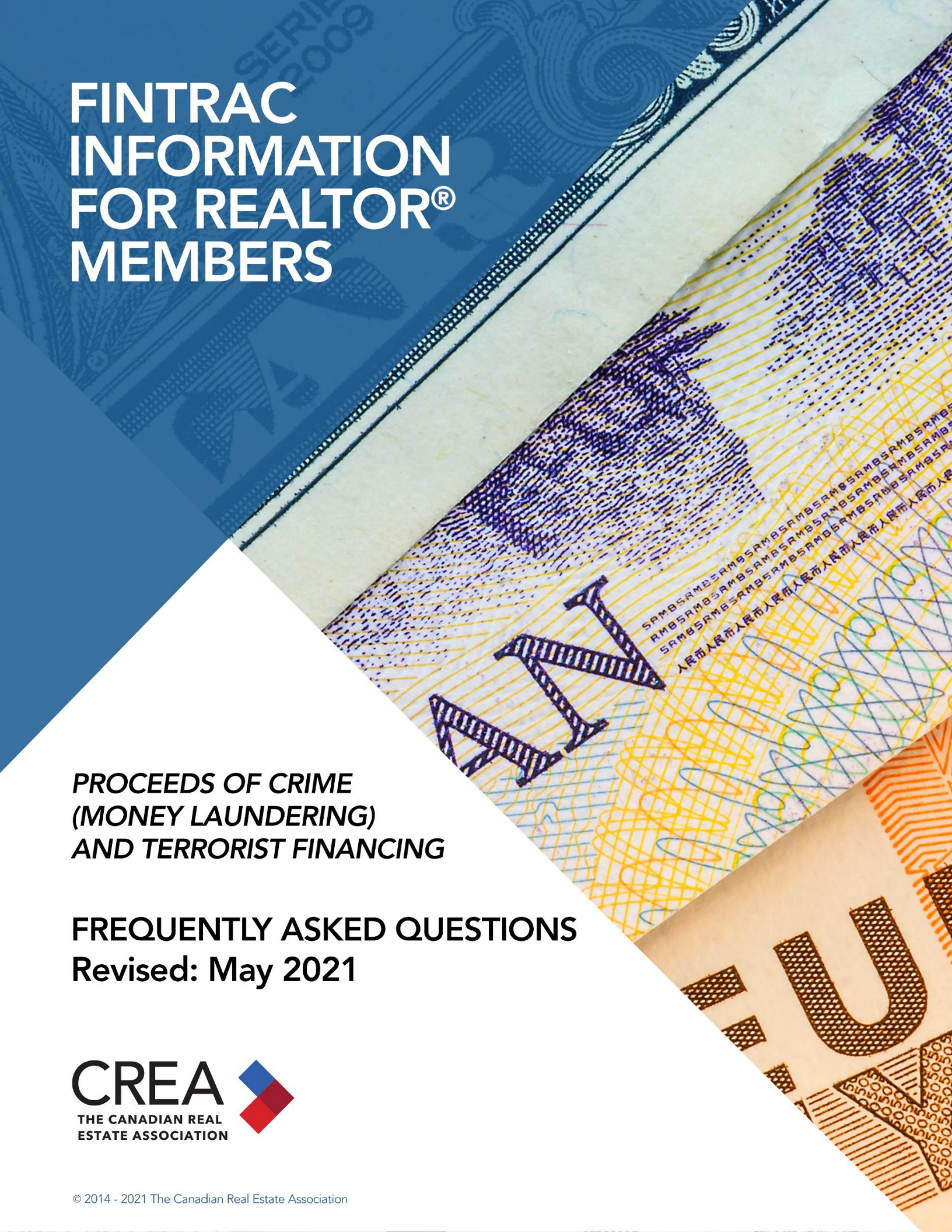
FINTRAC INFORMATION FOR REALTOR® MEMBERS



PROCEEDS OF CRIME (MONEY LAUNDERING) AND TERRORIST FINANCING

FREQUENTLY ASKED QUESTIONS
Revised: May 2021

CREA
THE CANADIAN REAL ESTATE ASSOCIATION

PROCEEDS OF CRIME (MONEY LAUNDERING) AND TERRORIST FINANCING
FREQUENTLY ASKED QUESTIONS

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Note that if you are a real estate agent (*i.e.* salesperson) and you are acting on behalf of a broker, the requirements identified in this document are the responsibility of your broker except with respect to reporting suspicious transactions and terrorist property, which are applicable to you as well. For simplicity, this document refers to "agents" where actions are likely to be performed by real estate agents and "brokers" when the actions are likely to be performed by brokers. However, brokers should keep in mind that they retain ultimate responsibility for the actions of their agents.

This document has been prepared by The Canadian Real Estate Association as a service to members to assist in complying with requirements of Canada's *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and regulations. It should not be construed as legal advice. If you have further concerns, you should contact your Board, FINTRAC directly or consult your legal counsel.

NEW CHANGES IN 2021

Q1: What are the changes in the 2021 version of CREA's template PCMLTFA materials?

A: CREA's template materials have been updated to reflect new FINTRAC policy interpretations and guidance that have been published since CREA's materials were last updated in 2020. The latest materials include:

- New sections of the template policy manual explaining how to comply with respect to reporting large virtual currency transactions, politically exposed persons ("PEP") and heads of international organizations ("HIO"), and beneficial ownership.
- A new section of the template policy manual dealing related to the 24-Hour Rule, which relates to large cash and virtual currency transactions.
- A new section of the template policy manual relating to the reliance method of identification.
- The creation of a new Politically Exposed Person/Head of International Organization Checklist/Record to assist REALTORS® in satisfying their PEP/HIO obligations.
- Updates to the Client Information Record and Receipt of Fund Record templates to reflect new information that must be kept and the elimination of some record keeping obligations with respect to reasonable measures.
- Updates to the Receipt of Funds template record to reflect changes to receipt of funds record-keeping obligations.
- More space in the Risk Assessment Form to include a more detailed analysis.
- The creation of a new Beneficial Ownership Record to assist REALTORS® in obtaining beneficial ownership information from corporations and entities.
- Updates to the "business relationship" section in the template policy manual to reflect changes in the law that effectively mean brokerages will always be in a business relationship with their clients.
- Information on what to expect when FINTRAC forms related to large cash transactions and suspicious transactions are updated.

Plus many smaller changes.

BUSINESS RELATIONSHIP OBLIGATIONS

Q2: When does the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and regulations ("PCMLTFA") state that a "business relationship" is formed?

A: The law with respect to when a "business relationship" has changed. As of June 1, 2021, any time your brokerage is required by law to identify your client, this is considered an "activity" that causes the brokerage to enter into a "business relationship" with that client under the PCMLTFA. This effectively means that brokerages are in a "business relationship" with almost all their clients.

However, for several years now CREA has suggested that brokers may wish to assume that they are in a business relationship with all of their clients. Therefore, the revised interpretation may have little practical impact for most brokerages.

Q3: What do I have to do if a "business relationship" is formed with a client?

A: Once a "business relationship" is formed, the broker needs to ensure the following "ongoing monitoring" actions are performed:

- Keep a record of the purpose and intended nature of the business relationship;
- Re-assess the client's level of risk of money laundering or terrorist financing;
- Ask the client if any client information has changed, and if so, document the changed information;
- Determine whether the client's activity is consistent with the information obtained, including the broker's risk assessment
- Keep a record of the measures the broker, or his/her agents, have taken to monitor the business relationship with the client during the transaction; and
- Report any suspicious transactions.

In practice this means:

- Asking the broker's real estate agents to complete Section C and D of the Client Information Record (or implementing a system where similar information is obtained); and
- Putting a system or schedule in place at the brokerage to periodically review the information gathered in Sections C and D of the Client Information Record.

Brokers may consult CREA's Compliance Regime Manual for further information on these obligations and review the FAQ entitled "What steps should be taken and what issues should be considered by a broker before implementing CREA's template Client Information Record in his/her brokerage?"

Q4: What steps should be taken and what issues should be considered by a broker before implementing CREA's template Client Information Record in his/her brokerage?

A: Brokers should:

1. Read Section 3.1.2.10 and 3.1.2.11 of CREA's Compliance Regime Manual to understand their obligations.
2. Ask themselves whether they want to have to have their agents use Section C of the Client Information Record in order to have their agents conduct an initial assessment of client risk or whether they would like to implement an alternative procedure in their brokerage.
    a. If the broker would like to use Section C of the Client Information Record, the broker should consider the generic template clusters at Appendix I of CREA's Compliance Regime Manual and determine if he/she wants to add additional clusters to CREA's template Client Information Record. In order to modify CREA's Client Information Record, the broker will have to create his/her own forms.
    b. If the broker does not want to use Section C of the Client Information Record, the broker must implement an alternative procedure for assessing client risk in their brokerage.
3. Document the procedure the broker selects for assessing client risk (step 2 above) in their policy and procedures manual (if using CREA's Compliance Regime Manual as the brokerage's policy and procedures manual, this can be done by filling in the blanks in Section 3.1.2.10 of the Compliance Regime Manual).
4. Ask themselves if they want to use Section D of the Client Information Record to satisfy their ongoing monitoring obligations or if they want to implement an alternative process.
    a. If the broker does not want to use Section D of the Client Information Record, the broker must implement an alternative procedure to satisfy their ongoing monitoring for business relationship in their brokerage.
    b. If the broker does want to use Section D of the Client Information Record, the broker should ask themselves whether they want to have their agents document the optional information in Sections D.2.2 and

D2.3 on the Client Information Record. Additionally, this alternate procedure should be reflected in the brokerage's policy and procedures manual (if using CREA's Compliance Regime Manual as the brokerage's policy and procedures manual, this can be done by filling in the blanks in Section 3.1.2.11 of the Compliance Regime Manual).

