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FinCEN Geographic Targeting Order

Everything You Need To Know Before Closing A Reportable
Transaction

February 18, 2016

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Today's Topics

- Background on FinCEN, the Bank Secrecy Act and Geographic Targeting Orders
- The Real Estate GTOs
 - Who is covered
 - Which transactions
 - What to collect
 - How to collect
- The GTO's impact on a real estate transaction
- Questions



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Today's Speakers

- Lawrence Scheinert: FinCEN – Director Office of Special Measures
- Steven Gottheim: ALTA – Senior Counsel

Disclaimer

This information is not a substitute for legal advice, is for your reference only and is not intended to represent the only approach to any particular issue. This information should not be construed as legal, financial or business advice and users should consult legal counsel and subject-matter experts to be sure that the policies adopted and implemented meet the requirements unique to your company.



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1. WHAT IS FINCEN & A GEOGRAPHIC TARGETING ORDER



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2. THE REAL ESTATE GTO



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The Basics

- Who: All title insurers and their agents
- When: August 28, 2016 through February 23, 2017
- Where: 5 counties in CA, 3 counties in FL, 5 counties in NY and 1 county in TX
- What: Purchases of real estate by legal entities without a bank loan for a purchase price at or above a certain dollar threshold in which any part of the purchase price is paid for via currency, cashiers check, a certified check, personal check, business check or a money order

What changed from the January, 2016 GTO?

- There are three main changes between the GTOS.
 1. The July GTO covers **ALL** title insurers & agents instead of select insurers.
 2. The covered jurisdictions are **expanded** beyond Manhattan, NY and Miami-Dade County, FL.
 3. Payments made using **personal or business checks** are covered and reportable.



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Covered Jurisdictions

California	Florida	Texas	New York
Los Angeles - \$2 million	Broward - \$1 million	Bexar - \$500,000	Bronx - \$1.5 million
San Diego - \$2 million	Miami-Dade - \$1 million		Brooklyn - \$1.5 million
San Francisco - \$2 million	Palm Beach - \$1 million		Manhattan - \$3 million
San Mateo - \$2 million			Queens – \$1.5 million

Who is a Covered Business

- All title insurers
 - Includes any of its subsidiaries and agents
- Reporting requirement is triggered when the insurer provides title insurance in the transaction
- Only one report is required for each Covered Transaction.
 - Filed by either the insurer or the agent

Frequently Asked Question

- If an independent agent is a title agent for multiple title insurers that received a GTO, which insurer must report the Covered Transaction?
 - Only the insurer that ultimately provides insurance on the transaction is responsible for reporting.
 - The agency should look to the insurers underwriting bulletin on reporting obligations



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What is a Covered Transaction

1. The buyer must be a **Legal Entity**, defined under the GTO as a corporation, limited liability company, partnership or other similar business entity, whether formed under the laws of a state or of the United States or a foreign jurisdiction;
2. **Residential** real property located in the Covered Jurisdictions;
3. For a **purchase price** at or above the dollar threshold;
4. Without a loan or similar form of **external financing from a financial institution**; and
5. Any **portion of the purchase price** is paid using currency, cashier's check, certified check, traveler's check, personal check, business check or money order.



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Frequently Asked Questions

- *Is a trust a legal entity?*
 - **No.** *In most states trusts are not distinct from the trustee.*
- *What does the term “residential real property” mean?*
 - **Real property** (including individual units of condominiums and cooperatives) designed principally for the occupancy of from one to four families.
- *Does private or seller financing qualify as “a bank loan” under the GTO reporting requirements?*
 - **On a case by case basis.** *Generally a loan from financial institutions triggers the exemption.*
- *Are the reporting requirements triggered when the purchase price is paid entirely through a wire transfer?*
 - **No.**



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Frequently Asked Questions

- *Is there a de minimis threshold of currency used in the transaction?*
 - *No. If any portion of the purchase price is paid for via the covered payment methods the deal is reportable.*
- *What if ancillary settlement services such as the survey, inspection or closing attorneys fee is paid using currency?*
 - *No. Only if part of the purchase price is paid using the covered payment methods.*



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What must be Reported

- Within 30 days following the closing, the covered insurer or its agent must file a Form 8300 with the following additional information:
 - *Identity of the individual primarily responsible for representing the Legal Entity;*
 - *A description of the identification (driver's license, passport or other similar identifying document) obtained from the individual primarily responsible for representing the Purchaser with a copy retained in the file;*
 - *identity of the Purchaser and any Beneficial Owner(s) of the Purchaser's;*
 - *A description of the type of identification, driver's license, passport or other similar identifying document, obtained from the Beneficial Owner with a copy retained in the file;*



