Guideline

Anti-Money Laundering

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INTRODUCTION

This guideline will help you understand some strategies you can use to meet your *Proceeds of Crime* (Money Laundering) *and Terrorist Financing Act* ("PCMLTFA") obligations. The Financial Transactions and Reports Analysis Centre of Canada ("FINTRAC") is the federal agency responsible for administering the PCMLTFA.

The federal FINTRAC requirements are additional to those under B.C.'s *Mortgage Brokers Act* ("MBA") and the regulations administered by BCFSA. BCFSA expects mortgage brokers and submortgage brokers to adhere to FINTRAC requirements.

Money laundering and terrorist financing in the mortgage services industry poses significant risks and potential harm to the public. Criminals may attempt to disguise funds gained through illegal activities by integrating them into the legitimate financial system through real estate purchases and mortgage transactions.

In your role as a submortgage broker or Designated Individual, you are well-positioned to identify potential money laundering and terrorist financing activities. For instance, you have access to detailed financial information and discuss financial issues when engaging with clients and borrowers. You play an important role in keeping B.C. safe and maintaining public confidence in the mortgage services industry by:

- Complying with the requirements under the PCMLTFA;
- Being aware of potential money laundering and terrorist financing indicators; and,

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- Knowing the steps to take when you see warning signs for money laundering and terrorist financing, including filing suspicious transaction reports ("STRs").

It is important to note that complying with FINTRAC's anti-money laundering and terrorist financing obligations does not exempt you from your other responsibilities under the MBA and regulations, including your duties to your clients, your regulatory obligation to conduct due diligence, your contractual duty to verify information, and your obligations to detect, deter, and prevent fraud.

This guideline provides key considerations and best practices to stop money laundering and terrorist financing across various roles in the mortgage services industry. However, they are not meant as a substitute for FINTRAC guidance. In addition to this guideline, you should review FINTRAC's guidelines and BCFSA's Advisory providing an overview of FINTRAC obligations for mortgage brokers and submortgage Brokers.

This guideline outlines the following:

1. The Importance of Having Early Discussions with Your Clients
2. Working with Borrowers and Lenders
3. Understanding Your Legal and Ethical Obligations
4. Money Laundering and Terrorist Financing Risk Indicators

GUIDELINE

1. The Importance of Having Early Discussions with Your Clients

Early in the process, you should ensure that your client and other parties to the mortgage transaction understand that you must collect certain personal information and conduct the necessary due diligence to verify this information.

This approach fosters trust and transparency, while also clarifying your legal and regulatory obligations. Clearly communicating these requirements early on may also act as a deterrent to potential money laundering and terrorist financing activities.

It is important to consult your brokerage's compliance policies and procedures to ensure you are aware of your specific responsibilities. You should also discuss any issues that arise with your brokerage's compliance officer who can provide guidance to you on how to proceed.

2. Working with Borrowers and Lenders

You have obligations under the PCMLTFA to identify persons or entities you provide mortgage services to.

Verifying the Identity of a Person or Entity

Under the PCMLTFA, you must identify any person or entity for the following transactions, or when the following records are required to be kept:

- Suspicious transactions
- Large cash transactions
- Large virtual currency transactions

- Receipt of funds records
- Information records
- Mortgage loan records

Verifying the Identity of a Person

There are multiple ways to appropriately verify a person’s identity. There are particular methods accepted by FINTRAC, and further information can be found on the FINTRAC website. Some of the key identification verification methods include:

- Government-Issued Photo Identification Method
  Ensure that the identification document presented is authentic, valid, and current. This includes physical examination of the document, checking the document's security features, and confirming that the name and photo match the individual. If the person is not physically present, use technology to authenticate the document (e.g., using mobile phone cameras and facial recognition). Record the document's unique details such as the issuing jurisdiction and expiry date.
- Credit File Method
  Verify the person's identity using a credit file that has existed for at least three years and comes from a recognized Canadian credit bureau. The file must match the person’s name, address, and date of birth. Ensure that the search is conducted at the time of verification and document the credit file number and source.
- Dual-Process Method
  Cross-verify identity using two pieces of information from separate reliable sources. This could include verifying the person’s name and address from a utility bill and their name and date of birth from a bank statement. All the information must be valid, current, and consistent with the details provided by the person.

