

FINTRAC POLICY



CONTACT:
Tel: +1-403-590-2233
Option 1
Email: info@urban-realty.ca



OFFICE:
820 26th Street NE
Calgary, AB
T2A 2M4



FIND US HERE:
www.urban-realty.ca

URBAN-REALTY.CA FINTRAC POLICY
(PART OF OFFICE POLICY)

Definition of FINTRAC

FINTRAC stands for Financial Transactions and Reports Analysis Centre of Canada.

This is a federal legislation and it is noteworthy that **breaches under this legislation may be subject to penalties under the Criminal Code of Canada.**



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NOTE

The term **AGENT** has been used in place of **REALTOR®** at numerous places in this document.

This is just to make the role of a **REALTOR®** easily understandable for **FINTRAC** purposes.

REALTOR® Obligations

Real estate associates or REALTORS® are under legal obligations to collect and maintain certain records about their real estate transactions.

These obligations arise under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act.

This is federal legislation and it supersedes provincial legislation in any circumstance where there may be conflict.

This legislation, which has been law since June 23rd, 2008 carries a fine of up to \$2,000,000.00 and five years in prison for each offence.

Failure to comply is viewed as a serious offence.

There are **three main matters** to understand right at the outset.

A

AGENCY (RELATIONSHIP)

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.

B

TRANSACTION

This refers to a real estate transaction and means any transaction whether completed or not.

So, the **obligations arise at the beginning, 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 "real estate", so it will be included.

Until the federal act comes up with its own

definition, this provincial definition will apply.

C

CORPORATION

This means a corporate body incorporated pursuant to the laws of a recognized jurisdiction by such means as are appropriate to that jurisdiction.

It does not include individuals (natural persons), trusts, partnerships, joint ventures, foundations or other entities.

IMPORTANT

It is the policy of Urban-Realty.ca that all associates must comply with federal FINTRAC legislation and that all associates must submit the properly completed FINTRAC forms for all listing and purchase contracts that involve the sale of real estate.

This means that any person or corporation you meet that result in a sale in real estate must be identified on the appropriate FINTRAC forms.

These records must be submitted to the brokerage when you submit your paperwork for any transaction.

Due to privacy concerns with the sensitive information supplied on these FINTRAC forms you must have systems in place to ensure this information is well protected.

Once you confirm that Urban-Realty.ca has received the required forms by checking your Virtual Office Transactions Page **you should destroy all FINTRAC records in your possession.**

If these are required in the future you can access them anytime on your virtual office, where they are stored indefinitely as an electronic file.

If your client refuses to supply the required information you should explain it to that person that this is a federal legislation, and that all real estate associates must follow this legislation when selling or listing a property for sale.

If they still refuse to provide this information, then you cannot continue to represent them or continue with the transaction.

You can also contact the company compliance officer or your office manager within 2 business days and they will determine if this person should be reported to FINTRAC for refusing to comply.

If you have any concerns about risks in conducting a real estate transaction (even if that transaction does not proceed) please contact the compliance Officer as soon as possible to report this.

All FINTRAC reports must be produced if requested by FINTRAC or law enforcement officers.

PENALTIES FOR NON-COMPLIANCE

Failure to comply with your record keeping or client identification requirements can lead to criminal charges against you.

A conviction of failure to retain records could lead to up to five years imprisonment, a fine of up to \$500,000, or both.

Alternatively, failure to keep records or identify individuals and confirm the existence of entities can lead to an administrative monetary penalty.

For more information on penalties, you can also consult the Penalties for non-compliance.

RETENTION

You must keep all related FINTRAC client information records for five years from the day the last business transaction was conducted.



FINTRAC Compliance Officer

Sunny Parmar, our Broker, is the compliance officer for FINTRAC purposes.

If you or any of your clients have questions regarding FINTRAC regulations, please contact or have your client contact Sunny Parmar at our office.

Address: Unit A, 820 - 26th Street NE, Calgary. AB. T2A 2M4

Phone: 403-590-2233. Ext 1.

Mobile: 403-838-8358.

Which FINTRAC Forms to Be Used

For all of your real estate transactions please understand:

You are an agent for the purposes of this legislation if you are “involved” in the real estate transaction. It doesn’t matter, what capacity.

