Jersey Financial Services Commission

# 18 REAL ESTATE AGENTS

## 18.1 Definition of *real estate agents* undertaking *supervised business*

**Overview**

1. Paragraph 19 of Part 3 of Schedule 2 to the *Proceeds of Crime Law* defines the relevant transactions and activity of *real estate agents* for the purposes of complying with the requirements of the *Money Laundering Order. Guidelines* provide the interpretation of "*real estate agents*" and their activities.

## 18.2 *Identification measures:* Finding out identity and obtaining evidence

### 18.2.1 Obligation to find out identity and obtain evidence

**Overview**

2. This sector-specific section is supplementary to and should be read in conjunction with section 4.2 of *this Handbook*.

3. A real estate agent or member of their staff may visit an individual at their home address. A record of this visit may corroborate the individual's residential address (for the purposes of a second document/source of verification). How and when this may be done should be included in the risk assessment and included in the real estate agents' policies and procedures.

***AML/CFT/CPF Codes of Practice***

[COP176] Following *FATF Recommendation* 22, a *supervised person* that provides real estate agency services as defined in paragraph 19 of Part 3 of Schedule 2 to the *Proceeds of Crime Law*, must comply with *CDD* obligations with respect to both purchasers **and** vendors of the property.

## 18.3 Exemptions from *CDD* measures – Jersey property transactions

**Overview**

4. This section is supplemental to and should be read in conjunction with section 8.3 of *this Handbook*.

5. This section relates to the exemption available under Article 18(6) of the *Money Laundering Order*, which provides that a *supervised person* that is a *Lawyer* or a *real estate agent*, which enters into a *business relationship* or carries out a *one-off transaction* for the purpose of enabling a *customer*, directly or indirectly, to enter into a registered contract within the meaning of the Control of Housing and Work (Jersey) Law 2012 (i.e. where it is to be passed before the Royal Court and registered in the Public Registry of Contracts), need not obtain **evidence of identity** of its *customer*.

6. Real estate agent specific exemptions:

| Customer/Activity | Exemption | Article of MLO | Section of *this Handbook* | Conditions to be fulfilled before use? | Ongoing requirements? |
|---|---|---|---|---|---|
| Registered Property contracts passed before court | Customer | 18(6) | 8.3.7 | Yes | Yes |

***AML/CFT/CPF Codes of Practice***

[COP177] A *supervised person* that is a *real estate agent* must obtain and retain documentation establishing that its *customer* is entitled to benefit from the exemption set out in Article 18(6) of the *Money Laundering Order*.

# 18.4 Business risk assessment

## 18.4.1 Service area vulnerabilities and warning signs

**Overview**

7. Criminal conduct generates huge amounts of illicit capital, and these criminal proceeds need to be integrated into personal lifestyles and business operations. Law enforcement agencies advise that property purchases are one of the most frequently identified methods of *money laundering*. Property can be used either as a vehicle for *money laundering* or as a means of investing laundered funds.

8. Criminals will buy property both for their own use, e.g., as principal residences or second homes, business, or warehouse premises, and as investment vehicles to provide additional income.

9. The *BRA* relating to *customers* and services will depend on the *supervised person's* size, type of *customers* and the business area it engages in.

10. *Supervised persons* carrying on real estate agency business should consider the different types of *money laundering, financing of terrorism,* or the *financing of proliferation* risks to which they are exposed when providing services. This service area risk assessment must also be reflected when undertaking a *CRA*.

11. Further factors to consider when evaluating the risks posed by clients and service areas are set out in section 3.3.4 of *this Handbook*.

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## 18.4.2 Criminal use of conveyancing services

### *Guidance notes*

12. The *real estate agent* is but one of the professionals who will be involved in a property transaction. Every property transaction requires a legal practitioner to undertake the conveyancing, and this is one of the criminal's most frequently utilised functions. Conveyancing is a comparatively easy and efficient method of *laundering money* with relatively large amounts of criminal monies cleaned in one transaction. In a stable or rising property market, the *money launderer* will incur no financial loss except fees. Whilst many legal practitioners will be unwitting accomplices, some corrupt legal practitioners will provide deliberate assistance and *real estate agents* should be vigilant for any signs that this is occurring.

