Subject: **FOREIGN OWNERSHIP OF LAND**

BACKGROUND

The *Foreign Ownership of Land Regulations* ("FOLR") were passed pursuant to the *Agricultural and Recreational Land Ownership Act (Alberta)* and *Citizenship Act (Canada)*, coming into effect on June 1, 1979. It was prompted by concerns that large areas of prime agricultural and recreational land were being acquired by foreign interests and absentee owners. The FOLR applies to controlled land; that is land in Alberta outside the boundaries of a city, town, village or summer village and also excludes Crown land and mines and minerals. The Alberta Foreign Ownership of Land Administration Office (FOLA) oversees and administers the FOLR.

FOLR attempts to strike a balance between limiting foreign ownership of prime land while still encouraging investment. This balance is achieved by prohibiting foreign individuals or foreign-controlled corporations from acquiring controlled land unless they meet one of the exemptions outlined in the FOLR. Generally speaking, the limit of controlled land that may be acquired by a foreign individual or foreign-controlled corporation is two parcels containing no more than 20 acres in the aggregate. Depending on the acreage involved, there are other exemptions in the FOLR allowing those to acquire more land above and beyond 20 acres, such as those acquisitions for manufacturing, processing, industrial and commercial development, for the construction of a pipeline, plant, or a transmission line, or for an electric system as defined in *The Hydro and Electric Energy Act (Alberta)* among others. Refer to the FOLR for the full list of exemptions. Where a purchase by a foreign individual or foreign entity is more than 20 acres and would not qualify for one of the "use-specific" exemptions, it may still be permitted if Cabinet and the Lieutenant Governor in Council grants an exemption by Order in Council pursuant to section 14 of the FOLR.

Anyone acquiring certain interests in controlled land (typically most transfers, many caveats, and some leases) is required to complete a statutory declaration in one of the prescribed forms (FORM 1, FORM 2, FORM 3 or FORM 4)), which provides the information necessary to administer the FOLR. See Foreign Ownership of Land Form Types Information Sheet. Using the prescribed forms is highly advisable; FOLA and Land Titles approves and registers files that have been completed by way of prescribed form and in the prescribed format at a significantly higher rate than those which are not completed in the prescribed format. Pursuant to section 28(1) of the *Land Titles Act*, the Registrar is to ensure that the statutory declaration is provided before these interests in controlled land are registered. FOLA and the Land Titles Office review all statutory declarations.

Section 25 of the FOLR authorizes FOLA to require any additional evidence, verified by statutory declaration or otherwise, as it considers necessary for the purpose of determining whether or not the information supplied pursuant to the FOLR or used in the *Land Titles Act* is correct or may result in the contravention of the FOLR.

REGISTRATION PROCEDURE

1. **Definition of Controlled Land** - Controlled land is defined in s.2 of the FOLR as land in Alberta but does not include land of the Crown, land within the boundaries of a city, town, new town, village or summer village, and mines and minerals. Therefore, all land located in a County or Municipal District is controlled land (though there are some specific exceptions, as outlined in item 4).

2. **Determination of Controlled Land** If there is any doubt whether a transaction involves controlled land, the location of the land should be checked in the Surveys section. This will usually necessitate checking the plan of subdivision for subdivided lands, the county or municipal district maps or the city, town, village or summer village boundary maps. If the land is within the boundaries of a city, town, new town, village or summer village or if it falls within the other exemptions, it is not controlled and a statutory declaration is not required.

3. **Requirements for Statutory Declaration** - To comply with section 28(1) of the *Land Titles Act* and the Foreign Ownership of Land Regulations, a statutory declaration in one of the prescribed forms (FORM 1, FORM 2, FORM 3 or FORM 4) must accompany the following documents submitted for registration on controlled land:

- transfer
- notice of sale at public auction (tax recovery)
- court order vesting an interest in another person or entity
- lease
- caveat claiming any of the following interests:
  - agreement for sale
  - amending agreement if adding more land
  - assignment of purchaser's interest in an agreement for sale
  - beneficial owner
  - beneficiary under a will, settlement or trust deed
  - interim agreement
  - joint venture agreement
  - lease, assignment of lease, or option to lease
  - life estate, life interest, or life lease
  - offer to purchase
  - option to purchase
  - profit á prendre
  - quit claim
  - right of first refusal
  - trust agreement, declaration of trust, or trust deed
  - unregistered transfer

  (and the transfer of any of the above caveats)
  - a change in the membership or the ownership/beneficial ownership of the shares of a corporation or entity that owns/beneficially owns an interest in controlled land that results in the corporation or entity becoming a foreign controlled corporation or entity.

If any of the above scenarios apply or relevant documents are presented for registration without the necessary declaration, it is to be rejected and a statutory declaration is to be requested. If a document is submitted for registration with the required declaration but is being rejected for some other deficiency, the declaration is to be reviewed prior to its return to the registrant. Most Form 1 statutory declarations for Canadian Citizens will be reviewed by a Land Titles Office Examiner while most others will be reviewed by FOLA. All foreign ownership statutory declarations (forms) must be current to within the last one year. Using the prescribed forms is highly advisable as FOLA and Land Titles approves files that have been completed by way of prescribed form and in the prescribed format at a significantly higher rate than those which are not completed in the prescribed format.

