

## New FinCEN Reporting Requirements for Real Estate Transfers

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### PRACTICE AREAS

- Real Estate, Hospitality & Finance

### An McV Real Estate Alert

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On August 28, 2024, the Financial Crimes Enforcement Network (“FinCEN”) of the U.S. Department of the Treasury issued a Final Rule under the Bank Secrecy Act (“BSA”), mandating new reporting requirements for certain U.S. residential real estate transactions. The Final Rule aims to increase transparency in real estate transfers involving legal entities and trusts, as part of FinCEN’s efforts to combat money laundering and terrorist financing.

### Transfers Subject to Reporting

The Final Rule applies to transfers of residential real property to a legal entity or trust, where no exemptions apply, and the transaction does not involve financing from a financial institution subject to anti-money laundering program requirements under BSA. For purposes of the Final Rule, residential properties include single-family homes, condominiums, cooperative housing units, and properties designed for occupancy by one to four families. There is no minimum purchase price—all reportable transfers must be disclosed, even if no consideration (such as money) is exchanged, including in gift transfers.

### Who Must File the Report

The reporting obligation falls on professionals involved in the transaction, such as settlement agents, title insurance companies, escrow agents, or attorneys. The Final Rule’s cascading reporting structure ensures that only one person per transaction is responsible for filing the report with FinCEN (the “[Reporting Persons](#)”).

### Beneficial Ownership Information Disclosure

A key aspect of the Final Rule is the requirement to report beneficial ownership information for transferee entities and trusts. In line with FinCEN’s Beneficial Ownership Information rules under the Corporate Transparency Act, a beneficial owner is defined as any individual who, directly or indirectly, (i) exercises substantial control over the entity or trust, or (ii) owns or controls at least 25% of the entity’s or trust’s ownership interests. For trusts, beneficial ownership includes individuals such as grantors, trustees, and beneficiaries

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who have substantial control or rights over the trust.

### **Exemptions to Reportable Transfers**

Certain transfers are exempt from the reporting requirement, including those resulting from inheritance, divorce, easements, or transfers supervised by a U.S. court.

Additionally, certain entities and trusts engaged in real estate transactions may also be exempt from reporting if they meet specific criteria, reducing redundant reporting. Exempt entities include U.S. government agencies, financial institutions like banks and credit unions, and other entities outlined in the Final Rule.

### **Reporting Deadlines**

Reports must be filed with FinCEN within 30 calendar days of the transfer or by the final day of the month following the month in which the transfer occurred, whichever is later.

### **Reporting Persons Responsibility**

While the primary reporting responsibility falls on professionals such as settlement agents, title companies, and escrow agents, attorneys and notaries involved in real estate transactions may also be subject to these reporting requirements. It is crucial for all involved professionals to ensure compliance with the Final Rule, including the obligations to collect the necessary information, file the report, and retain certain records for the required period.

### **Penalties for failure to comply with the reporting obligations**

Failure to comply with the Final Rule can result in significant penalties. Negligent violations may incur civil penalties of up to \$1,394 per violation, with fines up to \$108,489 for patterns of negligent activity. Willful violations could lead to criminal fines of up to \$250,000, imprisonment for up to five years, or both. Civil penalties for willful violations could reach the greater of \$278,937 or the amount involved in the transaction.

### **Effectiveness**



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The Final Rule becomes effective on **December 1, 2025**.

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