

STATE OF NEW YORK

8439

IN SENATE

March 1, 2022

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the limited liability company law, the tax law, the administrative code of the city of New York, and the executive law, in relation to the disclosure of beneficial owners of limited liability companies and certain other business entities

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 102 of the limited liability company law is amended
2 by adding a new subdivision (ii) to read as follows:

3 (ii) (1) "Beneficial owner" means a natural person who, directly or
4 indirectly, (A) holds a membership interest in a limited liability
5 company or a foreign limited liability company; (B) exercises substan-
6 tial control over the decisions of a membership interest in a limited
7 liability company or a foreign limited liability company; or (C) has
8 been assigned a membership interest in a limited liability company or a
9 foreign limited liability company.

10 (2) The term "beneficial owner" shall not include: (A) a minor child;
11 (B) a person acting as a nominee, intermediary, custodian, or agent on
12 behalf of another person; (C) a person acting solely as an employee of a
13 limited liability company and whose control over or economic benefits
14 from the limited liability company derives solely from the employment
15 status of the person; (D) a person whose only interest in a limited
16 liability company is through a right of inheritance, unless the person
17 also meets the requirements of paragraph one of this subdivision; (E) a
18 creditor of a limited liability company, unless the creditor also meets
19 the requirements of paragraph one of this subdivision; or (F) any
20 natural person whose membership interest in a limited liability company
21 derives solely from his or her employment by such limited liability
22 company and such limited liability company's organization as an employ-
23 ee-owned business or worker cooperative, as evidenced by such limited
24 liability company's by-laws or articles of organization.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 (3) If an entity other than a natural person meets the requirements of
2 a beneficial owner as defined in paragraph one of this subdivision, the
3 beneficial owners of such limited liability company or foreign limited
4 liability company shall include the names and business addresses of all
5 members, managers, shareholders, directors, officers, partners, and any
6 other authorized persons, if any, of such entity. The identification of
7 such names and addresses shall not be deemed an unwarranted invasion of
8 personal privacy pursuant to article six of the public officers law. If
9 any such member, manager or authorized person is itself a limited
10 liability company or other business entity, the names and addresses of
11 the shareholders, directors, officers, members, managers and partners of
12 the limited liability company or other business entity shall also be
13 disclosed until full disclosure of ultimate ownership by natural persons
14 is achieved. If such entity is publicly traded, a REIT, a UPREIT, or a
15 mutual fund, the requirements of this paragraph shall only apply to
16 shareholders possessing a controlling interest in such entity.

17 § 2. Paragraphs 6 and 7 of subdivision (e) of section 203 of the
18 limited liability company law, as added by chapter 470 of the laws of
19 1997, are amended to read as follows:

20 (6) if all or specified members are to be liable in their capacity as
21 members for all or specified debts, obligations or liabilities of the
22 limited liability company as authorized pursuant to section six hundred
23 nine of this chapter, a statement that all or specified members are so
24 liable for such debts, obligations or liabilities in their capacity as
25 members of the limited liability company as authorized pursuant to
26 section six hundred nine of this chapter; [~~and~~]

27 (7) a list of the beneficial owners of the limited liability company
28 that identifies each beneficial owner by (A) name; (B) current residen-
29 tial or business street address; and (C) a unique identifying number
30 from a non-expired passport issued by the United States or a non-expired
31 driver's license or identification card issued by this or another state;
32 and

33 (8) any other provisions, not inconsistent with law, that the members
34 elect to include in the articles [~~of~~] of organization for the regulation
35 of the internal affairs of the limited liability company, including, but
36 not limited to, (A) the business purpose for which the limited liability
37 company is formed, (B) a statement of whether there are limitations on
38 the authority of members or managers or a class or classes thereof to
39 bind the limited liability company and (C) any provisions that are
40 required or permitted to be included in the operating agreement of the
41 limited liability company pursuant to section four hundred seventeen of
42 this chapter.

43 § 3. Section 209 of the limited liability company law is amended to
44 read as follows:

45 § 209. Filing with the department of state. A signed articles of
46 organization and any signed certificate of amendment or other certifi-
47 cates filed pursuant to this chapter or of any judicial decree of
48 amendment or cancellation shall be delivered to the department of state.
49 If the instrument that is delivered to the department of state for
50 filing complies as to form with the requirements of law and the filing
51 fee required by any statute of this state in connection therewith has
52 been paid, the instrument shall be filed and indexed by the department
53 of state. The department of state shall not review such articles or
54 certificates for legal sufficiency, except that it may review such arti-
55 cles or certificates for legal sufficiency with regard to requirements
56 pertaining to beneficial owners pursuant to sections two hundred three

1 and two hundred eleven of this article; its review shall be otherwise
2 limited to determining that the form has been completed.

3 § 4. The limited liability company law is amended by adding a new
4 section 215 to read as follows:

5 § 215. Beneficial ownership disclosure. (a) Beneficial ownership
6 information relating to each limited liability company formed under the
7 laws of this state is required to be maintained by the secretary of
8 state until the end of the five year period beginning on the date that
9 the limited liability company terminates pursuant to this chapter.

