

The Firm's legal insights, news, and recent announcements

WHAT'S INSIDE

Corporate Transparency Act Halted—For Now

A federal court has issued a preliminary injunction halting the FinCEN BOI filings, which would have been due January 1, 2025.

New Cash-Purchased Real Estate Reporting Requirements for Entities

FinCEN strikes again- but for a new regulation governing reporting for certain real estate transactions.

Firm Welcomes New Estate Planning and Litigation Attorney

The Firm welcomes its newest litigation attorney, Laura Smittick.

Contract Terms to Know—Indemnification

Indemnification is an important and commonly used contract term protects one party from specific risks or liabilities.

DID YOU KNOW?

The wigs worn by British barristers in court called *perukes* date back to the 17th century, and serve as a symbol of uniformity and anonymity.

Full bottomed wigs worn by judges can cost up to \$3,000.

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Corporate Transparency Act Halted—For Now

By: Attorney Laura Smittick

If you are an owner or decision-maker of a business, you have likely heard of the impending deadline to comply with the U.S. Financial

Crimes Enforcement Network (FinCEN) Corporate Transparency Act (CTA).

As currently written, the CTA requires all corporations, limited liability companies, and certain other entities to file a beneficial ownership interest (BOI) report with FinCEN. Businesses formed prior to January 1, 2024 had a deadline of January 1, 2025 to comply with this new requirement. The BOI filing is required for all existing and newly formed entities which do not qualify for a limited number of exemptions.

CTA compliance, however, is in limbo. On December 3, 2024, a federal district court in Texas ruled that the CTA is likely unconstitutional. The Court preliminarily enjoined the CTA's enforcement nationwide. The federal government appealed, and the Fifth Circuit overturned the injunction on December 23, 2024, meaning compliance with the CTA was back in effect (with slightly modified compliance dates). But on December 26, 2024, in a rare event, the Fifth Circuit reversed itself, which reinstated the nationwide injunction relieving reporting companies of complying with the CTA. This means that given the District Court's ruling and the ruling by the Fifth Circuit, implementation of the CTA is currently on hold as of the date of this newsletter. The constantly changing guidance by the Courts indicates this reprieve from implementation may be short-lived.

Given the current status, FinCEN has posted the following on its website:

In light of a recent federal court order, reporting companies are not currently required to file beneficial ownership information with FinCEN and are not subject to liability if they fail to do so while the order remains in force.

If your business is one that is required to file a BOI with FinCEN, you can still voluntarily submit the report. There is currently no penalty if you decide to wait and see the outcome of the appeal before the Fifth Circuit before you file. A stay of the restraint or a reversal from an appeal would reinstate the CTA reporting obligations. However, we suggest if you decide not to file your BOI that you gather all the needed information that will be required to file in case the injunction is lifted or reversed. At this time, there is no guidance on how long reporting entities will be provided to file if the BOI reporting requirement is reinstated.

If you have questions about the CTA injunction, please do not hesitate to contact any of the attorneys with the Firm for further guidance.

New Cash-Purchased Real Estate Reporting Requirements for Entities

By: Shareholder Spencer C. Pittman

In August 2024, the Financial Crimes Enforcement Network (FinCEN) announced a final rule (“Rule”) to combat money laundering in the residential real estate sector by increasing transparency. Note, this Rule is different from the Corporate Transparency Act.



Under the Rule (effective Dec. 1, 2025), certain persons involved in non-financed real estate closings and settlements will be required to submit a “Real Estate Report” on certain real estate transfers deemed high risk for illicit financial activity—namely, non-financed transfers of residential real property to legal entities and trusts (such as corporations, LLCs, or revocable living trusts).

What types of transactions are reportable? The Rule covers single-family homes, townhouses, condominiums, cooperatives, and land intended for residential use. Mixed-use properties with residential components are also included. During the proposed rule-making process, FinCEN added exemptions to the reportable transfer, which include transfers involving easements, inheritance, divorce settlements, bankruptcy, or court supervision, among several others.

What must be reported? The reporting person is required to identify him/herself, the legal entity or trust to which the residential real property is transferred, the beneficial owner(s) of that transferee entity or transferee trust, the person(s) transferring the residential real property, and the property being transferred, along with certain transactional information about the transfer.

Who should file the Real Estate Report? The Rule introduces a cascading system to designate the responsible reporting professional/person. The cascading system is as follows: (i) closers or settlement agents, and if none, then (ii) the preparer of the closing/settlement statement, and if none, then (iii) the person that files the deed/instrument with the recording office, and if none, then (iv) the title insurance underwriter or insurance company... and so on.

What happens if I do not comply? Penalties for violating the Rule include a civil penalty of not more than \$1,394 for each violation, and an additional civil money penalty of up to \$108,489 for a pattern of negligent activity. Willful violations may expose the violator to up to 5-years in prison or a fine of not more than \$250,000, or both.

If you want more information on your reporting requirements for non-financed real estate transactions, contact Shareholder Spencer C. Pittman at spencer@wintersking.com.

Firm Welcomes New Estate Planning and Litigation Attorney

The Firm is proud to announce the addition of a new attorney to its team, Laura Smittick.



Ms. Smittick joined the firm in December 2024. Having practiced law in Tennessee and Mississippi for 10+ years, she offers a wealth of experience in diverse legal areas, including estate planning, probate, litigation, employment law, and personal injury. Ms. Smittick is a graduate of the Cecil C. Humphreys School of Law at the University of Memphis, where she was active in the school’s moot court team and received multiple awards for academic achievement and trial skills. Before going into private practice, she worked at the University of Memphis’s Office of Legal Counsel as both a law clerk and a licensed attorney before clerking for the Honorable Walter L. Evans in the Shelby County Chancery Court.

If you have any legal questions, you can contact Ms. Smittick at lsmittick@wintersking.com.

Contract Terms to Know: *Indemnification*

The term “indemnification” refers to an agreement in which one party agrees to compensate another party for certain losses, damages, or liabilities they might incur.



An indemnification is often used to protect one party from legal or financial consequences arising from the actions, omissions, or negligence of a third-party. These provisions may help mitigate risks, reduce disputes, and safeguard legal and financial interests for the parties involved.

Example: A homeowner hires a contractor to install a roof. The contract includes an indemnification clause that says:

Contractor agrees to indemnify and hold harmless the homeowner against any claims, damages, or injuries arising from the contractor's work, except those caused by the homeowner's negligence.

If a worker is injured during the project and sues the homeowner, the contractor would be responsible under the indemnification provision to cover the homeowner’s legal costs and any damages awarded.