

July 2016

REAL ESTATE and INTERNATIONAL TRUSTS & ESTATES LAW ALERT

US GOVERNMENT EXPANDS EFFORT TO PENETRATE SECRECY IN RESIDENTIAL TRANSACTIONS ACROSS NYC, OTHER GATEWAY CITIES

In January of 2016, the U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN") has ordered certain title insurance companies to identify the individuals behind the purchase of residential real estate in Manhattan (New York County, New York) and Miami-Dade County, Florida and to report this information to FinCEN to be retained in its database. At that time, we projected that FinCEN would extend its orders beyond the initial 180 day period, and to cover additional metropolitan areas. Our projections were proven correct.

On July 27, 2016, FinCEN issued new Geographic Targeting Orders ("GTOs"), which take effect on August 28, 2016 and (like the prior orders) are initially scheduled to remain in effect for 180 days, through February 23, 2017. The new GTOs have been expanded geographically to all of New York City, as well as certain counties located in the Ft. Lauderdale, Palm Beach, Los Angeles, San Francisco/San Jose, San Diego and San Antonio metropolitan areas.

The GTOs apply to the purchase of residential real estate by otherwise-anonymous entities such as limited liability companies, and requires the disclosure of the identity of any individual that owns at least 25% of the entity. The GTOs impose the identification and disclosure requirements on purchases where there is no bank loan (or similar form of external financing) and where any part of the purchase price is paid in currency, cashier's check, certified check, traveler's or money order.¹ The new GTOs apply to residential purchase prices at or above the applicable threshold amount for each jurisdiction listed in the table below:

| Jurisdiction | Price Threshold |
|--|-----------------|
| New York City | |
| Manhattan (New York County) | \$3,000,000 |
| Brooklyn (Kings County), Queens (Queens County), The Bronx (Bronx County), Staten Island (Richmond County) | \$1,500,000 |
| Florida: Miami-Dade, Broward, Palm Beach Counties | \$1,000,000 |
| California: San Diego, Los Angeles, San Francisco, San Mateo, Santa Clara Counties | \$2,000,000 |
| Texas: Bexar County | \$500,000 |

¹ U.S. Department of the Treasury, Financial Crimes Enforcement Network, Sample Order https://www.fincen.gov/news_room/nr/files/Title_Ins_GTO_Sample_072716.pdf

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What is FinCEN?

FinCEN was established in April, 1990, to provide a “government-wide, multi-source intelligence and analytical network in support of the detection, investigation, and prosecution of domestic and international money laundering and other financial crimes by Federal, State, local, and foreign law enforcement agencies.”² FinCEN derives its legal authority from the Bank Secrecy Act, which was originally enacted by Congress in 1970 to combat money-laundering activities, and from Title III of the USA Patriot Act of 2001, which was enacted after the 9/11 terrorist attacks. FinCEN issues regulations, conducts enforcement activities, and shares information with domestic and foreign law enforcement partners.

FinCEN's Next Steps?

Looking to the future, we anticipate that FinCEN will again seek to extend the GTOs beyond the initial 180-day period, and will implement new GTOs covering other jurisdictions where non-US purchasers have been attracted to high-end residential real estate transactions. Eventually, FinCEN will likely target suburban counties surrounding international gateway cities, such as Nassau, Suffolk and Westchester Counties in New York, Fairfield County in Connecticut, and Bergen, Essex and Morris Counties in New Jersey, luxury residential destinations such as Hawaii, and tech centers such as Boston and Seattle.

At a future date, FinCEN could seek to apply the same approach to all-cash acquisitions of commercial real estate, including office buildings, shopping centers, warehouses and the like. However, the commercial real estate industry is highly organized with a strong lobbying presence in Washington, and would likely oppose such measures.

Impact on Real Estate Market; Estate and Tax Planning

In the near term, the GTOs are likely to dissuade some prospective high-net worth individuals from purchasing expensive residential real estate. Even prospective purchasers who have “nothing to hide” will be concerned that the disclosure requirements will limit the number of prospective purchasers when it is time to resell the property. In Manhattan, where the supply of residences for \$10 million or more may have already outstripped demand, and other factors ranging from the 2016 Presidential election to the “Brexit” are having an impact on the market, the impact of the expanded GTOs may be limited.

High-net worth individuals who wish to invest in United States real estate, especially those who are neither citizens nor domiciliaries of the U.S., will continue to have a legitimate purpose in using domestic and foreign entities as part of their income and estate tax planning. These individuals should continue to utilize proper planning techniques to preserve their public anonymity and to afford themselves of legally compliant ways to limit their U.S. income, estate and gift tax liabilities.

² https://www.fincen.gov/about_fincen/pdf/FincenOurStory.pdf

We are able to provide counsel and guidance in matters of real estate, international trusts and estates and taxation, including those specifically related to the continuing developments of the US Treasury Department's Financial Crimes Enforcement Network (“FinCEN”) identification and disclosure requirements in residential purchases. For additional information, please contact the attorneys named below or the attorney with whom you have a primary relationship.

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