

ALTA's FAQs

FinCEN's Residential Real Estate Reporting Rule (As of September 25, 2025, at 3:25 PM Eastern Time)

The final rule on which these FAQs are based may be found at:
<https://www.govinfo.gov/content/pkg/FR-2024-08-29/pdf/2024-19198.pdf> and
<https://www.fincen.gov/rre>

CAUTION: These FAQs have been created to aid ALTA Members. The reporting person under the Residential Real Estate Report may have different standards in place that could be different than what is answered herein.

Note: These FAQs are subject to change based upon more information provided by FinCEN to ALTA.

Section 1: General Information, 31 C.F.R. § 1031.320(a)

- 1. Unwilling Buyer or Seller.** If a party is unwilling to provide the required information, does the closing have to be stopped?

The rule states in the comments "[t]he final rule does not authorize the filing of incomplete reports, and a reporting person who fails to report the required information about a reportable transfer could be subject to penalties." 89 F.R. 70264. **Failure to file the report when a report is due can subject the "Reporting Person" to severe penalties, including substantial fines and/or imprisonment up to 5 years.**

The Residential Real Estate Report is a type of Suspicious Activity Report. **FinCEN has also told ALTA and other land title associations that filing a Suspicious Activity Report is not a solution if the Buyer or Seller refuses to provide you information.**

- 2. Zero Consideration:**

- a. Do transfers with no consideration (including gifts) have to be reported?**

Yes, if no other exemption applies. There is no threshold like there was with the Geographic Targeting Orders that pre-dated this new rule. FinCEN states: "Furthermore, the rule does not adopt suggestions to include a dollar threshold for reporting. Low value non-financed transfers to legal entities and trusts, including gratuitous ones for no consideration, can present illicit finance risks and are therefore of interest to law enforcement." 89 F.R. 70269.

b. Transfer to LLC or Trust Post-Closing. If an individual purchases in their individual name and then transfers to an LLC or trust for \$0 consideration, is the transaction reportable?

Yes. Note: While there is an exemption for spouses for estate planning purposes, 31 C.F.R. § 1031.320(b)(2)(vi), there is no similar exemption for a gratuitous transfer to an entity or non-exempt trust. For a discussion of this rule, see 89 F.R. 70268.

3. Non-financed.

a. Is there a threshold amount like the Geographic Targeting Orders?

No. The Residential Real Estate Rule applies at \$0.00 consideration. 89 F.R. 70269.

b. Is a down-payment gift of cash to a buyer from their parents a non-financed transaction?

Yes. If a buyer is gifted a down-payment or any type of consideration where there is no requirement to pay it back, this is considered a non-financed transaction and potentially reportable.

c. Is a loan to the buyer from their parents a non-financed transaction?

Most likely yes. See also the discussion in Section 9 about loans made by parents to children.

d. Credit-line attached to different property. If a Buyer is using different collateral to finance the current transaction, is it reportable?

Yes. If the buyer is using funds from any source (other than a new first lien mortgage on the real estate being purchased), then it is going to be a reportable transaction, and those funds will be reported.

4. Small Loans. If there a minimum amount financed so reporting is not required?

Assuming that the question refers to 'financing' from a lender that has an anti-money laundering program and suspicious activity report obligation, the parties can assume that all due diligence was done by the lender regardless of the loan amount. In that case, no report is required.

5. Leaseholds. Does this rule cover leaseholds?

The rule is not the clearest on this but likely no. The rule covers transfers that are evidenced by a deed or a similar instrument but does not mention leases.

6. **All transactions?** Should reportable information be collected on all transactions before determining reportability?

There is no obligation to collect reportable information on all transactions. Every settlement agent will have to create their own workflow to determine which transactions are potentially reportable in order to determine whether an ALTA Certification Form needs to be sent out to determine whether an exemption applies.

Section Two: Is this Transaction Reportable? 31 C.F.R. § 1031.320(b)

1. Types of Properties:

- a. **Apartment Complexes:** Would the purchase of the entire complex be reportable?

Yes, potentially. It depends of the size of the apartment complex. If it is a small 1–4-unit building, then yes the transaction is reportable. If it is 5 units or more, then no the transaction is not reportable.

FinCEN’s discussion states: “FinCEN further notes that the definition is meant to include property such as single-family houses, townhouses, condominiums and cooperatives...as well as entire apartment buildings designed for one to four families. Furthermore, transfers of such properties may be reportable even if the property is mixed use, such as a single-family residence that is located above a commercial enterprise.” 89 F.R. 70266.

- b. **Mixed-Use Property:** Is a mixed-use property (part residential, part commercial) reportable?

Yes. FinCEN’s discussion states: “...transfers of such properties may be reportable even if the property is mixed use, such as a single-family residence that is located above a commercial enterprise.” 89 F.R. 70266.

- c. **Condominiums, Townhouses, and Co-Ops:** If the building has more than 4 units, is the transfer exempt?

