

Short Sale Assistance in Colorado and Under MARS

by Ronald D. Jung

With the rise of short sales in the state, many real estate professionals have sought advice concerning the licensing requirements and disclosure requirements in Colorado and under federal regulations to provide short sale assistance for clients. Although the landscape continues to change, this article attempts to answer some of the recurring questions.

Residential foreclosures continue to be a critical issue in Colorado. As recent as October 2011, one in every 458 housing units in Colorado was in the process of being foreclosed through the public trustee.¹ Adding to the problem, residential home values continue to deteriorate in many areas.² As such, even as the state and national economy attempts to emerge from the “Great Recession,” many homeowners across Colorado continue to struggle to keep their homes.

A homeowner on the verge of foreclosure generally has four options: (1) attempt to sell the home; (2) pursue a loan modification; (3) allow the home to be lost to foreclosure; or (4) depending on other financial considerations, file for bankruptcy protection. Of these alternatives, options (3) and (4) usually are the least attractive, though due to decreased market values and difficulties in negotiating with lenders, options (1) and (2) simply may not exist for many homeowners.

In instances where the first two options described above are unavailable and the second two options are unacceptable, homeowners may attempt a short sale. The Colorado Division of Real Estate of the Department of Regulatory Agencies (DORA) defines a “short sale” as the sale of a real property for less than the mortgage loan balance.³ Because a short sale results in a conveyance of the property for less than the amount of the debt secured by the property, lender consent to any short sale is mandatory so as to ensure that the existing deed of trust is extinguished. Any deficiency created from the settlement of the transaction may be transformed into a new promissory note, charged off, forgiven, or pursued as a judgment against the previous owner.⁴ The Colorado Foreclosure Protection Act defines “short sale” in relation to that Act as a transaction in which the residence in foreclosure is

sold when a holder of evidence of debt agrees to release its lien for an amount that is less than the outstanding amount due and owing under such evidence of debt, and the lien described is recorded in the real property records of the county where the residence in foreclosure is located.⁵ Obviously, the statutory definition is limited to properties in foreclosure.

There are two aspects of a short sale transaction that are important to the discussion in this article: (1) release of the deed of trust, which is the lien on the property; and (2) treatment of the remaining amount due on the loan. For the distressed homeowner, it is critical to explain that the lender’s acceptance of a short sale offer may result only in a release of its lien on the property and the homeowner still may owe the remaining amount of debt on the loan unless a specific release is negotiated. Even if the lender agrees to forgive the remaining debt and release the homeowner, such forgiveness is likely to constitute cancellation of debt income, for which the homeowner will receive a Form 1099(c) for the amount of the cancelled debt. This amount may be treated as ordinary taxable income by the Internal Revenue Service. It is important to explain this potential tax consequence to the homeowner before he or she accepts the lender’s short sale approval.

The homeowner may qualify under the Mortgage Forgiveness Debt Relief Act of 2007 for an exemption of any debt cancelled by the lender, which was used to buy, build, or substantially improve the principal residence.⁶ The qualified principal residence exemption does not apply to a second home, an investment condominium, or a seasonal home. To qualify, the unpaid mortgage balance that has been cancelled cannot be used for something other than acquiring or constructing the home or making capital improvements to it. For example, if a home was refinanced to pur-

Coordinating Editor

Joseph E. Lubinski, Denver, of Ballard Spahr LLP—(303) 299-7359, lubinskij@ballardspahr.com



About the Author

Ronald D. Jung is president and owner of the Boulder firm Jung & Associates, P.C., where he practices in the areas of real estate and business, with an emphasis on litigation—(303) 581-7961, www.legalrealty.com.

chase an expensive automobile, the portion of the refinancing used for the automobile would be taxed and would not fall within the exemption. Because of the complicated tax implications resulting from a short sale, it is always a good practice to recommend consultation with a tax expert before consummation of the transaction.

