



2025 ALLIANT NATIONAL

Florida Seminar



FRIDAY, SEPTEMBER 19

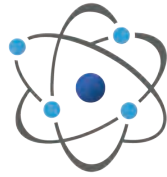
Ritz-Carlton Amelia Island



**ALLIANT
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TITLE INSURANCE COMPANY

7:30 am - 8:30 am	REGISTRATION
8:30 am - 8:35 am	WELCOME
8:35 am - 9:35 am	Federal Law Update: Washington Whirlwind, Keeping Agents Up-To-Date Valerie Jahn Grandin, Esq. <i>Vice President and Senior Underwriting Counsel - Florida</i>
9:35 am - 9:45 am	MEET THE SPONSORS
9:45 am - 10:45 am	FR-BAR Updated 2025: Recent Changes to FR-BAR Contracts and Addenda Lori Ellen Ward, Esq. <i>Underwriting Counsel - Florida</i>
10:45 am - 10:55 am	MEET THE SPONSORS
10:55 am - 11:55 am	Beyond The Grave: Probate's Impact on Florida Title Transfers Perry Craver, Esq. <i>Vice President and Florida Regional Counsel</i>
11:55 am - 12:55 pm	LUNCH
12:55 pm - 1:00 pm	WELCOME BACK
1:00 pm - 2:00 pm	Deeds of Deception: Impersonation Fraud in Real Estate Transactions Jodi Hansen, Esq. <i>Underwriting Counsel - Florida</i>
2:00 pm - 2:20 pm	Alliant National Escrow Reconciliation Procedures Jan Collis <i>Quality Assurance Auditor- Florida</i>
2:20 pm - 2:30 pm	SPONSOR GIVEAWAYS
2:30 pm - 3:30 pm	From Desk to Digital: Best Practices and Standards for Fraud Prevention in All Notary Environments Jeff Stein, Esq. <i>Chief Underwriting Counsel and Senior Vice President</i>
3:30 pm	CLOSING





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Federal Law Update: Washington Whirlwind, Keeping Agents Up-To-Date

1 hour CE (Ethics)

1 hour CLE (General, Real Estate)

Valerie Jahn Grandin, Esq.

Vice President and Senior Underwriting Counsel - Florida

CE Course Number: 134624

CE Course Offering ID: 1223960

CLE Course Number: 2507811N





Valerie Jahn Grandin

Vice President and Senior Underwriting Counsel - Florida
Alliant National Title Insurance Company

Valerie Jahn Grandin is Vice President and Senior Underwriting Counsel – Florida at Alliant National Title Insurance Company. Prior to joining Alliant National in 2024, Grandin served as Executive Vice President and Chief Underwriting Counsel at a national title insurance underwriter from 2014-2024. In that role, she served as part of the senior management team leading the company's national underwriting efforts. Grandin played a key role in the company's expansion efforts, greatly increasing its footprint. She brings extensive national underwriting experience to Alliant National, having had primary responsibility for underwriting and risk-based decisions; premium rate manual and forms development in 49 states; and reinsurance.

Grandin's prior experience with national underwriters includes serving as Senior Underwriting Counsel for Commercial Services, handling complex underwriting matters. Before her roles in underwriting, she practiced in the areas of commercial real estate, bankruptcy, and commercial litigation with nationally recognized law firms.

She currently serves on the Advisory Board for the University of Miami School of Law's Robert Traurig-Greenberg Traurig LL.M. graduate program in Real Property Development and lectures in that program on Title Insurance. A member of the Florida Bar and a Board-Certified Real Estate Lawyer, Grandin is active in many state land title associations, the Florida Bar, and has served on several committees of the Florida Bar and the American Land Title Association (ALTA) including Reinsurance, Government Affairs, and NAIC Liaison, and was recently tapped to serve on the Execute Committee of the ALTA Underwriter Section. She is a proud member of Women in Title (WIT) and has been an engaged participant in Commercial Real Estate Women (CREW) Network since 2007.



OVERVIEW

Name of Provider: Alliant National Title Insurance Company

Name of Course: Federal Law Update: Washington Whirlwind, Keeping Agents Up-To-Date

Targeted audience: Florida Title Insurance Agents and other Title Insurance Professionals

Course Objectives:

To educate and train title agents, attorney and their staff on the reporting requirements of the FinCEN Residential Real Estate Rule, effective December 2025; discuss pending federal legislation and administration policies in order to ensure compliant closings and title operations. The course aims to educate agents on new federal legislation and the shift in some consumer protections from the federal government to the states.

Course Relevance:

Title agents must not only comply with state licensing law and Florida settlement requirements but also comply with a myriad of federal regulations and statutes. This course will keep agents apprised of federal regulatory and statutory changes in the works during a time of significant policy shift in Washington, D.C.

Study Method: Classroom



OUTLINE

- | | |
|--|-------------------|
| I. FinCEN Residential Real Estate Rule, effective December 1, 2025 | 25 Minutes |
| II. Corporate Transparency Act | 3 Minutes |
| III. SECURE Notarization Act | 2 Minutes |
| IV. Changes to RESPA Enforcement | 5 Minutes |
| V. Federal Policy Changes Impact to State Laws | 5 minutes |
| <ul style="list-style-type: none">• Limits on real property purchases by foreign nationals• Taxation• Environmental Legislation, Affordable Housing, Return to Work Executive Orders and DEI Changes | |
| VI. Anticipated Federal Policy Changes Impacting State Law | 10 minutes |
| <ul style="list-style-type: none">• Immigration Policy Changes• Federal Agency Staff Reductions• Administration Policy Changes: CFPB, FHFA, IRS and SEC | |

Total Instruction Time - **50 minutes**

Total Break Time - **10 minutes**

Total Time - 60 minutes



Federal Law Update: Washington Whirlwind, Keeping Agents Up-To-Date

In this program we will discuss several changes initiated in Washington, D.C. including Administration policy changes, legislation and regulatory actions that will impact Florida title agents and how they operate their businesses compliantly. This is a topic with many moving parts and our in-person presentation will note any changes to this outline occasioned by court action or legislative changes.

Special thanks to the American Land Title Association (ALTA) for its lobbying efforts and close communication with the FinCEN team at the U.S. Treasury Department. The efforts of ALTA have resulted in a final rule which considers the reality of the title agent's role in a real estate transaction. A special thanks to ALTA is also due as well as credit of authorship, for much of the research and analysis we share with you today on the topic of FinCEN's new Residential Real Estate Rule. In addition, we wish to thank ALTA publications teams who research and articles in their industry publications, TitleNews® and Industry News® reports served as critical resources for this presentation.

1. FinCEN - This will be a broad overview to help agents unfamiliar learn the ins and outs of FinCEN Reporting while also bringing agents experienced with this reporting process online for the changes under the broad new Residential Real Estate Rule (RRER), effective December 1, 2025.

A. Foundation for FinCEN

- I. Bank Secrecy Act – The Currency and Foreign Transactions Reporting Act, 1970
 - i. The Currency and Foreign Transactions Reporting Act
 - First hearing - December 1968
 - Signed into law on October 26, 1970 by President Richard Nixon
 - ii. Response to failed investigations due to secret and numbered bank accounts.
 - “Secret-numbered foreign bank accounts have become an ever increasing widespread and versatile tool for the evasion of our laws and regulations and for the commission of crimes by American citizens and for hiding the fruits of crimes already committed.”
 - › Robert Morgenthau, U.S. Attorney, Southern District of New York, during the BSA hearings
 - iii. Required financial institutions to maintain records “where such records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.”
 - iv. Required the reporting of transactions of more than \$5,000 in monetary instruments transferred either into the United States or out of the United States had to be reported.
 - v. Required reporting on domestic transactions, which became the statutory basis for filing currency transaction reports (CTRs).
 - vi. Set at \$10,000 in 1972 and never changed.



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- II. Money Laundering Control Act of 1986
- III. Real estate closing professionals first added to BSA definition of “financial institution” in 1988 as part of Anti-Drug Abuse Act
- IV. Suspicious Activity Reports required in 1992 as part of Annunzio–Wylie Anti–Money Laundering Act
- V. FinCEN created in 1994 (Money Laundering Suppression Act)
- VI. 2002 PATRIOT Act requires all financial institutions to have anti-money laundering (AML) programs
- VII. *Ethics concerns* - ABA passed Revised Resolution 100, an update to the ABA Model Rule of Professional Conduct 1.16
 - i. Lawyer has “an obligation . . . to inquire into and assess the facts and circumstances of the representation before accepting it.”
 - ii. Inquiry is “informed by the risk that the client or prospective client seeks to use or persists in using the lawyer’s services to commit or further a crime or fraud . . . [which] means that the required level of a lawyer’s inquiry and assessment will vary for each client or prospective client, depending on the nature of the risk posed by each situation.”
 - iii. In general, identity of a client is not protected by the attorney–client privilege nor is the fact that a client sought legal advice.
 - *United States v. Goldberger & Dubin, P.C., 935 F.2d 501 (2d Cir. 1991)*

B. International collaboration to stop money laundering

- I. The Financial Action Task Force (FATF) is the global money laundering and terrorist financing watchdog.
 - i. Sets international standards to go after illicit funds linked to drugs trafficking, the illicit arms trade, cyber fraud and other serious crimes.
- II. International Criminal Police Organization (INTERPOL) facilitates police cooperation and criminal investigations
 - I. Focused on cross border investigations related to cyber-crime and money laundering



C. Money Laundering and Real Estate

- I. Many examples of criminal operations thwarted by federal agencies include ownership of residential real estate bought for cash by entities with multiple layers of ownership making the identification of the true beneficial owners virtually impossible to verify.
- II. Restitution and proceeds of criminal activity seized by federal marshals is proof positive of the success of the early FinCEN GTOs. According to the Government Accounting Office:
 - 86% of closed cases use BSA data as reported by the Organized Crime Drug Enforcement Task Force (OCDETF)
 - 27% of investigations involved money laundering through real estate purchases
 - 7% of GTO filings involved subjects in an ongoing FBI investigation where a Suspicious Activity Report (SAR) was already on file with FinCEN or other federal law enforcement agency

D. The Who, What, When and How of the new RRER

I. **When** is this a Reportable Transaction, 31 CFR §1031.320(b)?

- ii. A reportable transfer is a “non-financed” transfer to a transferee entity or transferee trust of an ownership interest in residential real property. Title agents need to ask themselves the following questions at time of order entry and again prior to closing to determine if the transaction is a Reportable Transaction under the RRER:
 - a. Is this “residential real property” as defined in the RRER? Residential real estate in all 50 states, D.C., Puerto Rico, overseas territories and Indian lands
 - 1-4 family residential structures,
 - Vacant land on which the transferee intends to build a 1-4 family residential structure,
 - Unit designed for 1-4 families, and
 - Shares in a cooperative housing corporation.
 - b. Single-family houses, townhouses, condominiums, cooperatives, and apartment buildings designed for 1-4 family use.
 - c. Caveat – Transaction is reportable if the property is mixed-use, including a single-family residence above a commercial enterprise Agent needs to ask if there are 1-4 family residential units included.



d. How to Identify “residential real property”

- Does Purchase and Sale Agreement identify the property as “residential?”
- Look to property appraiser to determine if it identifies “Building Type” and if property has Homestead exemption
- Building designed for 1-4 family use, or less- Single family home, condominium unit, cooperative unit, duplex, triplex or quad-plex
- Mixed-Use Property – Single family residences included, 1-4 units
- Vacant lot intended to be developed as any of the above.

e. Is the Transferee a “Transferee Entity” or “Transferee Trust”?

- Transferee entity - generally any person other than a transferee trust or individual, including Corporations, LLCs, Partnerships
- Transferee trust - is any arrangement where a person places assets under the control of a trustee for the benefit of one or more persons

f. Exemptions for Transferee Entities

- Certain properties and transactions that would otherwise need to report may be exempt under the RRER as defined in 31 CFR 1010.380(c)(2) and 15 U.S.C. 80a-3(a)
- Exempt entities include those with federal or state regulatory obligations:
 - Securities reporting issuer
 - Governmental authority
 - Bank
 - Credit union
 - Depository institution holding company
 - Money service business
 - Broker or dealer in securities
 - Securities exchange or clearing agency
 - Exchange Act registered entity
 - Insurance company
 - State-licensed insurance producer
 - Commodity Exchange
 - Public utility defined
 - Financial market utility
 - Investment company



g. Exemptions available for Transferee Trusts

- A trust that is a securities reporting issuer defined in 31 CFR 1010.380(c)(2)(i)
- A trust in which the trustee is a securities reporting issuer defined in 31 CFR 1010.380(c)(2)(i)
- A statutory trust - defined as any trust created or authorized under the Uniform Statutory Trust Entity Act or as enacted by a state
- Estate planning trust where
 - › Transfer is for no consideration and
 - › Transferor/seller (and/or their spouse) is the also the settlor or grantor of the trust

h. Is the Transfer “non-financed”?

1. “Non-financed transfer” means a transfer that does not involve an extension of credit to all transferees that is:
 - i. Secured by the transferred residential real property; and
 - ii. Extended by a financial institution that has both an obligation to maintain an anti-money laundering program and an obligation to report suspicious transactions under this chapter. 31 CFR §1031.320(n)(5)
2. “Non-financed” – What is “financed”?
 1. An extension of credit to the transferee that:
 - » is secured by the transferred residential real property; and
 - » is extended by a financial institution that has both an obligation to maintain an anti-money laundering program and an obligation to report suspicious transactions 31 CFR §1031.320(n)(5)
 2. Lender has minimum requirements:
 1. Extend credit to the Transferee;
 2. Record a mortgage/lien against the property being transferred;
 3. Have an anti-money laundering program; and
 4. Have an obligation to report suspicious transactions.



3. Is the Transfer “Non-Financed”?
 1. If the transaction is non-financed, then it must be reported under the RRER. This reporting obligation is triggered regardless of the dollar amount of the transaction; even zero-dollar transaction needs to be reported.
 2. Non-institutional lender transactions need to be reported. Hard money lenders, private financing, Seller financing and even familial loans and gifts of down payments shall be reported under the RRER.
- i. Is this Transaction Otherwise EXEMPT?
 1. The RRER does allow for exemptions for certain transactions which are accomplished by operation of law, under the scrutiny of a court or as part of an IRS authorized 1031 exchange, though the ultimate conveyance is reportable. The intermediary is exempt from reporting.
 2. RRER exemptions under 31 CFR §1031.320(b)(2) include:
 - Grant, transfer, or revocation of an easement
 - Transfer resulting from the death of an owner of residential real property
 - Transfer incident to divorce or dissolution of a marriage
 - A transfer to a bankruptcy estate
 - A transfer supervised by a court in the United States
 - Transfer to a qualified intermediary for purposes of 26 CFR 1.1031(k)-1
 - Transfer for which there is no reporting person
- II. If this is a Reportable Transaction, who **must** report?
 - i. Under the RRE there is a hierarchy of reporting obligations. The RRER class this hierarchy a “cascading reporting order” with seven potential reporters:
 - First: The person who is listed as the settlement agent on a settlement statement
 - Second: The person who prepares the settlement statement
 - Third: The person who files the deed for recordation
 - Fourth: The person who issues the owner’s title insurance policy; typically, the title insurance underwriter and/or title agent in case of a title only file.



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- Fifth: The person who disburses the greatest amount of funds. This is relevant in states where split closing as the industry standard.
 - Sixth: The person who did a title examination
 - Seventh: The person who prepares the deed
- ii. Written Designation of Reporting Person is permissible under the RRER and is a written designation agreement between the real estate professionals described in the cascading reporting order which designates a reporting person lower on the cascade to report in the subject transaction. Designations are only valid on a per transaction basis so there can be no wholesale abrogation of reporting obligations between reporting professionals.
- a. If more than one reporting person is part of the transaction, then the cascading people can enter into a written "Designation Agreement" which shall include the following:
1. Date of the agreement;
 2. Name and address of the transferor;
 3. Name and address of the transferee entity/transferee trust;
 4. Information identifying transferred residential real property;
 5. Name and address of the person designated through the agreement as the reporting person; and
 6. Name and address of all other parties to the agreement.
- b. A separate written Designation Agreement is required for each reportable transfer and the parties shall retain such agreement for 5 years. 31 CFR §1031.320(c)

III. What information needs to be gathered?

- i. Reporting Person
- a. Name
 - b. Category of reporting person
 - c. Address. 31 CFR §1031.320(d)
- ii. Transferee Entity
- a. Full legal name;
 - b. Trade name or "doing business as" name, if any;



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- c. Complete current address consisting of:
 - The street address that is the transferee entity's principal place of business; and
 - If not in the US, the street address of the primary location in the United States where the transferee entity conducts business, if any
 - d. Unique identifying number
 - The Internal Revenue Service Taxpayer Identification Number (IRS TIN)
 - If no IRS TIN, a tax identification number issued by a foreign jurisdiction and the name of such jurisdiction; or
 - If no IRS TIN or foreign TIN, an entity registration number issued by a foreign jurisdiction and the name of such jurisdiction. 31 CFR §1031.320(e)
- iii. Transferee Trust
- a. Full legal name;
 - b. Date the trust instrument was created;
 - c. Unique identifying number
 - IRS TIN, or
 - If no IRS TIN, a tax identification number issued by a foreign jurisdiction and the name of such jurisdiction
 - d. Whether the Trust is revocable. 31 CFR §1031.320(e)
- iv. Transferee's "beneficial owners" and signing individuals
- a. Full legal name;
 - b. Date of birth;
 - c. Current residential street address (No P.O. Boxes);
 - d. Citizenship; and
 - e. Unique identifying number consisting of:
 - IRS TIN; or
 - Where no IRS TIN, a tax identification number issued by a foreign jurisdiction and the name of such jurisdiction; or



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- If no IRS TIN or foreign TIN, the unique identifying number and the issuing jurisdiction from a non-expired passport issued by a foreign government
- f. For signing individual – description of the capacity of the signing 31 CFR §1031.320(e)
- g. Who are the “Beneficial Owners”?
1. Transferee Entity. “Beneficial Owners” are each individual who exercises substantial control over the transferee entity including executive officer or senior manager as defined in 31 CFR 1010.380(d)(1).
 - Chief Executive Officer,
 - Chief Financial Officer,
 - Chief Operating Officer,
 - Managing Member,
 - General Partner,
 - President,
 - Vice President
 - Treasurer
 - Each individual who, on the date of closing, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25 percent or more of the equity interests of the transferee entity.
 - Each individual who expects to sign documents on behalf of the transferee entity.
 2. Transferee Trust
 - An individual who is a trustee of the transferee trust
 - An individual other than a trustee with the authority to dispose of transferee trust assets
 - A beneficiary who is the sole permissible recipient of income and principal from the transferee trust or who has the right to demand a distribution of, or withdraw, substantially all of the assets from the transferee trust
 - A grantor or settlor who has the right to revoke the transferee trust or otherwise withdraw the assets of the transferee trust
 - A beneficial owner of a legal entity or trust that is a trustee or the transferee trust



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- A beneficial owner of a legal entity or trust with authority to dispose of transferee trust assets in a manner other than as a trustee of a transferee trust
 - A beneficial owner of a legal entity or trust that is the sole permissible recipient of income and principal from the transferee trust or who has the right to demand a distribution of, or withdraw, substantially all of the assets from the transferee trust
 - A beneficial owner of legal entity or trust that is a grantor or settlor with the right to revoke the transferee trust or otherwise withdraw the assets of the transferee trust
 - An individual who expects to sign documents on behalf of the transferee trust
- Challenges:** Minors as beneficiaries can present a challenge in respect to securing a TIN or verifiable state or federal identification documents.
- v. Transferor. Under the new RRER, not only the Buyer has reporting obligations. Under the RRER, the Seller/Transferor also have reporting obligations in a Reportable Transaction:
- a. Full legal name;
 - b. Date of birth;
 - c. Current residential street address;
 - d. Citizenship; and
 - e. Unique identifying number consisting of:
 1. IRS TIN; or
 2. Where no IRS TIN, a tax identification number issued by a foreign jurisdiction and the name of such jurisdiction; or
 3. If no IRS TIN or foreign TIN, the unique identifying number and the issuing jurisdiction from a non-expired passport issued by a foreign government
 4. Slight variation if Transferor is an entity 31 CFR §1031.320(f)
- vi. Details on the Property to be transferred must also be reported under the RRER. Required reporting elements are not different than under the GTOs.
- a. Street address, if any;
 - b. Legal description, such as the section, lot, and block; and
 - c. Date of closing. 31 CFR §1031.320(g)



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- vii. Reporting on payments made by or on behalf of Transferee in order to fund the closing are new to this RRER. This is where title and settlement agents will face challenges as this information is not typically available to the Agent. Moreover, with the heightened security efforts to avoid cybercrime, customers may be reluctant to disclose this required information. Agents should consider secure portals for delivery of this data as well as secure storage options as all the reporting data needs to be retained by the reporting party for 5 years from the closing date. Required information for reporting on Transferee payments include:
- a. The amount of the payment;
 - b. The method by which the payment was made;
 - c. If the payment was paid from an account held at a financial institution, the name of the financial institution and the account number;
 - d. The name of the payor on any wire, check, or other type of payment if the payor is not the transferee entity or transferee trust;
 - e. Total consideration paid or to be paid by the transferee; and
 - f. Total consideration paid by or to be paid by all transferees regarding the reportable transfer. 31 CFR §1031.320(h)
- viii. Hard money, private and other similar loans DO NOT make a transaction NON-reportable. These types of transactions are treated as a cash transaction and thus reporting under the RRER is mandated. Agents can identify such lenders by confirming whether the lender has BSA reporting obligations and an anti-money laundering reporting program. In other words, if it is not an "institutional lender" then it is a cash transaction and reportable under the RRER. Agents have tools available to assist them in making this determination:
- a. No AML Program based on reporting by the lender
 - b. Check the Nationwide Mortgage Licensing System & Registry (NMLS) website, <https://www.nmlsconsumeraccess.org/>
 - c. Agents are protected by a safe harbor if lender confirms to agent, in writing, that they have an AML Program; Agent not required to research and verify. However, if you know it is not true, agent should report transaction to avoid liability for non-compliance.



IV. 'What are the contents of the report and when is the report due?

- i. 111 distinct fields at present. Final form under public comment period and should be released by Fall 2025. Expect software providers to work on an API to allow for integration between agent closing software and FinCEN for reporting obligations. FinCEN has agreed to work with these software vendors and even allow for an integrated system through which agents can do a month end batch filing. One caveat, it is unlikely this system will be in place by December 1, 2025, so agents need to train staff to report through the BSA reporting portal.
- ii. FinCEN expects 60% of fields need to be completed for each transaction being reported.
- iii. Reports are due the later of:
 - a. Final day of the following month after which a closing took place, or
 - b. 30 days after the date of closing
- iv. FinCEN believes that a later reporting date would adversely impact the validity and utility of the reports for the law enforcement agencies engaged in this research. 31 CFR 1031.320(k)(3)

V. What are the penalties for not following the rules? FinCEN has established both Civil and Criminal penalties for non-compliance with the RRER.

- i. Civil Penalties
 - a. Negligent violations can be fined a penalty of not more than \$1,394 for each violation, and an additional civil money penalty of up to \$108,489 for a pattern of negligent activity.
 - b. Willful violations may result in a civil fine of not more than the greater of the amount involved in the transaction (not to exceed \$278,937) or \$69,733.30.
 - c. This is why developing an office process for RRER reporting is critical as lack of training can very quickly establish a bad practice and a significant money penalty.
- ii. Criminal Penalties are also available in the event of willful non-compliance. Terms of imprisonment of not more than five years or a criminal fine of not more than \$250,000 or both can be part of sentencing phase in a criminal action.



VI. Key Agent Takeaways

- i. Alert customers to FinCEN requirements at Order Entry, not at the last minute at your closing table.
- ii. The costs of this reporting can be substantial for the Agent and so FinCEN has not prohibited Agents from charging for such reporting services. Please note that in Florida any additional charge for FinCEN reporting should be added to the Buyer's settlement fee unless parties agree that Seller shall bear the expense. No separate line-item charge should be added to your Settlement Statement for FinCEN reporting.
- iii. Real estate professionals include FinCEN reporting obligations in the Agreement for Purchase and Sale. Below is a potential sales agreement clause you may want to recommend to your real estate agent referral partners:
 - Financial Crimes Enforcement Network (FinCEN) Real Estate Reporting (FinCEN Report). Section 1010.821 of Chapter 31 of the Code of Federal Regulations (Code) requires that certain residential real estate transactions purchased with all cash or without institutional lender financing, where at least one buyer/transferee is a legal entity, limited liability company, corporation, partnership, trust, trustee or other non-natural person, must be reported to the United States Treasury Department's Financial Crimes Enforcement Network (FinCEN).
 - IF THIS TRANSACTION IS SUBJECT TO FinCEN REPORTING, then Seller and Buyer shall, no later than closing, provide to the company conducting the closing the information and documentation necessary to enable the closing company to complete the FinCEN Report. Such information and documentation includes full legal name, date of birth, residential street address, and the IRS taxpayer identification number of the beneficial owners of the Buyer, as further defined and described in the Code. **Buyer shall also pay all costs and fees to prepare and file the FinCEN Report.**
- iv. Zero-dollar transactions are reportable so Agents and attorneys should take care in the handling of any courtesy recordings, courtesy deed preparation or other services which may trigger an obligation to report the action under the RRER.
- v. Do not forget that Seller financing and familial loan transactions are reportable, including gifts of down payments.



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VII. Current challenges to the RRER. At time of drafting there is litigation pending in multiple jurisdictions seeking to delay the RRER implementation or to declare it to be illegal agency action and therefore invalid. Stay tuned and we will advise should any of these challenges prove to be successful and alter in any manner the information shared with you at this seminar.

i. Litigation

- a. In April 2025, Flowers Title Companies LLC filed the first, of what may be many lawsuits, challenging the RRER. See *Flowers Title Companies LLC v. Department of Treasury*. U.S. District Court Eastern District of Texas Case No. 25-cv-00127.
 - b. In May 2024, Fidelity National Financial Inc. filed a lawsuit against the U.S. Dept of Treasury, Scott Bessent (Secretary of U.S. Dept of Treasury) and Andrew Gacki (Director of FinCEN). See U.S. District Court Middle District of Florida Case No. 25-cv-00554.
- ii. Lobbying in Congress by ALTA continues as they work actively with the U.S. Dept of Treasury to seek clarification and possibly scaling down of the reporting requirements. ALTA has also communicated with the Office of Management and Budget urging them to rescind the RRER.

VIII. Ethics of Compliance with FinCEN

- i. What happens if parties will not comply? Unlike under the GTOs, FinCEN is not recommending partial reporting and mandates complete reporting on each reportable transaction. The decision of whether to proceed with a closing rests with the title agency and their company management and is based on their business risk assessment and a determination as to whether they believe that complete reporting will be accomplished post-closing. Alliant National will not direct our agents to close or not to close. This is not an underwriting issue, and the insurability of your transaction is not affected by the collection of the reportable data or the file's reporting status.
- ii. Suspicious Activity Reports should be filed if a transaction is cancelled and moved to another agency for no ascertainable reason other than the parties' desire to avoid the reporting requirements of the RRER.



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2. Corporate Transparency Act

- a. The Corporate Transparency Act (CTA) is a U.S. law enacted in 2021 to combat illicit financial activities by requiring certain companies to report their beneficial ownership information to the Financial Crimes Enforcement Network (FinCEN). The Corporate Transparency Act is a significant piece of legislation aimed at increasing transparency in business ownership and combating illicit financial activities.
- b. This information could help law enforcement and other agencies identify and address money laundering, terrorism financing, and other illegal activities facilitated by anonymous shell companies – just like FinCEN RRER.
- c. Enacted and then delayed. March 2, 2025 Treasury Department announced that it will not enforce any CTA based penalties or fines associated with the beneficial ownership information reporting rule against U.S. citizens or domestic reporting companies or their beneficial owners. Please note that compliance and reporting remain in place for foreign entities.
- d. Treasury Department engaging in proposed rulemaking that will narrow the scope of the CTA to foreign, non-U.S. reporting companies only.
- e. Could the CTA have prevented the need for the new RRER? Under the Act, entities register once and secure a CTA entity number which could then have been used in real property transactions in lieu of the required reporting under the RRER we have already discussed.

3. SECURE Notarization Act - Will Congress step up to solve the RON problem on a national level?

- a. As of February 2025, 45 states and the District of Columbia have permanent RON laws; effort is to have uniform rules across all states.
 - I. S. 1561 (119th Congress):
 - i. Introduced in the Senate on May 1, 2025. Prior bills passed by the House in 2023, H.B. 3962.
 - ii. Referred to the Senate Committee on the Judiciary, S.B. 1625
 - iii. The bill proposes to authorize notaries to perform electronic and remote notarizations affecting interstate commerce.
 - iv. It would require federal courts and states to recognize notarizations from other states, especially those related to public acts, records, or judicial proceedings.
 - v. According to the Bill's sponsors, U.S. Sens. Mark R. Warner (D-VA) and Kevin Cramer (R-ND) remote notarizations have proven to be a safe and convenient way for individuals to complete



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essential services such as executing wills, completing financial documents, and buying or selling a home online. This legislation would continue to modernize this system by permitting nationwide use of Remote Online Notarization to complete important documents.”

- vi. The SECURE Notarization Act would make the mortgage closing process more convenient for consumers by creating federal minimum standards to allow notaries in all states to perform remote online notarization (RON) transactions.

II. Interstate Recognition:

- i. The bill seeks to ensure that notarizations performed in one state are recognized in other states, particularly those involving interstate commerce.

III. Minimum Standards:

- i. It grants authority to establish minimum standards for electronic and remote notarizations, including technical requirements like video and audio recordings.
- ii. The SECURE Notarization Act requires tamper-evident technology and fraud prevention measures through the use of multifactor authentication.

IV. Status of Bill

- i. The bill is endorsed by American Land Title Association (ALTA), Mortgage Bankers Association (MBA), National Association of REALTORS (NAR), and American Council of Life Insurers (ACLI).

4. What about RESPA?

- a. The CFPB has been significantly reduced in its ability to enforce RESPA and TILA lending violations. What does that mean for RESPA enforcement actions?
 - i. Enforcement actions greatly curtailed
 - ii. CFPB ceasing PACE Lien complaints
 - iii. Early end to CFPB redlining in lending consent order due to lack of enforcement personnel
 - iv. CFPB Lawsuit to exclude medical debts from loan underwriting dismissed
 - v. CFPB has rescinded mortgage origination guidelines targeted at avoiding discrimination in lending
 - vi. Cyber-security concerns – CFPB has withdrawn its notice of proposed rulemaking designed to prevent harmful information-sharing practices by data brokers



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- vii. CFPB Lawsuit against PayPal for credit disclosures dismissed
 - viii. CFPB lawsuit against bank for deceptive marketing of credit care services dismissed
 - ix. CFPB Blocks State Enforcement of Federal Consumer Laws
 - b. Problem with this change –
 - i. State enforcement will take over and will likely result in inconsistent enforcement
 - ii. Consumers will need to file personal actions – very costly
 - iii. Class actions will likely result in crippling judgments thereby reducing competitiveness in providers
 - c. The Consumer Financial Protection Bureau has withdrawn guidance from the Biden administration that had expanded states' rights, allowing individual states to broadly enforce violations of federal consumer protection laws.
5. Additional federal policy efforts to impact state laws
- a. Limitation on foreign national purchasing real estate
 - I. Multiple states have enacted laws prohibiting foreign nationals from purchasing real estate in "sensitive locations."
 - II. Florida's Version, F.S. § 692.203 (2024) - Florida law, specifically Senate Bill 264, restricts certain foreign individuals and entities from owning or acquiring real property in Florida. These restrictions primarily target those from "foreign countries of concern" and those with controlling interests in such entities.
 - III. The law also places limitations on landownership near military installations and critical infrastructure.
 - i. 10 miles of any military installation or critical infrastructure
 - ii. Registration of ownership required.
 - iii. Exemption: One 2 acre or less residential real property
 - iv. Penalties for Seller with knowledge buyer is a foreign national from impacted countries, to foreign national, as well as to Buyer.
 - v. Property purchased in violation may be forfeited to the state.
 - vi. Title agents: At the time of purchase, a buyer of the real property that is on or within 10 miles of any military installation or critical infrastructure facility in this state must provide an affidavit signed under penalty of perjury attesting that the buyer is:



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- a. Not a foreign principal or not a foreign principal prohibited from purchasing the subject real property; and
- b. In compliance with the requirements of this section.
 1. The failure to obtain or maintain the affidavit does not:
 1. Affect the title or insurability of the title for the real property; or
 2. Subject the closing agent to civil or criminal liability, unless the closing agent has actual knowledge that the transaction will result in a violation of this section.

b. Tax Matters

- I. Foreign National Tax Liability Federal Legislation - HR 3588, also cited as the Real Estate Reciprocity Act, was filed on May 23, 2025.
 - i. If passed, Bill would require all real estate purchases by non-citizens to be reported to the IRS, as well as impose a tax on such purchases.
 - II. Look for further expansion of these statutory prohibitions
 - III. Other taxation changes being considered include like-kind exchanges, capital gains taxes, and ordinary income rates. Some addressed in the "Big Beautiful Bill", some will be handled separately.
- c. Environmental Legislation - New environmental regulations, such as those concerning PFAS, could impact property assessments and lead to increased liability for property owners.
- d. Affordable Housing: These have been under consideration but the change in Administration may slow these changes. We were expecting legislation focused on turning distressed commercial properties into affordable housing, as well as initiatives promoting first-generation homeownership and rural housing, could reshape the housing landscape.
- I. Reduction in tax incentives for first-time home buyers
 - II. Tariffs on building supplies may increase home costs.



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- E. Return to Work Executive Order – The return to work in person has unleashed extensive changes in staffing but there are also new Federal laws that were signed into law with prior administration looking carefully at utilization of federal real estate. The Executive Order signed January 20, 2025 provides:
- Heads of all departments and agencies in the executive branch of Government shall, as soon as practicable, take all necessary steps to terminate remote work arrangements and require employees to return to work in-person at their respective duty stations on a full-time basis, provided that the department and agency heads shall make exemptions they deem necessary.*
- This memorandum shall be implemented consistent with applicable law.*
- I. H.R.388 - 118th Congress (2023-2024): This bill revokes the authority of the Securities and Exchange Commission (SEC) to lease general purpose office space.
- II. Will this free up more space and commercial real property? Could this further negatively impact commercial rental properties? Stay tuned.
- f. DEI- The pullback from DEI initiatives will impact a number of agencies, their staffing levels and their department practices. As yet, we are not aware of the full extent of these changes as there is substantial litigation about the constitutionality of these actions.
6. What other national policy issues will impact state real estate laws?
- a. Immigration policy – What happens when titleholder is foreign national and is deported?
- I. Travel bans, expansion to disfavored states – Impact on property held by those foreign nationals or even government entities.
- II. How will various Federal agencies and enforcement agencies use forfeiture ability to take these properties? Agents should contact Underwriting for assistance on these files as the federal forfeiture process is difficult with both in personum (Personal service required) and in rem forfeiture procedures (Personal service not necessary; limited notice requirements).
- b. Federal Agency Staff reductions –
- I. Impact to responsiveness of Federal agencies- IRS lien releases, FIRPTA, Estate Tax clearance letters
- II. Example, delay in releasing FinCEN reporting form for RRER effective December 1, 2025



c. Current Administration Policy Changes –

I. CFPB

II. FHFA and FHA

III. IRS enforcement

IV. Securities and Exchange Commission enforcement actions

7. Conclusion

Keep a close eye on developments. Legal challenges are likely for many of the executive orders; agency changes and DOGE workforce and project reductions and different jurisdictions may come to different conclusions.

Source Materials

1. DEPARTMENT OF THE TREASURY, Financial Crimes Enforcement Network, 31 CFR Chapter X RIN 1506–AB54, Anti-Money Laundering Regulations for Residential Real Estate Transfers
2. FinCEN Residential Real Estate, Frequently Asked Questions
3. H. R. 6395—1217, TITLE LXIV—ESTABLISHING BENEFICIAL OWNERSHIP INFORMATION REPORTING REQUIREMENTS (Corporate Transparency Act)
4. Securing and Enabling Commerce Using Remote and Electronic Notarization Act of 2023, H.B. 1777 (SECURE Notarization Act)
5. Florida Statutes Section 692.203 - Purchase of real property on or around military installations or critical infrastructure facilities by foreign principals prohibited.
6. Department of Business and Professional Regulation, Florida Real Estate Commission, Rule 61J2-10.200 Buyer's Affidavits; Form
7. HR 3588, Real Estate Reciprocity Act of 2025





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)

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).

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

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 5316-5336, including notes thereto. Its implementing regulations are found at 31 CFR Chapter X.

⁴ 31 U.S.C. 5311(1).

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).

requirements are “persons involved in real estate closings and settlements.”⁸

In particular, section 5318(g) of the BSA authorizes the Secretary to require financial institutions to report, via SARs, any “suspicious transactions relevant to a possible violation of law or regulation.”⁹ However, the BSA affords the Secretary flexibility in implementing that requirement, and indeed directs the Secretary to consider “the means by or form in which the Secretary shall receive such reporting,” including the relevant “burdens imposed by such means or form of reporting,” “the efficiency of the means or form,” and the “benefits derived by the means or form of reporting.”¹⁰ A provision added to the BSA by section 6202 of the Anti-Money Laundering Act of 2020 (AML Act) further directs FinCEN to “establish streamlined . . . processes to, as appropriate, permit the filing of noncomplex categories of reports of suspicious activity.” In assessing whether streamlined filing is appropriate, FinCEN must determine, among other things, that such reports would “reduce burdens imposed on persons required to report[.]” while at the same time “not diminishing[.] the usefulness of the reporting to Federal law enforcement agencies, national security officials, and the intelligence community in combating financial crime, including the financing of terrorism[.]”¹¹

2. Reporting High-Risk Transfers of Residential Real Estate

Most transfers of residential real estate are associated with a mortgage loan or other financing provided by financial institutions subject to AML/CFT program requirements. As non-financed transfers do not involve such financial institutions, such transfers can be and have been exploited by illicit actors of all varieties, including those that pose domestic threats, such as persons engaged in fraud or organized crime, and foreign threats, such as international drug cartels, human traffickers, and corrupt political or

business figures. Non-financed transfers to legal entities and trusts heighten the risk that such transfers will be used for illicit purposes. Numerous public law enforcement actions illustrate this point.¹² As such, FinCEN believes that

¹²As the Financial Action Task Force (FATF) noted in July 2022, “[d]isparities with rules surrounding legal structures across countries means property can often be acquired abroad by shell companies or trusts based in secrecy jurisdictions, exacerbating the risk of money laundering.” International bodies, such as the FATF have found that “[s]uccessful AML/CFT supervision of the real estate sector must contend with the obfuscation of true ownership provided by legal entities or arrangements[.]” FATF, “Guidance for a Risk Based Approach: Real Estate Sector” (July 2022), p. 17, available at <https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/RBA-Real-Estate-Sector.pdf.coredownload.pdf>; see, e.g., *U.S. v. Delgado*, 653 F.3d 729 (8th Cir. 2011) (drug trafficking, money laundering); *U.S. v. Fernandez*, 559 F.3d 303 (5th Cir. 2009) (drug trafficking, money laundering); Complaint for Forfeiture, *U.S. v. All the Lot or Parcel of Land Located at 19 Duck Pond Lane Southampton, New York 11968*, Case No. 1:23-cv-01545 (S.D.N.Y. Feb. 24, 2023) (sanctions evasion); Indictment and Forfeiture, *U.S. v. Maikel Jose Moreno Perez*, Case No. 1:23-cr-20035-RNS (S.D. Fla. Jan. 26, 2023) (bribery, money laundering, conspiracy); Motion for Preliminary Order of Forfeiture and Preliminary Order of Forfeiture, *U.S. v. Colon*, Case No. 1:17-cr-47-SB (D. Del. Nov. 18, 2022) (drug trafficking, money laundering); *U.S. v. Andrii Derkach*, 1:2022-cr-00432 (E.D.N.Y. Sept. 26, 2022) (sanctions evasion, money laundering, bank fraud); Doc. No. 10 at p. 1, *U.S. vs. Ralph Steinmann and Luis Fernando Vuitz*, 1:2022-cr-20306 (S.D. Fla. July 12, 2022) (bribery, money laundering); *U.S. v. Jimenez*, Case No. 1:18-cr-00879, 2022 U.S. Dist. LEXIS 77685, 2022 WL 1261738 (S.D.N.Y. Apr. 28, 2022) (false claim fraud, wire fraud, money laundering, identity theft); Complaint for Forfeiture, *U.S. v. Real Property Located in Potomac, Maryland, Commonly Known as 9909 Benicross Drive, Potomac, MD 20854*, 8:2020-cv-02071 (D. Md. July 15, 2020) (public corruption, money laundering); Final Order of Forfeiture, *U.S. v. Raul Torres*, Case No. 1:19-cr-390 (N.D. Ohio Mar. 30, 2020) (operating an animal fighting venture, operating an unlicensed money services business, money laundering); *U.S. v. Bradley*, Case No. 3:15-cr-00037-2, 2019 U.S. Dist. LEXIS 141157, 2019 WL 3934684 (M.D. Tenn. Aug. 20, 2019) (drug trafficking, money laundering); Indictment, *U.S. v. Patrick Hjediba, et al.*, Case No. 2:18-cr-06103-RDP-JEO, Doc. 1 (N.D. Ala. Mar. 29, 2018) (health care fraud); Redacted Indictment, *U.S. v. Paul Manafort*, Case 1:18-cr-00083-TSE (E.D. Va. Feb. 26, 2018) (money laundering, acting as an unregistered foreign agent); *U.S. v. Miller*, 295 F. Supp. 3d 690 (E.D. Va. 2018) (wire fraud); *U.S. v. Coffman*, 859 F. Supp. 2d 871 (E.D. Ky. 2012) (mail, wire, and securities fraud); *U.S. v. 10.10 Acres Located on Squires Rd.*, 386 F. Supp. 2d 613 (M.D.N.C. 2005) (drug trafficking); *Atty. Gen. Comm'n of Md. v. Blair*, 188 A.3d 1009 (Md. Ct. App. 2018) (money laundering drug trafficking proceeds); *State v. Harris*, 861 A.2d 165 (NJ Super. Ct. App. Div. 2004) (money laundering, theft); U.S. Department of Justice, Press Release, “Associate of Sanctioned Oligarch Indicted for Sanctions Evasion and Money Laundering; Fugitive Vladimir Vorontchenko Aided in Concealing Luxury Real Estate Owned by Viktor Vekselberg” (Feb. 7, 2023), available at <https://www.justice.gov/usao-sdny/pr/associate-sanctioned-oligarch-indicted-sanctions-evasion-and-money-laundering>; U.S. Department of Justice, Press Release, United States Reaches Settlement to Recover More Than \$700 Million in Assets Allegedly Traceable to Corruption Involving Malaysian Sovereign Wealth Fund (Oct. 30, 2019),

the reporting of non-financed transfers to legal entities and trusts will benefit national security by facilitating law enforcement investigations into, and strategic analysis of, the use of residential real estate transfers having these particular characteristics to facilitate money laundering.¹³

Indeed, since 2016, FinCEN has used a targeted reporting requirement—the Residential Real Estate GTOs—to collect information on a subset of transfers of residential real estate that FinCEN considers to present a high risk for money laundering.¹⁴ Specifically, the Residential Real Estate GTOs have required certain title insurance companies to file reports and maintain records concerning non-financed

available at <https://www.justice.gov/opa/pr/united-states-reaches-settlement-recover-more-700-million-assets-allegedly-traceable>; U.S. Department of Justice, Press Release, “Acting Manhattan U.S. Attorney Announces \$5.9 Million Settlement of Civil Money Laundering And Forfeiture Claims Against Real Estate Corporations Alleged to Have Laundered Proceeds of Russian Tax Fraud” (May 12, 2017), available at <https://www.justice.gov/usao-sdny/pr/acting-manhattan-us-attorney-announces-59-million-settlement-civil-money-laundering-and>.

¹³As explained in the notice of proposed rulemaking (NPRM) issued on February 16, 2024, while other investigative methods and databases may be available to law enforcement seeking information concerning persons involved in non-financed transfers of residential real property, the information obtained through such investigative methods or the databases themselves are often incomplete, unreliable, and diffuse, resulting in misalignment between those methods or sources and the potential risks posed by the transfers. For example, the non-uniformity of the title transfer processes across states and the fact that the recording of title information is largely done at the local level complicates and hinders investigative efforts. To presently verify how many non-financed purchases of residential real property a known illicit actor has made, law enforcement may have to issue subpoenas and travel to multiple jurisdictions—assuming that they are known—to obtain the relevant information. Law enforcement is also likely to experience difficulty in finding beneficial ownership information for legal entities or trusts not registered in the United States which have engaged in non-financed transfers of residential real estate. Furthermore, existing commercial databases do not collect much of the information that is the focus of this rule, such as that involving funds transfers. In these respects, a search of Real Estate Reports would be a far more efficient and complete mechanism. See FinCEN, NPRM, “Anti-Money Laundering Regulations for Residential Real Estate Transfers,” 69 FR 12424, 12430 (Feb. 16, 2024).

¹⁴See 31 U.S.C. 5326; 31 CFR 1010.370; Treasury Order 180-01 (Jan. 14, 2020), available at <https://home.treasury.gov/about/general-information/orders-and-directives/treasury-order-180-01>. In general, a GTO is an order administered by FinCEN which, for a finite period of time, imposes additional recordkeeping or reporting requirements on domestic financial institutions or other businesses in a given geographic area, based on a finding that the additional requirements are necessary to carry out the purposes of, or to prevent evasion of, the BSA. The statutory maximum duration of a GTO is 180 days, though it may be renewed.

⁸ 31 U.S.C. 5312(a)(2)(U).

⁹ 31 U.S.C. 5318(g)(1)(A).

¹⁰ 31 U.S.C. 5318(g)(5)(B)(i)–(iii).

¹¹ See AML Act, section 6202 (codified at 31 U.S.C. 5318(g)(5)(i)). Section 6102(c) of the AML Act also amended 31 U.S.C. 5318(a)(2) to give the Secretary the authority to “require a class of domestic financial institutions or nonfinancial traders or businesses to maintain appropriate procedures, including the collection and reporting of certain information as the Secretary of the Treasury may prescribe by regulation, to . . . guard against money laundering, the financing of terrorism, or other forms of illicit finance.” FinCEN believes this authority also provides an additional basis for the reporting requirement adopted in this final rule.

purchases of residential real estate above a specific price threshold by certain legal entities in select metropolitan areas of the United States. In combination with the numerous public law enforcement actions illustrating the heightened risks posed by non-financed transfers to legal entities and trusts, information obtained from the Residential Real Estate GTOs, as well as other studies conducted by Treasury and FinCEN, FinCEN has confirmed the need for a more permanent regulatory solution that would require consistent reporting of information about certain high-risk real estate transfers.

a. Benefits of Reporting

The Residential Real Estate GTOs have been effective in identifying the risks of non-financed purchases of residential real estate by providing relevant information about such transfers to law enforcement within specified geographic areas. Indeed, FinCEN regularly receives feedback from law enforcement partners that they use the information to generate new investigative leads, identify new and related subjects in ongoing cases, and support prosecution and asset forfeiture efforts. Law enforcement has also made requests to FinCEN to expand the Residential Real Estate GTOs to new geographic areas, which FinCEN has done multiple times, adding both additional metropolitan areas and methods of payment. This has provided law enforcement with additional insight into the risks in both the luxury and non-luxury residential real estate markets.

The Residential Real Estate GTOs have also proven the benefit of having reports identifying high risk residential real estate transfers housed in the same database as other BSA reports, such as traditional SARs and currency transaction reports (CTRs). For example, housing reports filed under the Residential Real Estate GTOs in the same database as other BSA reports enables FinCEN to cross-reference identifying information across reports, and having done so, FinCEN has been able to determine that a substantial proportion of purchases reported under the Residential Real Estate GTOs have been conducted by persons also engaged in other activity that financial institutions have characterized as suspicious. Specifically, FinCEN has found that from 2017 to early 2024, approximately 42 percent of non-financed real estate transfers captured by the Residential Real Estate GTOs were conducted by individuals or legal entities on which a SAR has been filed,

In other words, individuals engaging in a type of transaction known to be used to further illicit financial activity—the non-financed purchase of residential real estate through a legal entity—are also engaging in other identified forms of suspicious activities. The ability to connect these activities across reports allows law enforcement to efficiently identify potential illicit actors for investigation and build out current investigations.

b. Necessity of a Permanent Nationwide Reporting Requirement

The Residential Real Estate GTOs, while effective within the covered geographic areas, do not address the illicit finance risks posed by certain real estate transfers on a nationwide basis—a significant shortcoming. For instance, a study of money laundering through real estate in several countries by Global Financial Integrity, a non-profit that studies illicit financial flows, money laundering, and corruption, found that, of Federal money laundering cases involving real estate between 2016 and 2021, nearly 61 percent involved at least one transfer in a county not covered by the Residential Real Estate GTOs. FinCEN believes that money laundering through real estate is indeed a nationwide problem that jurisdictionally limited reporting requirements are insufficient to address.¹⁵ Furthermore, the Residential Real Estate GTOs were also intended to be a temporary information collection measure. Thus, FinCEN believes that a more comprehensive and permanent regulatory approach is needed.

B. The Notice of Proposed Rulemaking

On February 16, 2024, FinCEN published a notice of proposed rulemaking (NPRM) proposing a reporting requirement to address the risks related to non-financed transfers of residential real estate to either a legal entity or trust on a nationwide basis.¹⁶ The proposal targeted the transfers that posed a high risk for illicit finance and was built on lessons learned from the Residential Real Estate GTOs and from public comments received in response to an Advance Notice of Proposed

Rulemaking.¹⁷ Importantly, the NPRM was narrowly focused and did not propose a reporting requirement for most transfers of residential real estate—for example, it excluded purchases that involve a mortgage or other financing from a covered financial institution, as well as any transfer, including all-cash transfers, to an individual.

In the NPRM, FinCEN proposed that certain persons involved in residential real estate closings and settlements file a version of a SAR—referred to as a “Real Estate Report”—focused exclusively on certain transfers of residential real property. The persons subject to this reporting requirement were deemed reporting persons for purposes of the proposed rule. Under the proposed rule, a reporting person would be determined through a “cascading” approach based on the function performed by the person in the real estate closing and settlement. The proposed cascade was designed to minimize burdens on persons involved in real estate closings and settlements, while leaving no reporting gaps and creating no incentives for evasion.¹⁸ To provide some flexibility in this reporting cascade, FinCEN’s proposal included the option to designate (by agreement) a reporting person from among those in the cascade.

As proposed, information to be reported in the Real Estate Report would identify the reporting person, the legal entity or trust (including any legal arrangement similar in structure or function to a trust) to which the residential real property was transferred, the beneficial owners of that transferee entity or transferee trust, the person that transferred the residential real property, and the property being transferred, along with certain transactional information about the transfer. Regarding beneficial ownership information that a reporting person would be required to report, the rule proposed that a reporting person could collect such information directly from a

¹⁷ See FinCEN, Advance Notice of Proposed Rulemaking, “Anti-Money Laundering Regulations for Real Estate Transactions,” 86 FR 69589 (Dec. 8, 2021).

¹⁸ Through the proposed reporting cascade hierarchy, a real estate professional would be a reporting person required to file a report and keep records for a given transfer if the person performs a function described in the cascade and no other person performs a function described higher in the cascade. For example, if no person is involved in the transfer as described in the first tier of potential reporting persons, the reporting obligation would fall to the person involved in the transfer as described in the second tier of potential reporting persons, if any, and so on. The reporting cascade includes only persons engaged as a business in the provision of real estate closing and settlement services within the United States.

¹⁵ Global Financial Integrity, “Acres of Money Laundering: Why U.S. Real Estate is a Kleptocrat’s Dream” (Aug. 2021), p. 26, available at <https://gfiintegrity.org/report/acres-of-money-laundering-why-u-s-real-estate-is-a-kleptocrats-dream/>. According to its website, Global Financial Integrity is “a Washington, DC-based think tank focused on illicit financial flows, corruption, illicit trade and money laundering.” See Global Financial Integrity, “About,” available at <https://gfiintegrity.org/about/>.

¹⁶ See *supra* note 13.

transferee or a representative of the transferee, so long as the person certified that the information was correct to the best of their knowledge. On the timing of the reports, the proposed rule stated that the reporting person was required to file the Real Estate Report no later than 30 days after the date of closing.

C. Comments Received

In response to the NPRM, FinCEN received 621 comments, 164 of which were unique. Submissions came from a broad array of individuals, businesses, and organizations, including trade associations, transparency groups, law enforcement representatives, and other interested groups and individuals.

General support for the rule was expressed by law enforcement officials, transparency groups, certain industry associations, and individuals. For instance, attorneys general of 25 states and territories jointly submitted a comment stating that the proposed regulations would permit Federal, State, and local law enforcement to access information about suspicious real estate transfers more efficiently because that information would all be available from a single source, and that the information would aid them in identifying suspicious residential real estate transfers on a nationwide basis that might otherwise remain undetected. These attorneys general and one industry association applauded FinCEN's choice to use a transaction-specific reporting mechanism rather than imposing an AML/CFT program requirement on persons involved in real estate closings and settlements. One non-profit commenter expressed support for FinCEN's recognition of the wide-ranging impacts that money laundering through real estate can have on tenants, homebuyers, and the affordability and stability of regional housing markets and believed the rule will improve housing access. Two industry associations expressed strong support for the proposed rule, with one commenter expressing the view that it reflected a pragmatic approach. One industry association and an individual commenter stated that a permanent and nationwide rule would provide greater predictability and certainty to industry than Residential Real Estate CTOs.

Other commenters expressed opposition to the proposed rule. Some expressed concern about FinCEN's legal authority to impose a reporting requirement in the manner set forth in the proposed rule. Other commenters argued that the proposed reporting requirement would be ineffective, burdensome, or would require reporting

of information that is reported to the government through other avenues. The majority of private sector commenters—primarily small businesses, individuals employed in the real estate industry, and certain trade associations—asserted that the proposed reporting requirements are too broad and complex and would be burdensome to implement. They further assert that this would result in increased costs for businesses and, ultimately, consumers, potentially delaying closings and causing consumers to decline to seek their services. Many of these commenters expressed concerns that the proposed regulations, if finalized without significant change, would impose numerous and costly reporting and recordkeeping requirements on small businesses. Some commenters suggested the proposed rule would put large businesses at a competitive disadvantage while others suggested the same about small businesses. These commenters also suggested that the proposed regulation would create privacy and security concerns with respect to personally identifiable information. A number of these commenters suggested that FinCEN either not issue a final regulation or adopt a narrower approach, requiring reporting of less information on fewer transfers. Several commenters suggested that attorneys that fulfill any of the functional roles set out in the reporting cascade should not be required to report, primarily due to concerns about attorney-client privilege and confidentiality requirements.

Furthermore, many commenters suggested a range of modifications to the proposed regulations to: enhance clarity; reduce the potential burdens to industry; include or exclude certain professions from reporting requirements; refine the impact to certain segments of the industry; and enhance the usefulness of the resulting reports. Several commenters also asked hypothetical questions that sought clarification on the application of the proposed rule to certain situations.

FinCEN carefully reviewed and considered each comment submitted, and a more detailed discussion of comments appears in Section III. FinCEN believes that the regulatory requirements set out in this final rule reflect the appropriate balance between ensuring that reports filed under the rule have a high degree of usefulness to law enforcement and minimizing the compliance burden incurred by businesses, including small businesses. As detailed in Section III, FinCEN has made several amendments to the proposed rule that are responsive to

commenters and that may also reduce certain anticipated burdens.

III. Discussion of Final Rule

A. Overview

FinCEN is issuing a final rule that generally adopts the framework set out in the proposed rule but makes certain modifications and clarifications that are responsive to comments. The final rule imposes a reporting requirement on "reporting persons" that are involved in certain kinds of transfers of residential real property. In response to comments, the rule adopts a reasonable reliance standard, allowing reporting persons to, in general, reasonably rely on information obtained from other persons. FinCEN has also made other amendments in the final rule that are intended to clarify and simplify the reporting requirements, such as clarifying the definition of residential real property. Additionally, the rule excludes several additional transfers from needing to be reported, including one designed to exempt certain transfers commonly executed for estate and tax planning purposes. FinCEN also limited the requirement to retain certain records. We discuss these and other specific issues, comments, modifications, and clarifications in this section, beginning with issues that cut across the entire rule and continuing with a section-by-section analysis of changes and clarifications to the regulatory text, including sections for which FinCEN received no feedback from commenters.

FinCEN notes that it will consider issuing frequently asked questions (FAQs) and other guidance, as appropriate, to further clarify the application of the rule to specific circumstances. FinCEN also intends to continue to engage with stakeholders, for example through public outreach events, to assist with ensuring that the rule's requirements are understood by affected members of the public, including small businesses.

B. Comments Addressing the Rule Broadly

FinCEN received several comments that cut across various provisions of the rule or were otherwise broadly applicable. The subjects addressed by these comments include: FinCEN's authority to issue the rule; alternatives to the reporting and recordkeeping requirements; attorneys as reporting persons; the extent to which a reporting person can rely on information received from other persons; penalties for noncompliance; and the collection of unique identifying numbers. FinCEN

has carefully considered these comments and addresses them below.

1. Authority

Proposed Rule. The NPRM set out the legal authority that authorized the agency's issuance of the rule. Specifically, the NPRM cited the BSA provisions set forth at 31 U.S.C. 5312(a)(2), which defines a financial institution to include "persons involved in real estate closings and settlements," and at 31 U.S.C. 5318(g), authorizing FinCEN to impose a requirement on financial institutions to report suspicious activity reports, and to establish streamlined processes regarding the filing of such reports.

Comments Received. Several commenters questioned the legal authority underpinning the rule and the BSA reporting regime more generally, with one commenter stating that "the Constitutionality of this regime is not an entirely closed question." These commenters argued that the rule potentially infringes on certain constitutional rights and that it is inconsistent with certain statutes and Executive Orders (EOs), citing primarily to Gramm-Leach-Bliley Act (GLBA) and E.O. 12866. With regard to GLBA, one commenter stated that "[t]he [r]ule proposed by FinCEN directly clashes with the legal guideposts and requirements of the GLBA."

Final Rule. FinCEN is issuing this final rule pursuant to its BSA authority to require "financial institutions" to report "suspicious transactions" under 31 U.S.C. 5318(g)(1); the rule falls squarely within the scope of this authority. As discussed in the NPRM and in Section II.A.1 of this final rule, "persons involved in real estate closings and settlements" are a type of "financial institution" under the BSA.¹⁹ As such, FinCEN has clear statutory authority to require "persons involved in real estate closings and settlements" to file reports on suspicious activity,²⁰ and courts have long affirmed the constitutionality of, such reporting requirements.²¹ Furthermore, a more recent amendment to the BSA at 31 U.S.C. 5318(g)(5)(D) provides FinCEN with additional flexibility to tailor the form of the SAR reporting requirement. Consistent with that authority, FinCEN is instituting a streamlined SAR filing requirement to require specified "persons involved in real estate closings and settlements" to

report certain real estate transactions that FinCEN views as high-risk for illicit finance.

With regard to the comment concerning the relationship between the final rule and GLBA, FinCEN notes that information in reports filed under the BSA, which will include any information in a Real Estate Report, is exempt from the requirements of GLBA.²² Finally, FinCEN notes that significant comments relating to applicable E.O. are addressed in the regulatory impact analysis in this final rule.

2. Suggested Alternatives to Proposed Rule

Proposed Rule. The NPRM proposed that certain persons involved in the closing and settlement of real estate report and keep records about certain non-financed transfers of residential real estate to certain legal entities and trusts.

Comments Received. Commenters suggested several alternatives to the proposed reporting and recordkeeping requirement. One commenter suggested expanding the Internal Revenue Service (IRS) Form 1099-S to include the collection of buyer-side information in addition to the seller-side information already collected. Some commenters suggested that, rather than requiring reporting by real estate professionals, FinCEN should require reporting from county clerk offices when they accept a deed for a reportable transfer or directly from transferees before a reportable transfer. Finally, other commenters urged FinCEN to fund alternative databases or purchase access to electronic records at each county clerk's office and monitor filed deeds.

Final Rule. The final rule retains the fundamental framework of the proposed rule. FinCEN believes that the alternatives suggested by commenters are either technically or legally unworkable and would likely not result in the reporting of information that is equally useful to law enforcement. First, the IRS Form 1099-S is filed annually, making it significantly less useful to law enforcement and, as discussed in the NPRM,²³ is not readily available for FinCEN or broader law enforcement uses due to confidentiality protections around federal taxpayer information. Second, FinCEN believes that county clerks' offices and individuals do not typically play a role in the kinds of transfers that would require reporting. Therefore, these individuals would not

likely be in a position to interact with both the transferor(s) and the transferee(s), and thus, may not have ready access to reportable information. Regarding the suggested alternative of collecting reportable information directly from transferees instead of through reporting persons, FinCEN believes that buyers and sellers would be less willing to share personal information with each other than with a real estate professional fulfilling a function described in this rule's reporting cascade. Third, simply monitoring deeds at the county clerk level would likely not produce the information, including beneficial ownership and payment information, that FinCEN believes is important to law enforcement in combating illicit actors' abuse of opaque legal structures in the residential real estate market. Further, funding alternative databases would similarly not result in this information being made available to law enforcement, as private service providers would be unable to gather the same variety of highly relevant information, and any information they did provide would not be consolidated in a database with other BSA reports. The consolidation of Real Estate Reports with other BSA reports—including, but not limited to, traditional SARs, CTRs, Reports of Cash Payments Over \$10,000 Received in a Trade or Business (Forms 8300), and Reports of Foreign Bank and Financial Accounts—is important for law enforcement purposes, as doing so will allow law enforcement to efficiently cross-reference information across the various BSA reports.

3. Attorneys as Potential Reporting Persons

Proposed Rule. Under the proposed rule, attorneys could potentially be subject to a reporting requirement if they perform any of the real estate closing and settlement functions described in the reporting cascade. The proposed rule did not differentiate between attorneys and non-attorneys when they perform the same functions involving transfers of residential real property.

Comments Received. A number of commenters addressed the inclusion of attorneys in the reporting cascade. In general, legal associations opposed the inclusion of attorneys performing certain closing and settlement functions in the cascade as reporting persons, while others, in particular transparency organizations, supported the inclusion of attorneys as reporting persons. Commenters opposed to inclusion of attorneys generally argued that an attorney could not act as a reporting

¹⁹ 31 U.S.C. 5312(a)(2)(U); see FinCEN, NPRM, "Anti-Money Laundering Regulations for Residential Real Estate Transfers," 89 FR 12424, 12427 (Feb. 16, 2024).

²⁰ See 31 U.S.C. 5318(g).

²¹ See *California Bankers Ass'n v. Shultz*, 418 U.S. 21 (1974); *U.S. v. Miller*, 425 U.S. 435 (1976).

²² 15 U.S.C. 6802(e)(5).

²³ See FinCEN NPRM, "Anti-Money Laundering Regulations for Residential Real Estate Transfers," 89 FR 12424, 12447-12448 (Feb. 16, 2024).

person without either breaching the attorney's professional ethical obligations to maintain client confidentiality or violating attorney-client privilege. Some commentors also suggested that FinCEN lacks legal authority to regulate attorneys under the BSA.

Final Rule. FinCEN declines to amend the reporting cascade to exclude attorneys from the requirement to report.

First, FinCEN does not believe that attorneys would violate their professional ethical obligations by filing a Real Estate Report. Although commentors noted that the ABA Model Rules on Professional Conduct generally require attorneys to keep client information confidential regardless of whether it is subject to the attorney-client privilege, Rule 1.6(b)(6) of the Model Rules states that "[a] lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary . . . to comply with other law or a court order." The annotations to the Model Rules further elaborate that "[t]he required-by-law exception may be triggered by statutes, administrative agency regulations, or court rules." FinCEN believes that the Real Estate Report falls squarely within the required-by-law exception described in Rule 1.6(b)(6).

Second, FinCEN believes that the information required in the Real Estate Report (e.g., client identity and fee information) is of a type not generally protected by the attorney-client privilege, and accordingly FinCEN is not persuaded that attorneys should be categorically excluded from the reporting cascade on that basis.²⁴ Moreover, even if there were an unusual circumstance in which some information required to be reported in the Real Estate Report might arguably be subject to the attorney-client privilege, an attorney in such an unusual situation need not assume a reporting obligation, as that attorney might allow other parties in the reporting cascade to file the Real Estate Report through a designation agreement or, in certain circumstances, might decline to perform the function that triggers the obligation. It is therefore unlikely that any attorney would necessarily be required to disclose privileged information. Nonetheless, FinCEN expects to issue guidance that will address the rare circumstance in which an attorney is concerned about the disclosure of potentially privileged information.

²⁴ See, e.g., *In re Grand Jury Subpoenas*, 906 F.2d 1485, 1488 (10th Cir. 1990) (collecting cases).

which will provide further information on the mechanism for asserting the attorney-client privilege and appropriately filing the relevant Real Estate Report.

Similarly, FinCEN is not persuaded by commentors who argued that FinCEN lacks the authority to regulate attorneys under the BSA, claiming that the BSA does not clearly evince an intention to regulate attorneys. The BSA expressly authorizes regulation of "persons involved in real estate closings and settlements," and it is common for such persons to be attorneys. Congress thus made clear its intention to authorize regulation of functions commonly performed by attorneys, and it would be anomalous to regulate those functions only when performed by non-attorneys. FinCEN also notes that attorneys are not exempt from submitting reporting forms to FinCEN in other contexts in which they are not explicitly identified by statute, such as with FinCEN Form 8300, which must be submitted by any "[a]ny person . . . engaged in a trade or business." All courts of appeals that have considered the question have concluded that Form 8300 reporting requirements do not per se violate the attorney-client privilege and that attorneys must file such a form absent certain narrow exceptions.²⁵

4. Reasonable Reliance Standard

Proposed Rule. Proposed 31 CFR 1031.320(e)(3) provided that the reporting person may collect beneficial ownership information for the transferee entity or transferee trust directly from a transferee or a representative of the transferee, so long as the person certifies in writing that the information is correct to the best of their knowledge. However, the proposed rule did not state whether and to what extent a reporting person could rely on information provided by other persons in the context of other required information (i.e., other than beneficial ownership information) required under the rule or to make any determination necessary to comply with the rule.

Comments Received. Several commentors asked for clarification of this provision, suggesting that the burden to industry would be significant if reporting persons were required to verify the accuracy of each piece of reportable information provided by a transferee or another party, with one

²⁵ See: *U.S. v. Sindel*, 53 F.3d 874, 876 (8th Cir. 1995); *U.S. v. Blackman*, 72 F.3d 1418, 1424–25 (9th Cir. 1995); *U.S. v. Ritchie*, 15 F.3d 592, 602 (6th Cir. 1994); *U.S. v. Leventhal*, 961 F.2d 936, 940 (11th Cir. 1992); *U.S. v. Goldberger & Dubin, P.C.*, 935 F.2d 501, 505 (2d Cir. 1991); *In re Grand Jury Subpoenas*, 906 F.2d 1485, 1492 (10th Cir. 1990).

commenter questioning whether true verification is possible. Several commentors also expressed liability concerns, including that reporting persons could be penalized if a third party provides information that turns out to be incorrect.

To resolve these concerns, commentors suggested that reporting persons should be able to rely on information provided by the transferee or that the transferee should certify the accuracy of required information beyond beneficial ownership information. One industry group took the reliance standard a step further, suggesting that the reporting person be able to rely on the representations of the transferee for purposes of determining whether the transferee is an exempt entity or trust. One transparency group suggested that the final rule require that reporting persons perform a "clear error" or "best efforts" check to ensure they are not reporting obviously fraudulent information.

Some commentors suggested that, where a transferee is unwilling to provide complete or accurate information, reporting persons should be allowed to file incomplete forms, with some arguing that "good faith attempts" to file reports that are ultimately incomplete should not be penalized. Another argued that the reporting person should be able to simply file the information provided without any responsibility for its accuracy or completeness. However, one transparency group argued that reporting persons should not be allowed to file incomplete forms and that the final rule should clarify that, where a reporting person cannot gather complete information from a transferee, then the reporting person should decline to take part in the real estate transfer. Other commentors similarly questioned whether a reporting person can continue to facilitate a transfer if the transferee refuses to cooperate in providing reportable information. Additionally, one industry group requested that the final rule impose a clear duty on other persons described in the reporting cascade to share information reportable under the proposed rule.

Final Rule. In 31 CFR 1031.320(j), the final rule adopts a reasonable reliance standard that allows reporting persons to reasonably rely on information provided by other persons. As a result, the reporting person generally may rely on information provided by any other person for purposes of reporting information or to make a determination necessary to comply with the final rule, but only if the reporting person does not have knowledge of facts that would

reasonably call into question the reliability of the information. This reasonable reliance standard is consistent with that used by certain financial institutions subject to customer due diligence requirements.²⁶

This reasonable reliance standard is slightly more limited when a reporting person is reporting beneficial ownership information of transferee entities or transferee trusts. As expressed in the proposed rule, and as adopted in the final rule, when a reporting person is collecting the beneficial ownership information of transferee entities and transferee trusts. In those situations, the reasonable reliance standard applies only to information provided by the transferee or the transferee's representative and only if the person providing the information certifies the accuracy of the information in writing to the best of their knowledge.

FinCEN recognizes the necessity of permitting reliance on information supplied to the reporting person, considering the time and effort it would take for the reporting person to verify each piece of information independently. FinCEN believes that the reasonable reliance standard is significantly less burdensome than an alternative full verification standard, while still ensuring that obviously false or fraudulent information would not be reported.

As an example, FinCEN expects that the reporting person would be able to reasonably rely on the accuracy of a person's address provided orally or in writing, without reviewing government-issued documentation such as a driver's license, provided the reporting person does not have reason to question the information provided (e.g., if the information provided were to contain a numerically unlikely ZIP code or the person providing it makes comments bringing into question the reliability of the address or has provided other unreliable information).

As an additional example, in the context of ascertaining whether particular transfers are "non-financed transfers,"²⁷ a reporting person may rely on the information provided by the relevant lender extending credit secured by the underlying residential real property as to whether the lender has an obligation to maintain an AML program and an obligation to report suspicious transactions under 31 CFR Chapter X, provided the reporting person does not have reason to question the lender's information (e.g., if the lender were to

²⁶ 31 CFR 1010.230(b)(2).

²⁷ Discussed below in Section III.C.2.b.

represent that he (as a natural person) is subject to AML obligations).

In response to the comment requesting that FinCEN permit the filing of an incomplete report, FinCEN declines to add language to the regulation to provide for that option. FinCEN believes that allowing for the submission of incomplete reports could make it easier for transferees to avoid reporting requirements while simultaneously also making it difficult for FinCEN to ensure compliance with the rule. It could also greatly reduce the reports' utility to law enforcement. FinCEN believes the adoption of the reasonable reliance standard addresses many of the concerns expressed about access to reportable information.

Finally, FinCEN does not adopt the suggestion that a legal duty be imposed on other persons in the reporting cascade to share reportable information with the reporting person. FinCEN believes that the reasonable reliance standard will make the sharing of information easier and therefore will decrease potential friction among the persons described in the reporting cascade. Further, FinCEN believes that reporting persons are unlikely to perform the function described in the reporting cascade until they have either obtained the required information or are reasonably certain that they will be able to obtain it soon after the date of closing. If information cannot be obtained from a person in the reporting cascade, the reporting person would reach out directly to a relevant party to the transfer (e.g., the transferee) to gather the missing information.

FinCEN notes that there is no exception from reporting under the final rule should a transferee fail to cooperate in providing information about a reportable transfer. The final rule does not authorize the filing of incomplete reports, and a reporting person who fails to report the required information about a reportable transfer could be subject to penalties. However, FinCEN will consider issuing additional public guidance to assist the financial institutions subject to these regulations in complying with their reporting obligations.

5. Penalties

Proposed Rule. The proposed rule did not include a specific reference to potential penalties for noncompliance, as those penalties are already set forth in the provisions of the BSA that discuss criminal and civil penalties for violating a BSA requirement.

Comments Received. Several commenters sought clarification about penalties for noncompliance, with one

commenter noting that the proposed rule did not explicitly address potential penalties for failing to file a report or for filing an inaccurate report.

Final Rule. Consistent with the NPRM, FinCEN believes that it is unnecessary to list potential penalties in the regulatory text because the applicable penalties are already set forth by statute. Negligent violations of the final rule could result in a civil penalty of, as of the publication of the final rule, not more than \$1,394 for each violation, and an additional civil money penalty of up to \$108,489 for a pattern of negligent activity.²⁸ Willful violations of the final rule could result in a term of imprisonment of not more than five years or a criminal fine of not more than \$250,000, or both.²⁹ Such violations also could result in a civil penalty of, as of the publication of the final rule, not more than the greater of the amount involved in the transaction (not to exceed \$278,937) or \$69,733.³⁰ This penalty structure generally applies to any violation of a BSA requirement.³¹ FinCEN intends to conduct outreach to potential reporting persons on the need to comply with the final rule's requirements.

6. Unique Identifying Numbers

Proposed Rule. Proposed 31 CFR 1031.320(e) set forth requirements for the reporting person to report a unique identifying number of the transferee entity or transferee trust, the beneficial owners of the transferee entity or trust, the individuals signing documents on behalf of the transferee entity or trust, and the trustee of a transferee trust. FinCEN proposed that the specific form of unique identifying number required would be a taxpayer identification number (TIN) issued by the IRS, such as a Social Security Number or Employer Identification Number. However, the proposed rule provided that, when no IRS TIN had been issued, the proposed rule required the reporting of a foreign tax identification number or other form of foreign identification number, such as a passport number or entity registration number issued by a foreign government.

Comments Received. One commenter argued against the collection of TINs as a unique identifying number, citing to the reporting requirements of the Beneficial Ownership Information

²⁸ 41 U.S.C. 5321.

²⁹ 31 U.S.C. 5322.

³⁰ 31 U.S.C. 5321; 31 CFR 1010.821.

³¹ See FinCEN, "Financial Crimes Enforcement Network (FinCEN) Statement on Enforcement of the Bank Secrecy Act" (Aug. 18, 2020), available at https://www.fincen.gov/sites/default/files/shared/FinCENEnforcementStatement_FINAL508.pdf.

Reporting Rule (BOI Reporting Rule).³² In the NPRM for the BOI Reporting Rule,³³ which was issued pursuant to the Corporate Transparency Act (CTA),³⁴ FinCEN initially proposed the voluntary reporting of TINs by a reporting company of its beneficial owners but eliminated this optional reporting in the final rule. The final BOI Reporting Rule does, however, require that reporting companies report their own TINs.³⁵

Final Rule. In the final rule, FinCEN adopts the proposed requirement to collect the unique identifying numbers of entities and individuals, including their TINs, but clarifies that, for legal entities, a unique identifying number is required only if such number has been issued to that entity. The proposed rule contained a similar provision for transferee trusts, which the final rule adopts. In the trust context, no unique identifying number would need to be reported if a unique identifying number has not been issued to the trust. For instance, there may be a situation in which a transferee trust has not been issued an IRS TIN, nor has it been issued any of the foreign identifying numbers set out in the rule. With the clarifying edit to the unique identifying numbers required for legal entities, the rule makes clearer that a unique identifying number would similarly not be required to be reported in such a situation. FinCEN notes that the final rule does not extend this language to the TINs of individuals, as FinCEN expects that individuals will have been issued one of the unique identifying numbers required by the regulations.

While FinCEN continues to acknowledge that IRS TINs are subject to heightened privacy concerns and that

the collection of such information could entail cybersecurity and operational risks, several factors weighed heavily in its decision to retain this requirement. TINs are commonly required on other BSA reports, including, for example, Forms 8300, which FinCEN notes are commonly filed by the real estate industry. Furthermore, TINs are frequently necessary to identify the same actors, particularly those with similar names or those using aliases, across different BSA reports and investigations. FinCEN believes that nearly all reporting persons—primarily businesses performing functions typically conducted by settlement companies, including many that already file reports containing TINs with the government—will have preexisting data security systems and programs to protect information such as TINs, particularly since such information is often collected in the course of financed transfers of residential real estate.

C. Section-by-Section Analysis

1. 31 CFR 1031.320(a) General

FinCEN did not receive any comments to the general paragraph of the proposed rule found in proposed 31 CFR 1031.320(a), which provided a framework for the rule. That paragraph has been adopted in the final rule without substantial change. The technical changes that have been made include the renumbering of paragraph references, the addition of a reference to a new paragraph discussing the concept of reasonable reliance, and certain clarifying changes, such as the addition of language clarifying that reports required under this section and any other information that would reveal that a reportable transfer has been reported are not confidential.

2. 31 CFR 1031.320(b) Reportable Transfer

The proposed rule defined a reportable transfer as a non-financed transfer of any ownership interest in residential real property to a transferee entity or transferee trust, with certain exceptions. These proposed exceptions, found in 31 CFR 1031.320(b), reflected FinCEN's intent to capture only higher risk transfers. The proposed rule provided that transfers would be reportable irrespective of the value of the property or the dollar value of the transaction; there was no proposed dollar threshold for a reportable transfer. The proposed rule also provided that transfers would only be reportable if a reporting person is involved in the transfer and if the transferee is either a legal entity or trust.

Transfers between individuals would not be reportable.

a. Residential Real Property

Proposed Rule. Proposed 31 CFR 1031.320(b) defined "residential real property" to include real property located in the United States containing a structure designed principally for occupancy by one to four families; vacant or unimproved land located in the United States zoned, or for which a permit has been issued, for the construction of a structure designed principally for occupancy by one to four families; and shares in a cooperative housing corporation.

Comments Received. Several commenters argued that reporting persons would not have ready access to the zoning or permitting information necessary to determine whether vacant or unimproved land is reportable under the rule. Commenters noted that reporting persons do not routinely determine zoning information and that accurate zoning information may take several weeks to obtain. Examination of permits, they argued further, would take similar time and effort. Some commenters also noted that purchases of unimproved or vacant land are often for lower dollar amounts and therefore present a lower risk for money laundering. Two other commenters suggested that the determination of whether a property is "residential real property" as defined under the rule should turn on whether the real estate sales contract or purchase and sale agreement describes the property as being residential.

Furthermore, two commenters suggested that the proposed definition of residential real property lacked clarity, with one focusing on the treatment of mixed-use property and the other requesting that the definition provide clearer criteria, taking into account the treatment of residential real estate under tax law, zoning processes, and mortgage agreements, with examples provided. Another commenter suggested that FinCEN provide a non-exhaustive list of possible transfers intended to be subject to reporting requirements and that the list specifically include any transfer of ownership and any creation of an equitable interest, whether in whole or in part, directly or indirectly, in the property. One commenter requested clarity as to whether a transfer of residential real property as defined under the rule includes assignment contracts.

Final Rule. The definition of residential real property in paragraph 31 CFR 1031.320(b), as adopted in the final

³² The BOI Reporting Rule implements the CTA's reporting provisions. In recognition of the fact that illicit actors frequently use corporate structures to obfuscate their identities and launder ill-gotten gains, the BOI Reporting Rule requires certain legal entities to file reports with FinCEN that identify their beneficial owners. See FinCEN, "Beneficial Ownership Information Reporting Requirements," 87 FR 59498 (Sept. 30, 2022). Access by authorized recipients to beneficial ownership information collected under the CTA are governed by other FinCEN regulations. See FinCEN, "Beneficial Ownership Information Access and Safeguards," 88 FR 88732 (Dec. 22, 2023).

³³ See FinCEN, NPRM, "Beneficial Ownership Information Reporting Requirements," 86 FR 69920 (Dec. 8, 2021).

³⁴ The CTA is Title LXIV of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116-283 (Jan. 1, 2021) (the NDAA). Division F of the NDAA is the Anti-Money Laundering Act of 2020, which includes the CTA. Section 6403 of the CTA, among other things, amends the Bank Secrecy Act (BSA) by adding a new section 5336, Beneficial Ownership Information Reporting Requirements, to subchapter II of chapter 53 of title 31, United States Code.

³⁵ See 31 CFR 1010.380(b)(1)(i).

rule, contains several modifications and clarifications of the language in the proposed rule. This definition continues to include vacant or unimproved land, as FinCEN does not agree with the comment suggesting that transfers of such property inherently pose a lower risk for money laundering.

The revised definition addresses the difficulty raised by commenters in determining whether vacant or unimproved land is zoned or permitted for residential use by focusing on whether the transferee intends to build on the property a structure designed principally for occupancy by one to four families. Furthermore, the new provision added to the rule concerning reasonable reliance permits the reporting person to reasonably rely on information provided by the transferee to determine such intent. To address comments that requested clarity on whether mixed-use property qualifies as residential real property, the definition of residential real property also clarifies that separate residential units within a building, such as individually owned condominium units, as well as entire buildings designed for occupancy by one to four families, are included.

