



Real Estate Developers Required to Comply With Federal Anti-Money Laundering Legislation

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As of February 20, 2009, real estate developers joined the class of entities, including financial institutions, life insurance companies, securities dealers, foreign exchange dealers and real estate brokers, covered by the provisions of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (the “Act”). Real estate developers are now required to comply with the reporting, client identification and record keeping requirements set out in the Act, and are also required to implement the compliance regime mandated by the Act.

Definition of real estate developer

A real estate developer is defined as any individual or entity that has sold to the public in any calendar year after 2007 any of the following:

- five or more new houses or condominium units;
- one or more new commercial or industrial buildings; or
- one or more new multi-unit residential buildings that total five dwelling units or more.

The definition does not include the sale or development of land without buildings.

Once a person or entity satisfies this definition, they are required to comply with the obligations that apply to real estate developers set out in the Act for the remainder of that calendar year and all subsequent years, whether or not they satisfy the definition in those subsequent years. The obligation to comply with the Act will only terminate if the real estate developer is able to show that its business has changed substantially and permanently such that it no longer carries on the functions of a real estate developer.

Reporting, client identification and record keeping requirements

When real estate developers sell a house, condominium unit or building to the public, they are required to file, and keep copies of, the following reports:

- reports of suspicious transactions and suspicious attempted transactions (a transaction the client intended to complete, and took some form of action to complete, but that was not actually completed) - when there are reasonable grounds to suspect that the transaction or attempted transaction is related to a money laundering or terrorist financing offence. The real estate developer must also take reasonable measures to ascertain the identity of the person conducting or attempting to conduct the suspicious transaction, subject to certain exceptions;
- terrorist property reports - when a real estate developer knows that it holds property owned or controlled by or on behalf of a terrorist or terrorist group it must immediately report to the Financial Transactions and Reports Analysis Centre of Canada, Canada’s financial intelligence agency, as well as to the RCMP and CSIS; and



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- large cash transaction reports - when a real estate developer receives \$10,000 or more in cash within a 24 hour period in respect of a single transaction, unless the cash is received from a financial entity or public body. The real estate developer must also inquire whether the cash is being provided on behalf of a third party and, if so, obtain information about the third party and the third party's relationship to the person providing the cash to the developer.

Real estate developers are also required to identify any individual, and confirm the existence of any corporation or other legal entity, that:

- purchases a new home, condominium unit or building;
- provides to the developer any part of the funds used to purchase a new home, condominium unit or building, such as the deposit; or
- is a party to an Agreement of Purchase and Sale with respect to the purchase of a new home, condominium unit or building.

Real estate developers are also required to keep client information records on all parties to the Agreement of Purchase and Sale and a receipt of funds record with respect to all amounts received in the course of a single transaction, other than amounts received from a financial entity or public body.

The Act contains specific and detailed requirements as to how to identify individuals and corporate or other entities, what forms of identification are permitted, when a reporting entity may rely on an agent to identify clients and when clients who have been previously identified must be identified again, as well as the information that must be included in a client information record and receipt of funds record.

The record keeping and client identification requirements do not apply to a real estate developer if a real estate broker or real estate sales representative actually sells the property to the public, unless the agent or broker is an employee of the developer. Real estate agents and brokers have been covered by the Act since 2002, so are already required to comply with the client identification and record keeping requirements.

Compliance Regime

Real estate developers that sell new homes or buildings to the public must implement a compliance regime that includes:

- the appointment of a compliance officer, who must be someone with access to senior management and sufficient authority to carry out the obligations of the position;
- the assessment and documentation of the risks relating to the occurrence of money laundering and terrorist financing offences in a manner that is appropriate to the developer, along with the adoption of policies and procedures to mitigate any identified risks that are higher than normal. The risk assessment must take into account the real estate developer's clients, business relationships, products and services, delivery channels, and geographic location, as well as the geographic locations of its clients;
- the development and application of written compliance policies and procedures;
- a written ongoing compliance training program for employees and agents; and
- a documented review of the compliance policies and procedures, risk assessment and training program for effectiveness at least every two years, conducted by an internal or external auditor if the developer has an auditor, including a written report on the findings of the review to a senior officer of the developer, if the developer is a corporation.

Blaney McMurtry LLP has substantial experience assisting reporting entities in complying with their obligations under the Act. If you have any questions about the Act, please contact Jill McCutcheon or Kelly Morris. ■