

NINTH CIRCUIT HOLDS TILA'S NOTICE OF MORTGAGE TRANSFER REQUIREMENT IS NOT RETROACTIVE

Has your bank or other business been sued for violating the Truth In Lending Act's ("TILA") requirement for a notice of mortgage transfer based on a mortgage you acquired before May 20, 2009? If so, then a recent Ninth Circuit decision may be helpful.

15 U.S.C § 1641(g), an amendment to the Truth In Lending Act effective May 20, 2009, requires a creditor buying a mortgage loan to provide written notice to the borrower of the transfer and the new creditor's contact information within 30 days after acquiring the mortgage. Failing to provide the required notice can subject the new creditor to the plaintiff's actual damages, a statutory penalty of \$4,000 for individual claims, or up to a \$1 million in a class action, plus attorneys' fees and costs. 15 U.S.C. § 1641(a).

On December 14, 2015, the Ninth Circuit Court of Appeals held that 15 U.S.C. § 1641(g) does not apply retroactively, meaning section 1641(g)'s notification requirements do not apply to mortgages that were transferred before the section's May 20, 2009 effective date. *Talaie v. Wells Fargo Bank, NA*, 13-56314, 2015 WL 8606014, at *3 (9th Cir. Dec. 14, 2015).

The Ninth Circuit is the first federal appellate court to address the retroactivity of section 1641(g), although its decision is in accord with numerous district court rulings. *See, e.g., Bradford v. HSBC Mortg. Corp.*, 829 F. Supp. 2d 340, 353 (E.D. Va. 2011) ("Thus, to give effect to the well-established presumption against retroactivity here compels the conclusion that Ally's failure to give Bradford notice that it had acquired the Note is not actionable under § 1641(g), which had no legally operative effect at the time of Ally's receipt of the Note."); *Johnson v. Bank of Am., N.A.*, CIV.A. H-13-2029, 2014 WL 4923970, at *10 (S.D. Tex. Sept. 30, 2014) ("Section 1641(g) applies only to transfers made on or after the date of its passage.").

Hopefully, the Ninth Circuit's decision—in conjunction with the district court decisions uniformly reaching the same result—will reduce failure-to-notify suits arising out of lender conduct before section 1641(g)'s effective date. But, if your bank or financial services provider is the subject of such a suit, you now have a new and persuasive weapon in your arsenal in support of a dispositive motion.