"Safe as Houses": Money Laundering in Florida's Luxury Real Estate

By

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Chapter I: Introduction

"Money is the fruit of evil, as often as the root of it." - Henry Fielding

Miami: The Tardón Case

On the tip of South Miami Beach overlooking the Atlantic Ocean, sits a forty-story luxury tower boasting an Olympic-sized gym, two heated lagoon pools, and a two-story marble lobby. With the studio floor plan alone starting at $1 million, Continuum Tower is affordable to only a select few. A decade ago, one of these penthouses was owned by the drug lord Álvaro López Tardón. Tardón was able to purchase this penthouse along with 14 other luxury condos in Miami, several luxury cars, and other high end assets from the proceeds of a cocaine business he shared with his brother in Madrid, Spain. His international scheme included:

> "*The illegal proceeds from the distribution and sale of the drugs would then be sent into the U.S., either carried by couriers or wire-transferred into any one of the numerous bank accounts Alvaro Tardón had set up (often not in his own name). He and his associates—usually through straw buyers or shell companies—would then launder the money through their purchases of luxury vehicles and high-end real estate in the Miami area.*"[1]

Though the Tardón brothers were both captured and Álvaro faced 150 years in prison, the results of their crime were evident in Miami's real estate. The condos purchased by Álvaro only staggered in price, adding to the already-inflated real estate market. Local investors couldn't compete against him in negotiating for the same properties, as Tardón made only all-cash purchases. Tardón's properties appreciated over time, giving him a profitable investment without any liability to his name; the shell

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[1] Drug Kingpin Dethroned. (2015, February 02). Federal Bureau of Investigations.

companies that he purchased the properties through protected him while hiding his ownership.

The effect of the brothers' scheme on international and domestic economies is crucial in detecting the patterns of money laundering. Similar to Tardón, money launderers who are not yet uncovered or prosecuted also get to enjoy the fruits of their illegal labor. Most criminals aren't looking to only hide or "clean" their illicit funds, but to also make a profit from them. This criminal intent to profit is why Jennifer Calvery and Kevin Bell from the Financial Crimes Enforcement Network (FinCEN) deem real estate as the most vulnerable target for money launderers:

> *" [Criminals] want to conceal the origins of their funds in a way that grows as an investment, cleans as much money as possible in a single transaction, and allows them to enjoy the fruits of their illicit activity without worrying about market instability and exchange rates causing future losses. In that sense, real property — especially residential property in desirable cities in a relatively stable market like the United States — is a natural choice."*[2]

Similar to Tardón, criminals are constantly searching for secret and profitable ways to hide their illicit money into legitimate assets. Unfortunately, the U.S. offers relatively stable real estate desirable to domestic and international money launderers.

Defining Money Laundering

Money laundering (ML) is the act of making illicit funds appear as though they were acquired legitimately. FinCEN, a bureau of the U.S. Department of Treasury and a Financial Intelligence Unit formed to investigate and combat financial crimes, defines money laundering as "the process of making illegally-gained proceeds (i.e. "dirty money") appear legal (i.e. "clean")."[3] In most cases, crime is committed with the intent of generating a profit, money laundering is thereby inherently associated with other

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[2] Calvery, J. S., & Bell, K. (2017, January 09). Lifestyles of the Rich and Infamous.
[3] History of Anti-Money Laundering Laws. (n.d.), FinCEN.

crimes. Where there is a profit-generating crime, there is often money laundering. Thus, money laundering is not only a product of crime but also facilitates the perpetration of more crime.

To simplify its complexity, money laundering can be commonly identified by three phases: placement, layering, and integration. The first phase, placement, is critical in detecting the crime as the criminal profit may still be in bulk or one lump sum. Due to this, it is imperative that financial institutions comply with anti-money laundering standards. The placement of illegal funds occurs once the profit is collected and can be directly deposited into a financial institution, separated into multiple transactions, or altogether used in one transaction. The second stage, layering, is the structuring of money into smaller, individual transactions in order to make the tracing of the funds difficult. The structuring of illicit funds can take on many forms, making it its own form of crime in some cases. The intricacy of this step can take prosecutors a lengthy amount of time to investigate, and could even lead to the prosecution of fraud or other crimes that are more pronounced and quicker to resolve. The final stage, integration, involves the criminal proceeds reentering the economy via legitimate use, such as through payment of property taxes, employee wages, or the investment of funds into legitimate assets. This ‘wash’ back into the economy is meant to be camouflaged as a normal and inconspicuous transaction.

To better explain these three phases, take the aforementioned Tardón case. Álvaro was a drug tycoon who laundered his profits into Miami’s real estate through several transactions. After earning his drug profit, he would *place* the funds into U.S. bank accounts belonging to him, his family, and those working for him (straw buyers). He would also place portions of the proceeds directly into the purchases of large assets, such as Miami’s luxury properties. The proceeds would then be *layered* with the legitimate profits of his small businesses, or even through multiple concealed purchases made by him or his helpers. Then, to *integrate* the funds back into the economy, Álvaro would sell some of his assets or rent out his properties, which would generate a legitimate rental income that he could also camouflage illicit proceeds into.[4] Each individual phase can be complex in and of itself, and altogether they can create an opaque system in which criminals may hide their profits. This system of criminal transactions makes it equally complex to prosecute cases like Tardón's, which took decades from the start of the illegal activity all the way to prosecution. Tardón began his elaborate criminal enterprise in the 1990s, but was not prosecuted until 2011, when investigators were finally able to track down the origin of his funds. The prosecution then took place between 2011 and 2014, where Tardón was finally convicted of multiple charges. Patterns of money laundering can be camouflaged within other crimes, therefore the prosecution of money laundering is often overlooked when investigating more discernable crime, such as fraud.

Differentiating Fraud

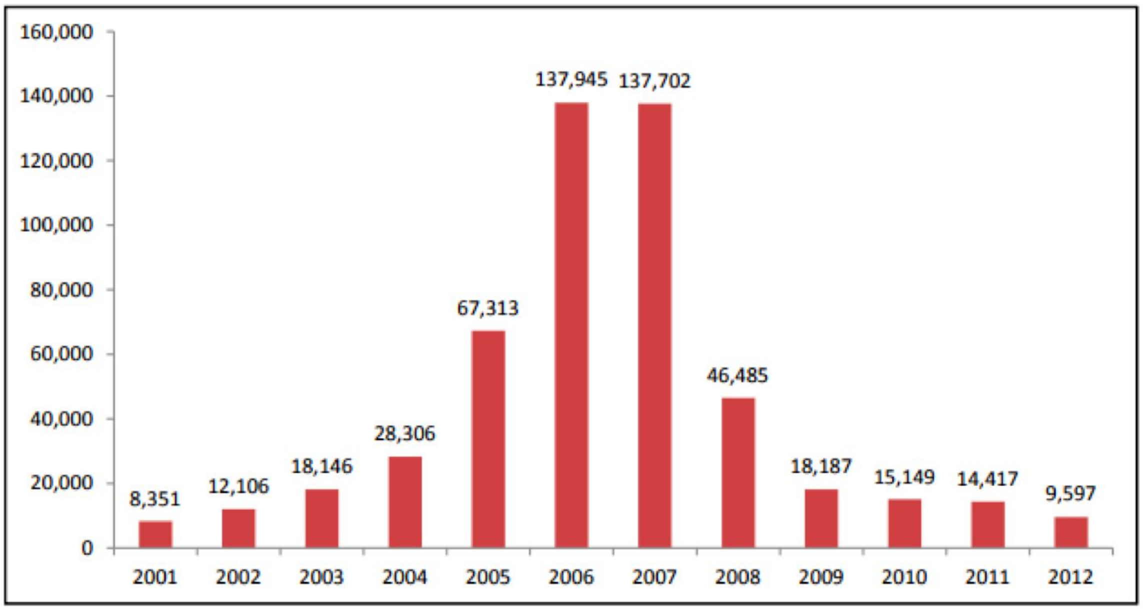
Fraudulent crime is, in fact, the number one generator of laundered money. Of the suspected $300 billion laundered annually, the U.S. Treasury Department deems fraud as the most profit-generating crime.[5] Fraud can be difficult to discern but primarily involves the deception of others for personal gain. It entails a transaction that deludes the victim into believing that they will achieve a high profit at a personal low-risk.

Whether it be reverse mortgage fraud, tax fraud, or Ponzi schemes, the profit generated by these crimes can necessitate the crime of money laundering. Yet, the patterns of money laundering are often camouflaged by the patterns of fraud and other crimes. Take, for example, the mortgage fraud spike that occurred in Florida between 2006 and 2007. These events led to the national financial crisis of 2008; the crisis was, by and large, due to the failure of compliance by financial institutions and real estate professionals when filing Suspicious Activity Reports (SARs). FinCEN's Mortgage Loan Fraud (MLF) Update for Calendar Year 2012 shows in *Figure 1* that the highest SAR

[4] Drug Kingpin Dethroned. (2015, February 02). Federal Bureau of Investigations.
[5] Szubin, Adam J. "Executive Summary." *2015 National Money Laundering Risk Assessment*. US Department of Treasury, 2015. Pg.86.

filings happened between 2006-07, and yet didn't deter the financial crisis of 2008.[6] While the graph below shows a correlation between SARs filed and the major crisis, it also signifies that the filing of a SAR *does not* necessarily mean that the investigations can lead to solutions in due time before crime escalates.

