



Compliance Update for Year End and the New Year - Real Estate Entities and the Federal Corporate Transparency Act (CTA)

Compliance Update for Year End and the New Year - Real Estate Entities and the Federal Corporate Transparency Act (CTA). The CTA is designed to deter terrorist financing, money laundering and other illegal activities. For real estate entities navigating the Corporate Transparency Act (CTA), some guidelines for compliance essentials follow. The analysis begins with Reporting Companies, defined by the CTA as a "corporation, limited liability company, or other similar entity that is "created by the filing of a document with a secretary of state or a similar office under the law of a State or Indian Tribe" Specifically, the CTA requires a "Reporting Company" to provide (and update) personally identifying information about the company's "Beneficial Owners" and potentially its "Company Applicant(s)" to FinCEN by certain dates. There are 23 exemptions, mostly for regulated industries and "large operating companies" with a track record. Also 501(c) non-profits are exempt but most other non-profit entities are not. This likely makes property owner associations Reporting Companies.

1. Identifying Beneficial Owners

- **Action Point:** Review ownership structures thoroughly to identify individuals meeting the CTA's criteria for significant control or ownership interests within your entity. The CTA defines a Beneficial Owner as "an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise: (1) exercises substantial control over the entity; or (2) owns or controls not less than 25% of the ownership interests of the entity." The CTA further defines "substantial control" and "ownership interests" to aid in the identification of a Beneficial Owner.
- **Consideration:** Look beyond direct ownership to identify indirect influencers in the decision-making processes. This will include senior officers.

2. Documentation and Information Gathering:

- **Action Point:** Collect detailed beneficial ownership information including names, addresses, dates of birth, and identification numbers of the identified individuals.
- **Consideration:** It may be useful to include in your entity and employment documents an obligation for "Beneficial Owners" to provide required information.
- **Also be aware of scams requesting important compliance information.**

3. Transactional Compliance in Real Estate Operations:

- **Action Point:** Integrate due diligence processes in property transactions, leases, and rental operations to identify and verify beneficial ownership details.
- **Consideration:** Develop protocols for ongoing monitoring and updating of ownership information in different transactional scenarios, including maintaining privacy and confidentiality.

4. Reporting Compliance:

- **Action Point:** Report the gathered beneficial ownership information to FinCEN in line with the CTA requirements.
- **The deadlines** for a Reporting Company to provide this information are as follows:

Entities formed before January 1, 2024	January 1, 2025
Entities formed on or after January 1, 2024	90 calendar days after formation for 2024; 30 calendar days thereafter
Update or correct reported information	30 calendar days after change in information or Reporting Company becomes aware of inaccuracy

#4 continued...

- **Consideration:** Familiarize yourself with FinCEN's reporting guidelines and submission procedures for accurate compliance. For more information on the CTA, including instructional videos and FAQs, please visit FinCEN's Beneficial Ownership Information website at <https://www.fincen.gov/boi>. And because this is a new and complex regulation, you may wish to consult your attorney or CPA if you think you or your entity may be subject to the CTA. If you anticipate forming an entity in the near future, it may make sense to do so on or before Friday December 29, 2023, to give yourself a full year to report.

5. Compliance Audit and Professional Guidance:

- **Action Point:** Conduct internal compliance audits periodically to ensure accuracy and completeness of beneficial ownership records.
- **Consideration:** Engage legal advisors or compliance experts specialized in real estate to address intricacies and complexities unique to the sector.

6. Ongoing Compliance Commitment:

- **Action Point:** Regularly review and update internal protocols and documentation to align with evolving CTA regulations.
- **Consideration:** Stay informed about regulatory changes and updates to adapt compliance strategies accordingly. Be prepared to update filings if there are any changes. Consider the CTA in any merger, acquisition, or loan transaction.

Conclusion:

Be proactive and make deliberative decisions about compliance. The penalties for failure to do so can be significant, and you will want to be sure all investors, owners, officers and the like are on board with providing the required information. You may also want to explore using a FinCEN identifier as an option for providing information.

