



FINTRAC: Compliance for REALTORS®, Brokers, and Broker Managers

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This course has been developed by the Alberta Real Estate Association, for Alberta REALTORS®, and is based on the FINTRAC guidelines. It is recommended that this course be considered a foundational pillar in a brokerage's Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA) training program.

Complying with Anti-Money Laundering and Counter-Terrorist Financing Obligations

INTRODUCTION

Money laundering and terrorist activities continue to plague the globe. The government of Canada, along with other countries belonging to the FATF (*Financial Action Task Force*), has instituted legislation that aims to hinder illegal activities that fund crime.

There are certain responsibilities that REALTORS®, their brokers, and other sales representatives have in order to suppress illegal financial transactions. In Canada, FINTRAC (*Financial Transactions and Reports Analysis Centre of Canada*) and the PCMLTFA (*Proceeds of Crime (Money Laundering) and Terrorist Financing Act*) dictate the guidelines and best practices which must be followed.

WHAT IS MONEY LAUNDERING

Money laundering is the method by which criminals disguise the illegal origins of their wealth and protect their asset bases. They do so to avoid suspicion of law enforcement, and to prevent leaving a trail of incriminating evidence. In short, it is a multi-phase process designed to transform “*dirty money*” gained through illegal activities, into “*clean money*”, making it difficult to identify its origin.

Money laundering typically has three stages:

Placement simply places the proceeds of crime into the financial system.

Layering transforms the “dirty money” into another form of currency and creates complex layers of financial transactions. Layering may involve transactions such as the buying and selling of stocks, commodities, or even property.

Integration allows the funds to re-enter the economy under the perception of legitimacy.



The money laundering process is cyclical, with new dirty money constantly entering the financial system under the pretense of being legitimate.

Money laundering offences involve a variety of acts committed with the intention of concealing or converting property, or the proceeds of property (such as money or real estate), knowing that they have been derived from the commission of a crime. These crimes can include, but are not limited to, any of the following:

- | | |
|-------------------|------------------------|
| Drug Trafficking | Bribery |
| Fraud | Forgery |
| Murder | Robbery |
| Counterfeit Money | Stock Manipulation |
| Tax Evasion | Copyright Infringement |

Money laundering offences can also include illegal activities that take place outside of Canada.

NOTES

While the methods to launder money are as far reaching as the imagination, common money laundering tools are frequently employed.

Nominees

A Launderer uses family members, friends, or community members who will not attract law enforcement attention to conduct transactions on their behalf.

Structuring

Individuals will make frequent deposits under the required reporting thresholds at banks, and then transfer the funds into one centralized account, often offshore.

Bulk Cash Purchases

Individuals will purchase big ticket items (cars, real estate, jewelry) with dirty money, and then resell legitimately to further launder the funds.

Exchange Transactions

Individuals will use dirty money to buy foreign currency and then exchange it using an offshore account.

Gambling

Individuals bring cash to a casino and purchase gambling chips. After briefly gaming, the individual redeems the remainder of the chips and requests a casino cheque, creating a clean financial trail.

Most individuals involved in the “business” of crime would not be if it were not for the profits to be made. The relationship between the profitability of crime and its prevalence is clear. With this information, it has become a major objective of Canada to deprive criminals of the profits from their crimes, in hopes of reducing the crime itself.



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WHAT IS TERRORIST FINANCING?

Taken from FINTRAC's Guideline 1

"The main objective of terrorist activity is to intimidate a population or compel a government to do something. This is done by intentionally killing, seriously harming or endangering an individual, or causing substantial property damage that is likely to seriously harm people. It can also be done by seriously interfering with, or disrupting, essential services, facilities, or systems"

Terrorists need financial support to carry out terroristic activities and achieve their goals. In one respect, terrorists are very similar to other types of criminal organizations in their manipulation of the financial system. A successful terrorist group is able to build and maintain an effective financial infrastructure. Terrorist groups need to ensure there is a way to have rapid access to funds in order to continue to commit terrorist acts.

Terrorist financing is any use of funds intended to further terrorist activity. It may involve funds raised from money laundering, but also involves funds obtained from legitimate sources, such as personal donations, and profits from business and charities.

WHAT IS FINTRAC?

The *Financial Transaction and Reports Analysis Centre of Canada* (FINTRAC) is Canada's Financial Intelligence Unit (FIU). FINTRAC was created in 2000, through the Proceeds of Crime (Money Laundering) and Terrorist Financing Act. Its mandate is to receive, collect, analyze, and disclose financial transactions which may be related to money laundering.

