

# Real Estate Law

## Early Holiday Surprise: New Real Property Register Requirement Added to OBCA

By: Daniel Mahler and Haley Wong

The Province of Ontario has introduced a new section 140.1 to the *Ontario Business Corporations Act* (“OBCA”). The new section comes into force on December 10, 2016, and imposes new record keeping requirements on all OBCA corporations that have an ownership interest in land in Ontario.

### New Record Keeping Requirements for Ontario Corporations

In accordance with the new section 140.1 of the OBCA, every corporation incorporated or continued in Ontario must prepare and maintain, at its registered office, a register of its ownership interests in land in Ontario. The register must include:

1. the date the corporation acquired the property and, if applicable, the date the corporation disposed of it; and
2. a copy of any deeds, transfers or similar documents that contain any of:
  - a. the municipal address, if any;
  - b. the PIN and LRO number;
  - c. the legal description; and
  - d. the tax roll number, if any.

### Timing of Implementation

All existing Ontario corporations (i.e., all corporations incorporated or continued in Ontario prior to December 10, 2016) will have a two-year grace period to comply with the new legislation. All corporations incorporated or continued in Ontario on or after December 10, 2016, will have to comply with the new OBCA requirements immediately.

### Ongoing Compliance/Non-Compliance Issues

The OBCA currently permits electronic record keeping and affords corporations a reasonable amount of time to make corporate records available to any person lawfully entitled to examine such records (which, from and after December 10, 2016, will include the register required under the new section 140.1 of the OBCA). While these existing OBCA provisions should alleviate some of the burden imposed by the new record keeping obligations under section 140.1 of the OBCA (particularly for corporations with significant real estate holdings), these new requirements will nonetheless require significant efforts for both corporations and their legal counsel to establish new procedures to ensure ongoing compliance.

Non-compliance may result in, among other things, fines being assessed against non-complying Ontario corporations and their directors and officers. Other more practical implications may arise in the context of third party transactions, where it is common for representations and warranties to be required to confirm a corporation is in compliance with all applicable laws. To the extent a corporation is not maintaining an up-to-date record of all land ownership in accordance with the OBCA, it may be unable to provide such a representation and warranty without being in breach of the agreement.

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