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Alabama District Court finds the newest requirements of the Corporate Transparency Act (“CTA”) Unconstitutional

By Bruce H. Easmunt and Anna Mancino

Shortly after the new CTA Beneficial Owner Information (“BOI”) reporting requirements came into effect, an opinion coming out of the Northern District of Alabama found those same requirements unconstitutional. Judge Liles C. Burke of the Court explained in his opinion, issued on March 1st, 2024, how Congress had managed to exceed its authority under its broad powers and overregulated corporate entities in the name of national security.

This ruling does not eliminate the need for certain community associations to comply with the CTA. The injunction entered by Judge Burke only allows the plaintiffs *in the case* to refrain from filing a BOI report; associations that meet the requirements of a reporting company should still prepare to file a report prior to January 1st, 2025. However, the opinion offers an avenue forward and a campaign platform to argue for and

obtain a more limited application of the CTA. We will continue to monitor and advise our clients as to their reporting obligations under the CTA.

While finding that the CTA was created with Congress' best intentions to protect the United States, Judge Burke held that the CTA and its requirements are not justified under Congress' Tax, National Security or Commerce powers (even with the support of the Necessary and Proper Clause adding additional leverage). From the statute itself missing the word "commerce", to the lack of necessity to collect the beneficial owner information at all, the CTA was summarized by the Court to be flawed on multiple levels, allowing it to provide for the extensive overregulation of more than for-profit corporate entities. The overregulation permitted by the CTA is an issue that practitioners in the community association field have raised since the announcement of the requirements in 2023.

The opinion alludes to the idea that through enacting the CTA, Congress was attempting to overturn every rock in the corporate vicinity that could hide nefarious financial actions, without first conducting a survey of which corporate-related and corporate-adjacent entities were actually susceptible to that kind of activity. This unfortunately included community associations. While Community Associations Institute and others have been advocating for an exemption for homeowners' associations and condominium associations alike, as of the publishing date of this article, Congress has not exempted those entities and many community associations remain required to file a BOI report by the January 1, 2025 deadline.

The Alabama case discussed above is [NBSA v Jannet Yellen](#), N.D. Ala., No. 5:22-cv-01448-LCB, 3/1/24.



The Corporate Transparency Act and Beneficial Reporting Requirements: What's New in the New Year

By Michael Sottolano and Anna Mancino

Starting January 1st, 2024, the Beneficial Owner Information ("BOI") Reporting requirements went into effect for corporations. Many community associations, as corporate entities, are subject to the BOI Reporting requirements and over the past few weeks, the Financial Crimes Enforcement Network (FinCEN") released guidance to navigate this inaugural year. This article summarizes the latest changes to the BOI Reporting requirements to help you file your BOI report in the coming months.

Breaking Down the BOI Reports

FinCEN has increased the amount of information included in BOI reports. While these increases are daunting, there are some exemptions that should decrease the informational load on associations generally.

We know that an individual is a beneficial owner if they exercise “substantial control” over a reporting company. In the recent guidance, the definition of substantial control has been expanded to include “important decision makers” of the reporting company. Important decision makers exercise control over the reporting company’s 1) business, 2) finances, and/or 3) structure.

There is also a category of to-be reported individuals: **company applicants**. A company applicant is an individual who is 1) a direct filer, who directly (physically or electronically) filed the document that created or registered a reporting company or 2) an indirect filer, who directs or controls the filing of the creation or registration documents. These filers are not the individuals who file the BOI report. Unlike beneficial owners, company applicants cannot be removed from the BOI report, even if they are no longer associated with the company after the report is submitted. And, also unlike beneficial owners, companies do not need to update BOI reports with informational changes for company applicants.

Every new reporting company created after January 1, 2024 will report at least one company applicant and have no more than two (2) company applicants, if more than one individual was involved in that filing process. Much like for beneficial owners, the categorization of who is a company applicant is broad. For example, third-party courier service providers may be considered company applicants if they are employed by a business formation service, law firm, or other business that is involved in the creation or registration of the reporting company.

