

## **THE RISKS OF A NOTARY WHEN THE IDENTITY OF THE LAND TRANSACTIONS: ACCENTS FINANCIAL MONITORING**

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*The role of the notary as an entity of initial financial monitoring during operations with the earth. The risks are considered notary for certification of real estate transactions in the context of financial monitoring. Suggestions to reduce the risk of a notary in this activity.*

***Land, notary, financial monitoring, laundering, the State  
Financial Monitoring Service of Ukraine (the SFMS of Ukraine).***

The notarialness is one of the most effective institutes of the legal providing in relation to defence, guard of rights and interests of physical and legal persons, and since the acceptance of the second release of Law of Ukraine «On Prevention and Counteraction to Legalization (Laundering) of the Proceeds of Crime or Terrorist Financing» very much attention is spared to the questions of organization and realization of the financial monitoring by notaries.

Exactly with this Law a notary got status of specially designated reporting entities of the initial financial monitoring and began to execute certain obligations in the field of a fight against money laundering and financing of terrorism.

The study of notarial aspects of the financial monitoring was conducted considerable number of scientists, including Berlach A.I.,

Biryukova G.M., Drana I.V., Kovalchuk A.T., Chizmar K.I. However, there are some unexplored questions about the role of the notary exactly during carrying out transactions with land and associated risks in the sphere of preventing and counteraction money laundering.

The purpose of this article is to demonstrate the role of the notary as an entity of initial financial monitoring during operations with the land, the risk analysis of a notary for certification of real estate transactions in the context of financial monitoring, as well as providing suggestions for reducing these risks.

It risks the notary to be used for legalization (laundering) of the proceeds of crime, became the root cause for the involvement of these entities in the system to counteract this phenomenon.

This happened back in 2003 year, when in Berlin (Germany) was updated 40 FATF Recommendations and accepted their new version.

It's been a long time (about seven years) until this international standard has been implemented in the legislation of Ukraine. As mentioned previously, this happened in 2010 year with the adoption of the new edition of the Law of Ukraine «On Prevention and Counteraction to Legalization (Laundering) of the Proceeds of Crime or Terrorist Financing».

The law on prevention, as well as international standards, clearly defines the cases in which notaries perform the duties of the entity of initial financial monitoring, in particular if they participate in the preparation and implementation of transactions on purchase and sale of real estate and sale of legal entities [corporate rights] (part 1 of article 8 of the Law).

The main focus of the notary's financial monitoring falls on transactions of sale of real estate (land plots).

Fraud in real estate are becoming more widespread. Criminals launder money through operations on purchase and sale of real estate, invest in housing construction, unlawfully obtain property, etc.

Typology of legalization (laundering) of the proceeds of crime through the real estate market approved by the State Financial Monitoring Service of Ukraine.

It is important to assess the risks, when the notary conducts the financial monitoring. While the risk assessment is carried out according to the relevant criteria, in particular by customer type, geographical location of the country of registration of the client or agency through which he carries out transfer (reception) assets, and the type of goods and services.

The most common risk criteria on which attention should be paid to the notary for certification of transactions of purchase and sale of land are the following:

- the client is a public exposed person or an associated person;
- the client has a structure which makes it difficult to identify the true owner or beneficiary;
- the client is a foreign company, controlled and administered by attorney.
- operations with real estate below market rates;
- the client attempts to perform operations with immovable property has been seized.

Among the above risk criteria special attention deserves the criterion of «operations with real estate below market price» as the most frequently used in practice.

Reducing the risks of a notary in the conducting of financial monitoring requires not only know the proper use and risk criteria, but also the improvement of legislation in this sphere.

It is reasonable definition in the regulations the term «suspicion», the strengthening of the criteria for its appearance, changing approaches to internal financial monitoring (in particular the abolition of the standards, the presentation of information in the State Financial Monitoring Service of Ukraine (the SFMS of Ukraine) is carried out by a notary public if the

transaction amount is equal to or more than 400 000 UAH or equals or exceeds the amount of foreign currency equivalent to 400 000 UAH).

The above shows that notaries can be used by criminals in their schemes, because they play a central role in the conducting of operations on the real estate market. They are attracted, within functions, for placement and prevent the detection of other participants in the system of combating money laundering signs crimes.

Thus, the value of notaries in identifying illegal activity on the land market is essential.