

Corporate Transparency Act—Does It Apply to New York Cooperatives and Condominiums?

The new year rang in new requirements for business entities that are created by the filing of a document with the secretary of state, including cooperatives (coops) and perhaps condominiums (condos), to report personal identifiable information about certain of their beneficial owners to the Financial Crimes Enforcement Network (FinCEN) of the U.S. Department of Treasury to comply with the Corporate Transparency Act and the regulations issued thereunder.

Which entities are required to report to FinCEN?

Any entity that is created by filing a document with the secretary of state or similar office under the laws of a state, including, but not limited to, corporations, limited partnerships, and LLCs (Reporting Company) is required to report to FinCEN. Coops that were created by the filing of a document with the secretary of state are Reporting Companies (unless otherwise exempt) and will be required to comply with the CTA. While Article 9-B of the New York Real Property Law, also known as the “Condominium Act,” does require a condo’s declaration to be filed with the New York Secretary of State, we do not believe that such action alone renders an unincorporated condo association a Reporting Company under the CTA and, therefore, it is not required to report to FinCEN. However, we intend to monitor guidance issued by FinCEN under the CTA with respect to such unincorporated condo associations. With that said, a condo association that is formed as a corporation (i.e., an incorporated condo association) will be considered a Reporting Company and must comply with the CTA. A condo board should review its governing documents to determine whether it is a corporation.

Are any companies exempt from the CTA?

Yes. The CTA lists 23 types of entities that are exempt from the reporting requirements. The CTA recognizes that many businesses are already subject to substantial governmental oversight regarding their beneficial owners and, therefore, are not required to comply with the CTA. Most, if not all, of the exemptions will not apply to coops and condos. However, we encourage boards of coops and condos to discuss such exceptions with their legal counsel to confirm.

What must a Reporting Company report to FinCEN?

As discussed in more detail below, every Reporting Company must file an initial report that contains the following:

1. Disclosures about its beneficial owners (as defined by the CTA);
2. Information about the Reporting Company; and
3. A certification that its report is true, correct, and complete.

Updated or corrected reports must be filed within 30 days of any change of information previously submitted to FinCEN about the beneficial owners or the Reporting Company.

Who is a beneficial owner?

Pursuant to the CTA, a beneficial owner is any individual who, directly or indirectly, either exercises substantial control over the Reporting Company or owns or controls at least 25% of the ownership interests of a Reporting Company. The regulation provides three specific indicators to determine if an individual has “substantial control:”



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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 decisions made by a Reporting Company.

Beneficial owners of coops and condos will likely include the following:

- Directors, managers, and certain key officers (as identified pursuant to the CTA) of the coop/condo;
- Shareholders/unit owners who own 25% or more of the shares/common interest in the coop or 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).

What information must be provided to FinCEN about a beneficial owner?

The following information must be provided to FinCEN about each beneficial owner:

1. Full legal name;
2. Date of birth;
3. Residential street address; and
4. Unique identifying number contained in:
 - a. a valid passport,
 - b. government or tribal identification document, or
 - c. state-issued driver's license. If an individual has none of these forms of identification, then a valid foreign passport may be used.

The unique identifying number must be accompanied by the name of the issuing jurisdiction and an image of the document from which the number was obtained.

What information must be provided to FinCEN about a Reporting Company?

Reporting Companies must report the following information about the entity:

1. Full legal name, as well as any trade or d/b/a names;
2. Street address for the principal place of business, if it is in the United States or the primary U.S. location where business is conducted;
3. Jurisdiction of formation for both foreign and domestic companies as well as the state or tribal jurisdiction where a foreign company first registers; and
4. TIN, such as an Employer Identification Number.

When is a Reporting Company required to report to FinCEN?

Reporting Companies in existence prior to January 1, 2024, must file their initial report by December 31, 2024. Reporting Companies created on or after January 1, 2024, but before January 1, 2025, will have 90 days to file their initial report. Any Reporting Company created on or after January 1, 2025, will have 30 days to file the initial report. FinCEN's guidance and regulations are evolving and we would hope that FinCEN will provide further guidance as to whether coops and condos are included as Reporting Companies. Accordingly, we recommend at this time that boards of coops begin to analyze who within their organization would be considered a beneficial owner and collect the required information that will need to be reported about such individuals and the company without reporting to FinCEN until we get closer to the filing deadline. Coop board members should be made aware that they may soon be required to disclose their identity.

How does a Reporting Company report to FinCEN?

There are several third-party vendors, such as SingleFile, CT Corporation, and Corporation Service Company, that can help Reporting Companies with their CTA disclosures. We encourage all boards of coops to discuss the mechanics of filing with their counsel and to enlist their managing agents to further assist with the process.

What happens if a Reporting Company does not file its initial report or updated reports within the required timeframe?

The willful failure to report complete or updated beneficial ownership information to FinCEN, or the willful provision of or attempt to provide false or fraudulent beneficial ownership information, may result in a civil or criminal penalties, including civil penalties of up to \$500 for each day that the violation continues, or criminal penalties including imprisonment for up to two years and/or a fine of up to \$10,000. Senior officers of a Reporting Company who fail to file a required beneficial ownership interest report may be held accountable for that failure.

How can Cozen O'Connor assist?

Cozen O'Connor has established a Corporate Transparency Act committee to help determine which entities are subject to the CTA and which may be exempt. Through a third-party vendor, we can also assist Reporting Companies in making the necessary filings when required. Please contact Leni Morrison Cummins at lcummins@cozen.com or Jennifer D. Miller at jdmiller@cozen.com for further information.