



WEBSTER CHAMBER OF COMMERCE


**BREAKFAST BEFORE BUSINESS
FEBRUARY 23, 2024**


*Presented by: Joshua B.
Beisker and Andrew M.
Washburn*

Underberg & Kessler LLP
300 Bausch & Lomb Place
Rochester, NY 14604
underbergkessler.com

PRESENTERS



 Joshua B. Beisker, Esq.

 585.258.2879


 jbeisker@underbergkessler.com

Corporate & Business, Estates & Trusts and Tax Law

As chair of both our Estates & Trusts and Tax Law Practice Groups, Josh advises clients on estate and income tax planning, wills and trusts, durable powers of attorney, health care proxies, and fiduciary administration. He represents corporations, LLCs, partnerships, and individuals in connection with mergers & acquisitions, corporate governance, business planning and financing, and he counsels businesses on day-to-day operations. Josh is a frequent lecturer at numerous organizations including the National Business Institute, universities and other educational institutions, adult education programs, financial planning organizations, alumni groups, and community organizations. He is a member of the Estate Planning Council of Rochester and the Monroe County and New York State Bar Associations.



 Andrew M. Washburn, Esq.

 585.258.2885

 awashburn@underbergkessler.com

Commercial Lending and Real Estate & Finance

Andrew counsels clients on a wide variety of commercial and residential real estate transactions, always putting himself in their shoes and working diligently to ensure the matter achieves a successful conclusion. He is a member of the Monroe County Bar Association (MCBA) and a participant in the 2024 MCBA Leadership Academy. He is also a Board member of the Webster Soccer Association/Lakefront Soccer Club, a member of the Women's Council of Realtors Rochester, and a member of the Webster Chamber of Commerce. In 2023, Andrew was awarded the Legal Excellence Award for Up and Coming Lawyers by *The Daily Record* and *Rochester Business Journal*.



underberg & kessler LLP

300 Bausch & Lomb Place
Rochester, New York 14604
underbergkessler.com

CORPORATE TRANSPARENCY ACT

OVERVIEW

- The Corporate Transparency Act (CTA) is intended to aid law enforcement in combatting illicit activity conducted through anonymous shell companies.
- It requires certain entities to report beneficial ownership information (BOI) to the US Treasury Department's Financial Crimes Enforcement Network (FinCEN).
- The reporting requirements are intended to impact **small companies**, many of whom have never made federal filings other than those with the Internal Revenue Service.
- Many larger or otherwise highly regulated entities are exempt from the CTA.



underberg & kessler LLP

300 Bausch & Lomb Place
Rochester, New York 14604
underbergkessler.com

CORPORATE TRANSPARENCY ACT

FREQUENTLY ASKED QUESTIONS

Who is FinCEN?

- U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN") is the agency monitoring these reports.
- FinCEN will store the reports in a secure, non-public database.



underberg & kessler LLP

300 Bausch & Lomb Place
Rochester, New York 14604
underbergkessler.com

CORPORATE TRANSPARENCY ACT

FREQUENTLY ASKED QUESTIONS

Who is required to report?

- Corporations and LLCs, in addition to various other business entities created by filing a document with a secretary of state or any similar office under the law.
- Both domestic and foreign entities can be reporting companies under the CTA.
- 23 categories of entities that are exempt from the reporting requirement, such as:
 - Banks
 - Credit unions
 - Tax-exempt entities registered with the IRS
 - **Large operating companies** (*employs 20 or more full time employees in the US/ *has an operating presence at a physical office within the US / *filed a federal income tax return for the previous year demonstrating more than \$5M in gross receipts or sales / *the entity reported the more than \$5M on IRS Form 1120, 1120-S, 1065 or other IRS Form / *when gross receipts from foreign sources are excluded from the gross receipts, the amount remains greater than \$5M)
 - Regulated public utilities
 - Inactive entities

