

# Working with FINTRAC: Information for CHBA Members



Overview  
Who has to comply?  
All Sales—Keep Records  
Special Cases—Make Reports  
Compliance  
Enforcement  
Q & A  
Samples and Examples

## Disclaimer

The contents of this publication are intended for Canadian Home Builders' Association (CHBA) member information only and do not represent legal advice.

The CHBA has made its best efforts, but cannot guarantee the accuracy of this information. Since FINTRAC's policy is not to comment on information provided by associations, this information has not been reviewed by FINTRAC, nor approved by the Government of Canada. To ensure compliance, builders should review the Guidelines published by FINTRAC, and contact FINTRAC directly with any questions.

1-866-346-8722 (toll free)  
[www.fintrac-canafe.gc.ca](http://www.fintrac-canafe.gc.ca)

## Why this booklet?

A study of Royal Canadian Mounted Police (RCMP) cases involving money laundering reported that more than 55% of the schemes involved real estate transactions. Where criminal proceeds were invested in real estate, more than 70% involved purchase of one or more single-family residential properties.

See *Money Laundering in Canada: An Analysis of RCMP Cases*  
Stephen Schneider, PhD  
York University, 2004

As of February 20, 2009, many new home builders and housing manufacturers will have new responsibilities under Canada's *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTF). The legislation is enforced by the *Financial Transactions Analysis and Reporting Centre of Canada* (FINTRAC), which also provides guidelines.

This CHBA booklet gives a "layman's version" of who has to comply with the Act, and what they have to do. Background on money laundering and terrorist financing is also found in the Risk Analysis section. For the online version, see [www.chba.ca/fintrac](http://www.chba.ca/fintrac).

### Bottom Line

- keep records on all sales
- report specific types of transactions to FINTRAC
- set up a compliance system in your company

# Executive Summary

## Who has to comply?

- Any individual or firm who sold five or more new residential units in 2008 or later.
- Substantial renovations (90% +) are also considered “new” if sold by a builder/renovator.
- Sales handled through an outside, provincially licensed real estate agent or broker do not count.
- Requirements for manufactured housing companies also depend on who sells to the final customer.

## What do they have to do?

### For all sales—keep records

#### *Client identification*

- Record information about buyers (individuals, corporations, partnerships, associations, etc.), and get approved identification.

#### *Receipt of funds*

- Keep a detailed record of all funds received towards the sale.

### For special cases—make reports

#### *Large cash transactions (\$10,000 or more)*

- Record specific information about the transaction.
- File a “Large Cash Transaction Report” with the government.

#### *Suspicious transactions*

- File a “Suspicious Transaction Report” with the government.

#### *Terrorist property (including funds) in your possession*

- File a “Terrorist Property Report” with the government without delay.

### For the company—compliance

- Do a risk analysis of how the company might be used for money laundering or terrorist financing.
- Set up a compliance system, including someone assigned to be responsible, written policies and procedures, training, and review.

## Enforcement, fines and penalties

- The Financial Transactions Reporting and Analysis Centre of Canada (FINTRAC) provides information, analyses reports, audits compliance, and can issue penalties.
- Criminal non-compliance can result in fines up to \$2 million or five years in jail.

# Information on Sales during the Transition

## For home sales contracted prior to February 20, 2009 with closings on or after that date

FINTRAC record-keeping and reporting requirements affecting the home building industry come into force February 20, 2009.

Many new home builders will have sales agreements or contracts that were signed prior to that date, but with closings that take place after it. So, they may not have recorded government-issued identification (ID) information during the face-to-face meetings with their clients (or the more extensive information FINTRAC requires on corporations, etc.) But they will need this information if they receive payments directly to their company on or after February 20, 2009.

FINTRAC has explained that builders' record keeping and reporting requirements for these sales depend on **how payments on the sales are received on or after February 20, 2009**. As home sales can involve a wide range of specific circumstances, CHBA members should submit any questions they have to FINTRAC directly.

### Existing sales agreements

#### Payments received by others

- If all payments made on or after February 20, 2009, including closing payments, are received by your lawyer and/or by an outside, independent, provincially licensed professional real estate agent/broker, rather than by your company directly, you have no record-keeping or reporting requirements for these sales.

#### Payments received by you

- If you receive any payments directly from your client or other individual/company on or after February 20, 2009, you must collect ***both*** "Receipt of Funds" and "Client Identification" information. FINTRAC procedures require you to meet with your client and see original government-issued ID, or use the combination of two methods of non-face-to-face client identification permitted by FINTRAC. (See the *Sample Client Identification Record Checklist—Individuals* in Appendix A for details.)
- This applies to all payments towards the sale (cash, cheque, etc.) made directly to your company for such things as:
  - upgrades
  - change orders
  - any other additions to the sales agreement/contract
  - balances paid on closing

### New sales agreements signed before February 20, 2009

In order to minimize the possibility that you will have to go back to clients to collect identification information after a contract or sales agreement has been signed, you may wish to consider putting FINTRAC record-keeping procedures in place immediately.

# Table of Contents

Who has to Comply?	1
1. How many new homes do you sell to the public?	1
2. Do “you” sell them?	2
3. Are custom home builders “selling a house”?	2
How about modular and manufactured housing?	3
4. What is “new”?	3
5. What is a sale “to the public”?	3
Examples	4
All Sales—Keep Records	7
Client Identification	7
Client Information Records—Individuals buying for themselves	8
Client Information Records—Buyers who are corporations, partnerships, etc.	10
Buyers who are purchasing for someone else	12
Foreign Buyers	13
“Receipt of Funds” Information	15
Special Cases—Make Reports	16
Large Cash Transactions	17
Suspicious Transactions	19
Terrorist Property	21
Compliance Regime	23
Risk Analysis Report	23
Person responsible for compliance	24
Compliance policies and procedures	24
Staff training	24
Enforcement	25
Questions and Answers	25
Appendices	
Appendix A: Sample Client Identification Record Checklist—Individuals	A-1
Appendix B: Sample Client Identification Record Checklist—Corporations, Partnerships, and Other Entities	A-3
Appendix C: Sample Receipt of Funds Record Checklist	A-5
Appendix D: Sample FINTRAC Risk Analysis Report	A-7
Appendix E: Selected Examples of Policies and Procedures	A-12



# Who has to Comply?

Under the new regulations, "real estate developers" must meet the Act's requirements, effective February 20, 2009. Don't be misled by the words used - sales of bare land and lots without buildings are not covered under the legislation. What FINTRAC really means are builders who handle their own sales in-house.

This essentially puts those builders on an equal footing with other people who sell new or existing properties through an independent outside provincially licensed real estate agent or broker.

These five questions help you determine whether you come under the Act.

- How many new homes do you sell to the public?
- Do "you" sell them?
- Are custom builders "selling a house"? How about housing manufacturers?
- What is "new"?
- What is a sale "to the public"?

**NOTE: Once you meet the definition of a "real estate developer" you must meet the FINTRAC requirements from that time on.**

## 1. How many new homes do you sell to the public?

*(Rule of thumb for home builders: five or more units and you qualify.)*

You qualify as a "real estate developer" and must comply with this legislation if:

- you sell **new residential properties** to the public, and
- in calendar year 2008 (or if you did not qualify in 2008, as soon as you reach this threshold in any later calendar year) you sold:
  - five or more new houses or condominium units, or
  - at least one new multi-unit residential building containing five or more units, or
  - at least two new multi-unit residential buildings that add up to five or more units (e.g. one duplex and one triplex)

OR

- you sell **new commercial and industrial properties** to the public, and
- in calendar year 2008 (or as soon as you reach this threshold in any later calendar year) you sold:
  - one new commercial building (or more), or
  - one new industrial building (or more)

## 2. Do “you” sell them?

*(If outside licensed real estate sales agents or brokers sell them, you don't meet the definition and they take on the responsibilities.)*

Builders only have to keep information and make reports under the Act for residential units they sell to the public themselves, through inside sales staff or through an outside new home sales company with non-licensed agents (*paragraph 39.5(1)(a) of the Regulations*).

If the sale is conducted by an *outside independent licensed real estate agent or broker* retained by the builder, FINTRAC says the builder is not deemed to have made the sale, and thus is not subject to any obligations in respect of that sale. (The sales still get recorded though, because licensed real estate agents and brokers have their own responsibility to keep records on sales and report special cases to FINTRAC.)

**The only exception** to this is when a licensed real estate sales representative is hired as an **employee** by the builder, rather than acting through its own firm or through a brokerage. In this case, the builder/employer is subject to the obligations.

If the builder handles some sales in-house and others through outside licensed real estate agents/brokers, the number of in-house sales will be used to determine whether the builder has responsibilities under the legislation. If so, the builder will be responsible for record keeping and making reports for those inside sales only.

