CORPORATE TRANSPARENCY ACT:
UPDATES AND PRACTICAL QUESTIONS

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State Bar of Texas
46TH ANNUAL
ADVANCED REAL ESTATE LAW
July 11-13, 2024
San Antonio

CHAPTER 5

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BIOGRAPHICAL INFORMATION

John Absher is an attorney in private practice in the Woodlands, Texas. He represents investors and other business owners in a wide range of transactions, often with a focus on real estate contracts. He enjoys wrestling complex issues in transactions and eliminating confusion with plain-English contracts.

EDUCATION

- B.A. in History, Harvard University
- J.D., the Tulane University School of Law

PROFESSIONAL ACTIVITIES

- Fellow, Texas Bar Foundation
- Member, REPTL
- Member and Speaker, San Antonio Real Estate Discussion Group
- Fellow, 2020-2021 Leadership Academy, State Bar of Texas Real Estate, Probate and Trust Law Section
- Member, Real Estate Legislative Affairs Committee, Texas Real Estate and Probate Institute

PUBLICATIONS

- Author and Presenter, *Series LLCs: Technical Details to Consider for Real Estate Entities*, San Antonio Real Estate Discussion Group, October 12, 2023

- Co-Author and Co-Presenter, *Deeds and Title Issues*, 25th Annual Summer School: Sun, Sand and CLE for the General Practitioner, Galveston Jule 20-22, 2023

- Co-Author, *Legislative Update: Significant Bills of the 88th Texas Legislature, Regular Session Affecting Real Estate, Lending and Other Commercial Matters*, Commissioned by the Real Estate Probate and Trust Law Section of the State Bar of Texas, June 2023

- Author and Presenter, *Wait…How is That Even a Thing? Highlights in Legislative Changes in the Past 3-5 Years*, 15th Annual Real Estate Strategies, February 17-18, 2022

- Co-Author and Co-Presenter, *Strategies for Acquisitions*, 17th Annual Advanced Real Estate Strategies, December 14-15, 2023.

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Clinton F. Brown - *Shareholder*

Clint Brown is a shareholder and joined the firm’s real estate section in 2012. He currently leads the firm's property owners association division. Mr. Brown represents community associations, developers, developer-controlled associations, and commercial associations throughout Texas and his practice area focuses on bankruptcy law, corporate law and all aspects of community association law.

Practice Areas
Bankruptcy
Community Association Law
Real Estate Practice

Education
J.D., South Texas College of Law, *cum laude*, 2009
B.A., University of Texas at Austin, 2005

Affiliations
Editor, Common Interest Communities and Timeshares, State Bar of Texas, REPTL Section Law Reporter (2016-present)
Member, Real Estate Forms Committee, State Bar of Texas (2019-present)
Board Member, Austin Community Association Institute, (2018-present)
Board Member, San Antonio Community Association Institute, (2016-18)
Chairman, Business Partner Committee, Austin Community Association Institute (2015-present)
Member, Education Committee, Austin Community Association Institute (2019-present)
Member, Events Committee, Austin Community Association Institute (2016-present)

Certifications and Designations
Board Certified in Residential Real Estate Law by the Texas Board of Legal Specialization
Board Certified in Property Owners Association Law by the Texas Board of Legal Specialization
Texas Rising Stars - Super Lawyers - 2020-2021
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Bar Admissions
State Bar of Texas
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Bankruptcy Courts for the Southern, Eastern, Western and Northern Districts of Texas
United States District Courts for the Eastern and Western Districts of Arkansas
Bankruptcy Courts for the Eastern and Western Districts of Arkansas

Publications and Presentations

Presenter and Author, POA Collections, State Bar of Texas Advanced Property Owners Association Law Course, September 2019
Presenter and Author, Texas Property Owners Association Case Law, Significant Cases, State Bar of Texas Advanced Property Owners Association Law Course, September 2018
Co-Presenter and Co-Author, A New Dawn for Short Term Rentals: The Texas Supreme Court's Opinion on POA Regulation and Probable Legislation, State Bar of Texas 40th Annual Advanced Real Estate Law Seminar, July 2018
Presenter, Board Leadership Development Workshop, Comal County, Austin Chapter Community Association Institute, May 2018
Co-Presenter and Co-Author, Enforcing Deed Restrictions by Express Right, State Bar of Texas 39th Annual Advanced Real Estate Law Seminar, July 2017
Author, Protecting Volunteers, A CAI Public Policy, Austin Chapter Community Association Institute, Community Association Living, 2017
Presenter, Happily Ever After: Thriving in an Arranged Marriage Between an HOA and MUDS, 2017 Association of Water Board Directors, Mid Winter Conference
Author, Protecting Volunteers, A CAI Public Policy, Article, Austin Chapter Community Association Institute, Community Association Living, 2017
Presenter, Interactions between Counties and HOAs, Comal County, Ty Preston Memorial Library, 2016
Presenter, "Is it Time for a Document Tune-Up," Legal Seminar, Austin Chapter Community Association Institute, 2016
Presenter, "Bankruptcies and Foreclosures," Legal Seminar, Dallas Chapter Community Association Institute, 2016
Author, Receiving Notice of a Bankruptcy…What's the Next Step, Austin Chapter Community Association Institute, Community Association Living, 2016
Presenter, Collecting the Difficult Assessment due to Bankruptcy, Probate or Divorce, Legal Seminar, Austin Chapter Community Association Institute, 2016
Presenter, Bankruptcy through the Eyes of a Creditor, Legal Seminar, Houston Chapter Community Association Institute, 2015
Presenter, Federal Laws Affecting Community Associations, CA Day Legal Seminar, San Antonio Chapter Community Association Institute, 2015

ZACHARY BRYAN WIEWEL

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EDUCATION

NEW YORK UNIVERSITY SCHOOL OF LAW — **New York City, NY**
Master of Laws, Taxation (LL.M.) — **2021**
Honors: Recipient of Dean's Graduate Award Scholarship

GEORGETOWN UNIVERSITY LAW CENTER — **Washington, DC**
Juris Doctor, *Magna Cum Laude* — **2020**
Journal: Georgetown Journal of International Law, *Articles Editor*
Activities: Student Bar Association, *Social Committee Chair and Appropriations Committee Member*
Honors: Order of the Coif (Top 10% of Graduating Class)

TEXAS TECH UNIVERSITY SCHOOL OF LAW — **Lubbock, TX**
First-year J.D. coursework completed — **2018**

TEXAS A&M UNIVERSITY — **College Station, TX**
Bachelor of Business Administration, *Cum Laude*, in Marketing and Business Honors — **May 2017**
Activities: Brotherhood of Christian Aggies, Fish Aides

EXPERIENCE

Texas Trust Law, PLLC — **Austin, TX**
Attorney — **2021 - Present**

U.S. House of Representatives — **Washington, DC**
Legislative Fellow, Congressman Kevin Brady — **2019**
- Researched taxation and other legal issues for the Ways and Means Committee's Ranking Member.

Simpson Thacher & Bartlett — **Houston, TX**
Summer Associate — **2019**
- Aided attorneys in private equity credit, M&A, funds, and capital markets related matters.

The Wiewel Law Firm — **Austin, TX**
Law Clerk — **2017, 2018**
- Researched multi-party accounts, executor duties, and ethical rules for attorneys.
- Streamlined Probate department to aid attorneys during an employee transition.

Hartman Income REIT — **Houston, TX**
Assistant Leasing Agent — **2016**
- Generated business leads for full time certified leasing agents.

Texas A&M University — **College Station, TX**
Teaching Assistant, Business Math — **2015**

Southwestern Advantage — **Nashville, TN**
Student Manager and Sales Representative — **2014, 2015**
- Recruited, trained, and managed college salespeople for direct sales while earning the President's Club award.
- Sold educational materials door-to-door, worked 86-hour weeks, and interacted with more than 3000 families.

INTERESTS

- **Boy Scouts of America**, Eagle Scout
- Travels Include: Egypt, Israel, Jordan, Japan, Hong Kong, China, Vietnam, Indonesia, Singapore, Philippines, Russia, Germany, France, Italy, United Kingdom, Zimbabwe, South Africa, Namibia, Botswana, Zambia, and Peru.

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CORPORATE TRANSPARENCY ACT: UPDATES AND PRACTICAL QUESTIONS

The Corporate Transparency Act ("CTA") is officially in effect. The first effective filing deadline, applicable to entities formed on January 1, 2024, was March 31, 2024.

