Navigating the Corporate Transparency and New York LLC Transparency Acts: A Guide for Trust and Estates Attorneys - *New York Law Journal*

October 21, 2024

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The implementation of the Corporate Transparency Act (CTA) and the New York LLC Transparency Act (NYLTA) introduces new reporting obligations that have significant implications for trusts and estates that hold ownership interests in corporations, limited liability companies (LLCs), or limited partnerships. Failure to comply with these reporting requirements can result in substantial penalties, including fines of $500 per day and potential criminal prosecution (under the CTA).

Trusts and estate plans created prior to the enactment of the CTA may not address the need for trustees and beneficiaries to provide sensitive personal information to the management of entities in which they hold an interest. As such, estate administration checklists must be updated to include CTA reporting obligations, and newly drafted trust and estate plans should consider these requirements when drafting and selecting individuals for fiduciary roles.

The Corporate Transparency Act

The CTA, enacted on Jan. 1, 2021, as part of the Anti-Money Laundering Act of 2020 (AML Act), aims to enhance transparency in the financial system and combat illicit activities, such as money laundering and terrorism financing. The act requires entities operating in the United States—such as corporations, LLCs, and other similar entities—to report beneficial ownership information (BOI) to the Financial Crimes Enforcement Network (FinCEN) (See https://www.fincen.gov/boi). This represents a significant shift from the previous U.S. practice, where the creation of entities could be done almost anonymously.

Under the CTA, entities that do not fall under one of 23 exemptions (referred to as "Reporting Companies") must disclose their beneficial owners' information. A "Beneficial Owner" is defined as an individual who either (1) directly or indirectly exercises substantial control over the Reporting Company or (2) directly or indirectly owns 25% or more of the equity in the Reporting Company. For trusts and estates, this definition may include executors, trustees, trust protectors, and beneficiaries.

The timeline for compliance is strict. Reporting Companies in existence before Jan. 1, 2024, must submit their initial BOI reports by Dec. 31, 2024. Companies created in 2024 have 90 days to file, while those established in 2025 or later must file within 30 days of creation. Additionally, any changes to the Reporting Company or Beneficial Owners must be reported within 30 days. The penalties for non-compliance apply both to the Reporting Company and to its individual Beneficial Owners, who may face daily fines of $500 per day and potential criminal charges.

Constitutional challenges to the CTA have been brought in Alabama, Ohio, Maine, Michigan, and Texas, all of which are now in active litigation.

The New York LLC Transparency Act

Signed into law by Gov. Kathy Hochul on Dec, 22, 2023, the NYLTA mirrors the federal CTA's guidelines, requiring LLCs formed or registered to do business in New York to report their beneficial ownership information to the New York Department of State (DOS). Unlike the CTA, which covers various entity types, the NYLTA is focused solely on LLCs.

The NYLTA adopts the CTA's definitions of "Beneficial Owner," "Reporting Company," "Exempt Company," and "Applicant" and adheres to the same 23 exemptions. However, exempt companies under the NYLTA must submit a written statement to the DOS specifying the applicable exemption.

The NYLTA becomes effective on Jan. 1, 2026. New LLCs formed after that date will have 30 days to comply with the initial filing requirements, while existing LLCs (formed or registered before Jan. 1, 2026) must file their initial reports by Dec. 31, 2026. Notably, the NYLTA requires annual statements to confirm or update the information submitted in the initial report, including beneficial ownership details, the principal place of business, and status as an exempt company.

Implications for Trusts and Estates

Although trusts and estates are not explicitly defined as "entities" under the CTA or the NYLTA, they can still be impacted by their reporting requirements. Trust and Estates practitioners must be vigilant in determining whether their clients are subject to these obligations.

Identifying Beneficial Owners: In the context of trusts and estates, a Beneficial Owner is typically an individual who either exercises substantial control over a Reporting Company or owns 25% or more of the ownership interest. This may include trustees, trust protectors, and executors if they have the authority to dispose of interests in entities subject to CTA reporting requirements.

Beneficiaries as Beneficial Owners: Trust beneficiaries may be deemed Beneficial Owners if they are the sole beneficiaries of income and principal from a trust with an interest in a Reporting Company, if they have the right to withdraw all assets of the trust, or other circumstances that give rise to beneficial ownership based on the trust document. For estate beneficiaries, this status is only triggered upon the settling of the estate and transfer of assets to the beneficiary, at which point a change BOI report must be filed within 30 days.

Grantors and Minor Beneficiaries: A grantor will be considered a Beneficial Owner if they have the right to revoke the trust or withdraw trust assets. For irrevocable grantor trusts, the grantor may still be deemed to control the trust if they retain the right to substitute trust property. Minor beneficiaries are not considered Beneficial Owners, but their parent or legal guardian will be regarded as such until the minor reaches the age of majority.

Agents and Powers of Attorney: Agents acting under a valid Power of Attorney or as nominees, intermediaries, or custodians on behalf of another person are not considered Beneficial Owners.

Practical Guidance for Compliance

To navigate the CTA's reporting requirements effectively, trust and estate practitioners should adopt a proactive approach. Although the Reporting Company is responsible for filing the BOI report, penalties can be assessed directly against the Beneficial Owners, including the possibility of jail time for individuals.

Creating a CTA Checklist: Practitioners should develop a checklist to evaluate existing trusts, newly created trusts, and estate administration processes. This checklist should help identify trusts or estates with interests in Reporting Companies, gather necessary information on potential Beneficial Owners, and ensure timely reporting to FinCEN.

Gathering Information: Accurate and complete information on trustees, trust protectors, executors/personal representatives, and beneficiaries is crucial. This information includes the name, date of birth, address, and non-expired identification (e.g., U.S. passport, driver's license, state ID, or foreign passport) of each individual. Practitioners should obtain and verify this information before submission to the Reporting Company.

Estate Administration: Executors and personal representatives must diligently identify any business interests held by the estate that could trigger CTA obligations. This includes verifying the decedent's ownership and control at the time of death and ensuring that all necessary information is reported to FinCEN within 30 days of asset distribution to an estate beneficiary.

Challenges and Considerations

One of the most significant challenges for trust and estate practitioners is balancing the privacy interests of their clients with the need to comply with CTA reporting requirements. The disclosure of sensitive personal information required by the CTA may raise privacy concerns for trustees, trust protectors, executors, and beneficiaries. To mitigate these concerns, individuals can obtain a FinCEN ID, which allows them to submit a unique identifier in place of personal information.

Alternative Structures: In light of the CTA, trusts may be considered as alternative entities to LLCs or corporations for asset segregation and transfer purposes. Trusts, not being classified as Reporting Companies under the CTA, offer a higher degree of privacy.

Reviewing Existing Structures: Practitioners should review existing trusts, entities owned by these trusts, and decedent ownership interests to ensure compliance with the CTA. Additionally, new provisions should be added to trusts and wills to address CTA filing requirements, including language that allocates penalties for non-compliance to individuals who fail to provide the necessary information.

By staying informed and prepared, trust and estate practitioners can navigate the complexities of the CTA and NYLTA while protecting their clients' interests.

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