*NOTE: It is **strongly recommended** that builders make sure the outside licensed real estate agent's/broker's responsibility for FINTRAC compliance for any sales it makes of your homes is clearly stated in your agency agreement or service contract. All such agreements should also state that the agent/broker will hold your firm harmless in any actions taken by FINTRAC as a result of sales the agent/broker makes of your homes.*

*NOTE: If a builder with sales volume of more than five units stops using outside licensed real estate agents/brokers and brings the sales in-house, the builder will take on the FINTRAC responsibilities as well.*

## 3. Are custom builders “selling a house”?

*(Short answer from FINTRAC: Not if they are hired to build on the customer's own lot.)*

According to FINTRAC, a builder that builds a home on land already owned by the client, as per the client's specifications, would not be a real estate developer, given that at no point do they actually sell a home.

In this case, the builder would be viewed like any other contractor who enters into an agreement with a land owner to provide that land owner with building (or plumbing or roofing or renovation) services: they are not “real estate developers” as defined in the regulations, because they do not sell new homes to the public.

*NOTE: If the builder was involved in the sale of the lot to the customer, that will probably bring the unit under the FINTRAC requirements.*

## How about modular and manufactured housing?

*(Yes, according to FINTRAC, because this involves the sale of a house, even if it is delivered to the client's lot.)*

While sales of factory-built, modular and manufactured homes may not include the sale of land, these transactions do involve the sale of a new home. As such, FINTRAC considers that modular and manufactured home sales do fall under the regulations and Act. The nature of the sales transaction determines who has the record-keeping and reporting obligation - either the manufacturer for direct-to-client sales, or the retailer/builder if they sign the sales contract with the client.

Note that, while manufactured and modular homes (that are substantially complete when shipped) are considered "new homes", FINTRAC has said panelized homes that require more site assembly, and pre-engineered homes that are essentially packages of pre-cut and numbered building components, are not. So sales of panelized and pre-engineered homes do not come under the Act.

Additional information on this topic can be found in the Examples section on page 4.

### 4. What is "new"?

*(Basically "less than two years after completion".)*

Guidelines prepared by FINTRAC state that in the context of "real estate developers", a new house or other building is one that was constructed within the past two years and was not occupied for its intended purpose before being sold. For example, a home occupied by the developer as a sales office would still qualify as a new home as long as it is sold within two years of being built.

Substantial renovations will also be considered "new", so anyone who guts, renovates and resells a home is creating a unit that could come under the legislation. Similarly, condominium units created by substantially renovating or converting an existing building would be considered "new".

### 5. What is a sale "to the public"?

*(Pretty much everything except sales to government, and sales between affiliates or a wholly-owned subsidiary and its owner.)*

Guidelines prepared by FINTRAC state that sales "to the public" include those to an individual, a corporation or any other type of entity (e.g. a partnership, cooperative, associates, etc.). Sales between affiliates and those between a wholly-owned subsidiary and its owner are excluded.

If you sell units to a federal or provincial government department or agency, an incorporated municipality or one of its agencies, or a public hospital authority, you are not selling "to the public". Those units would not come under the FINTRAC requirements.

## Examples

CHBA has asked FINTRAC to provide information on how requirements would affect builders in a number of different sales scenarios. Here is what they told us.

### **New home sales handled by in-house staff**

A new home sales agent who is *not a licensed real estate agent* works on site and carries out all aspects of the sales process from first contact with the buyer to closing. The sales agent is either on salary or commission, or some combination of the two, and is directly employed by the developer or new home builder.

*Because the sales agent is directly employed by the developer or new home builder, the builder or developer has the responsibility for information gathering and reporting.*

### **Builder retains new home sales agency for on-site sales**

The agency is retained to handle all aspects of the sales from first contact with the buyer to final closing. The sales agents are employed by the new home sales agency, but are *not licensed real estate agents*.

*If the contract makes the sales agency the builder's agent, the builder remains responsible for the obligations.*

**NOTE:** It is *strongly recommended* that builders ensure that any new home sales agency retained by your firm understands its responsibility for ensuring that your company fully complies with FINTRAC requirements for any sales it makes of your homes. This acknowledgement should be clearly stated in your service contract with the agency and further specify what measures the employees of the sales agency must carry out in relation to FINTRAC requirements when representing your firm. You must also ensure that all sales staff assigned to service your company by the sales agency have received proper training in FINTRAC procedures.

### **Builder retains independent outside licensed real estate agent or brokerage to carry out the sales function**

The contract transfers sales representation, so that the builder functions as the selling party. The agent/broker is paid a commission on all sales, and its agents are *not employees of the builder*.

*When a sale is conducted by an outside licensed real estate sales agent or broker on behalf of a builder (i.e. the builder is the client of the agent/broker), the builder is not subject to the requirements under the legislation. The agent/broker would have to keep records on the builder, as its client, and any unrepresented buyers, and file reports.*

**NOTE:** It is *strongly recommended* that builders make sure the outside licensed real estate agent's/broker's responsibility for FINTRAC compliance for any sales it makes of your homes is clearly stated in your agency agreement or service contract. All such agreements should also state that the agent/broker will hold your firm harmless in any actions taken by FINTRAC as a result of sales the agent/broker makes of your homes.

## **Mixed sales processes**

The builder uses more than one process for sales; e.g. sales at local sites may be handled in house, while outside licensed real estate agents/brokers are retained to perform the sales function for those in another location.

*Responsibilities follow the contract arrangements. Sales handled by in-house staff are the responsibility of the builder, while those handled by the outside real estate agent are recorded and reported by the agent or their broker.*

## **Custom home builders, where the client already owns the lot**

A home building company is contracted by a consumer to provide design, construction and project management services related to the construction of a new home on land owned by the consumer. The contract lays out a schedule of payments. These may be based on a fixed fee, or cost plus (actual cost for materials, labour and taxes plus a percentage).

*As the consumer is at all times the legal owner of the home being constructed, there is no sale of a home, and the FINTRAC requirements would not apply.*

## **Land and lot sales v. home sales**

A developer brings land to market and builds homes on some of the lots, while selling other lots to other new home builders who will use them for their own new home construction/sales.

*Information and reporting requirements arise only on the final sale of a home. The legislation refers to the sale of houses, condominium units, and buildings, not bare land or lots.*

## **“Tied” sales of lots**

A developer sells lots in its development to consumers, who are required to have a builder agreement in place at the time of the lot sale covering the construction of their home. Consumers are not permitted to buy a lot and construct the home themselves, they must use the services of a builder for this. The home building contracts are design-build.

*Although the consumers already own the lot when the home is built, CHBA believes these sales would be considered linked. So, there would be a sale of a new house to the consumer. The Canada Revenue Agency disregards this type of split sale in determining GST, and it seems likely this legislation will disregard them as well.*

## **“Substantial renovations”**

A renovator provides building services to a couple for major renovation of their existing home. The project would be classified as a “substantial renovation” under the provisions of the federal New Home Buyer GST Rebate, and be eligible for a partial rebate of GST paid for labour and materials.

*The legislation is clearly aimed at the sale of homes. As in the custom home builder scenario, the renovator is providing building services to the homeowner—there is no sale, so data-gathering and reporting requirements do not apply.*

### **Manufactured housing—direct sales**

A housing manufacturer sells homes directly to consumers, using in-house sales staff who are employees. The homes may be located on land developed by the manufacturer, by a separate development company, or on land owned by the consumer.

*This system is parallel to builders selling through in-house sales staff. The manufacturer would be responsible for compliance.*

### **Manufactured housing—sales through retailer**

A manufactured housing retailer, which is a separate and fully independent business, enters into an Agreement of Purchase and Sale with the consumer. The retailer subsequently places an order for the home with the housing manufacturer. Upon closing, the customer pays the retailer for the installed home.

*In essence, the retailer is functioning as a wholesale buyer and reselling to the consumer. As such, the retailer is the one that takes on the responsibility for information-gathering and reporting.*

### **Manufactured housing—to be installed in a land-lease community**

The home buyer will own the home itself, but lease the land it is located on. The buyer may purchase the home from the landlease community operator, the housing manufacturer, or an independent retailer.

*As FINTRAC requirements apply to the sale of new homes, rather than to land, the party that would be responsible for data gathering and reporting would be the party from whom the consumer purchased the home. Ownership of the land is not relevant.*

# All Sales—Keep Records

In the study of RCMP money-laundering cases that involved real estate, more than 60% used someone else to purchase property and/or register mortgages. This hid the true ownership or source of funds. According to Beare and Schneider, a British Columbia drug trafficker told a police informant that he owned 25 homes that were used for marijuana-growing operations. Four were registered in his sister's name, while seven were registered to companies of which he was a director. Police could not find any property listed in the trafficker's name.

*See Money Laundering in Canada: Chasing Dirty and Dangerous Dollars*

Margaret E. Beare and Stephen Schneider  
University of Toronto Press, 2007

## Record-Keeping Overview

If you qualify as a real estate developer, you must keep two types of information for all sales:

- **client identification** information for all buyers (giving name, address, date of birth and occupation for all individuals, backed up by acceptable ID, and name, address, and proof of existence for all corporations and other bodies, also backed up by acceptable ID).
- **receipt of funds records** for all amounts you receive towards the sale (including amounts, currency, who gave them, whether cash, cheque or equivalent, details of accounts the cheques were drawn on, etc. and ID for any individuals or companies other than the buyers who provide funds).

