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ARCADIA ASSOCIATION OF REALTORS®





TWO big changes ahead – FinCen Reporting, NEW 10-5

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Disclaimer

- This is a presentation of suggested best practices for responding to and minimizing exposure to liability.
- Nothing in this presentation is meant to convey any promise that the concepts in the presentation will prevent liability or claims.
- If a claim arises, seek guidance from experienced and qualified legal counsel immediately.

FinCen… they're Baaaack **eff. 12-1-25**

"Reporting high-risk transfers of residential real estate"

PART 1031—RULES FOR PERSONS INVOLVED IN REAL ESTATE CLOSINGS AND SETTLEMENTS

1031.320 Reports of residential real property transfers.

(a) *General.* A reportable transfer as defined in paragraph (b) of this section shall be reported to FinCEN by the reporting person identified in paragraph (c) of this section. The report shall include the information described in paragraphs (d) through (i) of this section. The reporting person may reasonably rely on information collected from others under the conditions described in paragraph (j). The report required by this section shall be filed in the form and manner, and at the time, specified in paragraph (k) of this section. Records shall be retained as specified in paragraph (l) of this section. Reports required under this section and any other information that would reveal that a reportable transfer has been reported are not confidential as specified in paragraph (m) of this section. Terms not defined in this section are defined in 31 CFR 1010.100.

Included reportable transactions -

(b) ***Reportable transfer.***

(1) … a reportable transfer is a non-financed transfer to a transferee entity or transferee trust of an ownership interest in residential real property. For the purposes of this section, residential real property means:

(i) Real property …containing a structure designed principally for occupancy by 1-4 families;

(ii) Land … the transferee intends to build a structure designed …for occupancy by 1-4 families;

(iii) ..unit designed principally for occupancy by one to four families …; or

(iv) Shares in a cooperative housing corporation ….

Excluded transactions -

(2) A reportable transfer does not include a:

(i) Grant, transfer, or revocation of an easement;

(ii) Transfer resulting from .. death … terms of a decedent's will or …trust, .. operation of law, or by contract…;

(iii) Transfer incident to divorce or dissolution of a marriage or civil union;

(iv) Transfer to a bankruptcy estate;

(v) Transfer supervised by a court in the United States;

(vi) Transfer for no consideration made by an individual, … to a trust of which that individual, that individual's spouse, or both of them, are the settlor(s) or grantor(s);

(vii) Transfer to a qualified intermediary for purposes of [1031 exchange]; or

(viii) Transfer for which there is no reporting person.

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WHAT must be reported… TRANSFEREE

(e) *Information concerning the transferee —*

(1) *Transferee entities.* For each transferee entity involved in a reportable transfer, the reporting person shall report:

(i) The following information for the transferee entity:

(A) Full legal name;

(B) Trade name or "doing business as" name, if any;

(C) Complete current address consisting of:

(*1*) …address [of] the transferee entity's principal place of business; and

(*2*) If such principal place of business [not in USA]…, street address of the primary location in [USA]…where the transferee entity conducts business, if any; and

(D) Unique identifying number, if any, consisting of:

(*1*) IRS Taxpayer Identification Number (IRS TIN) of the transferee entity;

(*2*) If transferee entity has not been issued an IRS TIN, its tax ID number from foreign jurisdiction and name of jurisdiction; or

(*3*) If transferee entity has not been issued an IRS TIN or a foreign tax ID number, entity registration number from foreign jurisdiction and name of jurisdiction;

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WHAT must be reported… Individual TRANSFEROR

(f) *Information concerning the transferor.* For each transferor involved in a reportable transfer, the reporting person shall report:

(1) The following information for a transferor who is an individual:

(i) Full legal name;

(ii) Date of birth;

(iii) Complete current residential street address; and

(iv) Unique identifying number consisting of:

(A) An IRS TIN; or

(B) Where an IRS TIN has not been issued:

(*1*) A tax identification number issued by a foreign jurisdiction and the name of such jurisdiction; or

(*2*) The unique ID # and the issuing jurisdiction from a non-expired foreign passport;

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WHAT must be reported – Entity TRANSFEROR

(2) The following information for a transferor that is a legal entity:

(i) Full legal name;

(ii) Trade name or "doing business as" name, if any;

(iii) Complete current address consisting of:

(A) …address … entity's principal place of business; and

(B) If …not in the United States, the street address of the primary location in USA States where entity conducts business, if any; and

(iv) Unique identifying number, if any, consisting of:

(A) An IRS TIN;

(B) In the case that the legal entity has not been issued an IRS TIN, [tax ID# from foreign jurisdiction and name of jurisdiction; or

(C) In the case that the legal entity has not been issued an IRS TIN or a foreign tax identification number, entity registration number from foreign jurisdiction;

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WHAT must be reported – the property

g) *Information concerning the residential real property.* For each residential real property that is the subject of the reportable transfer, the reporting person shall report:

(1) street address;

(2) legal description; and

(3) date of closing.

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WHAT must be reported – the consideration

(h) *Information concerning payments.*

(1) The reporting person shall report the following information concerning each payment, other than a payment disbursed from an escrow or trust account …. :

(i) amount of the payment;

(ii) method by which the payment was made;

(iii) If payment ..from an account held at a financial institution, name of the financial institution and account number; and

(iv) name of the payor on any wire, check, or other type of payment if the payor is not the transferee entity or transferee trust.

(2) The reporting person shall report the total consideration paid or to be paid by the transferee entity or transferee trust regarding the reportable transfer, as well as the total consideration paid by or to be paid by all transferees regarding the reportable transfer.

(i) *Information concerning hard money, private, and similar loans.* …shall report whether the …transfer involved credit extended by a person that is not a financial institution….

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HOW to report

(k) *Filing procedures* —(1) *What to file.* A reportable transfer shall be reported by completing a Real Estate Report.

(2) *Where to file.* The Real Estate Report shall be filed electronically with FinCEN, as indicated in the instructions to the report.

(3) *When to file.* A reporting person is required to file a Real Estate Report by the later of either:

(i) the final day of the month following the month in which the date of closing occurred; or

(ii) 30 calendar days after the date of closing.

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The Evolution of NAR 10-5

Standard of Practice 10-5 [Eff. 11-13-20)

REALTORS® must not use harassing speech, hate speech, epithets, or slurs based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity.

Standard of Practice 10-5 [Eff. 6/25]

REALTORS®, in their capacity as real estate professionals, in association with their real estate businesses, or in their real estate-related activities shall not harass any person or persons based on race, color, religion, sex, disability, familial status, national origin, sexual orientation, or gender identity.

As used in this Code of Ethics, harassment is unwelcome behavior directed at an individual or group based on one or more of the above protected characteristics where the purpose or effect of the behavior is to create a hostile, abusive, or intimidating environment which adversely affects their ability to access equal professional services or employment opportunity.

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Questions?



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