

Your Comprehensive Guide to Compliance with the *Land Owner Transparency Act* (British Columbia)

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[British Columbia's *Land Owner Transparency Act*](#), SBC 2019, c 23 ("LOTA") will come into force on November 30, 2020. At the same time, British Columbia's new beneficial ownership registry, the Land Owner Transparency Registry (the "Registry"), will come online. Beginning on November 30, 2020, anyone applying to register an interest in land will be required to make a concurrent disclosure filing under LOTA. Owners of existing registered interests in land will need to make any disclosure filings required to become compliant with LOTA by November 30, 2021 – one year after LOTA comes into force. This guide is current to October 19, 2020.

Below we answer some of the key questions about LOTA and how it may apply to you. Click on any of the questions to link directly to the applicable answer.

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1. What is the *Land Owner Transparency Act (LOTA)*?

LOTA is new legislation introduced by the government of British Columbia with the objective of increasing “land ownership transparency” in B.C. LOTA is intended to eliminate hidden ownership of land by requiring that certain corporations, trustees of certain trusts, and partners of certain partnerships holding registered interests in land publicly disclose any significant beneficial owners or other indirect owners of those interests in land. This information will allow the public, government authorities and law enforcement agencies to look behind the ownership information available in the existing land title registry. It is speculated that data collected under LOTA may be used as the basis for the Province to begin taxing beneficial transfers of real property, though to date this has not been confirmed.

The Province's plan to create a beneficial ownership registry was announced in June 2018, and draft legislation was introduced to the legislature under Bill 23 in April 2019. LOTA became law by royal assent on May 16, 2019, but its implementation was delayed. On September 20, 2020, the Province of British Columbia confirmed that most of the provisions of LOTA will come into force on November 30, 2020. The Province also introduced the Land Owner Transparency Regulation (the “Regulation”) on September 20, 2020, which will come into effect concurrently with LOTA. The Regulation sets out certain key timelines and other important details necessary to interpret and understand LOTA's requirements.

2. What is the *Land Owner Transparency Registry*?

Disclosures collected under LOTA will be maintained in B.C.'s new beneficial ownership registry, called the Land Owner Transparency Registry (the “Registry”) – also referred to as “LOTR”. The Registry will be administered by the B.C. Land Title & Survey Authority (“LTSA”) but will be separate from the existing land title registry maintained by the LTSA.

The Registry will be searchable by the public and other designated persons, including certain government authorities, law enforcement agencies and regulators; however, Registry searching is not anticipated to be available until April 30, 2021. As the Registry will contain sensitive personal information, only certain information in the Registry will be available to the public. Non-public information will only be available to government authorities, law enforcement agencies, regulators and other designated persons. Access to the information in the Registry is discussed in more detail below.

At present, only legal professionals are able to submit filings in the Registry, though the LTSA has indicated that it hopes to make some filing functions available to the general public in the future.

3. Who and what does LOTA apply to?

In general terms, LOTA applies to any person, company, trust or partnership directly or indirectly acquiring or owning a registered interest in land in British Columbia. The following three concepts are fundamental to an understanding of the disclosure requirements under LOTA and to whom and what they apply:

- (i) an "**interest in land**", which refers to any of the specified types of real property interests that are subject to LOTA;
- (ii) a "**reporting body**", which refers to an individual or legal entity that has a reporting obligation under LOTA because it holds a registered interest in land on behalf of one or more beneficial owners or other indirect owners (and is not otherwise exempt from such reporting obligation) – the reporting body will be the person or entity that is the registered owner of the property or other interest in land in the existing land title registry; and
- (iii) an "**interest holder**", which refers to an individual that is a beneficial owner or other indirect owner of an interest in land, such as a shareholder of a company, and that meets the ownership or control thresholds under LOTA – interest holders do not appear as registered owners on title to the property or other interest in land.

These three complex concepts are further detailed below.

(a) Interest in land

LOTA only applies to specific types of interests in land. The term "interest in land" has a defined meaning under LOTA that is narrower than the traditional legal meaning of that phrase. Specifically, an interest in land under LOTA encompasses any of the following:

- (i) an estate in fee simple;
- (ii) a life estate in land;
- (iii) a right to occupy land under a lease that has a term of more than 10 years;
- (iv) a right under an agreement for sale to occupy land or require the transfer of an estate in fee simple; and
- (v) any other estate, right or interest prescribed by regulation (of which there are none to date).

