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HOAs Inadvertently Caught in Federal Crossfire: Ten Things You Need to Know About Community Associations and the Corporate Transparency Act

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It’s easy to forget that community associations are corporations—and yet, today most community associations are incorporated. Community associations are subject to their state’s corporate statutes; but soon, they will be subject to the federal Corporate Transparency Act (“CTA”) too.

My corporate law colleagues have written some informative articles about the CTA, for corporate entities, already. I recommend you read their [articles](#) if you want a deep dive into this legislation and its regulations. **This post will serve as an introduction for why this law matters to community associations specifically.**

1. What is the CTA?

The CTA is a federal statute enacted on January 1, 2021, as part of the National Defense Authorization Act for Fiscal Year 2021. The CTA is intended to increase transparency for “reporting companies.” The law requires companies to submit “beneficial ownership information” to the Financial Crimes Enforcement Network (“FinCEN”). The government wants a better idea of who owns or controls companies to monitor corruption and financial crimes.

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2. Are Associations “Reporting Companies?”

Depending on the association, the answer for most associations is likely yes. The definition of a “reporting company” is very broad and includes all corporations, limited liability companies, some trusts, and other entities that are formed or registered to do business in the United States. Generally, unless an exemption applies, a “reporting company” is any entity that is created by filing a document with the secretary of state, state corporation commission, or similar state office. There are 23 exemptions, but **most community associations will not meet the narrowly drafted exemptions.** A full list of exemptions are listed [here](#).

3. What Kind of Information Must Be Reported?

Two kinds of information must be reported to FinCEN:

- Information about the “reporting company” such as the association’s name, address, state of formation, and its taxpayer identification number. This bit is not so difficult for most associations.
- However, the “reporting company” must also report the full legal name, date of birth, current address, a driver’s license or passport number, and a scanned copy of such driver’s license or passport of each “beneficial owner.”

4. What is a “Beneficial Owner?”

This is a very good question as relates to CTA and incorporated community associations in which lot owners/condominium unit owners are members. At a minimum, a beneficial owner would include a director serving on the association’s Board of Directors. A beneficial owner is anyone over a “reporting company” or (b) who owns or interests. Most associations will find the first de second, (b). In most associations, the Board of l substantial control over the association. You can control [here](#). That said, some associations may l its Board of Directors.

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5. When Must the Association Report Information?

By January 1, 2025 for currently existing associations or within 30 days of incorporation for associations incorporated after January 1, 2024. After its initial reporting to FinCen, the association must report any changes to CTA information previously submitted regarding the association and/or its beneficial owners within 30 days of the occurrence of the change. This means an association must provide CTA information for any new directors who are elected to the Board of Directors and report changes to the composition of the Board of Directors within 30 days of the change—which may be annually, for associations that hold annual elections.

6. Is My Association Exempt from CTA if It Is Not For Profit?

It depends. Companies that are income tax exempt pursuant to Section 501(c) of the Internal Revenue Code are exempt from CTA. Historically, most associations do not seek this status so your association should first verify that it has applied for and received a tax exemption pursuant to Section 501(c) from the Internal Revenue Service. If your association hasn't applied for a tax exemption pursuant to Section 501(c), then it won't be exempt from CTA unless and until it receives such tax exemption, even if it could qualify for a tax exemption pursuant to Section 501(c).

7. Will My Association Qualify for a Section 501(c) Exemption?

Maybe. You will need to speak to an attorney about whether your association would qualify for a Section 501(c) exemption; however, many associations do not qualify for the income tax exemption under Section 501(c). If the association qualifies, the association will want to weigh the costs of the tax exemption application and compliance against CTA compliance.

8. Is My Association Exempt from CTA if I Am Exempt from Federal Income Taxes?

It depends, but probably not. You'll have to figure out if your association does federal income taxes first. If your association does not, then your association would be exempt from CTA. However,

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federal income taxes because of any other kind of exemption, including exemption under Section 528 of the Internal Revenue Code, then you will not be exempt from CTA. An attorney or CPA familiar in the area can help your association determine why your association historically has not been required to pay federal income taxes.

9. What Happens if the Association Fails to Report?

A civil fine of \$500.00 per day, up to \$10,000.00, plus criminal fines or prison time for willful failure to report or filing erroneous reports.

10. Is There Any Hope This Law Might Change?

Maybe. New regulations are still in the works, but these upcoming regulations generally address the security of and access to the CTA's data and the CTA's interaction with other customer due diligence rule. Furthermore, new regulations will clarify the reporting process. And while there are a few legal challenges that have been raised, absent a clear exemption for all associations or a successful legal challenge, associations and association managers should prepare to comply with CTA in 2024.

Stay tuned as we continue to review and discuss new regulations, relevant lawsuits, and ways your association can avoid being collateral damage under this new legislation.

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