

FinCEN Residential Real Estate Reporting Rule Redux

Quick-Take: Starting March 1, 2026, many residential real estate transactions will have to be reported by the realtor who handles the closing to FinCEN or face substantial civil and/or criminal penalties.

Background: As was previously reported a few weeks back, starting March 1, 2026, nonfinanced residential real estate transactions that involve transferees that are not legal entities or trusts must be reported to FinCEN. The real estate professional who is involved with the closing or settlement will be required to file the FinCEN report. Willful or negligent noncompliance with the reporting requirement could result in civil or criminal penalties. This reporting rule covers any transfer, for any amount, **including gifts of an ownership interest** in residential real estate or contractual agreements that evidence the transfer of ownership in a residence.

Penalties: A negligent violation of the FinCEN reporting rule could result in a civil penalty of up to \$1,394 for each violation. If there is a pattern of negligent violations the civil penalty could increase to \$108,489. A willful violation of the FinCEN reporting rule could result in a criminal fine of \$250,000 and/or up to 5 years in prison. These larger amounts are tied to the existing penalty structure under the federal Bank Secrecy Act.

Exceptions: Excepted transfers of residential real estate include a transfer that results from death, divorce, bankruptcy, like-kind exchanges, and court orders.

Residential Real Estate: What is covered under this new reporting rule are single-family houses, townhouses, condominiums, and cooperatives that contain many units, or an entire building that is designed for the occupancy of one-to-four families. Reporting will nonetheless be required even if there is also a commercial component to the property, e.g., a residence that is located above a commercial establishment. Even transferred vacant land upon which the transferee intends to build a structure that is designed for the occupancy of one to four families will be subject to the reporting requirement.

Nonfinanced Transfer: This reporting rule applies to a transfer of residential real estate that **does not involve the extension of credit** that is both (i) secured by the transferred property; and (ii) extended by a financial institution which is subject to the anti-money laundering reporting obligations, as in those situations the already exists other ‘money laundering/suspicious activity’ reporting obligations on the lender. A transaction funded entirely by cash, funds transfers, or cryptocurrency without extension of credit **is covered**.

Transferee Entity: The rule applies to any individual other than a transferee trust or an individual. Accordingly, a transfer of residential real estate to a corporation, partnership, estate, or LLC would be covered, other than those entities, e.g., a bank, that are exempt under the FinCEN rules.

Transferee Trust: This is described as any legal arrangement created by a settlor who transfers residential real estate under the control of a trustee for the benefit of one or more beneficiaries, or to a ‘purpose’ trust. The trust will be treated as a *transferee trust* whether the title to the real estate is placed in the name of the trust, or in the name of the trustee. As long as one of the transferees in the transfer is a *transferee entity*, or a *transferee trust*, the transfer is reportable to FinCEN.

Beneficial Owner: A beneficial owner is defined as an individual who, either directly or indirectly, exercises substantial control over the legal entity or who owns or controls at least 25% of the legal entity’s ownership interests.

Beneficial Owner of a Transferee Trust: This should sound familiar from previous missives that pertained to the beneficial reporting obligations for legal entities, subsequently suspended. This is defined as any individual who, at the time of the transfer of the residential real property to the trust: (i) is a trustee; (ii) otherwise possesses the authority to dispose of transferee trust assets, such as with a trust director/protector; (iii) is a beneficiary who is the sole permissible recipient of income and principal from the transferee trust; (iv) is a settlor who has the right to revoke the transferee trust or otherwise withdraw the assets from the transferee trust; (v) is the beneficial owner of a trust that holds one of the ‘trust’ positions or powers just described; and (vi) is the beneficial owner of a legal entity that holds one of the ‘trust’ positions or powers just described. [31 CFR 1010.380(d).]

Conclusion: Considerable information must be gathered to complete this new FinCEN report, e.g., 111 fields have to be completed, and the form filed by the last day of the month following the month in which the residential real estate was transferred. Practically speaking, this new rule seems to extend the anti-money laundering reporting rules from just banks and other financial entities to residential real estate brokers. I have yet to hear the cries and complaints that FinCEN's former beneficial ownership interest (BOI) rules, later suspended, associated with this new rule. If it does get suspended, or withdrawn, I will be sure to report back on that relief.

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