Despite their categorial differences, company applicants and beneficial owners must provide the same information. Individuals must still submit their full legal name, birth date, complete current address, and information specific to an identification document like a U.S. passport or a state driver’s license. An individual’s residential street address must be used, *unless* the individual is a company applicant who forms companies in the course of their business. In those instances, the individuals must report their business address. To accommodate individuals who do not have identification photos on their I.D.s for religious reasons, companies can submit identification documents without the individual’s photograph.

Companies also do not have to report the reason why each individual is a beneficial owner.

Employees are the Exception

In the community association context, managers play an important role in the day-to-day running of an association. These individuals can be involved in important decisions made regarding the communities they manage; could their level of involvement make them beneficial owners who must report their information as well? Based on FinCEN’s guidance, managers who are employed by an association may not have to report their information because they likely fall into the employee exemption. An individual is considered to be an exempt employee if they 1) are subject to the will and control of the employer in what and how they do their work, 2) may be discharged by the employer, 3) economically benefit from, or exercise substantial control over, the company due to their employment status, and 4) are not a senior officer (such as a president, chief financial officer, or general counsel). Whether a community manager can or would fall within the aforementioned exemption should be evaluated on a case-by-case basis depending on their role and responsibilities and the facts and circumstances of the management relationship.

New Deadlines for Filing

New filing deadlines have been established for entities created in this inaugural period. If a company is created **on or after January 1, 2024, but before January 1, 2025**, the company has ninety (90) calendar days to file their BOI report after receiving actual or public notice that the company’s creation or registration is effective, whichever is earlier. If a company is created or registered on or after **January 1, 2025**, the company must file their BOI report within thirty (30) calendar days after the earlier of the actual or public notice.

There is no fee for submitting the BOI report. Reporting companies may file their report themselves at <https://boiefiling.fincen.gov> and can authorize a third party to file on its behalf. The filing application will provide the reporter with acknowledgement of submission success or submission failure and the reporter will be able to download a transcript of the BOI report. If a third party files the company's report, the company will have to obtain the acknowledgement and transcript from the third party filer.

For changes to BOI reports, there are slightly different deadlines to correct or change the reported information. Companies can file a corrected BOI report within ninety (90) calendar days of when the report was filed, without facing penalties. Changes, on the other hand, must be reported within thirty (30) calendar days after the date of the change. In the case of the death of a beneficial owner, the changes must be reported within thirty (30) days of when the deceased beneficial owner's estate is settled and identify any new beneficial owners. If the ownership of a reporting company is the subject of active litigation at the time of filing an initial report, the company must list *all* beneficial owners of the company, including those in dispute. Within thirty (30) calendar days of the resolution of the litigation, the company must file an updated BOI report with all the remaining beneficial owners, if there was such a change as a result of the litigation.

To update a BOI report, a new BOI report must be submitted. Even if there is only one change that needs to be made, all fields of the BOI report must be resubmitted with the updated information. There is a fillable PDF version of the BOI report application on FinCEN's site, which can be saved and reused. To assist in future filings associations should consider saving a copy of each fillable PDF submitted so preparation of future reports is easier and (hopefully) less time-consuming.

Conclusion

While BOI reporting is daunting, it is manageable with good record keeping and attention to detail. When compiling your BOI application, ensure that the information is saved in an easily accessible and clearly organized manner, for future BOI reports. When the BOI report is submitted, make sure that the association has the acknowledgement of submission, the copy of the report submitted, and any additional paperwork related to the submission process for the association's records.

If you have any questions about the updates to the BOI reporting requirements and its effect on your association, please do not hesitate to contact your attorneys at Chadwick, Washington, Moriarty, Elmore & Bunn, P.C.

Chadwick Washington Zoom Webinar Series



Chadwick, Washington, Moriarty, Elmore & Bunn, P.C., is pleased to host and invites you to attend one or more of its educational Webinar Series for 2024 highlighting topics relating to community association law and governance. Each Webinar is one hour, with two topics presented by CWMEB attorneys followed by Q&A Sessions in separate Zoom breakout rooms staffed by CWMEB attorneys. The waiting room for the Webinars will open about 15 minutes before the sessions begin at 7:00 p.m., with the Q&A Breakout Rooms opening at approximately 7:40 p.m.

