

Federal News

New FinCen Reporting Requirements On Real Property Transfers

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Effective March 1, 2026, **new federal regulations will impact residential real property title transfers to covered entities and trusts.** Important to note - the new requirements encompass non-judicial foreclosure sales.

As an overview relative to non-judicial foreclosure sales, the new law impacts three groups:

- A **covered transferee entity or trust receiving title** must provide and certify multiple data points during the course of the transaction.
- A **transferee entity or trust that is exempt from reporting** must certify this fact.
- A **reporting party** must timely report certain information to FinCEN applicable to the relevant transferee entity or trust for the transaction.

Given the effective date of the new reporting rules (March 1, 2026) and the extended post-foreclosure overbid process in states like California, the new law will affect foreclosure sales as early as mid-January.

History of the Regulation

The Financial Crimes Enforcement Network (“FinCEN”) recently proposed rulemaking related to information concerning potential money laundering associated with certain non-financed real estate transactions, which supposedly involve potential risk of money laundering activity. The Final Rule published in 89 Fed. Reg. 70,258 (“Rule”) provided an initial effective date of December 1, 2025, which has been extended to March 1, 2026. A copy of the Rule with commentary can be found [here](#).

Covered Transactions (includes non-judicial foreclosure sales)

The Rule is broadly drafted to cover non-financed transfers of **residential real property containing (or on which the transferee intends to build) structure(s) designed principally for occupancy by 1-4 families.** A “non-financed transfer” occurs where there is no extension of credit that is both:

(1) secured by an interest in the subject real property, and (2) extended by a financial institution subject to AML and SAR obligations under the BSA. Thus, if there is no purchase financing provided by a traditional lender, the transfer to a covered transferee will be reportable unless it is subject to another express exemption. Cutting to the chase, the new law covers non-judicial foreclosures on property containing (or with intent to build by the transferee) 1-4 residential units. Non-judicial foreclosure sales do not involve the creation of a security interest by a traditional lender and, as such, are covered transactions. If there was any doubt, the Rule specifically states: “The final rule also does not adopt the suggestion to exclude foreclosure sales, although [judicial foreclosures would be excluded] under the exception for transfers required by a court in the United States” and “. . . FinCEN does not agree that potential reporting persons involved in sales of foreclosed property should be treated differently from other transfers, as such sales, where the property is sold to a third party, do not necessarily present a lower risk for money laundering.”

Covered Transferees

Transfers of title to non-exempt transferee entities or trusts are not exempt from delivery of data to FinCEN by a reporting party. However, **title transfers to individual natural persons are not covered** by the reporting requirements. There is also a **list of 16 types of transferee entities that are exempt and 4 types of transferee trusts that are exempt**. Thus, it is possible that a transfer to a foreclosing beneficiary may be exempt from reporting. However, the reporting party is responsible for maintaining reasonable documentation via certification indicating that the transaction is exempt from reporting based on transferee entity type. As a result, **the foreclosing lender or the successful third party entity purchaser will need to make a determination as to its exemption status and certify that status to the reporting party, or if not exempt provide the required reporting data points regarding the transferee entity or trust via certification for each transaction.**

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Reporting Parties

The Rule identifies a priority waterfall of potential reporting parties for covered transactions, including: the closing or settlement agent on closing or settlement statement, the person that prepares the settlement statement, the **person that records the deed**, the person that issues the owner's title insurance policy, the **person that disburses the greatest amount of funds in connection with transaction**, the **person that provides evaluation or status of title**, or the **person that prepares the deed** or other legal instrument that transfers ownership. For a non-judicial foreclosure, the reporting party will likely be a foreclosure trustee or a title company, and these parties need to determine between them which party will collect the required information and complete the required reporting on a covered transaction.

Reporting Time Periods

The reporting to FinCEN must be completed by the LATER OF:

- Last day of the month following the month in which date of closing occurred. Example: Closing occurs on June 9, 2026 – Report would not be due until July 31, 2026
- 30 calendar days after date of closing. Example: Closing occurred on January 31 – Report would not be due until March 2 (or March 1 in leap years)

“Date of Closing” is the date on which the transferee entity or trust receives the ownership interest in the covered real property. Specific to the non-judicial foreclosure process in California, the transfer of title cannot occur until the high foreclosure bidder is identified, including any post-auction bid process under California Civil Code section 2924m (SB 1079). Thus, for ownership transfers on or after the current Rule effective date of March 1, 2026, the foreclosure sale will have occurred as early as January 12, 2026, if it is subject to the extended post-auction bid process in Civil Code section 2924m. Based on the delayed identification of transferees in non-judicial states subject to overbid processes, parties foreclosing in these states will need to quickly implement notices to bidders and reporting compliance processes much earlier than states where the timeline between the sale auction and the issuance of the deed is much shorter.

Penalties for Non-compliance

Negligent violations incur civil penalties of not more than \$1,394.00 for each violation and additional penalty of up to \$108,489 for pattern of negligent activity.

Willful violations incur civil penalties not more than the amount involved in the transaction (not to exceed \$278,973) or \$69,733.30, plus criminal penalties including term of imprisonment of not more than 5 years or criminal fine of not more than \$250,000, or both.

Frequently Asked Questions on FinCEN's website regarding the Rule can be found [here](#). Based on the above-cited commentary in the Rule and the initial extension of the Rule's effective date, it appears that the Rule will go into effect for title transfers on or after March 1, 2026. Wright Finlay & Zak provided an inquiry to FinCEN summarizing the substantial operational issues impacting foreclosure trustees and lenders holding nonjudicial foreclosures nationwide and requested a further extension of the effective date. Although industry participants have filed suit to invalidate or limit the application of the Rule, it does not appear likely at this point that the Rule will be invalidated.

Due to the short time period between potentially-implicated sales to be noticed and conducted in January of 2026, Wright Finlay & Zak LLP is developing a compliance package for foreclosure trustees to assist with analysis of the new regulations, application of the regulations to the specific nuances of non-judicial foreclosure sale transfers and development of compliant notices, policies and procedures. The firm can also assist foreclosing lenders with determinations as to whether they qualify for an exemption from reporting under the new regulations when taking title as real estate owned (“REO”) following non-judicial foreclosure.

The above information is intended for information purposes alone and is not intended as legal advice. Please consult with counsel before taking any steps in reliance on any of the information contained herein.



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