



nerej

CAI files lawsuit to exempt community associations from Federal Corporate Transparency Act

October 04, 2024 - Owners Developers & Managers

Community Associations Institute (CAI), the leading international authority on the community association housing model; including condominium associations, homeowners associations, and housing cooperatives, filed a lawsuit against the United States Department of the Treasury in the U.S. District Court for the Eastern District of Virginia challenging the federal Corporate Transparency Act. This lawsuit seeks to exempt community associations from burdensome reporting requirements that CAI argues are incompatible with nonprofit, volunteer-run organizations.

The Corporate Transparency Act, enacted by Congress in 2021, mandates that entities such as corporations and limited liability companies disclose beneficial owners' information to the Department of Treasury's Financial Crimes Enforcement Network (FinCEN). While CAI supports the act's goal of enhancing transparency to combat money laundering and terrorist financing, it contends the law's broad application unjustly includes community associations — entities vastly different from traditional corporations or businesses.

“CAI is committed to advocating for the interests of community associations and their volunteers,” said Thomas Skiba, CAE, CAI's chief executive officer. “The Corporate Transparency Act's requirements impose unnecessary and substantial burdens on volunteer-run community associations and threaten their ability to serve their residents effectively. We believe community associations were not the intended targets of this law, and in the absence of regulatory relief, we are taking this legal step to protect these vital communities.”

After extensive efforts to work with the U.S. Department of the Treasury and the Financial Crimes Enforcement Network and to lobby for the securing of an exemption, CAI filed the lawsuit against the Treasury Department.

The lawsuit challenges the application of the CTA to community associations and highlights several key issues:

- **Exemption from the Corporate Transparency Act:** Communities should be exempt from the act's reporting requirements, as they are considered nonprofit organizations under section 528 of the IRS code.
- **Improper Rulemaking Procedures:** FinCEN issued FAQs without following proper notice-and-comment procedures required by the Administrative Procedure Act, making these rules

invalid.

- **Arbitrary and Capricious Action:** FinCEN's refusal to exempt community associations from the CTA is arbitrary and capricious, as it fails to consider the low risk of illicit financial activity by such entities.
- **Constitutional Violations:** The act violates communities' constitutional rights under the Fourth, Fifth, and Ninth Amendments by requiring invasive personal disclosures without adequate privacy protections or sufficient cause.
- **Overreach of Federal Powers:** The act unlawfully usurps state authority to regulate corporate formation and governance, exceeding the federal government's constitutional powers.
- **Equal Protection Violation:** The act discriminates against community associations by not exempting them as nonprofit organizations, unlike similar entities under section 501(c) of the IRS code.

The lawsuit argues the act imposes excessive administrative and financial burdens on the more than 75.5 million Americans living in 365,000 community associations across the U.S. These nonprofit entities, primarily governed by volunteer homeowners, would be required to report board members' sensitive personal information to the federal government. Self-managed communities face even greater challenges due to a lack of clear compliance guidance. ?

As of now, new community associations must file immediately, while existing associations are required to submit their information by Dec. 31. As the law is currently active, community associations should adhere to these compliance deadlines as mandated. Noncompliance, whether intentional or accidental, could result in severe penalties, including fines up to \$10,000 and imprisonment of up to two years. Adhering to the act's requirements also increases communities' administrative costs and puts volunteers at risk for mishandling sensitive information.

CAI argues these factors could lead to significant disruptions in the governance and operation of community associations across the country and discourage volunteerism.

"Requiring community associations to comply with the Corporate Transparency Act not only diverts resources away from community governance and service but also poses a chilling effect on volunteerism," Skiba continues. "We are asking the court to recognize the constitutional violations, overreach of federal powers, and equal protection violations related to the Corporate Transparency Act and community associations."

CAI's lawsuit is a significant step in advocating for the distinct needs of community associations across the nation. As the case proceeds, CAI remains committed to keeping its members and the public informed about the developments and is optimistic the court will recognize the unique nature of community associations.

For more information on the lawsuit and how community associations can get involved or support CAI's efforts, visit www.caionline.org/Advocacy/Priorities/CTA/Pages/landing.aspx.

