

New York Targets Real Estate Owners in New LLC Transparency Law

Riding a wave of ownership disclosure laws began with the passage of the federal Corporate Transparency Act (CTA),¹ on December 22, 2023, Governor Hochul signed New York's own "LLC Transparency Act" (the NY-LLCTA), passed by the New York legislature on June 29, 2023.² Governor Hochul conditioned her approval of the Act on the legislature's post-approval removal of the Act's public database component. Senator Hoylman-Sigal (one of the NY-LLCTA's original sponsors) introduced superseding legislation on January 5, 2024, as Senate Bill 8059, to affect such removal of the public database in favor of a non-public database accessible only by law enforcement, government agencies and certain financial institutions. Governor Hochul signed the superseding legislation into law on March 1, 2024.³ While the finalized NY-LLCTA was originally expected to go into effect on December 21, 2024, the superseding law delays implementation until January 1, 2026. The NY-LLCTA amended New York's Limited Liability Company Law⁴ requiring disclosure of beneficial owners of both domestic limited liability companies (LLCs) and LLCs formed outside New York and operated or qualified to do business in New York.

Particularly, prior to the removal of the public database, the NY-LLCTA threw another obstacle in the way of the New York City real estate community, where land sales dropped 30% year-over-year in the first half of 2023, compared to the first half of 2022.⁵ Such drop has been attributed to a number of factors, including: expiration of the 421a tax abatement program (which expired in 2022); New York's high taxes; New York's modification of its rent control laws (which has led to "ghost apartments" sitting empty)⁶; the dramatic rise in hard and soft construction costs; high interest rates; and understaffed city offices leading to massive delays in gaining required approvals - all of which has crippled one of the biggest industries in New York City.

While patterned after (and sharing certain attributes with) the CTA, the New York law has certain differences from the CTA. This article outlines the NY-LLCTA and compares it to the CTA, highlighting its contrasting features, as well as considering its impact on the state's business community.

Purposes. As to LLCs operating in New York, the NY-LLCTA defines beneficial ownership, requires disclosure of human beneficial owner identities upon formation or registration and will record LLC beneficial ownership information in a business entity database accessible to law enforcement, government agencies and certain financial institutions. The NY-LLCTA requires

the New York Department of State (DoS) to establish provisions for sharing information with New York agencies and others permitted to access information relating to beneficial owners.

Scope. When compared to the NY-LLCTA (which is limited to the LLC business entity type only), the CTA applies more broadly to LLCs, corporations, limited partnerships, business trusts and certain other entity types⁷ operating in the United States, sweeping in a broad scope of beneficial interests.⁸ The CTA requires all non-exempt businesses to report direct and indirect, human beneficial ownership, control and service provider information into the FinCEN beneficial ownership secure system (BOSS). The BOSS began accepting reports on January 1, 2024.⁹ Business entities in existence as of December 31, 2023, have until January 1, 2025, to make their initial BOSS filing; entities newly formed in 2024 will have 90 days after entity formation to make their initial BOSS filing; and entities formed starting in 2025 will have 30 days after formation to make their initial filing.¹⁰ Entities excluded from the CTA's reporting requirements generally include heavily regulated business entities¹¹ and "large operating companies"¹².

By contrast, the NY-LLCTA only applies to LLCs formed or operating in New York and to membership interests in LLCs,¹³ but not to other business entity types or other possible indicia of ownership, economic rights or control interests. "Beneficial owner" and "reporting company" are both defined under the NY-LLCTA with reference to the corresponding CTA definitions¹⁴; and "exempt company" under the NY-LLCTA is defined to mean an LLC that is not otherwise defined as a reporting company under the CTA or that meets one of the CTA exemption conditions.

