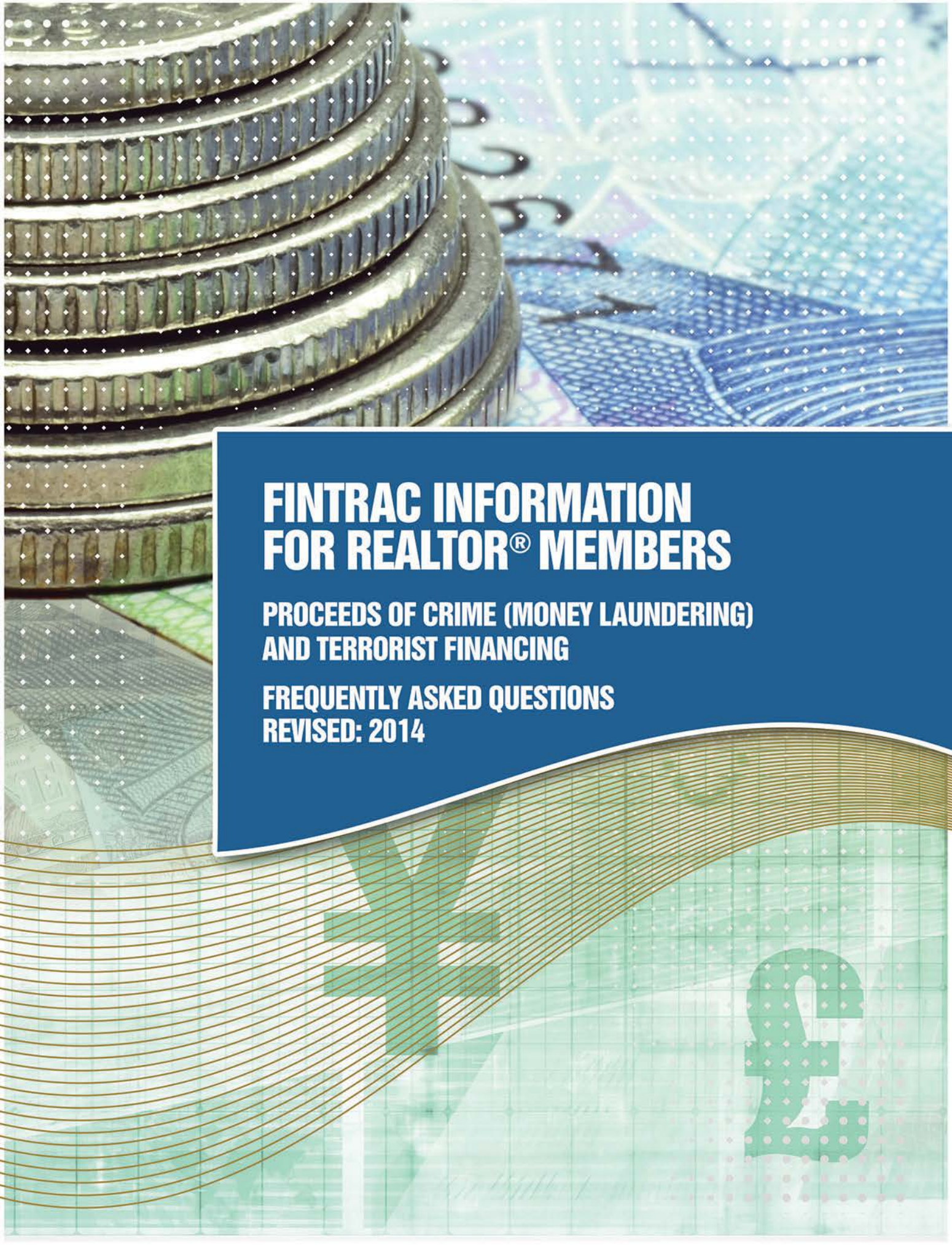

FINTRAC INFORMATION FOR REALTOR® MEMBERS

PROCEEDS OF CRIME (MONEY LAUNDERING) AND TERRORIST FINANCING

FREQUENTLY ASKED QUESTIONS
REVISED: 2014

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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 OBLIGATIONS IN 2014

Q1: What are the new obligations that affect REALTOR® members in 2014?

A: To meet its international anti-money laundering obligations, the government has enacted new regulations that require agents and brokers to better understand the risk of their clients to money laundering and terrorist financing. These new requirements require brokers to conduct ongoing monitoring of their clients when acting as an agent for the purchase or sale of real estate once a "business relationship" is formed. This basically means you need to better know your client when acting as their agent. Also, REALTOR® members now have an obligation to take reasonable measures to ascertain the identity of clients who perform attempted suspicious transactions (and not just suspicious transactions, as was previously the case).

