

Cash Deals Under Scrutiny: What FinCEN's New Reporting Rule Means for Real Estate Professionals

An overview of federal reporting requirements for certain non-financed residential real estate transactions and the compliance obligations facing closing and settlement professionals.

The U.S. Department of the Treasury's Financial Crime Enforcement Network ("FinCEN") has introduced a sweeping new reporting regime for certain residential real estate transactions throughout the United States. This reporting requirement marks a significant expansion of existing federal anti-money laundering oversight in the real estate sector. Under FinCEN's "Residential Real Estate Rule," which took effect on March 1, 2026, certain real estate professionals involved in real estate closing and settlements must report information to FinCEN regarding "non-financed transfer[s] to a transferee entity or transferee trust of an ownership interest in residential real property."

The Rule is designed to increase transparency in a market long-viewed by regulators as vulnerable to money laundering, particularly through shell companies or other illegitimate ownership vehicles. By requiring the disclosure of beneficial ownership and transaction details through a newly created "Real Estate Report," FinCEN aims to bring greater scrutiny to high-risk real estate transactions. The requirement to report these transactions imposes a significant burden on real estate professionals and carries heavy penalties for those who fail to comply. It is therefore incumbent on real estate professionals to understand their obligations under the Rule and report the required information to FinCEN, when necessary.

Which Transactions Are Subject to the Rule?

The transfers of real estate which are subject to the "Residential Real Estate Rule" generally make up a small fraction of the residential real estate market but have been identified by FinCEN as having a high risk for involvement in money laundering and other crimes. Whether a transfer is subject to the Rule is determined by a multi-factor analysis which must be conducted by the real estate professional on a case-by-case basis. For the Rule to apply, all four of the following conditions must be met:

- 1. The property must be residential real estate.** The Rule applies to transfers of residential property such as single-family homes, townhouses, condominiums, cooperatives, and small multi-family *structures or units* designed for occupancy by one to four families. This includes transfers of land where a structure has not yet been erected, but on which the transferee "*intends* to build a structure designed principally for occupancy by one to four families." Thus, if the property being transferred is a standalone structure, land where a standalone structure is intended to be built, or an individual unit of a building which is designed for one to four families, the Residential Real Estate Rule may apply.

- 2. The property must be transferred without financing.** The Rule applies to transactions conducted without financing from a financial institution that is already subject to anti-money laundering reporting obligations. The term "non-financed transfer" is explicitly defined by the Rule to mean "a transfer that does not involve an extension of credit to *all* transferees that is: (a) secured by the transferred residential real property; and (b) extended by a financial institution that has an obligation to maintain an anti-money laundering program and an obligation to report suspicious transactions under this chapter." This condition essentially creates a safe-harbor from the Rule for buyers who purchase residential property through a loan secured by a traditional mortgage given to a bank. Below are a few examples of scenarios when this condition of the Rule would be met:

Example 1 – \$1 Transfer Deed: An individual owns a residential property free and clear. The individual transfers the property to a newly formed trust for “\$1 and other good and valuable consideration.” The transaction does not involve a loan, mortgage, or any other form of external financing. In this situation, the transfer would satisfy the second condition of the Rule because no financing was used to fund the transaction, regardless of the nominal consideration reflected on the deed.

Example 2 – Partial Financing: An LLC purchases a condominium for \$3 million. The LLC pays \$2 million of the purchase price in cash and obtains the remaining \$1 million through a loan made by a private individual. Because the partial financing does not come from a bank or another lender subject to anti-money laundering reporting obligations, the transaction is treated as a non-financed transfer, satisfying the second condition of the Rule.

Example 3 – Different Security: An LLC purchases a single-family home (Property A) for \$1.8 million. The LLC finances the entire \$1.8 million purchase price through a loan from a bank. To secure the loan from the bank, the LLC gives the bank a mortgage on a separate property owned by the LLC (Property B). Despite the loan having been made by a bank subject to anti-money laundering obligations, the second condition of the Rule is met because the loan is not secured by Property A, the residential real property which is being transferred.

- 3. The property must be transferred to a qualifying entity or trust.** The Rule applies if the residential property is purchased by a legal entity (a “transferee entity”) or a trust (a “transferee trust”) rather than directly by a natural person. This requirement targets situations where ownership structures can obscure the identity of the true beneficial holder of the property.

