



Fund Assembly

Bank Secrecy and Spotting Money Laundering

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Money Laundering Through Real Estate

- Money Laundering
- AML Legislation
- AML Program Requirements
- Geographic Targeting Orders
- Real Estate Crime Problems and Red Flags
- Takeaways



Why Should You Care?

- **What do these crime problems have in common?**
 - Corruption
 - Drugs
 - Human trafficking
 - Flight capital
 - Other criminal activity
 - *The offenders must launder the proceeds of their illicit activity*
- **What does that mean to real estate professionals?**
 - Real estate is a major facilitation tool
 - *Real estate provides tremendous opportunity for exploitation*



Money Laundering

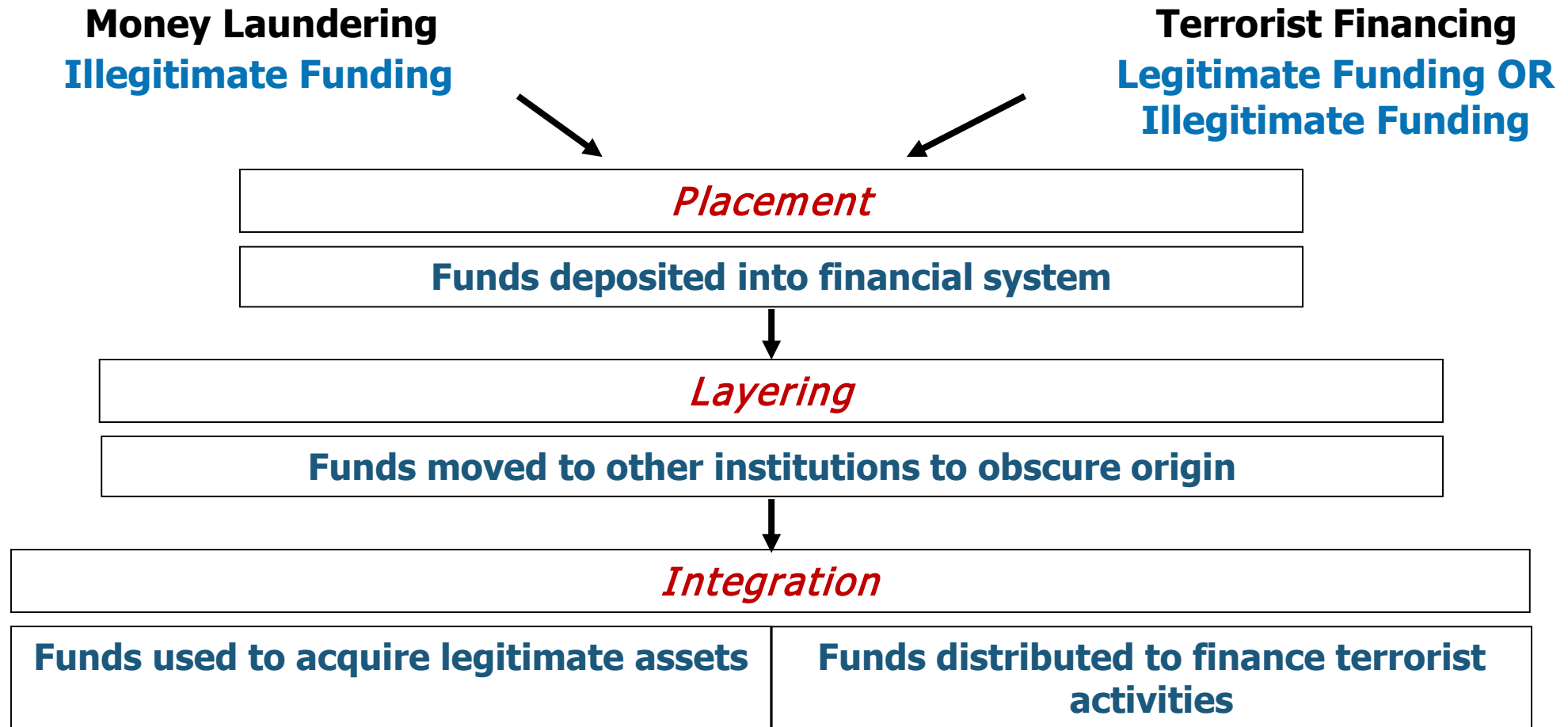


Money Laundering Considerations

- Key words or drivers differentiating between who prevails (good guys or bad guys)
 - Transparency
 - Reasonableness
 - Perspective
 - Diligence (inherently reactive process)
 - Innovation
 - Exploitation
 - Reporting



Money Laundering: The Process



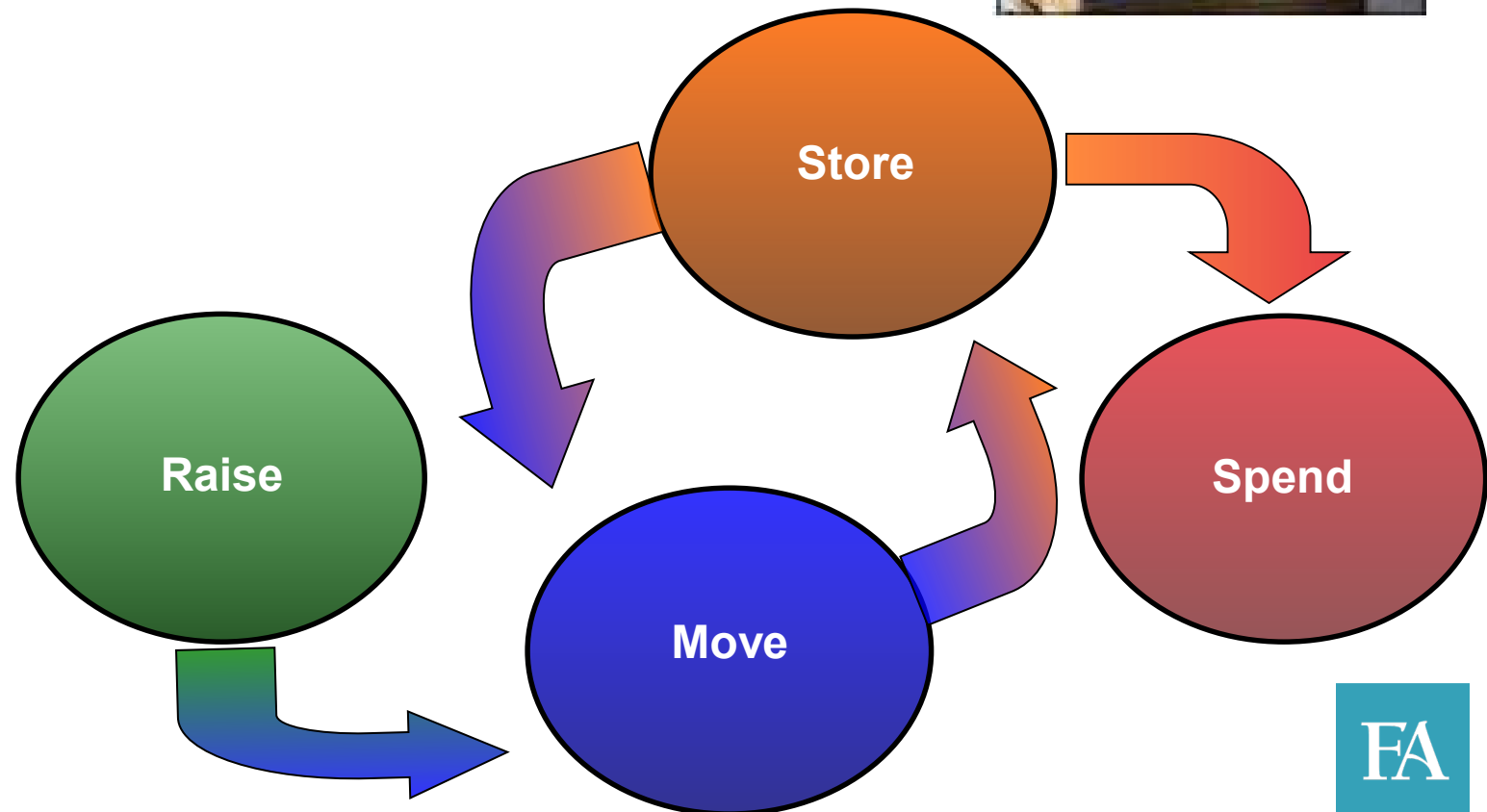
Understanding & Disrupting: Funding Flows

