

Requirements under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*

Real Estate Developers

2008

Presentation Overview

- Introduction
- About the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC)
- Overview of money laundering and terrorist financing
- Real estate developers and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA)
- FINTRAC's compliance approach
- Timeline

Introduction

- New requirements under the PCMLTFA for real estate developers are effective on February 20, 2009.
- FINTRAC will be responsible for ensuring compliance with all requirements.

Who Is a Real Estate Developer?

- Any individual or entity that has sold to the public, in a given year (after 2007), any of the following:
 - Five or more new dwelling units
 - One or more new commercial or industrial buildings
 - One or more new multi-unit residential buildings (that total five dwelling units or more)
- Land development and the sale of land without homes or other buildings is not covered.
- Excludes sales by real estate brokers and licensed real estate sales representatives as they have their own obligations.

FINTRAC

- FINTRAC is Canada's financial intelligence unit. The Centre produces financial intelligence for law enforcement and national security agencies. FINTRAC is uniquely positioned to analyze millions of financial reports to produce this intelligence.
- Created in 2000 under the PCMLTFA.
- Plays an integral role in Canada's effort to combat organized crime and terrorism.
- Independent agency reporting to the Minister of Finance and Parliament.
- Operates at arm's length from law enforcement and other bodies.
- Works in partnership with individuals and entities subject to the PCMLTFA.

FINTRAC's Role

- **Collect, analyze, assess and disclose** information related to money laundering, terrorist activity financing and threats to the security of Canada.
- **Ensure compliance** with obligations under Part 1 of the PCMLTFA and related regulations.
- Ensure **protection of personal information** under its control.
- Enhance **public awareness** of money laundering and **terrorist financing**.

What Is Money Laundering?

- The United Nations defines money laundering as “any act or attempted act to disguise the source of money or assets derived from criminal activity”.
- Essentially it is the process where “dirty money” is transformed into “clean money”.
- More than just cash, it also includes valuable items (for example real estate, diamonds) and other kinds of funds (for example electronic funds).

Stages of Money Laundering

- **Placement** – initial stage of putting the cash into the financial system
- **Layering** – creating layers of financial transactions to disguise the audit trail and sources of funds
- **Integration** – returning the laundered funds back into the economy to create a perception of legitimacy

For more information, please consult *Guideline 1: Background*.

What Is Terrorist Financing?

- Terrorist financing is the process by which money is provided to an individual or group to fund terrorist activities
- Different from money laundering - funds may be either from legitimate or illegitimate sources, but used to help facilitate a terrorist act
- Often deal in smaller amounts than money laundering

For more information, please consult *Guideline 1: Background*.

Why Are Real Estate Developers Covered?

- Real estate is one of several business sectors that is at 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).
- Real estate brokers and sales representatives have been covered since 2002.

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

Real Estate Developers Requirements

As of February, 2009, when they sell a new home or commercial or industrial building to the public, real estate developers will have to:

- Implement a **compliance regime**
- **Report** cash transactions of \$10,000 or more, suspicious transactions and terrorist property, and keep records of these transactions
- Keep client information and receipt of funds **records**, and **identify** clients in respect of these records

Client Identification and Record Keeping

When Must a Client Be Identified?

- Real estate developers will have to identify any individual **and** confirm the existence of any corporation or other legal entity that:
 - purchases a new home or building; or
 - provides funds in any amount or form as part of a new home or building purchase (such as a deposit).

Client Information Record and Identification

- Whenever an Agreement of Purchase and Sale (or equivalent) is signed, **identify** all individuals that are party to the purchase.
- If the purchase is being made by a corporation or other entity, also **confirm** the existence of the entity or entities conducting the purchase, within 30 days of the agreement being signed.
- Keep a **client information record** on all parties to the Agreement of Purchase and Sale.

Client Information Record and Identification (cont'd)

- Client information record must include:
 - client's name and address;
 - date of birth (if an individual); and
 - nature of their occupation or principal business, as applicable.
- If client is a corporation, must also keep a copy of a corporate record of the power to bind the corporation.

