National Association of REALTORS®

Anti-Money Laundering Voluntary Guidelines for Estate Professionals

February 16, 2021

This fact sheet and anti-money laundering voluntary guidelines is aimed at increasing real estate professionals' awareness, knowledge, and understanding of the potential money laundering risks surrounding real estate, and to enable real estate professionals to identify and to take practical measures to mitigate these risks. NAR encourages the distribution of this document by state and local REALTOR® associations, real estate commissions, and individual real estate professionals.

CONTENTS

Overview

The crime of money laundering continues to be a growing area of concern in the United States, resulting in law enforcement agencies and the financial sector devoting considerable time and resources to combat these illegal activities. However, many non-financial businesses and professions are also vulnerable to potential money laundering schemes. Real estate is believed to be used in money laundering schemes, making real estate professionals likely to encounter money laundering activities in the course of their business.

What Is Money Laundering?

Money laundering is the process criminals use to disguise the illegal origin of funds. Certain criminal activities generate substantial proceeds. Legitimizing, or "laundering," these proceeds through the financial system is a critical component for criminals to avoid detection of these activities and not draw attention to their illegally derived proceeds.

Money laundering is a three-step process that is initiated by introducing the illegal proceeds into the financial system, e.g., breaking up large amounts into small deposits or by purchasing financial instruments, such as money orders, and is referred to as placement. Placement is typically followed by distancing the illegal proceeds from the source of the funds through layers of financial transactions, referred to as layering. Finally, the illegally derived proceeds are then returned to the criminal from what appears to be a legitimate source, known as integration.

500 New Jersey Ave, NW
Washington, DC 20001-2020
(800) 874-6500
www.nar.realtor

A real estate transaction can be used in any one of the three stages of money laundering. For example, if an individual purchases a home and uses illegal funds as part of the down payment, the real estate would be used for the integration step.

Generally speaking, most money laundering activities are concentrated in the financial sectors. For this reason, banks and other financial institutions are subject to anti-money laundering/counter-terrorist financing (AML) laws and regulations, primarily the Bank Secrecy Act (BSA), and are required to have safeguards in place to help detect and mitigate money laundering activity. However, other industries, including as real estate, can also be exposed to questionable business practices and be utilized as a vehicle for money laundering activities.

The Role of Real Estate Agents

As a general matter, the real estate agent's AML risk is substantially mitigated by the fact that the great majority of real estate transactions involve regulated entities such as banks and non-bank mortgage companies, which have BSA obligations. However, when a transaction steps outside the norm or in cases where certain risk factors are present, as detailed below, a real estate agent could face an elevated chance of encountering a possible money-laundering scheme and should consider taking measures to address the risk.

As a real estate professional, knowledge of how real estate transactions normally progress enable one to recognize and evaluate whether variances from the norm may signify an enhanced AML risk. This is an important way real estate agents can help to mitigate AML risk in real estate transactions, and requires brokers and agents to be aware of how real estate transactions may be used in illegal financing schemes and steps to detect and deter those activities.

Being familiar with the signs of money laundering activity in the real estate market will help real estate agents:

a. Identify potential money laundering activities;
b. Take appropriate steps to mitigate the money laundering risk; and
c. If necessary, alert the proper authorities to help deter and mitigate the use of real estate in money laundering schemes.

Recent Federal Action in Real Estate: Identifying Beneficial Ownership in Shell Companies

The Financial Crimes Enforcement Network (FinCEN), a bureau of the U.S. Treasury Department, issued its first Geographic Targeting Order (GTO) aimed at combatting money laundering and illicit financial crimes involving real estate in 2016. These GTOs have been renewed biannually, and require U.S. title companies to identify individuals (the "beneficial owners") behind certain legal entities used to purchase residential real estate without bank loans or external financing in specific areas. Pursuant to the GTOs, covered businesses, primarily title companies and their subsidiaries, are subject to data collection and reporting requirements concerning the beneficial owners of covered transactions.

Covered transactions include residential real estate purchases for $300k or more by a legal entity made, at least in part, by cash, check, money order in any form, a fund transfer or virtual currency. A legal entity is a corporation, limited liability company, partnership, or other similar business entity. The GTOs apply to covered transactions in the following jurisdictions:

- San Diego, Los Angeles, San Francisco, Santa Clara, and San Mateo Counties in California;
- Miami-Dade, Broward, and Palm Beach Counties in Florida;
- The City and County of Honolulu in Hawaii;
- Cook County in Illinois;
- Suffolk and Middlesex Counties in Massachusetts;
- Clark County in Nevada;
- Bexar, Tarrant, and Dallas Counties in Texas;
- The Boroughs of Brooklyn, Queens, Bronx, Manhattan, and Staten Island in New York; and,
- King County in Washington.

