

Complying with the Corporate Transparency Act

The Corporate Transparency Act (“CTA”), effective January 1, 2024, was enacted as part of the Anti-Money Laundering Act of 2020 in the National Defense Authorization Act for Fiscal Year 2021 (31 U.S.C. § 5336). The CTA requires certain entities to report information, including specific beneficial ownership information (“BOI”), to the US Department of the Treasury’s Financial Crimes Enforcement Network (“FinCEN”).

The first step in compliance with the CTA is determining whether or not you need to report and who must report if you do. Below is a breakdown of who is required to report, how you can identify those entities/individuals within your entity or organization, and what information needs to be collected from each entity, association, or individual to successfully comply:

YOU ARE A REPORTING COMPANY IF YOU ARE A:

1. Corporation;
2. Limited Liability Company;
3. Condominium organization (trust or incorporated/unincorporated association); or
4. If you filed documentation with the Secretary of State’s Office or the Registry of Deeds to create your entity.

Note: For our condominium clients, it is our recommendation that all condominium organizations plan to file for the upcoming January 1, 2025 deadline. While the law is being challenged, we do not expect a change in the requirements over the next few months.

YOU ARE A COMPANY APPLICANT FOR THE REPORTING COMPANY IF YOU FORMED YOUR ENTITY/ASSOCIATION AFTER JANUARY 1, 2024, AND YOU ARE:

1. The individual who is primarily responsible for directing or controlling the filing of an application to form or register a corporation, limited liability company, or other similar entity under the laws of a state or Indian Tribe; or
2. The individual who directly filed the document to create or register the reporting company.

YOU ARE A “BENEFICIAL OWNER” IF YOU ARE:

1. An individual who, directly or indirectly, exercises substantial control over a reporting company;
2. An individual who, directly or indirectly, owns or controls at least 25 percent of the ownership interests of a reporting company;
3. A trustee or board member of a condominium organization;
4. An individual holding the position of or exercising the authority of a president, chief financial officer, general counsel, chief executive officer, chief operating officer, or any other officer (regardless of title) who performs a similar function;

5. An individual with the ability to appoint or remove any senior officer or a majority of the board of directors or similar body;
6. An individual who directs, determines, or has substantial influence over important decisions made by the reporting company, including decisions regarding the reporting company's business, finances, or structure; or
7. A unit owner in a condominium who has a 25% or greater percentage interest in the condominium.

***Any individual of a reporting company that fits any criteria in Nos. 1-7 needs to be reported as a beneficial owner of the reporting entity.*

WHAT INFORMATION NEEDS TO BE REPORTED?

For each entity, including any condominium organization, you will need:

1. The full legal name of the entity/organization;
2. The taxpayer identification number for the organization;
3. The country and state of formation; and,
4. The principal address of the entity/organization.

For each company applicant, you will need:

1. The individual's first and last name;
2. Date of birth;
3. Primary address; and,
4. A copy of their photographic identification (driver's license, state identification card, or passport).

If the individual provides a copy of their photographic identification, it will contain all of the information necessary for filing and extinguish the need to collect it on an information sheet.

For each beneficial owner (condominium board members), you will need:

1. The individual's first and last name;
2. Date of birth;
3. Primary address; and,
4. A copy of their photographic identification (driver's license, state identification card, or passport).

If the individual provides a copy of their photographic identification, it will contain all of the information necessary for filing and extinguish the need to collect it on an information sheet.

ARE YOU EXEMPT FROM FILING?

Unless your entity is associated with securities, a governmental authority, financial institution, investment company or advisor, insurance company or producer, public accounting firm, public utility, pooled investment vehicle, tax exempt entity, a large operating company, a subsidiary of a

large operating company, or any entity of a similar nature of the aforementioned, you are likely not exempt from the filing requirements.

Examples

Example A:

Question: Is Storage, LLC a reporting company?

Answer: Yes, because it is a limited liability company.

Question: Storage, LLC was created by filing a Certificate of Organization with the Massachusetts Secretary of State's Office on March 7, 2021, do we need to submit information for a company applicant?

Answer: No, because Storage, LLC was created before January 1, 2024.

Question: Storage, LLC has one manager with a 10% ownership interest in Storage LLC and three members each with a 30% ownership interest in Storage, LLC, who are the beneficial owners of Storage, LLC?

Answer: The beneficial owners are as follows: (1) the manager because the manager exercises substantial control over Storage, LLC by controlling the daily business operations of Storage, LLC, and (2) each member of Storage, LLC because each member has more than a 25% ownership interest in Storage, LLC.

Example B:

Question: Is Storage, Inc. a reporting company?

Answer: Yes, because it is a corporation.

Question: Storage, Inc. was created by filing Articles of Organization with the Massachusetts Secretary of State's Office on March 7, 2024, do we need to submit information for a company applicant?

Answer: Yes, because Storage, Inc. was created after January 1, 2024. Whoever filed the Articles of Organization, or coordinated filing, with the Secretary of State's Office, is the company applicant.

Question: Storage, Inc. has three shareholders. One shareholder is president/chief executive officer, one shareholder is vice president/chief operating officer, and one shareholder is treasurer/chief financial officer. Who are the beneficial owners of Storage, Inc.?

Answer: The beneficial owners are each shareholder because each shareholder holds an executive position within Storage, Inc. and each shareholder has more than a 25% ownership interest in Storage, Inc. Although each shareholder is a beneficial owner of Storage, Inc. for two separate reasons, each shareholder only needs to be reported once in the filing as a beneficial owner.

Example C:

Question: Is Wood Village Condominium Trust/Association a reporting company?

Answer: Yes, because it is a Condominium organization and presently the Corporate Transparency Act appears to include all such organizations (whether they are state registered entities or trusts). It is our recommendation that all condominium organizations comply with the Corporate Transparency Act filing requirement until such time as further guidance suggests otherwise.

Question: Wood Village Condominium Trust/Association was created on March 7, 1994, do we need to submit information for a company applicant?

Answer: No, because Wood Village Condominium Trust/Association was created before January 1, 2024.

Question: Wood Village Condominium Trust/Association has three board members and 100 units. Each unit has approximately a 1% percentage interest in the condominium, who are the beneficial owners of Wood Village Condominium Trust/Association?

Answer: The beneficial owners are the three board members because the board exercises substantial control over Wood Village Condominium Trust/Association for the benefit of the organization. If one unit owner collectively has more than a 25% percentage interest in the Condominium, then that particular unit owner should also be reported as a beneficial owner of Wood Village Condominium Trust/Association.