SOUTH FLORIDA BUSINESS JOURNAL

Jan 13, 2016, 3:01pm EST

Brian Bandell, Senior Reporter, *South Florida Business Journal*

MONEY LAUNDERING: Feds moves to strip secrecy from cash real estate deals in Miami

The days of mysterious shell companies plunking down millions of dollars for homes in Miami-Dade County could be over.

The Financial Crimes Enforcement Network (FinCEN) issued a temporary order that aims to end the secrecy in $1 million-plus cash deals in Miami-Dade and Manhattan to combat potential money laundering. Once the rule takes effect, title insurance companies would have to identify the natural persons behind the companies in such residential deals to law enforcement. The information likely wouldn't be made public in court records.

Cash sales are huge in Miami-Dade. They accounted for 54.9 percent of all existing home sales in November, according to the Miami Association of Realtors. That includes 67.5 percent of all existing condo sales. These cash buyers are often foreigners. Miami Association spokeswoman Lynda Fernandez noted that all-cash luxury transactions represent only 3.6 percent of deals in the county so she doesn't expect this to have a big impact on the overall market.

Condo developers have mostly relied on cash deals for their projects. That means the identities of scores of buyers with pre-sale contracts of over $1 million would be revealed to regulators.

Foreign buyers could be concerned that U.S. regulators would share information about their big purchases with their native countries as part of a probe, which could prevent them from hiding assets from their native governments.

In the past, criminals such as drug dealers, Ponzi schemers and corrupt foreign politicians have used dirty money to purchase Miami-Dade real estate and then had it seized by federal officials.

The *Business Journal* wrote a feature story on the money laundering loophole for real estate in 2013.

“It’s not exactly breaking news, film at 11. This is something that’s being going on for as long as I’ve been involved in law enforcement and beyond,” said Theresa Van Vliet, an attorney at Genovese Joblove & Battista and a former federal prosecutor in Miami. "There have been drug dealers and Ponzi schemers and racketeers that have lost houses here for years. This will make it a little easier to start to identify when those things happen cold based on a title company's hopefully accurate reporting."

In the Cocaine Cowboys heydays in the 1980s, law enforcement frequently followed the money in Miami to discover who the dealers were before the found the drugs, she said. Van Vliet said the names would probably be run through national and international databases of criminals and suspicious individuals and potentially shared with foreign governments if there's a multilateral agreement.

FinCEN previously cracked down on anti-money laundering rules for residential loans and its remaining concern is preventing money laundering by individuals who attempt to hide their assets and identity with all-cash residential purchases in big cities.

"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," FinCEN Director Jennifer Shasky Calvery said. "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 (Geographic Targeting Orders) will produce valuable data that will assist law enforcement and inform our broader efforts to combat money laundering in the real estate sector."

The GTO will start on March 1 and expire on August 27. The temporary period could be extended but the rule couldn't be made permanent without going through an official rule-making process.

This is a bad time in the real estate cycle for this regulation to take place, said Peter Zalewski, principal of CraneSpotters.com, which tracks the South Florida new condo market. It was already becoming harder to find buyers and this should make it even tougher, he said. Immediately, the news should empower legitimate buyers to demand bargains because they think there's less competition, and it should scare some foreign nationals that value their secrecy away from pre-construction deals, Zalewski said.

Zalewski isn't sure that title insurers are the best companies to find buyer information because most of them are small operations that work on high volume. Most title companies don't have the resources to verify transactions, especially if LLCs use "straw owners" instead of listing the real source of funds, Zalewski said.

As for foreign buyers, Zalewski noted they could just as easily take their money to markets like Panama that still allow secretive LLCs.

FinCEN has revealed exactly who title companies will gather buyer identifying information, said Wayne Stanley, spokesman for industry trade group American Title Association. This will apply mostly to large title insurance underwriters, he added.

The title association is waiting to hear exactly what information FinCEN wants to know about transactions, how it should be reported and the timing of that reporting, Stanley said. He's not sure whether title companies will be forced to reject $1 million cash buyers that refuse to reveal their identities.

“I don’t think they are trying to put us in the position of being detective so on the question of how much due diligence will be required by the title agent, we aren’t sure yet,” Stanley said.

Since the Patriot Act forced financial institutions to closely examine sources of funds, many people who aim to hide assets in the United States have chosen premium real estate in big cities as the vehicle, said Lewis Cohen, a banking attorney with Cohen Nicoleau in Miami. It was only a matter of time until FinCEN addressed this, he said.

Cohen said that a title company probably wouldn't prevent a deal from closing because of the GTO. However, if regulators find criminal activity, they might force the buyer to forfeit the property, he said.

"It will have a chilling effect on these kind of transactions in the real estate market," Cohen said. "You’re putting another roadblock in the way of illegal activity so that’s the greater good the Treasury Department is trying to accomplish."

Hal Lewis, an attorney at Pathman Lewis in Miami, doubts the FinCEN rule would hurt the real estate market because the overwhelming majority of buyers are legitimate, but he feels regulators created an overly burdensome rule for private industry.

“I have a lot of questions about why the private sector should be responsible for the job of the U.S. government here,” Lewis said. “Developers develop and sellers sell. They shouldn’t be reporting arms for the U.S. government.”

FinCEN hasn’t provided details on how the rule will work so it’s hard to know what title companies and closing agents will need to do to comply, Lewis said. The problem is that developers and sellers don’t have the tools to conduct a thorough source of funds investigation like a bank does, and that shouldn’t be their responsibility, he said. Even if the buyer signs a form saying they own the LLC, it would be hard for the seller to verify that’s accurate, Lewis said.

“I don’t like the idea where my clients become my suspects or my buyers become my suspects,” Lewis said.

Attorney Andrew Ittleman, of Fuerst Ittleman David & Joseph, noted this is the third GTO FinCEN has issued in Miami in the past year and that’s unprecedented. The other two involved anti-money laundering measuring for check cashing companies and electronics exporters.

“Targeting high value residential properties in New York and Miami, the GTO has an unbelievable high profile, and will reach far beyond title insurance companies to prospective real estate buyers,” Ittleman said. “To the extent that prospective real estate purchasers value their privacy and secrecy – even for reasons having absolutely nothing to do with money laundering – they may now seek to invest their money into other assets or in real estate in other markets."

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