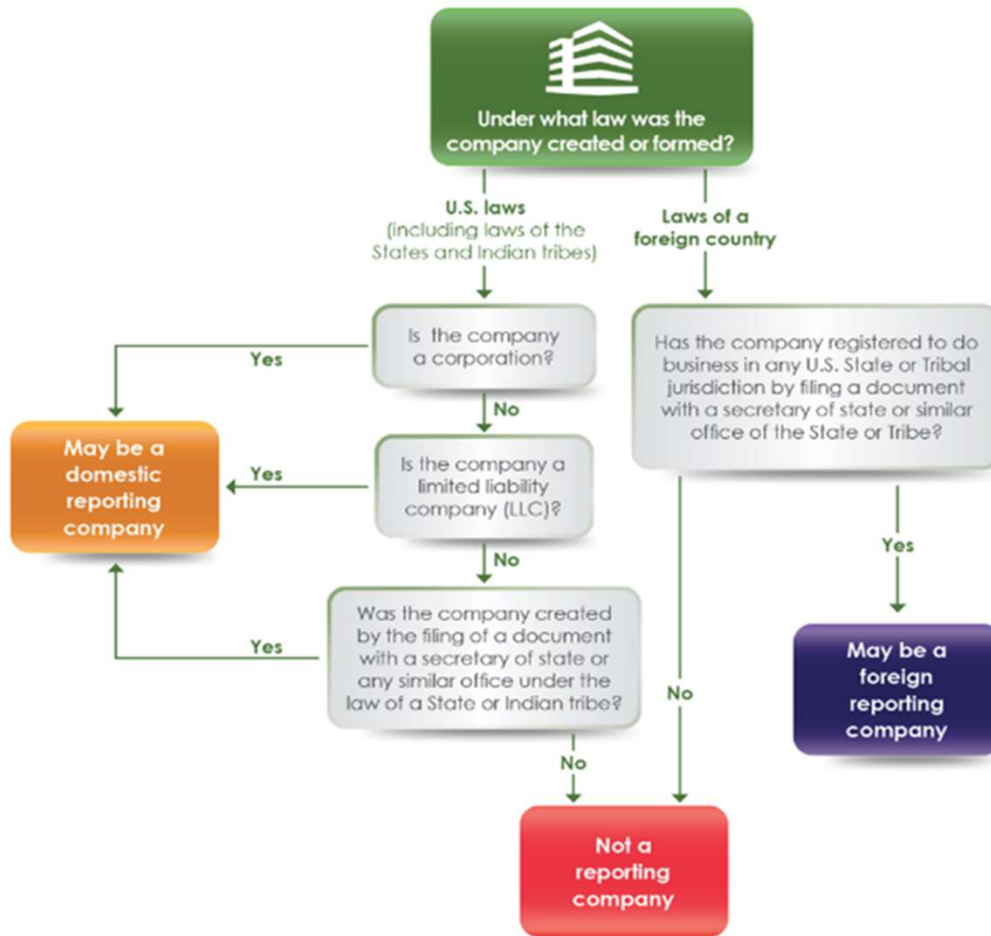


underberg & kessler LLP

300 Bausch & Lomb Place
Rochester, New York 14604
underbergkessler.com

CORPORATE TRANSPARENCY ACT

FREQUENTLY ASKED QUESTIONS



underberg & kessler LLP

300 Bausch & Lomb Place
Rochester, New York 14604
underbergkessler.com

CORPORATE TRANSPARENCY ACT

FREQUENTLY ASKED QUESTIONS

What information must be disclosed?

- Information about the Reporting Company:
 - Full legal name, including trade names and d/b/a names
 - Current address
 - State of formation
 - IRS taxpayer identification number
- Company applicants (for entities created on or after 1/1/2024)
 - The individual who files the document that creates the reporting company; or
 - The individual primarily responsible for directing or controlling the filing of the document by another individual.
 - There will be at least one company applicant, and at most two. All company applicants must be individuals. Companies or legal entities cannot be company applicants.



underberg & kessler LLP

300 Bausch & Lomb Place
Rochester, New York 14604
underbergkessler.com

CORPORATE TRANSPARENCY ACT

FREQUENTLY ASKED QUESTIONS

What information must be disclosed? (cont'd)

- Information about the Company Applicant and each Beneficial Owner:
 - Full legal name
 - Date of birth
 - Current address
 - Unique identifying number (passport, driver's license, state-issued ID)
 - Image of document with unique identifying number



underberg & kessler LLP

300 Bausch & Lomb Place
Rochester, New York 14604
underbergkessler.com

CORPORATE TRANSPARENCY ACT

FREQUENTLY ASKED QUESTIONS

What is a “Beneficial Owner”?