Required Disclosure. The NY-LLCTA will require that LLCs submit a disclosure report to the New York DoS after organizing an LLC (or amending its Articles of Organization) or qualifying to do business, in New York. The NY-LLCTA specifically amended the following sections of the NY LLC Law:

- Section 203(e) (relating to contents of the Articles of Organization), to add a paragraph 7 to allow an exempt company to provide the attestation of exemption excluding it from the reporting company definition;
- Section 211(d) (relating to when amendments to the Articles of Organization are required) to add a paragraph 11 requiring a reporting company (defined with reference to the CTA definition) to disclose any change in the required information (or to file the required disclosure if not so filed) at the time of filing of a Certificate of Amendment to the Articles; and
- Section 802(a) (relating to qualifying an LLC formed outside N.Y. and qualified to do business in New York), to add a paragraph 9 providing for beneficial ownership disclosure or an attestation of exemption.

The disclosure requirements include each "applicant" and each direct or indirect beneficial owner (defined with reference to the CTA definition, which ties into ownership of at least 25% of the ownership interests and/or exercise of substantial control over the LLC),¹⁵ who are required to electronically file disclosure with the DoS, including the following personal identifying information (PII): (1) full legal name; (2) birthdate; (3) current home or business street address¹⁶; and (4) a unique identifying number from (a) an unexpired passport, (b) an unexpired driver's license or (c) an unexpired identification card of document issued by a state or local government agency or tribal authority for the purpose of identifying that individual.¹⁷ A company forming or qualifying to do business in New York after the NY-LLCTA takes effect in 2026 will have until 30 days after formation or qualification to file its beneficial ownership report or an attestation of exemption in New York. A company formed or qualified prior to 2026 will have until January 1,

2027, to make such filing (i.e., one year after the NY-LLCTA takes effect). Notably, while the CTA limits “applicant” disclosure requirements to entities formed after its January 1, 2024 implementation date, the NY-LLCTA does not include such a limitation (which may be onerous for LLCs that were formed prior to 2024).

Exemptions. While the NY-LLCTA generally adopts much of the CTA nomenclature and approach, it has not adopted the “self-executing” nature of CTA exemptions. Instead, the NY-LLCTA requires an LLC relying on “exempt company” status (with the exemption defined with reference to the CTA’s exemption conditions) to electronically file with the DoS an attestation of exemption (under penalty of perjury) on a form to be provided by the DoS, indicating the specific exemption claimed and facts on which it is based. ¹⁸

Amendments and Annual Reports. After a triggering event, existing LLCs will need to amend their reports to accommodate NY-LLCTA disclosure obligations pertaining to the information change. Once the initial beneficial ownership disclosure has been filed, all reporting companies are required to electronically file with the DoS an annual statement confirming or updating: (1) their beneficial ownership disclosure information; (2) the street address of its principal executive office; (3) status as an exempt company, if applicable; and (4) such other information as may be designated by the DoS. All NY-LLCTA submissions will be electronic on forms prescribed by the DoS.

Confidentiality of Information. All information relating to beneficial owners who are natural persons collected by the DoS in accordance with the new law must be maintained in a secure database and will be deemed confidential except: (1) pursuant to the written request of or by voluntary written consent of the beneficial owner; (2) by court order; (3) to officers or employees of another federal, state or local government agency where disclosure is necessary for the agency to perform its official duties as required by statute or necessary to operate a program specifically authorized by law; or (4) for a valid law enforcement purpose including as relevant to any law enforcement investigation by the office of the New York attorney general. Any beneficial ownership information disclosed by the DoS may not be further disclosed by any recipient except as authorized in law or as otherwise necessary to the performance of statutory duties.

Potential Consequences of Non-Compliance. The CTA imposes steep, escalating fines (\$500 per day, up to \$10,000 per violation)¹⁹ and up to two years of federal jail time for those failing to timely or properly comply with the CTA. ²⁰ New York’s NY-LLCTA, as revised, will now allow the New York Attorney General to impose fines of up to \$500 for each day that the LLC has been past-due or delinquent in its filings (on top of the LLC’s potential loss of good standing), with the NY-LLCTA not capping the per-violation fines at \$10,000 (as is the case under the CTA).²¹ The NY-LLCTA will deem suspended any reporting or exempt company that fails to file its disclosure or attestation of exemption as required, with at least 30 days’ notice to be given by the DoS of such suspension prior to any change of status. A suspended LLC may not conduct business in New York until the non-compliance is remedied, at which point the suspension would be deemed annulled and all corporate rights restored retroactively; and a suspension will not render any contract void or reduce any third-party rights against the LLC (or lead to any principal becoming liable for the LLC’s contractual obligations or other liabilities).

