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The Corporate Transparency Act (CTA): FAQs for Community Associations

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In 2021, Congress adopted the Corporate Transparency Act (“CTA”) as part of the Anti-Money Laundering Act of 2020. This anti-corruption law is intended to make it harder for bad actors to shield their identities and launder ill-gotten gains, which in turn assists national security, intelligence and law enforcement efforts in countering money laundering, tax fraud, the financing of terrorism, and other illicit financial activity.

Under federal regulations that went into effect on January 1, 2024, corporations, limited liability companies and similar entities that qualify as “reporting companies” under the CTA must timely **submit their initial “Beneficial Owner Information” (BOI) Report by no later than January 1, 2025** to the Financial Crimes Enforcement Network (FinCEN), which is part of the U.S. Department of Treasury. However, *for those qualifying entities created on or after January 1, 2024, but before January 1, 2025*, their BOI Reports must be filed within 90 days after creation; and *for qualifying entities created after January 1, 2025*, their BOI Reports must be filed within 30 days of creation.

Because of the broad applicability of the CTA and its potential impact on community associations, it has become this year’s “Hot Topic” among association volunteer leaders and managers.

Below are responses to “Frequently Asked Questions” regarding compliance with the CTA by Virginia and D.C. community associations (homeowners’ associations and condominium unit owners’ associations).

Note: these FAQs are intended to provide general guidance. It is not intended to be legal advice. Legal advice must be tailored to the specific facts and circumstances of each association. While every effort has been made to ensure this information is up-to-date, it is not intended to be a full and exhaustive explanation of the Corporate Transparency Act, nor should it be used to replace the individualized advice of your legal counsel.

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FAQ #1. Are you serious? Why should our community association pay attention to the CTA?

As described in greater detail below, the scope of entities falling within FinCEN’s reporting requirement is quite broad. Although the stated intent behind the CTA seems far removed from the operations of community associations, the CTA’s requirement to file BOI Reports will apply to most community associations unless or until the CTA is eventually amended by Congress or is successfully challenged through the judicial system.¹

In June 2024, FinCEN updated its online FAQs to specifically address community associations. Below is FinCEN’s FAQ on this subject:

C.10. Are homeowners associations reporting companies?

It depends. Homeowners associations (HOAs) can take different forms. As with any entity, if an HOA was not created by the filing of a document with a secretary of state or

¹ There are at least five pending lawsuits across the nation challenging the CTA. In addition, the Community Associations Institute (CAI) recently filed a lawsuit contesting the CTA (<https://www.caionline.org/Advocacy/Priorities/CTA/Pages/landing.aspx>). On July 15, 2024, U.S. Representative Richard McCormick (R-GA-6) introduced H.R. 9045 – if eventually passed by Congress and signed into law, it would exempt community associations from the CTA’s reporting requirement. To support this legislation, see CAI’s legislative alert at <https://www.votervoice.net/CAI/Campaigns/116499/Respond>.

similar office, then it is not a domestic reporting company. An incorporated HOA or other HOA that was created by such a filing also may qualify for an exemption from the reporting requirements. For example, HOAs recognized by the IRS as section 501(c)(4) social welfare organizations (or that claim such status and meet the requirements) may qualify for the tax-exempt entity exemption. An incorporated HOA that is not a section 501(c)(4) organization, however, may fall within the reporting company definition and therefore be required to report BOI to FinCEN.

[Updated June 10, 2024]

In addition, there are potentially significant penalties for noncompliance. See FAQ #2 below.

FAQ #2. Is there a penalty for failing to comply with the CTA?

Yes, there are potentially significant penalties for noncompliance. For instance, FinCEN states as follows in its Small Entity Compliance Guide (“Compliance Guide”):²

The willful failure to report complete or updated beneficial ownership information to FinCEN, or the willful provision of or attempt to provide false or fraudulent beneficial ownership information may result in a civil or criminal penalties, including civil penalties of up to \$500 for each day that the violation continues, or criminal penalties including imprisonment for up to two years and/or a fine of up to \$10,000. Senior officers of an entity that fails to file a required BOI report may be held accountable for that failure . . . Additionally, a person may be subject to civil and/or criminal penalties for willfully causing a company not to file a required BOI report or to report incomplete or false beneficial ownership information to FinCEN.

