

CLAIM TO ENFORCE A RESCISSION REQUEST UNDER TILA MAY BE TIME-BARRED

An action by a Washington state borrower to enforce a request for rescission of a loan under the Truth in Lending Act (TILA) is analogous to an action to enforce a contract and must be brought within the Washington state statute of limitations for such a contract claim, given that **TILA ITSELF DOES NOT PROVIDE A LIMITATIONS PERIOD.** [Hoang v. Bank of America, N.A., 2018 WL 6367268 \(9th Cir. December 6, 2018\).](#)

To effect rescission of a loan under TILA, the borrower must notify the lender of her intent to rescind within three days, or if required disclosures are not given, three years of the loan's consummation date; but the borrower need not bring a lawsuit to enforce its rescission request within that three-year period. **TILA does not specify when the borrower must bring the enforcement lawsuit.**

So, to what limitations should a borrower, her lawyer, and the court look when the borrower has not brought the rescission suit within the three years? **“Without a statute of limitations in TILA, courts must first borrow the most analogous state law statute of limitations and apply that limitation period to TILA rescission enforcement claims.”** *Id.* at *1. “Only when a state statute of limitations would ‘frustrate or significantly interfere with federal policies’ do we turn instead to federal law to supply the limitations period” to look for an analogous statute of limitations. *Id.* at *4.

In the case at issue, the borrower, a resident of Washington state, effectively rescinded his loan but no steps were taken to wind up the loan by the bank for several years. When the bank started a foreclosure action, the borrower filed his rescission enforcement action. The Ninth Circuit reasoned: **“An action to rescind that loan (under TILA or otherwise) arises out of that written [loan] agreement. Because TILA rescissions necessarily require a contract to be rescinded, contract law provides the best analogy and we adopt [Washington’s] general contract law statute of limitations.”** *Id.*

While this reasoning seems straightforward and generally applicable beyond Washington, to California loans for example, there is a distinction between California and Washington law that may possibly make a difference to some judge in the future. As the Ninth Circuit noted, Washington's general contract law's *six-year* statute of limitations “would actually further TILA's

purpose, which is to protect consumers from predatory lending practices and promote the informed use of credit.” *Id.* But in California, while Code of Civil Procedure Section 337 provides a four-year general contract statute of limitations for actions to rescind a written contract, “the time begins to run from the date upon which the facts that entitle the aggrieved party to rescind occurred.” CCP §337(3).

Generally, **under TILA, the date upon which the facts that entitle the aggrieved party to rescind occurred is the date on which the loan was consummated and the lender failed to give the required disclosures.** If CCP § 337’s trigger were applied, a borrower who gave the lender notice of rescission under TILA just within the three year deadline would have a year after that notice to file suit to enforce the rescission request. Would that timetable sufficiently further TILA’s purposes of protecting consumers from predatory lending practices and promoting the informed use of credit? It seems reasonable to conclude that it would. A year provides the borrower with plenty of time to determine the status of rescission and sue for enforcement, given the lender is required by TILA to effectuate rescission within just twenty days of receiving the rescission notice, by tendering the property or its reasonable value to the borrower. *Id.* at *3; 15 U.S.C. § 1635(b).