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Will Trump Make FinCen Stop Its Luxury Condo Crackdown?

| By [Erika Morphy](#)
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President-elect Trump

WASHINGTON, DC—President-elect Trump has made clear he intends to roll back financial regulations to increase lending and facilitate business. Dodd-Frank is an oft-repeated target with its many requirements and restrictions on lending.

One regulation whose fate is unclear, though, is a pilot program the Treasury Department launched earlier this year to uncover money laundering by foreign parties. The program targets foreign nationals

buying luxury condos in such cities as New York and Miami using a shell company or LLC to hide their identities.

The pilot, which is being run by the Department's Financial Crimes Enforcement Network (FinCen), requires the true owner or owners of these properties to provide their names to the US government, which keeps the names confidential.

In August, was pilot was extended for an additional 180 days as well as expanded to other cities in California and Texas.

Good Intel

Before the presidential election, there was talk of expanding the program even further to include commercial properties, the reason being that FinCen was getting good intel from its initial foray in this area. That is not surprising: property management, real estate investment, realty and real estate development companies are the most commonly reported entities associated with money laundering and related illicit activity, according to **Venable partner D.E. Wilson**, former acting general counsel at the US Treasury and an authority on anti-money laundering laws and Venable attorney **Andrew Bigart**, who represents clients in anti-money laundering and economic sanctions issues.

Flight Capital Versus Bad Capital

But, they add — that does not necessarily mean that all purchases of luxury condos by foreign nationals are fronts to, say, launder drug money or, as another example, hide funds stolen from international aid organizations. “Part of the issue that the Treasury Department has been grappling with is that the US is the largest recipient of flight capital in the world,” Wilson tells GlobeSt.com. “But flight capital is not necessarily dirty or bad capital.”

“There is a lot of legitimate money coming in the US and one of the goals of Treasury was to separate the wheat from the chaff, or the legitimate from the illegitimate money,” Bigart tells GlobeSt.com.

Worried About Disclosure Anyway

To be sure, the legitimate buyers that fell under the regulation were a bit uneasy about the new rule, according to real estate attorney **Pierre Debbas of Romer Debbas**, who has closed on several transactions where the FinCen disclosure was required.

“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,” Debbas said.

He emphasized to clients that under the reg only Treasury has access to this disclosure and it is not something that is posted on the internet or made public.

For the most part, Debbas said, the firm's foreign clients have been made comfortable with the disclosure requirement. But there are nagging concerns: What if the law or regulation changes so the list does become public? What if the US Treasury provides a list to a foreign government after all? While these foreign buyers are not breaking US rules they could well be breaking rules in their home countries as to how much money they are allowed to take out each year — China, in particular, has been tightening its capital controls. Or even if there are no capital controls to contend with, a foreign buyer might be embarrassed because of his position or profile in his home country to be exposed as owning a

luxury condo in the US.

“If this list is ever released or hacked it could be damaging to a lot of investors,” Debbas says.

What Will the Trump Administration Do?

Of course, if the program ends when the pilot is up, these investors won't have to worry.

President-elect Trump has [only just named his Secretary-designate](#) for the Treasury Department and he still has to be confirmed by the Senate. The fate of this program is less of a focus than, say, the GSEs right now or Dodd Frank.

But if Debbas were to guess, he believes that President Trump and, if he is confirmed, Secretary Mnuchin will eliminate the program.

“I speculate that since Trump is pro real estate and an investor/developer himself, he might potentially scrap it if he views it to be detrimental to the real estate market,” he says.

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