§ 1635. Right of rescission as to certain transactions

(a) Disclosure of obligor's right to rescind. Except as otherwise provided in this section, in the case of any consumer credit transaction (including opening or increasing the credit limit for an open end credit plan) in which a security interest, including any such interest arising by operation of law, is or will be retained or acquired in any property which is used as the principal dwelling of the person to whom credit is extended, the obligor shall have the right to rescind the transaction until midnight of the third business day following the consummation of the transaction or the delivery of the information and rescission forms required under this section together with a statement containing the material disclosures required under this *title [15 USCS §§ 1601* et seq.], whichever is later, by notifying the creditor, in accordance with regulations of the Bureau, of his intention to do so. The creditor shall clearly and conspicuously disclose, in accordance with regulations of the Bureau, to any obligor in a transaction subject to this section the rights of the obligor under this section. The creditor shall also provide, in accordance with regulations of the Bureau, appropriate forms for the obligor to exercise his right to rescind any transaction subject to this section.

(b) Return of money or property following rescission. When an obligor exercises his right to rescind under subsection (a), he is not liable for any finance or other charge, and any security interest given by the obligor, including any such interest arising by operation of law, becomes void upon such a rescission. Within 20 days after receipt of a notice of rescission, the creditor shall return to the obligor any money or property given as earnest money, downpayment, or otherwise, and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction. If the creditor has delivered any property to the obligor, the

obligor may retain possession of it. Upon the performance of the creditor's obligations under this section, the obligor shall tender the property to the creditor, except that if return of the property in kind would be impracticable or inequitable, the obligor shall tender its reasonable value. Tender shall be made at the location of the property or at the residence of the obligor, at the option of the obligor. If the creditor does not take possession of the property within 20 days after tender by the obligor, ownership of the property vests in the obligor without obligation on his part to pay for it. The procedures prescribed by this subsection shall apply except when otherwise ordered by a court.

(c) Rebuttable presumption of delivery of required disclosures. Notwithstanding any rule of evidence, written acknowledgment of receipt of any disclosures required under this *title [15 USCS §§ 1601* et seq.] by a person to whom information, forms, and a statement is required to be given pursuant to this section does no more than create a rebuttable presumption of delivery thereof.

(d) Modification and waiver of rights. The Bureau may, if it finds that such action is necessary in order to permit homeowners to meet bona fide personal financial emergencies, prescribe regulations authorizing the modification or waiver of any rights created under this section to the extent and under the circumstances set forth in those regulations.

(e) Exempted transactions; reapplication of provisions. This section does not apply to--

(1) a residential mortgage transaction as defined in section 103(w) [*15 USCS § 1602(w)*];

(2) a transaction which constitutes a refinancing or consolidation (with no new advances) of the principal balance then due and any accrued and unpaid finance charges of an existing extension of credit by the same creditor secured by an interest in the same property;

(3) a transaction in which an agency of a State is the creditor; or

(4) advances under a preexisting open end credit plan if a security interest has already been retained or acquired and such advances are in accordance with a previously established credit limit for such plan.

(f) Time limit for exercise of right. An obligor's right of rescission shall expire three years after the date of consummation of the transaction or upon the sale of the property, whichever occurs first, notwithstanding the fact that the information and forms required under this section or any other

disclosures required under this chapter [*15 USCS §§ 1631* et seq.] have not been delivered to the obligor, except that if (1) any agency empowered to enforce the provisions of this *title [15 USCS §§ 1601* et seq.] institutes a proceeding to enforce the provisions of this section within three years after the date of consummation of the transaction, (2) such agency finds a violation of section 125 [this section] and (3) the obligor's right to rescind is based in whole or in part on any matter involved in such proceeding, then the obligor's right of rescission shall expire three years after the date of consummation of the transaction or upon the earlier sale of the property, or upon the expiration of one year following the conclusion of the proceeding, or any judicial review or period for judicial review thereof, whichever is later.

(g) Additional relief. In any action in which it is determined that a creditor has violated this section, in addition to rescission the court may award relief under section 130 [*15 USCS § 1640*] for violations of this *title [15 USCS §§ 1601* et seq.] not relating to the right to rescind.

(h) Limitation on rescission. An obligor shall have no rescission rights arising solely from the form of written notice used by the creditor to inform the obligor of the rights of the obligor under this section, if the creditor provided the obligor the appropriate form of written notice published and adopted by the Bureau, or a comparable written notice of the rights of the obligor, that was properly completed by the creditor, and otherwise complied with all other requirements of this section regarding notice.

(i) Rescission rights in foreclosure.

(1) In general. Notwithstanding section 139 [*15 USCS § 1649*], and subject to the time period provided in subsection (f), in addition to any other right of rescission available under this section for a transaction, after the initiation of any judicial or nonjudicial foreclosure process on the primary dwelling of an obligor securing an extension of credit, the obligor shall have a right to rescind the transaction equivalent to other rescission rights provided by this section, if--

(A) a mortgage broker fee is not included in the finance charge in accordance with the laws and regulations in effect at the time the consumer credit transaction was consummated; or

(B) the form of notice of rescission for the transaction is not the appropriate form of written notice published and adopted by the Bureau or a comparable written notice, and otherwise complied with all the requirements of this section regarding notice.

(2) Tolerance for disclosures. Notwithstanding section 106(f) [*15 USCS § 1605(f)*], and subject to the time period provided in subsection (f), for the purposes of exercising any rescission rights after the initiation of any judicial or nonjudicial foreclosure process on the principal dwelling of the obligor securing an extension of credit, the disclosure of the finance charge and other disclosures affected by any finance charge shall be treated as being accurate for purposes of this section if the amount disclosed as the finance charge does not vary from the actual finance charge by more than $ 35 or is greater than the amount required to be disclosed under this *title [15 USCS §§ 1601* et seq.].

(3) Right of recoupment under State law. Nothing in this subsection affects a consumer's right of rescission in recoupment under State law.

(4) Applicability. This subsection shall apply to all consumer credit transactions in existence or consummated on or after the date of the enactment of the Truth in Lending Act Amendments of 1995 [enacted Sept. 30, 1995].

History

(May 29, 1968,*P.L. 90-321*, Title I, Ch. 2, § 125, *82 Stat. 152*; Oct. 28, 1974, *P.L. 93-495*, Title IV, §§ 404, 405, 412, *88 Stat. 1517*, 1519; March 31, 1980, *P.L. 96-221*, Title VI, § 612(a)(1), (3)-(6), *94 Stat. 175*; Oct. 17, 1984, *P.L. 98-479*, Title II, § 205, *98 Stat. 2234*; Sept. 30, 1995, *P.L. 104-29*, §§ 5, 8, *109 Stat. 274*, 275; July 21, 2010, *P.L. 111-203*, Title X, Subtitle H, § 1100A(2), *124 Stat. 2107*.)

Annotations

Notes

Effective date of section:

This section became effective July 1, 1969, as provided by § 504(b) of Act May 29, 1968, *P.L. 90-321*, which appears as *15 USCS § 1631* note.

Amendments:

1974 . Act Oct. 28, 1974 (effective 10/28/74, as provided by § 416 of such Act, which appears as *15 USCS § 1665a* note), in subsec. (a), substituted ", including any such interest arising by operation of law, is or will be" for "is"; in subsec. (b), inserted ", including any such interest arising by operation of law,"; in subsec. (e),

added "or to a consumer credit transaction in which an agency of a State is the creditor" at the end thereof; and added subsec. (f).

1980 . Act March 31, 1980 (effective 2 years and 6 months after enactment on 3/31/80, as provided by § 625(a) of such Act, which appears as *15 USCS § 1602* note), substituted subsec. (a) for one which read: "Except as otherwise provided in this section, in the case of any consumer credit transaction in which a security interest, including any such interest arising by operation of law, is or will be retained or acquired in any real property which is used or is expected to be used as the residence of the person to whom credit is extended, the obligor shall have the right to rescind the transaction until midnight of the third business day following the consummation of the transaction or the delivery of the disclosures required under this section and all other material disclosures required under this chapter, whichever is later, by notifying the creditor, in accordance with regulations of the Board, of his intention to do so. The creditor shall clearly and conspicuously disclose, in accordance with regulations of the Board, to any obligor in a transaction subject to this section the rights of the obligor under this section. The creditor shall also provide, in accordance with regulations of the Board, an adequate opportunity to the obligor to exercise his right to rescind any transaction subject to this section."; in subsec. (b) substituted "20 days" for "ten days" and inserted "The procedures prescribed by this subsection shall apply except when otherwise ordered by a court."; in subsec. (c), inserted "information, forms, and"; substituted subsecs. (e) and (f) for ones which read:

"(e) This section does not apply to the creation or retention of a first lien against a dwelling to finance the acquisition of that dwelling or to a consumer credit transaction in which an agency of a State is the creditor.

"(f) An obligor's right of rescission shall expire three years after the date of consummation of the transaction or upon the sale of the property, whichever occurs earlier, notwithstanding the fact that the disclosures required under this section or any other material disclosures required under this chapter have not been delivered to the obligor.".

Such Act further added subsec. (g).

1984 . Act Oct. 17, 1984, in subsec. (e), deleted "(1)" following "(e)", redesignated former subparas. (A)-(D) as paras. (1)-(4) respectively, and deleted former para. (2) which read: "The provisions of paragraph (1)(D) shall cease to be effective 3 years after the effective date of the Truth in Lending Simplification and Reform Act.".

1995 . Act Sept. 30, 1995 added subsecs. (h) and (i).

2010 . Act July 21, 2010 (effective on 7/21/2011, pursuant to § 1100H of such Act, which appears as *5 USCS § 552a* note), substituted "Bureau" for "Board" wherever appearing.

Case Notes

I. IN GENERAL

1. Generally

Regulation promulgated by Federal Reserve Board providing that within three days of consummation of any credit transaction in which security interest is or will be retained or acquired in customer's residence, customer shall have right to rescind transaction, and that creditor is required to notify customer of his right to rescind when there is probability that lien on his home will arise by operation of law, even though he has not executed indenture on his property, is reasonable and consistent with legislative purpose and hence valid. *Gardner & North Roofing & Siding Corp. v Board of Governors (1972, App DC) 150 US App DC 329, 464 F2d 838.*

As matter of law, rescission under *15 USCS § 1635(a)* is not subject to revival. *Chapman v Mortgage One Corp. (2005, ED Mo) 359 F Supp 2d 831.*

2. Relationship with other laws

15 USCS § 1603(1) agricultural purpose exemption applies to right-of-rescission provision of § 1635. Farmer v First Bank (N.A.)-*Pipestone (1985, CA8 Minn) 760 F2d 872.*

Judgment debt is avoidable under *11 USCS § 522(f)(1)* and is not excepted on basis that avoidance would constitute fraud where (1) creditor had held mortgage on debtor's property (2) loan transaction had violation requirements of Truth-in-Lending Act (*15 USCS § 1635*), (3) debtors had exercised right to rescind transactions, receiving relief of mortgage and refund of interests, but had not repaid loan principles, (4) creditor had obtained judgment lien on outstanding principles, and (5) debtors had filed Chapter 7 petition, claimed real estate as exempt property to which no objections were filed and filed adversary proceeding against creditor to avoid judgment lien. *Krajci v Mt. Vernon Consumer Discount Co. (1981, ED Pa) 16 BR 462.*

Although Home Ownership Equity Protection Act (HOEPA) provides harsher penalties for statutory violations than does Truth in Lending Act, those enhanced penalties are for statutory damages only; nothing in HOEPA suggests that it is intended to diminish creditor's right to tender of its legal due under *15 USCS § 1634(b)*. *Ray v CitiFinancial, Inc. (2002, DC Md) 228 F Supp 2d 664.*

In part due to recognition that damages provisions of Fair Debt Collection Practices Act (FDCPA), *15 USCS §§ 1692* et seq., were modeled after damages provisions of Truth-in-Lending Act (TILA), *15 USCS § 1635*, and fact that courts had found that cases under TILA survived death of plaintiff, debtor's cause of action under FDCPA survived death of wrongdoer; co-trustees of defendant law firm's deceased representative's trust were substituted as successors-in-interest as defendants under *Fed. R. Civ. P. 15*, *25*. *Bracken v Harris & Zide, L.L.P. (2004, ND Cal) 219 FRD 481* (criticized in *Breeden v Hueser (2008, Mo App) 273 SW3d 1).*

Sanctions were imposed against borrower's attorney, pursuant to *Fed. R. Civ. P. 11*, because attorney asserted that mortgage company had not responded in earlier action to borrower's notice of rescission, which was not accurate statement where court, in earlier action, had granted mortgage company additional time to respond to rescission notice and had not issued final ruling on pending issues when complaint was filed. *Moazed v First Union Mortg. Corp. (2004, DC Conn) 221 FRD 28, 58 FR Serv 3d 753.*

In case arising under Truth in Lending Act, *15 USCS §§ 1601* et seq., in which borrowers' exercise of their rescission rights was untimely, their claims for damages arising from mortgage company's failure to honor that rescission were likewise untimely. *McMillian v AMC Mortg. Servs. (2008, SD Ala) 560 F Supp 2d 1210.*

Violation of *12 CFR § 226.23(b)(1)* and 209 Mass. Code Regs. § 32.23(2)(a), by failing to provide both borrowers with two copies of "Notice of Right to Cancel," allowed borrowers to rescind refinancing in keeping with terms of Mass. Gen. Law ch. 140D, § 10(b), which mirrored *15 USCS § 1635(b)*. *Wells Fargo Bank, N.A. v Jaaskelainen (2009, DC Mass) 407 BR 449* (criticized in *Giza v Amcap Mortg., Inc. (In re Giza) (2010, BC DC Mass) 428 BR 266).*

Pursuant to *15 USCS § 1602(w)*, Truth in Lending Act's rescission remedy did not apply where mortgagors had obtained their loan in order to finance purchase of same residence that was used as collateral. *Weingartner v Chase Home Fin., LLC (2010, DC Nev) 702 F Supp 2d 1276.*

Because claimants' entitlement to damages under *15 USCS § 1640* is wholly dependent upon, and flows directly from, their entitlement to rescissory relief, any right to damages for violation of *15 USCS § 1635(b)* does not exist until borrower has right to rescission. *Bradford v HSBC Mortg. Corp. (2012, ED Va) 838 F Supp 2d 424.*

Although borrower claimed she rescinded her mortgage under Truth in Lending Act (TILA) and law firm's conduct in filing foreclosure action against borrower violated *15 USCS § 1692e*, borrower's claim for rescission failed because borrower's mortgage deed and note fell squarely within TILA's exemption for residential mortgage transaction, *15 USCS § 1635(e)(1)*, and was not subject to rescission; even if rescission was appropriate remedy for residential mortgage transaction, there was no evidence borrower tendered proceeds of note and mortgage deed. *Derisme v Jacobson (2012, DC Conn) 880 F Supp 2d 311.*

Pursuant to *15 USCS § 1602(u)*, "material disclosures" are defined to include disclosures required by *15 USCS § 1639(a)*, and if debtors' contention was correct, then right to rescind continued until latter of three days after those material disclosures were provided or until three years after consummation of transaction under *15 USCS § 1635(a)* and (f). *Merriam v Chase Manhattan Mortg. Corp. (In re Merriam) (2005, BC WD NY) 333 BR 22.*

As part of legal action to judicially enforce consumer's right of rescission under Truth in Lending Act, court may determine amount of consumer's liability to

creditor, as well as enter money judgment against creditor under *15 USCS § 1640*. *Stuart v Decision One Mortg. Co., LLC (In re Stuart) (2007, BC ED Pa) 367 BR 541.*

15 USCS § 1635(g) was added as amendment to Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., in 1980 and states that in any action in which it is determined that creditor has violated *15 USCS § 1635*, in addition to rescission, court may award relief under *15 USCS § 1640* for violations of TILA not relating to right to rescind; neither language nor legislative history of this amendment support concept that § 1635(g) was intended to extend one-year statute of limitations of *15 USCS § 1640(e)*. *Wentz v Saxon Mortg. (In re Wentz) (2008, BC SD Ohio) 393 BR 545.*

Since, under Ohio law, creditor who accepts cognovit note as payment obtains security interest in obligor's residence within meaning of Truth in Lending Act, where purchaser of automobile pursuant to installment contract was sued by seller on cognovit note, and where purchaser alleged that seller had violated *15 USCS § 1635* by failing to disclose purchaser's right to rescind contract, contract was rescinded and purchaser relieved of his duty to make monthly payments thereunder; purchaser was also entitled to keep automobile and to recover damages under *15 USCS § 1640*. *Hank's Auto Sales, Inc. v Fisher (1973, Cuyahoga Co) 38 Ohio App 2d 1, 67 Ohio Ops 2d 62, 310 NE2d 259.*

Unpublished Opinions

Unpublished: Plaintiff took issue with decision that his claim for rescission under Truth in Lending Act was brought outside three-year statute of limitations, but even if court assumed that Georgia had authority to extend limitations for claims under Truth in Lending Act, *O.C.G.A. § 7-6A-7(e)* only permitted rescission of certain "high-cost home loans" for up to five years, and plaintiff pointed to no evidence that his loan qualified for that treatment. *Kareem v Am. Home Mortg. Servicing, Inc. (2012, CA5 Tex) 2012 US App LEXIS 13007.*

3. "Security interest" in property used as principal dwelling

Right to rescind is not available where transaction is structured as sale of residence rather than as loan and is evidenced by warranty deed absolute on its face with option to repurchase. *Redic v Gary H. Watts Realty Co. (1985, CA4 NC) 762 F2d 1181,* cert den *(1985) 474 US 920, 88 L Ed 2d 257, 106 S Ct 249.*

Even if water treatment system installed in purchasers' home was fixture, their TILA claims failed because lender did not have security interest in home; under

Florida law, security interest in fixture did not extend to home, and even if credit agreement created security interest in proceeds of sale or refinancing of home, proceeds were excluded from TILA's definition of security interest. *Lankhorst v Indep. Sav. Plan Co. (2015, CA11 Fla) 787 F3d 1100, 86 UCCRS2d 752, 25 FLW Fed C 1217.*

Rights to rescind under federal Truth In Lending Act (TILA) extend to obligors only; mortgagee, who had pledged her property to secure loan taken out by her ex-husband, did not have statutory rescission rights under TILA because she had never signed loan note and was not, therefore, obligor on it. *Moazed v First Union Mortg. Corp. (2004, DC Conn) 319 F Supp 2d 268.*

Bankruptcy court refused to confirm plan proposed by Chapter 13 debtor which allowed debtor to rescind loan he obtained from bank and paid bank nothing on loan, and instead granted bank's motion for relief under *11 USCS § 362(d)* from automatic stay so it could foreclose on debtor's home; there was no merit to debtor's claims that bank violated Truth in Lending Act ("TILA"), *15 USCS §§ 1601*-*1667e*, and Massachusetts Consumer Credit Cost Disclosure Act ("MCCCDA"), *Mass. Gen. Laws ch. 140D, § 1* et seq., when it made loan, and even assuming bank violated those statutes, neither TILA's rescission section, *15 USCS § 1635(a)*, nor MCCCDA's recission section, *Mass. Gen. Laws ch. 140D, § 10*, allowed debtor to rescind loan because loan was residential mortgage transaction. *Washington v Clinton Savings Bank (In re Washington) (2011, BC DC Mass) 455 BR 344.*

Right to rescission under *15 USCS § 1635* and § 226.9 [now *12 CFR § 226.15*] of Regulation Z applies only to credit transactions for which security interest is or will be retained in specified real [deleted by 1980 amendment]property and does not apply unless there has been security interest arising under and created simultaneously with credit transaction; hence, such provisions do not apply to written membership agreements in health spa; although lien obtained against members' residence following money judgment would constitute "security interest," such interest is not created simultaneously with credit transaction. *Holiday of Smith Haven, Inc. v Pollizze (1975) 82 Misc 2d 1097, 371 NYS2d 43.*

4. --Confession of judgment as security interest

Under § 226.2 of Regulation Z, defining security interest as any interest in property which secures payment or performance of obligation, and under § 226.202, stating that security interest is defined to include confessed liens whether or not recorded, withholding of real estate deeds by seller and seller's use of judgment notes in

credit transactions with buyers constitute security interest within meaning of *15 USCS § 1635(a)* and regulations. *Charnita, Inc. v FTC (1973, CA3) 479 F2d 684.*

Where confession of judgment acts as security interest, right to rescission under *15 USCS § 1635(a)* attaches only where confession of judgment applies to real [deleted by 1980 amendment] property used or expected to be used as debtor's principal residence; where lien on residence is expressly excluded by words of note, *15 USCS § 1635(a)* and § 226.9 [now *12 CFR § 226.18*] of Regulation Z are not applicable. *Douglas v Beneficial Fin. Co. (1971, DC Alaska) 334 F Supp 1166.*

Since, under Ohio law, creditor who accepts cognovit note as payment obtains security interest in obligor's residence within meaning of Truth in Lending Act, where purchaser of automobile pursuant to installment contract was sued by seller on cognovit note, and where purchaser alleged that seller had violated *15 USCS § 1635* by failing to disclose purchaser's right to rescind contract, contract was rescinded and purchaser relieved of his duty to make monthly payments thereunder; purchaser was also entitled to keep automobile and to recover damages under *15 USCS § 1640*. *Hank's Auto Sales, Inc. v Fisher (1973, Cuyahoga Co) 38 Ohio App 2d 1, 67 Ohio Ops 2d 62, 310 NE2d 259.*

5. "Principal dwelling"

Action under Consumer Credit Protection Act was improperly dismissed where insufficient facts had been presented to court to enable it to determine factual question as to whether, for purposes of rescission provision of Act (*15 USCS § 1635*), purchaser had purchased real estate which was used or expected to be used as principal residence. *Sarter v Mays (1974, CA5 Ala) 491 F2d 675.*

Right of rescission only applies to loans secured by debtor's principal place of residence, and, therefore, loans secured by livestock, farm products, equipment, and mortgage are not entitled to right of rescission. *Wilson v Prudential Ins. Co. (1984, CA8 Neb) 749 F2d 502.*

Under *15 USCS § 1635*, consumers have right to rescind security interest in property which is their principal dwelling only if they possess ownership in dwelling and thus have right to convey security interest, and debtors did not have right in property allowing them to convey security interest after they had filed petition in bankruptcy under Chapter 7 of Bankruptcy Code since at commencement of bankruptcy proceeding, property passed by operation of law to Chapter 7 estate. *In re Crevier (1987, CA9 Cal) 820 F2d 1553.*

Since plaintiff only lived at property in question for one summer, such property was not his principal dwelling within meaning of *15 USCS § 1635(a)*; thus, plaintiff, who reached age of majority two days before closing, was not entitled to notice of his right to rescind mortgage involving property that had been transacted by his stepmother in her capacity as plaintiff's successor custodian. *Scott v Long Island Sav. Bank (1991, CA2 NY) 937 F2d 738, 19 FR Serv 3d 1389.*

One selling real property on credit is required to inform purchaser of right to rescind if seller knows or has reason to know that buyer intends to use property as principal place of residence according to *15 USCS § 1635* and regulations promulgated thereunder; where acquisition agreement contained question concerning purpose for which buyer intended to use property, and buyer answered that he intended to use it as vacation residence and investment, seller neither knew nor had reason to know that buyer intended to use property as principal residence and was not required to notify him of right to rescind. *Glover v Doe Valley Development Corp. (1975, WD Ky) 408 F Supp 699.*

Originating lender was entitled to dismissal of claim for rescission under *15 USCS § 1635*; refinancing borrowers did not establish ability to tender and did not establish status of property as principal dwelling as required under § 1635(a). *Santos v U.S. Bank N.A. (2010, ED Cal) 716 F Supp 2d 970,* dismd (2010, ED Cal) *2010 US Dist LEXIS 88903,* request den, costs/fees proceeding (2010, ED Cal) *2010 US Dist LEXIS 88901.*

Financial services company and trustee were not required to provide home buyers with notice of right to rescission, and their alleged failure to do so was not violation of Truth in Lending Act, *15 USCS §§ 1601* et seq., because complaint and attached documents undisputedly established that funds buyers received from company were used to finance acquisition of home which buyers planned to, and did, use as their dwelling; as such, subject transaction was residential mortgage transaction, and buyers had no right to rescission under *15 USCS § 1635(a)*. *Grimes v Fremont Gen. Corp. (2011, SD NY) 785 F Supp 2d 269.*

Debtor's Federal Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., complaint against movants, which sought to rescind loans made by movants to mortgage broker to finance her purchase of debtor's property, was dismissed under *Fed. R. Civ. P. 12(b)(6)* for failure to state claim because debtor was not entitled to receive TILA disclosures when property was principal dwelling of debtor and not broker, person to whom credit was extended, and because HUD-1 statement established that loans constituted residential mortgage transactions exempt from rescission

under 15 USCS § 1635(e)(1). Figueroa v Smith (In re Figueroa) (2006, BC SD Fla) 20 FLW Fed B 400, app dismd (2007, SD Fla) 382 BR 814, 21 FLW Fed D 183.

Right of rescission is applicable only when property securing loan is borrower's principal residence; borrower's representation to lender that property securing loan is not residence renders right of rescission inapplicable. Fleming v Federal Land Bank (1983) 167 Ga App 326, 306 SE2d 332.

Unpublished Opinions

Unpublished: Bankruptcy court properly dismissed Chapter 7 debtor's claims for rescission of several loans under 15 USCS § 1635 and Regulation Z, 12 CFR § 226.33, because record did not show that loans in question were secured by debtor's principal dwelling. Gonzalez v HSBC Bank USA N.A. (In re Gonzalez) (2010, BAP9) 2010 Bankr LEXIS 5042.

6. Material disclosures or nondisclosures

In order for nondisclosure to be material for rescission purposes under 15 USCS § 1635 consumer must show that nondisclosure of which he complains is that which reasonable consumer would view as significantly altering total mix of information made available, and failure to break down "other charges" figure into its component parts or to adequately describe type of security interest created by agreement did not prevent consumers from making otherwise fully-informed credit choice, where both items were disclosed in agreement itself, which was executed simultaneously with extensions of credit. Davis v Federal Deposit Ins. Corp. (1980, CA5 La) 620 F2d 489.

Promissory note which contained no reference to mechanic's lien interest which could arise by operation of law was material nondisclosure under 15 USCS § 1638(a)(10) and Regulation Z (12 CFR § 226.8) [now 12 CFR § 226.18], and debtors thereby had right to rescind credit transaction under 15 USCS § 1635(a). Rudisell v Fifth Third Bank (1980, CA6 Ohio) 622 F2d 243 (criticized in Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636).

Credit company's retention of unearned interest resulted in understatement of finance charge on second loan which was material nondisclosure, giving borrower right to rescind second loan on ground that credit company materially understated its cost, because any understatement of finance charge is of some significance to reasonable consumer and therefore material, where credit company charged unearned interest on refinancing loan by rounding original loan period up. Steele v Ford Motor Credit Co. (1986, CA11 Ga) 783 F2d 1016.

Failure to disclose all third-party lenders was not material nondisclosure in closed end transaction where there were multiple creditors, since only creditor making disclosures need be identified on disclosure statement, and therefore borrower could not rescind loan secured by deed of trust on borrower's home. *King v California (1986, CA9 Cal) 784 F2d 910,* cert den and app dismd *(1987) 484 US 802, 108 S Ct 47, 98 L Ed 2d 11,* reh den *(1987) 484 US 971, 108 S Ct 474, 98 L Ed 2d 412* and (criticized in *McIntosh v Irwin Union Bank & Trust, Co. (2003, DC Mass) 215 FRD 26)* and (criticized in *Payton v New Century Mortg. Corp. (2003, ND Ill) 2003 US Dist LEXIS 18366)* and (criticized in *McKenna v First Horizon Home Loan Corp. (2006, DC Mass) 429 F Supp 2d 291)* and (criticized in *Barrett v JP Morgan Chase Bank, N.A. (2006, CA6 Ky) 445 F3d 874, 2006 FED App 137P)* and (criticized in *Pacific Shore Funding v Lozo (2006, 2nd Dist) 138 Cal App 4th 1342, 42 Cal Rptr 3d 283, 2006 CDOS 3502, 2006* Daily Journal DAR 5098) and (criticized in *Handy v Anchor Mortg. Corp. (2006, CA7 Ill) 464 F3d 760)* and (criticized in *Byron v EMC Mortg. Corp. (2009, ED Va) 2009 US Dist LEXIS 69589).*

Because without detrimental reliance on faulty disclosures (or no disclosure), there was no loss (or actual damage) under *15 USCS § 1640(a)(1)*, thus, since plaintiff car buyer failed to plead and could not prove detrimental reliance, his Truth in Lending Act claims against defendant bank failed; that *15 USCS §§ 1615*, *1635*, *1639*, specifically provided for rescission and restitution-type remedies did not imply that detrimental reliance was not required to recover actual damages for disclosure violations. *Vallies v Sky Bank (2009, CA3 Pa) 591 F3d 152.*

Term "material disclosures" in *15 USCS § 1635(a)* means pertinent disclosures, and liability under this section is limited to only those nondisclosures which reasonable consumer would view as significantly altering "total mix" of information made available; omission, however, need not be so important that reasonable consumer would probably change creditors; where total of payments disclosed by defendants differed from actual total of installments by $ 11.30, this error was not "material" within meaning of statute. *Ivey v United States Dep't of Hous. & Urban Dev. (1977, ND Ga) 428 F Supp 1337,* affd without op (1979, CA5 Ga) *607 F2d 1004.*

In determining commencement of time period for 3-day right of rescission under *15 USCS § 1635(a)*, "material disclosures" were made where, under Regulation Z (15 CFR § 226.8), lender's disclosure statement clearly reflected amount of loan, finance charge, number, frequency, and amount of payments, annual percentage rate, and total of payments was easily ascertainable. *Harvey v Housing Development Corp. & Information Center (1978, WD Mo) 451 F Supp 1198.*

Obligor's attempt to rescind transaction more than 3 days after its consummation, but within 3-year period allowed for rescission under *15 USCS § 1635* if material disclosures are never made, is valid, as there is material nondisclosure where creditor failed to disclose that certain other property was mortgaged; money paid by obligor on behalf of estate of second obligor is therefore required to be returned under § 1635 to obligor and estate in equal half shares, as both were obligors, and estate must return portion of its share to creditor as value of improvements made to house. *Pearson v Colonial Fin. Serv. (1981, MD Ala) 526 F Supp 470.*

In order to warrant rescission remedy, nondisclosure must be material; objective standard is utilized to determine whether nondisclosure is material; test of materiality is whether disclosure violation relates to information which would be important to consumer's decision to obtain credit from particular lender; failure of lender to utilize term "finance charge" and failure to disclose total of payments information on one side of form constitutes material nondisclosure; description of security interest contained in disclosure statement which does not clearly identify property to be covered is material nondisclosure. *Valentine v Influential Sav. & Loan Asso. (1983, ED Pa) 572 F Supp 36.*

Buyers of house siding are entitled to rescission of contract, cancellation of finance charges, and voiding of security interest in their home, where siding company did not give buyers copy of deed of trust and buyers did not realize they signed deed of trust, company did not give buyers proper notice of right to rescind, and violations could not be termed clerical errors in view of company's attempts to conceal buyer's rights from them and company's total inaction when buyers attempted to rescind transaction. *Cole v Lovett (1987, SD Miss) 672 F Supp 947,* affd (1987, CA5 Miss) *833 F2d 1008.*

Borrower had less incentive to rescind loan where borrower believed that, following rescission, borrower would still owe something under loan and lender would still retain security interest because borrower received wrong rescission disclosure rights form from lender; therefore, wrong form could not clearly and conspicuously disclose borrower's rescission rights as required by *15 USCS § 1635(a)*. *Gibbons v Interbank Funding Group (2002, ND Cal) 208 FRD 278.*

Based on undisputed facts, it was clear that borrower was provided with incomplete disclosure statement and that this constituted violation of Truth in Lending Act; thus, borrower was entitled to rescission of her mortgage under *15 USCS § 1635* and bank, even as assignee of mortgage, was liable for statutory damages as set out in *15 USCS § 1640*. *Lippner v Deutsche Bank Nat'l Trust Co.*

(2008, ND Ill) 544 F Supp 2d 695, judgment entered (2008, ND Ill) *2008 US Dist LEXIS 84582.*

