

# *Après BOI Le Deluge:* Beneficial Ownership Reporting to FinCEN Required by the Corporate Transparency Act

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# The Corporate Transparency Act In a Nutshell

Effective January 1, 2024, a Reporting Company must disclose information about the Reporting Company, its Beneficial Owners, and the Company Applicants to the Financial Crimes Enforcement Network (FinCEN) of the Department of Treasury.

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# Hi! I'm John R. Strohmeyer.

- I'm the proprietor of Strohmeyer Law PLLC in Houston, where I guide clients through the maze of estate planning, tax, international tax, and probate.
- I'm Board Certified by the Texas Board of Legal Specialization in both Tax Law and Estate Planning and Probate Law.
- I'm a Fellow of the American College of Trust and Estate Counsel.

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# Hi! I'm John R. Strohmeyer.

I've given a wide range of white-knuckle presentations.

- A Sun That Never Sets: International Tax Updates for Global Clients
- Income Tax Treaties, and Estate and Gift Tax Treaties
- A Whole New World: Trust and Estate Distributions to Foreign Beneficiaries
- Using Zapier to Automate the Boring Parts of Your Practice
- Hidden in Plain Sight: Estate and Inheritance Taxes Imposed by Other States on Non-Resident Decedents
- Hoisting Your Jolly Roger: How to Fund Your Retirement in a Non-Extradition Country with Your Client's Money
- IOLTA Automation: Let the Robots Help You Out

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# Hi! I'm John R. Strohmeyer.

I also host the Five Star Counsel® podcast, where I try to answer the question “What would a law firm built by the founders of Disney, Four Seasons, Ritz-Carlton, and Zappos look like if they'd been lawyers instead?”



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# Hi! I'm John R. Strohmeyer.

You may have questions when we're done, so you can go to [AskJohnAQuestion.com](http://AskJohnAQuestion.com) and find a time to chat.

## Bark Office



Griswold  
Strohmeyer-Daniels

**BARK OFFICE**



Molly Strohmeyer-  
Daniels

**BARK OFFICE**

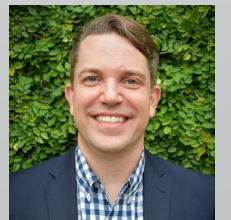


Billy Strohmeyer-  
Daniels

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# Housekeeping

1. Yes, this is real.
2. No, this is not a joke.
3. Yes, it's too late to call your Senator.
4. While one court held it unconstitutional, the banks will be held to the parts that are constitutional.
5. Yes, I'll absolutely send you the slides.



# The Corporate Transparency Act

# IT IS HERE!

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# The Corporate Transparency Act

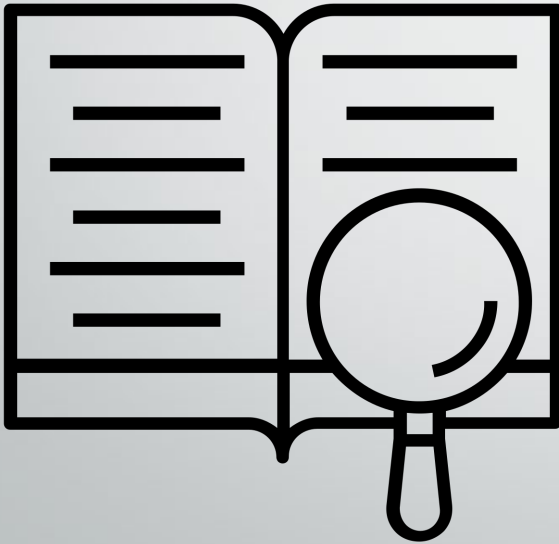
- When are reports due?
- What needs to be reported?
- Which entities must report?
- What happens if an entity doesn't report?



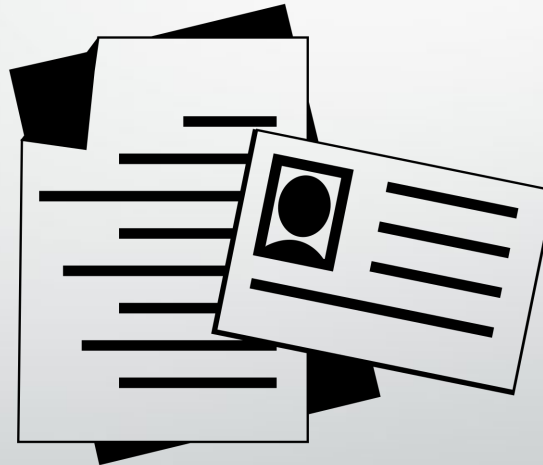
# The Corporate Transparency Act

## *What Needs to Be Done?*

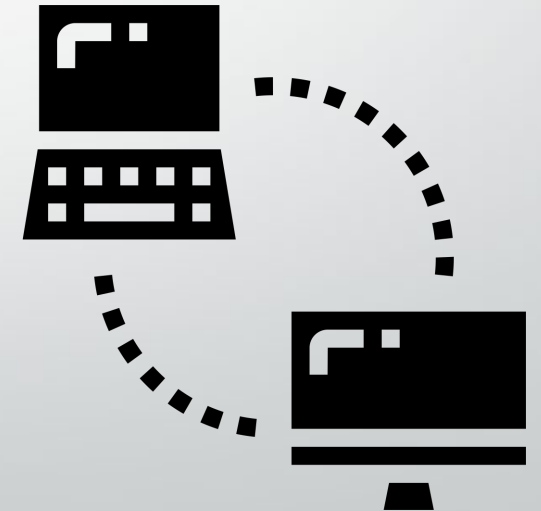
Is it a  
Reporting  
Company?



Collect Info on  
Beneficial Owners and  
Company Applicants



Report Beneficial  
Ownership  
Information and  
Company Applicants



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# Terms You'll Need to Understand

- Financial Crimes Enforcement Network (“FinCEN”)
- “Existing Reporting Company”
- “New Reporting Company”
- Domestic Reporting Company
- Foreign Reporting Company
- Beneficial Owner
- Substantial Control
- Company Applicant

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# THE IRS IS LISTENING

- Officers and employees of the Department of the Treasury “may obtain access to beneficial ownership information for tax administration purposes”

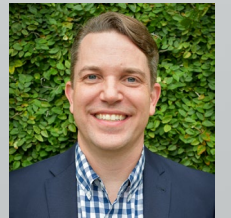
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# A few examples as we get started.

- Strohmeyer Law PLLC, a law firm with two attorneys and four other staff and annual revenues less than \$5,000,000
- Smith Jones Smith, a law firm with 100 attorneys and 75 other staff
- Family Cabin LLC, with three members and zero revenue
- Local Growing Business Inc., with revenue of \$15,000,000 and 20 employees
- Insurance Planning Escape Hatch, a general partnership owned by a trust and an individual

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# Governmental Security Protocols

- Protect the security and confidentiality of any Beneficial Ownership information provided
- Require requesting agencies to establish, maintain, and abide by a secure system that would store Beneficial Owner information
- Limit the scope of information sought, consistent with the purpose of seeking the information
- Restrict access to Beneficial Ownership information to those who have undergone appropriate training, and who are authorized to access the information
- Establish an auditable system of records to track each request, purpose of the request, name of requesting individual, and any disclosure of information

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# Penalties for Governmental Misuse of Information

- Any individual guilty of unauthorized disclosure or use of Beneficial Owner information
  - Is liable for a civil penalty of \$500 per day the violation continues or is not remedied **and**
  - Shall be fined no more than \$250,000, or imprisoned for 10 years, or both **or**
  - If violating another law of the United States or any illegal activity involving more than \$100,000 over a 12-month period, a fine of no more than \$500,000, imprisoned for no more than 10 years, or both

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# *Why* is the Corporate Transparency Act?

- The purpose of the Act is to
  - Enhance national security, intelligence, and law enforcement efforts to combat money laundering, terrorism financing, and other illicit activities
  - Bring the U.S. into compliance with international anti-money laundering and countering of terrorism financing standards
  - Set a clear federal standard for incorporation practices
  - Protect U.S. national security and commerce
- The Act is not intended to create a publicly accessible registry of business entities in the U.S.

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# *Why* is the Corporate Transparency Act?

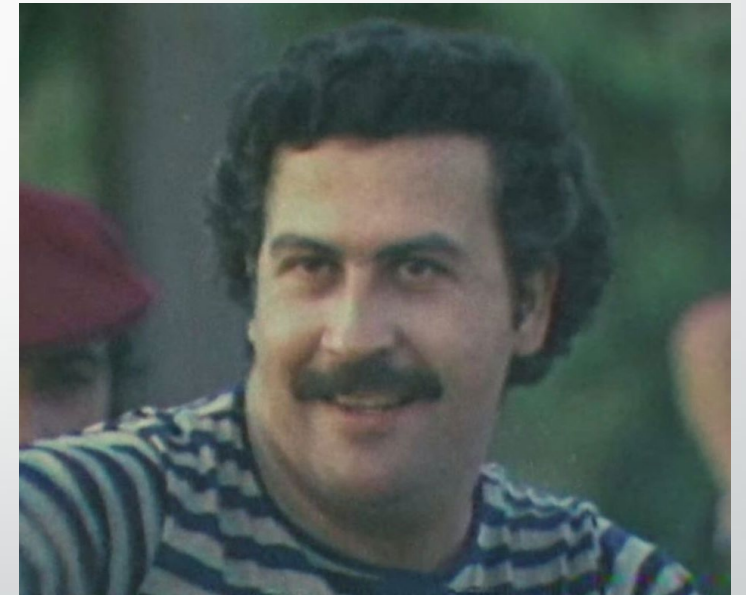
**Alphonse the  
Money Launderer**



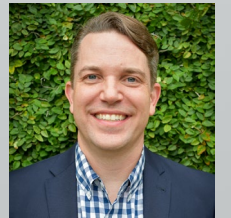
**Vladimir the  
Kleptocrat**



**Pablo the  
Narcotrafficker**



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# What is the Corporate Transparency Act?

