



# Was It Cupid, or Are the Markets Just Hot?

February 25, 2025

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# The Corporate Transparency Act's Reporting Obligations Are Back in Force

February 25, 2025



By **Dean Berry**  
Partner | Private Wealth



By **Christian Larson**  
Special Counsel | White Collar Defense and Investigations



By **Keyes Gilmer**  
Associate | Global Litigation

The Corporate Transparency Act's (CTA) reporting obligations are back in effect after a nationwide court order blocking the CTA's implementing regulations was stayed on February 17, 2025. Most reporting companies are now required to file beneficial ownership information (BOI) reports by March 21, 2025.<sup>1</sup> Reporting companies should be prepared to file by the new deadline, even though that deadline could be extended by the U.S. Department of Treasury's Financial Crimes Enforcement Network (FinCEN) or by legislation moving through Congress.

On February 17, 2025, the U.S. District Court for the Eastern District of Texas, citing a recent Supreme Court order in *McHenry v. Texas Top Cop Shop, Inc.*, granted a stay of an order that blocked implementation of the CTA's implementing regulations, including the BOI filing deadline.<sup>2</sup> The next day, FinCEN issued a notice announcing new BOI reporting deadlines.<sup>3</sup> FinCEN's notice states that most reporting companies must file BOI reports by March 21, 2025.<sup>4</sup>

FinCEN's notice notes several exceptions to the March 21, 2025 deadline. Reporting companies that previously received a reporting deadline later than March 21, 2025, may still file their initial BOI reports by the later deadline.<sup>5</sup> For example, for any reporting company that qualifies for disaster relief related to Hurricane Debby, Francine, Helene, or Milton, the reporting deadline remains April 23, 2025.<sup>6</sup> In addition, plaintiffs in *National Small Business United v. Yellen*, No. 5:22-cv-01448 (N.D. Ala.)—namely, members of the National Small Business Association as of March 1, 2024—are not currently required to file BOI reports.<sup>7</sup>

While the CTA is back in effect with a new reporting deadline, several pending developments could affect the CTA's scope and deadline. FinCEN's notice states that between now and the March 21, 2025, reporting deadline, the bureau "will assess its options to further modify deadlines, while prioritizing reporting for those entities that pose the most significant national security risks."<sup>8</sup> In addition, legislation pending in Congress, if enacted as law, would delay the reporting deadline to January 1, 2026, for all entities formed before January 1, 2024.<sup>9</sup> Finally, FinCEN has announced plans, without elaboration, "to initiate a process this year to revise the BOI reporting rule to reduce burden for lower-risk entities, including many U.S. small businesses."<sup>10</sup>

The constitutionality of the CTA remains on appeal in the Eleventh Circuit, where a U.S. district court in Alabama found the CTA unconstitutional, and in *Texas Top Cop Shop* in the Fifth Circuit, where oral argument is scheduled for April 1, 2025.<sup>11</sup> In Michigan, Oregon, and Virginia, U.S. district courts have denied preliminary injunctions with respect to the CTA.<sup>12</sup> In Maine, a U.S. district court granted summary judgment, holding that the CTA is a valid exercise of congressional power.<sup>13</sup>

For now, the CTA and its implementing regulations remain enforceable. We will continue to monitor developments as they occur.

<sup>1</sup> FinCEN Notice, FIN-2025-CTA1, *FinCEN Extends Beneficial Ownership Information Reporting Deadline by 30 Days; Announces Intention to Revise Reporting Rule* (February 18, 2025) [hereinafter *FinCEN Extension Notice*], available at <https://fincen.gov/sites/default/files/shared/FinCEN-BOI-Notice-Deadline-Extension-508FINAL.pdf>.

<sup>2</sup> Order, *Smith v. U.S. Dep't of the Treasury*, No. 6:24-cv-336-JDK (E.D. Tex. Feb. 17, 2025), ECF No. 39.

