



ALERT

Land Owner Transparency Act and Land Owner Transparency Registry

On November 30, 2020, the new *Land Owner Transparency Act* (“LOTA”) and the *Land Owner Transparency Registry* (“LOTR”) came into effect. LOTR was introduced in British Columbia to record and disclose who the beneficial interest holders of land in British Columbia are. LOTR allows the public to search for information on individuals that directly or indirectly hold interest in land through corporations, partnerships and trusts.

Now, every time an application is made to register an interest in land in British Columbia, a ***Transparency Declaration*** must be filed with the Land Title and Survey Authority of British Columbia (“LTSA”). The ***Transparency Declaration*** must indicate whether the transferee is a reporting body or not. . If the transferee is a reporting body, it must file a ***Transparency Report*** completed in accordance with Division 3 [Content of Transparency Reports] of LOTR, which sets out information about the reporting bodies’ interest holders.

In addition, a new ***Transparency Report*** must be filed when there is a **change** in the reporting body or in an interest holder’s information whether or not the **registered** ownership of land has changed.

And finally, **existing** reporting bodies with an interest in land must file a ***Transparency Report*** by November 30, 2021.

The following fines may be imposed for offences for failure to file a report or to provide misleading or false information:

- a person, other than an individual who commits an offence is liable to a fine of not more than the greater of: \$50,000, and 15% of the assessed value of the property to which the transparency declaration or ***Transparency Report*** relates; and
- an individual who commits an offence is liable to a fine of not more than the greater of \$25,000, and 15% of the assessed value of the property to which the transparency declaration or ***Transparency Report*** relates.

Beginning April 30, 2021, search of the LOTR is available by using myLTSA.

The public can search LOTR by the name of a person (individual or corporation) or by parcel identifier (PID). Only individuals listed in a transparency report as a reporting body, an interest holder or a settlor are searchable in LOTR. A fee of \$5.00 per LOTR search applies.

For more details, see the government website at “landtransparency.ca ⇨ *Fact Sheet*”. Accordingly, we are setting below the explanations for:

- the **reporting bodies** that must file the Transparency Report:
 - relevant corporations;

- relevant trusts; and
- relevant partnerships;
- **transactions** with respect to **interests in land** for which *Transparency Reports* are required:
 - estates in fee simple;
 - life estates; and
 - registered leases with a term of at least 10 years (see section 21 of LOTA Regulations for exemptions);

Note: Some lands are exempt from filing a Transparency Report (see page **Error! Bookmark not defined.** below “Examples of excluded lands”).

- **when** is a filing required (triggering events):
 - on application to register a new transaction only if the Transparency Declaration states that the transferee is a reporting body;
 - by November 30, 2021 for pre-existing owners that are reporting bodies;
 - when there is a change in interest holder(s) – an updated Transparency Report; and
 - within two months of becoming aware on incapacity of an interest holder to remove the incapacitated holder as an interest holder;
 - within two months of the date the registered owner ceases to be a reporting body - Notice to the Administrator:

Note: Reporting bodies may also choose to file a new *Transparency Report* at any other time to complete or correct **information** in a previously filed Transparency Report. **information** to be included in the Transparency Report and **who can access it**;

- who are the **interest holders**;
- Notices to be provided to whom and when.

Here is the glossary of some terms, concepts, and definitions which must be understood before reviewing the new legislation and rules and preparing and filing the *Transparency Declaration* and the *Transparency Register*:

Terms used	Explanation
Administrator	A statutory decision maker under LOTA and an employee of the LTSA, responsible for the general administration of LOTA and its regulations.
Authority	Means the LTSA of British Columbia established under section 2 of the <i>Land Title and Survey Authority Act</i> .
Beneficial Owners	Individuals who: <ul style="list-style-type: none"> • have a beneficial interest in land that is not contingent on the death of another individual; • have the power to revoke the relevant trust and receive the interest in land; or • are corporate interest holders in a relevant corporation that has: <ul style="list-style-type: none"> ➤ a beneficial interest in respect of the interest in land; or ➤ the power to revoke the relevant trust and receive the interest in land.
Certifier	The person who is either the Transferee or the lawyer who can sign on behalf of the Transferee.
Control of Shares	Includes indirect control where shares are held by a relevant intermediary or chain of relevant intermediaries. Only the corporate interest holders must be listed. The intermediaries do not need to be disclosed in the Transparency Report. See also “ relevant intermediaries ”.
Corporate Interest Holder	Individual who, with respect to the relevant company, owns alone, or with others, legally or beneficially, directly or indirectly a significant number of shares , or who has the right directly or indirectly to elect, appoint, or remove the majority of the of the directors.
Designate	Means a person in a class designated by the Administrator to certify electronic <i>Transparency Declarations</i> and electronic <i>Transparency Reports</i> under section 26 of LOTR.

