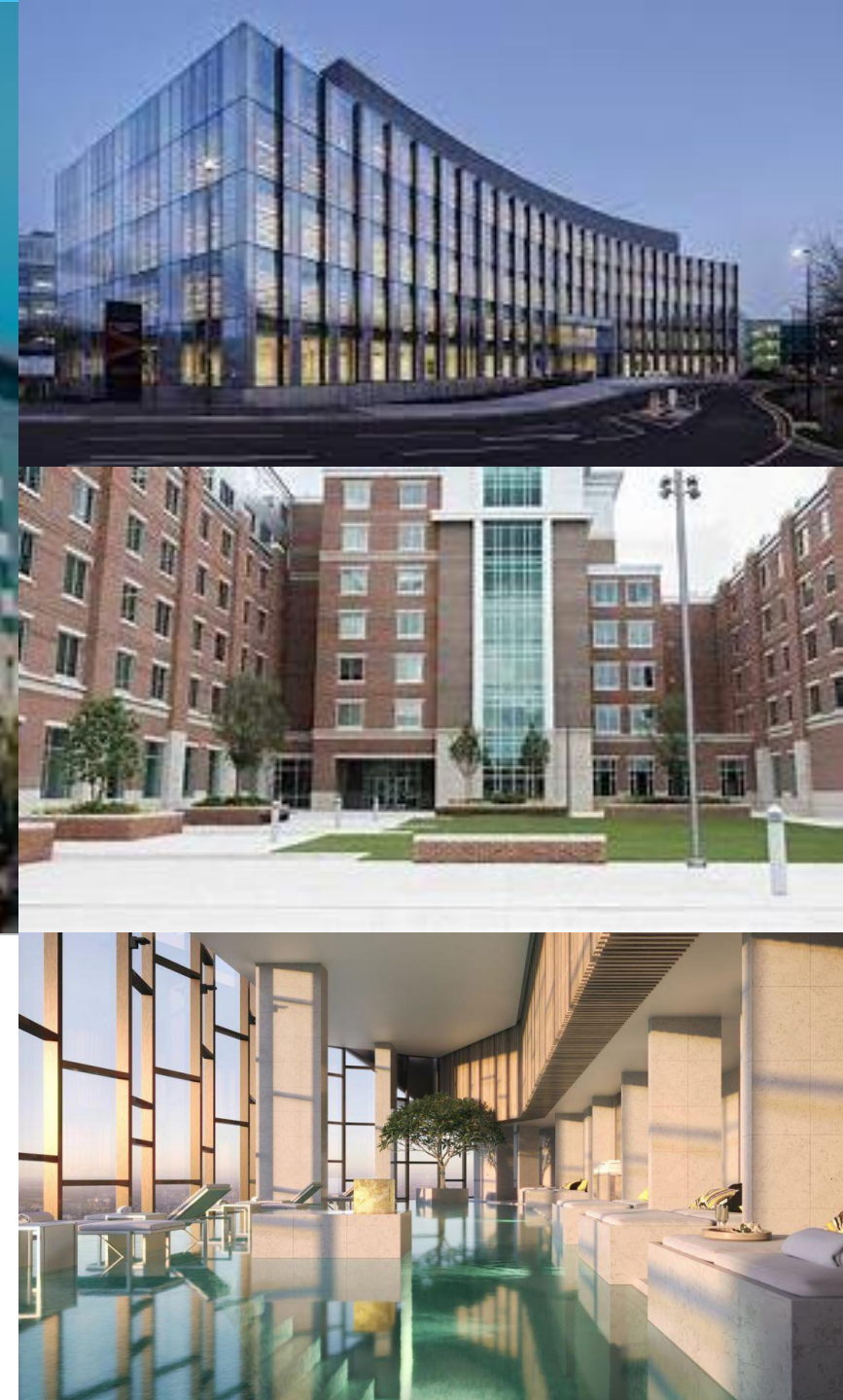


Title Insurance Underwriting in 2025: Navigating New Challenges in Commercial Real Estate

Presented by Ashley Russell, Esq. & Jennifer
Gaytan, Esq.



- +
 - Commercial Title Insurance Hot Topics

Key Title Risks

Definition of Title in Purchase Agreements

Importance of Title Definition

Clear title definition determines coverage scope and liabilities in real estate deals.

Zoning and Defects Clarification

Explicitly stating zoning nonconformities and restrictions as defects or risks avoids confusion.

Risk Management Benefits

Defining title elements helps attorneys anticipate issues and reduce disputes before closing.

Coordination with Title Insurers

Clear title terms support better coordination and tailored insurance policies for transactions.



Roadway Easement Claims and Access Issues

Easement Conflicts Impact

Conflicting easement claims can hinder legal and physical property access significantly.

ALTA/NSPS Survey Importance

ALTA/NSPS surveys verify physical and legal access, mitigating access risks effectively.

Title Insurance Endorsements

Title endorsements 17 and 17.1 address rights ensuring title coverage for access.

Clearing Access Ambiguities

Resolving ingress and egress easement issues guarantees property accessibility and coverage.



Restrictive Covenants and Enforceability



Impact of Restrictive Covenants

Restrictive covenants limit the use and development of commercial properties significantly.

Ensuring Enforceability

Attorneys must verify creation, privity, and recording of covenants for enforceability.

