New Requirements Regarding Beneficial Ownership of Real Estate in British Columbia

June 10, 2019

The *Land Owner Transparency Act* (LOTA) received royal assent on May 16, 2019, approximately one year after the provincial government's release of a white paper on the subject. LOTA seeks to enhance transparency in land ownership by establishing a registry of beneficial ownership in property (the Registry). Barring some exceptions, the information collected through the Registry will be available to various government and law enforcement agencies and, to a certain extent, members of the public.

LOTA's objective is to reduce an individual's ability to use real estate for illicit purposes, such as money laundering and tax evasion. This is in accordance with the B.C. government's 30-Point Plan for Housing Affordability, and is similar to the intention of the *Business Corporations Amending Act*, 2019.

LOTA will become operational upon the passage of regulations by the B.C. government.

Reporting Bodies

Once LOTA takes effect, an applicant looking to register an interest in land will be required to file a transparency declaration. An interest in land includes a fee simple estate, a leasehold estate of more than 10 years, or other estates, rights or interests to be prescribed by regulation. A transparency declaration must disclose whether the proposed interest in land will be registered in the name of a relevant corporation, trust, or partnership (Reporting Bodies). Entities exempt from disclosure under LOTA include reporting issuers under the relevant *Business Corporations Act*, corporations listed on a designated stock exchange, trust companies, pension fund societies, alter ego trusts, testamentary trusts and trusts in respect of pension plans.

Concurrently with the submission of a transparency declaration, Reporting Bodies must submit a transparency report upon the occurrence of any of the following:

1. on submission of a document to register an interest in land;
2. within two months of changes to the list of current interest holders or a determination of incapacity; and
3. during the initial transition period, to be prescribed by regulation, for pre-existing interests in land.

The Land Title and Survey Authority must refuse any application to register an interest in land if it is not accompanied by a transparency declaration and, if applicable, a transparency report.

Transparency Reports — Contents

All transparency reports must contain the Reporting Body's primary identification information. For corporations and limited liability companies, primary identification includes the registered office address, business number and jurisdiction of formation. For individuals, primary identification information includes status of Canadian citizenship, as well as city and country of primary residence.

Transparency reports must also provide personal information on the Reporting Body's interest holders. An individual is a corporate interest holder if he/she holds ten per cent or more of the corporation's shares, or has the ability to appoint or remove the corporation's directors[1]. In addition to the primary identification information identified above, a Reporting Body must disclose certain additional data for each of its interest holders including date of birth, Canadian social insurance number or individual tax number (if applicable) and the duration and extent of his/her/its relationship with the Reporting Body.

A Reporting Body must take reasonable steps to obtain the required information from relevant individuals and notify the interest holders of the disclosed information. Interest holders have 90 days thereafter to request that certain personal information be withheld from public access for health or safety reasons.

Enforcement

Transparency reports may be searched by law enforcement agencies, tax authorities, regulators, and the British Columbia Ministry of Finance. Certain sensitive information defined through regulations will be withheld from public disclosure. Enforcement officers may enter a Reporting Body's place of business or record-keeping area at all reasonable times to conduct inspections and ensure compliance with LOTA. They may also obtain a warrant to search private residences. Occupants are under a duty to assist the officer's inspections and produce or allow access to records upon request.

Contraventions of LOTA are classified into major and minor offences. Major offences include failing to file a transparency report after a prescribed occurrence, filing a non-compliant transparency report or providing false or misleading information in a transparency declaration or transparency report. Minor offences include failure by an interest holder to disclose required information to a Reporting Body and interference with an enforcement officer's inspection. Fines for major offences must not exceed the greater of 15 per cent of the property's assessed value, or the amount of $25,000 for individuals and $50,000 for non-individuals. In addition to fines, LOTA permits an enforcement officer to issue administrative penalties at his/her discretion for major and minor contraventions of LOTA. Administrative penalties for major offences must not exceed the greater of five per cent of the property's assessed value, or the amount of $25,000 for individuals and $50,000 for non-individuals.

Enactment

It is not clear when the provincial government will pass regulations to bring LOTA into force, or whether any other relevant acts, such as the *Personal Property Transfer Tax Act*, will be amended to reflect the changes brought by LOTA. We will be pleased to assist you with any required filings once LOTA is operational.

[1] The white paper published by the provincial government contemplated corporate interest holders as those individuals holding 25 per cent or more of a company's shares, which reflects the current reporting requirements under the British Columbia *Property Transfer Tax Act.*

By

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