

# FinCEN & Tips for a Smooth Closing

A Real Estate Professional's Guide to  
FinCEN's Residential Real Estate Reporting Rule



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# A Real Estate Professional's Guide to FinCEN's Residential Real Estate Reporting Rule

## Today's Presenter:



# TODAY'S AGENDA

- Who or what is FinCEN?
  - Why should I even care?
- What is the Residential Real Estate Reporting Rule?
- What Will Be Required?
  - Of Title Agents?
  - Of Real Estate Professionals?
  - Of your Buyers and Sellers?
- How Will this Affect My Closing?



# DISCLAIMER

- This information is not a substitute for legal advice, is for your reference only and is not intended to represent the only approach to any particular issue. This information should not be construed as legal, financial or business advice and users should consult legal counsel and subject-matter experts to be sure that the policies adopted and implemented meet the requirements unique to your company.
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# SPECIAL THANKS



The American Land Title Association (ALTA) has been active in lobbying Congress and FinCEN to make certain the new RERR is as easy as possible to comply with for all our customers.

ALTA developed much of this seminar's research and educational materials and have graciously shared it with the title and real estate industry in order to ensure education of all impacted stakeholders, consumers and industry professionals.



# FINCEN's RESIDENTIAL REAL ESTATE RULE & REAL ESTATE PROFESSIONALS



# FINCEN's RESIDENTIAL REAL ESTATE RULE & YOU

## Financial Crimes Enforcement Network

- Created by Congress
- Part of the United States Treasury Department
- Mission:
- *"...to safeguard the financial system from illicit use, combat money laundering and its related crimes including terrorism, and promote national security through the strategic use of financial authorities and the collection, analysis, and dissemination of financial intelligence."*
- Creates rules like the Residential Real Estate Rule to fulfill Mission



# WHAT IS THE RESIDENTIAL REAL ESTATE RULE (RRER)?



# WHAT IS THE RESIDENTIAL REAL ESTATE RULE (RRER)?

- Report of details of residential, non-financed or cash transactions to entities (LLCs, partnerships or corporations and trusts) to FinCEN
- Also requires reporting on transactions involving hard money and private lenders (Seller financing or loans to family members)



70258 Federal Register / Vol. 89, No. 168 / Thursday, August 29, 2024 / Rules and Regulations

## DEPARTMENT OF THE TREASURY

### Financial Crimes Enforcement Network

#### 31 CFR Chapter X

RIN 1506-AB54

#### Anti-Money Laundering Regulations for Residential Real Estate Transfers

**AGENCY:** Financial Crimes Enforcement Network (FinCEN), Treasury.

**ACTION:** Final rule.

**SUMMARY:** FinCEN is issuing a final rule to require certain persons involved in real estate closings and settlements to submit reports and keep records on certain non-financed transfers of residential real property to specified legal entities and trusts on a nationwide basis. Transfers made directly to an individual are not covered by this rule. This rule describes the circumstances in which a report must be filed, who must file a report, what information must be provided, and when a report is due. These reports are expected to assist the U.S. Department of the Treasury, law enforcement, and national security agencies in addressing illicit finance vulnerabilities in the U.S. residential real estate sector, and to curtail the ability of illicit actors to anonymously launder illicit proceeds through transfers of residential real property, which threatens U.S. economic and national security.

**DATES:** Effective December 1, 2025.

**ADDRESSES:** The FinCEN Regulatory

has long recognized the illicit finance risks posed by criminals and corrupt officials who abuse opaque legal entities and trusts to launder ill-gotten gains through transfers of residential real estate. This illicit use of the residential real estate market threatens U.S. economic and national security and can disadvantage individuals and small businesses that seek to compete fairly in the U.S. economy.

Earlier this year, pursuant to the BSA's authority to impose AML regulations on persons involved in real estate closings and settlements, FinCEN proposed a new reporting requirement. Under the proposed rule, certain persons involved in real estate closings and settlements would be required to report on certain transfers that Treasury deems high risk for illicit financial activity—namely, non-financed transfers of residential real property to legal entities and trusts.

