


ALLIANT NATIONAL TITLE INSURANCE COMPANY

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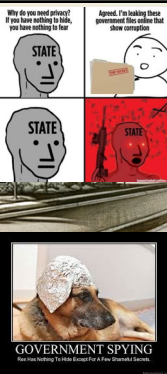
(Updated March 2025)

# Complying with FinCEN Beneficial Ownership Information and Real Estate Reporting Rules



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**#ALLNATEDU**  
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**GOVERNMENT SPYING**  
Has Your Agency To Watch Enough For A Few Thousand Dollars?

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## What is FinCEN?

U.S. Department of the Treasury

- Financial Crimes Enforcement Network (FinCEN)
- Established in 1990 with the Bank Secrecy Act (BSA)
- Mission:
  - To safeguard the financial system from illicit use and combat money laundering and promote national security through the collection, analysis, and dissemination of financial data and strategic use of financial institutions

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## What Does FinCEN Do?

- Responsible for receiving and maintaining financial transactions data
  - Suspicious Activity Reports
  - Currency Transaction Reports
- Analyze and disseminate financial data for law enforcement purposes
- Work with Homeland Security, IRS, SEC, FDIC, FBI, Immigration and Customs Enforcement
- Identify sanction evasion with the Office of Terrorism and Financial Intelligence
- Cooperates with international organizations and foreign governments
- FinCEN Exchange:
  - Voluntary public-private partnership that brings together law enforcement, national security agencies, and financial institutions to help combat financial crime

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**Bank Secrecy Act Growth to Include Real Estate**

1966 – Anti-state closing crimes was added to the BSA  
 Definition of a financial institution was part of the Anti Drug Abuse Act

- Patriot Act required all financial institutions to have anti-money laundering programs
- Real estate industry given temporary exemption for a full anti-money laundering program in 2003
- Duplicative of the mortgage bank reporting rules, if necessary

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**Money Laundering Process: Precursor to Understanding FinCEN Rules**

- 1. Placement** – Illegitimate money introduced to the economy (bank deposits)
- 2. Layering** – Bank deposits pass through several domestic and offshore transactions, which make tracking difficult for authorities to audit
- 3. Integration** – Laundered criminal proceeds get integrated into legitimate banks and other financial institutions

FinCEN's goal is to gather data during the placement stage before illegal money can be layered and integrated as "clean" money

Bad actors exploit the U.S. real estate market to launder and hide money from criminal activities while law abiding citizens suffer the costs of inflated housing prices

Real estate identified as a risk and target by the National Money Laundering Assessment

Billions of dollars laundered in the U.S. real estate market between 2015-2020 alone

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**Geographic Targeting Orders (GTO)**

- FINCEN Created the GTO's during Obama Administration
  - Expanded During Trump Administration
  - Expanded During Biden Administration
- Originally only covered Miami and New York City as main targets for enforcement and data collection
- Expanded to several counties and cities in 13 states and D.C.
- Focused on all cash residential transactions by legal entities (i.e., not individual parties)
- Started with a higher dollar amount but lowered to \$300,000
  - \$50,000 in Baltimore, Maryland (City or County)
- GTOs are supposedly very valuable to FinCEN
- Currently valid for 180 days (renewed October 15, 2024 – good through April 14, 2025)

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State	Counties	Cities
D.C.	(Amazing this wasn't included.....Hmmm)	
CA	San Diego, Los Angeles, San Francisco, San Mateo, Santa Clara	
CO	Adams, Arapahoe, Clear Creek, Denver, Douglas, Eagle, Elbert, El Paso, Fremont, Jefferson, Mesa, Pitkin, Pueblo, Summit	
CT	Fairfield, Litchfield	
FL	Miami-Dade, Broward, Palm Beach, Hillsborough, Pasco, Pinellas, Manatee, Sarasota, Charlotte, Lee, Collier	
HI	Hawaii, Maui, Kauai, Honolulu	Honolulu
IL	Cook	
MA	Suffolk, Middlesex, Bristol, Essex, Norfolk, Plymouth	
MD	Montgomery, Anne Arundel, Prince George's, Howard, Baltimore	Baltimore
NV	Clark	
NY	Burroughs of Brooklyn, Queens, Bronx, Staten Island, and Manhattan in NYC	
TX	Bexar, Tarrant, Dallas, Harris, Montgomery, Webb, Travis	
VA	Arlington, Fairfax	Alexandria, Falls Church, Fairfax
WA	King	

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### Covered Transaction: What Must Be Reported?

**Basic Information:**

- Closing date
- Purchase price
- Parties names

**Transferor / Transferee Information:**

- Transferor: Includes Beneficial Ownership Information (for the entity, if applicable)
- Transferee: Includes Beneficial Ownership Information
- Information about payment or purchase price

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### Covered Transaction: When and How to Report?

**When:**

- The later of the last day of the first month following the closing or 30 calendar days after closing
- Whichever is later

**How:**

- Report filed electronically through a website using the Real Estate Report
- FinCEN will provide the form to be used for reporting – Haven't published yet

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### Final Rule: Residential Real Estate and Non-Financed Transfer Defined

**Residential Real Estate:**

- Real property containing a structure designed for 1-4 family occupancy, including condominiums and dual use properties
- Vacant land on which the transferee *intends* to build a house
  - How would you know what the buyer intends to do with a vacant land purchase?
- Shares in a cooperative housing corporation
- Includes sales anywhere in the United States, D.C., Puerto Rico, other overseas U.S. territories, and Native American lands

**Non-Financed Transfer:**

- The absence of a loan coming from a lender, bank, mortgage broker, mortgage banker or other source that has an anti-money laundering obligation
- Private or seller financing does not make the transaction exempt (Hard Money Lender)
- How do you know if the lender has an anti-money laundering obligation?