Real estate professionals do not have any affirmative duties under the GTOs, but a title insurance company may request information from real estate professionals to help maintain its compliance with the GTOs. Real estate professionals are encouraged to cooperate and provide information in their possession. Keep in mind that these communications should not affect the real estate timeline for closing, as title companies are required to report GTO covered transactions to FinCEN within 30 days of the closing.

In late 2020, Congress passed the National Defense Authorization Act (NDAA) over a Presidential veto. NDAA included major anti-money laundering reforms designed to modernize the current anti-money laundering regime. The new law mandates the disclosure of beneficial ownership information by legal entities formed under state law, and the law calls for enhanced information sharing among government agencies, financial institutions, and law enforcement. Legal entities will now be required to disclose beneficial ownership information to the Financial Crimes Enforcement Network (FinCEN), a bureau within the Treasury Department. FinCEN is responsible for securely maintaining the beneficial ownership information. The disclosure of beneficial ownership information is aimed at preventing the formation and misuse of anonymous shell companies for illicit financial purposes, including money laundering.

Know Your Anti-Money Laundering (AML) Red Flags

Every real estate professional should be aware of certain identified warning signs of money laundering activity in connection with real estate. Becoming familiar with these red flags will allow real estate professionals to assist and help minimize the use of real estate as a vehicle for money laundering activities.

In general, these risk factors (red flags) can be grouped in the three categories: country/geographic, customer, and transaction risk.

1. **Geographic Risk:**
   Geographic risk may arise because the customer and/or the source of the customer's funds are located in a jurisdiction that has a weak AML regime, supports or funds terrorism, or has a high degree of political corruption. The Office of Foreign Assets Control (OFAC) of the U.S. Treasury Department maintains a list of jurisdictions subject to sanctions, and a good source of locations posing a heighted AML risk. OFAC administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals.

   OFAC-administered sanctions can be either comprehensive or selective, and generally restrict or prohibit dealings (including business and financial activities) by U.S. persons or in the United States that involve countries (or persons) subject to OFAC sanctions. Countries subject to comprehensive OFAC sanctions include Iran, Cuba, and Syria. The names of individuals, groups, and entities subject to OFAC sanctions are generally listed on OFAC's List of Specially Designated Nationals and Blocked Persons.

   Additionally, transactions in one of the jurisdictions covered by the GTOs and involving all cash wire transfers, may be a higher risk as well.

2. **Customer Risk:**
   - Location of property in relation to the buyer.
     - Is there a large unexplained geographic distance between the two?
   - Unusual involvement of third parties.
   - Titling a residential property in the name of third party;
     - For example, a friend, relative, business associate, or lawyer; or,
     - Use of legal entities (corporations, LLCs or partnerships) that obscure the identity of the person who owns or controls them without a legitimate business explanation.
   - Involvement of a high-ranking foreign political officials or their family members.
   - Location of the Buyer.
     - It is important to know the location of the buyer, and to determine whether the buyer resides in a jurisdiction that is on the OFAC list of jurisdictions that may pose a geographic risk.

3. **Transaction Risk:**
   - Under or over-valued properties.

    - For example, is the property owner selling the property for significantly less than the purchase price?
    - Does the seller seem disinterested in obtaining a better price?
- Use of large amounts of cash.
    - Buyer brings actual cash to the closing.
    - The purchase of a property without a mortgage, where it does not match the buyer profile.
- Property purchases inconsistent with the individual's occupation or income.
    - Is the property being purchased significantly beyond the purchaser's means?
- Immediate resale of the property (without reasonable explanation).
    - Especially if the sale entails a significant increase or decrease in the price compared to the prior purchase price, without a reasonable explanation.
- Speed of transaction (without reasonable explanation).
- Unusual source of funding.
    - For example: use of third-party funds to purchase a property where it does not make sense, i.e. third-party is not a parent, sibling, etc., use several different sources of funds without logical explanation, funding coming from a business but property not being held in business' name, or purchase of property does not match the business' purpose.
- Purchases made without viewing the property, and lack of interest in the property characteristics.
- Transactions occurring in cryptocurrency where the house is not listed in cryptocurrency.
- Transactions occurring with persons or entities involved in the marijuana sales or marijuana adjacent businesses.
- Any other activities which demonstrate suspicious behavior and do not make professional or commercial sense based on the agent's familiarity with the real estate industry and the normal course of business.