Involvement is sufficient. It doesn’t matter who you represent, sellers, buyers or both. And, **it doesn’t matter in what capacity you represent someone including a “FSBO” and “Customer Status” transactions.**

If there are unrepresented buyers or sellers involved in the transaction, the associate representing the other party are responsible for collecting the required information.

But in such cases, it they should truly and wholly be unrepresented. Refrain from supplying them any forms or information at all. Otherwise a relationship is established.

IMPORTANT

You must track all business relationships within the brokerage for your client. The easier way to handle this is to fill out a FINTRAC form for each transaction as a new transaction.

If a person refuses to provide information explain it to that person that it is federal legislation that all associates must follow when selling or listing real estate for sale. If they still refuse to provide this information, then you cannot continue to represent them or continue with the transaction.

A When Representing a Seller, You Must Submit the Following:

▪ **Individual Identification Information Record” form** - This form is available under FINTRAC in your WEBFORMS account on CREBLINK.

A separate form must be completed for each owner registered on title, or

▪ **Corporation/Entity Identification Information Record** - this form must be submitted if Seller is a corporation or entity you must also complete “Individual Identity Information Record” forms for all directors (or authorized representatives) that sign the contract.

Please refer further to Section 5 of this document for Corporation details.

It is also mandatory for REALTORS to complete the information in the form for sections of:

Risk Assessment Section (C) - You must rate the level of risk that the client poses in relation to terrorist activities or money laundering.

Business Relationship Section (D) - You must complete section D of the FINTRAC forms for individuals and corporations and state if you have

done three or more transactions with this client in the past five years effective February 2014 (enter dates of all previous transactions. If you conduct three or more transactions with a person or corporation within a five-year period, this creates a “Business Relationship” and you must enter the dates of at least the last two transactions.

IMPORTANT

You must track all business relationships within the brokerage for your client. The easier way to handle this is to fill out a FINTRAC form for each transaction as a new transaction.

▪ **Please use only the following identifications:**

- 1.) Driver’s License: This is our brokerages preferred identification
- 2.) Passport (if client has no driver’s license).
- 3.) If the person does not have the above identification you can also use a “record of landing, permanent record card or old age security card” If the person has none of the above instruments for identification please contact the FINTRAC Compliance Officer (Sunny Parmar) for alternative measures.

B When Representing a Buyer, You Must Submit the Following:

▪ **Individual Identification Information Record” form.** - This form is available under FINTRAC in your WEBFORMS account on CREBLINK.

A separate form must be completed for each owner registered on title, or

▪ **Corporation/Entity Identification Information Record** - this form must be submitted if Buyer is a corporation or entity you must also complete “Individual Identity Information Record” forms for all directors (or authorized representatives) that sign the contract.

Please refer further to Section 5 of this document for Corporation details.

It is also mandatory for REALTORS to complete the information in the form for sections of:

Risk Assessment Section (C) - You must rate the level of risk that the client poses in relation to terrorist activities or money laundering.

Business Relationship Section (D) - You must complete section D of the FINTRAC forms for individuals and corporations and state if you have done three or more transactions with

this client in the past five years effective February 2014 (enter dates of all previous transactions).

If you conduct three or more transactions with a person or corporation within a five-year period, this creates a “Business Relationship” and you must enter the dates of at least the last two transactions.

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▪ **Receipt of Funds form** - This is **always completed by the associate that represents the Buyer** no matter which brokerage is holding the deposit in trust. Even for New Home Builder files as well.

IMPORTANT

If a person refuses to provide information. We strongly believe that FINTRAC information should be completed right at the beginning of the relationship along with CRG and EBRA. If they still refuse to provide the information, explain them that this is a federal legislation and that all real estate associates must follow when selling or listing real estate for sale.

If they still refuse to provide this information, then you cannot continue to represent them or continue with the transaction.

C When Representing Both Buyers and Sellers:

All the forms detailed above in a) and b) need to be completed, relating to either individuals or corporations/entities as appropriate.

d) Representing a Buyer buying from a builder?