FINTRAC was born through a four-stage evolution:

Global Strategy, Suspicious Transaction Reports,

International Standards, Financial Intelligence



Global Strategy

The global anti-money laundering strategy crystallized in 1988 following the adoption of the *United Nations Convention against Illegal Traffic in Narcotic Drugs and Psychotropic Substances*. From this, the term of “proceeds of crime” was adopted, and the removal of these proceeds from the criminal environment was the primary goal. Depriving criminals of their illegal gains was not a new concept but doing so through the financial aspect was.

Suspicious Transactions Report

As the concept of involving the financial system evolved, the idea of suspicious transaction reporting was born. Governments, understanding that illegal funds were primarily transferred using cash, went to great lengths to focus on making illegal cash transactions more difficult. With the elimination of large denomination bills (\$1000 for example), criminals now found it easy to amass large sums of small bills and hide them in large transactions. While the intent of suspicious financial reporting was initially to solely hinder the drug trade, over time, it was realized that suspicious transactions apply to all serious crimes, and the phrase “follow the money” was ever valuable.

NOTES

International Standards

Once the collection and reporting of suspicious transactions started, the need to have a centralized institution to manage the data emerged. The creation of FIU's (Financial Intelligence Units) began in the 1990's. Canada did not develop an FIU in the 1990's, but after pressure from the FATF (*Financial Action Task Force*) did so in 2000. The FATF was a spawn of the G7 and introduced 40 recommendations that each member country was compelled to adopt to maintain good financial standing worldwide. Canada, as a member country of the FATF, is consistently evaluated for its adherence to the recommendations, which includes the inclusion of the real estate sector in financial reporting.

Financial Intelligence

The increase in worldwide terrorist attacks put extreme pressure on governments worldwide to focus on financial intelligence as a critical element in both understanding, and deterring, acts of terrorism. The FATF adopted the FIU's as a focal point for financial intelligence, and added nine recommendations to the initial 40, including adding counter-terrorism financing as a key focus.

YOUR ROLES, RESPONSIBILITIES, AND OBLIGATIONS

The PCMLTFA regulations designate “*real estate brokers*” and “*sales representatives*” as reporting entities covered under the act and its regulations.

Compliance Regime

The PCMLTFA requires brokers to establish a strict compliance regime. Each compliance regime must contain several elements, with the minimum being:

- A compliance officer
- Written policies and procedures which detail the brokerage’s approach to a PCMLTFA compliance program
- Documented assessment of money laundering and terrorist financing risks, as well as documentation of all mitigation measures used during high-risk activities
- Ongoing training for all employees, sales representatives, and other persons acting on the brokerage’s behalf
- A comprehensive review every two years on the policies, the training program, and their efficacy

While the brokerage is ultimately responsible for the actions of all those employed by the brokerage, sales representatives hold key responsibilities under PCMLTFA regulations.

Sales representatives are responsible for

Reporting

- Suspicious transactions, suspected terrorist property, large cash transactions

Record Keeping

- Large cash transactions, receipt of funds records, client information records, official corporate records, suspicious transaction reports, nature of business relationships, mitigation tools used to monitor business relationships

Confirming Identity

- Taking specific measures to identify any individual who conducts a large cash transaction, any individual or entity for whom a client information record or receipt of funds is kept, and any individual for whom a suspicious transaction report is sent

Managing Business Relationships

- Keeping records of any business relationship (meaning any individual or entity with whom the brokerage conducts two or more transactions in a 5 year period with)

