

Real Estate Developers Must Comply with Anti-Money Laundering Legislation

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By Syliva Adriano

Key amendments to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (the Act) make real estate developers part of the group of persons that now must comply with the reporting, client identification and record keeping requirements within the legislation.

The Act states that you are a “real estate developer” if in any calendar year after 2007, you have 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, 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 and Large Cash Transactions

Under the Proceeds of Crime (Money Laundering) and Terrorist Suspicious Transaction Reporting Regulations, developers must report ‘suspicious transactions’ to FINTRAC, the agency responsible for collecting information under and ensuring compliance with the Act and its regulations. ‘Suspicious transactions’ are largely determined by what is reasonable grounds to suspect that the money involved in the transaction stems from a money laundering offence.

Developers must submit a ‘large cash transaction report’ to FINTRAC when they or one of their solicitors receive \$10,000 or more in cash. Large cash transaction reports must be sent to FINTRAC within 15 days after the transaction. At the time a large cash transaction record or client information record is created, reasonable measures must be taken to determine whether the transaction is being conducted on behalf of a third party.

Some New Responsibilities for Developers

- Maintain a ‘receipt of funds record’ for every amount received in the course of a transaction.
- Maintain a ‘client information record’ for every client. The type of information depends on whether the client is an individual or 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.
- If you come to believe there is property in your possession or control that is owned or controlled on behalf of a terrorist group, this must be reported to FINTRAC. You will have to reference various lists, such as Public Safety Canada’s and that of the Office of the Superintendent of Financial Institutions, on a regular basis.

With files from Sylvia Adriano, a partner with WeirFoulds LLP, Toronto.

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