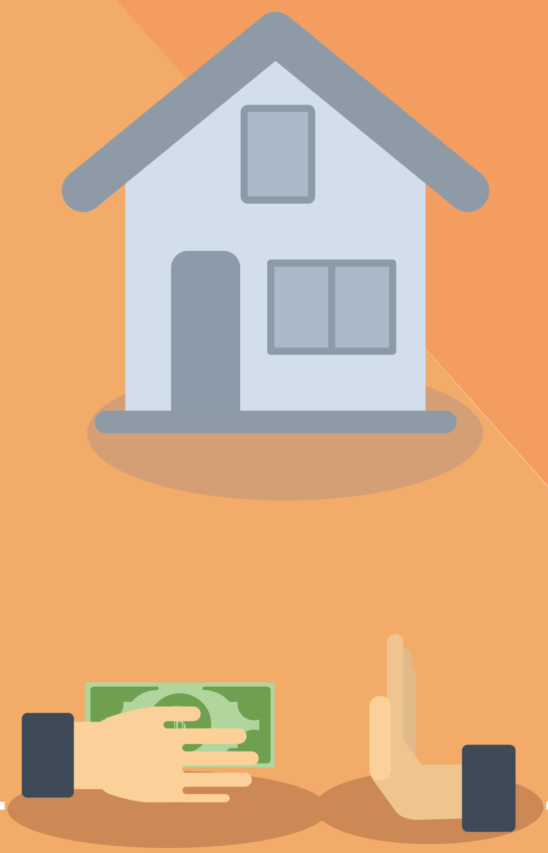
Financial
Intelligence Centre



TOOLKIT FOR COMBATING **MONEY LAUNDERING** AND **TERRORIST FINANCING**

INTRODUCTION

Estate agents know that buying, selling and/or renting property can be attractive options to those looking for a home or want to invest their hard-earned money.

On the flip side, however, estate agents must also be mindful that they themselves could be the target of those looking for a home for their criminal activities or who wish to use to use property purchases, sales and/or rentals as a channel for cleaning their dirty, criminal money.

Generally, for most people, buying a home epitomises long-term commitment and possibly the biggest investment they can make. But, for a stratum of people who make their money through crime, the property sector can offer myriad options for using their proceeds. They could invest their money and possibly making a tidy profit, or even buy a location from which they can grow their criminal enterprise.

The key for estate agents is to understand how money laundering and terrorist financing works and why they are pivotal to criminals and criminal enterprises that want to exploit them and their sector.

Money laundering

Laundering of money occurs when criminals disguise the true nature of how they have sourced their money. They then want to transform their proceeds into 'clean' or legitimate money in the financial system. To achieve this, need to move their money to a place or many places where they can pay cash, where they can exchange their dirty money for clean i.e. where they can legitimise their proceeds.

Criminals may source their proceeds from any range of criminal activities illicit trading and smuggling of weapons, poaching endangered flora and fauna, human or drug trafficking, gratification of bribery and corruption, fraud, theft, pyramid and Ponzi schemes, involvement in syndicated or organised crime, racketeering, and other crimes.

When they acquire these proceeds, criminals need to find options for spending the money in ways that will not draw attention to them directly, to how they have acquired their proceeds and to those who have assisted them in acquiring their proceeds, as this would link them to the criminal activities.

Criminals can, for example, buy a property for cash, sell it and make a profit from on-selling the property. They could then invest their profit further in other ventures in a seemingly legitimate way. These further transactions can make it difficult for authorities to retrace the steps to the origin of the dirty money.

Methods of laundering money in the property sector ranges from the simple to the sophisticated. And, the property sector offers a host of ways in which transactions can be done that can frustrate efforts of those who try to unearth the criminal source of funds and identify money laundering activity.

Property purchased for investment purposes can also be used to create the perception of a legitimate revenue stream. On the other hand, property purchased for rental purposes can enable enterprising criminals to deposit the proceeds of crime into bank accounts under the guise of rental income.

Furthermore, the assortment of professions involved directly and indirectly in the industry offers criminals a wide choice of opportunities and possibilities for abusing the financial system. Some of these professions can include: estate agents, property developers, tax advisors, lawyers, conveyancers, financial advisors, accountants, notaries, registrars, assessors, banks, builders and their suppliers, investment companies, town or city planners and property valuers.

All in all, money laundering in the property sector must be taken seriously. It may seem to be daunting, but it is important that estate and letting agents, as well as landlords, understand the importance of knowing what to look out for.

Stages in money laundering

Often not distinct or sequential, there are generally three phases in money laundering.

Phase one: Placement – in this initial phase criminals begin introducing proceeds or assets into the domestic and/or international financial system. They may do this via financial and non-financial institutions, businesses and gambling.

Criminals could opt to enter the financial system via cash purchases for high-end goods such as yachts, artwork, luxury motor vehicles, property purchases, jewellery and other sought-after items which can also be resold and where payment can be made in cash, by cheque or via electronic fund transfers.

