Advocus National Title Insurance Company®

OVERVIEW: FINCEN FINAL RESIDENTIAL REAL ESTATE RULE

Overview

The Financial Crimes Enforcement Network (FinCEN) is a bureau within the United States Department of the Treasury that collects and analyzes information about financial transactions to combat domestic and international money laundering, terrorist financing, and other financial crimes. On August 29, 2024, FinCEN issued its final Residential Real Estate Rule (the “RRE Rule”) regarding the reporting of non-financed residential real estate transfers to combat and deter money laundering. The rule requires, on a nationwide basis, certain persons involved in real estate closings and settlements to report information to FinCEN about specified transfers of residential real estate that are a high risk for illicit finance.

The rule requires that a “Real Estate Report” be filed for certain real property sales if the following conditions are met:

- The property is residential real property;
- The transfer is non-financed (i.e., it is an all-cash sale or the lender is not a financial institution);
- The property is transferred to a legal entity or trust (not to an individual); and
- An exemption does not apply.

The report must be filed by the later date of either (1) the final day of the month following the month in which the reportable transfer occurs; or (2) thirty calendar days after the date of closing. The requirement to report a non-financed residential real estate transfer becomes effective December 1, 2025.

The following provides a general overview of the key elements of the rule (for example, when a report is required to be filed, who must file, and when) and related administrative details. Please refer to the actual text of the final rule for further details, including important definitions.

The final rule requires that “reporting persons” performing specified closing or settlement functions in certain reportable transfers of residential real property report specified information to FinCEN about the transfer. As explained in greater detail below, this includes information about the parties to the transfer and the property itself.

Reportable Transfers of Residential Real Property

Transfers are reportable when they meet the following criteria: (1) the property is residential real property; (2) the transfer is non-financed; (3) the property is transferred to a legal entity or trust; and (4) an exemption does not apply.

Transfers meeting the rule’s requirements must be reported regardless of purchase price or the value of the property. Gift transfers are thus subject to the rule.

However, transfers made directly to an individual are not covered by this rule.

Definition of Residential Real Property

The rule applies only to residential real property located in the United States that fall under four categories.

1. It is real property located in the United States that includes a structure designed principally for occupancy by one to four families;
2. It is land in the United States on which the transferee intends to build a structure designed principally for occupancy by one to four families;
3. It is a unit designed principally for occupancy by one to four families within a structure on land located in the United States; and/or
4. It is a share in a cooperative housing corporation for which the underlying property is located on land within the United States.

Definition of Non-Financed Transfer

For a transfer to be reportable, it must be non-financed, meaning that it does not involve an extension of credit to all transferees that is both (1) secured by the transferred property and (2) extended by a financial institution subject to an Anti-Money Laundering (AML) program and Suspicious Activity Report (SAR) obligations. Transfers that are financed only by a lender without an obligation to maintain an AML program and file SARs, such as a non-bank private lender, are treated as non-financed transfers that potentially must be reported.

If reporting persons are unsure as to whether the lending institution involved in a transfer has both an obligation to maintain an AML program and to file SARs, they should reach out to that lending institution. When determining whether a transfer is non-financed and making any other determination necessary to comply with the final rule, the reporting person generally may rely on information provided by any other person if the reporting person does not have knowledge of facts that would reasonably call into question the reliability of the information.

Definitions of Transferee Entity and Transfer Trust

A transfer of residential real property must be reported if at least one of the new owners of residential real property is a “transferee entity” or “transferee trust.”

A transferee entity is defined as any person other than a transferee trust or an individual. For example, a transferee entity may be a corporation, partnership, estate, association, or limited liability company. However, certain regulated entities are exempt.

The following table summarizes the 16 exemptions:

Exemption No.	Exemption Short Title
1	Securities Reporting Issuer
2	Governmental Authority
3	Bank
4	Credit Union
5	Depository Institution Holding Company
6	Money Services Business
7	Broker or Dealer in Securities
8	Securities Exchange or Clearing Agency
9	Other Exchange Act Registered Entity
10	Insurance Company
11	State-licensed Insurance Producer
12	Commodity Exchange Act Registered Entity
13	Public utility
14	Financial Market Utility
15	A Registered Investment Company
16	Subsidiary of an Exempted Entity

A transferee trust is any legal arrangement created when a grantor or settlor places assets under the control of a trustee for the benefit of one or more beneficiaries or for a specified purpose and includes most trusts and similar foreign legal arrangements. A trust is a transferee trust regardless of whether the residential real property is titled in the name of the trust itself or in the name of the trustee. However, certain types of trusts are exempted.

The following table summarizes the four exemptions:

Exemption No.	Exemption Short Title
1	Securities Reporting Issuer
2	Trustee that is a Securities Reporting Issuer
3	Statutory Trust (such a trust is treated as a transferee entity, not a transferee trust)
4	Subsidiary of an Exempted Trust

What if there are multiple transferees, some of which are exempt?

As long as at least one of the transferees in a given transfer is a transferee entity or transferee trust, the transfer is reportable. However, the Real Estate Report only requires identifying information for the reportable transferees.

