

## Effects of Corporate Transparency Act HOA & COAs in Texas Should Know

Friday October 25, 2024

For homeowners associations (HOAs) and condo owners associations (COAs) across Texas, there have been a lot of details buzzing around the Corporate Transparency Act HOA and COA board members are questioning. While opinions vary on whether the Corporate Transparency Act (CTA) affects both HOAs and COAs equally, many board members are still concerned. What does your association need to do to comply? When is the deadline? What's the process to file?

Our local teams here at FirstService Residential Texas want to make sure you're informed on what's going on with this act, how to handle any challenges it brings, and [how to effectively communicate](#) about it within your associations. This is why we went straight to the expert, our partner Leah Burton, attorney at Steptoe & Johnson, PLLC, who presented an informative webinar on everything Texas board members should know about the CTA.

Here, we're summarizing her answers to the most common questions about the Corporate Transparency Act HOA and COA board members in Texas have asked. Keep reading to learn how the CTA affects your associations and steps you should take now to comply with this law.



## Why was the Corporate Transparency Act passed?

It may seem like a [newer piece of legislation](#), but its origins trace back to 2006 when concerns first arose about the lack of transparency surrounding company formations.

The Financial Action Task Force highlighted the potential risks posed by limited oversight over who was at the helm of these newly formed corporations. Over nearly two decades, the federal government has sought to tighten the reins to identify the individuals behind these companies and curb any potential criminal activities. Activated by Congress on January 1, 2021 (though it did not go into effect until January 2024) the CTA aims to bolster national security.

### The CTA states:

"It is the sense of Congress that a [database containing information about the beneficial owners of business entities] is needed to:

- protect vital national security interests
- better enable critical national security, intelligence, and law enforcement efforts to counter money laundering, the financing of terrorism, and other illicit activity." (CTA §6402)

### Attorney Leah Burton elaborates on Congress's goal with the CTA:

"It's all about finding the 'bad guys' who are forming corporations within the United States with the intention of hiding money or financing terrorism."

### She adds:

"It is a noble objective. **Unfortunately, we in the HOA industry and board members specifically are getting caught in the crosshairs of this initiative.**"



## **Filing process for the Corporate Transparency Act HOA and COA board members should know**

In the past, to form a corporation, you simply filed articles of incorporation or a certificate of formation with the Secretary of State. Once approved, you could officially identify as a corporation in Texas.

Now, with the CTA coming into effect, you must *also* file an application with the Financial Crimes Enforcement Network (FinCEN).

### **What is FinCEN?**

FinCEN is the U.S. Department of Treasury Financial Crimes Network (FinCEN). Formed by the Department of Treasury, it is a bureau tasked with the sole mission of finding information about the founders of the companies that form in the United States and their transactions. This is an effort to combat domestic and international money laundering, terrorism financing, and other criminal activities. FinCEN analyzes the data they collect and issues regulations regarding these companies.

### **Who has to report to FinCEN?**

Reporting companies must report to FinCEN.

### **What is a reporting company?**

A reporting company is created by the filing of its Certificate of Formation. So a corporation with an identity in the state of Texas is a reporting company per the CTA, unless it falls into an exemption.

Possible exemptions include (but are not limited to):

- Governmental authorities
- Banks
- Credit unions
- Insurance companies

- Accounting firms
- Public utilities
- **Entities Exempt under I.R.C. §501(a)** or I.R.C. §527

These companies do not have to file paperwork with FinCEN.



### **What exemption does your HOA or COA fall under? Is a homeowners association a nonprofit?**

The only exemption that may apply to your HOA or COA is **Entities Exempt under I.R.C. §501(a)**. To qualify for this exemption, your HOA or COA must be tax-exempt under Section 501(a) of the Internal Revenue Code (IRC) as an organization described in IRC Section 501(c)(4), which is for charitable organizations.

So if you're asking, "Is a homeowners association a nonprofit?" Yes, but just because your HOA or COA is incorporated as a nonprofit doesn't mean it's tax exempt.

"Out of all my communities I represent, I have two that qualify for this exemption. And really the reason why those two are exempt is because they sought the exemption forty years ago. These days, most HOAs [or COAs] are not going to qualify – they're simply not going to fulfill the requirements of a 501(c)(4), therefore they're not going to be able to obtain that exemption," says Burton.

### **Corporate Transparency Act HOA and COA tax exemptions**

In order to be exempt from reporting to FinCEN, an HOA or COA must have received a letter from the IRS which determines it is a 501(c)(4). An HOA or COA may have a Form 990 that identifies it as a 501(c)(4), but exemption status depends on how long ago the Form 990 was filed.

In the "old days," if your association self-reported as a 501(c)(4), that may have sufficed

for exemption status. Today, with the change in tax laws, if your association self-designates as a 501(c)(4), the IRS will make you jump through a long list of additional administrative hoops to provide verification that your HOA or COA is a viable 501(c)(4).

