



DID YOU JUST GET DEPUTIZED BY FINTRAC?

The government's increasing efforts to eliminate money laundering and the financing of terrorism have led to new regulations which apply to Real Estate Developers. These rules have been introduced because real estate is a sector that is always at risk for money laundering, since real estate transactions are frequently cited in RCMP money laundering cases and real estate transactions are commonly used to obscure the sources of funds and hide the ownership of assets. These new rules will be monitored by FINTRAC, Canada's financial intelligence unit.

A Real Estate Developer is defined by FINTRAC to include 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).

For this purpose, land development, and the sale of land without homes or other buildings is not covered. Furthermore, sales by real estate brokers and licensed real estate sales representatives are excluded where the brokers or representatives are working under contract with the builder, since they are already subject to separate compliance rules. However, if the brokers or representatives are employees of the developer, the sale is treated as being made by the developer and is therefore not excluded. Finally, you must report suspicious transactions and terrorist property, even if the transaction would otherwise be excluded from these rules.

WHAT MUST YOU DO?

Effective February 20th, 2009, if you meet the above criteria, you are required to do the following:

1. Report to FINTRAC

Report large (\$10,000 or more) cash (that is, currency) transactions and all suspicious client-based activities discovered during your business risk assessment. (FINTRAC provides guidelines to help you identify suspicious activities. These guidelines can be found on FINTRAC's website: <http://www.fintrac-canafe.gc.ca/reporting-declaration/1-eng.asp>.)

2. Ascertain Identity and Maintain Records

Identify any individual and confirm the existence of any corporation or other legal entity that buys a new home (detached house, semi-detached house, town-house, high-rise condominium, etc.) or building or provides funds to do so. You must include the client's name and address, date of birth (if individual) and nature of occupation or principal business. You must retain copies of proof that the individual representing a corporation has the authority to bind the corporation. Furthermore, you must take reasonable measures to determine if an individual is acting for himself or herself, or on behalf of a third party. If a third party is involved, you must obtain the above-noted information regarding that third party. Additional record-keeping requirements must be met for large (\$10,000 or more) cash transactions.

Finally, you must have a "receipt of funds record" for all funds (any amount, whether cash or not) for every client.

The detailed record-keeping requirements are available on the FINTRAC website noted above.

3. Implement a Compliance Regime

- a. Appoint a compliance officer
- b. Assess and document the risks of money laundering and terrorist financing and document the measures used to mitigate those risks
- c. Prepare and follow compliance policies and procedures
- d. Implement and document an ongoing compliance training program
- e. Review and document how effective the program has been.

If you do not comply with the requirements you can face either criminal or administrative penalties. Administrative penalties include fines up to \$500,000, with executives facing personal fines up to \$100,000. Serious breaches can result in criminal penalties up to \$2 million and/or 5 years imprisonment.

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If you believe that you may be required to comply with these new requirements and would like assistance in doing so, please contact your legal advisor or your partner at Goldfarb, Shulman, Patel & Co. LLP.