



BY CHERI HIPENBECKER

New Federal Reporting Requirements for Non-Financed Residential Real Estate Transfers



Beginning March 1, 2026, transfers of residential real estate, such as single-family dwellings, for which credit is not extended by an institution with an anti-money laundering program, will need to be reported to the federal government. It is vital for lawyers practicing in real estate, estate planning, or business to understand when the reporting requirement applies and to advise clients accordingly.

Kleptocrats, corrupt politicians, organized crime, and sanctions evaders all choose the U.S. real estate market as their destination to launder money.¹

Why? Because they can. In independent research, Global Financial Integrity found that in reported cases between 2015 and 2020 more than \$2.3 billion was laundered through U.S. real estate, 82% of those cases involved foreign sources of money, and more than 50% involved “politically exposed persons.” As of 2025, the U.S. remains the only G7 country that does not require real estate professionals to comply with anti-money laundering law.

This will end in 2026. Starting on March 1, 2026, real estate professionals will be required to report applicable transfers to the U.S. Department of the Treasury’s Financial Crimes Enforcement Network (FinCEN). (On Sept. 30, 2025, FinCEN pushed the start date from the original date, Dec. 1, 2025, citing the need to provide the industry more time to comply with the new reporting requirement.²) This article provides an overview of the 120-page reporting rule (hereinafter the Rule)³ and the steps to take with reportable real estate transactions in and after 2026.

Attorneys practicing in real estate, estate planning, or business should pay close attention to this rule. The Rule applies in some unexpected situations, such as transfers from an individual to that individual’s limited liability company (LLC) that are for no value and only intended as a means to limit liability. Failure to understand when a FinCEN report is required could subject lawyers and law firms to civil penalties of up to \$108,489 for a pattern of negligent activity and criminal penalties of up to five years’ imprisonment, a fine of up to \$250,000, or both for willful violations.

Background

In 1970, Congress passed the Bank Secrecy Act (BSA), which authorized the Department of the

Treasury to impose reporting and other requirements on financial institutions and other businesses to help detect and prevent money laundering. The purposes of the BSA include requiring financial institutions to keep records and file reports that “are highly useful in criminal, tax, or regulatory investigations or proceedings” or in the conduct of “intelligence or counterintelligence activities, including analysis, to protect against international terrorism.”⁴ The Secretary of the Treasury delegated the authority to implement, administer, and enforce compliance with the BSA to FinCEN.

In 2016, FinCEN expanded the reporting requirements beyond financial institutions to title insurance companies, requiring title insurance companies to file reports and maintain records concerning non-financed purchases of residential real estate above a specific price threshold by certain legal entities in select metropolitan areas of the U.S. As of 2025 these reports, known as the Residential Real Estate Geographic Targeting Orders (GTOs), are in effect in 13 states and the District of Columbia. The GTOs have successfully assisted FinCEN in generating new investigative leads, identifying new and related subjects in ongoing cases, and supporting prosecution and asset forfeiture in FinCEN’s efforts to detect and prevent money laundering. FinCEN found that from 2017 to early 2024, approximately 42% of non-financed real estate transfers captured by the GTOs were conducted by individuals or legal entities on which a suspicious activity report had been filed.

Since 2016, pressure has been mounting on FinCEN to expand the reporting beyond the geographic limitations within the GTOs and beyond the scope of title insurance companies as reportable parties. With this backdrop, on Aug. 29, 2024, FinCEN published the Rule, which, with the extended start date, applies to real estate transactions beginning March 1, 2026.

Reporting Requirement

The Rule, published as 31 C.F.R. § 1031.320, defines a reportable transfer as “a non-financed transfer to a transferee entity or transferee trust of an ownership interest in residential real property.” Thus, whether a transfer is reportable can be determined by answering three questions.

1) Is this residential real property?