Terms used	Explanation
Indirect Control	See “Relevant Intermediaries”
Interest Holder	An individual that holds directly or indirectly an interest in land or has specified rights in or to land through reporting bodies.
Intermediaries	See “Relevant Intermediaries”
Partnership Interest Holder	Is the individual who is either a partner in a relevant partnership or a corporate interest holder of a relevant corporation that is a partner in a relevant partnership.
Relevant Corporation	Includes a corporation or limited liability company. The exceptions are: those listed in Schedule 1 of LOTA ⁽¹⁾ mainly public companies, government companies, private schools, financial institutions, insurance companies, strata corporations, savings institutions, insurance companies, and trust companies.
Relevant Intermediaries	<p>The terms “indirect control”, “relevant intermediary” and “chain of relevant intermediaries” are defined in Division 2 of the LOTA Regulations which provides rules for determining “indirect control” necessary to disclose the interest holders of a relevant corporation. Refer to the government site that sets out the requirements in greater length, and also provides some examples:</p> <p>https://landtransparency.ca ⇒ LOTR Overview ⇒ Meaning of Indirect Control</p> <p>As the rules of indirect control and relevant intermediaries are complicated, you should seek legal advice concerning the specifics of the particular situation.</p>
Relevant Partnership	<p>Includes:</p> <ul style="list-style-type: none"> • all partnerships created under the BC Partnership Act; and • a legal relationship, created in another jurisdiction, that is similar to a legal relationship under the BC Partnership Act. <p>There are no exceptions at this time.</p>

⁽¹⁾ For a complete list of exceptions, see Schedule 1 of LOTA.

Terms used	Explanation
Relevant Trust	Includes: <ul style="list-style-type: none"> • express(intentional) trusts; • prescribed trusts; • bare trusts and family trusts; or • legal relationships, created in another jurisdiction, that is similar to a legal relationship referred to above. The exceptions are: charitable trusts, testamentary trusts, alter ego trusts. or joint spousal or common-law partner trusts within the meaning of the <i>Income Tax Act</i> (Canada), trusts where the Public Guardian and Trustee or an administrator of an estate is the trustee ⁽²⁾ .
Reporting body	A reporting body is one of: <ul style="list-style-type: none"> • a relevant corporation; or • a trustee of a relevant Trust; or • a partner of a relevant partnership; and is required to file a Transparency Report under LOTA.
Significant Number of Shares	Means either of the following: <ul style="list-style-type: none"> • 10% or more of the issued shares of the relevant corporation; • issued shares of the relevant corporation that carry 10% or more of the rights to vote at general meetings.
Transferee	Is an individual or entity to whom an interest in land is transferred.
Transparency Declaration	A mandatory declaration filed when an application to acquire an interest is filed. It must state whether or not the transferee is a reporting body. If the transferee is a reporting body, the Declaration must so state and state the name and the nature of the reporting body setting out information about the reporting body and its interest holders. (s. 10 of LOTA)
Transparency Report	A report that must be filed with the Transparency Declaration with an application to register an interest in land if the transferee is a reporting body.

⁽²⁾ For a complete list of exceptions, see Schedule 2 of LOTA,

Information to be included in the Transparency Register and who can access it:

A **Transparency Report** filed by a reporting body must contain the following information as set out in the table below:

- the reporting body's identification information which consists of:
 - primary information that is accessible to the public after April 30, 2021;
 - additional information that is only accessible to regulators, taxing authorities or law enforcement entities; and
 - the information required (s. 19) in respect of each interest holder.

Information to be included in the Transparency Register	
<u>Primary Identification information accessible to the public effective April 30, 2021</u> (will include prescribed information, if any)	<u>Additional information will only be accessible to regulators, taxing authorities or law enforcement entities</u>
With respect to an <u>individual</u> who is an interest holder	
<ul style="list-style-type: none"> • the individual's full name; • whether or not the individual is a Canadian citizen or permanent resident of Canada; • if the individual is not a Canadian citizen or permanent resident of Canada, every country or state of which the individual is a citizen; • if the individual's principal residence is in Canada, the city and province in which that principal residence is located; • if the individual's principal residence is outside Canada, the city and country in which that principal residence is located. 	<p><u>In addition to primary identification information:</u></p> <ul style="list-style-type: none"> • the individual's date of birth, • the individual's last known address, • the individual's social insurance number, if any, • the individual tax number, if any, assigned to the individual by the Canada Revenue Agency, • whether or not the individual is resident in Canada for the purposes of the Income Tax Act (Canada), • the date on which the individual became or ceased to be an interest holder, and • a description of how the individual is an interest holder.
With respect to relevant corporations	
<ul style="list-style-type: none"> • the relevant corporation's name and registered office address; • if the relevant corporation has a head office, its head office address; 	<p><u>In addition to primary identification information:</u></p> <ul style="list-style-type: none"> • business number, if any, within the meaning of the Income Tax Act (Canada), and • the incorporation, continuation, amalgamation or other identifying number or designation given to the relevant corporation

