

# ***Will The Treasury Department's Investigation Of Luxury Homes Purchased With Cash By An LLC Draw Attention To The Hamptons?***

John A. Viteritti | January 28, 2016

This month, the Treasury Department announced that it will begin investigating cash purchases of real estate by LLC's in Manhattan over \$3 million, and Miami-Dade County in Florida over \$1 million. An article that appeared in the January 13th issue of The New York Times stated: "It is the first time the federal government has required real estate companies to disclose names behind cash transactions, and is likely to send shudders through the real estate industry." The article quoted a top Treasury official, Jennifer Shasky Calvery, who stated, "We are concerned about the possibility that dirty money is being put into luxury real estate." Depending upon Treasury's findings in the two target areas, the department could develop reporting requirements across the country.



The use of LLC's as a business form is common across the country. In 1977, Wyoming became the first state to enact LLC legislation. Florida followed suit in 1982. In 1988, the IRS issued a ruling that an LLC in Wyoming would be treated as a partnership for tax purposes. Subsequently, nearly every state in the U.S. enacted statutes recognizing LLC's as a legitimate business form. Basically, an LLC combines the benefits of a partnership with the protection of a corporation: Its income is taxed once, and it provides protection from personal liability. Obviously there are legitimate reasons for doing business as an LLC, including purchasing a luxury home.

Using data provided by Judi A. Desiderio, Chief Executive Officer of Town & Country Real Estate, the 4th quarter of 2015 showed three villages in the Hamptons with home sales in excess of \$3 million, the price at which the Treasury is investigating cash purchases by LLC's in Manhattan. East Hampton Village had 13 purchases at a median price of \$3.995 million, Bridgehampton, which includes Water Mill and Sagaponack, had 55 purchases at a median price of \$3.950 million. Southampton and Amagansett, while close, were under the \$3 million price. "Most of these purchases were LLC's," noted Desiderio.

I posed the following questions to Christopher D. Kelley, Senior Partner of the law firm, Twomey, Latham, Shea, Kelley, Dubin & Quataro. What percentage of your real estate transactions are all-cash LLC's, and what is the most common reason for it? "I would say that 60 to 70 percent of my transactions involve all-cash buyers through LLC's," he answered. "Many of the buyers are celebrities. They want to protect their privacy. Since all sales are a matter of public record, they don't want everybody to know how much they paid and the location of the property. Only about 20 percent are financed by a mortgage, and these are the lower priced properties." I also inquired, since a benefit of an LLC has to do with taxes on income, do these properties have to be income producing or could primary and secondary homes also qualify? "The properties do not have to be income producing, and yes, primary and vacation homes may also be purchased by an LLC, and 1031 Exchanges may also be conducted through LLC's," he said. (Author's Note: 1031 is a Section of the Tax Code that allows for the deferment of taxes on a transfer of like-kind investment properties that would otherwise be due.)

To get the perspective of a real estate agent who has a history of dealing in luxury sales in the Hamptons, I spoke to Paul Brennan, Associate Broker with Douglass Elliman. I asked him when looking at the market over \$3 million, how many are cash buyers as LLC's? "I would say the majority are cash buyers through LLC's," he responded. "They may finance the purchase through other assets, but not through a mortgage. So there are no mortgage contingencies in the purchase." And why would they want to purchase through an LLC? Like Christopher, his answer was: "They want to maintain their privacy, although the name of the LLC is often the street address."

The Treasury's investigation is especially focusing on title insurance companies. One that I spoke to declined comment.

Buying real estate through an LLC is perfectly legitimate. But the Department of the Treasury and the Federal Bureau of Investigation are determined to continue and broaden their investigations. Even assuming no wrong-doing, it could require those engaged in real estate to go through extra efforts to satisfy the investigators.

"I'm sure everyone will be watching closely any laws coming down regarding real estate closings to LLC's on the high end," added Desiderio.