Taking into account the above changes, the definition of residential real property is now: (1) real property located in the United States containing a structure designed principally for occupancy by one to four families; (2) land located in the United States on which the transferee intends to build a structure designed principally for occupancy by one to four families; (3) a unit designed principally for occupancy by one to four families within a structure on land located in the United States; or (4) any shares in a cooperative housing corporation for which the underlying property is located in the United States. Given the ability for a reporting person to reasonably rely on information obtained from other persons, FinCEN declines to adopt the other suggestions made by some of the commenters to facilitate the determination of whether the property is residential in nature. FinCEN further notes that the definition is meant to include property such as single-family houses, townhouses, condominiums, and cooperatives, including condominiums and cooperatives in large buildings containing many such units, as well as entire apartment buildings designed for one to four families. Furthermore, transfers of such properties may be reportable even if the property is mixed use, such as a single-family residence that is located above a commercial enterprise.

FinCEN also notes that the rule is not designed to require reporting of the transfer of contractual obligations other than those demonstrated by a deed or, in the case of a cooperative housing corporation, through stock, shares, membership, certificate, or other contractual agreement evidencing ownership. Therefore, the transfer of an interest in an assignment contract would not be reportable. Assignment contracts typically involve a wholesaler contracting with homeowners to buy residential real property and then assigning their rights in the contract to a person interested in owning the property as an investment. The eventual purchase of the property by the assignee investor may be reportable under this rule because a transfer of an ownership interest demonstrated by a deed has occurred, but the initial signing of the contract between the assignor and the original homeowner would not be reportable.

b. Non-Financed Transfers

Proposed Rule. Proposed 31 CFR 1031.320(b)(1) defined the term “reportable transfer” to only include transfers that do not involve an extension of credit to all transferees that is both secured by the transferred residential real property and extended by a financial institution that has both an obligation to maintain an AML program and an obligation to report suspicious transactions under 31 CFR Chapter X. As explained in the NPRM, FinCEN considers such transfers to be “non-financed” for purposes of this rule.

Comments Received. One industry organization noted that the proposal would result in reporting when an individual transfers property subject to qualified financing to a trust, because the qualified financing is in the name of the transferor rather than the transferee trust. Another commenter similarly requested clarity as to whether the reporting of non-financed transfers applies only with respect to qualified financing held by the transferee, as opposed to qualified financing held by the transferor.

Two transparency organizations requested that FinCEN clarify whether partially financed transfers are reportable. These commenters cited as examples a situation in which some or all of the source of funds originate from entities or beneficial owners that have not undergone AML checks from a covered financial institution or where qualified credit is extended to some, but not all, beneficial owners of transferees. Finally, one commenter requested clarity as to how the reporting person

would determine if the transfer is non-financed.

Final Rule. The substance of the definition of a “non-financed transfer” is adopted as proposed, but FinCEN has elected to move the definitions paragraph of the rule to 31 CFR 1031.320(n)(5). FinCEN declines to adopt the commenter’s suggestion to include a specific carveout in the definition to account for transfers where the qualified financing is extended to the grantor or settlor of a trust, rather than to the trust itself—an issue raised in the comments. This situation is addressed, however, in the new exception for certain transfers to trusts for no consideration, discussed in depth in Section III.C.2.c.

In regards to requests for clarity about whether partially financed transfers meet the definition of a non-financed transfer, FinCEN notes that partially financed transfers involving one transferee (for example, in which the transferee entity or transferee trust puts down a 50 percent down payment but obtains a mortgage to finance the rest of the transfer) would not be reported. However, the definition of a non-financed transfer would result in reporting of transfers in which there are multiple transferee entities or transferee trusts receiving the property and financing is secured by some, but not all, of the transferees.

As to the comment questioning how reporting persons would determine whether a transfer is non-financed, it has been FinCEN’s experience with the Residential Real Estate GTOs that persons required to report have readily determined whether a given financial institution extending financing has such AML program obligations by asking the financial institution directly. The reporting person can reasonably rely on the representations made by the financial institution.

c. Excepted Transfers

Proposed Rule. Proposed 31 CFR 1031.320(b)(2) provided exceptions for transfers that are: the result of a grant, transfer, or revocation of an easement; the result of the death of an owner; incident to divorce or dissolution of marriage; to a bankruptcy estate; to individuals; or for which there is no reporting person.

Comments Received. Support for the proposed exceptions came from an industry group that applauded the decision to except transfers made to individuals. Other commenters did not oppose the proposed regulation and instead suggested modifications or clarifications that built on the proposed

exceptions. Numerous commenters also proposed additional exceptions.

However, FinCEN received several comments suggesting that FinCEN clarify or otherwise amend certain other exceptions, including those proposed for death, divorce, and bankruptcy. Two legal associations proposed that FinCEN clarify the exception for transfers that are the result of a death to ensure that the exception applies even if a transfer is not executed pursuant to a will or where the decedent is not technically the owner of the property at death because the property is owned by a revocable trust set up by the decedent. One legal association suggested that FinCEN expand the proposed exceptions for divorce, death, or bankruptcy to include transfers to certain specific types of trusts. One State bar association suggested that the rule build on the exceptions for death and divorce by excepting any transfers made in connection with a court-supervised legal settlement. A transparency organization recommended limiting the exceptions to transfers made to family members or heirs pursuant to divorce, probate proceedings, or a will, expressing concern that transfers resulting from death or divorce would remain at risk for money laundering.

Multiple commenters requested additional exceptions. Several commenters focused on exceptions for transfers to trusts used for estate or tax planning purposes. A State bar association requested the exclusion of transfers for estate planning purposes that involve no monetary consideration. One commenter suggested excepting gifts between family members, whether being transferred into a trust or legal entity, and in particular suggested excluding transfers to revocable trusts in which the trustee confirms by affidavit that the trustee or the settlor is the same person as the primary beneficiary. Similarly, another State bar association suggested that FinCEN except any intrafamily transfers and transfers into certain trusts created for estate or tax planning purposes, including revocable trusts, irrevocable trusts, irrevocable life insurance trusts, grantor trusts, purpose trusts, qualified personal residence trusts, pooled trusts, special needs and supplemental trusts, creditor protection trusts, various charitable trusts, certain State business trusts, and certain State business associations.

Some commenters suggested exceptions built around the relationship between the transferor and the transferee in the context of estate planning. Two such commenters requested that the final rule exclude any

transfer where the transferor is the settlor of a transferee trust, because beneficial ownership of the property would remain the same. A State bar association suggested excluding transfers that include the creation of a self-settled revocable or irrevocable trust, wherein the grantor(s)/settlor(s) of the trust have created it for the benefit of the grantor(s) or members of their family, arguing that such trusts for the purposes of estate planning are low risk for money laundering, and therefore of little interest to FinCEN, and that their exclusion would reduce the number of reports required from reporting persons. In a similar vein, a State land title association suggested the exclusion of living trusts with the same name as the property owner, citing the example of an individual purchasing property in a non-financed transfer and then subsequently transferring the property to a trust for estate planning purposes. A trust and estate-focused legal association similarly suggested the exclusion of transfers to trusts in which at least one of the beneficial owners is the same as the transferor or in which the transfer is for the benefit of the family of the transferor. One legal association asked that exceptions be made for transfers in which there is no change in beneficial ownership of the property and two other commenters similarly requested that FinCEN exclude any transfers where the transferor is the managing or sole member of a transferee entity or is the settlor of a transferee trust. The legal association also suggested an exception when the ownership interest in the property remains within a family.

Two commenters suggested the exclusion of sequential transfers involving a trust. One described these sequential transfers as occurring when an individual purchases residential real property in their own name with a mortgage and subsequently transfers the property to a trust, or when an individual seeks to refinance property held in a trust by transferring title of the property from the trust to the individual, refinancing in the name of the individual, and then transferring title of the property back to the trust. Another commenter stated that properties held in revocable trusts for estate planning are often only removed from the trust for refinancing or taking on additional debt and therefore have oversight from those processing mortgage loans. Such transfers, argued the commenters, are low risk and would result in unnecessary and redundant reporting.

Some commenters suggested excluding transfers where the transferee

or transferor is a qualified intermediary for the purposes of 26 U.S.C. 1031 (1031 Exchange), also known as a like-kind exchange. A national trade association for 1031 Exchange practitioners suggested adding an exception that would mirror the exception found in the BOI Reporting Rule for reporting of individuals acting as nominee, intermediary, custodian, or agent on behalf of another individual.³⁶ Three title insurance associations and two State bar associations urged FinCEN to include an exception for corrective conveyances, one commenter requested exclusion of transfers involving additional insured endorsements, another commenter suggested that FinCEN explicitly exclude foreclosures and evictions, and several commenters suggested that the final rule focus only on foreign transferees.

FinCEN also received a range of comments related to whether a dollar threshold should be included, below which reporting would not be required. In general, commenters representing transparency organizations supported the lack of a threshold in the proposed rule, with one commenter arguing that any threshold would provide a clear path for evasion. Other commenters—mostly real estate associations, businesses, or professionals—advocated for the inclusion of a threshold to reduce the number of reports that would need to be filed and avoid the reporting of transfers perceived as low risk for money laundering. One commenter suggested implementing a \$1 threshold, others suggested \$1,000, one suggested \$10,000, and another suggested adopting the same threshold as FinCEN's Residential Real Estate CTOs.

Final Rule. In the final rule, FinCEN is adopting the exceptions proposed in 31 CFR 1031.320(b)(2) and adding several additional exceptions.

First, in response to comments asking FinCEN to clarify the scope of the exception for transfers resulting from death, FinCEN has adopted language, set forth at 31 CFR 1031.320(b)(2)(ii), to clarify that the exception includes all transfers resulting from death, whether pursuant to the terms of a will or a trust, by operation of law, or by contractual provision. In the context of transfers resulting from death, transfers resulting by operation of law include, without limitation, transfers resulting from intestate succession, surviving joint owners, and transfer-on-death deeds, and transfers resulting from contractual provisions include, without limitation, transfers resulting from beneficiary designations. With respect to inclusion

³⁶ 31 CFR 1010.280(d)(3)(ii).

of transfers required under the terms of a trust, by operation of law, or by contractual agreements, FinCEN believes such transfers are akin to transfers required by a will, as they result from the death of the grantor or settlor or individual who currently owns the residential real property. As described in the NPRM, the exception was meant to include transfers governed by preexisting legal documents, such as wills, or that generally involve the court system. FinCEN believes that the adopted language will clarify the intended scope of the exception, which is meant to exclude only low-risk transfers of residential real property involving transfers that are required by legal or judicial processes at the time of the decedent's death.

Second, the rule adds an exception for any transfer supervised by a court in the United States at 31 CFR 1031.320(b)(2)(v). This exception builds on a commenter's suggestion to expand the list of exceptions to include transfers made in connection with a court-supervised legal settlement, but is focused on transfers required by a court instead of simply supervised by a court, which narrows the opportunity for such transfers to be abused by illicit actors. FinCEN believes that, like probate and divorce, transfers required as a result of judicial determination in the United States are generally publicly documented and subject to oversight and therefore are subject to a lower risk for money laundering.

Third, while FinCEN did not receive comments on the scope of the exception for transfers incident to divorce or the dissolution of marriage, FinCEN believes it is appropriate to clarify in the regulation that the exception also applies to the dissolution of civil unions and has done so at 31 CFR 1031.320(b)(2)(iii). Civil unions are similar to marriages with regard to property issues in form and function and are terminated in a similar manner—generally with the involvement of courts.

Fourth, in response to the comments requesting exceptions for estate planning techniques and for sequential transfers to trusts, an exception is added at 31 CFR 1031.320(b)(2)(vi) for transfers of residential real property to a trust where the transfer meets the following criteria: (1) the transfer is for no consideration; (2) the transferor of the property is an individual (either alone or with the individual's spouse); and (3) the settlor or grantor of the trust is that same transferor individual, that individual's spouse, or both of them. FinCEN expects that this addition will exempt many common transfers made for

estate planning purposes described by commenters, including transfers described in the exception where the grantor or settlor's family are beneficiaries of the trust, as well as sequential transfers to trusts, such as where the qualified financing is extended to the grantor or settlor rather than to the trust itself and the grantor or settlor then is transferring the secured residential real property for no consideration to the trust.

FinCEN intended to scope this exception in a manner that was responsive to comments but that would not create an overly broad exception that would be open to significant abuse. To be sure, illicit actors are known to use estate planning techniques to obscure the ownership of residential real estate, and all non-financed transfers of residential real estate not subject to this rule are subject to less oversight from financial institutions than financed transfers and are therefore inherently more vulnerable to money laundering. However, transfers in which an individual who currently owns residential real property is funding their own trust with that property are believed to be a lower risk for money laundering because the true owner of the property is not obscured when the property is transferred. Given this limitation on the exception and how common it is for an individual to place residential real property into a trust, whether revocable or irrevocable, for estate planning purposes, FinCEN believes it is appropriate to except such transfers at this time. Additionally, the expanded exception benefits from relying on information readily available to the reporting person, as the reporting person will know the identity of the transferor and can ascertain, such as through a trust certificate, whether the transferor is the grantor or settlor of the trust.

FinCEN does not agree with some commenters that the exception should be broader by excepting transfers where beneficial ownership does not change or where the transfer is an intrafamily one. An exception for such transfers would be difficult for the reporting person to administer, as it would require a review of the dispositive terms of the trust instrument, and it would be difficult for the reporting person to assess the reliability of information provided to them about beneficial ownership or family relationships. FinCEN also does not agree that all such transfers are automatically low risk for money laundering, especially when consideration is involved. Overall, the adopted exception offers a low-risk, bright line that should be easy to

understand and implement, lowering the burden on both industry and the parties to the transfer, when compared with the proposed rule.

FinCEN also does not believe that this same logic can be extended to justify excepting transfers of property by an individual to a legal entity owned or controlled by such individual, as some commenters suggested. In the exception described above concerning no consideration transfers to trusts, the exception applies when the transferor of residential real property is also the grantor or settlor of the trust—the identity of the grantor or settlor of the trust is a fact tied to the creation of the trust, is revealed on the face of the trust instrument, and generally cannot be changed. Although the trustee and beneficiaries of the trust may change over time, the identification of the settlor or grantor of the trust generally allows FinCEN to identify the source of the property being contributed to the trust, a factor that is critical to the identification and prevention of money laundering. That same identification and persistent connection with the transferor does not exist in the context of transfers of residential real property to a legal entity, where it is common for various owners of interests in the entity to each contribute assets to it.

Finally, the final rule adopts an exception, at 31 CFR 1031.320(b)(2)(vii), for transfers made to qualified intermediaries for purposes of effecting 1031 Exchanges. Such exchanges are commonly conducted to defer the realization of gain or loss, and, thus, the payment of any related taxes, for Federal income tax purposes.³⁷ This exception is limited to transfers made to the qualified intermediary; transfers from a qualified intermediary to the person conducting the exchange (the exchanger) remain potentially reportable if the exchanger is a legal entity or trust. When taking ownership of property in a 1031 Exchange, the qualified intermediary is acting on behalf of the exchanger for the limited purpose of effecting the exchange. In addition, the qualified intermediary may hold the property for only a limited

³⁷ In a 1031 Exchange, real property held for productive use in a trade or business or held for investment is exchanged for other business or investment property that is the same type or kind; as a result, the person conducting the exchange is not required to realize taxable gain or loss as part of the exchange. To avoid the exchange being disqualified, a qualified intermediary may be used to ensure that the exchanger avoids taking premature control of the proceeds from the sale of the relinquished property or, in a reverse 1031 Exchange in which the replacement property is identified and purchased before the original property is relinquished, ownership of the replacement property.

period of time before it jeopardizes the transaction's ability to qualify as a valid 1031 Exchange. Accordingly, FinCEN has determined that requiring the reporting of transfers made to a qualified intermediary would likely result in information that is of lower value to law enforcement. FinCEN considered whether to resolve commenter concerns around qualified intermediaries by relying, as one commenter suggested, on the rule's definition of transferee entity, which adopts by reference the exception found in 31 CFR 1010.380(d)(3)(ii) for the reporting of individuals who are acting as a nominee, intermediary, custodian, or agent. Without noting whether such exception for nominees, intermediaries, custodians, or agents would appropriately apply in the context of qualified intermediaries, FinCEN believes that allowing the broader exception for 1031 Exchanges in this rule more clearly resolves commenter concerns.

The final rule does not adopt the suggestions to exclude corrective conveyances and additional insured endorsements, as FinCEN believes such exceptions are not necessary. Corrective conveyances are used to correct title flaws, such as misspelled names, and are not used to create a new ownership interest in a property. As such, corrective conveyances do not involve a transfer of residential real property and are therefore not reportable. Similarly, additional insured endorsements are used to extend coverage of title insurance to an additional party identified by the policyholder and do not meet the rule's definition of a reportable transfer of residential real property.

The final rule also does not adopt the suggestion to exclude foreclosure sales, although FinCEN notes that foreclosure court proceedings wherein a lender obtains a judgment to foreclose on property would be excluded under the exception for transfers required by a court in the United States. Outside of such court-supervised foreclosure proceedings, FinCEN does not agree that potential reporting persons involved in sales of foreclosed property should be treated differently from other transfers, as such sales, where the property is sold to a third party, do not necessarily present a lower risk for money laundering.

FinCEN also declines to implement the suggestion that the final rule collect information only on foreign transferee entities and trusts. Law enforcement investigations and FinCEN's experience with the Residential Real Estate GTOs have repeatedly confirmed that non-

financed transfers of residential real estate to both foreign and domestic legal entities and trusts are high risk for money laundering.

Furthermore, the rule does not adopt suggestions to include a dollar threshold for reporting. Low value non-financed transfers to legal entities and trusts, including gratuitous ones for no consideration, can present illicit finance risks and are therefore of interest to law enforcement. Although the Residential Real Estate GTOs have had an evolving dollar threshold over the course of the program, ranging from over \$1 million to the current threshold of \$300,000, FinCEN's experience with administering the program and discussions with law enforcement shows that money laundering through real estate occurs at all price points. FinCEN believes that incorporation of a dollar threshold could move illicit activity into the lower priced market, which would be counter to the aims of the rule.⁴⁸ Rather than specifically exclude all such transfers from being reported, the final rule includes additional exceptions, discussed here and in Section III.C.2.c, that FinCEN believes will focus the reporting requirement on higher-risk low-value transfers.

d. Transferee Entities

Proposed Rule. Proposed 31 CFR 1031.320(j)(10) provided that a "transferee entity" is any person other than a transferee trust or an individual and set out the exceptions from this definition for certain entities, including certain highly regulated entities and government authorities. The definition of transferee entity was meant to include, for example, a corporation, partnership, estate, association, or limited liability company. Among the exceptions FinCEN proposed was an exception for any legal entity whose ownership interests are controlled or wholly owned, directly or indirectly, by an exempt entity.

Comments Received. Some commenters supported the proposed rule's inclusion of transferee entities as defined in the proposed rule, with one transparency organization highlighting that pooled investment vehicles (PIVs) and non-profits are largely exempt from beneficial ownership information reporting requirements under the CTA, which increases their risks for money laundering.

Final Rule. In 31 CFR 1031.320(n)(10), the final rule adopts the proposed

⁴⁸ The current Residential Real Estate GTO threshold is \$300,000 for all covered jurisdictions, except for in the City and County of Baltimore, where the threshold is \$50,000.

definition of "transferee entity" with technical edits to two specific exceptions from that definition. First, in 31 CFR 1031.320(n)(10)(O), FinCEN removed the unnecessary inclusion of the acronym "(SEC)" because the Securities and Exchange Commission is referred to only once in 31 CFR 1031.320. Second, FinCEN removed the term "ownership interests" from 31 CFR 1031.320(n)(10)(P), so that the regulation now excludes from the definition of a transferee entity a "legal entity controlled or wholly owned, directly or indirectly, by [an excepted legal entity]." FinCEN made this amendment to avoid potential confusion because the term "ownership interests" is specifically defined in the regulations at 31 CFR 1031.320(n)(6) and employed only in relation to residential real property.

e. Transferee Trusts

Proposed Rule. Proposed 31 CFR 1031.320(j)(11) defined "transferee trust" as any legal arrangement created when a person (generally known as a grantor or settlor) places assets under the control of a trustee for the benefit of one or more persons (each generally known as a beneficiary) or for a specified purpose, as well as any legal arrangement similar in structure or function to the above, whether formed under the laws of the United States or a foreign jurisdiction. The NPRM proposed several exceptions for certain types of trusts that FinCEN views as highly regulated—for instance, trusts that are securities reporting issuers and trusts that have a trustee that is a securities reporting issuer. Accordingly, such trusts were not covered by the proposed rule. Similarly, the proposed rule excluded statutory trusts from the definition of a transferee trust but, instead, proposed to capture statutory trusts within the definition of a transferee entity.

Comments Received. Several commenters supported the general inclusion of trusts within the scope of the rule and provided examples of money laundering through real estate transfers to trusts. One transparency organization highlighted that trusts are not required to directly report beneficial ownership information under the CTA and are therefore a higher risk for money laundering. However, other commenters were not supportive of the inclusion of trusts, arguing that trusts are: complicated arrangements for which the paperwork would not be easily understood by reporting persons; used for probate avoidance; and inherently low risk.

Several commenters suggested excluding living trusts. Three commenters suggested excluding transfers to irrevocable living trusts, arguing either that such trusts are low risk for money laundering or that such reporting is redundant with information received by the IRS. Some focused on revocable trusts, particularly those used for estate planning, arguing that they are subject to a lower risk of money laundering and that requiring reporting on such trusts would be burdensome given how commonly they are used.

Other commenters suggested the exclusion of specialized types of trusts. Two suggested excluding transfers to a qualified personal residence trust and another suggested excluding transfers to an intentionally defective grantor trust, charitable remainder trust, any qualified terminal interest property trust benefitting the contributing homeowner, testamentary trust, third-party common law discretionary trust, a discretionary support trust, or a trust for the support of an incapacitated beneficiary, including supplemental or special needs trusts, arguing that these transfers generally do not involve property purchased in cash within the last year and are low risk for money laundering.

Final Rule. In the final rule, FinCEN retains the requirement to report transfers to transferee trusts and, in 31 CFR 1031.320(n)(11), adopts the definition of “transferee trust” as proposed with one technical edit to make certain language consistent across similar provisions in the rule. As discussed in Section II.A.2, FinCEN continues to believe that non-financed residential real estate transfers to certain trusts present a high risk for money laundering. FinCEN also believes that the potential difficulties described by commenters, such as the need to review complex trust documents to determine whether a trust is reportable, will be minimized by the addition of new exceptions and by the reasonable reliance standard adopted in the final rule which is discussed in Section III.B.4.

FinCEN considered comments suggesting that it adopt additional exceptions from the definition of a transferee trust for specific types of trusts. In particular, comments suggested exceptions for all living trusts, all revocable trusts, or all irrevocable trusts, as well as more specialized types of trusts such as qualified personal residence trusts or defective grantor trusts. FinCEN believes that the suggested exceptions would be overly broad and, as such, would exclude from reporting certain transfers that pose a high risk for illicit

finance. However, depending on the particular facts and circumstances of a trust arrangement, some of the aforementioned trusts may be covered under the more tailored exception for “no consideration transfers” to trusts described in Section III.C.2.c. We also note that certain trusts, such as testamentary trusts, are not captured by the reporting requirement, as such trusts are created by wills and therefore fall within the exception for transfers occurring as a result of death.

3. 31 CFR 1031.320(c) Determination of Reporting Person

Proposed 31 CFR 1031.320(c) set forth a cascading reporting hierarchy to determine which person providing real estate closing and settlement services in the United States must file a report for a given reportable transfer. As an alternative, the persons described in the reporting cascade could enter into an agreement to designate a reporting person.

a. Reporting Cascade

Proposed Rule. Through the proposed reporting cascade, a real estate professional would be a reporting person required to file a report and keep records for a given transfer if the person performs a function described in the reporting cascade and no other person performs a function described higher in the reporting cascade. For example, if no person is involved in the transfer as described in the first tier of potential reporting persons, the reporting obligation would fall to the person involved in the transfer as described in the second tier of potential reporting persons, if any, and so on. The reporting cascade includes only persons engaged as a business in the provision of real estate closing and settlement services within the United States. The proposed reporting cascade was as follows: (1) the person listed as the closing or settlement agent on the closing or settlement statement for the transfer; (2) the person that prepares the closing or settlement statement for the transfer; (3) the person that files with the recordation office the deed or other instrument that transfers ownership of the residential real property; (4) the person that underwrites an owner's title insurance policy for the transferee with respect to the transferred residential real property, such as a title insurance company; (5) the person that 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; (6) the person that provides an evaluation of the status of

the title; and finally (7) the person that prepares the deed or, if no deed is involved, any other legal instrument that transfers ownership of the residential real property.

Comments Received. Some commenters, including real estate agent associations and transparency organizations, supported the use of a reporting cascade, believing it to be functional and useful in preventing arbitrage, while one commenter specifically opposed it, arguing that the cascading approach would be burdensome. One industry group asked that FinCEN exclude banks and other financial institutions subject to AML/CFT program requirements as reporting persons, arguing that such financial institutions are already subject to a higher standard of BSA compliance. Some commenters variously opposed the inclusion of settlement and closing agents, title agents, or escrow agents as reporting persons because they felt it threatened their status as neutral third parties with limited responsibilities when facilitating a transfer of residential real property. Other commenters expressed concern that certain professionals in the reporting cascade would be ill-equipped to report.

Associations representing real estate agents agreed with the absence in the cascade of functions typically associated with real estate agents, while two escrow industry commenters proposed including real estate agents as reporting persons. One commenter suggested adding appraisers as reporting persons, arguing that required inclusion of appraisers would help to identify potential market distortion by illicit actors and that appraisers are otherwise well-equipped to be reporting persons. That commenter also suggested that FinCEN require appraisals be included in every non-financed transfer. One industry association urged FinCEN to exempt small businesses from reporting altogether. One commenter asked for a clear exclusion for homeowners associations, arguing that their burden would be high. A transparency organization and an industry commenter suggested that FinCEN explicitly prohibit transferees, transferors, and their owners from being reporting persons.

Some commenters argued that certain functions described in the proposed reporting cascade should be moved further up in the cascade to ensure parties with what they viewed as the best access to information are the first-line reporters. One commenter suggested that 31 CFR 1031.320(c)(1)(iii) be modified to include the person who prepares a stock certificate or a

proprietary lease to better cover potential reporting persons closing transfers of cooperative units, and another requested clarity as to who files deeds with the recording office.

Two commenters noted that the reporting cascade may result in more than one reporting person in split settlements, in which the buyer and seller use separate settlement agents. One of those commenters also suggested that certain scenarios could result in the identification of multiple reporting persons, such as when transfers are closed by independent escrow companies but also involve title insurance or when an attorney performs the document preparation, document signing, and disbursement of funds in a transfer that also involves title insurance. Finally, one commenter noted that, in some locations, it is possible for title insurance to be issued several months after closing.

Final Rule. FinCEN adopts the reporting cascade largely as proposed. The reporting cascade is designed to efficiently capture both sale and non-sale transfers, and FinCEN notes that the real estate industry already uses a similar reporting cascade to comply with requirements associated with IRS Form 1099-S.³⁰

As set forth at 31 CFR 101.320(c)(3), FinCEN adopts the suggestion made by one commenter to exclude from the definition of a reporting person financial institutions with an obligation to maintain an AML program. Where a financial institution would have otherwise been a reporting person, the reporting obligation falls to the next available person described in the reporting cascade. The intent of this rulemaking is to address money laundering vulnerabilities in the U.S. real estate market, recognizing that most persons involved in real estate closings and settlements are not subject to AML program requirements. FinCEN considered imposing comprehensive AML obligations on such unregulated persons, but ultimately decided, as reflected in the final rule, to impose the narrower obligation of a streamlined SAR filing requirement. Financial institutions that already have an obligation to maintain AML programs, however, generally already have a SAR filing requirement that is more expansive than the streamlined reporting requirement adopted by this final rule. Therefore, FinCEN believes that it would not be appropriate at this time to add a streamlined reporting

requirement to the existing obligations of a financial institution with an obligation to maintain an AML program. FinCEN also believes that the removal of financial institutions from the cascade of reporting persons will generally result in real estate reports simply being filed by others in the reporting cascade, not in those reports remaining unfiled.

FinCEN is not persuaded by commenters suggesting that other types of professionals should be added to or excluded from the cascade. Excluding categories of real estate professionals that execute functions listed in the reporting cascade based on their professional title or business size would result in a significant reporting loophole that illicit actors would exploit. FinCEN believes it is also unnecessary for the effectiveness of the reporting cascade to include additional functions, such as the provision of appraisal services or services that real estate agents typically provide to buyers and sellers. FinCEN believes that the reporting cascade, as adopted, will effectively capture high risk non-financed transfers of residential real estate and any additional functions would unnecessarily increase the complexity of the rule. Furthermore, real estate agents and appraisers usually perform their primary functions in advance of the actual closing or settlement and therefore generally do not perform a central role in the actual closing or settlement process, unlike real estate professionals performing the functions described in the reporting cascade. FinCEN believes that focusing the reporting cascade on functions more central to the actual closing or settlement is necessary to ensure the reporting person has adequate access to reportable information. Regarding homeowners associations, FinCEN believes that is not necessary to explicitly exempt them the definition of a reporting person because they do not traditionally play the roles enumerated in the reporting cascade.

FinCEN is also not persuaded by commenters' suggestion that the reporting obligation would affect or decrease the neutral position of settlement agents and escrow agents. These real estate professionals are "neutral" in that they have similar obligations to both the transferee and transferor and are therefore seen as an independent party acting only to facilitate the transfer, as opposed to a party acting primarily to advance the interests of just one of the parties to the transfer. The reporting obligation does not upset the balance between service to the transferee and transferor. It merely requires the professional to report

additional information about the transfer.

FinCEN confirms that transferees, transferors, and their beneficial owners cannot be reporting persons unless they are engaged within the United States as a business in the provision of a real estate closing and settlement service listed in the reporting cascade, but declines to explicitly prohibit transferees, transferors, and their beneficial owners from being reporting persons when they do play these roles, as it would create an exploitable loophole in the reporting cascade, if such persons were the only real estate professionals involved in the transfer.

The final rule adopts clarifications proposed by commenters with respect to cooperatives. For cooperatives, the stock certificate is akin to a deed prepared for other types of residential real estate, and therefore FinCEN believes that it is appropriate to include these types of functions in the reporting cascade. However, FinCEN declines to modify the language for the person that files with the recordation office the deed or other instrument that transfers ownership of the residential real property, as requested by one commenter. FinCEN believes the proposed language clearly captures a person engaged as a business in the provision of real estate closing and settlement services that files the deed with the recordation officer. It would not include the individual clerk at the office who accepts the deed or other instrument.

In regard to concerns raised by a commenter about split settlements, the definition of "closing or settlement statement" found in 31 CFR 1031.320(n)(2) is modified in the final rule to make clarify that the closing or settlement statement is limited to the statement prepared for the transferee only. FinCEN does not agree that the other situations described by the commenter would result in multiple reporting persons being identified, given the inherent nature of the reporting cascade wherein the reporting responsibility flows down the cascade depending on the presence of a person performing each listed function.

The final rule does not adopt any changes to account specifically for title insurance purchased a significant period of time after a transfer of property. In those situations, FinCEN expects that the underwriting of title insurance would not be part of the closing or settlement process, and therefore another person in the reporting cascade would file the report. However, in the rare situation where there is no other person in the reporting

³⁰ See 29 CFR 1.6045-4 (Information reporting on real estate transactions with dates of closing on or after January 1, 1991).

cascade participating in the closing or settlement of a reportable transfer, the underwriter of title insurance may ultimately be required to file the report when the insurance is eventually purchased.

b. Designation Agreements

Proposed Rule. Proposed 31 CFR 1031.320(c)(3) set forth the option for persons in the reporting cascade to enter into an agreement deciding which person should be the reporting person with respect to the reportable transfer. For example, if a real estate professional involved in the transfer provides certain settlement services in the settlement process, as described in the first tier of the reporting cascade, that person may enter into a written designation agreement with a title insurance company underwriting the transfer as described in the second tier of the reporting cascade, through which the two parties agree that the title insurance company would be the designated reporting person with respect to that transfer. The person who would otherwise be the reporting person must be a party to the agreement; however, it is not necessary that all persons involved in the transfer who are described in the reporting cascade be parties to the agreement. The agreement must be in writing and contain specified information, with a separate agreement required for each reportable transfer.

Comments Received. Two business associations requested that the rule allow for what they described as “blanket” designation agreements. Such agreements would allow two or more persons described in the reporting cascade to designate a potential reporting person for a set period of time or a set number of transfers. For example, a commenter put forward the example of a title insurance company and a settlement company entering into an agreement wherein, for any transfer in which they are both involved, the title insurance company would be the designated reporting person. One of these commenters stated that blanket designation agreements would bring a type of certainty that is required for them to benefit from the costs savings provided by designation agreements. A third business association argued that designation agreements will not be effective, resulting in settlement companies being the primary reporting person. A fourth business association asked whether a third-party vendor could be a designated reporting person.

Final Rule. In the final rule, FinCEN adopts the allowance for designation agreements in 31 CFR 1031.320(c)(4) as proposed. Although FinCEN sees the

potential benefits of blanket designation agreements, such agreements would undermine FinCEN’s ability to enforce the rule, particularly when a Real Estate Report is not filed as required, and accordingly the final rule does not permit a blanket designation agreement in lieu of a separate designation agreement for each relevant transfer. A single transfer could be subject to multiple, potentially overlapping, blanket designation agreements between different parties. In such a situation, it would be difficult for FinCEN to determine which person had ultimate responsibility for filing the report, and even the persons described in the reporting cascade may not know who had filing responsibility. By comparison, a separate designation agreement for each transfer, describing the specific details of the transfer, makes that determination straightforward. The designation agreement is designed to provide an optional alternative to the reporting cascade that can be effectively and efficiently implemented by reporting persons if they choose. However, nothing in the final rule prohibits persons in the reporting cascade from having an understanding, in writing or otherwise, as to how they generally intend to comply with the rule, provided that they continue to effect designation agreements for applicable transfers.

The final rule also does not allow for third-party vendors who are not described in the reporting cascade to be designated as a reporting person, as such vendors are not financial institutions that can be regulated by FinCEN; a reporting person could outsource the preparation of the form to a third-party vendor, but the ultimate responsibility for the completion and filing of the report would lie with the reporting person.

4. 31 CFR 1031.320(d) Information Concerning the Reporting Person

Proposed Rule. Proposed 31 CFR 1031.320(d) set forth a requirement that reporting persons must report their full legal name and the category into which they fall in the reporting cascade, as well as the street address of their principal place of business in the United States.

Comments Received. FinCEN did not receive any comments on reportable information concerning the reporting person.

Final Rule. FinCEN is adopting 31 CFR 1031.320(d) as proposed.

5. 31 CFR 1031.320(e) Information Concerning the Transferee

a. General Information Concerning Transferee Entities

Proposed Rule. Proposed 31 CFR 1031.320(e)(1) set forth a requirement for the reporting of the name, address, and unique identifying number of a transferee entity, as well as similar identifying information for the beneficial owners of the transferee entity and the persons signing documents on behalf of the transferee entity.

Comments Received. One organization requested that the final rule collect legal entity identifiers (LEIs) for transferee entities. As described by the commenter, the LEI was developed by the International Organization for Standards and is “the only global standard for legal entity identification.”

Final Rule. In the final rule, FinCEN adopts 31 CFR 1031.320(e)(1) as proposed. It does not incorporate the suggestion to require reporting of LEIs. For purpose of this reporting requirement, FinCEN believes that a TIN is preferable, as it is broadly utilized by law enforcement and may be easily connected to other BSA documents.

b. General Information Concerning Transferee Trusts

Proposed Rule. Proposed 31 CFR 1031.320(e)(2) set forth a requirement to report certain information about transferee trusts, including the name of the trust, the date the trust instrument was executed, the address of the place of administration, a unique identifying number, and whether the trust is revocable. Proposed 31 CFR 1031.320(e)(2) also required the reporting of information about each trustee that is an entity, including full legal name, trade name, current address, the name and address of the trust officer, and a unique identifying number. Furthermore, proposed 31 CFR 1031.320(e)(2) required the reporting of identifying information about the trust’s beneficial owners and the individuals signing documents on behalf of the trust.

Comments Received. Two industry organizations and two other commenters associated with the title insurance industry argued that information reportable for trusts should align with that on trust certificates issued under State law. As described by one industry organization, “[u]nder the Uniform Trust Act promulgated by the Uniform Law Commission and enacted in 35 states, a trustee is authorized to issue a certification of trust containing much of the information sought under

this proposed rule.” Another commenter requested that the beneficial ownership information collected under this rule align more closely with that collected under the BOI Reporting Rule. One other commenter, a non-profit organization, requested that the final rule collect legal entity identifiers (LEIs) for transferee trusts, for the reason discussed in Section III.C.5.a above with respect to legal entities.

Final Rule. In the final rule, FinCEN adopts 31 CFR 1031.320(e)(2) largely as proposed. FinCEN is persuaded by the recommendation to align information collected about trust transferees more closely with what is available on trust certificates. While they vary by state, trust certificates generally contain much of a trust’s basic identifying information, such as the name of the trust, the date the trust was entered into, the name and address of the trustee, and whether the trust is revocable. The final rule eliminates the proposal to report information identifying the trust officer or the address that is the trust’s place of administration, as this information is not commonly found on trust certificates and FinCEN believes other information collected will be sufficient to support law enforcement investigations. However, reporting persons are still required to report some information that may not be available on trust certificates, such as the identifying information for the trustee, as this is basic information necessary to conclusively identify the trust and to effectively conduct investigations into illicit activity. FinCEN believes this information will be readily collected by reporting persons; for example, because trustees generally manage the assets of the trust, the trustee will likely be directly involved in the transfer of residential real property to the trust.

The final rule does not adopt the suggestion to completely align the collection of beneficial ownership information with that collected under the BOI Reporting Rule. While the two rules do align in the collection of the beneficial owner’s name, date of birth, and address, they differ in two key respects: first, regarding the unique identifying number, the real estate rule relies largely on TINs instead of passport numbers; and second, the real estate rule collects citizenship information, while the BOI Reporting Rule does not. As discussed in Section III.B.6, TINs are a key piece of identifying information for purposes of the database that would hold Real Estate Reports, and other BSA reports typically require TINs for this reason. Furthermore, FinCEN believes that the collection of citizenship information is

necessary in this context to better analyze the volume of illicit funds entering the United States via entities or trusts beneficially owned by non-U.S. persons and is a key element for ensuring that the implementation of this rule will enhance and protect U.S. national security. FinCEN notes that such citizenship information, along with TINs, are reported on traditional SARs. Finally, the rule does not incorporate the suggestion to require reporting of LEIs, for the reasons discussed in Section III.C.2.d with respect to information collected for transferee entities.

c. Beneficial Ownership Information of Transferee Entities and Trusts

Proposed Rule. Proposed 31 CFR 1031.320(e) set forth requirements to report certain beneficial ownership information with respect to transferee entities and transferee trusts. Proposed 31 CFR 1031.320(j)(1)(i) largely defined beneficial owners of transferee entities through a reference to regulations in the BOI Reporting Rule, specifically 31 CFR 1010.360(d). Similarly, proposed 31 CFR 1031.320(j)(1)(ii) established a definition for the beneficial owners of transferee trusts by leveraging concepts from the BOI Reporting Rule. For both transferee entities and transferee trusts, the proposed regulation set forth that the determination of beneficial ownership would be as of the date of closing. The proposed rule did not require reporting persons to determine whether an individual was a beneficial owner, allowing them instead to use a certification form described in 31 CFR 1031.320(e)(3) to collect beneficial ownership information directly from a transferee trust or a person representing a trust in the reportable transfer, as discussed further in Section III.B.4.

Comments Received. Three commenters expressed support for the collection of beneficial ownership information on the Real Estate Report, with one transparency organization specifically supporting the proposed rule’s adoption of definitions from the BOI Reporting Rule. This commenter noted that the proposal would minimize confusion, promote consistency, and maximize the ability to cross-reference data. Multiple commenters, however, argued that the collection of beneficial ownership information under the proposed rule is unnecessary due to the collection of similar information under the BOI Reporting Rule. Some of these commenters also argued that, if beneficial ownership information is collected, it should be limited to the reporting of a FinCEN Identifier, which is an identification number that

reporting entities and their beneficial owners may use to report beneficial ownership information under the BOI Reporting Rule. An industry group representing trust and estate lawyers argued that the definition of a beneficial owner of a transferee trust should be limited to trustees, rather than also including grantors/settlers and beneficiaries.

One commenter requested that the final rule retain the exception from beneficial ownership information reporting found in 31 CFR 1010.360(d)(3)(ii) for nominees, intermediaries, custodians, and agents, while two other commenters requested that the rule should except reporting where a beneficial owner is a minor.

Final Rule. The final rule retains the requirement to provide beneficial ownership information in the report, as proposed, with one technical edit to correct a cross reference. FinCEN agrees that the Real Estate Report will contain some information that is also reported under the BOI Reporting Rule. However, because these two distinct reports would be filed on different facets of a single legal entity’s activities, FinCEN believes it is appropriate for some of the same information to be reported on both forms. As FinCEN explained in the NPRM, the beneficial ownership information report (BOIR) and the report required by this rule serve different purposes.

The information reported on a BOIR informs FinCEN about the reporting companies that have been formed or registered in the United States, while Real Estate Reports will inform FinCEN about the legal entities, some of which may be “reporting companies” within the meaning of the BOI Reporting Rule, that have participated in reportable real estate transfers that Treasury believes to be at high risk for money laundering. Real Estate Reports, by including beneficial ownership information and real estate transfer information in a single report, will enable law enforcement to investigate potential criminal activity in a timely and efficient manner, and will allow Treasury and law enforcement to connect money laundering through real estate with other types of illicit activities and to conduct broad money laundering trend analyses. BOIRs are kept secure but are intended to be made available not only to government agencies but to financial institutions for certain compliance purposes. Real Estate Reports will be subject to all of the protections and limitations on access and use that already apply to SARs.

The need for two different types of report, of course, does not mean that FinCEN is not concerned about eliminating unnecessary duplication of effort. FinCEN appreciates the suggestion that reporting persons be allowed to submit FinCEN Identifiers in lieu of collecting and submitting beneficial ownership information for legal entities that are considered reporting companies under the BOI Reporting Rule. However, FinCEN has identified a number of legal and operational limitations that would prevent FinCEN from accepting FinCEN identifiers outside of the CTA context.⁴⁰ For instance, information provided to FinCEN under the CTA, including the information provided in order to obtain FinCEN identifiers, is housed in an information technology system kept separate from other Bank Secrecy Act reports. The CTA imposes strict limits on access to that system, and those statutory limits are reflected in implementing regulations and the relevant Privacy Act System of Records Notice.⁴¹ There is no reason to think that persons entitled to access to CTA information will routinely also be entitled to access to SARs and other BSA reports, or vice versa. Thus, at this time, allowing FinCEN identifiers to be reported in lieu of the underlying information would limit the usefulness of Real Estate Reports to law enforcement. As discussed in Section II.A.2 in the context of cross-referencing data from Residential Real Estate CTOs with SARs, the ability to link non-financed transfers of residential real property with other BSA reports is of significant value to law enforcement. Thus, FinCEN has not adopted this suggestion in the final rule.

With regard to the comments suggesting a more limited definition of a beneficial owner, FinCEN does not adopt the suggestion that beneficial owners of trusts be limited to trustees. The final rule instead adopts the approach in the proposed rule, which set forth several positions in a transferee trust that FinCEN considers to be occupied by the beneficial owners of the trust, including: the trustee; an individual other than a trustee with the authority to dispose of transferee trust assets; a beneficiary that is the sole permissible recipient of income and principal from the transferee trust or that has the right to demand a distribution of, or withdraw,

substantially all of the assets from the transferee trust; a grantor or settlor who has the right to revoke the transferee trust or otherwise withdraw the assets of the transferee trust; and the beneficial owner(s) of any legal entity that holds at least one of these positions. The persons holding these positions have clear ownership or control over trust assets and therefore should be reported as beneficial owners of the trust.

For legal entities, 31 CFR 1031.320(n)(1)(i) continues to reference 31 CFR 1010.380(d) and therefore the final rule incorporates exceptions from the definition of beneficial owner of a reporting company; these exceptions include nominees, intermediaries, custodians, and agents, as well as minor children (when certain other information is reported). For transferee trusts, the definition of beneficial owner in 31 CFR 1031.320(n)(1)(ii) does not contain exceptions mirroring those found in the definition of a beneficial owner of a transferee entity. FinCEN considered adding an exception for minor children as suggested by commenters but believes at this time that such an exception is not appropriate for trusts. Trusts, unlike legal entities, are largely designed to transfer assets to family members such as minor children, and therefore the reporting of minor children will accurately reflect the nature of the trust and, in aggregate, will allow FinCEN to more accurately determine the risks related to trusts. FinCEN notes, however, that the definition of beneficial owner is unlikely to result in significant reporting of minor children, as minor children would fall into only one category of beneficial owner—as the beneficiary of the transferee trust, and only when the minor child is the beneficiary who is the sole permissible recipient of income and principal from the transferee trust.

6. 31 CFR 1031.320(f) Information Concerning the Transferor

Proposed Rule. Proposed 31 CFR 1031.320(f) required the reporting person to report information relevant to identifying the transferor, such as the transferor's name, address, and identifying number. If the transferor is a trust, similar information would be reported identifying the trustee.

Comments Received. One think tank supported the collection of information on transferors, while three industry organizations opposed it, arguing that such information is unnecessary for law enforcement and is redundant with other information available to law enforcement through public land

records, BOI reports filed under the CTA, or IRS Form 1099-S.

Final Rule. In the final rule, FinCEN adopts 31 CFR 1031.320(f) as proposed. Information identifying the transferor is necessary to identify certain money laundering typologies, such as where the transferor and transferee are related parties mispricing the real estate in order to transfer value from one to the other. There is therefore a significant benefit to having the transferor's information on the same report as the transferee's information. The transferor's information is basic information about the transferor and does not include information that may be more difficult to gather, such as beneficial ownership information. There is a significant value in adding transferor information in the same report as transferee information and in the same database as information from other BSA reports. FinCEN has addressed the suggestion that similar information is available through reports filed under the BOI Reporting Rule or IRS Form 1099-S in Section III.B.2.

7. 31 CFR 1031.320(g) Information Concerning the Residential Real Property

Proposed Rule. Proposed 1031.320(g) required the reporting person to report the street address, if any, and the legal description (such as the section, lot, and block) of each residential real property that is the subject of a reportable transfer.

Comments Received. FinCEN did not receive any comments related to the reporting of information concerning residential real property.

Final Rule. FinCEN adopts 31 CFR 1031.320(g) with technical edits that are meant to lay out the requirements more clearly, and a modification to the text to require the reporting of the date of closing. The NPRM requested comments as to whether the proposed information reported regarding the description of the transferred residential real property was sufficient. Although FinCEN received no comments regarding the reporting of date of closing, FinCEN has subsequently determined that such information is necessary for it to confirm whether reporting persons are complying with the final rule. The term "date of closing" was defined in the NPRM (and is adopted in the final rule) to mean the date on which the transferee entity or transferee trust receives an ownership interest in the residential real property. As proposed in the NPRM and adopted in the final rule, reporting persons have to ascertain the date of closing to make key determinations, such as the filing

⁴⁰ See FinCEN, "Beneficial Ownership Information Access and Safeguards," 88 FR 88732 (Dec. 22, 2023).

⁴¹ FinCEN, "Notice of a New System of Records," 88 FR 62889 (Sept. 13, 2023).

deadline, discussed in Section III.C.11, and whether an individual is a beneficial owner, discussed in Section III.C.5.c. Because the date of closing is information that a reporting person must obtain to comply with the final rule and, relatedly, is information FinCEN also must receive to enforce compliance with the rule, the reporting of such information is a logical outgrowth of the NPRM. The parties to the transfer will know the date of closing and be able to report that date easily on the Real Estate Report.

8. 31 CFR 1031.320(h) Information Concerning Payments

Proposed Rule. Proposed 31 CFR 1031.320(h) set forth a requirement that reporting persons report detailed information about the consideration, if any, paid in relation to any reportable transfer. This would include total consideration paid for the property, the amount of each separate payment made by or on behalf of the transferee entity or transferee trust, the method of such payment, the name of and account number with the financial institution originating the payment, and the name of the payor.

Comments Received. Several commenters argued that reporting persons would not have ready access to the proposed information to be collected about payments. An industry group, for example, stated that state-level “good funds” laws limit settlement agents to accepting fully and irrevocably settled and collected funds, meaning typically wire payments and cashier’s checks, which would not contain information such as the originator’s full account number. A business clarified that, for wire payments, a settlement company would only see: the date on which the wire transfer was received; the amount of the wire transfer; the name on the originator’s account; the routing number for the sending bank; the name of the bank used by the beneficiary; the beneficiary’s account number; the beneficiary’s name and address; and wire information providing a reference number relevant to escrow. Some commenters also argued that the originating financial institution would be unlikely to provide the relevant information; that the person holding the originating account, such as an escrow company or attorney, would similarly be unlikely to provide the relevant information; or that transferees may refuse to provide information, believing the reporting of account numbers would put them at risk.

To remedy these issues, commenters argued that payment information should instead be limited to either the total

consideration or to the information readily available on wire instructions or a check. Some commenters suggested eliminating the reporting of payment information entirely, questioning the usefulness of reporting such information given that covered financial institutions are likely involved in the processing of such payments and that the reporting person may be separately required to report payment information on a Form 8300, and also raising concerns about the potential increased risk of fraud if detailed account information is required to be reported.

Final Rule. In the final rule, FinCEN adopts 31 CFR 1031.320(h) largely as proposed, with edits to clarify the reporting of the total consideration paid. FinCEN acknowledges that the information required may be beyond what is normally available to the reporting person, but nevertheless believes that the information can be readily collected from the transferee. FinCEN expects that the adoption of the reasonable reliance standard in this rule will help relieve concerns articulated by commenters about the burden of verifying payment information or their ability to collect such information. FinCEN also notes that filers of IRS Form 1099-S must report the account numbers of transferors and therefore believes these to be accessible to reporting persons, many of whom file such forms.

FinCEN appreciates commenters’ concerns about potential risks associated with collecting and retaining detailed payment information in relation to reportable transfers and believes that the removal of the requirement to retain Real Estate Reports, in which personal information would be aggregated, for five years, as discussed in Section III.C.12, will help mitigate this risk.

9. 31 CFR 1031.320(i) Information Concerning Hard Money, Private, and Similar Loans

Proposed Rule. Proposed 31 CFR 1031.320(i) set forth the requirement that reporting persons report whether the transfer involved an extension of credit from any institution or individual that does not have AML program obligations.

Comments Received. FinCEN did not receive any comments about the reporting of information concerning hard money, private, and similar loans.

Final Rule. In the final rule, FinCEN adopts 31 CFR 1031.320(i) as proposed. FinCEN believes this information will be valuable to understanding the risks presented by private lenders. FinCEN notes that, as discussed in Section

III.C.2.b covering the definition of a non-financed transfer, reporting persons may rely on information from the lender as to whether the lender has an AML program obligation.

10. 31 CFR 1031.320(j) Reasonable Reliance

The final rule adopts a reasonable reliance standard, set forth in 31 CFR 1031.320(j), that generally allows reporting persons, whether when reporting information required by the final rule or when necessary to make a determination to comply with the rule, to reasonably rely on information provided by other persons. This change from the proposed rule is explained in detail in Section III.B.4.

11. 31 CFR 1031.320(k) Filing Procedures

Proposed Rule. Proposed 31 CFR 1031.320(k) set forth a requirement that reporting persons file a Real Estate Report with FinCEN no later than 30 calendar days after the date of a given closing.

Comments Received. One transparency organization supported the 30-day filing period, arguing that 30 days is both reasonable and necessary to ensure that current and useful information is available to law enforcement soon after a reportable transfer takes place. Two other commenters, however, argued that a 30-day window would be too short a timeframe in which to gather the required information and that it would be burdensome to monitor differing filing dates for each reportable transfer. As an alternative, these commenters proposed an annual filing deadline, akin to IRS Form 1099-S, with another suggesting that a quarterly filing deadline would also be an improvement.

Final Rule. In the final rule, FinCEN adopts, in 31 CFR 1031.320(k)(3), a reporting deadline of the final day of the following month after which a closing took place, or 30 days after the date of the closing, whichever is later. FinCEN believes that this approach will reduce date tracking burdens for industry and may further reduce the logistical burden of compliance by providing a longer period of time in which to gather the reportable information, while still providing timely information to law enforcement. FinCEN recognizes that Real Estate Reports are unique when compared with other BSA reports and therefore necessitate a unique reporting deadline. Real Estate Reports require more information than forms such as a CTR or Form 8300—both required to be filed within 15 days of a transaction—

and the information may need to be gathered from a variety of sources, and not just from the single individual conducting the transaction. Relatedly, traditional SARs, which must be filed within 30 days after suspicious activity is detected, also frequently rely on information known to the filer and, critically, are filed by financial institutions required to have AML programs. FinCEN believes the final filing date will benefit both reporting persons and law enforcement by ensuring reporting persons have sufficient time to gather information, resulting in more complete and accurate reports.

FinCEN believes that a filing period longer than adopted here would adversely impact the utility of the reports for law enforcement and that the extended filing period adopted in this final rule strikes the appropriate balance between accommodating commenters' concerns and ensuring timely reporting of transfers, particularly given other modifications and clarifications in this rule. In particular, FinCEN believes that the adoption of the reasonable reliance standard will significantly reduce the time needed to file the form compared to verifying the accuracy of each piece of information. FinCEN therefore declines to adopt the longer quarterly or annual suggested filing periods.

The final rule deletes as unnecessary the reference in proposed 31 CFR 1031.320(k) to the collection and maintenance of supporting documentation. In contrast with a traditional SAR requirement, the requirement to file a Real Estate Report does not require the reporting person to maintain records documenting the reasons for filing, and therefore there is no need to consider such documentation to have been deemed filed with the Real Estate Report, or to reference such documentation when discussing what a reporting person should file.

12. 31 CFR 1031.320(l) Retention of Records

Proposed Rule. Proposed 31 CFR 1031.320(l) set forth a requirement that reporting persons maintain a copy of any Real Estate Report filed and a copy of any beneficial ownership certification form provided to them for five years. It also proposed that all parties to any designation agreement maintain a copy of the agreement for five years.

Comments Received. Several commenters stated that retaining records for five years represents an ongoing data storage cost and increases concerns about data security. Two commenters expressed concern that

collecting and retaining the information that reporting persons would need to FinCEN to report would run counter to the principles that underly certain State laws that the comments stated were designed to protect data privacy. One commenter argued that there were Fourth Amendment implications for the records retention requirement, which they viewed as requiring businesses to maintain records and produce them to law enforcement on demand. However, a transparency organization supported the proposed five-year recordkeeping requirement, noting also that FinCEN would need access to the designation agreement to determine who had responsibility for filing the report in a particular transfer.

Final Rule. The final rule retains the requirement that certain records be kept for five years but limits the requirement to a copy of any beneficial ownership certification form that was provided to the reporting person, as well as a copy of any designation agreement. As amended, the rule does not require reporting persons to retain a copy of a Real Estate Report that was submitted to FinCEN. FinCEN believes that eliminating the requirement to retain a Real Estate Report may reduce concerns related to data security and to costs associated with the retention of records. FinCEN also notes, more generally, that the BSA reporting framework has long been held to be consistent with the Fourth Amendment of the U.S. Constitution.⁴²

While FinCEN considered eliminating the record retention requirement in its entirety, it believes that it is necessary to the enforceability of the rule that reporting persons retain copies of documents that will not be filed with FinCEN—namely, a copy of any beneficial ownership information certification form and any designation agreement to which a reporting person is a party. Furthermore, FinCEN has retained the requirement in the proposed rule that all parties to a designation agreement—not just the reporting person—must retain a copy of such designation agreement, also to ensure enforceability of the rule. As previously stated, records that are required to be retained must be maintained for a period of five years.

13. 31 CFR 1031.320(m) Exemptions

Proposed Rule. Proposed 31 CFR 1031.320(m)(1) exempted reporting persons, and any director, officer, employee, or agent of such persons, and Federal, State, local or Tribal government authorities, from the

confidentiality provision in 31 U.S.C. 5318(g)(2) that prohibits the disclosure to any person involved in a suspicious transaction that the transaction has been reported or any information that would otherwise reveal that the transaction has been reported.

Proposed 31 CFR 1031.320(m)(2) confirmed that the exemption from the requirement to establish an AML program, in accordance with 31 CFR 1010.205(b)(1)(v), would continue to apply to those businesses that may be reporting persons under the final rule. It also stated that no such exemption applies for a financial institution that is otherwise required to establish an anti-money laundering program, as provided in 31 CFR 1010.205(c).

Comments Received. FinCEN received one comment by 25 Attorneys General that supported the exemption of Federal, State, local, or Tribal government authorities from the confidentiality provision. Additionally, one industry association supported the proposed rule's exemption for reporting persons from establishing an AML program.

Final Rule. In the final rule, FinCEN adopts 31 CFR 1031.320(m) largely as proposed, with one minor deletion for consistency. As in the NPRM, FinCEN recognizes that the confidentiality provision in 31 U.S.C. 5318(g)(2) applying to financial institutions that file SARs is not feasible with the Real Estate Report, as reporting persons need to collect information directly from the subjects of the Report, thus revealing its existence. Moreover, all parties to a non-financed residential real estate transfer subject to this rule would already be aware that a report would be filed, given such filing is non-discretionary, rendering confidentiality unnecessary. The final rule maintains the exemption from the requirement for reporting persons to establish an AML program. However, given the change discussed earlier explicitly excluding financial institutions with AML program obligations from the definition of a reporting person, the sentence referring to such financial institutions has been deleted.

14. 31 CFR 1031.320(n) Definitions

Proposed Rule. The proposed rule set forth several definitions in 31 CFR 1031.320(j) for key concepts, such as "transferee entity," "transferee trust," and the beneficial owners of these aforementioned entities.

Comments Received. FinCEN received comments related to the definition of "Beneficial owner," discussed above in Section III.C.5.c: "Residential real property," discussed above in Section

⁴²U.S. v. Miller, 425 U.S. 435 (1976).

III.C.2.a; “Transferee entity,” discussed above in Section III.C.2.d; and “Transferee trust,” discussed above in Section III.C.2.e. FinCEN did not receive comments on other proposed definitions.

Final Rule. For clarity, in the final rule, FinCEN moves the paragraph containing definitions to the end of the regulations, so that they appear at 31 CFR 1031.320(n). In addition to modifications and clarifications discussed in the sections referenced above, the rule adopts the following modifications:

- The definition of “closing or settlement statement” is limited to the statement prepared for the transferee, as discussed in Section III.C.3.a;
- The rule adds a definition for “Non-financed transfer” for clarity, as discussed in Section III.C.2.b;
- The rule is meant to be applied nationwide, and therefore the definition of “Recordation office” is modified to make clear that the recordation office may be located in a territory or possession of the United States, and is not limited to State, local, or Tribal offices for the recording of reportable transfers as a matter of public record. As a result, a person may be a reporting person if they file a deed or other instrument that transfers ownership of the residential real property with a recordation office located in any state, local jurisdiction, territory of possession of the United States, or Tribe;
- For clarity, the term “Residential real property” is removed from the list of definitions found in 31 CFR 1031.320(n) and is instead defined in 31 CFR 1031.320(b).

The remaining definitions are adopted as proposed.

IV. Effective Date

Proposed Rule. The NPRM proposed that the final rule would be effective one year after the final rule is published in the **Federal Register**.

Comments Received. Several industry commenters agreed that a one-year delayed effective date is necessary to implement the requirements, with some indicating that one year, at a minimum, would be feasible. One commenter suggested that the final rule be implemented in phases to allow industry time to adapt to the regulation.

Final Rule. The final rule provides for an effective date of December 1, 2025, at which point reporting persons will be required to comply with all of the rule’s requirements, chief among them the requirement to file Real Estate Reports with FinCEN. FinCEN believes that this effective date, which delays the effective date by slightly more than the one-year

that industry commenters generally supported at a minimum, will provide additional opportunity for potential reporting persons to understand the requirements of the rule and put appropriate compliance measures into place. Furthermore, this effective date will provide FinCEN with the additional time necessary to issue the Real Estate Report, including the completion of any process required by the Paperwork Reduction Act (PRA).

However, FinCEN declines to adopt a phased approach to implementation of the rule, such as by initially limiting the reporting obligation to persons performing a limited number of functions described in the reporting cascade or phasing-in the rule geographically. FinCEN believes a phased approach would likely create unneeded complexity for industry, as industry would need to adapt processes and procedures multiple times over the implementation period. A phased implementation would also undermine the effectiveness of the rule for an extended period of time. The rule is intended to provide comprehensive reporting for a subset of high-risk residential real estate transfers; phased implementation may enable avoidance of reporting requirements by illicit actors, replicating some of the issues FinCEN has encountered under the Residential Real Estate CTOs.

V. Severability

If any of the provisions of this rule, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

Indeed, the provisions of this rule can function sensibly if any specific provision or application is invalidated, enjoined or stayed. For example, if a court were to hold as invalid the application of the rule with respect to any category of potential reporting persons, FinCEN would preserve the reporting cascade approach for all other persons that perform the functions set out in the cascade. In such an instance, the provisions of the rule should remain in effect, as those provisions could function sensibly with respect to other potential reporting persons. Likewise, if a court were to hold invalid the application of the rule to any category of residential real property, as defined, the other categories should still remain covered. Because these categories operate independently from each other, the remainder of the rule’s provisions

could continue to function sensibly: a reportable transfer would continue to be a non-financed transfer of any ownership interest in the remaining categories of residential real property when transferred to a transferee entity or transferee trust. Similarly, with respect to transferee entities and transferee trusts, if a court were to enjoin FinCEN from enforcing the rule’s reporting requirements as applied to, for example, transferee trusts, the reporting of transfers to transferee entities should continue because the two types of transferees are separate and distinct from one another. Thus, even if the transferee trust provisions were severed from the rule, the remaining portions of the rule could still function sensibly. In sum, in the event that any of the provisions of this rule, or the application thereof to any person or circumstance, is held to be invalid, FinCEN has crafted this rule with the intention to preserve its provisions to the fullest extent possible and any adverse holding should not affect other provisions.

VI. Regulatory Analysis

This regulatory impact analysis (RIA) evaluates the anticipated effects of the final rule in terms of its expected costs and benefits to affected parties, among other economic considerations, as required by EOs 12866, 13563, and 14094. This RIA also affirms FinCEN’s original assessments of the potential economic impact on small entities pursuant to the Regulatory Flexibility Act (RFA) and presents the expected reporting and recordkeeping burdens under the Paperwork Reduction Act of 1995 (PRA). Furthermore, it sets out the analysis required under the Unfunded Mandates Reform Act of 1995 (UMRA).

As discussed in greater detail below, the rule is expected to promote national security objectives and enhance compliance with international standards by improving law enforcement’s ability to identify the natural persons associated with transfers of residential real property conducted in the U.S. residential real estate sector, and thereby diminish the ability of corrupt and other illicit actors to launder their proceeds through real estate purchases in the United States. More specifically, the collection of the transfer-specific SARs—Real Estate Reports—in a repository that is readily accessible to law enforcement and that contains other BSA reports is expected to increase the efficiency with which resources can be utilized to identify such natural persons, or beneficial owners, when they have conducted non-financed purchases of residential real

property using legal entities or trusts, and to cross-reference those beneficial owners and their legal entity or trust against other reported financial activities in the system.

This RIA first describes the economic analysis FinCEN undertook to inform its expectations of the rule's impact and burden. That is followed by certain pieces of additional and, in some cases, more specifically tailored analysis as required by EOs 12866, 13563, and 14094, the RFA, the UMRA, and the PRA, respectively. Responses to public comments related to the RIA—regarding specific findings, assumptions, or expectations, or with respect to the analysis in its entirety—can be found in Sections VI.A.1.b and VI.C and have been previewed and cross-referenced throughout the RIA.

A. Assessment of Impact

This final rule has been determined to be a "significant regulatory action" under Section 3(f) of E.O. 12866 as amended by 14094. The following assessment indicates that the rule may also be considered significant under Section 3(f)(1), as the rule is expected to have an annual effect on the economy of \$200 million or more.⁴³ Consistent with certain identified best practices in regulatory analysis, the economic analysis conducted in this section begins with a review of FinCEN's broad economic considerations,⁴⁴ identifying the relevant market failures (or fundamental economic problems) that demonstrate the need or otherwise animate the impetus for the policy intervention.⁴⁵ Next, the analysis turns to details of the current regulatory requirements and the background of market practices against which the rule will introduce changes (including incremental costs) and establishes FinCEN's estimates of the number of entities and residential real property transfers it anticipates to be affected in a given year.⁴⁶ The analysis then briefly reviews the final rule with a focus on the specifically relevant elements of the definitions and requirements that most directly inform how FinCEN contemplates compliance would be operationalized.⁴⁷ Next, the analysis proceeds to outline the estimated costs to the respective affected parties that

would be associated with such operationalization.⁴⁸ Finally, the analysis concludes with a brief discussion of the regulatory alternatives FinCEN considered in the NPRM, including a discussion of the public comments received in response.⁴⁹ Throughout the analysis, FinCEN has attempted to incorporate public comments received in response to the NPRM where most relevant. Certain broad commentary themes that are pertinent to the RIA as a whole are addressed specifically in Sections VI.A.1.b and VI.C below, while the remainder are integrated into the general discussion throughout the rest of the analysis.

1. Economic Considerations

a. Broad Economic Considerations

As FinCEN articulated in the RIA of the NPRM, two problematic phenomena animate this rulemaking.⁵⁰ The first is the use of the United States' residential real estate market to facilitate money laundering and illicit activity. The second, and related, phenomenon is the difficulty of determining who beneficially owns legal entities or trusts that may engage in non-financed transfers of residential real estate, either because this data is not available to law enforcement or access is not sufficiently centralized to be meaningfully usable for purposes of market level risk-monitoring or swift investigation and prosecution. The second phenomenon contributes to the first, making money laundering and illicit activity through residential real property more difficult to detect and prosecute, and thus can reduce the appropriate disciplinary and deterrent effects of law enforcement. FinCEN therefore expects that the reporting of non-financed residential real estate transfers required by this rule would generate benefits by mitigating those two phenomena. In other words, FinCEN expects that benefits would flow from the rule's ability to make law enforcement investigations of illicit activity and money laundering through residential real estate less costly and more effective, and it would thereby generate value by reducing the social costs associated with related illicit activity to the extent that it is more effectively disciplined or deterred.

b. Consideration of Comments Received

In completing the analysis to accompany the final rule, FinCEN took

all submitted public comments to the NPRM into consideration. While the NPRM received over six hundred comment letters, fewer than 25 percent of those comments presented non-duplicate content and a smaller fraction still provided comment specifically with respect to the NPRM RIA. The proportion of comment letters with non-duplicate content represents highly geographically concentrated and geographically unique feedback, which may therefore limit the generalizability of those responses regarding baseline and burden-related elements to other regions of the country and other local real estate markets that do not face the same general housing market trends or state-specific legal constraints. Where FinCEN has declined to revise its original analysis in response to certain comments, an attempt has been made to provide greater clarification of the reasons underlying FinCEN's original methodological choices and expectations.

i. Comments Pertaining to Burden Estimates

Numerous comment letters spoke to the anticipated burden of the rule, though there was substantial variation in parties' expectations about which participant in a reportable transfer would ultimately bear the financial costs. Some commenters expressed concern that, if required to serve as the reporting person, they would not be able to absorb the related costs. The majority of these commenters, however, did not offer any explanation for why they would therefore not opt to designate to another cascade member, though presumably the assumption may have been that no other cascade member might be willing to agree. This assumption may or may not be consistent with countervailing incentives other cascade members face in facilitating reportable transfers. Other commenters suggested that certain reporting persons might be forced to absorb a large proportion of the rule's costs due simply to their considerable market share in their particular industry. Additionally, a substantial fraction of those who commented on the burden of the rule signaled their expectation that to some degree the financial costs would ultimately be passed along to the transferee, the transferee's tenants, or to all housing market clients served by that potential reporting person.

For purposes of the economic analysis, FinCEN notes that there may be a meaningful distinction between the concept of being burdened, or affected, by the rule and bearing the cost of the

⁴³ E.O. 12866, 50 FR 51735 (Oct. 4, 1993), section 3(f)(1); E.O. 14094, 88 FR 21879 (Apr. 11, 2023), section 1(b).

⁴⁴ See Section VI.A.1.

⁴⁵ Broadly, the anticipated economic value of a rule can be measured by the extent to which it might reasonably be expected to resolve or mitigate the economic problems identified by such review.

⁴⁶ See Section VI.A.2.

⁴⁷ See Section VI.A.3.

⁴⁸ See Section VI.A.4.

⁴⁹ See Section VI.A.5.

⁵⁰ See FinCEN, NPRM, "Anti-Money Laundering Regulations for Residential Real Estate Transfers," 89 FR 12424 (Feb. 16, 2024).

rule. A party may be the primary affected business in terms of needing to undertake the most new burden or incremental, novel activity to comply with the rule, but to the extent that that work is compensated, that party, for purposes of the RIA is not considered to also bear the cost of the rule. The comments FinCEN received in response to the NPRM suggest that there may be considerable variation across states in the distinction between where businesses may be primary affected businesses only and where businesses may be both those primarily affected and those that bear the majority of the rule's costs.

Separately, FinCEN notes that while the vast majority of comment letters spoke to at least one element of burden as a concern, very few provided compelling estimates or alternative methods to quantify the expected burden of the proposed rule in its entirety. Many commenters, in fact, took FinCEN estimates as given when making their own arguments, suggesting that at least on some level, they found the estimates reasonably credible. In cases where commenters most strongly disagreed with the magnitude of FinCEN estimates (suggesting that FinCEN vastly underestimated the burden of the rule), it is unclear whether the same differences would persist in light of the clarifications and modifications to the proposed rule that have been made in the process of finalization. Given the divergence between what some commenters originally interpreted the rule to require of them and what the final rule would entail, a number of those concerns—including concerns related to the expected verification of information that are addressed by the reasonable reliance standard adopted in the final rule—may now be less pressing.

The primary revision that FinCEN has made to the RIA in response to commenters is with respect to wage estimates for the industry categories represented in the reporting cascade. In addition to updating wages to incorporate the BLS's most recent annual figures, FinCEN also elected to incorporate the 90th percentile wage values instead of the national average index values used in the NPRM RIA. This more conservative approach is meant to address certain commenter concerns that FinCEN's expected costs might underestimate the market wage rates reporting persons would need to pay, particularly because more reporting might occur in geographic areas where skilled labor commands higher compensation. Adopting this more conservative, higher wage rate approach

does not reflect any change in FinCEN's expectations about the underlying burden of compliance with the rule.

ii. Comments Suggesting Additional Analysis

A few comment letters suggested that FinCEN's analysis may have benefited from additional research activities, robustness tables, or analyses of distributional effects. While in principle FinCEN does not object to more, and more empirically robust, quantitative analysis of any of its policies, it is nevertheless unpersuaded that the analyses requested would have changed the conclusions those additional analytical activities would have informed. In none of the enumerated requests for additional analysis did the commenter convincingly substantiate how the findings of their requested items might have actionably changed the contours of the final policy without impairing its expected efficacy.

2. Baseline and Affected Parties

To assess the anticipated regulatory impact of the rule, FinCEN took several factors about the current state of the residential real estate market into consideration. This is consistent with established best practices and certain requirements⁵¹ that the expected economic effects of a rule be measured against the status quo as a primary counterfactual. Among other factors, FinCEN's economic analysis of regulatory impact considered the rule in the context of existing regulatory requirements, relevant distinctive features of groups likely to be affected by the rule, and pertinent elements of current residential real estate market characteristics and common practices. Each of these elements, including additional details and clarifications responsive to comments received, is discussed in its respective subsection below.

a. Regulatory Baseline

While there are no specific Federal rules that would directly and fully duplicate, overlap, or conflict with the rule, there are nevertheless components of the rule that mirror, or are otherwise consistent with, reporting and procedural requirements of existing FinCEN rules and orders, as well as those of other agencies. To the extent that a person would have previous compliance experience with these elements of the regulatory baseline, FinCEN expects that some costs

associated with the rule would be lower because the incremental changes in behavior from current practices would be smaller. FinCEN reviews the most proximate components from these existing rules and orders in greater detail below.

i. Residential Real Estate GTOs

Under the Residential Real Estate GTOs, covered title insurance companies are required to report: "(i) The dollar amount of the transaction; (ii) the type of transaction; (iii) information identifying a party to the transaction, such as name, address, date of birth, and tax identification number; (iv) the role of a party in the transaction (*i.e.*, originator or beneficiary); and (v) the name, address, and contact information for the domestic financial institution or nonfinancial trade or business."

As discussed above, FinCEN recognizes that the Residential Real Estate GTOs collect beneficial ownership information for certain non-financed purchases of residential real property by legal entities that meet or exceed certain dollar thresholds in select geographic areas. However, the Residential Real Estate GTOs are narrow in that they are temporary, location-specific, and limited in the transactions they cover. The rule is wider in scope of coverage and will collect additional useful and actionable information previously not available through the Residential Real Estate GTOs. As such, the nationwide reporting framework for certain residential real estate transfers will replace the current Residential Real Estate GTOs.

Some evidence suggests that, despite the restriction of reporting persons under the existing Residential Real Estate GTOs to title insurance companies only, certain additional categories of real estate professionals may already be familiar—and have experience—with gathering the currently required information. For example, FinCEN observes that in some markets presently covered by the Residential Real Estate GTOs, realtors and escrow agents often assist title insurance companies with their reporting obligations despite not being subject to any formal reporting requirements themselves. Some may even have multiple years' worth of guidance and informational support by the regional or national trade association of which they are a member in how best to facilitate and enable compliance with existing FinCEN requirements. For instance, in 2021, the National Association of Realtors advised that while "[r]eal estate professionals do

⁵¹ Office of Management and Budget, Circular A-4 (Nov. 9, 2023), available at <https://www.whitehouse.gov/wp-content/uploads/2023/11/CircularA-4.pdf>.

not have any affirmative duties under the Residential Real Estate GTOs," such entities should nevertheless expect that "a title insurance company may request information from real estate professionals to help maintain its compliance with the Residential Real Estate GTOs. Real estate professionals are encouraged to cooperate and provide information in their possession."⁵² Thus, the historical Residential Real Estate GTOs' attempt to limit the definition of reporting persons to title insurance companies does not seem to have completely forestalled the imposition of time, cost, and training burdens on other real estate transfer-related businesses. As such, the cascading reporting approach might not mark a complete departure from current practices and the related burdens of Residential Real Estate GTO requirements, as they may already in some ways be functionally applicable to multiple prospective reporting persons in the rule's reporting cascade.

ii. BOI Reporting Rule

Furthermore, following the enactment of the CTA, beneficial ownership information of certain legal entities is required to be submitted to FinCEN. However, as set out in the NPRM preamble and also discussed above,⁵³ the information needed to ascertain money laundering risk in the residential real estate sector differs in key aspects from what is collected under the CTA, and, accordingly, the information collected under this rule differs from that collected under the CTA.

For example, FinCEN believes that a critical part of the rule is that it will alert law enforcement to the fact that a residential real estate transfer fitting within a known money laundering typology has taken place. While beneficial ownership information collected under the CTA may be available, that information concerns the ownership composition of a given entity at a given point in time. As such reporting does not dynamically extend to include information on the market transactions of the beneficially owned legal entity, it would not alert law enforcement officials focused on reducing money laundering that any real estate transfer has been conducted, which includes those particularly vulnerable to money laundering such as non-financed transfers of residential property.

⁵² See National Association of Realtors, "Anti-Money Laundering Voluntary Guidelines for Real Estate Professionals" (Feb. 16, 2021), p. 3, available at <https://www.narfonc.com/billdatabase/clientfiles/172/4/1695.pdf>.

⁵³ See Section III.C.5.c.

Furthermore, the scope of entities that are the focus of the real estate rule is broader than the CTA, as certain types of entities, including most trusts, are not required to report under the CTA. Because non-excepted trusts under the residential real estate rule generally do not have an obligation to report beneficial ownership under the CTA, their incremental burden of compliance with the Real Estate Report requirements may be moderately higher insofar as the activities of collecting, presenting, or certifying beneficial ownership information are less likely to have already been performed for other purposes.

iii. Customer Due Diligence (CDD) Rule

The CDD Rule's⁵⁴ beneficial ownership requirement addressed a regulatory gap that enabled persons looking to hide ill-gotten proceeds to potentially access the financial system anonymously. Among other things, it required covered financial institutions to identify and verify the identity of beneficial owners of legal entity customers, subject to certain exceptions and exemptions; beneficial ownership and identification therefore became a component of AML requirements.

Financial institutions subject to the CDD Rule are required to collect some beneficial ownership information from legal entities that establish new accounts. However, this rule covers non-financed transfers of residential real estate that do not involve financial institutions covered by the CDD Rule. The rule would also collect additional information relevant to the real estate transfers that is currently not collected under the CDD Rule.

iv. Other (Form 1099-S)

In the course of current residential real estate transfers, some parties that might be deemed "transferors" under the rule already prepare and report portions of the requisite information to other regulators. For example, the IRS collects taxpayer information through Form 1099-S on seller-side proceeds from reportable real estate transfers for a broader scope of reportable real estate transfers than this rule.⁵⁵ This information, however, is generally unavailable for one of the primary purposes of this rule, as there are

significant statutory limitations on the ability of the IRS to share such information with Federal law enforcement or other Federal agencies. In addition to these statutory limitations on IRS disclosure of taxpayer information, details about the buyer's beneficial ownership (the focus of this rule) largely fall outside the scope of transaction information reported on the Form 1099-S.

However, IRS Form 1099-S is nonetheless relevant to the rule's regulatory baseline, given the process by which the Form 1099-S may be prepared and submitted to the IRS. Similar to the Real Estate Report, the person responsible for filing the IRS Form 1099-S can either be determined through a cascade of the various parties who may be involved in the closing or settlement process, or, alternatively, certain categories of the involved parties may enter into a written agreement at or before closing to designate who must file Form 1099-S for the transaction. The agreement must identify the designated person responsible for filing the form, but it is not necessary that all parties to the transaction, or that more than one party even, enter into the agreement. The agreement must: (1) identify by name and address the person designated as responsible for filing; (2) include the names and addresses of each person entering into the agreement; (3) be signed and dated by all persons entering into the agreement; (4) include the names and addresses of the transferor and transferee; and (5) include the address and any other information necessary to identify the property. The rule's designation agreement requires, and is limited to, the same five components that may be included in a designation agreement accompanying Form 1099-S. Therefore, the exercise of designation, as well as the collection of information and signatures that it involves, may already occur in connection with certain transfers of residential real property and in these cases be leveraged at minimal additional expense.

⁵⁴ FinCEN, "Customer Due Diligence Requirements for Financial Institutions," 81 FR 20398 (May 11, 2016).

⁵⁵ Reportable real estate for purposes of IRS Form 1099-S includes, for example, commercial and industrial buildings (without a residential component) and non-contingent interests in standing timber, which are not covered under the rule.

b. Baseline of Affected Parties

i. Transferees

Legal Entities

According to a recent study⁵⁶ that analyzed Ztrax data⁵⁷ covering 2,777 U.S. counties and over 39 million residential housing market transactions from 2015 to 2019, the proportion of average county-month non-financed residential real estate transactions involving purchases by legal entities was approximately 11 percent during the five-year period analyzed. When the sample is divided into counties that, by 2019, were under Residential Real Estate GTOs versus those that were never under Residential Real Estate GTOs, the proportions of average county-month non-financed sales to total purchases are approximately 13.6 percent and 11.2 percent, respectively.

Legal entities that own U.S. residential real estate vary by size and complexity of beneficial ownership structure, and by some measures, have increased market participation over time.⁵⁸ FinCEN analysis of the Department of Housing and Urban Development and Census Bureau's Rental Housing Finance Survey (RHFS) data for 2018 found that micro investors or small business landlords who owned 1–2 units owned 66 percent of all single family and multifamily structures with 2–4 units. Conversely, investors in the residential rental market who owned at least 1,000 properties owned only 2 percent of single-family homes and multi-family structures.

FinCEN did not receive any comments, studies, or data that meaningfully conflict with these estimates or the manner in which they informed the NPRM RIA's initial estimates of the number of reportable transfers per year.

Trusts

The final rule requires the reporting of certain non-finance transfers of residential real property to transferee trusts.⁵⁹ Residential real property purchases by transferee trusts have not

generally been reported under the Residential Real Estate GTOs and the entities themselves are typically⁶⁰ not subject to beneficial ownership reporting requirements under the CTA. Therefore, FinCEN expects that trusts would be more homogeneously newly affected by the rule than legal entities, discussed above, as a cohort of affected parties.

Establishing a baseline population of potentially affected transferee trusts based on the existing population of legal trusts is challenging for several reasons. These reasons include the general lack of comprehensive and aggregated data on the number,⁶¹ value, usage, and holdings of trusts formed in the United States, which in turn is a result of heterogeneous registration and reporting requirements, including instances where neither requirement currently exists. Because domestic trusts are created and administered under State law, and states have broad authority in how they choose to regulate trusts, there is variation in both the proportion of potential transferee trusts that are currently required to register as trusts in their respective states as well as the amount of information a given trust is required to report to its state about the nature of its assets or its structural complexity. Thus, limited comparable information may be available at a nationwide level besides what is reported for Federal tax purposes, and what is available is unlikely to represent the full population of potentially affected parties that would meet the definition of transferee trust if undertaking the non-financed transfer of residential real property.

