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July 7, 2025

RE: Comments on Revised Real Estate Report (RER) Form – Docket No. FINCEN-2024-0019

Dear Director Gacki,

Founded in 1908, The Texas Land Title Association (TLTA) is a statewide trade association representing the Texas title insurance industry and currently serving over 20,000 professionals involved in the safe and efficient transfer of real estate. In the course of their daily work, our membership serves over a million consumers each year. With active members in virtually every county in Texas, TLTA membership comprises over 80 percent of all title insurance agents and underwriters licensed to do business in Texas.

TLTA appreciates FinCEN's efforts to engage the public in refining the Residential Real Estate Report Form (Form), and we recognize the improvements that have been made in response to public input and the title insurance industry's concerns. We acknowledge FinCEN's incorporation of multiple helpful changes to the Form, including the use of clarifying terminology; dynamic field logic based on inputs; and reduced duplication where individuals play multiple roles. These are meaningful changes, and we thank you for them.

However, the Form remains seriously flawed and unworkable in the real world if it does not include an option for fields to be left incomplete when the required information cannot reasonably be obtained. To require all applicable fields to be completed in order to submit the Form, even when a customer refuses to provide the required information, imposes an impossible burden on title agents. Many customers will not want to provide some or all of the required information because they reasonably view the information as private and disclosure unnecessary simply to purchase real property. Citizenship information is often viewed as private. Likewise, parties are reluctant to disclose bank account information due to concerns about fraud or identity theft. Title agents have enough difficulty already obtaining their customers' social security numbers for 1099 reporting compliance, much less these additional categories of private information about individuals that are not directly involved in the transaction at hand.

The information collection is almost impossible, as the parties to the transaction are not within the definition of the reporting persons under the Rule. Therefore, they have no legal obligation or incentive to provide the sensitive data required under the Form. If there is one message we hope this comment conveys with absolute clarity, it is this: the final version of the Form must allow for fields to be left incomplete when the required information is not available.

Even if a customer provides some information, the Rule’s “reasonable reliance” standard does not solve the problem because the title agent must still verify and evaluate that information, but by doing so may engage in the unlicensed practice of law.¹ Not only is this operationally unworkable, it puts title agents in a legally precarious position. The inability to indicate when information cannot be obtained, despite good-faith effort, is the single greatest obstacle to successful compliance with this Rule. Title agents will either be forced to delay reporting or enter potentially inaccurate data, which undermines the purpose of the Rule. And, as FinCEN knows, the compliance liability is significant, with fines ranging from \$500 to \$250,000.² According to FinCEN’s own analysis, we can expect an “approximately 10 percent” average error rate in low complexity responses and “approximately 6 percentage points higher” for high complexity responses.³ The severity of these fines is wholly disproportionate to the possibility of innocent errors, including those caused by the title agent’s inability to leave fields blank where customers refuse to provide sufficient information. This highlights the seriousness of this proposal’s failure to establish a true and workable “safe harbor” for innocent neutral third parties to the transaction.

The implicit result is that the Form legislates a new legal principle: that a sale cannot close unless the Form is completed. Is FinCEN prohibiting the closing if they do not get this information? What is a title agent supposed to do if the Buyer or Seller does not provide all of the requested information? Is the Federal Government, through this Form, outlawing certain real estate transactions and overriding contracts between citizens? This appears to be the case given FinCEN’s statement, *“FinCEN notes that there is no exception from reporting under the final rule should a transferee fail to cooperate in providing information about a reportable transaction. The final rule does not authorize the filing of incomplete reports, and a reporting person who fails to report the required information about a reportable transfer could be subject to penalties.”*⁴

TLTA also emphasizes and endorses ALTA’s recommendation that FinCEN adopt application programming interface (API) functionality for data submission. It is important that FinCEN be mindful of the practical implications and associated costs of compliance. FinCEN must ensure that technologies employed are efficient and workable, regardless of the size of the firm. Manual reentry of information that already exists within secure closing software is inefficient, error-prone, and expensive. In a sector that already operates on narrow margins, the added compliance costs are significant and, for smaller firms, unsustainable. The obvious result is increased closing costs for the consumer, causing higher expenses and undermining affordable housing efforts. FinCEN should transparently account for this cost in its proposal.

Finally, TLTA restates our broader concern about the Real Estate Reporting Rule as a whole. As FinCEN is aware, multiple federal lawsuits are challenging the Rule’s constitutionality, alleging violations of the First and Fourth Amendments, and the limits of statutory authority under the

¹ See *Fidelity Nat’l Finance, Inc. et al. v. Treasury, et al.*, 3:25-CV-00554, 40, 41 (M.D. Fla. May 20, 2025).

² *Corey et al v. United States Department of the Treasury et al.*, 5:25-cv-00086, 5, 6 (N.D. Tex. April 17, 2025)

³ 90 Fed. Reg. 23997 (June 5, 2025).


⁴ 89 Fed. Reg. 70264 (Aug. 29, 2024).

Bank Secrecy Act.⁵ While the courts may ultimately decide the Rule’s fate, these cases reflect a deep unease within the industry and the public about the program’s reach, justification, and legality. In the meantime, FinCEN has an opportunity—and a responsibility—to mitigate the harm by making the Form as fair, flexible, and practical as possible. TLTA respectfully requests that FinCEN seriously consider these unresolved issues, especially the lack of “unable to obtain” functionality. This change would greatly reduce compliance friction and increase the integrity of the data you receive. It would avoid significant delays in closing and unnecessary costs. If FinCEN intends to prohibit transactions from closing without a fully completed Form, then it must recognize the realities on the ground and value the good-faith efforts of reporting persons to comply. We ask that you use this rulemaking opportunity to ease the regulatory burden where possible, promote clarity, and provide for basic and fundamental workability under the Rule.


Sincerely,



Gil Ernst
President



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Executive Vice President and CEO



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⁵ *Fidelity Nat’l Fin., Inc. v. FinCEN*, Case No. 3:25-cv-00554 (M.D. Fla.); *East Texas Title Co. v. Bessent*, Case No. 6:25-cv-00127 (E.D. Tex.); *Corley v. Bessent*, Case No. 5:25-cv-00086 (N.D. Tex.).