

TRUSTS AND ESTATES

A Shipman & Goodwin LLP® Newsletter

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Corporate Transparency Act

The Corporate Transparency Act (the “Act”), passed in connection with the National Defense Authorization Act for Fiscal Year 2021, went into effect on January 1, 2024. The Act requires “**Reporting Companies**” to disclose information regarding the company itself, its “**Beneficial Owners,**” and the “**Company Applicants.**” This information is entered into a national database managed by the Financial Crimes Enforcement Network of the Department of the Treasury (“**FinCEN**”). While the purpose of the Act is to combat money laundering and other illegal activities that occur through the use of shell companies, the Act casts a wide net, capturing within its scope many legitimate companies and the individuals and trusts that own them. There are a number of lawsuits challenging the constitutionality of the Act, but it is unclear what, if any, impact the outcomes of those cases may have on the Act or the filings required by Reporting Companies.

What Is a Reporting Company?

“**Reporting Companies**” are defined as corporations, limited partnerships, limited liability companies, and other entities that are formed by filing a document with a Secretary of State or a similar office.¹ Since general partnerships, sole proprietorships, and trusts are generally not formed by filing documents with a Secretary of State, they fall outside the scope of a Reporting Company under the Act. In addition, the Act includes twenty-three exemptions for types of entities that will not be considered Reporting Companies and are thus not subject to the Act while those exemptions apply. The exemptions include, for example, banks, insurance companies, charitable organizations, and large operating companies, many of which are already subject to other state or federal regulations so that they are not operating in the shadows.

The Act is primarily focused on gathering information from small entities that are not already subject to other reporting requirements. While this includes entities such as small family businesses, it also includes entities that are not used for an active trade or business, such as those created to hold real property or other investments. For example, an LLC created to hold a family vacation home will be considered a Reporting Company even if the property is never rented out or otherwise used as a source of income.

If your company is a Reporting Company, you must submit the following information to FinCEN:

- The full legal name of the company;
- All trade and d/b/a names used by the company;

¹ Foreign legal entities that register to do business in the United States may also be subject to the Act’s requirements.

- The address of the company's principal place of business;
- The company's jurisdiction of formation;
- The company's tax identification number;
- Information about the Beneficial Owners of the company; and
- Information about the Company Applicants (if the company is formed on or after January 1, 2024).

Who Are the Beneficial Owners of a Reporting Company?

If your company is a Reporting Company, you must also provide information on the **"Beneficial Owners."** There are two tests for determining who the Beneficial Owners are: a Control test and an Ownership test.

First, a Beneficial Owner is anyone who directly or indirectly exercises substantial control over a Reporting Company whether or not they have any actual ownership of the Reporting Company. This includes senior officers (e.g., president, CEO, CFO, COO, general counsel), anyone with the authority to remove or appoint senior officers or a majority of the board of directors, or anyone who has substantial influence over the important decisions of the Reporting Company. While there is no exhaustive list of what constitutes substantial influence over important decisions, this phrasing encompasses the authority to determine budgets, compensation, major expenditures, reorganizations, mergers, dissolutions, issuing equity, and taking on debt, among other major decisions.

"A Beneficial Owner is anyone who directly or indirectly exercises substantial control over a Reporting Company."

Second, a Beneficial Owner is anyone who directly or indirectly owns or controls at least 25% of the ownership interests of the Reporting Company.

Although trusts are generally not Reporting Companies, Beneficial Owners can own or control a Reporting Company through a trust (for instance because the trust owns 25% or more of a Reporting Company). In such cases, the Beneficial Owners may include those who manage or administer the trust, such as the trustee, trust protector, or investment advisor; certain beneficiaries of the trust, such as the sole beneficiary of income and principal of the trust or a beneficiary who has the right to withdraw or demand distribution of substantially all of the assets of the trust; and the grantor, if the grantor has the right to revoke the trust or withdraw all the assets of the trust. Who is considered a Beneficial Owner will vary depending on the terms of the trust and the individual facts and circumstances. In addition, more guidance from FinGEN will likely be necessary to provide further clarity.

It is important to note that an owner's interests will be aggregated in determining the owner's total ownership interest. For example, if an individual owns 15% of a Reporting Company individually and is also the sole beneficiary of a trust that owns 15% of the same Reporting Company, those two ownership interests will be aggregated. The individual will be considered the owner of 30% of the Reporting Company and, therefore, will be considered a Beneficial Owner. The same principal applies with trustees. If, for example, there are three separate trusts, all with the same trustee, and each trust owns 10% of the same Reporting Company, the trustee's ownership interests will be aggregated. The trustee will be considered to control 30% of the Reporting Company and, therefore, will be considered a Beneficial Owner.



