

# Client Alert

Special Matters and Government Investigations

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## FinCEN's Final Rule on Anti-Money Laundering for Residential Real Estate Transfers

### Background

On August 29, 2024, the Financial Crimes Enforcement Network ("FinCEN") issued a **final rule** under the Bank Secrecy Act ("BSA") requiring certain persons involved in real estate closings and settlements to report and maintain recordkeeping on certain non-financed transfers of residential real property on a nationwide basis. The final rule does not apply to transfers made directly to an individual, but rather to legal entities and trusts. It becomes effective December 1, 2025.

This regulatory action is part of FinCEN's broader anti-money laundering ("AML") and countering the financing of terrorism ("CFT") efforts; it targets non-financed transfers to legal entities and trusts, which can be used to obscure individual, beneficial ownership information due to the lack of involvement of financial institutions that are subject to AML/CFT requirements. This final rule follows a **proposed rulemaking** in February 2024, pursuant to which FinCEN received more than 620 comments. See our previous client alert [here](#).

The goal of the final rule is to increase transparency and prevent the laundering of illicit funds through the U.S. real estate market. The final rule aims to enhance law enforcement's ability to track illicit financial flows, to support national security by preventing the misuse of real estate for money laundering, and to promote fair competition by reducing the advantages of those using illicit funds to purchase real estate. As proposed, the final rule introduces a structured reporting process, building on lessons learned from previous geographic targeting orders ("GTOs"), which required title insurance companies to file reports identifying beneficial owners of legal entities making certain non-financed purchases of residential real estate in designated areas throughout the United States.<sup>1</sup>



## Main Provisions

**Scope of the rule:** As noted above, the final rule targets non-financed transfers of residential real estate to legal entities and trusts, excluding transfers to individuals. A financed transfer includes an extension of credit that is both secured by the transferred property and extended by a financial institution subject to an AML program and suspicious activity reporting requirements. Therefore, a residential real estate transaction financed by a non-bank private lender, an entity not subject to AML/SAR requirements, would be treated as a non-financed transfer. If the new owners include both an individual and an entity or trust, then the transfer must be reported.

## Reporting Requirements:

**Who Reports:** FinCEN stated that the reporting obligation would be carried out by settlement agents, title insurance agents, escrow agents, and attorneys, but that there would be only one reporting person per transaction. The reporting person would be determined by a “reporting cascade.” The final rule adopts the reporting cascade largely as proposed in February 2024. The reporting cascade lists seven functions that are performed in the transfer; the reporting obligation applies to the professional that performs the function highest on the list. To summarize, they are:

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 with the recordation office 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, such as a title insurance company;
5. 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;
6. The person that provides an evaluation of the status of the title; or
7. 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.<sup>2</sup>

If there is no professional involved in the transfer that fills the highest role, then the obligation goes to the second functionary on the list. Ultimately, the professional who is highest on the list is the reporting person and must file a “Real Estate Report.” The final rule provides some flexibility by allowing real estate professionals performing such functions to enter into agreements with each other that designate the professional who will file the report.

**What is Reported:** The Real Estate Report includes the identity of the reporting person, details of the legal entity or trust, beneficial ownership information, and specifics of the transaction. A beneficial owner of a transferee entity is “an individual who, on the date of the closing, either directly or indirectly: (i) exercises substantial control over the transferee entity; or (ii) owns or controls at least 25 percent of the transferee entity’s ownership interests.”<sup>3</sup>

**Reasonable Reliance Standard:** Reporting persons will be able to, in general, reasonably rely on information provided by “any other person,” absent knowledge of any discrepancies or reasons to call into question the reliability of the information. This is consistent with the standard applied to financial institutions subject to customer due diligence requirements.<sup>4</sup>



This reasonable reliance standard is more limited with regard to the beneficial ownership information of transferee entities or transferee trusts, such that it applies “only if the person providing the information certifies the accuracy of the information in writing to the best of their knowledge.”<sup>5</sup>

**Exemptions:** The final rule excludes certain transactions that are considered lower-risk transfers, such as those commonly used in estate and tax planning, divorces, bankruptcies, and transfers administered by a U.S. court.

**Recordkeeping:** The final rule limits the recordkeeping burden by not requiring a copy of the filed Real Estate Report submitted to FinCEN be retained. Certifications of beneficial ownership, however, must be retained for five years. Further, signed designation agreements must also be retained by the reporting party and as well as all parties to the agreement.

**When are Reports Required to be Filed:** If required, a report must be filed by the later of: (a) the last day of the month following the month in which the transfer occurred, or (b) 30 calendar days after the closing date.

**Penalties for Non-Compliance:** Penalties for non-compliance include civil fines and potential criminal charges. For instance, negligent violations could currently result in 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.<sup>6</sup> Willful violations of the final rule could result in a term of imprisonment of not more than five years, and/or a criminal fine of not more than \$250,000.<sup>7</sup> Such violations also could result in a current civil penalty of not more than the greater of the amount involved in the transaction (not to exceed \$278,937) or \$69,733.<sup>8</sup> These penalties are consistent with those under existing BSA regulations.

### Impact

This new requirement could be particularly burdensome, especially for small businesses. In particular, FinCEN, after considering comments to its proposed rulemaking expressing concerns about the administrative burden and potential delays that would be caused by the rule, made changes in the final rule in an attempt to mitigate those concerns through streamlined reporting processes and the “reasonable reliance” standard.

### Next Steps

FinCEN will be publishing a notice regarding the form of the report.

### Conclusion

Businesses in the real estate sector should prepare for the implementation of this final rule by reviewing their current AML practices, identifying roles that may trigger reporting obligations, and establishing processes to comply with the new requirements. FinCEN has issued [FAQs](#) to help stakeholders navigate the rule's complexities. King & Spalding is well positioned to assist clients subject to the rule comply with its requirements.



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<sup>1</sup> See 31 U.S.C. 5326; 31 CFR 1010.370; Treasury Order 180–01 (Jan. 14, 2020).

<sup>2</sup> 31 CFR 1031.320(c)

<sup>3</sup> See Fact Sheet: FinCEN Issues Final Rule to Increase Transparency in Residential Real Estate Transfers, available [here](#) (“FinCEN Fact Sheet”) at D.2.

<sup>4</sup> 31 CFR 1010.230(b)(2).

<sup>5</sup> See FinCEN Fact Sheet at D.4.

<sup>6</sup> 31 U.S.C. 5321.

<sup>7</sup> 31 U.S.C. 5322.

<sup>8</sup> 31 U.S.C. 5321; 31 CFR 1010.821.