Figure 1: MLF SAR Filings by Year Suspicious Activity Started, 2001-2012



The issue, however, lies in the time lapse between the filing of a SAR and the duration of the suspicious activity. FinCEN reports that in "2012, 57 percent of reported MLF activities commenced more than 5 years prior to filing (2007 or earlier)" (*Mortgage Loan*, 2013). Suspicious activity generated in 2007 was not made obvious until 2012 reporting, making SARs an outdated form of precaution.

To summarize, suspicious activity reports are crucial in detecting criminal movement of funds, but are oftentimes reported at the completion of the crime. SARs are useful in prosecuting criminals regardless of the time of discovery, but falter when it comes to prompt detection that could prohibit a crime from escalating. *Table 1* below shows that over 57% of mortgage loan fraud SARs from 2012 lapsed in over 5 years from the start of the crime to the time they were reported.

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[6] "Mortgage Loan Fraud Update." *Suspicious Activity Report Filings In Calendar Year 2012*. Financial Crimes Enforcement Network; 2013

Table 1: Mortgage Loan Fraud (MLF) SARs:

Time Elapsed from Activity Date to Reporting Date

Time Lapsed	CY 2012	CY 2011
0 - 90 days	10%	8%
90 - 180 days	5%	3%
180 days - 1 year	4%	3%
1 - 2 years	3%	2%
2 - 3 years	1%	4%
3 - 4 years	4%	23%
4 - 5 years	17%	32%
> 5 years	57%	26%

If criminal activity has five years to expand until it has been restrained, it will expand at a tremendous rate with considerable consequences. The mortgage loan fraud cases of 2006 and 2007 led to a financial collapse and market crash for the majority of Florida's real estate market. Real estate is such a vulnerable asset to financial crime, one can only imagine the detrimental consequences that would occur if these patterns are not detected at an early stage.

The purpose of this research is not to examine the financial crisis of 2008, but rather, let it serve as an example of the camouflaging of money laundering as part of a larger crime. How many of the criminals involved in the 2008 crisis were able to generate a profit, and where did the proceeds of their crime go? The answer likely concludes that these funds were processed back into the economy, and that most of the criminals may have been able to make a profit as well.

Money laundering can be initiated by the profits of fraud, and inversely, fraud can be committed using laundered money. Money laundering can also be initiated without the use of fraud and still generate a profit, however. Money laundering takes a more advanced form, concealing profit through the anonymity of legal entities.

Threat Assessment on Economic Sectors

Money laundering and fraudulent crimes can act individually, or altogether, to create detrimental consequences to both domestic and international economies. While the consequences of financial crime are much more immediate to the victim, the long-term effects are just as harmful to the overall society.

Short-term effects of money laundering can be difficult to notice as ML transactions can seem legitimate at first and may come in various forms. Some short-term effects on the real estate market can be a substantial surge in property prices and rent. The long-term consequences include political corruption, continuing inflation of real estate prices, small business bankruptcy, and the infiltration of international crime into national borders. The overall outcome of money laundering can be detrimental to all economic sectors: financial, private, voluntary, and real estate sectors. Overall, ML impairs the pre-existing and developing structures of a nation.

Financial sectors, such as banks and lending institutions, are exposed to corruption if their anti-money laundering techniques are not efficiently implemented. Bank compliance includes following the Customer Due Diligence (CDD) and Know Your Customer (KYC) procedures; CDD and KYC are both used by bank personnel to properly identify the customer who is making the transaction. If bankers fail to properly identify the nature of the transaction or the customer's proper identity (such as correct occupation), then the detection of common characteristics of ML will go unnoticed. An example of bank compliance failure, and eventually bankruptcy, is Wachovia Bank. FinCEN, as well as other governmental AML organizations, determined that between 2004 and 2008 Wachovia violated multiple federal regulations and failed to follow their anti-money laundering procedures. Specifics of the included:

> *"significant gaps and inaccuracies in the Bank's documentation of specific customer information, including the nature of the customers' businesses, verification of owner/operator identities, and anticipated account activity" …*

> *"despite the fact that Wachovia conducted in excess of six million wire transfers...as few as 120 wire alerts were generated by the Bank's transaction monitoring system."* [7]

The jurisdiction in 2010 charged Wachovia for various penalties of not complying with federal AML regulations along with a fine of $160 million. In fact, banks failing to comply with federal AML regulations is more common than just Wachovia's case. According to the U.S. Department of Treasury, the most common vulnerabilities of financial institutions exploited by money launderers include:

- *Use of cash and monetary instruments in amounts under regulatory recordkeeping and reporting thresholds over the $10,000 limit;*
- *Opening bank and brokerage accounts using nominees to disguise the identity of the individuals who control the accounts;*
- *Creating legal entities without accurate information about the identity of the beneficial owner;*
- *Misuse of products and services resulting from deficient compliance with anti-money laundering obligations; and*
- *Merchants and financial institutions wittingly facilitating illicit activity.* [8]

The financial sector is the forefront of exposure to money laundering; if financial institutions allow for clandestine profit to filter back into the economy, then national corruption becomes inevitable.

The private sector, or businesses and organizations not owned by the government, is also directly affected by ML. Legitimate, private 'startup' companies can collapse within a short time frame if they have to compete against businesses with illegitimate profit. The front companies' illegitimately large profits can become impossible to outmatch and will often drive legitimate businesses into bankruptcy or out of the market.

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[7] United States of America v. Wachovia Bank, N.A., 31 U.S.C. § 5318(h)(1) and 5322(a) (S.D. FL, 2010)
[8] Szubin, Pp. 8-9.

The voluntary sector, in large nonprofits and NGOs, have high risk exposure to ML and fraudulent transactions. The consequences can be as severe as NGOs solely serving as intermediaries between launderers at the expense of legitimate donors. 501(c)(4)s and 501(c)(6)s evade federal tax codes while allowing donors to fund anonymously. Hidden identities and free movement of funds, both legitimate and illegitimate, serve as a gateway for launderers to pass around clandestine proceeds. In large, the voluntary sector is susceptible to fraudulent transactions and laundered money whether it be unknowingly or for intentional purposes (i.e. political propaganda). Similarly to the voluntary sector, the real estate sector of an economy is just as much of a vehicle for money launderers.

The real estate sector can feel the effect of money laundering both in the short term and long term. In fact, real estate is a lucrative business for criminals to not only conceal profit, but generate an income from real assets. The most common effect of ML in this sector is the decline in property ownership by local investors. Investors are driven away from their local real estate leading them to not invest at all or to invest in other markets. This creates the substantial long-term distortion in property appraisals and rent value. Money laundering distorts property prices in favor of criminals who can make the purchase; criminals are less likely to negotiate prices if their main motive is to launder as much money per property as possible. In Tardón's case, his condo may have only been appraised for $1M, though he was willing to clean $3M of his illicit proceeds through just the one property. Though, for local investors, this may come as a loss; for criminals like Tardón, this is helpful in that the property may then be sold at an even higher price. The most detrimental cost on the real estate sector would be the delayed discovery of the involvement of assets; often the revealing of such assets is made after the criminal has made profit from the property investments.

Chapter II: Anti-Money Laundering Regulations

Anti-Money Laundering (AML) standards and risk-analyses used by financial institutions and legal professionals have adapted tremendously to eliminate legal loopholes that can be exploited by money launderers. A number of Congressional regulations have been passed since the discovery of financial crime, and states each have their own provisions against ML. With the focus on Florida, the state's provisions have been outlined below along with major federal regulations. The adaptation of AML standards in compliance with these regulations are briefly stated in this chapter, and more thoroughly-defined in *Appendix A*.

Bank Secrecy Act of 1970

The history of Congress identifying financial crimes began in 1970 with the legislation of the Bank Secrecy Act. The BSA of 1970 standardized the record-keeping of financial institutions for transactions made by individuals and businesses. The purpose was to better maintain paper trails that allowed for the detection of criminal patterns. Administered by FinCEN, the provisions required that any currency transaction over $10,000 must be confidentially reported by financial institution employees without disclosing the report to the customer; thus allowing for the detection of large and unusual transactions.[9] The purpose of this Act was to implement standards on specific dollar-amount transactions so that banks became more aware of their customers' financial patterns. However, many individuals became aware of this dollar-amount report and launderers exploited the loophole by structuring transactions that fell below the specified amount. In response, many banks have benchmarked a lower limit than $10,000; some large banks have made it their standard to report $8,000 cash and monetary-item transactions.