The new obligations are explained in detail in Section 3.1.2.11 in CREA's Proceeds of Crime (Money Laundering) and Terrorism Financing Act and Regulations 2014 Compliance Regime Manual ("Compliance Regime Manual"), available here.

Q2: When did the new obligations come into force?

A: The new regulations came into force on February 1, 2014.

Q3: When conducting audits on the new requirements, will FINTRAC take into consideration that its Guidelines, which provide guidance on compliance obligations, were only published a day before the regulations coming into force date?

FINTRAC has stated that it will take into consideration the publication date of the Guidelines when conducting compliance activities.

Q4: When does the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and regulations ("FINTRAC Regime") state that a "business relationship" is formed?

A: If this is at least the second time you have conducted a purchase or sale transaction with a particular client in the past five years the FINTRAC Regime deems that you have a "business relationship" with that client.

CREA lobbied for a time limit to the business relationship. Prior to CREA's advocacy, a business relationship would have been formed after any two transactions over an indefinite period of time.

Q5: 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;
- 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 the new Section D of the Client Information Record (or implementing a system where similar information is obtained); and
- Putting a system in place at the brokerage to re-assess client risk for all clients who conduct two or more purchase or sale transactions (or suspicious or attempted suspicious transactions) with the brokerage within a five year period.

Brokers may consult CREA's Compliance Regime Manual for further information on these new obligations and review Question 6, below.

Q6: What steps should be taken and what issues should be considered by a broker before implementing CREA's revised 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. Ask themselves whether they want to assume that every transaction with a client is a business relationship or whether they want to implement a process whereby agents can inquire (of the Compliance Officer or the Broker) whether the client has conducted a purchase or sale transaction with the brokerage in the past five years (after February 1st, 2014). This will determine when the information identified in Section D of the Client Information Record must be collected by their real estate agents or in the alternative process they have implemented. Please note that a business relationship is formed under the law after two transactions are completed with the brokerage in five years (after February 1, 2014); however, some brokerages may find it more practical to treat all client relationships as business relationships.
6. 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 relevant transactions.
7. Document the procedure the broker selects for ongoing monitoring (step 4-6 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.
8. 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.

Q7: Can a "business relationship" expire?

A: Yes. If it has been more than five years since the last purchase or sale transaction with that client, the agent no longer has a "business relationship" with that client and will not need to complete Section D of the Client Information Record the next time he/she conducts a purchase or sale transaction with that client (unless the broker has opted, for simplicity, to treat every client as being in a business relationship).

This five year expiry was something for which CREA advocated to reduce the record keeping burden on agents and brokers.

Q8: What is the purpose of the new Section C of the Client Information Record? Is this another new obligation?

A: Yes and No. 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 has incorporated more explicit language regarding this obligation in its Guidelines. 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 audit, brokers may wish to have their agents document on existing forms that they have conducted the necessary risk analysis. This new Section C in the Client Information Record is intended to make it easier for brokers to demonstrate this.

Further, one of the new 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 audit 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.

Q9: 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.

Q10: 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.

Q11: Do I have to complete new 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.

Q12: Why are Appendices A, B, D, E and F missing in CREA's template Compliance Regime Manual?

A: Appendices A, B, D, E and F refer to the Individual Identification Information Record, Corporation/Entity Information Record, Identification/Mandatary Agent Agreement, Receipt of Funds Record and Risk Assessment Form. 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://tinyurl.com/kmgzxlr.

GENERAL INQUIRIES

Q13: Are builders obligated to comply with the FINTRAC Regime? What about lawyers?

A: Both real estate builders and lawyers are subject to the FINTRAC Regime. Builders became subject to the revised regime on February 20, 2009. Lawyers ostensibly became subject to the revised regime on December 30, 2008 although the courts later declared that to be unconstitutional as it interferes with a principle of fundamental justice, namely the independence of the legal profession. This decision is under review by the courts. Note, however, that lawyers' professional societies have imposed on them similar client identification and verification obligations.

Q14: Does the FINTRAC Regime 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 in respect of the purchase or sale of real estate".

Consequently, the record keeping requirements in the FINTRAC Regime do not apply when executing leases.

Q15: 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 FINTRAC Regime. However, you may want to review CREA's guidance, available on REALTOR Link® and FINTRAC's Guidelines, available online at http://www.fintrac-canafe.gc.ca/publications/guide/guide-eng.asp, to ensure that you incorporate all of the required information into your forms.

