



MONEY laundering and income tax evasion

By Lisa A. Tyler
National Escrow Administrator

Recently enacted regulations to the Corporate Transparency Act (CTA) will require companies to report their beneficial owners, similar to the information collected under the Real Estate Geographic Targeting Order (GTO) issued by FinCEN. Will the duplicative information change or update the current reporting requirements in certain geographic areas? Read “WILL the CTA end the real estate GTO?” for more information.

Be sure to read “ONE day close” to discover how an escrow officer and her assistant prevented the absentee owner scam from being perpetrated on a potential sale transaction. The impressive part of the story is they followed their instincts, and refused to even open the order and waste valuable time working on an order they were certain was fraudulent.

Participating in laundering dirty money can go both ways. Requests for payments in small amounts, less than \$10,000, may provide the assistance needed to evade the reporting requirements under the Anti-Money Laundering regulations in the Bank Secrecy Act. As a result, multiple payments to the same payee are never acceptable. Making payments of less than \$10,000 to the same payee is considered “structuring,” which subjects anyone who assists to strict penalties.

When a party to a real estate transaction is to be paid \$100,000 and they deliberately request payments in increments of \$9,999 — they could be guilty of structuring. Financial institutions may be obligated to file a suspicious activity report (SAR). The article titled “MULTIPLE payments to same payee” contains examples of how a person could launder money with the unintentional help of a settlement agent.

IN THIS ISSUE



Share Fraud Insights
via email, mail or word of mouth.



volume 18 issue 5
May 2023

Publisher
Fidelity National Financial
Editor
Lisa A. Tyler
National Escrow Administrator



WILL the CTA end the real estate GTO?

It is no surprise, efforts to peel back the layers of entities to identify the ultimate owners are critical in the effort to intercept and stop money laundering and illicit activity. FinCEN, through a Geographic Targeting Order (GTO), looked to create a database of beneficial owners purchasing real property, designating specific areas across the country for specific property types and purchase price minimums.

The order, however, was only temporarily instituted. First issued in 2016, GTOs have been renewed every six months, the maximum time limit FinCEN could impose. In January 2021, Congress enacted the Corporate Transparency Act (CTA) looking to create a broader and more permanent reporting requirement.

Under the CTA, FinCEN is creating a database to track the Beneficial Ownership Information (BOI) of specific types of entities, not just those involving real property sales. The burden of reporting is placed on certain entity types and sizes — with potential civil and criminal penalties for failure to report or false reporting.

The idea behind the act is to increase transparency of companies which may look to hide or obscure their ultimate individual owners through the use of shell companies, thus targeting and exposing money laundering operations and illicit money.

The BOI reporting requirement goes into effect on January 1, 2024. Not all companies, however, will be required to report. There are numerous

potential exemptions which may exclude different types of entities.

Potential exemptions may include insurance companies, state-licensed insurance producers, general partnerships, banks, companies with 20 or more employees and \$5 million in annual revenue, and companies which are not actively engaged in business. Most, if not all, entities currently exempt from GTO will continue to be exempt from the new reporting requirement.

While the exemptions for specific types of business and the beneficial ownership information are similar to the information collected by the GTO, it is unclear if this will change or modify current requirements.

The CTA only focuses on the beneficial owners, it does not provide law enforcement with specific transaction details as with the Real Estate GTO. Moreover, it has been proposed to permanently enact some form of the Real Estate GTO reporting (instead of the typical six-month renewal period) and create a permanent, nationwide reporting process for certain real estate practices.

FinCEN renewed the Real Estate GTO, extending the required reporting on Covered Transactions until it is up for potential renewal on October 21, 2023. The new order contains expanded reporting. It does not look like the CTA will be replacing the GTO any time soon.

Article provided by contributing author:

Scott Cummins, Advisory Director
Fidelity National Title Group
National Escrow Administration



STOP

TELL US HOW YOU
**STOPPED
FRAUD**

settlement@fnf.com or
949.622.4425



ONE day close

Escrow Officer Kim Rafael and Escrow Assistant Liz Manges from Fidelity's Napa, California office, received a For Sale by Owner (FSBO) order on property in Southern California. The order was opened by the buyer via email.

The property was a residential three-bedroom, three-bathroom villa in Pacoima, California. The sale price was \$490,000 and the contract called for a one day closing with a Canadian buyer who was supposed to send a \$49,000 earnest money deposit.

Kim and Liz pulled a copy of the latest recorded deed and noticed the owner's name did not match the seller's name on the purchase and sale agreement. Kim and Liz reached out to the purported seller and asked why the name on the deed did not match the name on the agreement.