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[9] Federal Financial Institutions Examination Council. *Bank Secrecy Act / Anti-Money Laundering Examination Manual.* "Core Examination Overview And Procedures For Assessing The BSA/AML Compliance Program." (2006). Pp.18-27.

Money Laundering Control Act of 1986

The Money Laundering Control Act of 1986 was the first legal Act by Congress that labeled money laundering as a federal crime. Before this provision, no part of the money laundering process was known to be an illegal transaction. The Act defined ML as an activity that must be qualified under both conditions: 1) financial transactions generated by or that created 2) specified unlawful activities. This allowed for the use of proceeds generated by other crimes to be a crime in itself. In fact,

> "*The legislative history indicates, and several cases have held, that each separate financial transaction should be charged separately in an individual count. For example, if an individual earns $100,000 from offense. If he then withdraws $50,000, he commits a second offense. If he then purchases a car with the withdrawn $50,000, he commits a third offense. Each transaction should be charged in a separate count. Charging multiple financial transactions in a single count is duplicitous*."[10]

The statement above specifies "'proceeds' with the conclusion being that proceeds *do not* have to be money."[11] Examples of non-currency money laundering transactions include assets purchased by illegal funds that are then resold, generating a 'clean' profit for the criminal.

The implementation of this Act along with the BSA Act enabled for the requirement of Currency Transaction Reports (CTRs) by financial institutions (see *Appendix A*). The Act also introduced asset forfeiture and other penalties for the crime of money laundering.[12] States could penalize for any, and however many, stage(s) of the ML process, and warrant multiple fines for each offense related to a specified unlawful activity. However, this act was only applicable for criminal activity discovered by financial institutions and did not include real estate professionals. Criminals who

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[10] 2101. Money Laundering Overview. (n.d.). Office of the United States Attorneys. U.S. Department of Justice.
[11] Madinger, John. Money Laundering : A Guide for Criminal Investigators, Third Edition, Chapman and Hall/CRC, 2016.
[12] History of Anti-Money Laundering Laws. (n.d.), FinCEN.

made real estate purchases did so without the interference of banks, which was made possible by passing funds through escrow holding companies and title agencies. The exploitation of this loophole eventually led to the amendment change known as the USA Patriot Act of 2001.

USA Patriot Act of 2001

The USA Patriot Act of 2001 identified new categories of “financial institutions” that must establish an AML program including:

> *"(A) [T]he development of internal policies, procedures, and controls; [These should be appropriate for the level of risk of money laundering identified] (B) the designation of a compliance officer; (C) an ongoing employee training program; and (D) an independent audit function to test programs."*[13]

One of these added categories is “persons involved in real estate closings and settlements,” which FinCEN defined as residential mortgage lenders and originators along with insurance companies;

> “*The following financial institutions are required to file a FinCEN SAR: Banks (31 CFR §1020.320) including Bank and Financial Holding Companies (12 CFR § 225.4); Casinos and Card Clubs (31 CFR § 1021.320); Money Services Businesses (31 CFR § 1022.320); Brokers or Dealers in Securities (31 CFR § 1023.320); Mutual Funds (31 CFR § 1024.320); Insurance Companies (31 CFR § 1025.320); Futures Commission Merchants and Introducing Brokers in Commodities (31 CFR § 1026.320); and Residential Mortgage Lenders and Originators (31 CFR § 1029.320).*”[14]

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[13] Shepherd, K. L. (2004), The USA PATRIOT Act: The Complexities of Imposing Anti-Money Laundering Obligations on the Real Estate Industry. *Real Property, Probate and Trust Journal,* Volume 39 (No. 2) pp.409

[14] Financial Crimes Enforcement Network, *FinCEN Suspicious Activity Report (FinCEN SAR) Electronic Filing Instructions*. Version 1.2. (Release Date: October 2012)

The above categories of financial institutions must file a SAR within 30 days of detecting the criminal activity. In some cases, banks must file this in addition to a CTR, to comply with the BSA currency transaction limit of $10,000.

Florida Contraband Forfeiture Act

The *Florida Statute Title XLVII, Chap 932* allows for the state forfeiture "of any bulk currency that has been used or attempted to be used in commission of a felony or represents the proceeds therefrom."[15]

Florida Money Laundering Act

The *Florida Statute Title XLVI, Chapter 896.101* is the state adoption of the Federal Money Laundering Act of 1986. This statute also includes "a more general prohibition regarding transportation of illicit currency (that doesn't require border crossing)."[16] Thus, making it easier to prosecute for the domestic movement of illicit currency.

The above mentioned statutes and regulations put into place the procedures for identifying and prosecuting ML. However, a common enabler for the misuse of real estate in ML includes loopholes in the regulations of forming shell companies. To better understand the extent to which these companies are used to aid ML transactions, the hypothetical case below outlines some of the common characteristics used in the exploitation by criminals.

Hypothetical Case

A multinational drug dealer has $10 million in illegal profit that he needs to camouflage as legitimate without drawing the government's attention. Like what many established criminals do, he can create a series of shell companies to hide his identity

[15] Szubin, Adam J. "Executive Summary." *2015 National Money Laundering Risk Assessment*. US Department of Treasury; 2015. Pp. 89.
[16] Szubin, Adam J. "Executive Summary." *2015 National Money Laundering Risk Assessment*. US Department of Treasury; 2015. Pp. 89-90.

by separating his illicit profit into many various legitimate transactions. The tycoon can create an LLC in Delaware that allows for full anonymity while opening another shell company in Panama for the purpose of offshore tax benefits. He uses both of these companies to make multiple purchases of assets in Miami and Manhattan.

Companies A (in Delaware) and B (in Panama) together create a veil that hide the true owner- the criminal. When setting up these shell companies, the criminal can allocate a representative agent who will act on behalf of the company. The agent further assists with opening bank accounts and signing on behalf as a Nominee Bank Signatory. The criminal can also purchase services that authenticate a local address, mail services, 24-hour voicemail, and a local telephone listing for the shell companies.[17] So, now that there is an agent acting on behalf of the company, not only is the criminal's identity obscured, but the agent can make a $10 million deposit into Company B's bank account (in Panama). The agent can then move those funds via wire transfer into Company A's account (in Delaware) and use it to purchase two $5 million properties in Miami. Throughout the year, the launderer rents out one of these properties, generating a profit from his illegal proceeds.

Because these purchases were made in cash by the representing agent, it eliminates the beneficiary's identity being exposed through mortgage statements or a bank's customer due diligence. The process behind setting up Companies A and B are legitimate methods of business. The legal services provided above allow for the secure transfer of funds and the separation of personal liability. A legitimate beneficiary can set up shell companies and make transactions anonymously, which may be imperative for recipients such as politicians and celebrities. While these services help preserve anonymity and privacy in legitimate cases, it's also evident that these services can be easily exploited by money launderers.

Shell Companies

[17] Potential Money Laundering Risks Related to Shell Companies. (2006, November 09). FinCEN. Issue FIN-2006-G014.

The aforementioned legal entities that complicate the tracing of foreign funds due to the concealment of beneficiaries are better known as shell companies. Shell companies are quick and inexpensive organizational structures that serve as vehicles for another business' transactions. As FinCEN describes,

> *"The term "shell company," as used herein, refers to non-publicly traded corporations, limited liability companies (LLCs), and trusts that typically have no physical presence (other than a mailing address) and generate little to no independent economic value."*[18]

Though corporations are the most commonly-used business structure, limited liability companies have gained popularity, particularly for real estate investment companies. The popularity is in response to the pass-through taxation benefits of LLCs in contrast to the double taxation faced by corporations. States such as Delaware, Wyoming, and Nevada even uphold the full secrecy of beneficiaries from being identified in public records. Author John Madinger argues the detrimental loopholes and ease of exploitation in shell companies:

> "*Shells can be pyramided- one linked to the next, and the next, and so on- creating a very confusing path for the investigator to follow. If the shells are incorporated in some jurisdiction where the law permits secrecy in business relationships, the identity of the true owners of some of the shells may never be established. This is, of course, precisely the effect the launderer is seeking, and why shells are effective as layering devices.*"[19]

Although celebrities and politicians may use legitimate shell companies to hide personal assets from public exposure, money launderers can also use LLCs to funnel their illicit profit back into the economy. The leaked documents of the *Panama Papers* displayed how convenient it was for world leaders, celebrities, and criminals alike to conceal funds through shell company transactions that were managed by the

[18] Potential Money Laundering Risks Related to Shell Companies. (2006, November 09). FinCEN. Issue FIN-2006-G014.
[19] Madinger, John, 2016. pp. 339

Panamanian law firm Mossack Fonseca. The law firm made transactions on behalf of the beneficiaries, including the purchase of real estate in Miami and New York, totalling $70 million for secret shell companies that had ties to Argentina's former president, Cristina Fernández de Kirchner, and her late husband. Investigations revealed that the couple had embezzled money from the Argentinean government and laundered them to purchase more than 60 luxury condos in Miami and Manhattan through secret shell companies.[20] As expert analyst Ana Maria H. de Alba explains,

> *"we have a natural person wishing and willing to shield their name behind a legal arrangement and a jurisdiction willing to assist him or her. To meet its "secrecy" or "privacy" goal, the jurisdiction must not allow public access to a register of the companies, and it may even allow the issuance of bearer shares"…"thus making these legal arrangements a very attractive vehicle for criminal element to also use them to "shield" their names as the natural persons who exercise ultimate effective control of the corporation and of the accounts and assets which that corporation will ultimately own."*[21]

With LLCs gaining popularity as an efficient and inexpensive form of business, they're also becoming an efficient and inexpensive vehicle for money launderers to camouflage their proceeds while hiding their identity. The business's primary reason of formation is exploited primarily for the purpose, and benefit of, obtaining bank accounts without identifying the criminal.

