

Disclosure of Beneficial Ownership of Real Property in Ontario and British Columbia

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Over the past few years, the Ontario and British Columbia governments have created rules relating to disclosure of the beneficial ownership of real property. The Ontario government's stated objective is to better understand the housing market, which may lead to additional enforcement, while the British Columbia government's rationale is to combat money laundering, end the hidden ownership of real estate, and preserve the affordability of housing.

Ontario

On May 6, 2017, new requirements regarding the disclosure of certain prescribed information on most real property transfers in Ontario came into effect. Disclosure is provided by way of a prescribed form pursuant to section 5.0.1 of the *Land Transfer Tax Act*, which is completed and filed online on behalf of the transferee(s). Once the section 5.0.1 form is filed, a registration number is issued. Because all Ontario real property transfers are electronic, the number must be inserted into the electronic transfer form in order for the property transfer to be completed and registered. Part of the information that now must be disclosed is the beneficial ownership of the transferred property. The online form is registered

separately from the property transfer; it does not form part of the transfer and therefore is not publicly available.

The Ontario government's stated rationale for implementing these new disclosure requirements is to "better understand trends in the housing market." The government also advised that the "additional data will be used for the administration

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and enforcement of the [land transfer tax] and to support evidence-based policy development with respect to Ontario's real estate market" (see the Ontario government's webpage at <https://www.fin.gov.on.ca/en/tax/ltt/prescribedinfo.html>). Some speculate that before the last election the Ontario government was considering a change in certain land transfer tax policies and the way in which the tax is levied, and further that the government implemented the prescribed information form to determine what additional revenue might be raised as a result of these changes. To date, no such changes have been announced,

and the completion of the form itself does not give rise to any additional tax, although the form is used to confirm whether the non-resident speculation tax applies.

The prescribed information must be provided by any person who purchases or acquires land that contains at least one and not more than six "single family residences" or "agricultural land" (both defined in the *Land Transfer Tax Act*), except in the case of transfers to trustees of a mutual fund trust, a real estate investment trust, or a specified investment flowthrough trust (all defined in the *Income Tax Act*). The acquisition of land includes transfers to trustees and transfers by executors to beneficiaries. The prescribed information includes whether any beneficial interest in the land is acquired or retained (the disclosure rules do not differentiate between the two) by one or more persons who are not transferees. If so, the following information must also be provided concerning each beneficial owner who is not a transferee: name, date of birth, residence, and citizenship (for individuals), and name, number of directors, and information regarding citizenship and other foreign connections (for corporations).

British Columbia

The *Information Collection Regulation*, which was enacted under the *Property Transfer Tax Act*, came into effect on September 17, 2018. The regulation requires a transferee that is a "relevant corporation" (generally, a private corporation) and a trustee of



a “relevant trust” (generally, a private express trust) with beneficiaries that include a relevant corporation to disclose information relating to the “corporate interest holder.” An individual is a “corporate interest holder” if the individual has legal or beneficial ownership or control, directly or indirectly, of 25 percent or more of the shares of the corporation or 25 percent or more of the voting rights of the corporation. The required information includes the name and contact information of the corporate interest holder, and the date of birth, citizenship, and tax number of the individual.

In addition, the regulation requires a transferee to disclose whether a property is held on behalf of a partnership. In this regard, note that it is not possible to register a partnership on title in British Columbia.

In addition to the above information, which is currently collected in the property transfer tax return that accompanies the transfer form for real property in British Columbia, the

government of British Columbia has proposed to create a land registry that records the beneficial ownership of real property. The government originally invited interested parties to provide comments on the *Land Owner Transparency Act* (LOTA) white paper in June 2018. LOTA (Bill 23) passed First Reading on April 2, 2019.

If the legislation is enacted, a transferee must file a transparency declaration on registering an interest in land, indicating whether the interest is registered in the name of a corporation, trustee, or partner of a partnership. If so, the interest holder’s identification information, date of birth, tax number, and prescribed information must be disclosed. LOTA also requires existing owners to file a declaration within a prescribed period (not yet available). If there is a subsequent change in the beneficial ownership of the land, the change must also be reported. There is no such requirement for the collection of information under the *Property Transfer Tax Act*.

Individuals may apply to the administrator of LOTA to have some or all of their information omitted from publicly accessible information if they believe that disclosure would threaten the safety or mental or physical health of themselves or a family member. Beneficial owners have many legitimate reasons to use a corporation to hold registered title, including privacy and estate planning. It is unclear how the administrator will adjudicate requests to omit information. The regulation have not been released.

The administrator must make the transparency records available for search and inspection by the government, tax and law enforcement agencies, and financial sector regulators. In addition, the administrator must make certain information available on a search by members of the public including the names of individuals who are associated with a corporation, trustee, or partnership.

LOTA is the first legislation of its kind in Canada. It does not impose new taxes, but it does require holders of land to disclose the ultimate owner of a corporation, trust, or partnership. It may be possible for the government of British Columbia to tax the transfer of a beneficial interest in land on the basis of the information collected. The information collected will also be helpful to the governments in the enforcement of tax and non-tax legislation. ■