2024 No. 2

CAI Northern Ohio Chapter Quarterly Newsletter

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MESSAGE FROM THE PRESIDENT

It is amazing how fast Summer is going by. Before we know it, Fall will be upon us, and we will be working on fully funding reserves, contract and budgets for 2025. If you are like me, I feel like this was just done last week and here we go again!

We hope you found our June 14, 2024 seminar on the Corporate Transparency Act informative. We want to give a special thank you to Nick Meinert and Eric Haneberg for their work on this presentation. A copy of the PowerPoint presentation is attached.

The CTA continues to be a controversial issue. On May 20, 2024, CAI filed an Amicus Brief in the United States Court of Appeals for the 11th Circuit. CAI has taken the position that the Anti-Money Laundering Act and CTA are not intended to apply to Community Associations. Be sure to be on the lookout for emails from National CAI on this topic. Recently you should have received an email from CAI directly encouraging everyone to reach out to their District Representatives and ask them to vote in favor of removing Community Associations from the Corporate Transparency Act. If you have not already done so, please consider providing this information to your boards so they can reach out as well. Remember, our voices are heard louder when there is a magnitude of voices rather than a few.

Our next program is on Friday, August 23. 2024 - 11:00am - 1:15pm. Additional information and registration instructions are included as an attachment to this email.

Be sure to mark your calendar for our social event to be held on Friday, September 13, 2024. This will be held at Pins Mechanical on 25th Street in Cleveland from 2:00pm - 4:00pm. This will be a fun event to relax with some of our friends in the industry. This will also be our Trade Show this year as well. Additional information and registration instructions will be sent out in late-August.

Enjoy the rest of your summer! We hope to see you on August 23, 2024.

Tiffany Owen, President
Northern Ohio Chapter Community Associations Institute

Baptism by Fire

By Kasi Cox, CMCA, AMS. Reprinted from *Common Ground* May/June 2024

A building fire devastated an Ohio community almost three years ago. What lessons can be learned from the slow and frustrating recovery and the journey to get residents back into their homes?

The last thing a community association manager wants is a phone call from the emergency after-hours service saying there's a fire in your community. On a beautiful summer evening three years ago, I received that call.

Hidden Lake Association is a 277-unit condominium community in Columbus, Ohio, consisting of one-to-three bedroom units. It was built in the 1970s as an apartment complex and converted to condominiums in the early 1980s. It is a well-maintained but aging community with an annual budget of more than $1.6 million.

This fire destroyed seven units in an 18-unit building. Although this was not the community's first fire, it was the most destructive to date. All unit owners suddenly became homeless.

It has been a learning experience for everyone.

A LONG JOURNEY

Normally, when an event like this happens, the conventional advice is to contact the insurance company immediately. Then, the board chooses a contractor for repairs with the contractor and insurance company working out the details.

Unfortunately, Hidden Lake's documents called for competitive bidding in catastrophic circumstances. This turned out to be very difficult as every contractor we contacted told us they did not function that way. We sent out a bid request to more than a dozen companies and received a total of one response, which happened to be from the company the insurance company suggested. Since the fire, homeowners have voted to pass an amendment removing this provision for any future catastrophic events.

Understandably, everyone wants to return to their unit as soon as possible. For a fire of this magnitude, returning to your home could take years. There were many reasons for our delay. First, the city fire inspector needs to investigate the scene. The insurance company will also send its own investigators to evaluate the damage. After that, each unit owner's insurance company reviews the scene. We tried to coordinate all 18 insurance investigators on the same day and were mostly successful. That took a solid month.

Next, the association's insurance company's engineer came out to determine the scope of work. Was it a repair or a complete tear down and rebuild? This took another two weeks. After that, we issued the bid request to contractors. We gave potential contractors a deadline of approximately five weeks to submit proposals. No bids were submitted. We requested more bids. By the time we received the one and only bid, several months had passed since the fire.

Once the contract was signed and paperwork finalized, the contractor's project manager and architect started work on drawings. It took about two months for the drawings to be created and submitted to the city to start the permitting process. Two months later, the city required additional drawings. The drawings were finally approved in June 2022 – almost a full year after the fire. Once work began, additional problems were discovered, and additional permits were needed.

We discovered precision and accuracy is essential when working with insurance. Check over all documents before proceeding with repairs. Be sure to verify the insurance company includes all the association's responsibilities in its proposed work order. Don't assume the company read, understood, and incorporated all the community's responsibilities in its plan.

This was an assumption we made. The insurance company received a copy of our declaration and bylaws prior to issuing a policy. We assumed they would include everything in the work order that they were required to cover. It wasn't until the original contractor was almost finished when I asked, "When are the utilities scheduled?"

The insurance company apparently didn't realize it was the association's responsibility to get utilities into each unit. At that point, the board decided to let the current contractor finish their scope of work and then bring in other contractors to do the utility work.

