



TILA Rescission Examined

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In its opinion released on March 20, 2020, the Illinois Appellate Court for the Third District ruled on the statute of limitations within which a mortgagor can bring an action seeking to enforce Truth in Lending Act ("TILA") sanctions against a lender pursuant to an alleged right of rescission. In the case of U.S. Bank, N.A. v. Miller, Mortgagor had refinanced a loan secured by a residential mortgage on July 2, 2007. Two years later, Lender initiated foreclosure proceedings. Eventually, in November of 2011.....trust me, in a statute of limitations case these dates become relevant.....Mortgagor filed a counterclaim alleging that he had timely rescinded the mortgage transaction in June of 2010, within the three-year rescission right available under TILA when the mortgage lender violates its TILA obligations.

The TILA violation alleged by Mortgagor in the case was the failure of Lender to return earnest money and provide any response to Mortgagor's initial notice of rescission within 20 days of Mortgagor's assertion of rescission. Such a violation, if true, converts a three-**day** window for rescission to a three-**year** time frame.

The description of the outcomes of any case(s) referenced in this column are for informational purposes only, and do not represent any legal advice or recommendation as to any course of action that a bank should, or should not, take in a specific situation. Any actual dispute between a bank and a customer regarding any banking relationship calls for the consultation with, and reliance on, actual legal advice from the bank's own attorney.

Even assuming that Mortgagor's notice of rescission in June of 2010 was justified as within three years of the alleged TILA violation by Lender in July of 2007, the issue examined by the Third District Illinois Appellate Court ("Court") was whether Mortgagor could enforce the TILA remedies that he sought when he filed a counterclaim to the foreclosure lawsuit in November of 2011. The Court had to resolve a dilemma regarding the fact that one Section addressing remedies for TILA violations expressly stated a one-year statute of limitations, but the particular Section of TILA more relevant to Mortgagor's counterclaim did not mention a statute of limitations. Since that Section failed to impose a TILA statute of limitations, Mortgagor argued that the applicable statute of limitations for raising his TILA counterclaim to the foreclosure suit was Illinois' ten years limit applicable to written contracts.

The difference between those two choices was, of course, critical to the outcome of Mortgagor's counterclaim for rescission remedies. He had alleged in November of 2011 that Lender had failed to make a TILA-compliant response to his June, 2010 notice of rescission. Showing off their knowledge of both math and calendars, the Justices on the Court determined that Mortgagor's November, 2011 claim came more than one year, but less than ten years, after a June, 2010 TILA violation.

Ultimately, the Court rejected Mortgagor's argument and imposed the one-year statute of limitations, effectively disposing of Mortgagor's counterclaim seeking TILA remedies, which would have included removal of Lender's security interest. The Court concluded that the two Sections of TILA were of such similar subject matter that it was unreasonable to conclude that confining legal actions to a one-year statute of limitations in the first but failing to state a time in the second meant that Congress intended that the second should be governed by an expansive 10 year state statute of limitations.

Beyond that Appellate Court opinion, some other TILA rescission "refreshers" are:

- Even if the mortgage is on a principal dwelling of the consumer, rescission rights are not available if the loan has a business purpose.
- A mortgagor can only have one "principal dwelling" (providing rescission rights) at a time; rescission is not available for a mortgage on a second home or vacation home, even if consumer/residential.
- Rescission rights are afforded to any person who has an ownership interest in the dwelling, regardless of whether (s)he is a signatory on the note (e.g., even if only one spouse signed the note, all other spouses with an ownership interest in the residence are consumers with rescission rights). This requires two copies of the notice of right of rescission to be given to all spouses.
- Beyond the rescission period, the lender is entitled to conclude that rescission has not been and will not be asserted by reliance on a written statement from the mortgagor. **However**, because all persons with an ownership interest possess a right of rescission, the assurance from only one is not conclusive evidence that rescission has not been initiated by any other(s) who may have rescission rights.

Again, the above comments regarding rescission rights are merely information gleaned from existing TILA regulations (i.e., Federal Reserve Reg Z) and do not represent any legal advice on which any CBAI Member should rely in the event of an actual TILA rescission dispute with a customer. Confer with the bank's own attorney for such legal advice and representation.

Feel free to contact me (e-mail: jerryc@cbai.com) or CBAI Paralegal Levette Shade (e-mail: levettes@cbai.com) if you want any additional information.

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