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New FinCEN Requirements for Residential Real Estate Transactions

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Beginning on March 1, 2026, certain professionals involved in residential real estate closings and settlements or other innocuous transfers of residential real estate will be required to submit reports to the Department of the Treasury's Financial Crimes Enforcement Network ("**FinCEN**") regarding certain non-financed transfers of residential real estate to legal entities or trusts. The reporting requirement, known as the "**Residential Real Estate Rule**," is designed to increase transparency in the U.S. residential real estate sector and to combat and deter money laundering. It will replace FinCEN's prior reliance on Geographic Targeting Orders ("**GTOs**"). However, if the transaction is financed through a bank or other type of lender subject to separate government reporting requirements, and/or if the property will be transferred to one or more individuals and not a legal entity or trust, the Residential Real Estate Rule will not apply. Additionally, there are certain narrow exceptions for transfers, including: (1) transfers resulting from death; (2) transfers resulting from divorce; (3) transfers supervised by the court; and (4) transfers for no consideration by an individual to a trust for which the individual or the individual's spouse is the settlor or grantor.

Importantly, the Residential Real Estate Rule can apply to different instances of transfers of residential real estate that are not related to a traditional third-party sale transaction. A common example relates to estate planning and the structuring of different investment properties under limited liability company ownership for certain creditor protection purposes. While certain transfers to trusts may fall outside of the reporting requirements, transferring title to an LLC first and then having that LLC owned by a trust will trigger reporting obligations at the LLC level.

If the Residential Real Estate Rule applies to a transaction, a form report ("**Report**") must be filed directly with FinCEN. The Report, as compared to the prior one for GTOs, has a significantly expanded scope, including nationwide application and removal of all price thresholds for the transaction. Some additional components of the Report include: (1) transaction details, including the purchase price, the form of payment used, and the hierarchy of responsibility for reporting; (2) government ID collection and identification of beneficial owners, including individuals who own or control the purchasing trust or entity; (3) filing of the Report within a specified period following closing; and (4) recordkeeping and certification of the records submitted for accuracy and supporting documentation. Parties to an applicable transaction should familiarize themselves with the Report so there are no surprises or delays before closing. A copy of the Report can be found through FinCEN's website **here**.

Another important aspect of the Residential Real Estate Rule is the "legal duty waterfall" for reporting. This refers to the professional that is responsible for filing the Report for any applicable transaction based on FinCEN's established hierarchy: (1) the person listed as closing agent; (2) the person who prepares the closing statement; (3) the person who files the deed with the recording office (including the use of Simplifile); (4) the title insurance underwriter; (5) the person who disburses the greatest amount of funds; (6) the person providing the title evaluation; and (7) the person preparing the deed or other legal instruments, which includes accommodation deeds and stock certificate transfers (each, a "**Reporting Person**").

Negligent or willful violations of the Residential Real Estate Rule can lead to unwanted consequences for the Reporting Person. For example, forgetting to report an applicable transaction—or even a late filing—may lead to civil penalties of up to $1,430.00 per violation. These fines can also increase dramatically for a pattern of negligent activity. On the other hand, willful violations may lead to criminal penalties, such as imprisonment for up to 5 years and/or a fine of up to $250,000.00. To account for this potential liability and foster protection for the Reporting Person, the parties to an applicable transaction should contractually agree to cooperate with the Reporting Person and provide all necessary information for the Report. Those who use the FAR/BAR residential contracts will likely see an amendment to the forms in the near future to add language for the Residential Real Estate Rule.

While the Residential Real Estate Rule is not intended to be overly burdensome, failure to plan for the changes or timely submit the required information to the Reporting Person may delay the closing. It also is worth noting that legal challenges to the Residential Real Estate Rule have already been filed, including a recent lawsuit out of Puerto Rico. Until the courts issue a resolution on these challenges, however, the Residential Real Estate Rule remains in effect and compliance is required. Should you have any additional questions or concerns regarding the new Residential Real Estate Rule, please reach out to your real estate attorney and/or closing agent.

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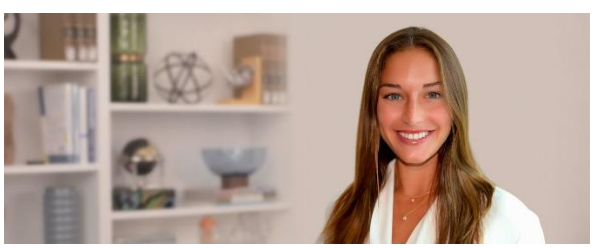

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