

PUBLICATION

Supreme Court Resolves Circuit Split Over TILA Rescissions Limitations Period

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The United States Supreme Court ruled yesterday that a borrower relying on the Truth in Lending Act (TILA) to rescind his mortgage loan need only mail written notice of his intent to his lender within three years of the loan's origination – not file suit within that same time period. The pro-borrower opinion issued by the Supreme Court in *Jesinoski v. Countrywide Home Loans, Inc.*, Docket No. 13-684 (U.S. Sup. Ct.) was unanimous and was delivered by Justice Scalia. This opinion clarifies the Court's ruling in *Beach v. Ocwen Federal Bank*, 523 U.S. 410 (1998) to establish that the three-year deadline for rescission by borrowers contained in 15 U.S.C. § 1635(a) does **not** act as a statute of repose. The opinion resolves a circuit split and reverses precedent in the First, Sixth, Eighth, Ninth and Tenth Circuits.

Jesinoski concerns the Truth in Lending Act's provision allowing a borrower to rescind certain mortgage loans within three years of origination when the originator fails to provide the borrower with complete and accurate statutory disclosures at closing. Under the statute, a borrower may rescind by notifying the originator or an acquiring lender in writing of his intent pursuant to Regulation Z, 12 C.F.R. § 226.23(a)(2).

Before yesterday's opinion, most lenders (and five Courts of Appeal) believed that the three-year deadline acted as a bar for rescission lawsuits, effectively barring any lawsuit seeking rescission that is not filed within three years of the loan's origination. The *Jesinoski* case turns this once widespread position on its head; now, a borrower need only mail written notice to his lender within three years to preserve his right to initiate a rescission suit later.

For lenders, the most troubling part of this opinion is not the ruling itself but what the Supreme Court failed to address. Although it is clear that a borrower has the right to notify lenders of his intent to rescind within three years after origination, it is not at all clear how long the borrower has to initiate a rescission lawsuit once notice is given. Lenders may need to face the prospect of many more rescission lawsuits in the future, and without a clear time frame in which to expect them.

If you have questions about this ruling or any other mortgage-related issues, please contact your Baker Donelson attorney or any member of the Firm's Residential Mortgage Litigation Group.