
# New FinCEN Reporting Rule and Its Impact on Estate Planning

**By Jennifer Fulton**

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**Overview**

The Financial Crimes Enforcement Network's (FinCEN's) final rule, entitled "Anti-Money Laundering Regulations for Residential Real Estate Transfers," took effect on March 1, 2026, but was paused by a federal district court order vacating the rule on March 19, 2026. That order is now being appealed.

The goal of the FinCEN final rule is to counter money laundering and the financing of terrorism programs which flow through the transfer of residential real estate.

**When the rule applies**

A real estate transfer is reportable under this rule when all four of the following conditions are met: (1) the real property is residential; (2) the transfer is non-financed; (3) the property is transferred to a certain type of entity or trust; and (4) an exception does not apply.

"Residential real property" implies location in the United States and is defined as: (1) real property containing a structure designed principally for occupancy by one to four families; (2) land on which the transferee intends to build a structure designed principally for occupancy by one to four families; (3) a unit designed principally for occupancy by one to four families within a structure; or (4) shares in a cooperative housing corporation, including townhouses, condominiums and cooperatives. See footnote for additional information.

Transfers to individuals, as well as most transfers commonly used in estate planning do not require reporting, but some estate planning tools trigger the FinCEN residential reporting rule.



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The person responsible for filing a Real Estate Report is the "reporting person." The reporting person can be designated by agreement or otherwise is determined by a "reporting cascade." An estate planning attorney would fall after an agent or other person who prepares a closing or settlement statement. Assuming that the attorney files the deed or other instrument transferring ownership for recording, they would be next in line to be the reporting person. For help determining if you are a reporting person, see FinCEN's guide. Intentional failure to report a reportable transaction can result in penalties to the reporting person. When required, the reporting person will report their own identity, the legal entity or trust to which the residential real estate was transferred, the beneficial owners of that transferee entity or trust, the persons transferring the residential real property, the property being transferred, and certain transactional information about the transfer. The reporting person may use reasonable reliance on the information provided in writing and certified to be to the best of the information provider's knowledge, unless the reporting person has knowledge that would call the provided information in question.




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**Exceptions and Exclusions**

The proposed rule provided exceptions for transfers that are: (1) the result of a grant, transfer or revocation of an easement; (2) the result of the death of an owner; (3) incident to divorce or dissolution of a marriage, including dissolution of civil unions; (4) to a bankruptcy estate; (5) to individuals; or (6) for which there is no reporting person. After a comment period, the final rule added language clarifying that the scope of exceptions for transfer resulting from death includes all such transfers, whether pursuant to the terms of a will or trust, by operation of law, including by intestate succession, surviving joint owners, and transfer on death deeds, or by contractual provisions, including by beneficiary designation. The final rule also added an exception for transfers supervised by a court in the United States (as opposed to a stricter requirement that it be ordered by a court), including foreclosures. The final rule provides an exception for transfers of residential real property to a trust where the following criteria are met: (1) the transfer is for no consideration; (2) the transferor of the property is an individual, either alone or with the individual's spouse; (3) the settlor of the trust is the same as the transferor of the real property, or the transferor's spouse, or both. This expanded exception permits the reporting person to rely on information provided in documents often created simultaneously, such as a certification of trust. The final rule also creates an exception for transfers made to qualified intermediaries in a 1031 exchange transaction.

A Real Estate Report must be filed by the later of the last day of the month following the month in which the closing occurred, or 30 calendar days after the date of closing. Information includes: the name of the trust, the date of execution of the trust instrument, a unique identifying number (such as an EIN), and whether the trust is revocable. Reportable information regarding an entity trustee includes the full legal name, trade name, and current address of the trustee. In addition, the final rule requires reportable information, including social security numbers and citizenship information, regarding the beneficial owners and persons signing documents on behalf of the trust. FinCEN considers the following as having sufficient ownership and control over a trust to be reported as beneficial owners thereof: (1) the trustee; (2) an individual other than a trustee with the authority to dispose of transferee trust assets; (3) a beneficiary that is the


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permissible recipient of income and principal from the transferee trust, or that has the right to demand a distribution of, or withdraw, substantially all of the assets from the transferee trust; (4) a grantor or settlor who has the right to revoke the transferee trust or otherwise withdraw the assets of the transferee trust; and (5) the beneficial owners of any legal entity that holds at least one of these positions. Reports regarding minor children as beneficial owners of a trust are required when the minor child is the sole permissible recipient of income and principal from the transferee trust.

**Filing Requirements and Penalties**

All reporting is done through the BSA (Bank Secrecy Act) E-filing system. Each person submitting a Real Estate Report must obtain a BSA E-Filing System account. Initial enrollment requires an institutional supervisor for the reporting institution. A third-party filer may be used. A reporting person who fails to report the required information could be subject to penalties and should collect the required information in advance of performing the function that triggers the reporting obligation. Similarly, a reporting person may use a third-party filer to handle the reporting on behalf of the reporting person. However, the onus is on the reporting person, as the person responsible for filing the Real Estate Report, to ensure that they maintain records demonstrating to whom, if anyone, they have delegated report filing authority.

The BSA E-Filing Portal does not charge a fee for reporting. However, third party filers may charge for their services, and may charge separately from the underlying transaction.

In sum, while the most common estate planning techniques will continue to be non-reportable (if for no consideration), some gifts can be reportable, including transfers to trusts of other non-spousal family members, and some planning techniques using entities other than trusts. Practitioners should prepare now to meet the recording requirements.