

Federal government's anti-money laundering legislation expanded to include B.C. developers

Law also covers casinos, financial institutions and other arenas where large sums of money change hands

Richard Chu

As of February 20, B.C. real estate developers will need 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 haven'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 that haven't had a large-scale process for collecting information and processing more volume of deals."

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

- 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."

Clark Wilson LLP partner Peter Tolensky noted that developers will need to collect 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]."

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.

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

"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, but 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." •

rchu@biv.com