

## Know Your Customer



### Money for Sale

### The Bank Secrecy Act (BSA/AML)

### *The Perils of Money Laundering & Wire Fraud*

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## Final Rule for R.E. Professionals

REAL ESTATE NEWS

### Feds Crack Down on Illicit Use of All-Cash Real Estate Deals for Money Laundering

By Keith Griffith  
Aug 28, 2024



**T**he U.S. Treasury Department has issued a new rule that aims to prevent nefarious actors from using residential real estate deals for money laundering.

The final rule issued on Wednesday will require real estate professionals to report the true identity of all-cash homebuyers who use shell companies or other legal entities to purchase residential property in the U.S. While those buyers can remain publicly anonymous, the rule requires the disclosure of their identity to the Financial Crimes Enforcement Network.

The purpose of the new rule is to prevent illicit actors such as drug cartels, international criminals, or sanctioned foreign oligarchs from laundering money through the housing market using anonymous transactions. Similar reporting rules already apply to banks and other mortgage lenders.

## New York, New Jersey and Pennsylvania



**Manhattan:** all-cash transactions 4<sup>th</sup> quarter 2023, 67.9% home sales all-cash deals, up from 65% in 2<sup>nd</sup> quarter 2023. [6sqft](#)

**Brooklyn & Queens:** Between October 2022 and October 2023, 37% of condo sales in Brooklyn and 40% in Queens were all-cash transactions. [The Real Deal](#)

**New Jersey and Pennsylvania** show similar trends of rising all-cash transactions influenced by higher mortgage rates and competitive housing markets.

**NYC Commercial real estate:** Between January 2023 and February 2024

- over 1,900 all-cash commercial sales worth \$100,000 or more,
- totaling approximately \$10.86 billion. [The Real Deal](#)

**Investors:** 1st first quarter of 2024, approx. 64% of investor purchases were cash

- marking the lowest proportion since 2008.
- attributed to more smaller investors, less likely to pay cash than larger investors.

[Realtor](#)

## Real Estate Agents and AML

You're the buyer's agent. You referred the buyer to a loan originator who issued a pre-approval.

The buyer calls you.

- **AGENT:** "That's great you have a pre-approval. If the seller accepts your \$500,000 offer, how much will you be putting down?"
- **BUYER:** "I have about \$50,000 in my savings account but will be putting down \$150,000."
- **AGENT:** Ok...so will you be getting a gift for the remaining \$100,000?
- **BUYER:** No...I have cash in my freezer that I will be using.
- **AGENT:** You know you can't deposit that amount of cash, right?
- **BUYER:** But it's my money...I can't use it for the down payment?
- **AGENT:** You can, but here's what I would do! Deposit \$9,500 at a time, on different days, into different accounts and then transfer it to one account when you need it for closing. If you deposit more than \$10,000 at a time, the bank is required to report it to the IRS. By the way, why do you have that much in cash? Where did it come from?
- **BUYER:** I'd rather not say.



**If anyone, who violated the law?**



## December 2021 CNBC



2m 55s

## Financial Crimes Enforcement Network (FinCen)

**FinCEN is a bureau of the U.S. Department of the Treasury.**

Director of FinCEN - appointed by Secretary of the Treasury and Reports to the Treasury Under Secretary for Terrorism and Financial Intelligence.



Congressional responsibilities toward the **detection and deterrence** of financial crime, FinCEN:

- ✓ Issues and interprets regulations authorized by statute;
- ✓ Supports and enforces compliance with those regulations;
- ✓ Supports, coordinates, & analyzes data regarding compliance exams delegated to other Federal regulators;
- ✓ Manages collection, processing, storage, dissemination, protection of data under reporting requirements;
- ✓ Maintains a government-wide access service to FinCEN's data, networks users with overlapping interests;
- ✓ Supports law enforcement investigations and prosecutions;
- ✓ Synthesizes data to recommend internal/external resources to areas of greatest financial crime risk;
- ✓ Shares information/coordinates with foreign financial intelligence units (FIU) on AML/CFT efforts; and
- ✓ Conducts analysis, supports policymakers; law enforcement, regulatory, intelligence agencies; FIUs; and the financial industry.

<https://www.fincen.gov/>

## Geographic Targeting Orders

- 2016 - FinCEN issued its first Geographic Targeting Order (GTO)\*,**
- ✓ **requiring U.S. title insurance companies to identify the natural persons**
  - ✓ **behind shell companies used in all-cash purchases of residential real estate**
  - ✓ **in certain specified U.S. metropolitan areas.**

- GTOs are:
- ✓ geographically limited,
  - ✓ temporary orders (180 days)
  - ✓ require designated businesses or sectors to maintain records and
  - ✓ submit reports to FinCEN on certain specified transactions.

**FinCEN renews and expands the scope of its GTOs on U.S. title insurance companies.**

## GTO Results

Reports now suggest GTOs reduced shell companies purchasing residential real estate.

