



# FinCEN's Residential Real Estate Reporting Rule

**Lisa M. Beville, JD, CPA, CTIP**

Southwest Region - Agency Training & Education Specialist  
Old Republic National Title Insurance Company

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# Today's Agenda

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- Discuss the background of Anti-Money Laundering Laws to see how we got where we are today.
- Review the final Residential Real Estate Reporting rule to understand:
  - what types of transactions are covered (as specified in the definitions found in the rule);
  - what information must be collected;
  - how the collected information must be reported; and
  - by whom the information must be reported.
- Consequences of non-compliance with the Final Rule.
- What you need to do to be prepared for the December 1st deadline.

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# The Bank Secrecy Act

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- The **Bank Secrecy Act (BSA)** is officially known as “The Currency and Foreign Transactions Reporting Act” and was signed into law by President Richard Nixon on October 26, 1970.
- Here’s how the BSA is described on the FinCEN website (<https://www.fincen.gov/resources/statutes-and-regulations/bank-secrecy-act>):

The Currency and Foreign Transactions Reporting Act of 1970, its amendments, and the other statutes relating to the subject matter of that Act, have come to be referred to as the Bank Secrecy Act (BSA). The BSA authorizes the Department of the Treasury to impose reporting and other requirements on financial institutions and other businesses to help detect and prevent money laundering. Specifically, the regulations implementing the BSA require financial institutions to, among other things, keep records of cash purchases of negotiable instruments, file reports of cash transactions exceeding \$10,000 (daily aggregate amount), and to report suspicious activity that might signify money laundering, tax evasion, or other criminal activities. The BSA is sometimes referred to as an "anti-money laundering" (AML) law or jointly as “BSA/AML,” and is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1960, 31 U.S.C. 5311-5314, 5316-5336, and includes notes thereto.

# The Bank Secrecy Act

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- **The Bank Secrecy Act (BSA)** is intended to combat money laundering, the financing of terrorism, and other illicit financial activity.
  - 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.”
- The Secretary of the Treasury has delegated the authority to implement, administer, and enforce compliance with the BSA and its implementing regulations to the Director of FinCEN.

# FinCEN = Financial Crimes Enforcement Network



## ➤ **FinCEN = Financial Crimes Enforcement Network**

- FinCEN is a bureau within the US Treasury Department that collects and analyzes information about financial transactions to combat domestic and international money laundering, terrorist financing, and other financial crimes.
- FinCEN's mission is to safeguard the US 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.

# The Bank Secrecy Act

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- Changes to the BSA since 1972 include:
  - Money laundering was made a crime via the Money Laundering Control Act of 1986 (18 U.S.C. § 1956 and 18 U.S.C. § 1957).
  - Real estate closing professionals were added to the BSA definition of “financial institution” in 1988 as a part of the Anti-Drug Abuse Act (Pub. L. 100–690, 102 Stat. 4181, enacted November 18, 1988, H.R. 5210).
  - FinCEN was created in 1994 via the Money Laundering Suppression Act (Enacted September 23, 1994, H.R. 3235)
  - The Patriot Act of 2002 required all financial institutions to have anti-money laundering (AML) programs (Enacted October 26, 2001, H.R. 3162)
  - **On August 28, 2024, FinCEN issued a Final Rule called the “Anti-Money Laundering Regulations for Residential Real Estate Transfers** (set forth in 89 Fed. Reg. 70258).

# Anti-Money Laundering Programs

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- Among the persons required by the BSA to maintain **anti-money laundering and countering the financing of terrorism (AML/CFT)** programs are “persons involved in real estate closings and settlements.”
- For many years, FinCEN has exempted such persons from comprehensive regulation under the BSA.
- However, information received in response to FinCEN’s geographic targeting orders (GTOs) relating to non-financed transfers of residential real estate has demonstrated the need for increased transparency and further regulation of this sector.

# Non-Financed Residential Real Estate Transfers

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- Most transfers of residential real estate are associated with a mortgage loan or other financing provided by financial institutions subject to AML/CFT program requirements.
- As non-financed transfers do not involve such financial institutions, such transfers can be and have been exploited by illicit actors of all varieties, including those that pose domestic threats, such as persons engaged in fraud or organized crime, and foreign threats, such as international drug cartels, human traffickers, and corrupt political or business figures.
- Non-financed transfers to legal entities and trusts heighten the risk that such transfers will be used for illicit purposes.