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[20] Nehamas, Nicholas and Gurney, Kyra. (2017, October 06). *Argentina's Former Leader Stashed 'Dirty Money' in Miami, Official Says Before Election*. Miami Herald.

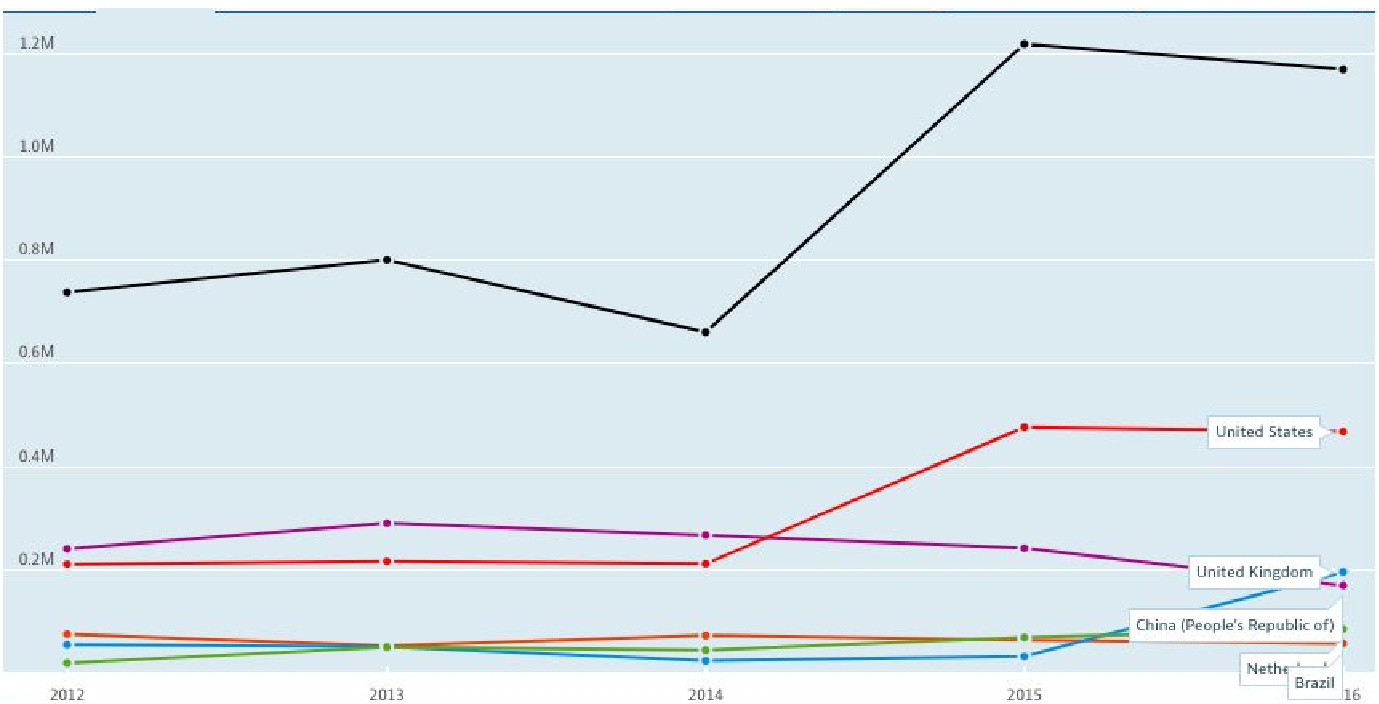
[21] H. de Alba, Ana Maria. *Ultimate Beneficial Ownership – The Implications of Not Knowing.* (2014, September). White Paper. Lexis Nexis: Risk Solutions.

Chapter III: Money Laundering Risks in the Real Estate Sector

Direct Foreign Investment in Real Estate

The U.S.'s financial border security against foreign investors obtaining our assets is lax. The U.S. is the "largest beneficiary of foreign direct investment (FDI)" with China acquiring over ninety U.S. companies in just 2016 alone.[22] As ranked by the Organisation for Economic Co-operation and Development (OECD), the U.S. is the largest individual beneficiary of foreign direct investment, with a total of $468,330 million US dollars in 2016 (*Figure 1* below).

Figure 2: OECD's Top Five Largest Beneficiaries of FDI (2012-2016)[23]



[22] Masters, Jonathan and McBride, James. (2018, March 20). Foreign Investment and U.S. National Security. Council on Foreign Relations.
[23] OECD (2018), FDI flows (indicator). doi: 10.1787/99f6e393-en (Accessed on 10 March 2018)

Table 2: OECD's Top Ten Largest Beneficiaries of FDI (2012-2016)

Location	2012	2013	2014	2015	2016
World	1 544 888	1 600 945	1 493 511	2 063 851	1 860 264
G20	882 419	1 013 517	864 833	1 122 056	1 201 862
OECD - Total	737 968	800 875	660 789	1 218 893	1 169 744
European Union	336 348	347 418	253 018	524 069	511 971
United States	211 467	217 274	212 324	476 684	468 330
United Kingdom	55 626	51 673	24 704	32 723	196 034
China (People's Republic of)	241 214	290 928	268 097	242 489	170 557
Netherlands	20 121	51 094	44 977	69 577	85 747
Brazil	76 098	53 564	73 366	64 291	57 935
Switzerland	28 969	646	9 352	81 891	48 328
Australia	59 540	56 273	40 326	19 480	48 186
India	23 996	28 153	34 576	44 008	44 458
Luxembourg	4 423	19 612	22 746	10 439	38 718

Table 2 above shows the rank in FDI per $1 million USD dollars between 2012 to 2016. Though the European Union shows a larger amount of FDI, it is a collective average between the Union countries and not per individual country. Showing in the graph above, the top competitors following the U.S. are the United Kingdom, China, the Netherlands, and Brazil as compared to the OECD average (black line in *Figure 2*). The OECD is made up of 35 individual nations that include competitors like Switzerland, Canada, Japan, Turkey, South Africa, Saudi Arabia, the Norwegian countries, and Argentina.[24] Part of this FDI assessment includes foreign investors acquiring investment equity such as real estate. While a high FDI shows that the U.S. is viewed as a more

[24] OECD (2018), FDI flows (indicator). doi: 10.1787/99f6e393-en (Accessed on 10 March 2018)

stable economy than others, it can also become very complicated when tracing the sources of foreign funds that have infiltrated the U.S. economy. It can become even more challenging, and sometimes impossible, if the beneficiaries of such transactions have concealed their identities through the means of shell companies.

With leaks such as the *Panama Papers*, discreet, international transactions are becoming anonymous with the disguise of financial crime. ML patterns commonly camouflaged with the patterns of other, more detectable, crimes such as fraud. ML transactions have, however, become more distinct due to updated regulations and public exposés, such as the *Panama Papers*. The *Panama Papers* leaked numerous cases of the movement of dirty money, emphasizing its growing involvement in real estate transactions made through shell companies. It is important to note that purchasing real estate under a shell company is not illegal in the U.S.; however, the 11.5 million leaked documents, that led to the prosecutions of several politically-exposed persons, showed the numerous international transactions that were backed by illegal sources of funding. Furthermore, much of the illegal funds were funneled profusely into U.S. real estate.

Defining the Florida Luxury Market

Real estate can be divided into three categories: residential, industrial, and commercial. With the focus of this research being on residential, there are different forms to recognize- condominiums, apartments, single-family homes, multi-family homes, manufactured homes, townhomes, etc. The differences in structure type and the regulations appropriated to each also create different standards in appraising the value, making it difficult to identify what can or cannot be determined as ‘luxurious’. A condo appraised at $175,000 may require much higher standards to be appraised that price than a similarly-valued, single-family home. The characteristics and demographic area of each residential home help shape the value of the home; a home with a pool may be listed as ‘luxurious’ if neighboring homes don’t also have a pool. Though this term is often overused and ‘loosely-defined’ in real estate listings, the luxury of a home is actually identified by a higher-than-average price within its demographic area. For metropolitan areas such as Orlando and Miami-Dade, the luxury market begins in the $1 million range.[25]

Florida: Who Are The Investors?