2016 - study found GTOs on title companies had **70% drop in corporate entities purchasing** luxury R.E. with cash

**Treasury found as of April 2019, 35% of GTO RE transactions reported involved subjects identified in a SAR.**

July 2020, U.S. GAO reported FinCEN not yet determined whether/how to address REML risks

**August 2024 FinCen published the final rule for reporting of residential real estate transactions**

<https://www.gao.gov/assets/gao-20-546.pdf>

## Geographic Targeting Orders

**Issued: April 17, 2024**

**Subject: Geographic Targeting Orders Involving Certain Real Estate Transactions**

On April 17, 2024, FinCEN renewed Geographic Targeting Orders (GTOs) requiring Covered Businesses to collect and report information about certain residential real estate transactions in the following jurisdictions:

- (1) the California counties of Los Angeles, San Diego, San Francisco, San Mateo, and Santa Clara;
- (2) the Colorado counties of Adams, Arapahoe, Clear Creek, Denver, Douglas, Eagle, Elbert, El Paso, Fremont, Jefferson, Mesa, Pitkin, Pueblo, and Summit;
- (3) the Connecticut counties of Fairfield and Litchfield;
- (4) the District of Columbia;
- (5) the Florida counties of Broward, Charlotte, Collier, Hillsborough, Lee, Manatee, Miami-Dade, Palm Beach, Pasco, Pinellas, and Sarasota;
- (6) the Hawaii counties of Hawaii, Honolulu, Kauai, and Maui, and the City of Honolulu;
- (7) the Illinois county of Cook;
- (8) the Maryland counties of Anne Arundel, Howard, Montgomery, Prince George's, and Baltimore, or the City of Baltimore;
- (9) the Massachusetts counties of Bristol, Essex, Middlesex, Norfolk, Plymouth and Suffolk;
- (10) the Nevada county of Clark;
- (11) the Boroughs of Bronx, Brooklyn, Manhattan, Queens, and Staten Island in New York City, New York;
- (12) the Texas counties of Bexar (San Antonio), Dallas, Harris (Houston), Montgomery, Tarrant (Fort Worth), Travis (Austin), and Webb;
- (13) the Washington county of King; and
- (14) the Virginia counties of Arlington and Fairfax, and the cities of Alexandria, Fairfax, and Falls Church.

There are **3,143 counties or county-equivalent entities** in the U.S.



## Laws Govern Anti-Money Laundering

### Bank Secrecy Act: (BSA/AML)

Introduced in 1970, Bank Secrecy Act (BSA) is the most important of the AML regulations in the US.

Intended to combat money laundering & ensure banks and financial institutions do not become complicit

Bank Secrecy  
Act

Anti-Money  
Laundering

As time went on, the BSA looked more broadly on illicit activity, as drug trade continues to increase in the U.S.

Suspicious Activity Reports (SAR) introduced in 1996, requiring financial institutions to report all suspected illegal activity to FinCEN.

BSA teams began hiring for skill sets that included analytical and investigative thinking.

**Still, terrorist financing was not a category available on the SAR form and not a severe threat that FinCrime professionals considered in their daily investigations...and that all changed...**

## The Day the World Changed...BSA Post 9/11

After 9/11 attacks, Congress passed the quickest bipartisan law enacted.

### ***The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001***

(USA PATRIOT Act) signed into law October 26, 2001, a little over one month after the attacks.

This was **the first legislation:**

- ✓ **that criminalized the financing of terrorism**
- ✓ equated it to money laundering,
- ✓ with strong regulatory requirements attached
- ✓ requiring financial institutions to implement AML programs
- ✓ including Customer Information Program (CIP), due diligence and information sharing requirements.



**If that wasn't enough for Financial Crime (FinCrime) professionals:**

- ✓ **the Anti-Money Laundering Act of 2020 (AMLA) was passed on January 1, 2021,**
- ✓ to strengthen and modernize the BSA, and
- ✓ **expected to bring the most substantial changes within the BSA since the USA PATRIOT Act.**

***AMLA also explicitly includes Combating the Financing of Terrorist (CFT) along with AML.***

## SO, HOW DOES MONEY ACTUALLY MOVE?



## Wire Fraud – The Most Common Federal Crime

WHERE THERE'S MONEY LAUNDERING...  
THERE'S USUALLY WIRE FRAUD!

"Wire" - any form of telecommunication: phone, fax, text message, radio, television, internet message, social media message, email, or any other form of airwave or cable communication.

"Fraud" involves using intentional deception for monetary or personal gain.

Investigated by the FBI or the FTC

State laws can also result in criminal charges.



## 4 Elements of Proving Wire Fraud



1. defendant created or participated in a scheme to defraud another party out of money or property
2. defendant did so with the intent to defraud
3. was reasonably foreseeable that the defendant would use wire communications
4. defendant did, in fact, use interstate wire communications

Federal wire fraud charges prosecute perpetrators of **white-collar crimes and organized crime** and scams that take place over interstate wires include telemarketing fraud, phishing, identity theft, and spam-related financial crimes.

[18 U.S.C. 1343](#)

## Penalties for Wire Fraud



Persons found guilty of wire fraud under federal law face the following penalties:

- ✓ Fines up to \$250,000 for individuals
- ✓ Fines up to \$500,000 for organizations
- ✓ Imprisonment of not more than 20 years

*Additional penalties of 30 years imprisonment and \$1Million fine if the wire fraud is related to a "presidentially declared major disaster" or "involves a financial institution."*

Penalties are per count; each phone call, email, or communication is a separate count!

ie. if an individual makes three phone calls regarding the fraud, there may be three counts of wire fraud.

