

Navigating the CTA: A Guide for Condos and HOAs to comply with the Corporate Transparency Act

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March 1, 2024 – Federal Court rules that the Corporate Transparency Act is Unconstitutional: What does it mean for Community Associations? Read our updated blog article.

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The Corporate Transparency Act is a federal law that was enacted in 2021 to stop individuals in foreign countries from illegally moving money into the United States. The Corporate Transparency Act creates new reporting requirements for certain types of corporate entities in the United States. The Federal Crimes Enforcement Network (“FinCEN”), is the federal agency that is charged with enforcing the Corporate Transparency Act and has adopted a set of reporting requirements for corporate entities, including most community associations, that must be complied with beginning in 2024. This article will discuss the new requirements for condominium and homeowners associations under the Corporate Transparency Act, provide information on how to comply with the Corporate Transparency Act, and discuss the potential penalties for non-compliance.

Are Community Associations Required to Comply with the Corporate Transparency Act?

The Corporate Transparency Act defines a **domestic reporting company as a corporation, limited liability company, and any other entity created by the filing of a document with a secretary of state or any similar office in the United States.** **Almost all condo and homeowners associations are organized as nonprofit corporations and would be domestic reporting companies under the Corporate Transparency Act.** While there are 23 types of entities that are exempt from compliance with the Corporate Transparency Act, in most cases, community associations do not qualify for an exemption, as they are organized under 26 U.S.C. 528 of the Internal Revenue Code. As discussed in a prior article, very few community associations can qualify for tax exempt status under 26 U.S.C. 501(c) of the Internal Revenue Code, which would be required to obtain an exemption from compliance with the Corporate Transparency Act. Accordingly, if a condominium or homeowners

association is unsure if it qualifies for an exemption, it should obtain an opinion from an attorney. However, community associations organized as nonprofit corporations, organized under 26 U.S.C. 528, should plan to comply with the CTA.

What are the reporting requirements for Community Associations under the Corporate Transparency Act?

All reporting companies are required to file beneficial ownership information reports with FinCEN. The Corporate Transparency Act defines a beneficial owner as any individual who, directly or indirectly, (i) exercises substantial control over the entity or (ii) owns or controls 25% or more of the ownership interests. While FinCEN has adopted a broad definition of what constitutes substantial control, and while many definitions presumably only apply to for-profit entities, it will typically include officers and directors of a nonprofit corporation, such as a community association, as it includes individuals that direct, determine, or have substantial influence over the decisions of the reporting company. According to FinCEN, A reporting company will have to submit the following information about the corporate entity:

- Its legal name;
- Any trade names, “doing business as” (d/b/a), or “trading as” (t/a) names;
- The current street address of its principal place of business;
- Its jurisdiction of formation or registration; and
- Its Taxpayer Identification Number.

The person who submits the report, known as the company applicant, will need to provide the following information:

- The individual’s name;
- Date of birth;
- Address; and
- An identifying number from an acceptable identification document such as a passport or U.S. driver’s license, and the name of the issuing state or jurisdiction of identification document.

The reporting company will also have to report an image of the identification document used to obtain the identifying number. If the company applicant works in corporate formation—for example, as an attorney or corporate formation agent—then the reporting company must report the company applicant’s business address. Otherwise, the reporting company must report the company applicant’s residential address.

What are the reporting requirements for beneficial owners under the Corporate Transparency Act?

FinCEN will also require the following information to be reported for everyone that qualifies as a beneficial owner:

- The individual's name;
- Date of birth;
- Residential address; and
- An identifying number from an acceptable identification document such as a passport or U.S. driver's license, and the name of the issuing state or jurisdiction of identification document.

The reporting company will also have to report an image of the identification document used to obtain the identifying number. The only acceptable forms of identification are:

- A non-expired U.S. driver's license (including any driver's licenses issued by a commonwealth, territory, or possession of the United States);
- A non-expired identification document issued by a U.S. state or local government, or Indian Tribe;
- A non-expired passport issued by the U.S. government; or
- A non-expired passport issued by a foreign government (only when an individual does not have one of the other three forms of identification listed above).

How often will community associations be required to submit reports under the Corporate Transparency Act?

Condominium and homeowners associations that are in existence as of January 1, 2024, which are subject to the CTA, must submit beneficial owner information reports to FinCEN on or before January 1, 2025. After an initial report is submitted, any changes to the beneficial ownership information must be reported to FinCEN within 30 days. Accordingly, while there is no annual reporting requirement that comes on a certain date each year, as it exists on the state level, as a practical matter, most community associations will need to file a report at least once a year if any of the directors and officers change at the annual meeting, and likely more. Specifically, every time a director or officer resigns, and/or a new director or officer is appointed between each annual meeting, it will require a report to be filed with FinCEN.

Will filing an annual report on the state level satisfy the requirements of the Corporate Transparency Act?

No, the Corporate Transparency Act is a federal law. The information required to be filed with a state agency to renew the corporate status is different than what is required by FinCEN.

How can reports be filed with FinCEN?

FinCEN will begin accepting beneficial ownership information reports on January 1, 2024. FinCEN will not accept beneficial owner reports prior to January 1, 2024. The reports will be submitted electronically through a secure filing system that will be made available on FinCEN's website. While board members and/or officers of a community association can submit a report as a company applicant, they would be responsible for gathering all personally identifiable information, keeping it safe, and properly completing the board. A law firm can also serve as a company applicant and would be able to gather the appropriate information from the beneficial owners in a secure manner and submit the report after reviewing it to determine compliance with the CTA.

What are the potential penalties for failing to comply with the CTA?

The penalties for failing to comply with the CTA are as follows:

- Civil penalties of up to \$500 for each day that a violation continues or has not been remedied, capped at \$10,000.
- Possible imprisonment of up to 2 years for any person who willfully (1) provides, or attempts to provide, false or fraudulent beneficial ownership information or (2) fails to report complete or updated beneficial ownership information to FinCEN.
- There are also civil and criminal penalties for unauthorized use of Beneficial Owner information reported to FinCEN by the parties entitled to use/access the information.

How can Hirzel Law help?

Given that the potential penalties for failing to comply with the Corporate Transparency Act are much more significant than failing to file an annual report under state law, we are here to provide peace of mind and assist our community association clients with the new process of CTA compliance. Accordingly, Hirzel Law can assist clients with the following:

- **Filing the Initial Beneficial Ownership Reports.** We can file the initial beneficial ownership report, in a secure fashion, without having to share the information with other board members or third parties, except for FinCEN.
- **Filing Changes to the Beneficial Ownership Reports.** We can file a change of beneficial ownership report, in a secure fashion, without having to share the information with other board members or third parties, except for FinCEN.
- **Providing Opinions regarding CTA compliance.** If you are unsure whether your community association is required to comply with the CTA, we are happy to review your governing documents, and tax status, and provide an opinion as to whether your condominium or homeowners association must comply with the CTA.

Kevin Hirzel is the Managing Member of Hirzel Law, PLC and concentrates his practice on commercial litigation, community association law, condominium law, Fair Housing Act compliance, homeowners association law and real estate law. Mr. Hirzel is a fellow in the College of Community Association Lawyers, a prestigious designation given to less than 175

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