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## NEWS & VIEWS

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July 2024

## Does the Corporate Transparency Act Apply?

By Brian D. Moreno, Esq., CCAL

Many professionals in our industry have inquired regarding whether community associations are subject to the Corporate Transparency Act (CTA). The answer, in general, is that most community associations will likely be required to comply with the CTA given the new law's broad definition of a "reporting company," which includes all corporations, limited liability companies, and other entities formed or registered to do business in the United States.

The CTA is a law designed to help law enforcement investigate potential money laundering by requiring millions of U.S. and non-U.S. entities to file a form with the U.S. Financial Crimes Enforcement Network identifying, among other information, the natural persons who are beneficial owners of the entity.

The CTA provides for 23 "exemptions;" however, those exemptions will not apply to most community associations unless the Association was formed under section 501(c) of the Internal Revenue Code - the Association's CPA should be consulted on this point. That said, as noted below, there are federal cases that call into question the constitutionality of the CTA.

Assuming the CTA applies, it mandates that reporting companies disclose certain

personal information of individuals who exercise control over the Association. The personal information may include the board members' full legal name, date of birth, and residential or business street address. Community associations may need to report the personal information of individuals who own or control 25% or more of the Association, such as developers, or management companies to the extent that such companies are exercising control over the Association.

Existing community associations will have until January 1, 2025, to submit their initial reports. After the initial registration, associations will have 30 days from the date a person becomes a board member for that person's information to be filed with FinCEN. Associations formed after January 1, 2024, must file their reports within 90 calendar days of formation.

Community associations should be proactive and begin to identify each individual within the Association who may need to disclose. Association board members can register directly on the FinCEN website for themselves, or the association can retain a third party provider to handle the registration at a cost).

One possible bit of good news for community associations is that

on March 1, 2024, a federal district court in Alabama ruled that the Corporate Transparency Act is unconstitutional. The ruling enjoins enforcement of the CTA only as to the parties to the case. The court concluded that the CTA is unconstitutional because it exceeds Congress' enumerated powers (i.e., the Commerce Clause, the taxing power, and the Necessary and Proper Clause) and does not provide sufficient authority for the CTA.

On March 11, 2024, the Justice Department appealed the ruling. While this litigation is ongoing, the U.S. Financial Crimes Enforcement Network will continue to implement the Corporate Transparency Act as required by Congress.

The Community Associations Institute (CAI), the only national organization that consists of HOA members and HOA service industry vendors, is also actively pursuing an exemption for CIDs. In addition, they are seeking an extension on the initial filing deadline and they are also considering a lawsuit similar to the NSBA case. There is no assurance that any of these efforts will be successful prior to the deadline.



*"Does the Corporate Transparency Act Apply?": continued on page 7.*

**Only six months remain until the deadline for compliance with SB326 on January 1, 2025. As a resource to companies providing the inspection service, you may go to <https://www.bevenandbrock.com/board-member/> See #20.**

# How to Get Your HOA On Board with Reserve Funding

By Robert Nordlund, PE, RS, Association Reserves, Founder/CEO



As a member of your HOA board, you shoulder significant responsibilities, facing the relentless force of deterioration. Your role is pivotal in preserving and enhancing your community's value and well-being. Drawing from our "Get On Board" webinar, equip yourself and the board with these tools for effective community management. Explore the duties you (and the homeowners) carry, and learn how to respond to your fellow board members so you can make sure your community is taken care of with reserve funding!

## The HOA Board VS Owner's Responsibilities

As board members, your community's assets are at stake and your ability to defend against deterioration is crucial. Your role as an HOA board member comes with significant responsibilities and powers that differ from owners. It's your duty to care for the common areas, ensuring they are maintained, repaired, renovated, restored, and replaced when necessary. As outlined in your governing documents, be it in your CC&Rs or

bylaws, this forms the foundation of your role and authority to act in the best interests of the entire community. There are no limitations or "ifs." You have the power to take care of the common areas for the benefit of all current and future owners.

## The Business Judgment Rule

With the weight of your responsibilities, it's more than recommended to follow the

as a stark reminder of the critical importance of adequately funding and managing HOA reserves to protect your community. Remember that you are the first line of defense, and your actions directly impact the well-being of everyone in your community, including the HOA board.

To fortify your defenses, you must understand your two essential tools: your budget and your message. These tools, when used effectively, can align HOA board members and homeowners behind a successful reserve funding strategy that safeguards your community, rather than drowning it in expensive risks.

