

# 2024 LEGAL UPDATE FOR YOUR ASSOCIATION: “THE CORPORATE TRANSPARENCY ACT”



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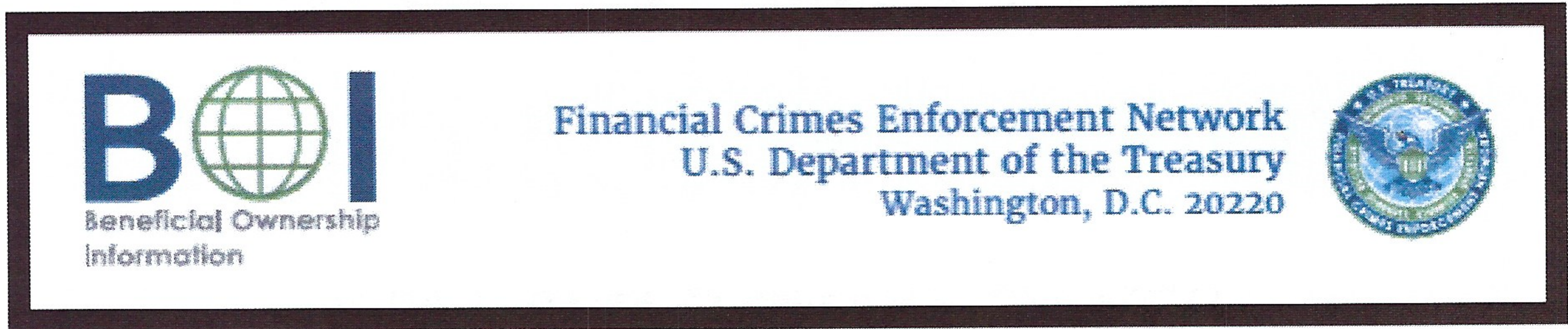
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“THE CORPORATE TRANSPARENCY ACT”

Page 1 of 8



# 1. THE CORPORATE TRANSPARENCY ACT (“CTA”)



Beginning January 1, 2024, all non-exempt corporations, limited liability companies, and other similar entities created in or registered to do business in the United States must report information about their beneficial owners—the persons who ultimately own or control the company—to the **Department of the Treasury’s Financial Crimes Enforcement Network (FinCEN)**, a bureau of the U.S. Department of Treasury.

**1.1 PURPOSE.** In 2021, Congress enacted the bipartisan **Corporate Transparency Act** to curb illicit finance. The law requires many companies doing business in the US to report information about who ultimately owns or controls them. Legal entities can be abused to disguise involvement in terrorist financing, money laundering, tax evasion, corruption, fraud, and other financial crimes. Requiring the disclosure of key individuals who own or control a legal entity (i.e., the beneficial owners) helps law enforcement investigate and prosecute these crimes. Reporting of beneficial ownership information is intended to make it more difficult for criminals, organized crime rings, and other illicit actors to hide their identities and launder money through the United States financial system.

**1.2 EXEMPT ENTITIES.** There are currently twenty-three (23) types of entities which are exempt from the beneficial ownership information (“BOI”) reporting requirements. Unfortunately, none of the 23 exemptions appear to apply to Condominium Associations, Homeowner Associations, or to Cooperative Association. Lobbying efforts are underway to create a new exemption for these types of community associations, but the outcome of such lobbying efforts appear uncertain.



Exemption No.	Exemption Short Title
1	Securities reporting issuer
2	Governmental authority
3	Bank
4	Credit union
5	Depository institution holding company
6	Money services business
7	Broker or dealer in securities
8	Securities exchange or clearing agency
9	Other Exchange Act registered entity
10	Investment company or investment adviser
11	Venture capital fund adviser
12	Insurance company
13	State-licensed insurance producer
14	Commodity Exchange Act registered entity
15	Accounting firm
16	Public utility
17	Financial market utility
18	Pooled investment vehicle
19	Tax-exempt entity
20	Entity assisting a tax-exempt entity
21	Large operating company
22	Subsidiary of certain exempt entities
23	Inactive entity

**1.3 REPORTING DEADLINES** – Condominium Associations, Homeowners Associations, and Cooperative Associations meet the current statutory definition of a **“Reporting Company”** and are required to obtain information from their **beneficial owners** and report that information to FinCEN by the applicable reporting deadline.

