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The Real Estate Impact of FinCEN's Beneficial Ownership Reporting: Are You Prepared?

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In a move heralded as a significant step toward transparency, the Financial Crimes Enforcement Network (FinCEN) has adopted its final Beneficial Ownership Information (BOI) Reporting Rule pursuant to the Corporate Transparency Act. Aimed at curbing illicit activities and bolstering national security, this rule could reshape the way businesses in the U.S. operate.

The implementation of FinCEN's new rule could reverberate across various sectors, including real estate. Developers, lenders, and even associations (like POAs, HOAs and COAs) may find themselves under closer scrutiny. They may need to disclose beneficial owners and persons with substantial control, adding an extra layer of compliance and potentially affecting the ease, speed, and privacy of real estate transactions. Overall, while the rule aims for greater transparency in financial dealings, those in the real estate sector should prepare for an uptick in administrative responsibilities.

Key Features of the Rule

- **Types of Reporting Companies**: Two categories, namely domestic and foreign, are identified. Domestic companies include corporations and LLCs formed by filing a document with a state's secretary or similar office. Foreign companies are those formed abroad but registered to do business in the U.S.
- **Beneficial Owners**: The rule mandates companies to disclose individuals with substantial control or ownership of at least 25% of the business. The definitions are crafted to plug loopholes that might enable illicit activities.
- **Company Applicants**: Two persons need to be identified - the individual filing the document that creates the entity and the one responsible for directing or controlling this filing.
- **Information Required**: Companies must report the name, birthdate, address, and a unique identifier for each beneficial owner. This data aims to facilitate law enforcement and authorized bodies in their duties.

- **Timeline**: The rule is effective from January 1, 2024. Companies existing before this date will have until January 1, 2025, to file their initial reports. New companies will have 30 days after their creation to comply.

The Road Ahead

While this rule sets the stage, it's just one of three planned rulemakings under the Corporate Transparency Act. Future iterations will focus on data accessibility and customer due diligence measures. Additionally, FinCEN plans to launch a secure system, the Beneficial Ownership Secure System (BOSS), to store this crucial data.

Stay tuned for further updates.