



Office of the
Superintendent
of Real Estate



PRESENTATION TO THE PROVINCE'S EXPERT PANEL ON MONEY LAUNDERING

January 23, 2019

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OVERVIEW

- Office of the Superintendent of Real Estate (OSRE) mandates and authorities
 - *Real Estate Development Marketing Act*
 - *Real Estate Services Act*
- Observed examples of market abuse mechanisms
- Systemic challenges in addressing money laundering in real estate
- OSRE's current role in supporting anti-money laundering in real estate
- OSRE's role in supporting anti-money laundering moving forward



OSRE'S MANDATES AND AUTHORITIES: REDMA

- OSRE is a regulatory agency of the BC government that protects consumers who are buying, selling or renting a home
- Administers and enforces the *Real Estate Development Marketing Act* (REDMA)
 - Receives and reviews disclosure statements
 - Takes enforcement action against developers
 - Enforces new Condo and Strata Assignment Integrity Register (CSAIR) requirements for developers

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- OSRE is a regulatory agency of the BC government that protects consumers who are buying, selling or renting a home
- Administers and enforces the *Real Estate Development Marketing Act* (REDMA)
 - Receives and reviews disclosure statements provided by developers to consumers when marketing multi-unit residential developments in BC to ensure disclosure of material facts and deposit protection
 - OSRE received 2206 filings in 2018 versus 1830 filings in 2017
 - Takes enforcement action against developers who provide inadequate disclosure or mishandle deposits
 - Supports tax compliance and anti-money laundering (AML) by enforcing new Condo and Strata Assignment Integrity Register (CSAIR) requirements for developers, beginning January 1, 2019
 - Because CSAIR is a new program, I'll now provide a bit further context for the condo and strata assignment integrity register and the enforcement role OSRE will play to support the program



OSRE'S MANDATES AND AUTHORITIES: CSAIR

- REDMA amended in 2018 to establish the Condo and Strata Assignment Integrity Register (CSAIR) to track strata assignments
- Property Taxation Branch (PTB) is the designated administrator
- Land Title and Survey Authority (LTSA) will manage the online register
- CSAIR purpose: support tax compliance and inform future housing and tax policy
- OSRE role: ensure that developers comply with their responsibilities under REDMA, including new CSAIR provisions

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- REDMA amended in 2018 to establish the Condo and Strata Assignment Integrity Register (CSAIR) to track strata assignments
- The Property Taxation Branch (PTB) is the designated administrator of the program and the Land Title and Survey Authority (LTSA) will manage the online register
- Developers are now required to include terms and a notice in their contracts to inform buyers of the new collection and reporting requirements; collect information, including the terms of the assignment and the name and social insurance number or business information of the parties to the assignment; and report this information in the online register
- Information in the CSAIR will be shared by the administrator with other agencies to support tax compliance and inform future housing and tax policy
- OSRE will ensure that developers comply with their responsibilities under REDMA, including new CSAIR provisions
 - Developers who fail to accurately report on assignments in a timely way could be subject to significant regulatory action by OSRE, including serious restrictions on their ability to market a development in British Columbia or hearings by the Superintendent to consider penalties up to \$500,000

- OSRE recently implemented new Policy Statement 16, which sets out requirements concerning REDMA disclosure with respect to CSAIR
- 314 disclosure statement amendments filed under REDMA in December 2018 (more than double any other month in 2018) as developers amended disclosure statements to reflect new CSAIR requirements



OSRE'S MANDATES AND AUTHORITIES: RESA

- Exercises specific responsibilities under the *Real Estate Services Act* (RESA) including:
 - Makes rules that govern the conduct of real estate licensees
 - Oversight responsibilities for the Real Estate Council of British Columbia (RECBC)
 - Investigates and disciplines persons who provide real estate services without a licence or exemption under RESA
 - May directly investigate licensees in matters that may be seriously detrimental to the public interest

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- Exercises specific responsibilities under the *Real Estate Services Act* (RESA) including:
 - Makes rules that govern the conduct of real estate licensees (trading services, rental property management, strata management)
 - Further information will be provided later in the presentation about OSRE's recent action with respect to Superintendent Rules for real estate licensees and some potential future Rule consideration
 - Has oversight responsibilities for the Real Estate Council of British Columbia (RECBC), which licenses and disciplines real estate service providers
 - Investigates and disciplines persons who provide real estate services without a licence or exemption under RESA
 - Unlicensed activity makes up a large portion of OSRE's investigative work
 - OSRE receives on average 200 complaints of this nature per year, of which about a quarter lead to potentially significant investigations
 - While RECBC is primarily responsible for investigating real estate licensees, OSRE may directly investigate licensees in matters that may be seriously detrimental to the public interest