Mortgages and other registrable charges, liens and interests in land not listed above do not qualify as interests in land under LOTA. Additionally, Indigenous lands are not subject to LOTA.

In determining whether a lease has a term of more than 10 years, it is only necessary to count the remaining term of the lease as at the date of registration, without taking into account any past terms, the amount of the current term elapsed to date, or any periods for which the lease may be extended or renewed. Note that the foregoing only applies to leases registered on or

after November 30, 2020. For leases already registered when LOTA comes into effect, the remaining term of the lease must be calculated as at November 30, 2020 (more on this below). If a lease is not registered, it is not subject to LOTA, even if the term of the lease exceeds 10 years.

(b) Reporting body

A reporting body is any individual or legal entity that has a reporting obligation under LOTA. In order to qualify as a reporting body, an individual or entity must hold or be applying for a registered interest in land and be one or more of the following:

- (i) a **relevant corporation** – a “relevant corporation” means a corporation or limited liability company, subject to a long list of exclusions including government bodies, schools, publicly-listed corporations, strata corporations, savings institutions, insurance companies and corporations owned by Indigenous nations, among others;¹
- (ii) a **trustee of a relevant trust** – a “relevant trust” means a trustee of an express trust, including a bare trust, and similar relationships in other jurisdictions, subject to certain exclusions including charitable trusts, testamentary trusts, alter ego trusts, pension plan trusts, bankruptcy trustees, mutual fund trusts and trusts where each beneficiary is an Indigenous nation, among others;² and
- (iii) a **partner of a relevant partnership** – a “relevant partnership” means a general partnership, limited partnership, limited liability partnership, professional or foreign partnership and includes similar legal relationships created in another jurisdiction.

In some cases, a reporting body may be more than one of the above. Landlords should note that where leases are concerned, the landlord will not be the reporting body and any LOTA disclosure requirements in respect of a lease will be a tenant responsibility.

(c) Interest holder

Generally speaking, an interest holder is an individual that holds a beneficial or other indirect ownership interest in an interest in land, such as a shareholder of a corporation, a beneficiary of a trust, or a partnership unit holder. Interest holders are distinct from legal and registered owners of land that are currently disclosed as owners under in the existing land title registry. Rather, they are individuals who are deemed to ultimately benefit from or control the interest in land through one or more intermediaries – they are the “hidden” owners that the Province is seeking to identify under this new legislative regime. LOTA and the Regulation set out various rules for determining whether an individual's interest or the degree of control that it exercises is significant enough to qualify the individual as an interest holder and make the individual subject to LOTA's disclosure requirements.

LOTA sets out three categories of interest holders, namely **corporate interest holders**, **beneficial owners**, and **partnership interest holders**, described as follows:

¹ See [Schedule 1 of LOTA](#) for a full list of exclusions from relevant corporations.

² See [Schedule 2 of LOTA](#) for a full list of exclusions from relevant trusts.

- (i) **Corporate interest holder** means an individual that has:
- (A) registered or beneficial ownership of, or indirect control over at least 10% of the shares or voting rights in a relevant corporation; or
 - (B) the right – or indirect control of the right – to elect, appoint or remove a majority of the directors of the corporation, or the ability to exercise direct and significant influence over an individual who has any such rights.

If an interest or right referred to above is jointly held by two or more individuals, each individual is a corporate interest holder. Additionally, where two or more individuals have interests, rights or abilities that, when combined, meet a criterion described above, and the individuals are associates or subject to an agreement that requires the interests, rights or abilities to be exercised jointly or in concert, then each individual is a corporate interest holder.

An individual is considered an “associate” of another individual under LOTA if the individual is the spouse or a child of the other individual, or the individual is otherwise a relative that shares their home with the other individual.

The Regulation sets out in detail the meaning of “indirect control” with respect to both shares and directors of a relevant corporation, including for circumstances where there is a series of intermediaries between the relevant corporation and the ultimate corporate interest holder(s).³ Clearly, where a complex ownership structure is involved, a detailed factual and legal analysis will be required to identify the interest holders.

- (ii) **Beneficial owner** – an individual that has any of the following rights in an interest in land registered in the name of a trustee of a relevant trust:
- (A) a beneficial interest in the interest in land, no matter how small, other than an interest contingent on the death of another individual; or
 - (B) the power to revoke the relevant trust and receive the interest in land.

