The FinCEN Residential Real Estate Reporting Obligation

Description

Article by Anna Marie Sossong

*__ALERT from Financial Crimes Enforcement Network__: *In light of a federal court decision, reporting persons are not currently required to file real estate reports with FinCEN and are not subject to liability if they fail to do so while the order remains in force.**

For many years, the Financial Crimes Enforcement Network (FinCEN), a bureau of the U.S. Department of Treasury, has issued Geographic Targeting Orders (GTO). These GTOs imposed data collection and reporting requirements for all cash purchases that occurred in certain identified geographic areas. In Virginia, the reporting obligation existed in Arlington and Fairfax counties and the cities of Alexandria, Falls Church and Fairfax. There was no GTO reporting obligation applicable to the remainder of Virginia. The new FinCEN report effective as of March 1, 2026 is similar to the prior GTO report, so those jurisdictions previously subject to GTO reporting may have an easier time complying. This article may assist the remainder of the state.

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As of March 1, 2026, the current GTO reporting obligation ended and was replaced by the FinCEN Residential Real Estate Reporting obligation[i] (https://www.fincen.gov/rre), which requires nationwide reporting of certain residential real estate transactions that meet the regulatory requirements. This nationwide reporting is being imposed to help combat and deter money laundering. According to statistics from the GTO reporting, illicit actors, through LLCs or other entities, often launder funds through the cash purchase of residential real estate.[ii] The cash purchase, coupled with the entity purchaser, avoids the Suspicious Activity Report (SAR) filing of a regulated financial or investment institution.

Notwithstanding FinCENâ??s belief that this required reporting will help deter an assortment of international money laundering and criminal activity, the U.S. District Court for the Eastern District of Texas, in *Flowers Title Companies, LLC vs. Bessent* (Case No. 6:25-cv-127-JDK) vacated the residential real estate reporting obligation because it felt that the reporting obligation allegedly permitted by two different provisions of the Bank Secrecy Act exceeded the authority provided under the Act. The first provision, 31 U.S.C. Â§ 5319(g)(1), permits FinCEN to require reports of â??any suspicious transaction.â?• But the Court determined that the agency failed to explain or show how non-financed residential real estate transactions are categorically â??suspicious.â?• The Court determined that the second provision, 31 U.S.C. Â§ 5318(a)(2), gives FinCEN the authority to require financial institutions to maintain â??proceduresâ?• to comply with the Act, but does not provide the authority to require the reports covered by the Final Rule. Therefore, the Court vacated and set aside the rule.

Everyone presumes this ruling will be appealed. Pending the determination of the appellate court, the title industry professionals are in a quagmire. FinCEN is advising on its website that reporting persons are currently not required to file reports with FinCEN and are not subject to liability if they fail to do so while the order remains in force. However, there is concern over what reporting obligation may be imposed after the appeal hearing, in the event that this Court determination is overturned. Will there be

retroactive reporting? Many title companies are recommending that title agents continue to gather the required information, even if they do not actually file the report. That way, if retroactive reporting is required, compliance will be simpler. Consult with your underwriter to determine its recommendation.

To help you understand what may be required of you in the future:

What must be reported? A reportable transfer is any non-financed transfer to a transferee entity or transferee trust of an ownership interest in residential real estate. All of the underlined words/phrases are defined in the regulation. In short, â??residential real propertyâ?• includes single-family houses, townhomes, condominiums and cooperatives, as well as entire buildings designed for 1-4 families. Mixed-use buildings are also reportable if there is residential element. Vacant land is reportable if it is zoned residential or if the purchaser intends to construct a 1-4 family residence on the property.

â??Non-financedâ?• is any transfer that does not involve the extension of credit to all transferees that is 1) secured by the property (i.e., a mortgage) and 2) extended by a financial institution subject to anti-money laundering program requirements and SAR reporting. Non-financed transactions are most commonly described as cash deals or deals with hard money lenders.

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As with any good regulation, there are a host of exceptions to the reporting requirement. (See: 31 CFR Â§ 1031.320(b)(2)) Briefly, transfers involving easements; resulting from death or divorce; made by a bankruptcy estate; supervised by a Court; into a qualified 1031 exchangor; or, transfers into grantor trusts are exempt from reporting.

