



# FinCEN Geographic Targeting Order


*First American Underwriting Standards: #NA-2016-016 & #NA-2016-017*

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An Independent Policy-issuing Agent of First American Title Insurance Company

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# Who is FinCEN & What Happened?

## Financial Crimes Enforcement Network (FinCEN)

- Agency of US Treasury
- Enforcement of Anti-Money Laundering Laws
- Bank Secrecy Act
  - Cash transactions

## Geographic Targeting Order issued July 22, 2016

- Effective August 28, 2016 until February 23, 2017
  - Can be extended
- Title Insurance Underwriters and Policy-Issuing Agents
  - Reporting of real estate transactions

# What Does the Order Say?

August 28, 2016 – February 23, 2017

Required Reporting of “Covered Transaction” When:

- A Legal Entity
  - Corporation;
  - Limited Liability Company;
  - Partnership; or
  - Other similar business entity
- Purchases Residential Real Estate

# What Does the Order Say?

## At or Over Dollar Thresholds

- \$500,000 or more in Bexar County, Texas
- \$2,000,000 or more in San Diego, Los Angeles, San Francisco, San Mateo or Santa Clara Counties, California;
- \$1,000,000 or more in Miami-Dade, Broward or Palm Beach Counties, Florida
- \$1,500,000 or more in the Boroughs of Brooklyn, Queens, Bronx or Staten Island, New York
- \$3,000,000 or more in the Borough of Manhattan, New York



# What Does the Order Say?

Without a bank loan or similar institutional lender involved, using *(even in-part)*

- Currency
- Cashier's Check
- Certified Check
- Traveler's Check
- Personal Check
- Business Check
- Money Order

# What Does the Order Say?

- IRS/FinCEN Form 8300 Must be Filed, Identifying
  - Purchaser
  - Beneficial Owner of Purchaser
  - Individual Primarily Responsible for Representing Purchaser
- Tax ID Numbers
- Addresses
- Occupations
- Beneficial Owner(s) and Individual Primarily Responsible
  - Confirmed by passport/license

# Defined Terms: The Parties

- Purchaser
  - The legal entity purchasing the property
    - LLC/LLP
    - Corporation
    - Similar business entity
- Regardless of Place of Formation
- A Trust is Not a Covered Entity



# Defined Terms: The Parties

- **Beneficial Owner**
  - Individual (directly or indirectly) owns 25% or more of Purchaser or is member of LLC
- **Individual Primarily Responsible for Representing the Purchaser**
  - Individual authorized to enter contracts
  - Officer, partner, managing member

# Defined Terms: Property

- Residential Real Estate
  - Real property
  - Includes
    - Coop Unit
    - Condo Unit
    - Townhouse Unit
  - Designed For 1-4 Family Occupancy

# What is Financing?

- Order ***does not*** apply if
  - Purchaser has bank loan/similar financing
    - Even if loan/financing not secured
  - Loan/financing from financial institution with anti-money laundering (AML) policy
- Order ***does*** apply if
  - Private/seller financing
  - Lender does not have AML policy

# Non-Compliance Penalties

## Criminal Penalties

- Willful Violation
  - \$250,000 and 5 years
- Willful Violation Plus Additional Law Broken
  - \$500,000 and 10 years
- Structuring/Assisting Structuring to Avoid Reporting
  - Fine and 5 years

## Civil Penalties

- Willful Violation
  - \$25,000 – \$100,000 per day
- Failure to File/Incorrect Filing
  - Up to amount of transaction
- Structuring/Assisting Structuring to Avoid Reporting
  - Up to amount of transaction
- Negligence/Pattern of Negligence
  - \$500 – \$50,000

# First American's Response

## Underwriting Standards: NA-2016-016 & NA-2016-017

*Dated August 4, 2016*

- All Policy-Issuing Agents involved in Covered Transactions
  - Issuing Title Insurance Policies
  - Must comply with the Order in accordance with Standard



# The Standard

## Every Commitment For Title Insurance Issuance **or** Preliminary Report

- Residential property
- Located in designated County/Borough
- Purchase price is
  - Unknown
  - Meets GTO threshold

