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Hon. Frank Seddio Sworn in as 101st President of BBA

RIGHT: The Brooklyn Bar Association swore in its newest officers and trustees, including its newest president, Hon. Frank Seddio, during an installation ceremony in the central jury room of the Kings County Supreme Court on Thursday, June 9. Seddio, left, was sworn in by Justice Lara Genovesi, right.

See page 8. Brooklyn Eagle photo by Mario Belluomo



Is Imitation The Highest Form Of Flattery? Maybe Not If You're A Fashion Designer



BROOKLYN BAR ASSOCIATION ENJOYS A NIGHT AT THE BALLPARK:

President Hon. Frank Seddio (left), Executive Director Avery Eli Okin and the Brooklyn Bar Association recently went to Coney Island where a group of 100 attended a Brooklyn Cyclones game. See page 9.

Brooklyn Eagle photo by Rob Abruzzese

By: Sheldon Siporin, Esq.

Jennifer Lawrence, adored by young and old alike, strolled out at the 2013 Oscars and dazzled the media with an original Dior Couture creation, a blush-pink ball gown valued at a cool \$4 million! Many women would kill to look like J-Law but can't afford a Dior original even at a tenth of that price tag. However, their budget could manage a copy of Jennifer's 2016 Golden Globes Red Carpet Dress, a steal at only \$169.99. Or, for those who don't like pink, they can also purchase Cate Blanchett's White One Shoulder Prom Dress, worn at a charity gala, for only \$149.99.

Even better, these gowns are readily available online from a company known as TCD (*The Celebrity Dresses*), which claims to provide high quality "celebrity inspired products." "Celebrity inspired" is another word for "knock-off" or an inexpensive copy of an original design.

And if you adore handbags, why buy a Gucci or other designer brand in New York City for \$1,000 to \$2,000 or more when cheap replicas of lesser quality can be had for only \$30?

According to one website:

The trick to seeing the "good stuff" on Canal Street, the best replica handbags with authentic looking logos, is to pay attention to the many vendors trying to get your attention by whispering a list of designer brand names into your ear as you walk by to strike your interest. They will be saying, "Handbag, handbag! Chanel, Gucci, Prada, Coach, Louis Vuitton," and so on. Play it cool and ask "Sure, where?" and then follow their lead.

You might be surprised to learn that the worldwide market for "knock-offs" is no minor cottage industry but a huge \$30 billion enterprise.

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Shrouded in Secrecy: LLCs and High-End Real Estate

By: Dayrel S. Sewell, Esq. and Andrew Janof, JD

High-end real estate makes up a significant portion of the New York real estate market. As of January 2016, there were nearly 1,700 properties for sale with asking price equal to, or greater than, \$3 million. In 2015, approximately 1,800 properties of this nature were sold, with revenues of over \$6.5 billion according to *PropertyShark* data.

These high valuations are projected to continue their upward trend in the coming years.

Furthermore, about half of all real estate purchases in Manhattan are all cash, according to Jonathan Miller of the appraisal firm Miller Samuel. See Robert Frank, *Money Laundering Rules could chill luxury real estate*, CNBC.COM, (Jan. 14, 2016). More than this, a significant amount of the buyers in new condo developments — more than a third by some estimates — in Manhattan. See *id.*

Increasing scrutiny concerning the identity of the purchasers and the source of the capital behind these transactions has sparked investigations and industry regulations. In response, FinCEN has issued several Geographic Targeting Orders (GTOs), in order to prevent individuals from laundering money through these purchases.

Some, including Michael Graves, a Douglas Elliman broker quoted in an article by E.B. Solomont of *TheRealDeal.com*, believe the number of transactions involving dirty money is insignificant. However, according to *The New York Times*, "[i]n all, more than half of New York condominium sales above \$5 million last year were to limited liability companies, which can be established in many states without disclosing the names of the actual, or "beneficial," owners." Stephanie Saul, *New Disclosure Rules for Shell Companies in New York Luxury Real Estate Sales*, NEW YORK TIMES, (Jul. 20, 2015) http://www.nytimes.com/2015/07/21/nyregion/new-disclosure-rules-for-shell-companies-in-new-york-luxury-real-estate-sales.html?_r=0.

Based on these facts, there is significant potential for criminals to take advantage of the system as is, and thus even if the impact is *de minimis* in terms of catching individuals laundering money, the deterrent effect is of value.

Transparency is key. On January 13, 2016, the Financial Crimes Enforcement Network (FinCEN) issued Geographic Targeting Orders (GTOs) temporarily requiring certain U.S. title insurance companies to identify natural persons behind companies used to pay all cash for high end residential real estate. Specifically, the title insurance companies will have to identify and report the true "beneficial owner" behind the entity involved in such a purchase. These orders targeted real estate in New York City, New York and Miami-Dade County, Florida. These GTOs are meant as a means of preventing money laundering through the purchase of real estate by LLCs which, outside of these orders, are not required to disclose the owners behind the LLC.