With hopes to add useful guidance to the growing mass of CTA-related articles, this article cuts to the chase with a series of practical questions and answers. We focus on the most recent updates in the CTA's implementation. We also focus on questions most relevant to practitioners in business law, HOA law, and trust law. The article includes forms and drafting guides to insulate ourselves and our clients from CTA-related liabilities.

The appendix contains the following forms and drafting guides (listed in the order they are cited in the article):

- Exhibit A: Form of CTA-Specific Section to Amend Existing Operating Agreement
- Exhibit B: Form of CTA-Specific Section for New Operating Agreement
- Exhibit C: Post-CTA Engagement Letter Drafting Guide With Template Language
- Exhibit D: Form of CTA Notice Letter for Current Client
- Exhibit E: Form of Termination of Engagement Letter
- Exhibit F: Form of CTA Notice Letter for "Probably-Former" Client

The questions follow a logical chain that generally goes like this: What is the current state of the CTA in light of pending litigation and Congressional initiatives against it? How might business owners, HOAs, or parties to a trust get penalized by FinCEN? How can these parties protect themselves from penalties and prosecution? (If an attorney can help clients avoid CTA violations through the entity's own documents, there would be no malpractice claim for the attorney to worry about.) How might an attorney be sued by a client for malpractice relating to the CTA? How can attorneys protect themselves from CTA malpractice claims? With an understanding of where liabilities may come from, drafting effective notices and disclaimers is easier.

We often quote FinCEN's own words to answer questions. Between the CTA[1], the CTA's Regulations[2], the CTA's Final Rules[3], and FinCEN's FAQs[4], FinCEN has given us a limited picture of how CTA prosecution will look. The added comments are speculative because, even after the passing of the first filing deadlines, we are still waiting to see what kind of enforcement actions FinCEN will take.

Key Definitions

We repeat certain terms with official definitions in the CTA. FinCEN's definitions are complex and worthy of their own CLE presentation. Here are some of those terms with a simplified definition for the purpose of this article:

> **"Reporting Company"**: In simple terms, an entity that is required to submit personal information about itself and its Beneficial Owners. Not every entity is a Reporting Company. The CTA gives the official definition of "Reporting Company" in the final CTA Regulation 1010.380(c).
>
> **"Beneficial Owner"**: When we refer to a "Beneficial Owner," we mean a person that is required to give personal identification to FinCEN. Not every person within in an entity is a Beneficial Owner. The CTA gives the official definition of "Beneficial Owner" in final CTA Regulation 1010.380(d).
>
> *(When we reference an "individual," "business owner," "owner," "partner," or "member" of a particular entity, we are referring to a person within the entity that qualifies as a Beneficial Owner.)*
>
> **"Beneficial Ownership Information" or "BOI"**: The identifying information required by the CTA. For individual Beneficial Owners, BOI includes the person's full name, residential address, date of birth, driver's license or passport number, and a photocopy of the driver's license or passport number with a clear photograph.
>
> "**Beneficial Ownership Information Report**" or "**BOI Report**": The Beneficial Ownership Information Report is the report that Reporting Companies must file (and proactively update) with current information about the entity and its Beneficial Owners.

[1] https://www.fincen.gov/sites/default/files/shared/Corporate_Transparency_Act.pdf

[2] www.fincen.gov/sites/default/files/shared/31_CFR_1010_380_excerpt_from_Final_Rule.pdf

[3] https://www.govinfo.gov/content/pkg/FR-2022-09-30/pdf/2022-21020.pdf

[4] https://www.fincen.gov/boi-faqs

"**Reporting Violation**": An unlawful failure to submit a complete or accurate Beneficial Ownership Information Report. The official definition is discussed more below.

PART I – CURRENT STATUS OF THE CTA'S ENFORCEMENT AND CONSTITUTIONALITY

Question 1: How has FinCEN's prosecution of the CTA gone so far?

We have all wondered how aggressively FinCEN would take action against small entities for failures to report. We hoped for some clarity on that question after the first reporting deadline passed on March 31, 2024. However, as of May 28, 2024, FinCEN has not publicized any prosecution under the CTA. FinCEN regularly announces its enforcement actions or publishes its activities through the press release sections of its website. So far, FinCEN has been silent about any CTA enforcement activities. With some effort, we were unable to locate any public record of prosecution of any entity for failing to report under the CTA.

Question 2: What is the status of the constitutional challenges to the CTA?

On March 1, 2024, the U.S. District Court for the Northern District of Alabama in NSBA v. Yellen ruled that the CTA is unconstitutional.[5] The federal government has appealed this decision to the Eleventh Circuit. Oral arguments are scheduled for September 16, 2024.

FinCEN has taken the position that the NSBA v. Yellen injunction only applies to the specific plaintiffs in that case. While that case is on appeal, they will not enforce the CTA against those plaintiffs. Otherwise, FinCEN intends to enforce the CTA against all other Reporting Companies.[6]

There are a number of similar lawsuits across the country. One notable case is Robert J. Gargasz Co. v. Yellen, No. 1:23-cv-02468 (N.D. Ohio Dec. 29, 2023). That case seeks a national injunction against CTA enforcement. The court granted abeyance to the government, pending the outcome of the appeal in NSBA v. Yellen.

As of May 28, 2024, there is no nationwide ruling against the CTA that enjoins its enforcement.

Question 3: Is there any chance of delayed reporting deadlines or a total repeal from Congress?

Possibly. On December 12, 2023, the US House passed H.R. 5119 , which would delay certain CTA reporting deadlines.[7] For entities that existed before January 1, 2024, the reporting deadline would be two years (instead of one year) from January 1, 2024 to report (deadline would be January 1, 2026). Entities formed after January 1, 2025 would have 90 days (instead of 30 days) to report. For entities created during the 2024 calendar year, the reporting deadline would remain 90 days.

This attempt to postpone reporting deadlines is still under consideration in the US Senate.

Separately, Senate Bill 4297 was first filed on May 9, 2024.[8] It seeks to repeal the CTA entirely. It is too early to tell what path that bill may take.

PART II – LIABILITY EXPOSURE TO OUR CLIENTS

Question 4: What level of culpability is required for a "Reporting Violation" under the CTA?

Section 5336(h)(1) of the CTA defines a "Reporting Violation" with regards to a person that is required to disclose BOI:

> **(1) REPORTING VIOLATIONS.—It shall be unlawful for any person to—**
>
> > **(A) willfully provide, or attempt to provide, false or fraudulent beneficial ownership information, including a false or fraudulent identifying photograph or document, to FinCEN in accordance with subsection (b) [subsection reference to Section 5336(b)]; or**
> >
> > **(B) willfully fail to report complete or updated beneficial ownership information to FinCEN in accordance with subsection (b)) subsection [reference to Section 5336(b)].**

Section 5336(h)(6) of the CTA gives a definition of "willful" that is specific to the CTA:

> **(6) DEFINITION.—In this subsection, the term 'willfully' means the voluntary, intentional violation of a known legal duty.**

[5] To read the full opinion go to: https://www.courtlistener.com/docket/66579602/51/national-small-business-united-v-yellen/

[6] https://www.fincen.gov/news/news-releases/updated-notice-regarding-national-small-business-united-v-yellen-no-522-cv-01448

[7] https://www.congress.gov/bill/118th-congress/house-bill/5119

[8] https://www.congress.gov/bill/118th-congress/senate-bill/4297

Author Comment: Note that in order for a person to be liable for civil penalties or criminal prosecution under the CTA, the person must act *voluntarily*, *intentionally*, and *with knowledge of the legal duty*.

FinCEN gave expanded guidance about culpability in the CTA's Final Rules:

> **Any assessment as to whether false information was willfully filed would depend on all of the facts and circumstances surrounding the certification and reporting of the BOI, but as a general matter, FinCEN does not expect that an inadvertent mistake by a reporting company acting in good faith after diligent inquiry would constitute a willfully false or fraudulent violation.**[9]

The comments in the Final Rules go on to say:

> **Finally, the proposed regulation 1010.380(g)(5) clarified that a person "fails to report" complete or updated beneficial ownership information to FinCEN, within the meaning of 31 U.S.C. 5336(h)(1), if such person directs or controls another person with respect to any such failure to report, or is in substantial control of a reporting company when it fails to report.**[10]

Question 5: What is FinCEN doing to let Beneficial Owners know there is a legal duty to report BOI?