The Rule defines residential real property as a) improved property designed for occupancy by one to four families, b) vacant land on which the transferee intends to build a one-to-four-family structure, or c) shares in a cooperative housing corporation.⁵ In its comments to the Rule, FinCEN stated that the definition is meant to include single-family houses, townhouses, condominiums, cooperatives, and mixed-use property, such as a one-to-four-family residence located above a commercial enterprise.

2) Is the transferee either an entity or a trust? With exceptions, the Rule defines a transferee entity as any person other than a transferee trust or an individual.⁶ With exceptions, the Rule defines a transferee trust as any legal arrangement created when a person places assets under the control of a

trustee for the benefit of one or more persons or for a specified purpose.⁷

3) Is this a non-financed transfer?

The Rule defines a non-financed transfer as 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 both an obligation to maintain an anti-money laundering program and an obligation to report suspicious transactions under this chapter.⁸

If the answers to these three questions are “yes,” then, with some exceptions and exemptions, the transfer is reportable.⁹

Contents of the New FinCEN Report

The Rule requires that seven categories of information be reported to FinCEN when there is a reportable transaction. Generally, the seven categories are as follows:

1) Reporting person: Legal name of reporting person, category of the reporting person (per 31 C.F.R. § 1031.320(c)), and street address.

2) Transferee: Full legal name of the entity or trust, IRS taxpayer identification number (IRS TIN), address, and other identifying information.

3) Transferee’s beneficial owners and signing individual(s):

The following information for each beneficial owner and signing individual: a) full legal name, b) date of birth, c) current residential street address, and d) IRS TIN (or other information from a foreign jurisdiction if the beneficial owner does not have an IRS TIN). The Rule defines the beneficial owners for entities and trusts in 31 C.F.R. § 1031.320(n)(1), which incorporates by reference “beneficial owner” as defined under the Corporate Transparency Act in 31 C.F.R. § 1010.380(d), requiring reporting for individuals who own at least 25% of the transferee entity or who exercise substantial control over the entity.

4) Transferor: If the transferor is an individual: a) full legal name, b) date of birth, c) current residential street address, and d) IRS TIN (or other information from a foreign jurisdiction if the beneficial owner does not have an IRS TIN). If the transferor is an entity or trust: a) the identifying information about the entity or trust, and b) the IRS TIN for the trustee of a trust.

5) Residential real property: Street address, legal description, and date of closing.

6) Payment: a) Amount of the payment; b) method by which the payment was made; c) if the payment was paid from an account held at a financial institution, the name of the financial institution and the account number; and d) name of the payor on any wire, check, or other type of payment if the payor is not the transferee entity or transferee trust.



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7) Hard money, private and other similar loans: Whether the reportable transfer involved credit extended by a person that is not a financial institution with an obligation to maintain an anti-money laundering program and an obligation to report suspicious transactions.¹⁰

The American Land Title Association (ALTA) has been actively involved in training its members and creating transferee and transferor collection forms to comply with the Rule and has made those forms available to its members. In the coming weeks these collection forms should be made available to the public on ALTA's website.

Who Must Report?

As mentioned earlier, the Rule expands the reporting from only title insurance companies who were required to report under the GTOs to all real estate professionals, by creating a priority list of who is the responsible reporting person:

- 1) The person who is listed as the settlement agent on a settlement statement;
- 2) The person who prepares the settlement statement;
- 3) The person who files the deed for recordation;
- 4) The person who issues the owner's title insurance policy;
- 5) The person who disburses the greatest amount of funds;
- 6) The person who provides an evaluation of the status of the title; and
- 7) The person who prepares the deed (and if no deed is involved, then whoever drafted the legal instrument to transfer title, including the stock certificate in a cooperative housing corporation).¹¹

The Rule provides that if there are multiple parties who might be a reporting person, the parties can enter into a written agreement designating who will be treated as the reporting person with respect to the transfer.¹²

Penalties for Failure to Report (Civil and Criminal)

FinCEN did not develop a penalty structure specific to this new rule, so the penalties for failure to comply generally fall in line with penalties for any violation of the Bank Secrecy Act.¹³

- Negligent violations are subject to a civil penalty of not more than \$1,394 for each violation and an additional civil penalty of up to \$108,489 for a pattern of negligent activity.

