

FinCEN RER Information

Multi-State

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Introduction

Beginning March 1, 2026, settlement agents must report certain transactions covered by the Anti-Money Laundering Regulations for Residential Real Estate Transfer (RRE). The RRE applies to any transfer within the within the U.S. including U.S. Territories. There is no specific geographic area and no minimum sales price. This Memo is a summation of the rule. It is recommended you read the entire rule and its comments along with the materials provided by FinCEN at <https://www.fincen.gov/rre>.

Under the RRE, the Reporting Person has an obligation to report. The Reporting Person is the highest person listed on the **Reporting Cascade** (see Appendix). The person conducting the settlement/closing is the primary reporting person, and second is the person who prepares the settlement statement. Thus, settlement agents will have the obligation to report transactions covered by this regulation. In a split closing, the Reporting Person is the settlement agent who prepares the settlement statement for the buyer.

Reporting Covered Transactions to FinCEN

The FNF Family of Companies has invested many resources to build an electronic method to securely collect the information necessary to properly document transactions covered by the regulations. The system enables settlement agents to send a secure link to buyers and a separate link to sellers which will record the buyer’s and seller’s certification of the information they provide. This enables settlement agents to submit reportable transactions electronically as required by FinCEN using their BSA eFiling System. Collecting data from the buyer and seller electronically serves as the most efficient method and requires the least amount of data entry by settlement agents. For training on how AgentTRAX will aid settlement agents in the collection of information, please visit the FNF Academy’s AgentTRAX Learning Journey at: <https://agencyoperation.learnupon.com/content-details/95313/1>.

Identifying Covered Transactions

Settlement Agents may choose to follow the steps described below for each transfer of real property.

Step 1: Determine if the transaction is facially reportable or exempt.

Step 2: Collect information

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- Step 3: Review for reasonable reliance
- Step 4: Close and file report

Expressly Exempt Transactions

Some transactions may always be exempt from reporting. Thus, a settlement agent may determine that no further review or documentation is necessary once one of the following transaction types are confirmed.

Easements – The sale or transfer of an easement, without any other property rights, is automatically exempt.

Reverse Exchange - Many reverse exchanges are cash purchases wherein the exchanger parks the property they are exchanging with an exchange company who utilizes an entity which would otherwise be considered a reportable transfer. This transfer to the holding entity is automatically exempt per the regulation, no other leg of the exchange is automatically exempt.

Refinance by a Trust - This exemption applies when title is transferred out of the trust for the purpose of a refinance and then placed back in the trust. Generally, the transfer from the individual to a trust would facially qualify as reportable. However, this is a narrowly drawn exemption. This only applies to multiple borrowers who are SPOUSES. The exemption reads as follows: *(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, are the settlor(s) or grantor(s).*

Mobile Homes: The sale of a mobile home, which is personal property, is not reportable. If the sale is combined with the purchase of real property, then it may be reportable, if the other qualifications exist. But if the home is located in a park and not a part of the real property, then it is exempt from reporting.

Within the four steps there may be additional criteria to consider. Settlement agents should consider only looking at the known facts about a transaction and not assuming details until they have actual knowledge the transaction is exempt.

Step 1: Determine if transaction is facially reportable

In this step, settlement agents should review to determine if further information is needed or if the transaction is exempt. The flowchart for assisting with these determinations is attached as Addendum A. To be reportable the transaction must meet all the following criteria:

- Criteria 1: Property is residential real property per FinCEN' definition;***
- Criteria 2: The transfer is non-financed, or the lender does not have an anti-money laundering program in place that requires the filing of a suspicious activity report; AND***
- Criteria 3: The Buyer is an Entity or Trust.***

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Information may or may not be known to the settlement agent to fully determine if one or more of these criteria are met. If a settlement agent is unsure, there is no penalty for over-reporting.

Criteria 1: Property is residential real property

FinCEN defines “residential real estate” to include any property with any of the following:

- A structure designed for 1-4 families, OR
- Vacant land on which the buyer intends to build a 1-4 structure.
- A condo or co-op
- Mixed use, or apartment buildings

Residential is further defined in the RRE: “...*the definition [of residential property] is meant to include property such as single-family houses, townhouses, condominiums, and cooperatives, including condominiums and cooperatives in large buildings containing many such units, 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.*”

Commercial and Mixed-Use Properties:

For mixed use (commercial and residential) and/or apartment buildings consisting of 1-4 family structures, settlement agents may need to report the transaction if the other criteria exist.

Currently, FinCEN has not provided clear direction regarding apartment complexes or mixed use wherein the subject property has more than 4 family units. The ALTA FAQs have been drafted to provide some guidance for settlement agents to rely upon.

