ANTI-MONEY LAUNDERING

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Limitation

This module is intended to provide suggestions and assistance regarding the topic covered. It is not intended as legal advice or to be authoritative.

In a specific instance, the learner should consult legislation, regulations, materials published by the regulator, case law, and other available related material. As well, in a specific instance the learner should obtain (as appropriate) legal, financial and other advice.

1. Module Learning Objectives

This module will assist mortgage brokers to:

- recognize,
- avoid becoming involved in, and
- report

money laundering.

Accordingly, it will assist mortgage brokers to avoid breaching the Mortgage Brokers Act (MBA) and attracting regulatory action.

Editor: Please insert the following as a pop-up after the first occurrence of “mortgage broker” above:

In this module, the terms “mortgage broker” and “broker” include both mortgage brokers and submortgage brokers.

2. Introduction

Real estate transactions, including mortgage transactions, most often involve transfers of large amounts of money. Mortgage brokers involved in such transactions, who either are not alert to money laundering risks or do not take sufficient steps to avoid becoming involved in it, can be vulnerable targets for money launderers.

Money laundering risks for mortgage brokers come in various forms, some obviously connected to proceeds from illegal conduct and others less obvious. Consider the following.

> You are a mortgage broker and have a client who frequently purchases and sells real estate, funds large private mortgages, drives a fancy car, and goes on vacation often. She lives the high life. You wonder how she affords the lifestyle.
>
> As far as you know, she doesn’t have a job, she hasn’t inherited a large amount of money, she hasn’t won a lottery, and she doesn’t have savings from which to draw large amounts of money. Your client has told you she has investments that have paid off rather well. You notice she often pays for expensive things in cash.

Should you be suspicious of your client being involved in money laundering? If she is involved in money laundering, what should you do to avoid becoming involved in it? What regulatory risks do you face if you either purposely or by not paying mind become involved in money laundering? Do you have a duty to report the suspicious activity? Should you report the activity even if you do not have a duty to do so? To whom would such a report be made?

This module will help you in making these assessments.

3. Harm to the Broker and the Industry

Mortgage brokers who engage in money laundering harm not only their own reputation and legitimacy but that of the entire mortgage brokering industry. The public is left unable to determine whether in hiring a broker they are paying for mortgage brokering services or for illicit conduct. Accordingly, mortgage brokers would do well to avoid becoming involved in money laundering and to remove it from the industry.

Further, mortgage brokers who participate in money laundering subject themselves to possible:

- criminal sanctions (such as related to proceeds of crime offences),
- civil remedies (such as related to property, including possibly fees and mortgages, being forfeited to the government under civil forfeiture laws), and
- regulatory consequences (such as related to having conducted business in a manner prejudicial to the public interest).

This module will focus on money laundering as it concerns regulatory requirements and sanctions under the Mortgage Brokers Act.

Although this module will assist you to recognize, avoid and report suspected money laundering, you are advised to seek legal advice to assess your individual circumstances and to address any specific questions or concerns. This module is not intended as legal advice or to be authoritative.

4. What is Money Laundering?

Money laundering has both an act and a knowledge/intention component. We will look at each.

4.1. The Act of Money Laundering

The goals of a money launderer are to:

- provide a legitimate explanation for proceeds obtained by unlawful activity,
- hide the true origin and owner of the proceeds, and
- convert the proceeds into a form that will more likely be perceived as legitimate.

These goals are achieved by the money launderer transforming ‘dirty money’ into ‘clean money’ by way of money laundering. The laundered money is easier to use and is less likely to attract the attention of legal authorities. In circumstances where the laundering process has involved many steps, with some of them complex, the history of the money can be difficult to trace.

The process of money laundering involves three stages:

- placement
    - ‘dirty money’ is introduced into the financial system
- layering
    - proceeds of crime are converted into another form (such as real estate purchases, mortgage investments, stocks, and bonds)
    - sequences of financial transactions, some complex, are created (to disguise the audit trail as well as the source and ownership of the funds)
- integration
    - the laundered proceeds have been put into the economy (to be perceived as ‘clean’ money).