A Reporting Company is responsible for gathering and disclosing to FinCEN the following Beneficial Ownership information:

- Each Beneficial Owner's legal name;
- Each Beneficial Owner's date of birth;
- Each Beneficial Owner's residential street address (not a P.O. Box address);
- A unique identifying number and the issuing jurisdiction for each Beneficial Owner from a non-expired U.S. passport, a non-expired state driver's license, a non-expired state ID document or a non-expired foreign passport if none of the foregoing are available; and
- An image of the document from which the unique identifying number was obtained.

The information provided above about the Reporting Companies and their Beneficial Owners will be held in a database that is not available to the public. The database will be available to federal, state and local agencies and financial institutions for national security, intelligence and law enforcement purposes.

If individuals are Beneficial Owners of a number of Reporting Companies, they may wish to apply for and obtain a FinCEN Identifier, or FinCEN ID, so that they can report their personal information to FinCEN directly. That FinCEN ID can then be reported on a Reporting Company's beneficial ownership report rather than the Beneficial Owner's personal information. In addition, if updates are needed regarding that particular Beneficial Owner, they could be made once with respect to the FinCEN ID rather than updating information for each Reporting Company.

[Who Are the Company Applicants of a Reporting Company?](#)

The Act also creates a one-time requirement to disclose information on a Reporting Company's "**Company Applicants**" when the Reporting Company is created. A Company Applicant is anyone who files documentation with a Secretary of State to create a Reporting Company and anyone who directs or controls the filings. There can be up to two Company Applicants per Reporting Company. For example, if your attorney's office made the initial filings for your company, the Company Applicant would likely be your attorney and any paralegal who assisted the attorney. The Reporting Company must report the same information on a Company Applicant as a Beneficial Owner (except a business address should be provided instead of a residential address). **Note:** This requirement applies only to new entities created on or after January 1, 2024.

[What Are the Filing Deadlines?](#)

If the Act applies to you or your company, there are a few important deadlines to keep in mind.

- Reporting Companies formed before January 1, 2024, have until January 1, 2025, to report.
- Reporting Companies formed in 2024 have 90 days after formation to report.
- Reporting Companies formed after 2024 have 30 days after formation to report.



It is important to note that a Reporting Company's obligations under the Act are ongoing, meaning additional reports must be submitted whenever the underlying information on the Reporting Company or Beneficial Owners changes. For instance, if a Reporting Company's senior officer moves to a new residence, the Reporting Company must submit the new address to FinCEN. **Updated information must be reported within 30 days of the change in the information or the occurrence of new actions (like an additional Beneficial Owner).**

What Are the Penalties for Noncompliance?

If the Act applies to you or your company, it is important to report your information in a timely manner. Failure to comply with the Act's reporting requirements and deadlines can lead to civil fines of up to \$500 per day until the violation is remedied. Further, willfully failing to comply with the Act can also lead to criminal penalties of a \$10,000 fine and/or imprisonment for up to two years. These penalties will be indexed for inflation.

“Failure to comply with the Act’s reporting requirements and deadlines can lead to civil fines of up to \$500 per day....”

Questions or Assistance

Please contact your Shipman & Goodwin attorney if you have any questions on the requirements of the Corporate Transparency Act or need assistance determining whether the Act applies to you or your company. Please note that Shipman & Goodwin will neither collect nor store the required information nor file the initial reports or any required amendments to such reports under the Act. You may file the necessary reports at <https://boiefiling.fincen.gov/> or engage a service company to assist you. We do not endorse any particular service company for filing the reports under the Act, but we can provide you with a list of some of the available service companies.

Trusts & Estates

James T. Betts
(860) 251-5150
jbetts@goodwin.com

Coleman H. Casey
(860) 251-5112
ccasey@goodwin.com

Cheryl A. Clemens
(860) 251-5452
cclemens@goodwin.com

Jeffrey A. Cooper
(203) 863-6418
jcooper@goodwin.com

Danielle P. Ferrucci
(860) 251-5105
dferrucci@goodwin.com

Stephen K. Gellman
(860) 251-5109
sgellman@goodwin.com

Bryon W. Harmon
(860) 251-5106
bharmon@goodwin.com

Laura A. Schuyler
(860) 251-5338
lschuyler@goodwin.com

Lyn Gammill Walker
(860) 251-5146
lwalker@goodwin.com

Donna D. Vincenti
(860) 435-2530
dvincenti@goodwin.com

www.shipmangoodwin.com/trustsandestates/

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