FinCEN is now issuing a final rule that adopts the proposed rule with some modifications. The final rule imposes a streamlined suspicious activity report (SAR) filing requirement under which reporting persons, as defined, are 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 for any transfer is one of a small number of persons who play specified roles in the real estate closing and settlement, with

FinCEN has sought to minimize burdens on reporting persons to the extent practicable without diminishing the utility of the Real Estate Report to law enforcement and believes the final rule appropriately balances the collection of information that is highly useful to Treasury, law enforcement, and national security agencies against the burdens associated with collecting that information, particularly on small businesses.

## II. Background

### A. Addressing High-Risk Transfers of Residential Real Estate

#### 1. Authority To Require Reports From Persons Involved in Real Estate Closings and Settlements

The BSA is intended to combat money laundering, the financing of terrorism, and other illicit financial activity.<sup>3</sup> The purposes of the BSA include requiring financial institutions to keep records and file reports that "are highly useful in criminal, tax, or regulatory investigations or proceedings" or in the conduct of "intelligence or counterintelligence activities, including analysis, to protect against international terrorism."<sup>4</sup> The Secretary of the Treasury (Secretary) has delegated the authority to implement, administer, and enforce compliance with the BSA and its implementing regulations to the Director of FinCEN.<sup>5</sup>

The BSA requires "financial institutions" to establish an AML/CFT program, which must include, at a



# WHAT IS THE PURPOSE OF THE RRER?

## **STOP** CRIME



# WHAT IS PURPOSE OF THE RRER?

- Money-laundering occurs in residential transactions that helps:
  - Terrorists
  - Drug Lords
  - Oligarchs
  - Criminal Conspirators
- Entities and Trusts identification data in land records do not disclose who is the “Beneficial Owner” (the person who controls the money) unless a separate report is made
- FinCEN wants to know the individual’s name because then:
  - They can correlate to other data to stop money-laundering
  - Hopefully, money-launderers quit using the residential real estate market to launder their ill-gotten gains



# WHY DO WE NEED THE RRER?

The Financial Action Task Force (FATF) is the global money laundering and terrorist financing watchdog.

- Sets international standards to go after illicit funds linked to drugs trafficking, the illicit arms trade, cyber fraud and other serious crimes.

International Criminal Police Organization (INTERPOL) facilitates police cooperation and criminal investigations

- Focused on cross border investigations related to cyber crime and money laundering

- 86% of closed cases use BSA data (Organized Crime Drug Enforcement Task Force)
- 27% of OCDETF investigations involved money laundering through real estate purchases
- 7% of GTO filings involved a subject of an ongoing FBI investigation



# Why do We Need the RRER? IT WORKED!

## US Marshals Service/DOJ



- In 2024, DOJ held \$7.6 billion in assets on hand to be forfeited as of Sept. 30, 2024.
  - \$21.4 million is real estate
  - \$605 million was distributed to victims of crime and claimants in 2024
- In 2024, DOJ sold 181 properties for \$87,850,096
  - Residential real estate sold primarily through agents - <https://reallook.com/>



# Why do We Need the RRER? IT WORKED!

## REAL PROPERTY AUCTIONS


[Upcoming Auctions](#)
[General Terms of Sale](#)
[Broker Sales](#)
[How To Guide for Bidding](#)
[Free Email Notification](#)
[Bid Results](#)
[About this Program](#)
[Frequently Asked Questions](#)

### Reasonable Accommodations Notice

This site advertises auctions of seized Real Property for sale throughout the United States and Puerto Rico and includes single and multi-family residences; commercial and residential land; commercial buildings and warehouses; and operating businesses. These properties have been seized and forfeited due to violations of federal laws enforced by the U.S. Department of the Treasury. Participating enforcement agencies include: IRS-Criminal Investigations Division, Homeland Security Investigations, and the U.S. Secret Service. All proceeds from the sale of property are deposited in the U.S. Treasury Asset Forfeiture Fund. This fund helps support continued law enforcement efforts and provide restitution to crime victims.

The Department of the Treasury has designated CWS Asset Management and Sales (CWSAMS) as the prime contractor responsible for the maintenance and sale of seized and forfeited real property.

Please visit the [General Property](#) auction site for other seized items for sale.

 
[Click here for list of all Auctions](#)


Auctions are open to the public. You do not need a real estate broker to bid.

