



THE ANTI-MONEY LAUNDERING REGULATIONS FOR RESIDENTIAL REAL ESTATE TRANSFERS

What Real Estate Professionals Need To Know

WHY ARE WE HERE?

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.

Source: FinCEN Fact Sheet





WHY IS THERE NOW A RULE?

In an effort to combat money laundering, the Financial Crimes Enforcement Network (FinCEN) issued a new rule for residential real estate transactions, which goes into effect on **December 1, 2025.**



WHO IS ENFORCING IT?

FinCEN is a bureau of the U.S. Department of the Treasury. The Director of FinCEN is appointed by the Secretary of the Treasury and reports to the Treasury Under Secretary for Terrorism and Financial Intelligence. FinCEN's mission is to safeguard the financial system from illicit activity, counter money laundering and the financing of terrorism, and promote national security through strategic use of financial authorities and the collection, analysis, and dissemination of financial intelligence.

source: fincen.gov

WHAT PROPERTIES ARE TO BE REPORTED?

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. Reportable property includes single-family houses, townhouses, condominiums, and cooperatives, including condominiums and cooperatives in large buildings containing many such units, as well as entire apartment buildings designed for occupancy by one to four families. The rule also requires reporting on transfers of land, such as vacant or unimproved land, on which the transferee intends to build a structure designed for occupancy by one to four families. Furthermore, a transfer of property may be reportable even if the property is mixed use, such as a single-family residence that is located above a commercial enterprise.

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 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.

Source: FinCEN Fact Sheet



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.” These categories include legal vehicles commonly used to own property, such as limited liability companies, corporations, partnerships, and trusts. Both domestic and foreign entities and trusts are covered by the reporting requirement.

Certain definitional exemptions apply for highly regulated types of legal entities and trusts that are less likely to be used by illicit actors to launder money through residential real property.



EXEMPTIONS FROM REPORTING

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.

Source: FinCEN Fact Sheet



WHO IS GOING TO BE REPORTING?

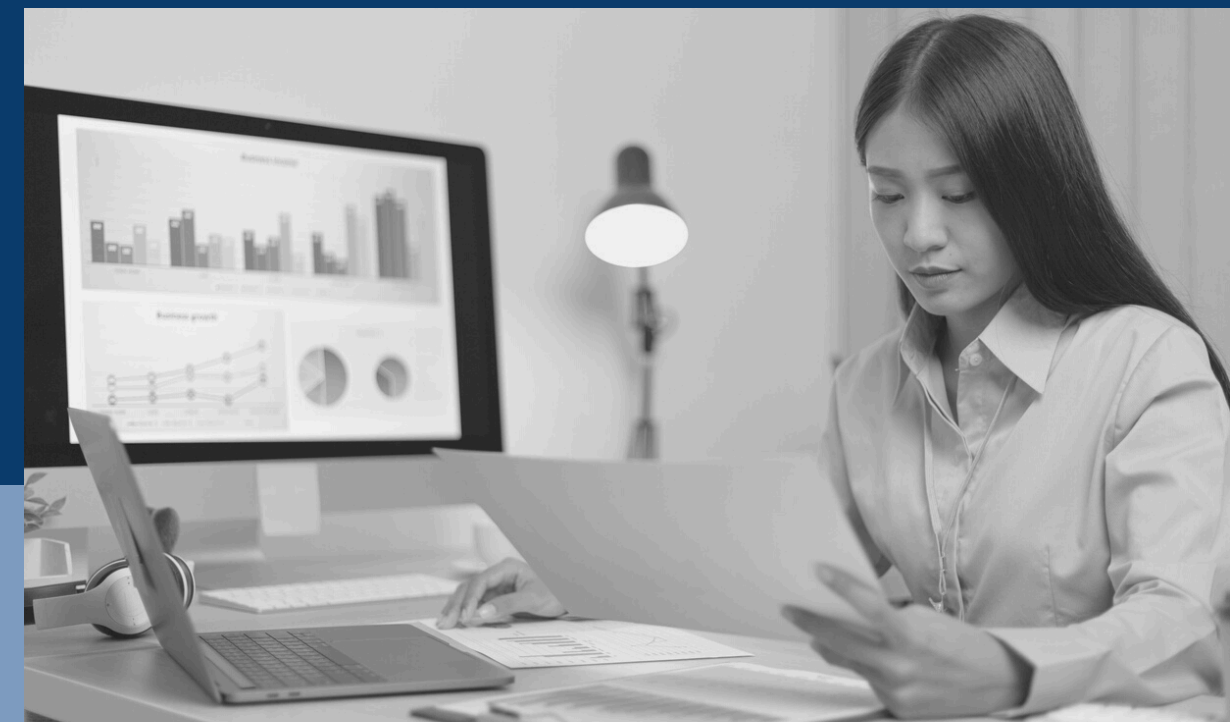
Generally, the settlement agent is the one responsible to report transfers covered by this rule.

Source: FinCEN Fact Sheet



WHEN WILL OUR COMPANY BEGIN THE PROCESS OF COLLECTING DATA FROM CUSTOMERS?