No. An individual condominium, townhouse, or co-op unit would fall within the reporting rule. See 31 CFR § 1031.320(b)(1)(i).

d. **Vacant Property:**

i. **Is vacant land reportable?**

Yes, if the transferee (Buyer) “intends to build a structure designed principally for one to four families.” See 31 CFR § 1031.320(b)(1)(ii).

ii. **If a property is zoned residential but is a vacant lot and the transferee/buyer does not intend to build, should the transaction still be reported?**

While zoning is good evidence, the rule states vacant land is residential if the buyer intends to build. See 31 CFR § 1031.320(b)(1)(ii). Thus, if the buyer is not intending to build but wants to hold a vacant lot, the transaction may not be reportable. A settlement agent can reasonably rely on information provided by the buyer about its intent to build, and it may be prudent for the settlement agent to rely on a certification that the transferee/buyer does not intend to build on the property.

iii. **What if the property, 100 acres, is purchased for residential development over the next few years?**

Reportable because there is the intent to build residential structures that qualify for reporting as 1-4 family structures, condominiums, townhomes, or co-ops. It also does not matter what step of the horizontal or vertical development the developer/builder is in because the intent is to build residential structures.

Note: Some developers are publicly traded. If the entities are all held with an organizational structure that is exempt, the transfers between the entities under the umbrella organization may be exempt per the definition of transferee entity. See 31 C.F.R. § 1031.320(n)(10)(ii).

e. **Farmland.** Is farmland reportable?

Yes if it includes a 1-4 family structure. There is no exemption because a house is on any amount of acreage.

f. **Commercial Use Intended:** What if the transferee/buyer intends to use a 1-4 family property for commercial purposes like a wedding venue or boutique clothing shop?

Reportable. There is no exemption for *intended commercial use*; if the property fits within the definition of residential property under § 1031.320(b)(1) then the transaction is reportable.

- g. Manufactured and Mobile Homes.** With manufactured and mobile homes, they are not considered by many states as residential until the structure is affixed to the real property. Would the sale of the manufactured or mobile home trigger reporting? **It depends on whether the transaction includes the land underneath the manufactured or mobile home.** This rule applies to transfers evidenced by a deed or similar instruments. If the manufactured or mobile home is still personal property, and the land is not transferred, it is potentially not reportable. A settlement agent would have to determine whether the new buyer intends to build a 1-4 family structure on the property which could include the manufactured or mobile home if the buyer intends to affix it to the property. A reminder here that there is no penalty for over-reporting transactions.

2. Exemptions Due to Transaction Not Being Reportable per FinCEN under 31 C.F.R. § 1031.320(b)(2)

- a. Still report?** If an exemption applies, does a settlement agent have to file anything with FinCEN?
No. But a settlement agent may want to retain the collection form to show FinCEN or a state auditor why it was determined a transaction did not have to be reported.
- b. Exempt only on Seller or Buyer Side:** If the transfer is exempt on only the Transferor/Buyer or Transferee/Seller side, is the whole transfer exempt?
Yes. If an exemption applies to either the Seller or Buyer, the whole transaction is exempt. See 31 CFR §§ 1031.320(n)(10) (ii) and (n)(11)(ii) for a list of exemptions.
- c. Transfers by Personal Representatives/Executors.**
- i. To Beneficiary's Entity or Trust.** If a beneficiary under a will or an heir wants the property transferred to an entity or trust rather than their personal name, is the transaction reportable?
Maybe. The rule states a reportable transfer does not include a “[t]ransfer resulting from 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.” 31 C.F.R. § 1031.320(b)(2)(ii). So, the question

is whether the transfer to the entity or trust is pursuant to the actual terms within the decedent's will or trust. The beneficiary always can have their attorney make the determination whether pursuant to the terms of the will or trust this would be a reportable transaction or exempt.

- ii. **Sale without Court Order.** In a state where a personal representative or executor can sell property without a court order, would the transfer be reportable?

Potentially reportable. The rule states “[a] reportable transfer does not include a ... [t]ransfer 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.” The rule simply does not appear to contemplate what happens in states where the probate court does not provide oversight on who will be the transferee of a sale from the Personal Representative or Executor to a 3rd party. ALTA is confirming this scenario since the sale is not court ordered and the 3rd party is not listed in the decedent's will or trust.

- d. **Transfers due to Divorce or Dissolution.** If a divorce decree (or similar judgment) requires a spouse to quitclaim a property to the other spouse, is the transaction reportable?

No. This scenario should fit within the divorce exemption even if the spouse uses an entity or trust to take title. See 31 C.F.R. § 1031.320(b)(2)(iii). See page 33 of the rule for a discussion of why there is an exemption.

- e. **Court supervised by a court in the United States.**

- i. **Judicial Foreclosure.** If there is a transfer to an entity or trust by a Sheriff or private selling officer due to a judicial foreclosure, is the transfer reportable?