- Willful violations are subject to imprisonment of up to five years, a criminal fine of up to \$250,000, or both. Willful violations may also be accompanied by a civil penalty: the greater of \$69,733 or the amount involved in the transaction (with a cap of \$278,937).

FAQs

Question: Where can I get more information about the rule?

Answer: FinCEN's first set of FAQs is



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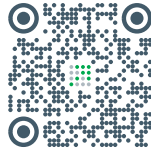
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available on its Residential Real Estate Rule website.¹⁴ Because FinCEN's FAQs are a bit anemic, the author and a team at ALTA are developing a robust set of FAQs, which will be on ALTA's website.¹⁵ Below are some of the more frequently asked questions fielded thus far.

Question: Are there any lawsuits challenging the Rule?

Answer: The author is aware of three pending lawsuits challenging the Rule, primarily on the following grounds: 1) Fourth Amendment issues – the Rule compels private businesses to collect and disclose extensive personal data, potentially violating individuals' rights against unreasonable searches and seizures; 2) separation-of-powers issues – delegation of broad rulemaking authority to FinCEN by the Bank Secrecy Act bypasses the legislative process, allowing unelected officials to create regulations without direct congressional oversight; and 3) Commerce Clause issues – the federal government lacks authority under the U.S. Constitution to regulate intrastate real estate transactions that do not involve interstate commerce.¹⁶ All these lawsuits are in their relative infancy stage.

Question: Turning to actual transactions, spouses own residential real property and transfer it into their revocable trust for estate planning purposes. Is this reportable?

Answer: This seems to fall squarely within the exception to the reporting requirement in 31 C.F.R. § 1031.320(b)(2)(vi), excepting a transfer that fits the following criteria: the transfer is 1) for no consideration; 2) made by an individual, either alone or with the individual's spouse; and 3) to a trust of which that individual, that individual's spouse, or both of them, are the settlor(s) or grantor.¹⁷

Question: Are transfers for no consideration between an LLC and its sole member and then from the sole member to the LLC to change the name of the same LLC also included in the trust exemption?

Answer: Sorry, we don't read the final rule that way. In fact, FinCEN was

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specifically asked to extend the exception for transfers from an individual to that same individual's LLC, and FinCEN declined to do so. Specifically, see the discussion on page 35 of the Rule, where FinCEN states, "FinCEN also does not believe that this same logic can be extended to justify excepting transfers of property by an individual to a legal entity owned or controlled by such individual, as some commenters suggested. In the exception described above concerning no consideration transfers to trusts, the exception applies when the transferor of residential real property is also the grantor or settlor of the trust – the identity of the grantor or settlor of the trust is a fact tied to the creation of the trust, is revealed on the face of the trust instrument, and generally cannot be changed. Although the trustee and beneficiaries of the trust

may change over time, the identification of the settlor or grantor of the trust generally allows FinCEN to identify the source of the property being contributed to the trust, a factor critical to the identification and prevention of money laundering. That same identification and persistent connection with the transferor does not exist in the context of transfers of residential real property to a legal entity, where it is common for various owners of interests in the entity to each contribute assets to it."

Question: How does the Rule apply to a transaction based on a transfer-on-death document?

Answer: The recording of the document to give public notice of the death of the decedent, and thus the passing of the real estate to the transfer-on-death (TOD) beneficiary, does not appear to be reportable per the exception to the reporting

in 31 C.F.R. § 1031.320(b)(2)(ii). However, when the TOD beneficiary sells or conveys the property to a third party, that might be reportable (you'll have to do the three-part analysis to determine whether the second transaction is reportable).¹⁸

Question: How about gift funds – would we have to report those?

