ABRAHAMS KASLOW & CASSMAN LLP

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80 YEARS

LEGAL Perspectives

OMAHA'S BUSINESS LAW FIRM SINCE 1944

What is Nebraska's "Transfer Tax"?

By Payton Hostens

Whether you are buying or selling real estate, it is important to understand and comply with all of the requirements of real estate transactions.

In Nebraska, one such requirement is the payment of the documentary stamp tax, sometimes referred to as the "transfer tax".

A documentary stamp tax is imposed on the transfer of beneficial interests in or legal title to real property located in the state of Nebraska, subject to a number of exemptions. The tax is based upon the value of the real estate, and the current rate is $2.25 for each $1,000 value or fraction thereof. For example, the documentary stamp tax for a home valued at $200,000 would be $450.00, which must be paid at the time the deed is filed with the register of deeds.

As noted above, there are a number of exemptions in which real estate may be transferred without being subject to the documentary stamp tax. A few commonly used exemptions include:

- Deeds between spouses, between ex-spouses for the purpose of conveying any rights to property acquired or held during the marriage, or between parent and child, without actual consideration therefor;
- Deeds to or from a corporation (whose stock is all owned by members of a family), partnership (whose partners are all members of a family), or limited liability company (whose members are all members of a family), for no consideration other than the issuance of stock of the corporation or interest in the partnership or limited liability company or the return of the stock in partial or complete liquidation of the corporation or dissolution of the interest in the partnership or limited liability company;
- Deeds of distribution executed by a personal representative conveying to devisees or heirs property passing by testate or intestate succession;
- Deeds transferring property into a trust if the transfer of the same property would be exempt if the transfer was made directly from the grantor to the beneficiary or beneficiaries under the trust;
- Deeds transferring property from a trustee to a beneficiary of a trust.

A complete list of the exemptions from the documentary stamp tax may be found at Neb. Rev. Stat. § 76-902. It is important to note that any exemption claimed must be clearly stated on the face of the deed or by presenting sufficient documentary proof to the register of deeds (generally through the filing of a Real Estate Transfer Statement in conjunction with the deed).

AKC can help you navigate the requirements of real estate transactions, including assisting you with Nebraska's documentary stamp tax. If you have questions or want to learn more, please contact Payton Hostens at phostens@AKCLaw.com.

AKC Law Announces Newest Partner

Abrahams Kaslow & Cassman LLP is pleased to announce David C. Nelson as the firm's newest partner.

Dave has over three decades of experience advising businesses and individuals on legal matters. He is able to skillfully handle the drafting, reviewing, revising, and negotiating complex contracts all aimed at safeguarding the best interests of his clients.

At AKC Law, his practice focuses on real estate law, contracts, agriculture law, construction law, commercial lending, intellectual property, franchise law, and mergers and acquisitions.

Dave said, "I'm honored to become a partner at the firm. AKC Law has been pivotal in my legal journey, and I'm eager to continue contributing alongside a team I deeply value."

Dave is a graduate of the University of Nebraska and received is JD from Creighton University's School of Law.

Abrahams Kaslow & Cassman LLP is one of the longest standing law firms in Omaha. For 80 years, we have been committed to caring for our clients as individuals and exhibiting the highest degree of ethical and professional conduct. We take pride in the many longstanding relationships that we have established and value our reputation for providing prompt and skillful legal services.

EMPLOYMENT LAW

Performance Improvement Plans Help Employees Get on Track

By Julie M. Ryan

Often, an employer will know that an employee has been struggling to perform their job based on direct observations or complaints from coworkers or customers.

An employee's insufficient job performance can have negative impacts on your business, from burdening coworkers with an increased workload and increased costs, to work not getting completed at all and possible safety or health issues when company policies are not being followed.

A performance improvement plan ("PIP") is a tool an employer can use to facilitate clear communication about an employee's job performance issues and memorialize a plan for what the employee must do to get back on track.

The main purpose of a PIP is to help the employee, not punish them. At the same time, if the employer ultimately decides to terminate the employee, the PIP documentation may be used to support that decision.