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An increase in assets of \$210,000 above the exemption amount can create a \$320,000 Estate tax.

Planning for this situation is an important consideration for our clients.

fit. If the monthly benefit is \$800 and the disclaimed amount is \$8,000 this will result in 10 months of ineligibility. With the same monthly benefit and a transfer of \$80,000 this will result in the maximum of 36 months of ineligibility even though the calculation is

Shrouded in Secrecy: LLCs

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If a title insurance company does not comply with these GTOs, they may be subject to both civil and criminal penalties. The GTOs expressly provide that those title insurance companies and any of their officers, directors, employees, and agents may be liable, without limitation, for civil or criminal penalties for violating the terms of the GTOs. Previous fines issued by FinCEN for a number of violations, according to FinCEN press releases, have ranged from \$10,000 to \$4 million, just in 2016.

LLCs are limited liability companies that shield the owners by creating a personage that acts on behalf of the owners. This shield protects the owners from personal liability, so long as they do not create a nuisance, such as incurring large amounts of debt or causing felonies to be committed. By using LLCs as a conduit, individuals—both civilians and criminals alike—are able to purchase high-value properties while protecting their identities and similarly the funds used in the purchases.

The use of LLCs in high-end real estate transactions has increased dramatically in the last 15 years. According to an analysis for the Wall Street Journal performed by Zillow, in 2012 27% of U.S. homes sold in 2012 were bought by LLCs, as opposed to 5 years prior, when this percentage was only 17%. See Alyssa Abkowitz, *Psst. Wanna Buy a House?* WALL STREET JOURNAL, (Oct. 25, 2012). This growth has continued, and is particularly relevant in larger markets, such as New York.

According to FinCEN director Jennifer Shasky Calvey in FinCEN's press release of January 13, 2016 on the matter, the purpose of these GTOs was to "understand the risk that corrupt officials, or transnational criminals, may be using premium U.S. real estate to secretly invest millions in dirty money". This came partially in response to an investigation by the New York Times reporters Louise Story and Stephanie Saul in February 2015, who uncovered a number of LLCs that had purchased properties with connections to foreign businessmen. Importantly, most of these businessmen, or the companies they were associated with, had recently been investigated in criminal matters or worse.

This investigation uncovered more than 200 shell companies, documenting a decade of this sort of ownership in the Time Warner Center in Manhattan. However, the investigators readily admitted that some of the shell companies were nearly impossible to establish a source for the money. What this demonstrates, in part, is how wealthy individuals who have criminal — or otherwise questionable connections — have been able to redistribute significant amounts of their wealth and minimize taxation considerations through seemingly-apparent, legitimate business transactions. Wealth that otherwise would be subject to greater taxes or at risk in a legal proceeding.

The work of these reporters shed light upon the significant problem that LLCs have created in high-end real estate, and especially in facilitating money laundering in these transactions. There have also been a number of lawsuits over the years that shed light on how these transactions occur, and how

complex they can be. One such case, *United States v. Real Prop. Known as Unit 5B of Onyx Chelsea Condo.*, No. 10 CIV. 5390 KBF, 2012 WL 1883371 (S.D.N.Y. May 21, 2012) involved the former President of Taiwan, Chen Shui-bian, and involved cash initially hidden in fruit boxes, and after numerous bank transfers, eventually being used to purchase a \$1.575 million apartment in New York City. This was all possible because of the lax laws governing the use of LLCs to purchase property in NYC and similar cities, and the talented lawyers, accountants, and bankers who have worked the system in the best interests of their clients, whose names may never be disclosed.

Another example is the case of *United States v. Tardon*, 56 F. Supp. 3d 1309, 1311 (S.D. Fla. 2014), where Alvaro Lopez Tardon, a drug kingpin in Miami, Florida, was found to have laundered millions of dollars, and had used the money to purchase expensive cars and property. This is just another example of a criminal using LLCs to launder illegally obtained funds.

A recent investigation in Miami has uncovered the effect that offshore money has had on the luxury market there. The investigation uncovered a trove of information revealing individuals with criminal indictments and connections, such as Paulo Octávio Alves Pereira, a Brazilian developer and politician now under indictment for corruption in his home country. Nicholas Nehamas, *How secret offshore money helps fuel Miami luxury real estate market*, THE MIAMI HERALD (Apr. 3, 2016) <http://www.miamiherald.com/news/business/real-estate-news/article69248462.html#storylink=cpy>.

But what does this mean for the average citizen, who would not consider purchasing such properties, and seem to lose nothing from the transactions? As the case of Chen Shui-bian illustrates, what this does is to allow individuals who have obtained significant wealth through possibly less than legal means, or who have committed crimes including political corruption, to avoid punishment. While this may not avoid jail time, it does protect the wealthy in the place that many view as most important, their wallets. Furthermore, foreign and/or criminal investment decreases the real estate market supply and significantly increases the market price for law-abiding citizens who seek to enter the market and become owners.