International heterogeneity in registration and reporting requirements for foreign trusts creates similar difficulties in assessing the population of potentially affected parties that are not originally registered in the United States. Further complicating this assessment is the exogeneity and unpredictability of changes to foreign tax and other financial policies, which studies in other, related contexts have shown, generally affect foreign demand for real estate.⁶²

While it is difficult to know exactly how many existing trusts there are, and within that population how many own residential real property (as a potential indicator of what proportion of new trusts might eventually be used to own residential real property), there is nevertheless a consistency in the limited existing empirical evidence that would support a conjecture that proportionally few of the expected reportable transfers would be likely to involve a transferee trust. A recent study of U.S. single-property residential purchases that occurred between 2015 and 2019 identified a trust as the buyer in 3.3 percent of observed transactions.⁶³ FinCEN also conducted additional analysis of publicly available data that might help to quantify the proportion of trust ownership in residential real estate and more clearly account for non-sale transfers for no consideration. Based on the RHFS, identifiable trusts accounted for approximately 2.5 percent of rental housing ownership and approximately 8.2 percent of non-natural person ownership of rental housing.⁶⁴

To the extent that trusts' current residential real property holdings are linear in the number of housing units and current holdings is a reliable proxy for future purchasing activity, FinCEN does not expect the proportion of reportable transfers involving a transferee trust to exceed 5 percent of potentially affected transfers. No further refinements to this upper-bound-like estimate, based on the number of existing trusts that may be affected, would be feasible without a number of additional assumptions about market behavior that FinCEN declines to impose in the absence of better/more data.

While the majority of public comments pertaining to trusts suggested that the number of affected trusts would be substantially higher than the original RIA had anticipated, FinCEN is not revising or updating its baseline

⁵⁶ See Matthew Collin, Florian Hollenbach, and David Szakonyi, "The Impact of Beneficial Ownership Transparency on Illicit Purchases of U.S. Property," Brookings Global Working Paper #170, (Mar. 2022), p. 14, available at <https://www.brookings.edu/wp-content/uploads/2022/03/Illicit-purchases-of-US-property.pdf>.

⁵⁷ Zillow, Transaction and Assessment Database (ZTRAX), available at <https://www.zillow.com/research/ztrax/>.

⁵⁸ See Redfin, "Investors Bought 26% of the Country's Most Affordable Homes in the Fourth Quarter—the Highest Share on Record," (Feb. 14, 2024), available at <https://www.redfin.com/news/investor-home-purchases-q4-2023/>.

⁵⁹ See Section III.C.2.e.

⁶⁰ FinCEN notes that while most trusts are not reporting companies under the BOI Reporting Rule, a reporting company would be required to report a beneficial owner that owned or controlled the reporting company through a trust.

⁶¹ FinCEN notes that while the U.S. Census Bureau does produce annual statistics on the population of certain trusts (NAICS 525—Funds, Trusts, and Other Financial Vehicles), such trusts are unlikely to be affected by the rule and thus their population size is not informative for this analysis.

⁶² See, e.g., Cristian Badrinza and Tarun Ramadorai, "Home away from home? Foreign demand and London House prices," *Journal of*

Financial Economics 130 (3) (2018), pp. 532–555, available at <https://www.sciencedirect.com/science/article/abs/pii/S0304405X18301867?via%3Dihub>; see also Caitlan S. Gorbach and Benjamin J. Keys, "Global Capital and Local Assets: House Prices, Quantities, and Elasticities," Technical Report, National Bureau of Economic Research (2020), available at <https://www.nber.org/papers/w27370>.

⁶³ See Matthew Collin, Florian Hollenbach, and David Szakonyi, "The Impact of Beneficial Ownership Transparency on Illicit Purchases of U.S. Property," Brookings Global Working Paper #170, (Mar. 2022), p. 14, available at <https://www.brookings.edu/wp-content/uploads/2022/03/Illicit-purchases-of-US-property.pdf>.

⁶⁴ See U.S. Census Bureau, Rental Housing Finance Survey (2021), available at https://www.census.gov/data-tools/demo/rhfs/#/?s=2018&s_type=1&s_tableNum=TABLE2.

estimates at this stage because the final rule has adopted certain broad exceptions that materially limit the reporting of transfers to trusts.

Excepted Transferees

Exceptions to the general definitions of transferee entities and transferee trusts apply to certain highly regulated entities and trusts that are subject to AML/CFT program requirements or to other significant regulatory reporting requirements.

For example, PIVs that are investment companies and registered with the SEC under section 8 of the Investment Company Act of 1940 are excepted, while unregistered PIVs engaging in reportable transfers are not. Unregistered PIVs are instead required to provide the reporting person with specified information, particularly including the required information regarding their beneficial owners. FinCEN analysis of costs below continues to assume that any such unregistered PIV stood up for a reportable transfer would generally have, or have low-cost access to, the information necessary for filing Real Estate Reports. FinCEN expects that a PIV that is not registered with the SEC—which can have at maximum four investors whose ownership percent is or exceeds 25 percent (the threshold for the ownership prong of the beneficial ownership test for entities)—would likely either (1) be an extension of that large investor, or (2) have a general partner who actively solicited known large investors. In either case, the unregistered PIV is likely to have most of the beneficial ownership information that would be required to complete the Real Estate Report and access to the beneficial owner(s) to request the additional components of required information not already at hand. FinCEN did not receive any comments indicating that these expectations are unreasonable and thus continues to operate under these assumptions with respect to baseline costs.

Operating companies subject to the Securities Exchange Act of 1934's current and periodic reporting requirements, including certain special purpose acquisition companies (SPACs) and issuers of penny-stock, are also excepted transferees under this rule. FinCEN notes that the percent ownership threshold for beneficial ownership for SEC regulatory purposes is considerably lower than as defined in the CTA and related Exchange Act beneficial ownership-related disclosure obligations usually apply to more control persons at such a registered

operating company.⁶⁵ Additionally, disclosures about the acquisition of real estate, including material non-financed purchases of residential property, are already required in certain periodic reports filed with the SEC.⁶⁶ Therefore, an incremental informational benefit from not excepting SEC-registered operating companies as transferees for the purposes of this rule's reporting requirements may either not exist or, at best, be very low while the costs to operating companies of reporting and compliance with an additional Federal regulatory agency are expected to be comparatively high.

Some commenters expressed concern that it might be difficult or burdensome for reporting persons to determine if a transfer might be exempt from reporting on the basis of the transfer being made to an excepted transferee. However, the final rule adopts a reasonable reliance standard, and therefore the reporting person may reasonably rely on information provided by others as described in Section III.B.2.4, including with respect to whether the transferee is exempt. Furthermore, should a reporting person nevertheless want to verify the excepted status of a transferee, FinCEN notes that the status of transferees as excepted pursuant to being registered with the SEC should be easily verifiable by a name search in the agency's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system, which can be queried using open access, publicly available search tools.

ii. Reporting Entities

Because the reporting cascade is ordered by function performed, or service provided, rather than by defined occupations or categories of service providers,⁶⁷ attribution of work to the capacity in which a person is primarily employed is necessarily imprecise. To account for the need to map from services provided to entities providing such services as a prerequisite to estimating the number of potentially affected parties, FinCEN acknowledges, but abstracts from, the common observation that title agents and settlement agents are “often the same entity that performs two separate functions in a real estate transaction,”

⁶⁵ See U.S. Securities and Exchange Commission, “Officers, Directors, and 10% Shareholders,” available at <https://www.sec.gov/education/smallbusiness/goingpublic/officersanddirectors>.

⁶⁶ See, e.g., U.S. Securities and Exchange Commission, Instructions to Item 2.01 on Form 8-K; see also 17 CFR 210.3–14.

⁶⁷ See *supra* Section III.C.3.a for a description of the reporting cascade; see also proposed 31 CFR 1031.320(c)(1).

and that “the terms title agent and settlement agent are often used interchangeably.”⁶⁸ For purposes of the remaining RIA, FinCEN groups potential reporting persons by features of their primary occupation and treats them as functionally distinct members of the cascade, acknowledging that this is done more for analytical clarity than as a rigid expectation about the capacity in which an individual is employed to service a given transfer. In total, FinCEN estimates there may be up to approximately 172,753 reporting persons and 642,508 employees of those persons that could be affected by the rule. Of this total, the distribution of potential reporting persons as identified by primary occupation⁶⁹ is: settlement agents (3.6 percent of potential reporting persons, 9.8 percent of the potentially affected labor force), title insurance companies (0.5 percent, 6.6 percent), real estate escrow agencies (10.9 percent, 10.5 percent), attorneys⁷⁰ (9.3 percent, 16.7 percent), and other real estate professionals⁷¹ (75.5 percent, 56.4 percent). For purposes of cost estimates throughout the remaining analysis, FinCEN computed the

⁶⁸ See Nam D. Pham, “The Economic Contributions of the Land Title Industry to the U.S. Economy,” ndp Consulting (Nov. 2012), p. 6, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2921931. This study was included as an appendix to a 2012 American Land Title Association comment letter submitted to the Consumer Financial Protection Bureau (CFPB) on the Real Estate Settlement Procedures Act (RESPA).

⁶⁹ FinCEN notes that the capacity in which a reporting person facilitates a residential real property transfer may not always be in the capacity of their primary occupation. However, as analysis here relies on the U.S. Census Bureau's annual Statistics of U.S. Business Survey, which is organized by NAICS code, the following nominal primary occupations (NAICS codes) are used for grouping and counting purposes: Title Abstract and Settlement Offices (541191), Direct Title Insurance Carriers (524127), Other Activities Related to Real Estate (531390), Offices of Lawyers (541110), and Offices of Real Estate Agents and Brokers (531210). As noted in note 73, these NAICS codes are not the basis for hourly wage rate information used in this paragraph.

⁷⁰ The estimate of affected attorneys is calculated as ten percent of the total SUSB population of Offices of Lawyers. This estimate is based on the average from FinCEN analysis of U.S. legal bar association membership, performed primarily at the State level, identifying the proportion of (state) bar members that are members of the organization's (state's) real estate bar association. FinCEN considers this proxy more likely to overestimate than underestimate the number of potentially affected attorneys because, while not all members of a real estate bar association actively facilitate real estate transfers each year, it was considered less likely that an attorney would, in a given year, facilitate real estate transfers in a way that would make them a candidate reporting person for purposes of the proposed rule when such an attorney had not previously indicated an interest in real estate specific practice (by electing to join a real estate bar).

⁷¹ NAICS Code 531210 (Offices of Real Estate Agents and Brokers).

following fully loaded⁷² average⁷³ hourly wages⁷⁴ by the respective primary occupation categories: settlement agents, \$79.35; title insurers, \$106.49; real estate escrow agencies, \$81.74; attorneys, \$153.48; and other real estate professionals, \$81.74. For reference, these wages estimates represent the following updates from the NPRM RIA:

TABLE 1—WAGE ESTIMATE REVISIONS FROM NPRM TO FINAL RULE RIA

Primary business categories	Fully loaded hourly wage (NPRM)	Fully loaded hourly wage (final)
Title Abstract and Settlement Offices	\$70.33	\$79.35
Direct Title Insurance Carriers	84.15	106.49
Other Activities Related to Real Estate	70.46	81.74
Offices of Lawyers	88.89	153.48
Offices of Real Estate Agents and Brokers	70.46	81.74

c. Market Baseline

i. Reportable Transfers

The scope of residential real estate transfers that would be affected by the rule is jointly defined by the (1) the nature of the property transferred, (2) the financed nature of the transfer, and (3) the legal organization of the party to whom the property is transferred. For purposes of identification, the defining attribute for the nature of the property is that it is principally designed, or intended to become, the residence of one to four families, including cooperatives and vacant or unimproved land. Additionally, the property must be located in the United States as defined in the BSA implementing regulations.

Reportable transfers exclude all those in which the transferees receive an extension of credit from a financial institution subject to AML/CFT program and SAR Reporting requirements that is secured by the residential real property being transferred. Reportable transfers also exclude transfers associated with an easement, death, divorce, or bankruptcy or that are otherwise supervised by a court in the United States, as well as certain no consideration transfers to trusts, certain transfers related to 1031 Exchanges, and any transfer for which there is no reporting person.

On the basis of available data, studies, and qualitative evidence, subject to certain qualifying caveats about limitations in data availability, and in the absence of large, unforeseeable shocks to the U.S. residential housing

market, FinCEN's NPRM analysis estimated that the number of reportable transfers would be between approximately 800,000 and 850,000 annually. FinCEN received a number of comment letters suggesting that this estimate is too low. However, because most arguments of this nature were made on the basis of an understanding that the rule would include several kinds of transfers that have since been explicitly excepted in the final rule, FinCEN is not increasing its estimates.

ii. Current Market Characteristics

FinCEN took certain potentially informative aspects of the current market for residential real property into consideration when forming its expectations about the anticipated economic impact of the rule. Among other things, FinCEN considered trends in the observable rate of turnover in the stock of existing homes. Additionally, FinCEN reviewed recent studies and data from the academic literature estimating housing supply elasticities on previously developed versus newly developed land.

FinCEN also considered recent survey results of the residential real estate holdings of high-net-worth individuals and the proportion of survey respondents who self-reported the intent to purchase additional residential real estate in the coming year. Further, FinCEN reviewed studies of trends in the financing and certain distributional characteristics of shared equity housing, which includes co-operatives that will be affected by the rule.

iii. Current Market Practices Settlement and Closing

FinCEN assessed the role of various persons in the real estate settlement and closing process to determine a quantifiable estimate of each profession or industry's overall participation in that process. Accordingly, FinCEN conducted research based on publicly available sources to assess the general participation rate of the different types of reporting persons in the rule's reporting cascade. As part of its analysis, FinCEN noted a recent blog post citing data from the American Land Title Association (ALTA) that 80 percent of homeowners purchase title insurance when buying a home.⁷⁵

To better understand the distribution of the other types of persons providing residential real property transfer services to the transfers that are affected by the rule, FinCEN utilized county deed database records to approximate a randomly selected and representative sample of residential real estate transfers across the United States. FinCEN made efforts to collect deed data that reflected a representative, nation-wide sample, both in terms of the number and geographic dispersion of deeds, but acknowledges selection was nevertheless constrained in part by the feasibility to search by deed type, among other factors. FinCEN invited public feedback on the extent to which the same analysis would yield substantively different results if performed over a larger sample (with either more geographic locations, more

⁷² Fully loaded wages are scaled by a benefits factor. The ratio between benefits and wages for private industry workers is (hourly benefits (11.86)/(hourly wages (26.37)) = 0.42, as of December 2023. The benefit factor is 1 plus the benefit/wages ratio, or 1.42. See U.S. Bureau of Labor Statistics, "Employer Costs for Employee Compensation Historical Listing," available at <https://www.bls.gov/web/ecec/ececqtn.pdf>. The private industry workers series data for December 2023 is available at <https://www.bls.gov/web/ecec/ececqtn.pdf>.

⁷³ Because available wage estimates are not available for each SUBS category at the 6-digit NAICS level, FinCEN has estimated average wages over the collection of occupational subcategories likely to be affected for each corresponding category at the next most granular NAICS-level available.

⁷⁴ Wage estimates presented here, and used throughout the subsequent analysis, reflect two forms of updating from the NPRM: (1) wage data has been updated to reflect the BLS publication of the May 2023 National Occupational Employment and Wage Estimates in April 2024, (2) responsive

to public comments that the previous wage estimates (based on national mean wages) might contribute to an underestimate of time cost burdens, FinCEN is electing to conservatively adopt 90th-percentile values of occupational wages in place of mean hourly wage.

⁷⁵ See American Land Title Association, Home Closing 101, "Why 20% of Homeowners May Not Sleep Tonight," (June 3, 2020) available at <https://www.homeclosing101.org/why-20-percent-of-homeowners-may-not-sleep-tonight/>.

observations per location, or both), but did not receive any responsive data or the results of analysis based on such data.

The final analysis included 100 deeds, of which 97 involved at least one of the following potential reporting persons: (i) Title Abstract and Settlement Offices, (ii) Direct Title Insurance Carriers, or (iii) Offices of Lawyers. A candidate reporting person was deemed to be involved with the creation of the deed if either (i) a company or firm performing one of these functions was included on the deed or (ii) an individual performing or employed by a company or firm performing one of these functions was included on the deed. FinCEN assessed the distribution of alternative entities identified on the remaining deeds, categorizing by reporting person type. Based on this qualitative analysis, FinCEN tentatively anticipates that approximately three percent of reportable transfers might have a reporting person or reporting cascade that begins with someone other than a settlement agent, title insurer, or attorney.

Records Search

Currently, law enforcement searches a variety of State and commercial databases (that may or may not include beneficial ownership information), individual county record offices, and/or use subpoena authority to trace the suspected use of criminal proceeds in the non-financed transfer of residential real estate. Even after a significant investment of resources, the identities of the beneficial owners may not be readily ascertainable. This fragmented and limited approach can slow down and decrease the overall efficacy of investigations into money laundering through real estate. This was one reason that FinCEN introduced the Residential Real Estate GTOs, which law enforcement has reported have significantly expanded their ability to investigate this money laundering typology. At the same time, the Residential Real Estate GTOs have certain restrictions that limited its usefulness nationwide. This rule builds on and is intended to replace the Residential Real Estate GTO framework and creates reporting and recordkeeping requirements for specific residential real estate transfers nationwide.

3. Description of Final Rule Requirements

a. Reportable Transfers

The final rule requires certain persons involved in real estate closings and

settlements to submit reports and keep records on identified non-financed transfers of residential real property to specified legal entities and trusts on a nationwide basis. The rule does not require transfers to be reported if the transfer is financed, meaning that the transfer involves an extension of credit to all transferees that is secured by the transferred residential real property and is extended by a financial institution that has both an obligation to maintain an AML program and an obligation to report suspicious transactions under this chapter. It also does not require reporting of: (i) a grant, transfer, or revocation of an easement; (ii) a transfer resulting from the death of an owner of residential real property; (iii) a transfer incident to divorce or dissolution of a marriage or civil union; (iv) a transfer to a bankruptcy estate; (v) a transfer supervised by a court in the United States; (vi) a transfer for no consideration made by an individual, either alone or with the individual's spouse, to a trust of which that individual, that individual's spouse, or both of them, are the settlor(s) or grantor(s); (vii) a transfer to a qualified intermediary for purposes of a 1031 Exchange; or (viii) a transfer that does not involve a reporting person. A report would also not need to be filed if the transferee is an exempt legal entity or trust, which are generally highly-regulated.

b. Reporting Persons

The final rule requires a reporting person, as determined by either the reporting cascade or as pursuant to a designation agreement, to complete and electronically file a Real Estate Report. The reporting person may generally obtain, and reasonably rely upon, information needed to complete the Real Estate Report from any other person. This reasonable reliance standard is more limited for purposes of obtaining the transferee's beneficial ownership information. In those situations, the reasonable reliance standard applies only to information provided by the transferee or the transferee's representative and only if the person providing the information certifies the accuracy of the information in writing to the best of their knowledge. The reporting person must file the report by the final day of the following month after which a closing took place, or 30 days after the date of the closing, whichever is later.

c. Required Information

The final rule requires the reporting person to report to FinCEN certain information about a reportable transfer

of residential real property. This includes information on the reporting person, the transferee and its beneficial owners, the transferor, the property being transferred, and certain payment information. The collected information will be maintained by FinCEN in an existing database accessible to authorized users. Some commenters' remarks suggest that certain expectations of the rule's potential effects may flow from a misunderstanding about who may access Real Estate Report data once filed and how it may be used. FinCEN is therefore reiterating that both access and use of Real Estate Report data will be subject to the same restrictions as other BSA reports, including traditional SARs.

4. Expected Economic Effects

This section describes the main, quantifiable economic effects FinCEN anticipates the various affected parties identified above may experience. Because the primary expected value of the rule is in the extent to which it is able to address or ameliorate the economic problems discussed under the RIA's broad economic considerations, which (while substantial) is generally inestimable, no attempt is made to quantify the net benefit of the rule. Instead, the remainder of this section focuses primarily on the estimates of reasonably anticipated, calculable costs to affected parties. While FinCEN continues to principally anticipate aggregate cost estimates between approximately \$267.3 million and \$476.2 million in the first compliance year and current dollar value of the aggregate costs in subsequent years between approximately \$245.0 million and \$453.9 million annually, it has provided revised estimates throughout the remaining analysis, responsive to public comments, that reflect more conservative expectations about the cost of labor. Under these assumptions, the anticipated costs of the rule would be between approximately \$428.4 and \$690.4 million (midpoint \$559.4 million) in the first compliance year and between approximately \$401.2 and \$663.2 million (midpoint \$532.2 million) (current dollar value) in subsequent years. These quantified costs are a pro forma accounting cost estimate only and are not expected to represent either the full economic costs of the rule nor the net cost of the rule as measured against the components of expected benefits that may become quantifiable. As previously stated, the ability to successfully detect, prosecute, and deter crimes—or other illicit activities that rely on money laundering to be

profitable—is not readily translatable to dollar figures.⁷⁶ However, it might be inferred that a tacit expectation underlying this rulemaking is that the rule will generate intangible benefits worth over \$500 million per year.⁷⁷

a. Costs to Entities in the Reporting Cascade

i. Training

To estimate expected training costs, FinCEN adopted a parsimonious model similar, in certain respects, to the methodology used by FinCEN when publishing the RIA for the 2016 CDD Rule (CDD Rule RIA). Taking into consideration, however, that, unlike covered financial institutions under the CDD Rule, only one group of affected

reporting persons has direct pre-existing experience with other FinCEN reporting and compliance requirements, the estimates of anticipated training time here are revised upward from the CDD Rule RIA to 75 minutes for initial training and 30 minutes for annual refresher training. FinCEN's method of estimation assumes that an employee who has received initial training once will then subsequently take the annual refresher training each following year. This assumption contemplates that more than half of the original training would not be firm-specific and remains useful to the employee regardless of whether they remain with their initial employer or change jobs within the same industry. As in the CDD Rule RIA

high estimate model, FinCEN estimates that two-thirds of untrained employees receive the initial (lengthier) training each year. However, because the initial training is assumed to provide transferrable human capital in this setting, turnover is not relevant to the assignment to initial training in periods following Year 1. Thus, in the revised model, FinCEN calculated annual training costs as the combination of the expected costs of providing two-thirds of the previously untrained workforce per industry with initial (lengthier) training and all previously trained employees with the refresher (shorter) training. Time costs are proxied by an industry-specific fully loaded wage rate at the 90th percentile per industry.

TABLE 2—TRAINING COSTS

Primary business categories	Estimated per person training costs		Initial training		Refresher (year 2+)	
	Fully loaded hourly wage	Time (hours)	Total	Time (hours)	Total (unadjusted)	
Title Abstract and Settlement Offices	\$79.35	1.25	\$99.18	0.5	\$39.67	
Direct Title Insurance Carriers	106.49	1.25	133.11	0.5	53.24	
Other Activities Related to Real Estate	81.74	1.25	102.17	0.5	40.87	
Offices of Lawyers	153.84	1.25	192.30	0.5	76.92	
Offices of Real Estate Agents and Brokers	81.74	1.25	102.17	0.5	40.87	

To model industry-specific hiring inflows in periods following Year 1, FinCEN converted the Bureau of Labor Statistics (BLS) projected 10-year cumulative employment growth rates for 2022–2032 for the NAICS code mostly closely associated with a given industry available. Additionally, inflation data from the Federal Reserve Bank of St. Louis was utilized to estimate annual wage growth given the opportunity cost of training is assumed to be equivalent to the wage of employees. Utilizing these inputs, and summing costs across all industries expected to be affected, FinCEN estimates that the aggregate initial year training costs would be approximately \$51.0 million dollars and the undiscounted aggregate training costs in each of the subsequent years would range between approximately \$23.2 and \$31.5 million.

FinCEN notes that fewer than five percent of unique comments received made specific reference to the training costs that the rule would necessitate and fewer still provided comments

pertaining to the RIA estimates of training costs. While one commenter suggested that the uniformity of the rule would reduce the burden of preparing training materials relative to the current variety of Residential Real Estate GTO thresholds and applications, the majority of training cost-related comments simply noted that training costs would impose a burden and might separately lead to higher labor costs if new personnel require compensation for additional reporting compliance related subject-matter expertise. There were, however, some commenters who expressed a belief that the amount of time needed for—and frequency of—training needed to adequately prepare staff for compliance would be higher. While FinCEN is declining to responsively adjust its estimates of training-related time costs for reasons, among others, that are further discussed below, FinCEN is responsive to certain other commenters who expressed a perceived value to having a greater range of potential burden estimates to compare: had FinCEN adopted the

suggested alternative training time costs, the aggregate annual training burden would have been either \$81.5 million in year 1⁷⁸ or \$101.9 million⁷⁹ in year 1, or between \$63.5 and \$130.8 million in a given year.⁸⁰

In its NPRM analysis, FinCEN recognized that the rule would impose certain costs on businesses positioned to provide services to non-financed transfers of residential real property even in the absence of direct participation in a specific reportable transfer, including the costs of preparing informational material and training personnel about the proposed rule generally as well as certain firm-specific policies and procedures related to reporting, complying, and documenting compliance. Because this training burden was applied uniformly across all potentially affected occupational categories represented in the reporting cascade, which is already a conservative assumption given that some cascade tiers are, in practice, more likely to become the reporting person than others, FinCEN considered time burden

⁷⁶ See FinCEN, NPRM, “Anti-Money Laundering Regulations for Residential Real Estate Transfers,” 89 FR 12424, 12446–12447 (Feb. 16, 2024).

⁷⁷ Based on the observation that the midpoint values of first year (\$559.4 million), subsequent year (\$532.2 million), and the midpoint of the midpoint values between first and subsequent years (\$545.8 million) are all approximately \$500 million.

See also *infra* Section VI.H for a discussion of annualized cost.

⁷⁸ Based on a comment that the initial training should be 120 minutes (2 hours).

⁷⁹ Based on a comment that the initial training should be double what FinCEN estimated (150 minutes, or 2.5 hours).

⁸⁰ Based on a comment that training would take 60 minutes (1 hour) per transfer, where FinCEN applies the lowest wage rate to the lower bound estimate of total annual reportable transfers to obtain the lower bound and applies the highest wage rate to the upper bound estimate of total annual reportable transfers to obtain the upper bound.

values (75 minutes for initial, 30 minutes for refresher) that would average across the expected variation in training by occupational category a reasonable approach. Furthermore, these training costs, as estimated in the NPRM, pertain only to those contemplated activities identified (developing general understanding of the rule and firm-specific compliance policies and procedures) and were not intended to reflect additional reporting-technology and form-specific training costs. Costs of training that are specific to the Real Estate Report will be separately estimated as a function of the RIA in the NPRM for the Real Estate Report; therefore, it would not have been appropriate to have included those training costs in the current final rule estimates as that would result in accounting for the same expense twice.

ii. Reporting

The total costs associated with reporting a given reportable transfer will likely vary with the specific facts and circumstances of the transfer. For

instance, the cost of the time needed to prepare and file a report could differ depending on which party in the cascade is the reporting person, because parties receive different compensating wages. The costs associated with the time to determine who is the reporting person will also vary by the number of potential parties who may assume the role and thus might be parties to a designation agreement. Additionally, the time required to prepare a report will likely vary with the complexity of the beneficial ownership of the transferee and, for example, the level of the transferee entity's preexisting familiarity with the concepts of beneficial ownership information as defined for FinCEN purposes.

FinCEN continues to estimate an average per-party cost to determine the reporting person of 30 (15) minutes for the party that assumes the role if a designation agreement is (not) required and 15 minutes each for all non-reporting parties (assuming each tier in the cascade corresponds to one reporting person). Therefore, the range

of potential time costs associated with determining the reporting person is expected to be between 15 to 90 minutes. Recently, FinCEN received updated information from parties currently reporting under the Residential Real Estate GTOs indicating that the previously estimated time cost of 20 minutes for that reporting requirement was less than half the average time expended per report in practice. Based on this feedback, the filing time burden FinCEN anticipates for the rule accordingly incorporates a 45-minute estimate for the collection and reporting of the subset of Real Estate Report required information that is similar to information in reports filed under the Residential Real Estate GTOs, although FinCEN recognizes that certain transfers may require significantly more time. Mindful of these outliers, FinCEN estimates an average 2 hour per reportable transfer time cost to collect and review transferee and transfer-specific reportable information and related documents, and an average 30 minute additional time cost to reporting.

TABLE 3—REPORTING COSTS

Estimated per transaction reporting costs		Non-reporting party		Reporting party			
Primary business categories	Fully loaded hourly wage	Designation		Designation-related		Designation-independent	
		Time (hours)	Total	Time (hours)	Total	Time (hours)	Total
Title Abstract and Settlement Offices	\$79.35	0.25	\$19.84	0.25	\$19.84	2.75	\$218.21
Direct Title Insurance Carriers	106.49	0.25	26.62	0.25	26.62	2.75	292.85
Other Activities Related to Real Estate	81.74	0.25	20.43	0.25	20.43	2.75	224.78
Offices of Lawyers	153.84	0.25	38.46	0.25	38.46	2.75	423.07
Offices of Real Estate Agents and Brokers ..	81.74	0.25	20.43	0.25	20.43	2.75	224.78

Based on the range of expected reportable transfers and the wages associated with different persons in the potential reporting cascade, FinCEN anticipates that the rule's reporting costs may be between approximately \$174.6 million and \$466.5 million.

In its original NPRM analysis, FinCEN stated an expectation that reporting persons would generally be able to rely on technology previously purchased and already deployed in the ordinary course of business (namely, computers and access to the internet) to comply with the proposed reporting requirements, and therefore no line item of incremental expected IT costs was ascribed to reporting. Certain commenters expressed that this expectation would be unrealistic because their current business practices rely on software for tracking and internal controls processes, for example, that would need to be updated in light of the rule's reporting requirements. However, FinCEN did not receive any

comments that would enable it to quantify the expected burden associated with these software upgrades that commenters described. In the absence of readily generalizable cost estimates, it is therefore not feasible to update reporting costs responsively, though FinCEN acknowledges that, as a consequence, its aggregate burden estimates can, at best, function as a lower-bound expectation of the total costs of the rule.

iii. Recordkeeping

FinCEN continues to expect that the rule would impose recordkeeping requirements on reporting persons as well as, in certain cases, members of a given reportable transfer's cascade that are not the reporting person. The primary variation in expected recordkeeping costs would flow from the conditions under which the reporting person has assumed their role. Additional variation in costs may result from differences in the dollar value

assigned to the reporting person's time costs as a function of their primary occupation.

If the reporting person assumes that role as a function of their position in the reporting cascade, this would imply that no meaningfully distinct person involved in the transfer provided the preceding service(s). In this case, the reporting person's recordkeeping requirements would be limited to the retention of compliance documents (i.e., a copy of the transferee's certification of beneficial ownership information) for a period of five years in a manner that preserves ready availability for inspection as authorized by law. Recordkeeping costs would therefore include those associated with creating and/or collecting the necessary documents, storing the records in an accessible format, and securely disposing of the records after the required retention period has elapsed. FinCEN anticipates that over the full recordkeeping lifecycle, each reportable

transfer would, on average, require one hour of the reporting person's time, as well as a record processing and maintenance cost of ten cents. Because FinCEN expects that records will

primarily be produced and recorded electronically and estimates its own processing and maintenance costs at ten cents per record, it has applied the same expected cost per reportable transfer to

reporting persons. In aggregate, this would result in recordkeeping costs between approximately \$63.6 million and \$130.8 million associated with one year's reportable transfers.

TABLE 4—ESTIMATED RECORDKEEPING COSTS

Estimated per transaction recordkeeping costs		Non-reporting party		Reporting party			
Primary business categories	Fully loaded hourly wage	Designation-related		Designation-related		Designation-independent	
		Time (minutes)	Total*	Time (minutes)	Total*	Time (hours)	Total* (unadjusted)
Title Abstract and Settlement Offices	\$79.35	5	\$6.71	5	\$6.71	1	\$79.45
Direct Title Insurance Carriers	106.49	5	8.97	5	8.97	1	106.59
Other Activities Related to Real Estate	81.74	5	6.91	5	6.91	1	81.84
Offices of Lawyers	153.84	5	12.92	5	12.92	1	153.94
Offices of Real Estate Agents and Brokers ..	81.74	5	6.91	5	6.91	1	81.84

* Total Recordkeeping cost estimates include both labor (wages) and technology costs (\$0.10).

If the reporting person has instead assumed that role as the result of a designation agreement, the rule would impose additional recordkeeping requirements on both the reporting person and at least one other member of the reporting cascade. This is because the existence of a designation agreement implies the existence of one or more distinct alternative parties to the reportable transfer that provided a preceding service or services as described in the cascade. While the final rule only stipulates that "all parties to a designation agreement" would also be anticipated to incur recordkeeping costs, FinCEN expects the minimum number of additional parties required to retain a readily accessible copy of the designation agreement for a five-year period would, in practice, depend on the number of alternative reporting parties servicing the transfer in a capacity that precedes the designated reporting person in the cascade, as it would otherwise be difficult to demonstrate the prerequisite sequence of conditions were met to establish the "but for" of the requirement. Conservatively assuming that each service in the cascade is provided by a separate party, this would impose an incremental recordkeeping cost on at least two parties per transfer and at most five. Because FinCEN estimates of reporting costs already assign the costs of preparing a designation agreement to the reporting person (when a transfer includes a designation agreement), the incremental recordkeeping costs it estimates here pertain solely to the electronic dissemination, signing, and storage of the agreement. This is assigned an average time cost of five minutes per signing party to read and sign the designation agreement, as well as a ten-cent record processing and maintenance cost per transfer. Thus, designation agreement-specific

recordkeeping costs are expected to include a time cost of 10–50 minutes (assuming one party signing per tier of the cascade) and \$0.20–\$0.50 per reportable transfer that involves a designation. This corresponds to expected annual aggregate costs ranging from approximately \$10.9 million to \$36.1 million. FinCEN notes that it assumes that rational parties to a reportable transfer would not enter into a designation agreement if the expected cost of doing so, including compliance with the recordkeeping requirements, were not elsewhere compensated in the form of efficiency gains or other offsetting cost savings associated with other components of compliance with the rule, such as training or reporting costs. As such, the estimates provided here should only be taken to reflect a pro forma accounting cost.

iv. Other Costs

Several commenters expressed concern that in addition to the technological costs associated with new or upgraded software, they would face certain non-monetary costs in the form of increased technology and cybersecurity related risk. Because FinCEN is not requiring reporting persons to retain copies of filed Real Estate Reports, it is not clear how the incremental data that would be retained (i.e., a copy of the beneficial ownership information certification and, if one exists, a copy of the designation agreement) could be meaningfully distinguished from other records a reporting person might retain in connection with the same reportable transfer for purposes of estimating a standalone burden of increased risk,

b. Government Costs

To implement the rule, FinCEN expects to incur certain operating costs that would include approximately \$8.5

million in the first year and approximately \$7 million each year thereafter. These estimates include anticipated novel expenses related to technological implementation,⁸¹ stakeholder outreach and informational support, compliance monitoring, and potential enforcement activities, as well as certain incremental increases to pre-existing administrative and logistical expenses.

While such operating costs are not typically considered part of the general economic cost of a rule, FinCEN acknowledges that this treatment implicitly assumes that resources commensurate with the novel operating costs exist. If this assumption does not hold, then operating costs associated with a rule may impose certain economic costs on the public in the form of opportunity costs from the agency's forgone alternative activities and those activities' attendant benefits. Putting that into the context of this rule, and benchmarking against FinCEN's actual appropriated budget for fiscal year 2023 (\$190.2 million),⁸² the corresponding opportunity cost would resemble forgoing approximately 4.5 percent of current activities annually.

5. Economic Consideration of Policy Alternatives

In the NPRM, FinCEN analyzed the expected impact of three policy alternatives to the proposed rule and invited public comment regarding the

⁸¹ Technological implementation for a new reporting form contemplates expenses related to development, operations, and maintenance of system infrastructure, including design, deployment, and support, such as a help desk. It includes an anticipated processing cost of \$0.10 per submitted Real Estate Report.

⁸² FinCEN, "Congressional Budget Justification and Annual Performance Plan and Report FY 2024" (2023), available at <https://home.treasury.gov/system/files/266/15.-FinCEN-FY-2024-CJ.pdf>.

viability and preferability of these alternatives.

First, instead of the designation option included in the proposed rule, FinCEN could have required the reporting person to be determined strictly by the reporting cascade, leaving it to the parties to a covered transfer to determine which service provider would meet the highest tier of the cascade and consequently be required to report without any option to select whichever party in the reporting cascade is best-positioned to file the report. FinCEN expects that rational parties would prefer to assign the reporting obligation to the party who can complete the report most cost-effectively. An alternative reporting structure that does not allow the parties to designate a reporting person responsible for the report would therefore be less cost-effective than the approach proposed in the NPRM, unless the reporting cascade would always assign the reporting requirement to the party with the lowest associated compliance costs. Because FinCEN expects that parties to the covered transfer may be better situated to determine which party can complete the required report in the most cost-effective manner, FinCEN declined to propose a standalone reporting cascade. FinCEN did not receive any comments indicating that it was mistaken in its assumptions, nor did it receive any comments indicating a preference for the designation option to be removed.

As a second alternative, FinCEN could have proposed to impose the full traditional SAR filing obligations and AML/CFT program requirements on the various real estate professionals included in the proposed reporting cascade instead of the narrower requirement that only one participant party would be required to file a Real Estate Report. While imposing full AML/CFT program requirements on all real estate professionals would have almost certainly served to mitigate the illicit finance risks in the residential real estate sector, FinCEN considered that the costs accompanying this alternative would be commensurately more significant and would likely disproportionately burden small businesses. Such weighting of costs towards smaller entities was expected to increase transaction costs associated with residential real property transfers both directly via program-related operational costs and indirectly via the potential anticompetitive effects of program costs and was therefore considered a less viable alternative than the streamlined reporting obligation proposed. FinCEN did not receive any

comments indicating that it was mistaken in its expectations about the economic impact of this alternative or its lesser desirability.

Finally, as a third alternative, FinCEN could have required the reporting person to certify the transferee's beneficial ownership information instead of allowing them to rely upon the transferee entity or trust to certify to the reporting person that the beneficial ownership information they have provided is accurate to the best of their knowledge. FinCEN anticipated that this alternative would likely be accompanied by a number of increased costs, including a potential need for longer, more detailed compliance training; lengthier time necessary to collect and review documents supporting the reported transferee beneficial ownership information required; and increased recordkeeping costs. FinCEN also considered that there might also be costs associated with transfers that would not occur if, for example, a reporting person was unwilling or unable to certify the transferee's information. Furthermore, FinCEN was concerned about the potential anticompetitive effects that might arise if certain reporting persons are better positioned to absorb the risks associated with certifying transferee beneficial ownership information, as it was foreseeable that smaller businesses could be at a disadvantage. FinCEN did not receive any comments indicating that it was mistaken in its expectations about the economic impact of this alternative or comments from potentially affected transferees that they would prefer the reporting person to provide certification instead.

B. EOs 12866, 13563, and 14094

E.O. 12866 and its amendments direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, and public health and safety effects; distributive impacts; and equity).⁸⁴ E.O. 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. E.O. 13563 also recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss

⁸⁴ E.O. 14094 sets the threshold that triggers regulatory impact analytical requirements at \$200 million in expected annual burden.

qualitatively values that are difficult or impossible to quantify.⁸⁴

Because annual residential real estate transaction volume can vary significantly from year to year and is sensitive to a host of macroeconomic factors (some of which cannot easily be modeled with reasonable accuracy), estimates that rely on average values of current data projected over extended periods of time into the future may be of limited informational value. Nevertheless, FinCEN has prepared certain annualized cost estimates as recommended in OMB circular A-4.⁸⁵ Using the midpoint of the estimated range of expected costs in year one of compliance⁸⁶ and in subsequent years,⁸⁷ FinCEN estimates that the net present value of costs associated with a five-year time horizon is \$2.21 billion (\$2.46 billion) using a 7 percent (3 percent) discount rate, respectively. This equates to annualized costs of \$538.4 million (\$538.0 million) using the same discount rates.

This rule has been designated a "significant regulatory action;" accordingly, it has been reviewed by the Office of Management and Budget (OMB).

C. Regulatory Flexibility Act

When an agency issues a rulemaking proposal, the RFA⁸⁸ requires the agency either to provide an initial regulatory flexibility analysis (IRFA) with a proposed rule or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. In its NPRM, FinCEN asserted that, although the rule might apply to a substantial number of small entities,⁸⁹ it

⁸⁴ E.O. 13563, 76 FR 3821 (Jan. 21, 2011), § 1(c) ("When appropriate and permitted by law, each agency may consider (and discuss qualitatively) values that are difficult or impossible to quantify, including equity . . . , and distributive impacts.")

⁸⁵ See Office of Management and Budget, "Circular A-4—Subject: Regulatory Analysis," (Sept. 17, 2003), available at https://obamawhitehouse.archives.gov/omb/circulars_a004_a-4/.

⁸⁶ The midpoint value of estimated first year costs is \$559.4 million; see *supra* note 76.

⁸⁷ The midpoint value of estimated subsequent year costs is \$532.2 million; see *supra* note 76.

⁸⁸ 5 U.S.C. 601 et seq.

⁸⁹ See FinCEN, NPRM, "Anti-Money Laundering Regulations for Residential Real Estate Transfers," 89 FR 12424, 12458 (Feb. 16, 2024) (finding that "an upper bound of potentially affected small entities includes approximately 160,800 firms (by the following primary business classifications: approximately 6,300 Title and Settlement Agents, 800 Direct Title Insurance Carriers, 18,000 persons performing Other Activities Related to Real Estate, 15,700 Offices of Lawyers, and 120,000 Offices of Real Estate Agents and Brokers).") though "(the point estimates differ non-trivially by how 'small' is operationally defined, and do not do so

was not expected to have a significant economic impact on a substantial number of them.⁹⁰ The preliminary basis for this expectation, at that stage, included FinCEN's attempts to minimize the burden on reporting persons by streamlining the reporting requirements and providing for an option to designate the reporting obligation. Accordingly, FinCEN certified that the proposed rule would not have a significant economic impact on a substantial number of small entities.⁹¹

Having considered the various possible outcomes for small entities under the reporting requirements at the proposal stage⁹² and having taken the public comments received in response to the NPRM into consideration, FinCEN continues to believe that the rule will not have a significant economic impact on a substantial number of small entities,⁹³ and therefore that certification remains appropriate and a Final Regulatory Flexibility Analysis (FRFA) is not required. Changes made from the NPRM to the final rule reinforce this conclusion. The final rule contains additional exceptions for low-risk transfers and otherwise clarifies the scope of transactions to which the rule will apply, and also adopts a reasonable reliance standard with respect to information provided to reporting persons. As a result, FinCEN expects that the final rule will result in a more narrowly scoped burden in general than the proposed rule that was certified at the NPRM stage.⁹⁴ FinCEN

unidirectionally across methodologies and data sources").

⁹⁰ *Id.* at 12452.

⁹¹ See U.S. Small Business Administration, "How to Comply with the Regulatory Flexibility Act," p.44, n.144 (Aug. 2017), available at <https://advocacy.sba.gov/wp-content/uploads/2019/07/How-to-Comply-with-the-RFA-WEB.pdf> (stating that "The Office of Advocacy believes that, given the emphasis in the law on public notice, the certification should also appear in the final rule even though there may have already been a certification in the proposed rule. Doing so will help demonstrate the continued validity of the certification after receipt of public comments").

⁹² When certifying at the NPRM stage, FinCEN discussed the basis on which its expectations were formed by considering the spectrum of potential burdens and costs a small business might incur as a result of the rule. This included considering the outcomes on businesses that would either incur no change in burden, a partial increase in burden, or the full increase in burden contemplated by the rule. In this analysis, FinCEN estimated that the incremental burden of complying with the rule would equate to an approximately 0%, 0.2%, or 0.5% increase in the average annual payroll expense of one employee, respectively, and was therefore unlikely to be significant.

⁹³ See *supra* note 91.

⁹⁴ While FinCEN has raised its estimate of the maximum anticipated cost per transaction (from \$363.17 to \$628.39 for reporting persons and from an aggregate of \$103.43 to \$116.64 for the

expects that small entities affected by the final rule would experience a proportionate share of this reduction in burden when compared to the proposed rule, resulting in a more limited burden for small entities under the final rule when compared to the proposed rule, noting again that the proposed rule was itself certified as not having a significant economic impact on a substantial number of small entities.

Nevertheless, while further steps to accommodate or discuss small entity concerns may not be a strict requirement, FinCEN is mindful of the small-business-oriented views and concerns voiced during the public comment period and has not precluded taking additional steps, as feasible, to facilitate implementation of the final rule in a manner that minimizes the perceived or realized competitive disadvantages a small business or other affected small entity may face. This includes, but may not be limited to, targeted outreach and production of training materials such as FAQs or a Small Entity Compliance Guide, in addition to the more broadly available support services as previously discussed in Section III.A and Section VI.A.iv.b.

Certification

Having considered the various possible outcomes for small entities under the reporting requirements at the proposal stage and having taken the public comments received in response to the NPRM into consideration for the final rule, FinCEN continues to certify that the rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Section 202 of the UMRA⁹⁵ requires that an agency prepare a statement before promulgating a rule that may result in expenditure by state, local, and Tribal governments, or the private sector, in the aggregate, of \$184 million or more in any one year.⁹⁶ Section 202 of the UMRA also requires an agency to identify and consider a reasonable

maximally inclusive number of non-reporting persons per transfer), the number of transactions to which the burden would apply (and could thereby become a transfer a small business would be required to report should it not enter into a designation agreement) is reduced.

⁹⁵ See 2 U.S.C. 1532(a).

⁹⁶ The U.S. Bureau of Economic Analysis reported the annual value of the gross domestic product (GDP) deflator in 1995 (the year in which UMRA was enacted) as 66.939; and in 2023 as 123.273. See U.S. Bureau of Economic Analysis, "Table 1.1.9. Implicit Price Deflators for Gross Domestic Product" (accessed June 5, 2024). Thus, the inflation adjusted estimate for \$100 million is 123.273 divided by 66.939 and then multiplied by 100, or \$184,157 million.

number of regulatory alternatives before promulgating a rule. FinCEN believes that the preceding assessment of impact⁹⁷ satisfies the UMRA's analytical requirements.

E. Paperwork Reduction Act

The new information collection requirements contained in this rule (31 CFR 1031.320) have been approved by OMB in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, under control number 1506-0080. The PRA imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA. Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The rule includes three information collection requirements: Real Estate Reports, which will be submitted to FinCEN, and, depending on the circumstances of the transfer, a designation agreement and/or a certification form for beneficial ownership information, neither of which will be submitted to FinCEN but which must be retained for five years.

Reporting and Recordkeeping Requirements: The provisions in this rule pertaining to the collection of information can be found in paragraph (a) of 31 CFR 1031.320. The information required to be reported by the rule will be used by the U.S. Government to monitor and investigate money laundering in the U.S. residential real estate sector. The information required to be maintained will be used by Federal agencies to verify compliance by reporting persons with the provisions of the rule. The collection of information is mandatory.

OMB Control Number: 1506-0080

Frequency: As required

Description of Affected Public:

Residential Real Estate Settlement Agents, Title Insurance Carriers, Escrow Service Providers, Other Real Estate Professionals

Estimated Number of Responses:

850,000⁹⁸

Estimated Total Annual Reporting and Recordkeeping Burden: 4,604,167 burden hours⁹⁹

⁹⁷ See generally Section VI.A.

⁹⁸ This estimate represents the upper bound estimate of reportable transfers per year as described in greater detail above in Section VI.A.3.

⁹⁹ This estimate includes the upper bound estimates of the time burden of compliance, as described in greater detail above, with the reporting and recordkeeping requirements. See Section VI.A.4.ii and Section VI.A.4.iii.

Estimated Total Annual Reporting and Recordkeeping Cost:
\$630,976,662.47¹⁰⁰

F. Congressional Review Act

OMB's Office of Information and Regulatory Affairs has designated this rule as meeting the criteria under 5 U.S.C. 804(2) for purposes of Subtitle E of the Small Business Regulatory Enforcement and Fairness Act of 1996 (also known as the Congressional Review Act or CRA).¹⁰¹ Under the CRA, such rules generally may take effect no earlier than 60 days after the rule is published in the *Federal Register*.¹⁰²

List of Subjects in 31 CFR Part 1031

Administrative practice and procedure, Aliens, Authority delegations (Government agencies), Bankruptcy, Banks and banking, Brokers, Buildings and facilities, Business and industry, Condominiums, Cooperatives, Courts, Currency, Citizenship and naturalization, Crime, Electronic filing, Estates, Fair housing, Federal home loan banks, Federal savings associations, Federal-States relations, Foreign investments in U.S., Foreign persons, Foundations, Holding companies, Home improvement, Homesteads, Housing, Indian—law, Indians, Indians—tribal government, Insurance companies, Investment advisers, Investment companies, Investigations, Lawyers, Legal services, Law enforcement, Low and moderate income housing, Money laundering, Mortgage insurances, Mortgages, Penalties, Privacy, Real property acquisition, Record retention, Reporting and recordkeeping requirements, Small businesses, Securities, Taxes, Terrorism, Trusts and trustees, U.S. territories.

Authority and Issuance

■ For the reasons set forth in the preamble, chapter X of title 31 of the Code of Federal Regulations is amended by adding part 1031 to read as follows:

PART 1031—RULES FOR PERSONS INVOLVED IN REAL ESTATE CLOSINGS AND SETTLEMENTS

Sec.

¹⁰⁰ This estimate includes the upper bound estimates of the wage and technology costs of compliance, as described in greater detail above, with the reporting and recordkeeping requirements. See Section VI.A.4.i and Section VI.A.4.iii.

¹⁰¹ 5 U.S.C. 804(2) *et seq.*

¹⁰² 5 U.S.C. 801(a)(3).

Subparts A and B [Reserved]

Subpart C—Reports Required to be Made by Persons Involved in Real Estate Closings and Settlements

1031.320 Reports of residential real property transfers.
1031.321 [Reserved]

Authority: 12 U.S.C. 1829b, 1951–1959; 31 U.S.C. 5311–5314, 5316–5336; title III, sec. 314 Pub. L. 107–56, 115 Stat. 307; sec. 701 Pub. L. 114–74, 129 Stat. 599; sec. 6403, Pub. L. 116–283, 134 Stat. 3388.

Subparts A and B [Reserved]

Subpart C—Reports Required to be Made by Persons Involved in Real Estate Closings and Settlements

§ 1031.320 Reports of residential real property transfers.

(a) *General.* A reportable transfer as defined in paragraph (b) of this section shall be reported to FinCEN by the reporting person identified in paragraph (c) of this section. The report shall include the information described in paragraphs (d) through (i) of this section. The reporting person may reasonably rely on information collected from others under the conditions described in paragraph (j). The report required by this section shall be filed in the form and manner, and at the time, specified in paragraph (k) of this section. Records shall be retained as specified in paragraph (l) of this section. Reports required under this section and any other information that would reveal that a reportable transfer has been reported are not confidential as specified in paragraph (m) of this section. Terms not defined in this section are defined in 31 CFR 1010.100.

(b) *Reportable transfer.* (1) Except as set forth in paragraph (b)(2) of this section, a reportable transfer is a non-financed transfer to a transferee entity or transferee trust of an ownership interest in residential real property. For the purposes of this section, residential real property means:

- (i) Real property located in the United States containing a structure designed principally for occupancy by one to four families;
- (ii) Land located in the United States on which the transferee intends to build a structure designed principally for occupancy by one to four families;
- (iii) A unit designed principally for occupancy by one to four families within a structure on land located in the United States; or
- (iv) Shares in a cooperative housing corporation for which the underlying property is located in the United States.

(2) A reportable transfer does not include a:

(i) Grant, transfer, or revocation of an easement;

(ii) Transfer resulting from the death of an individual, whether pursuant to the terms of a trust, the operation of law, or by contractual provision;

(iii) Transfer incident to divorce or dissolution of a marriage or civil union;

(iv) Transfer to a bankruptcy estate;

(v) Transfer supervised by a court in the United States;

(vi) Transfer for no consideration made by an individual, either alone or with the individual's spouse, to a trust of which that individual, that individual's spouse, or both of them, are the settlor(s) or grantor(s);

(vii) Transfer to a qualified intermediary for purposes of 26 CFR 1.1031(k)–1; or

(viii) Transfer for which there is no reporting person.

(c) *Determination of reporting person.*

(1) Except as set forth in paragraphs (c)(2), (3) and (4) of this section, the reporting person for a reportable transfer is the person engaged within the United States as a business in the provision of real estate closing and settlement services that is:

(i) The person listed as the closing or settlement agent on the closing or settlement statement for the transfer;

(ii) If no person described in paragraph (c)(1)(i) of this section is involved in the transfer, then the person that prepares the closing or settlement statement for the transfer;

(iii) If no person described in paragraph (c)(1)(i) or (ii) of this section is involved in the transfer, then the person that files with the recordation office the deed or other instrument that transfers ownership of the residential real property;

(iv) If no person described in paragraphs (c)(1)(i) through (iii) of this section is involved in the transfer, then the person that underwrites an owner's title insurance policy for the transferee with respect to the transferred residential real property, such as a title insurance company;

(v) If no person described in paragraphs (c)(1)(i) through (iv) of this section is involved in the transfer, then the person that 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;

(vi) If no person described in paragraphs (c)(1)(i) through (v) of this section is involved in the transfer, then the person that provides an evaluation of the status of the title; or

(vii) If no person described in paragraphs (c)(1)(i) through (vi) of this section is involved in the transfer, then the person that 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.

(2) *Employees, agents, and partners.* If an employee, agent, or partner acting within the scope of such individual's employment, agency, or partnership would be the reporting person as determined in paragraph (c)(1) of this section, then the individual's employer, principal, or partnership is deemed to be the reporting person.

(3) *Financial institutions.* A financial institution that has an obligation to maintain an anti-money laundering program under this chapter is not a reporting person for purposes of this section.

(4) *Designation agreement.* (i) The reporting person described in paragraph (c)(1) of this section may enter into an agreement with any other person described in paragraph (c)(1) of this section to designate such other person as the reporting person with respect to the reportable transfer. The person designated by such agreement shall be treated as the reporting person with respect to the transfer. If reporting persons decide to use designation agreements, a separate agreement is required for each reportable transfer.

(ii) A designation agreement shall be in writing, and shall include:

- (A) The date of the agreement;
- (B) The name and address of the transferor;
- (C) The name and address of the transferee entity or transferee trust;
- (D) Information described in paragraph (g) identifying transferred residential real property;
- (E) The name and address of the person designated through the agreement as the reporting person with respect to the transfer; and
- (F) The name and address of all other parties to the agreement.

(d) *Information concerning the reporting person.* The reporting person shall report:

- (1) The full legal name of the reporting person;
- (2) The category of reporting person, as determined in paragraph (c) of this section; and
- (3) The street address that is the reporting person's principal place of business in the United States.

(e) *Information concerning the transferee*—(1) *Transferee entities.* For each transferee entity involved in a

reportable transfer, the reporting person shall report:

(i) The following information for the transferee entity:

- (A) Full legal name;
- (B) Trade name or "doing business as" name, if any;
- (C) Complete current address consisting of:
 - (1) The street address that is the transferee entity's principal place of business; and
 - (2) If such principal place of business is not in the United States, the street address of the primary location in the United States where the transferee entity conducts business, if any; and
 - (D) Unique identifying number, if any, consisting of:
 - (1) The Internal Revenue Service Taxpayer Identification Number (IRS TIN) of the transferee entity;
 - (2) If the transferee entity has not been issued an IRS TIN, a tax identification number for the transferee entity that was issued by a foreign jurisdiction and the name of such jurisdiction; or
 - (3) If the transferee entity has not been issued an IRS TIN or a foreign tax identification number, an entity registration number issued by a foreign jurisdiction and the name of such jurisdiction;

(ii) The following information for each beneficial owner of the transferee entity:

- (A) Full legal name;
- (B) Date of birth;
- (C) Complete current residential street address;
- (D) Citizenship; and
- (E) Unique identifying number consisting of:
 - (1) An IRS TIN; or
 - (2) Where an IRS TIN has not been issued:

(i) A tax identification number issued by a foreign jurisdiction and the name of such jurisdiction; or

(ii) The unique identifying number and the issuing jurisdiction from a non-expired passport issued by a foreign government; and

(iii) The following information for each signing individual, if any:

- (A) Full legal name;
- (B) Date of birth;
- (C) Complete current residential street address;
- (D) Unique identifying number consisting of:
 - (1) An IRS TIN; or
 - (2) Where an IRS TIN has not been issued:

(i) A tax identification number issued by a foreign jurisdiction and the name of such jurisdiction; or

(ii) The unique identifying number and the issuing jurisdiction from a non-

expired passport issued by a foreign government to the individual;

(E) Description of the capacity in which the individual is authorized to act as the signing individual; and

(F) If the signing individual is acting in that capacity as an employee, agent, or partner, the name of the individual's employer, principal, or partnership.

(2) *Transferee trusts.* For each transferee trust in a reportable transfer, the reporting person shall report:

(i) The following information for the transferee trust:

- (A) Full legal name, such as the full title of the agreement establishing the transferee trust;
- (B) Date the trust instrument was executed;
- (C) Unique identifying number, if any, consisting of:
 - (1) IRS TIN; or
 - (2) Where an IRS TIN has not been issued, a tax identification number issued by a foreign jurisdiction and the name of such jurisdiction; and
- (D) Whether the transferee trust is revocable;

(ii) The following information for each trustee that is a legal entity:

- (A) Full legal name;
- (B) Trade name or "doing business as" name, if any;
- (C) Complete current address consisting of:
 - (1) The street address that is the trustee's principal place of business; and
 - (2) If such principal place of business is not in the United States, the street address of the primary location in the United States where the trustee conducts business, if any; and
 - (D) Unique identifying number, if any, consisting of:
 - (1) The IRS TIN of the trustee;
 - (2) In the case that a trustee has not been issued an IRS TIN, a tax identification number issued by a foreign jurisdiction and the name of such jurisdiction; or

(3) In the case that a trustee has not been issued an IRS TIN or a foreign tax identification number, an entity registration number issued by a foreign jurisdiction and the name of such jurisdiction;

(E) For purposes of this section, an individual trustee of the transferee trust is considered to be a beneficial owner of the trust. As such, information on individual trustees must be reported in accordance with the requirements set forth in paragraph (e)(2)(iii) of this section;

(iii) The following information for each beneficial owner of the transferee trust:

- (A) Full legal name;

(B) Date of birth;
 (C) Complete current residential street address;
 (D) Citizenship;
 (E) Unique identifying number consisting of:
 (1) An IRS TIN; or
 (2) Where an IRS TIN has not been issued:
 (i) A tax identification number issued by a foreign jurisdiction and the name of such jurisdiction; or
 (ii) The unique identifying number and the issuing jurisdiction from a non-expired passport issued by a foreign government; and
 (F) The category of beneficial owner, as determined in paragraph (j)(1)(ii) of this section; and
 (iv) The following information for each signing individual, if any:
 (A) Full legal name;
 (B) Date of birth;
 (C) Complete current residential street address;
 (D) Unique identifying number consisting of:
 (1) An IRS TIN; or
 (2) Where an IRS TIN has not been issued:
 (i) A tax identification number issued by a foreign jurisdiction and the name of such jurisdiction; or
 (ii) The unique identifying number and the issuing jurisdiction from a non-expired passport issued by a foreign government to the individual;
 (E) Description of the capacity in which the individual is authorized to act as the signing individual; and
 (F) If the signing individual is acting in that capacity as an employee, agent, or partner, the name of the individual's employer, principal, or partnership.
 (f) *Information concerning the transferor.* For each transferor involved in a reportable transfer, the reporting person shall report:
 (1) The following information for a transferor who is an individual:
 (i) Full legal name;
 (ii) Date of birth;
 (iii) Complete current residential street address; and
 (iv) Unique identifying number consisting of:
 (A) An IRS TIN; or
 (B) Where an IRS TIN has not been issued:
 (1) A tax identification number issued by a foreign jurisdiction and the name of such jurisdiction; or
 (2) The unique identifying number and the issuing jurisdiction from a non-expired passport issued by a foreign government to the individual;
 (2) The following information for a transferor that is a legal entity:
 (i) Full legal name;

(ii) Trade name or "doing business as" name, if any;
 (iii) Complete current address consisting of:
 (A) The street address that is the legal entity's principal place of business; and
 (B) If the principal place of business is not in the United States, the street address of the primary location in the United States where the legal entity conducts business, if any; and
 (iv) Unique identifying number, if any, consisting of:
 (A) An IRS TIN;
 (B) In the case that the legal entity has not been issued an IRS TIN, a tax identification number issued by a foreign jurisdiction and the name of such jurisdiction; or
 (C) In the case that the legal entity has not been issued an IRS TIN or a foreign tax identification number, an entity registration number issued by a foreign jurisdiction and the name of such jurisdiction; and
 (3) The following information for a transferor that is a trust:
 (i) Full legal name, such as the full title of the agreement establishing the trust;
 (ii) Date the trust instrument was executed;
 (iii) Unique identifying number, if any, consisting of:
 (A) IRS TIN; or
 (B) Where an IRS TIN has not been issued, a tax identification number issued by a foreign jurisdiction and the name of such jurisdiction;
 (iv) For each individual who is a trustee of the trust:
 (A) Full legal name;
 (B) Current residential street address; and
 (C) Unique identifying number consisting of:
 (1) An IRS TIN; or
 (2) Where an IRS TIN has not been issued:
 (i) A tax identification number issued by a foreign jurisdiction and the name of such jurisdiction; or
 (ii) The unique identifying number and the issuing jurisdiction from a non-expired passport issued by a foreign government; and
 (v) For each legal entity that is a trustee of the trust:
 (A) Full legal name;
 (B) Trade name or "doing business as" name, if any;
 (C) Complete current address consisting of:
 (1) The street address that is the legal entity's principal place of business; and
 (2) If the principal place of business is not in the United States, the street address of the primary location in the United States where the legal entity conducts business, if any; and

(D) Unique identifying number, if any, consisting of:
 (1) An IRS TIN;
 (2) In the case that the legal entity has not been issued an IRS TIN, a tax identification number issued by a foreign jurisdiction and the name of such jurisdiction; or
 (3) In the case that the legal entity has not been issued an IRS TIN or a foreign tax identification number, an entity registration number issued by a foreign jurisdiction and the name of such jurisdiction.
 (g) *Information concerning the residential real property.* For each residential real property that is the subject of the reportable transfer, the reporting person shall report:
 (1) The street address, if any;
 (2) The legal description, such as the section, lot, and block; and
 (3) The date of closing.
 (h) *Information concerning payments.*
 (1) The reporting person shall report the following information concerning each payment, other than a payment disbursed from an escrow or trust account held by a transferee entity or transferee trust, that is made by or on behalf of the transferee entity or transferee trust regarding a reportable transfer:
 (i) The amount of the payment;
 (ii) The method by which the payment was made;
 (iii) If the payment was paid from an account held at a financial institution, the name of the financial institution and the account number; and
 (iv) The name of the payor on any wire, check, or other type of payment if the payor is not the transferee entity or transferee trust.
 (2) The reporting person shall report the total consideration paid or to be paid by the transferee entity or transferee trust regarding the reportable transfer, as well as the total consideration paid by or to be paid by all transferees regarding the reportable transfer.
 (i) *Information concerning hard money, private, and other similar loans.* The reporting person shall report whether the reportable transfer involved credit extended by a person that is not a financial institution with an obligation to maintain an anti-money laundering program and an obligation to report suspicious transactions under this chapter.
 (j) *Reasonable reliance—(1) General.* Except as described in paragraph (j)(2) of this section, the reporting person may rely upon information provided by other persons, absent knowledge of facts that would reasonably call into question the

reliability of the information provided to the reporting person.

(2) *Certification when reporting beneficial ownership information.* For purposes of reporting information described in paragraphs (e)(1)(ii) and (e)(2)(iii) of this section, the reporting person may rely upon information provided by the transferee or a person representing the transferee in the reportable transfer, absent knowledge of facts that would reasonably call into question the reliability of the information provided to the reporting person, if the person providing the information certifies the accuracy of the information in writing to the best of the person's knowledge.

(k) *Filing procedures*—(1) *What to file.* A reportable transfer shall be reported by completing a Real Estate Report.

(2) *Where to file.* The Real Estate Report shall be filed electronically with FinCEN, as indicated in the instructions to the report.

(3) *When to file.* A reporting person is required to file a Real Estate Report by the later of either:

(i) the final day of the month following the month in which the date of closing occurred; or

(ii) 30 calendar days after the date of closing.

(l) *Retention of records.* A reporting person shall maintain a copy of any certification described in paragraph (j)(2) of this section. In addition, all parties to a designation agreement described in paragraph (c)(4) of this section shall maintain a copy of such designation agreement.

(m) *Exemptions*—(1) *Confidentiality.* Reporting persons, and any director, officer, employee, or agent of such persons, and Federal, State, local, or Tribal government authorities, are exempt from the confidentiality provision in 31 U.S.C. 5318(g)(2) that prohibits the disclosure to any person involved in a suspicious transaction that the transaction has been reported or any information that otherwise would reveal that the transaction has been reported.

(2) *Anti-money laundering program.* A reporting person under this section is exempt from the requirement to establish an anti-money laundering program, in accordance with 31 CFR 1010.205(b)(1)(v).

(n) *Definitions.* For purposes of this section, the following terms have the following meanings.

(1) *Beneficial owner*—(i) *Beneficial owners of transferee entities.* (A) The beneficial owners of a transferee entity are the individuals who would be the beneficial owners of the transferee entity on the date of closing if the transferee entity were a reporting

company under 31 CFR 1010.380(d) on the date of closing.

(B) The beneficial owners of a transferee entity that is established as a non-profit corporation or similar entity, regardless of jurisdiction of formation, are limited to individuals who exercise substantial control over the entity, as defined in 31 CFR 1010.380(d)(1) on the date of closing.

(ii) *Beneficial owners of transferee trusts.* The beneficial owners of a transferee trust are the individuals who fall into one or more of the following categories on the date of closing:

(A) A trustee of the transferee trust.

(B) An individual other than a trustee with the authority to dispose of transferee trust assets.

(C) A beneficiary who is the sole permissible recipient of income and principal from the transferee trust or who has the right to demand a distribution of, or withdraw, substantially all of the assets from the transferee trust.

(D) A grantor or settlor who has the right to revoke the transferee trust or otherwise withdraw the assets of the transferee trust.

(E) A beneficial owner of any legal entity that holds at least one of the positions in the transferee trust described in paragraphs (n)(1)(ii)(A) through (D) of this section, except when the legal entity meets the criteria set forth in paragraphs (n)(10)(ii)(A) through (P) of this section. Beneficial ownership of any such legal entity is determined under 31 CFR 1010.380(d), utilizing the criteria for beneficial owners of a reporting company.

(F) A beneficial owner of any trust that holds at least one of the positions in the transferee trust described in paragraphs (n)(1)(ii)(A) through (D) of this section, except when the trust meets the criteria set forth in paragraphs (n)(1)(ii)(A) through (D). Beneficial ownership of any such trust is determined under this paragraph (n)(1)(ii), utilizing the criteria for beneficial owners of a transferee trust.

(2) *Closing or settlement agent.* The term “closing or settlement agent” means any person, whether or not acting as an agent for a title agent or company, a licensed attorney, real estate broker, or real estate salesperson, who for another and with or without a commission, fee, or other valuable consideration and with or without the intention or expectation of receiving a commission, fee, or other valuable consideration, directly or indirectly, provides closing or settlement services incident to the transfer of residential real property.

(3) *Closing or settlement statement.* The term “closing or settlement

statement” means the statement of receipts and disbursements prepared for the transferee for a transfer of residential real property.

(4) *Date of closing.* The term “date of closing” means the date on which the transferee entity or transferee trust receives an ownership interest in residential real property.

(5) *Non-financed transfer.* The term “non-financed transfer” means a transfer that does not involve an extension of credit to all transferees that is:

(i) Secured by the transferred residential real property; and

(ii) Extended by a financial institution that has both an obligation to maintain an anti-money laundering program and an obligation to report suspicious transactions under this chapter.

(6) *Ownership interest.* The term “ownership interest” means the rights held in residential real property that are demonstrated:

(i) Through a deed, for a reportable transfer described in paragraph (b)(1)(i), (ii), or (iii) of this section; or

(ii) Through stock, shares, membership, certificate, or other contractual agreement evidencing ownership, for a reportable transfer described in paragraph (b)(1)(iv) of this section.

(7) *Recordation office.* The term “recordation office” means any State, local, Territory and Insular Possession, or Tribal office for the recording of reportable transfers as a matter of public record.

(8) *Signing individual.* The term “signing individual” means each individual who signed documents on behalf of the transferee as part of the reportable transfer. However, it does not include any individual who signed documents as part of their employment with a financial institution that has both an obligation to maintain an anti-money laundering program and an obligation to report suspicious transactions under this chapter.

(9) *Statutory trust.* The term “statutory trust” means any trust created or authorized under the Uniform Statutory Trust Entity Act or as enacted by a State. For the purposes of this subpart, statutory trusts are transferee entities.

(10) *Transferee entity.* (i) Except as set forth in paragraph (n)(10)(ii) of this section, the term “transferee entity” means any person other than a transferee trust or an individual.

(ii) A transferee entity does not include:

(A) A securities reporting issuer defined in 31 CFR 1010.380(c)(2)(i);

(B) A governmental authority defined in 31 CFR 1010.380(c)(2)(ii);

(C) A bank defined in 31 CFR 1010.380(c)(2)(iii);

(D) A credit union defined in 31 CFR 1010.380(c)(2)(iv);

(E) A depository institution holding company defined in 31 CFR 1010.380(c)(2)(v);

(F) A money service business defined in 31 CFR 1010.380(c)(2)(vi);

(G) A broker or dealer in securities defined in 31 CFR 1010.380(c)(2)(vii);

(H) A securities exchange or clearing agency defined in 31 CFR 1010.380(c)(2)(viii);

(I) Any other Exchange Act registered entity defined in 31 CFR 1010.380(c)(2)(ix);

(J) An insurance company defined in 31 CFR 1010.380(c)(2)(xii);

(K) A State-licensed insurance producer defined in 31 CFR 1010.380(c)(2)(xiii);

(L) A Commodity Exchange Act registered entity defined in 31 CFR 1010.380(c)(2)(xiv);

(M) A public utility defined in 31 CFR 1010.380(c)(2)(xvi);

(N) A financial market utility defined in 31 CFR 1010.380(c)(2)(xvii);

(O) An investment company as defined in section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(a)) that is registered with the Securities and Exchange Commission under section 8 of the Investment Company Act (15 U.S.C. 80a-8); and

(P) Any legal entity controlled or wholly owned, directly or indirectly, by an entity described in paragraphs (n)(10)(i)(A) through (O) of this section.

(11) *Transferee trust.* (i) Except as set forth in paragraph (n)(11)(ii) of this section, the term “transferee trust” means any legal arrangement created when a person (generally known as a grantor or settlor) places assets under the control of a trustee for the benefit of one or more persons (each generally known as a beneficiary) or for a specified purpose, as well as any legal arrangement similar in structure or function to the above, whether formed

under the laws of the United States or a foreign jurisdiction. A trust is deemed to be a transferee trust regardless of whether residential real property is titled in the name of the trust itself or in the name of the trustee in the trustee’s capacity as the trustee of the trust.

(ii) A transferee trust does not include:

(A) A trust that is a securities reporting issuer defined in 31 CFR 1010.380(c)(2)(i);

(B) A trust in which the trustee is a securities reporting issuer defined in 31 CFR 1010.380(c)(2)(i);

(C) A statutory trust; or

(D) An entity wholly owned by a trust described in paragraphs (n)(11)(i)(A) through (C) of this section.

§ 1031.321 [Reserved]

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Real Estate Reports

Frequently Asked Questions

These Frequently Asked Questions are explanatory only and do not supplement or modify any obligations imposed by statute or regulation. Please refer to the [final rule](#) for further details. FinCEN expects to publish further guidance in the future. Questions on any of this content should be directed to <https://www.fincen.gov/contact>.

A. General Questions

A.1. What is the Real Estate Report?

The Real Estate Report will be a new form that certain real estate professionals involved in certain real estate closings and settlements must file with FinCEN for certain transfers of residential real estate that are a high-risk for illicit finance. See Section B for more on the kinds of transfers that must be reported and Section C for more on who must file a report.

FinCEN will provide an opportunity for the public to comment on the form of the report mandated by the rule.

The information reported will help combat and deter money laundering by increasing transparency in the U.S. residential real estate sector. Although there are many legitimate reasons to use legal entities and trusts to own residential real property, illicit actors intent on laundering funds through residential real property often use entities and trusts to disguise their identities and make the proceeds of crime more difficult to identify. Illicit actors often favor non-financed transfers (including “all-cash” sales) of residential real estate to avoid scrutiny from financial institutions that have anti-money laundering and countering the financing of terrorism (AML/CFT) program and Suspicious Activity Report (SAR) filing requirements under the Bank Secrecy Act (BSA).

Real Estate Reports will be maintained by FinCEN in a secure database along with other BSA reports and will not be accessible by the general public. FinCEN imposes strict limits on the use and re-dissemination of BSA information by law enforcement and other authorized users of the system.

A.2. When will the requirements under the final rule take effect?

The final rule will be effective on December 1, 2025.

B. Reportable Transfers

B.1. Under what circumstances must a Real Estate Report be filed?

A Real Estate Report must be filed on any reportable transfer, which is defined in the final rule as a non-financed transfer to a transferee entity or transferee trust of an ownership interest in residential real property.

B.2. What is residential real property?

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 one to four families. These properties are reportable even if there is also a commercial element—a single-family residence that is located above a commercial enterprise, for example. Certain types of land on which a residence is not yet built are also included.

More specifically, property may fall within the parameters of the rule in one of four ways:

1. It is real property located in the United States that includes a structure designed principally for occupancy by one to four families;
2. It is land in the United States on which the transferee intends to build a structure designed principally for occupancy by one to four families;
3. It is a unit designed principally for occupancy by one to four families within a structure on land located in the United States; and/or
4. It is a share in a cooperative housing corporation for which the underlying property is located on land within the United States.

B.3. 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.

This definition includes purchases of residential real property for any amount, as well as transfers of ownership for which no consideration is exchanged, such as a gift.

B.4. What is a non-financed transfer?

A non-financed transfer is 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 AML program requirements and Suspicious Activity Report (SAR) reporting obligations. Under this final rule, a reportable transfer is a non-financed transfer to a transferee entity or transferee trust of an ownership interest in residential real property. Transfers that are financed by a lender without an obligation to maintain an AML/CFT program and a requirement to file SARs are treated under the final rule 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. When determining whether a transfer is non-financed and making any other determination necessary to comply with the final rule, the 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.

B.5. What types of transfers are not considered reportable?

The following transfers are not reportable:

1. A transfer that is a grant, transfer, or revocation of an easement.
2. 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 (such as transfers resulting from intestate succession, surviving joint owners, and transfer-on-death deeds), or by contractual provision (such as transfers resulting from beneficiary designations).
3. A transfer incident to divorce or dissolution of a marriage or civil union (such as transfers required by a divorce settlement agreement).
4. A transfer made to a bankruptcy estate.
5. A transfer supervised by a court in the United States.
6. 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.
7. A transfer to a qualified intermediary for the purposes of a like-kind exchange for purposes of Section 1031 of the Internal Revenue Code.
8. A transfer for which there is no reporting person.

Note that this is not a comprehensive list of all transfers that are not reportable, and reporting persons should evaluate the specific facts of each individual transfer to determine whether it constitutes a reportable transfer under the rule.

B.6. What is a transferee entity?

A transferee entity is defined as any person other than a transferee trust or an individual. For example, a transferee entity may be a corporation, partnership, estate, association, or limited liability company. However, certain regulated entities are exempt.

The following table summarizes the 16 exemptions:

Exemption No.	Exemption Short Title
1	Securities reporting issuer
2	Governmental authority
3	Bank
4	Credit union
5	Depository institution holding company
6	Money services business

7	Broker or dealer in securities
8	Securities exchange or clearing agency
9	Other Exchange Act registered entity
10	Insurance company
11	State-licensed insurance producer
12	Commodity Exchange Act registered entity
13	Public utility
14	Financial market utility
15	A registered investment company
16	Subsidiary of an exempted entity

B.7. What is a transferee trust?

A transferee trust is 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, certain types of trusts are exempted.

The following table summarizes the four exemptions:

Exemption No.	Exemption Short Title
1	Securities reporting issuer
2	Trustee that is a securities reporting issuer
3	Statutory trust (such a trust is treated as a transferee entity, not a transferee trust)
4	Subsidiary of an exempted trust

B.8. May a reportable transfer have more than one transferee entity or transferee trust?

Yes.

B.9. What if there are multiple transferees, some of which are exempt?

As long as at least one of the transferees in a given transfer is a transferee entity or transferee trust, the transfer is reportable. However, the Real Estate Report only requires identifying information for the reportable transferees.

C. Reporting Persons

C.1. Who is required to file Real Estate Reports?

The requirement to file a Real Estate Report rests with the “reporting person,” one of a small number of persons who play specified roles in the reportable transfer. Only one business would be deemed to be the reporting person, and would be required to file a report.

The reporting person can be identified in one of two ways:

1. By way of the reporting cascading described in the rule (see Question C.2), or
2. By way of a written designation agreement between the real estate businesses described in the cascading reporting order (see Question C.3).

C.2. What is the reporting cascade?

The reporting cascade consists of a list of seven different functions that a real estate professional may perform in a reportable transfer of residential real property. Unless a designation agreement is used, the reporting cascade will be used to determine the reporting person for the transfer. 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 that performs the second described function, if any, and so on down the cascade.

The reporting cascade is as follows:

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 that prepares the closing or settlement statement;
3. If no person described above is involved, the person that 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 that underwrites an owner’s title insurance policy for the transferee with respect to the transferred residential real property, such as a title insurance company;
5. If no person described above is involved, the person that 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;
6. If no person described above is involved, the person that provides an evaluation of the status of the title; or
7. If no person described above is involved, the person that 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.

If none of the above functions are performed for a given reportable transfer of residential real property, then a report is not required to be filed. FinCEN notes that the real estate industry

already uses a similar reporting cascade to comply with requirements associated with IRS Form 1099-S.¹

C.3. What is a designation agreement?

Rather than relying on the reporting cascade to identify the reporting person, a person that performs a function described in the reporting cascade may choose to enter into a written agreement that designates another person that performs a function described in the reporting cascade as the reporting person. This designation agreement option is designed to reduce the overall burden on reporting persons.

For example, if the first participating person listed in the cascade is a person who filed the deed with a recordation office for a given transfer, as described in the third tier of the cascade, that person may enter into a written designation agreement with a title insurance company underwriting the transfer, as described in the fourth tier of the cascade, through which the two parties agree that the title insurance company will be the designated reporting person with respect to that transfer. The person that would otherwise be the reporting person must be a party to the agreement. However, other persons involved in the transfer that fall into the reporting cascade do not need to be parties to the agreement.

There is no required format for a designation agreement, but it must 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.

A separate designation agreement is required for each reportable transfer. However, potential reporting persons are not prohibited from having an understanding with others, in writing or otherwise, as to how they generally intend to comply with the Real Estate Report's filing requirements, provided that they continue to effect and retain a copy of a unique designation agreement for each separate transfer for which they choose to employ one.

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.

C.4. Do potential reporting persons need to implement an AML/CFT compliance program?

The rule does not impose an AML/CFT program obligation on persons involved in real estate closings and settlements, including persons that perform the functions described in the cascade. Potential reporting persons continue to be exempt from the requirement to establish an AML program, in accordance with 31 CFR 1010.205(b)(1)(v).

D. Required Information

¹ See 29 CFR 1.6045-4 (Information reporting on real estate transactions with dates of closing on or after January 1, 1991).

D.1. What type of information is reported via a Real Estate Report?

On the Real Estate Report, the reporting person must submit information necessary to identify themselves; the residential real property being transferred; the transferor; the transferee entity or transferee trust; the individuals representing the transferee entity or transferee trust in the transfer; and the 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, and taxpayer identification number.

The reporting person must also report the total consideration paid for the property, along with certain information about any payments made by the transferee entity or transferee trust.

D.2. How should the reporting person gather the required information?

The reporting person may rely on information provided by any other person for purposes of reporting information or to make a determination necessary to comply with the final rule, but only if the reporting person does not have knowledge of facts that would reasonably call into question the reliability of the information.

This reasonable reliance standard is slightly more limited when a reporting person is reporting beneficial ownership information of transferee entities or transferee trusts. In those situations, the reasonable reliance standard applies only to information provided by the transferee or the transferee's representative and only if the person providing the information certifies the accuracy of the information in writing to the best of their knowledge, as described in Question D.5.

D.3. 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:

1. Exercises substantial control over the transferee entity, or
2. Owns or controls at least 25% of the transferee entity's ownership interests.

This definition is derivative of the definition of this term in the FinCEN's Beneficial Ownership Information (BOI) Reporting Rule. For information about this separate reporting requirement, see www.fincen.gov/boi. Although the definitions are similar, they may apply to individuals associated with different entity types—a given transferee entity under this rule is not necessarily a reporting company for purposes of the BOI Reporting Rule.

