

BUSINESS BROKERAGE

Purpose: This bulletin explains when the *Real Estate Act* (Act) applies when you sell a business.

This bulletin applies to real estate brokerages, brokers, associate brokers, associates and other individuals that may engage in the sale of a business.

The key element to consider in the sale of a business is whether the Act applies to the sale. The definition of real estate in the Act includes real or leasehold property. It does not include a business or the sale of shares of a corporation.

The structure of the sale of a business will determine if you require a real estate licence to sell the business on behalf of another person.

- you require a real estate licence for that portion of the sale of a business that involves the lease or sale of real property
- you do not require a real estate licence to sell a business if the sale of the business is by a sale of the shares even if the sale of the shares includes real estate

It is important for real estate professionals to disclose to the parties to a **sale of a business when the real estate professional's activities do not fall** under the Act. If a real estate professional sells a business and the sale does not involve real estate, then the sale would not fall under the jurisdiction of the Act. This means that any consumer protection measures under the Act would not be available.

Where the sale of the business begins as an asset sale and later changes to a sale of the shares, and a business asset includes real estate, the Act will apply to the real estate component of the sale not to the sale of shares.

Examples

1. Joe is 100% shareholder in a corporation that owns a strip mall that includes the land. Joe wants to sell the company through a share sale and engages someone to help him. Because it is a share sale, that person does not need a real estate authorization.
2. ABC Limited conducts retail sales from a leased premise. XYZ Inc. wishes to purchase the assets of ABC Limited and operate out of the leased location. In order to do so, the lease must be assigned to XYZ Inc. A business broker assisting with the assignment of the lease would be required to have a real estate authorization.

3. 1234567 Alberta Ltd. owns a chain of hotels with multiple real estate holdings. It wishes to sell the company's assets and a real estate authorization would be required to facilitate the sale of the real estate assets.

Related information

Legislation

- *Real Estate Act* - sections 1(1)(u), s.1(1)(x)

Information bulletins

- Trading in Real Estate as a Real Estate Broker
- Trading in Real Estate – Jurisdiction and the *Real Estate Act*