

2011-2012 Broker-in-Charge Annual Review

MORTGAGE ACTS & PRACTICES (MAP RULE)

OUTLINE:
INTRODUCTION
THE MAP RULE
SELECTION SECTIONS OF RULE

Learning Objective: The purpose of this Section, once again, is to alert brokers-in-charge to the potential applicability of a recent federal rule pertaining to disclosure and record-keeping requirements for those who provide information to consumers about mortgage credit products.

INTRODUCTION

The Federal Trade Commission recently issued its **Mortgage Acts and Practices - Advertising** rule, also known as **MAP**, which became effective August 19, 2011. As with much recent federal regulation, the intent is to regulate unfair or deceptive practices in the advertising of mortgage products. It covers all entities and individuals who advertise “**mortgage credit products**” which is defined as *any form of credit offered to a consumer that is secured by the consumer’s dwelling*. A “**dwelling**” is defined as “...*a residential structure that contains one to four units, whether or not that structure is attached to real property*. The term includes any of the following if used as a residence: an individual condominium unit, cooperative unit, mobile home, manufactured home, or trailer.” Those subject to the Rule, including, but not limited to mortgage brokers, lenders and home builders who provide information about particular mortgage credit products, must avoid misrepresentation, make certain disclosures, and maintain records pertaining thereto for two years.

The Rule will apply to real estate brokers whenever they provide information about specific mortgage products to a consumer. *Providing rate sheets from a particular lender or providing a consumer with application forms or other information about a specific mortgage product will bring a real estate broker within the scope of the Rule.*

THE MAP RULE

The MAP Rule may be found at 16 CFR Part 321. Because only those mortgage credit products secured by the consumer’s dwelling fall within the scope of the Rule, commercial brokers generally will be unaffected by MAP. The Rule is to protect the consumer from

misinformation about loans and loan costs and will apply when a real estate broker provides information about a specific mortgage product to a consumer. All statements concerning the terms of the mortgage product must be retained for two years.

What Are Commercial Communications?

The rule defines “*commercial communications*” very broadly as:

... any written or oral statement, illustration, or depiction, whether in English or any other language, that is designed to effect a sale or create interest in purchasing goods or services, whether it appears on or in a label, package, package insert, radio, television, cable television, brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, free standing insert, letter, catalogue, poster, chart, billboard, public transit card, point of purchase display, film, slide, audio program transmitted over a telephone system, telemarketing script, onhold script, upsell script, training materials provided to telemarketing firms, program-length commercial (‘infomercial’), the Internet, cellular network, or any other medium. Promotional materials and items and Web pages are included in the term ‘commercial communication.’ 16 C.F.R. §321.2(a)

In its comments, the FTC has noted that purely informational communications not designed to cause the purchase of a good or service is not within the scope of the Rule because it is not a “commercial communication.” Thus, a real estate broker who provides a consumer with general information about market rates for different types of mortgage products most likely would not be subject to the Rule because it is not related to a specific mortgage product. A broker also may be able to go through a prequalification process with a consumer to determine the range of properties a consumer may be able to afford without running afoul of the Rule, but providing a consumer with documents needed to obtain a preapproval form from a particular lender would be covered by the Rule.

Prohibited Misrepresentations

The Rule lists nineteen examples of prohibited deceptive claims (reprinted at the end of this Section), including misrepresentations concerning:

- the amount or nature of fees or costs associated with the mortgage;
- the terms, amounts and requirements of the mortgage as to taxes and insurance;
- the variability of interest, payments and other terms of the mortgage;
- the type of mortgage offered;
- the source of an advertisement or other commercial communication; and
- the likelihood of the consumer obtaining a refinancing or modification of its mortgage.

The National Association of REALTORS® advises its members to include a disclaimer whenever they are issuing a statement that falls within the scope of the Rule. The disclaimer must be **prominent** and should be separated from other text in the covered statement.

What Are the Recordkeeping Requirements?

The rule requires that the following documents be kept:

... for a period of twenty-four months from the last date the person made or disseminated the applicable commercial communication regarding any term of any mortgage credit product, the following evidence of compliance with this part:

(1) Copies of all materially different commercial communications as well as sales scripts, training materials, and marketing materials, regarding any term of any mortgage credit product, that the person made or disseminated during the relevant time period;

(2) Documents describing or evidencing all mortgage credit products available to consumers during the time period in which the person made or disseminated each commercial communication regarding any term of any mortgage credit product, including but not limited to the names and terms of each such mortgage credit product available to consumers; and

(3) Documents describing or evidencing all additional products or services (such as credit insurance or credit disability insurance) that are or may be offered or provided with the mortgage credit products available to consumers during the time period in which the person made or disseminated each commercial communication regarding any term of any mortgage credit product, including but not limited to the names and terms of each such additional product or service available to consumers. 16 C.F.R. §321.5

Selected Sections of the Rule:

§ 321.3 Prohibited representations.