*Each count is subject to a maximum \$250,000 fine and a 20-year prison sentence for a total of \$750,000 in fines and 60 years in prison.*



## SO...WHAT DOES THE LAW SAY?



## Congressional Action



**(1970) Currency and Foreign Transactions Reporting Act, (BSA/AML)**

**Granted the Secretary of the Treasury authority to impose regulations on insured banks**

(1986) Money Laundering Control Act

(1988) Anti-Drug Abuse Act

(1992) Annunzio-Wylie Anti-Money Laundering Act

(1994) Money Laundering Suppression Act

(1998) Money Laundering and Financial Crimes Strategy Act

(2001) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (PATRIOT)

(2004) Intelligence Reform and Terrorism Prevention Act



## The Money Laundering Control Act of 1986

**Anti-Drug Abuse Act made money laundering a federal crime.**

Created 3 new criminal offenses for money laundering activities

***by, through, or to a financial institution.***

1. Knowingly helping launder money derived from criminal activity.
2. Knowingly engaging in transaction > \$10,000 involves property or funds derived from criminal activity.
3. Structuring transactions to evade BSA reporting requirements.

***Willful blindness – pretending not to know or see***

## Global Financial Integrity Key Findings

[Global Financial Integrity \(GFI\)](#) - a Washington, DC-based think tank focused on: "[Illicit financial flows](#)" corruption, illicit trade and money laundering.

- Over last five years, more than US \$2.3 billion has been laundered through U.S real estate, '
- Doesn't include millions more through art, jewelry, and yachts;
- Gatekeepers: attorneys, real estate agents, investment advisers, and employees of financial institutions **have repeatedly facilitated REML** by high net-worth individuals **through willful blindness or direct complicity,**
- U.S. the only **G7** country not requiring AML regulations for real estate professionals
- 61% of U.S. cases involved properties in 1 or more **non-GTO counties**, proving the limitations of GTOs
- Over 50% percent of reported U.S. cases involved **politically exposed persons**
- 30% cases were in commercial real estate** with significantly higher values
- U.S. is yet to create any reporting obligations for risks in the REAL ESTATE sector;**
- Shell companies/complex corporate structures is the number one money laundering typology.
- 82% of U.S. cases involved a legal entity to mask ownership

***Highlights importance of the Beneficial Ownership Interest Registry under Corporate Transparency Act.***

**WHY IS THIS SO IMPORTANT...**  
**FOR THE REAL ESTATE INDUSTRY**



**Global Trends and Domestic Concerns**



- Money laundering and financial crimes in real estate take many forms
- Challenges real estate professionals, financial institutions, law enforcement, policymakers, and regulators
- ***Global scrutiny of real estate market's vulnerability to money laundering is growing***
- Congress must balance money-laundering risks in real estate against differing views on how to implement appropriate oversight.

## What About Non-bank Company Compliance "SARs" Filings

**Non-Bank = significant subset of the "loan or finance company" category**

Non-bank residential mortgage lenders and originators "RMLOs"  
Generally known as "mortgage companies" and "mortgage brokers"  
Working in the residential mortgage business sector



**2002 – FinCEN temporarily exempted "loan and finance companies"**

**2006 – numerous studies reported suspected fraud & money laundering with banks and non-banks**

- RMLOS are in a "unique position" to assess and identify money laundering risk and fraud
- Risks are no less significant than banks

**2009 – FinCEN issues Notice of Proposed Rule Making (NPRM)**

- Asking for comments if RMLOS should comply with AML
- **Final Rule: RMLOS must comply – otherwise a huge gap exists in the nonbank sector**

## Purpose for Non-Bank Residential Mortgage Lenders



### **Purpose:**

- ✓ To detect and prevent money-laundering
- ✓ To detect and prevent the financing of terrorist attacks
- ✓ To detect and prevent mortgage fraud & other criminal activities

## Real Estate Money-laundering Schemes

Usually involve a wide range of domestic and transnational criminals:

- including drug cartels
- human traffickers,
- international terrorists, and
- foreign kleptocrats (corrupt high-level officials).

- The purchase of real estate is often combined with methods to conceal a purchaser's identity and source of funds
- Which allows criminals to integrate *ill-gotten proceeds (dirty money)* into the legal economy or park illicit wealth abroad.

Real estate transactions often intersect with lenders subject to AML requirements

**Even with new rules under AML there are still gaps**

## Real Estate Reported Risks & Vulnerabilities

- real estate transactions involving **opaque legal entities** that obscure the natural persons who benefit from the property ownership;
- **nominee purchasers conceal real property owners;**
- **complicit professionals** in the real estate industry;
- **all-cash sales** of high-value real estate
- **use of commercial real estate** transactions to commit:
  - fraud,
  - tax evasion, and
  - money laundering,
  - including international transfers involving politically exposed persons (PEPs) and organized crime figures.



## HOW DO PEOPLE ACTUALLY "LAUNDER" MONEY?



Let's  
Hear it  
From  
the  
Experts!



Video 10m 46s

## Three Stages of Money Laundering

Money laundering is complex involving 3 different, overlapping, stages:



**Placement** - physically placing illegally obtained money into the financial system or retail economy, when money is most vulnerable to detection and seizure



**Layering** - separating illegally obtained funds from its criminal source by layering it through a series of financial transactions, which makes it difficult to trace the money back to its original source.



**Integration** - moving proceeds into a legitimate form. Integration may include the purchase of automobiles, businesses, real estate, etc.

## The "Money Mule"

- Someone who transfers /moves illegally acquired money for someone else.

Criminals recruit money mules to help launder proceeds derived from online scams and frauds or crimes like human trafficking and drug trafficking.

Money mules add layers between victims and criminals, making tracing harder for law enforcement

### Funds moved in various ways, including:

- bank accounts,
- cashier's checks,
- virtual currency,
- prepaid debit cards, or
- money service businesses.

