

Entity Disclosure Requirements Affecting New York Real Estate Transactions

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Client Advisory

January 21, 2020 by Macculloch M. Irving and Rocco M. Sainato

On November 8, 2019, the Financial Crimes Enforcement Network (“FinCEN”) of the U.S. Treasury Department issued a Geographic Targeting Order (“GTO”) extending its disclosure requirements for real estate transactions. The GTO requires title insurance companies to collect information on “beneficial owners” of LLCs and other legal entities that purchase residential real property in New York City and certain other specified locations for \$300,000 or more without bank or other external financing. For purposes of the GTO, residential real property includes condominium and cooperative units. In order to be subject to the GTO, at least part of the purchase price has to be paid using currency (including virtual currency), a check, money order, or funds transfer.

For the purposes of the GTO, “beneficial owner” means any individual who owns 25% or more of the equity interests of a legal entity. If the entity’s members are also an entity(ies), the members of those entities must be disclosed until an individual beneficial owner is reached. The individual beneficial owner must give the title insurance company a copy of his or her driver’s license, passport, or other similar identification.

GTOs are temporary in nature; however, this GTO has been continuously renewed since its introduction in 2016 and has grown in scope since then. FinCEN has reported that the GTO has been effective in combating financial crimes. As such, it is likely that the GTO will be renewed after it expires on May 9, 2020.

As of September 13, 2019, New York State and New York City each also enacted legislation expanding their disclosure requirements applicable to LLCs purchasing residential real property. An LLC selling or purchasing residential real property is now required under state and local law to disclose the names and addresses of all members, officers, managers and partners of the LLC and any other business entity that is a member, manager or authorized person of the LLC involved in the transaction; if these are not natural persons, further disclosure is required until a natural person is identified. State agencies have provided guidance since the law went into effect, and have clarified that, unlike the FinCEN GTO, the state and local disclosure laws only apply to LLCs, and do not apply to cooperative apartments or condominium apartments. The information is required to be included on New York State Form TP-584, and for New York City transactions, the New York City Real Property Transfer Tax Return, upon each transfer of real estate (or an interest therein).

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