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WHAT COMMUNITY ASSOCIATIONS NEED TO KNOW ABOUT THE CORPORATE TRANSPARENCY ACT

In 2021, Congress passed the Corporate Transparency Act. The legislation is intended to create a database of information to assist the U.S. government's efforts to track bad actors who hide or benefit through the use of shell companies. Companies, such as corporations and limited liability companies, must begin registering information with FinCEN regarding their "beneficial owners" and their "applicants," (discussed below). The companies must then file updated information on their beneficial owners. The information collected by FinCEN will be shared with federal agencies as well as certain financial institutions and state, local, tribal, and foreign governments.

However intended, the legislation does not currently exclude community associations in Florida, which are often corporations. Most community associations in Florida will be required to register a report with FinCEN by the end of 2024, and even sooner in some cases. FinCEN is now accepting reports, and there will likely be questions as to who must be listed and what information must be included and updated.

What is the Deadline to File an Initial Report and Updates with FinCEN?

Community associations that were formed (i.e. registered with the Florida Secretary of State) ***before*** January 1, 2024 must have their initial report filed with FinCEN on or before December 31, 2024.

Community associations that are formed ***on or after*** January 1, 2024 (***but before*** January 1, 2025), must file their initial report with FinCEN within ninety (90) calendar days from the date the association receives actual notice of its creation or registration (i.e. Florida Secretary of State first provides public notice of the corporation's creation or registration).

Community associations that are formed ***on or after*** January 1, 2025, will have thirty (30) days from their date of creation or registration to file this information, assuming that current regulations do not change.

After filing an initial report, community associations must file an update with FinCEN within thirty (30) days of any change in a beneficial owner's information. Updates will likely be required for most community associations whenever a director resigns, or a new director or officer is appointed. Likewise, whenever a beneficial owner changes their residential mailing address.

Who must be Included in the Initial Report and any Updates?

Community associations that were created ***before*** January 1, 2024, are only required to report "beneficial owners." Community associations that are formed ***on or after*** January 1, 2024 must report their beneficial owners and their applicants.

Beneficial Owners

A "beneficial owner" is any individual (natural person, not an entity) who exercises "substantial control" over a reporting community association ***or*** who owns or controls at least twenty-five percent (25%) of the ownership or voting interest of the community association.

You should consult with your association legal counsel to determine who qualifies as a "beneficial owner" and who is exempt under your association's governing documents and organizational structure. In many cases, the beneficial owners of a community association will include all of a community association's directors and officers. In certain cases, a general manager or other executive employee of a community association will also be a beneficial owner. By definition, a beneficial owner includes anyone who owns a 25% or greater equity or voting interest, which will likely apply to certain member/owners who are not officers or directors.

Applicants

An applicant is anyone who actually files articles of incorporation with the Florida Secretary of State (even attorneys and/or their staff) ***or*** anyone who is primarily responsible for directing or controlling the filing or the articles of incorporation (even one who directs an attorney).

What Information Must be Reported and Who is Responsible for Reporting?

The following information must be reported for the community association itself:

- Legal Name
- Any D/B/A or Trade Names
- Current street address (cannot be a PO Box) of its Principal Place of Business
- Jurisdiction of Formation
- Taxpayer Identification Number

The following information must be reported for each beneficial owner and applicant (if applicable):

- Legal Name
- Date of Birth
- Residential Address (cannot be a PO Box)
- Identifying Number and the Issuing Agency's Jurisdiction (such as a passport number, driver's license number, etc. and the name of the issuing state/national government)

This information must be updated for any reporting community association and for any beneficial owner. The information must also be corrected if an error is discovered. Applicant information does not have to be updated, but it must be correct.

After filing an initial report, a community association must file an update with FinCEN within thirty (30) days of the date of the change. For example, if the officers and directors of a community association change, or if an owner/member with a large voting percentage changes their residential address, then the community association will likely be required to file an updated report within a short period of time. If an error is discovered, then the community association must file a corrective report within thirty (30) days of the association becoming aware ***or*** "having reason" to become aware of the error.

The community association is primarily responsible for timely reporting information and updating information. It is imperative that community associations remind officers, directors, and certain owners/members of their continuing obligation to cooperate to ensure that information is timely reported and updated. It is recommended that community associations work with their legal counsel to develop forms and best practices for collecting, securing, and keeping track of reporting data and beneficial owners.

There can be significant penalties for failing to cooperate with the law. Presently, FinCEN does not intend to seek penalties if an omission or an error is addressed or corrected within ninety (90) days of a missed deadline. However, a person who willfully violates the reporting requirements (including refusal to cooperate with a company) can be subject to civil penalties of up to $500 for each day that the violation continues, in addition to up to two (2) years imprisonment and a fine of up to $10,000.

A note to the reader: Please be advised that this article is intended to offer general information and should not be considered a replacement for professional legal advice. It is strongly recommended that you seek the guidance of competent legal counsel if you have any inquiries related to legal compliance.

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