From FinCEN's own FAQs[11]:

> **A. 4. How will companies become aware of the BOI reporting requirements?**
> **FinCEN is engaged in a robust outreach and education campaign to raise awareness of and help reporting companies understand the new reporting requirements. That campaign involves virtual and in-person outreach events and comprehensive guidance in a variety of formats and languages, including multimedia content and the Small Entity Compliance Guide, as well as new channels of communication, including social media platforms. FinCEN is also engaging with governmental offices at the federal and state levels, small business and trade associations, and interest groups.**
>
> **FinCEN will continue to provide guidance, information, and updates related to the BOI reporting requirements on its BOI webpage, www.fincen.gov/boi. Subscribe here to receive updates via email from FinCEN about BOI reporting obligations.**

Question 6: If FinCEN claims there is a Reporting Violation, which parties within the entity might they penalize or prosecute?

The comments in the Final Rules state:

> **While the CTA requires reporting companies to file reports and prohibits failures to report, it does not appear to specify who may be liable if required information is not reported. Because section 5336(h)(1) makes it unlawful for "any person" to fail to report, and not just a reporting company, this obligation may be interpreted as applying to responsible individuals in addition to the reporting companies themselves. To the extent an individual willfully directs a reporting company not to report or willfully fails to report while in substantial control of a reporting company, individual liability is necessary to ensure that companies comply with their obligations. This is essential to achieving the CTA's primary objective of preventing illicit actors from using legal entities to conceal their ownership and activities. Illicit actors who form entities and fail to report required beneficial ownership information may not be deterred by liability applicable only to such entities. Absent individual liability, illicit actors might seek to create new entities to replace old ones whenever an entity is subject to liability, or might otherwise attempt to use the corporate form to insulate themselves from the consequences of their willful conduct.**[12]

The previous comment references the final CTA Regulation 1010.380(g), which states:

> **(g) Reporting violations. It shall be unlawful for any person to willfully provide, or attempt to provide, false or fraudulent beneficial ownership information, including a false or fraudulent**

[9] Final Rules, *see* Page 18 of the attached linked PDF. The quoted language is in the far-left column.
[10] Final Rules, *see* Page 49 of the attached linked PDF. The quoted language is in the far-left column.
[11] https://www.fincen.gov/boi-faqs#A_4
[12] Final Rules, *see* Page 49 of attached linked PDF. The quoted language is in the far-left column.

identifying photograph or document, to FinCEN in accordance with this section, or to willfully fail to report complete or updated beneficial ownership information to FinCEN in accordance with this section. For purposes of this paragraph (g):

(1) The term "person" includes any individual, reporting company, or other entity.
(2) The term "beneficial ownership information" includes any information provided to FinCEN under this section.
(3) A person provides or attempts to provide beneficial ownership information to FinCEN if such person does so directly or indirectly, including by providing such information to another person for purposes of a report or application under this section.
(4) A person fails to report complete or updated beneficial ownership information to FinCEN if, with respect to an entity:

(i) such entity is required, pursuant to title 31, United States Code, section 5336, or its implementing regulations, to report information to FinCEN;
(ii) the reporting company fails to report such information to FinCEN; and
(iii) such person either causes the failure, or is a senior officer of the entity at the time of the failure.[13]

Author Comment: The CTA defines "person" broadly. "Person" includes the reporting companies themselves, individuals responsible for those entities (like LLC managers or general partners), and even individuals that "cause" the reporting failure.

A conservative interpretation suggests that partners who refuse to give BOI may expose the entity to penalties, and also expose themselves to individual liability.

Question 7: Are Community Associations Considered Reporting Companies Subject to the CTA?

Generally, if your client was formed through the Texas Secretary of State as a Non-Profit Corporation under Chapter 22 of the Texas Business Organizations Code, or its predecessor statute, it is considered a Reporting Company subject to the CTA filing requirements.[14]

But, there are 3 exceptions exempting a community association from CTA filing requirements: 1) an unincorporated community association 2) a community association described in 501(c) of the Internal Revenue Code, and 3) a community association meeting the large operating company exception requirements.

Unincorporated community associations

As to unincorporated community associations, those are limited in Texas because many attorneys recommend community associations form as nonprofit organizations to gain access to the safe harbor protections found in Chapter 22 of the Texas Business Organizations Code[15]. Regardless, if your client is unincorporated, it does not meet the definition of Reporting Company thus excluding it from CTA filing requirements.[16]

501(c)(4) community associations

As to exception number 2, some Texas community associations can qualify as a 501(c)(4) organization under the Internal Revenue Code exempting it from CTA reporting requirements[17] if it promotes "…the common good and general welfare of the people of the community."[18] (emphasis added). The community association must benefit the community as whole and not merely the members of the community association. In determining whether a community association qualifies as a 501(c)(4) organization, some of the factors the IRS considers includes:

- whether the community embraces a minimum area or a certain number of homeowners;
- the community must serve a "community" which bears a reasonably recognizable relationship to an area ordinarily identified as governmental;
- the community does not conduct activities directed to the exterior maintenance of private residences; and
- the common areas or facilities the community owns and maintains must be for the use and enjoyment of the general public.[19]

It is important to note that condominium associations cannot qualify as a 501(c)(4) organization because condominium members, not the organization, own the real property in common and the care and maintenance thereof provides only private benefit, not community benefit, thus preventing the organization from providing

[13] Final Rules, *see* Page 99 of attached linked PDF. The quoted language is in the far-right column.
[14] 31 U.S.C. 5336(a)(11)(A)(i).
[15] Tex. Bus. Org. Code §§ 22.221, 22.235.
[16] *See* C.10., https://www.fincen.gov/boi-faqs
[17] 31 U.S.C. 5336(a)(11)(B)(xix).
[18] *See* https://www.irs.gov/government-entities/irc-section-501c4-homeowners-associations
[19] *Id.*

for the common good and general welfare of the community.[20] If you or your client are unsure whether it is a 501(c)(4) organization, you can simply input the community association's Employer Identification Number (EIN) into the IRS Tax Exempt Organization Search.[21]

Large operating company community associations

Finally, as to exception number 3, large scale self-managed community associations may be exempt from CTA reporting as a large operating company if it meets the following requirements:

(I) employs more than 20 employees on a full-time basis in the United States;
(II) filed in the previous year Federal income tax returns in the United States demonstrating more than $5,000,000 in gross receipts or sales in the aggregate, including the receipts or sales of—

(aa) other entities owned by the entity; and
(bb) other entities through which the entity operates; and

(III) has an operating presence at a physical office within the United States.[22]

As to employees, they must be employees of the community association and not a management company. For the 5,000,000 in gross receipts requirement, a question arises as to whether the assessments and other charges levied by a community association can be considered a gross receipt or sale. While the Small Entity [CTA] Compliance Guide does not specifically reference the community association income tax return IRS Form 1120-H, it does reference IRS 1120 forms generally and indicates that "other applicable IRS form[s]" may be used.[23] If you represent a community association meeting the above criteria, it may be best to obtain the opinion of a tax professional rather than issue the opinion yourself.

Question 8: Who are the Beneficial Owners of a Community Association?

If your community association client meets the definition of a Reporting Company, the client must report information about the Reporting Company and its Beneficial Owners to FinCEN. But, who are the Beneficial Owners of a community association? FinCEN has provided the following criteria to determine community association Beneficial Owners:

- the individual is a senior officer;
- the individual has authority to appoint or remove certain officers or a majority of directors of the HOA;
- the individual is an important decision-maker; or
- the individual has any other form of substantial control over the HOA.[24]

In looking to these criteria, a community association's President and Treasurer are most certainly considered Beneficial Owners. Additionally, because Texas incorporated community association boards typically make decisions as the entire board of directors in accordance with the community association's bylaws and Chapter 82 of the Texas Property Code[25] for condominiums and Chapter 209 of the Texas Property Code[26] for single family communities, all board members are considered important decision makers and Beneficial Owners. Finally, if a board grants substantial control to its community manager, either by resolution or through the management agreement, that community manager may be considered a Beneficial Owner as well. Accordingly, in advising your client as to Beneficial Owners, it is important to review the community association's governing documents as well as the management agreement.

Question 9: If an entity is owned by a trust, who needs to report as a beneficial owner?

A trust is a legal instrument with a grantor (the creator of the trust), a trustee (the person with power of trust assets), and a beneficiary (the person who the trust benefits). All three persons potentially have a duty to report.

