

# MAGASINN & FELDMAN

A LAW CORPORATION

300 CORPORATE POINTE

SUITE 410

CULVER CITY, CALIFORNIA 90230

TELEPHONE (310) 301-3545

FACSIMILE (310) 301-0035

WWW.MAGASINN.COM

JONATHAN M. FELDMAN  
VICKI FISHER MAGASINN\*  
AMANDA MORRISON

\*CERTIFIED SPECIALIST  
PROBATE ESTATE PLANNING AND  
TRUST LAW

ARNOLD W. MAGASINN  
(1935-1999)

VICKI@MAGASINN.COM  
JON@MAGASINN.COM  
AMANDA@MAGASINN.COM

## IMPORTANT CLIENT ALERT AND JANUARY 2024 NEWSLETTER

### The Corporate Transparency Act & Entity Reporting Requirements

**A new federal law now requires millions of small businesses nationwide, including most of our clients with business entities, to file a report with the government disclosing beneficial ownership of the entities or face substantial penalties. Those clients who control or own more than 25% of a business entity, including a limited liability company which owns just real property, will likely be required to file a timely report.**

#### **What Is the CTA?**

The Corporate Transparency Act (the “CTA”) was adopted by Congress as part of the Anti-Money Laundering Act of 2020. The CTA became mandatory and effective January 1, 2024. The intended purpose of the new law is to assemble a massive database of beneficial ownership information to permit governmental authorities to better combat money laundering, fraud, funding of terrorism, and other illicit activities. Under the CTA, information about most business entities of our clients, their beneficial owners and other controlling persons, and the individuals who formed those business entities, must be disclosed and reported electronically by our clients to the U.S. Department of the Treasury’s Financial Crimes Enforcement Network (“FinCEN”) which will maintain the database of the information.

#### **When Must the Reports Be Filed?**

If the Reporting Company was formed prior to January 1, 2024, the Beneficial Ownership Information Report (“BOIR”) must be filed before January 1, 2025. If, however, the Reporting Company was or will be formed during 2024, the Reporting Company must file its initial BOIR within ninety (90) days of its formation. Any entity formed on or after January 1, 2025 must file its initial BOIR within thirty (30) days of formation.

In addition to the initial filing requirements, a Reporting Company is also required to update its BOIR within thirty (30) days of the occurrence of certain events, which include a change of address of either the Reporting Company or a Beneficial Owner, the addition or removal of a Beneficial Owner, or a change in the identifying number (such as a new Driver’s License number) submitted in the prior BOIR. This updated filing must also be done by any individual who previously filed for a FinCEN Identifier.

## **How Does a Reporting Company Report the Required Information?**

A Reporting Company must report the required Beneficial Ownership Information electronically through a secure filing system available via FinCEN's website, found at: <https://fincen.gov/boi>. We believe that most of our clients will be able to file the BOIR online without difficulty.

## **Am I or My Company Required to Report Under the CTA?**

Under the CTA, a Reporting Company generally includes any entity that is created by the filing of a document with the Secretary of State or similar governmental office. This would include most corporations, limited liability companies, limited partnerships, and perhaps general partnerships in California. There are, however, several exemptions. The most likely exemptions for our clients would include: (i) tax-exempt organizations, such as private foundations; or (ii) operating businesses with more than twenty (20) employees and Five Million Dollars (\$5,000,000) or more in gross receipts or sales on its last federal income tax return. Inactive entities are also exempt from the reporting requirement. However, to be considered inactive the company must meet all of the following requirements: (a) was in existence on or before January 1, 2020; (b) is not engaged in an active business; (c) is not owned, directly or indirectly, wholly or partially by a foreign entity; (d) has not sent or received more than One Thousand Dollars (\$1,000) in the proceeding twelve (12) months; (e) has not changed ownership in the preceding twelve (12) months; and (f) does not hold any assets.

## **Who is Responsible for Filing the Report?**

The Reporting Company is ultimately responsible for fulfilling the BOIR requirements, with the individuals owning and/or controlling the Reporting Company being liable for any failures. Many CPAs and professional advisors will not include filing the BOIR as part of their ordinary services because, in large part, the advisors may not know of a change of the client's information which requires a filing. Therefore, the Reporting Companies must take on the responsibility to know when information changes and a filing becomes necessary.

## **Who is a Beneficial Owner of a Reporting Company?**

The CTA broadly defines a "Beneficial Owner" as "any individual who, directly or indirectly, either exercises substantial control over such Reporting Company, or owns at least twenty-five percent (25%) of the ownership interest of the Reporting Company." This definition will therefore generally include any individual who owns at least twenty-five percent (25%) of the Reporting Company (e.g., a member or shareholder owning 25% or more of the total interest or outstanding shares of the Company). For purposes of determining ownership of a Reporting Company, an individual's direct and indirect ownership of the Reporting Company will be aggregated. Also included is anyone who exercises substantial control over the Reporting Company, such as any individual who serves as a senior officer of the Company (i.e., CEO, President, CFO, LLC manager, or a general partner of a limited partnership), regardless of their interest or ownership in the Company. It could also include other individuals who have the right to exercise control over the entity or certain acts of the entity. There are certain rules for Trusts which are discussed below.

