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REAL ESTATE REPORTING – RESIDENTIAL REAL ESTATE

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As many know by now, as part of the National Defense Authorization Act, the Corporate Transparency Act (CTA) was promulgated, creating a federal beneficial ownership registry applicable to corporations, limited liability companies and most partnerships which went into effect on January 1, 2024. The CTA requires these organizations to report their “beneficial owners” and “applicants” to the Financial Crimes Enforcement Network (FinCEN).

In furtherance of FinCEN’s goal to prevent the use of shell companies to evade anti-money laundering rules or to hide other illegal activities, on February 6, 2024, FinCEN proposed a rule whereby parties will have to file a modified Suspicious Activity Report (SAR) which will be referred to as a “Real Estate Report” in connection with residential closings which are not subject to financing (the “Proposed Rule”).¹ Succinctly, the Proposed Rule would require professionals involved in the transfer of residential real estate nationwide to report information to FinCEN about certain non-financed sales and transfers. The Proposed Rule would apply nationally and irrespective

of purchase price, allowing the Proposed Rule to apply to gifts and transfers involving no consideration.

REPORTABLE TRANSACTIONS

The Proposed Rule would require reporting on various types of residential real property transfers, including transfers of single-family houses, townhouses, condominiums, and cooperatives, as well as buildings designed for occupancy by one to four families, and vacant land zoned for one to four family occupancy. As mentioned above, the Proposed Rule targets these types of residential transactions that are not subject to financing. The Proposed rule would therefore apply generally to ‘all cash’ transactions, but would also target private lenders who are not otherwise subject to SAR and anti-money laundering reporting requirements.

As currently proposed, exempted transactions include those transfers that (i) involve an easement; (ii) occur as the result of the death of the property’s owner; (iii) are the result of a divorce; or (iv) are made to a bankruptcy estate.

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¹ https://www.fincen.gov/sites/default/files/shared/RRE_NPRM_FactSheet_FINAL_02.06.24_508.pdf

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This publication is a summary of legal principles. Nothing in this article constitutes legal advice, which can only be obtained as a result of a personal consultation with an attorney. The information published here is believed accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues.

WHO MUST REPORT

'Transferee entities' and 'transferee trusts' must report under this Proposed Rule. These terms are generally defined to include most domestic and foreign legal entities (e.g., corporations, limited liability companies, partnerships and trusts). Similar to the CTA, there are certain exemptions to these reporting parties that are, for the most part, already highly regulated. These exempt entities include, without limitation, governmental authorities, banks, securities reporting issuers, public utilities and other Exchange Act registered entities.

WHAT MUST BE REPORTED

As of now, the Proposed Rule requires the following disclosures which, in many ways, parallel the CTA disclosure requirements.

- Beneficial ownership information for the transferee entity or transferee trust;
- Information about individuals representing the transferee entity or transferee trust;
- Information about the business filing the report;
- Information about the real estate being transferred;
- Information about the transferor; and
- Information about the payments made.

WHEN TO FILE AND FILE RETENTION

The Real Estate Report would need to be filed within thirty (30) days following the date of the transfer of the real estate. The reporting person would be required to keep a copy of the Real Estate Report for a period of five (5) years, along with a form, signed by the transferee or a

transferee's representative, certifying that the transferee's beneficial ownership information is correct.

IMPACTS

While the Proposed Rule is still in the comment stage and is likely to change, at least some, by the time it is passed, the Proposed Rule will have a significant impact on the residential real estate industry and generational wealth planning. Clients who value privacy are again faced with mounting requirements for disclosure. Similarly, high-net-worth individuals and family offices who have historically transferred or acquired vacation homes, estates and other residential real estate holdings via various trust agreements and 'all cash' transactions will be forced to disclose additional information. In summary, many groups of previously unregulated transferees may be subject to extensive reporting and recordkeeping obligations.

Another concern is whether this Proposed Rule is a "canary in the coal mine" for commercial transactions. FinCEN recently filed a notice reflecting that it intends to publish a separate proposal that addresses commercial real estate transactions reporting and recordkeeping.

Written comments to the Proposed Rule must be submitted to FinCEN by April 16, 2024. We will continue to monitor the Proposed Rule, any changes thereto, and the expansion of this rule or any new rules that apply in the commercial context. For additional guidance on the Proposed Rule and other related matters, please reach out to our Family Office and Strategic Investment Practice Group.