

New PCMLTFA Obligations

Real Estate Brokers and Sales Representatives

September 2008

Presentation Overview

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Introduction

- The PCMLTFA was amended in December 2006, authorizing the creation of new requirements through its related regulations:
 - *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*
 - *Proceeds of Crime (Money Laundering) and Terrorist Financing Suspicious Transaction Reporting Regulations*
- New requirements came into effect on June 23, 2008 and July 28, 2008

Objectives of New Requirements

Objectives of New PCMLTFA Requirements

- Strengthen existing AML/ATF regime and build on FINTRAC's experience
- Address existing gaps in the legislation and regulations
- Enhanced detection and deterrence of money laundering and terrorist financing
- Make illicit transactions more difficult to conduct
- Greater impact against organized crime and terrorists

Why is the Real Estate Sector Covered?

- Real estate is one of several business sectors that is at high risk for money laundering.
- According to an independent study, real estate transactions are frequently cited in RCMP money laundering cases.
- Real estate is a means used by criminals to obscure source of funds and hide ownership of assets (Financial Action Task Force).

Examples of Publications Citing Real Estate Money Laundering Risks

- **FINTRAC:** *Guideline 2: Suspicious Transactions*, indicators for money laundering and terrorist financing March 2008
- **FATF:** *Money Laundering and Terrorist Financing Through the Real Estate Sector*, typologies report May 2008
- **FinCEN** (United States' Financial Intelligence Unit):
 - *Suspected Money Laundering in the Residential Real Estate Industry* May 2008
 - *Suspected Money Laundering in the Commercial Real Estate Industry* December 2006
- **Criminal Intelligence Service of Canada:** *Mortgage Fraud and Organized Crime in Canada* September 2007
- **York University:** *Money Laundering in Canada: A Study of RCMP Cases* March 2004

Highlights of Changes to the *Proceeds of Crime* (*Money Laundering*) and *Terrorist Financing Act* and Regulations

Definition of “Real Estate Broker or Sales Representative”

- Regulations apply to licensed or registered real estate brokers or sales representatives when they **act as an agent in respect of the purchase or sale of real estate**
- Regulations do not apply to transactions pertaining to leases, rentals and property management

Changes to Reporting

Suspicious Attempted Transactions

- Brokers and sales representatives have to report suspicious **attempted** transactions to FINTRAC.
- An element of the attempted transaction must raise a **suspicion** of money laundering or terrorist financing for it to constitute a suspicious attempted transaction.
- An attempted transaction is an incomplete transaction that a client **intended** to conduct, having taken some form of **concrete action**.

Suspicious Attempted Transactions (cont'd)

- Every situation is different and should be assessed on a case-by-case basis in light of the facts.
- The fact that a transaction was not completed does not by itself imply suspicious activity.
- New information to be provided in suspicious transaction report form:
 - whether the transaction was completed
 - if not, the reason why it was not completed

Suspicious Attempted Transactions (cont'd)

- An attempted transaction would include uncompleted efforts to make a deposit once an offer has been made in respect of a listing agreement.
- Example: a client offers a large amount of cash for a deposit on a house. Upon request for identification by real estate agent, client changes his mind and walks away.

Changes to Client Identification

When Must Client ID be Done?

- Real estate brokers or sales representatives must identify all individuals **and** confirm the existence of all corporations or other legal entities that:
 - are a client in a purchase or sale of real estate; and/or
 - provide funds in any amount or form as part of a real estate transaction.

When Must Client ID be Done? (cont'd)

- You do not have to identify someone a second time if you have previously identified the individual and you recognize them (e.g. someone is your client and provides funds) unless you have doubts about the information they provided to you when you first identified them.

Identification Requirement – Client Information

- Clients must be identified in respect of every purchase **or** sale of real estate.
- Both the buyer's and the seller's broker or sales representative must identify their own clients.

Real estate broker or sales representatives must:

- ascertain the identity of any individual(s) you represent in a purchase or sale of real estate **at the time of the acceptance of an offer** (including individuals acting on behalf of clients that are corporations or other legal entities);
- confirm the existence and ascertain the name and address of every corporation and name of its directors **within 30 days** of the purchase/sale;
- confirm the existence of entity other than a corporation **within 30 days** of the purchase/sale.

Identification Requirement – Receipt of Funds

- A real estate broker or sales representative must identify any individual who provides them with funds, in any amount or form, **at the time the funds are received.**
- If the funds are provided on behalf of a corporation or other entity:
 - the individual must be identified at the time the funds are received
 - the existence of the corporation or other legal entity must be confirmed within **30 days** of the receipt of funds.

