

FINCEN GEOGRAPHIC TARGETING ORDER FOR LUXURY ALL-CASH PURCHASES IN MANHATTAN AND MIAMI-DADE

On January 6, 2016, the Director of the United States Department of the Treasury Financial Crimes Enforcement Network (“FinCEN”) issued a “Geographic Targeting Order” (the “Order”) requiring title insurance companies to report the identity of purchasers using entities to acquire residential real estate in all-cash transactions. The Order covers transactions in Manhattan that exceed \$3,000,000 and in Miami-Dade that exceed \$1,000,000. The Order is in effect from March 1, 2016, through August 27, 2016. Thereafter, FinCEN will determine whether the Order will be continued or expanded upon.

The Order requires a title company to electronically file FinCEN Form 8300 (“Form 8300”) within 30 days of closing. Part I of Form 8300 must provide information about the attorney representing the purchaser; Part II must provide information about the entity utilized to take title and the beneficial owner(s) of such entity; Part III must provide information about the transaction, including the closing date, the total amount paid under a money instrument (e.g., official bank check, money order, traveler’s check), the total purchase price, and the address of the real property; and Part IV must provide information about the title company responsible for filing Form 8300. Title companies are required to retain records of all transactions subject to the Order for a period of five years. It is important to note that a contract signed prior to the effective date of the Order (March 1, 2016) where the contract deposit or any portion of the purchase price was paid via a money instrument is still subject to the Order and reporting requirements should it close within the timeframe of the Order.

With respect to Part I of Form 8300, the attorney representing the purchasing entity must provide copies of his/her driver’s license or passport and disclose accurate information to the title company with respect to the purchasing entity. Failure to do so could lead to fines and/or potential civil and criminal liability. With regard to Part II of Form 8300, the attorney representing the purchasing entity must also provide a copy of a driver’s license and/or passport for each beneficial owner who, directly or indirectly, owns at least a 25% equity interest. Further, if the entity taking title is a limited liability company, each member, regardless of their percent interest, must disclose his/her name, address, and taxpayer identification number. Use of attorney-client privilege will not be accepted under this Order to avoid providing of the required information.

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A transaction that falls within the scope of the Order may nevertheless be deemed exempt from the reporting requirements in the following circumstances:

- the purchasing entity obtains mortgage financing
- the entire purchase price, including contract deposit and balance due at closing, is remitted via wire transfer
- title insurance is not purchased
- the purchase is of a cooperative apartment (“co-op”)

The rationale behind the first two exceptions is that a bank that initiates the wire transfer to an attorney trust account with the contract deposit and balance proceeds, or a bank that provides mortgage financing, will have conducted its own due diligence and know-your-client compliance and, therefore, no additional layer of disclosure to the federal government should be required. With respect to the third exception, it is generally inadvisable to purchase real property without title insurance. Lastly, in a co-op, title insurance is not acquired because the buyer of a co-op apartment purchases shares of a corporation rather than title to real property.

Closing costs, such as title insurance, transfer taxes, common charges, and other miscellaneous expenses, are costs deemed “paid outside of closing” and, therefore, payment by personal check, attorney escrow check, certified check, and/or traveler’s check should not subject the transaction to the reporting requirements under the Order.

It is important to consult a legal professional before purchasing real property to ensure that all necessary disclosures are made as the requirements under this Order may change.

For more information, please contact:

Justin M. Marques

jmarques@ghsklaw.com

212.682.1800

This summary is intended to provide general information and should not be construed as legal advice. Readers should seek specific legal advice before taking action with respect to the matters discussed herein.