



Transparency-looza: Update on All Things Corporate Transparency

January 20, 2026

Marc Painter
Joy Phillips
Kevin L. Shepherd
Andrew Weiner

Overview

- Status of Corporate Transparency Act (CTA) and implementing regulations
 - ❖ Interim Final Rule (IFR)
 - ❖ Litigation
- Status of FinCEN's non-financed residential real estate regulations.
 - ❖ March 1, 2026 rollout
 - ❖ Litigation
- Status of New York Limited Liability Company (LLC) Transparency Act
 - ❖ January 1, 2026 rollout
 - ❖ Forms and implementing regulations

CTA: IFR

- Treasury's Financial Crimes Enforcement Network (FinCEN) issued the IFR on March 26, 2025.
- IFR limited the scope of the CTA so that it now applies only to foreign entities registered to transact business in one or more states.
- IFR thus exempts domestic reporting companies from the scope of the CTA.
- Reduced number of reporting companies from about 35,000,000 to 12,000—IFR eliminated filing requirement for 99.945% of the universe of CTA reporting companies.
 - Does the IFR reflect Congressional intent in enacting the CTA?
- IFR eliminated requirement about reporting of information as to any “United States person” who is a beneficial owner of a reporting company.

CTA: IFR--continued

- FinCEN originally promised to issue final CTA regulations by the end of 2025.
- FinCEN admitted in court filings that it would not be able to issue the final regulations by the end of 2025—FinCEN blamed the lengthy federal government shutdown in 4Q 2025 on the delayed issuance of the final regulations.
- No exemption for providing the personally identifiable information (PII) or a FinCEN Identifier for a US person who is a company applicant for a foreign business entity registered to transact business in a state—gap in the IFR that may be addressed in the final regulations.

CTA: IFR--continued

- Beneficial ownership information (BOI) report form must identify at least one beneficial owner. But form does not address situation where all beneficial owners of a foreign business entity registered to transact business in a state are all US persons—nothing to report, but how can form be submitted with a blank?
- US persons who are beneficial owners must still update their FinCEN Identifier information, even though they have no reporting obligation.
- What happens to previously filed BOI reports for domestic reporting companies? Will they remain in the FinCEN database forever? What if already shared by FinCEN with other governmental entities or lenders?
- Bottom-line: stay tuned for FinCEN's issuance of the final CTA regulations.

CTA: Litigation

- The Eleventh Circuit upheld the constitutionality of the CTA in an opinion issued on December 16, 2025. *National Small Business United v. U.S. Department of the Treasury*, No. 24-10736. Reversed 2024 decision by the U.S. District Court for the Northern District of Alabama.
 - ✓ CTA regulates economic activity and thus does not violate the Commerce Clause. By effectively prohibiting anonymous business dealings, the CTA facially regulates economic activities having a substantial aggregate impact on interstate commerce.
 - District court focused on single act of incorporation, which it claimed was a non-commercial act
 - ✓ No Fourth Amendment violation against unreasonable searches since the CTA is a uniform and limited reporting requirement.

CTA: Litigation

- Other cases challenging the constitutionality of the CTA are pending in various appellate courts:
 - ✓ *Texas Top Cop Shop* (5th Cir.).
 - ✓ *Firestone* (9th Cir.).
 - ✓ *Community Associations* (4th Cir.).
- Not clear whether plaintiff in *National Small Business United* case will file an appeal to the U.S. Supreme Court.
- But, a contrary decision by other appellate courts would create an inter-circuit conflict, thereby allowing U.S. Supreme Court intervention as well.