With coastal views, fewer state tax laws, and tax favorability towards homeowners, Florida is a lucrative state to invest in, for both domestic and international investors. Local investors are being outcompeted by international investors, however, data shows an increase of purchases made by legal entities rather than individuals. According to a 2016 Reuters article, Florida was one of four states with the highest concentration of the following;

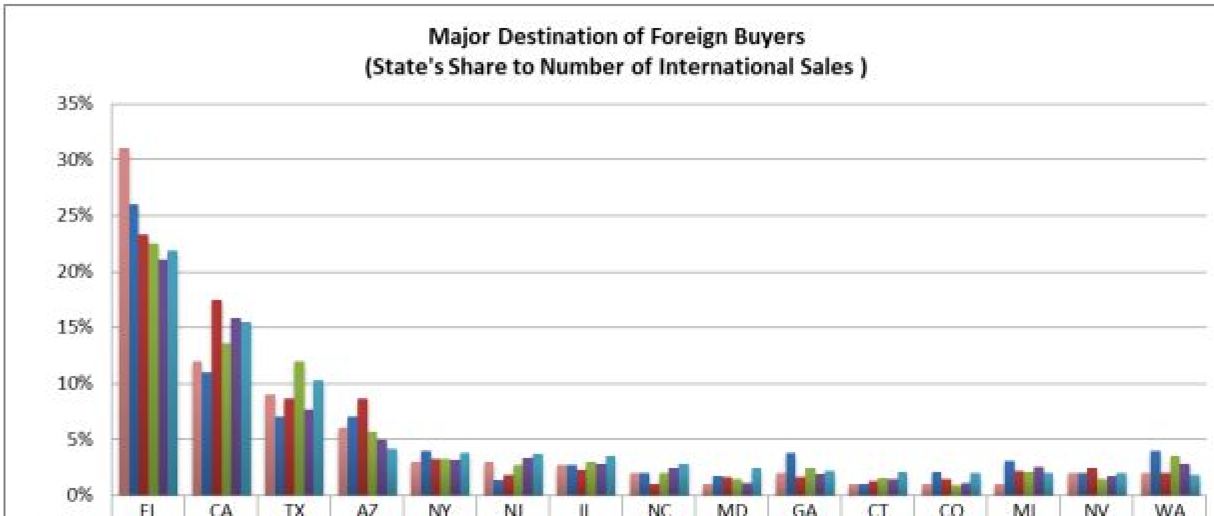
> *“17 percent of the 82,595 all-cash purchases of single family homes and condos went to buyers with an “LLC” in the name” … “Meanwhile, there were about $104 billion in transactions involving foreign investors in the*

[25] *“What Price Defines A ‘Luxury’ Home In Your Market?”* (2015, July 02). LuxuryDefined. Christie’s International Real Estate.

U.S. real estate market between April 2014 and March 2015. More than half the buyers in those deals were from China, Canada, India, Mexico, and the United Kingdom, and the majority of transactions involving overseas buyers were in cash.” [26]

According to the National Association of Realtors, in 2016, “Florida, California, Texas, Arizona, and New York… accounted for 51 percent of international buyers who purchased residential property.”[27] Florida, alone, accounted for 22% of the total in 2016; and has been ranked as the leading major destination for foreign buyers since 2011, as depicted in the graph below.

Figure 3: Major Destination of Foreign Buyers



	FL	CA	TX	AZ	NY	NJ	IL	NC	MD	GA	CT	CO	MI	NV	WA
2011	31%	12%	9%	6%	3%	3%	3%	2%	1%	2%	1%	1%	1%	2%	2%
2012	26%	11%	7%	7%	4%	1%	3%	2%	2%	4%	1%	2%	3%	2%	4%
2013	23%	17%	9%	9%	3%	2%	2%	1%	2%	2%	1%	1%	2%	2%	2%
2014	23%	14%	12%	6%	3%	3%	3%	2%	1%	2%	2%	1%	2%	1%	4%
2015	21%	16%	8%	5%	3%	3%	3%	2%	1%	2%	1%	1%	2%	2%	3%
2016	22%	15%	10%	4%	4%	4%	4%	3%	2%	2%	2%	2%	2%	2%	2%

[26] Lambert, L. (2016, January 13). *U.S. targets money laundering in all-cash home sales in Miami, Manhattan.*
[27] National Association of Realtors. 2016 Profile of International Activity in U.S. Residential Real Estate. (2016, June 06). Research Division. PDF.

Of those international buyers, China ranked as the largest investor, with 34% of total real estate purchases made by Chinese investors. According to the Florida Association of Realtors, Chinese buyers dominated property investments in the South Florida market in 2016.[28] A year prior to that, in 2015, Orlando's new construction had become the most attractive market for Chinese investors, outranking Miami's market, as shown in *Figure 3* below.

Figure 4: Top Florida Destinations for Chinese Property Buyers

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Another crucial data to note is the average price range of residential property purchased by major foreign buyers. From the top five countries of international buyers:

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[28] Ottley, Jesse. *Real Estate Buyers From China, Elsewhere In Asia Increasingly Eye Miami*. (2017, May 14). Miami Herald.

[29] Gerrity, Michael. Orlando is Top Florida City for Chinese Property Investor Activity. (2015, April 28). Residential Real Estate News, World Property Journal.

Canada, China, India, Mexico, and the U.K., China exceeded the average price range by more than $400,000. In 2016, Chinese buyers averaged on a price range of $936,615, while the closest to that was significantly less, the U.K.'s average of $598,182.

Figure 5: Average Price Range of Top Five International Buyers [30]

	2010	2011	2012	2013	2014	2015	2016
Canada	$247,283	$269,071	$321,745	$269,065	$314,718	$380,292	$332,072
China	$412,162	$370,902	$483,984	$555,903	$590,826	$831,761	$936,615
India	$333,333	$346,354	$418,966	$372,656	$459,028	$460,156	$420,352
Mexico	$214,744	$283,000	$396,154	$225,500	$224,123	$274,849	$266,188
United Kingdom	$447,143	$438,889	$355,921	$440,833	$499,242	$455,592	$598,182
All Countries	$311,400	$315,000	$400,000	$354,193	$396,200	$499,600	$477,462

There are specific characteristics that can also identify a correlation between international investors and the use of shell companies to purchase real estate. Whether it be an all-cash sale for an expensive estate or the ease of beneficiaries, each tell-tale sign has significance in telling apart a criminal transaction from a legitimate one. The relative stability of the U.S. economy, along with favorable assets, offers more profit and less risk for international investors and criminals alike. One common characteristic of shell companies purchasing properties is the exclusive use of cash rather than mortgage financing. For example, with above average, all-cash sales recorded, most of Miami's luxurious real estate is owned by foreign LLCs. In contrast, about two-thirds of the local Miami population rent their home rather than owning it.[31] The ability to identify the sources of funds for each of those cash-purchase transactions would aid in identifying any potentially-laundered funds. Anti-Money Laundering (AML) reports such

[30] National Association of Realtors. 2016 Profile of International Activity in U.S. Residential Real Estate. (2016, June 06). Research Division. PDF.
[31] Valdivia, Giordi, 2017.

as SARs and CTRs are beneficial, but can be untimely and inefficient in preventing the crime. Thus, it is important that any professional involved in an all-cash real estate purchase is cautious and takes proactive measures to prevent the perpetration of crime.

Besides all-cash transactions, another characteristic that could signify potential crime are the beneficiaries of shell companies; primarily, the usage of these entities by unnamed international beneficiaries who don't have an identity or anything tied to their name in the United States. As mentioned previously, international beneficiaries heavily used shell companies to purchase properties in Miami; more recently, however, these investors have shifted their focus to the coasts of Tampa, Saint Petersburg, and Sarasota areas. According to a *Tampa Bay Times* article from 2015, Chinese investors "paid cash for at least 37 properties in Tampa, Brandon, Saint Petersburg and other parts of the bay area… including the $2 million-plus purchase in October of a gulf-front motel on Treasure Island."[32] The only identified investor and owner of many of these local-area purchases was Bo Wu; in just the first four months of 2015, at least $4.7 million cash purchases for properties in Pinellas County had been made under his name. From Shore Acres to downtown Saint Petersburg, many of his properties were owned through shell companies, such as his entity, *Rich St Pete LLC*. Wu also made purchases on behalf of other Chinese investors who remained as undisclosed beneficiaries of these shell companies.

Based on the given information, as well as the common characteristics of ML identified, it can be assumed that the funding of Wu's transactions may have come from

[32]Martin, Susan Taylor.*Chinese Investors Target Tampa Bay Real Estate*. (2015, December 20). Tampa Bay Times.

illegitimate sources. The anonymity of the beneficiaries could likely be for the protection of their privacy, however, it could also serve as a gateway for criminal profit to circulate effortlessly between international borders. It is not to conclude that any of the undisclosed beneficiaries in this case were money launderers, but rather, to show the opportunities that can be exploited by criminals. Based on previously identified money laundering schemes, the anonymity of Bo Wu's beneficiaries along with their primary use of cash are commonly-identified patterns of ML. The data implies that correlation between home ownership and international investors does exist, and it is this pattern that can be difficult to differentiate as legitimate or the means of hiding corruption.

