



The Impacts of the Upcoming Beneficial Owner Disclosure Requirement on Real Estate Owners

As part of the National Defense Authorization Act for fiscal year 2021, Congress inserted a section titled the Corporation Transparency Act (the “CTA”) in order to combat money laundering and terrorism by creating a federal registry of the beneficial owners of limited liability companies, corporations, and other similar entities. The Financial Crimes Enforcement Network (“FINCEN”) of the Department of Treasury will keep the registry confidential, but is authorized to share the information with governmental, law enforcement, and foreign authorities.

The CTA will greatly impact real estate ownership entities given the wide use of limited liability companies and similar entities in the ownership of real property. Upon formation, the entity (with certain exceptions) will be required to report on all of its indirect and direct beneficial owners, defined as an individual or entity owning or controlling not less than 25% of the ownership interests of the entity or exercising substantial control over the entity. Entities formed prior to the promulgation of the regulations for the CTA will be required to provide that information within two years after the regulations are issued and any changes to the reported information are required within one year of such change.

The statute requires covered entities to report the following information on those beneficial owners who are subject to the disclosure requirement: date of birth, residential or business street address, and passport or driver’s license numbers.

Certain entities are excluded from the reporting requirements, namely banks, credit unions, registered investment companies, larger private companies, and public companies. Larger private companies are those with gross receipts or sales greater than \$5 million dollars, more than 20 full-time employees in the United States, and a

physical office presence in the United States.

The willful providing of false information and the willful failure to timely provide the required reports or any changes to information previously submitted subject the person who provides the false information or fails to provide the reporting to fines and imprisonment.

The Secretary of the Treasury is required to promulgate regulations regarding the CTA by January 2, 2022. Upon the effective date of the regulations, the CTA reporting requirements for new entities must be met and entities in existence prior to the date of the regulations have two years thereafter to comply.

Key Takeaways

- Consider adding provisions to operating agreements, bylaws, articles of incorporation, partnership agreements, and similar documents to require beneficial owners to provide the information required by the CTA to the person who registers such entity or who is responsible for updating such information. Also, consider adding indemnity provisions in such governing documents to protect the person providing the information pursuant to the statute from penalties in the event that inaccurate or incomplete information was provided by a beneficial owner or a beneficial owner refuses to provide the required information.
- Prior to passage of the regulations, entities that fall under the CTA will need to inform its beneficial owners of the requirements of the CTA and start gathering the required data on the beneficial owners. The requirement can be added to subscription agreements and other communications soliciting or offering investment opportunities to potential investors in a new entity. The need to start gathering the information also applies to companies formed prior to passage of the statute. We recommend that clients who organized or manage entities or are forming new entities begin the compliance process now to avoid delays in compliance when the regulations requiring disclosure are effective.
- Upon passage of the regulations, any person who registers an entity that falls under the reporting requirements of the CTA also will need to simultaneously file the required report with FINCEN. Therefore, such registration may need to be delayed until all of the required information is obtained by that person.

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