

# JUNE 2021 UPDATE: BRITISH COLUMBIA'S NEW REGISTRY OF BENEFICIAL OWNERSHIP

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## Background

Now that the Land Owner Transparency Registry (the “**LOTR**”) is searchable by the public, it is important to understand the scope of its use, and its current limitations. This bulletin is an update to our previous [bulletin](#) published on October 2020, and will provide guidance on what to expect when searching the LOTR, and how it may assist individuals or companies seeking to acquire an interest in land in British Columbia.

For background, on May 16, 2019, the government of British Columbia passed the *Land Owner Transparency Act* (Bill 23-2019) (the “**Act**”). The Act introduced mandatory disclosure about beneficial ownership of land with the purpose of ending anonymous land ownership in B.C. As discussed in our [bulletin](#) of October 2019, the Act creates and governs the LOTR, a first of its kind in Canada, with the intention to make land ownership “transparent” in British Columbia, including access to beneficial owners’ information, which was not required and available before the Act came into force.

On September 20, 2020, the Province of British Columbia approved *Order in Council No. 549*, which brought most of the provisions of the Act into force effective November 30, 2020. The Order also released the *Land Owner Transparency Regulation* (the “**Regulation**”), which also came into force on the same date, together with the Act. As of November 30, 2020, individuals who wish to acquire an interest in land are also required to disclose whether they are a “reporting body” on the LOTR. As of April 30, 2021, the LOTR is now searchable by the public. If you wish to view a more detailed outline of the key provisions under the Act and Regulation please see our last [bulletin](#).

Below are some answers to the key questions about the Act and the LOTR.

## What information on the LOTR is now publicly available?

As of April 30, 2021, the LOTR is publicly accessible. The public will be able to search the LOTR by name or by parcel identifier in order to obtain primary identification information about “reporting bodies” that are, at the time of the search, registered as owners of interests in land, and primary identification information in respect of

individuals who are current interest holders or settlors as follows:

- **By Name:** what interest in land is held by reporting bodies, interest holders or settlors?
- **By Parcel Identifier:** who are the reporting bodies, interest holders or settlors?

The cost for each search is \$5.00. Individuals can apply to have certain personal information omitted from public searches on the LOTR on reasonable belief that there is a threat to their health or safety if the information is public. Information may also be omitted if the interest holder is under the age of 19, if the interest holder is deemed mentally unfit to handle their financial affairs, if the individual is identified as an “interest holder” or “settlor” in transparency reports that have been filed into the LOTR for 90 days or less, and if the individual has made a successful application to omit information. However, there will be certain bodies that are entitled to search all of the information contained on the LOTR such as enforcement officers, taxing authorities, law enforcement officers, ministry of finance employees, and certain regulators, including securities commissions, FICOM, FINTRAC, and the Law Society of BC.

If an individual applies to have their personal information omitted from the LOTR then a section 40 - Application to Omit Information must be filed. This application must include evidence to support such application and specify the grounds on which the application is based, the particular information the individual seeks to have omitted or obscured, and the address at which the individual is to be notified of the LOTR administrator’s decision. The individual must also provide any other records, information and verifications that the LOTR administrator may require. The application fee is \$30.

When the LOTA administrator receives an application to omit information they will obscure the information identified in the application pending review and determination. The information will be obscured until either the applicant fails to provide, within the time specified by the administrator, any required records information, or verifications, or the administrator is satisfied that making some or all of the information available could not reasonably be expected to threaten the safety, mental or physical health of the applicant. The LOTR administrator will provide written notice of its decision and continue to obscure the information for at least 30 days after providing the applicant with notice.

### **How can a reporting body correct or change information in the LOTR?**

A reporting body or interest holder in land may apply to the LOTR Administrator to request that corrections be made to a filed transparency report or to publicly accessible information to correct incomplete or inaccurate information by filing a section 42 - Application to Correct or Change Information at any time after a transparency report is filed in the LOTR as part of an acquisition. The applicant must provide evidence to support such application. A reporting body can apply to correct or change information as long as it remains a

reporting body in respect to the interest in land for which the incomplete or incorrect information contained in a transparency report relates.

If the “reporting body” that previously filed the transparency report is no longer a “reporting body” it may also apply to the LOTR Administrator to request that correction or changes be made to a filed transparency report, reported information or publicly accessible information. Updating a previously filed report to reflect that the “reporting body” is no longer a “reporting body” also requires a \$30 filing fee.

If the information being updated or corrected relates to an “interest holder” or “settlor”, the applicant must take reasonable steps to give written notice of the requested correction to the “interest holder” or “settlor” prior to making the application. The applicant must show in their application that notice was given or, if the applicant was unable to give notice, provide a summary of the steps taken to give notice.

An “interest holder” or “settlor” is also entitled to request corrections or changes to a filed transparency report, reported information or publicly accessible information. Prior to making the request an applicant must first make a written request to the “reporting body” that provided the information, requesting that the “reporting body” correct or change the information by filing a new transparency report. The applicant must also confirm that the “reporting body” had not filed a new transparency report that contains complete and accurate information about the “interest holder” or “settlor” within three months after receiving such a request. The Act does not address whether these prerequisites apply where the “reporting body” that filed the transparency report is no longer a “reporting body”.