It is this high correlation between money laundering and real estate that has directed the U.S. Department of Treasury and AML organizations to adjust provisions so that they cover more complex real estate transactions. In residential markets with high number of property sales, FinCEN has implemented Geographic Target Orders to cover transactions that also hold title companies liable in addition to banks. The Financial Action Task Force (FATF) also monitors financial institutions that are obligated to follow AML standards.

The extensive outlets criminals have, to launder money, are not limited to just making all-cash purchases and/or forming shell companies. Because the scope of schemes to launder money are only as limited as the criminal's imagination, it is critical to detect and dissolve ML at an early stage. The necessary tools and regulations, such as CTRs and SARs for example, should be dynamically modernized to match the speed of the crime.

Financial Institutions

Banks and financial institutions are responsible for the inherent role of safeguarding the assets of their account holders from financial crime. In the case of money laundering, banks may unknowingly assist criminals in moving their profit, leading the bank to fail compliance and result in significant penalties. To minimize these consequences, banks must comply with regulatory guidelines and practice anti-money laundering procedures; some of these procedures include Know Your Customer (KYC), Customer Due Diligence, Politically Exposed Persons and Sanctioned Countries, Suspicious Activity Report (SAR), Unusual Transaction Report (UTR), and Currency Transaction Report (CTR) (see *Appendix A*). Financial institutions must practice AML techniques through proper customer identification, up-to-date reports, and customer due diligence during transactions. The USA Patriot Act "requires U.S. financial institutions to perform due diligence and, where appropriate, enhanced due diligence, with regard to correspondent accounts established or maintained for foreign financial institutions"[33]. If not in compliance, banks are fined heavily, and in some cases may have to file bankruptcy; as was the case with the Gibraltar Private Bank and Trust Company of Coral Gables, Florida. In 2016, the bank in Coral Gables was in violation of AML procedures and delays in proper SAR filings.

> *"Gibraltar's substantial AML program deficiencies led to its failure to monitor and detect suspicious activity despite red flags. These deficiencies ultimately caused*

[33] Szubin, 2015.

Gibraltar to fail to timely file at least 120 suspicious activity reports (SARs) involving nearly $558 million in transactions occurring during 2009 to 2013. These deficiencies also unreasonably delayed Gibraltar's SAR reporting regarding accounts related to a $1.2 billion Ponzi scheme led by Florida attorney Scott Rothstein. Timely filed SARs play an important role in law enforcement's detection of criminal activity."

Though the Ponzi criminal, Scott Rothstein, was convicted, the bank was also forced to pay a civil penalty of $4 million to the U.S. Department of Treasury that eventually drove the institution out of business.[34] Banks follow AML standards not only to identify criminals, but to also protect themselves from unwittingly participating in the crime. Some banks, however, have adapted enhanced procedures so as to mitigate risk from suspicious activity. For example, in 2014, JPMorgan Chase Bank banned their customers from making cash deposits into accounts that they were not authorized signers of. The idea behind the rule was to diminish the structuring of laundered money, as criminals typically avoid from depositing the threshold amount that requires the filing of a CTR. According to a *San Francisco Chronicle* article, Chase Bank enacted this change in policy after being fined $1.7 billion for failing to detect suspicious activity in accounts affected by the Bernie Madoff ponzi scheme.[35] Banks similar to JPMorgan Chase are taking extreme, preventative measures to keep from inadvertently assisting

[34] United States of America v. Gibraltar Private Bank and Trust Company, 12 C.F.R. §§ 163.177 and 163.180, No. AA-EC-2015-104, (Comptroller of the Currency, 2014).
[35]Pender, Kathleen. (2015, September 02). *Banks Change Deposit Policies To Combat Money-Laundering*. San Francisco Chronicles Newspaper.

criminals. However, banks could unintentionally allow crime to happen if the customer present during a transaction is not the criminal, but rather, the representative. The practice of customer due diligence is enacted solely upon the customer who is present at the time of the transaction. However, if the customer present is a representative of a legal entity, then the criminal activity will go undetected and the bank will unwillingly fail compliance. It may be likely that the customer present is simply responsible for acting on behalf of a legal entity and its beneficiaries, which allows for unlawful transactions to go undetected.

Similarly to bank regulations, title insurance companies also face a high risk of dealing with clients who are not the true beneficiaries of the legal entities for which they represent. To argue, bank employees miss opportunities in detecting criminal activity if the criminals themselves avoid presence during these interactions. It would be much more difficult to notice suspicious activity if a representing agent is depositing a large sum into someone else’s account (i.e the criminal’s shell company) than it would be if the same transaction was made by the criminal into his own account. Thus, AML compliance should include the recognition of whether a representative of a legal entity is present or the beneficiaries themselves, and different AML standards should follow. Amendments in AML standards and regulations must also take into consideration the influence of regulating not just financial institutions, but also real estate professionals who may unknowingly provide service to criminals.

The Title Insurance Company

On January 2016, FinCEN recognized that many lawyers and nominee agents were acting on behalf of beneficiaries and making transactions for the shell companies. In response, FinCEN announced an 180-day period enforcement of the Geographic Target Orders (GTOs). FinCEN ordered title insurance companies to file a Form 8300 “when a ‘Legal Entity’ purchases real estate without external financing and in part by using currency or any monetary instruments.” The ‘Legal Entity’ is defined as any business formed under a TIN (tax identification number) or EIN (employer identification number). The beneficiaries to be identified by the title companies must be anyone who owns, directly or indirectly, at least 25% of the ‘Legal Entity’. Originally focusing only in Miami and New York, the GTOs were set for shell company purchases made for over $1 million- the luxury market of real estate. Since then, the GTOs have been adjusted several times to include the specific purchase prices in the following areas:

1. *For a total purchase price of $500,000 or more in the Texas county of Bexar;*
2. *For a total purchase price of $1,000,000 or more in the Florida county of Miami-Dade, Broward, or Palm Beach;*
3. *For a total purchase price of $1,500,000 or more in the Borough of Brooklyn, Queens, Bronx, or Staten Island in New York City, New York;*
4. *For a total purchase price of $2,000,000 or more in the California county of San Diego, Los Angeles, San Francisco, San Mateo, or Santa Clara;*
5. *For a total purchase price of $3,000,000 or more in the Borough of Manhattan in New York City, New York; or*

6. *For a total purchase price of $3,000,000 or more in the City and County of Honolulu in Hawaii"*[36]

On February 2017, FinCEN expanded the GTOs to include wire transfers under the same price thresholds in the above-mentioned areas.[37] The change is in addition to the transactions made in cash and monetary instruments, such as cashier checks. Because wire transfers are commonly used to transfer large sums of money, including them in the scope of the GTO investigations has successfully allowed for title companies to better detect ML schemes. The Orders have not yet been made permanent, with expiry of 180-day periods. The latest Geographic Target Order will expire on March 20th, 2018. It would be advantageous that the GTOs gain permanence as part of regulatory compliance for real estate professionals.

The Real Estate Professional

Real estate agents must practice best standards for AML compliance by being cautious of their clients' transactions. Agents should be aware of fraud risk by determining whether there is actual money involved in the transaction. They should monitor money laundering risk, on the other hand, by determining whether the sources of the funds are legitimate. Agents can follow AML risk procedures that comply with BSA regulations by following client verification and KYC procedures. Agents should be made aware of the following common red flags;

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[36] *Geographic Targeting Order*. FinCEN. (2017, August 22). United States Department of the Treasury. PDF., p.2

[37] Fried Frank Harris Shriver & Jacobson LLP. FinCEN Renews and Expands Geographic Targeting Orders for Residential Real Estate Deals, Includes Wire Transfers. (2017, August 24). Lexology.

- large amounts of cash being used towards a purchase,
- the source of funding being suspicious or unusual,
- the property purchase price doesn't fall within the buyer's means or income level,
- the purchase is being made without interest in seeing the property first, or
- the sale or resale of the property immediately follows the purchase

The risks associated with these red flags include geographic, customer, and transaction risk. Identifying geographic risk is essential for an agent when doing business in areas with high exposure to financial crime. Real estate markets in Geographic Targeting Zones (GTOs) are more exposed to criminal transactions and agents practicing in these areas must be alert of the GTOs in place- this means that those 'hidden gem' homes could, in fact, have much more than just their lucrative location.

