



**CORPORATE TRANSPARENCY ACT:
NEW CHALLENGES FOR COMMUNITY ASSOCIATIONS**
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Managing Partner of Bender, Anderson and Barba, P.C. Practicing community association law for over 24 years, representing condominium associations, cooperatives and homeowners' associations throughout Connecticut. His clients include over 400 communities throughout Connecticut.




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**TODD A. SINKINS, ESQ.
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Todd Sinkins, a fellow in CAI's College of Community Association Lawyers, just completed a two-year term as co-chair of the CAI Washington Metropolitan Chapter DC Legislative Action Committee. He previously served on the chapter board from 2013 to 2019 and also chaired the DC LAC from 2007 to 2014. He has served on the CAI Government and Public Affairs Committee since 2016 and is a member of CAI's amicus review committee.




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**AMENDS BANK SECRECY ACT
ENACTED IN 2021**

Congress enacted the Corporate Transparency Act (the "CTA") as an amendment to the Bank Secrecy Act.

- The purpose of this law is to make it more difficult for smaller business entities to engage in money laundering by requiring these entities to provide information about the natural persons who directly or indirectly own or operate the entity.
- The CTA required the United States Department of Treasury's Financial Crimes Enforcement Network ("FinCEN") to adopt regulations to implement the provisions of the CTA, to create the forms required to be filed, and the procedures for filing them. Those regulations have now been adopted and are effective as of January 1, 2024.



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WHO MUST COMPLY?

- The regulations require many types of legal entities to file a "beneficial ownership information" ("BOI") report to FinCEN.
- Specifically, any entity that is a corporation, a limited liability company ("LLC"), or any entity created through a filing with a Secretary of State or any similar office under the law of any State or Indian tribe is required to submit a BOI.



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WHO MUST COMPLY? (CONTD.)

- Types of entities that must comply:
 - U.S. corporations
 - U.S. LLCs
 - Other similar U.S. entities such as limited partnerships and business trusts/statutory trusts
 - Non-U.S. corporations, LLCs and other similar entities that are registered to do business in the United States
- **Most Community Associations must comply with these requirements!!**

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EXCEPTIONS

Certain very large community associations may be exempt from compliance. An entity is exempt if they comply with the following criteria for the prior tax year:

- More than twenty (20) full-time employees.
- Gross receipts in excess of \$5,000,000.

Our community association clients that cannot satisfy these requirements are required to file a disclosure of their Beneficial Owners with FinCEN.

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WHAT IS A BENEFICIAL OWNER?

A beneficial owner is:

- [A]n individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise (i) exercises substantial control over the entity; or (ii) owns or controls not less than 25 percent of the ownership interests of the entity.
- The 25% ownership criterion is fairly straightforward. In practice, for a community association, this test likely will be triggered for communities under development by a declarant, for commercial condominiums or for smaller associations.
- **Exercises Substantial Control** – This is the standard under which Directors and Officers will be required to register with FinCEN as beneficial owners.

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EXERCISES SUBSTANTIAL CONTROL

Substantial control includes the following:

- serving as a senior officer of the company;
- having authority over the appointment or removal of any senior officer or a majority or dominant minority of the directors or manager(s) of the company;
- having any direction, determination, or decision power over, or substantial influence over, important matters affecting the company

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EXERCISES SUBSTANTIAL CONTROL CONT.

Direction, Determination, or Decision power Includes but is not limited to:

- The nature, scope, and attributes of the business of the reporting entity, including the sale, lease, mortgage, or other transfer of any principal assets of the entity;
- The reorganization, dissolution, or merger of the entity;
- Major expenditures or investments, issuances of any equity, incurrence of any significant debt, or approval of the operating budget of the company;
- The selection or termination of business lines or ventures, or geographic focus, of the company;
- Compensation schemes and incentive programs for senior company officers;
- The entry into or termination, or the fulfillment or non-fulfillment, of significant contracts of the company; or
- Amendments of any substantial governance documents of the entity, including the Articles or similar formation documents, bylaws, and significant policies or procedures of the entity; and,
- Any other form of substantial control over the entity.

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EXEMPTIONS FOR

The definition of beneficial owner exempts the following categories of people:


- minor children;
- individuals acting as a nominee, intermediary, custodian, or agent;
- employees of a reporting company, acting solely as an employee, whose substantial control over, or economic benefits from, such entity is derived solely from the employment status of the employee, provided such person is not a senior officer;
- individuals whose only interest in a reporting company is a future interest through a right of inheritance
- creditors.

