



# The Corporate Transparency Act (CTA): It Probably Applies to YOU (seriously)

By Lisa C. Thompson

**MISCONCEPTION:** The Corporate Transparency Act does not apply to me. I am an LLC and a law firm.

**WRONG!!!** The Corporate Transparency Act (CTA) applies to all business entities created by registration in any state.<sup>1</sup> This means Corporations, LLCs, LPs, LLPs, LLLPs, and in some states (not Arizona) trusts. There are exceptions to this rule, but even though there are many exceptions to the CTA's reporting requirements, few apply to small businesses, and law firms, in general, are not one of them.<sup>2</sup> The very super general rule<sup>3</sup> is that: If a business entity has less than 20 full-time employees,<sup>4</sup> then it IS subject to the CTA's reporting requirements.<sup>5</sup>

**What is the CTA???**<sup>6</sup> It's a bi-partisan act passed into law January 1, 2020.<sup>7</sup> The CTA was an extension of anti-money laundering legislation designed to provide law enforcement and other limited government agencies information on the "beneficial owners" of businesses large and small.<sup>8</sup> A beneficial owner is any person that has "substantial control" over the management of the businesses' financial affairs.<sup>9</sup>

**But, what does that really mean???** All businesses subject to the CTA must provide information on their beneficial owners to the Financial Crimes Enforcement Network (FinCEN).<sup>10</sup> This means providing the name, address, date of birth, and a copy of a personal identification document<sup>11</sup> to FinCEN for each beneficial owner of the business. Also, any person forming an entity is a "Company Applicant" and company applicants must also report their personal identifying information to FinCEN.<sup>12</sup> Businesses that were formed prior to January 1, 2024, have until December 31, 2025 to meet the CTA reporting requirements and entities formed after January 1, 2024 have only 30 days from formation to report.<sup>13</sup>

**So what???** Despite rules and regulations that have no real penalties for noncompliance, the CTA has teeth that can bite.<sup>14</sup> Failure to comply with the CTA can lead to fines of \$500/day up to \$10,000 and 2 years imprisonment.<sup>15</sup> There are few safe harbors for failure to comply.<sup>16</sup> All information reported to FinCEN must be updated within 30 days of any change with the same penalties imposed for failure to do so.<sup>17</sup>

**YIKES!!!** Yep. **But, never fear!!!** If you don't want to give your clients your personal information as a company applicant,<sup>18</sup> you can register for a FinCEN identifier. If you don't want to be responsible for filing your client's reports with FinCEN,<sup>19</sup> you can direct your clients to a third-party reporting company.<sup>20</sup>

*Editor's Note: Lisa Thompson, with co-presenters Mimi Petro, Udall Law Firm, and Jonathan Wilson, FinCen Reporting Company, recently presented the CLE, "The Corporate Transparency Act (CTA): It Affects You and Your Clients (Seriously)." The CLE recording is available for interested viewers. Please contact the PCBA office for details.*

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## FOOTNOTES:

<sup>1</sup> This includes entities formed outside of the U.S. that are registered to do business in any state or tribal jurisdiction in the U.S.

<sup>2</sup> Unless the law firm falls into a different category of exception.

<sup>3</sup> I made up.

<sup>4</sup> If the business has 20 full-time employees (part-time employees don't count), a physical location in the U.S. where it actively does business (no fake brick and mortar addresses) AND the business grosses \$5 million a year, THEN it is exempt from the CTA reporting requirements so long as these three prongs remain the same.

<sup>5</sup> If you want to know all 28 exceptions to my general rule, and missed the CLE, then check out the CLE recording.

<sup>6</sup> 31 U.S.C. §5336. See also 31 CFR §1010.380 (FinCEN regulations effective January 1, 2024).

<sup>7</sup> No matter what your political bent, you don't get to be mad at any one party about this.

<sup>8</sup> Mostly small. FinCEN estimates are that approximately 30 million small businesses operating in the U.S will be affected.

<sup>9</sup> This could mean general counsel or investors.

<sup>10</sup> FinCEN is a bureau of the U.S. Department of Treasury.

<sup>11</sup> Passport or driver's license suffice.

<sup>12</sup> This means you, paralegals and other support staff filing documents with the ACC (including amendments). This applies even if you are at a large firm that does not have to report its ownership to FinCEN.

<sup>13</sup> New businesses may want to think about forming before January 1, 2024 so they don't have to be the first to report.

<sup>14</sup> How quickly and how severely, we do not know, but do you want to be the one to find out???

<sup>15</sup> Repeated failures to comply increase these penalties exponentially.

<sup>16</sup> "Oopsie, I forgot" and "I did not know" are not defenses.

<sup>17</sup> This means renewing passports, changing your address or photo on your driver's license, etc.

<sup>18</sup> Please don't and why would you???

<sup>19</sup> If you do take on the responsibility of gathering and reporting personal information to FinCEN, be sure to have hard core security protocols in place. The liability could be huge.

<sup>20</sup> You can use a reporting company as well. To date, I only know of one: [www.fincenreport.com](http://www.fincenreport.com). The company founder was part of the recent CLE.