Since the Buyer is represented by you, even though the builder is required to do the FINTRAC identification forms you, their REALTOR®, must also complete an "Individual Identification Information Record" form with all the required information.

If the builder is holding the deposit you are not required to complete a FINTRAC "Receipt of Funds" form.

e) When your Client is Not Available for a Face to Face Meeting?

You must get a **FINTRAC - Identification Mandatory/Agent Agreement** signed.

If you are not able to meet with your client, then you must have a contracted agent (a mandatory) in place that can meet with the individual, review the required identification documents and forward the completed FINTRAC forms to you.

That agent can be a REALTOR® or licensed real estate practitioner, lawyer, or a notary.

You cannot obtain the required information by telephone or a faxed copy of the identification documents; someone must meet the client in person.

The form to be completed is the 4-page FINTRAC "Identification Mandatory/Agent Agreement" form, available in the forms section of the CREBLINK Webforms.



Corporate FINTRAC Definitions and Procedures

Client Information Record

This obligation arises for every transaction or receipt of funds occurring after 23 June 2008.

You will have to maintain a record that identifies your party and any other party that you must identify. Essentially, there are two new triggering events:

- 1) the receipt of funds, or
- 2) a transaction.

It is necessary to report suspicious transactions, and to report the receipt of funds.

As our Office Policy is **we do not accept funds in the form of cash.**

The question becomes somewhat more perplexing to the real estate industry when a corporation is involved.

That is largely because real estate brokers and sales representatives rarely deal with corporate documentation.

This is an area which can be fraught with risk, so be careful.

So, here's what you need for the Client Information Record, this is the "A" list of what is required:

- 1) corporation confirmation of existence,
- 2) corporation name,
- 3) corporation address, and
- 4) names of all the Directors.

Even if these are further corporations.

In addition, there is also a "B" list, this is the source material that is reasonable for you to examine to confirm the information required on the "A" list.



Client Information Record (Continued)

For the first three items on the "A" list, you can examine the following:

- 1) the corporation's certificate of corporate status,
- 2) a record that must be filed annually under provincial securities legislation, or
- 3) any other record that confirms the corporation's existence.

Please note that those sources are to be read disjunctively.

That means one is sufficient. You don't need all three. What is meant by the reference to "any other record..." as noted above.

Here are some examples, which are obviously not an exhaustive list:

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

This information should be relatively straightforward.

An application can be made to the Province of Alberta (Registries) for a Certificate of Corporate Status. It is available within days upon payment of the prescribed (nominal fee). Not all corporations are required to attend to annual filings.

However, if the corporation you are required to identify does, then you can use this document. The general "catch all" provision is generous. While most corporations do not have audited financial statements, some do. Certainly, the larger ones will.

And, remember that a very large corporation is exempt from the record provisions.

But, very large means publicly traded on a stock exchange with assets more than \$75million. Subsidiaries are included provided the financial statements are consolidated.

So, that brings us back to the financial statement.

You are not required to determine the firm's letter of engagement. It may be provided simply based on "Notice to Reader". That means that there was no audit. But, it's still an annual report, and for these purposes it is sufficient. It does not have to be "audited".

In most cases, financial statements are prepared for small closely held corporations, and the shareholders know exactly what is going on.

There are no arms-length independent third-party investors who require proof by random audit that serves as a verification of the transactions undertaken by the corporation. A simple financial statement will suffice, and this document will meet the FINTRAC requirements.

The second example in the "catch all" provision deals with assessments. Surely, there should be at least something here. A notice of assessment from Canada Revenue Agency under the Income Tax Act or the Excise Tax Act dealing with the HST, or perhaps, there is a tax bill from the Province, or even a tax bill from the municipality in respect to its occupied space.

Kindly note that **bills from public utilities are not sufficient identifying documents for these purposes.**

Any of these documents will serve to confirm the existence of the corporation. They are likely to provide evidence of the name and the address of the corporation.

However, **your next step is to identify all the Directors.**

This can become somewhat difficult. Generally, this information will not appear in any of the documents mentioned except for the annual filing, and even with the annual filing, sometimes one or more but not all Directors are mentioned.