# FinCEN's Geographic Targeting Orders

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- FinCEN's GTOs focused on non-financed transactions in which residential property was purchased by legal entities.
- The GTOs:
  - started in 2016, and have been extended through the current time;
  - initially covered high dollar deals in Miami and NYC only
  - were expanded over the years to include 69 counties across the U.S. and
  - only apply to non-financed transactions in the amount of \$300,000 or greater.
  - The most recent GTO is effective from April 15, 2025, through October 9, 2025.
- Note: Since 2016, only one title company went through a FinCEN audit regarding compliance with the GTOs, and no penalties were issued.

# Summary of GTOs in The Final Rule

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- According to the summary found in The Final Rule:
  - The GTOs have been effective in identifying the risks of non-financed purchases of residential real estate by providing relevant information about such transfers to law enforcement within specified geographic areas.
  - FinCEN regularly receives feedback from law enforcement partners that they use the information to generate new investigative leads, identify new and related subjects in ongoing cases, and support prosecution and asset forfeiture efforts.
  - The GTOs have also proven the benefit of having reports identifying high risk residential real estate transfers housed in the same database as other BSA reports, such as traditional SARs and currency transaction reports (CTRs).

# Summary of GTOs in The Final Rule

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- According to the summary found in The Final Rule:
  - FinCEN has 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 SAR has been filed.
  - The GTOs, while effective within the covered geographic areas, do not address the illicit finance risks posed by certain real estate transfers on a nationwide basis—a significant shortcoming.
  - FinCEN believes that money laundering through real estate is indeed a nationwide problem that jurisdictionally limited reporting requirements are insufficient to address.
  - Thus, FinCEN believes that a more comprehensive and permanent regulatory approach is needed.



## ➤ The Final Rule – Effective 12-1-25

- FinCEN believes that the reporting of non-financed transfers to legal entities and trusts on a nationwide basis will benefit national security by facilitating law enforcement investigations into, and strategic analysis of, the use of residential real estate transfers having these particular characteristics to facilitate money laundering.
- The final rule imposes a streamlined **suspicious activity report (SAR)** filing requirement under which reporting persons, as defined, are required to file a “**Real Estate Report**” on certain non-financed transfers of residential real property to legal entities and trusts.
- Transfers to individuals, as well as certain transfers commonly used in estate planning, do not have to be reported.

# The Final Rule

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- **A Real Estate Report (Report)**, essentially a streamlined version of a Suspicious Activity Report, promulgated under the statutory authority at 31 U.S. Code Section 5318(g), will be specifically designed to capture information about high-risk residential real estate transactions.
- The Report must be filed by the last day of the month following the month in which the date of closing occurred or 30 calendar days after the date of closing, whichever is later. Reporting persons will therefore generally have about 30 to 60 days to file the report.
- We've yet to see the form – but reporting will be done electronically through a website using the Report.

# The Final Rule

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- **FinCEN's Final Rule goes into effect December 1, 2025**, nationwide, requiring for reporting of transfers that meet the following criteria:
  - the property is residential real property;
  - the transfer is non-financed or cash;
  - the property is transferred to a legal entity or trust, and
  - an exemption does not apply.
- **The Residential Real Estate Reporting Rule** will replace GTOs with a nationwide disclosure system for non-financed transfers of residential real estate to non-individuals.

# FinCEN – Residential Real Estate Reporting Website



- On July 3, FinCEN launched a dedicated webpage for resources pertaining to Residential Real Estate Reporting at <https://www.fincen.gov/rre>.

Residential Real Estate Rule Home

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Questions About Residential Real Estate?




Starting December 1, 2025, certain professionals involved in real estate closings and settlements must submit reports to FinCEN regarding certain non-financed transfers of residential real estate to legal entities or trusts. The Department of the Treasury has long recognized that the illicit use of residential real estate threatens U.S. economic and national security and can disadvantage those that seek to compete fairly in the U.S. real estate market. This reporting requirement is designed to increase transparency in the U.S. residential real estate sector and to combat and deter money laundering.

## Prepare

- ⇒ What is the Real Estate Report?
- ⇒ When is a transfer reportable?
- ⇒ Am I a reporting person?

