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FOS NEWS - *Our Clients Come First*

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Editor: Diane Slomowitz

MARCH 1 BRINGS NEW RESIDENTIAL TRANSFER REPORTING REQUIREMENTS

By Jeremy DeLong

Let's say you personally own a residence that you simply want to transfer to an LLC to protect yourself against potential liability.

Or your financially fortunate parents want to buy your child a small first home with an all-cash offer.

Beginning March 1, 2026, both scenarios could be among those transfers subject to new federal reporting requirements under the Residential Real Estate Rule ("Rule") created by the Treasury Department's Financial Crimes Enforcement Network (FinCEN).

Covered Transfers.

The Rule requires the electronic reporting of information regarding "a non-financed transfer to a transferee entity or transferee trust of an ownership interest in residential real property."

The Rule intends to bring the U.S. in line with most other countries that require reporting of various transactions to comply with anti-money-laundering laws.

To fall within the Rule, there must be "residential real property," a "transferee entity" or a "transferee trust" and a "non-financed transfer."

"Residential real property" generally means a property designed to be occupied by *1-4 families* or vacant property intended to be so occupied; or *shares in a cooperative housing corporation*.

According to the Rule's comments, this includes single-family homes, condominiums, townhouses, cooperatives, and even mixed-use property where a 1-4 family residence is located above a commercial business.

"Transferee Entity" generally means any *transferee other than an individual or a transferee trust*. A "Transferee Trust" means any legal arrangement created when one places assets under the control of a trustee for the benefit of one or more persons or for a specific purpose, but the Rule carves out numerous exceptions.

Many trusts created for estate planning purposes, for example, would likely not constitute Transferee Trusts.

A "non-financed transfer" is one that *does not involve* an extension of credit to all transferees that is secured by the transferred real estate and extended by a financial institution that is obliged to have an anti-money-laundering program and report suspicious transactions.

In our initial examples, transferring your residence to an LLC is reportable because it

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FOS WINS *SHEPHERD EXPRESS* "BEST OF"

Fox, O'Neill, & Shannon, S.C.'s estate planning practice group has been named "Best of 2025" by *Shepherd Express* magazine.

FOS's estate planning practice group includes attorney shareholders **Greg Ricci** and **Mark Andres** and associate **Olivia Hansen.**

In addition to its estate planning win, FOS was one of three finalists in the categories of full service law firm, criminal defense, and business law.

The firm is particularly grateful for these honors given the voting process underlying them.

The "Best of" contest is based on votes from the general public. This includes lawyers and non-lawyers alike.

FOS WELCOMES LISA FOX

Lisa Fox has joined FOS as its Business Manager.

Lisa has extensive experience performing the unique services required in law firm administration, having served as the office manager of various law firms for almost twenty years.

Lisa brings knowledge, expertise and a results-oriented, focused approach to FOS business operations.

Clients with questions regarding their bills or other administrative matters should feel free to contact Lisa directly at (414) 273-3939 or at lvfox@foslaw.com.

Outside the office, Lisa is a dog lover, a supper club connoisseur, and a devoted pool player, participating in (and winning!) competitions throughout the state of Wisconsin.

We are excited to have Lisa on board.

DO YOU NEED A TRUST & ESTATES LITIGATOR?

By Lauren Maddente

Not every estate administration unfolds smoothly.

Even in the closest families, beneficiaries can disagree about how a will or a trust is being handled.

Questions can be raised regarding transparency between the administrator and the beneficiaries, and the duties of fiduciaries.

Conflicts can also arise as to the content of the decedent's will, trust or other estate planning documents.

When concerns turn into conflicts, having experienced trust and estate litigation counsel can make all the difference in protecting both relationships and rights.

This type of attorney is a litigator with additional expertise in estate planning disputes.

Such an attorney can address disputes arising out of estate administration, differences between or amongst trustees, personal representatives and/or beneficiaries, or challenges to wills and trusts.

We all hope that conflicts will never arise.

If they do, however, a trust and estates litigator can be beneficial in several scenarios.

For example, sometimes beneficiaries may suspect, discover, or identify actual or potential wrongdoing by the administrator of a will (executor/personal representative) or trust (trustee).

This could be as simple as a trustee not communicating as often or as effectively as desired or not providing trust accountings as required.

Or it could involve something more extreme, such as questionable financial activities or even theft of money or other assets from the estate.

Litigators may also be consulted when family members have questions or doubts about the validity of a will or trust document.

Legal issues may further arise where one person, who would benefit under a particular version of a will or trust, tries to enforce that document against another person, who suspects the will or trust is illegitimate.

In some trust disputes, a trustee may be accused of mishandling assets or not doing the requisite due diligence.

In others, a beneficiary may be improperly dealing with real estate or business assets owned by the trust.

An estate planning litigator can help resolve these and other issues, including through negotiation.

In any dispute, it is important to remember that the mere existence of a disputed or legal issue does not mean that the parties will or should end up in court.

Negotiation is commonly the first step in resolving a dis-

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involves residential real property being transferred to a Transferee Entity in a non-financed transaction.

By contrast, the all-cash purchase of a home for a child is only reportable if the home is purchased by (or transferred into) a Transferee Entity (such as an LLC) or a Transferee Trust.

Who Reports.

Real estate professionals, as opposed to a transaction's parties, will generally be required reporters. A "reporting person" is defined via a hierarchical list ("List") of responsible reporters.

The List, from most to least responsible, includes the closing agent listed on the closing statement; closing statement's preparer; filer of the deed; issuer of the owner's title insurance policy; entity disbursing the most funds for the transaction; person providing a title evaluation; and preparer of the deed or other transfer document.

If more than one person could be a reporting person, the person highest in the above hierarchy is responsible, although multiple potential reporters can designate who will be treated as the reporting person for the transfer.

