

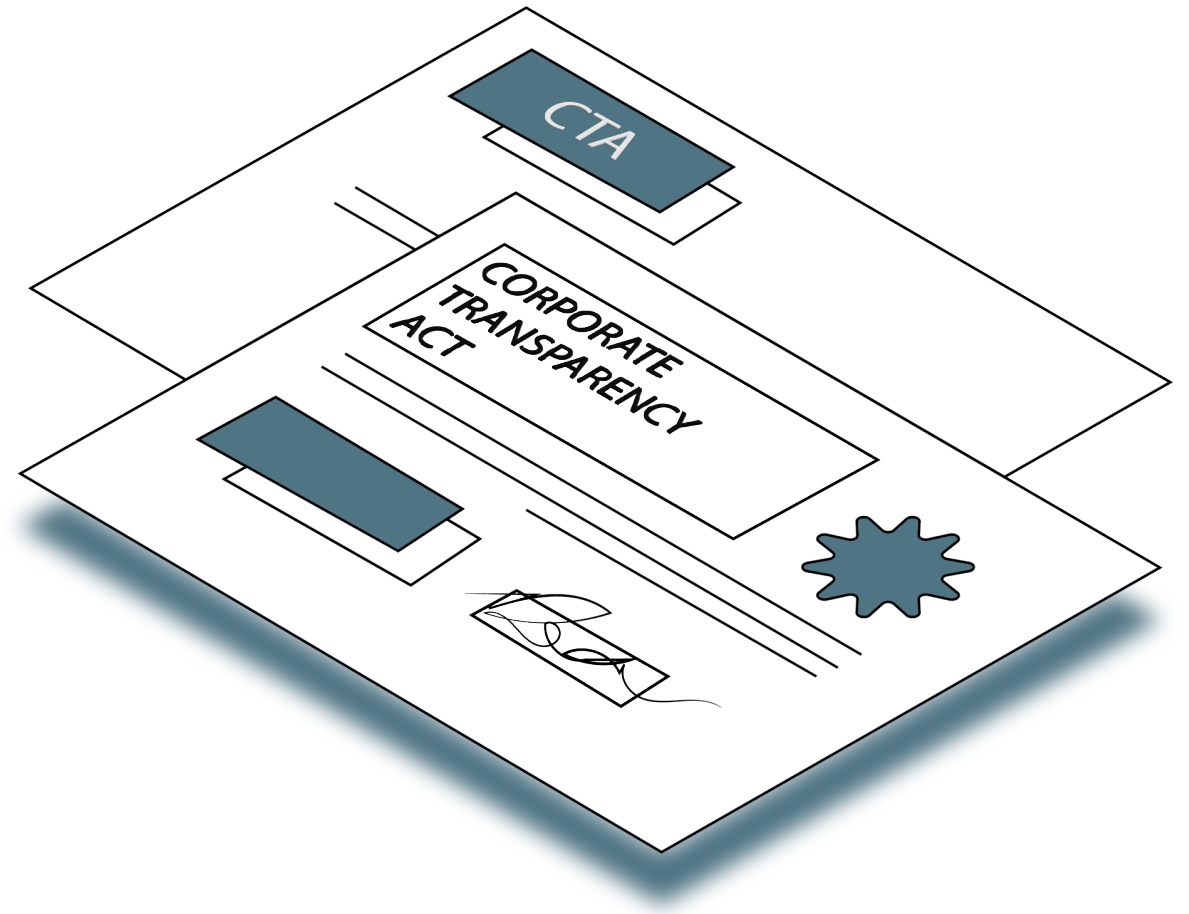


NAVIGATING THE CORPORATE TRANSPARENCY ACT

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BACKGROUND

- › Part of the Anti-Money Laundering Act of 2020
- › Became effective January 1, 2024
- › Purpose – to provide information to law enforcement, national security agencies & others to prevent money laundering, terrorism, and other illicit activities
- › Requires reporting so that the federal government can see the “real people” behind certain organizations
- › Managed by Financial Crimes Enforcement Network, or “FinCEN”, a bureau of the US Department of Treasury



