

UNITED STATES SUPREME COURT CLARIFIES THAT NOTICE, AS OPPOSED TO FILING A LAWSUIT, IS A PROPER METHOD OF EXERCISING TILA RESCISSION RIGHTS

In an opinion dated January 13, 2015, the Supreme Court of the United States reversed a decision of the Eighth Circuit Court of Appeals, unanimously holding that borrowers may exercise their three-year right of rescission under the Truth in Lending Act (TILA) simply by providing written notice to their lender.

The Court in *Jesinoski v. Countrywide Home Loans, Inc.* held that the petitioners' written notice to Countrywide of their election to exercise the right to rescind their loan was sufficient, resolving conflicting authority among federal circuit and district courts that interpret TILA as requiring a borrower to file a lawsuit within three years of loan consummation in order to exercise such rescission rights.

According to the Court's opinion delivered by Justice Scalia, TILA explains in unequivocal terms that a borrower shall have the right to rescind a loan by notifying the creditor of his intention to do so. According to Justice Scalia, "[this] language leaves no doubt that rescission is effected when the borrower notifies the creditor of his intention to rescind. ... The statute does not also require him to sue within three years."

Interestingly, the Court's opinion goes on to provide that, unlike the elements of common-law rescission which require a party to tender back what it received in order to be entitled to such relief, a borrower does not necessarily need to tender to a creditor funds received under the loan in order to effectuate its election to exercise its rescission rights under TILA. In the words of the Court, "[t]o the extent [TILA] alters the traditional process for unwinding such a unilaterally rescinded transaction, this is simply a case in which statutory law modifies common-law practice."

The full opinion of the Supreme Court of the United States in *Jesinoski v. Countrywide Home Loans, Inc.* can be found at: http://www.supremecourt.gov/opinions/14pdf/13-684_ba7d.pdf.