Failure to make the required initial disclosure filing or annual report thereafter (or attestation of exemption) within 30 days after receipt of a DoS notice will lead to past-due status. Failure to make such filings for two years after receipt of a DoS notice will lead to “delinquent” status (preventing the LLC from receiving a good standing certificate - a requirement to consummate certain business transactions) and could expose the LLC to possible dissolution or cancellation proceedings. ²² Good standing status may be restored by making the delinquent filing(s) and

paying a \$250 fine. The interplay between this \$250 fine (as prescribed in the original Act) and the \$500 per day assessment for NY-LLCTA filing non-compliance is currently unclear.

The NY-LLCTA makes it unlawful for any person to knowingly provide (or attempt to provide) false or fraudulent beneficial ownership information (including a false or fraudulent identifying photograph or document) to the DoS, with a person not being in violation if they voluntarily and promptly, within 90 days after the original information was submitted, provide the corrected information in the form and manner prescribed by the DoS (unless the false or fraudulent information was willfully submitted for the purpose of evading the NY-LLCTA).

Information Sharing and Security. As revised, both the CTA's BOSS and the NY-LLCTA business entity database will be accessible only by law enforcement, government agencies and certain financial institutions - and importantly, not the public.²³ Governor Hochul's approval, subject to removal of the public database, addressed what she called "legitimate privacy concerns".

Other New York Legislation

New York City's TP-584-NYC form requires certain LLC reporting as to transfers of 50% or more of the ownership in buildings that contain up to four family dwelling units. Such reporting identifies names and business addresses of human LLC members and managers, as well as (for entity members or managers) additional human owners, directors, managers and officers, and so forth until the disclosure reaches the ultimate ownership by natural persons (with certain exceptions including for public companies, REITs and mutual funds).²⁴

As an example of other local law initiatives, and as an additional data point on emerging trends toward business entity transparency, in September 2023, the Town of Clarkstown, New York, passed a local law that requires business entities that own residential properties locally (including properties of varying sizes, from single family homes to residential apartment complexes) to disclose personal information to the town's Building Department, including each beneficial owner's full legal name, street address, birthdate, phone number and driver's license or passport number. This reporting obligation was to commence by mid-December 2023 (i.e., within 90 days of the law's effectiveness).²⁵ Basic information about the entity also must be provided, including principal place of business, formation jurisdiction and trade name. Changed information must be provided within 30 days after the change. Beneficial owners that are entities must disclose their direct and indirect beneficial owners up to the level of natural persons who own or control such entities. "Beneficial owner" is defined as an individual that owns or controls at least 5% of the ownership interests or otherwise exercises substantial control, with the same five exclusions as contained in the CTA (e.g., minor children; creditors; nominees/agents; persons with inheritance rights; and mere employees). Covered entities include corporations, partnerships, LLCs and other entities created by filing a document with a state or other jurisdiction. The law allows for public access to filings through Freedom of Information Law (FOIL) requests. The law imposes a fine for non-compliance between \$3,500 to \$5,000 plus attorney's fees and costs (with unpaid penalties being added to collection activity similar to town taxes). Discussions surrounding the need for this law related to anonymous ownership and leasing of residential real property correlating to code violations and hampering of routine code enforcement by the City.²⁶

Other Proposed State Legislation

California recently proposed ownership disclosure legislation²⁷, with California's proposal (like the NY-LLCTA) relating to both California and non-California entities. The proposed California legislation was held in Committee on May 18, 2023 and returned to the Secretary of the California Senate on February 1, 2024.