Many builders are already doing all or most of this, to help guard against identity theft and fraud.

## Client Identification

If you come under the legislation, FINTRAC requires you to:

- Record client information for all buyers, and verify the information with acceptable ID.
- Ask whether the buyer is purchasing for someone else (a third party), and try to get the same information about that individual or company.
- Keep this information for five years.

The information and verification is different for different kinds of buyers: people buying for themselves; buyers who are corporations, partnerships, or other entities; buyers who are purchasing for someone else; or foreign buyers. Details are given in the following sections.

## Client Information Records—Individuals buying for themselves

### Bottom Line Tip

FINTRAC has said you don't need to keep client information on a separate form unless you want to. It may be easiest to simply add lines for date of birth and occupation to your offers, and keep a photocopy of all buyers' passport ID pages, driver's licence, or equivalent government-issued documents.

For most builders, the FINTRAC requirements are almost identical to current practice.

### What do you have to do?

- Record buyer's name, address, date of birth and occupation.
- Make sure they have original government-issued ID that has not expired, showing the same name and address they gave you. See "Acceptable Documents", below, for a list of acceptable identification.
- Photocopy or record the number, type of document, and where it was issued.
- If the buyers are not physically present, you will need two pieces of acceptable documentation for each person. These can include notarized photocopies of original documents, credit reports, etc. See Appendix A for more details.
- If the property is being bought by more than one person, do this for all buyers.

### When do you have to do it?

- When you enter into the transaction. In virtually all cases for builders who come under the FINTRAC requirements, this will be when the Offer to Purchase is signed.

### How do you have to record the information?

- As long as the information is in your files and can be made available to FINTRAC investigators if they need it, that is fine.

### How long do you have to keep it?

- Five years from the completion of the transaction.

### What if you can't get the information?

- People should be quite willing to give you the information FINTRAC requires. Sometimes, you may find someone who refuses to give their date of birth. If so, record that on the file (and their reasons if they give any).

## Acceptable Documents

Acceptable documents for identification of a person must have a unique identifying number and be issued by a provincial, territorial or federal government (or foreign equivalent). The document has to be valid and cannot have expired.

This can include:

- birth certificate (except birth or baptismal certificates issued by a church rather than a government body)
- driver's licence
- provincial health insurance card (except in Ontario, Manitoba or Prince Edward Island where it's illegal to use health cards for identification); in Quebec, you cannot ask for a person's health card but can accept it if the person wants to use it for identification
- passport
- record of landing
- permanent resident card
- certificate of Indian status
- provincial or territorial identification card issued by any of the following or their successors:
  - the Insurance Corporation of British Columbia
  - Alberta Registries
  - Saskatchewan Government Insurance
  - the Department of Service Nova Scotia and Municipal Relations
  - the Department of Transportation and Public Works of the Province of Prince Edward Island
  - Service New Brunswick
  - the Department of Government Services and Lands of the Province of Newfoundland and Labrador
  - the Department of Transportation of the Northwest Territories, or
  - the Department of Community Government and Transportation of the Territory of Nunavut
- other similar document

An employee identification card issued by an employer is not acceptable, even when the employer is a government department or agency.

**NOTE:** If your buyer wants to use his or her Social Insurance Number (SIN) for identification, that is acceptable, but the number itself must not be given to FINTRAC on any type of report. Instead, note on your records that the SIN card was presented and matched the person's name.

## Sample Client Identification Record Checklist—Individuals

See Appendix A for a sample checklist of main requirements for a client identification and verification record for individuals.

## Additional Requirements

If a buyer is acting for a third party, see *Buyers who are purchasing for someone else* (page 12).

If a buyer is not in Canada, see *Foreign Buyers* (page 13).

## Client Information Records—Buyers who are corporations, partnerships, and other entities

### Bottom Line Tip

Corporations should readily be able to give you a copy of their most recent corporate annual report to Industry Canada or equivalent provincial business registration body. They should also be able to provide either a signed letter or a copy of the Board resolution authorizing their representative to make the purchase.

If your buyer is a corporation, partnership, cooperative, association, or other legal entity, FINTRAC asks you to get some additional information that probably goes beyond your current practice. This is especially true for a corporation, where you are asked to get a list of the corporation's directors.

### What do you have to do?

- Where the buyer is a corporation or other legal entity, you will need to get two types of information and documents:
  - Information required when the offer to purchase is prepared:**
    - name, address, date of birth, and occupation of the individual who is acting on behalf of the corporation or other legal entity, plus acceptable, government-issued ID (as for individuals buying for themselves). (See the list of acceptable documentation on page 9.)
  - AND
    - name, address and type of business of the corporation or entity
  - Information required within 30 days after the offer is prepared:**
    - the identification number and information from an acceptable document that verifies:
      - the existence of the corporation, partnership, cooperative, association, etc.
      - (for corporations) its name and address, and the list of directors (keep a copy on file)
      - their representative's authorization to make the purchase
- If the property is being bought by more than one corporation or other entity, you need to record this information for each one
- See below for a list of acceptable identification for corporations or other business entities

### When do you have to do it?

- As outlined above, information about the company's representative and basic information about the company should be recorded when you enter into the transaction. In virtually all cases for builders who come under the FINTRAC requirements, this will be when the Offer to Purchase is signed.
- Documents proving the company's existence and (for corporations only) its list of directors should be recorded within 30 days after that.

### How do you have to record the information?

- As long as the information is in your files and can be made available to FINTRAC investigators if they need it, that is fine.

### How long must the records be kept?

- Five years from the completion of the transaction.

### What if you can't get the documents?

- Sometimes the representative of a corporation may refuse or be unable to give you copies of the documents FINTRAC lists (e.g. articles of incorporation). In this case, note that on the client information form. This may be perfectly legitimate. However, if there are other reasonable grounds to suspect the purchase may be involved in money laundering or terrorist financing, consider making a "Suspicious Transaction" report (see page 19.)

## Acceptable Identification for Corporations, Partnerships or Other Entities

Acceptable documents for confirming the existence of a corporation include:

- 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. Examples of these include the corporation's published annual report signed by an independent audit firm, or a letter or a notice of assessment for the corporation from a municipal, provincial, territorial or federal government.

An electronic version is acceptable if it comes from a government agency; otherwise you should get a paper copy.

Acceptable documents for confirming the names of the corporation's directors include:

- the list included with the company's application for incorporation (this would usually require only the first few pages of the articles of incorporation);
- an online listing from the Corporations Canada database on Industry Canada's website at [www.ic.gc.ca](http://www.ic.gc.ca) (go to the Company Directories page and follow the link to the Corporations Canada database); or
- similar information from a corporation searching and registration service.

To confirm the existence of other types of company/entity, refer to its partnership agreement, articles of association or similar public record.

If the record is in paper format, you have to keep the record or a copy of it. If the record is an electronic version, it must be from a public (government) source. For these, you have to keep a record of the corporation's registration number, and the type and source of the record.

## Sample Client Identification Record Checklist—Corporations, Partnerships and Other Entities

See Appendix B for a sample checklist of main requirements for a client identification and verification record for corporations, partnerships, cooperatives, associations and similar entities.

### Additional requirements

If a buyer is acting for a third party, see *Buyers who are purchasing for someone else* (page 12). If a buyer is not in Canada, see *Foreign Buyers* (page 13).

## Buyers who are purchasing for someone else

### Bottom Line Tip

Ask buyers if they are purchasing the unit(s) on behalf of a third party. If so, try to get the same identification information as outlined in *Individuals buying for themselves*, or *Buyers who are corporations, partnerships, or other entities*.

There are a number of legitimate reasons why the person at your sales desk might be buying on behalf of another person. But criminals and terrorists commonly do this to disguise their money sources and total holdings.

### What do you have to do?

- Builders have to make an effort to find out whether the person who signs the offer to purchase is acting on the instructions of another person or company (a third party).
- If so, they should record client identification for the buyer, and for the third party, plus the relationship between them and the buyer. See Appendix A for a client information record checklist for individuals, or Appendix B for an information record checklist for corporations, partnerships, and other entities.

### When do you have to do it?

- When the Offer to Purchase is signed, or
- When you find out there is a third party, if that happens later

### How do you have to record the information?

- As long as the information is in your files and can be made available to FINTRAC investigators if they need it, that is fine

### How long must the records be kept?

- Five years from the completion of the transaction

### What if you can't get the documents?

- Sometimes there are legitimate reasons why people might not reveal who they are acting for. A lawyer may buy a property in trust on behalf of a celebrity, for example. In that kind of case, you should note on the file that the lawyer is acting on behalf of a third party, but has been instructed not to identify them.
- A buyer may also tell you about a third party but not give you the identification documents FINTRAC asks for. That should also be noted on your file.
- If you have reasonable grounds to suspect that there is a third party involved despite the buyer saying there isn't, you should note that too.
- If there are enough reasonable grounds to suspect the purchase may be involved in money laundering or terrorist financing, you should make a "Suspicious Transaction" report.

