

Mortgage Prepayment under the Interest Act - More Exempt Entities

February 27, 2012 by [Ryan Therrien](#)

On January 1, 2012, the Prescribed Entities and Classes of Mortgages and Hypothecs Regulations (the "Regulations") under the Interest Act (Canada) (the "Act") came into force.

The Regulations expand the class of "prescribed entities" that are exempted from the protections afforded by Section 10 of the Act.

[Section 10 of the Act](#) provides for mandatory prepayment terms for mortgages and hypothecs over real property with a term of more than 5 years. Such mortgages must provide that, at any time after the first five years of the mortgage term, the mortgagor shall have the right to pre-pay the full amount of the mortgage and any accrued interest outstanding at that time, subject to the payment of a penalty of three months interest. By providing these mandatory prepayment provisions, Parliament provided mortgagors with the ability to renegotiate long-term, high interest mortgages without having to pay unreasonable penalties imposed by lenders.

The Act provides exceptions to these protections – mortgages given by corporations and joint stock companies are specifically exempted from the prepayment provisions provided under section 10 of the Act. The policy behind the exceptions is to permit sophisticated commercial parties to negotiate their own mortgage terms. However, prior to the Regulations coming into force, enterprises not structured as corporations or joint stock companies occasionally had difficulty in securing long-term financing because prepayment terms were prescribed by the Act and some lenders were unwilling to advance funds with a prepayment penalty limited to three months interest.

The Regulations reflect the modern commercial reality that business enterprises are now structured in a variety of ways. As of January 1, 2012, in addition to corporations and joint stock companies, the following entities would be excluded from the mandatory prepayment protections under the Act:

- Partnerships
- Trusts that are settled for business or commercial purposes
- Unlimited liability entities under corporate/company legislation in Alberta, British Columbia and Nova Scotia.

Note that in Ontario, [section 18 of the *Mortgages Act \(Ontario\)*](#) contains similar mandatory prepayment terms for mortgages longer than 5 years. This provincial legislation has not yet been updated to add exempt entities other than "corporations" or "joint stock companies" as mortgagors.

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