

Who Is A Beneficial Owner?

In short, a beneficial owner is any individual who, directly or indirectly, either:

- Exercises substantial control over the reporting company, or
- Owns or controls at least 25% of the reporting company.

Please note that it says a beneficial owner is an individual. Corporate or other entity owners are **not** beneficial owners. However, as we will discuss below, an individual may be a beneficial owner as a result of a tiered entity relationship.

What is Substantial Control?

Substantial control is broadly defined which makes this a very complicated and contentious topic. The regulations provide a much more expansive definition of control than is normally applied in the tax world. I will do my best to discuss it but questions and specific situations are best discussed with a business attorney. This is another good place to consider adopting the motto “when in doubt report”

An individual has substantial control if the individual (note the use of the word individual):

- Is a senior officer of the company (e.g. a president, chief financial officer, general counsel, chief executive officer, chief operating officer, or any other office (regardless of official title) who performs a similar function);
- Has authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body);
- Directs, determines, or has substantial influence over important matters affecting the reporting company, including but not limited to:
 - The nature, scope, and attributes of the company’s business, including the sale, lease, mortgage, or other transfer of any of the company’s principle assets;
 - The reorganization, dissolutions, or merger of the company;
 - Major expenditure or investments, issuance of any equity. Incurrence of any significant debt, or approval of the company’s operating budget;
 - The selection of the company’s business lines or ventures, or geographical focus;
 - Senior officer compensation
 - The entry into, termination of, or the fulfillment of significant contracts;
 - Amendments to any of the company’s governance documents, significant policies, or procedures; or
 - Has any other form of substantial control over the company.

An individual may directly or indirectly exercise substantial control over a reporting company through a variety of means, including through:

- Board representation;
 - A member of a board of directors is not automatically treated as a beneficial owner as result of being on the board. Only those who actually exercise substantial control or have a 25% ownership interest are beneficial owners.

- Ownership or control of a majority of the voting power or rights of the reporting company;
- Rights associated with any financing arrangement or interest in a company;
- Control over one or more intermediary entities that exercise substantial control over a reporting company;
- Arrangements or financial or business relationships, whether formal or informal with individuals or entities acting as nominees; or
- Any other contract, arrangement, understanding, relationship, or otherwise.

Ownership Interest

An individual may directly or indirectly own or control an ownership interest in a reporting company through a variety of means, including but not limited to:

- Joint ownership of an undivided interest;
- Through control of such ownership interest owned by another individual acting as a nominee, intermediary, custodian, or agent on behalf of such individual (e.g. parent/guardian of a minor child or disabled person);
- With respect to a trust
 - Acting as a trustee;
 - Being a beneficiary; or
 - As a grantor or settlor
- Through ownership or control of one or more intermediary entities or ownership or control of the ownership interest of any such entities that own or control the ownership interest of the reporting company.

Tiered Entities

Tiered entities are entities owned by other entities. Since the purpose of the Corporate Transparency Act is to identify the individuals with beneficial ownership tiered entities are look through to the individual owner. E.g. LLC A is owned by LLC B and John is a beneficial owner of LLC B. John is also a beneficial owner of LLC A.

Beneficial Owner Exceptions

The following are not beneficial owners:

- A minor child (under state law)
 - Their parent or legal guardian would be a beneficial owner instead
 - Once the minor reaches the age of majority the report must be updated;
- An employee of the reporting company, acting solely as an employee and not as a senior officer, as long as their control or economic benefit from the entity derives solely from their employment status;
- An individual whose only interest in the company is a future interest through right of inheritance;
- A creditor of a reporting company; and
- An individual acting as a nominee, intermediary, custodian or agent of another individual.