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## BUSINESS & CORPORATE LAW ALERT REGARDING NEW YORK LLC TRANSPARENCY ACT

### New Requirements and Obligations for Business Owners Under the New York LLC Transparency Act - Effective Jan. 1, 2026

Effective January 1, 2026, New York domestic and foreign limited liability companies ("LLCs") must comply with new state regulations under the amended New York LLC Transparency Act (the "NYLTA"). These new NYLTA rules require that LLCs file Beneficial Ownership Disclosure reports that include the details as to their "beneficial owners" and "company applicants" to the New York Department of State (the "DOS").

#### WHAT YOU NEED TO KNOW.

The primary obligation placed on LLCs who must comply with the NYLTA, is the filing of a **Beneficial Ownership Disclosure report** ("BOD report") with the DOS. In this alert, we will review the essential elements of the regulations and guidance issued by the DOS, including:

- Does your business have to comply with the NYLTA?
- What information needs to be included in the BOD report to comply with the NYLTA?
- How do you ensure your business is in compliance with the NYLTA?

#### WHAT IS THE PENALTY FOR FAILING TO COMPLY WITH THE NYLTA?

The NYLTA requirements can result in **serious penalties for noncompliance**. According to the NYLTA, "the attorney general may assess a fine of up to **\$500 for each day** the company has been past due [or delinquent]." Additionally, failure to file a BOD report or exemption can prevent your LLC from conducting business in New York.

Upon at least a 30-day notice from the DOS, any LLC that has not filed its BOD report or exemption is deemed suspended and prohibited from conducting business in New York. LLCs that fail to properly file for a period exceeding 2 years will be marked as delinquent on DOS records. A past due or delinquent status can only be removed once all filings have been properly updated and a **\$250 fine** has been paid.

These daily penalties can accumulate into substantial fines, but it is important to understand that compliance is not difficult as long as you understand the basics. We will cover this more below, but to avoid penalties, you should make sure that (1) your BOD report is timely submitted, (2) annual reports are filed with the DOS, and (3) you and your business associates all understand these requirements.

#### IS MY BUSINESS REQUIRED TO COMPLY WITH THE NYLTA?

##### Reporting Companies

According to the NYLTA, only LLCs formed or authorized to do business in New York State qualify as a "**reporting company**." A **reporting company** consists of domestic LLCs formed in New York State or foreign LLCs authorized to conduct business in New York State.

## Exemptions

The NYLTA has the same twenty-three exemptions as the federal Corporate Transparency Act (the “CTA”). These exceptions exempt certain LLCs from having to comply with the NYLTA.

Any of the following twenty-three types of LLCs are considered to be exempt and are not subject to the rules of a reporting company:

1. Securities reporting issuer
2. Governmental authority
3. Bank
4. Credit union
5. Depository institution holding company
6. Money services business
7. Broker or dealer in securities
8. Securities exchange or clearing agency
9. Other Exchange Act registered entity
10. Investment company or investment adviser
11. Venture capital fund adviser
12. Insurance company
13. State-licensed insurance producer
14. Commodity Exchange Act registered entity
15. Accounting firm
16. Public utility
17. Financial market utility
18. Pooled investment vehicle
19. Tax-exempt entity
20. Entity assisting a tax-exempt entity
21. Large operating company
22. Subsidiary of certain exempt entities
23. Inactive entity

The “Large operating company” exception, which has the potential to except a number of companies from NYLTA requirements, refers to any company that (1) has at least 20 full-time employees located in the United States, (2) has a physical office and operating presence in the United States, and (3) filed a Federal income tax or information return in the United States demonstrating more than \$5 in gross receipts or sales (return filed for prior tax year). If a company qualifies as a large operating company, it is exempt from BOD requirements, however, **keep in mind that if your LLC qualifies, or you believe your LLC qualifies, for any of the above exemptions, a statement must be filed with the DOS, under penalty of perjury, that indicates which exemption the LLC qualifies under and the facts on which the exemption is based.**

Since the penalties and fines for failure to comply with the NYLTA are serious, it is important to confirm any suspected exemption before assuming that your LLC meets the criteria of an exempt entity. **Unlike the CTA and the federal Beneficial Owner Information reporting requirements, the NYLTA requirements are such that even exempt entities must file annual reports indicating the exemption they qualify under and the facts in which the exemption is based.**

## WHAT IS A BENEFICIAL OWNER?

The NYLTA requires reporting companies to identify and report detailed information on their “**beneficial owners**.” The term “**beneficial owners**” under the NYLTA has the same meaning as provided under the CTA.

The CTA defines “**beneficial owners**” as “**any individual who, directly or indirectly, either exercises substantial control over such reporting company or owns or controls at least 25 percent of the ownership interests of such reporting company.**”

An individual is deemed to “**exercise substantial control**” over a reporting company if:

- they serve as a senior officer;
- have authority over the appointment or removal of senior officers or a majority of the board;
- have substantial influence over important decisions; or
- have any other form of substantial control over the reporting company.

