



Episode 24: What to Know about FinCEN

Call from the Agent: I hear people talking about “FinCEN” – can you give me an easy-to-understand explanation of it?

The Response: Sure, it is actually pretty simple. FinCEN went into effect for certain closings occurring on or after March 2nd. The U.S. Department of the Treasury, through FinCEN (the Financial Crimes Enforcement Network), has adopted a rule requiring that certain information be collected and reported to the U.S. Department of the Treasury in residential real estate transactions in which:

- the buyer is an **entity (such as an LLC) or a trust;**
- the property is residential (homes, condos, residential lots and 1-4 family dwellings); and
- the transaction is **not financed through a traditional bank or institutional lender****

**in other words, cash or seller-financed transactions

This rule is aimed at combating money laundering and other illicit activity in real estate transactions. It is not related to taxes and does not affect the terms of a transaction, but a transaction subject to the law will not close until both the buyer and seller furnish all required information to the closing attorney. Much of the information is of the kind closing attorneys already gather, but a good deal of additional information is required. Some offices will be gathering the information and reporting it to FinCEN themselves -- others will outsource the work.

If the necessary information is not gathered or not reported, the closing attorney is subject to harsh monetary penalties and, in extreme cases (which we’ll probably never see), prison.

Why do agents need to know this?

The best agents are well-informed, which is reason in itself, but it is also highly likely you will be asked questions by your clients. This is especially true in the early days of the law being in effect. Some clients will assume it is a scam or they need to change law firms in an effort to avoid it. If a transaction fits within the definition, the law will have to be strictly followed – changing offices will have no effect. Clients should be encouraged to provide the requested information promptly so as to avoid any delay of the closing.

If a client purchases property in his LLC and conveys to his LLC after closing, does he avoid the rule?

When purchasing in his individual name, he is not subject to the rule, but will be subject to the rule when he later conveys to his LLC. Still, there may be a benefit to arranging it in this way because at least it will not slow down his initial purchase – a post-closing transfer to his LLC obviously will not have the same time pressures as the initial purchase.