

NO RETROACTIVE APPLICATION OF 2009 TILA AMENDMENT

Last week, the U.S. Court of Appeals for the Ninth Circuit [denied](#) plaintiffs' December 28 [Petition for Panel Rehearing and Hearing En Banc](#) of a [putative class action](#) in which the plaintiffs alleged that defendant banks were required to comply with a 2009 TILA amendment requiring written notice of the sale or transfer of mortgages to borrowers. *Talaie v. Wells Fargo Bank*, No. 13-56314 (9th Cir. Feb. 19, 2016). In this case, the plaintiffs alleged that the TILA amendment should have applied retroactively to actions taken three years prior to its passage—namely the failure to provide written notice to borrowers regarding the transfer of a deed of trust from one defendant to the other. On December 14, 2015, the Ninth Circuit affirmed a district court's ruling that the TILA amendment did not apply retroactively, citing *Landgraf v. USA Film Prods.*, 511 U.S. 244, 265 (1994) and concluding that there was no clear Congressional intent that the amendment applied retroactively. Plaintiffs' December 28 petition for rehearing argued that the case should be reheard on the issues of (i) whether the TILA amendment should apply retroactively to borrowers who are currently being foreclosed upon by lenders; and (ii) whether tender was required for the cancellation of documents cause of action. The Ninth Circuit denied the plaintiffs' petition, stating that “[t]he full court has been advised of Appellants' petition for rehearing en banc and no judge of the court has requested a vote on the petition for rehearing en banc.”