13. The purchase of real estate is commonly used as part of the last stage of *money laundering*. Such a purchase offers the criminal an investment which gives the appearance of financial stability. The purchase of a restaurant or hotel, for example, offers particular advantages, as it is often a cash-intensive business, which is the preferred currency of criminals. Cash remains the mainstay of much serious organised criminal activity. It has the obvious advantage that it leaves no audit trail and is the most reliable form of payment, as well as the most flexible. Retail businesses also provide a good front for criminal funds where legitimate earnings can be mixed with the proceeds of crime.

14. **Case Study 1: Drug Trafficking funds a hotel purchase**

- A financial intelligence unit received information that a previously convicted drug trafficker had made several investments in real estate and was planning to buy a hotel. An assessment of their financial situation did not reveal any legal source of income, and they were subsequently arrested and charged with an offence of *money laundering*. Further investigation substantiated the charge that part of the invested funds were proceeds of their own drug trafficking. They were charged with substantive drug trafficking, *money laundering* and other offences.
- The criminal's *Lawyer* received the equivalent of approximately US$70,000 cash from their *customer*, placed this money in their *customer's* bank account and later made payments and investments on the *customer's* instructions. They were charged with *money laundering* in relation to these transactions.
- The drug trafficker was convicted of drug trafficking, sentenced to seven-and-a-half year's imprisonment, and a confiscation order was made for US$450,000. The *Lawyer* was convicted and sentenced to 10 months imprisonment.

15. **Case Study 2: Tobacco smuggling funds a property empire**

- In 2005, a national assets recovery agency was granted an Interim Receiving Order by the courts for assets valued at over £1 million.
- The assets in question were held by Mr S and his wife. In its application to the courts, the Agency evidenced that Mr S purported to trade as an ice cream salesman with two vans. However, no street trading *Licence* had ever been granted making the vans recoverable property. The Agency also showed that on a number of occasions police had detected Mr S selling smuggled tobacco from his vans. His lifestyle and property acquisitions appeared to be far in excess of his lawful means.
- The assets included:

- a principal residence in the capital city;
- two apartments in the city centre;
- an interest in a further eight building developments;
- a planned apartment in a prestige city development.

- The Agency advised that they had intervened to prevent Mr S from extending his property portfolio shortly before the hearing.
- The total value of the property subject to the restraint order was estimated to be £1.4 million.

## 18.4.3 Recognising suspicious behaviour and unusual instructions

**Overview**

16. The following are examples of potentially suspicious events, both prior to and during the life of the property transaction.

### 18.4.3.1 Absence of normal commercial rationale

***Guidance notes***

17. Activity that does not appear to make good business sense may indicate that it is linked to criminal activity. For example, where the prospective purchaser is willing to pay significantly over the market value for a property, particularly where the purchase is being undertaken by a cash-rich company.

18. A property sale or purchase that is subject to any significant last-minute changes may indicate that there is an attempt to confuse the *CDD* information.

19. A *customer* that has no apparent reason for using a *supervised person* (for example the location of the property or type of business) where another business would be better placed to act, may indicate that the *customer* is trying to make it harder for *CDD* measures to be completed. Alternatively, the *customer* may hope that if the transaction is outside the normal size that a *supervised person* handles, or if it is particularly lucrative, the *supervised person* may turn a blind eye to any unusual or suspicious activity.

20. Where a *customer* has declined services that a *supervised person* would normally expect them to use, or shows little interest in the transaction, this may indicate that the property deal is a sham and merely being used to confuse the audit trail for criminal money (i.e., part of the “layering” stage of the *money laundering* process).

### 18.4.3.2 Ownership issues

***Guidance notes***

21. Properties owned by nominee companies or those with complex structures may be used as *money laundering* vehicles to disguise the true owner and/or confuse the audit trail. Last minute changes of instructions concerning the identity of the prospective purchaser in whose name the property is to be registered should give rise to additional due diligence.

