

FinCEN Real Estate Reporting Rule

Practical Implementation for NY Closings

Effective March 1, 2026

Presentation Date: February 20, 2026

Eric Swarthout, President

Thoroughbred Title Services, LLC



Important Disclaimer

This presentation is provided for general educational and informational purposes only.

The presenter is not providing legal advice or legal opinions regarding the application of the Residential Real Estate Reporting Rule (31 C.F.R. Part 1031).

Application of the rule depends on specific facts and circumstances.

Attendees should consult their own counsel regarding specific transactions.

Today's Focus

This session is about implementation — not theory.

This is NOT:

- A deep dive into Anti-Money Laundering theory
- A federal policy lecture
- A scare tactic session

This IS:

- What's reportable
- Who files in New York
- Real-world scenarios you will face
- A practical workflow for March 1, 2026

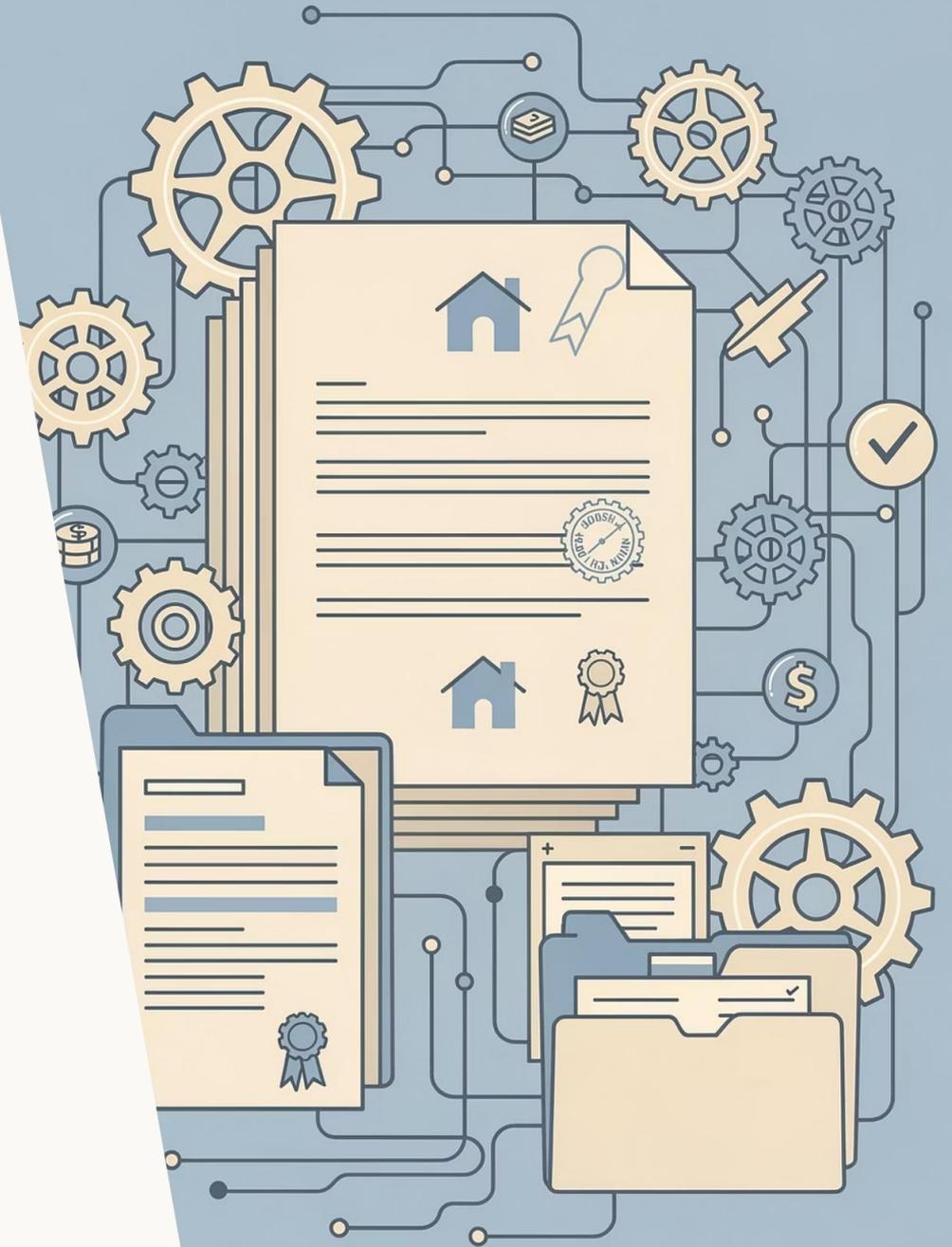
Understanding the FinCEN Real Estate Reporting Rule

What This Is

- A nationwide federal reporting requirement
- Effective March 1, 2026
- Applies to certain non-financed residential transfers
- Codified at 31 C.F.R. Part 1031

What This Is Not

- Not a Geographic Targeting Order (GTO)
- Not limited to certain counties
- Not temporary
- No \$300,000 minimum threshold



Poll Question #1

**Have you reviewed the
FinCEN Residential Real
Estate Rule in Full?**

When Is a Transaction Reportable?

Four Questions



Question 1: Is it Residential Real Estate?

1-4 family

Condo /
Co-op

Vacant residential land

"Land .. on which the transferee intends to build a structure designed principally for occupancy by one to four families"

Multi-Use

(eg. Storefront w/ 2 apartments)

Not commercial

Question 2: Is There an Entity or Trust?

At least one transferee (buyer) must be:



LLC



Corporation



Partnership



Trust

 **All** natural persons = generally not reportable

Question 3: Is It Non-Financed?

Institutional lender?

→ Not reportable

Hard money?

Private lender?

All cash?

Loan on a different property?

→ Potentially reportable

Question 4: Does an Exemption Apply?

Common Exemptions

Death

Divorce

Bankruptcy

Court order

Zero consideration transfer to an Estate planning trust

Exemptions are narrow

Rare Exemptions

- (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 \(n\)\(10\)\(ii\)\(A\) through \(O\)](#) of this section.