- Must understand four dimensions

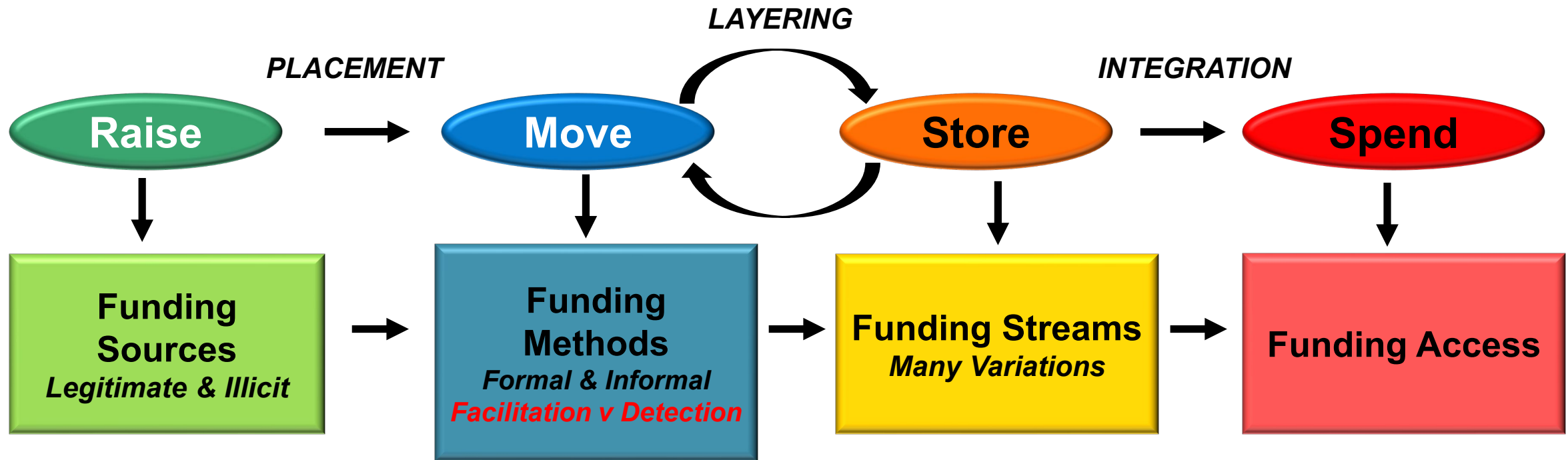
- Organization
- Funding capacity
 - Source of funds
 - Means to launder money
 - Availability of funds
- Funding mechanism
 - Formal financial system
 - Informal system
- Group members

- Funding cycle

- Raise
- Move
- Store
- Spend



Money Laundering: The Process



Areas of Criminal Exploitation

- Fraudulent Activity
 - Major financial frauds
 - Common fraud
- Criminal predicate offenses
 - ***Invariably includes fraud and requires money laundering***
- Fraudsters and affiliations
 - Individuals
 - Groups of individuals
 - Organizations
 - Criminal and terrorist



Emerging Fraud Trends in 2019

Cyber / Internet Fraud

- Business email compromise
- Data breach
- Denial of service
- Email account compromise
- Malware / scareware
- Phishing / spoofing
- Ransomware

