



# COHA Seminar November 19, 2024

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# Michigan's Marketable Record Title Act

# Marketable Title

- ❖ Owner must establish that they have an “unbroken chain of title” to property.
- ❖ A “chain of title” is the historic sequence of transfers of title to a property
- ❖ An “unbroken” chain of title refers to having a deed or a series of deeds to the current owner with nothing in the record purporting to “divest” or take away the owner’s title to the property.
- ❖ In 1945, the State legislature enacted the MRTA to permit title examiners to go back only 40 years.

- ❖ Owners often included restrictions in the actual deed transferring the property. Although this form of individual deed restriction is no longer common, current deeds still often use generic statements like “subject to easements and restrictions of record,” which effectively incorporate the older deed restrictions by reference.

# 2019 Amendment to MRTA

- ❖ Some title companies believed this type of generic incorporation by reference made it necessary to expand the title search beyond the 40-year period despite the MRTA provisions.
- ❖ Under the amendment, for a generic incorporation by reference like “subject to easements and restrictions of record” to validly preserve a restriction recorded outside the 40-year period, a document recorded within the 40-year period must specifically reference the liber and page of the document containing the restriction that is recorded outside the 40-year period.

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# Potential Problems

- ❖ The 2019 MRTA amendments may void restrictions contained in subdivision declarations or condominium master deeds/bylaws recorded more than 40 years ago.
- ❖ While references to eliminating aged homeowner association restrictions did not make it to the final form of the MRTA amendment, the discussion is still a part of the written legislative history and current commentary.

# Recommendations

- ❖ Associations should not take the chance that the Declaration restrictions will be wiped out and deemed unenforceable if challenged on this basis by an enterprising owner.
- ❖ For those with Declarations recorded over 40 years ago and never amended, the Association should pursue:
  - An amendment to the Declaration and/or
  - A Notice of Claim
- ❖ New extended deadline: **September 29, 2025**



# The Michigan Homeowners' Energy Policy Act

# Overview of the Homeowners' Energy Policy Act

- ❖ Key Dates: Approved by the Governor on July 8, 2024; effective early 2025.
- ❖ Purpose of the Act
  - u To invalidate certain provisions in homeowners' association agreements that prohibit energy-saving improvements or modifications.
  - u To allow the installation and operation of solar energy systems without undue restriction.



# Overview of the Homeowners' Energy Policy Act

## ❖ Definitions

- u "Energy-saving improvements or modifications" (e.g., clotheslines, heat pumps, insulation, solar water heaters, etc.)
- u "Solar energy systems" and components (e.g., solar panels/collectors, solar storage mechanisms)

# Key Provisions of the Act

- ❖ Inapplicability to Shared Roofs and Common Areas
  - u Act does not apply to energy-saving improvements or modifications or solar energy systems on shared roofs or in common areas.
  - u Explanation of "shared roofs" and "common areas" and implications for associations.



# Key Provisions of the Act

- ❖ Invalidation of Restrictive Provisions
  - u Provisions in governing documents prohibiting or requiring approval for energy-saving improvements are invalid.
  - u Associations cannot enforce such provisions, except in common areas or on shared roofs.

# Key Provisions of the Act

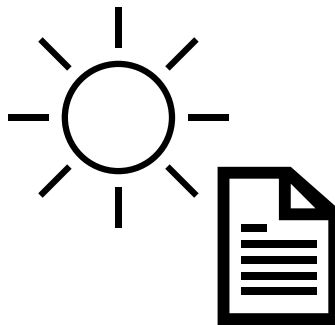
- ❖ Rights to Install Solar Energy Systems
  - u Restrictions on members' rights to install solar energy systems are limited.
  - u Prohibition of conditions that impair system operation or require excessive fees.





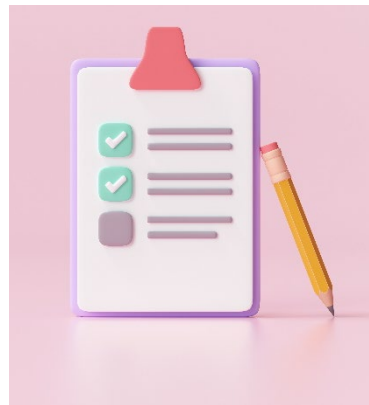
# Required Actions for Compliance

- ❖ Adoption of a Solar Energy Policy Statement
  - u All associations must adopt a written solar energy policy within one year of the Act's effective date.
  - u Policy requirements: Must not conflict with other laws, allow for installation on roof faces, avoid specifying manufacturer, and ensure minimal cost and efficiency impact.



# Required Actions for Compliance

- ❖ Establishing an Application Process
  - u Clear process and timelines for members to apply for solar energy system installations.
  - u Requirement for prompt response to applications; failure to respond allows members to proceed with installation.



# Situations Where Associations Can Deny Application

- ❖ Specific conditions under which applications can be denied
  - u Installations on shared roofs
  - u Systems extending beyond roof dimensions or not conforming to roof slope.
  - u Non-conforming aesthetics (e.g., frame colors).
  - u Installations violating law or not conforming to approved applications.



# Required Actions for Compliance

- ❖ Communication of the Policy to Members
  - u Ensure all members are informed about the new policy via website, direct communication, and availability on request.
- ❖ Maintenance and Repair Conditions
  - u Reasonable conditions may be imposed on solar energy system maintenance, but they must not be more burdensome than for non-solar projects.