Deep Dive: Estate Planning Trust Exemption

Transfer must be:

- For no consideration
- To a trust
- Transferor is settlor or grantor (alone or with spouse)
- Estate planning purpose

"(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);"

All elements must be met

What Does "No Consideration" Mean?

No money

No debt forgiveness

No value exchanged

Zero on the deed is not enough

Substance matters

Common NY Trust Scenario

Husband and Wife own a single family home and transfer the property for zero consideration into a trust that they are Settlers and Trustees of



Exempt.

Title company will need to review the trust or may request an affirmation

AFFIRMATION

_____ an attorney duly licensed to practice law before the courts of the State of New York, hereby affirms the following under penalties of perjury:

1. That I represent the Grantor of the enclosed Bargain and Sale Deed ("Deed") transferring the premises located at: _____. I am the attorney draftsman of said Deed.
2. The Grantor in said Deed is conveying the Property to _____ Trust (the "Trust") by Deed dated _____. The transfer is being made without the payment or receipt of any monetary or other valuable consideration.
3. I have reviewed the Trust Agreement and related documentation and confirm the following:
 - The transfer is 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; and/or
 - The transfer results from the death of an individual pursuant to the terms of a will, trust, operation of law (including intestate succession or survivorship), or contractual beneficiary designation.
4. I am familiar with the reporting requirements promulgated by the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN") pursuant to the Corporate Transparency Act and codified at 31 CFR Part 1031, including the Residential Real Estate Reporting Rule effective March 1, 2026.
5. Based upon my review of the Trust instrument, the status of the settlor(s)/grantor(s), the nature of the transfer, and the absence of consideration, it is my professional opinion that this transaction falls within the express exemptions to FinCEN's reporting requirements, including transfers resulting from the death of an individual and/or transfers for no consideration to a trust of which the transferor (and/or the transferor's spouse) is the settlor or grantor. Accordingly, this conveyance is exempt from the reporting requirements under the 2026 FinCEN Residential Real Estate Reporting Rule.
6. This affirmation is made to induce Thoroughbred Title Services, LLC and its underwriter to accept and record the deed without requiring FinCEN reporting in connection with this transaction. The Title Company and its underwriter may rely upon this certification for recording and underwriting purposes.

Dated: _____

The Reporting Cascade

If no designation agreement, the 'Reporting Person' is the person who:

1. Is listed as the settlement agent
2. Prepares closing or settlement statement
3. Records the deed
4. Underwrites the Owner's Policy
5. Largest disburser of funds
6. Title searcher
7. Preparer of Deed or Stock Certificate

Key Takeaway:

Only one reporting person



What Is a "Closing or Settlement Statement"?

The regulation defines it as:

"The statement of receipts and disbursements prepared for the transferee for a transfer of residential real property." (31 C.F.R. Part 1031)

In New York Practice

The person who:

- Prepares the adjustments
- Calculates receipts and disbursements
- Provides the check-cut / disbursement list

Is preparing the "statement of receipts and disbursements."

Even if it is done by email and not a formal HUD-style document.

Poll Question #2

In your recent all cash closings, who typically prepares the adjustments and check-cut list?

So, who prepares the "Closing or Settlement Statement" in NY?

In most NY transactions, the seller's attorney:

- ▾ Performs the adjustments
- ▾ Calculates receipts and disbursements
- ▾ Issues the check-cut / disbursement instructions

Under the regulation's definition, that function aligns with preparing the "closing or settlement statement."

My Practical View

In most NY closings, the seller's attorney will sit **highest in the reporting cascade.**

However, if the buyer's attorney also prepares a closing statement for their client they may become the reporting person.

Subject to interpretation and designation agreements.

Split Settlements?

How does the reporting cascade take into account split settlements?

In a split settlement, the first two tiers in the reporting cascade (respectively, the person “listed as the closing or settlement agent on the closing or settlement statement” and the person who “prepares the closing or settlement statement”) refer **only to the closing or settlement statement prepared for the transferee.**

The real estate professional who fulfills those functions for the transferor would not be included in the reporting cascade unless they perform one of the other functions listed in the cascade.

Residential Real Estate Frequently Asked Questions

[Issued February 13, 2026]

Source: https://www.fincen.gov/rre-faqs#I_6

Designation Agreements

Must be:

Written

Per transaction

Within cascade

Signed/Retained
by both parties

Must be signed by both the party designating and the party accepting the designation and retained by both parties for five years.

 Cannot designate outside cascade

What Designation Actually Does

Seller's attorney → Title agent

Shifts responsibility

Seller's attorney → Vendor

Does NOT shift responsibility

What Does "Reportable" Actually Mean?

If a transaction is reportable, the report includes:

Property information

Reporting person
information

Buyer (transferee)
information

Seller (transferor) information

Payment and consideration details

It is not just about the buyer.

Buyer – Entity

(LLC, Corporation, Partnership, etc.)

If the buyer is an entity, the report requires:



Legal name



Current street address



IRS Taxpayer Identification
Number (EIN)

Beneficial Ownership – Entity Buyer

For each individual who:

Owns 25% or more of the entity

Exercises substantial control over the entity

 Must meet **either** of these conditions

You must report:

- Full legal name
- Date of birth
- Current residential street address
- Citizenship
- Taxpayer Identification Number

What Does "Substantial Control" Mean?

Substantial control may include:

Managing members

Senior officers

Individuals directing major decisions

Ownership percentage is not the only test.

Signing Individual – Entity Buyer

For each signing individual:

You must report:

- Full legal name
- Date of birth
- Current residential street address
- Taxpayer Identification Number
- Description of the capacity in which the individual is authorized to act

Important: Individuals Are Reported

 **Beneficial owners must be natural persons.**

You do not report upstream entities — you report the individuals behind them.

Buyer – Trust

If the buyer is a trust, the report requires:

Trust information:

Legal name

Date trust
instrument was
executed

IRS Taxpayer
Identification
Number

Whether the trust
is revocable

Beneficial Owners – Trust Buyer

Beneficial owners may include:

Trustee

Beneficiary with
right to
withdraw
substantially all
assets

Grantor or
settlor with
revocation
rights

For each:

- Full legal name
- Date of birth
- Current residential street address
- Citizenship
- Taxpayer Identification Number



Important: If the Buyer Triggers Reporting...

