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AML/Financial Institutions | Real Estate Update

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## FinCEN's Residential Real Estate Reporting Rule Vacated Nationwide

*Gibson Dunn is monitoring regulatory developments closely. Our lawyers are available to assist companies as they navigate the challenges and opportunities posed by the current, evolving legal landscape.*

*On March 19, 2026, a federal district court in Texas vacated a Final Rule (the Residential Real Estate Rule or the Rule) issued in 2024 by the Financial Crimes Enforcement Network (FinCEN).<sup>[1]</sup> The Residential Real Estate Rule imposed reporting requirements on non-financed transfers of residential real estate. The Court held that the Residential Real Estate Rule exceeds FinCEN's authority under the Bank Secrecy Act, and thus vacated the rule in its entirety. Accordingly, the reporting obligations imposed by the Rule are no longer in effect, though this could quickly change. This update briefly describes the ruling and what it means for those subject to the Residential Real Estate Rule's requirements.*

### **Background**

On August 28, 2024, FinCEN issued the Residential Real Estate Rule.<sup>[2]</sup> The Rule covers non-financed transfers of various types of residential real estate, including single-family houses, townhouses, condominiums, cooperatives, and other buildings designed for occupancy by one to four families.<sup>[3]</sup> Under the Residential Real Estate Rule, a transaction is considered "non-financed" if it does not involve an extension of credit issued by a financial institution required to maintain an AML program and file SARs.<sup>[4]</sup> The Rule includes exemptions for some common, low-risk types of real estate transfers, such as those resulting from death, divorce, or to a

bankruptcy estate.<sup>[5]</sup> The Residential Real Estate Rule identifies persons required to file a report (Reporting Person(s)) through a “cascade” framework that assigns the reporting responsibility in sequential order to various persons who perform closing or settlement functions for residential real estate transfers.<sup>[6]</sup> The Reporting Person is required to report certain information about themselves; the transferee of the property; the transferor of the property; the property; and the payments, to FinCEN.<sup>[7]</sup>

The Residential Real Estate Rule was initially set to go into effect on December 1, 2025. On September 30, 2025, FinCEN delayed the effective date to March 1, 2026.<sup>[8]</sup>

### ***Court’s Ruling***

Plaintiff Flowers Title Companies, LLC, a Texas-based title company, challenged the Residential Real Estate Rule under the Administrative Procedure Act (APA), arguing that FinCEN lacked statutory authority to impose the reporting regime. After briefing, the U.S. District Court for the Eastern District of Texas (Judge Jeremy D. Kernodle) granted summary judgment in favor of Plaintiff and vacated the rule, as exceeding FinCEN’s authority under the Bank Secrecy Act.

The Court analyzed the two Bank Secrecy Act statutory provisions FinCEN invoked as authority to issue the Rule and found neither sufficient:

- FinCEN’s authority under 31 U.S.C. § 5318(g)(1), which authorizes the agency to require financial institutions to report “any suspicious transaction relevant to a possible violation of law or regulation.” The Court held that FinCEN’s attempt to characterize all non-financed residential real estate transfers to entities or trusts as categorically “suspicious” failed as a matter of statutory interpretation.
- FinCEN’s authority under 31 U.S.C. § 5318(a)(2), which authorizes the agency to require financial institutions to “maintain appropriate procedures, including the collection and reporting of certain information.” The Court held this interpretation was inconsistent with the natural reading of the statute.

The Court vacated and set aside the Residential Real Estate Rule, concluding that vacatur is the only statutorily prescribed remedy under the APA for a successful challenge to agency action and that universal vacatur is appropriate under Fifth Circuit precedent. The Court declined to depart from that default approach, reasoning that the Rule’s statutory deficiencies are fundamental and unlikely to be curable on remand, and that, given the Rule had been in effect for only a short time, vacatur merely restores the pre-rule status quo.

### ***What the Ruling Means for Reporting Persons***

Given the Court’s nationwide vacatur, the Residential Real Estate Rule’s reporting obligations are currently unenforceable. FinCEN’s webpage on the Rule states: “ALERT: In light of a federal court decision, reporting persons are not currently required to file real estate reports with FinCEN and are not subject to liability if they fail to do so while the order remains in force.”<sup>[9]</sup> As such, title companies, settlement agents, and others who would have been Reporting Persons under the rule are not currently required to file reports with FinCEN.

However, the government may appeal and seek an emergency stay of the vacatur from either the Fifth Circuit or the Supreme Court. It is notable that Judge Kernodle is not the only court to opine on the legality of the Residential Real Estate Rule. A judge in the Middle District of Florida reached the opposite conclusion in an earlier case.<sup>[10]</sup> Given the possibility of either the Fifth Circuit or the Supreme Court staying the district court's order pending appeal, Reporting Persons' legal obligations are subject to change on short notice.

Entities and professionals subject to the Rule should monitor this matter closely and consult with counsel as necessary to understand whether and when its obligations may be reinstated.

[1] *Flowers Title Companies, LLC v. Bessent, et al.*, 25-cv-127 (E.D. Tex. Mar. 19, 2026).

[2] The rule was codified at 31 C.F.R. § 1031.320. FinCEN described the rule in a series of documents in 2024. Press Release, U.S. Dep't of the Treasury, FinCEN, FinCEN Issues Final Rules to Safeguard Residential Real Estate, Investment Adviser Sectors from Illicit Finance (Aug. 28, 2024), <https://www.fincen.gov/news/news-releases/fincen-issues-final-rules-safeguard-residential-real-estate-investment-adviser>; Fact Sheet: FinCEN Issues Final Rule to Increase Transparency in Residential Real Estate Transfers, <https://www.fincen.gov/sites/default/files/shared/RREFactSheet.pdf>; Real Estate Reports Frequently Asked Questions, <https://www.fincen.gov/sites/default/files/shared/RREFAQs.pdf> (Real Estate FAQ); 89 Fed. Reg. 70258 (Aug. 29, 2024), <https://www.federalregister.gov/documents/2024/08/29/2024-19198/anti-money-laundering-regulations-for-residential-real-estate-transfers>.

[3] 89 Fed. Reg. at 70265-66; Real Estate FAQ B.3.

[4] 89 Fed. Reg. at 70266.

[5] *Id.* at 70266-69.

[6] *Id.* at 70270-72.

[7] 31 C.F.R. § 1031.320.

[8] <https://www.fincen.gov/news/news-releases/fincen-announces-postponement-residential-real-estate-reporting-until-march-1>.

[9] <https://www.fincen.gov/rre>.

[10] *Fidelity Nat'l Fin., Inc. et al. v. Bessent et al.*, 3:25-CV-554-WWB-SJH, 2025 WL 4477503 (M.D. Fla. Dec. 9, 2025), *report and recommendation adopted sub nom. Fid. Nat'l Fin., Inc. v. Bessent*, No. 3:25-CV-554-WWB-SJH, 2026 WL 472350 (M.D. Fla. Feb. 19, 2026).

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