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Updated Condo/Co-op disclosure requirements— FinCEN closes a money laundering “loophole” in real estate transactions involving wire transfers

By Erica F. Buckley and Ari Glatt

The New York Attorney General’s Real Estate Finance Bureau recently published a policy memorandum clarifying how a revision to the FinCEN Geographic Targeting Order (GTO) affects disclosure requirements for New York City co-op and condo offering plans.

What is required by the FinCEN order?

According to an official press release by the United States Department of the Treasury Financial Crimes Enforcement Network (FinCEN), the purpose of the revised order is to protect the real estate markets from serving as a vehicle to launder illicit proceeds by capturing a broader range of transactions, including transactions involving wire transfers.

FinCEN first issued the GTO in January 2016 to identify natural persons behind shell companies that buy real estate, and reissued the original GTO to expand coverage to more jurisdictions in July 2016 and February 2017, including all boroughs in New York City. The reporting requirements kick in based upon the price threshold of the transactions—\$3,000,000 for Manhattan and \$1,500,000 for the rest of New York City (i.e., Brooklyn, Bronx, Queens and Staten Island).

On August 22, 2017, FinCEN announced that title insurance companies will now be required to disclose the identity of persons behind LLCs that use wire transfers to pay for high-end residential real estate. FinCEN data indicates that about 30% of the transactions covered by FinCEN’s GTOs involve an owner that was the subject of a previous suspicious activity report.

Given the price of real estate in New York City, the revised order is likely to touch and concern a high percentage of real estate transactions in the city. And for sponsor sales of co-ops and condos under the Martin Act, the New York Attorney General (NYAG) now requires additional disclosure in the offering plan.

What is required by the NYAG in the offering plan?

According to the August 28, 2017, guidance memo issued by the NYAG, every active offering plan must disclose that, in New York City, title companies are required to report the identity of purchasers in residential real estate transactions when the:

- purchaser is a legal entity as defined by the FinCEN GTO;
- purchaser is buying residential real estate in New York City where the total purchase price is at least \$3,000,000 for Manhattan or \$1,500,000 for the other boroughs;
- purchase of such residential real estate is made without a bank loan or other form of external financing; *and*
- purchase is made, at least in part, using currency or a cashier's check, a certified check, a traveler's check, a personal check, a business check or a money order, in any form, **or a funds transfer.**

Any offering plan not yet accepted for filing by the NYAG must include the required disclosure. Otherwise, existing offering plans must include the disclosure at the time of the next amendment to the offering plan.

What does this mean to housing sponsors?

Offering plans should disclose the FinCEN order-required buyer identifications and sponsors' counsel should obtain the proper tax forms (i.e., W-9, W-8BEN or W-8BEN-E) from purchasers before any down payment or custom work deposits are accepted, even if purchasers will be paying via wire transfer.

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