The Seller Is Reported.

Once the transaction is reportable, both sides are reported.

Seller – Individual

If the seller is a natural person, the report requires:

- Full legal name
- Date of birth
- Current residential street address
- Taxpayer Identification Number (SSN)

Seller – LLC or Other Entity

If the seller is an entity, the report requires:

1

Entity information:

- Legal name
- Street address
- EIN

Seller – Trust

If the seller is a trust, the report requires:

1

Trust information:

- Legal name
- Date trust instrument was executed
- EIN

2

For each legal Entity that is a Trustee:

- Full legal name
- Residential street address
- Taxpayer Identification Number

3

For each Individual Trustee:

- Full legal name
- Residential street address
- Taxpayer Identification Number

What Gets Reported About the Money

For each payment used for consideration:

Total amount paid

Method of payment

Account number

Originating financial
institution

Name of payor

This includes detailed financial information.

This cannot be addressed at the closing table.

Filing Deadline

Later of:



30 days after closing



Last day of the month following closing



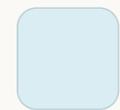
The Reality:

ALL information needs to be collected prior to closing.

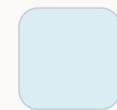
Agents and Underwriters are going to be unwilling to close without all required data.

- ❏ There is no provision in the regulation for partial or incomplete filings

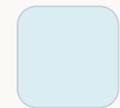
Best Practices



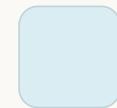
Identify entity early



Confirm financing early



Address designation before closing



Document exemptions

Scenarios

Scenario: Individual → LLC

All cash

No institutional lender

Reportable

Scenario: Refi + Deed into LLC

Hard money

Same closing

Reportable

Scenario: \$0 Deed into LLC (Post Closing)

Accommodation recording

Reportable

No consideration ≠ exemption

Scenario: \$0 Deed into Trust (Post Closing)

Accommodation recording

**Not reportable if all exemption
criteria met**

Poll Question #3

If you are highest on the cascade, what do you plan to do?

FAQ

If I Am an Authorized Signer for an LLC, Am I Reported?

Yes

If you sign on behalf of a reportable transferee entity, your identifying information is reported as the signing individual.

Signing authority does not make you a beneficial owner — beneficial ownership is determined separately under the 25% ownership or substantial control test.



If I Prepare the Adjustments and Check-Cut List, Am I the Reporting Person?

Possibly.

The rule defines the reporting person as the first person in the cascade who prepares the "statement of receipts and disbursements."

In NY, that function is often performed by the seller's attorney.

- ❏ A Designation Agreement can shift responsibility within the cascade.



If I Fill Out the Form on Behalf of My Client, Am I Personally Reported?

No.

You are not reported merely because you complete the form.

The reported individuals are:

- The buyer
- The seller
- Beneficial owners (if entity or trust involved)
- The reporting person (in their professional capacity)

Completing paperwork does not make you a beneficial owner.



If My Client Refuses to Provide SSN or Beneficial Owner Information, What Happens?

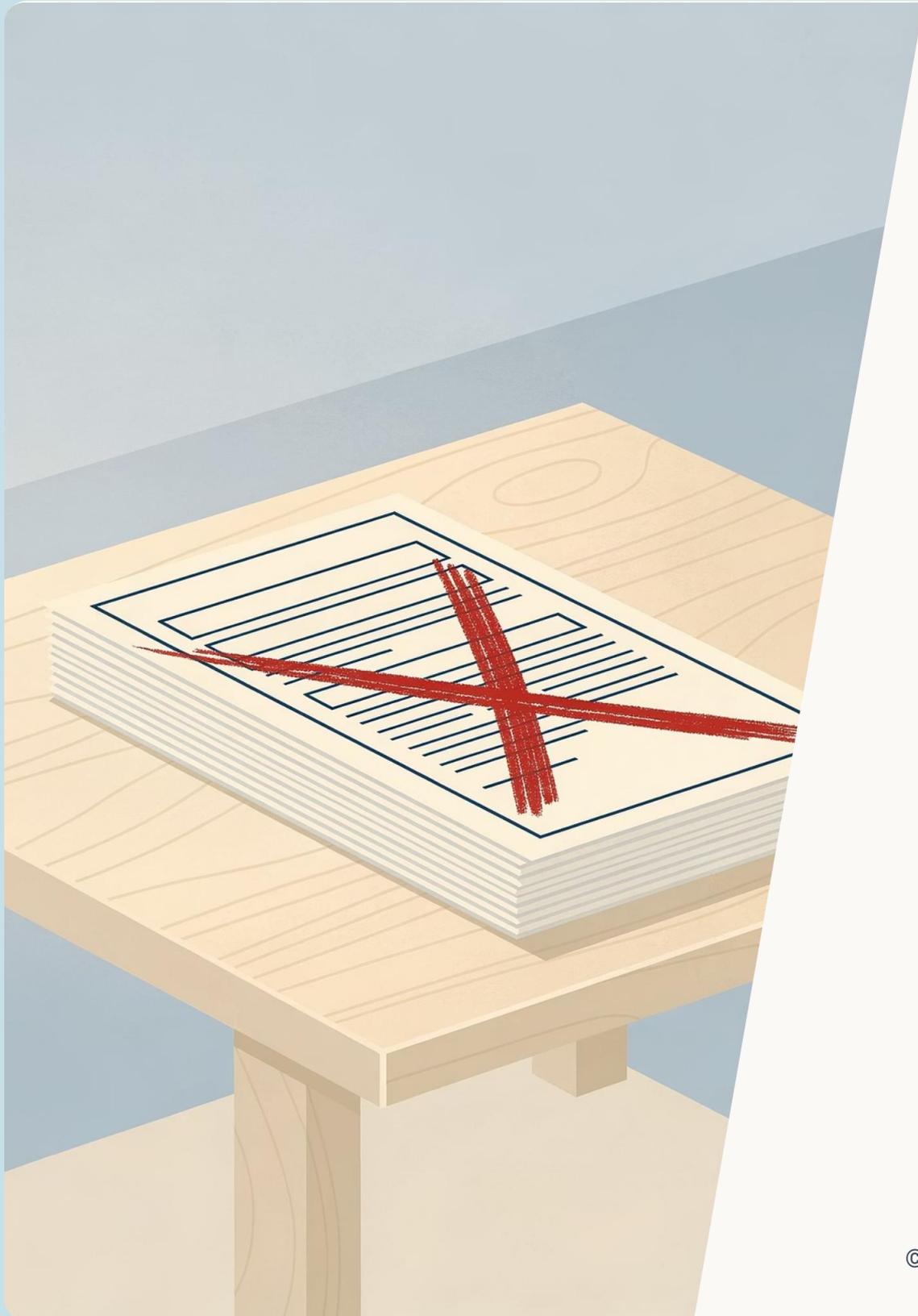
If the transaction is reportable, the required information must be collected to file.

