

Select Updates Impacting Family Business Owners

2026 Year-End Estate Planning Advisory

November 19, 2026

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For family business owners, family offices and their advisors, 2026 brought greater clarity on beneficial ownership reporting, Delaware entity governance and federal securities guidance. This section highlights those developments and what matters now. Although domestic reporting burdens have declined, obligations remain for foreign structures, significant public company holdings and transactions involving controlling owners.

Corporate Transparency Act

- **Final rule confirms the domestic exemption.** On August 11, 2026, the Financial Crimes Enforcement Network (FinCEN) issued a final rule, effective upon publication on August 14, 2026, making permanent its March 26, 2025 interim final rule, which substantially narrowed reporting under the Corporate Transparency Act (CTA). Under the final rule (91 Fed. Reg. 52508), entities created under US state or Tribal law are exempt from filing beneficial ownership information (BOI) reports, and US persons need not provide BOI as beneficial owners or company applicants.
- **Foreign-formed entities remain subject to reporting.** Foreign-formed entities registered to do business in a US state or Tribal jurisdiction generally remain reporting companies unless exempt. They report non-US beneficial owners and non-US company applicants, but not US persons. Newly registered reporting companies generally have 30 calendar days after notice of effective US registration to file. Because a reporting company must also report its own identifying information (including its legal name, address, jurisdiction of formation and taxpayer identification number), foreign-formed entities whose owners are all US persons should still confirm their filing status rather than assume no report is required.

- **Prior filings and bank requests.** US persons with FinCEN identifiers need not update or correct previously submitted information. FinCEN plans a one-time deletion of US-person information, subject to federal records requirements; individuals need not request removal. If BOI relating to a US company or a US person is included – inadvertently or intentionally – in a filing made after February 10, 2027, FinCEN does not anticipate deleting that information. Separate customer due diligence rules continue to require covered financial institutions to collect ownership information from legal entity customers, including entities held in trust.
- **The statute has not been repealed.** On October 5, 2026, the Supreme Court denied review of the Eleventh Circuit's December 16, 2025 decision in *National Small Business United v. US Department of the Treasury*, which upheld the CTA under the Commerce Clause and rejected a Fourth Amendment challenge. The denial was not a ruling on the merits, and because FinCEN's exemption is regulatory rather than statutory, it could change through future rulemaking.

Planning note: US-formed holding companies, FLPs and similar entities have no current federal BOI filing obligation. Families with foreign-formed, US-registered entities should confirm reporting status and maintain current ownership records. Bank know-your-customer requirements are separate and continue to apply.

New York LLC Transparency Act

The NY LLCTA took effect January 1, 2026, with a narrower scope than originally anticipated. Under New York Department of State guidance, only foreign-country-formed LLCs authorized to do business in New York are covered. LLCs formed in New York or another US jurisdiction currently have no filing obligation.

- **Who files and when.** Covered non-exempt LLCs report individuals who own at least 25% or exercise substantial control; covered exempt LLCs file an attestation. Those authorized before January 1, 2026, must file by December 31, 2026. Those applying for authority on or after January 1, 2026, must file within 30 days of application. Annual filings are also required.

Planning note: Families using non-US LLCs in New York should determine their filing status and complete any outstanding disclosure or attestation before year-end. The Department of State currently accepts submissions by email.

Delaware Corporate and LLC Developments

- **Controlling stockholder safe harbors upheld.** In *Rutledge v. Clearway Energy Group LLC* (Del. February 27, 2026), the Delaware Supreme Court upheld the 2025 amendments to section 144 of the DGCL, including the challenged retroactive application. For most controller transactions, statutory fiduciary duty safe harbors are available through either approval by a

properly empowered disinterested-director committee or an informed, uncoerced disinterested-stockholder vote; fairness remains an alternative. Going-private transactions generally require both safe harbor approvals or, alternatively, fairness. For these purposes, a “controller” may include a stockholder with at least one-third of the voting power who also exercises managerial authority.

- **2026 LLC Act amendments.** Effective August 1, 2026, House Bill 352 permits LLC agreements to establish series that are neither protected nor registered and clarifies that restrictions on a series' mergers, conversions and consolidations do not prevent the umbrella LLC from undertaking those transactions.
- **Entity maintenance costs increased.** Under House Bill 400, Delaware's annual tax for domestic and registered foreign LLCs and limited partnerships increased from $300 to $400, and the additional annual tax per registered series increased from $75 to $100. These annual tax changes apply beginning January 1, 2026; most other filing-fee changes took effect August 1, 2026.

Planning note: For Delaware family corporations contemplating controller loans, leases, recapitalizations or buyouts, structure section 144 approvals from the outset and document independence and disclosures. For LLCs and series structures, review governing agreements and maintenance budgets.

SEC Beneficial Ownership Guidance

In September 2026, the Securities and Exchange Commission (SEC) updated its staff interpretations of Schedules 13D and 13G. Investors relying on Rule 13d-1(b) or (c) do not lose Schedule 13G eligibility solely by discussing voting at an issuer's invitation, speaking with a proxy solicitor or seeking clarification of issuer disclosures. However, pressuring management to make changes may still disqualify an investor. Interpretations issued in July also clarify that standard cash-settled total return swaps, without more, do not create beneficial ownership and address Schedule 13D disclosure by vehicles formed to fund an activist campaign at a specific issuer.