## File

- ⇒ File a report using the BSA E-Filing System
- ⇒ Create a BSA E-Filing account
- ⇒ Create a Login.gov account

 **Alert:** Filing a Real Estate Report directly through FinCEN's BSA E-Filing System is free



- FinCEN’s dedicated RRER website will be a helpful tool for you as you learn more about the rule, and strive to keep up with any changes.
- Please note that you can subscribe to receive FinCEN updates.
- I believe that one of the most beneficial elements of the website are the FAQs, which FinCEN describes as follows:
  - “This webpage currently houses an initial batch of frequently asked questions, and will be updated on a rolling basis with forthcoming guidance materials.”
- This presentation was written prior to the website going live, and primarily includes citations to the Final Rule itself. However, several slides have been updated with screenshots of information found on the website – which will be noted on the slides themselves.

# What Transactions Are Covered?

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- **Reportable Transactions** are defined in **31 CFR 1031.320(b)** as those that include the following:
  1. Residential Real Property
  2. Non-Financed Transfers
  3. Buyer is an Entity or a Trust
  4. U.S. Coverage
  
- Note: As opposed to the GTOs, there is no dollar amount threshold, and the reporting requirements apply to all reportable transactions across all U.S. states and territories.
  
- We will now go over the definitions of items 1 through 3 above, as found in the Final Rule.



## ➤ **Definition of Residential Real Property in 31 CFR §1031.320(b)(1):**

- The rule applies only to residential real property located in
  - the United States (50 states),
  - the District of Columbia
  - Puerto Rico
  - overseas U.S. territories, including the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands and any other commonwealth, territory or possession of the U.S., and
  - Native American/Indian lands.

# Residential Real Property

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- **“Residential Real Property”** includes a structure designed for 1-4 family occupancy, including:
  - single-family houses
  - Townhouses
  - Condominiums
  - cooperatives (shares in a cooperative housing corporation), 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 definition also includes transfers of unimproved land on which the buyer intends to build a structure designed principally for occupancy by one to four families.
- A transfer of property may be reportable even if the property is mixed or dual use, such as a single-family residence that is located above a commercial enterprise.



- What are indicators of “Residential Real Property?”
  - Look at the sales contract. Does the contract describe the property as “residential?”
  - Look at the tax certificate. Does the tax certificate indicate a property type?
  - From pictures or other information provided to you, does the building appear to be designed for the occupancy of one to four families?
  - From information provided, does the building appear to be a multi-use building which includes one or more single-family residences?
  - If the property is vacant land, does the buyer intend to build a home on the land?

# What is a Transfer?

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- **This definition was taken from the Q&A Section of the FinCEN RRER website:**
  - B.3. What is a transfer of residential real property?
  - A transfer of residential real property is any transfer of an ownership interest in residential real property that is demonstrated through a deed or, for an interest in a cooperative housing corporation, through stock, shares, membership, a certificate, or other contractual agreement evidencing ownership.
  - This definition includes purchases of residential real property for any amount, as well as transfers of ownership for which no consideration is exchanged, such as a gift.

# Residential Real Property

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- The Final Rule noted that the transfer of an interest in an assignment contract would not be reportable.
- Assignment contracts typically involve a wholesaler contracting with homeowners to buy residential real property and then assigning their rights in the contract to a person interested in owning the property as an investment.
- The eventual purchase of the property by the assignee investor may be reportable under this rule because a transfer of an ownership interest demonstrated by a deed has occurred, but the initial signing of the contract between the assignor and the original homeowner would not be reportable.



## ➤ **Definition of Non-Financed Transfers 31 CFR §1031.320(n)(5):**

- The transfer does not involve an extension of credit to all transferees that is both: (1) secured by the transferred residential real property and (2) extended by a financial institution that has both an obligation to maintain an AML program and to file SARs.
- The transfer is made, at least in part, using currency or a cashier's check, a certified check, a traveler's check, a personal check, a business check, a money order in any form, a funds transfer, or virtual currency.
- 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, a hard money loan for example, are treated as nonfinance transfers that potentially must be reported.

# Non-Financed Transfers

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- In general, a non financed transfer is the absence of a loan coming from a bank, mortgage broker or mortgage banker or other source that has an AML obligation and whose loan is secured by the property.
- How will you determine if a lender has an AML obligation? NMLS number?? (National Multistate Licensing System - NMLS Consumer Access is a free via a public-facing portal where consumers can look up licensed MLOs and companies to check their status and credentials)
- So, private or seller financing does not exempt the transaction, because the lender normally does not have an AML obligation.