Additionally, if an individual is a corporate interest holder of a relevant corporation that has any of the above rights, that individual is also considered to be a beneficial owner.

- (iii) **Partnership interest holder** – an individual that is:
- (A) a partner in the relevant partnership, irrespective of the percentage of units or proportion of other entitlements held by the partner in respect of the partnership; or

³ See [Division 2 \(sections 3 through 9\) of the Regulation](#) with respect to determining indirect control of one or more shares of a relevant corporation; see also [Division 3 \(sections 10 – 16\) of the Regulation](#) with respect to determining indirect control of the right to elect, appoint or remove one or more of the directors of a relevant corporation.

- (B) a corporate interest holder (e.g., an individual holding 10% of the shares) in a relevant corporation, if that corporation is a partner in the relevant partnership, provided that the interest in land is registered in the name of a partner of the relevant partnership and is partnership property.

If a relevant partnership is a partner in another relevant partnership, any individual or relevant corporation that is a partner of the first partnership is deemed to be a partner of the second partnership. For example, if an individual is a partner in Partnership A, and Partnership A is a partner in Partnership B, then that individual is deemed for the purposes of LOTA to be a partner of Partnership B. The implication of this is that the individual, as a deemed partner of Partnership B, is considered to be a partnership interest holder in respect of an interest in land held by another partner of Partnership B. Practically speaking, this deeming provision is yet another tool to trace through multi-level ownership structures to the individuals who indirectly own or exert control over interests in land.

Notably, an individual is not considered to be a partnership interest holder if the individual, or the relevant corporation in which the individual is a corporate interest holder, has no interest, right or ability in respect of the interest in land. LOTA does not define "ability" in this context.

4. What types of filings are required under LOTA?

There are two primary types of filings under LOTA, a **transparency declaration** and a **transparency report**.

(a) Transparency declaration

Effective November 30, 2020, a transparency declaration must be filed concurrently with every application to register an interest in land. Each transferee (i.e., each person to be named as a registered owner of the interest in land) must file a separate transparency declaration, indicating whether or not the transferee is a reporting body and, if so, whether or not the transferee is a relevant corporation, a trustee of a relevant trust or a partner of a relevant partnership. If the transferee is a reporting body, the transferee must also file a transparency report, discussed below. The fee for filing a transparency declaration will be \$5.

The obligation to file a transparency declaration will apply to any individual purchasing a home in a typical residential conveyance; however, a transparency report – detailed below – will not be required in that scenario as long as the homeowner does not hold his or her real property interest for the benefit of a third party.

(b) Transparency report

A transparency report is a detailed filing containing a variety of required information about a reporting body and its interest holders. Effective November 30, 2020, a transparency report must be filed whenever a reporting body applies to register an interest in land; however, there are several other circumstances where a reporting body is required to file or update a transparency report, discussed below. The information required to be included in a

transparency report is also discussed in detail below. The fee for filing a transparency report will be \$35.

5. When does a transparency report have to be filed?

There are five main circumstances that give rise to a reporting body's obligation to file a transparency report, subject to certain exceptions:

- (i) when a reporting body applies to register an interest in land in its name;
- (ii) if, immediately before LOTA comes into force, a reporting body is the owner of a pre-existing registered interest in land;
- (iii) where a registered owner that was not a relevant corporation, trustee of a relevant trust or partner of a relevant partnership at the time of registration, but subsequently becomes a relevant corporation, trustee of a relevant trust or partner of a relevant partnership;
- (iv) where a previously filed transparency report no longer discloses the current interest holders; and
- (v) where a determination of incapacity has been made by a court, health authority designate or prescribed person in respect of an interest holder.

Each of the circumstances set out above is discussed in more detail below together with certain exceptions to the filing requirements. Note that a reporting body may also file a new transparency declaration to complete or correct information contained in a previously filed declaration.

(b) Transparency report on application to register an interest in land

Effective November 30, 2020, any reporting body applying to register an interest in land in its name must file both a transparency declaration and a transparency report. The transparency declaration and the transparency report must be submitted concurrently with the application to register the interest in land in the land title registry, failing which the registrar must refuse to register the interest in land.

As noted above, if the interest in question is a lease, a transparency report need not be filed if the remaining term – not including any periods for which the lease can be extended or renewed – is 10 years or less as at the date of registration.

(c) Transparency report for a pre-existing interest in land

If, immediately before November 30, 2020, a reporting body holds a registered interest in land, the reporting body must file a transparency report by November 30, 2021.