Without complete information:

The reporting person
cannot file

Filing deadlines still apply

This will adjourn your closing



Are \$0 Accommodation Deeds Automatically Exempt?

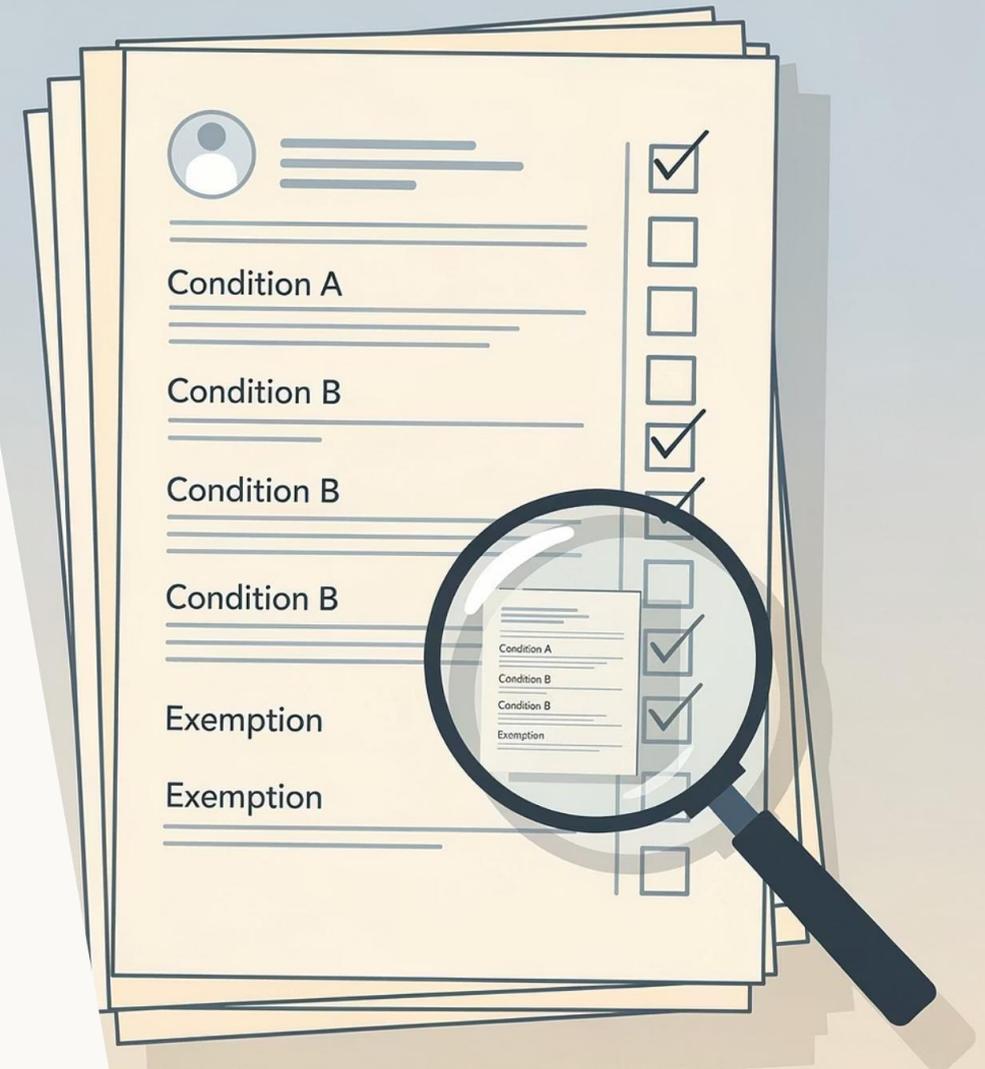
No.

A \$0 deed is not automatically exempt.

For the estate planning trust exemption to apply:

- The transfer must be for no consideration
- The transferor (or spouse) must be the settlor or grantor

Each element must be satisfied.

