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## What are the new condo/coop disclosure requirements?

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### What is required by the FinCEN order?

According to an official press release by the United State Department of the Treasury Financial Crimes Enforcement Network (FinCEN), the purpose of the renewal order is to eliminate illicit financial flow of money in the real estate sector by identifying the natural person behind shell companies that buy real estate, oftentimes in “all cash” transactions.

The February 23, 2017 order expands the geographic reach to six major metropolitan areas, 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).

Given the price of real estate in New York City, the FinCEN order is likely to touch and concern a high percentage of real estate transactions in the city. And for sponsor sales of coops and condos under the Martin Act, the NYAG now requires additional disclosure in the offering plan.

### What is required by the NYAG in the offering plan?

According to the June 6, 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 order.
- The 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,
- The purchase of such residential real estate is made without a bank loan or other form of external financing,
- The 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.

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.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

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