- The CTA does not authorize public disclosure of beneficial ownership.
- FinCEN can disclose the information to other law enforcement agencies.
  - A Federal agency involved in national security, intelligence, or law enforcement activity, for the use in furtherance of such activities; or
  - A State, local, or tribal law enforcement agency as part of a criminal or civil investigation, with court approval
  - To assist the investigation of a foreign government in a Federal Agency requests
    - A financial institution with the consent of the reporting company, to facilitate compliance of the institution with customer due diligence
    - A request made by a Federal functional regulator or other appropriate regulatory agency

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# When is a Reporting Company's Filing Deadline?

- “Existing Reporting Company”—Formed Before January 1, 2024
  - Initial Report is due by January 1, 2025
  - Company Applicant information is not required
- “New Reporting Company”—Formed After December 31, 2023
  - Initial Report is due 90 days after formation for entities filed in 2024
  - Initial Report is due 30 days after formation for entities filed after 2024
  - The timer starts after receipt of actual notice or public notice (in states with public notice of entity formations)
  - Company Applicant information is required



# What does a Reporting Company report about itself?

- The entity's name, as well as any trade names or DBAs
- Business street address
- Jurisdiction of formation
- Taxpayer Identification Number, or taxpayer number in home jurisdiction (non-US entities)
- A Reporting Company must file an updated statement if there is a change to any reported information, including a change of address or name change.

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# What does a Reporting Company report about Beneficial Owners?

***Only individuals can be Beneficial Owners***

- Full legal name
- Date of birth
- Current residential address
- A unique identification number (such as a driver's license, identification card, or passport number)
- A digital copy of the identifying document

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# What does a Reporting Company report about Beneficial Owners?

- An identification number
- Date of birth
- Full legal name
- Current residential address
- A digital copy of the identifying document



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# What does a Reporting Company report about Company Applicants?

***Only individuals can be Company Applicants***

- Full legal name
- Date of birth
- Current business address (alternatively a residential address)
- A unique identification number (such as a driver's license, identification card, or passport number)
- A digital copy of the identifying document

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# FinCEN ID

- A FinCEN ID is available through Login.gov after providing name, address, date of birth, unique identification number (such as a driver's license, identification card, or passport number), and a digital copy of the identifying document
- Like a CAF#, BSA, or PTIN, FinCEN will issue you an identifier number that can be provided to any Reporting Company instead of providing that information to a Reporting Company.
- Entities may also obtain a FinCEN ID.
- Any individual or entity with a FinCEN ID must update FinCEN of any change or if they become aware or have reason to know any information was inaccurate.

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# What happens if a Reporting Company doesn't report?

- An individual who **willfully** provides false or fraudulent information, or willfully fails to report complete or updated Beneficial Ownership information faces a civil penalty of \$500/day the violation continues or is not remedied, and a criminal fine of up to \$10,000, and/or 2 years imprisonment
- There is a 90-day safe-harbor if an individual voluntarily submits a report containing correct information



# From the top: What's Changed?

Effective January 1, 2024, a Reporting Company must disclose information about the Reporting Company, its Beneficial Owners, and the Company Applicants to the Financial Crimes Enforcement Network (FinCEN) of the Department of Treasury.

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# What Is a Reporting Company?

- The Act defines a Reporting Company as a corporation, LLC, or other similar entity that meets either of these requirements.
  - It was created by filing a document with a secretary of state or a similar office under the law of a State or Indian Tribe.
  - It was formed under the law of a foreign country and registered to do business in the United States by the filing of a document with the secretary of state or a similar office under the laws of a State or Indian Tribe.
- LPs, LLPs, and business trusts (statutory trusts) are “similar” entities.
- Trusts are excluded as Reporting Companies, but trustees, grantors, and beneficiaries are not excluded from being Beneficial Owners.
- General partnerships should be excluded as Reporting Companies.

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# 23 Exempt Entities (i.e., not Reporting Companies)

- **Securities Reporting Issuer** under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l), or is required to file supplementary and periodic information under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)).
- **Domestic governmental authorities** established under the laws of the United States, an Indian tribe, a State, or a political subdivision of a State, or under an interstate compact between two or more States; and exercises governmental authority on behalf of the United States or any such Indian tribe, State, or political subdivision.
- **Any Bank** as defined in one of these places.
  - Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)
  - Section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a))
  - Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)).
- **Any Federal credit union or State credit union** as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

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# 23 Exempt Entities (i.e., not Reporting Companies)

- **Depository institution holding company** as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), or any savings and loan holding company as defined in section 10(a) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)).
- **Any Money Services Business (money transmitting business)** registered with FinCEN under 31 U.S.C. 5330, and any money services business registered with FinCEN under 31 CFR 1022.380.
- **Any broker or dealer** as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), that is registered under section 15 of that Act (15 U.S.C. 78o).
- **Securities exchange or clearing agency.** Any exchange or clearing agency, as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), that is registered under sections 6 or 17A of that Act (15 U.S.C. 78f, 78q-1).
- Any other entity that is registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*)

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# 23 Exempt Entities (i.e., not Reporting Companies)

- **Investment company or investment adviser.**

- Either an investment company as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3) or an investment adviser as defined in section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2)

AND

- Registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*).

- **Venture capital fund adviser.**

- Any investment adviser described in section 203(l) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(l))

AND

- Has filed Item 10, Schedule A, and Schedule B of Part 1A of Form ADV, or any successor thereto, with the Securities and Exchange Commission.

- **Any insurance company** defined in section 2 of the Investment Company Act of 1940 (15 U.S.C. 80a-2).

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# 23 Exempt Entities (i.e., not Reporting Companies)

- **State-licensed insurance producer.**
  - An insurance producer that is authorized by a State and subject to supervision by the insurance commissioner or a similar official or agency of a State; and
  - Has an operating presence at a physical office within the United States.
- **Commodity Exchange Act registered entity.**
  - A registered entity as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a)
  - OR IS BOTH
  - A futures commission merchant, introducing broker, swap dealer, major swap participant, commodity pool operator, or commodity trading advisor, each as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a), or a retail foreign exchange dealer as described in section 2(c)(2)(B) of the Commodity Exchange Act (7 U.S.C.2(c)(2)(B))
  - Registered with the Commodity Futures Trading Commission under the Commodity Exchange Act.

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## 23 Exempt Entities (i.e., not Reporting Companies)

- **Any public accounting firm** registered in accordance with section 102 of the Sarbanes-Oxley Act of 2002 (15 U.S.C.7212).
- **Any public utility** defined in 26 U.S.C. 7701(a)(33)(A) that provides telecommunications services, electrical power, natural gas, or water and sewer services within the United States.
- **Any financial market utility** designated by the Financial Stability Oversight Council under section 804 of the Payment, Clearing, and Settlement Supervision Act of 2010 (12 U.S.C. 5463).
- **Any pooled investment vehicle** operated or advised by an exempt entity that is a bank, credit union, broker or dealer, investment company or investment adviser or venture fund adviser.

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# 23 Exempt Entities (i.e., not Reporting Companies)

- **Tax-exempt entities.**

- An entity defined under IRC § 501(c) (determined without regard to IRC § 508(a)) and exempt from tax under IRC § 501(a). They remain an exempt entity for 180 days after losing exempt status, giving it 210 days to report.
- A political organization defined in IRC § 527(e)(1) and exempt from tax under IRC § 527(a).
- Charitable Trusts under IRC § 4947(a)(1).
- Split-Interest Charitable Trusts under IRC § 4947(a)(2).





# 23 Exempt Entities (i.e., not Reporting Companies)

- **Entity assisting a tax-exempt entity.**
  - Operates exclusively to provide financial assistance to, or hold governance rights over, any exempt entity that is a Tax-exempt entity
  - Is a United States person under IRC § 7701(a)(30) (e.g., an individual, a trust, estate, partnership, association, company or corporation)
  - Is beneficially owned or controlled exclusively by one or more United States persons that are United States citizens or lawfully admitted for permanent residence (i.e., people who have to file IRS Form 1040 annually)
  - Derives at least a majority of its funding or revenue from one or more United States persons that are United States citizens or lawfully admitted for permanent residence.