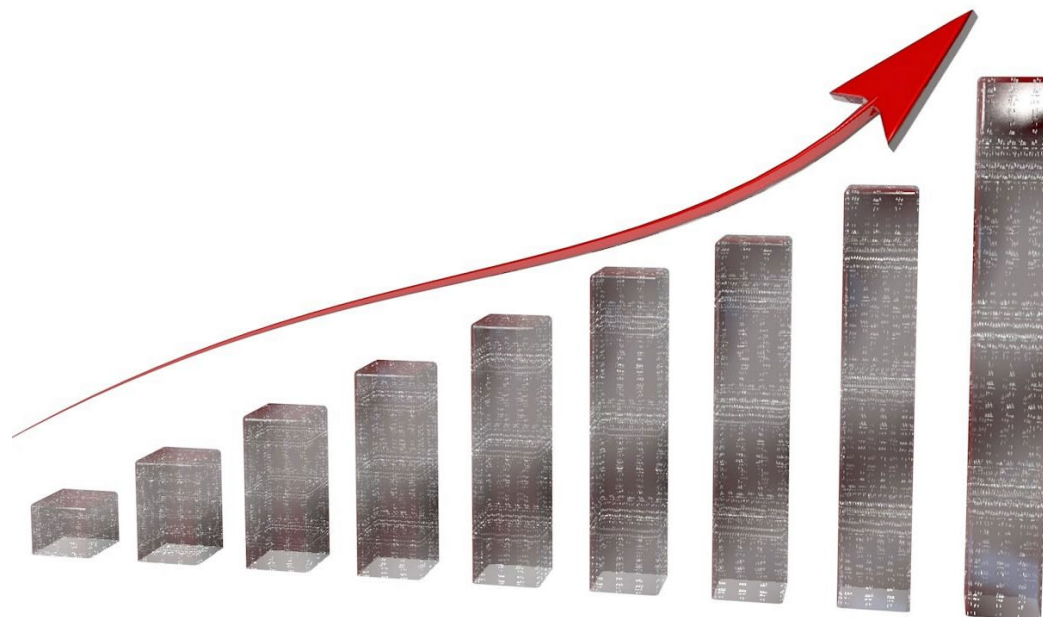


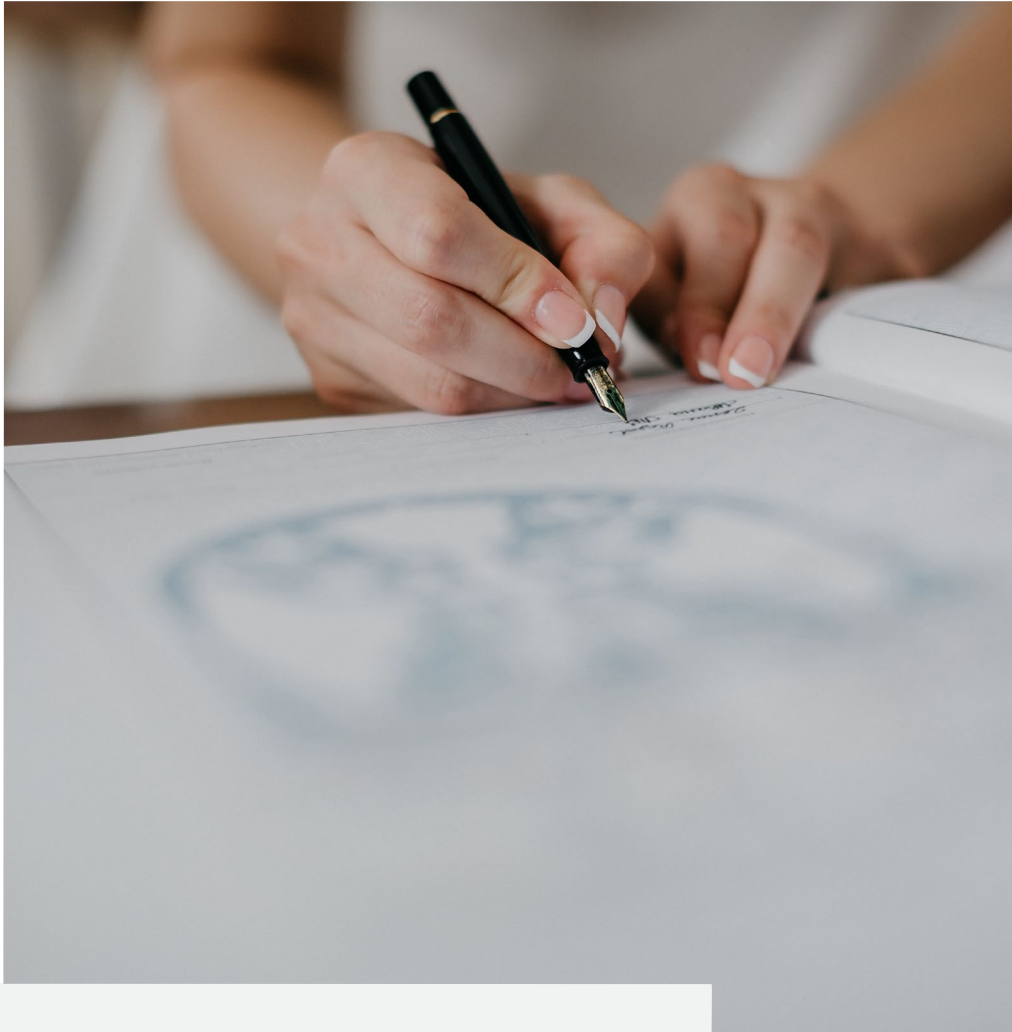
WHO NEEDS TO REPORT?

- › “Reporting Companies”
- › A corporation, LLC, or other similar business entity that is created by filing a document with a secretary of state (or similar office) or Indian Tribe
- › In the case of a foreign company, it is a company created in a foreign country and registered to do business in the U.S. by filing a document with a secretary of state (or similar office) or Indian Tribe
- › FinCEN estimates 32 million companies will have a reporting requirement and expects that 5 million new reporting companies will be formed each year

WHO DOESN'T NEED TO REPORT

- › 23 Exemptions, including certain highly regulated industries such as banks, public accounting firms, tax-exempt entities, public companies, and insurance companies
- › Two most prominent exceptions
 - Large operating companies that employ more than 20 employees, have a principal place of business in the United States, and have filed a federal income tax return demonstrating more than \$5 million in gross receipts or sales within the United States
 - Dormant companies that were in existence on or before January 1, 2020, are not engaged in an active business, are not owned by a foreign person, and do not own any assets





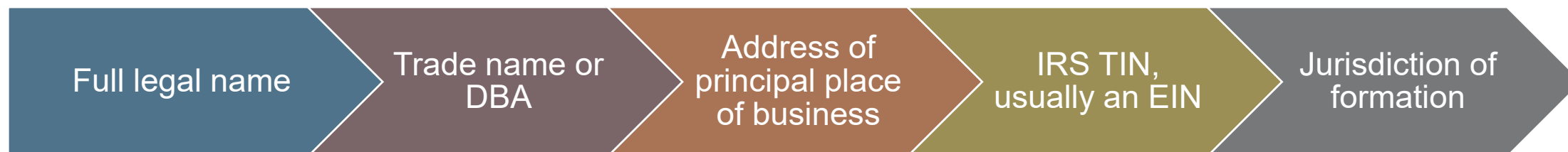
WHAT GETS REPORTED?

Reporting companies must submit a report of beneficial ownership information, or “BOI”

Three components. Information about:

