REAL ESTATE WEEKLY

January 15, 2016

http://rew-online.com/2016/01/15/the-bucks-stop-here-as-treasury-tries-to-head-off-the-bad-guys/

The Bucks Stop Here as Treasury Tries to Head off the Bad Guys

Manhattan luxury apartment buyers can run, but they can't hide — unless they have oodles of cash and the chutzpah to work through the loopholes in new government orders aimed at stopping crooks hiding behind LLCs.

Lawyers examining a new order issued by the Treasury Department requiring title companies to identify people who pay cash for $3 million-plus apartments in either Manhattan or Miami-Dade told Brokers Weekly it's far from fool proof.

"I have no doubt that well-motivated and well-advised people will find ways to shield their identities," said Aaron Shmulewitz, Esq. of Belkin Burden Wenig & Goldsmith.

AARON SCHMULEWITZ

"It's a cat and mouse game," added Terry Oved, of Oved & Oved.

"Those seeking to maintain their privacy and secrecy will seek, and ultimately find, new and novel ways to circumvent the regulation, which in turn will generate additional regulation by the government aimed at limiting and curtailing use of those practices, and so on and so forth…"

The government's Financial Crimes Enforcement Network (FinCEN) issued what it called Geographic Targeting Orders (GTO) last week.

For a six month period beginning in March, the order requires title insurance companies to identify the persons behind companies used to pay cash for residential real estate priced above $3 million in the Borough of Manhattan and $1 million in MiamiDade County, Florida.

FinCEN is concerned that these all-cash purchases — i.e., those without bank financing — may be conducted by individuals attempting to hide their assets and identity and launder money through the market.

“We are seeking to understand the risk that corrupt foreign officials, or transnational criminals, may be using premium U.S. real estate to secretly invest millions in dirty money,” said FinCEN director Jennifer Shasky Calvery.

“Over the years, our rules have evolved to make the standard mortgage market more transparent and less hospitable to fraud and money laundering. But cash purchases present a more complex gap that we seek to address.

“These GTOs will produce valuable data that will assist law enforcement and inform our broader efforts to combat money laundering in the real estate sector.”

Lawyers quickly rounded on the wording of the order, the targeting of the two boroughs and the potential loopholes.

Oved noted that the “government’s isolating of the Manhattan and Miami markets are reflective of the scope, breadth and capital sourcing of many of those ultra-luxury residential real estate markets which, to a large extent, have been driven by foreign investors over the past few years.

“It’s no secret that NY and Miami are the financial and leisure capitals of the U.S., attracting an international Who’s Who of foreign investors seeking to place their funds in a safe and secure asset. Relative to the capital or real estate markets available to them elsewhere, they, rightly or wrongly, clearly view these cities as offering them the greatest potential reward and least exposure to risk.”

Shmulewitz predicted that the regulations are likely to have an immediate adverse impact on Manhattan real estate.

“If purchase prices are driven downward, transfer tax revenues, which are geared to prices, will be too,” said Shmulewitz.

“Therefore, like much seemingly well-intentioned government regulations, if these requirements remain in place, their long-term impact will actually hurt City and State governments — and their citizens — who have grown dependent on the healthy money flow.

“It’s a zero sum game — budgetary holes will need to be made up in some other fashion, like higher income taxes, higher transit fares, service cutbacks, etc.

"Foreign investors who want to park cash will find other parking spots for it, in other countries."

ANDREW HEIBERGER

Andrew Heiberger, founder and CEO of TOWN Residential, doubts that the order will have a big impact on the Manhattan market or uncover mass corruption.

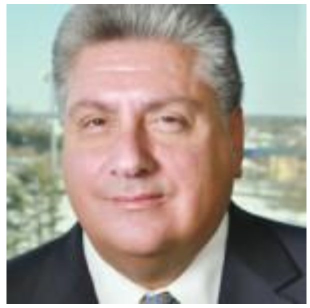
He said, "We live in the age of information with the most personal data available in just a few clicks. The purchasing of properties in an LLC has become common practice to safeguard the identity of buyers, who are often high profile and/or celebrity, where disclosure of address or financial circumstance could make them vulnerable from a safety, business or social standpoint. In these instances, it makes sense to afford buyers privacy.

"However, if buyers are using the shield of the LLC to conduct illegal activity, the new mandate is justified.

"Regardless of the purchasing entity, buyers are vetted by co-op boards and through the condo application process. As a result, I do not expect there to be a significant number of illegalities uncovered or impact on the market."

For their part, the American Land Title Association (ALTA), the national trade association for the title writers tasked with completing the paperwork for the Treasury order, said it "looks forward to continuing our work with FinCEN as our members implement this Order to help prevent money laundering schemes and the illegal purchase of real estate in the United States."

Locally, Steven Napolitano, president of First Nationwide Title Agency, said, "We are looking help the government in its endeavors to stop money laundering and we will gladly comply with anything they ask us to do."



STEVEN NAPOLITANO

Ultimately, Oved conceded, “This move is not a complete shutdown, but it is throwing a couple of hurdles up there to make it a little more difficult.

“It certainly is sweeping in its purview and, depending on what it nets over the six month period, it has the potential to be expanded and further refined if the Treasury department feels that it is having the requisite effect.”

Oved believes that as a result of the order that “many people who may not have anything to be concerned with will still try to close their transaction before the order takes effect in March if only to maintain the secrecy of their transaction, which is certainly a legitimate business purpose.”