Here are the best responses to common concerns that often hinder proper reserve



business judgment rule: the duty of care, the duty of loyalty, and the duty of inquiry. By demonstrating care in your decision-making, loyalty to the association, and a willingness to seek guidance when needed, you ensure that the law is on your side for every decision you make.

## Being a Corporate Officer

Many board members did not initially join the board with the intention of becoming corporate officers. Nevertheless, you now bear the responsibility of overseeing a multimillion-dollar real estate entity. This is challenging, especially when dealing with untrained volunteer board members. But nothing is worse than leaving your HOA unprepared and paying the price later.

## When the HOA Board Doesn't Have Reserve Funding

Ignoring or underfunding reserves can have dire consequences, as demonstrated by the tragic events of Champlain Tower South in 2021. In that incident, 98 lives were lost due to the neglect of maintenance at an oceanfront property. It serves

funding:

**"We can't afford reserve funding."**

One popular concern is the claim that reserve funding is financially unachievable. In response, emphasize that the cost of deterioration does not disappear when ignored. The association will eventually have to pay for repairs either through ongoing budgets or special assessments. Either way, you are paying a price - it's a matter of choosing which. Reserve funding doesn't increase costs; it simply ensures that expenses are spread out more evenly. Additionally, highlight the long-term benefits, such as increased property values and reduced costs of deferred maintenance, which outweighs the initial investment.

**"Reserve funding is too expensive."**

Some individuals may perceive reserve funding as a luxury beyond their means. Counter this misconception by showcasing the tangible benefits of proper maintenance. Share examples

*"How to Get Your HOA On Board with Reserve Funding": continued on page 6.*

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# Insurance Market Caused Changes in Financing of Condos

By Timothy Cline



Recent developments in the insurance market will have an impact on owners who are looking to sell in homeowner associations that have been forced to purchase insurance due to a non-renewal of their prior policy. The two primary underwriters of most mortgages in the country, Fannie Mae and Freddie Mac have recently announced new insurance requirements for loans that they underwrite.

Fannie Mae and Freddie Mac are *Government Sponsored Enterprises* that guarantee most of the mortgages. Historically, they were private companies operating with government permission and under government regulation. In late 2008, following the financial crisis, the U.S. government took over operations at both companies.

Loan guarantees from Fannie Mae and Freddie Mac reduce risk for lenders who make loans and investors who purchase them. These loans are more affordable and contributes to the availability of 30-year fixed-rate loans. Loans that are not eligible for Fannie Mae or Freddie Mac guarantees are typically more expensive. The lending market in the US is greatly impacted by changes that are made by Fannie and Freddie.

The following changes are being implemented for applications after June 1, 2024. HOA board members need to be aware of these changes due to the fact that if owners who wish to sell are not able to due to buyers' inability to obtain financing it will create pressure on boards to conform to the requirements of lenders.

Given the very significant increases that have occurred over the past two years in the insurance industry, common-interest developments and their insurance agents have been required to become very creative in how they replace the non-renewed coverage. The changes described below may impact the policies that have been

purchased. The new requirements are:

1. **Replacement Cost Claim Settlement Is Mandatory**

The master property insurance policy must provide for claims to be settled on a replacement cost basis. Property insurance policies that provide for claims to be settled on an actual cash value basis are not acceptable. Policies that limit, depreciate, reduce, or otherwise settle losses at anything other than a replacement cost basis are also not acceptable.

2. **Special Attention Must Be Paid To The Perils Insured**

("BASIC" Coverage Form is not acceptable). Master property insurance coverage policies covering project developments should be written on a "Special" coverage form or equivalent. At a minimum, the coverage must include the perils covered by a commercial "Broad" coverage form, which must include the following perils: fire, lightning, explosion, windstorm, hail, smoke, aircraft, vehicles, riot, civil commotion, vandalism, sprinkler leakage, sinkhole, volcanic action, falling objects, weight of snow, ice or sleet, water damage.

3. **Buying Additional Stand-Alone Coverage May Be Necessary.**

If a master property insurance policy excludes or limits coverage of any of the required perils, the HOA must obtain an acceptable stand-alone property insurance policy which provides adequate coverage for the limited or excluded peril.

4. **A "Loss Limit" On Certain Perils Will Not Qualify.**

The lender or servicer must verify that the property insurance coverage amount is at least equal to 100% of the replacement cost value of the project improvements, including common elements and residential structures, as of

*"Insurance Market Caused Changes in Financing...": continued on page 7.*



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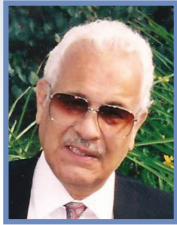
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# The 10 Biggest Mistakes Associations Make – The View Of A Roofing Consultant

By Carl Brown, RCI, RRO



Roofing replacement and other large waterproofing projects are generally the more expensive projects that association boards

management, especially those who have earned their professional designation. However, there is no formal training for them in management of construction projects.

