

FinCEN Residential Reporting Requirement Unconstitutional

Quick-Take: FinCEN’s residential reporting rules that were effective on March 1, 2026, were held to be unconstitutional by a federal District Court in Texas.

Background: Last year FinCEN published a rule called the “Anti-Money Laundering Regulations for Residential Real Estate Transactions.” The rule became effective on March 1, 2026. Shortly after the rule was published a lawsuit was filed in Texas that challenged the legality of the rule, asserting that: (i) it was unlawful under the Administrative Procedures Act, and (ii) the rule exceeded FinCEN’s authority under the Bank Secrecy Act.

On March 19, 2026, a federal District Court granted the Plaintiff’s motion for summary judgment, and it vacated FinCEN’s rule in ***Flowers Title Company v. Bessent (Eastern District of Texas.)***

The District Court held:

“Neither provision of the Bank Secrecy Act cited by FinCEN authorized the final rule... The first provision, 31 U.S.C. Section 55319(g)(1), permits FinCEN to require reports of ‘any suspicious transaction.’ But the agency fails to explain or show how non-financed residential real estate transactions are categorically ‘suspicious.’ The second provision, 31 U.S.C. Section 5318(2), gives FinCEN the authority to require financial institutions to maintain ‘procedures’ to comply with the Act, not the authority to require the reports covered by the final rule.”

The judge went on to refer to FinCEN’s explanations as “vague, conclusory and unpersuasive.”

“The fact that some bad actors have conducted non-financed real estate transactions does not make such transactions categorically ‘suspicious.’ If it did, then nearly every type of transaction imaginable would be ‘suspicious,’ and Section 5318(g)(1) would grant FinCEN far-reaching powers no one has contemplated.”

FinCEN must limit the reporting rule to any suspicious transaction. *“Instead, FinCEN has declared an entire category of residential real estate transactions to be ‘suspicious’ with no proof or sufficient explanation why.”*

Conclusion: It is a pretty good bet that FinCEN will appeal this decision. In the interim, if a residential real estate transaction is to take place, when it is not financed, if no report is filed, then the parties should be advised of the legal basis why FinCEN’s reporting requirement is ignored, and probably best to refer to the judge’s decision in *Flowers Title Company* as the basis for the non-compliance.

If you would like to read additional missives, [click here](#).