Notwithstanding the foregoing, a transparency report is not required to be filed if the reporting body transfers the interest in land to another person or ceases to be a reporting body, in either case by the November 30, 2021 filing deadline. Additionally, a transparency report in respect of a pre-existing registered lease need only be filed by the tenant if, on

November 30, 2020, the lease has a remaining term of more than 10 years, not including any periods for which the lease may be extended or renewed.

If a lease or other pre-existing interest in land is not registered in the land title registry, no transparency report is required to be filed in connection with that unregistered lease or other unregistered interest.

(d) Transparency report on corporation, trust or partnership becoming a reporting body

In some cases, a corporation, trustee or partner will not be a reporting body at the time of registration of a registered interest, but will subsequently become a reporting body. For instance, this could occur where the registered owner is a public company – which is excluded from the definition of “relevant corporation” and accordingly not a reporting body – and later goes private and, as a result, becomes a relevant corporation and a reporting body. In these cases, the registered owner must file a transparency report within two months of the corporation, trust or partnership becoming a relevant corporation, trust or partnership.

Notwithstanding the foregoing, where the applicable interest in land is a lease, a transparency report need only be filed if the remaining term of the lease is more than 10 years – not including any periods for which the lease can be renewed or extended – on the date that the registered owner becomes a reporting body.

It is tempting to summarize this filing requirement as applying any time a registered owner that was not a reporting body on registration of an interest in land subsequently becomes a reporting body; however, the wording in LOTA does not fully support this interpretation. LOTA does not appear to contemplate a situation where an individual is a registered owner and is not a reporting body at the time of registration, but subsequently becomes a trustee of a relevant trust or partner of a relevant partnership. Accordingly, it is not clear that there is any obligation to file a transparency report in those circumstances. As there is no evident policy reason for this omission, we are seeking clarification on this point from the LOTA administrator.

(e) Transparency report on change of interest holders

A reporting body must file a new transparency report within two months after the reporting body becomes aware or reasonably ought to have become aware that the previous transparency report filed by the reporting body no longer discloses the current interest holders. Among many other scenarios, this filing obligation will often arise where there is a significant change in shareholders of a company that holds a registered interest in land.

The legislation indicates that a reporting body is not required to file a transparency report as a result of a change to the interest holders if the reporting body is no longer the registered owner of the interest in land to which the previous transparency report relates. Certainly this applies where the reporting body is no longer the registered owner at the time it becomes aware of the change of interest holders; however, it is not clear that this provision eliminates the filing obligation in circumstances where the reporting body transfers title within the two-month filing window. Notably, there is no exemption where the registered owner ceases to be a reporting body within the two-month filing window.

(f) Transparency report on incapacity of interest holder

If, at any time, a reporting body becomes aware that an individual who is an interest holder or settlor may be incapable of managing the individual's financial affairs, the reporting body must take reasonable steps to determine whether, in respect of that individual, a determination of incapacity has been made by a court, health authority designate or prescribed person. A reporting body must file a new transparency report within two months after the reporting body becomes aware or reasonably ought to have become aware that a determination of incapacity has been made in respect of an interest holder. Curiously, there is no express obligation to file a new transparency report where a settlor is determined by the reporting body to be subject to a determination of incapacity.

6. What information must be included in a transparency report?

A transparency report must contain certain prescribed information about the reporting body, the interest holders, the land, and the individual certifying the transparency report, as detailed below. Additional information requirements may be prescribed by regulation; however, to date no such requirements have been prescribed.

(a) Primary identification information

Under LOTA, "**primary identification information**" means the following information with respect to the following persons:

- (i) for individuals:
 - (A) full name;
 - (B) whether or not the individual is a Canadian citizen or permanent resident of Canada;
 - (C) if the individual is not a Canadian citizen or permanent resident of Canada, every country or state of which the individual is a citizen;
 - (D) the city and province in which the individual's principal residence is located (or, if not in Canada, the city and country in which that principal residence is located);
- (ii) for corporations and limited liability companies:
 - (A) name of the corporation or limited liability company;
 - (B) registered office address;
 - (C) head office address, if applicable;
 - (D) the jurisdiction in which the corporation or company was incorporated, organized or formed; and

- (E) if the corporation or company has been continued or transferred into another jurisdiction, the jurisdiction into which the corporation or company was most recently continued or transferred; and
- (iii) for partnerships:
- (A) registered business name, if any;
 - (B) type of partnership;
 - (C) registered address or head office address, as applicable;
 - (D) address of principal business premises; and
 - (E) jurisdiction the laws of which govern the partnership or, if the partnership has a partnership agreement, the interpretation of the partnership agreement.

