

Equitable Tolling

The equitable tolling principles are to be read into every federal statute of limitations unless Congress expressly provides to the contrary in clear and ambiguous language, (See *Rotella v. Wood*, [528 U.S. 549, 560-61](#), 120 S. Ct. 1075, 145 L. Ed. 2d 1047 (2000)). Since TILA does not evidence a contrary Congressional intent, its statute of limitations must be read to be subject to equitable tolling, particularly since the act is to be construed liberally in favor of consumers.

Security Interest is Void

The statute and regulation specify that the security interest, promissory note or lien arising by operation of law on the property becomes automatically void. ([15 U.S.C. § 1635\(b\)](#); Reg. Z §§ 226.15(d)(1), 226.23(d)(1). As noted by the Official Staff Commentary, the creditor's interest in the property is "automatically negated regardless of its status and whether or not it was recorded or perfected." (Official Staff Commentary §§ 226.15(d)(1)-1, 226.23(d)(1)-1.). Also, the security interest is void and of no legal effect irrespective of *whether the creditor makes any affirmative response to the notice*. Also, strict construction of Regulation Z would dictate that the voiding be considered absolute and not subject to judicial modification. This requires DanversBank, Ameriquest Mortgage, Commonwealth Land Title Insurance Company, New Century Mortgage and Chase Home Finance to submit canceling documents creating the security interest and filing release or termination statements in the public record. (Official Staff Commentary §§ 226.15(d)(2)-3, 226.23(d)(2)-3.)

Extended Right of Rescission

The statute and Regulation Z make it clear that, if Mr. Pierre R. Augustin, Pro Se has the extended right and chooses to exercise it, the security interest and obligation to pay charges are automatically voided. (Cf. *Semar v. Platte Valley Fed. Sav. & Loan Ass'n*, [791 F.2d 699](#), 704-05 (9th Cir. 1986) (courts do not have equitable discretion to alter substantive provisions of TILA, so cases on equitable modification are irrelevant). The statute, section 1635(b) states: "When an obligor exercises his right to cancel..., any security interest given by the obligor... becomes void upon such rescission". Also, it is clear from the statutory language that the court's modification authority extends only to the procedures specified by section 1625(b). The voiding of the security interest is not a procedure, in the sense of a step to be followed or an action to be taken. The statute makes no distinction between the right to rescind in three day or extended in three years for

federal and four years under Mass. TILA, as neither cases nor statute give courts equitable discretion to alter TILA's substantive provisions. Since the rescission process was intended to be self-enforcing, failure to comply with the rescission obligations subjects DanversBank, Ameriquest Mortgage, Commonwealth Land Title Insurance Company, New Century Mortgage and Chase Home Finance to potential liability.

Non-Compliance

Non-compliance is a violation of the act which gives rise to a claim for actual and statutory damages under [15 USC 1640](#). TIL rescission does not only cancel a security interest in the property but it also cancels any liability for the Mr. Pierre R. Augustin, Pro Se to pay finance and other charges, including accrued interest, points, broker fees, closing costs and that the lender must refund to Mr. Pierre R. Augustin, Pro Se all finance charges and fees paid.

In case DanversBank, Ameriquest Mortgage, Commonwealth Land Title Insurance Company, New Century Mortgage and Chase Home Finance do not respond to this default letter, Mr. Pierre R. Augustin, Pro Se has the option of enforcing the rescission right in the federal, bankruptcy or state court (See S. Rep. No. 368, 96th Cong. 2 Sess. 28 at 32 reprinted in 1980 U.S.C.A.N. 236, 268 ("The bill also makes explicit that a consumer may institute suit under section 130 [15 U.S.C., 1640] to enforce the right of rescission and recover costs and attorney fees").

TIL rescission does not only cancel a security interest in the property but it also cancels any liability for Mr. Pierre R. Augustin, Pro Se to pay finance and other charges, including accrued interest, points, broker fees, closing costs and the lender must refund to Mr. Pierre R. Augustin, Pro Se all finance charges and fees paid. Thus, DanversBank, Ameriquest Mortgage, Commonwealth Land Title Insurance Company, New Century Mortgage and Chase Home Finance are obligated to return those charges to Mr. Pierre R. Augustin, Pro Se (Pulphus v. Sullivan, 2003 WL 1964333, at *17 (N.D. Apr. 28, 2003) (citing lender's duty to return consumer's money as reason for allowing rescission of refinanced loan); McIntosh v. Irving Union Bank & Trust Co., 215 F.R.D. 26 (D. Mass. 2003) (citing borrower's right to be reimbursed for prepayment penalty as reason for allowing rescission of paid-off loan).

Sources of Law in Truth in Lending Cases

"These include TILA itself, the Federal Reserve Board's Regulation Z which implements the Act, the Official Staff Commentary on Regulation Z, and

case law. Except where Congress has explicitly relieved lenders of liability for noncompliance, it is a strict liability statute. (Truth-In-Lending, 5th Edition, National Consumer Law Center, 1.4.2.3.2, page 11)

Synopsis of How Rescission Works

The process starts with the consumer's notice to the creditor that he or she is rescinding the transaction. As the bare bones nature of the FRB model notice demonstrates, it is not necessary to explain why the consumer is canceling. The FRB Model Notice simply says: "I WISH TO CANCEL," followed by a signature and date line (Arnold v. W.D.L. Invs., Inc., [703 F.2d 848](#), 850 (5th cir. 1983) (clear intention of TILA and Reg. Z is to make sure that the creditor gets notice of the consumer's intention to rescind)).