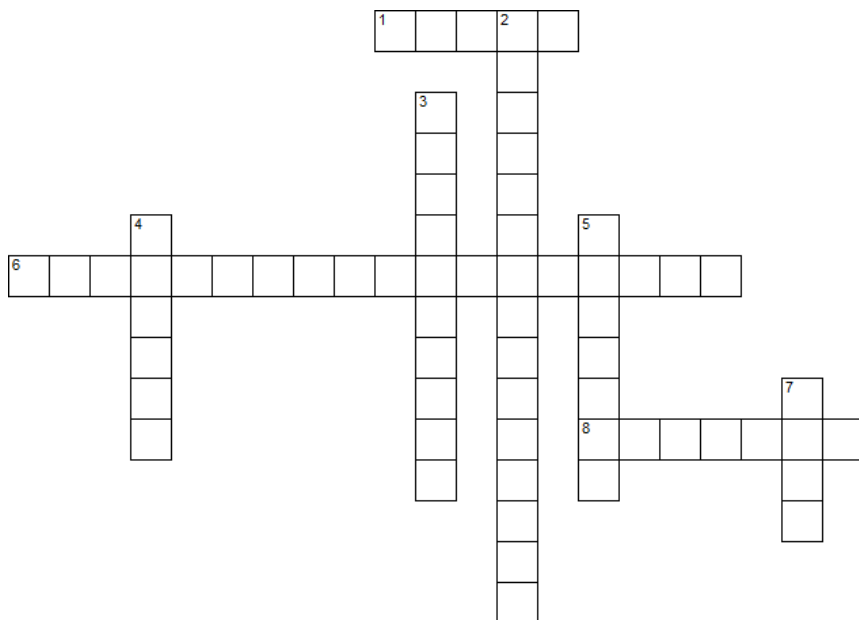
Third Party Determinations

- Determining, to the best of their ability, if the client is performing a transaction on behalf of a third party, and when the client is acting on behalf of a third party, obtaining specific information about the individual providing the cash

Responding to FINTRAC Requests

- Brokers and sales representatives must provide information to FINTRAC at any time that a request to respond to FINTRAC's compliance assessment report is received

NOTES



ACROSS

1. Money Laundering is an attempt to hide proceeds of _____?
6. Provides funds for terrorist activities
8. Canada's Financial Intelligence Unit

DOWN

2. Process where funds produced through criminal activity are converted into legitimate money
3. Sales representatives are required to report _____ transactions
4. Who is responsible for maintaining a compliance regime?
5. Canada's financial reporting act
7. Financial Action Task Force

Overview of the Compliance Regime

It is the responsibility of every broker to establish a comprehensive compliance regime to prevent money laundering and terrorist financing on the front lines. In addition to the broker's responsibility, sales representatives and all other employees play an important role in reducing money laundering and terrorist financing by strictly and consistently following established policies and procedures.

The compliance regime consists of the following:

1. Appointment of a Compliance Officer
2. Written Policies and Procedures
3. Method of Risk Assessment, Mitigation and Monitoring
4. Client Identification, Record Keeping, and Third-Party Verification
5. Comprehensive Training Program
6. Comprehensive Review



APPOINTMENT OF A COMPLIANCE OFFICER

Each brokerage is required to have an appointed compliance officer. This individual is responsible for program implementation, and for maintaining the integrity of the compliance program. The broker should endeavor to appoint an individual in a position to assume the responsibility of maintaining records, monitoring training, and responding to FINTRAC information requests. The broker themselves can act as the compliance officer.



WRITTEN POLICIES AND PROCEDURES

Each brokerage is required to keep all policies and procedures related to Anti-Money Laundering/Anti-Terrorist Financing obligations in a manual using CREA's compliance regime publication. While using CREA's publication, brokers are encouraged to edit and complete each section to explain the policies and procedures specific to their brokerage.

Once these edits have been made, the manual is satisfactory in meeting the legislative requirements for documentation.

The most important aspect of the broker's individual policies and procedures documentation is that it must accurately reflect the broker's own business.



RISK ASSESSMENT, MONITORING, AND MITIGATION

The risk of inadvertently being exposed to money laundering or terrorist financing schemes is very real in the real estate industry. The buying and selling of property is one common way that criminals clean illegally obtained funds or finance terrorist activities.

Each brokerage must include a method of risk assessment, risk mitigation, and risk monitoring to be truly compliant. When completing a risk assessment, brokers must consider a number of factors including, but not limited to: their clients, their business relationships, their geographic location, and any potential high-risk products.

FINTRAC states that brokers have an obligation to perform a risk assessment on each client they encounter, but that these assessments do not necessarily have to be in writing.

There are a variety of ways that risk assessments are completed. Brokerages may have their representatives document on custom created forms, or they may complete the CREA client information record. REALTORS® are encouraged to refer to their brokerage's compliance officer to determine the preferred method of assessment.



In addition to performing a risk assessment for every new client, brokers are required to reassess the level of risk when they enter business relationships. This component is called ongoing monitoring of business relationships. When monitoring the business relationships, brokers are required to ensure that the transactions and activities of the client are consistent with the information previously obtained on the risk assessment.

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NOTE

As of June 1, 2021, A business relationship is now considered established at the **first instance** that the broker or associate identifies a person or corporation(entity) for purchase or sale transaction with the brokerage.

