

ANTI-MONEY LAUNDERING PROGRAM

Federal, New York State and even some local laws prohibit money laundering. Regulators require that businesses adopt an anti-money laundering policy that requires the business to take affirmative steps to identify the source of money being used to purchase homes, land, equipment etc., and to make sure that the source of funds is a legal source. Failure to have adopted a policy (and enforcing it) may be one of the factors considered in the determination of how long a prison sentence or how high a fine may be imposed for violations of these laws.

What is money laundering?

Under Article 470 of the New York State Penal Law, money laundering is engaging in business transactions knowingly involving the use of the proceeds of criminal conduct, or concealing or disguising the fact that criminal proceeds are involved in the transaction or avoiding any transaction reporting requirement, or are represented to be property used to conduct or facilitate specified criminal conduct, with intent to:

- (i) promote the carrying on of specified criminal conduct; or
- (ii) conceal or disguise the nature, the location, the source, the ownership or the control of property believed to be the proceeds of specified criminal conduct; or
- (iii) avoid any transaction reporting requirement imposed by law.

The potential penalties are higher if the underlying criminal activity involved controlled substances, or if the amount exceeds \$100,000 or \$500,000. The penalties are further increased if the underlying crime involves terrorism.

Article 470 covers the activities of:

- Banks and credit unions
- broker or dealers
- an issuer, redeemer, or cashier of travelers' checks, checks, money orders, or similar instruments;
- Operators of credit card systems;
- an insurance company;
- a dealer in precious metals, stones, or jewels;
- a pawnbroker;
- **a loan or finance company;**
- **persons involved in real estate closings and settlements;**
- a travel agency;
- a person licensed to engage in the business of receiving money for transmission or transmitting the same by whatever means, or any other person engaged in such business as an agent of a licensee or engaged in such business without a license;
- a telegraph company;
- a business engaged in vehicle sales, including automobile, airplane and boat sales;
- persons involved in real estate closings and settlements.....
- any business or agency engaged in any activity which the superintendent of financial services or the United States Secretary of the Treasury determines, by regulation, to be an

- activity which is similar to, related to, or a substitute for activity which any business as described [above] is authorized to engage;
- and others

Violations of the New York State money laundering laws are punishable as a felony that can result in jail time ranging from up to 4 years, for the lowest level felony, up to 25 years for the most serious offenses. In addition to jail time, the court may impose “a fine not in excess of two times the value of the monetary instruments which are the proceeds of specified criminal activity.” NY Penal Law, Sec. 470.25

Your company’s anti-money laundering policy should be crafted to reflect your business activities. If you do not currently have such a policy, you are urged to contact your legal counsel as soon as possible to draft a policy applicable to your business.