It takes years of training and experience to be a competent construction manager.

Many of the largest management firms have a policy against their managers performing project management for construction due to high liability exposure for the firm.

face. Such projects are done only occasionally at an association. Because of the importance and cost of such work, boards need to avoid as many complications as possible. This article covers the ten biggest mistakes a board can make in initiating such projects.

## 1. Soliciting Bids Without Specifications

This mistake results in bids that cannot be compared, causing confusion and poor decision making. A specification must be complete and detailed for large projects and prepared by an architect or roofing consultant. The job specifications should be prepared only after the final product selection is made. Product manufacturers' specifications are generic and cannot contain all the special details that every project has. The details are critical for roofing projects.

## 4. Giving Large Advance Deposits for Materials to Contractors

Many associations are led to believe they are obligated to give contractors material deposits before starting the project. This is a mistake that can place the association's funds in jeopardy. All successful contractors have credit accounts with their suppliers, usually for 30 days or more. If a bidder cannot fund its payroll until the first payment, the association should reconsider doing business with that company.

## 2. Signing a Contract Prepared by a Contractor Without Consulting the Association's Legal Counsel

This mistake is made by many associations attempting to save money. All major contracts should have at minimum, a thorough review and comment by counsel.

## 5. Making Progress Payments Based on Percentage of Completion instead of Measurable Completed Work

Measuring the amount of progress in percentage is difficult for both parties, especially for the association and its manager. A good rule is to pay only for pre-agreed benchmarks of construction completed and materials verified onsite. The best benchmarks are finished work!

Even better is to have the association attorney write the contract. Roofing can be more complex than other types of work, especially related to warranties. A roofing contract is usually the largest one an HOA will ever have to sign.

## 6. Failure to Start Planning 3 - 5 Years in Advance of Need

This is a common mistake, and there are many reasons this can happen. Five years is not too early to start planning a major roof project. Better planning can help to limit or eliminate emergency assessments, disgruntled members, and excess

## 3. Asking the Manager to be the Project Manager for a Major Construction Project

Community Managers are well trained in the duties of association

*"The 10 Biggest Mistakes..": continued on page 5.*

"The 10 Biggest Mistakes...": continued from page 4.

cost, not to mention delay causing high emergency repair costs.

**7. Accepting the Lowest Bid without Evaluating all Bids, including Interviews with Bidders**

Associations try to save themselves personal time by simply selecting the low bid, assuming all contractors are the same and bids are the same, which is not true. The lowest bid may have critical exclusions that could result in the highest final cost! Metal flashings can vary widely from contractor to contractor, and they are critical for waterproofing. Reusing metal components is sometimes suggested as a way to reduce the roof cost, but it is a poor idea. These components are some of the lowest-cost parts of the roofing system.

**8. Believing that City Inspectors will Validate the Installation**

The typical city permit/inspection service is severely limited by just inspection of the final product. The City Inspector cannot possibly see what is under the roof covering. Seldom do the city inspectors make sufficient job-in-progress visits to verify the work is done per code or manufacturer's specifications. Further, city inspectors may not actually go up on the roof.

**9. Making the Final Payment Without Obtaining the Closeout Documents (Permit, Warranty, Lien Releases)**

The closeout documents should be demanded, and a final payment withheld until they are in the manager's hands and verified correct for the project. There are two kinds of warranties: workmanship and product, and they must be different documents. Nearly all local city or county building departments provide a signed-off permit card when they are notified the roof is done.

**10. Assuming All Roofs are Equal and All Contractors are Equal**

All roofs are custom fabricated onsite to some degree or other.

Most roofs are assembled one nail at a time by a real person with tools. Installers have their good and bad days like all humans. Roofing is both



art and science. Workmanship must meet industry standards, which are produced by industry consensus groups like NRCA and WSRCA.

**THE BOTTOM LINE:**

- Get a current roof condition survey by an independent roof professional to start the process.
- Retain professional help (roof consultant or architect) for guidance with product selection.
- Obtain complete custom specifications for your project, not generic specifications.
- Obtain Bids from pre-qualified contractors who have experience with the product you have selected (not request for proposals).
- Obtain a roofing contract from your attorney or an independent roofing professional.
- Arrange for independent service to monitor the contractor's work and provide final approval.

