



NEW rule causes changes for the title industry

By Lisa A. Tyler
National Escrow Administrator

The Financial Crimes Enforcement Network (FinCEN) is a bureau within the U.S. Department of the Treasury that collects and analyzes information about financial transactions, to combat domestic and international money laundering, terrorist financial crimes and other financial crimes.

FinCEN issued their proposed Anti-Money Laundering in Real Estate Rule for comment on February 16, 2024, with comments due no later than April 16, 2024. There were 624 comments submitted and posted online for the public to view. Many of the title insurance industry trade associations commented, including ALTA and FNF.

FinCEN issued the Anti-Money Laundering Regulations for Residential Real Estate Transfers on August 29, 2024. It is not to be confused with FinCEN's Geographic Targeting Orders (GTOs). It is very different and, if you have been subject to the reporting requirements covered by the GTO, you will need to look at this Rule with a new set of eyes. Do NOT apply the GTO requirements to this — as they are very different.

The Rule points to the success of the GTOs, which were served on the title industry every six months since 2016. According to comments from FinCEN, they found 42% of transactions reported under the GTOs involved individuals or entities who appeared in a previously filed Suspicious Activity Report (SAR).

From there, FinCEN reasoned the appearance of individuals and entities on both reports provides corroboration to the effectiveness of GTO reporting. Specifically, the visibility the GTO provides on money laundering and illicit activity within the real estate market. Read more about the new Rule in the article titled "ANTI-MONEY laundering regulations for residential real estate transfers."

Last year we shared some questions and answers (Q&As) from our live escrow training events in our May 2024 issue. The response was overwhelmingly positive, so we decided to include Q&As in each issue this year. The Q&A feature will be common questions from settlement agents nationwide. Be sure to read "I wanna know..."

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I wanna know...



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ANTI-MONEY laundering regulations for residential real estate transfers

The Financial Crimes Enforcement Network (FinCEN) issued the Anti-Money Laundering Regulations for Residential Real Estate Transfers on August 29, 2024. The Rule takes effect on December 1, 2025. Transactions covered by the final Rule are reported on a Real Estate Report specifically created for reporting transactions covered by this Rule.

However, as of this article the form has not been finalized, and public comments related to the form were due by January 13, 2025. In the months leading up to publishing the new reporting form, we will provide as much information as we can to keep our readers informed of how the new rule might impact their business.

What is covered?

Cash purchases of residential real estate designed for 1-4 family occupancy where the buyer is a legal entity or trust. Although a reportable transaction is typically an all-cash sale, the rule may cover instances of private or seller financing where the loan or funds are provided by a bank, mortgage broker or mortgage banker, or other source that does not have an anti-money laundering program. The new rule does state the funding of the loan must be secured by the subject property, so lines of credit secured by other collateral would be considered reportable.

The types of property covered under the rule include residential 1-4 family properties, vacant land on which the buyer intends to build a structure primarily for occupancy by 1-4 families, co-ops, condominiums, mixed use and apartment buildings. (A co-op, or cooperative, is a business that is owned and controlled by its members, who are also known as member-owners.)

The rule requires reporting on real estate sales located anywhere in the U.S. (50 states), D.C., Puerto Rico, overseas territories, and Indian lands. There is no minimum sales price. All sales, for any amount, are covered.

What is NOT covered?

There are exemptions. A reportable transfer does NOT include a:

- i. Grant, transfer, or revocation of an easement;
- ii. Transfer resulting from the death of an individual, whether pursuant to the terms of a decedent's will or the terms of a trust, the operation of law, or by contractual provision;
- iii. Transfer incident to divorce or dissolution of a marriage or civil union;
- iv. Transfer to a bankruptcy estate;
- v. Transfer supervised by a court in the United States;
- vi. Transfer for no consideration made by an individual, either alone or with the individual's spouse, to a trust of which that individual, that individual's spouse, or both of them, are the settlor(s) or grantor(s);
- vii. Transfer to a qualified intermediary for purposes of 26 CFR 1.1031(k)-1; or
- viii. Transfer for which there is no reporting person.

