



Chadwick, Washington, Moriarty, Elmore & Bunn, P.C.

Community Association Legal Webinar

September 23, 2024

- **The Corporate Transparency Act (“CTA”)**
 - **Plus: step-by-step instructions for creating your own FinCEN Identifier**

- **Q&A**



Community Association Legal Webinar - 2024

Introductions & Welcome

Bruce Easmunt

Legal Disclaimer

This information is not intended to be legal advice. Legal advice must be tailored to the specific facts and circumstances of each case and each association's governing documents.

Every effort has been made to ensure this information is up-to-date. However, it is not intended to be a full and exhaustive explanation of the law in any area, nor should it be used to replace the individualized advice of your legal counsel.



**Community Association Legal Webinar –
9/23/2024**

**The Corporate Transparency
Act (“CTA”):
Impact on Community Associations**

Presented by Allen Warren

What Is the CTA?

- ❑ Federal Corporate Transparency Act (part of the Anti-Money Laundering Act of 2020, enacted in 2021).
 - Anti-corruption law
 - Assists national security, intelligence and law enforcement efforts to counter money laundering, tax fraud, the financing of terrorism, and other illicit activity.
 - Makes it harder for bad actors to shield their identities and launder ill-gotten gains

- ❑ CTA reporting requirements are administered by the Financial Crimes Enforcement Network (FinCEN), which is part of the U.S. Dept. of Treasury.

What Is the CTA?

- ❑ “Reporting Companies” must timely submit their “Beneficial Owner Information” (BOI) Report to FinCEN by no later than **January 1, 2025.**
 - For entities created *on or after 1/01/2024 but before 1/01/2025*, BOI reports must be filed within 90 days after creation (e.g., based on date entity became incorporated)
 - For entities created *after 1/01/2025*, BOI reports must be filed within 30 days of creation.

- ❑ When any reported information changes, must submit updated BOI Report to FinCEN within 30 days.

- ❑ FinCEN’s database is not available to the public. Accessed mainly by law enforcement and eventually financial institutions.

Why Should We Care? And Comply?

- ❑ Will apply to most community associations
- ❑ Possible penalties for noncompliance:
 - ✓ Willful failure to report complete or updated BOI Reports to FinCEN, or willfully providing false information to FinCEN.
 - = \$500/day civil penalties until violation cured; up to 2 years imprisonment; and/or up to \$10,000 per violation in criminal fines.
 - ✓ Willfully causing a reporting company not to file a required BOI Report or to report incomplete or false beneficial ownership information.
 - = can also lead to civil/criminal penalties

What Entities Must File BOI Reports?

- “Reporting Companies”

- Includes all corporations, limited liability companies, *and any other entities created by the filing of a document with a secretary of state or any similar office* in the United States.

For instance: *all incorporated community associations*

- Unless fall within one of 24 exemptions, such as . . .
 - Tax exempt entity under IRS Code 501(c), or
 - “large operating company”: (i) 20 or more full-time employees in U.S.; (ii) has operating presence at physical office in U.S.; and (iii) last year’s tax return shows at least \$5 million in domestic gross receipts or sales.

What is included in Reporting Company's BOI Report?

- **Company information:**
 - Association's name (plus any d/b/a)
 - Association's address (principal place of business)
 - Association's state of incorporation/formation
 - Association's IRS-issued taxpayer identification number (EIN)

What is included in Reporting Company's BOI Report?

- **“Beneficial Owner” information** for each individual who:
 - *exercises substantial control over the company, or*
 - *owns or controls at least 25% of the ownership interests of a reporting company.*
- Full legal name
- Birthdate
- Current residential/home street address
- Unique identifying number and issuing jurisdiction from, and image of, one of the following non-expired documents:
 - ✓ State driver's license, or
 - ✓ U.S. passport, or
 - ✓ Identification document issued by a state, local government, or tribe, or
 - ✓ If an individual does not have any of the previous documents, a foreign passport

What is included in Reporting Company's BOI Report?

