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THE CORPORATE TRANSPARENCY ACT:

NEW REGULATORY REQUIREMENTS FOR AFFORDABLE HOUSING AND COMMUNITY DEVELOPMENT

Presented by:

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CTA Overview

Effective Date and General Filing Obligations

Effective on January 1, 2024

Filing Requirement: A "Reporting Company" must file a "beneficial ownership interest report" ("***BOI Report***") with FinCEN (U.S. Treasury Department).

Due Date For Initial BOI Report:

- "New" Reporting Company: 30 days (90 days if formed during 2024).
- "Old" Reporting Company (Pre-Effective Date): January 1, 2025.

Due Date for Additional BOI Report:

- No other BOI Report is required, unless information changes.
- If change, then additional BOI Report is due 30 days after any change.

Easy to learn … difficult to master …

- Everyday transactions will trigger initial and additional BOI Reports.

The Reporting Company

Identifying Non-Exempt Entities

What is a Reporting Company?

Broad Definition of "Company": Except for a U.S. trust or general partnership, an entity is a "company" if it is either (a) formed in the U.S. or (b) if not, registered to do business in the U.S. ***No cut-off date.***

Reporting Company: A "company" is a "Reporting Company," unless it's:

- already subject to a specified regulatory regime (*e.g.*, public companies, banks, broker-dealers, *etc.*),
- a "large operating company" (more on this below),
- tax-exempt under IRC Code Section 501(a)(no co-ops or condo associations), or
- wholly-owned or all of its ownership interests are controlled by one or more the above exempt entities.

What is an “Exempt Company”?

For convenience, an “Exempt Company” refers to any company that is not a Reporting Company because it’s:

- already subject to a specified regulatory regime (*e.g.*, public companies, banks, broker-dealers, *etc.*),
- a “large operating company”,
- tax-exempt under IRC Code Section 501(a), or
- wholly-owned or all of its ownership interests are controlled by one or more the above exempt entities.

Exemption #1: Large Operating Company

Exemption: A company is not a Reporting Company if it is a “large operating company.”

Large Operating Company: A company is a “large operating company,” if it:

- employs more than 20 “full-time” U.S.-based employees (not consultants, partners or leased employees),
- has an operating presence at a physical U.S. office, AND
- for its most recent completed tax year, filed a U.S. federal tax return with gross receipts exceeding $5 million.

Trap: This test is applied on separate, stand-alone basis without any consolidation with commonly-owned or affiliated entities.

- No benefit for new, early-stage, or pure holding company or a company managed by an outside management company.

Exemption #2: Tax-Exempt Entity

General Rule: A company is not a Reporting Company if it is tax-exempt.

Tax-Exempt Entity: A company is tax-exempt if it:

- is listed as a tax-exempt organization under Internal Revenue Code Section 501(a), AND
- has not lost its tax-exempt status for more than 180 days.

Trap 1: Co-ops and condo associations do not qualify as tax-exempt.

Trap 2: Losing tax-exempt status on repeated failures to file Form 990 causes loss of this exemption.

Exemption #3: Wholly-Owned Sub of Exempt Company

General Rule: A company is not a Reporting Company if all ownership interests are wholly owned or wholly controlled by one or more Exempt Companies.

- ***Example:*** A wholly-owned taxable "blocker" subsidiary of a tax-exempt organization is not a Reporting Company.
- ***Example:*** A wholly-owned subsidiary of a public company is not a Reporting Company.

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The BOI Report

A Quick Overview

What is a BOI Report?

Company-Level Obligation: A Reporting Company must file any required BOI Report with FinCEN.

Required Disclosure: A BOI Report gathers identifying information about:

- the Reporting Company,
- any "Company Applicant," and
- any "Beneficial Owner" (25% equity owners and "substantial control" persons).

On-Line Filing Only: BOI Reports must be filed electronically, via a client-owned account on FinCEN's CTA portal.

Playing Defense: Reporting Company must be able to harvest the necessary identifying and monitor any changes that may require an updated BOI Report.

The BOI Report

Required Disclosure for the Reporting Company

Reporting Company Information

Reporting Company Information: On a BOI Report, a Reporting Company must report:

- its full legal name,
- all trade names,
- current U.S. office address,
- formation jurisdiction, and
- U.S. tax identification number or, if none, foreign tax identification number and issuing jurisdiction.

TINs for Disregarded Entities: Guidance is not clear. Until FinCEN issues additional guidance, get a TIN for a disregarded entity.

The BOI Report

Required Disclosure for Company Applicants and Beneficial Owners

Individual Disclosure: Personal Information

Personal Information: On a BOI Report, a Reporting Company must report for each Company Applicant and Beneficial Owner the following information (the "***Personal Information***"):

- full name,
- residential (Beneficial Owner) or business (Company Applicant) address,
- ID number from a non-expired U.S. or foreign passport or non-expired state-issued ID, and
- an image of the passport or other relevant ID.

Individual Disclosure: FinCEN Numbers

Optional FinCEN Number: Instead of giving Personal Information to a Reporting Company, a Company Applicant or Beneficial Owner can provide an anonymous identifier number (a "***FinCEN Number***").

