



REAL ESTATE LICENSEE UPDATE



Christine Gregoire, Governor
Volume IV, Special Issue

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The New Law Dealing With Title Companies

From Audit Manager, Art Abrahamson

In today's tough economic times, licensees want to expand their income base by making referrals or directing clients to specific service providers. Referring clients to their firms other services may provide additional income. Examples of other services includes:

- » escrow,
- » home inspection,
- » mortgage origination or
- » title insurance.

It is important to note, that real estate firms or licensees that own providers of other real estate related services need to be aware of real estate laws and other laws applicable to those services.

As of July 1, 2010, Revised Code of Washington (RCW) 18.85.053, informs and clarifies the state's position in reference to collecting or receiving funds or perks for the referral of client title insurance business. RCW 18.85.361(10) states that a licensee who charges or accepts compensation from more than one party in any one transaction without first making full disclosure in writing of all the facts to all the parties can be subject to disciplinary action. In part, RCW 18.85.053 states:

(1) A real estate licensee or person who has a controlling interest in a real estate business shall not, directly or indirectly, give any fee, kickback, payment, or other thing of

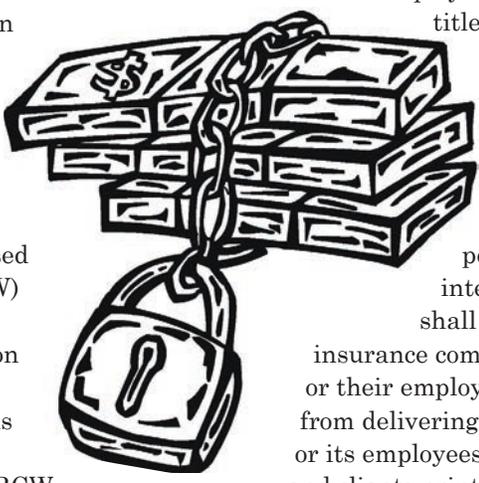
value to any other real estate licensee as an inducement, reward for placing title insurance business, referring title insurance business, or causing title insurance business to be given to a title insurance agent.

(2) A real estate licensee or person who has a controlling interest in a real estate business shall not either solicit or accept, or both, anything of value from: A title insurance company, a title insurance agent, or the employees or representatives of a title insurance company or title insurance agent, that a title insurance company or title insurance agent is not permitted by law or rule to give.

(3) A real estate licensee or person who has a controlling interest in a real estate business shall not prevent or deter a title insurance company, title insurance agent, or their employees or representatives from delivering to a real estate licensee or its employees, independent contractors, and clients printed promotional material concerning only title insurance services.

(4) A real estate licensee shall not require a consumer, as a condition of providing real estate services, to obtain title insurance from a title insurance agent in which the real estate licensee has a financial interest.

Payments or other consideration of value could include the following direct or indirect programs:



See "Title Companies" on page 2

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- » points towards trips,
- » bonuses,
- » additional funds to 401K's,
- » desk fees credits,
- » advertising credits,
- » cash incentives
- » other things of value or
- » items that may be converted to value.

In conclusion, one of the important aspects of this new law is that it is the responsibility of all real estate licensees to become familiar with the provisions and requirements regarding making referrals or directing clients to specific service providers.

This law is intended to level the playing field and protect the public, while not stifling the good service you provide your clients.



» Failure to provide invoice for work. The broker contended that she could not provide an account because she did not receive an invoice. The court stated that Ms. Hickethier had a duty to account for the funds set aside for repairs no matter what the repairman did or did not do.

» Failure to ensure that repairs were completed. Ms. Hickethier stated she had no duty to assure repairs were complete. However she had an agent-client relationship and agreed to perform the walk through before closing. The client relied upon the broker's silence. RCW 18.86.030(1)(d) provides that an agent can be sanctioned for concealment.

» Failure to give keys to client. The court found that failure to give the keys to the buyer after closing was incompetence, negligence or malpractice and supported the director's conclusion of unprofessional practice.

» Stated the Director's Order was arbitrary or capricious. The Court of Appeals held that a decision is not arbitrary or capricious if there is room for more than one opinion and the decision is based on honest and due consideration.

**DFI/DOL Joint Effort to Provide
Short Sale Info and Guidance**

**SHORT SALES – GUIDANCE
FOR LICENSEES
and
SHORT SALES – SELLER ADVISORY**

Both now available at:
dol.wa.gov/business/realestate/renews.html



**Real Estate Licensee Update
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What's New on Mortgage Assistance Relief Services (MARS)?

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The U.S. Federal Trade Commission (FTC) has finalized rules that it says will protect distressed homeowners from mortgage relief scams that have proliferated during the ongoing U.S. mortgage crisis. The new Mortgage Assistance Relief Services (MARS) rules, initially published for public comment last February, do not contain an exemption for real estate professionals that was sought by the National Association of REALTORS® (NAR).

The new rules arose from the emergence of bogus operations falsely claiming that, for a fee often collected in advance, they will negotiate various types of foreclosure relief. Many of these operations do not provide the promised services and some pretend to be affiliated with the U.S. government and/or other legitimate housing assistance programs.

The Nationwide Ban on Advance Fees

According to an FTC summary, the most significant consumer protection under the final MARS rules is the nationwide advance fee ban. Under this provision, mortgage relief companies may not collect any fees until they have provided consumers with a written offer from their lender or servicer that the consumer decides is acceptable and a written document from the lender or servicer describing the key changes to the mortgage that would result if the consumer accepts the offer. MARS providers must remind consumers of their right to reject the offer without any charge.

