



Overview of FinCEN Anti-Money Laundering Rule

Fund Member Summit | March, 2025

Melissa Jay Murphy - General Counsel, The Fund

PURPOSE OF THE NEW RULE:

To help law enforcement identify and prosecute situations in which "dirty money" is used to purchase residential real estate

SOLUTION?

Require closing agents to report all cash residential real estate transactions to an entity or trust!

Significant penalties if they do not comply

BASICS:

- Replaces the GTOs that cover 11 counties in Florida now.
- Will cover all of USA
- No \$ threshold, i.e., no minimum sales price
- Effective December 1, 2025
- Requires reporting of all cash (non-financed) transfers of residential property to an entity or trust.
- Definition of "residential property"
 - Property with a structure for 1-4 families
 - Vacant land on which buyer "intends" to build a home
- All types of "entities" included (profit and non-profit)

WHO MUST REPORT? AKA "THE CASCADE"

- Lays out an order or "cascade" of responsibility
 - The person who is listed as the settlement agent on the Transferee settlement statement
 - The person who prepared the settlement statement
 - The person that files the deed or other instrument for recordation
 - The person that underwrites the owner's title insurance policy
 - The person that disburses the greatest amount of funds
 - The person that provides an evaluation of the status of the title
 - The person that prepared the deed

EXEMPT TRANSACTIONS

- Grant, transfer, or revocation of an easement
- Transfer resulting from the death of an individual
- Transfer incident to a divorce
- Transfer to a bankruptcy estate
- Transfer to a QI for a Sec 1031 exchange
- Transfer for which there is no reporting person
- Transfer "supervised by a court"
- Transfers for no consideration from an individual, their spouse, or both of them, to a trust of which the same individual(s) are the settlor/grantor
- "Corrective" deeds are "not transfers" and therefore not reportable



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INFORMATION REQUIRED:

- Basic transactional information
- Information about Seller
 - Individuals: Full legal name, date of birth, current residential address, IRS TIN or equivalent
 - Entity: Legal name, DBA, current business address, TIN or equivalent
 - Trust: Full name of trust as listed on trust agreement; date trust agreement executed, TIN and legal name, address and TIN for Trustee (both individuals and entities)
- Information about Buyer
 - Purpose: to get to the flesh and blood individual beneficial owner of the entity/trust
 - Some situations can be very complicated/detailed
 - Who is a Beneficial Owner of an Entity?
 - Any individual who, directly or indirectly, either exercises **substantial control** OR owns or controls at least 25 percent of the ownership interests
- Information about Buyer (continued)
 - Substantial control includes
 - Senior officer
 - Authority to appoint board of senior officers
 - Direct decision making on important financial decisions including transfers of assets
 - Both profit and non-profit entities are covered
 - Who is a Beneficial Owner of a Trust?
 - Individual Trustee
 - An individual other than a trustee with authority to dispose of trust assets
 - Beneficiary that is the SOLE recipient of income/ principal or has right to demand distribution of substantially all of the assets
 - Grantor/settlor under a revocable trust
 - If an entity holds one of the covered positions, then the BO of that entity
 - Beneficial Owner Information
 - Full legal name, DOB, Current residential address, Citizenship, Unique ID (TIN, etc)

PAYMENT OF THE PURCHASE PRICE

- For each payment by Transferee or on their behalf to the settlement agent:
 - Amount of payment
 - Method of payment (wire, ACH, certified check, etc)
 - Name of financial institution payment was drawn on and the **account number**
 - Name of any payor on the wire or check if payor is not the Transferee

REASONABLE RELIANCE STANDARD

- Allows a reporting person to “reasonably rely” on information provided by the parties
 - E.g., intention to build a home, addresses, etc.
- Stricter requirement for BOI for transferee entities and trusts
 - BOI information for Transferee must be “certified” in writing by entity representative to be accurate “to the best of their knowledge.”

EFFECTIVE DECEMBER 1, 2025

BUT BE PREPARED!

Look for information about training and education from The Fund. **We are here to help!**