5. Ensure that a system for re-assessing client risk is in place at the brokerage. See the section entitled "Re-assessing Client Risk" in Section 3.1.2.11 of CREA's Compliance Regime Manual.
    a. Ask themselves whether they want to re-assess client risk on a periodic basis or after every transaction.
6. Document the procedure the broker selects for ongoing monitoring (step 4-5 above) in their FINTRAC policies and procedures manual (if using CREA's Compliance Regime Manual as the brokerage's policy and procedures manual, this can be done by filling in the blanks in Section 3.1.2.11 of CREA's Compliance Regime Manual). The checklist provided at Section 3.1.2.11 can assist the broker with this.
7. Educate their Compliance Officer on the procedures in place at the brokerage and ensure that this procedure has been explained to their real estate agents.

For more detail consult sections 3.1.2.10 and 3.1.2.11 of CREA's Compliance Regime Manual.

Q5: Can a "business relationship" expire?

A: Technically, yes, a "business relationship" can expire although given the new broad definition of "business relationship" the expiration of a business relationship may have little impact. If it has been more than five years since the last "activity" with that client, the brokerage no longer has a "business relationship" with that client. In theory, this means that the brokerage is not obligated to perform ongoing monitoring obligations with a client with which it has no business relationship. However, given the revised definition of "business relationship" under the PCMLTFA as of June 1, 2021, it may be simpler to assume that the brokerage has a business relationship with all clients while creating an ongoing monitoring that only obligates the brokerage to perform ongoing monitoring according to a schedule or triggering system.

Q6: What is the purpose of Section C of the Client Information Record?

A: FINTRAC has stated that brokers have an obligation to conduct a risk assessment of each client although such risk assessments do not have to be in writing. This requirement has existed for some time although FINTRAC incorporated more explicit language regarding this obligation in its Guidelines in 2014. Indeed, it is implicit in answering the questions on CREA's template Risk Assessment Form pertaining to a broker's clients that the broker has considered the level of risk of money laundering and terrorist financing to the brokerage due to its clients. For example, "Are client properties located in a high-crime rate area?" For this reason, and to assist brokers in the event of a FINTRAC examination, brokers may wish to have their agents document on existing forms that they have conducted the necessary risk analysis. Section C in the Client Information Record is intended to make it easier for brokers to demonstrate this.

Further, one of the ongoing monitoring obligations is to re-assess client risk. Documenting what a client's level of risk for every transaction makes it easier for the broker to develop a system to conduct this re-assessment.

Note that FINTRAC has informed CREA that there is no obligation to document every client's level of risk in writing. Accordingly, alternative methods, such as placing clients with different levels of risk in different colour folders may be used. Whatever method they select, brokers should be able to demonstrate to FINTRAC during an examination that the process they are using is being applied to clients.

For more information see Section 3.1.2.10 in CREA's template Compliance Regime Manual, available here.

Q7: Section C of the Client Information Record refers to client "clusters"? What are clusters?

A: Client risk can be assessed on an individual level or assessed against generic templates for commonly encountered clients. If the client matches the profile in the template, they fall into the association category of risk. For example, Canadian clients who are ID'ed by the agent in person and who do not otherwise demonstrate high risk may be assessed as low risk. CREA has developed several such generic templates for use in its template compliance regime available on REALTOR Link®. Brokerages are encouraged to develop their own clusters for clients they frequently encounter in their business.

Q8: Does ongoing monitoring mean that agents or brokers need to contact their clients after a transaction has completed?

A: No, agents (on behalf of brokers) are only required to observe their client for risk while they are acting as an agent in the purchase and sale of real estate. The intent of this requirement is for reporting entities, including brokers and agents, to know their clients to be in a better position to evaluate their risk for money laundering and terrorist financing.

CREA lobbied to ensure that brokers and salespersons did not have to contact their clients after a transaction was completed.

Q9: Do I have to complete Sections C and D of the Client Information Record when completing (a) a Receipt of Funds Record or when (b) ID'ing an individual who is conducting a transaction on behalf of a corporation or (c) when ID'ing an unrepresented party?

A: The answer is no with respect to persons falling into (b) or (c) and possibly with respect to (a).

Sections C and D of the Client Information Record relate to obligations that pertain to ***your*** clients. Individuals falling into (b) and (c) are not your clients. Therefore the obligations do not apply to these individuals.

Individuals falling into category (a) may or may not be your client. If it is your client who is providing the funds then complete sections C and D of the Client Information Record. If it is not your client who is providing the funds then you do not need to complete sections C and D of the Client Information Record.

Q10: Why are Appendices A, B, D, E, F, L and M missing in CREA's template Compliance Regime Manual?

A: Appendices A, B, D, E, F, L and M refer to the Individual Identification Information Record, Corporation/Entity Information Record, Identification/Mandatary Agent Agreement, Receipt of Funds Record, Risk Assessment Form, Politically Exposed Person/Head of International Organization Checklist/Record and Beneficial Ownership Record. The Manual includes placeholders where brokers may insert either their own forms or CREA's template forms, which are available on REALTOR Link® here at http://tiny.cc/1qn00x.

GENERAL INQUIRIES

Q11: Are builders obligated to comply with the PCMLTFA? What about lawyers?

A: Real estate builders are subject to the PCMLTFA. Builders became subject to the revised regime on February 20, 2009. The Supreme Court ruled in February 2015 that the PCMLTFA, to the extent it impacted lawyers, was unconstitutional as it interferes with a principle of fundamental justice, namely a lawyer's commitment to his/her clients, and also that it interferes with solicitor-client privilege more than absolutely necessary. Note, however, that lawyers' professional societies have imposed on them anti-money laundering obligations.

Q12: Does the PCMLTFA apply to leases? For example, do you have to ID clients and keep Receipt of Funds Records for residential leasing?

A: Agents are required to keep and retain records and verify the identity of any person or entity when they act as an agent "for purchasers or vendors in respect of the purchase or sale of real property or immovables". Consequently, the record keeping requirements in the PCMLTFA do not apply when executing leases.

Q13: Can brokers make up their own forms as long as the necessary information is on the form (i.e., can it be combined with our current Transaction Record Sheet)? Or do we have to use the CREA forms?

A: CREA provides templates to members to make compliance with FINTRAC obligations easier. Brokers are of course free to develop their own forms, as use of CREA's forms is not required in order to comply with the PCMLTFA. However, you may want to review CREA's guidance, available on REALTOR Link® and FINTRAC's Guidelines, available online at https://www.fintrac-canafe.gc.ca/guidance-directives/1-eng, to ensure that you incorporate all of the required information into your forms.

Q14: Would Errors and Omissions insurance cover you if you tried to comply with the PCMLTFA, but made a mistake on a record and was later fined by FINTRAC?

A: Likely no - insurance generally will not cover you against non-compliance with the law, but you need to ask your insurer this question.

Q15: Who has to make reports under the PCMLTFA?

A: The PCMLTFA captures "reporting entities" that have to make reports to FINTRAC. In addition to real estate brokers and agents, "reporting entities" include:

1. financial entities (such as banks, credit unions, caisses populaires, trust and loan companies, and agents of the Crown that accept deposit liabilities);
2. life insurance companies, brokers, and agents;
3. securities dealers, including portfolio managers and investment counselors;
4. money services businesses (including persons engaged in foreign exchange dealing);
5. agents of the Crown that sell or redeem money orders;
6. accountants and accounting firms (when carrying out certain activities on behalf of their clients);
7. certain casinos;
8. dealers in precious metals and stones;
9. public notaries and notary corporations in British Columbia (when carrying out certain activities on behalf of their clients).

For more information about who is considered a reporting entity, consult FINTRAC's *Guideline 1: Backgrounder*, available online at https://www.fintrac-canafe.gc.ca/guidance-directives/overview-apercu/Guide1/1-eng.

Q16: Should our Board take a listing where the information required for FINTRAC compliance has not been given?

A: The issue of collecting any information for FINTRAC purposes is an obligation of the broker or agent, who is required by law to comply. There is no role for the Board in ensuring that records are properly completed.

Q17: Where are CREA's French and English forms for FINTRAC?

A. The English forms are available on REALTOR Link® at: https://tinyurl.com/nxut6sr. The French forms are available on REALTOR Link® at: https://tinyurl.com/lfw7jtk.

Q18: Who is ultimately responsible for complying with the PCMLTFA?