FAQ #3. How do we know if our community association is required to comply with the CTA?

As noted above, most community associations will fall within the scope of the CTA’s reporting requirement. Generally speaking, unless an entity falls within one of the statutory exemptions, the requirement to file BOI Reports applies to all corporations, limited liability companies, and *any other entity created through a filing with a Secretary of State or a similar office under state or D.C. law*. This can include, for example, incorporated entities that filed their Articles of Incorporation with the Virginia State Corporation Commission or with the Corporations Division of the D.C. Department of Licensing and Consumer Protection (DLCP).

So, is your association a corporation, a limited liability company (LLC) or other similar entity that was created by the filing of a document with a secretary of state or a similar office under the law of a state or D.C.?

If the answer is “yes” to the above question, then your association is a reporting company that must comply unless it falls within one of the 24 exemptions provided under the CTA. Unfortunately, those exemptions will rarely apply to community associations.

² FinCEN’s Small Entity Compliance Guide (vers. 12/2023) (<https://www.fincen.gov/boi/small-entity-compliance-guide>).

For instance, a Virginia or D.C. community association would be exempt from CTA's reporting requirement if:

- (1) It is an IRS-recognized tax exempt entity under IRS Code 501(c), such as a charitable organization or social welfare organization – rather than just a not-for-profit entity; or
- (2) (i) It has 20 or more full-time employees in the U.S. and (ii) last year's filed tax return for the association shows at least \$5 million in domestic gross receipts or sales.

FAQ #4. Is an unincorporated community association a “reporting company” under the CTA?

While the CTA is clear that incorporated entities (that do not fall within a statutory exemption) are “reporting companies” because they are created by a filing with a secretary of state or similar office, the answer is less clear for unincorporated associations, like many condominiums. An unincorporated association is arguably not a “reporting company” because it is created by the filing of a condominium declaration in a local land records office, rather than with a secretary of state. However, the FinCEN regulations also refer to a secretary of state “or similar office” and neither the FinCEN regulations nor its published guidance expressly define that term. Given the potential harsh penalties for failing to file (discussed above), unincorporated associations may wish to file BOI Reports with FinCEN out of an abundance of caution. We suggest that such associations consult with their legal counsel for further guidance.

FAQ #5. What is the deadline to file a community association's first BOI Report?

The answer depends on when the reporting company was created/formed. As noted above, the deadline for a community association to file its initial BOI Report depends on when that “reporting company” was first created:

- (1) A reporting company *created before January 1, 2024*, must file its initial BOI Report by no later than by no later than January 1, 2025;
- (2) A reporting company *created on or after January 1, 2024, but before January 1, 2025*, must file its initial BOI Report within 90 days after its creation; and
- (3) A reporting company *created after January 1, 2025*, must file its initial BOI Report within 30 days after its creation.

FAQ #6. If our community association is a “reporting company” under the CTA, what must we do to comply?

Your association will be required to timely submit to FinCEN:

- (1) A complete and accurate initial BOI Report by the applicable deadline stated above in FAQ #5;
- (2) Complete and accurate updated BOI Reports within 30 days after previously-reported information changes about the association or the beneficial owners – such as when officers or directors change or when their residential address changes; and
- (3) Corrected BOI Reports within 30 days after the date you became aware of the inaccuracy or “had reason to know of it.”

FAQ #7. What must our community association’s BOI Report include?

As explained below, the initial BOI Report must contain information about (A) the association, (B) the association’s “beneficial owners,” and in some instances, (C) the association’s “company applicant.”