A *transferee entity* under the Rule may be a corporation, partnership, estate, association, or limited liability company. Notably, a statutory trust created or authorized by the Uniform Statutory Trust Entity Act also constitutes a transferee entity under the Rule. To the contrary, the Rule expressly provides that a transferee entity does NOT include:

- A securities reporting issuer;
- A governmental authority;
- A bank;
- A credit union;
- A depository institution holding company;
- A money service business;
- A broker or dealer in securities;
- A securities exchange or clearing agency;
- Any other Exchange Act registered entity;
- An insurance company;
- A State-licensed insurance producer;
- A Commodity Exchange Act registered entity;
- A public utility;
- A financial market utility;
- An investment company that is registered with the Securities and Exchange Commission under section 8 of the Investment Company Act; and

- Any legal entity controlled or wholly owned, directly or indirectly, by an entity described above.

A *transferee trust* under the Rule means “any legal arrangement created when a person (generally known as a grantor or settlor) places assets under the control of a trustee for the benefit of one or more persons (each generally known as a beneficiary) or for a specified purpose, as well as any legal arrangement similar in structure or function to the above, whether formed under the laws of the United States or a foreign jurisdiction.” A trust is deemed to be a transferee trust regardless of whether residential real property is titled in the name of the trust itself or in the name of the trustee in the trustee's capacity as the trustee of the trust. The Rule provides that a transferee trust does NOT include:

- A trust that is a securities reporting issuer;
- A trust in which the trustee is a securities reporting issuer;
- A statutory trust; or
- An entity wholly owned by a trust.

4. The transfer is not covered by a recognized exception. Even if a transfer satisfies the first three conditions of the Rule, a real estate professional may not have an obligation to report details of the transfer to FinCEN if the transfer falls within one of the recognized exceptions to the Rule. The following transfers of residential real property constitute exceptions to the Rule and do not need to be reported:

- A transfer that is a grant, transfer, or revocation of an easement.
- A transfer resulting from the death of an individual, whether pursuant to the terms of a will, the terms of a trust (including testamentary trusts), the operation of law (such as transfers resulting from intestate succession, surviving joint owners, and transfer-on-death deeds), or by contractual provision (such as transfers resulting from beneficiary designations).
- A transfer incident to divorce or dissolution of a marriage or civil union (such as transfers required by a divorce settlement agreement).
- A transfer made to a bankruptcy estate.
- A transfer supervised by a court in the United States.
- A transfer for no consideration made by an individual, either alone or with their spouse, to a trust of which that individual, that individual's spouse, or both, are the settlors or grantors.
- A transfer to a qualified intermediary for the purposes of a like-kind exchange for purposes of Section 1031 of the Internal Revenue Code (26 CFR 1.1031(k)-1); or
- A transfer for which there is no reporting person.

The Foreclosure Exception – While the Residential Real Estate Rule applies nationwide, the application of the exceptions to the Rule may vary from state to state. One of the most pronounced examples of this variance is between states with judicial and non-judicial foreclosure processes. Transfers resulting from **judicial foreclosures** are generally excluded from the Rule's reporting requirement because they occur through a court-supervised process that already generates a substantial record of the sale of the property and the identity of the transferee. By contrast, transfers resulting from **non-judicial foreclosures** – which are permitted in many states under deeds of trust

or similar instruments – are unlikely to fall within these exceptions to the Rule. Indeed, if a property acquired through a non-judicial foreclosure is transferred in a manner that otherwise meets the Rule’s criteria for a reportable transfer, the reporting obligation may apply. Under the same reasoning, property conveyed by way of a **deed-in-lieu of foreclosure** also constitutes a reportable transfer, in most cases.

It is vital for real estate professionals to carefully analyze whether a transfer falls within one of the recognized exceptions to the Rule. If a transfer is miscategorized and details of the transfer are withheld from FinCEN, the real estate professional or their client could be subject to substantial penalties.

Who is Responsible for Reporting?

