

MARS Q & A WHEN MARS DISCLOSURE IS REQUIRED



As explained in Richelle's legal article this month, there is yet another disclosure about which Realtors® need to be concerned. With the abundance of short sale transactions in today's market, it is very likely many of you will need to determine, in each transaction you have, whether you need to provide the MARS disclosure(s) and when it should be provided. Accordingly, here are my anticipated most frequently asked questions on the legal hotline in the coming months.

Q Where did MARS come from and why?

A The Federal Trade Commission (FTC) issued the Mortgage Assistance Relief Services rule (MARS) as a protection – mainly from companies offering loan modification services (i.e. foreclosure rescue companies that charge up-front fees to the homeowner and provide little or no assistance). The rule prohibits any MARS service provider from accepting up-front fees and providers can only receive payment if the consumer's loan is modified by the lender.

Q If a real estate agent is not a foreclosure rescue company, then why do real estate agents have to provide the disclosure(s)?

A During the drafting of the rule, the National Association of REALTORS® (NAR) requested that the FTC specifically exclude real estate agents from the requirements of the rule. The Commission concluded that an exemption for real estate agents was not necessary. However, since real estate agents were not specifically exempted from the rule and because the Rule defines a 'Mortgage Assistance Relief Service Provider' as someone who "provides, offers to provide, or arranges to provide, any mortgage assistance relief service," real estate agents and brokers could fall under that definition and therefore, may be required to provide the disclosure to their clients.

Q According to the MARS rule, when would a real estate agent be required to provide the necessary disclosures to his/her client?

A Depending on certain factors, the rule may require real estate professionals to make certain disclosures to consumers if they negotiate a short sale with a lender, advertise short sale experience, or receive a short sale approval letter from a lender. The timing of the disclosure and which disclosure is required will depend upon the facts and circumstances of the agent's business and whether the agent has conducted the negotiations.



1.800.444.5472

A real estate professional who advertises MARS services in general (i.e. not directed at a specific consumer), will need to provide a disclosure in all advertisements. This is the General Commercial Communication disclosure. [Click here for a link to the IAR sample disclosure.](#)

The Consumer Specific Commercial disclosure is required when an agent promotes himself/herself as a short sale specialist, or regularly represents short sale clients. This disclosure must be provided before the agent begins any mortgage-assistance services on behalf of the consumer. The timing of the disclosure requirement will vary depending upon when the agent becomes aware that the transaction may be a short sale. A listing broker must provide this disclosure to the client in a letter or memo once he or she learns the transaction may be a short sale. [Click here for a link to the IAR sample disclosure.](#)

The final disclosures need to be provided at the time the real estate professional presents its client with the lender's short sale approval letter. It also must be provided on a separate page. [Click here for a link to the IAR sample disclosures.](#)



Q Are there any format requirements for the disclosure(s)?

A Yes. The disclosure must be clear and prominent. For printed material the written disclosure must be the larger of 12-point type or one-half the size of the largest letter used to list the name of the firm providing the disclosure.

The following examples have been provided by the National Association of REALTORS® (NAR) in order to help real estate agents and brokers determine if and when disclosure would be required.

Example #1: Real estate broker A has a residential real estate brokerage business and is paid by commission. He does not advertise as a MARS provider. A takes a listing from a seller, but the property does not sell during the first six months and prices in the local market have dropped during that time. A then receives an offer that is substantially below the listing price, but consistent with the recent sales in the market. The seller informs A that his mortgage exceeds the offer price but the seller will accept the offer if the lender would be willing to accept the offered price. If A decides to continue working with his client during the short sale and will negotiate with the lender or will arrange for a MARS provider to negotiate with the lender, A should now make the Consumer-Specific Commercial Communications disclosure and may also need to update the listing in his local MLS.

Example #2: Real estate salesperson B has a prospect walk into her office, inquiring about possibly selling his home. The prospect tells B that he has lost his job and so needs to sell his home because he cannot afford to continue making mortgage payments. Based on the amount remaining on his loan and current market conditions, B may need a short sale in order to sell his home. B will need to provide the client with the Consumer-Specific Commercial Communications if she decides to pursue this listing.



Please remember that the Legal Hotline is available to assist principal or managing brokers and their designated agents between the hours of 9 a.m. and 5 p.m., Monday through Friday. Please call 1(800)- 444-5472 or you may e-mail your question to legalhotline@indianarealtors.com. □