Transfers to a â??transferee entityâ?• that meet the above requirements must be reported. A â??transferee entityâ?• is any person other than a transferee trust or an individual. It includes corporations, limited liability companies, partnerships, estates, and associations. It does not include a variety of entities that already have AML programs and reporting obligations. [iii]

Transfers to â??transferee trustsâ?• are also required to be reported. A â??transferee trustâ?• is any legal arrangement created when a grantor or settlor places assets under the control of a trustee for the benefit of one or more beneficiaries or for a specified purpose. Again, certain types of trusts are exempt from reporting: (A) a trust that is a securities reporting issuer, (B) a trust in which the trustee is a securities reporting issuer (C) a statutory trust or (D) An entity wholly owned by a trust described in paragraphs (n)(11)(ii)(A) through (C) of this section.

Who has the obligation to report? The reporting obligation rests, principally, with various individuals involved in the real estate settlement and closing. The regulation creates a specified order of those functions that have the reporting obligation. This is referred to as the â??reporting cascadeâ?•. Unless there is a written agreement otherwise, this reporting cascade will determine who has the obligation to report. The list is in order of obligation to report. The reporting cascade: (i) The person listed as the closing or settlement agent on the closing or settlement statement for the transfer; (ii) If no person is listed as the closing or settlement agent in the transfer, then the person that prepares the closing or settlement statement for the transfer; (iii) then the person that files with the recordation office the deed or other instrument that transfers ownership of the residential real property; (iv) If no person described above is involved in the transfer, then the person that underwrites an ownerâ??s title insurance policy for the transferee with respect to the transferred residential real property, such as a title insurance company; (v) then the person that disburses in any form, including from an escrow account, trust account, or lawyersâ?? trust account, the greatest amount of funds in connection with the residential

real property transfer; (vi) then the person that provides an evaluation of the status of the title; or (vii) If none of the individuals above is involved in the transfer, then the person that prepares the deed or, if no deed is involved, any other legal instrument that transfers ownership of the residential real property, including, with respect to shares in a cooperative housing corporation, the person who prepares the stock certificate.

This cascade is similar to the reporting cascade used for the filing and reporting associated with the IRS Form 1099-S.

What information must be reported? The real estate report will require the reporting person to gather information on the property being transferred, the transferor and transferee, the individuals who are representing the transferee entity (meaning the beneficial owners of the entity) and the beneficial owners of the transferee trust. Information required will include names, personal residential addresses, social security numbers, EIN numbers, citizenship. Also required to be reported is the total consideration paid for the property along with information on the payment(s) made and accounts used. â??Beneficial ownerâ?• refers to any individual that owns or controls at least 25% of the transferee entity or an individual that exercised substantial control over the transferee entity (for example: a non-owner manager, president, chairman of the board, etc.) The rules regarding the beneficial owners of a transferee trust are more complicated. It is suggested that you discuss this with your underwriter or counsel if you have a transaction involving a transferee trust.

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Issues to consider: Much of the information to be gathered and reported by the closing agent is confidential information regarding the parties and the transaction. Encrypted email on both ends of an email is required or a secure drop box/upload site. In the alternative, many of the current closing software companies offer (or will soon offer) a residential real estate reporting software option for their closing software that will help accomplish the information gathering. There are also several free-standing reporting software companies that do not require closing software or a subscription, but permit individual transaction use.

It is suggested that you do not close a transaction until and unless you have received all the information that is required to be reported by the time of closing. Once you have completed the closing it is doubtful that the buyer and seller will continue to cooperate. Also, because of the volume of information that may be required in more complex transactions, it is also suggested that you do not delay in your request to the buyer and seller. Get your request out as soon as you are aware that the deal is a cash transaction for 1-4 residential real estate. The residential real estate report is required to be filed by the last day of the month in which the date of closing occurred or 30 calendar days after the date of closing, whichever is later.

