



NATIONAL
ASSOCIATION of
REALTORS®

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July 19, 2019

The Honorable Mark Warner
United States Senate
703 Hart Senate Office Building
Washington, DC 20510

The Honorable Tom Cotton
United States Senate
326 Russell Senate Office Building
Washington, DC 20510

The Honorable Doug Jones
United States Senate
330 Hart Senate Office Building
Washington, DC 20510

The Honorable Mike Rounds
United States Senate
502 Hart Senate Office Building
Washington, DC 20510

Dear Senators Warner, Cotton, Jones, and Rounds:

On behalf of the 1.3 million members of the National Association of REALTORS® (NAR), we would like to thank you for your leadership in working to combat money laundering and terrorism financing by drafting the “*Improving Laundering Laws and Increasing Comprehensive Information Tracking of Criminal Activity in Shell Holdings (ILLICIT CASH) Act.*”

NAR supports the goals detailed in the “*ILLICIT CASH Act*” that aim to: (1) improve coordination among agencies and institutions tasked with administering anti-money laundering and counterterrorism financing requirements; (2) modernize anti-money laundering and counterterrorism financing laws; (3) promote tech innovation and adopt new technologies to combat money laundering and terrorist financing; (4) take a risk-based approach when developing anti-money laundering and counterterrorism financing laws; (5) require more studies and reports from law enforcement and regulators to better understand trends, and to assess the effectiveness of current laws and regulations used to combat money laundering and terrorist financing; and (6) to establish beneficial ownership reporting requirements to improve transparency and to stop the formation of anonymous shell companies often used by bad actors to engage in illicit financial crimes.

NAR believes that one of the most effective ways to combat money laundering and terrorist financing activities is through the disclosure of beneficial ownership information to the Financial Crimes Enforcement Network (FinCEN). It is important to collect such disclosures well before a real estate transaction is even attempted. Earlier this year, NAR supported the “*Corporate Transparency Act of 2019*” that your colleagues on the House Financial Services Committee championed and passed.

NAR is concerned about *section 402* of the “*ILLICIT CASH Act*,” which calls for mandated reporting by any person involved in a real estate transaction, and the expansion of Geographic Targeting Orders (GTOs) under Chapter 53 of title 31 of the United States Code.

NAR supports FinCEN’s GTOs as long as they are effectively combating financial crimes and in the greater interest of national security. NAR believes that Congress should work with law enforcement, financial institutions, FinCEN, and the real estate industry to develop a more consistent and permanent solution to the anti-money laundering framework with respect to reporting all cash, residential transactions.



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However, the uncertainty and the lack of guidance as to how the Department of the Treasury and FinCEN would work to improve the effectiveness of the GTOs creates confusion. We discourage expansion of GTOs until more information is known regarding their effectiveness in targeting and reaching bad actors involved in illicit financial crimes involving real estate.

NAR agrees that a more consistent and predictable framework is needed among the industry to ensure the most usable data is reported to FinCEN, but further studies are needed to fully determine the effectiveness of the GTOs before they are expanded. The Government Accountability Office (GAO) is currently assessing the effectiveness of the GTOs, including examining the impact of expanding the GTOs. We believe that this information should help guide Congress, FinCEN, and the Department of Treasury in working strategically to modernize money laundering laws. More information from regulators and law enforcement on the impact of GTOs will assist title companies, financial institutions, and other industry leaders to better understand the issues and effectively combat financial illicit crimes.

Another major area of concern of *section 402* of the “*ILLICIT CASH Act*” is the amendment of the U.S. Code to include section 5337, which would require reporting on domestic real estate transactions. This section could require real estate professionals, including real estate agents and brokers, to file mandated reports containing the following information: the name of the person purchasing real estate, the amount and source of funds received, the date and nature of the transaction, and the person filing the report would be required to provide his or her information.

The broad language in this section requiring reporting by any individuals involved in real estate transactions could significantly burden real estate professionals, have unintended negative consequences for consumers and would not be the most effective way to stop bad actors from engaging in illicit financial crimes in real estate. Real estate professionals are not the best source of information as it relates to financial or beneficial ownership information for the clients that they work with. Additionally, requiring a real estate professional to report could result in requiring real estate professionals to profile consumers, which raises significant concerns regarding the ability of real estate professionals to comply with Fair Housing obligations, and the REALTOR® Code of Ethics.