Identification Requirement – Receipt of Funds (cont'd)

- Effective July 28, 2008:
 - The broker or sales representative who represents the client **who provides the funds** is responsible for ascertaining identity.
 - If there are unrepresented parties to the transaction, the broker or sales representative who **receives** funds from an unrepresented party is responsible.

Client Identification

- Effective July 28, 2008:
 - If all parties to a transaction are represented by a real estate broker or sales representative, each real estate broker or sales representative only needs to identify the parties they represent.
 - If any parties to the transaction are not represented, each real estate broker or sales representative must take reasonable measures to identify the unrepresented parties.
 - If efforts to identify any unrepresented parties fail, must document why they were unable to identify the unrepresented party.

Client Identification (cont'd)

- If meeting client face-to-face, refer to a valid government-issued identification document with a unique identification number.
- Several options available for ascertaining client identity in non-face-to-face situations (e.g. out-of-town investors buying property).

Client Identification: Use of Agents (Mandataries)

- If not able to meet client face-to-face, brokers and sales representatives may rely on an agent to identify clients.
- Must have a written agreement for that purpose with each agent that identifies clients.
- The agent must meet the clients face-to-face.
- **Any** individual, in Canada or abroad, can enter into one of these agreements with a real estate broker or sales representative, including another real estate professional.
- Brokers and sales representatives have to obtain the client's information from the agent, and are responsible for making sure that the agent collects all necessary information.

Client Identification: Non-Face-to-Face Options

- Agent agreement can be used for any client that is not met face-to-face, regardless of their location.
- For clients not met face-to-face, other identification options are available in addition to the use of an agent.
- More information on these other options is available in FINTRAC's Guideline 6B for real estate.

Changes to Record Keeping

Client Information Record

- A client information record must be created for every purchase or sale of real estate, and must include:
 - client's name and address
 - date of birth (if an individual)
 - nature of their occupation or principal business, as applicable
 - if client is a corporation, must keep a copy of a corporate record of the power to bind the corporation
 - method used to identify client
 - identification number and expiry date (if applicable)

Receipt of Funds Record

- The broker or sales representative who represents a client **who provides the funds** for a real estate transaction is responsible for keeping a record.
- Receipt of funds record is not required if large cash transaction record being kept.
- The record must include:
 - name, address, date of birth and nature of principal business or occupation of individual from whom the funds were received
 - method used to identify client
 - identification number and expiry date (if applicable)
 - if funds were from an entity, in addition to the information about the individual, name, address and nature of principal business of entity
 - date of transaction
 - amount and currency of funds received
 - purpose and details of the transaction, i.e. how the funds were received, addresses of affected properties, other parties involved, etc.
 - whether funds were received in cash, and if so how (in person, by armoured car, etc.)
 - if received from corporation: must keep copy of binding document

Receipt of Funds Record (cont'd.)

- Must take reasonable measures to also obtain and record:
 - account number / type of account / account holder of the accounts affected by the transaction
- If an affected account is another broker or sales representative's trust account, record only that it is a real estate trust account. Account holder and number are not required in this case.

Record Keeping

- Information that is available in one record kept under the PCMLTFA does not have to be duplicated if it is kept in another record.
- For example, if you are already keeping a receipt of funds record for a given client, and then have to create a client information record, you are not required to duplicate the information you already have in that second record.

Suspicious Transaction Reports

- Brokers and sales representatives must keep copies of suspicious transaction reports (STRs) concerning both attempted and completed transactions.
- Brokers and sales representatives must take reasonable measures to ascertain identity of the individual who conducts a suspicious completed transaction.
 - Except if the individual's identity was previously ascertained or there is a possibility of tipping-off the individual.

Third Parties

- It is necessary to determine, whenever you create a large cash transaction record or a client information record, whether the client is acting on the instructions of a third party

Changes to Compliance Regime

The Compliance Regime and New Changes

1. The appointment of a compliance officer responsible for implementing the compliance program
2. The development and application of compliance policies and procedures, these have to be:
 - in writing,
 - kept up-to-date, and
 - for an entity, approved by senior officer.
3. Assess and document the money laundering and terrorist financing risks

The Compliance Regime and New Changes (cont'd)

4. If the brokers or sales representatives has employees or agents, must have an ongoing training program that is in writing and maintained
5. A review of policies and procedures, training program and risk assessment
 - Must be carried out every 2 years by an internal or external auditor, or by the brokers or sales representative themselves.
 - For an entity, report in writing findings of the review to senior officer including updates and implementation status.

