

ARIZONA STATE UNIVERSITY

CORPORATE & BUSINESS LAW JOURNAL FORUM

Volume 7

September 2025

Number 4

COMMENTARY

*Who's Really Buying that Property? New Rule Forces Disclosure in
Non-Financed Transactions*

BY ALYSSA MCCUISTON*

To deter money laundering and increase transparency in real estate transactions, a new federal rule requiring “mandatory reporting to the U.S. Department of Treasury’s FinCEN (Financial Crimes Enforcement Network)” will take full effect on December 1, 2025.¹ The Residential Real Estate Rule will apply to non-financed real estate transactions involving trusts and legal entities, rather than individuals.² A real estate transaction will need to be reported if four criteria are met. First, the transaction must involve a residential real property, including single-family homes, condos, or apartment buildings.³ Second, the transfer must be non-financed — that is, the buyer acquired the property without traditional bank financing, such as all-cash purchases or purchases financed by private lenders.⁴ Third, the property must be acquired by a transferee trust or a transferee entity, such as a corporation, LLC, or partnership.⁵ Lastly, the transaction cannot fall within one of the reporting exemptions, such as transfers resulting from death, divorce, etc.⁶

Benefits of the Real Estate Rule

Many real estate purchases do not fully disclose the identity of the buyer, as properties are often purchased by legal entities with little to no assets.⁷ One common reason for using an entity,

* J.D. Candidate, Class of 2026, Sandra Day O’Connor College of Law at Arizona State University

¹ April D. Smith & Sean Buckley, *FinCEN Rule Targets All-Cash Residential Real Estate Deals Involving Entities & Trusts*, ADAMS & REESE (Aug. 12, 2025), <https://www.adamsandrees.com/insights/fincen-rule-targets-all-cash-real-estate-deals-involving-entities-trusts>.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Bruce Ortwine, *U.S. Plays Catch-up to Close Long-Standing Gaps in Anti-Money Laundering Laws: Part Two: Focus on Real Estate Transactions*, 15 INT’L. IN-HOUSE COUNSEL J. 7929 (Summer 2022), https://heinonline.org/HOL/Page?handle=hein.journals/iijhcj15&div=55&g_sent=1&casa_token=Av-qcqv9pAAAAAA:UQsyBJzj0skyw6EAtbC1t0dlm--4uCDQEsUeuWOQNIkIZG-oYGLY3HKMRwhwh4_TneuRUSU&collection=journals.

such as an LLC, is to limit personal liability and protect against potential lawsuits. In November 2015, approximately “17 percent of the 82,595 all-cash purchases of single-family homes and condos went to buyers with an ‘LLC’ in the name.”⁸ The Residential Real Estate Rule will encourage transparency within the real estate market. Additionally, FinCEN is hopeful the rule will protect the real estate market from criminals engaging in illicit activity.⁹ Currently, non-financed real estate transactions are subject to few rules, and between 2015 and 2020, “an estimated \$2.3 billion was laundered through U.S. real-estate transactions.”¹⁰ Previously, reporting requirements applied only to transactions exceeding \$300,000.¹¹ Under the new rule, reporting will be required regardless of the purchase price.¹²

Effect on Real Estate Professionals

The real estate professionals who will likely be required to report the transactions are “title insurance agents, escrow agents and attorneys.”¹³ Real estate professionals will be required to report the transactions by providing information regarding the reporting person, the legal entity or “trust receiving ownership of the property”, and the transferor.¹⁴ Additionally, reporters will be required to provide the location of the property being transferred, the purchase price, and any individuals signing documents “on behalf of the transferee entity or transferee trust.”¹⁵ Only one person is required to report the transfer.¹⁶ Real estate professionals must file the report either on the last day of the following month in which the transfer occurred or within 30 days of closing.¹⁷

Reaction to the Residential Real Estate Rule

Fidelity National Financial (“FNF”) has filed a lawsuit challenging the rule, arguing that it exceeds FinCEN’s authority, as its authority only extends to reporting suspicious transactions

⁸ *US targets money laundering in all-cash home sales in Miami, Manhattan*, REUTERS (Jan. 13, 2016, 2:27 PM MST), <https://www.reuters.com/article/legal/us-targets-money-laundering-in-all-cash-home-sales-in-miami-manhattan-idUSL2N14X2N1/>.

⁹ Richard Vanderford, *U.S. Weighs New Rules for All-Cash Real-Estate Deals*, WALL ST. J.: RISK & COMPLIANCE J. (Dec. 6, 2021, 4:50 PM ET), https://www.wsj.com/articles/u-s-weighs-new-rules-for-all-cash-real-estate-deals-11638827425?gaa_at=eafs&gaa_n=ASWzDAgo1bbNe7d7CjfVHS8PC-gFTm5af-ztpAz8qkCf_PaLKdstSsbENfkYYZn6xfM%3D&gaa_ts=68cd7190&gaa_sig=9xYbte6eRc5v7UMOEZEn7yh27unUcaqhSY2LhfxVcKw7BHh03NRN5vnNsReTIx6AD_ZDXEfEPQAFFDRb55GJBg%3D%3D.

¹⁰ *Id.*

¹¹ *Id.*

¹² Mengqui Sun, *U.S. to Tackle Secrecy in All-Cash Home Purchases*, WALL STREET J.: RISK & COMPLIANCE J. (Feb. 7, 2024, 4:48 PM ET), https://www.wsj.com/articles/u-s-to-tackle-secrecy-in-all-cash-home-purchases-e38eed49?gaa_at=eafs&gaa_n=ASWzDAgwI07q0cFaE6pWmWSb2wKu76mF1t7wcU13Z_oh3lQTyhOaxXEfZT6bu2B41kg%3D&gaa_ts=68cd7315&gaa_sig=kgWYc6L_A4wCoPoH4GikobFK_DBlp0FmughPZly4CJImNYhiY6oQ9Ri9DieY5SL1b_YP6-haP9so2WondWmYvA%3D%3D.

¹³ *Id.*

¹⁴ *Fact Sheet: FinCEN Issues Final Rule to Increase Transparency in Residential Real Estate Transfers* (Aug. 28, 2024), <https://www.fincen.gov/system/files/shared/RREFactSheet.pdf>.

¹⁵ *Id.*

¹⁶ *Id.* at 3.

¹⁷ *Id.* at 5.

related to violating a law or regulation.¹⁸ Additionally, FNF contends that FinCEN has yet to establish the potential economic benefits or the anticipated effectiveness in reducing illicit activity, especially when considering the additional obligations and resources required for enforcement.¹⁹

While FNF's case unfolds, businesses, real estate professionals, including attorneys, should be aware of the new obligations they will have starting December 1, 2025. For example, businesses and real estate professionals should establish internal policies as to who is responsible for reporting and ensure records are maintained for at least five years.²⁰

¹⁸ Robert Maddox & Jonathan Harrington, *Will There Be Light? FinCEN's New Reporting Rule Faces Legal Challenges*, BRADLEY (May 30, 2025), <https://www.financialservicesperspectives.com/2025/05/will-there-be-light-fincens-new-reporting-rule-faces-legal-challenge/>.

¹⁹ *Id.*

²⁰ *Id.*