Alleged failure by defendant loan originator to adequately disclose risk of negative amortization was not "material" disclosure for *15 USCS § 1635(a)* to extend Truth in Lending Act's limitations period for plaintiff borrowers' rescission to three years, since disclosure stated loan contained variable-rate feature. *Jordan v Paul Fin., LLC (2009, ND Cal) 644 F Supp 2d 1156.*

Borrowers failed to state claim for rescission under *15 USCS § 1635(a)* based on alleged failure under *15 USCS § 1638* by mortgage lender and loan servicer to disclose loan's finance charge, amount financed, and annual percentage rate; however, borrowers did sufficiently allege that they were not provided with number of copies of disclosures required under *12 CFR §§ 226.23(b)* and *226.17(d)*. *Seldon v Home Loan Servs. (2009, ED Pa) 647 F Supp 2d 451, 74 FR Serv 3d 235.*

Borrower's TILA claim for damages against lender failed because claim was barred by one-year limitations period of *15 USCS § 1640(e)*; TILA rescission claim under *15 USCS § 1635* failed because payment schedule including legal obligation of minimum payment could not be basis for violation of Regulation Z and TILA and there were insufficient facts to support violations of claim based on APR disclosure under *15 USCS §§ 1605* and *1606*. *Conder v Home Sav. of Am. (2010, CD Cal) 680 F Supp 2d 1168,* motion gr, motion den, as moot (2010, CD Cal) *2010 US Dist LEXIS 59524.*

Motion to dismiss was granted because note and TILA Disclosure Statement (TILD) provided to borrower correctly identify initial interest rate and annual percentage rate and also clearly and conspicuously disclosed that actual cost of credit would depend on payment option that he selected; borrower received all required TILA disclosures and one year statute of limitations period for TILA violations applied. *Bopp v Wells Fargo Bank, N.A. (2010, DC Dist Col) 740 F Supp 2d 12.*

Borrower sufficiently alleged failure to provide required disclosures when bank increased borrower's home equity line of credit (HELOC); HELOC was open-end credit plan that was subject to disclosure requirements of *12 CFR §§ 226.5b-226.6(a)*. *Fernandes v JPMorgan Chase Bank, N.A. (2011, ND Ill) 818 F Supp 2d 1086.*

Where lender failed to provide required disclosures and debtor timely notified lender of intent to rescind transaction, debtor was permitted to rescind transaction,

but lender retained lien against debtor's home. *Robertson v Strickland (In re Robertson) (2005, BC MD Fla) 333 BR 894.*

Lender's rescission statement was not defective under Truth in Lending Act (*15 USCS § 1635*), notwithstanding statement recited that transaction was entered into on April 7, 1980 and that borrower had until midnight on April 10, 1980 to rescind transaction, where note was actually signed on April 11, 1980, since rescission statement included provision that borrower had 3 days from date recited in statement or "any later date" on which all material disclosures required under Act have been given, and borrower was not confused or misled by obvious mistake in date. *Bank of Evening Shade v Lindsey (1983) 278 Ark 132, 644 SW2d 920.*

7. Technical violations

Technical violation of Truth in Lending Act does not entitle debtors to relief under *15 USCS § 1635*, as nondisclosure must be material; failure of disclosure statement to identify real property securing loan and to include cost of credit life and disability insurance in finance charge does not constitute material nondisclosure under § 1635 so as to provide debtor continued right to rescission where there was simultaneous execution of deed of trust and reference to deed of trust in disclosure statement, and procedure followed for securing authorization of insured for insurance was not defective, thereby making setting out of insurance cost as separate charge in disclosure statement proper under *15 USCS § 1605* and *12 CFR § 226.4*. *Jones v Fitch (1982, CA5 Miss) 665 F2d 586.*

Court may not judicially carve out equitable exception to right of rescission provided by *15 USCS § 1635* on ground that if mistake occurred it was made in good faith and was purely technical, notwithstanding that rescission itself is equitable remedy. *Arnold v W.D.L. Inv. (1983, CA5 La) 703 F2d 848.*

Debtor is not entitled to rescind loan transaction in which she placed her principal place of residence as security for loan, even though creditor failed to disclose in Truth in Lending Act disclosure statement that residence also secured future advances, where as part of single transaction, parties executed disclosure statement and deed evincing security interest, where extent of security interest is clearly contained in deed, and where disclosure, although technically in violation of Act, is not so material as to give debtor right to rescind. *In re Smith (1984, CA11 Ga) 737 F2d 1549.*

Lender's technical violation of Truth in Lending Act (*15 USCS § 1635*), consisting of omission of expiration date of rescission right as required by Regulation Z,

imposed liability on creditor and entitled borrower to rescind, even though facts were unsympathetic and borrowers were not in need of protection. *Semar v Platte Valley Fed. Sav. & Loan Ass'n (1986, CA9 Cal) 791 F2d 699* (criticized in *Melfi v WMC Mortg. Corp. (2009, CA1 RI) 568 F3d 309).*

Rescission of consumer credit transaction was not warranted, where lender failed to include in disclosure statement itemization of taxes and fees required by law, but did itemize such fees in settlement statement, because this failure was technical violation and not material nondisclosure. *Malfa v Household Bank, F.S.B. (1993, SD Fla) 825 F Supp 1018, 7 FLW Fed D 249,* affd without op (1995, CA11 Fla) *50 F3d 1037.*

Class actions are not superior method for adjudicating technical disclosure violation claims under Truth in Lending Act where remedy sought is rescission. *Jefferson v Security Pac. Fin. Servs. (1995, ND Ill) 161 FRD 63* (criticized in *McIntosh v Irwin Union Bank & Trust, Co. (2003, DC Mass) 215 FRD 26)* and (criticized in *Latham v Residential Loan Ctrs. of Am., Inc. (2004, ND Ill) 2004 US Dist LEXIS 7993).*

Debtors who prevailed on truth-in-lending claims and received award of statutory damages pursuant to *15 USCS § 1640(2)(A)(iii)* in adversary proceeding in Chapter 13 bankruptcy case were entitled to attorney fees under § 1640(a)(3), although they did not obtain rescission; fee award is mandatory when plaintiff brings successful action under *15 USCS § 1635*. *Mourer v Equicredit Corp. of Am. (In re Mourer) (2004, BC WD Mich) 313 BR 701.*

8. Notice of rescission

Purchasers of home sufficiently notified developers from whom home was purchased and who provided additional financing through second mortgage on home, evidenced by 2 notes bearing no interest if timely paid, of intention to rescind second mortgage transaction under *15 USCS § 1635*, by tendering check in amount of one note to attorney representing developers in suit to recover on second note, and by letter to attorney offering to tender amount of second note and informing him of intention to rescind, since rescission requirements of § 1635 are to be construed liberally in favor of consumer. *Arnold v W.D.L. Inv. (1983, CA5 La) 703 F2d 848.*

As matter of law, lender's notice of right to cancel complied with applicable requirements under Truth in Lending Act (TILA) because average consumer would not have found notice confusing, and borrower's statutory right to rescind expired three days after she received notice; thus, district court did not err in dismissing

her TILA claim as time-barred. *Palmer v Champion Mortg. (2006, CA1 Mass) 465 F3d 24.*

Borrowers correctly contended district court erred when it concluded they were not entitled to Truth-in-Lending Act rescission of their mortgage loan because they failed to plead their ability to repay loan proceeds. *Sanders v Mt. Am. Fed. Credit Union (2012, CA10 Utah) 689 F3d 1138.*

Obligor exercises his right of rescission under Truth in Lending Act, *15 USCS §§ 1601* et seq., by sending creditor valid written notice of rescission, and need not also file suit within three-year period. *Sherzer v Homestar Mortg. Servs. (2013, CA3 Pa) 707 F3d 255.*

Obligor is only required to notify creditor of his or her intention to rescind, and obligor need not specify any or which disclosure violation which entitles her to rescission. *Aquino v Public Fin. Consumer Discount Co. (1985, ED Pa) 606 F Supp 504.*

Although notice of right to cancel form signed by borrowers may have technically been wrong form, notice was not defective because form did inform borrowers of their right to cancel agreements within three-day period. *Mills v Equicredit Corp. (2003, ED Mich) 294 F Supp 2d 903,* affd (2006, CA6 Mich) *172 Fed Appx 652, 2006 FED App 150N* (criticized in *Vermurlen v Ameriquest Mortg. Co. (2007, WD Mich) 2007 US Dist LEXIS 75070).*

In action by mortgagors, alleging violations of notice of right to rescind requirement of Truth in Lending Act, defendants were granted summary judgment because mortgagors were not able to provide evidence to rebut presumption that they received requisite notice; presumption of receipt was established by production of form signed by mortgagors acknowledging receipt of notice of right to rescind. *Jackson v New Century Mortg. Corp. (2004, ED Mich) 320 F Supp 2d 608.*

Where mortgagors claimed in their action alleging violations of notice of right to rescind requirement of Truth in Lending Act that, even if they received requisite notice of right to rescind, notice did not contain date of closing transaction or date on which right to rescind expired they similarly could not prove that they did not receive copies that contained appropriate dates because mortgagors were unable to rebut presumption that they received signed copies of notice. *Jackson v New Century Mortg. Corp. (2004, ED Mich) 320 F Supp 2d 608.*

In borrowers' suit regarding second mortgage that mortgage company immediately assigned to assignee, on assignee's motion to dismiss, borrowers could not state

claim under Federal Truth in Lending Act, *15 USCS §§ 1601* et seq., based upon mortgage company's designation of assignee as recipient of borrowers' rescission notice because technical violation of Federal Reserve Board Regulation Z, 12 C.F.R. pt. 226 (2004), was minor deviation with no potential for actual harm; however, borrowers' claim regarding assignee's purported practice of presenting both notice form and confirmation form at time of closing survived dismissal. *Rodrigues v Members Mortg. Co. (2004, DC Mass) 323 F Supp 2d 202.*

Deposition testimony of property owners and blank copy of notice produced by owners were insufficient to rebut presumption of receipt of notice of right to rescind disclosures under *15 USCS § 1635*; thus, question of fact as to whether owners timely received properly completed notice remained, and summary judgment was inappropriate. *Briggs v Provident Bank (2004, ND Ill) 349 F Supp 2d 1124.*

Mortgage lender was denied summary judgment on individual's claim under *15 USCS § 1635* where forms describing his right to cancel within three days and confirming that he was not canceling transaction included statements contradictory to individual's right to rescind under Truth in Lending Act, *15 USCS §§ 1601* et seq., and by signing forms, individual likely would have assumed that he had given up his right to rescind deal. *Adams v Nationscredit Fin. Servs. Corp. (2004, ND Ill) 351 F Supp 2d 829.*

Individual was denied summary judgment on his claim that he was required to sign both form describing his right to cancel within three days and form confirming that he was not canceling transaction at closing, in violation of Truth in Lending Act, *15 USCS §§ 1601* et seq., where there was issue of fact as to whether he was actually required to sign confirmation at closing. *Adams v Nationscredit Fin. Servs. Corp. (2004, ND Ill) 351 F Supp 2d 829.*

Notification provided to original lender does not operate to give notice to lender's assignees that borrower intends to exercise his or her right to rescind loan under *15 USCS § 1635*; both *15 USCS § 1635(a)* and *12 CFR § 226.23(a)(2)* state that borrower should notify "creditor," i.e. original lender, to effectuate rescission, and even though there is no explicit reference to assignees in rescission notice provision, there is nothing to indicate that assignee, who has interest in applicable loan and is otherwise subject to same claims and defenses as creditor under *15 USCS § 1641(d)(1)*, is not entitled to receive rescission notice, just like original lender. *Harris v OSI Fin. Servs. (2009, ND Ill) 595 F Supp 2d 885.*

Although borrowers' claims for damages under *15 USCS § 1604(a)* were barred by one-year limitations period of *15 USCS § 1640(e)*, borrowers had to allege that

they were not provided notice of their right to rescind and that lender failed to make material disclosures so as to plead claim for rescission under *15 USCS § 1635(a)*. *Kelley v Mortgage Elec. Registration Sys. (2009, ND Cal) 642 F Supp 2d 1048.*

Borrower's claim for rescission failed to state claim because borrower did not indicate ability to tender as required under *Fed. R. Civ. P. 11* and Truth in Lending Act (TILA), *15 USCS § 1635*, and her claim for damages under TILA and Regulation Z failed to state claim because claim was time barred under *15 USCS § 1640* and borrower showed no basis for tolling for fraud or extraordinary circumstances. *Garcia v Wachovia Mortg. Corp. (2009, CD Cal) 676 F Supp 2d 895* (criticized in *Valdez v America's Wholesale Lender (2009, ND Cal) 2009 US Dist LEXIS 118241).*

Borrowers sufficiently alleged TILA claim for rescission in that they alleged that they would tender proceeds and that they had ability to do so as was required for rescission under *15 USCS § 1635(b)*. *Olivera v Am. Home Mortg. Servicing, Inc. (2010, ND Cal) 689 F Supp 2d 1218.*

Text and structure of *15 USCS § 1635(b)* and decision in *Am. Mortg. Network, Inc. v. Shelton, 486 F.3d 815 (4th Cir. 2007)* pointed persuasively to conclusion that plaintiff borrower's notice to lender of borrower's intent to rescind did not, without more, trigger obligation to effect rescission. *Bradford v HSBC Mortg. Corp. (2012, ED Va) 838 F Supp 2d 424.*

Rescission notice is invalid, and thus cannot possibly effectuate complete rescission, unless it is timely and unless creditor did something that actually gives borrower right to rescind. *Iroanyah v Bank of Am., N.A. (2012, ND Ill) 851 F Supp 2d 1115.*

Motion to dismiss was allowed because unilateral notification of cancellation under Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., did not automatically void loan contract; rather, notice to defendants that borrowers wished to rescind mortgage transaction merely advanced claim seeking rescission--it did not establish their right to rescission. *Ward v Sec. Atl. Mortg. Elec. Registration Sys. (2012, ED NC) 858 F Supp 2d 561.*

In absence of binding Second Circuit precedent, and against backdrop of contradictory precedent elsewhere, United States District Court for Eastern District of New York follows precedents that hold that lender's use of H-8 form does not provide clear and conspicuous notice of effects of rescission where borrower's

right to rescind is limited by refinancing exception of *15 USCS § 1635(e)(2)*. *Karakus v Wells Fargo Bank, N.A. (2013, ED NY) 941 F Supp 2d 318.*

Debtor-borrower was entitled to rescission, damages, costs, and attorney's fees, pending evidentiary hearing, where lender failed to provide second copy of consumer right of rescission under Regulation Z, 12 C.F.R. part 226, and other disclosures required by law. *Stanley v Household Fin. Corp. III (In re Stanley) (2004, BC DC Kan) 315 BR 602.*

Although *15 USCS § 1635(b)* provides for immediate voiding of security interest and return of money within twenty days of notice of rescission, this assumes that notice of rescission was proper in first place; since borrower was not entitled to extended three-year rescission period, his notice of rescission was out of time and was, therefore, ineffective. *Groat v Carlson (In re Groat) (2007, BAP8) 369 BR 413.*

Unpublished Opinions

Unpublished: Borrower who filed secured claim in amount of $ 1,026,026 against LLC's Chapter 11 bankruptcy estate failed to establish that LLC owed her debt because it wrongfully collected $ 1,049,290 from title company after company that serviced deed of trust on home borrower owned initiated foreclosure action and debtor sold her home for $ 1.735 million in private sale; although borrower claimed that she rescinded loan that was secured by deed of trust pursuant to Truth in Lending Act, *15 USCS § 1635*, when she sent letter to LLC in 2009, Ninth Circuit case law did not recognize her letter as valid rescission, and actions she took after she declared bankruptcy in 2009 were inconsistent with her claim that she had rescinded loan. *In re Residential Capital, LLC (2014, BC SD NY) 2014 Bankr LEXIS 1889.*

9. --Filing of complaint as notice

Filing of court complaint constitutes statutory notice of rescission. *Taylor v Domestic Remodeling (1996, CA5 Miss) 97 F3d 96* (criticized in *Williams v G.M. Mortg. Corp. (2004, ED Mich) 2004 US Dist LEXIS 29365)* and (criticized in *Marschner v RJR Fin. Servs. (2005, ED Mich) 382 F Supp 2d 918)* and (criticized in *Powell v Aegis Mortg. Corp. (2007, DC Md) 2007 US Dist LEXIS 2114)* and (criticized in *LaLiberte v Pacific Mercantile Bank (2007, 4th Dist) 147 Cal App 4th 1, 53 Cal Rptr 3d 745, 2007 CDOS 979, 2007* Daily Journal DAR 1224).

Service of complaint does not satisfy requirement of *15 USCS § 1635(b)* that claimant first present claim for rescission to lender by means of written

communication, because filing of complaint initiates lawsuit that statute is expressly intended to defer. *Jefferson v Security Pac. Fin. Servs. (1995, ND Ill) 162 FRD 123,* summary judgment gr, dismd (1995, ND Ill) *1995 US Dist LEXIS 14226* and (criticized in *Rodrigues v U.S. Bank (In re Rodrigues) (2002, BC DC RI) 278 BR 683)* and (criticized in *Pulphus v Sullivan (2003, ND Ill) 2003 US Dist LEXIS 7080)* and (criticized in *McIntosh v Irwin Union Bank & Trust, Co. (2003, DC Mass) 215 FRD 26)* and (criticized in *Harris v OSI Fin. Servs. (2009, ND Ill) 595 F Supp 2d 885).*

Filing of Truth In Lending Act (TILA), *15 USCS §§ 1601* et seq., complaint itself can, in rescission action, constitute notice for purposes of *15 USCS § 1635*, and no prior request for rescission is necessary. *McIntosh v Irwin Union Bank & Trust, Co. (2003, DC Mass) 215 FRD 26* (criticized in *Morris v Wachovia Sec., Inc. (2004, ED Va) 223 FRD 284, 59 FR Serv 3d 169)* and (criticized in *Bell v Ameriquest Mortg. Co. (2004, ND Ill) 2004 US Dist LEXIS 24289)* and (criticized in *Murry v America's Mortg. Banc, Inc. (2005, ND Ill) 2005 US Dist LEXIS 11751)* and (criticized in *Cazares v Household Fin. Corp. (2005, CD Cal) 2005 US Dist LEXIS 39222)* and (criticized in *McKenna v First Horizon Home Loan Corp. (2005, DC Mass) 429 F Supp 2d 291)* and (criticized in *LaLiberte v Pacific Mercantile Bank (2007, 4th Dist) 147 Cal App 4th 1, 53 Cal Rptr 3d 745, 2007 CDOS 979, 2007* Daily Journal DAR 1224) and (criticized in *Briscoe v Deutsche Bank Nat'l Trust Co. (2008, ND Ill) 2008 US Dist LEXIS 90665)* and (criticized in *Douglas v Wilmington Fin., Inc. (2009, ND Ill) 2009 US Dist LEXIS 107560)* and (criticized in *Garcia v HSBC Bank USA, N.A. (2009, ND Ill) 2009 US Dist LEXIS 114299).*

Undisputed material facts established that first owner did not have ownership interest in property prior to loan, and that even if first owner became owner of property through loan, loan was "residential mortgage transaction" as to him and thus exempt under *15 USCS § 1635(e)*; therefore, first owner was not entitled to disclosures under Truth in Lending Act, *15 USCS §§ 1601* et seq., and bank and corporation's motion for summary judgment was granted as to all claims for damages by first owner. *Briggs v Provident Bank (2004, ND Ill) 349 F Supp 2d 1124.*

Although filing of complaint generally constituted notice, for *15 USCS § 1635* purposes, that four borrowers intended to seek rescission of two loans (because borrowers made clear that they were seeking rescission as relief and allegations in complaint sufficiently identified entities responsible for rescinding loans), complaint had to be timely filed and served not only as to credit company that was original lender, but also as to all of company's assignees, who held interests in two loans; service of complaint on company did not constitute notice to all assignees, and

one bank did not receive timely notice, as it was not added to suit until after three year time limit for providing notice of rescission under § 1635(f) had expired. *Harris v OSI Fin. Servs. (2009, ND Ill) 595 F Supp 2d 885.*

Northern District of Illinois, Eastern Division, court agrees with those courts that have held that timely filing of complaint can constitute notice that borrower is exercising his or her rescission rights under *15 USCS § 1635*, which notice is required by *12 CFR § 226.23(a)(2)*, provided that complaint clearly states borrower's intent to rescind and specifically names party to whom demand for rescission is addressed; there is nothing to prevent sued lender from taking action required under *15 USCS § 1635(b)* and *12 CFR § 226.23(d)(2)* within 20 days of being served copy of complaint, which action will have effect of mooting rescission claim against it. *Harris v OSI Fin. Servs. (2009, ND Ill) 595 F Supp 2d 885.*

10. Finance or other charge liability

District Court does not have equitable jurisdiction to alter statute by requiring borrower to repay principal and interest in Truth in Lending Act (*15 USCS §§ 1601* et seq.) rescission, since statute states in plain language that borrower is not liable for any finance charge (*15 USCS § 1635*), and interest is considered finance charge (*15 USCS § 1605*). *Semar v Platte Valley Fed. Sav. & Loan Ass'n (1986, CA9 Cal) 791 F2d 699* (criticized in *Melfi v WMC Mortg. Corp. (2009, CA1 RI) 568 F3d 309).*

Mortgagors' action against lender must fail, even though finance charge listed in their copy of loan disclosures was inaccurate, where amount listed as finance charge in their copy was greater than actual finance charge closed in loan, because disclosures provided mortgagors, although inaccurate, are "treated as being accurate for purposes of" Truth in Lending Act (*15 USCS §§ 1601* et seq.) under §§ 1635(i)(2) and 1649(a). *Moore v Flagstar Bank (1997, ED Va) 6 F Supp 2d 496.*

Borrower is denied rescission of mortgage loan under *15 USCS § 1635*, where his principal submission is that $ 1,273 premium for life insurance policy was not included as finance charge in calculation and disclosure of annual percentage rate on his loan, because (1) he has not established that policy was for credit life insurance since lender was not designated as beneficiary, and (2) he gave clear testimony that he purchased insurance voluntarily, knowing it was not required. *Williams v First Gov't Mortg. & Investors Corp. (1997, DC Dist Col) 974 F Supp 17.*

Mortgagors who were entitled to rescind loan transaction based on mortgagee's technical violation of *15 USCS § 1635(b)* also were entitled to recover all finance

and interest charges associated with mortgage, including overcharge for appraisal, charge for forced place insurance, and closing-related costs such as broker fees and origination fees. *Riopta v Amresco Residential Mortg. Corp. (1999, DC Hawaii) 101 F Supp 2d 1326.*

Five-dollar service charge imposed by closing agent to reimburse it for recording mortgage was properly excluded from finance charge under Truth in Lending Act (TILA) under *15 USCS § 1605(a)*; thus, finance charge disclosure error fell within $ 35 statutory error tolerance of *15 USCS § 1635(i)*, and no material violation of TILA occurred; five-dollar charge was not imposed by lender, and lender retained none of charge. *Lowenstein v U.S. Bank, N.A. (In re Lowenstein) (2011, BC ED Pa) 459 BR 877.*

Where customer validly rescinded offer from lender on home mortgage, *15 USCS § 1635(b)* did not absolve customer from paying mortgage broker's fees; while § 1635(b) protected customer from lender's fees upon rescission, it did not protect customer from brokerage fees. *The Mortgage Source, Inc. v Strong (2003) 2003 MT 205, 317 Mont 37, 75 P3d 304,* reh den (2003, Mont) *2003 Mont LEXIS 408.*

11. Rebuttable presumption of delivery of disclosures

Borrower was entitled to new trial on rescission claim under Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., against assignee of loan because district court improperly instructed jury that something more than borrower's testimony was needed to rebut presumption that borrower received notice since borrower's signature was on notice of right to cancel; testimony of borrower alone was sufficient to overcome TILA's presumption of receipt because of plain language of TILA under *15 USCS § 1635(c)* and resulting conclusion that U.S. Congress did not intend something other than *Fed. R. Evid. 301* presumption to apply. *Cappuccio v Prime Capital Funding LLC (2011, CA3 Pa) 649 F3d 180.*

Congressional policy, as expressed in *15 USCS § 1635(c)*, precludes granting defendant creditor summary judgment on basis of receipt acknowledgement alone, where plaintiffs deny by affidavit that they received disclosures required by Act; where plaintiffs' affidavits rebut defendant's protestations of delivery, court cannot conclude that there is no genuine issue as to fact of delivery which would entitle defendant to summary judgment as matter of law. *Powers v Sims & Levin Realtors (1975, ED Va) 396 F Supp 12,* affd in part and revd in part on other grounds (1976, CA4 Va) *542 F2d 1216* (criticized in *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636).*

In action brought under Consumer Credit Protection Act of 1968 (*15 USCS §§ 1601* et seq.) alleging failure of defendant creditors to give financial disclosure statement required by Regulation Z (*12 CFR §§ 226.1* et seq.), failure of plaintiffs to controvert by affidavit their receipt of financial disclosure statement as indicated by their signature on loan document entitled defendants to summary judgment as to issue of such receipt. *Whitlock v Midwest Acceptance Corp. (1977, ED Mo) 76 FRD 190, 24 FR Serv 2d 463,* revd on other grounds (1978, CA8 Mo) *575 F2d 652.*

Rebuttable presumption of delivery of required disclosures is created by borrower's written acknowledgment of receipt and argument is incorrect that loan statements do no more than raise rebuttable presumption so that there is issue for trial. *Kicken v Valentine Production Credit Asso. (1984, DC Neb) 628 F Supp 1008,* affd without op (1984, CA8 Neb) *754 F2d 378.*

Although homeowners' written acknowledgment of receipt of required disclosures in connection with mortgage loan created rebuttable presumption that disclosures were delivered, presumption was rebutted and summary judgment for lender was precluded by homeowners' testimony that disclosures were not given. *Hanlin v Ohio Builders & Remodelers, Inc. (2002, SD Ohio) 212 F Supp 2d 752.*

Where mortgagor was not given two sets of separate notices of his right to rescind his mortgage transaction within three days of closing, his right to rescind nonetheless terminated when mortgaged property was sold at foreclosure sale. *Worthy v World Wide Fin. Servs. (2004, ED Mich) 347 F Supp 2d 502,* affd (2006, CA6 Mich) *192 Fed Appx 369, 2006 FED App 525N.*

Mortgagee's argument that mortgagors' complaint rested entirely on alleged nonreceipt of documents at closing was rejected where complaint contained allegations that mortgagee misrepresented certain terms of refinancing their mortgage. *Kajitani v Downey Sav. & Loan Ass'n (2008, DC Hawaii) 647 F Supp 2d 1208.*

Mortgagors had raised genuine issue of fact as to whether they had received required documents at closing where, in addition to their own declarations that they had not received documents, they submitted declaration of third-party witness who corroborated mortgagors' assertions. *Kajitani v Downey Sav. & Loan Ass'n (2008, DC Hawaii) 647 F Supp 2d 1208.*

Defendants' failure to deliver Notice of Right to Cancel, if proven, provided basis to rescind transaction; although executed delivery receipt was hurdle to borrowers' ultimate success on merits, it was not absolute bar to relief, but established only

presumption of delivery which could be rebutted upon sufficient evidentiary showing. *Glucksman v First Franklin Fin. Corp. (2009, ED NY) 601 F Supp 2d 511.*

With respect to mortgagors' claim for damages under Truth in Lending Act, genuine issues of material fact existed as to whether requisite notices regarding cancellation were delivered because although mortgagors signed document, that only created rebuttable presumption of delivery, which mortgagors amply rebutted with evidence to contrary. *Abubo v Bank of N.Y. Mellon (2013, DC Hawaii) 977 F Supp 2d 1037.*

Chapter 13 debtor's signature on Notice of Right to Cancel, acknowledging receipt of notice created rebuttable presumption that debtor was provided with required notice, but debtor testified that her husband was given folder with loan documents and that she was given no documents at closing, and thus, creditor bank did not comply with Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., and debtor was entitled to rescission. *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636* (criticized in *Wells Fargo Bank, N.A. v Jaaskelainen (2009, DC Mass) 407 BR 449).*

Debtor husband's testimony was sufficient for summary judgment purposes to rebut presumption under *15 USCS § 1635(c)*, that debtors' signatures on mortgage and loan documents acknowledged receipt of required number of copies of notice of right to rescind and disclosure notice under *15 USCS § 1631(a)*; it created issue of fact for trial. *Jones v Novastar Mortg., Inc. (In re Jones) (2003, BC DC Kan) 298 BR 451.*

Trial court correctly denied defendant's motion to strike motion to dismiss his counterclaim based on allegations that plaintiff failed to notify him of right under *15 USCS § 1635* to rescind contract, where mere allegation in defendant's motion to strike is insufficient to rebut presumption of notice evidenced by receipt signed by defendant acknowledging he had received 2 copies of notice, although affidavit of nondelivery from defendant would have sufficed to create material issue of fact. *Award Lumber & Constr. Co. v Humphries (1982, 1st Dist) 110 Ill App 3d 119, 65 Ill Dec 676, 441 NE2d 1190.*

Under Truth in Lending Act, creditor's evidence, including receipt for copy of disclosure statement signed by makers, constituted prima facie proof of delivery, and issue was properly resolved in favor of creditor, where one maker testified that he had no recollection of transaction, while other maker testified that although she kept all papers relative to transaction, she had found no copy of disclosure

statement, but neither of makers denied having received copy of statement. *College Park Credit Corp. v Aitkens (1975, La App 1st Cir) 317 So 2d 238.*

Unpublished Opinions

Unpublished: Although mortgage documents included acknowledgment that bankruptcy debtors received requisite number of disclosure statements, debtors properly rebutted presumption of receipt created by acknowledgment under *15 USCS § 1635(c)*; debtors' testimony was credible that they were given loan documents at closing, that they placed loan documents in folder, that they placed folder in file cabinet, that they first examined packet after they took it to their bankruptcy attorney, and that examination revealed only one copy of disclosure statement. *Regan v HSBC Bank (USA) (In re Regan) (2010, BC DC Kan) 2010 Bankr LEXIS 3122.*

12. Modification or waiver of rights

Under *15 USCS § 1635(d)*, existence of "bona fide" emergency is required in order for waiver, and where borrowers stated in waiver statement that they needed money because they were close to foreclosure, they faced no bona fide immediate personal financial emergency, since foreclosure was not possible for more than 2 months. *Ljepava v M. L. S. C. Properties (1975, CA9 Cal) 511 F2d 935.*

Where debtor's bankruptcy petition was filed on October 11, 2003, and right to rescind--effectuated through giving of notice to rescind pursuant to *15 USCS § 1635(f)*--did not expire until three days later on October 14, 2003, extension in *11 USCS § 108(b)* was applicable because right to rescind was effected on October 14th, within 60 days after date of order for relief (*11 USCS § 301*); therefore, bankruptcy court's decision dismissing as untimely debtor's adversary proceeding complaint was reversed and case was remanded. *Thomas v GMAC Residential Funding Corp. (2004, DC Md) 309 BR 453.*

Lender was not entitled to dismissal of borrower's TILA action pursuant to *Fed. R. Civ. P. 12(b)(6)* because having borrower sign post-dated election not to rescind violated *15 USCS § 1635(d)*; election that lender allegedly had borrower sign at closing did not involve any emergency and was not handwritten. *Daniels v Equitable Bank, SSB (2010, ED Wis) 746 F Supp 2d 1021.*

Though lender had failed to comply with notice requirements of Truth in Lending Act (*15 USCS §§ 1601* et seq.) debtor did not forfeit all rights to further repayment by debtor under Chapter 13 plan since plan itself already modified rights of lender and in bankruptcy proceeding statutory procedures of Truth in Lending Act may

properly be altered to impart equity for both debtor and creditor in order to harmonize interest of both statutes. *In re Chancy (1983, BC ND Okla) 33 BR 355* (criticized in *Ray v CitiFinancial, Inc. (2002, DC Md) 228 F Supp 2d 664).*

Borrowers' execution of emergency waiver of rescission rights constituted was valid notwithstanding that lender's loan officer did not assist borrowers in determining whether or not they faced genuine personal emergency and notwithstanding contention that under Truth in Lending Act (*15 USCS §§ 1601* et seq.) lender has independent duty to investigate facts underlying debtor's waiver of rescission rights, since defendants were experienced borrowers and at their own initiative executed emergency waiver in their own words for facially plausible reasons which they but not lender knew were false. *Mortgage Mint Corp. v Morgan (1985) 76 Or App 174, 708 P2d 1177* (criticized in *Langenfeld v Bank of Am., N.A. (2009, ND Okla) 2009 US Dist LEXIS 38316).*