If your board cannot provide enough information to verify that you qualify as a 501(c)(4), your HOA or COA is required to report to FinCEN.



## **CTA beneficial ownership: Who are the association's beneficial owners?**

According to the CTA, a beneficial owner is:

“Any individual who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise (1) exercises substantial control over the entity; or (2) owns or controls 25% or more of the ownership interests of the entity”

In the Corporate Transparency Act HOA and COA board members don't own anything, but you do have substantial control over your organization.

## **What does substantial control mean?**

This means you:

- serve as a senior officer of the company
- have authority to appoint or remove senior officers
- have authority over the appointment or removal of a majority of the board
- direct, determine, or have substantial influence over the important decisions of the company or have any other form of substantial control

As a board, you don't have to meet every item above to have substantial control over the entity. Any one or two of the above items suffice.

Leah Burton expands on this:

“As an HOA or COA board member...you *do* have exertion of control over the governance of the community. There is no doubt that you as an HOA board member are a beneficial owner of the corporation in accordance with the CTA.”

### **Is the management company a beneficial owner?**

No, if someone's only control within the HOA comes from his/her employment or committee membership, he/she does not qualify as a beneficial owner. For example, if he/she is employed by your property management company or [volunteers on one your community's committees](#), this does not equal beneficial ownership. Only the board members are beneficial owners.



### **Compliance steps for Corporate Transparency Act HOA or COA board members should take now**

To ensure your association is in compliance with the CTA in Texas, follow these steps:

1. All board members must **obtain a FinCEN identifier number**. This is easy!
  - a. Go to [www.fincen.gov](http://www.fincen.gov)
  - b. Provide full name, date of birth, current address, and a copy of your ID
  - c. **What if you don't want to get a FinCEN number?**
    - i. You can have your property manager do this on your behalf, but you'll have to hand over your ID, which makes it an official record of the association and subject to production upon records requests by homeowners! Do you want to risk homeowners obtaining your home address and other personal info?
2. **Provide your FinCEN identifier number** to the company that is filing the report for you. This way, all they have to do is provide your FinCEN number on the application, and they won't need your ID (meaning your information is protected).



### **What about that recent lawsuit that held the CTA unconstitutional?**

On March 1, 2024, the US District Court for the Northern District of Alabama declared the CTA unconstitutional in the case of *National Small Business Association, et al. v. Yellen*. This made many HOAs and COAs believe they no longer need to comply with the CTA. However, as FinCEN later announced on March 11, 2024, this ruling was specific to the plaintiffs in that case only.

Although the Department of Justice filed a Notice of Appeal (also on March 11, 2024), and this appeal is still active, it most likely won't be resolved before the end of the year.



### **Community Associations Institute (CAI) Requested for a Hold on the CTA**

As an advocate for associations like yours, CAI asked FinCEN for a moratorium on the CTA for homeowners associations until an ultimate decision is made for the case mentioned earlier, but this was denied. **HOAs and COAs must comply with the CTA.**

FinCEN now has an ongoing list of frequently asked questions on its [website](#), including information specifically for HOAs and COAs.

“They know who we are, they know that we’re not happy, and when the ultimate decisions are made with regard to the constitutionality of the CTA, FinCEN and everyone else will be well aware that HOAs stand to either lose or gain from these requirements,” says Burton.



## **Penalties for Corporate Transparency Act HOA and COA board member non-compliance**

There are several penalties that you could face as a board member for noncompliance with the CTA. If you willfully provide false information or willfully refuse to provide the required information, you can be subject to a fine of up to \$10,000 and can be imprisoned for two years.

*So to be on the safe side, let's make sure you meet the deadlines listed below!*

## **Due dates for your board to comply with the CTA**

For **existing reporting companies**, the official deadline to file your initial report is **January 1, 2025**.

For **new reporting companies**, here are additional details on the deadline to file:

- If you created or registered **on or after** January 1, 2024, and **before** January 1, 2025: You have **90 calendar days after you've created/registered** to file with FinCEN.
- If you created or registered **on or after** January 1, 2025, you have **30 calendar days after creation/registration** to file with FinCEN.

After filing that initial report on January 1, 2025, you have ongoing filing obligations. Any time the beneficial owner information changes on your board, you must update this



information with FinCEN **within 30 calendar days** of the change.

**This applies to *any* change.** For example, as a board member, if you move and now have a new home address on your driver's license, or if you get married and now have a new name on your license, you must update your new driver's license with FinCEN within 30 days.



