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FINCEN INCREASES SCRUTINY TO COMBAT MONEY LAUNDERING ON RESIDENTIAL REAL ESTATE IN MIAMI-DADE AND PALM BEACH COUNTIES

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Due to the continued effects of money laundering in certain geographically targeted areas, including Miami-Dade and Palm Beach Counties, the Financial Crimes Enforcement Network (FinCEN) has recently increased its investigation into high-end residential real estate transactions. All cash residential real estate transactions with purchase prices over the threshold amount of One Million Dollars ($1,000,000.00) in either Miami-Dade County or Palm Beach County are subject to further requirements by financial institutions, title companies, third-party escrow agents, and the legal community at-large.

While FinCEN had issued notice of anti-money laundering programs to financial institutions for "persons involved in real estate closings and settlements" back in 2003, continued increases in the last 14 years of suspicious criminal activity falling in this area has breathed new life into this topic. Once limited to "all cash" transactions, which was defined as a transaction in which payments were made by cash or check, FinCEN recently revised its Geographic Targeting Orders (GTOs), thereby broadening the range of transactions to include those involving wire transfers. The GTO requires title insurers to report beneficial ownership information on legal entities, including shell companies, used to purchase high-end residential real estate in targeted metropolitan areas (including Miami-Dade and Palm Beach counties). The revised GTO also expanded the geographic regions covered to include the City and County of Honolulu, in addition to Miami-Dade and Palm Beach Counties, and other areas in New York, Texas and California which were already covered by the GTO. The changes go into effect on September 22, 2017.

FinCEN continues to expand its reach and implores those involved in real estate transactions, specifically financial institutions, title companies, third-party escrow agents, and, to the extent they do not break attorney-client privilege, real estate lawyers to mandate that purchasers of real property in these areas comply with all due diligence requirements needed in order to combat money laundering schemes that have plagued the South Florida community in recent years. To that end, FinCen also issued an *Advisory to Financial Institutions and Real Estate Firms and Professionals,* warning of money laundering risks in the real estate sector and encouraging brokers, escrow agents, and other real estate professionals to voluntarily report suspicious transactions as financial institutions are required to do under the Bank Secrecy Act.

Perhaps FinCEN's increased investigation into the South Florida real estate market coincides with the necessity to more closely monitor and report suspicious funding sources and due diligence requirements related to the continued influx of foreign purchasers from Europe, Central America, and South America.

But do the issues described relate only to residential real estate in these particular marketplaces? Commercial real estate has shown significant expansion in recent years, one particular example being the explosion in the Wynwood Arts District of Miami-Dade County. While the threshold purchase prices are likely to be higher than

on the residential side and FinCEN may be more concerned about the issues with residential real estate currently, the possibility that money laundering is occurring on the commercial real estate side of the business is almost just as likely. The requirements sought by FinCEN to financial institutions, title companies, third-party escrow agents, and real estate lawyers concerning the verification process and due diligence review of potential purchasers can and may extend to the commercial real estate sphere in the future. While this is most likely FinCEN's next step, it may be wise to begin preparing now for the potential expansion of FinCEN regulations into the commercial real estate area.

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