It is a violation of this part for any person to make any material misrepresentation, expressly or by implication, in any commercial communication, regarding any term of any mortgage credit product, including but not limited to misrepresentations about:

(a) The interest charged for the mortgage credit product, including but not limited to misrepresentations concerning:

(1) The amount of interest that the consumer owes each month that is included in the consumer's payments, loan amount, or total amount due; or

(2) Whether the difference between the interest owed and the interest paid is added to the total amount due from the consumer;

(b) The annual percentage rate, simple annual rate, periodic rate, or any other rate;

(c) The existence, nature, or amount of fees or costs to the consumer associated with the mortgage credit product, including but not limited to misrepresentations that no fees are charged;

(d) The existence, cost, payment terms, or other terms associated with any additional product or feature that is or may be sold in conjunction with the mortgage credit product, including but not limited to credit insurance or credit disability insurance;

- (e) The terms, amounts, payments, or other requirements relating to taxes or insurance associated with the mortgage credit product, including but not limited to misrepresentations about:
 - (1) Whether separate payment of taxes or insurance is required; or
 - (2) The extent to which payment for taxes or insurance is included in the loan payments, loan amount, or total amount due from the consumer;
- (f) Any prepayment penalty associated with the mortgage credit product, including but not limited to misrepresentations concerning the existence, nature, amount, or terms of such penalty;
- (g) The variability of interest, payments, or other terms of the mortgage credit product, including but not limited to misrepresentations using the word “fixed;”
- (h) Any comparison between:
 - (1) Any rate or payment that will be available for a period less than the full length of the mortgage credit product; and
 - (2) Any actual or hypothetical rate or payment;
- (i) The type of mortgage credit product, including but not limited to misrepresentations that the product is or involves a fully amortizing mortgage;
- (j) The amount of the obligation, or the existence, nature, or amount of cash or credit available to the consumer in connection with the mortgage credit product, including but not limited to misrepresentations that the consumer will receive a certain amount of cash or credit as part of a mortgage credit transaction;
- (k) The existence, number, amount, or timing of any minimum or required payments, including but not limited to misrepresentations about any payments or that no payments are required in a reverse mortgage or other mortgage credit product;
- (l) The potential for default under the mortgage credit product, including but not limited to misrepresentations concerning the circumstances under which the consumer could default for nonpayment of taxes, insurance, or maintenance, or for failure to meet other obligations;
- (m) The effectiveness of the mortgage credit product in helping the consumer resolve difficulties in paying debts, including but not limited to misrepresentations that any mortgage credit product can reduce, eliminate, or restructure debt or result in a waiver or forgiveness, in whole or in part, of the consumer's existing obligation with any person;
- (n) The association of the mortgage credit product or any provider of such product with any other person or program, including but not limited to misrepresentations that:
 - (1) The provider is, or is affiliated with, any governmental entity or other organization; or
 - (2) The product is or relates to a government benefit, or is endorsed, sponsored by, or affiliated with any government or other program, including but not limited to through the use of formats, symbols, or logos that resemble those of such entity, organization, or program;
- (o) The source of any commercial communication, including but not limited to misrepresentations that a commercial communication is made by or on behalf of the consumer's current mortgage lender or servicer;
- (p) The right of the consumer to reside in the dwelling that is the subject of the mortgage credit product, or the duration of such right, including but not limited to misrepresentations concerning how long or under what conditions a consumer with a reverse mortgage can stay in the dwelling;
- (q) The consumer's ability or likelihood to obtain any mortgage credit product or term, including but not limited to misrepresentations concerning whether the consumer has been preapproved or guaranteed for any such product or term;
- (r) The consumer's ability or likelihood to obtain a refinancing or modification of any mortgage credit product or term, including but not limited to misrepresentations concerning whether the consumer has been preapproved or guaranteed for any such refinancing or modification; and

(s) The availability, nature, or substance of counseling services or any other expert advice offered to the consumer regarding any mortgage credit product or term, including but not limited to the qualifications of those offering the services or advice.

§ 321.4 Waiver not permitted.

It is a violation of this part for any person to obtain, or attempt to obtain, a waiver from any consumer of any protection provided by or any right of the consumer under this part.