

Please note that this Compliance Manual has been compiled based on the best information available to CREA and should not be construed as legal advice.

If you have further concerns, you should contact FINTRAC directly or consult with legal counsel.

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***Proceeds of Crime (Money
Laundering) and Terrorism
Financing Act and Regulations***

2008

OFFICE COMPLIANCE MANUAL

TABLE OF CONTENTS

INTRODUCTION	3
RECORD KEEPING OBLIGATIONS	
Client Information Record	4
Receipt of Funds Record	6
Large Cash Transaction Record	6
Record Keeping Policy	7
REPORTING OBLIGATIONS	
Reporting Obligations	8
Large Cash Transaction Reports	9
Suspicious Transaction Reports	9
Terrorist Property Reports	11
COMPLIANCE PROGRAM OBLIGATIONS	
Compliance Officers	13
Policies and Procedure Manual	13
Risk Assessment Statement	13
Training Program	13
Review Process	15
APPENDICIES/EXAMPLES	
Suspicious Transaction Examples	16
Compliance Officer Appointment	17
Training Certifications	18

INTRODUCTION

Real estate brokers and sales representatives have a number of obligations under the *Proceeds of Crime (Money Laundering) and Terrorism Financing Act* and Regulations (the PCMLTF Regime). Information regarding these obligations can be found in numerous locations, such as in the legislation itself, in Guidelines and other resources on FINTRAC's website, and in the information CREA has provided on REALTOR Link®. The purpose of this Compliance Manual is to consolidate the basic information that brokers and sales agent must know in order to comply with the PCMLTF Regime; however, you may still need to resort to other resources for more detailed information.

The obligations of real estate brokers and sales representatives (referred to as simply REALTORS® for the purpose of this Compliance Manual) under the PCMLTF Regime can be divided into three broad categories: record keeping obligations, reporting obligations, and compliance program obligations. The remainder of this Compliance Manual will also be divided into those three categories.

RECORD KEEPING OBLIGATIONS

The PCMLTF Regime establishes that whenever a REALTOR[®] acts as an agent in respect of the purchase or sale of real estate, they are required to create and maintain records: Client Information Records, Receipt of Funds Records, and Large Cash Transaction Records. All of these records must be maintained for FIVE (5) years. REALTORS[®] are also expected to keep copies of official corporate records and copies of Suspicious Transaction Reports, which will be discussed in the Reporting Obligations section in more detail.

Client Information Records

REALTORS[®] are required to ascertain the identity of individual clients at the time of the transaction; completing a client information record fulfills this obligation. FINTRAC defines “time of the transaction” as the time when the deed is signed. However, since REALTORS[®] are often not present when transactions are closed, it would be prudent to verify the client’s identity prior to closing, such as when a listing is accepted or when an offer is made. If the client is a corporation or other entity, their identity must be verified within 30 days of the transaction, i.e. within 30 days of signing the deed.

The information that is required to verify the client’s identity will depend on whether the client is an individual, corporation, or other entity. To verify the identity of an individual, the REALTOR[®] must record the client’s name, address, date of birth, and principal business or occupation. The client will need to produce a valid Provincial, Territorial, or Federal piece of ID with a unique identifier number for this purpose. Specific details as to what documents (ID) are acceptable are printed on CREA’s Individual Identification Information Record, posted on www.realtorlink.ca or available in WEBForms[™]. Copies of this form can be printed from the Money Laundering section of the Compliance Centre on REALTOR Link[®].

If the client is a corporation, REALTORS[®] are obligated to confirm the existence of the corporation, to determine the corporation’s name and address, and to determine the names of its directors. This information can be verified using the corporation’s certificate of corporate status, a record that has to be filed annually under provincial securities legislation, or any other record that confirms the corporation’s existence. Similarly, if the client is an entity, the existence of the entity must be confirmed through appropriate records.

The documents used to verify the existence of the corporation do not have to be in hard copy; an electronic document may be used as long as it is a public record such as Industry Canada’s Strategis federal corporations database on the Corporations Canada page of the Strategis Web site (<http://strategis.ic.gc.ca>).