Q16: Would Errors and Omissions insurance cover you if you tried to comply with the FINTRAC Regime, 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.

Q17: Who has to make reports under the FINTRAC Regime?

A: The FINTRAC Regime 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 http://www.fintrac-canafe.gc.ca/publications/guide/Guide1/1-eng.asp#s5-2.

Q18: 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.

Q19: Where are CREA's French and English forms for FINTRAC?

A. The English forms are available on REALTOR Link® at: http://tinyurl.com/kmgzxlr. The French forms are available on REALTOR Link® at: http://tinyurl.com/lbkavgf.

Q20: Who is ultimately responsible for complying with the FINTRAC Regime?

A: The FINTRAC Regime 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 FINTRAC Regime 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

Q21: What is the difference between a Client Information Record, an Individual Identification Information Record and a Corporate/Entity Information Record?

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

Q22: 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.

INDIVIDUAL CLIENT IDENTIFICATION

Q23: 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: There is no need for self-identification.

Q24: If you are representing a client, and the client is a REALTOR® member, may he/she ID themselves?

A: No. Although CREA has been advised by FINTRAC that there is no need to self-identify, the fact a client is a REALTOR® member does not alter the FINTRAC Regime, which sets out a specific procedure for identifying individual clients.

Q25: 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 FINTRAC Regime. 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.

Q26: 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.

Q27: 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 FINTRAC Regime 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.

Q28: 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 for Canadian clients. You just need to record the requisite information necessary to complete the Individual Identification Information Record. It is, however, recommended that you obtain a copy of the foreign client's ID when documenting their information.

Q29: What types of ID may be used to identify a client?

A: A valid government issued piece of 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: birth certificate; driver's licence; record of landing; permanent resident card; SIN card; and a certificate of Indian Status.

You can refer to an individual's provincial health card, but only if it is not prohibited by provincial or territorial legislation. For example, you cannot refer to an individual's provincial health card from Ontario, Manitoba, Nova Scotia, or Prince Edward Island since health cards cannot be used for this purpose in these provinces. In Quebec, you cannot request to see a client's health card, but you may accept it if the client wants to use it for identification purposes.

If the identification document is from a foreign jurisdiction, it must be the equivalent to an acceptable Canadian document.

Q30: What do I do if my client provides an expired passport or expired driver's licence?

A: Expired government issued identification is not acceptable for FINTRAC purposes. You should ask for valid government issued ID with a unique identifier. One option is a social insurance number (SIN) card, which does not expire.

Pursuant to FINTRAC's Guidelines, the SIN number itself should not be provided to FINTRAC. Therefore, when completing the client identification record, record that you used the SIN card under row #5 "Type of Identification Document", and list the SIN number under "Document Identifier Number". The issuing jurisdiction will be the "Federal Government" and the expiry date will be "not applicable". If you had to make a report to FINTRAC that included the individual's identifier (for example, a large cash transaction report), FINTRAC states to merely indicate "SIN Card" in the relevant field of the large cash transaction report but not to provide FINTRAC with the SIN number itself.

The Office of the Privacy Commissioner (http://www.priv.gc.ca) has produced a fact sheet concerning best practices for the use of SINs. Please consult it for more information on this topic.

Q31: 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")

VERIFYING THE IDENTITY OF UNREPRESENTED PARTIES

Q32: What are the record keeping obligations with respect to unrepresented parties?

A: Agents must make reasonable efforts to ascertain the identity of unrepresented parties, but if unable to do so, they must record what measures they took to try and obtain the information. These measures can be recorded in the Client Information Record. Therefore, agents must complete a Client Information Record for every unrepresented party to transactions they deal with, whether or not the identity of that person is actually verified.

The 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.

Q33: 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 FINTRAC Regime. Accordingly, buyers' agents should treat mere poster sellers as unrepresented and make reasonable efforts to ascertain 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. See Question 32, above.

Q34: What should you do if an unrepresented party absolutely refuses to provide the information required to complete either the Client Information Record or the Receipt of Funds Record?

A: If the unrepresented party refuses to provide the requested information, this must be noted on the relevant record along with any other steps the agent took. The agent should also decide whether to send a Suspicious Transaction Report to FINTRAC. See Question 25, above.

VERIFYING IDENTITIES OF THIRD PARTIES

Q35: 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. If you are unable to determine the identity of the third party, you should as a precautionary measure describe the efforts taken in an attempt to ascertain the information.

Q36: 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. Agents must do this by obtaining a government issued identification document.

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.

Q37: 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.

Q38: 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 identify 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.

