



**CANADIAN LAW CONFERENCE**  
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### ***Forfeited Corporate Property Act: Do You Have a Real Estate Register?***

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If you are an Ontario corporation that has an “ownership interest” in a shopping centre located in Ontario, recent developments in Ontario corporate law should be of significant interest to you.

The *Forfeited Corporate Property Act* (FCPA) came into force on December 10, 2016. Its enactment entails a shift in the process for dealing with the remaining property of corporations that have been dissolved.

The FCPA also amends the *Business Corporations Act* (Ontario) (OBCA), which is the main piece of Ontario legislation governing the incorporation, operation and dissolution of Ontario corporations. Similar amendments have been introduced through the FCPA to the *Ontario Corporations Act* and *Not-for-Profit Corporations Act*. These FCPA amendments impose new record-keeping requirements on Ontario corporations with respect to their ownership interests in real property. It appears the purpose of the amendments is to make it easier for the provincial government to locate real property owned by Ontario corporations where the property has reverted to the Crown.

For Ontario corporations that own little to no real estate in Ontario, this new requirement will go largely unnoticed. However, for those with substantial ownership interests in real property in Ontario, such as landlords with interests in multiple shopping centres, the new record-keeping requirements (and specifically the requirements to compile and organize documents respecting ownership interests in land) will be time consuming.

#### **Application to Ontario Corporations:**

This new law applies only to corporations incorporated under Ontario statutes. Federally incorporated corporations, extra-provincial corporations, or other forms of business organization (such as joint ventures or partnerships that do not include Ontario corporations) are not affected. To be clear, an Ontario corporation with an ownership interest in land, including underlying corporate general partners of partnerships are required to comply with this new law. However, the record-keeping requirements do not apply to properties owned by Ontario corporations where those properties are not located in Ontario. Similarly, the legislation does not affect non-Ontario corporations with ownership interests in real property in Ontario.

#### **Record-Keeping Requirements:**

The new law requires that all Ontario corporations maintain a register of its ownership interests in real property in Ontario. The register must identify each interest/property in which the corporation has an ownership interest and include the following:

- 1) the date the corporation acquired the property and, if applicable, the date the corporation disposed of the property;

- 2) a copy of any deeds, transfers or similar documents that contain any of the following:
  - a. The municipal address, if any
  - b. The registry or land titles division and property identifier number (PIN)
  - c. The legal description
  - d. The assessment role number, if any

### **Ownership Interests:**

The legislation does not define “ownership interests”. Therefore, the scope of real property interests that will need to be recorded is unclear. A broad interpretation of the term “ownership interests” could extend beyond simple legal ownership in land (for example, beneficial interests in land might be caught by the definition, as could leasehold interests and mortgages). At this stage, it is simply too early to assess the reach of this new record-keeping requirement.

### **Location of the Register:**

The property register is to be kept at a corporation’s registered office. If a corporation’s registered office is located other than at the corporation’s place of business (such as at the office of the corporation’s lawyer or accountant), then the register is to be kept at that location. Regardless of where the register is kept, it is the corporation’s responsibility to ensure that it is up-to-date.

### **How to Maintain these Records:**

The register must be updated as properties are acquired and disposed of, but the legislation does not specify any particular form of record-keeping. It is noteworthy that the OBCA extends great flexibility and permits corporate records to be maintained in a bound or looseleaf book, or to be entered or recorded by any system of mechanical or electronic data processing or any other information storage device.

It might be appropriate to keep a register in a binder organized by property, and further subdivided to separate the required supporting documents. For organizational purposes, it would likely be prudent to keep the register in the same location as (or have it included in) the corporate minute book (assuming that the corporate minute book is maintained at the corporation’s registered office).

### **Grace Period:**

Although the amendments came into effect on December 10, 2016, compliance with them is subject to a two-year grace period for Ontario corporations incorporated prior to December 10, 2016. However, corporations incorporated on or after December 10, 2016 are required to comply with the amendments as soon as the corporation is incorporated. Failure to comply with these new record-keeping requirements can result in the corporation and its officers or directors facing fines or other penalties under the OBCA.

The period leading up to the December 10, 2018 deadline will be busy as everyone (including law firms) work towards ensuring that corporate records are in compliance with the OBCA.