# Penalties for Noncompliance

- ❖ Consequences of violating the Act
  - u Potential civil actions against associations by members.
  - u Possible court awards for damages, attorney fees, and costs.



# Conclusion and Next Steps

- ❖ Recap of key changes and compliance steps
- ❖ Importance of policy/modification of older policies that don't comply
- ❖ Encouragement for associations to seek legal guidance to ensure full compliance





# Corporate Transparency Act Compliance

# What is the Corporate Transparency Act?

- ❖ **Federal Law:** the Corporate Transparency Act (“CTA”) is administered by FinCEN (Financial Crimes Enforcement Network)
- ❖ **Purpose:** increase disclosure of corporate entity ownership to help combat illicit activities like money laundering, terrorist financing, and tax evasion through shell companies



# What does the CTA Require?

- ❖ **Reporting Company:** any of the following (subject to exemption)
  - u Corporation (including Nonprofit Corporations)
  - u Limited liability company
  - u Other entity created under laws of a U.S. state or Indian tribe by the filing of a document with a secretary of state or similar office
  
- ❖ **Disclosure Beneficial Ownership Interests:** must disclose “beneficial ownership interests” (“BOI”) in entities that qualify as a “reporting company”

# Certain Exemptions

## Potential Applicable Exemptions:

### 1. **Large Operating Company:** all the following must apply:

- u More than 20 full-time employees in the U.S.
- u Operating presence at a physical office in the U.S.
- u Filed a federal income tax return demonstrating more than \$5 million in gross receipts or sales from sources within the U.S.
- u Some larger management companies may qualify for exemption based on the above criteria

### 2. **501(c) Tax Exempt Entity**

- ❖ Recent guidance from FinCEN confirms that most community associations are classified as “reporting companies” and must submit beneficial ownership interest

## Who is a “beneficial owner”?

An individual who either directly or indirectly:

- 1. Substantial Control:** exercises substantial control over a reporting company; or
- 2. 25% Ownership:** owns or controls at least 25% of reporting company’s ownership interests

u Associations – Board of Directors

u Management companies – corporate leaders/owners

# Completing Report/BOI Directly with FinCEN

## ❖ What reporting company information is reported?

- u Corporate Name
- u Any D/B/A Name, if applicable
- u EIN
- u Business Address

## ❖ What personal information is reported?

- u Name
- u Date of Birth
- u Address
- u ID (e.g., Driver's License / Passport)
  - o *Social Security Number is not required!*

## ❖ Link to FinCEN BOI online

- u <https://boiefiling.fincen.gov/fileboir>

# Working with MAGWV to Submit BOI Reports

## ❖ **MAGWV has made BOI reporting easy for associations**

- u Online system
- u Board member personal information confidential – other board members need not handle or otherwise have access to this information
- u MAGWV processes company and board member information
- u MAGWV will provide a copy of filing confirmation
- u Cost for initial filings is \$375\*
- u Cost for updated BOI report is \$125\*

## ❖ **What we need to get started**

- u Association's EIN
- u Names and emails of all board members
- u Send to [BOI@maglawpllc.com](mailto:BOI@maglawpllc.com)
- u Once we have this information, MAGWV will handle all processing and follow up – there is no need for management involvement once this information is provided

\*Cost is subject to change

# Filing Deadline

## ❖ Reporting Deadline: January 1, 2025

- u Must also file a new BOI form **within 30 days of change** in beneficial ownership interest (e.g., election/appointment of new board member)
- u No annual reporting requirement
- u Time is running short – get it done now.

## ❖ Who will have access to the reported information?

- u U.S. Federal agencies engaged in national security, intelligence, or law enforcement
- u U.S. Treasury officers and employees
- u State, local, and Tribal law enforcement agencies
- u Certain foreign officials who submit a request through a U.S. Federal government agency, for authorized activities related to national security, intelligence, and law enforcement
- u Financial institutions subject to customer due diligence requirements, but only with consent of the reporting company
- u Significant penalties for wrongful disclosure

# Penalties for Noncompliance

## ❖ Penalties for Failure to file BOI

- u Civil penalty up to \$500 for each day
- u Criminal penalty of imprisonment for up to two years and/or a fine of up to \$10,000

## ❖ Who is responsible?

- u Senior officers of an entity that fails to file a required report may be held accountable
- u Board member who refuses to provide information: “A person may be subject to civil and/or criminal penalties for willfully causing a company not to file a required BOI report or to report incomplete or false beneficial ownership information to FinCEN. For example, an individual who qualifies as a beneficial owner or a company applicant might refuse to provide information, knowing that a company would not be able to provide complete beneficial ownership information to FinCEN without it.”

- ❖ **Safe harbor:** If a person has reason to believe that a report filed with FinCEN contains inaccurate information and voluntarily submits a report correcting the information within 90 days of the deadline for the original report

# Is the CTA Here to Stay?

- ❖ Alabama Federal District Court ruled that the CTA is unconstitutional, but that holding only applies to the plaintiff in the case.
- ❖ Western District of Michigan: *Michigan Small Business Association v. Yellen*.
- ❖ CAI National is lobbying for filing extension and exemption for community associations and pursuing litigation.



# Questions & Answers

*Thanks for joining us today!*