MORTGAGE PROFESSIONALS CANADA

# The AML/ATF Compliance Guide for Mortgage Professionals

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# AGENDA

# Expectations & Limitations

Mortgage Professionals Canada provides this guide as a supporting document rather than an actual AML/ATF Program. When preparing your AML/ATF program, you should seek legal and compliance advice to meet FINTRAC's expectations.

- **General Information Disclaimer**
  This guide is intended for informational purposes only and does not constitute legal advice. Readers should consult with qualified legal counsel or compliance experts for advice tailored to their circumstances.
- **No Guarantee of Compliance**
  While this guide provides useful information to assist in achieving AML/ATF compliance, it does not guarantee compliance with applicable laws or regulations. Complete compliance obligations may vary based on jurisdiction, business type, and specific operational circumstances.
- **Evolving Regulatory Environment**
  The legal and regulatory landscape surrounding Anti-Money Laundering and Anti-Terrorist Financing is constantly evolving. This guide is based on information available as of September 15, 2024. It is the reader's responsibility to stay informed of any changes that could affect their compliance obligations.
- **Use of Third-Party Resources**
  This guide may reference third-party resources or tools. The inclusion of these references does not imply endorsement or warranty regarding the accuracy, effectiveness, or reliability of such resources. Readers should exercise their own judgment when utilizing external services.
- **Limitations of Liability**
  The authors and publishers of this guide disclaim any liability for losses or damages arising directly or indirectly from the use or reliance on the information contained herein. Users accept full responsibility for their actions based on the information provided in this guide.
- **Customized Compliance Programs**
  Each organization has unique circumstances that may require tailored AML/ATF compliance programs. This guide is not exhaustive and should not be considered a substitute for developing a customized AML framework suited to your organization's specific needs.
- **No Professional Relationship**
  The information in this guide does not create a professional-client or attorney-client relationship between the reader and the authors, publishers, or affiliated entities.
- **Possible Regulatory Consequences**
  Readers should be aware that failure to comply with AML/ATF regulations can result in severe penalties, including fines and legal consequences. This guide does not assume any responsibility for such consequences.
- **Review and Update Disclaimer**
  This guide may be updated periodically to reflect changes in laws and regulations. Readers are encouraged to verify the information and seek current guidance as needed.
- **Jurisdictional Variability**
  Regulatory requirements may differ significantly based on jurisdiction. Users are advised to ensure their compliance approach aligns with local laws relevant to their specific operations.

01.

# Introduction

# Objectives

This step-by-step guide is a comprehensive roadmap for mortgage businesses and professionals seeking to establish effective AML/ATF—anti-money laundering and anti-terrorist financing compliance practices in accordance with the Proceeds of Crime (Money Laundering) and Terrorist Financing Act and its corresponding regulations.

- This document aims to empower your organization to confidently navigate the new regulations your business must achieve to meet the October 11, 2024 deadline.
- Adopting a proactive, systematic approach to AML/ATF practices can protect your organization from legal repercussions, enhance its reputational credibility, and contribute to the global fight against financial crime.
- Becoming AML/ATF compliant is not just a regulatory obligation but an essential aspect of responsible business practice.
- It is also important to include strategies for fostering a culture of compliance within your organization, encouraging proactive participation from all employees, and emphasizing management's role in leading by example.

**Definition from**: Proceeds of Crime (Money Laundering) and Terrorist Financing Act

## A financial entity means:

(a) an entity that is referred to in any of paragraphs 5(a), (b) and (d) to (f) of the Act;
(b) a financial services cooperative;
(c) a life insurance company, or an entity that is a life insurance broker or agent, in respect of loans or prepaid payment products that it offers to the public and accounts that it maintains with respect to those loans or prepaid payment products, other than:

- (i) loans that are made by the insurer to a policyholder if the insured person has a terminal illness that significantly reduces their life expectancy, and the loan is secured by the value of an insurance policy;
- (ii) loans that are made by the insurer to the policyholder for the sole purpose of funding the life insurance policy and
- (iii) advance payments to which the policyholder is entitled that are made to them by the insurer;

(d) a credit union central when it offers financial services to a person or to an entity that is not a member of that credit union central; and
(e) a department or an entity that is an agent of His Majesty in right of Canada or an agent or mandatary of His Majesty in right of a province when it carries out an activity referred to in section 76.