# Non-Financed Transfers

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- So, what is a **financed transfer**? 31 CFR §1031.320(n)(5):
  - An extension of credit to all transferees that:
    - is secured by the transferred residential real property, and
    - is extended by a financial institution that has both an obligation to maintain an anti-money laundering program and an obligation to report suspicious transactions.
  - The lender must:
    - Extend credit to all transferees;
    - Record a mortgage/lien against the property being transferred;
    - Have anti-money laundering program; and
    - Have an obligation to report suspicious transactions.

# Transferee Entity

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- **Definition of Transferee Entity - §1031.320(n)(10):** 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.”
  - A “**transferee entity**” is anyone other than a trust or individual.
    - This includes legal vehicles commonly used to own property, such as limited liability companies, corporations, and partnerships.

# Transferee Trust

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- **Definitions of Transferee Trust - §1031.320(n)(11):** 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.”
  - A “**transferee trust**” is any arrangement where 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.

# Transferee Entity and Transferee Trust

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- Reporting applies even if a co-purchaser is not a transferee entity or a transferee trust.
- Certain exemptions apply for highly regulated types of legal entities and trusts (companies that have beneficial ownership registered with other federal or state regulators; i.e., certain banks, credit unions, insurance companies, U.S. public companies) that are less likely to be used by illicit actors to launder money through residential real property.
- There are 16 exceptions for these highly regulated types of entities defined in 31 CFR § 1010.380(c)(2) and 15 U.S.C. § 80a-3(a). Many of these businesses must register its securities with the SEC, so the illicit finance risk of non-financed transfers is adequately diminished.
- On the next slide is a list of the 16 exempted entities, taken from the the Q&A Section of the FinCEN RRER website:

# Exemptions from Reporting re: Transferee Entity



## B.6. What is a transferee entity?

A transferee entity is defined as any person other than a transferee trust or an individual. For example, a transferee entity may be a corporation, partnership, estate, association, or limited liability company. However, certain regulated entities are exempt.

The following table summarizes the 16 exemptions:

Exemption No.	Exemption Short Title
1	Securities reporting issuer
2	Governmental authority
3	Bank
4	Credit union
5	Depository institution holding company
6	Money services business
7	Broker or dealer in securities
8	Securities exchange or clearing agency
9	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	A registered investment company
16	Subsidiary of an exempted entity

# Exemptions from Reporting

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- **Exemptions** are provided for certain common, lower-risk transfers. As set forth in **31 CFR 1031.320(b)(2)**. Examples of transfers that are not reportable include:
- a grant, transfer or revocation 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 (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 to a bankruptcy estate;

# Exemptions from Reporting



## ➤ Exemptions, continued:

- 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 (QI) 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.

\* what does this mean? Does this include a mortgage foreclosure, whether judicial or non-judicial? Does it include a Quiet Title Judgment? What if the court order includes the phrase “transfers required by a court” rather than simply being “supervised” by the court?

- ## ➤ Note: If a transaction is not reportable, there is nothing to do under the RRE Rule – except perhaps save a memo to file that explains your rationale.

# Who Must Report?

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- If a transaction *is* reportable, who must file the report?
- According to **31 CFR § 1031.320(c)**, there is one “**Reporting Person,**” and they can be identified in one of two ways:
  1. a cascading reporting order, or
  2. a written designation agreement between the real estate professionals described in the cascading reporting order.

# Who Must Report?

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- Section 31 CFR § 1031.320 (c) defines the **cascading reporting order** as follows:
  - **First choice:** The person who is listed as the settlement agent on a settlement statement;
  - **Second Choice:** The person who prepares the settlement statement;
  - **Third Choice:** The person who files the deed for recordation;
  - **Fourth Choice:** The person who issues the Owner's Title Insurance Policy;
  - **Fifth Choice:** The person who disburses the greatest amount of funds;
  - **Sixth Choice:** The person who did a title examination; and
  - **Final Choice:** 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).

# Who Must Report?

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- If there are more than 1 reporting persons in the “cascade,” then those persons can enter into a written “**Designation Agreement**” that includes the following information:
  - The date of the agreement;
  - The name and address of the transferor;
  - The name and address of the transferee entity/transferee trust;
  - Information identifying the transferred residential real property;
  - The name and address of the person designated through the agreement as the reporting person; and
  - The Name and address of all other parties to the agreement.
- A separate Designation Agreement is required for each reportable transfer, and each Agreement must be retained for 5 years.

