



HOA Brief Newsletter

Federal Court finds Corporate Transparency Act Unconstitutional

In a decision issued late Friday, March 1, 2024, a Federal District Court ruled that the Corporate



Transparency Act was unconstitutional. The Court then permanently enjoined the government from enforcing the CTA against the named plaintiffs and ordered a further hearing on the award of costs of litigation.

While it is likely that this litigation will continue to play out in the federal appellate courts, the initial ruling is in favor of small business. However, the exact implications for continued compliance with the Act are unclear. Because the Court order only prevents the government from enforcing the Act against the plaintiffs in the case, it is uncertain whether this decision affects the act's status for other entities. Given that the deadline for filing the required BOI Report is not until the end of the year, it may be prudent for community associations to wait until the latter half of the year to determine if reporting will still be required or if the courts will step in and issue orders preventing enforcement of the CTA on a much larger scale.

As this is a developing case, we will continue to monitor and provide further updates as new information becomes available, including whether the reporting required under the Act will be delayed for California associations pending resolution of the case. You can sign up for our alerts at <https://www.ndhoalaw.com/subscribe>.

What is the Corporate Transparency Act?

The 2021 National Defense Authorization Act included a section called the Corporate Transparency Act ("CTA"). Although the CTA made up just over 21 pages of the NDAA's nearly 1,500-page total, the law carries substantial regulatory impact, requiring millions of entities created under State law to disclose personal stakeholder information to the Treasury Department's criminal enforcement arm. The stated goal of these disclosures was to prevent financial crimes like money laundering and tax evasion, which are often committed through shell corporations. As written, despite its name, the CTA is not limited to corporations as it requires any entity created by filing a document with a Secretary of State to file a Beneficial Ownership Information (BOI) Report with the Financial Crimes Enforcement Network

(FinCEN) of the United States Treasury Department.

Does the CTA Apply to Community Associations?

While the CTA has several exemption categories, the most likely to apply are those exempting corporations with over 20 full-time employees and over five million dollars in gross receipts. While there is also an exemption for corporations that are exempt from tax under Internal Revenue Code section 501(c)(3), most community associations are not recognized as 501(c) organizations. As a result, most community associations are subject to the reporting requirements.

What is a Beneficial Ownership Information (BOI) Report and how do I file one?

The Beneficial Ownership Information Report contains information about the reporting entity, including those who are beneficial owners of the entity and the company applicant if it was created after January 1, 2024 (see FinCEN's Small Entity Compliance Guide, December 2023, Version 1.1, which can be found at:

https://www.fincen.gov/sites/default/files/shared/BOI_Small_Compliance_Guide.v1.1-FINAL.pdf).

A Beneficial Owner is an individual who owns or controls at least 25 percent of a company **or** has substantial control over the company.

An individual exercises substantial control over a reporting company if the individual meets any of four general criteria: (1) the individual is a senior officer; (2) the

individual has the authority to appoint or remove certain officers or a majority of directors of the reporting company; (3) *the individual is an important decision-maker*; or (4) the individual has any other form of substantial control over the reporting company.

Important Decision Makers are any individuals who direct, determine, or have substantial influence over important decisions made by the reporting company, such as business or financial decisions. Managing agents and employees may be exempt from being beneficial owners. Managing agents, such as community managers, may qualify for an agency exemption to the definition of beneficial owner if they perform ordinary advisory or contractual services. Employees of the reporting company who are not senior officers and whose substantial control is derived solely from their employment status may qualify for an employee exemption.

Each reporting company must provide: the full legal business name and any trade name or doing business as (DBA) name of the reporting company and the current United States address of the reporting company. Each Beneficial Owner must provide their full legal names; date of birth, current address; unique identifying number, *and* issuing jurisdiction from, *and image of, one of the following* non-expired documents: U.S. passport; state driver's license; or identification document issued by a state, local government, or tribe. If an individual does not have any of the previous documents, a foreign passport may be used.

The Report can be filed online at:
fincen.gov/boi.

When do I have to file?

The filing deadline for an existing entity's initial report is January 1, 2025. An updated report must be filed within 30 calendar days any time there is a change to the required information provided in previously-filed BOI report. *This last requirement is important, as a new report will have to be filed anytime there is a change in the Board of Directors, whether by election, appointment or vacancy.*

What if a BOI Report is not filed?

The CTA's disclosure requirements aren't toothless. Knowing or willful violations carry serious civil and criminal penalties. Willfully providing false or fraudulent beneficial ownership information or failing to report "complete or updated beneficial ownership information to FinCEN" by "any person" is punishable by a \$500 per day civil penalty and up to \$10,000 in fines and 2 years in federal prison. At least one Alabama court has ruled that (at least for standing purposes), these severe penalties apply to individuals, not reporting entities.

Recommendations

In addition to court action, there are efforts underway to delay the implementation of the CTA and even exempt community associations from the reporting requirements. As stated above, associations may want to wait until the latter half of the year to determine if reporting is required, and consult counsel to determine what, if any, reporting is required. You can lend your voice to those efforts by participating

in CAI's call to action to contact federal legislators at:
<https://www.votervoice.net/CAI/Campaigns/108066/Respond>

We provide this newsletter for advertising and general informational purposes only. It is not intended to create an attorney client relationship. Readers should not act on any issues raised in this newsletter without consulting with legal counsel.

Email: admin@NDHOALaw.com

Website: NDHOALaw.com