



Crackdown on anonymous LLC real estate purchases

By Erica F. Buckley and Ari Glatt

Owning real estate through a limited liability company (LLC) provides many benefits—such as shielding against liability and providing tax incentives—and has become an increasingly popular practice in New York State. Federal law enforcement officials now require a greater number of disclosures in connection with LLCs (and other legal entities purchasing residential real estate) and are no longer just focused on high-end luxury apartments.

Increase in LLC real estate purchases

A recent analysis of recorded sales by [The Real Deal](#) shows that 7,319 real estate deals in the five boroughs during 2018's first half involved an LLC. In Manhattan's luxury residential market, 72 percent of condominium sales over \$10 million involved an LLC in the same time span—up from 20 percent fifteen years ago. Most states require very little information to set up a new LLC and purchasers desiring anonymity have often used shell companies to remain invisible rather than buying real estate in their individual names.

Government crackdown and updated disclosure rules

One of the many reforms being pushed to identify buyers and combat illicit money laundering has been the Geographic Targeting Orders (GTO) issued by the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN) – (See our previous real estate alerts [here](#) and [here](#) for further details). Last week, FinCEN announced that they are once again updating their reporting requirements to further crack down on the flow of “dirty” money into real estate. This sixth revision of FinCEN's GTO is effective November 17, 2018 through May 15, 2019.

The revised requirements have been made public to all parties and supersede the previous GTO. Title insurance companies now must report the identity of purchasers to FinCEN in residential real estate transactions when the:

- Purchaser is buying residential real estate in New York City (as well as many other covered areas as set forth in the GTO) where the total purchase price is at least \$300,000;
- Purchaser is a “Legal Entity” (which is defined by the GTO as a corporation, limited liability company, partnership or other similar business entity, whether formed under the laws of a

- state, or of the United States, or a foreign jurisdiction);
- 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, certified check, traveler's check, personal check, business check, money order in any form, funds transfer, or virtual currency.

Differences in disclosure rules

Note that these updated rules differ from previous GTOs in that the purchase price threshold has been significantly lowered to cover a much wider net of transactions. Also, purchases using Bitcoin and other virtual currencies must now be reported, while purchases by trusts do not.

What does this mean to condominium and cooperative developers and sponsors?

Although the onus is on title insurance companies to comply with the GTO, all condominium and cooperative developers and sponsors should be aware that offering plans not yet accepted for filing by the NYAG must disclose the new FinCEN-required buyer identifications. Filed applicable offering plans not currently containing the expanded FinCEN disclosures must be updated in the next substantive amendment to the offering plan, regardless of whether the offering plan already contains details of the previously issued FinCEN rules.

Many of our real estate clients have requested that we assist them with these fluctuating disclosure requirements. Nixon Peabody's team of cooperative and condominium attorneys would be happy to assist in meeting these requirements as well as tracking compliance going forward.

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

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