Negotiating Policy Exceptions

Negotiating policy exceptions addresses enforceability concerns in acquisition agreements.

Protecting Client Interests

Proper due diligence safeguards clients from liabilities and ensures adequate title insurance coverage.



Easement Location Disputes

Challenges of Easement Disputes

Easement boundary ambiguities complicate commercial real estate deals and must be resolved early.

Collaboration with Title Companies

Work closely with title companies to enable issuing title insurance without exceptions.

Use of Surveys and Legal Documentation

Surveys and legal records clarify easement locations and support dispute resolution.

Preventing Future Conflicts

Proactive dispute resolution ensures proper property use and strengthens title protection.

Construction Liens and Title Clearance

Lien Claims Vulnerability

Construction properties face risks of lien claims complicating the closing process.

Confirming Lien Releases

Attorneys must ensure all lien releases for recorded liens or needed affidavits are obtained before closing.

Title Insurer Clearance

Securing title insurer clearance prevents claims and delays by verifying payments.

Ensuring Smooth Transactions

Clear titles ease transactions, assuring lenders and buyers of no liens.



Fixture Filings and UCC Priority

Critical Role of Fixture Filings

Fixture filings and UCC priority are essential in securing financing for commercial real estate transactions.

Comprehensive Record Checks

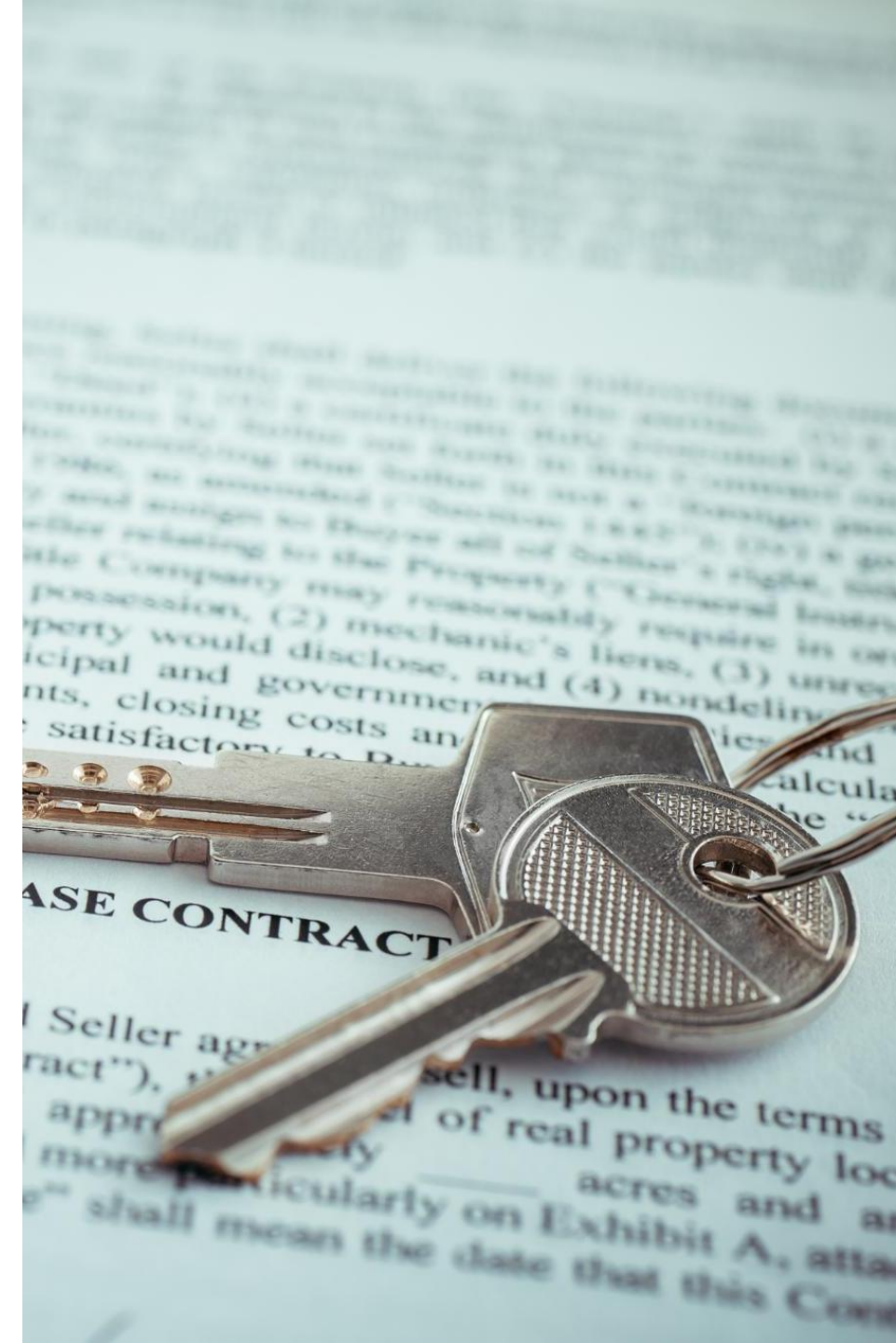
Attorneys must verify both county and Secretary-of-State records to ensure accurate priority and filing.

Coordination with Lender Counsel

Close coordination between attorneys and lender counsel avoids conflicts and ensures proper filing.