No because the court ordered the sale of the property. The final rule discusses “transfers required as a result of judicial determination in the United States” that “are generally publicly documented and subject to oversight.” 89 F.R. 70269.

- ii. **Non-judicial Foreclosure.** If there is a transfer by a trustee in a deed of trust state to an entity or a trust, is it reportable?

Yes because there is no court supervision. The final rules states “[o]utside of such court-supervised foreclosure proceedings, FinCEN does

not agree that potential reporting persons involved in sales of foreclosed property should be treated differently from other transfers, as such sales, where the property is sold to a third party, do not necessarily present a lower risk for money laundering.” 89 F.R. 70269.

- iii. **Tax Sales.** If there is a transfer to an entity or trust by a Sheriff or private selling officer due to a tax sale, is the transfer reportable?

No, it is not reportable if it is due to a judicial order. The final rule discusses “transfers required as a result of judicial determination in the United States” that “are generally publicly documented and subject to oversight.” 89 F.R. 70269.

- iv. **HOA Lien Foreclosure..** If there is a judgment resulting from an HOA lien foreclosure, is the resulting transfer reportable?

No, it is not reportable if it is due to a judicial order. The final rule discusses “transfers required as a result of judicial determination in the United States” that “are generally publicly documented and subject to oversight.” 89 F.R. 70269.

f. Trusts.

- i. **Exemption.** Which trusts are exempt?

The rule states a reportable transfer does not include a... “[t]ransfer 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)”. This does not include family trusts where there are settlors/grantors who are not married or trusts where the original settlor/grantor has died. Focus should be on the settlors and grantors, not the trustee. It is always prudent to have the Buyer determine whether they are exempt with their attorney.

Note: The discussion by FinCEN where it discussed broadening the exemption but declined to do so. 89 F.R. 70270.

- ii. **Entity?** Is there a similar exemption for entities where the beneficial owner of the LLC is the same for the Transferor/Seller and Transferee/Buyer?

No.

- g. 1031 Exchanges:** Is there an exemption for a 1031 Exchange (Drop and Swap)?
Yes, but the exemption only applies for the transfer to the 1031 Qualified Intermediary wherein the 1031 Qualified Intermediary takes title to the real property (vs. just holding the funds). If the transaction from the 1031 Qualified Intermediary is to an entity or trust, it may be reportable. 31 C.F.R. § 1031.320(b)(2)(vii).

FinCEN's discussion states: "Finally, the final rule adopts an exception, at 31 CFR §1031.320(b)(2)(vii), for transfers made **to qualified intermediaries** for purposes of effecting 1031 Exchanges. Such exchanges are commonly conducted to defer the realization of gain or loss, and, thus, the payment of any related taxes, for Federal income tax purposes. This exception is limited to transfers made to the qualified intermediary; transfers from a qualified intermediary to the person conducting the exchange (the exchanger) remain potentially reportable if the exchanger is a legal entity or trust." 89 F.R. 70268-9.

- h. Publicly Traded Entities.** Are publicly traded companies exempt?
Yes. As are any legal entities "controlled, or wholly owned, directly or indirectly, by" the exempted publicly traded companies. See 31 C.F.R. §§ 1031.320(n)(10)(ii)(A), 1031.320(n)(10)(ii)(P). See also 31 C.F.R. § 1010.380(c)(2)(i). For exempted transactions, see generally 31 C.F.R. § 1031.320(b)(1)-(b)(2).

i. What about...

- i. Relocation Companies.** Relocation companies are not specifically exempt. But if their parent company is exempt due to being a publicly traded company, the relocation company may be exempt.
- ii. Non-Profit Entities or Trusts.** There is no exemption for non-profit entities or trusts.

3. ALTA Certification Form for Exemptions. Does the FinCEN RRER require a reporting person to use the ALTA Certification form to document exemptions?

No, but it is always prudent to document reasons why an exemption applies and even better for a reporting person to have the person with the better knowledge about why an exemption applies certify the reason to the reporting person.

4. Repeat Customers like Investors, Developers, or Builders.

- a. Every transaction.** Do builders have to report every transaction, or can a settlement agent use the same certification form for future transactions?
For reasonable reliance to apply to beneficial ownership information, a settlement agent must collect a certification for every transaction. A settlement agent can always prepopulate data into the collection form, but a settlement agent will need to have the form certified to the settlement agent for each transaction even if the settlement agent has reported the information before. And of course, the source of funds for each transaction may vary.

5. Assignment of Contracts. If the eventual Transferee/Buyer is an individual, but there was an assignment of contract involving an entity or trust wholesaler, is the transaction reportable?

No. The rule focuses on who the end Transferee/Buyer is and FinCEN specifically states "...the transferor of an interest in an assignment contract would not be reportable." 89 F.R. 70266.

Note: If the Transferee/Buyer is an entity or trust, it may be reportable.