NAR wants to work with lawmakers, regulators, law enforcement, and industry leaders to provide the best support to combat the use of real estate in money laundering schemes. NAR firmly believes that industry partners like title companies, financial institutions, and regulators are in the best position to obtain and maintain beneficial ownership and financial information from consumers engaging in non-financed real estate transactions. And, to be sure, NAR developed and issued the [NAR Anti-Money Laundering Voluntary Guidelines for Real Estate Professionals](#) encouraging real estate professionals, including agents and brokers, to assist in these efforts.

NAR supports “*section 401*” of the “*ILLICIT CASH Act*,” which focuses on beneficial ownership. The collection of beneficial ownership information to FinCEN, when legal entities are formed under state law will promote greater transparency; better assist law enforcement with investigating, tracking, and tracing individuals who are or would create anonymous shell corporations to engage in money laundering, tax evasion, or other illicit financial crimes. Promoting greater transparency by providing beneficial ownership information to FinCEN and maintaining the integrity of the information by limiting broad disclosure is a necessary step to modernize money laundering regimes.


NAR also strongly supports the provision within the legislation requiring changes to beneficial ownership information be reported to FinCEN within 90 days of a change. We believe that this provision will help ensure compliance, and will provide businesses with greater predictability and efficiency in their interactions with government and regulators. We also believe that a FinCEN identifier would likely be a helpful tool in identifying beneficial owners, and may be helpful by limiting the scope of information that must be disclosed over time, when beneficial owners are engaged in their interactions with title companies or financial institutions.

NAR supports the legislation’s goal of increasing information sharing between institutions, regulators, and law enforcement to better protect against the misuse of corporations and limited liability companies to launder money via the U.S. economy, including in the nation’s real estate markets. Careful consideration must be given to address the legitimate privacy and data security concerns of business entities reporting, and to minimize the unintended exposure of non-beneficial owners and guarantee that the most germane information is reported to FinCEN. To be most effective, business entities must be confident in knowing that disclosed beneficial ownership information will not be misused or misappropriated, allowing their focus to remain on lawful business operations and investment opportunities that promote economic growth.

For privacy and national security reasons, we believe that FinCEN and law enforcement only should be collecting and retaining beneficial ownership information. We support the provision contained within the “*ILLICIT CASH Act*” that imposes criminal penalties for any unlawful use or unauthorized disclosure of beneficial ownership information by regulators or law enforcement with access to FinCEN’s database. We also support the provision in the legislation requiring an investigation by the Department of Treasury in the event of a cybersecurity breach, which may result in the disclosure of beneficial ownership information. Proper privacy and security protocols must be in place to protect data and limit exposure in instances, where data may be compromised in any way.

NAR greatly appreciates your efforts on these issues, and looks forward to working with you in the future in a thoughtful and strategic manner to combat money laundering and terrorism financing in the twenty-first century. Please feel free to contact me or NAR staff if you would like to discuss the draft legislation in greater detail.

Sincerely,

A handwritten signature in black ink, appearing to read "John Smaby". The signature is stylized with a large, sweeping initial "J" and a long, horizontal flourish extending to the right.

John Smaby
2019 President, National Association of REALTORS®

cc: U.S. Senate Banking, Housing, and Urban Affairs Committee

Anti-Money Laundering Guidelines for Real Estate Professionals

OVERVIEW

The crime of money laundering continues to be a growing area of concern in the United States. Therefore, law enforcement agencies and the financial sector devote considerable time and resources to combatting these illegal financial activities. However, many non-financial businesses and professions are also vulnerable to potential money laundering schemes. Real estate professionals are a category of the non-financial business sector that may encounter persons engaging in money laundering activities. The purpose of this fact sheet and suggested voluntary guidelines is to increase real estate professionals' awareness, knowledge, and understanding of the potential money laundering risks surrounding real estate and enable them to identify practical measures to mitigate the risks.

What Is Money Laundering?

Money laundering is the process criminals use to disguise the illegal origin of their funds. Certain criminal activities generate substantial proceeds. Legitimizing, or "laundering" this money through the financial system, is a critical component for criminals to hide their activities and not draw attention to their illegally derived proceeds.

The actual process of money laundering is a three step process that is initiated by introducing the illegal proceeds into the financial system, e.g., breaking up large amounts into small deposits or by purchasing financial instruments, such as money orders, which is referred to as placement. This is typically followed by distancing the illegal proceeds from the source of the funds through layers of financial transactions, referred to as layering, and finally by returning the illegally derived proceeds to the criminal from what appears to be a legitimate source, known as integration. A real estate transaction can be used in any one of the three stages of money laundering. For example, if an individual purchases a home and uses illegal funds as part of the down payment, this would be considered integration.¹

Generally speaking, most money laundering activities are concentrated in the financial sectors. Therefore, banks and other financial institutions are subject to anti-money laundering/counter-terrorist financing (AML) laws and regulations, primarily the Bank Secrecy Act (BSA), and have safeguards in place to help detect and mitigate money laundering activity. But other industries, such as real estate, can also be exposed to questionable business practices and be utilized as a vehicle for money laundering activities.

