



CORPORATE TRANSPARENCY ACT WHERE THINGS STAND

The Corporate Transparency Act (CTA) requires corporations (including community associations) to file a report identifying all “beneficial owners,” defined as individuals who own or exercise “substantial control” over a corporation. However, there is still confusion as to the status of the law and whether its reporting requirements apply to homeowner associations and other common interest developments. So where do things stand?

Legal Challenge Status

National Small Business United v. Yellen

In *National Small Business United v. Yellen* (N.D. Alabama), the plaintiffs challenged the constitutionality of the CTA. In March 2024, a federal district court ruled in favor of the plaintiffs and prohibited the Financial Crimes Enforcement Network (FinCEN) from enforcing the CTA against them. This ruling is narrow, applying only to the plaintiffs in this case.

The Justice Department filed a Notice of Appeal on March 11, 2024. While this case makes its way through the appeal process, reporting companies are still required to comply with the law and file Beneficial Owner Information (BOI) reports.

On May 20, 2024, Community Association Institute (CAI) filed an amicus brief in the US Court of Appeals for the 11th Circuit in support of the Plaintiff/Appellee. These “friends of the court” briefs are permitted when an individual or organization that is not a party to the legal case is able to assist a court by offering information, expertise, or insight that has a bearing on the issues.

The appeal process will likely take more than a year to work its way through the courts and even longer if the ruling is appealed to the Supreme Court.

Community Association Institute (CAI)

In June 2024, the CAI Board of Trustees approved the filing of a separate lawsuit against the Department of the Treasury, seeking an exemption for community associations from the CTA.

Summary

In addition to *Yellen* and the planned CAI suit, there are reportedly at least two additional pending lawsuits. Given the lengthy trial and appellate process at the federal level, experts do not anticipate judicial clarity on CTA matters until at least 2025 or 2026.

So, What Does This All Mean?

Bottom line, **associations need to submit the required BOI report to FinCEN by the January 1, 2025 deadline.** Corporations that do not comply with the reporting requirements are subject to a \$500 fine per day. Those found to be “willfully” non-compliant or who intentionally file false information can be charged with a felony, punishable by up to two years in prison. If combined with another felony, as many as ten years of incarceration are possible.

Who Must File?

Any corporation or LLC created by filing articles of incorporation or association with the Secretary of State must file the required report. There are some exemptions; however, **nearly all homeowner associations are currently required to file a BOI report.**

Who is a “Beneficial Owner”?

A beneficial owner is anyone who owns or controls at least 25% or **exercises “substantial control” over of a reporting company.** “Substantial control” means every senior officer (president, vice president, secretary, treasurer), anyone who has the authority to appoint or remove senior officers, anyone who has substantial control over important decisions, or anyone who has any other form of substantial control. Because the board of directors is the governing body of an association and board members have decision-making authority on behalf of the association, they are considered beneficial owners.

What About Community Managers?

But what about community managers? This isn’t as clear. Does the manager have the authority to make decisions on behalf of the board or association? Do they only work at the direction of the board? The answer to this question likely requires a legal review of the management

contract or other agreements between the management company and the association. Additionally, managers and management companies typically are “managing agents” of community associations; managing agents legally exercise control over the assets of a common interest development (*Civil Code* §4158). Management companies are advised to not make this determination without first consulting legal counsel due to the potential penalties involved.

What Must Be Filed?

For the **reporting company (association)**, the following is required:

- The association’s legal name
- Any trade names or DBAs
- Street address of the place where business is primarily conducted
- The jurisdiction of formation (i.e., California)
- The association’s Taxpayer Identification Number

For each **beneficial owner**, the following is required:

- Legal name
- Date of birth
- Residential address
- Identifying number from a driver’s license, state ID, or passport
- Copy of the driver’s license, state ID, or passport

How Frequently?

Any reporting company formed before January 1, 2024, must submit its initial report by January 1, 2025. Reporting companies formed after January 1, 2024, must file their initial report within 90 days after formation. There is no annual filing requirement.

After the initial filing, an amended report must be filed within 30 calendar days any time there is a change to the information provided in a previously filed report. This includes changes in the beneficial owners (resignation or appointment of a director, election of new directors) and changes in the personal information of beneficial owners (including expired driver’s license or passport).

How Do I File?

Reports can be submitted electronically via the U.S. government’s FinCEN website. Associations may submit their reports directly with FinCEN. Many management companies offer a filing service on behalf of their clients. Additionally, there are reporting companies that will submit the BOI report on behalf of the association and will provide reminders when amendments need to be submitted.

More than thirty million entities are required to submit BOI reports by the end of the year, and as of June 1, 2024, just over two million have done so. Therefore, waiting until December 31 is not recommended. **We recommend that associations start compiling the necessary information now.** Managers should consider asking for the information from directors immediately upon election or appointment to the board. Additionally, we recommend including in nomination and election materials that those elected to the board will be required to provide the information necessary to comply.

Be sure to contact your manager and legal counsel with any questions.

July 2024