- › The reporting company
- › The company applicant
- › The beneficial owners

REPORTING COMPANY INFORMATION



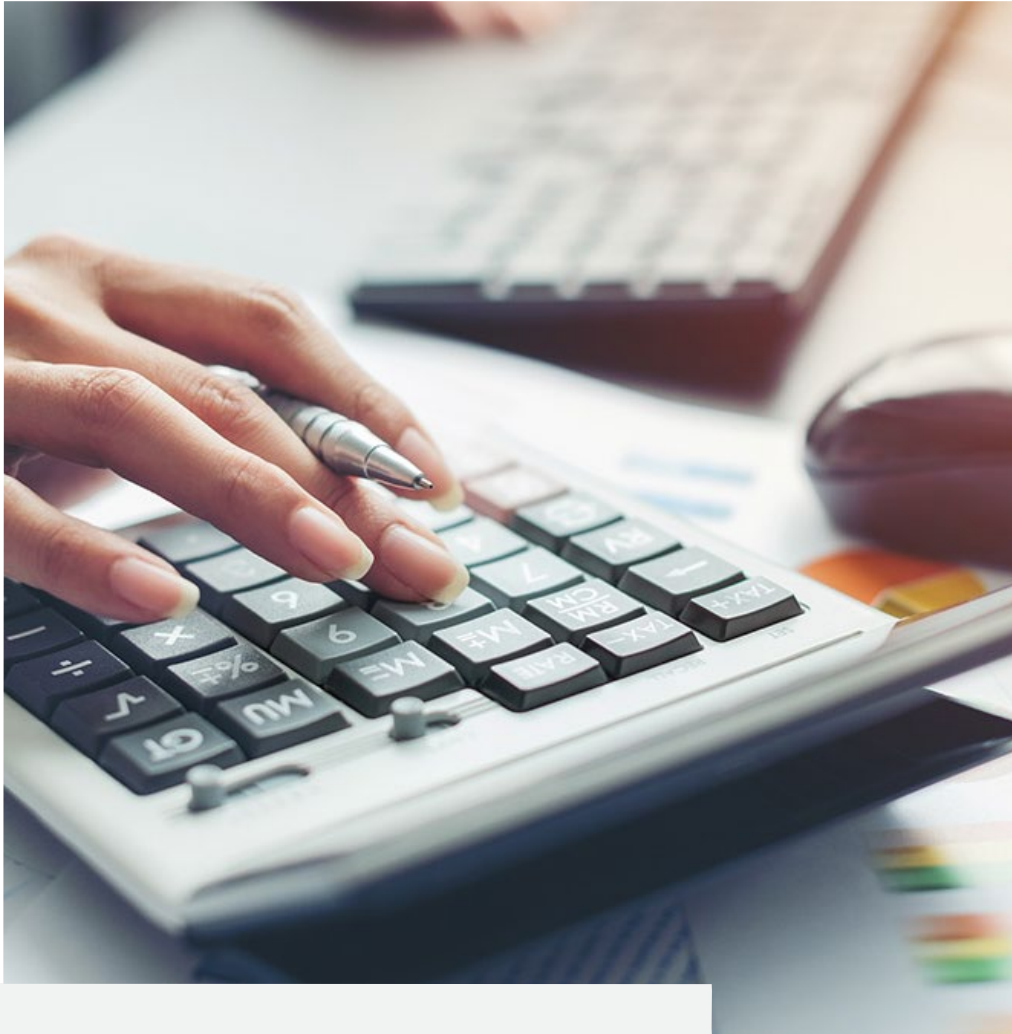
APPLICANT INFORMATION

- › The individual who was physically responsible for directing or controlling the filing of the organization document with the secretary of state- i.e., the person that pushes the button, and the person who tells the person to push the button
- › Must report: full legal name, date of birth, residential street address OR business address, a unique identifying number from a passport, driver's license, or similar document, and an image of that identifying document
- › Can also use FinCEN ID



BENEFICIAL OWNERS INFORMATION

- › An individual who exercises substantial control over the reporting company or owns at least a 25% ownership interest in the entity
- › Examples:
 - Senior officer, board member, holder of convertible debt, majority voting power, trustee & potentially beneficiary of a trust that owns a reporting entity
- › Must report:
 - Full legal name, date of birth, residential street address, a unique identifying number from a passport, driver’s license, or similar document, and an image of that identifying document
 - Question: What gets reported if there is no TIN? For example, single member LLCs are often reported to the owner’s SSN. Should single member LLCs apply for EINs?
- › Alternative: FinCEN ID – removes liability from reporting companies



BENEFICIAL OWNER

Controls 25% of Ownership Interests

- › Equity, stock, similar interest
- › Capital or profit interest
- › Convertible debt
- › Any call, put, straddle, option
- › “Any other instrument, contract, arrangement, understanding, relationship, or mechanism used to establish ownership.”

BENEFICIAL OWNER

Substantial Control

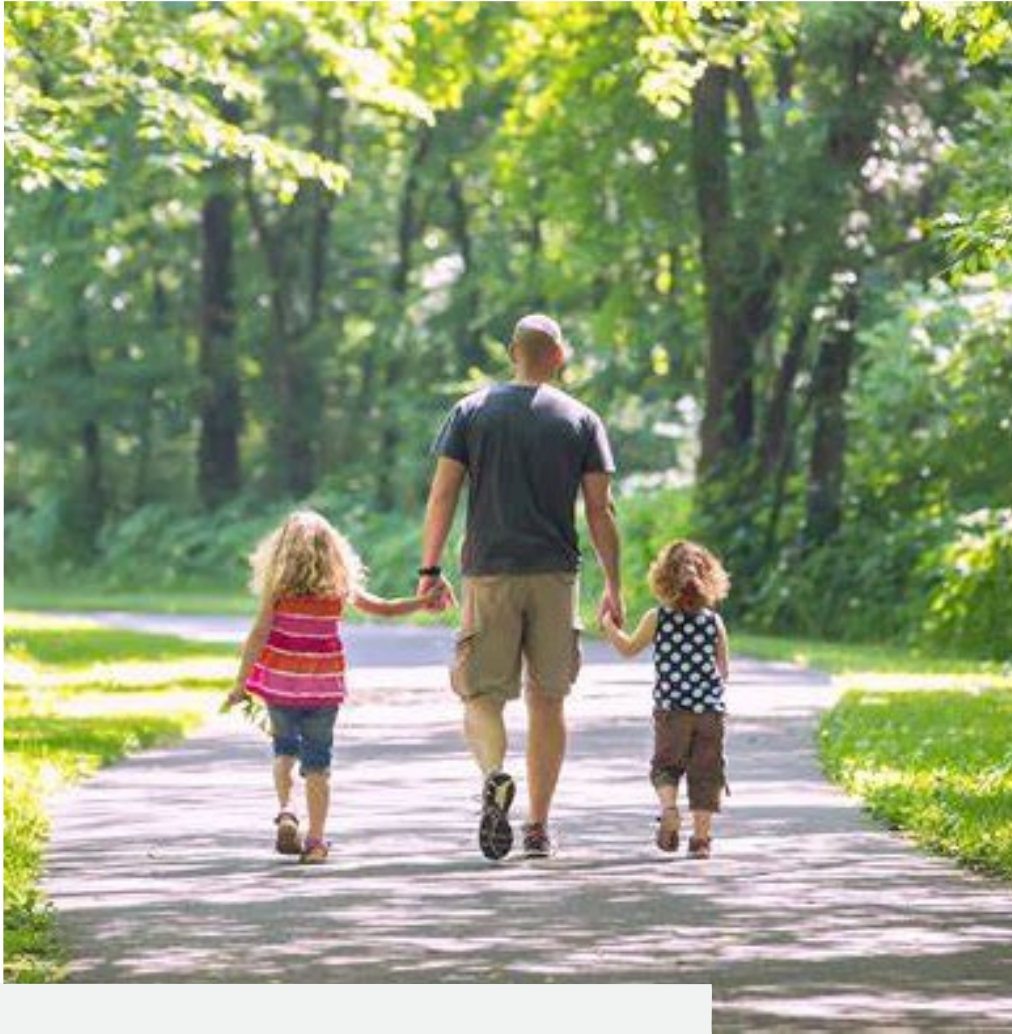
- › Senior officer
- › Can appoint/ remove senior officer
- › Important decision-maker
 - Sale/lease/transfer of assets
 - Re-organization, dissolution, merger
 - Major expenditures
 - Entering into contracts
 - And more!
- › Catch-all – “any other form of substantial control”
 - Board representation
 - Majority voting power
 - “Arrangements of financial or business relationships, whether formal or informal, with other individuals or entities acting as nominees”
 - “Any other contract, arrangement, understanding, relationship, or otherwise.”

