



## **We now live on “MARS”**

### *A roadmap to the new, mandatory FTC disclosures for short sale transactions*

There are three possible disclosures that the FTC Mortgage Assistance Relief Services (MARS) regulations may require if you are advertising your services for short sale assistance, negotiating a short sale for a consumer or arranging a short sale on behalf of a consumer. Please note the first one would not be necessary if you are not advertising your services. The National Association of Realtors® has summarized them as follows:

#### **Disclosure No. 1: General Commercial Communications**

A real estate professional who advertises MARS services which are not directed at a specific consumer will need to include in all advertisements a clear and prominent disclosure with the following:

**“IMPORTANT NOTICE** *(in two point-type larger than the font size of the disclosure): (Name of company) is not associated with the government, and our service is not approved by the government or your lender. Even if you accept this offer and use our service, your lender may not agree to change your loan. If you stop paying your mortgage, you could lose your home and damage your credit rating.”*

#### **DISCLOSURE No. 2 Consumer Specific Commercial Communications**

The second disclosure is required in all communications that the MARS provider directs to specific “prospective” clients, and so these disclosures need to be made by a real estate professional who represents a seller in a short sale transaction, unless the seller has engaged a short sale negotiator independently. These communications must be provided by the MARS provider before the provider begins mortgage-assistance services on behalf of the consumer. The time when the real estate professional needs to provide this disclosure will vary, as a listing broker may not be aware that the transaction will need to be a short sale until far into the listing process.

In order to comply with this disclosure requirement, a listing broker should provide this disclosure to the client in a letter or memo once he/she is aware the transaction may be a short sale, highlighting this fact in the document and prominently displaying the below disclosure statement.

Florida Realtors® has created a **disclosure form** to assist real estate firms in making this disclosure required by the FTC regulation. You should use this form, or a similar form, before

any negotiations on a short sale begin. The disclosure in this form is required when a real estate professional either negotiates a short sale with a lender on behalf of a seller or arranges with a MARS provider to conduct these negotiations on behalf of the seller.

***Disclosure No. 3 (Part 1 & Part 2)***

**Disclosures When Providing an Offer of Mortgage Relief  
(short sale approval!)**

The third disclosure needs to be provided in a clear and prominent manner at the time the real estate licensee presents his/her client with the lender's short sale approval letter.

The licensee must also provide a notice from the lender or servicer that describes all material differences between the seller's current loan and the lender's proposal to modify the loan if the seller accepts the short sale offer, which may include the lender holding the seller liable for the deficiency amount. This information will likely be contained in the lender's short sale approval letter.

Florida Realtors® has created two separate **disclosure forms** to assist real estate firms in making this third disclosure required by the FTC MARS rule. You should use these forms, or similar forms, when presenting the consumer a written agreement from the consumer's lender that incorporates the offer of mortgage assistance relief (the short sale approval letter in all likelihood) and when providing the seller or consumer with the notice from the lender detailing the difference between the original mortgage terms and the new offer terms. They are two separate disclosure forms since the FTC MARS rule requires each disclosure to be on a separate written page.

Below is an example to illustrate the time when each disclosure is to be provided to a seller in a short sale transaction:

I am a broker. All my associates and I advertise our services to sellers who may be facing a short sale. We also actively list these properties for sale. Upon receipt of an offer we work with the lender(s) to get the short sale approval. Which disclosures must I use....and when?

- In any advertisement or electronic communication where you highlight your services in selling short sales you need to include Disclosure No 1. In the event you simply put your SRS or LMC designation after your name, such designation would not appear to trigger a disclosure.
- When you take a listing and you know it is a short sale you should provide Disclosure No. 2 to the seller. We recommend it be a separate disclosure and not incorporated into the listing agreement.
- When the lender or servicer provides you with the short sale approval letter or any other approval documents for the seller, you are required to provide both Disclosure 3(I) & Disclosure 3(II) to the seller at the time you present the letter to the seller for review.