- A beneficial owner is any individual who, directly or indirectly, either:
 - Exercises **substantial control** over the reporting company
 - There is no limit to the number of individuals who can be reported for exercising substantial control.
 - Senior Officer
 - Individual with authority to appoint or remove certain officers or a majority of directors of the reporting company
 - Individual is an important decision-maker
 - Individual has any other form of substantial control over the reporting company
 - Owns or controls **25%** or more of the ownership interests of the reporting company
 - Equity, stock, voting rights; capital or profit interest; convertible instruments; options to buy/sell any of the foregoing; any other instrument, contract or other mechanism used to establish ownership.



underberg & kessler LLP

300 Bausch & Lomb Place
Rochester, New York 14604
underbergkessler.com

CORPORATE TRANSPARENCY ACT

FREQUENTLY ASKED QUESTIONS

What are the penalties for willful failure to report complete Beneficial Ownership information or the willful provision of or attempt to provide false or fraudulent BOI?

- Civil and Criminal penalties, including:
 - \$500 for each day that the violation continues
 - Fine up to \$10,000; or
 - Imprisonment for up to 2 years; or
 - All of the above!



underberg & kessler LLP

300 Bausch & Lomb Place
Rochester, New York 14604
underbergkessler.com

CORPORATE TRANSPARENCY ACT

FREQUENTLY ASKED QUESTIONS

Important dates and timelines:

- Companies formed **before** January 1, 2024, have until January 1, 2025, to file.
- Companies formed on or after January 1, 2024, have 90 days to file.
- Companies formed on or after January 1, 2025, have 30 days to file.



underberg & kessler LLP

300 Bausch & Lomb Place
Rochester, New York 14604
underbergkessler.com

CORPORATE TRANSPARENCY ACT

FREQUENTLY ASKED QUESTIONS

CTA Resources:

- Small Entity Compliance Guide:
https://www.fincen.gov/sites/default/files/shared/BOI_Small_Compliance_Guide.v1.1-FINAL.pdf
- FinCEN FAQ page: https://www.fincen.gov/boi-faqs#B_1
- FinCEN filing site: <https://boiefiling.fincen.gov/fileboir>



underberg & kessler LLP

300 Bausch & Lomb Place
Rochester, New York 14604
underbergkessler.com

GAS APPLIANCE BAN

- **All-Electric Building Act:**

- Adopted on May 2, 2023 as part of the 2024 fiscal year budget
- Nation's first statewide ban on fossil-fuel use in new construction
 - Prohibits the installation of fossil fuel equipment/hookups in **new buildings**, starting in **2026** for buildings up to 7 stories and **2029** for larger buildings
 - Contains various exemptions, including manufacturing facilities, commercial food establishments, laundromats, hospitals, crematoriums, and manufactured homes

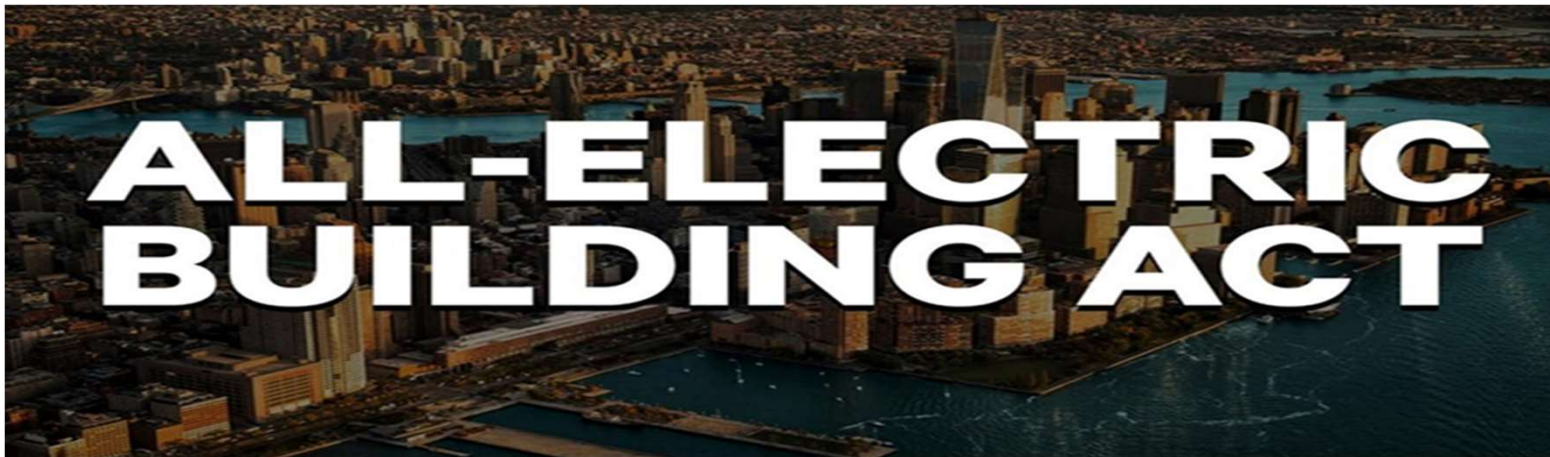


Photo: <https://bloximages.newyork1.vip.townnews.com/nny360.com/content/tncms/assets/v3/editorial/8/07/80722ce1-452f-5e95-b3b9804fabfe4504/62d5a62a2f3eb.image.jpg?crop=1919%2C1007%2C0%2C36&resize=1200%2C630&order=crop%2Cresize>



