

Courtside Newsletter

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MARS Enforcement Stayed Against Short Sale Listing Agents

REVISIONS TO C.A.R.'s MARS RULE Q&A

BY: SYLVIA J. SIMMONS



The California Association of REALTORS® revised its Q & A on the MARS rule in late August 2011 to reflect the announcement by the Federal Trade Commission (FTC) of its current position regarding enforcing the rule against REALTORS®. As of July 15, 2011, the FTC is generally not seeking enforcement of the Mortgage Assistance Relief Services (MARS) rules against REALTORS® who are simply trying to help their clients complete a short sale.

The following agents must comply with the MARS rules:

- Agents who are pure short sale negotiators
- Agents who promote their services as a way to avoid foreclosure
- Agents who offer various foreclosure and loan related services

Of course, the FTC will enforce the MARS rules against any REALTOR® who engages in unfair or deceptive practices in the handling of a short sale. At this time, the Consumer Financial Protection Bureau (CFPB) is responsible for the rule-making functions of the FTC. The two agencies are required by federal law to coordinate their activities for consistent regulations. Therefore, the CFPB will follow the FTC policy, but the enforcement approach may change in the future.

For the complete MARS rule Q & A, contact the California Association of REALTORS®, or visit their website at www.car.org. For in-depth legal advice regarding the MARS rule or other real estate matters, feel free to contact The Giardinelli Law Group, APC.

CALENDAR

Professional Standards Training

Date: October 5, 2011
Time: 9:00 a.m. – 3:00 p.m.
Where: Rim O'The World
Association of REALTORS®

Please contact the Rim O'The World
Association of REALTORS® to sign up!

Reminder!!

If you have not scheduled your
Association's Professional
Standards Training for this year,
contact our office to schedule
today!!

NAR 2011 Conference and REALTOR® Expo

Date: November 11-14, 2011
Where: Anaheim, California

Please contact the National Association
of REALTORS® at www.realtor.org for
information and to sign up!

BIOGRAPHY

Sylvia J. Simmons is a business and transaction attorney at The Giardinelli Law Group, APC. Ms. Simmons has been providing legal services to businesses and REALTOR® Associations, brokers, residential, commercial and vacant land buyers and sellers for more than 14 years. The services she provides includes business entity formation, corporate maintenance, buy-ins and buy-outs, succession planning, director disagreements, leases, contracts, employment policies and handbooks, hiring, discipline and termination. Ms. Simmons may be reached at sylvia@glawgroupapc.com or (951) 244-1856.

Short sale listing agents must meet three criteria:

1. Be licensed and maintain good standing under state law;
2. Be acting in compliance with state law governing the practices of brokers and agents; and
3. Be assisting or attempting to assist a consumer in negotiating, obtaining or arranging a short sale of a dwelling in the course of securing the sale of the consumer's home.

Agents who do not meet these requirements must:

- Provide the C.A.R. form MARSSN when they take short sale listings
- Provide the C.A.R. form MARSSN when they obtain a lender approval letter
- Include general commercial notice in advertisements marketing properties
- Comply with MARS' other record keeping and monitoring requirements

SPECIAL RIGHTS FOR ARMED SERVICEMEMBERS

Back in 1918, Congress enacted the first Soldiers' and Sailors' Civil Relief Act (SSCRA) which postponed or suspended certain civil obligations to allow servicemembers to devote full attention to their duty and to relieve stress on their family members. In 2003, the Servicemembers Civil Relief Act (SCRA) expanded and improved on the SSCRA. Broad protections are afforded to eligible Active Duty servicemembers (Army, Navy, Air Force, Marine Corps, Coast Guard), Reservists and members of the National Guard while on duty, and their heirs, personal representatives and assigns, commencing on the date of entering active duty and terminating within 30 to 90 days after the date of discharge from active duty.

Mortgage payment relief and protection from foreclosure are among the benefits. SCRA limits the interest chargeable on mortgages existing before entering active service. On written request, the lender must reduce the interest rate to no more than 6% per year during active duty and recalculate the

payments to reflect the lower rate. Interest over 6% during that time is forgiven. The Notice of Disclosure (HUD 92070) is available from HUD at www.hud.gov or www.militaryonesource.com.

Other provisions include protection from eviction from housing while on active duty due to non-payment of rent up to \$2,932.31 per month; right to terminate a lease if there is a permanent change of station or if deployed to a new location for 90 days or more; 6% limit on credit card debt while on active duty with excess forgiven; and delay of civil court actions (bankruptcy, foreclosure or divorce). To get more information about SCRA, go to <http://legalassistance.law.af.mil> and <http://usmilitary.about.com/od/sscra/1/blscramenu.htm>.

Each case must be reviewed on its own merits and servicemembers should consult with a lawyer, REALTOR® or base personnel familiar with these issues for a review of their specific situations.

LANDLORDS SUBJECT TO NEW CREDIT REPORTING ACT RULE

As of July 21, 2011, landlords must comply with new rules adopted by the Federal Reserve Board and the Federal Trade Commission to implement amendments to the Fair Credit Reporting Act. Landlords must give the tenants or potential tenants a notice if they take an "adverse action" against a consumer based on the consumer's credit score. If the action results in less favorable terms to the tenant or applicant than the most favorable terms available to a substantial proportion of consumers, a notice must be given that includes the following:

- Credit score relied upon by the landlord
- Entity that created the credit report
- Range of possible scores within the model used
- All key factors that adversely affected the score, not to exceed four factors (or five factors if the number of credit inquiries is included)
- Date of the credit report

Examples of an "adverse action" include denying a rental application, requiring a larger security deposit, and increasing the amount of rent.

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BUSINESS CORNER

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BUSINESS TIPS

E-VERIFY REMAINS OPTIONAL IN CALIFORNIA

California employers may choose whether to use E-Verify, the federal program that allows employers to use an Internet-based system to electronically compare the worker's Form I-9 documentation against federal government databases to determine authorization to work in the United States. Use of E-Verify is mandatory for federal contractors or subcontractors.

E-Verify is fast and free. It makes it easy to comply with the U.S. law that requires companies to employ only individuals who may legally work in the United States – either U.S. citizens, or foreign citizens who have the necessary authorization.

The US Supreme Court recently ruled in a case arising from an Arizona law that allowed the state to suspend or revoke licenses of Arizona employers for knowingly or intentionally employing unauthorized workers and made using E-Verify mandatory. The court found that states may require use of E-Verify and may penalize companies that hire undocumented workers, including conditioning, suspending or revoking business licenses. This decision is expected to result in other states enacting mandatory use of E-Verify and related enforcement provision, including penalties. The city of Mission Viejo, California already has a city ordinance requiring use of E-Verify for new hires of city employees and employees of certain companies that contract with the city.

Real estate companies should establish consistent policies and uniformly apply those policies, including requiring complete and accurate pre-hire information and Form I-9s. Employment counsel should be consulted if E-Verify is being considered.

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