Some money mules know they are supporting criminal enterprises;

Others are unaware that they are helping criminals, profit.

Money mules receive commissions or might help; believing in trusting or romantic relationships

***If you move money at the direction of another person, you may be a money mule.***



## What is a Money Mule Scheme? Three Types of Mules...



### Unwitting/Unknowing

- Solicited online
- Asked for personal info/open new acct
- Can keep some \$
- Motivated by trust

*Trust in cause*



### Witting

- May have been warned by bank employee
- Open multiple accts
- Unwitting at first, continues to act

*Motivated by \$\$\$*



### Complicit

- Serially open accts
- Advertise as "mule"
- Travel to open accts in other countries
- Operate funnel accts from low level mules
- Recruit other mules

*Motivated by \$\$\$*



## Signs You May Be a Money Mule



- You receive an unsolicited email or social media message that promises easy money for little or no effort.
- "Employer" you communicate with uses web-based email services (Gmail, Yahoo, Hotmail, Outlook, etc.).
- You're asked to open bank account in your name/name of company you formed to receive/send money.
- As an employee, you're asked to receive funds then "process" or "transfer" funds via: wire transfer, ACH, mail, or money service business (such as Western Union or MoneyGram)
- You are allowed to keep a portion of the money you transfer
- Your duties have no specific job description
- Online contact you never met asks you to receive money & forward funds to someone you do not know.





## Consequences to the Money Mule



Acting like a mule is illegal and punishable, *even if you're not aware you're committing a crime.*

You could be prosecuted and incarcerated as part of a criminal money laundering conspiracy.

Some of the federal charges you could face include:

- *mail fraud,*
- *wire fraud,*
- *bank fraud,*
- *money laundering, and*
- *aggravated identity theft.*

## SO...HOW DOES MONEY LAUNDERING GET REPORTED?



## Reporting Requirements Of the Bank Secrecy Act

<b>8300</b> Form (Rev. August 2014)	<b>Report of Cash Payments Over \$10,000 Received in a Trade or Business</b> Use this form for transactions occurring after August 28, 2014. Do not use prior versions after this date. For Privacy Act and Paperwork Reduction Act Notice, see the last page.	<b>8300</b> FinCEN Form (Rev. August 2014) OMB No. 1526-0118 Department of the Treasury Financial Crimes Enforcement Network
<p><b>Part I Identity of Individual From Whom the Cash Was Received</b></p> <p>2 If more than one individual is involved, check here and see instructions <input type="checkbox"/> <b>3</b> Last name</p> <p>4 First name</p> <p>5 M.I.</p> <p>6 Taxpayer identification number</p> <p>7 Address (number, street, and apt. or suite no.)</p> <p>8 Date of birth (see instructions)</p> <p>9 City</p> <p>10 State</p> <p>11 ZIP code</p> <p>12 Country (if not U.S.)</p> <p>13 Occupation, profession, or business</p> <p>14 Identifying document (ID)</p> <p>a Describe ID</p> <p>b Issued by</p> <p>c Number</p>		
<p><b>Part II Person on Whose Behalf This Transaction Was Conducted</b></p> <p>15 If this transaction was conducted on behalf of more than one person, check here and see instructions <input type="checkbox"/></p> <p>16 Individual's last name or organization's name</p> <p>17 First name</p> <p>18 M.I.</p> <p>19 Taxpayer identification number</p> <p>20 Doing business as (DBA) name (see instructions)</p> <p>Employer identification number</p> <p>21 Address (number, street, and apt. or suite no.)</p> <p>22 Occupation, profession, or business</p> <p>23 City</p> <p>24 State</p> <p>25 ZIP code</p> <p>26 Country (if not U.S.)</p> <p>27 Alien identification (ID)</p> <p>a Describe ID</p> <p>b Issued by</p> <p>c Number</p>		
<p><b>Part III Description of Transaction and Method of Payment</b></p> <p>28 Date cash received (M M D D Y Y Y Y)</p> <p>29 Total cash received \$ .00</p> <p>30 If cash was received in more than one payment, check here <input type="checkbox"/></p> <p>31 Total price if different from item 29 \$ .00</p> <p>32 Amount of cash received (in U.S. dollar equivalent) (must equal item 29) (see instructions):</p> <p>a U.S. currency \$ .00 (Amount in \$100 bills or higher \$ .00)</p> <p>b Foreign currency \$ .00 (Country ▶)</p> <p>c Cashier's check(s) \$ .00</p> <p>d Money order(s) \$ .00</p> <p>e Bank draft(s) \$ .00</p> <p>f Traveler's check(s) \$ .00</p> <p>33 Type of transaction</p> <p>a <input type="checkbox"/> Personal property purchased</p> <p>b <input type="checkbox"/> Real property purchased</p> <p>c <input type="checkbox"/> Personal services provided</p> <p>d <input type="checkbox"/> Business services provided</p> <p>e <input type="checkbox"/> Intangible property purchased</p> <p>f <input type="checkbox"/> Debt obligations paid</p> <p>g <input type="checkbox"/> Exchange of cash</p> <p>h <input type="checkbox"/> Escrow or trust funds</p> <p>i <input type="checkbox"/> Bail received by court clerks</p> <p>j <input type="checkbox"/> Other (specify in item 34) ▶</p> <p>34 Specific description of property or service shown in 33. Give serial or registration number, address, docket number, etc. ▶</p>		
<p><b>Part IV Business That Received Cash</b></p> <p>35 Name of business that received cash</p> <p>36 Employer identification number</p> <p>37 Address (number, street, and apt. or suite no.)</p> <p>38 City</p> <p>39 State</p> <p>40 ZIP code</p> <p>41 Nature of your business</p> <p>42 Under penalties of perjury, I declare that to the best of my knowledge the information I have furnished above is true, correct, and complete.</p> <p>Signature</p> <p>43 Date of signature (M M D D Y Y Y Y)</p> <p>44 Type or print name of contact person</p> <p>45 Contact telephone number</p>		