CORPORATE CLIENT IDENTIFICATION

Q39: 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 Guideline 6B. 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 ascertain the existence of the corporation.

Q40: 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, the agent must retain a copy of the record. If the record is an electronic version, 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).

Q41: In the case of a corporate client, is an online search sufficient (such as BC Online Company Records search)? Is there still a requirement to identify the individual(s) involved?

A: When dealing with a client corporation, an agent's obligation is to confirm the existence of the corporation and to determine the corporation's name and address. This information can be confirmed by obtaining copies of documents verifying the existence of the corporation. For example, you can use 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. Information obtained from a government website is sufficient. The corporate records must be authentic and registered with a public body (incorporation records, or with the securities commission) or signed off by an independent auditor - as is an annual report for publicly traded companies.

You do not have to verify the identities of the individuals involved in the transaction, but you are required to obtain the part of the official corporate records showing that the person signing on behalf of the corporation has the power to bind the corporation regarding the transaction and you are required to determine the names of the corporation's directors. This information may be contained in the articles of incorporation, the certificate of incumbency or the by-laws.

Q42: 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 agreement that can be used for these purposes. This form is available on REALTOR Link® at http://tinyurl.com/kmgzxlrh

NON FACE-TO-FACE IDENTIFICATION

Q43: What are the methods for identifying a client who is not physically present?

A: Agents have to either: (i) enter into an agreement with a mandatary/agent and have them verify your client's identity on your behalf or (ii) use two of the five possible identification methods. The five different identification options are: (1) identification product method; (2) credit file method; (3) attestation method; (4) cleared cheque method; or (5) confirmation of deposit account method. If using a combination of identification methods, it must be kept in mind that method 1 cannot be used with method 2 and method 4 cannot be used with method 5.

Refer to FINTRAC's *Guideline 6B: Record Keeping and Client Identification for Real Estate*, available at http://www.fintrac.gc.ca/publications/guide/Guide6/6B-eng.asp, for more information.

Q44: 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 with the agent/mandatary, caution should be exercised before amending Schedules A or B in order to ensure that the agent/mandatary obtains the information necessary to identify the client.

Q45: 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)). Finally, the agent should also need specify what provincial laws are applicable (paragraph 10). Keep in mind that the agent/mandatary may wish to negotiate the terms of the agreement (see Question 44, above).

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 either Schedule A for an individual client or Schedule B if the client is a corporation/entity.

Q46: 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.

Q47: 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: If the client is not present, an agent must use either an agent/mandatary to identify the client on his/her behalf, or a combination of two of the five non-face-to-face identification methods (see Question 43, above). When using a mandatary to identify the client, you can NOT use a photocopy of a driver's licence - the agent/mandatary must see a valid original driver's licence, and record that information.

Q48: The Identification Mandatary/Agent Agreement states: "the agent will obtain Broker's prior written approval for all Services it performs on the Broker's behalf". Is this done through the use of this form?

A: The Identification Mandatary/Agent Agreement on REALTOR Link® consists of two parts: an agreement between the broker and mandatary/agent (pages 1 and 2); and the identification form that the mandatary/agent fills out (Schedule A or B). When the broker signs the agreement portion of the form, the obligation to obtain prior written authorization before verifying the client's identity in the second part of the form is fulfilled.

Q49: Who can act as a guarantor if using the attestation method of identification?

A: If you are using the guarantor option as one of the two identification methods, you can let your client choose the guarantor; however, you need to ensure that they are an acceptable guarantor. The following people would be acceptable:

- a dentist, a medical doctor or a chiropractor;
- a judge, a magistrate or a lawyer;
- a notary (in Quebec) or a notary public;
- an optometrist or a pharmacist;
- an accredited public accountant (APA), a chartered accountant (CA), a certified general accountant (CGA), a certified management accountant (CMA), a public accountant (PA) or a registered public accountant (RPA);
- a professional engineer (P. Eng., in a province other than Quebec) or engineer (Eng. in Quebec); or
- a veterinarian.

Q50: How do you use the cleared cheque method of identification? Should you ask for a photocopy of a cleared cheque to be faxed to our office? Do you have to have a copy of both sides of the cheque?

A: If you are using the cleared cheque method, you are required to confirm that a cheque drawn on a deposit account that the individual has with a financial entity has cleared. The cheque must have been written by the individual, cashed by the payee and cleared through the individual's account. It does not include preauthorized payments, as these are not cheques written by the individual. You can confirm that a cheque has

cleared by looking at a bank statement. A copy of any cheque that has cleared would also be sufficient, regardless of whether or not it was payable to real estate broker.

