

DECEMBER 10, 2018 – DEADLINE FOR CREATING REGISTER OF OWNERSHIP INTERESTS IN LAND HELD BY ONTARIO CORPORATIONS

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The *Forfeited Corporate Property Act, 2015* (“**FCPA**”), which came into force in Ontario on December 10, 2016, introduced new record-keeping obligations on Ontario corporations by way of amendments to the *Ontario Business Corporations Act* (“**OBCA**”). The new obligations applied immediately to corporations incorporated or continued under the OBCA after December 10, 2016. For corporations incorporated or continued under the OBCA prior to December 10, 2016, there was a two-year grace period to comply with the new record-keeping requirements. The December 10, 2018 compliance deadline is now fast approaching.

Record-Keeping Requirements

The amendments to the OBCA require corporations to maintain at their registered office a register of all “ownership interests” in land situated in Ontario. The phrase “ownership interests” is not defined in the OBCA, however, the phrase likely extends to both legal and beneficial interests in land.

The register must identify each property and list the date the corporation acquired the property or, if applicable, disposed of the property. In addition, corporations are required to keep supporting documents with the property register. Specifically, corporations must retain “a copy of any deeds, transfers or similar documents” that contain any of the following:

1. the municipal address;
2. the registry or land titles division and the property identifier number;
3. the legal description; and
4. the assessment roll number.

Practical Implications

These new record-keeping requirements raise several practical issues for corporations seeking to comply with their duties and obligations under the OBCA.

For large corporations with many real estate holdings, preparing and maintaining a list of all real property interests may be administratively difficult and costly. For example, real estate development corporations that have subdivided land pursuant to a registered plan of subdivision may own hundreds or thousands of lots. These corporations must prepare, maintain and store an extensive register that lists each lot, together with the corresponding PIN and any other supporting documentation. Administrative challenges may also arise for corporations actively engaged in the real estate market. For example, large homebuilding corporations may acquire and dispose of real property daily, necessitating frequent updates to the register.

Failing to comply with the OBCA may have significant implications. While compliance is unlikely to be actively enforced by the Ministry, non-compliance with the law may prevent corporations from providing certain representations to purchasers, creditors or other interested parties. This may hinder corporations' ability to enter into certain financing arrangements or other commercial transactions.

Conclusion

The amendments to the OBCA may impose significant corporate record keeping requirements to certain Ontario corporations with an interest in a large amount of real estate. With the December 10, 2018 deadline approaching, it is important that corporations, directors and officers familiarize themselves with these changes, and discuss their duties, obligations and potential exposure to liability with legal counsel.

a cautionary note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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