Topics this season include Neighbor-to-Neighbor Disputes & Group Homes in the Fair Housing Era; Find the Money – Post-Judgment Collection Remedies; Association Special Funding Options; Navigating the Corporate Transparency Act; Top 10 Amendments to Governing Documents; Are Rules Enough? Behavior Modification in Associations; Election Integrity in New Era: From Paper to Online Voting; Case Law Update; The Ins and Outs of Exec Session and Confidential Information; Defending an Administrative Fair Housing Claim: An Overview; Associations in Social Media: Best Practices; Managing the Risks: Tips for Avoiding Premises Liability Claims; Parliamentary Procedure; a Virginia legislative update (June sessions); and more.

The firm's next educational Zoom Webinar will be held on **Monday, March 25, 2024, at 7:00 p.m.** and will include presentations regarding **Neighbor-to-Neighbor Disputes & Group Homes in the Fair Housing Era** and **Find the Money – Post-Judgment Collection Remedies**. If you are interested in registering, you may do so directly [here](#).

We look forward to seeing all of our clients and guests during our 2024 Webinar Series and encourage you to register early for those topics and presentations you don't want to miss. The schedule listing the dates, times and topics for the 2024 Webinar Series is posted [here](#). Clients, managers and guests can also register for the Webinar(s) of choice directly [here](#). Additionally, more information can be found on the Seminar Series page of our website at www.chadwickwashington.com.



Michael C. Gartner is a shareholder in the firm's Fairfax Office. Mike focuses his practice on representation of community associations and routinely provides legal counseling on a wide range of issues, including governing document interpretation, document amendments, developer transition, covenant enforcement, meetings and operational requirements, contracts, and a variety of other matters that associations confront. Mike also has a strong litigation background that has involved litigating cases in the state and federal courts in Virginia and Washington, D.C. for over 25 years. Mike is active in the Washington Metropolitan Chapter of the Community Associations Institute, having served in many roles including as the Chapter's President in 2021.

CHADWICK, WASHINGTON, MORIARTY, ELMORE & BUNN, P.C.

is pleased to announce that

Michael C. Gartner

has become a Partner with the Firm, practicing in our Fairfax, VA office and focusing his practice in the area of common interest community association representation.

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Firm Happenings



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Bruce H. Easmunt has been granted fellowship in the College of Community Association Lawyers ("CCAL"). More than 4,000 lawyers practice community association law in the United States, yet only approximately 200 attorneys nationwide can distinguish themselves as CCAL fellows. Bruce is the eighth Chadwick Washington attorney to be accepted into this elite group of community association practitioners from around the nation.



Brendan Bunn was elected as President of the College of Community Association Lawyers ("CCAL") and chaired the 2024 Community Association Law Seminar for the College. As this year's CCAL President and chair for the 2024 Law Seminar **Brendan** had the unique opportunity to present **Bruce Easmunt** and **Jerry Wright**, who were recently admitted to the College, with their designations as CCAL fellows. At this year's Law Seminar Brendan also served as a panelist on a session highlighting the difficulties of the current insurance market for community associations.



On February 29, 2024, **Jerry Wright**, **Michael Sottolano** and **Olga Tseliak** presented with Michelle Baldry, PE, PRA, RS from Reserve Advisors a webinar for the Central Virginia Chapter of Community Associations Institute ("CVC-CAI") on Core Principles for Effective Community Management and Leadership.



Tiago Bezerra was recently a panelist on the “Panel of Pundits” at the 2024 Community Associations Institute Law Seminar in Las Vegas, Nevada in February 2024.



Tiago Bezerra and **Dan Blom** co-presented *When Life Gives You Lemons: Managing Difficult Situations in Community Association* with Bryant Phillips, Executive Vice President from Associa-CMC, at the 2024 Washington Metro Chapter Community Associations Institute Annual Conference & Expo on March 2, 2024.



On March 16, 2024, **Olga Tseliak** will present on *Dealing with Difficult Directors* at the Southeastern Virginia Chapter of Community Associations Institute (“SEVA-CAI”) Day Trade Show & Education Expo with Sally Stamper, CMCA, AMS, PCAM, from Property Management Associates.



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