underberg & kessler LLP

300 Bausch & Lomb Place
Rochester, New York 14604
underbergkessler.com

GAS APPLIANCE BAN

- **Climate Leadership and Community Protection Act (Senate Bill S6599):**
 - Enacted on July 18, 2019
 - Established a timeline to reduce economy-wide greenhouse gas emissions and shift to renewable energy sources.
 - 40% reduction of greenhouse gas emissions by 2030 and 85% by 2050.
 - 70% of the state's energy should come from renewable sources by 2030, and 100% by 2040.
 - Net zero emissions statewide by 2050.
 - **Scoping Plan** - 445-page document setting forth a series of recommended policies and actions to meet the goals of the Climate Act.

Climate Act Targets

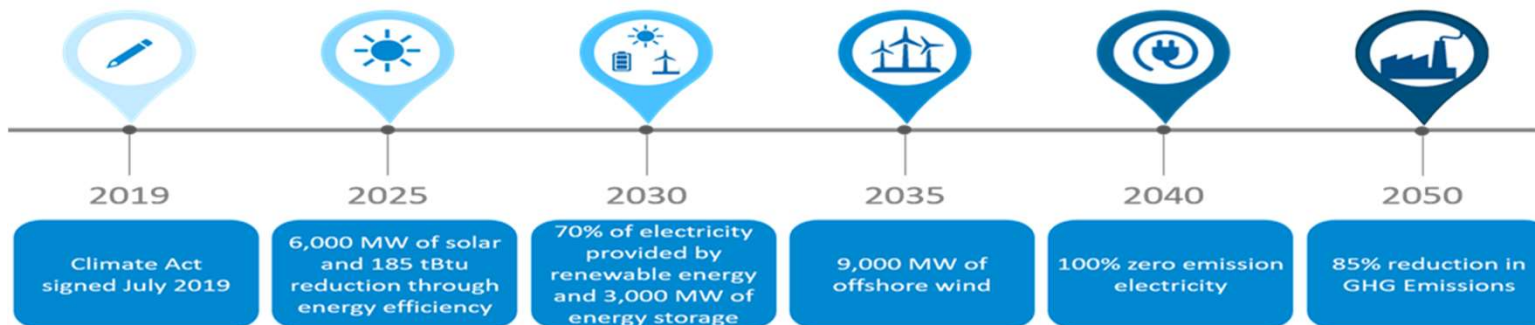


Photo: <https://nyrevconnect.com/wp-content/uploads/2021/10/Climate-act-targets.png>



underberg & kessler LLP

300 Bausch & Lomb Place
Rochester, New York 14604
underbergkessler.com

GAS APPLIANCE BAN

- ***Mulhern Gas Co. v. Rodriguez, 1:23-cv-01267***
 - Federal lawsuit commenced on October 12, 2023 in the NDNY
 - Plaintiffs include businesses, trade associations and labor unions
 - Asserts that All-Electric Building Act is preempted by federal statute (Energy Policy and Conservation Act).
 - City of Berkeley's comparable prohibition on gas piping in new buildings was recently invalidated using same argument.
 - *Cal. Rest. Ass'n v. City of Berkeley*, 65 F.4th 1045 (9th Cir. 2023), petition for reh'g en banc filed, No. 21-16278 (9th Cir. May 31, 2023).
- **NY Home Energy Affordable Transition Act (NY HEAT Act)**
 - Attempts to:
 - Cap energy bills for low and middle-income families
 - Permit the downsizing/decommissioning of the natural gas network of pipelines and plants.



underberg & kessler LLP

300 Bausch & Lomb Place
Rochester, New York 14604
underbergkessler.com

Q&A SESSION

Thank you for joining us!

Joshua B. Beisker, Esq., jbeisker@underbergkessler.com

Andrew M. Washburn, Esq., awashburn@underbergkessler.com



underberg & kessler LLP

300 Bausch & Lomb Place
Rochester, New York 14604
underbergkessler.com