6. Multiple Title Policies. If the transaction requires multiple title policies, does that affect how many reports must be filed?

No. The reporting count is based upon the number of reportable transactions involving separate deeds to a transferee/buyer.

7. One transaction with multiple deeds. If the transaction involves one closing but there are multiple recorded deeds, how many reports must be filed?

The amount of report filed correlates to how many deeds of reportable transactions are recorded. 3 deeds = 3 reports, 1 deed = 1 report, etc.

Section 3: Determining the Reporting Person. § 1031.320(c)

1. Reporting Person for the Company.

- a. Scope of Employment.** Is the reporting person doing so on behalf of the company for which they work?
Yes. If an employee is acting within the scope of their employment, the company is deemed to be the reporting person. 31 C.F.R. § 1031.320(c)(2).
- b. One Person or Many.** Can a company identify one person or many people to file the reports?

Yes. One person may file the reports on behalf of the company because the company can be deemed to be the reporting person if the person reporting is acting within the scope of their employment. 31 C.F.R. § 1031.320(c)(2).

Note: On the FinCEN BSA E-filing site, there can be supervisory users and users set up for each company. Every operation will have to set up their own reporting structure that fits their unique needs.

Note: It is prudent to have more than one supervisory user and to have multiple people trained on how to file reports for business continuity purposes.

- c. 1 Company, Multiple d/b/a.** If a settlement agent operates using multiple “doing business as” names or joint ventures, can the settlement agent set up just one company for reporting purposes?

Yes. Based upon conversations between FinCEN and the land title industry, a subsidiary company can appoint a parent company as an authorized submitter; however, the obligation to report still lies with the company within the reporting cascade.

2. Third-party vendors outside of the cascade.

- a. Reporting.** May a reporting person designate someone outside of the cascade to report the information to FinCEN on their behalf?

No. The rules for designation state it is permissible to designate “any other person described in paragraph (c)(1) which does not include a person outside of the cascade”. See 31 C.F.R. § 1031.320(c)(4); 89 F.R. 70272. However, ALTA is seeking clarification from FinCEN based on conversations with our industry wherein FinCEN said that a subsidiary could appoint a parent company as an “authorized submitter.” ALTA is confirming if a reporting person may appoint a 3rd party as an “authorized submitter”.

- b. Gathering of Information.** May a reporting person rely on a third-party outside of the cascade to gather information and prepare FinCEN’s collection form on their behalf?

Yes, however, the comments state " a reporting person could outsource the preparation of the form to a third-party vendor, but the ultimate responsibility for the completion and filing of the report would lie with the reporting person." 31 CFR § 1031.320(c)(4); 89 F.R. 70272. Therefore, it is the risk tolerance of the reporting person on whether they would rely upon a third-party

to collect and prepare the form for them because the reporting person still is responsible for the content and filing with FinCEN.

Note: Many title production platforms and other vendors are working on solutions to help collect and report the data to FinCEN. Now is a great time to reach out to title production software companies and other vendors about solutions being developed.

- 3. One report or many?** On the cascade of reporting persons, do all the parties have to report or just one?

Just one party has to report. Either it is the highest party on the cascade or the person that agrees under a designation agreement.

- 4. Employee Liability.** Does an employee have any exposure for personal liability for failure to report rather than the settlement or title agency?

The reporting person is the company serving as the employer of the settlement agent listed on the settlement statement in regard to this rule only. 31 CFR § 1031.320(c)(2). However, this does not answer the question about criminal or civil liability for aiding and abetting money launderers outside of this rule.

- 5. Split Closing States.** In a split-closing state, who is responsible for reporting the transaction to FinCEN?

Typically, the Buyer Side. 89 F.R. 70271 (<https://www.federalregister.gov/d/2024-19198/page-70271>). However, if there are multiple parties within the reporting cascade, a company further down the list of the cascade could agree to submit the report provided that both parties enter into an appropriate written designation agreement.

- 6. Title-only Issuing Agent.** If a company is a title-only issuing agent with no settlement role, does the company still have to report?

Technically, no, BUT while the settlement agent and person preparing the closing or settlement statement are ahead of the title-only issuing agent who may have recording obligations, however, it would be prudent to make sure someone ahead of the company has completed the filing in case FinCEN asks. See 31 C.F.R. § 1031.320(c)(1).

Note: The cascade of reporting persons also includes “the person that provides an evaluation of the status of title.” 31 C.F.R. § 1031.320(c)(vi).