License Requirements for Service Providers

In Colorado, persons who assist homeowners negotiate short sale transactions (service providers) need to be licensed as a mortgage loan originator, real estate broker, or attorney. A mortgage loan originator is an individual who takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan.⁷ To perform this activity, a license is required.⁸ The term “mortgage loan originator” does not include any of the following: (1) a person engaged solely as a loan processor or underwriter; (2) one who performs only real estate brokerage or sales activities and is licensed or registered pursuant to the State of Colorado’s licensing requirements (unless that person is compensated by a mortgage lender or mortgage loan originator); (3) a person who is solely involved in the extensions of credit relating to time share plans; (4) a person who is servicing a mortgage loan; or (5) one who only performs the services and activities of a dealer engaged in the sale, leasing, or distribution of new manufactured homes.⁹

Under the statute concerning mortgage loan originators, real estate brokerage activity includes negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than matters related to financing for the transaction.¹⁰ Real estate brokerage activity also includes engaging in any activity for which a person engaged in the activity is required under applicable law to be registered or licensed as a real estate agent or real estate broker.¹¹

The exception to the mortgage loan originator license requirement for real estate brokerage activities seems to specifically exclude matters related to financing for the transaction.¹² Therefore, it appears under this subsection that a real estate broker also is required to be licensed as a mortgage loan originator to assist in short sale negotiation. However, subpart (d) of CRS § 12-61-902(7.7) expands the exception for mortgage loan originator licensing requirements to real estate brokers engaging in any activity for which a person engaged is required to be registered or licensed as a real estate broker.

These sections of the statute do not provide much clarity concerning license requirements for short sale facilitation. One also must consider the definition of “real estate broker,” which includes someone who negotiates the purchase, sale, or exchange of real estate, or interests therein, or improvements affixed thereon.¹³ Although some service providers might argue that a real estate broker’s license is not required merely to negotiate with the lender, because a mortgage/deed of trust is not an interest in real estate,¹⁴ a release of the mortgage is an integral part of negotiating the sale of real estate when its value is less than the mortgage. Therefore, such lender negotiations would require a real estate broker’s license.¹⁵

Recognizing the potential ambiguities of the mortgage loan originator licensing requirements, DORA issued a Position Statement attempting to clarify the exception for real estate brokers.¹⁶ The Position Statement provides that licensed Colorado real estate brokers are required to fulfill specific duties and obligations. Many of these duties address financial matters involved in a contract for a

real property transaction. The Position Statement lists certain activities that the real estate broker must exercise with reasonable skill and care. These include: (1) accounting for all money and property received in a timely manner; (2) keeping the parties fully informed of the transaction; (3) assisting the parties and complying with the terms and conditions of any contract, including closing the transaction; and (4) making disclosures regarding adverse material facts pertaining to a principal’s financial ability to perform the terms of the transaction and the buyer’s intent to occupy the property as a principle residence. DORA also recognized that real estate brokers advise on fees relating to homeowner associations, special assessments, appraisals, surveys, inspections, property insurance, and taxes. A transaction broker is prohibited from disclosing that a seller or buyer will agree to financing terms other than those offered. A single agent is prohibited from disclosing whether his or her clients will agree to financing terms other than those offered, unless the client consents. After listing these activities, the Position Statement states:

Pursuant to § 12-61-902(7.7)(c), C.R.S., the aforementioned activities could be construed as requiring a mortgage loan originator’s license since they involve “matters related to financing for the transaction” at the time of contract negotiation. However, the Board has determined these activities are exempt from the mortgage loan originator’s licensing act. Specifically, § 12-61-902(6)(a), C.R.S. defines a mortgage loan originator as an individual who “takes a residential loan application” or “offers or negotiates terms of a residential mortgage loan.” Real estate brokers engaging in these activities are required to be licensed as a mortgage loan originator.¹⁷

This Position Statement, as it pertains to short sale negotiation, appears to require a service provider to be licensed as a mortgage loan originator because he or she may “offer or negotiate terms of a residential mortgage loan.” This Position Statement was issued November 10, 2009 and revised on March 16, 2011. A reasonable interpretation of this particular Position Statement would require a real estate broker also to be licensed as a mortgage loan originator to negotiate a short sale with a lender on behalf of a client.

