

TILA RIGHT OF RESCISSION DOES NOT APPLY WHEN MORTGAGE USED TO REACQUIRE PROPERTY RIGHTS

On August 14, the U.S. Court of Appeals for the 9th Circuit [held](#) that TILA's right of rescission does not apply when a borrower obtains a mortgage to reacquire residential property after having no ownership rights. According to the opinion, in 2003, a borrower quitclaimed his interest in residential property to his then wife; in 2007, he obtained a mortgage loan and took title to the property in accordance with a divorce judgment. The borrower sought rescission of the mortgage loan and the district court dismissed the action as untimely. On appeal, the 9th Circuit vacated the district court's judgment, holding the borrower gave proper notice within the three year limit under TILA. On remand, the district court granted summary judgment in favor of the mortgage company, concluding the transaction was a residential mortgage transaction, in which no statutory right of rescission exists under TILA.

On appeal, the 9th Circuit affirmed summary judgment in favor of the mortgage company. The appellate court rejected the borrower's arguments that (i) the mortgage documents showed he already owned an interest in the property before he took out the mortgage loan; and (ii) the mortgage was taken in accordance with a divorce judgment, not to finance the acquisition of the property. The appellate court concluded that under TILA, the mortgage loan was a "residential mortgage transaction," the definition of which "includes both an initial acquisition and a reacquisition of a property." The fact the mortgage company characterized the transaction as a refinance is not determinative, according to the panel, because the borrower did not acquire title to the property until the day after he signed the loan. Moreover, while the divorce judgment ordered the borrower to make a payment to his ex-wife in order to obtain title to the property, he obtained a residential mortgage loan "in order to carry out those conditions."