2. EXECUTION BY A CORPORATION [§6.12]

A corporation executes instruments by the signature of its authorized signatory, who signs on its behalf. The name of the person who signed as the authorized signatory must be specified below their signature. An officer needs to witness the signature of only one of the company's authorized signatories; that signatory must set out their full name.

An instrument executed by a corporation in accordance with the *Land Title Act* is deemed conclusively to be properly executed as against all persons dealing in good faith with the corporation and takes effect accordingly. See s. 165(4) of the *Land Title Act* with respect to deemed proper execution by a corporation. Corporations dealing with land are not required to execute by seal.

IV. *LAND OWNER TRANSPARENCY ACT* [§6.13]

The *Land Owner Transparency Act*, S.B.C. 2019, c. 23 ("*LOTA*"), became effective November 30, 2020 and with it the creation of the Land Owner Transparency Registry. The purpose of the *LOTA* is to look through the organizational structure of the transferee to identify the individuals or natural persons who have control over the transferee and therefore have an indirect interest in the land.

A "transparency declaration" must be filed with every application to register an interest in land. The transparency declaration must disclose whether the transferee is a "reporting body". A reporting body is a "relevant corporation", a trustee of a "relevant trust", or a partner of a "relevant partnership".

In general,

- a relevant corporation is a corporation or limited liability company;
- a relevant partnership is a general partnership, limited partnership, limited liability partnership, professional partnership, or foreign partnership within the meaning of the *Partnership Act*, R.S.B.C. 1996, c. 348; and
- a relevant trust is an express trust, including a bare trust, or a similar legal relationship created in another jurisdiction.

If the transferee is a reporting body, a "transparency report" must also be filed disclosing "primary identification information":

- for a relevant corporation, the corporation's name and registered office and head office address(es), and the jurisdiction in which the corporation was incorporated, organized, or formed;
- for a relevant partnership, the partnership's registered business name, the type of partnership, the registered address or head office address, the principal business premises address, and the jurisdiction that governs the partnership; and
- for individuals, full name—whether or not the individual is a Canadian citizen or permanent resident of Canada, and if not, every country or state of which the individual is a citizen—and principal residence.

In addition, a reporting body must disclose information on each "interest holder". An interest holder means:

- a "beneficial owner", an individual who, either directly or as a corporate interest holder, has a beneficial interest in land or the power to revoke the relevant trust and receive the interest in land;

- a "corporate interest holder", an individual who is the registered or beneficial owner of 10% or more of the corporation's shares or has the right or ability to elect, appoint, or remove the majority of directors; and
- a "partnership interest holder", an individual who is a partner in the relevant partnership or the individual is a corporate interest holder in a relevant corporation that is a partner in the relevant partnership.

Once an interest holder is identified, the following information must be provided per s. 19(a):

(i) the individual's primary identification information,

(ii) the individual's date of birth,

(iii) the individual's last known address,

(iv) the individual's social insurance number, if any,

(v) the individual tax number, if any, assigned to the individual by the Canada Revenue Agency,

(vi) whether or not the individual is resident in Canada for the purposes of the *Income Tax Act* (Canada),

(vii) the date on which the individual became an interest holder, and

(viii) a description of how the individual is an interest holder.

The vast majority of residential conveyances will require the filing of a transparency declaration only, as the purchasers will be individuals who will be the registered and beneficial owners of the property.

Note that the definition of a corporate interest holder under *Property Transfer Tax Act*, R.S.B.C. 1996, c. 378 ("*PTTA*")'s Information Collection Regulation, B.C. Reg. 166/2018, s. 2 has a higher threshold. A corporate interest holder under *PTTA* is an individual who has legal or beneficial ownership or control of 25% or more of the equity or voting rights of the relevant corporation.

V. POWERS OF ATTORNEY AND REPRESENTATION AGREEMENTS FILED AT LAND TITLE OFFICE [§6.14]

Note that the electronic version of Form 17 provides practitioners with the ability to submit powers of attorney, representation agreements, and revocations electronically using the Electronic Filing System.

A. POWERS OF ATTORNEY [§6.15]

1. FORMS [§6.16]

Amendments to the *Power of Attorney Act*, R.S.B.C. 1996, c. 370 (under the *Adult Guardianship and Planning Statutes Amendment Act, 2007*, S.B.C. 2007, c. 34) came into effect on September 1, 2011. The amendments repealed and replaced s. 8 (the former enduring power of attorney section) with a new Part 2 (ss. 10 to 31) and Part 3 (ss. 32 to 42), containing provisions to govern the making and use of enduring powers of attorney. An enduring power of attorney is one that expressly provides that the power of the attorney does not cease when the donor becomes incapable.

Section 42 of the amended Act provides that a valid enduring power of attorney made before September 1, 2011, under now-repealed s. 8 is deemed to be an enduring power of attorney.

On September 1, 2011, the Ministry of Attorney General published an Enduring Power of Attorney form (available at www2.gov.bc.ca/assets/gov/health/managing-your-health/incapacity-planning/enduring_power_of_attorney.pdf). This standard form includes several features required by the land title office (see the discussion beginning at "Land Title Office Index" in this chapter), such as the officer's certification, the attorney's statutory declaration, and the donor's revocation of previous instruments (including "Note 1—Actions that must be taken to revoke previous instruments" explaining the need to provide written notice for the revocation to take effect).

Nevertheless, the government's Power of Attorney form may not be appropriate for use by every client; for example, it provides for the appointment of only one attorney to act at one time. The legislation also contemplates options that are not reflected in this form regarding, for example, the type of authority that may be given or when the power will come into effect.

Note that the form need not expressly exclude the effect of s. 56(1) of the *Land Title Act*, which limits the validity of a power of attorney to three years unless it is an enduring power of attorney.

For more information on powers of attorney under the amended *Power of Attorney Act*, see chapter 30 (Enduring Powers of Attorney) of *Wills and Personal Planning Precedents: An Annotated Guide* (CLEBC, 1998–) and chapter 16 (Planning for Incapacity) of *British Columbia Estate Planning and Wealth Preservation* (CLEBC, 2002–).

2. LAND TITLE OFFICE INDEX [§6.17]

The land title office maintains an index of the powers of attorney filed there. The index contains information about the date of filing, the donor's name, and the attorney's name. For a person to file a power of attorney in the land title office, the following requirements must be met (see the discussion at "Forms" in this chapter):

- the power of attorney must contain the full name, address, and occupation of the adult;
- the adult's execution of the power of attorney must be witnessed or proved in the manner required for instruments by Part 5 of the *Land Title Act* (officer's certification and signature of the witness under a column headed "Officer Signature(s)"—as in Item 7 of the Form A—Freehold Transfer); and
- the power of attorney must be accompanied by proof (normally a statutory declaration by the attorney) that the attorney was 19 years of age at the time of execution. Note that if the power of attorney appoints more than one attorney, a declaration must be filed for all attorneys, even if they can act separately.

3. LENDER'S REQUIREMENTS [§6.18]

If the purchaser is obtaining mortgage financing, confirm that the lender will accept a mortgage signed under a power of attorney.

B. SUBMITTING A POWER OF ATTORNEY TO THE LAND TITLE OFFICE [§6.19]

When documents executed by attorney are submitted for registration in the land title office, the power of attorney must comply with Part 6 of the *Land Title Act* and must be executed in accordance with Part 5.

Documents signed by an attorney and filed in a land title office must refer to a power of attorney filed in that or another land title office.