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Here's what a defensible beneficial ownership program looks like

AML / REAL ESTATE

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FinCEN's permanent nationwide real estate AML rule replaced geographic targeting orders. Here's what a defensible beneficial ownership program looks like under the new standard.

On August 28, 2024, FinCEN finalized a rule to close the opacity of shell company purchases in residential real estate. As of March 1, 2026, the rule applies to all covered transactions. An estimated 30 percent of all-cash residential purchases in targeted markets involved entities with undisclosed beneficial owners. A Texas federal court vacated the rule on March 19, 2026, raising legal uncertainty, but the underlying beneficial ownership requirements remain critical for compliance leaders in real estate.

Scope and Core Requirements

The rule applies to all non-financed residential transfers (all-cash or cash-equivalent) with no minimum purchase price, replacing geographic targeting orders that were limited to \$300,000+ transactions in specific metro areas. Settlement agents (title companies, escrow agents, attorneys) must report beneficial ownership information for transferees, including names and identifying information of individuals with 25 percent or greater ownership interest or significant managerial control, along with property details (address, parcel number, property type) and transaction information (purchase price, payment method, account information, source of funds). Records must be maintained for five years, creating a historical compliance trail.

The 25 percent beneficial ownership threshold mirrors FinCEN's Customer Due Diligence rule for financial institutions, but in real estate—where shell companies, multi-layer LLCs, and nominee purchases are standard industry practice—identifying actual owners often requires tracing through corporate registries across multiple states and foreign jurisdictions. The rule mandates beneficial ownership identification but does not specify methodology or standards of inquiry, creating compliance gaps in practice when information is legitimately unavailable.

From Geographic Orders to National Standard: Practical Scope and Ownership Challenges

Geographic Targeting Orders, issued from 2016 onward, covered beneficial ownership requirements in high-risk metros such as Manhattan, Miami, Boston, Chicago, Dallas, and others, but were limited by geography, dollar thresholds, and periodic six-month renewals. FinCEN's August 2024 rule nationalizes the requirement, applying to all non-financed residential closings throughout the United States and extending obligations to all settlement agents—not just title companies—without regard to transaction size or geography. The change is permanent and eliminates the renewal cycle, but raises the compliance bar substantially for smaller participants. A real estate attorney closing two deals yearly faces the same beneficial ownership identification obligations as a major title company, creating operational risk for practitioners without dedicated compliance systems.

Genuine beneficial ownership identification during closing is inherently difficult. Shell companies, special purpose vehicles (SPVs), and multi-layer LLCs are standard industry practice in real estate. A buyer LLC owned by another Delaware LLC, which is owned by a trust, requires tracing through operating agreements, membership lists, and trust documents. Some corporate documents are publicly available through state filings; many are controlled by buyer's counsel and unavailable at closing. Foreign beneficial owners in low-disclosure jurisdictions—British Virgin Islands, Middle Eastern countries, offshore financial centers—are often impossible to trace through standard documentary investigation conducted within closing timeframes.

FinCEN's rule mandates beneficial ownership identification without specifying permitted methodology or acknowledging the practical limitations that settlement agents face in real-world transactions. Private registry access to beneficial ownership databases is expensive and time-consuming; many foreign jurisdictions maintain no publicly accessible beneficial ownership registries at all. A defensible compliance program acknowledges these gaps explicitly and establishes clear policies defining what constitutes reasonable inquiry given

available information sources and realistic timeframes at closing. The regulatory expectation is that operators document their process and exercise judgment transparently, not that they achieve perfect information in all cases.

Building a Defensible Program

A compliance program rests on three pillars: clear policy, structured inquiry, and documented judgment. First, establish written procedures specifying required documents to verify beneficial ownership: articles of organization or incorporation, operating agreements or bylaws, certified member or shareholder lists, and parent entity documents cascading to natural persons. Specify acceptable evidence types such as state corporate filings, certified resolutions, or signed certifications from buyer's counsel. Set clear thresholds defining when identification cannot proceed further based on available evidence and reasonable inquiry efforts given closing timeframes. Document these thresholds in writing—for example, "When a buyer entity is a foreign trust and the trustee cannot produce beneficial ownership information, good-faith inquiry has been satisfied after written request, response time allowance, and documented follow-up."

Second, develop a repeatable collection and analysis process. Title companies use integrated verification platforms combining state corporate registries, beneficial ownership databases, and sanctions screening. Smaller practitioners can use standardized checklists, template inquiry letters, and summary forms ensuring consistent application. Documentation is critical—regulators assess whether procedures were applied consistently across multiple transactions and whether the program adapted to identified gaps. Track completion rates, identify patterns of incomplete information, and adjust procedures accordingly. When certain transaction types consistently yield inadequate beneficial ownership information, escalate to senior review rather than accepting incomplete responses.

Third, document written judgment. When beneficial ownership cannot be fully traced despite good-faith inquiry, the compliance record should reflect the process undertaken, documents obtained, specific gaps encountered, and the reasoning for concluding the inquiry adequate. This judgment must align with established policy and demonstrates proportionate effort appropriate to the circumstances. Regulatory examiners understand that perfect information is impossible; they assess whether the organization followed its own procedures, documented gaps, and exercised reasonable judgment.

Programs should also establish post-closing monitoring. Track transactions involving entities later appearing in FinCEN Wanted Persons lists or sanctions alerts, maintain transaction files

for the required five-year retention period, and implement technology where available to flag high-risk ownership patterns. Programs scale with volume and organizational complexity. A title company closing 50 monthly transactions needs integrated software systems, centralized compliance review, and dedicated personnel. An attorney closing four residential transactions yearly can operate defensible compliance using manual processes-checklists, template letters, organized files-provided they are thorough, consistent, and documented. The regulatory standard is proportionate effort, not absolute uniformity across different business models.

The March 2026 court decision created legal uncertainty, but the underlying beneficial ownership requirements remain foundational to compliance management in residential real estate. Beneficial ownership identification, shell structures, foreign entities, and closing practice realities all demand careful attention to policy, process, and documentation. Entities should continue building compliance foundations-investment in beneficial ownership verification systems will likely be required in some form, whether under the current rule or a revised standard.

To learn more about building financial crime compliance programs grounded in entity and beneficial ownership data, request a demo of Sayari's platform for beneficial ownership investigation and network analysis.

Sources

- FinCEN Residential Real Estate Rule (FinCEN.gov)
- FinCEN Fact Sheet on Final Rule
- FinCEN Residential Real Estate FAQs
- Federal Register: Anti-Money Laundering Regulations for Residential Real Estate Transfers
- FinCEN News Release: Final Rules for Residential Real Estate and Investment Adviser Sectors
- Mayer Brown: FinCEN Finalizes Residential Real Estate Reporting Requirements
- Bradley: FinCEN's New Real Estate Reporting Rule: Historical Context, Compliance Requirements, Legal Challenges

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