

Window to the Law: New Effort to Combat Money Laundering

Video Transcript

NAR LEGAL AFFAIRS DEPARTMENT
April 2016

Welcome to this episode of Window to the Law.

Money laundering is a process that has long been used by criminals to disguise the illegal origin of funds and transform those funds to appear to have come from a legal source.

While money laundering is not a new practice, the two recent Geographic Targeting Orders, or GTOs, issued by the Financial Crimes Enforcement Network, commonly known as FinCEN, the issue has once again been placed in the spotlight and gained the renewed attention of the real estate industry.

The GTOs, which took effect on March 1, 2016 and are effective through August 27, 2016, were issued to specific title companies and apply to high-end real estate transactions in the Borough of Manhattan, New York and in Miami-Dade County, Florida.

While the GTOs do not impose any new requirements or obligations on real estate professionals, NAR members are interested in understanding how the GTOs may affect their client's transactions.

So, let's talk about the specific terms of the GTOs.

The GTOs affect only residential real estate purchases by legal entities, such as a limited liability company or partnership, where the total purchase price is in excess of \$3 million in the Borough of Manhattan and in excess of \$1 million in Miami-Dade County. The GTO's only cover these transactions when the purchase is

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made without a bank loan or similar form of external financing, and where the purchase price is satisfied, at least in part, using currency or a cashier's check, a certified check, a traveler's check or a money order.

All of these criteria must be met in order for the transaction to be covered by the terms of the GTO. Note that purchases of commercial properties do not fall under the terms of the GTO. Additionally, residential real estate purchases by individual persons are not covered by the terms of the GTO either, because the GTO only applies to purchases by legal entities. And neither are transactions where the purchase price is paid entirely by wire transfer, as the GTO requires that the purchase must be made at least in part by one of the stipulated forms of payment. Only those transactions that meet all of the elements of a Covered Transaction will trigger the reporting and recordkeeping requirements of the GTO.

And once again, I want to emphasize that that the GTOs do not place any new obligations on real estate professionals. But, as a best business practice, it's a good idea to be familiar with the terms of the GTOs so that you can inform your clients of the potential that certain information may be requested of them in accordance with the GTO. You can help your clients not be caught off guard by educating clients upfront, which will in turn promote a smoother transaction.

Another concern expressed by the real estate community is how will these GTOs affect real estate transactions and closings in the Borough of Manhattan and Miami-Dade County?

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The intent of the orders is not to hinder real estate closings from taking place. FinCEN's goal is to collect information that will help FinCEN combat money laundering schemes and the use of real estate in those schemes.

And the goal is not to slow real estate closings down either. The information required pursuant to the GTO has to be reported within 30 days AFTER the closing of a covered transaction.

Finally, because the GTOs are aimed at high-end real estate transactions, putting things into perspective, the GTO will only affect a small segment of the real estate market in the relevant geographic areas.

Beyond the GTO's, the National Association of REALTORS® has been focused on the issue of anti-money laundering for many years. The Bank Secrecy Act is the primary U.S. anti-money laundering law for detecting and deterring money laundering schemes. The Act requires banks and other financial institutions to take certain measures to prevent financial crime from taking place, but does not place any affirmative obligations on real estate professionals. This is because the real estate professional's anti-money laundering risk is substantially mitigated by the fact that the vast majority of real estate transactions involve regulated entities that DO have anti-money laundering obligations under the Bank Secrecy Act.

That being said, real estate professionals still have a valuable role to play in anti-money laundering efforts. A real estate professional's knowledge of how real estate transactions normally progress, place them in a prime position to spot suspicious activity.

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For this reason, NAR collaborated with FinCEN to develop NAR's "Anti-Money Laundering Guidelines for Real Estate Professionals". These AML Guidelines are voluntary guidelines that NAR urges all members be familiar with so that real estate professionals can be effective partners in the fight against money laundering, and help minimize the use of real estate in money laundering schemes.

The NAR AML guidelines go through the basics of how money laundering works, which is a three step process that entails first introducing the illegal proceeds into the financial system, by breaking up large amounts of money into small deposits or by purchasing financial instruments, such as money orders, which is referred to as placement.

Then the scheme typically involves distancing the illegal proceeds from the source of the funds through layers of financial transactions, which is referred to as layering.

And finally the illegally derived proceeds are returned to the criminal from what appears to be a legitimate source, known as integration.

The guidelines also walk through some of the red flags that real estate professionals should be attuned to as a potential transaction progresses.

Understanding and becoming familiar with potential geographic, customer and transaction-based risks, which include things such as the unusual involvement of third parties, under-valued properties where the seller seems disinterested in

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obtaining a better price, large amounts of cash at closing and purchases made sight unseen, will help real estate professionals quickly spot risks and know when to report such activity.

We encourage you to review and become familiar with the “Anti-Money Laundering Guidelines for Real Estate Professionals”. Keeping these guidelines in the back of your mind will enable you to quickly recognize suspicious activity when it occurs and know where to report it to help stop money laundering schemes.

In addition to the guidelines, please review other helpful anti-money laundering materials available to you on realtor.org, including additional materials on the recently issued Geographic Targeting Orders.

Thank you for watching this episode of “Window to the Law”.