Avoiding Title Exceptions

Proper perfection and subordination of filings prevent title insurance exceptions and disputes.



Key Takeaways

Best Practices for Title Insurance Practitioners

Proactive Title Review

Attorneys must perform hands-on title reviews and thorough due diligence proactively to manage decentralized recording.

Clarity in Title Definitions

Defining 'marketable title' and objection procedures in writing prevents disputes and misunderstandings.

Risk Negotiation with Endorsements

Tailoring ALTA endorsements to deal specifics aligns insurance policy with transaction risks.

Compliance and Malpractice Coverage

Maintain compliance as authorized title opinion providers and secure malpractice coverage for title work.





Keeping the Rate - Loan Modifications

Modification Endorsements



- As interest rates decrease, borrowers will seek to modify their commercial deeds of trust.
- Modifications require the recording of a recordable Loan Modification or Amended & Restated Mortgage
- Modifications are typically priced at \$.35 per thousand to \$.50 per thousand – if no new funds.
 - There is flexibility where we are modifying a recent DOT.
- Modifications being done mid-construction will need to be reviewed further.



Fannie Mae – Form 4650 Updates

Released in May 2025

Fannie Mae
Released New
Guidelines for Multi-
Family transactions
in May 2025.

Fannie Mae has required that underwriters handle escrow on most multi-family transactions for some time.



The May 2025 Form 4650 Release confirms that all Fannie Mae Multi-Family purchase loans and refinances will require the underwriter to handle escrow.



The MidSouth Commercial Team can handle that for you at any time!

Fannie Mae is also requiring a 3-year chain of title to be included in every commitment – either the commitment or in an attached document.

Chain of Title Schedule: An informational (i.e., information only) schedule attached to the title commitment and addressed in the same manner as the Title Policy in accordance with Section V.A(4) below for the Lender's Title Policy (or a separate title report or equivalent document) that identifies and attaches any of the following documents recorded in the applicable public records for the Property's jurisdiction during the 3 years prior to the date of the title commitment (and which are not otherwise be identified on the title commitment):

- instruments evidencing any Property or ownership interest transfers, including:
 - deeds,
 - tax affidavits, and/or
 - other similar lien instruments;
- deeds of trust, mortgages, or similar lien instruments securing debt; and
- releases of deeds of trust, mortgages, or other lien instruments.



NEW REQUIREMENTS

- This means that your commitment or its attachment must identify exceptions, deeds, and other documents that are not standard exceptions or requirements.

What does this mean for you?

- If you are ordering your search from Titlewave, please identify that this search is for a Fannie Mae MultiFamily transaction at the time that you order the search. Additional documents will need to be included in your search.
- If you are ordering from an independent abstractor or your internal abstractor, they will need to obtain additional documents for inclusion in the commitment or an attachment.
- The lender may ask questions about these documents prior to closing – questions that the parties to the transaction will need to address.

The Lender
is also
required to
review the
borrower
entity
documents.

-
- Prior to closing, the borrower entity documents must be provided to the lender and approved – including the resolution and the operating agreement for the borrower entity.
 - The Lender must also compare those documents to the PSA.

Other New Requirements Include:

- The loan policy must be the effective date of the loan – not the date of recording.
 - But the lender may require that the date be the date of the recording of the assignment as well.
- The loan policy must be issued within 30 days of closing.
 - There appears to be some flexibility if recording times are extended, but that is limited.
- The settlement statement must include all payments made to legal counsel for the borrower, lender, and seller.
- The policy must identify the lender as the “Lender and/or Fannie Mae their successors and assigns, as their respective interests may appear.”

So what does this mean for your team?

The Commitment must fit within Fannie Mae's requirements – and may need to be amended if Fannie Mae financing is added to what was previously a cash transaction

The Closing Instruction Letter should be reviewed in detail to ensure that you and your team are in compliance with the terms of that letter.



Fraud Prevention in Commercial Real Estate Transactions in 2025

Real Estate Fraud: An Overview

9 2024 IC3 ANNUAL REPORT

2024 CRIME TYPES

BY COMPLAINT COUNT

Crime Type	Complaints	Crime Type	Complaints
Phishing/Spoofing	193,407	Harassment/Stalking	11,672
Extortion	86,415	Real Estate	9,359
Personal Data Breach	64,882	Advanced Fee	7,097
Non-Payment/ Non-Delivery	49,572	Crimes Against Children	4,472
Investment	47,919	Lottery/Sweepstakes/ Inheritance	3,690
Tech Support	36,002	Data Breach	3,204
Business Email Compromise	21,442	Ransomware	3,156
Identity Theft	21,403	Overpayment	2,705
Employment	20,044	IPR*/Copyright and Counterfeit	1,583
Confidence/Romance	17,910	Threats of Violence	1,360
Government Impersonation	17,367	SIM Swap	982
Credit Card/Check Fraud	12,876	Botnet	587
Other	12,318	Malware	441
Descriptor**			
Cryptocurrency	149,686		

*IPR: Intellectual Property Rights

** This descriptor relates to the medium or tool used to facilitate the crime and used by IC3 for tracking purposes only. It is available as a descriptor only after a crime type has been selected.

Please see Appendix C for more information regarding IC3 data.