D.4. Who are the beneficial owners of a transferee trust?

The beneficial owners of a transferee trust are any individual who, at the time of the transfer of residential real property to the trust:

1. Is a trustee;
2. Otherwise has authority to dispose of transferee trust assets, such as may be the case with a trust protector;

3. Is a beneficiary who is the sole permissible recipient of income and principal from the transferee trust or who has the right to demand a distribution of, or to withdraw, substantially all of the assets of the transferee trust;
4. A grantor or settlor who has the right to revoke the transferee trust or otherwise withdraw the assets of the transferee trust; or
5. Is the beneficial owner of a legal entity or trust that holds one of the positions described in the above four categories, taking into account the exemptions that apply to transferee entities and transferee trusts.

D.5. How should a reporting person collect information about beneficial owners?

The reporting person may collect beneficial ownership information directly from a transferee or a representative of the transferee, so long as the person the information is collected from certifies that the information they have provided is correct to the best of their knowledge. The certification may be collected using a form of the reporting person's choosing or design and may be incorporated into existing closing documents used by the reporting person.

E. Reporting and Recordkeeping Requirements

E.1. What is the due date for a Real Estate Report?

A Real Estate Report must be filed by the last day of the month following the month in which the date of closing occurred or 30 calendar days after the date of closing, whichever is later. Reporting persons will therefore generally have about 30 to 60 days to file the report.

E.2. What records must a reporting person keep?

The reporting person must maintain a copy of the certification by the transferee or transferee's representative as to the identities of the beneficial owner of the transferee, as well as any designation agreement entered into, for a period of five years. The reporting person is not required to retain a copy of the Real Estate Report.

E.3. Are there record retention requirements for other real estate businesses involved in a reportable transfer?

Any parties to a designation agreement must retain a copy of the designation agreement for a period of five years.

H. R. 6395—1217

TITLE LXIV—ESTABLISHING BENEFICIAL OWNERSHIP INFORMATION REPORTING REQUIREMENTS

Sec. 6401. Short title.
Sec. 6402. Sense of Congress.
Sec. 6403. Beneficial ownership information reporting requirements.

SEC. 6401. SHORT TITLE.

This title may be cited as the "Corporate Transparency Act".

SEC. 6402. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) more than 2,000,000 corporations and limited liability companies are being formed under the laws of the States each year;

(2) most or all States do not require information about the beneficial owners of the corporations, limited liability companies, or other similar entities formed under the laws of the State;

(3) malign actors seek to conceal their ownership of corporations, limited liability companies, or other similar entities in the United States to facilitate illicit activity, including money laundering, the financing of terrorism, proliferation financing, serious tax fraud, human and drug trafficking, counterfeiting, piracy, securities fraud, financial fraud, and acts of foreign corruption, harming the national security interests of the United States and allies of the United States;

(4) money launderers and others involved in commercial activity intentionally conduct transactions through corporate structures in order to evade detection, and may layer such structures, much like Russian nesting "Matryoshka" dolls, across various secretive jurisdictions such that each time an investigator obtains ownership records for a domestic or foreign entity, the newly identified entity is yet another corporate entity, necessitating a repeat of the same process;

(5) Federal legislation providing for the collection of beneficial ownership information for corporations, limited liability companies, or other similar entities formed under the laws of the States is needed to—

(A) set a clear, Federal standard for incorporation practices;

(B) protect vital United States national security interests;

(C) protect interstate and foreign commerce;

(D) better enable critical national security, intelligence, and law enforcement efforts to counter money laundering, the financing of terrorism, and other illicit activity; and

(E) bring the United States into compliance with international anti-money laundering and countering the financing of terrorism standards;

(6) beneficial ownership information collected under the amendments made by this title is sensitive information and will be directly available only to authorized government authorities, subject to effective safeguards and controls, to—

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- (A) facilitate important national security, intelligence, and law enforcement activities; and
- (B) confirm beneficial ownership information provided to financial institutions to facilitate the compliance of the financial institutions with anti-money laundering, countering the financing of terrorism, and customer due diligence requirements under applicable law;
- (7) consistent with applicable law, the Secretary of the Treasury shall—
 - (A) maintain the information described in paragraph (1) in a secure, nonpublic database, using information security methods and techniques that are appropriate to protect nonclassified information systems at the highest security level; and
 - (B) take all steps, including regular auditing, to ensure that government authorities accessing beneficial ownership information do so only for authorized purposes consistent with this title; and
 - (8) in prescribing regulations to provide for the reporting of beneficial ownership information, the Secretary shall, to the greatest extent practicable consistent with the purposes of this title—
 - (A) seek to minimize burdens on reporting companies associated with the collection of beneficial ownership information;
 - (B) provide clarity to reporting companies concerning the identification of their beneficial owners; and
 - (C) collect information in a form and manner that is reasonably designed to generate a database that is highly useful to national security, intelligence, and law enforcement agencies and Federal functional regulators.

SEC. 6403. BENEFICIAL OWNERSHIP INFORMATION REPORTING REQUIREMENTS.

(a) IN GENERAL.—Subchapter II of chapter 53 of title 31, United States Code, as amended by sections 6306(a)(1), 6307(a), and 6313(a) of this division, is amended by adding at the end the following:

“§ 5336. Beneficial ownership information reporting requirements

“(a) DEFINITIONS.—In this section:

“(1) ACCEPTABLE IDENTIFICATION DOCUMENT.—The term ‘acceptable identification document’ means, with respect to an individual—

“(A) a nonexpired passport issued by the United States;

“(B) a nonexpired identification document issued by a State, local government, or Indian Tribe to the individual acting for the purpose of identification of that individual;

“(C) a nonexpired driver’s license issued by a State;

OR

“(D) if the individual does not have a document described in subparagraph (A), (B), or (C), a nonexpired passport issued by a foreign government.

“(2) APPLICANT.—The term ‘applicant’ means any individual who—

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“(A) files an application to form a corporation, limited liability company, or other similar entity under the laws of a State or Indian Tribe; or

“(B) registers or files an application to register a corporation, limited liability company, or other similar entity formed under the laws of a foreign country to do business in the United States by filing a document with the secretary of state or similar office under the laws of a State or Indian Tribe.

“(3) BENEFICIAL OWNER.—The term ‘beneficial owner’—

“(A) means, with respect to an entity, an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise—

“(i) exercises substantial control over the entity;

or

“(ii) owns or controls not less than 25 percent of the ownership interests of the entity; and

“(B) does not include—

“(i) a minor child, as defined in the State in which the entity is formed, if the information of the parent or guardian of the minor child is reported in accordance with this section;

“(ii) an individual acting as a nominee, intermediary, custodian, or agent on behalf of another individual;

“(iii) an individual acting solely as an employee of a corporation, limited liability company, or other similar entity and whose control over or economic benefits from such entity is derived solely from the employment status of the person;

“(iv) an individual whose only interest in a corporation, limited liability company, or other similar entity is through a right of inheritance; or

“(v) a creditor of a corporation, limited liability company, or other similar entity, unless the creditor meets the requirements of subparagraph (A).

“(4) DIRECTOR.—The term ‘Director’ means the Director of FinCEN.

“(5) FINCEN.—The term ‘FinCEN’ means the Financial Crimes Enforcement Network of the Department of the Treasury.

“(6) FINCEN IDENTIFIER.—The term ‘FinCEN identifier’ means the unique identifying number assigned by FinCEN to a person under this section.

“(7) FOREIGN PERSON.—The term ‘foreign person’ means a person who is not a United States person, as defined in section 7701(a) of the Internal Revenue Code of 1986.

“(8) INDIAN TRIBE.—The term ‘Indian Tribe’ has the meaning given the term ‘Indian tribe’ in section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5130).

“(9) LAWFULLY ADMITTED FOR PERMANENT RESIDENCE.—The term ‘lawfully admitted for permanent residence’ has the meaning given the term in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)).

“(10) POOLED INVESTMENT VEHICLE.—The term ‘pooled investment vehicle’ means—

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“(A) any investment company, as defined in section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(a)); or

“(B) any company that—

“(i) would be an investment company under that section but for the exclusion provided from that definition by paragraph (1) or (7) of section 3(c) of that Act (15 U.S.C. 80a-3(c)); and

“(ii) is identified by its legal name by the applicable investment adviser in its Form ADV (or successor form) filed with the Securities and Exchange Commission.

“(11) REPORTING COMPANY.—The term ‘reporting company’—

“(A) means a corporation, limited liability company, or other similar entity that is—

“(i) created by the filing of a document with a secretary of state or a similar office under the law of a State or Indian Tribe; or

“(ii) formed under the law of a foreign country and registered to do business in the United States by the filing of a document with a secretary of state or a similar office under the laws of a State or Indian Tribe; and

“(B) does not include—

“(i) an issuer—

“(I) of a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l); or

“(II) that is required to file supplementary and periodic information under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d));

“(ii) an entity—

“(I) established under the laws of the United States, an Indian Tribe, a State, or a political subdivision of a State, or under an interstate compact between 2 or more States; and

“(II) that exercises governmental authority on behalf of the United States or any such Indian Tribe, State, or political subdivision;

“(iii) a bank, as defined in—

“(I) section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

“(II) section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)); or

“(III) section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a));

“(iv) a Federal credit union or a State credit union (as those terms are defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752));

“(v) a bank holding company (as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841)) or a savings and loan holding company (as defined in section 10(a) of the Home Owners’ Loan Act (12 U.S.C. 1467a(a)));

“(vi) a money transmitting business registered with the Secretary of the Treasury under section 5330;

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"(vii) a broker or dealer (as those terms are defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c) that is registered under section 15 of that Act (15 U.S.C. 78o);

"(viii) an exchange or clearing agency (as those terms are defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c) that is registered under section 6 or 17A of that Act (15 U.S.C. 78f, 78q-1);

"(ix) any other entity not described in clause (i), (vii), or (viii) that is registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

"(x) an entity that—

"(I) is an investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3)) or an investment adviser (as defined in section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2)); and

"(II) is registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) or the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.);

"(xi) an investment adviser—

"(I) described in section 203(l) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(l)); and

"(II) that has filed Item 10, Schedule A, and Schedule B of Part 1A of Form ADV, or any successor thereto, with the Securities and Exchange Commission;

"(xii) an insurance company (as defined in section 2 of the Investment Company Act of 1940 (15 U.S.C. 80a-2));

"(xiii) an entity that—

"(I) is an insurance producer that is authorized by a State and subject to supervision by the insurance commissioner or a similar official or agency of a State; and

"(II) has an operating presence at a physical office within the United States;

"(xiv)(I) a registered entity (as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a));

or

"(II) an entity that is—

"(sa)(AA) a futures commission merchant, introducing broker, swap dealer, major swap participant, commodity pool operator, or commodity trading advisor (as those terms are defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a)); or

"(BB) a retail foreign exchange dealer, as described in section 2(c)(2)(B) of that Act (7 U.S.C. 2(c)(2)(B)); and

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“(bb) registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.);

“(xv) a public accounting firm registered in accordance with section 102 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7212);

“(xvi) a public utility that provides telecommunications services, electrical power, natural gas, or water and sewer services within the United States;

“(xvii) a financial market utility designated by the Financial Stability Oversight Council under section 804 of the Payment, Clearing, and Settlement Supervision Act of 2010 (12 U.S.C. 5463);

“(xviii) any pooled investment vehicle that is operated or advised by a person described in clause (iii), (iv), (vii), (x), or (xi);

“(xix) any—

“(I) organization that is described in section 501(c) of the Internal Revenue Code of 1986 (determined without regard to section 508(a) of such Code) and exempt from tax under section 501(a) of such Code, except that in the case of any such organization that loses an exemption from tax, such organization shall be considered to be continued to be described in this subclause for the 180-day period beginning on the date of the loss of such tax-exempt status;

“(II) political organization (as defined in section 527(e)(1) of such Code) that is exempt from tax under section 527(a) of such Code; or

“(III) trust described in paragraph (1) or (2) of section 4947(a) of such Code;

“(xx) any corporation, limited liability company, or other similar entity that—

“(I) operates exclusively to provide financial assistance to, or hold governance rights over, any entity described in clause (xix);

“(II) is a United States person;

“(III) is beneficially owned or controlled exclusively by 1 or more United States persons that are United States citizens or lawfully admitted for permanent residence; and

“(IV) derives at least a majority of its funding or revenue from 1 or more United States persons that are United States citizens or lawfully admitted for permanent residence;

“(xxi) any entity that—

“(I) employs more than 20 employees on a full-time basis in the United States;

“(II) filed in the previous year Federal income tax returns in the United States demonstrating more than \$5,000,000 in gross receipts or sales in the aggregate, including the receipts or sales of—

“(aa) other entities owned by the entity;

and

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“(bb) other entities through which the entity operates; and

“(III) has an operating presence at a physical office within the United States;

“(xxii) any corporation, limited liability company, or other similar entity of which the ownership interests are owned or controlled, directly or indirectly, by 1 or more entities described in clause (i), (ii), (iii), (iv), (v), (vii), (viii), (ix), (x), (xi), (xii), (xiii), (xiv), (xv), (xvi), (xvii) (xix), or (xxi);

“(xxiii) any corporation, limited liability company, or other similar entity—

“(I) in existence for over 1 year;

“(II) that is not engaged in active business;

“(III) that is not owned, directly or indirectly, by a foreign person;

“(IV) that has not, in the preceding 12-month period, experienced a change in ownership or sent or received funds in an amount greater than \$1,000 (including all funds sent to or received from any source through a financial account or accounts in which the entity, or an affiliate of the entity, maintains an interest); and

“(V) that does not otherwise hold any kind or type of assets, including an ownership interest in any corporation, limited liability company, or other similar entity;

“(xxiv) any entity or class of entities that the Secretary of the Treasury, with the written concurrence of the Attorney General and the Secretary of Homeland Security, has, by regulation, determined should be exempt from the requirements of subsection (b) because requiring beneficial ownership information from the entity or class of entities—

“(I) would not serve the public interest; and

“(II) would not be highly useful in national security, intelligence, and law enforcement agency efforts to detect, prevent, or prosecute money laundering, the financing of terrorism, proliferation finance, serious tax fraud, or other crimes.

“(12) STATE.—The term ‘State’ means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the United States Virgin Islands, and any other commonwealth, territory, or possession of the United States.

“(13) UNIQUE IDENTIFYING NUMBER.—The term ‘unique identifying number’ means, with respect to an individual or an entity with a sole member, the unique identifying number from an acceptable identification document.

“(14) UNITED STATES PERSON.—The term ‘United States person’ has the meaning given the term in section 7701(a) of the Internal Revenue Code of 1986.

“(b) BENEFICIAL OWNERSHIP INFORMATION REPORTING.—

“(1) REPORTING.—

“(A) IN GENERAL.—In accordance with regulations prescribed by the Secretary of the Treasury, each reporting

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company shall submit to FinCEN a report that contains the information described in paragraph (2).

^(B) REPORTING OF EXISTING ENTITIES.—In accordance with regulations prescribed by the Secretary of the Treasury, any reporting company that has been formed or registered before the effective date of the regulations prescribed under this subsection shall, in a timely manner, and not later than 2 years after the effective date of the regulations prescribed under this subsection, submit to FinCEN a report that contains the information described in paragraph (2).

^(C) REPORTING AT TIME OF FORMATION OR REGISTRATION.—In accordance with regulations prescribed by the Secretary of the Treasury, any reporting company that has been formed or registered after the effective date of the regulations promulgated under this subsection shall, at the time of formation or registration, submit to FinCEN a report that contains the information described in paragraph (2).

^(D) UPDATED REPORTING FOR CHANGES IN BENEFICIAL OWNERSHIP.—In accordance with regulations prescribed by the Secretary of the Treasury, a reporting company shall, in a timely manner, and not later than 1 year after the date on which there is a change with respect to any information described in paragraph (2), submit to FinCEN a report that updates the information relating to the change.

^(E) TREASURY REVIEW OF UPDATED REPORTING FOR CHANGES IN BENEFICIAL OWNERSHIP.—The Secretary of the Treasury, in consultation with the Attorney General and the Secretary of Homeland Security, shall conduct a review to evaluate—

⁽ⁱ⁾ the necessity of a requirement for corporations, limited liability companies, or other similar entities to update the report on beneficial ownership information in paragraph (2), related to a change in ownership, within a shorter period of time than required under subparagraph (D), taking into account the updating requirements under subparagraph (D) and the information contained in the reports;

⁽ⁱⁱ⁾ the benefit to law enforcement and national security officials that might be derived from, and the burden that a requirement to update the list of beneficial owners within a shorter period of time after a change in the list of beneficial owners would impose on corporations, limited liability companies, or other similar entities; and

⁽ⁱⁱⁱ⁾ not later than 2 years after the date of enactment of this section, incorporate into the regulations, as appropriate, any changes necessary to implement the findings and determinations based on the review required under this subparagraph.

^(F) REGULATION REQUIREMENTS.—In promulgating the regulations required under subparagraphs (A) through (D), the Secretary of the Treasury shall, to the greatest extent practicable—

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“(i) establish partnerships with State, local, and Tribal governmental agencies;

“(ii) collect information described in paragraph (2) through existing Federal, State, and local processes and procedures;

“(iii) minimize burdens on reporting companies associated with the collection of the information described in paragraph (2), in light of the private compliance costs placed on legitimate businesses, including by identifying any steps taken to mitigate the costs relating to compliance with the collection of information; and

“(iv) collect information described in paragraph (2) in a form and manner that ensures the information is highly useful in—

“(I) facilitating important national security, intelligence, and law enforcement activities; and

“(II) confirming beneficial ownership information provided to financial institutions to facilitate the compliance of the financial institutions with anti-money laundering, countering the financing of terrorism, and customer due diligence requirements under applicable law.

“(G) REGULATORY SIMPLIFICATION.—To simplify compliance with this section for reporting companies and financial institutions, the Secretary of the Treasury shall ensure that the regulations prescribed by the Secretary under this subsection are added to part 1010 of title 31, Code of Federal Regulations, or any successor thereto.

“(2) REQUIRED INFORMATION.—

“(A) IN GENERAL.—In accordance with regulations prescribed by the Secretary of the Treasury, a report delivered under paragraph (1) shall, except as provided in subparagraph (B), identify each beneficial owner of the applicable reporting company and each applicant with respect to that reporting company by—

“(i) full legal name;

“(ii) date of birth;

“(iii) current, as of the date on which the report is delivered, residential or business street address; and

“(iv)(I) unique identifying number from an acceptable identification document; or

“(II) FinCEN identifier in accordance with requirements in paragraph (3).

“(B) REPORTING REQUIREMENT FOR EXEMPT ENTITIES HAVING AN OWNERSHIP INTEREST.—If an exempt entity described in subsection (a)(1)(B) has or will have a direct or indirect ownership interest in a reporting company, the reporting company or the applicant—

“(i) shall, with respect to the exempt entity, only list the name of the exempt entity; and

“(ii) shall not be required to report the information with respect to the exempt entity otherwise required under subparagraph (A).

“(C) REPORTING REQUIREMENT FOR CERTAIN POOLED INVESTMENT VEHICLES.—Any corporation, limited liability company, or other similar entity that is an exempt entity

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described in subsection (a)(1)(B)(xviii) and is formed under the laws of a foreign country shall file with FinCEN a written certification that provides identification information of an individual that exercises substantial control over the pooled investment vehicle in the same manner as required under this subsection.

“(D) REPORTING REQUIREMENT FOR EXEMPT SUBSIDIARIES.—In accordance with the regulations promulgated by the Secretary, any corporation, limited liability company, or other similar entity that is an exempt entity described in subsection (a)(1)(B)(xxii), shall, at the time such entity no longer meets the criteria described in subsection (a)(1)(B)(xxii), submit to FinCEN a report containing the information required under subparagraph (A).

“(E) REPORTING REQUIREMENT FOR EXEMPT GRANDFATHERED ENTITIES.—In accordance with the regulations promulgated by the Secretary, any corporation, limited liability company, or other similar entity that is an exempt entity described in subsection (a)(1)(B)(xxiii), shall, at the time such entity no longer meets the criteria described in subsection (a)(1)(B)(xxiii), submit to FinCEN a report containing the information required under subparagraph (A).

“(3) FINCEN IDENTIFIER.—

“(A) ISSUANCE OF FINCEN IDENTIFIER.—

“(i) IN GENERAL.—Upon request by an individual who has provided FinCEN with the information described in paragraph (2)(A) pertaining to the individual, or by an entity that has reported its beneficial ownership information to FinCEN in accordance with this section, FinCEN shall issue a FinCEN identifier to such individual or entity.

“(ii) UPDATING OF INFORMATION.—An individual or entity with a FinCEN identifier shall submit filings with FinCEN pursuant to paragraph (1) updating any information described in paragraph (2) in a timely manner consistent with paragraph (1)(D).

“(iii) EXCLUSIVE IDENTIFIER.—FinCEN shall not issue more than 1 FinCEN identifier to the same individual or to the same entity (including any successor entity).

“(B) USE OF FINCEN IDENTIFIER FOR INDIVIDUALS.—Any person required to report the information described in paragraph (2) with respect to an individual may instead report the FinCEN identifier of the individual.

“(C) USE OF FINCEN IDENTIFIER FOR ENTITIES.—If an individual is or may be a beneficial owner of a reporting company by an interest held by the individual in an entity that, directly or indirectly, holds an interest in the reporting company, the reporting company may report the FinCEN identifier of the entity in lieu of providing the information required by paragraph (2)(A) with respect to the individual.

“(4) REGULATIONS.—The Secretary of the Treasury shall—

“(A) by regulation prescribe procedures and standards governing any report under paragraph (2) and any FinCEN identifier under paragraph (3); and

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“(B) in promulgating the regulations under subparagraph (A) to the extent practicable, consistent with the purposes of this section—

“(i) minimize burdens on reporting companies associated with the collection of beneficial ownership information, including by eliminating duplicative requirements; and

“(ii) ensure the beneficial ownership information reported to FinCEN is accurate, complete, and highly useful.

“(5) EFFECTIVE DATE.—The requirements of this subsection shall take effect on the effective date of the regulations prescribed by the Secretary of the Treasury under this subsection, which shall be promulgated not later than 1 year after the date of enactment of this section.

“(6) REPORT.—Not later than 1 year after the effective date described in paragraph (5), and annually thereafter for 2 years, the Secretary of the Treasury shall submit to Congress a report describing the procedures and standards prescribed to carry out paragraph (2), which shall include an assessment of—

“(A) the effectiveness of those procedures and standards in minimizing reporting burdens (including through the elimination of duplicative requirements) and strengthening the accuracy of reports submitted under paragraph (2); and

“(B) any alternative procedures and standards prescribed to carry out paragraph (2).

“(c) RETENTION AND DISCLOSURE OF BENEFICIAL OWNERSHIP INFORMATION BY FINCEN.—

“(1) RETENTION OF INFORMATION.—Beneficial ownership information required under subsection (b) relating to each reporting company shall be maintained by FinCEN for not fewer than 5 years after the date on which the reporting company terminates.

“(2) DISCLOSURE.—

“(A) PROHIBITION.—Except as authorized by this subsection and the protocols promulgated under this subsection, beneficial ownership information reported under this section shall be confidential and may not be disclosed by—

“(i) an officer or employee of the United States;

“(ii) an officer or employee of any State, local, or Tribal agency; or

“(iii) an officer or employee of any financial institution or regulatory agency receiving information under this subsection.

“(B) SCOPE OF DISCLOSURE BY FINCEN.—FinCEN may disclose beneficial ownership information reported pursuant to this section only upon receipt of—

“(i) a request, through appropriate protocols—

“(I) from a Federal agency engaged in national security, intelligence, or law enforcement activity, for use in furtherance of such activity; or

“(II) from a State, local, or Tribal law enforcement agency, if a court of competent jurisdiction.

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including any officer of such a court, has authorized the law enforcement agency to seek the information in a criminal or civil investigation;

“(ii) a request from a Federal agency on behalf of a law enforcement agency, prosecutor, or judge of another country, including a foreign central authority or competent authority (or like designation), under an international treaty, agreement, convention, or official request made by law enforcement, judicial, or prosecutorial authorities in trusted foreign countries when no treaty, agreement, or convention is available—

“(I) issued in response to a request for assistance in an investigation or prosecution by such foreign country; and

“(II) that—

“(aa) requires compliance with the disclosure and use provisions of the treaty, agreement, or convention, publicly disclosing any beneficial ownership information received; or

“(bb) limits the use of the information for any purpose other than the authorized investigation or national security or intelligence activity;

“(iii) a request made by a financial institution subject to customer due diligence requirements, with the consent of the reporting company, to facilitate the compliance of the financial institution with customer due diligence requirements under applicable law; or

“(iv) a request made by a Federal functional regulator or other appropriate regulatory agency consistent with the requirements of subparagraph (C).

“(C) FORM AND MANNER OF DISCLOSURE TO FINANCIAL INSTITUTIONS AND REGULATORY AGENCIES.—The Secretary of the Treasury shall, by regulation, prescribe the form and manner in which information shall be provided to a financial institution under subparagraph (B)(iii), which regulation shall include that the information shall also be available to a Federal functional regulator or other appropriate regulatory agency, as determined by the Secretary, if the agency—

“(i) is authorized by law to assess, supervise, enforce, or otherwise determine the compliance of the financial institution with the requirements described in that subparagraph;

“(ii) uses the information solely for the purpose of conducting the assessment, supervision, or authorized investigation or activity described in clause (i); and

“(iii) enters into an agreement with the Secretary providing for appropriate protocols governing the safekeeping of the information.

“(3) APPROPRIATE PROTOCOLS.—The Secretary of the Treasury shall establish by regulation protocols described in paragraph (2)(A) that—

“(A) protect the security and confidentiality of any beneficial ownership information provided directly by the Secretary;

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“(B) require the head of any requesting agency, on a non-delegable basis, to approve the standards and procedures utilized by the requesting agency and certify to the Secretary semi-annually that such standards and procedures are in compliance with the requirements of this paragraph;

“(C) require the requesting agency to establish and maintain, to the satisfaction of the Secretary, a secure system in which such beneficial ownership information provided directly by the Secretary shall be stored;

“(D) require the requesting agency to furnish a report to the Secretary, at such time and containing such information as the Secretary may prescribe, that describes the procedures established and utilized by such agency to ensure the confidentiality of the beneficial ownership information provided directly by the Secretary;

“(E) require a written certification for each authorized investigation or other activity described in paragraph (2) from the head of an agency described in paragraph (2)(B)(i)(I), or their designees, that—

“(i) states that applicable requirements have been met, in such form and manner as the Secretary may prescribe; and

“(ii) at a minimum, sets forth the specific reason or reasons why the beneficial ownership information is relevant to an authorized investigation or other activity described in paragraph (2);

“(F) require the requesting agency to limit, to the greatest extent practicable, the scope of information sought, consistent with the purposes for seeking beneficial ownership information;

“(G) restrict, to the satisfaction of the Secretary, access to beneficial ownership information to whom disclosure may be made under the provisions of this section to only users at the requesting agency—

“(i) who are directly engaged in the authorized investigation or activity described in paragraph (2);

“(ii) whose duties or responsibilities require such access;

“(iii) who—

“(I) have undergone appropriate training; or

“(II) use staff to access the database who have undergone appropriate training;

“(iv) who use appropriate identity verification mechanisms to obtain access to the information; and

“(v) who are authorized by agreement with the Secretary to access the information;

“(H) require the requesting agency to establish and maintain, to the satisfaction of the Secretary, a permanent system of standardized records with respect to an auditable trail of each request for beneficial ownership information submitted to the Secretary by the agency, including the reason for the request, the name of the individual who made the request, the date of the request, any disclosure of beneficial ownership information made by or to the agency, and any other information the Secretary of the Treasury determines is appropriate;

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“(I) require that the requesting agency receiving beneficial ownership information from the Secretary conduct an annual audit to verify that the beneficial ownership information received from the Secretary has been accessed and used appropriately, and in a manner consistent with this paragraph and provide the results of that audit to the Secretary upon request;

“(J) require the Secretary to conduct an annual audit of the adherence of the agencies to the protocols established under this paragraph to ensure that agencies are requesting and using beneficial ownership information appropriately; and

“(K) provide such other safeguards which the Secretary determines (and which the Secretary prescribes in regulations) to be necessary or appropriate to protect the confidentiality of the beneficial ownership information.

“(4) VIOLATION OF PROTOCOLS.—Any employee or officer of a requesting agency under paragraph (2)(B) that violates the protocols described in paragraph (3), including unauthorized disclosure or use, shall be subject to criminal and civil penalties under subsection (h)(3)(B).

“(5) DEPARTMENT OF THE TREASURY ACCESS.—

“(A) IN GENERAL.—Beneficial ownership information shall be accessible for inspection or disclosure to officers and employees of the Department of the Treasury whose official duties require such inspection or disclosure subject to procedures and safeguards prescribed by the Secretary of the Treasury.

“(B) TAX ADMINISTRATION PURPOSES.—Officers and employees of the Department of the Treasury may obtain access to beneficial ownership information for tax administration purposes in accordance with this subsection.

“(6) REJECTION OF REQUEST.—The Secretary of the Treasury—

“(A) shall reject a request not submitted in the form and manner prescribed by the Secretary under paragraph (2)(C); and

“(B) may decline to provide information requested under this subsection upon finding that—

“(i) the requesting agency has failed to meet any other requirement of this subsection;

“(ii) the information is being requested for an unlawful purpose; or

“(iii) other good cause exists to deny the request.

“(7) SUSPENSION.—The Secretary of the Treasury may suspend or debar a requesting agency from access for any of the grounds set forth in paragraph (6), including for repeated or serious violations of any requirement under paragraph (2).

“(8) SECURITY PROTECTIONS.—The Secretary of the Treasury shall maintain information security protections, including encryption, for information reported to FinCEN under subsection (b) and ensure that the protections—

“(A) are consistent with standards and guidelines developed under subchapter II of chapter 35 of title 44; and

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“(B) incorporate Federal information system security controls for high-impact systems, excluding national security systems, consistent with applicable law to prevent the loss of confidentiality, integrity, or availability of information that may have a severe or catastrophic adverse effect.

“(9) REPORT BY THE SECRETARY.—Not later than 1 year after the effective date of the regulations prescribed under this subsection, and annually thereafter for 5 years, the Secretary of the Treasury shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report, which—

“(A) may include a classified annex; and

“(B) shall, with respect to each request submitted under paragraph (2)(B)(i)(II) during the period covered by the report, and consistent with protocols established by the Secretary that are necessary to protect law enforcement sensitive, tax-related, or classified information, include—

“(i) the date on which the request was submitted;

“(ii) the source of the request;

“(iii) whether the request was accepted or rejected or is pending; and

“(iv) a general description of the basis for rejecting the such request, if applicable.

“(10) AUDIT BY THE COMPTROLLER GENERAL.—Not later than 1 year after the effective date of the regulations prescribed under this subsection, and annually thereafter for 6 years, the Comptroller General of the United States shall—

“(A) audit the procedures and safeguards established by the Secretary of the Treasury under those regulations, including duties for verification of requesting agencies systems and adherence to the protocols established under this subsection, to determine whether such safeguards and procedures meet the requirements of this subsection and that the Department of the Treasury is using beneficial ownership information appropriately in a manner consistent with this subsection; and

“(B) submit to the Secretary of the Treasury, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives a report that contains the findings and determinations with respect to any audit conducted under this paragraph.

“(11) DEPARTMENT OF THE TREASURY TESTIMONY.—

“(A) IN GENERAL.—Not later than March 31 of each year for 5 years beginning in 2022, the Director shall be made available to testify before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, or an appropriate subcommittee thereof, regarding FinCEN issues, including, specifically, issues relating to—

“(i) anticipated plans, goals, and resources necessary for operations of FinCEN in implementing the requirements of the Anti-Money Laundering Act of 2020 and the amendments made by that Act;

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“(ii) the adequacy of appropriations for FinCEN in the current and the previous fiscal year to—

“(I) ensure that the requirements and obligations imposed upon FinCEN by the Anti-Money Laundering Act of 2020 and the amendments made by that Act are completed as efficiently, effectively, and expeditiously as possible; and

“(II) provide for robust and effective implementation and enforcement of the provisions of the Anti-Money Laundering Act of 2020 and the amendments made by that Act;

“(iii) strengthen FinCEN management efforts, as necessary and as identified by the Director, to meet the requirements of the Anti-Money Laundering Act of 2020 and the amendments made by that Act;

“(iv) provide for the necessary public outreach to ensure the broad dissemination of information regarding any new program requirements provided for in the Anti-Money Laundering Act of 2020 and the amendments made by that Act, including—

“(I) educating the business community on the goals and operations of the new beneficial ownership database; and

“(II) disseminating to the governments of countries that are allies or partners of the United States information on best practices developed by FinCEN related to beneficial ownership information retention and use;

“(v) any policy recommendations that could facilitate and improve communication and coordination between the private sector, FinCEN, and the Federal, State, and local agencies and entities involved in implementing innovative approaches to meet their obligations under the Anti-Money Laundering Act of 2020 and the amendments made by that Act, the Bank Secrecy Act (as defined in section 6003 of the Anti-Money Laundering Act of 2020), and other anti-money laundering compliance laws; and

“(vi) any other matter that the Director determines is appropriate.

“(B) TESTIMONY CLASSIFICATION.—The testimony required under subparagraph (A)—

“(i) shall be submitted in unclassified form; and

“(ii) may include a classified portion.

“(d) AGENCY COORDINATION.—

“(1) IN GENERAL.—The Secretary of the Treasury shall, to the greatest extent practicable, update the information described in subsection (b) by working collaboratively with other relevant Federal, State, and Tribal agencies.

“(2) INFORMATION FROM RELEVANT FEDERAL, STATE, AND TRIBAL AGENCIES.—Relevant Federal, State, and Tribal agencies, as determined by the Secretary of the Treasury, shall, to the extent practicable, and consistent with applicable legal protections, cooperate with and provide information requested by FinCEN for purposes of maintaining an accurate, complete, and highly useful database for beneficial ownership information.

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⁽³⁾ REGULATIONS.—The Secretary of the Treasury, in consultation with the heads of other relevant Federal agencies, may promulgate regulations as necessary to carry out this subsection.

^(c) NOTIFICATION OF FEDERAL OBLIGATIONS.—

⁽¹⁾ FEDERAL.—The Secretary of the Treasury shall take reasonable steps to provide notice to persons of their obligations to report beneficial ownership information under this section, including by causing appropriate informational materials describing such obligations to be included in 1 or more forms or other informational materials regularly distributed by the Internal Revenue Service and FinCEN.

⁽²⁾ STATES AND INDIAN TRIBES.—

^(A) IN GENERAL.—As a condition of the funds made available under this section, each State and Indian Tribe shall, not later than 2 years after the effective date of the regulations promulgated under subsection (b)(4), take the following actions:

⁽ⁱ⁾ The secretary of a State or a similar office in each State or Indian Tribe responsible for the formation or registration of entities created by the filing of a public document with the office under the law of the State or Indian Tribe shall periodically, including at the time of any initial formation or registration of an entity, assessment of an annual fee, or renewal of any license to do business in the United States and in connection with State or Indian Tribe corporate tax assessments or renewals—

^(I) notify filers of their requirements as reporting companies under this section, including the requirements to file and update reports under paragraphs (1) and (2) of subsection (b); and

^(II) provide the filers with a copy of the reporting company form created by the Secretary of the Treasury under this subsection or an internet link to that form.

⁽ⁱⁱ⁾ The secretary of a State or a similar office in each State or Indian Tribe responsible for the formation or registration of entities created by the filing of a public document with the office under the law of the State or Indian Tribes shall update the websites, forms relating to incorporation, and physical premises of the office to notify filers of their requirements as reporting companies under this section, including providing an internet link to the reporting company form created by the Secretary of the Treasury under this section.

^(B) NOTIFICATION FROM THE DEPARTMENT OF THE TREASURY.—A notification under clause (i) or (ii) of subparagraph (A) shall explicitly state that the notification is on behalf of the Department of the Treasury for the purpose of preventing money laundering, the financing of terrorism, proliferation financing, serious tax fraud, and other financial crime by requiring nonpublic registration of business entities formed or registered to do business in the United States.

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“(f) NO BEARER SHARE CORPORATIONS OR LIMITED LIABILITY COMPANIES.—A corporation, limited liability company, or other similar entity formed under the laws of a State or Indian Tribe may not issue a certificate in bearer form evidencing either a whole or fractional interest in the entity.

“(g) REGULATIONS.—In promulgating regulations carrying out this section, the Director shall reach out to members of the small business community and other appropriate parties to ensure efficiency and effectiveness of the process for the entities subject to the requirements of this section.

“(h) PENALTIES.—

“(1) REPORTING VIOLATIONS.—It shall be unlawful for any person to—

“(A) willfully provide, or attempt to provide, false or fraudulent beneficial ownership information, including a false or fraudulent identifying photograph or document, to FinCEN in accordance with subsection (b); or

“(B) willfully fail to report complete or updated beneficial ownership information to FinCEN in accordance with subsection (b).

“(2) UNAUTHORIZED DISCLOSURE OR USE.—Except as authorized by this section, it shall be unlawful for any person to knowingly disclose or knowingly use the beneficial ownership information obtained by the person through—

“(A) a report submitted to FinCEN under subsection (b); or

“(B) a disclosure made by FinCEN under subsection (c).

“(3) CRIMINAL AND CIVIL PENALTIES.—

“(A) REPORTING VIOLATIONS.—Any person that violates subparagraph (A) or (B) of paragraph (1)—

“(i) shall be liable to the United States for a civil penalty of not more than \$500 for each day that the violation continues or has not been remedied; and

“(ii) may be fined not more than \$10,000, imprisoned for not more than 2 years, or both.

“(B) UNAUTHORIZED DISCLOSURE OR USE VIOLATIONS.—Any person that violates paragraph (2)—

“(i) shall be liable to the United States for a civil penalty of not more than \$500 for each day that the violation continues or has not been remedied; and

“(ii)(I) shall be fined not more than \$250,000, or imprisoned for not more than 5 years, or both; or

“(ii)(II) while violating another law of the United States or as part of a pattern of any illegal activity involving more than \$100,000 in a 12-month period, shall be fined not more than \$500,000, imprisoned for not more than 10 years, or both.

“(C) SAFE HARBOR.—

“(i) SAFE HARBOR.—

“(I) IN GENERAL.—Except as provided in subclause (II), a person shall not be subject to civil or criminal penalty under subparagraph (A) if the person—

“(aa) has reason to believe that any report submitted by the person in accordance with

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subsection (b) contains inaccurate information; and

“(bb) in accordance with regulations issued by the Secretary, voluntarily and promptly, and in no case later than 90 days after the date on which the person submitted the report, submits a report containing corrected information.

“(II) EXCEPTIONS.—A person shall not be exempt from penalty under clause (i) if, at the time the person submits the report required by subsection (b), the person—

“(aa) acts for the purpose of evading the reporting requirements under subsection (b); and

“(bb) has actual knowledge that any information contained in the report is inaccurate.

“(ii) ASSISTANCE.—FinCEN shall provide assistance to any person seeking to submit a corrected report in accordance with clause (i)(I).

“(4) USER COMPLAINT PROCESS.—

“(A) IN GENERAL.—The Inspector General of the Department of the Treasury, in coordination with the Secretary of the Treasury, shall provide public contact information to receive external comments or complaints regarding the beneficial ownership information notification and collection process or regarding the accuracy, completeness, or timeliness of such information.

“(B) REPORT.—The Inspector General of the Department of the Treasury shall submit to Congress a periodic report that—

“(i) summarizes external comments or complaints and related investigations conducted by the Inspector General related to the collection of beneficial ownership information; and

“(ii) includes recommendations, in coordination with FinCEN, to improve the form and manner of the notification, collection and updating processes of the beneficial ownership information reporting requirements to ensure the beneficial ownership information reported to FinCEN is accurate, complete, and highly useful.

“(5) TREASURY OFFICE OF INSPECTOR GENERAL INVESTIGATION IN THE EVENT OF A CYBERSECURITY BREACH.—

“(A) IN GENERAL.—In the event of a cybersecurity breach that results in substantial unauthorized access and disclosure of sensitive beneficial ownership information, the Inspector General of the Department of the Treasury shall conduct an investigation into FinCEN cybersecurity practices that, to the extent possible, determines any vulnerabilities within FinCEN information security and confidentiality protocols and provides recommendations for fixing those deficiencies.

“(B) REPORT.—The Inspector General of the Department of the Treasury shall submit to the Secretary of

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the Treasury a report on each investigation conducted under subparagraph (A).

“(C) ACTIONS OF THE SECRETARY.—Upon receiving a report submitted under subparagraph (B), the Secretary of the Treasury shall—

“(i) determine whether the Director had any responsibility for the cybersecurity breach or whether policies, practices, or procedures implemented at the direction of the Director led to the cybersecurity breach; and

“(ii) submit to Congress a written report outlining the findings of the Secretary, including a determination by the Secretary on whether to retain or dismiss the individual serving as the Director.

“(6) DEFINITION.—In this subsection, the term ‘willfully’ means the voluntary, intentional violation of a known legal duty.

“(1) CONTINUOUS REVIEW OF EXEMPT ENTITIES.—

“(1) IN GENERAL.—On and after the effective date of the regulations promulgated under subsection (b)(4), if the Secretary of the Treasury makes a determination, which may be based on information contained in the report required under section 6502(c) of the Anti-Money Laundering Act of 2020 or on any other information available to the Secretary, that an entity or class of entities described in subsection (a)(1)(B) has been involved in significant abuse relating to money laundering, the financing of terrorism, proliferation finance, serious tax fraud, or any other financial crime, not later than 90 days after the date on which the Secretary makes the determination, the Secretary shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report that explains the reasons for the determination and any administrative or legislative recommendations to prevent such abuse.

“(2) CLASSIFIED ANNEX.—The report required by paragraph (1)—

“(A) shall be submitted in unclassified form; and

“(B) may include a classified annex.”

(b) CONFORMING AMENDMENTS.—Title 31, United States Code, is amended—

(1) in section 5321(a)—

(A) in paragraph (1), by striking “sections 5314 and 5315” each place that term appears and inserting “sections 5314, 5315, and 5336”; and

(B) in paragraph (6), by inserting “(except section 5336)” after “subchapter” each place that term appears;

(2) in section 5322, by striking “section 5315 or 5324” each place that term appears and inserting “section 5315, 5324, or 5336”; and

(3) in the table of sections for chapter 53, as amended by sections 6306(b)(1), 6307(b), and 6313(b) of this division, by adding at the end the following:

“5336. Beneficial ownership information reporting requirements.”

(c) REPORTING REQUIREMENTS FOR FEDERAL CONTRACTORS.—

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(1) **IN GENERAL.**—Not later than 2 years after the date of enactment of this Act, the Administrator for Federal Procurement Policy shall revise the Federal Acquisition Regulation maintained under section 1303(a)(1) of title 41, United States Code, to require any contractor or subcontractor that is subject to the requirement to disclose beneficial ownership information under section 5336 of title 31, United States Code, as added by subsection (a) of this section, to provide the information required to be disclosed under such section to the Federal Government as part of any bid or proposal for a contract with a value threshold in excess of the simplified acquisition threshold under section 134 of title 41, United States Code.

(2) **APPLICABILITY.**—The revision required under paragraph (1) shall not apply to a covered contractor or subcontractor, as defined in section 847 of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116-92), that is subject to the beneficial ownership disclosure and review requirements under that section.

(d) **REVISED DUE DILIGENCE RULEMAKING.**—

(1) **IN GENERAL.**—Not later than 1 year after the effective date of the regulations promulgated under section 5336(b)(4) of title 31, United States Code, as added by subsection (a) of this section, the Secretary of the Treasury shall revise the final rule entitled “Customer Due Diligence Requirements for Financial Institutions” (81 Fed. Reg. 29397 (May 11, 2016)) to—

(A) bring the rule into conformance with this division and the amendments made by this division;

(B) account for the access of financial institutions to beneficial ownership information filed by reporting companies under section 5336, and provided in the form and manner prescribed by the Secretary, in order to confirm the beneficial ownership information provided directly to the financial institutions to facilitate the compliance of those financial institutions with anti-money laundering, countering the financing of terrorism, and customer due diligence requirements under applicable law; and

(C) reduce any burdens on financial institutions and legal entity customers that are, in light of the enactment of this division and the amendments made by this division, unnecessary or duplicative.

(2) **CONFORMANCE.**—

(A) **IN GENERAL.**—In carrying out paragraph (1), the Secretary of the Treasury shall rescind paragraphs (b) through (j) of section 1010.230 of title 31, Code of Federal Regulations upon the effective date of the revised rule promulgated under this subsection.

(B) **RULE OF CONSTRUCTION.**—Nothing in this section may be construed to authorize the Secretary of the Treasury to repeal the requirement that financial institutions identify and verify beneficial owners of legal entity customers under section 1010.230(a) of title 31, Code of Federal Regulations.

(3) **CONSIDERATIONS.**—In fulfilling the requirements under this subsection, the Secretary of the Treasury shall consider—

(A) the use of risk-based principles for requiring reports of beneficial ownership information;

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(B) the degree of reliance by financial institutions on information provided by FinCEN for purposes of obtaining and updating beneficial ownership information;

(C) strategies to improve the accuracy, completeness, and timeliness of the beneficial ownership information reported to the Secretary; and

(D) any other matter that the Secretary determines is appropriate.

TITLE LXV—MISCELLANEOUS

- Sec. 6501. Investigations and prosecution of offenses for violations of the securities laws.
- Sec. 6502. GAO and Treasury studies on beneficial ownership information reporting requirements.
- Sec. 6503. GAO study on feedback loops.
- Sec. 6504. GAO CTR study and report.
- Sec. 6505. GAO studies on trafficking.
- Sec. 6506. Treasury study and strategy on trade-based money laundering.
- Sec. 6507. Treasury study and strategy on money laundering by the People's Republic of China.
- Sec. 6508. Treasury and Justice study on the efforts of authoritarian regimes to exploit the financial system of the United States.
- Sec. 6509. Authorizations of appropriations.
- Sec. 6510. Discretionary surplus funds.
- Sec. 6511. Severability.

SEC. 6501. INVESTIGATIONS AND PROSECUTION OF OFFENSES FOR VIOLATIONS OF THE SECURITIES LAWS.

(a) IN GENERAL.—Section 21(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)) is amended—

(1) in paragraph (3)—

(A) in the paragraph heading—

(i) by inserting “CIVIL” before “MONEY PENALTIES”;

and

(ii) by striking “IN CIVIL ACTIONS” and inserting

“AND AUTHORITY TO SEEK DISGORGEMENT”;

(B) in subparagraph (A), by striking “jurisdiction to impose” and all that follows through the period at the end and inserting the following: “jurisdiction to—

“(i) impose, upon a proper showing, a civil penalty to be paid by the person who committed such violation; and

“(ii) require disgorgement under paragraph (7) of any unjust enrichment by the person who received such unjust enrichment as a result of such violation.”; and

(C) in subparagraph (B)—

(i) in clause (i), in the first sentence, by striking “the penalty” and inserting “a civil penalty imposed under subparagraph (A)(i)”;

(ii) in clause (ii), by striking “amount of penalty” and inserting “amount of a civil penalty imposed under subparagraph (A)(i)”;

(iii) in clause (iii), in the matter preceding item (aa), by striking “amount of penalty for each such violation” and inserting “amount of a civil penalty imposed under subparagraph (A)(i) for each violation described in that subparagraph”;



119TH CONGRESS
1ST SESSION

H. R. 1777

To authorize notaries public to perform, and to establish minimum standards for, electronic notarizations and remote notarizations that occur in or affect interstate commerce, to require any Federal court to recognize notarizations performed by a notarial officer of any State, to require any State to recognize notarizations performed by a notarial officer of any other State when the notarization was performed under or relates to a public Act, record, or judicial proceeding of the notarial officer's State or when the notarization occurs in or affects interstate commerce, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 3, 2025

Mr. BENTZ (for himself, Ms. DEAN of Pennsylvania, and Ms. FEDORCHAK) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To authorize notaries public to perform, and to establish minimum standards for, electronic notarizations and remote notarizations that occur in or affect interstate commerce, to require any Federal court to recognize notarizations performed by a notarial officer of any State, to require any State to recognize notarizations performed by a notarial officer of any other State when the notarization was performed under or relates to a public Act, record, or judicial proceeding of the notarial

officer's State or when the notarization occurs in or affects interstate commerce, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Securing and Enabling
5 Commerce Using Remote and Electronic Notarization Act
6 of 2025" or the "SECURE Notarization Act of 2025".

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

9 (1) **COMMUNICATION TECHNOLOGY.**—The term
10 "communication technology", with respect to a nota-
11 rization, means an electronic device or process that
12 allows the notary public performing the notarization,
13 a remotely located individual, and (if applicable) a
14 credible witness to communicate with each other si-
15 multaneously by sight and sound during the notari-
16 zation.

17 (2) **ELECTRONIC; ELECTRONIC RECORD; ELEC-**
18 **TRONIC SIGNATURE; INFORMATION; PERSON;**
19 **RECORD.**—The terms "electronic", "electronic
20 record", "electronic signature", "information", "per-
21 son", and "record" have the meanings given those
22 terms in section 106 of the Electronic Signatures in
23 Global and National Commerce Act (15 U.S.C.
24 7006).

1 (3) LAW.—The term “law” includes any stat-
2 ute, regulation, rule, or rule of law.

3 (4) NOTARIAL OFFICER.—The term “notarial
4 officer” means—

5 (A) a notary public; or

6 (B) any other individual authorized to per-
7 form a notarization under the laws of a State
8 without a commission or appointment as a no-
9 tary public.

10 (5) NOTARIAL OFFICER’S STATE; NOTARY PUB-
11 LIC’S STATE.—The term “notarial officer’s State” or
12 “notary public’s State” means the State in which a
13 notarial officer, or a notary public, as applicable, is
14 authorized to perform a notarization.

15 (6) NOTARIZATION.—The term “notariza-
16 tion”—

17 (A) means any act that a notarial officer
18 may perform under—

19 (i) Federal law, including this Act; or

20 (ii) the laws of the notarial officer’s
21 State; and

22 (B) includes any act described in subpara-
23 graph (A) and performed by a notarial officer—

24 (i) with respect to—

25 (I) a tangible record; or

4

(II) an electronic record; and

(ii) for—

(I) an individual in the physical presence of the notarial officer; or

(II) a remotely located individual.

(7) NOTARY PUBLIC.—The term “notary public” means an individual commissioned or appointed as a notary public to perform a notarization under the laws of a State.

(8) PERSONAL KNOWLEDGE.—The term “personal knowledge”, with respect to the identity of an individual, means knowledge of the identity of the individual through dealings sufficient to provide reasonable certainty that the individual has the identity claimed.

(9) REMOTELY LOCATED INDIVIDUAL.—The term “remotely located individual”, with respect to a notarization, means an individual who is not in the physical presence of the notarial officer performing the notarization.

(10) REQUIREMENT.—The term “requirement” includes a duty, a standard of care, and a prohibition.

(11) SIGNATURE.—The term “signature” means—

1 (A) an electronic signature; or
2 (B) a tangible symbol executed or adopted
3 by a person and evidencing the present intent
4 to authenticate or adopt a record.

5 (12) SIMULTANEOUSLY.—The term “simulta-
6 neously”, with respect to a communication between
7 parties—

8 (A) means that each party communicates
9 substantially simultaneously and without unrea-
10 sonable interruption or disconnection; and

11 (B) includes any reasonably short delay
12 that is inherent in, or common with respect to,
13 the method used for the communication.

14 (13) STATE.—The term “State”—

15 (A) means—

16 (i) any State of the United States;

17 (ii) the District of Columbia;

18 (iii) the Commonwealth of Puerto
19 Rico;

20 (iv) any territory or possession of the
21 United States; and

22 (v) any federally recognized Indian
23 Tribe; and

24 (B) includes any executive, legislative, or
25 judicial agency, court, department, board, of-

1 fice, clerk, recorder, register, registrar, commis-
2 sion, authority, institution, instrumentality,
3 county, municipality, or other political subdivi-
4 sion of an entity described in any of clauses (i)
5 through (v) of subparagraph (A).

6 **SEC. 3. AUTHORIZATION TO PERFORM AND MINIMUM**
7 **STANDARDS FOR ELECTRONIC NOTARIZA-**
8 **TION.**

9 (a) AUTHORIZATION.—Unless prohibited under sec-
10 tion 10, and subject to subsection (b), a notary public may
11 perform a notarization that occurs in or affects interstate
12 commerce with respect to an electronic record.

13 (b) REQUIREMENTS OF ELECTRONIC NOTARIZA-
14 TION.—If a notary public performs a notarization under
15 subsection (a), the following requirements shall apply with
16 respect to the notarization:

17 (1) The electronic signature of the notary pub-
18 lie, and all other information required to be included
19 under other applicable law, shall be attached to or
20 logically associated with the electronic record.

21 (2) The electronic signature and other informa-
22 tion described in paragraph (1) shall be bound to
23 the electronic record in a manner that renders any
24 subsequent change or modification to the electronic
25 record evident.

1 **SEC. 4. AUTHORIZATION TO PERFORM AND MINIMUM**
2 **STANDARDS FOR REMOTE NOTARIZATION.**

3 (a) **AUTHORIZATION.**—Unless prohibited under sec-
4 tion 10, and subject to subsection (b), a notary public may
5 perform a notarization that occurs in or affects interstate
6 commerce for a remotely located individual.

7 (b) **REQUIREMENTS OF REMOTE NOTARIZATION.**—If
8 a notary public performs a notarization under subsection
9 (a), the following requirements shall apply with respect to
10 the notarization:

11 (1) The remotely located individual shall appear
12 personally before the notary public at the time of the
13 notarization by using communication technology.

14 (2) The notary public shall—

15 (A) reasonably identify the remotely lo-
16 cated individual—

17 (i) through personal knowledge of the
18 identity of the remotely located individual;
19 or

20 (ii) by obtaining satisfactory evidence
21 of the identity of the remotely located indi-
22 vidual by—

23 (I) using not fewer than 2 dis-
24 tinct types of processes or services
25 through which a third person provides
26 a means to verify the identity of the

8

1 remotely located individual through a
2 review of public or private data
3 sources; or

4 (II) oath or affirmation of a
5 credible witness who—

6 (aa)(AA) is in the physical
7 presence of the notary public or
8 the remotely located individual;
9 or

10 (BB) appears personally be-
11 fore the notary public and the re-
12 motely located individual by
13 using communication technology;

14 (bb) has personal knowledge
15 of the identity of the remotely lo-
16 cated individual; and

17 (cc) has been identified by
18 the notary public in the same
19 manner as specified for identi-
20 fication of a remotely located in-
21 dividual under clause (i) or sub-
22 clause (I) of this clause;

23 (B) either directly or through an agent—

9

1 (i) create an audio and visual record-
2 ing of the performance of the notarization;
3 and

4 (ii) notwithstanding any resignation
5 from, or revocation, suspension, or termi-
6 nation of, the notary public's commission
7 or appointment, retain the recording cre-
8 ated under clause (i) as a notarial
9 record—

10 (I) for a period of not less
11 than—

12 (aa) if an applicable law of
13 the notary public's State specifies
14 a period of retention, the greater
15 of—

16 (AA) that specified pe-
17 riod; or

18 (BB) 5 years after the
19 date on which the recording
20 is created; or

21 (bb) if no applicable law of
22 the notary public's State specifies
23 a period of retention, 10 years
24 after the date on which the re-
25 cording is created; and

1 (II) if any applicable law of the
2 notary public's State governs the con-
3 tent, manner or place of retention, se-
4 curity, use, effect, or disclosure of the
5 recording or any information con-
6 tained in the recording, in accordance
7 with that law; and

8 (C) if the notarization is performed with
9 respect to a tangible or electronic record, take
10 reasonable steps to confirm that the record be-
11 fore the notary public is the same record with
12 respect to which the remotely located individual
13 made a statement or on which the individual ex-
14 ecuted a signature.

15 (3) If a guardian, conservator, executor, per-
16 sonal representative, administrator, or similar fidu-
17 ciary or successor is appointed for or on behalf of
18 a notary public or a deceased notary public under
19 applicable law, that person shall retain the recording
20 under paragraph (2)(B)(ii), unless—

21 (A) another person is obligated to retain
22 the recording under applicable law of the notary
23 public's State; or

24 (B)(i) under applicable law of the notary
25 public's State, that person may transmit the re-

1 recording to an office, archive, or repository ap-
2 proved or designated by the State; and

3 (ii) that person transmits the recording to
4 the office, archive, or repository described in
5 clause (i) in accordance with applicable law of
6 the notary public's State.

7 (4) If the remotely located individual is phys-
8 ically located outside the geographic boundaries of a
9 State, or is otherwise physically located in a location
10 that is not subject to the jurisdiction of the United
11 States, at the time of the notarization—

12 (A) the record shall—

13 (i) be intended for filing with, or re-
14 late to a matter before, a court, govern-
15 mental entity, public official, or other enti-
16 ty that is subject to the jurisdiction of the
17 United States; or

18 (ii) involve property located in the ter-
19 ritorial jurisdiction of the United States or
20 a transaction substantially connected to
21 the United States; and

22 (B) the act of making the statement or
23 signing the record may not be prohibited by a
24 law of the jurisdiction in which the individual is
25 physically located.

1 (c) PERSONAL APPEARANCE SATISFIED.—If a State
2 or Federal law requires an individual to appear personally
3 before or be in the physical presence of a notary public
4 at the time of a notarization, that requirement shall be
5 considered to be satisfied if—

6 (1) the individual—

7 (A) is a remotely located individual; and

8 (B) appears personally before the notary
9 public at the time of the notarization by using
10 communication technology; and

11 (2)(A) the notarization was performed under or
12 relates to a public act, record, or judicial proceeding
13 of the notary public's State; or

14 (B) the notarization occurs in or affects inter-
15 state commerce.

16 **SEC. 5. RECOGNITION OF NOTARIZATIONS IN FEDERAL**
17 **COURT.**

18 (a) RECOGNITION OF VALIDITY.—Each court of the
19 United States shall recognize as valid under the State or
20 Federal law applicable in a judicial proceeding before the
21 court any notarization performed by a notarial officer of
22 any State if the notarization is valid under the laws of
23 the notarial officer's State or under this Act.

24 (b) LEGAL EFFECT OF RECOGNIZED NOTARIZA-
25 TION.—A notarization recognized under subsection (a)

1 shall have the same effect under the State or Federal law
2 applicable in the applicable judicial proceeding as if that
3 notarization was validly performed—

4 (1)(A) by a notarial officer of the State, the law
5 of which is applicable in the proceeding; or

6 (B) under this Act or other Federal law; and

7 (2) without regard to whether the notarization
8 was performed—

9 (A) with respect to—

10 (i) a tangible record; or

11 (ii) an electronic record; or

12 (B) for—

13 (i) an individual in the physical pres-
14 ence of the notarial officer; or

15 (ii) a remotely located individual.

16 (c) PRESUMPTION OF GENUINENESS.—In a deter-
17 mination of the validity of a notarization for the purposes
18 of subsection (a), the signature and title of an individual
19 performing the notarization shall be prima facie evidence
20 in any court of the United States that the signature of
21 the individual is genuine and that the individual holds the
22 designated title.

23 (d) CONCLUSIVE EVIDENCE OF AUTHORITY.—In a
24 determination of the validity of a notarization for the pur-
25 poses of subsection (a), the signature and title of the fol-

1 lowing notarial officers of a State shall conclusively estab-
2 lish the authority of the officer to perform the notariza-
3 tion:

4 (1) A notary public of that State.

5 (2) A judge, clerk, or deputy clerk of a court
6 of that State.

7 **SEC. 6. RECOGNITION BY STATE OF NOTARIZATIONS PER-**
8 **FORMED UNDER AUTHORITY OF ANOTHER**
9 **STATE.**

10 (a) RECOGNITION OF VALIDITY.—Each State shall
11 recognize as valid under the laws of that State any notari-
12 zation performed by a notarial officer of any other State
13 if—

14 (1) the notarization is valid under the laws of
15 the notarial officer’s State or under this Act; and

16 (2)(A) the notarization was performed under or
17 relates to a public act, record, or judicial proceeding
18 of the notarial officer’s State; or

19 (B) the notarization occurs in or affects inter-
20 state commerce.

21 (b) LEGAL EFFECT OF RECOGNIZED NOTARIZA-
22 TION.—A notarization recognized under subsection (a)
23 shall have the same effect under the laws of the recog-
24 nizing State as if that notarization was validly performed

1 by a notarial officer of the recognizing State, without re-
2 gard to whether the notarization was performed—

3 (1) with respect to—

4 (A) a tangible record; or

5 (B) an electronic record; or

6 (2) for—

7 (A) an individual in the physical presence
8 of the notarial officer; or

9 (B) a remotely located individual.

10 (e) PRESUMPTION OF GENUINENESS.—In a deter-
11 mination of the validity of a notarization for the purposes
12 of subsection (a), the signature and title of an individual
13 performing a notarization shall be prima facie evidence in
14 any State court or judicial proceeding that the signature
15 is genuine and that the individual holds the designated
16 title.

17 (d) CONCLUSIVE EVIDENCE OF AUTHORITY.—In a
18 determination of the validity of a notarization for the pur-
19 poses of subsection (a), the signature and title of the fol-
20 lowing notarial officers of a State shall conclusively estab-
21 lish the authority of the officer to perform the notariza-
22 tion:

23 (1) A notary public of that State.

24 (2) A judge, clerk, or deputy clerk of a court
25 of that State.

1 **SEC. 7. ELECTRONIC AND REMOTE NOTARIZATION NOT RE-**
2 **QUIRED.**

3 Nothing in this Act may be construed to require a
4 notary public to perform a notarization—

- 5 (1) with respect to an electronic record;
6 (2) for a remotely located individual; or
7 (3) using a technology that the notary public
8 has not selected.

9 **SEC. 8. VALIDITY OF NOTARIZATIONS; RIGHTS OF AG-**
10 **GRIEVED PERSONS NOT AFFECTED; STATE**
11 **LAWS ON THE PRACTICE OF LAW NOT AF-**
12 **FECTED.**

13 (a) **VALIDITY NOT AFFECTED.**—The failure of a no-
14 tary public to meet a requirement under section 3 or 4
15 in the performance of a notarization, or the failure of a
16 notarization to conform to a requirement under section 3
17 or 4, shall not invalidate or impair the validity or recogni-
18 tion of the notarization.

19 (b) **RIGHTS OF AGGRIEVED PERSONS.**—The validity
20 and recognition of a notarization under this Act may not
21 be construed to prevent an aggrieved person from seeking
22 to invalidate a record or transaction that is the subject
23 of a notarization or from seeking other remedies based on
24 State or Federal law other than this Act for any reason
25 not specified in this Act, including on the basis—

1 (1) that a person did not, with present intent
2 to authenticate or adopt a record, execute a signa-
3 ture on the record;

4 (2) that an individual was incompetent, lacked
5 authority or capacity to authenticate or adopt a
6 record, or did not knowingly and voluntarily authen-
7 ticate or adopt a record; or

8 (3) of fraud, forgery, mistake, misrepresenta-
9 tion, impersonation, duress, undue influence, or
10 other invalidating cause.

11 (c) **RULE OF CONSTRUCTION.**—Nothing in this Act
12 may be construed to affect a State law governing, author-
13 izing, or prohibiting the practice of law.

14 **SEC. 9. EXCEPTION TO PREEMPTION.**

15 (a) **IN GENERAL.**—A State law may modify, limit, or
16 supersede the provisions of section 3, or subsection (a) or
17 (b) of section 4, with respect to State law only if that State
18 law—

19 (1) either—

20 (A) constitutes an enactment or adoption
21 of the Revised Uniform Law on Notarial Acts,
22 as approved and recommended for enactment in
23 all the States by the National Conference of
24 Commissioners on Uniform State Laws in 2018
25 or the Revised Uniform Law on Notarial Acts,

1 as approved and recommended for enactment in
2 all the States by the National Conference of
3 Commissioners on Uniform State Laws in
4 2021, except that a modification to such Law
5 enacted or adopted by a State shall be pre-
6 empted to the extent such modification—

7 (i) is inconsistent with a provision of
8 section 3 or subsection (a) or (b) of section
9 4, as applicable; or

10 (ii) would not be permitted under sub-
11 paragraph (B); or

12 (B) specifies additional or alternative pro-
13 cedures or requirements for the performance of
14 notarizations with respect to electronic records
15 or for remotely located individuals, if those ad-
16 ditional or alternative procedures or require-
17 ments—

18 (i) are consistent with section 3 and
19 subsections (a) and (b) of section 4; and

20 (ii) do not accord greater legal effect
21 to the implementation or application of a
22 specific technology or technical specifica-
23 tion for performing those notarizations;
24 and

1 (2) requires the retention of an audio and vis-
2 ual recording of the performance of a notarization
3 for a remotely located individual for a period of not
4 less than 5 years after the recording is created.

5 (b) **RULE OF CONSTRUCTION.**—Nothing in section 5
6 or 6 may be construed to preclude the recognition of a
7 notarization under applicable State law, regardless of
8 whether such State law is consistent with section 5 or 6.

9 **SEC. 10. STANDARD OF CARE; SPECIAL NOTARIAL COMMIS-**
10 **SIONS; FALSE ADVERTISING.**

11 (a) **STATE STANDARDS OF CARE; AUTHORITY OF**
12 **STATE REGULATORY OFFICIALS.**—Nothing in this Act
13 may be construed to prevent a State, or a notarial regu-
14 latory official of a State, from—

15 (1) adopting a requirement in this Act as a
16 duty or standard of care under the laws of that
17 State or sanctioning a notary public for breach of
18 such a duty or standard of care;

19 (2) establishing requirements and qualifications
20 for, or denying, refusing to renew, revoking, sus-
21 pending, or imposing a condition on, a commission
22 or appointment as a notary public;

23 (3) creating or designating a class or type of
24 commission or appointment, or requiring an endorse-
25 ment or other authorization to be received by a no-

1 tary public, as a condition on the authority to per-
2 form notarizations with respect to electronic records
3 or for remotely located individuals; or

4 (4) prohibiting a notary public from performing
5 a notarization under section 3 or 4 as a sanction for
6 a breach of duty or standard of care or for official
7 misconduct.

8 (b) SPECIAL COMMISSIONS OR AUTHORIZATIONS
9 CREATED BY A STATE; SANCTION FOR BREACH OR OFFI-
10 CIAL MISCONDUCT; FALSE ADVERTISING.—A notary pub-
11 lic may not perform a notarization under section 3 or 4
12 if any of the following applies:

13 (1) The notary public's State has enacted a law
14 that creates or designates a class or type of commis-
15 sion or appointment, or requires an endorsement or
16 other authorization to be received by a notary public,
17 as a condition on the authority to perform
18 notarizations with respect to electronic records or for
19 remotely located individuals, and—

20 (A) the commission or appointment of the
21 notary public is not of that class or type; or

22 (B) the notary public has not received the
23 endorsement or other authorization.

24 (2) The notarial regulatory official of the no-
25 tary public's State has prohibited the notary public

1 from performing the notarization as a sanction for
2 a breach of duty or standard of care or for official
3 misconduct.

4 (3)(A) The notary public has engaged in false
5 or deceptive advertising.

6 (B) For the purposes of subparagraph (A), a
7 notary public shall be considered to have engaged in
8 false or deceptive advertising if the notary public
9 (unless the notary public is an attorney licensed to
10 practice law in a State)—

11 (i) uses the term “notario” or “notario
12 publico”; or

13 (ii) states or represents in a record offer-
14 ing commercial notarial services that the notary
15 public is authorized to—

16 (I) assist in drafting legal records,
17 give legal advice, or otherwise practice law;

18 (II) act as an immigration consultant
19 or an expert on matters pertaining to im-
20 migration;

21 (III) represent a person in a judicial
22 or administrative proceeding relating to
23 immigration to the United States, United
24 States citizenship, or related matters; or

1 (IV) receive compensation for per-
2 forming any activity described in this sub-
3 paragraph.

4 (C) For the purposes of a notarization per-
5 formed by a notary public under section 4 for a re-
6 motely located individual, if a record executed by the
7 remotely located individual attests that the notary
8 public disclosed to the individual the prohibitions
9 under this paragraph, and that the notary public did
10 not make any statement or representation in viola-
11 tion of this paragraph, that record shall conclusively
12 establish compliance by the notary public with the
13 requirements of this paragraph, as of the date on
14 which the individual executes that record.

15 **SEC. 11. SEVERABILITY.**

16 If any provision of this Act or the application of such
17 provision to any person or circumstance is held to be in-
18 valid or unconstitutional, the remainder of this Act and
19 the application of the provisions thereof to other persons
20 or circumstances shall not be affected by that holding.

○



11B

118TH CONGRESS
1ST SESSION

H. R. 1059

IN THE SENATE OF THE UNITED STATES

FEBRUARY 28, 2023

Received; read twice and referred to the Committee on the Judiciary

AN ACT

To authorize notaries public to perform, and to establish minimum standards for, electronic notarizations and remote notarizations that occur in or affect interstate commerce, to require any Federal court to recognize notarizations performed by a notarial officer of any State, to require any State to recognize notarizations performed by a notarial officer of any other State when the notarization was performed under or relates to a public Act, record, or judicial proceeding of the notarial officer's State or when the notarization occurs in or affects interstate commerce, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Securing and Enabling
5 Commerce Using Remote and Electronic Notarization Act
6 of 2023” or the “SECURE Notarization Act of 2023”.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

9 (1) **COMMUNICATION TECHNOLOGY.**—The term
10 “communication technology”, with respect to a nota-
11 rization, means an electronic device or process that
12 allows the notary public performing the notarization,
13 a remotely located individual, and (if applicable) a
14 credible witness to communicate with each other si-
15 multaneously by sight and sound during the notari-
16 zation.

17 (2) **ELECTRONIC; ELECTRONIC RECORD; ELEC-**
18 **TRONIC SIGNATURE; INFORMATION; PERSON;**
19 **RECORD.**—The terms “electronic”, “electronic
20 record”, “electronic signature”, “information”, “per-
21 son”, and “record” have the meanings given those
22 terms in section 106 of the Electronic Signatures in
23 Global and National Commerce Act (15 U.S.C.
24 7006).

1 (3) LAW.—The term “law” includes any stat-
2 ute, regulation, rule, or rule of law.

3 (4) NOTARIAL OFFICER.—The term “notarial
4 officer” means—

5 (A) a notary public; or

6 (B) any other individual authorized to per-
7 form a notarization under the laws of a State
8 without a commission or appointment as a no-
9 tary public.

10 (5) NOTARIAL OFFICER’S STATE; NOTARY PUB-
11 LIC’S STATE.—The term “notarial officer’s State” or
12 “notary public’s State” means the State in which a
13 notarial officer, or a notary public, as applicable, is
14 authorized to perform a notarization.

15 (6) NOTARIZATION.—The term “notariza-
16 tion”—

17 (A) means any act that a notarial officer
18 may perform under—

19 (i) Federal law, including this Act; or

20 (ii) the laws of the notarial officer’s
21 State; and

22 (B) includes any act described in subpara-
23 graph (A) and performed by a notarial officer—

24 (i) with respect to—

25 (I) a tangible record; or

4

(II) an electronic record; and

(ii) for—

(I) an individual in the physical presence of the notarial officer; or

(II) a remotely located individual.

(7) NOTARY PUBLIC.—The term “notary public” means an individual commissioned or appointed as a notary public to perform a notarization under the laws of a State.

(8) PERSONAL KNOWLEDGE.—The term “personal knowledge”, with respect to the identity of an individual, means knowledge of the identity of the individual through dealings sufficient to provide reasonable certainty that the individual has the identity claimed.

(9) REMOTELY LOCATED INDIVIDUAL.—The term “remotely located individual”, with respect to a notarization, means an individual who is not in the physical presence of the notarial officer performing the notarization.

(10) REQUIREMENT.—The term “requirement” includes a duty, a standard of care, and a prohibition.

(11) SIGNATURE.—The term “signature” means—

1 (A) an electronic signature; or
2 (B) a tangible symbol executed or adopted
3 by a person and evidencing the present intent
4 to authenticate or adopt a record.

5 (12) SIMULTANEOUSLY.—The term “simulta-
6 neously”, with respect to a communication between
7 parties—

8 (A) means that each party communicates
9 substantially simultaneously and without unrea-
10 sonable interruption or disconnection; and

11 (B) includes any reasonably short delay
12 that is inherent in, or common with respect to,
13 the method used for the communication.

14 (13) STATE.—The term “State”—

15 (A) means—

16 (i) any State of the United States;

17 (ii) the District of Columbia;

18 (iii) the Commonwealth of Puerto
19 Rico;

20 (iv) any territory or possession of the
21 United States; and

22 (v) any federally recognized Indian
23 Tribe; and

24 (B) includes any executive, legislative, or
25 judicial agency, court, department, board, of-

1 fice, clerk, recorder, register, registrar, commis-
2 sion, authority, institution, instrumentality,
3 county, municipality, or other political subdivi-
4 sion of an entity described in any of clauses (i)
5 through (v) of subparagraph (A).

6 **SEC. 3. AUTHORIZATION TO PERFORM AND MINIMUM**
7 **STANDARDS FOR ELECTRONIC NOTARIZA-**
8 **TION.**

9 (a) **AUTHORIZATION.**—Unless prohibited under sec-
10 tion 10, and subject to subsection (b), a notary public may
11 perform a notarization that occurs in or affects interstate
12 commerce with respect to an electronic record.

13 (b) **REQUIREMENTS OF ELECTRONIC NOTARIZA-**
14 **TION.**—If a notary public performs a notarization under
15 subsection (a), the following requirements shall apply with
16 respect to the notarization:

17 (1) The electronic signature of the notary pub-
18 lie, and all other information required to be included
19 under other applicable law, shall be attached to or
20 logically associated with the electronic record.

21 (2) The electronic signature and other informa-
22 tion described in paragraph (1) shall be bound to
23 the electronic record in a manner that renders any
24 subsequent change or modification to the electronic
25 record evident.

1 **SEC. 4. AUTHORIZATION TO PERFORM AND MINIMUM**
2 **STANDARDS FOR REMOTE NOTARIZATION.**

3 (a) **AUTHORIZATION.**—Unless prohibited under sec-
4 tion 10, and subject to subsection (b), a notary public may
5 perform a notarization that occurs in or affects interstate
6 commerce for a remotely located individual.

7 (b) **REQUIREMENTS OF REMOTE NOTARIZATION.**—If
8 a notary public performs a notarization under subsection
9 (a), the following requirements shall apply with respect to
10 the notarization:

11 (1) The remotely located individual shall appear
12 personally before the notary public at the time of the
13 notarization by using communication technology.

14 (2) The notary public shall—

15 (A) reasonably identify the remotely lo-
16 cated individual—

17 (i) through personal knowledge of the
18 identity of the remotely located individual;
19 or

20 (ii) by obtaining satisfactory evidence
21 of the identity of the remotely located indi-
22 vidual by—

23 (I) using not fewer than 2 dis-
24 tinct types of processes or services
25 through which a third person provides
26 a means to verify the identity of the

8

1 remotely located individual through a
2 review of public or private data
3 sources; or

4 (II) oath or affirmation of a
5 credible witness who—

6 (aa)(AA) is in the physical
7 presence of the notary public or
8 the remotely located individual;
9 or

10 (BB) appears personally be-
11 fore the notary public and the re-
12 motely located individual by
13 using communication technology;

14 (bb) has personal knowledge
15 of the identity of the remotely lo-
16 cated individual; and

17 (cc) has been identified by
18 the notary public in the same
19 manner as specified for identi-
20 fication of a remotely located in-
21 dividual under clause (i) or sub-
22 clause (I) of this clause;

23 (B) either directly or through an agent—

1 (i) create an audio and visual record-
2 ing of the performance of the notarization;
3 and

4 (ii) notwithstanding any resignation
5 from, or revocation, suspension, or termi-
6 nation of, the notary public's commission
7 or appointment, retain the recording cre-
8 ated under clause (i) as a notarial
9 record—

10 (I) for a period of not less
11 than—

12 (aa) if an applicable law of
13 the notary public's State specifies
14 a period of retention, the greater
15 of—

16 (AA) that specified pe-
17 riod; or

18 (BB) 5 years after the
19 date on which the recording
20 is created; or

21 (bb) if no applicable law of
22 the notary public's State specifies
23 a period of retention, 10 years
24 after the date on which the re-
25 cording is created; and

1 (II) if any applicable law of the
2 notary public's State governs the con-
3 tent, manner or place of retention, se-
4 curity, use, effect, or disclosure of the
5 recording or any information con-
6 tained in the recording, in accordance
7 with that law; and

8 (C) if the notarization is performed with
9 respect to a tangible or electronic record, take
10 reasonable steps to confirm that the record be-
11 fore the notary public is the same record with
12 respect to which the remotely located individual
13 made a statement or on which the individual ex-
14 ecuted a signature.

15 (3) If a guardian, conservator, executor, per-
16 sonal representative, administrator, or similar fidu-
17 ciary or successor is appointed for or on behalf of
18 a notary public or a deceased notary public under
19 applicable law, that person shall retain the recording
20 under paragraph (2)(B)(ii), unless—

21 (A) another person is obligated to retain
22 the recording under applicable law of the notary
23 public's State; or

24 (B)(i) under applicable law of the notary
25 public's State, that person may transmit the re-

1 cording to an office, archive, or repository ap-
2 proved or designated by the State; and

3 (ii) that person transmits the recording to
4 the office, archive, or repository described in
5 clause (i) in accordance with applicable law of
6 the notary public's State.

7 (4) If the remotely located individual is phys-
8 ically located outside the geographic boundaries of a
9 State, or is otherwise physically located in a location
10 that is not subject to the jurisdiction of the United
11 States, at the time of the notarization—

12 (A) the record shall—

13 (i) be intended for filing with, or re-
14 late to a matter before, a court, govern-
15 mental entity, public official, or other enti-
16 ty that is subject to the jurisdiction of the
17 United States; or

18 (ii) involve property located in the ter-
19 ritorial jurisdiction of the United States or
20 a transaction substantially connected to
21 the United States; and

22 (B) the act of making the statement or
23 signing the record may not be prohibited by a
24 law of the jurisdiction in which the individual is
25 physically located.

1 (c) PERSONAL APPEARANCE SATISFIED.—If a State
2 or Federal law requires an individual to appear personally
3 before or be in the physical presence of a notary public
4 at the time of a notarization, that requirement shall be
5 considered to be satisfied if—

6 (1) the individual—

7 (A) is a remotely located individual; and

8 (B) appears personally before the notary
9 public at the time of the notarization by using
10 communication technology; and

11 (2)(A) the notarization was performed under or
12 relates to a public act, record, or judicial proceeding
13 of the notary public’s State; or

14 (B) the notarization occurs in or affects inter-
15 state commerce.

16 **SEC. 5. RECOGNITION OF NOTARIZATIONS IN FEDERAL**
17 **COURT.**

18 (a) RECOGNITION OF VALIDITY.—Each court of the
19 United States shall recognize as valid under the State or
20 Federal law applicable in a judicial proceeding before the
21 court any notarization performed by a notarial officer of
22 any State if the notarization is valid under the laws of
23 the notarial officer’s State or under this Act.

24 (b) LEGAL EFFECT OF RECOGNIZED NOTARIZA-
25 TION.—A notarization recognized under subsection (a)

1 shall have the same effect under the State or Federal law
2 applicable in the applicable judicial proceeding as if that
3 notarization was validly performed—

4 (1)(A) by a notarial officer of the State, the law
5 of which is applicable in the proceeding; or

6 (B) under this Act or other Federal law; and

7 (2) without regard to whether the notarization
8 was performed—

9 (A) with respect to—

10 (i) a tangible record; or

11 (ii) an electronic record; or

12 (B) for—

13 (i) an individual in the physical pres-
14 ence of the notarial officer; or

15 (ii) a remotely located individual.

16 (c) PRESUMPTION OF GENUINENESS.—In a deter-
17 mination of the validity of a notarization for the purposes
18 of subsection (a), the signature and title of an individual
19 performing the notarization shall be prima facie evidence
20 in any court of the United States that the signature of
21 the individual is genuine and that the individual holds the
22 designated title.

23 (d) CONCLUSIVE EVIDENCE OF AUTHORITY.—In a
24 determination of the validity of a notarization for the pur-
25 poses of subsection (a), the signature and title of the fol-

1 lowing notarial officers of a State shall conclusively estab-
2 lish the authority of the officer to perform the notariza-
3 tion:

4 (1) A notary public of that State.

5 (2) A judge, clerk, or deputy clerk of a court
6 of that State.

7 **SEC. 6. RECOGNITION BY STATE OF NOTARIZATIONS PER-**
8 **FORMED UNDER AUTHORITY OF ANOTHER**
9 **STATE.**

10 (a) RECOGNITION OF VALIDITY.—Each State shall
11 recognize as valid under the laws of that State any notari-
12 zation performed by a notarial officer of any other State
13 if—

14 (1) the notarization is valid under the laws of
15 the notarial officer’s State or under this Act; and

16 (2)(A) the notarization was performed under or
17 relates to a public act, record, or judicial proceeding
18 of the notarial officer’s State; or

19 (B) the notarization occurs in or affects inter-
20 state commerce.