Vacant Land:

Vacant land transfers are only *residential* if the buyer intends on building a 1-4 family residential structure on the land. The settlement agent may confirm with the buyer by asking:

Are there any structures designed for occupancy by one to four families on the property being purchased? (yes or no)

Do you, as the buyer, have any intent to build any structure designed for occupancy by one to four families on said property? (yes or no)

Settlement agents will need to determine whether they want this in writing and/or certified. FinCEN’s discussion about reasonable reliance beginning at 89 F.R. 70263 can be reviewed so a settlement agent can determine their own risk. See Addendum B for an example.

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Criteria 2: The transfer is non-financed, or the lender does not have an anti-money laundering program in place that requires the filing of a suspicious activity report.

Non-financed is defined as any transaction without (1) a loan secured by the property AND (2) the loan is provided by a financial institution that does not have an anti-money laundering program and an obligation to report suspicious activity. Under this definition, cash only transactions are reportable.

Anti-Money Laundering and SAR Inquiry

There is not one resource for determining whether a lender has an anti-money laundering program. If a settlement agent is unsure, settlement agents may choose to ask:

For the referenced transaction, does the lender have an obligation to maintain an anti-money laundering program and an obligation to report suspicious transactions under Title 31, Chapter X of the Code of Federal Regulations? (yes or no)

Settlement agents will need to determine whether they want this in writing and/or certified. FinCEN's discussion about reasonable reliance beginning at 89 F.R. 70263 can be reviewed so a settlement agent can determine their own risk. See Addendum C for an example.

Generally, settlement agents can reasonably rely on the statement provided unless you have direct knowledge to the contrary. For example, if the lender is an individual, then you can assume the transaction is *non-financed*. If the lender can confirm they have the requisite programs in place, and the loan will be secured by the property which the buyer is purchasing, the transaction is exempt.

Criteria 3: Buyer is an entity or trust

Buyer must be an entity or trust, as in, the buyer is not an individual or estate. There are several types of entities and trusts that are exempt (see **Exempt Buyers** for reference), however the settlement agent **does not** decide or determine if the buyer is exempt. The buyer's representative or signer will have the ability to select and certify if they are an exempt during the collection step.

If the transaction facially meets all 3 criteria, proceed to **Step 2. Collect Information**. If it does not, document the file by indicating it is exempt from reporting.

Step 2: Collect information

If the transaction meets the above-criteria, the settlement agent must collect information. Settlement agents must choose how they would like to collect the information whether it is through using technology or paper. An example collection form is attached as Addendum D.

AgentTRAX and the collection form have the ability to choose transactional exemptions. Note there are some exemptions that only apply to the Buyer.

Potential Exemptions – Transactional Exemptions

FinCEN does provide several transactional exemptions (See **Transactional Exemptions** for a full list). The buyer must acquire the property due to one of these instances to qualify for

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one of the transaction exemptions. In general, a settlement agent would not handle these types of transfers since they are not a *sale*. The buyer's representative will be given the opportunity to select one of these exemptions, if applicable, and certify the information is correct.

Potential Buyer Type Exemptions

FinCEN included exemptions for various types of entities and trusts (see **Exempt Buyers**). Settlement agents may choose to rely on the authorized signer or representative's statement and certification if the entity or trust qualifies as one of these entity types. If the buyer is unsure or has any questions about whether their entity or trust qualifies, settlement agents are strongly encouraged to have the Buyer consult with the Buyer's attorney who assisted them in setting up the entity or trust.

Reportable Transactions

Buyer's Information

The RRE requires the Reporting Person to report information about:

1. The buying entity or trust
2. The authorized signer(s)
3. Any beneficial owners

Beneficial ownership information is required for the entity or trust. For an entity, in brief, a beneficial owner of a transferee entity is someone who (i) exercises substantial control over the transferee entity, or (ii) owns or controls at least 25% of the transferee entity's ownership interests.

A beneficial owner of a transferee trust includes, in brief, (i) the trustee, (ii) a beneficiary of the trust who has the right to demand a distribution of, or withdraw, substantially all of the assets of the transferee trust, and (iii) a grantor or settlor who has the right to revoke the transferee trust.

Settlement agents will need to determine their own comfort with what needs to be reviewed in regard to information submitted by the Buyer. FinCEN's discussion about reasonable reliance beginning at 89 F.R. 70263 can be reviewed so a settlement agent can determine their own risk.

Seller's Information

The RRE requires the Reporting Person to report information about:

1. The seller (whether an individual, entity or trust)
2. If a trust, the trustee(s) information

Seller's information is required. Unlike the buyer, there are no comparable exemptions for specific types of sellers. Even if the seller is HUD or other government agency, publicly traded, sale of a REO, or trustee sale, the transaction is **NOT** exempt based on the type of

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entity a seller may be. The RRE requires the Reporting Person to report information about the seller.