If using an electronic record, the Corporation/Entity Identification Information Record should state the corporation registration number, the type of document referred to, and the source of the document. A copy of the Corporation/Entity Identification Information Record is available on www.realtorlink.ca, or in WEBForms™.

If a REALTOR® is not dealing with a client face-to-face and therefore cannot personally verify the client's identity, an agent or mandatary can be used to fulfill this obligation. If using an agent or mandatary, the PCMLTF Regime requires there to be an agreement, in writing, between the broker and the mandatary outlining what is required of the mandatary. The mandatary must then provide the client information pursuant to their agreement. An Identification Mandatary/Agent Agreement form is available on www.realtorlink.ca for this purpose.

When verifying the identity of clients, REALTORS® are required to take reasonable measures to determine if a third party is involved in the transaction. FINTRAC defines a third party as an individual or entity other than the individual who conducts the transaction. For example, if an individual "A" is conducting a transaction and they have Power of Attorney for another individual "B", then "A" would be considered the client for identification purposes and "B" would be the third party. Information about "B" would then be recorded in the Verification of Third Parties portion of the Individual Identification Information Record.

REALTORS® should also keep in mind that their obligation to verify the identity of parties to a transaction may, in some circumstances, extend beyond their own clients. If the REALTOR® is dealing with an unrepresented party, they are expected to take reasonable measures to ascertain the identity of the unrepresented party. If unable to ascertain that party's identity, the REALTOR® should indicate in the client information record that the required information is unavailable and describe the measures taken to obtain the information. There is, however, no obligation to exchange client information with other REALTORS® if both the buyer and seller in a transaction are represented.

There are two exceptions to the client identification obligations. One, REALTORS® do not have to verify the identity of a client that they recognize and have previously identified in a past transaction. Two, REALTORS® do not need to complete a client information record if a bank is acting on behalf of the client, such as when the bank holds Power of Sale.

Receipt of Funds Record

Whenever a REALTOR® receives funds, they are required to complete and maintain a Receipt of Funds Record. Generally, the buyer's agent will complete this form; however, if there is no buyer's agent involved, the listing broker would be required to complete a Receipt of Funds Record. This record must state who the funds are received from, how the funds were received, the amount of the funds, the date of the transaction, the purpose and details of the transaction, and the number and details of any account affected by the transaction. A Receipt of Funds Record form is available on REALTOR Link® and in WEBForms™.

If the buyer's agent transfers funds from their trust account into the listing agent's trust account, both accounts are affected by the transaction and therefore both numbers are to be recorded on the Receipt of Funds Record; REALTORS® are expected to make reasonable efforts to obtain this information. If a REALTOR® is unable to ascertain the other REALTOR®'s trust account number, they should record on the form that the information is unavailable and provide a brief description of the efforts made to acquire the information.

REALTORS® should keep in mind that a Receipt of Funds record must always be accompanied by a client identification record. Also, if the funds that are received are such that a Large Cash Transaction Record must be created, the REALTOR® may keep a copy of this record in lieu of completing a Receipt of Funds Record.

There is no requirement to provide another broker office with copies of the completed Receipt of Funds Record.

Large Cash Transaction Record

If a REALTOR® receives funds totaling \$10,000 or more in cash (i.e., coins, notes issued by the Bank of Canada, and coins or bank notes of countries other than Canada), a Large Cash Transaction Record must be created and maintained.

This record must contain the amount and currency of the cash received, the date and nature of the transaction, the purpose and details of the transaction, the type of transaction, whether any other individuals or entities were involved in the transaction, how the cash was received, the number and type of any account affected by the transaction, if known, the full name of the client that holds the account, and the currency in which the accounts transactions are conducted. The REALTOR® must also verify the identity of the party providing the funds, recording all the information described above in the client information record section. The Large Cash Transaction Record form can be printed from the FINTRAC website.

Record Keeping Policy

It shall be the Compliance Officer who develops and implements the actual filing system for the keeping of forms, or Records, required for compliance. The actual documents prepared as required for compliance are the property of the brokerage, and they shall be kept in a manner that makes them accessible within thirty (30) days of a request from FINTRAC for the brokerage to provide them. The brokerage policy, as required for compliance, is that any and all forms prepared for compliance purposes shall be kept for a period of five (5) years.