The PCMLTF regulations provide an exception to forming a business relationship with public bodies or a large corporation. That exception exists because there is no requirement to ascertain the exact identity of these two types of clients. Public bodies mean a Canadian provincial or federal department a crown agency, a Canadian municipal body, or a hospital authority. A large corporation means one that has net assets of \$75 million or more on their last audited balance sheets, whose shares trade on a stock exchange designated under a subsection of the *Income Tax Act*, and who operates in a FATF member country.

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CLIENT IDENTIFICATION, RECORD KEEPING, AND THIRD PARTY VERIFICATIONS

The PCMLTFA and its regulations require that any time a REALTOR® acts as an agent in respect to a real estate transaction, they are required to create and maintain records on:

- Client information
- Receipt of Funds
- Suspicious (complete or incomplete) transactions
- Large cash transactions
- Copies of official corporate records

NOTE

Throughout your business relationship with a person or entity, additional information and records must be kept:

- Information on the purpose and intended nature of the business relationship
- Information on the measures the broker and his representative have taken to continually monitor the business relationship

These records must be maintained for 5 years.

When identifying an individual, a REALTOR® must record the client's name, address, date of birth, principal business or occupation, and verify the information using a valid form of government identification. When recording this information, the documentation must include the type of document, the reference number, and its place of issue.

Acceptable identification includes, but is not limited to:

| | |
|-------------------------|-----------------------------------|
| Birth Certificate | Driver's License |
| Provincial Health Card* | Passport |
| Record of Landing | Permanent Resident Card |
| Old Age Security Card | Certificate of Indian Status card |

**not acceptable if from Ontario, Manitoba, Nova Scotia, or PEI)*

In the instance that the client is a corporation, sales representatives are required to confirm the existence of the corporation and determine the legal name and address of the corporation. As of June 1, 2021, brokers and associates are required to obtain beneficial ownership information for the corporation (entity). This means they must obtain not only the names of all the directors/shareholders, but also all the addresses of all the directors/shareholders who own 25% or more interest/shares in the corporation. In addition they must obtain all information establishing ownership, control and struction of the corporation (entity). This information is best found using the corporation's certificate of corporate status, which is filed annually under the

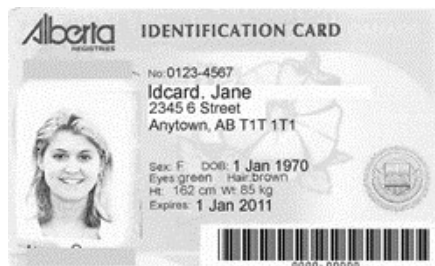
provincial securities legislation, as well as current corporate bylaws. If the client is any other type of entity, the entity must be confirmed prior to proceeding and similar requirements are also in place for publicly held trusts, trusts, and non corporate or trust entities and the compliance officer should be consulted in regards to these other possible entities.

FINTRAC also requires that the person conducting the transaction on behalf of the corporation or entity be identified as an individual as well.

NOTE: As of June 1, 2021, a special provision has been made for individuals who would be considered Politically exposed persons (PEP) or head of an international organization (HIO). These provisions require REALTORS® to take reasonable measures to determine if such a person is a PEP or HIO, periodically take measures to assess the PEP or HIO foreign status of the individual, as well as monitor the ongoing relationship regarding family members or associates of the PEP or HIO who transact with the brokerage. Consult with your compliance officer if any of these situations apply.

Occasionally, a client may use an agent or mandatary to conduct a real estate transaction. In this instance, the PCMLTFA requires that the agent/mandatary obtain the appropriate client information. Alternatively, the PCMLTFA allows for a combination of **two** of the below **five** methods to be used to identify a client who is not physically present:

- Refer to an independent and reliable identification product, which must be based on personal information, as well as Canadian credit history, of which there must be at least 6 months of history
- After obtaining consent, refer to a credit file in respect to that individual in Canada that is at least 6 months old
- Obtain attestation of identification from a commissioner of oaths or guarantor
- Confirm that a cheque drawn from an account in their name has cleared
- Confirm the existence of an active deposit account, i.e. an original bank statement



In addition to identifying the individuals they are dealing directly with during a transaction, REALTORS® are required to take all reasonable measures to determine if a third party is also involved. FINTRAC defines a third party as an individual or entity other than the individual who conducts the transaction. If there are third parties, they must be identified equal to the individual conducting the transaction.

In addition to identifying their clients, a REALTOR® is required to make a reasonable effort to identify unrepresented parties (i.e. unrepresented sellers). The requirements to identify these unrepresented parties are less onerous than the REALTOR®'s client, but the reasonable effort must still be made.