# 23 Exempt Entities (i.e., not Reporting Companies)

- **Inactive entity.** Any entity that meets all the following requirements.
  - Was in existence on or before January 1, 2020
  - Is not engaged in active business
  - Is not owned by a foreign person, whether directly or indirectly, wholly or partially
  - Has not experienced any change in ownership in the preceding 12 months
  - Has not sent or received any funds in an amount greater than \$1,000, either directly or through any financial account in which the entity or any affiliate of the entity had an interest, in the preceding 12 month
  - Does not otherwise hold any kind or type of assets, whether in the United States or abroad, including any ownership interest in any corporation, limited liability company, or other similar entity

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# 23 Exempt Entities (i.e., not Reporting Companies)

- **Subsidiaries of Exempt Entities.** Any entity whose ownership interests are controlled or wholly owned, directly or indirectly, by one or more exempt entities.
- Exception! Subsidiaries of the following exempt entities must report Beneficial Owner Information.
  - Money Services Business
  - Pooled Investment Vehicle
  - Entity Assisting a Tax-Exempt Entity
  - Inactive Entity

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# 23 Exempt Entities (i.e., not Reporting Companies)

- **A Large Operating Company**

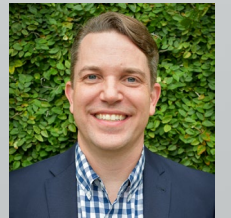
- More than 20 (i.e., 21+) full-time employees in the United States
  - 30 hours of service per week in a calendar month under 26 C.F.R. 54.4980H-1(a) and 54.4980H-3
  - “United States” means States of the United States, the District of Columbia, the Indian lands (as defined in the Indian Gaming Regulatory Act), and the Territories and Insular Possessions of the United States under 31 C.F.R. § 1010.100(hhh)
- Gross receipts or sales as reported on a federal income tax or information return for the previous year showing over \$5 million in gross receipts or sales, reported as gross receipts or sales (net of returns and allowances) on or the applicable IRS form (e.g., Form 1120, consolidated Form 1120, Form 1120-S, or IRS Form 1065).
  - Excludes gross receipts or sales from sources outside the United States.
  - For affiliated corporations filing a consolidated return, use the amount reported on the consolidated return.
- Has an operating presence at a physical office within the United States
  - “regularly conducts its business at a physical location in the United States that the entity owns or leases and that is physically distinct from the place of business of any other unaffiliated entity. 31 C.F.R. § 1010.380(f)(6).

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# Not Automatically Exempt Entities (i.e., Reporting Companies Unless Otherwise Exempt)

- Law firms
- Accounting firms
- Doctor's office
- Family Limited Partnerships
- Private Trust Companies





# Exempt Entities (i.e., not Reporting Companies)

Do Exempt Entities as of  
December 31, 2023, need to  
file anything to claim their  
exempt status?

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## Appendix—Beneficial Ownership Information (BOI) Report Summary of Data Fields

**Note:** Lines that must be filled in for a report to be accepted are identified with the \* symbol next to the line number. *Italicized text* provides a description and/or explanation of lines and response options for purposes of this PRA notice.

### Filing Information

1. \* Type of filing (*check only one box for lines 1a–1d*)
  - a. Initial report
  - b. Correct prior report (*if this box is checked, then you must fill out lines 1e–1h (Reporting Company information associated with most recent report)*)
  - c. Update prior report (*if this box is checked, then you must fill out lines 1e–1h (Reporting Company information associated with most recent report)*)
  - d. New exempt entity (*if this box is checked, then you must fill out lines 1e–1h (Reporting Company information associated with most recent report) and no other lines in the report*)
- Reporting Company information associated with most recent report, if any: (*Lines 1e–1h must be filled out when the type of filing is “Correct prior report” (line 1b), “Update prior report” (line 1c), or “Newly exempt entity” (line 1d) in order to link the new filing to the previous filing*)
- e. Legal name
- f. Tax identification type (*select one from list of options*)
  - EIN
  - SSN/ITIN
  - Foreign
- g. Tax identification number
- h. Country/Jurisdiction (if foreign tax ID only) (*select from list of countries/jurisdictions*)

# Exempt Entities (i.e., not Reporting Companies)

- No, according to FAQ L.5, a company does not need to report to FinCEN that it is exempt from the BOI reporting requirements if it has “always” been exempt.
- There’s no affirmative authority requiring Exempt Entities to file anything.
- But Exempt Entities should consider spending the 5 minutes to affirmatively claim their exempt status by reporting their legal name and TIN (plus jurisdiction of formation if foreign EIN/TIN).

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# Terminated Entities

Do entities that terminated  
on or before December 31,  
2023, need to file anything?

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# Terminated Entities

- FAQ G. 4. Should an initial BOI report include historical beneficial owners of a reporting company, or only beneficial owners as of the time of filing?
- A: An initial BOI report should only include the beneficial owners as of the time of the filing. Reporting companies should notify FinCEN of changes to beneficial owners and related BOI through updated reports.
- Thoughts
  - Even if the language of the statute and the regulations doesn't say “still in existence” an entity that no longer exists has no beneficial owners and doesn't have the authority to report as required.
  - Terminated entities as of 12/31/23 have no person authorized to file and no beneficial owners. The same is true on 1/1/24 when the portal opens.
  - From 5.1 of the Small Business Guide: If your company already exists as of January 1, 2024, it must file its initial BOI report by January 1, 2025.

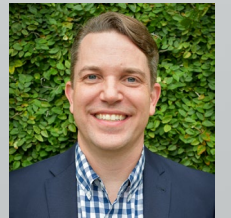
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# What if the Reporting Company Is Owned by an Exempt Entity?

- Beneficial Owner Information is not required to be reported for entities that are wholly owned or controlled by other exempt entities.
  - Exception: If one or more of those exempt entities is a money service business, a pooled investment vehicle, or an entity assisting a tax-exempt entity, then Beneficial Owner Information must be reported.
- The Reporting Company then reports the Exempt Entity's name and TIN instead.

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# Entities That Change Exemption Status

*If the exemption status changes, tell FinCEN.*

- Entities that lose their exemption status will need to file a report within 30 days of losing that status.
- Entities that qualify for an exemption after filing an initial report must file report within 30 days of gaining that status.

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# Is this a Reporting Company?

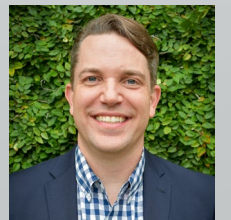
- Strohmeyer Law PLLC, a law firm with two attorneys and four other staff and annual revenues less than \$5,000,000
- Smith Jones Smith, a law firm with 100 attorneys and 75 other staff
- Family Cabin LLC, with three members and zero revenue
- Local Growing Business Inc., with revenue of \$15,000,000 and 20 employees
- Insurance Planning Escape Hatch, a general partnership owned by a trust and an individual



# Who is *Not* a Beneficial Owner?

- A minor child (defined by state law for the Reporting Company's formation)
  - But only if the information of the minor's parent or guardian is reported (both?)
- An individual acting as a nominee, intermediary, custodian, or agent on behalf of another individual.
- An individual acting solely as an employee of the Reporting Company.
  - Their control over or economic benefits from the Reporting Company must be derived solely from their employment status.
  - Unless they're a Senior Officer, then they're a Beneficial Owner.
- An individual whose only interest in the Reporting Company is through a right of inheritance.
  - Sorry, no definitions or guidance on this. ㄟ(っ)ㄟ
- A creditor of the Reporting Company
  - Unless they're already a Beneficial Owner.

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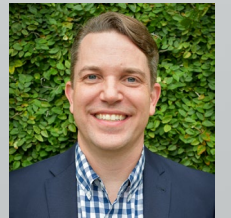
# Who is a Beneficial Owner?

- An individual who
- Directly or indirectly
- Through any contract, arrangement, understanding, relationship, or otherwise
- EITHER
  - Exercises Substantial Control over the Reporting Company; or
  - Owns or controls at least 25% of the ownership interests of the Reporting Company.



# Who “Owns or Controls” Interests?

- Ownership interests are calculated at the present time.
- Ownership interest is defined broadly to include equity, profit sharing agreements, voting trusts, convertible debt, and options.
  - Joint ownership with others of an undivided interest in the ownership interest.
  - Ownership through subsidiary entities.
- Any options or similar interests are treated as exercised.





# Who “Owns or Controls” Interests?

- Capital or profits interests are calculated as percentage of the total outstanding capital or profits interests (not the total ownership interests).
- For corporations, entities taxed as corporations, and S corporations, the shares owned is the greater of these options.
  - The total combined voting power (e.g., voting shares in an S corporation), or
  - The total combined value of the ownership interest of all classes of ownership (e.g., non-voting shares in an S corporation)



# Who “Owns or Controls” Interests?

- What happens if the facts and circumstances do not permit either the capital-or-profits-interest calculations or the vote-or-value calculations for corporations to be performed with reasonable certainty?
- Then any individual who owns or controls 25% or more of any class or type of ownership interest of a Reporting Company is treated as a Beneficial Owner.

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# Who “Owns or Controls” Interests In Trust?