**2024 LEGAL UPDATE FOR YOUR ASSOCIATION:  
“THE CORPORATE TRANSPARENCY ACT”**

Page 3 of 8



**1.3.1 JANUARY 1, 2025.** A Reporting Company created or registered to do business before January 1, 2024 has until January 1, 2025 to file its initial beneficial ownership information report with FinCEN.

**1.3.2 90 CALENDAR DAYS.** A Reporting Company created or registered on or after January 1, 2024, and before January 1, 2025, will have 90 calendar days after receiving notice of the company's creation or registration to file its initial Beneficial Ownership Information ("BOI") report. This 90-calendar day deadline runs from the time the company receives actual notice that its creation or registration is effective, or after a secretary of state or similar office first provides public notice of its creation or registration, whichever is earlier.

**1.3.3 30 CALENDAR DAYS.** Reporting Companies created or registered on or after January 1, 2025, will have 30 calendar days from actual or public notice that the company's creation or registration is effective to file their initial BOI reports with FinCEN.

**1.3.4 30 CALENDAR DAYS.** Any updates or corrections to BOI report that you previously filed with FinCEN must be submitted within 30 days.

**1.4 HOW DO I REPORT.** Reporting Companies must timely report beneficial ownership information directly to FinCEN via its website: <https://www.fincen.gov/boi>. Filing is free, and the website includes detailed filing instructions, step-by-step guides, and other information. State or local governments, financial institutions, and other federal agencies, such as the IRS, may separately require entities to report certain beneficial ownership information. However, by law, those requirements are not a substitute for reporting beneficial ownership information to FinCEN.

You are not required to use a certified public accountant or attorney to submit your beneficial ownership information to FinCEN.

## **1.5 IS THERE AN ANNUAL REPORTING REQUIREMENT.**

No. There is no annual reporting requirement. Reporting companies must file an initial BOI report by the applicable deadline and updated or corrected BOI report as needed.

However, if there is any change to the required information about the reporting company or its beneficial owners in a beneficial ownership information report that you previously filed, the company must file an updated report no later than 30 calendar days after the date of the change.



**1.6 REPORTING COMPANY INFORMATION.** A reporting company will have to report: (1) its legal name; (2) any trade names, “doing business as” (d/b/a), or “trading as” (t/a) names; (3) the current street address of its principal place of business if that address is in the United States (P.O. Boxes are not permitted); (4) its jurisdiction of formation or registration; and (5) its Taxpayer Identification Number (“TIN”). A reporting company will also have to indicate whether it is filing an initial report, or a correction or an update of a prior report.

**1.7 REPORTING REQUIREMENTS FOR BENEFICIAL OWNERS.** Beneficial ownership information refers to identifying information about the individuals who directly or indirectly own or control a corporation or company. Beneficial ownership information reporting is not an annual requirement. Reporting companies must provide four pieces of information about each beneficial owner: (1) name; (2) date of birth; (3) address; and (4) the identifying number and issuer from either a non-expired U.S. driver’s license, a non-expired U.S. passport, or a non-expired identification document issued by a State (including a U.S. territory or possession), local government, or Indian tribe. If none of those documents exist, a non-expired foreign passport can be used. An image of the document must also be submitted.

**1.8 BENEFICIAL OWNER DEFINITION.** A beneficial owner is an individual who either directly or indirectly: (1) exercises substantial control over the reporting company, or (2) owns or controls at least 25% of the reporting company’s ownership interests. An individual can exercise substantial control over a reporting company in four different ways.

If the individual falls into any of the categories below, the individual is exercising substantial control: (1) the individual is a senior officer (the company’s president, chief financial officer, general counsel, chief executive officer, chief operating officer, or any other officer who performs a similar function); (2) the individual has authority to appoint or remove certain officers or a majority of directors (or similar body) of the reporting company; (3) the individual is an important decision-maker for the reporting company; (4) the individual has any other form of substantial control over the reporting company.