The CTA states that an individual may exercise substantial control over a reporting company "directly or indirectly, including as trustee of a trust."[27] More specifically, the statute says that substantial control can be exercised by: (1) a **trustee** with the power to dispose of assets; (2) a **beneficiary** who either: (A) is sole permissible recipient of income and principal; or (B) can demand a distribution or withdraw substantially all of the trust assets; or (3) a **grantor** who retains the power to revoke the trust or withdraw trust assts.

For example, Person A creates a revocable trust and appoints Person B as Trustee to manage trust assets for the sole benefit of Person C, who has a right of withdraw. If the trust owns a reporting company, all

[20] *See* https://www.irs.gov/pub/irs-tege/eotopicr82.pdf
[21] https://apps.irs.gov/app/eos/
[22] 31 U.S.C. 5336(a)(11)(B)(xxi).
[23] *See* pg. 12, https://www.fincen.gov/boi/small-entity-compliance-guide
[24] *See* D.13., https://www.fincen.gov/boi-faqs
[25] *See* Tex. Prop. Code § 82.108.
[26] *See* Tex. Prop. Code § 209.0051.
[27] 31 CFR § 1010.380(d)(1)(ii)

three would likely have a duty to report. Person A must report because Person A retained the right to revoke the trust. Person B must report because Person B is a trustee and trustees typically are granted broad powers to manage trust assets. Person C must report because Person C is a beneficiary who can withdraw trust assets.

However, there may be other parties to a trust with a duty to report. For instance, Trust Protectors are commonly used in trusts and are often given authority to fire a trustee, among other powers. Although the CTA contains little guidance on Trust Protectors, the law may require a trust with a named trust protector to report because of the inherent power given to the Trust Protector.

Question 10: How long do I have to report when a beneficial owner dies and title is transferred?

In general, if the reporting company is owned by an individual at death, the timelines are very difficult from a practical perspective to determine. The CTA states the beneficial owner must report a change in information when the estate of the deceased beneficial owner is "settled," via either operation of intestacy laws or testamentary disposition.[28]

In Texas, equitable title vests immediately upon death in the beneficiaries, even if legal title is not formally transferred until a later date. However, assets are not often allocated to a specific beneficiary for months or even years after death. This delay is unavoidable but may mean the beneficiary may be liable for non-compliance. Additionally, until such property is formally transferred, a personal representative is typically granted broad powers over estate assets until such transfer. This power, as well as other provisions in a reporting company's operating or management agreement, could result in the personal representative having a duty to report.

Similarly, if an entity is transferred to a trust through a Transfer on Death Agreement, the CTA may be interpreted so as to impose a duty to register the Trustee or other parties of the trust within 30 days of death. To be sure, if the reporting company is owned by a trust, CTA registration may allow for more flexibility. For instance, if the Trustee of a trust which owns a reporting company is and continues to be a trust company, then the trust company would likely not have to re-register on the death of the grantor, through the new beneficiaries may need to.

A conservative approach is that any potential beneficiary must report within 30 days of the death of a loved one since the beneficiary has equitable title immediately upon death. A more liberal approach is to wait until a formal assignment is signed or to only have the beneficiary who is most expected to inherit the reporting company register, but these approaches are taken at the beneficiary's own peril.

Question 11: If my trust is revocable, does that mean the future beneficiaries need to report?

The CTA states that "an individual whose only interest in a reporting company is a future interest through a right of inheritance" does not have a duty to report.[29] In other words, a mere contingent or remainder beneficiary does not have a duty to report.

However, once that interest passes to that beneficiary on death (or some other event), that beneficiary will have 30 days to report their information to FinCEN.

For example, Person A creates a revocable trust in which Person A is the sole beneficiary and trustee while Person A is alive. On death, the trust becomes irrevocable and everything in the trust passes to Person B. While Person A is alive, Person B would likely not have a duty to report because Person A could amend the trust to exclude Person B, making Person B a mere future beneficiary. However, as soon as Person A dies, Person B would have a duty to report to FinCEN within 30 days of Person A's death.

As discussed above, this creates several practical issues for Person B since Person B may not be aware of his or her reporting obligation until months after death.

Question 12: What is the reporting duty of a minor who owns or inherits an entity?

The CTA states that a "minor child" cannot be a beneficial owner, provided "the required information of a parent or legal guardian of the minor child" is submitted to FinCEN with a clear indication of such on the filing.[30] However, the CTA also mandates that upon attaining the age of majority, the minor must report their own information to FinCEN within 30 days of reaching such age.[31] Two serious issues arise under this statutory structure.

First, there is likely not enough time for such report to be made in many situations. When a court-appointed guardian is acting, the CTA does not specify whether a guardian of the person or a guardian of the estate is required to report their information. In Texas, a guardian of the estate needs to be appointed for a minor when a minor inherits property in his or her own name. However, it often takes months for a court to appoint one. Since only a parent or legal guardian can file this report, the CTA did not seem to contemplate this time delay for an appointed guardian.

Second, the strict 30-day deadline to report raises issues once the minor turns the age of majority. Although the CTA is clear that the now-adult will only have 30 days to report their own information upon

[28] 31 CFR § 1010.380(a)(2)(iii)

[29] 31 CFR § 1010.380(d)(e)(iv)

[30] 31 CFR § 1010.380(d)(3)(i)

[31] 31 CFR § 1010.380(a)(2)(iv)

attaining the age of 18, for most young adults, this is not a realistic expectation for them to meet.

Question 13: Does someone who gets married and change their name have a duty to report?

Yes, there is a duty to report. The CTA imposes an obligation to update a previously filed report if "there is any change with respect to the required information,"[32] such as a name change.

Question 14: What steps can existing business entities take to gather BOI for all Beneficial Owners?

We can best help our clients avoid CTA penalties from two perspectives: (1) draft contracts that empower them to get BOI from all applicable partners, and (2) be ready to advise them when partners refuse to give BOI.

For existing entities, it is best to amend the operating agreement to include explicit obligations for owners (those that are Beneficial Owners) to give current personal information upon request and to give updated information when applicable.

FORM: Exhibit A contains a form section to be incorporated in an amendment to an existing operating agreement. With an amendment like the one attached, the entity will have multiple mechanisms to pressure stubborn owners to give their BOI, and remedies for failure to give BOI.

Question 15: What if a particular business owner refuses to give their information to the entity?

In the case of an existing entity, the same Beneficial Owners that do not want to share personal information may also refuse to sign an amended operating agreement. To resolve this situation, first look to the existing operating agreement. There may be a provision that a stubborn partner must indemnify the entity and other partners for any damages resulting from the stubborn partner's breach of the operating agreement. There may be other leverage points in the operating agreement.

At the minimum, the LLC managers or general partner should thoroughly document any refusal from one of the owners. If the entity and compliant owners can show that the stubborn owner "caused" the failure to report, FinCEN might limit penalties or prosecution to the stubborn owner.

If an existing entity does not have a written operating agreement, the process to force compliance is more difficult. In this scenario it is even more important for the entity to document any owner's refusal to give Beneficial Ownership Information. As before, this documentation may limit FinCEN's prosecution to the stubborn owner

Question 16: What should a Community Association do if a Beneficial Owner fails or refuses to Properly Report to the CTA?

In reporting Beneficial Owner information, what happens if a particular board or board member simply fails or refuses to report or provide the Company Applicant with the required information? As discussed elsewhere in this paper, the CTA civil and criminal penalties are hefty for both the Company Applicant and Beneficial Owner.[33]

In order to reduce CTA penalties, community associations should consider amending their bylaws to allow for the automatic removal of a board member that fails to properly report or provide the required information for CTA reporting. Many times, the board, without a member vote, can amend their bylaws in accordance with governing document amendment procedures or Section 22.102 of the Texas Business Organizations Code.

Question 17: What steps can new entities take to simplify CTA compliance?

For new entities, a specific CTA-related section in the original operating agreement can prevent future problems.

FORM: Exhibit B gives form language for a new operating agreement. The CTA-specific language intends to give the entity maximum leverage over its Beneficial Owners. The message to persons thinking to sign the operating agreement is: either help the company comply with the CTA or do not join at all.

PART III – LIABILITY EXPOSURE TO ATTORNEYS

Question 18: What if a client asks me for an opinion letter saying they are exempt from the CTA?

You may gather facts to understand the basis of the client's request, and compare those facts with the specific exemptions to the CTA's reporting requirements.[34] You may draft an opinion letter if you determine an exemption applies. If the client's basis for the exemption is a technical interpretation of the CTA, then it is best not to give an opinion letter.