22. Changes in the *beneficial ownership* of a company owning and managing a property where the new beneficial owners’ *source of funds* for the company purchase is unclear or dubious may indicate that criminal funds have been injected into the company. This risk is heightened if known, reputable *Lawyers* have not been appointed by either or both sides to act for them.

23. Intermediaries may be used by criminals to protect their identity or hide their involvement. Real estate agents should be wary where ownership is said to be confidential and there is a reluctance to provide details of the *customer* for due diligence to be undertaken on them.

### 18.4.3.3 Property values

***Guidance notes***

24. A significant discrepancy between the sale price and what would be considered to be normal for such a property may indicate fraud or *money laundering*.

25. Properties sold below the market value to an associate may have the objective of obscuring the title to the property while the original owner still maintains the *beneficial ownership*.

26. There is a risk that transactions might be used for tax evasion, for example, the manipulation of property prices to just below the Stamp Duty threshold, perhaps by "rigging" the price of fixtures and fittings.

### 18.4.3.4 Valuations and surveys

***Guidance notes***

27. When *real estate agents* provide a valuation service prior to being instructed as selling agents, or when they are providing a service as surveyors, it is important that they are vigilant. If there is any indication that the property is being used for criminal conduct, a *SAR* must be submitted to the *MLRO*. A roomful of randomly stacked high value goods or a greenhouse inexplicably filled with cannabis cannot be ignored.

28. **Case Study 3: A lucrative farming enterprise**

- In 2006, a cannabis farm was discovered by local police. Officers found a large and sophisticated infrastructure for growing cannabis which could have produced close to £2.5 million pounds worth of cannabis over the previous four years. The owner, who was convicted of producing cannabis with intent to supply, was imprisoned for three years and had nearly £400,000 worth of assets confiscated.

### 18.4.3.5 Funding issues

***Guidance notes***

29. Whilst *Lawyers* will normally handle the funds provided for a property purchase, or the sale proceeds, *real estate agents* will often become aware of the funding arrangements. Suspicions should not be ignored merely because a *Lawyer* is also involved, and the sale or purchase funds are not passing through the *real estate agent's* client account.

30. For example, a *customer* who advises that the funds from the sale will be going overseas and paid to an unrelated third party may indicate that the funds are being laundered on behalf of that third party. Similarly, where the *source of funds* for a purchase is obscure or appears to be unusual, this may indicate *laundering* of criminal funds, particularly if the funds are offered in cash or are coming in from an overseas bank account that is unconnected to the purchaser.

31. A cash deposit paid to a *real estate agent* as part of a large property transaction, which is also to be settled in cash, may indicate tax evasion or that criminal proceeds are being used to fund the transaction. Cash is the principal currency of criminals and should always be subject to further enquiries.

32. Situations where a potential purchaser requests the real estate agent to hold the potential purchase funds in their client account must be treated with extreme caution. Because large amounts of cash cannot normally be banked without suspicions being raised, criminals will use other professionals as 'gatekeepers'. Placing cash into the banking system through client accounts of professional firms is a classic *money laundering* technique. Where a *customer* withdraws from a transaction after paying money into a client account, the *customer* receives a cheque or electronic transfer from the *Lawyer* or *real estate agent* which makes the funds appear to be legitimate.

33. *Real estate agents* should be mindful that as *Lawyers* tighten up on the circumstances in which they will hold *customer* money, other targets will be sought by criminals.

### 18.4.3.6 Mortgage fraud

***Guidance notes***

34. Where prospective property purchasers overstate or misrepresent their income to mislead mortgage lenders, this falls within the definition of mortgage fraud. Alternatively, the value of the property may be inflated with a view to obtaining a mortgage for the full inflated value. *Real estate agents* must avoid becoming complicit in such criminal arrangements. Mortgage fraud is itself a criminal offence, but if the *real estate agent* becomes involved, they are also entering into an arrangement to further a criminal act.

35. Unexplained changes in ownership may indicate a form of *money laundering* known as "flipping", which involves a property purchase, often using someone else's identity. The property is then quickly sold for a much higher price to the same buyer using another identity. The proceeds of crime are mixed with mortgage funds for the purchase. This process may be repeated several times.