## Must contain

- Commitment – Schedule B, Part 1 **Requirement**
- Report – **Exception**

# Title Insurance Requirement

“This transaction may be subject to the FinCEN Geographic Targeting Order affecting residential sale transactions. This issuing agent must be provided with information prior to closing sufficient to determine if IRS/FinCEN Form 8300 must be completed and filed, and must be provided information sufficient to meet the records retention requirements of the FinCEN Geographic Targeting Order. This transaction will not be insured, and this issuing agent and/or its underwriter will not be involved in a Covered Transaction (as defined by the FinCEN Geographic Targeting Order) until this information is submitted and reviewed by the issuing agent.”

# Standard: Exhibit B Worksheet



## FinCEN Geographic Targeting Order Covered Transaction Determination Worksheet - Agent

### Transaction Information

Name of Title Issuing Agent [ ]		Person completing worksheet [ ]	
Phone: [ ]	Call Phone: [ ]	Fax: [ ]	E-Mail: [ ]
Title Issuing Agent jacket or Jacket #: [ ]		First American Policy # [ ]	Date of Closing: [ ]
Property Address [ ]		City [ ]	State Zip [ ] [ ]
Name of outside settlement agent or attorney (if any) [ ]		Person providing information [ ]	
Order Number: [ ]	Phone: [ ]	Fax: [ ]	E-Mail: [ ]

Copies of identification documents and other relevant information must be saved in the Issuing Agent's file.

**Covered Transaction Determination** (A transaction is a "covered transaction" if all 5 questions contain at least one "Yes" answer.)  
Note: If a "No" answer is given to any of questions 1-4 it is not necessary to answer the remaining questions.

1. Is the subject property in one of the following Counties and the purchase price equal to or over the amount shown? <input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/> CA - Los Angeles - \$2 million	<input type="checkbox"/> FL - Broward - \$1 million
<input type="checkbox"/> CA - San Diego - \$2 million	<input type="checkbox"/> FL - Miami-Dade - \$1 million
<input type="checkbox"/> CA - San Francisco - \$2 million	<input type="checkbox"/> FL - Palm Beach - \$1 million
<input type="checkbox"/> CA - San Mateo - \$2 million	<input type="checkbox"/> NY - Brooklyn - \$1.5 million
<input type="checkbox"/> CA - Santa Clara - \$2 million	<input type="checkbox"/> NY - Manhattan - \$3 million
	<input type="checkbox"/> NY - Queens - \$1.5 million
	<input type="checkbox"/> NY - Staten Island - \$1.5 million
	<input type="checkbox"/> TX - Bexar - \$500,000
2. Is the subject property residential? <input type="checkbox"/> Yes <input type="checkbox"/> No	
3. Is the purchaser a corporation, limited liability company, partnership or similar business entity, whether formed under the laws of a state or the United States or a foreign jurisdiction? <input type="checkbox"/> Yes <input type="checkbox"/> No	
4. Is the purchase made without a loan from an institutional lender? <input type="checkbox"/> Yes <input type="checkbox"/> No	
5. Was any of the purchase price, including the earnest money deposit, paid through the use of the following?	
a. Currency (bills or coins); <input type="checkbox"/> Yes <input type="checkbox"/> No	
b. Cashier's check; <input type="checkbox"/> Yes <input type="checkbox"/> No	
c. Certified check; <input type="checkbox"/> Yes <input type="checkbox"/> No	
d. Traveler's check; <input type="checkbox"/> Yes <input type="checkbox"/> No	
e. Money order in any form; <input type="checkbox"/> Yes <input type="checkbox"/> No	
f. Business Check; or <input type="checkbox"/> Yes <input type="checkbox"/> No	
g. Personal Check <input type="checkbox"/> Yes <input type="checkbox"/> No	

*Note: Payments from the purchaser to a party representing the seller or purchaser (i.e. an attorney or real estate agent) or directly to the seller using one of the listed forms of payment require a "Yes" answer.*

Check the item below that applies and send any required documents to First American: (1) by secure e-mail to [FinCen.8300@firstam.com](mailto:FinCen.8300@firstam.com); (2) by U.S.P.S. to First American, P.O. Box 27751, Santa Ana, CA 92799; or (3) by FAX to 677-255-1972.