Verifying the Identity of an Entity

FINTRAC provides guidance on how to verify the identity of an entity. When verifying the identity of a corporation, you should refer to authentic, valid, and current records, such as certificate of incorporation, provincial securities filings, or a certificate of active corporate status. For instance, you can use a database such as Corporations Canada or the B.C. Registry to obtain a corporation’s name, address, and directors.

When verifying the identity of entities other than corporations, you can use partnership agreements, articles of association, or similar documents that confirm the entity’s existence and include its name and address.

Ownership structures can be complex, and you are not expected to become an expert in understanding them. In cases of complicated organizational structures, you should discuss any unclear information with your brokerage’s compliance officer who can provide guidance on how you should proceed.

Communication and Coordination with Lenders

Effective communication and coordination between mortgage brokers and mortgage lenders are important to align both parties in their anti-money laundering (“AML”) efforts. You should establish clear channels of communication to appropriately discuss potential risks, share relevant information, and collaborate on appropriate procedures for handling and reporting suspicious activities. For example, if you identify an unusual activity during the mortgage transaction process, you should immediately notify the lender and work together to determine the appropriate course of action. Regardless of the lender's decision upon being informed of the unusual activity, you may still be required to file a STR with FINTRAC.

3. Understanding Your Legal and Ethical Obligations

You have a responsibility to uphold legal and ethical standards in relation to AML, including identifying areas of your business that are vulnerable to being used by criminals for conducting money laundering or terrorist financing activities.

It is important to remember that the landscape of money laundering risks, regulations, and best practices evolves over time. It is your responsibility to stay informed about changes so that you can help prevent money laundering and terrorist financing activities from taking place.

Compliance with Laws and Regulations

You must adhere to requirements under the PCMLTFA and its associated regulation, as well as applicable ministerial directives and transaction restrictions. This includes filing a STR with FINTRAC when you have reasonable grounds to suspect (there is a possibility) that a transaction is related to the commission or attempted commission of a money laundering or terrorist activity financing event. Consult FINTRAC's compliance guidance as well as your brokerage's compliance policies and procedures for more information on your specific requirements.

It is important to remember that the federal requirements under the PCMLTFA are in addition to requirements under B.C.'s MBA and regulations.

Ongoing Education and Awareness

Maintaining a commitment to ongoing education is important in fulfilling your AML obligations. Engaging in continuous education and training programs on AML will help equip you with knowledge and skills necessary to identify and mitigate risks more effectively. For example, courses, such as BCFSA's Legal Update, provide education on important issues impacting mortgage brokers, including legal obligations. Third parties also offer AML-specific courses.

Ask Questions

If you become concerned about the possibility of money laundering or terrorist financing in a mortgage transaction, you should analyze the situation by asking yourself questions, such as:

- Have I seen any warning signs/risk indicators?
- Have I fully discussed the situation with my Designated Individual or compliance officer?
- Do I have reasonable grounds to suspect that my client is engaging in money laundering or terrorist financing?
- Should I file a suspicious transaction report?
- What will be the impact of money laundering and terrorist financing on the reputation of my brokerage or the mortgage services industry?

If you have any concerns or suspicions that money laundering or terrorist financing is taking place or took place at an earlier time, discuss the matter with your compliance officer.

4. Money Laundering and Terrorist Financing Risk Indicators

You may be able to identify potential risk indicators for money laundering and terrorist financing based on the behaviours and activities of your client and/or other parties in the mortgage transaction.

If you see any of the following behaviours or activities, it does not necessarily mean that money laundering or terrorist financing is taking place. However, these indicators should prompt you to consider conducting further investigation, discussing with your compliance officer, or making a STR.

You are also encouraged to review FINTRAC's indicators of money laundering and terrorist financing in real estate for other potential indicators of money laundering and terrorist financing.

