Real Estate Council Alberta

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RECA Resource
Information Bulletins

LAST REVISED
August 2026
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Business - Brokerage

Purpose

This bulletin applies to real estate licensees and other individuals who may engage in the sale of a business. It explains when the *Real Estate Act* (Act) applies to the sale of a business.

Regulatory status: Information Bulletins provide guidance on how RECA interprets and applies existing legislative requirements. They do not create new legal requirements or amend the *Real Estate Act* or the *Real Estate Act* Rules.

Why this matters

The key question in a business sale is whether the Act applies. The Act's definition of "real estate" includes real or leasehold property; it does not include a business or the sale of shares of a corporation, since shares are personal property. Whether the Act applies depends on how the transaction is structured, not on which assets the underlying corporation owns: does the transaction transfer an interest in real estate itself (a sale of land, a building, or a lease assignment), or does it transfer ownership of a corporation that happens to own those assets? In the first case, the Act applies; in the second, it generally does not, even where the corporation's only significant asset is real estate.

What the Rules require

The structure of a business sale determines whether you require a real estate licence to sell the business on behalf of another person:

- You **require** a real estate licence for the portion of a business sale that involves the lease or sale of real property.
- You do **not require** a real estate licence to sell a business through a bona fide sale of shares, even if the company holds real estate.

It is important for real estate licensees to disclose to the parties to a business sale when their activities do not fall under the Act. If a licensee sells a business and the sale does not involve real estate, the sale does not fall under the Act's jurisdiction, meaning the Act's consumer protection measures are not available to the parties.

Where a business sale begins as an asset sale and later changes to a share sale, and a business asset includes real estate, the Act applies to the real estate component of the sale, but not to the share sale itself.

Examples

1. Joe is the 100% shareholder of a corporation that owns a strip mall, including the land. Joe wants to sell the company through a share sale and engages someone to help. Because it is a share sale, that person needs a real estate authorization.
2. ABC Limited conducts retail sales from leased premises. XYZ Inc. wishes to purchase ABC Limited's assets and operate from the leased premises. To do so, the lease must be assigned to XYZ Inc. A business broker assisting with the lease assignment would be required to hold a real estate authorization.
3. 123 Alberta Ltd. owns a chain of hotels and has multiple real estate holdings. It wishes to sell the company's assets. A real estate authorization would be required to facilitate the sale of the real estate assets.

Related Information

Legislation	Relevant Sections
Real Estate Act Rules	ss. 1(1)(u), 1(1)(x)
Additional Resource: Information Bulletins	Trading in Real Estate as a Real Estate Licensee Trading in Real Estate - Jurisdiction