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What must be Reported Continued

- *Date of closing of the Covered Transaction;*
- *Total amount transferred in the form of a Monetary Instrument;*
- *Total purchase price of the Covered Transaction; and*
- *Address of the real property involved in the Covered Transaction;*
- *Also include the term “REGTO” as a unique identifier for this GTO in the Comments section.*



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Frequently Asked Questions

- *How does the GTO define a beneficial owner?*
 - **An individual who directly or indirectly owns 25% or more of the equity interest in the Legal Entity.**
- *What if the purchasing entity is owned by a series of legal entities?*
 - **Must report the ultimate beneficial owner at the end of the chain.**
- *Can the insurer rely on information reported by the parties or collected by a third party such as an attorney?*
 - **Yes. A Covered Business may reasonably rely on information provided to it by third parties, including other parties involved in Covered Transactions.**
- *Must a Covered Business verify information about the Beneficial Owner of a Purchaser?*
 - **A Covered Business must obtain and retain a copy of the Beneficial Owner's (or all member s of an LLC) driver's license, passport, or other similar identifying documentation. But does not need to verify their status as a beneficial owner.**



Frequently Asked Questions

- *Who is the “individual primarily responsible for representing the Purchaser”?*
 - The “individual primarily responsible for representing the Purchaser” means the individual authorized by the entity to enter legally binding contracts on behalf of the entity.
- *Is this information subject to an attorney client privilege?*
 - Information necessary for completing a form 8300, Suspicious Activity Report or other Bank Secrecy Act reporting requirement cannot be withheld from the government due to attorney-client privilege. See *United States v. Goldberger & Dublin, P.C.*, 935 F.2d 501 (2nd Cir. 1991).

Compliance

- A Covered Business is expected to have reasonably designed procedures to ensure compliance with the terms of the GTOs
 - reasonable due diligence to determine whether it (or its subsidiaries or agents) is involved in a Covered Transaction
 - to collect and report the required information
 - may reasonably rely on information provided to it by third parties
- Reports can be shared with law enforcement but are otherwise kept private and are not FOIA accessible

RESOURCES



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Covered Transaction Determination

- Assist title company to determine if a transaction is reportable under the GTO
- Document that decision in the file

Title Company Information

Company Name		Person Completing this worksheet (Name and Position)	
Postal Address (Headquarters)	City	State	Zip
Phone	Fax	E-Mail	ALTA ID
Order/File Number	Title Insurer	Policy Number	Date of Closing

Covered Transaction Determination:

A "Covered Transaction" is one in which you answer "YES" to all five questions below.

If you answer a question with a "NO", then the transaction is not a "Covered Transaction."

Note: If a "No" answer is given to any of questions it is not necessary to answer the remaining questions and you may skip to the Question 6b.

1. Is the property in one of the following counties and the purchase price equal to or over the amount shown? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No CA – Los Angeles - \$2 million FL – Broward - \$1 million NY – Bronx - \$1.5 million CA – San Diego - \$2 million FL – Miami-Dade - \$1 million NY – Brooklyn - \$1.5 million CA – San Francisco - \$2 million FL – Palm Beach - \$1 million NY – Manhattan - \$3 million CA – San Mateo - \$2 million TX – Bexar - \$500,000 NY – Queens - \$1.5 million CA – Santa Clara - \$2 million NY – Staten Island - \$1.5 million	
2. Is the property residential? Property Address: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
3. Is the purchase made <u>without</u> a loan from a financial institution? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Note: Only consider loans made by financial institutions with anti money laundering programs such as a bank, credit union or mortgage company. This does not include private or seller financing.
4. Is the purchaser a corporation, limited liability company, partnership or similar business entity, whether formed under the laws of state or a foreign jurisdiction? If yes indicate the type of entity <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
5. Was or will any of the purchase price, including earnest money deposits, be paid using one or more of the following? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No a) Currency (bills or coins); b) Cashier's check c) Certified check; d) Travelers check e) Money order in any form; f) Business Check; or g) Personal Check	
Note: Payments to a party representing the purchaser or seller (i.e. an attorney, real estate agent or settlement agent) using one of the listed forms of payment require a "Yes" answer.	
6. a) <input type="checkbox"/> Form 8300 Submission Required – If the answer to each of questions 1 to 5 "Yes", then a FinCEN Form 8300 must be filed. b) <input checked="" type="checkbox"/> No Form 8300 Submission Required – If any questions at 1 to 5 above contain a "NO" answer, then Form 8300 is not required.	