A. Entity Information. The following information about the community association must be included in its BOI Report:

- Association’s full legal name (plus any trade name or “doing business as” name used by the association);
- Association’s street address (the address for its principal place of business);
- Association’s state of incorporation or formation; and
- Association’s IRS-issued taxpayer identification number (TIN) / Employee Identification Number (EIN)

B. “Beneficial Owner” Information. In addition to containing the association’s information, the association’s BOI Report must contain certain personal identifying information for *each* person that qualifies as a “beneficial owner” as defined under the CTA.

1. Who are your association’s beneficial owners? Rather than referring to all the homeowner members of the association, a “beneficial owner” includes all those individuals who:

- a. Exercise substantial control over the association; or
- b. Own or control at least 25% of the ownership interests of the association.

The definition of a beneficial owner is extremely broad as it includes any individual who exercises a certain level of control over the association. In addition, if at least 25% of the dwellings (or voting rights or other ownership interests) are owned by one individual or entity (such as developer, builder or investor), then that individual or a senior

officer or owner of that entity could be a “beneficial owner” of the association.³ This scenario is more likely to be present in relatively small or newly-formed associations.

Under the CTA, an individual exercises substantial control if they perform such actions as:

- Serving as a senior officer of the association. A senior officer includes “any individual holding the position or exercising the authority of a president, chief financial officer, general counsel, chief executive officer, chief operating officer, or any other officer, regardless of official title, who performs a similar function;”
- Having authority over the appointment or removal of any senior officer;
- Directing, determining, or having substantial influence over important decisions made by the association; or
- [the *catch-all provision*] Having “any other form of substantial control over the reporting company.”

However, we note that an *association’s employee* is exempt from the “beneficial owner” definition if (i) that employee’s control over the association is derived solely from their employment status and (ii) that employee neither serves as a senior officer of the association nor performs similar functions as a senior officer.

Given these broad definitions, it is likely that each director and officer of a covered community association will be considered a “beneficial owner” of the association whose personal identifying information must be included in the association’s BOI Report.

2. What Beneficial Owner Information Must be Reported? For each person identified as your association’s beneficial owners, the following information must be included in the association’s BOI Report:

- Full legal name
- Birthdate
- Current residential/home street address
- Unique identifying number and issuing jurisdiction from, and image of, one of the following non-expired documents:
 - ✓ State driver’s license, or
 - ✓ U.S. passport, or
 - ✓ Identification document issued by a state, local government, or tribe, or
 - ✓ If an individual does not have any of the previous documents, a foreign passport.

* See FAQ #8 below regarding the option for beneficial owners to obtain a FinCEN Identifier, which would then be included in the association’s BOI Report instead of their personal information.

³ For more information on determining those with at least 25% ownership interest, see FinCEN’s Small Entity Compliance Guide and its FAQ D.12 (<https://www.fincen.gov/sites/default/files/shared/BOI-FAQs-QA-508C.pdf>).

C. Company Applicant Information. For community associations that qualify as reporting companies under the CTA, if the association was created on or after January 1, 2024, then the association’s BOI Report must also contain personal identifying information for its “company applicant” as defined in the CTA.

The association’s company applicant can be up to two individuals:

- 1) The individual who directly filed (whether physically or electronically) the association’s articles of incorporation or other document creating the association; and
- 2) The individual who was primarily responsible for directing or controlling the filing of the articles of incorporation or other document creating the association.

If more than one individual was involved in the filing as described above, then two of them must be reported as the association’s company applicants. For example, if the attorney for the association’s declarant prepared the articles of incorporation, and then, the attorney’s legal assistant electronically filed the articles with the Va. State Corporation Commission, the attorney and the legal assistant would be the association’s company applicants.

Once the company applicant(s) is identified, the same type of personal identifying information as beneficial owners must be included in the initial BOI Report, but the company applicant’s business address may be reported instead of their residential address. Company Applicants also have the option to obtain a FinCEN Identifier to include in the BOI Report instead of their personal information – see FAQ #8 below.

FAQ #8. What if a board member is uncomfortable with providing their personal information to the association for inclusion in the BOI Report?

