

Understanding the FinCEN Real Estate Rule

The Financial Crimes Enforcement Network (FinCEN) Real Estate Rule targets non-traditional financed (all-cash) transactions where residential real estate is transferred to legal entities (e.g., LLCs, corporations, partnerships) or trusts.

Purpose: The purpose of the rule is to increase transparency in certain residential real estate transactions and prevent money laundering and other illicit financial activity. It does this by requiring reporting on non-traditional financed purchases made through entities and trusts, helping identify the real individuals behind those transactions.

Impact: The rule adds a reporting step to certain residential real estate transactions involving entity or trust buyers and all-cash or non-traditionally financed purchases. When identified early and managed proactively, it does not prevent a transaction from closing and typically has minimal impact on timing, cost, or the overall transaction flow.

What to Report?

All non-traditionally financed/cash transfers of residential real estate where the transferee is an entity or trust subject to exceptions and exemptions.

When do you Report?

The later of the last day of the month following “closing” or 30 calendar days after closing.

Who must Report?

Typically, the title company or settlement agent to the transactions but there is a cascade hierarchy structure, or you can have an agreement to delegate reporting.

How do you report?

Electronically with FinCEN in a form called a Real Estate Report. Third party providers may be used to assist in reporting.

Covered Transactions

Covered transactions under the FinCEN Real Estate Rule involves residential real estate in the United States intended for one-to-four family occupancy. This includes single-family and small multi-family homes, mixed-use buildings, condominium units, cooperative housing shares, and vacant land where the buyer intends to build a one-to-four family residential structure.





Specific Excluded Transactions

Easements: Right to use land for a specific purpose without ownership transfer.

Transfers Arising from Life Events:
Inheritance, divorce, or to a bankruptcy estate.

Court-Supervised Transfers: Transactions overseen by a court, ensuring legitimacy.

1031 Exchanges: Like-kind exchanges to a qualified intermediary under Section 1031 of the Internal Revenue Code, facilitating tax-deferred property swaps. Transactions out of the exchange might be reportable.

No Consideration Transfer to a Trust:
Individually, or with a spouse, to a trust where they are the settlor(s) or grantor(s).

Reporting Requirements

The information required in the Real Estate Report includes:

- + **Entities:** full legal name, trade name or dba, complete address (Includes foreign addresses and a principal place of biz in US, if any), and unique identification number (SSN, TIN etc.)
- + **Trusts:** Full legal name like the title of the agreement establishing trust, date of trust execution, identification number
- + **Individuals that are transferor:**
Name, date of birth, address, and identification number
- + **Property Details:** Legal description and address (If there is one)
- + **Signing Individual Information:** Name, date of birth, address, and identification number
- + **Beneficial Ownership Information:** Identities of individuals with significant control or ownership interests of entities or trusts
- + **Transaction Details:** Total consideration paid, all payment methods (and date of transfer), the closing date, name of any financial institution involved, and the name of payors on any wire, check or other type of payment

Beneficial Ownership Information for Trust Buyers:

+ **Trustees:** Individuals or entities responsible for managing the trust

+ **Trust Protectors:** Persons with oversight authority over the trustee's actions

+ **Beneficiaries:** Individuals entitled to benefit from the trust's assets

+ **Grantors with Revocation Rights:** Individuals who have established the trust and retain the right to revoke it



Who Files the Report?

The Real Estate Report is filed by the professional responsible under FinCEN's reporting cascade, which establishes an ordered list of parties involved in a residential real estate transaction. In most cases, the title company, escrow agent, or closing attorney is the reporting person, and a real estate agent is only required to file if no higher-priority professional exists, which is uncommon.

The rule also allows the parties to use a "Designation Agreement" to formally assign reporting responsibility to a specific reporting person. When a Designation Agreement is in place, the designated party files the report and may reasonably rely on information provided by others, including beneficial ownership information, as long as there is no reason to doubt its accuracy and the required certifications are obtained.

Only one business would be deemed to be the reporting person and would be required to file a report. The reporting person can be identified in one of two ways:

1. By way of the reporting cascading hierarchy described, or
2. By way of a written Designation Agreement between the real estate businesses described in the cascading reporting order

Hierarchy or Cascading of Reporting Responsibility:

1. **Closing or Settlement Agent:** Primary responsibility due to direct involvement in the transaction.
2. **Settlement Statement Preparer:** If no agent is designated, the individual preparing the settlement statement assumes responsibility.
3. **Deed Filer:** In the absence of the above, the person responsible for filing the deed.
4. **Title Insurance Underwriter:** Next in line if previous roles are unfilled.
5. **Largest Fund Disbursing:** The entity disbursing the majority of funds in the transaction.
6. **Title Evaluator:** Person assessing the title's validity.
7. **Deed or Legal Instrument Preparer:** Responsible for drafting the transfer documents.

Designation Agreements Purpose and Function of the Agreements:

Written Agreements:

Allow parties to designate a specific individual or entity as the reporting person.

Flexibility:

Enables customization based on transaction specifics, ensuring clarity in reporting obligations.

Compliance Efficiency:

Streamlines the reporting process, reducing the potential for oversight or duplication.

Designation Agreements are optional written agreements among the professionals involved in a transaction that clearly identify which party will serve as the reporting person for FinCEN purposes. Rather than relying solely on the default reporting cascade, the agreement allows the parties to proactively assign responsibility to one specific party, typically the title company or closing agent that is best positioned to gather information and file the report.



Reasonable Reliance Standard

The reasonable reliance standard allows the reporting person to rely on information provided by other parties to the transaction, including beneficial ownership information, as long as there is no reason to question its accuracy. This reliance is permitted when the reporting person obtains the required certifications and does not have knowledge of facts that would make the information unreliable, allowing the report to be completed without independently verifying every detail.

The Standard: The Reasonable Reliance standard permits reporting persons to depend on information provided by other parties during a reportable transaction, provided there is no knowledge of facts that would reasonably question the reliability of that information.

General Application: Reporting persons can rely on details obtained from involved parties without independent verification, unless there are red flags or inconsistencies that suggest the information might be inaccurate.

NOTE: If relying on information provided regarding BOI, you must get certification in writing from the transferee or their authorized representative.

Sun Title is here to help

Sun Title is here to support real estate agents and consumers by helping identify reportable transactions early, explaining how the FinCEN Real Estate Rule applies, and managing the reporting process when required. For more information on the rule, visit sunttitle.com/fincen. To contact us directly please email YesTeam@sunttitle.com, or call 616.458.9100.