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STATE OF NEW YORK

DEPARTMENT OF LAW

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REAL ESTATE FINANCE BUREAU

MEMORANDUM

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**Re: Disclosure Requirements Regarding  
FinCEN's Geographic Targeting Order**

**Date: December 4, 2018<sup>1</sup>**

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The New York State Department of Law (“DOL”) publishes this memorandum as a guidance document pursuant to State Administrative Procedure Act § 102(14).

**I. INTRODUCTION**

This guidance document clarifies how the Geographic Targeting Order (“GTO”) issued by the Financial Crimes Enforcement Network (“FinCEN”) affects DOL disclosure requirements for sponsors and prospective purchasers of residential real property located in all boroughs of New York City. As of the date of this guidance document, the GTO requires U.S. title insurance companies to identify and report to FinCEN the natural persons behind companies making certain “all-cash” – *i.e.*, without a bank loan or other similar form of external financing – purchases of residential real property located in New York City and several other jurisdictions (“covered purchases”).

FinCEN first issued the GTO in January 2016, and has since reissued the original GTO several times to expand its coverage. On November 15, 2018, FinCEN announced the issuance of a revised GTO. The revised GTO covers more jurisdictions than in the past, lowers the purchase amount threshold for covered purchases to \$300,000 within all jurisdictions covered by the GTO, and requires that covered purchases using virtual currency be reported to FinCEN. Further information regarding the revised GTO is available at the following web address:

[https://www.fincen.gov/sites/default/files/shared/Real%20Estate%20GTO%20GENERIC\\_111518\\_FINALE.pdf](https://www.fincen.gov/sites/default/files/shared/Real%20Estate%20GTO%20GENERIC_111518_FINALE.pdf)

This guidance document includes updated DOL disclosure requirements reflecting the revised GTO’s reporting requirements (“updated DOL FinCEN disclosures”).

**II. UPDATED DOL FINCEN DISCLOSURE REQUIREMENTS**

To provide prospective purchasers and contract vendees with adequate information about the GTO’s reporting requirements, certain residential offering plans must disclose or be amended to disclose that FinCEN requires

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<sup>1</sup> This guidance document shall supersede and replace all previously issued versions of this guidance document, including, but not limited to, the version dated August 28, 2017. The DOL hereby repeals the version of this guidance document dated August 28, 2017.

U.S. title insurance companies to report to FinCEN the personal identity of purchasers in residential real estate transactions in which:

- (1) the purchaser is a legal entity as defined in the GTO;
- (2) the purchaser purchases residential real property located in the Boroughs of Bronx, Brooklyn, Queens, Manhattan, and Staten Island;
- (3) the total purchase price is in the amount of \$300,000 or more;
- (4) such purchase is made without a bank loan or other similar form of external financing; and
- (5) the purchase is made, at least in part, using currency or a cashier's check, a certified check, a traveler's check, a personal check, a business check, a money order in any form, a funds transfer, or virtual currency.

The updated DOL FinCEN disclosure must make clear that as long as the GTO remains in effect, its reporting requirements apply to all residential real property closings meeting the above criteria and occurring on or after November 17, 2018 (the revised GTO's effective date).

### **III. APPLICABILITY OF UPDATED DOL FINCEN DISCLOSURE REQUIREMENTS**

As of the date of this guidance document, the aforementioned updated DOL FinCEN disclosure requirements apply only to offerings of residential real property located in New York City in which purchase prices exceed \$300,000 ("applicable offering plans").

All applicable offering plans that have not yet been filed must include the updated DOL FinCEN disclosure prior to acceptance for filing.

Filed applicable offering plans not currently containing the updated DOL FinCEN disclosure must include the updated DOL FinCEN disclosure in the next substantive amendment to the offering plan, **regardless of whether the offering plan and/or any amendments thereto contained the DOL FinCEN disclosures detailed in any previously issued versions of this guidance document.** Specifically, filed applicable offering plans that do not disclose the revised GTO's applicability to purchases in the amount of \$300,000 or more and/or purchases made using virtual currency must contain the updated DOL FinCEN disclosure in the next substantive amendment to the offering plan. Filed applicable offering plans already containing the updated DOL FinCEN disclosure need not include further disclosure in subsequent amendments to the offering plan.

Applicable offering plans must contain the updated DOL FinCEN disclosure as long the GTO remains in effect and/or its reporting requirements remain unchanged. If there is a change to the GTO in the future, it shall be sponsor's obligation to submit disclosures reflecting the revised reporting requirements in applicable offering plans, regardless of whether the DOL updates this guidance document.

The DOL reserves the right to reject amendments submissions that fail to comply with this guidance document and all other applicable laws and regulations. Additionally, the Attorney General has the authority under Article 23-A of the General Business Law to investigate and strictly enforce violations of the statutes and regulations governing disclosure requirements. Nothing contained in this guidance document shall be construed to be a waiver of or a limitation on the Attorney General's authority to take enforcement action pursuant to Article 23-A of the General Business Law and other applicable provisions of law, except as expressly stated herein.