Receipt of Funds Record and Identification

- In addition to the client information record, keep a record of every receipt of funds.
- If you receive funds for the purchase of a new home or building—in any amount or form—from a party not listed on the Agreement of Purchase and Sale, **identify** the individual and **confirm** the existence of the entity that provides funds.
- The individual who provides the funds must be identified at the time funds are received.
- If the funds are provided on behalf of a corporation or other legal entity, confirm the existence within 30 days of receipt of funds.

Receipt of Funds Record and Identification (cont'd)

Receipt of funds record must include:

- name, address, date of birth and nature of principal business or occupation of individual from whom the funds were received
- 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.
- account number, type and account holder(s) of the account(s) affected
- whether funds were received in cash, and if so how (in person, by armoured car, etc.)

Receipt of Funds Record and Identification (cont'd)

- If funds received from a corporation, must also keep a copy of a corporate record of the power to bind the corporation.

Record Keeping

- Information that is available in one record kept under the PCMLTFA does not have to be duplicated 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.

Client Identification

- If client is present, refer to a valid government-issued identification document.
- Other options for ascertaining client identity are available in non face-to-face situations.
- May rely on an agent (mandatary) to take identification measures when there is a written agreement for that purpose with each agent that identifies clients.
- The agent must meet the client face to face.
- Real estate developers have to obtain the client's information from the agent, and are responsible for making sure that the agent collects all required information.

For more information, please consult *Guideline 6B: Record Keeping and Client Identification for Real Estate*.

Client Identification

- If a new obligation to ascertain the identity of a client arises for an individual previously identified, a real estate developer is not required to ascertain their identity again if they recognize the individual.
- Real estate developers must always ascertain the individual's identity again if they have **doubts** about the accuracy of the identification information obtained previously.

For more information, please consult *Guideline 6B: Record Keeping and Client Identification for Real Estate*.

Reporting Requirements

Large Cash Transactions

- Real estate developers will have to report transactions involving \$10,000 or more **in cash**
- Will have to be reported to FINTRAC within 15 days of receipt of cash
- 24-hour rule

For more information, please consult *Guideline 7: Submitting Large Cash Transaction Reports to FINTRAC*.

Large Cash Transactions (cont'd)

- When receiving \$10,000 or more in cash, real estate developers will also have to inquire whether the cash is being provided on behalf of a third party.
- If so, need to obtain information about the third party and their relationship to the person providing the cash.

Suspicious Transactions

- If you suspect that a transaction or attempted transaction is related to a money laundering or terrorist activity financing offence, you will have to:
 - Report within 30 days following the fact that gave rise to the suspicion
 - Keep a copy of the report
 - Take reasonable measures to ascertain identity of the individual conducting or attempting to conduct the suspicious transaction (some exceptions apply)
- This applies whether or not the transaction is in cash and regardless of the amount.

For more information, please consult *Guideline 2: Suspicious Transactions*, *Guideline 3: Submitting Suspicious Transaction Reports to FINTRAC* and *Guideline 6B: Record Keeping and Client Identification for Real Estate*.

Suspicious Attempted Transactions

- An attempted transaction is an incomplete transaction that a client intended to conduct and took some form of action towards completing it.
- An attempted transaction includes negotiations or discussions to conduct the transaction and involves concrete measures taken by either the real estate developer or the client.
- The fact that a transaction was not completed does not by itself imply suspicious activity.

Example of an attempted transaction:

- A client offers a large amount of cash for a deposit on a new house. Upon request for identification by real estate developer, client changes his mind and walks away.

