



By Lisa A. Tyler
National Escrow Administrator

The Financial Crimes Enforcement Network (FinCEN) is the government entity which has been issuing Geographic Targeting Orders (GTOs) to title insurance companies since 2016. The GTOs require title insurance companies to report certain real estate transactions in specific geographic locations. The GTOs have changed and expanded into more geographic areas since then.

FinCEN has issued a proposed rule that would make real estate reporting permanent. It also expands the order nationwide, covering all transactions of real property within the United States. In addition, the order as proposed increases the personal data which must be collected and remitted to FinCEN.

The proposed rule is open for comment until April 15, 2024. FNF is working closely with the industry associations and other interested parties on the comments which will be submitted. Read on for a summary of the "PROPOSED rule."

Fraud Insights is published to communicate the latest trends in fraud to the Fidelity National Financial, Inc. family of Companies and others in the industry. We love hearing stories from our readers where the tips and tricks learned from reading this newsletter helped stop a

fraudulent transaction from closing. Even better, the FNF employee featured in the published article receives a \$1,500 reward. Owner-imposter fraud has not slowed down. Read "EVERYDAY heroes" for this month's success story.

Security systems and "Beware of Dog" signs serve as deterrents for a potential thief. They are simply added challenges a would-be thief must get past to successfully break into someone else's property. In the escrow and title industry we have our own deterrents. They are added layers which serve as tools to assist us in identifying a nefarious party to a real estate transaction. Read on to uncover how one of these deterrents assisted in identifying an imposter in the story titled "GHOSTED."

All-Star was the theme for the 2023 FNF annual escrow training events. National Escrow Administration chose this theme because of our deep belief that our colleagues are the All-Stars in the industry. Our colleagues are what differentiate our Company from the competition.

Our settlement agents nationwide provide a top-notch customer experience, which is proven by our market share. They are the best of the best in the industry. Read about a few of the recipients of the All-Star Award in the article titled "ALL-stars."

IN THIS ISSUE



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PROPOSED rule

For some time, the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) has taken an interest in the real estate industry as it relates to money laundering in the real estate sector. Illicit actors often favor non-financed transfers or "all-cash" sales of residential real estate to avoid law enforcement scrutiny due to anti-money laundering reporting requirements for banks and other financial institutions.

Beginning in 2016, FinCEN required title insurance companies to report certain cash transactions in specific Geographic Targeting Orders (GTOs) to increase transparency in real estate transactions.

According to FinCEN, the success of the GTO program has demonstrated the need for additional geographic coverage and further regulation of the real estate sector nationwide. On February 16, 2024, FinCEN proposed a new rule to extend anti-money laundering measures to the real estate sector on a nation-wide basis.

Scope of Regulations and Required Information

The proposed rule would require certain professionals involved in the closing or settlement of residential real estate transfers to report information to FinCEN about certain non-financed sales and transfers and keep records of the transactions.

The proposed rule would include nationwide reporting requirements and, unlike the current GTO program, there would be no purchase price threshold for reporting. A new reporting form called a "Real Estate Report" would be used for filings.

The proposed rule would require reporting on transfers of single-family homes, townhouses, condominiums and cooperatives, as well as buildings designed for occupancy by one to four families. It would require reporting on transfers of vacant or unimproved land that is zoned, or for which a permit has been issued, for occupancy by one to four families.

For a transfer to be reportable it must be non-financed, meaning that it does not involve an extension of credit that is (1) secured by the transferred property and (2) extended by a financial institution subject to Anti-Money Laundering (AML) program and Suspicious Activity Reporting (SAR) obligations. Transfers financed by private lenders without an obligation to maintain an AML program or to file SARs would be covered by the reporting requirement.

The proposed rule would require businesses performing specified closing or settlement



functions for the non-financed sale or transfer of residential real property to an entity or trust, to collect and report certain information to FinCEN. This information includes:

- » Beneficial ownership information for the legal entity (transferee entity) or trust (transferee trust) receiving the property
- » Information about individuals representing the transferee entity or transferee trust
- » Information about the business filing the report (the reporting person)
- » Information about the residential real property being sold or transferred
- » Information about the transferor (e.g., the seller)
- » Information about any payments made

Only one Real Estate Report would be filed for each transaction. The rule proposes a cascading process to determine the reporting person responsible for filing a Real Estate Report, listing seven different real estate functions and requiring the reporting function of the person performing the highest function on the list. The list of functions in prioritized order is as follows:

1. The person listed as the settlement agent on a settlement statement
2. The person that prepares the settlement statement
3. The person that files the deed for recordation
4. The person that issues owner's title insurance policy
5. The person that disburses the greatest amount of funds
6. The person that did a title examination
7. The person that prepares the deed

This means that, in most cases, the reporting person will be the settlement agent, title insurance company or an attorney involved in the transaction. The real estate businesses that

[Continued on pg 3]



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[PROPOSED rule - continued]

perform the functions described in the above list may enter into a written agreement with each other to designate one among them to file the report.

A Real Estate Report must be filed within 30 days after the date of the property's transfer to comply with the proposed rule. The reporting person would be required to keep a copy of the Real Estate Report for a period of five years, along with a form signed by the transferee or a transferee's representative, certifying the transferee's beneficial ownership information is correct.

