

# ADVERSE WITNESS

A PUBLICATION OF THE COLLIER COUNTY BAR ASSOCIATION

VOL. 225 • FEBRUARY 2024



AW

## NEW YEAR BRINGS NEW FEDERAL REPORTING REQUIREMENTS UNDER THE CORPORATE TRANSPARENCY ACT

JEANNE L. SEEWALD, ESQ., KELSEY R. HOLMBERG, ESQ.



### *Have you or your clients filed a BOI Report with FinCEN yet?*

If you have no idea what that question means, you are not alone. We know this sounds like a dull topic, but stay with us because this information will be important to you if you have clients who own businesses or you own your own law firm.

The Corporate Transparency Act (“CTA”) took effect on January 1, 2024, and brings new terminology and compliance obligations of which privately-owned businesses (and their attorneys) must be aware. Although an article ran in the Adverse Witness last summer advising of the impending effective date of the CTA, it still has crept up on many who are unaware of the requirements and the ramifications.



In short, the new law requires business owners to file reports with the federal government through the U.S. Department of Treasury’s Financial Crimes Enforcement Network (“FinCEN”) and to keep reported information up to date, at all times. While existing entities will have the full calendar year to complete their first report, companies established in 2024 will have just ninety (90) days from their date of formation. Failure to comply with the CTA’s reporting requirements could be disastrous for privately-owned companies. CTA violations can result in civil penalties of up to \$500 per day and potential criminal fines up to \$10,000 and two (2) years in prison.

Reporting to FinCEN is now a crucial step of entity formation. Further, the lawyers, accountants, paralegals, or other professionals that form entities for clients are considered “Company Applicants” under the law and their identity must be disclosed to FinCEN. Therefore, if you or other staff members at your firm file to organize entities for your clients, you may become subject to liability.

If you are unfamiliar with the CTA and its requirements, here is a quick overview to bring you up to speed:

### CTA TERMINOLOGY

The law requires “Reporting Companies” to disclose “Beneficial Ownership Information” (or “BOI”) to FinCEN.

#### Reporting Companies

A “Reporting Company” is, absent an applicable exemption, any domestic or foreign entity created by filing organizational documents with a Secretary of State’s office (or similar state filing office) within the United States. This includes corporations, limited liability companies, limited partnerships, and any other business entity created by filing.

#### Beneficial Owners

A “Beneficial Owner” is any individual who exercises “Substantial Control” over a Reporting Company’s business or who owns or controls at least twenty-five percent (25%) of a Reporting Company’s ownership interests.

#### Substantial Control

An individual exercises “Substantial Control” over a Reporting Company if that person is a senior officer, has authority to appoint or remove certain officers or majority of directors, is an important decision maker, or otherwise has any form of substantial control over the Reporting Company. This definition makes it possible that an individual who has no equity or formal role in the Reporting Company may be considered a Beneficial Owner for CTA purposes.

#### Beneficial Ownership Information (BOI)

According to FinCEN, BOI refers to “identifying information about individuals who directly or indirectly control a company.” Beneficial Owners will be required to provide their name, date of birth, residential address, and a copy of a government issued identification document such as a driver’s license or passport. BOI reports will be made directly to FinCEN via its secure portal: [www.fincen.gov/boi](http://www.fincen.gov/boi).

### COMPLIANCE TIMELINE

The CTA requires that Reporting Companies file an initial BOI Report and then continue to update its disclosures on an ongoing basis. A Reporting Company’s first BOI Report will be due according to the time that the entity was formed:

**Existing Entities:** Entities in existence prior to 2024, have until December 31, 2024 to file their first BOI report.



## NEW YEAR BRINGS NEW FEDERAL REPORTING REQUIREMENTS UNDER THE CORPORATE TRANSPARENCY ACT

JEANNE L. SEEWALD, ESQ. KELSEY R. HOLMBERG, ESQ.

AW

**New Entities:** Entities that are formed on or after January 1, 2024, have ninety (90) days to file their first BOI report.

**Future Entities:** Starting in 2025, newly formed entities will have just thirty (30) days to file an initial BOI report.

Updated reports are due within thirty (30) days of any change in a Beneficial Owner's information. For example, if a company's CEO moves and has a new residential address, a BOI update is required.

### PRACTICE POINTERS

Corporate attorneys should keep abreast of updates from FinCEN as it continues to release new guidance and FAQs. We have compiled some of our top considerations for Florida attorneys below:

#### Other Entities are NOT Beneficial Owners

As a general rule, other entities cannot be named as a Beneficial Owner for CTA compliance purposes. The CTA is focused on identifying individuals who own and run businesses across the U.S. Therefore, Reporting Companies that are owned by other companies or trusts must analyze those entity structures to determine the individuals who hold at least 25% of the Reporting Company's ownership interests or who exercise substantial control of the business.

#### Most Businesses are NOT Exempt

The CTA provides twenty-three (23) enumerated exemptions; however, most small and medium size businesses will not qualify. Exempt entities are generally those that already have federal reporting obligations of some kind, such as large, publicly traded companies and their subsidiaries, banks, credit unions, insurance companies, and securities brokers/dealers among others.

#### Condo and Homeowner Associations

Condo and Homeowner Associations ("HOAs") will be considered Reporting Companies under the CTA. Even though HOAs are typically set up as nonprofit corporations, they do not qualify as charitable organizations under Section 501(c)(3) of the Internal Revenue Code. Consequently, these organizations will not be CTA exempt. Therefore, each Condo/HOA will have to determine who its Beneficial Owners are and file a FinCEN report.

#### Offering Business Formation Services

The CTA requires a Reporting Company formed after January 1, 2024, to disclose its Company Applicant(s). Law firms and other professional service firms that offer business formation services should be aware that creating entities can open them to potential liability under the CTA. For example, an attorney may oversee the preparation and filing of an entity's formation documents, but a paralegal at the same law firm may file the incorporation documents with the Secretary of State's office. FinCEN advises that both the attorney and the paralegal should be listed as Company Applicants on the Company's BOI Report.

*Jeanne L. Seewald and Kelsey R. Holmberg are corporate attorneys at Hahn Loeser & Parks LLP, a full-service law firm with offices in Fort Myers and Naples. Hahn Loeser and Parks LLP has assembled a multi-faceted team dedicated to assisting and advising business owners with CTA compliance. More information on CTA is available on our website at <https://www.hahnlaw.com/practice/corporate-transparency-act/>.*

© 2024 Hahn Loeser & Parks, LLP

*Disclaimer: This article is for general informational purposes only. Readers should not act upon this information without investigating the CTA and its application to you or consulting legal counsel.*