

Let's Talk About the New FinCEN AML Rule.



Expert Guidance from Your Trusted Source





As FinCEN's new AML rule takes shape, staying informed is more important than ever. That's why Stewart has created an evolving information hub with regular updates and insights articles to engaging explainer videos with **Fin & Cen**[™], guides to help simplify complexities so you can navigate the new rule with confidence.

The presentation that follows will be delivered by your Stewart contact, but we'll be sure to share a link to Fin & Cen at the end.



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What is the Financial Crimes Enforcement Network (FinCEN)

What is FinCEN?

- Established in 1990, FinCEN is a bureau within the U.S. Treasury Dept. intended to combat money laundering activity through the collection and analysis of financial information.
- FinCEN issues regulations to require banks and other financial institutions to take precautions against financial crime, including the establishment of anti-money laundering (AML) programs and the filing of associated reports, such as Suspicious Activity Reports (SARs).



Basics of the FinCEN AML Rule



Beginning on March 1, 2026, all **residential transfers** of real property to a **legal entity** or a **trust** that are **non-financed** must be reported to FinCEN by the later of either the final day of the month following the month in which the date of closing occurred or 30 calendar days after the date of closing.

What Qualifies as Residential Real Property?



1. One-to-four family residences
2. Vacant land intended for future one-to-four family development
3. Units in buildings designed for one-to-four family occupancy (e.g., condominiums or apartments - This would include a mixed-use property, ex: deli store with apartments for residential occupancy above the store).
4. Shares in a cooperative housing corporation (co-ops)

What Qualifies as a Non-financed?



1. Any transaction that does not involve an extension of credit that is secured by the subject property and extended by a financial institution that is subject to an AML program and Suspicious Activity Report (SAR) obligations.
2. Includes non-bank private lenders (individuals, multi-bene, IRAs, seller-carry backs, “hard” money”)
3. If the lender is not a FDIC-insured bank, savings bank or credit union and not found on the FDIC.gov website or other similar websites.

What Qualifies as a Transferee Entity?



1. Transferee Entity is defined as any person other than a transferee trust or an individual.
2. This includes corporation, partnership, estate, association, or limited liability company – both foreign and domestic.

What Qualifies as a Transferee Trust?



1. Transferee Trust is defined as a legal arrangement where a grantor places assets under a trustee's control for the benefit of others, or for a specific purpose.
2. Under this rule, a trust is considered a transferee trust even if the property is titled in the name of the trustee instead of the trust itself.

