



Corporate Transparency Act: Are You Exempt?

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December 20, 2023 - The 2021 Corporate Transparency Act (“CTA”) is new federal legislation that becomes effective January 1, 2024 and may require certain business entities operating in or around the title insurance industry to report personal information about their individual owners to the federal Financial Crimes Enforcement Network (“FinCEN”).

Specifically, the CTA requires a **“Reporting Company”** to provide (and update) personally identifying information about the company’s **“Beneficial Owners”** and potentially its **“Company Applicant(s)”** to FinCEN by certain dates. Its purpose is to create a registry of beneficial ownership information that law enforcement and regulators can quickly and easily access in their fight against organized crime, money laundering, and bad actors hiding behind shell entities.

The CTA defines a Reporting Company as a “corporation, limited liability company, or other similar entity that is “created by the filing of a document with a secretary of state or a similar office under the law of a State or Indian Tribe” Therefore, filing entities may be Reporting Companies if they do not qualify for an exemption. However, non-filing entities – such as common law trusts, general partnerships, and sole proprietorships – do not constitute Reporting Companies and do not need to file with FinCEN.

There are 23 exemptions to the definition of a Reporting Company, the most relevant to the title industry being exemptions for: (1) a publically traded company; (2) an insurance company; (3) a state-licensed insurance producer; (4) a large operating company; and (5) a wholly-owned subsidiary of those exempt entities.

The CTA loosely defines a “state-licensed insurance producer” as any entity that “is an insurance producer authorized by a State and subject to supervision by the insurance commissioner or similar official or agency of a State and has an operating presence at a physical office in the United States.” A “large operating company” is defined as one which: (1) employs more than 20 full-time employees;

(2) filed the previous year’s income tax returns showing more than \$5 Million in gross receipts or sales; and (3) has an operating presence at a physical office in the United States.

Consequently, title insurers and title agents likely do not qualify as Reporting Companies, but their related entities may be. Additionally, there is no exemption for attorneys or law firms.

If an entity is a Reporting Company, it will have to report to FinCEN personal information about its Beneficial Owners. The CTA defines a Beneficial Owner as “an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise: (1) exercises substantial control over the entity; or (2) owns or controls not less than 25% of the ownership interests of the entity.” The CTA further defines “substantial control” and “ownership interests” to aid in the identification of a Beneficial Owner.

Reporting Companies must provide the following information to FinCEN:

<u>For a Reporting Company</u>	● Full legal name
	● Any trade or d/b/a name
	● Street address of principal place of business or primary location in U.S.
	● Jurisdiction of formation or registration
	● Unique identifying number = TIN with EIN

<u>For a Beneficial Owner</u>	● Full legal name
	● Date of birth
	● Current residential street address
	● Unique identifying number (1 of 4 options): <ul style="list-style-type: none"> ○ Current U.S. passport ○ State or local ID ○ Current drivers’ license ○ If none of the above available, current foreign country passport
	● Image of document from which unique identifying number came with photograph of individual <i>e.g., picture of DL or passport</i>

The deadlines for a Reporting Company to provide this information are as follows:

Entities formed before January 1, 2024	<ul style="list-style-type: none">• January 1, 2025
Entities formed on or after January 1, 2024 through December 31, 2024	<ul style="list-style-type: none">• 90 calendar days after formation
Entities formed on or after January 1, 2025	<ul style="list-style-type: none">• 30 calendar days after formation
Update or correct reported information	<ul style="list-style-type: none">• 30 calendar days after change in information or Reporting Company becomes aware of inaccuracy

There are also steep penalties for willful failure to fully report or providing false or fraudulent information, including fines of \$500/day up to a maximum of \$10,000 and up to two years' imprisonment.

For more information on the CTA, including instructional videos and FAQs, please visit FinCEN's Beneficial Ownership Information website at <https://www.fincen.gov/boi>. And because this is a new and complex regulation, the Texas Land Title Association strongly recommends that you consult with your attorney if you think you or your entity may be subject to the CTA.

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