

**Real Estate and Business Practice Groups****Coming Soon: Many New and Existing Corporations, LLCs and Similar Entities Must Report Owners' Personal Information to U.S. Treasury Department**

Syracuse ♦ Ithaca ♦ New York City

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At the start of the new year, the National Defense Authorization Act ("NDAA") was enacted into law and included the Corporate Transparency Act ("CTA"). The CTA subjects individuals who own, or apply to form, businesses organized as corporations, limited liability companies, partnerships or similar entities to heightened reporting to the Financial Crimes Enforcement Network ("FinCEN") of the U.S. Treasury Department. The purpose of the CTA is to thwart money-laundering, limit the ability of beneficial owners to use shell companies for illegal activity, and bring U.S. law in line with anti-money laundering laws of other countries. The CTA contains confidentiality requirements and strict limitations on the use of the information by the Federal government.

When will reporting start?

The CTA will become effective when final regulations are promulgated by the Treasury. The Treasury has until January 2022 to issue the regulations. The regulations will establish reporting mechanics, clarify definitions, and perhaps add exceptions.

These requirements also apply retroactively to existing entities. Entities in existence when the regulations go into effect must report to FinCEN within two years after the effective date of the regulations.

What is a Reporting Company?

Any corporation, limited liability company, partnership or similar entity which is created by filing a document with a state government or with a foreign government and registered to do business in the U.S.

Whose information must be reported?

A Reporting Company must report information for any individual applying to a state government to incorporate or form a Reporting Company and any beneficial owner of the Reporting Company. The CTA contains some exceptions including, among others, an individual acting as a nominee, intermediary, custodian or agent on behalf of another individual and a person who controls an entity solely because of his or her employment. Reporting Companies must timely (at least within 1 year) file with FinCEN any changes in reported information.

Who is a beneficial owner?

Under the law, a "beneficial owner" is generally any individual who, directly or indirectly, through contract, arrangement, understanding, relationship or otherwise: –

- Owns or controls 25% or more of an interest in the Reporting Company; or
- Otherwise exercises substantial control over the Reporting Company.

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What entities are not Reporting Companies?

Notably, the CTA contains only a few narrow exemptions from the reporting requirements, such as among others:

- Banks, credit unions, insurance companies, and other closely regulated entities;
- Publicly traded companies;
- Tax-exempt organizations; and
- Taxable entities that:
 - (1) Have an operating presence from a physical location in the U.S.;
 - (2) Have over 20 full-time employees in the U.S.; and
 - (3) Report more than \$5 million in gross receipts or sales, annually (aggregated with other entities that are owned by such entity and through which such entity operates).

What information is reported to FinCEN?

Reporting Companies must report for each individual:

- Full legal name;
- Date of birth;
- Residential or business address; and
- A "unique identifying number" from a driver's license, passport or other government-issued identification card.

The CTA imposes heavy civil and criminal penalties for non-compliance.



Our Real Estate and Business lawyers will be monitoring the regulations. In the meantime, please contact Jeffrey Fasoldt or the other members of our Real Estate or Business Groups with questions.

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Jeff has passed the New York State Bar exam and his admission to practice law is pending. He anticipates being admitted to officially practice law in New York State in early 2021.