BENEFICIAL OWNER

Trusts

- › Most trusts themselves are not reporting entities as, generally, they do not register with the Secretary of State
- › When a trust owns an interest in a reporting entity, it can be a beneficial owner. But who reports?
 - The Trustee
 - A Beneficiary who:
 - Is the sole permissible recipient of income and principal,
 - Has the right to demand a distribution, or
 - The grantor/ settlor of a revocable trust
 - Certain Trust Protectors (While this is not explicit in the regs, if a Trust Protector can remove/ replace a Trustee, it would likely fall under the catch-fall provisions)





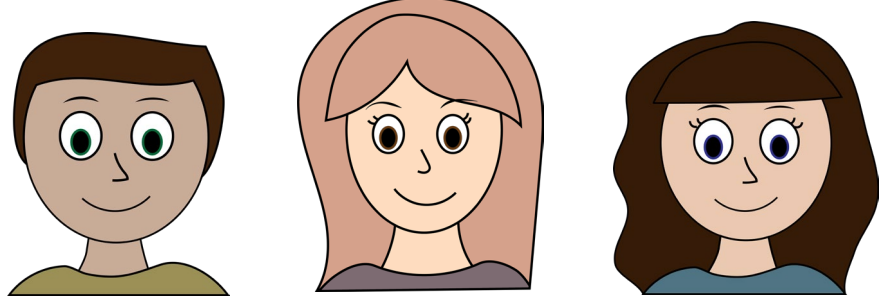
BENEFICIAL OWNER

Exceptions

- › A minor child
- › An individual acting as a nominee, intermediary, custodian, or agent
- › An employee of a reporting company, so long as their control over economic benefits are derived solely from employment status, and they are not a senior officer
- › The only interest is a future interest via a right of inheritance
- › A creditor of a reporting company

abc inc.
XYZ LLC
Joint Venture LLC

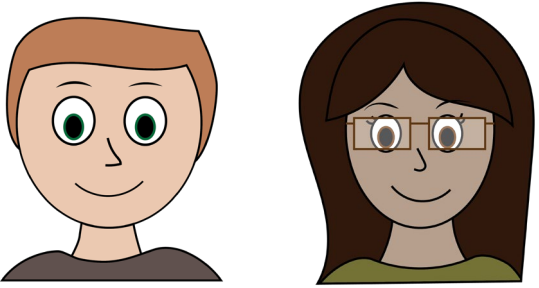
CASE STUDY 1



Adam

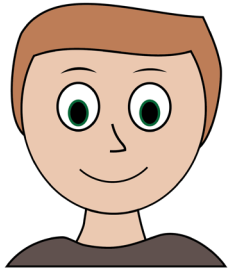
Chloe

Brianne

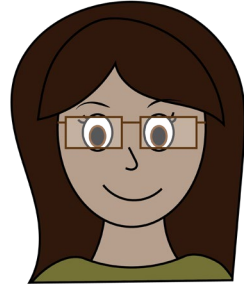


Xander

Yvonne



Xander
30% owner



Yvonne
70% owner

XYZ LLC

*Joint
Venture* LLC

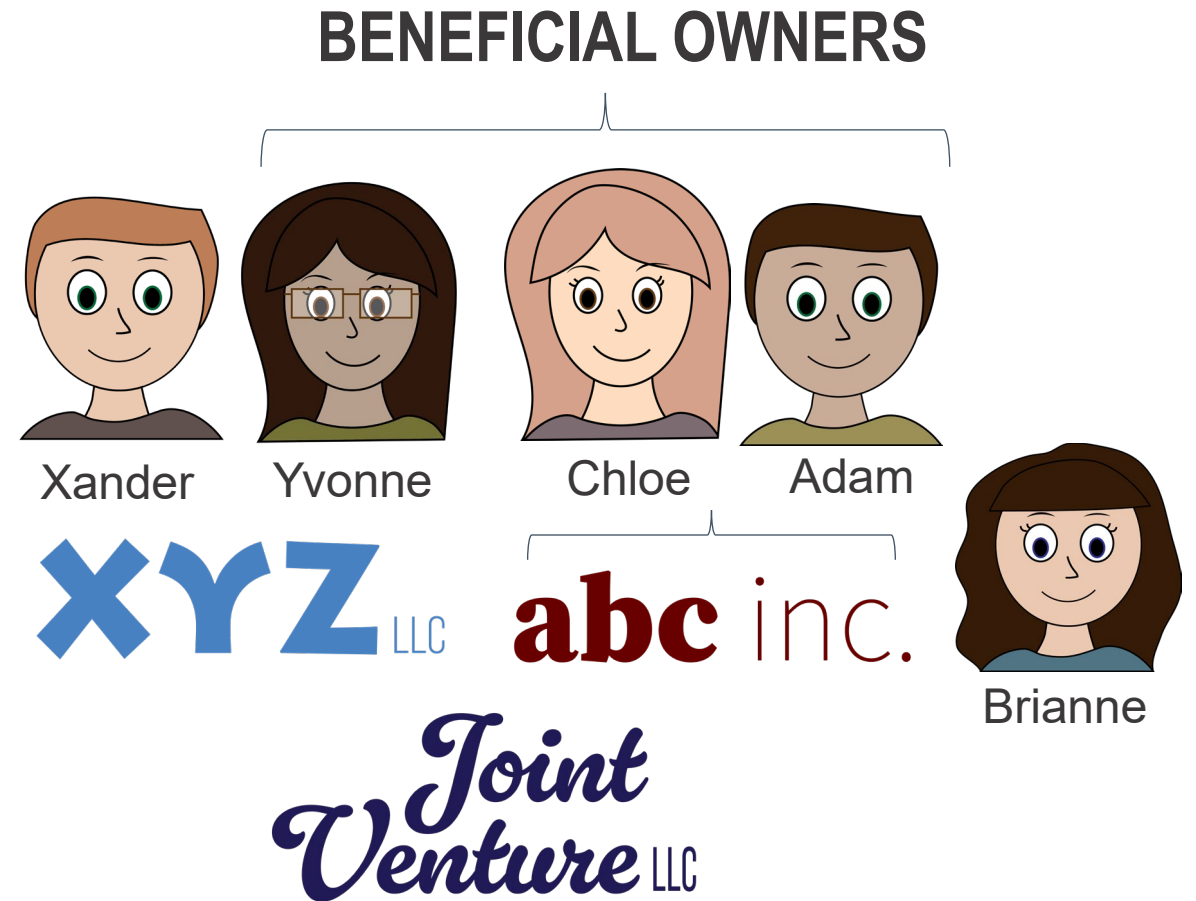
CASE STUDY

- ▶ Joint Venture, LLC, is wholly owned by XYZ, LLC. XYZ, LLC has two members. Yvonne owns 70%, and Xander owns 30%
- ▶ Xander and Yvonne are the beneficial owners of both XYZ, LLC and Joint Venture, LLC as they each own more than 25%

CASE STUDY

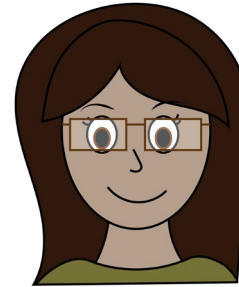
Joint Venture, LLC is owned 50% by XYZ, LLC and ABC, Inc. ABC, Inc. is owned 50% by Adam and 50% by Brianne, and it is itself exempt from the CTA reporting requirements. Adam is active in the business, serving as the company's president. Brianne is passive and takes no role in the day-to-day management. Chloe is the vice-president but has no ownership interest.

