

## Breaking Down the Treasury's New Requirements for Foreign Investors and Shell Companies

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A popular topic of discussion in 2015 was the use of LLCs, off-shore corporations, partnerships and various other entities which foreign nationals use to acquire New York City luxury apartments. Lost in this discussion was the legitimate use of various different entities in properly planning for the tax implications pertaining to foreign nationals and shielding individuals from potential liability. That being said, it has always been surprising that one could structure these transactions while completely concealing the identity of the beneficial owner from the IRS, federal government, and state and city authorities.

Starting in March, the U.S. Treasury Department is going to require that regardless of the number of entities being used in structuring a transaction, all individual owners who own a 25% interest or more in any of these entities, must disclose their identities. If an LLC is the sole entity involved in the transaction, then all of the members of the LLC must be disclosed. The Treasury is mandating this for all residential transactions (not applicable to commercial transactions) in New York and Miami-Dade County which have a purchase price exceeding \$3 million or exceeding \$1 million respectively. This program is going to essentially be a trial period for the Treasury to determine whether the suspicions of money laundering that have recently been publicized are actually legitimate. The program is set to expire on August 27, 2016.

Since this news has been released, there has been an uproar in the market on how this can adversely affect the market, which has become largely dependent on foreign capital, and what the next steps will be. It would be surprising if the Treasury actually does not renew or revamp the program come August. In representing hundreds of foreign nationals in my career, I can fortunately say I have never been suspicious of any money-laundering activities from our clients. While most of our clients have utilized LLCs and off-shore corporations for tax planning purposes and to limit their exposure to liability, we have certainly had clients who wanted to use an LLC to preserve their anonymity. Every transaction that takes place in New York City is recorded on the City's website, known as ACRIS. Several buyers do not want the whole world to be able to access a website and know where they live or how much they paid for their property. I think few people would take issue with such a sentiment being viewed as reasonable. However, it would certainly be a red flag if a buyer was only apprehensive about the Treasury Department knowing what property they own.

The most common structures we utilize entail foreign nationals individually being the member(s) of an LLC, or the foreign nationals being shareholders of an off-shore corporation that is the sole

member of the LLC. In the first instance, the IRS would know the identity of the individuals if they rent out the property and file a tax return. The reason is that they would file an individual tax return, as the LLC is treated as a disregarded entity for tax purposes. If the property is not rented out and receives no income, then there is no need for the individuals to notify the IRS or any other government agency of their identity. The off-shore corporation is most commonly utilized to mitigate the risk of estate tax in the event any of the shareholders pass away. It can also be utilized to preserve the anonymity of the individual owners even in the event the property is rented out and receives income, as a corporate tax return is filed as opposed to an individual tax return. Even the IRS will not know the identity of all of the shareholders.

As transactions take place under this new policy, we will certainly see several creative ways to avoid this disclosure, which should be met with extreme levels of caution. The Treasury has put the onus on title insurance companies to obtain the identity of all of the individuals. When confronted with an investor who desires to avoid this requirement, you must ask yourself, why would the individual be so apprehensive for only the Treasury to know their identity. Keep in mind that the Treasury's list is not going to be available on the internet in the same manner as ACRIS. The Treasury's initiative should actually be viewed as a positive one given that money laundering is not something we want taking place in our market and, with licensed professionals being involved in transactions such as brokers, lawyers, mortgage brokers and title insurance agents, we do not want to be at risk of being involved in any illegal activity without even having the slight inclination same was taking place.

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