

# New Anti-Money Laundering Legislation to Impact Real Estate Developers

## Introduction

On February 20, 2009, real estate developers (“Developers”) will become subject to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (the “Act”). Developers will be required to comply with the following record keeping and reporting obligations:

1. keeping a “client identification record” each time they sell a new property;
2. keeping a “receipt of funds record” each time they receive funds from a purchaser (some exceptions apply);
3. reporting the receipt of cash in excess of \$10,000; and
4. reporting suspicious transactions where they have reason to suspect that the transaction is related to the commission of money laundering or terrorist financing.

## 1. Client Identification Records

Each time a Developer sells a new house, new condominium unit, new commercial or industrial building or new multi-unit residential building (a “Transaction”), the Developer will be required to ascertain the identity of the purchaser in the Transaction and keep a “client information record”. A “client information record” must set out the client’s name and address, and the nature of the client’s principal business or occupation. Therefore, Developers will have to ask each client to provide a brief description of their principal business or occupation.

If the client is an individual, the “client information record” also has to include the individual’s date of birth. If the “client information record” is for a corporation, the Developer must keep a copy of the part of the corporate records showing the power of the corporation to enter into the Transaction.

Where the purchaser is an individual, ascertaining their identity requires a Developer to check the individual’s:

- birth certificate;
- driver’s license;
- provincial health insurance card;
- passport; or
- other similar document.

Where the purchaser is a corporation, the Developer must confirm the corporation’s name and address and the names of its directors. In British Columbia, the most common way to confirm this information would be to conduct a corporate search on BC Online at <https://www.bconline.gov.bc.ca/>.

Where the purchaser is another form of entity (e.g. a partnership or trust), the Developer must ascertain its existence by examining appropriate records (e.g. a partnership agreement or declaration of trust).

## **2. Receipt of Funds Records**

Developers will be required to keep a “receipt of funds record” for every amount received in the course of a Transaction, unless the amount is received from a financial entity (i.e. a bank or credit union) or a public body. An amount is “received from a financial entity” only if it is a payment made by the financial entity itself (e.g. a payment by the Royal Bank). An amount is not “received from a financial entity” if it is a payment from an individual drawn from an account at a financial entity (e.g. a cheque from an individual drawn on their Royal Bank account).

The information required in a “receipt of funds record” includes:

1. the amount and currency of the funds received;
2. the date of the transaction;
3. the purpose, details and type of transaction (for example, the funds were for a deposit on the purchase of a house, etc.), including whether any other individuals or entities were involved in the transaction;
4. if the funds received were cash, how the cash was received (for example, in person, by mail or any other way); and
5. if an account was affected by the transaction, include the following:
  - a. the number and type of any such account;
  - b. the full name of the client that holds the account, and
  - c. the currency in which the transaction was conducted.

## **3. Large Cash Transactions**

If a Developer receives an amount in cash of \$10,000 or more, it must keep a “large cash transaction record” unless the cash is received from a financial entity or a public body. Cash includes only coins and bills, and does not include cheques or bank drafts.

A “large cash transaction record” includes the same details noted above for a “receipt of funds record”. However, “large cash transaction records” must be reported to FINTRAC (the Financial Transactions and Reports Analysis Centre of Canada). Details regarding submitting “large cash transaction records” to FINTRAC can be found online at <http://www.fintrac-canafe.gc.ca/publications/guide/guide-eng.asp>.

## **4. Suspicious Transactions**

In addition to reporting large cash transactions, Developers will be required to report suspicious transactions and attempted suspicious transactions to FINTRAC where there are reasonable grounds to suspect that the transaction is related to the commission of money laundering or terrorist financing. Details regarding reporting suspicious transactions can be found online at <http://www.fintrac-canafe.gc.ca/publications/brochure/05-2003/2-eng.asp>.

## Record Retention

Developers must retain “client information records”, “receipt of funds records” and “large cash transaction records” in paper or electronic form for at least five years from the date they were created.

If you have any questions, please do not hesitate to contact us:



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