**This means if your organization does not meet the above definition, you are required to meet the compliance requirements for* ***Mortgage Professionals*** *

https://laws-lois.justice.gc.ca/eng/acts/P-24.501/page-1.html#h-398214

## The Personas

# Welcome to the world of “reporting entities” as per FINTRAC.

FINTRAC is the Canadian overarching regulatory body above the different provincial ones.

***Mortgage**
Professionals

***Mortgage Administrators**

A person or entity, other than a financial entity, engaged in the business of servicing mortgage agreements on real property or hypothec agreements on immovables on behalf of lenders.

***Mortgage Brokers**

A person or entity authorized under provincial legislation to act as an intermediary between a lender and a borrower regarding loans secured by mortgages on real property, hypothecs, or immovables.

***Mortgage Lenders**

A person or entity, other than a financial entity, engaged in the business of providing loans secured by mortgages on real property or hypothec on immovables.

**These three mortgage entity types will be called Mortgage Professionals (“MP”) throughout this document.*
*Please see the link to the self-assessment tool provided by Fintrac:*
https://fintrac-canafe.canada.ca/re-ed/mortgage-hypotheque/1-eng

FINTRAC Link https://fintrac-canafe.canada.ca/re-ed/mortgage-hypotheque-eng#s6

## Definitions

### What is Money Laundering?

Money laundering is the criminal practice of processing the proceeds of crime, or “dirty” money, through a series of transactions. In this way, the funds are “cleaned” so that they appear to be proceeds from legal activities.

Mortgage professionals, and other employees must be vigilant to identify transaction activity outside of expected norms that may indicate inappropriate or fraudulent use of systems, i.e. potentially suspicious activity. It is not difficult for criminals to obtain money/funds. However, until the money/funds are deposited into the formal financial system, their ability to use such funds is restricted. When financial institutions knowingly or unknowingly accept the cash deposits of criminals, they unwittingly help “clean” the proceeds, eventually making the money/funds look legitimate, especially where the money/funds are eventually used. It is important to recognize that money laundering is not limited to cash transactions. Money laundering can also be conducted via any type of transaction or group of transactions.

Generally, the money laundering process involves four stages:

1. **Placement**—Physically disposing of cash derived from illegal activity. One way to accomplish this is by depositing criminal proceeds into bank accounts with financial institutions or non-traditional financial institutions such as debit card issuers or payment facilitators.
2. **Layering** – Separating the proceeds of criminal activity from their source through the use of layers of financial transactions. These layers are designed to hamper the audit trail, disguise the origin of funds and provide anonymity. Examples of layering include payments to sham entities, bill payments, or payments unrelated to any genuine business purpose.
3. **Integration** – Placing the laundered proceeds back into the economy in such a way that they re-enter the financial system as apparently legitimate funds. For example, a criminal could pay legitimate creditors with illegal funds.
4. **Use of Funds**- Spending the money on actual goods/services.

Under Canadian law, a money laundering offence involves various acts committed with the intention to conceal or convert property or the proceeds of property (e.g., money), knowing or believing that, or being reckless as to whether these were derived from the commission of a designated offence.

# Definitions

## What is Terrorist Financing?

The techniques used to launder money are essentially the same as those used to conceal the sources of and uses for terrorist financing. Funds used to support terrorism may originate from legitimate sources, criminal activities, or both.

The motivation behind terrorist financing is ideological as opposed to profit-seeking, which is generally the motivation for most crimes associated with money laundering. Terrorism is intended to intimidate a population or to compel a government or an international organization to do or abstain from doing any specific act through the threat of violence. An effective financial infrastructure is critical to terrorist operations. Terrorist groups develop sources of funding that are relatively mobile to ensure that funds can be used to obtain material and other logistical items needed to commit terrorist acts. Money laundering is often a vital component of terrorist financing.

