

Fintrac ~ Identification of Individuals



By Brian Madigan LL.B.

As a real estate agent you are under new legal obligations to collect and maintain certain records with regard to real estate transactions.

These obligations arise under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. This is federal legislation and has provided for the establishment of the Financial Transactions and Reports Analysis Centre of Canada, known commonly as “FINTRAC”. It is noteworthy that breaches under this legislation may be subject to penalties under the *Criminal Code of Canada*.

It is important to realize that the definitions that are set forth in the *Real Estate and Business Brokers Act* are not applicable here. This is federal legislation and it supercedes provincial legislation in any circumstance where there may be conflict.

There are three matters to consider at the outset:

Agency: You are an agent for the purposes of this legislation if you are “involved” in the deal. It doesn’t matter, what capacity. Involvement is sufficient. It doesn’t matter who you represent. I have chosen to use the term “involvement” rather than the federal term “represent” since that term could be confusing with the provincial term “represent”. And, it doesn’t matter in what capacity you represent someone. So, you might have a client, a customer (without fiduciary obligations) or you may simply be providing the services of a broker at common law, not truly representing either party. But, nevertheless you are involved in the deal and that’s enough. If there are two agents, then they each take care of their own party (client or customer). If there is an unrepresented party in the deal, then every real estate agent who is involved in the deal, has a duty to identify them. Further, you can be doing this work for free, and you still have obligations under the Act.

Transaction: This refers to a real estate transaction, and means any transaction whether completed or not. So, the obligations arise at the outset, not at the end. An abortive or attempted transaction still gives rise to the obligation to identify and maintain a record.

However, it does not include property management, leasing or renting properties. It does include buying or selling a business. Under the *Real Estate and Business Brokers Act*, a business is considered to be “real estate”, so it will be included. Until the federal act comes up with its own definition, this provincial definition will apply.

Individual: This means a natural person. It does not include corporations, trusts, partnerships, joint ventures, foundations or other entities.

Client Information Record

This obligation arises for every transaction occurring after 23 June 2008. You will have to maintain a record that identifies your party and any other party that you must identify. The record is technically referred to as the “Client Information Record”, and it must include the following:

The “A” list, the actual information required:

- 1) client’s name,
- 2) client’s address,
- 3) the nature of the client’s principal business or occupation, and
- 4) the individual’s date of birth.

The “B” list, the source of the identification material on the “A” list:

- 1) type of document used to confirm the individual's identity,
- 2) its reference number, and
- 3) its place of issue.

Timing

An individual must be identified at the time of the transaction. This basically means the Offer, since it could turn out to be an abortive or attempted transaction. There is a 30 day period that applies to corporations and entities. The reason for that, is that a new corporation or entity may come into existence to complete that deal and you still have an outstanding obligation concerning identification. Naturally, that will not apply to an individual, so an individual must be identified right away.

Reasonable Source Records

Here is a list of documents that would be appropriate to use for client identification purposes:

- 1) birth certificate,
- 2) driver's licence,
- 3) passport,
- 4) record of landing,
- 5) permanent resident card, and
- 6) other similar documents.

From time to time, such documents may not be available, in which case, you might refer to similar documents. So, here's a list of similar documents:

- 1) Provincial health card (from some Provinces)
- 2) Social Insurance Number (but, only if it is offered)
- 3) Old Age Security Card,
- 4) Certificate of Indian Status, and
- 5) Provincial or Territorial Identification Card.

Special Health Card Rules

Some provinces have stringent rules concerning the use of health cards and some do not.

The approved list is: British Columbia, Alberta, Saskatchewan, New Brunswick, Nova Scotia, Newfoundland, Yukon, Northwest Territories, and Nunavut.

The "maybe" list is: Quebec (only if offered by the individual.

The not-approved list is: Ontario, Manitoba and Prince Edward Island.

Minimum Authentication Requirements for Documents

In addition to Canadian documents, there may be documents from other sources that are similar. Foreign documents that are similar to Canadian documents may also be used. There are some strict criteria, the identifying documents must:

- 1) have a unique identifier number,
- 2) have been issued by a provincial, territorial or federal government, and
- 3) be current and valid, not expired.

Note: This means quite clearly that baptismal certificates, and employee identification cards are not appropriate (not to mention Blockbuster cards or Golf Club membership cards no matter how valuable they might be).

Delegation of Identification to an Agent

There are circumstances in which the individual may not be personally present or their identifying documents may not be available. In these cases, you may be permitted to use an agent for identification purposes. This agent must be retained in writing and provided with clear instructions concerning their role. The request and the answer must both be retained as part of your records. The documents must be seen and attested by a commissioner of oaths or a guarantor. You may use a dentist, doctor, chiropractor, optometrist, veterinarian, pharmacist, judge, magistrate, lawyer, notary public, accountant or professional engineer for this purpose. They will have to attest to having seen and examined the original

document, sign the attestation, include their profession and the identifying number and nature of the identifying document upon a legible photocopy of the identifying document.

Some Exceptions

Once the legislation is in effect, you only have to identify the individual once, that is, provided you recognize them the second time, and have no doubts. Otherwise, identify them again, and each time maintain those records for five years.

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