It is important to understand that even individuals that do not own a reporting company may be roped into the CTA's definition of beneficial owner. For example, if a Special Director or Independent Manager is put in place as a requirement in connection with certain loan transactions, this Special Director or Independent Manager may be considered a "beneficial owner" for purposes of the CTA regardless of whether they have any true ownership of the reporting company. If you are not clear on which individual(s) in your business qualify as "beneficial owners" based on the CTA's requirements, it is best to consult legal counsel and accounting professionals for guidance.

### WHAT INFORMATION MUST BE INCLUDED IN A BOD REPORT?

To comply with the NYLTA, businesses that qualify as a reporting company must file a **BOD report**.

There are two categories of information that have to be provided in a BOD report:

1. Beneficial Owners information; and
2. Company Applicant information.

Information that has to be filed for **Beneficial Owners** and the **Company Applicant** includes:

- Full legal name
- Date of Birth
- Current home or business address
- Unique identifying number and photo from: (i) an unexpired passport; 4 (ii) an unexpired state driver's license; or (iii) an unexpired identification card or document issued by a state or local government agency or tribal authority for the purpose of identification of that individual.

It is important to understand that the BOD report involves submitting information about (i) the beneficial owners and (ii) the company applicant. The company applicant is the individual who directed the filing of the document that gave rise to the organization of the reporting company. For example, if you hire an attorney to form a limited liability company on your behalf, the company applicant is the attorney who filed the organizational document with the appropriate secretary of state. If more than one person is involved in the filing, the individual who is primarily responsible for directing or controlling the filing. There is one key difference between the NYLTA and CTA when it comes to the reporting of company applicants. The CTA does not require companies created or registered prior to January 1, 2024, to report their company applicants. **However, the NYLTA requires all LLCs formed or authorized to do business in New York to report information on their company applicants, regardless of if the LLC was formed or authorized before the effective date of January 1, 2026.**

The CTA allows beneficial owners and company applicants to obtain a FinCEN Identification Number. The FinCEN ID makes it easier for beneficial owners and company applicants who are involved with multiple companies. A beneficial owner or company applicant can go to the FinCEN submission portal, upload their required information to FinCEN, and FinCEN will provide a FinCEN ID number which allows an individual to input this ID number when filing a Beneficial Ownership Information report ("BOI report") instead of uploading all the identifiable information for every individual BOI report. **However, as of now, there is no New York State equivalent to a FinCEN ID.** Beneficial owners and company applicants must input all their information for each LLC they are involved with. **Please be aware that beneficial owners and company applicants cannot use their FinCEN ID when reporting their information to the DOS. Neither can an LLC submit a copy of its federal BOI report to satisfy the NYLTA requirements.**

As of now, there is no link or direction as to where BOD reports should be filed – all we know is that reports must be filed with the New York DOS.

### WHAT IS THE DEADLINE TO REPORT INFORMATION?

The deadline for reporting companies to file a BOD report or exemption is dependent on the date the LLC was created or authorized to do business. The following chart summarizes the BOD reporting deadlines, based on an LLC's date of creation or authorization.

BUSINESS START DATE	DEADLINE TO COMPLY
Created or authorized to do business in New York <b>before</b> January 1, 2026	BOD report or exemption due by January 1, 2027  Keep in mind that these LLCs need to report company applicant information
Created or authorized to do business in New York <b>on or after</b> January 1, 2026	BOD report or exemption due 30 calendar days after the initial filing of articles of organization or application of authority

### HOW OFTEN MUST BOD BE REPORTED?

A reporting company is obligated to file an annual BOD report. **Changes to reported information do not need to be reported as they occur.** Each year a reporting company must submit a **statement confirming or updating**: (1) their beneficial ownership disclosure information; (2) the street address of its principal executive office; (3) status as exempt company, if applicable; and (4) such other information as may be designated by the department of state.

### WILL THE INFORMATION IN A BOD REPORT BE MADE PUBLIC?

Many are concerned that BOD reporting may create privacy issues. In response, the NYLTA has assured that all information relating to beneficial owners who are natural persons collected by the DOS will be maintained in a secure database and remain confidential.

The NYLTA establishes that BOD information is confidential and may not be disclosed except as authorized under the following circumstances:

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; and
4. for a valid law enforcement purpose including as relevant to any law enforcement investigation by the office of the attorney general.

Any beneficial ownership information disclosed by the DOS shall not be further disclosed by any recipient except as authorized in law or as otherwise necessary to the performance of statutory duties.

### HOW CAN I ENSURE MY BUSINESS IS IN COMPLIANCE WITH THE NYLTA?

Even though the NYLTA requirements do not go into effect until January 1, 2026, it is important to start gathering the necessary information needed for filing to make the process less stressful when it comes time to file. Given the seriousness of the penalties for noncompliance, it is of utmost importance to make sure that your LLCs comply with the NYLTA. While there are still aspects of the NYLTA that lack clarity, the guidance provided by someone who understands the rules can make complying with the NYLTA a much more manageable process.

If you have questions on whether your business must comply with the NYLTA, who your business' beneficial owners are, or how to properly file a BOD report; contact an attorney in Lipsitz Green Scime Cambria's Business & Corporate Law Group.