If the unrepresented party refuses to be identified, the REALTOR® shall document this information, with the date and time that the attempt was made.

NOTES

RECEIPT OF FUNDS RECORD REQUIREMENTS

Whenever a REALTOR® receives funds for a transaction, they are required to complete and maintain a Receipt of Funds Record. Generally, the buyer's REALTOR® will complete this form; however, if the buyer is unrepresented, the listing REALTOR® is required to complete the form.

The Receipt of Funds record must contain:

- Who the funds are from
- The form in which the funds were received (cash, cheque, draft, etc.)
- The amount and currency of the funds
- The date of the transaction
- The purpose and details of the transaction

**receipt of funds records do not need to be kept when the amount is received from a financial entity (bank, credit union, or trust/loan company), a public body, or when dealing with large cash transactions (\$10,000 or more)*

COMPREHENSIVE TRAINING

Any brokerage who has sales representatives or any other individuals authorized to act on the brokerage's behalf must include comprehensive training in their compliance program. If the broker is a sole proprietor, with no employees, sales representatives, or other authorized individuals, they are not required to have a training program for themselves.

FINTRAC requires that all training programs:

- Be in writing
- Be vigorously maintained to ensure accuracy

The training program should ensure that its learners have a clear understanding of:

- Compliance
- Confidentiality
- Immunity Provisions
- Risk Assessments
- Vulnerability
- Money Laundering
- Terrorist Financing

Records of training should be documented in the event of a FINTRAC audit.

COMPREHENSIVE REVIEW

Each brokerage must ensure that they review their compliance regime at least every two years. This review must test the effectiveness of the program, and must cover at a minimum:

- Policies and Procedures
- Risk Assessments
- Training Program

The review program may be completed by an internal or external auditor, and should include some combination of interviews, reviews, tests, and sampling.

Reporting and Record Keeping

Brokers and REALTORS® are required, by law, to disclose FOUR types of reports to FINTRAC:

- Suspicious Transaction Reports
- Large Cash Transaction Reports
- Large Virtual Currency Transaction Reports
- Terrorist Property Reports

REALTORS® are required to make these reports to their brokerage's compliance officer, and the compliance officer is required to submit these reports to FINTRAC in a timely manner.



SUSPICIOUS TRANSACTION REPORTS

A suspicious transaction is any real estate transaction that a REALTOR® or broker has reasonable grounds to suspect is related to the commission of a money laundering offence. Suspicious transactions may be completed, or merely attempted by the client. A REALTOR® is required to use their best judgement when determining when a transaction may be classified as suspicious.

Once a REALTOR® has determined that a transaction is suspicious, they are required to disclose the information to their compliance officer immediately. The compliance officer must submit any suspicious transaction reports within 30 days of the initial notification.

Any individual reporting a suspicious transaction must **not inform anyone** that a report has been or is about to be made (with the exception of the compliance officer). The penalty for breaching this obligation is up to **two years in prison**.

Suspicious transaction reports must include the date of the transaction, the amount and type of funds used, how and where the funds were deposited, the branch and transit number of the financial institution, the account number and type of account, the name of the account holder, and all information that led to the belief that the transaction may be suspicious.

The brokerage has a legal obligation to keep all suspicious transaction reports.

LARGE CASH TRANSACTIONS AND LARGE VIRTUAL CURRENCY TRANSACTIONS

Large cash transactions and large virtual currency transactions, while not always illegitimate, require reporting to FINTRAC. When a REALTOR® receives a cash transaction or equivalent amount in virtual currency that totals \$10,000 or more (in bills, coins, bank notes, foreign currency, virtual currency such as bitcoin etc.), a Large Cash Transaction Record or Large virtual currency transaction record, as the case may be, must be created and maintained by the brokerage. In addition to single large cash transactions, any combination of cash transactions or Virtual currency transactions made by one client which equal \$10,000 or more in a 24-hour period must also be disclosed.

The Large Cash Transaction Record or Large Virtual currency transaction record must contain:

- Amount and currency of the cash or virtual currency received
- Name, date of birth, address, and occupation of the individual who provided the cash or virtual currency
- The transaction date
- The details of the transaction
- How the cash or virtual currency was received

- If possible, number and type of any account affected by the transaction. Large cash transaction reports and Large virtual currency transaction reports must be submitted to FINTRAC within 5 days of receipt of funds.

NOTE

A Large Cash Transaction Record or Large Virtual currency transaction record does not need to be created or retained where the amount was received from a financial entity or a public body.