**Form 8300 Submission Required** - If questions 1 to 5 above ALL contain at least one "Yes" answer then a FinCEN Form 8300 must be completed and submitted to FinCEN via the Bank Secrecy Act E-filing system. Additionally, to evidence compliance to First American, send the following to First American within 30 business days of closing:

- A copy of Form 8300 with Parts I, II, III and IV completed; and
- A copy of the Bank Secrecy Act E-Filing System acknowledgment for the filing.

**No Form 8300 Submission Required** - If questions 1 to 5 above DO NOT ALL contain at least one "Yes" answer, then Form 8300 need not be submitted to FinCEN. It is recommended that a copy of this worksheet be retained in your file.

<sup>1</sup> Residential property is defined as real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from one to four families.

## Covered Transaction Determination Worksheet

- Job Aid to analyze transaction-Covered or Not
- If any questions in section 1-4 contains a **NO** answer, no need to complete remaining sections;
- If each section 1-5 contains at least one **YES** answer, IRS/FinCEN Form 8300 must be filed

# Worksheet: Completion

5. Was any of the purchase price, including the earnest money deposit, paid through the use of the following?

- a. Currency (bills or coins);  Yes  No
- b. Cashier's check;  Yes  No
- c. Certified check;  Yes  No
- d. Traveler's check;  Yes  No
- e. Money order in any form;  Yes  No
- f. Business Check; or  Yes  No
- g. Personal Check  Yes  No

*Note: Payments from the purchaser to a party representing the seller or purchaser (i.e. an attorney or real estate agent) or directly to the seller using one of the listed forms of payment require a "Yes" answer.*

- Complete Section 5
  - If not conducting the settlement, another person with knowledge of the transaction will need to furnish this information

# Types of Funds

- No De Minimus Exception
- Funds Not Included
  - Wire transfers
    - Source of Funds Triggers Reporting  
*(i.e. Wire of funds originally deposited by money order is included)*



# Standard: Exhibit D

- Policy-issuing agent must collect information and documents to meet requirements of GTO
  - Determination of applicability
  - Complete IRS/FinCEN Form 8300
- Job Aid/Worksheet to assist in transactions with third-party settlement agent/attorney

# Standard: Exhibit D



## Exhibit D

### FinCEN Geographic Targeting Order Information Transmittal Worksheet

(Note: It is NOT necessary to complete the address fields if the information is on a legible copy of the government issued ID that will be submitted.)

#### SETTLEMENT AGENT INFORMATION (i.e. Law Firm, Escrow Company, etc.)

Settlement Agent Entity Name	Settlement Agent Individual's Name		
Address	City	State	Zip
Phone Number	E-Mail Address		
I declare that to the best of my knowledge the information I have furnished is true, correct, and complete.			
Signature	Date		

#### REPORTING IS NOT REQUIRED UNDER THE FinCEN GEOGRAPHIC TARGETING ORDER - REASON

Reporting is not required because: **None of the funds in the transaction were furnished by currency, cashier's check(s), certified check(s), traveler's check(s), personal check(s), business check(s) or money order(s)**

- Note why reporting is not required
- Signed by person with knowledge of transaction

# Exhibit D: Worksheet



Exhibit D

## FinCEN Geographic Targeting Order Information Transmittal Worksheet

(Note: It is NOT necessary to complete the address fields if the information is on a legible copy of the government issued ID that will be submitted.)

### SETTLEMENT AGENT INFORMATION (i.e. Law Firm, Escrow Company, etc.)

Settlement Agent Entity Name		Settlement Agent Individual's Name	
Address	City	State	Zip
Phone Number	E-Mail Address		
I declare that to the best of my knowledge the information I have furnished is true, correct, and complete.			
Signature	Date		

### REPORTING IS NOT REQUIRED UNDER THE FINCEN GEOGRAPHIC TARGETING ORDER - REASON

Reporting is not required because:
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### INDIVIDUAL PRIMARILY REPRESENTING PURCHASER (Defined as the individual authorized by the entity to enter into legally binding contracts.)