### Additional requirements

If a buyer is not in Canada, see *Foreign Buyers*, next.

## Foreign Buyers

### Bottom Line Tip

For individuals who are in a foreign country and buying for themselves, the simplest strategy is to have an agent or mandatary meet your buyer(s), record their name, address, date of birth and occupation, and take a photocopy of the relevant pages of their original, valid, foreign passport.

If your buyer is in another country, the requirements become a bit more complex. You or your staff won't be seeing them, and can't personally check that the identification documents are originals, or that the information (and possibly signatures) match the information the client has given you.

In this situation, you will need to use what the regulations call an agent or mandatary (someone given a "mandate" to act for you). This person will meet with your buyer in the foreign country, to confirm that the person is who they say they are by viewing his or her identification documents.

### What do you have to do? (individuals)

- You have to retain an agent or mandatary, using a written agreement that sets out what information they will collect for you, and how they will verify it through government-issued information documents. They have to send this information back to you. You remain responsible for making sure the FINTRAC requirements are met.
- As for other individual identification documents, the agent or mandatary will need to send you the number and type of identification document used, the country and agency that issued it, and the expiry date (to confirm that the document is still valid).
- Foreign identification documents must be equivalent to the Canadian ones listed on page 9.

### What do you have to do? (corporations and other entities)

- Again, you will need a contract with an agent or mandatary, who will meet with the company's representative and verify:
  - the representative's own information and identity
  - the name, address and type of business for the corporation, partnership, cooperative, association, or other entity
  - the existence of the corporation or entity
  - (for corporations), the list of directors (record within 30 days)
- Identification documents for corporations and other entities must be equivalent to the Canadian ones listed on page 11.

### When do you have to do it?

- Your agent or mandatary should collect and verify the information when the Offer to Purchase is signed. If this is not possible, they should do it as soon as possible afterwards.

## For more information

Check the FINTRAC website at [www.fintrac-canafe.gc.ca](http://www.fintrac-canafe.gc.ca), or call the toll free number, 1-866-346-8722.

### NOTE: Countries that may require special care

FINTRAC publishes notices about countries for which you may need to be extra careful about sales and identification. They can be found on the FINTRAC website by clicking on *Publications*, and then *General Publications/ FINTRAC Advisories* (or [www.fintrac-canafe.gc.ca/publications/avs/1-eng.asp](http://www.fintrac-canafe.gc.ca/publications/avs/1-eng.asp)).

# “Receipt of Funds” Information

## Bottom Line Tip

It’s probably easiest to simply photocopy all cheques and similar payment documents, and attach a copy to the file.

As someone who comes under the legislation, you have to record information every time you receive money towards the sale. (If you receive \$10,000 or more in cash, you also have to make a Large Cash Transaction report—see page 17.)

## Exclusion Tests

### 1. Do you “receive” the funds?

If NOT (i.e. the payment goes directly to your outside licensed real estate agent/broker, or your lawyer, in trust), you are not responsible for these records. In many cases, a builder and/or inside sales staff will only receive the initial deposit, or staged series of deposits. Closing funds are transmitted directly to the builder’s lawyer in trust.

### 2. Is the buyer a financial institution or “public body”?

If SO, you do not need to keep a “Receipt of Funds” record. Financial institutions include Canadian banks or foreign banks authorized to operate in Canada, credit unions, trust or loan companies, government deposit institutions, etc. Public bodies mean provincial or federal departments or Crown agencies, incorporated municipal bodies, or a public hospital authority.

## What do you have to do?

- Record the amount paid and the payment form (cash, cheque, credit card, bank draft, etc.)
- For any cash payment (Canadian or foreign banknotes or coins), record the amount of cash, the currency used, and the method of delivery; e.g. in person, by another person, via courier or delivery company.
- For any non-cash payment, record the account and financial institution the payment is drawn on, including account number and account holder’s name.
- Record the account you deposited the funds into.

## When do you have to do it?

- When the payment is received.

## How do you have to record the information?

- As long as the information is in your files and can be made available to FINTRAC investigators if they need it, that is fine.

## How long must the records be kept?

- Five years from the completion of the transaction.

## Sample Receipt of Funds Record Checklist

See Appendix C for a checklist of main requirements for a receipt of funds record.

# Special Cases—Make Reports

In one case from The Netherlands, a man set up two offshore companies as well as one in his own country providing legitimate services.

He was not registered as the owner of any of the companies. To hide his involvement he used two trust and company service providers as legal representatives offshore, plus a front man at home. They opened bank accounts with three different banks in different jurisdictions, explaining that the companies were part of an international structure that wanted to benefit from favourable tax treatment by means of inter-company loans.

Then, the man used the companies to set up loan-back arrangements to transfer, layer and integrate the income from his criminal activity with funds from his legitimate enterprises. And in order to buy real estate, he had the front man arrange a fraudulent loan from one of the companies.

*See Money Laundering and Terrorist Financing  
Through the Real Estate Sector*  
Financial Action Task Force Secretariat  
Organization for Economic Cooperation and Development, 2008

## Reporting Obligations—Overview

Builders who meet the definition of a “real estate developer” must report two types of possibly suspicious activity to the Financial Transactions Reporting and Analysis Centre of Canada (FINTRAC):

- **Large Cash Transactions** (defined as \$10,000 or more in cash). This type of report must be filed within 15 days, normally over the internet.
- **Suspicious Transactions** (where there are reasonable grounds to suspect money laundering or terrorist activity is involved). This type of report must be filed within 30 days, normally over the internet.

Builders must also report to FINTRAC, the Royal Canadian Mounted Police (RCMP), and the Canadian Security Intelligence Service (CSIS) if they ever find they have in their possession:

- **Known Terrorist Property** (including funds or other assets given towards the purchase of a house or condominium). The FINTRAC report must be made within 15 days, in hard copy (paper).

All reports will go into FINTRAC’s database for analysis, along with all the ones received from financial institutions, insurance companies, accountants, security/investment advisors, money services businesses, casinos, dealers in precious gems, accountants, licensed real estate agents and brokers. The Centre looks for patterns that could help prove that people or companies are trying to place cash and/or launder money from criminal or terrorist activities.

# Large Cash Transactions

## Bottom Line Tip

Make sure everyone in your firm who deals with buyers knows that any payment(s) of \$10,000 or more in cash towards a sale must be reported to the government within 15 days. Consider establishing a company policy that you will not accept large cash payments (or possibly *any* cash payments).

The biggest problem for people trying to launder criminal proceeds or terrorist financing is: how are they going to use the large amounts of “dirty” cash they’ve been given, without attracting attention? If they can just get that cash into the legitimate economy without getting caught, they can send it through a maze of different bank accounts and companies so it looks “clean”. That’s why the legislation requires a number of sectors to report large cash transactions to FINTRAC.

**NOTE:** If someone gives you \$10,000 or more in bearer cheques or other anonymous instruments towards a sale, or gives you a number of cash payments that seem designed to avoid the \$10,000 reporting level, or starts to make this kind of large cash transaction but stops, that may trigger a Suspicious Transaction report. See page 19 for more details.

## What counts as “cash”?

- “Cash” means Canadian or foreign banknotes and/or coins
- A “large cash transaction” includes smaller cash payments if they add up to \$10,000 or more and they were made within 24 hours of each other

## What do you have to do?

- Record all cash transactions, including amount, currency, date and time, how the cash was received, and from whom, as described in the Receipt of Funds section
- Decide how you will identify cash transactions that happen within 24 hours of each other, and how much they add up to
- Make a “Large Cash Transaction” report to FINTRAC whenever you receive \$10,000 or more in banknotes and/or coins towards a sale within a 24-hour period
- Keep a copy of the report(s) on file

FINTRAC’s website shows sample Large Cash Transaction and Suspicious Transaction reports. Go to [www.fintrac-canafe.gc.ca](http://www.fintrac-canafe.gc.ca) and click *Reporting*, then *F2R*, then *F2R Electronic Reporting User Guide*, then *Appendix C—Sample Reports* (or go directly to [www.fintrac-canafe.gc.ca/reporting-declaration/F2Rguide/appc-eng.asp](http://www.fintrac-canafe.gc.ca/reporting-declaration/F2Rguide/appc-eng.asp)).

