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FEDERAL COURT VACATES FINCEN REAL ESTATE REPORTING RULE

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Despite the U.S. District Court previously upholding The Financial Crimes Enforcement Network's (FinCEN) rule requiring persons involved in certain residential real estate closings and settlements to report certain information to FinCEN (the Real Estate Reporting Rule), the U.S. District Court for the Eastern District of Texas, in Flowers Title Companies, LLC v. Bessent, ruled against FinCEN and vacated the Real Estate Reporting Rule.

The Real Estate Reporting Rule went into effect on March 1, 2026, and required the reporting of information to FinCEN in certain “non-financed” residential real estate transfers in which the purchaser or other recipient of an interest in real property is a legal entity (Transferee Entity) or trust (Transferee Trust). Under the Real Estate Reporting Rule, non-financed transactions include not only "all cash" transactions, but also transfers with financing provided by private lenders that are not already subject to FinCEN’s anti-money laundering and Suspicious Activity Report obligations. The reports were to be submitted electronically to FinCEN and include information concerning the transferred property and identifying information for the Transferee Entity or Transferee Trust and its beneficial owners, the transferor, and the person filing the real estate report.

The Court determined that the Real Estate Reporting Rule exceeded FinCEN’s statutory authority under the Bank Secrecy Act and ordered that the final Real Estate Reporting Rule be vacated and set aside in its entirety, including the reporting obligations. The Court’s opinion and order held that FinCEN, in issuing the Real Estate Reporting Rule, exceeded its authority under the Bank Secrecy Act of 1970 (BSA). Although FinCEN may require reporting of “suspicious” transactions, the Court concluded that non-financed residential real estate transactions to legal entities or trust recipients are not categorically suspicious. The Court also determined that the BSA only authorizes FinCEN to require procedures that include reporting information and that the BSA does not authorize FinCEN to require the reports mandated by the Real Estate Reporting Rule. The Court’s order stops all reporting obligations under the Real Estate Reporting Rule. The Court’s full opinion is available here.

In response to the Court’s decision, FinCEN issued the following official statement clarifying that the filing of real estate reports is not currently required:

"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."

The Court’s decision in Flowers is subject to appeal, and given the conflicting rulings on the subject, it is likely that appellate courts will be asked to address the matter. In the event of an appeal of the Flowers decision, the Court’s order may be stayed, resulting in enforcement of the Real Estate Reporting Rule pending a final decision by an appellate court on FinCEN’s authority to issue the Real Estate Reporting Rule. As a result, reporting persons should continue to collect the information required to prepare the reports, although the reports need not currently be filed with FinCEN.

We will continue to monitor any developments related to this case and on this subject as they arise.

Related Team Member(s)

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