

TILA' RIGHT OF RESCISSION CONSTRUED:
Jesinoski v. Countrywide Home Loans

The **Truth-in-Lending Act** [“TILA”], 15 U.S.C. §§ 1601 *et seq.*, was enacted to help consumers “avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing”. 15 U.S.C. §1601(a). To this end, TILA §1635(a) permits borrowers to rescind a loan “until midnight of the third business day following the consummation of the transaction or the delivery of [disclosures required by TILA], whichever is later, by notifying the creditor of his intention to do so”. Thus, borrowers enjoy an *unconditional* right of rescission for a period of 3 days after closing, and a *conditional* right of rescission if the lender fails to deliver the required disclosures. If the lender *never* makes the required disclosures, §1635(f) provides that “the right of rescission shall expire three years after the date of consummation ...”.

On February 23, 2007, Jesinoski refinanced the mortgage on his home by borrowing \$611,000 from Countrywide. Exactly 3 years later, on February 23, 2010, he notified the lender of his intention to rescind the transaction. On March 12, 2010, the lender responded by rejecting the borrower’s notice. In February, 2011, Jesinoski filed suit against the lender.

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Countrywide took the position that in order for the rescission be effective, the borrower was required to file suit during the 3-year period, and not merely advise the lender of his intention. The United States District Court agreed with the lender, and the Eighth Circuit Court of Appeals affirmed. However, the United States Supreme Court disagreed. In a unanimous decision by Justice Scalia, the court held that the plain wording of TILA merely required the borrower to notify the creditor of his intention to rescind, which is precisely what Jesinoski had done. Accordingly, it reversed the Eighth Circuit. *Jesinoski v. Countrywide Home Loans*, ___ U.S. ___, 2015 WL 144681 (2015).

In general, title insurers and their agents are not concerned with TILA and similar consumer protection statutes, because the *ALTA Loan Policy* (2006), Exclusion No. 5, excludes from coverage:

Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.

Nevertheless, title companies are aware that Regulation Z, adopted pursuant to TILA, sets forth a 3-day right of rescission for mortgage transactions involving the borrower’s principal dwelling (subject to certain exceptions, the most notable of which is for purchase-money mortgages). The practical effect of Regulation Z is to require that residential refinance loan transactions be closed “in escrow” until the 3-day period has expired. Although Regulation Z clearly falls within the ambit of the policy exclusion set forth above, it is prudent for a title company which is responsible for disbursing funds to comply with the lender’s instructions relative thereto.



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