3 FinCEN Extension Notice, *supra* note 1.

4 *Id.*

5 *Id.*

6 See FinCEN Notice, FIN-2024-NTC8, *FinCEN Provides Beneficial Ownership Information Reporting Relief to Victims of Hurricane Debby; Certain Filing Deadlines in Affected Areas Extended Six Months* (Oct. 29, 2024), available at <https://fincen.gov/sites/default/files/shared/FinCEN-BOI-Notice-Debby-508FINAL.pdf>; FinCEN Notice, FIN-2024-NTC9, *FinCEN Provides Beneficial Ownership Information Reporting Relief to Victims of Hurricane Francine; Certain Filing Deadlines in Affected Areas Extended Six Months* (Oct. 29, 2024), available at <https://fincen.gov/sites/default/files/shared/FinCEN-BOI-Notice-Francine-508FINAL.pdf>; FinCEN Notice, FIN-2024-NTC10, *FinCEN Provides Beneficial Ownership Information Reporting Relief to Victims of Hurricane Helene; Certain Filing Deadlines in Affected Areas Extended Six Months* (Oct. 29, 2024), available at <https://fincen.gov/sites/default/files/shared/FinCEN-BOI-Notice-Helene-508FINAL.pdf>; FinCEN Notice, FIN-2024-NTC11, *FinCEN Provides Beneficial Ownership Information Reporting Relief to Victims of Hurricane Milton; Certain Filing Deadlines in Affected Areas Extended Six Months* (Oct. 29, 2024), available at <https://fincen.gov/sites/default/files/shared/FinCEN-BOI-Notice-Milton-508FINAL.pdf>.

7 *Beneficial Ownership Information*, FinCEN, available at <https://fincen.gov/boi> (last accessed Feb. 19, 2025).

8 FinCEN Extension Notice, *supra* note 1.

9 The House passed the *Protect Small Businesses from Excessive Paperwork Act of 2025* (H.R. 736) unanimously on February 10, 2025. A companion bill, S.505, is still pending in the Senate.

10 FinCEN Extension Notice, *supra* note 1.

11 Notice of Appeal, *Nat'l Small Bus. United v. Yellen*, No. 5:22-CV-1448-LCB (N.D. Ala. Mar. 11, 2024), ECF No. 54; Clerk's Memorandum, *Texas Top Cop Shop, Inc. v. Bondi*, No. 24-40792 (5th Cir. Feb. 11, 2025), ECF No. 220-1.

12 Case Management Order, *Small Bus. Ass'n. of Mich. v. Yellen*, No. 1:24-cv-314 (W.D. Mich. Apr. 26, 2024), ECF No. 24; Notice of Appeal, *Firestone v. Yellen*, No. 3:24-CV-1034-SI (D. Or. Nov. 18, 2024), ECF No. 19; Notice of Appeal, *Cmt'y. Associations Inst. v. Yellen*, No. 1:24-CV-1597 (MSN/LRV) (E.D. Va. Nov. 4, 2024), ECF No. 41.

13 Order on Cross-Motions for Summary Judgment, *Boyle v. Bessent*, No. 2:24-CV-00081-SDN (D. Me. Feb. 14, 2025), ECF No. 51.

# To Pay, or Not to Pay, the Co-op's Attorneys' Fees; That Is the Question

February 25, 2025



By **Steven M. Herman**  
Senior Counsel | Real Estate



By **Katheryn Pereyra-Caldwell**  
Associate | Real Estate

On January 28, 2025, the New York Appellate Division, First Department refused to enforce a contractual provision that required a tenant-shareholder to pay a co-op's attorneys' fees in all lawsuits that the tenant-shareholder might bring against the co-op. In *Kasowitz, Benson, Torres & Friedman, LLP v. JPMorgan Chase Bank, N.A.*, the court held that the attorneys' fee award provision in the proprietary lease was unconscionable and unenforceable because it could apply to any claims brought by the tenant-shareholder, regardless of the co-op's default or the merit of the lawsuit.

The tenant-shareholder had acquired an apartment unit in a residential cooperative corporation. At the time of purchase, the tenant-shareholder and the co-op entered into a proprietary lease. Under this lease, the co-op was entitled to attorneys' fees (1) if the tenant-shareholder was at any time in default under the lease, and the co-op took any action based upon such default, or (2) if the co-op defended any action or proceeding (or claim therein) originated by the tenant-shareholder. Some years later, the tenant-shareholder sued the co-op for alleged racial discrimination, among other things. The co-op responded with a counterclaim invoking the attorneys' fee award provision in their proprietary lease and requested that its attorneys' fees be paid by the tenant-shareholder.