Exemptions

Exemptions are provided for certain common, lower-risk transfers. A reportable transfer does not include:

- a transfer of an easement;
- a transfer resulting from the death of an individual, whether pursuant to the terms of a decedent's will or the terms of a trust, the operation of law, or by contractual provision;
- a transfer incident to divorce or dissolution of a marriage or civil union;
- a transfer to a bankruptcy estate;
- a transfer supervised by a court in the United States;
- a transfer made for no consideration by an individual, either alone or with their spouse, to a trust of which that individual, their spouse, or both of them, are the settlor or grantor;
- a transfer to a qualified intermediary for purposes of a like-kind exchange under Section 1031 of the Internal Revenue Code; and
- a transfer for which there is no reporting person.

Note that this is not a comprehensive list of all transfers that are not reportable, and reporting persons should evaluate the specific facts of each individual transfer to determine whether it constitutes a reportable transfer under the rule.

Required Information

The final rule requires that a reporting person provide information about the transfer of residential real property identifying the following:

- The reporting person;
- The legal entity (transferee entity) or trust (transferee trust) receiving ownership of the property;
- The beneficial owners of the transferee entity* or transferee trust†;
- Certain individuals signing documents on behalf of the transferee entity or transferee trust during the reportable transfer;
- The transferor (i.e., the seller);
- The residential real property being transferred; and
- Total consideration and certain information about any payments made.

* Beneficial owners of transferee entities: To be a beneficial owner of a transferee entity, an individual must, either directly or indirectly, exercise "substantial control" over the transferee entity, or own or control at least 25 percent of the transferee entity's ownership interests. This definition is consistent with the definition of a beneficial owner in FinCEN's Beneficial Ownership Information Reporting Rule. See **https://fincen.gov/boi**.

† Beneficial owners of transferee trusts: The beneficial owner of a transferee trust is: any individual who is a trustee or otherwise has authority to dispose of transferee trust assets; a beneficiary who is the sole permissible recipient of income and principal from the transferee trust or who has the right to demand a distribution of, or to withdraw, substantially all of the assets of the transferee trust; a grantor or settlor of a revocable trust; or the beneficial owner of an entity or trust that holds one of these aforementioned positions in the trust.

Reasonable Reliance on Information Provided by Others

When determining whether a transfer is reportable and when collecting required information, reporting persons may rely on information provided by any other person, but only if the reporting person does not have knowledge of facts that would reasonably call into question the reliability of the information.

With regard to the beneficial ownership information of transferee entities or transferee trusts, this reasonable reliance standard is slightly more limited. In these situations, the reasonable reliance standard applies only to information provided by the transferee or the transferee's representative and only if the person providing the information certifies the accuracy of the information in writing to the best of their knowledge.

Determination of Reporting Persons

FinCEN expects that the obligation to file reports will generally rest with settlement agents, title insurance agents, escrow agents, and attorneys. There is only one reporting person for any given reportable transfer.

The reporting person is determined by one of the following ways:

1. Reporting cascade: The reporting cascade consists of a list of seven different functions that a real estate professional may perform in a transfer of residential real property, with the reporting obligation for any such transfer applying to the professional that performed a function that appears highest on the list.
    a. The person listed as the closing or settlement agent on the closing or settlement statement;
    b. If no person described above is involved, the person that prepares the closing or settlement statement;
    c. If no person described above is involved, the person that files with the recordation office the deed or other instrument that transfers ownership of the residential real property;
    d. If no person described above is involved, the person that underwrites an owner's title insurance policy for the transferee with respect to the transferred residential real property, such as a title insurance company;
    e. If no person described above is involved, the person that disburses in any form, including from an escrow account, trust account, or lawyers' trust account, the greatest amount of funds in connection with the residential real property transfer;
    f. If no person described above is involved, the person that provides an evaluation of the status of the title; or
    g. If no person described above is involved, the person that prepares the deed or, if no deed is involved, any other legal instrument that transfers ownership of the residential real property, including, with respect to shares in a cooperative housing corporation, the person who prepares the stock certificate.
2. Real estate professionals decide: Designed to provide flexibility to the industry and reduce potential burden, the real estate professionals that perform the functions described in the cascading list may enter into a written agreement with each other to designate the professional that will file the report for the transfer. There is no required format for a designation agreement, but it must be in writing and identify the date of the agreement, the name and address of the transferor, the name and address of the transferee entity or transferee trust, the property, the name and address of the designated reporting person, and the name and address of all parties to the designation agreement. A separate designation agreement is required for each reportable transfer. All parties to a designation agreement are required to retain a copy of the agreement for a period of five years. The reporting person is not required to file the designation agreement as part of the Real Estate Report.

Filing Real Estate Reports and Keeping Records

A report must be filed by the later date of either: (1) the final day of the month following the month in which the reportable transfer occurred; or (2) 30 calendar days after the date of closing.

The reporting person is not required to retain a copy of the report. However, they must keep for five years a copy of any certification signed by the transferee or a transferee's representative, certifying that the transferee's beneficial ownership information, as well as a copy of any signed designation agreement. Other parties to the designation agreement similarly need to keep copies of the agreement.

