

Client Alert

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The United States Supreme Court Decides Written Notice from a Consumer Borrower is Sufficient to Rescind a Loan Within Three Years of the Loan Transaction under the TILA

On January 14, 2015, the United States Supreme Court considered whether a consumer can exercise his right to rescind a loan by merely providing written notice to his lender or whether he must also file a lawsuit before the three year time period elapses under § 1635(a) and (f) of the Truth in Lending Act (TILA). The Court held that if a lender fails to provide adequate disclosures under TILA, a consumer need only provide written notice of rescission to his lender within three years of the date the loan was consummated.¹

Brief Background of Rescission under TILA

TILA was enacted in 1968 to ensure meaningful disclosures of credit terms in consumer credit transactions.² Congress reasoned that meaningful disclosure would help protect consumers from inaccurate and unfair practices related to credit and promote economic stability and competition.³ Courts have consistently ruled that TILA should be liberally construed to protect consumers and among its provisions is the right given to consumers to rescind certain loan transactions. The right to rescind applies to any consumer credit transaction secured by a principal dwelling, except for “residential mortgage transactions” which are generally defined as purchase money mortgages on the consumer’s principal dwelling.⁴

Pursuant to the terms of TILA, the consumer must exercise his right of rescission within the later of three days after the applicable loan transaction is consummated or three days after the lender complies with the disclosure requirements of TILA, see §1635(a); provided, however, the consumer must exercise his right of rescission no later than three years after the applicable loan transaction is consummated, §1635(f). The courts, however, had not consistently ruled as to whether the consumer must file a lawsuit to rescind the applicable loan transaction within three years after the loan transaction was consummated or whether a mere notice is all that is required.

Case Background

On February 23, 2007, Larry and Cheryle Jesinoski borrowed \$611,000 from Countrywide Home Loans, Inc. to refinance their mortgage. Three years later, on February 23, 2010, the Jesinoski’s sent Countrywide Home Loans, Inc. and Bank of America, which had acquired Countrywide, a letter rescinding their loan based upon their claim that Countrywide failed to provide adequate TILA disclosures. Bank of America disputed that Countrywide failed to provide adequate TILA disclosures and refused to accept the letter as a valid rescission. As such, the Jesinoski’s filed suit on February 24, 2011 in the United States District Court for the District of Minnesota seeking rescission of the loan and statutory TILA damages.

¹ *Jesinoski v. Countrywide Home Loans, Inc.*, 574 U.S. ____ (2015).

² See 15 U.S.C. § 1601(a).

³ See *id.*

⁴ See *id.* at 1635(e).

The District Court dismissed the Jesinoski's suit and held that a consumer can only exercise his right of rescission by filing a lawsuit within three years of when the loan was consummated. The United States Court of Appeals for the Eighth Circuit affirmed. In *Keiran v. Home Capital, Inc.*, 720 F. 3d 721, 727-728 (8th Cir. 2013), the Eighth Circuit concluded that § 1635(f) does not allow the right to rescind unless a consumer has filed suit within three years of the transaction's consummation.⁵ The Supreme Court reversed and remanded.

Supreme Court Decision

The Supreme Court analyzed the plain language of the statute and held that § 1635(a) clearly designates the process under which a consumer may exercise his right to rescind. This provision states that a consumer "shall have the right to rescind the transaction until midnight of the third business day following the consummation of the transaction . . . by **notifying** the creditor, in accordance with regulations of the Board, of his intention to do so. (emphasis added)"⁶ Thus, the court concluded that rescission is effectuated by mere notice. The Court further explained that § 1635(f) does not change the notice requirement found in § 1635(a) because it only designates the time frame within which the right to rescind *must* be exercised. Accordingly, if a lender never makes the required disclosures, the consumer's right of rescission expires "**three years** after the date of consummation of the transaction or upon the sale of property, whichever occurs first . . . (emphasis added)"⁷

Bank of America argued that written notice does not suffice if the parties dispute the adequacy of the disclosures and pointed to § 1635(g) to support its contention. Section 1635(g) provides that "[i]n any action in which it is determined that a creditor has violated this section, in addition to rescission, the court may award relief under section 1640 of this title for violations of this subchapter."⁸ The Court concluded that Bank of America's argument was unfounded because rescission can be, but is not necessarily, a consequence of judicial action and § 1635(a) does not create a distinction between disputed and undisputed rescissions.

Conclusion

The Supreme Court resolved the uncertainty that surrounded the method pursuant to which a consumer exercises his right of rescission under the TILA. The Court's decision supports the Congressional intent behind the enactment of the TILA, which is to protect consumers from unfair practices on the part of lenders. As such, lenders should be cognizant of the fact that consumers can exercise their right by merely submitting timely written notice.

Contacts

Tara L. Elgie
telgie@hunton.com

Gregory G. Hesse
ghesse@hunton.com

Eric W. Flynn
eflynn@hunton.com

Laura A. McKenery
lmckenery@hunton.com

Jarrett L. Hale
jhale@hunton.com

⁵ See *Jesinoski v. Countrywide Home Loans, Inc.*, 729 F. 3d 1092, 1093 (8th Cir. 2013).

⁶ See 15 U.S.C. § 1635(a).

⁷ See *id.* at 1635(f).

⁸ See *id.* at 1635(e).