REPORTING OBLIGATIONS

REALTORS® are obligated to file reports with FINTRAC in three different situations: if they are involved in a suspicious transaction or attempted suspicious transaction, if they are involved in a large cash transaction, and if there is a property in their possession or control that is owned or controlled by a terrorist or terrorist group. Regardless of what type of report is being filed, there are a few general principles that must be kept in mind.

Reports filed with FINTRAC must be kept confidential. As a reporting person or entity, which real estate practitioners are, you are not allowed to inform anyone, including the client, about the contents of a suspicious transaction report or even that you have made such a report. Because it is important not to tip your client off that you are making a suspicious transaction report, you should not be requesting information that you would not normally request during a transaction. You are able, however, to disclose the reporting of large cash transactions.

FINTRAC also has obligations when it comes to handling confidential information. There are numerous safeguards to protect the privacy of individuals about whom information is sent to FINTRAC, including the following:

- the independence of FINTRAC from law enforcement and other agencies to which FINTRAC is authorized to disclose information;
- criminal penalties for any unauthorized use or disclosure of the personal information under FINTRAC's control;
- the requirement for police to get a court order to obtain further information from FINTRAC; and
- the application of the *Privacy Act* to FINTRAC.

FINTRAC is required to ensure that personal information under its control is protected from unauthorized disclosure. Information may only be disclosed to the appropriate law enforcement authorities when it has been determined that there are reasonable grounds to suspect that the information would be relevant to investigating or prosecuting a money laundering offence or a terrorist activity financing offence.

When FINTRAC has made this determination, it discloses only designated information to law enforcement agencies. Designated information is limited to key identifying information, such as name and address, date of birth and citizenship. It also includes certain information about the transaction itself, such as the name and address of the place of business where it occurred, the date of the transaction, amount and type of currency or value of the funds, account number, etc. To obtain further information from FINTRAC, police must first get a court order.

FINTRAC may also, under specified circumstances, disclose designated information to CRA, Citizenship and Immigration, or foreign agencies with mandates similar to FINTRAC's. If FINTRAC determines that there are reasonable grounds to suspect that the information under its control would be relevant to threats to the security of Canada, designated information is disclosed to the Canadian Security Intelligence Service or CSIS.

No criminal or civil proceedings may be brought against a REALTOR[®] for making a report in good faith concerning a suspicious transaction. This also applies if the REALTOR[®] is not required to submit a report to FINTRAC, but decide to provide information voluntarily because of your suspicions of money laundering or financing of terrorist activity.

Large Cash Transaction Reports

REALTORS[®] must report large cash transactions when receiving \$10,000 CDN or more in cash, or an equivalent amount in a foreign currency, in the course of a real estate transaction. If two or more cash transactions of less than \$10,000 each are made within a 24-hour period by or on behalf of the same client, these are considered to be a single large cash transaction if they add up to \$10,000 or more. These transactions must also be reported. This reporting requirement is in addition to the requirement of keeping a Large Cash Transaction Record.

Large cash transactions are to be reported to your Compliance Officer, who will send the report to FINTRAC within 15 days of the transaction. All Large Cash Transaction Reports are submitted to FINTRAC electronically by completing and sending the report through FINTRAC's secure website: www.fintrac.gc.ca. The website provides instructions on how to complete a report; drop-down menus appear wherever a specific selection is required. In addition, details concerning formatting of particular information may appear at the bottom of the screen.

For all reports submitted electronically, FINTRAC issues an acknowledgement message, which can be printed from the browser window. This acknowledgement message will include the date and time that the report was received, together with a FINTRAC-generated identification number. If a Large Cash Transaction Report contains incomplete information, FINTRAC will notify our Compliance Officer about information that must be completed or corrected. The Compliance Officer will then notify the employee concerned.

Suspicious Transaction Reports

Any REALTOR[®] who suspects that a transaction, or attempted transaction, may be suspicious is responsible for notifying their Compliance Officer so that a Suspicious Transaction Report can be completed. These reports are to be forwarded to FINTRAC within 30 days of the suspicion, using the following described procedure.

Some examples of suspicious transactions as they could apply to a real estate transaction are attached to this Compliance Manual.

