

TILA DISCLOSURE REQUIREMENTS DON'T APPLY TO LOAN MODS

The United States District Court for the Southern District of California recently held **that the Truth in Lending Act's ("TILA") disclosure and rescission provisions do not apply to a loan modification in which there is no extension of new credit.** See Lucore v. Wells Fargo Bank, N.A., 2019 WL 2373499 (S.D. Cal. June 5, 2019). In the case, plaintiff received a loan in 2006 that was secured by a deed of trust against his home. In 2010, he executed a modification of the loan and, four months later, sought to rescind the loan under TILA because he was not given the required TILA disclosures during the modification. Defendant nonetheless proceeded to record notices of default and a notice of trustee's sale against the property. Plaintiff then brought this action seeking cancellation of the instruments and alleging a violation of the Fair Debt Collection Practices Act ("FDCPA"). The FDCPA claim was based on plaintiff's allegations that defendant was trying to foreclose on a note and deed of trust that had been rescinded. Defendant moved to dismiss the action, arguing that plaintiff's attempt to rescind was time-barred because it was more than four years after the initial loan.

The Court granted defendant's motion to dismiss. Under TILA, borrowers have the right to rescind a loan for three days. However, if the lender fails to make the required TILA disclosures, this rescission right extends for three years. Here, plaintiff claimed that defendant was required to provide TILA disclosures in connection with the 2010 refinance and, because defendant failed to do so, his rescission request was timely. The Court disagreed, noting that "[c]ourts in the Ninth Circuit have found that **TILA's disclosure requirements and rescission provisions do not apply to loan modifications agreements when they do not constitute either the extension of new credit or a refinancing.**" Likewise, the relevant federal regulations state that a transaction is not a refinancing when it results in a "reduction in the annual percentage rate [from the original loan] with a corresponding change in the payment schedule [compared to the original loan]." 12 C.F.R. § 226.20(a)(2). Here, the 2010 modification was not a refinancing because "Plaintiff's existing obligation to repay the original loan was not satisfied and replaced by a new obligation. The modification simply altered Plaintiff's existing loan repayment obligation by lowering his interest rate." Thus, defendant did not have a duty to provide new disclosures in 2010, and plaintiff's rescission request was untimely. Because plaintiff's causes of action for FDCPA and cancellation were based on his claim that he timely rescinded the loan, the Court dismissed the action.