13. Exemptions

Language of predecessor to *15 USCS § 1635(e)* applies only to "dwelling" and not to mere sale of land. *Charnita, Inc. v FTC (1973, CA3) 479 F2d 684.*

District court properly granted mortgage assignee and others judgment on pleadings on borrower's TILA claim where attached warranty deed, loan, and accompanying mortgage supported conclusion that loan agreement was residential mortgage transaction, and as such, was exempt under *15 USCS § 1635(e)*. *Dunn v Bank of Am. N.A. (2017, CA8 Ark) 844 F3d 1002.*

Mobile home purchasers' suit against bank is summarily dismissed, where bank lent purchasers money to have mobile home installed on their real property, because 3-day rescission right, which bank allegedly failed to disclose to purchasers, does not apply to loan for predominant purpose of enabling borrower to acquire or erect new residential structure. *Heuer v Forest Hill State Bank (1989, DC Md) 728 F Supp 1199.*

Loan that borrowers took out two years after their acquisition of property in order to complete construction of home was residential mortgage transaction under *15 USCS § 1602(w)*, part of Truth in Lending Act (TILA), and loan was therefore nonrescindable under *15 USCS § 1635(e)(1)*; as result, borrowers' TILA claims were time-barred under *15 USCS § 1640(e)* because they were brought more than one year after loan transaction. *Perkins v Cent. Mortg. Co. (2006, ED Pa) 422 F Supp 2d 487.*

In case in which two home owners sued bank alleging violations of Truth in Lending Act, *15 USCS §§ 1601* et seq., to extent that they recited claim for rescission, residential mortgage transactions were excluded from right of rescission. *Ortiz v Accredited Home Lenders, Inc. (2009, SD Cal) 639 F Supp 2d 1159* (criticized in *Wiebe v NDEX West, LLC (2010, CD Cal) 2010 US Dist LEXIS 49555).*

Although property owner conclusorily alleged that purpose of mortgage loans was refinance and not residential mortgage for acquisition or initial construction of dwelling, more specific contents of controlling signed loan documents unequivocally established fact that first mortgage loan proceeds were disbursed, at least in part to finance construction of property owner's principal dwelling; accordingly, first mortgage loan constituted "residential mortgage transaction" under *15 USCS § 1602(w)* and was exempt from Truth in Lending Act's rescission provisions, *15 USCS § 1635*. *Infante v Bank of Am. Corp. (2010, SD Fla) 680 F Supp 2d 1298.*

Chapter 13 debtors could not seek rescission of their home mortgage loan under *15 USCS § 1635* because, pursuant to § 1635(e)(1), right to rescission did not apply to residential mortgage transaction. *Figard v PHH Mortg. Corp. (In re Figard) (2008, BC WD Pa) 382 BR 695* (criticized in *Lewis v Ford Motor Co. (2009, WD Pa) 263 FRD 252).*

Lack of notice that borrower may rescind credit transaction is not actionable where debtor waives right to rescind transaction on date of loan. *Burrill v First Nat'l Bank, N.A. (1984, Mo App) 668 SW2d 116.*

Predecessor to *15 USCS § 1635(e)*, exempting first lien against dwelling from Truth-in-Lending Act, is inapplicable to mobile home lot since lot is not "dwelling" as defined under *12 CFR § 226.2(p)*. *Kovalik v Delta Inv. Corp. (1980, App) 125 Ariz 602, 611 P2d 955.*

Unpublished Opinions

Unpublished: Plaintiff borrower's Truth in Lending Act-based right to rescission claim against defendant bank did not apply for rescission of first mortgage loan because some of loan proceeds were used to finance cost of constructing borrower's residence, as was evidenced by loan documents which unequivocally established that first mortgage loan proceeds were disbursed--at least in part--to finance construction of his principal dwelling; first mortgage loan was "residential mortgage transaction" as defined in *15 USCS § 1602(w)* and under *15 USCS §*

1635(e)(1), was exempt from rescission provisions. *Infante v Bank of Am. Corp. (2012, CA11 Fla) 2012 US App LEXIS 4836.*

Unpublished: Because plaintiff mortgagors' adjustable rate mortgage loan from defendant mortgagor was "residential mortgage transaction" as defined by *15 USCS § 1602(x)*, it was not subject to rescission under *15 USCS § 1635(e)(1)* and mortgagors' rescission claim had properly failed. *Oliva v Nat'l City Mortg. Co. (2012, CA9 Nev) 2012 US App LEXIS 16129.*

14. --Arranger of credit

Debtor is not entitled to rescission of loan contract and statutory damages for automobile seller's alleged violations of Truth In Lending Act, where seller, who was not arranger of credit, was not obligated to comply with disclosure requirements of *15 USCS § 1638*. *In re Solis (1984, BC ED Pa) 38 BR 293.*

Right of rescission does not apply to cash contract for home improvement if contractor is not arranger of credit, so contractor need not give notice or delay performance until after related credit transaction is consummated. FC-0106, 42 Fed Register 46916.

15. --Business or commercial credit transactions

Business nature of mortgage transaction which exempted transaction from operation of Truth-in-Lending Act by *15 USCS § 1603(1)* also prevents relief under *15 USCS § 1635*. *Sapenter v Dreyco, Inc. (1971, ED La) 326 F Supp 871,* affd (1971, CA5 La) *450 F2d 941,* cert den *(1972) 406 US 920, 32 L Ed 2d 120, 92 S Ct 1775.*

Debtor-borrower was entitled to rescission, damages, costs, and attorney's fees, pending evidentiary hearing, where lender failed to provide second copy of consumer right of rescission under Regulation Z, 12 C.F.R. part 226, and other disclosures required by law. *Stanley v Household Fin. Corp. III (In re Stanley) (2004, BC DC Kan) 315 BR 602.*

Right of rescission of loan transaction secured by residential mortgages does not apply to commercial loan made to business corporation, notwithstanding parties agreed that loan would be consummated in accordance with Truth-In-Lending Act (*15 USCS §§ 1601* et seq.), where borrowers defaulted after making 21 monthly payments and claimed right to rescind based on minor technical nondisclosures, since (1) borrowers were not damaged by trivial, immaterial omissions, (2) lender substantially performed its obligation under contract, and (3) agreement merely

specified manner in which loan was to be consummated and did not provide remedies of Act for breach which were inconsistent with principles of contract law. *First Mortg. Co. v Carter (1982) 306 Pa Super 498, 452 A2d 835.*

16. --Refinancing

Since loans secured by security agreement are refinancing transactions, they are exempt from right of rescission under Truth In Lending Act (*15 USCS § 1635(3)(1)(b)*), even if, as plaintiffs allege, they are secured by plaintiffs' principal residence. *Kucera v Citizens Bank & Trust Co. (1985, CA8 Neb) 754 F2d 280.*

With respect to refinancing, right to rescind under *15 USCS § 1635(e)* is limited when earlier loan was already secured by security interest in home; thus, where lender satisfies old mortgage and takes new mortgage in borrower's home, transaction is refinancing and not new loan. *In re Porter (1992, CA3 Pa) 961 F2d 1066,* CCH Bankr L Rptr P 74544.

On appeal from lenders' successful *Fed. R. Civ. P. 12(b)(6)* motion to dismiss, court presumed that plaintiff home owners' allegation was correct--that home owners received new money advance as part of their refinance and, therefore, exemption from rescission provisions of *15 USCS § 1635(e)(2)* did not apply. *Santos-Rodriguez v Doral Mortg. Corp. (2007, CA1 Puerto Rico) 485 F3d 12.*

Borrower is excused from further liability on promissory notes, and is awarded $ 3,000 plus her costs and attorney fees, where creditor refinanced borrower's small consumer loan 3 times in 2 years but failed to release record mortgages or disclose their retention in connection with each separate refinancing transaction, because borrower had right to rescind and receive statutory damages for creditor's violations of Truth in Lending Act (*15 USCS §§ 1635(b)*, *1640(a)(2)(A)(i)*, and *1640(a)(3)*). *Gill v Mid-Penn Consumer Discount Co. (1987, ED Pa) 671 F Supp 1021,* affd without op (1988, CA3 Pa) *853 F2d 917* and (criticized in *Riopta v Amresco Residential Mortg. Corp. (1999, DC Hawaii) 101 F Supp 2d 1326).*

Plaintiffs alleged that loan would "straighten out" previous loan, and there were no allegations that any "new money" was involved in transaction; thus, bank was correct that loan should be considered refinancing; accordingly, right to rescission and associated rescission disclosure requirements, including security interest disclosures, were inapplicable. *Gray v First Century Bank (2008, ED Tenn) 547 F Supp 2d 815.*

Mortgagors were not entitled to rescission under *15 USCS § 1635* as they had refinanced their loan, and under applicable judicial precedent, refinance ended

right to rescission. *Plascencia v Lending 1st Mortg. (2008, ND Cal) 583 F Supp 2d 1090.*

Modification exemption applied, and therefore rescission notice consistent with *12 CFR § 226*, app. H-9, had to be provided to three borrowers pursuant to *15 USCS § 1635(a)* when they refinanced prior original loan and borrowed larger sum of money, even though original lender had assigned its interest in original loan before refinancing occurred and even though fourth borrower had been added to refinanced loan; *15 USCS § 1602(f)* and *12 CFR § 226.2(a)(17)* defined "creditor" as person to whom debt arising from consumer credit transaction was initially payable, and original lender did not relinquish its status as "creditor" when it assigned its interest in original loan to third party. *Harris v OSI Fin. Servs. (2009, ND Ill) 595 F Supp 2d 885.*

Modification exemption applies to loans that are refinanced for higher loan amount, and therefore rescission notice consistent with *12 CFR § 226*, app. H-9, has to be provided in order to comply with *15 USCS § 1635(a)* requirements, even if original lender has assigned its interest in original loan prior to time refinancing occurs, because *15 USCS § 1602(f)* and *12 CFR § 226.2(a)(17)* define "creditor" as person to whom debt arising from consumer credit transaction is initially payable, and original lender does not relinquish its status as "creditor" when it assigns its interest in original loan to third party. *Harris v OSI Fin. Servs. (2009, ND Ill) 595 F Supp 2d 885.*

Lender is "creditor" as defined in *15 USCS § 1602(f)* and *12 CFR § 226.2(a)(17)*, with regard to *15 USCS § 1635* rescission regulation if it is originator of loan, even it subsequently assigns its interest in loan to third party; modification exemption set out in *12 CFR § 226.23(f)(2)*, applies when borrower refinances, for increased amount, loan that lender has originated, regardless of whether, at time of refinancing, that loan has been assigned by lender to third party. *Harris v OSI Fin. Servs. (2009, ND Ill) 595 F Supp 2d 885.*

Plaintiff borrower's complaint referred to mortgage transaction was refinancing, which was exempt from Truth in Lending Act under *15 USCS § 1635(e)*, but, she argued that such characterization had been improper, and that original lender had previously extended her credit and assignor later extended additional credit, and if that were true, assignor's loan agreement would not be refinancing offered by "same creditor," and would therefore be subject to notice of rescission requirement; thus, borrower was allowed to amend her complaint against defendant assignee of note to properly describe transaction. *Cheche v Wittstat Title & Escrow Co., LLC (2010, ED Va) 723 F Supp 2d 851.*

Debtor's transaction was "residential mortgage transaction" excluded from right of rescission; fact that debtor had made downpayment to realty firm prior to executing loan agreement was not separate transaction for purposes of avoiding this exclusion under 12 *CFR pt. 226, supp. I. Roberts v Am. Bank & Trust Co. (2011, ED La) 835 F Supp 2d 183.*

Generally, under *15 USCS § 1634*, events subsequent to consumer loan transaction did not affect validity of initial disclosures or require creditor to make further disclosures, and where mortgage modification stated that it amended and supplemented original mortgage, and that it was not satisfaction of original loan which remained unchanged except as modified, it was not refinancing under *12 C.F.R. § 226.20(a)*, and thus, no disclosures were required; debtor and his non-debtor wife were not entitled to rescission under *15 USCS § 1635(e)(2)*. *Sheppard v GMAC Mortg. Corp. (In re Sheppard) (2003, BC ED Pa) 299 BR 753.*

17. Foreclosure rescission rights

Mortgagor was not entitled to rescind under Truth in Lending Act on ground that tolerance should have been $ 35 under *15 USCS § 1635(i)(2)* because $ 35 tolerance was inapplicable as mortgagee did not follow through on its notice of foreclosure sent pursuant to *35 Pa. Stat. Ann. § 1680.403c* and actually initiate foreclosure. *McCutcheon v America's Servicing Co. (2009, CA3 Pa) 560 F3d 143.*

Mortgagors' action against lender must fail, even though finance charge listed in their copy of loan disclosures was inaccurate, where amount listed as finance charge in their copy was greater than actual finance charge closed in loan, because disclosures provided mortgagors, although inaccurate, are "treated as being accurate for purposes of" Truth in Lending Act (*15 USCS §§ 1601* et seq.) under §§ 1635(i)(2) and 1649(a). *Moore v Flagstar Bank (1997, ED Va) 6 F Supp 2d 496.*

Plaintiff borrowers' Truth in Lending Act claim survived motion to dismiss because complaint rested on allegation that judicial foreclosure process was commenced against property, which under *15 USCS § 1635(i)(2)*, reduced rescission tolerance level to $ 35; fact that defendants had not filed summons and complaint for foreclosure was not dispositive. *Glucksman v First Franklin Fin. Corp. (2009, ED NY) 601 F Supp 2d 511.*

"Amount Financed" under *15 USCS § 1635(i)(2)* properly did not include amounts for title insurance and amounts for endorsements to same. *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636* (criticized in *Wells Fargo Bank, N.A. v Jaaskelainen (2009, DC Mass) 407 BR 449).*

Where defendant in action seeking to foreclose mortgage asserted counterclaim alleging that plaintiff had violated Truth in Lending Act, defendant had burden of proving facts alleged in such counterclaim, and it was erroneous to place upon plaintiff burden of negating counterclaim's allegation that plaintiff had failed to give 3-day notice of rescission as required by Act. *Grandway Credit Corp. v Brown (1974, Fla App D3) 295 So 2d 714.*

18. Arbitration

District court properly granted motion to compel arbitration in Truth in Lending Act action; until designated decision maker decided borrowers' claim seeking rescission of mortgage agreement, agreement remained in effect, and arbitration clause in agreement was enforceable. *Large v Conseco Fin. Servicing Corp. (2002, CA1 RI) 292 F3d 49.*

Arbitration clause in loan agreement was enforceable and demand for rescission under Truth in Lending Act was not somehow self-executing and did not result in automatic voiding of loan agreement. *Thompson v Irwin Home Equity Corp. (2002, CA1 RI) 300 F3d 88* (criticized in *EEOC v Rappaport, Hertz, Cherson & Rosenthal, P.C. (2006, ED NY) 448 F Supp 2d 458).*

Homeowner must submit her claims against remodeler and finance company to arbitration, where she signed loan documents containing arbitration clause as broad as it is possible to draft, because court will uphold and enforce arbitration clause in accordance with strong policy favoring arbitration agreements, and Court will not consider argument that rescission of contract by letter pursuant to *15 USCS § 1635* rendered arbitration clause unenforceable. *Dorsey v H.C.P. Sales, Inc. (1999, ND Ill) 46 F Supp 2d 804.*

Lender's motion to stay pending arbitration was granted because contracts subject to rescission under *15 USCS § 1635*, part of Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., could not be deemed voidable for reasons related to arbitration clauses embedded in those contracts; furthermore, because homeowners did not dispute that arbitration provision facially encompassed issues raised in their complaint, Federal Arbitration Act (FAA), *9 USCS §§ 1* et seq., required enforcement of arbitration clause. *Bertram v Ben. Consumer Disc. Co. (2003, MD Pa) 286 F Supp 2d 453.*

Borrowers' rescission of loan agreement under *15 USCS § 1635(a)* was, as matter of law, not subject to revival, and accordingly, arbitration clause in original agreement had no effect on subsequent dealings between parties; thus, when borrowers agreed to enter into new loan by simply signing "borrower's notice of

confirmation," which was placed on back side of notice of right to cancel, this document did not revive original agreement, nor did it reinstate requirement to arbitrate. *Chapman v Mortgage One Corp. (2005, ED Mo) 359 F Supp 2d 831.*

19. Miscellaneous

Application of rescission provision of Truth in Lending Act (*15 USCS § 1635*) is not excused by fact that developer providing additional financing to home purchasers through second mortgage on home, evidenced by 2 notes bearing no interest if timely paid, did not consider transaction as extension of credit for which purchasers could reasonably compare other credit terms, in belief that few if any other lenders would loan money on such terms. *Arnold v W.D.L. Inv. (1983, CA5 La) 703 F2d 848.*

Remedies available to borrower under *15 USCS §§ 1635*, *1640*, remain available even if loan that is subject of rescission has been paid off; right to rescission under *15 USCS § 1635* encompasses right to return to status quo that existed before loan, which means unwinding transaction in its entirety and returning borrower to position that he or she occupied prior to loan agreement. *Handy v Anchor Mortg. Corp. (2006, CA7 Ill) 464 F3d 760* (criticized in *Santos-Rodriguez v Doral Mortg. Corp. (2007, CA1 Puerto Rico) 485 F3d 12)* and (criticized in *Plascencia v Lending 1st Mortg. (2008, ND Cal) 583 F Supp 2d 1090).*

Borrower's inability to satisfy his tender obligations may make recission, even if based on Truth in Lending Act violation, impossible, and if lenders' security interest remained intact and loan continued to exist or if repayment was impossible, then rescission, by any definition, had not taken place and there was no benefit to claim. *Iroanyah v Bank of Am. (2014, CA7 Ill) 753 F3d 686.*

Negotiated settlement of credit transaction between consumer and creditor does not constitute credit transaction to which Truth in Lending Act (*15 USCS §§ 1631* et seq.) is applicable where effect of new transaction was to reduce indebtedness and unpaid balance and there is no right to rescission under *15 USCS § 1635*, in light of Regulation Z (12 CFR § 226.903) [now *12 CFR § 226.15*]], even though disclosures required by *12 CFR § 226.8* [now *12 CFR 226.6*] must be made. *Dumas v Home Constr. Co. (1977, SD Ala) 440 F Supp 1386,* affd without op (1979, CA5 Ala) *609 F2d 1006.*

Although right of rescission is inapplicable to creation, retention, or assumption of first lien or equivalent security interest to finance acquisition of dwelling, where plaintiffs owned their dwelling and borrowed funds from lender for purpose of moving house to new lot, failure of lender to disclose right of rescission constituted

violation of Truth in Lending Act (*15 USCS § 1635*). *French v Wilson (1978, DC RI) 446 F Supp 216* (criticized in *Riopta v Amresco Residential Mortg. Corp. (1999, DC Hawaii) 101 F Supp 2d 1326).*

Assertion by carpet buyer that his signature on installment contract and second mortgage securing payment on carpeting was forged precluded claim for rescission under *15 USCS § 1635*. *Walker v Michael W. Colton Trust (1999, ED Mich) 47 F Supp 2d 858.*

Order, finding that mortgagee violated Home Ownership and Equity Protection Act provisions of Truth in Lending Act with regard to refinancing transaction involving Chapter 13 bankruptcy debtors, was upheld; although bankruptcy court did not expressly address rebuttable presumption of *15 USCS § 1635(c)*, implicit finding that it had been adequately rebutted by debtors' testimony was not clearly erroneous. *Mourer v EquiCredit Corp. of Am. (In re Mourer) (2004, WD Mich) 309 BR 502* (criticized in *Short v Wells Fargo Bank Minn., N.A. (2005, SD W Va) 401 F Supp 2d 549).*

Court denied motion of defendants, real estate broker, real estate holding company, and related company, for summary judgment as to homeowners' Home Ownership and Equity Protection Act (HOEPA) and Truth in Lending Act (TILA) claims, which alleged that defendants violated disclosure requirements of both statutes as set forth in *15 USCS §§ 1602*, *1638*, *1639*, and *1641* and implementing regulations, *12 CFR §§ 226.31* and .32, and which sought rescission under *15 USCS § 1635* and *12 CFR § 226.23(a)(2)*, because genuine issues of fact existed as to whether parties intended outright sale, in which case TILA and HOEPA were inapplicable, or whether, given facts surrounding transaction, transaction could be construed as equitable mortgage, in which case TILA and HOEPA applied, and with regard to rescission, given discretion within which court could condition right to rescission, it was not necessary that owners demonstrate they had means to secure necessary financing at instant stage of proceedings. *Jones v REES-MAX, LLC (2007, DC Minn) 514 F Supp 2d 1139.*

Borrower failed to sufficiently plead violation of Truth in Lending Act by lender and servicer under *15 USCS § 1635* because residential mortgage transactions, as defined under *15 USCS § 1602*, were excluded from three-year right of rescission and his claim for statutory damages was likely barred by one-year limitations period of *15 USCS § 1640(e)*. *Delino v Platinum Cmty. Bank (2009, SD Cal) 628 F Supp 2d 1226.*

Although homeowner made good faith allegation that Truth in Lending Act and Home Ownership and Equity Protection Act were applicable to loan servicer and trust deed beneficiary, his claim for damages under those acts were barred by one-year limitations period of *15 USCS § 1640* but his rescission claim was governed by three-year limitations period under *15 USCS § 1635(f)* and was not barred. *Allen v United Fin. Mortg. Corp. (2009, ND Cal) 660 F Supp 2d 1089.*

Borrowers' Truth in Lending Act claim was not barred on motion to dismiss based on statute of limitations of *15 USCS § 1640(e)* because there were factual issues yet to be resolved; however, borrowers failed to state claim for rescission under *15 USCS § 1635* because notice provisions did not apply to residential transactions as defined under *15 USCS § 1602(w)*. *Urbina v Homeview Lending, Inc. (2009, DC Nev) 681 F Supp 2d 1254.*

Borrower's rescission claim against lender and lender's nominee was dismissed where transaction was residential mortgage transaction, and such transactions were excluded from right to rescission under *15 USCS § 1635(e)(1)*. *Lingad v IndyMac Fed. Bank (2010, ED Cal) 682 F Supp 2d 1142.*

Borrower's rescission claims under Truth in Lending Act were dismissed pursuant to *15 USCS § 1635(f)* where borrower's property had already been sold. *Mehta v Wells Fargo Bank, N.A. (2010, SD Cal) 737 F Supp 2d 1185.*

Plaintiff borrower sufficiently stated claim for rescission under *15 USCS § 1635*, provision of Truth-in-Lending Act, *15 USCS §§ 1601* et seq., where borrower adequately plead that borrower was able to tender borrowed funds in rescission; factual inquiry into borrower's actual ability to tender funds was not appropriate at *Fed. R. Civ. P. 12(b)(6)* stage. *Carrington v HSBC Bank USA, N.A. (2010, ED Va) 760 F Supp 2d 589.*

Former wife of borrower failed to state claim for rescission of her signature on Deed of Trust under *15 USCS § 1635*, part of Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., because rights to rescind under TILA extended to borrower only. *Kendall Falkiner v OneWest Bank (2011, ED Va) 780 F Supp 2d 460.*

Motion to dismiss recission claim brought under Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., was denied because court neither declared that plaintiff's mortgage loan "automatically void" based upon her unilateral rescission notice, nor did it provided remedy of "unconditional rescission"; court only found that plaintiff was not required to plead her ability to tender in complaint. *Findlay v Citimortgage, Inc. (2011, DC Dist Col) 813 F Supp 2d 108.*

Successor in interest, which acquired bank's assets from Federal Deposit Insurance Corporation (FDIC), could not be held liable for statutory damages under Truth in Lending Act, *15 USCS §§ 1601* et seq., to extent that borrower's claims were based on bank's actions; those claims were barred by successor's acquisition agreement with FDIC and also were time-barred; however, acquisition agreement did not bar damages based on successor's alleged failure to respond to borrower's rescission notice. *Fernandes v JPMorgan Chase Bank, N.A. (2011, ND Ill) 818 F Supp 2d 1086.*

Claim for enforcement of notice of rescission under Truth in Lending Act (TILA) involves more than invalidation of subject mortgage; indeed, it is not entirely accurate to refer to rescission of "the mortgage" under TILA; more precisely, TILA and Regulation Z refer to consumer's "right to rescind transaction," not right to rescind "the mortgage," *15 USCS § 1635(a)*; *12 CFR § 226.23(a)*. *Stuart v Decision One Mortg. Co., LLC (In re Stuart) (2007, BC ED Pa) 367 BR 541.*

Unpublished Opinions

Unpublished: Disabled adult's complaint against lenders and brokers failed to state claim based on applicable statutes of limitations because there was no rescission claim for three-year period of *15 USCS § 1635* to apply and she did not allege tolling under Cal. Code Civ. Proc. § 352(a) by establishing mental incapacity under *Cal. Civ. Code §§ 39*, *1556*, or *1689*. *House v Cal State Mortg. Co. (2009, ED Cal) 2009 US Dist LEXIS 58529.*

Unpublished: Claims that insured failed to make disclosures required by Truth in Lending Act and Home Ownership and Equity Protection Act under *15 USCS §§ 1602*, *1635*, *1638*, *1640*, did not require plaintiff to prove that insured knowingly or purposefully failed to make requisite disclosures, and thus, insurer was required to provide defense as to those claims under policy that only excluded risks that arose from event that insured deliberately caused or of which he was consciously aware. *Szelc v Stanger (2010, DC NJ) 2010 US Dist LEXIS 13146.*

Unpublished: In arguing that Chapter 7 debtors' cases should be substantively consolidated under *11 USCS § 302(b)*, court rejected creditor's argument that debtor husband was liable on home equity line of credit where he signed mortgage, but not underlying equity line agreement, because: (1) mortgage's clear language did not impose personal liability on husband; (2) alternatively, his liability was, at best, ambiguous because both payment and performance paragraph as well as definition of indebtedness differentiated between wife's obligation to pay equity line and debtors' joint obligations under mortgage; but only wife had to

complete Uniform Residential Loan Application to obtain equity line, and only wife was provided with disclosures required by *15 USCS §§ 1637* and *1637a* for equity line; and (3) creditor presented no extrinsic evidence indicating husband had liability under equity line, and as drafter, any ambiguity had to be construed against it. *In re Pruitt (2011, BC DC Or) 2011 Bankr LEXIS 2219.*

II. NOTICE OF RIGHT TO RESCIND

20. Generally

Plain meaning of word "or" in *15 USCS § 1635(h)* makes clear that lender may comply with its disclosure obligations by using model form or, alternatively, comparable written notice. *Santos-Rodriguez v Doral Mortg. Corp. (2007, CA1 Puerto Rico) 485 F3d 12.*

Notice of right of rescission and disclosure statements must be conveyed to debtor in meaningful fashion; mere acknowledgment by debtor of material disclosures is not conclusive that disclosures were in fact made consistent with requirement. *Abbott v Shaffer (1983, DC Utah) 564 F Supp 1200.*

Seventh Circuit precedent, which holds that lender does not properly notify borrowers of their rescission rights, as required by *15 USCS § 1635*, where it does not select and provide appropriate form rescission notice and instead provides borrowers with both form notices set out in *12 CFR § 226*, app. H-8, and *12 CFR § 226*, app. H-9, is equally applicable where creditor provides H-9 notice form to borrowers in connection with original loan; form H-9 is to be used only when borrowers refinance prior loan with same lender for higher amount, and use of that form does not properly notify borrowers of their rescission rights with regard to original loan because borrowers will be left with incorrect impression that they are not entitled to rescind full amount of their original loan. *Harris v OSI Fin. Servs. (2009, ND Ill) 595 F Supp 2d 885.*

Borrower was simply incorrect in his assertion that three-year rescission period was triggered by lender's failure to sign notices; in fact, forms complying with Rescission Model Form H-8 do not contain line for lender's signature. *Groat v Carlson (In re Groat) (2007, BAP8) 369 BR 413.*

21. Number of copies of notice

Alleged delivery to borrower of only one copy of notice of her right to rescind second mortgage transaction involving her principal dwelling, as opposed to 2

copies, supported claim for violation of *15 USCS § 1635(a)*. *Staley v Americorp Credit Corp. (2001, DC Md) 164 F Supp 2d 578.*

Homeowners' claim that they did not receive two copies of right to rescind mortgage loan agreement, together with lender's evidence that standard procedure was provided, precluded summary judgment on homeowners' claim that they were entitled to rescind loan agreement under *15 USCS § 1635(f)*. *Hanlin v Ohio Builders & Remodelers, Inc. (2002, SD Ohio) 212 F Supp 2d 752.*

In homeowners' suit alleging that mortgage assignee was liable for rescission of original lender's loans and statutory damages, mortgage assignee was not entitled to summary judgment, because material facts regarding delivery of two copies of Notice of Right to Cancel Form were in dispute. *Cooper v First Gov't Mortg. & Investors Corp. (2002, DC Dist Col) 238 F Supp 2d 50.*

Court granted mortgagee's motion to compel arbitration of mortgagor's action seeking rescission of mortgage loan transaction where mortgagor's letter to defendants did not rescind mortgage and arbitration agreement where: (1) arbitration agreement was separately negotiated and executed, and court would be required to sever its consideration of that agreement from any attack on accompanying mortgage transaction; and (2) mortgagor's notice purporting to rescind mortgage did not legally void either mortgage itself or arbitration agreement, as defendants did not acknowledge that purported rescission met all of necessary preconditions, nor did decisionmaker rule that rescission attempt was valid. *Anderson v Delta Funding Corp. (2004, ND Ohio) 316 F Supp 2d 554.*

Mortgagor, who had mortgaged her property to secure loan taken out by her ex-husband, had no right of rescission under note, mortgage, or any loan related documents because: (1) she had not offered to and could not return amount of loan's unpaid principal balance; (2) she was informed, at time she signed mortgage deed, that mortgagee had right to foreclose upon her property if ex-husband defaulted on loan; and (3) mortgagee had also informed mortgagor of her rescission rights as required by law, as proven by notice of right to cancel document that she had signed. *Moazed v First Union Mortg. Corp. (2004, DC Conn) 319 F Supp 2d 268.*

Because right of rescission created by *15 USCS § 1635(a)* was not applicable to transaction at issue, defendants were entitled to summary judgment on plaintiffs' claim for rescission; exception to right of rescission contained in *15 USCS § 1635(e)(1)* applied because unrefuted evidence reflected that plaintiffs obtained loan evidenced by adjustable rate mortgage and secured by deed of trust to

purchase certain real estate for use as their primary residence and that property was plaintiffs' primary residence when they filed their lawsuit. *Betancourt v Countrywide Home Loans, Inc. (2004, DC Colo) 344 F Supp 2d 1253.*

When mortgagor alleged that mortgagee violated Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., and, after Federal Deposit Insurance Corporation (FDIC) was appointed as mortgagee's receiver, FDIC sold mortgage in question to bank, bank was entitled to summary judgment on issue of whether mortgagee's delivery of one copy of notice required by TILA to mortgagor, rather than two copies, extended time within which mortgagor could exercise right to rescission because, under *12 CFR § 226.23(a)(3)*, rescission right was extended only if required "notice" was not delivered, indicating intent of Federal Reserve Board that failure to deliver two copies of notice did not extend right to rescission. *King v Long Beach Mortg. Co. (2009, DC Mass) 672 F Supp 2d 238.*

Borrowers' claim under *15 USCS § 1635* that lender failed to provide each of them with two copies of notice of right to cancel pursuant to *12 CFR § 226.23(b)(1)* did not survive challenge by motion to dismiss, as such claim was barred in Second Circuit where "hypertechnicality standard" was not employed for claims under Truth in Lending Act, *15 USCS §§ 1601*-*1667f*. *Karakus v Wells Fargo Bank, N.A. (2013, ED NY) 941 F Supp 2d 318.*

Where Chapter 13 debtor was not provided with two copies of Notice of Right to Cancel, or copy of Disclosure Statement as required by 12 C.F.R. pt. 226.23, fact that one copy of notice was given to debtor's husband was irrelevant, and debtor was entitled to rescission under *15 USCS § 1635(a)*. *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636* (criticized in *Wells Fargo Bank, N.A. v Jaaskelainen (2009, DC Mass) 407 BR 449).*