Important decisions include decisions about a reporting company’s business, finances, and structure. An individual that directs, determines, or has substantial influence over these important decisions exercises substantial control over a reporting company.



## **1.9 WHO HAS ACCESS TO BENEFICIAL OWNERSHIP INFORMATION.**

FinCEN will store beneficial ownership information in a secure, non-public database.

FinCEN permits Federal, State, local, Tribal officials, and certain foreign officials who submit a request to obtain beneficial ownership information for authorized activities related to national security, intelligence, and law enforcement. In addition, financial institutions and their regulators will have access to beneficial ownership information in certain circumstances, with the consent of the reporting company.

**1.10 PENALTIES FOR NON-COMPLIANCE.** The CTA establishes SUBSTANTIAL civil and criminal penalties for individuals who “willfully provide, or attempt to provide, false or fraudulent beneficial ownership information” or who “willfully fail to report complete or updated beneficial ownership information.” A willful failure to report complete or updated beneficial ownership information is punishable by civil penalties of up to \$500 per day that the violation continues, and criminal penalties of up to \$10,000, two (2) years’ imprisonment, or both.

## **1.11 WHO CAN BE HELD LIABLE.**

Both individuals and corporate entities can be held liable for willful violations. This can include not only an individual who actually files (or attempts to file) false information with FinCEN, but also anyone who willfully provides the filer with false information to report. Both individuals and corporate entities may also be liable for willfully failing to report complete or updated beneficial ownership information; in such circumstances, individuals can be held liable if they either cause the failure or are a senior officer at the company at the time of the failure.

### **1.11.1 Can an individual who files a report on behalf of a reporting company be held liable?**

Yes. An individual who willfully files a false or fraudulent beneficial ownership information report on a company’s behalf may be subject to the same civil and criminal penalties as the reporting company and its senior officers.

### **1.11.2 Can a beneficial owner or company applicant be held liable for refusing to provide required information to a reporting company?**

Yes. As described above, an enforcement action can be brought against an individual who willfully causes a reporting company’s failure to submit complete or updated beneficial ownership information to FinCEN. This would include a



beneficial owner or company applicant who willfully fails to provide required information to a reporting company.

**1.11.3 Is a reporting company responsible for ensuring the accuracy of the information that it reports to FinCEN?**

Yes. It is the responsibility of the reporting company to identify its beneficial owners and company applicants, and to report those individuals to FinCEN. At the time the filing is made, each reporting company is required to certify that its report or application is true, correct, and complete. Accordingly, FinCEN expects that reporting companies will take care to verify the information they receive from their beneficial owners and company applicants before reporting it to FinCEN.

**1.11.4 What should a reporting company do if a beneficial owner withholds information?**

While FinCEN recognizes that much of the information required to be reported about beneficial owners and company applicants will be provided to reporting companies by those individuals, reporting companies are responsible for ensuring that they submit complete and accurate beneficial ownership information to FinCEN.

Existing reporting companies should engage with their beneficial owners to advise them of this requirement, obtain required information, and revise or consider putting in place mechanisms to ensure that beneficial owners will keep reporting companies apprised of changes in reported information, if necessary. Beneficial owners and company applicants should also be aware that they may face penalties if they willfully cause a reporting company to fail to report complete or updated beneficial ownership information.

Persons considering creating or registering legal entities that will be reporting companies should take steps to ensure that they have access to the beneficial ownership information required to be reported to FinCEN, and that they have mechanisms in place to ensure that the reporting company is kept apprised of changes in that information.



## 1.12 WHERE CAN I LEARN MORE.



You can find guidance materials and additional information by scanning the QR code or visiting [www.fincen.gov/boi](http://www.fincen.gov/boi).



Beneficial Ownership Information Reporting: Frequently Asked Questions



Beneficial Ownership Information: Small Business Resources: Small Entity Compliance Guide

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