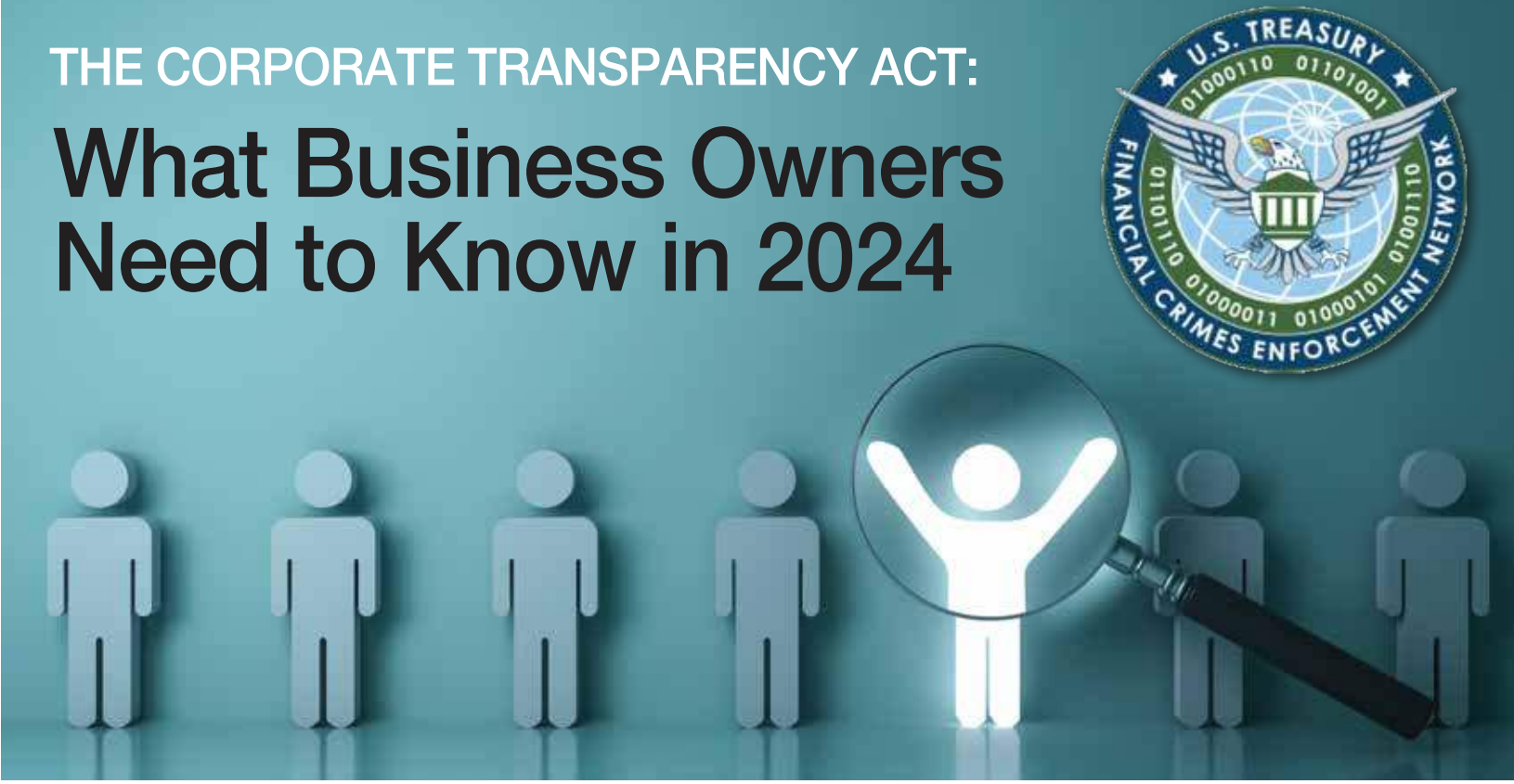
Here are some things for employers to consider relating to PIPs:

