

Ministry of Finance
BRIEFING DOCUMENT

To: Honourable Carole James
Minister of Finance
and Deputy Premier

Date Requested:
Date Required:

Initiated by: Chris Dawkins
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Date Prepared: February 26, 2019

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TITLE: Final Structure of the Land Owner Transparency Act (LOTA)

PURPOSE:

(X) FOR DECISION

Executive Director approval: _____

ADM approval: _____

DM approval: _____

DATE PREPARED: February 26, 2019

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ISSUE: This note seeks confirmation of the final proposed structure of the registry to be created by LOTAs, sets out the major differences between the structure proposed in the white paper and proposes a date for the launch of the new registry.

BACKGROUND:

On June 20, 2018, the government released a white paper including the draft Land Owner Transparency Act (LOTA) for public consultation. The registry is intended to be a database of beneficial owners of land in British Columbia that will be built and maintained by the Land Title and Survey Authority (LTSA).

Feedback from the white paper has been received and analyzed by staff. Staff have now developed a proposed final version of the legislation.

DISCUSSION:

Structure

The proposed final structure for the registry is detailed in the Appendix and has been agreed to by the LTSA. Its fundamental structure is largely the same as the structure set out in the white paper, but it differs in its administrative scheme. The white paper envisioned that the LTSA would have the power to investigate the accuracy of the entries in the database and to impose penalties.

The LTSA raised significant concerns about its ability to undertake investigative activities, noting that its strength lies in ability to create and maintain a database. Consequently, the final proposed structure for the registry differs from that set out in the white paper in that it removes inspection and enforcement powers from the LTSA and gives them to an inspector, to be appointed by the Minister of Finance. The final proposed structure also includes decisions made by the Minister in December 2018 and expands the agencies that have access to full information in the registry to include the Law Society of British Columbia and BC Assessment.

The following table summarizes the major changes relative to the white paper:

Major differences between the White Paper and the Proposed Final Draft		
	White paper	Proposed final draft
Changes to Administration	LTSA would conduct inspections	The Minister of Finance would appoint an inspector. The inspector would investigate the veracity of information on the database or if the use of the information on the database is inappropriate.
	LTSA would impose administrative penalties.	The inspector imposes penalties.
	LTSA would collect administrative penalties and use for education purposes.	The government would collect the penalties and they would form part of government revenues.
	White paper – was silent on appeals of administrative penalties.	Appeals are made to the Minister of Finance.
	The administrator is not required to inquire into the accuracy of information included in a disclosure report (unless conducting an inspection).	The administrator may require a person to verify information (including by way of an affidavit) or provide proof of information included in a transparency declaration or disclosure report.
	If a person fails to pay an administrative penalty, the administrator may issue a certificate setting out the unpaid amount and file it with the court.	If a person fails to pay an administrative penalty, the inspector may file a certificate with the court, and/or may register a lien against the property.
Public feedback	Full disclosure report information is available to law enforcement, tax authorities, and financial sector regulators.	The definitions of tax authority and financial sector regulators is expanded to include BC Assessment and the Law Society of BC.
Minister Decision 2018	Maximum offence penalties are set at \$50,000 for an individual or \$100,000 for a corporation.	Maximum offence penalties are set at the greater of \$50,000 for an individual or \$100,000 for a corporation, or 15% of the most recent assessed property value.
	Silent on the ability to place liens against property for unpaid penalties.	Liens can be placed against property for unpaid penalties.
	Information from disclosure reports is automatically withheld from the public registry for 30 days to allow vulnerable individuals to apply for the omission of information.	The automatic holding period is increased to 90 days.

Timelines

In spring 2018, the target launch date for the registry was spring 2020. This date was not made public.

While exploring the scope of the project, the LTSA indicated that other measures (changes to the property transfer tax applications, and migration to a new system) were being undertaken concurrently with the development of the LOTA registry and requested that that flexibility be included in the draft legislation to allow the registry to be launched in phases. However, the subsequent proposal for a phased implementation would have left some property owners without any obligation to disclose the beneficial owners under the legislation.

The LTSA now proposes to launch the **full LOTA registry in Fall 2020** (including disclosures when interests in land are transferred, disclosures of beneficial owners of interests in land that have already registered on title and disclosures when beneficial owners of a property change).

The LTSA has indicated that it can commit to this date some certainty.

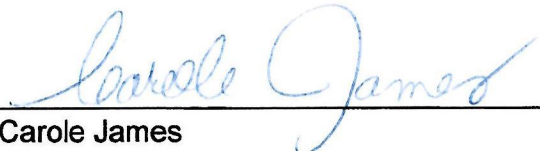
Attachment

DECISION:

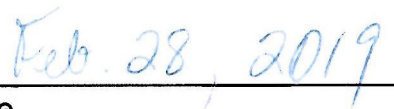
A decision is sought on:

- The proposed final structure of the LOTA registry as set out in the appendix; and
- A launch date of Fall 2020 for the registry.

Approved / Not Approved



Carole James
Minister and Deputy Premier



Date

Appendix

Land Ownership Transparency Act- Summary

The proposed *Land Ownership Transparency Act* (Act) creates a framework for disclosure requirements to identify the actual owners of properties in BC. Currently, entities such as trusts, partnerships and corporations that own land can be used to disguise the underlying beneficial owners of property. The information collected under the Act will be used to inform taxation and regulatory agencies to prevent tax evasion and non-compliance with regulations. In addition, the public will have better access to property ownership information, subject to certain limitations.