(b) Information about the reporting body

The transparency report must include the following information about the reporting body:

- (i) the reporting body's "primary identification information";
- (ii) if the reporting body is a **relevant corporation**:
 - (A) business number, if any, within the meaning of the *Income Tax Act* (Canada);
 - (B) the incorporation, continuation, amalgamation or other identifying number or designation given to the relevant corporation by the jurisdiction in which the relevant corporation is incorporated, organized, formed, continued or transferred the reference number of the trust; and
- (iii) if the reporting body is a **trustee of a relevant trust**:
 - (A) the reference number, if any, of the trust instrument registered under section 180 of the *Land Title Act*; and
 - (B) the following information with respect to each settlor, subject to certain exceptions where the reporting body is unable to obtain the required information (discussed further below):
 - (I) the settlor's "primary identification information";
 - (II) date of birth;
 - (III) last known address;
 - (IV) Canadian social insurance number, if any;

- (V) individual tax number, if any, assigned to the settlor by the Canada Revenue Agency; and
 - (VI) whether or not the settlor is resident in Canada for the purposes of the *Income Tax Act* (Canada); and
- (iv) if the reporting body is a partner of a relevant partnership:
- (A) the relevant partnership's "primary identification information";
 - (B) the relevant partnership's business number, if any, within the meaning of the *Income Tax Act* (Canada); and
 - (C) identifying number, if any, issued to the partnership by the jurisdiction indicated in the partnership's primary identification information provided under subparagraph (A), above.

(c) Information about the interest holders

The transparency report must contain the following information for each interest holder, subject to certain exceptions where the reporting body is unable to obtain the required information (discussed further below):

- (i) the interest holder's "primary identification information";
- (ii) date of birth;
- (iii) last known address;
- (iv) social insurance number, if any;
- (v) individual tax number, if any, assigned to the individual by the Canada Revenue Agency;
- (vi) whether or not the individual is resident in Canada for the purposes of the *Income Tax Act* (Canada);
- (vii) the date the individual became or ceased to be an interest holder;
- (viii) a description of how the individual is an interest holder; and
- (ix) if the reporting body knows, as a result of steps taken in accordance with LOTA, that a determination of incapacity has been made in respect of the individual, a statement setting this out.

(d) Information about the individual certifying the transparency report

The transparency report must include the following information about the individual certifying the report (see further below for details about who can certify a transparency report):

- (i) name;
- (ii) position or title;
- (iii) telephone number; and
- (iv) email address.

(e) Other information

The transparency report must contain the following additional information:

- (i) the parcel identifier assigned to the land to which the report relates;
- (ii) a list of the interest holders and settlors to whom the reporting body was able to give notice of the transparency report filing (see further below for details about the reporting body's notice obligations); and
- (iii) for the interest holders and settlors to whom the reporting body was not able to give notice, a summary of the steps taken to give notice to those interest holders and settlors.

7. Who can certify a transparency report?

A transparency declaration or transparency report submitted by a transferee or reporting body must, if the transferee or reporting body is a corporation or limited liability company, be certified to be correct and complete by an individual who has knowledge of the matters certified and actual authority to certify the declaration or report on behalf of the transferee or reporting body. For example, a director or senior officer of the corporation or limited liability company may be an appropriate person to certify the transparency declaration or report.

A transparency declaration or transparency report submitted by a transferee or reporting body must, if the transferee or reporting body is an individual, be certified to be correct and complete by the transferee or reporting body, or an agent of the transferee or reporting body who has knowledge of the matters certified. For example, a lawyer acting for the reporting body or agent may, in certain circumstances, be an appropriate person to certify the transparency declaration or report.

8. Do interest holders and settlors have an obligation to provide information required for a transparency report?

Interest holders and settlors have a duty under LOTA to give information to the reporting body. The reporting body may, by written request, require that a person who is or may be an interest holder or settlor, as applicable, provide the reporting body with information for the purposes of the reporting body completing and filing a transparency report. After a person receives such a request and takes reasonable steps to compile the requested information, that person must give to the reporting body a written statement setting out the information that the person was able to compile. An interest holder or settlor that fails to comply is liable under LOTA to a fine of not more than \$50,000.