Indicators of Suspicious Transactions

- Unusual mortgage loan agreements
- Client conducts transaction from high-risk jurisdiction, using offshore account
- Efforts to obscure true owner of property
- Several transactions by the same individual or by related individuals
- Client shows minimal interest in the nature of the property itself, and wants deal closed quickly
- Significant cash deposit payments
- Client wants luxury property built in non-prime locations
- Client appears to misrepresent financial situation
- Different names on offers to purchase, closing documents and deposit receipts without explanation

Source: Financial Action Task Force

Terrorist Property

- When you know or believe that there is property in your possession or control that is owned or controlled by or on behalf of a terrorist, a terrorist group or a listed person, you will have to:
 - Report it to FINTRAC using a terrorist property report (TPR) **paper** form
 - TPRs must be submitted to FINTRAC **without** delay
- Current obligations require similar reports be made to the RCMP and CSIS.

For more information, please consult *Guideline 5: Submitting Terrorist Property Reports to FINTRAC*.

How to Submit Reports to FINTRAC?



- A real estate developer must submit all STRs and LCTRs electronically if it has the technical capability to do so. TPRs are submitted on paper.
- Reporting mechanisms
 - Electronic:
 - By F2R (via FINTRAC's secure Web site)
 - Paper:
 - By fax
 - By mail

Compliance Regime

Compliance Regime

If they sell new homes or buildings to the public, real estate developers will also have to implement a compliance regime that includes:

- The **appointment of a compliance officer**
- The development and application of **written compliance policies and procedures**.
- The **assessment and documentation of risks** of money laundering and terrorist financing and measures to mitigate high risks
- Implementation and documentation of an **ongoing compliance training program** for all employees and agents
- A **documented review** of the effectiveness of policies and procedures, training program and risk assessment every two years
 - For corporations and other entities, report in writing findings of the review to senior officer including updates and implementation status

For more information, please consult *Guideline 4: Implementation of a Compliance Regime*.

Risk-Based Approach

- A risk-based approach allows real estate developers to identify and measure potentially higher risks and develop strategies to mitigate them so they can focus resources where most needed to manage risks within their own acceptable tolerance levels.
- 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 real estate developer's business's operations.

Risk-Based Approach: Requirements

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

Risk-Based Approach: Requirements (cont'd)

- For all activities that pose a **high** money laundering or terrorist financing risk, real estate developers must develop and apply policies and procedures to:
 - mitigate the identified risks of money laundering or terrorist financing offences;
 - 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.

For more information, please consult *Guideline 4: Implementation of a Compliance Regime*.

Risk-Based Approach – Tools

- FINTRAC's Guideline 4 provides checklists which can be used to help develop a risk assessment.
- The checklists take into account products & services, delivery channels, geographical locations, and clients and business relationships.
- Guideline 4 also includes information on what the risk assessment must include, risk mitigation measures and suggestions on how to monitor high risk clients when needed.
- For more information, a web-based seminar on the risk-based approach is also available on FINTRAC's Web site

FINTRAC's Approach to Ensuring Compliance

FINTRAC's Compliance Approach

- FINTRAC favours a cooperative approach.
- FINTRAC will work with real estate developers and their associations to assist in understanding and implementing requirements.
- Our experience indicates that the vast majority of individuals and entities subject to the PCMLTFA wish to comply with their legislative obligations.

FINTRAC's Compliance Authority

- FINTRAC officers have the authority to inquire into the business of individuals and entities subject to the PCMLTFA.
- FINTRAC officers also have the authority to require from individuals or entities subject to the PCMLTFA, any document or other information relevant for compliance purposes.
- Can be done by :
 - Administration of a questionnaire
 - Examination
 - Request for information

How Examinations Are Conducted

Examination process:

- May contact the real estate developer in advance to schedule meeting
- Test effectiveness of mechanisms and controls
- Exit meeting
- Findings letter

Examination findings and follow-up action

- If compliant – report highlights scope and results
- If non-compliance detected - report identifies areas in need of corrective action
- Request action plan (if required)

Penalties

- FINTRAC will have the ability to issue an administrative monetary penalty as a response to non-compliance.
- Criminal penalties, including fines up to \$2 million or up to five years in jail, can also apply for serious non-compliance.

Timeline

- Provisions affecting real estate developers are effective **February 20, 2009**

For More Information

Please consult FINTRAC's Web site:

www.fintrac-canafe.gc.ca