To move their funds, terrorists use the formal banking system, informal value-transfer systems, and the physical transportation of cash, gold and other valuables through smuggling routes.

Terrorists often finance their activities through both unlawful and legitimate sources. Legitimate sources may include the use of charitable or relief funds, foreign government sponsors, business ownership, and personal employment. The potential use of legitimate funding sources (instead of or in addition to "dirty money", i.e. the proceeds of crime, drug trade, fraud, and extortion) to fund terrorism is a key difference between terrorist financing and money laundering.

*FINTRAC Guidance is regularly updated and is available on FINTRAC's [website](website).*

MORTGAGE PROFESSIONALS CANADA

02.

# The Overall Program

# Components of The Program

Aside from assigning an experienced Compliance Officer, Mortgage Professionals must document policies and procedures, keep them up to date, provide training, use various automated solutions and technologies to perform due diligence, monitor activity, and report suspicious activities to FINTRAC.

*KYC: Know your Customer
*PEP: Politically Exposed Person

1. Appoint a Compliance Officer

2. AML/ATF Compliance Program Policies & Procedures

**2.1** *KYC – Customer onboarding

**2.2** *PEP & Sanction Screening

**2.3** Ministerial Assessment

**2.4** Customer Risk Assessment

**2.5** Transaction Monitoring

**2.6** Regulatory Reporting

**2.7** Record Keeping

3. Business Risk Assessment Framework

4. Training and Awareness Program

5. Independent Effectiveness Review

03.

# The Framework

1.

# Appoint a Compliance Officer and Their Responsibilities

1
Designate an official representant as the firm's compliance officer who will manage service providers, banking relationships and regulators, as well as the tasks below:

2
Oversee the implementation of the program review policies and procedures.

3
Assess high-risk areas that warrant attention.

4
Assess resources needed to effectively operate the compliance program.

5
Report to the senior management or the Board on the important compliance decisions and effectiveness of the compliance program.

*More details can be found in section 4.1 of the Policy*

# Roles and Responsibilities

**Compliance Officer**

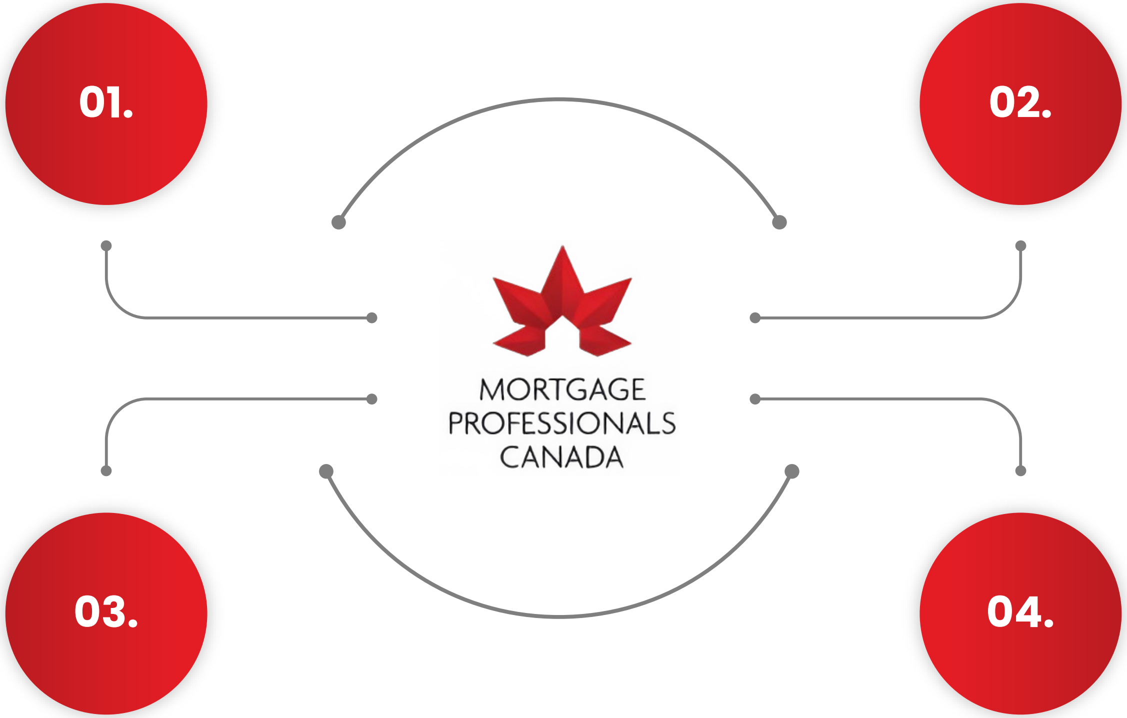
The Mortgage Professional's Senior Management will designate an individual who meets the requirements below as its Compliance Officer for the purpose of the AML Regulations. The designation will be made in writing, and the Mortgage Professional will keep a record of it. The following are the qualities and responsibilities of the Compliance Officer:

- Responsible and accountable for the management and implementation of the Mortgage Professional’s AML Program, as outlined in the Policy.
- Have knowledge of the Mortgage Professional’s business operations, products, customers, and geographic locations, as well as the financial crime risk typologies associated with those activities in Canada and abroad.
- Have expertise in AML and sanctions legislation, as well as a strong understanding of financial crime risk. They should also know the PCMLTFA and its Regulations.
- Possess sufficient authority and resources to implement and manage the Mortgage Professional’s AML Program. The AML Officer will have direct access to Senior Management and will report to Senior Management on the implementation of the AML Program, as outlined above.
- On an ongoing basis, routinely review notices from FINTRAC and other relevant government sources regarding new or amended legislation, regulations, guidance and business practices, and will evaluate the applicability to the operations of the Mortgage Professional while taking appropriate steps to update the Policy and any applicable procedures accordingly.
- Advising the Mortgage Professional’s business units about any material changes in the Mortgage Professional’s obligations under Canadian AML and sanctions legislation, and the impact on the internal processes and controls.

*More details can be found in section 4.1 of the Policy*

2.

# Development and Application of Written Compliance Policies and Procedures




**Step 1**
Draft comprehensive policies and procedures that align with regulatory requirements and operational needs.

**Step 2**
Include sections on risk assessment, KYC practices, reporting transactions and suspicious activities, training and record-keeping.
All components from The Program on page 6.

**Step 3**
Review policies with senior management and obtain approval from a designated Senior Officer or Compliance Officer.

**Step 4:**
Ensure policies are accessible and kept up to date by reviewing them at least annually and adapting to regulatory changes.

*2.4 - 3. Business, relationship and customer risk assessment combined*

# Risk Assessment Framework

Understanding your Risk Exposure and Appetite. FINTRAC calls out assessing business and relationship-based risks. Below are the steps for a business-based risk assessment

**Step 1**

Identifying *ML/TF risk by assessing the following areas: products services and delivery channels, geography, new development and technologies, client and business relationships, and any other relevant factors.

**Step 2**

Once all the inherent risk is documented, a scoring and rationale is required. A low, medium or high level of risk can be identified, depending on the size of the business. High risk elements must have special measures put in place (and these measures must be effective) to help mitigate the risk.

**Step 3**

Set your risk tolerance. Consider regulatory/reputational/legal and financial risk.

**Step 4**

Identify all the effective controls that mitigate the inherent risk or implement ones that will. All high-risk elements must be documented and mitigated

*ML/TF: Money Laundering/Terrorist Financing

*More details can be found in sections 4.2 – 4.4 of the Policy*

*2.4 - 3. Business, relationship and customer risk assessment combined*

# Risk Assessment Framework *cont.*

Understanding your Risk Exposure and Appetite. The risk assessment process continued.