Information Gathering Form

- Help gather data for 8300 reporting
- Can be given to purchaser, their attorney or real estate agent
- Document information company relied on when completing 8300
- Electronic fillable form

Individual Primarily Representing Purchaser (Defined as the individual authorized by the entity to enter into legally binding contracts).

<input type="checkbox"/> Attach Legible copy of government issued identification (i.e. passport, driver's license, etc.)				
Type of ID			Issuing State or Country	
Last Name		First Name		M.I.
Date of Birth	Occupation	Taxpayer ID Number or EIN (if none check the box) <input type="checkbox"/> None		
Address		City	State	Zip

Purchasing Entity's Name & Address

Name of Purchasing Entity				
Taxpayer ID Number (if none check the box) <input type="checkbox"/> None			Type of Legal Entity <input type="checkbox"/> Ltd. Liability Co. (LLC), <input type="checkbox"/> Corp., <input type="checkbox"/> Partnership, <input type="checkbox"/> Other	
Doing Business Name (DBA) (if none check the box) <input type="checkbox"/> None			Country of Address (if not U.S.)	
Address		City	State	Zip

Real Estate Purchase Information

Date of Closing	Total Purchase Price \$	Total Amt. paid by below instruments \$	Paid in more than 1 payment <input type="checkbox"/> Yes <input type="checkbox"/> No
Amount of Monetary Instruments (in U.S. Dollar)			
U.S. Currency ² \$	Amt. in \$100 bills or higher		\$
Foreign Currency \$	Country:		
	Issuer's Name(s)	Serial Number(s)	
Cashier's check(s) \$			
Money order(s) \$			
Certified check(s) \$			
	Issuer's Name(s)	Account & Check Number(s)	
Traveler's check(s) \$			
Business check(s) \$			
Personal check(s) \$			

Property Information

Address		City	State	Zip
County				

Other resources

- ALTA Fact Sheet
- FinCEN FAQ
- TitleNews cover article “The Hunt for Dark Money”

All resources available at www.alta.org/fincen

3. IMPACT ON REAL ESTATE MARKETS



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Impact on Closings

- Should not prevent closings
 - Reporting is done post closing
- Should be familiar to buyers
 - Reporting is similar to the types of information necessary provided to banks for opening an account
- Small segment of the high end market
 - Wire transfers are already the preferred method of transferring funds for real estate closings

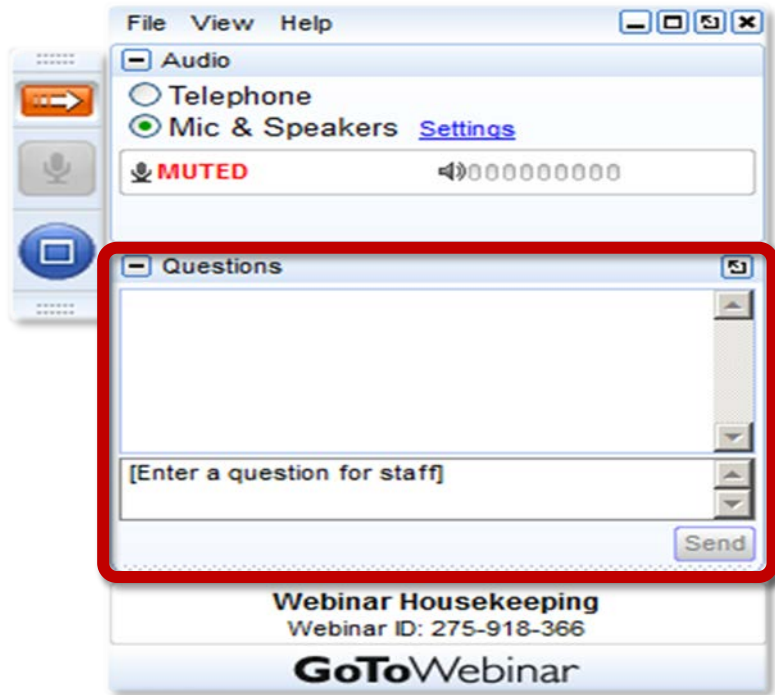


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ANY
QUESTIONS
?

GoToWebinar Housekeeping: time for questions



Your Participation

- Please continue to submit your text questions and comments using the Questions Panel

For more information, please
[insert contact information]

THANK YOU



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