New Advertising Disclosures

In their advertising and other communications directed at individual consumers, such as telemarketing calls, the companies also must disclose that:

- » They are not associated with the government, and their services have not been approved by the government or the consumer's lender
- » The lender may not agree to change the consumer's loan; and
- » If companies tell consumers to stop paying their mortgage, they must also tell them that they could lose their home and damage their credit rating.

Companies must also disclose the amount of any fee to be charged and explain to consumers that they can stop doing business with the company at any time, accept or reject any offer the company obtains from the lender or servicer and do not have to pay the company's fee if they reject the offer.

Prohibited Service Claims

The MARS rules also prohibit mortgage relief providers from making any false or misleading claims about their services, including claims about:

- » The likelihood of consumers getting the results they seek
- » The company's affiliation with government or private entities
- » The consumer's payment and other mortgage obligations
- » The company's refund and cancellation policies
- » Whether the company has performed the services it promised
- » Whether the company will provide legal representation to consumers
- » The availability or cost of any alternative to for-profit mortgage assistance relief services
- » The amount of money a consumer will save by using their services; or
- » The cost of the services.

MARS providers are also prohibited from telling consumers to stop communicating with their lenders or servicers and must maintain reliable evidence to back up any claims they make about the benefits, performance or effectiveness of the services they provide.

No Exemption for Real Estate Agents

The new rules contain a lengthy and very broad definition of "mortgage assistance relief services" that is intended to encompass all services that purport to help consumers stop, prevent or postpone any foreclosure sale or otherwise save the property, regardless of the form of the relief.

When the rules were initially released for public comment, NAR argued that real estate professionals should be exempt from the rules, especially with respect to

short sales, as long as they do not hold themselves out to be MARS providers or attempt to collect an upfront or other fee, other than traditional commissions paid at closing. The FTC did not incorporate the requested exemption. In its Final Rule Notice, the FTC concluded that an exemption for real estate agents is not necessary. The FTC noted that, "Real estate agents customarily assist consumers in selling or buying homes and perform functions such as listing homes for sale, showing homes, and finding desirable homes for consumers. The [FTC] is aware that real estate agents may perform these functions when properties are bought or sold through a short sale transaction, but does not consider these services to be MARS." An exemption from the MARS rules was, however, approved for attorneys, subject to certain conditions.

According to the FTC, the new rules will apply to all entities within the FTC's jurisdiction under the Federal Trade Commission Act. The Act excludes, among others, banks, savings and loans, federal credit unions, common carriers and entities engaged in the business of insurance.

"The new Mortgage Assistance Relief Services rules, initially published for public comment last February, do not contain an exemption for real estate professionals that was sought by the National Association of REALTORS®."

What You Should Know About Real Estate Licensing Fingerprint Background Checks

by Regulatory & Enforcement Program Manager, Karen Jarvis

The department has been receiving fingerprint cards from real estate broker and managing broker applicants for approximately 8 months. We believe you will be interested in this information about the fingerprint process:

When are first license applicants fingerprinted?

All individuals applying for their first broker license must submit fingerprint cards.

All applicants using alternative experience qualifications in seeking their first managing broker license must submit a fingerprint card. Applications submitted without the fingerprint card are considered incomplete.

When will you be required to submit a fingerprint card?

There are approximately 32,000 actively licensed brokers and managing brokers. To provide a manageable process, the workload of receiving and processing fingerprint cards from active licensees was distributed over a 6 year period. All active brokers and managing brokers will be required to submit a fingerprint card in connection with just one of their license renewals occurring between July 1, 2010 and July 1, 2016. When it's time for your renewal with fingerprints, the card and instructions will be sent to you.

Who can take my fingerprints to be provided to the department?

Your fingerprints can be taken by any law enforcement agency that does fingerprinting or by any authorized fingerprinting service. Although we cannot recommend a fingerprinting service, it should be noted that we have had a lower percentage of rejects from fingerprinting services than from law enforcement agencies.

What is the fee to have my fingerprints taken?

There is a fee to have your fingerprints taken at a law enforcement agency or at a fingerprint service. They set their prices and they vary.

The fee to have your fingerprints run through the Washington State Patrol and the FBI is \$35.25. That is the fee we pass on to you.

What if the department notifies me that my fingerprints were rejected by the State Patrol and I need to have them taken again?

If you submit your completed fingerprint card with your first license or renewal, this will not affect your license status. Your license will continue to be active. The department will send you a letter with instructions if the fingerprints need to be retaken.

What happens to my fingerprint card after I submit it?

Fingerprint cards are stored only a short period of time before being destroyed by shredding the card. The fingerprint record is stored electronically by the State Patrol.

What background check is performed and how is the background check related to submission of my fingerprints?

The fingerprint cards and background check are interrelated.

We are told that the identification required at the time of printing, as well as the name and identifying information on the fingerprint card allow the FBI to search their national database for information on criminal convictions.

Information about aliases and convictions is returned to our regulatory and enforcement program as a result of these searches. Sometimes the difference in names (aliases) is insignificant with respect to the conviction check (nicknames, changes due to marriage, etc.). Occasionally, the names may be quite different and potentially significant.

Is this new process beneficial?

In the past, license applications were sometimes denied as a result of information disclosed in the application process and on the basis of department investigation of information received from other than the applicant. The license application forms still require applicants to disclose criminal convictions. We are unable to determine how much more accurate those upfront voluntary disclosures might have become because of the new background checks. It's possible those disclosures have become more accurate. In the past, we were limited to checking for criminal convictions within Washington State. The new national background checks vastly expand that search. Because licensees are apt to be in other people's homes, are entrusted with client funds and may have access to confidential information, it's important to perform this much broader search. We believe the new process makes it less likely that persons convicted of sex crimes, fraud, identity theft and other serious crimes committed far from Washington, might be licensed.