The obligation under this legislation is to obtain the names of all the Directors, not just some. In this regard, one method would be to undertake a corporate search of the records of the corporation, and specifically request the names of the current Directors.

Hopefully, the filings will be up to date, but more frequently than not, these filings are slightly in arrears.

Often the corporation will be incorporated by its initial "incorporators" and "first directors". Rather than using the names of the actual clients, law offices will use "in-house" personnel for this purpose.

If three incorporators are required, then three lawyers at the firm or three support staff will sign the appropriate documents. The law firm might deliver the corporate records to the client in this fashion with instructions on how to complete "FORM 1" which is the notice dealing with the new directors.

If the client does not attend to this filing, then it would appear from the corporate records that three members of the law firm are the Directors, when that is no longer the case. This practice has been discontinued to a large degree simply because law firms do not wish to receive these types of inquiries unnecessarily.

However, it is nevertheless important to know there are thousands of such corporations.

The Corporate Constitution

The corporate constitution is set out in the Constatng Documents. These are the documents that create and govern the corporation.

In addition, certain amendments to the original documents may also be included.

The documents could take various forms and include any one or more of the followings:

- Royal Charter
- Declaration
- Statute
- Letters Patent
- Supplementary Letters Patent
- Articles of Incorporation
- Supplementary Articles of Incorporation
- Articles of Association
- Supplementary Articles of Association
- Memorandum of Association
- Articles of Amalgamation
- Court Order

By-Laws and Other Corporate Documents

In addition to the constating documents there may be some other relevant documents. By-Laws are passed by the shareholders. They can arise at a Directors meeting and continue in force until ratification by the shareholders.



By-Laws

The series of By-Laws are the general rules of corporate governance.

There will be a General By-law and that should spell out the duties and obligations and the corporate authority as it may be delegated to various Officers and Directors of the corporation.

You will also likely find a short stand-alone Borrowing By-Law, as well as a Banking By-law.

The banking by-law will deal specifically with signing authority and undertaking banking business. It will be executed upon a form provided to the corporation by the bank.

There can, of course, be more than one. The general authority appears in much the same way.

Who signs for the company? Are two signatures required? Does the company have a corporate seal? Must the seal be affixed to contracts?

The authority should be found in the general by-law, not in either the borrowing by-law or baking by-law.

Resolution is the way corporations make decisions.

So, if there is a decision to purchase a property, then the proper record for this corporate decision is by way of Resolution.

The difficulty at the outset, is that the decision to acquire the premises has probably not been recorded in the corporate minute book.

The true signing authority is what you're looking for. So, if there is substantial difficulty, then you should probably seek legal counsel.

The Certificate of Incumbency is a document which will indicate the name of the individual who holds a certain office within the corporation.

This is a document signed by the corporate secretary under the seal of the corporation confirming that John Smith is the President, and Robert Brown is the Vice-President of the company and that the two of them have corporate authority to sign documents on behalf of the corporation.

You need this document to prove who holds the positions. When you looked at the general by-law it would simply indicate that the signatures of both the President and the Vice-President are required. So, this can end up being quite confusing as well. Again, if you find yourself in difficulty seek legal counsel.

Jurisdictional Issues

You must also appreciate that not all companies will have been created in Alberta.

There are 9 other provinces, 3 territories and the federal government to consider any one of which may have created the corporation, and that's without going outside of the country.

This is an area which can be fraught with risk, so be careful.



Resources

FINTRAC for REALTORS®

<http://www.fintrac-canafe.gc.ca/re-ed/real-eng.asp>

Record Keeping for REALTORS®

<http://www.fintrac-canafe.gc.ca/guidance-directives/recordkeeping-document/record/real-eng.asp>

Penalties for Non-Compliance

<http://www.fintrac-canafe.gc.ca/pen/1-eng.asp>

Complete FINTRAC Guidance

<http://www.fintrac-canafe.gc.ca/guidance-directives/1-eng.asp>

i. Your Role in fighting Money Laundering

<http://www.fintrac-canafe.gc.ca/guidance-directives/overview-apercu/multimedia/1-eng.asp?v=role>

ii. The Case Video

<http://www.fintrac-canafe.gc.ca/publications/multimedia/1-eng.asp?v=case>



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