Again, we began a bidding process. We collected all the bids received and sent those to the insurance company for authorization, which started a battle regarding responsibility.

One-and-a-half years after the fire, we are still fighting. The board decided to start work anyway. Luckily, the community had a healthy reserve fund to pay vendors as work was completed. Our goal was always to get unit owners back in their homes as soon as possible.

In June 2023, the association completed most of the utility work and gave unit owners the OK for their personal contractors to start repairs in individual units. As of January, only eight units have made the repairs needed to obtain an occupancy certificate.

UNANTICIPATED EVENTS

Previously, the community withstood six other fires throughout its 40+ year history, which is one reason the community had a bare walls insurance policy. None of the previous fires were as severe. This was the first time fire department water trucks were not sufficient and fire hydrants in the community were used to douse the flames.

Using the fire hydrants created a hammering effect on the water main within the community. In the six weeks after the fire, we experienced three major water line breaks that required shutting down the water for multiple days with each break. The community had access to water from the lake to flush toilets. Drinking water had to be purchased.

The water issue was not considered part of the insurable event. The association spent more than $105,000 for plumbing, asphalt, and landscaping repairs over a six-week period.

Additionally, Ohio law requires associations to fully fund reserves unless the majority of homeowners vote to waive funding that year. As the association was spending money to make repairs without reimbursement from insurance in a timely manner, the board was forced to ask owners to waive funding. Thankfully, in 2023, a majority voted to waive the requirement; a special assessment would have been needed if the measure failed.

LESSONS LEARNED

When a high claim is made, plan for the insurance company to decline to renew your policy. The association was kicked into the high-risk category. The insurance company we finally found increased the deductible twofold. The premium of $72,000 jumped to $240,000 in one year, necessitating a special assessment. The next year? It increased another $30,000 that we were able to budget for. We will continue budgeting for high premiums for the next five years. Monthly maintenance assessments have risen each year as well.

It's also important to know what the statute of limitations is for insurance claims in your state. We battled the insurance company for the work we were responsible for after the fire. The insurance company had outside counsel review the documents and made their final offer. We rejected the offer, presented reasons for the rejection, and proposed a compromise. Insurance sent us a check as "final" payment. We refused to cash it. This scuffle went back and forth for a few months. And then, the insurance company ghosted us. As we approached the two-year anniversary of the fire, the company was refusing to respond to emails or calls.

After a few interesting discussions with the association attorney, the board decided to file a lawsuit against the insurance company. The board didn't want to go to trial – the lawsuit was designed as a maneuver to bring the insurance company back to the table and settle. After two-and-a-half years, we are close to a reasonable settlement.

We are grateful no one was seriously injured the night of the fire, although some residents did lose pets to smoke inhalation. Since the fire, only eight of the 18 homeowners in the impacted building still live in the community. Some homeowners didn't want to deal with the headaches and sold to house flippers who did not obtain the necessary permits to repair units properly.

Those not directly affected by the fire still got smacked with surprise repairs. For example, the fire was in the middle of the building, but insurance determined that the entire roof needed to be completely removed, including the trusses. All six units on the top floor were suddenly without electrical, ductwork, insulation, and anything else that ran though the attic.

Having lived through my own fire back in the early 1990s, I was able to relate to homeowners who were suddenly homeless. I sincerely hope no one ever has to experience a catastrophic event like a major fire. Daily issues came up, and we were forced to scramble to find answers. Trying to keep unit owners updated and calm wasn't always easy. Hopefully, by the time you read this, most of them will be back in their homes.

Artificial intelligence: How Can Communities Safely Harness the Technology?

By Dana M. Wilkie. Reprinted from CAI's Online Blog, April 4, 2024

Artificial intelligence remains an elusive concept to many, including those in community associations. That doesn't mean community association board members and managers can't learn about it. Or that they can't use it now with a little bit of forethought and determination.

Take the following examples of how artificial intelligence could make the job of a board—and the lives of homeowners—a whole lot easier.

Imagine the scenario: A pipe bursts inside an empty condominium unit and floods the building. Sensors detect the break and send instant alerts to staff that allow them to assess the flooding and push a single button to summon a trusted plumber and clean-up crew to the home.

Or take a popular device like Alexa. With a voice command during a board meeting, relevant documents display on your virtual screen. Another prompt sends a link to the document to all community residents.

"AI is the future of our industry because it keeps costs down, allows the management company to stay competitive from a pricing standpoint, and helps the manager recruit talent because the jobs are more rewarding," says Cat Carmichael, PCAM, with Strategy 1 2 3 in Broomfield, Colo.