Virtual Currency

- Bitcoin
- Initial coin offerings

Opioids

- Fentanyl

Elder Fraud

- Market manipulation
- Grandparent scams
- Romance fraud

Other significant crime problems with fraud components

- Drug trafficking
- Human trafficking.
- Counterfeit goods

Public Corruption

Trade-based Money Laundering

Contrasts of Using Financial System

- In using the financial system, criminals and terrorists are confronted with distinct contrasts
 - ***Facilitation tool v. detection mechanism***
- Serves as facilitation tool by providing continuous access to funds
 - Financing the lifeblood of criminal and terrorist organizations
- Serves as detection mechanism because funds can be identified through monitoring and / or investigation
 - Financing a major vulnerability



U.S. AML Legislation



Evolution of BSA Legislation

- The key U.S. AML / CFT legislative framework is the Bank Secrecy Act (BSA)
 - Also known as the Financial Recordkeeping of Currency and Foreign Transactions Act of 1970
- The BSA was significantly amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (U.S. PATRIOT Act)
 - Title III of USA PATRIOT Act is the International Money Laundering Abatement and Anti-Terrorism Financing Act of 2001
- Since 1970, other AML / CFT laws have been passed to enhance the BSA

Purpose of BSA

- Purpose of BSA to require U.S. financial institutions to **maintain appropriate records and file certain reports** involving currency transactions and a financial institution's customer relationships
- Currency transaction reports (CTRs) and suspicious activity reports (SARs) are the primary means used by banks to satisfy BSA requirements
- Recordkeeping regulations also include requirement that a financial institution's records be sufficient to enable transactions and activity in customer accounts to be reconstructed in necessary

Intent of BSA

- The implementing regulations under the BSA were originally intended to aid investigations into an array of criminal activities, from income tax evasion to money laundering
- In recent years, the reports and records prescribed by the BSA have been utilized as tools for investigating individuals suspected of engaging in illegal drug and terrorist financing activities
 - *Law enforcement agencies have found CTRs to be extremely valuable in tracking cash generated for illicit purposes*
 - *SARs are likewise extremely valuable to law enforcement agencies*

BSA Reports

Currency transaction reports (CTRs)

- Reports filed by certain types of financial institution for cash currency transactions of more than \$10,000 in one business day
 - Multiple transactions aggregated

Form 8300 (cash over \$10,000 received in trade or business)

- Should be completed and submitted to IRS if a person engaged in trade or business receives more than \$10,000 in a single or multiple related transactions in currency

Suspicious activity report (SAR)

- Report that documents suspicious or potentially suspicious activity attempted or conducted at or through a financial institution

Report of Foreign Bank and Financial Accounts (FBAR)

- Report that must be filed by U.S. person who has financial interest in or signature or other authority over any foreign financial account exceeding \$10,000 alone or in aggregate at any time over a calendar year

Report of International Transportation of Currency or Monetary Instrument (CMIR)

- Each person who physically transports, mails, or ships currency or monetary instruments in excess of \$10,000 at one time into or out of the U.S. must file a CMIR

Congressional Consensus Regarding BSA

- BSA legislation should or must be updated
- Concerns regarding the effectiveness & efficiency of BSA reporting
- Multiple Congressional committees assessing numerous issues and considering legislation
 - ***Bipartisan consensus***
- Congressional interest gaining momentum



Concerns, Prior Experience & Possibilities

Concerns

- Congressional will / motivation / understanding
- Stakeholder engagement
- Getting it right

Prior experience dealing with the Hill

Possibilities

- Potential legislation in due course
- Potential legislation driven by 9/11 like event
 - ***PATRIOT Act 2.0***

Key Issues & Testimony

Key Issue

- ***AML reporting requirements / thresholds***
- Safe Harbor / information sharing
- ***CDD / beneficial ownership***
- Financial inclusion / de-risking
- Terrorist financing
- Human trafficking
- Financial technology protection
- ***Cash purchase of real estate***
- Other matters

Congressional Testimony

- Clearing House representatives (various hearings)
- Lormel (Senate Banking Committee) (January 9, 2018)
- Lormel (Senate Banking Sub-Committee) (June 20, 2018)
- Lormel (House Financial Services Sub-Committee) (March 13, 2019)