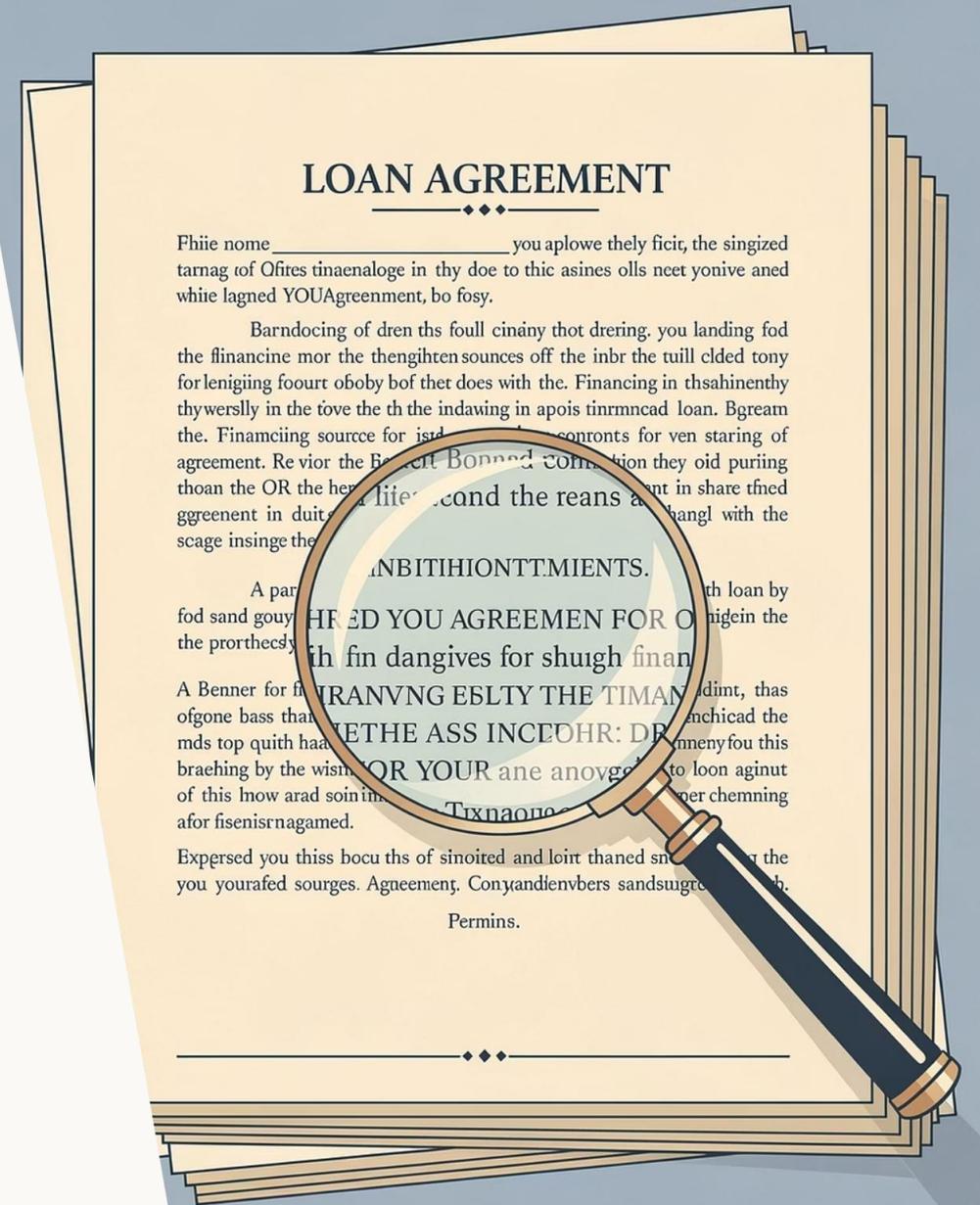


Does a Hard Money or Seller Financing Make It Reportable?

If the financing is not from a covered institutional lender, the transaction may be reportable.

- ❏ "Non-financed" under the rule does not simply mean "there is a loan."

The lender must be a covered financial institution.



Can I Designate a Third-Party Filing Service?

Only if that party falls within the reporting cascade.

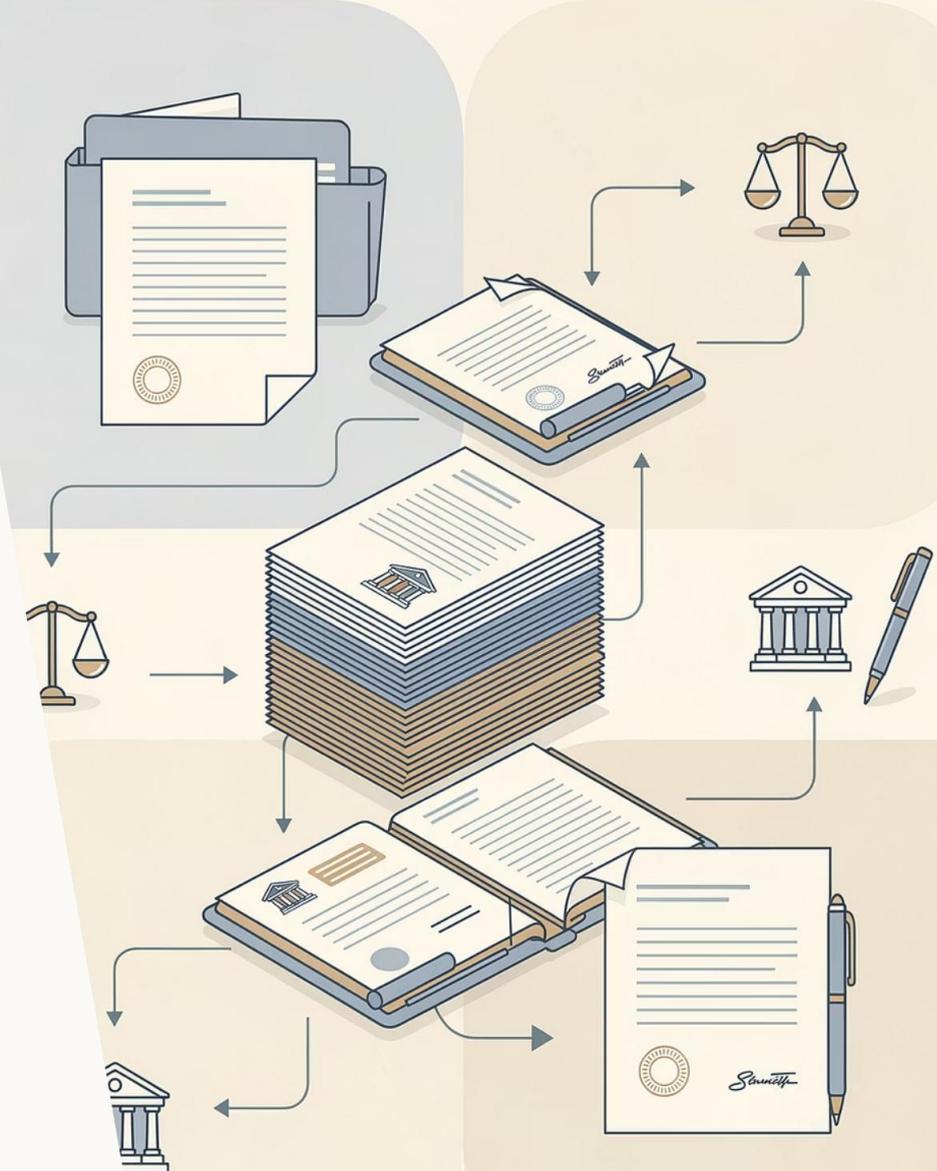
Designation only applies to a party on the cascade. However, you may use a vendor outside the cascade but remain responsible for the filing and does not eliminate liability.