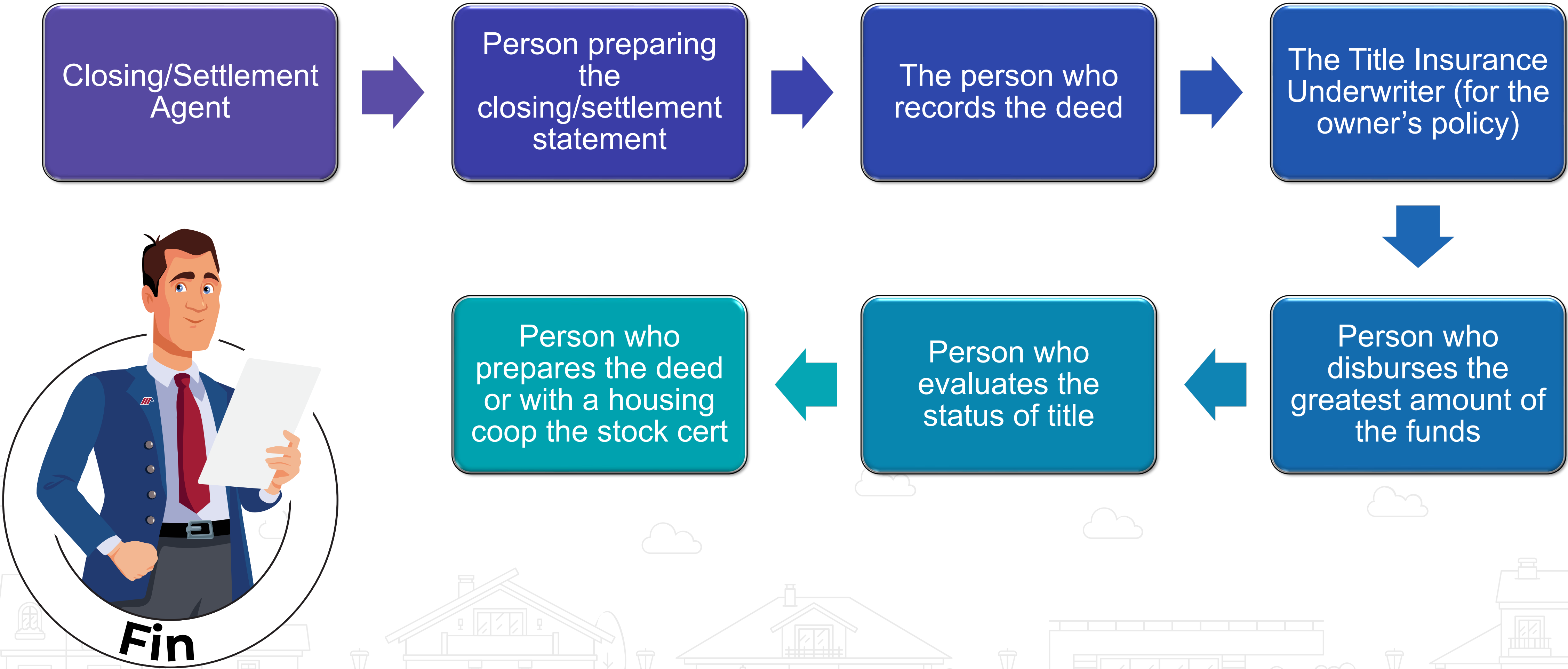
Who Is Responsible For Reporting

FinCEN created a **Reporting Cascade**, a ranked list of who might be responsible for reporting a transaction.

- Starts with the highest ranking individual or company involved in the transaction and moves down the list until an individual or company applies.
- Only one party is responsible – the highest-ranking applicable person in the cascade.



Reporting Persons Cascade



Reporting Persons Cascade

The individual reporting person does **NOT** include:

1. You, as an individual, when employed by a company and acting within the scope of your employment; your employer company is deemed to be the reporting person
2. A person/company that is relieved of reporting responsibility under a transaction-specific Designation Agreement



What Must Be Reported?

1. The reporting person's identifying information
2. The legal entity (transferee entity) or trust (transferee trust) receiving ownership of the property
3. The beneficial owners of the transferee entity or transferee trust
4. Certain individuals signing documents on behalf of the transferee entity or transferee trust during the reportable transfer
5. The transferor (e.g., the seller)
6. The residential real property being transferred
7. Total consideration and certain information about any payments made

Information Concerning Payments that Must Be Reported

1. All payments, other than a payment disbursed from an escrow or trust account held by a transferee entity or transferee trust, that is made by or on behalf of the transferee entity or transferee trust regarding a reportable transfer:
 - a. The amount of the payment
 - b. The method by which the payment was made
 - c. The payment was paid from an account held at a financial institution, the name of the financial institution and the account number
 - d. The 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. 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.
3. Information regarding hard money, private and other similar loans involved.

When Must It Be Reported?



A Reporting Person must file a Real Estate Report by the later of either: (1) the final day of the month following the month in which the date of closing occurred, or (2) 30 calendar days after the date of closing.