As the closing agency, you are not required to keep a copy of the actual real estate report once it has been filed with FinCEN. However, you must keep a copy of the certification by the transferee as to the identities of the beneficial owners of the transferee entity as well as any designation agreement for a period of five years.

As a reporter on the reporting cascade, you will have to register with FinCEN before you file your first report. Registering as a reporting person means that you will not have to repeatedly enter your personal information for each report you file. You will be assigned a reporting person identification number to use instead, saving you time and effort. See https://www.fincen.gov/rre for a link to register.

The FinCEN website offers significant detailed information on this obligation. It is suggested that you review it carefully in addition to the information that is available from the VLTA or ALTA.

[i] See 31 CFR Chapter X,et. seq. for the full regulation.

[ii] â??Specifically, FinCEN has found that from 2017 to early 2024, approximately 42 percent of non-financed real estate transfers captured by the Residential Real Estate GTOs were conducted by individuals or legal entities on which a SAR has been filed.â?• Federal Register, Vol 89 No. 168, April 29, 2024, pg. 70260

[iii] A transferee entity does not include: (A) A securities reporting issuer defined in 31 CFR 1010.380(c)(2)(i); (B) A governmental authority defined in 31 CFR 1010.380(c)(2)(ii); (C) A bank defined in 31 CFR 1010.380(c)(2)(iii);

(D) A credit union defined in 31 CFR 1010.380(c)(2)(iv); (E) A depository institution holding company defined in 31 CFR 1010.380(c)(2)(v); (F) A money service business defined in 31 CFR 1010.380(c)(2)(vi); (G) A broker or dealer in securities defined in 31 CFR 1010.380(c)(2)(vii); (H) A securities exchange or clearing agency defined in 31 CFR 1010.380(c)(2)(viii); (I) Any other Exchange Act registered entity defined in 31 CFR 1010.380(c)(2)(ix); (J) An insurance company defined in 31 CFR 1010.380(c)(2)(xii); (K) A State-licensed insurance producer defined in 31 CFR 1010.380(c)(2)(xiii); (L) A Commodity Exchange Act registered entity defined in 31 CFR 1010.380(c)(2)(xiv); (M) A public utility defined in 31 CFR 1010.380(c)(2)(xvi); (N) A financial market utility defined in 31 CFR 1010.380(c)(2)(xvii); (O) An investment company as defined in section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80aâ??3(a)) that is registered with the Securities and Exchange Commission under section 8 of the Investment Company Act (15 U.S.C. 80aâ??8); and (P) Any legal entity controlled or wholly owned, directly or indirectly, by an entity described in paragraphs (n)(10)(ii)(A) through (O) of this section.wholly owned, directly or indirectly, by an entity described in paragraphs (n)(10)(ii)(A) through (O) of this section.

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Anna Marie Sossong, Esq., Underwriting Counsel, came to Conestoga Title Insurance Co. in 2022. A University of Pittsburgh graduate of its College of Philosophy and School of Law, Anna Marie brings many years of real estate law experience from her time in private practice and from service to the Commonwealth. During her 30 years of private practice in the Harrisburg area, Anna Marie concentrated her practice in business law and mergers and acquisitions, handling the asset transfer portion of deals. She was also an owner of a Conestoga title agency for twenty years. While with her most recent private practice firm, she managed the in-house title agency, which was also a Conestoga title agency. For many years, Anna Marie represented credit unions and savings and loans, handling

residential closings as well as the financial institution business real estate transactions. However, she concentrated her title practice in business, commercial and developer-based transactions . She has extensive experience with commercial real estate transactions, including the requirements for federal and state lending programs, REIT financings and 1031 exchange requirements. Since joining Conestoga she has put all her past work to good use â?? helping to teach many CE/CLE in-person and webinar topics relevant to title agencies. She also helped develop Conestogaâ??s on-line training and resource center for use by its agents. She has also taught legal courses for Harrisburg Area Community College, local bar associations, private training companies and the Commonwealth of Pennsylvania. She is a member of ALTA, PLTA as well as the PA Bar Assoc. Real Property, Probate and Trust section, Dauphin County Bar Assn. and the Central Pennsylvania Steelers Fan Club.

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