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Federal real estate investigative agency puts spotlight on Chicago

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On Nov. 8, the Financial Crimes Enforcement Network, a unit of the U.S. Treasury Department, announced it was renewing its regulation targeting secret buyers of residential real estate properties in various cities, including Chicago.

In 2016, FinCEN issued a geographic targeting order requiring U.S. title insurance companies to report the identity of the beneficial owners of limited liability companies and other shell companies that purchase residential real estate without bank loans in two locations — New York and Miami-Dade County.

That 2016 order came on the heels of The New York Times reporting in 2015 that nearly half of the most expensive residential properties in the United States are purchased anonymously through shell companies and that the real estate industry was not required to conduct a full examination of buyers' identities or backgrounds.

Foreign buyers have increasingly invested their money in United States residential real estate. For example, between 2003 and 2014, the percentage of condominiums purchased by shell companies in one particular building in Manhattan rose from one-third to more than 80%.

On Nov. 15, 2018, FinCEN expanded the targeting order to cover Chicago and other major metropolitan areas, including Boston, Dallas, Honolulu, Las Vegas, Los Angeles, San Antonio, San Diego, San Francisco and Seattle. That six-month long targeting order was renewed this May and renewed for a second time on Nov. 8.

The current targeting order will last at least until May 2020, but given that the original order for New York and Miami has been repeatedly extended since 2016, it is likely that Chicago will remain under this rule for the foreseeable future.

Title insurance companies involved in real estate transactions covered by the order face criminal and civil penalties if they do not comply with the order's regulations. Specifically, title insurance companies must report the identity of the beneficial owner — an individual who, directly or indirectly, owns 25% or more of the equity interests of the purchaser — where a legal entity — the purchasing corporation, LLC, partnership or other entity — purchases residential real estate for more than $300,000 — and does so without a bank loan or other external financing.

The title insurance companies must submit a form to FinCEN within 30 days of closing in a qualifying real estate transaction. The title insurance company is also expected to implement procedures reasonably designed to ensure compliance with the terms of the targeting order, including reasonable due diligence to determine whether it is involved in a transaction subject to the targeting orders and to collect and report the required information.

At a minimum, the title insurance company must collect the beneficial owner's driver's license, passport or other identifying information. The title insurance company may reasonably rely on information provided to it by third parties, including third parties who are part of the transaction.

FinCEN submits the information it gathers from title insurance companies into a law enforcement database used by various agencies. FinCEN previously touted that the information it has gathered from these targeting orders for residential real estate has been successful in generating leads and identifying previously unknown suspects.

FinCEN frequently sharpens its focus on various industries and areas with the potential for money-laundering. Targets of FinCEN's focus in recent years, which led to either targeting orders or fines by FinCEN, have included banks processing payments through money exchange businesses in Mexico (so-called "casas de cambio"), casinos purportedly catering to high-rollers with unknown sources of wealth and, most recently, crypto-currency exchangers who failed to establish anti-money laundering procedures required by FinCEN.

FinCEN's concern about beneficial owners in residential real estate stems from that fact that certain high net worth individuals have used LLCs and other structures to purchase expensive real estate in cash, thereby concealing their identities and avoiding the need to disclose background information to banks in mortgage loan applications.

FinCEN believes that certain of the individuals using front companies to make all-cash purchases of high-end real estate could be foreign government officials or foreign criminals who are secretly investing criminal proceeds, or "dirty money," in American real estate to move the ill-gotten gains out of their home countries.

In its news release announcing the 2016 targeting order, FinCEN wrote that it was "concerned that all-cash purchases — those without bank financing — may be conducted by individuals attempting to hide their assets and identity by purchasing residential properties through limited liability companies or other opaque structures."