

Are you covered?

The Corporate Transparency Act and its impact on commercial real estate associations

BY JODI L. HENNINGER
AND JANEANN LUEDERS
Clingen Callow & McLean, LLC

You may have heard recent talk about the Corporate Transparency Act (CTA), which went into effect Jan. 1, 2024, that requires Beneficial Ownership Information reporting for reporting companies into a database with the Financial Crimes Enforcement Network.

Generally, a reporting company is a legal entity created or qualified to do business by a filing with a secretary of state or equivalent office ("reporting company").

Under the law, there is a list of exceptions as to companies which do not need to report mainly due to the fact that they are companies that already are in some manner regulated (such as large operating companies, publicly traded companies, banks, credit unions, etc.).

The Beneficial Ownership Information (BOI) calls for information about each beneficial owner, including full legal name, date of birth, current residential or business address, and unique identifying number or FinCEN identifier.

A "beneficial owner" is an individual who, directly or indirectly exercises substantial control over the entity or owns or controls not less than 25% of the ownership interests of the entity.

Regarding timing, a domestic reporting company created on or after Jan. 1, 2024, and before Jan. 1, 2025, must file a report within 90 days of creation of the entity. If the entity is created after Jan. 1, 2025, the report must be filed within 30 days of entity creation.

An entity in existence before Jan. 1, 2024, must file a report by no later than Jan. 1, 2025. This article is not meant to be a primer on the requirements and reporting under the CTA, but rather it is to discuss the anticipated implications of such reporting on certain aspects of commercial real estate.

If you have formed an entity (corporation, limited liability company, trust, etc.) the time is now to evaluate if you must file BOI under the CTA. However, the reach of the CTA goes beyond title-holding entities.

Various types of commercial real estate call for some form of association. These can be condominium associations for industrial condominiums or office building condominiums, or associations for retail shopping centers which encompass several titleholders and operate the common areas of the shopping center.

These associations may fall under the reporting



Jodi L. Henninger



JaneAnn Lueders

requirements of the CTA depending on whether the association entity is created or qualified to do business by filing with the secretary of state or equivalent office and such association does not fall within an exception to the reporting requirements.

In agreements such as declarations of covenants, conditions, and restrictions; operation and easement agreements; or reciprocal easement agreements, there may be an association established to take such action as maintain and operate commons areas including landscaping, parking areas, ring roads, and detention ponds. The facilitator of the association may be determined by the largest parcel owner of the center or the owner of the parcel with the anchor tenant, as two examples.

The association also may operate by cooperation and voting of the various members. The landowners involved in the association now need to walk through the decision-making of the CTA BOI and determine if the association qualifies as a reporting company or fulfills an exception, and who is deemed a beneficial owner.

If a shopping center operates with an operator or approving party, rather than an association, then the operator will need to make its own determination of the BOI reporting for the title-holding entity. When there is a separate association, each titleholder entity makes its own determination, then there is an additional, separate determination made for the association entity.

Even though there may be additional reporting requirements under an association formed under a secretary of state, such as a limited liability company, it appears unlikely that this would cause associations to move toward a nonreporting entity, such as a partnership, due to the liability advantages of a limited liability company or corporation.

Titleholders and those with decision-making power in commercial real estate-related associations also need to heed the reporting requirements when there are sales of the

real estate or other actions that change the power structure of the association. If the largest parcel holder sells its real estate, which includes a transfer of their responsibilities under the association, this may trigger the need to file a report regarding the change under the CTA.

If the association is for condominiums located in Illinois, statute requires condominium instruments including the declaration, plat, and bylaws. The statutory requirements do not include creating an entity which is required to be filed with the secretary of state. Even though it is not a requirement by statute, a condominium association may still want to create an entity such as a not-for-profit corporation or limited liability company.

When incorporated or organized, the entity is formed by filing with the secretary of state and may fall within the reporting requirements of the CTA. As an unincorporated condominium association would not be formed by filing with the secretary of state or qualifying to do business with the secretary of state, then this does not appear to fall within the definition of a reporting company. Be advised, there also is an exception to reporting companies relating to certain tax-exempt entities to be considered.

Association entities created by a filing with the secretary of state or which qualify to do business with the secretary of state need to evaluate their beneficial owners and complete the reporting requirements of the CTA with FinCEN. Anyone who willfully provides false or fraudulent BOI, may be subject to a penalty of \$500 per day that the violation is not remedied up to \$10,000 and may be imprisoned for up to 2 years.

While title-holding entities are reviewing their companies for BOI and confirming compliance with the CTA, do not overlook that care should also be taken to check for the compliance of condominium and shopping center associations.

• Jodi L. Henninger and JaneAnn Lueders are legal experts with Clingen Callow & McLean, LLC.