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## **Frequently Asked Questions on MARS**

Many Realtors are quickly becoming accustomed to working in the new world of MARS disclosures for soliciting and listing short sale listings. In addition to disclosure requirements, there are some internal company policy issues that Realtors must comply with under the new FTC rules. Specifically, all “MARS providers” are required to ensure their companies and independent contractors are educated on the MARS rules, and have an internal policy on how to handle any complaints. The following Q&As further expand upon the MARS rules:

### **Why do sales associates and brokers fall under the MARS rules?**

The definition of MARS activity under the rule includes negotiating, obtaining and arranging a short sale, and applies to real estate licensees who negotiate a short sale with a lender or servicer on behalf of a consumer on a loan secured by a dwelling or residence. It also applies to real estate licensees who represent to consumers (through advertisements and other means) that they are engaged in the business of assisting consumers in avoiding foreclosure by negotiating a short sale with a lender. Finally, the rule would be applicable to licensees *who refer* consumers to a MARS provider for short sale negotiation services, since such referral itself could be construed as arranging a short sale.

### **As a broker who lists short sale property, what compliance requirements do I have under the new FTC rules in terms of internal policies?**

Providers are required to take reasonable steps to monitor and ensure that all employees and independent contractors comply with the rule including:

- providing consumers with certain disclosures;
- random recording and testing;
- establishing a procedure for receiving and responding to complaints;
- investigating consumer complaints promptly and fully taking corrective action to comply;
- retention of any information to demonstrate the MARS provider’s compliance with the requirements of the rule (See sample office policy); and
- providing consumers with certain disclosures.

### **What are the various disclosures that providers need to make to consumers to comply with the regulations?**

There are three (3) separate disclosures that need to be made including the:

1. General Commercial Communications Disclosure\*
2. Consumer-Specific Commercial Communications Disclosure\*
3. Disclosures When Providing an Offer of Mortgage Relief\*

\* available on [FloridaRealtors.org](http://FloridaRealtors.org) (click on Legal Center)

## **What triggers the need to make each of these disclosures?**

The General Commercial Communications Disclosure is required when the MARS provider *in any way advertises* MARS services which is not directed at a specific consumer (including any written material, radio, TV Internet, phone, etc.).

The Consumer-Specific Commercial Communications Disclosure is consumer specific and must be made *at the time that the consumer enters into an agreement for MARS*. ***Please note: in the event you are not the entity or individual who actually negotiates the short sale but you REFER a consumer to either a negotiator or an attorney for services you still MUST make this disclosure.*** (Example: You are the listing broker for a short sale and you immediately refer the seller to an attorney who will handle the entire short sale negotiation for them, you still must provide this disclosure at the time you refer the seller to this attorney.)

The third disclosure (Part I and Part II) applies to when the lender provides an offer of mortgage relief (i.e. short sale approval letter) to the seller. It is to be given to the seller/consumer when the lender gives the seller/consumer the short sale approval letter incorporating the offer of mortgage assistance relief. (The rule prohibits the MARS provider from collecting a fee until the consumer executes such written agreement with the loan holder.)

## **What are the recordkeeping requirements of the MARS regulations?**

Sales associates/brokers are responsible for keeping copies of all contracts between the provider and the consumer, copies of all written communications between the consumer and MARS provider prior to entering into the agreement for MARS services, copies off all documents or recordings or any other commercial communications for MARS services, all consumer files containing contact information and description of MARS services provided for a period of twenty-four (24) months from the date the record is created. ***Please see the sample office policy for further assistance.***

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