



## Nowhere to Run to Baby, Nowhere to Hide: An Overview of the New York LLC Corporate Transparency Act and Its Disclosure Requirements



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If you thought you could hide behind your LLC in this new year, think again. Governor Kathy Hochul signed the New York LLC Corporate Transparency Act (the “Act”), which will go into effect in late 2024.<sup>[1]</sup> The Act provides for disclosure of the ultimate beneficial ownership of limited liability companies (individually, an “LLC” and collectively, “LLCs”), similar to its federal counterpart, the Corporate Transparency Act (the “Federal Statute”). The Act requires the creation of a database of the beneficial owners of limited liability companies, which will allow for members of law enforcement and regulatory authorities to uncover misconduct surrounding disclosure of LLC ownership.<sup>[2]</sup> Such disclosure will prevent the use of anonymous LLCs for illicit activities, such as fraud, tax evasion, money laundering, and violations of real estate leasing, government contracting laws and campaign financing.<sup>[3]</sup>

Before jumping into the Act, let’s take a step back and review the Federal Statute, which went into effect January 1, 2024. The Federal Statute requires all entities that are registered with a secretary of state, including LLCs, to file certain identifying information, such as their name and business address, with the Financial Crimes Enforcement Network (“FinCEN”), a bureau of the Department of the Treasury that collects and analyzes information about financial transactions in order to combat financial crimes. The Federal Statute requires corporations, limited liability companies and other entities created or registered to do business in the United States to provide personal identifying information to FinCen, such as the beneficial owner’s name, their address, date of birth and identification number, either from a driver’s license or passport. If the company is sold or ownership changes, such information must be updated within 30 days of any change in the beneficial ownership. Only federal, state, local and tribal officials will have access to such information. Those that do not comply face both civil and criminal monetary penalties of \$500 to \$10,000 per violation and jail time of up to 2 years. A “beneficial owner” is defined as an individual who, directly or indirectly, either “exercises substantial control over the entity” or “owns or controls not less than

25% of the ownership interests of the entity.”<sup>[4]</sup> The Federal Statute provides exemptions for large operating companies, broker-dealers, publicly traded companies, public accounting firms, insurance companies and registered investment advisers, to name a few.<sup>[5]</sup>

The Act’s requirements are broadly patterned after the Federal Statute. The Act adopts the same definition of beneficial ownership as the Federal Statute and its implementing regulations, however, the Act applies only to LLCs formed or authorized to do business in the state of New York, and such filings must be filed with the New York Department of State. LLCs must update their information within 90 days of any change in beneficial ownership for NY LLCs. The Act also requires companies to update their LLC’s organizational certificate, such as the articles of organization, any time there is a change to the organizational documents. This requirement might result in more frequent disclosures for NY LLCs because of the requirement to disclose amendments to the articles of organization for minor events such as engaging a new registered agent or a change in managers. Failure to disclose the beneficial owners of an LLC is punishable by the payment of a civil penalty of \$250.<sup>[6]</sup>

Similarly to the Federal Statute, access to such records are available to law enforcement and government officials via a searchable database, which will display the name, business street address and other personal identifying information of each beneficial owner. Originally, the Act required the creation of a public database, where the name and business address of each beneficial owner would be displayed for the public to access. Governor Hochul, however, struck such requirement and limited access to the database for law enforcement and government official use only. The creation of a database for law enforcement and government officials to easily search LLCs and their ultimate beneficial owners will allow law enforcement and state agencies to monitor and hopefully, discourage those hiding behind a corporate shield from engaging in illicit activities. While LLCs are used to limit liability of the ultimate beneficial owners, it also masks their identities, which those of nefarious intent can use as a tool to hide income or launder money.

For those in the Real Estate Finance sector, Lenders should consider making changes to their loan documents by adding additional covenants and obligations of the borrower to comply with such disclosure requirements. Many real estate transactions commonly use special purpose entities (“SPEs”) to finance, acquire and develop real property to limit liability within an organizational structure. Under the Federal Statute, SPEs may be exempt from such reporting if they are considered to be a “large operating company”. The “large operating company” exemption requires that an entity (a) has an operating presence in a physical office within the United States; (b) employs more than 20 employees on a full-time basis in the United States; and (c) filed federal income tax or information return in the United States for the previous year demonstrating more than \$5 million in gross receipts or sales from US sources.<sup>[7]</sup>

### **So, when and what should you report?**

Pursuant to the Federal Statute, for companies created before January 1, 2024, filings will be due by January 1, 2025. Reporting companies created on or after January 1, 2024 must file their initial reports within 30 days. Reporting companies must disclose it’s (a) legal name, (b) trade name, (c) business address, (d) jurisdiction information and (e) US IRS taxpayer identification number. Beneficial Owners must disclosure their (a) legal name, (b) date of birth, (c) current address

and (d) identification number (such as one found on a driver's license or passport).  
[8]

Under the Act, Companies formed on or before the effective date of the Act will be required to file their reports by January 1, 2025. Companies formed after the effective date will have 30 days to file their reports. For LLCs that file under the Federal Statute, the Act permits the LLC to file a copy of the same form with the NY Department of State.

[1] S. 995B, enacted December 22, 2023.

[2] <https://www.governor.ny.gov/news/governor-hochul-signs-llc-transparency-act>

[3] See Memorandum in Support of Legislation, Assemb. A03484, 2023-2024 Sess. (N.Y. 2023-2024), [https://nyassembly.gov/leg/?default\\_fld=&leg\\_video=&bn=A03484&term=2023&Memo=Y](https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A03484&term=2023&Memo=Y).

[4] Corporate Transparency Act, H.R. 6395, 116th Cong. §§ 6403 (a)(3)(A)(i)-(ii), p. 1219.

[5] LLC Transparency Act, N.Y. S.995 (2023); see also 31 U.S.C. Section 5336(a)(11) (B).

[6] [https://today.westlaw.com/Document/I3b1603d673fe11ee8921fbef1a541940/View/FullText.htm?transitionType=Default&contextData=\(sc.Default\)&firstPage=true;https://nyassembly.gov/leg/?default\\_fld=&leg\\_video=&bn=A03484&term=2023&Memo=Y](https://today.westlaw.com/Document/I3b1603d673fe11ee8921fbef1a541940/View/FullText.htm?transitionType=Default&contextData=(sc.Default)&firstPage=true;https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A03484&term=2023&Memo=Y)

[7] 31 U.S. Code § 5336(a)(11)(B)(xxi).

[8] See 31 U.S.C. Section 5336(a)(11)(B); <https://www.congress.gov/bill/116th-congress/house-bill/2513/text>