

# CAPITOL ♦ TITLE

## FTC Mortgage Assistance Relief Services (MARS) Rule Impacts Many Real Estate Professionals

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On January 31, 2011 the FTC's Mortgage Assistance Relief Services (MARS) Rule (the, "Rule") took effect. The Rule is designed to protect financially distressed homeowners from mortgage relief scams that have sprung up during the mortgage and financial crisis. The Rule has significant implications for and imposes certain requirements on real estate professionals who fall within the scope of its application. This bulletin will summarize key points of the Rule and its impact on real estate professionals.

### Am I covered by the Rule?

The Rule defines "mortgage assistance relief service" as a service, plan or program that is represented, expressly or by implication, to help homeowners prevent or postpone foreclosure or help them get other kinds of relief, such as loan modifications, forbearance agreements, short sales, deeds-in-lieu of foreclosure, or extensions of time to cure defaults or reinstate loans. **The rule covers mortgage brokers who promote loan origination or refinancing transactions as a way for homeowners to prevent foreclosure and real estate brokers and agents who promote their services as a way to avoid foreclosure (e. g. by getting a lender's approval for a short sale).**

Even if you don't provide "mortgage assistance relief services" you may still have obligations under the Rule if you provide "substantial assistance" to a provider which you know is violating the Rule. For example, if you are providing leads to MARS providers or assisting a MARS provider with its back-room operations, you can become liable if you ignore the fact that the MARS provider is not complying with the Rule.

### What restrictions are there on how I advertise and charge for my services?

Under the Rule, it's illegal to misrepresent any "material aspect" of your services, including any information that would reasonably affect a consumer's decision to use your services, such as the likelihood of arranging or the time it will take to arrange a specific form of mortgage relief or the amount homeowners may save if they use your services. If you make claims about the benefits and performance of your services, the statements must be truthful and you must have competent and reliable evidence to back them up. The Rule also makes it illegal to tell a customer or potential customer to stop communicating with their lender or servicer.

Under the Rule, it is also illegal to collect any fee from a customer until (i) your customer's lender has made an offer of mortgage relief; (ii) you've given your customer the written offer of mortgage relief; and (iii) your customer has accepted the written offer.

### **What information must I disclose to customers or prospective customers?\***

The Rule sets out several important pieces of information that must be disclosed "clearly and prominently" (the Rule provide details on how to make sure your disclosures are clear and prominent) to consumers, utilizing specific words or documents set forth in the Rule. The disclosures are separated into three categories:

- 1) Disclosures that must be provided in ads meant for a general audience;
- 2) Disclosures that must be provided in "consumer-specific consumer communications" (i. e. a letter, phone call, email, text or other communication directed to a specific person you're soliciting for your service
- 3) Disclosure that you must make when you give customers an offer of mortgage relief from their lender or servicer

\*(at the end of this bulletin we will provide you with a link to the FTC publications that provide specifics on the disclosures that must be provided in each of the categories listed above)

### **Does the Rule have record-keeping requirements?**

The Rule requires you to keep the following records for at least two years from the date the following documents are created, generated or received:

- 1) Advertising and promotional materials (including copies of each substantially different advertisement, brochure, website, or other material related to the advertising of your service)
- 2) Sales records (including the contact information for each of your customers, the services which for which they paid you and how much they paid you. You do not need to retain records (under the Rule) relating to people who asked you about your services but did not retain you.
- 3) Communications with customers (that occurred both before and after they agreed to use your service)
- 4) Agreements with customers

### **What are the penalties for non-compliance?**

The penalties for non-compliance include civil (monetary) penalties of to \$16,000 per occurrence, and gives rise to the potential for other, state or private civil actions and relief (e. g. injunctions, disgorgement of unlawful gain, etc.).

### **Where can I get more detailed information on the Rule and its specific requirements?**

This bulletin is intended as a summary of some of the most significant aspects of the Rule.

More detailed information on the Rule, including the specific disclosure requirements (and wording) that apply if you are covered by the Rule, can be found at:

[http://www.ftc.gov/opa/2011/02/pdf/110210mars\\_business.pdf](http://www.ftc.gov/opa/2011/02/pdf/110210mars_business.pdf)

The full text of the final Rule can be found at:

<http://www.ftc.gov/os/fedreg/2010/december/R911003mars.pdf>

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