21 (b) LEGAL EFFECT OF RECOGNIZED NOTARIZA-
22 TION.—A notarization recognized under subsection (a)
23 shall have the same effect under the laws of the recog-
24 nizing State as if that notarization was validly performed

1 by a notarial officer of the recognizing State, without re-
2 gard to whether the notarization was performed—

3 (1) with respect to—

4 (A) a tangible record; or

5 (B) an electronic record; or

6 (2) for—

7 (A) an individual in the physical presence
8 of the notarial officer; or

9 (B) a remotely located individual.

10 (e) PRESUMPTION OF GENUINENESS.—In a deter-
11 mination of the validity of a notarization for the purposes
12 of subsection (a), the signature and title of an individual
13 performing a notarization shall be prima facie evidence in
14 any State court or judicial proceeding that the signature
15 is genuine and that the individual holds the designated
16 title.

17 (d) CONCLUSIVE EVIDENCE OF AUTHORITY.—In a
18 determination of the validity of a notarization for the pur-
19 poses of subsection (a), the signature and title of the fol-
20 lowing notarial officers of a State shall conclusively estab-
21 lish the authority of the officer to perform the notariza-
22 tion:

23 (1) A notary public of that State.

24 (2) A judge, clerk, or deputy clerk of a court
25 of that State.

1 **SEC. 7. ELECTRONIC AND REMOTE NOTARIZATION NOT RE-**
2 **QUIRED.**

3 Nothing in this Act may be construed to require a
4 notary public to perform a notarization—

- 5 (1) with respect to an electronic record;
6 (2) for a remotely located individual; or
7 (3) using a technology that the notary public
8 has not selected.

9 **SEC. 8. VALIDITY OF NOTARIZATIONS; RIGHTS OF AG-**
10 **GRIEVED PERSONS NOT AFFECTED; STATE**
11 **LAWS ON THE PRACTICE OF LAW NOT AF-**
12 **FECTED.**

13 (a) **VALIDITY NOT AFFECTED.**—The failure of a no-
14 tary public to meet a requirement under section 3 or 4
15 in the performance of a notarization, or the failure of a
16 notarization to conform to a requirement under section 3
17 or 4, shall not invalidate or impair the validity or recogni-
18 tion of the notarization.

19 (b) **RIGHTS OF AGGRIEVED PERSONS.**—The validity
20 and recognition of a notarization under this Act may not
21 be construed to prevent an aggrieved person from seeking
22 to invalidate a record or transaction that is the subject
23 of a notarization or from seeking other remedies based on
24 State or Federal law other than this Act for any reason
25 not specified in this Act, including on the basis—

1 (1) that a person did not, with present intent
2 to authenticate or adopt a record, execute a signa-
3 ture on the record;

4 (2) that an individual was incompetent, lacked
5 authority or capacity to authenticate or adopt a
6 record, or did not knowingly and voluntarily authen-
7 ticate or adopt a record; or

8 (3) of fraud, forgery, mistake, misrepresenta-
9 tion, impersonation, duress, undue influence, or
10 other invalidating cause.

11 (c) **RULE OF CONSTRUCTION.**—Nothing in this Act
12 may be construed to affect a State law governing, author-
13 izing, or prohibiting the practice of law.

14 **SEC. 9. EXCEPTION TO PREEMPTION.**

15 (a) **IN GENERAL.**—A State law may modify, limit, or
16 supersede the provisions of section 3, or subsection (a) or
17 (b) of section 4, with respect to State law only if that State
18 law—

19 (1) either—

20 (A) constitutes an enactment or adoption
21 of the Revised Uniform Law on Notarial Acts,
22 as approved and recommended for enactment in
23 all the States by the National Conference of
24 Commissioners on Uniform State Laws in 2018
25 or the Revised Uniform Law on Notarial Acts,

1 as approved and recommended for enactment in
2 all the States by the National Conference of
3 Commissioners on Uniform State Laws in
4 2021, except that a modification to such Law
5 enacted or adopted by a State shall be pre-
6 empted to the extent such modification—

7 (i) is inconsistent with a provision of
8 section 3 or subsection (a) or (b) of section
9 4, as applicable; or

10 (ii) would not be permitted under sub-
11 paragraph (B); or

12 (B) specifies additional or alternative pro-
13 cedures or requirements for the performance of
14 notarizations with respect to electronic records
15 or for remotely located individuals, if those ad-
16 ditional or alternative procedures or require-
17 ments—

18 (i) are consistent with section 3 and
19 subsections (a) and (b) of section 4; and

20 (ii) do not accord greater legal effect
21 to the implementation or application of a
22 specific technology or technical specifica-
23 tion for performing those notarizations;
24 and

1 (2) requires the retention of an audio and vis-
2 ual recording of the performance of a notarization
3 for a remotely located individual for a period of not
4 less than 5 years after the recording is created.

5 (b) **RULE OF CONSTRUCTION.**—Nothing in section 5
6 or 6 may be construed to preclude the recognition of a
7 notarization under applicable State law, regardless of
8 whether such State law is consistent with section 5 or 6.

9 **SEC. 10. STANDARD OF CARE; SPECIAL NOTARIAL COMMIS-**
10 **SIONS.**

11 (a) **STATE STANDARDS OF CARE; AUTHORITY OF**
12 **STATE REGULATORY OFFICIALS.**—Nothing in this Act
13 may be construed to prevent a State, or a notarial regu-
14 latory official of a State, from—

15 (1) adopting a requirement in this Act as a
16 duty or standard of care under the laws of that
17 State or sanctioning a notary public for breach of
18 such a duty or standard of care;

19 (2) establishing requirements and qualifications
20 for, or denying, refusing to renew, revoking, sus-
21 pending, or imposing a condition on, a commission
22 or appointment as a notary public;

23 (3) creating or designating a class or type of
24 commission or appointment, or requiring an endorse-
25 ment or other authorization to be received by a no-

1 tary public, as a condition on the authority to per-
2 form notarizations with respect to electronic records
3 or for remotely located individuals; or

4 (4) prohibiting a notary public from performing
5 a notarization under section 3 or 4 as a sanction for
6 a breach of duty or standard of care or for official
7 misconduct.

8 (b) SPECIAL COMMISSIONS OR AUTHORIZATIONS
9 CREATED BY A STATE; SANCTION FOR BREACH OR OFFI-
10 CIAL MISCONDUCT.—A notary public may not perform a
11 notarization under section 3 or 4 if—

12 (1)(A) the notary public’s State has enacted a
13 law that creates or designates a class or type of
14 commission or appointment, or requires an endorse-
15 ment or other authorization to be received by a no-
16 tary public, as a condition on the authority to per-
17 form notarizations with respect to electronic records
18 or for remotely located individuals; and

19 (B) the commission or appointment of the no-
20 tary public is not of the class or type or the notary
21 public has not received the endorsement or other au-
22 thorization; or

23 (2) the notarial regulatory official of the notary
24 public’s State has prohibited the notary public from
25 performing the notarization as a sanction for a

1 breach of duty or standard of care or for official
2 misconduct.

3 **SEC. 11. SEVERABILITY.**

4 If any provision of this Act or the application of such
5 provision to any person or circumstance is held to be in-
6 valid or unconstitutional, the remainder of this Act and
7 the application of the provisions thereof to other persons
8 or circumstances shall not be affected by that holding.

Passed the House of Representatives February 27,
2023.

Attest: CHERYL L. JOHNSON,
Clerk.

The 2024 Florida Statutes (including 2025 Special Session C)

Title XL

REAL AND PERSONAL PROPERTY

Chapter 692

CONVEYANCES BY OR TO PARTICULAR ENTITIES

[View Entire Chapter](#)

692.203 Purchase of real property on or around military installations or critical infrastructure facilities by foreign principals prohibited.—

(1) A foreign principal may not directly or indirectly own, or have a controlling interest in, or acquire by purchase, grant, devise, or descent any interest, except a de minimus indirect interest, in real property on or within 10 miles of any military installation or critical infrastructure facility in this state. A foreign principal has a de minimus indirect interest if any ownership is the result of the foreign principal's ownership of registered equities in a publicly traded company owning the land and if the foreign principal's ownership interest in the company is either:

(a) Less than 5 percent of any class of registered equities or less than 5 percent in the aggregate in multiple classes of registered equities; or

(b) A noncontrolling interest in an entity controlled by a company that is both registered with the United States Securities and Exchange Commission as an investment adviser under the Investment Advisers Act of 1940, as amended, and is not a foreign entity.

(2) A foreign principal that directly or indirectly owns or acquires any interest in real property on or within 10 miles of any military installation or critical infrastructure facility in this state before July 1, 2023, may continue to own or hold such real property, but may not purchase or otherwise acquire by grant, devise, or descent any additional real property on or within 10 miles of any military installation or critical infrastructure facility in this state.

(3)(a) A foreign principal must register with the Department of Commerce if the foreign principal owns or acquires real property on or within 10 miles of any military installation or critical infrastructure facility in this state as authorized under subsection (4) or if the foreign principal owned or acquired an interest, other than a de minimus indirect interest, in such property before July 1, 2023. The department must establish a form for such registration which, at a minimum, must include all of the following:

1. The name of the owner of the real property.
 2. The address of the real property, the property appraiser's parcel identification number, and the property's legal description.
- (b) A foreign principal that fails to timely file a registration with the department is subject to a civil penalty of \$1,000 for each day that the registration is late. A foreign principal must register a property interest owned before July 1, 2023, by December 31, 2023. The registration is considered to be late after January 31, 2024. A foreign principal who owns or acquires real property on or after July 1, 2023, as authorized under subsection (4), must register the real property within 30 days after the property is owned or acquired. The department may place a lien against the unregistered real property for the unpaid balance of any penalties assessed under this paragraph.
- (4) Notwithstanding subsection (1), a foreign principal who is a natural person may purchase one residential real property that is up to 2 acres in size if all of the following apply:
- (a) The parcel is not on or within 5 miles of any military installation in this state.
 - (b) The person has a current verified United States Visa that is not limited to authorizing tourist-based travel or official documentation confirming that the person has been granted asylum in the United States, and such visa or documentation authorizes the person to be legally present within this state.
 - (c) The purchase is in the name of the person who holds the visa or official documentation described in paragraph (b).
- (5) Notwithstanding subsections (1) and (2), a foreign principal may acquire real property or any interest therein which is on or within 10 miles of any military installation or critical infrastructure facility in this state on or after July 1, 2023, by devise or descent, through the enforcement of security interests, or through the collection of debts, provided that the foreign principal sells, transfers, or otherwise divests itself of such real property within 3 years after acquiring the real property.
- (6)(a) At the time of purchase, a buyer of the real property that is on or within 10 miles of any military installation or critical infrastructure facility in this state must provide an affidavit signed under penalty of perjury attesting that the buyer is:
1. Not a foreign principal or not a foreign principal prohibited from purchasing the subject real property; and
 2. In compliance with the requirements of this section.
- (b) The failure to obtain or maintain the affidavit does not:

1. Affect the title or insurability of the title for the real property; or
 2. Subject the closing agent to civil or criminal liability, unless the closing agent has actual knowledge that the transaction will result in a violation of this section.
- (c) The Florida Real Estate Commission shall adopt rules to implement this subsection, including rules establishing the form for the affidavit required under this subsection.
- (7)(a) If any real property is owned or acquired in violation of this section, the real property may be forfeited to the state.
- (b) The Department of Commerce may initiate a civil action in the circuit court of the county in which the property lies for the forfeiture of the real property or any interest therein.
- (c) Upon filing such action, the clerk must record a lis pendens in accordance with s. 48.23. The court must advance the cause on the calendar. The defendant may at any time petition to modify or discharge the lis pendens based upon a finding that there is no probable cause to believe that the real property, or any portion thereof, is owned or held in violation of this section.
- (d) If the court finds that the real property, or any portion thereof, is owned or held in violation of this section, the court must enter a final judgment of forfeiture vesting title to the real property in this state, subject only to the rights and interests of bona fide lienholders, and such final judgment relates back to the date of the lis pendens.
- (e) The department may sell the real property subject to a final judgment of forfeiture. Any proceeds from the sale must first be paid to any lienholders of the land, followed by payment of any outstanding fines assessed pursuant to this section, after which the department must be reimbursed for all costs related to the forfeiture civil action and any costs related to the sale of the land. Any remaining proceeds must be paid to the property owner.
- (f) At any time during the forfeiture proceeding, the department may seek an ex parte order of seizure of the real property upon a showing that the defendant's control of the real property constitutes a clear and present danger to the state.
- (8) A foreign principal that purchases or acquires real property or any interest therein in violation of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.
- (9) A person who knowingly sells real property or any interest therein in violation of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(10) The Department of Commerce shall adopt rules to implement this section.

History.—s. 6, ch. 2023-33; s. 232, ch. 2024-6.

61J2-10.200 Buyer's Affidavits; Form

In order to implement sections 692.202(5)(c), 692.203(6)(c), and 692.204(6)(c), Florida Statutes, the Commission hereby establishes the following Forms of Affidavits of Buyers of Property.

(1) Buyer's Affidavits. At the time of purchase, buyers of real property shall sign an affidavit under penalty of perjury attesting to the requirements of sections 692.202-205, Florida Statutes. Such affidavits shall be signed by the buyers at the time of closing.

(2) Individual buyers shall use the following Affidavit, Part III, Ch. 692 F.S. – Conveyances to Foreign Entities – By Natural Person Buyer.

Affidavit

[Part III, Ch. 692 F.S. - Conveyances to Foreign Entities - By Natural Person Buyer]

BEFORE ME, the undersigned authority, duly authorized to take acknowledgments and administer oaths, personally appeared _____ (“Affiant”), who deposes and says under penalties of perjury that:

(When used “Affiant” includes singular or plural as context so requires or admits.)

1. Affiant is purchasing or acquiring an interest in the following described real property:

[Insert Legal Description]

2. Affiant has been given the opportunity to consult with an attorney.

3. Affiant is (initial which is applicable):

Not a Foreign Principal as defined in s. 692.201, F.S., and is in compliance with the requirements set out in ss. 692.202-205, F.S.

OR

A Foreign Principal as defined in s. 692.201, F.S., and is in compliance with the requirements set out in ss. 692.202-205, F.S.

4. Affiant acknowledges the foregoing representations will be relied upon to establish compliance with the law.

(Affiant)
Print Name: _____
Address: _____

STATE OF _____
COUNTY OF _____

Sworn to (or affirmed) and subscribed before me by means of physical presence or online notarization this ____ day of _____, 20____, by _____ who is personally known or has produced _____ as identification.

[Notary Seal]

Notary Public
Printed Name: _____
My Commission Expires: _____

(3) Entity buyers shall use the following Affidavit Part III, Ch. 692 F.S. – Conveyances to Foreign Entities – By Entity Buyer.

Affidavit

[Part III, Ch. 692 F.S. - Conveyances to Foreign Entities - By Entity Buyer]

BEFORE ME, the undersigned authority, duly authorized to take acknowledgments and administer oaths, personally appeared _____ (“Affiant”) who deposes and says under penalties of perjury that:

(When used “Affiant” and “Buyer” include singular or plural as context so requires or admits.)

1. Affiant is the [state official capacity] of [state name/type/venue of entity], which is hereinafter referred to as “Buyer.”

All statements in Lines 4 through 5 below are made solely with respect to the Buyer and any holder of a “Controlling Interest” in the Buyer (as defined in s. 287.138(1)(a), F.S.), in each case solely with respect to the real property identified in Line 2.

2. Buyer is purchasing or acquiring an interest in the following described real property:

[Insert Legal Description]

3. Affiant has been given the opportunity to consult with an attorney.

4. Buyer is (initial which is applicable):

Federal Law Update: Washington Whirlwind, Keeping Agents Up-To-Date

Not a Foreign Principal as defined in s. 692.201, F.S., and is in compliance with the requirements set out in ss. 692.202-205, F.S.

OR

A Foreign Principal as defined in s. 692.201, F.S., and is in compliance with the requirements set out in ss. 692.202-205, F.S.

5. Affiant acknowledges the foregoing representations will be relied upon to establish compliance with the law.

(Affiant)
Print Name: _____
Official Capacity: _____
Name of Buyer: _____
Address: _____

STATE OF _____
COUNTY OF _____

Sworn to (or affirmed) and subscribed before me by means of physical presence or online notarization this ___ day of _____, 20___, by _____ who is personally known or has produced _____ as identification.

[Notary Seal]

Notary Public
Printed Name: _____
My Commission Expires: _____

Rulemaking Authority 692.202(5)(c), 692.203(6)(c) FS. Law Implemented 692.202, 692.203 FS. History—New 1-17-24.



I

119TH CONGRESS
1ST SESSION

H. R. 3588

To amend the Internal Revenue Code of 1986 to require all real estate purchases by non-citizens to be reported to the Internal Revenue Service, to impose a tax on the purchase of real estate purchases by certain non-citizens, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 23, 2025

Mr. HARRIGAN introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Foreign Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Internal Revenue Code of 1986 to require all real estate purchases by non-citizens to be reported to the Internal Revenue Service, to impose a tax on the purchase of real estate purchases by certain non-citizens, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Real Estate Reci-
5 procity Act”.

1 **SEC. 2. RETURNS WITH RESPECT TO FOREIGN PERSONS**
2 **HOLDING DIRECT INVESTMENTS IN UNITED**
3 **STATES REAL PROPERTY INTERESTS.**

4 (a) **REQUIRED RETURN.**—Section 6039C(a) of the
5 Internal Revenue Code of 1986 is amended by striking
6 “To the extent provided in regulations, any” and inserting
7 “Any”.

8 (b) **DOLLAR THRESHOLD REMOVED.**—Section
9 6039C(b) of such Code is amended by striking “during
10 any calendar year if—” and all that follows through the
11 period and inserting “during any calendar year if such
12 person did not engage in a trade or business in the United
13 States at any time during such calendar year”.

14 (c) **EFFECTIVE DATE.**—The amendments made by
15 this section shall apply to returns filed with respect to tax-
16 able years beginning after the date of the enactment of
17 this Act.

18 **SEC. 3. REPORT ON FOREIGN PROHIBITION OF UNITED**
19 **STATES OWNERSHIP OF REAL PROPERTY IN-**
20 **TERESTS.**

21 Not later than 60 days after the date of the enact-
22 ment of this Act, and annually thereafter, the Secretary
23 of State shall provide to the Secretary of the Treasury
24 a report describing all foreign countries that prohibit the
25 purchase or ownership of real estate by citizens of the
26 United States.

1 SEC. 4. IMPOSITION OF TAX ON THE ACQUISITION OF
2 UNITED STATES REAL PROPERTY BY DIS-
3 QUALIFIED PERSONS.

4 (a) IN GENERAL.—Subtitle D is amended by insert-
5 ing after chapter 50A the following new chapter:

6 **“CHAPTER 50B—ACQUISITION OF UNITED**
7 **STATES REAL PROPERTY BY DIS-**
8 **QUALIFIED PERSONS**

“Sec. 5000E. Imposition of tax on acquisition of United States real property
by disqualified persons.

9 **“SEC. 5000E. IMPOSITION OF TAX ON ACQUISITION OF**
10 **UNITED STATES REAL PROPERTY BY DIS-**
11 **QUALIFIED PERSONS.**

12 “(a) IN GENERAL.—In the case of any acquisition of
13 any United States real property by any disqualified per-
14 son, there is hereby imposed on such person a tax equal
15 to 50 percent of the amount paid for such interest.

16 “(b) DISQUALIFIED PERSON.—For purposes of this
17 section—

18 “(1) IN GENERAL.—The term ‘disqualified per-
19 son’ means—

20 “(A) any citizen of a disqualified country
21 (other than a citizen, or lawful permanent resi-
22 dent, of the United States),

23 “(B) any entity domiciled in a disqualified
24 country.

1 “(C) any disqualified country and any po-
2 litical subdivision, agency, or instrumentality
3 thereof, and

4 “(D) except as provided in paragraph (3),
5 any entity if persons described in subparagraph
6 (A), (B), or (C) (in the aggregate) 10-percent
7 control such entity.

8 “(2) DISQUALIFIED COUNTRY.—The term ‘dis-
9 qualified country’ means any country identified in
10 the report described in section 3 of the Real Estate
11 Reciprocity Act.

12 “(3) EXCEPTION FOR CERTAIN NON-CITI-
13 ZENS.—An individual shall not be treated as de-
14 scribed in paragraph (1)(A) if such individual re-
15 sides in the United States during the taxable year
16 due to—

17 “(A) diplomatic obligations, or

18 “(B) a grant of asylum by the United
19 States.

20 “(4) EXCEPTION FOR CERTAIN PUBLICLY
21 TRADED CORPORATIONS.—

22 “(A) IN GENERAL.—An entity shall not be
23 treated as described in paragraph (1)(D) if—

24 “(i) such entity is a specified publicly
25 traded corporation, or

1 “(ii) specified publicly traded corpora-
2 tions (in the aggregate) control such enti-
3 ty.

4 “(B) SPECIFIED PUBLICLY TRADED COR-
5 PORATION.—

6 “(i) IN GENERAL.—The term ‘speci-
7 fied publicly traded corporation’ means any
8 corporation if—

9 “(I) the stock of such corporation
10 is regularly traded on an established
11 securities market located in the
12 United States, and

13 “(II) specified disqualified per-
14 sons do not (in the aggregate) control
15 such corporation.

16 “(ii) SPECIFIED DISQUALIFIED PER-
17 SONS.—The term ‘specified disqualified
18 persons’ means, with respect to any cor-
19 poration referred to in clause (i), any per-
20 son which—

21 “(I) is described in subparagraph
22 (A), (B), or (C) of paragraph (1), and

23 “(II) 10-percent controls such
24 corporation.

1 “(c) PRORATED TAX ON ACQUISITIONS BY ENTITIES
2 NOT MORE THAN 50 PERCENT CONTROLLED BY DIS-
3 QUALIFIED PERSONS.—

4 “(1) IN GENERAL.—In the case of any disquali-
5 fied person described in subsection (b)(1)(D) with
6 respect to which persons described in subparagraphs
7 (A), (B), or (C) of subsection (b)(1) do not (in the
8 aggregate) control such disqualified person, sub-
9 section (a) shall be applied by substituting ‘the ap-
10 plicable percentage of the amount’ for ‘the amount’.

11 “(2) APPLICABLE PERCENTAGE.—For purposes
12 of this section, the term ‘applicable percentage’
13 means, with respect to any disqualified person to
14 which paragraph (1) applies, the highest percentage
15 which could be substituted for ‘50 percent’ both
16 places it appears in section 954(d)(3) without caus-
17 ing persons described in subparagraph (A), (B), or
18 (C) of subsection (b)(1) (in the aggregate) to control
19 (determined by taking into account such substi-
20 tution) such disqualified person.

21 “(d) CONTROL.—For purposes of this section—

22 “(1) IN GENERAL.—The term ‘control’ has the
23 meaning given such term under section 954(d)(3),
24 determined by treating the rules of section 958(a)(2)

1 as applying to both foreign and domestic corpora-
2 tions, partnerships, trusts, and estates.

3 “(2) 10-PERCENT CONTROL.—The term ‘10-
4 percent control’ means control (as defined in para-
5 graph (1)), determined by substituting ‘10 percent’
6 for ‘50 percent’ both places it appears in section
7 954(d)(3).

8 “(e) UNITED STATES REAL PROPERTY.—The term
9 ‘United States real property’ has the meaning which would
10 be given the term ‘United States real property interest’
11 by section 897(c) if—

12 “(1) paragraph (1)(A)(ii) were applied by sub-
13 stituting ‘such corporation was not a United States
14 real property holding corporation at the time of ac-
15 quisition’ for ‘such corporation’ and all that follows,

16 “(2) paragraph (1)(B) did not apply, and

17 “(3) paragraph (3) were applied by substituting
18 ‘at the time of acquisition’ for ‘at some time during
19 the shorter of the periods described in paragraph
20 (1)(A)(ii)’.”.

21 (b) REPORTING REQUIREMENTS.—

22 (1) IN GENERAL.—Subpart B of part III of
23 subchapter A of chapter 61 is amended by adding at
24 the end the following new section:

1 **“SEC. 6050AA. RETURNS RELATING TO ACQUISITION OF**
2 **UNITED STATES REAL PROPERTY BY DIS-**
3 **QUALIFIED PERSONS.**

4 “(a) **IN GENERAL.**—The required reporting person,
5 with respect to any acquisition of any United States real
6 property by a presumptively disqualified person to which
7 section 5000E(a) applies, shall make a return at such time
8 as the Secretary may provide setting forth—

9 “(1) the name, address, and TIN of such pre-
10 sumptively disqualified person,

11 “(2) a description of such United States real
12 property (including the street address, if applicable),
13 and

14 “(3) the amount paid for such United States
15 real property.

16 “(b) **STATEMENT TO BE FURNISHED TO PRESUMP-**
17 **TIVELY DISQUALIFIED PERSON.**—Every person required
18 to make a return under subsection (a) shall furnish, at
19 such time as the Secretary may provide, to each presump-
20 tively disqualified person whose name is required to be set
21 forth in such return a written statement showing—

22 “(1) the name and address of the information
23 contact of the required reporting person, and

24 “(2) the information described in paragraphs
25 (1), (2), and (3) of subsection (a) which relates to
26 such disqualified person.

1 “(c) REQUIRED REPORTING PERSON.—For purposes
2 of this section, the term ‘required reporting person’
3 means, with respect to any acquisition of any United
4 States real property—

5 “(1) the person (including any attorney or title
6 company) responsible for closing the transaction in
7 which such United States real property is acquired,
8 or

9 “(2) if no one is responsible for closing such
10 transaction (or in such other cases as the Secretary
11 may provide), the transferor of such United States
12 real property.

13 “(d) PRESUMPTIVELY DISQUALIFIED PERSON.—For
14 purposes of this section, the term ‘presumptively disquali-
15 fied person’ means any person unless such person fur-
16 nishes to the required reporting person an affidavit by the
17 such person stating, under penalty of perjury, that such
18 person is not a disqualified person (as defined in section
19 5000E(b)).

20 “(e) REQUIREMENT TO REQUEST AFFIDAVIT.—If
21 the required reporting person, with respect to any acqui-
22 sition of any United States real property, has not, as of
23 the time of such acquisition, been furnished the affidavit
24 described in subsection (d) by the acquirer of such inter-
25 est, such required reporting person shall furnish to such

1 acquirer, at such time, a written statement informing such
2 acquirer of the required reporting person's obligation to
3 make the return described in subsection (a) with respect
4 to such acquisition and including such other information
5 as the Secretary may require.

6 “(f) UNITED STATES REAL PROPERTY.—For pur-
7 poses of this section, the term ‘United States real prop-
8 erty’ has the meaning given such term in section 5000E.”.

9 (2) PENALTIES.—Section 6724(d) is amend-
10 ed—

11 (A) in paragraph (1)(B), by striking “or”
12 at the end of clause (xxvii), by striking “and”
13 at the end of clause (xxviii) and inserting “or”,
14 and by adding at the end the following new
15 clause:

16 “(xxix) section 6050AA(a) (relating to
17 returns relating to acquisition of United
18 States real property by disqualified per-
19 sons), and”, and

20 (B) in paragraph (2), by striking “or” at
21 the end of subparagraph (KK), by striking the
22 period at the end of subparagraph (LL) and in-
23 serting “, or”, and by inserting after subpara-
24 graph (LL) the following new subparagraph:

1 “(MM) subsection (b) or (e) of section
2 6055AA (relating to statements relating to ac-
3 quisition of United States real property by dis-
4 qualified persons).”.

5 (e) CLERICAL AMENDMENTS.—

6 (1) The table of chapters for subtitle D is
7 amended by inserting after the item relating to
8 chapter 50A the following new item:

 “CHAPTER 50B. ACQUISITION OF UNITED STATES REAL PROPERTY BY
 DISQUALIFIED PERSONS.”.

9 (2) The table of sections for subpart B of part
10 III of subchapter A of chapter 61 is amended by
11 adding at the end the following new item:

 “Sec. 6050AA. Returns relating to acquisition of United States real property
 by disqualified persons.”.

12 (d) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to acquisitions in taxable years be-
14 ginning after the date of the enactment of this Act.

○

FR-BAR Update 2025: Recent Changes to FR-BAR Contracts and Addenda

1 hour CE (Title)

1 hour CLE (General, Real Estate)

Lori Ellen Ward, Esq.

Underwriting Counsel - Florida

CE Course Number: 134784

CE Course Offering ID: 1223961

CLE Course Number: 2508307N





Lori Ellen Ward, Esq.

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Lori Ellen Ward is a Board Certified Real Estate Attorney who grew up in Jackson County (Marianna), Florida and transplanted to the Emerald Coast in 1996 when she married a true local, Michael Ward. After earning her law degree at Florida State University in 1997, she began her legal career in a small Destin firm with a broad area of practice, where she quickly developed an interest in and proficiency at representing clients in the real estate industry.

Over time, her practice grew to include developers of large commercial and residential real estate ventures, local banks in their real estate lending departments and individual buyers and sellers of property. In 2008, she started Priority Title and has focused on providing insured residential real estate closings (primarily in Okaloosa and Walton Counties) ever since. Prior to joining the team at Alliant National Title, she was General Counsel for the Legendary companies, a local development and hospitality company whose projects include Legendary Marinas at Midbay (Destin) and Gulf Shores (AL), Regatta Bay subdivision, Emerald Grande at HarborWalk Village, and upcoming marinas in The Bahamas. In 2017, Lori obtained her Real Estate Sales Associate license to further her involvement in all areas of the real estate industry and in 2024, she became a licensed Real Estate Broker.

Outside of her professional activities, Lori has served as a past President of the Junior League of the Emerald Coast and remains a sustainer in that organization. She is also a charter and Evergreen member of Impact 100 of Northwest Florida, and a former board member and regular volunteer with Food for Thought Outreach. Professionally, she is current Chair of the Grievance Committee for the Emerald Coast Association of Realtors, past Chair of the Law Related Education and Annual Convention Committees for The Florida Bar, At-Large Member of The Florida Bar Real Property Probate and Trust Law Section, former treasurer of the Okaloosa Bar Association, past President of the Walton County Bar Association, and former board member for Legal Services of North Florida, Inc. Lori and Michael have two adult children, 2 dogs, 2 cats, and enjoy traveling in their free time!



OVERVIEW

Name of Provider: Alliant National Title Insurance Company

Name of Course: FR-BAR Update 2025: Recent Changes to FR-BAR Contracts and Addenda

Targeted audience: Florida Title Insurance Agents and other Title Insurance Professionals

Course Objectives:

Provide the target audience with comprehensive updates on the changes made to the FR-Bar contract forms and addenda in 2024 and early 2025; discuss legislative actions which prompted many of the recent contract revisions.

Course Relevance:

The two FR-Bar contract forms, along with the various addenda, are used for more than 95% of all residential real estate transactions in Florida. This course aims to ensure the target audience has more-than-passing familiarity with the forms and can present themselves as knowledgeable partners for their customers and clients.

Study Method: Classroom

Course Level: Intermediate



OUTLINE

- | | |
|--|-------------------|
| I. Changes to the main contract forms | 25 Minutes |
| • Paragraph 9 – Closing Services Fees | |
| • Paragraph 15(a) – Buyer Default and Retained Deposits | |
| • Paragraph 19 – Riders FF and GG | |
| II. Revisions to CR-7 Condo Rider | 30 Minutes |
| • Refresher on condominium disclosures | |
| • Changes from 10/2024 – annual financial statements (legislative change) | |
| • Changes from 12/2024 – additional legislative changes re: milestone, turnover and SIRS disclosures | |
| • Changes from 6/2025, including those mandated by HB913 (signed into law, effective 7/1/2025) – comprehensive form changes resulting from 3 years of work by committee, revision to statutory voidability period from 3 to 7 days | |
| III. Questions and Answers | 5 Minutes |

Total Instruction Time - **60 minutes**

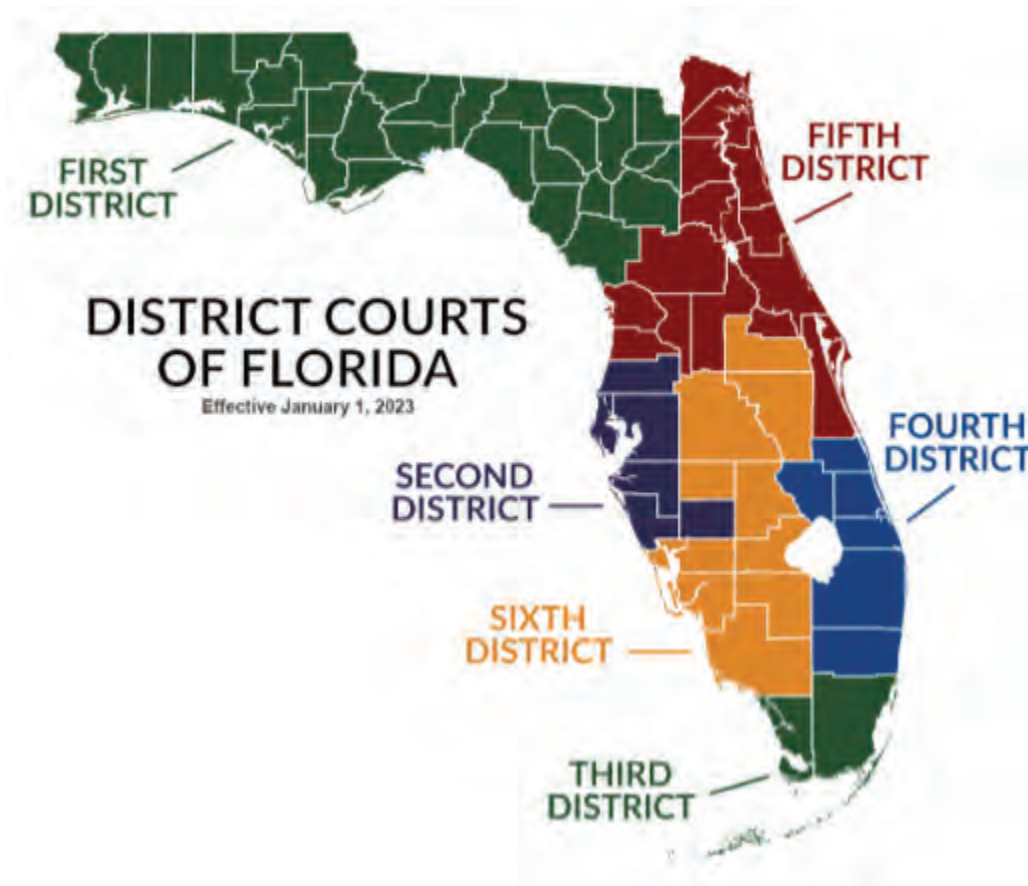
Total Time - 60 minutes



FR-BAR UPDATE 2025: RECENT CHANGES TO FR-BAR CONTRACTS AND ADDENDA

1. Who Makes All These Changes Anyway?

- a. Florida Realtor – Attorney Joint Committee
 - i. 26 member committee, half Realtors and half attorneys, appointed by The Florida Bar and Florida Realtors for staggered 2 year terms
 - ii. 2 from each group of the 6 judicial appellate districts and 1 from each group in an “at-large” position



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- b. Contract Subcommittee
 - i. Subgroup within the Joint Committee responsible for proposing and drafting changes to the contract forms maintained by the Joint Committee
 - ii. Forms maintained are the 2 FR/Bar contract forms – Standard and AS-IS, and Comprehensive Riders A through GG
- c. Florida Realtor Forms Committee
 - i. Responsible for essentially all Realtor forms except the FR/Bar documents
 - ii. FR's Contract for Residential Sale and Purchase (CRSP) and its riders
 - iii. Listing Agreements, Buyer Broker Agreements, Disclosures, etc.

2. Recent changes to the main contract forms

- a. Paragraph 9 – Closing Services Fees
 - i. Clarifies that each party is responsible for paying their own Closing Services fees
 - ii. Refers to statutory definition of what “Closing Services” are, in Section 627.7711, F.S.
 - iii. **IMPORTANT NOTE:** This revision does not allow a title agent to charge both sides without their agreement. The picking party is deemed to have selected the Closing Agent to provide their Closing Services; but explicit agreement (preferably in writing and at the beginning of processing the transaction) of the non-picking party should be obtained before Closing Services are provided to that party. See lines 169-170 (standard contract) for the authority for the parties to select a provider other than the Closing Agent to provide their Closing Services. The biggest take away here is: The non picking party is **NOT** required to use the Closing Agent for Closing Services, but they are responsible for **PAYING** for their own Closing Services!
- b. Paragraph 15(a) – Buyer Default and Retained Deposits
 - i. Due to practice changes resulting from the NAR settlement, broker compensation can now come from multiple sources. The purchase contract (between the buyer and seller) is no longer an appropriate location for dealing with how retained deposits might be split between the brokers. So that language was removed.
 - ii. Brokers could agree separately on a method to share forfeited deposits, but we are unaware of any widely-used agreements which contain those kind of terms.



c. Paragraph 19 – Riders FF and GG

- i. Paragraph 19: New checkboxes were added to reflect that Riders FF or GG might be attached to the contract and incorporated therein.
- ii. BONUS MATERIAL: Paragraph 19's importance is highlighted in the somewhat recent case of *Mercado v. Sridhar*, 48 Fla. L. Weekly D 2188, November 15, 2023 (3d DCA). In *Mercado*, the parties were negotiating both the contract terms and an addendum related to the buyer's purchase of home furnishings and the seller's option to lease back the home after closing. Buyer's offer was presented with buyer's proposed addendum on those matters and seller's counteroffer contained a proposed revised version of the addendum. Neither party marked any box in Paragraph 19 indicating their intention for the proposed addendum to be incorporated into the contract. Seller's counteroffer was signed by both parties, but neither version of the addendum was ever fully executed. Sellers refused to close because the addendum terms had not been agreed on, prompting Buyers to sue for specific performance. At trial, Seller argued that no contract was formed because the terms of the addendum were "essential" to the formation of the contract and the parties had never reached a meeting of the minds on the addendum terms. Buyer argued that the parties had reached a meeting of the minds on the terms related to purchase of the real property and that the matters in the addendum were collateral, rather than essential. The trial court determined that the addendum had not been properly incorporated into the base contract, because "pursuant to the plain terms of [the FR-Bar contract], in order for the parties to elect that an addendum was to be included, that election must be made within the pages of the Contract itself" – in other words, if no box in Paragraph 19 was checked to indicate the parties intended to incorporate an addendum, and nothing on the face of the contract indicated that intention (like perhaps in Paragraph 20), then the contract language overrides the intent of the parties. The appellate court agreed, stating that the parties' mere act of attaching an addendum to the Form Contract when making offers or counteroffers was not enough to make the addendum an essential part of the contract, such that the addendum had to be agreed to in order for a contract to be formed. Attachments must be expressly incorporated into the main form, either by checking a box in Paragraph 19, or clearly evidencing the intent for incorporation on the face of the Contract form itself.



- iii. Rider FF – Credit Related to Buyer’s Broker Compensation
 - A. Used by the buyer to request a specific credit from the seller to be applied toward what the buyer owes their broker under an already existing Buyer Broker Agreement (BBA).
 - B. Contains instructions on how to proceed if the amount of the credit (or any part of it) is disallowed by the lender.
 - C. Appears on the settlement statement as a debit/credit entry between seller and buyer. Except, if the credit exceeds the lender’s allowance and the parties selected the option for the seller to pay the disallowed amount directly to the buyer’s broker, then there could be BOTH a credit from seller to buyer, and a payment from seller to buyer’s broker.
- iv. Rider GG – Seller’s Agreement with Respect to Buyer’s Broker Compensation
 - A. Makes the contract contingent upon either the seller or the seller’s broker entering into a separate compensation agreement with the buyer’s broker within a specified time frame (3 days from Effective Date unless a different time period is specified).
 - B. Buyer has the right to terminate if the contingency isn’t timely met, but if the buyer doesn’t timely terminate then the contingency is waived.
 - C. Final result of this Rider is that a separate comp agreement will be entered into which the closing agent will need to get a copy of to understand who is getting paid, how much they are getting paid, and who is paying them.
- v. Side note on compensation agreements in general. You may have to request copies of some of the comp agreements between the parties and/or the brokers in order to fully understand how much to pay each broker and who is making those payments. Be wary of any aggregation of payments to the buyer broker which exceed the amount agreed upon in the BBA.

3. Revisions to CR-7 Condo Rider

- a. Condo rider changes have been prolific over the last couple of years, following the Surfside condo collapse and the legislative activity re: condos which has followed. Beyond safety concerns, the subcommittee has been working on comprehensive updates to the rider for almost 3 years.
- b. This presentation covers changes in rider revisions 9/2024, 12/2024, and 6/2025. The first 2 were exclusively legislative-mandated changes and the latest revision includes both legislative changes and the comprehensive update.



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- c. Relocation of condominium contact information, change to defined term “Association”, now “Condominium Association” throughout the rider.
- d. Most changes are designed for clarity of reading rather than change to substance.
- e. Paragraph 3(c) was area of significant updates, but primarily to improve readability, remove reference to “pending” assessments which had been problematic in application over the last few years, and increase negotiability between the parties as to who is going to pay special assessments, both at and after closing.
- f. The 9/2024 revision to the rider changed the Paragraph 5 term “Year End Financial Statements” to “Annual Financial Statement and Annual Budget”, which was a statutory change from the 2024 session.
- g. The 6/2025 changes to Paragraph 5 are also statutory and change the voidability period following receipt of the mandatory disclosures from 3 business days to 7 business days!
- h. Refresher on condominium required disclosures (old news, but worth repeating)
 - i. Declaration of Condominium, including all amendments thereto
 - ii. Bylaws of the Association
 - iii. Articles of Organization of the Association
 - iv. Rules and Regulations
 - v. FAQ
 - vi. Annual Financial Statement
 - vii. Annual Budget
 - viii. DBPR Governance Form
- i. Paragraph 6 – big changes!
 - i. Creation of subparagraph (a), which is what was formerly the entire paragraph. Also removed the option for buyer to say they don’t want a copy of the required disclosures, since the delivery of the disclosures by the seller can’t be waived and is the trigger for running of the 7 business day voidability period.
 - ii. New subparagraph (b) allows buyers to include additional disclosure items they want to review as part of their due diligence, with a termination right that tracks the language of the voidability statute, for consistency within the rider.



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- j. No changes to paragraphs 7 and 8 other than re-numbering in the 6/2025 revision – they used to be paragraphs 8 and 9.
- k. Paragraph 9 (formerly 10): In the 12/2024 rider revision, in compliance with Condo 3.0 (passed in the 2024 legislative session), this paragraph was revised to include a series of questions about turnover inspections, milestone inspections and structural integrity reserve studies. The new paragraph asked if each of these particular inspections or studies is required for the subject condominium, then sets forth the statutory requirements and remedies if they are required and not delivered to the buyer prior to contract execution – spoiler alert: it's another voidability period! In Condo 3.0, the Legislature established the voidability period at 3 business days, but that was changed in Condo 4.0 (and the 6/2025 rider revision) to 7 business days, to match the nondeveloper disclosure voidability period.
- l. There are subsections in Paragraph 9 for Milestone Inspections (sub (a)), Turnover Inspection Reports (sub (b)), and Structural Integrity Reserve Studies (sub (c)), each of which have 3 subparts that are substantially the same. In each of the subparagraphs, the first option should be selected if the specific report IS REQUIRED and HAS BEEN COMPLETED. This triggers the new voidability provision. If the property where the unit is located is NOT REQUIRED to complete the item described in the subparagraph, then subpart (ii) should be selected. Lastly, check the box for subpart (iii) if the association is REQUIRED to have completed the item in question but HAS NOT YET COMPLETED it. Think of this section of Paragraph 9 like one of those old "Choose Your Own Adventure" books – remember those? Selecting subpart (i) in each subparagraph directs you to subparagraph (d) – where even more check boxes await. Selecting (ii) or (iii) is the end of the inquiry and subparagraph (d) will not apply FOR THAT PARTICULAR ITEM. It's relevant to note that the selections in (a), (b) and (c) could (and likely will be) different for the property being sold. For example, an Association might be required to complete a Milestone Inspection report and SIR Study, but not have a requirement for the Turnover Inspection report described in subparagraph (b).
- m. How does paragraph 9 work in practice? Let's say one or more of the items (milestone inspection, turnover inspection report, or SIRS) is required and completed – what are the buyer's rights related to those items? FIRST, the buyer is entitled to receive a copy of the report(s) at least seven business days prior to execution of the contract. Which, in real life, is basically never going to happen. So if the buyer hasn't received the report(s) in that time frame, THEN the contract is voidable by the buyer giving written notice of their intent to cancel within 7 business days after buyer receives the last of the items required to be provided.



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- n. For those interested in the nitty gritty details, and additional information not likely to be covered in the live presentation, the following subparagraphs contain additional information about what each of these reports actually are.
- o. MILESTONE INSPECTION:
 - i. It is helpful to explore briefly the statutory requirements for understanding what condo projects are required to complete milestone inspections. Here, we look to that portion of Chapter 553 which also known as the Florida Building Code (subparts .70 - .8991). Going all the way back to special legislative session in 2022 after the Surfside condo collapse, we find the Legislature determining that all buildings which are three habitable*** stories or more in height (as determined under the Florida Building Code) and which are subject, in whole or in part, to residential condominium or cooperative ownership should be subjected to a milestone inspection by December 31 of the year in which the building reaches 30 years of age, and then every 10 year thereafter. Local enforcement agencies were also given leeway under the statute to require the initial milestone inspection within 25 years after the building receives a certificate of occupancy if “local circumstances”, which could include proximity to salt water, are determined to exist which would merit an earlier initial inspection. A “local enforcement agency” under the Building Code is the agency with jurisdiction to make inspections of buildings and enforce state and local design and building codes; this can be an arm of a local government (city or county), a local school board, or trustees of a community college or state university.
***(this is an addition under Condo 4.0 which became law on 7/1/2025)
 - ii. What is a milestone inspection? It is a structural inspection of the load-bearing elements, primary structural members, and primary structural systems of a building by a licensed architect or engineer in which the licensee must attest to the life safety and adequacy of the structural components of the building(s) and include, to the extent reasonably possible, a determination of any necessary maintenance, repair or replacement of any structural component of the building(s). That’s quite a mouthful – let’s unpack it a little bit. “Load-bearing elements” are pretty self-explanatory, right? Floors, ceilings, footers (if visible), foundations (if visible), columns, headers. “Primary structural members” and “primary structural systems” are really just a different, perhaps more comprehensive, way to describe “load-bearing elements” (but I’m not an engineer and know that this explanation is a gross oversimplification); those terms would include, again, columns, beams, bearing walls, girders, braced frames, roof and floor panels and slabs, and then also the interconnection of those items into a complete system, like



the load-bearing wall system, the frame system, the truss system, the shear wall system, the rigid frame system, and the core system.

- iii. What is the process of the inspection? Phase one, which must be completed for all buildings that are required to have a milestone inspection report, includes a visual examination of both habitable and nonhabitable areas by the licensee so that a qualitative assessment of the structural condition can be made. If there are no signs of “substantial structural deterioration” to any building components, then no further (phase two) inspection is required. At the completion of the phase one inspection, the licensee must submit a signed and sealed copy of their report, which must include a separate summary section, to the local enforcement agency, the Association, and any other owner of any portion of the building which is not subject to condominium or cooperative ownership. If the phase one inspection reveals “substantial structural deterioration” of any component, then a phase two inspection must be performed to fully assess the areas of structural distress so that soundness and safety of the building can be confirmed and a complete program for assessing and repairing distressed and damaged areas can be recommended. Phase two inspections can involve invasive or destructive testing, if necessary. The licensee must submit another signed and sealed report, with a summary, to the same group of constituents when the phase two inspection is complete. Unless a shorter time period is instituted by the local government (board of county commissioners or municipal governing body), repairs identified as being necessary within a phase two report must be commenced within one year (365 days) of the Association’s receipt of the report.
- iv. The Association is responsible for ensuring that condo and coop owners receive a copy of the inspector-prepared summary of the phase one report and any phase two report within 45 days after receipt from the licensee. The summary must be delivered in a physical copy (by mail or personal delivery, or by email/fax if the owner has previously consented to electronic notices), it must be physically posted on the property in a conspicuous location (like where meeting notices are posted), and it must be published on the Association’s website, if the Association is required to have a website (25 units or more). The full report is part of the records of the Association, available to any owner upon request, and must also be posted on any required Association website.
- v. New in Condo 4.0 is a requirement that each local enforcement agency prepare a comprehensive report to the Department of Business and Professional Regulation which includes the following information:



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- The number many buildings in the jurisdiction required to have a milestone inspection.
- The number of phase one inspections which have been completed.
- The number of buildings granted an extension for their phase one inspections.
- The number of phase two inspections required.
- The number of required phase two inspections which have been completed.
- The number, type and value of permit applications received to complete repairs required by a phase two inspections.
- A list of buildings deemed unsafe or uninhabitable as determined by a milestone inspection.
- The license number of the building official responsible for milestone inspections for the local enforcement agency.

The first of these reports is due 12/31/2025, and it must be updated by 12/31 of each succeeding year. The Department will work with the Legislature to present the annual findings to Legislative leadership (President of the Senate and Speaker of the House).

p. TURNOVER REPORT:

- This requirement is really designed only for new turnovers, since the disclosure isn't required for any turnover occurring after July 1, 2023. To help brokers and agents understand when turnover is required and what must be in the turnover report, a brief reminder on those statutory requirements.
- Under Section 718.301(4), a developer is required to turn over control of the association to the unit owners whenever unit owners other than the developer are entitled to elect a majority of the board of directors – but when does that happen? According to subparagraph (1) of the same section, unit owners are entitled to elect a majority of the board at the earliest to occur of:
 - 3 years after 50% of the units which will be operated by the association have been sold to purchasers (includes all future phases);
 - 3 months after 90% of the units which will be operated by the association have been sold to purchasers (includes all future phases);
 - When all units which will be operated by the association are complete, some have been sold to purchasers, and no others are being offered for sale by the developer in the ordinary course of business;



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- When some of the units have been sold to purchasers, no planned units are being constructed, and no units are being offered for sale by the developer in the ordinary course of business;
 - The developer has sought bankruptcy protection;
 - A receiver has been appointed for the developer and not discharged within 30 days of appointment, unless the court in the receivership determines transfer would be detrimental to the association or its members; OR
 - 7 years after the date of recording of the surveyor's certificate (which goes along with the Declaration of Condominium) or the recording of a conveyance to a purchaser which does not include an assignment of developer's rights, whichever occurs first. NOTE: for associations which will ultimately operate more than one condominium (phased or multi-building projects), then this category changes to whichever of the foregoing recordings occurs first for the first condominium building or phase to be operated by the association.
- iii. So when the appropriate milestone (pun intended) has been reached under Section 718.301(1), the developer must "simultaneously" turn over the following records:
- Original or certified copy of the recorded Declaration
 - Certified copy of articles of incorporation of the association
 - Bylaws of the association
 - Minute books, including all minutes, and other books and corporate records
 - Rules and regulations of the association
 - Resignations of developer-appointed board members and officers who are required to resign because of the change in control
 - Financial records, prepared in accordance with GAAP and audited (the developer has 90 days from the milestone occurrence to turn these over)
 - Association funds (or control of them)
 - All tangible personal property owned by the association
 - A copy of the plans and specs for construction of the condo (not applicable for conversions occurring more than 3 years after original construction)
 - A list of all contractors, subs and suppliers for the construction and landscaping
 - Insurance policies



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- Copies of all certificates of occupancy for the condo property
- All permits in force or issued within 1 year prior to turnover
- All written warranties that are still in effect
- A roster of unit owners and their contact information
- Leases of the common elements or to which the association is a party
- Employment and service contracts the association is a party to which require payment by the association to a person performing a service
- A copy of the recorded surveyor's certificate for the Declaration or the recorded transfer of a unit not accompanied by an assignment of developer's rights
- The most recent structural integrity reserve study
- A turnover inspection report, which amounts to a structural integrity reserve study, signed and sealed by an architect or engineer, attesting to the required maintenance, condition, useful life, and replacement costs of:
 - Roof
 - Structure (load-bearing walls, primary structural members and systems)
 - Fireproofing and fire protection systems
 - Plumbing
 - Electrical systems
 - Waterproofing and exterior painting
 - Windows and exterior doors
- A turnover inspection report, signed and sealed by an architect or engineer, attesting to the required maintenance, condition, useful life, and replacement costs of:
 - Elevators
 - Heating and cooling systems
 - Swimming pool or spa and equipment
 - Seawalls
 - Pavement and parking areas
 - Drainage systems
 - Irrigation systems



- iv. The last two items (in bold and italics) are the reports identified in the disclosure requirement of Section 718.503(2)(e), F.S. and embodied in Paragraph 9 of the rider. The questions for the disclosure are, basically, has turnover occurred or is it required to have occurred (in other words, have any of the milestone conditions occurred since 7/1/2023 or later); if yes, then were the turnover inspection reports completed by the developer and given to the association.
- q. STRUCTURAL INTEGRITY RESERVE STUDY (SIRS):
- i. What is a SIRS, you ask? According to the definitions in Section 718.103(26), F.S., it means a study of the reserve funds required for future major repairs and replacement of the condominium property, performed in accordance with the requirements set forth in Section 718.112(2)(g). And what are those requirements? I'm so glad you asked!
- ii. Section 718.112 is the provision of the condo law that mandates what MUST BE included in an association's bylaws. Tucked into subpart (2)(g) is the SIRS requirement. Every residential condo association must complete a SIRS at least every 10 years after the condo creation for each building on the property which is three (habitable*) stories or higher in height. *"habitable" was added in HB913 effective 7/1/2025. At a minimum, the SIRS must study the following items related to the structural integrity and safety of the building (hold on to your hats, as these are going to seem pretty familiar after the review of "turnover inspection report" from above):
- Roof
 - Structure (load-bearing walls, primary structural members and systems)
 - Fireproofing and fire protection systems
 - Plumbing
 - Electrical systems
 - Waterproofing and exterior painting
 - Windows and exterior doors
 - Any other item with a deferred maintenance expense or replacement cost that exceeds \$10,000 (increasing to \$25K, or the inflation-adjusted amount determined by the Division of Condo every February starting in 2026, under HB913 effective 7/1/2025) if the failure to replace or maintain such item will negatively affects the items described above.



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- iii. The SIRS includes a visual inspection of the property and must be performed by an architect or “certified reserve specialist” or “professional reserve analyst” by the Community Associations Institute or the Association of Professional Reserve Analysts. HB913 also add some conflict of interest language which will prohibit the SIRS from being completed by someone who also submits a bid to perform the recommended services set forth within the SIRS report.
- iv. The SIRS must, at a minimum, identify each items of the condo property which was visually inspected, state the estimated remaining useful life and the estimated replacement cost or deferred maintenance expense for each such item, and provide a reserve funding schedule with a recommended annual reserve amount necessary to achieve the estimated replacement cost or deferred maintenance expenses by the end of the estimated remaining useful life thereof.
- v. Within 45 days after receiving the SIRS, the association must distribute a copy to each unit owner by mail or personal delivery, or by electronic delivery if the owner has consented to receive notices by electronic transmission. One particularly useful change in HB913 requires the Division of Condos to adopt a rule prescribing the form of the SIRS for all condos, which will make it much easier for unit owners to understand the studies from one project to the next, and for industry participants (like lenders) to properly underwrite the risks identified in the SIRS.

Questions and Answers



Residential Contract For Sale And Purchase

THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR



1* **PARTIES:** _____ ("Seller"),
 2* and _____ ("Buyer"),

3 agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal Property
 4 (collectively "Property") pursuant to the terms and conditions of this Residential Contract For Sale And Purchase and
 5 any riders and addenda ("Contract");

6 **1. PROPERTY DESCRIPTION:**

- 7* (a) Street address, city, zip: _____
 8* (b) Located in: _____ County, Florida. Property Tax ID #: _____
 9* (c) Real Property: The legal description is _____
 10 _____
 11 _____

12 together with all existing improvements and fixtures, including built-in appliances, built-in furnishings and
 13 attached wall-to-wall carpeting and flooring ("Real Property") unless specifically excluded in Paragraph 1(e) or
 14 by other terms of this Contract.

- 15 (d) Personal Property: Unless excluded in Paragraph 1(e) or by other terms of this Contract, the following items
 16 which are owned by Seller and existing on the Property as of the date of the initial offer are included in the
 17 purchase: range(s)/oven(s), refrigerator(s), dishwasher(s), disposal, ceiling fan(s), light fixture(s), drapery rods
 18 and draperies, blinds, window treatments, smoke detector(s), garage door opener(s), thermostat(s), doorbell(s),
 19 television wall mount(s) and television mounting hardware, security gate and other access devices, mailbox
 20 keys, and storm shutters/storm protection items and hardware ("Personal Property").

21* Other Personal Property items included in this purchase are: _____
 22 _____

23 Personal Property is included in the Purchase Price, has no contributory value, and shall be left for the Buyer.

- 24* (e) The following items are excluded from the purchase: _____
 25 _____

26 **PURCHASE PRICE AND CLOSING**

27* **2. PURCHASE PRICE** (U.S. currency): _____ \$ _____

- 28* (a) Initial deposit to be held in escrow in the amount of **(checks subject to Collection)** \$ _____
 29 The initial deposit made payable and delivered to "Escrow Agent" named below

30* **(CHECK ONE):** (i) accompanies offer or (ii) is to be made within _____ (if left
 31 blank, then 3) days after Effective Date. IF NEITHER BOX IS CHECKED, THEN
 32 OPTION (ii) SHALL BE DEEMED SELECTED.

33* Escrow Agent Name: _____

34* Address: _____ Phone: _____

35* Email: _____ Fax: _____

- 36* (b) Additional deposit to be delivered to Escrow Agent within _____ (if left blank, then 10)
 37* days after Effective Date \$ _____

38 (All deposits paid or agreed to be paid, are collectively referred to as the "Deposit")

- 39* (c) Financing: Express as a dollar amount or percentage ("Loan Amount") see Paragraph 8 _____

40* (d) Other: _____ \$ _____

- 41* (e) Balance to close (not including Buyer's closing costs, prepaids and prorations) by wire
 42* transfer or other Collected funds (See STANDARD S) \$ _____

43 **3. TIME FOR ACCEPTANCE OF OFFER AND COUNTER-OFFERS; EFFECTIVE DATE:**

- 44 (a) If not signed by Buyer and Seller, and an executed copy delivered to all parties on or before
 45* _____, this offer shall be deemed withdrawn and the Deposit, if any, shall be returned
 46 to Buyer. Unless otherwise stated, time for acceptance of any counter-offers shall be within 2 days after the day
 47 the counter-offer is delivered.

- 48 (b) The effective date of this Contract shall be the date when the last one of the Buyer and Seller has signed or
 49* initialed and delivered this offer or final counter-offer ("Effective Date").

- 50 **4. CLOSING; CLOSING DATE:** The closing of this transaction shall occur when all funds required for closing are
 51 received by Closing Agent and Collected pursuant to STANDARD S and all closing documents required to be
 52 furnished by each party pursuant to this Contract are delivered ("Closing"). Unless modified by other provisions of

53* this Contract, the Closing shall occur on _____ ("Closing Date"), at the time
 54 established by the Closing Agent.

55 **5. EXTENSION OF CLOSING DATE:**

56 (a) In the event Closing funds from Buyer's lender(s) are not available on Closing Date due to Consumer Financial
 57 Protection Bureau Closing Disclosure delivery requirements ("CFPB Requirements"), if Paragraph 8(b) is
 58 checked, Loan Approval has been obtained, and lender's underwriting is complete, then Closing Date shall be
 59 extended for such period necessary to satisfy CFPB Requirements, provided such period shall not exceed 7
 60 days.

61 (b) If an event constituting "Force Majeure" causes services essential for Closing to be unavailable, including the
 62 unavailability of utilities or issuance of hazard, wind, flood or homeowners' insurance, Closing Date shall be
 63 extended as provided in STANDARD G.

64 **6. OCCUPANCY AND POSSESSION:**

65 (a) Unless Paragraph 6(b) is checked, Seller shall, at Closing, deliver occupancy and possession of the Property
 66 to Buyer free of tenants, occupants and future tenancies. Also, at Closing, Seller shall have removed all
 67 personal items and trash from the Property and shall deliver all keys, garage door openers, access devices and
 68 codes, as applicable, to Buyer. If occupancy is to be delivered before Closing, Buyer assumes all risks of loss
 69 to the Property from date of occupancy, shall be responsible and liable for maintenance from that date, and
 70 shall have accepted the Property in its existing condition as of time of taking occupancy (see Rider T PRE-
 71 CLOSING OCCUPANCY BY BUYER), except with respect to any items identified by Buyer pursuant to
 72 Paragraph 12, prior to taking occupancy, which require repair, replacement, treatment or remedy.

73* (b) **CHECK IF PROPERTY IS SUBJECT TO LEASE(S) OR OCCUPANCY AFTER CLOSING.** If Property is
 74 subject to a lease(s) or any occupancy agreements (including seasonal and short-term vacation rentals) after
 75 Closing or is intended to be rented or occupied by third parties beyond Closing, the facts and terms thereof
 76 shall be disclosed in writing by Seller to Buyer and copies of the written lease(s) shall be delivered to Buyer, all
 77 within 5 days after Effective Date. If Buyer determines, in Buyer's sole discretion, that the lease(s) or terms of
 78 occupancy are not acceptable to Buyer, Buyer may terminate this Contract by delivery of written notice of such
 79 election to Seller within 5 days after receipt of the above items from Seller, and Buyer shall be refunded the
 80 Deposit thereby releasing Buyer and Seller from all further obligations under this Contract. Estoppel Letter(s)
 81 and Seller's affidavit shall be provided pursuant to STANDARD D, except that tenant Estoppel Letters shall not
 82 be required on seasonal or short-term vacation rentals. If Property is intended to be occupied by Seller after
 83 Closing, see Rider U POST-CLOSING OCCUPANCY BY SELLER.

84* **7. ASSIGNABILITY: (CHECK ONE):** Buyer may assign and thereby be released from any further liability under
 85 this Contract; may assign but not be released from liability under this Contract; or may not assign this Contract.
 86 IF NO BOX IS CHECKED, THEN BUYER MAY NOT ASSIGN THIS CONTRACT.

87 **FINANCING**

88 **8. FINANCING:**

89* (a) This is a cash transaction with no financing contingency.
 90* (b) This Contract is contingent upon, within _____ (if left blank, then 30) days after Effective Date ("Loan Approval
 91* Period"); (1) Buyer obtaining approval of a conventional FHA VA or other _____ (describe)
 92* mortgage loan for purchase of the Property for a (CHECK ONE): fixed, adjustable, fixed or adjustable rate
 93* in the Loan Amount (See Paragraph 2(c)), at an initial interest rate not to exceed _____ % (if left blank, then
 94* prevailing rate based upon Buyer's creditworthiness), and for a term of _____ (if left blank, then 30) years
 95* ("Financing"); and (2) Buyer's mortgage broker or lender having received an appraisal or alternative valuation of the
 96* Property satisfactory to lender, if either is required by lender, which is sufficient to meet the terms required for lender
 97* to provide Financing for Buyer and proceed to Closing ("Appraisal").

98* (i) Buyer shall make application for Financing within _____ (if left blank, then 5) days after Effective Date
 99 and use good faith and diligent effort to obtain approval of a loan meeting the Financing and Appraisal terms of
 100 Paragraph 8(b)(1) and (2), above, ("Loan Approval") within the Loan Approval Period and, thereafter, to close this
 101 Contract. Loan Approval which requires Buyer to sell other real property shall not be considered Loan Approval
 102 unless Rider V is attached.

103 Buyer's failure to use good faith and diligent effort to obtain Loan Approval during the Loan Approval Period shall
 104 be considered a default under the terms of this Contract. For purposes of this provision, "diligent effort" includes,
 105 but is not limited to, timely furnishing all documents and information required by Buyer's mortgage broker and lender
 106 and paying for Appraisal and other fees and charges in connection with Buyer's application for Financing.

107 (ii) Buyer shall, upon written request, keep Seller and Broker fully informed about the status of Buyer's
 108 mortgage loan application, loan processing, appraisal, and Loan Approval, including any Property related conditions

109 of Loan Approval. Buyer authorizes Buyer's mortgage broker, lender, and Closing Agent to disclose such status
 110 and progress and release preliminary and finally executed closing disclosures and settlement statements, as
 111 appropriate and allowed, to Seller and Broker.

112 (iii) If within the Loan Approval Period, Buyer obtains Loan Approval, Buyer shall notify Seller of same in writing
 113 prior to expiration of the Loan Approval Period; or, if Buyer is unable to obtain Loan Approval within the Loan
 114 Approval Period but Buyer is satisfied with Buyer's ability to obtain Loan Approval and proceed to Closing, Buyer
 115 shall deliver written notice to Seller confirming same, prior to the expiration of the Loan Approval Period.

116 (iv) If Buyer is unable to obtain Loan Approval within the Loan Approval Period, or cannot timely meet the
 117 terms of Loan Approval, all after the exercise of good faith and diligent effort, Buyer may terminate this Contract by
 118 delivering written notice of termination to Seller prior to expiration of the Loan Approval Period; whereupon, provided
 119 Buyer is not in default under the terms of this Contract, Buyer shall be refunded the Deposit thereby releasing Buyer
 120 and Seller from all further obligations under this Contract.

121 (v) If Buyer fails to timely deliver any written notice provided for in Paragraph 8(b)(iii) or (iv), above, to Seller
 122 prior to expiration of the Loan Approval Period, then Buyer shall proceed forward with this Contract as though
 123 Paragraph 8(a), above, had been checked as of the Effective Date; provided, however, Seller may elect to terminate
 124 this Contract by delivering written notice of termination to Buyer within 3 days after expiration of the Loan Approval
 125 Period and, provided Buyer is not in default under the terms of this Contract, Buyer shall be refunded the Deposit
 126 thereby releasing Buyer and Seller from all further obligations under this Contract.

127 (vi) If Buyer has timely provided either written notice provided for in Paragraph 8(b)(iii), above, and Buyer
 128 thereafter fails to close this Contract, the Deposit shall be paid to Seller unless failure to close is due to: (1) Seller's
 129 default or inability to satisfy other contingencies of this Contract; or (2) Property related conditions of the Loan
 130 Approval (specifically excluding the Appraisal valuation) have not been met unless such conditions are waived by
 131 other provisions of this Contract; in which event(s) the Buyer shall be refunded the Deposit, thereby releasing Buyer
 132 and Seller from all further obligations under this Contract.

- 133* (c) Assumption of existing mortgage (see Rider D for terms).
 134* (d) Purchase money note and mortgage to Seller (see Rider C for terms).

135 **CLOSING COSTS, FEES AND CHARGES**

136 **9. CLOSING COSTS; TITLE INSURANCE; SURVEY; HOME WARRANTY; SPECIAL ASSESSMENTS:**

137 (a) **COSTS TO BE PAID BY SELLER:**

- 138 • Documentary stamp taxes and surtax on deed, if any • HOA/Condominium Association estoppel fees
 139 • Owner's Policy and Charges (if Paragraph 9(c)(i) is checked) • Recording and other fees needed to cure title
 140 • Title search charges (if Paragraph 9(c)(iii) is checked) • Seller's attorneys' fees
 141 • Municipal lien search (if Paragraph 9(c)(i) or (iii) is checked) • Seller's Closing Services
 142* • Charges for FIRPTA withholding and reporting • Other: _____
 143 • Municipal lien search (if Paragraph 9(c)(i) or (iii) is checked) • Other: _____
 144* • Charges for FIRPTA withholding and reporting

145 Seller shall pay the following amounts/percentages of the Purchase Price for the following costs and expenses:

- 146* (i) up to \$ _____ or _____ % (1.5% if left blank) for General Repair Items ("General Repair
 147 Limit"); and
 148* (ii) up to \$ _____ or _____ % (1.5% if left blank) for WDO treatment and repairs ("WDO Repair
 149 Limit"); and
 150 (iii) up to \$ _____ or _____ % (1.5% if left blank) for costs associated with closing out open or
 151 expired building permits and obtaining required building permits for any existing improvement for which a
 152 permit was not obtained ("Permit Limit").

153 If, prior to Closing, Seller is unable to meet the Maintenance Requirement as required by Paragraph 11 or the
 154 repairs, replacements, treatments or permitting as required by Paragraph 12, then sums equal to 125% of
 155 estimated costs to complete the applicable item(s) (but not in excess of applicable General Repair, WDO
 156 Repair, and Permit Limits set forth above, if any) shall be escrowed at Closing. If actual costs of Maintenance
 157 Requirement or required repairs, replacements, treatment or permitting exceed applicable escrowed amounts,
 158 Seller shall pay such actual costs (but not in excess of applicable General Repair, WDO Repair, and Permit
 159 Limits set forth above). Any unused portion of escrowed amount(s) shall be returned to Seller.

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 162 **[The remainder of this page is intentionally left blank.**
 163 **This Contract continues with Paragraph 9(b) on Page 4 of 14.]**

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(b) COSTS TO BE PAID BY BUYER:

- Taxes and recording fees on notes and mortgages
- Recording fees for deed and financing statements
- Owner's Policy and Charges (if Paragraph 9(c)(ii) is checked)
- Survey (and elevation certification, if required)
- Lender's title policy and endorsements
- HOA/Condominium Association application/transfer fees
- Municipal lien search (if Paragraph 9(c)(ii) is checked)
- Other: _____
- ~~Other:~~ _____
- Loan expenses
- Appraisal fees
- Buyer's Inspections
- Buyer's attorneys' fees
- All property related insurance
- Owner's Policy Premium (if Paragraph 9(c)(iii) is checked)
- Buyer's Closing Services

(c) TITLE EVIDENCE AND INSURANCE: At least _____ (if left blank, then 15, or if Paragraph 8(a) is checked, then 5) days prior to Closing Date ("Title Evidence Deadline"), a title insurance commitment issued by a Florida licensed title insurer, with legible copies of instruments listed as exceptions attached thereto ("Title Commitment") and, after Closing, an owner's policy of title insurance (see STANDARD A for terms) shall be obtained and delivered to Buyer. If Seller has an owner's policy of title insurance, or other evidence of title covering the Real Property, Seller shall furnish a copy to Buyer and Closing Agent within 5 days after Effective Date. The owner's title policy premium and title search (collectively, "Owner's Policy and Charges") shall be paid as set forth below. The title insurance premium charges for the owner's policy and any lender's policy will be calculated and allocated in accordance with Florida law, but may be reported differently on certain federally mandated closing disclosures and other closing documents. For purposes of this Contract "municipal lien search" means a search of records necessary for the owner's policy of title insurance to be issued without exception for unrecorded liens imposed pursuant to Chapters 153, 159 or 170, F.S., in favor of any governmental body, authority or agency. At least _____ (if left blank, then 15, or if Paragraph 8(a) is checked, then 5) days prior to Closing Date ("Title Evidence Deadline"), a title insurance commitment issued by a Florida licensed title insurer, with legible copies of instruments listed as exceptions attached thereto ("Title Commitment") and, after Closing, an owner's policy of title insurance (see STANDARD A for terms) shall be obtained and delivered to Buyer. If Seller has an owner's policy of title insurance covering the Real Property, Seller shall furnish a copy to Buyer and Closing Agent within 5 days after Effective Date. The owner's title policy premium, title search and closing services (collectively, "Owner's Policy and Charges") shall be paid, as set forth below. The title insurance premium charges for the owner's policy and any lender's policy will be calculated and allocated in accordance with Florida law, but may be reported differently on certain federally mandated closing disclosures and other closing documents. For purposes of this Contract "municipal lien search" means a search of records necessary for the owner's policy of title insurance to be issued without exception for unrecorded liens imposed pursuant to Chapters 153, 159 or 170, F.S., in favor of any governmental body, authority or agency.

"Closing Services" shall have the meaning ascribed to that term in Section 627.7711(1)(a), F.S.; each party shall bear their own Closing Services fees payable to Closing Agent or such other provider(s) as each party may select.

(CHECK ONE):

- (i) Seller shall designate Closing Agent and pay for Owner's Policy and Charges. Buyer shall pay premiums for any lender's title policy and endorsements; or Seller shall designate Closing Agent and pay for Owner's Policy and Charges, and Buyer shall pay the premium for Buyer's lender's policy and charges for closing services related to the lender's policy, endorsements and loan closing, which amounts shall be paid by Buyer to Closing Agent or such other provider(s) as Buyer may select; or
- (ii) Buyer shall designate Closing Agent and pay for Owner's Policy and Charges and premiums for any lender's title policy and endorsements; or Buyer shall designate Closing Agent and pay for Owner's Policy and Charges and charges for closing services related to Buyer's lender's policy, endorsements and loan closing; or
- (iii) **[MIAMI-DADE/BROWARD REGIONAL PROVISION];** Buyer shall designate Closing Agent and pay for premiums for owner's title policy, any lender's title policy and endorsements, and any post-Closing continuation. Seller shall pay actual costs for: (A) a title search or continuation of title evidence acceptable to Buyer's title insurance underwriter, not to exceed \$ _____ (if left blank, then \$200.00); (B) tax search; and (C) municipal lien search. Buyer shall designate Closing Agent. Seller shall furnish a copy of a prior owner's policy of title insurance or other evidence of title and pay fees for: (A) a continuation or update of such title evidence, which is acceptable to Buyer's title insurance underwriter for reissue of coverage; (B) tax search; and (C) municipal lien search. Buyer shall obtain and pay for post-Closing continuation and premium for Buyer's owner's policy, and if applicable, Buyer's lender's policy. Seller shall not be obligated to pay more than \$ _____ (if left blank, then \$200.00) for abstract continuation or title search ordered or performed by Closing Agent.

- 220 (d) **SURVEY:** At least 5 days prior to Closing Date, Buyer may, at Buyer's expense, have the Real Property
 221 surveyed and certified by a registered Florida surveyor ("Survey"). If Seller has a survey covering the Real
 222 Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date.
 223 (e) **HOME WARRANTY:** At Closing, Buyer Seller N/A shall pay for a home warranty plan issued by
 224 _____ at a cost not to exceed \$ _____. A home
 225 warranty plan provides for repair or replacement of many of a home's mechanical systems and major built-in
 226 appliances in the event of breakdown due to normal wear and tear during the agreement's warranty period.
 227 (f) **SPECIAL ASSESSMENTS:** At Closing, Seller shall pay: (i) the full amount of liens imposed by a public body
 228 ("public body" does not include a Condominium or Homeowner's Association) that are certified, confirmed and
 229 ratified before Closing; and (ii) the amount of the public body's most recent estimate or assessment for an
 230 improvement which is substantially complete as of Effective Date, but that has not resulted in a lien being
 231 imposed on the Property before Closing. Buyer shall pay all other assessments. If special assessments may
 232 be paid in installments (**CHECK ONE**):
 233 (a) Seller shall pay installments due prior to Closing and Buyer shall pay installments due after Closing.
 234 Installments prepaid or due for the year of Closing shall be prorated.
 235 (b) Seller shall pay, in full, prior to or at the time of Closing, any assessment(s) allowed by the public body
 236 to be prepaid. For any assessment(s) which the public body does not allow prepayment, OPTION (a) shall be
 237 deemed selected for such assessment(s).
 238 IF NEITHER BOX IS CHECKED, THEN OPTION (a) SHALL BE DEEMED SELECTED.
 239 This Paragraph 9(f) shall not apply to a special benefit tax lien imposed by a community development district
 240 (CDD) pursuant to Chapter 190, F.S., or special assessment(s) imposed by a special district pursuant to
 241 Chapter 189, F.S., which lien(s) or assessment(s) shall be prorated pursuant to STANDARD K.

242 **DISCLOSURES**

243 **10. DISCLOSURES:**

- 244 (a) **RADON GAS:** Radon is a naturally occurring radioactive gas that, when it is accumulated in a building in
 245 sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that
 246 exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding
 247 radon and radon testing may be obtained from your county health department.
 248 (b) **PERMITS DISCLOSURE:** Except as may have been disclosed by Seller to Buyer in a written disclosure, Seller
 249 does not know of any improvements made to the Property which were made without required permits or made
 250 pursuant to permits which have not been properly closed or otherwise disposed of pursuant to Section 553.79,
 251 F.S. If Seller identifies permits which have not been closed or improvements which were not permitted, then
 252 Seller shall promptly deliver to Buyer all plans, written documentation or other information in Seller's possession,
 253 knowledge, or control relating to improvements to the Property which are the subject of such open permits or
 254 unpermitted improvements.
 255 (c) **MOLD:** Mold is naturally occurring and may cause health risks or damage to property. If Buyer is concerned or
 256 desires additional information regarding mold, Buyer should contact an appropriate professional. See Rider I
 257 MOLD INSPECTION.
 258 (d) **FLOOD ZONE; ELEVATION CERTIFICATION:** Buyer is advised to verify by elevation certificate which flood
 259 zone the Property is in, whether flood insurance is required by Buyer's lender, and what restrictions apply to
 260 improving the Property and rebuilding in the event of casualty. If Property is in a "Special Flood Hazard Area"
 261 or "Coastal Barrier Resources Act" designated area or otherwise protected area identified by the U.S. Fish and
 262 Wildlife Service under the Coastal Barrier Resources Act and the lowest floor elevation for the building(s) and/or
 263 flood insurance rating purposes is below minimum flood elevation or is ineligible for flood insurance coverage
 264 through the National Flood Insurance Program or private flood insurance as defined in 42 U.S.C. §4012a, Buyer
 265 may terminate this Contract by delivering written notice to Seller within _____ (if left blank, then 20) days after
 266 Effective Date, and Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further
 267 obligations under this Contract, failing which Buyer accepts existing elevation of buildings and flood zone
 268 designation of Property.
 269 (e) **ENERGY BROCHURE:** Buyer acknowledges receipt of Florida Energy-Efficiency Rating Information Brochure
 270 required by Section 553.996, F.S.
 271 (f) **LEAD-BASED PAINT:** If Property includes pre-1978 residential housing, a lead-based paint disclosure is
 272 mandatory.
 273 (g) **HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE: BUYER SHOULD NOT EXECUTE THIS**
 274 **CONTRACT UNTIL BUYER HAS RECEIVED AND READ THE HOMEOWNERS'**
 275 **ASSOCIATION/COMMUNITY DISCLOSURE, IF APPLICABLE.**

- 276 (h) **PROPERTY TAX DISCLOSURE SUMMARY:** BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT
 277 PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO
 278 PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY
 279 IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER
 280 PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE
 281 COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION.
- 282 (i) **FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA"):** Seller shall inform Buyer in writing if
 283 Seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act ("FIRPTA"). Buyer
 284 and Seller shall comply with FIRPTA, which may require Seller to provide additional cash at Closing. If Seller
 285 is not a "foreign person", Seller can provide Buyer, at or prior to Closing, a certification of non-foreign status,
 286 under penalties of perjury, to inform Buyer and Closing Agent that no withholding is required. See STANDARD
 287 V for further information pertaining to FIRPTA. Buyer and Seller are advised to seek legal counsel and tax
 288 advice regarding their respective rights, obligations, reporting and withholding requirements pursuant to
 289 FIRPTA.
- 290 (j) **SELLER DISCLOSURE:** Seller knows of no facts materially affecting the value of the Real Property which are
 291 not readily observable and which have not been disclosed to Buyer. Except as otherwise disclosed in writing
 292 Seller has received no written or verbal notice from any governmental entity or agency as to a currently
 293 uncorrected building, environmental or safety code violation.

294 **PROPERTY MAINTENANCE, CONDITION, INSPECTIONS AND EXAMINATIONS**

295 **11. PROPERTY MAINTENANCE:** Except for ordinary wear and tear and Casualty Loss, and those repairs,
 296 replacements or treatments required to be made by this Contract, Seller shall maintain the Property, including, but
 297 not limited to, lawn, shrubbery, and pool, in the condition existing as of Effective Date ("Maintenance Requirement").
 298 See Paragraph 9(a) for escrow procedures, if applicable.

299 **12. PROPERTY INSPECTION AND REPAIR:**

300 (a) **INSPECTION PERIOD:** Buyer shall have _____ (if left blank, then 15) days after Effective Date ("Inspection
 301 Period"), within which Buyer may, at Buyer's expense, conduct "General", "WDO", and "Permit" Inspections as
 302 described below. If Buyer fails to timely deliver to Seller a written notice or report required by (b), (c), or (d)
 303 below, then, except for Seller's continuing Maintenance Requirement, Buyer shall have waived Seller's
 304 obligation(s) to repair, replace, treat or remedy the matters not inspected and timely reported. If this Contract
 305 does not close, Buyer shall repair all damage to Property resulting from Buyer's inspections, return Property to
 306 its pre-inspection condition and provide Seller with paid receipts for all work done on Property upon its
 307 completion.

308 (b) **GENERAL PROPERTY INSPECTION AND REPAIR:**

309 (i) **General Inspection:** Those items specified in Paragraph 12(b) (ii) below, which Seller is obligated to repair
 310 or replace ("General Repair Items") may be inspected ("General Inspection") by a person who specializes in
 311 and holds an occupational license (if required by law) to conduct home inspections or who holds a Florida
 312 license to repair and maintain the items inspected ("Professional Inspector"). Buyer shall, within the Inspection
 313 Period, inform Seller of any General Repair Items that are not in the condition required by (b)(ii) below by
 314 delivering to Seller a written notice and upon written request by Seller a copy of the portion of Professional
 315 Inspector's written report dealing with such items.