Estimated Time

FinCEN estimates that about 850,000 Reports will be filed annually by up to 172,753 reporting persons. FinCEN also estimates that it will take, on average, each filer about 50 minutes to institute training and technology sufficient to be able to file Reports. FinCEN further estimates that it will take, on average, about 15 minutes to file each Report. Thus, FinCEN estimates that compliance with the reporting requirement will impose a total annual burden of 356,461 hours.

Language

ALTA suggests that the following language be added to all Purchase Agreements and Commitment Schedule B forms:

For Purchase Agreement:

> *Financial Crimes Enforcement Network (FinCEN) Real Estate Reporting ("FinCEN Report") Section 1010.821 of Chapter 31 of the Code of Federal Regulations ("Code") requires that certain residential real estate transactions purchased with all cash or without institutional lender financing, where at least one buyer/transferee is a legal entity,*

limited liability company, corporation, partnership, trust, trustee, or other non-natural person, must be reported to the United States Department of the Treasury's Financial Crimes Enforcement Network (FinCEN).

IF THIS TRANSACTION IS SUBJECT TO THE FinCEN REPORT, then Seller and Buyer shall, no later than closing, provide to the company conducting the closing the information and documentation necessary to enable the closing company to complete the FinCEN Report. Such information and documentation includes full legal name, date of birth, residential street address, and the IRS taxpayer identification number of the beneficial owners of the Buyer, as further defined and described in the Code. Buyer shall also pay all costs and fees to prepare and file the FinCEN Report.

For Schedule B:

In the event that the contemplated transaction is a transaction for which a Real Estate Report is required to be submitted to the United States Department of the Treasury Financial Crimes Enforcement Network ("FinCEN Report"), then the parties to transaction (Seller(s) and Buyer(s)) shall, no later than the closing, provide to the Company the information and documentation necessary to enable the Company to complete the FinCEN Report. Such information and documentation includes full legal name, date of birth, residential street address, and the IRS taxpayer identification number of the beneficial owners of the Buyer(s), as further defined and described in Section 1010.821 of Chapter 31 of the Code of Federal Regulations ("Code").

NOTE: The FinCEN Report requires that certain residential real estate transactions purchased with all cash or without institutional lender financing, where at least one buyer/transferee is a legal entity, limited liability company, corporation, partnership, trust, trustee or other non-natural person, must be reported to the United States Department of the Treasury's Financial Crimes Enforcement Network. If the required information is not timely provided to the Company, the Company may elect to withdraw as the settlement company or otherwise be involved in the transaction.

Penalties for Non-Compliance

Failing to comply with this Order can lead to both Civil and Criminal Penalties. For Violations due to negligence, you can expect a civil penalty of not more than $1,394 for each violation, and an additional civil money penalty of up to $108,489 for a pattern of negligent activity. For willful violations, you can expect a civil penalty of not more than the greater of the amount involved in the transaction (not to exceed $278,937) or $69,733.30, as well as a criminal penalty of a term of imprisonment of not more than five years or a criminal fine of not more than $250,000 or both.

Why track these files?

Illicit actors often favor non-financed transfers (including "all-cash" sales) of residential real estate to avoid scrutiny from financial institutions that have Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) program and Suspicious Activity Report (SAR) filing requirements under the Bank Secrecy Act. Illicit actors also often hold residential real estate in the name of a legal entity or trust in an effort to obscure their identities and their ownership interests in the property. Transfers that are both non-financed and involve a transferee that is a legal entity or trust are of higher risk for money laundering and make the proceeds of crime and their owners more difficult to track and identify. The reporting of these transfers will help curtail the anonymous laundering of illicit proceeds through the purchase of residential real property, which threatens U.S. economic and national security. Building on FinCEN's long-running Residential Real Estate Geographic Targeting Orders (GTOs)—which required title insurance companies to file reports identifying the beneficial owners of legal entities that make certain non-financed purchases of residential real estate in select jurisdictions in the United States—this rule will address the demonstrated need for increased transparency and work to deter illicit use of the U.S. residential real estate market. The final rule reflects FinCEN's consideration of the comments it received in response to the notice of proposed rulemaking that was published in February 2024. Commenters included a broad array of individuals, businesses, and organizations, including trade associations, transparency groups, law enforcement representatives, and other interested parties. In response to the commenters and in order to reduce potential compliance burden, FinCEN made several amendments to the proposed rule, such as the adoption of a reasonable reliance standard with respect to information provided by others. Additionally, in order to provide flexibility for real estate professionals in complying with the rule, the rule continues to contain a "cascade" system for determining which professional has primary filing responsibility, but with a with a flexible option for industry professionals to designate compliance responsibilities. FinCEN believes that the requirements set out in the rule reflect the appropriate balance between ensuring that reports filed under the rule have a high degree of usefulness to law enforcement and minimizing the compliance burden incurred by businesses, including small businesses.

Helpful Links

Final RRE Rule: **http://bit.ly/41lcwzA**

FinCEN's RRE Fact Sheet: **http://bit.ly/3lZP2cY**

ALTA's Buyer Collection Form: **http://bit.ly/45wYAoC**

ALTA's Seller Collection Form: **http://bit.ly/4lbhhmi**