## Treasury Auctions

- Properties seized from by Treasury and DHS
  - IRS has separate auction
- In 2024 sold 105 properties for \$42m

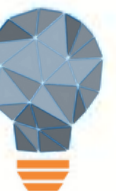


# EXAMPLES OF MONEY LAUNDERING CRIMINAL ACTION

## Robert Wise/Viktor Vekselberg



- NY based attorney Robert Wise, pled guilty in April 2023 to serving as a straw buyer/owner on behalf of sanctioned Russian oligarch, Viktor Vekselberg,
- Helped Vekselberg (who was sanctioned) maintain ownership of six properties in the United States including an estate in Southampton, New York (see to left)
- Used series of shell companies created prior to Vekselberg's OFAC designation.
- After OFAC designation Wise's IOLTA started to receive payments from an account in the Bahamas held in the name of a shell company, Smile Holding Ltd., controlled by Vekselberg associate



# EXAMPLES OF MONEY LAUNDERING CRIMINAL ACTION

## Omar Colon/Shakira Martinez

- Between 2009 and 2017, married couple laundered over a million dollars in drug proceeds through the purchase of real estate in Delaware and Pennsylvania using their company, Zemi Property Management.
- Couple and friends structured deposits at banks and used funds to buy cashier's checks that funded the property purchases.
- Had a secret underground bunker beneath their residence, that hid marijuana grow operation.
- Investigation conducted by IRS Criminal Investigation special agents



# EXAMPLES OF MONEY LAUNDERING CRIMINAL ACTION

## Kleptocracy Asset Recovery Initiative (KARI)



- Teodoro Obiang was son of President of Equatorial Guinea (and also Minister of Agriculture and Forestry)
- Accepted bribes to exploit economic opportunities
- Despite an official government salary of less than \$100,000 amassed assets worth over \$300m including \$30 million Malibu mansion, a Ferrari automobile and various items of Michael Jackson memorabilia
- DOJ used recovered funds to purchase COVID vaccines for Equatorial Guinea



# WHAT INFORMATION IS REQUIRED?



# WHAT INFORMATION IS REQUIRED FOR REPORTING?



- Buyer – Entity/Trust Details and Identification of the Beneficial Owners including address, SSN, and/or Passport Number
- Seller – Individual's Information or if an entity or trust, information about the entity or trust and Beneficial Owner Information
- Property Details
- Banking Information for Buyer including source of all funds

***REQUIRED: ALTA Buyer and Seller Collection of Information Forms***



# HOW WILL THIS AFFECT MY CLOSING?



# HOW WILL THIS AFFECT CLOSING?

- **Buyers and Sellers** will have to submit information to the title agent before closing can be scheduled using a process your title agent partner will explain
- Part of their order entry process, it may be a **secure online portal**, a fillable form delivered to customers electronically, or a request for the data through a secure and encrypted email
- This process will require Buyers and Sellers to certify the accuracy of the information in writing to the title agent's internal FinCEN expert and closer.
- After closing, the title agent will be responsible for the mandatory reporting to FinCEN and the secure retention of the information for the statutory required period, **5 years**



# WILL THERE BE ANY MODIFICATIONS TO CONTRACT OR CLOSING DOCUMENTS?



# FORM CHANGES?

- Data Collection Request at Order Entry- Your title agent will be asking Buyer and Seller to execute standard Buyer and Seller Data Collection forms
  - Please encourage your customers to comply early the order process
  - These forms were developed by ALTA so will be standard at all title agents' offices and will guide them through the process
- Title Commitments – There will NOT be any requirement on the title commitments, as FinCEN is not a title matter
- What about your forms? The Florida Bar, FREC and your local Boards of Realtors® are currently considering changing to the standard Purchase and Sale Agreement language to account for these FinCEN changes so all Realtors® know the transaction could or will require FinCEN reporting



# PROPOSED PURCHASE AND SALE AGREEMENT CLAUSE

Financial Crimes Enforcement Network (FinCEN) Real Estate Reporting (“FinCEN Report”).

Section 1010.821 of Chapter 31 of the Code of Federal Regulations (Code) requires that certain residential real estate transactions purchased with all cash or without institutional lender financing, where at least one buyer/transferee is a legal entity, limited liability company, corporation, partnership, trust, trustee or other non-natural person, must be reported to the United States Treasury Department’s Financial Crimes Enforcement Network (FinCEN).