<input type="checkbox"/> Legible copy of government issued identification (i.e. passport, driver's license, etc.)				
Taxpayer Identification Number (if none check none)		<input type="checkbox"/> None	Occupation	
Last Name	First Name	M.I.	Date of birth	Country of Address (if not U.S.)
If address or ID information is not shown (or is not legible) on the government issued identification, please complete below				
Address		City	State	Zip
Alien identification description		Alien ID issued by		Alien ID number

### PURCHASING ENTITY'S NAME & ADDRESS

Taxpayer Identification Number (if none check none)		<input type="checkbox"/> None	Type of Legal Entity	
			<input type="checkbox"/> Ltd. Liability Co., <input type="checkbox"/> Corporation, <input type="checkbox"/> Partnership, <input type="checkbox"/> Other	
Name of purchasing entity				
Doing business as (DBA) name			Country of Address (if not U.S.)	
Address		City	State	Zip

### DATE OF CLOSING – AMOUNTS PAID WITH IDENTIFIED MONETARY INSTRUMENTS – PURCHASE PRICE

Date of Closing	Total Amt. Paid by below instruments	Paid in more than 1 payment	Total Purchase Price
	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	\$
Amount of Monetary Instrument (in U.S. dollar equivalent)			
U.S. currency	\$	Amt. in \$100 bills or higher \$	
Foreign currency	\$	Country:	
		Issuer's name(s)	Serial number(s) <sup>1</sup>
Cashier's check(s)	\$		
Money order(s)	\$		
Certified check(s)	\$		
Traveler's check(s)	\$		
Business check(s)	\$		
Personal check(s)	\$		

<sup>1</sup> For Business Checks or Personal Checks enter the account number and check number.



### PROPERTY ADDRESS

Address	City	State	Zip
County	Block & Lot Number (NY only)		

### NAMES OF "BENEFICIAL OWNERS" (AS DEFINED) & NAMES OF ALL MEMBERS OF LIMITED LIABILITY COMPANIES

- For Corporations, Partnerships or Similar Business Entities each INDIVIDUAL who, directly or indirectly, owns 25% or more of the equity interests of the Purchaser must be listed below.
- For Limited Liability Companies all members must be listed below.

(Note: It is NOT necessary to complete the address fields if the information is on a legible copy of the government issued ID submitted to the title underwriter.)

<input type="checkbox"/> Legible copy of government issued identification (i.e. passport, driver's license, etc.)				
Taxpayer Identification Number (if none check none)		<input type="checkbox"/> None	Occupation	
Last Name	First Name	M.I.	Date of birth	Country of Address (if not U.S.)
If address or ID information is not shown (or is not legible) on the government issued identification, please complete below				
Address		City	State	Zip
Alien identification description		Alien ID issued by		Alien ID number

<input type="checkbox"/> Legible copy of government issued identification (i.e. passport, driver's license, etc.)				
Taxpayer Identification Number (if none check none)		<input type="checkbox"/> None	Occupation	
Last Name	First Name	M.I.	Date of birth	Country of Address (if not U.S.)
If address or ID information is not shown (or is not legible) on the government issued identification, please complete below				
Address		City	State	Zip
Alien identification description		Alien ID issued by		Alien ID number

<input type="checkbox"/> Legible copy of government issued identification (i.e. passport, driver's license, etc.)				
Taxpayer Identification Number (if none check none)		<input type="checkbox"/> None	Occupation	
Last Name	First Name	M.I.	Date of birth	Country of Address (if not U.S.)
If address or ID information is not shown (or is not legible) on the government issued identification, please complete below				
Address		City	State	Zip
Alien identification description		Alien ID issued by		Alien ID number

# Exhibit D: Worksheet *Page 1*



## Exhibit D

### FinCEN Geographic Targeting Order Information Transmittal Worksheet

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#### SETTLEMENT AGENT INFORMATION (i.e. Law Firm, Escrow Company, etc.)