In response to all of this, FinCEN issued these GTOs in Miami Dade County and New York, specifically targeting all-cash real estate transactions and largely focusing on the title insurance companies and their responsibilities in these deals. Specifically, these businesses will be required to collect and report certain identifying information about "Beneficial Owner(s)" of purchasers in transactions of over \$3 million in New York, and \$1 million in Miami. According to the FAQs published by FinCEN for the GTOs, this means any individual who owns more than 25% of the equity interest in a covered transaction. One important clarification that is critical, is that the transaction does not necessarily need to be all-cash. If any part is paid for via cash methods such as cashier's checks or similar,

s and High-End Real Estate

the transaction is covered by the GTO.

Another important note is that these GTOs are only in effect for a short period of time from March 1, 2016 through August 27, 2016. While FinCEN can elect to reissue the GTOs, the temporary nature of the GTOs is somewhat concerning. It is unlikely that there will be a large number of these transactions during this 6-month period, and the public nature of these GTOs will likely have a chilling effect on the real estate market during this period.

As FinCEN Director Calvery has made clear, these GTOs are not meant as anything more than data collection, as a means of improving law enforcement's ability to combat money laundering in the real estate sector. By obtaining information regarding the identities of the individuals behind LLCs purchasing high end properties, FinCEN believes they can learn about how these transactions transpire, and develop the necessary procedures to prevent them.

One potential effect these GTOs could have is that some title insurance companies will simply avoid or decrease participation in these transactions altogether. This would in many ways be a positive outcome, as it will make it more difficult for those individuals using these transactions for money laundering. If we have learned anything from history however, this may only be a temporary effect, as this could leave a lucrative vacuum in these transactions likely to be filled by eager market entrants.

The temporary nature of these GTOs is the most significant challenge to their success. 180 days may simply not be enough time to gather the necessary data, though there is the ability to extend the GTOs. If anything can be learned from the New York Times investigation of Time Warner Center, it is that more drastic measures must be taken. To be effective, there must be long-term commitment from all parties in these transactions coupled with robust resources. A temporary order requiring disclosure of the "beneficial owner" in these transactions may provide helpful data over time, but it is unlikely to be enough. The method itself appears effective, in that by identifying the individuals behind these transactions anti-money laundering forces, both foreign and domestic, will be able to more easily trace "dirty" money.

There are other issues with these GTOs beyond their temporary nature. Some may argue that there are wealthy individuals who use LLCs to purchase real estate, not to launder money, but simply to protect their identity and investments. These new rules take away from these people, such as celebrities and popular business people, from retaining what little privacy they may have.

These GTOs are only a small aspect of what needs to be done to correct the issues raised in regard to LLCs and money laundering. While these methods seem to have the potential to be effective, one thing that must change is the ease with which individuals can create and fund LLCs. A simple google search of "how to create an LLC" provides significant information that would allow anyone to create an LLC. In New York, pursuant to Section 203 of the Limited Liability Company Laws, organizers simply choose a name, and file Articles of

Organization to create the LLC. They must also file notice of the creation of the LLC, which includes the name of the LLC and little else.

The ease of creating an LLC is something that must be changed in order to prevent money laundering of the nature discussed here. By adding requirements to the creation of LLCs, such as requiring detailed disclosure of any members of the LLC, many of the issues that arise from these LLCs can be avoided. This would not have any effect on the main purposes of an LLC, which are generally to create flexible businesses that limit the liability of its members for the actions of the business.

By strengthening the laws surrounding the creation of LLCs, it will be possible to allay certain types of money laundering that are prevalent because of the secrecy allowed under current laws. This secrecy does not necessarily need to be sacrificed altogether. One method would be to place a seal on the identities of LLCs, which can only be lifted by court order, or under certain specific circumstances. These circumstances could be modeled after the GTOs themselves, where any LLC purchase of real property of high value, in cash or similar methods, requires a review of the LLC itself prior to purchase. This would take the pressure off title insurance companies, while at the same time ensuring transparency in these transactions.

As for the GTOs themselves, while it is hopeful that FinCEN will be able to collect critical data, more is needed to combat the problems at hand. While the GTOs are only temporary, they do require the title insurance companies to maintain the records created for 5 years. One step along these lines to improve the effectiveness would be to require GTOs to go back through transactions in the past 5 to 10 years and create these records, as opposed to only creating prospective records. This information would shed light on the reality of the situation, increase successful prosecution, and act as a greater deterrence tool, as opposed to possibly skewed data collected once the purchasers are fully aware records will be made.

While investigations and data collections are an important aspect of analyzing transactions, trends, and developing useful tools of remediation, they are only the tip of the iceberg. What is more important is what is done with that information and the collective, sustained resolve to remedy the problem(s). If the industry and all affected parties are serious about reforms, there needs to be a long-term commitment and comprehensive efforts of all parties involved to effectuate the desired change.

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