

Dear Stewart Partners,

As we once again tackle our usual Nor'easters, this week's Mid-Week Update reviews the U.S. Treasury Department's new requirements for certain companies to report beneficial owners effective as of January 1, 2024 and private road transactions in Vermont. We are also providing a link to a learning opportunity from the Mortgage Bankers Association and a cybersecurity update from ALTA.



**Effective January 1, 2024: Corporate Transparency Act Requiring Beneficial Ownership Reporting for Certain Businesses** By: Kate Fletcher, Assoc. Senior Underwriting Counsel and CT Underwriter

Overview:

The Corporate Transparency Act (CTA), which was enacted as part of the Anti-Money Laundering Act of 2020 (AMLA), was created to combat illegal activities such as money laundering, terrorism financing and other illicit activities. Specifically, beginning January 1, 2024, the CTA will require certain companies to disclose its "beneficial owners" - and in some instances, its "company applicant" - to the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN). The reported information, known as beneficial ownership information, will be submitted to a national registry which can be accessed by certain authorities and organizations. This is distinct from the FinCEN reporting requirements that policy issuing agents have had to comply with when handling certain transactions in Massachusetts and Connecticut.

Generally, a "beneficial owner" means a natural person who, directly or indirectly, exercises substantial control over or receives substantial economic benefits from a corporation or limited liability company or owns 25 percent or more of the equity interests of a corporation or limited liability company. The CTA applies to a broad range of entities ("Reporting Companies"), domestic and foreign, including corporations, limited liability companies, and other similar structures. There are exemptions for certain entities, such as publicly traded companies, registered investment companies, certain regulated entities, and inactive entities. We urge you to learn the specifics of such exemptions to help you determine whether your business or clients' businesses fall under the scope of the CTA. A "company applicant" is any individual who directly files the document that creates the domestic reporting company or registers a foreign reporting company, and the individual who is primarily responsible for directing or controlling such filing if more than one

individual is involved in the filing. Only Reporting Companies created or registered on or after January 1, 2024, will need to report their Company Applicants.

*Beneficial Ownership Information (BOI) to be Reported:*

A Reporting Company must report the following in each BOI report:

- (i) about itself: (1) legal name, (2) trade name, (3) business address, (4) jurisdiction information, and (5) US Internal Revenue Service taxpayer identification number.
- (ii) about its Beneficial Owners and Company Applicants: (1) legal name, (2) date of birth, (3) residential address, and (4) an identification document with a unique identifying number (e.g., passport or driver's license).

After the initial filing of a BOI report, if there is any change in the information about the Reporting Company or its Beneficial Owners, the Reporting Company must file an updated BOI report no later than 30 days after the date of the change. A Reporting Company is not required to file an updated report for any changes to previously reported information about a Company Applicant.

*Filing Deadlines:*

The following sets forth filing deadlines:

- (iii) A Reporting Company formed before January 1, 2024 will have until January 1, 2025 to file the BOI report;
- (iv) A Reporting Company formed after January 1, 2024, but before January 1, 2025, must file the BOI report within 90 days after receiving actual or public notice that the company's creation or registration is effective, whichever is earlier;
- (v) A Reporting Company formed after January 1, 2025, must file the BOI report within 30 days after receiving actual or public notice that the company's creation or registration is effective; and
- (vi) Any updates or corrections to beneficial ownership information that was previously filed with FinCEN must be submitted within 30 days.

As of the date of this Midweek Update, there is no requirement to file a BOI Report annually (however, after the initial report is filed, updated or corrected reports must be filed as set for above).

*Fees and Penalties:*

As of the date of this Midweek Update, there is no fee for submitting BOI reports to FinCEN.

Reporting violations (e.g., false reporting or failure to report) can lead to civil or criminal penalties for a Reporting Company and certain individuals associated with it.

*Closing Thoughts:*

The foregoing summary is not a complete discussion of the details surrounding the new CTA requirements and BOI report filings with FinCEN. For more information, please refer to

FinCEN's Beneficial Ownership Information Reporting website:

<https://www.fincen.gov/boi>. The site provides numerous reference materials and guides.



**Private Road Transactions in Vermont** By: Jill Spinelli, Esq., Assoc.  
Senior Underwriting Counsel and VT Underwriter

The Vermont Supreme Court in *Rawley, et al. vs. Heymann*, 2023 VT 64 took a fresh look at the allocation of road maintenance obligations for property owners who share a private road in a decision issued last month. The decision, which is discussed in detail below, offers a few insights and reminders for real estate attorneys when handling private road transactions.

The *Rawley* case was decided on Summary Judgment with relatively straightforward facts. The private road with dead-end cul-de-sac, known as Purple Mountain Road, serves seven properties, five of which are owned by the Plaintiffs and two are owned by the Defendants.

Each of the parties agreed that they must contribute to road maintenance, but disagreed as to the amount. The Plaintiff/Appellant argued that the maintenance obligation should be based on the distance from each property to the public road while the Defendant/Appellee argued for an equal allocation among the seven properties.

There was some evidence proffered in the Motions for Summary Judgment about earlier road-maintenance agreements that were signed by some but not all of the owners as well as evidence about how road maintenance obligations had been allocated in prior years. Notwithstanding, the lower court determined that without a current and express road-maintenance agreement, the statute governing private roads (19 V.S.A. § 2702) must control.