316 (ii) **Property Condition:** The following items shall be free of leaks, water damage or structural damage: ceiling,
 317 roof (including fascia and soffits), exterior and interior walls, doors, windows, and foundation. The above items
 318 together with pool, pool equipment, non-leased major appliances, heating, cooling, mechanical, electrical,
 319 security, sprinkler, septic, and plumbing systems and machinery, seawalls, dockage, watercraft lift(s) and
 320 related equipment, are, and shall be maintained until Closing, in "Working Condition" (defined below). Torn
 321 screens (including pool and patio screens), fogged windows, and missing roof tiles or shingles shall be repaired
 322 or replaced by Seller prior to Closing. Seller is not required to repair or replace "Cosmetic Conditions" (defined
 323 below), unless the Cosmetic Conditions resulted from a defect in an item Seller is obligated to repair or replace.
 324 "Working Condition" means operating in the manner in which the item was designed to operate. "Cosmetic
 325 Conditions" means aesthetic imperfections that do not affect Working Condition of the item, including, but not
 326 limited to: pitted marcite; tears, worn spots and discoloration of floor coverings, wallpapers, or window
 327 treatments; nail holes, scrapes, scratches, dents, chips or caulking in ceilings, walls, flooring, tile, fixtures, or
 328 mirrors; and minor cracks in walls, floor tiles, windows, driveways, sidewalks, pool decks, and garage and patio
 329 floors. Cracked roof tiles, curling or worn shingles, or limited roof life shall not be considered defects Seller must
 330 repair or replace, so long as there is no evidence of actual leaks, leakage or structural damage.

331 (iii) **General Property Repairs:** Seller is only obligated to make such general repairs as are necessary to bring
 332 items into the condition specified in Paragraph 12(b) (ii) above. Seller shall within 10 days after receipt of Buyer's

333 written notice or General Inspection report, either have the reported repairs to General Repair Items completed
 334 at Seller's expense, or have repairs estimated by an appropriately licensed person and a copy delivered to
 335 Buyer, or have a second inspection made by a Professional Inspector and provide a copy of such report and
 336 estimates of repairs to Buyer. If Buyer's and Seller's inspection reports differ and the parties cannot resolve the
 337 differences, Buyer and Seller together shall choose, and equally split the cost of, a third Professional Inspector,
 338 whose written report shall be binding on the parties.
 339 If cost to repair General Repair Items equals or is less than the General Repair Limit, Seller shall have repairs
 340 made in accordance with Paragraph 12(f). If cost to repair General Repair Items exceeds the General Repair
 341 Limit, then within 5 days after a party's receipt of the last estimate: (A) Seller may elect to pay the excess by
 342 delivering written notice to Buyer, or (B) Buyer may deliver written notice to Seller designating which repairs of
 343 General Repair Items Seller shall make (at a total cost to Seller not exceeding the General Repair Limit) and
 344 agreeing to accept the balance of General Repair Items in their "as is" condition, subject to Seller's continuing
 345 Maintenance Requirement. If neither party delivers such written notice to the other, then either party may
 346 terminate this Contract and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all
 347 further obligations under this Contract.

348 (c) **WOOD DESTROYING ORGANISM ("WDO") INSPECTION AND REPAIR:**
 349 (i) **WDO Inspection:** The Property may be inspected by a Florida-licensed pest control business ("WDO
 350 Inspector") to determine the existence of past or present WDO infestation and damage caused by infestation
 351 ("WDO Inspection"). Buyer shall, within the Inspection Period, deliver a copy of the WDO Inspector's written
 352 report to Seller if any evidence of WDO infestation or damage is found. "Wood Destroying Organism" ("WDO")
 353 means arthropod or plant life, including termites, powder-post beetles, oldhouse borers and wood-decaying
 354 fungi, that damages or infests seasoned wood in a structure, excluding fences.
 355 (ii) **WDO Repairs:** If Seller previously treated the Property for the type of WDO found by Buyer's WDO
 356 Inspection, Seller does not have to retreat the Property if there is no visible live infestation, and Seller, at Seller's
 357 cost, transfers to Buyer at Closing a current full treatment warranty for the type of WDO found. Seller shall within
 358 10 days after receipt of Buyer's WDO Inspector's report, have reported WDO damage estimated by an
 359 appropriately licensed person, necessary corrective treatment, if any, estimated by a WDO Inspector, and a
 360 copy delivered to Buyer. Seller shall have treatments and repairs made in accordance with Paragraph 12(f)
 361 below up to the WDO Repair Limit. If cost to treat and repair the WDO infestations and damage to Property
 362 exceeds the WDO Repair Limit, then within 5 days after receipt of Seller's estimate, Buyer may deliver written
 363 notice to Seller agreeing to pay the excess, or designating which WDO repairs Seller shall make (at a total cost
 364 to Seller not exceeding the WDO Repair Limit), and accepting the balance of the Property in its "as is" condition
 365 with regard to WDO infestation and damage, subject to Seller's continuing Maintenance Requirement. If Buyer
 366 does not deliver such written notice to Seller, then either party may terminate this Contract by written notice to
 367 the other, and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further
 368 obligations under this Contract.

369 (d) **INSPECTION AND CLOSE-OUT OF BUILDING PERMITS:**
 370 (i) **Permit Inspection:** Buyer may have an inspection and examination of records and documents made to
 371 determine whether there exist any open or expired building permits or unpermitted improvements to the
 372 Property ("Permit Inspection"). Buyer shall, within the Inspection Period, deliver written notice to Seller of the
 373 existence of any open or expired building permits or unpermitted improvements to the Property. If Buyer's
 374 inspection of the Property identifies permits which have not been properly closed or improvements which were
 375 not permitted, then Seller shall promptly deliver to Buyer all plans, written documentation or other information
 376 in Seller's possession, knowledge, or control relating to improvements to the Property which are the subject of
 377 such open permits or unpermitted improvements.
 378 (ii) **Close-Out of Building Permits:** Seller shall, within 10 days after receipt of Buyer's Permit Inspection notice,
 379 have an estimate of costs to remedy Permit Inspection items prepared by an appropriately licensed person and
 380 a copy delivered to Buyer. No later than 5 days prior to Closing Date, Seller shall, up to the Permit Limit, have
 381 open and expired building permits identified by Buyer or known to Seller closed by the applicable governmental
 382 entity, and obtain and close any required building permits for improvements to the Property. Prior to Closing
 383 Date, Seller will provide Buyer with any written documentation that all open and expired building permits
 384 identified by Buyer or known to Seller have been closed out and that Seller has obtained and closed required
 385 building permits for improvements to the Property. If final permit inspections cannot be performed due to delays
 386 by the governmental entity, Closing Date shall be extended for up to 10 days to complete such final inspections,
 387 failing which, either party may terminate this Contract, and Buyer shall be refunded the Deposit, thereby
 388 releasing Buyer and Seller from all further obligations under this Contract.
 389 If cost to close open or expired building permits or to remedy any permit violation of any governmental entity
 390 exceeds Permit Limit, then within 5 days after a party's receipt of estimates of cost to remedy: (A) Seller may

391 elect to pay the excess by delivering written notice to Buyer; or (B) Buyer may deliver written notice to Seller
 392 accepting the Property in its "as is" condition with regard to building permit status and agreeing to receive credit
 393 from Seller at Closing in the amount of Permit Limit. If neither party delivers such written notice to the other,
 394 then either party may terminate this Contract and Buyer shall be refunded the Deposit, thereby releasing Buyer
 395 and Seller from all further obligations under this Contract.
 396 (e) **WALK-THROUGH INSPECTION/RE-INSPECTION:** On the day prior to Closing Date, or on Closing Date prior
 397 to time of Closing, as specified by Buyer, Buyer or Buyer's representative may perform a walk-through (and
 398 follow-up walk-through, if necessary) inspection of the Property solely to confirm that all items of Personal
 399 Property are on the Property and to verify that Seller has maintained the Property as required by the
 400 Maintenance Requirement, has made repairs and replacements required by this Contract, and has met all other
 401 contractual obligations.
 402 (f) **REPAIR STANDARDS; ASSIGNMENT OF REPAIR AND TREATMENT CONTRACTS AND WARRANTIES:**
 403 All repairs and replacements shall be completed in a good and workmanlike manner by an appropriately
 404 licensed person, in accordance with all requirements of law, and shall consist of materials or items of quality,
 405 value, capacity and performance comparable to, or better than, that existing as of the Effective Date. Except as
 406 provided in Paragraph 12(c)(ii), at Buyer's option and cost, Seller will, at Closing, assign all assignable repair,
 407 treatment and maintenance contracts and warranties to Buyer.

408 **ESCROW AGENT AND BROKER**

409 **13. ESCROW AGENT:** Any Closing Agent or Escrow Agent (collectively "Agent") receiving the Deposit, other funds
 410 and other items is authorized, and agrees by acceptance of them, to deposit them promptly, hold same in escrow
 411 within the State of Florida and, subject to Collection, disburse them in accordance with terms and conditions of this
 412 Contract. Failure of funds to become Collected shall not excuse Buyer's performance. When conflicting demands
 413 for the Deposit are received, or Agent has a good faith doubt as to entitlement to the Deposit, Agent may take such
 414 actions permitted by this Paragraph 13, as Agent deems advisable. If in doubt as to Agent's duties or liabilities
 415 under this Contract, Agent may, at Agent's option, continue to hold the subject matter of the escrow until the parties
 416 agree to its disbursement or until a final judgment of a court of competent jurisdiction shall determine the rights of
 417 the parties, or Agent may deposit same with the clerk of the circuit court having jurisdiction of the dispute. An
 418 attorney who represents a party and also acts as Agent may represent such party in such action. Upon notifying all
 419 parties concerned of such action, all liability on the part of Agent shall fully terminate, except to the extent of
 420 accounting for any items previously delivered out of escrow. If a licensed real estate broker, Agent will comply with
 421 provisions of Chapter 475, F.S., as amended and FREC rules to timely resolve escrow disputes through mediation,
 422 arbitration, interpleader or an escrow disbursement order.
 423 In any proceeding between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder,
 424 or in any proceeding where Agent interpleads the subject matter of the escrow, Agent shall recover reasonable
 425 attorney's fees and costs incurred, to be paid pursuant to court order out of the escrowed funds or equivalent. Agent
 426 shall not be liable to any party or person for mis-delivery of any escrowed items, unless such mis-delivery is due to
 427 Agent's willful breach of this Contract or Agent's gross negligence. This Paragraph 13 shall survive Closing or
 428 termination of this Contract.

429 **14. PROFESSIONAL ADVICE; BROKER LIABILITY:** Broker advises Buyer and Seller to verify Property condition,
 430 square footage, and all other facts and representations made pursuant to this Contract and to consult appropriate
 431 professionals for legal, tax, environmental, and other specialized advice concerning matters affecting the Property
 432 and the transaction contemplated by this Contract. Broker represents to Buyer that Broker does not reside on the
 433 Property and that all representations (oral, written or otherwise) by Broker are based on Seller representations or
 434 public records. **BUYER AGREES TO RELY SOLELY ON SELLER, PROFESSIONAL INSPECTORS AND
 435 GOVERNMENTAL AGENCIES FOR VERIFICATION OF PROPERTY CONDITION, SQUARE FOOTAGE AND
 436 FACTS THAT MATERIALLY AFFECT PROPERTY VALUE AND NOT ON THE REPRESENTATIONS (ORAL,
 437 WRITTEN OR OTHERWISE) OF BROKER.** Buyer and Seller (individually, the "Indemnifying Party") each
 438 individually indemnifies, holds harmless, and releases Broker and Broker's officers, directors, agents and
 439 employees from all liability for loss or damage, including all costs and expenses, and reasonable attorney's fees at
 440 all levels, suffered or incurred by Broker and Broker's officers, directors, agents and employees in connection with
 441 or arising from claims, demands or causes of action instituted by Buyer or Seller based on: (i) inaccuracy of
 442 information provided by the Indemnifying Party or from public records; (ii) Indemnifying Party's misstatement(s) or
 443 failure to perform contractual obligations; (iii) Broker's performance, at Indemnifying Party's request, of any task
 444 beyond the scope of services regulated by Chapter 475, F.S., as amended, including Broker's referral,
 445 recommendation or retention of any vendor for, or on behalf of, Indemnifying Party; (iv) products or services
 446 provided by any such vendor for, or on behalf of, Indemnifying Party; and (v) expenses incurred by any such vendor.
 447 Buyer and Seller each assumes full responsibility for selecting and compensating their respective vendors and

448 paying their other costs under this Contract whether or not this transaction closes. This Paragraph 14 will not relieve
449 Broker of statutory obligations under Chapter 475, F.S., as amended. For purposes of this Paragraph 14, Broker
450 will be treated as a party to this Contract. This Paragraph 14 shall survive Closing or termination of this Contract.

451 **DEFAULT AND DISPUTE RESOLUTION**

452 **15. DEFAULT:**

453 (a) **BUYER DEFAULT:** If Buyer fails, neglects or refuses to perform Buyer's obligations under this Contract,
454 including payment of the Deposit, within the time(s) specified, Seller may elect to recover and retain the Deposit
455 for the account of Seller as agreed upon liquidated damages, consideration for execution of this Contract, and
456 in full settlement of any claims, whereupon Buyer and Seller shall be relieved from all further obligations under
457 this Contract, or Seller, at Seller's option, may, pursuant to Paragraph 16, proceed in equity to enforce Seller's
458 rights under this Contract. ~~The portion of the Deposit, if any, paid to Listing Broker upon default by Buyer, shall
459 be split equally between Listing Broker and Cooperating Broker; provided however, Cooperating Broker's share
460 shall not be greater than the commission amount Listing Broker had agreed to pay to Cooperating Broker.~~

461 (b) **SELLER DEFAULT:** If for any reason other than failure of Seller to make Seller's title marketable after
462 reasonable diligent effort, Seller fails, neglects or refuses to perform Seller's obligations under this Contract,
463 Buyer may elect to receive return of Buyer's Deposit without thereby waiving any action for damages resulting
464 from Seller's breach, and, pursuant to Paragraph 16, may seek to recover such damages or seek specific
465 performance.

466 This Paragraph 15 shall survive Closing or termination of this Contract.

467 **16. DISPUTE RESOLUTION:** Unresolved controversies, claims and other matters in question between Buyer and
468 Seller arising out of, or relating to, this Contract or its breach, enforcement or interpretation ("Dispute") will be settled
469 as follows:

470 (a) Buyer and Seller will have 10 days after the date conflicting demands for the Deposit are made to attempt to
471 resolve such Dispute, failing which, Buyer and Seller shall submit such Dispute to mediation under Paragraph
472 16(b).

473 (b) Buyer and Seller shall attempt to settle Disputes in an amicable manner through mediation pursuant to Florida
474 Rules for Certified and Court-Appointed Mediators and Chapter 44, F.S., as amended (the "Mediation Rules").
475 The mediator must be certified or must have experience in the real estate industry. Injunctive relief may be
476 sought without first complying with this Paragraph 16(b). Disputes not settled pursuant to this Paragraph 16
477 may be resolved by instituting action in the appropriate court having jurisdiction of the matter. This Paragraph
478 16 shall survive Closing or termination of this Contract.

479 **17. ATTORNEY'S FEES; COSTS:** The parties will split equally any mediation fee incurred in any mediation permitted
480 by this Contract, and each party will pay their own costs, expenses and fees, including attorney's fees, incurred in
481 conducting the mediation. In any litigation permitted by this Contract, the prevailing party shall be entitled to recover
482 from the non-prevailing party costs and fees, including reasonable attorney's fees, incurred in conducting the
483 litigation. This Paragraph 17 shall survive Closing or termination of this Contract.

484 **STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS")**

485 **18. STANDARDS:**

486 **A. TITLE:**
487 (i) **TITLE EVIDENCE; RESTRICTIONS; EASEMENTS; LIMITATIONS:** Within the time period provided in
488 Paragraph 9(c), the Title Commitment, with legible copies of instruments listed as exceptions attached thereto, shall
489 be issued and delivered to Buyer. The Title Commitment shall set forth those matters to be discharged by Seller at
490 or before Closing and shall provide that, upon recording of the deed to Buyer, an owner's policy of title insurance
491 in the amount of the Purchase Price, shall be issued to Buyer insuring Buyer's marketable title to the Real Property,
492 subject only to the following matters: (a) comprehensive land use plans, zoning, and other land use restrictions,
493 prohibitions and requirements imposed by governmental authority; (b) restrictions and matters appearing on the
494 Plat or otherwise common to the subdivision; (c) outstanding oil, gas and mineral rights of record without right of
495 entry; (d) unplatted public utility easements of record (located contiguous to real property lines and not more than
496 10 feet in width as to rear or front lines and 7 1/2 feet in width as to side lines); (e) taxes for year of Closing and
497 subsequent years; and (f) assumed mortgages and purchase money mortgages, if any (if additional items, attach
498 addendum); provided, that, unless waived by Paragraph 12 (a), there exists at Closing no violation of the foregoing
499 and none prevent use of the Property for **RESIDENTIAL PURPOSES**. If there exists at Closing any violation of
500 items identified in (b) – (f) above, then the same shall be deemed a title defect. Marketable title shall be determined
501 according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law.

502 (ii) **TITLE EXAMINATION:** Buyer shall have 5 days after receipt of Title Commitment to examine it and notify Seller
 503 in writing specifying defect(s), if any, that render title unmarketable. If Seller provides Title Commitment and it is
 504 delivered to Buyer less than 5 days prior to Closing Date, Buyer may extend Closing for up to 5 days after date of
 505 receipt to examine same in accordance with this STANDARD A. Seller shall have 30 days ("Cure Period") after
 506 receipt of Buyer's notice to take reasonable diligent efforts to remove defects. If Buyer fails to so notify Seller, Buyer
 507 shall be deemed to have accepted title as it then is. If Seller cures defects within Cure Period, Seller will deliver
 508 written notice to Buyer (with proof of cure acceptable to Buyer and Buyer's attorney) and the parties will close this
 509 Contract on Closing Date (or if Closing Date has passed, within 10 days after Buyer's receipt of Seller's notice). If
 510 Seller is unable to cure defects within Cure Period, then Buyer may, within 5 days after expiration of Cure Period,
 511 deliver written notice to Seller: (a) extending Cure Period for a specified period not to exceed 120 days within which
 512 Seller shall continue to use reasonable diligent effort to remove or cure the defects ("Extended Cure Period"); or
 513 (b) electing to accept title with existing defects and close this Contract on Closing Date (or if Closing Date has
 514 passed, within the earlier of 10 days after end of Extended Cure Period or Buyer's receipt of Seller's notice), or (c)
 515 electing to terminate this Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all
 516 further obligations under this Contract. If after reasonable diligent effort, Seller is unable to timely cure defects, and
 517 Buyer does not waive the defects, this Contract shall terminate, and Buyer shall receive a refund of the Deposit,
 518 thereby releasing Buyer and Seller from all further obligations under this Contract.

519 **B. SURVEY:** If Survey discloses encroachments on the Real Property or that improvements located thereon
 520 encroach on setback lines, easements, or lands of others, or violate any restrictions, covenants, or applicable
 521 governmental regulations described in STANDARD A (i)(a), (b) or (d) above, Buyer shall deliver written notice of
 522 such matters, together with a copy of Survey, to Seller within 5 days after Buyer's receipt of Survey, but no later
 523 than Closing. If Buyer timely delivers such notice and Survey to Seller, such matters identified in the notice and
 524 Survey shall constitute a title defect, subject to cure obligations of STANDARD A above. If Seller has delivered a
 525 prior survey, Seller shall, at Buyer's request, execute an affidavit of "no change" to the Real Property since the
 526 preparation of such prior survey, to the extent the affirmations therein are true and correct.

527 **C. INGRESS AND EGRESS:** Seller represents that there is ingress and egress to the Real Property and title to
 528 the Real Property is insurable in accordance with STANDARD A without exception for lack of legal right of access.

529 **D. LEASE INFORMATION:** Seller shall, at least 10 days prior to Closing, furnish to Buyer estoppel letters from
 530 tenant(s)/occupant(s) specifying nature and duration of occupancy, rental rates, advanced rent and security
 531 deposits paid by tenant(s) or occupant(s) ("Estoppel Letter(s)"). If Seller is unable to obtain such Estoppel Letter(s)
 532 the same information shall be furnished by Seller to Buyer within that time period in the form of a Seller's affidavit,
 533 and Buyer may thereafter contact tenant(s) or occupant(s) to confirm such information. If Estoppel Letter(s) or
 534 Seller's affidavit, if any, differ materially from Seller's representations and lease(s) provided pursuant to Paragraph
 535 6, or if tenant(s)/occupant(s) fail or refuse to confirm Seller's affidavit, Buyer may deliver written notice to Seller
 536 within 5 days after receipt of such information, but no later than 5 days prior to Closing Date, terminating this
 537 Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under
 538 this Contract. Seller shall, at Closing, deliver and assign all leases to Buyer who shall assume Seller's obligations
 539 thereunder.

540 **E. LIENS:** Seller shall furnish to Buyer at Closing an affidavit attesting (i) to the absence of any financing
 541 statement, claims of lien or potential lienors known to Seller and (ii) that there have been no improvements or
 542 repairs to the Real Property for 90 days immediately preceding Closing Date. If the Real Property has been
 543 improved or repaired within that time, Seller shall deliver releases or waivers of construction liens executed by all
 544 general contractors, subcontractors, suppliers and materialmen in addition to Seller's lien affidavit setting forth
 545 names of all such general contractors, subcontractors, suppliers and materialmen, further affirming that all charges
 546 for improvements or repairs which could serve as a basis for a construction lien or a claim for damages have been
 547 paid or will be paid at Closing.

548 **F. TIME: Time is of the essence in this Contract.** Calendar days, based on where the Property is located, shall
 549 be used in computing time periods. Other than time for acceptance and Effective Date as set forth in Paragraph 3,
 550 any time periods provided for or dates specified in this Contract, whether preprinted, handwritten, typewritten or
 551 inserted herein, which shall end or occur on a Saturday, Sunday, national legal public holiday (as defined in 5
 552 U.S.C. Sec. 6103(a)), or a day on which a national legal public holiday is observed because it fell on a Saturday or
 553 Sunday, shall extend to the next calendar day which is not a Saturday, Sunday, national legal public holiday, or a
 554 day on which a national legal public holiday is observed.

555 **G. FORCE MAJEURE:** Buyer or Seller shall not be required to exercise or perform any right or obligation under
 556 this Contract or be liable to each other for damages so long as performance or non-performance of the right or
 557 obligation, or the availability of services, insurance, or required approvals essential to Closing, is disrupted, delayed,
 558 caused or prevented by a Force Majeure event. "Force Majeure" means: hurricanes, floods, extreme weather,
 559 earthquakes, fires, or other acts of God, unusual transportation delays, wars, insurrections, civil unrest, or acts of

580 terrorism, governmental actions and mandates, government shut downs, epidemics, or pandemics, which, by
 581 exercise of reasonable diligent effort, the non-performing party is unable in whole or in part to prevent or overcome.
 582 The Force Majeure event will be deemed to have begun on the first day the effect of the Force Majeure prevents
 583 performance, non-performance, or the availability of services, insurance or required approvals essential to Closing.
 584 All time periods affected by the Force Majeure event, including Closing Date, will be extended a reasonable time
 585 up to 7 days after the Force Majeure event no longer prevents performance under this Contract; provided, however,
 586 if such Force Majeure event continues to prevent performance under this Contract more than 30 days beyond
 587 Closing Date, then either party may terminate this Contract by delivering written notice to the other and the Deposit
 588 shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.

589 **H. CONVEYANCE:** Seller shall convey marketable title to the Real Property by statutory warranty, trustee's,
 590 personal representative's, or guardian's deed, as appropriate to the status of Seller, subject only to matters
 591 described in STANDARD A and those accepted by Buyer. Personal Property shall, at request of Buyer, be
 592 transferred by absolute bill of sale with warranty of title, subject only to such matters as may be provided for in this
 593 Contract.

594 **I. CLOSING LOCATION; DOCUMENTS; AND PROCEDURE:**

595 (i) **LOCATION:** Closing will be conducted by the attorney or other closing agent ("Closing Agent") designated by
 596 the party paying for the owner's policy of title insurance and will take place in the county where the Real Property
 597 is located at the office of the Closing Agent, or at such other location agreed to by the parties. If there is no title
 598 insurance, Seller will designate Closing Agent. Closing may be conducted by mail, overnight courier, or electronic
 599 means.

600 (ii) **CLOSING DOCUMENTS:** Seller shall, at or prior to Closing, execute and deliver, as applicable, deed, bill of
 601 sale, certificate(s) of title or other documents necessary to transfer title to the Property, construction lien affidavit(s),
 602 owner's possession and no lien affidavit(s), and assignment(s) of leases. Seller shall provide Buyer with paid
 603 receipts for all work done on the Property pursuant to this Contract. Buyer shall furnish and pay for, as applicable,
 604 the survey, flood elevation certification, and documents required by Buyer's lender.

605 (iii) **FinCEN GTO REPORTING OBLIGATION.** If Closing Agent is required to comply with a U.S. Treasury
 606 Department's Financial Crimes Enforcement Network ("FinCEN") Geographic Targeting Order ("GTO"), then Buyer
 607 shall provide Closing Agent with essential information and documentation related to Buyer and its Beneficial
 608 Owners, including photo identification, and related to the transaction contemplated by this Contract which are
 609 required to complete mandatory reporting including the Currency Transaction Report; and Buyer consents to
 610 Closing Agent's collection and report of said information to IRS.

611 (iv) **PROCEDURE:** The deed shall be recorded upon Collection of all closing funds. If the Title Commitment provides
 612 insurance against adverse matters pursuant to Section 627.7841, F.S., as amended, the escrow closing procedure
 613 required by STANDARD J shall be waived, and Closing Agent shall, **subject to Collection of all closing funds**,
 614 disburse at Closing the brokerage fees to Broker and the net sale proceeds to Seller.

615 **J. ESCROW CLOSING PROCEDURE:** If Title Commitment issued pursuant to Paragraph 9(c) does not provide
 616 for insurance against adverse matters as permitted under Section 627.7841, F.S., as amended, the following
 617 escrow and closing procedures shall apply: (1) all Closing proceeds shall be held in escrow by the Closing Agent
 618 for a period of not more than 10 days after Closing; (2) if Seller's title is rendered unmarketable, through no fault of
 619 Buyer, Buyer shall, within the 10 day period, notify Seller in writing of the defect and Seller shall have 30 days from
 620 date of receipt of such notification to cure the defect; (3) if Seller fails to timely cure the defect, the Deposit and all
 621 Closing funds paid by Buyer shall, within 5 days after written demand by Buyer, be refunded to Buyer and,
 622 simultaneously with such repayment, Buyer shall return the Personal Property, vacate the Real Property and re-
 623 convey the Property to Seller by special warranty deed and bill of sale; and (4) if Buyer fails to make timely demand
 624 for refund of the Deposit, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect
 625 except as may be available to Buyer by virtue of warranties contained in the deed or bill of sale.

626 **K. PRORATIONS; CREDITS:** The following recurring items will be made current (if applicable) and prorated as of
 627 the day prior to Closing Date, or date of occupancy if occupancy occurs before Closing Date: real estate taxes
 628 (including special benefit tax assessments imposed by a CDD pursuant to Chapter 190, F.S., and assessments
 629 imposed by special district(s) pursuant to Chapter 189, F.S.), interest, bonds, association fees, insurance, rents
 630 and other expenses of Property. Buyer shall have option of taking over existing policies of insurance, if assumable,
 631 in which event premiums shall be prorated. Cash at Closing shall be increased or decreased as may be required
 632 by prorations to be made through day prior to Closing. Advance rent and security deposits, if any, will be credited
 633 to Buyer. Escrow deposits held by Seller's mortgagee will be paid to Seller. Taxes shall be prorated based on
 634 current year's tax. If Closing occurs on a date when current year's millage is not fixed but current year's assessment
 635 is available, taxes will be prorated based upon such assessment and prior year's millage. If current year's
 636 assessment is not available, then taxes will be prorated on prior year's tax. If there are completed improvements

617 on the Real Property by January 1st of year of Closing, which improvements were not in existence on January 1st
 618 of prior year, then taxes shall be prorated based upon prior year's millage and at an equitable assessment to be
 619 agreed upon between the parties, failing which, request shall be made to the County Property Appraiser for an
 620 informal assessment taking into account available exemptions. In all cases, due allowance shall be made for the
 621 maximum allowable discounts and applicable homestead and other exemptions. A tax proration based on an
 622 estimate shall, at either party's request, be readjusted upon receipt of current year's tax bill. This STANDARD K
 623 shall survive Closing.

624 **L. ACCESS TO PROPERTY TO CONDUCT APPRAISALS, INSPECTIONS, AND WALK-THROUGH:** Seller
 625 shall, upon reasonable notice, provide utilities service and access to Property for appraisals and inspections,
 626 including a walk-through (or follow-up walk-through if necessary) prior to Closing.

627 **M. RISK OF LOSS:** If, after Effective Date, but before Closing, Property is damaged by fire or other casualty
 628 ("Casualty Loss") and cost of restoration (which shall include cost of pruning or removing damaged trees) does not
 629 exceed 1.5% of Purchase Price, cost of restoration shall be an obligation of Seller and Closing shall proceed
 630 pursuant to terms of this Contract. If restoration is not completed as of Closing, a sum equal to 125% of estimated
 631 cost to complete restoration (not to exceed 1.5% of Purchase Price) will be escrowed at Closing. If actual cost of
 632 restoration exceeds escrowed amount, Seller shall pay such actual costs (but, not in excess of 1.5% of Purchase
 633 Price). Any unused portion of escrowed amount shall be returned to Seller. If cost of restoration exceeds 1.5% of
 634 Purchase Price, Buyer shall elect to either take Property "as is" together with the 1.5%, or receive a refund of the
 635 Deposit thereby releasing Buyer and Seller from all further obligations under this Contract. Seller's sole obligation
 636 with respect to tree damage by casualty or other natural occurrence shall be cost of pruning or removal.

637 **N. 1031 EXCHANGE:** If either Seller or Buyer wish to enter into a like-kind exchange (either simultaneously with
 638 Closing or deferred) under Section 1031 of the Internal Revenue Code ("Exchange"), the other party shall cooperate
 639 in all reasonable respects to effectuate the Exchange, including execution of documents; provided, however,
 640 cooperating party shall incur no liability or expense related to the Exchange, and Closing shall not be contingent
 641 upon, nor extended or delayed by, such Exchange.

642 **O. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; DELIVERY; COPIES; CONTRACT**
 643 **EXECUTION:** Neither this Contract nor any notice of it shall be recorded in any public or official records. This
 644 Contract shall be binding on, and inure to the benefit of, the parties and their respective heirs or successors in
 645 interest. Whenever the context permits, singular shall include plural and one gender shall include all. Notice and
 646 delivery given by or to the attorney or broker (including such broker's real estate licensee) representing any party
 647 shall be as effective as if given by or to that party. All notices must be in writing and may only be made by mail,
 648 facsimile transmission, personal delivery or email. A facsimile or electronic copy of this Contract and any signatures
 649 hereon shall be considered for all purposes as an original. This Contract may be executed by use of electronic
 650 signatures, as determined by Florida's Electronic Signature Act and other applicable laws.

651 **P. INTEGRATION; MODIFICATION:** This Contract contains the full and complete understanding and agreement
 652 of Buyer and Seller with respect to the transaction contemplated by this Contract and no prior agreements or
 653 representations shall be binding upon Buyer or Seller unless included in this Contract. No modification to or change
 654 in this Contract shall be valid or binding upon Buyer or Seller unless in writing and executed by the parties intended
 655 to be bound by it.

656 **Q. WAIVER:** Failure of Buyer or Seller to insist on compliance with, or strict performance of, any provision of this
 657 Contract, or to take advantage of any right under this Contract, shall not constitute a waiver of other provisions or
 658 rights.

659 **R. RIDERS; ADDENDA; TYPEWRITTEN OR HANDWRITTEN PROVISIONS:** Riders, addenda, and typewritten
 660 or handwritten provisions shall control all printed provisions of this Contract in conflict with them.

661 **S. COLLECTION or COLLECTED:** "Collection" or "Collected" means any checks tendered or received, including
 662 Deposits, have become actually and finally collected and deposited in the account of Escrow Agent or Closing
 663 Agent. Closing and disbursement of funds and delivery of closing documents may be delayed by Closing Agent
 664 until such amounts have been Collected in Closing Agent's accounts.

665 **T. RESERVED.**

666 **U. APPLICABLE LAW AND VENUE:** This Contract shall be construed in accordance with the laws of the State
 667 of Florida and venue for resolution of all disputes, whether by mediation, arbitration or litigation, shall lie in the
 668 county where the Real Property is located.

669 **V. FIRPTA TAX WITHHOLDING:** If a seller of U.S. real property is a "foreign person" as defined by FIRPTA,
 670 Section 1445 of the Internal Revenue Code ("Code") requires the buyer of the real property to withhold up to 15%
 671 of the amount realized by the seller on the transfer and remit the withheld amount to the Internal Revenue Service
 672 (IRS) unless an exemption to the required withholding applies or the seller has obtained a Withholding Certificate
 673 from the IRS authorizing a reduced amount of withholding.

- 674 (i) No withholding is required under Section 1445 of the Code if the Seller is not a "foreign person". Seller can
- 675 provide proof of non-foreign status to Buyer by delivery of written certification signed under penalties of perjury,
- 676 stating that Seller is not a foreign person and containing Seller's name, U.S. taxpayer identification number and
- 677 home address (or office address, in the case of an entity), as provided for in 26 CFR 1.1445-2(b). Otherwise, Buyer
- 678 shall withhold the applicable percentage of the amount realized by Seller on the transfer and timely remit said funds
- 679 to the IRS.
- 680 (ii) If Seller is a foreign person and has received a Withholding Certificate from the IRS which provides for reduced
- 681 or eliminated withholding in this transaction and provides same to Buyer by Closing, then Buyer shall withhold the
- 682 reduced sum required, if any, and timely remit said funds to the IRS.
- 683 (iii) If prior to Closing Seller has submitted a completed application to the IRS for a Withholding Certificate and has
- 684 provided to Buyer the notice required by 26 CFR 1.1445-1(c) (2)(i)(B) but no Withholding Certificate has been
- 685 received as of Closing, Buyer shall, at Closing, withhold the applicable percentage of the amount realized by Seller
- 686 on the transfer and, at Buyer's option, either (a) timely remit the withheld funds to the IRS or (b) place the funds in
- 687 escrow, at Seller's expense, with an escrow agent selected by Buyer and pursuant to terms negotiated by the
- 688 parties, to be subsequently disbursed in accordance with the Withholding Certificate issued by the IRS or remitted
- 689 directly to the IRS if the Seller's application is rejected or upon terms set forth in the escrow agreement.
- 690 (iv) In the event the net proceeds due Seller are not sufficient to meet the withholding requirement(s) in this
- 691 transaction, Seller shall deliver to Buyer, at Closing, the additional Collected funds necessary to satisfy the
- 692 applicable requirement and thereafter Buyer shall timely remit said funds to the IRS or escrow the funds for
- 693 disbursement in accordance with the final determination of the IRS, as applicable.
- 694 (v) Upon remitting funds to the IRS pursuant to this STANDARD, Buyer shall provide Seller copies of IRS Forms
- 695 8288 and 8288-A, as filed.

ADDENDA AND ADDITIONAL TERMS

696
697 **19. ADDENDA:** The following additional terms are included in the attached addenda or riders and incorporated into this
698 Contract (Check if applicable):

- | | | |
|--|--|--|
| <input type="checkbox"/> A. Condominium Rider | <input type="checkbox"/> M. Defective Drywall | <input type="checkbox"/> X. Kick-out Clause |
| <input type="checkbox"/> B. Homeowners' Assn. | <input type="checkbox"/> N. Coastal Construction Control Line | <input type="checkbox"/> Y. Seller's Attorney Approval |
| <input type="checkbox"/> C. Seller Financing | <input type="checkbox"/> O. Insulation Disclosure | <input type="checkbox"/> Z. Buyer's Attorney Approval |
| <input type="checkbox"/> D. Mortgage Assumption | <input type="checkbox"/> P. Lead Paint Disclosure (Pre-1978) | <input type="checkbox"/> AA. Licensee Property Interest |
| <input type="checkbox"/> E. FHA/VA Financing | <input type="checkbox"/> Q. Housing for Older Persons | <input type="checkbox"/> BB. Binding Arbitration |
| <input type="checkbox"/> F. Appraisal Contingency | <input type="checkbox"/> R. Rezoning | <input type="checkbox"/> CC. Miami-Dade County Special Taxing District Disclosure |
| <input type="checkbox"/> G. Short Sale | <input type="checkbox"/> S. Lease Purchase/ Lease Option | <input type="checkbox"/> DD. Seasonal/Vacation Rentals |
| <input type="checkbox"/> H. Homeowners/Flood Ins | <input type="checkbox"/> T. Pre-Closing Occupancy | <input type="checkbox"/> EE. PACE Disclosure |
| <input type="checkbox"/> I. Mold Inspection | <input type="checkbox"/> U. Post-Closing Occupancy | <input type="checkbox"/> FF. Credit Related to Buyers Broker Compensation |
| <input type="checkbox"/> J. Interest-Bearing Acct. | <input type="checkbox"/> V. Sale of Buyer's Property | <input type="checkbox"/> GG. Sellers Agreement with Respect to Buyers Broker Compensation |
| <input type="checkbox"/> K. "As Is" | <input type="checkbox"/> W. Back-up Contract | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> L. Right to Inspect/ Cancel | <input type="checkbox"/> X. Kick-out Clause | _____ |
| <input type="checkbox"/> M. Defective Drywall | <input type="checkbox"/> Y. Seller's Attorney Approval | _____ |
| <input type="checkbox"/> N. Coastal Construction Control Line | <input type="checkbox"/> Z. Buyer's Attorney Approval | |

699 **20. ADDITIONAL TERMS:** _____

700 _____

701 _____

702 _____

703 _____

704 _____

705 _____

706 _____

707 _____

708 _____

709 _____
710 _____
711 _____
712 _____
713 _____
714 _____
715 _____
716 _____

717

COUNTER-OFFER

718 * Seller counters Buyer's offer.

FOR EDUCATIONAL PURPOSES ONLY

719

720 THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE ADVICE
721 OF AN ATTORNEY PRIOR TO SIGNING.

722 THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR.

723 Approval of this form by the Florida Realtors and The Florida Bar does not constitute an opinion that any of the terms
724 and conditions in this Contract should be accepted by the parties in a particular transaction. Terms and conditions
725 should be negotiated based upon the respective interests, objectives and bargaining positions of all interested persons.

726 AN ASTERISK (*) FOLLOWING A LINE NUMBER IN THE MARGIN INDICATES THE LINE CONTAINS A BLANK TO
727 BE COMPLETED.

728

ATTENTION: SELLER AND BUYER

729 **CONVEYANCES TO FOREIGN BUYERS:** Part III of Chapter 692, Sections 692.201 - 692.205, Florida Statutes, 2023
730 (the "Act"), in part, limits and regulates the sale, purchase and ownership of certain Florida properties by certain buyers
731 who are associated with a "foreign country of concern", namely: the People's Republic of China, the Russian
732 Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the
733 Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic. **It is a crime to buy or knowingly sell property
734 in violation of the Act.**

735 **At time of purchase, Buyer must provide a signed affidavit which complies with the requirements of the Act.**
736 **Seller and Buyer are advised to seek legal counsel regarding their respective obligations and liabilities under the Act.**

737* Buyer: _____ Date: _____

738* Buyer: _____ Date: _____

739* Seller: _____ Date: _____

740* Seller: _____ Date: _____

741 Buyer's address for purposes of notice Seller's address for purposes of notice

742* _____

743* _____

744* _____

745 **BROKER:** Listing and Cooperating Brokers, if any, named below (collectively, "Broker"), are the only Brokers entitled
746 to compensation in connection with this Contract. Instruction to Closing Agent: Seller and Buyer direct Closing Agent to
747 disburse at Closing the full amount of the brokerage fees as specified in separate brokerage agreements with the parties
748 and cooperative agreements between the Brokers, except to the extent Broker has retained such fees from the
749 escrowed funds. This Contract shall not modify any ~~MLS or other~~ offer of compensation made by Seller or Listing Broker
750 to Cooperating Brokers.

751* _____ Listing Sales Associate

752 Cooperating Sales Associate, if any

753* _____ Listing Broker

754 Cooperating Broker, if any

“AS IS” Residential Contract For Sale And Purchase
 THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR



1* **PARTIES:** _____ (“Seller”),
 2* and _____ (“Buyer”),
 3 agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal Property
 4 (collectively “Property”) pursuant to the terms and conditions of this AS IS Residential Contract For Sale And Purchase
 5 and any riders and addenda (“Contract”):

6 **1. PROPERTY DESCRIPTION:**
 7* (a) Street address, city, zip: _____
 8* (b) Located in: _____ County, Florida. Property Tax ID #: _____
 9* (c) Real Property: The legal description is _____
 10 _____
 11 _____

12 together with all existing improvements and fixtures, including built-in appliances, built-in furnishings and
 13 attached wall-to-wall carpeting and flooring (“Real Property”) unless specifically excluded in Paragraph 1(e) or
 14 by other terms of this Contract.

15 (d) Personal Property: Unless excluded in Paragraph 1(e) or by other terms of this Contract, the following items
 16 which are owned by Seller and existing on the Property as of the date of the initial offer are included in the
 17 purchase: range(s)/oven(s), refrigerator(s), dishwasher(s), disposal, ceiling fan(s), light fixture(s), drapery rods
 18 and draperies, blinds, window treatments, smoke detector(s), garage door opener(s), thermostat(s), doorbell(s),
 19 television wall mount(s) and television mounting hardware, security gate and other access devices, mailbox
 20 keys, and storm shutters/storm protection items and hardware (“Personal Property”).
 21* Other Personal Property items included in this purchase are: _____
 22 _____

23 Personal Property is included in the Purchase Price, has no contributory value, and shall be left for the Buyer.
 24* (e) The following items are excluded from the purchase: _____
 25 _____

PURCHASE PRICE AND CLOSING

26
 27* **2. PURCHASE PRICE** (U.S. currency): _____ \$ _____

28* (a) Initial deposit to be held in escrow in the amount of **(checks subject to Collection)** \$ _____
 29 The initial deposit made payable and delivered to “Escrow Agent” named below
 30* **(CHECK ONE):** (i) accompanies offer or (ii) is to be made within _____ (if left blank,
 31 then 3) days after Effective Date. IF NEITHER BOX IS CHECKED, THEN OPTION (ii)
 32 SHALL BE DEEMED SELECTED.

33* Escrow Agent Name: _____
 34* Address: _____ Phone: _____
 35* Email: _____ Fax: _____

36* (b) Additional deposit to be delivered to Escrow Agent within _____ (if left blank, then 10)
 37 days after Effective Date \$ _____
 38 (All deposits paid or agreed to be paid, are collectively referred to as the “Deposit”)

39* (c) Financing: Express as a dollar amount or percentage (“Loan Amount”) see Paragraph 8..... _____

40* (d) Other: _____ \$ _____

41 (e) Balance to close (not including Buyer’s closing costs, prepaids and prorations) by wire
 42* transfer or other Collected funds (See STANDARD S) \$ _____

43 **3. TIME FOR ACCEPTANCE OF OFFER AND COUNTER-OFFERS; EFFECTIVE DATE:**

44 (a) If not signed by Buyer and Seller, and an executed copy delivered to all parties on or before
 45* _____, this offer shall be deemed withdrawn and the Deposit, if any, shall be returned to
 46 Buyer. Unless otherwise stated, time for acceptance of any counter-offers shall be within 2 days after the day
 47 the counter-offer is delivered.

48 (b) The effective date of this Contract shall be the date when the last one of the Buyer and Seller has signed or
 49 initialed and delivered this offer or final counter-offer (“Effective Date”).

50 **4. CLOSING; CLOSING DATE:** The closing of this transaction shall occur when all funds required for closing are
 51 received by Closing Agent and Collected pursuant to STANDARD S and all closing documents required to be
 52 furnished by each party pursuant to this Contract are delivered (“Closing”). Unless modified by other provisions of

53* this Contract, the Closing shall occur on _____ ("Closing Date"), at the time
 54 established by the Closing Agent.

55 **5. EXTENSION OF CLOSING DATE:**

56 (a) In the event Closing funds from Buyer's lender(s) are not available on Closing Date due to Consumer Financial
 57 Protection Bureau Closing Disclosure delivery requirements ("CFPB Requirements"), if Paragraph 8(b) is
 58 checked, Loan Approval has been obtained, and lender's underwriting is complete, then Closing Date shall be
 59 extended for such period necessary to satisfy CFPB Requirements, provided such period shall not exceed 7
 60 days.

61 (b) If an event constituting "Force Majeure" causes services essential for Closing to be unavailable, including the
 62 unavailability of utilities or issuance of hazard, wind, flood or homeowners' insurance, Closing Date shall be
 63 extended as provided in STANDARD G.

64 **6. OCCUPANCY AND POSSESSION:**

65 (a) Unless Paragraph 6(b) is checked, Seller shall, at Closing, deliver occupancy and possession of the Property
 66 to Buyer free of tenants, occupants and future tenancies. Also, at Closing, Seller shall have removed all
 67 personal items and trash from the Property and shall deliver all keys, garage door openers, access devices and
 68 codes, as applicable, to Buyer. If occupancy is to be delivered before Closing, Buyer assumes all risks of loss
 69 to the Property from date of occupancy, shall be responsible and liable for maintenance from that date, and
 70 shall have accepted the Property in its existing condition as of time of taking occupancy, see Rider T PRE-
 71 CLOSING OCCUPANCY BY BUYER.

72 (b) **CHECK IF PROPERTY IS SUBJECT TO LEASE(S) OR OCCUPANCY AFTER CLOSING.** If Property is
 73 subject to a lease(s) or any occupancy agreements (including seasonal and short-term vacation rentals) after
 74 Closing or is intended to be rented or occupied by third parties beyond Closing, the facts and terms thereof
 75 shall be disclosed in writing by Seller to Buyer and copies of the written lease(s) shall be delivered to Buyer, all
 76 within 5 days after Effective Date. If Buyer determines, in Buyer's sole discretion, that the lease(s) or terms of
 77 occupancy are not acceptable to Buyer, Buyer may terminate this Contract by delivery of written notice of such
 78 election to Seller within 5 days after receipt of the above items from Seller, and Buyer shall be refunded the
 79 Deposit thereby releasing Buyer and Seller from all further obligations under this Contract. Estoppel Letter(s)
 80 and Seller's affidavit shall be provided pursuant to STANDARD D, except that tenant Estoppel Letters shall not
 81 be required on seasonal or short-term vacation rentals. If Property is intended to be occupied by Seller after
 82 Closing, see Rider U POST-CLOSING OCCUPANCY BY SELLER.

83* **7. ASSIGNABILITY: (CHECK ONE):** Buyer may assign and thereby be released from any further liability under
 84* this Contract; may assign but not be released from liability under this Contract; or may not assign this Contract.
 85 IF NO BOX IS CHECKED, THEN BUYER MAY NOT ASSIGN THIS CONTRACT.

86 **FINANCING**

87 **8. FINANCING:**

88* (a) This is a cash transaction with no financing contingency.
 89* (b) This Contract is contingent upon, within _____ (if left blank, then 30) days after Effective Date ("Loan
 90* Approval Period"): (1) Buyer obtaining approval of a conventional FHA VA or other _____
 91* (describe) mortgage loan for purchase of the Property for a **(CHECK ONE):** fixed, adjustable, fixed or
 92* adjustable rate in the Loan Amount (See Paragraph 2(c)), at an initial interest rate not to exceed _____ % (if left
 93* blank, then prevailing rate based upon Buyer's creditworthiness), and for a term of _____ (if left blank, then 30)
 94* years ("Financing"); and (2) Buyer's mortgage broker or lender having received an appraisal or alternative valuation
 95* of the Property satisfactory to lender, if either is required by lender, which is sufficient to meet the terms required
 96* for lender to provide Financing for Buyer and proceed to Closing ("Appraisal").

97* (i) Buyer shall make application for Financing within _____ (if left blank, then 5) days after Effective Date
 98* and use good faith and diligent effort to obtain approval of a loan meeting the Financing and Appraisal terms of
 99* Paragraph 8(b)(1) and (2), above, ("Loan Approval") within the Loan Approval Period and, thereafter, to close this
 100* Contract. Loan Approval which requires Buyer to sell other real property shall not be considered Loan Approval
 101* unless Rider V is attached.

102* Buyer's failure to use good faith and diligent effort to obtain Loan Approval during the Loan Approval Period shall
 103* be considered a default under the terms of this Contract. For purposes of this provision, "diligent effort" includes,
 104* but is not limited to, timely furnishing all documents and information required by Buyer's mortgage broker and lender
 105* and paying for Appraisal and other fees and charges in connection with Buyer's application for Financing.

106* (ii) Buyer shall, upon written request, keep Seller and Broker fully informed about the status of Buyer's
 107* mortgage loan application, loan processing, appraisal, and Loan Approval, including any Property related conditions
 108* of Loan Approval. Buyer authorizes Buyer's mortgage broker, lender, and Closing Agent to disclose such status

109 and progress and release preliminary and finally executed closing disclosures and settlement statements, as
 110 appropriate and allowed, to Seller and Broker.

111 (iii) If within the Loan Approval Period, Buyer obtains Loan Approval, Buyer shall notify Seller of same in writing
 112 prior to expiration of the Loan Approval Period; or, if Buyer is unable to obtain Loan Approval within Loan Approval
 113 Period but Buyer is satisfied with Buyer's ability to obtain Loan Approval and proceed to Closing, Buyer shall deliver
 114 written notice to Seller confirming same, prior to the expiration of the Loan Approval Period.

115 (iv) If Buyer is unable to obtain Loan Approval within the Loan Approval Period, or cannot timely meet the
 116 terms of Loan Approval, all after the exercise of good faith and diligent effort, Buyer may terminate this Contract by
 117 delivering written notice of termination to Seller prior to expiration of the Loan Approval Period; whereupon, provided
 118 Buyer is not in default under the terms of this Contract, Buyer shall be refunded the Deposit thereby releasing Buyer
 119 and Seller from all further obligations under this Contract.

120 (v) If Buyer fails to timely deliver any written notice provided for in Paragraph 8(b)(iii) or (iv), above, to Seller
 121 prior to expiration of the Loan Approval Period, then Buyer shall proceed forward with this Contract as though
 122 Paragraph 8(a), above, had been checked as of the Effective Date; provided, however, Seller may elect to terminate
 123 this Contract by delivering written notice of termination to Buyer within 3 days after expiration of the Loan Approval
 124 Period and, provided Buyer is not in default under the terms of this Contract, Buyer shall be refunded the Deposit
 125 thereby releasing Buyer and Seller from all further obligations under this Contract.

126 (vi) If Buyer has timely provided either written notice provided for in Paragraph 8b(iii), above, and Buyer
 127 thereafter fails to close this Contract, the Deposit shall be paid to Seller unless failure to close is due to: (1) Seller's
 128 default or inability to satisfy other contingencies of this Contract; or (2) Property related conditions of the Loan
 129 Approval (specifically excluding the Appraisal valuation) have not been met unless such conditions are waived by
 130 other provisions of this Contract; in which event(s) the Buyer shall be refunded the Deposit, thereby releasing Buyer
 131 and Seller from all further obligations under this Contract.

132 (c) Assumption of existing mortgage (see Rider D for terms).

133 (d) Purchase money note and mortgage to Seller (see Rider C for terms).

134 **CLOSING COSTS, FEES AND CHARGES**

135 **9. CLOSING COSTS; TITLE INSURANCE; SURVEY; HOME WARRANTY; SPECIAL ASSESSMENTS:**

136 (a) **COSTS TO BE PAID BY SELLER:**

- 137 • Documentary stamp taxes and surtax on deed, if any
- 138 • Owner's Policy and Charges (if Paragraph 9(c)(i) is checked)
- 139 • Title search charges (if Paragraph 9(c)(iii) is checked)
- 140 • Municipal lien search (if Paragraph 9(c)(i) or (iii) is checked)
- 141 • Charges for FIRPTA withholding and reporting
- HOA/Condominium Association estoppel fees
- Recording and other fees needed to cure title
- Seller's attorneys' fees
- Seller's Closing Services Other: _____
- Other: _____

142 If, prior to Closing, Seller is unable to meet the AS IS Maintenance Requirement as required by Paragraph 11,
 143 a sum equal to 125% of estimated costs to meet the AS IS Maintenance Requirement shall be escrowed at
 144 Closing. If actual costs to meet the AS IS Maintenance Requirement exceed escrowed amount, Seller shall pay
 145 such actual costs. Any unused portion of escrowed amount(s) shall be returned to Seller.

146 (b) **COSTS TO BE PAID BY BUYER:**

- 147 • Taxes and recording fees on notes and mortgages
- 148 • Recording fees for deed and financing statements
- 149 • Owner's Policy and Charges (if Paragraph 9(c)(ii) is checked)
- 150 • Survey (and elevation certification, if required)
- 151 • Lender's title policy and endorsements
- 152 • HOA/Condominium Association application/transfer fees
- 153 • Municipal lien search (if Paragraph 9(c)(ii) is checked)
- 154 • Other: _____
- Loan expenses
- Appraisal fees
- Buyer's Inspections
- Buyer's attorneys' fees
- All property related insurance
- Owner's Policy Premium (if Paragraph 9(c)(iii) is checked)
- Buyer's Closing Services

155 (c) **TITLE EVIDENCE AND INSURANCE:** At least _____ (if left blank, then 15, or if Paragraph 8(a) is checked,
 156 then 5) days prior to Closing Date ("Title Evidence Deadline"), a title insurance commitment issued by a Florida
 157 licensed title insurer, with legible copies of instruments listed as exceptions attached thereto ("Title
 158 Commitment") and, after Closing, an owner's policy of title insurance (see STANDARD A for terms) shall be
 159 obtained and delivered to Buyer. If Seller has an owner's policy of title insurance, or other evidence of title
 160 covering the Real Property, Seller shall furnish a copy to Buyer and Closing Agent within 5 days after Effective
 161 Date. The owner's title policy premium and, title search and closing services (collectively, "Owner's Policy and
 162 Charges") shall be paid, as set forth below. The title insurance premium charges for the owner's policy and any
 163 lender's policy will be calculated and allocated in accordance with Florida law, but may be reported differently
 164 on certain federally mandated closing disclosures and other closing documents. For purposes of this Contract

165 "municipal lien search" means a search of records necessary for the owner's policy of title insurance to be issued
 166 without exception for unrecorded liens imposed pursuant to Chapters 153, 159 or 170, F.S., in favor of any
 167 governmental body, authority or agency.
 168 ~~(c) "Closing Services" shall have the meaning ascribed to that term in Section 627.7711(1)(a), F.S.;~~
 169 ~~each party shall bear their own Closing Services fees payable to Closing Agent or such other provider(s)~~
 170 ~~as each party may select.~~

171 **(CHECK ONE):**

172 (i) Seller shall designate Closing Agent and pay for Owner's Policy and Charges ~~and Buyer shall pay the~~
 173 ~~premiums for Buyer's any lender's title policy and charges for closing services related to the lender's policy,~~
 174 ~~endorsements, or and loan closing, which amounts shall be paid by Buyer to Closing Agent or such other~~
 175 ~~provider(s) as Buyer may select; or~~

176 (ii) Buyer shall designate Closing Agent and pay for Owner's Policy and Charges and ~~charges premiums for~~
 177 ~~any closing services related to Buyer's lender's title policy, and endorsements, and loan closing; or~~

178 (iii) **[MIAMI-DADE/BROWARD REGIONAL PROVISION];** ~~Buyer shall designate Closing Agent and pay for~~
 179 ~~premiums for owner's title policy, any lender's title policy and endorsements, and any post-Closing continuation.~~
 180 ~~Seller shall pay actual costs for: (A) a title search or continuation of title evidence acceptable to Buyer's title~~
 181 ~~insurance underwriter, not to exceed \$ _____ (if left blank, then \$200.00); (B) tax search; and (C)~~
 182 ~~municipal lien search. Buyer shall designate Closing Agent. Seller shall furnish a copy of a prior owner's policy~~
 183 ~~of title insurance or other evidence of title and pay fees for: (A) a continuation or update of such title evidence,~~
 184 ~~which is acceptable to Buyer's title insurance underwriter for reissue of coverage; (B) tax search; and (C)~~
 185 ~~municipal lien search. Buyer shall obtain and pay for post-Closing continuation and premium for Buyer's owner's~~
 186 ~~policy, and if applicable, Buyer's lender's policy. Seller shall not be obligated to pay more than \$ _____~~
 187 ~~(if left blank, then \$200.00) for abstract continuation or title search ordered or performed by Closing Agent.~~

188 (d) **SURVEY:** At least 5 days prior to Closing Date, Buyer may, at Buyer's expense, have the Real Property
 189 surveyed and certified by a registered Florida surveyor ("Survey"). If Seller has a survey covering the Real
 190 Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date.

191 (e) **HOME WARRANTY:** At Closing, Buyer Seller N/A shall pay for a home warranty plan issued by
 192 _____ at a cost not to exceed \$ _____. A home
 193 warranty plan provides for repair or replacement of many of a home's mechanical systems and major built-in
 194 appliances in the event of breakdown due to normal wear and tear during the agreement's warranty period.

195 (f) **SPECIAL ASSESSMENTS:** At Closing, Seller shall pay: (i) the full amount of liens imposed by a public body
 196 ("public body" does not include a Condominium or Homeowner's Association) that are certified, confirmed and
 197 ratified before Closing; and (ii) the amount of the public body's most recent estimate or assessment for an
 198 improvement which is substantially complete as of Effective Date, but that has not resulted in a lien being
 199 imposed on the Property before Closing. Buyer shall pay all other assessments. If special assessments may
 200 be paid in installments **(CHECK ONE):**

201 (a) Seller shall pay installments due prior to Closing and Buyer shall pay installments due after Closing.
 202 Installments prepaid or due for the year of Closing shall be prorated.

203 (b) Seller shall pay, in full, prior to or at the time of Closing, any assessment(s) allowed by the public body
 204 to be prepaid. For any assessment(s) which the public body does not allow prepayment, OPTION (a) shall be
 205 deemed selected for such assessment(s).

206 IF NEITHER BOX IS CHECKED, THEN OPTION (a) SHALL BE DEEMED SELECTED.

207 This Paragraph 9(f) shall not apply to a special benefit tax lien imposed by a community development district
 208 (CDD) pursuant to Chapter 190, F.S., or special assessment(s) imposed by a special district pursuant to
 209 Chapter 189, F.S., which lien(s) or assessment(s) shall be prorated pursuant to STANDARD K.

210 **DISCLOSURES**

211 **10. DISCLOSURES:**

212 (a) **RADON GAS:** Radon is a naturally occurring radioactive gas that, when it is accumulated in a building in
 213 sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that
 214 exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding
 215 radon and radon testing may be obtained from your county health department.

216 (b) **PERMITS DISCLOSURE:** Except as may have been disclosed by Seller to Buyer in a written disclosure, Seller
 217 does not know of any improvements made to the Property which were made without required permits or made
 218 pursuant to permits which have not been properly closed or otherwise disposed of pursuant to Section 553.79,
 219 F.S. If Seller identifies permits which have not been closed or improvements which were not permitted, then
 220 Seller shall promptly deliver to Buyer all plans, written documentation or other information in Seller's possession,

- 221 knowledge, or control relating to improvements to the Property which are the subject of such open permits or
 222 unpermitted improvements.
- 223 (c) **MOLD:** Mold is naturally occurring and may cause health risks or damage to property. If Buyer is concerned or
 224 desires additional information regarding mold, Buyer should contact an appropriate professional.
- 225 (d) **FLOOD ZONE; ELEVATION CERTIFICATION:** Buyer is advised to verify by elevation certificate which flood
 226 zone the Property is in, whether flood insurance is required by Buyer's lender, and what restrictions apply to
 227 improving the Property and rebuilding in the event of casualty. If Property is in a "Special Flood Hazard Area"
 228 or "Coastal Barrier Resources Act" designated area or otherwise protected area identified by the U.S. Fish and
 229 Wildlife Service under the Coastal Barrier Resources Act and the lowest floor elevation for the building(s) and/or
 230 flood insurance rating purposes is below minimum flood elevation or is ineligible for flood insurance coverage
 231 through the National Flood Insurance Program or private flood insurance as defined in 42 U.S.C. §4012a, Buyer
 232 may terminate this Contract by delivering written notice to Seller within _____ (if left blank, then 20) days after
 233 Effective Date, and Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further
 234 obligations under this Contract, failing which Buyer accepts existing elevation of buildings and flood zone
 235 designation of Property.
- 236 (e) **ENERGY BROCHURE:** Buyer acknowledges receipt of Florida Energy-Efficiency Rating Information Brochure
 237 required by Section 553.996, F.S.
- 238 (f) **LEAD-BASED PAINT:** If Property includes pre-1978 residential housing, a lead-based paint disclosure is
 239 mandatory.
- 240 (g) **HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE: BUYER SHOULD NOT EXECUTE THIS
 241 CONTRACT UNTIL BUYER HAS RECEIVED AND READ THE HOMEOWNERS'
 242 ASSOCIATION/COMMUNITY DISCLOSURE, IF APPLICABLE.**
- 243 (h) **PROPERTY TAX DISCLOSURE SUMMARY: BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT
 244 PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO
 245 PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY
 246 IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER
 247 PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE
 248 COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION.**
- 249 (i) **FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA"):** Seller shall inform Buyer in writing if
 250 Seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act ("FIRPTA"). Buyer
 251 and Seller shall comply with FIRPTA, which may require Seller to provide additional cash at Closing. If Seller
 252 is not a "foreign person", Seller can provide Buyer, at or prior to Closing, a certification of non-foreign status,
 253 under penalties of perjury, to inform Buyer and Closing Agent that no withholding is required. See STANDARD
 254 V for further information pertaining to FIRPTA. Buyer and Seller are advised to seek legal counsel and tax
 255 advice regarding their respective rights, obligations, reporting and withholding requirements pursuant to
 256 FIRPTA.
- 257 (j) **SELLER DISCLOSURE:** Seller knows of no facts materially affecting the value of the Real Property which are
 258 not readily observable and which have not been disclosed to Buyer. Except as provided for in the preceding
 259 sentence, Seller extends and intends no warranty and makes no representation of any type, either express or
 260 implied, as to the physical condition or history of the Property. Except as otherwise disclosed in writing Seller
 261 has received no written or verbal notice from any governmental entity or agency as to a currently uncorrected
 262 building, environmental or safety code violation.

263 **PROPERTY MAINTENANCE, CONDITION, INSPECTIONS AND EXAMINATIONS**

- 264 **11. PROPERTY MAINTENANCE:** Except for ordinary wear and tear and Casualty Loss, Seller shall maintain the
 265 Property, including, but not limited to, lawn, shrubbery, and pool, in the condition existing as of Effective Date ("AS
 266 IS Maintenance Requirement"). See Paragraph 9(a) for escrow procedures, if applicable.
- 267 **12. PROPERTY INSPECTION; RIGHT TO CANCEL:**
- 268 (a) **PROPERTY INSPECTIONS AND RIGHT TO CANCEL:** *Buyer shall have _____ (if left blank, then 15)
 269 days after Effective Date ("Inspection Period") within which to have such inspections of the Property
 270 performed as Buyer shall desire during the Inspection Period. If Buyer determines, in Buyer's sole
 271 discretion, that the Property is not acceptable to Buyer, Buyer may terminate this Contract by delivering
 272 written notice of such election to Seller prior to expiration of Inspection Period. If Buyer timely
 273 terminates this Contract, the Deposit paid shall be returned to Buyer, thereupon, Buyer and Seller shall
 274 be released of all further obligations under this Contract; however, Buyer shall be responsible for
 275 prompt payment for such inspections, for repair of damage to, and restoration of, the Property resulting*

- 276 *from such inspections, and shall provide Seller with paid receipts for all work done on the Property (the*
 277 *preceding provision shall survive termination of this Contract). Unless Buyer exercises the right to*
 278 *terminate granted herein, Buyer accepts the physical condition of the Property and any violation of*
 279 *governmental, building, environmental, and safety codes, restrictions, or requirements, but subject to*
 280 *Seller's continuing AS IS Maintenance Requirement, and Buyer shall be responsible for any and all*
 281 *repairs and improvements required by Buyer's lender.*
- 282 (b) **WALK-THROUGH INSPECTION/RE-INSPECTION:** On the day prior to Closing Date, or on Closing Date prior
 283 to time of Closing, as specified by Buyer, Buyer or Buyer's representative may perform a walk-through (and
 284 follow-up walk-through, if necessary) inspection of the Property solely to confirm that all items of Personal
 285 Property are on the Property and to verify that Seller has maintained the Property as required by the AS IS
 286 Maintenance Requirement and has met all other contractual obligations.
- 287 (c) **SELLER ASSISTANCE AND COOPERATION IN CLOSE-OUT OF BUILDING PERMITS:** If Buyer's inspection
 288 of the Property identifies open or needed building permits, then Seller shall promptly deliver to Buyer all plans,
 289 written documentation or other information in Seller's possession, knowledge, or control relating to
 290 improvements to the Property which are the subject of such open or needed permits, and shall promptly
 291 cooperate in good faith with Buyer's efforts to obtain estimates of repairs or other work necessary to resolve
 292 such permit issues. Seller's obligation to cooperate shall include Seller's execution of necessary authorizations,
 293 consents, or other documents necessary for Buyer to conduct inspections and have estimates of such repairs
 294 or work prepared, but in fulfilling such obligation, Seller shall not be required to expend, or become obligated to
 295 expend, any money.
- 296 (d) **ASSIGNMENT OF REPAIR AND TREATMENT CONTRACTS AND WARRANTIES:** At Buyer's option and
 297 cost, Seller will, at Closing, assign all assignable repair, treatment and maintenance contracts and warranties
 298 to Buyer.

299 **ESCROW AGENT AND BROKER**

- 300 **13. ESCROW AGENT:** Any Closing Agent or Escrow Agent (collectively "Agent") receiving the Deposit, other funds
 301 and other items is authorized, and agrees by acceptance of them, to deposit them promptly, hold same in escrow
 302 within the State of Florida and, subject to Collection, disburse them in accordance with terms and conditions of this
 303 Contract. Failure of funds to become Collected shall not excuse Buyer's performance. When conflicting demands
 304 for the Deposit are received, or Agent has a good faith doubt as to entitlement to the Deposit, Agent may take such
 305 actions permitted by this Paragraph 13, as Agent deems advisable. If in doubt as to Agent's duties or liabilities
 306 under this Contract, Agent may, at Agent's option, continue to hold the subject matter of the escrow until the parties
 307 agree to its disbursement or until a final judgment of a court of competent jurisdiction shall determine the rights of
 308 the parties, or Agent may deposit same with the clerk of the circuit court having jurisdiction of the dispute. An
 309 attorney who represents a party and also acts as Agent may represent such party in such action. Upon notifying all
 310 parties concerned of such action, all liability on the part of Agent shall fully terminate, except to the extent of
 311 accounting for any items previously delivered out of escrow. If a licensed real estate broker, Agent will comply with
 312 provisions of Chapter 475, F.S., as amended and FREC rules to timely resolve escrow disputes through mediation,
 313 arbitration, interpleader or an escrow disbursement order.
- 314 In any proceeding between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder,
 315 or in any proceeding where Agent interpleads the subject matter of the escrow, Agent shall recover reasonable
 316 attorney's fees and costs incurred, to be paid pursuant to court order out of the escrowed funds or equivalent. Agent
 317 shall not be liable to any party or person for mis-delivery of any escrowed items, unless such mis-delivery is due to
 318 Agent's willful breach of this Contract or Agent's gross negligence. This Paragraph 13 shall survive Closing or
 319 termination of this Contract.
- 320 **14. PROFESSIONAL ADVICE; BROKER LIABILITY:** Broker advises Buyer and Seller to verify Property condition,
 321 square footage, and all other facts and representations made pursuant to this Contract and to consult appropriate
 322 professionals for legal, tax, environmental, and other specialized advice concerning matters affecting the Property
 323 and the transaction contemplated by this Contract. Broker represents to Buyer that Broker does not reside on the
 324 Property and that all representations (oral, written or otherwise) by Broker are based on Seller representations or
 325 public records. **BUYER AGREES TO RELY SOLELY ON SELLER, PROFESSIONAL INSPECTORS AND**
 326 **GOVERNMENTAL AGENCIES FOR VERIFICATION OF PROPERTY CONDITION, SQUARE FOOTAGE AND**
 327 **FACTS THAT MATERIALLY AFFECT PROPERTY VALUE AND NOT ON THE REPRESENTATIONS (ORAL,**
 328 **WRITTEN OR OTHERWISE) OF BROKER.** Buyer and Seller (individually, the "Indemnifying Party") each
 329 individually indemnifies, holds harmless, and releases Broker and Broker's officers, directors, agents and
 330 employees from all liability for loss or damage, including all costs and expenses, and reasonable attorney's fees at
 331 all levels, suffered or incurred by Broker and Broker's officers, directors, agents and employees in connection with

332 or arising from claims, demands or causes of action instituted by Buyer or Seller based on: (i) inaccuracy of
 333 information provided by the Indemnifying Party or from public records; (ii) Indemnifying Party's misstatement(s) or
 334 failure to perform contractual obligations; (iii) Broker's performance, at Indemnifying Party's request, of any task
 335 beyond the scope of services regulated by Chapter 475, F.S., as amended, including Broker's referral,
 336 recommendation or retention of any vendor for, or on behalf of, Indemnifying Party; (iv) products or services
 337 provided by any such vendor for, or on behalf of, Indemnifying Party; and (v) expenses incurred by any such vendor.
 338 Buyer and Seller each assumes full responsibility for selecting and compensating their respective vendors and
 339 paying their other costs under this Contract whether or not this transaction closes. This Paragraph 14 will not relieve
 340 Broker of statutory obligations under Chapter 475, F.S., as amended. For purposes of this Paragraph 14, Broker
 341 will be treated as a party to this Contract. This Paragraph 14 shall survive Closing or termination of this Contract.

342 **DEFAULT AND DISPUTE RESOLUTION**

343 **15. DEFAULT:**

344 (a) **BUYER DEFAULT:** If Buyer fails, neglects or refuses to perform Buyer's obligations under this Contract,
 345 including payment of the Deposit, within the time(s) specified, Seller may elect to recover and retain the Deposit
 346 for the account of Seller as agreed upon liquidated damages, consideration for execution of this Contract, and
 347 in full settlement of any claims, whereupon Buyer and Seller shall be relieved from all further obligations under
 348 this Contract, or Seller, at Seller's option, may, pursuant to Paragraph 16, proceed in equity to enforce Seller's
 349 rights under this Contract. ~~The portion of the Deposit, if any, paid to Listing Broker upon default by Buyer, shall
 350 be split equally between Listing Broker and Cooperating Broker, provided however, Cooperating Broker's share
 351 shall not be greater than the commission amount Listing Broker had agreed to pay to Cooperating Broker.~~

352 (b) **SELLER DEFAULT:** If for any reason other than failure of Seller to make Seller's title marketable after
 353 reasonable diligent effort, Seller fails, neglects or refuses to perform Seller's obligations under this Contract,
 354 Buyer may elect to receive return of Buyer's Deposit without thereby waiving any action for damages resulting
 355 from Seller's breach, and, pursuant to Paragraph 16, may seek to recover such damages or seek specific
 356 performance.

357 This Paragraph 15 shall survive Closing or termination of this Contract.

358 **16. DISPUTE RESOLUTION:** Unresolved controversies, claims and other matters in question between Buyer and
 359 Seller arising out of, or relating to, this Contract or its breach, enforcement or interpretation ("Dispute") will be settled
 360 as follows:

361 (a) Buyer and Seller will have 10 days after the date conflicting demands for the Deposit are made to attempt to
 362 resolve such Dispute, failing which, Buyer and Seller shall submit such Dispute to mediation under Paragraph
 363 16(b).

364 (b) Buyer and Seller shall attempt to settle Disputes in an amicable manner through mediation pursuant to Florida
 365 Rules for Certified and Court-Appointed Mediators and Chapter 44, F.S., as amended (the "Mediation Rules").
 366 The mediator must be certified or must have experience in the real estate industry. Injunctive relief may be
 367 sought without first complying with this Paragraph 16(b). Disputes not settled pursuant to this Paragraph 16
 368 may be resolved by instituting action in the appropriate court having jurisdiction of the matter. This Paragraph
 369 16 shall survive Closing or termination of this Contract.

370 **17. ATTORNEY'S FEES; COSTS:** The parties will split equally any mediation fee incurred in any mediation permitted
 371 by this Contract, and each party will pay their own costs, expenses and fees, including attorney's fees, incurred in
 372 conducting the mediation. In any litigation permitted by this Contract, the prevailing party shall be entitled to recover
 373 from the non-prevailing party costs and fees, including reasonable attorney's fees, incurred in conducting the
 374 litigation. This Paragraph 17 shall survive Closing or termination of this Contract.

375 **STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS")**

376 **18. STANDARDS:**

377 **A. TITLE:**

378 (i) **TITLE EVIDENCE; RESTRICTIONS; EASEMENTS; LIMITATIONS:** Within the time period provided in
 379 Paragraph 9(c), the Title Commitment, with legible copies of instruments listed as exceptions attached thereto, shall
 380 be issued and delivered to Buyer. The Title Commitment shall set forth those matters to be discharged by Seller at
 381 or before Closing and shall provide that, upon recording of the deed to Buyer, an owner's policy of title insurance
 382 in the amount of the Purchase Price, shall be issued to Buyer insuring Buyer's marketable title to the Real Property,
 383 subject only to the following matters: (a) comprehensive land use plans, zoning, and other land use restrictions,
 384 prohibitions and requirements imposed by governmental authority; (b) restrictions and matters appearing on the
 385 Plat or otherwise common to the subdivision; (c) outstanding oil, gas and mineral rights of record without right of
 386 entry; (d) unplatted public utility easements of record (located contiguous to real property lines and not more than

387 10 feet in width as to rear or front lines and 7 1/2 feet in width as to side lines); (e) taxes for year of Closing and
388 subsequent years; and (f) assumed mortgages and purchase money mortgages, if any (if additional items, attach
389 addendum); provided, that, none prevent use of Property for **RESIDENTIAL PURPOSES**. If there exists at Closing
390 any violation of items identified in (b) – (f) above, then the same shall be deemed a title defect. Marketable title shall
391 be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance
392 with law.

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STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

393 (ii) **TITLE EXAMINATION:** Buyer shall have 5 days after receipt of Title Commitment to examine it and notify Seller
 394 in writing specifying defect(s), if any, that render title unmarketable. If Seller provides Title Commitment and it is
 395 delivered to Buyer less than 5 days prior to Closing Date, Buyer may extend Closing for up to 5 days after date of
 396 receipt to examine same in accordance with this STANDARD A. Seller shall have 30 days ("Cure Period") after
 397 receipt of Buyer's notice to take reasonable diligent efforts to remove defects. If Buyer fails to so notify Seller, Buyer
 398 shall be deemed to have accepted title as it then is. If Seller cures defects within Cure Period, Seller will deliver
 399 written notice to Buyer (with proof of cure acceptable to Buyer and Buyer's attorney) and the parties will close this
 400 Contract on Closing Date (or if Closing Date has passed, within 10 days after Buyer's receipt of Seller's notice). If
 401 Seller is unable to cure defects within Cure Period, then Buyer may, within 5 days after expiration of Cure Period,
 402 deliver written notice to Seller: (a) extending Cure Period for a specified period not to exceed 120 days within which
 403 Seller shall continue to use reasonable diligent effort to remove or cure the defects ("Extended Cure Period"); or
 404 (b) electing to accept title with existing defects and close this Contract on Closing Date (or if Closing Date has
 405 passed, within the earlier of 10 days after end of Extended Cure Period or Buyer's receipt of Seller's notice), or (c)
 406 electing to terminate this Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all
 407 further obligations under this Contract. If after reasonable diligent effort, Seller is unable to timely cure defects, and
 408 Buyer does not waive the defects, this Contract shall terminate, and Buyer shall receive a refund of the Deposit,
 409 thereby releasing Buyer and Seller from all further obligations under this Contract.

410 **B. SURVEY:** If Survey discloses encroachments on the Real Property or that improvements located thereon
 411 encroach on setback lines, easements, or lands of others, or violate any restrictions, covenants, or applicable
 412 governmental regulations described in STANDARD A (i)(a), (b) or (d) above, Buyer shall deliver written notice of
 413 such matters, together with a copy of Survey, to Seller within 5 days after Buyer's receipt of Survey, but no later
 414 than Closing. If Buyer timely delivers such notice and Survey to Seller, such matters identified in the notice and
 415 Survey shall constitute a title defect, subject to cure obligations of STANDARD A above. If Seller has delivered a
 416 prior survey, Seller shall, at Buyer's request, execute an affidavit of "no change" to the Real Property since the
 417 preparation of such prior survey, to the extent the affirmations therein are true and correct.

418 **C. INGRESS AND EGRESS:** Seller represents that there is ingress and egress to the Real Property and title to
 419 the Real Property is insurable in accordance with STANDARD A without exception for lack of legal right of access.

420 **D. LEASE INFORMATION:** Seller shall, at least 10 days prior to Closing, furnish to Buyer estoppel letters from
 421 tenant(s)/occupant(s) specifying nature and duration of occupancy, rental rates, advanced rent and security
 422 deposits paid by tenant(s) or occupant(s) ("Estoppel Letter(s)"). If Seller is unable to obtain such Estoppel Letter(s)
 423 the same information shall be furnished by Seller to Buyer within that time period in the form of a Seller's affidavit
 424 and Buyer may thereafter contact tenant(s) or occupant(s) to confirm such information. If Estoppel Letter(s) or
 425 Seller's affidavit, if any, differ materially from Seller's representations and lease(s) provided pursuant to Paragraph
 426 6, or if tenant(s)/occupant(s) fail or refuse to confirm Seller's affidavit, Buyer may deliver written notice to Seller
 427 within 5 days after receipt of such information, but no later than 5 days prior to Closing Date, terminating this
 428 Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under
 429 this Contract. Seller shall, at Closing, deliver and assign all leases to Buyer who shall assume Seller's obligations
 430 thereunder.

431 **E. LIENS:** Seller shall furnish to Buyer at Closing an affidavit attesting (i) to the absence of any financing
 432 statement, claims of lien or potential lienors known to Seller and (ii) that there have been no improvements or
 433 repairs to the Real Property for 90 days immediately preceding Closing Date. If the Real Property has been
 434 improved or repaired within that time, Seller shall deliver releases or waivers of construction liens executed by all
 435 general contractors, subcontractors, suppliers and materialmen in addition to Seller's lien affidavit setting forth
 436 names of all such general contractors, subcontractors, suppliers and materialmen, further affirming that all charges
 437 for improvements or repairs which could serve as a basis for a construction lien or a claim for damages have been
 438 paid or will be paid at Closing.

439 **F. TIME: Time is of the essence in this Contract.** Calendar days, based on where the Property is located, shall
 440 be used in computing time periods. Other than time for acceptance and Effective Date as set forth in Paragraph 3,
 441 any time periods provided for or dates specified in this Contract, whether preprinted, handwritten, typewritten or
 442 inserted herein, which shall end or occur on a Saturday, Sunday, national legal public holiday (as defined in 5
 443 U.S.C. Sec. 6103(a)), or a day on which a national legal public holiday is observed because it fell on a Saturday or
 444 Sunday, shall extend to the next calendar day which is not a Saturday, Sunday, national legal public holiday, or a
 445 day on which a national legal public holiday is observed.