### **What is the required disclosure under the LOTR?**

The LOTR provides information about individuals who are deemed to have an indirect ownership interest in land in B.C., pursuant to the Act and Regulation. As of November 30, 2020, anyone who applies to the Land Title Office (the “**LTO**”) to register an “interest in land”, must also file a “transparency declaration” that will be stored in the LOTR, disclosing whether or not the transferee is a “reporting body”. Under the Act, an “interest in land” includes:

- fee simple estates;
- life estate;
- any lease with a term greater than 10 years;
- right to occupy or require transfer under agreement for sale; and
- certain other real property interests.

If the person who filed a transparency declaration is considered a “reporting body”, pursuant to the Act, then that person will also be required to file a “transparency report”. Under the Act, a “reporting body” is described as

a “relevant corporation”, “trustee of a relevant trust”, or a “partner of a relevant partnership”. The transparency report requires a “reporting body” to disclose information about themselves and their beneficial or indirect owners, referred to in the Act as “interest holders”. These categories are meant to capture individuals or entities that may hold land as a “relevant intermediary” (now defined in the Regulation) for a beneficial owner or an indirect owner, subject to certain exceptions such as public companies, government bodies, savings institutions and many others that are excluded from the definition of a “relevant corporation” under the Act.

On application to register a legal interest in land, a two-tiered obligation is triggered:

1. each transferee must file a transparency declaration indicating if they are a “reporting body” and, if so, which type; and
2. a “reporting body” must also file a transparency report disclosing specified information about each interest holder.

In practice, these documents will need to be filed concurrently with a LTO application, that is with a Form A Freehold Transfer and a Property Transfer Tax Return required for a transaction involving an acquisition of real estate.

It is worth noting that the disclosure obligations of “reporting bodies” are ongoing, which means that a “reporting body” must file an updated transparency report at the LOTR each time its interest holders change, even if there is no change in the legal/registered ownership of the land.

In addition, if a registered owner ceases to be a “reporting body”, a notice to administrator must be filed if a corporation, trust or partnership ceases to be a relevant corporation, relevant trust or relevant partnership within 60 days of such person ceasing to be a reporting body.

### **What are the disclosure requirements by Pre-Existing Owners and who is exempt from such requirements?**

The Regulation provides that “reporting bodies”, that is a relevant corporation, relevant trust or relevant partnership, that owned an interest in land when the Act came into force must file a transparency report by **November 30, 2021**. This will certainly affect most of the corporate “interest holders” who own a beneficial or indirect interest in land through a corporate ownership structure.

However, if a pre-existing beneficial owner transfers or will transfer their interest in land prior to **November 30, 2021**, that person will be exempt from such requirement. This exemption is due to the fact that if such transfer also involves a transfer of the registered ownership, then the new owner must file, as discussed above, a transparency declaration and, if the purchaser is a “reporting body”, a transparency report as well. If the new owner only acquires a beneficial ownership before November 30, 2021, then they must file a transparency

report within two months of the date of the acquisition as a one-time obligation.

This will provide current landowners, particularly those with complex ownership structures, sufficient time to assess their ownership structure, obtain legal advice, if required, and file their transparency reports.

This requirement does not apply to individuals who hold an interest in land as a legal and beneficial owner as well as those relevant corporations who are exempt from the Act requirements by Schedule 1 of the Act.

Notable exemptions include publicly traded corporations, Crown corporations, local governments, strata corporations, schools, insurance companies, trust companies, corporations owned by an Indigenous nation, savings institutions, and corporations who are a wholly owned subsidiary, within the meaning of the *Business Corporations Act*, of these corporations.

In addition, Schedule 2 of the Act contains an exemption for relevant trusts who are exempt from the Act requirements including testamentary trusts, charitable trusts, alter ego or joint spousal trusts and real estate investment trusts (REITs).

### **Key Takeaways**

The LOTR should be used for informational purposes only, and not relied on for confirming title. It simply provides a purchaser with insight on who the “interest holders” are of a particular parcel of land. In addition, not all parcels of land may be represented on the LOTR at this time. This is because “reporting bodies” who held an interest in land prior to November 30, 2020 are not required to file a transparency report in the LOTR until November 30, 2021. Given that the LOTR will omit information about certain individuals there may be gaps in the disclosure that will make it difficult to determine who the interest holders of a particular parcel are.

Additionally, the LOTR search does not disclose information about reporting bodies who are individuals under the age of 19, are deemed incapable of managing their own financial affairs, have submitted an Application to Omit Information which has been approved by the LOTA administrator, or until at least 90 days after the transparency report has been accepted for filing by the registrar; therefore, it should not be solely relied on in performing due diligence investigation as part of an acquisition of a parcel of land. However, the LOTR is a useful tool that will help a purchaser to confirm if there is a beneficial ownership in land, subject to the above caveats.

If you wish to obtain further particulars on the LOTR, its use and its limitations, please do not hesitate to contact us.

by [Damon Chisholm](#), [Douglas Zorrilla](#) and [Stephen Lewis](#)

### **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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