A: The PCMLTFA states that if you are a real estate agent (i.e. salesperson) and you are acting on behalf of a broker, the requirements in the PCMLTFA are the responsibility of your broker except with respect to reporting suspicious transactions and terrorist property, for which you have independent obligations. For clarity, real estate agents do not need to draft their own policies and procedures manual when they work for a broker. For simplicity, these FAQs refer to "agents" where actions are likely to be performed by real estate agents and "brokers" when the actions are likely to be performed by brokers. However, brokers should keep in mind that they retain ultimate responsibility for the actions of their agents.

For the same reason, if you are in a jurisdiction where it is possible for a broker to be an employee of or act on behalf of another broker (i.e. a broker of record), it is the broker of record who is ultimately responsible for the actions of their agents and brokers (except with respect to reporting suspicious transactions and terrorist property, for which their agents and brokers have independent obligations) and therefore it is the broker of record who is required to draft a brokerage policies and procedures manual.

CLIENT VERIFICATION AND RECORD KEEPING

Q19: What is the difference between a Client Information Record, an Individual Identification Information Record and a Corporate/Entity Identification Information Record?

A: Individual Identification Information Records and Corporate/Entity Identification Information Records are both Client Information Records. The former pertains to individuals while the latter pertains to corporations and other entities.

Q20: When an agent fills out a Client Information Record, does that agent have to give a copy of said record to the other agent? Also, does the agent give a copy of said record to the client or should they just retain the paperwork in their own particular files?

A: This question has two parts.

As long as both the buyer and seller are represented by brokers or agents, there is no cross-client identification requirement. You do not exchange records with the other agent (e.g., the buyer's agent would not give a copy of the identification record to the listing broker).

Agents are also not required to give a copy of identification records to their respective clients. However, such information needs to be kept in the agent's or brokerage's respective files for five years. If the records are kept by the agent and the agent leaves the brokerage, the records need to be kept by the brokerage in its files.

Q21: May abbreviations be used when completing Client Information Records?

A: Abbreviations should be avoided. FINTRAC has cautioned brokers during examinations that certain abbreviations such as "DL" for "Driver's License" (for identifying the type of identification document) are not acceptable. For example, when inserting a country/province name on the Client Information Record, use the country's/province's complete name and avoid using abbreviations in this portion or anywhere else on the form. For example, use "United States of America" and not "United States" or "USA".

INDIVIDUAL CLIENT IDENTIFICATION

Q22: If an agent or broker is buying a property and is representing himself/herself do they need to fill out Individual Identification Information Record?

A: FINTRAC has published a policy interpretation, PI-9124, on its website pertaining to self-identification. Agents and brokerages should review this policy interpretation when deciding how to proceed.

Q23: If you are representing a client, and the client is a REALTOR® member, may he/she ID themselves?

A: No. The fact a client is a REALTOR® member does not alter the PCMLTFA, which sets out a specific procedure for identifying individual clients.

Q24: What should you do if a client absolutely refuses to provide the identification information required to complete the Individual Identification Information Record or the Receipt of Funds Record?

A: The strict legal position is that a failure to identify a client, for any reason, would place the broker in non-compliance with the PCMLTFA. However, FINTRAC has stated that whether penalties are invoked for such a failure depends upon a complete analysis of a broker's compliance history as well as their office compliance systems. It is entirely at a broker's discretion whether or not to proceed with such transactions and, if a broker does proceed, FINTRAC advises that the broker should submit a Suspicious Transaction Report.

Q25: If a client refuses to disclose his/her personal information for the Individual Identification Information Record, can you simply get the client to strike off that part of the form and initial it?

A: No – you would be in contravention of the law. All relevant information required by the records must be provided.

Q26: If a husband and wife are co-purchasing a property, and both names will be on title, do you need to ID both persons?

A: Yes, the client identification requirement under the PCMLTFA specifies that you need to identify every person who conducts the transaction. Therefore, in the case of a husband and wife co-purchasing a property, you would need to keep an Individual Identification Information Record of both individuals. Whether the information should be recorded on separate forms or on one form is up to the broker or agent to determine according to their internal process/procedure.

Q27: Do you have to make or keep a photocopy of whatever document a client provides for ID?

A: You do not need a photocopy of the client's ID. You just need to record the requisite information necessary to complete the Individual Identification Information Record. You may wish to obtain a copy of foreign client's ID when documenting their information. Should you choose to keep photocopies you should ensure that they are securely stored and protected.

Q28: What types of ID may be used to identify a client?

A: The answer to this question depends on what method of identification is used to ID the client.

If the Photo ID Method is used then a valid federal or provincial/territorial government-issued piece of photo ID with a unique identifier number can be used to verify the identity of an individual client, including a non-Canadian. For example, a passport would be a sufficient piece of ID. Other examples include: driver's licenses, permanent resident card and provincial or territorial identity cards. Note that government-issued identification without a photograph (such as a SIN card) can no longer be used as of January 23, 2018.

The Credit File Method does not involve ID (see the FAQ entitled "How do I verify a client's ID using the Credit File Method).

If the Dual Process Method is used a REALTOR® must refer to documents/information from two of the following three categories:

- Documents or information from a reliable source that contain the client's name and date of birth;
- Documents or information from a reliable source that contain the client's name and address; or
- Documents or information that contain the client's name and confirms that they have a deposit, credit card or other loan account with a financial entity.

Only documents or information from two independent, reliable sources can be used using the Dual Process Method. A reliable source is one that is well known and considered reputable. Note that you cannot use the same source to satisfy two categories – two sources are needed. Examples of reliable, independent sources are: a government, crown corporation, bank or utility provider. FINTRAC's Guideline: *Methods to identify individuals and confirm the existence of a corporation or an entity other than a corporation*, available at https://www.fintrac-canafe.gc.ca/guidance-directives/client-clientele/Guide11/11-eng, provides more detail on the type of documents that may be used.

Note that, as of July 2019, you are permitted to rely on a fax, photocopy, scan or electronic image of such documentation.

Q29: May foreign documents be used?

A: FINTRAC has informed CREA that foreign documents may be used under the Photo ID Method and the Dual Process Method so long as the documents are reliable and refer to information from reliable and independent sources. For example, a foreign utility bill or foreign marriage certificate or bank statement from an overseas branch of a Canadian bank. However, keep in mind that when confirming a client has a deposit, credit card or other loan account with a financial entity the financial entity must be a "financial entity" as defined by the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*.

Q30: How do I verify a client's ID using the Credit File Method?

A: You may verify a client's identity by consulting a Canadian credit file that has been in existence for at least three years and is derived from more than one source. The credit file must match the name, address and date of birth that the client has provided. Equifax Canada and TransUnion Canada are Canadian credit bureaus that provide credit file information for identification purposes. Make sure you complete section A.2 in the Individual Identification Information Record. For more information refer to FINTRAC's Guideline: *Methods to identify individuals and confirm the existence of a corporation or an entity other than a corporation*, available at https://www.fintrac-canafe.gc.ca/guidance-directives/client-clientele/Guide11/11-eng.

Q31: Can an expired passport or expired driver's licence be used for FINTRAC purposes?

A: No. Expired government issued identification is not acceptable for FINTRAC identification purposes. If you refer a document that has an expiry date, the document must be current and if there is no expiry date (for example, a utility bill under the Dual Process Method), it must be recent.

Q32: What level of detail should I include for a client's occupation?

A: FINTRAC has advised CREA that that a client's occupation should use language commonly used to describe work performed by Canadians. The description should

convey a precise and detailed idea of the work performed. However, FINTRAC has also advised CREA that it is not necessary to provide your client's employer, along with their occupation. For example, it is appropriate to list:

- "Retired" if the client has retired.
- Doctor
- Teacher
- Welder
- Information Technology Consultant (rather than "consultant")

Q33: Under the Dual Process Method, when confirming a financial account, can you provide examples of the difference between a "Source" and "Financial Account Type"?

A: If you verify that a client has a chequing account at Scotiabank, the "Source" would be "Scotiabank" and the "Financial Account Type" would be "chequing account".

Q34: Under the Dual Process Method, can you provide examples of the types of documents or information that could be used to verify a name and financial account?

A: You could use:

- A credit card statement
- A bank statement
- A loan account statement
- A cheque that has been processed by a financial institution
- A telephone call, email or letter from the financial entity holding the deposit account, credit card or loan account.
- Identification product from a Canadian credit bureau (containing two trade lines in existence for at least 6 months)
- Use micro deposits to confirm an account

See FINTRAC's Guideline: *Methods to identify individuals and confirm the existence of a corporation or an entity other than a corporation*, available at https://www.fintrac-canafe.gc.ca/guidance-directives/client-clientele/Guide11/11-eng.

Q35: Under the Dual Process Method can you explain when I would insert a reference number and provide an example of a reference number?

A: FINTRAC's Guidelines indicate that you must insert a reference number if there is no account number available. An example of an account number is the number of a chequing account at a financial institution. An example of a reference number is the number associated with a utility bill.

Q36: Under the Photo ID Method, what should I insert for "Jurisdiction" and "Country" when the client provides federal documentation (for example, a passport)?