Answer: This depends on the transaction and how the buyer is obtaining the remaining funds to purchase the property: 1) If the remaining purchase funds are coming from a bank that has an anti-money laundering program and an obligation to report suspicious transactions, then this would not be a reportable transfer. 2) If the remaining purchase funds are coming from anyone else (including a hard money lender), then this appears to be reportable.

Question: What if the buyers pull from a home equity line of credit to pay for the cash transaction?

Answer: This is reportable because the mortgage loan is secured against a different property, not the property being acquired.¹⁹

Question: What about when parents finance the purchase of the home?

Answer: Provided that the other two parts of the three-part test are met (residential property and either a transferee entity or transferee trust), this seems reportable because the acquisition is being financed by family members, who don't have an obligation to maintain an anti-money laundering program and an obligation to report suspicious transactions.²⁰

Question: What happens if a property is sold on a land contract or contract for deed to an entity – is it reportable?

Answer: This is reportable because the acquisition is being financed by a party that does not have the obligation to maintain an anti-money laundering program and an obligation to report suspicious transactions.²¹

Question: If we have a tiered entity (the other entity is the member), is it safe to assume we need to drill down to the humans involved?

Answer: Yes, based on the definition of “beneficial owners” we think you'll need to drill down to flesh-and-blood individuals.²²

Question: What if the legal entity (either transferee or transferor) has filed its report under the Corporate Transparency Act, identifying its beneficial owners and signers? Is a real estate transfer to or from that entity still reportable?

Answer: Yes. Commentators, including ALTA, specifically asked FinCEN this

question during the rule's comment period, and FinCEN declined to except transfers due to an existing report under the Corporate Transparency Act.

Question: Will Wisconsin's offer to purchase form be amended to include a reference or contingency about this new reporting?

Answer: Possibly. On Sept. 24, 2025, the Wisconsin Realtors Association released a disclosure addendum addressing the reporting. As for an amendment, that's up to the Wisconsin Real



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Estate Examining Board, which is the Wisconsin body designated to approve forms for use in real estate practice.

Question: It seems like a lot of new information that must be gathered and reported. How long will it take?

Answer: Per the Rule, FinCEN believes that it will take 2.75 hours for a reporting person to report on each transfer. This is in addition to the anticipated 75 minutes of initial training and 30 minutes annually for refresher courses. ALTA believes the training time estimate is slightly low.

Question: Annually, how many transactions will be reportable?

Answer: FinCEN estimates between 800,000 and 850,000 reportable transactions annually. Data from First American Title shows that about 10% of home sales in 2024 were all-cash transactions to legal entities or trusts, with Wisconsin being among the top 10 states with the highest percentage of these types of transactions.

Question: How will we gather the transferor and transferee information, and can we rely upon what is provided?

Answer: As noted above, ALTA has created transferor and transferee collection forms to comply with the Rule, and those forms should be made available on ALTA's website. The Rule includes a reasonable reliance standard providing that a reporting person may rely upon information provided by other persons, absent knowledge of facts that would reasonably call into question the reliability of the information provided to the reporting person and provided that, as to beneficial ownership information, the person providing the information certifies the accuracy of the information in writing to the best of the person's knowledge.²³

Question: Once we gather the information, what do we do next? Where do we submit the report?

Answer: This is still in process. On June 5, 2025,²⁴ FinCEN published its final version of the report, which the Office of Management and Budget approved on Sept. 26, 2025.²⁵ Because the final report form was only recently approved, as of the writing of this article FinCEN has not yet created its online portal

for the transfer of required data. But once created, the reports are to be filed electronically through FinCEN's BSA (Bank Secrecy Act) E-filing system, at <https://www.fincen.gov/rre>. Reporting persons will first need to enroll in the BSA E-filing system and designate a supervisory user. Once enrolled, the BSA E-Filing System will provide three different filing options for the report: online, PDF, or a user-developed automated interface.

Question: Do you think FinCEN will expand the scope of reportable transfers to commercial properties (not just residential ones)?

