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Supreme Court Says Written Notice of Rescission by Mortgagors is Sufficient Under TILA

On January 13, 2015, the U.S. Supreme Court resolved a split amongst the Circuit Courts as to whether the Truth in Lending Act ("TILA") requires borrowers to file a lawsuit within three years of loan origination in order to exercise their rescission rights, or whether written notice of rescission within the three year period is sufficient. The Court held that only written notice is required.

Under TILA, borrowers who receive a mortgage have two rescission rights: one within three days of closing and before any funds are disbursed, and one within three years of the closing date if the borrowers can prove that they were not provided with the TILA mandated right to rescind disclosure at loan origination. Circuit courts, however, have split on exactly when and how borrowers must notify lenders of a mortgage rescission. The First, Sixth, Eighth, Ninth and Tenth Circuits have held that rescission is only effective under TILA if a lawsuit is filed within three years of rescission. The Third, Fourth and Eleventh Circuits have taken the position that written notification alone is sufficient.

The Supreme Court ended this split in *Jesinoski v. Countrywide Home Loans Inc.* (No. 13-684), reversing a September 2013 ruling by the Eighth Circuit that borrowers

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Larry and Cheryle Jesinoski were required under TILA to file suit against their lender, Countrywide, within the three year period in order to have their mortgage rescinded.

The Jesinoskis refinanced their mortgage loan with Countrywide on February 23, 2007. On February 23, 2010, the Jesinoskis mailed written notice to Countrywide of their decision to rescind. One year later, and four years after loan origination, the Jesinoskis filed suit against Countrywide demanding rescission, claiming they did not receive the right to rescind notice. The district court dismissed the case, ruling that the Jesinoskis were required under TILA to file their law suit within the three-year period. The Eighth Circuit upheld the district court's decision, and the Jesinoskis appealed to the U.S. Supreme Court.

Writing for a unanimous Court that found in favor of the Jesinoskis, Justice Antonin Scalia stated that the language in TILA "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. The statute does not also require him to sue within three years."

Preparing for the New RESPA Requirements for Real Estate Closings

The Consumer Financial Protection Bureau ("CFPB") has finalized its rulemaking in amending Regulation X, which implements the Real Estate Settlement Procedures Act of 1974 ("RESPA"), and Regulation Z, which implements the Truth in Lending Act ("TILA"). These new rules governing mortgage loan servicing under the Dodd-Frank Act go into effect on August 1, 2015.

Under the new rules, form documents used for mortgage loan transactions pursuant to both RESPA and TILA have been merged, and redundant forms will no longer be used. The new forms include:

Loan Estimate -- this document must be provided to mortgage loan applicants within three days following the

PIB Law Gives Back

Food Drives

PIB Law's Boston, New Jersey and Philadelphia offices each participated in local food drives to support their communities. PIB's Boston office donated to [BostonCanshare](#), an annual food drive sponsored by the Mayor's Office of Food Initiatives, FedEx, and The Greater Boston Food Bank. The New Jersey office donated to the Food Bank of Somerset County, who then distributed the goods to three local food pantries located in Somerville, Bound Brook, and North Plainfield, as well as a warehouse in Bridgewater, NJ. The firm's Philadelphia office donated to Philabundance, the Philadelphia region's largest hunger relief organization.



Blood Drive

The New Jersey office held a blood drive on January 8th. New Jersey Blood Services requested PIB Law to host another drive after previous successful drives. The blood bank was able to collect many

submission of an application. The new form replaces the Good Faith Estimate (under RESPA) and the early Truth-in-Lending disclosure (under TILA), and includes new disclosures required under Dodd-Frank. Other requirements include:

- If a consumer obtains a loan through a mortgage broker and the broker provides the Loan Estimate, the lender is still responsible for complying with all form requirements.
- A lender cannot charge a consumer any fees -- except those related to obtaining a consumer's credit report -- until the consumer has been given the Loan Estimate form and has informed the lender that the consumer intends to proceed with the loan transaction.
- Written estimates may be provided to consumers prior to a loan application, but these estimates must include a written disclaimer that the estimate is not an official Loan Estimate. This disclaimer must also be included in any advertising of mortgage loan products.

Closing Disclosure -- this document is a detailed account of the settlement transaction and must be provided within at least three business days before closing. It replaces the HUD-1 (RESPA) and revised Truth-in-Lending disclosure (TILA) and, as with the Loan Estimate, also includes new disclosures required under Dodd-Frank. Other requirements include:

- If the lender makes any significant changes between the time the Closing Disclosure form is provided to a consumer and the closing date, the consumer must be provided with a new Closing Disclosure form and an additional three business day waiting period. Significant changes include changes to the APR of more than $\frac{1}{8}$ of a percent (or $\frac{1}{4}$ of a percent for loans with irregular periods or payments), the addition of a prepayment penalty or a change in the loan product.
- A lender may use a settlement agent to provide the Closing Disclosure, so long as the agent complies with the final rule requirements.

There are numerous other requirements for mortgage lenders and servicers under the final CFPB rules, and

units of blood and look forward to returning in a few months for another successful event!



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preparation for compliance must be completed for loans that originate on or after August 1, 2015.



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