1. **Check Company Policies:** After investigating an incident, check your company's handbook or other policies to determine whether using a PIP is appropriate for the situation. Subject to those policies and the facts of the incident, a one-time incident may not be cause, by itself, to warrant implementing a PIP. Part of your considerations may include whether the employee received clear expectations or training to know better to avoid the issue. In that instance, you may consider documenting that incident and applying some other form of discipline, such as a written warning or suspension. Sometimes progressive discipline is not appropriate, though. There can be one-time incidents that are so egregious or otherwise which warrant immediate termination based on company policy and the facts of the incident. When company policy allows, a PIP can be used for situations that fall somewhere in between those two scenarios. A PIP is most commonly used as the last step in a progressive discipline process before termination, if any.
2. **Prepare the PIP:**
   - A properly drafted PIP will identify general information such as the employee's name and job title, his or her supervisor's name, a space to write in the date for when the company representative (supervisor and/or human resources) will meet with the employee to review the PIP, and spaces for that company representative and the employee to each sign and date when they have each reviewed and acknowledged the PIP.
   - The PIP will identify what standards of performance are being reviewed. For example, is the employee having issues with productivity, quality of work, teamwork, timeliness, attendance, conduct, etc.?
   - As relevant to the identified standard of performance under review, the PIP should then describe what an employee must do to satisfactorily perform that standard.
   - The PIP should describe how the employee has not been satisfactorily meeting that standard of performance. Use examples of incidents in which the employee failed to meet that standard and explain why.
   - Having identified the current performance issue areas and the required standard for those areas, the next step is to identify the improvement plan. These are the things the employee must do to correct the job performance issue. For the improvement plan, state what is expected of the employee, how the task must be done, and the timeframe for how long the plan will be in place (e.g., 30, 60, or 90 days).
   - If the employee is employed by the business "at-will", the PIP should include language to inform the employee that nothing in the PIP changes the "at-will" nature of employment.
   - Be specific and concise throughout the PIP
3. **Meet with Employee:** The company representative's meeting with the employee should be as soon as practicable after the investigation of the incident has been completed and the draft PIP has been prepared. The company representative should go through the PIP with the employee and ensure that the employee understands the issues and the plan. Allow the employee to offer suggestions of how they believe they can improve their performance and, if appropriate considering the business needs and duties of the position, you may revise the PIP accordingly. Both the representative and employee should sign and date the acknowledgment on the PIP.
4. **Follow-up:** Plan recurring meetings with the employee every one to four weeks after the initial meeting to review the employee's progress with implementing the improvement plan. The PIP should include an area to document the periodic review meetings. If the employee successfully completes the PIP plan, the PIP should document the date that was accomplished. The PIP and all documents relating to the PIP should be kept in the employee's personnel file.

For more information, please contact Julie M. Ryan at jryan@AKCLaw.com or another one of AKC Law's Employment Law attorneys at 402.392.1250

THE CORPORATE TRANSPARENCY ACT:

What Business Owners Need to Know in 2024



By Alex Montoya

The effective date of the Corporate Transparency Act ("CTA") has arrived.

As of January 1, 2024, the CTA drastically changed corporate ownership reporting requirements for millions of new and existing entities formed or registered to do business in the United States.

The CTA was enacted by Congress in 2021 as a part of the National Defense Authorization Act with the aim of reducing financial crimes and illicit activity conducted through shell companies with opaque ownership structures.

As articles in previous editions of this newsletter have addressed, the CTA will require "reporting companies" (most new and existing entities in the United States) to file Beneficial Ownership Information Reports ("BOI Reports") with the U.S. Department of Treasury's Financial Crimes Enforcement Network ("FinCEN"), the agency tasked with implementing and overseeing the CTA.

There are many factors that affect who has to file a BOI Report, what has to be reported, and when the BOI Report has to be filed.

A Brief CTA Overview

Who does this affect? All entities formed or registered to do business in the United States before or after January 1, 2024 and that are not exempt under any of the CTA's 23 exemptions are subject to the CTA reporting requirements(exemptions are discussed in previous articles and are available on AKCLaw.com).

BOI Reports must initially include:

1. Reporting Company Information
   - Full Legal Name
   - Trade Name(s)
   - Principal Place of Business
   - Jurisdiction of Formation
   - Taxpayer Identification Number

2. Beneficial Owner Information – Individuals with substantial control and/or 25% ownership interest
   - Full Legal Name
   - Date of Birth
   - Current Address (residential)
   - Unique Identifying Number (from valid State ID or US Passport)
   - Image of the document with the Unique Identifying Number

3. Company Applicant Information – Individual who files the document that creates the entity and/or directs and controls the filing (only for entities filed after 2024)
   - Full Legal Name
   - Date of Birth
   - Current Address (business address)
   - Unique Identifying Number (from valid State ID or US Passport)
   - Image of the document with the Unique Identifying Number

*An updated BOI Report is required if any information initially reported above changes or is inaccurate

When: The BOI Report filing deadline depends on when the entity was formed.

1. Entities formed any time before January 1, 2024:
   - Initial BOI Report is due by January 1, 2025
   - After the initial BOI Report is filed, any updated/corrected BOI Report is due within 30 calendar days of the update/discovery of an inaccuracy

2. Entities formed in 2024:
   - Initial BOI Report is due 90 calendar days after the entity is formed (when actual or public notice of the entity's registration becomes effective)
   - After the initial BOI Report is filed, any updated/corrected BOI Report is due within 30 calendar days of the update/discovery of an inaccuracy

3. Entities formed in 2025:
   - Initial BOI Report is due 30 calendar days after the entity is formed (when actual or public notice of the entity's registration becomes effective)
   - After the initial BOI Report is filed, any updated/corrected BOI Report is due within 30 calendar days of the update/discovery of an inaccuracy

AKC Law has been following the CTA closely since its passage by Congress. The firm has followed each rulemaking comment and promulgation session and is prepared to answer questions related to the CTA and the roll-out of FinCEN's BOI reporting system.