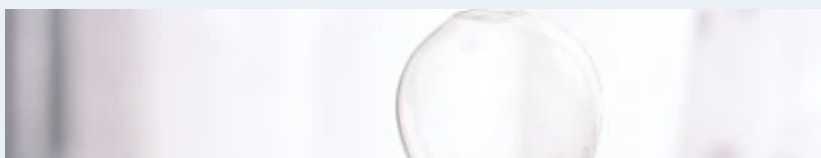
### **Should your HOA or COA wait until the end of the year to file or do it now?**

If you've waited until now, Q4 of 2024, to file, that's actually ideal timing. Why? Because if you filed earlier but then your board had an election and its members change, you'll have to re-report. If you've waited until now to file, it likely saves you from having to report twice.

Also, if you've waited until Q4 of 2024 to file, this has allowed time to see if the law would change as we're anticipating more lawsuits. CAI, along with millions of small businesses, is still actively advocating to delay the CTA filing deadline, but there's no sign anything will change between now and January 1, 2025.

#### **Burton recommends:**

"If you know you're going to be a board member as of January 1, 2025, there's no reason to wait any longer. Get your FinCEN number and give it to the management company or whoever is filing this application on your behalf...There are lawsuits all over the country... The reality is that a decision on this issue between now and January 1, 2025 is highly unlikely. **So don't wait, just get it done.**"





## What is FirstService Residential doing about the CTA?

Our team here at FirstService Residential supports the Community Association Institute's (CAI) position that community associations should be exempt from the CTA. Our efforts align with CAI's, which include:

- Seeking exemption for community associations from the CTA and its Beneficial Ownership Information (BOI) reporting.
- Supporting efforts to delay BOI reporting requirements through legislation like H.R. 4035/S. 2623 and H.R. 5119.
- Advocating for confidentiality in BOI reporting during rulemaking.

CAI encourages board members and industry professionals to contact their senators to postpone the CTA's enforcement and clarify the impact on community associations.

Of course, consult with your association's legal counsel and CPA to ensure compliance with the CTA. In doing so, consider updating your association's [governing documents and bylaws](#) to reflect the recent changes.

You can also visit the Financial Crimes Enforcement Network's website for the latest updates: [FinCEN](#).

Our Texas team members remain committed to supporting our boards as you serve your communities.





## Watch the full CTA webinar presented by Attorney Leah Burton

For more information on the CTA and how it affects HOAs and COAs in Texas, download the full webinar of Attorney Leah Burton explaining everything board members should know about this law. Simply use the form you see on this page to access the webinar.

### FirstService Residential is simplifying property management.

Our FirstService Residential Texas family enjoys peace of mind knowing they're in good hands. They can count on our 24/7 customer service for tailored solutions that take the balancing act out of property management. And our service-first philosophy means we don't stop until what's complicated becomes uncomplicated. To make life, simplified.

If your association is not currently managed by FirstService Residential Texas, we would love to learn more about your community. Please click below and fill out a short **Request for Proposal** to set up a no-strings-attached conversation about how we can best support your association. We look forward to meeting you!

First Name\*

Last Name\*

Association/Building Name\*

Email\*

Phone (optional)

Address\*

City\*

Country\*

Zip Code/Postal Code\*

Are you a board member?\*

Total units\*

How can we help you today?

Submit

## Watch the Webinar on CTA Compliance.

As a board member for your HOA or COA in Texas, you probably have several questions about the Corporate Transparency Act (CTA). That's why we partnered with Attorney Leah Burton at Steptoe & Johnson, PLLC, who breaks down the steps your board needs to take to comply with the CTA by the January 1st deadline. Click below to watch the full webinar today!

[Access webinar here.](#)



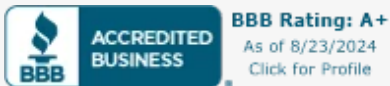
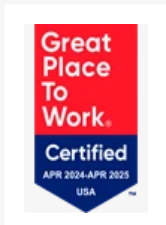
## **BUSINESS HOURS**

Monday to Friday, 9:00 am to 5:00 pm (office times may vary)

## **CORPORATE OFFICE**

14951 N. Dallas Pkwy., Ste 600  
Dallas, TX 75254

Security License Number: B19238



## **SERVICES & PRODUCTS**

Condominium Association

Development Services

High Rise

Active Adult Community

Lifestyle Community

Luxury Rental Management Services

Master-Planned Community

Single-Family Home

Commercial Association Management


Mixed Use Property

**Telephone** [214.871.9700](tel:214.871.9700)

**Fax** 214.889.9980

Toll Free [877.378.2388](tel:877.378.2388)

Copyright © 2024 FirstService Residential. All rights reserved.

[Privacy Policy & Terms of Use](#) | [Terms of Use](#) | [Accessibility Statement](#) |  
[Your Privacy Choices](#) 

#### Also of Interest

[Mission and Values - FirstService Residential Texas](#)

[HOA Property Management Developer Services](#)

[Our Texas Clients](#)