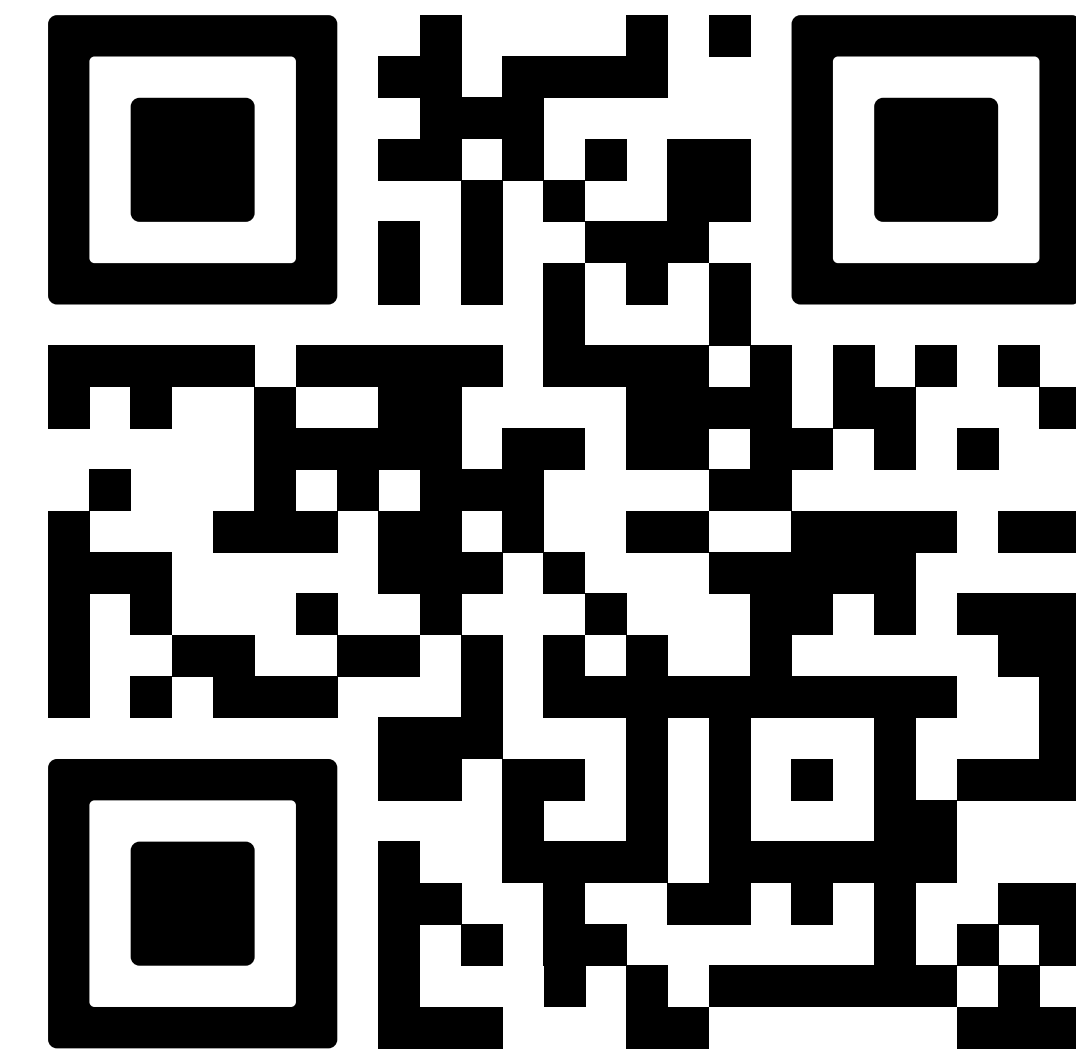
Transfers That May Not Have to be Reported

1. Transfer of an easement
2. Transfer resulting from death (by will, trust, contract, or operation of law)
3. Transfer incident to divorce
4. Transfer to a bankruptcy estate
5. Transfer supervised by a court in the U.S.
6. Transfer for no consideration to a trust meeting certain conditions
7. Transfer to a qualified intermediary as part of a 1031
8. Transfer for which there is no reporting person





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