The seller told them in an email response she was using a Power of Attorney to sign on behalf of the record owner. Kim and Liz asked for a copy of the Power of Attorney and inquired why it was being used. The seller's response was that was "a personal question" and to hurry and deposit the earnest money.

Kim and Liz were suspicious. They looked up the address for the "seller" as reflected on the purchase and sale agreement. Their internet search indicated the address as Stanford University. They knew something was not right and did not open the escrow.

Instead, they sent the Notice of Pending Real Estate Transaction via overnight to the property address in Pacoima, which was also the address where the property tax bills were being mailed.

The true owner called first thing the next morning to confirm that she had no knowledge of a purchase contract for the sale of her home. The owner's broker also reached out to Liz to confirm the

property was not for sale and stated this was the second attempt by the same imposter to sell the property out from the true owner.

The Company is appreciative Kim and Liz stopped the transaction before it ever opened. For Kim's and Liz's efforts they were rewarded \$750 each and received letters of recognition.

MORAL OF THE STORY

Absentee Owner Fraud is occurring nationwide. Operations are opening sales with imposters daily and many of them are not immediately sending a letter to the tax bill address. Instead, they spend hours and days working on files only to figure out later the seller is not the true owner of the property being sold. Unfortunately, they regularly find out by accident. Had they sent the letter out immediately, they most likely would have found out within 24-48 hours.

It is also important the true owner is properly identified. By asking a series of questions, operations can arrive at the identity of the person with whom they are communicating. For more information about the methods used to identify the seller, contact settlement@fnf.com.

Strict adherence to the Company's Document Execution Guidelines is the best way to avoid becoming a victim. Never let a seller (or any party to a transaction) bully you or convince you to let them use their own notary.

Should you have any suspicions, share them with the notary to ensure the notary fully identifies the signer. Better yet, demand the signer personally appear in your office.

UPDATE

While writing this issue, we received reports from several states that some imposters are changing the mailing address where the tax bill is sent, PRIOR to selling the property out from the legitimate owner.

Contact the tax collector office to find out if the property which is the subject of a transaction you may be handling had a recent address change or not. If yes, contact your local management or settlement@fnf.com for additional instructions.



MULTIPLE *payments to same payee*

The Bank Secrecy Act (BSA) was enacted to help combat money laundering through the requirement of reporting cash transactions exceeding \$10,000. In order to avoid assisting in money laundering or other fraudulent activities, it is important to remember the motto: **One disbursement per payee.** Below are some examples of evasion techniques:

In one example, a man who had completed several construction projects involving homes for sale convinced the settlement agent to reduce any payments due him to less than \$10,000. He cashed more than 50 checks rather than deposit them into his bank account.

The man wanted to prevent the banks from filing a Currency Transaction Report reporting his suspicious activity. The checks were part of his scheme to defraud the IRS, since he did not declare the cash transactions as income on his federal tax returns.

In another example, a doctor had his patients pay him by check in increments of less than \$10,000. If they owed more than \$10,000, he instructed them to write multiple checks to ensure none of them were more than \$10,000.

The doctor cashed more than \$2 million at the counter of a bank to ensure he could evade the reporting requirements of the bank. The bank was inadvertently assisting him in hiding this income earned when he intentionally failed to report the payments on his tax returns.

Conversely, it is important to understand that not everyone who makes cash deposits or cashes checks for less than \$10,000 is

attempting to evade paying taxes. It is not illegal to deposit cash into a person's bank account.

A bartender, for example, can earn thousands in cash each week. During any given month the bartender could easily make multiple cash deposits. If the intent is to report the earnings on their tax returns and not to "structure" these cash deposits, there is nothing illegal about this.

Sometimes settlement agents receive itemized invoices or demands for payment. The itemization may describe the charge for different products or services payable to the same person or entity.

Settlement agents may itemize the charges and descriptions on their closing statement, but should simply combine the charges and make just one disbursement per payee when disbursing their file. They should never make multiple disbursements to the same payee.

Rather than accuse or imply whether someone's actions are illegal or not, it is best to live by the hard and fast rule — never waiver.

The information provided herein does not, and is not intended to, constitute legal advice; instead, all information, and content, in this article are for general informational purposes only. Information in this article may not constitute the most up-to-date legal or other information.

Article provided by contributing author:

Diana Hoffman, Corporate Escrow Administrator
Fidelity National Title Group
National Escrow Administration

