

New Duties for Real Estate Developers Under Money Laundering Legislation

On **February 20, 2009**, a key amendment to regulations under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act, 2000, c.17* will come into force. This amendment makes **“real estate developers”** part of the group of financial service providers and financial intermediaries that must meet the reporting and record-keeping requirements that are described in the legislation.

By Sylvia Adriano

The Purpose of the Act

The *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (the “Act”) is designed to help law enforcement officials detect, investigate and prosecute money laundering and the financing of terrorist activities. Banks, mortgage companies, life insurance companies and other members of the financial sector are already subject to the requirements under the Act. When the amendment to certain regulations to the Act comes into force on February 20, 2009, real estate developers will be included in this group and will be required to keep detailed records of the identity of their clients and the transactions in which they are involved, and to report any suspicious transactions and large cash transactions. This information can provide law enforcement officials the information they need to respond to the threat posed by organized crime and to help fulfill Canada’s international commitments to participate in the fight against transnational crime, particularly money laundering and the fight against terrorist activities.

The Act established the Financial Transactions and Reports Analysis Centre of Canada, or “FINTRAC” as the agency responsible for ensuring that the Act is complied with. Within Canada, FINTRAC is the agency responsible for collecting information under and ensuring compliance with the Act and its related regulations. On a global level, FINTRAC is Canada’s financial intelligence unit responsible for analyzing and disclosing financial information and intelligence on suspected money laundering and terrorist activities financing.

Details of real estate developers’ new responsibilities

The new responsibilities of real estate developers under the Act and its related regulations are extensive. Generally speaking, every time a real estate developer sells a new building, including a house or condo, they must take steps to comply with the specific requirements under two regulations under the Act:

1. Under the *Proceeds of Crime (Money Laundering) and Terrorist Financing*

Are You a Real Estate Developer?

A real estate developer is defined under the legislation as a person or entity who, in any calendar year after 2007, has sold to the public, other than in the capacity of a real estate broker or sales representative:

- 1. Five or more new houses or condominium units;*
- 2. One or more new commercial or industrial buildings; or*
- 3. One or more new multi-unit residential buildings each of which contains five or more residential units, or two or more new multi-unit residential buildings that together contain five or more residential units.*

Suspicious Transaction Reporting Regulations, they must report 'suspicious transactions' to FINTRAC. 'Suspicious transactions' are transactions that are in progress or have been completed in which there are reasonable grounds to suspect that that money involved in the transaction stems from a money laundering offence, which can include a terrorist activity financing.

2. Under the Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations, they must ascertain the identity of the people they are dealing with and maintain certain records. The following is a list of some of the new responsibilities that a real estate developer now has:

- Maintain a 'receipt of funds record' for every amount received in the course of a transaction (subject to certain exceptions).*
- Maintain a 'client information record' for every client. The type of information that must be obtained depends on whether the client is an individual or a corporation.*
- Follow specific procedures for determining the identity of every person who conducts the transaction and every corporation (including the names of their directors) or other entity on whose behalf the transaction is being conducted.*

- Submit a 'large cash transaction report' to FINTRAC when the developer or its solicitor receives \$10,000 or more in cash.*
- Report any transactions involving known terrorists or terrorist property.*

The regulations also require that real estate developers develop the necessary policies and procedures and implement a comprehensive record keeping and compliance system to conform with this regime once the amendments come into force. FINTRAC has the authority to make inquiries into the real estate developer's business and obtain documents or other information from the developer's records for compliance purposes. The consequences of not complying with the requirement to report to FINTRAC involve criminal penalties and, depending on the offence, could result in a fine, imprisonment, or both.

We can help!

We would be pleased to speak with you to help you determine whether you would be classified as real estate developer under the Act and, if so, what you need to do to fulfill the FINTRAC reporting and record-keeping requirements.

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Sylvia practises all aspects of commercial real estate law. She acts for a wide variety of clients in all types of real estate transactions, including the purchase, sale and financing of retail, commercial and industrial properties. Sylvia also provides advice on land development and acts for clients involved in the acquisition, investment, development and management of real property. She assists her clients with all aspects of their real estate development projects and has negotiated a wide variety of agreements in connection with the acquisition and development of properties throughout Canada. Contact Sylvia at 416.947.5095 or sadriano@weirfoulds.com.

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