

## **BORROWERS' ACKNOWLEDGMENT OF RECEIPT OF TILA DISCLOSURE DEFEATED THEIR TILA CLAIM**

In a decision approved for publication, the United States Court of Appeals for the Eighth Circuit recently affirmed the district court's decision granting a lender's motion for summary judgment and holding that **the borrowers' signed acknowledgement that they had received the requisite number of Truth in Lending Act ("TILA") disclosures created a rebuttable presumption that the borrowers could not overcome.** See Jesinoski v. Countrywide Home Loans, Inc., 2018 WL 1073235 (8th Cir. Feb. 28, 2018). In the case, the borrowers—a husband and wife—sought to rescind their mortgage based on alleged TILA violations. Under TILA, the lender was required to “deliver two copies of the notice of the right to rescind to each consumer entitled to rescind[.]” See 12 C.F.R. 1026.23(b)(1). According to the borrowers, when they brought their closing file to a mortgage specialist almost three years after the closing, the specialist found only two copies of the TILA disclosure when there should have been four (two disclosures each). The borrowers claimed to have no personal knowledge of how many disclosures they received. The borrowers then sought to rescind, and brought this action when the lender denied their request. The lender moved for summary judgment, based in large part on the acknowledgment executed by both borrowers stating “[t]he undersigned each acknowledge receipt of two copies of” the notice. The district court granted the motion, finding that this acknowledgement created a rebuttable presumption that the borrowers had received the notice and holding that the borrowers were unable to overcome it.

On appeal, the Eighth Circuit affirmed. First, it rejected the borrowers' argument that the acknowledgement was ambiguous because it did not state “[t]he undersigned each acknowledge receipt of two copies each of” the notice. (Emphasis added.) **THE COURT FOUND THAT THIS ARGUMENT WAS “A TORTURED ATTEMPT TO CREATE AMBIGUITY WHERE NONE EXISTED.”** Second, the Court held that the borrowers' claim that **the mortgage specialist had informed them that there were only two copies of the notice in the file was “textbook inadmissible hearsay” that could not be used to rebut the presumption created by the acknowledgement.** Accordingly, it affirmed the dismissal of the TILA claim.