



ABQ Elder Law, PC

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Elder Law
Probate
Estate Planning
Wills & Trusts
Guardianships & Conservatorships
Medicaid & VA Pension Planning
Elder Mediation/Facilitated Family Meetings

December 14, 2023

RE: Corporate Transparency Act

Dear Client:

Before you dismiss this letter because of the subject line, please read this entire document!

Congress passed the National Defense Authorization Act in 2021, and the Corporate Transparency Act ("CTA") is part of that law. The purpose is to fight the funding of terrorism. The majority of entities doing business in the U.S. must file online reports with the Treasury Department's Financial Crimes Enforcement Network (FinCEN). The report must include information on the company, its beneficial owners and company applicants.

A *reporting company* includes corporations, limited liability companies, and other business entities that have anything filed with the secretary of state or similar state agency. A *beneficial owner* (which can be a trust) is anyone who owns at least 25% of the company or exerts substantial control over it. A *company applicant* is the person who files the entity's creation documents as well as the person who directs this action. The report must also include the business address and tax ID, individual names, addresses and dates of birth, and individual ID numbers like a driver's license number or passport. Information from reports are only available to financial institutions, law enforcement, and government agencies for compliance and anti-money laundering purposes. Changes to reported information must be filed within 30 days of the change(s). Reporting is only done online, and no reports will be taken before Jan 1, 2024. There is no retroactive reporting requirement.

Failure to comply includes civil penalties of \$500 per day, and criminal fines of up to \$10,000 and two years in prison.

You may want to consider amending operating agreements, bylaws, partnership agreements, etc., to include language obligating the members and managers to provide the beneficial ownership information required by the CTA and the managers/managing members to fully comply with the reporting requirements of the CTA.

NOTE REGARDING TRUSTS: A trust is NOT a reporting company but the trust itself, the trustee(s), grantors with the right to revoke or withdraw trust assets, and possibly trust beneficiaries may be *beneficial owners* upon whom the reporting company reports information in its Beneficial Owner Information Report. There is still some uncertainty about how trusts will be deemed beneficial owners, but for now, I advise a conservative approach and when in doubt, file with FinCen.

Please see the reverse side of this letter for more information. We hope you find this information helpful.

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