Phase two: Layering – the primary objective in this phase is to create distance between the criminal proceeds and themselves, thereby creating anonymity and those involved in the source of the proceeds.

This is done using various instruments to create complex layers of anonymity or disguise using various financial transactions. These are intended to blur audit trails, the source of proceeds and who owns them. Some methods include transferring money across jurisdictions, purchasing of shares, bonds and life insurance and reselling of high-end goods.

Phase three: Integration – in this final stage of money laundering, proceeds are fully part of the financial system. Criminals are now free to buy even more luxury items and deepen the spread of proceeds into the financial system through the purchase of property and businesses.

Criminals may also look to grow proceeds even further seeking legitimate or illegal investment opportunities.

Impact of money laundering

Because they can offer to purchase or pay rentals upfront, money launderers can influence the prices and rental costs of property. This can abnormally skew prices, so much so that it becomes less and less affordable for ordinary citizens to own or even afford rental property as costs escalate. The effects are insidious and pervasive.

Further down the line, construction and development costs also escalate and begin to impact not only on smaller builders but also larger construction firms.
The knock-on effect can be felt far and wide and across society. In advanced stages, the lack of stability impacts city-wide, regionally and could spread to a country's overall economy and outlook.

Significantly, in its 2007 report, the FATF noted of the property sector: "Fluctuations in property prices have an impact on decisions about where to live and work in addition to affecting an owner's net worth."

Terrorist financing

In some instances, funds are accumulated for use in the financing of terrorists, acts of terror and/or related activities. Those involved in terrorism may also launder money to accumulate further wealth for funding of their activities.

The key difference between money laundering and terrorist financing is that those involved in terrorism are keen to accumulate funds for immediate or future use in financing of terrorists, acts of terrorism and/or related terrorist activities.

In these instances, whether the source of funds is legitimate or appears to be legitimate, the destination and use of the funds is disguised and hidden.

WHAT CAN ESTATE AGENTS DO?

Estate agents need to remain aware of and alert to the methods the criminals may use to launder their money through estate agencies.

The FIC Act includes estate agents as potentially vulnerable to being abused for money laundering and terrorist financing purposes. Estate agents are customer facing, non-financial institutions and are listed in Schedule 1 of the FIC Act. As such, all estate agents are required to fulfil various obligations, as shown below.

Registering with the FIC via the FIC's electronic registration and reporting system

All estate agents must register with the FIC. This can be done via the FIC's website, using the registration and reporting portal – goAML.

Applying a risk-based approach to identifying and verifying customers

The risk-based approach entails the estate agency assessing their clients against the risk of their products and services being exploited by the client for money laundering and terrorist financing purposes. The estate agency must implement more stringent measures for customer identification and verification upon clients who are high risk.

Those who pose less of a risk would require a lighter touch regarding due diligence measures for customer identification and verification.

Developing a risk management and compliance programme in managing money laundering and terrorist financing

All accountable institutions are required to develop, implement, review and implement a risk management and compliance programme. The programme refers to a whole organisation approach in the identification and managing of money laundering and terrorist financing. The programme identifies the roles and responsibilities down and across accountable institutions, including estate agencies. The programme needs to be agreed upon by top management and filtered the organisation.

Keeping records of transactions

Records of transactions with clients must be kept for five years.

Submitting regulatory reports to the FIC

Importantly, estate agents must first be registered with the FIC before they are able to file any of the following regulatory reports:

- Cash threshold – reports on cash transactions exceeding R24 999.99
- Suspicious and unusual transaction – reports on transactions that raise suspicions of which seem out of the ordinary
- Terrorist property – reports where it is suspected that the client or the accountable institution may be holding property related to the an individual or organisation involved in terrorism.

Provide ongoing training to employees on FIC Act requirements

The estate agency must provide training to their employees on their FIC Act compliance obligations.

Appoint a compliance officer

Accountable institutions are required, as part of FIC Act compliance obligations, to appoint a compliance officer.

By fulfilling these FIC Act compliance obligations, estate agents assist in the fight against crime, helping to create a safer and more stable business, economic and social environment, encouraging and improving domestic and foreign investor confidence and growing the economy. For more information on FIC Act obligations of all accountable institutions, visit www.fic.gov.za or call the FIC's compliance contact centre on +2712 641 6000.

- - - - IMPORTANCE OF FILING REPORTS - - - -

The FIC uses the transactional and other data reports submitted by accountable institutions to conduct analysis and create financial intelligence reports. As the national centre for the production of financial intelligence, the FIC is the only authority empowered to produce these reports and, where necessary, shares them with competent authorities. Law enforcement, investigative and prosecutorial authorities use the financial intelligence reports of the FIC for investigations and applications for asset forfeiture.

CHECKLIST FOR ESTATE AGENTS

Methods associated with laundering illicit proceeds in the property sector

Listed below are some of the methods used by criminals in trying to channel their proceeds through the property sector. The list is intended to assist estate agents and is by no means exhaustive or complete, as criminals may adapt and review how they launder money.