- If a trust is involved, then the Regulations identify five (non-exhaustive) situations that will trigger Beneficial Owners status.
  - A trustee of the trust or other individual (if any) with the authority to dispose of trust assets under 31 C.F.R. § 1010.380(d)(2)(ii)(C)(1).
  - A beneficiary who is the sole permissible recipient of income and principal from the trust under 31 C.F.R. § 1010.380(d)(2)(ii)(C)(2)(i).
  - A beneficiary who has the right to demand a distribution of or withdraw substantially all of the assets from the trust under 31 C.F.R. § 1010.380(d)(2)(ii)(C)(2)(ii).
  - A grantor or settlor who has the right to revoke the trust under 31 C.F.R. § 1010.380(d)(2)(ii)(C)(3).
  - A grantor or settlor who has the right to otherwise withdraw the assets of the trust under 31 C.F.R. § 1010.380(d)(2)(ii)(C)(3).

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# Who “Owns or Controls” Interests In Trust?

- A trustee or other individual with authority to dispose of the asset.
  - Executors, Administrators, & Personal Representatives
  - Trust Protectors
  - Guardians, Custodians, & Conservators
- Who is the trustee?
  - Individual
  - Corporate Trustee that is a Reporting Company
  - Corporate Trustee that is not a Reporting Company (i.e., it is an Exempt Entity)
- Relevant Dates
  - Date of Acceptance
  - Date of Funding
  - Date of Death
  - Date of Resignation

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# Who “Owns or Controls” Interests In Trust?

- A beneficiary who is the sole permissible recipient of income and principal from the trust.
  - This should include wards in guardianships.
- A beneficiary who has the right to demand a distribution of or withdraw substantially all the trust assets (e.g., a lifetime power of appointment)
- Relevant Dates
  - Date of Funding
  - Date of Death





# Who “Owns or Controls” Interests In Trust?

- A grantor of the trust if it is revocable.
- A grantor of the trust if they have the right to withdraw trust assets regardless of form (e.g., a swap power for grantor trust status).
- Relevant Dates
  - Date of Funding
  - Date of Death

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# Who Has “Substantial Control”?

- “Senior Officers” who have *De Jure* Control
  - An individual holding the position or exercising the authority of a president, CFO, general counsel, CEO, COO, or any other officer who performs a similar function, regardless of official title.
  - Maybe not a secretary or a treasurer if they’re just ministerial roles.
- Others with *De Facto* Control
  - The ability to appoint and remove any Senior Officer
  - The ability to appoint or remove a majority of the board of directors
  - The ability to direct, determine, or have substantial influence over “Important Decisions” made by the Reporting Company

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# What is an “Important Decision”?

- The sale, lease, mortgage, or other transfer of any principal assets
- The reorganization, dissolution, or merger of the Reporting Company
- Major expenditures or investments, issuances of any equity, incurrence of any significant debt, or approval of the operating budget
- Selection or termination of business lines or ventures, or geographic focus
- Compensation schemes and incentive programs for senior officers
- The entry into or termination, or the fulfillment or non-fulfillment, of a significant contract
- Amendments of any substantial governance documents

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# What is an “Important Decision”?

“any other form of substantial control  
over the reporting company”

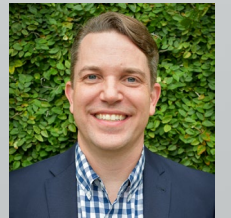
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# Who Is a Beneficial Owner?

- A Manager of Family Cabin LLC
- President of Local Growing Business Inc.
- H-E-B store manager
- Angel investor who can appoint 2 out of 5 directors
- Creditor with security interest in the sole business asset
- The Managing Director of Corporate Trustee, which serves as the trustee of a trust that owns 25% of a Reporting Company
- Someone with the right to replace the trustee of a trust that owns 25% of a Reporting Company

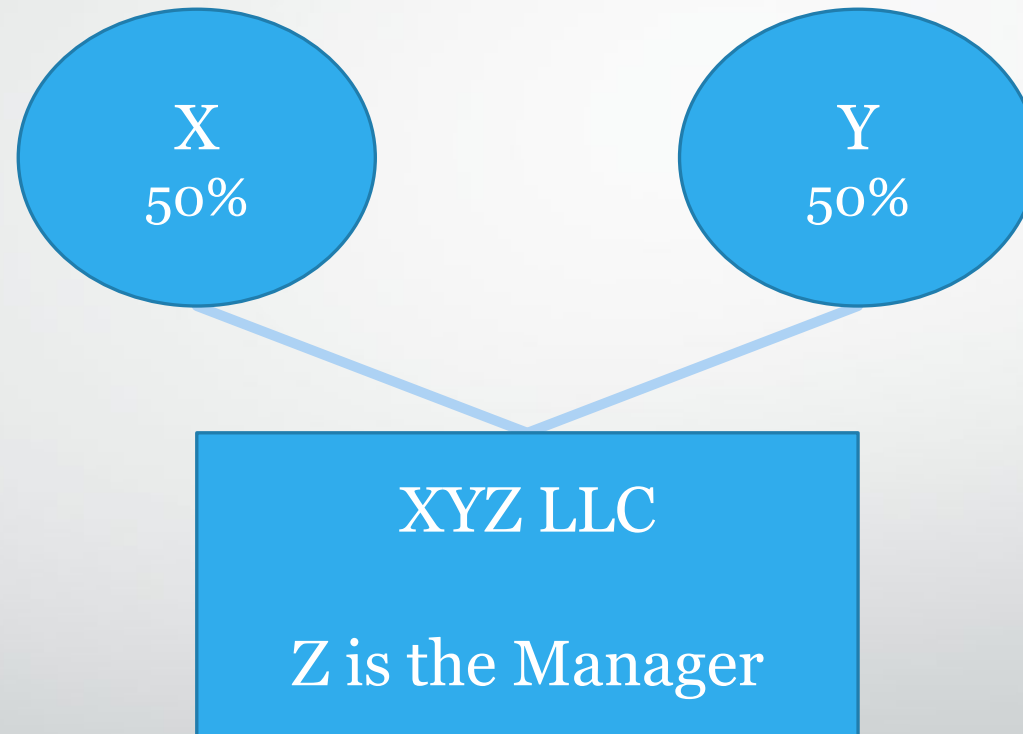
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# Example 1