Examples of each of these three stages will be evident when red flags of money laundering are discussed later in the module.

A person who is involved in any of the above three stages has committed the act of money laundering. As well, a person who facilitates or assists the process is involved in the act of money laundering.

4.2. The Knowledge/Intention Component

A mortgage broker who knowingly engages in or facilitates money laundering is accountable for their conduct. Some degrees of knowledge less than actual knowledge can be enough to make the broker accountable. We will look at the following:

- actual knowledge
- wilful blindness
- recklessness.

(For the sake of simplicity of discussion, except where indicated or the context requires otherwise, “money laundering” includes facilitating money laundering.)

4.2.1. Actual Knowledge

A mortgage broker has actual knowledge of being involved in money laundering when they in fact were aware they were involved in it.

For example, a broker who arranged a mortgage for a lender understanding that the lender would fund the mortgage with money obtained from drug trafficking knowingly (that is, with actual knowledge) commits money laundering.

4.2.2. Wilful Blindness

A mortgage broker who engages in money laundering with wilful blindness is generally no better off than the person who committed it with actual knowledge. This is because the wilfully blind person is considered by the law to have the knowledge of which they were wilfully blind.

A person is willfully blind where they:

- do not have actual knowledge of being involved in money laundering,
- understand there is a need to make some inquiry in the circumstances, and
- deliberately do not make the inquiry because they do not want to know the truth and want to be able to deny knowing it.

For example, a broker might arrange a mortgage for a lender whom he knows to have no legitimate source of funds and shows considerable indications of earning income from trafficking in drugs (including a meth lab and possessing large amounts of cash). The broker does not have actual knowledge that the lender by funding the mortgage is money laundering but should understand that the circumstances should cause him to inquire as to the source of funds. If the broker is determined to have not made the inquiry so as to avoid learning that the mortgage funds are drug trafficking proceeds, he will be considered to have been wilfully blind. Accordingly, he will be effectively considered to have known that the funds were in fact drug trafficking proceeds.

4.2.1. Recklessness

A mortgage broker who becomes involved in money laundering because of recklessness is considered to have enough knowledge of what they are doing to be held accountable.

A person is reckless when they are aware of a substantial risk that the property is the proceeds of crime but nevertheless proceeds with the transaction.

For example, if the mortgage broker in the above example concerning wilful blindness did not inquire as to the source of funds because they simply didn't care whether they were drug trafficking proceeds, the broker was reckless and accountable.

Note that recklessness is different from negligence. Negligence concerns the broker failing to recognize the funds are drug trafficking proceeds in circumstances where it should have been recognized. With recklessness, it is not that the broker failed to recognize the risk, it is that the broker recognized the risk but proceeded without caring about it.

To avoid being reckless, mortgage brokers should perform appropriate risk assessments. Inadequate diligence and scrutinizing can result in the mortgage broker being found to have engaged in money laundering.

Designated individual and other superiors should pay mind to alerts of possible money laundering raised by brokers. A superior who is made aware of the risk but is not sufficiently diligent, might be said to have engaged in money laundering.

5. The Naïve or Dishonest Professional

A variety of professionals involved in the real estate and mortgage transaction process might be assisting criminals to launder money through real estate by:

- setting up and maintaining foreign corporations, entities, or trust companies;
- receiving large amounts of cash to complete transactions;
- completing real estate, mortgage, complex credit arrangements or other asset-based transactions;
- introducing launderers to financial institutions;
- structuring contracts and executing documentation to transfer ownership of property; and
- executing documentation or forms to manufacture false identification or travel visas.

Among the trusted individuals who assist launderers are:

- professionals (such as lawyers and accountants),
- financial sector members (such as mortgage brokers and bank employees),
- business sector members (such as Realtors and car lot owners),
- friends, and
- relatives.

The use of a professional can also provide a veneer of legitimacy to the money laundering and create a buffer between criminals and their financial activities and assets.

To better avoid detection, a money launderer might use multiple professionals to further complicate the money laundering process. For example, the launderer may use a notary to execute a statutory declaration to obtain a government issued identity card, and then a lawyer to facilitate a conveyance of property using that government issued identity card.