In an effort to clarify the issue of whether real estate brokers can act to facilitate short sales, DORA promulgated another Position Statement, MLO 1.5 Loan Modifications, wherein § 6 states:

Licensed Real Estate Brokers engaged in licensed activities when performing services within the above defined short sale transactions do not need to maintain a license as a mortgage loan originator. If a real estate broker engages in the activities of providing loan modification services (those not included in the activities of short sales) as defined above, loan modification services are defined as outside the scope of licensed real estate broker activities and as such separate licensure as a mortgage loan originator as defined in MLO 1.5 Position Statement.”¹⁸

As it stands, real estate brokers are permitted to facilitate short sales without also being licensed as mortgage loan originators.

Another relevant statute for persons engaged in facilitating short sales is the Colorado Foreclosure Protection Act. This Act places restrictions on foreclosure consultants.¹⁹ A “foreclosure consultant” is a person who, for consideration, represents that he or she will: (1) stop or postpone a foreclosure sale; (2) obtain a forbearance from a beneficiary under a deed of trust, mortgage, or other lien; (3) assist in exercising a right to cure, obtaining an extension of the right to cure or a waiver of an acceleration clause; (4) assist the homeowner

to obtain a loan or advance; (5) assist with the homeowner's credit impairment; (6) delay or prevent foreclosure; or (7) assist in obtaining excess proceeds from a foreclosure sale.²⁰ The definition of foreclosure consultant excludes a person licensed as real estate broker while the person engages in activity for which the person is licensed.²¹ Although a foreclosure consultant is not required to be licensed, there are terms set forth in a foreclosure consulting contract that are required, including a right of cancellation.²² A breach of the Colorado Foreclosure Protection Act is a crime.²³

Mortgage Assistance Relief Services Rule

On April 5, 2010, the Home Affordable Foreclosure Alternatives (HAFA) program was launched. HAFA provides servicers incentives to enter into short sales and deeds-in-lieu of foreclosure transactions with consumers who do not qualify for a loan modification under the Making Home Affordable Program. Despite public and private programs and services, consumers are faced with for-profit businesses that act as intermediaries between consumers and their lenders to provide mortgage assistance relief services (MARS). Many consumers were being charged hundreds or thousands of dollars in advance by MARS providers and often did not receive the promised service.²⁴ Therefore, to protect these consumers, the Federal Trade Commission (FTC) adopted the Mortgage Assistance Relief Services Final Rule, which was fully effective on January 31, 2011 (Rule).²⁵

MARS

"Mortgage assistance relief services" are any service, plan, or program offered or provided to the consumer, in exchange for consideration, that is represented to assist the consumer with any of the following:

- 1) stopping, preventing, or postponing any mortgage or deed of trust foreclosure sale for the consumer's dwelling, any repossession of the consumer's dwelling, or otherwise saving the consumer's dwelling from foreclosure or repossession;
- 2) negotiating, obtaining, or arranging a modification of any term of a dwelling loan, including a reduction in the amount of interest, principal balance, monthly payments, or fees;
- 3) obtaining any forbearance or modification in the timing of payments from any dwelling loan holder or servicer on any dwelling loan;
- 4) negotiating, obtaining, or arranging any extension of the period of time within which the consumer may:
 - cure his or her default on a dwelling loan
 - reinstate his or her dwelling loan
 - redeem a dwelling or
 - exercise any right to reinstate a dwelling loan or redeem a dwelling;
- 5) obtaining any waiver of an acceleration clause or balloon payment contained in any promissory note or contract secured by any dwelling; or
- 6) negotiating, obtaining, or arranging:
 - a short sale of a dwelling
 - a deed-in-lieu of foreclosure or
 - any other disposition of a dwelling other than a sale to a third party who is not the dwelling loan holder.²⁶

In essence, the Rule applies to all types of mortgage assistance relief services, including anything having to do with foreclosure, loan modifications, short sales, or deed-in-lieu settlements.