On February 2, 2024, Maryland introduced Senate Bill 954, with a proposed October 1, 2024 effective date, which would require certain business entities to file with the State Department of Assessments and Taxation a report including certain information regarding entities' beneficial owners (and prohibiting the inspection of the reports in certain circumstances), together with any applicable federal beneficial ownership information report. Compliance for entities formed prior to the legislation's effectiveness would have until October 1, 2025 to file their Maryland report.

The proposed California and Maryland laws may signal a trend toward state-driven transparency (independent of the CTA), so as to assist in bringing the U.S. more into line with many other countries' business entity transparency requirements.

Recent CTA Development

It bears note that on March 1, 2024, a U.S. District Judge in Alabama ruled that the CTA is unconstitutional because it exceeds the U.S. Constitution's limits on the U.S. Congress's power, and enjoined FinCEN from enforcing the CTA against the plaintiffs in that case.²⁸ On March 4, 2024, FinCEN issued a Notice Regarding National Small Business United v. Yellen, indicating that it would not enforce the CTA against the relevant plaintiffs (or members of National Small Business United as of the March 1, 2024 judgment date).²⁹ On March 11, 2024, the U.S. Treasury appealed the ruling to the U.S. Eleventh Circuit Court of Appeals. If the CTA is ultimately ruled unconstitutional on a nationwide basis through future court proceedings, such a result could derivatively implicate and impact the cross-referenced CTA provisions imbedded in the NY-LLCTA.

Takeaways

While the CTA applies to all business entities operating in the U.S., the NY-LLCTA applies only to LLCs operating in New York. The federal CTA went into effect on January 1, 2024, whereas the NY-LLCTA will go into effect January 1, 2026. The staggered implementation between the two Acts effectively gives LLCs formed or doing business in New York two years to begin NY-LLCTA filings without experiencing negative consequences for non-compliance. As a result, New York will have the benefit of the CTA rollout and ensuing companies' compliance as a guide in its own implementation and rollout. As companies ramp up to handle federal CTA compliance, New York LLCs will need to carry over their new data collection and reporting procedures to their NY-LLCTA compliance. Further, in spite of the recent federal court decision on the CTA and the New York business community's generally negative reaction to the NY-LLCTA disclosure requirements (with certain exceptions), increasing business entity ownership transparency clearly continues to be a trend, both in New York and elsewhere in the country. Now is the time to discuss the CTA and NY-LLCTA with your legal team for guidance.

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- [\[1\]](#) §§ 6401 – 6403 under Title LXIV of the National Defense Authorization Act for Fiscal Year 2021.
 - [\[2\]](#) See New York 2023 -2024 Legislative Session State Assembly Bill A3484A and Senate Companion Bill S995B. S. S995B, N.Y. Legis. Assemb. Reg. Sess. 2023-

2024 (2023),

[https://www.nysenate.gov/legislation/bills/2023/S995/amendment/B#:~:text=2023%2DS995B%20\(ACTIVE\)%20%2D%20Sponsor%20Memo&text=Section%20three%20amends%20section%20203,LLC%20in%20New%20York%20State](https://www.nysenate.gov/legislation/bills/2023/S995/amendment/B#:~:text=2023%2DS995B%20(ACTIVE)%20%2D%20Sponsor%20Memo&text=Section%20three%20amends%20section%20203,LLC%20in%20New%20York%20State).

