

## commercial real estate group bulletin

February 2009

### New Record-keeping and Reporting Obligations in Effect for Real Estate Developers

#### Background to Bill C-25

On December 14, 2006, Bill C-25 (the "Bill") received Royal Assent. The Bill is intended to bolster the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (the "Act") and harmonize it with current international standards as well as with the recommendations of the intergovernmental Financial Action Task Force on Money Laundering.

The Bill's provisions have come into force in phases over 2008 and 2009. In particular, as of February 20, 2009, real estate developers are subject to this regime as reporting entities.

The Act and its regulations require such entities to create a compliance regime, identify clients, keep specified records, and make reports concerning certain transactions to the Financial Transactions and Reports Analysis Centre of Canada ("FINTRAC").

#### New Obligations

Real estate developers are subject to the Act's obligations when engaging in activities relating to the sale of a new house, a new condominium unit, a new commercial or industrial building or a new multi-unit residential building. In such a case, the developer must:

- Keep a client information record;
- Identify the client; and
- Determine if there is any third party involved in the transaction and keep a record about such determination.

Once the developer receives funds pursuant to a sale of the specified property, it must:

- Keep a receipt of funds record; and
- Identify the individual who provides the funds and confirm the existence of the client (if it is an entity).

If the sale of the specified property involves \$10,000 or more in cash, the developer must also:

- Keep a large cash transaction record;
- Identify the individual who hands over the cash;
- Determine if there is any third party involved and keep a record about such determination; and
- Send a large cash transaction report to FINTRAC.

Additionally, in the case of suspicious transactions, the real estate developer must:

- Identify the individual who completed the transaction, if not already done; and
- Send a suspicious transaction report to FINTRAC (whether the suspicious transaction was completed or not).

Records must be kept for a minimum of five years from the date they were created. For client information records and records to confirm the existence of an entity, more particularly, these records have to be kept for five years from the day the last business transaction was conducted, and in the case of a copy of a suspicious transaction report, the record has to be kept for a period of at least five years following the date the report was made.

### Exceptions

It should be noted that certain exceptions to these obligations are carved out. For example, if a real estate broker or sales representative is hired to act as the

developer's agent, the obligations described herein do not apply to the developer, but instead to the broker or sales representative, unless the broker or sales representative is the developer's employee.

Moreover, the real estate developer needn't keep such records described above if it conducts a transaction for a public body (ie: a provincial or federal department or Crown agency, an incorporated municipal body or a hospital authority) or a very large corporation (ie: a corporation owning \$75 million or more in net assets and the shares of which are traded on a designated stock exchange). The same is true regarding a subsidiary of either of those entities, if the financial statements of the subsidiary are consolidated with those of the public body or very large corporation.

### Penalties for Non-Compliance

Failure to comply with these record keeping, client identification or reporting requirements can lead to criminal charges, conviction for which could result in up to five years imprisonment, a fine of \$500,000, or both.

Additionally, a new administrative monetary penalty scheme allows for penalties that could range from \$1 to \$500,000 depending on the gravity of the violation.

*Written by Daniel Ehrenfeld*

### A Cautionary Note

*The foregoing provides only an overview. Readers are cautioned against making any decisions based on this material alone. Rather, a qualified lawyer should be consulted.*

© Copyright 2009 McMillan LLP

For further information, please contact one of the Chairs of our Commercial Real Estate Group:

Michael Garonce	514.987.5033	michael.garonce@mcmillan.ca
George Payne	416.865.7053	george.payne@mcmillan.ca

[mcmillan.ca](http://mcmillan.ca)

McMillan LLP

Toronto | t 416.865.7000 | f 416.865.7048  
Montreal | t 514.987.5000 | f 514.987.1213

mcmillan.ca | Lawyers | Avocats