We do not include a form opinion letter with the article because it is not advisable to draft opinion letters based on new laws that are still being updated, interpreted and implemented for the first time.

If you do draft an opinion letter, you can limit your liability with the following disclaimers:

- Write out the full text of the CTA section that you are basing your opinion on. State that you are interpreting that section.

[32] 31 CFR § 1010.380(a)(2)

[33] *See* K.2. – K.5., https://www.fincen.gov/boi-faqs

[34] *See* FinCEN's Small Business Compliance Guide (discussion of Exempt entities begins on Page 2); *see* also the discussion of certain exemptions in FinCEN's FAQ page.

- Emphasize the date on which you issue the opinion letter. State that FinCEN is still actively changing the CTA's rules and regulations. Your opinion is based on the CTA as it is written on issue date. The client releases you if a change after the issue date causes the client to no longer be exempt.
- Even with an opinion letter, important parties like banks and title companies may have internal policies that require the client to submit a BOI Report to FinCEN. You do not warrant that the opinion letter will be accepted by all third parties, and you are released from any losses that may result from a private third party's refusal to accept the opinion letter.

Question 19: Should I Act as the Company Applicant for my community association Client?

Because any individual filing CTA information on behalf of a Reporting Company is considered a Company Applicant under the CTA and subject to civil and criminal liability, generally, the answer is a simple no!

If you regularly represent community associations, you likely have multiple community association clients, sometimes into the hundreds or thousands. Attempting to stay informed on board member removals and appointments, as well as managing agent changes, can be daunting, if not impossible. Accordingly, it may be wise to not offer a CTA reporting service and instead provide your client with a third party company that can act as the Company Applicant and/or provide detailed information on how to comply with the CTA. For those that have filed with the CTA before, the process is fairly straightforward.[35]

Also, if your client is represented by a community association management company, that company may offer CTA filing and monitoring services for a fee. Community managers are much more involved in a community association's day to day affairs and will likely be apprised of any board member changes requiring updated CTA filing information.

Finally, for those practitioners that are offering CTA filing services, it is recommended to have your client sign a separate limited engagement agreement specifying the services you will and will not provide. Establishing these parameters may help avoid CTA criminal and civil liability as the Company Applicant.

Question 20: Apart from specific questions from clients, does an attorney have an affirmative duty to notify or advise current clients about changes in laws like the CTA? (Alternatively, is it a violation of the attorney's duty if the attorney does not proactively notify or advise a current client of a change in laws?)

Maybe, depending on the scope of the engagement.

Consider the following excerpts from the Texas Disciplinary Rules of Professional Conduct ("TDRPC") that discuss the scope of duty an attorney owes to a client:

- **Rule 1.01(b)**. "In representing a client, a lawyer shall not: (a) neglect a legal matter entrusted to the lawyer…"
- **Rule 1.01(c)**. "As used in this Rule [1.01], 'neglect' signifies inattentiveness involving a conscious disregard for the responsibilities owed to a client or clients."
- **Rule 1.01, Comment 6**. "Having accepted employment, a lawyer should act with competence, commitment and dedication to the interest of the client and with zeal in advocacy upon the client's behalf. A lawyer should feel a moral or professional obligation to pursue a matter on behalf of a client with reasonable diligence and promptness despite opposition, obstruction or personal inconvenience to the lawyer…"
- **Rule 1.01, Comment 7**. "Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions…Under [Rule 1.01] paragraph (b), a lawyer is subject to professional discipline for neglecting a particular legal matter as well as for frequent failures to carry out fully the obligations owed to one or more clients. A lawyer who acts in good faith is not subject to discipline, under those provisions for an isolated inadvertent or unskilled act or omission, tactical error, or error of judgment. Because delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness, there is a duty to communicate reasonably with clients; see Rule 1.03."
- **Rule 1.02(b)**. "A lawyer may limit the scope, objectives and general methods of the representation if the client consents after consultation."
- **Rule 1.02, Comment 4**. "The scope of representation provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to

[35] *See* https://www.fincen.gov/boi

the client. For example, a retainer may be for a specifically defined objective."

- **Rule 1.02, Comment 6**. "Unless the representation is terminated as provided in Rule 1.15, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's representation is limited to a specific matter or matters, the relationship terminates when the matter has been resolved. If a lawyer has represented a client over a substantial period in a variety of matters, the client may sometimes assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice to the contrary. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so…"

Whether an attorney has the duty to inform a current client of a change in laws depends heavily on how the engagement letter is worded.

The ideal scenario is that the engagement letter does two things. First, it limits the scope of work to a specific transaction or task. Second, it explicitly disclaims the obligation to inform the client of changes in laws. In this ideal scenario, the attorney does not have the obligation to proactively notify a current client of a change in laws, including the CTA.

DRAFTING RESOURCE: Exhibit C is an engagement letter drafting guide with tips and template language for CTA-related disclaimers.[36]

Several factors may apply in less-ideal scenarios.

1. The scope of work may be general, or it may include a catch-all clause that says something like, "…and other general counsel matters."
2. The engagement letter may not specifically disclaim the obligation to inform the client of changes in laws.
3. There is no engagement letter.

In each of these scenarios the scope of engagement is vague, subject to argument and selective memory.

We assume for this ethical discussion that any client in a dispute with an attorney will argue that counseling them about the CTA rules was within the scope of engagement. We can only speculate about what arguments the malpractice plaintiff might offer.

To avoid that argument, a cautious attorney can seal off that liability by proactively giving current clients notice of the CTA.

FORM: Exhibit D is a form CTA Notice Letter for Current Clients. It puts the client on general alert that the new law has requirements that may affect them, without creating the duty to manage their Beneficial Ownership Information Report. The letter mentions that there are third-party service providers well suited to help them file the BOI Report.

A Comment About Filing BOI Reports For Clients

Filing BOI Reports online is surprisingly quick and simple. It took me seven minutes to file the BOI report for my PLLC. The online portal is designed well enough for non-attorneys to use it without trouble.

Despite that, it is my own policy to not file BOI Reports on behalf of clients. This is for several reasons. First, the FinCEN database is designed well enough that clients can submit the reports themselves. Second, filing the report is an inherently administrative task better suited for either administrative personnel of the client or a corporate services company. Advising a client about the CTA's requirements is a legal task, but filing of the report is an administrative task. Third, by filing an initial BOI report we do not want to create an ongoing duty to update their report whenever a Beneficial Owner changes their address. We also prefer not to keep copies of clients' driver's licenses and passports in my office records. Managing a client's BOI Report involves a lot of detail and a lot of liability.

There are corporate service providers that are better suited to help clients with administrative tasks like CTA compliance. We are recommending to all clients that they consider using a corporate services provider. We are cautioning them to use an established company and be wary of random companies that may email them offering CTA compliance help. There are many fraudulent companies using the CTA to fish for people's private information.

The form CTA Notice Letter to Current Clients in Exhibit D includes a suggestion to use a corporate services provider for CTA compliance.

Question 21: Does an attorney have a duty to notify or advise *former* clients about changes in laws like the CTA?

In short, an attorney does not owe a duty to former clients to inform them of changes in laws. This conclusion is based on a review of TDRCP treatment of "former clients," a conversation with the Texas Bar's Ethics Helpline, and relevant ethics analysis from another state bar association.

An attorney only owes former clients a duty of confidentiality and a duty to avoid unpermitted conflicts of interest.[37] The TDRPC also discusses former clients

[36] *See* Texas Disciplinary Rules of Professional Conduct, Rule 1.02(b); *see* also Texas Disciplinary Rule of Professional Conduct, Rule 1.02, Comment 4.

[37] *See* Texas Disciplinary Rules of Professional Conduct, Rules 1.05(b) and 1.09.

in the context of client solicitation.[38] Beyond that, the TDRPC does not explicitly discuss "former clients." Reading the disciplinary rules on their face, they do not contemplate a situation where an affirmative duty of competence, communication or diligence that may have existed for then-current clients continues to exist when they become former clients.

We discussed this question with the Texas Bar's Ethics Helpline and they confirmed that the duties to former clients are limited to conflicts of interest and confidentiality. We searched the database of opinions in the Texas Center for Legal Ethics, and failed to locate one that addressed this question.

The Maryland Bar Association issued an opinion specifically about duties to former clients in the context of the CTA.[39] The Maryland Bar analyzed the question within Maryland's professional rules, but the substance of their analysis was the same as we have used with the TDRPC. That is, duties to former clients are limited to confidentiality and conflicts of interest.

