Money Laundering Risks in the Real Estate Industry

*Sareena M. Sawhney**

Real estate brokers, escrow agents, title insurers, and other real estate professionals can identify potential suspicious money laundering transactions by reviewing available facts. The author of this article provides some examples of red flags involving real estate transactions and reviews the Financial Crimes Enforcement Network's Geographic Targeting Orders.

Real estate transactions have certain characteristics that make them susceptible to abuse as criminals such as drug dealers and corrupt public officials have used real estate to hide the existence and origins of their ill-gotten gains. For example, many real estate transactions involve high-value assets, shell companies, and processes that can limit transparency because of their intricacy.

An example of the abuse of the luxury real estate sector involves the Venezuelan Vice President Tareck El Aissami and his frontman Samark Lopez Bello. The U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") designated Tareck El Aissami under the Foreign Narcotics Kingpin Designation Act for playing a significant role in international narcotic trafficking. Lopez Bello assisted by providing material assistance, financial support and/or services in support of the international narcotic trafficking activities of, and acting for or on behalf of, El Aissami. Additionally, OFAC designated shell companies tied to Lopez Bello that were used to hold real estate. This property is now frozen or blocked as a result of OFAC's action.

Background

In August of 2017, the Financial Crimes Enforcement Network ("FinCEN") issued an advisory to provide financial institutions and the real estate industry with information on money laundering risks associated with real estate transactions. More specifically, real estate transactions at risk include those that involve luxury property purchased through shell companies almost exclusively with cash and no financing. Financial institutions, which now include individuals involved in real estate closings and settlements, have certain anti-money laundering obligations. For example, real estate brokers may have greater insight as to the purpose for which a property is being purchased or the possible origin of such funds. Real estate brokers, escrow agents, title insur-

*Sareena M. Sawhney, MBA, CFE, CAMS, MAFF, is a principal at Grassi & Co. She can be reached at ssawhney@grassicpas.com.

ers, and other real estate professionals can identify potential suspicious transactions by reviewing available facts. Examples of some red flags involving real estate transactions include:

- A transaction that has no apparent lawful business purpose. These can include purchases/sales that generate little to no revenue or are conducted without regard to high fees or penalties;
- A transaction that is used to purchase real estate without regard for the property's condition, location, value or sales price;
- Involves funding that far exceeds the purchaser's wealth or comes from an unknown source;
- Transactions where property is purchased under an unrelated individual's or company's name.

When filing a Suspicious Activity Report ("SAR") involving a real estate transaction, financial institutions — including individuals involved in real estate closings and settlements- should provide complete and accurate information about the real estate transaction and the circumstances and reasons why such a transaction may be suspicious in the narrative section of the SAR.[1]

Use of Shell Companies to Purchase Real Estate

Criminals often use shell companies as a vehicle to launder money in order to reduce the transparency of their transactions. A shell corporation is a corporation without active business operations or significant assets. These types of entities are not necessarily all illegal, but they are sometimes used illegitimately, such as to disguise business ownership from law enforcement or the public. Shell companies are often formed without disclosing the individuals that own or control them (*i.e.,* their beneficial owners) and can be used to conduct financial transactions without disclosing their true beneficial owners' involvement. The abuse of shell companies to launder money has continually been a concern in the "all-cash" segment of the real estate market. Criminals can use all-cash purchases to make payments in full for properties and thus avoid reporting requirements about the source of their wealth that is regularly performed by financial institutions in transactions involving mortgages. All-cash purchases account for nearly 25 percent of residential real estate purchases and are prone to abuse.[2] Many all-cash transactions are legitimate, however, they also present opportunities for criminals to hide their illicit funds.

FinCEN's Geographic Targeting Orders

In August of 2017, FinCEN issued revised Geographic Targeting Orders (New "GTOs") that require U.S. title insurance companies, their subsidiaries and agents to identify individuals behind shell companies used to pay "all cash" for high-end residential real estate in seven major metropolitan areas. FinCEN has found that about 30 percent of the transactions covered by the GTOs involve a beneficial owner or purchaser representative that is also the subject of a previous suspicious activity report. This substantiates FinCEN's concerns that shell companies are being utilized to buy real estate in "all cash" transactions.

The New GTOs include the following seven major U.S. geographic areas:

1) all boroughs of New York City;

2) Miami-Dade County and two other counties (Broward and Palm Beach);

3) Los Angeles County;

4) three counties comprising the San Francisco area (San Francisco, Sam Mateo, and Santa Clara counties);

5) San Diego County;

6) the county that includes San Antonio, Texas (Bexar County); and

7) the City and County of Honolulu, Hawaii.

The monetary thresholds for each geographic area is as follows:

Jurisdiction	Monetary Threshold
New York	
Manhattan	$3,000,000
Brooklyn	$1,500,000
Queens	$1,500,000
Bronx	$1,500,000
Staten Island	$1,500,000
Florida	
Miami-Dade County	$1,000,000
Broward County	$1,000,000
Palm Beach County	$1,000,000
California	
San Diego County	$2,000,000
Los Angeles County	$2,000,000
San Francisco County	$2,000,000
San Mateo County	$2,000,000
Santa Clara County	$2,000,000
Texas	
Bexar County	$500,000

Besides including the City and County of Honolulu, Hawaii, the New GTOs also include purchases made, in whole or in part, using a funds transfer including a wire transfer. The inclusion in the New GTOs of "fund transfers" as a method of payment were not previously included under the prior GTOs but will now be subject to FinCEN residential real estate transaction reporting under the new GTOs.

FinCEN is covering title insurance companies because title insurance is a common feature in the majority of real estate transactions. Thus, such entities pay a crucial role that can provide FinCEN with important information about real estate transactions of concern. Additionally, the real estate industry recognizes the significance of protecting the U.S. real estate market from abuse. As an example, the National Association of Realtors has issued flags to be aware of and voluntary guidelines to assist real estate professionals in minimizing the risk of real estate becoming a vehicle for money laundering.

NOTES:

[1]To report suspicious transactions, financial institutions should electronically submit a SAR through FinCEN's BSA E-filing System located at https://bsaefiling.fincen.treas.gov/main.html.

[2]The National Association of Realtors reports monthly figures on all-cash sales for existing homes to near 25 percent.