A Form 1 declaration must be completed when there is an attempted acquisition of an interest in controlled land by an individual Canadian Citizen or Permanent Resident. The Canadian Citizen or Permanent Resident (or lawyer completing the declaration on behalf of one) must also swear by solemn declaration that the individual acquiring the interest will also hold their interest in the land beneficially and not as trustee(s) and not on behalf of any person. While a lawyer who is a member of the Law Society of Alberta may complete any foreign ownership declaration on behalf of his/her/their client, on a Form 1 it is imperative to still name the actual transferee, transmittee, caveator, or lessee on the Form 1 declaration. The name(s) should be entered in the large blank white space immediately below the selected Clause 1 item.
**If the Canadian Citizen or Permanent Resident acquiring title is not holding beneficial interest in the land and is acting as trustee for/on behalf of another individual, corporation, or entity, a Form 4 declaration must be completed instead.*

A Form 2 statutory declaration must be completed when there is an attempted acquisition of an interest in controlled land by a Canadian-controlled corporation or Canadian-controlled entity. Proof, typically by way of shareholdings or memberships and in the form of appendices, must also be provided to establish Canadian control (multiple appendices may be required to demonstrate the full, complete, chain(s) of control). An officer of the corporation (or lawyer completing the declaration on behalf of his/her corporate client) must also swear by solemn declaration that the corporation/entity will hold the interest in the land beneficially and not as trustee(s) and not on behalf of any person.
**If the Canadian-controlled corporation/entity acquiring title is not holding beneficial interest in the land and is acting as trustee for/on behalf of another individual, corporation, or entity, a Form 4 declaration must be completed instead.*

A Form 3 statutory declaration must be completed when there is an attempted acquisition of an interest in controlled land by a non-Canadian individual, corporation, or entity. Eligibility under the FOLR must also be sought in the Form 3 and an appropriate exemption in the FOLR referenced and substantiated. The non-Canadian (or lawyer completing the declaration on behalf of one) must also swear by solemn declaration that the individual/corporation/entity acquiring the interest will also hold their interest in the land beneficially and not as trustee(s) and not on behalf of any person.
**If the non-Canadian individual, corporation, or entity acquiring title is not holding beneficial interest in the land and is acting as trustee for/on behalf of another individual, corporation, or entity, a Form 4 declaration must be completed instead.*

A Form 4 statutory declaration captures any and all other situations where the individual, corporation, or entity that attempts to obtain an interest in the controlled land is **not** holding beneficial interest in the land (he/she/they are doing so on behalf of or in some way as trustee(s) for someone or something else). The nature of this beneficial ownership/trusteeship situation must then be spelled out in detail in the Form 4 declaration (appendices may be required to demonstrate the full, complete, chain(s) of control) and if the ultimate beneficiary/beneficial owner is non-Canadian, eligibility under the FOLR must be sought and an appropriate exemption in the FOLR referenced and substantiated.

Section 22(2) of the FOLR identifies who is eligible to make a foreign ownership statutory declaration. An "Agent" is *not* one of the eligible parties. Refer to s.22(2) of the FOLR.

Parties involved or anticipating involvement in transactions which may fall under the FOLR should seek legal advice for an interpretation of the FOLR.

To swear a false statutory declaration would be a punishable offense under the *Citizenship Act (Canada)* which oversees the FOLR. Where controlled land is acquired contrary to the FOLR, a judicial sale will be ordered, the procedures for which are outlined in section 20 of the FOLR.

4. **Exclusions from Regulations** - Pursuant to section 14(1) of the FOLR, the following have been excluded from the operation of the FOLR:

- Crown corporations, both provincial and federal
- Corporations formed under the Great Seal of Canada
- Municipal corporations
- Schools, school districts, colleges, universities
- Irrigation and drainage districts
- Hospital or nursing home districts
- Regional services commissions established pursuant to the *Municipal Government Act*
- Land(s) in provincial or national parks
- Land(s) in Strathcona County **(Sherwood Park)**
- Land(s) in Regional Municipality of Wood Buffalo **(Fort McMurray)**
- Land(s) in Crowsnest Pass
- Land(s) in Camrose County **(Ferintosh)**
- Land(s) in Camrose County **(New Norway)**
- Land(s) in County of Grande Prairie No. 1 **(Hythe)**
- Land(s) in County of Minburn **(Minburn)**
- Land(s) in County of Newell **(Tilley)**
- Land(s) in County of Stettler No. 6 **(Botha)**
- Land(s) in County of Stettler No. 6 **(Gadsby)**
- Land(s) in County of Two Hills No. 21 **(Derwent)**
- Land(s) in County of Two Hills No. 21 **(Willingdon)**
- Land(s) in County of Vermilion River **(Dewberry)**
- Land(s) in Flagstaff County **(Galahad)**
- Land(s) in Flagstaff County **(Strome)**
- Land(s) in Lac La Biche County **(Lac La Biche)**

- Land(s) in Leduc County **(New Sarepta)**
- Land(s) in M.D. of Big Lakes **(Kinuso)**
- Land(s) in M.D. of Greenview No. 16 **(Grande Cache)**
- Land(s) in M.D. of Willow Creek No. 26 **(Granum)**
- Land(s) in Parkland County **(Wabamun)**
- Land(s) in Special Area No. 3 **(Cereal)**
- Land(s) in Thorhild County **(Thorhild)**
- Land(s) in County of Paintearth No. 18 **(Halkirk)**
- Land(s) in Clearwater County **(Caroline)**
- Land(s) in County of Grande Prairie No.1 **(Hythe)**
- Any other transaction authorized by Order in Council or section 14.

Other exclusions from the FOLR include:

- Transfers and notifications under the *Public Lands Act* for a sale of public land
- Notifications relating to a sale of public land under the administration of the *Government Organization Act*
- Transmissions on death or a Transfer to an Estate or a person in his/her capacity as an Administrator, Executor, Representative, or some other capacity for or on behalf of an Estate
- Intervening transfers
- Surface leases if clearly less than 20 acres
- Any specific “site”, if less than 20 acres, other than a plant site

(A plant site, regardless of size, always requires foreign ownership compliance)

5. **Retention of Statutory Declaration** - FOLA retains all statutory declarations completed, and registered, pursuant to the FOLR.