Steven M. Falk, Esq.
Falk Law Firm, P.A.
7400 Trail Blvd., Suite 103
Naples, FL 34108
(239) 596-8400
(239) 596-8401 (fax)
sfalk@falklawpa.com
www.falklawpa.com

CORPORATE TRANSPARENCY ACT

As explained below, entities in existence before January 1, 2024 are not required to comply with the CTA until January 1, 2025 and some of such entities are exempt.

In January, 2021, Congress adopted the Corporate Transparency Act ("CTA") in an attempt to address financial crime and fraud. Subject to certain exemptions, corporations, limited liability companies and other business entities must report their Beneficial Ownership Information ("BOI") to the U.S. Department of Treasury's Financial Crimes Enforcement Network ("FinCEN"). Entities that are not exempt are deemed "reporting companies".

This article relates solely to how the Corporate Transparency Act affects community associations and country clubs.

A community association (condominium, cooperative or homeowners association) is subject to the CTA, unless it (1) employs more than 20 full-time employees; (2) is physically located in the U.S.; and (3) has at least $5,000,000 in gross receipts in the previous year (as reported on its U.S. tax return). This is known as the "large operating company" exemption.

A country club that is a large operating company or a tax-exempt organization under Internal Revenue Code Section 501 is exempt from the CTA.

Unless exempt, (1) entities in existence before January 1, 2024 must file a BOI Report by January 1, 2025; (2) entities created on or after January 1, 2024 but before January 1, 2025, must file a BOI Report within 90 days of formation; and (3) entities created on or after January 1, 2025 must file a BOI Report within 30 days after formation.

After the first BOI Report for an entity is filed, any change in information regarding that entity or its beneficial owners must be filed within 30 days of the change occurring.

The required disclosures include:

For the "reporting company" basic corporate information such as full legal name, all fictitious names, complete current address, state of formation, and taxpayer identification number;

For each "beneficial owner" of the entity, which in the case of community associations may include directors and officers (full-time, part-time or volunteer), community association managers and agents of third-party management firms, each individual's full legal name, date of birth, current residential address,

and information from (along with an image of) the individual's unexpired U.S. passport, state driver's license or other government-issued identification document; and

For each "company applicant" of an entity formed on or after January 1, 2024, which includes any person who filed or directed the filing of a document creating the entity, substantially the same disclosures required of a Beneficial Owner.

A "beneficial owner" is any individual who, directly or indirectly, (1) owns or controls at least 25 percent of the ownership interests of the reporting company or (2) exercises substantial control over the reporting company.

An individual may exercise substantial control over the reporting company if such person is: (1) a senior officer of the reporting company; (2) a person who has the authority to appoint or remove certain officers or a majority of the board of directors; (3) a person who directs, determines or has substantial influence over important decisions of the reporting company, including decisions about its business, finances or structure; or (4) a person who otherwise exercises substantial control over the reporting company.

Any individual holding the position or exercising the authority of a president, chief financial officer, general counsel, chief executive officer or chief operating officer is a "senior officer." On the other hand, whether an individual serving on the board of directors (or equivalent body) exercises substantial control over the reporting company is a question that must be analyzed under the above criteria on a director-by-director basis.

"Substantial control" is determined independently from the "ownership interests" determination. FinCEN takes the view that where a reporting company is structured such that multiple individuals exercise "essentially equal authority" over important decisions, each such individual likely has substantial influence even though no single individual directs or determines them.

There is no limit to the number of beneficial owners of each reporting company that may be subject to reporting requirements under the BOI Rule.

A "company applicant" is (1) the individual who directly filed the document (either physically or electronically) causing the reporting company to be created or registered to do business in the United States; and (2) if more than one individual was involved in the filing, the individual primarily responsible for directing or controlling such filing.

A reporting company cannot have more than two company applicants.

Reporting companies must file updated reports within 30 days of any change to the reported information and must promptly correct any inaccuracies in their disclosure to avoid penalties.

Fines of $500 per day can be levied for failure to timely comply with CTA reporting requirements. Criminal penalties (including imprisonment) are also available to regulators in certain circumstances, including where a person willfully fails to file the required reports.

BOI Reports must be completed and submitted to FinCEN either directly on the Beneficial Ownership Secure System (BOSS) https://www.fincen.gov/boi or by using a third-party service provider.