A: You may insert "Canada" for "Jurisdiction" and "Canada" for "Country". Note that a record needs to be kept for both "Jurisdiction" and "Country". Do not leave the "Country" field blank in the individual Identification Information Record.

VERIFYING THE IDENTITY OF UNREPRESENTED PARTIES

Q37: What are the record keeping obligations with respect to unrepresented parties?

A: Agents must make reasonable efforts to verify the identity of unrepresented parties, but if unable to do so, they must record what measures they took to try and obtain the information, including why the measures were unsuccessful and the date the measures were taken. These measures can be recorded in CREA's template Client Information Records. Therefore, agents must complete a record for every unrepresented party to transactions they deal with, whether or not the identity of that person is actually verified.

One difference between verifying the identity of clients and verifying the identity of unrepresented parties is that agents MUST verify the identity of their own client. Simply stating that efforts were made to obtain the information is unacceptable. Another difference is that FINTRAC has stated there is no obligation to determine whether an unrepresented party is acting on behalf of a third party.

Q38: What are the identification obligations with respect to sellers who use mere posting services?

A: FINTRAC has informed CREA that agents and brokers that take mere posting listings are not subject to the PCMLTFA. Accordingly, buyers' agents should treat mere poster sellers as unrepresented and make reasonable efforts to verify the identity of the seller. However, an agent's obligation to identify a mere posting seller is less onerous than the requirements to identify their own client. Specifically, an agent only needs to take reasonable measures to obtain ID with a mere posting seller. FINTRAC has advised these measures include asking for ID – whereas when an agent is representing a client, they are required to obtain the ID.

Q39: If a mere poster agent or broker provides additional services, such as adding a lockbox to the door of a property, do they become subject to the PCMLTFA? What should an agent or broker do in such circumstances?

A: FINTRAC has communicated to CREA that brokers that solely offer mere posters services are not covered by the PCMLTFA. However, FINTRAC has also indicated that should a mere poster agent or broker provide additional services the agent/broker may become subject to the regime. Unfortunately, FINTRAC has refused to provide any guidance as to what additional services have to be provided in order this to occur. Instead FINTRAC has indicated each circumstance will be treated on a case-by-case basis.

In light of this uncertainty, there are steps that agents and brokers representing buyers can take in order to mitigate any risk to them: the conservative approach and the not-conservative approach.

The conservative approach would be for the agent/broker representing the buyer to treat the seller as unrepresented (*i.e.* take reasonable measures to verify the identity of seller). Doing so ensures the agent/broker is complying with any potential PCMLTFA obligations.

The not-conservative approach is to do nothing and assume that FINTRAC will eventually come to the conclusion that the agent/broker posting the listing is covered under the PCMLTFA. Doing so runs the risk that FINTRAC will disagree with this decision and determine that the broker/agent representing the buyer should have attempted to ID the seller. Therefore, if this option is selected, it would be prudent to at least document why the agent/broker is not taking reasonable measures to verify the identity of the seller. This can be kept to show FINTRAC the agent/broker representing the buyer is doing his/her due diligence.

Similarly, the agent/broker representing the seller can take a conservative approach (*i.e.* assume the brokerage is covered by the PCMLTFA and comply with all the traditional FINTRAC obligations) or the not-conservative approach (*i.e.* assume the brokerage is not covered by the PCMLTFA and do nothing). Such agents/brokers should be aware, however, that should they take the not-conservative approach and FINTRAC comes to the conclusion that they are covered by the law, they face the potential for steep penalties.

Q40: What should you do if an unrepresented party absolutely refuses to provide the information required to identify the client?

A: If the unrepresented party refuses to provide the requested information the agent should keep a record of the measures taken to try and ID the unrepresented individual. This may be done by completing the Reasonable Measures Record portions of CREA's template Individual Identification Information Record and Corporate/Entity Identification Information Record, if used. The agent should also decide whether to send a Suspicious Transaction Report to FINTRAC.

VERIFYING IDENTITIES OF THIRD PARTIES

Q41: Do I have to complete section B of the Individual Identification Information Record or Corporate/Entity Identification Information Record?

A: Prior to June 1, 2021, the PCMLTFA obligated agents to record certain information about third parties – even when there was no third party. Where there was no third party, this information included: a record the measures taken to determine whether there is a third party, the date on which the measures were taken, and why they were unsuccessful and whether there are any grounds to suspect a third party. If using CREA's template forms, this was completed by completing section B.1 of the Individual Identification Information Record or Corporate/Entity Identification Information Record. If there was a third party and CREA's template forms were being used then information on the third party was recorded in Section B.2 of those forms.

On or after June 1, 2021, due to changes in the law, Section B.1 only needs to be completed if an agent is unable to confirm there is a third party but has reasonable grounds for suspecting there is one. Section B.2 will continue to be used if there is a third party.

Q42: We are dealing with a law firm who is representing a client who wants to remain unknown to the buyer. What are the FINTRAC requirements and what is the course of procedure in this situation?

A: Agents are obligated to take reasonable measures to determine if their client is acting on behalf of another person and, if so, to fill out the Verification of Third Parties portion of the Client Information Record. FINTRAC has defined a third party as an individual or entity other than the individual who conducts the transaction. As the law firm is conducting the transaction, they would be considered your client and you would have to verify their identity as such. You would then identify the actual property owner as the third party on the Client Information Record, as they are the one giving instructions to the law firm.

FINTRAC has informed CREA that taking reasonable measures to determine the identity of the third party includes asking the question to the client and/or retrieving the information already contained in the files of the agent or broker. Starting June 1, 2021, if you are unable to confirm there is a third party but have reasonable grounds for suspecting there is one, complete section B in the Client Information Record. Prior to June 1, 2021, you have more onerous record keeping obligations (see FAQ entitled *Do I have to complete section B of the Individual Identification Information Record or Corporate/Entity Identification Information Record*?)

Q43: Whose information is to be recorded when dealing with an estate -- the vendor (deceased), the executors of the estate, or the "estate"?

A: FINTRAC has advised CREA that when dealing with an executor of an estate, they are the party who the agent is required to identify when completing an Individual Identification Information Record. FINTRAC has informed CREA that this is the case when the executor is named in the will or has some legal document to that effect authorizing the executor to liquidate the estate.

Q44: When dealing with a power of attorney, do you need to ID the power of attorney?

A: Agents are obligated to determine if their client is acting on behalf of another person and, if so, to fill out the Verification of Third Parties portion of the Client Information Record. FINTRAC has defined a third party as an individual or entity other than the individual who conducts the transaction. As the person acting under

a power of attorney is the person conducting the transaction, they would be considered your client and you would verify that person's identity as such. You would then record information on the actual property owner as the third party on the Client Information Record, as they are the one giving instructions to the person acting under the power of attorney. Note, however, that FINTRAC has stated that where a power of attorney is acting on behalf of someone who is incapacitated then the actual property owner's details do not need to be recorded.

CORPORATE CLIENT IDENTIFICATION

Q45: Do I need to ID the individual who is conducting the transaction on behalf of the corporation (for example, the person I am physically dealing with) as well as the corporation itself?

A: Yes. FINTRAC explicitly says this in its guidance. Complete only Sections A and B of the Individual Identification Information Record in order to ID the person and complete the entire Corporation/Entity Identification Information Record in order to verify the existence of the corporation.

Q46: What information is required to verify that the person an agent or broker is dealing with has the authority to bind a corporation?

A: To verify that the person you are dealing with has the authority to bind the corporate client, you would need to review the official corporate records. For example, a certificate of incumbency, the articles of incorporation, or the bylaws of the corporation that set out the officers duly authorized to sign on behalf of the corporation.

If the record is in paper format or electronic database not accessible to the public, the agent must retain a copy of the record. If the record is an electronic version in a public electronic database, the agent must maintain a record of the corporation's registration number and the type and source of the record (such as the Corporations Canada website).

Q47: In the case of a corporate client, is an online search sufficient to identify the corporation? Is there a requirement to identify the director(s) involved?

A: If the client is a corporation, agents are obligated to confirm the existence of the corporation, to determine the corporation's name and address, and to determine the names of its directors. This information can be verified using 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. Similarly, if the client is another type of legal entity, the existence of the entity must be confirmed through appropriate records.

You also have to confirm the names of the corporation's directors. This does not include verifying their identity. You can obtain a corporation's name and address and the names of its directors from a provincial or federal database such as the Corporations Canada database, which is accessible from Innovation, Science and Economic Development Canada. You may also get this type of information if you subscribe to a corporation searching and registration service.

The documents used to verify the existence of the corporation do not have to be in hard copy; an electronic document may be used, for example, a record such as Corporation Canada's federal corporations database, which is accessible from Innovation, Science and Economic Development Canada's website (www.ic.gc.ca).

For more information, see CREA's template compliance regime available on REALTOR Link® for broker offices on REALTOR Link® or FINTRAC's Guideline: *Methods to identify individuals and confirm the existence of a corporation or an entity other than a corporation*, available at https://www.fintrac-canafe.gc.ca/guidance-directives/client-clientele/Guide11/11-eng.

