



The Corporate Transparency Act: What you Need to Know

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Background- Who Needs to Comply and When

I've heard about a ruling in the Texas Top Cop Shop case which impacts community associations. Do I still need to comply?

On Dec. 3, the U.S. District Court for the Eastern District of Texas published a decision in the matter of Texas Top Cop Shop, Inc., et al. v. Garland, et al. issuing a preliminary nationwide injunction against the Corporate Transparency Act (Act). The court granted Plaintiff's request for a preliminary injunction, blocking the U.S. Department of Treasury from enforcing the act's beneficial ownership information (BOI) reporting requirements.

This preliminary injunction applies nationwide, halting enforcement and compliance of the Act's beneficial ownership reporting requirements across the entire United States. **As a result, community associations are NOT CURRENTLY required to comply with the CTA, however they should still be ready to comply should an appeal change the result of the ruling.**

Corporate Transparency Act Basics

The Corporate Transparency Act is a federal law enacted to combat money laundering, terrorist financing, and other illicit activities. It requires corporations, limited liability companies, and similar entities to disclose information about ownership (*Beneficial Owners- see next section for more information*) to the Department of Treasury's Financial Crimes Enforcement Network.

Most community associations, if incorporated and not meeting the exemptions, are required to comply with the Act.

What is the deadline for complying with the Corporate Transparency Act?



For existing associations, the deadline to make your initial report is Jan. 1, 2025. After you make your initial report, you need to report any change in beneficial owners within 30 days. For associations incorporated after Jan. 1, 2024, initial reports must be filed within 90 days of its notice of incorporation, and associations incorporated after Jan. 1, 2025, have 30 days for their initial filing.

All information must be updated within 30 days if there is any change to beneficial owners (e.g., if a new board member is elected).

Community Associations Basics

Community associations are nonprofit organizations, unincorporated communities, trusts, or business corporations that govern residential communities such as homeowners associations, condominium associations, and housing cooperatives. They are typically governed by volunteer boards comprised of homeowners in the community. Volunteer boards are responsible for all operations and ensure the association is following the law and community governing documents.

The Corporate Transparency Act and Community Associations

As of now, the act applies to entities created by filing a document with the secretary of state or similar office of a jurisdiction of the United States, U.S. corporations, U.S. LLCs, and other similar entities, including most community associations. A “similar office” is any office (including a department, agency, or bureau) of a governmental authority under the law of a State or Indian Tribe where or through which a domestic entity files a document to be created, or a foreign entity files a document to be registered to do business in the United States. Please note that federal agencies are not considered “similar offices” by FinCEN. Domestic entities that are created by State or Federal charter do not fall under this definition.

The CTA mandates all covered entities, including nonprofit organizations such as community associations, disclose their beneficial owners to the Department of Treasury's Financial Crimes Enforcement Network.

CAI's lawsuit and advocacy efforts seek to change this by obtaining an exemption specifically for community associations.

Unless a legal exemption is granted or the Act is amended, community associations must adhere to the current requirements of the CTA.



Are any community associations currently exempt from the CTA?

Yes. Community associations holding an active 501(c)(4) IRS tax exemption are already exempt from filing. In addition, community associations with more than \$5 million in annual revenue and 20 or more employees qualify under the current exemptions and has an operating presence at a physical office within the United States.

What are the penalties for a community association beneficial owners' noncompliance with the CTA?

Any person who violates the reporting requirements of the act shall be liable to the United States of potential civil penalties of \$500 per day and criminal penalties of up to \$10,000 and up to 24 months in prison for beneficial owners.

Beneficial Owners- What are they and who needs to report?

What is a Beneficial Owner?

Any individual who directly or indirectly through any contract, arrangement, understanding, relationship, or otherwise:

- 1) Exercises substantial control over the entity;
- 2) Owns or controls 25% or more of the ownership interests of the entity.

Beneficial owners do NOT include minors, proxies or power of attorney agents, employees whose sole control over the entity comes from employment, someone who only has an interest in the entity through inheritance, or creditors of the company.

Beneficial Owner Exemptions

Beneficial Owners CANNOT be:

- Minors.
- Proxies or power of attorney agents.
- Employees whose sole control over the entity comes from employment.
- Someone who only has an interest in the entity through inheritance.
- Creditors of the company.



What defines substantial control?

An individual has substantial control if they serve as a senior officer of the company (e.g., a community association board member); have authority over the appointment or removal of senior officers; have the authority over the appointment or removal of a majority of the board of directors of the company; direct, determine, or has substantial influence over the important decisions of the company; or have any other form of substantial control.

Who can be considered a beneficial owner by FinCEN?

Each individual community association board member (director) is considered a beneficial owner.

Property owners if they own more than 25% of the lots/units in the community are considered beneficial owners.

Committee members are not considered beneficial owners so long as they do not exercise substantial control as defined by the act.

My association doesn't have an individual owner with 25% or more of the lots/units, who do I report instead?

Your association should report as beneficial owners each individual community association board member. You do not have to report beneficial owner information for each property owner if they each own less than 25% of the units/lots, and you do not have to report beneficial owner information for owners who only participate in a single committee, provided committee does not exercise substantial control (*see above for information on substantial control*).

FinCEN expects that every reporting company (association) will have at least one person who qualifies as a beneficial owner.

Filing Information with FinCEN

Beneficial Owner Information to be reported to FINCEN

A beneficial owner needs to report:

- Full legal name.
- Date of birth.
- Current residential or business street address.

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- A unique identifying number from an acceptable identification document OR a FinCEN identifier (i.e., current U.S. passport, U.S. ID, drivers' license, etc.)

What is a FinCEN identifier and how do I get one?

FinCEN identifiers are issued by FinCEN to an individual or reporting company (the community association) who has previously reported beneficial owner information to FinCEN. Individuals may request a FinCEN identifier at <https://fincenid.fincen.gov>.

Individuals will need to provide:

- Full legal name.
- Date of birth.
- Address
- Unique identifying number (e.g., driver's license number or passport number) AND issuing jurisdiction (*see next question for more information on acceptable identification documents*).
- An image of the acceptable identification document.

Only one FinCEN identifier is issued for each individual or company. Companies (community associations) may request a FinCEN identifier by checking a box on the beneficial ownership information report.

List of Acceptable Identification Documents

An acceptable identification document must be an original document issued by a governmental authority specifically for use as proof of the holder's identity. Acceptable identification documents are any of the following:

- A current U.S. driver's license (including any driver's license issued by a commonwealth, territory, or possession of the United States).
- A current identification document issued by a U.S. state or local government or Indian tribe.
- A current U.S. passport.
- A current foreign passport.

You must be able to submit a picture of the document to FinCEN as part of the reporting process.

PLEASE NOTE: A current foreign passport is only permitted when an individual does not have one of the other three forms of identification (U.S. driver's license, U.S. state/local/tribal ID,



U.S. passport). Please be aware if an identification document does not contain a photograph of the individual for religious reasons, FinCEN will still accept a picture of the document.

Where can I file beneficial ownership information?

FinCEN allows for online filing at: <https://boiefiling.fincen.gov>. You can file directly through FinCEN's online system or via a PDF document. For instructions on how to file, please visit: <https://boiefiling.fincen.gov/help>.

Resources

- [CAI Advocacy Blog Post on Texas Top Cop Shop Ruling](#)
- [Texas Top Cop Shop Preliminary Injunction](#)
- [FinCEN FAQ](#).
- [Beneficial ownership information](#).
- [Beneficial owner information filing instructions](#).
- [CAI Corporate Transparency Act](#).