

Real estate is a critically important asset class to many family offices. Our global Real Estate Practice monitors market and regulatory developments in the real estate sector around the world to provide our clients with real-time information and expertise.

Last month, the US Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) implemented its Residential Real Estate Reporting Rule (RRE Rule), a new anti-money-laundering (AML) reporting obligation that applies to certain residential real estate transactions in the US, and we have summarized the RRE Rule and its requirements below.

Current Pause on Reporting Requirements

On March 19, 2026, the US District Court for the Eastern District of Texas issued a decision in *Flowers Title Companies, LLC v. Bessent*, No. 6:25-CV-127-JDK, 2026 WL 782283 (E.D. Tex. Mar. 19, 2026), vacating the RRE Rule. Specifically, the court held that FinCEN lacked the statutory authority under the Bank Secrecy Act to impose the RRE Rule, and ordered it vacated. In response to this decision, on March 20, 2026, FinCEN issued the following statement: "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." Accordingly, parties otherwise subject to the RRE Rule are not currently obligated to submit a Real Estate Report or otherwise comply with the requirements of the RRE Rule. Our global Real Estate team will be monitoring the rulemaking in this space, and interested parties should standby for further developments.

Introduction to the RRE Rule

Effective March 1, 2026, FinCEN implemented the RRE Rule, a new AML reporting obligation that applies to certain residential real estate transactions across the US. The RRE Rule will require specified categories of professionals involved in real estate closings and settlements to submit reports (Real Estate Reports) to FinCEN regarding certain non-financed transfers of residential real property to legal entities or trusts. Specifically, a Real Estate Report must be filed when the following four conditions are met: (i) the transaction involves residential real property; (ii) the transfer is non-financed; (iii) the property is transferred to a legal entity or trust and (iv) no exemptions apply.

What is Residential Real Property Under the RRE Rule?

For the purposes of the RRE Rule, "residential real property" is defined as real property containing a structure designed principally for occupancy by one to four families.

This definition includes an individual unit within a larger residential structure designed principally for occupancy by one to four families. Critically for real estate developers and investors, the RRE Rule also applies to raw land where the transferee intends to build one or more structures designed principally for occupancy by one to four families.

However, this definition does not encompass transactions where an entity purchases developed lots, if the developer only intends to hold the lots as a "landbank," or otherwise subdivide and sell the lots to third-party builders (who would then construct homes after acquiring title), as such transferee would not "intend to build" a residential structure during its period of ownership.

In addition to the acquisitions of real property described above, the transfer of residential real property under the RRE Rule includes sales of shares in a cooperative housing cooperation if the underlying property is located in the US.

What Constitutes a "Non-financed Transfer"?

A transfer of residential real property is considered "non-financed" if either (1) no financing was used at all, or (2) any financing received by the transferee is neither secured by the transferred property, nor extended by a financial institution subject to FinCEN's AML program requirements and suspicious activity reports (SAR) obligations. Thus, transfers that are financed by financial institutions that have an obligation to maintain an AML program, and are required to file SARs are not subject to additional reporting under the RRE Rule. However, transactions involving cash purchases or financing from private parties (such as debt funds and other sources of private credit) will require reporting under the RRE Rule.

Reporting Requirements and Timeline Under the RRE Rule

The individual required to file the Real Estate Report with FinCEN under the RRE Rule is known as the "Reporting Person." On the Real Estate Report, the Reporting Person must submit information to identify the Reporting Person, the real property being transferred, the transferee entity or trust (including, if the transferee is a trust, the identity of any entity trustee), the beneficial owners of the transferee, certain individuals representing the transferee and the transferor. The Reporting Person must also report the total consideration paid for the property, along with other specified information about the payment made by transferee.

While the parties of the subject transaction may enter a written "designation agreement" electing an individual to serve as the Reporting Person, if no such designation agreement is entered, there is a "reporting cascade," which prioritizes the individuals who must serve as the Reporting Person. The reporting cascade ranks those individuals in the following order: (i) the person listed as the closing or settlement agent on the closing or settlement statement;

(ii) the person that prepares the closing or settlement statement for the transfer; (iii) the person that files with the recordation office the deed or other instrument that transfers ownership of the residential real property; (iv) 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; (v) the person that disburses in any form, including from an escrow account, trust account or lawyers' trust account, the greatest amount of funds in connection with the residential real property transfer; (vi) the person that provides an evaluation of the status of the title and finally (vii) 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.

A Real Estate Report must be filed by the last day of the month following the month closing occurred, or 30 calendar days after the date of closing, whichever is later. The applicable Reporting Person will therefore generally have about 30 to 60 days to file the report.

Exceptions to the RRE Rule

The RRE Rule expressly exempts certain transfers from its purview. Those transfers include (i) a transfer of an easement, (ii) a transfer due to the death of an individual through their will, trust, by operation of law or by contract; (iii) transfer due to divorce or dissolution of marriage or civil union; transfer to bankruptcy estate; (iv) transfer supervised by a court in the US; (v) gift transfer or transfer for zero consideration between spouses, or to a trust created for the benefit of the transferor; (vi) transfer to a qualified intermediary for 1031 tax deferred exchange; (vii) a transfer where there is no reporting person.

The RRE Rule continues the regulatory trend towards greater transparency and disclosure in private transactions. Family offices engaged in financing, acquiring or developing portfolios of residential real estate need to consider the potential application of the RRE Rule to their activities. Our global Real Estate team will be monitoring the rulemaking in this space for further developments.

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