

New Year Brings New Corporate Transparency Laws, By Elizabeth V. Marchionni, Esq., Seth J. Meyer, Esq. and Alisha Talati, Law Clerk 12/22/2023

What To Know

- Corporate entities need to be aware and prepared to address new reporting requirements to help avoid fines, potential imprisonment and disqualification from doing business;
- Businesses can get ahead of these new laws by identifying their beneficial owners and determining whether disclosure exemptions apply; and
- In New York, consider specific limited liability company modifications before the end of 2023.

Businesses will see significant changes in the New Year with new laws on corporate transparency. The immediate impact will be felt on the federal level with the Federal Corporate Transaction Act ("CTA").

On January 1, 2024, the CTA will go into effect and require certain corporate entities to disclose their Beneficial Ownership Information ("BOI") as discussed below. The stated purpose of the Act is to improve transparency in ownership of business structures, combat money laundering, tax fraud, and other illicit activities. Under the CTA, most entities will be required to disclose detailed information about their beneficial owners to the United States Department of Treasury Financial Crimes Enforcement Network ("FinCEN").

Separately, New York State is in the final stages of enacting the LLC Transparency Act ("LLC Act"), which will require publication of BOI for the owners of limited liability companies. The stated goal is to prevent anonymous limited liability companies from engaging in illegal activity, hiding political donations, skirting government contracting requirements and shielding the owners of real estate. Notably, the LLC Act will only apply to limited liability companies and not other corporate entities.

The following is a breakdown of both laws:

Domestic and Foreign Reporting Companies under the CTA

Under the Act, any domestic entity that is formed by filing with a Secretary of State or similar office is required to report their beneficial owners to FinCEN. These entities include corporations, limited liability companies, limited liability partnerships and corporations. In addition, foreign entities that are formed under the laws of a foreign country must also report to FinCEN if they register to do business with a respective state's Secretary of State. The Act exempts 23 types of entities from reporting; such as banks, certain regulated financial institutions; tax-exempt entities; insurance companies; accounting firms; investment companies and investment advisers; pooled investment vehicles, and large operating companies (a business with more than 20 full-time employees and more than \$5,000,000 in gross receipts).

Who is a Beneficial Owner under the CTA?

Beneficial Owners are those individuals who directly or indirectly:

- Exercise substantial control over the Reporting Company. These individuals include C-suite officers, individuals who can appoint or remove C-suite officers, such as a board of directors, or individuals who have substantial influence over the Reporting Company.
- Own or control at least 25% a Reporting Company.

A Beneficial Owner is required to report to FinCEN their name, date of birth, address, unique identifier number and a photo of that document to FinCEN which is stored in a non-public database.

Reporting Requirements under the CTA

- Companies formed before January 1, 2024: The reporting deadline is January 1, 2025.
- Companies formed between January 1, 2024, and January 1, 2025: The reporting deadline is the earlier of 90 calendar days after receipt of actual or public notice of company formation.
- Companies formed after January 1, 2025: The reporting deadline is 30 calendar days after receipt of actual or public notice of company formation.
- Updates or corrections to beneficial ownership information must be made within 30 days of filing.

Failing to Comply with the CTA

The civil and criminal penalties for noncompliance include fines from \$500 to \$10,000 and up to two years' imprisonment. Staying informed with FinCen updates, as well as other local, state and federal changes will ensure that entities are complying with the reporting requirements.

New York LLC Transparency Act

The LLC Act, which will become effective one year after it is signed into law by the Governor, will require limited liability companies doing business in New York to disclose the identity of any Beneficial Owner as defined by the CTA. In many respects, the LLC Act and the CTA are similar, such that a company can comply with the LLC Act filing the same report filed with FinCEN. However, notable differences exist including:

- Under the LLC Act, BOI is publicly available, subject to limited exceptions, while under the CTA, BOI is not public.
- The LLC Act only applies to limited liability companies and the CTA applies to most entities formed at the state level.
- Penalties are less severe under the LLC, and include lesser fine amounts and no risk of imprisonment. The LLC Act does permit the New York State Secretary of State to revoke a limited liability company's ability to do business in New York if it does not comply.

The LLC Act would require new limited liability companies to include BOI in their articles of organization. Existing limited liability companies would be required to disclose BOI when they make ownership changes, change their name, address for services of process or their registered agent. Penalties under the LLC Act include a civil penalty of \$250 and potential delinquency of the limited liability company with the Secretary of State. These penalties appear cumulative with those under the CTA, potentially resulting in significant compliance issues.

Kaufman Dolowich LLP Can Help

The new law brings a host of new compliance obligations to certain businesses and corporate entities. Kaufman Dolowich's construction and commercial law practices are well-known throughout New York and New Jersey for providing comprehensive legal services to various businesses and the construction industry. Whether it's navigating this new law or any other local or state statutes, Kaufman Dolowich's team of skilled attorneys can assist.