10 FEDERAL BUREAU OF INVESTIGATION

2024 CRIME TYPES *continued*

BY COMPLAINT LOSS

Crime Type	Loss	Crime Type	Loss
Investment	\$6,570,639,864	Extortion	\$143,185,736
Business Email Compromise	\$2,770,151,146	Lottery/Sweepstakes/ Inheritance	\$102,212,250
Tech Support	\$1,464,755,976	Advanced Fee	\$102,074,512
Personal Data Breach	\$1,453,296,303	Phishing/Spoofing	\$70,013,036
Non-Payment/Non-Delivery	\$785,436,888	SIM Swap	\$25,983,946
Confidence/Romance	\$672,009,052	Overpayment	\$21,452,521
Government Impersonation	\$405,624,084	Ransomware *	\$12,473,156
Data Breach	\$364,855,818	Harassment/Stalking	\$10,611,223
Other	\$280,278,325	Botnet	\$8,860,202
Employment	\$264,223,271	IPR/Copyright and Counterfeit	\$8,715,512
Credit Card/Check Fraud	\$199,889,841	Threats of Violence	\$1,842,186
Identity Theft	\$174,354,745	Malware	\$1,365,945
Real Estate	\$173,586,820	Crimes Against Children	\$519,424
Descriptor**			
Cryptocurrency	\$9,322,335,911		

* Regarding ransomware adjusted losses, this number does not include estimates of lost business, time, wages, files, or equipment, or any third-party remediation services acquired by an entity. In some cases, entities do not report any loss amount to FBI, thereby creating an artificially low overall ransomware loss rate. Lastly, the number only represents what entities report to FBI via IC3 and does not account for the entity directly reporting to FBI field offices/agents.

** This descriptor relates to the medium or tool used to facilitate the crime and is used by IC3 for tracking purposes only. It is available as a descriptor only after a crime type has been selected.

Please see Appendix C for more information regarding IC3 data.

- Real estate fraud is a high value enterprise. In 2024 the IC3 reported 9,359 cases of Real estate fraud resulting in \$173,586,820 of loss. This resulted in a loss of \$18,547.58 per instance.

- Federal Bureau of Investigation Internet Crime Report 2024*, Federal Bureau of Investigation Internet Crime Complaint Center, https://www.ic3.gov/AnnualReport/Reports/2024_IC3Report.pdf, (last visited Jun 13, 2025)

What About Entity Impersonation?

- A seller LLC provides take or older entity documentation for an entity.
- This can happen after a business divorce.
- This is why we require full review of entity documents, including a current resolution approving the transaction.



Other Red Flags of Fraud and Forgery

- Vacant lot
 - Unencumbered lot
 - Execution of docs outside USA
 - Seller-prepared Deed
 - Non-US Identification
 - Requests to wire money internationally
 - Executed Docs arrive from a foreign country or in a different envelope than the agent provided.
 - Notary stamp is from a different country than where seller claims to be.
- **

In this transaction, the “Sellers” provided a passport from Canada. Deed was notarized in the Netherlands. Funds were wired to Mexico.

Signed, sealed and delivered in our presence:

W. Klaus
REQUIRED WITNESS #1 SIGNATURE
Witness #1 Printed Name: WULF KLAUS

Robert
REQUIRED WITNESS #2 SIGNATURE
Witness #2 Printed Name: ROBERT ROWSE

Aileen R. Kung (Seal)
Aileen R. Kung, aka Aileen Rhonda, aka Aileen Rhonda Hansen
Address: 106 Invermay Ave., North York, Ontario, Canada M3H 1Z5

Paul E. Hansen (Seal)
Paul E. Hansen
Address: 106 Invermay Ave., North York, Ontario, Canada M3H 1Z5

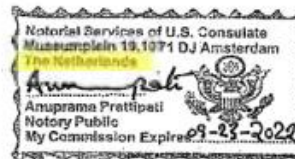
COUNTRY OF ~~CANADA~~ THE NETHERLANDS
COUNTY/PROVIDENCE OF AMSTERDAM

The foregoing instrument was acknowledged before me, a notary public, by means of (X) physical presence or () online notarization, this 29 day of SEPTEMBER, 2021, by Aileen R. Kung, aka Aileen Rhonda, aka Aileen Rhonda Hansen, a married woman, and Paul E. Hansen, her husband, who was personally known to me or who has produced PASSPORTS as identification.

Anupama Prati
Notary Public
Print Name: ANUPAMA PRATTIPATI

My Commission Expires: 09-23-2022

(Notary Seal)



Wire Fraud

Title companies, law firms, realtors, sellers and buyers are some of the most often targeted victims of wire fraud.

From 2020-2022 there was a 27% increase of reported BEC matters and a 72% increase in BEC losses

In Q1 2025, 46.8% of transactions of residential, commercial and business purpose loans had issues of wire & title fraud.

One of the most prevalent fraud scheme targeting businesses today.

In 2024, IC3 received 21,442 BEC complaints with adjusted losses over \$2.7 billion.

