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Client Alert: U.S. Supreme Court Holds That Borrowers Need Only Give Notice of Intent to Rescind Under TILA within Three Years of Closing

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On January 13, 2015, the United States Supreme Court ruled in favor of homeowners seeking to rescind their loans and mortgages with written notice to lenders within three years of completion of a real estate transaction, where lenders allegedly failed to comply with the federal Truth in Lending Act (TILA). Based on this decision in *Jesinoski v. Countrywide Home Loans, Inc.*, it is not necessary that a homeowner actually file a court action within those three years.

The borrowers in this case received money to refinance their home mortgage. Exactly three years after receiving the loan, borrowers sent the lender a letter purporting to rescind the transaction claiming that the lender had failed to provide the required number of copies of the TILA notice and disclosure at the closing. The lender refused to acknowledge the rescission. The borrowers sued over four years after the completion of the real estate transaction.

TILA provides a right to rescind to borrowers under certain circumstances, which right expires three years after the closing of the real estate transaction or the sale of property, whichever occurs first (15 U.S. Code § 1635(f)).

Appellate courts had split across the United States, with some courts requiring borrowers to file their lawsuit within three years of closing to exercise the right to rescind provided by TILA (First, Sixth, Eighth, Ninth, and Tenth Circuits), and others simply requiring that borrowers give notice of intent to rescind in that timeframe without necessarily filing a lawsuit (Third, Fourth and Eleventh Circuits).

In *Jesinoski*, the Court held that a borrower need **only provide written notice within the three year period to rescind** to properly begin the rescission process. The language of the law “leaves no doubt that rescission is effected when the borrower notifies the creditor of his intention to rescind,” wrote Justice Antonin Scalia on behalf of the court, which voted unanimously.

As a practical matter, this extends the timeframe when borrowers may file suit for rescission, so long as they timely give notice of intent to rescind. For lenders, the decision underscores the importance of complying with disclosure requirements early on to avoid uncertainty and risk many years after a transaction or sale is completed.

If you have questions about this case or related financial institution or lender/servicer issues, please contact: [Lisa Forbes](#) (Cleveland; 216.479.6105); [Rodney Holaday](#) (Columbus; 614.464.8356); or [Chris Santagate](#) (Columbus; 614.464.5477).