Settlement agents will need to determine their own comfort with what needs to be reviewed in regard to information submitted by the Seller. FinCEN's discussion about reasonable reliance beginning at 89 F.R. 70263 can be reviewed so a settlement agent can determine their own risk.

Payment Information

The required information for each payment includes the following:

1. Originating financial institution name
2. Account number
3. Payor or who provided the funds (including third parties)
4. Method of payment such as a wire, check, or other; and
5. Amount of the transfer

Settlement agents must request any missing details from the buyer. It may be ideal to solicit information prior to receiving payments and closing. The information is required for deposits made by the principal and third parties.

Settlement agents will need to determine their own comfort with what needs to be certified by the Buyer in regard to payments because this information can change immediately before or at closing. FinCEN's discussion about reasonable reliance beginning at 89 F.R. 70263 can be reviewed so a settlement agent can determine their own risk.

Step 3: Reasonable Reliance Review

Once the Buyer and Seller have provided information necessary to file a completed report, the settlement agent will need to perform a review of the completed information and may reasonably rely on some information subject to the certified in writing requirements for beneficial ownership information for Buyer entities and trusts. The rule states:

(j) Reasonable reliance -- (1) General. Except as described in paragraph (j)(2) of this section, the reporting person may rely upon information provided by other persons, absent knowledge of facts that would reasonably call into question the reliability of the information provided to the reporting person.

(2) Certification when reporting beneficial ownership information. For purposes of reporting information described in paragraphs (e)(1)(ii) and (e)(2)(iii) of this section, the reporting person may rely upon information provided by the transferee or a person representing the transferee in the reportable transfer, absent knowledge of facts that would reasonably call into question the reliability of the information provided to the reporting person, if the person providing the

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information certifies the accuracy of the information in writing to the best of the person's knowledge.

Settlement agents will need to determine their own comfort with what needs to be reviewed in regard to information submitted by the Seller and Buyer. FinCEN's discussion about reasonable reliance beginning at 89 F.R. 70263 can be reviewed so a settlement agent can determine their own risk.

Note: Incomplete reports are unacceptable under FinCEN regulations. Settlement agents must determine whether they will close without all required information. FinCEN has repeatedly stated that incomplete reports are not acceptable in ANY circumstances and there is no ability to file a suspicious activity reports like lenders instead of compliance with the RER.

Step 4: File the Report

Once all required information is acquired, a settlement agent may file with AgentTRAX or another system. If a settlement agent is filing manually, they will input the information into the pdf provided by FinCEN which on the BSA-efiling website.

Resources

Settlement agents should direct questions from Buyers and Sellers to their attorney or FinCEN. Settlement agents should be cautious about providing legal advice and the unauthorized practice of law. Resources from FinCEN for Buyers and Sellers are available at:

FinCEN RRE: <https://www.fincen.gov/rre>

Code of Federal Regulations: <https://www.ecfr.gov/current/title-31/subtitle-B/chapter-X/part-1031/subpart-C/section-1031.320>

Designation Agreement

An example Designation Agreement has been provided as Addendum E for those title only agents who may wish to record documents as part of their services.

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APPENDIX

Reporting Cascade

The regulation provides a reporting cascade to determine who is considered the Reporting Person. If the first person listed in the cascade does not exist or is not involved in the transfer, then the second person becomes the Reporting Person and if that person does not exist, the third person becomes the Reporting Person and so on. The regulation describes the cascade in this order:

1. Settlement agent listed on the closing statement
2. Person who prepares the closing statement
3. Person who files the deed
4. Title company that underwrites the owner's title insurance
5. Person who disburses funds
6. Person who evaluates title status
7. Person who prepares the deed or legal instrument

Settlement agents who handle **split closings** are required to report the transfer when they are the buyer's settlement agents. The Reporting Person is considered the highest-ranking person on the reporting cascade.

Transactional Exemptions

(2) 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.

Exempt Buyers

Certain buyers are exempt from reporting.

- A securities reporting issuer defined in 31 CFR 1010.380(c)(2)(i);
- A governmental authority defined in 31 CFR 1010.380(c)(2)(ii);
- A bank defined in 31 CFR 1010.380(c)(2)(iii);
- A credit union defined in 31 CFR 1010.380(c)(2)(iv);
- A depository institution holding company defined in 31 CFR 1010.380(c)(2)(v);
- A money service business defined in 31 CFR 1010.380(c)(2)(vi); (G)