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## What is Covered?

- Purchaser is a Legal Entity or Trust
  - Transferee Entity = anyone other than a trust or individual (Corporation, LLC, Etc.)
  - Transferee Trust = any arrangement where a person places assets under the control of a Trustee for the benefit of one or more persons
- Reporting required if a co-purchaser is not a legal entity or trust
  - If one purchaser meets the definition, then the entire transaction is a covered transaction and must be reported (yes this includes minor children)
- Limited exceptions for certain entities
  - Beneficial Ownership Information already registered with the federal and/or state agencies

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## Reasonable Reliance

**Standard**

- Allows reporting parties to reasonably rely on information provided by the parties to the transaction
  - Buyer's intent to build
  - Addresses provided
  - Lender having anti-money laundering obligations

**Beneficial Ownership Information**

- Similar application for BOI of transferee entities of transferee trusts
- Reporting parties can rely on information "certified" in writing by the entity/trust representative to be accurate and not subject to change

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## Exempt Transactions

- Grants, transfers, or revocations of an easement
- Transfers resulting from the death of an individual
  - Under a Will, trust, by operation of law, or by contract
- Transfers stemming from a divorce or dissolution of a marriage
- Transfers to a bankruptcy estate
- Transfers "supervised by a court"
- Transfers for no consideration to certain trusts
- Transfers to a Qualified Intermediary for the purpose of completing a 1031 exchange
- Transfers when there is no reporting party

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## Exempt Transactions Continued

- What is a transfer "supervised by a court"
  - Mortgage foreclosure – judicial
  - Quiet title
- Final rule commentary includes language of "transfers required by a court" as opposed to "supervised" by a court
- Transfers from an individual, their spouse, or both, to a trust where the same individuals are the settlors and grantors
- Corrective deeds are not transfers and do not have to be reported

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## Transaction Information Report

**What's New?**

- Individuals**
  - Full legal name, DBA, business address, TIN or foreign business number
- Trust**
  - Full name of trust, trust date, TIN, address for trustee
- Entity**
  - BOI and Signor info
    - BO = full legal name, date of birth, current and former citizenship, U.S. SSN or EIN, U.S. address
    - Signor = full legal name, date of birth, current and former citizenship, U.S. SSN or EIN, U.S. address

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## Beneficial Owner Information for Entities

- "BOI"
- Effective January 1, 2024
- Companies created prior to January 1, 2024 have until January 1, 2025 to file their BOI report
- After January 1, 2025, 30 days to file BOI report after receipt of the notice of registration of the entity
  - February 27, 2025 – BOI rule in place but FinCEN will not issue any fines or penalties (for now)
  - Interim final rule intended to be issued by FinCEN no later than March 21, 2025 (Oops – Now only for foreign nationals)
- Any individual who, directly or indirectly, either exercises substantial control or owns or controls at least 25% of the ownership interest of the entity
- Substantial control includes
  - Senior officers
  - Authority to appoint Board Members or Senior Officers
  - Directs decision making on important financial decisions including transfer of assets
- Includes both for-profit and non-profit entities

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### Beneficial Owner Information for Trusts

- Individual Trustee
- An individual other than a Trustee with the authority to dispose of Trust assets
- Beneficiary that is the **sole** recipient of income/principal of the Trust or who has the right to demand distribution of substantially all the assets of the Trust
  - Implies one person
- Grantor / Settlor under a revocable Trust
- If an entity holds one of the covered positions listed above, then the BOI for that entity is required to be reported

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### Payments Information

- Total Purchase Price
  - Includes any amounts paid outside of closing
- Each payment by the Transferee or on the Transferee's behalf to the settlement agent
  - Amount of the payment
  - Method of payment (wire transfer, ACH, certified check, traveler's check, any other method)
  - Name of financial institution the payment was drawn on and the account number
  - Name of any Payor on the wire or check if the Payor is not the same as the Transferee
- Including information on whether there is any private or hard money lending
  - Includes seller financing

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### Who Must Report?

- Reporting Persons Defined: includes title insurance company and its agents
- Level of involvement
- Cascade of responsibility to report, which means the responsibility to report cascades down to the person who is most directly involved in the transaction
- The person who is named as the settlement agent on the settlement statement is automatically considered the settlement agent for all transactions (Buyer)
- The person that prepares the settlement statement
- The person who has the deed for recording
- The person who issues the owner's title insurance policy
- The person that dispenses the greatest amount of funds
- The person that did the title examination
- The person that prepared the deed
- Responsibility to attorneys and non-attorneys

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**Reporting Designation Agreement**

- The persons in the cascade of responsibility can agree to designate someone lower on the list to do the required reports (waterfall down each tier of the cascade)
  - Otherwise, all are responsible with the responsibility flowing up to the settlement agent listed on the Transferee's settlement statement
- Designation agreement must be in writing and be specific to each transaction
- Requirements:
  - Date of the agreement;
  - Name and address of the Transferor;
  - Name and address of the Transferee Entity or Transferee Trust;
  - Transferred residential real property information;
  - Name and address of the person designated as the reporting party for the transfer; and
  - Name and address of all the other parties to the agreement

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**FinCEN Cost Estimate\***

- For the next 10 years, the estimated cost per person is \$40,123 - \$66,622 Million, depending on the number of persons per year.
- 604,167 hours of staff time for reporting per year
- Additional 30 minutes of training per person per year (annually)
- \*Source: ALTA One Presentation (2024)

**How much money are we talking about here...?**




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**Recordkeeping Requirements**

- 5 years from the date of filing the report
- Reporting person must only retain the certification from the Transferee and a copy of any designation agreement (if any)
- No requirement that the reporting person maintain the real estate report that is filed with FinCEN
  - Best practice to consider: Keep the Real Estate Report

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