

**KEEPING THE REGULATORY ACRONYMS STRAIGHT
(MLOLA, SAFE, MARS, RESPA and MAP)**

This article is intended to help REALTORS® differentiate between several regulations with confusing acronyms. The article does not include a detailed analysis of the various regulations, but instead includes only brief descriptions intended to help REALTORS® identify the correct regulation for a particular situation. We have included cross-references to other sources where REALTORS® can find a more detailed analysis of the appropriate regulation.

**I. MLOLA – Mortgage Loan Originator Licensing Act
(SAFE Act – Secure and Fair Enforcement for Mortgage Licensing Act)**

A. Hypothetical

REALTOR® Smith has a client who regularly buys REOs, fixes them up and then sells the refurbished homes on land contract. REALTOR® Smith needs to familiarize himself with the MLOLA requirements.

B. Summary

MLOLA is the Michigan statute enacted pursuant to the federal SAFE Act. This legislation is aimed at “originators” of residential mortgage loans. People who are in the business of making residential mortgage loans must be licensed as “mortgage loan originators.” Sellers who provide financing (via land contract or purchase money mortgages) must be licensed “mortgage originators” if they are involved in four or more of these types of transactions per year. (Certain personal and familial transactions are exempt.) A seller who provides seller financing on more than ten loans per year may also need to be licensed under the Mortgage Brokers, Lenders and Servicers Licensing Act (“MBLSLA”). To make matters more

complicated, a seller who makes more than one of these loans per year may be required to comply with the federal Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act (“Regulation Z”). REALTORS® who are working with sellers who are providing notice can put the seller on notice of these requirements by using MAR’s new form Q “Seller Financing Addendum to Exclusive Listing Contract.” (Attached as Exhibit A.)

A real estate broker assisting such a seller need not be licensed as a mortgage loan originator unless he or she charges a separate fee for handling the seller financed transaction. A seller cannot avoid licensure by working with a REALTOR® who is licensed under the MLOLA unless the REALTOR® is also licensed under MBLSLA.

For more information about MLOLA, see:

www.michigan.gov/documents/difs/Mortgage_Loan_Originator_and_Seller_Financing_FA_Qs_438151_7.pdf.

II. MARS – Mortgage Assistance Relief Services

A. Hypothetical

REALTOR® Jones specializes in short sales. REALTOR® Jones charges his seller client a commission on the sale of the home as well as a short sale negotiator fee. REALTOR® Jones needs to familiarize himself with the MARS Rule.

B. Summary

MARS is a federal regulation adopted by the FTC to protect homeowners from mortgage relief scams or what the regulators describe as “bogus operations that falsely claim that, for a fee, they will negotiate with the consumers’ mortgage lender or servicer to obtain a loan modification, a short sale or other relief from foreclosure.” A MARS provider is required to

make certain disclosures in each and every communication it has with the consumer. MARS providers are prohibited from collecting any fee until they have provided the consumer with a written offer that is acceptable to the consumer.

For more information about the MARS Rule, see
www.mirealtors.com/content/referencelibrary.htm.

“Understanding The New FTC Regulation of ‘Mortgage Assistance Relief Services’ Providers.”

III. RESPA – Real Estate Settlement Procedures Act

A. Hypothetical

REALTOR® Green has been approached by a mortgage company who wants to pay REALTOR® Green for preparing mortgage applications for REALTOR® Green’s buyer clients. REALTOR® Green needs to familiarize himself with the RESPA requirements.

B. Summary

RESPA is a 35-year old federal statute enacted to protect consumers of residential mortgages from deceptive trade practices. The federal statute and the regulations adopted pursuant to the statute focus on closing costs and settlement procedures. Section 8(a) of RESPA prevents unearned “kickbacks” for the referral of business. Section 8(b) of RESPA prevents someone from attempting to circumvent 8(a) by setting up some type of sham fee-splitting arrangement. Under RESPA, a service provider can share a fee with another service provider only if such fee is for “services actually performed.”

For more information about Section 8 of RESPA, see:

www.realtor.org/topics/real-estate-settlement-procedures-act/glossary;
www.realtor.org/ae/manage-your-association/association-policy/respa-faq; and
www.mirealtors.com/content/upload/AssetMgmt/Documents/RESPA%20and%20Home%20warranty%20Program.pdf

IV. MAP Rule – Mortgage Acts and Practices

A. Hypothetical

REALTOR® Brown has been contacted by a mortgage company who has asked him to distribute materials describing a particular loan program to his buyer clients. REALTOR® Brown needs to familiarize himself with the MAP Rule.

B. Summary

The MAP Rule is a federal rule governing all persons – including real estate licensees and home builders – who provide information about a specific lender’s mortgage loan product to a consumer. Under the MAP Rule, REALTORS® who provide clients and customers with information about a specific lender’s product are held responsible for accuracy of the information provided, even if the information was prepared by the lender. The MAP Rule makes clear that a “misrepresentation” includes the omission of critical information about a mortgage product – for example, the fact that there will be an adjustment to the interest rate during the life of the loan. The MAP Rule also contains recordkeeping requirements whereby all “covered communications” must be retained for a period of two years.

For more information about the MAP Rule, see www.mirealtors.com/content/upload/AssetMgmt/Documents/legallinesNov11.pdf.

Exhibit A

Q



Seller Financing Addendum to Exclusive Listing Contract (Residential Property)



This is an addendum to a Listing Contract dated _____, 20____ between _____ ("Seller") and _____ ("Brokerage Firm") for the Property located at: _____ ("Property").

It is acknowledged by the parties hereto that the Seller may provide financing or extend credit to a buyer through the use of a land contract or other arrangement by which the Seller extends credit which is secured by a mortgage or an equivalent consensual security interest on a residential dwelling or on land on which the buyer intends to construct a residential dwelling ("Seller Financing").

Seller understands that neither Brokerage Firm nor any person affiliated with Brokerage Firm can provide legal advice or financial advice with regard to Seller Financing. The process and terms of Seller Financing may be subject to both federal and state regulation, including but not limited to the Michigan Mortgage Loan Originator Licensing Act, the Michigan Mortgage Brokers, Lenders, and Servicers Licensing Act, the Federal Secure and Fair Enforcement for Mortgage Licensing Act, the federal Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act ("Regulation Z"). This list of potentially applicable federal and state law(s) and regulations is not exhaustive. Seller is advised to consult with an attorney as to any transaction involving Seller Financing. There can be substantial penalties and adverse consequences if a Seller fails to comply with applicable federal and state laws and regulations when providing Seller Financing.

Listed by: _____ REALTOR® Seller

Agent for: _____ Brokerage Firm Seller

Date: _____ Date: _____

Disclaimer: This form is provided as a service of the Michigan Association of REALTORS®. Please review both the form and details of the particular transaction to ensure that each section is appropriate for the transaction. The Michigan Association of REALTORS® is not responsible for use or misuse of the form, for misrepresentation, or for warranties made in connection with the form.