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Novel Fiduciary Liability Risks Under the CTA

Probate & Property on **November/December 2024**

As of January 1, 2024, the newly implemented Corporate Transparency Act (CTA) mandates that most corporations, limited liability companies (LLCs), limited partnerships (LPs), and similar business entities formed or registered to do business in the United States file reports with FinCEN identifying, among other things, such entity's "beneficial owners" and "company applicants." So-called reporting companies that fail to comply with these new requirements are subject to fines of up to $500 per violation per day, and individuals responsible for any willful noncompliance maybe sentenced to imprisonment for up to two years. Although trusts them- selves are not reporting companies under the CTA, many trusts own interests in reporting companies, thereby mandating the disclosure of the trustees and other fiduciaries of such trusts as beneficial owners of these reporting companies in FinCEN filings. Accordingly, the fiduciaries of trusts that own interests in reporting companies understandably may have concerns regarding the extent to which they are responsible for compliance with filing requirements under the CTA and could be held personally liable for noncompliance. This article explores potential fiduciary liability risks under the CTA and suggests practices to potentially mitigate or limit those liability risks.

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