What Is Reported.

Required reporting information will include basic information regarding the identity of the reporting person; the transferor's name, address, date of birth (for individuals), and IRS TIN; transferee's legal name and TIN; the property's street address and legal description; closing date; and payment amount, method, payor, and financial institution (name and account number), if applicable.

Similar identifying information must also be provided regarding the person signing (reporting) the form and the transferee's Beneficial Owners, as referenced under the Corporate Transparency Act (the CTA).

Beneficial Owners under the CTA generally own at least 25% of or exercise substantial control over the Transferee Entity.

Some owners of Transferee Entities may not be happy with these disclosure requirements, since they could interfere with owners' interests in keeping their identities private.

Even so, noncompliance could subject violators to financial liability and other penalties, which can be severe for a pat-

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PRIVACY OR PRIVILEGE? GOVERNMENT GETS UPPER HAND IN CRIMINAL CASES

By Jacob Manian

"Just subpoena their Facebook account and we can prove the witness is lying!!!"

Sounds simple enough when your client says it.

After all, defense attorneys, not just law enforcement, have subpoena power in criminal cases.

Still, when it comes to accessing private social media content, defense attorneys get treated like the ugly stepchild.

Just look at the federal Stored Communications Act (SCA).

This law protects the privacy of information stored by third-party service providers such as Facebook, GitHub, Google, Instagram, Microsoft and X (formerly known as Twitter).

Its purpose is to protect user data by forbidding companies from disclosing electronic communications like emails and private messages.

As with most laws, there are exceptions.

The most common exception applies when law enforcement requests such information through a subpoena or search warrant.

Unfortunately, the law provides no such exception for criminal defendants' attorneys.

Why should the government be allowed to access key, possibly exculpatory evidence under the SCA's exceptions when a criminal defendant has no similar recourse?

Take the criminal defendant who is blocked from arguing self-defense because he is denied access to the records of harassing online messages and death threats that kept him in fear for his life.

Or consider the murder defendant who is denied access to a key prosecution witness's social media accounts, despite the trial judge's initial finding that the evidence is relevant, material, and necessary to vindicate the defendant's "fundamental constitutional rights."

Courts will eventually have to grapple with this severe disparity's adverse impact on a criminal defendant's ability to defend himself, particularly given a defendant's right to due process in criminal proceedings.

Unless and until the SCA is amended to put criminal defendants on equal footing with law enforcement's access to existing social media and related evidence, criminal defendants will have to find other ways to prove their innocence.

More times than not, this is a daunting and overwhelming task.

If you have questions about accessing social media to defend your criminal case, contact your FOS attorney.

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tern of negligence or willfulness.

Exceptions Exist.

Some relatively low-risk transfers are excluded from the reporting requirements.

These include transactions involving easements; life events such as divorce or inheritance; court-supervised transfers; and Section 1031 exchanges.

What To Do Now.

Do not be surprised if these reporting requirements evoke nightmares of the CTA, which tried to require the reporting of entities' Beneficial Owners until legal challenges and public outcry eventually disarmed its rule.

As with the CTA reporting rules, several legal challenges to the Rule are pending in various federal courts.

The end result of these actions are currently unknown.

FinCEN and several title insurance companies are developing model reporting forms, which may be used to comply with the Rule.

Additional information regarding the Rule is at https://www.fincen.gov/rre.

Those contemplating transactions that may be subject to the Rule's reporting requirements should consider the Rule's potential impact on their transactions.

For transactions closing after March 1, 2026, the parties should determine whether the transaction is subject to the Rule and who is responsible for reporting.

FOS will continue to monitor the Rule and its status.

In the meantime, if you have any questions regarding the Rule or its reporting requirements, contact your FOS attorney.

QUESTIONS?
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pute, unless one or the other party remains intransigent.

If informal communications are insufficient to resolve an issue, an estate planning litigator will always be prepared to begin or defend against litigation, if necessary.

If litigation does occur, the client will have a distinct advantage by being represented by a litigator versed in the law of wills, trusts, and fiduciaries.

Contact your FOS attorney with questions about your estate plan administration issues.

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SPOTLIGHT ON 529 PLANS

By Olivia Hansen

The cost of an education is skyrocketing, with no ceiling in sight.

Graduates are commonly saddled with tens of thousands of dollars in debt, just as they are starting their professional careers.

Many parents, other family members, and loved ones want to provide financial help for one or more students' educational and related expenses.

A vital and central tool for education-focused gifting is the 529 Plan.

A 529 Plan is a tax-advantaged savings tool designed to fund qualified education expenses, including tuition, fees, room and board, and certain K-12 and apprenticeship costs.

Creating a 529 Plan is straightforward.

You choose a state program, complete the online application, name an owner (you) and a beneficiary (the student), fund the account, and set up reoccurring contributions, if desired.

As the owner, you maintain control of the account, including investment choices and the timing of withdrawals.

And as the contributor, a 529 Plan gives you flexibility, control, and even potential state tax benefits.

You can create a 529 Plan on its own or in conjunction with and as a tool in your estate plan (which FOS recommends).

For the beneficiary, a 529 Plan can reduce the burden of education costs and grow with potential tax advantages.

Contributions to a 529 Plan are considered completed gifts but remain under the contributor's control.

Additionally, large contributions to a 529 Plan may be "front-loaded" under a special five-year election rule.

This would allow you to accelerate funding while spreading gift tax treatment over five years.

Certain procedural precautions are important for a successful 529 Plan.

For example, make sure to denote successor ownership in the event something happens to you.

You can name a successor right on the 529 form.

A properly created and implemented 529 Plan allows you to invest in a loved one's future today, while you can experience the fruits of your investment.

Your FOS attorney can help with questions regarding establishing a 529 Plan.