

Brief Overview: Land Owner Transparency Act (“LOTA”)

1. What is LOTA and why was it enacted?

By enacting LOTA, the provincial government is seeking to end “hidden” ownership of real estate and to eliminate tax evasion and fraud. LOTA creates new disclosure requirements for land owners in British Columbia – each entity that is a “reporting body” that owns or acquires an “interest in land” will need to make certain disclosure filings under LOTA, and particular disclose information about the “interest holders.” Disclosures made under LOTA are maintained in the Land Owner Transparency Register (the “**Register**”), and certain information stored in the Register will eventually be accessible to the public. The majority of LOTA will be in force on **November 30, 2020**.

2. What qualifies as an “Interest in Land?”

- an estate in fee simple (this is standard, outright ownership of property),
- a life estate in land (this is the right of an individual to occupy property for the individual’s lifetime),
- a right to occupy land under a lease that has a term of more than 10 years (considering only the remaining term of the lease as at the date of registration, disregarding any renewal or extension periods),
- a right under an agreement for sale to occupy land or require the transfer of an estate in fee simple
- any other estate, right or interest prescribed by regulation (note there are no prescribed regulations yet).

Excluded: treaty, First Nations, and reserve lands, generally.

3. What is a “Reporting Body?”

The reporting body is, generally, a corporate entity - a trustee of a trust, a corporation, or a partner of a partnership (that is not otherwise excluded) - that owns or that acquires a registered “interest in land,” and that is not otherwise excluded. Notable exclusions include: public bodies, schools, publicly-listed corporations, strata corporations, savings institutions, insurance companies, charitable trusts, and testamentary trusts.

4. What is an “Interest Holder?”

Interest holders are the individuals (as opposed to entities) that hold certain beneficial or indirect ownership interest in the property. LOTA sets out three different categories of interest holders to classify different forms of ownership - corporate interest holders, beneficial owners, and partnership interest holders.

5. When is disclosure required?

There are four primary triggering events for disclosure under LOTA:

- if an application is made to register an interest in land at the Land Title Office
- if a reporting body already owns an interest in land prior to LOTA coming into force on November 30, 2020. Reporting bodies will have until **November 30, 2021** to file a transparency report regardless of when they acquired their interest in the land.
- if a registered owner of an interest in land is not a reporting body at the time the interest in land was registered and it subsequently becomes a reporting body, it must file a transparency report. if a reporting body discovers that a prior filing is inaccurate due to a change in the interest holders or if an individual who is an interest holder or settlor becomes incapable of managing their financial affairs, the reporting body must file a transparency report within two months of the reporting body becoming aware of the inaccuracy

6. What information will be publically available in the Register?

“Primary identification information” in respect of reporting bodies (that are, at the time of the search, registered owners of interests in land), and primary identification information in respect of individuals who are current interest holders or settlors at the time of the search will be publicly available. Individuals can apply to have certain personal information omitted from the publicly accessible Register due to health and safety concerns. Certain bodies are entitled to search all information in the Register, including the LTSA (the administrator of LOTA), taxing authorities, law enforcement officers, and certain regulators, including securities commissions, FINTRAC, and the Law Society.

7. When will the Register be searchable?

The Register will not be searchable either by the public or government entities until **April 30, 2021**.

8. What are the penalties for non-compliance under LOTA and the Regulations?

If a transparency declaration and the transparency report (if applicable) are not filed with the application to register an interest in land, the LTSA can refuse to register the interest.

There are penalties for failing to file a transparency report or providing false information. Penalties include a \$50,000 fine for a corporation or other entity, a \$25,000 fine for an individual, or a fine of 5% of the assessed value of the property. For more serious offences, including an interest holder’s or settlor’s failure to provide information, misuse of information obtained by a reporting body, misuse of publicly accessible information, or providing false or misleading information in connection with an enforcement action, the offender may be liable for a fine of not more than \$50,000 for individuals and \$100,000 for persons other than individuals, or 15% of the assessed value of the property.

9. Is this the same as the Transparency Register required by the *Business Corporation Act*?

No. The BC company Transparency Register is a requirement for all private companies in British Columbia pursuant to the *Business Corporations Act*. LOTR is a separate registry, and the requirements for disclosure are similar, but there are some important differences.

If you have any questions, please feel free to reach out.

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