Q48: What if I have to contact a corporation's lawyer or accountant to obtain the necessary information to complete the Corporation/Entity Identification Information Record?

A: CREA has prepared a consent letter that can be used for these purposes. This letter is available on REALTOR Link® at https://tinyurl.com/nxut6sr.

Q49: Do I need to confirm a corporate client's directors if the client is a securities dealer?

A: No.

NON FACE-TO-FACE IDENTIFICATION

Q50: What are the methods for identifying a client who is not physically present?

A: Brokers or agents are permitted to use the Credit File Method or Dual Process Method to identify clients in non-face-to-face situations.

Refer to FINTRAC's Guideline: *Methods to identify individuals and confirm the existence of a corporation or an entity other than a corporation*, available at https://www.fintrac-canafe.gc.ca/guidance-directives/client-clientele/Guide11/11-eng, for more information.

An agreement may also be entered with a mandatary/agent to verify your client's identity on the broker's/agent's behalf.

Note that it is also possible to use the government-issued photo ID method of ID'ing when an individual is not physically present if you use technology capable of assessing a government-issued photo identification document's authenticity. See FINTRAC's Guideline*: Methods to identify individuals and confirm the existence of a corporation or an entity other than a corporation*: https://www.fintrac-canafe.gc.ca/guidance-directives/client-clientele/Guide11/11-eng for more information as to what technology may qualify. However, simply looking at a photo ID through video software such as Facetime, Skype or Zoom is insufficient (although FINTRAC has temporarily permitted such methods during the COVID-19 pandemic – see https://www.fintrac-canafe.gc.ca/covid19/covid-2020-04-22-eng for information).

Q51: If I use an agent or mandatary for identification purposes what information needs to be in the contract with the agent/mandatary?

A: FINTRAC's guidelines state that if you use an agent or mandatary for client identification, you have to enter into a written agreement or arrangement with the agent or mandatary outlining what you expect them to do for you. In addition, you have to obtain from the agent or mandatary the customer information that was obtained according to the agreement or arrangement. CREA has prepared a template agreement for members to use when contracting the services of an agent or mandatary for the purposes of compliance. The template Identification Mandatary/Agent Agreement is available on REALTOR Link®. While the terms of the agreement (pages 1 and 2) may require negotiation, the agreement contemplates the broker/agent providing the mandatary/agent with Client Information Records to

complete any clients. Caution should be exercised before amending these forms as they need to be properly completed by the agent/mandatary in order to identify clients.

Q52: Who is responsible for completing the different parts of the Identification Mandatary/Agent Agreement?

A: Agents in Canada will likely fill in the name and address portion for the broker and have their broker, or someone with signing authority for the broker, sign the agreement. Agents may also choose to offer compensation to the mandatary/agent and fill in that portion of the form (paragraph 2(b)). The agent should also specify what provincial laws are applicable (paragraph 10). Finally, the agent should specify what person or corporation/entity is being identified in Schedule A to the agreement and provide the relevant identification forms (*i.e.* CREA's template Client Information Records, if used) to the mandatary/agent. Keep in mind that the agent/mandatary may also wish to negotiate the terms of the agreement.

The mandatary/agent will then fill in their name and address information and sign the agreement. Having completed the agreement portion of the form, the mandatary/agent will then complete the Client Information Records and provide the completed forms to the agent.

FINTRAC's Guideline: *Methods to identify individuals and confirm the existence of a corporation or an entity other than a corporation*, available at https://www.fintrac-canafe.gc.ca/guidance-directives/client-clientele/Guide11/11-eng states that that the date the agent referred to the information provided by the mandatary/agent must be recorded. FINTRAC has also advised CREA that the date when the broker received the information from the mandatary/agent must be recorded. Space has been allocated at the end of the template agreement for both records. Alternatively, the information may be recorded elsewhere.

Q53: Do I have to offer compensation to the mandatary/agent?

A: Whether or not there is compensation is up to you. You may amend this portion of the form depending on how your arrangement is structured.

Q54: Can a client who is not physically present be ID'ed by having him/her mail a photocopy of his/her driver's license to my agent/mandatary?

A: No. If the client is not present, an agent must use either an agent/mandatary to identify the client using one of the other methods described in FAQ entitled *What are the methods for identifying a client who is not physically present*.

Q55: What does it mean to record the "date where the Broker referred to the information provided by the [Mandatary/Agent]" in CREA's template Identification Mandatary/Agent agreement?

A: Agents have an obligation to keep a record of the date the agent referred to the information provided by the agent/mandatary. Agents (or their brokers, as CREA's template agreement is a contract between the brokerage and the agent/mandatary) may insert the date they actually looked at the ID information that the agent/mandatary collected and verified nothing was missing or otherwise appeared problematic (e.g. expired ID was not used).

EXCEPTIONS TO CLIENT IDENTIFICATION

Q56: If a client has conducted business with the brokerage before and been properly ID'ed, do they need to be ID'ed again even if the specific agent or broker dealing with the client does not recognize them?

A: So long as the agent has no doubts about the information previously used to verify the identity of the client, individual clients do not need to be ID'ed again. Similarly, agents do not need to confirm the existence of corporate and other entity clients again where they have already done so and they have no doubts about the information previously used to confirm the existence of the client.

However, keep in mind that even if this exception applies, if you are in a "business relationship" with the client you need to ask the client if any client information has changed, and if so, document the changed information.

Q57: If an Agent properly ID'ed an individual client in the past, can you still rely on the exceptions to client identification if the ID that was originally used to identify the client has since expired?

A: Yes. Provided the ID was valid when the individual client was ID'ed by the agent there is no requirement that the ID still be valid.

Q58: If I take a listing from a financial institution, under power of sale, do I have to identify them as a Corporate or "Other Entity" Identification?

A: Whether or not agents must identify a financial institution as a corporation or as an 'entity' depends on whether the listing institution is incorporated. Under the PCMLTFA, examples of a non-corporate entity include a partnership and an unincorporated association. Agents are not required to identify what FINTRAC describes in its guidelines as 'very large corporations' or their subsidiaries (i.e., companies having a minimum of $75M net assets at their last audit, whose shares are traded on a Canadian stock exchange and which operate in a member of the FATF [includes Canada and the United States – for a full list of FATF countries see: http://www.fatf-gafi.org/about/membersandobservers/]). As regards power of sale situations, FINTRAC advises that agents only have to identify the client. This is because the client is not acting under the instructions of the third party borrower.

Q59: An agent is selling a property with a bankruptcy company. The individual she is dealing with is a trustee appointed with the government. We know that the agent does not have to complete a Corporate/Entity Identification Information Record for a very large corporation or for a government entity who is buying or selling a property. Could you please advise as to whether or not the trustee in bankruptcy would classify as a very large corporation?

A: A public body is defined in the PCMLTFA as a provincial or federal department or Crown agency, an incorporated municipal body, or a hospital authority in Canada. Examples of public bodies are Crown agencies such as FINTRAC, Crown Corporations such as Canada Post, and Provincial Governments. Details on what is a large corporation are defined in the FAQ entitled "If I take a listing from a financial institution, under power of sale, do I have to identify them as a Corporate or "Other Entity" Identification?"

Whether or not the bankruptcy company you are dealing with is exempt from the identification requirements will depend on if they fall under the definition of a very large corporation or a public body.

Q60: If an agent is dealing with an embassy in the sale or purchase of a property do we have to have the Client Information Record signed?

A: Real estate agents and brokers are not obligated to complete Client Information Records or Receipt of Funds Records if the client is a public body. The PCMLTFA defines a public body as a provincial or federal department or Crown agency, an incorporated municipal body, or a hospital authority in Canada. Examples of public bodies are Crown agencies such as FINTRAC, Crown Corporations such as Canada Post, and Provincial Governments. Embassies do not satisfy this definition and therefore need to be identified.

RECEIPT OF FUNDS, LARGE CASH TRANSACTION RECORDS, VIRTUAL CURRENCY TRANSACTIONS

Q61: If your clients are getting their financing from their parents do you have to identify the parents?

A: Agents are required, in all transactions, to verify the identity of their respective clients (buyer or seller). In addition, agents must verify the identity of (1) persons or entities that provide cash, money orders, bank drafts etcetera to them for a transaction or (2) persons or entities from whose bank account funds are drawn to complete a transaction.

For example:

- If the parent of a prospective buyer provides a real estate agent with funds for a property purchased by their child, the agent will have to verify the identity of the parent and the child.
- If, however, the agent receives funds only from the child, the agent will have to verify the identity of the child only. This is true even if the parent has provided funds directly to the child (for use in the transaction) and the child has deposited it into their account and provides the agent or broker with a cheque drawn on their (the child's) account.

The agent is never required to verify where the funds came from.

Q62: When is the Receipt of Funds Record required?

A: Agents are obligated to complete a Receipt of Funds Record whenever they receive funds, i.e., the funds are deposited into the real estate agent's trust account. Generally, the buyer's agent will complete this form. If there is no buyer's agent involved, however, the listing broker would be required to complete a Receipt of Funds Record. If, on the other hand, the funds go directly to a builder or lawyer, not through an agent, then a Receipt of Funds Record does not need to be completed.