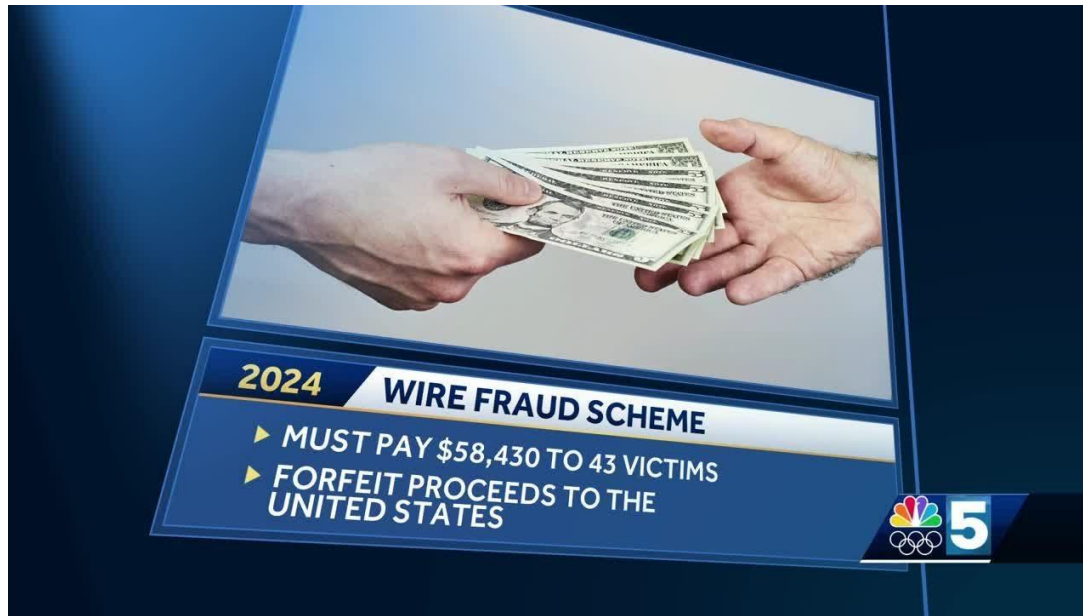
Cyber enabled fraud is responsible for almost 83% of all reported losses.

Common Real-Estate Targets

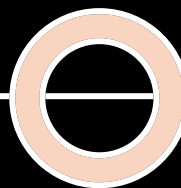
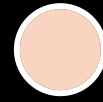
- i. Seller Proceeds
- ii. Earnest Money
- iii. Buyer Closing Funds
- iv. Loan or Lien payoffs
- v. Real estate commissions
- vi. Other large invoices such as legal fees



Common Steps in Payoff Wire Fraud



- 1) Target receives an email purportedly from wire sender or representative asking for a copy of payoff/invoice
- 2) The perpetrator claims there is an issue with the invoice and will either send a new invoice or just new wiring instructions.
- 3) The “updated” payoff/invoice sent via email, Fax (most common), and courier service.
- 4) Most of the time, the only difference is the banking information and lack of mailing address



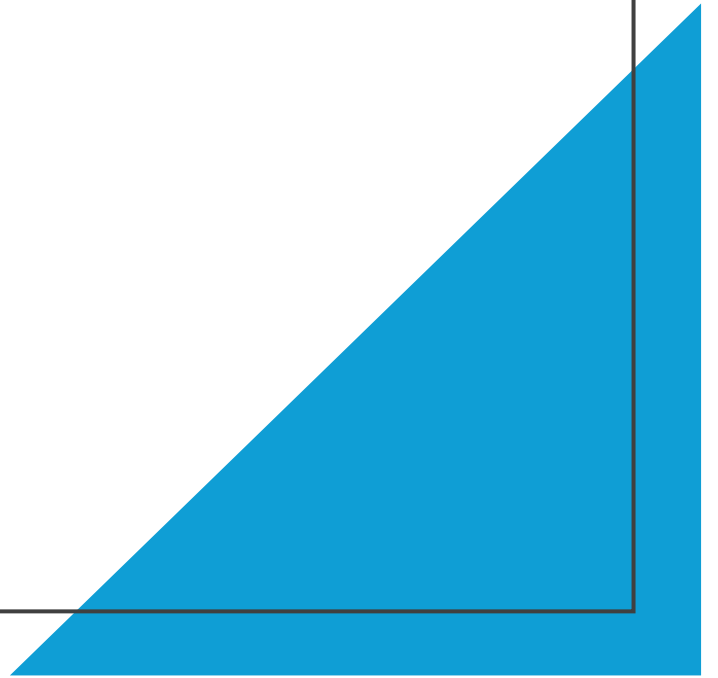
FinCEN's Residential Real Estate Rule

It's time to discuss federal
requirements that will affect
closings beginning March 1, 2026 ?



Agenda

- Who is FinCEN?
- What is the Residential Real Estate Rule?
- What Will Be Required?
- How Will This Affect Closing?



FinCEN – Financial Crimes Enforcement Network

- Created by Congress
 - Part of the Treasury Department
 - Mission: “...to safeguard the system from illicit use, combat money laundering and its related crimes including terrorism, and promote national security through the strategic use of financial authorities and the collection, analysis, and dissemination of financial intelligence.”
 - Creates Rules Like Residential Real Estate Rule to Fulfill Mission
- 
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What is a RRER?

- Report of details of “residential” cash transactions to entities or trusts to FinCEN
- Also includes transactions involving hard money/private lenders
- “Residential” includes some apartment buildings and vacant land on which one to four family construction or apartment/rentals are to be constructed.

DEPARTMENT OF THE TREASURY**Financial Crimes Enforcement Network****31 CFR Chapter X****RIN 1506-AB54****Anti-Money Laundering Regulations for Residential Real Estate Transfers**

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Final rule.