Any person reporting a suspicious transaction must not inform anyone, including the client, about the contents of a Suspicious Transaction Report or even that such a report has been made or is to be made (except for the Compliance Officer who has a duty to ensure secrecy and store such confidential reports). The penalty for such an offence if found guilty can be up to two years in prison.

A Suspicious Transaction Report must include the date of the financial transaction, the amount and type of funds used in the transaction, how and where the funds were deposited, the branch and transit numbers of the financial institution for where the funds were deposited (include copy of cheque if possible), the account number and type of account into which the funds were deposited, the full name of the account holder, and an explanation of what led to the belief something was suspicious about the transaction. The explanation of the suspicious should include as complete and clear a description as possible of all factors or unusual circumstances that led to the suspicion of money laundering or terrorist financing.

Information that is not mandatory in a suspicious transaction report is to be provided if it is available prior to, or results from, a financial transaction. Any salesperson or other employee who suspects that a suspicious transaction should be reported to FINTRAC must supply the above information to their Compliance Officer immediately so that the electronic report can be prepared and submitted to FINTRAC within the time constraints imposed by FINTRAC.

If suspicions about a money laundering offence arise as a result of more than one transaction, all of the transactions that contributed to the suspicions are to be included in the same report and forwarded to the Compliance Officer. All Suspicious Transaction Reports are to be submitted electronically through FINTRAC's secure web site: www.fintrac.gc.ca.

The website provides instructions on how to complete a report; drop-down menus appear wherever a specific selection is required. In addition, details concerning formatting of particular information may appear at the bottom of the screen.

Once the report has been filed, FINTRAC will issue an acknowledgement message, which can be printed from the browser window. This acknowledgement message will include the date and time that the report was received, together with a FINTRAC-generated identification number. If a Suspicious Transaction Report contains incomplete information, FINTRAC may notify our Compliance Officer.

The notification will indicate the date and time the report was received, an identification number generated by FINTRAC, and information on the fields that must be completed or corrected. The Compliance Officer will contact the person who initiated the report to obtain the necessary information, which must be forwarded to FINTRAC within 30 calendar days of the time the suspicious transaction was first detected. The legal obligation to report will not be fulfilled until your Compliance Officer sends the completed report to FINTRAC.

Terrorist Property Reports

Anyone who knows that a client is a terrorist, or knows that a property in their possession or control is owned or controlled by a terrorist or terrorist group, must not complete the transaction. REALTORS[®] are obligated to complete a Terrorist Property Report and notify their Compliance Officer immediately so that a report can be filed with FINTRAC without delay. This reporting obligation applies to information about any transaction or proposed transaction for such properties.

Property, for the purpose of this reporting obligation, includes:

- any deed or instrument giving title or right to property, or giving right to money or goods
- cash, money orders, traveler's cheques, or bank accounts
- insurance policies
- securities
- real estate
- other assets

A list of known terrorist groups and individuals are available on the web sites: www.psepc.gc.ca, www.osfi-bsif.gc.ca/osfi/index_e.aspx?DetailID=525, or www.fintrac.gc.ca. Our Compliance Officer should keep a full list and description of these terrorist groups and individuals.

A Terrorist Property Report must include the reason for making the report including how possession or control of the terrorist property was obtained, how it became known that the property was terrorist property, the type of property and its actual or approximate value, the branch and transit numbers of the financial institution where the funds for the completed or proposed transaction were deposited, the account number and type of account to where terrorist funds were deposited, the amount and type of funds deposited, the full name of the account holder to where the funds were deposited, the time and date of the transaction, the type of funds or other property involved in initiating the transaction, and how the transaction was, or was proposed to be, completed.

Terrorist Property Reports must be submitted on paper to FINTRAC; copies of Terrorist Property Report forms can be printed from FINTRAC's website. To ensure that the information provided is legible, it is preferable that the report is typed. However, if the report must be completed by hand, use black ink and print using capital letters. For detailed instructions on how to complete the report, consult FINTRAC's website.

