

FinCEN finalizes rule creating reporting requirements for certain residential real estate transfers

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FinCEN finalized a rule that targets illicit finance in the real estate sector and imposes new reporting requirements with respect to certain non-financed residential real estate transactions.

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¹ FinCEN, Press Release, FinCEN Issues Final Rules to Safeguard Residential Real Estate, Investment Adviser Sectors from Illicit Finance (August 28, 2024), <https://www.fincen.gov/news/news-releases/fincen-issues-final-rules-safeguard-residential-real-estate-investment-adviser>. See also FinCEN, FinCEN Residential Real Estate Rule Fact Sheet (August 28, 2024), <https://www.fincen.gov/sites/default/files/shared/RREFactSheet.pdf>; FinCEN, Frequently Asked Questions on Real Estate Reports (August 28, 2024), <https://www.fincen.gov/sites/default/files/shared/RREFAQs.pdf>.

Overview of the Real Estate Reporting Rule

Reportable transfers of residential real property

Transfers

- o Grants, transfers, or revocations of an **easement**;
- o Transfers 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;
- o Transfers incident to **divorce or dissolution of a marriage or civil union**;
- o Transfers to a **bankruptcy estate**;
- o Transfers **supervised by a U.S. court**;
- o Transfers 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;
- o Transfers to a qualified intermediary for purposes of a **like-kind exchange under Section 1031** of the Internal Revenue Code; and
- o Transfers for which there is **no reporting person**.

“Non-financed” transfers

Residential real property

1. Real property located in the United States containing a structure designed principally for occupancy by one to four families;

2. Land located in the United States on which the transferee intends to build a structure designed principally for occupancy by one to four families;
3. A unit designed principally for occupancy by one to four families within a structure on land located in the United States; or
4. Shares in a cooperative housing corporation for which the underlying property is located in the United States.

Transferee entities and transferee trusts

Reporting persons

Reporting cascade method

1. The person listed as the **closing or settlement agent** on the closing or settlement statement for the transfer.
2. The person that **prepares the closing or settlement statement** for the transfer.
3. The person that **files the deed or other instrument** that transfers ownership of the residential real property.
4. The person that **underwrites an owner's title insurance policy** for the transferee with respect to the transferred residential real property (i.e., the title insurance company).
5. The person that **disburses the greatest amounts of funds** in connection with the reportable transfer in any form, including from an escrow account, trust account, or lawyers' trust account.
6. The person that **provides an evaluation of the status of the title**.
7. The person that **prepares the deed or any other legal instrument that transfers ownership** (including a stock certificate with respect to shares in a cooperative housing corporation).

Designation agreement

Real Estate Reports

Reporting Topic	Required Information
Reporting person	<ol style="list-style-type: none"> 1. Full legal name 2. Category of the reporting person 3. Street address of the reporting person's principal place of business
Transferee entity	<ol style="list-style-type: none"> 1. Full legal name 2. Trade name or "doing business as" name (if any) 3. Street address of the transferee's principal place of business⁶ 4. Unique identifying number⁷
Transferee trust	<ol style="list-style-type: none"> 1. Full legal name, such as the full title of the agreement establishing the transferee trust 2. Date the trust instrument was executed 3. Unique identifying number 4. Whether the transferee trust is a revocable trust 5. Certain identifying information for each trustee that is a legal entity⁸
Individual representing the transferee	<ol style="list-style-type: none"> 1. Full legal name 2. Date of birth 3. Current residential street address 4. Unique identifying number 5. Description of the capacity in which the individual is authorized to act as the signing individual⁹
Beneficial owners of the transferee entity or transferee trust	<ol style="list-style-type: none"> 1. Full legal name 2. Date of birth 3. Current residential street address 4. Citizenship 5. Unique identifying number¹⁰ 6. Category of beneficial owner (owner or substantial control person)
Transferor (if an individual)	<ol style="list-style-type: none"> 1. Full legal name 2. Date of birth 3. Current residential street address 4. Unique identifying number
Transferor (if a legal entity)	<ol style="list-style-type: none"> 1. Full legal name 2. Trade name or "doing business as" name (if any) 3. Street address of the transferor's principal place of business 4. Unique identifying number
Transferor (if a trust)	<ol style="list-style-type: none"> 1. Full legal name, such as the full title of the agreement establishing the transferee trust 2. Date the trust instrument was executed 3. Unique identifying number 4. Certain identifying information for each trustee¹¹
Residential real property being transferred	<ol style="list-style-type: none"> 1. Street address (if any) 2. Legal description (e.g., section, lot and block) 3. Date of closing¹²
Payment for the property ¹³	<ol style="list-style-type: none"> 1. Amount of payment 2. Method of payment 3. Name of financial institution and account number from which the payment was made (as applicable) 4. Name of the payor on any wire, check or other payment (if the payor is not the transferee entity or trust) 5. Total consideration to be paid

