COMMERCIAL REAL ESTATE INSIGHT & NEWS

The Bowditch & Dewey Real Estate Blog

Updated: Federal District Court Vacates FinCEN Rule for Residential Real Estate Transfers

BY JOSEPH R. DUQUETTE AND SAMANTHA P. MCDONALD • MARCH 21, 2026

As of March 23, 2026, FinCEN has confirmed that reporting entities do not have to file reports regarding affected transfers while the federal order remains in effect. We anticipate that FinCEN will appeal the ruling, however. Stay tuned!

On March 19, 2026, a federal district court in Texas vacated a rule recently imposed by the Financial Crimes Enforcement Network ("FinCEN"), a division of the United States Treasury Department. See *Flowers Title Companies, LLC v. Scott Bessent*. The "Anti-Money Laundering Regulations for Residential Real Estate Transfers" rule, known as RRE, went into effect on March 1st. 31 C.F.R. Sec. 1031.320. RRE required transfers of residential real estate to an entity or trust that were not financed by a lender subject to anti-money laundering laws to be reported to FinCEN. The reports required that personal information about both the transferee and transferor be filed with FinCEN, such as the underlying beneficial owners of the trust or entity, including Social Security numbers, dates of birth, and copies of unexpired government-issued identification, along with trust documentation or entity governance documentation. Over the last few weeks, many of our clients have expressed discomfort with their personal information residing in a federal database. While money laundering is a serious problem, we echo our clients' concern with this tool. In addition, in many instances, the law firm preparing transfer documentation is a reporting entity subject to civil and criminal penalties for noncompliance with the FinCEN reporting requirement. This puts us in a difficult position of effectively policing client compliance.

Since 2016, certain non-financed residential real estate transfers to a non-public entity have required reporting to FinCEN under the RRE's predecessor temporary rule, known as Geographic Targeting Orders or GTOs. GTOs were effective only in certain geographic areas and only when the sale price was above a threshold market price (typically $300,000 or more). RRE was much broader: there was no minimum transfer value or sale price; even gifts required reporting. While there were some exceptions to the reporting requirement, they were very narrow. For example, transfers to a trust are common for estate planning. These were only excepted from reporting if the transfer was from

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the property owner individually to a trust where the property owner was the trust grantor and the transfer was made for zero consideration. However, deeds for zero consideration are not valid in Massachusetts, so this "exception" is essentially eviscerated.

FinCEN has authority from Congress to institute procedures to comply with the Bank Secrecy Act of 1970, intended to fight money laundering in international transactions, later enlarged to include "suspicious" domestic transactions. The federal district court found that RRE exceeded FinCEN's authority because it failed to explain how all non-exempt, non-financed transfers are suspicious. In general, a federal agency's power is limited to the authority explicitly delegated to the agency by Congress, as shown in the text of the statute; therefore, FinCEN cannot regulate all or virtually all transactions – it must limit its rules to those transactions deemed suspicious.

The federal district court vacated RRE, which is generally seen as applicable across the country. However, that has become the focus of debate recently, similar to the applicability of preliminary injunctions issued by a federal district court. Accordingly, questions need to be resolved before the real estate industry and trust and estate professionals have clarity that we do not need to collect the reporting information and file it with FinCEN. While this uncertainty means reporting the information will at the moment continue, we are hopeful that ultimately the courts will uniformly strike down the reporting rule.

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