

## Money Laundering and Real Estate Development

The *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (the “Act”) was enacted to help law enforcement officials detect, investigate, and prosecute money laundering and offences relating to the financing of terrorist activities. On Feb. 20, 2009, portions of the *Regulations Amending Certain Regulations Made Under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act* will come into force adding real estate developers to the list of persons and entities that are subject to the Act. Take our quiz and see if you are up to speed on what real estate developers will have to do to comply with the Act.



**WeirFoulds** LLP

**1** You are in-house counsel for a company that built and sold one industrial building in 2008. As a result, your company is now considered a “real estate developer” under the Act and must comply with the requirements under the legislation from now on.

True or False?

**2** Under the Act, real estate developers and other professions covered under the Act must report any suspicious transactions to:

- (a) The RCMP
- (b) Financial Transactions and Reports Analysis Centre of Canada (FINTRAC)
- (c) The fraud department of their local or provincial police department.

**3** Which one of the following duties apply to real estate developers when they sell a new building?:

- (a) Maintain a receipt of funds record for every amount you receive in the course of a transaction, which includes information on the individual or corporation from which the funds were received and the accounts from which the funds are being withdrawn and into which they will be deposited.
- (b) Maintain a client information record for the clients you deal with, whether the client is an individual, corporation or other entity.
- (c) Follow specific procedures

for determining the identity of every person who conducts the transaction and every corporation or other entity on whose behalf the transaction is being conducted.

- (d) File a report with FINTRAC if you are involved in a sale transaction that seems suspicious or for which you are paid \$10,000 or more in cash.
- (e) All of the above.

**4** Real estate developers and other professions covered under the Act must report any cash transaction in excess of:

- (a) \$10,000
- (b) \$100,000
- (c) \$2,500
- (d) \$1,000,000

**5** You are in-house counsel for a small building company that builds one or two commercial buildings a year for sale to the public. You have read the Act and the amending regulations and plan to ensure that as of February 20, 2009, whenever your company engages in one of these transactions, it keeps the required records and identifies clients in respect of these records, and will keep records and report to FINTRAC “large cash transactions”, suspicious transactions and (however unlikely the possibility) transactions involving known terrorist property. By doing this, has your company discharged its obligations under the Act?

Yes or  No

## QUIZ ANSWERS

**1 TRUE.** A real estate developer is defined under the Act as any person or entity who, in a given calendar year after 2007 has sold to the public (other than in the capacity of a real estate broker or sales representative):

- 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.

Furthermore, once you meet the definition of a “real estate developer” you will always be considered a real estate developer and must comply with the Act whenever you engage in the sale of a new house, condominium unit, commercial building, industrial building, or multi-unit residential building to the public from that point forward (unless there is a substantial and permanent change to your operations).

**2 B. FINTRAC.** The regulations to the Act require real estate developers to report any “suspicious transaction” to FINTRAC within 30 days of the fact that gave rise to the suspicion. A suspicious transaction is one in which there are reasonable grounds to suspect that the transaction (whether it has been completed or is in progress) is related to money laundering or a terrorist activity financing offence. FINTRAC is Canada’s financial intelligence unit responsible for analyzing and disclosing financial information and intelligence on suspected money laundering and terrorist activities financing, and the agency responsible for collecting information under and ensuring compliance with the Act.

**3 E. ALL OF THE ABOVE.** Real estate developers must complete all of these items when engaged in a prescribed sale transaction, as described earlier. However, there are exceptions, such as:

- you do not have to keep a receipt of funds record or client information record if you sell the new building to a public body (provincial or federal department, Crown agency, an incorporated municipality or a hospital authority) or a very large corporation (a company with minimum net assets of \$75 million with shares traded on a Canadian stock exchange or an exchange outside Canada designated by the Minister of Finance, and that is operated in a country

that is a member of the Financial Action Task Force),

- you do not have to submit a “large cash transaction report” if the cash is received from a public body or financial institution, and
- if you use a real estate broker or sales representative (that is not your employee) to sell your building, it becomes the obligation of the broker or sales representative to collect the necessary information and report to FINTRAC as required under the Act.

The items listed in this question are only short summaries of the types of information that real estate developers are required to obtain and maintain; for further details please refer to Guideline 6B – Record Keeping and Client Identification for Real Estate available on FINTRAC’s website ([www.fintrac.gc.ca](http://www.fintrac.gc.ca)).

**4 A. \$10,000.** Real estate developers must submit a large cash transaction report to FINTRAC within 15 days of receipt of \$10,000 CDN (or its equivalent in foreign currency) or more in cash. This includes receipt of 2 or more cash transactions by or on behalf of the same client within 24 hours that add up to \$10,000 or more.

**5 NO.** All real estate developers must implement a compliance regime that includes:

- appointment of a compliance officer;
- development and implementation of written compliance policies and procedures;
- assessment and documentation of the areas in which you are particularly at risk for money laundering and the measures you will take to mitigate these high risk areas, and the development of methods to conduct ongoing monitoring of these areas;
- implementation of an ongoing compliance training program for employees and agents; and
- ongoing reviews of the effectiveness of the various elements of the regime (i.e. every 2 years).

### YOUR RANKING?

- **One or fewer correct:** *Might be time to brush up*
- **Two or three correct:** *Not bad, but could do better.*
- **Four or five correct:** *Impressive.*



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