

October 30, 2024

Coop and Condo Update

SCHWARTZ
SLADKUS
REICH
GREENBERG
ATLAS LLP

News & Announcements

Virginia Court Denies Relief to Homeowner Associations Concerning the CTA

In an effort to exclude homeowner associations (HOAs) from the Corporate Transparency Act (CTA), the Community Associations Institute and other plaintiffs commenced an action in a US District Court in Virginia and moved for a preliminary injunction. On October 24, 2024, the Court issued an Opinion denying the motion, finding that plaintiffs were not likely to succeed on the merits of their claim. For our purposes, an HOA is functionally similar to a condominium association, and the Court's basis for its decision would likely apply to a condominium association making similar claims. The position that cooperatives are subject to the CTA is even stronger, though a finding that the CTA is unconstitutional would apply to all covered entities.

Plaintiffs raised various objections to the CTA and its application to HOAs. First, they argued that HOAs are tax exempt and should be within the CTA exemption for tax exempt entities. But the Court held that the CTA only exempts 501(c) entities, and HOAs are governed by IRC Section 528. Next, plaintiffs argued that FinCEN's FAQs about HOAs are administrative regulations improperly adopted without, among other things, notice and a comment period. This argument was rejected on the basis that the FAQs are merely guidance, not intended to exceed the limits of the statute and, therefore, not the same as administrative regulations.

Finally, plaintiffs raised several constitutional challenges to the CTA, including citing the earlier Alabama decision (under appeal) which held that the CTA is unconstitutional under the commerce clause.¹ The Virginia Court rejected all these arguments, and disagreed with the Alabama Court, finding that the CTA is a regulation of interstate commerce.

Unfortunately for condominium associations, at least in New York, this case did not include one key argument as to why NY condominium associations should not be deemed covered by the CTA. The CTA applies only to entities formed by a filing with a secretary of state or similar office. Many NY practitioners have argued that the recording of a condominium declaration is not the type of filing that the statute contemplates.

¹ We discussed that decision in an earlier Alert - <https://ssrga.com/wp-content/uploads/2024/04/Corporate-Transparency-Act-Update.pdf>

That said, our recommendation remains that NY condominium associations plan to comply with the CTA. While this issue remains unclear, we believe it is better to have filed when it might be unnecessary than to ignore the need to file when it might be required.

Please contact us if you have any questions or concerns. We are happy to help you meet your obligations under the CTA.

Mark Silverstein
msilverstein@ssrga.com