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FTC'S LOAN MODIFICATION ADVANCE FEE BAN TAKES EFFECT

February 11, 2011

The following information was posted on the Federal Trade Commission's website (www.ftc.gov) on February 10, 2011:

FTC's Mortgage Assistance Relief Services Advance Fee Ban Takes Effect

The advance fee ban under the FTC's Mortgage Assistance Relief Services (MARS) Rule is designed to protect financially distressed homeowners from mortgage relief scams that have sprung up during the mortgage crisis.

"Banning the collection of up-front fees will protect homeowners from being victimized," FTC Chairman Jon Leibowitz said. "This is especially important at a time when so many people are behind on their mortgages or facing foreclosure."

As of January 31, 2011, companies that offer to help homeowners get their loans modified or sell them other types of mortgage assistance relief services are no longer allowed to charge up-front fees. Under the rule, a mortgage assistance relief company may not collect a fee until the consumer has signed a written agreement with the lender that includes the relief obtained by the company. When the company presents the consumer with that relief, it must inform the consumer, in writing, that the consumer can reject the offer without obligation and, if the consumer accepts, the total fee due. Before the consumer agrees to accept the mortgage relief, the company must also provide a written notice from the lender or servicer showing how the relief will change the terms of the consumer's loan (including any limitations on a trial loan modification).



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During the past three years, the FTC has filed 32 lawsuits against mortgage assistance relief companies for deception and abuse, and state law enforcers have filed hundreds of additional cases. [The MARS Rule issued in November](#) gives the FTC and the states an additional tool for combating deceptive and unfair acts or practices by these entities.

Attorney exemption

Attorneys are generally exempt from the rule if they provide mortgage assistance relief services as part of the practice of law, are licensed in the state where the consumer or dwelling is located, and comply with state laws and regulations governing attorney conduct related to the rule. To be exempt from the advance fee ban, attorneys must also place any advance fees they collect in a client trust account and abide by state laws and regulations covering such accounts. [Note: Some state laws, including California, also prohibit attorneys from collecting advance fees for loan modification or mortgage loan forbearance services.](#)

Information for Businesses and Consumers

FTC staff has issued two new business education publications. [“The Mortgage Assistance Relief Services Rule: A Compliance Guide for Business”](#) describes the key provisions of the MARS Rule to help covered businesses ensure that they are in compliance. [“The Mortgage Assistance Relief Services Rule: A Compliance Guide for Lawyers”](#) contains specific guidance for attorneys who provide mortgage assistance relief services. The staff has also issued a consumer publication, [“Mortgage Assistance Relief Scams: Another Potential](#)



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Stress for Homeowners in Distress,” which relates how to spot and avoid these scams.

For further information, please contact Michael A. Thurman, mthurman@loeb.com, 310.282.2122.

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