36. Fraudulent borrowers will often seek to build a portfolio of properties by obtaining many mortgages with several lenders, using fictitious and/or real names. The portfolio is then used for various purposes such as:

- organised letting (particularly using assisted housing schemes);
- property development of a site or individual properties;
- 'rollover', where the criminal sells the properties to themselves (in various guises) at inflated prices.

37. Collusive mortgage fraud has become a significant problem in many countries with *real estate agents*, property valuers and legal professionals acting in concert to provide all concerned with maximum benefit.

38. **Case Study 4: Mortgage fraud investigation**

- A ring of over 40 professionals, including several fraudulent valuers, was broken because of an extensive mortgage fraud investigation. The fraudsters bought over 200 properties, falsely inflated their values, and sold them amongst themselves, fraudulently obtaining mortgages from most of the large lenders. No repayments were ever made on any of the mortgages which totalled over £30 million.

### 18.4.3.7 Buy to let

***Guidance notes***

39. Buy to let properties are particularly vulnerable to *money laundering* and especially so when linked to self-certification of income by the purchaser. Terrorist organisations may also purchase multi-tenanted property to provide safe haven accommodation for the operatives within their cells. The receipt of rent payments in cash also increases the vulnerabilities of letting agents.

40. To safeguard the position of letting agents who deal with buy to let properties or wish to receive payments of rent in cash, the Association of Residential Letting Agents has recommended that they voluntarily adopt the *AML/CFT/CPF systems and controls* (including *policies and procedures*) that are applicable to *real estate agents*.

41. **Case Study 5: *Money laundering* through buy to let**

› In 2004, following an investigation by law enforcement and tax authorities in the UK, several people were arrested for importing cannabis resin concealed in machines from overseas. One of the defendants offered to plead guilty if no confiscation order was brought against them. The investigation, which spanned several jurisdictions in Europe, had uncovered a property portfolio the defendant wanted to protect. The defendant had purchased several new apartments in various developments to launder the money and rent out the properties. A confiscation order was raised against the defendant amounting to nearly £3 million.

#### 18.4.3.8 Ghost lettings

42. Ghost lettings raise *financial crime* risks and may take multiple forms:

- Where a property is being advertised for rent which is not available and this maybe without the knowledge of the homeowner or tenant;
- Multiple occupants living in a rental property unofficially – unauthorised sub-letting which may be to a criminal or for criminal purposes; or
- Where no-one physically occupies the premises when you would reasonably expect there to be an occupier, and rent is paid regularly.

### 18.4.4 Other *financial crime* red flags

43. *Financial crime* trends evolve, and real estate agents should consider what *money laundering terrorist financing* or proliferation risk they may face on a continuing basis. Other issues that may be relevant include:

- staff being offered bribes or becoming aware of bribes being made, for example, in relation to valuations or planning applications;
- acceptance of disproportionate corporate hospitality;
- owner of various properties using multiple agents without justification;
- virtual currencies being used to finance property transactions;
- searches on a party to a transaction or associate show, for example, adverse media attention, disqualification as a director, convictions for dishonesty or association with bribery in relation to contract procurement;
- cash exchanges directly between *customer*s e.g. for fixtures and fittings;
- poor explanation for the early redemption of a previous mortgage, especially where redemption incurs a penalty cost;
- the *customer* or counterparty does not take up services that are attractive or is willing to pay fees that seem unnecessary;
- the property value doesn't fit the *customer*'s profile;
- the client has not viewed the property or has only seen it on the internet;

- where multiple properties are purchased, resold or exchanged;
- a large cash deposit with the balance from an unusual source;
- multiple payments of smaller amounts possibly through different accounts and to avoid thresholds put in place by overseas authorities;
- unusual speed or requests to expedite transactions unnecessarily, possibly over or under value;
- a third party, apparently unconnected with the client bears the costs, settles invoices or otherwise pays the transaction costs;
- an unusually big cash or foreign currency transaction, and the buyer will not disclose the source of the funds;
- unusual involvement of third parties, cash gifts, or large payments from private funds, particularly where the buyer appears to have a low income;
- successive transactions, especially of the same property, with unexplained changes in value; or
- a previously sold property is re-marketed following renovation without an obvious source of funding.