

Dear Stewart Partners,

Happy New Year and welcome to 2025! We hope you all enjoyed time with your family and loved ones during the holiday. In our first Mid-Week of 2025, we are providing you with details of the current status of the Corporate Transparency Act's Beneficial Ownership Reporting Rules, which will impact many of you and your businesses. The activity in the case in the last week of the year was like watching an Olympic ping pong match. In the article below, Frank explains what happened and what you need to know.

Additionally, for those practitioners in Connecticut we are also including a brief article on the common uses of Connecticut's General Statutes Section 47-12a sworn statements of facts relating to title or interests in real estate. Lastly, we are including a link to Stewart's commercial real estate education page, called Title Tenets. On this site you can register for upcoming sessions and access previously recorded webinars on commercial real estate focused topics.



**Current Status of the Corporate Transparency Act's Beneficial Ownership Reporting Rules** By: Frank Cammarano, Esq.,  
Connecticut Underwriting Counsel

The Corporate Transparency Act (CTA) was enacted in 2021 to combat illicit activity including tax fraud, money laundering, and financing for terrorism by capturing more ownership information for specific U.S. businesses operating in or accessing the U.S. market. Under the legislation, businesses that meet certain criteria must submit a Beneficial Ownership Information (BOI) Report to the U.S. Department of Treasury's Financial Crimes Enforcement Network (FinCEN) by January 1, 2025. This required filing would provide details identifying individuals who are associated with the reporting company.

Two types of reporting companies will be required to submit BOI reports pursuant to the CTA's reporting rules: domestic reporting companies, including LLCs, corporations, and other entities formed through filing with a secretary of state or a comparable office in the U.S.; and foreign reporting companies that are registered to conduct business in the United States through filing with a secretary of state or an equivalent office.

On December 3, 2024, the United States District Court for the Eastern District of Texas, Sherman division, in a case entitled Texas Top Cop Shop, Inc. et al. v. Merrick Garland, Attorney General of the United States, et al. issued a nationwide preliminary injunction enjoining the CTA and enforcement of the BOI reporting rule under the CTA and staying the

compliance deadline. Specifically, the court ruled that "reporting companies need not comply with the CTA's January 1, 2025, BOI reporting deadline pending further order of the Court." The basis for the court's ruling is a determination that the CTA is likely unconstitutional by overstepping Congress's authority under the Commerce Clause, siding with a similar ruling from a federal court in Alabama and disagreeing with federal courts in Oregon and Virginia. The Government requested a stay of the preliminary injunction, which the District Court denied.

The Government appealed, and on December 23, 2024, a motions panel of the Fifth Circuit Court of Appeals granted the Government's emergency motion for a stay pending appeal, which lifted the injunction and reinstated the CTA's reporting rules. FinCEN immediately issued an alert notifying the public of this ruling and extended reporting deadlines from January 1, 2025 to January 13, 2025.

On December 26, 2024, the merits panel of the U.S. Court of Appeals for the Fifth Circuit issued an order vacating the Court's December 23, 2024 order granting a stay of the preliminary injunction to "preserve the constitutional status quo while the merits panel considers the parties' weighty substantive arguments." Therefore, as of December 26, 2024, **the injunction issued by the district court in Texas Top Cop Shop, Inc. v. Garland is in effect and reporting companies are not currently required to file beneficial ownership information with FinCEN.**

The Fifth Circuit Court of Appeals has set March 25, 2025 as the date for oral argument (Texas Top Cop Shop, Inc., et al. v. Merrick Garland, Attorney General of the United States, et al.), with a briefing schedule back and forth between the parties throughout February 2025.

On December 27, 2024, FinCEN issued the following alert:

**Alert [December 27, 2024]: Impact of Ongoing Litigation – Deadline Stay – Voluntary Submission Only** – In light of a recent federal court order, reporting companies are not currently required to file beneficial ownership information with FinCEN and are not subject to liability if they fail to do so while the order remains in force. However, reporting companies may continue to voluntarily submit beneficial ownership information reports ([Beneficial Ownership Information Reporting | FinCEN.gov](https://www.fincen.gov/beneficial-ownership-reporting)).

As of the date of this article, this is the latest development in what has been a turbulent record for enforcement of the CTA's BOI reporting rules. Although the reporting deadlines are currently on pause, reporting companies should continue to monitor for additional updates and/or guidance from FinCEN due to the ongoing litigation.



**The Use of Affidavits of Facts Relating to Title or Interests in Real Estate in Connecticut** By: David M. Piechota, Esq., Connecticut Underwriting Counsel

Connecticut General Statutes Section 47-12a addresses the use of affidavits relating to title or interest in real estate, which state facts relating to the matters which may affect the title to or any interest in real estate. The affidavit must be executed by any person having

knowledge of the facts and competent to testify concerning them in open court. The affidavit may be recorded in the land records of the town in which the real estate is situated.