For all new orders closing on or after
December 1st, escrow will begin
collecting data starting **October 15th**.



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 (e.g., 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; is 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; is a grantor or settlor of a revocable trust; or is the beneficial owner of an entity or trust that holds one of these aforementioned positions in the trust.

Source: FinCEN Fact Sheet

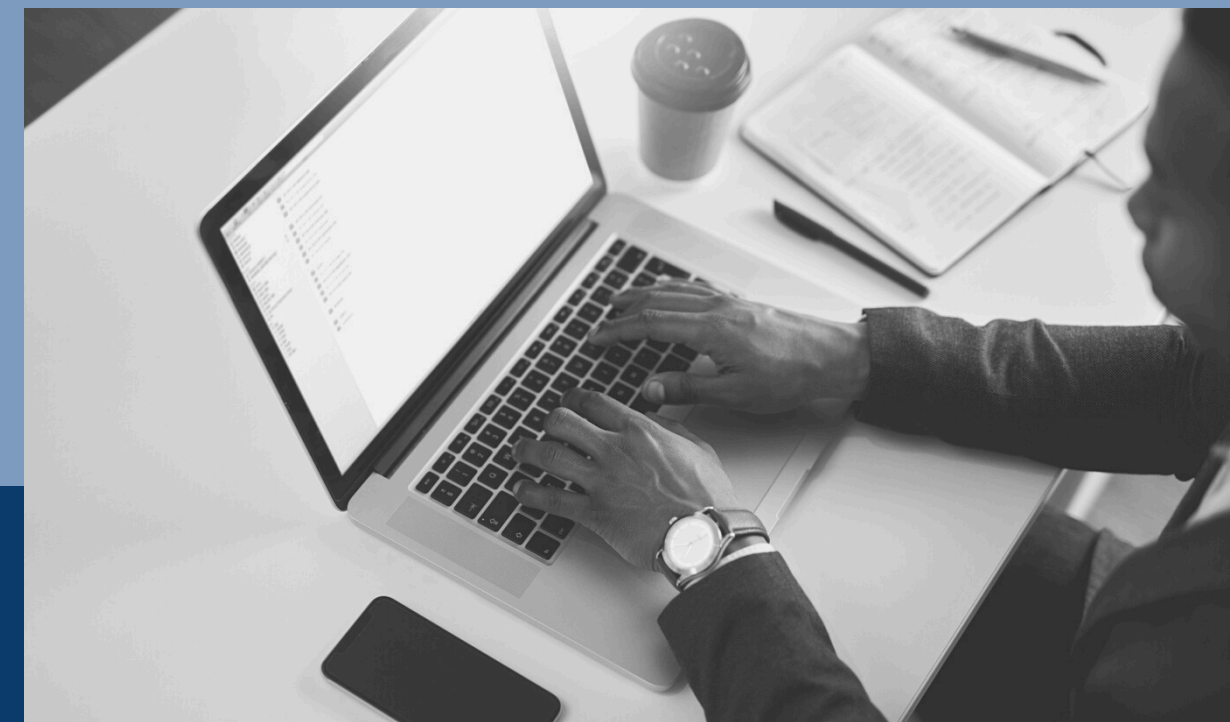


WHEN IS THE REPORT DUE?

The collection of the information about transfers covered by this rule will be collected by the settlement agent prior to closing.

Incomplete forms will not be accepted by FinCEN.

Source: FinCEN Fact Sheet



**WHAT HAPPENS IF
NOT REPORTED?**



Criminal or Civil Liability

Criminal Violation	Penalty
Willful	Up to \$250,000 fine and 5 years in prison
Willful while violating another law	Up to \$500,000 fine and 10 years in prison
Structuring or assisting in structuring a transaction to avoid reporting	Fine and up to five years in prison

Civil Violation	Penalty
Willful (separate violation occurs for each day the violation continues and each location a violation occurs)	Greater of the amount involved up to \$100,000 (minimum \$25,000)
Failure to file a report, material misstatement or omission	Not to exceed the amount involved in the transaction
Structuring or assisting in structuring a transaction to avoid reporting	Not to exceed the amount involved in the transaction
Negligence	Not to exceed \$500 or \$50,000 if a pattern of negligence is found



How Can You Help Us?



EDUCATE

Educate your clients upfront. Inform them this is a federal regulation all settlement agents, buyers and sellers must comply with these requirements in qualified transfers.

CALM & COLLECTED

Keeping calm and discussing this with your clients will help them understand and prepare for these new requirements.

SUPPORT US

Support the escrow officer by encouraging your customer to provide the required information as soon as possible.

COMMUNICATE

Make sure to communicate with escrow before or at the beginning of the transaction if it is covered by the regulation in order to prepare for a smooth and successful closing.

ANY
QUESTIONS?

A hand holding a blue marker is shown in the lower right corner, drawing a horizontal line under the word 'QUESTIONS?'. The line starts under the 'Q' and extends to the right, ending under the question mark.