

U.S. Supreme Court Confirms Truth In Lending Act Rescission Notice Requirements

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On January 13, 2015, the United States Supreme Court announced its decision in the case of *Jesinoski v. Countrywide Home Loans, Inc.* The unanimous opinion, written by Justice Antonin Scalia, confirmed that a borrower need not file suit in order to rescind a mortgage transaction and instead may exercise his right to rescind under the Truth in Lending Act (“TILA”) simply by providing timely notice to the lender.

In February 2010, exactly three years after they had refinanced the mortgage on their home, the Jesinoskis sent a written notice to their lender stating that they were rescinding the loan. They claimed that they had not received two copies of a disclosure document required by TILA. Their lender, Countrywide Home Loans, denied the rescission claim based upon documents in which the Jesinoskis acknowledged their receipt of the required disclosures. One year and one day after they originally delivered the rescission notice, the Jesinoskis filed suit in federal court to enforce the rescission of the loan. Countrywide Home Loans argued that the Jesinoskis could not effectively rescind the loan transaction unless they actually initiated litigation within three years of the date the refinancing had been completed. The District Court agreed, holding that TILA required the Jesinoskis to sue for rescission within three years after the transaction was consummated. Because they did not, their claim was barred. The Court of Appeals agreed.

The central question presented to the Supreme Court was what steps are required under TILA to rescind a mortgage loan transaction. In answer to this question, the Supreme Court considered the text of TILA, and determined that under Section 1635(a)’s unequivocal terms a borrower, “...shall have the right to rescind . . . by notifying the creditor . . . of his intention to do so”. Therefore, a TILA rescission is effective when the borrower notifies the creditor of his intention to rescind. A borrower’s letter notifying a lender of the intent to rescind is itself the rescission.

This ruling clearly requires that lenders pay close attention to any written TILA based notice of rescission that they might receive within three years of making a loan. TILA generally requires lenders to timely address and respond

to a borrower's rescission within twenty days. A failure to make the timely response may preclude any action to contest the rescission.

The Supreme Court's five page ruling may be found at: http://www.supremecourt.gov/opinions/14pdf/13-684_ba7d.pdf

For further information on this issue, please contact Michael D. Morehead, Tim Sullivan or your regular Hinshaw attorney.

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