

FinCEN Rule Highlights Intrinsic Value of the Title Insurance Industry

Description

Provided by Michael Holden, Author of The Ramblings of a Title Man and Vice President of AmTrust Title Insurance Company.

In early 2024, the Financial Crimes Enforcement Network (FinCEN), an agency of the Treasury Department, issued a final rule requiring professionals 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.

FinCEN's proposal is tailored to residential real estate transfers considered to be high-risk for money laundering and is the culmination of nearly a decade of effort to find a pathway to combat this practice in the U.S. real estate market.

Launching a limited program in 2016, FinCEN issued Geographic Targeting Orders (GTOs) in a few specific markets it had identified as hot spots for money laundering. In the intervening years, the GTOs were expanded repeatedly, eventually encompassing 69 markets in 13 states. The new rule now makes the requirement mandatory nationwide.

According to FinCEN most real estate transfers are financed via a mortgage loan provided by a financial institution subject to Anti-Money Laundering (AML) and Countering the Financing of Terrorism (CFT) requirements. If the transfer is a cash sale, it is facilitated only by closing professionals, allowing the illicit actors to fly under traditional radar that would detect money laundering attempts.

What the new rule requires

The new regulation, which goes into effect on Dec. 1, 2025, requires the filing of a Real Estate Report, a new form created by FinCEN, for transfers of residential real estate considered to be at high risk for illicit funds and defined as "a non-financed transfer to a transferee entity or transferee trust of an ownership interest in residential real property."

Who is required to file the report?

The onus of reporting falls primarily on the closing or settlement agent involved in the transfer, although FinCEN listed a reporting cascade of other participants upon whom the responsibility would fall if there were no closing agent involved in the transfer.

Significantly, nearly all of the participants named in the cascade would primarily fall under the auspices of a title agency or real estate law firm as well, including the person who prepares the closing or settlement statement; the person who records the deed or other instrument that transfers ownership; the person who underwrites an owner's title insurance policy; the person who disburses in any form, including from an escrow account, trust account, or lawyers' trust account, the greatest amount of funds in connection with the transfer; the person who provides an evaluation of the status of the title; or the person who prepares the deed.

In essence, the responsibility for fulfilling the requirements of this new regulation falls squarely on the shoulders of the title insurance industry.

Lenders and homeowners for more than a century have turned to the title insurance industry to investigate the history of property ownership for the purpose of ensuring that the rights to the property are transferred intact to a new owner.

With the explosive growth of cybercrime over the past three decades, every participant in a real estate transaction has looked to title insurance, escrow and closing professionals to protect the transaction through enhanced cyber security, client education efforts and reporting protocols, such as suspicious activity reports (SARs).

The title insurance industry has always been the guardian of real estate transactions, acting as an impartial third-party for the protection of all participants. It has also held the critical role of protector of land records in the U.S., methodically reviewing, updating and correcting legal documents filed of record on properties with each transaction.

This new requirement adds yet another layer of responsibility on agents across the country and shines a spotlight once again on how essential this industry is in protecting property transfer and ownership in the U.S.

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