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## FinCen and the GTO Explained

### Description

For those of us handling real estate transactions in the Mid-Atlantic, our time has finally arrived. As of April 30, 2022 Virginia, Maryland and Washington D.C. joined the list of jurisdictions where title insurance companies are required to collect and report information to the U.S. Department of the Treasury Financial Crimes Enforcement Network (FinCEN) about persons involved in certain all cash residential real estate transactions.

This does not affect the entire State of Maryland or Commonwealth of Virginia. The specific jurisdictions involved include Baltimore City and County, Montgomery, Anne Arundel, Prince George's and Howard counties for Maryland and Arlington and Fairfax Counties and the Cities of Alexandria, Falls Church and Fairfax in Virginia. All of Washington D.C. is also covered.[\[1\]](#)

Many of us in this region have no prior experience with FinCEN so this article will briefly touch on the history of the Federal program and its primary purposes. Also, some of the relevant lingo will be defined and finally, how our industry has been handling the compliance issues to date. This article is not intended to provide you with all of the information you need to handle FinCEN compliance. You should discuss compliance specifics with your title insurance underwriters.

FinCEN is a nickname for the Financial Crimes Enforcement Network, which is a bureau of the US Treasury Department. When it was established in 1990[\[2\]](#), it was tasked with the enforcement of anti-money laundering laws, tracking purchases by drug traffickers, corrupt officials, terrorists and detecting, deterring and disrupting terrorist financing networks. FinCEN collects and analyzes data regarding financial transactions for use in domestic and international law enforcement, identifying instances where alleged bad actors try to use real estate transactions to launder illegally obtained money by concealing their identity in a real estate transaction. Essentially the government is trying to identify, target and stop shell entities from washing illegally obtained money.

FinCEN's legal authority is derived from the Bank Secrecy Act[\[3\]](#) (BSA), the enabling legislation for anti-money laundering regulations including the establishment of programs within Banks and other financial institutions to detect and report financial crimes. One example is the requirement for banks and other financial institutions, (including title companies) to file reports on cash transactions that exceed certain dollar amounts.

As we all know, money laundering is the process by which proceeds from a criminal activity are converted into money or other property so that it appears to have come from a legal source. For more specific information on this process, watch Ozark on Netflix.

The first GTO (Geographic Targeting Order) aimed at the title insurance industry was issued in 2016 and was specific to Manhattan and Miami. Prior to this point, FinCEN's interest in the real estate arena was limited to collecting data from lenders, mortgage brokers and loan originators. Then it noticed an uptick in activity involving all cash deals of residential properties in certain areas. On January 13, 2016, FinCEN issued its first GTO directed exclusively at U.S. title insurance companies and their subsidiaries and agents. This alert turned out to be the first of many. Although all GTO's

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are for a limited time period, they can be renewed after their initial 180 day period and consistently have been to date.<sup>[4]</sup> The latest GTO includes counties, cities and Boroughs in Texas, Florida, California, Hawaii, Nevada, Washington, Massachusetts, Illinois, Maryland, Virginia, Connecticut and Washington D.C.

The FinCEN GTO requires a "Covered Business" to report a "Covered Transaction" to FinCEN by filing a Currency Transaction Report within 30 days of the closing. The "Covered Business" would need to keep all records related to compliance with the GTO for five years from the last day the GTO is effective. FinCEN defines a "Covered Business" as a title insurance company and any of its subsidiaries and agents. This does not include attorneys or real estate agents who represent clients in the transaction. However, if the attorney is an agent of the title insurance company, then FinCEN will regard said attorney as a "Covered Business".

FinCEN defines a "Covered Transaction" as a transaction in which residential real property is purchased by a legal entity in an amount of \$300,000 or more (\$50,000 in the County or City of Baltimore) and is made without a bank loan or other similar financing. In other words, a "cash" deal. The purchase price threshold is particularly burdensome for Baltimore City and County where cash transactions are common for investors who purchase and rehab blighted properties.

If your business is a "Covered Business" and your transaction is a "Covered Transaction" then the GTO requires you to report the transaction to FinCEN by filing a FinCEN Currency Transaction Report within 30 days of the closing of the Covered Transaction. This filing is done electronically through the BSA E-Filing system that the Treasury Department has established. A Covered Business can create a BSA E-Filing User account by visiting <https://bsaefiling.FinCEN.treas.gov/Enroll.html>.

This Currency Transaction Report will require title agents to obtain information from their purchasers that they have never had to ask for in the past. This will obviously cause some push back from the parties agents work with whom may be reluctant to provide this information. For example, a title agent is used to obtaining the driver's license or other identification from the person who is representing the purchaser and will be signing the closing documents. In the case of a Limited Liability Company, this person may be the manager or one of the members. But now under the GTO, the title agent will be required to also obtain information and copies of identification from all of the other LLC members or shareholders of a corporation that own a 25% or more equity interest in the entity that is purchasing the property. FinCEN refers to such persons as "Beneficial Owners". Also, none of this information is considered confidential by FinCEN so there can be no expectation of privacy by said Beneficial Owners.

A "Legal Entity" that is purchasing the property can refer to a corporation, limited liability company, partnership or other similar business entity formed in the United States or other foreign jurisdiction. This does not include an entity that is listed on a securities exchange regulated by the SEC or other self-regulatory organization registered with the SEC or an entity wholly owned by such a business. In other words, FinCEN does not require a report to be filed if the purchaser is a publicly traded company or entity owned by a publicly traded company. Further, the definition of a legal entity in this context does not include the beneficial owners of trusts nor an "exchange accommodation titleholder" being used for a 1031 exchange.

While there is nothing preventing a title agent from handling the reporting process on their own from start to finish, many title insurance underwriters have stepped in to handle the reporting process on

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their behalf. The agent typically gathers the relevant information that is required for reporting purposes from the parties and then completes a pre-approved form for submission to the underwriter. This form more than likely will be the "ALTA GTO Information Collection Form". You can find this form on the ALTA website or obtain a copy from your underwriter.

Lack of compliance with FinCEN has consequences. There are criminal and civil penalties for violating the GTO. These include monetary fines as high as \$500,000 and ten years in prison. Ignorance of the law does not allow title agents to escape such penalties.

In summary, it appears FinCEN is here to stay in the Mid-Atlantic for the foreseeable future. Title agents need to be proactive in educating the real estate agents they work with about what information will be required from their clients. By advising all parties in the transaction as far in advance of closing as possible that the title agent is now required by Federal law to collect this information, closing delays can be avoided. If there is pushback, agents are advised to have a copy of the GTO on hand. Soon enough FinCEN will become just another part of the closing process.

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[1] See "Geographic Targeting Order" dated April 29, 2022 issued by the Financial Crimes Enforcement Network, U.S. Department of the Treasury.

[2] See <https://www.fincen.gov/>.

[3] See <https://www.fincen.gov/history-anti-money-laundering-laws>.

[4] See "Money Laundering & Real Estate" on [www.alta.org](http://www.alta.org).

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