Components of the Rule

There are five basic components to the Rule. In general, the Rule: (1) prohibits MARS providers from making false or misleading claims or representations; (2) mandates that MARS providers make specific disclosures; (3) bars seeking or collecting advance fees for providing "MARS services"; (4) prohibits anyone from cooperating with someone he or she knows is engaged in a violation of the Rule; and (5) imposes record keeping and compliance requirements.²⁷

MARS Prohibited Representations

Section 322.3 of the Final Rule provides that it is a violation to engage in the following conduct:

- 1) representing in connection with advertising or marketing MARS that a consumer cannot or should not contact or communicate with the lender or servicer;
- 2) misrepresenting any material aspect of MARS, including the likelihood of negotiating any represented service or result; the amount of time it will take to accomplish any represented service or result; that a MARS provider is affiliated with, endorsed or approved by, or otherwise associated with the U.S. government, any governmental homeowner assistance plan, any federal, state, or local government agency, any non-profit housing counselor, agency, or program, a maker, holder, or servicer of the consumer's dwelling loan, or any other individual entity or program.

The MARS provider is further precluded from misrepresenting the consumer's obligation to make scheduled payments or any other payments pursuant to the consumer's loan; the terms or conditions of the consumer's dwelling loan; the terms or conditions of any refund, cancellation, exchange, or repurchase policy for a mortgage assistance relief service; that the MARS provider has completed the represented services or has a right to charge or receive other consideration; that a consumer will receive legal representation; the availability, performance, cost, or characteristics of any alternative to for-profit MARS services; the amount of money or percentage of debt amount that a consumer may save by using the MARS service; and the total cost to purchase the MARS service or the terms of any offer of mortgage assistance relief the provider obtains from the consumer's lender, including the time during which the consumer must decide to accept the offer.²⁸

In summary, MARS providers are precluded from making numerous misrepresentations expressly or by implication. MARS providers also are precluded from making representations about the benefits, performance, or efficacy of MARS service unless it is supported by competent and reliable evidence that substantiates the representation.²⁹ Separate from the Rule, misrepresentations in a commercial setting, if material and detrimentally relied on, constitute actionable fraud.³⁰

MARS Disclosures

Certain disclosures are mandated at various stages of providing MARS service. The Rule requires that nearly all general commercial communications include the following statements: (1) [Name of company] is not associated with the government, and our service is not approved by the government or your lender; (2) even if you accept this offer and use our service, your lender may not agree to change your loan; and (3) also in cases where the MARS provider has implied or stated in connection with marketing that the consumer should temporarily or permanently discontinue payments in whole or in part, the disclosure must include: "If you stop paying your mortgage, you could lose your home and damage your credit rating."

Nearly all consumer-specific commercial communications must include:

1. You may stop doing business with us at any time. You may accept or reject the offer of mortgage assistance we obtain from your lender [or servicer]. If you reject the offer, you do not have to pay us. If you accept the offer, you will have to pay us [insert amount or method for calculating the amount] for our services. (For the purposes of this paragraph, the amount "you will have to pay" shall consist of the total amount the consumer must pay to purchase, receive, and use all of the mortgage assistance relief services that are the subject of the sales offer, including, but not limited to, all fees and charges.)
2. [Name of company] is not associated with the government, and our service is not approved by the government or your lender.
3. Even if you accept this offer and use our service, your lender may not agree to change your loan.

Once an offer from a lender is obtained, the Rule requires written notice be provided to the client, describing all material differences between the terms of the offer and the customer's current loan. Again, the client must be informed that if the lender's offer is not accepted, the customer does not have to pay the provider's fee.³¹

In response to the Rule, the Colorado Real Estate Commission Forms Committee has adopted a section to be included in the Short Sale Addendum Form in § 4 entitled "Mortgage Assistance Relief Services (FTC-Disclosures)." These new forms were adopted on August 2, 2011 and, if not changed, are effective January 1, 2012. The Arizona Association of Realtors has created suggested disclosure forms, which can be found on their website.³² There is an advertising disclosure form, a consumer specific commercial communication disclosure, an agreement offer disclosure, and a lender servicer notice. If a realtor is advertising himself or herself as a short sale specialist or provider, the advertising disclosure must be included in his or her marketing materials.³³ It is recommended that the consumer-specific commercial communication disclosure be provided at the same time as a listing agreement, if it appears that there is a potential for short sale.