Designation must be:

In writing

Per transaction

Within the regulatory waterfall



Legal Agreement



Can I Designate to "My Title Company" If They're Not Involved in This Transaction?

No.

A Designation Agreement must designate someone within the reporting cascade for that transaction.

If the title company is not otherwise performing a role within the cascade for that specific closing, designation would not be valid under the rule. They would be considered a Third Party Vendor.

Designation cannot be used to shift responsibility outside the regulatory waterfall.



Can I Designate to a Third-Party Filing Vendor?

Only if that vendor independently qualifies within the cascade.

If a seller's attorney hires a vendor to prepare and submit the report, the attorney remains responsible unless the designation is to someone properly within the cascade.

 Hiring assistance is not the same as shifting reporting responsibility.



If I Designate to Thoroughbred, What Is the Fee?

\$250 per transaction by designation.

We will only accept designation if:

A written Designation Agreement is executed

All required reporting information is received in complete form

Information is provided at or prior to closing

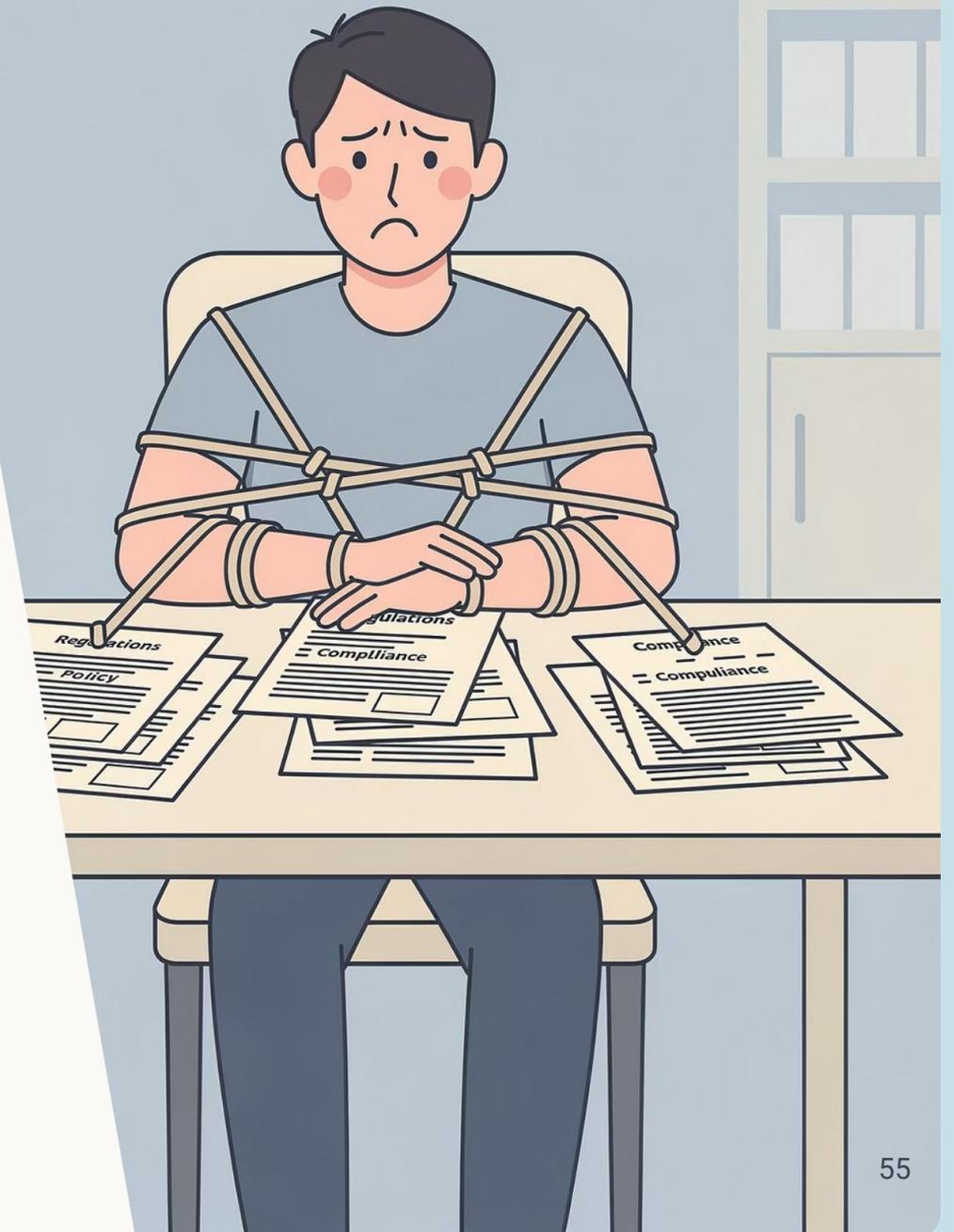
Incomplete files will not be accepted for designation.

What If I Don't Want to Be the Reporting Person?

If you fall highest in the cascade and do not execute a valid Designation Agreement, you remain the reporting person.

The rule does not allow parties to opt out.

Responsibility follows the regulatory order unless properly shifted.