For community associations, artificial intelligence can help with gathering, consolidating, and interpreting information, says Nicholas Bartzen, a community association attorney with Bartzen Rosenlund Kasten in Chicago. "If it helps managers do their jobs more efficiently, and helps boards collect necessary information more cost effectively, then AI should be a tool in the toolbox of each community association," he says.

Embracing AI makes sense for community associations despite the barriers, says Carmichael, a past CAI president. "The key to making bots work is having a robust database that the software can search and provide an answer. This is one of our industry's weaknesses now."

Still, community association professionals and leaders worry AI interferes with an essential element of the industry—building community.

Homeowners might use AI to promote false ideas among association members and taint trust in boards and managers, says Jeff Westendorf, a community manager in West Des Moines, Iowa.

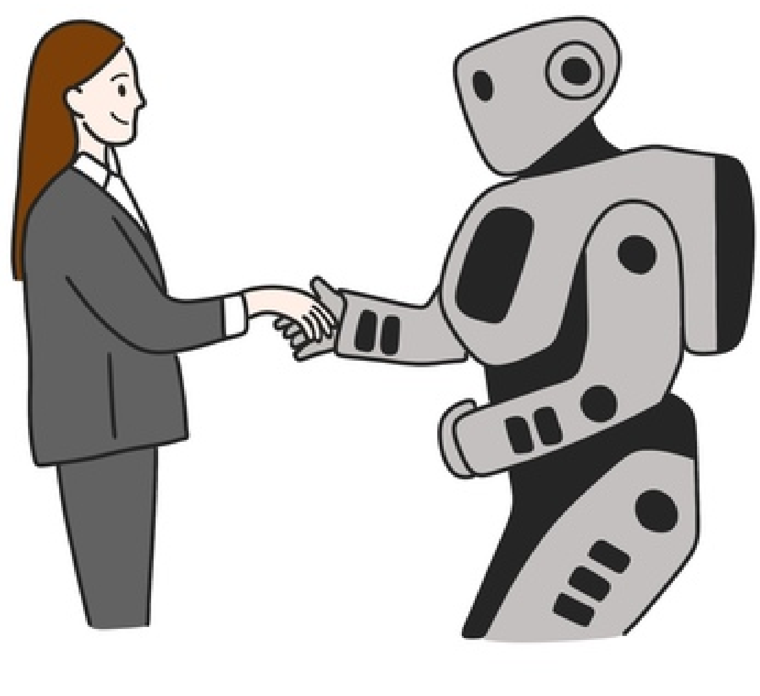
Janet Newcomb, president of Springhurst Townhomes Homeowners Association in Huntington Beach, Calif., and a past chair of the CAI Homeowner Leaders Council, worries relying too much on AI may do a disservice to the community. “I worry a lot about accuracy of response, customer frustration, and the possibilities of increased conflict generated by such a system,” she says.

A lack of understanding about AI and its long-term effects can have a powerful impact. “As an insurance and risk management professional, AI scares me,” says Joel Meskin, CIRMS, an attorney and managing director of community association products at The McGowan Companies in Fairview Park, Ohio.

Using AI in community association law is another sticky area, according to Scott D. Weiss, an attorney in Nashville, Tenn. If a board uses AI to compose amendments, fine policies, board resolutions, and other legal documents, Weiss wonders if AI will recognize restrictions that federal, state, and local laws placed on the language in its documents.

Boards also must consider practical governance issues surrounding AI. Mitchell Drimmer, president of Axela Technologies in Miami, believes “An AI policy should establish guidelines for implementing and managing AI technologies within the community, fostering trust, and minimizing potential risks.”

Drimmer urges boards to review and understand the purpose and goals of AI for their community and consider issues such as informed consent, data security, and procedures for addressing bias and discrimination. Policies should be reviewed and updated periodically as technology improves and goals change, he adds. Despite the uncertainty, it’s clear that boards and managers will have to acknowledge—if not embrace— AI technology going forward.



H.R. 4035/S. 2623 - The Corporate Transparency Act Effective Date

EXEMPT COMMUNITY ASSOCIATIONS FROM BENEFICIAL OWNERSHIP INFORMATION (BOI) REPORTING REQUIREMENTS AND DELAY IMPLEMENTATION

The Anti-Money Laundering/Corporate Transparency Act that passed in 2021 and related Business Ownership Information (BOI) reporting requirements unintentionally apply to more than 350,000 local volunteer-driven, homeownership non-profit organizations in the United States.

Community associations, also known as homeowners associations, condominium associations, and housing cooperatives are usually organized as state non-profit corporations therefore, are swept into the Business Ownership Information (BOI) reporting requirements of the Anti-Money Laundering/Corporate Transparency Act.

The non-profit corporation has shareholders (every owner in the community). The owners pay their fair share of the non-profit corporation's expenses by paying assessments. Further, the owners select, by election, the board of directors to make decisions on their behalf. The Corporate Transparency Act exempts non-profits that hold an IRS non-profit tax determination. Community associations are incorporated as a local state non-profit corporation; however, they usually do **not** have a non-profit tax determination by the IRS (i.e., 501c).

