

Real Estate Exemption from Bulk Sales Act



By Brian Madigan LL.B.

Question: I thought that real estate was exempt from the provisions of the Bulk Sales Act?

Well, that is true to some extent. Let's have a look at the operative part of the *Bulk Sales Act*:

Where no right of action

(2) No action shall be brought or proceeding taken in respect of real property included in a sale in bulk if the real property has been sold, transferred, charged or mortgaged to a purchaser, transferee, chargee or mortgagee in good faith for valuable consideration without actual notice of non-compliance with the Act by the buyer. R.S.O. 1990, c. B.14, s. 17 (2).

That was the actual exemption and when we break down the operative parts of the definition, we are left with the following:

The exemption applies:

Disposition: If the real property (otherwise part of the bulk sale) has been:

- 1) sold,
- 2) transferred,
- 3) charged or mortgaged

To Whom: to a

- 1) purchaser
- 2) transferee
- 3) chargee or mortgagee

Qualification: provided that such person

- 1) acquires the real property in good faith,
- 2) for valuable consideration,
- 3) without actual notice of non-compliance with the Act by the buyer.

So, what does this mean? Obviously, real estate is not exempt. It applies without reservation to the buyer (the first purchaser) under the Bulk Sales Act.

The only possibility of an exemption, is the second purchaser. And that person certainly needs to be arms-length in terms of the deal. This probably works with a financial institution, but not the one financing the acquisition of the business. They would either know, or they ought to have known of the bulk sale. The exemption may not save them.

However, the financial institution assisting the second purchaser is not placed upon inquiry. They can consider the proposed transaction as a straightforward commercial mortgage.

There is a qualification in respect to “valuable consideration”. Again, this means a true commercial transaction. This will not apply if no real money changes hands, that is, if it’s a friend, relative, or other trade creditor.

And finally, the purchaser must have no knowledge of the buyer’s non-compliance with the Act. The provision says “actual” notice. In that regard, this purchaser is not placed upon inquiry. This purchaser does not have to go looking for an error or mistake. This purchaser will require actual notice, before the exemption will not apply.

As a result, it is clear that there are some rules that need to be followed for the real property exemption to apply. Watch your step!

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