



Bob Aaron bob@aaron.ca

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Why condo cash deal caused concern

Big bucks in a bag viewed with suspicion

Tim was in his early 20s when he bought his first condominium home a few years ago.

He told his lawyer he was self-employed "in the computer business" and wouldn't need a mortgage to close his purchase.

The day before closing Tim received a call from his lawyer's secretary giving him the total amount of money that would be needed for the balance of the purchase price, as well as legal fees, disbursements and land transfer tax - slightly over \$100,000.

After Tim reviewed and signed the papers with his lawyer the next morning, the lawyer asked if he had brought with him the necessary funds.

Tim said that he had and proceeded to put a small sports bag on the lawyer's desk.

"What's in there?" the lawyer asked, afraid of the answer he was going to get.

In response, Tim unzipped the bag and pointed to bundles of \$50 and \$100 bills, neatly wrapped with rubber bands.

"It's all there," Tim told his astonished lawyer, sheepishly explaining that he had been working and saving for several years but "didn't trust banks," so he had the money in cash.

Under the law at the time, cash deposits of \$10,000 and more could not be deposited into bank accounts - even lawyer's trust accounts - without a satisfactory written explanation of the source of the funds.

The lawyer called his bank manager. He told her the story about Tim's money and his flimsy excuse for having it all in cash. The bank manager was unimpressed.

She told the lawyer he would not be allowed to deposit the cash for Tim's condominium purchase in the firm's trust account. The source of the funds, she said, was too suspicious for the bank to accept in cash. The federal legislation requiring reporting of suspicious transactions was substantially strengthened last year.

The new Proceeds of Crime (Money Laundering) Act was passed by Parliament and received Royal Assent in June. Some sections came into force on July 5, 2000, and others will become law later this year.

The new legislation is designed to require record keeping and immediate reporting of suspicious transactions, defined as those in excess of \$10,000 in cash in the course of a single transaction.

The funds can consist of paper money, traveller's cheques, money orders, wire transfers and certified or personal cheques. Required records will include details of the transaction, as well as the identity of the person involved and particulars of documents such as birth certificate, driver's licence or passport.

Later this year, the legislation will require recording and reporting of all cross-border monetary transactions, both cash and non-cash. This is called a "prescribed transaction," and is caught by the law even when it is clearly not suspicious.

It is expected that the threshold for reporting will be set at \$15,000 Canadian.

All stocks and bonds crossing the border in amounts greater than this limit, including all legitimate transactions, will have to be reported.

Money laundering is the process by which "dirty money" generated by criminal activities is converted into assets that cannot be easily traced back to their illegal origins.

A significant portion of the dirty money is linked to profits from illicit drug trade, but other crimes are also involved, including burglaries and cigarette smuggling.

Toronto lawyer Michael D. Lipton, of Elkind, Lipton & Jacobs, is an expert in this area of law. He estimates the extent of the problem in Canada is more than \$25 billion a year from drug offences alone.

Worldwide, the number is \$1 trillion a year. Under the new Proceeds of Crime (Money Laundering) Act, as many as 500,000 employees and professionals in Canada will be involved in record-keeping and recording as part of their daily employment duties.

This includes real estate brokers and sales representatives, lawyers, accountants and other professionals who handle large sums of money, banks, credit unions, trust companies, insurance companies, securities and foreign exchange dealers, bullion dealers, and casinos.

This will require a separate report to the federal government of every real estate transaction in Canada where the funds are entering or leaving the country.

Failing to keep or file a required record can result in fines on a first offence of up to \$500,000, and \$1 million on subsequent convictions.

It is also an offence to notify the persons involved that a report about them has been filed with the government.

So much paperwork is expected to flow into Ottawa that a new government body, the Financial Transactions and Report Analysis Centre of Canada, has been established.

The centre will store all the reports, analyze and assess them, and provide "leads" to law enforcement agencies. One of the scariest parts of the legislation authorizes the federal government to open mail and conduct searches without warrants in the offices of any person or company required to comply with the terms of the Money Laundering Act - including a law office.

The lawyer is required to co-operate with the search and permit the government agent to use his or her computer to examine and reproduce data. A warrant is required if the search is to be conducted in a dwelling house.

A search of a lawyer's office is deemed to be legal unless the lawyer immediately claims the information is covered by solicitor-client privilege, seals and retains the information, and applies to a judge within 14 days.

If the lawyer fails to apply, the privilege is lost.

Even if the lawyer wins the application to claim privilege, the court is prohibited from awarding costs. The legal community is already revving up its engines to claim that the provisions in the legislation for searches without warrants are unconstitutional.

Toronto lawyer John S. Kelly of Goodman and Carr presented a paper on this issue at a recent Canadian Bar Association seminar: Taking the Starch Out of Money Laundering.

But back to the story of Tim's "all-cash" condo purchase.

At the time Tim was buying his condo, the legislation was not as Draconian as it is now.

Tim's lawyer pointed out that the agreement of purchase and sale contained the standard clause that almost every agent uses (but shouldn't).

The offer stated that the balance of the price would be paid by "cash or certified cheque."

In Tim's case, it was going to be cash. Tim and his lawyer showed up on closing together and Tim produced the sports bag full of cash, which his lawyer refused to touch.

Under the terms of the deal, the vendor's lawyer was obliged to accept the proceeds in cash.

Fortunately, he was able to sweet-talk his bank into accepting it. He might not be so successful today. Real estate agents who still draft offers allowing payment in cash would be well advised to change their standard wording.

Bob Aaron is a leading Toronto real estate lawyer.

Please send your inquiries and questions to bob@aaroon.ca or call 416-364-9366.

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