SUMMARY: FinCEN is issuing a final rule to require certain persons involved in real estate closings and settlements to submit reports and keep records on certain non-financed transfers of residential real property to specified legal entities and trusts on a nationwide basis. Transfers made directly to an individual are not covered by this rule. This rule describes the circumstances in which a report must be filed, who must file a report, what information must be provided, and when a report is due. These reports are expected to assist the U.S. Department of the Treasury, law enforcement, and national security agencies in addressing illicit finance vulnerabilities in the U.S. residential real estate sector, and to curtail the ability of illicit actors to anonymously launder illicit proceeds through transfers of residential real property, which threatens U.S. economic and national security.

DATES: Effective December 1, 2025.

ADDRESSES: The FinCEN Regulatory Support Section at 1-800-767-2825 or electronically at frc@fincen.gov.

SUPPLEMENTARY INFORMATION:**I. Executive Summary**

Among the persons required by the Bank Secrecy Act (BSA) to maintain anti-money laundering and countering the financing of terrorism (AML/CFT)¹ programs are “persons involved in real estate closings and settlements.”² For many years, FinCEN has exempted such persons from comprehensive regulation under the BSA. However, information received in response to FinCEN’s geographic targeting orders relating to non-financed transfers of residential real estate (Residential Real Estate GTOs) has demonstrated the need for increased transparency and further regulation of this sector. Furthermore, the U.S. Department of the Treasury (Treasury)

has long recognized the illicit finance risks posed by criminals and corrupt officials who abuse opaque legal entities and trusts to launder ill-gotten gains through transfers of residential real estate. This illicit use of the residential real estate market threatens U.S. economic and national security and can disadvantage individuals and small businesses that seek to compete fairly in the U.S. economy.

Earlier this year, pursuant to the BSA’s authority to impose AML regulations on persons involved in real estate closings and settlements, FinCEN proposed a new reporting requirement. Under the proposed rule, certain persons involved in real estate closings and settlements would be required to report on certain transfers that Treasury deems high risk for illicit financial activity—namely, non-financed transfers of residential real property to legal entities and trusts.

FinCEN is now issuing a final rule that adopts the proposed rule with some modifications. The final rule imposes a streamlined suspicious activity report (SAR) filing requirement under which reporting persons, as defined, are required to file a “Real Estate Report” on certain non-financed transfers of residential real property to legal entities and trusts. Transfers to individuals, as well as certain transfers commonly used in estate planning, do not have to be reported. The reporting person for any transfer is one of a small number of persons who play specified roles in the real estate closing and settlement, with the specific individual determined through a cascading approach, unless superseded by an agreement among persons in the reporting cascade. The reporting person is required to identify herself, the legal entity or trust to which the residential real property is transferred, the beneficial owner(s) of that transferee entity or transferee trust, the person(s) transferring the residential real property, and the property being transferred, along with certain transactional information about the transfer.

The final rule adopts a reasonable reliance standard, allowing reporting persons to rely on information obtained from other persons, absent knowledge of facts that would reasonably call into question the reliability of that information. For purposes of reporting beneficial ownership information in particular, a reporting person may reasonably rely on information obtained from a transferee or the transferee’s representative if the accuracy of the information is certified in writing to the best of the information provider’s own knowledge.

FinCEN has sought to minimize burdens on reporting persons to the extent practicable without diminishing the utility of the Real Estate Report to law enforcement and believes the final rule appropriately balances the collection of information that is highly useful to Treasury, law enforcement, and national security agencies against the burdens associated with collecting that information, particularly on small businesses.

II. Background**A. Addressing High-Risk Transfers of Residential Real Estate****1. Authority To Require Reports From Persons Involved in Real Estate Closings and Settlements**

The BSA is intended to combat money laundering, the financing of terrorism, and other illicit financial activity.³ The purposes of the BSA include requiring financial institutions to keep records and file reports that “are highly useful in criminal, tax, or regulatory investigations or proceedings” or in the conduct of “intelligence or counterintelligence activities, including analysis, to protect against international terrorism.”⁴ The Secretary of the Treasury (Secretary) has delegated the authority to implement, administer, and enforce compliance with the BSA and its implementing regulations to the Director of FinCEN.⁵

The BSA requires “financial institutions” to establish an AML/CFT program, which must include, at a minimum, “(A) the development of internal policies, procedures, and controls; (B) the designation of a compliance officer; (C) an ongoing employee training program; and (D) an independent audit function to test programs.”⁶ The BSA also authorizes the Secretary to require financial institutions to report any suspicious transaction relevant to a possible violation of law or regulation.⁷ Among the financial institutions subject to these

¹ Section 6101 of the AML Act, codified at 31 U.S.C. 5318(h), amended the BSA’s requirement that financial institutions implement AML programs to also combat terrorist financing. This rule refers to “AML/CFT program” in reference to the current obligation contained in the BSA.

² 31 U.S.C. 5312(a)(2)(U).

³ See 31 U.S.C. 5311, Section 6003(1) of the Anti-Money Laundering Act of 2020 defines the BSA as section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b), Chapter 2 of Title I of Public Law 91–508 (12 U.S.C. 1951 et seq.), and 31 U.S.C. chapter 53, subchapter II, AML Act, Public Law 116–283, Division F, section 6003(1) (Jan. 1, 2021). Under this definition, the BSA is codified at 12 U.S.C. 1829b and 1951–1960, and 31 U.S.C. 5311–5314 and 5316–5386, including notes thereto. Its implementing regulations are found at 31 CFR Chapter X.