Q51: Can a letter of mortgage or lending approval from a chartered bank or credit union be used to meet the requirement of "verify credit file", or do you have to subscribe to a credit reporting service?

A: When using the credit file method, the agent must refer to a credit file of the client that has been in existence for at least six months. As well, the document referred to in respect to the credit file must include the name, address and the date of birth of the client.

In other words, you may use the letter of mortgage or lending approval from a Canadian chartered bank or a Canadian credit union to refer to the credit file, as a means of ascertaining the person's identity, as long the credit file (or the credit arrangement) has been in existence for at least six months, and as long as the document you are referring to includes the name, address and date of birth of the person. Please note that when utilizing these non-face-to-face methods, the agent must ensure that the information gathered by either of the identification methods (such as the name, the address, and the date of birth) are consistent, as well as consistent with the information that was given by the client.

EXCEPTIONS TO CLIENT IDENTIFICATION

Q52: There are two exceptions to identifying a client -- one being in the case of a client that an agent or broker recognizes and has been identified in a past transaction. Does a client have to satisfy both points or is it sufficient for a client to be merely recognized?

A: The exception to identification record keeping is actually a single exception with two pre-requisites: (1) the agent must recognizes a client; and (2) the agent must have previously verified that client's identity in a past transaction. This means that the agent would have the client's Individual Identification Information Record on file, as those records must be maintained for five years. As a result of having readily obtainable information regarding the client's identity, they would qualify for the verification of identity exception. It is not sufficient that an agent or broker merely recognized a client from a past transaction. Unless you can provide some other evidence that you have

verified the client's identity in a past transaction you would still need to verify the client's identity.

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 (see Question 5, above).

Q53: If an Agent properly ID'ed a 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 client was ID'ed by the Agent and provided the pre-requisites noted in Question 52 still apply, there is no requirement that the ID still be valid.

Q54: 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 FINTRAC Regime, examples of a non-corporate entity include a partnership and an unincorporated association. Agents are not required to identify what FINTRAC describes in its Guideline 6B 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/pages/aboutus/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.

Q55: 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 FINTRAC Regime as a provincial or federal department or Crown agency, an incorporated municipal body, or a hospital authority. 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 Question 54, above.

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.

Q56: 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 FINTRAC Regime defines a public body as a provincial or federal department or Crown agency, an incorporated municipal body, or a hospital authority. 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 AND LARGE CASH TRANSACTION RECORDS

Q57: 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.

The requirement to complete a Receipt of Funds Record comes from amendments to the FINTRAC Regime, which came into effect on June 23, 2008. It is not consistent with the regulations to simply rely on the information that may already be in your files.

Q58: 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 FINTRAC Regime 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®.

If the funds you are receiving exceed $10,000 in cash, then a Large Cash Transaction Report is required. A form for this type of report is found on the FINTRAC website:

http://www.fintrac-canafe.gc.ca/reporting-declaration/1-eng.asp. In these situations, you would retain a copy of the Large Cash Transaction Report for your records instead of completing a Receipt of Funds Record.

Q59: 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, (i.e., 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.

Q60: 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, i.e., 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.

Q61: Are account numbers necessary on Receipt of Funds forms?

A: 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; (ii) the full name of the client that holds the account; and (iii) the currency in which the transaction was conducted. This means that in the simplest case where the buyer provides a cheque, the name of the bank account holder, the number of the account, and the financial institution where the account is located must all be recorded.

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. However, the buyer's agent is not required to include the number and type of the listing agent's account or the name of the person or entity that is the holder of that account if, after taking reasonable measures, they are unable to do so. Further, if dealing with trust accounts, although the buyer's agent must indicate that the funds were deposited into the listing agent's trust account, the buyer's agent would not be required to include the number of the trust account or the name or entity that holds the trust account.

Note that if multiple accounts are affected, information on all accounts affected needs to be recorded. For example, assuming the buyer's agent transfers funds from their account into the listing agent's account, both accounts are affected by the transaction and therefore both numbers are to be recorded on the Receipt of Funds Record. However, the features noted in the previous paragraph with respect to the listing agent's accounts still apply.

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. As noted above, a Receipt of Funds record needs to be kept on every account that is affected by the transaction.

WHEN TO COMPLETE FORMS

Q62: 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.

Q63: Could you provide me with some clarification as to when the 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 recommend 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.

Q64: 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 was filled out but no money was received, you would not be obligated to retain these records.

Q65: 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 – see Question 58, above), 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

Q66: How long to records need to be kept?

A: Brokers are required to keep the information on file and available in FINTRAC requests for FIVE years.

Q67: 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.

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

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