## Who Are the Beneficial Owners?

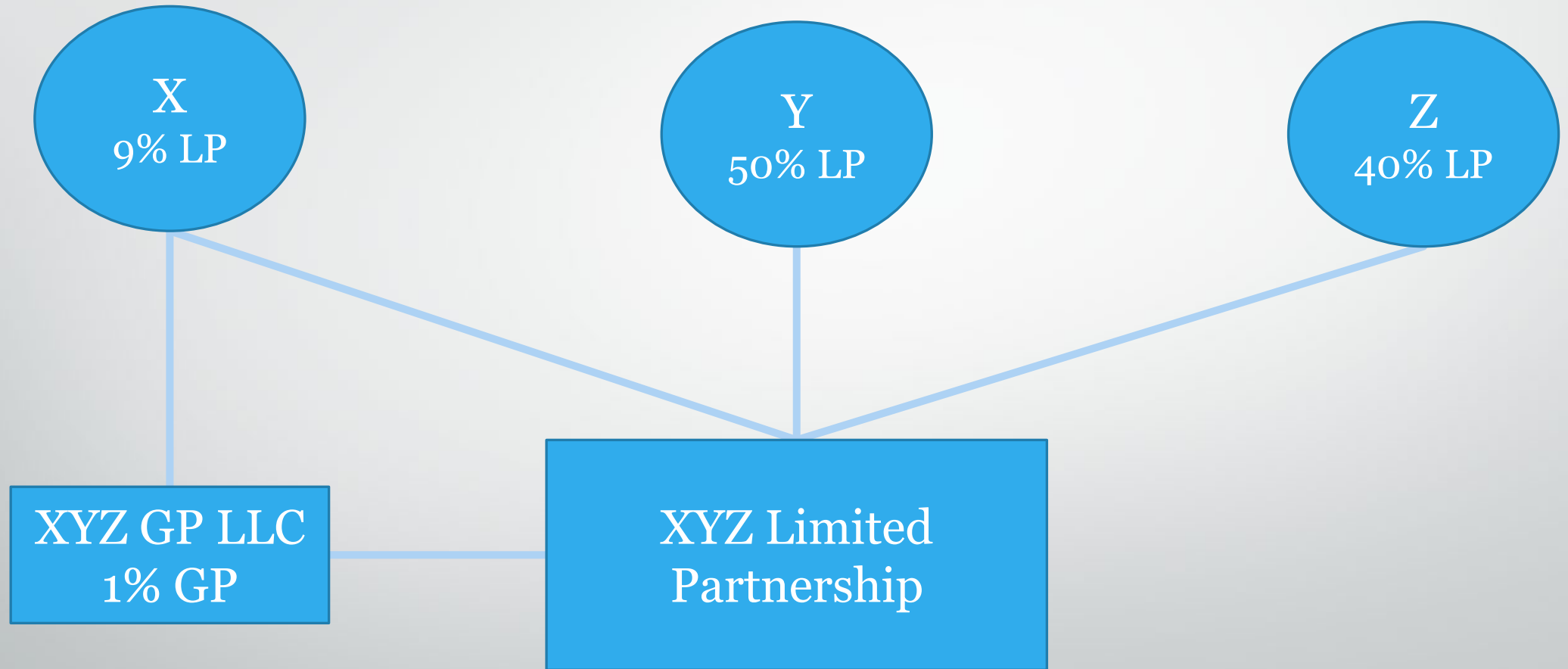


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# Example 2

## Who Are the Beneficial Owners?

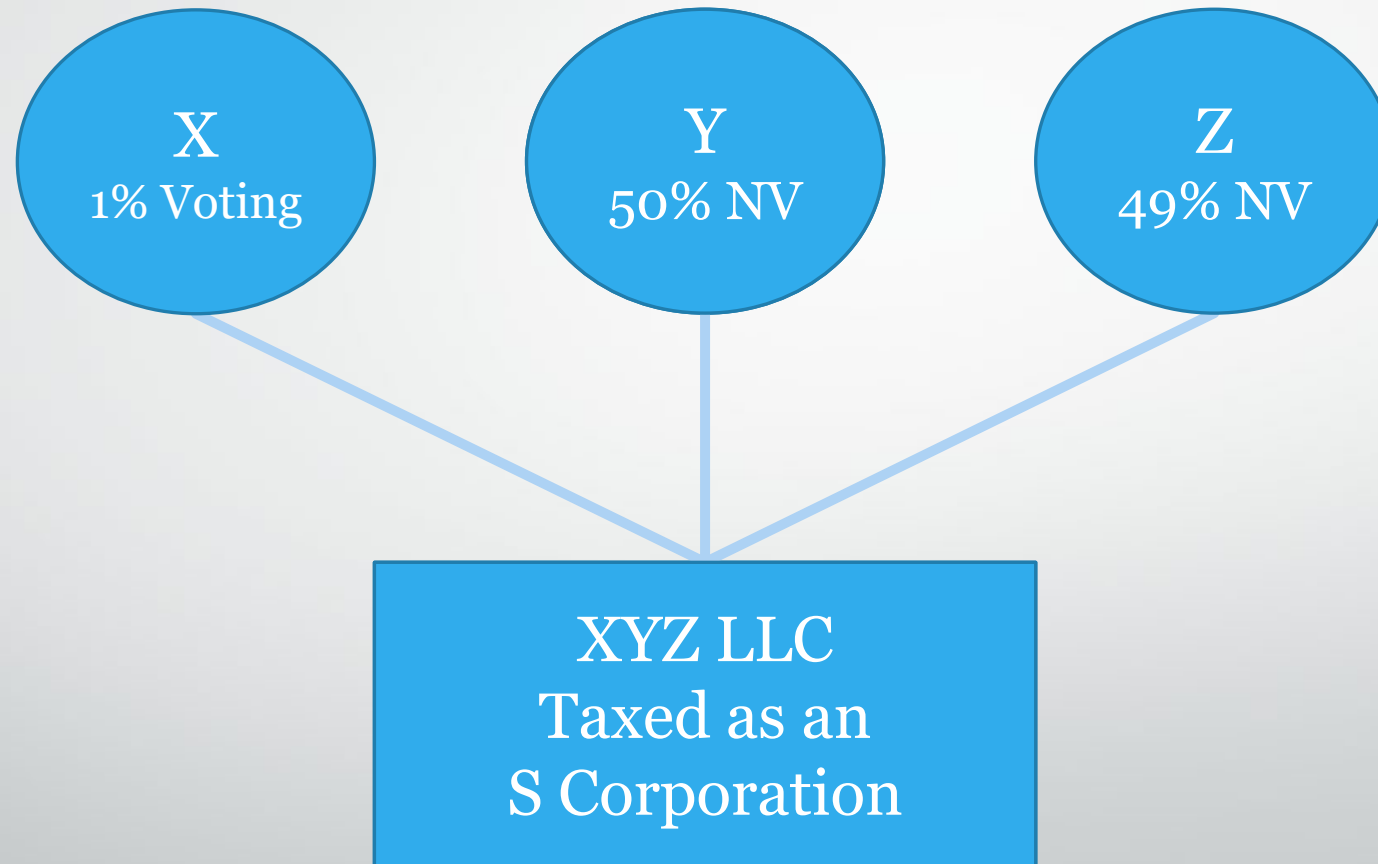


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# Example 3

## Who Are the Beneficial Owners?

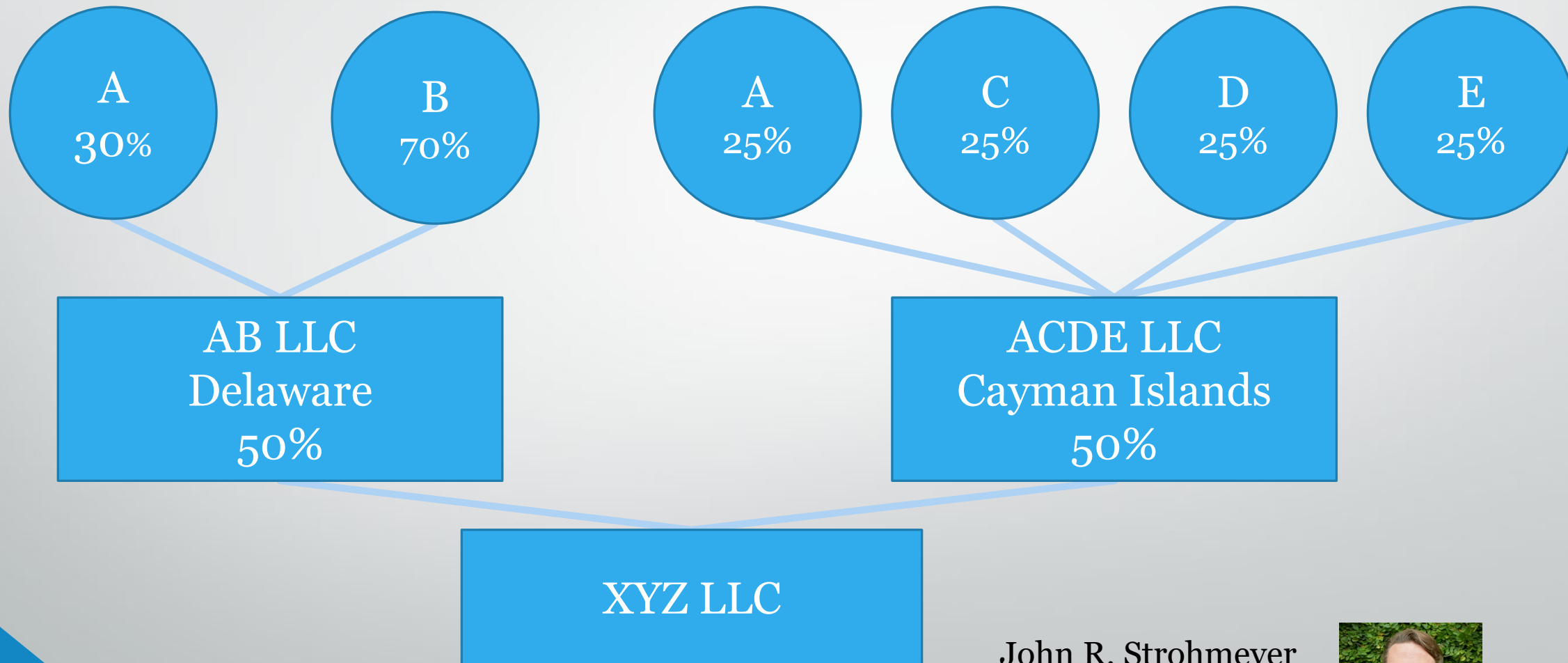


