

## **Updating New Jersey's Bulk Sale Notification Law**

### ***Legislature Revamps Bulk Sale Notice Requirements***

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Commercial real estate owners, investors and their attorneys have long become accustomed to the overbearing and sometimes inefficient compliance requirements of New Jersey's bulk sale notification law at N.J.S.A. 54:50-38. Originally adopted in 1966 and expanded in 2007, the law requires real estate purchasers to notify the Division of Taxation ("Division") of every bulk sale<sup>1</sup> transaction at least ten (10) days prior to the proposed closing of the transaction. A purchaser's failure to abide by bulk sale notice requirement subjects the purchaser to liability for any state tax obligations due by seller at the time of closing. The underlying goal of the law was simple – to capture any tax liabilities owed to the state by the seller by effectively creating a lien against the seller's assets.

Although the law was established for a generally practical and logical purpose, it has effectively put the brakes on commercial real estate transactions across the state as result of its application to entities that do not generate a sales tax liability to the state. While the law originally applied only to entities that generate a sales or use tax in their business, the 2007 revision expanded the law's application to any seller, irrespective of whether they collect a sales or use tax in their operation. Accordingly, virtually every commercial real estate transaction now requires purchasers to file the mandatory bulk sale notice and deal with the inevitable post-closing tax escrow requirements with the seller.

Moreover, even though the law requires that the notice be sent to the Division at least ten (10) days prior to the anticipated transaction date for purposes of giving the Division enough time to respond, transactions cannot commence without receipt of the bulk sale escrow or tax clearance letter from the state. As a result, deals at the eve of their closing are held hostage to the issuance of the appropriate response from the Division.

In an effort to update the law, Governor Christie signed bill A-2748 last month, retroactively amending the current law to lessen the bureaucratic nature of the notice requirements, thereby promoting greater efficiency in the real estate marketplace. Importantly, the amendment retroactively applies to all sales occurring on or after August 1, 2007.

### ***New Exemptions to Bulk Sale Notification Law***

The thrust of the amendment to the bulk sale notification law is the exemption of certain properties and owners from the bulk sale notice requirements. Specifically, the law no longer requires bulk sale notices to be issued to the Division for transactions involving the sale, transfer or assignment of a "simple dwelling house"<sup>2</sup> or a "seasonal rental unit"<sup>3</sup> if the seller is an

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<sup>1</sup> A bulk sale is the sale, transfer, or assignment (collectively, "Transfers") in bulk of any part or the whole of a taxable entity's business assets, other than those Transfers made in the ordinary course of business.

<sup>2</sup> "Simple dwelling house" is defined under the law as a one or two-family home, a co-op unit or a condominium unit.

<sup>3</sup> "Seasonal rental unit" is defined under the law as a timeshare estate or a dwelling unit rented for a term less than 125 consecutive days by a person having permanent residence elsewhere.

**individual, estate, or a trust.** Notably, business entities such as corporations, partnerships and limited liability companies are not subject to this exemption. Moreover, the exemption does not extend to individual sellers when the property is owned by more than one individual.

The remainder of the prior bulk sale notification law outlining the Division's responsibility in notifying the purchaser of its potential claim as well as requirements for a bulk sale remains unchanged.

### ***Effect of Amendments***

The new exemptions to the Act give purchasers a "bright-line" test for whether the Act does or does not apply to their respective sellers. Exempt sellers of one and two-family homes are no longer subject to the sometimes sluggish bulk sale notification process. Real estate investors holding their property as individuals, or under a trust or estate can move more expeditiously towards the sales of their properties and without the nuisance of having a considerable escrow held at closing until later resolution by the Division.

However, the effect of the retroactive nature of the amendment remains to be seen. The amendment is to apply to all sales since late 2007. Since Governor Christie signed the bill, the Division has advised that its case workers are in the process of reviewing their files to determine whether the exemption applies to currently outstanding cases. If the Division determines that the exemption applies to a current case file, it will issue a clearance letter accordingly. Time will tell as to how quickly the Division addresses past files with respect to the new exemptions.

### ***Considerations***

Sellers and their attorneys should review their current and past real estate transactions to determine whether the amendment exempts them from the onerous bulk sale notice requirements. In many cases, significant escrow amounts in the thousands of dollars can be held for months while the Division determines whether the seller maintains any current tax liability. At this juncture, the Division has not issued a technical bulletin addressing the changes to the bulk sale notification law – however, case workers are aware of the amendment. While it is not necessary, it could prove helpful for sellers involved in past transactions to notify their bulk sale case worker in the event that an exemption applies to their case.

From a policy standpoint, although this amendment appears entirely rational, it bears wondering why it has been 4 years since the legislature decided to cut the "red-tape" on some of these transactions. In any event, the amendment is a reassuring step in the right direction in promoting the efficiency of real estate transactions in an era where these deals simply cannot afford any more hurdles.

*Harwood Lloyd's Commercial Department routinely represents clients in the sale, acquisition and financing of real estate transactions throughout New Jersey and New York.*