Q63: Do transfers of $10,000 or more have to be reported – and is there a difference if the transfer is international, or made from within Canada?

A: This question has two parts.

Whenever a real estate agent receives funds, whether through electronic transfer within Canada or by other means, they are required to fill out a Receipt of Funds Record. Further, whenever a Receipt of Funds Record is completed, a Client Information Record must also be completed on the individual that provides the funds (for simplicity CREA has separated this information into two documents but the PCMLTFA defines a "Receipt of Funds" Record as including information on both). An Individual Identification Information Record and a Corporate/Entity Identification Information Record are also available on REALTOR Link®.

In addition to a Receipt of Funds Record, a Large Cash Transaction Report or Large Virtual Currency Transaction Report may also be required.

If the funds you are receiving are $10,000 or more in cash, then a Large Cash Transaction Report is required. A form for this type of report is found on the FINTRAC website: https://www.fintrac-canafe.gc.ca/guidance-directives/transaction-operation/1-eng. In these situations, you would retain a copy of the Large Cash Transaction Report for your records as well. Note that prior to June 1, 2021 a receipt of funds record was not required if submitting a Large Cash Transaction Report. This exception no longer exists as of June 1, 2021.

If the funds you are receiving are $10,000 or more in virtual currency, then a Large Virtual Currency Transaction Report is required. A form for this type of report is found on the FINTRAC website: X. In these situations, you would retain a copy of the Large Virtual Currency Transaction Report for your records. Note that no record

(receipt of funds or large virtual currency transaction record) is required if you receive less than $10,000 in virtual currency.

Q64: If the deposit is paid directly to a builder who is represented by an agent is a Receipt of Funds Record still required?

A: Agents are obligated to complete a Receipt of Funds Record whenever they receive funds, (e.g., the funds are deposited into the agent's trust account). Generally, the buyer's agent will complete this form; however, if there is no buyer's agent involved, the listing broker would be required to complete a Receipt of Funds Record. If, on the other hand, the funds go directly to a builder or lawyer, not through an agent (even though one may be involved in the transaction), then a Receipt of Funds Record does not need to be completed.

Q65: How do you fill out the Receipt of Funds Record in a "zero money down" deal?

A: Agents are obligated to complete a Receipt of Funds Record whenever they receive funds, (e.g. the funds are deposited into the agent's trust account). Generally, the buyer's agent will complete this form. If there is no buyer's agent involved, however, the listing broker would be required to complete a Receipt of Funds Record. Where the agent does not receive any funds (e.g., zero money down), there is no need to fill out a Receipt of Funds Record, although a client identification form may have to be completed.

Q66: Are account numbers necessary on Receipt of Funds forms?

A: Yes. To complete a Receipt of Funds Record, information you have to keep includes, if an account was affected by the transaction, (i) the number and type of any such account; and (ii) the full name of the client that holds the account. This means that in the simplest case (where the buyer provides a cheque), REALTORS® need to record the information on the account on which the cheque was drawn.

Where there are two agents involved in a transaction and the funds are deposited in the listing agent's account the buyer's agent is responsible for completing the Receipt of Funds Record.

If funds are deposited into a listing agent's trust account, the buyer's agent is only required to record the fact that the funds were deposited into the listing agent's trust account but is not required to include the number of the trust account or the name or entity that holds the trust account.

If the buyer agent's client provides funds directly to the listing agent, where a client account is affected (e.g. client's chequing account), the buyer agent is only obligated to take reasonable measures to obtain the account number, the name of the account holder and the type of account.

Note that if multiple accounts are affected, information on all accounts affected needs to be record subject to the caveats noted above with respect to listing agent trust accounts and the reasonable measures record. In situations where there is only one agent involved, the agent involved in the transaction is obligated to record all specified account information including trust account information. A Receipt of Funds Record needs to be kept on every account that is affected by the transaction.

Q67: Do I have to verify whether an individual who provides funds is acting on behalf of a third party?

A: If you are completing a Large Cash Transaction Record or Large Virtual Currency Transaction Record, you have to take reasonable measures to determine whether the individual who gives you the cash or virtual currency is acting on the instructions of a third party. If you are simply completing a Receipt of Funds Record, there is no obligation to determine whether the person providing the funds is acting on behalf of a third party. The sections of the Client Information Record referring to third parties do not apply to those individuals.

Q68: What are Receipt of Fund reference numbers?

A: As of June 1, 2021, agents have an obligation to obtain every reference number that is connected to the transaction and has a function equivalent to that of an account number. According to FINTRAC, the requirement simply asks that the real estate brokerage record a number that is associated with the specific transaction that was completed. In most cases, this is already part of the transaction records.

Specifically, a reference number similar to an account number would be a number that is unique and internal to the brokerage that the brokerage could/would use to associate the funds received by the brokerage. The idea behind the reference number is to identify the real estate transaction and pull up any details associated to that transaction should FINTRAC or law enforcement come back to inquire about that specific transaction.

CREA is not aware of any brokerages using “reference numbers”. Therefore, CREA anticipates that in most cases this field in the Receipt of Funds record will be left blank.

Q69: What is the 24-Hour Rule?

A: The 24-hour rule is a requirement to aggregate multiple cash or virtual currency amounts that the brokerage receives into a "single transaction" and report these transactions together in a single report to FINTRAC. This is required when the multiple transactions total $10,000 or more within a consecutive 24-hour window and the transactions are known to be: (a) conducted by the same person or entity; (b) conducted on behalf of the same person or entity, or (c) for the same beneficiary.

It is possible for a broker to establish different 24-Hour Rules for their brokerage for different business lines within their brokerage. For example, one business line (residential real estate) could use a 24-Hour window that starts at 10 am and ends at 9:59 am the next day, while another business line (commercial real estate) at the brokerage could have a 24-Hour Rule that starts at 1 pm and ends at 12:59 pm the next day. While brokerages are free to adopt different Rules, FINTRAC requires that the Rule(s) in use be documented in the brokerage's policies and procedure manual.

Q70: Do we have any special obligations if we receive virtual currency (e.g. bitcoin) for a purchase or sale transaction?

A: Yes, as of June 1, 2021, agents will have new obligations to report large virtual currency transactions worth $10,000 CAD or more. See the FAQ entitled *What are my large virtual currency reporting and record keeping obligations.*

Until June 1, 2021, agents have no special obligations when it comes to virtual currencies. Indeed, under the current law, virtual currencies are not even considered "funds". Therefore, should a client provide the agent with virtual currency (e.g. for a deposit) the agent is not required to complete a receipt of funds record or large cash transaction record for the virtual currency. That said, agents still have an obligation to perform their other PCMLTFA obligations, such as ID'ing their clients and reporting suspicious transactions. Agents should consider the fact a client has provided funds in a virtual currency in light of the context of the transaction and, if they have concerns, discuss with their compliance officer whether a suspicious transaction report should be filed in light of the brokerage's policies and procedures.

Q71: What are my large virtual currency reporting and record keeping obligations?

A: As of June 1, 2021, if an agent receives funds totaling $10,000 or more in virtual currency, a Large Virtual Currency Record must be created and maintained. This record must contain detailed information about the virtual currency as well as any individuals involved in the large virtual currency transaction, such as their principal business or occupation. All of this information may be documented in the Large Virtual Currency Transaction Report form on FINTRAC's website. This form can be printed off and used as a Large Virtual Currency Transaction Record.

The agent must also verify the identity of the individual providing the virtual currency and take reasonable measures to determine whether that individual is providing the virtual currency on behalf of third parties.

If the agent is unsuccessful in determining whether the individual is acting on behalf of a third party, but there are reasonable grounds to suspect the individual is acting on behalf of a third party, the agent must keep a record of (a) whether, according to the individual, the transaction is being conducted on behalf of a third party; and (b) the reasonable grounds to suspect that the individual is acting on behalf of a third party.

POLITICALLY EXPOSED PERSONS AND HEADS OF INTERNATIONAL ORGANIZATIONS

Q72: When are Agents obligated to determine if someone is a PEP or HIO?

A: Agents are obligated to take reasonable measures to determine whether an individual is:

(a) A politically exposed foreign person,

(b) a politically exposed domestic person,

(c) a head of an international organization, or

(d) a family member or close associate of someone who falls into (a)-(c).

in four specific situations:

- Upon entering a business relationship with a client;

- Periodically, with all clients with whom the brokerage has a business relationship;
- When they receive more than $100,000 in cash or virtual currency;
- When they detects a fact that constitutes reasonable grounds to suspect that a person with whom the brokerage has a business relationship falls into any of the above categories.

All of these terms have specific definitions under the PCMLTFA. See FINTRAC Guidance at https://www.fintrac-canafe.gc.ca/guidance-directives/client-clientele/pep/pep-eng for more information.

Q73: What is a "politically exposed foreign person", "politically exposed domestic person" and "head of an international organization"?