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# Example 4

## Who Are the Beneficial Owners?

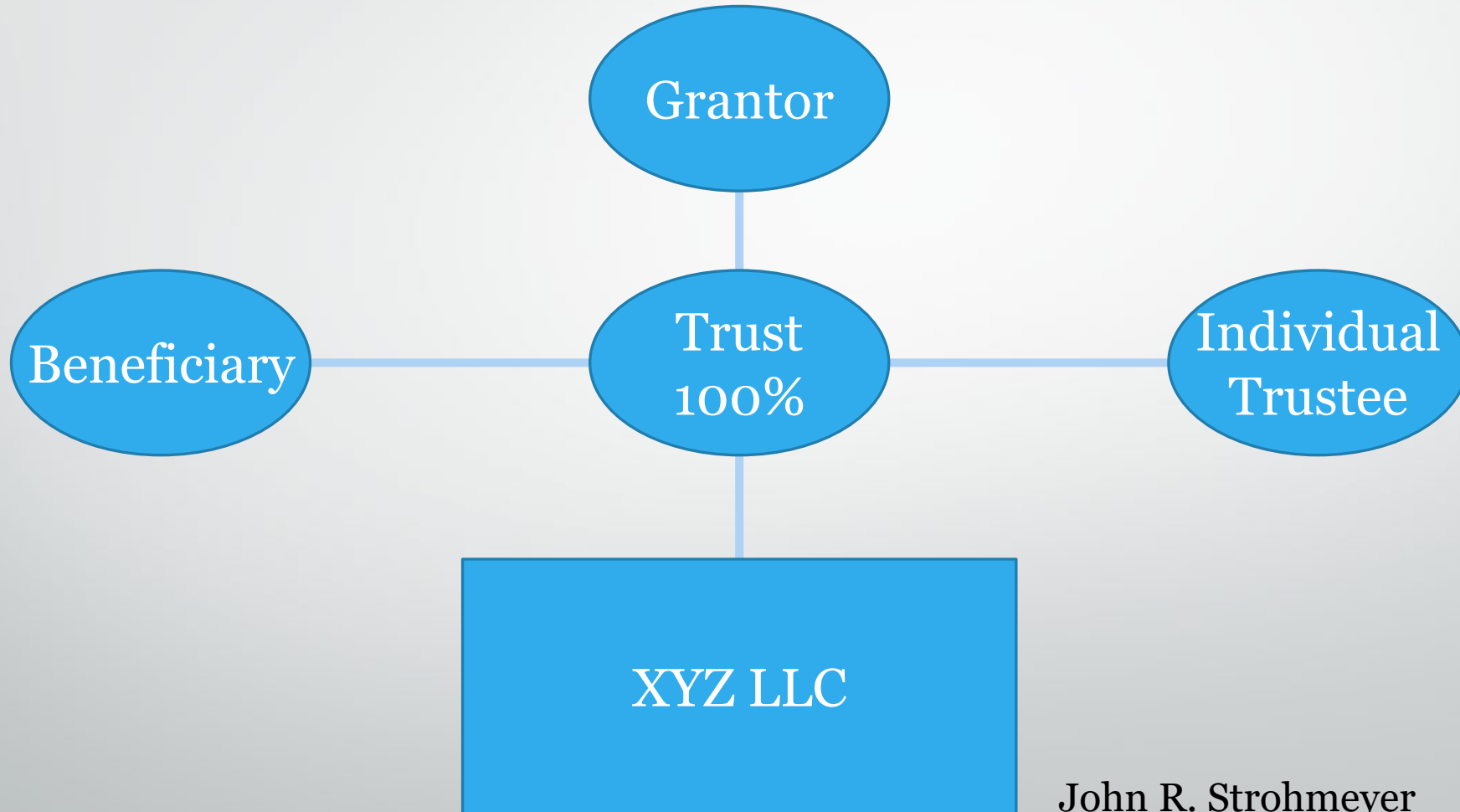


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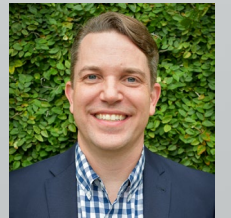


# Example 5

## Who Are the Beneficial Owners?



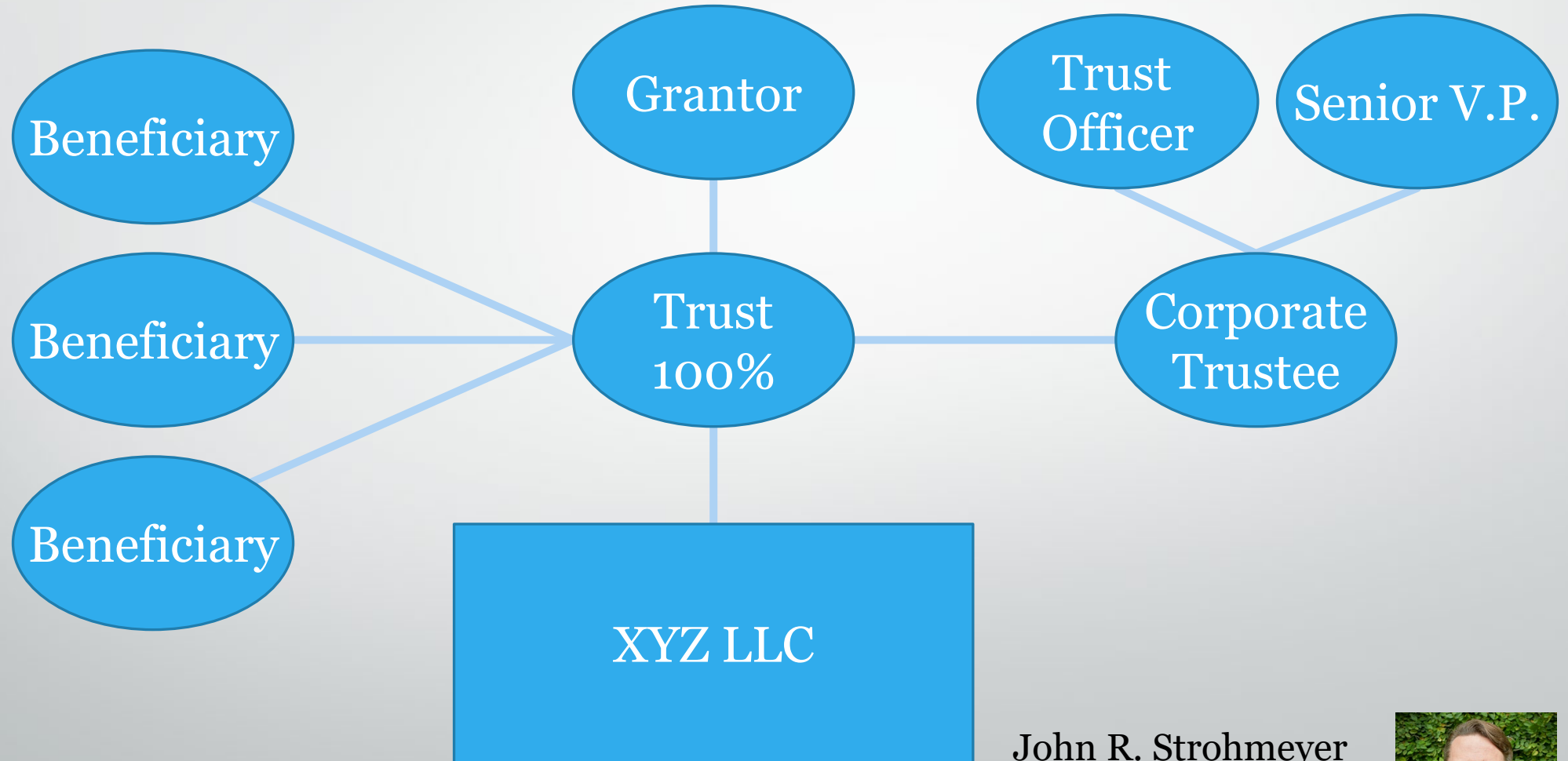
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# Example 6

