

December 27, 2023

# Coop and Condo Alert

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## News & Announcements

### **The Corporate Transparency Act is here – What now?**

You have probably seen a number of notices about The Corporate Transparency Act (CTA), *which goes into effect January 1, 2024*. In fact, SSRGA's latest issue of the LawDown included our summary of the CTA. But, for the benefit of our many cooperative and condominium clients, as well as the managing agents and accountants that support them, we wanted to make special mention of how the CTA might affect them.

A reporting company under the CTA, subject to certain exemptions, is any domestic entity “created by the filing of a document with a secretary of state or any similar office under the law of a State.” Cooperatives are generally formed as state business corporations, so they clearly fit within this definition.

Condominiums file a declaration with the applicable county clerk or the City Register, and it is unclear if such a filing will be viewed as being covered by the CTA. For the time being, we therefore recommend that condominiums take a wait and see approach. Entities existing as of December 31, 2023 have until December 31, 2024 to make their initial filing, and it is possible that there will be more guidance regarding condominiums between now and then.

Once you decide that your entity is a reporting company, the entity must file a report with the US Treasury Financial Crimes Enforcement Network (FinCEN) providing the entity's (1) formal name, (2) any d/b/a names, (3) jurisdiction of formation, (4) address and (5) EIN. The tricky part is that the entity must also provide information on each beneficial owner (traced to a

natural person) who either owns 25% or more of the entity or who “exercises substantial control.”

For cooperatives - and condominiums, if it is determined that they are a necessary reporting company - the ownership test should be easy to administer and, except for the smallest buildings, it is unlikely that any unit owners will qualify.

Unfortunately, the rules so far adopted by FinCEN are intentionally vague as to “substantial control.” The guidance provided is that:

There is no limit to the number of individuals who can be reported for exercising substantial control. An individual exercises substantial control over a reporting company if the individual meets any of four general criteria: (1) the individual is a senior officer; (2) the individual has authority to appoint or remove certain officers or a majority of directors of the reporting company; (3) the individual is an important decision-maker; or (4) the individual has any other form of substantial control over the reporting company.

Other provisions make clear that the chief executive officer (President) and chief financial officer (Treasurer) are covered, but that does not mean that other officers are not. Similarly, in discussing whether every director is covered, the rules provide that “[w]hether a particular director meets any of these criteria is a question that the reporting company must consider on a director-by-director basis.”

Cooperatives (and condominiums, if they report at all) have two options. Clearly, over-disclosure cannot be criticized by FinCEN, so a valid approach is to provide information on all of the directors and all of the officers. Pending further guidance, the more conservative approach is to provide information on the President and Treasurer, and no one else. For whomever is included, the report must set forth each person’s (1) name, (2) date of birth, (3) residence address and (4) a “unique identifying number,” such as a driver’s license or passport number, and the jurisdiction of issuance, and must also include a copy

of the instrument.<sup>1</sup>

A benefit of the more conservative approach is that updates are required to be filed within 30 days of any change in the reported information. The more people covered by a report, the more times updates may be required.

Given that personal information is required to be disclosed, it is worth noting that reports are intended to be confidential. However, they will be available to certain federal agencies, law enforcement, banks and other businesses that are subject to a “customer due diligence” obligation.

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This Alert contains only a brief summary of the key points discussed, and is not intended as a complete description of the CTA.

If you have questions about your reporting obligations, SSRGA is here to help. Please reach out to your regular contact partner or any of the members of SSRGA’s CTA Working Group:

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<sup>1</sup> Alternatively, individuals can submit this information directly and obtain a unique “FinCEN identifier.” After that, they only need to provide their identifier to the reporting company rather than all the underlying information.