U.S. persons engaged in trade or business which includes real estate:

**Required to file Form 8300 with FinCEN and the IRS**

**on transactions involving receipt of over \$10,000 in currency and certain monetary instruments,**

**Filers may submit Form 8300 on voluntary basis for suspicious transactions < \$10,000.**

You may also be required to file a **Currency and Monetary Instrument Reports (CMIR)** with **U.S. Customs and Border Protection (CBP)** on cross-border movements of currency/monetary instruments over \$10,000

(31 U.S.C. 5331 and 26 U.S.C. 60501) (31 C.F.R. 1010.330)

(31 U.S.C. 5316 (31 C.F.R. 1010.340)

(31 U.S.C. 5314 (31 C.F.R. 1010.350)

## What They Want To Know...

<b>Part I Identity of Individual From Whom the Cash Was Received</b>			
2 If more than one individual is involved, check here and see instructions <input type="checkbox"/>	3 Last name	4 First name	5 M.I.
6 Taxpayer identification number	7 Address (number, street, and apt. or suite no.)		
8 Date of birth (see instructions)	9 City	10 State	11 ZIP code
12 Country (if not U.S.)	13 Occupation, profession, or business		
14 Identifying document (ID)	a Describe ID	b Issued by	
c Number			
<b>Part II Person on Whose Behalf This Transaction Was Conducted</b>			
15 If this transaction was conducted on behalf of more than one person, check here and see instructions <input type="checkbox"/>			
16 Individual's last name or organization's name	17 First name	18 M.I.	19 Taxpayer identification number
20 Doing business as (DBA) name (see instructions)		Employer identification number	
21 Address (number, street, and apt. or suite no.)			
22 Occupation, profession, or business	23 City	24 State	25 ZIP code
26 Country (if not U.S.)	27 Alien identification (ID)		
a Describe ID	b Issued by		c Number
<b>Part III Description of Transaction and Method of Payment</b>			
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32 Amount of cash received (in U.S. dollar equivalent) (must equal item 29) (see instructions):			
a U.S. currency \$ .00	(Amount in \$100 bills or higher \$ .00)		
b Foreign currency \$ .00	(Country ▶)		
c Cashier's check(s) \$ .00	Issuer's name(s) and serial number(s) of the monetary instrument(s) ▶		
d Money order(s) \$ .00			
e Bank draft(s) \$ .00			
f Traveler's check(s) \$ .00			
33 Type of transaction			
a <input type="checkbox"/> Personal property purchased	f <input type="checkbox"/> Debt obligations paid	34 Specific description of property or service shown in 33. Give serial or registration number, address, docket number, etc. ▶	
b <input type="checkbox"/> Real property purchased	g <input type="checkbox"/> Exchange of cash		
c <input type="checkbox"/> Personal services provided	h <input type="checkbox"/> Escrow or trust funds		
d <input type="checkbox"/> Business services provided	i <input type="checkbox"/> Bail received by court clerks		
e <input type="checkbox"/> Intangible property purchased	j <input type="checkbox"/> Other (specify in item 34) ▶		

## Customer Attempts at Evading Reporting Requirements



### Customers who are reluctant to provide information:

- ✓ requires for a reporting or recordkeeping,
- ✓ whether required by law or by company policy.

### Customers who are reluctant to proceed with a transaction:

- ✓ after being told that a report must be filed

### Customers who break down large transaction into smaller transactions

- ✓ after being informed that a report must be filed

### Customers who present different identification for each multiple transactions

- ✓ Repeat customers using different names for contracts

## Attempts to Evade BSA Reporting or Recordkeeping Requirements

Customers may keep their transactions just below reporting thresholds to avoid reporting requirements:

### A customer or group of customers who attempt to hide the size of a large cash transaction by:

- ✓ breaking it into multiple, smaller transactions by
  - ✓ conducting the smaller transactions
  - ✓ at different times on the same day
  - ✓ with different MSB cashiers on the same day or different
  - ✓ at different branches of the same MSB on the same or different days



### ✓ For example, the customer may: –

- ✓ Purchase money orders with cash just under \$3,000 over several days.
- ✓ Purchase traveler's checks with cash just under \$3,000 over several days.
- ✓ Initiate multiple money transfers to the same receiver, each transfer in an amount under \$3,000, over several days.

### A customer who:

- ✓ spells his/her name differently or
- ✓ uses a different name each time they initiate/receive a money transfer or purchases traveler's checks.

## WHAT ARE THE RED FLAGS AND WHAT TO DO?



## Responding to Red Flags & Suspicious Activity

### WHO IS YOUR COMPLIANCE OFFICER?

**When employees detect any red flag, or other activity that may be suspicious:**

- ✓ He or she must notify the appropriate supervisor per company policy.

