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September 19, 2018

The Honourable Carole James
Minister of Finance and Deputy Premier
PO Box 9418 Stn Prov Govt
Victoria, BC V8W 9V1

Re: Proposed Land Owner Transparency Act

Dear Minister James,

On behalf of the over 850 members of the Urban Development Institute (UDI), we respectfully submit our comments regarding the proposed *Land Owner Transparency Act* (*LOTA*) *White Paper*. UDI recognizes there is a need to build public confidence in the real estate industry to ensure that everyone pays their fair share of taxes and that any potentially fraudulent activity is eliminated. We have endorsed the Province's efforts to establish a multi-agency task force to address tax fraud and money laundering in the BC real estate marketplace, and want to work with all levels of Government in these efforts. UDI has also supported the Ministry on the development of the Presale Assignment Registry.

Even though the proposed measures will add substantial administrative costs, fees and delays to real estate transactions and development projects, UDI is supportive of *LOTA* in principle. However, UDI is significantly concerned at the prospect of unfettered public access to a beneficial ownership registry (Registry) that includes personal information of parties who are not beneficial owners (as that term is legally recognized) of real property, or who have no ability to control or even influence decisions that could result in their identification in a public registry. We take no issue with the Registry information being available to the federal and provincial governments and their respective relevant authorities and agencies, including law enforcement, but we see no justifiable reason to make all information collected under *LOTA* available to the public at large.

We also note that there are often *bona fide* commercial purposes for purchasers – whether public bodies or private entities – not to have commercially sensitive information to be publicly known for both proprietary reasons unique to a particular transaction and for reasons to curb speculation. If reducing land speculation is a goal of the Province then making this information immediately and widely known will be counter-productive. At the very least, there should be an allowance for delayed reporting to protect commercially sensitive transactions.

We were pleased that the Ministry publicly released the draft legislation for comment. UDI would encourage this practice for other legislation and regulations in the future. As a general principle, the more notice our industry has, then the more we are able to comply with them. Further, interpretive guidance issued by the Ministry will be a valuable resource. One of the ongoing problems for accurate reporting of additional property transfer (foreign buyers) tax is the lack of guidance from the Ministry to repeated questions from industry to clarify how the tax is being assessed and what information is to be provided. For *LOTA* to operate efficiently, those who are subject to its requirements should have the benefit of timely and accurate information as to its requirements.

We offer the following initial comments on *LOTA*:

Part 1: Definitions, Interpretation and Application

- The definition of "relevant trust" includes a reference to "express trust". However, "express trust" is not defined in the statute. We ask that it be defined, and that clear examples be provided in guidance materials as to what comprises an "express trust".

- LOTA needs to be very clear in how bare trusts are to be addressed. Are they included under "relevant trusts"? Bare trusts are a popular tool used under the federal *Income Tax Act* for many years and the Province has in the past avoided providing definitional guidance around them. With the introduction to *LOTA*, it is our view that the Province can no longer avoid providing legislative language around bare trusts, and that legislative language will also require further Ministry guidance materials to provide greater clarity for filings to be made under *LOTA*.

- As one example, it is important for the Ministry to provide a definition of "settlor" under *LOTA*. Despite numerous requests for clarity on this point since the introduction of the additional property transfer tax, the Ministry has not provided any clarity on this point. It should also be noted that the definition of settlor in the *Property Transfer Tax Act* is different from what is commonly thought to be a settlor in law, and is not consistent with the definition used in *LOTA*.

- We understand from the language regarding the 25% rule described in Section 3 that no reporting under *LOTA* will be required if there are more than four individuals with equal shares of the ownership of a property. However, if this is not the expectation of the Ministry, then the definition of "beneficial owner" under Section 2 needs to be clarified.

- There is a disconnect with the definition of "*corporation*" between the *Land Title Act* and the *Business Corporations Act*. Does the government anticipate the difference in definitions as an issue for *LOTA* and specifically with regard to the definition or "*corporate interest holder*" (Section 3)?

- There are other clarifications needed under Section 3 regarding "*corporate interest holder*":

    - The inclusion of a "value of equity" test is too vague and effectively imposes a daily obligation to assess the ownership of a property where no actual transfer has occurred since there can be different classes of

shares with different valuations. The voting rights test in section 3(1)(a)(ii) should be adequate for the government's purpose.

- Under Section 3(1)(c), a definition of what "… *significant influence or control over the relevant corporation*," is needed.

- "*common Interests*" is not defined under Section 3 (2) (b).

- Under Section 4 ("*Partnership Interest Holder*"), UDI asks the Government to consider applying the 25% rule noted above to partnerships – especially limited partnerships and limited liability partnerships (which typically comprise professional service partnerships with office leases). As with corporations, the increased administrative costs would not be warranted in situations in which there are numerous individuals involved, each with little effective ownership/control of a property . It would also provide a consistent approach in *LOTA* between partnerships and corporations.

- To ensure consistency of language throughout *LOTA*, we recommend that Section 7(a) be amended from "*provide the corporation's or company's*…" to "*provide the relevant corporation's or company's*…".