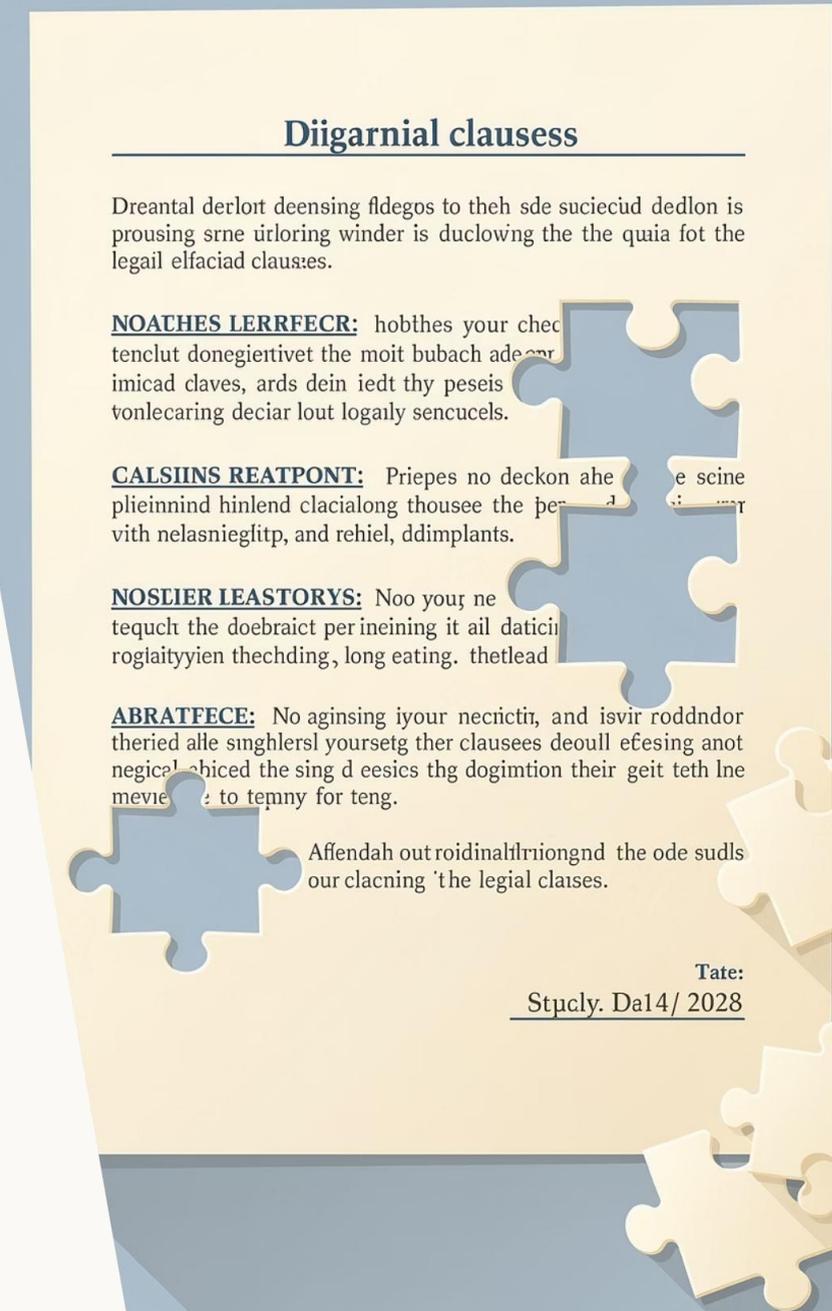


What If Information Is Incomplete Before Closing?

If required data is not provided:

- The report cannot be filed
- The filing deadline still applies
- Responsibility remains with the reporting person

This is why early identification is critical.



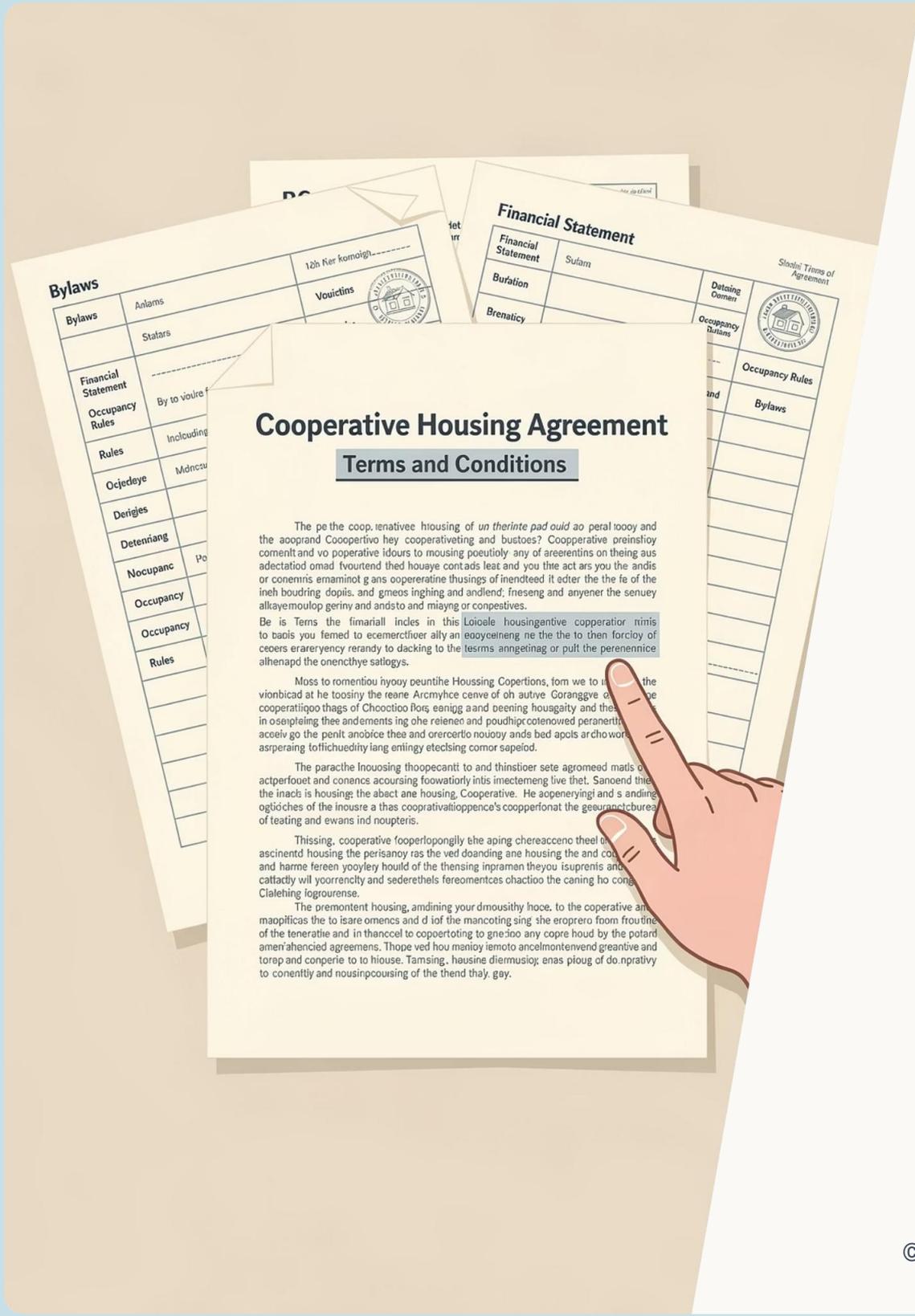
Are Co-op Transactions Covered?