The statute and Regulation Z states that if creditor disputes the consumer's right to rescind, it should file a declaratory judgment action within the twenty days after receiving the rescission notice, before its deadline to return the consumer's money or property and record the termination of its security interest ([15 USC 1625\(b\)](#)). Once the lender receives the notice, the statute and Regulation Z mandate 3 steps to be followed.

Step One of Rescission

First, by operation of law, the security interest and promissory note automatically becomes void and the consumer is relieved of any obligation to pay any finance or other charges ([15 USC 1635\(b\)](#); Reg. Z-226.15(d)(1), 226.23(d)(1). . See Official Staff Commentary § 226.23(d)(2)-1. (See Willis v. Friedman, Clearinghouse No. 54,564 (Md. Ct. Spec. App. May 2, 2002) (Once the right to rescind is exercised, the security interest in the Mr. Pierre R. Augustin's property becomes void ab initio). Thus, the security interest is void and of no legal effect irrespective of whether the creditor makes any affirmative response to the notice. (See Family Financial Services v. Spencer, 677 A.2d 479 (Conn. App. 1996) (all that is required is notification of the intent to rescind, and the agreement is automatically rescinded).

It is clear from the statutory language that the court's modification authority extends only to the procedures specified by section 1635(b). The voiding of the security interest is not a procedure, in the sense of a step to be followed or an action to be taken. The statute makes no distinction between the right to rescind in 3-day or extended as neither cases nor statute give courts equitable discretion to alter TILA's substantive provisions. Also, after the security interest is voided, secured creditor becomes unsecured. (See Exhibit #6)

Step Two of Rescission

Second, since Mr. Pierre R. Augustin has legally rescinded the loans transaction, the mortgage holders (DanversBank, Ameriquet Mortgage, Commonwealth Land Title Insurance Company, New Century Mortgage and Chase Home Finance) must return any money, including that which may have been passed on to a third party, such as a broker or an appraiser and to take any action necessary to reflect the termination of the security interest within 20 calendar days of receiving the rescission notice which has expired. The creditor's other task is to take any necessary or appropriate action to reflect the fact that the security interest was automatically terminated by the rescission within 20 days of the creditor's receipt of the rescission notice ([15 USC 1635](#)(b); Reg. Z-226.15(d)(2),226.23(d)(2)).

Step Three of Rescission

Mr. Pierre R. Augustin is prepared to discuss a tender obligation, should it arise, and satisfactory ways in which to meet this obligation. The termination of the security interest is required before tendering and step 1 and 2 have to be respected by DanversBank, Ameriquet Mortgage, Commonwealth Land Title Insurance Company, New Century Mortgage and Chase Home Finance.

Conclusion

I am requesting an itemized statement of my payment record to DanversBank, Ameriquet Mortgage, Commonwealth Land Title Insurance Company, New Century Mortgage and Chase Home Finance. When Mr. Pierre R. Augustin rescinds within the context of a bankruptcy, courts have held that the rescission effectively voids the security interest, rendering the debt, if any, unsecured (See Exhibit #6). (See *in re Perkins*, 106 B.R. 863, 874 (Bankr. E.D.Pa. 1989); *In re Brown*, 134 B.R. 134 (Bankr. E.D.Pa. 1991); *In re Moore*, 117 B.R. 135 (Bankr.E.D. Pa. 1990)).

Once the court finds a violation such as not responding to the TILA rescission letter, no matter how technical, it has no discretion with respect to liability (*in re Wright*, *supra*. At 708; *In re Porter v. Mid-Penn Consumer Discount Co.*, 961 F.2d 1066, 1078 (3d. Cir. 1992); *Smith v. Fidelity Consumer Discount Co.*, *Supra*. At 898. Any misgivings creditors may have about the technical nature of the requirements should be addressed to Congress or the Federal Reserve Board, not the courts.

Since DanversBank, Ameriquet Mortgage, Commonwealth Land Title Insurance Company, New Century Mortgage and Chase Home Finance have

not cancelled the security interest and return all monies paid by Mr. Pierre R. Augustin within the 20 days of receipt of the letter of rescission of September 21, 2006, the lenders named above are responsible for actual and statutory damages pursuant to [15 U.S.C. § 1640\(a\)](#).

Once again, please send me a copy of my payment history and other document showing the loan disbursements, loan charges and payment made. Also, DanversBank, Ameriquest Mortgage, Commonwealth Land Title Insurance Company, New Century Mortgage and Chase Home Finance are to take any necessary or appropriate action to reflect the fact that the security interest was automatically terminated by the rescission ([15 USC 1635\(b\)](#); Reg. Z-226.15(d)(2),226.23(d)(2)). This requires canceling documents creating the security interest and filing release or termination statements in the public record of FREE and CLEAR TITLE to Mr. Pierre R. Augustin. Thank you (TTTLMG).