U.S. AML Program Requirements



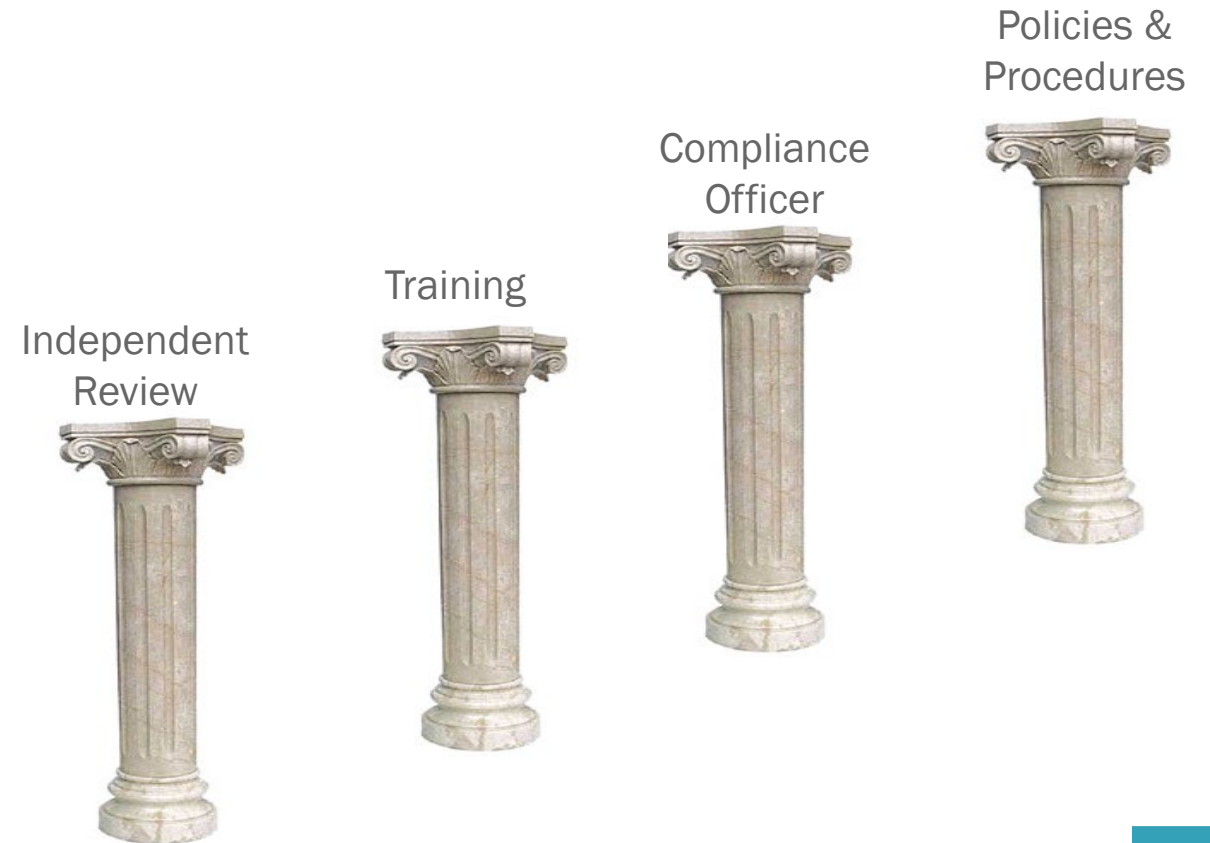
AML Program

- An AML program must be **“reasonably designed”** to prevent the system from being used to launder money or to finance terrorist activity
- Financial institutions are not expected to identify **all** illicit activity but to have a program **“reasonable designed”** to identify and report suspicious activity / transactions on a consistent and timely basis



Basic Elements and Pillars

- Policies and procedures
- Designated compliance officer
- Training
- Independent review
- **(2018) CDD**



