

FEATURE Distracted developers must now deal with complicated new anti-money laundering regulations

Big brother is moving in

RICHARD CHU/FRANK O'BRIEN

WESTERN INVESTOR

As of February 20, B.C. real estate developers have had to keep more detailed client records and report any suspicious deals as part of new requirements under the federal government's anti-money laundering legislation.

The new requirements, under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, will primarily affect developers who had't already complied when the rules came into effect last year for real estate brokerage firms.

Said Eric Andreasen, Adera's vice-president of marketing and sales, "It'll be more onerous for people who haven't had a large-scale process for collecting information and processing more volume of deals."

Adera is a Metro Vancouver developer involved in both residential and commercial projects.

The law will require changes to the standard sales process and in-house compliance to ensure enough client information is collected and safely stored for government audits.

"They can descend at any time they want and ask for records," said Andreasen, "so everyone is compelled to keep those records."

In addition to keeping basic contact information, developers will need to keep occupation data for at least five years, according to McCarthy Tetrault partner Beverly Ellingson.

"It's a little bit more security and due diligence, which never hurts," said Neil Chrystal, president and CEO of Polygon Homes Ltd.

Developers will have to report any transaction that involves more than \$10,000 in cash, as well as those that appear to be suspicious or involve property that's controlled by a terrorist or terrorist group.

From more than 70,000 reported transactions during fiscal 2007-2008, FINTRAC made 210 case disclosures, of which:

- 171 were for suspected money laundering
- 29 were for suspected terrorist activity financing and/or threats to the security of Canada
- 10 were for both suspected money laundering and suspected terrorist activity financing

FINTRAC's financial intelligence disclosures were provided to a variety of law enforcement and intelligence agencies:

- 61 per cent to the RCMP
- 24 per cent to foreign financial intelligence units
- 24 per cent to municipal police services
- 12 per cent to provincial police services
- 12 per cent to the Canadian Security Intelligence Service
- 5 per cent to Canada Border Services Agency, Canada Revenue Agency and Communication Security Establishment Canada

Eight out of 10 FINTRAC disclosures this year were related to active investigations by police. For the year 2007-2008, FINTRAC had 329 employees and a budget of \$51.1 million.

Red flags

According to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), suspicious transactions can include deals with parties who:

- don't show a usual interest in the characteristics of a property they're buying;
- don't care about the purchase or sale price or financing terms;
- express an intention that the contract not be notarized;
- have a property that's bought and sold in a short period of time; and
- buy or sell a home that's inconsistent with an individual's income or occupation.

Any of the above scenarios might have a legitimate explanation, but, according to Ellingson, "if something seen is out of the ordinary, you're better off reporting it. There's no liability for reporting."



Eric Andreasen, Adera VP, sales and marketing: "They can descend at any time they want and ask for records." Beverly Ellingson, partner with McCarthy Tetrault: "If something is out of the ordinary, you are better off reporting."



Clark Wilson LLP partner Peter Tolensky notes that developers will need to collect

The new law will add new administrative requirements for developers that come at the worst time for an industry dealing with a declining market.

more information if a property is being sold to a corporation.

"A bit more disclosure may be required because with respect to corporations, you typically have to drill down a number of layers [to get the name of the principals]."

This research will be even more difficult when it involves off-shore clients. In some cases, local developers will have to rely on information verified by agents in the client's host country. And, due to the size of real estate developments, it is likely these agents will be dealing with cash transfers in excess of \$10,000.

Last year, FINTRAC reported it had found 210 cases of illegal activity from the millions of disclosures it received under the legislation from across Canada. Most of them were money-laundering cases. Only one case involved mortgage fraud.

"They're dealing with other issues right now," said Ellingson. "Defaulting purchasers; banks not lending; keeping projects on track. The last thing they need is another headache."

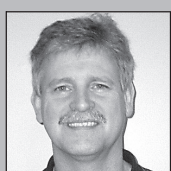
Developers will need to have a compliance regime in place that includes:

- the appointment of a compliance officer;
- written compliance policies and procedures;
- an assessment and documentation of money laundering and terrorist financing risks;
- a compliance training program for staff; and
- a review of compliance effectiveness.

Developers will have to be careful with deals signed before February 20 that involve transfers after that date, said Ellingson.

"If there's a deposit increase, they will need to collect the client information that they didn't earlier."♦

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