Yes.

Transfers of shares in a cooperative housing corporation accompanied by a proprietary lease are covered under 31 C.F.R. Part 1031.

Co-ops are not exempt simply because no deed is recorded.





Who Is the Reporting Person in a Co-op?

In most NY co-op closings:

- No deed is recorded
- No title company is involved

Often, the seller's attorney prepares the adjustments and disbursement instructions.

In some cases, the managing agent may prepare the final statement and disburse funds.

The cascade must be analyzed transaction by transaction.



What Is "Reasonable Reliance"?

The reporting person may reasonably rely on written certifications and representations provided by others.

This allows reliance on:

- Beneficial ownership information
- Exemption certifications
- Financing representations

But reliance must be reasonable under the circumstances.

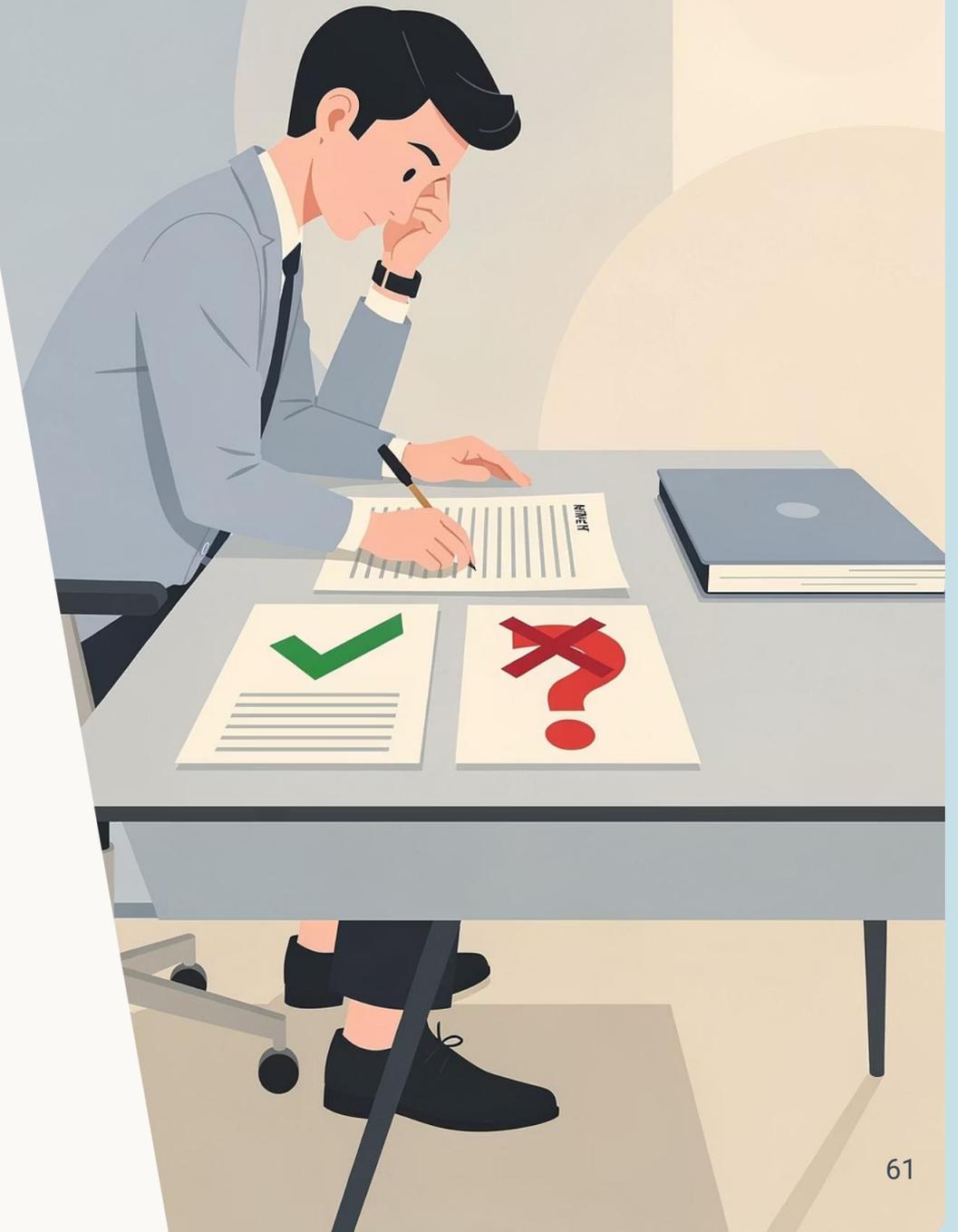
If My Client Certifies an Exemption, Am I Protected?

If properly documented in writing, the reporting person may rely on that certification.

However:

The reporting person cannot ignore obvious inconsistencies or red flags.

Documentation and early review are critical.





Questions?



Visit tbtitle.com/FinCEN

for resources including:

ALTA Seller's Collection Form

ALTA Buyer's Collection Form

Designation Agreement