

CORPORATE TRANSPARENCY ACT AND ESTATE PLANNING

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GENERAL PURPOSE OF THE ACT

- It was enacted under the National Defense Authorization Act (January 2021)
- The Act is applicable to all Reporting Companies, not just corporations
- Its purpose is to avoid money laundering and counter-financing terrorism
- Designed to apply to smaller private entities not large, highly regulated companies
- The purpose is the disclosure of beneficial owners of a Reporting Company to FinCen, where it can be examined by law enforcement

GENERAL PURPOSE OF THE ACT

- The effective date for reporting is January 1, 2024, for new entities and January 1, 2025, for existing ones
- Beneficial owners that need to be disclosed are always identifiable
- Beneficial status may change from year to year
- For lawyers who represent business entities or owners of business entities, it is a critical time as existing entities which must report need to be identified, internal practices need to be updated, new internal protections need to be created, and client alerts need to be sent out

REPORTING COMPANIES

- Domestic Reporting Company—a corporation, LLC, or “other similar entity” created by the filing of a document pursuant to the laws of a US State or Indian Tribe
- The final regulations emphasized the creation of the Reporting Company by the filing of a document with the Secretary of State or any similar office under the laws of a State or Indian Tribe
- Common law business trusts are not included as a Reporting Company, but some trusts are captured under the “beneficial owner” definition in the final regulations

REPORTING COMPANIES

Foreign Reporting Company—a corporation, LLC or “other similar entity” that is:

- Formed under the law of a foreign entity, and
- Registered to do business in any State or tribal jurisdiction by the filing of a document with the Secretary of State or any similar office under the law of a State or Indian Tribe



REPORTING COMPANY EXEMPTIONS

- Banks and bank-type entities
- Tax-exempt entities
- Public accounting firms registered under Sarbanes-Oxley Act
- Publicly traded companies
- Large operating companies—companies with more than 20 US employees and sales over \$5M and physically present in US
- Subsidiaries of an exempt entity
- Certain inactive entities in existence before January 1, 2020

COMPANY APPLICANT

- A company applicant is anyone who directly files a document that creates a domestic Reporting Company, or first registers a foreign reporting company, or is primarily responsible for directing or controlling such filing (think lawyer and paralegal)
- The initial report of a Reporting Company formed on or after January 1, 2024, must include the required information on those applicants
- But no information on applicants of pre-existing companies need to be filed and no updates are required

INFORMATION TO BE REPORTED—BENEFICIAL OWNERS AND APPLICANTS

- Legal name
- Date of birth
- Residential address for beneficial owners
- Business address for other applicants
- Unique identifying number from an acceptable identification document (unexpired passport number or FinCEN identifier)
- Image of document with ID number

INFORMATION TO BE REPORTED— **REPORTING COMPANY**

- Name
- Business address
- Jurisdiction of formation
- Business address for other applicants
- Unique identification number

DUE DATES FOR REPORTS FOR ALREADY EXISTING REPORTING COMPANIES

- January 1, 2025, for Reporting Companies in existence prior to January 1, 2024
- It is estimated that this could be more than 30,000 companies nationwide
- Advisors need to gear up to make sure these requirements are followed for their existing clients



30-DAY RULE FOR REPORTING

- Reporting Companies formed (domestic) or registered (foreign) on or after January 1, 2024
- Updates to beneficial information
- Reporting Company becoming tax-exempt or an exempt entity becoming a Reporting Company
- Error in beneficial information

PENALTIES FOR VIOLATING THE ACT

- Willfully providing or attempting to provide false or fraudulent ownership information
- Willfully failing to report, complete, or update beneficial ownership information
- \$500-a-day fine up to a maximum of \$10,000
- Possible imprisonment of up to two years

BENEFICIAL OWNERS

A beneficial owner for purposes of reporting is any individual who directly or indirectly, through any contract, arrangement, understanding, or relationship:

- Exercises substantial control over a Reporting Company, or
- Owns at least 25% of Reporting Company, or
- Controls ownership of at least 25% percent of a Reporting Company

SUBSTANTIAL CONTROL OF A BENEFICIAL OWNER

- Service as a senior officer of a Reporting Company
- Authority over the appointment or removal of any senior officer or of the majority of the board of directors
- Direction, determination, or substantial influence over important decisions of a Reporting Company, like dissolution or merger, approval of major expenditures, compensation for senior officers, or selection of business lines

OTHER TYPES OF DIRECT OR INDIRECT CONTROL

- Board representation
- Ownership or control of the majority of the voting rights of the Reporting Company
- Rights associated with a financing arrangement with the Reporting Company
- Control of one or more intermediary companies that control a Reporting Company
- Any contract, arrangement, or understanding that gives control over a Reporting Company

BENEFICIAL OWNERS AS IT RELATES TO ESTATE PLANNING

An individual may directly or indirectly control an ownership interest in a Reporting Company through a contract or understanding, including:

- Joint ownership of undivided interests in the ownership interest
- Trustee with the authority to dispose of trust assets
- Beneficiary of trust who is the sole permissible recipient of income and principal who has right to demand with a distribution or withdraw all the assets of the trust
- A grantor who has right to revoke the trust and withdraw all the assets

BENEFICIARY OWNER **EXCEPTIONS**

- Minor children provided Reporting Company provides required information on parent or guardian
- Employees of Reporting Company provided they are not a senior officers
- Creditors
- Rights of inheritance whose only interest is a future interest regarding the inheritance



UNANSWERED QUESTIONS FOR TRUSTS

- Fully discretionary trusts with multiple beneficiaries
- Contingent beneficiaries
- Bifurcated or unmeasurable interests
- Beneficiary, trustee or third party who holds power of appointment
- Certain third parties or fiduciaries given power to remove trustee, amend, decant or appoint trust assets (trust protectors or trust advisors)
- Certain advisors appointed separate from trustee (investment advisor or special committees)
- Application of these rules with corporate trust companies

ASSET PROTECTION CONCERNS

- Notices and/or client alerts to existing Reporting Companies
- Engagement agreements going forward for entities formed
- Revaluation of entity/vehicle selection/concern
- Creation of new entities that don't require state filing
- Re-evaluate benefits of single member LLC where no profit motive
- Look at using strategies that don't involve entities
- Errors and omissions coverage for CTA omission and updates

QUESTIONS ?





Contact me!

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