

Real Estate Investors Beware - Corporate Transparency Act to Require Disclosure of Beneficial Ownership

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In Congress's effort to combat the financing of terrorism, money laundering, and other illicit activity, the recently passed Corporation Transparency Act (the "CTA") will require business entities to report their beneficial ownership to the Financial Crimes Enforcement Network ("FinCEN"). The CTA was enacted as a part of the National Defense Authorization Act for Fiscal Year 2021.

The CTA is far-reaching and will have a significant impact on many business entities, particularly those with estate holdings. Real estate investments are often held in layers of numerous and varying entities for tax planning, syndicating ownership, liability protection, privacy concerns, and many other legal and practical considerations. Under the CTA, the beneficial owners of these entities will be required to be disclosed to FinCEN. A beneficial owner is any entity or individual who directly or indirectly exercises substantial control over the entity or owns not less than 25% of the entity. This is a low bar.

The CTA may also affect lenders in requiring the expansion of know-your-customer provisions and disclosure if the lender becomes the beneficial owner of an entity by exercising a right under a security interest.

The CTA leaves many questions unanswered, and the Secretary of the Treasury is required to promulgate regulations within one year of the enactment of the CTA – by January 2, 2022. Fortunately, the CTA provisions will not become effective until these regulations are issued; nevertheless, it is not too early to begin planning for its implementation.

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