



# The Corporate Transparency Act: How it Impacts Community Associations

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# About The Corporate Transparency Act

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- Enacted on 1/1/2021 as part of the National Defense Authorization Act of 2021 and under the scope of the Money Laundering Act of 2020.
- Intended to provide law enforcement with beneficial ownership information for the purpose of detecting, preventing, and punishing terrorism, money laundering, and other misconduct through business entities.



# About The Corporate Transparency Act

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- Requires certain business entities ("Reporting Company") to file, in the absence of an exemption, information, on the "Beneficial Owners" with the Federal Crimes Enforcement Network ("FinCEN") to U.S. Department of Treasury.





# When Is It Effective?

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- **\*No Fee**
- January 1, 2024
- Company created or registered to do business before January 1, 2024, will have until January 1, 2025 to file its initial beneficial ownership information report.
- Company created or registered on or after January 1, 2024, will have 30 days to file its initial beneficial ownership information report. Runs from date of formation or registration. \*Proposed Regs would increase to 90-days.



# What Companies Will Be Required To Report Beneficial Ownership Information?

- "Reporting Companies"
- Domestic Reporting Company
  - Corporation
  - LLC, LLP, LLLP, Business Trusts, and LP.
  - Nonprofit Corporations
  - Any other entity created by the filing of a document with a Secretary of State or any similar office under law or Indian tribe.
- General Partnerships and Statutory Trusts fall outside the scope of the Act



## Reporting Companies (Cont.)

- Foreign Reporting Company
  - Corporation, LLC, or other entity formed under the law of a foreign country, AND
  - Registered to do business in any U.S. state or in any Tribal jurisdiction.
- Some foreign companies may simply own US real estate and do not have to register to do business or apply for a certificate of authenticity.

# Exemptions From Beneficial Ownership Reporting

1. Generally industries which are already heavily regulated
2. Certain types of securities reporting issuers
  - Registered under Section 15 of Security Exchange Act of 1934
  - Or required to file supplementary, and periodic information under Section 15(d)
3. A U.S. government authority
4. Certain types of banks
5. Federal or state credit unions
6. Bank holding companies
7. Certain types of money transmitting services



## Exemptions (cont.)

8. Broker/Dealer defined in Section 3 of the Security Exchange Act, registered under Section 15
9. Securities and Exchanges
10. Certain other types of entities registered at a Secretary of State
11. Certain types of investment companies
12. Certain types of venture capital advisors
13. Insurance companies defined in Section 2 of Investment Company Act of 1940.
14. State-licensed insurance producers with physical office in the state.





## Exemptions (cont.)

15. Commodity Exchange Act registered entities
16. Any public accounting firm registered with Section 102 of the Sarbanes-Oxley Act of 2002
17. Certain types of regulated public utilities (telecom, electric, natural gas, or water/sewer within U.S.)
18. Financial market utility
19. Certain pooled investment vehicles
20. Certain types of tax-exempt entities
21. Entities assisting a tax-exempt entity.



## Exemptions (cont.)

22. Large operating companies with at least 20 full-time employees, more than \$5,000,000 in gross receipts or sales, and an operating presence at a physical office within the United States.
23. The subsidiaries of certain exempt entities
  - Not money transmitting businesses
  - Not pooled investment vehicles
  - Not entity assisting tax-exempt entities
24. Certain types of inactive entities that were in existence on or before January 1, 2020.



# Tax-Exempt Entities

1. 501(c) and exempt from tax under Section 501(a) of the Code.
2. Political organization exempt under Section 527(e)(1) of the Code.
3. A trust described in paragraph (1) or (2) of Section 4947(a) of the Code.
4. HOAs filing under IRS Revenue Code 528, are not 501(c) organizations.
  - HOA's will need to adopt policies to identify benefitted owners and collect the needed information to be reported
5. HOA's that qualify as 501(c)4 social welfare organizations or social clubs 501(c)7

## Tax-Exempt Entities (cont.)

- 501(c)4 – HOA may qualify as a social welfare organization if it is operated for the benefit of all the residents of a community.
  - Roadways and amenities it owns and maintains must be open to the public and NOT just its own members. It must also show that it DOES NOT engage in exterior maintenance of private homes.
- 501(c)7 – Social clubs organized for pleasure, recreation, and other similar purposes.