The relevant language in the statute provides,

*In the absence of an express agreement or requirement governing maintenance of a private road, when more than one person enjoys a common benefit from a private road, each person shall contribute rateably to the cost of maintaining the private road... (emphasis added)*

The lower court determined that because each of the property owners had unrestricted use of the entire road at any time, and that they shared the benefit of living on a road that is not a thoroughfare, a "rateable share", under the facts presented, meant an "equal share", and found in favor of the Defendant.

On appeal, the Vermont Supreme Court upheld the lower court's decision. Based on its earlier precedent in *Kahn v. Alpine Haven Prop. Owners' Ass'n*, 2020 VT 90, the Court set forth the standard for determining that a "rateable share" is what is "reasonable and equitable" given the benefit that each owner receives. The Court held that the lower court was reasonable in applying an equal distribution standard for unrestricted use.

The *Rawley* decision serves as a reminder for real estate attorneys to pay careful attention when handling private road transactions. First, it's important to know whether a subject property is located on a private road. This is public information and should be discovered

from the public records when conducting the title search. Once you know whether the property is served by a private road, the maintenance obligations should be outlined in one of the following places:

1. By Road Maintenance Agreement. Where there is a Road Maintenance Agreement, carefully read it to ensure that it is executed by all the appropriate parties and that you understand how the road maintenance fees are allocated. Some Road Maintenance Agreements allocate equally, proportionally based on use, or by some other formula. Make sure you and your client understand what the formula is and seek clarification where there is ambiguity. Additionally, the Road Maintenance Agreement should also be recorded in the Land Records.
2. By Language in the Deed. Some deeds set forth the road maintenance formula in the text of the deed. It is important to be sure that the exact language is used in each of the property deeds that are benefited by the private roadway. In Rawley, for instance, six of the seven lots contained language as to how the road maintenance should be allocated (i.e., “Grantee will bear their proportionate share of the repair and maintenance of the road.” Emphasis added.). But the lower court ultimately ignored this language since it was not contained in each of the seven properties that the private road serves.
3. By Statute. When there is no express road maintenance agreement or language contained in the deed, the default road maintenance obligation is found in 19 V.S.A. § 2702, the statute relied on by the court in Rawley. While Rawley does not establish a per se rule that a “rateable share” will mean an “equal share” the following were the factors the court used to determine that the use of the road was unrestricted and therefore an equal distribution was appropriate:
  - Is the use of the private road restricted by some or all of the owners?
  - Is the private road a thoroughfare?
  - Does the private road have a cul-de-sac that could be used as a spot to turn-around by guests, emergency vehicles, and delivery services/couriers?

With respect to title insurance, be sure that the terms and conditions of any Road Maintenance Agreement are taken as exceptions in Schedule B of the title policy, as well as any specific deed language regarding road maintenance obligations. Where no agreement or deed language exists, the title insurance policy exception should read as follows:

“The Insured Property is served by \_\_\_\_\_ (insert private road name here). There are road maintenance obligations related to the use of said private road, which shall be assigned in a manner that is consistent with those provisions set forth in 19 V.S.A. § 2702 or by agreement of all property owners benefitted by said private road. This Policy shall not cover any loss or damage resulting from any dispute related to the manner or allocation of said road maintenance obligations.”

When it comes to private road transactions, adequate research and discussion with your client will serve as the best defense to a Rawley-type dispute.

The full text of the Rawley decision can be viewed here:

<https://law.justia.com/cases/vermont/supreme-court/2023/23-ap-003.html>



## **Mortgage Bankers Association's 2024 Economic Forecast**

Michael Fratantoni, MBA's Chief Economist and Senior Vice President will be presenting at the upcoming Economic Forecast Series event on January 26, 2024 at 2:00PM. Topics discussed will be nationwide housing demand, current events impacting the housing market, and the trajectory of mortgage foreclosures and delinquencies.

This event is sponsored by Softpro and is free to the public.

Register here: <https://www.thelegaldescription.com/TLD/economic-forecast-michael-fratantoni-2024.aspx#>



## **Cybersecurity update from ALTA**

ALTA's Information Security Work Group is monitoring and identifying trends in cybersecurity incidents impacting the real estate market. To this end, ALTA is urging all real estate professionals to use extreme caution when opening e-mails from all sources, including known sources. The following are suggestions provided by ALTA to remain vigilant:

- Ensure you're using strong, unique, and at least 14-character passwords or passphrases for each account.
  - Utilize Multi-factor Authentication (MFA) on every account where it is available.
  - Verify that user accounts which don't need administrator access do not have administrator roles. Check with your IT support team if you don't know what this means -it is important!
  - Hover over every link to see where it would take you before you click on it.
  - Verify the authenticity of an email before clicking a link, opening an attachment, responding, or providing any requested information.
1. Determine the sender's telephone number from a source other than the email (like the company website, for example).
  2. Call and verify.
  3. Be particularly careful when replying to emails on your mobile phone – it can be difficult to see the actual email address of the sender.
- Stay vigilant and be aware of common tactics used by attackers, like creating a sense of urgency, pretending to be unavailable for a call, or asking for help in a suspicious way. If something doesn't feel right, trust your instincts, and double-check before taking action.
  - Patch all your systems. Check with your IT support team if you don't know that this means – it is important!
  - Review business practices to discover any risks and identify any changes to make.

- Educate ALL employees on their security responsibilities.
- Have a business continuity plan, an incident response plan, and a routine to test your backups regularly.
- If anything seems not right, reach out to your IT support team immediately!

ALTA has resources available on their website for reviewing and implementing cybersecurity measures, so be sure to take advantage of these. You can find ALTA's latest Advisory statement with the suggestions contained herein, at: [ALTA - Cybersecurity Advisory from ALTA's Information Security Work Group](#)



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