Completed reports are to be sent to FINTRAC by our Compliance Officer. Reports can be faxed to 1-866-226-2346 or mailed by registered mail to the following address:

FINTRAC
Section A
234 Laurier Avenue West, 24th Floor
Ottawa, ON, K1P 1H7

In addition to making a Terrorist Property Report to FINTRAC, anyone in Canada and any Canadian outside Canada having property in their possession or control that they know is owned or controlled by or on behalf of a terrorist or a terrorist group must, by law, disclose its existence to the RCMP and to the Canadian Security Intelligence Service (CSIS) without delay. Faxes for the RCMP can be sent to 613-993-9474; faxes for CSIS can be sent to 613-231-0266. Your Compliance Officer will contact the RCMP and CSIS as required.

If you only suspect that a transaction is related to property owned or controlled by or on behalf of a terrorist or terrorist group, or you suspect that your client is a terrorist but do not know for sure, a Suspicious Transaction Report should be filed with FINTRAC.

COMPLIANCE PROGRAM OBLIGATIONS

The PCMLTF Regime requires REALTORS® to establish compliance programs, which must contain several elements in order to satisfy their obligation. At a minimum, the Compliance Program must include the appointment of a Compliance Officer, a policy and procedures manual, a risk assessment, and a training program for all employees.

Compliance Officers

A person to be responsible for implementing this compliance program must be appointed for our office. This Compliance Officer has the responsibility, among other things, to file reports with FINTRAC. A form for assigning a Compliance Officer, which also details that person's responsibilities, is attached to this Compliance Manual.

Policies and Procedure Manual

Policies should establish reasonable measures to keep client information up to date, reasonable measures to conduct ongoing monitoring for the purpose of detecting suspicious transactions and attempted suspicious transactions, and steps that should be taken to mitigate the risk of money laundering or terrorist financing offences.

Risk Assessment Statement

The Compliance Program should also provide for assessing and documenting the risk of a money laundering offence or a terrorist activity financing offence. The assessment should take into consideration the clients and business relationships of the person or entity, the products and delivery channels of the person or entity, the geographic location of the activities of the person or entity, and any other relevant factor.

Training Program

Our office must develop and maintain a written, ongoing compliance training program for employees, agents etc. All sales representatives and authorized officials, management, administrative staff, etc. employed by our firm, who are authorized to act on behalf of the firm, and who have contact with clients/customers, see client/customer transaction activity, or who handle cash in any way, must receive compliance training. Others with responsibilities under the compliance program, such as information technology, the appointed Compliance Officer, internal auditors or accountants, and staff responsible for designing and implementing electronic or manual internal controls, must also receive compliance training.

All new employees, administrative staff, or other persons authorized to act on the firm's behalf must receive compliance training before they begin to deal with clients/customers. Any person who changes jobs within the brokerage firm must complete compliance training to ensure that they are up-to-date with compliance policies associated with their new responsibilities.

All employees will be kept informed of any changes in the PCMLTF Regime and will be informed of current developments and changes in money laundering or terrorist activity financing schemes particular to their jobs.

Compliance training includes legislative requirements for reporting, client identification, and record keeping, a general understanding of the money laundering process and its occurrence within the real estate industry, and all agency compliance policies and procedures. Specifically, all employees, without exception, must complete the following:

1. Complete Money Laundering 101: all five modules; provided on the CREA website www.realtorlink.ca
2. Read and understand the Money Laundering and Terrorist Financing Reference Manual
3. Read and understand the firm's Compliance Policies and Procedures

Upon completion of the above training, an employee must complete the form provided and forward it to our Compliance Officer. The Compliance Officer will file these forms as proof of employee training should FINTRAC conduct an audit and request such information.

Review Process

The Compliance Program should institute and document a review of the policies and procedures, the risk assessment, and the training program for the purpose of testing their effectiveness. An internal or external auditor of the person or entity, or by the person or entity must conduct reviews every two years if we do not have such an auditor. The findings of the review, any updates made to the policies and procedures, and the status of the implementation must all be reported to a senior officer in written form 30 days after the assessment.

