

FinCEN Residential Real Estate Reporting Rule

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On August 28, 2024, the Financial Crimes Enforcement Network (FinCEN) issued the Residential Real Estate Rule (the “RRE Rule”), which is codified at 31 C.F.R. § 1031.320. The RRE Rule requires designated real estate professionals to file a Real Estate Report with FinCEN for every non-financed transfer of residential real property to a legal entity or trust. The RRE Rule applies to various types of residential real estate, including single-family houses, townhouses, condominiums, cooperatives, and other buildings designed for occupancy by one to four families, and a transaction is considered “non-financed” if it does not involve an extension of credit issued by a financial institution required to maintain an anti-money laundering (AML) program and file Suspicious Activity Reports.¹ The RRE Rule uses a “reporting cascade” that identifies which real estate professional bears the reporting obligation for any given transaction.² The reporting person must electronically file a Real Estate Report with FinCEN that specifies certain information about themselves, the transferor of the property, the transferee of the property, and the payment and consideration information.³ Failure to do so may result in significant consequences, including civil and criminal fines and imprisonment.

From an estate planning perspective, the RRE Rule, at first glance, appears to impose an additional administrative task for clients transferring residential real estate into a trust to avoid probate, for example. However, there is a specific exception for transfers made for no consideration by an individual (either alone or with a spouse) to a trust of which that individual (and/or that individual’s spouse) is the settlor/grantor, such as a revocable trust or a qualified personal residence trust.⁴ Therefore, if clients wish to retitle homes in the name of their revocable trusts (and they are the trustee), the RRE Rule does not apply and there is no reporting requirement. Additionally, an exception exists for transfers resulting from the death of an individual, whether pursuant to the terms of a will, the terms of a trust, the operation of law (such as transfers resulting from intestate succession, surviving joint owners, and transfer-on-death deeds) or by contractual provision.⁵ Such transfers will also not trigger the application of the RRE Rule.

The RRE Rule went into effect on March 1, 2026. On March 19, a federal district court in Texas (the “Court”) vacated the RRE Rule, holding that it exceeds FinCEN’s authority.⁶ Even if the RRE Rule is subsequently reinstated on appeal, clients may take comfort in the fact that the RRE Rule should have little impact on the utilization of certain common estate planning techniques such as real estate transfers to revocable trusts which are generally done to reduce the involvement

¹ 89 Fed. Reg. at 70265-66.

² *Id.* at 70270-72.

³ 31 C.F.R. § 1031.320.

⁴ 31 C.F.R. § 1031.320(b)(2)(vi).

⁵ 31 C.F.R. § 1031.320(b)(2)(ii).

⁶ *Flowers Title Companies, LLC v. Bessent*, et al., 25-cv-127 (E.D. Tex. Mar. 19, 2026).

of a probate clerk. With that said, clients are encouraged to reach out to the Firm with any specific questions or concerns.