- Yvonne and Xander are beneficial owners of XYZ, LLC as they each own more than 25%
- Yvonne, Adam, Chloe, and ABC, Inc. are beneficial owners of Joint Venture, LLC

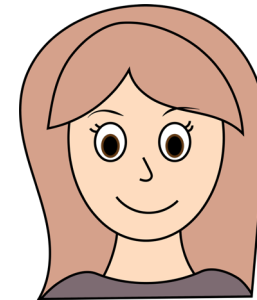


CASE STUDY

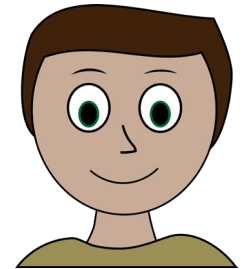
- › Yvonne is a beneficial owner because she owns more than 25% of the equity (70% of 50% is 35% of Joint Venture, LLC)
- › Xander is exempt because he does not meet the 25% threshold (30% of 50% is 15% of Joint Venture, LLC)
- › While both Adam and Brianne own 25% of the equity, they do not have to personally report as owners. ABC, Inc., as an exempt entity, can be reported in their stead
- › However, Adam & Chloe are beneficial owners under the “substantial control” prong. So, while Adam does not need to report because of his 25% ownership, he does because he exercises control over Joint Venture, LLC



Yvonne



Chloe

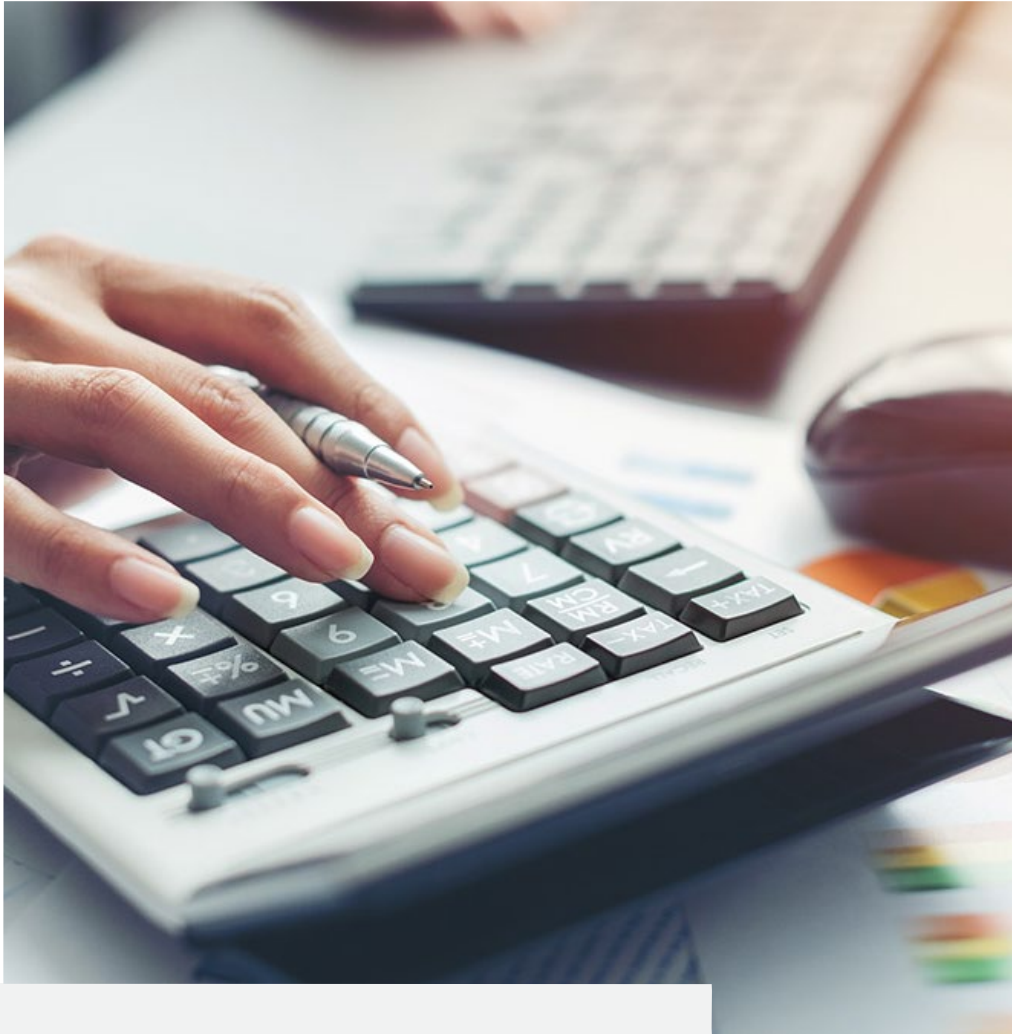


Adam

XYZ LLC

abc inc.

*Joint
Venture* LLC



CASE STUDY

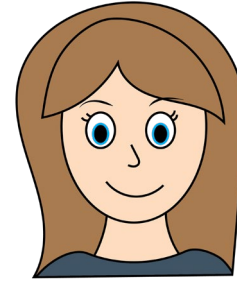
- › ABC, Inc. also owns a 100% interest in QRS, LLC. QRS, LLC does not need to file a BOI report as it is wholly owned by an exempt entity

abc inc.