Rather than providing their personal information to the board-designated person or vendor for inclusion in the BOI Report, a beneficial owner (e.g., an officer/director) could instead choose to separately submit their own information directly to FinCEN by applying for a “FinCEN Identifier.” This is a unique identifying number issued by FinCEN. That person would then only have to provide their FinCEN Identifier to the person who is completing and filing the Association’s BOI Report (see: <https://fincenid.fincen.gov/landing>). However, that beneficial owner would be responsible for timely submitting updates to FinCEN if the information they used to obtain their FinCEN Identifier ever changes or needs correction.

This same option is available to an association’s “company applicant” as referenced in FAQ #7 above.

FAQ #9. How does the association file a BOI Report?

BOI Reports are filed through an online portal provided by FinCEN, which can be found at: <https://boiefiling.fincen.gov/fileboir>, along with instructions. You will have the option to either (i) download, complete and then upload a fillable PDF form, or (ii) enter the information directly into the portal. As FinCEN noted in its published guidance, submitting a BOI Report (and updates) is an administrative task that does not require handling by an attorney or CPA.

a. One approach is for the board of directors to designate someone (such as an association officer) to gather the required information from all board members and then complete and timely submit the BOI Report electronically on behalf of the Association using the FinCEN online portal.

b. Another option would be for the board to use a third-party company that is offering a BOI Report filing service using information supplied by the association and applicable beneficial owners.

FAQ #10. For associations that must file a BOI Report, what are possible “Next Steps” for boards to consider?

Depending on your association’s particular circumstances and needs, the following are possible “next steps” for getting ready to comply and then complying with the CTA’s ongoing reporting requirements:

- Determine **who are the association’s beneficial owners** per the CTA.
- Determine **who will gather beneficial owner information and file the association’s initial and updated BOI Reports**.
- Consider **adopting a CTA compliance policy** and adopting or **amending applicable governing documents to address consequences** for beneficial owners who fail to timely provide the association with required information.
- Start sending periodic **compliance reminders** to beneficial owners.
- Determine **whether the association’s beneficial owners will** first apply for and **obtain** their own **FinCEN Identifiers**.
- Start process of **gathering beneficial owner information** from applicable persons.
- Ensure that the association’s **initial BOI Report is timely filed** with FinCEN (no later than 1/01/2025).
- Ensure that the association **timely files updated BOI Reports** with FinCEN within 30 days after any reported information changes.

FAQ #11. Does FinCEN offer resources about CTA compliance?

Yes. Below are a few links to various other guidance resources provided by FinCEN:

- **Website:** www.FinCEN.gov/BOI
 - Quick Reference Brochure: <https://www.FinCEN.gov/sites/default/files/shared/BOI-Informational-Brochure-April-2024.pdf>
 - FAQs: <https://www.FinCEN.gov/boi-faqs>
- **YouTube video:** <https://www.youtube.com/watch?v=GydCvfbKxPw>

FAQ #12. What can we do try to get the CTA amended to exempt community associations?

As mentioned under FAQ #1, on July 15, 2024, U.S. Representative Richard McCormick (R-GA-6) introduced H.R. 9045. If this bill is eventually passed by Congress and signed into law, it would exempt community associations from the CTA's reporting requirement. To support this legislation, see CAI's legislative alert at the following link – it provides an easy way for you to email your congressional representatives to urge them to support this important bill: <https://www.votervoice.net/CAI/Campaigns/116499/Respond>.

The Big Picture

It does not appear that community associations were intended to be targeted by the CTA, but nevertheless, most community associations will be required to comply with these reporting requirements. While there are some pending court challenges and legislation that may impact this new reporting requirement, it is unlikely that those efforts will reach a conclusion before qualifying associations must file their initial BOI Report by January 1, 2025.

Accordingly, we encourage community association boards and their managers to take steps now to confirm whether your association is a “reporting company,” and if the answer is yes, ensure that the association has the information it needs to timely file a complete and accurate BOI Report and timely submit subsequent updates as needed.

If you have any questions about the CTA requirements and its effect on your association, we encourage you to speak to your association's attorney for additional guidance.