Carl Brown is a Senior Vice President with AWS Consultants Inc. and can be reached at [cbrown@awsconsultants.com](mailto:cbrown@awsconsultants.com).

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of past investments that led to increased property values and homeowner satisfaction. Emphasize that reserve funding is a smart financial choice that protects the community's assets and prevents more extensive and expensive repairs in the future.

***"Why should I participate in reserve funding if I won't be living here when repairs or replacements happen?"***

Occasionally, board members argue against funding reserves, especially if they plan to move in the near future. In response, convey the importance of fairness and shared responsibility. Explain that reserve funding isn't about paying for the distant future; it's about offsetting the ongoing deterioration of common areas while residents

live in the community right now. Everyone pays their fair share for what they are using during their occupancy.

***"But funding is not required in my state."***

When confronted with the claim that reserve funding isn't mandatory in your state, remind board members and homeowners that state law doesn't halt the natural deterioration of common areas. Stress the responsibility of the board to ensure proper maintenance and protect property values. Encourage a proactive approach rather than relying solely on legal mandates. Don't just follow the law, but think: what do I want from my association? Do I want my property values maximized? What do I need to do to move my association forward? Along with that, take a critical walk around and ask yourself, do you like what you see? And are we prepared for what's ahead?

***"Homeowners won't approve it."***

Where homeowners have the final say over the budget, some board members might express concern about obtaining homeowner approval for reserve funding. To address this, use your power where you can and incrementally increase assessments however possible. Meanwhile, improve your messaging and communicate the necessity of paying the "deterioration bill". Consistently educate homeowners about inflation, the ongoing deterioration of common areas, and the tangible benefits of reserve funding. Show them that a little bit each year will prevent larger special assessments down the road.

***"Our HOA board doesn't know what to do."***

For boards struggling with the complexity of reserve funding, remember the duty of inquiry within the business judgment rule. Find out what you should do, ask questions, and get professional help when needed. Reserve funding is not guesswork; it's based on solid information about your association's components and their expected lifespans. Continuously update your reserve study and adapt to changing circumstances,

like inflation or unexpected events, to ensure everyone is adequately prepared. If you want help from highly experienced reserve study professionals, don't hesitate to get us on your team.

While it may feel like a lot of work, the rewards of maintaining your HOA property through properly funded reserves are both life-changing and measurable:

**1. HOA Board Peace of Mind**

One of the intangible rewards of properly funded HOA reserves is the peace of mind it brings. Knowing that your family and neighbors are safe and that your property is well taken care of can relieve a significant burden. With reserves in place, you can address maintenance and repair needs promptly, ensuring the safety and enjoyment of your community.

**2. Stop Special Assessments**

Properly funded reserves eliminate the need for special assessments. When you have the necessary funds readily available, projects can be completed without causing financial strain on homeowners. This leads to smoother board meetings, quicker project execution, and a happier community overall.

**3. Reduce HOA Liability Exposure**

While not legal advice, it's essential to understand that maintaining your property responsibly can lower your liability exposure. Following governing documents and adhering to the business judgment rule significantly reduces the risk of legal challenges. When you make prudent decisions as a board member, you can sleep peacefully knowing you've minimized potential disputes and liabilities.

**4. Raise HOA Property Values**

Perhaps one of the most compelling rewards of properly funded HOA reserves is the substantial increase in property values. Curb appeal plays a vital role in determining property values, and well-maintained common areas



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*"Does the Corporate Transparency Act Apply?": continued from page 1.*

There is a bill pending in the US Senate as of June 1, 2024 which is S.3625. We would encourage you to contact your Senators. A similar bill in the House of Representatives (H.R. 4035) has already been passed.

In sum, community associations will need to continue to comply with the CTA and should be proactive with regard to the requirements of the act in advance of the January 1,

2025 submission deadline.

It should be noted that non-compliance could result in civil penalties of \$500.00 per day and criminal penalties of up to \$10,000.00 and 24 months in prison. Board members need to be very aware of this issue to remain in compliance.

Brian D. Moreno, Esq., CCAL is an experienced litigator, community association attorney, and real estate professional having practiced in all areas since 2003. Brian can be

contacted at [bdm@moreno.law](mailto:bdm@moreno.law).