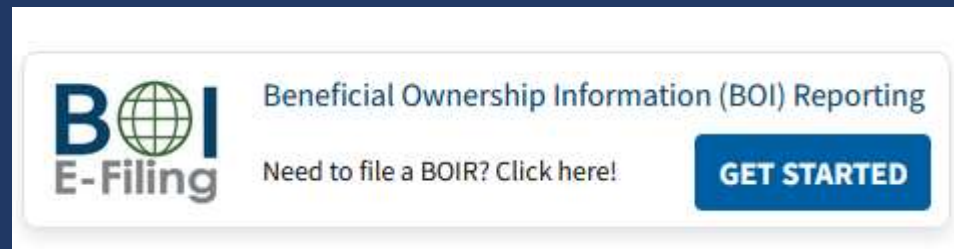
- **“Company applicant” information:**
 - *Only applies to Reporting Companies created on or after 1/01/2024*
 - Company applicant can be up to two persons:
 - 1) Person who directly filed Articles of Incorporation with state to create the incorporated association; and
 - 2) Person primarily responsible for directing or controlling the filing of the Articles of Incorporation
 - Same type of personal identifying information as beneficial owners, but may be able to report their business address instead of residential address.

Providing FinCEN Identifier (instead of including PII in BOI Report)

- Optional approach for Beneficial Owners and Company Applicants
- Request FinCEN Identifier
 - <https://fincenid.fincen.gov/landing>
 - Upload personally identifiable information to FinCEN website - receive FinCEN Identifier
 - Just provide your FinCEN Identifier to person filing BOI Report
- Responsible for updating/correcting PII associated with your Identifier – 30-day deadline

Method of Filing

- Electronic Submission through FinCEN's portal at <https://boiefiling.FinCEN.gov/>.
 - Enter directly into portal or use their fillable PDF form and then upload



- What approach will your Association take?
 - Who will gather required information from each applicable officer/director?
 - Who will complete and submit the Association's BOI Report on or before January 1, 2025 (and updates or corrections within 30 days)?
 - Will you use a third-party vendor for this?

FinCEN Resources

- **Website:** www.FinCEN.gov/BOI
 - Quick Reference Brochure:
<https://www.FinCEN.gov/sites/default/files/shared/BOI-Informational-Brochure-April-2024.pdf>
 - FAQs: <https://www.FinCEN.gov/boi-faqs>
 - Small Entity Compliance Guide:
<https://www.FinCEN.gov/boi/small-entity-compliance-guide>
- **YouTube videos:**
<https://www.youtube.com/@FinCENTreasury>

Summary: CTA BOI Report

- ❑ Will apply to most community associations
- ❑ Reporting Companies must timely submit their BOI Report to FinCEN by no later than **January 1, 2025.**
 - For entities created *on or after 1/01/2024 but before 1/01/2025*, BOI reports must be filed within 90 days after creation (e.g., based on date entity became incorporated)
 - For entities formed *after 1/01/2025*, BOI reports must be filed within 30 days of creation.
- ❑ When any reported information changes or needs correction, must submit updated or corrected BOI Report to FinCEN within 30 days.

NEXT STEPS?

1. Determine **who will gather Beneficial Owner Information and file** association's BOI Report
 - Will the Board use a third-party vendor for this?
2. **Confirm whether** Beneficial Owners will first apply for and **obtain individual FinCEN Identifiers** to include in BOI Report?
 - <https://fincenid.fincen.gov/landing>

NEXT STEPS?

3. Consider adopting CTA Compliance Policy (and/or amending governing documents): *possible items to consider*:

- Confirm intent to comply
- Procedure for collecting board member information
 - Obligation of board members to timely provide
 - Informing new board members (or candidates)
- Procedure for filing association's BOI Report
- Procedure for filing updates to BOI Report
 - Obligation of board members to timely provide
- Consequences for board member failure to comply
- Safeguarding data

NEXT STEPS?

4. Start sending periodic compliance reminders to beneficial owners
5. Start process of gathering Beneficial Owner Information per Board-approved approach/procedures
 - When are elections at annual meeting?
6. Timely file Association's first BOI Report
 - Early December? No later than 1/01/2025.
7. Timely file updated BOI Reports with FinCEN
 - Within 30 days after any reported information changes

Attempts to Challenge CTA in Court

- March 1, 2024: **Federal District Court in Alabama finds CTA unconstitutional**
 - The Catch: only members of National Small Business Association (as of March 1st) do not have to comply at least for now
 - Case is currently **being appealed**
- March 2024: Maine business owner filed suit in federal court
- March 2024: Small Business Association of Michigan (“SBAM”) sues in federal court
- May 2024: National Federation of Independent Business (NFIB) sues in federal court in Texas
- May 2024: Black Economic Council of Massachusetts sues in federal court
- ***September 10, 2024: Community Associations Institute (CAI) filed suit in federal court in Virginia***

