

Summary: The term “business” was removed from the definition of “real estate” in 2008. However, when an individual is engaged to represent a seller or buyer in the sale or purchase of a business that includes a real estate component, the *Real Estate Act* will apply, but only to the trade of real estate. [See: *Real Estate Act* s.1(1)(u), s.1(1)(x)]

In July 2008, amendments were made to the *Real Estate Act*. The word “business” was deleted as a defined term and “business” is no longer part of the definition of “real estate” in the *Real Estate Act*.

If a person is hired to sell a business, for the purposes of the *Real Estate Act*, the following will apply:

1. Where the sale of a business involves the sale of shares, whether or not “real estate” as defined in *Real Estate Act* is transferred as a result of the share sale, the *Real Estate Act* will not apply. Shares are being traded, not real estate and therefore the *Real Estate Act* does not apply.
2. Where the sale of the business involves the sale of the business assets as opposed to the sale of shares and a business asset is “real estate” as defined in the *Real Estate Act*, the *Real Estate Act* will apply but only to the trade of real estate and not to other potential assets in the business sale.
3. Where the sale of the business begins as an asset sale and later changes to a share sale, and a business asset is “real estate” as defined in the *Real Estate Act*, the *Real Estate Act* will apply but only to the trade of real estate while a business asset and not to the sale of shares.

As a result of the amendments, the *Real Estate Act* no longer regulates business brokerage. It is only the real estate component of any sale in business assets that is governed by the *Real Estate Act*.

Examples

1. Joe is the 100% shareholder in a company that owns a strip mall, including the real property on which the strip mall is situated. The company also owns two of the six businesses located in the mall. Joe wishes to sell the business. If Joe sells the business through a share sale and wishes to engage the services of someone to assist him, the *Real Estate Act* would not apply as the sale is a share sale.
2. Joe's business is real estate. He owns 5 residential lots and houses in his name. Joe decides he wants to sell his business. If Joe wishes to sell the residential lots and houses, the *Real Estate Act* would apply and a person assisting Joe in the business sale would require an authorization under the *Real Estate Act*.

3. Joe is in retail and sells upscale kids' clothing. He conducts his sales from a rental premises. Joe wishes to sell his clothing business and assign his lease to the eventual buyer of the clothing business. The *Real Estate Act* would apply to the assignment of the lease component of this business sale.

Where the *Real Estate Act* does not cover the trading activity (e.g. share sale or retail goods business sale), and a real estate industry member is engaged to assist in the business sale, the public will need to be advised of the *Real Estate Act* limitations. Should services not be at an appropriate level and negligence, fraud or breach of trust occur, industry members and the public may be required to seek private remedies.