

How Courts Are Clashing Over FinCEN Real Estate Rule

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On March 19, the [U.S. District Court for the Eastern District of Texas](#) entered a final judgment setting aside and vacating the [Financial Crimes Enforcement Network's](#) (FinCEN) residential real estate rule in its entirety, including all reporting obligations imposed pursuant thereto.

This decision in *Flowers Title Companies LLC v. Bessent* is the latest and most consequential in a series of federal court decisions addressing challenges to the rule, and it has created significant uncertainty for real estate industry participants regarding their current and prospective compliance obligations.

Background on the Residential Real Estate Rule

The residential real estate rule, formally titled "Anti-Money Laundering Regulations for Residential Real Estate Transfers," was promulgated by FinCEN under the authority of the Bank Secrecy Act and took effect on December 1, 2025, with its reporting obligations commencing March 1.

The rule was designed to address the potential use of nonfinanced residential real estate transfers among legal entities and trusts as a vehicle for laundering illicit funds.

Before the rule, FinCEN's reporting requirements in the residential real estate space were limited to certain all-cash residential real estate purchases in specific metropolitan areas via geographic targeting orders. The rule represented a nationwide, permanent expansion of those reporting obligations.

Under the rule, reporting persons — typically the party responsible for the settlement of covered transactions, often the title insurance company — were required to file reports with FinCEN identifying certain information regarding nonfinanced transfers.

Notably, nonfinanced transfers included not only so-called all cash purchases, but also transfers with financing provided by debt funds and other private lenders that are not already subject to FinCEN's existing anti-money laundering and suspicious activity report obligations.

Moreover, the definition of "residential real property" expressly included raw land on which the transferee intended to build one or more structures designed for occupancy by one to four families. Accordingly, the scope of the residential real estate rule extended well beyond traditional residential closings and into the development space.

The rule required the reporting person to submit detailed information to FinCEN regarding the following.

- Property, including the address, legal description and date of closing;
- The transferee and its beneficial owners, including the name, date of birth, residential address, citizenship, and tax identification number or passport number;
- Any signing individuals who executed documents on behalf of the transferee;
- The transferor, including the name, address and TIN, though beneficial ownership of transferors is not required; and
- Payment information, including total consideration, payment method, and financial institution name and account number.

While the information submitted to FinCEN was to be maintained in a secure, nonpublic database exempt from disclosure under the Freedom of Information Act, significant concerns existed within the industry about the collection and transmission of sensitive personal data and nonpublic information.

The Three Federal Court Decisions

Since the rule was promulgated, three separate federal district court cases have addressed challenges to its enforceability. Two of those courts upheld the rule, while the third — the *Flowers* court — ultimately held FinCEN exceeded its authority and vacated the rule.

Fidelity v. Bessent

The first decision came from the [U.S. District Court for the Middle District of Florida](#) on February 19. In [Fidelity National Financial Inc. v. Bessent](#), U.S. District Judge Wendy Berger upheld the rule on summary judgment, finding that FinCEN had acted squarely within the scope of its rulemaking authority.

The *Fidelity* order reasoned that the BSA authorized FinCEN to establish processes related to suspicious transactions, that the suspicion need not have an individualized and particularized basis,

and that FinCEN was entitled to rely on its experience with geographic targeting orders in determining that this category of transaction was suspicious.

Accordingly, the residential real estate rule represented a valid exercise of the secretary of the treasury's authority to impose reporting requirements.

Flowers v. Bessent

A few weeks later, the *Flowers* case in the Eastern District of Texas addressed a similar challenge to the residential real estate rule. Addressing many of the same arguments that were made in *Fidelity* regarding FinCEN's rulemaking authority under the BSA, the *Flowers* court agreed with the plaintiff title company that the residential real estate rule exceeded such authority.

U.S. District Judge Jeremy Kernodle held that "suspicious" was not a blank check, and FinCEN cannot mandate reporting of an entire class of transactions without demonstrating that the class tends to arouse a belief that something is wrong. Accordingly, on March 19, the court entered a final judgment vacating and setting aside the residential real estate rule in its entirety and on a nationwide basis.

Corley v. Treasury

While chronologically the second of the three cases, the [U.S. District Court for the Northern District of Texas](#) addressed a different set of arguments in [Corley v. U.S. Department of the Treasury](#), on February 25.

The plaintiff in *Corley* argued that the residential real estate rule regulated inherently intrastate activity, and that it was therefore an impermissible expansion of the federal government's authority. The *Corley* court disagreed, holding that the rule was constitutional according to binding precedent interpreting the U.S. Constitution's commerce clause and granting summary judgment upholding the rule.

Comparing the Decisions

Interestingly, *Fidelity* and *Flowers* analyzed substantially identical arguments focused on the same statutory provisions, and both orders relied heavily on dictionary definitions, rules of grammar and canons of statutory interpretation. Nonetheless, the courts reached diametrically opposite conclusions.

The *Fidelity* court generally deferred to FinCEN's determination, informed by its experience with geographic targeting orders, that nonfinanced residential real estate transfers were categorically suspicious.

By contrast, the *Flowers* court ruled that FinCEN sought to regulate an immense category of transactions and failed to demonstrate that it was inherently suspicious.

The *Fidelity* court also found additional statutory support for the rule within another provision of the BSA, while the *Flowers* court concluded that the provision in question dealt exclusively with the practicalities of implementation and was not an independent grant of authority.

Current Status and Practical Considerations

While the residential real estate rule is vacated for now, the existence of directly conflicting district court decisions creates significant uncertainty that will likely need to be resolved through appellate review.

FinCEN has not announced whether it intends to appeal the *Flowers* decision, opting instead to issue the following statement: "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."

Many still anticipate an appeal, however, and FinCEN is widely expected to resume issuing geographic targeting orders in the interim.

In response to the present uncertainty regarding the future of the residential real estate rule, practitioners have adopted divergent approaches.

Some professional and real estate bar organizations have recommended that reporting persons continue to collect the information that would be required for reporting under the residential real estate rule in anticipation of a potential reinstatement.

Others, including certain national title insurance company underwriters, have taken the view that any reinstatement would have prospective effect only and have stopped collecting the relevant information altogether.

Of course, in the absence of appellate resolution or additional guidance from FinCEN, the appropriate course of action for any particular reporting person or transaction participant will depend on a range of factors, including that party's risk tolerance, the volume and nature of its transactions, and the guidance of its legal counsel.

The stakes, however, are not negligible — when in effect, the residential real estate rule made reporting persons subject to substantial civil penalties, fines and even potential criminal penalties in the case of willful violations.

All parties should be prepared for the possibility that further procedural and appellate developments may occur quickly or without advance notice, and that any changes may or may not include a reinstatement of the residential real estate rule's reporting requirements.

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