9. What notice does a reporting body have to give to an interest holder or settlor before and after filing a transparency report?

Before filing a transparency report, a reporting body must take reasonable steps to give written notice of the following to each interest holder and settlor required to be identified in the report:

- (i) that information about the interest holder or settlor is required for the purposes of completing and filing a transparency report;
- (ii) that an individual has the right to request that some or all of the information in relation to the individual be omitted from or obscured in publicly accessible information (see further below for more details about applications to omit information where a person's health or safety may be at risk); and
- (iii) that unless an individual makes a request referred to above within 90 days after the filing of a transparency report, the information in relation to the individual will be publicly accessible after the end of that 90-day period.

LOTA does not provide any guidance as to what constitutes "reasonable steps", nor does it indicate a required notice period. As timelines and other circumstances vary greatly from one transaction to the next, reasonable steps and notice timelines will need to be determined on a case-by-case basis. Regardless, where a reporting body is acquiring a registered interest in land, notices will need to be sent out in advance of closing – and well in advance where time allows. In other cases, such as where a new transparency report is required to be filed as a result of a change of interest holders, it may be reasonable to send out notices at the time of the change, given that a new transparency report is not due to be filed until two months after the change occurs.

Additionally, within seven days after submitting a transparency report, a reporting body must take reasonable steps to give to each interest holder and settlor, as applicable, an extract from the report showing the information contained in the report in respect of the interest holder or settlor.

10. What if certain information required for a transparency report cannot be obtained?

A reporting body must take reasonable steps to obtain and confirm the accuracy of most of the information required in respect of each interest holder and, if applicable, settlor. It is not yet clear what constitutes "reasonable steps". If a reporting body is unable to obtain or confirm the accuracy of some or all of the information required to be confirmed in respect of an interest holder or settlor, the transparency report must contain the information that the reporting body was able to obtain or confirm in respect of the interest holder or settlor, as well as a summary of the steps taken to obtain or confirm the information that the reporting body was not able to obtain or confirm.

11. What information in the Registry will be publicly accessible?

Beginning on or around April 30, 2021, the public will be able to search the Registry by parcel identifier and by name. Publicly available information will include primary identification information in respect of 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 at the time of the search. Nothing in LOTA suggests that historical information will be available to the public; however, additional publicly available information can be prescribed by regulation at a later date.

Information about interest holders and settlors will not be available for at least 90 days after the applicable transparency report is accepted for filing by the Registry. Some information may be obscured for a longer period of time – for example, primary identification information of individuals under the age of 19 will not be publicly available, nor will be information obscured for health or safety concerns (more on this below).

12. How can a reporting body, interest holder or settlor update incorrect information in the Registry?

A reporting body may file a new transparency report at any time the reporting body considers necessary in order to complete or correct information contained in a previously filed transparency report. The foregoing only applies as long as the reporting body in question remains a reporting body in respect of the interest in land to which the incorrect or incomplete transparency report relates. A \$30 filing fee applies to any new transparency report filed to update a previously filed report.

A former reporting body may apply to the LOTA administrator to request that corrections or changes be made to a filed transparency report, reported information or publicly accessible information where the same contain incomplete or inaccurate information. If the information in question relates to an interest holder or settlor, the applicant must take reasonable steps to give written notice of the requested correction or change to the interest holder or settlor prior to making the application. The application must contain a confirmation that such notice was given or, if the applicant was unable to give such notice, a summary of the steps taken to give such notice.

A person other than a former reporting body, such as an interest holder or settlor, may also apply to request corrections or changes to a filed transparency report, reported information or publicly accessible information. As a prerequisite to such a request, (i) the applicant must 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, and (ii) the reporting body must not have filed a new transparency report that contains complete and accurate information about the person within three months after receiving such a request. LOTA does not clearly address whether these prerequisites apply where the reporting body that filed the transparency report is no longer a reporting body, though common sense dictates that they should not.

The current fee to update a transparency report or other information (other than by way of filing a new transparency report) is \$150.

13. How can interest holders protect sensitive information from public disclosure?

Individuals can apply to have their information hidden from public searches of the Registry in circumstances where the information could threaten the safety or mental or physical health of the individual or a member of the individual's household. The LOTA administrator interprets "member of the individual's household" as an individual who resides with the applicant in the

same dwelling, and has a relationship with the applicant in which a bond of fondness, affinity or intimacy is shared and integral to the relationship.