### Step 5

Evaluate the residual risk, which should align with risk tolerance. If the residual risk exceeds risk tolerance, then the mitigation measures should be enhanced.

### Step 6

The *RBA should be implemented as part of daily business practices. Where certain business activities are outside of risk tolerance, even with the mitigation measures in place, the mitigation measure should be either further developed to mitigate the risk, or the activity should not be undertaken.

### Step 7

Your RBA should be updated with your policy and procedures or more frequently if your business model changes.

*RBA: Risk-Based Approach

*More details can be found in sections 4.2 – 4.4 of the Policy*

# 4. AML/ATF Compliance Training Program

**Step 1**

Develop and document a training plan and curriculum that includes every single topic of the Program-(the curriculum is not the plan).

**Step 2**

Schedule initial training for all employees, followed by regular refreshers (at least annually).

**Step 3**

Incorporate real-life scenarios or case studies in training sessions to enhance understanding.

**Step 4**

Track and document employee participation and performance in training for audit purposes.

*More details can be found in section 5.0 of the Policy*

## Required Training Program Components

### 2. AML/ATF Compliance Program Policies & Procedures

- **2.1** KYC – Customer onboarding
- **2.2** PEP & Sanction Screening
- **2.3** Ministerial Assessment
- **2.4** Customer Risk Assessment
- **2.5** Transaction Monitoring
- **2.6** Regulatory Reporting
- **2.7** Record Keeping

### 3. Business Risk Assessment Framework

### 4. Training and Awareness Program

### 5. Independent Effectiveness Review

*5.*

# Two-Year Effectiveness Review

**Step 1**

Establish a timeline for conducting reviews of the AML/ATF compliance program every two years.

**Step 2**

Develop metrics and evaluation criteria to assess the effectiveness of the program.

**Step 3**

Conduct reviews focusing on the ongoing training program, risk assessment, and policies and procedures.

**Step 4**

Document findings and apply necessary enhancements or updates based on review outcomes.

*More details can be found in section 6.0 of the Policy*

04.

# Day To Day Operations


*It is often referred to as "The Onboarding Process"*

*When using a technology service provider for KYC, the other 2 components are usually included in the process.*

*2.1 – 2.2 – 2.3*

# Know Your Client (KYC)/PEP and Sanction Screening / Ministerial Directives

**Step 1**

Develop a KYC policy that outlines customer identification procedures and due diligence processes.

**Step 2**

Implement systems for verifying client identity, assessing risk, and monitoring ongoing business relationships.

**Step 3**

Ensure that the KYC program includes enhanced due diligence for higher-risk clients.

**Step 4**

Politically Exposed Screening (Domestic and Foreign) and Head of International Organization –Implemented during onboarding, periodic screening and when you have detected a fact about an existing business relationship.

*More details can be found in sections 7.4 – 7.9 of  of the Policy*

*You are required to document all findings of this process and maintain files as required by regulations.*

*2.1 – 2.2 - 2.3*

# Continued

**Step 5**

Sanctions screening needs to be conducted at onboarding, as part of ongoing monitoring and on a transactional basis.

**Step 6**

Regularly review ministerial directives and assess their impact on existing compliance policies and practices.

**Step 7**

Ensure that any changes mandated by ministerial directives are incorporated into compliance procedures and processes promptly.

**Different technology service providers can assist with these important steps.*

*More details can be found in sections 7.4 – 7.9 of  of the Policy*

2.5

# Transaction Monitoring and Suspicious Activity

**Step 1**

Establish criteria for monitoring business relationships, including transaction types and thresholds.  Are the transactions consistent with what you know about the client?

**Step 2**

Implement monitoring to flag unusual or suspicious transactions for review.  Procedures should identify red flags.

**Step 3**

Review the ongoing business relationship regularly and update risk assessments as necessary.

**Step 4**

Document all monitoring activities, including rationale/clarifying information, and provided there are reasonable grounds to suspect, report to FINTRAC via “Suspicious Transaction Report” (STR).

