The Corporate Transparency Act Created New Reporting Obligations for Certain Businesses. Do You Understand Your Reporting Obligations?

Stephen B. Schrock, Taylor S. Benatar, Melanie Tate

The Federal Corporate Transparency Act took effect on January 1, 2024, and imposes new reporting requirements for certain companies. The Corporate Transparency Act (CTA) requires a "reporting company" to file reports with the Financial Crimes Enforcement Network of the Department of the Treasury (FinCEN). These reports will include information about the company, "beneficial owners" of the company, and sometimes the "company applicant." Thompson Hine LLP recently provided a comprehensive summary of the CTA's requirements in this publication: "Federal Corporate Transparency Act Takes Effect January 1; Some States Following Suit."

Real estate owners who form a new company for each property acquired and ultimately manage the property through complicated ownership structures may find that figuring out how to comply with the CTA could present some challenges.

Commercial real estate owners may form dozens of special purpose entities (SPE), each owning a single property, and there could be multiple additional entities in the ownership chain separating the SPE from the ultimate beneficial owners of the company. Understanding which companies in the chain are "reporting companies" under the CTA involves a detailed analysis of the organizational structure. Then, it must be determined which individuals would be considered "beneficial owners."

For example, consider a property owned by Owner LLC, which is organized in the State of Georgia. Owner LLC is 100% owned by Manager LLC, which is 100% owned by Parent LLC. Which of these companies would be considered a "reporting company" under the CTA? If Parent LLC is a "large operating company" as defined under the CTA, it would fall under one of the 23 exemptions from reporting company status. Because Manager LLC is wholly owned by an exempt entity, it would be exempt as well. The same logic would apply to make Owner LLC exempt. However, these exemptions would not apply if another party held a small interest in Manager LLC, even if in practice, these companies are controlled only by Parent LLC.

If any of these companies were required to report, they would next have to determine the identities of the beneficial owners. If Parent LLC is owned by five individuals, any individual who owns at least 25% of the ownership interests would be considered a beneficial owner. However, this would not be the only beneficial owner if, for example, Parent LLC is managed by an individual who holds no ownership interest but is a senior officer or has the right to direct important decisions of the company.

This oversimplified example demonstrates the kind of analysis that will need to be conducted at each level of a property's ownership structure. Thompson Hine can assist in understanding your requirements under the CTA, including determining whether your company is a reporting company, determining beneficial owners, and identifying categories of data required to be submitted. Thompson Hine will not prepare or file your FinCEN reports or monitor your business to determine the need for corrected or updated reports, but we can provide third-party referrals for those CTA filings and related services.

For More Information

For more information, please contact:

Stephen B. Schrock
Partner, Real Estate
404.541.2909
Stephen.Schrock@ThompsonHine.com

Taylor S. Benatar
Managing Associate, Real Estate
404.407.3610
Taylor.Benatar@ThompsonHine.com

Melanie Tate
Associate, Real Estate
404.407.3617
Melanie.Tate@ThompsonHine.com