Consequences of Non-Compliance

- Consequences to a financial institution for not operating an AML program that is “reasonably designed” to identify suspicious activity in the U.S. includes:
 - Enforcement actions
 - Civil law suits
 - Deferred prosecution
 - Criminal prosecution



Nonbank Financial Institutions

- Nonbank financial institutions include all entities, excluding depository institutions, considered to be financial institutions under the Bank Secrecy Act
- Certain nonbank financial institutions are exempt from the requirement to maintain an AML program under Section 352 of the USA PATRIOT Act
 - *Persons involved in real estate settlements and closings are exempt from requirements to maintain an AML program*
 - *FinCEN encourages persons involved in real estate closings and settlements to voluntarily file SARs*
 - *Safe harbor provisions apply*
 - *SARs extremely beneficial to law enforcement*

Geographic Targeting Orders



Geographic Targeting Order (GTO)

- FinCEN can issue orders imposing additional recordkeeping and reporting requirements on domestic financial institutions or non-financial trades or businesses in a specific geographic area for transactions involving certain amounts of U.S. currency or monetary instruments
- Effective for up to 180 days
- Renewable for additional 180 days if circumstances justified
- Covered transactions must be reported within 30 days
- All records related to compliance with GTO must be retained for five years from last day GTO is effective

Real Estate GTOs

- Issued initially in March 2016, by FinCEN
- Consistently renewed and expanded
 - Initially in effect in Manhattan and Miami
 - Expanded to cover housing markets in New York, Florida, Texas, California and Hawaii
- Applies to real estate transactions involving luxury property purchased through shell companies
 - Particularly when conducted with cash and no financing
- Reporting thresholds went from millions to \$300,000
- ***Real estate professionals encouraged to file voluntary SARs***
- Legislative considerations / proposals regarding real estate reporting requirements

Real Estate Crime Problems



Understand the Crime Problem

To address the threat, you must understand the threat

- Mortgage fraud and money laundering through mortgage fraud
- Phishing and wire transfer fraud
- Money laundering through real estate

Warning signs (red flags)

- Lack of transparency
- Questionable source of funds
- Reasonableness of parties involved in transaction

Identify risk factors

- Geographic risk / customer risk / transaction risk

Situational awareness

- Personal security / identifying money laundering in real estate



Situational Awareness from a Real Estate Perspective

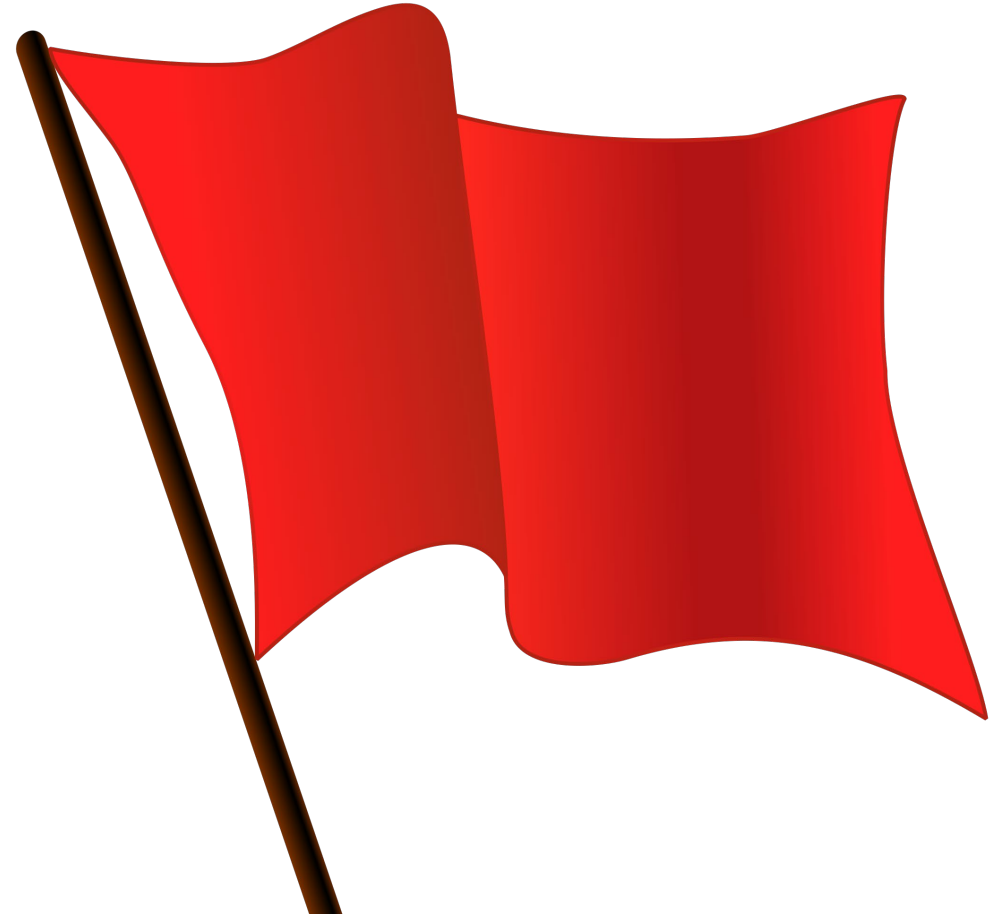
Situational awareness from a real estate perspective should focus on:

