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Government Cracks Down on Secretive Miami-Dade Luxury Real Estate Buyers

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There are certain exceptions to the recordkeeping and reporting requirements under the GTO. For instance, if a buyer obtains a bank loan or similar form of financing, then no additional reporting is required as banks and other mainstream mortgage lenders are already required to report identifying information to the government. Additionally, the GTO currently excludes purchases made exclusively via wire transfer. Reporting, however, can be triggered if any portion of the purchase price utilizes a check or cash (i.e. including a deposit held by a real estate brokerage).

Essentially, the recordkeeping and reporting requirements are designed to work as follows: When a transaction falls within the stated criteria, the title company will submit the federal form (FinCEN Form 8300) and all associated information/documentation to title underwriters. The title underwriters then file the forms/documents with FinCEN. Failure to do so subjects them to civil and criminal penalties.

Limited liability companies ("LLC's") are commonly used by foreign buyers (and domestic buyers for non-homestead residential purchases) to acquire residential real estate in Miami-Dade County as they provide certain tax and liability protection benefits and insulate against FIRPTA withholding. LLC's are also an effective vehicle for those owners who value individual privacy as the owners of the LLC (known as "members") are not required to be publicly disclosed.

In real estate circles, there is concern that some security conscious foreign buyers could be leery of making such real estate purchases due to privacy concerns while the FinCEN order remains in place. If FinCEN expands the duration or if the GTO becomes permanent, it is possible that a small percent-

age of the Miami-Dade luxury real estate business could move to Broward or Palm Beach Counties. However, if the GTO were determined to be an exceptionally valuable tool in combating money laundering, FinCEN may well expand the geographic reach to other counties in Florida and/or other parts of the United States. Only time will tell.

The Elias Law Firm can help

If you have any questions about your Florida real estate transaction, feel free to contact The Elias Law Firm at 305-823-2300 or via email at relias@eliaslaw.net.

***About the Author:** Robert Elias, Esq. leads a boutique law firm specializing in all aspects of residential and commercial real estate transactions, corporate law and asset protection/estate planning. He is active in a variety of charitable and civic endeavors throughout South Florida and maintains an AV Pre-Eminent Lawyer Rating from Martindale-Hubbell, the highest peer rating for professional excellence. Mr. Elias was named to the exclusive list of South Florida's Top Rated Lawyers in 2015 by American Lawyer Media.*



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