What Real Estate Professionals Can Do to Mitigate Risk

The presence of a single risk factor, or even multiple factors, does not necessarily mean the purchaser or seller is engaging in money laundering activities. The role of real estate agents is to be familiar with these risk factors, and exercise sound judgment based on their knowledge of the real estate industry, and when a combination of these factors truly raises a red flag, know the proper action to take.

1. Know Your Customer/Customer Due Diligence (CDD)

This is a critical component of the role real estate professionals can play in helping to identify and combat money laundering. Knowing an agent's true customer and understanding their interest and planned use for a property will help agents detect red flags, and mitigate AML risks.

The process by which the real estate agent forms a reasonable belief that they know the true identity customer and is then able to assess AML risk, is commonly referred to as know-your-customer or customer due diligence (CDD). In cases where red flags are present, the agent should apply increased levels of CDD, which may include the following:

- **i.** Obtain additional information, a driver's license, passport or other reliable identification document, to confirm the true identity of the customer.
- **ii.** If a legal entity is involved, such as a corporation or LLC, take additional measures to identify who actually controls or owns the entity and take risk-based measures to verify the identity of the owner (the beneficial ownership information).
- **iii.** Obtain other appropriate information based on the agent's experience and knowledge to understand the customer's circumstances and business.
- **iv.** Notify senior management about the higher risk customer or a particular situation that raises red flags to monitor the relationship and transaction with the customer.

2. Reporting Suspicious Activity

When confronted with suspicious activity, real estate agents always have the option of voluntarily reporting the information to local law enforcement or the FBI or by filing with FinCEN, a suspicious activity report.

Agents should consider filing a suspicious activity report (SAR), when red flags are present or there is reasonable suspicion a real estate transaction may be a vehicle for illegal financing activity. SARs are primarily designed for use by financial institutions and are a significant tool for law enforcement agencies to combat money laundering.

As stated in their [2017 Advisory](), "[p]ersons filing SARs should note that FinCEN protects the confidentiality of such filings." FinCEN also clarified that "[w]hen reporting suspicious activity, persons involved in real estate closings and settlements should note that they can benefit from protection from civil liability," citing to 31 U.S.C. § 5318(g)(3)(A). This section applies to "financial institutions," which includes real estate professionals, even though no regulations are currently imposing BSA/AML monitoring requirements. FinCEN's guidance suggests that there is support for a civil liability bar in the context of filing a voluntary SAR. However, real estate agents should thoroughly evaluate circumstances of the suspicious activity and consider consulting an attorney prior to filing a SAR.

The electronic SAR form is available at: http://bsaefiling.fincen.treas.gov/main.html (link is external).

For further information or assistance regarding how to file a SAR, real estate professionals may call FinCEN's Regulatory Helpline 1-800-949-2732.

3. Form 8300

A Form 8300 must be filed by any trade or business (including real estate) that receives more than $10,000 in cash in the course of a single transaction or two or more related transactions. It is not a SAR and is not used to report suspicious activity. Form 8300 is an information report that is required to be filed by any trade or business (such as a car or boat dealer) that receives in excess of $10,000 in cash in a single transaction. Therefore, if for any reason a real estate agent or broker receives more than $10,000 in cash from a buyer or seller in the course of a real estate transaction, the form must be filled out and filed, and can be found at http://www.irs.gov/pub/irs-pdf/f8300.pdf (link is external).

Cash, for purposes of this requirement, includes cash equivalents such as cashier's checks, bank drafts, money orders. If the cash equivalent instrument is for more than $10,000, the transaction will be reported by the issuing bank, and the agent does not need to also file a Form 8300. If, however, an agent receives a cashier's check or other cash equivalent of less than $10,000, but which in combination with other cash or cash equivalents totals more than $10,000, a Form 8300 must be filed.

Conclusion

While the illicit finance risk for real estate agents is often mitigated by the involvement of financial institutions already subject to strict AML laws, the use of real estate in money laundering schemes continues to be an area of concern. These voluntary guidelines will help real estate agents be effective partners with law enforcement agencies in detecting and addressing the use of real estate in illegal financing activities.

Additional Resources

FinCEN's Advisory to Financial Institutions and Real Estate Firms and Professionals

NAR Issue Brief: Geographic Targeting Orders (GTOs)

NAR Issue Brief: Cryptocurrency (*in process and will be shared soon)*

NAR AML GTO & Risk Mitigation Infographics (*in process and will be shared soon)*