Risk-Based Approach

- A risk-based approach (RBA) allows brokers and sales representatives to identify and measure potentially higher risks and develop strategies to mitigate them so they can focus resources where they are most needed to manage risks within their own acceptable tolerance levels.
- Existing client identification, record keeping and reporting requirements still apply. The risk-based approach serves as an enhancement to those requirements.
- The risk-based approach will vary depending on the size and complexity of the broker's or sales representative's operations.

Risk-Based Approach – Requirements

- Assess and document, as appropriate for the brokers or sales representative, the risk of money laundering or terrorist financing offences in the course of their activities.
- The risk assessment must take into account the broker's or sales representative's:
 - clients
 - business relationships
 - products and services
 - delivery channels
 - geographic location of its activities and the location of its clients
 - other relevant factors related to the broker's or sales representative's business.

Risk-Based Approach – Client Risk Assessment

- Completing a client risk assessment should be appropriate where there is an ongoing relationship. An ongoing relationship is where a client undertakes multiple transactions over a time period with you, regardless of whether the transactions are related to each other.
- Where your dealings with a client are limited to a single transaction, this is **not** considered to be an ongoing relationship, thus no client risk assessment is required.

Real Estate Risk Assessment Process

- The following slides provide examples specific to real estate of how a checklist can be used to complete a risk assessment.
- Must conduct a risk assessment and document risk mitigation strategies for high risk situations at least every two years.
- General risk assessment checklists can be found in FINTRAC's Guideline 4.

Real Estate Risk Assessment Process (cont'd)

Assessment criteria: Clients and business relationships

Considerations when assessing risk as low, medium or high:

- New client
- Referral client
- Previous client
- Ease of discussions with client – open and forthcoming
- Employment – full-time, part-time, self-employed, unemployed
- Individual, corporate or trust registration of the property
- Foreign client
- Domestic client
- Local client

Real Estate Risk Assessment Process (cont'd)

Assessment criteria: Delivery channels

Considerations when assessing risk as low, medium or high:

- Face-to-face meeting with client
- Non-face-to-face dealing with client (Internet)

Real Estate Risk Assessment Process (cont'd)

Assessment criteria: Products and services

Considerations when assessing risk as low, medium or high:

- Single family homes
- Vacant land
- Commercial
- Multi-unit residential
- Rural farming
- Investment/Rental

Real Estate Risk Assessment Process (cont'd)

Assessment criteria: Other relevant factors

Considerations when assessing risk as low, medium or high:

- Third party down payment
- Large cash payment
- Multiple bank drafts
- Multiple money orders
- Client flipping properties
- Use of intermediary

Risk-Based Approach - Special Measures

- For all activities that pose a high ML or TF risk, brokers and sales representatives must develop and apply policies and procedures to mitigate the identified risks of money laundering or terrorist financing offences;
- For high-risk clients with an ongoing relationship with the broker or sales representative:
 - take reasonable measures to keep client ID information up to date every two years; and
 - take reasonable measures to conduct ongoing monitoring to detect suspicious transactions.

Risk-Based Approach - Risk Mitigation

- When high risks are identified, possible mitigation steps can include:
 - Implement senior management (i.e. broker) approval of high risk relationships and transactions
 - Enhance steps to “know the customer” and conduct due diligence
 - Periodically review high risk relationships

Risk-Based – Approach Tools

- FINTRAC's Guideline 4 provides more information on:
 - Legislative and regulatory requirements;
 - Risk mitigation measures;
 - Suggestions on how to monitor;
 - Checklists which can be used as a starting point for developing a risk assessment by analyzing:
 - Products & services,
 - Delivery channels, geographical locations, and clients and business relationships.

Other Information

FINTRAC's Compliance Approach

- FINTRAC is committed to a cooperative approach to compliance
- Continue to provide guidance on upcoming and existing requirements through the updating and development of FINTRAC guidelines

Administrative Monetary Penalty (AMP) Regime

- Starting December 30, 2008, FINTRAC will be able to issue administrative monetary penalties as a response to non-compliance with the PCMLTFA and related regulations.

For More Information

- Revised FINTRAC guidelines and other publications are available
- Sector-specific presentations, webcasts and fact sheets available online
- All new requirements now in effect

For More Information

Please consult FINTRAC's Web site:

www.fintrac-canafe.gc.ca