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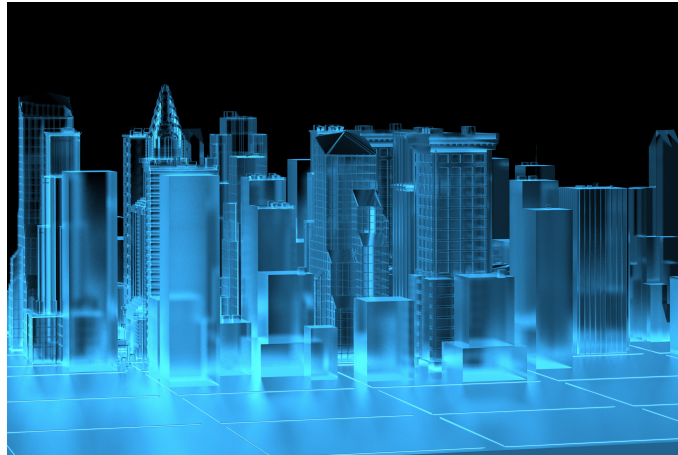
This newsletter explores the emerging legal topics and issues affecting the condominium and cooperative services industry. Thought-leading attorneys from Moritt Hock & Hamroff's Condominium and Cooperative Services Practice Group share their legal insight, experience and best practices on this rapidly evolving area of law.

As always, if you have any questions regarding the matters raised in this Digest, please feel free to contact Bill McCracken of our New York City office at wmccracken@moritthock.com, or your regular contact at the firm.

About The Group

Moritt Hock & Hamroff's Condominium and Cooperative Services Practice Group represents clients in all aspects of condominium and cooperative law.

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[The Corporate Transparency Act \(CTA\)](#), which requires reporting to the Financial Crimes Enforcement Network of the U.S. Treasury Department (FinCEN) of the names, residential addresses and other information on and concerning certain large equity owners, senior officers and others in control of most corporations, limited liability companies, limited partnerships, and other legal entities (known as Reporting Companies under the CTA), became effective on January 1st of this year and has captured the attention of the legal world. Moritt Hock & Hamroff LLP's Corporate, M&A & Securities Practice Group has prepared a **[Client Alert](#)** on the law and its filing requirements and deadlines. As a supplement to the Client Alert, below are a handful of considerations and unanswered questions particularly pertinent to condominiums and cooperatives.

Do Co-Ops and Condominiums Have To File Reports?

As noted above, most corporations are required to file Beneficial Ownership Information (BOI) Reports. That includes most co-ops, which are customarily formed as corporations in New York. The formation process is what triggers an entity's status as a Reporting Company. The CTA provides 23 exemptions from obtaining Reporting Company status, but it is highly unlikely that any of such exemptions would apply to co-ops. Accordingly, a co-op will need to file an initial BOI Report and be under the obligation to update its BOI Report if any required information in an filed BOI Report becomes outdated, superseded, or needs to be supplemented.

As you already know, co-ops and condominiums are completely different types of entities. Generally speaking, unlike co-ops, condominium associations in New York are not created by the filing of a document with the New York Secretary of State. The creation of an entity under a state statute, such as New York's Business Corporation Law, is what triggers an entity's status as a Reporting Company, subject to the 23 exemptions.

Accordingly, at first glance, it would appear that condominium associations should not be considered a Reporting Company. On the other hand, condominium declarations are required to be filed with the New York Secretary of State, even if that filing does not "create" the condominium as the CTA seems to require. We are hopeful that FinCEN will provide guidance on New York condominiums. Accordingly, until FinCEN weighs in with specific guidance or rulemaking, the question whether condominiums are Reporting Companies remains open. It should be noted that New York is an outlier in that most condominium associations in other states are, in fact, created by a filing with the Secretary of State.

We also understand that there are concerted industry efforts underway to secure legislation expressly exempting condominiums and other community associations from reporting obligations. It is much too early to know whether those efforts will manifest or prove successful.

How Do Board Members Comply With The CTA?

Based on our review of the CTA and FinCEN rules, we believe that all co-op board members would meet the definition of Beneficial Owners under the CTA, and disclosure concerning them would be needed to be included in the co-op's BOI Report. This is because any individual director (separate and apart from any equity ownership they may have) is arguably in the position to "directly or indirectly . . . exercise substantial control" over the co-op and therefore qualifies as a so-called Beneficial Owner under the statute.

