



Title Topics



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Bulk Sales Reporting Requirements Impact Realty

While the subject of tax-related reporting requirements is generally beyond the scope of title coverage, we have received several inquiries concerning Bulk Sales and the provisions of N.J.S.A. 54:50-38 as amended. Here's summary of the topic that we hope you will find informative.

The bulk sale of certain assets is subject to taxation under the Sales and Use Tax Act, *N.J.S.A. 54:32B-1 et seq.* Accordingly, the statutory scheme imposed a notice requirement in connection with such sales. Practitioners who routinely handle the sale of businesses are familiar with the need for the preparation of a so-called "bulk sale notice."

In 2007 the Legislature enacted **P. L. 2007, c.100, §5**, (eff. June 28, 2007 and operative Aug. 1, 2007). This section, which has been codified as *N.J.S.A. 54:50-38*, expands the bulk sale requirements as follows:

Whenever a person shall make a sale, transfer, or assignment **in bulk** of any part or the whole of the person's **business assets, otherwise than in the ordinary course of business**, the **purchaser** ... shall, at least ten (10) days before taking possession of the subject of the sale ... notify the Director [of the Division of Taxation]. ... Within 10 days of receiving such notice, the Director shall notify the **purchaser** ... that a possible claim for State taxes exists [Emphases added.]

The statute goes on to state that if the purchaser fails to give notice to the State, the amount of unpaid

taxes becomes a lien on the proceeds of sale payable to the seller. Furthermore, the purchaser shall be personally liable for the payment of the taxes due to the State. See also *N.J.S.A. 54:49-1* (entitled "Tax a debt and a lien...").

Does the sale of real estate fall within the scope of the foregoing statute? This past summer the Treasury Department, Division of Taxation, published a Technical Bulletin regarding this subject. **TB-60** (7-3-08). The bulletin notes that the term **business assets** includes **realty**, but only "**if the primary use of the realty is to support a business on its premises**". [Emphases added.]

What does the last phrase mean? Some attorneys have advised that notice of the proposed sale of all non-single family real estate must be given to the Division of Taxation. That notice would be given via form C-9600, Notification of Sale, Transfer, or Assignment in Bulk that must be submitted 10 days "before taking possession of, or paying for, the property." The form must be submitted by registered mail, but" certified mail or overnight delivery

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Mortgage Relief for Homeowners through bankruptcy? See page 2.

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is also acceptable.”

Responsibility for compliance lies with the purchaser (or his or her attorney). And in the event of non-compliance, a personal penalty is imposed on the purchaser (rather than a lien on the realty).

So just what transactions ARE covered by the new notice requirement? Is the conservative approach mentioned earlier warranted? In short, yes!

In response to an inquiry we made to the Division of Taxation as to the applicability of the notice provisions, by letter dated February 19, 2009 the Division responded,

The general rule applied to real estate transfers should be: If the realty is not the primary residence

of the seller, the transfer should be reported by the transferee or their representative to the Division of Taxation as per the TB-60. Since there may be some exception so this general rule, it is best to file form C-9600 and discuss the specific facts and circumstances with a representative of the Bulk Sale Section.”

The telephone number for the Bulk Sale Section is 609-292-6604. Keep it handy.

A copy of the Bulletin and related forms will be found at:
www.state.nj.us/treasury/taxation/pdf/pubs/tb/tb60.pdf.

Thanks to Lawrence J. Fineberg of Chicago Title Insurance Company for the background material.

Mortgage Relief for Homeowners through Bankruptcy? From Vestedtitle.blogspot.com

One of the proposals before Congress is to allow Bankruptcy Court judges to "cram down" first mortgages on residential real estate. Some believe this is good for the nation, others do not. The Wall Street Journal recently featured an op-ed by Todd J. Zywicki, "Don't Let Judges Tear Up Mortgage Contracts." Allowing a cram down "would be a profound mistake," he writes.

* Mortgage modification provides a windfall for some homeowners but "the ripple effects could further roil America's consumer credit markets."

* "In the first place, mortgage costs will rise."

* "Allowing mortgage modification in bankruptcy also could unleash a torrent of bankruptcies." "A surge in new bankruptcy filings, brought about by a judge's power to modify mortgages, could destabilize the market for all other types of consumer credit."

"There are other problems. A bankruptcy judge's power to reset interest rates and strip down principal to the value of the property sets up a dynamic that will fail to help many needy homeowners, and also reward bankruptcy abuse.

"Consider that the pending legislation requires the judge to set the interest rate at the prime rate plus "a reasonable premium for risk." Read more at <http://vestedtitle.blogspot.com/2009/02/plea-dont-allow-mortgage-cramdown.html>

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