Review will vary depending on your firms circumstances, but could include interviews, tests, and samplings, such as:

- Interviews with those employees handling transactions and with their supervisors to determine their knowledge of the legislative requirements and our firm's policies and procedures;
 - A review of the criteria and process for identifying and reporting suspicious transactions;
 - A sampling of large cash transactions followed by a review of the reporting of such transactions;
 - A test of the record keeping system for compliance with legislation; and
 - A test of the client identification procedures for compliance with the legislation.
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Suspicious Transaction Examples

Real Estate Specific Examples of Suspicious Transactions

- Client arrives at a real estate closing with a significant amount of cash. (Remember that any cash amount over \$10,000 MUST be reported – see **Large Cash Transaction Reporting** below.)
- Client purchases property in the name of a nominee such as an associate or a relative other than a spouse.
- Client does not want to put his or her name on any document that would connect him or her with the property or uses different names on Offers to Purchase, closing documents, and deposit receipts.
- Client inadequately explains the last minute substitution of the purchasing party's name.
- Client negotiates a purchase for market value or above asking price, but records a low value on documents, paying the difference "under the table".
- Client sells property below market value with an additional "under the table" payment
- Client pays initial deposit with a cheque from a third party, other than a spouse or parent
- Client pays substantial down payment in cash and balance is financed by an unusual source or offshore bank
- Client purchases personal use property under corporate veil when this type of transaction is inconsistent with the ordinary business practice of the client
- Client purchases property without inspecting it
- Client purchases multiple properties in a short time period, and seems to have few concerns about the location, condition, and anticipated repair costs of each property
- Client pays rent or the amount of a lease in advance using a large amount of cash
- Client is known to have paid large remodeling or home improvement invoices with cash on a property for which property management services are provided.

Compliance Officer Appointment **COMPLIANCE OFFICER**

Our Compliance Officer is _____.

The duties of the Compliance Officer are as follows:

- (a) to register with FINTRAC and obtain a ID number, logon id, and password for reporting purposes (It is not necessary to do this until you are faced with a situation that needs to be reported to FINTRAC.)
- (b) to file any necessary reports with FINTRAC relating to suspicious transactions, large cash transactions, or terrorist property
- (c) to maintain associated records as required by FINTRAC
- (d) to implement and administer a compliance program for money laundering and terrorist property financing reporting; this includes the completion of the Compliance Questionnaire – Real Estate Sector form when requested to do so by FINTRAC. This form can be downloaded from the web site: www.fintrac.gc.ca; click on 'Real Estate' and select Compliance Questionnaire. This form is **not completed until requested to do so** by FINTRAC. < <http://www.fintrac-canafe.gc.ca/publications/questionnaires/CQ-eng.asp>>
- (e) to ensure that all employees of the firm receive training and to keep a record indicating when those requiring such training received it; to ensure that all employees receive ongoing training as required to remain current with legislative changes or changes to our firm's policies and procedures
- (f) to prepare any necessary forms to facilitate reporting by employees within our organization to the Compliance Officer
- (g) to maintain lists of terrorist individuals and organizations available on the identified web sites for review by the firm's staff
- (h) to assess the need to review compliance policies and procedures
- (i) Stay up-to-date on FINTRAC information by subscribing online to the "FINTRAC Mailing List" < <http://www.fintrac-canafe.gc.ca/contact-contactez/list-liste-eng.asp>>

The name of our Compliance Officer shall be made available, when required, to FINTRAC.

FINTRAC has a responsibility to ensure compliance with legislative requirements related to money laundering and terrorist financing activities. To do this, FINTRAC can examine our compliance policies, procedures, and records. FINTRAC has the authority to refer non-compliance cases to the appropriate law enforcement agencies.

CERTIFICATION OF COMPLETION OF COMPLIANCE TRAINING

By signing this form, I certify that I have completed the following training:

1. Money Laundering 101: all modules, as provided on the CREA website www.realtorlink.ca
2. Money Laundering and Terrorist Financing Reference Manual
3. Firm's Compliance Policies and Procedures

Name: _____

Date: _____

Signature: _____

Please forward this form to the Compliance Officer

**RECORD OF ADDITIONAL TRAINING
(Meetings, CPD, etc.)**

Name of session organizer: _____

Date of session: _____

Signature: _____

Type of Training:

(Indicate whether training was provided in a Sales meeting, CPD, etc.)

Names of those attending:

Complete as required and send to the firm's Compliance Officer for record keeping.