



Posted on: January 20, 2012

## LEGISLATIVE UPDATE - SECTION 10 OF THE CANADA INTEREST ACT

January 20, 2012

*prepared for Richards Buell Sutton's Real Estate Lending Newsletter*

Section 10(1) of the *Canada Interest Act* grants borrowers a statutory right to prepay mortgage loans with terms over 5 years at the end of 5 years upon payment of 3 months' interest, even if the mortgage is expressed to be closed or prepayable only with yield maintenance.

Up until January 1, 2012, the only exemption to the statutory prepayment rights in Section 10(1) of the *Interest Act* was for mortgages granted by joint stock companies and other corporations, which could consequently be locked into long-term mortgages indefinitely. However, individuals and other non-corporate entities which were not specifically exempted were entitled to the benefit of the prepayment rights in Section 10(1).

In our June, 2011 Annual Legal Report to the Mortgage Investment Association of B.C., we reported on the federal government's proposal to amend the *Interest Act* to expand the list of entities that are exempt from the prepayment rights in Section 10(1), the stated purpose being to modernize the *Interest Act* by expanding the list of entities that are free to negotiate their own prepayment terms to obtain more favourable long-term lending arrangements.

This change to the legislation has now occurred with the coming into force on January 1, 2012 of the "Prescribed Entities and Classes of Mortgages and Hypothecs Regulations" (the "Regulations"). Pursuant to the Regulations, the statutory prepayment rights in Section 10(1) of the *Interest Act* will not apply to mortgages granted after January 1, 2012 by:

- *partnerships;*
- *trusts settled for business or commercial purposes;*
- *Alberta unlimited liability corporations;*
- *British Columbia unlimited liability companies; and*
- *Nova Scotia unlimited companies.*



RICHARDS  
BUELL  
SUTTON

*Established in 1871*

Lenders should continue to use caution in structuring long-term mortgage loans involving individuals, trusts established for non-business or non-commercial purposes, or any other non-corporate entities not specifically exempted in the Regulations from the prepayment rights in Section 10(1).

For further information please contact any member of Richards Buell Sutton's Commercial Real Estate Lending Group - Michael Shane, Brenda Lightbody, Michael Leroux, or Mark Baron.

Prescribed Entities and Classes of Mortgages and Hypothecs



700 - 401 W GEORGIA ST.  
VANCOUVER, BC V6B 5A1  
CANADA

TELEPHONE  
604 682 3664

FAX  
604 688 3830

[RBS.CA](http://RBS.CA)