EXAMPLES OF MARKET ABUSE MECHANISMS

- Murrayville House and Developer Mark Chandler
 - Developer that double, triple and quadruple-sold individual units
- Vanfun.com and Shangren Vancouver Settlement Services
 - Unlicensed real estate services
- Unlicensed Rental Property Management
 - Large scale subleasing in downtown Vancouver condo building

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Examples of Market Abuse Mechanisms

Murrayville House and Developer Mark Chandler

- 92-unit development in Langley, BC which is subject to a Superintendent of Real Estate urgent order, a court ordered receivership, and an RCMP criminal investigation
- Developer has double, triple and quadruple-sold individual units
 - Developer entered into 151 sale agreements for 92 units, with several individual units pre-sold more than once to multiple unrelated buyers
- The Superintendent previously took regulatory action against Mr. Chandler and his prior development companies in 2006 and 2007
 - REDMA does not require licensing for developers and does not authorize banning or suspending developers
- The Developer has requested a hearing by the Superintendent regarding the urgent order under REDMA
 - REDMA authorizes the Superintendent to hold hearings and issue orders, including financial penalties of up to \$500,000

Vanfun.com and Shangren Vancouver Settlement Services

- OSRE took action against the operators of “vanfun.com,” a Chinese language website marketing BC properties outside Canada
 - The website was operated from mainland China
- Website operators directed persons in BC to engage in unlicensed real estate services (showing properties and advising on real estate in BC) to collect significant commissions
- The Superintendent issued a freeze order against a BC bank account used to collect these commissions and issued a cease and desist order to end the operation of the website
 - The *Real Estate Services Act* allows the Superintendent to take certain actions without a hearing, if it's in the public interest to do so. That includes issuing a freeze order in respect of a particular bank account, where there is a reasonable basis to conclude the account has received money in connection with a potential breach of the *Real Estate Services Act*. It also includes an order to cease and desist activity.”
- OSRE worked closely with RECBC, who disciplined multiple licensees found to have facilitated the unlicensed activity
- The website is now in the control of a local licensed brokerage, preventing unlicensed activity and giving regulators greater control over a business model with a high risk profile (e.g. foreign marketing and foreign buyers)

Unlicensed Property Management

- An unlicensed rental property manager was managing between 35-50 condos in a downtown Vancouver high-rise building
- Tenants were largely international students, subjected to cramped living spaces and sharp practice by the unlicensed manager
- The unlicensed property manager required rent payment exclusively in cash (at least

\$70,000 per month). The unlicensed manager would then deposit the cash monthly in-person to various condo owner bank accounts

- The unlicensed manager had obtained leases to reside in each condo, and was subleasing to tenants
 - For lease or sale by owner activity, including at high volumes or for business purposes, does not require licensing. For this reason, subleasing activity does not require a licence under RESA

Public Interest Immunity



SYSTEMIC CHALLENGES IN ADDRESSING MONEY LAUNDERING IN REAL ESTATE

- Real estate licensees, developers, BC notaries and accountants are required to report suspicious transactions to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC)
 - Lawyers are not required to report these transactions and are also exempt from the requirement to be licensed to provide real estate services in BC
 - Real estate purchase monies commonly are provided through lawyers' trust accounts which are regulated by the Law Society of BC and not by FINTRAC
- Historically no requirements in BC to identify the beneficial owner of real estate

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- Under the federal *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, anti-money laundering provisions cover real estate licensees, developers, BC notaries and accountants and require these entities to report suspicious transactions to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC)
 - Lawyers are not covered by the anti-money laundering provisions of that Act and are also exempt from the requirement to be licensed under RESA to provide real estate services in BC
 - Real estate purchase monies commonly are provided through lawyers' trust accounts which are regulated by the Law Society of BC and not by FINTRAC
- There have historically been no requirements in BC for any person involved in real estate transactions to identify the beneficial owner of real estate



SYSTEMIC CHALLENGES IN ADDRESSING MONEY LAUNDERING IN REAL ESTATE

- Province has proposed to address improved transparency in land ownership through the *Land Owner Transparency Act*
 - Land title registry has data that could be used to identify AML abuses
- Market misconduct related to unlicensed real estate services is an increased risk for money laundering
 - The unregulated rental market may be vulnerable to money laundering
 - The Residential Tenancy Branch has a growing investigative capacity, but its enforcement mandate may not include explicit AML activities

