FINCEN: How Do I Know When I Must Report a Transaction?

PART I

Does this transaction involve the transfer of **"residential real property"** which means real property with a 1-4 family structure or condo, vacant land zoned or where buyer intends to build such structures (including builder projects), co-ops, and all other property that include or intend to include 1-4 family use (e.g., mixed-use like apartments over strip mall or 5+ structure with intent for 1-4 family residential use)

YES → Is this transfer

NO → TRANSACTION IS NOT SUBJECT TO FINCEN REPORTING

Is this transfer:

1. A grant, transfer, or revocation of an easement;
2. Resulting from the death of an individual, whether pursuant to the terms of a decedent's will or the terms of a trust, the operation of law, or by contractual provision;
3. Incident to divorce or dissolution of a marriage or civil union;
4. To a bankruptcy estate; or
5. Supervised by a court in the U.S.;
6. For no consideration made by an individual, either alone or with the individual's spouse, to a trust of which that individual, that individual's spouse, or both of them, are the settlors) or grantor(s) - Trust Exclusion; or
7. To a qualified intermediary (but only TO the qualified intermediary)

NO → Is the transferee an entity or trust?

YES → TRANSACTION IS NOT SUBJECT TO FINCEN REPORTING

Is the transferee an entity or trust?

Transferee Entity means a corporation, limited liability company, partnership or other similar business - domestic or foreign - other than a publicly traded or self-regulated entity whose interests are regulated by the Securities Exchange Commission.

Transferee Trust is a legal arrangement created when a person places assets under control of a trustee for benefit of a beneficiary or a specified purpose - domestic or foreign but not a securities-related or statutory trust.

YES → Continue to "PART II"

NO → TRANSACTION IS NOT SUBJECT TO FINCEN REPORTING

TRANSACTION IS NOT SUBJECT TO FINCEN REPORTING

PART II

Is the transfer "Non-Financed"?

Meaning the lender funds are not from a lender (or owned by a lender) that is subject to Bank Secrecy Act rules or required to file Suspicious Activity Reports, like state or federal credit unions, chartered banks and the well-recognized, large, national financial lenders. "Non-financed" transfers include all cash deals, all other lenders, private lenders, and seller carryback and investor loans.

YES → **TRANSACTION MUST BE REPORTED TO FINCEN**

NO → **TRANSACTION IS NOT SUBJECT TO FINCEN REPORTING**

REPORTING WATERFALL CASCADE

1. The person/company listed as the closing or settlement agent on the closing or settlement statement.
2. The person/company that prepares the closing or settlement statement.
3. The person/company that submits transfer documents for recording.
4. The person/company that underwrites an owner's title insurance policy.
5. The person/company that disburses the greatest amount of funds.
6. The person/company that provides an evaluation of the status of the title.
7. The person/company that prepares the deed or, if no deed is involved, any other legal instrument that transfers ownership in co-ops the person who prepares the stock certificate.

For additional FinCEN AML rule guidance and information on FinCEN AML Reporting Services, visit stewart.com/fincen-aml.

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