Once a real estate professional has determined that a transfer is reportable under the Rule, the next step is to identify the individual responsible for filing the completed Real Estate Report with FinCEN. Accurate identification of the reporting person is crucial to the reporting process as that person will incur any penalties if the report is not made. Fortunately, the Rule provides a clear “reporting cascade” to guide real estate professionals in how to determine the proper reporting person. The Rule provides that the reporting person for a reportable transfer is the person engaged within the United States as a business in the provision of real estate closing and settlement services that is:

- i. The person listed as the closing or settlement agent on the closing or settlement statement for the transfer;
- ii. If no person above is involved in the transfer, then the person that prepares the closing or settlement statement for the transfer;
- iii. If no person above is involved in the transfer, then the person that files with the recordation office the deed or other instrument that transfers ownership of the residential real property;
- iv. If no person above is involved in the transfer, then 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;
- v. If no person above is involved in the transfer, then 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;
- vi. If no person above is involved in the transfer, then the person that provides an evaluation of the status of the title; or
- vii. If no person above is involved in the transfer, then 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.

A financial institution that has an obligation to maintain an anti-money laundering program is not a reporting person under the Rule.

The reporting person may enter into an agreement with any other person described in (i) - (vii) above to designate such other person as the reporting person with respect to the reportable transfer. The person designated by such agreement shall be treated as the reporting person with respect to the transfer. If reporting persons decide to use designation agreements, a separate agreement is required for each reportable transfer and a copy of that agreement must be retained by the parties for a period of five (5) years.

What Information Must Be Reported?

The rule requires that the reporting person submit a report containing detailed information about the transaction, the property, and the individuals behind the purchasing entity or trust. The following sections, while not comprehensive, provides a summary of the key categories of information that must be submitted.

- 1. Information about the Reporting Person.** The report must identify the individual or entity responsible for filing the report, including:
 - Full legal name;
 - Category in reporting cascade; and
 - Street address of reporting person's principal place of business.
- 2. Information about the Transferor.** The reporting person must provide identifying information regarding the transferor, including:
 - Name of the seller or transferor;
 - Other identifying information necessary to identify the transferor in the transaction.
- 3. Information about the Transferee (Purchaser).** If the property is acquired by an entity or trust, the report must include identifying information such as:
 - Full legal name of the transferee entity or trust;
 - Trade name or DBA (if applicable);
 - Principal place of business address;
 - Date the trust instrument was executed (if applicable); and
 - Unique identifying number (if applicable);
- 4. Beneficial Ownership Information.** The reporting person must report identifying information for beneficial owners of the transferee entity or transferee trust, including:
 - Full legal name;
 - Date of birth;
 - Residential address;
 - Citizenship; and
 - Taxpayer Identification Number (TIN).
- 5. Information about the Property.** The reporting person must provide identifying details about the transferred property, including:
 - Property street address, if available; and
 - Legal description of the property (e.g., lot, block, section); and
 - The date of closing.
- 6. Information about the Transfer.** The report must disclose financial details of the transaction, including:
 - Total purchase price or consideration;
 - Amount of each payment made by or on behalf of the transferee;
 - Method of payment (e.g. wire transfer, check);
 - Name of the financial institution and account number if payment originated from a bank account;
 - Identity of the payor if different from the transferee entity or trust; and
 - Whether credit was extended by a non-regulated lender.

When Must a Transfer Be Reported?

A reporting person is required to file a Real Estate Report by the later of either:

- (i) the final day of the month following the month in which the date of closing occurred; or
- (ii) 30 calendar days after the date of closing.

What Are the Penalties For Failing to Report?

Negligent violations of the rule could result in a civil penalty of not more than \$1,430 for each violation, and an additional civil money penalty of up to \$111,308 for a pattern of negligent activity.

Willful violations could result in a civil penalty of not more than the greater of the amount involved in the transaction (not to exceed \$286,184) or \$71,545. Criminal penalties for willful violations of the rule could result in a term of imprisonment of not more than five years or a criminal fine of not more than \$250,000, or both.

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Because FinCEN's Residential Real Estate Rule contains detailed definitions, exceptions, and technical requirements, the discussion above provides only a high-level overview of the Rule's reporting obligations. Determining whether a transaction is reportable and identifying the appropriate reporting person can be complex and fact-specific. Parties involved in residential real estate transactions should therefore carefully review the Rule and consider seeking legal guidance to ensure full compliance.

At Hill Wallack LLP, we have used our established systems and a proactive compliance framework to ensure that our clients are supported in meeting their reporting obligations under the Rule. For more information on the Rule or its application to a particular transaction, please reach out to Michael Morrow, Eric Kelner, or Daniel Kaschak.