

CAPITOL♦TITLE

NEW FTC MORTGAGE INFORMATION RULE AFFECTS BROKERS AND AGENTS

(effective August 19, 2011)

The Federal Trade Commission (“FTC”) recently enacted the Mortgage Acts and Practices – Advertising Rule (“MAP”) which went into effect on August 19, 2011 and which applies to, among others, real estate brokers and agents that provide mortgage information to consumers, such as providing a purchaser or prospective purchaser with a lender’s rate sheet. **The rule prohibits the broker or agent from misrepresenting any aspect of the mortgage information which has been provided and imposes recordkeeping requirements.**

PROVISION OF MORTGAGE INFORMATION AND DISCLAIMER

Although the rule does not require any specific disclosure to the consumer receiving the information, based on the FTC commentary relating to the rule the National Association of Realtors (“NAR”) has recommended that “real estate professionals always include a disclaimer when providing information to consumers about the terms of a mortgage credit product, as a properly drafted disclaimer can protect against later misrepresentation claims”, and NAR provided the following “model” disclaimer:

“This communication is provided to you for information purposes only and should not be relied upon by you. [Name of brokerage] is not a mortgage lender and you should contact [entity providing mortgage product(s) identified] directly to learn more about its mortgage products and your eligibility for such products.”

NAR suggests that the disclaimer be provided in text at least as large as the text in the body of the mortgage information document provided to the consumer and placed in a location so it is “readily apparent to the consumer receiving the mortgage information.”

RECORDKEEPING REQUIREMENTS

The rule also requires that the following documents be kept “for a period of twenty-four months from the last date the person made or disseminated the applicable commercial communication regarding any term of any mortgage credit product”:

“...for a period of twenty-four months from the last date the person made or disseminated the applicable commercial communication regarding any term of any mortgage credit product, the following evidence of compliance with this part:

(1) Copies of all materially different commercial communications as well as sales scripts, training materials, and marketing materials, regarding any term of any mortgage credit product, that the person made or disseminated during the relevant time period;

(2) Documents describing or evidencing all mortgage credit products available to consumers during the time period in which the person made or disseminated each commercial communication regarding any term of any mortgage credit product, including but not limited to the names and terms of each such mortgage credit product available to consumers; and

(3) Documents describing or evidencing all additional products or services (such as credit insurance or credit disability insurance) that are or may be offered or provided with the mortgage credit products available to consumers during the time period in which the person made or disseminated each commercial communication regarding any term of any mortgage credit product, including but not limited to the names and terms of each such additional product or service available to consumers.”

16 C.F.R. §321.5

To read the entire MAP rule, go to:

<http://www.ftc.gov/os/fedreg/2011/07/110719mortgagead-finalrule.pdf>

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