10 (b) Any person who: (1) knowingly provides false or fraudulent benefi-
11 cial ownership information; or (2) willfully fails to provide complete
12 or updated information shall be guilty of a misdemeanor and liable to
13 the state for a civil penalty of not more than ten thousand dollars and
14 shall be prohibited from organizing, forming, registering, or managing
15 any limited liability company or partnership in the state of New York
16 for a period not less than one year or greater than five years.

17 § 5. Section 1418 of the tax law is amended by adding a new subdivi-
18 sion (j) to read as follows:

19 (j) Notwithstanding the provisions of subdivision (a) of this section,
20 the commissioner or any officer or employee of the department of taxa-
21 tion and finance may furnish to the department of state information
22 relating to beneficial ownership that is obtained or derived from
23 returns filed pursuant to this article.

24 § 6. Paragraphs 7 and 8 of subdivision (a) of section 802 of the
25 limited liability company law are amended and a new paragraph 9 is added
26 to read as follows:

27 (7) a statement that the foreign limited liability company is in
28 existence in the jurisdiction of its formation at the time of the filing
29 of such application; [~~and~~]

30 (8) the name and address of the authorized officer in the jurisdiction
31 of its formation where a copy of its articles of organization is filed
32 or, if no public filing of its articles of organization is required by
33 the law of the jurisdiction of formation, a statement that the foreign
34 limited liability company shall provide, on request, a copy thereof with
35 all amendments thereto (if such documents are in a foreign language, a
36 translation in English thereof under oath of the translator shall be
37 attached thereto), and the name and post office address of the person
38 responsible for providing such copies[~~;~~]; and

39 (9) a list of the beneficial owners of the foreign limited liability
40 company that identifies each beneficial owner by (A) name; (B) current
41 residential or business street address; and (C) a unique identifying
42 number from a non-expired passport issued by the United States or a
43 non-expired driver's license or identification card issued by this or
44 another state.

45 § 7. The limited liability company law is amended by adding a new
46 section 810 to read as follows:

47 § 810. Beneficial ownership disclosure. (a) Beneficial ownership
48 information relating to each foreign limited liability company formed
49 under the laws of this state is required to be maintained by the secre-
50 tary of state until the end of the five year period beginning on
51 the date that the foreign limited liability company terminates pursuant
52 to this chapter.

53 (b) Any person who: (1) knowingly provides false or fraudulent benefi-
54 cial ownership information or (2) willfully fails to provide complete or
55 updated information shall be guilty of a misdemeanor and liable to the
56 state for a civil penalty of not more than ten thousand dollars and

1 shall be prohibited from organizing, forming, registering, or managing
2 any limited liability company or partnership in the state of New York
3 for a period not less than one year or greater than five years.

4 § 8. Paragraph 2 of subdivision (a) of section 1409 of the tax law, as
5 amended by section 3 of part 0 of chapter 59 of the laws of 2021, is
6 amended to read as follows:

7 (2) When the grantor or grantee of a deed for a building used as resi-
8 dential real property [~~containing up to four family dwelling units~~] is a
9 limited liability company, the joint return shall not be accepted for
10 filing unless it is accompanied by a document which identifies the
11 [~~names and business addresses of all members, managers, and any other~~
12 ~~authorized persons, if any, of such limited liability company and the~~
13 ~~names and business addresses or, if none, the business addresses of all~~
14 ~~shareholders, directors, officers, members, managers and partners of any~~
15 ~~limited liability company or other business entity that are to be the~~
16 ~~members, managers or authorized persons, if any, of such limited liabil-~~
17 ~~ity company. The identification of such names and addresses shall not be~~
18 ~~deemed an unwarranted invasion of personal privacy pursuant to article~~
19 ~~six of the public officers law. If any such member, manager or author-~~
20 ~~ized person of the limited liability company is itself a limited liabil-~~
21 ~~ity company or other business entity other than a publicly traded enti-~~
22 ~~ty, a REIT, a UPREIT, or a mutual fund, the names and addresses of the~~
23 ~~shareholders, directors, officers, members, managers and partners of the~~
24 ~~limited liability company or other business entity shall also be~~
25 ~~disclosed until full disclosure of ultimate ownership by natural persons~~
26 ~~is achieved] beneficial owners of such limited liability company.~~

27 For purposes of this subdivision, the terms [~~"members", "managers", "author-~~
28 ~~ized person",~~] "beneficial owners" and "limited liability company" [~~and~~
29 ~~"other business entity"~~] shall have the same meaning as those terms are
30 defined in section one hundred two of the limited liability company law.