- [3] See <https://www.nysenate.gov/legislation/bills/2023/A8544>.
- [4] See <https://www.nysenate.gov/legislation/laws/LLC>.
- [5] <https://www.forbes.com/sites/shimonshkury/2023/08/11/three-trends-impacting-new-york-city-commercial-real-estate/?sh=29edad625276>.
- [6] <https://therealdeal.com/new-york/2022/07/06/in-housing-starved-nyc-tens-of-thousands-of-affordable-apartments-sit-empty/>.
- [7] Entities created by the filing of a document with a secretary of State or any similar office under the law of a State or Indian tribe. See 31 CFR 1010.380(c).
- [8] See 31 CFR 1010.380(d)(2).
- [9] § 6403 under Title LXIV of the National Defense Authorization Act for Fiscal Year 2021.
- [10] Beneficial Ownership Information Reporting Deadline Extension for Reporting Companies Created or Registered in 2024, 88 FR 83499 (November 30, 2023), at <https://www.federalregister.gov/documents/2023/11/30/2023-26399/beneficial-ownership-information-reporting-deadline-extension-for-reporting-companies-created-or>.
- [11] See 31 U.S.C. §5336 (a)(11)(B). Heavily regulated entities include those such as SEC reporting issuers and registered broker/dealers; certain registered public accounting firms; certain types of venture capital fund advisers; utilities, financial institutions, insurance providers, commodity exchanges, pooled investment vehicles, Internal Revenue Code §501(c) registered nonprofits; governmental and quasi-governmental entities.
- [12] Large operating companies are businesses that meet all three of the following criteria: (i) have a physical street address in the U.S., (ii) have 21 or more full-time employees (i.e., employees averaging 30 hours per week or 130 hours per month) and (iii) have more than \$5 million in annual U.S. gross receipts or sales as reported on their prior year's federal tax filing.
- [13] For purposes of the NY-LLCTA and the term "beneficial owners," the term "limited liability company" includes foreign limited liability companies and authorized foreign limited liability companies. See NY-LLCTA § 2.
- [14] Such reference to CTA definitions is subject to the NY-LLCTA's reduced scope of covered companies solely to New York formed and qualified LLCs. We note five CTA "beneficial owner" exceptions for: a minor child (so long as a parent or guardian's information is reported); an individual acting as a nominee, intermediary, custodian or agent on behalf of another individual; an individual acting solely as an employee of a reporting company in specified circumstances; an individual whose only interest in a reporting company is a future interest through a right of inheritance; and a creditor of a reporting company." See 31 CFR § 1010.380 (printed page 59533), referencing 31 CFR 1010.380(d)(4).
- [15] The originally proposed NY-LLCTA would have required disclosure of all beneficial owners and not just ones considered "beneficial owners" under the CTA, and the differing definitions likely would have led to confusion as to the differences. The NY-LLCTA as revised now ties its reporting and ownership to the CTA's definitions.
- [16] By contrast, the CTA requires a current *residential* street address.
- [17] Note the NY-LLCTA's absence of the CTA's requirement that an image of the identification document itself (and derivatively a photograph of the associated person) be included in the filing.
- [18] NY LLC Law § 203(e)(7).

- [19] These have now been adjusted as of January 25, 2024 pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), to \$591.00 per day up to a maximum of \$11,820.00 per violation.
- [20] 31 U.S.C. §§ 5336(h)(1), 5336(h)(3)(A).
- [21] NY-LLCTA §5.
- [22] *Id.*
- [23] See 31 U.S.C. NY LLC Law § 5319; 31 CFR 1010.960.
- [24] See <https://nycadmincode.readthedocs.io/t11/c21/#:~:text=%C2%A7%2011%2D2105%20Returns.,the%20recording%20of%20such%20deed>. (N.Y.C. Code §11-2105) and <https://www.nysenate.gov/legislation/laws/TAX/1409> (N.Y. Tax Law §1409(a)).
- [25] See <https://ecode360.com/42790881#42790881>; see also <https://www.clarkstown.gov/clerk/downloads/> (Legal Notices – August 30, 2023 – Proposed Local Law to Amend Chapter 157).
- [26] See <https://clarkstownny.iqm2.com/Citizens/calendar.aspx> (September 12, 2023 – Town Board – Regular Meeting).
- [27] California Senate Bill SB 594. SB 594, Ca. Legis. Reg. Sess. 2023-2024 (2023), <https://fastdemocracy.com/bill-search/ca/2023-2024/bills/CAB00029571/>.
- [28] See Nat'l Small Bus. United v. Yellen, No. 5:22-cv-01448-LCB (N.D. Ala. 2022) (document 52, filed March 1, 2024).
- [29] See <https://www.fincen.gov/news/news-releases/notice-regarding-national-small-business-united-v-yellen-no-522-cv-01448-nd-ala>.