FinCEN's Non-Financed Residential Real Estate Rule



FinCEN's Non-Financed Residential Real Estate Rule (RRER)

- Effective March 1, 2026, the RRER requires certain professionals involved in real estate closings and settlements to submit reports (which are streamlined “suspicious activity reports”) to FinCEN regarding certain non-financed transfers of residential real estate to legal entities or trusts.
- The RRER incorporates definitions and procedures set forth in the CTA.
- The RRER replaces the geographic targeting orders (GTOs) that have been in place in certain jurisdictions for the last several years.
- Why should commercial real estate lawyers be aware of the RRER?
 - ✓ FinCEN has stated that it will plans to adopt same approach at later time for non-financed *commercial* real estate transactions
 - ✓ RRER tracks the CTA—the CTA is not dead

RRER Litigation

- Fidelity National filed suit in the United States District Court for the Middle District of Florida (Jacksonville Division) challenging the RRER. *Fidelity Nat'l Financial, Inc. v. Bessent*, Case No.: 3:25-cv-554-WWB-SJH.
- Magistrate judge issued a report and recommendation on December 9, 2025 recommending that the district court grant the government's motion for summary judgment and deny Fidelity's summary judgment motion
 - ✓ RRER does not exceed statutory authority
 - ✓ RRER is not arbitrary or capricious
 - ✓ RRER does not violate the Fourth or First Amendments
- Parties now awaiting court's decision

What is “residential real property”?

- Parameters:
 - ✓ Real property located in the U.S. that includes a structure designed principally for occupancy by 1-4 families;
 - ✓ Land in the U.S. on which the transferee *intends* to build a structure designed principally for occupancy by 1-4 families;
 - ✓ A unit designed principally for occupancy by 1-4 families within a structure on land located in the U.S.; and/or
 - ✓ A share in a cooperative housing corporation for which the underlying property is located on land within the U.S.

What is “residential real property”?

- Includes single-family houses, townhouses, condominiums, and cooperatives, including condominiums and cooperatives in large buildings containing many such units, as well as entire buildings designed for occupancy by 1-4 families.
- Properties are reportable even if there is also a commercial element, e.g., a single-family residence that is located above a commercial enterprise.
- Includes certain types of land on which a residence is not yet built.
- RRER does not apply if intent is to create 5 or more units on land.

What is a transfer of residential real property?

- A transfer of residential real property is any transfer of an ownership interest in residential real property that is demonstrated through a deed or, for an interest in a cooperative housing corporation, through stock, shares, membership, a certificate, or other contractual agreement evidencing ownership.
- Includes purchases of residential real property for any amount, as well as transfers of ownership for which no consideration is exchanged, e.g., a gift.

What is a non-financed transfer?

- A transfer that does not involve an extension of credit to all transferees that is both (1) secured by the transferred property and (2) extended by a financial institution subject to Anti-Money Laundering (AML) program requirements and Suspicious Activity Report (SAR) reporting obligations.
- Transfers that are financed by a lender without an obligation to maintain an AML/CFT program and a requirement to file SARs are treated as non-financed transfers that potentially must be reported.
- If reporting persons are unsure as to whether the lending institution involved in a transfer has both an obligation to maintain an AML program and to file SARs, they should reach out to that lending institution. A reporting person generally may rely on information provided by any other person if the reporting person does not have knowledge of facts that would reasonably call into question the reliability of the information.

What types of transfers are not considered reportable?

- The following transfers are not reportable:
 - A transfer that is a grant, transfer, or revocation of an easement.
 - A transfer resulting from the death of an individual, whether pursuant to the terms of a will, the terms of a trust, the operation of law (e.g., transfers resulting from intestate succession, surviving joint owners, and transfer-on-death deeds), or by contractual provision (e.g., transfers resulting from beneficiary designations).
 - A transfer incident to divorce or dissolution of a marriage or civil union (e.g., transfers required by a divorce settlement agreement).
 - A transfer made to a bankruptcy estate.
 - A transfer supervised by a court in the United States.

What types of transfers are not considered reportable?--continued

- A transfer for no consideration made by an individual, either alone or with their spouse, to a trust of which that individual, that individual's spouse, or both, are the settlors or grantors.
- A transfer to a qualified intermediary for the purposes of a like-kind exchange for purposes of IRC §1031.
- A transfer for which there is no reporting person.

What is a transferee entity?

