

CLIENT ALERT

Creditors' Rights and Bankruptcy Practice Group
January 14, 2015

U.S. Supreme Court Rules that TILA Rescission Claims May Be Effectuated By Written Notification

Yesterday, the U.S. Supreme Court ruled unanimously in the case of Jesinoski v. Countrywide Home Loans, Inc., et al., No. 13-684 (January 13, 2015), that a borrower exercising a right to rescind under the Truth in Lending Act ("TILA") need only provide *written notice* to her lenders within the 3-year period following consummation of the loan transaction, *not file suit* within that period.¹

In Jesinoski, Larry and Cheryle Jesinoski mailed their lender, Countrywide Home Loans, Inc., a letter purporting to rescind their \$611,000 refinancing loan within three years of the loan's consummation. Their lender refused to acknowledge the validity of the purported rescission. A year later, the Jesinoskis filed suit in U.S. District Court seeking a declaration of rescission and damages.

The District Court granted the lender's motion for judgment on the pleadings, ruling that TILA requires a borrower seeking rescission to *file a lawsuit* within three years after the transaction's consummation, and that the Jesinoskis did not file their complaint until four years and one day after the loan's consummation. On appeal, the Eighth Circuit affirmed the judgment of the District Court.

The language of TILA requires that a borrower take the step of "notifying the creditor" of its right to rescind but does not specify how. Some courts, including the First, Sixth, Eighth, Ninth and Tenth Circuits, interpreted the statute to mean that the borrower *had to file a lawsuit* seeking rescission within three years after consummation of the loan transaction.² However, the Supreme Court found that the Eighth Circuit's interpretation was in error.

The Supreme Court explained that: "The language [of section 1635(a)] leaves no doubt that *rescission is effected* when the borrower *notifies* the creditor of his intention to rescind. It follows that, so long as the borrower notifies within three years after the transaction is consummated, his rescission is timely. . . Nothing in section 1635(f) changes this conclusion." (emphasis added).

Mortgage lenders must be aware of this new development.

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¹See 15 U. S. C. § 1635(a), (f).

²See McOmie-Gray v. Bank of America Home Loans, 667 F.3d 1325 (9th Cir. 2012) ("Because § 1635(f) is a statute of repose, it extinguished McOmie-Gray's right to rescission on April 14, 2009, three years after the consummation of the loan. McOmie-Gray did not file her rescission suit until August 28, 2009.") (emphasis added).