22. To whom notice is given; co-obligors

Although husband had received required disclosure statement and notice of right to rescind from lender in connection with loan to husband and wife, lender's failure to supply such statement and notice to wife constituted violation of Consumer Credit Protection Act, so that, after husband's death, wife was entitled, under *15 USCS § 1640*, to recover $ 1,000 in her own right against lender and $ 1,000 as administratrix of her husband's estate. *Simmons v American Budget Plan (1974, ED La) 386 F Supp 194.*

As general rule, creditor need furnish statement of required disclosures to only one of customers to transactions, but this does not apply where transaction is one which may be rescinded in which case all customers are entitled to necessary

disclosures. *Gerasta v Hibernia Nat'l Bank (1975, ED La) 411 F Supp 176,* affd in part and revd in part on other grounds (1978, CA5 La) *575 F2d 580* (superseded by statute on other grounds as stated in *Williams v Homestake Mortgage Co. (1992, CA11 Fla) 968 F2d 1137, 6 FLW Fed C 975).*

Cosigner of automobile loan who signed mortgage note on home as part of loan transaction had right to rescind agreement almost 2 years later, where creditor failed to provide cosigner with clear notice of her rescission rights in violation of *15 USCS § 1635* by having cosigner sign postdated certificate of confirmation. *Curry v Fidelity Consumer Discount Co. (1987, ED Pa) 656 F Supp 1129.*

Homeowners who took out home improvement loan are entitled to rescission of loan in action against bank, where homeowners sent letter to bank rescinding contract 14 months after entering into contract and mortgage, because bank violated *15 USCS § 1635(a)* by failing to provide homeowners separate notice of their rights of rescission and forms by which to exercise those rights as set forth in *12 CFR § 226.23(b)*, and notice that bank did provide (1) did not inform homeowners of security interest taken in their home, (2) did not describe effects of rescission, and (3) failed to disclose date upon which right to rescission expired. *Reynolds v D & N Bank (1992, ED Mich) 792 F Supp 1035* (criticized in *Briscoe v Deutsche Bank Nat'l Trust Co. (2008, ND Ill) 2008 US Dist LEXIS 90665)* and (criticized in *Melfi v WMC Mortg. Corp. (2009, CA1 RI) 568 F3d 309).*

Rescission is equitable doctrine and there is nothing in statutory provision of federal Truth in Lending Act with regard to right of rescission or in *15 USCS § 1635(b)*'s provision of procedural steps in effecting right of rescission that limits power of court of equity to circumscribe right of rescission to avoid perpetration of stark inequity; courts may condition borrowers' continuing right of rescission upon their tender to lender of all of funds spent by lender in discharging earlier indebtedness of borrowers and, when rescission is attempted under circumstances that would deprive lender of its legal due, attempted rescission will not be judicially enforced unless it is so conditioned that lender will be assured of receiving its legal due. *Moazed v First Union Mortg. Corp. (2004, DC Conn) 319 F Supp 2d 268.*

Copy of notice of right to rescind given to debtor's wife required only debtor's signature and was not addressed to wife, who was not obligated on loan but who had granted mortgage on debtor's and wife's home, thus, notice was unclear under *15 USCS §§ 1632(a)*, *1635(a)*, *12 C.F.R. § 226.17(a)*, and period for rescission was extended to three years, and loan could be rescinded. *Apgar v Homeside Lending, Inc. (In re Apgar) (2003, BC ED Pa) 291 BR 665.*

23. Particular cases

Notice from creditor to debtors who had obtained home improvement loan that debtors had only 2 days in which to rescind loan violated notice requirements of § 125 of Truth in Lending Act (*15 USCS § 1635*). *Powers v Sims & Levin (1976, CA4 Va) 542 F2d 1216* (criticized in *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636).*

Notice sent to mortgagor of right to rescind loan transaction was ineffective where, at time notice was sent, no one had actually agreed to extend credit to mortgagor so that no loan transaction was "consummated" at that time, and where no additional notice of right to rescind was provided to mortgagor when loan actually was consummated more than 2 months later. *Jackson v Grant (1989, CA9 Cal) 876 F2d 764,* op replaced on other grounds (1989, CA9 Cal) *890 F2d 118.*

Pursuant to *15 USCS § 1640*, court improperly dismissed debtors' action against creditor because debtors alleged that creditor failed to comply with rescission procedures found in Truth in Lending Act, *15 USCS § 1635(b)*, and applicable state law, which required creditor to return debtors' money and take steps to void security interest within 20 days of receiving notice of rescission; debtors had filed their action within one year of creditor's receipt of notice for rescission. *Belini v Wash. Mut. Bank, FA (2005, CA1 Mass) 412 F3d 17.*

Mortgagee violated its duties under *15 USCS § 1635(a)* when it provided to plaintiff, mortgagor, during closing of her new mortgage loan, copies of two different Federal Reserve Board model rescission forms, one of which was inappropriate to mortgagor's loan, since (1) simultaneous provision of both Fed. Res. B., Rescission Model Form H-8 and Fed. Res. B., Rescission Model Form H-9 to plaintiff was not simply minor, technical error, but constituted violation of § 1635(a) clear and conspicuous disclosure requirement, (2) mortgagee created confusion by providing both model forms and, in doing so, failed to provide plaintiff with clear notice of what her right to rescind entailed, and (3) mortgagee was not entitled to protection under safe harbor provision set out in *15 USCS § 1640(c)* because mortgagee did not present any evidence showing that it had procedures in place to ensure that borrowers received correct rescission form and to guard against making type of disclosure error that was committed in plaintiff's case. *Handy v Anchor Mortg. Corp. (2006, CA7 Ill) 464 F3d 760* (criticized in *Santos-Rodriguez v Doral Mortg. Corp. (2007, CA1 Puerto Rico) 485 F3d 12)* and (criticized in *Plascencia v Lending 1st Mortg. (2008, ND Cal) 583 F Supp 2d 1090).*

Plain language of *15 USCS § 1604(b)* and regulations did not require exclusive use of model forms in *12 CFR § 226.23* (app. H-8, H-9). Lenders' alleged failure to provide appropriate form to home owners was not per se violation of *15 USCS § 1635* and *Regulation Z. Santos-Rodriguez v Doral Mortg. Corp. (2007, CA1 Puerto Rico) 485 F3d 12.*

Where borrower refinanced home mortgage, but form providing notice of right to rescind transaction left blank spaces for date of transaction and actual deadline to rescind, notice adequately complied with *15 USCS § 1635(a)* because reasonable borrower could not have been misled since short notice period for rescission at will was plain despite blanks. *Melfi v WMC Mortg. Corp. (2009, CA1 RI) 568 F3d 309,* cert den (2010, US) *130 S Ct 1058, 175 L Ed 2d 884* and (criticized in *Rojo v U.S. Bank N.A. (2010, ED Wis) 2010 US Dist LEXIS 29632).*

Even assuming plaintiffs' version of facts (that disclosure forms they received incorrectly stated that loan closed on August 11, 2003, and did not provide date that they would be allowed to rescind mortgage), they signed right to cancel forms and dated them August 12, 2003, and notice forms made clear that they had right to cancel transaction, without cost, within three business days from date of transaction; there was no question that plaintiffs received adequate notice of their right to cancel. *Fuller v Deutsche Bank Nat'l Trust Co. (In re Fuller) (2011, CA1 Mass) 642 F3d 240.*

Borrower was entitled to opportunity to convince trier of fact that he did not receive two copies of notice of his three-day right to cancel at closing as required by *12 CFR § 226.23(b)(1)* because reasonable jury could believe his claim that he left closing with his folder of closing papers and never removed anything from it. *Marr v Bank of Am., N.A. (2011, CA7 Wis) 662 F3d 963.*

Borrower did not have right to rescind mortgage refinancing based on lender's use of 12 CFR pt. 226, app. H, Model Form H-8, general rescission disclosure form, rather than Model Form H-9, refinancing form; right to rescind transaction did not distinguish between initial financing and refinancing, and lender was not required to advise borrower of specific effects of rescinding refinancing and distinct from rescinding initial financing. *Watkins v SunTrust Mortg, Inc. (2011, CA4 Va) 663 F3d 232.*

Because plaintiff borrower gave written notice that she wanted rescission before *15 USCS § 1635(f)*'s 3-year time bar lapsed and defendant lender did not respond, her complaint, filed after 3-year repose period expired, was untimely; Congress's manifest intent was that Truth in Lending Act (TILA) permit no rescission right after

3-years, because while purpose of TILA, as stated in *15 USCS § 1601(a)*, was to assure meaningful disclosure of credit terms and to protect consumer against inaccurate and unfair credit billing and credit card practices, primary justification of rescission was "remedial economy," and if borrower provided notice of rescission, as required by § 1635(a), then, at some unknown, and perhaps distant, point in future, decides to effectuate rescission right through judicial process, underlying circumstances in no small number of cases were likely to have changed significantly, outcome which was not consistent with general goal and application of rescission remedy. *Rosenfield v HSBC Bank, USA (2012, CA10 Colo) 681 F3d 1172* (criticized in *Leonard v Bank of Am. NA (2012, ED Wis) 2012 US Dist LEXIS 101616).*

Although borrowers asserted that they were entitled to rescind mortgage under "buyers' remorse" provision of Truth-in-Lending Act, which gave borrower three days following closing of mortgage to rescind transaction, *15 USCS § 1635(a)*, district court correctly held that borrowers did not overcome presumption that they received four copies of notice of right to cancel. *Lee v Countrywide Home Loans, Inc. (2012, CA6 Ohio) 692 F3d 442, 2012 FED App 261P,* reh den, reh, en banc, den (2012, CA6) *2012 US App LEXIS 19764.*

Record supported trial court's findings that mortgaged property was borrower's principal dwelling for purposes of Truth in Lending Act and that she signed both loan and waiver of right to rescind at same time given borrower's testimony. *Harris v Schonbrun (2014, CA11 Fla) 773 F3d 1180, 25 FLW Fed C 693.*

Where homeowners were furnished notices of rescission in regard to home improvement contracts before consumer credit transaction existed, so that last date for rescission given on notice was misleading, and where overall procedure used by defendant to inform plaintiffs of their rights under Consumer Credit Protection Act was in contravention of Federal Reserve Board regulations, notices of rescission were ineffective for purposes of *15 USCS § 1635*. *Doggett v County Sav. & Loan Co. (1973, ED Tenn) 373 F Supp 774.*

Notice of right to rescind is inadequate where creditor fails to file with court important material allegedly contained in notice and where disclosures actually contained in notice of rescission obviously contradict and obscure terms of other rescission notice. *O'Neil v Four States Builders & Remodelers, Inc. (1979, ED Pa) 484 F Supp 18.*

Right to rescind notice is sufficient, despite failure to include right to rescind within 3 days of consummation of transaction, where right to rescind notice is model form

issued by Federal Reserve Board which carries with it regulating body's approval of farm as in compliance with regulation. *Murphy v Empire of America FSA (1984, WD NY) 583 F Supp 1563,* affd (1984, CA2 NY) *746 F2d 931.*

Omission of identification of transaction in blank at top of form notice of right to rescind does not extend time within which obligor may exercise option to rescind where all of information required to identify transaction, such as date, creditor's name and business address, date for rescission, customer's signature, and current date, appeared elsewhere on rescission notice. *Cantu v Stief (1984, WD Tex) 598 F Supp 562.*

Lender's disclosures were improper under *15 USCS § 1635*, where deadline for, and manner and effect of, rescission were misstated, because lender's compliance with requirements must be strict; thus, 3-year rescission period was operative and borrower's rescission within that period was valid. *Jenkins v Landmark Mortg. Corp. (1988, WD Va) 696 F Supp 1089.*

Where bankruptcy court found that creditor violated Truth in Lending Act, *15 USCS § 1635*, by failing to respond to debtor's notice of rescission within 20 days, court did not err in declining to void creditor's mortgage lien because rescission was not automatic upon debtor giving notice to creditor. *Merriman v Beneficial Mortg. (In re Merriman) (2005, DC Kan) 329 BR 710.*

Where creditor foreclosed on debtor's delinquent loan and purchased property at sheriff's sale, and where debtor filed suit against creditor three days before expiration of statutory redemption period, but did not effect service until 16 days after redemption period expired, debtor was unable to recover because notice of right to rescind under Truth in Lending Act, *15 USCS § 1635(f)*, was untimely; filing of complaint without service was insufficient notice of rescission because it did not constitute "delivery to creditor's designated place of business" under *12 CFR § 225.23(a)(2)*. *Marschner v RJR Fin. Servs. (2005, ED Mich) 382 F Supp 2d 918.*

Average person would have been aware that rescission period expired three days after receipt, even though three-day notices required under *15 USCS § 1635(a)* failed to include dates of transaction, and thus, right to rescind was waived and claim for rescission was dismissed. *Carye v Long Beach Mortg. Co. (2007, DC Mass) 470 F Supp 2d 3* (criticized in *Bonney v Wash. Mut. Bank (2008, DC Mass) 596 F Supp 2d 173).*

Borrowers alleged right to rescind under *15 USCS § 1635(a)* against certain lenders because lenders failed to provide required disclosures; lenders' motions to

dismiss were granted as to notice of right to cancel because that notice adhered to model form; lenders' motions to dismiss were denied as to portion of claim alleging right to rescind based on inadequate disclosure statements, because those statements did not explicitly indicate payment periods. *Ware v Indymac Bank, F.S.B. (2008, ND Ill) 534 F Supp 2d 835.*

Borrowers' putative class action claims against lender failed, where lender's notice pursuant to Truth in Lending Act, *15 USCS § 1635*, and Massachusetts Consumer Credit Cost Disclosure Act, Mass. Gen. Laws ch. 140D, clearly and conspicuously disclosed to borrowers effects of their exercise of their right of rescission. *McKenna v First Horizon Home Loan Corp. (2008, DC Mass) 537 F Supp 2d 284.*

Bank's failure to honor consumers' rescission request, which they tendered within three years of allegedly defective notice, constituted distinct and actionable violation; therefore, consumers' prayer for damages was sufficient to extent it was based on bank's alleged failure to provide proper number of notices, *15 USCS § 1640(g)*, or to honor consumers' request to rescind, *15 USCS § 1635(g)*. *Buick v World Sav. Bank (2008, ED Cal) 637 F Supp 2d 765,* motion den, motion to strike den (2008, ED Cal) *565 F Supp 2d 1152,* request den (2009, ED Cal) *2009 US Dist LEXIS 49461.*

To extent that investors sought rescission, such relief was not available to them under Truth in Lending Act, *15 USCS § 1635(e)*; moreover, fact that purchase money properties had been foreclosed precluded order of rescission, *15 USCS § 1635(f)*. *Smith v Jenkins (2009, DC Mass) 626 F Supp 2d 155.*

In case in which homeowner sued lender, alleging that it violated Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., because she was required to sign document purporting to confirm that three days had elapsed after loan closing, and she did not intend to exercise her right under TILA to rescind loan and lender moved to dismiss pursuant to *Fed. R. Civ. P. 12(b)(6)*, homeowner's allegation was directly belied by her signed loan documents that contained opposite representation; specifically, she signed document titled "NOTICE OF RIGHT TO CANCEL," stating that she had legal right under federal law to cancel transaction, without cost, within *THREE BUSINESS DAYS. Palmer v GMAC Commer. Mortg. (2009, DC Dist Col) 628 F Supp 2d 186.*

When mortgagor alleged that mortgagee violated Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., and, after Federal Deposit Insurance Corporation (FDIC) was appointed as mortgagee's receiver, FDIC sold mortgage in question to bank, bank was not entitled to summary judgment on issue of whether notice provided

by mortgagee to mortgagor did not comply with TILA, thereby extending time within which mortgagor could exercise right to rescind, because reasonable jury could find that notice provided was confusing to average consumer, as mortgagee's failure to include expiration date for rescission right on notice retained by mortgagor was sufficiently confusing that jury might return verdict for mortgagor. *King v Long Beach Mortg. Co. (2009, DC Mass) 672 F Supp 2d 238.*

Although borrower asserted that she was entitled to rescission on ground that lender sent her incorrect notice of right to rescind form and that *15 USCS § 1635(a)* and Regulation Z, *12 CFR § 226.23(b)(1)*, required creditor to clearly and conspicuously disclose to obligor obligor's right to rescind and length of rescission period, as well as to provide obligor with appropriate forms to exercise his right to rescind transaction under *15 USCS § 1635(a)*, court found that even if lender sent incorrect form, its contents disclosed all information required under Regulation Z, and thus, provided borrower with all information required under *15 USCS § 1635(a)*. *Larrabee v Bank of Am., N.A. (2010, ED Va) 714 F Supp 2d 562.*

Lender was not entitled to dismissal of borrower's TILA action pursuant to *Fed. R. Civ. P. 12(b)(6)* because having borrower sign post-dated election not to rescind--as alleged--constituted impermissible waiver of three day right to rescind at *15 USCS § 1635(a)* and may also have violated *Wis. Stat. § 100.18*, *Wisconsin Deceptive Trade Practices Act. Daniels v Equitable Bank, SSB (2010, ED Wis) 746 F Supp 2d 1021.*

Bank's request that borrower sign postdated statement at loan closing confirming that three business days had passed and that he had not rescinded transaction was inherently confusing to average borrower and did not satisfy Truth in Lending Act's "clearly and conspicuously" disclosure requirement, *15 USCS § 1635(a)*. *Conrad v Farmers & Merchs. Bank (2011, WD Va) 762 F Supp 2d 843.*

Failure of debtor to properly inform homeowner of her right to rescind oral contract within 3 days as provided by *15 USCS § 1635(a)* gives homeowner continuing right to rescind home improvements contract which right was exercised by homeowner in filing of complaint in bankruptcy action; homeowner is entitled to return of full consideration for contract. *In re Snyder (1982, BC ED Tenn) 22 BR 29.*

By terms of *15 USCS § 1635(a)* and *12 CFR 226.23*, consumer must give notice to exercise right to rescind; as such, applicable subsection under *11 USCS § 108* for purposes of extension of time was § 108(b), providing additional 60 days from order for relief where that extension was longer than period provided by

nonbankruptcy law; here, three year period provided by Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., expired later than 60 day extension under § 108(b); while debtors correctly contended that some courts had determined that filing of complaint seeking rescission could qualify as notice to satisfy terms of statute and regulation, it was notice that was required by *15 USCS § 1635(a)* and *12 CFR § 226.23*, and not commencement of action as provided for under § 108(a). *West v America's Servicing Co. (In re West) (2009, BC WD Pa) 420 BR 284.*

Borrowers who used lender to refinance mortgage on their home had valid claim for statutory damages in amount $ 1,000 under *15 USCS § 1640* because lender violated *15 USCS § 1635* when it failed to provide borrowers with documents explaining their right to rescind transaction, and were also allowed to seek payment of additional $ 850 under New Jersey law because they were charged $ 1,700 to apply for loan when that fee should have been $ 850; however, they did not establish right to recover other damages under Truth in *Lending Act, Home Ownership Equity Protection Act, Real Estate Settlement Procedures Act, or New Jersey law. In re New Century Trs Holdings, Inc. (2013, BC DC Del) 495 BR 625.*

In action seeking foreclosure of mortgage because of homeowner's failure to make required payments, there was sufficient conflicting evidence as to circumstances involving notice of right to rescind (under *15 USCS § 1635*), so as to warrant denial of motion for summary judgment, where although homeowner claimed that he had never received notice and that signature contained on notice was forgery, corporation's depositions showed that notices were always mailed to customers and that notice had been mailed in present case. *Gillis v Fisher Hardware Co. (1974, Fla App D1) 289 So 2d 451.*

Where, in regard to construction of garage upon plaintiffs' property, materialmen failed to disclose plaintiff property owners' right to rescind construction contract as provided in *15 USCS § 1635*, materialmen's mechanics' liens upon property were invalid and could not be foreclosed. *Hobbs Lumber Co. v Shidell (1974, CP Ct) 42 Ohio Misc 21, 71 Ohio Ops 2d 135, 326 NE2d 706.*

Unpublished Opinions

Unpublished: District court properly concluded that mortgagor could not hold mortgagee's assignee liable under Truth in Lending Act (TILA), *15 USCS § 1640(a)*, as matter of law, arising from assignee's failure to make required TILA disclosures, including disclosure of her rescission rights as required by *15 USCS § 1635(a)*, because mortgagor did not allege facts showing that assignee was

"creditor" as defined in *15 USCS § 1602(f)* and *12 C.F.R. § 226.2(a)(17)*; there were two required elements for "creditor" under TILA, and assignee did not meet second element because her name did not appear on face of any of mortgage loan documents that mortgagor had signed. *Parker v Potter (2007, CA11 Fla) 232 Fed Appx 861.*

Unpublished: In borrowers' suit against defendants, mortgage company, bank, and law firm, it was not clear error to find that four copies of notice of right to rescind were provided at closing, because district court made explicit factual finding that one borrower's testimony was not credible, and closing agent signed document claiming to having followed closing instructions. *Smith v Argent Mortg. Co., LLC (2009, CA10 Colo) 331 Fed Appx 549.*

Unpublished: Plaintiffs acknowledged that they each signed "Notice of Right to Cancel," which created rebuttable presumption of delivery of two copies, and although plaintiffs offered their testimony that mortgage company failed to provide them with two copies each of notice as rebuttal evidence, district court found plaintiffs' deposition testimony "plainly obstructive," and found closing agent's testimony (that he always followed all applicable procedures and provided relevant number of copies to borrowers at closings) credible; court found no clear error in district court's conclusions and agreed that plaintiffs failed to rebut presumption that they received requisite copies. *Jobe v Argent Mortg. Co., LLC (2010, CA3 Pa) 373 Fed Appx 260.*

Unpublished: Borrower's choice to arbitrate was wholly separate from her choice to rescind loan in its entirety, and her right to rescind loan was in no way undermined by her right to opt out of arbitration; fact that arbitration cancellation provisions were different from rescission provisions did not affect clarity of separate notice of right to cancel, and accordingly, court rejected borrower's argument that arbitration cancellation provision undermined notice of right to cancel that was perfectly consistent with Truth in Lending Act's disclosure requirements. *Wolf v Fannie Mae (2013, CA4 Va) 2013 US App LEXIS 4300.*

III. TIME FOR RESCISSION

A. In General

24. Generally

Where defendant's disclosure statement was violative of Truth in Lending Act, plaintiffs are entitled to rescind transaction until midnight of third business day following receipt of correct disclosure statement, *15 USCS § 1635(b)* giving debtor

continuing and open-ended power of rescission so long as required disclosures have not been made. *Powers v Sims & Levin (1976, CA4 Va) 542 F2d 1216* (criticized in *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636).*

Under *15 USCS § 1635*, where required disclosures were never made, right to cancel transaction existed after expiration of three day period. *Pedro v Pacific Plan (1975, ND Cal) 393 F Supp 315.*

Consumer has right to rescind transaction until end of third business day following transaction or until creditor delivers to consumer information, notification of rescission form, and disclosure statements that are required, whichever is later; if disclosure statement does not comply with disclosure requirements, consumer has ongoing right to rescind transaction for as long as creditor fails to comply, subject to 3 year limitations period. *Valentine v Influential Sav. & Loan Asso. (1983, ED Pa) 572 F Supp 36.*

Where creditor fails to specify date upon which 3 day rescission period expires, debtor has right to rescind transaction. *Aquino v Public Fin. Consumer Discount Co. (1985, ED Pa) 606 F Supp 504.*

In Chapter 13 bankruptcy case, in which debtor challenged alleged predatory loan transaction, debtor could rescind under *15 USCS § 1635(b)* without making immediate repayment; Chapter 13 plan could be used as vehicle for debtor to repay loan proceeds over time. *Bell v Parkway Mortg., Inc. (In re Bell) (2004, BC ED Pa) 309 BR 139,* mod on other grounds and reh den (2004, BC ED Pa) *314 BR 54, 59 FR Serv 3d 763* and (criticized in *Hodges v Swafford (2007, Ind App) 863 NE2d 881).*

Three year time period to exercise right of rescission under Truth in Lending Act, *15 USCS §§ 1601* et seq., is statute of repose, not statute of limitations; since right of rescission expires at end of three years after consummation of loan, passage of statute of repose was properly raised by motion to dismiss pursuant to *Fed. R. Civ. P. 12(b)(6)*. *Velardi v Countrywide Bank, FSB (In re Velardi) (2016, BC MD Pa) 547 BR 147,* app dismd (2016, MD Pa) *2016 US Dist LEXIS 44440,* vacated, motion dismd, as moot (2016, MD Pa) *2016 US Dist LEXIS 49172.*

Obligor in consumer credit transaction in which security interest is acquired on obligor's principal dwelling place has 3 days to rescind following delivery of full disclosure of credit terms, and when disclosures are not provided, right to rescind continues for 3 years from date of transaction. *Gramatan Home Investors Corp. v Starling (1983) 143 Vt 527, 470 A2d 1157.*

25. Consummation of transaction

Loan from creditor to consumer was not "consummated" within meaning of *15 USCS § 1635(a)*, for purposes of measuring time for rescission, at time when initial documents were executed where these documents specified that creditor would not be lender, that lender was not presently known, and that borrower was not guaranteed loan, and it was only when creditor was unable to find another lender that it agreed to make loan itself, since, under governing state law, lender did not become contractually bound until date that it agreed to make loan itself. *Jackson v Grant (1989, CA9 Cal) 890 F2d 118.*

District court did not err when it granted summary judgment to lender and bank on borrowers claims under Truth in Lending Act, *15 USCS §§ 1601* et seq., that their loan was not consummated on January 26, 1999, since loan was conditioned on appraisal review because document relied upon by borrowers clearly informed them that despite fact that loan was conditioned on satisfactory appraisal, loan was consummated; therefore, appraisal review notwithstanding, borrowers became contractually obligated when loan documents were executed on January 26, 1999, and rescission period expired three days later. *Gaona v Town & Country Credit (2003, CA8 Minn) 324 F3d 1050.*

Consumer cannot exercise right to rescind created by *15 USCS § 1635(a)* until after consummation of consumer credit transaction. *Weintraub v Quicken Loans, Inc. (2010, CA4 Va) 594 F3d 270.*

Principle that credit transaction must be consummated to trigger Truth in Lending Act, *15 USCS §§ 1601* et seq., liability applies with equal force to right to rescind created by *15 USCS § 1635(a)*; no consumer credit transaction exists for which right to rescind can be exercised until that transaction has been consummated, or put another way, until credit is in fact extended. *Weintraub v Quicken Loans, Inc. (2010, CA4 Va) 594 F3d 270.*

Commonsense reading of text of *15 USCS § 1635(a)* suggests that "transaction" refers to consummated, binding agreement, rather than to whole course of parties' interactions. *Weintraub v Quicken Loans, Inc. (2010, CA4 Va) 594 F3d 270.*

Lender was not obligated by *15 USCS § 1635(b)* to return full value of application deposit when consumers attempted to exercise right to rescind given by § 1635(a) because right to rescind never arose because consumers withdrew their application before loan was consummated, and no consumer credit transaction existed for which right to rescind could have been exercised until that transaction

was consummated. *Weintraub v Quicken Loans, Inc. (2010, CA4 Va) 594 F3d 270.*

Right to rescind credit transactions exists within 3 business days of consummation of transaction, receipt of truth in lending disclosures, or receipt of notice of right to rescind; under regulation, state law determines when consumer becomes contractually bound under credit terms for purposes of consummation of transaction; consummation of transaction occurs at time commitment contract is executed. *Murphy v Empire of America FSA (1984, WD NY) 583 F Supp 1563,* affd (1984, CA2 NY) *746 F2d 931.*

For purposes of *15 USCS § 1635* permitting rescission within specified period after "consummation" of transaction, loan is deemed consummated when credit is extended, or perhaps even earlier, when creditor-customer contractual relationship is created. *Bokros v Associates Finance, Inc. (1984, ND Ill) 607 F Supp 869.*

Borrower became contractually obligated as to amount of credit she purchased from funding corporation when she signed promissory note with funding corporation on August 31, 2000, and not when she completed transaction with home equity company on September 6, 2000, pursuant to which she received loan that covered her cash contribution to funding corporation's loan; any condition precedent to funding corporation's performance did not affect buyer's obligation; thus, funding corporation's loan was "consummated" for purposes of *15 USCS § 1635*, part of Truth in Lending Act (TILA), when buyer signed promissory note such that funding corporation's notice of her right to cancel her loan no later than midnight on September 5, 2000, was valid, as TILA's three-day rescission period, and not alternate three-year rescission period, applied. *O'Brien v Aames Funding Corp. (2005, DC Minn) 374 F Supp 2d 764.*

Borrowers' claimed that lender failed to recognize their right of rescission; however, because borrowers received requisite notice of their rights to rescind, three-day time limit applied under *15 USCS § 1635*, and borrowers' claim failed because they did not act within three days after settlement. *Parker v Long Beach Mortg. Co. (2008, ED Pa) 534 F Supp 2d 528, 69 FR Serv 3d 1162.*

Three-year statutory limit on rescission, triggered by consummation of transaction, applies even though there is no requirement to file suit within that period. *In re Jensen-Edwards (2015, BC DC Idaho) 535 BR 336.*

26. Bankruptcy

Truth in Lending Act was construed to require bankruptcy court to impose equitable terms for benefit of mortgagee upon debtors who elected to rescind mortgage agreement upon filing their bankruptcy petition, where mortgagee's predecessor in interest used wrong right to cancel form in original transaction, effectively extending right to rescind to three years. *Quenzer v Advanta Mortg. Corp. USA (2003, DC Kan) 288 BR 884* (criticized in *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636)* and (criticized in *Ramirez v Household Fin. Corp. III (In re Ramirez) (2003, BC DC Kan) 2003 Bankr LEXIS 1364)* and findings of fact/conclusions of law, claim dismissed (2005, BC DC Kan) *2005 Bankr LEXIS 2627.*

Upon entry of order for Chapter 7 relief, debtors' right of rescission under state Consumer Credit Code becomes property of estate within meaning of *11 USCS § 541*, exercisable exclusively by trustee in bankruptcy; since sale of realty effectively cuts off any right of rescission under both state Consumer Credit Code and federal Truth in Lending Act, trustee fails to timely exercise right of rescission where, although trustee was made party defendant in adversary proceeding to determine validity of creditor lien, trustee fails to appear or otherwise respond, and Bankruptcy Court authorizes sale of subject real estate on request of debtors and creditor. *Lausier v Goodwin (1980, BC DC Me) 7 BR 476.*

Bankruptcy court lost jurisdiction under *28 USCS § 157* to hear claims Chapter 7 debtor filed against bank under TILA, *15 USCS §§ 1601* et seq., seeking statutory damages, rescission of mortgage bank held on her residence, and attorney's fees, when trustee abandoned debtor's claims in no-asset case and case was closed, and although court had discretion to retain jurisdiction and try case, retention of jurisdiction was not warranted based on procedural history and facts of case; although dismissing case would deprive debtor of her ability to seek statutory damages under TILA, it would not affect her right to file action in another court on her claim seeking rescission of her mortgage, and that was primary objective of her lawsuit. *Bank of Am., N.A. v Doe (In re Travers) (2014, BC DC RI) 507 BR 62.*

27. Fraudulent concealment

To make out case of fraudulent concealment tolling period prescribed by *15 USCS § 1635* for asserting right to rescission, debtor must allege facts indicating fraudulent concealment by party raising statute of limitations, together with other party's failure to discover facts which are basis of his cause of action despite his exercise of due diligence. *Bokros v Associates Finance, Inc. (1984, ND Ill) 607 F Supp 869.*

Even if irregularities and omissions in promissory note should have raised some doubt on part of assignee of note concerning assignor's diligence and care in documenting loan, those deficiencies themselves are not badges of fraud so as to warrant conclusion that assignee had engaged in fraudulent concealment tolling period specified by *15 USCS § 1635(a)* for exercising right of rescission; where debtor's own allegations indicate that assignee took no affirmative steps to conceal debtor's rights under § 1635 and do not imply deliberate failure by assignee to investigate patently suspect transactions, debtor is not entitled to relief from statute of limitations. *Bokros v Associates Finance, Inc. (1984, ND Ill) 607 F Supp 869.*

B. Expiration of Right to Rescind

1. In General

28. Generally

Even if *15 USCS § 1635(f)*, allowing rescission of loan that does not conform with Truth in Lending Act, were interpreted to refer only to time at which consumer must notify lender of his intention to rescind, rather than time at which suit must be brought, notice should have been sent by borrower before contracting to sell her property which secured loan, rather than at time of actual conveyance. *Hefferman v Bitton (1989, CA9 Cal) 882 F2d 379* (criticized in *Meyer v Ameriquest Mortg. Co. (2003, CA9) 342 F3d 899)* and (criticized in *Meyer v Ameriquest Mortg. Co. (2003, CA9 Cal) 342 F3d 899).*

