

## MESSAGE REGARDING MARS FORMS

Depending on several factors, a new Federal Trade Commission (FTC) Rule requires real estate professionals make specific disclosures when representing clients involved in a short sale transaction. KAR staff has been working closely with National Association of REALTORS® (NAR), KAR Legal Counsel and the KAR Contracts and Forms Committee on this issue.

While NAR is currently in discussions with the FTC and instructions from the FTC may change, KAR recommends that until further notice, KAR members should use the Model Disclosure Forms developed by KAR when representing clients in short sales.

KAR hosted a Webinar on March 16 on this topic. You may listen to this webinar for additional guidance on when and how to use the Model Disclosure Forms. Harry Borders, an attorney from Louisville, presented. Mr. Borders informed participants that if they represent clients in short sales, take upfront fees for his/her services, or promote himself/herself to potential short sale sellers, they need to be aware of the MARS rule and the disclosure requirements. The entire Webinar and Q & A session is available at [www.kar.com](http://www.kar.com). Click on the MARS Quick Link.

***If a broker is charging an upfront fee in what is, or could become, a short sale, that broker may be in violation of the FTC rule.***

There are three types of disclosures that a real estate professional may need to make consumers. The rules have specific requirements on how the disclosures must be presented to consumers, depending on the communication medium. In all cases, the disclosure must be clear and prominent. For printed materials, the written disclosure must be the larger of 12-point type or one-half the size of the largest letter used to list the name of the firm providing the disclosures.

KAR's Model Disclosure Forms meet the FTC requirements and may be used KAR members. The following Model Disclosure Forms are available at [www.kar.com](http://www.kar.com):

- 1. Disclosure for General Commercial Communications**

A real estate professional that advertises MARS services which is not directed at a specific consumer will need to include in all advertisements a clear and prominent disclosure the language identified on this Model Disclosure Form.

- 2. Disclosure for 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 may need to be made by a real estate professional that represents a seller in a short sale transaction. 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 disclosure statement on the Model Disclosure Form.

**3. Disclosure for Offer from Lender (Part 1)**

Part 1. The third disclosure needs to be provided, in a clear and prominent manner, at the time the real estate professional presents its client with the lender's short sale approval letter. The disclosure must be provided on a separate page. See KAR's Model Disclosure Form.

**4. Disclosure for Offer from Lender (Part 2)**

Part 2. The real estate professional 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. See KAR's Model Disclosure Form.

KAR staff will continue to work closely with NAR, KAR Legal Counsel and the KAR Contracts and Forms Committee. **If and when there is additional information on the MARS rule that affects REALTORS®, we will distribute to all members.**