

FinCEN Issues New Reporting Requirement for Certain Residential Real Estate Transfers

PUBLISHED ON

November 21, 2024

For many years, the Department of Treasury's Financial Crimes Enforcement Network ("FinCEN") has enacted programs and regulations to protect against money laundering and the financing of terrorism, acts which threaten U.S. economic and national security. Up until now, FinCEN has exempted persons involved in residential real estate closings and settlements from reporting requirements designed to protect against these illicit activities. That's about to change.

Pursuant to authority imposed under the Bank Secrecy Act ("BSA"), FinCEN has now issued a rule, set to become effective December 1, 2025, whereby certain persons involved in real estate closings will be required to report on real estate transfers deemed "high risk" pursuant to the [Residential Real Estate Rule](#). Those transactions deemed high risk for illicit financial activity include non-financed transfers of residential real property to legal entities and trusts.

The new rule imposes a suspicious activity report ("SAR") filing requirement under which reporting persons, as defined by the rule, will be 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 reporting person tasked with filing a Real Estate Report will be one of a small number of people who play a specific role in the real estate closing and settlement, with the specific individual determined through a [cascading approach](#), unless otherwise superseded by an agreement among persons in that reporting cascade. In most cases, this reporting person will be the closing or settlement agent. The reporting person is required to identify him/herself, the legal entity or trust to which the residential real property is transferred, the beneficial owner(s) of that transferee entity or transferee trust, the person(s) transferring the residential real property, and the property being transferred, along with certain transactional information about the transfer.

While the rule does impose this new reporting requirement, such a responsibility is not a new or foreign concept to settlement agents (those most likely to be designated as the reporting person) who are already tasked with other similar reporting duties such as the filing of IRS Form 1099-S. As additional reassurance, the rule adopts a reasonable reliance standard allowing reporting persons to rely on information obtained from other persons absent knowledge of facts that would reasonably call into question the reliability of that information. 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 new rule does not include a specific reference to potential penalties for noncompliance as the penalty structure is already set forth in the provisions of the BSA, which includes both [civil and criminal penalties](#).

The form of the Real Estate Report is yet to be determined. On November 12, 2024, FinCEN issued a [60-day notice](#) in the Federal Register concerning the form that will be used to report such beneficial ownership information. Comments from interested parties must be received on or before January 13, 2025.

We will continue to follow FinCEN's new reporting requirement closely and provide updates as new information is released. In the meantime, if you have any questions about the Residential Real Estate Rule, other FinCEN reporting requirements, or real estate transfers, please reach out to [Jayne Katherman](#), [Stacey MacNeal](#) or any attorney in Barley Snyder's [Business](#) or [Real Estate](#) practice groups.

WRITTEN BY:



Stacey R. MacNeal

Partner

Tel: (717) 718-7586

Email: smacneal@barley.com



Jayne R. Katherman

Counsel

Tel: (717) 718-7585

Email: jkatherman@barley.com