The Role of Real Estate Agents

As a general matter, the real estate agent's AML risk is substantially mitigated by the fact that the great majority of real estate transactions involve regulated entities such as banks and non-bank mortgage companies, which have BSA obligations. However, when a transaction steps outside the norm or in cases where certain risk factors are present, as detailed below, a real estate agent faces an elevated chance of encountering a possible money-laundering scheme and should consider taking measures to address the risk.

As a real estate professional, knowledge of how real estate transactions normally progress and the resulting ability to recognize and evaluate whether variances from the norm may signify an enhanced AML risk is an important way real estate agents can help to mitigate AML risk in real estate transactions. This requires brokers and agents to be aware of how real estate transactions may be used in illegal financing schemes and what steps should be taken to detect and deter those activities.

¹ Financial Enforcement Crimes Network, Suspected Money Laundering in the Residential Real Estate Industry, April 2008.

Anti-Money Laundering Guidelines for Real Estate Professionals

Being familiar with the signs of money laundering activity in the real estate market will help real estate agents to:

1. Identify potential money laundering activities;
2. Take appropriate steps to mitigate the money laundering risk; and
3. If necessary, alert the proper authorities to help deter and mitigate the use of real estate in money laundering schemes.

GUIDELINES

Law enforcement and financial experts have identified some of the warning signs of money laundering activity in connection with real estate. By familiarizing oneself with these voluntary guidelines, real estate agents can assist and help minimize the risk of real estate becoming a vehicle for money laundering activities.

Know Your Business

Every broker and agent should be aware of certain characteristics of a real estate transaction that may be indicative of illegal financing activities. A real estate agent's familiarity with the normal course of business will help them to identify any unusual or suspicious patterns. Law enforcement, regulators and the international community have identified multiple money laundering risk factors. In general, these risk factors (red flags) can be grouped in the three categories: country/geographic, customer, and transaction risk.

Geographic Risk:

Geographic risk may arise because the customer and/or the source of the customer's funds are located in a jurisdiction that has a weak AML regime, supports or funds terrorism, or has a high degree of political corruption. Although there is no definitive list of such jurisdictions, one good source is the list of jurisdictions subject to sanctions of the Office of Foreign Assets Control (OFAC) of the U.S. Treasury Department. OFAC administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals. OFAC-administered sanctions can be either comprehensive or selective, and generally restrict or prohibit dealings (including business and financial activities) by U.S. persons or in the United States that involve countries (or persons) subject to OFAC sanctions. Countries subject to comprehensive OFAC sanctions include Iran, Cuba, and Syria. The names of individuals, groups, and entities subject to OFAC sanctions are generally listed on OFAC's List of Specially Designated Nationals and Blocked Persons.²

Customer Risk:

- Location of property in relation to the buyer.
 - Is there a large unexplained geographic distance between the two?
- Unusual involvement of third parties.
- Titling a residential property in the name of third party; for example, a friend, relative, business associate, or lawyer. Use of legal entities (corporations, LLCs or partnerships) that obscure the identity of the person who owns or controls them without a legitimate business explanation.
- High-ranking foreign political officials or their family members.

² See www.treasury.gov/ofac/

Anti-Money Laundering Guidelines for Real Estate Professionals

Transaction Risk:

- Under or over-valued properties.
 - For example, is the property owner selling the property for significantly less than the purchase price?
 - Does the seller seem disinterested in obtaining a better price?
- Use of large amounts of cash.
 - Buyer brings actual cash to the closing.
 - The purchase of a property without a mortgage, where it does not match the characteristics of the buyer.
 - While rules and regulations governing the financial sector are designed to detect situations where large amounts of cash are being introduced, real estate agents should keep this factor in mind when evaluating whether a transaction seems suspicious.
- Property purchases inconsistent with the individual's occupation or income.
 - Is the property being purchased significantly beyond the purchaser's means?
- Immediate resale of the property.
 - Especially if the sale entails a significant increase or decrease in the price compared to the prior purchase price, without a reasonable explanation.
- Speed of transaction (without reasonable explanation).
- Unusual source of funding.
 - Example: use of third-party funds to purchase a property where it doesn't make sense, i.e. third-party is not a parent, sibling, etc., use several different sources of funds without logical explanation, funding coming from a business but property not being held in business' name, or purchase of property doesn't match the business' purpose.
- Purchases being made without viewing the property, no interest in the characteristics of the property.
- Any other activities which demonstrate suspicious behavior and do not make professional or commercial sense based on the agent's familiarity with the real estate industry and the normal course of business.