- 7. Courtesy Recordings/Accommodations.** If a title agent handles courtesy/accommodation recordings, does the title agent have to report?
Potentially. The title company is filing "with the recordation office the deed" that transfers ownership, so the title company will also want to confirm the settlement agent or person completing the settlement statement has filed the report. 31 C.F.R. § 1031.320(c)(iii).
- 8. Underwriters.** Is "the person that underwrites an owner's title insurance policy for the transferee with respect to the transferred residential real property, such as a title insurance company" the title agent or underwriter?
It is the title insurance underwriter. 89 F.R. 70271-2.
- 9. Attorneys Drafting Deeds *after* Closing.** If a transferee/buyer on a reportable transfer balks and states they will have their attorney draft a deed post-closing to transfer to the entity or trust, is their attorney still responsible for reporting?
Yes. An attorney preparing and recording a deed after closing is within the cascade of reporting persons. 31 C.F.R. § 1031.320(c)(vii).
- 10. Over-reporting.** Is there any risk or penalty for reporting a transaction where there was no requirement to do so?
No.
- 11. Prior Transactions.** If the prior vesting deed in the chain of title should have had a report filed but one was not, is there any obligation on the current settlement agent to file one?
No. Settlement agents only need to worry about the transaction in front of them and not prior transaction.
- 12. No reporting person.** Is there an example of a reportable transaction without a reporting person so that the exemption applies?
Yes. If Mike is not an attorney and makes his own deed to transfer his home to his LLC, does not record it, and gets no title or settlement work done, there is likely no reporting person. 31 CFR §§ 1031.320(b)(viii), (c)(2).

Section 4: Information Concerning the Reporting Person

1031.320(d)

1. **Missed report.** What should a reporting person or company do if they realize there was a transaction that should have been reported but was not. Will there be a penalty?
Hopefully not, and a company should file the report as soon as possible. FinCEN has indicated there will be a grace period for compliance as the rule begins; however, it would be prudent to adopt auditing and retraining practices now to show a culture of compliance.

If there is a pattern of non-compliance, a reporting person should consult with their attorney.

Section 5: Information Concerning the Transferee 1031.320(f)

1. Trusts.

- a. **Certificate of Trust.** Can a Certificate of Trust be used if available in the settlement agent's state?
Probably not because in most states the Certificate of Trust will not provide the required beneficial owner information. As for the information it does provide, the certificate of trust is usually provided under penalties of perjury which would meet the reasonable reliance standard.

b. Information Collected

- i. **Minor Beneficiary.** If a minor is a beneficial owner of a trust, what information must be collected from them? Is this a problem because they do not have a driver's license or passport yet?

A minor would only be reportable in limited circumstances where they are a beneficial owner of the transferee trust because they are the beneficiary with the sole right to demand a distribution. In the event that a minor is reportable the rule provides two options. First, a settlement agent can report the guardian's information in lieu of the minor. Second, a settlement agent can report the minor's information. In either choice, you would provide the person's IRS Taxpayer ID Number. This is most commonly their social security number.

ii. What if the trust does not have a Tax Identification Number?

Generally, if a trust is revocable it does not need a separate TIN for IRS purposes and instead uses the trustee's TIN.

Note: Irrevocable trusts usually have a separate tax identification number.

iii. Successor Trustee. Is a settlement agent required to report information for a successor trustee?

No. A settlement agent only has to collect information for the current trustee(s).

c. Beneficial Owners of Trusts.

i. For trusts, which beneficiaries are beneficial owners? Qualified? Contingent?

For a transferee trust, the rule requires the reporting of a trust's beneficial owners. While there are times when a beneficiary is considered a beneficial owner under the definition in 31 C.F.R. § 1031.320(n)(1)(ii), not every beneficiary is a beneficial owner. Further, the rule limits reporting to just beneficial owners at the time of transfer.

A beneficiary is a beneficial owners when they are the sole permissible recipient of the income/principal from the trust or if they have the right to demand a distribution or withdrawal of substantially all the assets. The question hinges on whether a beneficiary has the ability to move assets or force the sale or transfer of assets in or out of the trust.

It is always prudent to have the attorney for the trust certify the answer to the reporting person.

ii. What if the Settlor is dead? Are they still reported as a beneficial owner?

No. For reportable transactions involving a transferee trust, the settlor may be reported as a beneficial owner of the trust. Under the definitions in 31 C.F.R. § 1031.320(n), a settlor is a beneficial owner of the trust when the settlor has the right to revoke the trust. If the settlor is deceased they will not have a right to revocation any longer and thus would not be reportable as a beneficial owner.

2. Entities

a. Information Reported

- i. **Multiple D/B/As.** If an entity has multiple d/b/a names, do they all have to be reported?

Yes. All d/b/a names should be reported. See 31 C.F.R. §§ 1031.320(e)(1)(i)(B), (f)(2)(ii) and (f)(3)(v)(B).

- ii. **Driver's License or Passport Numbers.** What is collected to identify a Beneficial Owner?

IRS TIN's (usually an SSN) are collected for U.S. persons. For foreign individuals, a passport number and the name for the foreign jurisdiction are collected. 31 C.F.R. § 1031.320 (e)(1)(ii)(E).

b. Beneficial Owner Determination.

- i. **Multiple Individuals in Control.** If an entity has a CEO, CFO, Treasurer, etc., are all individuals reported or just one?

