

## TILA's Rescission Remedy Reigned in by Tennessee District Court

In a pair of decisions by the Eastern District of Tennessee, the court reminded consumers that there are limitations to the right of rescission provided by the Truth in Lending Act. *See Jones v. Select Portfolio Servicing, Inc.*, C.A. No. 2:15-cv-02495, 2016 US Dist. LEXIS 16658 (W.D. Tenn. Feb. 10, 2016); *Bowles v. Mass Mutual Life Ins. Co.*, C.A. No. 2:15-cv-02677, 2016 U.S. DIST. LEXIS 16660 (W.D. Tenn. Feb. 10, 2016). In both cases, the consumer's loans were assigned to third parties several years after the consumer executed the note and deed of trust. In both cases, the consumer took issue with whether or not the loans were properly assigned and whether proper notice of the assignment was provided to the consumer. Both consumers contended that the transfer of the loan was a material fact and that the defendants' breach of their statutory duty under the Truth in Lending Act in failing to disclose the transfer of the note and deed of trust entitled them to rescission. The court in each instance disagreed and granted the lenders' and servicers' motion to dismiss.

Under the Truth in Lending Act, a consumer is provided with a limited right to rescind the transaction. The right to rescission must be exercised by midnight of the third business day following the consummation of the transaction or the delivery of the "information and rescission forms" together with the material disclosures required. **The right of rescission expires in any event three years after the date of consummation of the transaction or upon the sale of the property, whichever occurs first. The right of rescission is not available in purchase money transactions for residential mortgages or certain other transactions. See 15 U.S.C. §1635(e)(1).**

The issue before the court in both instances was whether the failure to disclose an assignment of a residential mortgage as required by 15 U.S.C. §1641(g) constitutes a material disclosure allowing for a rescission. The court held that it was not. **"An assignment is not one of the material disclosures listed or identified in TILA." Jones at \*37. Going into more depth, the court in Bowles reminded the consumer that the right of rescission only applied to the required disclosures about the consumer credit transaction.** As defined by TILA, those disclosures are expressly limited to: "the disclosure...of the annual percentage rate, the method of determining the finance charge and the balance upon which a finance charge will be imposed, the amount of the finance charge, the amount to be

financed, the total of payments, the number and amount of payments, the due dates or periods of payments scheduled to repay the indebtedness, and the disclosures required by section 1639(a). Section 1639(a) goes on to require other disclosures for certain mortgages; however, the assignment or transfer of the mortgage is not among them.” *Bowles* at \*13.

The cases provide the following reminders to the consumer’s bar:

- Rescission is not available for every residential mortgage transaction;
- Rescission rights have a fairly short shelf life;
- Rescission is not available for every violation of the Truth in Lending Act; and
- Rescission may not be an effective means to thwart foreclosure.