446 **G. FORCE MAJEURE:** Buyer or Seller shall not be required to exercise or perform any right or obligation under
 447 this Contract or be liable to each other for damages so long as performance or non-performance of the right or
 448 obligation, or the availability of services, insurance, or required approvals essential to Closing, is disrupted, delayed,

STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

449 caused or prevented by a Force Majeure event. "Force Majeure" means: hurricanes, floods, extreme weather,
 450 earthquakes, fires, or other acts of God, unusual transportation delays, wars, insurrections, civil unrest, or acts of
 451 terrorism, governmental actions and mandates, government shut downs, epidemics, or pandemics, which, by
 452 exercise of reasonable diligent effort, the non-performing party is unable in whole or in part to prevent or overcome.
 453 The Force Majeure event will be deemed to have begun on the first day the effect of the Force Majeure prevents
 454 performance, non-performance, or the availability of services, insurance or required approvals essential to Closing.
 455 All time periods affected by the Force Majeure event, including Closing Date, will be extended a reasonable time
 456 up to 7 days after the Force Majeure event no longer prevents performance under this Contract; provided, however,
 457 if such Force Majeure event continues to prevent performance under this Contract more than 30 days beyond
 458 Closing Date, then either party may terminate this Contract by delivering written notice to the other and the Deposit
 459 shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.
 460 **H. CONVEYANCE:** Seller shall convey marketable title to the Real Property by statutory warranty, trustee's,
 461 personal representative's, or guardian's deed, as appropriate to the status of Seller, subject only to matters
 462 described in STANDARD A and those accepted by Buyer. Personal Property shall, at request of Buyer, be
 463 transferred by absolute bill of sale with warranty of title, subject only to such matters as may be provided for in this
 464 Contract.
 465 **I. CLOSING LOCATION; DOCUMENTS; AND PROCEDURE:**
 466 (i) **LOCATION:** Closing will be conducted by the attorney or other closing agent ("Closing Agent") designated by
 467 the party paying for the owner's policy of title insurance and will take place in the county where the Real Property
 468 is located at the office of the Closing Agent, or at such other location agreed to by the parties. If there is no title
 469 insurance, Seller will designate Closing Agent. Closing may be conducted by mail, overnight courier, or electronic
 470 means.
 471 (ii) **CLOSING DOCUMENTS:** Seller shall at or prior to Closing, execute and deliver, as applicable, deed, bill of
 472 sale, certificate(s) of title or other documents necessary to transfer title to the Property, construction lien affidavit(s),
 473 owner's possession and no lien affidavit(s), and assignment(s) of leases. Seller shall provide Buyer with paid
 474 receipts for all work done on the Property pursuant to this Contract. Buyer shall furnish and pay for, as applicable,
 475 the survey, flood elevation certification, and documents required by Buyer's lender.
 476 (iii) **FinCEN GTO REPORTING OBLIGATION.** If Closing Agent is required to comply with a U.S. Treasury
 477 Department's Financial Crimes Enforcement Network ("FinCEN") Geographic Targeting Order ("GTO"), then Buyer
 478 shall provide Closing Agent with essential information and documentation related to Buyer and its Beneficial
 479 Owners, including photo identification, and related to the transaction contemplated by this Contract which are
 480 required to complete mandatory reporting, including the Currency Transaction Report; and Buyer consents to
 481 Closing Agent's collection and report of said information to IRS.
 482 (iv) **PROCEDURE:** The deed shall be recorded upon Collection of all closing funds. If the Title Commitment
 483 provides insurance against adverse matters pursuant to Section 627.7841, F.S., as amended, the escrow closing
 484 procedure required by STANDARD J shall be waived, and Closing Agent shall, **subject to Collection of all closing**
 485 **funds**, disburse at Closing the brokerage fees to Broker and the net sale proceeds to Seller.
 486 **J. ESCROW CLOSING PROCEDURE:** If Title Commitment issued pursuant to Paragraph 9(c) does not provide
 487 for insurance against adverse matters as permitted under Section 627.7841, F.S., as amended, the following
 488 escrow and closing procedures shall apply: (1) all Closing proceeds shall be held in escrow by the Closing Agent
 489 for a period of not more than 10 days after Closing; (2) if Seller's title is rendered unmarketable, through no fault of
 490 Buyer, Buyer shall, within the 10 day period, notify Seller in writing of the defect and Seller shall have 30 days from
 491 date of receipt of such notification to cure the defect; (3) if Seller fails to timely cure the defect, the Deposit and all
 492 Closing funds paid by Buyer shall, within 5 days after written demand by Buyer, be refunded to Buyer and,
 493 simultaneously with such repayment, Buyer shall return the Personal Property, vacate the Real Property and re-
 494 convey the Property to Seller by special warranty deed and bill of sale; and (4) if Buyer fails to make timely demand
 495 for refund of the Deposit, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect
 496 except as may be available to Buyer by virtue of warranties contained in the deed or bill of sale.
 497 **K. PRORATIONS; CREDITS:** The following recurring items will be made current (if applicable) and prorated as of
 498 the day prior to Closing Date, or date of occupancy if occupancy occurs before Closing Date: real estate taxes
 499 (including special benefit tax assessments imposed by a CDD pursuant to Chapter 190, F.S., and assessments
 500 imposed by special district(s) pursuant to Chapter 189, F.S.), interest, bonds, association fees, insurance, rents
 501 and other expenses of Property. Buyer shall have option of taking over existing policies of insurance, if assumable,
 502 in which event premiums shall be prorated. Cash at Closing shall be increased or decreased as may be required
 503 by prorations to be made through day prior to Closing. Advance rent and security deposits, if any, will be credited
 504 to Buyer. Escrow deposits held by Seller's mortgagee will be paid to Seller. Taxes shall be prorated based on
 505 current year's tax. If Closing occurs on a date when current year's millage is not fixed but current year's assessment

580 terrorism, governmental actions and mandates, government shut downs, epidemics, or pandemics, which, by
 561 exercise of reasonable diligent effort, the non-performing party is unable in whole or in part to prevent or overcome.
 562 The Force Majeure event will be deemed to have begun on the first day the effect of the Force Majeure prevents
 563 performance, non-performance, or the availability of services, insurance or required approvals essential to Closing.
 564 All time periods affected by the Force Majeure event, including Closing Date, will be extended a reasonable time
 565 up to 7 days after the Force Majeure event no longer prevents performance under this Contract; provided, however,
 566 if such Force Majeure event continues to prevent performance under this Contract more than 30 days beyond
 567 Closing Date, then either party may terminate this Contract by delivering written notice to the other and the Deposit
 568 shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.

569 **H. CONVEYANCE:** Seller shall convey marketable title to the Real Property by statutory warranty, trustee's,
 570 personal representative's, or guardian's deed, as appropriate to the status of Seller, subject only to matters
 571 described in STANDARD A and those accepted by Buyer. Personal Property shall, at request of Buyer, be
 572 transferred by absolute bill of sale with warranty of title, subject only to such matters as may be provided for in this
 573 Contract.

574 **I. CLOSING LOCATION; DOCUMENTS; AND PROCEDURE:**

575 (i) **LOCATION:** Closing will be conducted by the attorney or other closing agent ("Closing Agent") designated by
 576 the party paying for the owner's policy of title insurance and will take place in the county where the Real Property
 577 is located at the office of the Closing Agent, or at such other location agreed to by the parties. If there is no title
 578 insurance, Seller will designate Closing Agent. Closing may be conducted by mail, overnight courier, or electronic
 579 means.

580 (ii) **CLOSING DOCUMENTS:** Seller shall, at or prior to Closing, execute and deliver, as applicable, deed, bill of
 581 sale, certificate(s) of title or other documents necessary to transfer title to the Property, construction lien affidavit(s),
 582 owner's possession and no lien affidavit(s), and assignment(s) of leases. Seller shall provide Buyer with paid
 583 receipts for all work done on the Property pursuant to this Contract. Buyer shall furnish and pay for, as applicable,
 584 the survey, flood elevation certification, and documents required by Buyer's lender.

585 (iii) **FinCEN GTO REPORTING OBLIGATION.** If Closing Agent is required to comply with a U.S. Treasury
 586 Department's Financial Crimes Enforcement Network ("FinCEN") Geographic Targeting Order ("GTO"), then Buyer
 587 shall provide Closing Agent with essential information and documentation related to Buyer and its Beneficial
 588 Owners, including photo identification, and related to the transaction contemplated by this Contract which are
 589 required to complete mandatory reporting including the Currency Transaction Report; and Buyer consents to
 590 Closing Agent's collection and report of said information to IRS.

591 (iv) **PROCEDURE:** The deed shall be recorded upon Collection of all closing funds. If the Title Commitment provides
 592 insurance against adverse matters pursuant to Section 627.7841, F.S., as amended, the escrow closing procedure
 593 required by STANDARD J shall be waived, and Closing Agent shall, **subject to Collection of all closing funds**,
 594 disburse at Closing the brokerage fees to Broker and the net sale proceeds to Seller.

595 **J. ESCROW CLOSING PROCEDURE:** If Title Commitment issued pursuant to Paragraph 9(c) does not provide
 596 for insurance against adverse matters as permitted under Section 627.7841, F.S., as amended, the following
 597 escrow and closing procedures shall apply: (1) all Closing proceeds shall be held in escrow by the Closing Agent
 598 for a period of not more than 10 days after Closing; (2) if Seller's title is rendered unmarketable, through no fault of
 599 Buyer, Buyer shall, within the 10 day period, notify Seller in writing of the defect and Seller shall have 30 days from
 600 date of receipt of such notification to cure the defect; (3) if Seller fails to timely cure the defect, the Deposit and all
 601 Closing funds paid by Buyer shall, within 5 days after written demand by Buyer, be refunded to Buyer and,
 602 simultaneously with such repayment, Buyer shall return the Personal Property, vacate the Real Property and re-
 603 convey the Property to Seller by special warranty deed and bill of sale; and (4) if Buyer fails to make timely demand
 604 for refund of the Deposit, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect
 605 except as may be available to Buyer by virtue of warranties contained in the deed or bill of sale.

606 **K. PRORATIONS; CREDITS:** The following recurring items will be made current (if applicable) and prorated as of
 607 the day prior to Closing Date, or date of occupancy if occupancy occurs before Closing Date: real estate taxes
 608 (including special benefit tax assessments imposed by a CDD pursuant to Chapter 190, F.S., and assessments
 609 imposed by special district(s) pursuant to Chapter 189, F.S.), interest, bonds, association fees, insurance, rents
 610 and other expenses of Property. Buyer shall have option of taking over existing policies of insurance, if assumable,
 611 in which event premiums shall be prorated. Cash at Closing shall be increased or decreased as may be required
 612 by prorations to be made through day prior to Closing. Advance rent and security deposits, if any, will be credited
 613 to Buyer. Escrow deposits held by Seller's mortgagee will be paid to Seller. Taxes shall be prorated based on
 614 current year's tax. If Closing occurs on a date when current year's millage is not fixed but current year's assessment
 615 is available, taxes will be prorated based upon such assessment and prior year's millage. If current year's
 616 assessment is not available, then taxes will be prorated on prior year's tax. If there are completed improvements

STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

563 (IRS) unless an exemption to the required withholding applies or the seller has obtained a Withholding Certificate
 564 from the IRS authorizing a reduced amount of withholding.
 565 (i) No withholding is required under Section 1445 of the Code if the Seller is not a "foreign person", Seller can
 566 provide proof of non-foreign status to Buyer by delivery of written certification signed under penalties of perjury,
 567 stating that Seller is not a foreign person and containing Seller's name, U.S. taxpayer identification number and
 568 home address (or office address, in the case of an entity), as provided for in 26 CFR 1.1445-2(b). Otherwise, Buyer
 569 shall withhold the applicable percentage of the amount realized by Seller on the transfer and timely remit said funds
 570 to the IRS.
 571 (ii) If Seller is a foreign person and has received a Withholding Certificate from the IRS which provides for reduced
 572 or eliminated withholding in this transaction and provides same to Buyer by Closing, then Buyer shall withhold the
 573 reduced sum required, if any, and timely remit said funds to the IRS.
 574 (iii) If prior to Closing Seller has submitted a completed application to the IRS for a Withholding Certificate and has
 575 provided to Buyer the notice required by 26 CFR 1.1445-1(c) (2)(i)(B) but no Withholding Certificate has been
 576 received as of Closing, Buyer shall, at Closing, withhold the applicable percentage of the amount realized by Seller
 577 on the transfer and, at Buyer's option, either (a) timely remit the withheld funds to the IRS or (b) place the funds in
 578 escrow, at Seller's expense, with an escrow agent selected by Buyer and pursuant to terms negotiated by the
 579 parties, to be subsequently disbursed in accordance with the Withholding Certificate issued by the IRS or remitted
 580 directly to the IRS if the Seller's application is rejected or upon terms set forth in the escrow agreement.
 581 (iv) In the event the net proceeds due Seller are not sufficient to meet the withholding requirement(s) in this
 582 transaction, Seller shall deliver to Buyer, at Closing, the additional Collected funds necessary to satisfy the
 583 applicable requirement and thereafter Buyer shall timely remit said funds to the IRS or escrow the funds for
 584 disbursement in accordance with the final determination of the IRS, as applicable.
 585 (v) Upon remitting funds to the IRS pursuant to this STANDARD, Buyer shall provide Seller copies of IRS Forms
 586 8288 and 8288-A, as filed.

587 **W. RESERVED**

588 **X. BUYER WAIVER OF CLAIMS:** *To the extent permitted by law, Buyer waives any claims against Seller*
 589 *and against any real estate licensee involved in the negotiation of this Contract for any damage or defects*
 590 *pertaining to the physical condition of the Property that may exist at Closing of this Contract and be*
 591 *subsequently discovered by the Buyer or anyone claiming by, through, under or against the Buyer. This*
 592 *provision does not relieve Seller's obligation to comply with Paragraph 10(j). This Standard X shall survive*
 593 *Closing.*

594 **ADDENDA AND ADDITIONAL TERMS**

595 **19. ADDENDA:** The following additional terms are included in the attached addenda or riders and incorporated into this
 596 Contract (Check if applicable):

- | | | |
|--|---|---|
| <input type="checkbox"/> A. Condominium Rider | <input type="checkbox"/> M. Defective Drywall | <input type="checkbox"/> X. Kick-out Clause |
| <input type="checkbox"/> B. Homeowners' Assn. | <input type="checkbox"/> N. Coastal Construction Control Line | <input type="checkbox"/> Y. Seller's Attorney Approval |
| <input type="checkbox"/> C. Seller Financing | <input type="checkbox"/> O. Insulation Disclosure | <input type="checkbox"/> Z. Buyer's Attorney Approval |
| <input type="checkbox"/> D. Mortgage Assumption | <input type="checkbox"/> P. Lead Paint Disclosure (Pre-1978) | <input type="checkbox"/> AA. Licensee Property Interest |
| <input type="checkbox"/> E. FHA/VA Financing | <input type="checkbox"/> Q. Housing for Older Persons | <input type="checkbox"/> BB. Binding Arbitration |
| <input type="checkbox"/> F. Appraisal Contingency | <input type="checkbox"/> R. Rezoning | <input type="checkbox"/> CC. Miami-Dade County Special Taxing District Disclosure |
| <input type="checkbox"/> G. Short Sale | <input type="checkbox"/> S. Lease Purchase/ Lease Option | <input type="checkbox"/> DD. Seasonal/Vacation Rentals |
| <input type="checkbox"/> H. Homeowners/Flood Ins. | <input type="checkbox"/> T. Pre-Closing Occupancy | <input type="checkbox"/> EE. PACE Disclosure |
| <input type="checkbox"/> I. RESERVED | <input type="checkbox"/> U. Post-Closing Occupancy | <input type="checkbox"/> FF. Credit Related to Buyers Broker Compensation |
| <input type="checkbox"/> A. Condominium Rider | <input type="checkbox"/> V. Sale of Buyer's Property | <input type="checkbox"/> GG. Sellers Agreement with Respect to Buyers Broker Compensation |
| <input type="checkbox"/> B. Homeowners' Assn. | <input type="checkbox"/> W. Back-up Contract | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> C. Seller Financing | <input type="checkbox"/> X. Kick-out Clause | _____ |
| <input type="checkbox"/> D. Mortgage Assumption | <input type="checkbox"/> Y. Seller's Attorney Approval | _____ |
| <input type="checkbox"/> E. FHA/VA Financing | <input type="checkbox"/> Z. Buyer's Attorney Approval | |
| <input type="checkbox"/> F. Appraisal Contingency | | |
| <input type="checkbox"/> G. Short Sale | | |
| <input type="checkbox"/> H. Homeowners/Flood Ins. | | |
| <input type="checkbox"/> I. RESERVED | | |
| <input type="checkbox"/> J. Interest-Bearing Acct. | | |
| <input type="checkbox"/> K. RESERVED | | |
| <input type="checkbox"/> J. Interest-Bearing Acct. | | |
| <input type="checkbox"/> K. RESERVED | | |
| <input type="checkbox"/> L. | | |

- RESERVED
- M. Defective Drywall
- N. Coastal Construction Control Line
- RESERVED

FOR EDUCATIONAL PURPOSES ONLY

597* 20. ADDITIONAL TERMS: _____
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COUNTER-OFFER

615
616* Seller counters Buyer's offer.

617 [The remainder of this page is intentionally left blank.
618 This Contract continues with Line 612 on Page 13 of 13.]

619 THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE
620 ADVICE OF AN ATTORNEY PRIOR TO SIGNING.

621 THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR.

622 Approval of this form by the Florida Realtors and The Florida Bar does not constitute an opinion that any of the
623 terms and conditions in this Contract should be accepted by the parties in a particular transaction. Terms and
624 conditions should be negotiated based upon the respective interests, objectives and bargaining positions of all
625 interested persons.

626 AN ASTERISK (*) FOLLOWING A LINE NUMBER IN THE MARGIN INDICATES THE LINE CONTAINS A BLANK
627 TO BE COMPLETED.

628 ATTENTION: SELLER AND BUYER

629 CONVEYANCES TO FOREIGN BUYERS: Part III of Chapter 692, Sections 692.201 - 692.205, Florida Statutes,
630 2023 (the "Act"), in part, limits and regulates the sale, purchase and ownership of certain Florida properties by
631 certain buyers who are associated with a "foreign country of concern", namely: the People's Republic of China, the
632 Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of
633 Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic. It is a crime to buy or knowingly
634 sell property in violation of the Act.

635 At time of purchase, Buyer must provide a signed Affidavit which complies with the requirements of the
636 Act. Seller and Buyer are advised to seek legal counsel regarding their respective obligations and liabilities under
637 the Act.

638 Buyer: _____ Date: _____
639 Buyer: _____ Date: _____
640 Seller: _____ Date: _____
641 Seller: _____ Date: _____

642 Buyer's address for purposes of notice Seller's address for purposes of notice
643 _____
644 _____
645 _____

646 BROKER: Listing and Cooperating Brokers, if any, named below (collectively, "Broker"), are the only Brokers
647 entitled to compensation in connection with this Contract. Instruction to Closing Agent: Seller and Buyer direct
648 Closing Agent to disburse at Closing the full amount of the brokerage fees as specified in separate brokerage
649 agreements with the parties and cooperative agreements between the Brokers, except to the extent Broker has
650 retained such fees from the escrowed funds. This Contract shall not modify any ~~MLS or other~~ offer of compensation
651 made by Seller or Listing Broker to Cooperating Brokers.

652 Cooperating Sales Associate, if any Listing Sales Associate
653 _____
654 Cooperating Broker, if any Listing Broker
655 _____



Comprehensive Rider to the Residential Contract For Sale And Purchase

If initialed by all parties, the clauses below will be incorporated into the Florida Realtors®/Florida Bar Residential Contract For Sale And Purchase between _____ (SELLER) and _____ (BUYER) concerning the Property described as _____

Buyer's Initials _____ Seller's Initials _____

FF. CREDIT RELATED TO BUYER'S BROKER COMPENSATION

Buyer has entered into a separate brokerage agreement, as may be amended (a "Buyer Broker Agreement", which is NOT incorporated herein by this reference) with _____ (insert name of brokerage, "Buyer Broker").

At Closing, Seller agrees to credit Buyer the sum(s) described below, which for disclosure purposes only the parties agree is related to Buyer's obligation under the Buyer Broker Agreement to pay all or a portion of Buyer Broker's compensation (check one):

- checkbox ___% of the Purchase Price
checkbox _____
checkbox ___% of the Purchase Price PLUS \$_____

In the event the credit described above exceeds the amount allowed by Buyer's lender for such contributions, then, to the extent permitted by Buyer's lender, (check one; if no box is checked, then the balance of the credit will be paid by Seller directly to Buyer Broker) checkbox the balance of the credit will be paid by Seller directly to Buyer Broker, or checkbox the credit will be reduced to the maximum amount allowed by Buyer's lender.

In the event the credit described above exceeds the limit allowed by the Buyer Broker Agreement, then the credit will be adjusted to the amount allowed under the Buyer Broker Agreement, as may be amended.

This Rider FF shall not modify the Buyer Broker Agreement or any other compensation agreement made between Seller, Buyer, Seller Broker and/or Buyer Broker. Nothing in this Rider FF requires the Buyer or Buyer Broker to provide a copy of the Buyer Broker Agreement to the Seller or Seller Broker.

Broker commissions are not set by law and are fully negotiable.

FF. CREDIT RELATED TO BUYER'S BROKER COMPENSATION



Comprehensive Rider to the Residential Contract For Sale And Purchase

If initialed by all parties, the clauses below will be incorporated into the Florida Realtors®/Florida Bar Residential Contract For Sale And Purchase between _____ (SELLER) and _____ (BUYER) concerning the Property described as _____

Buyer's Initials _____ Seller's Initials _____

GG. SELLER'S AGREEMENT WITH RESPECT TO BUYER'S BROKER COMPENSATION

This Contract is contingent upon (check one) Seller's Broker and Buyer's Broker or Seller and Buyer's Broker executing a compensation agreement with terms acceptable to Buyer ("Compensation Agreement") within ____ days (if left blank, then three (3) days) after the Effective Date ("Time Period"). If the Compensation Agreement described herein is not executed and delivered within the Time Period, then Buyer may, within three (3) days thereafter deliver written notice to Seller, terminating this Contract in which event the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract. If Buyer fails to timely deliver said written notice to Seller, this contingency shall have no further force or effect.

Broker commissions are not set by law and are fully negotiable.

GG. SELLER'S AGREEMENT WITH RESPECT TO BUYER'S BROKER COMPENSATION

FOR EDUCATIONAL PURPOSES ONLY

Comprehensive Rider to the Residential Contract For Sale And Purchase

THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR



If initiated by all parties, the clauses below will be incorporated into the Florida Realtors®/Florida Bar Residential Contract For Sale And Purchase between _____ (SELLER) and _____ (BUYER) concerning the Property described as _____

Buyer's Initials _____ Seller's Initials _____

A. CONDOMINIUM RIDER

1. CONDOMINIUM ASSOCIATION APPROVAL:

The Association's approval of Buyer (CHECK ONE): is is not required. If approval is required, this Contract is contingent upon Buyer being approved by the Association no later than _____ (if left blank, then 5) days prior to Closing. Within _____ (if left blank, then 5) days after Effective Date Seller shall initiate the approval process with the Association and Buyer shall apply for such approval. Buyer and Seller shall sign and deliver any documents required by the Association in order to complete the transfer of the Property and each shall use diligent effort to obtain such approval, including making personal appearances if required. If Buyer is not approved within the stated time period, this Contract shall terminate and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

2. RIGHT OF FIRST REFUSAL:

- (a) The Association (CHECK ONE): has does not have a right of first refusal ("Right"). If the Association has a Right, this Contract is contingent upon the Association, within the time permitted for the exercise of such Right, either providing written confirmation to Buyer that the Association is not exercising that Right, or failing to timely exercise such Right pursuant to the terms of the Declaration of Condominium ("Declaration", which reference includes all amendments thereto).
- (b) The members of the Association (CHECK ONE): have do not have a Right. If the members do have a Right, this Contract is contingent upon the members, within the time permitted for the exercise of such Right, either providing written confirmation to Buyer that the members are not exercising that Right, or failing to timely exercise such Right pursuant to the terms of the Declaration.
- (c) Buyer and Seller shall, within _____ (if left blank, then 5) days after Effective Date, sign and deliver any documents required as a condition precedent to the exercise of the Right, and shall use diligent effort to submit and process the matter with the Association and members, including personal appearances, if required.
- (d) If, within the stated time period, the Association, the members of the Association, or both, fail to provide the written confirmation or the Right has not otherwise expired, then this Contract shall terminate and the Deposit shall be refunded to the Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.
- (e) If the Association or a member timely exercises its or their Right, this Contract shall terminate and the Deposit shall be refunded to Buyer (unless this Contract provides otherwise), thereby releasing Buyer and Seller from all further obligations under this Contract, and Seller shall pay to Broker the full commission at Closing in recognition that Broker procured the sale.

3. FEES; ASSESSMENTS; PRORATIONS; LITIGATION:

- (a) Condominium Association assessment(s) and Rents: Seller represents that the current Association assessment(s) installments is/are
 \$ _____ payable (CHECK ONE): monthly quarterly semi-annually annually
 and if more than one Association assessment
 \$ _____ payable (CHECK ONE): monthly quarterly semi-annually annually
 and the current rent on recreation areas, if any, is
 \$ _____ payable (CHECK ONE): monthly quarterly semi-annually annually

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A. CONDOMINIUM RIDER (CONTINUED)

All annual assessments levied by the Association and rent on recreational areas, if any, shall be made current by Seller at Closing, and Buyer shall reimburse Seller for prepayments.

- (b) Fees: Seller shall, at Closing, pay all fines imposed against the Unit by the Condominium Association as of Closing Date and any fees the Association charges to provide information about the Property, assessment(s) and fees.

If Property is part of a Homeowners' Association, see Rider B. HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE for further information including additional assessments and fees.

- (c) Special Assessments and Prorations:

- (i) Seller represents that Seller is not aware of any special or other assessment that has been levied by the Association or that has been an item on the agenda, or reported in the minutes, of the Association within twelve (12) months prior to Effective Date, ("pending") except as follows: _____
- (ii) If special assessments levied or pending exist as of the Effective Date are disclosed above by Seller and may be paid in installments (CHECK ONE): Buyer Seller (if left blank, then Buyer) shall pay installments due after Closing Date. If Seller is checked, Seller shall pay the assessment in full prior to or at the time of Closing.
- (iii) If special assessments levied or pending exist as of the Effective Date and have not been disclosed above by Seller, then Seller shall pay such assessments in full at the time of Closing.
- (iv) If, after Effective Date, the Association imposes a special assessment for improvements, work or services, which was not pending as of the Effective Date, then Seller shall pay all amounts due before Closing Date and Buyer shall pay all amounts due after Closing Date.
- (v) A special assessment shall be deemed levied for purposes of this paragraph on the date when the assessment has been approved as required for enforcement pursuant to Florida law and the condominium documents listed in Paragraph 5.
- (vi) Association assets and liabilities, including Association reserve accounts, shall not be prorated.

- (d) Litigation: Seller represents that Seller is not aware of pending or anticipated litigation affecting the Property or the common elements, if any, except as follows: _____

4. SPRINKLER SYSTEM RETROFIT:

If, pursuant to Sections 718.112(2)(n), F.S., the Association has voted to forego retrofitting its fire sprinkler system or handrails and guardrails for the condominium units, then prior to Closing Seller shall furnish to Buyer the written notice of Association's vote to forego such retrofitting.

5. NON-DEVELOPER DISCLOSURE:

(CHECK ONE):

(a) THE BUYER HEREBY ACKNOWLEDGES THAT BUYER HAS BEEN PROVIDED A CURRENT COPY OF THE DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION OF THE ASSOCIATION, BYLAWS AND RULES OF THE ASSOCIATION, A COPY OF THE MOST RECENT ANNUAL FINANCIAL STATEMENT AND ANNUAL BUDGET, AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, PRIOR TO EXECUTION OF THIS CONTRACT.

(b) THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER AND RECEIPT BY BUYER OF A CURRENT COPY OF THE DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION, BYLAWS AND RULES OF THE ASSOCIATION, A COPY OF THE MOST RECENT ANNUAL FINANCIAL STATEMENT AND ANNUAL BUDGET, AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT IF SO REQUESTED IN WRITING. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND

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A. CONDOMINIUM RIDER (CONTINUED)

LEGAL HOLIDAYS, AFTER THE BUYER RECEIVES THE DECLARATION, ARTICLES OF INCORPORATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT IF REQUESTED IN WRITING, BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.

6. BUYER'S REQUEST FOR DOCUMENTS:

Buyer is entitled, at Seller's expense, to current copies of the condominium documents specified in Paragraph 5, above. Buyer (CHECK ONE): requests does not request a current copy of the documents specified in Paragraph 5, above. If this Contract does not close, Buyer shall immediately return the documents to Seller or reimburse Seller for the cost of the documents.

7. BUYER'S RECEIPT OF DOCUMENTS:

(COMPLETE AND CHECK ONLY IF CORRECT) Buyer received the documents described in Paragraph 5, above, on _____

8. COMMON ELEMENTS; PARKING:

The Property includes the unit being purchased and an undivided interest in the common elements and appurtenant limited common elements of the condominium, as specified in the Declaration. Seller's right and interest in or to the use of the following parking space(s), garage, and other areas are included in the sale of the Property and shall be assigned to Buyer at Closing, subject to the Declaration:

Parking Space(s) # _____ Garage # _____ Other: _____

9. INSPECTIONS AND REPAIRS:

The rights and obligations arising under Paragraphs 11 and 12 of this Contract to maintain, repair, replace or treat are limited to Seller's individual condominium unit and unless Seller is otherwise responsible do not extend to common elements, limited common elements, or any other part of the condominium property.

10. GOVERNANCE FORM; MILESTONE INSPECTION REPORT; STRUCTURAL INTEGRITY RESERVE STUDY:

(a) GOVERNANCE FORM: Pursuant to Chapter 718, F.S., Buyer is entitled to receive from Seller a copy of the governance form in the format provided by the Division of Florida Condominiums, Timeshares and Mobile Homes of the Department of Business and Professional Regulation, summarizing governance of condominium associations.

(b) MILESTONE INSPECTION REPORT SUMMARY: Pursuant to Section 718.503(2)(a)5, F.S., Buyer who has entered into this Contract is entitled, at Seller's expense, to receive from Seller, before the sale of the Property, a copy of the inspector-prepared summary of the milestone inspection report, as described in Sections 553.899 and 718.301(4)(p), Florida Statutes, if (1) applicable and (2) the summary has been submitted to the Association.

(c) STRUCTURAL INTEGRITY RESERVE STUDY: Pursuant to Section 718.503(2)(a)6, F.S., Buyer who has entered into this Contract is entitled, at Seller's expense, to receive from Seller, before the sale of the Property, a copy of the Association's most recent structural integrity reserve study or a statement that the Association has not completed a structural integrity reserve study.

11. CONDOMINIUMS CREATED WITHIN A PORTION OF A BUILDING OR WITHIN A MULTIPLE PARCEL BUILDING. If applicable, pursuant to Section 718.407, F.S., the following disclosure is provided for condominiums created within a portion of a building or within a multiple parcel building.

DISCLOSURE SUMMARY

THE CONDOMINIUM IN WHICH YOUR UNIT IS LOCATED IS CREATED WITHIN A PORTION OF A BUILDING OR WITHIN A MULTIPLE PARCEL BUILDING. THE COMMON ELEMENTS OF THE CONDOMINIUM CONSIST ONLY OF THE PORTION OF THE BUILDING SUBMITTED TO THE CONDOMINIUM FORM OF OWNERSHIP.

BUYER ACKNOWLEDGES ALL OF THE FOLLOWING:

- (1) THE CONDOMINIUM MAY HAVE MINIMAL COMMON ELEMENTS.
- (2) PORTIONS OF THE BUILDING WHICH ARE NOT INCLUDED IN THE CONDOMINIUM ARE OR WILL BE

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A. CONDOMINIUM RIDER (CONTINUED)

~~GOVERNED BY A SEPARATE RECORDED INSTRUMENT. SUCH INSTRUMENT CONTAINS IMPORTANT PROVISIONS AND RIGHTS AND IS OR WILL BE AVAILABLE IN PUBLIC RECORDS.~~
~~(3) THE PARTY THAT CONTROLS THE MAINTENANCE AND OPERATION OF THE PORTIONS OF THE BUILDING WHICH ARE NOT INCLUDED IN THE CONDOMINIUM DETERMINES THE BUDGET FOR THE OPERATION AND MAINTENANCE OF SUCH PORTIONS. HOWEVER, THE ASSOCIATION AND UNIT OWNERS ARE STILL RESPONSIBLE FOR THEIR SHARE OF SUCH EXPENSES.~~
~~(4) THE ALLOCATION BETWEEN THE UNIT OWNERS AND THE OWNERS OF THE PORTIONS OF THE BUILDING WHICH ARE NOT INCLUDED IN THE CONDOMINIUM OF THE COSTS TO MAINTAIN AND OPERATE THE BUILDING CAN BE FOUND IN THE DECLARATION OF CONDOMINIUM OR OTHER RECORDED INSTRUMENT.~~

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Comprehensive Rider to the Residential Contract For Sale And Purchase

THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR



If initialed by all parties, the clauses below will be incorporated into the Florida Realtors®/Florida Bar Residential Contract For Sale And Purchase between _____ (SELLER) and _____ (BUYER) concerning the Property described as _____

Buyer's Initials _____ Seller's Initials _____

A. CONDOMINIUM RIDER

1. ASSOCIATION APPROVAL:

The Association's approval of Buyer (CHECK ONE): is is not required. If approval is required, this Contract is contingent upon Buyer being approved by the Association no later than _____ (if left blank, then 5) days prior to Closing. Within _____ (if left blank, then 5) days after Effective Date Seller shall initiate the approval process with the Association and Buyer shall apply for such approval. Buyer and Seller shall sign and deliver any documents required by the Association in order to complete the transfer of the Property and each shall use diligent effort to obtain such approval, including making personal appearances if required. If Buyer is not approved within the stated time period, this Contract shall terminate and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

2. RIGHT OF FIRST REFUSAL:

- (a) The Association (CHECK ONE): has does not have a right of first refusal ("Right"). If the Association has a Right, this Contract is contingent upon the Association, within the time permitted for the exercise of such Right, either providing written confirmation to Buyer that the Association is not exercising that Right, or failing to timely exercise such Right pursuant to the terms of the Declaration of Condominium ("Declaration", which reference includes all amendments thereto).
- (b) The members of the Association (CHECK ONE): have do not have a Right. If the members do have a Right, this Contract is contingent upon the members, within the time permitted for the exercise of such Right, either providing written confirmation to Buyer that the members are not exercising that Right, or failing to timely exercise such Right pursuant to the terms of the Declaration.
- (c) Buyer and Seller shall, within _____ (if left blank, then 5) days after Effective Date, sign and deliver any documents required as a condition precedent to the exercise of the Right, and shall use diligent effort to submit and process the matter with the Association and members, including personal appearances, if required.
- (d) If, within the stated time period, the Association, the members of the Association, or both, fail to provide the written confirmation or the Right has not otherwise expired, then this Contract shall terminate and the Deposit shall be refunded to the Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.
- (e) If the Association or a member timely exercises its or their Right, this Contract shall terminate and the Deposit shall be refunded to Buyer (unless this Contract provides otherwise), thereby releasing Buyer and Seller from all further obligations under this Contract, and Seller shall pay to Broker the full commission at Closing in recognition that Broker procured the sale.

3. FEES; ASSESSMENTS; PRORATIONS; LITIGATION:

- (a) Condominium Association assessment(s) and Rents: Seller represents that the current Association assessment(s) installments is/are
 \$ _____ payable (CHECK ONE): monthly quarterly semi-annually annually
 and if more than one Association assessment
 \$ _____ payable (CHECK ONE): monthly quarterly semi-annually annually
 and the current rent on recreation areas, if any,
 is \$ _____ payable (CHECK ONE): monthly quarterly semi-annually annually

A. CONDOMINIUM RIDER (CONTINUED)

All annual assessments levied by the Association and rent on recreational areas, if any, shall be made current by Seller at Closing, and Buyer shall reimburse Seller for prepayments.

- (b) Fees: Seller shall, at Closing, pay all fines imposed against the Unit by the Condominium Association as of Closing Date and any fees the Association charges to provide information about the Property, assessment(s) and fees.

If Property is part of a Homeowners' Association, see Rider B. HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE for further information including additional assessments and fees.

- (c) Special Assessments and Prorations:

- (i) Seller represents that Seller is not aware of any special or other assessment that has been levied by the Association or that has been an item on the agenda, or reported in the minutes, of the Association within twelve (12) months prior to Effective Date, ("pending") except as follows: _____

- (ii) If special assessments levied or pending exist as of the Effective Date are disclosed above by Seller and may be paid in installments (**CHECK ONE**): Buyer Seller (if left blank, then Buyer) shall pay installments due after Closing Date. **If Seller is checked, Seller shall pay the assessment in full prior to or at the time of Closing.**

- (iii) If special assessments levied or pending exist as of the Effective Date and have not been disclosed above by Seller, then Seller shall pay such assessments in full at the time of Closing.

- (iv) If, after Effective Date, the Association imposes a special assessment for improvements, work or services, which was not pending as of the Effective Date, then Seller shall pay all amounts due before Closing Date and Buyer shall pay all amounts due after Closing Date.

- (v) A special assessment shall be deemed levied for purposes of this paragraph on the date when the assessment has been approved as required for enforcement pursuant to Florida law and the condominium documents listed in Paragraph 5.

- (vi) Association assets and liabilities, including Association reserve accounts, shall not be prorated.

- (d) Litigation: Seller represents that Seller is not aware of pending or anticipated litigation affecting the Property or the common elements, if any, except as follows: _____

4. SPRINKLER SYSTEM RETROFIT:

If, pursuant to Sections 718.112(2)(n), F.S., the Association has voted to forego retrofitting its fire sprinkler system or handrails and guardrails for the condominium units, then prior to Closing Seller shall furnish to Buyer the written notice of Association's vote to forego such retrofitting.

5. NON-DEVELOPER DISCLOSURE:

(CHECK ONE):

(c) THE BUYER HEREBY ACKNOWLEDGES THAT BUYER HAS BEEN PROVIDED A CURRENT COPY OF THE DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION OF THE ASSOCIATION, BYLAWS AND RULES OF THE ASSOCIATION, A COPY OF THE MOST RECENT ANNUAL FINANCIAL STATEMENT AND ANNUAL BUDGET AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, PRIOR TO EXECUTION OF THIS CONTRACT.

(d) THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER AND RECEIPT BY BUYER OF A CURRENT COPY OF THE DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION, BYLAWS AND RULES OF THE ASSOCIATION, A COPY OF THE MOST RECENT ANNUAL FINANCIAL STATEMENT AND ANNUAL BUDGET, AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT IF SO REQUESTED IN WRITING. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND

A. CONDOMINIUM RIDER (CONTINUED)

LEGAL HOLIDAYS, AFTER THE BUYER RECEIVES THE DECLARATION, ARTICLES OF INCORPORATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT ANNUAL FINANCIAL STATEMENT AND ANNUAL BUDGET, AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT IF REQUESTED IN WRITING. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.

6. BUYER'S REQUEST FOR DOCUMENTS:

~~Buyer is entitled~~ Seller shall, at Seller's expense, ~~to provide Buyer with~~ current copies of the condominium documents specified in Paragraph 5, above, ~~as well as the governance form described in Section 718.503(2)(b).~~ Buyer (CHECK ONE): requests does not request (if left blank, then "requests") a current copy of the documents specified in Paragraph 5, above ~~along with the governance form.~~ If this Contract does not close, Buyer shall immediately return the documents to Seller or reimburse Seller for the cost of the documents, ~~if any.~~

7. BUYER'S RECEIPT OF DOCUMENTS:

(COMPLETE AND CHECK ONLY IF CORRECT) Buyer received the documents described in Paragraph 5, above, on _____.

8. COMMON ELEMENTS; PARKING:

The Property includes the unit being purchased and an undivided interest in the common elements and appurtenant limited common elements of the condominium, as specified in the Declaration. Seller's right and interest in or to the use of the following parking space(s), garage, and other areas are included in the sale of the Property and shall be assigned to Buyer at Closing, subject to the Declaration:

Parking Space(s) # _____ Garage # _____ Other: _____

9. INSPECTIONS AND REPAIRS:

The rights and obligations arising under Paragraphs 11 and 12 of this Contract to maintain, repair, replace or treat are limited to Seller's individual condominium unit and unless Seller is otherwise responsible do not extend to common elements, limited common elements, or any other part of the condominium property.

10. ~~GOVERNANCE FORM; MILESTONE INSPECTION REPORT; STRUCTURAL INTEGRITY RESERVE STUDY;~~ TURNOVER INSPECTION REPORTS:

~~(c) GOVERNANCE FORM: Pursuant to Chapter 718, F.S., Buyer is entitled to receive from Seller a copy of the governance form in the format provided by the Division of Florida Condominiums, Timeshares and Mobile Homes of the Department of Business and Professional Regulation, summarizing governance of condominium associations.~~

~~(d) MILESTONE INSPECTION REPORT SUMMARY: Pursuant to Section 718.503(2)(a)5, F.S., Buyer who has entered into this Contract is entitled, at Seller's expense, to receive from Seller, before the sale of the Property, a copy of the inspector-prepared summary of the milestone inspection report, as described in Sections 553.899 and 718.301(4)(p), Florida Statutes, if (1) applicable and (2) the summary has been submitted to the Association.~~

(a) MILESTONE INSPECTION: The Association (check only one option):

(i) is required to and has completed a milestone inspection report as described in Section 553.899, F.S. (SEE PARAGRAPH 10(d) BELOW FOR VOIDABILITY RIGHTS); or

(ii) IS NOT REQUIRED TO HAVE COMPLETED A MILESTONE INSPECTION REPORT AS DESCRIBED IN SECTION 553.899, F.S.; or

(iii) IS REQUIRED TO HAVE COMPLETED A MILESTONE INSPECTION REPORT AS DESCRIBED IN SECTION 553.899, F.S. BUT HAS NOT COMPLETED SUCH INSPECTION.

(b) TURNOVER INSPECTION REPORT: The Association (check only one option):

(i) is required to and has completed a turnover inspection report for a turnover inspection performed on or after July 1, 2023, as described in Section 718.301(4)(p) and (q), F.S. (SEE PARAGRAPH 10(d) BELOW FOR VOIDABILITY RIGHTS); or

(ii) IS NOT REQUIRED TO HAVE COMPLETED A TURNOVER INSPECTION REPORT FOR A TURNOVER INSPECTION PERFORMED ON OR AFTER JULY 1, 2023, AS DESCRIBED IN SECTION 718.301(4)(p) AND (q), F.S. (this option should be selected if the Association was turned over prior to July 1, 2023); or

A. CONDOMINIUM RIDER (CONTINUED)

(iii) IS REQUIRED TO HAVE COMPLETED A TURNOVER INSPECTION REPORT FOR A TURNOVER INSPECTION PERFORMED ON OR AFTER JULY 1, 2023, AS DESCRIBED IN SECTION 718.301(4)(p) AND (q), F.S. BUT HAS NOT COMPLETED SUCH REPORT.

(c) **STRUCTURAL INTEGRITY RESERVE STUDY:** Pursuant to Section 718.503(2)(a)6, F.S., Buyer who ~~The Association~~ (check only one option):

(i) is required to and has entered into this Contract is entitled, at Seller's expense, to receive from Seller, before the sale of the Property, a copy of the Association's most recent completed a structural integrity reserve study or a statement that as described in Sections 718.103(28) and 718.112(2)(g), F.S. (SEE PARAGRAPH 10(d) BELOW FOR VOIDABILITY RIGHTS); or

(ii) IS NOT REQUIRED TO HAVE COMPLETED A STRUCTURAL INTEGRITY RESERVE STUDY AS DESCRIBED IN SECTIONS 718.103(28) AND 718.112(2)(g), F.S.; or

(iii) IS REQUIRED TO HAVE COMPLETED A STRUCTURAL INTEGRITY RESERVE STUDY AS DESCRIBED IN SECTIONS 718.103(28) AND 718.112(2)(g), F.S. BUT HAS NOT COMPLETED SUCH STUDY.

(d) **CHECK ONLY ONE BOX BELOW IF** the Association has ~~not completed a completed~~ a milestone inspection (Paragraph 10(a)(i), above, is checked), or a turnover inspection report (Paragraph 10(b)(i), above, is checked), or a structural integrity reserve study (Paragraph 10(c)(i), above, is checked):

(i) THE BUYER HEREBY ACKNOWLEDGES THAT BUYER HAS BEEN PROVIDED A CURRENT COPY OF THE INSPECTOR-PREPARED SUMMARY OF THE MILESTONE INSPECTION REPORT AS DESCRIBED IN SECTION 553.899, FLORIDA STATUTES, IF APPLICABLE; A COPY OF THE TURNOVER INSPECTION REPORT DESCRIBED IN SECTION 718.301(4)(p) AND (q), FLORIDA STATUTES, IF APPLICABLE; AND A COPY OF THE ASSOCIATION'S MOST RECENT STRUCTURAL INTEGRITY RESERVE STUDY DESCRIBED IN SECTIONS 718.103(28) AND 718.112(2)(g), FLORIDA STATUTES, IF APPLICABLE, MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, PRIOR TO EXECUTION OF THIS CONTRACT.

(ii) THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER AND RECEIPT BY BUYER OF A CURRENT COPY OF THE INSPECTOR-PREPARED SUMMARY OF THE MILESTONE INSPECTION REPORT AS DESCRIBED IN SECTION 553.899, FLORIDA STATUTES, IF APPLICABLE; A COPY OF THE TURNOVER INSPECTION REPORT DESCRIBED IN SECTION 718.301(4)(p) AND (q), FLORIDA STATUTES, IF APPLICABLE; AND A COPY OF THE ASSOCIATION'S MOST RECENT STRUCTURAL INTEGRITY RESERVE STUDY DESCRIBED IN SECTIONS 718.103(28) AND 718.112(2)(g), FLORIDA STATUTES, IF APPLICABLE. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE BUYER RECEIVES A CURRENT COPY OF THE INSPECTOR-PREPARED SUMMARY OF THE MILESTONE INSPECTION REPORT AS DESCRIBED IN SECTION 553.899, FLORIDA STATUTES; A COPY OF THE TURNOVER INSPECTION REPORT DESCRIBED IN SECTION 718.301(4)(p) AND (q), FLORIDA STATUTES; OR A COPY OF THE ASSOCIATION'S MOST RECENT STRUCTURAL INTEGRITY RESERVE STUDY DESCRIBED IN SECTIONS 718.103(28) AND 718.112(2)(g), FLORIDA STATUTES, IF REQUESTED IN WRITING. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.

11. **CONDOMINIUMS CREATED WITHIN A PORTION OF A BUILDING OR WITHIN A MULTIPLE PARCEL BUILDING.** If applicable, pursuant to Section 718.407, F.S., the following disclosure is provided for condominiums created within a portion of a building or within a multiple parcel building:

DISCLOSURE SUMMARY

THE CONDOMINIUM IN WHICH YOUR UNIT IS LOCATED IS CREATED WITHIN A PORTION OF A BUILDING OR WITHIN A MULTIPLE PARCEL BUILDING. THE COMMON ELEMENTS OF THE CONDOMINIUM CONSIST ONLY OF THE PORTIONS OF THE BUILDING SUBMITTED TO THE CONDOMINIUM FORM OF OWNERSHIP.

BUYER ACKNOWLEDGES ALL OF THE FOLLOWING:

Page 4 of 5 A. CONDOMINIUM RIDER

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A. CONDOMINIUM RIDER (CONTINUED)

- (1) THE CONDOMINIUM MAY HAVE MINIMAL COMMON ELEMENTS.
- (2) PORTIONS OF THE BUILDING WHICH ARE NOT INCLUDED IN THE CONDOMINIUM ARE OR WILL BE GOVERNED BY A SEPARATE RECORDED INSTRUMENT. SUCH INSTRUMENT CONTAINS IMPORTANT PROVISIONS AND RIGHTS AND IS OR WILL BE AVAILABLE IN PUBLIC RECORDS.
- (3) THE PARTY THAT CONTROLS THE MAINTENANCE AND OPERATION OF THE PORTIONS OF THE BUILDING WHICH ARE NOT INCLUDED IN THE CONDOMINIUM DETERMINES THE BUDGET FOR THE OPERATION AND MAINTENANCE OF SUCH PORTIONS. HOWEVER, THE ASSOCIATION AND UNIT OWNERS ARE STILL RESPONSIBLE FOR THEIR SHARE OF SUCH EXPENSES.
- (4) THE ALLOCATION BETWEEN THE UNIT OWNERS AND THE OWNERS OF THE PORTIONS OF THE BUILDING WHICH ARE NOT INCLUDED IN THE CONDOMINIUM OF THE COSTS TO MAINTAIN AND OPERATE THE BUILDING CAN BE FOUND IN THE DECLARATION OF CONDOMINIUM OR OTHER RECORDED INSTRUMENT.

FOR EDUCATIONAL PURPOSES ONLY

Comprehensive Rider to the Residential Contract For Sale And Purchase

THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR



If initialed by all parties, the clauses below will be incorporated into the Florida Realtors®/Florida Bar Residential Contract For Sale And Purchase between _____ (SELLER) and _____ (BUYER) concerning the Property described as _____

Buyer's Initials _____ Seller's Initials _____

A. CONDOMINIUM RIDER

If Property is part of a master or other homeowners' association, Seller shall complete Rider B. HOMEOWNERS' ASSOCIATION / COMMUNITY DISCLOSURE for further information including additional assessments and fees. If Property is part of more than one condominium association, Seller shall also complete a separate Rider A. CONDOMINIUM RIDER for EACH condominium association.

The condominium association ("Condominium Association") to which this Condominium Rider is applicable, and any management company, and to which assessments, special assessments, and/or rent/land use fees are due and payable, is/are:

Association _____ Management Company _____

<u>Contact Person</u> _____	<u>Contact Person</u> _____
<u>Phone</u> _____	<u>Phone</u> _____
<u>Email</u> _____	<u>Email</u> _____

Additional contact information can be found on the Association's website, which is:
www. _____

1. CONDOMINIUM ASSOCIATION APPROVAL:

The Condominium Association's approval of Buyer (CHECK ONE): is is not required. If approval is required, this Contract is contingent upon Buyer being approved by the Association no later than ____ (if left blank, then 5) days prior to Closing. Within _____ (if left blank, then 5) days after Effective Date Seller shall initiate the approval process with the Condominium Association and provide Buyer with a copy of the current application for approval, and Buyer shall promptly apply for such approval. Buyer and Seller shall sign and deliver any documents required by the Condominium Association in order to complete the transfer of the Property and each shall use diligent effort to obtain such approval, including making personal appearances if required. If Buyer is not approved within the stated time period, this Contract shall terminate is terminated and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

2. RIGHT OF FIRST REFUSAL:

(a) The Condominium Association (CHECK ONE): has does not have a right of first refusal ("a "Right""); ~~If the Association has a Right, this Contract is contingent upon the Association, within the time permitted for the exercise of such Right, either providing written confirmation to Buyer that the Association is not exercising that Right, or failing to timely exercise such Right")~~ pursuant to the terms of the Declaration of Condominium ("Declaration"," which reference includes all amendments thereto).

(b) ~~The members of the Condominium Association (CHECK ONE): have do not have a Right. If have do have a Right, this Contract is contingent upon the~~

A. CONDOMINIUM RIDER (CONTINUED)

~~members, within the time permitted for the exercise of such Right, either providing written confirmation to Buyer that the members are not exercising that Right, or failing to timely exercise such Right pursuant to the terms of the Declaration.~~

~~(c)~~ then Buyer and Seller shall, within _____ (if left blank, then 5) days after Effective Date, sign and deliver
~~(d)~~(c) any documents required as a condition precedent to the exercise of the Right, and shall use diligent effort to submit and promptly process the matter with the Condominium Association and members, including personal appearances, if required

FOR EDUCATIONAL PURPOSES ONLY

~~(e) If, within the stated time period, the Association, the members of the Association, or both, fail to provide the written confirmation or the Right has not otherwise expired, then this Contract shall terminate and the Deposit shall be refunded to the Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.~~

~~If the Association or a member timely exercises its or their Right, this Contract shall terminate~~
~~(f)(d) If the Condominium Association or a member timely exercises a Right, this Contract is terminated and the Deposit shall be refunded to Buyer (unless this Contract provides otherwise), thereby releasing Buyer and Seller from all further obligations under this Contract, and Seller shall pay to Broker the full commission at Closing in recognition that Broker procured the sale.~~

~~(e) If, within the time permitted for exercise of the Right, the Condominium Association, the members of the Condominium Association, or both, either (i) provide written confirmation to Buyer that the Right will not be exercised, or (ii) fail to timely exercise the Right, then this Contract shall proceed to Closing as otherwise provided herein.~~

3. FEES; ASSESSMENTS; PRORATIONS; LITIGATION:

(a) Condominium Association assessment(s) and ~~Rents~~rents: Seller represents that the current Condominium Association regular periodic assessment(s) installments is/are ~~and the current rent on recreation areas, if any,~~
is \$ _____ payable (CHECK ONE): monthly quarterly semi-annually annually
\$ _____ payable (CHECK ONE): monthly quarterly semi-annually annually
and the current rent on recreation areas, if any, is
\$ _____ payable (CHECK ONE): monthly quarterly semi-annually annually

All ~~regular periodic~~annual assessments levied by the Condominium Association and rent on recreational areas, if any, shall be made current by Seller at Closing, ~~and Buyer, Association assets and liabilities, including Association reserve accounts,~~ shall ~~reimburse Seller for prepayments~~not be prorated.

A. CONDOMINIUM RIDER (CONTINUED)

Fees

(b) ~~Fines~~: Seller shall, at Closing, pay all fines imposed against the ~~Unit/Property~~ by the Condominium Association as of Closing Date and ~~any fees the Association charges to provide information about the Property, assessment(s) and fees.~~

(b) ~~If Property is part~~ remedy all open violations of ~~a Homeowners' Association, see Rider B-~~ HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE for further information including additional assessments and fees rules and regulations noticed to Seller in the Condominium Association official records.

(c) Special Assessments and Prorations:

(i) ~~Seller represents that Seller is not aware of any special or other assessment that has been levied by~~ If the Condominium Association has levied any special or additional assessments as of the Effective Date, then (CHECK ONE): Buyer Seller (if left blank, then Seller) shall pay all such assessment(s) in full prior to or at Closing.

(i) ~~If the Association or that has been an item on the agenda, or reported in the minutes, of the Association within twelve (12) months prior to Effective Date, ("pending") except as follows:~~

(ii) ~~If Condominium Association levies any special or additional assessments levied or pending exist as of after the Effective Date are disclosed above by Seller and and prior to the Closing Date, then (CHECK ONE):~~ Buyer Seller (if left blank, then Seller) shall pay all such assessment(s) in full prior to or at Closing.

(iii) ~~Notwithstanding the provisions of (i) or (ii) above, if any special or additional assessments may be paid in installments (CHECK ONE):~~ Buyer Seller (if left blank, then Seller) and the Condominium Association will allow Buyer shall pay to assume installments due after Closing Date scheduled to be paid after Closing, then Seller shall, prior to or at Closing, pay all installments which are payable on or before Closing Date, and (CHECK ONE): Buyer Seller (if left blank, then Buyer) shall pay installments payable after Closing Date. If Seller is checked, Seller shall pay the or if the Condominium Association does not allow a Buyer to assume installments scheduled to be paid after Closing, Seller shall pay the special or additional assessment in full prior to or at the time of Closing.

(iii) ~~If special assessments levied or pending exist as of the Effective Date and have not been disclosed above by Seller, then Seller shall pay such assessments in full at the time of Closing.~~

(iv) ~~If, after Effective Date, the Association imposes a special assessment for improvements, work or services, (v) which was not pending as of the Effective Date, then Seller shall pay all amounts due before Closing Date and Buyer shall pay all amounts due after Closing Date.~~

(v) ~~(iv)~~ special or additional assessment shall be deemed levied for purposes of this paragraph Paragraph 3 on the date when ~~the~~ such assessment has been approved as required for enforcement pursuant to Florida law and the condominium documents listed in Paragraph 5. Seller is aware of the following special or additional assessments that have been levied by the Condominium Association, or discussed at a Board meeting in the 12 months prior to the Effective Date, (include purpose(s) of assessments and amount, if known):

~~Association assets and liabilities, including Association reserve accounts, shall not be prorated.~~

(vi) (d) Litigation: Seller represents that Seller is not aware of pending or anticipated litigation affecting the Property or the common elements, if any, except as follows:

4. SPRINKLER SYSTEM RETROFIT:

If, pursuant to Sections 718.112(2)(n), F.S., the Condominium Association has voted to forego retrofitting its fire sprinkler system or handrails and guardrails for the condominium units, then prior to Closing Seller shall furnish to Buyer the written notice of Condominium Association's vote to forego such retrofitting.

A. CONDOMINIUM RIDER (CONTINUED)

5. ~~NON-DEVELOPER~~NONDEVELOPER DISCLOSURE:
(CHECK ONE):

(d)(a) THE BUYER HEREBY ACKNOWLEDGES THAT BUYER HAS BEEN PROVIDED A CURRENT COPY OF THE

FOR EDUCATIONAL PURPOSES ONLY

A. CONDOMINIUM RIDER (CONTINUED)

(a) DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION OF THE ASSOCIATION, BYLAWS AND RULES OF THE ASSOCIATION, A COPY OF THE MOST RECENT ANNUAL FINANCIAL STATEMENT AND ANNUAL BUDGET AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT MORE THAN 37 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, ~~PRIOR TO~~BEFORE EXECUTION OF THIS CONTRACT.

(b) ~~THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 37 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER AND RECEIPT BY BUYER OF A CURRENT COPY OF THE DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION, BYLAWS AND RULES OF THE ASSOCIATION, A COPY OF THE MOST RECENT ANNUAL FINANCIAL STATEMENT AND ANNUAL BUDGET, AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT IF SO REQUESTED IN WRITING. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 37 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND~~

FOR EDUCATIONAL PURPOSES ONLY

~~A. CONDOMINIUM RIDER (CONTINUED)~~ A. CONDOMINIUM RIDER (CONTINUED)

(b) LEGAL HOLIDAYS, AFTER THE BUYER RECEIVES THE DECLARATION, ARTICLES OF INCORPORATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT ANNUAL YEAR-END FINANCIAL STATEMENT AND ANNUAL BUDGET, AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT IF REQUESTED IN WRITING. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.

6. BUYER'S REQUEST FOR DOCUMENTS:

(a) Seller shall, at Seller's expense, provide Buyer with current copies of the condominium documents specified in Paragraph 5, above, as well as the governance form described in Section 718.503(2)(b). Buyer (CHECK ONE): requests does not request (if left blank, then "requests") a current copy of the documents specified in Paragraph 5 above along with the governance form, F.S. If this Contract does not close, Buyer shall immediately return the documents to Seller or reimburse Seller for the cost of the documents, if any.

7. BUYER'S RECEIPT OF DOCUMENTS:

(b) (COMPLETE AND CHECK ONLY IF CORRECT) Seller shall, at Seller's expense, provide Buyer received with a current copy of the documents described in following (CHECK ALL REQUESTED BY BUYER):

- Minutes of Condominium Association Board meetings for the 12 months preceding the Effective Date
- Agendas for all Condominium Association Board meetings for the 12 months preceding the Effective Date
- Minutes of Condominium Association member meetings for the 12 months preceding the Effective Date
- Agendas for all Condominium Association member meetings for the 12 months preceding the Effective Date
- Insurance Declaration Pages for general liability, hazard/windstorm, and any required or existing flood policies held by the Condominium Association
- If Paragraph 5, above, on 9(a)(iii), 9(b)(iii), or 9(c)(iii) is checked and the referenced document is actually received by the Seller prior to Closing, then such document (i.e. the inspector-prepared summary of a milestone inspection report, a turnover report, or a structural integrity reserve study report)
-
-
-

THIS AGREEMENT MAY BE TERMINATED BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 7 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE DATE BUYER RECEIVES ALL OF THE DOCUMENTS REQUESTED IN THIS SUBPARAGRAPH 6(b). BUYER'S RIGHT TO TERMINATE THIS AGREEMENT UNDER THIS SUBPARAGRAPH 6(b) SHALL TERMINATE AT CLOSING.

8.7. COMMON ELEMENTS; PARKING:

The Property includes the unit being purchased and an undivided interest in the common elements and appurtenant limited common elements of the condominium, as specified in the Declaration. Seller's right and interest in or to the use of the following parking space(s), garage, and other areas are included in the sale of the Property and shall be assigned to Buyer at Closing, subject to the Declaration:

Parking Space(s) # _____ Garage # _____ Other: _____

9.8. INSPECTIONS AND REPAIRS:

The rights and obligations arising under Paragraphs 11 and 12 of this Contract to maintain, repair, replace or treat are limited to Seller's individual condominium unit and unless Seller is otherwise responsible do not extend to common elements, limited common elements, or any other part of the condominium property

~~A. CONDOMINIUM RIDER (CONTINUED)~~ **A. CONDOMINIUM RIDER (CONTINUED)**

40.9. MILESTONE INSPECTION REPORT; STRUCTURAL INTEGRITY RESERVE STUDY; TURNOVER INSPECTION REPORTS:

- (a) **MILESTONE INSPECTION:** The Association (check only one option):
- (i) is required to and has completed a milestone inspection report as described in Section 553.899, F.S. (SEE PARAGRAPH 10(d) BELOW FOR VOIDABILITY RIGHTS); or
 - (ii) **IS NOT REQUIRED TO HAVE COMPLETED A MILESTONE INSPECTION REPORT AS DESCRIBED IN SECTION 553.899, F.S.;** or
 - (iii) **IS REQUIRED TO HAVE COMPLETED A MILESTONE INSPECTION REPORT AS DESCRIBED IN SECTION 553.899, F.S. BUT HAS NOT COMPLETED SUCH INSPECTION.**
- (b) **TURNOVER INSPECTION REPORT:** The Association (check only one option):
- (i) is required to and has completed a turnover inspection report for a turnover inspection performed on or after July 1, 2023, as described in Section 718.301(4)(p) and (q), F.S. (SEE PARAGRAPH 10(d) BELOW FOR VOIDABILITY RIGHTS); or
 - (ii) **IS NOT REQUIRED TO HAVE COMPLETED A TURNOVER INSPECTION REPORT FOR A TURNOVER INSPECTION PERFORMED ON OR AFTER JULY 1, 2023, AS DESCRIBED IN SECTION 718.301(4)(p) AND (q), F.S.** (this option should be selected if the Association was turned over prior to July 1, 2023); or
 - (iii) **IS REQUIRED TO HAVE COMPLETED A TURNOVER INSPECTION REPORT FOR A TURNOVER INSPECTION PERFORMED ON OR AFTER JULY 1, 2023, AS DESCRIBED IN SECTION 718.301(4)(p) AND (q), F.S. BUT HAS NOT COMPLETED SUCH REPORT.**
- (c) **STRUCTURAL INTEGRITY RESERVE STUDY:** The Association (check only one option):
- (i) is required to and has completed a structural integrity reserve study as described in Sections 718.103(2826) and 718.112(2)(g), F.S. (SEE PARAGRAPH 10(d) BELOW FOR VOIDABILITY RIGHTS); or
 - (ii) **IS NOT REQUIRED TO HAVE COMPLETED A STRUCTURAL INTEGRITY RESERVE STUDY AS DESCRIBED IN SECTIONS 718.103(2826) AND 718.112(2)(g), F.S.;** or
 - (iii) **IS REQUIRED TO HAVE COMPLETED A STRUCTURAL INTEGRITY RESERVE STUDY AS DESCRIBED IN SECTIONS 718.103(2826) AND 718.112(2)(g), F.S. BUT HAS NOT COMPLETED SUCH STUDY.**
- (NOTE: The definition of "structural integrity reserve study" is found in Section 718.103(28), F.S.)**
- (d) **CHECK ONLY ONE BOX BELOW IF** the Association has completed a milestone inspection (Paragraph 10(a)(i), above, is checked), or a turnover inspection report (Paragraph 10(b)(i), above, is checked), or a structural integrity reserve study (Paragraph 10(c)(i), above, is checked):

(i) **THE BUYER HEREBY ACKNOWLEDGES THAT BUYER HAS BEEN PROVIDED A CURRENT COPY OF THE INSPECTOR-PREPARED SUMMARY OF THE MILESTONE INSPECTION REPORT AS DESCRIBED IN SECTION 553.899, FLORIDA STATUTES, IF APPLICABLE; A COPY OF THE TURNOVER INSPECTION REPORT DESCRIBED IN SECTION 718.301(4)(p) AND (q), FLORIDA STATUTES, IF APPLICABLE; AND A COPY OF THE ASSOCIATION'S MOST RECENT STRUCTURAL INTEGRITY RESERVE STUDY DESCRIBED IN SECTIONS 718.103(2826) AND 718.112(2)(g), FLORIDA STATUTES, IF APPLICABLE, MORE THAN 37 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, ~~PRIOR TO BEFORE~~ EXECUTION OF THIS CONTRACT.**

(ii) **THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 37 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER AND RECEIPT BY BUYER OF A CURRENT COPY OF THE INSPECTOR-PREPARED SUMMARY OF THE MILESTONE INSPECTION REPORT AS DESCRIBED IN SECTION 553.899, FLORIDA STATUTES, IF APPLICABLE; A COPY OF THE TURNOVER INSPECTION REPORT DESCRIBED IN SECTION 718.301(4)(p) AND (q), FLORIDA STATUTES, IF APPLICABLE; AND A COPY OF THE ASSOCIATION'S MOST RECENT STRUCTURAL INTEGRITY RESERVE STUDY DESCRIBED IN SECTIONS 718.103(2826) AND 718.112(2)(g), FLORIDA STATUTES, IF APPLICABLE. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 37 DAYS, EXCLUDING**

~~A. CONDOMINIUM RIDER (CONTINUED)~~ **A. CONDOMINIUM RIDER (CONTINUED)**

SATURDAYS,

FOR EDUCATIONAL PURPOSES ONLY

~~A. CONDOMINIUM RIDER (CONTINUED)~~ **A. CONDOMINIUM RIDER (CONTINUED)**

SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE BUYER RECEIVES A CURRENT COPY OF THE INSPECTOR- PREPARED SUMMARY OF THE MILESTONE INSPECTION REPORT AS DESCRIBED IN SECTION 553.899, FLORIDA STATUTES; A COPY OF THE TURNOVER INSPECTION REPORT DESCRIBED IN SECTION 718.301(4)(p) AND (q), FLORIDA STATUTES; OR A COPY OF THE ASSOCIATION'S MOST RECENT STRUCTURAL INTEGRITY RESERVE STUDY DESCRIBED IN SECTIONS 718.103(2826) AND 718.112(2)(g), FLORIDA STATUTES, IF REQUESTED IN WRITING. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.

~~44.10. CONDOMINIUMS CREATED WITHIN A PORTION OF A BUILDING OR WITHIN A MULTIPLE PARCEL BUILDING. If applicable, pursuant to Section 718.407, F.S., the following disclosure is provided for condominiums created within a portion of a building or within a multiple parcel building:.~~

DISCLOSURE SUMMARY

THE CONDOMINIUM IN WHICH YOUR UNIT IS LOCATED IS CREATED WITHIN A PORTION OF A BUILDING OR WITHIN A MULTIPLE PARCEL BUILDING. THE COMMON ELEMENTS OF THE CONDOMINIUM CONSIST ONLY OF THE PORTIONS OF THE BUILDING SUBMITTED TO THE CONDOMINIUM FORM OF OWNERSHIP.

BUYER ACKNOWLEDGES ALL OF THE FOLLOWING:

- (1) THE CONDOMINIUM MAY HAVE MINIMAL COMMON ELEMENTS.
- (2) PORTIONS OF THE BUILDING WHICH ARE NOT INCLUDED IN THE CONDOMINIUM ARE OR WILL BE GOVERNED BY A SEPARATE RECORDED INSTRUMENT. SUCH INSTRUMENT CONTAINS IMPORTANT PROVISIONS AND RIGHTS AND IS OR WILL BE AVAILABLE IN PUBLIC RECORDS.
- (3) THE PARTY THAT CONTROLS THE MAINTENANCE AND OPERATION OF THE PORTIONS OF THE BUILDING WHICH ARE NOT INCLUDED IN THE CONDOMINIUM DETERMINES THE BUDGET FOR THE OPERATION AND MAINTENANCE OF SUCH PORTIONS. HOWEVER, THE ASSOCIATION AND UNIT OWNERS ARE STILL RESPONSIBLE FOR THEIR SHARE OF SUCH EXPENSES.
- (4) THE ALLOCATION BETWEEN THE UNIT OWNERS AND THE OWNERS OF THE PORTIONS OF THE BUILDING WHICH ARE NOT INCLUDED IN THE CONDOMINIUM OF THE COSTS TO MAINTAIN AND OPERATE THE BUILDING CAN BE FOUND IN THE DECLARATION OF CONDOMINIUM OR OTHER RECORDED INSTRUMENT.

Comprehensive Rider to the Residential Contract For Sale And Purchase

THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR



If initialed by all parties, the clauses below will be incorporated into the Florida Realtors®/Florida Bar Residential Contract For Sale And Purchase between _____ (SELLER) and _____ (BUYER) concerning the Property described as _____

Buyer's Initials _____ Seller's Initials _____

A. CONDOMINIUM RIDER

If Property is part of a master or other homeowners' association, Seller shall complete Rider B. HOMEOWNERS' ASSOCIATION / COMMUNITY DISCLOSURE for further information including additional assessments and fees. If Property is part of more than one condominium association, Seller shall also complete a separate Rider A. CONDOMINIUM RIDER for EACH condominium association.

The condominium association ("Condominium Association") to which this Condominium Rider is applicable, and any management company, and to which assessments, special assessments, and/or rent/land use fees are due and payable, is/are:

Association _____	Management Company _____
Contact Person _____	Contact Person _____
Phone _____	Phone _____
Email _____	Email _____

Additional contact information can be found on the Association's website, which is: www. _____

1. CONDOMINIUM ASSOCIATION APPROVAL:

The Condominium Association's approval of Buyer (CHECK ONE): is is not required. If approval is required, this Contract is contingent upon Buyer being approved by the Association no later than _____ (if left blank, then 5) days prior to Closing. Within _____ (if left blank, then 5) days after Effective Date Seller shall initiate the approval process with the Condominium Association and provide Buyer with a copy of the current application for approval, and Buyer shall promptly apply for such approval. Buyer and Seller shall sign and deliver any documents required by the Condominium Association in order to complete the transfer of the Property and each shall use diligent effort to obtain such approval, including making personal appearances if required. If Buyer is not approved within the stated time period, this Contract is terminated and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

2. RIGHT OF FIRST REFUSAL:

- (a) The Condominium Association (CHECK ONE): has does not have a right of first refusal ("Right") pursuant to the terms of the Declaration of Condominium ("Declaration", which reference includes all amendments thereto).
- (b) The members of the Association (CHECK ONE): have do not have a Right.
- (c) If either the Condominium Association or the members have a Right, then Buyer and Seller shall, within _____ (if left blank, then 5) days after Effective Date, sign and deliver any documents required as a condition precedent to the exercise of the Right, and shall use diligent effort to submit and promptly process the matter with the Condominium Association and members, including personal appearances, if required.

A. CONDOMINIUM RIDER (CONTINUED)

- (d) If the Condominium Association or a member timely exercises a Right, this Contract is terminated and the Deposit shall be refunded to Buyer (unless this Contract provides otherwise), thereby releasing Buyer and Seller from all further obligations under this Contract.
- (e) If, within the time permitted for exercise of the Right, the Condominium Association, the members of the Condominium Association, or both, either (i) provide written confirmation to Buyer that the Right will not be exercised, or (ii) fail to timely exercise the Right, then this Contract shall proceed to Closing as otherwise provided herein.

3. FEES; ASSESSMENTS; PRORATIONS; LITIGATION:

- (a) Condominium Association assessment(s) and rents: Seller represents that the current Condominium Association regular periodic assessment(s) installments is/are
 \$ _____ payable (CHECK ONE): monthly quarterly semi-annually annually
 and the current rent on recreation areas, if any, is
 \$ _____ payable (CHECK ONE): monthly quarterly semi-annually annually

All regular periodic assessments levied by the Condominium Association and rent on recreational areas, if any, shall be made current by Seller at Closing. Association assets and liabilities, including Association reserve accounts, shall not be prorated.

- (b) Fines: Seller shall, at Closing, pay all fines imposed against the Property by the Condominium Association as of Closing Date and remedy all open violations of rules and regulations noticed to Seller in the Condominium Association official records.
- (c) Special Assessments:
 - (i) If the Condominium Association has levied any special or additional assessments as of the Effective Date, then (CHECK ONE): Buyer Seller (if left blank, then Seller) shall pay all such assessment(s) in full prior to or at Closing.
 - (ii) If the Condominium Association levies any special or additional assessments after the Effective Date and prior to the Closing Date, then (CHECK ONE): Buyer Seller (if left blank, then Seller) shall pay all such assessment(s) in full prior to or at Closing.
 - (iii) Notwithstanding the provisions of (i) or (ii) above, if any special or additional assessments may be paid in installments, and the Condominium Association will allow Buyer to assume installments scheduled to be paid after Closing, then Seller shall, prior to or at Closing, pay all installments which are payable on or before Closing Date, and (CHECK ONE): Buyer Seller (if left blank, then Buyer) shall pay installments payable after Closing Date. **If Seller is checked, or if the Condominium Association does not allow a Buyer to assume installments scheduled to be paid after Closing, Seller shall pay the special or additional assessment in full prior to or at the time of Closing.**
 - (iv) A special or additional assessment shall be deemed levied for purposes of this Paragraph 3 on the date when such assessment has been approved as required for enforcement pursuant to Florida law and the condominium documents listed in Paragraph 5. Seller is aware of the following special or additional assessments that have been levied by the Condominium Association, or discussed at a Board meeting in the 12 months prior to the Effective Date, (include purpose(s) of assessments and amount, if known): _____

- (d) Litigation: Seller represents that Seller is not aware of pending or anticipated litigation affecting the Property or the common elements, if any, except as follows: _____

4. SPRINKLER SYSTEM RETROFIT:

If, pursuant to Sections 718.112(2)(n), F.S., the Condominium Association has voted to forego retrofitting its fire sprinkler system or handrails and guardrails for the condominium units, then prior to Closing Seller shall furnish to Buyer the written notice of Condominium Association's vote to forego such retrofitting.

5. NONDEVELOPER DISCLOSURE:

(CHECK ONE):

- (a) **THE BUYER HEREBY ACKNOWLEDGES THAT BUYER HAS BEEN PROVIDED A CURRENT COPY OF THE**

A. CONDOMINIUM RIDER (CONTINUED)

DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION OF THE ASSOCIATION, BYLAWS AND RULES OF THE ASSOCIATION, A COPY OF THE MOST RECENT ANNUAL FINANCIAL STATEMENT AND ANNUAL BUDGET, AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT MORE THAN 7 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, BEFORE EXECUTION OF THIS CONTRACT.

(b) THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 7 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER AND RECEIPT BY BUYER OF A CURRENT COPY OF THE DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION, BYLAWS AND RULES OF THE ASSOCIATION, A COPY OF THE MOST RECENT ANNUAL FINANCIAL STATEMENT AND ANNUAL BUDGET, AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT IF SO REQUESTED IN WRITING. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 7 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE BUYER RECEIVES THE DECLARATION, ARTICLES OF INCORPORATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL STATEMENT AND ANNUAL BUDGET, AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT IF REQUESTED IN WRITING. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.

6. BUYER'S REQUEST FOR DOCUMENTS:

(a) Seller shall, at Seller's expense, provide Buyer with current copies of the condominium documents specified in Paragraph 5, above, as well as the governance form described in Section 718.503(2)(b), F.S. If this Contract does not close, Buyer shall immediately return the documents to Seller or reimburse Seller for the cost of the documents, if any.

(b) Seller shall, at Seller's expense, provide Buyer with a current copy of the following (CHECK ALL REQUESTED BY BUYER):

- Minutes of Condominium Association Board meetings for the 12 months preceding the Effective Date
Agendas for all Condominium Association Board meetings for the 12 months preceding the Effective Date
Minutes of Condominium Association member meetings for the 12 months preceding the Effective Date
Agendas for all Condominium Association member meetings for the 12 months preceding the Effective Date
Insurance Declaration Pages for general liability, hazard/windstorm, and any required or existing flood policies held by the Condominium Association
If Paragraph 9(a)(iii), 9(b)(iii), or 9(c)(iii) is checked and the referenced document is actually received by the Seller prior to Closing, then such document (i.e. the inspector-prepared summary of a milestone inspection report, a turnover report, or a structural integrity reserve study report)
[]
[]
[]

THIS AGREEMENT MAY BE TERMINATED BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 7 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE DATE BUYER RECEIVES ALL OF THE DOCUMENTS REQUESTED IN THIS SUBPARAGRAPH 6(b). BUYER'S RIGHT TO TERMINATE THIS AGREEMENT UNDER THIS SUBPARAGRAPH 6(b) SHALL TERMINATE AT CLOSING.

7. COMMON ELEMENTS; PARKING:

The Property includes the unit being purchased and an undivided interest in the common elements and appurtenant limited common elements of the condominium, as specified in the Declaration. Seller's right and interest in or to the use of the following parking space(s), garage, and other areas are included in the sale of the Property and shall be assigned to Buyer at Closing, subject to the Declaration:

Parking Space(s) # _____ Garage # _____ Other: _____

8. INSPECTIONS AND REPAIRS:

The rights and obligations arising under Paragraphs 11 and 12 of this Contract to maintain, repair, replace or treat are limited to Seller's individual condominium unit and unless Seller is otherwise responsible do not extend to common elements, limited common elements, or any other part of the condominium property.

A. CONDOMINIUM RIDER (CONTINUED)

9. MILESTONE INSPECTION REPORT; STRUCTURAL INTEGRITY RESERVE STUDY; TURNOVER INSPECTION REPORTS:

- (a) **MILESTONE INSPECTION:** The Association (check only one option):
- (i) is required to and has completed a milestone inspection report as described in Section 553.899, F.S. (SEE PARAGRAPH 9(d) BELOW FOR VOIDABILITY RIGHTS); or
 - (ii) IS NOT REQUIRED TO HAVE COMPLETED A MILESTONE INSPECTION REPORT AS DESCRIBED IN SECTION 553.899, F.S.; or
 - (iii) IS REQUIRED TO HAVE COMPLETED A MILESTONE INSPECTION REPORT AS DESCRIBED IN SECTION 553.899, F.S. BUT HAS NOT COMPLETED SUCH INSPECTION.

- (b) **TURNOVER INSPECTION REPORT:** The Association (check only one option):
- (i) is required to and has completed a turnover inspection report for a turnover inspection performed on or after July 1, 2023, as described in Section 718.301(4)(p) and (q), F.S. (SEE PARAGRAPH 9(d) BELOW FOR VOIDABILITY RIGHTS); or
 - (ii) IS NOT REQUIRED TO HAVE COMPLETED A TURNOVER INSPECTION REPORT FOR A TURNOVER INSPECTION PERFORMED ON OR AFTER JULY 1, 2023, AS DESCRIBED IN SECTION 718.301(4)(p) AND (q), F.S. (this option should be selected if the Association was turned over prior to July 1, 2023); or
 - (iii) IS REQUIRED TO HAVE COMPLETED A TURNOVER INSPECTION REPORT FOR A TURNOVER INSPECTION PERFORMED ON OR AFTER JULY 1, 2023, AS DESCRIBED IN SECTION 718.301(4)(p) AND (q), F.S. BUT HAS NOT COMPLETED SUCH REPORT.

- (c) **STRUCTURAL INTEGRITY RESERVE STUDY:** The Association (check only one option):
- (i) is required to and has completed a structural integrity reserve study as described in Sections 718.103(26) and 718.112(2)(g), F.S. (SEE PARAGRAPH 9(d) BELOW FOR VOIDABILITY RIGHTS); or
 - (ii) IS NOT REQUIRED TO HAVE COMPLETED A STRUCTURAL INTEGRITY RESERVE STUDY AS DESCRIBED IN SECTIONS 718.103(26) AND 718.112(2)(g), F.S.; or
 - (iii) IS REQUIRED TO HAVE COMPLETED A STRUCTURAL INTEGRITY RESERVE STUDY AS DESCRIBED IN SECTIONS 718.103(26) AND 718.112(2)(g), F.S. BUT HAS NOT COMPLETED SUCH STUDY.

(NOTE: The definition of "structural integrity reserve study" is found in Section 718.103(28), F.S.)

- (d) **CHECK ONLY ONE BOX BELOW IF** the Association has completed a milestone inspection (Paragraph 9(a)(i), above, is checked), or a turnover inspection report (Paragraph 9(b)(i), above, is checked), or a structural integrity reserve study (Paragraph 9(c)(i), above, is checked):

(i) THE BUYER HEREBY ACKNOWLEDGES THAT BUYER HAS BEEN PROVIDED A CURRENT COPY OF THE INSPECTOR-PREPARED SUMMARY OF THE MILESTONE INSPECTION REPORT AS DESCRIBED IN SECTION 553.899, FLORIDA STATUTES, IF APPLICABLE; A COPY OF THE TURNOVER INSPECTION REPORT DESCRIBED IN SECTION 718.301(4)(p) AND (q), FLORIDA STATUTES, IF APPLICABLE; AND A COPY OF THE ASSOCIATION'S MOST RECENT STRUCTURAL INTEGRITY RESERVE STUDY DESCRIBED IN SECTIONS 718.103(26) AND 718.112(2)(g), FLORIDA STATUTES, IF APPLICABLE, MORE THAN 7 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, BEFORE EXECUTION OF THIS CONTRACT.