The assistance might be provided inadvertently (such as due to the professional's naivete as to money laundering) or intentionally (such as due to the professional's willingness to be corrupted by being paid extra to do the illegal service).

The broker needs to ensure he or she is not considered to be that naïve person. New brokers can be particularly susceptible to being targeted by money launderers. Brokers of course need to ensure they do not perform illegal services, without regard as to whether they are being paid an extra fee for doing so.

Just as importantly, the broker needs to be on the watch for red flags that their transaction involves money laundering. We will now look at some of these red flags.

6. Red Flags

In order to avoid engaging in money laundering, it is important that mortgage brokers be able to identify transactions that might involve money laundering. Unfortunately, money is laundered in numerous ways, with new methods created constantly. Some methods of money laundering use the real estate and financial sectors; others do not. Often, various methods of money laundering are used together or in sequence.

It would serve a mortgage broker to recognize:

- red flags that should alert the broker to possible money laundering by a client,
- money laundering schemes in sectors other than real estate and mortgage sectors (these can be related to money laundering schemes in the real estate and mortgage sectors), and
- money laundering schemes in the real estate and mortgage sectors.

We will cover each of these.

6.1. Some Indicators of Possible Money Laundering by the Client

Indicators of possible money laundering will vary from industry to industry. Mortgage brokers and real estate agents generally deal with few transactions, with each involving large amounts. They should be suspicious, or at least inquisitive, of transactions that do not follow the norms of their industry. They should also be suspicious or inquisitive when the transactions by which their client raised funds to close the transaction are out of the ordinary.

Consider these indicators of possible money laundering:

- the client wants to pay for the transaction with an unusually large amount of cash

- the client wants to pay for the transaction with a series of small amounts or a number of small bank drafts

- the customer conducts the transactions through an unusually large number of intermediaries (especially if some or all of those intermediaries are located overseas)

- the customer is involved in transactions that:
    - are out of the normal course for industry practice,
    - do not appear to be economically viable,
    - are unnecessarily complex, or
    - involve connections between disparate types of businesses (for example, a food importer dealing with an automobile parts exporter)

- the customer's transaction involves a non-profit or charitable organization for which there appears to be no logical economic purpose, or where there appears to be no link between the stated activity of the organization and the other parties in the transaction

- the earnings for the customer's business seem to be well above the norm for that type of business or the customer earns an inordinately large salary as principal of a small business

- the customer's business deals in large amounts of cash instruments where there is no practical purpose for preferring cash.

6.2. Money Laundering Schemes in Non-Real Estate Sectors

Not only should mortgage brokers be aware of money laundering schemes that occur in the real estate and mortgage sectors, they should be aware of schemes that occur in other sectors. Money laundering schemes can overlap various business and commercial sectors. For example, money laundering schemes sometimes involve a complex chain that starts in one sector, passes through other sectors, and is largely completed in the real estate and mortgage sector. This is because the illegal money is sometimes accumulated in another sector, but the final steps of the laundering scheme occur in the real estate and mortgage sectors by way of a large single transaction (such as a purchase or mortgage funding).

Some things for mortgage brokers to be on the lookout for in other sectors include:

- asset purchases with bulk cash

  A trusted associate, friend, or relative uses 'dirty money' to buy expensive items (such as real estate and mortgage investments) in their names, but for the use of the primary launderer.

- nominees

  Family, friends, associates, or professionals who will not attract attention conduct transactions on behalf of the primary launderer, using 'dirty money'.

- structuring or 'smurfing'

  Many individuals make deposits or buy bank drafts using 'dirty money,' with each transaction being less than the threshold that triggers reporting requirements. Alternatively, a single individual makes such deposits or purchases at different institutions. The small amounts are then pulled together into a single account.

- exchange transactions

  Foreign currency is purchased with 'dirty money' and transferred to offshore bank accounts anywhere in the world.

- currency smuggling

  'Dirty money' is moved in various ways (such as by mail, couriers, body-packing, and stuffing items such as furniture, appliances, and dead bodies) across borders to countries with strict bank secrecy laws.