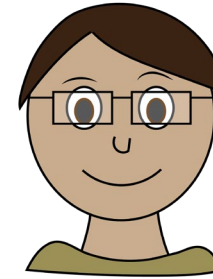
QRS
LLC

CASE STUDY 2

Beneficial Owner



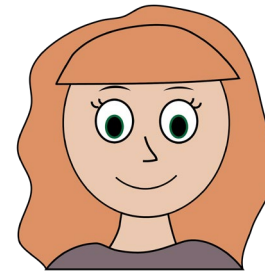
Penny



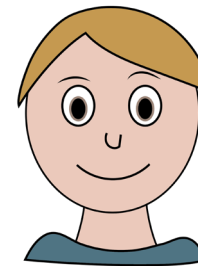
Vincent



Greta



Debbie

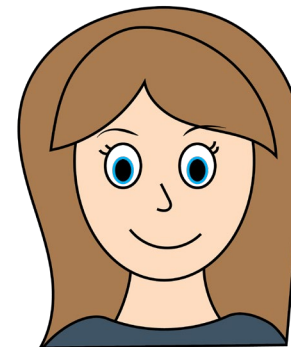


Tom

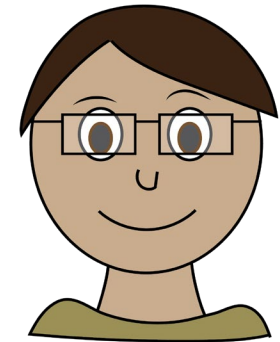
CASE STUDY

Corporation is formed with a board of directors and officers but has not issued stock. Penny and Vincent are the board members. Penny is the President, Vincent is the Vice President.

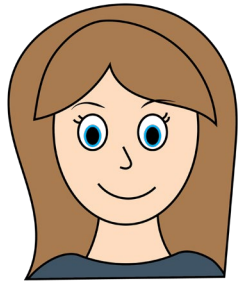
Initial BOI report filed reporting Penny and Vincent as beneficial owners



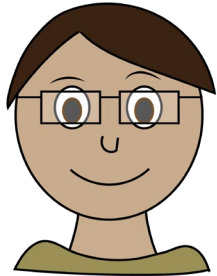
Penny
President



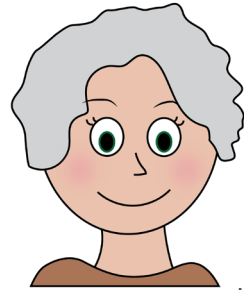
Vincent
Vice President



Penny
President



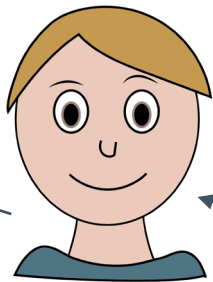
Vincent
Vice President



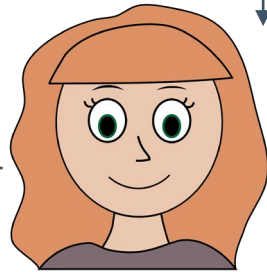
Greta
Grantor



Greta's Charity
Upon Debbie's
death



Tom
Debbie's Trustee



Debbie
Daughter

CASE STUDY

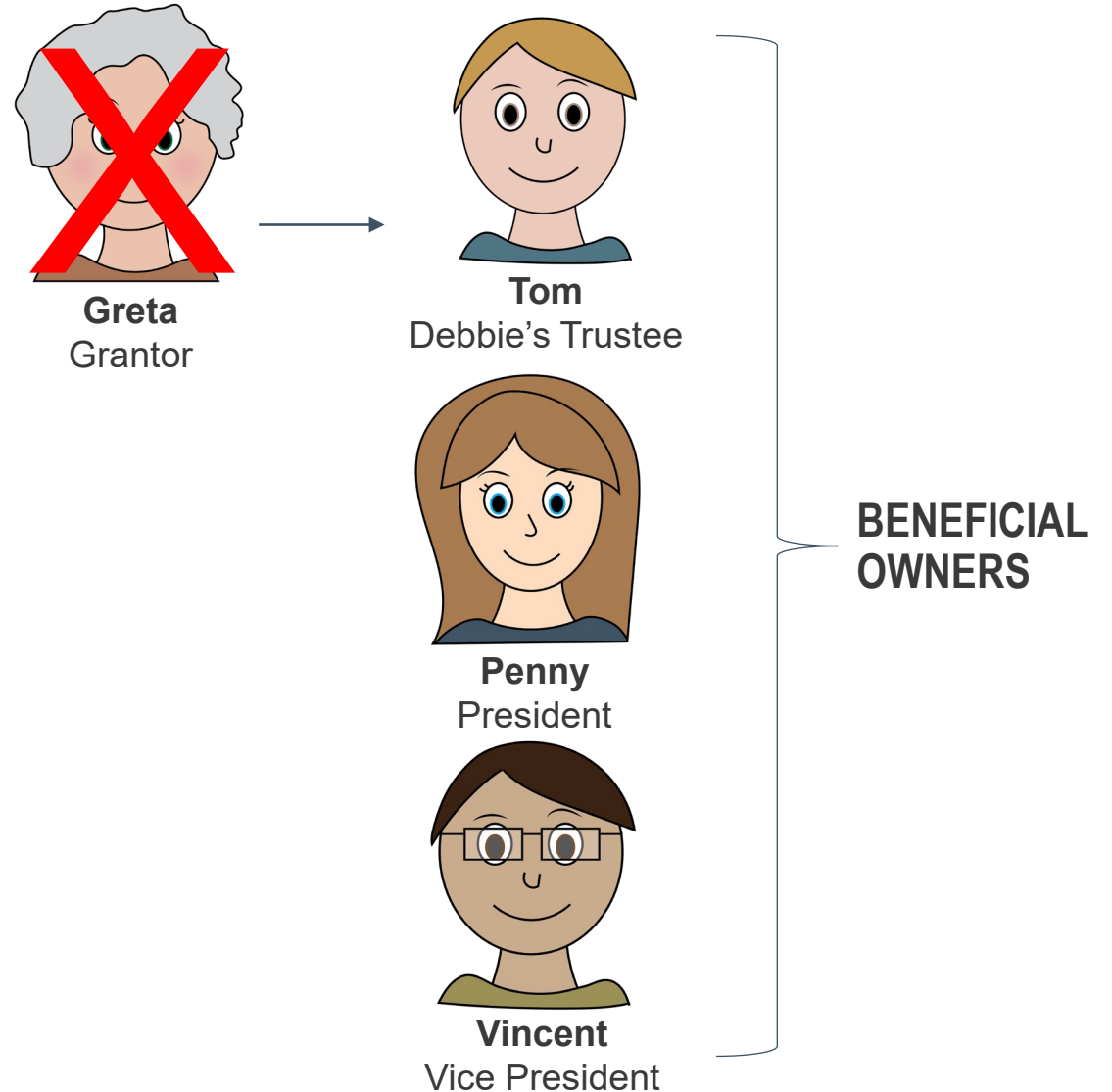
4 months later, corporation issues 100% of its stock to a revocable trust with Greta as the grantor. Her revocable trust would leave all her assets for her 16-year-old daughter, Debbie. Tom would be the Trustee of Debbie's trust. On Debbie's, death, her trust would go to Greta's favorite charity.

