**The Corporate Transparency Act: Is Your Community Association Required To Comply?**

Likely, yes.  There are pending legal challenges that argue that the Corporate Transparency Act (“CTA”) should not apply to community associations, but as it is currently written, the CTA applies to community associations.  The CTA is a new federal law designed to combat financial crime by requiring a corporation (even a non-profit community association with a volunteer Board of Directors) to disclose certain information about the company and its “Beneficial Owners” to the United States Department of Treasury’s Financial Crimes Enforcement Network (“FinCEN”).

Under the CTA, a community association and its directors are required to file certain information with the federal government.  Several cases are pending in courts across the country litigating whether a community association must comply.  It is difficult to predict exactly how and when those courts may rule.  Until definitive rulings are made by the courts, community associations should consult with knowledgeable community association legal counsel and be prepared to comply with the requirements by the deadlines set in the law in order to avoid potential consequences.

**The Community Association as a “Reporting Company.”**

If your community association was created by the filing of articles of incorporation or a certificate of formation with the State, then your association is considered a “Reporting Company” pursuant to federal law.  The deadline to file the Initial Report under the CTA depends on when the association was incorporated.  If the association was incorporated ***before 2024***, then ***the Initial Report must be filed no later than January 1, 2025***.

If your association was incorporated ***in 2024***, then the Initial Report is ***due ninety (90) days after the entity was incorporated***.

For associations to be incorporated ***in 2025 or later***, then the Initial Report is ***due thirty (30) days after the entity is incorporated***.

The Initial Report must include information regarding your community association, its “Beneficial Owners” and the Company Applicant.  The following information is required: (1) the entity’s name, as well as any trade names or DBAs, (2) the business street address, (3) the Taxpayer Identification Number, and (4) the jurisdiction of formation.

Based on the broad language of the CTA, and unless changed by the courts (which is still an open question) nearly every community association would be considered a Reporting Company subject to the CTA.

**The Members of the Board of Directors as “Beneficial Owners.”**

Pursuant to the CTA, a “Beneficial Owner” is an individual who either directly or indirectly: (1) exercises substantial control over the association or (2) owns or controls at least twenty-five (25%) percent of the association’s ownership interests.  Notably, a Beneficial Owner must be listed and identified as an individual, not as a corporate entity.  Most individual members of the board of directors are not likely to own at least twenty-five (25%) percent of the units.  Nevertheless, directors are most likely to be considered Beneficial Owners because the board members exercise substantial control over the community association and have the critical decision-making authority for the community association pursuant to the master deed and by-laws (or other governing documents).

The CTA requires individual board members to report the following information: (1) full legal name, (2) date of birth, (3) current residential address, (4) a unique identification number such as a driver’s license number or a passport number, and (5) a digital copy of the driver’s license or passport.  An individual board member may submit the required information directly through the FinCEN website.  In that case, they would receive a unique FinCEN ID.  The individual Board Member can provide their own separate FinCEN ID for the Initial Report.

**Requirements of “Company Applicants.”**

A Company Applicant is the person who filed the certificate of formation creating the community association corporation with the Secretary of State.  An association must report its Company Applicant(s) ***only if the association was incorporated in 2024 or later***.  A Company Applicant must report the following similar information: (1) full legal name, (2) date of birth, (3) current business address, (4) a unique identification number such as a driver’s license number or a passport number, and (5) a digital copy of the driver’s license or passport.

**Changes/Updates Required for Previously Reported Information.**

Under the CTA, an association is also required to file an update within thirty (30) days after any change of information previously submitted to FinCEN, such as the addition or removal of a director.  Moreover, it is the Board Member’s responsibility to update the required information previously submitted to FinCEN within thirty (30) days of the date of change.

**Potential Penalties in the Event of a Failure to Report.**

As of the time of this writing, it is not clear exactly how FinCEN will monitor and enforce the CTA in general, or monitor and enforce against community associations in particular.  Under the CTA, an individual who willfully provides false or fraudulent information or willfully fails to report complete or updated Beneficial Ownership (i.e., Board Member) information faces a civil penalty of up to $500.00 per day (which is adjusted annually for inflation) that the violation continues, a criminal fine of up to $10,000.00 and/or two years’ imprisonment.

**Conclusion.**

Compliance with CTA is a substantial undertaking.  It is suggested that board members actively consult with experienced legal counsel in the community association field and their managing agent.

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