Settlement Agent Entity Name	Settlement Agent Individual's Name		
Address	City	State	Zip
Phone Number	E-Mail Address		
I declare that to the best of my knowledge the information I have furnished is true, correct, and complete.			
Signature	Date		

#### REPORTING IS NOT REQUIRED UNDER THE FinCEN GEOGRAPHIC TARGETING ORDER - REASON

Reporting is not required because:
------------------------------------

#### INDIVIDUAL PRIMARILY REPRESENTING PURCHASER (Defined as the individual authorized by the entity to enter into legally binding contracts.)

<input type="checkbox"/> Legible copy of government issued identification (i.e. passport, driver's license, etc.)				
Taxpayer Identification Number (if none check none)		<input type="checkbox"/> None	Occupation	
Last Name	First Name	M.I.	Date of birth	Country of Address (if not U.S.)
<i>If address or ID information is not shown (or is not legible) on the government issued identification, please complete below</i>				
Address		City	State	Zip
Alien identification description	Alien ID Issued by		Alien ID number	

- **Box 1:**  
Settlement agent information
- **Box 2:**  
Individual representing purchaser

# Exhibit D: Worksheet *Page 1*

- **Box 3:**  
Purchasing entity information
- **Box 4:**  
Date of closing and amounts paid by type of monetary instrument

PURCHASING ENTITY'S NAME & ADDRESS			
Taxpayer Identification Number (if none check none)		<input type="checkbox"/> None	Type of Legal Entity
			<input type="checkbox"/> Ltd. Liability Co., <input type="checkbox"/> Corporation, <input type="checkbox"/> Partnership, <input type="checkbox"/> Other
Name of purchasing entity			
Doing business as (DBA) name			Country of Address (if not U.S.)
Address		City	State Zip
DATE OF CLOSING – AMOUNTS PAID WITH IDENTIFIED MONETARY INSTRUMENTS – PURCHASE PRICE			
Date of Closing	Total Amt. Paid by below instruments \$	Paid in more than 1 payment <input type="checkbox"/> Yes <input type="checkbox"/> No	Total Purchase Price \$
Amount of Monetary Instrument (in U.S. dollar equivalent)			
U.S. currency	\$	Amt. in \$100 bills or higher \$	
Foreign currency	\$	Country:	
		Issuer's name(s)	Serial number(s) <sup>1</sup>
Cashier's check(s)	\$		
Money order(s)	\$		
Certified check(s)	\$		
Traveler's check(s)	\$		
Business check(s)	\$		
Personal check(s)	\$		

<sup>1</sup> For Business Checks or Personal Checks enter the account number and check number.

Page 1 of 4



# Exhibit D: Worksheet *Page 2*



**PROPERTY ADDRESS**

Address	City	State	Zip
County	Block & Lot Number (NY only)		

**NAMES OF "BENEFICIAL OWNERS" (AS DEFINED) & NAMES OF ALL MEMBERS OF LIMITED LIABILITY COMPANIES**

1. For Corporations, Partnerships or Similar Business Entities each INDIVIDUAL who, directly or indirectly, owns 25% or more of the equity interests of the Purchaser must be listed below.
2. For Limited Liability Companies all members must be listed below.

(Note: It is NOT necessary to complete the address fields if the information is on a legible copy of the government issued ID submitted to the title underwriter.)

<input type="checkbox"/> Legible copy of government issued identification (i.e. passport, driver's license, etc.)					
Taxpayer Identification Number (if none check none)		<input type="checkbox"/> None	Occupation		
Last Name	First Name	M.I.	Date of birth	Country of Address (if not U.S.)	
<i>If address or ID information is not shown (or is not legible) on the government issued identification, please complete below</i>					
Address		City	State	Zip	
Alien identification description		Alien ID Issued by		Alien ID number	

- **Box 1:**  
Property address
- **Box 2:**
  - If LLC, all members must be listed
  - If not LLC, all individuals owning 25% or more of the entity