Answer: Why wouldn't they? If FinCEN is catching the bad guys in part due to this reporting, why wouldn't they expand the reporting to at least some commercial properties? **WL**

ENDNOTES

¹Global Financial Integrity, *GFI Submits Comment to FinCEN on Anti-Money Laundering Regulations for Real Estate Transactions* (Feb. 22, 2022), <https://gfinetegrity.org/press-release/gfi-submits-comments-to-fincen-on-anti-money-laundering-regulations-for-real-estate-transactions/>.

²FinCEN, *FinCEN Announces Postponement of Residential Real Estate Reporting Until March 1, 2026* (Sept. 30, 2025), <https://www.fincen.gov/news-releases/fincen-announces-postponement-residential-real-estate-reporting-until-march-1>.

³<https://public-inspection.federalregister.gov/2024-19198.pdf>.

⁴31 C.F.R. § 5311(i).

⁵31 C.F.R. § 1031.320(b)(1).

⁶31 C.F.R. § 1031.320(n)(10). See 31 C.F.R. § 1031.320(n)(10)(ii) for the excepted entities, which are primarily highly regulated entities.

⁷31 C.F.R. § 1031.320(n)(11).

⁸31 C.F.R. § 1031.320(n)(5).

⁹A full list of the exceptions and exemptions is outside of the scope of this article. For the transactional exceptions, see 31 C.F.R. § 1031.320(b)(2). For the transferee entity exemptions, see 31 C.F.R. § 1031.320(n)(10)(ii). For the transferee trust exemptions, see 31 C.F.R. § 1031.320(n)(11)(ii).

¹⁰31 C.F.R. § 1031.320(d)-(i).

¹¹31 C.F.R. § 1031.320(c).

¹²31 C.F.R. § 1031.320(c)(4).

¹³For reference, see 31 C.F.R. § 1010.821 tbl. 1.

¹⁴FinCEN, *Residential Real Estate Frequently Asked Questions*, <https://www.fincen.gov/rre-faqs> (last visited Oct. 8, 2025).

¹⁵ALTA, *Financial Crimes Enforcement Network (FinCEN)*, <https://www.alta.org/business-operations/operations/financial-crimes-enforcement-network> (last visited Oct. 8, 2025).

¹⁶*Flowers Title Cos. v. Bessent*, No. 25-cv-00127 (E.D. Tex.) (filed April 14, 2025); *Corley v. United States Dep't of Treasury*, No. 6:25-cv-86 (N.D. Tex.) (filed April 17, 2025); *Fidelity Nat'l Fin. Inc. v. Bessent*, No. 25-cv-00554 (M.D. Fla.) (filed May 20, 2025).

¹⁷For additional information about excepted transfers for estate planning techniques, see the discussion at the top of page 34 of the final rule.

¹⁸For more information about transfers resulting from death being excepted from the reporting requirements, see the discussion starting at the bottom of page 32 of the final rule.

¹⁹See the definition of non-financed transfer in 31 C.F.R. § 1031.320(n)(5).

²⁰See the definition of non-financed transfer in 31 C.F.R. § 1031.320(n)(5).

²¹See the definition of non-financed transfer in 31 C.F.R. § 1031.320(n)(5).

²²See 31 C.F.R. § 1031.320(n)(1) (defining "beneficial owner"). In 31 C.F.R. § 1010.380(d), a *beneficial owner* is defined as "any individual who, directly or indirectly, either exercises substantial control over such reporting company or owns or controls at least 25 percent of the ownership interests of such reporting company." See also the definition of "beneficial owner" in FinCEN's FAQs, *supra* note 14.

²³See 31 C.F.R. § 1031.320(j).

²⁴90 Fed. Reg. 23991 (June 5, 2025), <https://www.govinfo.gov/content/pkg/FR-2025-06-05/pdf/2025-10263.pdf>

²⁵https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202506-1506-001. **WL**