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- Improving transparency in land ownership is a challenge that the Province has proposed to address through the *Land Owner Transparency Act*
 - Data at the land title registry may illuminate AML abuses which may involve builders' liens and opaque ownership
- Market misconduct related to unlicensed real estate services is an increased risk for money laundering
 - For lease or sale by owner activity, including at high volumes or for business purposes, does not require licensing under the *Real Estate Services Act*.
 - In 2016, the Independent Advisory Group (IAG) identified this wholesale unlicensed activity as an opportunity for increased regulation.
 - Unregulated activity is vulnerable to money laundering and other market abuses and may involve high value cash transactions with no FINTRAC reporting requirements
 - As evidenced by the unlicensed subleasing example, the unregulated rental market may be vulnerable to money laundering
 - The Residential Tenancy Branch has a growing investigative capacity, but its enforcement mandate may not include explicit AML activities



SYSTEMIC CHALLENGES IN ADDRESSING MONEY LAUNDERING IN REAL ESTATE

- Commercial developments, single family homes and small strata developments are not regulated under REDMA
 - Development construction and financing may provide opportunities for laundering the proceeds of crime
 - BC Housing licenses residential builders
- Development capital-raising activity in a high cost real estate market may involve exempt or unregulated lending and foreign capital (e.g. accredited investors, subprime lending and Mortgage Investment Corporations [MICs])
 - The BC Securities Commission administers securities legislation
 - The Registrar of Mortgage Brokers at the Financial Institutions Commission registers mortgage brokers and MICs
 - The Canada Revenue Agency has identified BC real estate as an area for increased auditing for tax purposes

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- Commercial developments, single family homes and small strata developments are not regulated under REDMA
 - Development construction and financing may provide opportunities for laundering the proceeds of crime
 - BC Housing licenses residential builders of new homes, but does not have an AML mandate
- Development capital-raising activity in a high cost real estate market may involve exempt or unregulated lending and foreign capital (e.g. accredited investors, subprime lending and Mortgage Investment Corporations [MICs])
 - The BC Securities Commission administers securities legislation
 - The “exempt market,” which includes soliciting investments from wealthy individuals or close associates, operates under exemptions from the requirements under securities law to file a prospectus when issuing securities
 - The Registrar of Mortgage Brokers at the Financial Institutions Commission registers mortgage brokers and MICs
 - When registered MICs offer investments, they do so under the purview of the BC Securities Commission

Public Interest Immunity

Public Interest Immunity

- These regulators apply legislation to deter misconduct and achieve compliance with respect to capital-raising
 - High development costs can increase the risk for developer non-compliance, especially with respect to raising the capital to fund their developments
 - Non-compliant capital-raising in development may present AML risks



SYSTEMIC CHALLENGES IN ADDRESSING MONEY LAUNDERING IN REAL ESTATE

- FINTRAC examinations in the real estate sector address only a small portion of market activity
 - Few enforcement actions in the past 10 years
- OSRE routinely refers matters to the police where it believes a crime may have occurred (e.g. fraud, uttering forged documents, etc.)
 - Police have not routinely pursued these matters
- Historically, the real estate sector has been tolerant of conflicts of interest
 - Transparency International has linked conflicts of interest such as dual agency to unethical conduct in the BC real estate market

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- Despite increases in recent years, the number of FINTRAC examinations in the real estate sector address only a small portion of market activity and there have been few enforcement actions of FINTRAC provisions in the real estate sector (only 12 monetary penalties issued in the past 10 years)
- OSRE routinely refers matters to the police where it believes a crime may have occurred (e.g. fraud, uttering forged documents, etc.). In OSRE's experience, police have not routinely pursued these matters, and the extent to which police have the capacity to pursue AML offences is unclear
- Historically, the real estate sector has been tolerant of conflicts of interest
 - Transparency International has linked conflicts of interest such as dual agency to unethical conduct in the BC real estate market



OSRE'S CURRENT ROLE IN SUPPORTING ANTI-MONEY LAUNDERING IN REAL ESTATE

- OSRE is a consumer protection agency with no explicit AML mandate
 - Money laundering is a crime that is appropriately investigated by the police

- OSRE supports AML activities through engagement with the broader law enforcement and policy community, for example:
 - Subject matter expertise to key government initiatives
 - Work closely with other agencies including law enforcement to conduct joint investigations and make referrals
 - Collaboration with Property Taxation Branch on the proposed *Land Owner Transparency Act* (LOTA) and CSAIR

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- OSRE is a consumer protection agency with no explicit AML mandate; money laundering is a crime that is appropriately investigated by the police

