

The Corporate Transparency Act and YES, It Impacts Estate Planners!

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What is the Corporate Transparency Act?

- Sections 6401 through 6403 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (PL 116-283, January 1, 2021)
- Intent is to enhance anti-money laundering efforts through the reporting of beneficial owners of corporations and other legally created entities to the Treasury Department's Financial Crimes Enforcement Network (FinCEN)
- FinCEN issued its final rule, 31 C.F.R. § 1010.380, on September 30, 2022, that details the reporting requirements



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Who will primarily be impacted?

- Small businesses that operate as corporations, LLCs, or any other entity created by filing a document with a secretary of state
- Small foreign businesses that operate in the United States by registering with a secretary of state
- Those who have a beneficial ownership interest (BOI) in the above
- Those individuals who file the documents to create or register an entity on or after January 1, 2024 (Applicants)

Why are those the groups that will primarily be impacted?

- They are the type of business that more likely than not will not meet any of the 23 exceptions
- To be a company that is required to report its beneficial owners (Reporting Company), a company must not meet one of the 23 exceptions and either be a (§ 1010.380(c)(2))
 - Domestic corporation, LLC, or formed by filing a document with a secretary of state or
 - Foreign corporation, LLC, or other entity that must register to do business with a secretary of state
- Broadly speaking, the 23 exceptions include (§ 1010.380(c)(2))
 - Regulated financial companies (includes required SEC filers),
 - Governmental entities,
 - Tax exempt entities, and
 - Large operating companies (greater than \$5M of gross receipts on prior year filed tax return, more than 20 full time employees, and a physical operating presence in the U.S.)

What makes someone a beneficial owner subject to reporting?

- A beneficial owner is a person who directly or indirectly either
 - Controls at least 25% of the ownership interest or
 - Exercises substantial control
- Ownership Interest (§ 1010.380(d)(2))
 - Can be either 25% of equity or voting rights
 - Includes options (put, call, straddles, etc.), convertible interests, and other such arrangements or future interests
 - Includes any agreements concerning control or ownership of the entity such as voting agreements; joint ownership; ownership through an intermediary, custodian, or agent; and ownership through one or more intermediaries

Who has a BOI when a trust holds the interest in the Reporting Company?

- A trustee with the authority to dispose of trust assets
- A beneficiary who
 - Is the sole permissible recipient of income and principal from the trust or
 - Has the right to demand a distribution or withdraw substantially all of the assets from the trust
- A grantor or settlor who has the right to revoke the trust or otherwise withdraw the assets of the trust

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