TERRORIST PROPERTY

A Terrorist Property Report must be sent to FINTRAC in two circumstances:

- Possession or control of terrorist property
- Property of a listed person

Property, for the purpose of terrorist property reports, are vaguely defined, but does include:

- Any deed or instrument giving title or right to property
- Cash, money orders, traveler's cheques, bank accounts
- Insurance policies
- Securities
- Real Estate

If a REALTOR® **knows** that a transaction is related to property owned or controlled by or on behalf of a terrorist group, **the transaction should not be completed**. Such property must be frozen under the *Criminal Code of Canada*. The REALTOR® must notify the compliance officer immediately, who in turn must notify FINTRAC, the Royal Canadian Mounted Police (RCMP) and Canadian Security Intelligence Service (CSIS).

NOTES

FINTRAC WORD FIND

S M Y N N H K H O H D L C Y A
F N D T O H S K E S V D C J E
S U S P I C I O U S F N K T L
K E R T T L R T K G E F A X X
N G E G C X I W R R W M O C A
A A A R A O O B R A I O H V M
S R L Z S R M U A T I E E I K
S E T D N S C P I R Q N T S X
E K O E A P I G L U E I I O B
S O R S R Y E S E I G N Q N P
S R G G T L E Q C A A A L I G
M B P R O P E R T Y C N V U B
E P M C R N O I L J R L C B V
N W T S I R O R R E T H N E L
T G Z E M N M H G Q C L G N C

ASSESSMENT
BROKERAGE
CHEQUE
COMPLIANCE
CSIS
CURRENCY
LEGITIMATE
MITIGATION
PROPERTY

RCMP
REALTOR
RISK
SUSPICIOUS
TERRORIST
TRAINING
TRANSACTION
VULNERABILITY

FINTRAC's Roles and Responsibilities

Those involved in high-risk transactions have a legal obligation to comply with PCMLTFA and its regulations. FINTRAC not only provides assistance to various reporting entities, they offer awareness services such as educational seminars, publications and interpretation of policies. FINTRAC's ultimate responsibility is to ensure industry-wide compliance with PCMLTFA.

FINTRAC receives a number of reports and has special obligations when it comes to the handling and dissemination of that information. These obligations specify that FINTRAC is independent from law enforcement, and the other agencies that FINTRAC is authorized to disclose information to. This means that FINTRAC works independently, as well as collaboratively, with a number of agencies in Canada.

Agencies that FINTRAC may work with include but are not limited to: appropriate law enforcement agencies, *Royal Canadian Mounted Police*, the *Canada Revenue Agency*, the *Canada Border Services Agency*, the *Communications Security Establishment*, or foreign agencies with similar FINTRAC mandates in FATF countries.

FINTRAC is responsible for maintaining confidentiality and is responsible for ensuring that the disclosure of any information received under FINTRAC's control is disclosed only to authorized individuals or agencies. Criminal penalties apply to any unauthorized use or disclosure.

Lastly, the *Privacy Act* applies to FINTRAC.

FINTRAC AND COMPLIANCE

FINTRAC monitors compliance using a variety of tools.

Your brokerage may receive a FINTRAC audit request. These requests will examine your compliance regime and your record keeping, specifically for adequacy, accuracy, completeness, and timeliness of information.

FINTRAC frequently identifies compliance issues. When identified, they may allow time for the brokerage to correct deficiencies, they may demand corrective action, or they may impose administrative monetary penalties.



OUTCOMES FOR NON-COMPLIANCE

Non-compliance with PCMLTFA may lead to a variety of administrative and/or criminal penalties.

1

SUSPICIOUS TRANSACTIONS

Failure to report could lead to:

- Up to 5 years' imprisonment, a fine of up to \$2,000,000, or both

2

LARGE CASH TRANSACTIONS

Failure to report could lead to:

- Fines of up to \$500,000 for initial offence, and \$1,000,000 for each subsequent offence

3

RECORDS RETENTION

Failure to retain adequate records could lead to:

- Up to 5 years' imprisonment, a fine of up to \$500,000, or both

4

COMPLIANCE REGIME

Failure to implement a compliance regime could lead to:

- Up to 5 years' imprisonment, a fine of up to \$2,000,000, or both

CONCLUSION

FINTRAC's core goal is to increase world security by hindering crime and disallowing proceeds of crime to filter through the economy.

REALTORS® and Brokers play an integral role in this process. All those in the real estate industry should make themselves aware of FINTRAC's obligations, their obligations in remaining compliant, and the penalties associated with non-compliance.