## When do you have to report?

- Within 15 days of receiving the cash

### **How do you file the report?**

- Electronically if you have a computer with an internet connection
- Before you file your first report, you will need to call 1-866-346-8722, get a user ID and password, and then set up a user account online
- Go to [www.fintrac-canafe.gc.ca](http://www.fintrac-canafe.gc.ca), then click on "FINTRAC Reporting"
- When filing a report, you have to fill in all the information spaces marked with an asterisk (\*) that apply - the rest you only have to fill in if you have the information
- Be sure to print or save a copy of your report from the website to keep on file
- On the FINTRAC website, go to section 5 of *Guideline 7A* for more information ([www.fintrac-canafe.gc.ca/publications/guide/Guide7A/lctr-eng.asp#55](http://www.fintrac-canafe.gc.ca/publications/guide/Guide7A/lctr-eng.asp#55))

### **Do you have to stop dealing with the buyer?**

- The Act doesn't require you to stop dealing with a buyer when you have reported or are planning to report a large cash transaction

# Suspicious Transactions

## Bottom Line Tip

While FINTRAC asks builders to report suspicious transactions, it does not expect them to be investigators. “Reasonable grounds to suspect” that something is wrong are determined by normal circumstances, business practices and systems within the industry. Most builders already shy away from transactions that don’t pass the “sniff test”. If it smells rotten, you should probably report it.

If there are reasonable grounds to suspect that a transaction or attempted transaction is related to an actual or attempted money-laundering or terrorist-financing offence, you must report that to FINTRAC. As a single report is highly unlikely to start an investigation by itself, FINTRAC encourages people to also report suspicious transactions to law enforcement agencies.

## What counts as “suspicious”?

FINTRAC has provided some examples of situations that it believes may be linked to transactions that are being used for money laundering or terrorist financing. If a client does, or attempts to do, any of these things, pay close attention. According to FINTRAC, a sale exhibiting one or more of these indicators may represent a suspicious transaction:

- Buyer starts to fill out the Offer to Purchase but stops when asked to provide identification
- Buyer purchases property in the name of an associate or relative, other than a spouse
- Buyer doesn’t want his or her name on any document that would connect them with the property or uses different names on the Offer to Purchase, deposit receipts and closing documents
- Buyer wants the purchase documents to show a lower price than negotiated, paying the difference “under the table”
- Buyer makes several payments in cash, each of which is less than the “\$10,000 within 24 hours” that would trigger a Large Cash Transaction report, but they add up to more than \$10,000
- Buyer pays in bank notes, bearer cheques or other anonymous instruments
- Local news media report that the buyer has been charged with or convicted of criminal or terrorist activity
- Buyer changes the name of the purchasing party at the last minute
- Deposit(s) are paid by a third party, other than the buyer’s spouse or parent
- Buyer uses a corporation to buy a house or condominium for itself or someone else, when you know the company does not normally deal in real estate
- Buyer purchases a property but shows no interest in its features, finishes or the final pre-closing inspection
- Buyer purchases a number of properties in a short time period
- Buyer will only provide signature on documents by fax, except where they cannot be physically present and you use a mandatary to confirm (see *Foreign Buyers*)
- Buyer does not want correspondence sent to home address
- Buyer uses a General Delivery address
- Buyer is unusually concerned about your compliance with government reporting requirements and anti-money-laundering policies
- Buyer appears extremely nervous or uncomfortable

**NOTE:** There are additional requirements if you are dealing with known terrorists. See page 21 for more information.

## What do you have to do?

- Get identification from the buyer (unless you believe asking for the information would let them know you are making a report, or the transaction was only attempted, or you have already done this at the Offer to Purchase stage)
- Make a “Suspicious Transaction Report” to FINTRAC. This will include:
  - the number and type of identification document, if available (see previous bullet)
  - date (and time, if available) of the suspicious transactions/events
  - details of suspicious activity
  - details of funds involved: type, amount, currency, etc.
  - account funds were drawn on
  - action you took/will take (if any)
- Do not tell the buyers or tip off anyone else that you are making the report, or what it contains
- Keep a copy of the report on file for five years

FINTRAC’s web site shows sample Large Cash Transaction and Suspicious Transaction reports. Go to [www.fintrac-canafe.gc.ca](http://www.fintrac-canafe.gc.ca), and click *Reporting*, then *F2R*, then *F2R Electronic Reporting User Guide*, then *Appendix C - Sample Reports* (or go directly to [www.fintrac-canafe.gc.ca/reporting-declaration/F2Rguide/appc-eng.asp](http://www.fintrac-canafe.gc.ca/reporting-declaration/F2Rguide/appc-eng.asp)).

## When do you have to report?

- Within 30 days of when you detect the suspicious activity or combination of activities

## How do you file the report?

- Electronically if you have a computer with an internet connection
- Before you file your first report, you will need to call 1-866-346-8722, get a user ID and password, and then set up a user account online
- Go to [www.fintrac-canafe.gc.ca](http://www.fintrac-canafe.gc.ca), then click on “FINTRAC Reporting”
- When filing a report, you have to fill in all the information spaces marked with an asterisk (\*) that apply - the rest you only have to fill in if you have the information
- Be sure to print or save a copy of your report from the website to keep on file
- On the FINTRAC website, go to section 5 of Guide 3A for more information ([www.fintrac-canafe.gc.ca/publications/guide/Guide3A/str-eng.asp#55](http://www.fintrac-canafe.gc.ca/publications/guide/Guide3A/str-eng.asp#55))

## Do you have to stop dealing with the buyer?

- The legislation doesn’t require you to stop dealing with a buyer when you have reported or are planning to report a suspicious transaction; however, if you do stop before you submit the report, state that in Part H of FINTRAC’s report form

# Terrorist Property

In its 2008 Annual Report, FINTRAC says that through its analysis of suspicious transactions, including third-party deposits of cash, cheques and bank drafts, payments to credit card accounts or lines of credit, and electronic funds transfers to individuals and non-profit organizations, both in Canada and abroad, it identified several new individuals and entities as part of a known terrorist group.

See *FINTRAC Annual Report 2008: Financial Intelligence and Public Safety* available online at

[www.fintrac-canafe.gc.ca/publications/ar/2008/ar-eng.pdf](http://www.fintrac-canafe.gc.ca/publications/ar/2008/ar-eng.pdf)

Terrorist financing is different from money laundering. In money laundering, the money comes from illegal activity. Terrorist financing often comes from legitimate sources including charitable donations, but will be used for illegal activity. As such, it is much more difficult to identify.

## Bottom Line Tip

If you have reason to suspect that terrorists are buying or financing one of your sales, file a Suspicious Transaction report with FINTRAC.

If you know you have terrorist property in your possession (money, goods or an agreement giving rights to real estate), stop the deal immediately.

Not only do you have to file a Terrorist Property report with FINTRAC, you (and anyone else in Canada who finds themselves in a similar situation) must immediately inform the RCMP and CSIS. It is a criminal offence to deal with such property.

## Who is a terrorist?

The government of Canada keeps lists of people and groups that have been flagged by the international community as being associated with terrorism. If you suspect that one of your properties is being bought or financed by terrorists, you should check whether their names appear on these lists:

- [www.osfi-bsif.gc.ca](http://www.osfi-bsif.gc.ca) - click *Terrorist Listings and Sanctions*, then (Under Terrorism Financing, United Nations Code and Criminal Code) *List of Names*. This links to one list of entities (corporations, groups, trusts, partnerships, funds, unincorporated associations, etc.) and another list of individuals
- [www.psepc-sppcc.gc.ca](http://www.psepc-sppcc.gc.ca), click *National Security*, then *Listed Entities*, then *Currently Listed Entities*

**NOTE:** Many of the names of individuals found on the lists above are quite common in Canada's multicultural society. FINTRAC has said that just matching an individual's name would not by itself automatically trigger a "Suspicious Transaction" or "Terrorist Property" report. There should be further reasonable grounds to suspect involvement with terrorism (matching date of birth, known link with listed terrorist "entity", large cash payments, or other indicators of suspicious transactions).

### **What do you have to do (known Terrorist Property)?**

- Stop the transaction
- Inform the Royal Canadian Mounted Police, Financial Intelligence Branch by fax at 613-993-9474
- Inform the Canadian Security Intelligence Service Financing Unit by fax at 613-231-0266
- File a paper "Terrorist Property" report with FINTRAC as soon as possible, by fax or registered mail. This will include:
  - information about how you know the property is owned or controlled by terrorists
  - name, address and contact information for the terrorist or terrorist group
  - name, address and contact information for the person who owns or controls the property for the terrorist or terrorist group (if different from above)
  - description of the property
  - details of the transaction (Offer to Purchase, deposit payments and similar)

### **When do you have to make the report to FINTRAC?**

- "Without delay."

### **How do you file the report?**

- In paper format
- Print a copy of the report form from [www.fintrac-canafe.gc.ca](http://www.fintrac-canafe.gc.ca) (Click *Publications*, then *Reporting Forms*, then *Terrorist Property Report Forms*), or call FINTRAC at 1-866-346-8722 to have a copy faxed or mailed to you
- Fax the completed report to FINTRAC at 1-866-226-2346 (you will receive a receipt), or send the report by registered mail to FINTRAC Section A, 234 Laurier Ave. W., 24th Floor, Ottawa, ON K1P 1H7 (no receipt will be sent)
- On the FINTRAC website, go to *Guide 5* for more information ([www.fintrac-canafe.gc.ca/publications/guide/Guide5/5-eng.asp#44](http://www.fintrac-canafe.gc.ca/publications/guide/Guide5/5-eng.asp#44))

### **Do you have to stop dealing with the buyer?**

- Yes. It is illegal to conduct further dealings or transactions relating to property you know is owned or controlled by known terrorists.

