

**CORPORATE TRANSPARENCY ACT (CTA)
WHAT IS IT? WHAT ALL ASSOCIATIONS NEED TO DO
UPDATED DECEMBER 26, 2024**

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IMPORTANT!

This article was originally published in early November 2024. As of December 26, 2024, the US 5th Circuit Court of Appeals has made three rulings in December regarding whether filings are required. At this date, filings have been suspended (not required) pending further rulings. Seek out up-to-date guidance. It has been recommended by some experts that the information should be gathered and on hand in the event the requirement is permanently reinstated. HOAs, a form of a tax-exempt organization, are not exempt from the filing requirement if reinstated.

I am not an attorney. To seek legal advice on this filing requirement, consult with your own legal counsel. This article is intended only to make you aware of the requirement and what you need to do.

From the American Institute of CPAs (AICPA) –

“Enacted as part of the 2021 National Defense Authorization Act and amending the Bank Secrecy Act, the CTA is intended to close a perceived information gap related to money laundering and other illicit acts. Specifically, CTA establishes a ‘a database of beneficial ownership information (BOI) that will be highly useful in combatting illicit finance and the abuse of shell and front companies by criminals, corrupt officials and other bad actors, and aids efforts to protect US national security and safeguard the US financial system from such illicit use. Although passed in 2020, reporting under CTA was initially delayed. A final rule was issued in September 2022, making compliance with the Act mandatory for reporting companies as of January 1, 2024.”

Initial filings are now due by December 31, 2024.

Before I go into what is involved to make the filing, additional background and my commentary, here are the onerous penalties that one can be threatened with.

“Failure to comply with CTA or missing filing deadlines can result in criminal (fines and/or imprisonment) or civil (monetary) penalties. There is a \$500 per day penalty, up to \$10,000, and imprisonment of up to two years for the failure to timely file the initial or updated reports.”

COMMENTARY: As you will see from the discussion following, I have decided **NOT** to attempt to file these on behalf of my clients. These will have to be done by an attorney, board member, owner, managing agent, third party vendor, etc. While many nonprofits are exempt from filing, homeowner associations are currently not exempt and must file.

Who is required to file: Any entity that is registered with the Secretary of State must file the Beneficial Ownership Information (BOI) form with the Financial Crimes Enforcement Network (FinCen) by December 31, 2024. This means that corporations, LLCs, general partnerships are required to make this filing. It is estimated that up to 35 million entities nationwide are subject to this filing. As of November 8, 2024, less than 20% of the expected filings have been made. There is an exemption for nonprofits under Internal Revenue Code Section 501(c) such as charities, churches, etc. Homeowner Associations are not exempt under 501(c) and therefore are required to file. There is also an exemption for organizations with more than \$5 million in revenue.

How to get started: The filing is done online - <https://boiefiling.fincen.gov/> . This is the home page to start the filing. Here is the information necessary to complete the filing –

- **Legal name of the entity**
- **Address**
- **Federal EIN (Tax ID number)**

Beneficial Owners Information (those who have ‘substantial control’):

- **Full legal name of all board members in the Association.** Owners for other corporations or LLCs.
- **Primary Residence Address**
- **Date of birth**
- **Copy of Government Issued ID (drivers license or passport, etc.)**

COMMENTARY: Banks get this information when accounts are opened and signature cards drafted. Will some board members be resistant in providing this information and quit? See additional discussion later in the article. The primary users of this database will be banks and financial institutions.

Is there a filing fee? No

How often does the filing need to be done? If there is no change to any of the above information, once. However, changes in board members, addresses, and even a new driver’s license constitutes a change which is now required to be reported **within 30 days of the change**. We know that these changes occur frequently.

Lawsuits have been filed to stop enforcement or exempt associations from the requirements. In National Small Business United vs. Yellen, a federal district court in

Alabama held the CTA unconstitutional. Members of the National Small Business United organization do not have to file currently. All other entities do. In Community Associations Institute (CAI) vs U.S. Department of the Treasury, CAI asked for a preliminary injunction to exempt community associations. In late October, the court did not grant the injunction.

A bill was introduced in the House of Representatives HR 9045, to exempt homeowner associations from the filing requirements in July 2024. No action has been taken to date (November 6) and I believe that the bill will die if not enacted by the end of 2024.

There is also the question about whether filing of these reports is an unauthorized practice of law (UPL) by someone other than an attorney. While the entity can file its own reports, can others do so? It still is an open question. While CPAs can advise on tax law, prepare tax returns, etc., that activity is permitted under a different section of the United States Code than this FinCen report.

I attended a webinar on November 4 done by my liability insurance company (not the first one I've attended) to gain a sense of how to proceed going forward with this filing. They offered to answer questions so here are my verbatim questions and the incomplete answer I received:

Questions:

I have over 100 Common Interest Realty Association clients who are corporations registered with the Secretary of State. HOAs are not tax-exempt under 501c of the IRC but under 528 of the code. Thus, they are currently subject to this filing. Boards of directors (typically 3-9 members) are volunteers (unpaid) like nonprofits. Some are as small as 3 units. The SOS has the officer information and the banks have personal information when bank accounts are opened.

Board member changes/resignations/appointments can happen frequently, resulting in additional filings. Here are my questions so far -

1) What constitutes substantial control? Many HOAs have management companies who collect assessments, pay bills, sign checks, provide financial reports, arrange and supervise maintenance, interact with members and vendors, etc. Do management companies have substantial control? The management company owner, the managing agent, the bookkeeping staff? Do these people have to be reported?

2) How will FinCen know whether a filing is complete or incorrect?

3) What percentage of expected filings have occurred to date? I heard that a month or so ago, it was less than 10%.

4) Could the deadline be extended with the lack of filings?

If an association asks their board members for their driver licenses to be scanned and sent to the Federal government, I see mass resignations of board members. Remember, they are unpaid volunteers.

A lawsuit was filed by Community Associations Institute to exempt HOAs from this requirement. It initially failed last month. I think they are still trying.

We've all heard of phony 501c charities which are exempt from filing. In my 40 years of working with HOAs, I have never heard of any phony ones. Embezzlements, yes but no money laundering ones.

Answer:

Mike –

Your observations are valid regarding the issues you've identified. Your questions, "What constitutes substantial control?", "Do management companies have substantial control?", "The management company owner, the managing agent, the bookkeeping staff?", and "Do these people have to be reported?" **are all questions that an attorney that chooses to practice in this niche should respond.**

I believe you have made a prudent decision to opt out of providing these services for your clients. If you have not done so already, I encourage you to inform your clients of the CTA/BOI reporting issue (possibly using the notification CAMICO developed, being certain to indicate that you are not providing this service and that you encourage them to seek assistance from qualified legal counsel), and to modify your engagement letters to alert clients of the FinCEN CTA/BOI issue and that your services don't include nor will they include providing these services.

So, outside of board members, I don't know what constitutes substantial control. So time is of the essence to get started on filing the reports. Take a look at the website link in the article earlier to see if you can handle it. Contact your legal counsel if you have questions or to see if they can handle the filing for you. As my clients know, I have plenty of accounting work to do and do not have the time, capacity or desire to complete these filings.

For homeowner associations, I have identified some third-party companies that say they can prepare the filings. You will still have to provide them with all the information for the filing as specified earlier in the article.

CTA Review - <https://ctareview.com/> Preparation fees are specified on the website

Swedelson and Gottlieb attorneys in LA are offering to do them with an update to your election rules – www.lawforhoas.com.

I'm sure a web search will find others able to provide the filings, if needed.