

The background features a vibrant, colorful illustration of a city skyline with various buildings, houses, and icons. A large magnifying glass is positioned over the center, focusing on a document with horizontal lines. The overall theme is community management and transparency.

# YOUR **HOA**

COMMUNITY MANAGEMENT COMPANY, INC.

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## **Guide To the "Corporate Transparency Act"**

*To obtain more information about our company, please visit [www.yourhoahelp.com](http://www.yourhoahelp.com)*

**Did You Know?** Beginning on January 1, 2024, the federal Corporate Transparency Act (CTA) required “reporting companies” to report information about the organization, its “beneficial owners,” and, if formed after January 1, 2024, its “company applicants.”. Passed by Congress in 2021, the CTA seeks to enhance entity transparency to prevent money laundering, tax fraud and other illegal financial activities.

Given the broad sweep of the new law, we have examined the ways that the CTA will impact Homeowners Associations (HOAs).

## **Are HOAs subject to the new reporting requirements under CTA?**

**Short answer: Yes**

The CTA applies to domestic and foreign corporations, limited liability companies, certain non-profit corporations, entities created by the filing of a document with any government authority and entities registered to do business in any state. Since HOAs are generally organized by filing articles of incorporation with a secretary of state, HOAs are considered “reporting companies” under the CTA.

Even though most HOAs are formed as non-profit corporations and treated as tax exempt organizations, HOAs are typically tax exempt under Section 528 of the Internal Revenue Code (IRC) versus Section 501(c) of the IRC. The CTA specifically exempts 501(c) organizations from the new reporting requirements, but it does not exempt Section 528 organizations.

Section 528 of the IRC applies exclusively to HOAs, condominium associations, residential real estate associations and timeshare associations.

## **What/Who Must HOA's Report?**

The CTA will require associations to provide a "beneficial ownership report" to the Financial Crimes Enforcement Network of the U.S. Treasury (FinCEN), with specific information about the organization, the organization's “beneficial owners” and the organization's “applicant.”

This includes their name, date of birth, a current residential or business address, a unique identifying number from an acceptable document such

as a non-expired driver's license, passport or social security card along with an image of such identification.

The CTA defines "beneficial owner" as any individual who exercises "substantial control" over the reporting company or who owns or controls at least 25% of the ownership interests of the reporting company.

An individual exercises "substantial control" if they serve as a senior officer of a reporting company; have appointment or removal power; or have substantial influence over important matters affecting the "reporting company," such as, influence over decisions regarding the transfer of the organization's assets, the reorganization, dissolution, or merger of the organization, or amendments of any of the organization's governance documents.

"Beneficial owners" of HOAs are the individuals that exercise substantial control over the HOA or own at least 25% of the ownership interests.

HOAs are generally governed by a Board of Directors who likely exercise "substantial control" over the HOA and make decisions on behalf of the members. Accordingly, members of the Board of Directors of HOAs and officers of HOAs will often be considered "beneficial owners" for reporting purposes under the CTA.

### **What Is the Impact of the CTA on HOAs?**

1. It will add management and administrative costs as HOAs must ensure that the report is filed properly and on time. Since most HOAs do not generate profit from its activities, these administrative costs will be passed down to the property owners in the form of higher HOA dues. Despite the administrative costs, compliance with the CTA is important since failure to do so can lead to significant financial penalties and additional punishments.

2. HOAs will need to ensure that they use safe and secure tools (i.e. third-party software) for collecting and storing the personal identifiable information (PII) of its "beneficial owners" and applicants.

3. Existing HOAs will have until January 1, 2025, to file their first report. New HOAs formed in 2024 must file their first report within (90) days of their formation. HOAs formed in 2025 or later will have only (30) days from their formation to file their initial report.

4. HOAs must stay up-to-date on changes to their beneficial ownership as the CTA requires “reporting companies” to report changes to their beneficial ownership or their most recent filing to FinCEN within (30) days of the change.

### **What Is the Penalty for Noncompliance?**

Willful failure to comply with the CTA reporting requirements can be costly. The CTA establishes a civil fine of \$500 per day, up to \$10,000, plus criminal fines or prison time for willful failure to report or filing erroneous reports. Importantly, these penalties also apply to the person filing the report, even if they are not a beneficial owner.

### **Conclusion:**

To conclude, the CTA will impose new reporting requirements on most HOAs, requiring the reporting of information about the organization, its “beneficial owners” (i.e. typically members of the Board of Directors of HOAs and officers of HOAs). Impacted HOAs should use secure methods for the collection and storage of personal identifiable information. While these reporting requirements will increase the administrative costs of HOAs, noncompliance can be even more costly.

### **How Our Team will Help.**

Our team is well versed in the Act as well as the form(s) needed and will assist each board with filing of the forms prior to the designated filing time.

As always, if you have any additional questions, feel free to reach out to our team at anytime.