Giving of notice is necessary predicate act to ultimate exercise of right to rescind but is not sufficient, in itself, to complete exercise of that right; borrowers' right to rescind real estate loan transactions therefore expired because they did not file rescission action prior to foreclosure sale of property at issue. *Hartman v Smith (2013, CA8 Minn) 734 F3d 752,* reh den, reh, en banc, den (2013, CA8 Minn) *2013 US App LEXIS 19768.*

By enacting § 125(f) of Truth in Lending Act (*15 USCS § 1635(f)*) Congress did not merely limit time period within which right to rescission could be asserted, but actually limited to 3 years existence of right itself so that where plaintiff failed to bring action for rescission within 3 years after she acquired right to rescind, case had to be dismissed for lack of subject matter jurisdiction. *Jamerson v Miles (1976, ND Tex) 421 F Supp 107.*

Although borrowers sought loan for purchase of dwelling, fact that financial corporation's encumbered second property, not one being acquired, removed

mortgage at issue, pursuant to *15 USCS § 1602(w)*, from purview of residential mortgage exception contained in Truth in Lending Act, *15 USCS §§ 1601* et seq., pursuant to *15 USCS § 1635*, meaning that borrowers had right to rescission; they lost that right, however, when they failed to exercise it within three days after transaction given that there was no indication that required disclosures were not made. *De Jesus-Serrano v Sana Inv. Mortg. Bankers, Inc. (2007, DC Puerto Rico) 552 F Supp 2d 191,* summary judgment gr, claim dismissed, judgment entered (2007, DC Puerto Rico) *552 F Supp 2d 196.*

Rescission notice did not clearly and conspicuously disclose date rescission period expired, as required by Truth in Lending Act, *15 USCS § 1635(h)*, because it did not provide correct date when rescission period expired, and it did not define business days or explain when to begin counting business days or explain how to count them. *Aubin v Residential Funding Co., LLC (2008, DC Conn) 565 F Supp 2d 392.*

Notwithstanding that required disclosures have not been made, right to rescind automatically lapses upon occurrence of earliest of (1) expiration of 3 years after occurrence giving rise to right of rescission, (2) transfer of all of consumer's interest in property, including bequests and gifts, and (3) voluntary or involuntary sale of consumer's interest in property, including transaction in which consumer sells dwelling and takes back purchase money mortgage or retains legal title through installment sale contract. Board of Governors of Federal Reserve System Official Staff Interpretation TIL-1, *48 Fed Reg 14887.*

2. Three Years After Consummation of Transaction

29. Generally

Language of *15 USCS § 1635(a)* left no doubt that rescission was effected when borrower notified creditor of his intention to rescind. *Jesinoski v Countrywide Home Loans, Inc. (2015, US) 135 S Ct 790, 190 L Ed 2d 650, 25 FLW Fed S 29.*

So long as borrower notified within three years after transaction was consummated, his rescission under Truth in Lending Act was timely, and there was no requirement that borrower sue within three years. *Jesinoski v Countrywide Home Loans, Inc. (2015, US) 135 S Ct 790, 190 L Ed 2d 650, 25 FLW Fed S 29.*

3-year limitation period of *15 USCS § 1635(f)* is to be applied prospectively. *James v Home Constr. Co. (1980, CA5 Ala) 621 F2d 727* (criticized in *Rodrigues v U.S. Bank (In re Rodrigues) (2002, BC DC RI) 278 BR 683)* and (criticized in *McIntosh v Irwin Union Bank & Trust, Co. (2003, DC Mass) 215 FRD 26).*

Truth in Lending Act permits no federal right to rescind, defensively or otherwise, after 3-year period of *15 USCS § 1635(f)* has run, as § 1635(f) represents absolute limitation on rescission actions which bars any claims filed more than three years after consummation of transaction. *Miguel v Country Funding Corp (2002, CA9 Hawaii) 309 F3d 1161, 2002 CDOS 10911, 2002* Daily Journal DAR 12629, amd on other grounds, reh den, petition for certiorari filed (2002, CA9) *2002 CDOS 12285* and cert den *(2003) 539 US 927, 123 S Ct 2577, 156 L Ed 2d 604* and (criticized in *Jackson v Mortg. Elec. Registration Sys. (2009, Minn) 770 NW2d 487)* and (criticized in *Santos v Countrywide Home Loans (2009, ED Cal) 2009 US Dist LEXIS 71736)* and (criticized in *Briosos v Wells Fargo Bank (2010, ND Cal) 2010 US Dist LEXIS 87735).*

Where lender provided requisite information in disclosure statement under Truth in Lending Act, *15 USCS §§ 1601* et seq., consumers were not entitled to extended rescission period under *15 USCS § 1635(f)*. *Carmichael v Payment Ctr., Inc. (2003, CA7 Ill) 336 F3d 636,* reh, en banc, den (2003, CA7 Ill) *2003 US App LEXIS 20763* and cert den *(2004) 541 US 987, 124 S Ct 2015, 158 L Ed 2d 491* and (superseded by statute on other grounds as stated in *Hamm v Ameriquest Mortg. Co. (2007, CA7 Ill) 506 F3d 525).*

Provision of Act of October 28, 1974 amending *15 USCS § 1635* to provide that right of rescission expires 3 years after date of consummation of transaction applies to contracts then in existence. *Rodriguez v County Lumber & Supply Co. (1978, ND Ill) 460 F Supp 810.*

Because *15 USCS § 1635(f)*, which allows for extended three year right of rescission, is statute of repose, rather than statute of limitations; it is not subject to equitable extensions; therefore, borrower cannot file amended complaint and then rely on relation back doctrine to get around three year time limit for notifying lender or lender's assignee of rescission claim. *Harris v OSI Fin. Servs. (2009, ND Ill) 595 F Supp 2d 885.*

So-called "buyer's remorse" provision of Truth in Lending Act (TILA), *15 USCS §§ 1601* et. seq., gives borrowers three business days to rescind loan agreement without penalty; to invoke this provision, loan must be consumer loan using borrower's principal dwelling as security; if lender fails to deliver certain forms or disclose important terms accurately, *15 USCS § 1635(f)* gives borrower right to rescind until three years after consummation of transaction or sale of property, whichever occurs first. *Sakugawa v Countrywide Bank F.S.B. (2011, DC Hawaii) 769 F Supp 2d 1211.*

Pursuant to *15 USCS § 1635(f)*, when creditor never gives obligor proper notice of right to rescind, and obligor has not sold property, right lasts for three years from date of consummation of transaction. *Quenzer v Advanta Mortg. Corp. (In re Quenzer) (2001, BC DC Kan) 266 BR 760* (criticized in *Regency Sav. Bank v Chavis (2002, 2d Dist) 333 Ill App 3d 865, 267 Ill Dec 504, 776 NE2d 876)* and (criticized in *Ray v CitiFinancial, Inc. (2002, DC Md) 228 F Supp 2d 664)* and revd on other grounds, remanded (2003, DC Kan) *288 BR 884* (criticized in *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636)* and (criticized in *Ramirez v Household Fin. Corp. III (In re Ramirez) (2003, BC DC Kan) 2003 Bankr LEXIS 1364)* and findings of fact/conclusions of law, claim dismissed on other grounds (2005, BC DC Kan) *2005 Bankr LEXIS 2627* and (criticized in *Stanley v Household Fin. Corp. III (In re Stanley) (2004, BC DC Kan) 315 BR 602).*

30. Particular cases

Under *15 USCS § 1635(f)*, borrower's right of rescission is completely extinguished at end of 3-year period--and may not be asserted as affirmative defense in collection action brought by lender more than 3 years after consummation of transaction--because (1) § 1635(f) contains uncompromising provision that borrower's right of rescission "shall expire" with running of time, (2) Truth in Lending Act (*15 USCS §§ 1601* et seq.) gives borrower no express permission to assert right of rescission as affirmative defense after expiration of 3-year period, and (3) statutory right of rescission could cloud lender's title on foreclosure, which risk Congress may well have chosen to circumscribe, while permitting borrower's recovery of damages regardless of date collection action may be brought. *Beach v Ocwen Fed. Bank (1998) 523 US 410, 140 L Ed 2d 566, 118 S Ct 1408, 98 CDOS 2943, 98 Daily Journal DAR 4023, 1998 Colo J C A R 1913, 11 FLW Fed S 470.*

Borrowers complaint was improperly dismissed as untimely where they had mailed lenders written notice of their intention to rescind within three years of their mortgage loan's consummation, and that was all that was required in order to exercise right to rescind under *15 USCS § 1635(a)*. *Jesinoski v Countrywide Home Loans, Inc. (2015, US) 135 S Ct 790, 190 L Ed 2d 650, 25 FLW Fed S 29.*

Three-year limit on rescission of consumer loan under *15 USCS § 1635(f)* did not run where creditor made material failures to disclose. *La Grone v Johnson (1976, CA9 Cal) 534 F2d 1360* (criticized in *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636).*

Failure of creditor to complete rescission notice required by Truth in Lending Act (*15 USCS § 1635(a)*) by inserting date of third business day after execution of transaction, as date until which borrower had right to rescind, constituted violation of Act and extended rescission period until 3 years from date of transaction, where disclosures were never correctly made at time of transaction or subsequently. *Williamson v Lafferty (1983, CA5 Miss) 698 F2d 767* (criticized in *Tribeca Lending Corp. v Gilbert (2008, NJ Super Ct Ch Div) 2008 NJ Super Unpub LEXIS 3014)* and (criticized in *Melfi v WMC Mortg. Corp. (2009, CA1 RI) 568 F3d 309).*

Creditor's nondisclosure of contingent mechanic's lien in favor of contractor did not extend to purchaser right to rescind her loan agreement with creditor within 3 year period, since contractor was not creditor, and any liens that could have attached to purchaser's residence by operation of law would not have run in favor of creditor and therefore were not subject to disclosure under Truth in Lending Act (*15 USCS §§ 1601*, et seq.). *McCoy v Harriman Utility Bd. (1986, CA6 Tenn) 790 F2d 493.*

Lenders' disclosure correctly stated that rescission of refinance loan would cancel security interest contemplated by that loan, and would impact only refinance transaction; thus, lenders satisfactorily disclosed effects of rescission as required by *12 CFR § 226.23(d)*, and three-day rescission period was not extended to three years under *15 USCS § 1635(f)*. *Santos-Rodriguez v Doral Mortg. Corp. (2007, CA1 Puerto Rico) 485 F3d 12.*

Where borrowers were asked to sign statement acknowledging they had been advised of their right to rescind loan transaction within three business days and, at same time, were instructed to sign statement certifying that three business days had elapsed and they had not rescinded transaction, lender violated Truth in Lending Act, *15 USCS § 1635(a)*, by failing to clearly and conspicuously disclose borrowers' three-day right to rescind transaction, thereby giving rise to three-year period of rescission. *Rand Corp. v Yer Song Moua (2009, CA8 Minn) 559 F3d 842,* judgment entered, in part, costs/fees proceeding, in part (2009, DC Minn) *2009 US Dist LEXIS 107968.*

Debtor's assertion that lender violated Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., by failing to provide required disclosures to him and refusing to cancel mortgage after he sent notice of rescission, under *15 USCS §§ 1635* and *1638*, failed because required disclosures were delivered under TILA because (1) power of attorney debtor gave to his wife was valid; (2) debtor's wife, acting pursuant to valid power, signed acknowledgment at closing that she received required disclosures on debtor's behalf; and (3) signing of acknowledgment established delivery of required disclosures under *15 USCS § 1641(b)*; no right to

rescind existed because debtor, through his wife acting as attorney-in-fact, received timely notice of right to cancel. *Ofor v Ocwen Loan Servicing, LLC (2011, CA8 Minn) 649 F3d 808.*

Borrower's rescission action was time-barred even though borrower sent rescission notice within three years of loan transaction; *15 USCS § 1635(f)* is statute of repose that represents absolute three-year bar on rescission actions. *McOmie-Gray v Bank of Am. Home Loans (2012, CA9 Cal) 667 F3d 1325.*

Borrowers timely exercised their right to rescind under Truth in Lending Act, *15 USCS §§ 1601* et seq., by notifying loan subservicer within three-year period under *15 USCS § 1635(f)* that they were exercising their right to rescind; borrowers were not required to file suit within three years after consummation of loan transaction in order to exercise their right to rescind. *Gilbert v Residential Funding LLC (2012, CA4 NC) 678 F3d 271* (criticized in *Rosenfield v HSBC Bank, USA (2012, CA10 Colo) 2012 US App LEXIS 11799).*

Because plaintiff borrower gave written notice she wanted rescission before *15 USCS § 1635(f)*'s 3-year time bar lapsed and defendant lender did not respond, her complaint, filed after 3-year repose period expired, was untimely; Congress's manifest intent was that Truth in Lending Act permit no rescission right after 3-years. *Rosenfield v HSBC Bank, USA (2012, CA10 Colo) 681 F3d 1172* (criticized in *Leonard v Bank of Am. NA (2012, ED Wis) 2012 US Dist LEXIS 101616).*

Because plaintiff borrower gave written notice she wanted rescission before *15 USCS § 1635(f)*'s 3-year time bar lapsed and defendant lender did not respond, her complaint, filed after 3-year repose period expired, was untimely; by its plain terms, § 1635(b) contemplated reaction by creditor in order to effectively "close deal" of rescission--that is, creditor shall return to obligor any money or property given as earnest money, downpayment, or otherwise, and shall take any action necessary or appropriate to reflect termination of any security interest created under transaction within 20 days after receipt of consumer's notice of rescission, and, absent that "return," there had been no mutual recognition of cancellation of loan in literal sense, so action invoking "statutory right of rescission" had to be limited temporally, lest it cloud lender's title on foreclosure. *Rosenfield v HSBC Bank, USA (2012, CA10 Colo) 681 F3d 1172* (criticized in *Leonard v Bank of Am. NA (2012, ED Wis) 2012 US Dist LEXIS 101616).*

District court erred as matter of law when it dismissed borrowers' Truth in Lending Act, *15 USCS §§ 1601* et seq., complaint as untimely because text of *15 USCS § 1635* and its implementing regulation (Regulation Z) supported view that to timely

rescind loan agreement, obligor need only send valid notice of rescission. *Sherzer v Homestar Mortg. Servs. (2013, CA3 Pa) 707 F3d 255.*

Rescission claim was time-barred under this statute because borrowers had notified their lender of their intent to rescind but failed to file lawsuit within three-year period after consummation of transaction. *Bank of Am., N.A. v Peterson (2014, CA8 Minn) 746 F3d 357.*

Borrower was entitled to rescission where lender instructed borrower to sign simultaneously loan documents and postdated waiver of her right to rescind, and postdated waiver failed to give borrower clear and conspicuous notice of her right to rescind. *Harris v Schonbrun (2014, CA11 Fla) 773 F3d 1180, 25 FLW Fed C 693.*

Three year statute of limitations commenced on day mortgage was executed, barring mortgagor from seeking rescission more than 3 years after mortgage execution. *Dau v Federal Land Bank (1985, ND Iowa) 627 F Supp 346, CCH Fed Secur L Rep P 92832.*

Borrower's rescission of loan secured by her home was proper under *15 USCS § 1635(a)*, notwithstanding that rescission did not occur until almost 1 year after loan was entered into, where bank never properly completed right to rescission form or provided borrower with required material disclosures, because borrower had 3 years to rescind. *Mayfield v Vanguard Sav. & Loan Ass'n (1989, ED Pa) 710 F Supp 143.*

Debtors had right to rescind mortgage transaction almost 3 years after execution, where mortgagee made clerical error in amount of monthly payment on original loan documents, eventually got state court judgment in its favor for correct monthly payments and issued corrected documents, but never provided new rescission forms with corrected documents, because failure to provide new forms was Truth-in-Lending Act (*15 USCS §§ 1601* et seq.) violation which granted debtors continuing right to rescind for 3 years under § 1635(f). *Smith v Wells Fargo Credit Corp. (1989, DC Ariz) 713 F Supp 354.*

Even if loan to finance purchase of cooperative apartment constituted consumer credit transaction rather than residential mortgage transaction and even if mortgagor's claim under *15 USCS § 1635* could be read as asserting rescission claim, mortgagor's right of rescission under statute expired 3 years after transaction date. *Van Pier v Long Island Sav. Bank, F.S.B. (1998, SD NY) 20 F Supp 2d 535.*

Lender's violation of *15 USCS § 1635* and regulations promulgated thereunder extends period of borrower's right to rescind to 3 years, where (1) language of election not to rescind is both objectively false and internally inconsistent, (2) language tells average borrower that her "cooling off" period "has expired" and that she may no longer rescind, and (3) disputed provision is objectively confusing given its placement on same page as notice of rescission rights, because election not to rescind is inherently confusing in both its language and its placement on notice document as whole. *Wiggins v Avco Fin. Servs. (1999, DC Dist Col) 62 F Supp 2d 90.*

Where creditor foreclosed on debtor's delinquent loan and purchased property at sheriff's sale, and where debtor attempted to rescind sale by filing suit, but where creditor was not served with complaint until after expiration of redemption period, debtor was precluded from receiving relief of rescission under Truth in Lending Act, *15 USCS § 1635(f)*, because right to any such relief was cut off by sheriff's sale. *Marschner v RJR Fin. Servs. (2005, ED Mich) 382 F Supp 2d 918.*

In action arising out of predatory lending scheme allegedly perpetrated by banks and from which lender allegedly profited, no class member had timely claim for rescission because no rescission claims were asserted within three years of closing of loans; proposed claims for rescission were subject to statute of repose and, thus, right could not be revived by equitable tolling, relation back, or any of theories advanced. *In re Cmty. Bank of N. Va. (2006, WD Pa) 467 F Supp 2d 466* (criticized in *Dia Shammami v Indymac Fed. Bank, FSB (2009, ED Mich) 2009 US Dist LEXIS 97402)* and (criticized in *United States SEC v Kearns (2010, DC NJ) 691 F Supp 2d 601, CCH Fed Secur L Rep P 95618).*

In case in which homeowner asserted that three mortgage lenders violated Truth-in-Lending Act, *15 USCS §§ 1601* et seq., because they failed to provide notice of his right to rescind within three-day cooling-off period as set forth in *15 USCS § 1635(a)*, lender's motion for summary judgment was granted; since loan was consummated in 1995 and homeowner did not bring suit until 2006, his right to rescission had expired pursuant to *15 USCS § 1635(f)*. *Williams v Countrywide Home Loans, Inc. (2007, SD Tex) 504 F Supp 2d 176,* affd (2008, CA5 Tex) *269 Fed Appx 523* and (criticized in *Wentz v Saxon Mortg. (In re Wentz) (2008, BC SD Ohio) 393 BR 545).*

Fact issues precluded summary judgment in favor of mortgage refinancing lender on borrower's claim under Truth in Lending Act, *15 USCS §§ 1601* et seq., as there were fact issues regarding whether extended three-year period for rescission under *15 USCS § 1635(f)* applied; borrower claimed that lender failed to disclose

certain prepaid finance charges, including processing fee, administrative fee, appraisal fee, and deed preparation and recording fees, so there was fact question as to whether lender's disclosure of finance charges was materially accurate. *Jefferies v Ameriquest Mortg. Co. (2008, ED Pa) 543 F Supp 2d 368.*

In case in which mortgage company did not enumerate date certain by which rescission rights must be exercised, but notice did state with crystalline clarity that borrowers could cancel their loan for any reason within three business days after any of three enumerated events and no reasonably attentive consumer reading that notice could have failed to appreciate existence and running of three-day rescission period, borrowers were ineligible for three-year rescission period under *15 USCS § 1635(f)*. *McMillian v AMC Mortg. Servs. (2008, SD Ala) 560 F Supp 2d 1210.*

Borrower's request for rescission of mortgage agreement pursuant to Truth in Lending Act was barred by *15 USCS § 1635(f)* because borrower's right to rescind expired when borrower sold mortgaged property. *Morilus v Countrywide Home Loans, Inc. (2008, ED Pa) 651 F Supp 2d 292.*

Pursuant to *15 USCS § 1635(f)*, four borrowers had three years from time they closed on two loans to provide notice of their intention to rescind loans because rescission notices provided by their original lender failed to accurately inform borrowers of their rescission rights: (1) three borrowers obtained original loan from lender, and later all four borrowers obtained second, larger loan, some of proceeds of which were used to pay off original loan; (2) *12 CFR § 226*, app. H-9, form notice that borrowers received in connection with their original loan violated *15 USCS § 1635(a)* because that form was intended to be used for refinanced loans, rather than original loans, and it incorrectly suggested to borrowers that they could not rescind full amount of their original loan; and (3) *12 CFR § 226*, app. H-8, form notice that borrowers received in connection with their second loan violated *15 USCS § 1635(a)* because that form was intended to be used for original loans, rather than refinanced loans, and it incorrectly indicated that entire amount of second loan amount could be rescinded, when pursuant to modification exemption, only additional loan amount could be rescinded. *Harris v OSI Fin. Servs. (2009, ND Ill) 595 F Supp 2d 885.*

Consumers' claims that their lender violated Truth in Lending Act, *15 USCS §§ 1601* et seq., were not brought within limitations periods of *15 USCS § 1640(e)* and *15 USCS § 1635(f)*, where relief was not requested from original creditor; their claim alleging secret fees stated claim for relief under *12 USCS § 2607(a)* of Real Estate Settlement Procedures Act, *12 USCS §§ 2601* et seq. *Brewer v Indymac*

Bank (2009, ED Cal) 609 F Supp 2d 1104, dismd (2009, ED Cal) *2009 US Dist LEXIS 81657.*

In case in which two home owners sued bank alleging violations of Truth in Lending Act, *15 USCS §§ 1601* et seq., to extent that they recited claim for rescission, such was precluded by applicable three-year statute of limitations in *15 USCS § 1635(f)*; according to loan documents, loan closed in December 2005 or January 2006, and present case was not filed until February 6, 2009, outside allowable three-year period. *Ortiz v Accredited Home Lenders, Inc. (2009, SD Cal) 639 F Supp 2d 1159* (criticized in *Wiebe v NDEX West, LLC (2010, CD Cal) 2010 US Dist LEXIS 49555).*

Because plaintiff borrower did not attempt to rescind against proper entity within three-year limitation period, her right to rescind had expired. *Zakarian v Option One Mortg. Corp. (2009, DC Hawaii) 642 F Supp 2d 1206.*

Because plaintiff borrower did not attempt to rescind against proper entity within three-year limitation period, her right to rescind under Truth in Lending Act, *15 USCS §§ 1601* et seq., had expired, and it was too late for plaintiff to amend her complaint to add lender as defendant, and thereby "relate back" to circumvent expiration of statutory period, as *Fed. R. Civ. P. 15(c)* could not be used to extend federal jurisdiction. *Zakarian v Option One Mortg. Corp. (2009, DC Hawaii) 642 F Supp 2d 1206.*

Where plaintiff borrowers' claimed alleged failure by defendant loan originator to adequately disclose annual percentage rate (APR), and disclosure stated loan contained variable-rate feature, and that APR was 6.99% and was "the cost of your credit as yearly rate," but note stated interest was "at yearly rate of 1%," and interest rate could change, factual dispute existed on whether reference in loan documents to both APR and finance charge as "yearly" rates of interest would confused ordinary consumer, and thus, claim for rescission under *15 USCS § 1635(a)* due to failure to disclose true APR on loan, based on *12 CFR § 226.23(a)(3)*'s extend limitations period could proceed. *Jordan v Paul Fin., LLC (2009, ND Cal) 644 F Supp 2d 1156.*

Mortgagors claim for rescission against loan servicer was time-barred under *15 USCS § 1635(f)* where they filed claim more than three years after closing. *Nool v Homeq Servicing (2009, ED Cal) 653 F Supp 2d 1047.*

Mortgage corporation was entitled to *Fed. R. Civ. P. 12(b)(6)* dismissal of borrower's action, which was related to residential mortgage loan transaction and which arose after notice of default and election to sell had been recorded, because

borrower's rescission claim under Truth in Lending Act, *15 USCS §§ 1601* et seq., was barred by three-year statute of limitations under *15 USCS § 1635(f)*; further, loan was residential mortgage transaction, *15 USCS § 1602(w)*, that was exempt from TILA rescission under *15 USCS § 1635(e)(1)*. *Saldate v Wilshire Credit Corp. (2010, ED Cal) 268 FRD 87,* complaint dismd, in part, judgment entered (2010, ED Cal) *2010 US Dist LEXIS 28220,* complaint dismd, in part, judgment entered (2010, ED Cal) *686 F Supp 2d 1051* (criticized in *Kurek v Countrywide Home Loans, Inc. (2010, ND Cal) 2010 US Dist LEXIS 75214)* and (criticized in *Kurek v America's Wholesale Lender (2010, ND Cal) 2010 US Dist LEXIS 75401).*

Although borrower's damages suit was time-barred under one year limitations of Truth-in-Lending Act (TILA), *15 USCS § 1640(e)*, she was still able to maintain timely claim for rescission under *15 USCS § 1635(a)* because she alleged that lender failed to make required disclosures under TILA, and she filed suit within three years of loan closing. *Johnson v NovaStar Mortg., Inc. (2010, DC NJ) 698 F Supp 2d 463.*

In case in which pro se borrower sued lender, to extent borrower sought recission under Truth in Lending Act (TILA), claim was time-barred under *15 USCS § 1635(f)*; regardless of when he commenced present action, borrower did not assert TILA's rescission right until after three-year period expired. *Dixon v Countrywide Home Loans, Inc. (2010, SD Fla) 710 F Supp 2d 1325.*

Borrowers' argument that successor bank's immunity claim contravened *15 USCS § 1641(c)* was rejected where they had not sufficiently asserted Truth in Lending Act claim, and even if they had asserted such claim, it would have been time-barred under *15 USCS § 1635(f)* because borrowers had consummated loan more than five years before filing action. *McCann v Quality Loan Serv. Corp. (2010, WD Wash) 729 F Supp 2d 1238* (criticized in *Rundgren v Wash. Mut. Bank, F.A. (2010, DC Hawaii) 2010 US Dist LEXIS 126803).*

United States District Court for Eastern District of Wisconsin adopts position set forth in *Hubbard v. Ameriquest Mortgage Co., 624 F.Supp. 2d 913 (N.D. Ill. 2008),* which holds that timely notice to creditor is effective as to assignee; therefore, assignee's motion to dismiss was denied in action brought under Truth in Lending Act, *15 USCS §§ 1601* et seq., because right to rescission under *15 USCS § 1635(f)* had not expired since proper notice of rescission to original creditor rescinded transaction. *Mattek v Deutsche Bank Nat'l Trust Co. (2011, ED Wis) 766 F Supp 2d 899.*

Bank was entitled to *Fed. R. Civ. P. 12(b)(6)* dismissal of claim by borrowers for rescission under *15 USCS § 1635*; any claim for rescission was time-barred because alleged violations occurred more than three years before action was filed and because property had been sold at foreclosure auction. *Rodenhurst v Bank of Am. (2011, DC Hawaii) 773 F Supp 2d 886.*

Truth in Lending Act claims against mortgage lender for damages and for rescission were time-barred under *15 USCS §§ 1635(f)*, *1640(e)* because they were filed outside limitations period, equitable tolling was not available under § 1635(f), and fraudulent concealment was not sufficiently alleged under *Fed. R. Civ. P. 9(b)* to allow equitable tolling under § 1640(e). *Marzan v Bank of Am. (2011, DC Hawaii) 779 F Supp 2d 1140.*

Borrowers' claim for rescission against title guaranty company was dismissed as time-barred under *15 USCS § 1635(f)* where claim was filed more than five years after transaction was consummated. *Ramos v Chase Home Fin. (2011, DC Hawaii) 810 F Supp 2d 1125.*

Both "notices of right to cancel" produced by debtor lacked date of transaction and corollary deadline to rescind; this was clear violation of *15 USCS § 1635*; it gave debtor 3 years from date of loan closing to rescind. *Armstrong v Nationwide Mortg. Plan/ Trust (In re Armstrong) (2003, BC ED Pa) 288 BR 404.*

Where borrower argued that disclosures required under *15 USCS § 1635(a)* were never properly made so limitation period never began to toll, and exception of rescission under § 1635(I) applied, argument was rejected because § 1635(f) was statute of repose and not subject to any tolling doctrine. *Chabot v Wash. Mut. Bank (In re Chabot) (2007, BC DC Mont) 369 BR 1.*

Chapter 7 trustee's claim seeking damages under Truth in Lending Act, *15 USCS §§ 1601*-*1693*, from lender who allegedly failed to provide Chapter 7 debtor with Notice of Right to Cancel when it loaned debtor money before she declared bankruptcy was barred by one-year statute of limitations contained in *15 USCS § 1640(e)* because violation occurred in October 2005 and trustee did not file her adversary proceeding until January 2008; however, facts alleged gave debtor right to rescind transaction, and that right was not barred because it was subject to three-year statute of limitations contained in *15 USCS § 1635(f)*. *Helbling v Fox (In re Fox) (2008, BC ND Ohio) 391 BR 772.*

Bankruptcy court refused to dismiss Chapter 7 trustee's claim seeking order requiring home loan company and bank to rescind two loans Chapter 7 debtor obtained on his principal residence on September 24, 2004, over three years

before he declared bankruptcy on October 19, 2007; debtor claimed that he did not receive requisite notice when he obtained loans, and if that was true, he had three years to rescind loans under *15 USCS § 1635(f)*, and letter he sent home loan company and bank on September 10, 2007, was timely; once debtor provided timely notice of rescission, he had one year under *15 USCS § 1640(e)* to file suit, and trustee filed his adversary proceeding less than one year after debtor sent his letter. *Herzog v Countrywide Home Loans (In re Hunter) (2009, BC ND Ill) 400 BR 651* (criticized in *Rosenfield v HSBC Bank, USA (2010, DC Colo) 2010 US Dist LEXIS 90218).*

Where creditor arranged sale and lease-back transaction involving debtors' home, whereby creditor did not loan debtors any money but obtained new mortgage against home for amount greater than required to pay debtors' mortgage, rescission remained available remedy under *15 USCS § 1635(f)* since creditor's fraud provided debtors with three years to rescind transaction. *O'Brien v Cleveland (In re O'Brien) (2010, BC DC NJ) 423 BR 477.*

Bankruptcy court found that there was material issue of fact which precluded award of summary judgment to Chapter 13 debtors and bank on debtors' claim that they were entitled to rescind loan and mortgage under Truth-in-Lending Act, *15 USCS §§ 1601*-*1667f*, because lender understated finance charge by more $ 35.00; although period debtors had to rescind loan was extended under *15 USCS § 1635* and *12 CFR § 226.23(a)(3)* from three days to three years if lender understated finance charge by more $ 35.00, and court found that lender understated finance charge by $ 35.00, there was question of fact as to whether lender's treatment of $ 5.00 mortgage recording "service charge" should have been included in finance charge, such that there was erroneous disclosure that exceeded $ 35.00 tolerance, and until that issue was resolved neither party was entitled to summary judgment. Lowenstein v U.S. Bank, N.A.(In re Lowenstein) (2011, BC ED Pa) *459 BR 227,* summary judgment gr, summary judgment den, judgment entered (2011, BC ED Pa) *2011 Bankr LEXIS 4305.*

Mortgagor's Truth in Lending Act claims against debtors failed because they were time-barred as alleged violations occurred more than three years before she filed her complaint. *In re Residential Capital, LLC (2014, BC SD NY) 513 BR 856, 59 BCD 241.*

Unpublished Opinions

Unpublished: District court properly granted summary judgment in favor of mortgagee in mortgagor's action seeking to rescind refinancing transaction almost

three years after closing; mortgagor failed to establish issue of material fact concerning her receipt of required notices of her right to rescind her loan under *15 USCS § 1635(a)*, part of Truth in Lending Act, and *12 CFR § 226.23* because district court did not abuse its discretion in denying mortgagor's *Fed. R. Civ. P. 36(b)* motion to withdraw her deemed admission, mortgagor's written acknowledgement that she received requisite two copies created rebuttable presumption of delivery under *15 USCS § 1635(c)*, and mortgagor's deposition testimony that she received only one copy was insufficient to rebut presumption. *Sibby v Ownit Mortg. Solutions, Inc. (2007, CA6 Mich) 240 Fed Appx 713, 2007 FED App 484N.*

Unpublished: Even if mortgagor sufficiently alleged claim for rescission under Truth in Lending Act, claim would fail as matter of law because it was time-barred under *15 USCS § 1635(f)*, as mortgagor had waited more than three years after refinancing his mortgage to assert claim; record showed that refinancing took place in 1993, but mortgagor did not seek rescission until 2005. *Hall v GMAC Mortg. Corp. Payoff Processing Unit (2007, CA3 NJ) 258 Fed Appx 448.*

Unpublished: Consumer's action against banks alleging violations of Truth In Lending Act (TILA) was properly dismissed because (1) action was untimely under *15 USCS § 1640(e)* as it was filed more than one year after consumer closed on mortgage and signed TILA disclosure statements; (2) even if *15 USCS § 1635(f)* applied, complaint was filed after three-year period expired; and (3) consumer failed to show that equitable tolling applied. *Taggart v Chase Bank USA (2009, CA3 Pa) 353 Fed Appx 731,* cert den (2010, US) *2010 US LEXIS 6681.*

Unpublished: District court properly granted summary judgment to lender's assignee because borrower did not exercise his right of rescission under Truth in Lending Act until he filed suit, months after his right of rescission expired, and he failed to preserve his disclosure argument under Real Estate Settlement Procedures Act by objecting to magistrate's report. Lumpkin v Deutsche Bank Nat'l Trust Co. (2013, CA6 Mich) 2013 FED App 726N.