It depends on whether the individual has substantial control. If each has substantial control, then yes, all are reported.

- ii. **Substantial Control.** What is substantial control of an entity?

An individual exercises substantial control over an entity if they serve as a senior officer, have authority over the appointment or removal of a senior officer or a majority of the board of directors, have substantial influence over important decisions, or have any other form of substantial control over the entity. 31 C.F.R. § 1010.380(d)(1).

- iii. **No one owns 25% or more of a company.** If there is an entity where no one owns 25% or more, is it still reportable?

Yes. There is always a person with substantial control (CEO, managing member) and a signing individual for the entity. 31 C.F.R. § 1010.380(d)(1).

- c. **Self-directed IRAs.** Are self-directed IRAs subject to this rule?

Yes. FinCEN wants to know who the beneficial owners are of entities and trusts.

3. **Marital Interest States.** If a transaction takes place in a state which laws would require that a non-titled spouse sign the deed or other document to waive a marital

interest/homestead right, is the non-titled spouse considered a transferor/seller who needs to provide their information?

No. This is not an ownership interest that FinCEN is concerned about.

4. **Occupation.** Does the beneficial owner's occupation have to be collected?

No. Collection of occupation is not required under the new rule.

Note: This was required under the old Geographic Targeting Orders.

5. **Driver's License.** Does the beneficial owner's driver's license have to be collected?

No. Collection of the driver's license is not required under the new rule.

Note: This was required under the old Geographic Targeting Orders.

6. **Foreign Beneficial Owner.** If the transferor is not a US Citizen or does not have a Social Security Number, what number is reported?

The rule has other options including foreign tax identification numbers and passport numbers. 31 C.F.R. § 1031.320(f)(iv).

7. **Amish and Mennonite Beneficial Owners.** The Beneficial Owner is Amish or Mennonite and does not have a Social Security Number. What should a settlement agent do?

The IRS, which is also a part of the Department of Treasury, has created a process for obtaining a limited SSN number that overcomes the religious objections. More information is available at: <https://secure.ssa.gov/poms.nsf/lnx/0110225035>.

Section 6: Information Concerning the Transferor §1031.320(f)

1. **Governmental Entity Seller.** If the transferor/seller is a governmental entity, what information has to be collected?

The same as any other entity since the rule does not exempt a governmental entity seller.

2. **Trusts.** Does a settlement agent have to report beneficial ownership information for a Transferor/Seller Entity or Trust?

No. There is no requirement to report beneficial ownership information for the Transferor/Seller Entity or Trust. 31 C.F.R. 1031.320(f). This is because the trigger is the Buyer who FinCEN is most concerned about.

Section 7: Information Concerning the Street Address § 1031.320(g)

1. **Unknown Street Address.** For the transfer of a property with an unknown street address because it has not been established by the local government, what should a reporting person put in the form?

The rule states street address (if any). An address is not required if it has not been established yet.

2. **Legal Description Longer than 1,000 characters.** The FinCEN form will only accept a legal description 1,000 characters in length but the legal description is 3 pages long. What should be put in the form?

The first 1,000 characters.

Section 8: Information Concerning Payments § 1031.320(h)

1. **REALTOR®'s holding earnest money.** If an earnest money deposit is held in a REALTOR®'s account, will the information about the REALTOR®'s account have to be reported?

Yes. Reporting is required for all funds used to purchase the property. The rule for a discussion where FinCEN acknowledges the information required is beyond what is normally provided. 89 F.R. 70275

2. **Back-to-Back Closings.** Back-to-back closings involve situation where the Buyer in the second transaction just sold their residential property in the first transactions. Since the funds do not leave the settlement agent's escrow account, should the settlement agent list their account as the source of funds?

Yes.

3. **Funds from an Entity or Trust.** If the transferee/buyer is an individual, but the funds to purchase are coming from an entity or trust, is the transaction reportable?

No. This is not "...a non-financed transfer to a transferee entity or transferee trust." 31 CFR § 1031.320(b).

4. **Difficult and New.** Won't it be difficult to get full payment information before closing?

Potentially, due to it being a new requirement. It is important to talk to customers, REALTORS®, Investors, Attorneys, etc. now before the rule starts.

Section 9: Information Concerning Hard Money, Private, and Other Similar Loans 31 CFR § 1031.320(n)(5)

1. **Hard-money/Private Loans.** Are hard-money/private loan transactions reportable?

Yes. Those lenders will not have an AML/SARs reporting obligation. These are considered non-financed transactions.

2. **What information is collected about the hard-money/private loan lender?**

Right now, the only question is a yes/no on whether there is a hard money/private lender. There is no indication FinCEN wants information about the hard money/private lender.

3. **How does a settlement agent know whether a lender has an anti-money laundering program?**

A settlement agent should not assume that a lender has an AML Program. In order to have the reasonable reliance standard, the lender should be asked whether they have an anti-money laundering program. This can be done using the ALTA Certification Forms.