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## Who Is A Beneficial Owner Of A Reporting Company?

1. An individual who directly or indirectly exercises "Substantial Control" over Reporting Company,

**OR**

1. An individual who directly or indirectly owns or controls 25% or more of "Ownership Interests" of Reporting Company.



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## What Is Substantial Control?

- Direct, determine, or exercise substantial influence over, important decisions the Reporting Company makes.
- Any Senior Officer is deemed to have substantial control over Reporting Company.
  - President
  - CFO
  - General Counsel
  - CEO
  - COO
  - Directors
  - Managers
  - Decision maker
  - Or any officer who performs a similar function regardless of title.



A circular graphic on the left side of the slide features several white paper cutouts of human figures holding hands in a circle. The figures are set against a dark blue background with a subtle geometric pattern of triangles. The lighting creates soft shadows on the surface they appear to be standing on.

# What Are Considered "Ownership Interests"?

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- Shares of stock
- LLC ownership interests
- Trustee of Trust exercising control over Reporting Company
- Debt instruments

It is possible to have substantial control without an "ownership interest"



# HOA

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- Each Director and Officer – decision maker or person who has substantial influence over important matters
- Management company could be considered a beneficial owner if the terms of the management contract give manager substantial influence

\*Independent decision making is the test.



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## What Information Must Be Reported?

Companies created or registered on or after January 1, 2024:

- Itself
- Beneficial Owners, and
- Company Applicants
  - Can be up to two individuals
    - Individual who directly files the document that creates entity
    - Individual that is primarily responsible for directing or controlling the filing
    - Management Company?





# What Information Must Be Reported?

Companies registered before January  
1, 2024:

