



# ABSOLUTE Advantage

## Trust and Estate Law Happening Now

FALL 2024



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"THE SEASON FOR  
ENJOYING THE  
FULLNESS OF LIFE:  
PARTAKING OF THE  
HARVEST, SHARING  
THE HARVEST WITH  
OTHERS, AND  
REINVESTING AND  
SAVING PORTIONS OF  
THE HARVEST FOR YET  
ANOTHER SEASON OF  
GROWTH."

-DENIS WAITLEY

## FIVE ASSET TYPES NOT TO FUND INTO YOUR TRUST

By Kirsten Howe

As our clients already know, creating a written estate plan is not the end of the process. Trusts must also be funded in order for them to be effective planning tools. Funding is the process of re-titling assets into your name as trustee of the trust. Funding a trust with your assets ensures that the assets will pass according to the terms of the trust and your wishes. Assets funded into the trust will avoid probate, the lengthy court process of transferring assets on death.

It's important to remember, though, that certain types of assets should NOT be funded into a trust, as follows:

1. Tax-deferred retirement accounts These include any kind of IRA (traditional, SEP, rollover) and 401k, 457, and 403b accounts, among the most common. These are all tax-deferred assets. For this reason they are different from most other financial accounts. They must always be owned in the name of the employee who earned them. A transfer of these assets to a trust is considered a taxable distribution, meaning you will pay the entire tax obligation on the whole account in that tax year. These accounts will go on your death to the beneficiary you name in the account documentation.
2. ROTH accounts These retirement accounts are not tax-deferred, like traditional IRAs, but they are tax-free. Once the money goes in, it grows tax-free until it is distributed or withdrawn. This is a wonderful tax benefit and one that everyone, especially younger people should consider taking advantage of, but the tax advantage would be eliminated by transferring these accounts to your trust. These accounts will also go on your death to the beneficiary you name in the account documentation.
3. 529 accounts These are education accounts we set up for our children and grandchildren. One important point to remember about these accounts is that they do not belong to the account owner. For these accounts, the word owner has a very specific meaning. The account owner is the person who makes decisions about the account, has the power to direct money to be spent for education expenses of the beneficiary and has the power to change the beneficiary. However, the money that was used to create these accounts was a gift. It no longer belongs to the giver (usually a parent or grandparent) and therefore cannot be funded into the giver's (or anybody's) trust.



The other important point to remember with these assets is that the owner can designate a successor owner. This is done by informing the financial institution holding the account, usually when the account is opened, but it can

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## FIVE ASSET TYPES NOT TO FUND INTO YOUR TRUST (CONTINUED)

be done later, who you wish that successor owner to be. This ensures that if something happens to the account owner, someone else can step in and manage the account without probate court involvement.

4. **Donor Advised Funds** These accounts are created by transferring money or securities to the account, which can be held in the account until the transferor decides what charities will receive funds. The transferor gets a charitable deduction for the contribution in the year the transfer is made, even if the distributions to the charities happen in later years. Here, the transferor is called the adviser. In important ways very similar to a 529 account, it is important to designate a successor advisor for your DAF. You should do this when first creating the DAF, but you can add it any time by completing the necessary documentation with the institution that holds your DAF.
5. **Medical savings accounts** These accounts include Health Savings Accounts (HSAs) and Flexible Savings Accounts (FSAs). These accounts can be both tax-deferred and tax-free, like the best combination of a traditional IRA and a ROTH IRA. As long as the money in the account is spent on medical expenses, no taxes are paid. Like IRAs and ROTH accounts, they would lose all of their tax benefits if transferred to a trust. These accounts will go on your death to the beneficiary you name in the account documentation.

Planning for ALL of your assets, not just your trust assets, is an important component of estate planning. If you need help with your estate plan, give us a call! 📞



## WHAT IS THE CORPORATE TRANSPARENCY ACT?

By Kirsten Howe

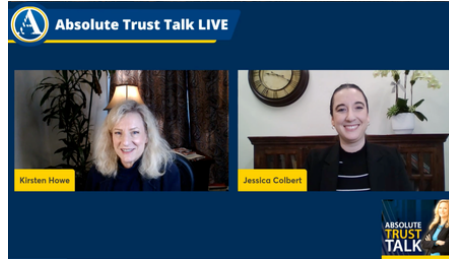
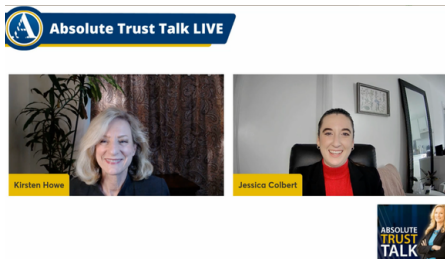
The Corporate Transparency Act (CTA), enacted as part of the National Defense Authorization Act for Fiscal Year 2021, requires certain owners of interests in legal entities to file a report by the end of 2024, or within 30 days for the formation of entities formed in 2024. It is crucial that business owners and owners of other entities are aware of this legislation and understand their reporting requirements. This article aims to provide a just a very brief heads-up about the CTA. If you are a business owner or otherwise involved in a legal entity such as a partnership, LLC or corporation, it is important to consult with your business attorney to make sure you are in compliance with this law.

