

**aml**

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**From:** [REDACTED]@bayleys.co.nz>  
**Sent:** Thursday, 9 December 2021 3:58 pm  
**To:** aml  
**Subject:** AML Review

Hi, I have only just today come across this review process.  
Hopefully you will take this email into consideration for the review of the AML/CFT.  
I would be happy to speak to anyone on the review committee about my views.

12 months ago I emailed Carolyn Tremain at MBIE about my concerns with the AML process of our vendors only as it relates to Real Estate Agents. See a copy of this email below;  
There was no resolution to my email. I was merely told to live with the new laws!

In summary we have now been operating for 2 years with the AML legislation.  
All property transactions in NZ must be on a paper agreement, signed and dated, and must go through a lawyer. This is different to many other countries.  
In order for money to be laundered, a transaction must occur. This is a given. Activity around the transaction does not enable money to be laundered. Only the transaction makes this happen.  
So how does a transaction occur in the real estate industry in NZ.

#### DEPOSIT

Once an agreement is signed and dated, a deposit is paid into a trust account. This can be the real estate agents trust account or the vendors solicitors account. This deposit must be held for 10 working days before it can be released. Unless an early release is authorised by both lawyers. Again both lawyers have completed AML checks on their clients.

If the agreement is subsequently cancelled, the deposit is refunded. Assuming the deposit is in the real estate trust account, the deposit can now only be transferred to the lawyer for the purchaser trust account.

The lawyer has already completed AML review on their clients and charged them for this process. The deposit money has not gone to the vendors account at this stage.

No laundering has occurred. Secondly deposits over the value of \$10,000 are triggered at the bank, causing a review of the money trail.

Banks also complete an AML due diligence on their clients.

This cancellation of the deposit process, through a real estate agent has not lead to money laundering, nor can it. Even if the money went to a different account, ie not to the lawyers trust account, due to a processing issue at the real estate agents office, then the bank would pick it up.

Cancellation and refund of deposits are a rare issue in my experience.

A process could be established to enable a report to be provided showing all deposit refunds, and the bank accounts that were used. Even better the bank accounts that weren't the purchasers lawyers account, or were different than the account the deposit money came from.

#### SETTLEMENT

Once an agreement is unconditional and the settlement date occurs, no money goes via the real estate agent. The money is handled entirely by the lawyers.

As the settlement money does not go via the real estate agent, no money laundering can occur.

Again the bank is involved as the transaction is over \$10,000.

Marketing fees.

The only other transaction between a Real Estate agency and a Vendor is marketing fees. These are typically below \$10,000. So not significant

AML compliance on the ground in a Real Estate office.

Every listing must be checked for AML before it can be listed. This involves obtaining proof of ID from all individuals associated with the property owner, be it trusts, companies and beneficiaries. Proof of address and statements on sources of wealth and how the property that is being sold was obtained. This process can happen in one day when the ownership is simple, or up to 3 months in one of my listings.

This is very personal information, which has already been collected by a lawyer. Some agents are not comfortable asking for this kind of information.

The review of the AML process should suggest that in order to make the AML process more efficient for the Real Estate Industry, to include a step in the listing process, that required the vendor's lawyer to provide a statement that AML has been completed satisfactorily on their client. The Real Estate agency could then be removed from the AML checking process completely.

This would save my office at least 1.5 fulltime equivalent persons. And at least 3 people in our head office.

Im not sure what the cost in terms of missed listing opportunities due to clients being overcome by the AML process, but in 12months it could be over \$100,000 in lost commissions per office.

To continue to do the same process for the Real Estate Industry is a waste of time and money for no real return. Banks and Lawyers have this covered the AML checks already.

All the agents are doing is updating records for the government, for free.

The AML checks should be where the money laundering can occur, ie the bank and or lawyer not the Real Estate agent.

Yours faithfully



Email from 2020

Hi Carolyn, My name is  and I work for Bayleys Mangawhai.

We have been working under the current Anti Money Laundering (AML) legislation for the past 12 months.

I understand the intention of the act, and the obvious opportunity to launder money, when you have a large dollar value transactions such as property.

Most Real Estate agencies have diligently gone about setting up systems and process to comply with the legislation. Including documented processes to help comply with auditing.

My admin team in Mangawhai now has a full time person who works solely on AML, together with a head office person. There are 3 other people involved part time in the process.

This added expense to the Real estate industry must be significant. My own business has been affected with listings being delayed due to drawn out AML processes, staff wages to ensure the listing gets processed correctly, and listing renewals which need to go back through AML.

All of this could be justified if I could see that the person who wanted to launder money through a property transaction would be caught by my office, adhering to the AML legislation.

But I cannot see how this would happen in New Zealand.

- 1) All property transactions must be processed through a lawyer. Lawyers must have their clients processed through the AML due diligence.
- 2) Listing a property, does not involve a monetary transaction.
- 3) Paying for advertising a property, could pose a risk of a person laundering money. But most vendor paid marketing is less than \$10,000 which is not the larger dollar figure that the AML legislation was hoping to catch when it targeted the Real Estate industry.
- 4) Deposits are an area where you could previously launder money. However this loop hole has now been closed as we cannot refund a deposit to the person or entity that paid the money to us. We must refund the money to the purchasers lawyer. This lawyer must do AML due diligence on their client.
- 5) Banks also trigger AML if a large transaction appears.

When discussing the matter with colleagues and lawyers, no body has any idea as to why this cost has been put upon the real estate industry.

“The law is the law, and we must comply or risk being fined.”

Lawyers get paid for AML due diligence, the Real Estate industry does not.

I hope this letter can start a review of the AML legislation to exclude real estate agencies from having to process AML due diligence. Hopefully you can see that it is in large part a cost which eventually gets either passed on to the clients, or absorbed by the agents. Secondly is covered by legislation already in place. Thirdly the only value we are providing is to update already existing AML checks, completed by lawyers.

Merry Christmas and a Happy New Year.

Regards,



Regards,



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