31 § 9. Subdivision h of section 11-2105 of the administrative code of
32 the city of New York, as added by chapter 297 of the laws of 2019, is
33 amended to read as follows:

34 h. When the grantor or grantee of a deed for residential real property
35 [~~containing one to four family dwelling units~~] is a limited liability
36 company, the joint return shall not be accepted for filing unless it is
37 accompanied by a document which identifies the [~~names and business~~
38 ~~addresses of all members, managers, and any other authorized persons, if~~
39 ~~any, of such limited liability company and the names and business~~
40 ~~addresses or, if none, the business addresses of all shareholders,~~
41 ~~directors, officers, members, managers and partners of any limited~~
42 ~~liability company or other business entity that are to be the members,~~
43 ~~managers or authorized persons, if any, of such limited liability compa-~~
44 ~~ny. The identification of such names and addresses shall not be deemed~~
45 ~~an unwarranted invasion of personal privacy pursuant to article six of~~
46 ~~the public officers law. If any such member, manager or authorized~~
47 ~~person of the limited liability company is itself a limited liability~~
48 ~~company or other business entity, the names and addresses of the share-~~
49 ~~holders, directors, officers, members, managers and partners of the~~
50 ~~limited liability company or other business entity shall also be~~
51 ~~disclosed until full disclosure of ultimate ownership by natural persons~~
52 ~~is achieved] beneficial owners of such limited liability company.~~

53 For purposes of this subdivision, the terms [~~"members", "managers", "author-~~
54 ~~ized person",~~] "beneficial owners" and "limited liability company" [~~and~~
55 ~~"other business entity"~~] shall have the same meaning as those terms are
56 defined in section one hundred two of the limited liability company law.

1 § 10. The tax law is amended by adding a new section 171-x to read as
2 follows:

3 § 171-x. Information sharing with the department of state regarding
4 beneficial owners of limited liability companies. Notwithstanding any
5 other law, the commissioner shall release to the department of state
6 information regarding beneficial owners of limited liability companies
7 which is reported to the department either on a form issued by the
8 department or any other method of report to the department. For
9 purposes of this section, the terms "beneficial owners" and "limited
10 liability company" shall have the same meaning as those terms are
11 defined in section one hundred two of the limited liability company law.

12 § 11. The executive law is amended by adding a new section 100-b to
13 read as follows:

14 § 100-b. Corporation and business entity database; information on
15 beneficial owners. 1. The secretary of state shall assign each benefi-
16 cial owner of a limited liability company a unique identifying number
17 and publish such number in relation to any affiliated limited liability
18 companies in the corporation and business entity database or any subse-
19 quent database which is maintained by the division of corporations with-
20 in the department of state. The identification of the names and busi-
21 ness addresses of beneficial owners associated with a unique identifying
22 number in the corporation and business entity database shall not be
23 deemed an unwarranted invasion of personal privacy pursuant to article
24 six of the public officers law; provided, however, that the department
25 shall also establish, through regulations, procedures to allow benefi-
26 cial owners with significant privacy interests to apply for a waiver
27 to withhold their names and business addresses from disclosure pursuant
28 to the freedom of information law. For purposes of this section, the
29 terms "beneficial owners" and "limited liability company" shall have the
30 same meaning as those terms are defined in section one hundred two of
31 the limited liability company law.

32 2. The secretary of state, in cooperation with the commissioner of the
33 department of taxation and finance, may verify the beneficial ownership
34 information included in returns pursuant to subdivision two-b of section
35 two hundred eleven of the tax law using beneficial ownership information
36 submitted to the department of state pursuant to section two hundred two
37 or eight hundred two of the limited liability company law in order to
38 identify fraud or suspicious activities and may, at his or her own
39 discretion, refer such fraud to appropriate authorities.

40 § 12. Section 211 of the tax law is amended by adding a new subdivi-
41 sion 2-b to read as follows:

42 2-b. (a) The commissioner shall prescribe regulations and instructions
43 requiring returns of information to be made and filed in conjunction
44 with the reports required to be filed pursuant to this article, relating
45 to beneficial owners of limited liability companies. For purposes of
46 this section, the terms "beneficial owners" and "limited liability
47 company" shall have the same meaning as those terms are defined in
48 section one hundred two of the limited liability company law.

49 (b) No report shall be accepted by the department if the information
50 required to be included in the return pursuant to paragraph (a) of this
51 subdivision is not included in such report.

52 (c) The commissioner, in cooperation with the secretary of state, may
53 verify the beneficial ownership information included in returns pursuant
54 to this subdivision using beneficial ownership information submitted to
55 the department of state pursuant to section two hundred two or eight
56 hundred two of the limited liability company law in order to identify

1 fraud or suspicious activities and may at his or her own discretion
2 refer such fraud to appropriate authorities. The information included in
3 returns pertaining to the names and business addresses of beneficial
4 owners shall be transmitted to the secretary of state to keep beneficial
5 ownership information up to date, including with respect to the business
6 entity database or any subsequent database maintained by the division of
7 corporations within the department of state pursuant to section one
8 hundred-b of the executive law.

9 (d) The information required to be included with returns pursuant to
10 this subdivision shall be filed and shall be in such form as the commis-
11 sioner may prescribe.

12 § 13. This act shall take effect on the three hundred sixty-fifth day
13 after it shall have become a law. Effective immediately, the addition,
14 amendment and/or repeal of any rule or regulation necessary for the
15 implementation of this act on its effective date are authorized to be
16 made and completed on or before such effective date.