### What is the Corporate Transparency Act?

The CTA is designed to combat illicit activities such as money laundering, terrorism financing, and other forms of financial crime by increasing transparency in corporate ownership. It mandates that certain business entities disclose information about their beneficial owners to the

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## WHAT IS THE CORPORATE TRANSPARENCY ACT? (CONTINUED)

Financial Crimes Enforcement Network (FinCEN). This information is intended to create a centralized database accessible to law enforcement and other regulatory agencies.

### Who Must Comply with the CTA?

The CTA applies to a wide range of entities, including corporations, limited liability companies (LLCs), and similar entities created under state law. However, there are several categories of entities that are not required to disclose the required information:

- Publicly traded companies.
- Banks and credit unions.
- Insurance companies.
- Registered investment companies and advisers.
- Tax-exempt entities.
- Subsidiaries of certain exempt entities.

### Key Definitions Under the CTA

**Beneficial Owner:** A beneficial owner is any individual who, directly or indirectly:

- Exercises substantial control over a reporting company, or
- Owns or controls at least 25% of the ownership interests of the entity.

### **Substantial Control includes:**

- Serving as a senior officer.
- Having authority over the appointment or removal of any senior officer or a majority of the board of directors.
- Directing, determining, or having substantial influence over important decisions made by the entity.

### **Reporting Requirements**


Entities subject to the CTA must report specific information about their beneficial owners to FinCEN, including:

- Full legal name.
- Date of birth.
- Current residential or business street address.
- A unique identifying number from an acceptable identification document (e.g., passport or driver's license).

The initial report must be filed within a prescribed time frame, with updates submitted promptly upon any changes to the reported information. For entities that existed prior to January 1, 2024, reporting must be completed by December 31, 2024. For entities formed in 2024 and after, reporting must be completed within 30 days. It is also to note that any changes in beneficial ownership, such as through a sale, a merger or issuing shares as compensation, must be reported within 30 days of the change.

### **Conclusion**

The Corporate Transparency Act introduces a new era of

transparency in entity ownership, aiming to enhance the fight against financial crime. If you own or are involved in a business entity, or are the trustee of a trust that owns a business entity, it is important to talk to your business attorney and make sure your entity is in compliance with CTA. 


## MEET OUR NEW ASSOCIATE ATTORNEY, ARIANA FLYNN!

Before joining us, she worked primarily as a trust and estate litigation attorney in Walnut Creek, although she also did estate planning, trust administration and probate. We don't handle litigation at ATC, but we already really see the benefit of Ariana's experience and perspective in many of our cases.



In her words, "Transitioning from trust and estate litigation to estate planning has allowed me to focus on the preventative side of law. My goal is to work closely with families to safeguard their assets, plan for their legacy, and provide them with peace of mind knowing their future is secure."

As an undergraduate, she played NCAA basketball (at Dominican University) and then graduated from UC Davis. She earned her Juris Doctor from ATC's favorite law school, University of California, Hastings College of the Law (now known as University of California College of the Law, San Francisco).

In her free time, Ariana enjoys giving back to the youth in her community and volunteers as the director of a youth girls basketball program. She also enjoys playing basketball and coaches varsity girls basketball at Livermore High. Ariana loves working out and spending time outdoors with her family, partner, and pug, Frank. 

## HERE ARE SOME OF OUR FAVORITE HALLOWEEN CANDIES. WHAT'S YOURS?

**Kirsten** – Banana Bikes, a very chewy, bright yellow, no doubt carcinogenic candy that I loved as a kid, but that would give my dentist a heart attack today, so I have to say Snickers.

**Ariana** – Airhead soft-filled bites!

**Jessica** – My favorite Halloween candy is the pumpkin shaped Reese's candy.

**Sandy** – My favorite candy is Kit Kat

**Denette** – My favorite Halloween candy is any of the popular ones with milk chocolate and especially caramel – Reese's, Snickers, Twix, Milky way, even 3 Musketeers.

**Cameron** – I'd have to say Reese's peanut butter cups!

**Alexandra** – My favorite candy is Reese's peanut butter cups.

**Suzette** – My favorite candy is Reese's peanut butter cups.





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## PERSONAL NOTE FROM KIRSTEN

Dear Clients and Other Friends,

National Estate Planning Awareness Week, the third full week of October, this year is October 21-27, was adopted in 2008 by the House of Representatives to help the public understand what estate planning is and why it is so important.

If you are reading this newsletter, we know that you already appreciate the importance of estate planning – that’s why you came to us in the first place. Consider sharing this fact (and even this newsletter!) with a friend or family member you care about, to encourage them to take care of their own estate planning.

I hope this month is full of your favorite Halloween candy!

Warmly,

Kirsten

**PLEASE RECYCLE, REDUCE AND REUSE.  
SHARE THIS NEWSLETTER WITH FRIENDS AND FAMILY.  
TO UNSUBSCRIBE, EMAIL US AT  
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