A: The terms "politically exposed foreign person", "politically exposed domestic person", "head of international organization", are defined as follows:

- "Politically exposed foreign person" (foreign PEP): an individual holding one of the following offices in or on behalf of a foreign state:
    - head of state or head of government member of the executive council of government or member of a legislature; deputy minister or equivalent rank; ambassador, or attaché or counsellor of an ambassador; military officer with a rank of general or above; president of a state-owned company or a state-owned bank; head of a government agency; judge of a supreme court, constitutional court or other court of last resort; or leader or president of a political party represented in a legislature.
- "Politically exposed domestic person" (domestic PEP): an individual who holds or has held within the last 5 years one of the following specific office or positions in or on behalf of the Canadian federal government, a Canadian provincial (or territorial) government, or a Canadian municipal government:
    - Governor General, lieutenant governor or head of government; member of the Senate or House of Commons or member of a legislature; deputy minister or equivalent rank; ambassador, or attaché or counsellor of an ambassador; military officer with a rank of general or above; president of a corporation that is wholly owned directly by Her Majesty in right of Canada or a province; head of a government agency; judge of an appellate court in a province, the Federal Court of Appeal or the Supreme Court of Canada; leader or president of a political party represented in a legislature; or mayor.

- "Head of an international organization" (HIO): an individual who currently holds or has held within the last 5 years the specific office or position of head of an international organization and the international organization that they head or were head of is either:
    - an international organization established by the governments of states; or
    - an institution established by an international organization.

Q74: Do Agents and Brokers obligations change when they are dealing with a domestic PEP vs. a foreign PEP?

A: Yes.

First, its important to note that an individual's domestic PEP status can expire if they (or their family member or close associate) haven't held office in 5 years. Conversely, a foreign PEP is a foreign PEP forever. This may impact how and when brokers ask their agents to determine the PEP status of a client or other individual (as there is no need to keep repeatedly checking whether a foreign PEP is still a foreign PEP, while conversely there may be a need to determine whether a domestic PEP is still a domestic PEP).

Second, agents' obligations will differ depending on whether they are dealing with a foreign PEP or domestic PEP. Basically, the obligations with respect to domestic PEPs mirror the obligations with respect to foreign PEPs but only if the domestic PEP is considered high risk under the brokerage's risk assessment. In other words, domestic PEP obligations are potentially less onerous. Walking through the steps of CREA's template Politically Exposed Person/Head of International Organization Checklist/Record will help agents complete the relevant obligations.

Q75: How do Agents and Brokers fulfill their obligations with respect to PEPs and HIOs?

As noted in the FAQ entitled *When are Agents obligated to determine if someone is a PEP or HIO?,* the obligation to determine whether an individual is a PEP/HIO may arise in different circumstances. To avoid confusion, one way brokers could support their agents is for brokers to create a schedule for agents to follow that indicates: (a) when they should attempt to determine whether a client is a PEP/HIO; and (b) any follow up tasks. A template schedule has been provided in CREA's Compliance Regime Manual.

Certain records related to an individual's PEP/HIO status also need to be kept. CREA has created a Politically Exposed Person/Head of International Organization

Checklist/Record that agents may use to satisfy their PEP/HIO record keeping obligations.

Q76: Can you provide examples as to what it means to be a "close associate"?

According to FINTRAC, a close associate is a person who is connected to a PEP or HIO for personal or business reasons. Examples of relationships that could indicate that someone is a close associate (personal or business) could include, but are not limited to, persons who:

- are the business partners of, or who beneficially own or control a business with, a PEP or HIO;
- are in a romantic relationship with a PEP or HIO;
- are involved in financial transactions with a PEP or a HIO;
- serve as prominent members of the same political party or union as a PEP or HIO;
- serve as a member of the same board as a PEP or HIO;
- carry out charitable works closely with a PEP or HIO; or
- are listed as joint on a policy where one of the holders may be a PEP or HIO.

Once you determine that a person is the close associate of a PEP or HIO, they remain a close associate until they lose that connection.

BENEFICIAL OWNERSHIP

Q77: When are Agents obligated to determine a client's beneficial ownership?

A: Starting June 1, 2021, agents have an obligation to determine the beneficial ownership of corporations and other entities they have to ID when they verify the entity of such entities. This may occur when:

- ID'ing a new corporate/entity client.
- ID'ing an unrepresented corporate/entity.
- ID'ing a corporation/entity providing funds.
- ID'ing a corporation/entity providing large cash.
- ID'ing a corporate/entity providing large virtual currency.

- ID'ing a corporate entity conducting a suspicious or attempted suspicious transaction.

Beneficial ownership information must be kept up to date as part of the brokerage's requirements to conduct ongoing monitoring of its business relationships.

Q78: What is a beneficial owner?

A: Beneficial owners are the actual individuals (i.e. human beings) who:

- In the case of a corporation or an entity, directly or indirectly own or control 25% or more of the corporation or entity;
- In the case of a trust, are the trustees, the known beneficiaries and the settlors of the trust; or
- In the case of a trust that is widely held or publicly traded, are the trustees and all persons who own or control, directly or indirectly, 25% or more of the units of the trust.

Q79: How do Agents fulfill their beneficial ownership obligations?

A: CREA has created a new Beneficial Ownership Record template on WEBForms® and REALTOR Link® to help agents walk through this obligation. The template is posted on REALTOR Link®. The template record walks agents through five steps for satisfying their beneficial ownership obligations:

1. Step One: Obtain type-specific beneficial ownership information
2. Step Two: Obtain ownership/control information
3. Step Three: Obtain not-for-profit information (if applicable)
4. Step Four: Confirm Accuracy of Information in Steps One, Two and (as a best practice) Three.
5. Step Five: Last Resort. If you cannot obtain information in steps 1-2 or confirm its accuracy in step 4, complete Section 5

There is also a record keeping obligation associated with determining beneficial ownership. Completing the Beneficial Ownership Record for an entity will satisfy this obligation.

Q80: Is it sufficient for agents to check a provincial registry to satisfy their beneficial ownership obligation?

A: Agents may use provincial beneficial ownership registries to assist them in obtaining the information necessary to fulfill their beneficial ownership obligations. However, agents should keep in mind that if information is unavailable or incomplete in the provincial registry, agents will still be obligated to obtain it.

WHEN TO COMPLETE FORMS

Q81: All the information regarding ID collection seems to pertain only to a time when "funds" come into play. When listing a property or presenting a market evaluation, is an agent required to fill out any forms? When a property is listed as an "an invitation to treat" -- there is only a possibility of any money becoming involved. Conversely, if a property never sells why would we have to collect information?

A: Whenever an agent receives funds and completes a Receipt of Funds Record an accompanying Client Information Record must be filled out. However, if no funds are received and the transaction does not complete, then no Client Information Records or Receipt of Funds Record needs to be completed or kept by the agent.

Q82: Could you provide me with some clarification as to when Client Information Records need to be completed. Is it at the time when the listing agreement is being signed, or when an offer is being made and funds are being exchanged?

A: FINTRAC has said that the identification of a client must be done at the time of the transaction, which is when the transaction is completed and the deed is signed. CREA advises members to verify their clients' identity before that time for practical reasons, namely because agents are generally not present at the closing. Also, a Client Information Record must be completed prior to, or at the same time as, a Receipt of Funds Record if you are receiving funds (e.g., a buyer's agent receiving a deposit from the buyer).

Therefore, we suggest that a Client Information Record be completed at the time an offer is accepted or when an offer is made. You will, however, have 30 days from the day of the transaction to verify the existence of the entity.

Q83: If a Receipt of Funds Record has been filled but no funds are received, what are my obligations?

A: A Receipt of Funds Record and accompanying Client Information Record only needs to be completed when money is actually received. If these records were filled out but no money was received, you would not be obligated to retain these records.

Q84: A real estate transaction is initiated (i.e. a "deal"), forms are filled out, and a deposit is made in conjunction with an offer to purchase. However, the seller rejects the offer and instead accepts the offer made by another, unrelated, party. One deal is completed (accepted) and the other is not - what does the agent do with the private information on deals that do not proceed?

A: This response is based on the assumption that all parties to the transaction are each represented by their respective agents. The agent for the first buyer, whose offer was not accepted, would have to retain a Receipt of Funds Record since a deposit was received. As a Client Information Record must always accompany a Receipt of Funds Record (as the information on the two documents together constitutes the "Receipt of Funds Record), the agent would have to retain that record as well. The agent representing the second buyer, whose offer was received, would have a Receipt of Funds Record and a Client Information Record for their client on file.

RECORD KEEPING

Q85: How long to records need to be kept?

A: Generally speaking, Brokers are required to keep the information on file and available in FINTRAC requests for FIVE years. However, the exact period will depend on the type of record:

- In the case of Client Information Records and records to confirm the existence of an entity (including a corporation), these records have to be kept for five years from the day the last business transaction was conducted.
- In the case of a copy of a suspicious transaction report or terrorist property report, the record has to be kept for a period of at least five years following the date the report was submitted.

- All other records must be kept for a period of at least five years following the date they were created.

Q86: Is there an obligation to keep a Will or Power of Attorney for FINTRAC purposes?

