Anti-Money Laundering Regime Now Includes Real Estate Developers

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Those involved in real estate transactions have already heard of the dangers of title fraud and some have experienced it first hand. But there is another threat facing the real estate industry: money laundering and terrorist activity financing.

“Money laundering” is any act or attempted act to disguise the source of money derived from criminal activity. “Terrorist financing” is the process of providing money, which may be derived from legitimate sources, to an individual or group whose main objective is to intimidate a population or compel a government to do something. The Proceeds of Crime (Money Laundering) and Terrorist Financing Act was passed by the federal government to respond to these threats within Canada and assist in fulfilling Canada’s international commitments in the fight against organized crime.

Many financial intermediaries across the country have been subject to the Act from the start, such as banks, savings and credit unions, life insurance companies and brokers, trust and loan companies, securities dealers, money services businesses, casinos, real estate brokers and accountants.
Recognizing that real estate transactions are often used to obscure sources of funds and hide ownership of assets, certain regulations under the Act were amended so that as of Feb. 20th, real estate developers were included in this group. This means that more real estate transactions will be captured by the Act.

The penalties for non-compliance can be severe, ranging from small administrative fines to hefty fines and even criminal sanctions.

“Real estate developers” are defined in the Act as any person or entity who, in a given calendar year (after 2007) has sold to the public:

* five or more new houses or condominium units;
* one or more new commercial or industrial buildings;
* one or more new multi-unit residential buildings with five or more residential units each; or
* two or more new multi-unit residential buildings that together contain five or more residential units.

A “new” building is one that has been constructed in the past two years or has been substantially renovated and has not yet been occupied for its intended purpose before being sold.

Most of the new duties that real estate developers have under the Act relate to obtaining information from purchasers that the developer must retain in its files, available to be disclosed upon the request of the authorities. These include maintaining a “receipt of funds record” for every amount received by the developer in the course of each subject transaction, and maintaining a “client information record” for every purchaser and third party involved in a subject transaction, as described in the Act.

However, there are certain circumstances where real estate developers must report their information to the Financial Transactions

and Reports Analysis Centre of Canada (FINTRAC). FINTRAC is Canada's financial intelligence gathering unit responsible for collecting information under and monitoring compliance with the legislation, and working with other law enforcement agencies around the country. Transactions that knowingly involve terrorists or terrorist property, involve the receipt by the real estate developer of $10,000 or more in cash within 24 hours, or where the developer has reasonable grounds to suspect that the transaction is related to money laundering or a terrorist activity financing must be reported to FINTRAC. Although every suspicious situation must be considered in whole, some examples of things that may make a developer suspicious are:

* the purchaser shows minimal interest in the property and wants to close quickly;
* the purchaser appears to be misrepresent his or her financial situation; and
* the purchaser uses different names on the offer to purchase, closing documents and deposit receipts without explanation.

One of the most noteworthy requirements under the Act is the obligation to create and implement a "compliance regime." Once developers qualify under the Act, they will be subject to the Act from then on (unless their business changes drastically) and are required to develop and implement a compliance regime. The failure to do so is an offence subject to penalties. The compliance regime
must include, among other things, appointing a compliance officer, developing written policies and procedures including those related to record retention, assessing high-risk areas and how to mitigate them, training employees, and reviewing the effectiveness of the regime on an ongoing basis.

For further information about the Act and its requirements, you can contact FINTRAC or visit their website at www.fintrac.gc.ca and consult FINTRAC's Guideline 6B: Record Keeping and Client Identification for Real Estate.

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