MARS Restriction on Advance Fees

One of the major changes to service providers caused by the implementation of the Rule is the prohibition on collection of advance payments. It is a violation of the Rule for any service provider to request or receive payment of any fee or other consideration until the consumer has executed a written agreement between the consumer and the consumer's dwelling loan holder or servicer that incorporates the offer of mortgage assistance relief the provider obtained from the consumer's dwelling loan holder or servicer.³⁴

It is important to note that the Rule makes it a violation to request or receive payment before execution of the agreement with the lender. The Rule does not specify the source of the payment. There have been inquiries from real estate brokers concerning whether they are allowed to pay the upfront fee for MARS service. The FTC has informally suggested that this is not a violation of the rule, though this issue certainly has not been settled.

Assisting and Facilitating MARS Violations

It is a violation of the Rule for a person to provide substantial assistance or support to any mortgage assistance relief service provider when that person knows or consciously avoids knowing that the provider is engaged in any act or practice that violates the Rule.³⁵ This is an interesting standard. It begins by stating that a person cannot knowingly assist a service provider who is violating the Rule. Then, the Rule goes on to prohibit one who consciously avoids knowing that a provider is engaged in a Rule violation from assisting in the transaction. This language closely resembles the civil standard for behavior that is reckless. In the civil context, wanton and reckless conduct is defined as conduct that creates a substantial risk of harm to another and is purposely performed with an awareness of the risk and disregard of the consequences.³⁶ It is not clear whether "consciously avoids" equates with the civil standard of "knew or should have known," which can give rise to exemplary damages in certain tort cases.³⁷

Recordkeeping and Compliance Requirements

The Rule requires that mortgage assistance relief providers keep certain records for a period of at least twenty-four months from the date the record is created. These include the following records:

- 1) all contracts or other agreements between the provider and any consumer for any mortgage assistance relief service;

- 2) copies of all written communications between the provider and any consumer occurring before the date on which the consumer entered into an agreement with the provider for any mortgage assistance relief service;
- 3) copies of all documents or telephone recordings created in connection with compliance with paragraph (b) (compliance by employees, discussed below), of this section;
- 4) all consumer files containing the names, phone numbers, dollar amounts paid, and descriptions of MARS services purchased, to the extent the MARS provider keeps such information in the ordinary course of business;
- 5) copies of all materially different sales scripts, training materials, commercial communications, or other marketing materials, including websites and weblogs, for any MARS services; and
- 6) copies of the documentation provided to the consumer as specified in § 322.5 (prohibition on advance payments) of this rule.³⁸

In addition, the MARS provider must take reasonable steps to monitor and ensure that employees and independent contractors are in compliance with the Rule requirements. If telemarketing is used, the MARS provider is required to provide random blind recording and testing of oral representations made. Service providers must establish a procedure for receiving and responding to all consumer complaints and record the number of complaints with respect to all employees and independent contractors involved. The Rule requires that the MARS provider investigate said complaints and take corrective action if the MARS provider determines an employee or a contractor is not complying with the Rule. MARS providers must maintain recordation necessary to demonstrate compliance with the above mandates.³⁹

Exemptions

Nonprofit corporations are excluded from the FTC's jurisdiction under the FTC Act and, as such, are exempt from rules issued pursuant to the Omnibus Appropriations Act (such as the Rule).⁴⁰ However, should a purported nonprofit company in fact operate for profit, enforcement actions may be pursued.⁴¹

An attorney is exempt from the Rule if the attorney provides MARS services as part of the practice of law, is licensed to practice in the state in which the consumer resides or where the consumer's dwelling is located, and complies with state laws and regulations for attorney conduct.⁴² As such, an attorney is exempt from the prohibition against charging upfront fees, as long the attorney deposits funds received from the consumer before performing legal services in a client trust account and complies with all state laws concerning the trust account.⁴³