# Who Must Report?

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- If the first choice on the list – the settlement agent - is going to be the Reporting Person, there is no need for a Designation Agreement, but if the Reporting Person will be anyone other than the settlement agent, there must be.
- The reporting person may outsource the preparation of the form to a third-party vendor, but the ultimate responsibility for the completion and filing of the report would lie with the reporting person.
- The idea behind the cascade was to prevent an increased burden on reporting persons by ensuring that multiple real estate professionals do not have to collect information and file a report about the same transfer, while also minimizing opportunities for reporting evasion by ensuring the report is filed for most reportable transfers.

# Summary of What We've Reviewed So Far

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- If you are closing a residential real estate transaction on or after December 1, 2025, you must ask four questions:
  1. Is the property “residential real property” as defined in the Final Rule?
  2. Is the Buyer/Transferee a “Transferee Entity” or a “Transferee Trust?”
  3. Is the transfer “Non-Financed?”
  4. Is the transfer otherwise “Exempt?”
- If this is a reportable transaction, then you must determine if you are the Reporting Person.
- If you are the Reporting Person, you must gather all of the following information that apply in your transaction, then report that information to FinCEN via the Report.

# What Information Must be Reported?

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- The final rule requires that a Reporting Person provide information about the transfer of residential real property identify the following:
  1. The reporting person;
  2. The legal entity (transferee entity) or trust (transferee trust) receiving ownership of the property;
  3. The beneficial owners of the transferee entity or transferee trust and certain individuals signing documents on behalf of the transferee entity or transferee trust during the reportable transfer;
  4. The transferor;
  5. The residential real property being transferred;
  6. Payments made by or on behalf of the Transferee; and
  7. Hard money, private and other similar loans.
  
- Let's look at each of these line items in more detail:

# What Information Must be Reported?

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1. Information about the **Reporting Person** - 31 CFR § 1031.320(d);
  - Name
  - Category of reporting person (from the cascade list)
  - Address

# What Information Must be Reported?

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## 2. Information about the **Transferee Entity** - 31 CFR § 1031.320(e);

- Full legal name of entity;
- Trade name or “doing business as” name, if any;
- Complete current address consisting of:
  - The street address of the Transferee Entity’s principal place of business; and
  - If not in the U.S., the street address of the primary location in the U.S. where the Transferee Entity conducts business, if any;
- Unique identifying number
  - The IRS Taxpayer Identification Number (TIN);
  - If no IRS TIN, a tax I.D. number issued by a foreign jurisdiction and the name of that jurisdiction; or
  - If no IRS TIN or foreign TIN, an entity registration number issued by a foreign jurisdiction and the name of the jurisdiction.

# What Information Must be Reported?

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2. Information about the **Transferee Trust** - 31 CFR § 1031.320(e);
  - Full legal name of the Trust;
  - Date the Trust was created;
  - Unique identifying number of the Trust
    - IRS TIN, or
    - If no IRS TIN, a tax ID number issued by a foreign jurisdiction and the name of the jurisdiction
  - Whether the Trust is revocable.

# What Information Must be Reported?

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- Note: In the Final Rule, FinCEN requires collection of the unique identifying numbers of entities and individuals, including their TINs, but clarifies that, for legal entities, a unique identifying number is required only if such number has been issued to that entity.
- The Final Rule contains a similar provision for transferee trusts. In the trust context, no unique identifying number would need to be reported if a unique identifying number has not been issued to the trust.
  - For instance, there may be a situation in which a transferee trust has not been issued an IRS TIN, nor has it been issued any of the foreign identifying numbers set out in the rule.

# What Information Must be Reported?

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- With the clarifying edit to the unique identifying numbers required for legal entities, the rule makes clearer that a unique identifying number would similarly not be required to be reported in such a situation.
- FinCEN notes that the final rule does not extend this language to the TINs of individuals, as FinCEN expects that individuals will have been issued one of the unique identifying numbers required by the regulations.

# What Information Must be Reported?

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3. Information about the **transferee beneficial owners and signing individuals** - 31 CFR § 1031.320(e);
- Full legal name;
  - Date of birth;
  - Current residential street address;
  - Citizenship; and
  - Unique identifying number
    - IRS TIN, or
    - If no IRS TIN, a tax I.D. number issued by a foreign jurisdiction and the name of that jurisdiction; or
    - If no IRS TIN or foreign TIN, the unique ID number and the issuing jurisdiction from a non-expired passport issued by a foreign government.
  - For signing individuals, a description of the capacity they are signing in.