## Who Are the Beneficial Owners?

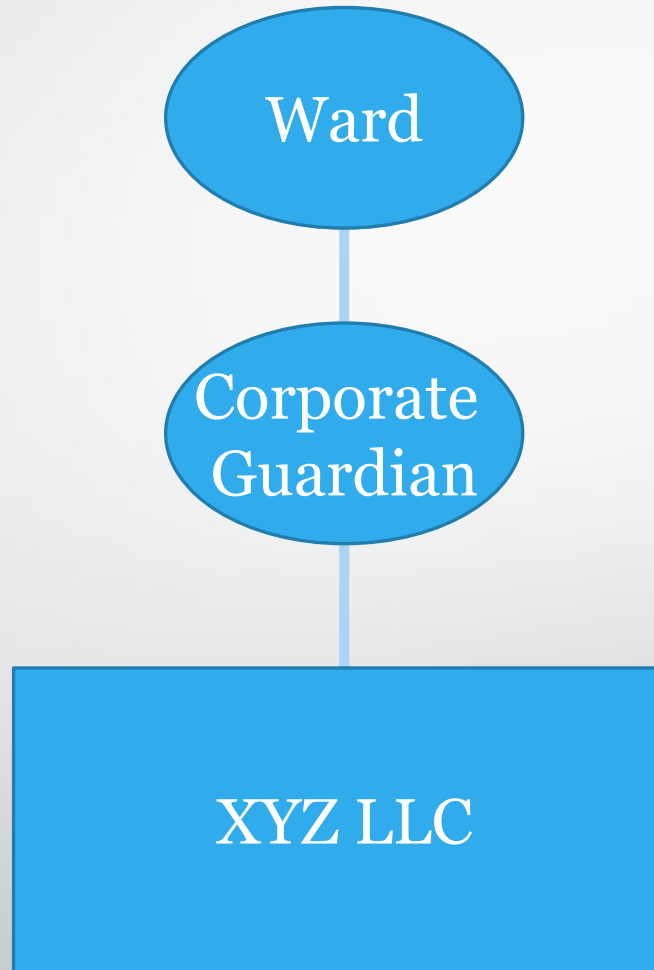


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# Example 7

## Who Are the Beneficial Owners?

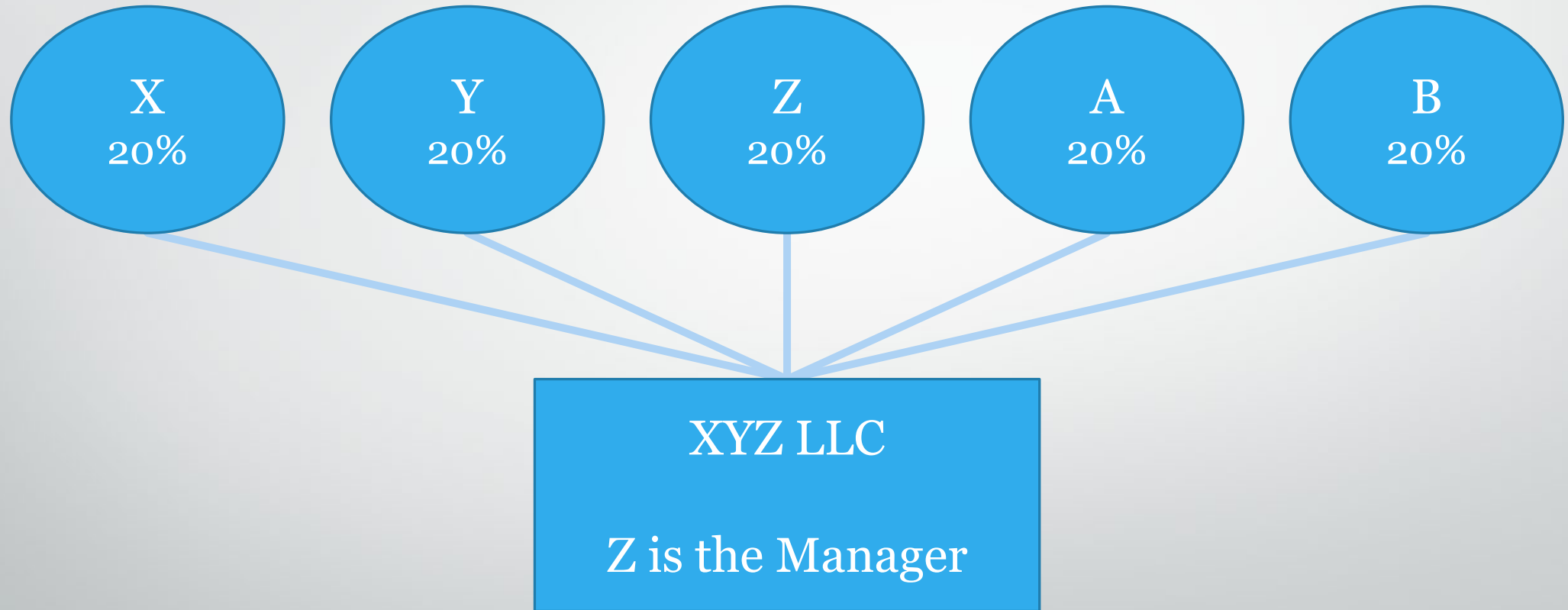


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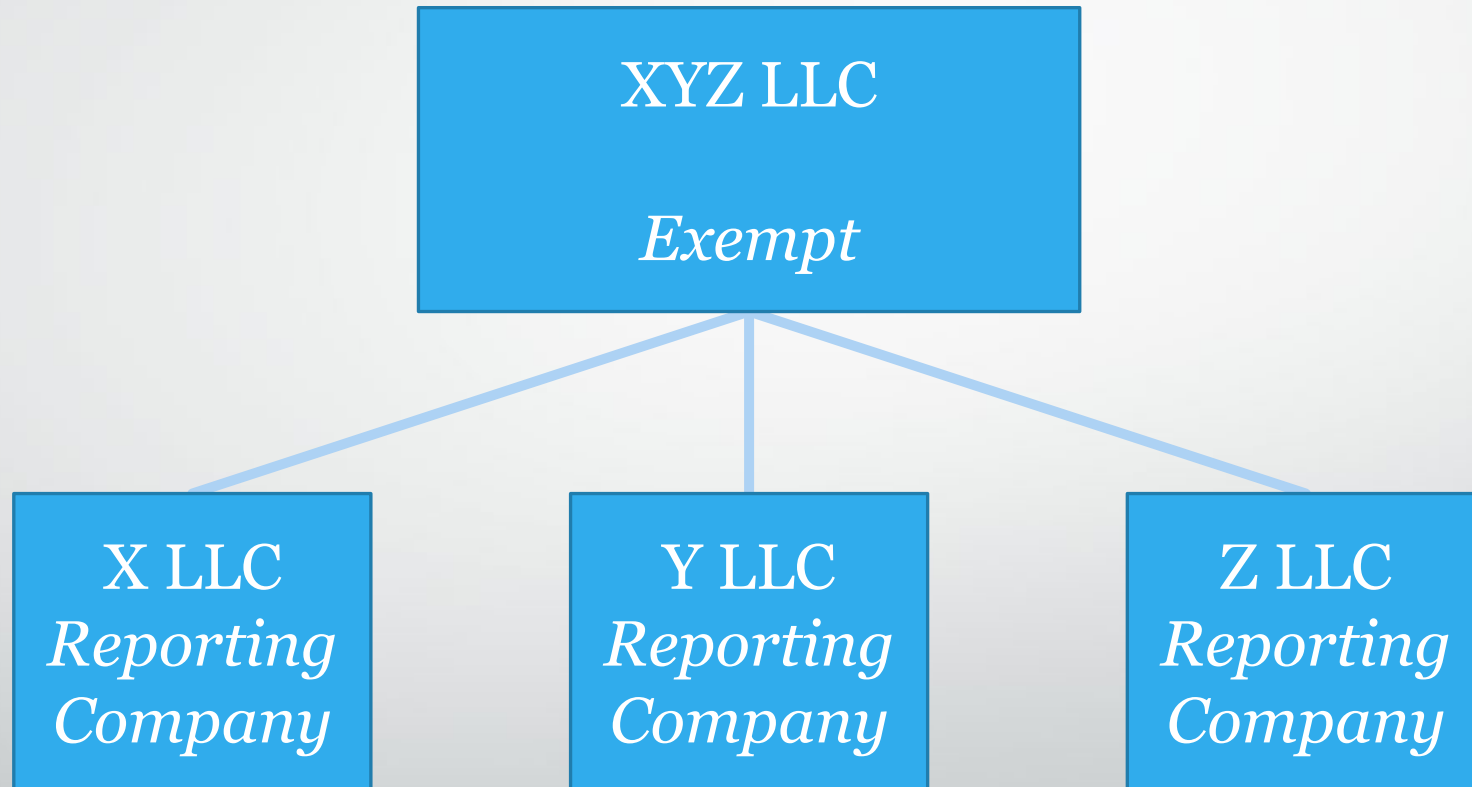
# Example 8

## Who Are the Beneficial Owners?



# Example 9

## Who Are the Beneficial Owners?



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# Who is a Company Applicant?

- An individual who is responsible for the creation of a reporting company through the filing of formation documents, and the individual who directly submits the formation documents.
  - Any individual who files the document creating a domestic Reporting Company
  - Any individual who registers a foreign Reporting Company
  - Any individual who “directs or controls” the filing of such documents by another (i.e., you, the person listening to me right now).
- Only applies to Reporting Companies formed after December 31, 2023

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# Who is a Company Applicant?

- Two Tests
  - Any individual who files the document creating the Reporting Company or registering a foreign Reporting Company
  - Any individual who “directs or controls” the filing of such documents by another
- There can be one or two Company Applicants for any company
- The exemptions for Reporting Companies don’t apply to Company Applicants
- Consequences
  - The Company Applicants will be permanently associated with this entity.

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## • The exemptions for Reporting Companies don't apply to Company Applicants

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  - The Company Applicants will be permanently associated with this entity.

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# Who is a Company Applicant?

- Assume the clients in all four examples used Strohmeyer Law PLLC to form the entities.
- Strohmeyer Law PLLC doesn't qualify for a Reporting Company exemption.
- John directs associate Ginna to create the formation paperwork, and operations manager Brad files the paperwork with the Texas Secretary of State. Bookkeeper Bill obtains the EIN for XYZ LLC.
  - Strohmeyer Law PLLC must report as a Reporting Company
  - John and Brad must report individually as Company Applicants.
  - Bill and Ginna do not need to report as a Company Applicant.

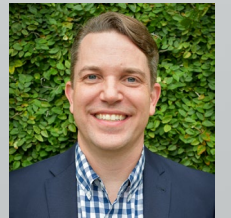
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# When is a Report Due?

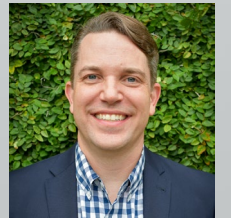
- “Existing Reporting Companies” Formed Before January 1, 2024
  - Initial Report is due by January 1, 2025.
  - Updated reports due within 30 days after the Initial Report has been filed.
  - Company Applicant information is not required.
  - Exempt companies should consider filing to claim the exemption.
- “New Reporting Companies” Formed After December 31, 2023
  - For entities formed in 2024, the Initial Report is due 90 days after formation.
  - For entities formed after 2024, the Initial Report is due 30 days after formation.
  - Updated reports due within 30 days after the Initial Report has been filed.
  - Company Applicant information is required.

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# How Do You File a Report?

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# What If Something Changes?