The disclosure requirements will apply to trusts, corporations and partnerships (information on direct ownership by individuals is already collected). The information will be required to be disclosed on application to register an interest in land and any time there is a change of interest in land at the Land Title and Survey Authority (LTSA) (see also the transition period below).

The following describes the main features of the proposed legislation and the mechanics of how the Act will operate.

Role of the Land Title and Survey Authority

The LTSA will:

- Maintain a separate registry of beneficial ownership of property containing transparency declarations disclosure reports and other information obtained under the Act.
- The CEO of the LTSA will appoint an administrator (and deputy administrators).
- The Board of the LTSA will set fees payable for services provided under the Act.
- Will provide public education material and outreach about the new requirements under LOTA.

Role of Registrar

The Registrar will be the Registrar of Land Titles at the LTSA. Upon application to transfer interest in a property:

- The registrar will register an interest in land if a properly signed transparency declaration is submitted. (On application to register an interest in land, a transferee must sign a transparency declaration whether the interest in land is to be registered in the name of a trustee, corporation or a partnership that is required to file a disclosure report. Without this signed declaration, the registrar will not register the interest in land).

- If the signed transparency declaration indicates that the interest in the land is not to be registered in the name of a reporting body, the registrar will accept that declaration and proceed with registering the interest in land.
- If the signed transparency declaration indicates that the interest in the land is to be registered in the name of a reporting body, the registrar will require a signed disclosure report from the reporting body prior to registering the interest in land.
- The registrar will also collect any fees required to be paid at the time of registration of the interest in land.
- After title is transferred, the role of the registrar is complete with respect to the Act.

Role of Administrator

The administrator is appointed by the CEO of the LTSA. The administrator:

- Is responsible for general administration of the Act including maintaining the registry of beneficial ownership of property (the database).
- Will keep and maintain transparency declarations, disclosure reports and all documents received under the Act.
- May require a person to provide verification of information in a transparency declaration, disclosure report or in applications to change, correct information or omit information from public disclosure.
- Will establish a searchable database containing transparency declarations, disclosure reports and other information. The database will allow for full access to the following agencies (competent authorities):
 - Taxing authorities;
 - Law enforcement agencies; and,
 - Regulatory agencies (British Columbia Securities Commission, Financial Institutions Commission, Financial Transactions and Reports Analysis Centre of Canada and others).

These agencies may arrange for access to bulk data from the database and the administrator may provide information regarding suspicious activity to these agencies directly.

- Will allow for public access to the database. On application to the administrator, the public can access information in the database with certain exceptions to the information accessible. These exceptions are:
 - Personal information – date of birth, social insurance number, tax number, or in the case of trusts, the settlor's identification information;

- Any information contained in a disclosure report that has not yet passed the mandatory 90-day holding period;
 - Information that has been identified as harmful to the health and safety of the individual.
- Will collect fees for searching the database.
 - Will be responsible for making any changes to the information in the database.
 - May proactively provide information about entries in the database to the competent authorities listed above and to the inspector (see below).

Transition

The foregoing describes the operation of the Act when an application to register an interest in land is made. For pre-existing property owners, the intent is to require disclosure reports with respect to these properties if a reporting body has an interest in the property. A grace period will be provided to give people time to provide the relevant information.

The administrator will collect the disclosure reports during transition for pre-existing property owners.

Transfers of Beneficial Ownership

The administrator will also be required to receive disclosure reports when beneficial ownership changes, even if the change does not result in a legal transfer of title.

Role of the Ministry of Finance

The Minister of Finance:

- May appoint an inspector to investigate any of the information provided in the LOTA database or to investigate use of the data that violates the Act.

The inspector:

- Has various investigation powers set out in the Act.
- May impose administrative penalties (subject to a limit of 6 years after the date of the contravention, maximum amounts and factors that must be considered).
- Will issue notices of penalties.
- Will be able to direct the administrator to correct information in the data base.

Appeals of the inspector penalties will be made to the Minister.

Administrative penalties levied by the inspector are payable to the government and will be collected by the government.

Offences

The Act will provide for offences which will be imposed by the courts.

Various LOTA Terms and Provisions

Properties subject to disclosure

All properties in BC, excluding lands of an Indigenous nation including treaty lands and reserve lands (the Act also allows for lands to be excluded by order in council).

Reporting body

Entities subject to disclosure requirements include:

- Trusts (with exceptions such as charitable trusts, testamentary trusts and others);
- Partnerships (the Act allows for prescribed partnership exceptions); and,
- Corporations (with exceptions such as publicly traded corporations, government bodies, and others).

Information to be disclosed

In the case of an individual (i.e. trustee, settlor and beneficiaries):

- Name and whether the individual is a Canadian citizen or permanent resident of Canada, and country of citizenship in other cases;
- City of the individual's principal residence;
- Date of birth, last known address, and social insurance number or individual tax number;
- In the case of a corporate interest holder, a description of how the person is an interest holder in respect of the corporation; and
- Other information some of which might be prescribed.

In the case of a corporation:

- Name, address and business number;
- Jurisdiction of incorporation; and,
- Other information some of which might be prescribed.

In the case of a partnership:

- Name, if applicable;
- Type of partnership;
- Business number, if applicable;
- Jurisdiction of governing law; and,
- Other information some of which might be prescribed.

Transparency declaration

On application to register an interest in land, any transferee must sign a declaration whether the interest in land is to be registered in the name of a trustee, corporation or a partnership that is required to file a disclosure report. Without this signed declaration, the registrar will not register the interest in land.