Timeline and Impact of Regulations

FinCEN released its Notice of Proposed Rulemaking on February 16, 2024. There is a 60-day comment period that will be followed by additional review. It is anticipated that any final rule related to this proposed rule would not be adopted prior to the end of 2024. An effective date is expected to occur within the year after the rule's

EVERYDAY heroes

Non-owner occupied transactions continue to be a target of fraudsters. They do not just sell other people's properties; they also borrow against them. After all, the money is what they are after. They do not care how they get it or what kind of havoc they wreak to get it.

Monica Stewart, Escrow Officer with Ticor Title in Newport Beach, California, opened a loan only transaction. The property was free and clear of a mortgage. The new loan amount was \$322,000, which represented one-half the value of the property being pledged as the collateral for the loan.

The owner, a limited liability company (LLC), had just one member. The member was located outside the U.S. and planned on signing their loan document at the U.S. Embassy.

The loan was being made by a private lender who did not check the credit history of the borrower nor credit qualify the borrower in any way, since the loan was being secured by a property worth \$644,000.

All these facts combined requires a closer review on the part of the settlement agent. The articles of organization for the LLC were reviewed and appeared to be in order. Next, Monica performed an internet search of the member which revealed the information

provided was for a deceased person. As a result, she resigned from the transaction and never heard from the borrower again.

What FNF is doing

This proposed rule introduces a significant new requirement for title insurance companies, approved attorneys and others in the title industry. FNF Corporate Compliance continues to work with American Land Title Association (ALTA) to provide feedback to FinCEN on the expected impact to FNF and the title industry. Experience with the existing GTO reporting requirements has provided valuable information for us on how federal reporting requirements have affected the industry and how it will likely affect us in the future.

FNF will continue to monitor and report important developments throughout this rulemaking period.

provided was for a deceased person. As a result, she resigned from the transaction and never heard from the borrower again.

Monica reads *Fraud Insights* every month which provided her with the information she needed to identify this high-risk transaction. In this instance, her file had four red flags:

- ✓ Non-owner occupied property
- ✓ Free and clear of any encumbrances
- ✓ Cash-out loan transaction
- ✓ Owner located in a foreign country

Monica took what she learned to heart, put it into practice and saved the Company from a potential claim. The loan proceeds would have been more than \$300,000. She is one of many everyday heroes.

Not only did Monica's efforts protect the Company, but they also protected the equity in the property for the true property owner. For her efforts, she received a \$1,500 reward.

Article provided by contributing author:

Diana Hoffman, Corporate Escrow Administrator
Fidelity National Title Group
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GHOSTED

Mitek Systems® is an identity verification and authentication tool. For certain transactions where the property is vacant or non-owner occupied, Mitek’s services allow us to verify the identification of a principal to the real estate transaction as soon as an order is opened.

Once the principal has received the request, they will be guided through the steps. All the customer needs are a cell phone or computer with a webcam, and an unexpired I.D. The software serves as one of our many deterrents to an imposter attempting to defraud the parties to a real estate transaction.

Recently, one of our offices opened an order for the sale of a vacant lot. They sent the Mitek link to the seller — who never replied. As soon as the imposter received the link to authenticate their I.D., he ghosted everyone. He did not respond to anyone, which can be somewhat unsatisfying because it alone does not prove without a doubt someone is a fraudster. It simply indicates additional research is needed.

The office began to investigate further and contacted the listing agent to notify them the identity verification had to be completed

to continue processing the sale. The real estate agent found an address for the seller, which was a house. She drove to the house to meet the seller face-to-face and discovered the real owner was not selling their lot at all.

The Company resigned from the transaction and the listing broker cancelled the listing. The real estate agent shared her story and the name of the individual posing as the seller with the local Association of REALTORS® and found others who had had similar experiences with the same person.

I.D. verification is a new tool which helps to identify potentially risky transactions. It serves as a deterrent to a fraudster who realizes they will be caught, so they move on to a new target that does not have as many hurdles to jump over in order for the scheme to succeed.

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ALL-stars

All-Stars are highly effective and productive individuals. They are often self-starters, who are trustworthy, compassionate and demonstrate a high standard of conduct. They are tenacious and possess the ability to work with different personality traits. This month we are featuring three individuals who were recipients of the FNF All-Star award in 2023.



Debbie Helmold
EPU Manager
Vancouver, WA



Fidelity National Title nominates Debbie Helmold as their All-Star. Debbie fully immersed herself in Fidelity’s inHere project. She worked closely with her colleagues and the Digital Solutions Group to identify the best ways for the application to work for Fidelity’s customers and operations.

Debbie has embraced the tasking options and put together a training program to share her knowledge with others. She has gone above and beyond to help, resulting in her being the go-to for support for inHere. She has stood out as an All-Star for the Company.



Michelle Gay
Escrow Officer
Boulder, CO



Michelle Gay has worked for many years to build a loyal customer base. Now, her customers are devoted to her because she never leaves anything unfinished.

Many of her customers refer multi-million dollar deals to her and she handles their transactions with grace and professionalism. Heritage Title Company is happy to have her as a part of the Company



Emily Hummel
Escrow Officer
Clackamas, OR



Emily Hummel is a top producing escrow officer for the Fidelity operation and an All-Star in our community. Last November, she demonstrated this when she and her colleagues collected 121 coats for a fundraiser that was coordinated through the Oregon City of Department of Health Services.

The coats Emily collected for the fundraiser went directly to local kids in need. Our operation is proud to know and work with such a generous person.

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