The Maryland Bar emphasized that their analysis only applied to *former* clients. They went on to say:

> The trickier issue may be determining whether the representation has terminated such that an individual or organization is actually a former client. Termination of a representation is a factual issue dependent upon the particular circumstances. A letter terminating the representation or recognizing that it has been completed is a best practice, but often there is no such writing memorializing the end of the representation. Since the [Maryland opinion] assumes that the representation has terminated, this issue is beyond the scope of the inquiry.[40]

The TDRPC touches on the same crucial distinction between *former* and *current* clients in Rule 1.02, Comment 6. That comment is worth repeating:

> Unless the representation is terminated as provided in Rule 1.15, a lawyer should carry through to conclusion all matters undertaken for a client. **If a lawyer's representation is limited to a specific matter or matters, the relationship terminates when the matter has been resolved (emphasis added).** If a lawyer has represented a client over a substantial period in a variety of matters, the client may sometimes assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice to the contrary. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so…

The Maryland Bar and TDRPC make the same concluding point. If the engagement has been clearly terminated, ideally with a written notice to the client, then there is no ongoing duty to communicate with the client about a change in laws.

A cautious attorney wishing to seal off the kind of liability that may result from the CTA should use termination letters to formally terminate the attorney-client relationship. Note also that the TDRPC presumes the relationship has ended when the scope of engagement is limited to a specific task and that task is completed. These are all best practices, but not common practices among all attorneys. The CTA's harsh penalties should motivate more attorneys to adopt them.

FORM: Exhibit E is a form termination of engagement letter. Also, see Exhibit C for engagement letter template language for a limited scope of work.

Question 22: What about clients that are "probably-former" clients?

The Maryland Bar opinion and the TDRPC acknowledge the inherent ambiguity in many attorney-client relationships. In the absence of a narrow scope of work or a termination letter, proving when an engagement ended is not simple.

When an attorney cannot comfortably say that engagement with a particular client ended, a proactive way to seal off CTA liabilities is to notify "probably-former" clients of the new law.

FORM: Exhibit F is a form CTA Notice Letter For "Probably-Former" Clients. This form gives general notice of the CTA and disclaims any new duty to file BOI Reports for the "probably-former" client's behalf. The form also includes a section where the attorney acknowledges that the engagement terminated when the client's project was completed.

CONCLUSION

The CTA is an onerous and expansive law with expensive penalties. It creates exposures to liability for ourselves and our clients where similar liabilities did not exist before. Consider these questions, answers, and the attached forms to help you navigate the CTA for your clients and yourselves.

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[38] *See* Texas Disciplinary Rules of Professional Conduct, Rules 7.03 and 7.05.

[39] *See* Maryland State Bar Association, Inc., Committee on Ethics, Ethics Docket No. 2023-03, "*IS THERE A DUTY TO ADVISE FORMER CLIENTS OF A CHANGE IN LAW?*"(https://www.msba.org/ethics-opinions/ethics-docket-no-2023-03).

[40] Ibid.

EXHIBIT A

[OPERATING AGREEMENT AMENDMENT – CTA-SPECIFIC SECTION (EXISTING LLC – MANAGER-MANAGED)]

Section ## Corporate Transparency Act

a. This Section deals specifically with the Company's compliance with 31 U.S.C. 5336 (the "Corporate Transparency Act" or the "CTA"), as the provisions of the CTA may be amended during the term of this Agreement. In general, the CTA requires the Company to submit an initial report with the personal information and identification documents of all beneficial owners (at times called the "Beneficial Ownership Information Report" or "BOIR"), and to proactively update the Beneficial Ownership Information Report whenever the personal information of any beneficial owner changes. Any failure to comply with the CTA may result in monetary penalties to the Company, Managers or Members, and may also result in imprisonment.

b. To the extent that any terms in this Section ## conflict with the terms in any other Section in this Agreement, the terms in this Section ## shall control.

c. The Managers hereby individually and collectively acknowledge that the Members would not have appointed them as managers without each Manager's commitment to comply with CTA requirements, and each Manager's active cooperation to keep the Company in compliance with the CTA.

d. Each Member hereby acknowledges that they would not be permitted to continue holding interests in the Company without the Member's commitment to comply with CTA requirements, and the Member's active cooperation to keep the Company in compliance with the CTA.

e. **Condition Precedent to Issuance of Ownership Interests in Company**. For any person that may be admitted to the Company after this Agreement is amended to add this Section ##, before the Company issues ownership interests to any such additional member, that additional member must first give all requested personal information and identification documents in a form acceptable to include in the Company's Beneficial Ownership Information Report. The condition in this Subsection is in addition to any other requirement for issuance of interests in the Company under other Sections of this Agreement.

f. Each Manager agrees to promptly comply with all personal disclosure requests that may be required by the CTA, for as long as the such Manager holds that position within the Company. Each Manager shall also notify the other Managers anytime there is a change in their personal information that will require the Company to update its Beneficial Ownership Information Report. A Manager's updated information must include documents acceptable for the Managers to update the Company's Beneficial Ownership Information Report.

g. Each Member agrees to promptly comply with all personal disclosure requests which may be required by the CTA, for as long as each Member holds an interest in the Company sufficient to require CTA compliance. In addition, each Member shall also notify the Managers anytime there is a change in their personal information that will require the Company to update its Beneficial Ownership Information Report information report. A Member's updated information must include documents acceptable for the Managers to update the Company's Beneficial Ownership Information Report.

h. The Company shall file the initial BOIR, and file all applicable corrections or updates to the BOIR, promptly after receiving all information necessary to complete the filing. The Company may hire a third party service provider to complete any such filings.

i. **Failure to Provide Beneficial Ownership Information**.

1. In this Subsection, the term "**unreasonably delays**" shall mean a Member's or Manager's failure to provide the required beneficial ownership information within ten (10) days of when a request was sent in writing to the applicable Member or Manager. Written requests for personal information for CTA filings may be completed by electronic mail at the applicable Member's or Manager's then-current email address.

2. In this Subsection, the terms "Noncompliant Member" and "Noncompliant Manager" shall refer to either a Member or Manager that refuses to give, or unreasonably delays in giving, that Member's or Manager's personal information or identification documents acceptable for the Company to comply with the CTA.

3. Any Noncompliant Manager may be removed immediately by written notice of removal, which may be sent by any other Manager, or by the Members.

4. Any Noncompliant Member shall be in default under this Agreement, and the Company, Managers and other Members shall have the following remedies:

A. For any civil penalties assessed, or criminal prosecution pursued, against the Company, any of the Managers, and/or any of the other Members, which result from the Noncompliant Member's failure to give personal information, the Noncompliant Member shall fully indemnify all affected parties for all costs incurred to pay the penalties and/or defend against any criminal claims. The Company shall have the right to withhold distributions from the Noncompliant Member and use them to reimburse the Company, any Managers, and/or any other Members, until all indemnified parties are made whole.

B. The Managers shall have the right to expel the Noncompliant Member from the Company. The Noncompliant Member's expulsion shall be effective immediately upon written notice to the Noncompliant Member (the "Expulsion Date"). If expelled, the Company shall redeem the Noncompliant Member's interests in the Company. The "Redemption Price" for the Noncompliant Member's interests shall be equal to: (i) the percentage of the ownership interests of the Company held by the Noncompliant Member, multiplied by (ii) the book value of the Company on the Expulsion Date. The Company shall have the right to pay the Redemption Price over a period of two (2) years, with accrued interest on the unpaid balance accruing from the Expulsion Date, at the fixed annual rate equal to the Short Term IRS AFR Rate published in the month of the Expulsion Date.

5. To the extent that a particular Noncompliant Manager or Noncompliant Member receives a direct civil penalty or is directly prosecuted for that Noncompliant Manager's or Noncompliant Member's failure to submit acceptable beneficial owner information, the Company shall not reimburse or indemnify that Noncompliant Manager or Noncompliant Member for any fines, penalties or other costs (including that

Noncompliant Manager’s or Noncompliant Member’s private attorney fees) that may result.

j. The Company may store personal information of Members and Managers in physical and/or electronic form. Each Member and Manager agrees that the Company has properly secured personal information so long as (i) any physical copies are kept in a place where only authorized Company personnel are permitted access, and (ii) electronic copies are stored in a password-protected server, which may be a physical computer or cloud server. Each Member hereby releases the other Members, Managers and Company from any claims that may result from exposure of personal information that is properly secured according to this paragraph.

