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Client Alert

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New Federal Regulations for All-Cash Purchases of High-End Real Estate

The Financial Crimes Enforcement Network (FinCEN) of the United States Department of the Treasury issued a "Geographic Targeting Order" on January 13, 2016, aimed at curbing money laundering in the real estate sector. The targeting order is an expression of the Treasury's power under 31 U.S.C. § 5326 of the Bank Secrecy Act and will affect all-cash purchases of real estate valued at $3 million or more in Manhattan and $1 million or more in Miami-Dade County.

The targeting order seeks to compel certain title insurance companies to record and report to FinCEN the ownership information of legal entities purchasing the aforementioned real estate. In other words, the regulation makes it more difficult for all-cash purchasers of high-end real estate to hide their identities through the use of corporate organizations such as limited liability corporations (LLCs). Although the order will technically be in effect only from March 1, 2016, until August 27, 2016, as reported in the Miami Herald, should FinCEN uncover serious evidence of money laundering, the policy could be applied permanently and nationwide.

The targeting order forms part of a larger government trend to combat money laundering in all areas, with a particular emphasis on real estate. In September 2014, a district court judge in Florida sentenced a notorious Spanish drug dealer found guilty of a single conspiracy charge and 13 charges of money laundering. A significant portion of the money laundering charges centered on the defendant's purchase of condominiums valued at over $1 million and a fleet of luxury cars. His defense attorney argued that "[h]e didn't sell any cocaine in the United States; he allegedly sold tons in Spain," and "[h]e simply brought his money here, like so many criminals that have propped up South Florida's real estate market for years." Even so, the government sought a 150-year prison term, which the judge imposed, and $14 million in property was forfeited, including condominiums. While financial institutions have long been subject to reporting requirements for suspicious activity and real estate has many times been subject to asset forfeiture, the targeting order may indicate a more vigorous government interest in regulating real estate transactions.

The targeting order's stated purpose is to combat money laundering, but it will also increase the compliance burden for institutions involved in covered transactions. In certain circumstances, FinCEN will require title insurance companies to "record and report" the purchasers' beneficial ownership information, filing a Form 8300. FinCEN will then put this information in a database made available to law enforcement investigators. Some commentators believe that the targeting order may have a significant negative effect on the relevant real estate markets and properties in question, in part because purchasers with legitimate reasons for shielding their identities now suffer an increased risk that their identities will be revealed (not only to the U.S. government, but to their home country governments), there may be tax implications in other nations, or purchasers may suffer increased publicity and destruction of their privacy. As of publication, details are still forthcoming. Potential purchasers should consult legal counsel if contemplating a transaction that may be affected by the targeting order.

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