- gambling in casinos

  Casino chips are purchased with 'dirty money' and, sometimes after placing just a few bets, are redeemed for a casino cheque.

- black-market peso exchange

‘Dirty pesos’ are exchanged for United States dollars in an underground network of currency brokers with offices in North America, the Caribbean and South America. The dollars stay in the United States and are bought by South American (mainly Colombian) companies, which use them to buy American goods for sale back home.

- front business operation

  The launderer operates a business in a sector that normally generates many cash sales in small amounts. No regard is given to legitimately operating the business or making a profit. Often the business does little (if any) legitimate business but is shown as being successful on paper. The indicated business income is in fact ‘dirty money’ put forward by the launderer.

6.3. Money Laundering Schemes in Real Estate and Mortgage Sectors

Mortgage brokers should be on the alert for money laundering schemes in the real estate and mortgage sectors. As indicated, these sectors are particularly attractive to money launderers. Following are some popular vehicles for money laundering:

- hiding ownership using third parties

  Ownership of real estate or mortgages is placed in the name of family members or other third parties, who will not attract attention (perhaps because they have no criminal record or direct involvement in criminal activity). The launderer places ‘dirty money’ in the bank account of the third party, who then uses it to purchase real estate or fund a mortgage on behalf of the launderer.

- funding loans and mortgages

  ‘Dirty money’ is used to fund loans or mortgages. It might be mixed with clean money to better hide the source of the funds. Launderers might use loan-back schemes to lend ‘dirty money’ to themselves or related parties (such as off-shore entities). This give the transaction the appearance of arm’s length legitimacy.

- servicing mortgages

  A loan or mortgage is obtained from a financial institution or other regulated lender, sometimes using false income or employment information to give the appearance of legitimacy. The loan or mortgage is repaid using smaller, monthly amounts of ‘dirty money’.

- under-valuation of property values

  A property purchase is closed using a significantly less than true value, with the balance of the true price paid secretly ‘under the table’ using ‘dirty money.’ The property might then be flipped for the true higher value; the ‘profit’ made on paper launders the dirty money.

- over-valuation

  A property is overvalued, with the goal of obtaining the largest mortgage possible from a financial institution. Larger mortgages provide an opportunity to make larger monthly payments using ‘dirty money’ to service the mortgage.

- successive sales at higher values

  A single property is successively sold to related parties, with ‘dirty money’ being used for at least part of the transactions. This can confuse the audit trail, artificially inflate property values, and give the appearance of legitimate profits being made.

- rental income to legitimize illicit funds

  Properties are ‘rented’ to related parties who pose as tenants and who pay their rent with ‘dirty money.’ These properties are sometimes used for criminal activities such as drug manufacturing, which fuels criminal operations.

- renovations and improvements to property

  Real estate in need of repair or renovation is purchased. Contractors are paid in cash with ‘dirty money.’ The property is then sold at a higher price than would otherwise be the case, giving the appearance of a legitimate profit.

7. Reporting Money Laundering

If a mortgage broker suspects money laundering, to whom should it be reported. At least the following should be considered:

- BCFSA (the Registrar of Mortgage Brokers)
- CMHC

- the police
- Financial Transactions and Reports Analysis Centre of Canada (FINTRAC)

7.1. BCFSA (Registrar of Mortgage Brokers)

If the money laundering involves a mortgage broker, a complaint should be made to the Registrar of Mortgage Brokers.

7.2. CMHC Hotline

Lenders are required to immediately report to CMHC if false or misleading information has been provided or is suspected in relation to a CMHC-insured mortgage application, even when there is no intention to approve the loan.

7.3. Police

Money laundering is a crime and as such can be reported to the police.

7.4. FINTRAC

FINTRAC is Canada's financial intelligence unit. It collects, analyzes, and discloses financial information and intelligence on suspected money laundering. Its primary functions are to:

- receive reports from various reporting agencies (including banks, insurance companies, money services businesses, casinos, accountants, and real estate agents);
- analyze those reports for information relevant to money laundering, and
- provide identifying information to law enforcement and intelligence agencies.

