

33 Birnbaum

SENT BY ELECTRONIC MAIL TO: Regcomments@fincen.treas.gov

June 9, 2003

Financial Crimes Enforcement Network
United States Department of the Treasury

ATTN: Section 352-Real Estate Settlements

Re: Comments of Attorneys' Title Guaranty Fund, Inc. in response to
Advance Notice of Proposed Rulemaking -- Anti Money Laundering Requirements for
Persons Involved in Real Estate Closings and Settlements, 68 Fed. Reg. 17,569 (April 10,
2003)

These comments on the Advance Notice of Proposed Rulemaking ("Advance Notice") are respectfully submitted on behalf of Attorneys' Title Guaranty Fund, Inc. ("ATG"), an Illinois corporation engaged in the business of real estate title insurance in the States of Illinois, Indiana, and Wisconsin. ATG supports the comments previously submitted by the National Association of Bar-Related Title Insurers® ("NABRTI"). This letter will provide additional comments and elaborate on some of the points made by NABRTI.

The Advance Notice requests comment on four specific issues. The comments of ATG will address each of these issues in the order presented in the Advance Notice.

1. What Are the Money Laundering Risks in Real Estate Closings and Settlements?

It is the position of ATG that the money laundering risks in real estate closings and settlements are minor risks that do not warrant extensive, intrusive regulation. A real estate asset is one of the most illiquid assets that an investor might consider. A person attempting to launder money would likely choose real estate as a last resort because of this illiquidity. Even if illicit money was used to acquire real estate, criminal enforcement agencies could, with relative ease,

locate the real estate assets and use the already existing forfeiture statutes to seize and dispose of the real estate.

On the other hand, the burden on persons involved in real estate closings and settlements would greatly outweigh the benefit achieved by requiring anti-money laundering (“AML”) programs. The real estate industry is already required to file Currency Transaction Reports (IRS Form 8300) if cash of \$10,000 or more is involved in the closing or settlement. Most frequently, persons involved in real estate closings and settlements receive wire transfers, checks, or other instruments involving banks or other financial institutions. These banks and other financial institutions are already governed by AML requirements and the application of additional AML laws and regulations to the real estate industry would be redundant.

2. How Should Persons Involved in Real Estate Closings and Settlements be Defined?

The Advance Notice notes that the universe of participants in real estate closings and settlements is potentially broad. However, most persons involved in real estate closings or settlements have relatively little or no information concerning the source of money. Further, few of those persons are positioned to identify the purpose and nature of the transaction other than with respect to the limited services that they provide. For example, title insurance companies are typically limited to providing information about matters appearing in the public record. Even those title insurance companies that actually conduct the closing or settlement have little or no information about the structure of the transaction, other than the possibility that a large amount of cash could be used to finance the acquisition. In that case, the current statutes and regulations already impose reporting requirements that could be used by criminal enforcement agencies to investigate.

With respect to the involvement of attorneys, they are also required to file Currency Transaction Reports. Additionally, the further expansion of AML due diligence gives rise to the possible violation of the confidential relationship between attorneys and clients. The Canadian Government, on March 25, 2003, recognized the impropriety of imposing the requirement of filing suspicious activity reports, upon attorneys, under Canada's AML Act.

3. Should any Persons Involved in Real Estate Closings or Settlements be Exempted From Coverage Under Section 352?

It is the position of ATG that title insurance companies, their agents, and attorneys involved in real estate closings and settlements should all be exempted from coverage under Section 352. The burden of AML regulations on those participants greatly outweighs the benefit that could be achieved by imposing AML requirements on them.

4. How Should the Anti-Money Laundering Program Requirement for Persons Involved in Real Estate Closings and Settlements be Structured?

The Advance Notice recognizes that some businesses in the real estate closing and settlement industry are smaller companies and sole proprietorships. The burden of AML requirements on those persons would be sufficiently great so as to induce many of them to leave the industry, thus reducing competition and increasing prices. Because the large majority of the real estate industry is devoted to sales and mortgages of owner-occupied residential real estate, the resulting increase in costs would make housing less affordable for all Americans. The structure of any AML program requirement should be such that it minimizes the impact on the housing industry.

Real estate closings and settlements are today complex and costly because they must accommodate numerous federal, state, and local laws concerning real estate titles, financing,

taxes, and other diverse matters. The added imposition of AML systems, compliance officers, and auditing functions is unwarranted and unnecessary.

5. Summary

For the reasons set forth above, it is ATG's position that "persons involved in real estate closings and settlements" should not include title insurance companies, their title agents, or attorneys involved in real estate transactions. In the alternative, title insurance companies, their agents, and attorneys involved in real estate transactions should be exempted from any AML program requirements.

ATG thanks the Financial Crimes Enforcement Network for their consideration of our position. If you have any comments or questions concerning this letter, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter J. Birnbaum". The signature is fluid and cursive, with a long horizontal stroke at the end.

Peter J. Birnbaum
President

PJB:dlp