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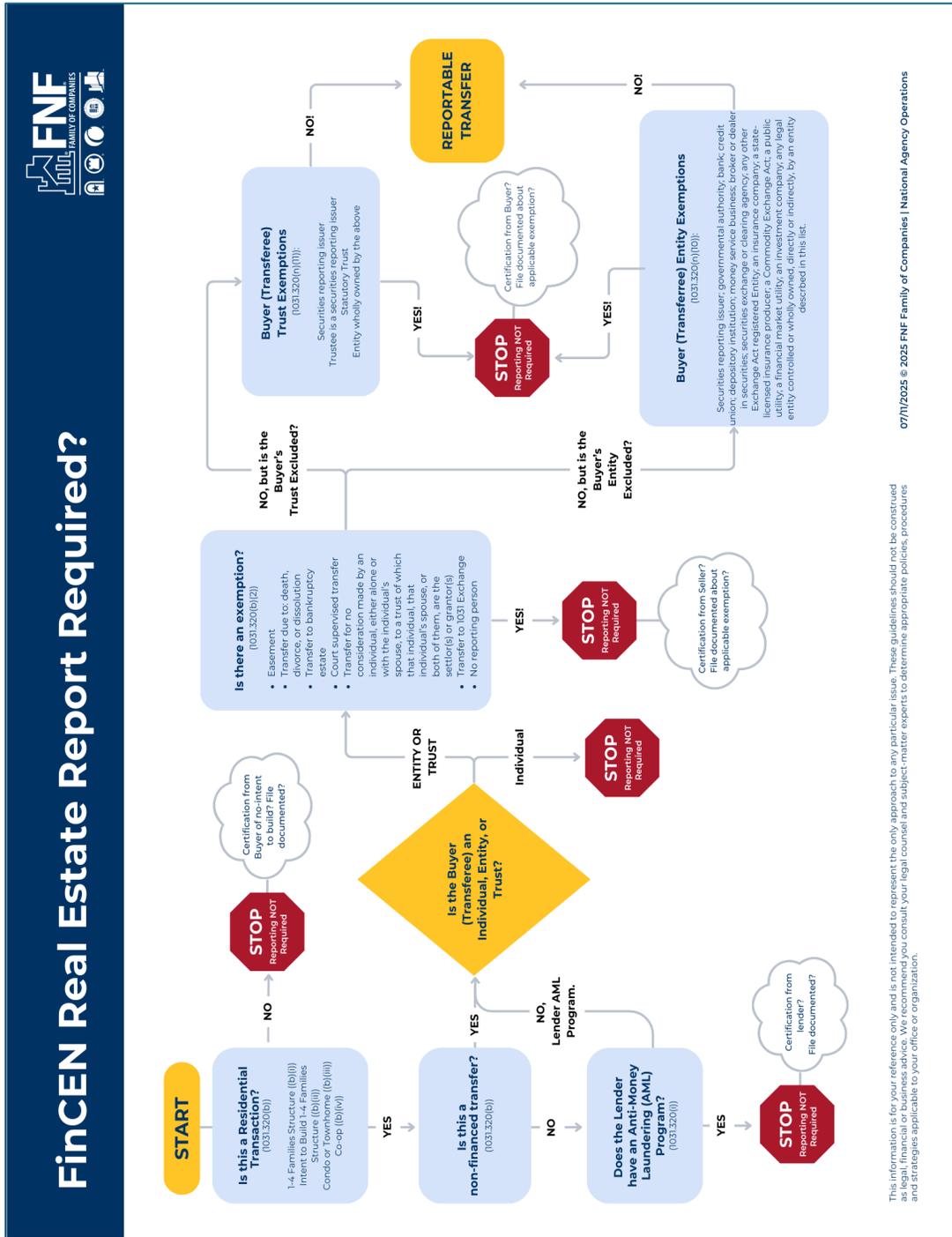
- A broker or dealer in securities defined in 31 CFR 1010.380(c)(2)(vii);
- A securities exchange or clearing agency defined in 31 CFR 1010.380(c)(2)(viii);
- Any other Exchange Act registered entity defined in 31 CFR 1010.380(c)(2)(ix);
- An insurance company defined in 31 CFR 1010.380(c)(2)(xii);
- A State-licensed insurance producer defined in 31 CFR 1010.380(c)(2)(xiii);
- A Commodity Exchange Act registered entity defined in 31 CFR 1010.380(c)(2)(xiv);
- A public utility defined in 31 CFR 1010.380(c)(2)(xvi);
- A financial market utility defined in 31 CFR 1010.380(c)(2)(xvii);
- An investment company as defined in section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(a)) that is registered with the Securities and Exchange Commission under section 8 of the Investment Company Act (15 U.S.C. 80a-8); and
- 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.

Trusts:

- A trust that is a securities reporting issuer defined in 31 CFR 1010.380(c)(2)(i)
- A trust in which the trustee is a securities reporting issuer defined in 31 CFR 1010.380(c)(2)(i)
- A statutory trust - defined as any trust created or authorized under the Uniform Statutory Trust Entity Act or as enacted by a State
- Estate planning trust where (1) the transfer is for no consideration and (2) the transferor/seller (and/or their spouse) is the also the settlor or grantor of the trust

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Addendum A - Flowchart



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