Please contact Alex Montoya at amontoya@AKCLaw.com for more information about the CTA.

ESTATE PLANNING

The Importance of a Living Will

By Sam O'Neill

A common question we run into when discussing an estate plan is, "Do I need a living will?" For many, contemplating end-of-life decisions may not be the most comfortable topic, but it is undeniably important.

What is a Living Will?

A living will, also known as a declaration or advance directive, is a legal document that outlines your preferences for end-of-life medical treatment in case you become unable to communicate your own decisions. It serves as a guide for medical providers and your loved ones, ensuring that your end-of-life wishes are honored.

Why Consider a Living Will?

1. Empowerment in Decision-Making: A living will empowers you to state your preferences in writing regarding end-of-life medical treatment that you want or do not want, including life-sustaining interventions, resuscitation, and organ donation. By doing so, you take an active role in shaping the medical care you receive, even when you are unable to express your wishes to medical providers.
2. Relieves Burden on Loved Ones: In the absence of a living will, family members may face difficult decisions about your medical care when you are unable to provide your own directions to medical providers. Having a living will relieves your family members of the burden of making difficult choices regarding your care and can help eliminate conflict between your family members.
3. Peace of Mind: Your living will serves as a roadmap for medical providers, ensuring they deliver care consistent with your values and beliefs. It helps avoid medical interventions that may not align with your wishes and provides you with more control over your end-of-life treatment. A living will can be updated periodically to ensure the living will follows your wishes if your personal circumstances change over time. It also provides peace of mind that your end-of-life medical decisions are made by you and documented for the benefit of those that you care about.

The question of whether you need a living will is personal but should be considered by anyone making or updating an estate plan. However, considering the potential benefits, many individuals find that having a living will in place brings a sense of control and peace of mind.

If you have any questions regarding a living will, gaining the assistance of an estate planning attorney can be beneficial. Abrahams Kaslow & Cassman LLP has been assisting families with estate planning since 1944. Contact Sam O'Neill at soneill@AKCLaw.com for more information.

Increased Estate & Gift Tax Exclusions for 2024

By Howard Kaslow

Each year, the Internal Revenue Service adjusts the federal estate and gift tax exclusion amount to reflect cost-of-living increases.

Because of the high level of inflation during much of 2023, the 2024 increase from 2023 is substantial.

For the estate of a decedent dying in 2024, the applicable exclusion for federal estate tax purposes is increased from the 2023 exclusion of $12,920,000 to $13,610,000. This increase also applies to an individual's lifetime gift tax exclusion and generation-skipping transfer tax exclusion.

With proper planning, a husband and wife could transfer $27,220,000 by gifts during 2024, including generation-skipping gifts, and not have any gift tax or future estate tax liability for such transfers (assuming they had not used any portion of their gift tax exclusion in prior calendar years). Gifts that qualify for the annual exclusion (discussed below) do not use any portion of the overall gift tax exclusion, and most charitable gifts are entirely free of gift and estate tax and do not use any portion of the estate and gift tax exclusion.

Upon the death of a decedent, the federal estate tax on the decedent's estate is computed by taking into account lifetime gifts to which the gift tax exclusion applied so that there is no duplication of the exclusion amount. If a deceased spouse does not fully use his or her estate tax exclusion amount, it is possible for the unused amount to be carried over and added to the estate and gift tax exclusion amount of the surviving spouse (if the surviving spouse has not remarried and survived a second spouse).

Current law provides that in 2026 the federal estate and gift tax exclusion amount will be reduced to the prior exclusion amount, adjusted for inflation; in effect, a 50% reduction. That reduced amount appears likely to be in the range of $6,800,000 to $7,000,000 for 2026, with possible future increases for inflation.

In addition to the overall exclusion amount discussed above, an individual can make annual exclusion gifts of $18,000 in 2024 to an unlimited number of recipients (an increase from $17,000 in 2023) as long as the gifts meet certain requirements.

A gift by one spouse can be treated as having been made equally by both spouses, with the effect that their total gift to each recipient in 2024 could be $36,000. Lifetime charitable gifts (and the charitable portion of gifts to both a charity and an individual) are not subject to that limit and are free of any gift tax. In addition to the annual exclusion amount, gifts in the form of certain tuition payments and medical expense payments can be made without being subject to gift tax.

While there are a number of ways to take advantage of the estate, gift, and generation-skipping transfer tax exclusions, there are often very technical requirements that must be complied with to accomplish the intended result.

Members of the estate planning group at AKC Law are skilled in assisting our clients to accomplish their gift and estate planning goals and will be happy to assist you. Contact AKC Law at 402.392.1250.

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