#### Additional resources:

FinCEN FAQ: <https://www.fincen.gov/mandatory-e-filing-faqs>

How to file: <https://www.fincen.gov/boi>

Inform your US Senator of your opinion on this: <https://www.votervoicenet.com/CAI/Campaigns/108066/Respond> ❖

*"How to Get Your HOA On Board with Reserve Funding": continued from page 6.*

can substantially enhance the attractiveness of your community. A study conducted in 2017 found that well-funded associations experienced a 12.6% higher home value. This means that your modest reserve contributions can translate into thousands of dollars in increased home values.

5. **HOA Community Spirit**  
Properly funding reserves fosters a sense of community spirit and pride of ownership. Communities that invest in

maintaining their appearance tend to experience less friction and tension during HOA board meetings. With fewer deferred maintenance issues and the ability to complete projects promptly, homeowners are more likely to take pride in their community and share their great experience with others.

By sufficiently funding HOA reserves, you can enjoy a myriad of rewards, both tangible and intangible. From financial peace of mind to higher home values, your efforts directly impact the quality of life for all community members. Remember that you have

been entrusted with the tools and responsibilities to safeguard your association's assets and maximize property values. By effectively communicating the importance of reserve funding to homeowners, you can ensure that your community thrives, property values soar, and everyone enjoys a well-maintained and financially stable HOA.

Robert Nordlund is a registered professional engineer, and has been involved in the Community Association industry since 1982. Robert founded Association Reserves, Inc. in 1986. ❖

*"Insurance Market Caused Changes in Financing...": continued from page 3.*

the current property insurance policy effective date.

5. **New Deductible Term(S)**  
The maximum allowable deductible for all required property insurance perils is 5% of the master property insurance coverage amount. When a master property insurance policy includes multiple deductibles, such as a separate deductible that applies to windstorms, or a separate

deductible that applies to a specific property element such as the roof, the total amount for such deductibles applicable to a single occurrence must be no greater than 5% of the insurance coverage amount.

If the coverage you currently have in place does not meet these new requirements, please contact us or your insurance agent to see about getting quotes for additional coverage. If your agent is not able to help, we are here.

Timothy Cline is one of the

foremost authorities on insurance for common interest developments. He is CEO of the Cline Agency Insurance Brokers, with offices in Los Angeles and Portland, Oregon. Mr. Cline can be reached at [cline.agency@clineagency-newsletters.com](mailto:cline.agency@clineagency-newsletters.com).

Another resource that may also be consulted on HOA insurance issues is John Sinner and he can be reached at: [john.sinner.b8h5@statefarm.com](mailto:john.sinner.b8h5@statefarm.com). ❖

### About this newsletter:

HOA News and Views has been published and provided free of charge to board members in Los Angeles county for over 30 years. This issue is our 120th.

The newsletter is distributed quarterly during the first week of each quarter. If you do not receive it, and you have received it in the past, please let us know at [HOANewsletter@bevenandbrock.com](mailto:HOANewsletter@bevenandbrock.com). We do not remove names unless requested.

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## BEVEN & BROCK NEWS & VIEWS for Homeowner Associations

### HOA BOARD MEMBER EDUCATION

Education for volunteer HOA board members is essential for success as board members. Due to the ever-increasing complex and changing nature of the laws and regulations that impact common-interest-developments staying on top of these changes greatly increases a board's member ability to succeed in their role, and operate in confidence

There are several ways for board members to be educated, and Beven & Brock offers training for board members.

#### UPCOMING DATES:

**Fall 2024 Date not set at this time.**

Free three-hour training course for current and prospective HOA board members. A course syllabus and informational handouts are provided. This CAI-sanctioned class is taught by its co-creator Kelly Richardson, Esq. CCAL of Richardson Ober, and is co-sponsored with the Community Associations Institute. Seating is limited, and reservations may be made by emailing: [BoardTraining@bevenandbrock.com](mailto:BoardTraining@bevenandbrock.com). Priority is given to current Beven & Brock managed associations due to space limitations.

#### A RESOURCE AVAILABLE FOR HOA BOARDS!

Beven & Brock is pleased to announce the availability of a new resource for Homeowner Association Boards to find information on topics of interest as needed on demand. Over 135 articles have been taken from prior newsletters and gathered in one place, located at <https://www.bevenandbrock.com/topical-article-library/>. The topics are organized into categories, such as Legal, Meetings, Board, Reserves, Insurance, Community, Elections, Maintenance, Management and other subjects.

This area of the website requires a simple one-time registration, and once that is completed, you can freely access a number of articles on a variety of topics that have appeared in *HOA News and Views* over the past eight years. This resource will help HOA Board members to become educated in an easy and accessible way. The goal is to help boards make well-informed decisions in a variety of challenges that they may encounter.



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