General Warning Signs

- The borrower cannot be properly identified using "know your client" procedures.
- The borrower is associated with questionable or suspicious activities, such as alleged criminal activities, through open-source searches or negative reports in news media.
- The borrower shows reluctance to provide complete information or state their true occupation or identity.
- The borrower has no email address, physical address, telephone number (e.g., disconnected or fake telephone number), company logo, or contact person.

Behaviour Warning Signs

- The borrower is reluctant to meet in person and prefers everything to be handled over the telephone or electronically.
- The borrower refuses to include their name on any document linking them to the transaction or insists that the document be submitted by a third party with no involvement in the mortgage transaction.
- The borrower expresses unusual concerns about government reporting requirements and the mortgage broker's AML policies or procedures.
- The borrower shows a lack of concern about risks, commissions, or other transaction costs.

Unusual Transaction Warning Signs

- The borrower buys property significantly below or above market value.
- Information on source of repayment is obscured or seems unreasonable based on the borrower's profile. For example, the borrower is willing to accept a mortgage contract with a servicing payment that exceeds their ability to pay.
- Refinancing a property shortly after its purchase. This may involve renovating the property and paying for the renovations with cash. Once the renovations are completed and the property's value has increased, the property is refinanced to draw out the equity.

- Large mortgage pre-payments are made shortly after the initial funding, without a verifiable source of the funds.
- The borrower wants to pay for the down payment and make re-payments using a number of small bank drafts from unrelated individuals or entities. It is particularly unusual if the bank drafts come from different financial institutions.
- The borrower wants to pay the down payment through a series of amounts below FINTRAC's reporting threshold of $10,000 from unrelated individuals or entities.
- The borrower is interested in having a short closing to expedite the transaction and minimize the time and effort required for due diligence.
- The borrower has purchased other properties in a short period of time.
- The borrower is involved in the real estate transaction; however, the ownership of the property is registered in the name of a nominee.
- The borrower wants to have an accelerated repayment shortly after completing the deal despite penalties.
- The borrower wants to refinance the existing property without a clear purpose.
- The borrower does not show concern about whether the transaction is economically viable.

Borrower Financial Profile Warning Signs

- The borrower represents their financial situation in a way that is unrealistic or that could not be supported by documents.
- The borrower seeks to pay off a loan from a lender, but there is no evidence of any prior mortgage payments made to that lender.
- The borrower has significant assets that do not match their income level or financial profile.
- The borrower cannot or will not state the true source(s) of the down payment.
- The borrower uses lump-sum payments to pay off the mortgage that do not align with their financial profile or income level.
- The borrower pays the down payment or repays the mortgage using a third party, other than a spouse or a parent.
- The borrower makes a large down payment that comes from a friend or distant family members.

Use of Other Parties Warning Signs

- The borrower pays a substantial down payment in cash and finances the balance from an unusual source, for example, a third party or offshore bank account.
- Lack of proper proof and accountability for the source and history of large gift funds.
- The borrower uses complex ownership structures or offshore accounts for the transaction.

- Transaction involves a non-profit or charitable organization with no logical financial or other purpose for the organization to be involved in the transaction, or there is no link between the organization's activities and the other parties in the transaction.

- The source of the down payment comes from countries or banking systems that are subject to government sanctions.

APPLICABLE SECTIONS OF THE MBA/MBA REGULATIONS

- MBA, Section 8(1) – Registrar's orders – registration and compliance
- MBA Regulations, Section 6 – Statements and records
- MBA Regulations, Section 8.2 – Business Practices and Consumer Protection Act powers
- Regulatory Statement MB - 12-003, Conditions of Registration

DEFINITIONS

Compliance officer: The individual, with the necessary authority, that is appointed to be responsible for the implementation of the compliance program, under the PCMLTFA.

Compliance program: All elements (compliance officer, policies and procedures, risk assessment, training program, effectiveness review) that a reporting entity is legally required to have under the PCMLTFA and its associated regulations to ensure that it meets all its obligations.

Money laundering offence: An offence under subsection 462.31(1) of the *Criminal Code*.

Terrorist activity financing offence: An offence under section 83.02, 83.03 or 83.04 of the *Criminal Code* or an offence under section 83.12 of the *Criminal Code* arising out of a contravention of section 83.08 of that Act.