



# Illinois Department of Financial and Professional Regulation

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## Division of Financial Institutions

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### Statement Regarding Escrow Agents Acting as Short-Sale Negotiators

The Department of Financial and Professional Regulation, Division of Financial Institutions (Department) has received inquiries concerning the propriety of licensed title insurance companies and registered title insurance agents serving as short-sale negotiators in the same transaction where they also serve as the escrow agent. While the Department neither issues “advisory opinions” nor dispenses legal advice, the public’s interest in this topic merits this Statement from the Department. Persons seeking a legal opinion should consult their own attorney.

The Federal Trade Commission (FTC) adopted final rules governing Mortgage Assistance Relief Services (MARS) that were effective (except for the advance fee ban) on December 29, 2010. 16 CFR Part 322, published in 75 Federal Register 230 at 75091-75144, December 1, 2010. Under Section 322.2(i)(6)(i), negotiating, obtaining or arranging a short-sale of a dwelling is a Mortgage Assistance Relief Service and subjects the “provider” to the MARS rules. Section 322.3 lists prohibited representations that the provider may not make and Section 322.4 lists the disclosures that the provider is required to make in various communications.

The Illinois Title Insurance Act (215 ILCS 155/3(8)) defines the term “escrow agent” to include title insurance companies, title insurance agents or independent contractors of either. That section further requires the escrow agent to comply with any rules adopted by the Secretary pertaining to escrow, settlement or closing transactions. One such rule (50 Ill. Adm. Code Section 8100.1742) requires the escrow agent to act without partiality to any of the parties to an escrow transaction. Further, in the event of a relationship or affiliation “which can be construed as a conflict of interest in relation to the escrow transaction” the escrow agent must advise in writing all parties to the escrow transaction of such relationship or affiliation **before being employed** as the escrow agent in connection with the transaction.

The act of serving as a short-sale negotiator can be construed as a conflict of interest in relation to the escrow transaction. Therefore, the escrow agent that serves as a short-sale negotiator **must** notify all parties to the escrow transaction **in writing** of the conflict of interest **before** being employed as the escrow agent in connection with the short-sale transaction. The escrow agent must also comply with all of the FTC’s MARS rules. Escrow agents planning to serve as a short-sale negotiator in a transaction where they are also the escrow agent are strongly urged to consult competent counsel to ensure compliance with all state and federal statutes and regulations.