Beneficial owners

Reasonable reliance standard

Reporting deadline

Penalties

- Negligent violations could result in a civil penalty of up to \$1,394 for each violation, and an additional civil money penalty of up to \$108,489 for a pattern of negligent activity.¹⁶
- Willful violations could result in a term of imprisonment of up to five years, a criminal fine of up to \$250,000, or both.¹⁷
- Violations also could result in a civil penalty of not more than the greater of the amount involved in the transaction (not to exceed \$278,937) or \$69,733.¹⁸

^[2] The Proposed Rule is described in our February 2024 [client update](#).

^[3] The full list of exempt entities includes: (1) securities reporting issuer; (2) governmental authority; (3) bank; (4) credit union; (5) depository institution holding company; (6) money service business; (7) broker or dealer in securities; (8) securities exchange or clearing agency; (9) any 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) SEC-registered investment company; and (16) any legal entity controlled or wholly owned, directly or indirectly, by an entity described in this list of exemptions.

^[4] FinCEN also noted that the real estate industry uses a similar reporting cascade to comply with requirements of IRS Form 1099-S.

^[5] Though, FinCEN notes that potential reporting persons may arrive at a working agreement with others, in writing or otherwise, as to how they will generally comply with the Real Estate Reporting Rule, provided that the persons continue to effect and retain a copy of each unique designation agreement for each separate transfer.

^[6] If the transferee entity's principal place of business is **not** in the United States, the street address of the primary location in the United States where the transferee entity conducts business should be provided.

^[7] Unique identifying numbers include an IRS TIN, a tax identification number issued by a foreign jurisdiction, or an entity registration number issued by a foreign jurisdiction.

^[8] Note, individual trustees of the transferee trust are considered to be a beneficial owner of the trust. Accordingly, the information on individual trustees must be reported in accordance with the requirements related to beneficial owners. For trustees that are legal entities, information that must be provided includes full legal name, trade name or "doing business as" name, complete current address, and unique identifying number.

^[9] If the signing individual is acting in that capacity as an employee, agent, or partner, the Real Estate Report must include the name of the individual's employer, principal, or partnership.

^[10] For the beneficial owners of a transferee entity, unique identifying numbers include an IRS TIN, a tax identification number issued by a foreign jurisdiction, or the unique identifying number from a non-expired passport issued by a foreign government. For the beneficial owners of a transferee trust, unique identifying numbers include an IRS TIN, a tax identification number issued by a foreign jurisdiction, or an entity registration number issued by a foreign jurisdiction.

^[11] Identifying information required for each trustee of the trust includes full legal name, current residential street address, and unique identifying number.

^[12] The term "date of closing" means the date on which the transferee entity or transferee trust receives an ownership interest in residential real property.

^[13] With respect to hard money, private and other similar loans, the reporting person must report whether the reportable transfer involved credit extended by a person that is not a financial institution with an obligation to maintain an AML compliance program and report suspicious transactions.

^[14] We discuss the term "beneficial owner" as defined in the BOI Reporting Rule extensively in this [client update](#).

^[15] This reasonable reliance standard is consistent with the standard FinCEN offers covered financial institutions subject to the Customer Due Diligence Rule. See 31 C.F.R. § 1010.230(b)(2) ("A covered financial institution may rely on the information supplied by the legal entity customer regarding the identity of its beneficial owner or owners, provided that it has no knowledge of facts that would reasonably call into question the reliability of such information.")

^[16] See 31 U.S.C. § 5321.

^[17] See 31 U.S.C. § 5322.

^[18] See 31 U.S.C. § 5321; 31 C.F.R. § 1010.821.

² The Proposed Rule is described in our February 2024 [client update](#).