- **The money laundering threat**
 - Lack of transparency
 - Current and emerging trends
- **Funding**
 - Sources
 - All cash / cash and or other financing
- **Who you are dealing with (beneficial ownership)**
 - Organizations
 - Individuals



Red Flags For Fraud and Money Laundering Involving Real Estate

- Many sources list red flags, to include:
 - FinCEN
 - FBI
 - The FFIEC Examination Manual (Appendix F)
 - Protiviti Guide to U.S. AML Requirements
 - National Association of Realtors
 - American Land Title Association
 - Google and other sources
- Red flags can be developed through media reports
- Red flags can be developed from case study typologies
- Red flags can be developed from legal filings to include a criminal information, indictments, search and arrest warrants



Mortgage Fraud Red Flags

Two areas of mortgage fraud

- Fraud for profit
- Fraud for housing

Common mortgage fraud schemes

- Foreclosure rescue schemes
- Loan modification schemes
- Illegal property flipping
- Builder bailout / condo conversion
- Equity skimming
- Silent second
- Commercial real estate loans
- Air loans



Phishing / Wire Fraud

- Use of altered email address
- Victims vulnerable through unsecured channels
- Use unwitting third parties to facilitate fraud
- Use of malware
- Perpetrators proactive
 - Maintain contact with multiple parties
 - Manipulate and compartmentalize victims and / or third parties
 - Frequently impersonate parties involved in transaction



Money Laundering Through Real Estate

- Geographic Targeting Order (real estate)
 - All cash purchases by shell companies
- Suspicious transactions include:
 - Lacks economic sense or has no apparent lawful business purpose
 - Suspicious real estate transactions may include purchases / sales that generate little to no revenue or are conducted with no regard to high fees or monetary penalties
 - Is used to purchase real estate with no regard for the property's condition, location, assessed value or sale price
 - Involves funding that far exceeds the purchaser's wealth, comes from an unknown origin, or is from or goes to unrelated individuals or companies
 - Is deliberately conducted in an irregular manner
 - Illicit actors may attempt to purchase property under an unrelated individual's or company's name or ask for records (e.g., assessed value) to be altered



Takeaways



Conclusion and Takeaways

- Understand the nexus between fraud and money laundering
 - Intertwined with most other predicate offenses
- As a nonbank financial institution, you can be a facilitation tool or detection mechanism
 - Consequences of facilitation v. detection
- Understand the crime problem
- Practice situational awareness and recognize warning signs that apply to you
 - Lack of transparency
 - Questionable source of funds
 - Reasonableness of parties involved in transaction





Thank You!
for attending



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