# Compliance Regime

If you meet the definition of a “real estate developer”, there are a number of things you must have in place by February 20, 2009. These include:

- **Risk analysis report** (assessing the risks that your company’s operations could be used for money laundering or terrorist financing, and how to deal with them)
- **Person responsible for compliance** (appointed to make sure your company meets FINTRAC requirements)
- **Compliance policies and procedures** (written, prepared and applied)
- **Staff training** (for employees and people who act for you, such as non-licensed sales agents)

Every two years, you will also need to:

- **Review** (all of the above, for effectiveness and any updating)

## Risk Analysis Report

Builders who qualify as “real estate developers” under the legislation must analyse how their company might be at risk of being used for money laundering or terrorist financing, and how they can address any high-risk areas.

Small businesses do not have to prepare a long and complex report. But they do have to list:

- the products and services they offer and the level of risks they present (e.g. real estate has been identified as an element in more than half of the money laundering cases pursued by the RCMP, although the actual number of cases represented a minute percentage of the total volume of real estate transactions).
- the ways they interact with clients (e.g. taking customer information, preparing Offers to Purchase, accepting deposits).
- where the risks are (e.g. sales staff may be asked to accept large cash payments).
- key indicators of suspicious transactions.
- any special concerns (e.g. selling in a high crime area, selling to overseas buyers).
- past experience of problems, if any (e.g. have any units sold by your company in the past five years been used as “grow-ops”?).
- potential internal issues, if any (e.g. high turnover of sales staff, experience of theft or fraud).
- recommended ways to deal with high-risk operations or transaction types.

This report can become a good starting point for your staff training. Its recommendations to handle high-risk areas can also become a key part of the company’s written policies and procedures.

**NOTE:** Your risk analysis is just a tool for assessing your company’s *general* level of risk for being used for money laundering or terrorist financing. You still need to stay alert to the risks of each individual case. Apply the “sniff test” to every sales transaction, and make all required reports to FINTRAC.

### Sample FINTRAC Risk Analysis Report

See Appendix D for a sample risk analysis report for a small home building company.

## Person responsible for compliance

Every “real estate developer” must give someone the responsibility and resources to oversee compliance with the legislation (a “compliance officer”).

In a small business, that person will probably be the owner, or a senior manager who reports to the owner/board of directors. A sole proprietor can be his or her own compliance officer - or appoint another person. Large companies may want to have an individual at each site who will report to the company’s overall compliance officer.

Responsibilities would typically include:

- preparing and updating the company’s written compliance policies and procedures.
- staff training.
- monitoring record-keeping and reporting, to ensure compliance and identify risk areas.
- overseeing or personally handling higher-risk transactions, including:
  - the continued use of licensed outside real estate agents, if applicable
  - identification of corporations, partnerships and other entities
  - cash transactions
  - staff reports on potentially suspicious activity
- reporting to FINTRAC on large cash transactions and suspicious transactions.
- reviewing effectiveness every two years.

Often, it will make sense to have the same individual responsible for FINTRAC compliance as for privacy legislation.

## Compliance policies and procedures

Every “real estate developer” must have written policies and procedures setting out how they will comply with the legislation. See Appendix E for some examples of policy statements and related procedures.

## Staff training

Anyone who qualifies as a “real estate developer” and has employees or other individuals who act on their behalf in dealings with clients or handling cash or funds must provide them with training. This should explain how criminals or terrorists might try to use the company for money laundering or placement of funds, and what actions must be taken.

Whether the training is done in simple face-to-face meetings, or instructed classes and computer programs, the contents still have to be written down and kept on file. So does a record of who has been trained and when. New hires should be trained on FINTRAC compliance before they start dealing with the public.

Training must cover FINTRAC requirements for record keeping and reporting, plus your internal policies and procedures to deal with them.

Go to Guide 4 on FINTRAC's website for information pages on training ([www.fintrac-canafe.gc.ca/publications/guide/Guide4/4-eng.asp#77](http://www.fintrac-canafe.gc.ca/publications/guide/Guide4/4-eng.asp#77)).

# Enforcement

The *Proceeds of Crime (Money Laundering) and Terrorist Financing* legislation is enforced by the Financial Transactions Reporting and Analysis Centre of Canada (FINTRAC).

This group receives and analyses reports on listed types of transactions (including Large Cash Transactions and Suspicious Transactions) from the growing list of sectors covered under the legislation. They have the right to see the client identification and receipt of funds records, and other information relevant to enforcement. If they find patterns that could help prove money laundering or terrorist financing, they make reports to law enforcement agencies.

FINTRAC may also audit companies' and individuals' compliance with the regulations. Effective December 31, 2008, the Centre can issue penalties to people or companies who don't comply. Criminal penalties, including fines of up to \$2 million or up to five years in jail, can also apply for serious non-compliance.

They have prepared guidelines and can help answer questions about the requirements. For more information:

FINTRAC  
24th floor, 234 Laurier Avenue West  
Ottawa, ON, K1P 1H7  
Email: [guidelines-lignesdirectrices@fintrac-canafe.gc.ca](mailto:guidelines-lignesdirectrices@fintrac-canafe.gc.ca)  
Telephone: 1-866-346-8722 (toll free)  
Fax: 613-943-7931  
[www.fintrac-canafe.gc.ca](http://www.fintrac-canafe.gc.ca)

## Questions and Answers

**Do I have to set up separate FINTRAC files to record basic information on all my homebuyers?**

NO. You can record this information (verified buyer ID, date-of-birth, occupation) in whatever way is most convenient. This would include simply amending your sales agreement to include these information items. FINTRAC simply requires this information to be available to it on request.

**Do I have to use government-issued ID to verify every buyer's identification, even if I know the person?**

YES, this is what FINTRAC requires. Your records need to include details on the government-issued identification documents provided (i.e. photo ID, Birth Certificate), including its type and issuance number. The only time you can avoid doing this is for a repeat buyer, where it has previously been done.

**What do I do if someone refuses to provide me with government-issued photo identification?**

You should note this on the sales file, but you can continue with the sale. You still have a responsibility to obtain whatever personal identification information your client is willing to provide. Also, in cases where a client refuses to provide personal identification documents, or any other FINTRAC related information, you need to consider why they are refusing to do this. If you believe the client is trying to evade government detection of their involvement in the transaction, you should make a Suspicious Transaction Report to FINTRAC. Review the Suspicious Transaction section of this booklet for other indicators that money laundering may be taking place.

# APPENDICES

Appendix A: Sample Client Identification Record Checklist—Individuals

Appendix B: Sample Client Identification Record Checklist—  
Corporations, Partnerships and Other Entities

Appendix C: Sample Receipt of Funds Checklist

Appendix D: Sample Risk Analysis Report

Appendix E: Selected Examples of Policies and Procedures

Appendix A

# Client Identification Record Checklist— INDIVIDUALS

**Date** (dd/mm/yyyy) .....

**Record completed by** .....

### Type of client being identified

- Buyer
- Third party (person or company buyers are purchasing property for)
- Other person supplying funds for this sale (e.g. parents, business associate, corporation)
- Other (please explain) .....

### Sales transaction involved

Property type ..... Number of residential units .....

Site (if applicable) .....

Address ..... City ..... Prov .....

Our file number .....

### Client Information

Name .....

Address ..... Apartment # .....

City ..... Prov ..... Postal Code .....

Date of Birth dd/mm/yyyy .....

Occupation .....

### Verification ***if the individual is present*** (1 document required)

Type of document ..... (passport, driver's licence, etc.)

Number ..... Issued by .....

Expiry date (dd/mm/yyyy) .....

Check all boxes where the ID information matches the client information above:

- Name
- Photograph (if included in document)
- Date of birth (if included in document)
- Address (if included in document)
- Occupation (if included in document)

Check here to confirm that photocopy of ID is attached to the file.

**Verification if individual is not present (2 of these 3 types required)**

- (original of) legible photocopy of acceptable identification document, signed by a Canadian commissioner of oaths or guarantor to be a true copy of the original
- credit report
- cleared cheque or confirmed bank account in name of the individual:  
Financial institution .....  
Account number ..... Branch .....

Check here to confirm that photocopies of both types of ID are attached to the file.

**Third Party Involvement**

- Individual has been asked if they are acting for someone else (a third party). (All buyers must fill in and sign a disclosure statement in our standard Offer to Purchase.)  
Their answer was ..... If YES,
- Information and ID has been collected about the third party. (Our reference # .....)

**Documents not available**

Explain what our company has done to try to obtain the documents/identification

.....  
.....

**Other Comments**

.....  
.....  
.....  
.....

Appendix B

# Sample Client Identification Record Checklist—CORPORATIONS, PARTNERSHIPS AND OTHER ENTITIES

Date (dd/mm/yyyy) ..... Record completed by .....