Unpublished: Borrower's mailing of notice to rescind under Truth in Lending Act to lender was insufficient to preserve right to rescind beyond three-year period under *15 USCS § 1635(f)*; because borrower did not file suit to enforce right within three-year period, suit was untimely; equitable tolling could not resurrect borrower's right to rescind because § 1635(f) is statute of repose. *Williams v Wells Fargo Home Mortg., Inc. (2011, CA3 Pa) 2011 US App LEXIS 2539.*

Unpublished: Plaintiffs filed only written notice of rescission within Truth in Lending Act (TILA), *15 USCS §§ 1601-1667f*, three-year repose period; their action was filed more than three years after loan transaction, so their rescission right had expired. Tadehara v Ace Sec. Corp. Home Equity Loan Trust Series 2007-*HE4 (2012, CA10 Utah) 2012 US App LEXIS 13672.*

Unpublished: District court's holding that borrower's rescission claim had expired was contrary to law of circuit because borrower did not need to file lawsuit seeking rescission within three-year time frame and instead, only had to notify her lender that she was exercising her right of rescission within three-year limit. *Wolf v Fannie Mae (2013, CA4 Va) 2013 US App LEXIS 4300.*

Unpublished: Because rescission rules outlined in *15 USCS § 1635*, part of Truth in Lending Act (TILA) do not apply to residential mortgage transactions, as defined by *15 USCS § 1602(w)*, and it appeared that borrower who filed TILA complaint had residential mortgage, borrower's claim of rescission right would fail; however, since complaint was somewhat ambiguous, court based its dismissal instead on fact that claim for rescission, brought more than six years after transaction, was time-barred by *15 USCS § 1635(f)*, which closed door on actions filed more than three years after transaction. *Nix v Option One Mortg. Corp. (2006, DC NJ) 2006 US Dist LEXIS 2289.*

Unpublished: Because rescission rules outlined in *15 USCS § 1635*, part of Truth in Lending Act (TILA), do not apply to residential mortgage transactions, as defined by *15 USCS § 1602(w)*, and it appeared that borrower who filed TILA complaint had residential mortgage, borrower's claim of rescission right would fail; however, since complaint was somewhat ambiguous, court based its dismissal instead on fact that claim for rescission, brought more than six years after transaction, was time-barred by § 1635(f), which closed door on actions filed more than three years after transaction. *Nix v Option One Mortg. Corp. (2006, DC NJ) 2006 US Dist LEXIS 2289.*

Unpublished: While the three-day period for rescission of mortgage loan transaction expired, the three-year period of *15 USCS § 1635(f)* was applicable and rendered timely a bankruptcy debtor's claim for rescission of mortgage loan transaction, since the debtor established that mortgage lender's disclosures were inaccurate at least with regard to recording fees. *Orr v Ameriquest Mortg. Co. (In re Hollis) (2009, BC DC NJ) 2009 Bankr LEXIS 3020.*

Unpublished: Court rejected debtor's claim that she was entitled to rescind transaction under Truth in Lending Act, as her right to rescind was extinguished, at

latest, three years after she refinanced debt on her property, which was long before she filed complaint. *Scafuro v PennyMac Loan Servs., LLC (In re Scafuro) (2013, BC DC Vt) 2013 Bankr LEXIS 3658.*

IV. RETURN OR TENDER OF MONEY OR PROPERTY

31. Creditor's duties

Failure of bank to perform statutorily prescribed duties within 10 [now 20] days upon notification by borrower of intention to rescind home improvement loan transaction pursuant to *15 USCS § 1635*, on ground that borrower's rescission was equivocal and bank was uncertain whether transaction came within disclosure and rescission provisions of Truth in Lending Act (*15 USCS § 1635*) exposed bank to possibility of increased liability under *15 USCS § 1640(a)* upon judicial determination that borrowers were entitled to rescind transaction and that notice of rescission was valid; bank was required to return to borrowers any money or property received from them in connection with transaction and take any action necessary to reflect termination of security interest created in borrowers' property and upon such performance borrowers had to tender loan proceeds to bank within reasonable time; upon bank's failure to perform, borrowers were entitled to damages under *15 USCS § 1640(a)*, including reasonable attorney's fee for services rendered on appeal. *Gerasta v Hibernia Nat'l Bank (1978, CA5 La) 575 F2d 580* (superseded by statute on other grounds as stated in *Williams v Homestake Mortgage Co. (1992, CA11 Fla) 968 F2d 1137, 6 FLW Fed C 975).*

When debtor exercises right of rescission, Truth in Lending Act does not require debtor to tender first, rather, under sequence of events anticipated by statute, creditor must tender before borrower's obligation arises. *Brown v National Permanent Fed. Sav. & Loan Ass'n (1982, App DC) 221 US App DC 125, 683 F2d 444* (criticized in *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636).*

Because borrower gave lawful notice of rescission to creditor concerning rent-and-sale transaction which court determined was really loan, creditor would have to return all finance charges, including (1) $ 100 per month "profit" on rentals that borrower was paying, and (2) $ 1,000 profit that creditor made when he resold house back to borrowers; however, borrowers would not be entitled to return of $ 154 per month, which was part of rent borrowers had been paying to creditor, but which creditor had used to make monthly payments on mortgage on property originally obtained by borrowers. *James v Ragin (1977, WD NC) 432 F Supp 887.*

In action following borrowers' service of notice of rescission of loan transaction after creditor received complete payment of obligations, for creditor's failure to terminate its security interest and foreclosure proceedings, creditor is required to return to borrowers only sum of all moneys received by creditor in excess of those sums disbursed to plaintiffs or to other persons for plaintiffs' benefit because effective rescission under Truth in Lending Act (*15 USCS § 1635*) requires borrower to make restitution of amounts expended by lender. *Clemmer v Liberty Financial Planning, Inc. (1979, WD NC) 467 F Supp 272.*

Mortgage company's motion to dismiss homeowner's claim that it violated Truth in Lending Act by not taking steps to rescind loan transaction as required under *15 USCS § 1635* was denied where company had failed to provide homeowner with rescission statement, take steps toward releasing its security interest in home, and conditioned its rescission on homeowner's return of loan money. *Velazquez v HomeAmerican Credit, Inc. (2003, ND Ill) 254 F Supp 2d 1043.*

Where mortgage companies did not allege that third-party defendants were "creditors" pursuant to *15 USCS §§ 1631*, *1635*, third-party defendants had no statutory duty to deliver proper Notice of Right to Cancel forms to companies' borrowers; because companies did not identify any plausible source of third-party defendants' duty, companies' negligence claims were dismissed. *Ameriquest Mortg. Co. v Northwest Title & Escrow Corp. (In re Ameriquest Mortg. Co. Mortg. Lending Practices Litig.) (2008, ND Ill) 589 F Supp 2d 987.*

Because borrower's notice of intent to rescind does not automatically unwind secured transaction, it follows that *15 USCS § 1635(b)* cannot require that lender unilaterally void security interest and return all loan payments merely because lender has received such notice. *Bradford v HSBC Mortg. Corp. (2012, ED Va) 838 F Supp 2d 424.*

Put simply, *15 USCS § 1635(b)* establishes default procedures that govern Truth in Lending Act rescissions; those procedures require creditor to release its security interest and to return all of borrower's payments before borrower is required to tender; statute, however, allows those default procedures to be modified by court order. *Iroanyah v Bank of Am., N.A. (2012, ND Ill) 851 F Supp 2d 1115.*

Twenty-day period for creditor's action refers to time within which creditor must begin process; it does not require all necessary steps to have been completed within that time, but creditor is responsible for seeing process through to completion, 12 CFR pt. 226, supp. I, para. 23(d)(2)(3). *Pinson v Pioneer WV Fed. Credit Union (In re Pinson) (2016, BC SD W Va) 548 BR 443.*

To comply with its statutory obligations upon receipt of notice of rescission, creditor needs only to begin process of seeking court order declaring rights of parties. *Pinson v Pioneer WV Fed. Credit Union (In re Pinson) (2016, BC SD W Va) 548 BR 443.*

32. --Forfeitures

Failure by creditor to disclose accurate APR on loan agreement permits borrower to rescind under *15 USCS § 1640(a)*, but does not cause creditor to forefeet loan proceeds under § 1635(b), where although creditor did not perform obligation to tender payments made by borrowers, borrowers likewise failed to tender loan proceeds to creditor. *Bustamante v First Fed. Sav. & Loan Ass'n (1980, CA5 Tex) 619 F2d 360.*

Although creditor's forfeiture of loan proceeds is conditioned on prior tender by debtor of such proceeds, debtor's right to rescission is not conditioned on such tender. *Canal Mortg. & Finance Co. v Jackson (1980, La App 4th Cir) 390 So 2d 1347.*

33. --Setoffs

15 USCS § 1635(b) does not prevent creditor from offsetting value owed to it by obligor from sum it initially tenders to obligor since such arrangement would prevent perfunctory exchange of funds while protecting lender from dissipation of money while it is in hands of obligor. *Harris v Tower Loan (1980, CA5 Miss) 609 F2d 120, 61 ALR Fed 832,* reh den (1980, CA5 Miss) *613 F2d 314* and cert den *(1980) 449 US 826, 66 L Ed 2d 30, 101 S Ct 89* and (superseded by statute on other grounds as stated in *Williams v Homestake Mortgage Co. (1992, CA11 Fla) 968 F2d 1137, 6 FLW Fed C 975).*

District Court has power to allow creditor to offset reasonable value of improvements with moneys it is to pay in view of fact that in normal home improvement contract situation, creditor must terminate its security interest and return all moneys that obligor has paid and that following these steps, obligor must tender property or if its return is impracticable, reasonable value thereof. *Pearson v Colonial Fin. Serv. (1981, MD Ala) 526 F Supp 470.*

Where bankruptcy court found that creditor violated Truth in Lending Act, *15 USCS § 1635*, by failing to respond to debtor's notice of rescission within 20 days and awarded debtor statutory damages under *15 USCS § 1640(a)(2)(A)(iii)*, court did not err in deducting damages from post-rescission balance due to creditor because creditor's post-rescission claim arose at same time and as part of same

transaction as debtor's claim. *Merriman v Beneficial Mortg. (In re Merriman) (2005, DC Kan) 329 BR 710.*

34. --Ignoring or refusing to honor obligor's notice of rescission

Purchaser of aluminum siding under contract which violated Truth-in-Lending Act, who notified seller of rescission, including express offer to return siding, had right under *15 USCS § 1635(b)*, when offer elicited no response, to keep siding without obligation to pay for it; seller was required to return payments made previously by purchaser; lien to secure indebtedness, imposed pursuant to contractual provision creating deed of trust to secure payment of total sales price, was invalid. *Sosa v Fite (1974, CA5 Tex) 498 F2d 114.*

Developer which provided additional financing for home purchasers through second mortgage on home, evidenced by 2 notes bearing no interest if timely paid, forfeited its rights to proceeds of loans which purchasers tendered or offered to tender upon electing to rescind second mortgage transaction pursuant to *15 USCS § 1635* by failing to respond to purchaser's notice, where notification and tender was sufficient and was timely made. *Arnold v W.D.L. Inv. (1983, CA5 La) 703 F2d 848.*

Where defendant did not make required disclosures and refused to voluntarily honor plaintiff's election to cancel, defendant forfeited its right to restitution under *15 USCS § 1635(b)*; however, where plaintiff recognized presence of equitable obligation to restore net balance of what she had received, and did not allege that defendant practiced any fraud or unconscionable conduct, she had equitable duty to restore net amount which she had received. *Pedro v Pacific Plan (1975, ND Cal) 393 F Supp 315.*

Creditor, by failing to follow statutory steps outlined in *15 USCS § 1635(b)* upon notice of borrower's rescission of loan transaction and failing to give effect to such notice, caused cancellation of security interest, as well as necessity of returning note to plaintiffs together with all moneys paid under such note in order to assure self-enforcement and compliance with Truth in Lending Act. *French v Wilson (1978, DC RI) 446 F Supp 216* (criticized in *Riopta v Amresco Residential Mortg. Corp. (1999, DC Hawaii) 101 F Supp 2d 1326).*

Creditor who ignores obligor's notice of rescission and begins foreclosure proceedings is required to cancel his mortgage as well as return note to obligors, together with all moneys paid by obligors under such note, and forfeit all sums paid over to obligor. *French v Wilson (1978, DC RI) 446 F Supp 216* (criticized in

Riopta v Amresco Residential Mortg. Corp. (1999, DC Hawaii) 101 F Supp 2d 1326).

Where plaintiff, in action alleging violation of Truth in Lending Act (*15 USCS §§ 1601* et seq.), has grounded her prayer for damages and attorney's fees squarely on lender's failure to answer notice of rescission which she sent via counsel and alleged that in failing to comply with plaintiff's request, lender has violated plaintiff's rescission rights pursuant to *15 USCS § 1635* and Regulation Z; 10 [now 20] days after date of notice of rescission is earliest pertinent date for determining when violation occurred for bar of statute of limitations to apply. *Sherwood v Serubo Cadillac Co. (1981, ED Pa) 514 F Supp 167.*

If after 20 days set forth in *12 C.F.R. § 226.23* expires, creditor indicates that it will not comply with *15 USCS § 1635*, consumer has right to sue then and there even if creditor may have begun process of rescinding loan transaction. *Velazquez v HomeAmerican Credit, Inc. (2003, ND Ill) 254 F Supp 2d 1043.*

Four borrowers were entitled to recover statutory damages under *15 USCS § 1640(a)* because credit company and bank trustee had not complied with their rescission demands, as required by *15 USCS § 1635(b)*, within 20 days after borrowers filed their suit; borrowers' complaint, which was timely filed under § 1635(f) within three years after borrowers' two loans closed, constituted timely notice to company and to trustee of borrowers' rescission demand. *Harris v OSI Fin. Servs. (2009, ND Ill) 595 F Supp 2d 885.*

Creditor filed action in federal district court seeking declaratory judgment as to whether debtors had right to rescind within statutorily prescribed time frame of 20 days; that they filed for bankruptcy, staying district court proceeding, and that creditor objected to treatment of its secured lien in bankruptcy and sought declaratory relief through its Answer in this adversarial proceeding as well, did not adversely impact creditor's compliance with rescission provisions of *Regulation Z. Pinson v Pioneer WV Fed. Credit Union (In re Pinson) (2016, BC SD W Va) 548 BR 443.*

35. Obligor's duty to return or tender property

Attempt of debtors to rescind home improvement loan was fatally defective under Truth in Lending Act (*15 USCS §§ 1601* et seq.) where debtors agreed to tender delivery of home improvements but would not reimburse creditor for amount expended in satisfying other indebtedness of debtors. *Powers v Sims & Levin (1976, CA4 Va) 542 F2d 1216* (criticized in *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636).*

Although borrowers rescinded refinancing loan for their home, under Truth in Lending Act, *15 USCS § 1635(b)*, lender was not required to unconditionally release security interest in home because borrowers were unable to tender loan balance, and due to borrowers' inability to tender loan proceeds, remedy of rescission was inappropriate. *Am. Mortg. Network, Inc. v Shelton (2007, CA4 NC) 486 F3d 815* (criticized in *Avelo Mortg., LLC v Jeffery (2010, NJ Super Ct App Div) 2010 NJ Super Unpub LEXIS 1583).*

Borrowers could state claim for rescission under Truth in Lending Act without pleading that they had tendered, or that they had ability to tender, value of their loan; only at summary judgment stage may court order statutory sequence altered and require tender before rescission, and then only on case-by-case basis, once creditor has established potentially viable defense. *Merritt v Countrywide Fin. Corp. (2014, CA9 Cal) 759 F3d 1023.*

Performance of creditors' obligations under *15 USCS § 1635(b)* required that obligors return principal to defendant creditors as condition of rescission. *Mitchell v Security Inv. Corp. (1979, SD Fla) 464 F Supp 650.*

If mortgagee fails to provide mortgagor with notice of right to rescind transaction under *15 USCS § 1635(a)* and mortgagor rescinds loan transaction, mortgagee must look to mortgagor to whom loan proceeds were delivered for return of those proceeds after mortgagee terminates its security interest. *Eveland v Star Bank, NA (1997, SD Ohio) 976 F Supp 721,* subsequent app (1999, CA6 Ohio) *188 F3d 507,* reported in full (1999, CA6 Ohio) *1999 US App LEXIS 20351.*

Where plain language of *15 USCS § 1635(b)* and Regulation Z demonstrated that rescission was not automatic upon giving notice, but required affirmative acts by bankruptcy debtors; creditor's mortgage lien was not automatically void upon giving of notice, but secured creditors loan, less adjustments for TILA violations. *Ramirez v Household Fin. Corp. III (In re Ramirez) (2005, DC Kan) 329 BR 727.*

Court was not convinced that "property," as that term was used in *15 USCS § 1635(b)*, could have been read to cover debtor's house because house was merely security for repayment of "property" provided by creditor, i.e. loan proceeds; because complaint alleged that "property" received by debtor from creditor was loan proceeds from two refinance credit transactions, loan proceeds were "property" that must have been tendered by debtor in rescission. *Moore v Wells Fargo Bank, N.A (2009, ED Va) 597 F Supp 2d 612.*

Mortgage corporation was entitled to *Fed. R. Civ. P. 12(b)(6)* dismissal of borrower's action, which was related to residential mortgage loan transaction and

which arose after notice of default and election to sell had been recorded, because borrower's rescission claim under Truth in Lending Act, *15 USCS §§ 1601* et seq., was barred by borrower's failure to make tender of loan proceeds under *15 USCS § 1635(b)*. *Saldate v Wilshire Credit Corp. (2010, ED Cal) 268 FRD 87,* complaint dismd, in part, judgment entered (2010, ED Cal) *2010 US Dist LEXIS 28220,* complaint dismd, in part, judgment entered (2010, ED Cal) *686 F Supp 2d 1051* (criticized in *Kurek v Countrywide Home Loans, Inc. (2010, ND Cal) 2010 US Dist LEXIS 75214)* and (criticized in *Kurek v America's Wholesale Lender (2010, ND Cal) 2010 US Dist LEXIS 75401).*

Borrower's claim for rescission under *15 USCS § 1635(a)* brought against lender, lender's nominee, and bank was dismissed where borrower failed to allege that he had tendered or had ability to tender principal balance of loan. *Sipe v Countrywide Bank (2010, ED Cal) 690 F Supp 2d 1141.*

Plaintiff borrower's allegation that she "might be able to" repay loan proceeds upon rescission was insufficient to show plausible ability to tender, but she could amend complaint against defendant mortgage note assignee to cure that defect, if possible. *Cheche v Wittstat Title & Escrow Co., LLC (2010, ED Va) 723 F Supp 2d 851.*

Even if mortgagors overcame presumption of delivery of notice of right to rescind their loan, they could not rescind loan because they were unable to tender full amount due under loan. *Abdel-Malak v JP Morgan Chase Bank, N.A. (2010, DC Md) 748 F Supp 2d 505.*

Because rescission was only available under *15 USCS § 1635(b)* for new money portion of loan proceeds and had nothing to do with prior obligations, borrower's 2006 mortgage remained unaffected by rescission of 2007 Mortgage, and creditor retained valid security interest in mortgaged property; because 2006 mortgage could not be tendered back to creditor and because funds for its discharge were to be provided by rescinded 2007 mortgage, 2006 mortgage was erroneously discharged and was enforceable. *Johnson v JPMorgan Chase Bank, N.A. (2011, DC Mass) 786 F Supp 2d 438.*

Obligors cannot rescind loan transaction and void creditor's encumbrance on obligors' property where obligors file bankruptcy petitions and become unable to return loan proceeds to creditor as required by *15 USCS § 1635(b)*. *In re Pitre (1981, BC ND Ill) 11 BR 777,* CCH Bankr L Rptr P 68212.

In determining how to implement rescission of loan transaction, concept of permitting consumer reasonable time frame to repay creditor while creditor retains

security interest it acquired in rescinded transaction is balanced, equitable approach; court accepted debtor's proffer that appropriate procedure for implementing rescission of transaction was to permit lender to retain its mortgage pending completion of debtor's performance of her repayment obligation under *15 USCS § 1635(b)* and *12 CFR § 226.23(d)(3)* through installment payments of repayment amount. *Sterten v Option One Mortg. Corp. (In re Sterten) (2006, BC ED Pa) 352 BR 380.*

Borrower was not entitled to rescission of loan transaction pursuant to *15 USCS § 1635(b)* without obligation to pay for loan because her claim was subject to requirement to tender loan proceeds. *Chabot v Wash. Mut. Bank (In re Chabot) (2007, BC DC Mont) 369 BR 1.*

Borrowers were not entitled to release from mortgage until they tendered payment of principal amount due without interest and finance charges where it was readily obvious that borrowers did not have necessary funds, there were no prospects for securing such funds, borrowers requested creditor to depart from statutory scheme with regard to time limit and method of refund, and borrowers' main objective was to defeat security interest of creditor who had cooperated fully with borrower and even during trial offered to withhold action on foreclosure in order to give more time to secure funds to tender payment. *Nietert v Citizens Bank & Trust Co. (1978) 263 Ark 251, 565 SW2d 4,* cert den *(1978) 439 US 965, 58 L Ed 2d 424, 99 S Ct 453.*

Unpublished Opinions

Unpublished: Where district court dismissed plaintiff's Truth in Lending Act (TILA) claim seeking rescission as he failed to allege that he tendered value of loan to his creditor, Ninth Circuit had held that plaintiffs could state claim for rescission under TILA without pleading that they had tendered, or that they had ability to tender, value of their loan. *Obeng-Amponsah v Chase Home Fin., LLC (2015, CA9 Cal) 624 Fed Appx 459.*

Unpublished: Scope of bankruptcy debtor's entitlement upon rescission of mortgage loan transaction which refinanced prior loan by same lender was not limited to amount of new money advanced, since *12 CFR § 226.23(f)(2)* was reasonably interpreted by the Federal Reserve Board to allow debtor to recover refund of new advance amount as well as any amounts paid by debtor as part of the refinancing. *Orr v Ameriquest Mortg. Co. (In re Hollis) (2009, BC DC NJ) 2009 Bankr LEXIS 3020.*

Unpublished: Debtor's complaint stated claim for rescission of loan transaction and cancellation of bank's lien against her residence under Truth in Lending Act, *15 USCS §§ 1601* et seq., as bankruptcy court had discretion to alter sequence of recission procedures under *15 USCS § 1635(b)* and claim was not barred because debtor was unable to repay loan proceeds. *Chavez v Bank of Am. (In re Chavez) (2009, BC ED Cal) 2009 Bankr LEXIS 5647.*

Unpublished: Bankruptcy court properly dismissed Chapter 7 debtor's claims for rescission of several loans under *15 USCS § 1635* and Regulation Z, *12 CFR § 226.33*, because debtor did not show he could tender proceeds of loans made to him to lenders as required under *TILA. Gonzalez v HSBC Bank USA N.A. (In re Gonzalez) (2010, BAP9) 2010 Bankr LEXIS 5042.*

36. --Reasonable value in lieu of in-kind return

Where financing company is not intimately involved with seller that should be considered seller's alter ego, there is no reason why obligor should be permitted to return property purchased with proceeds of credit transaction rather than monetary equivalent of credit extended; if obligor were permitted to return purchased property to creditor, then creditor would suffer consequences of obligor's poor consumer decision. *Aquino v Public Fin. Consumer Discount Co. (1985, ED Pa) 606 F Supp 504.*

Where buyer of home improvements was unable to return what she received in order to effectuate rescission of contract, she must tender reasonable value of improvements to assignee of seller, and upon tender by buyer of reasonable value of improvements, assignee must return all moneys paid by buyer to assignee pursuant to contract. *Cox v First Nat'l Bank (1986, SD Ohio) 633 F Supp 236.*

Homeowners are granted rescission of installment contract for purchase of 6 windows but must tender to bank reasonable value of windows less amount already paid, where material disclosures were either omitted from or illegibly printed on financing documents, because implementation of *15 USCS § 1635* rescission remedy here involves payment of reasonable value of windows installed in plaintiffs' home, which cannot be readily returned. *Rowland v Magna Millikin Bank, N.A. (1992, CD Ill) 812 F Supp 875.*

37. Conditions placed on rescission

Requirement of tender of consideration as prerequisite to rescission was abolished by Truth in Lending Act; where lender violated provisions of Truth in Lending Act, borrowers are entitled to right of rescission despite fact that they did

not tender money loaned to them at time they notified lender of their decision to exercise right. *Palmer v Wilson (1974, CA9 Cal) 502 F2d 860* (criticized in *Quenzer v Advanta Mortg. Corp. (In re Quenzer) (2001, BC DC Kan) 266 BR 760).*

Tender back of consideration received from creditor by debtor is not prerequisite to rescission under § 125 of Truth in Lending Act (*15 USCS § 1635*), but rather section requires only that obligor exercise his right of rescission by notifying creditor within prescribed time limit of his intent to rescind. *Rachbach v Cogswell (1976, CA10 Colo) 547 F2d 502* (superseded by statute on other grounds as stated in *Quenzer v Advanta Mortg. Corp. (In re Quenzer) (2001, BC DC Kan) 274 BR 899)* and (criticized in *Dawson v Thomas (In re Dawson) (2008, BC DC Dist Col) 411 BR 1).*

In case where obligors notified creditor of their intention to rescind transaction and creditor responded by insisting that obligors return any moneys involved in transaction before creditor would cancel its security or refund any moneys, obligors' contention that creditor's failure to perform its statutory duty worked forfeiture of its right to restitution of proceeds of loan is rejected since *15 USCS § 1635* contemplates performance by creditor and then tender by debtor, and because neither party performed its obligation under § 1635(b), 10 [now 20] -day forfeiture provision was never triggered. *Bustamante v First Fed. Sav. & Loan Ass'n (1980, CA5 Tex) 619 F2d 360.*

Where defendant lender fails to follow sequence for rescission set forth in *15 USCS § 1635(b)* and insists on unwarranted and unreasonable preconditions before it would rescind, plaintiffs as matter of law are excused from making statutory tender envisioned by § 1635(b); hence, ownership of air conditioner and home improvement vested in borrowers. *Powers v Sims & Levin Realtors (1975, ED Va) 396 F Supp 12,* affd in part and revd in part on other grounds (1976, CA4 Va) *542 F2d 1216* (criticized in *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636).*

Creditor's contention that debtor's attempted rescission of transaction under *15 USCS § 1635* is ineffective because debtor did not tender to creditor amounts that it had expended for her benefit is rejected since § 1635(b) does not require tender or restitution as precondition of rescission; before any obligation arises on part of debtor to tender benefit he has received, creditor must first return any money already paid by debtor in connection with loan; thus, debtor is in no way obligated to return benefits received before she is entitled to rescind where bank not only failed to perform its obligations under § 1635(b) when it received debtor's notice of rescission, but sent her letter denying effectiveness of rescission. *Brown v*

National Permanent Fed. Sav. & Loan Ass'n (1981, DC Dist Col) 526 F Supp 815, affd in part and remanded in part (1982, App DC) *221 US App DC 125, 683 F2d 444* (criticized in *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636).*

Termination of creditor's mortgage should not be conditioned upon plaintiff's payment of entire amount billed for creditor's services where such amount exceeds amount plaintiffs owe creditor at time they enter into transaction. *Dougherty v Hoolihan, Neils, & Boland (1982, DC Minn) 531 F Supp 717.*

Power to rescind is equitable doctrine subject to equitable considerations; when equity demands it, rescission may be conditioned upon return of property by obligor. *Aquino v Public Fin. Consumer Discount Co. (1985, ED Pa) 606 F Supp 504.*

Condition that homeowners release mortgage company of liability in exchange for rescission of loans was not improper under *15 USCS § 1635(b)* because § 1635(b) contains no absolute prohibition against conditioning rescissions on some act by borrower. *Personius v Homeamerican Credit Inc. (2002, ND Ill) 234 F Supp 2d 817.*

Though complaint entirely failed to plead ability to tender full amount of loan, court was not convinced that plaintiff was required to make such pleading; in light of court's interpretation of Yamamoto and Truth in Lending Act (TILA), *15 USCS §§ 1601* et. seq., rescission statute which itself does not contain such requirement, plaintiff's complaint could not be dismissed for failure to plead ability to tender loan proceeds; additionally, defendants did not allege any other deficiency in plaintiff's TILA rescission claim, so plaintiff's claim survived defendants' challenge. *Sakugawa v Countrywide Bank F.S.B. (2011, DC Hawaii) 769 F Supp 2d 1211.*

Creditor's demand that debtor tender loan proceeds as condition precedent to exercise of debtor's rescission right is rejected even though creditor will be stripped of its secured creditor status and will be powerless to collect its debt in light of debtor's pending bankruptcy proceedings. *In re Wright (1981, BC SD Miss) 11 BR 590.*

Lender which fails to give notice required under Truth in Lending Act (*15 USCS §§ 1601* et seq.) when retaining security interest in debtors' principal dwelling when granting mortgage loan cannot demand that debtor first return property delivered as condition to release of mortgage, but statutory language clearly contemplates tender by debtor after creditor has performed its obligation. *In re Chancy (1983,*

BC ND Okla) 33 BR 355 (criticized in *Ray v CitiFinancial, Inc. (2002, DC Md) 228 F Supp 2d 664).*

38. --Court-ordered conditions

Where court decree granting rescission under Truth in Lending Act did not condition relief upon repayment by debtor, case would be remanded for consideration of propriety of conditioning grant of rescission on repayment. *Palmer v Wilson (1974, CA9 Cal) 502 F2d 860* (criticized in *Quenzer v Advanta Mortg. Corp. (In re Quenzer) (2001, BC DC Kan) 266 BR 760).*

Under *15 USCS § 1635(b)*, trial judge has discretion to condition rescission upon tender by borrower of property he received from lender, but tender is not mandatory, and more liberal remedy should be required in cases of egregious violations of Act. *Ljepava v M. L. S. C. Properties (1975, CA9 Cal) 511 F2d 935.*

Court's power to condition rescission of consumer loan on tender of net amounts advanced by creditors is not restricted to cases in which both rescission and damages are at issue and condition should be imposed in case involving rescission alone where violations of Truth in Lending Act (*15 USCS §§ 1601* et seq.) are not egregious and equities heavily favor creditors. *La Grone v Johnson (1976, CA9 Cal) 534 F2d 1360* (criticized in *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636).*

When rescission of consumer loan is attempted pursuant to Truth in Lending Act (*15 USCS §§ 1601* et seq.) under circumstances which would deprive lender of its legal due, attempted rescission will not be judicially enforced unless it is so conditioned that lender will be assured of receiving its legal due. *Powers v Sims & Levin (1976, CA4 Va) 542 F2d 1216* (criticized in *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636).*