Planning note: Before relying on Schedule 13G, family offices and trusts with holdings exceeding 5% of a registered equity class should assess voting and investment authority, positions that may be aggregated and the purpose of any shareholder engagement.

Family Businesses and Non-Competes

The Federal Trade Commission (FTC) formally removed its blocked nationwide non-compete rule effective February 12, 2026. Federal enforcement nevertheless continues. In June 2026, the FTC

finalized an order barring Rollins, Inc. from enforcing non-competes against more than 18,000 workers. State restrictions continue to expand; for example, Washington's broad prohibition takes effect June 30, 2027, and will apply to existing agreements. Case-by-case federal scrutiny and evolving state law are particularly significant for family businesses that employ workers in multiple states.

Planning note: Family businesses should review restrictive covenants under applicable state law and reinforce confidentiality, trade secret and tailored non-solicitation protections.

Key things to know

- **CTA status today:** Domestic BOI reporting relief is now final agency policy, but foreign-formed US-registered entities can still have filing obligations.
- **NY LLCTA compliance:** Covered foreign-formed LLCs authorized before 2026 face a December 31, 2026 initial filing deadline.
- **Delaware:** Use section 144 conflict procedures for controller transactions, and account for increased entity taxes.
- **SEC and employment:** Reassess large public-stock positions and restrictive covenants under current guidance and applicable law.

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CONTACTS

For more information, contact your Katten attorney or any of the following attorneys.



Joshua S. Rubenstein
+1.212.940.7150
joshua.rubenstein@katten.com



Diane B. Burks
+1.704.344.3153
diane.burks@katten.com



Charles Harris
+1.312.902.5213
charles.harris@katten.com



Tye J. Klooster
+1.312.902.5449
tye.klooster@katten.com



David M. Allen
+1.312.902.5260
david.allen@katten.com



Charlotte A. Castillo
+1.312.902.5434
charlotte.castillo@katten.com



Adam M. Damerow
+1.312.902.5250
adam.damerow@katten.com



Brianna Garland
+1.312.902.5242
brianna.garland@katten.com



Stuart E. Grass
+1.312.902.5276
stuart.grass@katten.com



Michael O. Hartz
+1.312.902.5279
michael.hartz@katten.com



Nicholas J. Heuer
+1.312.902.5549
nicholas.heuer@katten.com



Chris S. Hopkins
+1.312.902.5230
chris.hopkins@katten.com

Robert J. Hovey
+1.312.902.5426
robert.hovey@katten.com



Caitlyn E. Jensen
+1.312.902.5293
caitlyn.jensen@katten.com

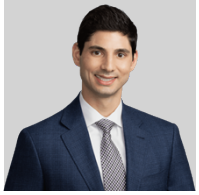
Katie Keating
+1.312.902.5407
katie.keating@katten.com



Caitlin A. Kelly
+1.312.902.5419
caitlin.kelly@katten.com



Jonathan Kohl
+1.312.902.5619
jon.kohl@katten.com



Benjamin Lavin
+1.312.902.5670
ben.lavin@katten.com

Jay A. Mansker
+1.312.902.5268
jay.mansker@katten.com

Laura E. Marion
+1.312.902.5264
laura.marion@katten.com



Andrew L. McKay
+1.312.902.5315
andrew.mckay@katten.com



Kelli Chase Plotz
+1.312.902.5347
kelli.plotz@katten.com



Michael L. Sherlock
+1.312.902.5643
msherlock@katten.com



Abby Feinman
+1.310.788.4722
abby.feinman@katten.com



Carol A. Johnston
+1.310.788.4505
carol.johnston@katten.com



Avi Pariser
+1.310.788.4514
avi.pariser@katten.com

Megan E. Ricker
+1.310.788.4521
megan.ricker@katten.com



Ronni G. Davidowitz
+1.212.940.7197
ronni.davidowitz@katten.com



Cynthia Reed Altchek
+1.212.940.6710
cynthia.altchek@katten.com



Mal L. Barasch
+1.212.940.8801
mal.barasch@katten.com



Lawrence B. Buttenwieser
+1.212.940.8560
lawrence.buttenwieser@katten.com



Jonathan C. Byer
+1.212.940.6532
jonathan.byer@katten.com



Bonnie Lynn Chmil
+1.212.940.6415
bonnie.chmil@katten.com



Alexandra Copell
+1.212.940.8588
alexandra.copell@katten.com



Marla G. Franzese
+1.212.940.8865
marla.franzese@katten.com



Robert E. Friedman
+1.212.940.8744
robert.friedman@katten.com



Gale R. Helfgott
+1.212.940.6487
gale.helfgott@katten.com



Milton J. Kain
+1.212.940.8750
milton.kain@katten.com



Rebecca H. Lomazow
+1.212.940.6497
rebecca.lomazow@katten.com



Christina N. Romero
+1.212.940.6380
christina.romero@katten.com



Parker F. Taylor
+1.212.940.8668
parker.taylor@katten.com



Andrew B. Toporoff
+1.212.940.6356
andrew.toporoff@katten.com



Emily Tuten
+1.212.940.8617
emily.tuten@katten.com



Kathryn von Matthiessen
+1.212.940.8517
kathryn.vonmatthiessen@katten.com

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