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## Loopholes leave federal illicit cash rule far from Draconian

By CATHERINE LACKNER

Federal efforts enacted March 1 to block illicit cash from being invested in residential real estate are not as Draconian as they have been portrayed, observers say. The rules require that all cash sales be reported.

"It shouldn't impact honest buyers of real estate," said Richard DeNapoli, chief trust officer at Coral Gables Trust. "The rules are so the Department of Justice can identify corrupt politicians, drug traffickers and other criminals using shell companies to purchase luxury real estate with cash. Efforts to stop money laundering have existed since the Bank Secrecy Act of 1970, but recently, Manhattan and Miami-Dade County have been the subjects of the geo-targeting orders because mainstream efforts don't apply when there is no mortgage lender or broker involved."

The large number of cash deals last year — which Mr. DeNapoli puts at more than 50% in Miami, Fort Lauderdale and West Palm Beach — is just one factor. "Miami and Manhattan are natural areas to target due to the price of luxury real estate," he said.

There are loopholes, he added. The new law only applies to all-cash deals, so getting even a small mortgage exempts the transaction, and the rules require only that the "beneficial owners" of a limited liability corporation — those who own 25% or more — be identified.

"This definition leaves the door open for buyers who splinter their ownership among multiple individuals, such as fam-



ily members or attorneys," Mr. DeNapoli said.

"Real estate purchases funded solely through wire transfers also may sidestep the reporting requirements, since wires are technically exempted, though a small check escrow held with a real estate agent or title company would make it reportable.

"From what I've heard, the only impact has been questions from foreign buyers, who may think that the rules are more heavy-handed than they actually are," Mr. DeNapoli said. "It's really too soon to identify a true impact in transactions [other than] to create more paperwork for realtors and title insurers. We'll have to wait on reports in the next couple of months to see a true impact after adjusting for seasonality and other

factors."

Jonathan Perlman, a partner in the Miami office of the Genovese Joblove & Battista law firm, says the impact of the targeting order may be limited, due to a major loophole.

"It only applies if some portion of the purchase is made with cash, money orders, cashier's checks or traveler's checks. It does not apply to wire transfers or personal checks, which is how most 'cash' transactions currently are handled.

"While funds transferred by wire transfer or personal check may, unlike cash, be traceable, banks do not currently have any reporting requirements for receiving large wire transfers and personal checks just because the money came from a foreign institution. Therefore, the Treas-

ury Department will not receive reports of property purchases using these funds," said Mr. Perlman, who often serves as a court-appointed receiver in actions brought by federal agencies and frequently brings lawsuits against banks for aiding and abetting in money laundering. "Title companies and their attorney agents will be very careful in ensuring that not one dollar of the purchase money deposit (or the rest of purchase price) is paid by cash, money order or cashier's check."

"I don't think the impact is so enormously meaningful," said Alan Lips, partner and shareholder in the Gerson Preston Robinson CPA firm. "This addresses pure cash and doesn't affect wire transfers, which is how most transactions are done today. Rarely do you see a certified check.

"If you have an account at a bank, that bank is required to do background checks," he said, and in this way, the federal government has transferred some of the obligation for screening incoming money to the banks. "The bank has to be sure it is dealing with clean money.

"What I do believe is that this is the first step — and it might be just one of many — to achieve the government's objective, which is to be sure that all money that's coming in is clean," Mr. Lips said. "I expect that they will, at the end of this program, extend it, and might enhance it to include more things. They will do whatever they can to achieve their objective in a legal manner."



Alan Lips