The issue for co-ops is really how to administer compliance with the CTA. Reporting Companies must submit information about each Beneficial Owner, including their full legal name, date of birth, residential street address, and a "unique identifying number" (such as a driver's license or passport -- a copy of which also must be filed). Gathering and properly submitting this information for existing directors (not to mention senior officers, any 25% equity or pecuniary owners, and others in "control") will be an important administrative task.

On top of that, Reporting Companies need to update their initial filings whenever a Beneficial Owner changes or a Beneficial Owner's personal information changes – such as when a board member's term expires and is replaced, or a board member resigns during their term – which

creates a significant ongoing compliance obligation. Are managing agents going to step up to handle the filings and monitoring? Will third party vendors fill the void? Different co-ops will handle this differently, but all covered co-ops will have to come up with a workable compliance solution.

What Happens If Co-ops Do Not Comply?

For existing co-ops and other Reporting Companies, the initial BOI reports are due to be filed with FinCEN by the end of this calendar year (i.e., by December 31, 2024). Co-ops formed in calendar year 2024 would need to file their BOI Report within 90 days of formation; with co-ops formed in 2025 or thereafter, the filing requirement is 30 days from formation. Even if we do not have yet all of the answers to every open issue, noncompliance should not be considered an option. The willful failure to file initial or updated beneficial ownership information, or the willful attempt to provide false or fraudulent information could result on civil or criminal penalties, including civil penalties of \$500 per day and criminal penalties of imprisonment up to two years. Senior officers of entities that fail to file BOI reports may also be held accountable. One consideration co-ops should consider is whether to amend their Bylaws to add a provision requiring all co-op owners and board members to provide the required information on themselves, when requested and be required to advise the co-op if there are any changes, updates, or supplements to such information. Co-ops should also consider designating an individual as the “CTA Compliance Officer.”

* * *

These are by no means the only open issues to be resolved under the CTA, a brand new disclosure regime that is estimated to affect upwards of 30 million entities. As FinCEN issues additional guidance over the coming months, we will continue to update our clients as to their compliance obligations.



Reminder Of New Flood Disclosure Obligations

The CTA is not the only new disclosure law affecting condos and co-ops. As a reminder, the New York State legislature recently amended the [Real Property Law](#) to require that “[e]very residential lease” (meaning both new and existing leases) shall provide notice of whether any or all of the leased premises are located in a floodplain, 100-year floodplain, or 500-year floodplain, as well as of any relevant history of flood damage. Further, every lease must provide a standard notice advising the prospective tenant of the availability of federal flood insurance for the premises and a warning that the standard renter’s policy excludes coverage for flood damage.

In addition to being corporations, co-ops are also technically landlords, and enter into a proprietary lease with each tenant-shareholder. Accordingly, in order to comply with the new law, co-ops should incorporate the required disclosures into their proprietary leases, either by amending their house rules or at the very least including this information in their standard purchase application packages.

Although condominium associations are not landlords and do not have to make these disclosures, any condo unit owners who individually rent out their units should take care to incorporate these disclosures into their tenant leases.



Checking In On The Current Legislative Session In Albany

As noted in the previous edition of the [Condo/Co-op Digest](#), the State Legislature passed 896 pieces of legislation last year, and it has picked up where it left off in 2024. We are monitoring dozens of proposed bills in this session, which began the first week in January and will continue until the beginning of June.

To illustrate the breadth of legislation under consideration, we have identified nearly 200 bills affecting cooperatives and condominiums that have already been introduced in this session, including, for example, the so called "[Fairness in Cooperative Housing Act](#)" (which requires that co-ops respond to sales applications with set time limits, and to the

extent an application is denied, reasons for the denial), and [A5050/S0093](#) (a bill establishing an abatement and exemption or real property taxes for capital improvements to reduce carbon emissions).

The vast majority of these proposals will never receive a floor vote, much less get passed into law, but we note that at least one bill affecting condos and co-ops, [to restrict the use of keyless security devises at multifamily properties](#), has already passed the Assembly.

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