

The Corporate Transparency Act - Applicability to Co-ops and Condos

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Advisory

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A new federal law was enacted entitled the Corporate Transparency Act (CTA) to help “combat money laundering, terrorist financing, corruption and tax fraud.” The law was intended to prevent businesses from concealing their true owners, especially if there were nefarious purposes or principals behind entities such as corporations or LLCs. Due to the very broad language used in the law, cooperative housing companies and condominium associations may also have to comply with the law.

The CTA requires that companies created before Jan. 1, 2024 (as well as their “beneficial owners,” defined below), must file a report no later than Jan. 1, 2025. Newer companies are required to file earlier. Though the vast majority of our co-op and condo clients have a full year to file the required reports, having advance knowledge of the CTA, who will be expected to file, and what must be included in the report will be important in the future.

At this point, it appears that cooperative housing corporations will each be considered a “reporting company” that must file disclosure reports with the U.S. Treasury Department’s Financial Crimes Enforcement Network (FinCEN). Information required to be disclosed would include the co-op’s full legal name, its address and its EI number. After the initial filing, an update must be filed whenever there is a change in the information disclosed.

It is less clear at this point whether a condominium will be considered a “reporting company” under the CTA. The law defines a reporting company as one which was “created by the filing of a document with a secretary of state or any similar office under [State law].” In New York, condominiums are created by a filing with the county clerk or City Register, not the Secretary of State. Whether this detail is deemed to exempt condominiums remains to be seen. We are

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If co-ops and/or condos must file, the more problematic requirement is that “beneficial owners” of the entity must also file an initial report (and updates). The report must include the name of the individual, date of birth, residential address, “a unique identifying number” (i.e., passport or driver’s license number) and provide a copy of the document which includes that number. But who is a “beneficial owner”? This has been defined in the CTA as someone who owns 25% or more of a reporting company or someone who **“exercises substantial control over the reporting company, such as a president, chief executive officer, chief financial officer or other important decision maker”**. The regulations promulgated under the CTA state that an individual may also be deemed to exercise substantial control over a reporting company through board representation.

If applicable, does the law, therefore, require every board member of a cooperative or condominium to file a report with the information listed above? Does it require every co-op and condo president and treasurer (or perhaps every officer) to file a report? And every year when there is an election to the board, must there be an update of both the entity filing and the beneficial owner filing? At present, it seems that this is the case. However, we are hopeful that the Treasury Department will consider these issues and clarify the law’s requirements.

It should be noted that as invasive as the CTA seems to be, included in the law is the requirement that the beneficial ownership information NOT be disclosed to the public, and there are substantial penalties if there is a leak. Likewise, it should be noted that there are substantial penalties for failing to file a report or reporting false information: A civil penalty of up to \$500 a day, and a fine of up to \$10,000 and two years imprisonment may result.

The foregoing is only a summary of the CTA, and additional information will be forthcoming as the deadline of Jan. 1, 2025, approaches. If you have any questions, please consult your regular AT lawyer or one of the authors.



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