Application Process: To obtain a FinCEN Number, a natural person must maintain up-to-date current Personal Information with FinCEN.

The BOI Report

Identifying Beneficial Owners

Who is a Beneficial Owner?

Natural Persons Only: On a BOI Report, a Reporting Company must report identifying information for each ***natural person*** who:

- ***directly or indirectly*** owns or controls a 25-percent ownership interest in the Reporting Company, or
- ***directly or indirectly*** exerts "substantial control" over the Reporting Company.

Special "No Look-Up" Rules: In limited circumstances, a Reporting Company can report an entity as a Beneficial Owner (as discussed below).

Trap: To determine its direct and indirect equity ownership, a Reporting Company must be able to look up its entire equity ownership and control structure.

Another Trap: "Substantial control" test will require a holder of typical "major decision" and other similar consent rights to be reported as a Beneficial Owner.

Step 1: Find the Ownership Interests

Ownership Interest: "Ownership interest" includes (a) any stock, membership/partnership interest (capital or profits), or other equity interest and (b) if known to the Reporting Company, any option or other similar right, including:

- put, call or straddle (including Year 15 exit option),
- compensatory option, or
- convertible note.

It's More Fun with Options: The option ownership rule also applies to parent and other upper-tier entities, if the Reporting Company has knowledge of the option.

- *Example:* Parent company owns 100% of a subsidiary's stock. Individual A makes loan to parent, convertible into 25 percent of parent stock. Parent no longer wholly owns subsidiary. Subsidiary reports A as a Beneficial Owner.

Step 2: Find the 25% Owners

Don't Stop Until You Reach the Heartbeats: A Reporting Company must look through its entity owners/controllers to find its indirect individual owners/controllers.

"No Look-Up" Rule 1: If a Reporting Company is a wholly-owned subsidiary of a non-Exempt Company, Reporting Company reports the non-Exempt Company as its Beneficial Owner.

"No Look-Up" Rule 2: If an individual owns an indirect ownership interest in a Reporting Company solely through an Exempt Company, Reporting Company reports the Exempt Company as a Beneficial Owner (in lieu of the individual).

- *Example*: Individual A controls and owns 100% of Exempt Company. Exempt Company owns 50% of Reporting Company. Reporting Company reports Exempt Company as a Beneficial Owner.
- *Example*: Same as above, except that Exempt Company also has substantial control of Reporting Company. Reporting Company reports A as a Beneficial Owner.

Step 3: Find the "Substantial Control" Individuals

Broad Sweep of Substantial Control: An individual has "substantial control" if the individual:

- is a senior officer (*i.e.*, C-suite),
- has authority over the appointment or removal of any senior officer or a majority of the board of directors,
- directs, determines or has substantial influence over *any* important decision (including any typical "major" decision), or
- has "any other form of substantial control."

Ownership Not Required: Regardless of actual equity ownership, a "substantial control" individual is a Beneficial Owner.

- C-Suite individuals are automatically Beneficial Owners.
- Routine hirings, firings, and "major decision" consent rights can trigger BOI Reports.

The BOI Report

Identifying Company Applicants

Who is a Company Applicant?

Natural Persons Only: A Company Applicant is each ***natural person*** who forms or oversees the formation or registration of a Reporting Company.

- No more than two Company Applicants per BOI Report.

Bottom Line: Company Applicants = one individual from the service company + one person overseeing formation or registration (*i.e.*, the lawyer).

Make sure you get Personal Information or FinCEN Number from your lawyer or other professional.

Enforcement

Penalties for Failure to file BOI Report or Provide Information

CTA Penalties – Personal Liability for You

Failure to File or Provide Information: If a Reporting Company fails to file a BOI Report, then the Reporting Company, the Reporting Company's senior officers and any other person causing the failure are ***personally*** subject to:

- $500-per-day fine ($10,000 maximum per BOI Report), and
- potential jail time of two years.

Unauthorized Disclosure of BOI Report Information: $500-per-day penalty (up to a maximum of $250,000), along with potential jail time of five years. ***So be careful if you're gathering Personal Information !***