The U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN) published a statement recognizing the charitable sector that operates domestically presents a low risk for money laundering terrorism financing risk.

The Corporate Transparency Act intends to detect and report suspicious activity including predicate offenses to money laundering and terrorist finance, to facilitate tracking money that has been sourced through criminal or terrorist activity to safeguard the national security and the financial system of the U.S.

This Act was not intended to apply to volunteer-driven nonprofit corporations that are locally based with the sole purpose of providing municipal-like services to residents.

HOW TO SUPPORT

1. Exempt community associations from the Act and the subsequent Beneficial Ownership Information (BOI) reporting requirements.
2. Support **H.R. 4035/S.2623**; delay implementation of the Beneficial Ownership Information (BOI) reporting requirements.
3. Require Treasury to maintain confidentiality of the individual corporate filings of the Beneficial Ownership Information (BOI) reporting.

For more information, contact:

Dawn M. Bauman, CAE
Chief Strategy Officer
Community Associations Institute (CAI)
dbauman@caionline.org

John Buscher
Senior Consultant
Cornerstone Government Affairs
jbuscher@cgagroup.com

NORTHERN OHIO CHAPTER

community

ASSOCIATIONS INSTITUTE

Corporate Transparency Act Compliance

Nicholas J. Meinert, Esq., Legislative Action Committee

Eric Haneberg, Legislative Action Committee

Corporate Transparency Act Origins

- Enacted by Congress on January 1, 2021, as part of the National Defense Authorization Act.
- Intended to help prevent and combat money laundering, terrorist financing, corruption, and tax fraud.
- FinCen is a Bureau of the United States Department of the Treasury that collects and analyzes information about financial transactions in order to combat domestic and international money laundering and terrorist financing.

Corporate Transparency Act
Who Must Comply

- All “Reporting Companies” in the United States with bank accounts.
  - All companies registered with secretary of state that does not fit exceptions.

Corporate Transparency Act
Who Must Comply

Is the Association a "Reporting Company" pursuant to the CTA?

- YES!!!!

Are management companies and business partners?

- MAYBE. Does your company meet the exceptions?
- If yes, you must report on the **Beneficial Owners** and basic financial information.

Corporate Transparency Act Exceptions

- **There are exceptions. BUT**
- <u>Corporations (like associations) don’t fall under them, unless:</u>

1. You have more than 20 FTEs
2. Filed a Federal Income tax return with more than $5 Million in Gross Receipts
3. Operating presence at a physical office in the US

Corporate Transparency Act
Who are Beneficial Owners?

Any individual who:

- Directly or indirectly through any contract or relationship:

1. Exercises substantial control
2. Owns 25% or more of the entity.

Corporate Transparency Act
Beneficial Owners

- **Substantial Control:**

A. Officers

B. Directors

C. Definition -31 CFR § 1010.380(d)(1)

Corporate Transparency Act Reporting

- **Each Beneficial Owner must Report:**

A. Full Legal Name
B. Date of Birth
C. Current Resident or Business Address
D. Either an identifying number (passport or driver's license number) or FinCen identifier
E. Also must upload a copy of the document verifying the number (passport or driver's license)

Corporate Transparency Act Information Submission

- **Ways to Submit:**

A. Through FinCen website (Website Form or Upload PDF) – Submitter name, email and certification

B. Third party secured portal

Corporate Transparency Act Information Submission

Submission Considerations

A. Only one submission per association, so need a central person/entity to submit on Association's behalf

B. Two sources of submission liability:
   - Submitting correct and complete information
   - Holding and storing personal identifiable information (*pii*)

Corporate Transparency Act Information Submission

▶ When to Submit

A. Reporting companies have until the end of 2024 to submit for the first time (recommend doing so during Q3)

B. Thereafter, reporting companies must submit updated information annually, and within 30 days of any change in beneficial owners (e.g. board changes)

Corporate Transparency Act
Penalties

- **Non-Compliance:**

A. Not more than $500 for each day that the violation continues. Including updating information.
B. Up to $10,000, imprisoned for not more than 2 Years or Both.
C. Penalties for false information filings and not filing or updating.

Corporate Transparency Act

- **What if Board Members Refuse to Provide Information?**

A. Board can pass rule requiring directors to provide required information
B. Remaining directors could levy enforcement assessment against non-complying director
C. Condominium boards can amend bylaws without an owner vote to require as a qualification to serve on the board

Corporate Transparency Act

- **CTA Uncertainty**

A. One court in the US has found unconstitutional, but that ruling only applies to that case

B. Still possible for Congress to delay implementation, but unlikely, so Associations need to plan

Thank you!

And now, time for QUESTIONS