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Cooperatives & Condominiums Alert

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Do HOAs have to report beneficial ownership under the CTA?

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FinCEN issues guidance on whether homeowners associations (HOAs) are required to report beneficial ownership information to FinCEN under the Corporate Transparency Act.



What's the impact?

- HOAs must determine whether they are a “reporting company” under the Corporate Transparency Act.
- An HOA that must report to FinCEN is required to identify all its beneficial owners based on specific criteria and within specific timeframes to avoid penalties. FinCEN recently clarified those reporting criteria, timeframes, and penalties in updates to their FAQs on April 18, 2024.
- While there may be HOAs in which no individuals own or control at least 25 percent, FinCEN still expects that every HOA reporting company will be able to report at least one beneficial owner.

On April 18, 2024, the Financial Crimes Enforcement Network (FinCEN) published new [FAQs](#) to provide additional guidance on the [Corporate Transparency Act's](#) beneficial ownership

information reporting requirement, which went into effect on January 1, 2024. The updated FAQs address two critical questions related to homeowners associations (HOAs):

1. Are HOAs reporting companies?
2. Who are the beneficial owners of an HOA?

Understanding the Corporate Transparency Act

As a refresher, the Corporate Transparency Act (CTA) is a federal anti-corruption law adopted to combat financial crime by requiring a broad range of companies to disclose information to FinCEN, including the identities of their beneficial owners. The CTA's goal is simple, but its requirements require close attention to detail and every legal entity must assess whether it is a "reporting company" under the CTA.

Do HOAs have to report information to FinCEN?

Pursuant to FinCEN agency guidance, every HOA that meets the reporting company definition and does not qualify for any exemptions must identify and report its beneficial owners to FinCEN. Whether an HOA is a reporting company depends on the HOA's corporate form and how it was created.

As with any entity, if an HOA was not created by the filing of a document with a secretary of state or similar office, then it is not a domestic reporting company. HOAs that were created through these official filings are likely reporting companies—unless they qualify for one of the 23 specific types of exemptions from the CTA's reporting requirements.¹

Identifying the beneficial owner of an HOA

HOAs classified as reporting companies, absent exemptions, must report their beneficial owner(s). While there may be some HOAs for which no individuals own or control at least 25%, FinCEN still expects that every HOA reporting company will be substantially controlled by one or more individuals, and therefore that every HOA reporting company will be able to identify and report at least one beneficial owner to FinCEN.

FINCEN CRITERIA FOR SUBSTANTIAL CONTROL

Individuals are considered by FinCEN to "exercise substantial control" over the HOA if:

- / the individual is a senior officer (such as a president, CEO, COO, CFO, general counsel, or any

¹ FinCEN's [Small Entity Compliance Guide](#) includes a table summarizing the 23 exemptions to help determine whether a company meets an exemption (see Chapter 1.2, "Is my company exempt from the reporting requirements?").

other officer who performs similar functions);

- / the individual has the power to nominate or remove HOA officers or a majority of directors;
- / the individual is an important decision-maker; or
- / the individual has any other form of substantial authority over the HOA (for example, ownership or control of equity, stock, or voting rights; or rights associated with financings or directing intermediary entities.)

Whether a particular person, principal, board member, officer, or director meets any of these criteria is a question that the reporting company must consider on an individual basis.

Difference between condominiums, cooperatives, and HOAs

Condominium associations, cooperative apartment corporations (Co-ops), and HOAs are all forms of common interest properties. While they share similarities, they do not have the same legal meaning.

Condominium associations govern a condominium form of ownership on behalf of all the owners of the units. Each condominium unit is exclusively owned by its unit owner, along with an undivided share of the common elements of the condominium. The condominium association is administered by a board of managers appointed by the unit owners. Condominium associations in New York may be incorporated or unincorporated, but most condominiums in New York are unincorporated associations.

HOA communities are operated by a governing HOA entity that owns and manages the common areas. The members of an HOA entity are typically the owners of the community's separately owned individual units or parcels.

Co-ops are corporate entities owned by shareholders. The corporation owns the entire property and issues proprietary leases to its shareholders, entitling them to exclusive occupancy of their particular apartments.

Practical implications

Under the current provisions of the CTA and FinCEN guidelines, an incorporated HOA or other HOA that was created by the filing of a document with a secretary of state and does not qualify for any exemption is required to identify and report its beneficial owners to FinCEN.

This same principle applies to both Co-ops and incorporated condominium associations, as they are also formed through state filings. However, it's important to note that most condominium

associations in New York are unincorporated. Presumably, the CTA reporting requirements would not apply to these unincorporated condominiums.²

In summary, incorporated HOAs, incorporated condominium associations, and Co-ops are all likely considered reporting companies. On the other hand, unincorporated condominium associations and unincorporated HOAs are likely not considered reporting companies.

Nixon Peabody's [Cooperatives & Condominiums Team](#) is well equipped to assist in navigating these complex regulations and reporting obligations.

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² Note that Real Property Law § 339-s requires that a condominium declaration and any amendments thereto be filed with the department of state. As of the date of this Alert, it remains unclear as to whether that statutory filing triggers application of the CTA reporting requirements to the condominium association.