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WHAT NEEDS TO BE DISCLOSED



- Full legal name;
- Date of birth;
- Current address [business or residential]; and
- Either a unique identifying number from an acceptable form of identification (e.g., unexpired passport, driver's license) or a FinCEN identifier number, along with an image of the document used in (d)

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WHEN MUST ASSOCIATIONS COMPLY

- Associations will have until December 31, 2024 to file their initial registration of beneficial owners.
- After the initial registration, associations will have 30 days from the date a person becomes a beneficial owner for that person's information to be filed with FinCEN.

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PROTECTING PERSONAL IDENTIFYING INFORMATION

- It will be imperative for Associations to protect any Personal Identifying Information (PII) it received from Beneficial Owners as such information can be used to penetrate a person's personal accounts and to assume a person's identity.
- Counsel should be exploring various platforms to assist in complying with the FinCEN registration requirements and will be providing an update on the process for our clients to comply that will reduce the need for their clients or the attorneys to exercise custodial control of PII.
- Expect to have an updates all year.

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ONGOING DISCLOSURE OBLIGATION

- Associations will be obligated to disclose any change in any of the information previously submitted within thirty days of the change through an amendment to the initial annual filing.
- Also, if a community association becomes aware that any information included on a report filed with FinCEN is inaccurate, it will have 30 days from the date the community association became aware of the inaccuracy to file a report correcting the inaccuracy.

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ONGOING DISCLOSURE OBLIGATION (CONTD.)

- Associations will have 30 days to file an update when any officer or director resigns and is replaced.
- Similarly, if there is a change in the Board following an annual meeting, the Association will have 30 days to file an update
- As a result, it will be imperative for our clients to keep accurate and up to date records, and to communicate with their attorney to ensure that reports are filed in a timely manner to avoid the risk of penalties being imposed upon the association.

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ADVISING POTENTIAL OFFICERS AND DIRECTORS IN ADVANCE

- Some people may not wish to be directors because they will need to provide their PII to FinCEN.
- We recommend including in the call for candidates a disclosure that any person elected to the Board will have to provide the required PII to FinCEN.
- We expect this new requirement will have a chilling effect on volunteerism.

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REGISTRATION UPON CREATION

- New entities have 30 days to be registered with FinCEN, with the initial deadline for compliance March 31, 2024.
- The attorney creating the entity and any other persons meeting the definition of a Company Applicant need to register.
- Company Applicant is the person responsible for the filing of the documents creating the entity, which in many cases will be the lawyer who prepared and filed the Articles of Incorporation or condominium instruments, as applicable.
- This will apply to new associations upon their creation.

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CTA COMPLIANCE AND PROCEDURE

- All reporting entities must become familiar with the guidance publications made available by FinCen:
- <https://boiefiling.fincen.gov/>



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FINANCIAL CRIMES ENFORCEMENT NETWORK

BOI E-FILING | FILE BOIR | HELP

Help & Resources

- [Beneficial Ownership Information Report \(BOIR\) Filing Instructions](#)
- [PDF BOIR Filing Method: Quick Reference Guide](#)
- [PDF BOIR Filing Method: Step-by-Step Instructions](#)
- [Online BOIR Filing Method: Quick Reference Guide](#)
- [Online BOIR Filing Method: Step-by-Step Instructions](#)

FINCEN GUIDES
[HTTPS://BOIEFILING.FINCEN.GOV/HELP](https://boiefiling.fincen.gov/help)

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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

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**CTA:
IS MY
CORPORATION
EXEMPT??**



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Beneficial Ownership Information Report
Filing Instructions



Financial Crimes Enforcement Network
U.S. Department of the Treasury
Version 1.0 January 2016

**BENEFICIAL
OWNERSHIP
INFORMATION
(BOI)
FILING
INSTRUCTIONS**



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Before beginning the report filing, make sure to have the information about each beneficial owner available to you:

- Name
- Birthdate
- Address (residential or business)
- A unique identifying number and image from an acceptable identification document
 - Unexpired driver's license
 - Unexpired passport
 - State identification card

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**GATHER ALL THE
INFORMATION
BEFORE YOU
BEGIN**



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OTHER CONSIDERATIONS

- Liability minefield
- Personal Information security
- Board qualifications and amending bylaws
- Chilling effect on board participation
- Strict compliance
- Finding the right company applicant

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ADVOCACY EFFORTS

1. CONGRESS
2. EXEMPTION REQUEST
3. CALL TO ACTION

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BOI BENEFICIAL OWNERSHIP INFORMATION

Many companies are required to report information to FinCEN about the individuals who ultimately own or control them. FinCEN began accepting reports on January 1, 2024. Learn more about reporting deadlines.

Prepare	File
How do I file?	File a report using the BOI E-Filing System
Do I qualify for an exemption?	Create a FinCEN ID (optional)
How do I get a FinCEN ID?	

Corporate Transparency Act: Community Associations Prepare and Engage

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