

LIDSTONE & COMPANY
BARRISTERS AND SOLICITORS

BULLETIN

TO: CLIENTS (BC)
FROM: Alison Espetveidt & William Pollitt
DATE: July 25, 2022
RE: Land Owner Transparency Act & Pre-Existing Owners

The aim of this bulletin is to flag changes to the *Land Owner Transparency Act* (the “Act”) that will take effect on November 30, 2022. Many local governments have received notices from the Province regarding these changes.

I. BACKGROUND

In 2020, the Province enacted the Act. The intent of the legislation is to create a public registry of beneficial real estate ownership. In other words, to crack down on ‘hidden’ ownership of real estate in the province. The Act currently requires all persons acquiring an interest in land to file a transparency declaration and, in some circumstances, file a transparency report setting out beneficial ownership of the interest in land.

II. THE LEGISLATION

A. Filing Requirements

One part of implementing the Act requires all pre-existing registered owners of an interest in land to file a transparency report, if required, by November 30, 2022. The requirement applies to a relevant corporation, a trustee of a relevant trust or a partner of a relevant partnership. These definitions are explored in more detail in the following section. Each land ownership situation involving other parties will require an assessment of whether a local government is a “reporting body”, with an obligation to file a transparency report under the Act. Legal advice should be sought to assess whether a particular structure for owning an interest in land triggers the need for a local government to file a transparency report.

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Section 15 of the Act provides:

Transparency report required from pre-existing and other owners

15 (1) Subject to [section 13](#) [general rules for filing and completing transparency reports], this section and the exemptions, if any, in the regulations, if, immediately before the coming into force of this section,

- (a) a relevant corporation,
- (b) a trustee of a relevant trust, or
- (c) a partner of a relevant partnership

is a registered owner of an interest in land, the corporation, trustee or partner must, within the prescribed period, file with the administrator a transparency report completed in accordance with Division 3 [Content of Transparency Reports].

Section 15(1) comes into force on November 30, 2022. The coming into force of this section was previously scheduled for November 30, 2021, but was extended on November 2, 2021.

The content of a transparency report will depend on the circumstances but must generally set out the beneficial ownership of the relevant interest in land. In addition to lawyers and notaries, local governments may have sought advice from other professionals on different ways to structure land ownership, including the creation of trusts or partnerships. A local government may need to gather information from different sources both to be able to assess whether they have an obligation to file a transparency report and the content of such report.

Definitions

The Act predominantly applies to specified companies, trust relationships and partnerships. These are expressly defined as:

- “Relevant Corporation”, which means all corporations (itself also defined in the Act) except those expressly excluded under Schedule 1. Schedule 1 excludes, among other corporations, a “local public body within the meaning of the *Freedom of Information and Protection of Privacy Act*” and by extension “a municipality”, “regional district”, “improvement district”, “municipal police boards” and other similar bodies. The Act also excluded corporations incorporated by a municipality (under s. 185 of the *Community Charter*) or regional district (under s. 265 of the LGA).

- “Relevant Trust”, which means all express trust relationships other than those excluded under Schedule 2 to the Act and analogous relationships in foreign jurisdictions. The scheduled trust relationships are all largely inapplicable to local governments: for example, various types of financial investment trusts. Of note, charitable purpose trusts are excluded trusts.
- “Relevant Partnership”, which means a general partnership, a limited partnership, a limited liability partnership, professional partnership or foreign partnership within the meaning of the *Partnership Act*, other than those excluded by regulation.

The act also defines “interest in land” more broadly than fee simple interests. Among other interests, leasehold interests with a term greater than 10 years are interests in land subject to the Act. However, the regulation provides that a transparency report does not need to be filed for a lease that, as of November 30, 2020 will have a remaining term of 10 years or less.

III. NEXT STEPS

In our view, most local governments are not required to file a transparency report in respect of interests in land they own. This applies both to interests held directly by the local government, as well as interests held by local government created corporations.

There might be situations where a local government is the legal owner but not the beneficial owner and is required to submit a transparency report. For example, sometimes local governments own land as trustees for a local development corporation. Equally, there can be more complicated land ownership situations related to tourism or conference centres, parks, municipal type services for Indian reserves and Indigenous territories where there are interests in land for infrastructure that is not located on the reserve, affordable housing or other similar projects. Each local government should review all interests in lands it is the registered owner of to determine if it is subject to filing requirements.

If your local government does own land on behalf of another entity, you should consider seeking further legal advice on whether your local government must file a transparency report prior to November 30, 2022. Characterizing the exact nature of a trust or partnership, and how the Act applies to these relationships, may require input from a variety of advisors. Local governments may want to reach out to their accountants, finance professionals, tax professionals and legal advisors to gather the information that is necessary to determine the applicability of the Act and the regulation.

If an interest in land *is* subject to reporting requirements under the Act, a local government might be able to avoid reporting requirements by restructuring its ownership interest before November 30, 2022. Local governments should seek further professional advice on this point.