Enforcement

The FTC can use its powers under the FTC Act to investigate and enforce the Rule, and the FTC can seek civil penalties under the FTC Act against those who violate them.⁴⁴ Further, states can enforce the Rule by bringing civil actions in federal district court or in another court of competent jurisdiction to obtain civil penalties and other relief. States must provide sixty days' advance notice to the FTC before bringing such actions under the Rule.⁴⁵ On July 21, 2011, the Commission's rulemaking authority under the Omnibus Appropriations Act was transferred to a new Bureau of Consumer Financial Protection (BCFP).⁴⁶ Both the FTC and BCFP will have authority to bring enforcement actions.⁴⁷

In response to numerous questions to the FTC regarding application of Rule to Realtors, the FTC issued a press release on July 15, 2011 indicating:

Until further notice, the Commission will forbear from taking any enforcement action for violation of the MARS Rule with the exception of the Rule's prohibition against misrepresentations in Section 322.3(b) against real estate professional who provides "any service, plan, or program, offered or provided to the consumer in exchange for consideration, that is represented, expressly or by implication, to assist or attempt to assist the consumer [in] . . . [n]egotiating, [o]btaining or [a]rranging . . . [a] short sale of a dwelling." This forbearance of enforcement will only apply to real estate brokers (and real estate agents under their direction and control) who are:

- (1) licensed and maintain good standing pursuant to any applicable state law requirements;
- (2) in compliance with state laws governing the practices of real estate professionals; and
- (3) 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.⁴⁸

Although the FTC has issued its decision to forebear enforcement actions with respect to disclosure requirements and upfront fees of the Rule, the Rule itself has not been modified. Further, the Bureau of Consumer Financial Protection has stated that it will give due consideration to the application of other written guidance, interpretations, and policy statements issued before July 21, 2011 by transfer or agency in light of all relevant factors, including: (1) whether the agency had rulemaking authority for the law in question; (2) the formality of the document in question and the weight afforded it by the issuing agency; (3) the persuasiveness of the document; and (4) whether the document conflicts with guidance or interpretations issued by another agency.⁴⁹

Therefore, the FTC's decision to forebear full enforcement is not binding on the BCFP. Neither is it binding on state attorneys general.

In the past three years, the Commission has filed thirty-two law enforcement actions against MARS providers.⁵⁰ State attorneys general offices have investigated at least 450 MARS providers and have sued hundreds of them for alleged state law violations.⁵¹ On March 31, 2011, the Colorado Attorney General's Office filed suit against a Castle Rock company called Loan Modification Solutions, primarily for charging upfront fees and promising 100% of the money back for modifications. Colorado's Attorney General also has been active in the enforcement of the Colorado Foreclosure Protection Act.⁵²

Conclusion

There are certain courses that real estate brokers can take, through which they can earn designations and certifications such as certified short sale agents. Although it is important to note that such professional designations or certifications are not affiliated with or endorsed by the National Association of Realtors or any specific state Real Estate Commission, such a designation does trigger MARS requirements—specifically, the general commercial communication disclosure, which should be included in all advertisement for MARS providers. Although mortgage loan originators, real estate brokers, and attorneys in Colorado can represent clients in negotiating and facilitating short sales, none is exempt entirely from MARS, and attorneys are exempt only if they also comply with existing attorney regulations and place any upfront retainers in their trust accounts. This regulation, together with the education of consumers and professionals, are likely to lead to greater consumer protection.

Notes

1. See www.realtytrac.com. The foreclosure rate is calculated by dividing the total housing units in the county (based on the most recent estimate from the U.S. Census Bureau) by the total number of properties that received foreclosure filings during the month (using most recent monthly data available), and that number is expressed as a ratio (*i.e.*, one in 100 housing units received a foreclosure filing during the month). The lower the second number in the ratio, the higher the foreclosure rate. So, one in 100 is higher than one in 1,000.