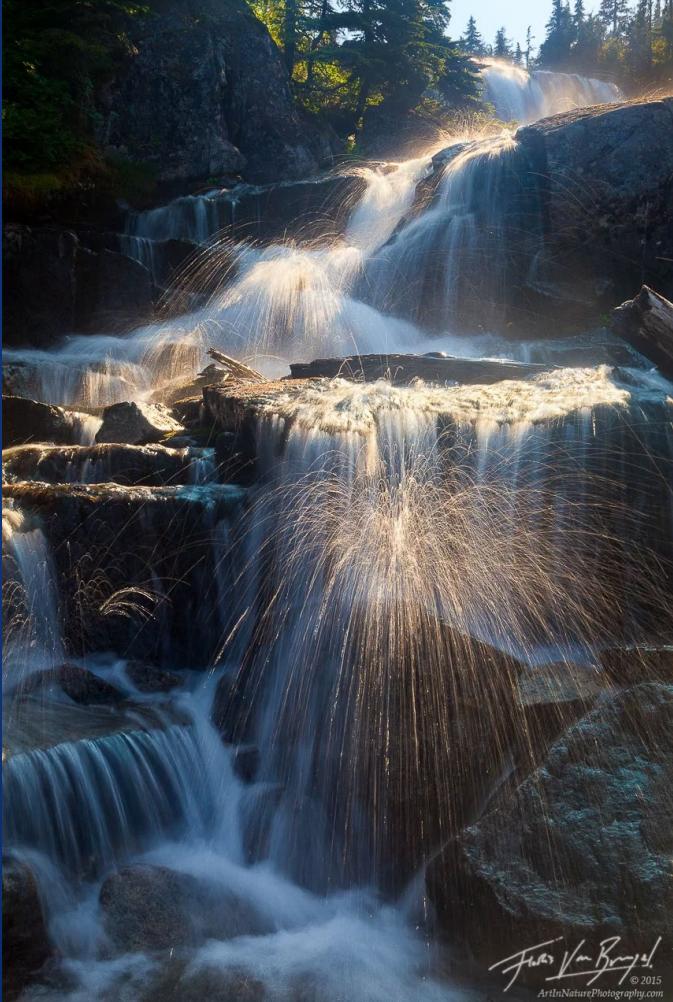
- Transferee entity: any person other than a transferee trust or an individual, e.g., a transferee entity may be a corporation, partnership, estate, association, or LLC.
- Transferee trust: any legal arrangement created when a grantor or settlor places assets under the control of a trustee for the benefit of one or more beneficiaries or for a specified purpose and includes most trusts and similar foreign legal arrangements. A trust is a transferee trust regardless of whether the residential real property is titled in the name of the trust itself or in the name of the trustee. However, four types of trusts are exempted:
 - Securities reporting issuer
 - Trustee that is a securities reporting issuer
 - Statutory trust (treated as a transferee entity, not a transferee trust)
 - Subsidiary of an exempted trust

Who is required to file the Real Estate Reports?

- A “reporting person” is obligated to file the Real Estate Report with FinCEN.
- Identify the reporting person via the “reporting cascade” or a written designation agreement between the real estate businesses described in the cascading reporting order.

Reporting cascade

- General: if a person is performing the first function described in the cascade, then that person would be the reporting person. If no person performing the first function described in the cascade is involved in the transfer, then the reporting person would be the person who performs the second described function, if any, and so on down the cascade.



Reporting cascade--continued

1. The person listed as the closing or settlement agent on the closing or settlement statement;
2. If no person described above is involved, the person who prepares the closing or settlement statement;
3. If no person described above is involved, the person who files with the recordation office the deed or other instrument that transfers ownership of the residential real property;
4. If no person described above is involved, the person who underwrites an owner's title insurance policy for the transferee for the transferred residential real property, e.g., title insurance company;
5. If no person described above is involved, the person who disburses in any form, including from an escrow account, trust account, or lawyers' trust account, the greatest amount of funds in connection with the residential real property transfer;

Reporting cascade--continued

- 6. If no person described above is involved, the person who provides an evaluation of the status of the title; or
- 7. If no person described above is involved, the person who prepares the deed or, if no deed is involved, any other legal instrument that transfers ownership of the residential real property, including, with respect to shares in a cooperative housing corporation, the person who prepares the stock certificate.
- Note: A Real Estate Report is *not* required to be filed if none of the above functions are performed for a given reportable transfer of residential real property.