EXHIBIT B

[OPERATING AGREEMENT – CTA-SPECIFIC SECTION (NEW LLC – MANAGER-MANAGED)]

Section ## Corporate Transparency Act

a. This Section deals specifically with the Company's compliance with 31 U.S.C. 5336 (the "Corporate Transparency Act" or the "CTA"), as the provisions of the CTA may be amended during the term of this Agreement. In general, the CTA requires the Company to submit an initial report with the personal information and identification documents of all beneficial owners (at times called the "Beneficial Ownership Information Report" or "BOIR"), and to proactively update the Beneficial Ownership Information Report whenever the personal information of any beneficial owner changes. Any failure to comply with the CTA may result in monetary penalties to the Company, Managers or Members, and may also result in imprisonment.

b. To the extent that any terms in this Section ## conflict with the terms in any other Section in this Agreement, the terms in this Section ## shall control.

c. The Managers hereby individually and collectively acknowledge that the Members would not have appointed them as managers without each Manager's commitment to comply with CTA requirements, and each Manager's active cooperation to keep the Company in compliance with the CTA.

d. Each Member hereby acknowledge that they would not be offered interests in the Company without the Member's commitment to comply with CTA requirements, and the Member's active cooperation to keep the Company in compliance with the CTA.

e. **Condition Precedent to Issuance of Ownership Interests in Company**. Before the Company issues ownership interests to any particular Member under this Agreement, that Member must first give all requested personal information and identification documents in a form acceptable to include in the Company's Beneficial Ownership Information Report. The condition in this Subsection is in addition to any other requirement for issuance of interests in the Company under other Sections of this Agreement.

f. Each Manager agrees to promptly comply with all personal disclosure requests that may be required by the CTA, for as long as the such Manager holds that position within the Company. Each Manager shall also notify the other Managers anytime there is a change in their personal information that will require the Company to update its Beneficial Ownership Information Report. A Manager's updated information must include documents acceptable for the Managers to update the Company's Beneficial Ownership Information Report.

g. Each Member agrees to promptly comply with all personal disclosure requests which may be required by the CTA, for as long as each Member holds an interest in the Company sufficient to require CTA compliance. In addition, each Member shall also notify the Managers anytime there is a change in their personal information that will require the Company to update its Beneficial Ownership Information Report information report. A Member's updated information must include documents acceptable for the Managers to update the Company's Beneficial Ownership Information Report.

h. The Company shall file the initial BOIR, and file all applicable corrections or updates to the BOIR, promptly after receiving all information necessary to complete the filing. The Company may hire a third party service provider to complete any such filings.

i. **Failure to Provide Beneficial Ownership Information**.

1. In this Subsection, the term "**unreasonably delays**" shall mean a Member's or Manager's failure to provide the required beneficial ownership information within ten (10) days of when a request was sent in writing to the applicable Member or Manager. Written requests for personal information for CTA filings may be completed by electronic mail at the applicable Member's or Manager's then-current email address.

2. In this Subsection, the terms "Noncompliant Member" and "Noncompliant Manager" shall refer to either a Member or Manager that refuses to give, or unreasonably delays in giving, that Member's or Manager's personal information or identification documents acceptable for the Company to comply with the CTA.

3. Any Noncompliant Manager may be removed immediately by written notice of removal, which may be sent by any other Manager, or by the Members.

4. Any Noncompliant Member shall be in default under this Agreement, and the Company, Managers and other Members shall have the following remedies:

A. For any civil penalties assessed, or criminal prosecution pursued, against the Company, any of the Managers, and/or any of the other Members, which result from the Noncompliant Member's failure to give personal information, the Noncompliant Member shall fully indemnify all affected parties for all costs incurred to pay the penalties and/or defend against any criminal claims. The Company shall have the right to withhold distributions from the Noncompliant Member and use them to reimburse the Company, any Managers, and/or any other Members, until all indemnified parties are made whole.

B. The Managers shall have the right to expel the Noncompliant Member from the Company. The Noncompliant Member's expulsion shall be effective immediately upon written notice to the Noncompliant Member (the "Expulsion Date"). If expelled, the Company shall redeem the Noncompliant Member's interests in the Company. The "Redemption Price" for the Noncompliant Member's interests shall be equal to: (i) the percentage of the ownership interests of the Company held by the Noncompliant Member, multiplied by (ii) the book value of the Company on the Expulsion Date. The Company shall have the right to pay the Redemption Price over a period of two (2) years, with accrued interest on the unpaid balance accruing from the Expulsion Date, at the fixed annual rate equal to the Short Term IRS AFR Rate published in the month of the Expulsion Date.

5. To the extent that a particular Noncompliant Manager or Noncompliant Member receives a direct civil penalty or is directly prosecuted for that Noncompliant Manager's or Noncompliant Member's failure to submit acceptable beneficial owner information, the Company shall not reimburse or indemnify that Noncompliant Manager or Noncompliant Member for any fines, penalties or other costs (including that

Noncompliant Manager’s or Noncompliant Member’s private attorney fees) that may result.

j. The Company may store personal information of Members and Managers in physical and/or electronic form. Each Member and Manager agrees that the Company has properly secured personal information so long as (i) any physical copies are kept in a place where only authorized Company personnel are permitted access, and (ii) electronic copies are stored in a password-protected server, which may be a physical computer or cloud server. Each Member hereby releases the other Members, Managers and Company from any claims that may result from exposure of personal information that is properly secured according to this paragraph.

EXHIBIT C

[POST-CTA ENGAGEMENT LETTER DRAFTING TIPS WITH TEMPLATE LANGUAGE]

This exhibit gives advice and template language to update an engagement letter for protection against CTA-related malpractice claims.

1. Make the scope of engagement narrow, limited as much as possible to a specific transaction.

For example:

- "I agree to represent you in connection with the purchase of commercial property located at 123 Commercial Drive, Houston, TX 77001 (the 'Work')."

2. Avoid adding an ambiguous catch-all clause, like, "and other general counsel matters."

3, If the engagement is to organize an entity, limit obligations to SOS filings and operating agreements.

For example:

- "I agree to represent you in connection with the initial organization of a new limited liability company (the 'Work'). The Work shall be limited to the preparation and filing of formation documents with the Texas Secretary of State, and the drafting of an operating agreement for the company."

4. Include additional language to limit the scope of and term of the Work.

Examples:

- "My responsibilities are limited to those tasks encompassed by the Work, and, unless we otherwise agree in writing, I will not be responsible for any of your other matters."
- "My responsibilities will not be continuous. My responsibilities will cease upon completion of the Work, or the earlier termination of my engagement according to this Agreement."

5. Specifically disclaim the obligation to advise them on changes in laws or compliance with laws.

Examples:

- "To the extent that any current or future law may require Client's entity to file administrative reports with a governmental authority, you will solely be responsible for those actions. I will only be obligated to complete required filings after we agree in writing to perform the specific actions."
- "I will not have the obligation to advise you with respect to changes in laws that arise after the Work is completed."

6. If CTA filings are part of the engagement, add specific limitations.

For example:

- "To the extent I agree to file Beneficial Ownership Information ("BOI") in compliance with the Corporate Transparency Act on your behalf, you must share all required information for the entity and all beneficial owners that is complete, accurate, and in a form acceptable to FinCEN. You agree to release me from any penalties that result from information you give me that is incomplete, inaccurate, expired, or otherwise not in compliance with FinCEN's guidance. If I submit information on your behalf, I will not have the obligation to make any updates to your BOI report. You must actively notify me in writing when any required information changes, and send me the necessary documents to update your BOI report. I must acknowledge your request to update your report and confirm receipt of your documents before I have the obligation to submit the updated report. For any personal information that you send to me for the BOI report, I will not store any physical copies. I may store personal information electronically in a secure cloud-based server, with password-protected access. You hereby authorize me to store personal information electronically and release me from any claims that may result from exposure of personal information that is secured according to this paragraph.

EXHIBIT D
[CTA NOTICE LETTER – CURRENT CLIENT]

[Letterhead]

[*Month*]____, 202[*___*]

[*Entity Client*]
Attn: [*name, President/Manager*]

Or [*Individual names*]

[*Street address*]
[*City, State, Zip*]

Re: Notice of New Disclosure Requirements Under the Corporate Transparency Act

Dear [*____________*]:

I hope this letter finds you well. I am writing as a courtesy to let you know about an important change in federal law that you should be aware of.