2. *Id.*

3. MLO 1.5(2)(1), Department of Regulatory Agencies (DORA), Division of Real Estate, Board of Mortgage Loan Originators, Position Statement (rev. Feb. 16, 2011).

4. *Id.*

5. CRS § 6-1-1103(9).

6. I.R.C. § 108(a)(1)(E).

7. CRS § 12-61-902(6)(a).

8. CRS § 12-61-903.

9. CRS § 12-61-902(6)(b).

10. CRS § 12-61-902(7.7)(c).

11. CRS § 12-61-902(7.7)(d).

12. CRS § 12-61-902(7.7)(c).

13. CRS § 12-61-101(2)(a)(IV).

14. *Crown Life Ins. Co. v. Haag Ltd. P'ship*, 929 P.2d 42, 45 (Colo.App. 1996), citing *Bigelow v. Nottingham*, 833 P.2d 764 (Colo.App. 1991), *rev'd on other grounds*, *Haberl v. Bigelow*, 855 P.2d 1368 (Colo. 1993).

15. *Goff v. Halandras*, 523 P.2d 147, 149 (Colo.App. 1974).

16. MB 1.8 § 3, DORA, Division of Real Estate, Board of Mortgage Loan Originators, Position Statement (rev'd March 16, 2011).

17. *Id.*

18. DORA, *supra* note 3.

19. CRS §§ 6-1-1101 *et seq.*

20. CRS § 6-1-1103(4)(a).

21. CRS § 6-1-1103(4)(b)(VII).

22. CRS §§ 6-1-1104 and -1105.

23. CRS § 6-1-1108.

24. Mortgage Assistance Relief Services (MARS), 75 Fed. Reg. 75092, 75095 (Dec. 1, 2010) (MARS Final Rule).

25. *Id.* at 75092.

26. *Id.* at 75141. See also 16 C.F.R., pt. 322.2(i).

27. 16 C.F.R. pt. 322.

28. 16 C.F.R. pt. 322.3.

29. 16 C.F.R. pt. 322.3(c).

30. *M.D.C./Wood, Inc. v. Mortimer*, 866 P.2d 1380 (Colo. 1994). See also *Nielson v. Scott*, 53 P.3d 777 (Colo.App. 2002).

31. 16 C.F.R. pts. 322.4 and 322.5.

32. Lind, "A 'Roadmap' to the Mortgage Assistance Relief Services ('MARS') Disclosures" (Feb. 23, 2011), available at www.aaronline.com/AZR/2011/March/roadmap-of-mars.aspx.

33. 16 C.F.R. pt. 322.4(a).

34. 16 C.F.R. pt. 322.5(a).

35. 16 C.F.R. pt. 322.6.

36. *Western Fire Truck, Inc. v. Emergency One, Inc.*, 134 P.3d 570, 577 (Colo.App. 2006).

37. *Bodah v. Montgomery Ward & Co., Inc.*, 724 P.2d 102, 103 (Colo. App. 1986). See also CRS § 13-21-102.

38. 16 C.F.R. pt. 322.9(a).

39. 16 C.F.R. pt. 322.9(b).

40. MARS Final Rule, *supra* note 24 at 75105.

41. *Id.*

42. 16 C.F.R. pt. 322.7(a).

43. 16 C.F.R. pt. 322.7(b).

44. MARS Final Rule, *supra* note 24 at 75092.

45. *Id.*

46. *Id.*

47. *Id.*

48. Federal Trade Commission, "FTC Enforcement Policy: Real Estate Professionals and the Mortgage Assistance Relief Services Rule," available at www.ftc.gov/os/2011/07/110714marsrealestatepolicy.pdf.

49. Bill of Consumer Financial Protection, Identification of Enforceable Rules and Orders, 76 Fed. Reg. 43570 (July 21, 2011).

50. MARS Final Rule, *supra* note 24 at 75096.

51. *Id.*

52. "Foreclosure- and Mortgage-Related Consumer Protection Cases," available at www.coloradoattorneygeneral.gov/departments/consumer_protection/mortgage_fraud_information_center/learn_more_about_attorney_general%E2%80%99. ■