It is not a policing agency.

Certain named entities are required to report completed or attempted money laundering to FINTRAC. Each of these entities is considered to be susceptible to being used for money laundering because their operations are conducive to conversion or concealment of funds.

The list of entities required to report does not include mortgage brokers, however FINTRAC will accept voluntary reports about suspicions of money laundering from anyone. Anyone who makes such a report is protected from criminal and civil legal proceedings so long as they have acted in good faith.

8. Some Possible Regulatory Actions

The Registrar may find that a mortgage broker who engaged in money laundering:

- engaged in conduct prejudicial to the public interest and/or
- should have their suitability for continued registration reviewed.

As well the Registrar can take regulatory action if the money laundering activities resulted in the mortgage broker being convicted or found to have contravened the laws of Canada or elsewhere concerning mortgages, mortgage brokerage, or real estate.

The Registrar may do one or more of the following:

- suspend the person's registration
- cancel the person's registration
- order the person to cease a specified activity
- order the person to carry out specified actions that the registrar considers necessary to remedy the situation,

The Registrar may also order the mortgage broker to pay an administrative penalty of not more than $50 000.

9. Questions

You must score at least 8 out of 10 to pass this course.

1. Mortgage brokers who engage in money laundering:
   a. harm their own reputation and legitimacy
   b. can cause the public to determine whether in hiring a broker they are paying for mortgage brokering services or for illicit conduct
   c. may be subject to criminal, civil and regulatory consequences
   d. all of the above

2. Which of the following is not indicated in this module as being a stage of money laundering?
    a. integration
    b. contemplating
    c. placement
    d. layering

3. The integration stage of money laundering refers to:
    a. the laundered proceeds being put into the economy
    b. the cooperation between various persons in arranging money laundering
    c. converting proceeds of crime into another form of asset
    d. introducing 'dirty money' into the financial system

4. Being wilfully blind to money laundering occurring:
    a. excuses the participating mortgage broker from being accountable for the money laundering
    b. means the mortgage broker was reckless in becoming involved in the money laundering
    c. essentially makes the participating mortgage broker as accountable as if the broker actually knew the money laundering was occurring
    d. means the mortgage broker was negligent in becoming involved in the money laundering

5. Structuring or 'smurfing' can refer to:
    a. where many individuals make deposits or buy bank drafts using 'dirty money,' with each transaction being less than the threshold that triggers reporting requirements
    b. a single individual makes deposits or buys bank drafts using 'dirty money', at different institutions, with the small amounts then pulled together into a single account
    c. a and b
    d. neither a nor b

6. Money laundering involving the under-valuation of property value means a property purchase is closed using a significantly less than true value:
    a. with the balance of the true price paid secretly 'under the table' using 'dirty money.'
    b. to save on capital gains tax
    c. so a second mortgage can be registered later using the true value of the property
    d. to avoid paying full property transfer tax

7. A mortgage broker who engages in money laundering may have:

a. **engaged in conduct prejudicial to the public interest**
b. their registration cancelled up to but no more than 3 years
c. be required to pay an administrative penalty of not more than $80,000
d. all of the above

8. Which of the following is generally not itself an indicator of possible money laundering?
    a. the client wants to pay for the transaction with a series of small amounts or a number of small bank drafts
    b. **the client wants to use his car as the down payment for the purchase of the real estate**
    c. the customer conducts the transactions through an unusually large number of intermediaries
    d. the client wants to pay for the transaction with an unusually large amount of cash

9. Which of the following is false?
    a. **Professions do not assist money launderers.**
    b. A professional might inadvertently assist a money launderer.
    c. A professional might be corrupted to assist a money launder.
    d. Sometimes multiple professionals are used by money launderers to complicate the process and avoid detection.

10. The goals of a money launder include:
    a. converting the proceeds into a form that will more likely be perceived as legitimate
    b. hiding the true origin and owner of the proceeds
    c. providing legitimate explanation for proceeds obtained by unlawful activity
    d. **all of the above**