

Legal update

Amendments to the Ontario *Business Corporations Act*: what every Ontario corporation should know about the new record-keeping obligations

April 2017

Corporate and commercial Real estate

The *Forfeited Corporate Property Act, 2015* (the FCPA) recently came into force, amending numerous provisions of the *Business Corporations Act* (Ontario) (the OBCA) and thereby creating additional record-keeping obligations on all Ontario corporations. Notably, the new subsection 140(1)(e) obligates Ontario corporations to prepare and maintain a register of ownership interests in land.

The new record-keeping rules

The new section 140.1 of the OBCA sets forth this requirement:

140.1 (1) A corporation shall prepare and maintain at its registered office a register of its ownership interests in land in Ontario.

Although the term “ownership interests” is not defined, the prudent view is this term includes both registered and beneficial freehold interests. It will also be advisable to include interests in a partnership or limited partnership that owns land in Ontario. There is currently no judicial guidance on whether other interests, such as mortgages and leases, are captured; our view is these types of interests will not need to be included on the register.

Pursuant to subsection 140.1(2) of the OBCA, the register shall (i) identify each property to which the corporation has an ownership interest, and (ii) include the date the corporation acquired the property and, if applicable, the date the corporation disposed of it. Additionally, as supporting documentation, the corporation must keep copies of any deeds, transfers, or similar documents for each property listed in the register, which contains the following information:

- the municipal address, if any;
- the registry or land title division and the property identifier number;
- the legal description; and
- the assessment roll number, if any.

The register and supporting documentation may be maintained in either paper or electronic format, so long as they are maintained at the corporation's registered office.

These record-keeping obligations extend only to ownership interests in land situated in Ontario.

Application

The application of the new real property register requirements varies according to a corporation's date of incorporation. If a corporation was incorporated or continued under the OBCA on or after December 10, 2016, it is immediately subject to the new record-keeping obligations. Corporations incorporated or continued before December 10, 2016, enjoy the benefit of a two-year transition period and must come into full compliance by December 10, 2018.

While existing corporations with ownership interests in real property have two years to comply with the new requirements, it would be prudent for them to begin preparing their registers as soon as possible as compilation of the required documents may prove to be quite time-consuming. It is important to note that non-compliance of the recording requirements constitutes an offence under the OBCA, which may be punishable by fine.

The FCPA will eventually enact similar amendments to the *Not-for-profit Corporations Act, 2010* (the NFPCA), but the coming-into-force date for the NFPCA is unknown at this time.

Alexandra Aversa
Oliver Moore

For further information, please contact one of the following lawyers:

> Alexandra Aversa	Ottawa	+1 613.780.1543	alexandra.aversa@nortonrosefulbright.com
> Oliver Moore	Ottawa	+1 613.780.8688	oliver.moore@nortonrosefulbright.com
> Michael Lieberman	Toronto	+1 416.202.6702	michael.lieberman@nortonrosefulbright.com
> Troy Ungerman	Toronto	+1 416.216.1862	troy.ungerman@nortonrosefulbright.com

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