- Itself
- Beneficial Owners

# What Must Be Reported About Itself?

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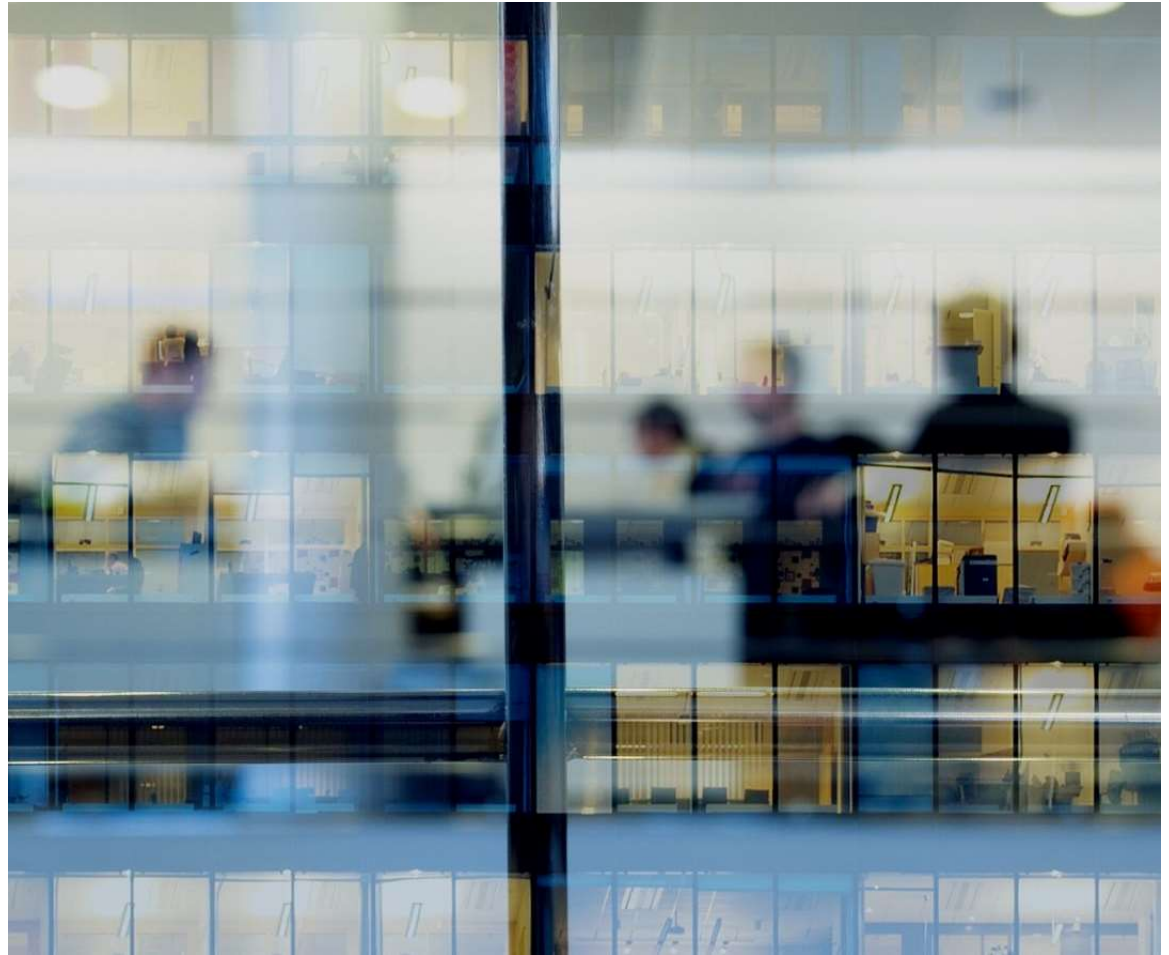
- Legal name
- Trade names, "doing business as"
- Current street address of its principal place of business if address is in United States
- Outside the U.S., current address from which the country conducts business in the U.S.
- Jurisdiction of formation or registration
- Taxpayer ID number



## What Must Be Reported About Beneficial Owners And Company Applicants?

- Individuals name, DOB, and address.
  - Residential street address (attorney business address)
- A unique identifying number from an acceptable identification document\*
  - Driver's license or ID card issued by state
  - Passport
  - Non-expired passport by a foreign government
- The name of the state or jurisdiction that issued the identification document

