

FEBRUARY 27, 2024 | PUBLICATION

Client Alert: The Corporate Transparency Act Imposes Reporting Requirements Applicable to Many Condominium, Cooperative, and Homeowners Associations

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The Federal Corporate Transparency Act (CTA), which took effect January 1, 2024, requires most homeowners, condominium, and other community associations to report information relating to the association and its directors and officers to the Financial Criminal Enforcement Network (FinCEN). Community associations in existence prior to January 1, 2024 must report to FinCEN no later than January 1, 2025 and update FinCEN within thirty (30) days of a change. Failure to report and update information as required may result in penalties. FinCEN accepts e-filed reports at <https://boiefiling.fincen.gov>.

The CTA aims to combat money laundering, tax fraud, and other illicit activities by persons utilizing legal entities by requiring Reporting Companies to report Beneficial Ownership Information (BOI) to FinCEN. The CTA defines Reporting Companies broadly to include any domestic or foreign entity, which is formed or registered to do business by filing with the secretary of state or similar office under any state law or territory, unless specifically excepted.^[1] Reporting Companies may include both for-profit and not-for-profit corporations. Accordingly, Florida condominiums, cooperatives, and homeowners associations formed under Chapters 718, 719, and 720 are Reporting Companies and must comply with the CTA, except in the rare case they qualify as tax exempt under Sec. 501(c)(4) of the Internal Revenue Code or other less likely exceptions set forth in the CTA (see footnote 1 below for complete list). If you are unsure about your condominium, cooperative, or homeowners association's eligibility for tax-exemption under 501(c)(4) or obligation to report BOI to FinCEN, we recommend you consult with appropriate accountants and legal counsel.

Reporting Companies subject to the CTA must report to FinCEN the company's full legal name; any trade name or DBA; a complete address; the state, tribal, or foreign jurisdiction of formation; and the taxpayer identification number or employer identification number for the company. In addition, Reporting Companies must provide the name, date of birth, address, and number for a passport, state driver's license, or other governmental identification for all Beneficial Owners of the Reporting Company. The CTA defines Beneficial Owners as "any individual who, directly or indirectly, either exercises substantial control over such reporting company or owns or controls at least 25 percent of the ownership interests of such reporting company." This includes, but is potentially not limited to, the Board of Directors for the Reporting Company. Reporting companies formed on or after January 1, 2024, must also submit certain information on the company applicant.

Reporting Companies existing before January 1, 2024 must report BOI to FinCEN by January 1, 2025. Reporting Companies created on or after January 1, 2024 must report BOI within 90 days from the earlier of 1) the date of actual notice of creation or registration or 2) the date of public notice of creation or registration. Reporting Companies must report updates or corrections to BOI to FinCEN within 30 calendar days.

The CTA creates both civil and criminal penalties for the willful failure to report, update, or correct inaccurate BOI. Civil penalties may be imposed up to \$500 per day with no maximum amount set, and criminal penalties can be up to a \$10,000 fine and imprisonment for no more than two years, or both. These penalties can be applied to both the Reporting Company and the individual or senior officer who fails to report or correct the report at the time of failure.

FinCEN has created a small entity compliance guide and other information for the CTA available on its website: <https://www.fincen.gov/boi/small-business-resources>.

^[1] Excepted entities include 1) securities reporting issuer; 2) governmental authority; 3) bank; 4) credit union; 5) depository institution holding company; 6) money services business; 7) broker or dealer in securities; 8) securities exchange or clearing agency; 9) other exchange act registered entity; 10) investment company or investment advisor; 11) venture capital fund adviser; 12) insurance company; 13) state-licensed insurance producer; 14) commodity exchange act registered entity; 15) accounting firm; 16) public utility; 17) financial market utility; 18) pooled investment vehicle; 19) tax-exempt entity under IRS Code Sec 501(c)4, 527(1)(1), or 4947(a); 20) entity assisting a tax-exempt entity; 21) large operating company; 22) subsidiary of certain exempt entities; and 23) inactive entity.