In discussion reasonable reliance the rule says: "a reporting person may rely on the information provided by the relevant lender extending credit secured by the underlying residential real property as to whether the lender has an obligation to maintain an AML program and an obligation to report suspicious transactions under 31 CFR Chapter X, provided the reporting person does not have reason to question the lender's information (e.g., if the lender were to represent that he (as a natural person) is subject to AML obligations)" as an example of a situation where the lender most likely does not have an AML/SAR program. 89 F.R. 70264.

Depending on a settlement agent's risk tolerance, a list of lenders who have been asked this question could be developed, used, and re-verified yearly, biannually, etc.

4. **Farm Credit Service Agencies.** Are Farm Credit Service Agencies considered hard money lenders?

Possibly because many are exempt from AML/SARs Compliance. However, some lenders that do rural housing loans will have AML/SARs programs since they have other mortgage transactions also. You will need to ask the lender whether they have an AML program.

5. **Contract for Deed, Bond for Deed, Land Contract.** Are Seller-backed financing transactions reportable?
Yes, if the transaction is residential property and the transferee/buyer is an entity or a trust. This assumes the Seller does not have any obligation to maintain an anti-money laundering program and an obligation to report suspicious transactions under the Bank Secrecy Act.
6. **Seller-backed financing/Seller Carry Back.** Is seller-backed financing exempt?
No. If the seller does not have an anti-money laundering program, the transaction is still considered non-financed and potentially reportable. Some seller financing would benefit from an exemption for the requirement to comply with the SAFE ACT for NMLS+R registration but would still be a reportable transaction under this rule.
7. **Loan Amount.** If there is any amount of a loan on the property with a lender with an anti-money laundering program, is the transaction reportable? What about reporting the cash to close?
No. If there is a mortgage from a lender that has an AML requirement then the whole transaction is not reportable, and the settlement agents does not need to report on any amount of funds.
8. **Loan Assumptions.** If the Transferee/Buyer is assuming a loan, is this a reportable transaction?
This is unknown at this time but will be submitted to FinCEN for confirmation that if there is evidence the lender has an anti-money laundering program and knows the loan is being assumed by the transferee/buyer, the transaction is not reportable.
9. **Bank of Mom & Dad.** If the lender is a parent or other related person, is the transaction reportable?
Most likely yes because relatives will not have an anti-money laundering program.

Section 10: Reasonable Reliance § 1031.320(j)

1. **Residential Property.** Can you rely ONLY on the Buyer or buyer's representative to tell the settlement agent whether the property is residential?

Maybe. You may rely on statements for reasonable reliance purposes, generally, but if you have reason to know the statement is likely false, then you may not rely upon it.

Settlement agents should develop their own procedures based on their own risk tolerance. A plain reading of the reasonable reliance standard indicates that absent any information to the contrary, you can rely on the statements made by the buyer. There is currently no guidance as to what would constitute an indication that would abrogate the reasonable reliance standard, but it does not appear to be FinCEN's intention that settlement agents investigate beyond the statements made by the buyer.

2. **Intent to build.** What if the settlement agent receives a mixed message by the transferee/buyer on whether they intend to build on the property?

This is up to the risk tolerance of the settlement agent. If the settlement agent does not trust the statements but closes without reporting, they could lose reasonable reliance purposes. Agents should be cognizant that any documentation, including notetaking, related to intended purposes of the property could be seen as an indication that could raise red flags concerning reasonable reliance.

3. **Intent to transfer to Entity or LLC.** Does the settlement agent have to report the transaction if the settlement agent knows there will be an immediate transfer to an entity or trust?

Yes. This is about risk tolerance. There are many valid reasons why a person would transfer to an entity or trust after closing. What happens after the transaction and the timing of any subsequent transfer may be irrelevant if you do not know what the intentions are. The more a settlement agent is involved in the subsequent transfer, the more risk the settlement agent may incur.

4. **Wrong Account Number.** What if the account number reported on the ALTA Certification for payment information is not what is on the incoming wiring account information?

If the numbers do not match, settlement agents should report the data from the wire receipt. This information reasonably calls into question the reliability of the information provided. Settlement agents should attempt to clarify discrepancies.

Note: There is also no indication that banks will change their wire receipt information due to this rule because there is no change to the laws on what the bank must provide under this rule.

Section 11: Filing Procedures 31 C.F.R. §1031(k)

- 1. Timing.** When does the Residential Real Estate Report have to be filed?

Latter of 30 days after closing or end of the month following the closing month. 31 C.F.R. § 1031.320(k)(3), (n)(4); 89 F.R. 70275-6. For example, if a closing takes place on December 14, 2025, which is reportable, the RRER must be filed by the latter of January 13, 2026 or January 31, 2026.

Note: This does not prevent a settlement agent from filing earlier.