# What Information Must be Reported?



3. Who are “**transferee beneficial owners of a Transferee Entity?**” - 31 CFR § 1010.380(d)(1);
- Each individual who exercises substantial control over the transferee entity, such as:
    - Chief Executive Officer, Chief Financial Officer, Chief Operating Officer,
    - Managing Member,
    - General Partner,
    - President,
    - Vice President, or
    - Treasurer.
  - Each individual who, on the date of closing, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25% or more of the equity interests of the transferee entity;

# What Information Must be Reported?

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3. Who are “**transferee beneficial owners of a Transferee Trust?**” - 31 CFR § 1010.380(d)(1);
- An individual who is a Trustee of the Transferee Trust.
  - An individual other than a Trustee with the authority to dispose of Transferee Trust assets.
  - 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 withdraw, substantially all of the assets from the Transferee Trust.
  - A grantor or settler who has the right to revoke the Transferee Trust or otherwise withdraw the assets of the Transferee Trust.
  - Is the beneficial owner of a legal entity or trust that holds one of the positions described in the above four categories, taking into account the exemptions that apply to transferee entities and transferee trusts.

# What Information Must be Reported?



3. Who are “**transferee beneficial owners of a transferee trust?, cont.**”  
- 31 CFR § 1010.380(d)(1);
- A beneficial owner of a legal entity or trust with authority to dispose of Transferee Trust assets in a manner other than as a Trustee of a Transferee trust.
  - A beneficial owner of a legal entity or trust that is the sole permissible recipient of income and principal from the Transferee Trust or who has the right to demand a distribution of, or withdraw, substantially all of the assets from the Transferee Trust.
  - A beneficial owner of a legal entity or trust that is a grantor or settler with the right to revoke the Transferee Trust or otherwise withdraw the assets of the Transferee Trust.
  - An individual who expects to sign documents on behalf of the Transferee Trust.

# What Information Must be Reported?

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4. Information about the **transferor** - 31 CFR § 1031.320(f);
- Full legal name;
  - Date of birth;
  - Current residential street address;
  - Citizenship; and
  - Unique ID number consisting of:
    - IRS TIN; or
    - Where no IRS TIN, a tax ID number issued by a foreign jurisdiction and the name of the jurisdiction; or
    - If no IRS TIN or foreign TIN, the unique ID number and the issuing jurisdiction from a non-expired passport issued by a foreign government.

# What Information Must be Reported?

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5. Information about the **Residential Real Property** - 31 CFR § 1031.320(g);
  - Street address, if any;
  - Legal description, such as lot and block; and
  - Date of closing.

# What Information Must be Reported?

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6. Information about any **payments made by or on behalf of the Transferee** - 31 CFR § 1031.320(h);
- The amount of the payment;
  - The method by which the payment was made;
  - If the payment was paid from an account held at a financial institution, the name of the financial institution and the account number;
  - The name of the payor on any wire, check, or other type of payment if the payor is not the transferee entity or transferee trust;
  - The total consideration paid or to be paid by the transferee; and
  - The total consideration paid by or to be paid by all transferees regarding the reportable transfer.

# What Information Must be Reported?

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7. Information about any **hard money loans, private loans, or other similar loans** - 31 CFR § 1031.320(i);
  - The Reporting Person shall report 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 under this chapter.

# How Does the Reporting Person Gather the Information?

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- FinCEN is finalizing a Collection Form that can be used to collect the required information that must be reported, and they are also finalizing the Real Estate Report (RER) itself.
- FinCEN posted a notice in 89 FR 89700 (Nov. 13, 2024) titled “Agency Information Collection Activities; Proposed Collection; Comment Request; Real Estate Reports,” that included the following information:
  - The proposed RER contains 111 distinct fields;
  - FinCEN believes that “very rarely will a reporting person need to complete all 111 field,” and instead expects that approximately 60% must be completed to report a given transfer. In fact, the form may require as few as 40 fields to be completed.
  - FinCEN anticipates that significantly more fields may be required for certain highly complex reportable transfers, such as those with multiple beneficial owners or multiple sources of funds that would require the same fields to be populated for each owner or source of funds.

