

The FinCEN Kerfuffle

A federal district court halts new Financial Crimes Enforcement Network reporting requirements for real estate transactions.

New Residential Real Estate Reporting to FinCEN Begins March 1, 2026

By Sandra D. Mertens

Federal Taxation – March 2026 &

Here We Go Again: Challenges to FinCEN’s Residential Real Estate Rule

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Federal Taxation – April 2026

A MARCH 19 FEDERAL DISTRICT

COURT ruling has halted reporting requirements for residential real estate transactions and settlements that took effect on March 1. The requirements, promulgated by the Financial Crimes Enforcement Network (FinCEN) under the U.S. Department of the Treasury, were to apply to each “non-financed transfer to a transferee entity or transferee trust of an ownership interest in residential real property,” with certain exclusions and exemptions.

But on March 19, the U.S. District Court for the Eastern District of Texas in *Flowers Title Companies, LLC v. Bessent*, Case No. 6:25-cv-127-JDK (E.D. Tex. Mar. 19, 2026) found that FinCEN lacked statutory grounds for issuing its 2024 Final Rule that set the March 1 effective date in motion. The court specifically opted not to vacate the application of the Final Rule only to the plaintiff, given the seriousness of FinCEN’s purported deficiencies in adopting the Final Rule.

While the government has the right to appeal the decision, in the meantime, it may not require reports under the residential real estate reporting rule. FinCEN updated its website to advise: “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.”

A recap

On Feb. 7, 2024, FinCEN quietly published a proposed rule imposing new residential real estate reporting. The rule became final on Aug.

28, 2024. Reports were initially due beginning Dec. 1, 2025; however, the effective date was pushed back to March 1, 2026.

FinCEN cited as its authority 31 U.S.C. Section 5318(h), covering anti-money laundering programs and granting the U.S. Treasury authority to “prescribe minimum standards for programs” required by financial institutions “to guard against money laundering and the financing of terrorism through financial institutions.” FinCEN deems the real estate industry to fall under its authority because the term “financial institution” is defined to include “persons involved in real estate closings and settlements.” 31 U.S.C. § 5312(a)(2)(U).

Although FinCEN has been authorized to regulate this industry for years, FinCEN historically exempted “persons involved in real estate closings and settlements” from comprehensive regulation. However, “information received in response to FinCEN’s geographic targeting orders relating to non-financed transfers of residential real estate (‘Residential Real Estate GTOs’) has demonstrated the need for increased transparency and further regulation.” 2024-19198 (89 FR 70258).

Specifically, FinCEN is targeting “criminals and corrupt officials who abuse opaque legal entities and trusts to launder ill-gotten gains through transfers of residential real estate.” *Id.* Therefore, the reportable information is similar to the Corporate Transparency Act (CTA): beneficial ownership information for certain legal entities and trusts.

If this sounds all too familiar, readers will recall that a Texas district court previously struck down the CTA and issued a nationwide ban on government enforcement. Like the CTA, the FinCEN Final Rule covering residential real estate transactions may continue to be litigated in the coming months until either the government relents as it did with the CTA, or the U.S. Supreme Court rules.

In the meantime, attorneys, tax practitioners, and real estate professionals should carefully watch as courts interpret the applicable laws and regulations and FinCEN responds.



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This is a combined excerpt of two articles that appeared in the March 2026 and April 2026 issues of Federal Taxation, the newsletter of the ISBA’s Section on Federal Taxation. Each article is available to all ISBA members at law.isba.org/4ed2miy (March article) and law.isba.org/4c2i2JK (April article).

Sandra D. Mertens is a partner at Schoenberg Finkel Beederman Bell Glazer LLC, and may be contacted at (312) 648-2300 or Sandra.Mertens@SFBGG.com.

