

NEWS & MEDIA



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Money Laundering & Corruption: Realtors' Guide to Spotting Issues

By Natalia Gindler Corsini for Florida Realtor magazine

Real estate transactions are attractive targets for money laundering. Here's how to spot some red flags.

Large financial transactions and high-value assets are susceptible to risks and illegal activity.

That's why real estate attracts illicit actors seeking to exploit vulnerabilities in the system, particularly through money laundering. The industry's size, the involvement of multiple parties and its international reach—particularly operations in high-risk jurisdictions—make it an attractive target.

South Florida faces unique challenges

There is substantial evidence of foreign corruption, fraud, money laundering and other illicit activities associated with covered real estate transactions in South Florida.

Miami, renowned as a global economic force, plays a crucial role as the primary gateway to Latin America and the Caribbean. The area faces unique challenges, including the importation of corrupt practices and criminals from these regions. Corrupt foreign funds also

have infiltrated the local real estate market.

To tackle this concern, in 2018 the Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) issued an extension to the Geographic Targeting Order (GTO) initially introduced in January 2016. This order mandates title insurers to identify individuals with beneficial interests in shell companies involved in all-cash transactions exceeding \$1 million in residential real estate in South Florida. Remarkably, the most recent extension reduced the purchase threshold to \$300,000.

When a property is registered under the name of a shell company, it lacks transparency and conceals the identities of the true owners. While there can be valid reasons for non-transparency, criminals seeking to hide their activities often create shell companies. Residential real estate transactions are exploited to launder money by individuals linked to, or allegedly involved in, illicit activities, such as foreign corruption.

Individuals from Latin America facing corruption allegations in their countries are establishing offshore companies and channeling funds into luxurious Miami condos and mansions, for example, the Mossack Fonseca case. In that case, the Panama-based law firm Mossack Fonseca assisted affluent clients globally, including those in the United States, in establishing offshore entities, such as corporations, foundations and bank accounts. These structures allowed clients to conceal significant amounts of cash and assets. However, in certain instances, Mossack Fonseca seemed to deliberately create accounts to protect identities and evade scrutiny from American authorities.

Know the risks

In general, these risk factors (red flags) can be grouped into customer risk and transaction risk, according to the National Association of Realtors® ([nar.realtor/money-laundering-and-terrorism-financing/anti-money-laundering-voluntary-guidelines-for-real-estate-professionals](https://www.nar.realtor/money-laundering-and-terrorism-financing/anti-money-laundering-voluntary-guidelines-for-real-estate-professionals)).

Here are the guidelines from NAR:

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.

Involvement of a high-ranking foreign political official or their family members.

Location of the buyer.

- It is important to know the location of the buyer, and to determine whether the buyer resides in a jurisdiction that is on the Office of Foreign Assets Control (OFAC) list of jurisdictions that may pose a geographic risk.

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 buyer profile.

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 (without reasonable explanation).

- For example, 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.

- For example, third-party funds are used to purchase a property where it does not make sense, i.e. third party is not a parent, sibling, etc.
- Using several different funding sources without logical explanation, such as funding coming from a business, but property is not being held in business's name; or the property purchase does not match the business's purpose.

Purchases made without viewing the property, and lack of interest in the property characteristics.

Transactions occurring in cryptocurrency where the house is not listed in cryptocurrency.

Transactions occurring with persons or entities involved in the marijuana sales or marijuana adjacent businesses.

Any other activities that 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.

Addressing vulnerabilities

Real estate businesses remain susceptible to the influx of illicit funds derived from crime and corruption, despite the mandatory safeguards imposed by the U.S. government, as noted above. In addition, anti-money-laundering regulations require financial institutions to develop effective customer due diligence plans to assess money laundering risks and detect suspicious transactions.

Accordingly, title insurance companies and financial institutions serve as the guardians of the system.

Real estate businesses are expected to conduct fundamental "Know Your Customer" (KYC) due diligence and reporting, like the obligations imposed on banks. However, because industry professionals aren't mandated to report these concerns to authorities, real estate agents and transactions become vulnerable when potential issues are downplayed in favor of prioritizing sales in the competitive real estate market.

Become the Gatekeeper, Not the Target

This list illustrates the essential components of a compliance program within a real estate company to mitigate money laundering and anti-corruption risks.

Risk Identification:

1. Money laundering
2. Bribery and corruption

Policies, Procedures and Control Implementation:

1. "Know Your Customer" procedures
2. Enhanced due diligence for high-risk transactions
3. Anti-money laundering and anti-bribery and corruption policies
4. Training and awareness programs
5. Internal controls and monitoring

6. Ongoing risk assessments

Peace of Mind

Implementing robust measures to prevent, detect and rectify ethical and legal violations not only safeguards your business, it also offers you the opportunity to save money, time and redirect efforts towards generating sustainable profits.

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How Money Laundering Works

Take a closer look at the parties involved in money laundering through real estate in this three-stage process:

Stage 1 - Placement: Dirty money is introduced into the financial system (banks).

Stage 2 - Layering: Illicit funds are moved around to disguise their origin (financial transactions).

Stage 3 - Integration: Money re-enters the legitimate economy through clean investments (real estate).

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 to exercise sound judgment based on their knowledge of the real estate industry, and when a combination of these factors raises a red flag, know the proper action to take.

1. Know Your Customer (KYC)/Customer Due Diligence (CDD)

The process by which the real estate agent forms a reasonable belief that they know the true identity customer and is then able to assess risk is commonly referred to as "Know Your Customer" (KYC) or customer due diligence (CDD). In cases where red flags are present, the

agent should:

- Obtain additional information—a driver's license, passport or other reliable identification documents—to confirm the true identity of the customer.
- If a legal entity is involved, such as a corporation or LLC, take additional measures to identify who controls or owns the entity and take risk-based measures to verify the identity of the owner (the beneficial ownership information).
- Obtain other appropriate information based on the agent's experience and knowledge to understand the customer's circumstances and business.
- Notify senior management about the higher risk customer or a particular situation that raises red flags to monitor the relationship and transaction with the customer.

2. Reporting Suspicious Activity

When confronted with suspicious activity, you may voluntarily report the information to local law enforcement, the FBI or file a suspicious activity report (SAR) with the Department of the Treasury's Financial Crimes Enforcement Network (FinCEN).

Agents should consider filing a SAR when red flags are present or there is reasonable suspicion a real estate transaction may be a vehicle for illegal financing activity. The electronic SAR form is available at: bsaefiling.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 at (800) 949-2732.

3. IRS Form 8300

A Form 8300 must be filed by any trade or business (including real estate) that receives more than \$10,000 in cash during a single transaction or two or more related transactions. It is not a SAR, and is not used to report suspicious activity. 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 irs.gov/pub/irs-pdf/f8300.pdf

For more information from the National Association of Realtors®, go to tinyurl.com/3y7mvwnm

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