

The Mortgage Industry Needs More, Not Less, Oversight

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I have read the recent articles about the “Panama Papers” with great interest, because the way these shell companies are used has a direct impact on our local real estate market. Although many of these offshore vehicles have a legitimate purpose, a significant number are set up to wash ill-gotten gains from their owners. The offshore shell companies that buy real estate in South Florida have an accomplice in their intricate web of deceit; large sums of money are laundered by affixing a mortgage to these real estate transactions.

The scheme works like this: an offshore shell company buys a piece of real estate. Shortly thereafter, a Florida corporation (typically with a name that sounds like a financial institution) specially created to participate in the scheme, affixes a mortgage loan on the property. Next, the shell company pays the Florida corporation monthly mortgage payments and ultimately pays off the mortgage. Voila! The perpetrator now has so-called “clean” money in the U.S. Even more disturbing is the fact that this scheme can happen multiple times on the same property. It is the gift that keeps on giving for these criminals.

In the State of Florida, this scenario happens again and again through the use of unlicensed lenders or “shadow lenders.” Legitimate lenders are required to adhere to BSA (Bank Secrecy Act) requirements and have a stringent KYC (Know Your Customer) Policy. Unlicensed “shadow” lenders operate in the shadows with no oversight.

How could this happen? Chapter 494 of the Florida statutes, which governs mortgage loans, is lax in its interpretation of what constitutes a mortgage lender. A literal reading of the statute suggests that a loan on a one-to-four-unit residential property that is not owner occupied, meaning the property is not being used primarily for the personal use of the borrower, is not deemed a “mortgage loan” and thus the lender is not required to be licensed.

The statute further states that it does not cover entities that do not “hold themselves out” to the public as mortgage lenders. In other words, an entity is exempt from being considered a mortgage lender if, for example, they do not have business cards or a neon sign stating that they do mortgages. This provision is not a major cause for concern as money launderers typically do not want to garner too much attention and don’t usually have such signage at their place of business. Still, a mortgage is a mortgage and should be treated as such!

If the Government wants to truly get serious about curbing money laundering, then it must require real estate mortgages to be arranged only through licensed mortgage lenders. We should call upon our State’s elected leaders to put an end to this lax oversight, once and for all.

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