Attempts to Change or Delay CTA

- ❑ Two bills to repeal CTA (HR 8147 filed in April and S 4297 filed in May)
- ❑ HR 9045: seeks to exempt community associations from CTA
- ❑ **CAI's Initiative**: updates posted at <https://www.caionline.org/Advocacy/Priorities/CTA/Pages/landing.aspx>
 - ✓ <https://www.voterve.net/CAI/Campaigns/16499/Respond>



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FinCEN Identifier (“FinCEN ID”) Creation Guide

Presented by Tiago Bezerra

This *How To* guide details how beneficial owners and company applicants (if applicable) can obtain an individual FinCEN Identifier for use in later submitting a Beneficial Ownership Information Report (“BOIR”) to FinCEN.

Creating a FinCEN ID allows beneficial owners and company applicants to retain control over their personal information without having to share it with the BOIR filer. When it is time to file the BOIR, those individuals will only need to share their unique FinCEN ID.

This Guide is intended to provide general guidance. It is not intended to be legal advice. Legal advice must be tailored to the specific facts and circumstances of each association. While every effort has been made to ensure this information is up-to-date, it is not intended to be a full and exhaustive explanation of the Corporate Transparency Act, nor should it be used to replace the individualized advice of your legal counsel.

Please see our other How To Guide for directions on how to submit the BOIR.



1. Navigate to <https://fincenid.fincen.gov/>
2. Click on button to “Create an Account”



FINANCIAL CRIMES
ENFORCEMENT NETWORK

FINCEN ID

HELP

Welcome to the FinCEN ID Application for Individuals

Sign in or Create an Account with  LOGIN.GOV



3. Click on button to “Sign in with LOGIN.GOV”



FinCEN Identifier (FinCEN ID)

[FinCEN.Gov/Contact](#)



Sign in using a trusted authentication provider. Trusted providers secure digital identities and help us confirm and protect your identity.



4. Click on button to “Create an account”



5. Scroll down the page and enter an email address, select a language preference, check the box to accept the terms, and then click “Submit”

Enter your email address

Select your email language preference
You will receive emails from Login.gov in the language you choose.

English (default)

Español

Français

中文 (简体)

I read and accept the Login.gov [Rules of Use](#)

Submit



6. An email will be sent to the email address you input at the previous step. Check your email and click the button to “Confirm email address”

If you did not receive an email, you can click either to have the Treasurer Department “Resend the confirmation email” to the same address OR “Use a different email address.”

Once you receive the email and click “Confirm email address,” you may close out of the original tab.



Check your email

We sent an email to [REDACTED] with a link to confirm your email address. Follow the link to continue creating your account.

You can close this window if you're done.

Having trouble? Here's what you can do:

[Resend the confirmation email](#)



[Use a different email address](#)



7. After clicking “Confirm email address,” a new browser window will open and ask you to create a strong password.

Create a strong password in the first space provided and then retype the same password to confirm it in the second space provided.

Then click “Continue.”

✔ You have confirmed your email address

Create a strong password

Your password must be **12 characters** or longer. Don't use common phrases or repeated characters, like abc or 111.

Password

Confirm password

Show password

Continue



8. The account creator will allow you to select an additional layer of protection for your account.






There is no “right” or “wrong” authentication option, so just select the one(s) you prefer.

Click “Continue,” and then fill in the information requested to confirm your additional authentication method.

Authentication method setup

Add an additional layer of protection to your Login.gov account by selecting a multi-factor authentication method.

We recommend you select at least two different options in case you lose one of your methods.

-  **Authentication application**
Download or use an authentication app of your choice to generate secure codes.
-  **Text or voice message**
Receive a secure code by (SMS) text or phone call.
-  **Security key**
Connect your physical security key to your device. You won't need to enter a code.
-  **Government employee ID**
PIV/CAC cards for government and military employees. Desktop only.
-  **Backup codes**
A list of ten codes you can print or save to your device. Because backup codes are easy to lose, choose this option only as a last resort.





You've added your first authentication method! Add a second method as a backup.

Adding another authentication method prevents you from getting locked out of your account if you lose one of your methods.

Add another method

[Skip for now](#)

- 9. Once your first additional method is confirmed, you will have an opportunity to add another method or “skip for now.”**





Continue to U.S. Department of the Treasury

We'll share this information with U.S. Department of the Treasury:

✓ Email addresses on your account

▲ [Add a second authentication method](#). You will have to delete your account and start over if you lose your only authentication method.

