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Mortgages and MARS

By: Gary A. Kahle
May 2011



With so many homeowners “upside down” on their mortgages, the marketplace has become replete with companies and individuals offering assistance in exchange for upfront fees and often providing little in return. Many of the companies falsely pretend to be affiliated with the government. In an effort to protect consumers from unfair and deceptive practices, the Federal Trade Commission has issued a rule regulating providers of mortgage assistance relief services (MARS).

The Rule defines MARS as any service provided to a consumer in exchange for consideration that is represented as aiding the consumer in modifying a mortgage, stopping or preventing foreclosure, negotiating forbearance or repayment agreements, deeds-in-lieu of foreclosure, short sales, or other types of relief to avoid a delinquency or foreclosure.

The Rule applies to residential mortgages, including second homes and rentals, but does not apply to commercial properties.

Under the Rule, MARS providers must disclose that they are not affiliated with the government, may not collect a fee in advance for their services and are entitled to payment only if they are successful in obtaining relief accepted by the mortgagor. In a “short sale” context, a fee may be collected only after the seller signs an agreement with the lender.

The Rule prohibits false or misleading claims, requires that additional written disclosures be provided to the consumer regarding the services to be rendered by the MARS provider, permits the consumer to cancel the services at any time, and requires the MARS provider to maintain detailed records of each transaction.

Lenders, their servicers, and attorneys who provide MARS as part of their practice are exempted from the Rule; provided that attorneys must place advance fees in a client trust account.

The Rule applies to real estate licensees who negotiate a short sale with a lender or servicer on behalf of a seller and to real estate licensees who represent to consumers through advertisement or otherwise that they are engaged in the business of assisting consumers in negotiating short sales. The Rule also would apply to real estate licensees who refer consumers to MARS providers since the referral may be construed as arranging a short sale. If the



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Rule is applicable, then the disclosures, record keeping, and other compliance requirements of the Rule must be met by the real estate licensee.

Before signing up for help with a mortgage on Earth, be sure to ask about MARS.

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