Designation Agreement

- A person who performs a function described in the reporting cascade may choose to enter into a written agreement that designates another person who performs a function described in the reporting cascade as the reporting person.
- Other persons involved in the transfer who fall into the reporting cascade do not need to be parties to the agreement.
- No specified format, but agreement needs to be in writing and identify the date of the agreement, the name and address of the transferor, the name and address of the transferee entity or transferee trust, the property, the name and address of the designated reporting person, and the name and address of all parties to the designation agreement.
- All parties to a designation agreement are required to retain a copy of the agreement for a period of five years. The reporting person is not required to file the designation agreement as part of the Real Estate Report.

Real Estate Report: What type of information is reported?

- Information necessary to identify the reporting person.
- The residential real property being transferred.
- Transferor.
- Transferee entity or transferee trust.
- Total consideration for the property.
- Individuals representing the transferee entity or transferee trust in the transfer.

Real Estate Report: What type of information is reported?

- **Beneficial owners of the transferee entity or transferee trust.** For example, the reporting person must collect the following identifying information for any beneficial owner of a transferee entity or a transferee trust:
 - Name
 - Date of birth
 - Residential address
 - Citizenship
 - Taxpayer identification number.

Who are the beneficial owners of a transferee entity?

- A beneficial owner of a transferee entity is an individual who, on the date of closing, either directly or indirectly:
 - ✓ Exercises substantial control over the transferee entity, or
 - ✓ Owns or controls at least 25% of the transferee entity's ownership interests.
- Definition is derivative of the definition of the term in the FinCEN's BOI Reporting Rule.

New York LLC Transparency Act

New York LLC Transparency Act

- First state to enact legislation that emulates the CTA—2024 legislation adopts CTA's 23 reporting exemptions and the definitions of “beneficial owner,” “reporting company,” “ownership interest,” “substantial control,” “applicant,” and “exempt company”
- FinCEN’s March 2025 IFR upended the definition of “reporting company” so that it applies only to non-US entities registered to do business in the US
- In response, New York legislature passed SB S8432 that sought to amend the NY LLC Act to require New York LLCs and out-of-state LLCs authorized to do business in New York to file beneficial ownership disclosure statements (BOD) with the State--bill tried to “de-couple” the New York LLC Act from the CTA
- New York governor vetoed this bill on December 19, 2025
- THUS, effective January 1, 2026, only non-US LLCs authorized to do business in New York are required to file BOD statements or attestations of exemption

New York LLC Transparency Act

- US persons do not need to be identified as beneficial owners or company applicants
- Non-US LLCs authorized to transact business in New York on or after January 1, 2026 need to file BOD statements or attestations of exemption within 30 days of receipt of such authorization
- Non-US LLCs already authorized to do business in New York before January 1, 2026 need to file BOD statements or attestations of exemption by December 31, 2026.
- State has website dedicated to the LLC Act:
 - ✓ FAQs
 - ✓ Forms of BOD statements and attestations of exemption

New York LLC Transparency Act

- Annual filing required, even if there are no changes to previously filed information
- \$25 fee for each filing
- Electronic filings only
- If a reporting company believes that a report contains inaccurate information, it may file a corrected report
- Unlike the CTA, the NY LLC Act does not have a FinCEN Identifier provision
- Company applicants—identification required for existing non-US LLCs—will create potential difficulties in tracking down that information (CTA required company applicant information only on a going forward basis)

New York LLC Transparency Act

- Failure to file within 30 days of reporting deadline will be marked as “past due” on the State’s records.
- No criminal penalties, but fines of \$500/day for each day of noncompliance along with an additional fine of \$250 for an initial failure to file.
- In certain situations, the state may suspend, cancel, or dissolve the non-US LLC entirely.
- All information relating to beneficial owners who are natural persons collected by the NYDOS ***will be maintained in a secure non-public database and is confidential***, subject to limited exceptions by written request of, or by voluntary written consent of, the beneficial owner.
- The information in the database is accessible to federal, state, and local governmental agencies under certain circumstances.

Thank you!

Questions/comments