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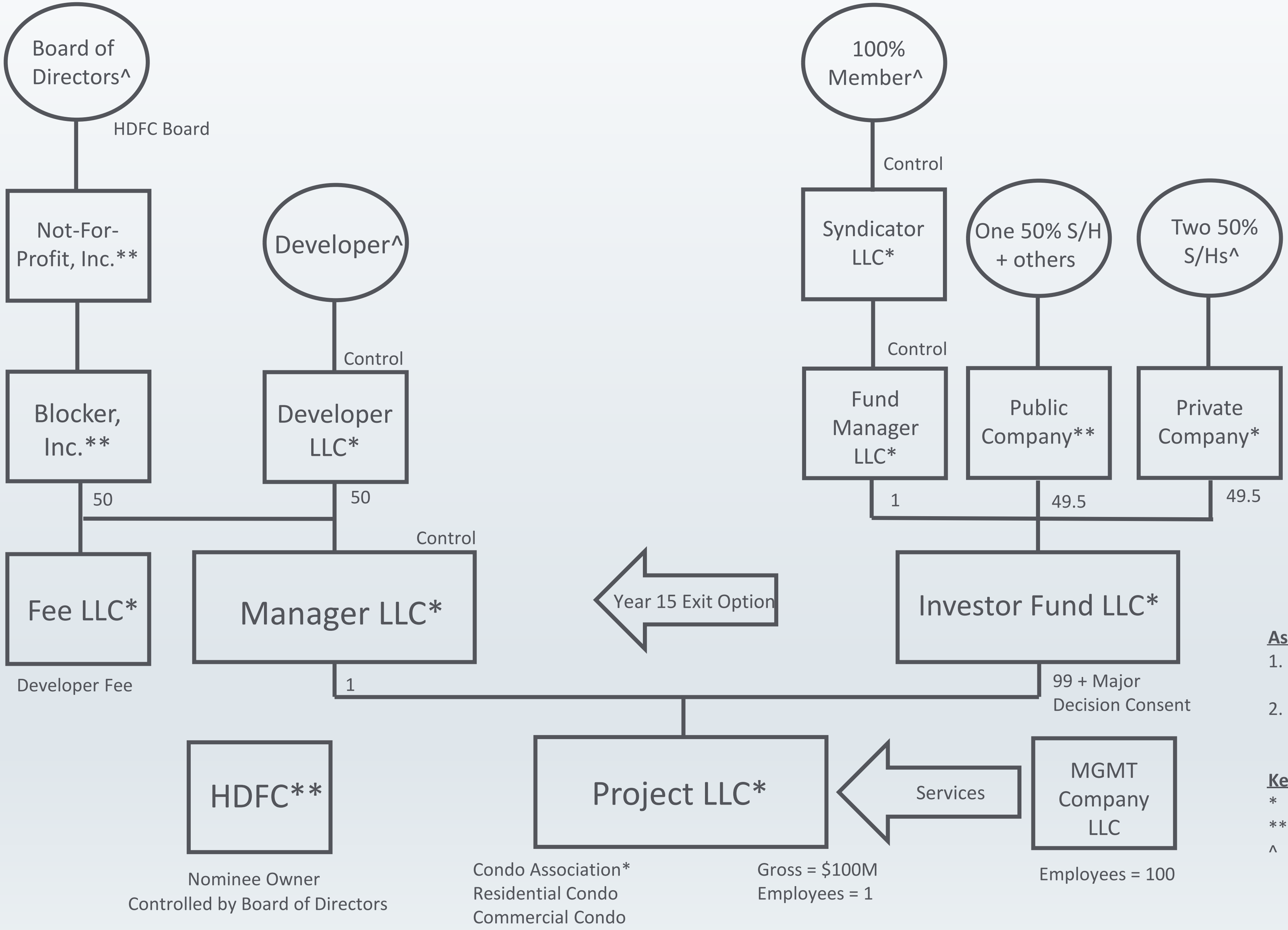
Real World Example

LIHTC Investment Structure

LIHTC Syndication with Not-For-Profit Partner



Assumptions:

1. Except as noted, all entities have fewer than 20 employees.
2. No company is subject to a special regulatory regime.

Key:

* Reporting Company
** Non-Reporting Company
^ Beneficial Owner

So Now What?

Key Take-Aways from Today's Presentation

STOP! DO NOT PASS GO!

<u>VERY IMPORTANT FIRST STEP</u>: Identify each company for which you have operational responsibility.

Even if you're an Exempt Company (such as 501(c)(3) organization), you may be responsible for CTA compliance for a Reporting Company in the following roles:

- manager,
- general partner,
- trustee, or
- executive or board member of any of the above or the Reporting Company.

Don't Forget! Penalties for noncompliance apply to you … personally.

“Big Picture” Compliance Points

It’s Never Too Early to Start! By the end of 2024, ALL entities and transactions must comply with the CTA. If you have operational responsibility for a company, then:

- Determine if the company is a Reporting Company or an Exempt Company.
- Identify Beneficial Owners (including “substantial control”) for each Reporting Company. Detailed document review may be required.
- Develop a timeline and method to obtain necessary information on Beneficial Owners and Company Applicants. Allow extra time for tiered entities.
- Create internal risk management procedures to track a new filing deadlines and triggering events (*e.g.*, an ownership shift, information change, gain or loss of Exempt Company status, or the expiration or loss of a valid ID).
- Educate equity owners, directors and executives about CTA impacts.

“Big Picture” Deal Points

New Deals: If you’re closing a new deal, keep the following points in mind:

- For transactions closing now (after January 1), you have 90 days to comply with the CTA (dropping to 30 days next year).
- Given this tight filing deadline, implement closing conditions and procedures to gather necessary information at closing (not after). Expect “Know Your Customer” procedures.
- Consider listing agreed-upon Beneficial Owners.
- Make sure all transaction documents include provisions that require Beneficial Owners to provide each Reporting Company with all CTA-related information and notify the Reporting Company if any such information changes.
- Include CTA compliance provisions in executive employment agreements.

Brought to you by Herrick, Feinstein, LLP:

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