## Type of client being identified

- Buyer
- Third party (corporation or other entity that buyers are purchasing property for)
- Corporation or entity supplying funds, other than the listed buyer
- Other (please explain) .....

## Sales transaction involved

Property type ..... Number of residential units .....

Site (if applicable) .....

Address ..... City ..... Prov .....

Our file number .....

## Client Information required at time of transaction

Type of business entity

- Corporation (*inform person responsible for FINTRAC compliance and owner*)
- Partnership
- Cooperative
- Association
- Other (please specify) .....

Name ..... Address ..... Suite # .....

City ..... Prov ..... Postal Code .....

Principal business activity .....

Name of representative .....

- Information about the representative and ID has been collected. (Our reference # .....)
- Representative has been asked to provide:
  - o proof of the corporation or other entity's existence (e.g. the partnership agreement, articles of association, the corporation's published annual report or annual updating of registry information with Industry Canada or equivalent provincial business registration body)
  - o (for corporations) record confirming the list of directors, letter of authorization and/or Board resolution authorizing the purchase
- Representative has been asked if the corporation or other "entity" is acting for someone else (a third party). (The representative must fill in and sign a disclosure statement in our standard Offer to Purchase.) Their answer was ..... If YES,
- Information and ID has been collected about the third party. (Our reference # .....)

**Verification of Client Information required within 30 days**

**Part A—Existence of the Corporation or Entity**

Type of document ..... Date (dd/mm/yyyy) .....

Number ..... Issued by .....

Check all boxes where information on document matches the client information above:

- Name
- Address
- Principal business activity

Check here to confirm that a photocopy of the document is attached to the file.

**Part B (for Corporations only) — Name, Address, List of Directors, and Confirmation of Representative’s Authorization**

*(Fill in additional sheets if there is more than one document.)*

Type of document ..... Date (dd/mm/yyyy) .....

Number ..... Issued by .....

Check all boxes where document(s) provides/confirms required client information

- Name
- Address
- Principal business activity
- List of Directors
- Representative’s authority to undertake the purchase

Check here to confirm that a photocopy of the document is attached to the file.

**Documents not available**

Explain what our company has done to try to obtain the documents/identification

.....  
.....

**Other Comments**

.....  
.....  
.....  
.....

Appendix C

# Sample Receipt of Funds Record Checklist

**Date** (dd/mm/yyyy) .....

**Record completed by** .....

## Sales transaction involved

Our file number ..... Property type .....

Number of residential units ..... Site (if applicable) .....

Address ..... City ..... Prov .....

## Information on Funds Received

Purpose (e.g. initial deposit, balance of deposit, progress payment, etc.) .....

Date received (dd/mm/yyyy) .....

Time received ..... a.m./p.m. (circle one)

Currency  Canadian or  Other (specify) .....

Total amount in Canadian dollars \$ .....

## Person or company providing the funds

Name .....

Information and ID was already on file about this person/company (our reference # .....)

OR

I recorded information and ID about this person/company (our reference # .....)

Date collected .....

(ID is not required if funds are coming from the buyer's spouse, a public body or a buyer that is a financial institution)

## Form(s) of payment (check all that apply)

- |   |                             |
|---|-----------------------------|
| <input type="checkbox"/> Personal cheque                  | Amount in Canadian \$ ..... |
| <input type="checkbox"/> Cheque drawn on business account | Amount in Canadian \$ ..... |
| <input type="checkbox"/> Bank draft                       | Amount in Canadian \$ ..... |
| <input type="checkbox"/> Credit card                      | Amount in Canadian \$ ..... |
| <input type="checkbox"/> Banknotes and/or coins           | Amount in Canadian \$ ..... |
| <input type="checkbox"/> Other (specify) .....            | Amount in Canadian \$ ..... |

If payments were in cash (banknotes or coins), how were they delivered? (e.g. in person, by courier, armoured car, etc.)

.....  
.....

**Account funds were drawn from (if applicable)**

Name of account holder .....

Account number .....

Financial institution .....

Branch Number ..... Branch Location .....

**Account funds were deposited into**

Name of account holder .....

Account number .....

Financial institution .....

Branch Number ..... Branch Location .....

**Large Cash Transaction (banknotes and/or coins)**

- Check here if \$10,000 or more in cash was paid or offered towards this transaction within a 24-hour period.
- Inform the owner and our company person responsible for FINTRAC compliance without delay.

**Comments**

.....  
.....  
.....  
.....

Appendix D

# Sample FINTRAC Risk Analysis Report ABC HOME BUILDERS

**NOTE: This report will be completed and kept on file by the person in our company responsible for our compliance with FINTRAC (compliance officer). It will be reviewed/ updated every two years.**

**Date (dd/mm/yyyy) .....**

## **Our Company**

Name .....

Address ..... Apartment # .....

City ..... Prov ..... Postal Code .....

Established in (yyyy) .....

Type of business structure (corporation, partnership, sole proprietorship, etc.).....

.....

Owner(s) / Partners.....

.....

We come under Canada's *Proceeds of Crime (Money Laundering) and Terrorist Financing* legislation as a "real estate developer" because in 2008 (or later first year.....), we sold to the public (check all that apply):

- five or more new houses or condominium units
- one or more new multi-unit residential building containing five or more units
- two or more new multi-unit residential buildings which together add up to five or more units
- one or more new commercial building
- one or more new industrial building

## **Products and Services Offered**

ABC Home Builders sells to the public approximately ....(40).... new single detached, duplex and townhouse units per year. Townhouse projects can be either condominium or fee simple. We buy lots from developers, and currently operate in ....(3).... subdivisions, all located within .... (40 km) .... of the head office. We provide all design and construction services.

We also undertake occasional renovation projects, but these do not come under the legislation and do not carry FINTRAC record-keeping and reporting obligations.

## How We Deal With Clients

All sales of single-detached and duplex homes are handled in-house. There are three people who deal with clients: the owner, business manager, and/or sales agent. The sales agent is not a provincially licensed real estate agent, and does not have her own reporting obligations under FINTRAC.

Typically, potential clients are met in the sales office and invited to fill out prospect cards, giving their names and contact information. When they are ready to make an offer, our company representative(s) sit down with them to fill out our standard Offer to Purchase. The clients are asked to complete the section with their personal identification, including name, address, phone/fax/email contact information, date of birth, and occupation or type of business.

There is also a section to record personal identification information for each individual, which is completed by our company representative. He or she will check the ID to make sure the information available on it (name and as many as possible of address, date of birth, photo and signature) match those given by the person signing the offer. Normally, a photocopy of the identification document is attached to the file. We just started this practice two years ago, but so far we have not had any individuals who were unwilling or unable to provide identification. Our company policy is to record any such problems on the file, and send a report to our person responsible for FINTRAC compliance.

In the past, we have not had any specific practices to try to identify whether the real buyer is someone other than the person signing the Offer to Purchase. As of February 2009, it is our policy to ask all buyers whether or not they are acting for someone else, and if so who that person or company is. They must complete and sign a disclosure statement to this effect, which is part of the Offer to Purchase.

In the past five years, we have only had .... (6) .... sales to corporations. We have always recorded name, address and type of business for corporations, partnerships or similar entities. Because of FINTRAC requirements, we have added sections for confirming the existence of this type of client, and getting additional information for corporations (list of directors, signing authority) as of February 2009. We normally request that the corporate representative provide us with a photocopy of the corporation's annual return to Industry Canada or the provincial Corporations Branch. In addition, we request a copy of the Corporation's Board resolution authorizing the purchase.

When they fill out and sign the Offer to Purchase, potential purchasers are asked to make a deposit. In the vast majority of cases, they make this and any subsequent payments by cheque. Cheques and similar payment documents are photocopied and kept on file. Details of these deposits and any subsequent payments towards the agreed downpayment are recorded and filed. Funds are sent to our lawyers and kept in a trust account. Lawyers are identified in the transaction file for each sale. Additional payments may be made by clients when they choose finishes and upgrades. These are handled in the same way as above. Final payments at closing are always handled by our lawyer.

In the past, we have occasionally had some customers who wanted to make all or part of a payment in cash. Despite the fact that people never paid more than \$2,000 in cash, as of January 1, 2009, it is our company policy not to accept cash payments.

## Our Understanding of Common Risks for Our Sector

A 2004 study of RCMP cases involving money laundering found that almost 56% had included the purchase of real estate. More than 70% of those involved the purchase of one or more single-family homes, and 12% involved the purchase of multi-family buildings. In the vast majority of cases, the accused purchased a home to live in. Numerous homes were also purchased as marijuana-growing operations. In 77% of the cases involving real estate, cash was used as a deposit, a downpayment or a mortgage payment. In more than 60%, the accused used someone else as the registered owner or mortgagee, including relatives, friends, business associates, lawyers, and shell or legitimate companies.

