

Mortgage Assistance Relief Services Rule: A Compliance Guide for Lawyers

Many people who have trouble paying their mortgages seek legal assistance to save their homes or avoid foreclosure. Services consumers ask lawyers to perform run the gamut: representing clients who are in legal proceedings related to foreclosure; advising them on the legal and tax implications of foreclosure, short sales, or bankruptcy; or negotiating a modification of a client's loan.

Lawyers who offer mortgage assistance relief services need to know that the Federal Trade Commission (FTC), the nation's consumer protection agency, has issued a regulation affecting how these services can be marketed and provided: the **Mortgage Assistance Relief Services (MARS) Rule**. Because attorneys are subject to state requirements that duplicate much of what the Rule requires, the Rule has provisions that specifically address the practices of attorneys who provide these services.

ARE ATTORNEYS COVERED BY THE MARS RULE?

In general, attorneys are **not** covered by the MARS Rule if:

1. They provide mortgage assistance relief services as part of the practice of law;
2. They are licensed to practice law in the state where their client or their client's home is located; and
3. They comply with all relevant state laws and regulations concerning attorney conduct.

Attorneys who don't comply with these requirements are subject to the Rule's provisions. Examples of activities that likely could cause attorneys to lose their exemption include:

- Allowing their name to be used in solicitations to clients without actively providing legal services in connection with mortgage assistance relief services;
- Misrepresenting any material aspect of their legal services, including the likelihood they'll get a favorable result, an affiliation with a government agency, or the cost of their services;
- Sharing legal fees for MARS-related services with non-attorneys;
- Helping non-attorneys engage in the unauthorized practice of law;
- Failing to keep clients reasonably informed about their matters, including the potential for adverse outcomes;
- Failing to work diligently and competently on behalf of their clients – that is, not making reasonable efforts to get mortgage assistance relief; and
- Engaging in a widespread telemarketing operation staffed by non-attorneys.

WHAT ABOUT COLLECTING LEGAL FEES?

Lawyers can charge clients fees in advance if: 1) they're providing mortgage assistance relief services as part of practice of law; 2) they're licensed in the state in which their client or their client's home is located; 3) they're complying with state laws and regulations concerning attorney conduct; and 4) before they perform any services, they place the fees in a client trust account that complies with state laws and regulations. Non-attorneys who offer mortgage

assistance relief services can't collect fees until their customer has accepted a written offer of mortgage relief from their lender or servicer.

Under the Rule, attorneys can't withdraw fees in the client trust account before earning the fee or incurring the expense. To maintain their exemption from the Rule's ban on upfront fees, attorneys must comply with all state requirements related to use of client trust accounts. Laws and regulations for attorneys vary by state, but examples of activities that likely could cause attorneys to lose their exemption include:

1. Withdrawing money from a client trust account before the attorney earns fees or incurs expenses;
2. "Front-loading" fees for mortgage relief assistance services to expedite the withdrawal of funds from a client trust account;
3. Failing to keep complete records of transactions associated with a client trust account;
4. Failing to notify a client of a withdrawal so that he or she has an opportunity to review the transaction and, if necessary, contest it; or
5. If a client contests a withdrawal, failing to keep those funds separate from other clients' and attorneys' funds.

The Rule doesn't restrict the type of fees attorneys may charge their clients. Attorneys may charge any kind of fee, including flat fees, contingency fees, hourly fees, or some combination. However, before performing promised services, attorneys must deposit any fee in a client trust account. Regardless of the type of fee an attorney charges, he or she can't withdraw money from the account until fees are earned or expenses incurred.

For More Information

MARS Rule:

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

Mortgage Assistance Relief Services Rule: A Compliance Guide for Business

<http://business.ftc.gov/documents/bus76-mortgage-assistance-relief-services-rule>

The BCP Business Center: Your Link to the Law
business.ftc.gov

Questions about the MARS Rule? Contact:

Division of Financial Practices
Bureau of Consumer Protection
Federal Trade Commission
Washington, DC 20580
(202) 326-3224

The FTC works for the consumer to prevent fraudulent, deceptive, and unfair practices in the marketplace and to provide information to businesses to help them comply with the law. To file a complaint or get free information on consumer issues, visit ftc.gov or call toll-free, 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261. Watch a video, *How to File a Complaint*, at ftc.gov/video to learn more. The FTC enters consumer complaints into the **Consumer Sentinel Network**, a secure online database and investigative tool used by hundreds of civil and criminal law enforcement agencies in the U.S. and abroad. For free compliance resources, visit the Business Center, business.ftc.gov.

Your Opportunity to Comment

The National Small Business Ombudsman and 10 Regional Fairness Boards collect comments from small businesses about federal compliance and enforcement activities. Each year, the Ombudsman evaluates the conduct of these activities and rates each agency's responsiveness to small businesses. Small businesses can comment to the Ombudsman without fear of reprisal. To comment, call toll-free 1-888-REGFAIR (1-888-734-3247) or go to www.sba.gov/ombudsman.

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1-877-FTC-HELP	FOR THE CONSUMER