When must the information be reported?

A Real Estate Report must be filed by the later date of either: (1) 30 calendar days after the date of closing or (2) the last day of the month following the month in which the date of closing occurred. Reporting persons will now generally have between 30 and 60 days to file a Real Estate Report.



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Who must report?

According to the Rule, the primary “reporting person” is the person conducting the settlement/closing or the person who prepares the settlement statement. Reporting is required even when the buyer does not purchase title insurance.

What must be reported?

On the current proposed form there are 111 data points, not including additional data required if there are multiple properties, multiple authorized signers, or multiple beneficial owners. The data fields include, but are not limited to:

- » Reporting person information
- » Closing date
- » Property address and full legal description
- » Transferee/Buyer information*
- » Person(s) associated with the transferee (authorized signers and beneficial owners)
- » Transferor/Seller information
- » If the Transferor is a Trust, provide the trustee's information
- » Purchase price
- » Payment Information, including bank account details for sourcing funds**
- » Detailed payment information for payments made on behalf of the Transferee/Buyer

*Beneficial Ownership Information (BOI) Reporting

Transferee/Buyer information may be challenging to collect due to the sensitive nature of this information. The new rule allows for a reasonable reliance standard, which will allow reporting persons to generally rely on information obtained from other persons, absent knowledge of facts that would reasonably call into question the reliability of that information.

wanna know...

The questions posed in each of the following scenarios are similar to questions submitted by our settlement agents nationwide. Read each scenario and determine how you would answer the settlement agent's question.

The questions provide multiple choice answers, and the correct answers are located at the end of this article. HINT: There may be more than one correct answer.

Although these scenarios seem real, they are not. They are all fiction. Any similarities to a transaction you may be handling or have handled are only a coincidence. For questions regarding any of these scenarios, please reach out to settlement@fnf.com.

Scenario #1: Our office forgot to include the charges for the endorsements requested by the lender when we entered our fees into the lender's portal. The lender will not allow us to charge the borrower but still requires the endorsements to their loan title policy. How do I need to reflect this in my file for auditing purposes?

- A. Add it as a charge after closing and collect the shortage from the borrower then.
- B. Be sure to include the endorsements on the policy instructions and add a note to the file stating the charges were accidentally left off the fee quote.

**Payment information

The required payment information includes the following (some of which is not typically provided to settlement agents):

- » The amount of the payment, consisting of the total consideration paid by the transferee entity or transferee trust;
- » The form or method by which the payment was made;
- » If the payment was paid from an account held at a financial institution, the name of the financial institution and the **account number**; and
- » The name of the payor on any wire, check, or other type of payment if the payor is not the transferee entity or transferee trust.

How will we collect all of this information?

This is the time to embrace automation, the Company's direct operations is using Start inHere®. FNF has also begun a project to help automate this process.

Otherwise, settlement agents must collect and manually input information from updated Information Collection Forms from multiple parties. Then settlement agents will manually input the information into the Limited SARS. Reports are filed through FinCEN's BSA eFiling system after passing a quality review and approval.

In the coming months we will discuss training and implementation, as well as other concerns for you, your colleagues and your customers. Start the discussion now, share the information you learn.

Be sure to read more about the Anti-Money Laundering in Real Estate rule and its sweeping changes to the industry in next month's edition of *Fraud Insights*.

- C. Stand your ground! Do not close unless you collect all the fees, or the lender revises their instructions to remove the endorsements.

Scenario #2: I have a buyer who has deposited all the funds necessary to close a cash transaction; \$110k or so. The sale is a REO, and the seller has not been able to clear title so we can close. The buyer wants all closing funds, less his initial deposit of \$10k returned. Do I need to prepare and have notarized a pre-release amendment, or can the buyer provide me with a written request to return his funds?