**The AML Compliance Person and the firm, determine if investigation required**

- ✓ Make determination of how to further investigate including but not limited to:
  - ✓ gathering additional information internally or from third-party sources,
  - ✓ contacting the government,
  - ✓ freezing the account
  - ✓ and/or filing a SAR



## What Did You Know and When Did You Know It?



Four categories of transactions that require reporting:

**A loan or finance company is required to report a transaction**

**if it knows, suspects, or has reason to suspect that a transaction (or pattern of transactions):**

1. **Involves funds derived from illegal activity** or is intended or conducted to hide or disguise funds or assets derived from illegal activity;
2. **is designed, whether through structuring or other means, to evade the requirements of BSA;**
3. **has no business or apparent lawful purpose**, and knows of no reasonable explanation for transaction OR
4. involves the **use of the loan or finance company to facilitate criminal activity**

**Within 30 days after a loan or finance company becomes aware of a suspicious transaction, the business must report the transaction by completing a SAR and filing it with FinCEN.**

[Section 1029.320\(a\)\(2\)](#)

## SHELL COMPANIES AND THE CORPORATE TRANSPARENCY ACT

### What is Beneficial Ownership Interest? (BOI)





## What is a “Shell Company?”



### The US Securities Act defines a shell company as:

“a company, other than an asset-backed issuer, with no or nominal operations; and either:

- 1) no or nominal assets/assets consisting of cash and cash equivalents; or
- 2) assets consisting of any amount of cash and cash equivalents and nominal other assets.”

Shell companies are created for the purpose of diverting money or for money laundering.

Some notable characteristics of most shell companies are:

- conduct almost no economic activity.
- do not manufacture goods or renders any services.
- primarily used to make transactions, acting as a pass-through, facilitating cross border currency and asset transfer.
- banking transactions often do not have any economic rationale.
- make high-value transactions with no connection with operations of business.
- assets only on paper and not in real terms.
- do not have any or insignificant physical existence at their registered addresses.



## “Real” Intentions Behind Shell Companies



Major reasons to create shell companies which are often interlinked with one another:

**Evading taxes:** Shell companies created by corporations at offshore locations, (tax havens where they pay less in taxes), park assets to evade higher taxes within their home country.

**Laundering money:** Shell companies are used to hold ill-gotten gains to obscure origin of money.

**Ponzi Schemes:** Criminals create shell companies to divert money earned from Ponzi schemes. When the fraud is found, the real culprits can't be identified; law enforcement only have shell companies to go after.

**Hiding identities of owners:** real owners of offshore shell companies cannot be located. The registered addresses of directors is different from the address submitted to the registrar.

<https://www.tookitaki.ai/news-views/role-of-technology-in-the-worldwide-crack-down-on-shell-companies/>



## The Corporate Transparency Act (CTA)

*Why Beneficial Ownership Interests Matter*

**Beneficial ownership is determined under two prongs:**

- Control prong
- Ownership prong.

**Control prong:**

- Each legal entity must identify one beneficial owner
- The beneficial owner is A single individual with significant responsibility to control, manage or direct A legal entity customer. (Ie. An executive officer/senior manager (CEO, CFO, COO, president or any individual who regularly performs similar functions.)
- Titles don't really matter-actions do!**

**Ownership prong, a beneficial owner is each individual, if any, who:**

- Directly or indirectly through any contract, arrangement, understanding, relationship,
- Owens 25% or more of the equity interests of A legal entity customer
- Identification of A beneficial owner if no individual owns 25% or more of A legal entity customer.
- All legal entity customers will have a total of one & five beneficial owner(s) –
  - One individual under the control prong and
  - Zero to four individuals under the ownership prong.

## Less than 20 Employees? Time to File!

The screenshot shows the FinCEN website's BOI reporting page. At the top, the header reads "FINANCIAL CRIMES ENFORCEMENT NETWORK" with the agency's seal. Below the header is a navigation menu with links for "ABOUT", "RESOURCES", "NEWSROOM", "CAREERS", "ADVISORIES", and "GLOSSARY", along with a search bar. The main content area features the "BOI BENEFICIAL OWNERSHIP INFORMATION" title. A paragraph explains that many companies must report information to FinCEN by January 1, 2024. Two main sections are highlighted: "Prepare" with links for "How do I file?", "Do I qualify for an exemption?", and "How do I get a FinCEN ID?"; and "File" with links for "File a report using the BOI E-Filing System" and "Create a FinCEN ID (optional)". At the bottom, there are three call-to-action buttons: "FAQ Need More Information? View our FAQ page.", "Need More Information? Chat With Us Here.", and "Stay Informed. Subscribe to FinCEN Updates."

## WHAT DOES COMPLIANCE LOOK LIKE?





## Bank Secrecy Act (BSA) Requirements for Financial Institutions



"Financial institutions" must establish AML programs

Since 2012- Residential mortgage lenders and originators

Since 2014 Fannie Mae and Freddie Mac

AML programs should encompass\*:

- ✓ development of AML policies, procedures, and controls;
- ✓ designation of an AML compliance officer;
- ✓ provision of ongoing employee training; and
- ✓ establish an independent audit function to test AML programs



[\\*31 U.S.C. 5318\(h\)](#)

