

New York State LLC Transparency Act Amendments Signed Into Law

March 11, 2024

On March 1, 2024, New York State Governor Kathy Hochul signed into law amendments to the state's recently enacted LLC Transparency Act (the "NYLTA"), which requires limited liability companies ("LLCs") that are formed under New York law or authorized to conduct business in the state to report information about their beneficial owners or attest to their exemption from reporting. As amended, New York's LLC transparency requirements take effect on January 1, 2026, with LLCs formed or authorized to do business before that date having until January 1, 2027, to make their initial filings.

The NYLTA is based on the federal Corporate Transparency Act ("CTA")¹ and cites to the CTA's requirements in certain respects. There are, however, notable differences, including the NYLTA's applicability only to LLCs and not to corporations or other types of entities formed or authorized to do business under New York law.

In this Debevoise In Depth, we describe the NYLTA's key provisions, important differences between the NYLTA and the CTA, and implications for New York domestic LLCs and foreign LLCs authorized to do business in the state.

BACKGROUND

The NYLTA was enacted on December 22, 2023, to build on previous efforts to require the disclosure of LLC members and managers involved in real estate transactions in New York.² This version of the NYLTA required the New York Department of State to maintain a public database of New York domestic and foreign LLCs, including their beneficial ownership information.

¹ We have written extensively about the Corporate Transparency Act and its implementing regulations, including [here](#), [here](#) and [here](#).

² See Sponsor Memo, S995B, 2023-2024 Leg. Sess. (N.Y. 2023).

In signing the NYLTA, Governor Hochul required that the state legislature agree to implement certain amendments before the law's effective date, including amendments to address privacy concerns and extend the implementation timeframe. The law signed on March 1, 2024, implements the agreed changes and makes other substantive revisions (collectively, the "2024 Amendments").

KEY COMPONENTS OF THE NYLTA AND DIFFERENCES FROM CTA

To which entities does the NYLTA apply?

- **Reporting Companies.** "Reporting company" under the NYLTA has the same meaning as it does under the CTA, *except that it includes only LLCs formed or authorized to do business in New York State.*
 - Under the CTA, a reporting company is any corporation, LLC or other similar entity that is (i) created by the filing of a document with a secretary of state or similar office under the law of a U.S. state or Indian tribe or (ii) formed under the law of a foreign country and registered to do business in the United States by the filing of a document with a secretary of state or similar office, in each case unless an exemption applies.³ As noted above, the NYLTA covers only LLCs; corporations and other types of entities are not in scope.
- **Exempt Companies.** The NYLTA defines "exempt company" to mean a New York domestic LLC or foreign LLC that meets a condition for exemption enumerated in the CTA.
 - Exempt entities under the CTA include publicly traded entities; banks; bank holding companies; money services businesses registered with the Treasury Department's Financial Crimes Enforcement Network ("FinCEN"); broker-dealers registered with the Securities and Exchange Commission (the "SEC"); SEC-registered investment advisers and investment companies; certain pooled investment vehicles; securities exchanges, clearing agencies and other entities registered with the SEC or the Commodity Futures Trading Commission; and operating companies with more than 20 full-time U.S. employees, annual U.S.-source gross receipts or sales of greater than \$5 million and an operating presence at a physical office in the United States.⁴

³ 31 U.S.C. § 5336(a)(11)(A); *see also* 31 CFR 1010.380(c)(1).

⁴ 31 U.S.C. § 5336(a)(11)(B); *see also* 31 CFR 1010.380(c)(2).

Are existing LLCs formed or authorized to do business in New York subject to the NYLTA?

- Yes. As with the CTA, there is no grandfathering for pre-existing entities.
- New York's LLC transparency requirements take effect on January 1, 2026, for LLCs formed or authorized to do business in New York after that date. LLCs formed or authorized to do business before January 1, 2026, have one year – until January 1, 2027 – to make their initial filings with the New York Department of State.

What filings does the NYLTA require?

- **Reporting Companies – Beneficial Ownership Disclosure.** The NYLTA requires each reporting company to file with the New York Department of State a beneficial ownership disclosure in such form and manner as directed by the Department of State, identifying each beneficial owner of, and each applicant with respect to,⁵ the reporting company.
 - The 2024 Amendments removed language allowing a reporting company to submit to the New York Department of State a copy of its federal beneficial ownership information report to satisfy NYLTA requirements.
 - Additionally, unlike the CTA, the 2024 Amendments appear to require even reporting LLCs formed or authorized to do business in New York before the January 1, 2026, effective date to report information on their applicants.
 - It remains to be seen whether the New York Department of State will address these points in implementing regulations.
- **Exempt Companies – Attestation of Exemption.** Each exempt company must file, under penalty of perjury, an attestation of exemption in such form designated by the New York Department of State, which statement will identify the specific exemption claimed and the facts on which the exemption is based.
 - FinCEN's regulations implementing the CTA do **not** impose reporting obligations on exempt entities.

