WHAT SHOULD FAMILIES KNOW ABOUT THE "CORPORATE TRANSPARENCY ACT"?

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The Corporate Transparency Act ("CTA") takes effect on January 1, 2024. The CTA seeks to create a centralized database containing information about various corporate entities to remove anonymity for shell companies and establish reporting responsibilities to maintain an updated database. Although the name may suggest that the act only affects the *corporate* world, the CTA will also impact family ownership structures and estate planning.

Who Does This Impact?

The CTA requires any entity created by filing a document with the Secretary of State, or other similar office in the United States (defined as a "Reporting Company"), to file a report with the Financial Crimes Enforcement Network (FinCEN). Corporations and LLCs, for example, would be considered a Reporting Company, while a sole proprietorship or partnership would not. The CTA also does not apply to large publicly traded companies, as they are already subject to other specific reporting requirements, such as the Sarbanes-Oxley Act. Companies that have at least

20 employees **and** an excess of $5,000,000 in revenue are also exempt. There are a total of twenty-four other exceptions to the definition of Reporting Company, including banks and bank-type entities, governmental entities, insurance companies, and trusts/trust companies.

What Is the Process?

A Reporting Company is required to file a report including the names and information of any individual who is considered a "beneficial owner". According to FinCEN, a beneficial owner is "any individual who, directly or indirectly, either (1) exercises substantial control over such reporting companies **or** (2) owns or controls at least 25% of the ownership interests of such a reporting company." Substantial control includes senior officers, persons who have appointment or removal power of senior officers, or persons who have considerable influence over the decision-making of the entity. Importantly, the Act includes those who have obtained an interest in a reporting entity via an inheritance, and they would be required to be included in the report. The CTA imposes an ongoing reporting requirement, which will require a Reporting Company to file an amended report within thirty (30) days of any change to required information or any changes to beneficial ownership.

Required Information -- The CTA requires Reporting Companies to provide the following information for each beneficial owner:

- Individual's full legal name
- Individual's date of birth
- Individual's current residential or commercial address
- a unique identifying number, such as a passport or a driver's license number.

Although the information itself may not be particularly cumbersome, because the CTA applies to all pre-existing entities, locating information for entities formed decades ago could be a difficult and laborious task. Presumably for this reason, existing entities have a delayed compliance deadline of January 1, 2025. For corporate entities created on or after the CTA's effective date of January 1, 2024, the Reporting Company must file within the designated time period set by FinCEN. The original time period was 30 days for entities formed in 2024. Proposed legislation, to be voted on by the end of October, would seek to increase this period to 90 days. Written comments on the proposed change can be submitted before October 31,2023. At that time, FinCEN will decide whether the 30-day or 90-day time requirement is implemented. The CTA includes stiff penalties for those who fail to comply, including fines of up to $10,000 and up to 2 years in prison.

Applicability to Trusts

It is important for families and advisors to understand how the requirements affect trusts. Although trusts are exempted from the reporting requirements, a trust can be a "beneficial owner" in a corporate entity structure. For example, a trust that is a 25% owner as a shareholder of a closely held corporation or a member in a limited liability company would trigger status as a beneficial owner. In that case, the Reporting Company would report not only the trust, but also information on the trustee and certain grantors and beneficiaries. While the reporting requirement is generally on the Company itself, the Trustee may assume responsibility for initial filings and updates if the trust itself manages or controls the entity.

The CTA is intentionally broad in scope and the regulatory provisions of the CTA can be very confusing. Thus, it is important to consult with tax and legal advisors to discuss the CTA and its possible implications or reporting requirements for your family.

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