- › Updated BOI report listing Greta, Penny, and Vincent as beneficial owners
- › Questions: Was Greta possibly a beneficial owner prior to the issuance of stock? What if she was the client directing the formation?
- › Debbie is not a beneficial owner as she only has rights via an inheritance

CASE STUDY

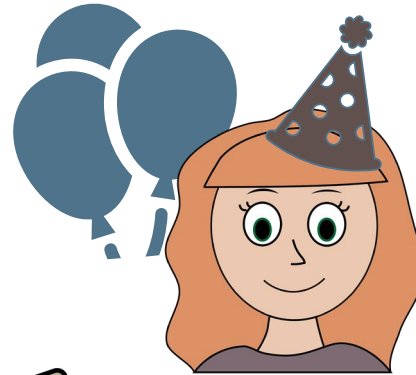
5 months after that, Greta dies, Debbie is now 17. After Greta's revocable trust is distributed to Debbie's trust:

- › Updated BOI report listing Penny, Vincent, Tom, and Debbie's Guardian as Beneficial Owners
- › The charity is not listed as they only have a right via inheritance



CASE STUDY

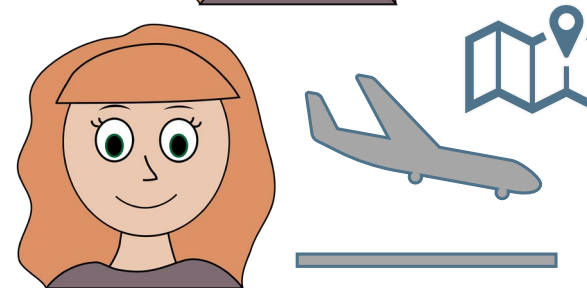
› Debbie turns 18:
Updated BOI report



› Debbie renews her passport:
Updated BOI report



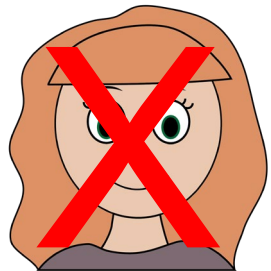
› Debbie moves:
Updated BOI report



CASE STUDY

Debbie dies.

- After distribution to the charity, no further reporting requirement as the company is wholly-owned by the charity and thus falls within an exception
- The company must file to inform FINCEN that it is now exempt



WHEN TO REPORT

- › Existing companies (those formed on or before December 31, 2023) that are required to report under the CTA will have one year, until January 1, 2025
- › Companies formed after January 1, 2024, will have only 90 days from formation
- › Companies formed after January 1, 2025, will only have 30 days
- › Must also report any changes to submitted information within 30 days of that change



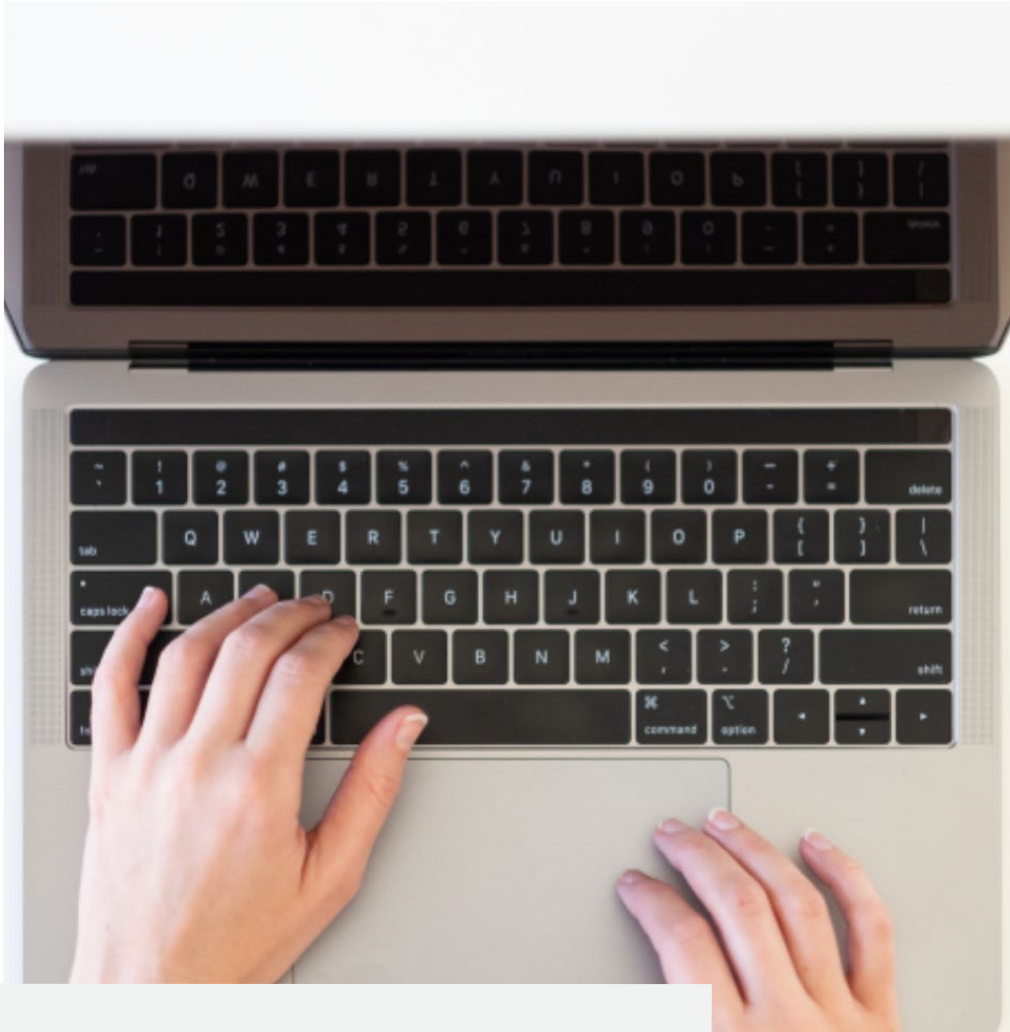
PENALTIES FOR NON-COMPLIANCE

- › Civil penalties fine of up to \$500 fine per day
- › Criminal penalties fine of up to \$10,000 and up to two years of imprisonment
- › Must be willful
- › Penalties for non-compliance may be imposed on senior officers of the reporting company

WHO SEES MY INFORMATION

- › Federal agencies engaged in national security, intelligence, or law enforcement
- › State and local agencies can obtain the information for use in criminal investigations with court authorization
- › Foreign law enforcement agencies can request information through a United States Federal agency
- › The IRS will have access for tax administration purposes
- › Financial institutions, under certain circumstances (when there are customer due diligence requirements, and requires the reporting company's consent)





HOW TO REPORT

- [Web based portal](#)
- [PDF/mail](#)
- [BOI E-FILING \(fincen.gov\)](#)

BEST PRACTICES – HOW OUR FIRM IS ADAPTING

Should Our Firm File? And When?