If reporting resumes

Attorneys should understand what the March 1 FinCEN rule required:

1. Information about the “reporting person” (legal name, address, and reporting category).
 2. Information about the transferee entity or trust (full legal name and trade name, address, details about the trust instrument if applicable, taxpayer identification, and details about each beneficial owner of the transferee).
 3. Information about the beneficial owners and the signer of the real estate closing documents (full name, date of birth, residential address, citizenship, taxpayer identification (or other unique number if foreign), capacity and role of the transferee, and the category of beneficial owner).
 4. Information about the transferor (same as above).
 5. Information about the property, including the address, legal description, and date of closing.
 6. Information about the payment(s) amounts and methods (total consideration paid, the amount of each payment, the method by which each payment was made, the name of the transferring financial institution and account number, and the name of the payor on the check or wire if made by another party).
 7. Information about any credit extended by a person who is not a financial institution with reporting obligations under the Bank Secrecy Act, such as private loans or “hard money.”
- 31 C.F.R. § 1031.320(d)-(i).

The reporting requirement had excluded transfers involving mortgages or other financing, as well as transfers to individuals. It also excluded transfers of commercial property and other types of property, such as personal property or intellectual property. Generally, exemptions covered common real estate transfers for no consideration or where there is a low risk of the transfer being made with illicit purpose.

A “reporting person”

In most cases, a “reporting person” would be “the person listed as the closing or settlement agent on the closing or settlement statement for the transfer.” 31 C.F.R. § 1031.320(c)(1)(i). If no such person exists, it could be “the person that prepares the closing or settlement statement for the transfer,” or “the person that files with the recordation office the deed or other instrument that transfers ownership,” or “the person that underwrites an owner’s title insurance policy,” or “the person that disburses ... the greatest amount of funds,” or “the person that provides an evaluation of the status of the title,” or “the person who prepares the deed or ... legal instrument that transfers ownership of the residential real property.” 31 C.F.R. § 1031.320(c)(1)(ii)-(vii).

Therefore, the “reporting person” could include the closing agent, underwriter, virtually any employee of a title company, or even an attorney on the transaction. Notably, attorneys are not on the list of exclusions from being considered a “reporting person.” In fact, FinCEN’s final rule confirmed that attorneys are *not* exempt from the reporting requirements. 2024-19198 (89 FR 70258).

Nevertheless, if the individual who would otherwise be a “reporting person” is an employee, agent, or partner acting within the scope of his or her employment, then that person’s employer, principal, or partnership would be deemed to be the “reporting person.” 31 C.F.R. § 1031.320(c)(2). This means that the title company itself would usually be the “reporting person” liable for reporting at the entity level. Alternatively, it could be the law firm itself employing an attorney.

Interestingly, although the authority for the rule stems from the Bank Secrecy Act and related laws, “a financial institution that has an obligation to maintain an anti-money laundering program ... is not a reporting person for purposes of this section.” 31 C.F.R. § 1031.320(c)(3).

Filing

FinCEN has a Real Estate Report form available on its website [fincen.gov/rre](https://www.fincen.gov/rre) to

be submitted by: a) the final day of the month following the month in which the date of closing occurred; or b) 30 calendar days after the closing date. 31 C.F.R. § 1031.320(k). As stated above, the website currently includes a statement about the federal district court ruling.

Civil & criminal consequences

A “reporting person” would be obligated to maintain certain records relating to the FinCEN report, including a copy of a certification made by customers regarding beneficial ownership information or designation agreements. 31 C.F.R. § 1031.320(l).

However, a “reporting person” is entitled to “reasonable reliance” upon information provided by other persons, so long as they have no knowledge of facts contrary to the reliability of information provided. The reporting person may obtain a certification about the beneficial ownership information certifying the accuracy of the information in writing to the best of the person’s knowledge. 31 C.F.R. § 1031.320(j).

Unlike the Corporate Transparency Act, the new Residential Real Estate Reporting regulation had no specific enforcement mechanisms. However, FinCEN has indicated that it has authority to enforce violations through both civil and criminal mechanisms under the Bank Secrecy Act. Negligence violations of the final rule would invoke civil penalties of not more than \$1,394 for each violation, with an additional civil money penalty of up to \$108,489 for a pattern of negligent activity. See 31 U.S.C. § 5321.

Willful violations could have resulted in a term of imprisonment of not more than five years or a criminal fine of not more than \$250,000, or both. See 31 U.S.C. § 5322. Willful violations could have resulted in a civil penalty of not more than the greater of the amount involved in the transaction (not to exceed \$278,937), or \$69,733. See 31 U.S.C. § 5321; 31 C.F.R. § 1010.821. These figures are adjusted for inflation. **EB**