

# Schuler Law & Title Services

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The Federal Corporate Transparency Act

## THE NEW FEDERAL CORPORATE TRANSPARENCY ACT THAT AFFECTS FLORIDA CORPORATIONS AND LLCs

### SUBJECT MATTER

This newsletter was prepared to advise our clients and friends of the requirements of FinCEN's (the Financial Crimes Enforcement Network, a Federal Agency within the Department of the Treasury that combats illicit finance and money laundering) enactment of the Corporate Transparency Act effective as of January 1, 2024.

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If you would like to receive more information about this subject, or others, you may:

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### WHO DOES IT AFFECT

Practically every existing small corporation and limited liability company having less than 20 employees, or those with more than 20 employees but who do not generate over \$5,000,000.00 in gross receipts. In addition, any foreign company registered to do business in the U.S.

### WHAT DOES IT REQUIRE

The filing of what is described as a BOI (Beneficial Owner Information report) with FinCEN.

### WHEN MUST IT BE FILED

All Corporations and LLCs in existence prior to January 1, 2024 must file by January 1, 2025. Corporations and LLCs filed anytime in 2024 will have 90 days from creation to file, and those filed in 2025 or after, within 30 days of creation.

### WHAT MUST BE REPORTED

The company name, any DBAs it

uses, its Tax ID number (EIN) and business address. In addition, the name, address, date of birth, social security number, and photo ID (like a driver's license), of EVERY person who has a beneficial interest in the company of 25% or more, or who has a substantial control of the company. An example of substantial control would be a Manager of an LLC who does not have an ownership interest in it. The Registered Agent who has no other interest in the company is not considered someone who has substantial control or would have to give information on the BOI.

It does not require officer and director information, but rather owner (shareholder or member) data, unless they have an ownership interest or substantial control.

It also includes the person who does the actual filing of the company documents on or after January 1, 2024 (not the BOI, but

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the original documents that created your company) with the Secretary of State, like your secretary, lawyer or accountant. (called the Applicant)

### **HOW OFTEN MUST THIS BOI BE FILED**

Unlike the Annual Report that has to be filed with the Florida Secretary of State, the BOI is only reported once, UNLESS there is any change in the information, like a change of name, change of address, new driver's license, etc.

### **WHAT IF I DON'T WANT TO REPORT MY PRIVATE INFORMATION**

Unfortunately there are penalties for not filing, (\$500/day plus potential criminal conviction with up to 2 years in jail and a \$10,000.00 fine). A person can go to an alternate secure site to obtain a FinCEN identifier number, which can be used instead of the personal information on the BOI. However, you must still provide the private information to FinCEN and then use that identifier number on the BOI.

There is no cost to obtain the identifier number.

### **WHERE DO I GET THE BOI FORM**

The BOI form can be

downloaded or completed on-line at FinCEN's BOI forms website (<https://boiefiling.fincen.gov>) and select "File BOIR".

There is no cost for the filing.

If you download the form and fill it out manually, you will need to scan and upload the completed form and file on their website. This is a secure website. (NOTE: To download the form as a pdf for manual filing, you will need Adobe Reader 8 or higher).

### **ARE THERE ANY EXEMPTIONS**

In addition to companies that employ 20 or more persons and have gross receipts exceeding \$5,000,000.00, there are several others that are too numerous to detail here (23 in total), but do include SEC registered entities, insurance companies and agents, banks, accounting firms (but NOT law firms) and 501(c) tax exempt entities. Not necessarily all non-profits are exempt, like condominium and homeowner associations, who still need to file.

### **WHAT IF I DO BUSINESS AS A SOLE PROPRIETOR**

As long as you are not a LLC or Corporation, and only file a Schedule C tax return, you are not required to comply with a BOI filing.

### **WHAT IF MY COMPANY IS INACTIVE BUT NOT DISSOLVED**

You may still need to file the BOI unless your company was in existence before January 1, 2020, is actually not doing any business (not just forgot to file with the state), has had no money transactions or change of ownership in the previous 12 months, holds no other assets and is now owned by a foreign person.

### **CAN SOMEONE ELSE, LIKE MY CPA OR ATTORNEY FILE FOR ME**

Yes, any *authorized* third party can file if you provide them all the required information. The third party will also have to report some of the required information on themselves as a filer (name, email, etc, but not date of birth, license information, etc.)

### **WHERE CAN I GET MORE INFORMATION**

FinCEN has a very informative and easy to navigate website that can assist you in answering most questions, including explanations and examples of what a beneficial interest is, what comprises substantial control, who is exempt, etc.

<https://www.fincen.gov/boi>

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