LEGAL UPDATE Feb 2, 2024

Complying with the Corporate Transparency Act of 2020: Guidance for New York Cooperatives and Condominiums

The Corporate Transparency Act of 2020 ("CTA") took effect on January 1, 2024 ("Effective Date"), impacting many privately held corporations, limited liability companies, and other similar entities. At a high level, the goal of the CTA and its associated beneficial ownership information regulations ("BOI Regulations") is to penetrate through layers of intermediate entities and identify to the U.S. Department of Treasury's Financial Crimes Enforcement Network ("FinCEN"), for law enforcement purposes, the individuals ultimately exercising control or enjoying ownership of entities doing business in the US.

The CTA requires certain entities (each, a "Reporting Company") to report specific beneficial ownership information ("BOI") to FinCEN, and any change to previously reported information within a specified time period. All reports and filings are submitted online through FinCEN's E-Filing System. The CTA applies to cooperative corporations and may apply to condominiums, adds a new material layer of regulatory compliance for entities, and carries both civil and criminal penalties for non-compliance.

This Legal Update is intended to bring the CTA and its anticipated impact on cooperatives and condominiums to your attention and is provided for informational purposes. This is a summary only, and you may wish to consult with Seyfarth for legal advice before you report. In addition, view the most current BOI FAQs issued by FinCEN and the FinCEN BOI Small Entity Compliance Guide.

When must a report be filed?

For cooperatives and condominiums created before January 1, 2024, a report must be filed online with FinCEN no later than January 1, 2025. For cooperatives and condominiums created in 2024, a report must be filed within ninety (90) calendar days after receipt of notice of formation.

You can access the form of the BOI report from FinCEN through their web-based application at: https://www.fincen.gov/boi.

Which entities are a Reporting Company?

An entity created by the filing of a document with a secretary of state or similar office under the laws of a US state is a "domestic reporting company," unless it qualifies for an exemption. In New York, cooperative corporations are required to file their certificates of incorporation with the New York State Department of State ("NYDOS") pursuant to Business Corporation Law § 403, and Real Property Law § 339-s requires that condominium declarations and any amendments thereto be filed with the NYDOS. Based on these filings, cooperative corporations qualify as Reporting Companies under the CTA, and condominiums likely qualify as well.

Who is a beneficial owner?

A beneficial owner is an individual who, (i) directly or indirectly, through contract, arrangement, understanding, relationship, or otherwise, exercises substantial control over an entity, or (ii) owns or controls, directly or indirectly, 25% or more of the ownership interests in an entity.

As stated in the BOI Regulations, under the "substantial control" prong of the beneficial owner definition, the following persons are beneficial owners:

- any "senior officer," which is defined as a person "exercising the authority of a president, chief financial officer ... or any other officer, regardless of official title, who performs a similar function"
- any member of the board of directors or board of managers
- any individual who "directs, determines or has substantial influence over

important decisions" or who exercises "any other form of substantial control"

This list is not exhaustive and additional individuals may be deemed to exercise "substantial control" depending on the circumstances.

What BOI must be reported?

A cooperative or condominium that qualifies as a Reporting Company must disclose the following BOI with regard to each individual beneficial owner:

1. full name;
2. date of birth;
3. complete current residential street address;
4. ID number and jurisdiction of issuance for one of the following:
   - US passport,
   - state, local, or Indian tribal identification document, or
   - state-issued driver's license; and
5. an image of the ID from which the ID number was obtained.

If the individual has none of the above listed documents, a passport issued by a foreign government will suffice.

Note that BOI also refers to the information required from individuals exercising substantial control over the cooperative or condominium.

The BOI collected by FinCEN from reporting entities and beneficial owners is kept in a secure, confidential database and is not available to the public.

When BOI previously reported to FinCEN changes, an updated report must be filed within thirty (30) days after the BOI changes. For example, if a cooperative or condominium's president changes their name, the cooperative or condominium must file an updated report with the new name (and new ID reflecting the new name when one is obtained) within thirty (30) days of the change.

In addition to the BOI, the cooperative or condominium must disclose the following information to FinCEN:

1. Full legal name of the entity;
2. Any trade names, doing business as (d/b/a), or trading as (t/a) names through which it conducts business;
3. The entity's complete current address of its principal place of business in the US;
4. State of formation; and
5. The entity's federal employer identification number (EIN).

Is their an alternative to a beneficial owner providing their BOI to the cooperative or condominium?

Yes, there is a very quick online procedure. FinCEN will issue a unique identifying number (called a FinCEN Identifier or ID) to beneficial owners (individuals or entities) upon request, which may be used in lieu of providing the information above directly to the cooperative or condominium by allowing the cooperative or condominium to report the beneficial owner's FinCEN Identifier to FinCEN, rather than an individual's or entity's BOI. Beneficial owners can apply for a FinCEN Identifier from FinCEN's web-based application at: https://www.fincen.gov/boi. This will be useful in instances where a beneficial owner does not want to disclose its BOI to the cooperative or condominium. If a cooperative or condominium reports a beneficial owner's FinCEN Identifier rather than its BOI, this will also put the onus on the beneficial owner (rather than the cooperative or condominium) to report any changes to the beneficial owner's BOI.

What cooperatives or condominiums may be exempt from the CTA reporting requirements?

The BOI Regulations provide some limited exemptions that may be applicable to certain cooperatives and condominiums. Specifically, the regulations exempt "Large Operating Companies," which are entities with (i) more than twenty (20) full-time employees[1] in the US, (ii) an operating presence at a physical office within the US, and (iii) more than $5 million in gross receipts or sales from sources inside the US on its prior year's federal tax return. If a previously exempt cooperative or condominium becomes a Reporting Company (for example, if a Large Operating Company no longer has more than twenty (20) full-time employees), then it is required to file a report with FinCEN within thirty (30) days of becoming a Reporting Company.

How can you prepare for compliance?

In light of the January 1, 2025 filing deadline for cooperatives and condominiums created prior to 2024, we recommend that cooperatives and condominiums and their managing agents take the following steps over the next few months:

1. Determine the beneficial owners of the cooperative or condominium, both at an ownership level and in terms of individuals having "substantial control."

2. Apply for a FinCEN Identifier to facilitate filings and encourage other relevant individuals to also apply for a FinCEN Identifier.

3. Establish a process to request and manage BOI that will need to be reported.

4. Designate individuals responsible for compliance and making the required BOI filings.

5. Update internal policies and procedures to effectively collect and report BOI information and create an internal system to capture and report changes to BOI information previously reported to FinCEN.

In addition to reporting BOI to FinCEN, cooperative and condominium governing documents may need to be updated to address CTA requirements. Please contact us for assistance with updating your governing documents, or if you have any questions regarding the CTA or how it might affect your cooperative or condominium. While our firm will not be collecting the required information or filing or arranging to file with FinCEN on behalf of cooperatives and condominiums, we anticipate that managing agents or third-party vendors will collect the information and file or arrange to file with FinCEN. Nevertheless, we remain available to assist you or answer any questions you may have.

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[1] FinCEN uses the IRS definition of full-time employee, which is an employee who works thirty (30) hours or more per week and more than one hundred and thirty (130) hours per month.

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