\*Image of the identification document



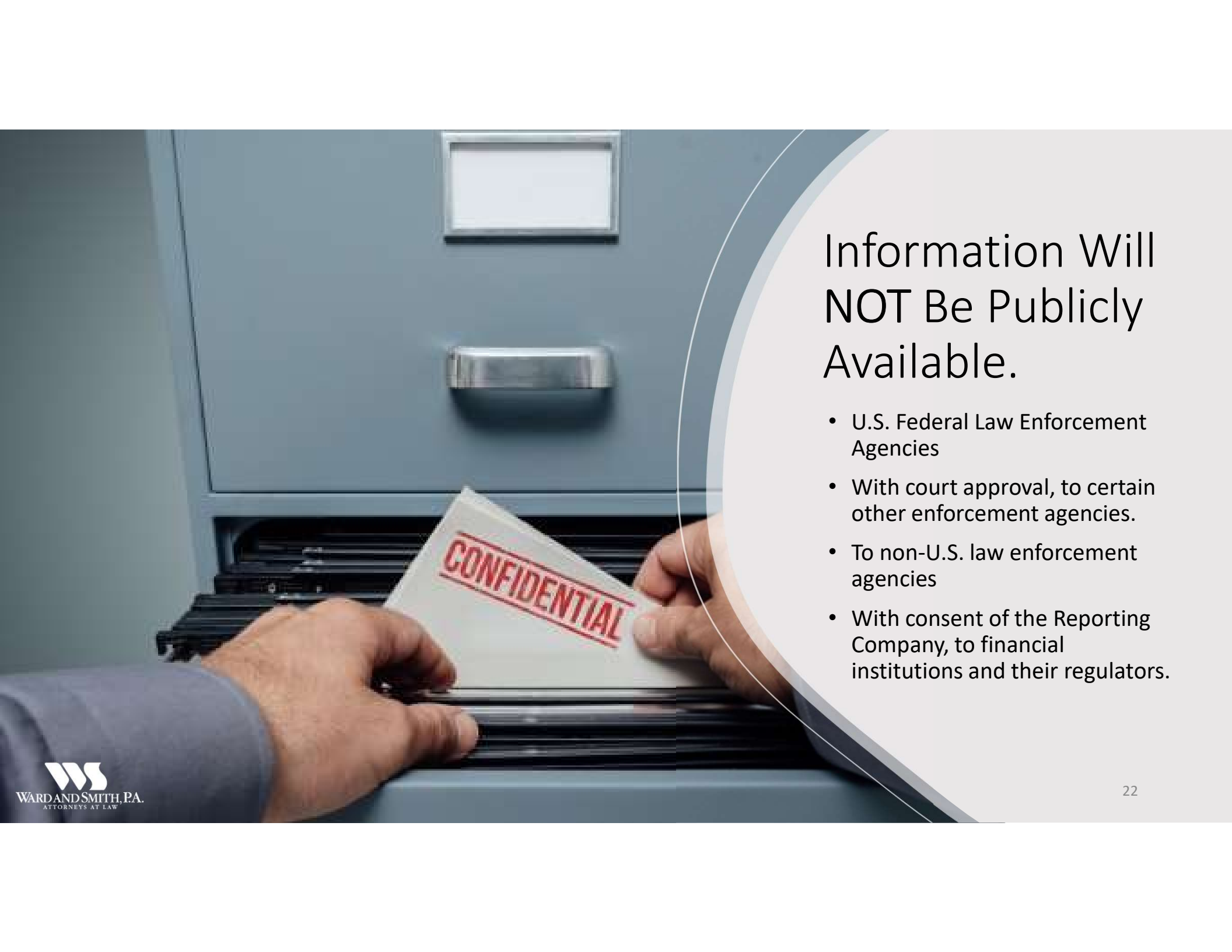


A close-up, shallow depth-of-field photograph of a wooden desk. In the foreground, a stack of yellow folders is visible, with a red folder peeking out from the bottom. A red pen with gold accents lies horizontally across the desk in the middle ground. The background is softly blurred, showing more papers and the desk surface.

# How Will The Information Be Reported?

- Electronically to FinCEN website

\*30-days to report changes to beneficial ownership or corrections in information upon discovery



## Information Will NOT Be Publicly Available.

- U.S. Federal Law Enforcement Agencies
- With court approval, to certain other enforcement agencies.
- To non-U.S. law enforcement agencies
- With consent of the Reporting Company, to financial institutions and their regulators.

# Civil and Criminal Penalties

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1. Willful Reporting Violations
  - Civil – \$500 per day that the violation continues
  - Criminal – fine up to \$10K, and/or 2 years imprisonment
2. Unauthorized Disclosure or Use
  - Civil – \$500 per day that violation continues
  - Criminal – fine up to \$250K and/or 5 years imprisonment
  - Part of a pattern of any illegal activities involving more than \$100,000.00 in a 12-month period, a fine of not more than \$500,000.00 and/or 10 years imprisonment

# Statutory Safe Harbor

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- No civil or criminal penalties if inaccurate report is voluntarily corrected with 90 days from date filing should have been made.

## Reasonable Cause

- Negligent violations not penalized.
- Violations for reasonable cause and NOT willful neglect, not penalized.





# QUESTIONS