Customer risk is also essential in identifying whether the customer is an individual or corporation. To mitigate these risks, agents should apply procedures such as Customer Due Diligence (CDD) or Know-Your-Customer (KYC), be familiar with Form 8300 and reports for suspicious activity. Similar to bank employees, agents should deploy CDD/KYC procedures by asking questions such as:

- *Why is my customer making this sale/purchase?*
- *Does the customer seem to be persistent in closing the deal?*
- *Is the customer paying in cash? If so, where do they say the funds came from?*

· *Is the customer a corporation or business entity? If so, who is the true owner of the business?*

The process of eliminating transaction risk must include the reporting of suspicious activity and unusual transactions. FinCEN encourages voluntary action to, but does not mandate the filing of SARs by "persons involved in real estate closings and settlements—which may include real estate brokers, escrow agents, title insurers, and other real estate professionals."[38] Despite FinCEN's intentions, the most effective way to minimize risk associated with ML would be to make mandatory SAR reports by real estate professionals. This suggestion is due to the fact that in most real estate transactions, real estate professionals are primarily required.

The Cash Buyer

The term "cash is king" is a well-practiced verse for real estate professionals. Cash-only sales take less time, less paperwork, and often have the upper hand in negotiating purchase prices. Buying a property in cash can often entail only one transaction- the movement of funds from buyer to seller. This is commonly done through a wire transfer, especially in the case of a high-dollar luxury property. Cash-only buys rarely leave much paper trail, simplifying the process and enabling criminals to leave minimal trace behind. The cash-only process makes it even that much more difficult in identifying an individual if the purchase is made under a legal entity name. This lax path is vulnerable to money launderers looking for a safe haven to park their cash, and is

[38]FinCEN Advisory: Advisory to Financial Institutions and Real Estate Firms and Professionals. (2017, August 22). FinCEN, No. FIN-2017-A003

increasingly predominant in property purchases in the Florida market. Data shows that in 2015 alone, "eight of the top 10 markets for cash buyers [were] in Florida."[39] Miami was the top major market for cash buyers, with more than half of property purchases bought in cash in 2015. Sarasota came in second followed by Fort Myers, Daytona Beach, and Tampa respectively. Lakeland ranked seventh while Melbourne came in ninth place, and Orlando rounded out the Top 10 list. Out of the entire nation, the coasts of Florida along with Orlando were the most appealing to investors, specifically cash buyers.

More recently, the data below was collected for home sales in the Miami-Dade County for the fourth quarter of 2016:

> *"According to the Miami Association of Realtors (MAR), the volume of* ***home sales*** *continued to slow, with the number of single-family home sales in 2016: Q4 down 1.3% from the fourth quarter of the previous year, with 3,193 sales. The number of condo or townhome sales was down over 17.5% from a year earlier to 3,129.* ***Cash sales*** *in the single-family market were down nearly 23% from a year earlier as the cash-share of all sales dropped to 29%. In the condo/townhouse market, the number of cash sales fell 27.5% year over year, but still accounted for more than half, 57.4%, of all sales in the fourth quarter."*[40]

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[39] Heffter, Emily. Feds Want To Know Who's Behind Purchases in #1 Cash Real Estate Market Miami. (2016, January 13). Zillow Porchlight.

[40] MIAMI-DADE COUNTY RESIDENTIAL & COMMERCIAL REAL ESTATE PROFILE 2016:Q4 Profile. (June 2017). Department of Regulatory and Economic Resources Planning Research and Economic Analysis Section. Miami-Dade County. PDF.

The data shows a significant correlation to the prior research identifying the increasing number of cash buyers who were not individuals. Purchases were made under trusts (family deed names, real estate investment trusts, etc.) and limited liability companies. Real estate investment trusts can be a collection of investors from anywhere in the world, and LLCs can take the form of a shell company. The legitimacy of transactions made by such entities becomes questionable as the increase of all-cash purchases also show correlation to high-risk ML zones. In other words, the more cash-only transactions made by shell companies, the more difficult it is to decipher the legitimacy of each transaction; especially so in markets where ML is rampant. The opacity of unidentifiable beneficiaries in legal entities increases the likelihood that criminal proceeds may be infiltrating these purchases.

Chapter IV: Money Laundering Patterns in Case Analyses

Fraud: The Hernandez Case

Fraudulent schemes such as falsifying loans, falsifying documents, and phantom sales all led to the Florida housing market crash in the early 2000s. Conspiracies to deceive financial institutions and honest home buyers were rampant, and legislative loopholes made it difficult to maintain control of such fraudulent schemes.

On July 2015, the prosecution of more than twenty individuals involved in falsifying mortgage loans that totaled a $64 million loss occurred in Miami. The majority of the crime was committed by Hector Hernandez through his mortgage company, with the help of underwriters and loan processors who were willing to falsify applications for under-qualified borrowers. The borrowers' identities were not compromised and they were fully aware of the application taking place. They did not, however, understand that they were unqualified for the loans that Hernandez was approving them for. Hernandez and his company would also pay the closing costs on behalf of the borrowers through wire transfers, which ranged from hundreds to thousands of dollars.[41]

The Hernandez case is an example of multiple mortgage fraud schemes, but specifically a fictitious loan scheme involving fraudulent qualification documents. Red

[41] The United States Department of Justice. Office of Public Affairs. *Owner of Florida Mortgage Company Sentenced to Over 11 Years in Prison for Orchestrating $64 Million Fraud Scheme*. *Justice News*. Office of Public Affairs, 8 Nov. 2016.

flags of this scheme included signatures not matching throughout the loan process, W-2 pay stubs and tax statements not matching occupation and/or credit reports. Besides falsifying his borrowers' information, Hernandez also inflated appraisal prices on sales' contracts so to obtain a larger margin of fraudulent proceeds. Consequently, these red flags are also triggers of a possible ML scheme. Underlying evidence of ML can be found in the source of funds that Hernandez used for the down deposits. The prosecution of Hector Hernandez revealed that there was a total of $8 million in proceeds from his criminal activity, but no mention of a prosecution of ML or how the proceeds were laundered back into his criminal activity. Laundered money, in this case, could also include any profit that was personally obtained by the employees during the length of their scheme.

For a fraud analyst, this case would be resolved once they unveiled what the fraudulent activity was, how it was executed, and what financial risk was involved. For an AML analyst, questions such as, "where did the funds for the closing costs come from?" and "where did the illicit proceeds from this scheme go?", would arise. Hernandez was convicted of wire fraud and all 24 defendants involved were also charged for mortgage fraud. But there were no charges in this case made for money laundering, even though there was a strong indication of the crime: Hernandez made an $8 million profit from his crime which he then used to make wire transfers towards more closing costs.

The fault in, and avoidance of, identifying money laundering involved in more complex crimes, such as this specific mortgage fraud scheme, is detrimental to the development of AML standards. The purpose of prosecuting Hernandez and his employees was to enforce legal action against the overlying crime, in this case fraud. Because Hernandez could be declared guilty from fraud charges, perhaps there was no legal obligation to further identify underlying crimes such as money laundering.

Fraud and Money Laundering: The Aleman Case

In another case, the criminal is prosecuted for both fraud and money laundering. According to a 2003 *Washington Post* article, former Nicaraguan president Arnoldo Aleman was charged with money laundering, embezzlement, and fraud, and faced house arrest for 20 years. During his presidency, Aleman had acquired a $1.8 million private helicopter, a $3.5 million condo in Miami, multiple investments in Florida, and unnecessarily-expensive vacations. He made these transactions discreetly; Aleman had purchased his U.S. assets through "fraudulent shell companies and investment accounts to conceal his illicit proceeds" from Nicaragua.[42] By 2017, the Politically Exposed Persons (PEPS) Task Force discovered a total of $5 million in assets associated with Aleman's embezzlement of funds from Nicaragua.

The most apparent ML pattern in this case is the use of fraudulent shell companies with Aleman serving as the unidentifiable beneficiary. The crime of money laundering is evident in that illicit funds from Nicaragua were transferred illegitimately for the purchase of U.S. assets for personal profit. The crime of fraud is evident in Aleman's deception of the Nicaraguan people to embezzle funds for personal gain. Aleman's

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[42] *Nicaragua high court overturns corruption conviction of ex-president.* (2005, March). U.S. Department of State, Bureau of International Narcotics and Law Enforcement Affairs, International Narcotics Control Strategy Report.

crime displays many of the same red flags as the previous mortgage fraud case, however, the prosecution of ML takes place in this case. It could be that Aleman's political status made it easier, and more noteworthy, to expose the money laundering scheme.

To further explain, the intricacy of money laundering makes it a lengthier investigation, and even at times impossible, for a prosecutor to trace its origins. The prosecution of politically-exposed persons could be more of an incentive to investigate the origin of the crime, or at least spend more time on the investigation, which often leads to the discovery of money laundering. Unless the source of the laundered money is easily evident, or involves a high-profile individual, does the investigation of ML take place. Otherwise, the complexity of ML also makes the prosecution of the crime equally convoluted.