⁴ 31 U.S.C. 5311(i).

⁵ Treasury Order 180–01, Paragraph 3(a) (Jan. 14, 2020), available at <https://home.treasury.gov/about/general-information/orders-and-directives/treasury-order-180-01>.

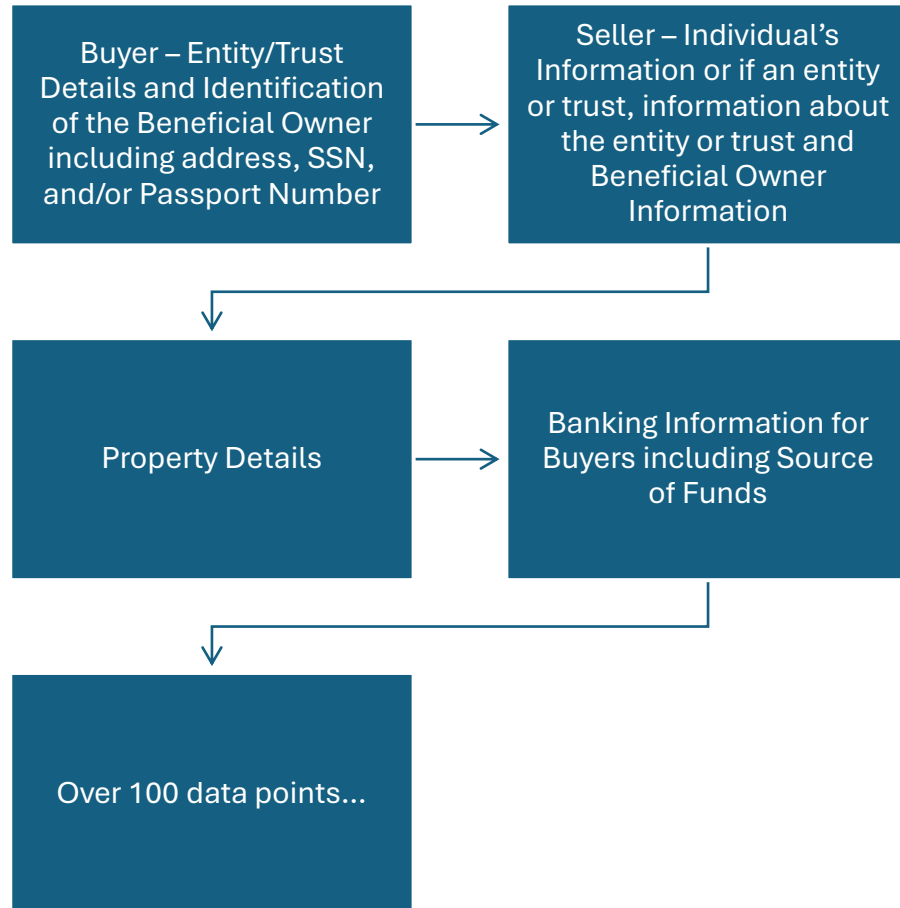
⁶ 31 U.S.C. 5318(h)(1)(A)–(D).

⁷ 31 U.S.C. 5318(g).

What is the Purpose?

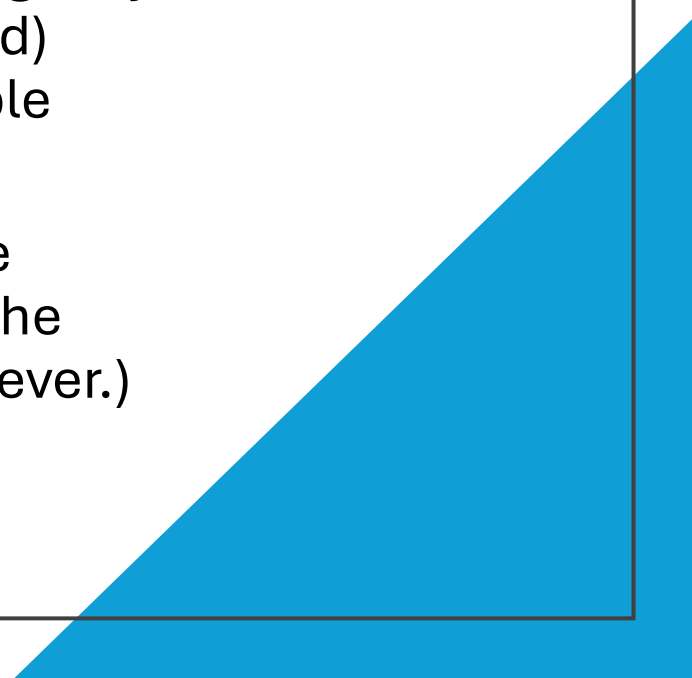
- Money-laundering occurs in residential transactions that helps:
 - Terrorists
 - Drug Lords
- Entities and Trusts identification in land records do not disclose who is the Beneficial Owner (the person who controls the money) unless a separate report is made
- FinCEN wants to know the individual's name because then
 - They can correlate to other data to stop money-laundering
 - Hopefully, money-launderers quit using the residential real estate market

What Information is Required?



- ***REQUIRED: Buyer and Seller Collection of Information Forms.***

How Will This Affect Closing?