IF THIS TRANSACTION IS SUBJECT TO FinCEN REPORTING, then Seller and Buyer shall, no later than closing, provide to the company conducting the closing the information and documentation necessary to enable the closing company to complete the FinCEN Report. Such information and documentation includes full legal name, date of birth, residential street address, and the IRS taxpayer identification number or other international tax identification number of the beneficial owners of the Buyer, as further defined and described in the Code. **Buyer shall also pay all costs and fees to prepare and file the FinCEN Report.**



# HOW IS THE RERR DIFFERENT FROM THE PRIOR FINCEN GTOs?



# HOW IS THE RERR DIFFERENT FROM THE PRIOR FINCEN GTOS?

Qualifications	GTO	RERR
1. Residential Property	1-4 family dwellings, condos and co-ops	1-4 family dwellings, condos, co-ops, vacant land purchase to build 1-4 family; mixed use with commercial and 1-4 family dwelling
2. Geographic impact	Limited geographic areas in 9 states	All U.S. States and Territories, all counties, Puerto, DC and all Indian Lands
3. Threshold Dollar Amount	\$300,000 and \$50,000 in Baltimore County and City	No threshold, also applies to <b>\$0 transfers</b>
4. Entities impacted	Corporations, LLCs, Partnerships	Corporations, LLCs, Partnerships <b>and Trusts</b>
5. Parties Reporting	Buyer	Buyer <b>and Seller</b>
6. Criminal and Civil Penalties	Yes, for failure to fully comply	Yes, for failure to fully comply
7. Will there be a charge?	No charge	Title agent may charge Buyer for FinCEN reporting (Settlement Fee)



# WILL THERE BE ANY CHARGE FOR FINCEN REPORTING?



# CHARGES?

- For complying with FinCEN, your title agents may charge the Buyer the fee for the reporting process.
- If they charge, it will be an included expense in the Settlement Closing Fee
- This fee is typically Charged to the Buyer since the purchase in an entity is what triggers the additional time and expense of FinCEN reporting.
- Why are title agents charging for this?

Estimated Per Transaction Reporting Costs		Non-Reporting Party		Reporting Party			
		Designation		Designation-Related		Designation-Independent	
Primary Business Categories	Fully Loaded Hourly Wage	Time (hours)	Total	Time (hours)	Total	Time (Hours)	Total
Title Abstract and Settlement Offices	\$79.35	0.25	\$19.84	0.25	\$19.84	2.75	\$218.21
Direct Title Insurance Carriers	\$106.49	0.25	\$26.62	0.25	\$26.62	2.75	\$292.85
Other Activities Related to Real Estate	\$81.74	0.25	\$20.43	0.25	\$20.43	2.75	\$224.78
Offices of Lawyers	\$153.84	0.25	\$38.46	0.25	\$38.46	2.75	\$423.07
Offices of Real Estate Agents and Brokers	\$81.74	0.25	\$20.43	0.25	\$20.43	2.75	\$224.78



# IS THIS REQUIRED? DO ALL PARTIES HAVE TO COMPLY?



# CRIMINAL AND CIVIL PENALTIES FOR NON-COMPLIANCE

## CIVIL

*Negligent violations* - civil penalty of not more than \$1,394 for each violation, and an additional civil money penalty of up to \$108,489 for a pattern of negligent activity.

*Willful violations* - not more than the greater of the amount involved in the transaction (not to exceed \$278,937) or \$69,733.30

## CRIMINAL

*Willful violations* - Term of imprisonment of not more than five years or a criminal fine of not more than \$250,000, or both.



# WORKING TOGETHER WILL MAKE FOR A SMOOTH TRANSACTION



# STEPS TO A SMOOTH CLOSING



- Ask your Buyers at time of contracting if they will be acquiring title in either an Entity or a Trust
- Provide that information to your title agent at **Order Entry**
- If a Buyer changes their mind, tell title agent **ASAP** so Closing is not delayed
- If your Buyer or Seller are hesitant to provide the required information you can allay their fears with the information you learned today:
  - Stopping Money-Laundering
  - Required by Federal Government, criminal and civil penalties for non-compliance
  - Information obtained is securely stored by your licensed title agent
  - If they have any questions, have them speak to the title agent about their secure processes for FinCEN reporting



# QUESTIONS?



# Thank You!

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