**Step 5**

Keep a record of all notes and actions along with the STR.

*Under no circumstances should the potential filing or actual filing of an STR be disclosed to the client.

*More details can be found in section 7.0 of the Policy*

2.6
# Regulatory Reporting Requirements

**Step 1**
Develop policies outlining when and how to report particular transactions, including *STRs, *TPRs, *LCTRs, *LVTRs and Sanction Reports.

**Step 2**
Train relevant staff members on the reporting process for each report type. Include red flags for suspicious transaction reporting and activity in your policy and procedures.

**Step 3**
Include record-keeping requirements on reporting in your procedures, and retain a copy of the report submission to FINTRAC (which should align with what is documented in your procedures)

**Step 4**
FINTRAC/law enforcement may contact you regarding your submissions in relation to your report submissions.

*STR: Suspicious Transaction Report
*TPR: Terrorist Property Report
*LCTR: Large Cash Transaction Report
*LVTR: Large Virtual Transaction Report

*More details can be found in section 7.0 of the Policy*

2.7

# Record-Keeping Requirements

### Step 1

Implement policies to manage records retention according to regulatory requirements.

### Step 2

Ensure that records are maintained for a minimum number of years as specified by laws (**commonly five years**).

### Step 3

Develop secure storage solutions for physical and digital records to prevent unauthorized access.

### Step 4

Regularly review and purge outdated records while ensuring compliance with retention policies.

FINTRAC Links https://fintrac-canafe.canada.ca/re-ed/mortgage-hypotheque-eng#s6

*More details can be found in section 7.4 of the Policy*

## 05. In the News

VANCOUVER | News September 2024

### Richmond business fined $33K for failing to register with anti-money-laundering regulator

https://bc.ctvnews.ca/richmond-business-fined-33k-for-failing-to-register-with-anti-money-laundering-regulator-1.7047462

MONEY

### Anti-money laundering watchdog gives failing grades to banks, real estate companies

By Andrew Russell • Global News
Posted April 11, 2024 8:51 am · Updated April 11, 2024 6:22 pm · 5 min read

https://globalnews.ca/news/10414820/canada-anti-money-laundering-agency-gives-failing-grades-to-banks-real-estate-companies/

VANCOUVER | News July 2024

### Federal anti-money-laundering agency fines West Vancouver real estate firm $83K

https://bc.ctvnews.ca/federal-anti-money-laundering-agency-fines-west-vancouver-real-estate-firm-83k-1.6965883

https://realestatemagazine.ca/the-big-fintrac-mistakes-brokers-need-to-know-about-insights-from-an-expert/

### The big FINTRAC mistakes brokers need to know about: Insights from an expert

February 2024

#### Common mistakes made by brokerages

Klaus pointed out that many brokerages make the mistake of assuming FINTRAC's previous "soft touch" will continue. He says, "Canada's international reputation as a haven of weak enforcement of AML laws has forced regulatory bodies to take action. Unfortunately, a lack of financial resources available to enforcement agencies and regulators because of a decade of underfunding and broken promises by the Liberal Party of Canada means that the burden of enforcement falls upon small businesses."

Real estate, being a prime destination for laundered funds, means brokerages must adapt or change their business models to comply with the increasingly stringent regulations that will only become more challenging in the future.

## 06. Conclusion

Implementing an AML/ATF Compliance Program requires a comprehensive and systematic approach to ensure regulatory compliance and mitigate risks.

By following this guide, Mortgage Professionals can establish a robust compliance framework that safeguards against money laundering and terrorist financing offences.

Regular reviews and updates are essential for maintaining the program's effectiveness and its compliance.

The FINTRAC website is the best resource for the most up-to-date information related to anti-money laundering and anti-terrorist financing in Canada.

https://fintrac-canafe.canada.ca/intro-eng

International Financial Crime Associations that provide certifications and important resources:

https://www.acams.org/en

https://www.acfcs.org/

https://www.acfe.com/