- 2. Contracts received on or after December 1 or taking place on or after December 1.**

Does this rule apply to contracts/purchase agreements received at order entry starting December 1 or for closings starting March 1, 2026?

Closings. This rule is effective for closings taking place on or after March 1, 2026, so if a reporting person's procedures require collection of information prior to March 1, 2026, those procedures begin before March 1, 2026.

- 3. Last Minute Change to Entity or Trust.** Will a settlement agent have to collect the required information if the Transferee/Buyer makes a last-minute decision to put the transaction into an entity or trust?

Yes. There are no exceptions or extensions of time for a settlement agent for last minute decisions by the Transferee/Buyer.

- 4. Closing Date.**

- a. Typical Closing Date.** What is the closing date for filing purposes for most transactions?

"[T]he date on which the transferee entity or transferee trust receives an ownership interest in residential property." Typically, the date the deed is signed and delivered. 31 C.F.R. § 1031.320(k)(3), (n)(4); 89 F.R. 70275-6.

- b. Seller-Backed Financing Closing Date.** What's the closing date for filing purposes for seller-backed financing (Sales Deed, Contract for Deed, Land Contract) where the deed is held in escrow until the contract completed?

The date the entity or trust received an ownership interest would be when the contract was signed.

5. **Title Agency Division of Bank.** If a title agency is a division of a bank, would the bank already have processes and procedures for BSA E-Filing?

Most likely, yes, the bank is registered to file as an entity and a supervisory user should be contacted for internal procedures.

Section 12: Miscellaneous

1. **Information Usage.** How will the information collected be used by FinCEN? Is the data secure?

All data submitted to FinCEN is added to their secure Bank Secrecy Act databases. This data is available to other federal entities like the FBI, DEA or IRS to combat money-laundering. Settlement agents do not have responsibility for how the federal government protects data.

2. **Suspicious Activity Reports.**

- a. **Suspicious Activity Report Required?** If a transferee/buyer of a reportable transaction refuses to provide the information and the transaction does not close, does a settlement agent have an obligation to file a Suspicious Activity Report?

No. There is no obligation to file a suspicious activity report.

- b. **Suspicion Required?** Is a settlement agent supposed to be suspicious any time an entity or trust changes to an individual? Does FinCEN want all of those changes marked as suspicious?

No. There is no requirement to be suspicious. A settlement agent might need to be careful about what services are provided if the settlement agent suspects the individual will later transfer to their entity or trust shortly after closing to avoid reporting information to FinCEN.

- c. **Liability.** If a settlement agent files a SAR and there is no suspicious activity actually occurring, can the settlement agent be held liable for filing that report?

No. Financial institutions have a liability shield for any information filed as part of a SAR. As a reminder, the FinCEN Real Estate Report is a form of SAR under the law.

- d. Alert to Person.** If a settlement agent elects to file a SAR, can they tell the person a SAR will be filed?
Yes. Under bank anti-money laundering rules, settlement agents would not be allowed to tell a customer a SAR is being filed; however, this rule has an exemption to that rule. 31 C.F.R. § 1031.320(m).
- e. Bank Involvement.** Why does the bank who is wiring money to the settlement agent not have a duty to provide all of this information to FinCEN if they are holding the money?
No. Banks are under requirements to file suspicious activity reports but since these transactions involve entities or trusts, there may not have been any reason for a bank to file a SAR.
- 3. E-Sign.** Can the Buyer and Seller Collection forms be completed electronically or does it have to be wet-signed?
E-Sign is permissible. Wet-signed is not required. Settlement agents will want to put in place systems to collect and save the data collection form for reasonable reliance purposes.
- 4. NPI.** Are there any suggestions on how to handle objections when Buyers and Sellers do not want to provide information due to confidentiality concerns?
Yes. Now is a great time to create or refurbish the customer communications settlement agents use to introduce themselves to customers and inform them about this required new rule. Then when the time comes to collect, the customer is already familiar with the potential reporting process. It is also good to designate a point person to handle these questions so the individual is ready with answers on how the settlement agent collects and stores information securely.
- 5. Real Estate Agents.**
- a. Contracts.** To prevent last-minute changes by the Buyer to vest title into an entity or trust, can Buyers and Sellers write into their contact/purchase agreement when the Buyer can no longer change their mind?
Yes, although the FinCEN RRER is silent on this. Buyers and Sellers may elect at contracting to determine when it has to be finalized whether the Buyer will be vesting title in an entity or trust.
- b. Education.** Does ALTA have any educational materials for real estate agents?

Yes. As part of the FinCEN Bootcamp, ALTA has provided a power point that settlement agents may use to train real estate agents.

- 6. Collection Form Licensing.** Can the ALTA Certification Form be used if the settlement agent has a license only but is not a full member of ALTA?

First, now is a great time to be a full ALTA Member. But like with the ALTA policy forms, these collection forms are copyrighted. A license to use these forms is given to all ALTA members and those that purchase a license.

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