The court strictly interpreted the attorneys' fee provision. Since the tenant-shareholder was not in default at the time of the initial claim, prong (1) in the provision was not in question. In analyzing prong (2), the court held that this provision was unconscionable and unenforceable. The court reasoned that this provision could deter tenant-shareholders from pursuing legal action because it imposed financial penalties even when a co-op was in the wrong or if the claim had merit. The court clarified that its conclusion was not altered by the requirement in the lease that the fees be "reasonable" in amount.

The law regarding attorneys' fees in New York State is the "American Rule," wherein each litigant (even a prevailing litigant) bares the costs of its own attorneys' fees. Courts may, however, allow attorneys' fee-shifting provisions where authorized by statute, a court ruling or a contract. It is very typical for sophisticated parties to negotiate attorneys' fees provisions in contracts. The primary objection of the court here was that the lease expressly provided for attorneys' fees whenever the tenant-shareholder filed a lawsuit against the co-op for a default of the co-op. The moral of the story is that parties to a lease may contract for attorneys' fees, so long as such fees are not in the nature of a penalty for pursuing legal action.

## Key Takeaways: 2025 CREFC Market Insights and Forecasts

February 25, 2025



By **Teresa Long**  
Counsel | Real Estate



By **Matthew Pawling**  
Special Counsel | Capital Markets



By **Nicole Schapira**  
Associate | Capital Markets

Kicking off the new year in customary fashion, Cadwalader recently deployed a team of attorneys to the annual CREFC conference in Miami.

We are pleased to share the market insights and forecasts that our team gained there and provide them for your consideration as you make your plans to navigate 2025. We look forward, as always, to answering any questions and providing additional insights tailored to the specific needs of your organization.

There were a range of topics covered at CREFC Miami 2025. [Here are highlights](#) from what our team heard while attending panels and on the ground in South Beach.

## Emerging Hot Spots in Real Estate Practices

February 25, 2025

Cadwalader partner **Bonnie Neuman** spoke with Law360 about current trends in the commercial real estate market in an article, "Emerging Hot Spots In Real Estate Practices," published on February 12.

Data centers have quickly grown to become the focus of a significant share of the real estate deals being worked on by top law firms. Because of the complexity of these deals, they often involve additional legal practices to real estate such as energy, infrastructure, finance and construction. Beyond the lease of the data center, these deals also include many other considerations, including a typical data center user's wish for confidentiality making it challenging to meet the disclosure requirements of securities laws for data centers that are financed with commercial-mortgage backed securities.

"There's a delicate balance between meeting obligations for the minimum amount of information that needs to be provided to investors in order to satisfy securities laws, versus what confidentiality restrictions there are in the leases," said Bonnie.

It's also difficult to underwrite data centers because of rapidly changing technology.

"Data centers have very high per-square-footage valuations right now," Bonnie said. "But whether that holds over time is a real concern for financing."

The growth of data center deals over the last few years is just one way in which the real estate industry is changing. Bonnie also discussed how she learned to adapt to distress early in her career when the global financial crisis erupted in 2008.

While it was "terrifying at the time," Bonnie said, it benefited her career because it helped her understand the importance of the provisions in the documents that attorneys draft. She is seeing the same dynamic happen with younger attorneys now.

"Watching all the things that could go wrong, you understand why they happen," she said.

As the commercial real estate market has seen mounting distress over the last couple years, real estate transaction attorneys have had to work closely with litigators to make sure that complex deals hold up in a legal fight. Bonnie also discussed the way this relationship plays out.

"There's a bit of 'We don't speak the same language,' so we have to spend a minute getting ourselves reoriented and making sure that we're all kind of on the same page," Bonnie added. "You don't want your deals to go sideways, but there's something interesting about doing something a little bit different every once in a while."

Read the full article [here](#) (subscription required).

## Recent Transactions

February 25, 2025

Recent transactional highlights include Cadwalader representing:

- The lenders in the \$1.5 billion refinancing of a landmark commercial property in midtown Manhattan.
- The lenders in the \$500 million refinancing of two office condominium towers in San Francisco, which includes the corporate headquarters of a multinational transportation company.
- The lender in the \$135 million refinancing of a mixed-use members only club and retail property located in the Meatpacking District of Manhattan.