



The new record-keeping requirements for Ontario corporations

Corporate Alert

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In an attempt to improve management of corporate land forfeited to the Crown (that is, to facilitate the ease with which the Crown may act in order to seize forfeited land), Ontario has amended the *Business Corporations Act* (Ontario) (the "OBCA") to provide for significant amendments to the corporate record-keeping requirements.

Real estate register requirement

As of December 12, 2016, the new section 140.1 of the OBCA requires an Ontario corporation to prepare and maintain a register of its ownership interests in land in Ontario.

The register must identify each property and show the dates of acquisition and disposition. The register may be prepared and maintained in either paper or electronic form but must be kept strictly at the registered office alongside copies of supporting documentation. This includes any deeds, transfers, or similar documents containing any of the following information:

- the municipal address;
- the registry or land titles division and the property identifier number (PIN);
- the legal description; and

- the assessment roll number, if any.

It should be noted that the new provisions do not include a definition of “ownership interests,” although its use of the words “acquisition” and “disposition” of property may imply that it is merely fee interests that are contemplated. This said, whether a leasehold interest, a security interest or another interest in land that is capable of becoming an “ownership interest” is to be included in the register is not clear; prudence, therefore, would suggest that any such interest be included.

Compliance

While compliance with the OBCA is always recommended, the new provisions provide additional incentive to comply. In addition to potential fines against a non-compliant corporation and its directors and officers, section 238 will require a corporation’s articles of dissolution to state that the corporation is no longer a registered owner of land in Ontario and, pursuant to section 239, the Director may refuse to endorse the articles of dissolution if he or she learns otherwise.

Remember too that in order to give a representation made to any party, including a lender, that a corporation is in compliance with all laws, it must be in compliance with this new requirement.

Corporations which are incorporated or continued on or after December 12, 2016, must comply immediately with the new record-keeping requirements. However, corporations already in existence will have until December 12, 2018 to prepare the register.

While the new record-keeping requirements are relatively straightforward for corporations with just a few “ownership interests” in real property, corporations with significant interests, such as those involved in property development, face a much more onerous task. It is therefore recommended that Ontario corporations begin preparing the register as soon as possible to gather the required information and to establish a common practice.

Please contact Justin Mooney, Partner, or Nick Sharratt, Associate, for further information or assistance in preparing the new register of ownership interests in land.

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