The CTA also requires that a Reporting Company must provide information for each “Company Applicant” for entities formed on or after January 1, 2024. A Company Applicant is generally any person who files a document with the Secretary of State to register the Company (which would include the Incorporator or Organizer), or an individual who is creating the entity and directs another to file it with the Secretary of State (no more than two Company Applicants will be reported). Any entities formed prior to 2024 do not have to report the Company Applicant’s information.

### **What Information Must Be Disclosed?**

A Reporting Company must disclose: (i) its legal name, as well as any trade names and fictitious names used by the Company; (ii) the address of its principal place of business; (iii) the jurisdiction of formation; and (iv) its Taxpayer Identification Number.

The report must also disclose with respect to each Beneficial Owner such Beneficial Owner’s: (i) full legal name; (ii) date of birth; (iii) current address; (iv) government-issued identification number, such as the Beneficial Owner’s Passport or Driver’s License number; and (v) an image of the unexpired, current document with the identification number (i.e. an unexpired and current Passport or Driver’s License of the Beneficial Owner).

For those Beneficial Owners and Reporting Companies who have multiple entities, the Beneficial Owners may apply to obtain a FinCEN Identifier Number (FinCEN ID), which is a number assigned to that Beneficial Owner or Reporting Company and may be used when submitting additional reports to FinCEN, eliminating the need to resubmit the same information numerous times (i.e., the Beneficial Owner or Reporting Company would be able to avoid the need to upload a copy of their Driver’s License/Passport for each filing, and the reporting form would auto-fill the information for the Beneficial Owner or Reporting Company by using the FinCEN ID previously acquired by the individual).

### **How Are Interests in Reporting Companies Held By Trusts Reported?**

Many of our clients own their Reporting Companies in a Trust. If a Trust owns an interest in a Reporting Company, then certain individuals named in the Trust may be deemed to be an indirect Beneficial Owner under the CTA and must provide their information to the Reporting Company to be included in its report. This would include:

(a) The Trustee(s) or any other individual named in the Trust currently acting on behalf of the Trust or with the power to dispose of the Trust assets, or if the Trust should include other fiduciary positions with powers over the Trust assets (e.g., a special administrative Trustee), then that individual may also be required to report their information;

(b) Any beneficiary of the Trust who is the sole permissible recipient of income and principal from the Trust, or who has the right to withdraw substantially all of the assts from the Trust (except for a minor who is exempt from the filing requirements, in which case the minor’s parent or guardian will be required to provide the information of said parent or guardian); and

- (c) The Grantor(s) (i.e. creator) of a Revocable Trust.

### **What If I Fail to Report the Required Information?**

There are substantial penalties for noncompliance. Individuals who willfully provide false information or willfully fail to report all the required information may be liable for a civil penalty which is currently Five Hundred Ninety-One Dollars (\$591) per day as long as the violation continues, with a maximum penalty of Ten Thousand Dollars (\$10,000). These penalties may be adjusted for inflation in the future. There are also criminal penalties if an individual willfully files false information or fails to file the required information, including imprisonment for up to two (2) years and/or a fine of up to Ten Thousand Dollars (\$10,000).

In the event that a BOIR is filed, and the Reporting Company believes that incorrect information may have accidentally been provided, the CTA has a safe harbor from penalty so long as the report is voluntarily corrected and filed within ninety (90) days of the initial filing. However, should a Company willfully fail to report or willfully provide false information, FinCEN can determine its appropriate enforcement response in accordance with the penalties listed above.

### **What Should I Do Now?**

You should immediately determine whether each of your business entities are Reporting Companies and, if so, you should determine which individuals qualify as Beneficial Owners. If your Trust owns an interest in a Reporting Company, you should also determine who are the Grantors and Trustees, and whether there are any other individuals who exercise control under the Trust for the purposes of reporting. If you have a Reporting Company, the required information must be timely reported.

The foregoing is only a brief summary of the requirements.

We are available to discuss compliance with you and assist you with completing and reporting the required information. We will charge our regular hourly rates for any time required to assess and determine specific filing requirements for your entities plus \$150 per entity to handle the actual filing with FinCEN. Alternatively, you can file any required reports directly with FinCEN at: <https://fincen.gov/boi>. Please contact us if you would like our help to assist you with this new, mandatory requirement. We will not provide any initial or amended reporting services for you absent a specific engagement that is confirmed in writing.

#### **Disclosure and Disclaimer**

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