## "Financial Institutions" Defined in BSA/AML

- (A) an insured bank (as defined in section 3(h) of the FDIC
- (B) a commercial bank or trust company;
- (C) a private banker;
- (D) an agency or branch of a foreign bank in the U.S.
- (E) any credit union;
- (F) a thrift institution;
- (G) a broker or dealer registered with the SEC
- (H) a broker or dealer in securities or commodities;
- (I) an investment banker or investment company;
- (J) a currency exchange;
- (K) issuer, redeemer, or cashier of travelers' checks, money orders,
- (L) an operator of a credit card system;
- (M) an insurance company;
- (N) a dealer in precious metals, stones, or jewels;
- (O) a pawnbroker;
- (P) a loan or finance company;
- (Q) a travel agency
- (R) a licensed sender of money engaged in money transmissions
- (S) a telegraph company;
- (T) a business in vehicle sales, autos, airplane, and boats
- (U) persons involved in real estate closings and settlements;**
- (V) the United States Postal Service;
- (W) U.S. agencies carrying out a duty or power of a business described in this paragraph;
- (X) casinos, gambling casino, or gaming establishment
- (Y) any business or agency engaged in activity which the Secretary of the Treasury determines, by regulation, to be an activity which is similar to, related to, or a substitute for any activity in which any business described in this paragraph is authorized to engage; or
- (Z) any business deemed by the Secretary if cash transactions have a high degree of usefulness in criminal, tax, regulatory matters.**



<https://bsaaml.ffiec.gov/docs/manual/regulations/31USC5312.htm#31USC5312a2>

This Photo by Unknown



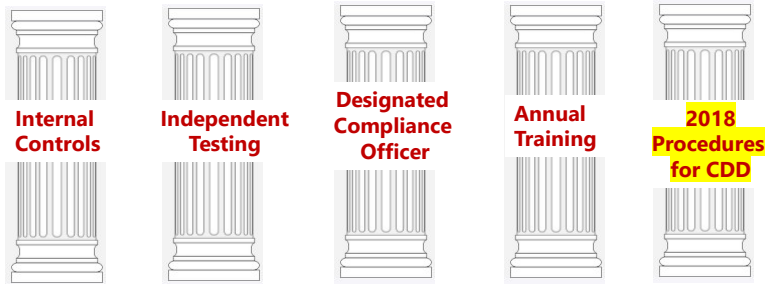
## General AML Requirements



- All financial institutions must comply and complete annual AML training
- ✓ Employees must report suspicious activity to designated Compliance Person
  - ✓ Designated Compliance Person - file SARS within 30 days of initial detection
  - ✓ SARS reports must be kept confidential – NO SHARING
  - ✓ SARS reports must be filed even if application not accepted
  - ✓ **Civil penalties depend on severity of violation – up to \$100,000/day**
  - ✓ **Employees and companies may be penalized for violations**



## Five Pillars of “Customer Due Diligence”



1. a system of internal controls;
2. independent testing of the systems;
3. designation of a compliance officer/individual responsible for day-to-day compliance;
4. annual, ongoing training for employees
5. **appropriate risk-based procedures for conducting ongoing CDD with four core elements:**
  - i. customer identification and verification;
  - ii. beneficial ownership identification and verification;
  - iii. understanding nature & purpose of customer relationships to develop a customer risk profile; and
  - iv. ongoing monitoring of reporting suspicious transactions & maintaining customer information

## WHAT REAL ESTATE PROFESSIONALS CAN DO?



## Real Estate Voluntary AML Guidelines and Reporting



- FinCEN worked with NAR to develop **voluntary** AML guidelines for real estate
- **Published in 2012 and then updated the guidelines in February 2021.**
- August 2017, FinCEN issued a public **Advisory to Financial Institutions and Real Estate Firms & Agents**
- outlined ML risks in real estate, encouraging real estate professionals (**brokers, title agents and insurers**)
- **to voluntarily file a SAR if a real estate transaction seems suspicious.**

<https://sgp.fas.org/crs/misc/IF11967.pdf>

## What Does NAR Say?

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Fraud, Negligence & Liability › Money Laundering and Terrorism Financing

### Anti-Money Laundering Voluntary Guidelines for Real Estate Professionals

February 16, 2021 Money Laundering and Terrorism Financing

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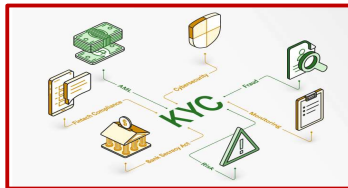
Download (PDF: 900KB)

This fact sheet and anti-money laundering voluntary guidelines is aimed at increasing real estate professionals' awareness, knowledge, and understanding of the potential money laundering risks surrounding real estate, and to enable real estate professionals to identify and to take practical measures to mitigate these risks. NAR encourages the distribution of this document by state and local REALTOR® associations, real estate commissions, and individual real estate professionals.

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## ...Know Your Customer (KYC)



### 1. Know Your Customer/Customer Due Diligence (CDD)

- i. Obtain driver's license, passport or other identification documents, to confirm identity
- ii. For legal entity (corporation or LLC) - take additional measures to identify who controls/owns the entity
- iii. take risk-based measures to verify the identity of the owner (**the beneficial ownership information**)
- iv. Obtain other information based on experience and knowledge to understand the customer's circumstances and business.
- v. **Notify senior management about the higher risk customer or a particular situation that raises red flags to monitor the relationship and transaction with the customer.**

<https://www.nar.realtor/money-laundering-and-terrorism-financing/anti-money-laundering-voluntary-guidelines-for-real-estate-professionals>

## ...Report Suspicious Activity

### 2. Reporting Suspicious Activity

When confronted with suspicious activity, agents always have the option of voluntarily reporting the information to local law enforcement or the FBI or by filing with FinCEN, a Suspicious Activity Report. (SAR)

Agents should consider filing a suspicious activity report (SAR), when:

- red flags are present OR
- there is reasonable suspicion a transaction may be using illegal financing activity.

