



TILA does not require a loan servicer to identify the loan's owner

Foley & Lardner LLP
Patrick T. Wong

USA

December 31 2012



Author page »

The Ninth Circuit recently sided with a loan servicer who was sued by a borrower for failing to provide him with the loan owner's information. In *Gale v. First Franklin Loan Services et al.*, 686 F.3d 1055 (9th Cir. 2012), *amended*, 2012 U.S. App. LEXIS 18545 (9th Cir. Aug. 31, 2012), the Ninth Circuit held that a loan servicer is not required under the Truth in Lending Act (TILA) to disclose the owner of the loan obligation to the borrower even at the borrower's request. The only exception is when the loan servicer is also the assignee-owner of the loan.

The Plaintiff borrower in the case was Richard Gale. In November 2006, he refinanced his home mortgage loan with Franklin Loan Services ("First Franklin"). At the time, First Franklin was both the creditor and servicer of the loan. In June 2008, Gale lost his job, and consequently, he fell behind his mortgage payments. Seeking to renegotiate his loan, Gale sent a letter to First Franklin explaining his situation and offering solutions. In his letter, Gale also asked First Franklin for the identity of the "true owner" of his loan. First Franklin did not respond to Gale's letter. Ultimately, Gale's home was foreclosed when he continued to fall behind his mortgage payments. Gale subsequently sued First Franklin and others for violation of TILA, among others. The trial court dismissed the TILA claim, and the Ninth Circuit affirmed.

As it concerns the alleged violation of TILA, the issue before the Ninth Circuit was the last sentence of TILA, 15 U.S.C. section 1641(f)(2), which states, "Upon written request by the obligor, the servicer shall provide the obligor, to the best knowledge of the servicer, with the name address, and telephone number of the owner of the obligation or the master servicer of the obligation." The Court acknowledged that at first read, this sentence seems to apply to *all* creditors or servicers, but the Court ultimately rejected such a sweeping interpretation of the law. Instead, the Court noted that section 1641 does not apply to servicers in general, but only to "purchasers or assignees of mortgages." Furthermore, the Court also held the section did not apply to an assignee merely for administrative convenience, as opposed to an assignee-owner of the loan obligation. As First Franklin was the original lender and merely the servicer, the Court held that the section did not apply to it. In reaching its conclusion, the Court examined section 1641 "as a whole before focusing on paragraph (f)(2)" and found that, contrary to what section 1641(f)(2)'s text may suggest, section 1641 is limited in scope to a servicer who is "an assignee of such obligation..." The Court also noted that the section further excluded an assignee "solely for the administrative convenience of the servicer in servicing the

obligation.” The Court concluded that subsection (f) must be read “in keeping with the theme of § 1641 as a whole...”

The *Gale* decision does not necessarily foreclose any relief to borrowers who find themselves in the same situation as *Gale*. As the Ninth Circuit pointed out, the 2010 amendment to the Real Estate Settlement Procedures Act (RESPA) required that *all* servicers must respond to a borrower’s request for information, although such requirement only applies prospectively from 2010. There may also be state law requirements that are broader than those required under TILA. For example, beginning January 1, 2013, California’s so-called Homeowners’ Bill of Rights comes into effect, which defines a “mortgage servicer” much more broadly than TILA’s section 1641. Thus, it is critical that owners of mortgage loans, lenders, and loan servicers are aware of the various other federal and state laws that may or may not require the same sets of obligations.

Tags USA, Banking, Litigation, Foley & Lardner LLP

If you are interested in submitting an article to Lexology, please contact Andrew Teague at ateague@lexology.com.

© Copyright 2006-2013 Globe Business Publishing Ltd | [Cookies](#) | [Disclaimer](#) | [Privacy policy](#)