(ii) THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 7 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER AND RECEIPT BY BUYER OF A CURRENT COPY OF THE INSPECTOR-PREPARED SUMMARY OF THE MILESTONE INSPECTION REPORT AS DESCRIBED IN SECTION 553.899, FLORIDA STATUTES, IF APPLICABLE; A COPY OF THE TURNOVER INSPECTION REPORT DESCRIBED IN SECTION 718.301(4)(p) AND (q), FLORIDA STATUTES, IF APPLICABLE; AND A COPY OF THE ASSOCIATION'S MOST RECENT STRUCTURAL INTEGRITY RESERVE STUDY DESCRIBED IN SECTIONS 718.103(26) AND 718.112(2)(g), FLORIDA STATUTES, IF APPLICABLE. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 7 DAYS, EXCLUDING SATURDAYS,

A. CONDOMINIUM RIDER (CONTINUED)

SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE BUYER RECEIVES A CURRENT COPY OF THE INSPECTOR-PREPARED SUMMARY OF THE MILESTONE INSPECTION REPORT AS DESCRIBED IN SECTION 553.899, FLORIDA STATUTES; A COPY OF THE TURNOVER INSPECTION REPORT DESCRIBED IN SECTION 718.301(4)(p) AND (q), FLORIDA STATUTES; OR A COPY OF THE ASSOCIATION'S MOST RECENT STRUCTURAL INTEGRITY RESERVE STUDY DESCRIBED IN SECTIONS 718.103(26) AND 718.112(2)(g), FLORIDA STATUTES, IF REQUESTED IN WRITING. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.

10. CONDOMINIUMS CREATED WITHIN A PORTION OF A BUILDING OR WITHIN A MULTIPLE PARCEL BUILDING.
If applicable, pursuant to Section 718.407, F.S.:

DISCLOSURE SUMMARY

THE CONDOMINIUM IN WHICH YOUR UNIT IS LOCATED IS CREATED WITHIN A PORTION OF A BUILDING OR WITHIN A MULTIPLE PARCEL BUILDING. THE COMMON ELEMENTS OF THE CONDOMINIUM CONSIST ONLY OF THE PORTIONS OF THE BUILDING SUBMITTED TO THE CONDOMINIUM FORM OF OWNERSHIP.

BUYER ACKNOWLEDGES ALL OF THE FOLLOWING:

- (1) THE CONDOMINIUM MAY HAVE MINIMAL COMMON ELEMENTS.
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- (3) THE PARTY THAT CONTROLS THE MAINTENANCE AND OPERATION OF THE PORTIONS OF THE BUILDING WHICH ARE NOT INCLUDED IN THE CONDOMINIUM DETERMINES THE BUDGET FOR THE OPERATION AND MAINTENANCE OF SUCH PORTIONS. HOWEVER, THE ASSOCIATION AND UNIT OWNERS ARE STILL RESPONSIBLE FOR THEIR SHARE OF SUCH EXPENSES.
- (4) THE ALLOCATION BETWEEN THE UNIT OWNERS AND THE OWNERS OF THE PORTIONS OF THE BUILDING WHICH ARE NOT INCLUDED IN THE CONDOMINIUM OF THE COSTS TO MAINTAIN AND OPERATE THE BUILDING CAN BE FOUND IN THE DECLARATION OF CONDOMINIUM OR OTHER RECORDED INSTRUMENT.

Beyond the Grave: Probate's Impact on Florida Title Transfers

1 hour CE (Ethics)

1 hour CLE (General, Wills, Trusts and Estates)

Perry Craver, Esq.

Vice President and Florida Regional Counsel

CE Course Number: 134809

CE Course Offering ID: 1223963

CLE Course Number: 2507312N





Perry Craver, Esq.

Vice President and Florida Regional Counsel
Alliant National Title Insurance Company

Perry Craver is Vice President and Florida Regional Counsel for Alliant National Title Insurance Company. He has been employed by Alliant National since 2021. Mr. Craver first entered the title insurance industry in 1991, and since that time has enjoyed working in numerous roles including title searcher, title examiner, production manager, claims counsel, and underwriting counsel, on both the underwriter and agent sides of the business. A licensed title agent in Florida, Mr. Craver is a member of the Florida Bar, the Florida Land Title Association (FLTA), and the American Land Title Association (ALTA). He serves on the Forms Committee of both FLTA and ALTA. Mr. Craver holds a Bachelor of Science degree from North Carolina State University, and a J.D. from Nova Southeastern University, Shepherd Broad Law Center.



OVERVIEW

Name of Provider: Alliant National Title Insurance Company

Name of Course: Beyond the Grave: Probate's Impact on Florida Title Transfers

Targeted audience: Florida Title Insurance Agents and other Title Insurance Professionals

Course Objectives:

To improve understanding of the probate process in Florida and the various types of issues and challenges that can arise when title to Florida real property is vested in an individual who is now deceased. Special emphasis will be given to recognizing the different types of estate administration available under Florida law as well as understanding the proper way to convey title out of the estate of a deceased individual. The impact of Florida's homestead laws on titles affected by probate will also be discussed. This course will aim to reduce the number of title clouds and title insurance claims that result from improper estate administration and insufficient recordation of title clearance documentation.

Course Relevance:

People in Florida frequently die while owning an interest in real property, and determining the proper way to convey title out of the estate of a deceased individual can often be challenging and confusing for title agents. Without a solid understanding of Florida probate law and its impacts on real property, title insurance claims can occur as the result of failure to record necessary probate documents or failure to properly divest the interests of the heirs or devisees of the deceased.

Study Method: Classroom

Course Level: Intermediate



OUTLINE

I. Introduction and Definitions	7 Minutes
II. What Does Probate Do?	7 Minutes
III. Types of Probate Administrations	7 Minutes
• Formal Administration	
• Summary Administration	
• Ancillary Administration	
IV. The Personal Representative	7 Minutes
V. Homestead Headaches	13 Minutes
VI. Alternatives to Traditional Probate	7 Minutes
VII. A Brief word about Estate Taxes	2 Minutes

Total Instruction Time - **50 minutes**

Total Break Time - **10 minutes**

Total Time - 60 minutes



INTRODUCTION

If a Seller walks in and says, "My mother just died, and I am going to be selling her real estate," that should raise many alarms. Has Mom been probated? Is probate even needed? Did she have a will? Was this property her homestead? Was she survived by a spouse or any other children? These are only a few of the questions that will need to be asked of the person who is claiming to be entitled to sell the property. Depending on the answers received, the death of the mother could turn out to be a complete non-issue that won't slow down the closing one bit, or it could result in substantial delays to the closing, or maybe even the "Seller" not being entitled to sell the property at all.

The issues raised by a deceased titleholder can be very complex, and determining the proper way to convey title out of the estate of a deceased individual can often be challenging and confusing for title agents. These materials will serve to improve understanding of the probate process in Florida and the various types of issues and challenges that can arise when title to Florida real property is vested in an individual who is now deceased. Specifically, the pages below will cover and discuss:

1. What probate is, and when it is and is not needed with respect to the passage of title to Florida real property.
2. Definitions of frequently-used probate terms.
3. The different types of estate administrations available in Florida.
4. Probate concerns when the deceased is not a Florida resident.
5. The impact of Florida's homestead laws on the passage of title to a deceased's primary residence.
6. Common probate documents and how they can help clear title concerns when property is being deeded out of an estate.
7. Estate tax liens.



DEFINITIONS

Probate: All procedures and legal acts necessary to determine the heirs or devisees of a decedent and the proper distribution of a deceased's assets. Probate means "proven".

Testate Estate: An estate where the decedent died with a valid will. A valid will must be in writing and signed by the testator (the person making the will) before two witnesses. The witnesses must sign the will in the presence of the testator and in the presence of each other.

Intestate Estate: An estate or any part of an estate not disposed of in a valid will.

Testate Succession: The disposition of a decedent's property by will.

Intestate Succession: Florida's laws of descent and distribution applicable to decedents who die without a will (or a will exists but is invalid). The Florida statutes governing intestate succession are set forth in Sections 732.102-103 F.S.

Lineal Descendant: A decedent's blood relative such as a child or grandchild.

Heirs: Those persons, including the surviving spouse, who are entitled to the property of the decedent under the statutes of intestate succession. For the most part, this means family members of the decedent. Heirs cannot be non-human.

Devisee: Traditionally, the person to whom real property is given under a will. However, Florida uses the term broadly to refer to the recipient of any gift (real property or personal property) under a will.

Personal Representative: The individual legally appointed to administer the estate of a deceased person. Commonly known as a "PR". Formerly known (and still known in some jurisdictions) as an "Executor" (male) or "Executrix" (female), or "Administrator" (male) or "Administratrix" (female).



WHAT DOES PROBATE DO?

The purpose of a probate administration is to provide a legal process for settling a deceased person's estate in an orderly, supervised way. It ensures that the deceased's assets are properly distributed, debts are paid, and legal rights are protected. Probate can also serve to judicially confirm the validity of a will, the appointment of a personal representative, or the determination of heirs or devisees. Remember, "probate" means "proven".

Generally, title to real property vests immediately in the heirs or devisees as of the date of death. This is true even though it may take the probate court several months to confirm the identity of said heirs or devisees. Once the probate court has determined to whom property of the deceased has passed, such vesting is considered to be retroactive to the date of death.

A deceased's "probate estate" consists of most (but not all) of the assets of the deceased at the time of death. This includes:

- Real Property (but not homestead real property)
- Personal Property
- Debts of the decedent

In order to release Florida assets from the estate, a probate case needs to be opened in a Florida probate court (a special division of the circuit court).

Requirements for probate include:

- Must be opened in the Florida county where venue is proper (see below).
- Heirs or devisees must be identified.
- If a will exists, it must be located and filed in the probate court.
- Court appoints a Personal Representative to oversee the distribution of assets and payment of creditors from the estate. (No PR appointed in summary administration)

Venue for probate cases is proper in the Florida county where:

- i. The decedent as domiciled at their date of death;
- ii. The decedent was possessed of any property, if the decedent had no domicile in this state; or
- iii. A debtor of the decedent resides if the decedent had no domicile in this state and possessed no property in this state (fairly uncommon, at least for title insurance work).



Beyond The Grave: Probate's Impact on Florida Title Transfers

You only have to file one probate per decedent in one Florida county. This is true even if the deceased owned property in multiple Florida counties. You can always obtain certified copies of probate documents from the county where the probate case was actually filed, and then record those in the official records of the county where your subject real property is located.

Who can petition to open a probate in Florida? Pursuant to Sec. 733.202 F.S., "Any interested person may petition for administration." According to Sec. 731.201(23) F.S. "'Interested person' means any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved." This is an extremely broad definition. Usually, probates are opened by an heir or devisee of the deceased, or by someone who expects to be appointed as PR. However, it is also possible for a probate administration to be opened by a creditor of the deceased, or by any other interested person.

TYPES OF PROBATE ADMINISTRATIONS

Formal Administration: This is the most common type of probate administration in Florida. It is governed by Chapter 733 of the Florida Statutes. Formal administration is typically used in cases where the total value of the probate estate (which excludes homestead property) is in excess of \$75,000.00. In a formal administration:

- A Petition for Administration is filed. This will list the persons and/or entities that are believed to be beneficiaries of the estate.
- A PR is appointed by the probate court and confirmed by the filing of Letters of Administration, which are then recorded in the official records.
- In a testate estate, the will is filed along with an Order Admitting Will to Probate. Both of these documents should be recorded in the official records as both are essential to confirming the valid transfer of title under a will.
- A 90-day Notice to Creditors is filed unless the decedent has been dead for two years or more.
- After the creditor period has passed, an Order Determining Homestead may be entered if applicable.
- While the estate is still open, the remaining (non-homestead) real property assets would then be distributed either by PR's Deed, or by a PR's Certificate of Release and Distribution followed by a deed from the heirs or devisees as appropriate. Note: A PR cannot convey real property of the estate unless either: a) the will admitted to probate gives the PR the power of sale; or b) the court has issued an order authorizing the PR to sell that particular piece of real property. This latter option applies to all intestate estates, as well as all testate estates where the will does not give the PR the power of sale. The PR's ability to convey homestead real property is discussed below.



Beyond The Grave: Probate's Impact on Florida Title Transfers

Summary Administration: Governed by Chapter 735 of the Florida Statutes. This is a simpler and more expedited form of estate administration that is available when the value of the estate (not including homestead property) is \$75,000.00 or less OR the deceased has been dead for more than two years. In a summary administration:

- A Petition for Summary Administration is filed. This will list the persons and/or entities that are believed to be beneficiaries of the estate.
- No PR is appointed.
- Can be utilized in both testate and intestate estates.
- At the end of the proceeding an Order of Summary Administration and/or an Order Determining Homestead is/are filed to confirm the beneficiaries to whom the assets of the estate have passed.

Ancillary Administration: Governed by Sec. 734.102 F.S. If a non-resident dies leaving assets in Florida, then ancillary administration may be opened in this state to determine disposition of the Florida real property. It is important to note that out-of-state probate proceedings cannot be relied upon to distribute Florida real property. This is because the probate courts of other jurisdictions have no authority over Florida real property, and PRs appointed by out-of-state probate courts have no authority to transfer Florida real property either. In an ancillary administration:

- The decedent died as a resident of another state or country.
- A Petition for Ancillary Administration (or Ancillary Summary Administration) is filed. This will list the persons and/or entities that are believed to be beneficiaries of the estate.
- If the decedent has already been probated in another jurisdiction, authenticated or exemplified copies of documentation from the domiciliary probate case would typically be filed in the Florida ancillary probate.
- The administration can be either formal or summary.
 - In a formal ancillary administration, an Ancillary PR will be appointed by the Florida probate court. If qualified under Florida law, a PR appointed by the domiciliary probate court may also be appointed to serve as Ancillary PR in Florida pursuant to the issuance of Ancillary Letters of Administration.
 - A summary ancillary administration is governed by Sec. 734.1025 F.S. and only applies to testate estates where the value of all Florida property is no more than \$50,000.00 and where the deceased has been dead for less than two years. Under this statutory framework, as long as no claims against the estate are timely filed, no PR would be appointed, and the and the foreign will would be admitted to probate.



Beyond The Grave: Probate's Impact on Florida Title Transfers

- The administration is necessary to distribute or sell Florida real property (but see discussion of Petition to Admit Foreign Will to Record below). Out-of-state probates and PRs cannot be relied upon.

THE PERSONAL REPRESENTATIVE

The Personal Representative (or "PR") is the fiduciary appointed by the court to administer an estate, be it testate or intestate.

If a will exists, a PR (along with one or more successor PRs) will typically be named therein. However, the PR must be qualified to act. Persons not qualified to act as PR are described in Sec. 733.303 F.S. Specifically, a person is not qualified to act as PR if the person:

- a. Has been convicted of a felony.
- b. Has been convicted in any state or foreign jurisdiction of abuse, neglect, or exploitation of an elderly person or a disabled adult, as those terms are defined in s. 825.101.
- c. Is mentally or physically unable to perform the duties.
- d. Is under the age of 18 years.

The duties and powers of the PR are set forth with specificity in Section 733.601 et seq. Generally speaking, however, the duties and powers of the PR are to:

- Settle and distribute the estate;
- Take possession or control of the decedent's property (but not homestead property);
- Manage assets of the estate during administration to preserve them; and
- Arrange for the liquidity of the estate to pay the claims and expenses of administration and make distributions.

But in a testate estate, the will can spell out precisely what the PR can and cannot do. One common power that title insurance professionals will often look for is the power to sell and convey real property, commonly known as the "power of sale". If this power is provided for in the will, the PR may convey real property (excluding homestead). If the power of sale is not provided for in the will (or if the estate is intestate), the PR may not convey real property except pursuant to court order.



Beyond The Grave: Probate's Impact on Florida Title Transfers

If an Order Authorizing Sale of Real Property is obtained, it should be recorded. These orders may be general in nature, but they will usually be limited to authorizing a PR to sell pursuant to a specific purchase and sale agreement. If a contract cancels subsequent to the issuance of an Order Authorizing Sale, it may be necessary to obtain and record a new Order prior to closing a sale under a new contract. Be sure to check with Underwriting for guidance if you encounter one of these situations.

HOMESTEAD HEADACHES

What Do We Mean When We Talk About "Homestead" Property? To sum up this question as succinctly as possible, a person's homestead is their primary residence in Florida. There are various requirements on size (160 acres if located outside of a municipality, or ½ acre if located within a municipality), length of occupancy, and the types of ownership that qualify; but for our purposes, when we talk about homestead, we are talking about someone's primary residence. And in the probate context, we are talking about the deceased's primary residence on their date of death.

The Three Main Categories of Florida Homestead Law: When addressing how Florida law treats homestead property, the discussion can be compartmentalized into three distinct categories:

- 1. Ad Valorem Property Tax Break:** As most Florida homeowners know, a property tax exemption is available for homestead property. When claimed, the homestead exemption can reduce a property's assessed value by up to \$50,000.00. This can result in a substantial savings on one's annual property tax bill. While not to be completely discounted, this particular application of Florida homestead law is not the one that we are going to be most concerned about here. If you notice that a deceased was claiming homestead exemption on his or her most recent tax bill prior to death, that is usually a pretty good indication that you should consider the subject property to be homestead and apply the proper homestead rules when performing your probate analysis. However, if you ever notice that a property does not have a homestead exemption showing on the tax bill, this does not necessarily mean that the property is not (or was not) the primary residence and constitutional homestead of the owner. Sometimes, for whatever reason, a property owner may simply fail to claim the exemption.
- 2. Protection Against Creditors' Claims:** Article X, Section 4(a) of the Florida Constitution provides that homestead property "shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon, obligations contracted for the purchase, improvement or repair thereof, or obligations contracted for house, field or other labor performed on the realty". It is because of this protection that an Order Determining Homestead will usually include a statement that the constitutional protection from the



Beyond The Grave: Probate's Impact on Florida Title Transfers

claims of decedent's creditors inures to the heirs named therein. While the protection against creditors' claims is an important concept to understand in the world of title insurance, and it may, under certain circumstances, allow us to disregard a judgment lien that would otherwise attach to non-homestead property, this is once again not the primary facet of homestead law that we are concerned about in these materials.

3. Restraint on Alienation and Devise: This is the big one. Article X, Section 4(c) of the Florida Constitution provides in part that "[t]he homestead shall not be subject to devise if the owner is survived by spouse or minor child, except the homestead may be devised to the owner's spouse if there be no minor child." So if the deceased was not survived by a spouse or minor child, then the property is said to be "freely devisable", and the deceased could have made whatever arrangements they wanted for the disposition of their homestead property after their death. Bear in mind however that your title insurance underwriter may still require recording of an affidavit to confirm that the deceased was not survived by a spouse or minor child. If the deceased was survived by a spouse or minor child, that is when the situation gets more interesting.

When the Deceased was Survived by a Spouse or Minor Child: As Article X, Section 4(c) states, only one type of devise of homestead property can be made when the deceased is survived by a spouse or minor child, and that is a devise to the owner's spouse if there is no minor child. Any other type of devise attempted to be made in this situation is considered to be invalid.

It is also important to realize that a "devise" under Florida law is not limited to dispositions by will. A conveyance to a revocable trust, or a conveyance into a life estate is also considered a devise, and the constraints imposed by Article X, Section 4(c) still apply. One cannot circumvent the Florida Constitution by dumping their property into a life estate or revocable trust! Attempts to do this are sometimes referred to as creating an "Aronson" problem, after the case of *Aronson v. Aronson*, 81 So.3d 515 (Fla. 3d DCA 2012).

Florida Statute 732.401: This statute is applied when homestead property is "not devised as authorized by law and the constitution" and the decedent is "survived by a spouse and one or more descendants". This means that the statute could potentially kick in in two situations:

1. In intestate estates; and
2. When an attempted devise was made in contravention of the restraint on devise set forth in the Florida Constitution. This can occur through a will, or through a conveyance into a life estate or revocable trust.

When you are faced with one of these situations, and you are dealing with homestead property and a deceased owner who was survived by a spouse and one or more descendants, what happens?

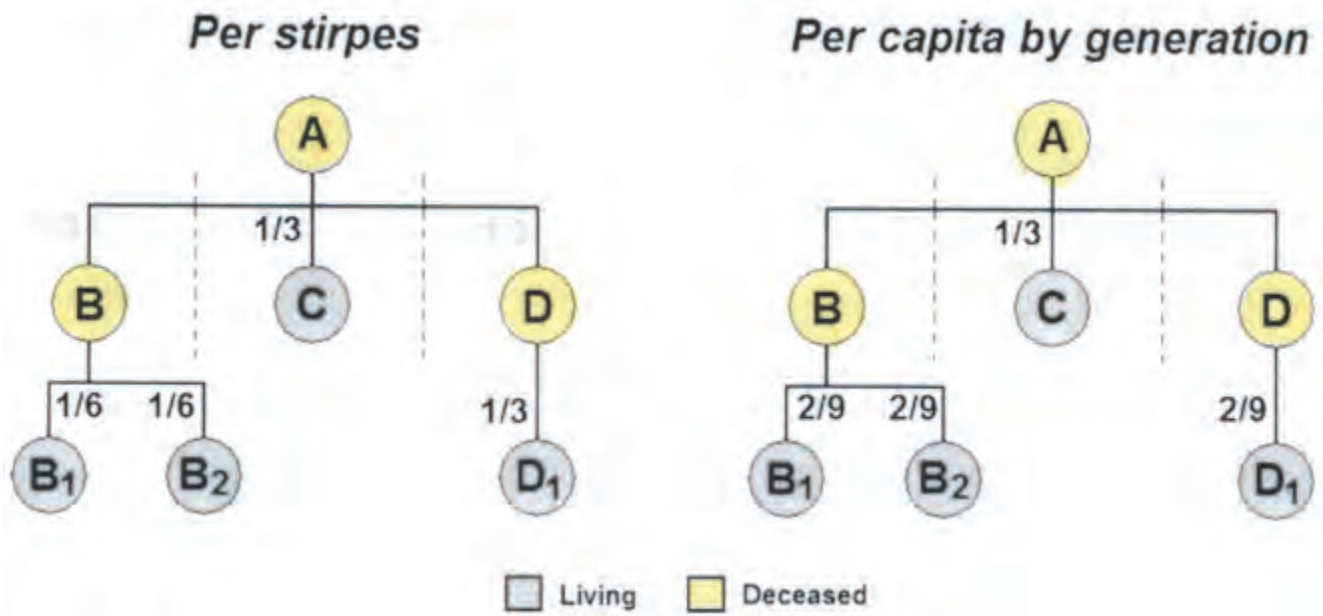


Beyond The Grave: Probate's Impact on Florida Title Transfers

732.401(1) states that "the surviving spouse shall take a life estate in the homestead, with a vested remainder to the descendants in being at the time of the decedent's death per stirpes."

732.401(2) provides an alternative disposition that the surviving spouse can elect to take in lieu of subsection (1). Specifically, subsection (2) provides that the surviving spouse "may elect to take an undivided one-half interest in the homestead as a tenant in common, with the remaining undivided one-half interest vesting in the decedent's descendants in being at the time of the decedent's death, per stirpes." This election must be made within six months of the decedent's death.

What is meant by "Per Stirpes" anyway? Florida Statute 732.104 states that "[d]escent shall be per stirpes, whether to descendants or to collateral heirs." This means that, unless a will or trust states otherwise, Florida law defaults to per stirpes distribution when determining how a decedent's estate is divided among heirs. Under per stirpes, if a beneficiary (usually a child of the decedent) predeceases the decedent, that beneficiary's share passes to his or her descendants rather than being divided among the remaining living heirs at the same level. The below diagram may help you to visualize the distinction between per stirpes distribution and the alternative "per capita by generation" distribution.



Beyond The Grave: Probate's Impact on Florida Title Transfers

The PR Can Only Convey Homestead Property in Limited Situations: Homestead property is not considered to be a probate asset in Florida. This means that title to homestead passes outside of the probate estate. As a result, the PR generally has no authority over homestead property and is therefore not able to convey it, even with a court order. But there are two notable exceptions, both of which can only arise in a testate situation when the deceased is not survived by a spouse or minor child:

1. The will specifically directs the PR to sell or convey the homestead property. Note that general authority to convey real property is not sufficient to allow the PR to convey homestead.
2. The decedent validly devised the homestead to a non-heir.

In both of the above circumstances, the decedent's homestead loses its homestead status and becomes an asset of the probate estate, thus allowing the PR the power to convey.

The Order Determining Homestead Status of Real Property: Commonly known as an "ODH", this order is not always necessary, but it can be very helpful in confirming not only that a particular piece of real property constituted the homestead of the deceased, but also to whom title to said property passed upon the death of the decedent. Your underwriter may require that one be obtained and recorded in order to ensure the marketability of the title.

ALTERNATIVES TO TRADITIONAL PROBATE

No Probate Needed When Title is Vested in Certain Manners: If title was held as a joint tenancy with right of survivorship, tenancy by the entireties, or a valid life estate, probate should not be needed at all. Title will pass by operation of law to the surviving spouse, surviving joint tenant(s), or the remaindermen, as the case may be. Probate may also not be required if title was being held in the deceased's revocable trust, a common estate planning tool. It is also important to note that the Florida constitutional restrictions on the devise of homestead property do not apply to titles held as a tenancy by the entireties or a joint tenancy with right of survivorship, but the restrictions do apply to life estates and trusts.



Beyond The Grave: Probate's Impact on Florida Title Transfers

Petition to Admit Foreign Will to Record: As an alternative to ancillary administration, Sec. 734.104 F.S. outlines a procedure through which a will that was admitted to probate in another jurisdiction can be admitted in Florida and thereby deemed effective to pass title to Florida real property. The requirements are:

1. The decedent must have had a will that was admitted to probate in another jurisdiction;
2. The will must be executed as required by Florida law; and
3. The decedent must have been dead for at least two years. (Note: If the decedent has been dead for less than two years, a summary ancillary administration may be available under Sec. 734.1025 (see discussion above).)

Once admitted to record through this process, the foreign will shall be as valid and effectual to pass title to Florida real property as if the will had been admitted to probate in this state.

F.S. 733.105 – Determination of Beneficiaries: This statute provides a procedure through which a court can be asked to determine the beneficiaries of an estate or their shares. It can be used in testate or intestate estates when doubt exists about: a) who is entitled to receive any part of the property; or (b) the shares and amounts that any person is entitled to receive. The procedure can be followed when a probate case has already been opened, but it can also be used as the basis for bringing a separate civil action to determine beneficiaries in cases where no probate action has been commenced (thus making it an alternative to probate). The procedure can be especially helpful in situations where there is doubt surrounding whether all heirs (or correct heirs) have been named and served in a probate action, or when the decedent died many years ago and no probate has been filed. Please be sure to consult with Alliant National's Florida underwriting team before attempting to utilize this statutory framework.

A BRIEF WORD ABOUT ESTATE TAXES

The State of Florida abolished estate taxes in 2005. Federal estate taxes still exist, but for U.S. citizens, they only apply to very high-net-worth individuals as determined at their date of death. For example, for U.S. citizens dying in 2024, the exemption threshold for federal estate tax liability is \$13,610,000.00. Very few people die with estates this large.

However, for foreign citizens, the threshold is only \$60,000.00. This is a very low number, and most Florida properties are valued in excess of this amount. The bottom line here is that we need to be much more careful about potential federal estate tax liability when we are dealing with foreign decedents.

Federal estate tax liens are considered "silent liens" since nothing needs to be recorded in order for them to attach.



Beyond The Grave: Probate's Impact on Florida Title Transfers

The good news is that, pursuant to 26 U.S.C. § 6324(a)(2), no federal estate tax will apply to properties being conveyed out of the surviving tenant of a survivorship estate (TBE or JTWR0S) as long as the property is being conveyed to a bona-fide purchaser for value (BFP).

More good news is that if it exists at all, the lien of federal estate taxes is only good for ten years after the death of the decedent.

Other situations (including conveyances from a PR and conveyances from heirs or devisees when no survivorship property is involved) can be murkier. A good rule to follow is that, unless you are dealing with survivorship property, or a deceased US citizen's estate that you know does not exceed the \$13MM+ threshold, contact your underwriting counsel for direction on how to best ensure that the lien of federal estate taxes has been cleared.

If no federal estate tax is due, it never hurts to record an affidavit or other evidence confirming that a federal estate tax return is not required to be filed. A Florida Form DR-312 is sufficient for this purpose.

If federal estate tax liability is incurred, proof from the IRS of payment of the tax, or release of the estate tax lien from a specific property, will be required.

NOTE: Estate tax liens are a matter that is covered by the Fifth Revised Florida Mutual Indemnification Agreement.



Deeds of Deception: Impersonation Fraud in Real Estate Transactions

1 hour CE (Ethics)

1 hour CLE (General, Real Estate)

Jodi Hansen, Esq.

Underwriting Counsel - Florida

CE Course Number: 134643

CE Course Offering ID: 1223964

CLE Course Number: 2507840N





Jodi Hansen, Esq.

Underwriting Counsel - Florida
Alliant National Title Insurance Company

Jodi Hansen is Florida Underwriting Counsel for Alliant National Title Insurance Company, a position she began in May 2025. Jodi first started in the title insurance industry in December 2012, and since that time has worked in numerous roles including claims counsel, national commercial counsel, underwriting counsel, and technology underwriter. Jodi received her law degree from the University of Tennessee. A Memphis native, Jodi is a member of the Tennessee Bar, but she currently resides in Florida.



OVERVIEW

Name of Provider: Alliant National Title Insurance Company

Name of Course: Deeds of Deception: Impersonation Fraud in Real Estate Transactions

Targeted audience: Florida Title Insurance Agents and other Title Insurance Professionals

Course Objectives:

This course will explain impersonation fraud, how it happens, and various types of schemes, and will highlight some specific impersonation fraud claims that have occurred. It'll discuss the types of properties that are most at risk for impersonation fraud and some red flags to watch out for, as well as steps to prevent this fraud, including requirements for commitments. The course will cover notarization and how to identify fake identification. It'll summarize action taken by the Florida legislature to address this problem. Finally, this course will discuss what to do if impersonation fraud is suspected and how customers can protect themselves.

Course Relevance:

Claims related to impersonation fraud have caused significant losses. This course aims to equip title insurance professionals with the information and tools necessary to spot and prevent impersonation fraud in their closings, with the goal of reducing costly litigation and claim losses.

Study Method: Classroom



Deeds of Deception: Impersonation Fraud in Real Estate Transactions

OUTLINE

I. What is impersonation fraud?	4 Minutes
II. How does this fraud happen?	6 Minutes
• Seller Impersonation Schemes	
• Borrower Impersonation Schemes	
• Consequences of a Forged Deed or Mortgage	
• Impersonation Fraud and Title Insurance	
III. Claim Trends	8 Minutes
• Real Seller Impersonation Cases	
IV. Properties at Risk & Red Flags	8 Minutes
V. Steps to Prevent Impersonation Fraud	4 Minutes
VI. Alliant Requirements	4 minutes
• Search Product Requirements	
• Remote Online Notarization Requirements	
VII. Fake Identification	4 minutes
• Out-of-State Identification	
• Florida Identification	
VIII. Florida Legislative Efforts	3 minutes
• Lee County Pilot Program	
• Recording Notification Service	
• Quieting Title	
IX. What to Do if You Suspect Impersonation Fraud	4 minutes
• Crime Watch Program	
X. How can your customers protect themselves from impersonation fraud?	5 minutes
• What about title monitoring services?	

Total Instruction Time - **50 minutes**

Total Break Time - **10 minutes**

Total Time - 60 minutes



DEEDS OF DECEPTION: IMPERSONATION FRAUD IN REAL ESTATE TRANSACTIONS

1. What is impersonation fraud?

Impersonation fraud takes many forms and has different names, including seller or borrower impersonation, deed theft, home title theft, or deed or mortgage fraud. Impersonation fraud is when someone impersonates an owner of real property and executes closing documents using fake identification credentials. The fraudster forges the owner's name on the deed or mortgage and steals the money from the sale or loan.

The FBI first drew attention to this scheme in 2008, and this type of fraud has been on the rise in the last few years. A study by [ndp | analytics](#) revealed that 28% of title companies in 2023 had at least one impersonation attempt. In 2024, the FBI received 9,359 complaints relating to real estate, with total losses of \$173,586,820. However, this statistic includes all types of real estate fraud, not just impersonation fraud.

2. How does this fraud happen?

With current technology, especially advances in AI, scammers have more tools than ever to carry out these schemes. They can easily access all the information they need online. Property owner info can be found on county websites, personal details can be mined from social media, and state websites can be searched for notary info.

Seller Impersonation Schemes

In a seller impersonation scheme, the fraudster locates a property to "sell" and finds the owner by looking through online property records. They list the property for sale and may even enlist the help of a real estate agent. The sale price is usually below market value to attract interest. Once the contract is signed, the criminal finds a title company to handle the transaction. The scammer is often "unavailable" for closing. They may provide their own deed with a fake acknowledgment using real notary information found online. Alternatively, the fraudster may provide a fake ID when signing.

In a variation of this scheme, the criminal may instead first execute a deed into their own name or another identity by forging the owner's name. This is usually done by quitclaim deed to avoid the payment of transfer taxes. Now that the property is in the scammer's name, they can sell to an unsuspecting buyer or use the property as collateral for a mortgage loan.



Deeds of Deception: Impersonation Fraud in Real Estate Transactions

Borrower Impersonation Schemes

In a borrower impersonation scheme, the criminal impersonates the owner to obtain a mortgage loan rather than sell the property. If the owner is the victim of identity theft, scammers may have access to their sensitive information, like birth date and social security number. With this info, the fraudster scams a lender into providing a loan on the property and forges the owner's signature on the note and mortgage.

Consequences of a Forged Deed or Mortgage

Forged documents are void so the buyer loses the property. If there's a forged mortgage, the lender loses their collateral. This results in a claim on the owner's or lender's title policy and a significant loss from the insurer, usually in the amount of the policy limits.

While the impersonated grantor should keep the property, they may have to endure costly litigation to restore title to their name. If the forgery isn't discovered until they're ready to sell or refinance, their transaction will be delayed until the title issue is resolved.

- **Impersonation Fraud and Title Insurance**

An insured who purchases property from a fraudster is covered by the 2021 ALTA Owner's Policy. Covered Risk 2(a)(i) insures against any defect in title caused by forgery, fraud, or impersonation. Similarly, a lender who loans money to a criminal who forges the owner's name on a mortgage is covered by the 2021 ALTA Loan Policy. Covered Risk 9(a) insures against the invalidity or unenforceability of the lien of the insured mortgage caused by forgery, fraud, or impersonation.

However, an owner who is impersonated by a fraudster is not covered by the 2021 ALTA Owner's Policy. Forgery, fraud, or impersonation occurring after the date of the policy is excluded from coverage under Exclusion 3(d). There is another policy form that does insure against post-policy fraud and forgery, which is the 2021 ALTA Homeowner's Policy. Covered Risk 5 in that form specifically provides coverage for certain matters that occur after the date of policy, including claims resulting from forgery or impersonation. While this form is available in many states, it is not available in Florida, so Florida owners do not have access to this coverage.

There are two endorsements pending with the American Land Title Association (ALTA) that will cover forgery of a deed or mortgage when the insured was impersonated as the grantor after the date of policy. One version of the endorsement is for use with newly issued owner policies and the other can be added to existing policies. It is unknown at this time whether these endorsements will be approved for use in Florida.



Deeds of Deception: Impersonation Fraud in Real Estate Transactions

3. Claim Trends

As an industry, the American Land Title Association (ALTA) has reported that total claim losses have steadily increased over the past five years. Included in these claim numbers are fraud files, which include impersonation. A study of claims on policies issued from 2013 to 2022 found that payments on fraud and forgery claims make up 21% of the total amount spent on claims. The average cost for a fraud or forgery claim was around \$143,000. The average payment for other types of claims was only around \$26,000.

Real Seller Impersonation Cases from Alliant National's Claims Department

Who is the real Rosalie McCurdy?

Rosalie McCurdy acquired title to vacant Florida property in November 2001. The agent received an order for a vacant land cash deal where the imposter would sell to a wholesale company and then the wholesale company would sell the property to a developer.

The imposter stated her name was now Rosalie Lawrence because she divorced and returned to her maiden name. No document of the divorce or legal name change was provided. She lived in Michigan and provided a copy of her driver's license. The conveyance deed showed her as Rosalie McCurdy, now known as Rosalie Lawrence. Both transactions closed.

A few months later, the developer was clearing the property to begin construction when they were notified of a dispute. The "real" Rosalie McCurdy lives in Florida and filed a complaint with the local police department, who contacted the developer as part of their investigation.

The developer filed a claim under their title policy. Since the transaction was fraudulent and the deed from the imposter was void, this was a complete failure of title and policy limits were paid to the insured developer. The imposter has been arrested in Michigan.

Seller's Own Notary

In 2016, Jose Orlando Morales was conveyed vacant residential land. In 2023, an imposter sought to sell the land and asked to use his own notary. The agent confirmed through the online notary system that the name given was a valid, active notary. The agent mailed the documents to the seller to be executed. The imposter executed and returned the documents, including a deed to the insured buyer. The deed showed Penny Davis, the notary public, notarized the documents in a different county than the address for the seller and the property.

Subsequently, Jose blocked the buyer's access to the land, asserting that he never sold the property. Jose



Deeds of Deception: Impersonation Fraud in Real Estate Transactions

hired an attorney, filed a quiet title action, and recorded a Lis Pendens against the property. The insured filed a claim on their title policy.

The notary is a valid notary; however, she stated she did not notarize the deed. She also stated that her notary information and seal have been used in 14 fraudulent transactions that she was aware of. She filed complaints with the local police department, the FBI, and the Secret Service regarding the situation.

The deed from the imposter was void, resulting in a complete failure of title and policy limits were paid to the insured. This claim is an important reminder that you, as the title agent, must maintain control over the execution and acknowledgment of the closing documents.

Mail-Away Closing with Foreign Seller

In 1984, Luis Enrique Ocampo purchased vacant land. The deed showed a Mexico address for Luis. In 2023, the agent received a rush order for a sale of the property, noting that the seller was in Mexico. All communication with the seller was conducted via email.

The imposter emailed the agent stating "I would like my sale proceeds transferred to my bank account in Asia because I am factory owner here in Mexico and I will be using the proceeds to purchase factory machinery to be shipped to Mexico. I am trying to avoid high taxes from the government of Mexico."

The closing documents arrived at the agent's office and showed they were notarized by Dorothy Ngutter at the US Embassy in Mexico. A passport from the imposter was included. No attempt was made to confirm if Dorothy Ngutter was a real notary public or if she notarized the documents. Funds were disbursed as requested by the imposter and the deed to the insured was recorded.

Two weeks after the sale, the agent was contacted by Luis' widow, who stated that the "real" Luis died in 2011 and provided a copy of his death certificate from Mexico. The insured filed a claim under their title policy. The deed from the imposter was void, resulting in a complete failure of title and policy limits were paid to the insured. This claim is an important reminder to contact the US Embassy to verify notaries. Contact information for US embassies can be found at <https://www.usembassy.gov/>.

Company Sale of Property

The subject property was owned by Hailan Property Inc. and was on the market for sale when the agent received an order with a purchase contract. As part of the sale, the agent also received a Corporate Resolution & Consent by Hailan Property Inc., authorizing Mitchell Smith to sign all documents related to the sale. The Resolution was "docusigned" by the CEO of the company. The name matched what was on record with the Secretary of State.



Deeds of Deception: Impersonation Fraud in Real Estate Transactions

The transaction closed and the deed was sent to be recorded. The recorder's office contacted the agent and stated that another deed was recently recorded involving the same seller and the same property but with a different title company. The insured filed a claim under their title policy.

The agent confirmed that they had not spoken with anyone at Hailan Property Inc. and relied on the Resolution giving Mitchell Smith authority to execute documents. The other title company stated that the CEO of Hailan Property Inc. appeared at their closing. They had worked with her on other transactions and were familiar with her from those past dealings. A copy of the CEO's driver's license was provided from that closing. The CEO confirmed that she had not executed a Resolution giving anyone authority to execute documents on the company's behalf.

It was then discovered that the fake authorized signer was a college student with no criminal record who responded to a Craigslist ad offering to pay him \$18,000 to attend the closing and sign the documents. All communication was by phone or text, and he confirmed he spoke with a man, not a woman.

The deed from the imposter was void, resulting in a complete failure of title and policy limits were paid to the insured. However, the insured spent a significant amount of funds improving the property beyond the policy limits. Even though the title policy terminated upon payment, the insured sued the agent seeking to recover the remaining amount of its loss beyond the policy limit paid.

This claim is a reminder to be on the lookout for fake company documents and corporate resolutions. Do not hesitate to contact the company at a number or email you acquire through your own independent due diligence to verify the validity of the documentation and authorized signatories. Keep the details of this information (who you contacted and how, plus any confirmation emails) in your file just in case there is a later challenge regarding authority. This also applies to Powers of Attorney and Trust documents. Use your own independent due diligence to verify the validity of instruments before accepting them.

4. Properties at Risk & Red Flags

The properties most at risk for impersonation fraud are vacant land and unoccupied properties, especially if the owner is not local. These properties are easy targets because the owners often aren't keeping an eye on them.

Unencumbered or "free and clear" properties are also at risk. These are attractive because there are no mortgages or liens to payoff at closing that would reduce the criminal's proceeds.

However, even occupied properties are subject to impersonation fraud because scammers can sell them online to non-local investors at a sale price below market value. The investors don't visit the property in



Deeds of Deception: Impersonation Fraud in Real Estate Transactions

person, instead, they rely on photos online, which may not even be of the subject property.

Additional red flags include a below market sale price, mismatched handwriting, a prior conveyance by quitclaim deed, different addresses, use of a Power of Attorney, a loan by a hard money lender, parties who communicate only through text or email or who are unusually demanding and use high-pressure tactics, out-of-town signers who insist on using their own notary, and parties who refuse to participate in, or are unable to pass, identity verification.

5. Steps to Prevent Impersonation Fraud

Steps to prevent impersonation fraud include the following: contact the current owner or the prior grantor on a quitclaim deed to confirm the transaction, reach out to the real estate agent, require documents be signed in your office or select the notary who will acknowledge the signatures, and use remote online notarization and identification verification services.

6. Alliant Requirements

Alliant Search Product Requirements

Different Tax Address

Tax bills and notices are currently being sent to an address other than the situs/property address. The Company requires satisfactory confirmation from the record owner that the Land is in fact being sold. Confirmation can be obtained by several methods including by causing a letter to be delivered to the record owner at the address shown on the tax bills (not the situs/property address), which letter requires the record owner to contact the agent and provide the security code contained in the letter. Proof of such confirmation and any other documentation supporting the verification of the record owner's identity must be retained in the agent's file.

Uninsured Deeds

The Deed from [Grantor] to [Grantee] recorded in _____, of the Public Records of _____ County, FL, which does not appear to be in connection with an insured transaction, or for which no consideration was paid, must be verified directly with the grantor who has provided acceptable identification. Proof of such verification and identification must be retained in the agent's file.



Deeds of Deception: Impersonation Fraud in Real Estate Transactions

Forged and Fraudulent Releases

Regarding that certain Satisfaction recorded in Official Records Book ____, Page ____, there appears to be no new mortgage. Agent should confirm with [Lender on satisfied mortgage] that the Mortgage recorded in Official Records Book ____, Page ____ has, in fact, been paid off and that the Satisfaction is valid.

Alliant Remote Online Notarization Requirements

US Citizens

For US citizens signing in another state, we require a Florida notary be used for remote online notarization (RON). We do not require RON approval for US citizens because they can meet the knowledge-based authentication (KBA) requirements as part of the RON signing process.

Non-US Citizens

If the seller or borrower is not a US citizen and is signing outside of the US, you may conduct a RON closing using a Florida RON notary, if the signer has an established credit history and is able to pass knowledge-based authentication.

If the signer cannot pass knowledge-based authentication, you may conduct a RON closing using a Virginia RON notary. The Virginia notary will verify the identity of the signer using biometrics and credential analysis. A licensed professional, such as a CPA, attorney, real estate broker, or realtor, must attend the RON session and sign an Affidavit of Identity attesting that they personally know the signer and can confirm that the signer appeared and signed the documents during the RON session.

The licensed professional must personally know the signer well enough to vouch for their identity. The licensed professional must also be able to pass knowledge-based authentication, so they must be someone who is a US citizen or has an established credit history in the US.

7. Fake Identification

Compare the photo and the physical description with the appearance of the person signing. Pay attention to features that generally do not change, like the person's nose, ears, chin, and the position of their eyes and eyebrows. Check the height and birth date to confirm they're consistent with who's signing.

Compare the signature on the ID with the signature on the notarized document to see if they match. Physically handle and inspect the ID up close. Real IDs will generally be thick with smooth, rounded corners.



Deeds of Deception: Impersonation Fraud in Real Estate Transactions

Look for indications in the lamination that the ID is fake, such as peeling, air bubbles, or rough edges. A raised picture could indicate that another photo was placed on top of a real ID.

Out-of-State Identification

IDs have different designs depending on the state that issued them. Use an internet search to learn the specifics for a particular state or reference the ID Checking Guide, which has information and the format for driver's licenses in all 50 states.

Confirm that the license number has the correct format and number of characters for that state. Many state IDs have microprint that requires a magnifying glass or a holographic image that is only visible under UV light. There may be other security features that are only visible when viewing the ID in the light at a certain angle. Some states have security features that can be felt, like laser perforations or raised characters. Also check the back of the ID for any state required elements.

Florida Identification

Both Florida driver's licenses and ID cards will have thirteen characters consisting of one letter followed by twelve numbers. They should always list an expiration date.

Florida Standard Class E Adult driver's licenses issued after August 2020 have a green header and a gold circle with photo that turns clear when held to the light, which is visible both on the front and back of the ID. A ghost picture, and the first and last name initials followed by the last two digits of the birth year are visible when tilting the ID in the light. The bottom right corner contains "FL" that can be felt to the touch. The back of the Florida driver's license will contain two barcodes, the type of license, restrictions, and endorsements. It will also list the birth date.

8. Florida Legislative Efforts

Lee County Pilot Program

Florida Statute § 28.2225 created a pilot program in Lee County for title fraud prevention through identity verification. This program requires individuals presenting a deed or other conveyance instrument to the county clerk for recording to provide a government-issued photographic identification card. The clerk may refuse to record a deed or other instrument purporting to convey real property if the requested identification card is not provided.

This pilot program ended in July 2025. By the end of the year, the clerk is to provide information about the program to the government, including feedback from the community, whether the pilot program led



Deeds of Deception: Impersonation Fraud in Real Estate Transactions

to the identification of any fraudulent transactions and the outcome of any criminal charges or civil actions brought, and the clerk's recommendation as to whether the production of a government-issued photographic identification card in connection with the presentation of a deed or other instrument for recording is appropriate to require throughout the state.

Recording Notification Service

Florida Statute § 28.47 required each county clerk to create and operate a free recording notification service by July 1, 2024. Registration must be available through an electronic portal accessible through a direct link on the clerk's official public website. Registrants may subscribe to receive notifications for at least five monitored identities per email address. A "monitored identity" means a personal or business name or a parcel identification number. The property appraiser may use a verification process for those wishing to register to ensure the integrity of the process.

When a deed, mortgage, or other document purporting to convey or encumber real property is recorded for a monitored identity, a recording notification must be sent to the registrant's email within 24 hours. The notification must include the document's recording information and instructions on how to electronically search for and view the document.

Quieting Title

Traditional quiet title actions can be costly and time-consuming. Florida Statute § 65.091 permits summary procedure under Florida Statute § 51.011 for quiet title actions based on fraudulent conveyances. The court clerk must provide a simplified form for the filing of a complaint to quiet title based on a fraudulent attempted conveyance allegation and instructions for completing the form.

9. What to Do if You Suspect Impersonation Fraud

Be careful not to use the words "fraud" or "forgery" when communicating your concerns. Any suspicions of fraud should not be communicated to any other party without prior approval by your manager or supervisor. Not taking these precautions could result in a defamation suit against you and your office if your suspicions are unfounded.

If you suspect fraud or forgery, do not disburse any funds (including payments, recording fees, transfer taxes, commissions, etc.), and do not issue the title commitment or title policy, or record any instruments until you investigate further to determine whether a fraud is taking place. If you cannot rule out fraud, contact your office management and/or the Alliant National Underwriting or Claims Department immediately.



Deeds of Deception: Impersonation Fraud in Real Estate Transactions

Crime Watch Program

Alliant National created the Crime Watch Program to help raise our agents' awareness of potential fraudulent transactions and to reduce the overall cost of claims. As part of Alliant National's Crime Watch Program, we award vigilant agents \$1,000 for their crime-stopping efforts.

To receive the \$1,000 award, you must be an employee of an active Alliant National agent in good standing and have prevented a fraudulent transaction or forgery in connection with a real estate transaction that was to be insured by Alliant National. Once the discovery of the attempted fraudulent transaction is verified by your management, your office manager must send all pertinent documentation along with an Award Nomination Form to Alliant National's State Manager, Regional Agency Manager, or Claims Manager within sixty days after the discovery of the fraud or forgery.

10. How can your customers protect themselves from impersonation fraud?

Your customers can sign up for free property alerts through the Florida court clerks website: <https://www.flclerks.com/page/PropertyAlertServices>. This free service will notify registrants when a deed, mortgage, or other official record is recorded in their name. While this won't stop a fraud from occurring, it will alert your customer so they can act before the problem becomes worse. For example, they can take action before the buyer moves in or starts building a house on the property. They can dispute a forged mortgage before missed payments are reported on the owner's credit report or the property enters foreclosure. Notifications also enable owners to clear up title issues before they're ready to sell or refinance.

Your customers can also setup a Google alert to notify them if their property address is listed for sale online. If they receive such an alert, they should contact the site with the listing (Zillow, Redfin, etc.), explain that the property is not for sale, and demand the listing be removed. If a real estate agent is shown on the listing, they should also contact them to alert them to the fraud. The owner may need to run an internet search of their address to find all websites where their property is listed for sale.

Absentee owners should regularly check their property or ask a neighbor to keep watch and report any suspicious activity.

Advise your customers to keep an eye on their mail. Tax or utility bills or other ownership related documents addressed to a different name may be a sign that record ownership has changed hands. Your customers should also be concerned if they stop receiving these types of documents altogether. If they start receiving unexpected mail from lenders, that may be a sign that someone is in the process of taking out loans on the property.



Deeds of Deception: Impersonation Fraud in Real Estate Transactions

Finally, your customers should regularly check their credit report. If there are inquiries they don't recognize, their identity may have been stolen. If this is a concern, they can freeze their credit or look into credit monitoring.

If your customer discovers they've been the victim of impersonation fraud, they should report the crime to the police. If a fraudulent document has been recorded against their property, they should seek legal counsel.

What about title monitoring services?

In response to the growing threat of impersonation fraud, several companies now offer property monitoring. Many of these services simply alert the owner if something is filed against their property in the public records. Some do not compensate the owner for their loss or hire counsel to help them clear their title. Since all Florida counties, and many other counties throughout the country, offer free property notifications for filed documents, these other services that offer nothing additional are of questionable value.

Other services claim to "lock" or "freeze" title. These companies record a document against the property to alert interested parties that the document must be removed before the property can be sold or mortgaged. It is not possible to "lock" or "freeze" your title and these attempts will not prevent future documents from being recorded against the property. Plus, fraudsters can forge a release of the document in the same manner that they can forge a deed or mortgage.

Filing this type of document can also have negative unforeseen consequences. When the owner is ready to sell or refinance in the future, they will need to first get a release because a vigilant title company will not insure a transaction with such a document still on title. This could delay their closing. Since many years may pass before an owner decides to sell or refinance, the company that filed the document may have gone out of business and be unavailable to provide a release.



Alliant National Remote Online Notarization Requirements

US Citizens

- For US citizens signing in another state, we require a Florida notary be used for remote online notarization (RON). We do not require RON approval for US citizens because they can meet the knowledge-based authentication requirements as part of the RON signing process.

Non-US Citizens

- If the seller or borrower is not a US citizen and is signing outside of the US, you may conduct a RON closing using a Florida RON notary, if the signer has an established credit history and is able to pass knowledge-based authentication (KBA).
- If the signer cannot pass KBA, you may conduct a RON closing using a Virginia RON notary, which is the industry standard for foreign notarizations. The Virginia notary will verify the identity of the signer using biometrics and credential analysis.
 - A licensed professional, such as a CPA, attorney, real estate broker, or realtor, must attend the RON session and sign an Affidavit of Identity attesting that they personally know the signer and can confirm that the signer appeared and signed the documents during the RON session.
 - The licensed professional must personally know the signer well enough to vouch for their identity. The licensed professional must also be able to pass KBA, so they must be someone who is a US citizen or has an established credit history in the US.
 - If you are using NotaryCam, we will provide you with an approval letter from Alliant National to confirm we agree to the waiver of KBA for the foreign signer.

Deeds of Deception: Impersonation Fraud in Real Estate Transactions

Alliant National Search Product Requirements

When you order a search through Alliant, our search product will include certain requirements if we identify a red flag for fraud.

Different Tax Address

Tax bills are being sent to an address other than the property address, or the tax address doesn't match the seller's address:

Tax bills and notices are currently being sent to an address other than the situs/property address. The Company requires satisfactory confirmation from the record owner that the Land is in fact being sold. Confirmation can be obtained by several methods including by causing a letter to be delivered to the record owner at the address shown on the tax bills (not the situs/property address), which letter requires the record owner to contact the agent and provide the security code contained in the letter. Proof of such confirmation and any other documentation supporting the verification of the record owner's identity must be retained in the agent's file.

The requirement will include a link to a template for a form letter you can use.

Uninsured Deeds

Deed recorded within the past three years, which does not appear to be part of an insured transaction or for which no consideration was paid:

The Deed from [Grantor] to [Grantee] recorded in _____, of the Public Records of _____ County, FL, which does not appear to be in connection with an insured transaction, or for which no consideration was paid, must be verified directly with the grantor who has provided acceptable identification. Proof of such verification and identification must be retained in the agent's file.

Forged and Fraudulent Releases

A naked satisfaction, or release of a lien or mortgage, that is not done in conjunction with a sale or refinance transaction:

Regarding that certain Satisfaction recorded in Official Records Book _____, Page _____, there appears to be no new mortgage. Agent should confirm with [Lender on satisfied mortgage], that the Mortgage recorded in Official Records Book _____, Page _____ has, in fact, been paid off and that the satisfaction is valid.

How can your customers protect themselves from impersonation fraud?

- Owners can sign up for free property alerts through the Florida court clerks website: <https://www.flclerks.com/page/PropertyAlertServices>. This free service will notify registrants when a deed, mortgage, or other official record is recorded in their name. While this won't stop a fraud from occurring, it will alert your customer so they can act before the problem becomes worse.
- Owners can setup a Google alert to notify them if their property address is listed for sale online. If they receive such an alert, they should contact the site with the listing (Zillow, Redfin, etc.), explain that the property is not for sale, and demand the listing be removed. If a real estate agent is shown on the listing, they should also contact them to alert them to the fraud.
- Absentee owners should regularly check their property or ask a neighbor to keep watch and report any suspicious activity.
- Owners should keep an eye on their mail. Tax or utility bills or other ownership related documents addressed to a different name may be a sign that record ownership has changed hands. Owners should also be concerned if they stop receiving these types of documents altogether. If they start receiving unexpected mail from lenders, that may be a sign that someone is in the process of taking out loans on the property.
- Owners should regularly check their credit report. If there are inquiries they don't recognize, their identity may have been stolen. If this is a concern, they can freeze their credit or look into credit monitoring.
- If your customer discovers they've been the victim of impersonation fraud, they should report the crime to the police. If a fraudulent document has been recorded against their property, they should seek legal counsel.

Deeds of Deception: Impersonation Fraud in Real Estate Transactions

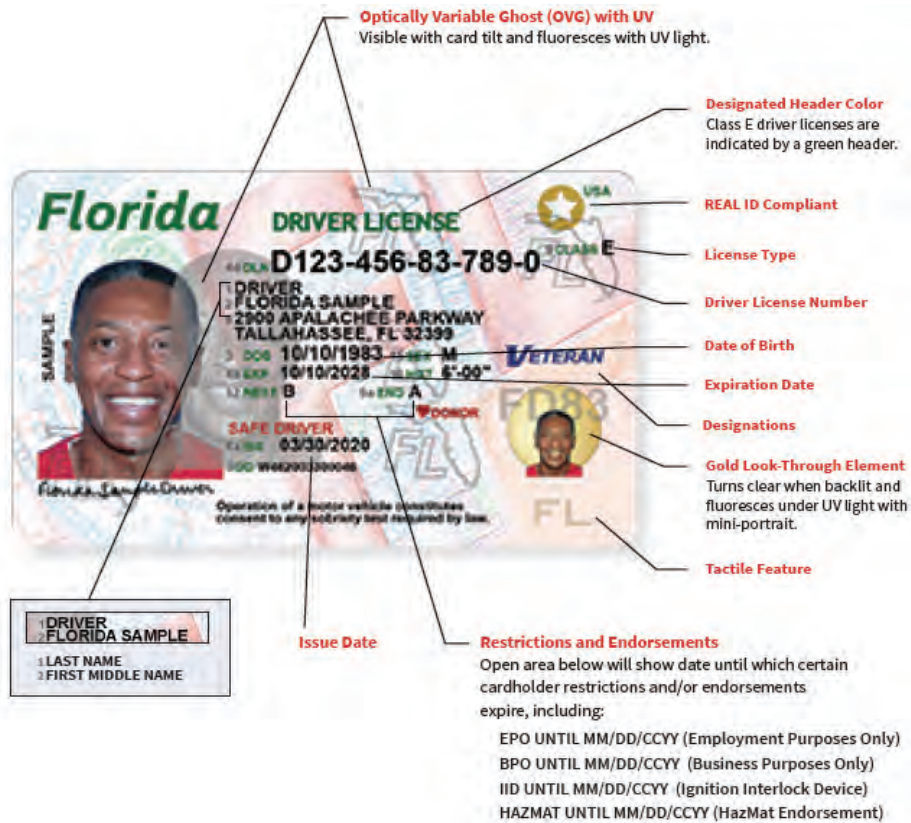
Red Flags for Impersonation Fraud

- Vacant land, unoccupied property, or unencumbered or “free and clear” property
- Sale price below market value
- Prior conveyance by quitclaim deed for no consideration
- Seller or borrower’s address is different from the property address or the tax mailing address on the county website
- Use of a Power of Attorney
- Loan from a hard money lender
- Communication only through text or email
- Parties who are unusually demanding or use high-pressure tactics
- Out-of-town signers who insist on using their own notary
- Seller or Borrower refuses to participate in identity verification or is unable to pass identity verification

Steps to Prevent Impersonation Fraud

- Contact the owner of the property using an independently verified phone number and send a letter to the property address and tax mailing address to confirm the owner is actually selling or mortgaging the property.
- If a Power of Attorney is being used, make sure there is a valid reason why someone is unable to sign in person and contact the owner directly to verify.
- If there’s a recent prior conveyance made by quitclaim deed, contact the grantor on that deed, again using independently verified contact information, to confirm the quitclaim deed was authorized.
- Find out if the real estate agent personally knows the seller or has otherwise confirmed their identity.
- Require signings be conducted in your office and scrutinize the identification provided.
- If documents will be signed outside your office, you should select the notary who will acknowledge the signatures. Compare the signature on the ID and deed or mortgage with signatures on prior documents in the public record.
- Use remote online notarization (RON). RON notaries can verify identity either through knowledge-based authentication (KBA) or biometrics and by analyzing identification documents.
- Third party services can be used to verify the seller or borrower’s identity.
- Take your time. Fraudsters use urgency to distract you from red flags. Be aware of anything that makes you feel uneasy and trust your instincts!

Deeds of Deception: Impersonation Fraud in Real Estate Transactions

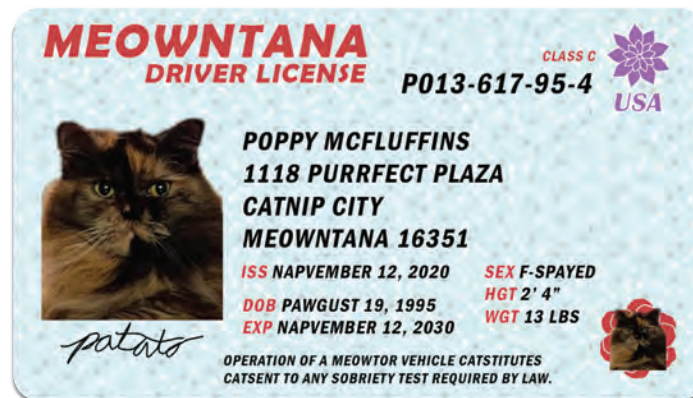


These graphics and details are from the Florida Driver License and ID Card Retail Guide issued August 2020 by Florida Highway Safety and Motor Vehicles.

Deeds of Deception: Impersonation Fraud in Real Estate Transactions

Tips for Spotting Fake Identification

- Compare the photo and the physical description with the appearance of the person signing.
 - Pay attention to features that generally do not change, like the person's nose, ears, chin, and the position of their eyes and eyebrows.
 - Check the height and birth date to confirm they're consistent with who's signing.
- Compare the signature on the ID with the signature on the notarized document to see if they match.
- Physically handle and inspect the ID up close.
 - Real IDs will generally be thick with smooth, rounded corners.
 - Look for indications in the lamination that the ID is fake, such as peeling, air bubbles, or rough edges.
 - A raised picture could indicate that another photo was placed on top of a real ID.



Out-of-State Identification

- IDs have different designs depending on the state that issued them.
 - Use an internet search to learn the specifics for a particular state.
 - Reference the ID Checking Guide, which has information and the format for driver's licenses in all 50 states. <https://www.driverslicenseguide.com/id-checking-guide.html>
- Confirm that the license number has the correct format and number of characters for that state.

Deeds of Deception: Impersonation Fraud in Real Estate Transactions

- Check for security features that may be used in that state, such as:
 - Microprint that requires a magnifying glass
 - Holographic images visible only under UV light
 - Features visible only when viewing the ID in the light at a certain angle
 - Features that can be felt, like laser perforations or raised characters
- Examine the back of the ID for any state required elements.

Florida Identification

Checklist for Florida Standard Class E Adult driver's licenses issued after August 2020:

- ID number is thirteen characters consisting of one letter followed by twelve numbers
- Expiration date
- Green header
- Gold circle with photo that turns clear when held to the light – visible on both front and back
- Ghost picture
- First and last name initials followed by the last two digits of the birth year visible when tilting ID in the light
- "FL" on bottom right corner can be felt to the touch
- Back will list the birth date and contain two barcodes, the type of license, restrictions, and endorsements

From Desk to Digital: Best Practices and Standards for Fraud Prevention in All Notary Environment

1 hour CE (Ethics)

1 hour CLE (General, Technology)

W. Jeffry Stein

Chief Underwriting Counsel and Senior Vice President

CE Course Number: 134991

CE Course Offering ID: 1223965

CLE Course Number: 2508976N





W. Jeffry Stein, Esq.

Chief Underwriting Counsel and Senior Vice President
Alliant National Title Insurance Company

W. Jeffry Stein, Esq. is Chief Underwriting Counsel and Senior Vice President for Alliant National Title Insurance Company. Jeff is responsible for underwriting and support of our independent agents throughout the country.

With over forty years experience working for title insurers in both claims and underwriting, as well as in private practice actually writing title policies for title insurers, he brings a deep and rich understanding of not just the legal ramifications inherent to the title insurance industry, but of the critical elements necessary to ensure an Independent title insurance agent's success. Jeff is a past president of the FLTA and current member of the ALTA Forms Committee.

When not wrangling title issues, Jeff can be found racing cars, taking professional quality pictures and working with his wife on their horse farm.



OVERVIEW

Name of Provider: Alliant National Title Insurance Company

Name of Course: From Desk to Digital: Best Practices and Standards for Fraud Prevention in All Notary Environments

Targeted audience: Florida Title Insurance Agents and other Title Insurance Professionals

Course Objectives:

Participants will gain insights into:

- The importance of Identity verification
- Proven methods for identity verification across all platforms
- National and state-level standards and compliance requirements
- Tools and technologies to safeguard electronic notarial acts

Course Relevance:

In order to protect consumers and provide reliable title insurance and closing services it is critical that an understanding of the many issues related to Identity theft and the use of notaries be developed and continuously improved upon.

Study Method: Classroom

Course Level: Intermediate



OUTLINE

- | | |
|---|-------------------|
| I. Introduction and Definitions | 5 Minutes |
| Why are we concerned with identity verification and why isn't it enough to rely on the Notary | |
| II. Identity Verification | 15 Minutes |
| a. Minimal Review, Alliant National Standards | |
| b. ALTA suggested guidelines | |
| c. Secure My Transaction, using a service to verify | |
| III. Notary Guidelines | 10 Minutes |
| a. Florida Statutes | |
| b. Alliant National additional requirements | |
| III. Notarization outside of your Office | 20 Minutes |
| a. Mobile Notary | |
| b. RON | |
| c. use of a service to provide RON | |

Total Instruction Time - **50 minutes**

Total Break Time - **10 minutes**

Total Time - 60 minutes



FROM DESK TO DIGITAL: BEST PRACTICES AND STANDARDS FOR FRAUD PREVENTION IN ALL NOTARY ENVIRONMENTS

With notarial services expanding into digital and mobile spaces, maintaining the integrity of notarized documents is more critical than ever.

This seminar focuses on **practical best practices and Alliant National's standards** to protect against **fraud** and **forgery in remote, mobile, and traditional** notarization settings.

Participants will gain insights into:

- Proven methods for identity verification across all platforms
- National and state-level standards and compliance requirements
- Tools and technologies to safeguard electronic notarial acts
- The importance of Identity verification

Forgeries are on the rise. Each claim results in significant losses, averaging well into six figures.

Notarization of documents was created to verify the identity of the person signing documents. Is it still enough? We will explore the answer.

How about the notary? If the notary is outside of your employment, is the notary a real notary, or are they fake too?

Some questions we should explore:

How do you verify that the notary is not a fake?

How do you verify that the individual/party is not a fake?

We now have Remote Online Notarizations. States have various levels of authentication in their statutes. So, is RON enough? Have the KBA and verification efforts been fooled?



From Desk to Digital: Best Practices and Standards for Fraud Prevention

A. Identity Verification

Verifying the identity of the party signing a document we intend to insure or that you are going to rely upon is critically important regardless of the method of notarization.

Please stay vigilant even when using RON or even more so with in person and mobile notarizations.

In all cases we strongly recommend and encourage you to take the additional step of using a third party identification verification service on all closings for all parties.

1. Alliant National guidelines What to look for when authenticating any ID.

Note that even following these guidelines, it is very difficult to determine if any given ID is authentic. We strongly recommend that an identity verification service be used in all cases unless you do actually know the individual personally.

Minimal review of the Identification should include the following.

1. The name must be the same as the name on the documents to be signed. If there is a variance, contact an Alliant National Underwriter before proceeding. (A mobile notary should contact the title agent, who should then contact an Alliant National Underwriter.)
2. The address must agree with the address provided in the transaction documents.
3. The photo must match the person who is appearing to sign.
4. The age shown on the identification must match the age of the person.
5. The signature must match the signature of the party, do not hesitate to look at signatures on previously recorded documents.

The notary must either (i) make a legible copy of the ID presented, or (ii) complete and sign the Identification and Notary Certification form for each party whose signature is notarized.

The agent must retain in its permanent file a legible copy of the ID presented, or an executed Identification and Notary Certification form.

If a sample signed document is provided, the notary must compare the signature of the signing party with the signature on the sample document.

If the signatures do not reasonably match, contact an Alliant National Underwriter before proceeding. (A mobile notary who is unable to reconcile the signatures must contact the agent who must then contact an Alliant National Underwriter before proceeding.)



2. ALTA Guidelines

Identity Verification Methods

The following section discusses the various methods of identity verification that are available. No method or methods completely eliminate the risk of impersonation or forgery, but the objective is to use the tools available to reduce the risk.

1. Verification of Government ID provided by a signer

- Description: Physical document verification of a government issued photo ID (driver's licenses, passports). Designed to answer the question: Does the individual possess an authentic Government issued identity document that supports their claim to a physical identity?

- Potential actions to verify:

Where possible, obtain and validate the ID of a signer in advance of the closing.

Require multiple forms of government ID, at least one of which is unexpired.

Cross referencing data sources: Data in the government ID cross-referenced with DMV database, or similar, to determine if: The database corroborates the ID and the provided personal information The expiration date, issue date, and id number can be verified

The data in the ID cross-references with data provided using the bar code or other similar coding.

Tamper and manipulation detection methods (color, text patterns).

Automated security feature detection (holograms, UV patterns).

The expected features of the government ID of the jurisdiction.

Use of systems or tools to identify forged government IDs:

Print quality and color matching: Advanced systems check for inconsistencies in print quality and color across the document, which may indicate physical alterations.

Font consistency analysis: Systems examine the consistency of fonts used throughout the document to identify potential tampering.

Photo replacement detection: Some fraudsters physically replace the photograph on a genuine document, which can be caught by sophisticated verification systems.

Image compression analysis: Systems check for signs of image manipulation by analyzing compression artifacts.



From Desk to Digital: Best Practices and Standards for Fraud Prevention

Pixel-level analysis: Advanced algorithms perform detailed examinations of pixel arrays to identify modified principal components.

2. Database Verification of Personal Information provided by the signer

- Description: checking that information an end user provides about themselves - such as name, date of birth, etc. - matches a record in a known database, and that at least some of the records tie the person to the property.
- Potential actions to verify:

Verification of claimed personally identifiable information (PII) against credit bureaus, government agencies, and other authoritative databases. Recommended elements to verify include:

First Name

Last Name

Address

Phone Number

Date of Birth

Social Security Number (or national ID if outside of US)

Watchlist screening and compliance checks

Unless otherwise required, there is no need to disclose the databases being utilized to persons being verified or persons involved in the transaction.

3. Personal Contacts and References received from the signer

- Description: Ensure that the reference sources the signer claims to have can corroborate the signer's information
- Potential Actions to Verify:

Independently search and obtain contact information for the reference

Send letter to the reference using the reference's publicly available address

Contact signer's real estate agent, attorney, mortgage lender, and/or accountant



4. Biometric Verification for the signer

- Description: In situations where the signer is remote, it may be helpful to determine whether the person presenting the ID is the rightful owner using physical attributes, such as requesting a “selfie” to compare against the ID.

- Potential actions to verify:

Facial comparison between selfie and photo ID

Liveness detection – preventing spoofing attempts and/or deepfakes by requesting that remote individuals follow action commands (e.g., turn left, turn right, raise your hand)

5. Use of open-source personal information to verify signer

- Description: Determine whether the provided phone number, email address and photo are likely to be those of the person who should be the signer.

- Recommended actions to verify:

Public search of email addresses, phone numbers, and photos. This may be used to verify if the phone number and email address have been associated with the individual’s name and address in public records or commercial databases. Compare these items to information presented by the person.

Domain Validation: Checks the validity of the email domain.

Syntax Check: Ensures the email address follows proper formatting.

Disposable Email Detection: Identifies temporary email addresses that have not previously been associated with the individual or represents a recently created email address.



From Desk to Digital: Best Practices and Standards for Fraud Prevention

3. Use of a third-party verification service.

We strongly encourage the use of a third-party verification service on all transactions for all parties unless you personally know the individuals executing the documents in your presence.

There are many services available. Some examples include:

- Certified ID
- Intellicheck
- Val-ID
- Proof
- Closing Lock
- Land Lock

B. Alliant National Notary Guidelines

Whenever we are working with a notary, or we are the notary, there are guidelines, both in our Florida Statutes and additionally in our experience.

We will explore three basic Notarization formats. In Person, whether done by ink or electronically, using a mobile notary and finally remote online notarization.

1. General Notary Guidelines for use regardless of the type of notarization:

A. Florida Statutes:

Florida law regarding acceptable identification for notarial acts must be followed. These should be considered a minimum threshold.

Florida Notary laws are found in Chapter 117. The relevant portion of these reads as follows (emphasis has been added):

(5) **A notary public may not notarize a signature** on a document **unless** he or she **personally knows, or has satisfactory evidence**, that the person whose signature is to be notarized is the individual who is described in and who is executing the instrument. A notary public shall certify in the certificate of acknowledgment or jurat the type of identification, either based on personal knowledge or other form of identification, upon which the notary public is relying. In the case of an online notarization, the online notary public shall comply with the requirements set forth in part II of this chapter.



From Desk to Digital: Best Practices and Standards for Fraud Prevention

- (a) For purposes of this subsection, the term “personally knows” means having an acquaintance, derived from association with the individual, which establishes the individual’s identity with **at least a reasonable certainty**.
- (b) For the purposes of this subsection, the term “**satisfactory evidence**” means the **absence of any information, evidence, or other circumstances which would lead a reasonable person to believe that the person whose signature is to be notarized is not the person he or she claims to be** and any one of the following:
1. The sworn written statement of one **credible witness personally known to the notary public or the sworn written statement of two credible witnesses whose identities are proven to the notary public** upon the presentation of satisfactory evidence that each of the following is true:
 - a. **That the person whose signature is to be notarized is the person named in the document;**
 - b. **That the person whose signature is to be notarized is personally known to the witnesses;**
 - c. **That it is the reasonable belief of the witnesses that the circumstances of the person whose signature is to be notarized are such that it would be very difficult or impossible for that person to obtain another acceptable form of identification;**
 - d. **That it is the reasonable belief of the witnesses that the person whose signature is to be notarized does not possess any of the identification documents specified in subparagraph 2.; and**
 - e. **That the witnesses do not have a financial interest in nor are parties to the underlying transaction; or**
 2. Reasonable reliance on the presentation to the notary public of any one of the **following forms of identification, if the document is current or has been issued within the past 5 years and bears a serial or other identifying number:**
 - a. A **Florida identification card or driver license** issued by the public agency authorized to issue driver licenses;
 - b. A **passport issued by the Department of State of the United States;**
 - c. A **passport issued by a foreign government if the document is stamped by the United States Bureau of Citizenship and Immigration Services;**
 - d. A **driver license or an identification card issued by a public agency authorized to issue driver licenses in a state other than Florida or in a territory of the United States, or Canada or Mexico;**



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- e. An identification card issued by any branch of the armed forces of the United States;
- f. A veteran health identification card issued by the United States Department of Veterans Affairs;
- g. An inmate identification card issued on or after January 1, 1991, by the Florida Department of Corrections for an inmate who is in the custody of the department;
- h. An inmate identification card issued by the United States Department of Justice, Bureau of Prisons, for an inmate who is in the custody of the department;
- i. A sworn, written statement from a sworn law enforcement officer that the forms of identification for an inmate in an institution of confinement were confiscated upon confinement and that the person named in the document is the person whose signature is to be notarized; or
- j. An identification card issued by the United States Bureau of Citizenship and Immigration Services.

B. Alliant National additional or modified requirements:

Alliant National requires one of the forms of identification listed below:

1. Unexpired driver's license or identification card issued by a U.S. state, territory, or federal government,
2. Unexpired Passport – United States or foreign country,
3. Unexpired United States military ID,
4. Permanent Resident Card ("Green Card"), or Employment Authorization document (EAD, or "work permit") issued by the U.S. Citizenship and Immigration Services, or Visa issued by the United States,
5. Identification card issued by a federally recognized U.S. tribal government.

The notary must carefully review each form of identification provided. This applies even when the person comes to your office or when they are remote from your office.

In all cases a second type of ID should be reviewed in addition to the governmental ID. This can be a membership ID with a photo or other ID.



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2. Documents signed outside of your office:

Any title document signed outside your direct control must be conducted by either:

- i. a licensed and bonded mobile notary selected by you as the title agent and covered by E&O insurance. We strongly recommend a minimum of \$250,000.00 coverage (Mobile Notaries); or
- i. a Remote Online Notary (RON) validly licensed in the state of appointment.

A. Mobile Notaries: General Guidelines for Out of Office Signings with a Mobile Notary

The Mobile Notary must be selected by you and not the customer. You must have direct contact with the mobile notary.

You must maintain evidence of the mobile notary's license, bond and E&O coverage.

You must provide the mobile notary with written instructions to be followed in the signing and acknowledgement process.

When the documents are received from the mobile notary, you must carefully review the documents to be sure that they comply with the requirements set forth herein. If our requirements have not been met, the documents may not be acceptable for title insurance purposes and should not be used to close a transaction without specific approval from an Alliant National Underwriter.

You can refer to the Agents Resource Center for a list of mobile notaries we have reviewed and who have met some basic criteria. This is not a mandatory or exclusive list but is there to be helpful to you in selecting a mobile notary service.

Even after carefully selecting a Mobile Notary for your transaction, and having submitted your instructions, it is still necessary to work to verify the identity of the individual who is executing your documents. It is not something that should be left exclusively to the notary.

B. Remote Online Notary: General Guidelines for Signings with RON

The second option for executing documents outside of your direct control is the use of a Remote Online Notary (RON).

Requirements for using a RON notary on a transaction to be insured by Alliant National are:

- All parties must expressly authorize the use of RON technology. This authorization may be contained in the closing instructions or in a separate written instrument, as long as the consent in the separate written instrument does not conflict with the closing instructions.



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- All parties must also provide a separate, electronic written consent prior to the execution of documents electronically. This is obtained from the vendor providing the RON platform.
- It is not necessary to record the consents in the public records, but you must retain a copy in your electronic records.
- Confirm that the state and county where the property is located accepts electronic documents for recording, or that they will allow “papering out” of the electronic documents for recording.
- Florida does allow RON documents to be papered out (printed to paper) and recorded.
- Each person whose signature will be notarized must be a United States citizen or permanent resident.
- If signers are neither United States citizens nor permanent residents and will be signing in the United States, Alliant National requires an in-person notarization by a Florida or other state’s notary.
- If signers are neither United States citizens nor permanent residents and will be signing outside of the United States, obtain prior underwriting approval from Alliant National. There are occasions where we will allow non-US Citizens to use RON providers governed by VA law where KBA is not required. In these cases, in addition to the ID requirements, we require an affidavit from a credible witness who has a professional license and who can themselves pass the KBA requirements and is present during the RON session.
- Each person whose signature will be notarized must pass the multi-factor authentication administered by the RON platform.
- **A RON transaction must comply with all Florida notarial requirements and any Florida specific RON requirements.**
- When using a jurat, the remote online notary must ensure that the oath is administered, and verbal confirmation is captured during the video/audio recording.
- The form of acknowledgment and attestation must comply with the laws of Florida.

Selection of a RON Provider.

- We encourage the use of a provider that has been vetted by MISMO. They maintain a list of those that they have approved. This is a link to the list:
<https://www.mismo.org/events-education/certifications/emortgage-technology-certification/ron/certified-ron-providers>



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- There are also services using one or more of these approved providers that you can choose, such as Network Transaction Solutions. This is a link to their web page:
<https://networktransactionsolutions.com/eclosing-with-ron/>
- Alliant National has reviewed various RON providers and has made a list of providers which met our review criteria. You may access that list on the Agents Resource Center.
- When selecting any RON Technology Provider or RON they must be properly licensed and approved by the State in which that RON is located.
 - Please check the state's webpage for vendor authorization before using the vendor. These states have such lists: Arkansas, Colorado, Florida, Kansas, Louisiana, Maryland, Michigan, Missouri, Nebraska, Nevada, New Mexico, Pennsylvania, Utah, Wisconsin.



EXHIBIT A

Alliant National Suggested instructions

NOTARY INSTRUCTIONS

Before witnessing any signatures, you must obtain satisfactory evidence that the party in your presence is the party whose name appears on the documents. One of the following forms of government-issued photo identification must be provided by each party:

1. Unexpired driver's license or identification card issued by a U. S. state, territory, or federal government,
2. Unexpired Passport – United States or foreign country.
3. Unexpired United States military ID;
4. Permanent Resident Card ("Green Card"), or Employment Authorization document (EAD, or "work permit") issued by U.S. Citizenship and Immigration Services, or Visa issued by the United States.
5. Identification card issued by a federally recognized U.S. tribal government

You must obtain a second form of ID with a photograph. This ID does not need to be one of the preceding 5 types of IDs. An acceptable example would be a membership card

You must compare the name, address, photograph, signature, and date of birth of the party with the identification provided and the document being signed.

You may provide a legible color copy of the identification used or using the identification, provide the information below and return the identification to the party.

Notary, you must fill in the following information for each party and each ID used for verification of that party and execute the notary information and certification.



IDENTIFICATION VERIFICATION

Name of Party:

Type of ID:

Driver's License issued by

Identification card issued by of this type:

U.S. Military ID • U.S. Passport • Passport issued by

ID described in #4 above of this type:

Tribal ID as in #5 Last 4 digits of ID: _____ Expiration of ID: _____

Name on document matches name on identification: Yes No

Address on document matches address on identification: Yes No

Photograph matches person before you: Yes No

Signature on document matches signature on identification: Yes No

Date of birth reasonably matches age of person before you: Yes No

Name of Party:

Type of ID:

Driver's License issued by

Identification card issued by of this type:

U.S. Military ID • U.S. Passport • Passport issued by

ID described in #4 above of this type:

Tribal ID as in #5 Last 4 digits of ID: _____ Expiration of ID: _____

Name on document matches name on identification: Yes No

Address on document matches address on identification: Yes No

Photograph matches person before you: Yes No

Signature on document matches signature on identification: Yes No



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NOTARY INFORMATION AND CERTIFICATION

I hereby certify, under penalty of perjury, that I am authorized to act as a Notary Public in the jurisdiction set out below; and that in performing my duties as a Notary Public I have complied with all applicable state and local laws. I further certify that I have received and reviewed original government issued identification as set out above, which has not expired and which bears a photo or physical description and a signature which matches the signature on the documents executed by the applicable party. My information below is true, correct, and current.

Notary name: _____

Notary best contact phone: _____

Notary mailing address: _____

Notary for _____ County, State of _____ or for _____ State at large

Notary commission expires: _____

Signature of Notary Public

Stamp or affix Notary Seal in box to the right