- › Make sure filing responsibility is clear and in writing
- › To file, or not to file
 - For entities we assist in forming, we believe it is part of the work and essential to meet client expectations
 - Harder question for ongoing responsibilities
- › Monitoring
 - Infrastructure should be in place for the reporting company
 - Much of the reporting is not on a regular cycle

When to File

- › For existing companies
 - Wait! The law is developing, and existing companies have until 12/31
 - Start gathering information now!
- › For new companies
 - Within 90 days
 - Gather all information prior to formation
 - May be a staggered process that requires follow-up as an EIN is required
 - We have implemented a new entity tracking log

BEST PRACTICES – HOW OUR FIRM IS ADAPTING

Client Communication

› General communications with clients

- Website article
- Email to all firm clients

› Intake processes

- Obtaining information necessary for the BOI report, including personal information and all governing documents

› Engagement letters

- Defining scope of work and who has what responsibilities

› Transmittal letters

- Caution clients about their ongoing responsibilities to file updated BOI reports and advise them to keep records of compliance

BEST PRACTICES – HOW OUR FIRM IS ADAPTING

Firm Process & Looking Ahead

- › FinCEN IDs – burden shifting
- › Evaluate existing clients
 - Is the crazy uncle with the bunker in Montana a board member?
 - Likely cannot clean up 25% ownership, but may be able to clean up substantial control
- › Single member LLCs that report to a social – advise of the potential requirement to get an EIN
- › No penalty for over-reporting. Likely, the best course will be, when in doubt, report

BEST PRACTICES – HOW OUR FIRM IS ADAPTING

Mergers & Acquisitions

› Due diligence

Buyers will require disclosure of all previous reports and FinCEN applications and updates thereto

› Representations and Warranties

Sellers will be required to represent and warrant that they have complied at all times with the CTA and FinCEN regulations

› Indemnification

Sellers will be required to indemnify Buyers for liability resulting from past non-compliance

› Post-Closing Obligations

The Buyer will have the obligation to update reports within 30 days after closing. What liability, if any, does the Buyer have for the company's past failure to comply with the CTA?

› Asset Acquisitions

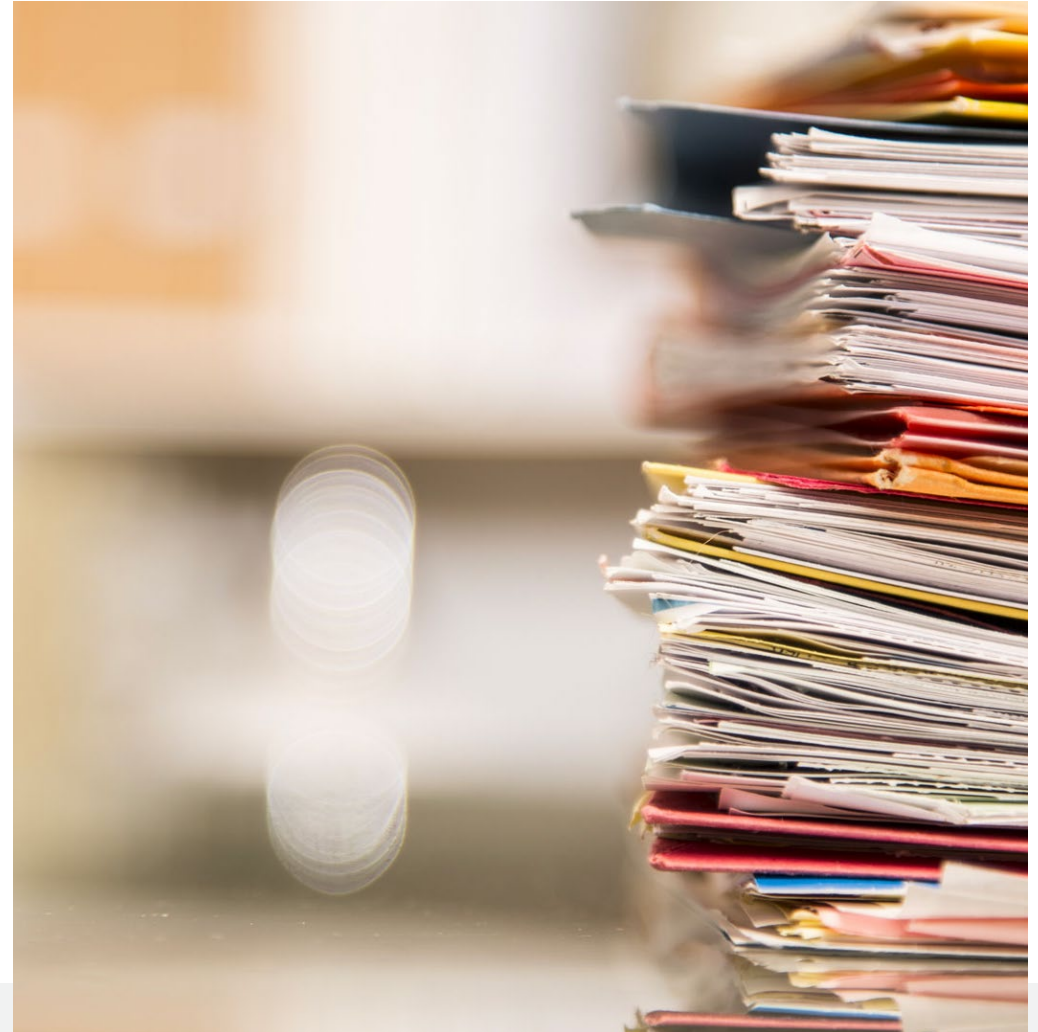
Buyers' concerns over liability should apply only to mergers and stock acquisitions – not to asset acquisitions

BEST PRACTICES- HOW OUR FIRM IS ADAPATING

Entity Formation

› Being proactive

- “Baking in” compliance in entity formation documents
- Should officers/trustees be required to obtain a FinCEN ID?
- Should buy-sell agreements identify who is responsible for CTA compliance?





BEST PRACTICES – HOW OUR FIRM IS ADAPTING

Drafting Trusts

- › Should Trustees be required to get a FinCEN ID?
- › Should Trustees be able to withhold discretionary distributions for a beneficiary who refuses to comply with providing information necessary to complete a BOI report?

DISCLAIMER

The information in this presentation is intended to be general information only. It is not intended to provide legal advice for any specific situation. Legal advice can be provided only in the course of an attorney-client relationship with reference to all the facts of a specific situation.

CONTACT US

Let us know how we can help you



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