⁵ The NYLTA's definition of "applicant" incorporates by reference the definition of "applicant" under the CTA and its implementing regulations. Under FinCEN's regulations, a "company applicant" is (i) the individual who directly files the document that creates a domestic reporting company or registers a foreign reporting company to do business and (ii) if more than one individual is involved in the filing of such a document, the individual who is primarily responsible for directing or controlling such filing. 31 CFR 1010.380(e).

When are filings due?

- **Initial Filings.**
 - LLCs formed or authorized to do business in New York after January 1, 2026, must file beneficial ownership disclosures or attestations of exemption, as applicable, within 30 days of the initial filing of articles of organization or an application for authority pursuant to New York's Limited Liability Company Law.
 - LLCs formed or authorized to do business in New York before January 1, 2026, have until January 1, 2027, to make their initial filings.
 - These timeframes generally align to the beneficial ownership reporting framework under the CTA, which, effective January 1, 2025, will require newly created entities to report beneficial ownership information within 30 days.
- **Updated Filings.** Unlike under the CTA, changes to reported information need not be reported as they occur. Instead, all reporting companies and exempt companies must file an annual statement with the New York Department of State confirming or updating: (1) beneficial ownership disclosure information; (2) the principal executive office address; (3) status as exempt company, if applicable; and (4) such other information as may be designated by the Department of State.
 - For exempt companies, the annual statement must be attested under penalty of perjury, as with respect to the initial attestation of exemption.

Who are a reporting company's "beneficial owners"?

- The NYLTA borrows from the CTA and its implementing regulations in defining the term "beneficial owner" for purposes of a reporting company's beneficial ownership disclosure.
- Under the CTA, a "beneficial owner" is any individual who, directly or indirectly: (i) exercises "substantial control" over a reporting company; or (ii) owns or controls at least 25 percent of the ownership interests of the company.⁶

⁶ 31 U.S.C. § 5336(a)(3); 31 CFR 1010.380(d).

What should be included in a reporting company's beneficial ownership disclosure under New York law?

- For each beneficial owner and company applicant, a reporting company must report the following information:
 - full legal name;
 - date of birth;
 - current home or business street address; and
 - a unique identifying number from: (1) an unexpired passport; (2) an unexpired state driver's license; or (3) an unexpired identification card or document issued by a state or local government agency or tribal authority.
- These reporting elements mirror those required under the CTA, which additionally requires submission of a copy of the identifying document.
- Such information must be filed in the form and manner directed by the New York Department of State.

Will New York maintain a database of beneficial ownership information?

- Yes. The New York Department of State will maintain LLC information in a secure, non-public database. Such information will not be disclosed except: (1) pursuant to a written request or voluntary written consent of the beneficial owner; (2) by court order; (3) to officers or employees of a federal, state or local government agency as necessary to the performance of the agency's official duties or the operation of a program authorized by law; or (4) for a valid law enforcement purpose.
- The beneficial ownership information registry implemented by FinCEN under the CTA also is non-public, but it appears the New York database may allow for broader access to governmental authorities, including in relation to programs operated by a state or local agency.

What are the consequences of non-compliance?

- **Past Due or Delinquent Status.** Any LLC that fails to file its beneficial ownership disclosure, attestation of exemption, or annual statement for a period exceeding 30 days will be shown as past due on the records of the New York Department of State. Any LLC that fails to make such filings for a period exceeding two years will be shown as delinquent.

- The attorney general may assess a penalty of up to \$500 for each day an LLC has been past due or delinquent.
- Past due or delinquent status can be removed once filings are made current, a fine of \$250 is paid, and the attorney general verifies that any penalties have been paid.
- **Suspension for Failure to File.** Upon at least 30 days' notice from the Department of State, any LLC that fails to file its beneficial ownership disclosure or attestation of exemption is deemed suspended and is prohibited from conducting business in New York until such filing has been made.
- **Dissolution or Annulment.** The New York attorney general is authorized to bring an action to dissolve or cancel any LLC, or to annul an LLC's authorization to do business in New York, if it is delinquent in filing its beneficial ownership disclosure or attestation of exemption or it knowingly provides or attempts to provide false or fraudulent beneficial ownership information.

NEXT STEPS

As the NYLTA takes effect, LLCs formed under New York law and foreign LLCs authorized to do business in New York should familiarize themselves with the law's requirements, particularly in the areas where they differ from those under the CTA. LLCs should monitor developments related to efforts by the New York Department of State to promulgate implementing regulations and should consider commenting on any proposed regulations, as appropriate.

In addition, interested stakeholders should monitor similar legislative efforts in other states. Although New York is the first state to enact such legislation, other states have proposed their own beneficial ownership reporting requirements. A patchwork of state beneficial ownership reporting obligations would add complexity to existing compliance activities.

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We will continue to monitor developments and provide updates as warranted. Please do not hesitate to contact us with any questions.



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