# How Does the Reporting Person Gather the Information?

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- The Federal Register Notice also provided that:
  - The Reporting Person may **reasonably rely** on information obtained from others, absent knowledge of facts that would reasonably call into question the reliability of that information.
  - For purposes of reporting beneficial ownership information in particular, a Reporting Person may reasonably rely on information obtained from a transferee or the transferee's representative if the accuracy of the information is certified in writing to the best of the information provider's own knowledge.
  - The reports are to be filed electronically through an online interface using the same free system that other financial institutions required to file BSA reports use for purposes other than in connection with real estate transactions.

# How Does the Reporting Person Gather the Information?

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- The ALTA has created both a Buyer's Collection Form and a Seller's Collection Form that can be used to collect the required information that must be reported.
- Here's how they announced these forms on the ALTA website:

## **ALTA Develops Forms to Aid Compliance With FinCEN AML Rule**

*June 24, 2025*

ALTA has developed two forms to assist the industry in collecting information needed to comply with FinCEN's Anti-Money Laundering (AML) **rule** for residential real estate transactions.

ALTA's AML Work Group developed collection forms for buyers and sellers. The forms are designed to take advantage of the reasonable reliance standard in the rule. It also includes a certification section copied from a model FinCEN developed for bank compliance with the customer due diligence rule.

You must be logged in and be an ALTA member or a Policy Forms License Holder to access the forms.

# How Does the Reporting Person Gather the Information?

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- ALTA's went on to add (and yes, I repeated the first sentence on this slide intentionally):

You must be logged in and be an ALTA member or a Policy Forms License Holder to access the forms.

The **buyer's form** includes sections to collect information about:

- the person completing the form
- potential exemptions to reporting
- the buyer/transferee in a covered real estate transaction
- the origin of funds used to acquire the subject real estate

The **seller's form** includes sections to collect information about:

- the person completing this collection form
- potential exempt transactions
- the seller in a covered real estate transaction

# How Are the Reports Submitted?

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- The Federal Register Notice went on to provide:
  - To file RERs through FinCEN's BSA E-Filing System, individual users will be required to create a login.gov account (if they have not already done so for other purposes).
  - The enrollment process for FinCEN's BSA E-Filing System entails identifying the reporting person and assigning a designated "Supervisory User." The Supervisory User:
    - is an individual who will facilitate the process of creating general user accounts for the reporting person's other employees, if any, who may file reports, and
    - will have access to system functionality not available to regular users, such as the ability to update filing organization information and track the status of filings submitted by all users from across the organization.

# How Are the Reports Submitted?

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- Once the enrollment process has been completed, the BSA E-Filing System will provide three different filing options for RERs. Filers will file individual reports either:
  1. through an online form or
  2. as a PDF form, or
  3. filers may file multiple reports through a user-developed automated interface using Secure File Transfer Protocol.

# Penalties for Non-Reporting

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- There are no penalties set forth in the final rule because FinCEN believes the applicable penalties are already set forth by statute.
- Here's a summary of what those statutes say:
  - Negligent violations of the final rule could result in a civil penalty of, as of the publication of the final rule, 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.
  - Willful violations of the final 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.
  - Such violations also could result in a civil penalty of, as of the publication of the final rule, not more than the greater of the amount involved in the transaction (not to exceed \$278,937) or \$69,733.
  - This penalty structure generally applies to any violation of a BSA requirement.

# Preparing for December 1

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- FinCEN's final comments estimated the following:
  - Estimated Costs:
    - First Year: Nationwide cost of \$428.4 Million- \$690 Million, and between \$410.2 and \$663.2 Million thereafter.
  - Time Investment:
    - 75 minutes of initial training per staff member, plus 30 minutes of annual training thereafter.
  - Reporting Volume:
    - Estimated 850,000 filings per year, requiring 4.6 Million staff hours.
  - Recordkeeping:
    - 5-year retention period for Beneficial Ownership Certification Forms and Designation Agreements.

# Preparing for December 1

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- How are you going to identify transactions covered by the rule?
- How will you collect information?
- Where in your office's workflow will you begin collecting information?
- How will you handle customer push back?
- Who in your office will be responsible for filing? Will you be using designation agreements?
- Have you created a BSA E-Filing Account?
- Will you charge a fee for compliance – are you even allowed to do that in your state?
- Where will you store the information collected and reported, and do you have ample storage?





**THANK  
YOU**

