

## REAL ESTATE

### NEW LEGISLATION: THE FORFEITED CORPORATE PROPERTY ACT

by Andrew J. Skinner

The *Forfeited Corporate Property Act, 2015* (“FCPA”) and related changes to the *Ontario Business Corporations Act* (“OBCA”) received Royal Assent on December 10, 2015 and came into force December 10, 2016.

The FCPA provides that if an Ontario corporation (incorporated under the OBCA) is dissolved and is the owner of real property at the time of dissolution, that real property is forfeited to the Crown. The FCPA has granted the Minister of Economic Development, Employment and Infrastructure, for Ontario (“MOI”), broad new powers with respect to forfeited land. The FCPA has implications for corporations which own real property and for lenders, lessees and other parties which hold interests in lands.

#### Legislative Intent of the FCPA

The Ontario Ministry of Finance stated in a press release on November 18, 2015 that the intended effect of the FCPA is to:

1. Mitigate risks to Ontario taxpayers that may arise when corporate property forfeits to and becomes Crown property when a company is dissolved;
2. Reduce the number of corporate properties that forfeit to the Crown;
3. Increase corporate accountability for costs associated with forfeited corporate property;
4. Increase transparency and certainty in the management and disposition of forfeited corporate property; and
5. Return forfeited property to productive use as quickly and efficiently as possible.

#### Key Provisions with respect to Forfeited Property

- Immediately upon the dissolution of a corporation, the Crown, by operation of law, becomes “the owner” of the real property and there is no requirement that the Crown register notice of the forfeiture on title.
- Prior to the introduction of the FCPA, the “owners” of a dissolved corporation had twenty years from the date of dissolution to revive the corporation and recover its escheated real property. The FCPA provides that a corporation may still be revived within

a twenty-year period however, it will not be able to recover its assets if the revival takes place more than three years after the date of dissolution.

- The phrase “ownership interest” in the FCPA is not defined. It is clear that it will cover ownership and co-ownership interest in the freehold and real property, but likely will include leasehold, registered and beneficial ownership interests and other interests in Ontario real property.
- It is important to note that the FCPA imposes new recordkeeping requirements on all Ontario corporations with respect to their “ownership interests” in real property. Corporations governed by the OBCA that were incorporated prior to December 10, 2016 will be required by December 10, 2018 to create and maintain a register of the corporation’s ownership interests in land in Ontario. For corporations incorporated on or after December 10, 2016, the recordkeeping requirements apply immediately.
- The Register must identify each property by including:
  - The municipal address.
  - The registry or land titles division and the property identifier number.
  - The legal description.
  - The assessment roll number, if any.

The Register should also set out the date that the corporation acquired a particular property and, if applicable, the date the corporation disposed of such property. A copy of any deeds, transfers or similar documentation should be included.

- These amendments apply only to corporations incorporated under Ontario statutes and do not extend to ownership interests in real property owned by an OBCA corporation if the real property is situated outside Ontario. Similarly, the legislation does not apply to non-Ontario corporations with ownership interests in real property in Ontario.
- While there are no specific penalties listed in the new provisions, failure to comply with these new recordkeeping requirements may result in the corporation and its officers or directors facing fines or other penalties under the OBCA.
- The MOI now has the power to order the cancellation of mortgages or other encumbrances against property which has been forfeited by a corporation, notwithstanding that the mortgages or encumbrances were valid and enforceable prior to the forfeiture. The MOI also has the authority to cancel interests created after the property forfeits and have those interests removed from title.

**Conclusion**

The FCPA has a broad impact on OBCA corporations which hold an interest in real property situate in Ontario. While new regulations and clarifications will be forthcoming with respect to the FCPA, a corporation should be mindful of these provisions and the additional recordkeeping requirements of the new Act.

*This Client Alert is published by Dickinson Wright LLP to inform our clients and friends of important developments in the field of real estate law. The content is informational only and does not constitute legal or professional advice. We encourage you to consult a Dickinson Wright lawyer if you have specific questions or concerns relating to any of the topics covered in here.*

FOR MORE INFORMATION CONTACT:



**Andrew J. Skinner** is a partner in Dickinson Wright's Toronto Office and can be reached at 416.777.4033 or [askinner@dickinsonwright.com](mailto:askinner@dickinsonwright.com)

Or another Toronto real estate/commercial transactions lawyer: Stewart J. Wallace, Steven J. Gray, James M. McKeon, Robert Farmer, Alexandra J. Zilbert.