



COMMISSIONER OF FINANCIAL REGULATION
ADVISORY NOTICE

SEPTEMBER 16, 2013



Advisory: Guidance For Real Estate Licensees in Short Sale Transactions
(Revises Guidance issued June 5, 2013 as to Real Estate Licensees Only)

September 16, 2013

REVISED GUIDANCE FOR REAL ESTATE LICENSEES IN SHORT SALE TRANSACTIONS

On June 5, 2013, the Commissioner issued interim guidance for individuals providing short sale negotiation services and the impact of the Maryland Mortgage Assistance Relief Services Act (the Md. MARS Act), which was adopted during the 2013 legislative session. The June 5, 2013 guidance noted that the Commissioner was working with the Real Estate Commission (the "Commission") to provide additional guidance specific to real estate brokers, associate brokers, and salespeople (collectively, "Real Estate Licensees"). The Commission recently issued additional short sale guidance for Real Estate Licensees which can be found at: <http://www.dlfr.state.md.us/license/mrec/mrecshortsalesguide.shtml>.

In follow up and in consult with Commission, the Commissioner has therefore revised the June 5, 2013 guidance **as it pertains to Real Estate Licensees only**, and is issuing the following to Real Estate Licensees involved in short sale transactions:

The MD MARS Act is modeled after the Federal Bureau of Consumer Financial Protection's MARS Act known as Regulation O. As the Commissioner and the Commission have pointed out in previous Advisories and Guidance memos, neither the MD MARS Act nor Regulation O provide specific exemptions for real estate licensees. However, the Commissioner and the Commission recognize that some activities subject to the legislative effect of the MD MARS Act, which includes potential penalty provisions, overlap some activities that real estate professionals ("**Licensees**") undertake in the normal course of business and which are included within the scope of the Maryland real estate license.

THEREFORE, the Commission with the consent and approval of the Commissioner, advises, that a Licensee whose license is in good standing with the Real Estate Commission and who is complying with Maryland State laws governing the practice of real estate professionals, will not be in violation of the MD MARS Act when doing or performing the following in connection with a property *subject to, under consideration for, in need of, or which becomes the subject of*, a short-sale:

I. Permitted Activities

- a. Enters into a contract with a homeowner to market their house for a short-sale, lists the property in multiple list service, and markets the property for sale.
- b. Conducts a Comparative Market Analysis (CMA), which a lender/servicer may refer to as a Broker's Price Opinion (BPO). The Licensee may communicate with the lender/servicer regarding the value of the proposed short-sale property, including topics such as neighborhood conditions and comparable sales within the community.

- c. May truthfully advertise or present to the public any training or achievements that reflect the licensee's experience in the field of residential short sales.
- d. Submits documentation to the seller's lender if:
 - (i) The Licensee informs the seller that the Licensee is not conducting negotiations with the lender, but is merely submitting documents or other information requested by the lender in connection with consideration of the short-sale request;
 - (ii) The Licensee informs the seller that the seller must either personally negotiate with the lender or hire a Mortgage Assistance Relief Service Provider or a Maryland attorney to conduct the negotiation; and
 - (iii) The seller voluntarily signs an authorization indicating the Licensee may submit required short-sale or loss mitigation information and documentation on the seller's behalf.

II. Additional Requirements if Providing Services Covered Under Section I

A Licensee Must:

- a. Refer a seller to a tax advisor or tax professional to explain to the seller the potential tax consequences of a short sale and the applicability of the Mortgage Forgiveness Debt Relief Act of 2007;
- b. Must refer a client to a housing counselor for discussion about alternatives available to avoid foreclosure. Free housing counseling is available through the Maryland HOPE Program at 1-877-462-7555; and
- c. Must inform the seller of, and refer to the licensee's broker, any requests from the lender/servicer for reductions in real estate brokerage commissions on a short-sale.

III. Activities Subject to the MD MARS Act

The Commission has determined that the following activities are beyond the scope of a real estate license, and therefore the Commissioner and the Commission advise that a Licensee MUST comply with all of the provisions of the MD MARS Act if the Licensee does any of the following:

- a. Collects any monies in addition to the real estate brokerage sales commission from a short-sale client. *The MD MARS Act prohibits collection of up-front fees in connection with short-sale services.*
- b. Assists a seller in negotiating with the lender/servicer or other lienholder to obtain approval for a short-sale, release of lien, modification of a promissory note, waiver of deficiency, or to otherwise prevent or obtain relief from a foreclosure.
- c. Represents to the public that the licensee:
 - (1) can assist in preventing foreclosure;
 - (2) is an "expert" in short-sales;
 - (3) can arrange refinancing; or
 - (4) will contact creditors on the owner's behalf.
- d. Makes Representations to a homeowner that the Licensee can save the owner's home, stop foreclosure, or obtain a short-sale.
- e. Provides advice to a homeowner regarding the benefits of a strategic default.

- f. Makes any predictions with regard to the likelihood of the waiver of a deficiency or the payment of relocation costs in a short-sale.

None of the above-described actions in Section III come within Maryland's definition of real estate brokerage services, and therefore, a LICENSEE IS NOT ACTING under his or her license when taking these actions or providing these services to a client. The licensee must ensure that the client understands that these services are in addition to, and not part of, the real estate brokerage services that the licensee has agreed to provide. Licensees should refer questions regarding licensing, conduct, and requirements to the Commission.