**SARs** - designed for financial institutions, are a helpful tool for law enforcement in money laundering.

FinCen's 2017 Advisory, FinCen *protects the confidentiality of SAR filings*

FinCEN clarified "when reporting suspicious activity, persons involved in real estate closings and settlements should note that *they can benefit from protection from civil liability*;"\*

*This section applies to "financial institutions," which includes real estate professionals, even though no regulations are currently imposing BSA/AML monitoring requirements.*

**Real estate agents should thoroughly evaluate circumstances of the suspicious activity and consider consulting an attorney prior to filing a SAR.**

\* 31 U.S.C. § 5318(g)(3)(A).

<https://www.nar.realtor/money-laundering-and-terrorism-financing/anti-money-laundering-voluntary-guidelines-for-real-estate-professionals>

## ....File Form 8300

### 3. Form 8300 – an information report required to be filed by:

- ✓ any trade or business (includes real estate), receiving more than \$10,000 in cash in a single transaction or two or more related transactions.

**It is not a SAR and is not used to report suspicious activity.**

If a real estate agent or broker receives more than \$10,000 in cash from a buyer or seller, 8300 must be filed

Cash includes *cash equivalents* such as:

- ✓ cashier's checks, bank drafts, money orders.
- ✓ Cash equivalent instruments > \$10,000 will be reported by the issuing bank, and the agent does not need to also file a Form 8300.
- ✓ ***If, however, an agent receives a cashier's check or other cash equivalent of less than \$10,000, but which in combination with other cash or cash equivalents totals more than \$10,000, a Form 8300 must be filed.***

<https://www.nar.realtor/money-laundering-and-terrorism-financing/anti-money-laundering-voluntary-guidelines-for-real-estate-professionals>

## Red Flags for Real Estate.....

**Real estate brokers, escrow agents, title insurers, and other real estate professionals can identify potential suspicious transactions by reviewing available facts and circumstances.**

**Real estate professionals may be suspicious after evaluating whether the real estate transaction:**

- 1. Lacks economic sense or has no apparent lawful business purpose.**
  1. Suspicious real estate transactions may include purchases/sales that generate little to no revenue or are conducted with no regard to high fees or monetary penalties;
- 2. Used to purchase real estate with no regard for the condition, location, assessed value, sale price;**
- 3. Involves funding that far exceeds the purchaser's wealth, comes from an unknown origin, or is from or goes to unrelated individuals or companies; or**
- 4. Conducted in an irregular manner.** (attempts to purchase property under unrelated individual or company's name, or ask for records (e.g., assessed value) to be altered.

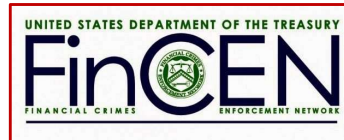
[https://www.fincen.gov/sites/default/files/advisory/2017-08-22/Risk%20in%20Real%20Estate%20Advisory\\_FINAL%20508%20Tuesday%20%28002%29.pdf](https://www.fincen.gov/sites/default/files/advisory/2017-08-22/Risk%20in%20Real%20Estate%20Advisory_FINAL%20508%20Tuesday%20%28002%29.pdf)

<https://www.nar.realtor/money-laundering-and-terrorism-financing/anti-money-laundering-voluntary-guidelines-for-real-estate-professionals> End

## What Must be Reported to FinCEN

### 1. FinCEN Requirements for Cash Transactions

- What must be reported:
  - Transactions involving large amounts of cash or monetary instruments (e.g., cashier's checks, money orders).
  - FinCEN (Financial Crimes Enforcement Network) requires title companies to report all-cash purchases of real estate in certain areas under the Geographic Targeting Orders (GTOs).
- Information reported:
  - Identity of the buyer.
  - Amount and source of funds.
  - Entities involved in the transaction.



## What Must be Reported to IRS

### 2. IRS Requirements for Real Estate Transactions

- **Form 1099-S:**
  - Used to report sales or exchanges of real estate.
  - **What must be reported:**
    - Sale price.
    - Date of closing.
    - Description of the property.
    - Information about the seller and buyer.
- **Form 8300:**
  - Required for businesses receiving more than **\$10,000 in cash** in a single transaction or a series of related transactions.



## Must Real Estate Agents and Brokers Report? Seven Reporting Entities Cascade

- 1. Title Insurance Company:** If a title insurance company is involved in the transaction, it is the primary reporting person.
- 2. Title Insurance Agent:** If no title insurance company is involved, but a title insurance agent is, then the agent becomes the reporting person.
- 3. Settlement or Closing Attorney:** In the absence of both a title insurance company and agent, the settlement or closing attorney handling the transaction assumes the reporting responsibility.
- 4. Settlement or Closing Agent:** If none of the above are involved, the settlement or closing agent overseeing the transaction is the reporting person.
- 5. Real Estate Broker or Agent:** If the transaction does not involve any of the previously mentioned parties, the real estate broker or agent representing the buyer is responsible for reporting.
- 6. Real Estate Brokerage Firm:** If no individual broker or agent is involved, the brokerage firm representing the buyer must file the report.
- 7. Other Person Responsible for Closing:** If none of the above parties are involved, any other person responsible for closing the transaction becomes the reporting person.



**When in doubt...seek legal counsel!**

**Q & A**

*Thank you!!!*

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