- Also, under Section 7(a)(iii), UDI recommends that "*if applicable*" be added after "*head office address*"

- Lastly, the inclusion of leases under the definition of *"interest in land"* is an unnecessary extension of the application of LOTA that is unlikely to amount to anything more than a significant burden for the Province to manage. We note that the *Property Transfer Tax Act* only triggers transfer tax for leases as equivalents to ownership for leases (including renewal terms) of more than 30 years. The definition of "*interest in land*" in *LOTA*, as drafted, would likely capture thousands of additional leases to no material benefit. Further, given the Province's recent changes to the *Residential Tenancy Act*, the definition may now capture residential tenancy agreements where terms convert to periodic tenancies.

Part 2: Transparency Declarations and Disclosure Reports

Under Section 15, "*Reporting bodies will also be obligated to file an updated disclosure report within two months of becoming aware of a change in beneficial ownership*." UDI recommends that a different approach be taken in which reporting bodies provide disclosure reports with updates in beneficial ownership every six months. This would reduce the administrative burden of *LOTA*, which will likely be quite high for reporting bodies with significant land holdings.

Part 3: Access to Information Provided in Disclosure Reports

As noted above, UDI supports the establishment of a Registry in which key information regarding who beneficially owns real property is shared with tax auditors and law enforcement. This should assist the efforts of agencies to combat money laundering and tax evasion. However, UDI is concerned that access to the Registry information would be available beyond the federal and provincial governments and their respective authorities and agencies, including law enforcement. If commercially sensitive information is shared beyond government and the necessary authorities,

this could undermine both the private and public sectors' abilities to acquire land without triggering speculation. As the Province has done with the additional property transfer tax, and the Province's proposed pre-sale assignment reporting, the information can be collected, assessed and disseminated on an aggregated basis, but public access to individual filings is not contemplated.

In terms of our industry, there will be impacts on competition as the proprietary information of our members (e.g. when they assemble sites for future projects) will be released to their competitors and land speculators. It is our understanding that one of the overarching goals of the Government is to increase reduce real estate speculation. *LOTA* will only increase speculation if the Registry is accessible to the public at large. When the Province, TransLink, BC Hydro, BC Housing, local governments and our members assemble sites for projects, the Registry will effectively act as an invitation for others to purchase abutting sites and flip them at a higher price, which will drive up land costs that will be passed onto tenants and purchasers. New important public sector projects like housing, highways, transit and commercial/industrial developments will become more expensive to assemble and build.

We note that in 2007 the Province of B.C. purchased 15 single room occupancy (SRO) buildings, and reportedly was able to reduce the land costs by shielding the Province's purchase activities through the use of numbered companies to complete the purchases. At the time, this approach was broadly supported by all stakeholders.

One option for the Ministry could be for *LOTA* to allow the public access to information on the "beneficial owner" (as this term has traditionally been defined) of a site. However, information beyond who owns a beneficial owner entity could be limited to law enforcement and government tax auditors. It is not clear what public policy benefits would arise from making this information also available to the public. If there are any, they would be outweighed by the negative impacts of increased speculation and land prices. Further, the *Business Corporations Act* and *Partnership Act* do provide public access to certain corporate and partnership information. LOTA should not become a shortcut for the public to circumvent the restrictions to information established under those statutes.

If the Government does proceed with public access to the Registry, we also ask that personal information such as the principal residence of individuals (Section 8(d)) not be released for privacy and security reasons. Again, it is not clear why such information would have to be publicly accessible if the relevant tax and law enforcement agencies have access to the information.

We ask that Section 28(2) be amended to double the time period between when the Registrar accepts disclosure reports and when personal information is publicly posted on the Registry from 30 to 60 days. This will ensure that there is enough time for:

a) people to be notified by a reporting body that personal information about them will appear on the Registry; and

b) those who have concerns about their information being made public to apply to the administrator to omit or obscure the information from the Registry under sections 38 and 39.

Schedules 1 and 2 (Exemptions)

LOTA includes several exemptions for corporations and trusts in Schedules 1 and 2. We ask that there be similar exclusions under paragraph (a) of the definition of "*relevant corporation*" (Schedule 1) for partnerships if the partnership (usually a limited partnership or a limited liability partnership) is a reporting issuer as contemplated by the *Securities Act*, as they are the equivalent of public companies. Alternatively, a Schedule for partnership exclusions should be added. Such a schedule should also include professional services partnerships. Societies and non-profit corporations should also be considered for exemptions in Schedule 1.

We also recommend for Schedule 2 that hybrid charitable trusts and spousal trusts be added as exclusions under paragraph (d) of the definition of "relevant trust". It is not clear whether "charitable trust" under Schedule 2 would include hybrid charitable trusts and so, for sake of clarity, we ask that it be specifically added. If joint spousal trusts are included in the exemption list then spousal trusts should similarly be included in the exemption list.

Thank you again for publicly releasing the *LOTA White Paper*. We hope this is a practice that will be adopted more frequently by the Government in the future. Although UDI is supportive of *LOTA*, we ask that you consider the recommendations we have made to improve the legislation – especially with regard to limiting public access to the Registry. If you or Ministry staff have any questions regarding our response, please do not hesitate to contact us. We would be pleased to discuss them further. We would also be interested in discussing future regulations under *LOTA* and Ministry Bulletins.

Yours sincerely,

Anne McMullin
President & CEO