

Corporate Transparency Act Update: New York Cooperatives, Condominiums, and HOAs are Advised to Comply

January 1, 2025, is the deadline for all entities (unless exempt) created prior to January 1, 2024, to file reports under the Federal Corporate Transparency Act (CTA), and there are substantial penalties for noncompliance. Willful violations can result in civil penalties of up to \$591 (adjusted for inflation) per day for any violation that has not been remedied and criminal penalties of up to \$10,000 and/or two years of prison.

How does the CTA apply to Coops, Condos, and HOAs?

Cooperatives (coops) and possibly condominiums (condos), unless exempt, must report personal identifiable information about their beneficial owners to the Financial Crimes Enforcement Network (FinCEN) in accordance with the CTA and its related regulations. For a discussion of whether an unincorporated condo association is a reporting company under the CTA, please see our prior Alert on this issue.

Since the enactment of the CTA, industry groups challenged the CTA's potential applicability to Homeowner Associations (HOAs) and condos. In responding to these challenges, FinCEN declined to change its position that if an HOA otherwise meets the definition of a Reporting Company, unless exempted, it must comply with the CTA. In response, on September 10, 2024, the Community Associations Institute (CAI) filed a federal lawsuit in the United States District Court for the Eastern District of Virginia challenging the constitutionality of the CTA, seeking to exempt non-profit and voluntary-run organizations from the burdensome reporting requirements. As part of that litigation, the CAI filed a request for a preliminary injunction to preclude enforcement of the CTA against CAI's members during the pendency of the lawsuit. On October 24, 2024, the court denied such relief.

While the extent of the CTA's applicability to HOAs and condos remains in the hands of the courts, given the approaching deadline and potential penalties for noncompliance, it is prudent for condos and HOAs to comply with the CTA reporting requirements until FinCEN issues affirmative guidance stating otherwise.

With that said, a coop, condo, and/or HOA is exempt as a *large operating company* from the CTA requirements if it:

1. employs more than 20 full time employees in the United States;
2. has an operating presence at a physical office within the United States; and
3. filed a federal income tax or information return in the United States for the previous year demonstrating more than \$5,000,000 in United States gross receipts or sales.

Whose information must be reported to FinCEN?

As previously advised, all beneficial owners of a Reporting Company (i.e., coop, condo, or HOA) must be reported to FinCEN. Pursuant to the CTA, a beneficial owner is defined as any individual who, directly or indirectly, either exercises substantial control over a Reporting Company or owns or controls at least 25% of the ownership interest of a Reporting Company. The regulation provides three specific indicators to determine if an individual has *substantial control*:

1. The individual serves as a senior officer of a Reporting Company; or
2. The individual has authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body) of a Reporting Company; or
3. The individual directs, determines, decides, or has substantial influence over important



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decisions made by a Reporting Company.

Beneficial owners of coops, condos, and HOAs, if applicable, will likely include the following:

- Senior officers (as defined pursuant to the CTA) and potentially all board members or directors;
- Shareholders/unit owners who own 25% or more of the shares/common interest in the coop/condo; and
- Sponsors of coops/condos who remain in control of the entity or have at least 25% ownership therein (*i.e.*, holders of unsold shares).

FinCEN's [Frequently Asked Questions D.9](#) indicates that each member of a reporting company's board is not automatically a beneficial owner. That FAQ indicates that whether a particular director meets any of the criteria for exercising substantial control is a facts and circumstances determination done on a director-by-director basis. Generally, the larger the number of members of the board of directors, the less likely that an individual director will exercise substantial control, subject to consideration of any contractual voting provisions and other specific facts and circumstances that may influence the analysis. Absent facts and circumstances that clearly limit a board member's control over the Reporting Company, prudence dictates that all board members of New York coops, condos, and HOAs comply with the CTA reporting requirements.

Is more than one report required?

An initial beneficial ownership report is required for a reporting company, but the reporting company must provide updates to the information included in a report within 30 days after the change. For example, if the senior officers change, then the beneficial ownership report will need to be updated.

We will continue to monitor guidance issued by FinCEN under the CTA with respect to the foregoing issues and provide updated alerts.

Should your coop, condo, or HOA need assistance in filing, please feel free to contact the authors for further guidance.