WHAT REAL ESTATE PROFESSIONALS CAN DO TO MITIGATE RISK

The presence of a single risk factor, or even multiple factors, does not necessarily mean the purchaser or seller is engaging in money laundering activities. The role of real estate agents is to be familiar with these risk factors, and exercise sound judgment based on their knowledge of the real estate industry, and when a combination of these factors truly raises a red flag, know the proper action to take.

Know Your Customer/Customer Due Diligence (CDD)

This is a critical component of the role real estate professionals can play in helping to identify and combat money laundering. Knowing an agent's true customer and understanding their interest and planned use for a property will help agents evaluate a situation where one or more red flags are raised.

The process by which the real estate agent forms a reasonable belief that he/she knows the true identity customer and is then able to assess AML risk, is commonly referred to as know-your-customer or customer due diligence (CDD). In cases where red flags are present, the agent should apply increased levels of CDD, which could include the following:

1. Obtain additional information, a driver's license, passport or other reliable identification document, to confirm the true identity of the customer.
2. If a legal entity is involved, such as a corporation or LLC, take additional measures to identify who actually controls or owns the entity and take risk based measures to verify the identity of the owner. This is commonly referred to as beneficial ownership information.
3. Obtain other appropriate information based on the agent's experience and knowledge to understand the customer's circumstances and business.

Anti-Money Laundering Guidelines for Real Estate Professionals

In addition, depending on the size of the firm, it may be appropriate for the agent to notify and discuss with senior management the higher risk customer or a particular situation that raises red flags, and to monitor the relationship if there are a series of transactions with the customer.

Reporting Suspicious Activity

When confronted with suspicious activity, real estate agents always have the option of reporting the information to local law enforcement or the FBI.

In addition, agents may also consider filing a suspicious activity report, or SAR, which is reported to the U.S. Treasury's Financial Crimes Enforcement Network (FinCEN). SARs are primarily designed for use by financial institutions and are a significant tool for enforcement agencies to combat money laundering. Real estate professionals are not required to file a SAR, but should be aware of the availability of this tool to the extent that they have reasonable suspicion that a transaction may be a vehicle for illegal financing activity.

The electronic SAR form is available at: <http://bsae filing.fincen.treas.gov/main.html>.

For further information or assistance regarding how to file a SAR, real estate professionals may call FinCEN's Regulatory Helpline 1-800-949-2732.

It is important to note that while the Bank Secrecy Act contains a safe harbor shielding financial institutions from civil liability in connection with the filing of a SAR, there is no precedent to suggest that the safe harbor would extend beyond financial institutions to real estate professionals. Therefore, a real estate agent should be prudent and file a suspicious activity report only after thoroughly evaluating the circumstances surrounding the suspicious activity, and additionally should consider consulting an attorney on the matter prior to filing a SAR. Otherwise, a real estate agent could subject themselves to civil liability as a result.

Form 8300

A Form 8300 must be filed by a business that receives more than \$10,000 in cash in the course of a single transaction or two or more related transactions. It is not a SAR and is not used to report suspicious activity. Form 8300 is an information report that is required to be filed by any trade or business (such as a car or boat dealer) that receives in excess of \$10,000 in cash in a single transaction. Therefore, if for any reason a real estate agent or broker receives more than \$10,000 in cash from a buyer or seller in the course of a real estate transaction, the form must be filled out and filed, and can be found at <http://www.irs.gov/pub/irs-pdf/f8300.pdf>.

Cash, for purposes of this requirement, includes cash equivalents such as cashier's checks, bank drafts, money orders. If the cash equivalent instrument is for more than \$10,000, the transaction will be reported by the issuing bank, and the agent does not need to also file a Form 8300. If, however, an agent receives a cashier's check or other cash equivalent of less than \$10,000, but which in combination with other cash or cash equivalents totals more than \$10,000, a Form 8300 must be filed.

CONCLUSION

While the illicit finance risk for real estate agents is often mitigated by the involvement of financial institutions already subject to strict AML laws, the use of real estate in money laundering schemes continues to be an area of concern to the government. Adherence to these voluntary guidelines will help the real estate agent identify potential money laundering risks. These voluntary guidelines will also help real estate agents be effective partners with enforcement agencies in detecting and addressing the use of real estate in illegal financing activities.