Information to be included in the Transparency Register	
<u>Primary</u> Identification information <u>accessible to the public</u> effective April 30, 2021 (will include prescribed information, if any)	<u>Additional</u> information will <u>only</u> be accessible to regulators, taxing authorities or law enforcement entities
<ul style="list-style-type: none"> • the jurisdiction in which the relevant corporation was incorporated, organized or formed; • if the relevant corporation has been continued or transferred into another jurisdiction, the jurisdiction into which the relevant corporation was most recently continued or transferred. 	<p>by the jurisdiction in which the relevant corporation is incorporated, organized, formed, continued or transferred.</p>
<u>Relevant Partnerships</u>	
<ul style="list-style-type: none"> • the registered business name, if any; • the type of partnership that applies to the partnership; • the registered address or head office address, as applicable; • the address of the partnership's principal business premises; • the jurisdiction the laws of which govern: <ul style="list-style-type: none"> ➤ the partnership, or ➤ if the partnership has a partnership agreement, the interpretation of the partnership agreement; • prescribed information, if any. 	<p><u>In addition to primary identification information:</u></p> <ul style="list-style-type: none"> • the relevant partnership's business number, if any, within the meaning of the Income Tax Act (Canada), and • the identifying number, if any, issued to the partnership by the jurisdiction identified under subparagraph 1 above.
Information about Settlor	
<p>See <u>primary information with respect to an individual who is an interest holder.</u></p>	<p><u>In the case of a settlor who is an individual:</u></p> <ul style="list-style-type: none"> • the individual's primary information; and • information with respect to an individual who is an interest holder (see above). <p><u>In the case of a settlor that is a corporation or limited liability company:</u></p> <ul style="list-style-type: none"> • the corporation's or company's primary identification information.

In addition, a Transparency Report filed by a reporting body must contain the following information:

- a list of the interest holders and settlors to whom the reporting body was able to give notice under section 24(1) of LOTA; and
- 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.

Notices to be provided to interest holders and settlors

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:

- that information about the interest holder or settlor is required under Division 3 of LOTA for the purposes of completing and filing a transparency report;
- that an individual has the right under section 40 of LOTA to request that some or all of the information in relation to the individual be omitted from or obscured in publicly accessible information;
- that unless an individual makes a request under section 40 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.

In addition, 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 that interest holder or settlor.

Furthermore, when a registered owner (who has previously filed a Transparency Report) ceases to be a reporting body, it must under section 17.1 of LOTA, give notice to the Administrator within two months of the change in status. The requirement to submit a Section 17.1 Notice applies in circumstances where there is a material change to what was formerly a relevant corporation, relevant trust or relevant partnership such that the entity no longer meets the definition of relevant corporation, relevant trust or relevant partnership under LOTA.

Exclusions:

Some types of land, organizations and individuals are not required to be registered in LOTR (see Schedules 1 and 2 to LOTA).

Examples of excluded **lands** are:

- Treaty lands of a Treaty First Nation;
- Recognized self-governing First Nations lands (e.g., Sechelt, Nisga'a);
- Reserve lands.

Examples of excluded **organizations** are:

- Public corporations (listed on stock exchanges);
- Strata corporations;
- Government bodies (special Act corporations);
- Charitable trusts.

Examples of excluded individuals are shareholders in private corporations with less than 10% of the corporation's voting shares.

Non-mandatory requirements after a Transparency Register has been filed

A new *Transparency Report* may be filed:

- If a determination of incapacity has been made in respect of an interest holder or settlor (s. 22 of LOTA); or
- to correct or complete information in a filed *Transparency Report*: (section 42 of LOTA)

In addition to these requirements, a reporting body may file a new *Transparency Report* (s. 17) at any time the reporting body considers it necessary in order to correct or complete information contained in a previously filed *Transparency Report*.

Furthermore, an individual may request that some or all of the publicly accessible information about the individual in LOTR be omitted. To make this application, the individual must believe that making the information publicly accessible could reasonably be expected to threaten their safety or mental or physical health, or that of a member of their household. (S. 17 and 40)

Fees

Filing of transparency declaration under any provision of LOTA	\$5.00
Filing of transparency report under any provision of LOTA	\$35.00
Notice under section 17.1 of LOTA [Notice required if corporation, trust or partnership ceases to be relevant corporation, relevant trust or relevant partnership].	\$30.00
Application under section 40 of LOTA [Application to omit information if health or safety at risk].	\$30.00
Application under section 42 of LOTA [Application to correct or change information].	\$150.00