- OSRE supports AML activities through engagement with the broader law enforcement and policy community, for example:
 - Subject matter expertise to key initiatives including: designating an OSRE liaison to the Attorney General's investigation into money laundering in real estate led by Dr. German; and supporting the Ministry of Finance's Expert Panel chaired by Prof. Maloney and *Real Estate Regulatory Structure Review* led by Mr. Perrin
 - Work closely with other agencies to conduct joint investigations and make referrals (RCMP and municipal police, BC Securities Commission, Canada Revenue Agency, Residential Tenancy Branch, Financial Institutions Commission, etc.)
 - OSRE's legislative matrix gives good latitude to share information with other public bodies and law enforcement agencies. OSRE is a law enforcement agency as defined in the *Freedom of Information and Protection of Privacy Act* and is able to share active investigational information with other agencies in both a practical way under that Act, or by way of more formal memoranda of understanding
 - Collaboration with Property Taxation Branch on the proposed *Land Owner Transparency Act* (LOTA) and CSAIR



OSRE'S CURRENT ROLE IN SUPPORTING ANTI-MONEY LAUNDERING IN REAL ESTATE

- OSRE has an expanding investigations unit with a depth of regulatory and criminal law expertise
 - Special Provincial Constables
 - Association of Certified Anti-Money Laundering Specialists (ACAMS) and the International Association of Certified Financial Crimes Investigators (IAFCI) professional designations and membership
- The Superintendent has rule-making authority and has taken steps to address conflicts of interest and increase transparency in real estate transactions
 - First and only Canadian jurisdiction to eliminate dual agency

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- OSRE has an expanding investigations unit with a depth of regulatory and criminal law expertise
 - Special Provincial Constable status (Fall 2018)
 - Association of Certified Anti-Money Laundering Specialists (ACAMS) and the International Association of Certified Financial Crimes Investigators (IAFCI) professional designations and membership
 - Currently recruiting new staff (investigators and a CSAIR analyst)
- The Superintendent has rule-making authority and has taken steps to address conflicts of interest and increase transparency in real estate transactions by introducing new Rules for real estate licensees
 - First and only Canadian jurisdiction to eliminate dual agency, in which a licensee represents both a buyer and seller in the same transaction



OSRE'S ROLE IN SUPPORTING ANTI-MONEY LAUNDERING MOVING FORWARD

- OSRE's mandates are evolving
 - Standalone office since Fall 2016 amendments to RESA
 - Increased investigative capacity
 - CSAIR enforcement
 - Closer collaboration of taxation authorities and law enforcement bodies
- Broader regulatory context is evolving
 - Recommendations from the *Real Estate Regulatory Structure Review* currently being considered by government
 - LOTA contemplated to collect information about beneficial ownership of land in a public registry

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- OSRE's mandates are evolving
 - OSRE has been a standalone office since the 2016 RESA amendments conferred enhanced oversight of Real Estate Council operations and transferred rule-making authority to the Superintendent
 - New designation as a Special Provincial Constable agency and an increased investigative capacity
 - CSAIR enforcement and closer support of taxation authorities and law enforcement bodies
- Broader regulatory context is evolving
 - Recommendations from the *Real Estate Regulatory Structure Review* currently being considered by government
 - LOTA contemplated to collect information about beneficial ownership of land in a public registry



OSRE'S ROLE IN SUPPORTING ANTI-MONEY LAUNDERING MOVING FORWARD

- Multi-agency collaboration is required to provide an effective AML response
 - Money laundering is a crime and is the primary jurisdiction of the police
 - OSRE is well-positioned to work closely with other agencies including law enforcement to support deterrence and enforcement
- Superintendent could consider explicit Rules for real estate licensees in respect of complying with FINTRAC and AML requirements
 - RESA provisions already prohibit conduct unbecoming a licensee
 - An explicit Superintendent Rule could demonstrate licensees will be held to a high standard concerning their compliance with AML requirements

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- Multi-agency collaboration is required to provide an effective AML response
 - Money laundering is a crime and is the primary jurisdiction of the police
 - However, with increased investigative capacity, OSRE is well-positioned to work closely with tax authorities and other regulators, police and other law enforcement bodies to support deterrence and enforcement in this area
- Superintendent could consider explicit Rules for real estate licensees in respect of complying with FINTRAC and AML requirements
 - While RESA provisions already prohibit conduct unbecoming a licensee, an explicit Superintendent Rule could demonstrate to industry and the public that licensees will be held to a high standard concerning their compliance with FINTRAC and AML requirements



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