As of January 1, 2024, a new law known as the Corporate Transparency Act ("CTA") requires that certain owners of registered entities provide personal information to a new database created by the US Treasury Department's Financial Crimes Enforcement Network (called "FinCEN" for short). With limited exceptions, this requirement applies to all registered entities, like LLCs, LPs and corporations, across all states. The database is intended to help FinCEN monitor for and investigate criminal activity. The database will not be accessible by the general public.

Please understand that this notice is not an indication that you are the subject of any criminal investigation. It is merely a notice that you, along with millions of other business owners in the country, are now required to submit Beneficial Ownership Information ("BOI") to FinCEN's new database.

Beneficial Ownership Information for the entity will include the entity's name, address and tax ID number. Beneficial Ownership Information for each owner in the entity will include the owner's name, current residential address, date of birth, either driver's license or passport number, and a copy of the current driver's license or passport with a clear picture of the person. The disclosure requirements for owners only apply to individuals that exercise substantial control over the entity, or who own at least 25% of the entity. After submitting this Beneficial Ownership Information in an initial report, the entity will need to update the report anytime provided information changes (like a change in address).

The deadline to submit Beneficial Ownership Information to FinCEN depends on when the entity was formed. Entities formed after January 1, 2024, must submit complete information within 90 days of the formation date. Entities formed before January 1, 2024, must submit complete information by January 1, 2025.

Failure to comply with the CTA can result in civil penalties up to $10,000, and/or up to 2 years imprisonment.

This law represents a dramatic change for business owners. You will likely have questions. The best resource for information is FinCEN's frequently asked questions page (https://www.fincen.gov/boi-faqs) and FinCEN's Small Business Compliance Guide (https://www.fincen.gov/boi/small-entity-compliance-guide). FinCEN is still making adjustments to its requirements, so their official FAQ page is the best place to get the most current guidance.

[OPTION 1: IF YOU ARE NOT WILLING TO DO THEIR FINCEN DISCLOSURES]

As a policy this firm does not upload Beneficial Ownership Information on behalf of clients. FinCEN has designed an online portal to submit information quickly and conveniently. (https://boiefiling.fincen.gov). The portal is designed well enough for non-attorneys to submit their information without difficulty.

If you do not wish to submit the BOI reports yourself, I recommend using a corporate services or registered agent service company. PLEASE BE AWARE THAT THERE ARE MANY COMPANIES OFFERING TO SUBMIT BOI REPORTS AND SOME OF THEM ARE FRAUDULENT SCHEMES TO STEAL YOUR PERSONAL INFORMATION. I recommend using only companies with an established record of providing corporate services. For example only, two established companies are CT Corporation and LegalZoom.

[OPTION 2: IF YOU ARE WILLING TO DO THEIR FINCEN DISCLOSURES]

FinCEN has designed an online portal to submit required information quickly and conveniently. (https://boiefiling.fincen.gov/) The portal is designed well enough for non-attorneys to submit their information without difficulty.

I am willing to submit your BOI report on your behalf. Please let us know if you want us to submit the BOI report for you. If I submit the BOI report on your behalf, you must share with us all required information that is accurate and in a form acceptable to FinCEN. I will not be liable for penalties that result from information you give us that is inaccurate, expired, or otherwise not in compliance with FinCEN's guidance.

If I submit information on your behalf, I will not have the obligation to make any updates to your BOI report. You must actively notify us when any required information changes, and send us the necessary documents to update your report. I must acknowledge your request to update your report and confirm receipt of your documents before I have the obligation to submit the updated report.

For any personal information that you send to us, I will not store any physical copies. I may store your information electronically in a secure cloud server, with password-protected access. You will release us from any claims that may result from exposure of personal information that is properly secured according to this paragraph.

I must include a disclaimer that the scope of our work with you generally does not include active updates about every change in law that may happen at the local, state or federal level. Despite that, I am sending this specific notice only about the CTA as a courtesy.

Thank you for your attention to this notice. I am available to discuss any questions you have.

Yours truly,

[*name of lawyer*]

EXHIBIT E
[FORM OF TERMINATION OF ENGAGEMENT LETTER]

[Letterhead]

[*Month*]____, 202[*___*]

[*Entity Client*]
Attn: [*name, President/Manager*]

Or [*Individual names*]

[*Street address*]
[*City, State, Zip*]

Re: Legal Representation regarding of [*entity name*] (the "Company") or [*individual names*]

Dear [*____________*]:

Thank you for choosing me to represent you with your real estate transaction. I am writing this letter to inform you that our work on your case is complete and your case is closed as of the date of this letter.

Enclosed are all of the original materials regarding your case that are in my firm's possession. Please let me know by [INSERT 30 DAYS FROM DATE OF LETTER] if there is anything else that you believe is still in our firm's possession that should be returned. Otherwise, I will assume that you have reviewed the documents and have everything that you need. While we are closing the file on this matter, we will keep a copy for a period of at least five years. After five years we may destroy records of your case in accordance with our record-retention policy then in effect.

I would like to take this opportunity to thank you for choosing me to represent you. I sincerely hope that your experience with my firm was satisfactory and that you may consider [Example Law Firm] for future legal work. With this in mind, I welcome any feedback you have about your experience.

While this concludes my representation of you regarding this legal matter, please don't hesitate to reach out in the future should you have any further legal needs and wish to discuss retaining my services again.

Yours truly,

Completion Letter – Page 2

[*name of lawyer*]

EXHIBIT F
[CTA NOTICE LETTER – "PROBABLY-FORMER" CLIENT]

[Letterhead]

[*Month*]____, 202[*___*]

[*Entity Client*]
Attn: [*name, President/Manager*]

Or [*Individual names*]

[*Street address*]
[*City, State, Zip*]

Re: Notice of New Disclosure Requirements Under the Corporate Transparency Act

Dear [*____________*]:

I hope this letter finds you well. [OPTION 1 – GENERAL: I represented you in a past real estate transaction.] [OPTION 2 – SPECIFIC: I represented you in a real estate transaction in [insert year and other specific identifying details as desired].] I am writing as a courtesy to let you know about an important change in federal law that you should be aware of.

As of January 1, 2024, a new law known as the Corporate Transparency Act ("CTA") requires that certain owners of registered entities provide personal information to a new database created by the US Treasury Department's Financial Crimes Enforcement Network (called "FinCEN" for short). With limited exceptions, this requirement applies to all registered entities, like LLCs, LPs and corporations, across all states. The database is intended to help FinCEN monitor for and investigate criminal activity. The database will not be accessible by the general public.

Please understand that this notice is not an indication that you are the subject of any criminal investigation. It is merely a notice that you, along with millions of other business owners in the country, are now required to submit Beneficial Ownership Information to FinCEN's new database.

Beneficial Ownership Information for the entity will include the entity's name, address and tax ID number. Beneficial Ownership Information for each owner in the entity will include the owner's name, current residential address, date of birth, either driver's license or passport number, and a copy of the current driver's license or passport with a clear picture of the person. The disclosure requirements for owners only apply to individuals that exercise substantial control over the entity, or who own at least 25% of the entity. After submitting this Beneficial Ownership Information in an initial report, the entity will need to update the report anytime provided information changes (like a change in address).

The deadline to submit Beneficial Ownership Information to FinCEN depends on when the entity was formed. Entities formed after January 1, 2024, must submit complete information within 90 days of the formation date. Entities formed before January 1, 2024, must submit complete information by January 1, 2025.

Failure to comply with the CTA can result in civil penalties up to $10,000, and/or up to 2 years imprisonment.

This law represents a dramatic change for business owners. You will likely have questions. The best resource for information is FinCEN's frequently asked questions page (https://www.fincen.gov/boi-faqs) and FinCEN's Small Business Compliance Guide (https://www.fincen.gov/boi/small-entity-compliance-guide). FinCEN is still making adjustments to its requirements, so their official FAQ page is the best place to get the most current guidance.

[OPTION 1 – GENERAL: Please understand that my representation of you concluded when we completed your transaction.] [OPTION 2 – SPECIFIC: Please understand that my representation of you concluded when we completed you transaction in [Insert date when work completed]]. This letter is not a continuation of any representation or the beginning of any new engagement. I am sending it as a courtesy only. I respect the hard work you put into your business, and I do not want you to risk any disruption from failing to comply with this new law.

Yours truly,

[*name of lawyer*]