The actual number of cases represented a minute percentage of the total volume of real estate transactions taking place. And the transactions themselves were usually legal—that is the whole point of money laundering. However, our business does face some risk of being used for placing the proceeds of crime (especially cash) into the legitimate economy, and it is conceivable that one of our homes could become a terrorist property or be used for a criminal home or operation.

## Additional Risk Considerations

FINTRAC has identified some indicators that may suggest higher-risk operations. Here is how those indicators appear to affect our company

### Client base

FINTRAC suggests that a business with ongoing, known clients is considered to be at low risk, while growing one with lots of new clients in a wide geographic area is considered to be at high risk.

*We do not operate in a wide geographic area. Our clients generally speaking are new to us. However, sales records show that more than .... (60%) .... are referrals from existing clients, and approximately .... (15%) .... are repeat customers. The vast majority are individuals or couples buying their own home. Since .... (90%) .... plus live in the homes they buy, they are easy to locate. To the best of our knowledge, none of the homes we have built and sold in the past five years has been reported as being used as a marijuana-growing operation or similar.*

*Risk Avoidance: Our procedures to identify buyers and ask people if they are buying on behalf of someone else should reduce residual risk of fraud or nominees.*

*Assessment of Risk: Low*

### Cash Transactions

FINTRAC suggests that a business with few to no large cash transactions is considered low risk.

*In the past five years, we have experienced very few cash transactions and none at the "\$10,000 or more" definition of a large cash transaction.*

*Risk Avoidance: As of February, 2009, it is our company's policy not to accept cash payments.*

*Assessment of Risk: Low*

### **International Accounts**

FINTRAC suggests that a business with few transactions involving international clients or accounts is considered to be low risk.

*In the past five years, we have had a small number of sales to buyers living overseas. However, two were to Canadians serving in the armed forces. The other was to residents of South America who immigrated to Canada under a family reunification program. There may be a trend of more investment buyers from Europe, however, who might be a bit more difficult to identify.*

*Risk Avoidance: Additional measures will be used to identify clients abroad.*

*Assessment of Risk: Low-Moderate*

### **Local Crime**

FINTRAC suggests that businesses located in a low-crime area are at lower risk than those in an area known to have a high crime rate.

*Our City is reported to have a crime rate ... equivalent to the national average (information from local police force and/or media reports). The areas in which we are building appear to have a rate lower than the City as a whole.*

*Risk Avoidance: Continue choosing building sites in low-crime areas. If we undertake a project in a higher-crime area, we will inform staff of need for increased care in identifying customers and tracking indicators of suspicious transactions.*

*Assessment of Risk: Low*

### **Transactions with High-Risk Geographic Areas**

FINTRAC suggests that a business with no transactions with high-risk geographic areas is considered to be at low risk.

*High-risk geographic areas appear to be parts of the world with few legal structures to avoid crime, money laundering or terrorist centres. We have never had any clients from these areas. Nor do we expect to.*

*Assessment of Risk: Non-existent*

### **Personnel Turnover**

FINTRAC suggests that a business with low turnover of people dealing with customers, handling funds and/or ensuring FINTRAC compliance is considered to be at low risk.

*Funds and FINTRAC compliance are dealt with by the owner and the business manager, both of whom have ownership positions in the company. The sales representative has been with us for two years. Our previous representative was with us for less than six months, but the one before that was here five years.*

*Risk Avoidance: We train new staff people on FINTRAC requirements and compliance before they start dealing with the public. Records and reports are backed up every week.*

*Assessment of Risk: Low*

## Key Indicators of Suspicious Transactions

- Buyer starts to fill out the Offer to Purchase but stops when asked to provide identification.
- Buyer purchases property in the name of an associate or relative, other than a spouse.
- Buyer doesn't want his or her name on any document that would connect them with the property or uses different names on the Offer to Purchase, deposit receipts and closing documents.
- Buyer wants the purchase documents to show a lower price than negotiated, paying the difference "under the table".
- Buyer makes several payments in cash, each of which is less than the "\$10,000 within 24 hours" that would trigger a Large Cash Transaction report, but they add up to more than \$10,000.
- Buyer pays in bank notes, bearer cheques or other anonymous instruments.
- Local news media report that the buyer has been charged with or convicted of criminal or terrorist activity.
- Buyer changes the name of the purchasing party at the last minute.
- Deposit(s) are paid by a third party, other than the buyer's spouse or parent.
- Buyer uses a corporation to buy a house or condominium for itself or someone else, when you know the company does not normally deal in real estate.
- Buyer purchases a property but shows no interest in its features, finishes or the final pre-closing inspection.
- Buyer purchases a number of properties in a short time period.
- Buyer will only provide signature on documents by fax, except where they cannot be physically present and you use a mandatary to confirm. (See *Foreign Buyers*.)
- Buyer does not want correspondence sent to home address.
- Buyer uses a General Delivery address.
- Buyer is unusually concerned about your compliance with government reporting requirements and anti-money-laundering policies.
- Buyer appears extremely nervous or uncomfortable.

## ABC Home Builders

### Assessment of Risks after Risk Avoidance Measures

INDICATOR	LOW	L – M	MODERATE	M – H	HIGH
Client base	X				
Cash Transactions	X				
International Accounts		X			
Local Crime	X				
High-Risk Geographic Areas	N/A				
Staff Turnover	X				

## Appendix E

# Selected Examples of Policies & Procedures

1. It is the policy of this company to conduct all sales through an independent, outside, licensed real estate agent or broker.

## Procedures

Valid contracts with licensed outside agents or brokers will be maintained at all times. These contracts shall clearly state:

- the licensed real estate agent's/broker's responsibility for FINTRAC compliance for any sales it makes of our homes
- that the agent/broker will hold our firm harmless in any actions taken by FINTRAC as a result of sales it makes of our homes
- that if the relationship ends, the agents/brokers must provide our company with a copy of all FINTRAC records and reports they have made in the preceding five years relating to sales of our company's homes

If a contract is to be terminated or allowed to lapse, that shall be reported immediately to our compliance officer and the owner.

If sales move in-house, the compliance officer and the owner will immediately bring in policies and procedures to ensure that our company complies with FINTRAC requirements.

OR

1. It is the policy of this company that sales will be handled by the owner or in-house sales staff (employees) under the policies and procedures outlined below.
2. Senior management and all staff who deal with buyers will have a basic understanding of how our operations might be at risk for money laundering and terrorist financing, and our responsibilities under FINTRAC.

## Procedures

All current managers and staff will receive training with appropriate updates every two years. FINTRAC requirements will be part of the orientation for new people.

3. Our company will take action to make sure other people who act on our behalf also understand how our operations might be at risk for money laundering and terrorist financing, and what we require of them.

## Procedures

Any contract with people acting on behalf of our firm (e.g. a new home sales agency not using licensed real estate agents) will clearly state:

- that the sales agency or similar is responsible for ensuring our firm fully complies with FINTRAC requirements for any sales it makes of our company's homes
- the measures the employees of the sales agency must carry out in relation to FINTRAC requirements when representing our firm
- that all sales staff assigned to service our company will receive proper training in FINTRAC procedures, and how

## 4. Client identification will be recorded for all sales of residential units and investment properties.

### Procedures

All Offers to Purchase will include lines for name, address, date of birth and occupation for each individual:

- buying on their own behalf (includes all individuals whose names will be listed as legal owners)
- representing a corporation, partnership, cooperative or other business-like legal entity
- buying on behalf of a third party, and
- third parties themselves (wherever possible)

The individuals will be asked to fill in the personal information as above.

Our sales staff will record and verify that the individuals are who they say they are by seeing and recording the number, type and date of issue/expiry of appropriate government-issued identification documents such as a driver's license or passport. A photocopy of this ID will be attached to the file.

All Offers to Purchase will include a declaration to be filled out by each buyer stating whether or not they are acting on behalf of a third party, and if so the name, address and contact information for that individual or company.

The Offer to Purchase must be referred to our compliance officer and the owner for additional client identification if:

- the purchaser is a corporation, partnership, cooperative or similar business entity
- the buyers are not in Canada

## 5. Receipt of Funds information will be recorded for every amount received towards each purchase.

### Procedures

Sales staff will record the amount received, currency, the date and time it was received, and from whom, plus either details of how cash was received, or identification of accounts used for other transaction types. If the funds were received from anyone other than the listed and identified buyers, personal information and identification will be recorded as for buyers.

- 6. This company does not accept cash payments of \$10,000 or more (or stated lower limit).**

**Procedures**

Staff will politely refuse such payments, informing buyers who offer them that this is strict company policy.

All cash payments or attempted cash payments of any amount, payments by bearer draft or similar anonymous instruments will be reported to the person in our company responsible for FINTRAC compliance and the owner.

- 7. This company will keep information required by FINTRAC for a minimum of five years (or such longer period required under other legislation).**

**Procedures**

All records and reports must be dated.

Duplicate records and reports should be kept so if one set is damaged, lost or stolen, there is still another back-up copy.

All agreements with sales firms who are non-licensed real estate agents/brokers will clearly state the records and reports belong to our company and must be returned if the business relationship ends.