Detecting Money Laundering

Alvaro Tardón built his investments on the foundation of 'dirty' proceeds. Both, in the case of Tardón and the Argentinian President, Cristina Fernández de Kirchner, profit from crime fueled their intentions to launder money. In contrast, Hector Hernandez and his company committed fraudulent crime with the intent of acquiring criminal profit. Like these noteworthy crooks, most criminals aren't looking to just clean their illegitimate funds, but to make a profit from them. Whether money fuels crime or is a product of crime, money laundering then, should be deemed as both an enabler for and product of other crimes.

The implication is that fraudulent real estate transactions involving the movement of money, or generating a profit, are also crimes of money laundering. So is money laundering in real estate the obtaining of illegal funds and using them to purchase a property? Can it also include the profit of charging tenants for a move-in deposit, only to then uncover that the property was a fraudulent listing? Because ML involves the movement of illicit funds to appear legitimate, then both instances should be indictments of money laundering. However, the first transaction is a distinguished act of ML, and most likely prosecuted as such; whereas, the latter transaction primarily shows signs of fraud with the act of money laundering an adjunct, and would, more commonly, be prosecuted for fraud only.

Real estate is deemed to be the most vulnerable asset to exploit, as much of the process of buying or selling a home can easily conceal both licit and illicit funds. Thus, it is usual to find that the most lucrative and luxurious of real estate markets also happen to be the most saturated with criminal activity. Due to the high value per dollar in Florida's real estate, Florida homes are sought after by both local and international investors. However, with historical crises in the Florida market, such as the financial collapse of 2008, it is safe to assume that suspicious activity is not a new trend in this market. To eradicate this crime from Florida's economy, current lenient regulations for the formation of shell companies, standards concerning real estate professionals, and the ease of all-cash sales, must be re-evaluated to ensure transparency and make

To eradicate this crime from florida's economy, the current regulations regarding the formation of shell companies, standards concerning real estate professionals, and the ease of all-cash real estate transactions must be re-evaluated to ensure transparency in these matters, deter criminality, and facilitate swift apprehension of those conducting illicit affairs.

Appendix A
Anti-Money Laundering Regulations

Criminal Penalties for Money Laundering, Terrorist Financing, and Violations of the BSA

Penalties for money laundering and terrorist financing can be severe. A person convicted of money laundering can face up to 20 years in prison and a fine of up to $500,000.11 Any property involved *in a transaction or traceable to the proceeds of the criminal activity, including property such as loan collateral, personal property, and, under certain conditions, entire bank accounts (even if some of the money in the account is legitimate), may be subject to forfeiture. Pursuant to various statutes, banks and individuals may incur criminal and civil liability for violating AML and terrorist financing laws. For instance, pursuant to 18 USC 1956 and 1957, the Department of Justice may bring criminal actions for money laundering that may include criminal fines, imprisonment, and forfeiture actions.12 In addition, banks risk losing their charters, and bank employees risk being removed and barred from banking. Moreover, there are criminal penalties for willful violations of the BSA and its implementing regulations under 31 USC 5322 and for structuring transactions to evade BSA reporting requirements under 31 USC 5324(d). Penalties such as a criminal fine of up to $250,000 or five years in prison, or both.*

A person who commits such a violation while violating another U.S. law, or engaging in a pattern of criminal activity, is subject to a fine of up to $500,000 or ten years in prison, or both.

A bank that violates certain BSA provisions, including 31 USC 5318(i) or (j), or special measures imposed under 31 USC 5318A, faces criminal money penalties up to the greater of $1 million or twice the value of the transaction.

Civil Penalties for Violations of the BSA Pursuant to 12 USC 1818(i) and 31 USC 5321, the federal banking agencies and FinCEN, respectively, can bring civil money penalty actions for violations of the BSA. Moreover, in addition to criminal and civil money penalty actions taken against them, individuals may be removed from banking pursuant to 12 USC 1818(e)(2) for a violation of the AML laws under Title 31 of the U.S. Code, as long as the violation was not inadvertent or unintentional. All of these actions are publicly available.[43]

Money Laundering Control Act of 1986

Penalties.—

(1) In general.— Whoever conducts or attempts to conduct a transaction described in subsection (a)(1) or (a)(3), or section 1957, or a transportation, transmission, or transfer described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of—

(A) the value of the property, funds, or monetary instruments involved in the transaction; or (B) $10,000.

(2) Jurisdiction over foreign persons.— For purposes of adjudicating an action filed or enforcing a penalty ordered under this section, the district courts shall have jurisdiction over any foreign person, including any financial institution authorized under the laws of a foreign country, against whom the action is brought, if service of process upon the foreign person is made under the Federal Rules of Civil Procedure or the laws of the country in which the foreign person is found, and—

(A) the foreign person commits an offense under subsection (a) involving a financial transaction that occurs in whole or in part in the United States;

[43] Federal Financial, (2006). Pp.13-14

(B) the foreign person converts, to his or her own use, property in which the United States has an ownership interest by virtue of the entry of an order of forfeiture by a court of the United States; or

(C) the foreign person is a financial institution that maintains a bank account at a financial institution in the United States.[44]

Customer Due Diligence

BSA/AML policies, procedures, and processes should include CDD guidelines that:

• Are commensurate with the bank's BSA/AML risk profile, paying particular attention to high-risk customers.

• Contain a clear statement of management's overall expectations and establish specific staff responsibilities, including who is responsible for reviewing or approving changes to a customer's risk rating or profile, as applicable.

• Ensure that the bank possesses sufficient customer information to implement an effective suspicious activity monitoring system.

Customer Due Diligence — Overview

• Provide guidance for documenting analysis associated with the due diligence process, including guidance for resolving issues when insufficient or inaccurate information is obtained.

• Ensure the bank maintains current customer information.[45]

Currency Transaction Reports

Multiple currency transactions totaling more than $10,000 during any one business day are treated as a single transaction if the bank has knowledge that they are by or on behalf of the same person. Transactions throughout the bank should be aggregated when determining multiple transactions. Types of currency transactions subject to reporting requirements individually or by aggregation include, but are not limited to, denomination exchanges, individual retirement accounts (IRAs), loan payments, automated teller machine (ATM) transactions, purchases of certificates of deposit, deposits and withdrawals, funds transfers paid for in currency, and monetary instrument purchases. Banks are strongly encouraged to develop systems necessary to aggregate currency transactions throughout the bank. Management should ensure that an adequate system is implemented that will appropriately report currency transactions subject to the BSA requirement.[46]

Suspicious Activity Report

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[44] Title 18 P.1 CH. 95 § 1956 Money Laundering Control Act of 1986. Federal Financial Institutions Examination Council. PDF.

[45] Federal Financial, Pp. 56-57.

[46] Federal Financial, P.80

Suspicious Activity Reporting — Overview knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

A transaction includes a deposit; a withdrawal; a transfer between accounts; an exchange of currency; an extension of credit; a purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument or investment security; or any other payment, transfer, or delivery by, through, or to a bank.

Suspicious activity reporting forms the cornerstone of the BSA reporting system. It is critical to the United States' ability to utilize financial information to combat terrorism, terrorist financing, money laundering, and other financial crimes. Within this system, FinCEN and the federal banking agencies recognize that, as a practical matter, it is not possible for a bank to detect and report all potentially illicit transactions that flow through the bank. Examiners should focus on evaluating a bank's policies, procedures, and processes to identify and research suspicious activity. However, as part of the examination process, examiners should review individual Suspicious Activity Report (SAR) filing decisions to determine the effectiveness of the suspicious activity monitoring and reporting process. Above all, examiners and banks should recognize that the quality of SAR data is paramount to the effective implementation of the suspicious activity reporting system. Banks, bank holding companies, and their subsidiaries are required by federal regulations 54 to file a SAR with respect to:

• Criminal violations involving insider abuse in any amount.

• Criminal violations aggregating $5,000 or more when a suspect can be identified.

• Criminal violations aggregating $25,000 or more regardless of a potential suspect.

• Transactions conducted or attempted by, at, or through the bank (or an affiliate) and aggregating $5,000 or more, if the bank or affiliate knows, suspects, or has reason to suspect that the transaction:

- *May involve potential money laundering or other illegal activity (e.g., terrorism financing). ƒ Is designed to evade the BSA or its implementing regulations.*
- *Has no business or apparent lawful purpose or is not the type of transaction that the particular customer would normally be expected to engage in.*

Prohibition of SAR Disclosure

No bank, and no director, officer, employee, or agent of a bank, that reports a suspicious transaction may notify any person involved in the transaction that the transaction has been reported. Thus, any person subpoenaed or otherwise requested to disclose a SAR or the information contained in a SAR, except when such disclosure is requested by FinCEN or an appropriate law *enforcement or federal banking agency, shall decline to produce the SAR or to provide any information that would disclose that a SAR has been prepared or filed, citing 31 CFR 103.18(e) and 31 USC 5318(g)(2). FinCEN and the bank's federal banking agency should be notified of any such request and of the bank's response. Furthermore, FinCEN and the federal banking agencies take the position that banks' internal controls for the filing of SARs should minimize the risks of disclosure.*[47]

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[47] Federal Financial, Pp. 64-65; 70.

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