The affidavits provided for under C.G.S. 47-12a (b) may relate to the following matters: age, sex, birth, death, capacity, relationship, family history, heirship, names, identity of parties, marital status, possession or adverse possession, adverse use, residence, service in the armed forces, conflicts and ambiguities in description of land in recorded instruments, the happening of any condition or event which may terminate an estate or interest, unlawful restrictive covenants and any other state of facts affecting title to real property.

The statute requires that every affidavit shall include a description of the land and shall state the name of the owner of the land at the time of the recording of the affidavit, thus bringing the affidavit within the chain of title. If so recorded, and if the affiant is dead or otherwise not available to testify in court, then the affidavit, or a certified copy of it, is admissible as prima facie evidence of the facts stated in it, so far as those facts affect title to real estate in any action involving the title to that real estate or any interest in it.

These affidavits are widely used for the purpose of clarifying land titles and to correct defects in title. The affidavit should set forth the basis for the affiant's knowledge of the facts asserted to be true. The same statements as to competency and personal knowledge of the affiant as would be required and elicited from a witness in court should be set forth in the affidavit.

The recording of the affidavit gives the title and those searching it constructive notice of its contents. The doctrine of constructive notice as to the contents of instruments properly recorded has long been recognized by Connecticut courts. Under this doctrine, every person is presumed to know, so far as that person's legal title to land is concerned, whatever in fact appears upon the record with respect to that land. *Sumner v. Rhodes*, 14 Conn. 135, 139 (1840). The proper statement of the rule of constructive notice was clearly set forth in the case of *Beach v. Osborne*, 74 Conn. 405, 412 (1902): "[E]very person who takes a conveyance of an interest in land is conclusively presumed to know those facts which are apparent upon the land records concerning the chain of title of the property described in the conveyance."

Connecticut courts have held that the filing of an affidavit pursuant to § 47a-12a does not create a lien on the subject property but merely a notice analogous to a *lis pendens*. See *Mortgage Electronic Registration Systems, Inc. v. Venditto*, Superior Court, judicial district of New London, Docket No. 4002228 (October 28, 2005, Devine, J.) 40 Conn. L. Rptr. 209, 210, 2005 Conn.Super. LEXIS 2998; *People's Bank v. Bouffard*, J.D. of Fairfield at Bridgeport, CV 05-40008908 (August 19, 2005, Doherty, J.) (39 Conn. L. Rptr. 832).

However, not all affidavits recorded on the land records fall under C.G.S. 47-12a. *Alaska Seaboard Partners, LP v. Legare*, No. TTDCV 085002827, 2009 Conn.Super. LEXIS 2026 [48 Conn. L. Rptr. 338] (Conn.Super.Ct. July 23, 2009), concerned an affidavit in which the affiant alleged to have entered into a contract for the purchase of certain real estate which was recorded on the land records. Both sides filed motions for summary judgment. Defendant buyer's revised counterclaim sought specific performance of a time barred contract. The court held that the recording of a notice of a contract for the conveyance of land cannot be construed to fall under the authorization of § 47-12a. Thus, despite the

affidavit's reference to § 47-12a, it was not authorized by that statute because it did not relate to any of the matters named in subsection (b).

The Connecticut legislature enacted Section 47-12a in 1967, which provides legislative sanction for the admission into evidence of certain affidavits which recite facts relating to title or interest in real estate. The statute permits the use of affidavits to clarify issues in the chain of title on the land records to better describe the facts of land ownership. The intent of the statute is to reduce the necessity to investigate or ascertain facts outside of such records and the need to resort to an action to quiet title. The facts recited in such an affidavit are presumptive evidence only of the truth of those alleged facts and are subject to rebuttal by other evidence. However, the importance of this statute to real estate attorneys is that the facts recited in such an affidavit are prima facie evidence of the truthfulness and accuracy of those facts to the extent that they relate to matters named in subsection (b) of the statute, and in the absence of contrary evidence may be the basis of a judgment quieting title or determining that a title is marketable.

Please reach out to our Connecticut team of underwriters if you have any questions regarding the use of 47-12a affidavits.



## **Stewart Title's Commercial Real Estate Education Series "Title Tenets"**

STGC's commercial real estate webinar series offers customized and creative presentations to our industry partners. Presented by members of our renowned team of national title and underwriting experts, our specialists share their years of title and underwriting knowledge and expertise on a wide variety of timely topics, trends and resources. To register for upcoming presentations or access the library of recorded webinars follow this link: [STGC's commercial real estate webinar series](#)



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