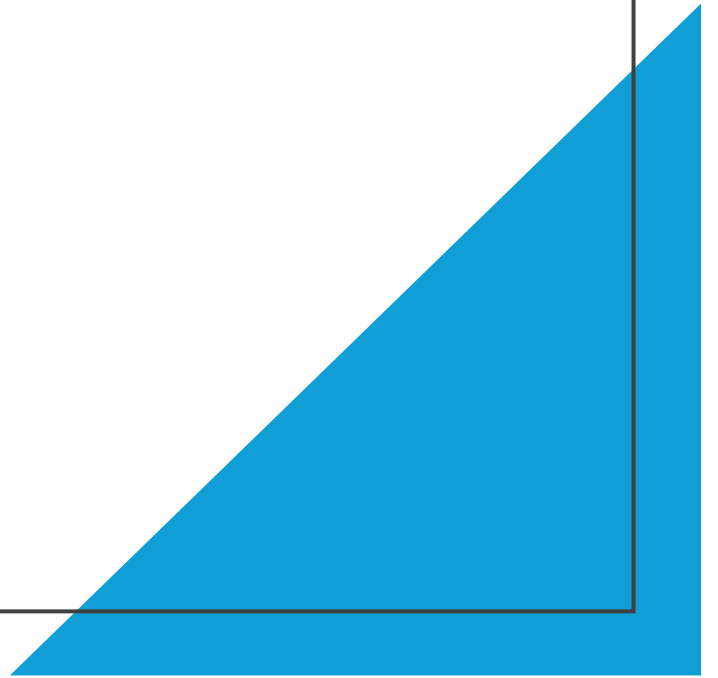
- Buyers and Sellers will have to submit information to our agency (before closing, at closing, before closing will be scheduled) using (insert how you will obtain information - portal, fillable form, encrypted email, etc.)
 - This process will require Buyers and Sellers (or acceptable representatives to your agency) to certify the accuracy of the information in writing to (closer, FinCEN team lead, whomever.)
 - After closing, the office will handle the filing with FinCEN.
- 
- A large blue right-angled triangle is positioned in the bottom right corner of the slide, pointing towards the top right.

Form Changes?

- Title Commitment - Schedule B(i) will have a requirement to provide this information prior to or at closing.
- What about your forms? Consider changing standard Purchase Agreement Language to account for these changes so all REALTORS know the transaction could or will require FinCEN reporting.

What will you charge for this service?

- For complying with FinCEN, the following charges will apply:
 - (Insert charges agency will assess to buyer)
 - (Rush charges?)
 - (Where will it appear on Settlement Statement?)

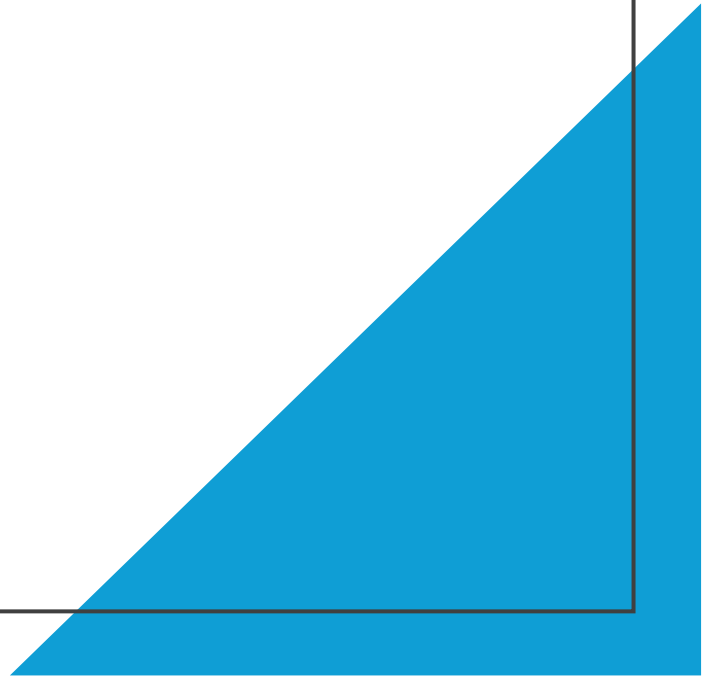


This is Required. No One Wants to Go to Jail.

Mens Rea	Fine or Penalty?	Criminal?
Negligent?	Not more than \$1,394 per violation; up to \$108,489 for a pattern	No
Willful?	Criminal – up to \$250,000 Civil – Not more than the greater amount involved in the transaction (not to exceed \$278,937) or \$69,733	Yes, up to five years in prison

How Can We Work Together to Make this SMOOTHER?

- Ask Your Buyers At Contracting Whether an Entity or Trust Will Be Used
- Tell Us at Order Entry
- If a Buyer Changes Their Mind, Tell Us ASAP so Closing is NOT Delayed
- If Your Buyer is Hesitant, explain the Why...
 - Stopping Money-Laundering
 - Required by Federal Government
 - Information Obtained & Stored Securely
 - Have Them Speak to Us About Processes



The background of the image is a dense, out-of-focus field of question marks. The question marks are rendered in various shades of gray and light beige, creating a textured, layered effect. Some question marks are sharp and prominent, while others are blurred and recede into the background. The overall tone is muted and contemplative.

Questions?