

6th Circuit Rejects Borrowers' Claim for Rescission for Lender's Failure to Notify the Borrowers That the Debt Had Been Assigned

In a case “that appears to be a new question in the court of appeals,” the United States Court of Appeals for the Sixth Circuit recently affirmed a lower court’s holding that **A LENDER’S FAILURE TO NOTIFY ITS BORROWERS OF THE ASSIGNMENT OF THE BORROWERS’ DEED OF TRUST DID NOT ENTITLE THE BORROWERS TO RESCIND THE LOAN UNDER THE TRUTH IN LENDING ACT** (“TILA”). See *Robertson v. U.S. Bank, N.A.*, 831 F.3d 757 (6th Cir. 2016). In the case, the borrowers executed a note and deed of trust in 2005. The note was eventually assigned to the defendant, whereas the deed of trust simply listed MERS as the beneficiary. After the borrowers defaulted in 2011, MERS assigned the deed of trust to the defendant. In 2014, after receiving a notice of trustee’s sale for the property, the borrowers sent a “notice of rescission” to the defendant and, the day before the scheduled sale, filed an action claiming that the defendant’s failure to notify them of the assignment of the deed of trust in 2011 violated TILA and allowed the borrowers to rescind the loan. The defendant moved for summary judgment, which the district court granted. On appeal, the Sixth Circuit affirmed. First, it found that **TILA’S NOTICE REQUIREMENT ONLY APPLIED TO AN ASSIGNMENT OF THE UNDERLYING DEBT, NOT THE DEED OF TRUST.** The note here was assigned in 2006, three years before the notice provision was enacted, and therefore that the assignment could not have violated TILA. See 15 USC § 1641. Regardless, however, the Sixth Circuit further held that, **even if the debt had been assigned in violation of TILA’s notice provision, the right of rescission found in 15 USC § 1635 applied only to a failure to make “material disclosures.”** Because 15 USC § 1602(v) lists the required “material disclosures” and appears to be exhaustive, the court found that the a failure to notify of an assignment does not entitle the borrowers to rescind.