Agree and continue

10. Once you are finished adding your multi-layer authentication methods, click “Agree and continue.”



11. You should be automatically rerouted to the FinCEN ID website (<https://fincenid.fincen.gov/>)

Click on the button to “Sign in” to your account.



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12. Fill in your “First name,” “Last name,” and your “Date of birth.”


Including your “Middle name” or “Suffix” is optional.

FinCEN Identifier (FinCEN ID) Application

OMB No. 1506-0076

Filers must provide information in EVERY field marked with the * symbol in ALL CIRCUMSTANCES. Filers must also provide information in all fields not marked with the * symbol that are applicable to the filer. For example, the "Middle Name" field is not marked with a * symbol; the filer MUST provide information in that field IF the relevant individual's legal name includes a middle name. Notwithstanding any other instruction, individuals must provide all information required pursuant to 31 CFR 1010.380(b).

Full legal name and date of birth

 Need help?


* First name

Middle name

* Last name

Suffix

* Date of birth

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13. Scroll down and then select “Residential address” to insert the address information.

Note: Beneficial Owners (e.g., Directors) must report their residential address. A business address cannot be used.

Address

Need help?

Address type: Indicate address type as “Residential address” or “Business address” for the individual. Add an address by clicking the “+ Add additional address” button, or remove an address by clicking the “- Remove address” button. Report both the individual’s residential address and business address if the FinCEN ID will be reported on a BOIR as both a beneficial owner and a company applicant who forms or registers an entity in the course of your business.

Individual address: Enter the individual’s street address information, including the city, country or jurisdiction, State, and ZIP code or foreign postal code. U.S. Territories are included in the drop-down menu for “Country/ Jurisdiction.” The “State” will be automatically populated when a U.S. Territory is selected in the “Country/Jurisdiction”. “State” is required if the country selected is the United States, Canada, or Mexico.

* Address type
 Residential address Business address

* Address (number, street, and apt. or suite no.)

* City

* Country/Jurisdiction

* ZIP/Foreign postal code



14. Scroll down and then select which identifying document you will disclose to FinCEN. Enter the required information (indicate by an asterisk (*)) in the spaces provided. *The screenshot shows the information that will be required if you elect to disclose your driver's license.*

Form of identification and issuing jurisdiction

 Need help?

* Identifying document type

State-issued driver's license State/local/Tribe-issued ID U.S. passport Foreign passport

* Identifying document number

* Country/Jurisdiction

* State

* Identifying document image

Accepted file types: JPG/JPEG, PNG, and PDF

Drag file here or [choose from folder](#)



15. Take a picture or scan a copy of your selected form of identification and make sure it is available on your computer.

On the same screen where you inserted your identifying document information, you must upload a copy of the document either by dragging it from a folder or your desktop OR by clicking “choose from folder” and selecting the correct file on your computer.

Form of identification and issuing jurisdiction

 Need help?

* Identifying document type

State-issued driver's license State/local/Tribe-issued ID U.S. passport Foreign passport

* Identifying document number

* Country/Jurisdiction

* State

* Identifying document image

Accepted file types: JPG/JPEG, PNG, and PDF

Drag file here or [choose from folder](#)



16. Once your identifying document information is added and a copy uploaded, scroll down to the “Certification,” click “I agree,” and then “Submit.”

Certification

* I certify that the information furnished is true, correct, and complete.

COMPLIANCE REMINDER: The willful provision of false or fraudulent beneficial ownership information to FinCEN may result in civil or criminal penalties.

I agree

Submit



CONGRATULATIONS! You will now be provided your FinCEN ID!

Write down your FinCEN ID so that you can correctly provide it to whoever will file the BOIR on behalf of your Association.

If you ever need to correct or update the personal information associated with your account, you will need to log back into the FinCEN ID system (<https://fincenid.fincen.gov/>).



If you have any questions, please contact your attorney.

For further information, please see FinCEN's website at <https://www.fincen.gov/boi>.

For updates regarding the CTA, please visit CAI's website, <https://www.caionline.org/Advocacy/Priorities/CTA/Pages/default.aspx> or CWMEB's blog, <https://www.chadwickwashington.com/blog/>.



ANY QUESTIONS?

. . . Time for breakout sessions