

2025 MLTA Spring Education Seminar • May 14-16
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Ethics: FinCEN's RRERs: Handling Compliance Ethically

Purpose and Description: The Financial Crimes Enforcement Network (FinCEN) has promulgated a new rule to disclose cash transactions to entities and/or trusts. See CFR 1031.320. Settlement agents and title agents may be affected by this rule as they are within the purview of reporting persons according to FinCEN. There will be ethical dilemmas that arise with our customers due to data privacy, compliance questions, and adoption hurdles. "To Close or Not to Close – That is the Question...". Settlement agents will have to adopt their own unique processes to handle situations that could be challenging and since the rule is to prevent money-laundering, potentially asking settlement agents to make judgment calls that enter into gray areas.

The information collected also will contain Non-Public Information (NPI) so thinking ethically around collection and storage procedures is a must for any attorney, settlement agent, or title agent that is handling these type of transactions. It is the law, but also our ethical duty as settlement and title professionals to train teams on how to collect, use, and store information safely to protect the consumer.

Introduction to Residential Real Estate Reports to FinCEN

1. Implementation Date of FinCEN's Anti-Money Laundering Regulations for Residential Real Estate Transactions

2. Money-Laundering Steps
 - a. Deposits of small amounts

 - b. Numerous Transactions

 - c. Disguised and appears clean

3. FinCEN – Financial Crimes Enforcement Network
 - a. History of the Agency
 - i. FinCEN Mission

 - ii. Bank Secrecy Act, 31 U.S.C. 5311

 - iii. Anti-Money-Laundering Act of 2020

 - iv. Department of Treasury Leadership and Goals

b. Anti-Money Laundering Act of 2020

- i. Information received and investigations into money-laundering
- ii. Set-up of FinCEN to investigate information

c. Receipt of Financial Data

- i. Suspicious Activity Reports
- ii. Currency Transaction Reports
- iii. Cooperation amongst agencies to analyze data and make connections

4. FinCEN Final Rule Creation into AML for Residential Real Estate Transactions

a. Geographic Targeting Order History and Expansion

- i. 2016
- ii. 69 counties
- iii. Threshold Amounts

b. Data obtained from FinCEN and statistics about collection results

c. Final Rule Creation Process

5. Civil and Criminal Liability for Non-Compliance

Why Implementation Will Put Settlement Agents in Ethical Dilemmas and Discussion on What Should Be Done

1. Determination of Subject Matter Experts for Execution and Compliance
 - a. Who will review the rule for content?
 - b. Who will review the rule for workflow?
 - c. Who will update your Best Practices?
 - d. Who will coordinate training, auditing, and compliance?

2. Calculating Staffing Impact
 - a. The Transferee (Buyer), 1031.320(e)
 - b. Reportable Cash Transfers
 - c. Estimating time for compliance with regulation

3. Securing and Storage of NPI
 - a. Space required
 - b. Secure collection of data
 - c. Who can access data during collection process

4. Use of Certifications

- a. Reasonable reliance standard
- b. Specific examples articulated by FinCEN

5. Communicating with REALTORS and Attorneys

- a. Information about the rule and contents for compliance
- b. Complications that will occur if information not provided

6. Future To-Dos

- a. Collaboration with Software Providers and Outside Vendors
- b. Discussions with Underwriters about confirmation filing complete