- A. Yes, you need a pre-release amendment. As the neutral third party you can only act on written, mutual instructions.
- B. Unless the buyer and seller mutually agree in writing to cancel, the funds must remain in escrow.
- C. The buyer can request their funds back now since the seller is the one holding up the closing.
- D. Yes, the buyer alone can request their closing funds, less the initial deposit be returned to him.

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[I wanna know... - continued]

Scenario #3: We received a sale where the Department of Veteran's Affairs is the seller. The earnest money was delivered with a buyer's termination of the purchase agreement. Their termination states they have inspected the property and decided there is too much work required to make it habitable. Does the seller have to agree to the termination and sign off on releasing the earnest money if we never receipted it in or can we just give the buyers their check back?

- A. Maybe
- B. Yes
- C. No

Scenario #4: Are funds received via Automated Clearing House (ACH) considered good funds?

- A. Yes, it is a very affordable way for someone to send funds.
- B. No, they are not considered collected funds since the remitter of the funds can dispute the ACH transfer for up to ninety (90) days after the transfer has been initiated.

Scenario #5: I have a customer asking if we file a 1099 with the Internal Revenue Service (IRS) to report commission paid to real estate companies on purchase transactions. They believe there is a new IRS tax law that says the real estate agents need to receive a 1099. Please let me know.

- A. Yes, we report all disbursements made through escrow on form 1099.
- B. No, it is the broker's responsibility to report.



Answers to "I wanna know..."

Scenario #1: Answer B. Be sure to include the endorsements on the policy instructions and add a note to the file stating the charges were accidentally left off the fee quote.

Scenario #2: Answer D. Yes, the buyer alone can request their closing funds, less the initial deposit be returned to him.

Scenario #3: Answer A. Maybe, depending on whether the purchase agreement allows the buyer to unilaterally terminate the agreement during their inspection period.

Scenario #4: Answer B. No, they are not considered collected funds since the remitter of the funds can dispute the ACH transfer for up to ninety (90) days after the transfer has been initiated.

Scenario #5: Answer B. No, it is the broker's responsibility to report.

Scenario #6: Can we accept documents digitally signed? For example, purchase agreements, escrow instructions and cancellation instructions.

- A. Yes, per Uniform Electronic Transactions Act (1999) – any document, including purchase contracts and promissory notes, can be electronically signed.
- B. No, we have no way of knowing who really signed them.

Scenario #7: I am working on a refinance transaction. Title shows the property is owned by a trust. The loan instructions show the borrower as an individual who is also the trustee of the trust. The deed of trust matches the vested owner but the borrower on the note is the individual. Who is listed as the borrower on the Closing Statement?

- A. The owner of the property.
- B. The individual reflected on the loan instructions and promissory note.

Scenario #8: We have a closing wherein the seller is Smith & Jones Property Investments, LLC. The two members of the LLC are Martin Smith and David Jones, who disagree as to the distribution of the proceeds.

The property being sold is the only asset of the LLC. The total proceeds are \$1,535,812. They have instructed us to disburse \$600,000 of the proceeds half each to the members individually.

Their attorney has asked if we will hold the balance of the sales proceeds in the amount of \$935,812 for a short period of time, for the two men to come to an agreement as to the disbursement of the balance. What should we do?

- A. Cut one check payable to the Smith & Jones Property Investments, LLC representing all the proceeds at closing and let them make their own distributions.
- B. Accept an instruction from the attorney to send all the proceeds to his trust account.
- C. Prepare a holdback agreement for Smith & Jones to sign, close and hold the funds as requested.
- D. Not close.

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Scenario #6: Answer A. Yes, per Uniform Electronic Transactions Act (1999) – any document, including purchase contracts and promissory notes, can be electronically signed.

Scenario #7: Answer B. The individual reflected on the loan instructions and promissory note.

Scenario #8:

Answer A. Cut one check payable to the Smith & Jones Property Investments, LLC representing all the proceeds at closing and let them make their own distributions.

AND

Answer B. Accept an instruction from the attorney to send all the proceeds to his trust account.