

FICA GUIDE

Background

The Financial Intelligence Centre Act (hereinafter referred to as "FICA") was passed by Parliament in December 2001 and is being promulgated in a phased approach. FICA effectively establishes a partnership between the private and the public sector to assist in the identification of proceeds of unlawful activities thereby combating money laundering activities. In terms of FICA, the Money Laundering Advisory Council and Financial Intelligence Centre (hereinafter referred to as "FIC") were established.

Who is affected?

All accountable institutions including estate agents, attorneys, banks, insurance companies.

What is money laundering?

Money laundering is the process of manipulating the proceeds of crime in order to conceal the nature of its true source. Money that started out dirty will end up clean and any act in connection with any proceeds of crime, whether it is in the form of money or property or any other form can constitute a laundering offence.

Estate agents' duties under FICA FICA imposes the following four categories of duties on estate agents:-

1. The duty to establish and verify the identity of clients, commonly referred to as the "know-your-client-requirement"
 - An estate agent may not establish a business relationship with a client unless the estate agent has taken the prescribed steps to establish and verify the identity of the client.
 - The client will be the person who has given an estate agent a mandate.
 - We believe that it is important to get as much information as possible at the mandate stage and inform the client as to what documentation is required.
 - The client's identity must then be verified before the mandate is performed.

2. The duty to report suspicious transactions to FIC
 - An automatic reporting duty relating to cash transactions and electronic transfers of money to or from the Republic in excess of the prescribed amount (not yet implemented).
 - Reporting of suspicious or unusual transactions. This means the business believes it has received or is about to receive the proceeds of unlawful activities.

- Reporting of evasion or attempted evasion of a duty to pay a tax, duty or levy imposed by SARS.
- Reporting that a business has been or is about to be used in any way for money laundering purposes.

3. Submitting of report

- Electronically on the FIC website at www.fic.gov.za;
- Fax to FIC at (012) 315-5828; or
- Delivered to FIC at their offices in Pretoria at 14th Floor, 240 Vermeulen Street, Pretoria.

A report has to be submitted as soon as possible, but not later than 15 working days after the suspicion arose.

4. Internal Administrative Duties

- A duty to keep record of client's transactions for a period of 5 (five) years.
- A duty to formulate and implement internal rules to ensure compliance with the act.
- Duty to train staff.
- Duty to appoint a compliance officer to monitor compliance with the act.

In regards to point 1 to 4 above, your company will in most cases take care of the administrative duties as set out above.

Tipping Off

Tipping off is a serious offence and you might be prosecuted. As a result, no tipping off is allowed.

Penalties for non-compliance

Imprisonment for a period not exceeding 15 years or to a fine not exceeding ten million rand.

General guidelines to consider

1. Suspicion must be based on facts.
2. No suspicion arises merely by reason of a person's race, creed, nationality, sexual orientation, gender or beliefs.
3. A transaction can be suspicious regardless of the amount involved, but cash may or may not be suspicious depending on the amount, type of transaction involved and surrounding circumstances.

4. An estate agent is required to make a reasonable evaluation of all relevant facts and circumstances and is not to view every client and customer suspiciously.
5. A transaction can be assumed to be above board unless there are circumstances warranting an estate agent to reasonably believe otherwise.

Suspicion arises in our opinion if:-

1. An estate agent receives a large amount in trust from a third party on the pretense that the money is to be used for property investment purposes and the purchaser then asks for the money to be released on the basis that he does not wish to proceed with the purchase of the property.
2. A large deposit on a sale transaction is paid by an unidentified third party.
3. A purchaser buys a property without inspecting the same.
4. The true purchase price of a transaction is not disclosed and the parties wish to exchange part of the purchase price without disclosing the same in the agreement.
5. The name of the buyers change just before the transaction is closed.
6. A buyer insists that the property be registered in a party's name other than his spouse.
7. An estate agent is asked to deposit money in his trust account and to issue a trust cheque in return for a commission or a fee.
8. An estate agent is asked by a seller to overstate the value of a property as at October 2001 in order to evade payment of Capital Gains Tax.
9. The parties wish to split the purchase price between the property and movables and such split is unrealistic.
10. If an estate agent is asked to attend to a transaction where the money is deposited into an overseas account.

Hints on reporting

Continue with the transaction and continue to provide the same level of service that you usually would. Treat all clients with courtesy even if they refuse to answer your questions. Do not tip off and proceed to report the suspicious transaction in the prescribed manner.

The above should be seen as very brief comments on FICA and our interpretation thereof and should not be seen as an extensive guideline.