*If something changes, tell FinCEN.*

A Reporting Company must file an updated report within 30 days after any change to any information previously submitted to FinCEN, including a change of address or name change, about the Reporting Company, a Beneficial Owner, or a Company Applicant.

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# The Reporting Company Must Report These Changes (Not an exhaustive list)

- An addition or removal of a Beneficial Owner
- An addition or removal of a person with Substantial Influence
- A change in the residential address of a Beneficial Owner
- A change in the business address of a Company Applicant
- A Large Operating Company no longer qualifies as exempt
- An executor with the power to dispose of the entity is appointed

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# The Reporting Company Doesn't Need to Report These Changes (Not an exhaustive list)

- A change in the business address of a Beneficial Owner
- A change in the residential address of a Company Applicant
- An exempt entity qualifies for an additional exemption
- An exempt company qualifies as a Large Operating Company
- If a Beneficial Owner dies, the change probably doesn't occur until the "future interest" becomes a "present interest."

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# What If Something Was Wrong?

If a Reporting Company becomes aware “or has reason to know” that information contained in a report is inaccurate they have 30 days from that date to file a corrected report.

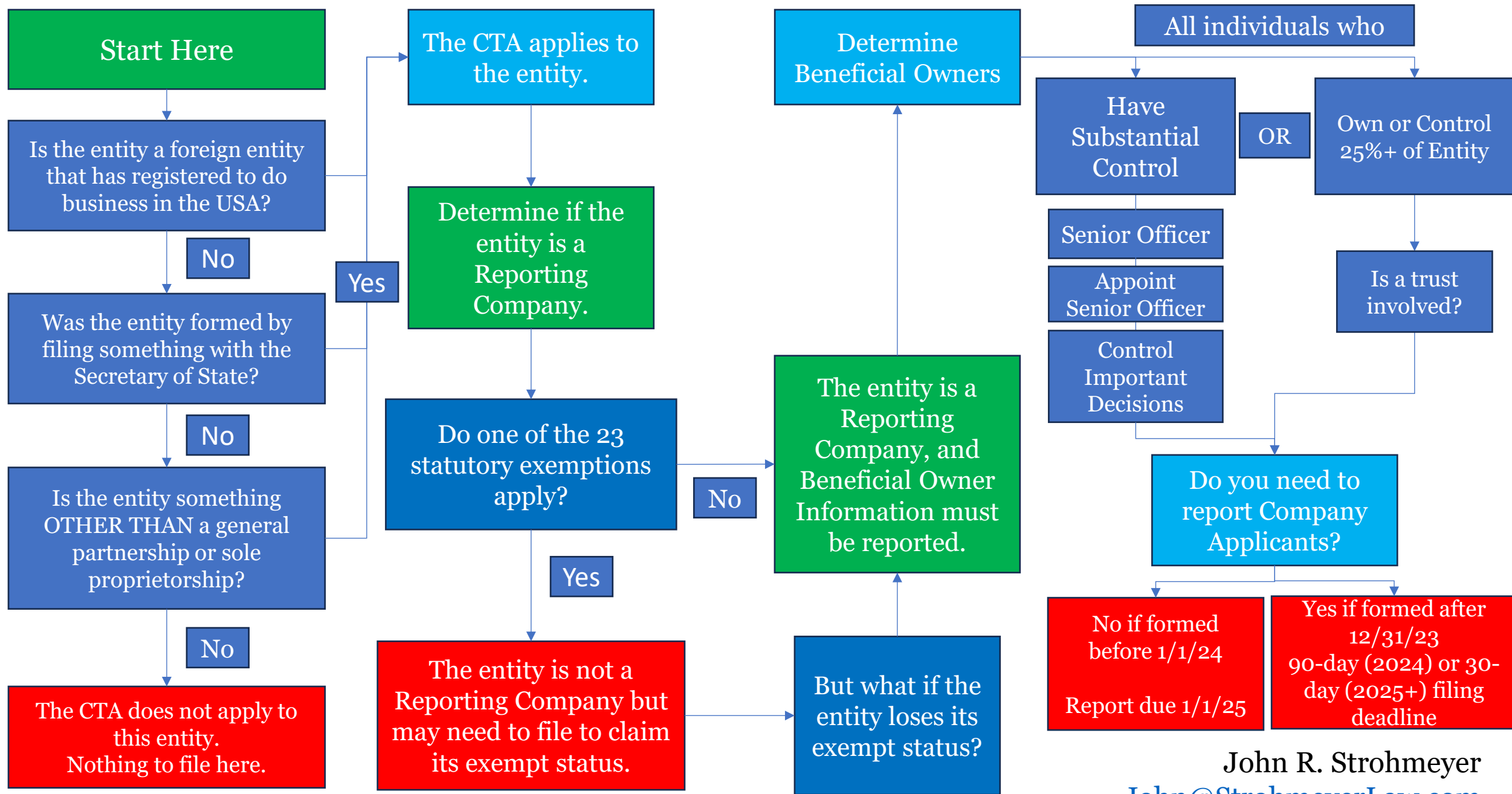
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# Life Cycle of an Entity

- Existing Entities
  - File initial Beneficial Owner report before January 1, 2025.
  - Reach out to clients now.
- New Entities
  - File initial Beneficial Owner report within 30 days of formation or registration
  - Don't form the entity until you have all Beneficial Owner information.
- M&A or Change in Beneficial Owners
  - File updated Beneficial Owner report within 30 days of change
  - Don't close the deal until you have all Beneficial Owner information.
- Termination
  - Unclear. ￣\\_(\ツ)\\_/￣







# Language for Company Agreements

1. Is this entity a Reporting Company?
  1. If not, what exemption does it qualify for?
2. Who are the Beneficial Owners as of formation?
  1. How do they qualify as Beneficial Owners?
  2. When does this information need to be filed?
3. Who are the Company Applicants?

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# What Is Your Obligation as an Advisor?

- Yes, you're probably the Company Applicant.
- What level of due diligence will you do on information provided by clients about their Beneficial Owners?
- Will you contact old clients?
- Will you review existing structures to determine Beneficial Owners?

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# Language for Engagement Letters

## No Responsibility 1 of 3

- **Corporate Transparency Act Compliance.** Beginning on January 1, 2024, the Corporate Transparency Act will require that certain entities that are formed or registered to do business in the United States report Beneficial Owner Information to the Financial Crimes Enforcement Network.

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# Language for Engagement Letters

## No Responsibility 2 of 3

- During our representation of you, we may discuss your obligations under the Corporate Transparency Act, but Strohmeyer Law will not be responsible for determining or reporting any Beneficial Owner Information for any entity unless we have been specifically retained to report Beneficial Owner Information for any entity. In other words, any verbal discussions with you will not create an obligation on our part to report or determine Beneficial Owner Information for any entity or to report Beneficial Owner Information to the Financial Crimes Enforcement Network.

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# Language for Engagement Letters

## No Responsibility 3 of 3

- The obligation to determine and report Beneficial Owner Information to the Financial Crimes Enforcement Network will be an obligation of each respective entity.

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# Language for Engagement Letters

## Taking Responsibility 1 of 3

- **Corporate Transparency Act Compliance.** Beginning on January 1, 2024, the Corporate Transparency Act will require that certain entities that are formed or registered to do business in the United States report Beneficial Owner Information to the Financial Crimes Enforcement Network. We are being retained to assist you with [the formation of \*New Business LLC\*/the acquisition of \*Target Entity\*]. We will work with you to determine the Beneficial Owner Information of \*Entity\* as required by the Corporate Transparency Act.

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# Language for Engagement Letters

## Taking Responsibility 2 of 3

- OPTION: We will not form \*Entity\* with the Secretary of State of Texas until we have all information needed to report the Beneficial Owners Information for all Beneficial Owners as required by the Corporate Transparency Act (i.e., full legal name, birth date, residential address, and an image of their identifying document, such as a driver license or passport).
- OPTION: We will obtain a FinCEN Id for each Beneficial Owner as part of our representation.
- OPTION: We will report the initial Beneficial Owner Information on your behalf to the Financial Crimes Enforcement Network. After we have filed that initial report, we will not have any ongoing duty to file updated reports to reflect changes in the Beneficial Owners of \*Entity\*. We will rely upon information provided by you to determine the Beneficial Owners of \*Entity\*.

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# Language for Engagement Letters

## Taking Responsibility 3 of 3

- OPTION: As part of obtaining a FinCEN ID, we will not accept emailed images of any identifying document, such as a driver license or passport, for any person we have not met in person. We will only accept copies that have been scanned in our office by our staff.
- OPTION: It will be your obligation, as representative of \*Entity\*, to confirm that the Beneficial Owners and Company Applicants are reported correctly on an ongoing basis.
- OPTION: We will work with you to determine the existing Beneficial Owners of \*Entity\* as part of the acquisition of \*Target Entity\*.

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# What should you be doing now?

- Let clients and referral sources know this is coming.
- Update engagement letters to address how you'll assist with the CTA.
- Update company agreements to require compliance with the CTA.
- When the forms are released, add them to your document preparation.
- If you form entities for clients, formalize your internal process so you know who your Company Applicants will be.
- Register for a FinCEN ID when you can.
- Remind your clients and referral sources that this is coming!

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