A: Brokers are not required to keep a Power of Attorney or Will for FINTRAC purposes. However, brokerages should keep in mind that if a brokerage retains these documents, FINTRAC may ask for them to facilitate an examination of the brokerage.

SUSPICIOUS TRANSACTIONS

Q87: What steps should be followed in order to determine whether a transaction is suspicious?

A: According to FINTRAC guidance, agents and brokers should:

- screen for and identify suspicious transactions;
- assessing the facts and context surrounding the suspicious transaction;
- link money laundering/terrorist financing indicators to their assessment of the facts and context; and
- explain their grounds for suspicion in a suspicious transaction report, where they articulate how the facts, context and money laundering/terrorist financing indicators allowed them to reach their grounds for suspicion.

Detailed guidance on may be found at FINTRAC's *What is a suspicious transaction report?* guidance: https://www.fintrac-canafe.gc.ca/guidance-directives/transaction-operation/Guide2/2-eng.

Q88: What indicators should I consider when deciding whether to file a Suspicious Transaction Report?

A: Agents and brokers should consider the indicators identified in FINTRAC's guidance material. Specifically:

- Operational brief: Indicators of money laundering in financial transactions related to real estate (https://www.fintrac-canafe.gc.ca/intel/operation/real-eng);

- FINTRAC Suspicious Transactions guidance (https://www.fintrac-canafe.gc.ca/guidance-directives/transaction-operation/1-eng)

Q89: Does filing a Suspicious Transaction Report on a transaction mean I cannot complete the transaction?

A: Under the PCMLTFA**,** just because an agent or broker files a Suspicious Transaction Report on a transaction does not mean they can't complete a real estate transaction. However, agents may wish to talk to the brokerage's compliance officer to discuss how best to proceed as the brokerage may have its own practices and procedures (for example, enhanced risk mitigation measures) when dealing with such transactions.

SANCTIONS/FREEZING ASSETS

Q90: Do brokers and agents need to be aware of Canadian economic sanctions?

A. Yes. The Federal Government can impose a variety of sanctions on specific countries, organization and individuals that may limit what activity may be done with such persons or entities. These measures may include an asset freeze that prohibits persons in Canada from dealing in any property held by, or on behalf of, a person named in the relevant sanctions regulation. For a list of Canadian sanctions see: https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/current-actuelles.aspx?lang=eng. If a broker or agent believes they are involved in a transaction that could be impacted by a Canadian economic sanction they should speak to their legal counsel.

Note that, technically speaking, the above restrictions are not "PCMLTFA" obligations nor are they limited to real estate professionals; they apply to all persons in Canada and even Canadians outside of Canada.

OTHER

Q91: What are the reasonable record obligations relating to suspicious transactions, large cash transactions and large virtual currency transactions?

A: Starting June 1, 2021, the reasonable measures obligations have been simplified for large cash transactions and eliminated for suspicious transactions. A new obligation has been created with respect to large virtual currency transactions.

Large Cash Transactions

Records must be kept for large cash transactions in two circumstances.

Where an agent is unable to determine, after using reasonable measures to do so, if the person giving $10,000 CAD or more in a large cash transaction is acting on behalf of a third party, the agent should keep a record of (a) whether, according to the individual, the transaction is being conducted on behalf of a third party; and (b) the reasonable grounds to suspect that the individual is acting on behalf of a third party.

Brokers may wish to attach the above records to the large cash transaction report they keep.

Large Virtual Currency Transactions

The reasonable measure obligations with respect to large virtual currency transactions mirror the obligations with respect to large cash transactions.

Where an agent is unable to determine, after using reasonable measures to do so, if the person giving $10,000 CAD in virtual currency in a large virtual currency transaction is acting on behalf of a third party, the agent should keep a record of (a) whether, according to the individual, the transaction is being conducted on behalf of a third party; and (b) the reasonable grounds to suspect that the individual is acting on behalf of a third party.

Brokers may wish to attach the above records to the large virtual currency transaction report they keep.

Q92: Are brokers obligated to use FINTRAC's *Guidance on the Risk-Based Approach to Combatting Money laundering and Terrorist Financing* and *Risk-based approach workbook for Real Estate Sector* ("RBA Guidance") when completing their brokerage risk assessment and implementing their risk mitigation measures?

A: No. FINTRAC has informed CREA that the RBA guidance (available online at https://www.fintrac-canafe.gc.ca/guidance-directives/compliance-conformite/1-eng) are not mandatory documents. Brokers are free to continue to use CREA's template Risk Assessment Form, or another tool of their choice, if they wish, provided they can provide a rationale to support their risk rating decisions (which can be documented on pages 4-6 of the form or in attached additional pages).

However, FINTRAC has also communicated that the FINTRAC examiners will evaluate reporting entities against the expectations in the RBA Guidance. For that reason, while use of the RBA Guidance is not mandatory, brokers may wish to compare the rationale they provide to support their risk rating decisions, and their risk mitigation procedures, against the expectations in the RBA Guidance to ensure they are sufficiently robust.

Q93: Can you provide some examples of "services and delivery channel" risks, "risks associated with new technologies and developments at the brokerage" "geography" risks, "client and business relationship risks", "other" risks that brokers can consider when conducting a risk assessment of their brokerage?

FINTRAC has provided examples of possible risks applicable to the real estate sector in its *Risk-based approach workbook Real estate sector*, which can be found online at: https://www.fintrac-canafe.gc.ca/guidance-directives/compliance-conformite/rba/rba-res-eng. More general guidance is available in FINTRAC's *Risk Assessment Guidance*, which is available online at: https://www.fintrac-canafe.gc.ca/guidance-directives/compliance-conformite/rba/rba-eng.

The following is an excerpt from the *Risk Assessment Guidance* that REALTORS® may find useful when considering their risks:

> *1. Products, services and delivery channels*
>
> *You need to identify the products, services and delivery channels or ways in which they combine that may pose higher risks of ML/TF. Delivery channels*

are mediums through which you offer products and/or services to clients, or through which you can conduct transactions.

…

2. Geography

You need to identify the extent to which the geographic locations where you operate or undertake activities could pose a high-risk for ML/TF. Depending on your business and operations, this can range from your immediate surroundings, whether rural or urban, to a province or territory, multiple jurisdictions within Canada (domestic) or other countries.

…

3. New developments and technologies

You need to identify the risks associated with new developments and the adoption of new technologies within your business. That is, if your business intends to put in place a new service/activity/location or introduce a new technology, then you must assess it in order to analyze the potential ML/TF risks it may bring to your business, before you implement it.

…

5. Other relevant factors (if applicable):

You need to identify other factors relevant to your business and that could have an impact on the risk of ML/TF such as:

legal: related to domestic laws, regulations and potential threats
structural: related to specific business models and processes

Q94: What can brokers expect in a FINTRAC examination?

A. FINTRAC's guidance document entitled *FINTRAC examinations: your responsibilities and what you can expect from FINTRAC*, online at: https://www.fintrac-canafe.gc.ca/guidance-directives/exam-examen/05-2005/4-eng explains what reporting entities, such as brokers, can expect from a FINTRAC examination.

Q95: How are assignments of an agreement of purchase or sale handled under the PCMLTFA?

A. FINTRAC considers assignments to be a separate real estate transaction under the PCMLTFA. Therefore, members who represent either an assignor or assignee are responsible for completing their regular PCMLTFA obligations, including the identification requirements, with respect to the assignment transaction. For example, a member who represents an assignor in the assignment is responsible for ID'ing the assignor. If the assignee was unrepresented, the member would have to take reasonable measures to try and ID the unrepresented assignee and keep a record if they were unable to do so. Brokerages whose agents represent a party to an assignment should also count any activities they conduct with their clients relating to the assignments towards forming a "business relationship" under the Regime (assuming the brokerage is counting such activities and not simply assuming they are in a business relationship with all clients).

However, if a member does not act for the assignor or assignee in the assignment they have no obligations (including ID obligations) with respect to the assignment.

Q96: Who can brokers contact if they need assistance in satisfying their PCMLTFA obligations?

A. Brokers may wish to contact their lawyers or accountants to learn about what anti-money laundering services are available in their jurisdiction.

For example, here are the names of companies that offer anti-money laundering services to real estate professionals:

MNP
https://www.mnp.ca/en/valuation-forensics-and-litigation-support/compliance-and-risk-management
403-444-0150

The AML Shop
1-877-701-0555
https://www.theamlshop.ca/get-intouch/
info@theamlshop.ca

Outlier Solutions Inc.
250 Yonge St., Suite 2201
Toronto, ON M5B 2L7
T: 844-919-1623 (Toll Free)
https://www.outliercanada.com/contact-us/

About Business Crime Solutions Inc.
PO Box 427
Merrickville, Ontario
K0G 1N0
613-283-2862
info@moneylaundering.ca
https://www.moneylaundering.ca/

Any questions or comments about the service or products CREA provides?
You can contact us on-line at info@crea.ca.

200 Catherine Street, 6th Floor, Ottawa, Ontario, K2P 2K9

Tel: 613-237-7111, Fax: 613-234-2567