Trial court acted within its discretion in awarding interest on unpaid note balance to creditor in permitting rescission by debtor under § 125 of Truth in Lending Act (*15 USCS § 1635*) since provision in § 125(b) that when obligor exercises his right to rescind he is not liable for any finance or other charge does not preclude court from doing equity, and in this case debtor had had benefit of use of loan proceeds and payment of interest on those loan proceeds was equitable condition to right of rescission. *Rachbach v Cogswell (1976, CA10 Colo) 547 F2d 502* (superseded by statute on other grounds as stated in *Quenzer v Advanta Mortg. Corp. (In re Quenzer) (2001, BC DC Kan) 274 BR 899)* and (criticized in *Dawson v Thomas (In re Dawson) (2008, BC DC Dist Col) 411 BR 1).*

Court may condition rescission and return of monies under equitable remedy of *15 USCS § 1635(b)* on debtors' returning property received in connection with transaction and debtors who contracted with home improvement contractor for installation of aluminum siding could be required to give contractor reasonable value of siding installed where it was impossible to return material itself. *Rudisell v Fifth Third Bank (1980, CA6 Ohio) 622 F2d 243* (criticized in *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636).*

Truth in Lending Act generally provides that creditor shall perform first (i.e. return monies paid by debtor and release its security interest), but Act gives courts discretion to devise other procedures, including conditioning rescissions upon debtor's prior return of principal. *Federal Deposit Ins. Corp. v Hughes Dev. Co. (1991, CA8 Minn) 938 F2d 889,* cert den *(1992) 502 US 1099, 117 L Ed 2d 426, 112 S Ct 1183* and (criticized in *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636).*

Upon rescission of credit transaction under *15 USCS § 1635*, court will require customer to return to lender difference between amount repaid on loan and amount financed, and relieve customer from further liability for finance charge on loan; customer is not entitled to have remaining indebtedness extinguished on grounds home improvement work which loan financed was overpriced and defective, since lender is not liable for unsatisfactory services performed by third party. *Bookhart v Mid-Penn Consumer Discount Co. (1983, ED Pa) 559 F Supp 208.*

Rescission is equitable remedy, and court may condition it upon borrower's return of moneys advanced by lender; since statutory procedures for rescission are designed to restore parties to status quo ante, remainder of indebtedness is not forfeited by lender's failure to fulfill statutory obligation and to terminate security interest in property. *Valentine v Influential Sav. & Loan Asso. (1983, ED Pa) 572 F Supp 36.*

Additional factfinding must take place in action seeking rescission of loan transaction marred by lender's failure to disclose date on which rescission period expires "clearly and conspicuously" in right-to-rescind notice, even though omission of date and right to rescind are not seriously disputed, because court needs more information before it can exercise its discretion under *15 USCS § 1635(b)* to condition rescission upon tender of loan proceeds by borrower. *New Me. Nat'l Bank v Gendron (1991, DC Me) 780 F Supp 52.*

Bankruptcy court rescinded creditor's lien on debtor's home without conditioning rescission upon debtor tendering to creditor its legal due; while bankruptcy court gave inadequate consideration of factors that should have guided exercise of discretion in determining relief to afford debtor, it had authority under *15 USCS § 1635(b)* to order rescission of lien without conditioning rescission upon return to creditor of net balance due on loan secured by lien. *Ray v CitiFinancial, Inc. (2002, DC Md) 228 F Supp 2d 664.*

Bankruptcy court may impose conditions that run with voiding of creditor's security interest upon terms that would be equitable and just to parties in view of all surrounding circumstances, and that it should require debtors' return of property received in connection with transaction as condition to rescission in this case; Truth in Lending Act was construed to require bankruptcy court to impose equitable terms for benefit of mortgagee upon debtors who elected to rescind mortgage agreement upon filing their bankruptcy petition, where mortgagee's predecessor in interest used wrong right to cancel form in original transaction, effectively extending right to rescind to three years. *Quenzer v Advanta Mortg. Corp. USA (2003, DC Kan) 288 BR 884* (criticized in *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636)* and (criticized in *Ramirez v Household Fin. Corp. III (In re Ramirez) (2003, BC DC Kan) 2003 Bankr LEXIS 1364)* and findings of fact/conclusions of law, claim dismissed (2005, BC DC Kan) *2005 Bankr LEXIS 2627.*

Where bankruptcy court found that creditor violated Truth in Lending Act, *15 USCS § 1635*, by failing to respond to debtor's notice of rescission within 20 days, court did not err in conditioning voiding of creditor's security interest on satisfaction of payment by debtor because court was authorized to impose equitable conditions to ensure that debtor met her obligations. *Merriman v Beneficial Mortg. (In re Merriman) (2005, DC Kan) 329 BR 710.*

Where loan documents clearly indicated material violation of disclosure requirements triggering mortgagors' right to rescind loan, equities dictated modification of rescission procedure under *15 USCS § 1635(b)* to condition rescission upon mortgagors' tender of loan amount to assignee of loan; even though assignee did not tender amounts otherwise due to mortgagors as was required by rescission procedure, it appeared that mortgagors, who failed to pay numerous monthly installments and filed for bankruptcy, lacked capacity to return loan amount. *Egipciaco Ruiz v R&G Fin. Corp. (2005, DC Puerto Rico) 383 F Supp 2d 318,* magistrate's recommendation (2005, DC Puerto Rico) *2005 US Dist LEXIS 40857.*

In claim for rescission under Truth in Lending Act, *15 USCS §§ 1601* et seq., case law does not sanction dismissal at pleading stage for failure to allege ability to tender; however, considerations regarding adequacy of pleadings in that respect may come into play in summary judgment context. *Lonberg v Freddie Mac (2011, DC Or) 776 F Supp 2d 1202.*

Because *15 USCS § 1635(b)* provides flexible set of procedures rather than inflexible set of rules, lender cannot violate § 1635(b) unless lender fails to comply with rescission procedure that court has ordered. *Bradford v HSBC Mortg. Corp. (2012, ED Va) 838 F Supp 2d 424.*

Where bankruptcy debtor was entitled to rescission under Truth in Lending Act, *15 USCS §§ 1601* et seq., creditor bank's security interest was voided and under *15 USCS § 1635(b)* and Regulation Z, 12 C.F.R. pt. 226, voiding of security interest was not dependent upon debtor's tender; holding that bank was unsecured creditor, bankruptcy court was not persuaded by cases holding that courts may condition rescission under *15 USCS § 1635* on payment by obligor. *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636* (criticized in *Wells Fargo Bank, N.A. v Jaaskelainen (2009, DC Mass) 407 BR 449).*

Where creditor defrauded bankruptcy debtors through scam sale and lease-back transaction involving debtors' home, whereby creditor did not loan debtors any money but obtained new mortgage against home for amount greater than required to pay debtors' mortgage, bankruptcy court had equitable authority under *12 CFR § 226.23(d)(4)* to modify rescission process by ordering creditor to return all payments and charges made by debtors, while not requiring debtors to return loan amount to creditor. *O'Brien v Cleveland (In re O'Brien) (2010, BC DC NJ) 423 BR 477.*

Debtor who sought rescission under *15 USCS § 1635* for failure to make disclosures under *15 USCS §§ 1602(u)*, *1638*, *1640*, and *1641* was, in court's discretion, not required to tender amount of loan proceeds to lender upon requesting rescission. *Gisondi v Countrywide Bank, N.A. (In re Gisondi) (2013, BC ED Pa) 487 BR 423.*

Unpublished Opinions

Unpublished: Equitable reordering of rescission procedure by requiring borrowers to show ability to repay was appropriate because property value was insufficient, mortgage lender had no obligation to accept tender of house, and lender acted equitably during proceedings. *Sanders v Mt. Am. Credit Union (2015, CA10 Utah) 621 Fed Appx 520.*

V. PRACTICE AND PROCEDURE

39. Parties

Action for rescission under *15 USCS § 1635* survives death of plaintiff, since § 1635 remedy is not penal sanction. *James v Home Constr. Co. (1980, CA5 Ala) 621 F2d 727* (criticized in *Rodrigues v U.S. Bank (In re Rodrigues) (2002, BC DC RI) 278 BR 683)* and (criticized in *McIntosh v Irwin Union Bank & Trust, Co. (2003, DC Mass) 215 FRD 26).*

Mortgage broker could not be held liable to Chapter 13 debtor for failing to provide disclosures under Truth in Lending Act, *15 USCS §§ 1601* et seq., because broker was not "creditor" as defined under *15 USCS § 1602*; debtor's mortgage loan obligation was initially payable to lender, not to broker. *Maroun v New York Mortg. Co., LLC (In re Maroun) (2010, BC DC NH) 2010 BNH 8, 427 BR 200.*

40. --Assignees

Fact that assignee of mortgage was not engaged in acquiring mortgages in regular course of his business and therefore would not be liable for civil penalty under § 130 of Truth in Lending Act (*15 USCS § 1640*) had nothing to do with debtor's right to rescind mortgage under § 125 of Act (*15 USCS § 1635*) because of original mortgagee's violation of Act. *Rachbach v Cogswell (1976, CA10 Colo) 547 F2d 502* (superseded by statute on other grounds as stated in *Quenzer v Advanta Mortg. Corp. (In re Quenzer) (2001, BC DC Kan) 274 BR 899)* and (criticized in *Dawson v Thomas (In re Dawson) (2008, BC DC Dist Col) 411 BR 1).*

Mortgage lender who financed home repair work was not liable for home repair contractor's alleged failure to provide notice of right to rescind under *15 USCS § 1635(a)*; contract clearly included required language, and even if notice was not provided, there was no evidence that contract was assigned to lender. *Hanlin v Ohio Builders & Remodelers, Inc. (2002, SD Ohio) 212 F Supp 2d 752.*

Because discovery had not begun, district court found that it was premature to dismiss mortgagors' Truth in Lending Act, *15 USCS §§ 1601* et seq., claim against one mortgage company based on its contention that it could not be held liable as it was only assignee of mortgage. *Polis v Am. Liberty Fin., Inc. (2002, SD W Va) 237 F Supp 2d 681.*

Assignees argued that borrower's claims for rescission failed because they were merely former assignees who no longer owned loans and therefore could not execute rescission pursuant to *15 USCS § 1635*; however, because *15 USCS §*

1641(c) gave consumers right to rescind against "any assignee," including former assignees, borrower's claims for rescission against assignees survived dismissal. *Miranda v Universal Fin. Group, Inc. (2006, ND Ill) 459 F Supp 2d 760.*

Assignee could not be held liable for statutory damages for failing to comply with notice to rescind under *15 USCS § 1635*, part of Truth in Lending Act, *15 USCS §§ 1601* et seq., because underlying basis for requested rescission was alleged disclosure violation that was not apparent on face of disclosure statement; mortgagor and another plaintiff allegedly had not received two copies each of complete notice of right to cancel; under *15 USCS § 1641(a)*, assignee could only be held liable for violations that were apparent on face of disclosure statement, and § 1641(a) did not require assignee to go beyond documents to investigate plaintiffs' claim. *Bills v BNC Mortg., Inc. (2007, ND Ill) 502 F Supp 2d 773.*

District court refused to dismiss claim which Chapter 7 debtor and Chapter 7 trustee filed against bank that served as trustee of mortgage loan trust that held mortgage on debtor's house, alleging, inter alia, that bank was vicariously liable for violations of Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq.; debtor and trustee stated valid claim seeking recission under *15 USCS § 1635* of contract debtor signed when she refinanced debt she owed on her house by alleging that debtor did not receive disclosures required by TILA, and they could pursue that claim against bank, as assignee, pursuant to *15 USCS § 1641(c)*; although debtor and trustee had not indicated in their pleadings that debtor would be able to return amount she borrowed as condition of rescinding contract, she was not required to plead that condition to survive bank's motion to dismiss. *Frese v Empire Fin. Servs. (2010, DC Dist Col) 725 F Supp 2d 130.*

Successor in interest, which acquired bank's assets from Federal Deposit Insurance Corporation (FDIC), was "assignee" under Truth in Lending Act, *15 USCS §§ 1601* et seq., and was subject to borrower's rescission claim; rescission claim was not barred by acquisition agreement with FDIC, as allowing agreement to extinguish claim would have been contrary to congressional intent and would have left borrower without rescission remedy. *Fernandes v JPMorgan Chase Bank, N.A. (2011, ND Ill) 818 F Supp 2d 1086.*

Based on documents produced by debtors and debtor wife's credible testimony, debtors had not received completed copies of notice of right to rescind, as required under *15 USCS § 1635(a)* and Regulation Z, 12 C.F.R. pt. 226.23(b); bankruptcy court found bank, as assignee of loan, had to pay minimum statutory penalty under *15 USCS § 1640(a)(2)(A)(iii)*, and loan was rescinded and mortgage was void. *Rodrigues v U.S. Bank (In re Rodrigues) (2002, BC DC RI) 278 BR 683.*

Unpublished Opinions

Unpublished: Although district court properly determined that mortgagee's assignee could not be held liable under *15 USCS §§ 1640(a)*, *1641(a)*, because assignee was not "creditor" as defined in Truth In Lending Act and assignee had no statutory duty to make sure that proper disclosures were made by mortgagee, it erred in dismissing mortgagor's suit under *Fed. R. Civ. P. 12(b)(6)* because mortgagor was seeking rescission under *15 USCS § 1635*, and assignee could possibly be required to provide rescission under *15 USCS § 1641(c)*; dismissal order was vacated and mortgagor's case was remanded back to district court to determine if she had sufficiently alleged claim for rescission against assignee pursuant to *15 USCS §§ 1635*, *1641(c)*. *Parker v Potter (2007, CA11 Fla) 232 Fed Appx 861.*

41. --Class actions

Rescission under *15 USCS § 1635* is purely personal remedy and obligor seeking to rescind credit transaction cannot maintain class action merely by filing individual claim. *James v Home Constr. Co. (1980, CA5 Ala) 621 F2d 727* (criticized in *Rodrigues v U.S. Bank (In re Rodrigues) (2002, BC DC RI) 278 BR 683)* and (criticized in *McIntosh v Irwin Union Bank & Trust, Co. (2003, DC Mass) 215 FRD 26).*

As matter of law, class certification was not available for rescission claims, direct or declaratory, under federal Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., and, thus, under Massachusetts Consumer Credit Cost Disclosure Act, Mass. Gen. Laws ch. 140D because it was clear that Congress did not intend rescission suits to receive class-action treatment since variation in treatment of class actions in two relevant sections of TILA strongly suggested that Congress did not intend to include class-action mechanism within compass of *15 USCS § 1635*; moreover, TILA already included significant incentives for creditor compliance with its strictures, thus casting serious doubt on need for class-action mechanism with respect to rescission. *McKenna v First Horizon Home Loan Corp. (2007, CA1 Mass) 475 F3d 418* (criticized in *Andrews v Chevy Chase Bank, FSB (2007, ED Wis) 474 F Supp 2d 1006)* and (criticized in *In re Ameriquest Mortg. Co. Mortg. Lending Practices Litig. (2007, ND Ill) 2007 US Dist LEXIS 29641).*

United States Court of Appeals for Seventh Circuit held that rescission remedy under *15 USCS § 1635*, which was by its terms historically equitable, individualized, restorative remedy, as opposed to compensatory remedy of statutory damages under *15 USCS § 1640(a)(2)*, could not be pursued on behalf

of putative class. *Andrews v Chevy Chase Bank (2008, CA7 Wis) 545 F3d 570,* reh den, reh, en banc, den (2008, CA7 Wis) *2008 US App LEXIS 27913* and cert den (2009, US) *129 S Ct 2864, 174 L Ed 2d 578.*

Although it appears that Congress intended that some Truth in Lending Act violations would proceed as class actions (*15 USCS § 1640(a)(2)(B)*), propriety of pursuing rescission under *15 USCS § 1635* through class action is open to serious doubt since there is obvious conflict among interest of parties seeking rescission from credit institution of limited solvency and availability of award of attorneys' fees to successful plaintiff seeking rescission on individual basis undermines contention that class treatment furthers class members' interest in minimizing burdens imposed on recovery by allowing them to share cost of single attorney. *Nelson v United Credit Plan (1978, ED La) 77 FRD 54, 24 FR Serv 2d 830.*

Class actions are not superior method for adjudicating technical disclosure violation claims under Truth in Lending Act where remedy sought is rescission. *Jefferson v Security Pac. Fin. Servs. (1995, ND Ill) 161 FRD 63* (criticized in *McIntosh v Irwin Union Bank & Trust, Co. (2003, DC Mass) 215 FRD 26)* and (criticized in *Latham v Residential Loan Ctrs. of Am., Inc. (2004, ND Ill) 2004 US Dist LEXIS 7993).*

Pursuant to claims under Truth In Lending Act, *15 USCS §§ 1601* et seq., class seeking rescission under *15 USCS § 1635* can be certified, particularly where plaintiffs seek declaratory judgment that class members are entitled to rescission. *McIntosh v Irwin Union Bank & Trust, Co. (2003, DC Mass) 215 FRD 26* (criticized in *Morris v Wachovia Sec., Inc. (2004, ED Va) 223 FRD 284, 59 FR Serv 3d 169)* and (criticized in *Bell v Ameriquest Mortg. Co. (2004, ND Ill) 2004 US Dist LEXIS 24289)* and (criticized in *Murry v America's Mortg. Banc, Inc. (2005, ND Ill) 2005 US Dist LEXIS 11751)* and (criticized in *Cazares v Household Fin. Corp. (2005, CD Cal) 2005 US Dist LEXIS 39222)* and (criticized in *McKenna v First Horizon Home Loan Corp. (2005, DC Mass) 429 F Supp 2d 291)* and (criticized in *LaLiberte v Pacific Mercantile Bank (2007, 4th Dist) 147 Cal App 4th 1, 53 Cal Rptr 3d 745, 2007 CDOS 979, 2007* Daily Journal DAR 1224) and (criticized in *Briscoe v Deutsche Bank Nat'l Trust Co. (2008, ND Ill) 2008 US Dist LEXIS 90665)* and (criticized in *Douglas v Wilmington Fin., Inc. (2009, ND Ill) 2009 US Dist LEXIS 107560)* and (criticized in *Garcia v HSBC Bank USA, N.A. (2009, ND Ill) 2009 US Dist LEXIS 114299).*

In suit for violation of Truth in Lending Act (TILA), *15 USCS § 1635*, district court granted borrowers' motion to certify class of all person who received mortgage loans from defendants during 15-month period because class resolution was

appropriate for claims seeking declaration of right to rescind under *TILA. Rodrigues v Members Mortg. Co. (2005, DC Mass) 226 FRD 147* (criticized in *McKenna v First Horizon Home Loan Corp. (2005, DC Mass) 429 F Supp 2d 291)* and (criticized in *LaLiberte v Pacific Mercantile Bank (2007, 4th Dist) 147 Cal App 4th 1, 53 Cal Rptr 3d 745, 2007 CDOS 979, 2007* Daily Journal DAR 1224).

Borrowers' Truth In Lending Act (TILA), *15 USCS §§ 1601* et seq., and state Consumer Credit Cost Disclosure Act, Mass. Gen. Laws ch. 140D, claims for rescission and statutory damages against lender were certified because 1974 amendment of TILA specifically to limit damages recoverable in class actions under *15 USCS § 1640(a)(2)* did not prohibit class actions for rescission under *15 USCS § 1635*, which did not pose same economic threat to credit industry as class action damages. *McKenna v First Horizon Home Loan Corp. (2006, DC Mass) 429 F Supp 2d 291.*

Bank's motion for stay pursuant to *Fed. R. Civ. P. 23(f)* was granted because (1) bank was unlikely to prevail on its claim, that class action could not be maintained in suit seeking rescission under Truth in Lending Act, because that claim was based on First Circuit case, First Circuit appeals court had incorrectly relied upon and applied legislative history in concluding that class actions in such suits were barred, and Seventh Circuit appeals court had repeatedly held that class actions could be maintained in TILA actions as long as requirements of *Fed. R. Civ. P. 23* were met; (2) bank was likely to prevail on interlocutory appeal as to its claim that district court erred by defining rescission class too broadly because class included all borrowers who had received loans from bank, but pursuant to *15 USCS § 1635(e)(1)*, (2), district court should have included only those borrowers who refinanced loan with bank as different lender or who refinanced prior loan from bank, but secured it with different collateral; and (3) irreparable harm that bank would suffer, if stay was not granted, was greater than harm to some potential class members, who might lose their right to seek rescission under *15 USCS § 1635(f)* if applicable three-year time period expired before bank's interlocutory appeal was decided. *Andrews v Chevy Chase Bank, FSB (2007, ED Wis) 474 F Supp 2d 1006.*

Unpublished Opinions

Unpublished: In borrower's putative class action against mortgage company for alleged violations of Truth in Lending Act, *15 USCS §§ 1601* et seq., mortgage company was entitled to strike borrower's request for rescission under *15 USCS § 1635(b)* on class wide basis; however, because there was at least possibility that mortgage company would be proper party to rescission of borrower's individual

loan, mortgage company was not entitled to strike borrower's request for rescission on individual basis. *Amparan v Plaza Home Mortg. (2008, ND Cal) 678 F Supp 2d 961.*

42. Statute of limitations

One-year period of limitations contained in *15 USCS § 1640(e)* applies only to actions to enforce § 1640 rights, and action for rescission under *15 USCS § 1635* is not subject to such one-year period of limitations. *Littlefield v Walt Flanagan & Co. (1974, CA10 Colo) 498 F2d 1133.*

Eighth Circuit agrees with Tenth Circuit that plaintiffs seeking rescission must file suit, as opposed to merely giving bank notice, within three years in order to preserve that right. *Keiran v Home Capital (2013, CA8 Minn) 720 F3d 721.*

To accomplish rescission within meaning of *15 USCS § 1635(f)*, obligor must file rescission action in court; because borrowers did not accomplish rescission in this way within three years of their respective transactions, their right to rescind had expired. *Keiran v Home Capital (2013, CA8 Minn) 720 F3d 721.*

Even though borrowers' claim for actual rescission was not timely, their claims for money damages based upon banks' failure to rescind was cognizable. *Keiran v Home Capital (2013, CA8 Minn) 720 F3d 721.*

Debtor's Truth in Lending Act claim for rescission for lack of disclosures or inaccuracies was time barred because it was brought more than three years after consummation of loan transaction *Sheedy v Deutsche Bank Nat'l Trust Co. (In re Sheedy) (2015, CA1 Mass) 801 F3d 12.*

Even if equitable tolling applied to toll statute of limitations on consumers' claim against contractor for rescission of contract to purchase house under *15 USCS § 1635*, it would be tolled only until consumers discovered contractor's second mortgage on their home, which was discovered much earlier than 3 days before rescission action was filed, and, thus, claims were dismissed for lack of jurisdiction. *Diehl v ACRI Co. (1995, CD Ill) 910 F Supp 439.*

Lender's failure to rescind is separate violation of Truth in Lending Act (TILA), subject to three-year statute of limitations, *15 USCS § 1635(f)*; however, TILA violations that are subject to one year statute of limitations, *15 USCS § 1640(e)*, cannot be overcome merely by linking them to rescission claim. *Jenkins v Mercantile Mortg. Co. (2002, ND Ill) 231 F Supp 2d 737* (criticized in *Payton v New Century Mortg. Corp. (2003, ND Ill) 2003 US Dist LEXIS 18366)* and (criticized in

McKenna v First Horizon Home Loan Corp. (2006, DC Mass) 429 F Supp 2d 291) and (criticized in *Barrett v JP Morgan Chase Bank, N.A. (2006, CA6 Ky) 445 F3d 874, 2006 FED App 137P)* and (criticized in *Pacific Shore Funding v Lozo (2006, 2nd Dist) 138 Cal App 4th 1342, 42 Cal Rptr 3d 283, 2006 CDOS 3502, 2006* Daily Journal DAR 5098).

Mortgage lender, its assignee, and loan servicer were entitled to summary judgment on borrower's claims for statutory damages for alleged violations of Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., as amended by Home Ownership and Equity Protection Act of 1994 (HOEPA), *15 USCS §§ 1602(aa)*, *1639*, because damage claims for violations of TILA and HOEPA were barred by TILA's one-year statute of limitations as was set forth in *15 USCS § 1640(e)*; borrower's argument that if she was entitled to three-year right to rescind loan because of violations under *15 USCS § 1635*, then she would also be allowed, in seeking rescission, to preserve her damage claims even though they would be time-barred if they stood alone lacked merit because both language and legislative history of § 1635(g) supported notion that § 1635(g) was not intended to alter one-year statute of limitations for TILA damage claims. *Brown v Nationscredit Fin. Servs. Corp. (2005, ND Ill) 349 F Supp 2d 1134.*

Truth in Lending Act claim was barred by one-year statute of limitations of *15 USCS § 1640(e)* because limitations period was triggered when 20 days elapsed and defendant lender failed to respond to plaintiff borrower's rescission notice and each unsuccessful contact regarding his ignored rescission notice id not renew limitations period. *Percival v Am. Home Mortg. Corp. (2007, ND Tex) 469 F Supp 2d 409.*

Where mortgage assignee claimed that borrowers were not entitled to rescission under Federal Truth in Lending Act, *15 USCS §§ 1601*-*1693r*, on grounds that request was time barred, summary judgment was not appropriate because borrowers had established issue of material fact as to whether they received properly completed notices of their right to rescind. *White v Homefield Fin., Inc. (2008, WD Wash) 545 F Supp 2d 1159.*

Even assuming plaintiff had three-year right to rescind, because she did not exercise that right within three years of entering refinancing agreement, and because equitable tolling did not apply to *15 USCS § 1635(f)*, her claim pursuant to § 1635(f) was meritless. *Roach v Option One Mortg. Corp. (2009, ED Va) 598 F Supp 2d 741,* injunction den (2009, ED Va) *2009 US Dist LEXIS 11262* and affd (2009, CA4 Va) *332 Fed Appx 113.*

Mortgagors' request for rescission of loan transaction was time-barred under *15 USCS § 1635(f)* where they had filed lawsuit against mortgagee more than five years after date they obtained loan and were provided Truth in Lending Act, *15 USCS §§ 1601* et seq., disclosure statement. *Thielen v GMAC Mortg. Corp. (2009, ED Mich) 671 F Supp 2d 947.*

Mortgagor's Truth in Lending Act (TILA) claims were dismissed because (1) statute of limitations for mortgagor's action for damages under *15 USCS § 1640* against mortgagee, successor to bank that refinanced mortgagor's residential home mortgage, had elapsed as action was filed more than one year after mortgagor refinanced his loan, and mortgagor's request for equitable tolling failed as he did not plead fraud with particularity under *Fed. R. Civ. P. 9(b)*, failed to allege facts showing he acted with due diligence, and failed to allege requirements for assignee liability under *15 USCS § 1641(e)(1)*; (2) mortgagor's TILA claims against loan servicing agent were dismissed because § 1641(f)(1) did not impose liability on servicer of consumer obligation unless it was owner of obligation, and there was no allegation that servicer owned obligation; and (3) mortgagor could not restate his TILA claim with respect to rescission under *15 USCS § 1635* because right of rescission did not apply to residential mortgage transaction or to refinancing of principal balance by same creditor secured by interest in same property. *Yaldu v Bank of Am. Corp. (2010, ED Mich) 700 F Supp 2d 832.*

Mortgagor's Home Ownership and Equity Protection Act claims against mortgagee, successor to bank that refinanced mortgagor's residential home mortgage, were dismissed because mortgagor's reliance on *15 USCS § 1639(b)(3)* failed as § 1639(b)(3) did not create individual cause of action, and any claim under § 1639(h) was time barred under one-year statute of limitations set forth in *15 USCS §§ 1635(f)*, *1640(e)*. *Yaldu v Bank of Am. Corp. (2010, ED Mich) 700 F Supp 2d 832.*

In case filed on August 13, 2010 in which pro se home owner alleged violations of Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., and Real Estate Settlement Procedures Act (RESPA), *12 USCS §§ 2601* et seq., and bank moved to dismiss pursuant to *Fed. R. Civ. P. 12(b)(6)*, home owner's claims were time-barred; complaint was filed on August 13, 2010, and, since settlement date of promissory note was January 30, 2007, she had until January 30, 2008, to bring her damages claim under TILA and RESPA, and until January 30, 2010, to bring her rescission claim under *TILA. George v Bank of Am. N.A. (2011, DC Dist Col) 821 F Supp 2d 299.*

With respect to mortgagors' claim for damages under Truth in Lending Act, arising from allegations that requisite notices regarding cancellation were not properly delivered, even if rescission claim was deemed time-barred, claim for damages was timely and represented separate remedy. *Abubo v Bank of N.Y. Mellon (2013, DC Hawaii) 977 F Supp 2d 1037.*

Although mortgage borrower's rescission claim against her first mortgage lender was time-barred, her rescission claim against her second mortgage lender was timely; limitations period on rescission claim against second lender began to run on April 15, 2004, and ended on April 15, 2005; because borrower filed suit on March 30, 2005, her rescission claim against second mortgage lender was not time-barred. *Johnson v Long Beach Mortg. Loan Trust 2001-4 (2006, DC Dist Col) 451 F Supp 2d 16.*

Unpublished Opinions

Unpublished: Plaintiff sent defendants letter asserting her right to rescission under Truth in Lending Act (TILA), on September 17, 2004, exactly three years and six months after closing on her loan; because this fell outside three-year time limit, *15 USCS § 1635(f)*, her TILA claim was barred. *Johnson v Mortg. Elec. Registration Sys. (2007, CA11 Ga) 252 Fed Appx 293.*

Unpublished: Borrowers did not file their adversary action until more than three years after they closed their loan and *15 USCS § 1635(f)* completely extinguished right of rescission at end of 3-year period; although borrowers argued in bankruptcy court that three-year period should have been tolled based on class action litigation against mortgage company, they did not raise this argument on appeal and, consequently they failed to show that doctrine of legal tolling was applicable. *Dye v Ameriquest Mortg. Co. (2008, CA7 Wis) 289 Fed Appx 941,* reh den, reh, en banc, den (2009, CA7 Wis) *2009 US App LEXIS 10880.*

Unpublished: District court did not evaluate whether defendants' failure to timely rescind mortgage transaction amounted to separate violation of *15 USCS § 1635(b)*, which was actionable under *15 USCS § 1640(a)*; because borrower filed her Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., action within one year of date she exercised her statutory right to rescind, her claim was not time barred. *Frazile v EMC Mortg. Corp. (2010, CA11 Fla) 2010 US App LEXIS 11931.*

Unpublished: Homeowner's claim for rescission under Truth in Lending Act, *15 USCS §§ 1601* et seq., was untimely because she filed her lawsuit almost four years after her home equity line of credit agreement was modified. *Boone v JP Morgan Chase Bank (2011, CA11 Ga) 2011 US App LEXIS 23813.*

Unpublished: Because plaintiff borrower's loans from defendant lenders were made in 2006 and suit was filed over 3 years later, borrower's claims for improper disclosures under Truth in Lending Act (TILA) and kickbacks under Real Estate Settlement Procedures Act were barred by 1-year limitations periods of *15 USCS § 1640(e)* and *12 USCS § 2614*, and TILA rescission claims were also barred by *15 USCS § 1635(f)*'s 3-year period. *McCrimmon v Wells Fargo Bank, N.A. (2013, CA5 Tex) 2013 US App LEXIS 4985.*

Unpublished: Because plaintiff borrower's loans from defendant lenders were made in 2006 and suit was filed over 3 years later, borrower's claims for improper disclosures under Truth in Lending Act (TILA) and kickbacks under Real Estate Settlement Procedures Act were barred by 1-year limitations periods of *15 USCS § 1640(e)* and *12 USCS § 2614*, and TILA rescission claims were also barred by *15 USCS § 1635(f)*'s 3-year period. *McCrimmon v Wells Fargo Bank, N.A. (2013, CA5 Tex) 2013 US App LEXIS 4985.*

43. Defenses

Under *15 USCS § 1635(f)*, borrower's right of rescission is completely extinguished at end of 3-year period--and may not be asserted as affirmative defense in collection action brought by lender more than 3 years after consummation of transaction--because (1) § 1635(f) contains uncompromising provision that borrower's right of rescission "shall expire" with running of time, (2) Truth in Lending Act (*15 USCS §§ 1601* et seq.) gives borrower no express permission to assert right of rescission as affirmative defense after expiration of 3-year period, and (3) statutory right of rescission could cloud lender's title on foreclosure, which risk Congress may well have chosen to circumscribe, while permitting borrower's recovery of damages regardless of date collection action may be brought. *Beach v Ocwen Fed. Bank (1998) 523 US 410, 140 L Ed 2d 566, 118 S Ct 1408, 98 CDOS 2943, 98 Daily Journal DAR 4023, 1998 Colo J C A R 1913, 11 FLW Fed S 470.*

