

# To Our Clients and Friends

# Memorandum

March 8, 2021

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## *Corporate Transparency Act Impact on Real Estate Transactions*

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In December 2020, Congress passed the Corporate Transparency Act (“**CTA**”), as part of the National Defense Authorization Act for Fiscal Year 2021, impacting the ability of individuals and organizations to anonymously conduct business through private entities (e.g., corporations, limited liability companies, etc.).

Prior to the enactment of the CTA, in most states, parties could form and use private entities to conduct business without disclosing the ultimate beneficial owners of the applicable entities. For example, a party could purchase, finance or sell real estate using an authorized agent, such as an attorney, to sign paperwork in the applicable entity’s name, obscuring the identity of the ultimate beneficial owner.

The CTA requires certain private entities (“reporting companies”) to disclose the beneficial owners of those reporting companies to Department of the Treasury’s Financial Crimes Enforcement Network (“FinCEN”) and charges FinCEN with maintaining a database of such information. Under the CTA, reporting companies will be required to report the full legal name, address, birth date and driver’s license or passport number for each of the reporting companies’ “beneficial owners,” which is defined as persons who, directly or indirectly, exercise “substantial control” over an entity or own or control at least 25% of the ownership interests of an entity. FinCEN will be able to disclose the details of a reporting company’s beneficial ownership to law enforcement, regulatory agencies and, under certain circumstances, financial institutions, but the information will not otherwise be made public.

Newly formed reporting companies must make the required disclosures upon their creation, whereas, existing reporting companies must report the applicable information within two years. Furthermore, if a reporting company’s beneficial ownership details change, it will have one year to update the reported information.

Note that there are several categories of entities and beneficial owners that are exempt from the disclosure requirements, including, without limitation, minors, persons who inherited their interest, persons acting as intermediaries or agents, and entities subject to certain regulatory systems, such as publicly traded companies and banks.

Several aspects of the new law will require clarification through the adoption of regulations. For example, the CTA clearly applies to corporations and limited liability companies, but it is unclear whether the law will apply to partnerships and trusts. Likewise, the regulations will need to provide guidance regarding what “substantial control” means in regard to identifying beneficial owners.

Reporting companies will be required to comply with the CTA when the U.S. Department of the Treasury adopts regulations in connection with the law, which is anticipated to occur by January 1, 2022. The penalty for intentional violation of the CTA includes a five hundred dollar per day fine (up to ten thousand dollars) and/or two years in prison.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its contents. If you have any questions about the contents of this memorandum, please call your regular Fried Frank contact or an attorney listed below:

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