

FinCEN Extends Disclosure Requirements for Foreign Nationals of Luxury Properties

By Pierre E. Debbas, Esq., Romer Debbas, LLP



Back in March of this year, I had published an article on the U.S. Treasury Department's new requirements for disclosing the identities of foreign national buyers who acquire luxury properties in the name of shell companies. Historically, no such requirement existed and under certain structures involving off-shore corporations, LLCs and a few other entity types, foreign nationals could acquire a property without anyone knowing, including the government, the identities of the individual owner of these entities. As several of the major markets in the U.S. have been fueled by foreign capital, the legitimacy of the funds that have been entering the country has become a concern, as well as the fear that money laundering activities may be taking place.

The original policy had targeted only Manhattan and Miami-Dade County, and the disclosure was only required for residential properties that sold for over \$3,000,000 and \$1,000,000, respectively. The policy was implemented on a trial basis and was set to expire on August 27, 2016. It is safe to say that most professionals in the real estate industry have been paying close attention to this in 2016, and have been screening potential foreign national clients. Since this policy went into effect, we have closed on several transactions where the FinCEN (Financial Crimes Enforcement Network) disclosure was required and have not run into any issues. FinCEN has now further expanded its Geographic Targeting Orders (GTO) to four states total and added a number of counties per state. In New York, the disclosure requirement now also includes Brooklyn, Queens, The Bronx and Staten Island; in Florida they have added Broward and Palm Beach counties; California is a new state added to the list and includes San Diego, Los Angeles, San Francisco, San Mateo and Santa Clara counties and the last state added to the list is Texas, which only includes Bexar County.

The thresholds for the disclosure range from \$500,000 to \$3,000,000, depending on the state/county where the transaction takes place. For a complete list of the thresholds, you can visit: www.fincen.gov. The policy has now been extended for an additional 180 days beginning on August 28, 2016. The requirement is applicable regardless of the number of entities that are 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. FinCEN has issued a statement that federal and state law enforcement agencies have confirmed that the information they have gathered as a result of this policy has, in fact, led to the uncovering of money laundering schemes and other illegal activities by foreign nationals.

When the Treasury released the news of this requirement, professionals in the real estate industry were concerned with the negative impact this could have on our market. In describing the requirements to foreign national clients, we emphasize the fact that the Treasury is the only one who has access to this disclosure and it is not something that is posted on the internet and on websites such as ACRIS. Thus, all foreign national clients we have encountered have been comfortable with the disclosure. The only risk to the current structure of the disclosure is in the event the Treasury releases this list to another foreign country. As several countries around the world have limits on how much money you can take out of the country per year (some as low as \$50,000), many foreign buyers who are purchasing in the U.S. are violating this rule in their home countries. This does not impact us in the U.S.; however, if a foreign buyer now has this risk to take into consideration when purchasing a property, that could be a deterrent for them proceeding with a transaction.

"In New York, the disclosure requirement now also includes Brooklyn, Queens, The Bronx and Staten Island..."

The disclosure requirement is something that will continue to evolve and change as FinCEN discovers the loopholes and any illegal activity that is taking place. Whether the program will ever be implemented permanently is still to be determined, but at the moment, we are not encountering any disruption in the market due to such requirement. While anonymity is something that is important for certain foreign buyers, it should be emphasized that anonymity is still preserved for the purposes of the general public and most foreign nationals should not be concerned with the disclosure of their identity solely to the Treasury Department.

*Pierre E. Debbas, Esq.
Romer Debbas, LLP
275 Madison Avenue, Suite 801
New York, NY 10016
Office: 212-888-3100
Mobile: 646-599-6994
PDebbas@romerdebbas.com
www.romerdebbas.com*