Criminal ownership or property leasing

- The use of nominees and/or fronts for property registration
- Purchase of property using large cash amounts
- Unnecessary use of third parties during property transactions
- Carry out transactions on behalf of minors, incapacitated persons or generally persons not economically capable of making such purchases
- Unusual methods used for payment
- Complicated structures involving multiple jurisdictions for no apparent reason
- Use of unregistered estate agents
- Use of shell companies to buy property
- Purchase income-generating property and co-mingle legitimate rental income with criminal revenue
- Payments of long leases by a tenant who has an unsound economic background
- The same party or many groups of persons with links to one another sharing an address or the same legal representatives is involved in the transaction
- Intermediaries acting on behalf of groups of potentially associated individuals, affiliated legal persons such as family ties, business links, businesses of similar nationality, shared addresses, names or representatives of legal entities.

Natural and legal persons

- Parties are not acting on their own behalf or hiding the identity of their real customer
- Transactions begin in one individual’s name and at time of completion end up in another person’s name
- Little to no interest in the characteristics of the property; no interest in negotiating a better price or payment terms; strong interest in completing the transaction quickly; high interest in buildings in particular areas without interest in their cost
- Where payments are made by a third party other than those involved.

Bonds and loans

- Register a property and/or a bond in the name of nominees, such as relatives, friends, business associates, lawyers, and shell or registered companies
- Acquire bonds and settle or liquidate them early using large cash amounts
- Purposely default on payment of bond instalments and later settle the bond using lump sum payments (cash, wire transfers, using other property, series of transactions)
- Repayment of home loans unexpectedly or repeatedly paying off large loans/ home loans early
- Register bond (as well as title to the property) in the name of a nominee to help hide the criminal ownership of the property
- Shell companies and trust accounts, through which illicit proceeds are funnelled to purchase property.

Flipping property

- In some instances, a nominee or a criminal entrepreneur will purchase property with criminal revenue and then quickly sell it, thereby claiming a legitimate source of revenue
- Criminal entrepreneur pays for the construction and/or renovation of a house with the proceeds of crime, before selling the property at an increased value
- Criminal pays cash covertly to contractors, thereby benefiting both parties
- Buying building material using cash or through successive deposits in the accounts of the construction material stores
- Legitimise property transactions by incorporating construction and development companies. These companies would then purchase properties, financed in part by bonds provided by other shell companies established by the launderer.

Under-invoicing

- The property seller agrees to a purchase price below the actual value and then accepts the difference outside of the formal transaction.
- Transactions entered at a value significantly higher or much lower than the true value of the property or differing remarkably from market values
- Transactions involving payments in cash or in negotiable instruments which do not state the true payer (for example, bank drafts), where the accumulated amount is significant in relation to the total value of the transaction.

Foreign ownership

- Foreign nationals using locals to make large investments directly in property
- Foreign politically exposed persons and nationals investing in property
- Those persons residing in tax havens or risk territories
- Where public figures or criminals are known to be involved in illegal, related or suspicious activity
- Foreign or non-resident parties, for tax purposes, are purchasing property only as capital investment; are interested in large-scale operations e.g. purchase large plots to build homes, purchase complete buildings, or to set up leisure activities
- Property purchased for a foreign national who may or may not be resident for tax purposes

- Funds emanating from tax havens or risk territories; whether customer is resident in that country or territory or not foreign national intermediaries who are non-resident for tax purposes
- Transactions in which a loan is granted, or an attempt is made to obtain a loan, using cash collateral or where this collateral is deposited abroad.

Property attorneys, trust accounts, and attorney-client privilege

- Lawyers physically handle cash proceeds of crime or monetary instruments in helping to facilitate criminal property transactions
- Use of third parties and gate keepers such as attorneys and conveyancers to purchase and lease immovable property
- Foundations, cultural or leisure associations or non-profit organisations are involved in property transactions, and there is little to link the goals of the organisations
- Where the legal person involved does not have a physical address, address is unknown or only a private bag or PO box number is provided or likely to be false
- Establishment of legal persons to hold properties with the sole purpose of placing a front man between the property and the true owner
- Installing front man or straw man between property and true owner
- Unusual or unnecessarily complex legal structures used without economic logic.

Means of payment

- Cash payments or use of negotiable instruments where the true payer (such as bank drafts) is disguised and the accumulated amount is high in comparison to the total amount of the transaction
- Party asks for payment to be divided into smaller parts with a short interval between them
- Cash collateral offered for loans or where collateral is deposited abroad in instances where loans are granted, or attempts are made to apply for a loan
- Anonymous instruments such as cash, bank notes, bearer cheques or third party endorsed cheques, are used for payments
- Where the buyer takes on significant debt in relation to the value of the property.

Information sourced from:
http://www.fintrac-canafe.gc.ca/
http://www.fatf-gafi.org/
http://www.acams.org/
http://www.fic.gov.za/
http://www.austrac.gov.au/

www.fic.gov.za | 012 641 6000

Find out how criminals target the property sector and how you can help break the cycle of abuse by visiting the Financial Intelligence Centre (FIC) campaign website page (www.fic.gov.za/campaign).