

CLIENT ALERT

FinCEN Issues ID Requirement for Cash Buyers of High-End Manhattan and Miami Real Estate

January 13, 2016

On January 13, the Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) announced that it has issued Geographic Targeting Orders (GTOs) for Manhattan and Miami-Dade County, temporarily requiring certain U.S. title insurance companies to identify and report natural persons who use legal entities to acquire high-end residential properties without external financing.

FinCEN already requires Residential Mortgage Lenders and Originators (RMLOs) to have AML programs in place and to file Suspicious Activity Reports (SARs). The new GTOs are an expansion of FinCEN's efforts to mitigate money laundering in the real estate sector.

The GTOs require that the beneficial owners of legal entity purchasers be identified and reported in deals valued at more than \$3 million in Manhattan and more than \$1 million in Miami-Dade County. The orders define beneficial owners as individuals who, directly or indirectly, own 25 percent or more of the equity interests of the entity that bought the property, a definition of beneficial ownership similar to one FinCEN has proposed in a draft rule on customer due diligence. FinCEN is covering certain title insurance companies because title insurance is common in real estate transactions.

Information reported will be shared with law enforcement agencies, providing insight into the natural persons involved in transactions vulnerable to abuse for money laundering. FinCEN anticipates that the GTOs will make it more difficult for individual purchasers behind the covered transactions to disguise their involvement, mitigating the key vulnerability of such "all cash" transactions.

The program only covers two markets and is of limited duration, taking effect on March 1, 2016 and expiring on August 27, 2016. If FinCEN finds suspicious activity in many sales, it reportedly plans to develop permanent reporting requirements for the entire U.S. real estate market.

The Bank Secrecy Act provides for the imposition of an AML program requirement on "persons involved in real estate closing and settlements" because such persons are part of the Act's broad definition of "financial institutions." However, FinCEN has exempted such persons and certain other businesses defined as "financial institutions" under the Act from this requirement while it studies the extent to which AML programs are appropriate for those industries. In 2003, FinCEN published an Advance Notice of Proposed Rule Making specifically to consider the imposition of AML requirements on persons involved in real estate closing and settlements, in which it recognized that real estate had been and might continue to be used for money laundering, but never issued a final rule.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Carlton Greene

Partner – Washington, D.C.

Phone: +1.202.624.2818

Email: cgreene@crowell.com