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Client Alert: FinCEN's New Residential Real Estate Reporting Rule

Effective **March 1, 2026**, the Financial Crimes Enforcement Network (FinCEN) will, under the Residential Real Estate Rule, require certain professionals involved in real estate closings and settlements to submit reports to FinCEN regarding certain non-financed transfers of residential real estate to legal entities or trusts (the Real Estate Report). This reporting requirement is designed to increase transparency in the U.S. residential real estate sector and to combat and deter money laundering.

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I. Transfers Subject to the Residential Real Estate Rule

Under the Residential Real Estate Rule, a Real Estate Report must be filed with FinCEN for a "**reportable transfer**," which occurs when all three of the following conditions are met (unless an exemption applies):

A. The property is a transfer of **residential real property.**

Broadly, this includes single-family houses, townhouses, condominiums, and cooperatives, including condominiums and cooperatives in large buildings. Residential properties are reportable even if there is a commercial element (e.g., a residential property is located above a commercial enterprise). Additionally, certain types of land on which a residence is not yet built are included.

B. The transfer is a **non-financed** transfer.

A transfer is non-financed if it does not involve an extension of credit that is both (a) secured by the transferred property and (b) extended by a financial institution subject to Anti-Money Laundering (AML) program requirements and Suspicious Activity Report (SAR) reporting obligations.

C. The transferee **is an entity or trust.**

A transfer is reportable if at least one transferee is a transferee entity or transferee trust. The Real Estate Report is only required to include identifying information for the transferee entities or transferee trusts that are subject to reporting.

Further, transfers of ownership interests (e.g., membership interests, partnership interests, or shares) in a transferee entity or transferee trust may also be considered a reportable transfer if the entity or trust holds residential real property, unless an exemption applies.

II. Common Exemptions

The following are examples of transfers that are exempt under the rule. This is *not* a comprehensive list of all transfers that are not reportable, and reporting persons should evaluate the specific facts of each individual transfer to determine whether it constitutes a reportable transfer under the rule:

A. A transfer that is a grant, transfer, or revocation of an easement.

B. A transfer resulting from the death of an individual.

C. A transfer incident to divorce or dissolution of a marriage or civil union.

D. 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.

E. 1031 Exchanges.

F. A transfer for which there is no reporting person.

III. Who is Required to File

For each reportable residential real estate transfer, **only one party** is responsible for filing the Real Estate Report with FinCEN. That party is referred to as the **"reporting person."**

The reporting person is identified in one of two ways. First, if the parties do not agree otherwise, FinCEN applies a **reporting cascade** that assigns responsibility based on the role performed in the transaction.

Priority generally begins with the **closing or settlement agent** listed on the settlement statement and, if that role is not present, moves down a defined list of functions, including preparing the settlement statement, recording the deed, underwriting the owner's title policy, disbursing the largest amount of funds, providing a title evaluation, or preparing the deed or other ownership instrument. The first party in this hierarchy that participates in the transaction becomes the reporting person. If none of these functions are performed, no report is required.

Alternatively, parties involved in the transaction may use a **written designation agreement** to assign reporting responsibility to another eligible participant in the reporting cascade. Designation agreements must be transaction-specific, in writing, and retained for five years, but they are not filed with FinCEN. This option is intended to allow real estate professionals to allocate reporting responsibility efficiently while ensuring that exactly one party remains accountable for filing the report.

IV. Required Information on the Real Estate Report

The Real Estate Report requires the reporting person to submit identifying information about the transaction and the parties involved. This includes the following information:

A. Identification of the reporting person;

B. Description of the residential real property;

C. Identification of the transferor (seller);

D. Identification of the transferee entity or transferee trust;

E. Identification of individuals representing the transferee in the transaction;

F. Beneficial ownership information for the transferee entity or trust; and

G. Financial details of the transfer.

Beneficial owners of a **transferee entity** include individuals who, as of the closing date, either (a) exercise substantial control over the entity or own the entity or (b) control at least 25 percent of its ownership interests. Beneficial owners of a trust may include trustees, certain beneficiaries, grantors or settlors with revocation rights, and other individuals with authority to dispose of trust assets.

The reporting person can generally rely on information provided by others involved in the transaction, unless there is reason to question its reliability. However, beneficial ownership information must be obtained directly from the transferee or the transferee's representative and must be **certified in writing** as accurate to the best of that person's knowledge. The certification may be collected using the reporting person's own form and may be incorporated into existing closing documentation.

The Real Estate Report must be filed by the **later of: (a) 30 calendar days after closing or (b) the last day of the month following the month of closing**.

With respect to recordkeeping, the reporting person must retain beneficial ownership certifications and any designation agreements for **five years**. A copy of the filed Real Estate Report itself does not need to be retained. Other parties to a designation agreement are likewise required to retain a copy of that agreement for five years.

If you would like more information on FinCEN's new Residential Real Estate Reporting Rule—including whether a transaction is a "reportable transfer," how the reporting cascade and designation agreements work, and what information must be collected and certified—please contact Shumaker attorney Anna Nelson.

Whether you are updating closing and settlement workflows ahead of the March 1, 2026 effective date, building checklists to identify non-financed transfers to entities or trusts, or implementing procedures to gather and retain beneficial ownership certifications and designation agreements for the required five-year period, Shumaker's Real Estate, Construction & Development Service Line provides practical, business-focused guidance to help real estate professionals stay compliant and keep transactions moving efficiently.

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