The application must 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 LOTA administrator's decision. Additionally, the individual must provide any other records, information and verifications that the LOTA administrator may require. The application fee is \$30.

Upon receiving an application, the LOTA administrator must obscure the information identified in the application until either (i) the applicant fails to provide, within the time specified by the administrator, any required records, information or verifications, or (ii) the administrator is satisfied that making some or all of the information could not reasonably be expected to threaten the safety or mental or physical health of the applicant or a member of the applicant's household. The administrator must provide written notice of its decision and continue to obscure the information for at least 30 days after giving that notice.

14. Will information in the Registry be accessible to government authorities, law enforcement agencies and regulators?

Beginning on or around April 30, 2021, various government authorities, law enforcement agencies, regulators and other designated persons will have access to the Registry for specifically defined purposes. This access will include access to information not available to the general public. At present, these authorities and persons include the following, and others may be added at a later date by regulation:

- (i) enforcement officers designated under LOTA to enforce LOTA compliance;
- (ii) officials or employees of tax authorities for British Columbia or Canada, including the Ministry of Finance, British Columbia Assessment Authority and the Canada Revenue Agency (CRA);
- (iii) certain police officers and members of the Royal Canadian Mounted Police (RCMP); and
- (iv) officials or employees of the British Columbia Securities Commission (BCSC), Financial Institutions Commission (FIC), Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), and the Law Society of British Columbia.

15. What are the consequences of non-compliance?

Persons who do not comply with LOTA are at risk of various penalties. Certain contraventions of LOTA may result in administrative penalties of not more than the greater of (i) \$25,000 for individuals or \$50,000 for persons other than individuals, and (ii) 5% of the assessed value of the property to which the transparency report relates. In some cases, administrative penalties are limited to \$25,000 for individuals and \$50,000 for persons other than individuals.

More serious offences carry potentially higher penalties. For example, where a person commits an offence related to failing to file a transparency report or filing false or misleading information in a transparency declaration or transparency report, the offender may be liable

to a fine of not more than the greater of (i) \$25,000 for individuals or \$50,000 for persons other than individuals, and (ii) 15% of the assessed value of the property to which the transparency report relates.

For other offences, including those related to an interest holder's or settlor's failure to give information, misuse of information obtained by a reporting body, misuse of publicly accessible information, or providing false or misleading information in connection with an enforcement action, the offender may be liable for a fine of not more than \$50,000 for individuals and \$100,000 for persons other than individuals.

If a corporation or limited liability company commits a contravention or an offence, an officer, director, manager or agent of a corporation or limited liability company who authorized, permitted or participated in the commission of the contravention or offence may also be (i) in the case of a contravention, subject to an administrative penalty, or (ii) in the case of an offence, is deemed to have also committed an offence, whether or not the corporation or limited liability company is prosecuted or convicted.

LOTA provides enforcement officers with extensive powers to investigate and confirm compliance, including rights to enter business premises and to seize and inspect records, including, in some cases, lawyers' records. The Regulation contains detailed procedures for dealing with claims of solicitor-client privilege.⁴

16. What does a registered owner need to do if it ceases to be a reporting body?

If a corporation, trust or partnership ceases to be a relevant corporation, relevant trust or relevant partnership, respectively, after filing a transparency report, the applicable corporation, trustee or partner that was formerly a reporting body must give notice and pay a \$30 fee to the LOTA administrator within two months of the applicable person ceasing to be a reporting body.

17. How can Lawson Lundell help you with LOTA compliance?

Lawson Lundell has been carefully tracking LOTA since it was first announced in 2018 and is on the forefront of understanding this new regime and its compliance requirements. We have been engaged with public bodies on various matters pertaining to LOTA, including participating in user-feedback sessions and meetings with the LOTA administrator and the Land Title & Survey Authority.

We are ready to help you with LOTA compliance for any transactions closing after LOTA comes into force. We can provide you with template notices and other documents to help you comply with your notice and information gathering obligations under LOTA. We can also review your real estate holdings and ownership structures and help you prepare a compliance plan to bring your holdings in line with LOTA before the November 30, 2021 deadline. Please reach out to any of the following partners in our Real Estate Group to find out more about how we can help you: Peter Tolensky, Edward Wilson, Jack Yong, Maxwell Carroll, Chad Travis and Scott Anderson.

⁴ See [Part 5 of the Regulation](#)



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