

# NEW RECORD-KEEPING REQUIREMENTS FOR ONTARIO CORPORATIONS

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The *Forfeited Corporate Property Act, 2015* (“**FCPA**”) is scheduled to come into force in Ontario on December 10, 2016. The FCPA introduces new record-keeping obligations on Ontario corporations by way of amendments to the *Ontario Business Corporations Act* (“**OBCA**”). These new record-keeping requirements apply to all corporations incorporated or continued under the OBCA.

## 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, large homebuilding corporations may acquire and dispose of real property daily, necessitating frequent updates to the register. Real estate development corporations 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. As corporations are required to keep the register up-to-date at all times, it may be administratively onerous for some corporations with many ownership interests in land in Ontario to maintain such a register.

Finally, failing to comply with the OBCA 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.

### **Timing for Compliance**

The amendments to the OBCA come into force on December 10, 2016. For corporations incorporated or continued under the OBCA on or after this date, the new record keeping rules will apply immediately upon incorporation or continuance. However, for corporations incorporated or continued under the OBCA prior to December 10, 2016, there is a two-year grace period to comply with the new record-keeping requirements.

### **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. At this time, the Ministry has provided little guidance regarding this new regime. Therefore, 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.

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### **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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