Where mortgage assignee claimed that borrowers were not entitled to rescission under Federal Truth in Lending Act, *15 USCS §§ 1601*-*1693r*, because they knowingly and intentionally doubled their income level on income loan application, summary judgment was not appropriate because there was at least question of material fact as to inflated income levels stated in loan documents and whether borrowers acted in inequitable manner. *White v Homefield Fin., Inc. (2008, WD Wash) 545 F Supp 2d 1159.*

Where mortgage assignee claimed that borrowers were not entitled to rescission under Federal Truth in Lending Act, *15 USCS §§ 1601-1693r*, because they were unable to pay principal of loan, summary judgment was not appropriate because neither party had provided court with dollar amount representing borrowers' remaining obligation after valid rescission, and borrowers had not had opportunity to submit evidence to court regarding their ability to repay that remaining obligation. *White v Homefield Fin., Inc. (2008, WD Wash) 545 F Supp 2d 1159.*

Because plaintiffs had refinanced their loan they could not under Truth in Lending Act (TILA), *15 USCS § 1635* rescind their original loan with lender. *Monaco v Bear Stearns Residential Mortg. Corp. (2008, CD Cal) 554 F Supp 2d 1034* (criticized in *O'Donnell v Bank of Am. (2009, ND Cal) 2009 US Dist LEXIS 26642).*

Where creditor obtained state court foreclosure judgment against Chapter 13 debtor, debtor's claim for rescission of mortgage under Truth in Lending Act was stricken as barred by Rooker-Feldman doctrine because rescission relief sought by debtor was inextricably intertwined with state court foreclosure judgment. *Randall v Bank One Nat'l Ass'n (In re Randall) (2006, BC ED Pa) 358 BR 145.*

Rooker-Feldman doctrine deprived court of subject matter jurisdiction and barred claim by Chapter 13 debtors under Truth in Lending Act, *15 USCS §§ 1601* et seq., seeking rescission as remedy because foreclosure judgment had previously been entered in state court pursuant to stipulation signed by debtors' attorney. *Dougal v Saxon Mortg. (In re Dougal) (2008, BC WD Pa) 395 BR 880.*

Although right to rescind terminated 3 years after consummation of transaction, original demand for rescission became defense of recoupment. *Dawe v Merchants Mortg. & Trust Corp. (1984, Colo) 683 P2d 796* (criticized in *Beach v Ocwen Fed. Bank (1998) 523 US 410, 140 L Ed 2d 566, 118 S Ct 1408, 98 CDOS 2943, 98 Daily Journal DAR 4023, 1998 Colo J C A R 1913, 11 FLW Fed S 470).*

44. Dismissals

Action under Consumer Credit Protection Act was improperly dismissed where insufficient facts had been presented to court to enable it to determine factual question as to whether, for purposes of rescission provision of Act (*15 USCS § 1635*), purchaser had purchased real estate which was used or expected to be used as principal residence. *Sarter v Mays (1974, CA5 Ala) 491 F2d 675.*

Where district court dismissed borrowers' Truth In Lending Act, *15 USCS §§ 1601-1667f*, claim against mortgage company for failure to state claim, dismissal was reversed and case was remanded; district court erred in finding that Lock-in

Agreement addressed only refund of $ 400 lock-in fee before closing, and so was not inconsistent with rescission right set out in Notice of Right to Cancel. Jones v E**Trade Mortg. Corp. (2005, CA9 Cal) 397 F3d 810.*

In case in which two homeowners sought rescission of mortgage well outside ordinary three-day period allowed under Truth in Lending Act (TILA), *15 USCS §§ 1640* et seq., and they appealed district court's order granting lender's *Fed. R. Civ. P. 12(b)(6)* motion to dismiss, homeowners' failure to respond to lender's assertion that none of 10 allegedly inaccurate charges identified in complaint were part of annual percentage rate, finance charge, or amount financed was waiver of any argument that allegedly erroneous TILA disclosures were in fact material, which was required for rescission past three-day period allowed under *TILA. Bonte v U.S. Bank, N.A. (2010, CA7 Wis) 624 F3d 461.*

In case in which district court dismissed Home Ownership and Equity Protection Act (HOEPA) claim under *Fed. R. Civ. P. 12(b)(6)* because *15 USCS § 1639* claim was untimely and deceased's estate appealed, arguing that later events triggered protection under HOEPA, effectively extending statute of limitations, that argument failed; deceased had not alleged that bank and loan servicer failed to notify her of change in her loan terms after she signed closing documents or that there was any change in her loan's terms; events that occurred within statute of limitations did not amount to actionable claim under *HOEPA. Estate of Davis v Wells Fargo Bank (2011, CA7 Ill) 633 F3d 529.*

District court erred in dismissing borrowers' suit under Truth In Lending Act, *15 USCS §§ 1601* et seq., on basis that complaint included completed Notice of Right to Cancel bearing borrowers' signatures, because signed Notice only created rebuttable presumption that required disclosures were delivered to borrowers. *Balderas v Countrywide Bank, N.A. (2011, CA9 Cal) 664 F3d 787.*

By enacting § 125(f) of Truth in Lending Act (*15 USCS § 1635(f)*) Congress did not merely limit time period within which right to rescission could be asserted, but actually limited to 3 years existence of right itself so that where plaintiff failed to bring action for rescission within 3 years after she acquired right to rescind, case had to be dismissed for lack of subject matter jurisdiction. *Jamerson v Miles (1976, ND Tex) 421 F Supp 107.*

Mobile home purchasers' suit against bank is summarily dismissed, where bank lent purchasers money to have mobile home installed on their real property, because 3-day rescission right, which bank allegedly failed to disclose to purchasers, does not apply to loan for predominant purpose of enabling borrower

to acquire or erect new residential structure. *Heuer v Forest Hill State Bank (1989, DC Md) 728 F Supp 1199.*

Even if equitable tolling applied to toll statute of limitations on consumers' claim against contractor for rescission of contract to purchase house under *15 USCS § 1635*, it would be tolled only until consumers discovered contractor's second mortgage on their home, which was discovered much earlier than 3 days before rescission action was filed, and, thus, claims were dismissed for lack of jurisdiction. *Diehl v ACRI Co. (1995, CD Ill) 910 F Supp 439.*

Because discovery had not begun, district court found that it was premature to dismiss mortgagors' Truth in Lending Act, *15 USCS §§ 1601* et seq., claim against one mortgage company based on its contention that it could not be held liable as it was only assignee of mortgage. *Polis v Am. Liberty Fin., Inc. (2002, SD W Va) 237 F Supp 2d 681.*

Refinancing borrowers' failure to provide bank notice of their request for rescission as required under *15 USCS § 1635* before filing their Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., complaint did not require dismissal because filing of TILA claim itself satisfied § 1635's notice requirement. *McIntosh v Irwin Union Bank & Trust, Co. (2003, DC Mass) 215 FRD 26* (criticized in *Morris v Wachovia Sec., Inc. (2004, ED Va) 223 FRD 284, 59 FR Serv 3d 169)* and (criticized in *Bell v Ameriquest Mortg. Co. (2004, ND Ill) 2004 US Dist LEXIS 24289)* and (criticized in *Murry v America's Mortg. Banc, Inc. (2005, ND Ill) 2005 US Dist LEXIS 11751)* and (criticized in *Cazares v Household Fin. Corp. (2005, CD Cal) 2005 US Dist LEXIS 39222)* and (criticized in *McKenna v First Horizon Home Loan Corp. (2005, DC Mass) 429 F Supp 2d 291)* and (criticized in *LaLiberte v Pacific Mercantile Bank (2007, 4th Dist) 147 Cal App 4th 1, 53 Cal Rptr 3d 745, 2007 CDOS 979, 2007* Daily Journal DAR 1224) and (criticized in *Briscoe v Deutsche Bank Nat'l Trust Co. (2008, ND Ill) 2008 US Dist LEXIS 90665)* and (criticized in *Douglas v Wilmington Fin., Inc. (2009, ND Ill) 2009 US Dist LEXIS 107560)* and (criticized in *Garcia v HSBC Bank USA, N.A. (2009, ND Ill) 2009 US Dist LEXIS 114299).*

Mortgage company's motion to dismiss homeowner's claim that it violated Truth in Lending Act by not taking steps to rescind loan transaction as required under *15 USCS § 1635* was denied where company had failed to provide homeowner with rescission statement, take steps toward releasing its security interest in home, and conditioned its rescission on homeowner's return of loan money. *Velazquez v HomeAmerican Credit, Inc. (2003, ND Ill) 254 F Supp 2d 1043.*

Mortgage servicer's *Fed. R. Civ. P. 12(b)(6)* motion to dismiss borrowers' complaint alleging that mortgage servicer failed to provide all material disclosures required by *15 USCS § 1639(a)* and that borrowers timely rescinded transaction was denied because, although mortgage servicer did not have any involvement in initial mortgage transaction and therefore did not have any responsibility to provide disclosures at that time, complaint could support reasonable inference that mortgage servicer was, at least in part, responsible for decisions regarding rescission of transaction pursuant to *15 USCS § 1635(a)*. *Smith v Argent Mortg. Co., LLC (2006, DC Colo) 447 F Supp 2d 1200.*

Mortgage company was entitled to *Fed. R. Civ. P. 12(b)(6)* dismissal of borrower's claim for rescission under *15 USCS § 1635(a)* of Truth in Lending Act, *15 USCS §§ 1601* et seq., because borrowers had refinanced and deed of trust securing their loan had been reconveyed. *Velazquez v GMAC Mortg. Corp. (2008, CD Cal) 605 F Supp 2d 1049.*

Notably absent from mortgagor's complaint was any allegation that he attempted to tender, or was capable of tendering, value of property pursuant to rescission framework established by Truth in Lending Act (TILA), *15 USCS § 1635*. Nor did mortgagor allege that such equitable circumstances existed that conditioning rescission on any tender would have been inappropriate; therefore, mortgagor failed to adequately allege that he was entitled to rescission under *TILA. Reyes v Premier Home Funding, Inc. (2009, ND Cal) 640 F Supp 2d 1147.*

Despite having been afforded two opportunities to amend his Truth in Lending Act claim, property owner failed to identify which mortgage loans he sought to rescind; because property owner failed to adequately identify his demand for relief sought, rescission claim under *15 USCS § 1635* was dismissed with prejudice. *Infante v Bank of Am. Corp. (2010, SD Fla) 680 F Supp 2d 1298.*

Borrower' *15 USCS § 1635* claims against successor bank, trustee, and others was dismissed where borrower failed to demonstrate how their alleged failure to disclose who was involved in servicing his loan established that banks and trustee had failed to disclose borrower's right to rescind at time he signed loan agreement. *Rosenfeld v JPMorgan Chase Bank, N.A. (2010, ND Cal) 732 F Supp 2d 952* (criticized in *Rundgren v Wash. Mut. Bank, F.A. (2010, DC Hawaii) 2010 US Dist LEXIS 126803).*

Lender's motion to dismiss borrowers' rescission claim was denied because borrowers plainly alleged ability to repay but did not provide any particular facts in support of their allegation; although evidence of ability to repay loan proceeds

could be required before rescission was granted, at pleading stage borrowers' allegation will suffice *Holcomb v Fed. Home Loan Mortg. Corp. (2011, SD Fla) 2011 US Dist LEXIS 123935* (criticized in *Rinegard-Guirma v Bank of Am. NA (2012, DC Or) 2012 US Dist LEXIS 46094)* and (criticized in *Galeano v Fed. Home Loan Mortg. Corp. (2012, SD Fla) 23 FLW Fed D 429)* and (criticized in *Kissinger v Wells Fargo Bank, N.A. (2012, SD Fla) 23 FLW Fed D 432)* and (criticized in *Montano v Wells Fargo Bank N.A. (2012, SD Fla) 2012 US Dist LEXIS 155434)* and (criticized in *Runkle v Fannie Mae (2012, SD Fla) 2012 US Dist LEXIS 168358).*

Motion to dismiss plaintiffs' TILA rescission claims denied, as inquiry into whether and when each putative class member who sought rescission provided written notice to their lender was not appropriate for resolution on motion to dismiss. *In re Cmty. Bank of N. Va. Mortg. Lending Practices Litig. (2013, WD Pa) 954 F Supp 2d 360* (criticized in *Macauley v Estate of Nicholas (2014, ED Pa) 2014 US Dist LEXIS 38926).*

Allegations of disclosure violations of Truth in Lending Act, *15 USCS §§ 1601* et seq., brought by Chapter 13 debtors, could not be dismissed on pleadings because debtors had to be given opportunity to rebut presumption of delivery of disclosures, and their allegation of non-receipt of required documents could not be dismissed via motion to dismiss. *Hopkins v First NLC Fin. Servs. (In re Hopkins) (2007, BC ED Pa) 372 BR 734.*

Where Chapter 13 debtors alleged that it had right to rescind loan under Truth in Lending Act, *15 USCS §§ 1601* et seq., due to disclosure violations, but that loan originator and assignee failed to honor their request to rescind loan, claims survived motion to dismiss because they sufficiently asserted claim for rescission and for damages that conceivably could entitle them to recovery. *Hopkins v First NLC Fin. Servs. (In re Hopkins) (2007, BC ED Pa) 372 BR 734.*

Trial court correctly denied defendant's motion to strike motion to dismiss his counterclaim based on allegations that plaintiff failed to notify him of right under *15 USCS § 1635* to rescind contract, where mere allegation in defendant's motion to strike is insufficient to rebut presumption of notice evidenced by receipt signed by defendant acknowledging he had received 2 copies of notice, although affidavit of nondelivery from defendant would have sufficed to create material issue of fact. *Award Lumber & Constr. Co. v Humphries (1982, 1st Dist) 110 Ill App 3d 119, 65 Ill Dec 676, 441 NE2d 1190.*

Unpublished Opinions

Unpublished: Mortgagors failed to state claim for declaratory judgment of recission or injunction prohibiting enforcement of loan; they did not attach or describe document that purportedly accomplished valid rescission and did not state which disclosures creditor failed to provide. *Igou v Bank of Am., N.A. (2015, CA10 Colo) 634 Fed Appx 208.*

Unpublished: Because borrower did not allege facts showing how lender was liable for alleged misdeeds of its predecessors and real estate agent, borrower's claim under *15 USCS § 1635* was dismissed with leave to amend in order to comply with *Fed. R. Civ. P. 8(a)(2)*. *Skrabe v Chase Home Fin. (2011, ND Cal) 2011 US Dist LEXIS 34915.*

45. Summary judgment

District court did not err when it granted summary judgment to lender and bank on borrowers claims under Truth in Lending Act, *15 USCS §§ 1601* et seq., that their loan was not consummated on January 26, 1999, since loan was conditioned on appraisal review because document relied upon by borrowers clearly informed them that despite fact that loan was conditioned on satisfactory appraisal, loan was consummated; therefore, appraisal review notwithstanding, borrowers became contractually obligated when loan documents were executed on January 26, 1999, and rescission period expired three days later. *Gaona v Town & Country Credit (2003, CA8 Minn) 324 F3d 1050.*

District court properly granted summary judgment for lender's assignee in plaintiffs' suit to rescind loan under *15 USCS § 1635(b)* of Truth in Lending Act (TILA), even though district court found triable issue of fact as to whether plaintiffs had received required TILA disclosures, as plaintiffs were unable to tender loan proceeds; district court had discretion to modify sequence of rescission events to assure that plaintiffs could meet their obligations should rescission be warranted. *Yamamoto v Bank of N.Y. (2003, CA9 Hawaii) 329 F3d 1167, 2003 CDOS 4481, 2003* Daily Journal DAR 5722, cert den *(2004) 540 US 1149, 124 S Ct 1146, 157 L Ed 2d 1042* and (criticized in *Singh v Wash. Mut. Bank (2009, ND Cal) 2009 US Dist LEXIS 73315)* and (criticized in *Avelo Mortg., LLC v Jeffery (2010, NJ Super Ct App Div) 2010 NJ Super Unpub LEXIS 1583).*

Congressional policy, as expressed in *15 USCS § 1635(c)*, precludes granting defendant creditor summary judgment on basis of receipt acknowledgement alone, where plaintiffs deny by affidavit that they received disclosures required by Act; where plaintiffs' affidavits rebut defendant's protestations of delivery, court cannot conclude that there is no genuine issue as to fact of delivery which would

entitle defendant to summary judgment as matter of law. *Powers v Sims & Levin Realtors (1975, ED Va) 396 F Supp 12,* affd in part and revd in part on other grounds (1976, CA4 Va) *542 F2d 1216* (criticized in *Williams v BankOne Nat'l Ass'n (In re Williams) (2003, BC ED Pa) 291 BR 636).*

In action brought under Consumer Credit Protection Act of 1968 (*15 USCS §§ 1601* et seq.) alleging failure of defendant creditors to give financial disclosure statement required by Regulation Z (*12 CFR 226.1* et seq.), failure of plaintiffs to controvert by affidavit their receipt of financial disclosure statement as indicated by their signature on loan document entitled defendants to summary judgment as to issue of such receipt. *Whitlock v Midwest Acceptance Corp. (1977, ED Mo) 76 FRD 190, 24 FR Serv 2d 463,* revd on other grounds (1978, CA8 Mo) *575 F2d 652.*

Court denies creditor's motion for partial summary judgment in rescission action despite debtor's failure to tender amount of loan as condition to rescission in view of factual question whether debtor enjoyed benefit of loan proceeds. *City Consumer Servs. v Horne (1984, DC Utah) 578 F Supp 283.*

Claim for rescission of loan under *15 USCS § 1635* will not be denied summarily, where borrower asserts failure to include as part of finance charge payment of $ 1,273.27 for purchase of credit life insurance, because genuine issues of fact remain as to whether (1) borrower willingly chose to purchase insurance, and (2) term of loan was properly disclosed. *Williams v Central Money Co. (1997, DC Dist Col) 974 F Supp 22,* motions ruled upon (1997, DC Dist Col) *974 F Supp 17.*

Homeowners' claim that they did not receive two copies of right to rescind mortgage loan agreement, together with lender's evidence that standard procedure was provided, precluded summary judgment on homeowners' claim that they were entitled to rescind loan agreement under *15 USCS § 1635(f)*. *Hanlin v Ohio Builders & Remodelers, Inc. (2002, SD Ohio) 212 F Supp 2d 752.*

In homeowners' suit alleging that mortgage assignee was liable for rescission of original lender's loans and statutory damages, mortgage assignee was not entitled to summary judgment, because material facts regarding delivery of two copies of Notice of Right to Cancel Form were in dispute. *Cooper v First Gov't Mortg. & Investors Corp. (2002, DC Dist Col) 238 F Supp 2d 50.*

Because bank did not wrongfully refuse to rescind plaintiffs' loan, plaintiffs' claim under *15 USCS § 1635* for failing to clearly and conspicuously inform them of their right to cancel, failed; therefore, bank was entitled to summary judgment on issue. *Barrett v Bank One, N.A. (2007, ED Ky) 511 F Supp 2d 836.*

Where mortgage assignee claimed that borrowers were not entitled to rescission under Federal Truth in Lending Act, *15 USCS §§ 1601-1693r*, because assignee no longer held that mortgage, summary judgment was not appropriate because borrowers had at least established issue of material fact as to whether assignee was actual lender instead of only current loan servicer. *White v Homefield Fin., Inc. (2008, WD Wash) 545 F Supp 2d 1159.*

Where mortgage borrowers sought rescission under Federal Truth in Lending Act, *15 USCS §§ 1601-1693r*, on basis that they were given copies of notice of right to cancel form that incorrectly stated date of consummation of loan transaction, and assignee of mortgage claimed that forms in loan file showed handwritten corrections to date of consummation, summary judgment was not appropriate because there was material issue of fact as to whether violation that borrowers were claiming would have been apparent to reasonable person on face of documents in loan file. *White v Homefield Fin., Inc. (2008, WD Wash) 545 F Supp 2d 1159.*

Defendants were entitled to summary judgment in plaintiff's action under Truth in Lending Act, *15 USCS §§ 1601* et seq., wherein he sought rescission of his home loan and damages, as plaintiff failed to show that he could meet his tender obligation if rescission were ordered pursuant to *15 USCS § 1635(a)*. *Haas v Falmouth Fin., LLC (2011, ED Va) 783 F Supp 2d 801.*

Mortgagors' claim for damages under Truth in Lending Act, arising from mortgage assignee's alleged failure to honor their notice of rescission in refinancing transaction, was not resolved by summary judgment for assignee because there were genuine issues of material fact as to whether requisite notices regarding cancellation were delivered. *Abubo v Bank of N.Y. Mellon (2013, DC Hawaii) 977 F Supp 2d 1037.*

Bankruptcy court concludes that creditor and debtor entered into only one transaction for purposes of "regularity" requirement and it followed that creditor was not "creditor" under *15 USCS § 1635*; creditor was entitled to summary judgment, pursuant to *Fed. R. Civ. P. 56*; *Fed. R. Bankr. P. 7056*, as matter of law as to debtor's first and second claims for relief. *Sticka v Geller (In re Stratton) (2003, BC DC Or) 299 BR 616.*

In action seeking foreclosure of mortgage because of homeowner's failure to make required payments, there was sufficient conflicting evidence as to circumstances involving notice of right to rescind (under *15 USCS § 1635*), so as to warrant denial of motion for summary judgment, where although homeowner claimed that

he had never received notice and that signature contained on notice was forgery, corporation's depositions showed that notices were always mailed to customers and that notice had been mailed in present case. *Gillis v Fisher Hardware Co. (1974, Fla App D1) 289 So 2d 451.*

Unpublished Opinions

Unpublished: Rescission was not proper under *15 USCS § 1635* where (1) bank objected to service of process in its answer and thus did not waive its objections to insufficient service of process and jurisdiction, (2) consumers were estopped from seeking judicial enforcement of alleged cancellation of loan transaction where, at their behest, court of competent jurisdiction necessarily found that subject transaction had not been rescinded and was in full force and effect, and (3) even if fully executed notice of cancellation had been delivered as alleged, delivery was defective and could not have served as basis for judicial enforcement. *Brown v Chevy Chase Bank, FSB (2005, CA11 Ga) 137 Fed Appx 278,* cert den *(2005) 546 US 1042, 126 S Ct 754, 163 L Ed 2d 587.*

46. Election of remedies

Remedy of rescission under *15 USCS § 1635(a)* is not inconsistent with recovery under *15 USCS § 1640*, and it is unnecessary for litigant to make election of remedies so as to be limited to remedies under either § 1635 or § 1640; request for relief under both sections is addressed to court's sense of equity and may properly be denied in appropriate cases; and it was not abuse of equitable discretion to grant relief under both sections where creditor had failed to make required disclosures of credit terms. *Eby v Reb Realty (1974, CA9 Ariz) 495 F2d 646, 28 ALR Fed 539.*

Although plaintiff may seek both damages under *15 USCS § 1640* and rescission under 15 USCS § 1630 and need not elect between these remedies, court which grants both remedies may condition granting of rescission on plaintiff's compliance with court's order to tender to defendant lender principal of loan which plaintiff had received, and where District Court apparently was unaware of its equitable power to impose such condition, judgment in favor of plaintiff would be vacated and case would be remanded by Court of Appeals, so that District Court could consider propriety of conditioning grant of rescission upon plaintiff's repayment. *Palmer v Wilson (1974, CA9 Cal) 502 F2d 860* (criticized in *Quenzer v Advanta Mortg. Corp. (In re Quenzer) (2001, BC DC Kan) 266 BR 760).*

Where notice provisions of Truth In Lending Act are violated, relief consisting of both rescission under *15 USCS § 1635* and monetary award under *15 USCS §*

1640 is appropriate. Sellers v Wollman (1975, CA5 La) 510 F2d 119, 29 ALR Fed 899.

Remedies provided by 15 USCS §§ 1635, 1640 are not mutually exclusive and consumer may be entitled to both rescission pursuant to § 1635 and damages pursuant to § 1640. Gerasta v Hibernia Nat'l Bank (1978, CA5 La) 575 F2d 580 (superseded by statute on other grounds as stated in Williams v Homestake Mortgage Co. (1992, CA11 Fla) 968 F2d 1137, 6 FLW Fed C 975).

Since double damages under 15 USCS § 1640 and rescission pursuant to 15 USCS § 1635(b) are not mutually exclusive remedies, obligors did not foreclose their right to double damages by seeking rescission as each remedy serves different purpose. Mitchell v Security Inv. Corp. (1979, SD Fla) 464 F Supp 650.

Several courts, including Fourth Circuit, had held that Congress intended for plaintiffs to be able to avail themselves of both remedy of rescission and civil damages when alleging violations of Truth in Lending Act's disclosure requirements in 15 USCS § 1635; thus, defendant mortgage note assignee's argument, that plaintiff borrower's complaint had to be dismissed because she failed to make necessary election of remedies inasmuch as she alleged right to rescind transaction and claim for damages arising from non-disclosure violation, failed. Cheche v Wittstat Title & Escrow Co., LLC (2010, ED Va) 723 F Supp 2d 851.

47. Attorney's fees and costs

Attorney's fees would not be awarded to debtor suing for rescission under § 125 since § 125 makes no provision for award of attorney's fee and attorney's fees are not ordinarily recoverable by prevailing litigant in federal litigation in absence of statutory authorization. Rachbach v Cogswell (1976, CA10 Colo) 547 F2d 502 (superseded by statute on other grounds as stated in Quenzer v Advanta Mortg. Corp. (In re Quenzer) (2001, BC DC Kan) 274 BR 899) and (criticized in Dawson v Thomas (In re Dawson) (2008, BC DC Dist Col) 411 BR 1).

Attorneys' fees are not ordinarily recoverable by prevailing litigant in federal litigation in absence of statutory authorization, and 15 USCS § 1635 contains no provision for award of attorneys' fees. Rachbach v Cogswell (1976, CA10 Colo) 547 F2d 502 (superseded by statute on other grounds as stated in Quenzer v Advanta Mortg. Corp. (In re Quenzer) (2001, BC DC Kan) 274 BR 899) and (criticized in Dawson v Thomas (In re Dawson) (2008, BC DC Dist Col) 411 BR 1).

Because Truth in Lending Act, *15 USCS §§ 1601* et seq., entitles borrower to know identity of noteholder for purpose of ensuring that borrower can obtain remedy under *15 USCS § 1635* against current owner of his loan obligation, noteholder-identity issue litigated with respect to § 1635 claims is inextricably intermingled with successful *15 USCS § 1641(f)(2)* claim for purposes of fee award. *Bradford v HSBC Mortg. Corp. (2012, ED Va) 859 F Supp 2d 783.*

Debtor's failure to abide by requirements of *15 USCS § 1635(a)* renders him liable to homeowner under *15 USCS § 1640(a)(2)(A)(i)* in amount equal to twice finance charge imposed under contract and under *15 USCS § 1640(a)(3)* to reasonable attorney fee. *In re Snyder (1982, BC ED Tenn) 22 BR 29.*

Debtor was entitled to costs and attorney's fees in truth in lending action, pursuant to *15 USCS § 1640(a)(3)* where court determined that debtor had right of rescission under *15 USCS § 1635*. *Webster v Centex Home Equity Corp. (In re Webster) (2003, BC WD Okla) 300 BR 787* (criticized in *Stanley v Household Fin. Corp. III (In re Stanley) (2004, BC DC Kan) 315 BR 602).*

Where creditor, as assignee of debtors' mortgage, was not liable for damages for either disclosure violation under Truth in Lending Act, *15 USCS §§ 1601* et seq., or subsequent failure to perform its statutory duties after receiving notice of rescission, because disclosure violations were not apparent on face of disclosure statement, creditor was nonetheless liable for payment of debtors' attorney's fees and costs for their successful vindication of their right to rescind mortgage transaction. *Alparone v Ocwen Loan Serv. (In re Alparone) (2012, BC DC NJ) 471 BR 104.*

Borrowers were not entitled to recover attorneys' fees as result of creditor's violation of *15 USCS § 1635* by failing to adequately disclose right of rescission where creditor readily admitted obligations under Truth in Lending Act and withheld foreclosure for several months pending borrowers' futile efforts to obtain financing to repay principal, borrowers' counterclaim was brought more than one year after transaction, and borrowers were not successful in their counteraction against creditor. *Nietert v Citizens Bank & Trust Co. (1978) 263 Ark 251, 565 SW2d 4,* cert den *(1978) 439 US 965, 58 L Ed 2d 424, 99 S Ct 453.*

48. Miscellaneous

Requirements of res judicata under P.R. Laws Ann. tit. 31, § 3343 were satisfied because state-court judgment against individual was final and unappealable; state and federal actions arose out of common nucleus of operative fact and pertained to common subject matter, and parties in federal action were, for all practical

purposes, identical to parties in state action; therefore, prior judgment precluded individual from asserting his present rescission claim under federal Truth in Lending Act against companies. *R.G. Fin. Corp. v Vergara-Nunez (2006, CA1 Puerto Rico) 446 F3d 178.*

Court rejected individual's claim that window for asserting his rescission right under Truth in Lending Act (TILA) remained open because events other than expiration of three-year period or sale of encumbered property could cut off debtor's right of rescission; therefore, because ordinary preclusion principles continued to operate in TILA milieu and those principles could hasten demise of debtor's TILA-based right of rescission, earlier foreclosure judgment extinguished individual's TILA right of rescission. *R.G. Fin. Corp. v Vergara-Nunez (2006, CA1 Puerto Rico) 446 F3d 178.*

Seventh Circuit rejected defendants' argument that, even if mortgagee had violated its disclosure obligations under *15 USCS § 1635(a)*, rescission of plaintiff's mortgage loan was inappropriate and/or impossible remedy because loan had already been paid in full, because (1) remedies provided for in *15 USCS §§ 1635*, *1640*, remained available to plaintiff, even though loan had been paid off, (2) plaintiff's right to rescission under *15 USCS § 1635* encompassed right to return to status quo that existed before loan, which meant unwinding transaction in its entirety and returning plaintiff to position that she occupied before she accepted mortgage loan, and (3) not only did parties have to return everything they received from each other on mortgage closing date, but defendants also had to release whatever security interest they might have asserted in mortgagee's property, they had to reimburse plaintiff for interest that she paid while loan was outstanding, and defendants might also be liable for statutory damages and attorneys' fees pursuant to *15 USCS § 1640(a)(2)(A)(iii)*, (a)(3). *Handy v Anchor Mortg. Corp. (2006, CA7 Ill) 464 F3d 760* (criticized in *Santos-Rodriguez v Doral Mortg. Corp. (2007, CA1 Puerto Rico) 485 F3d 12)* and (criticized in *Plascencia v Lending 1st Mortg. (2008, ND Cal) 583 F Supp 2d 1090).*

TILA is primarily disclosure statute that does not require consumer to suffer actual prejudice to bring action, and whether consumer is entitled to rescind transaction depends on whether she received clear notice of her right to rescission under *15 USCS § 1635*, not whether she actually was prejudiced by any ambiguity in lending agreement. *Williams v Empire Funding Corp. (2000, ED Pa) 109 F Supp 2d 352.*

If after 20 days set forth in *12 C.F.R. § 226.23* expires, creditor indicates that it will not comply with *15 USCS § 1635*, consumer has right to sue then and there even

if creditor may have begun process of rescinding loan transaction. *Velazquez v HomeAmerican Credit, Inc. (2003, ND Ill) 254 F Supp 2d 1043.*

Where mortgagors notified business that they were rescinding loan due to alleged violations of Truth In Lending Act (TILA), but default had been entered against mortgagors in foreclosure action, businesses were entitled to judgment on pleadings and, in turn, declaratory judgment that all issues addressed in foreclosure action were res judicata and that, because mortgagors did not raise TILA claims as compulsory counterclaims, P.R. R. Civ. P. 11.1, in foreclosure action, mortgagors were collaterally estopped from pursuing any TILA claims arising from loan transaction. *R-G Fin. Corp. v Vergara-Nunez (2005, DC Puerto Rico) 381 F Supp 2d 1,* affd (2006, CA1 Puerto Rico) *446 F3d 178.*

Bankruptcy court judge was aware of debtor's contentions and decided that, because debtor's rescission claim under Truth in Lending Act, *15 USCS §§ 1601* et seq., was disputed and had not been resolved in his favor, mortgage lien remained effective and nothing warranted reconsideration of order granting relief; because that decision was not clearly erroneous as matter of law and did not constitute abuse of discretion, company's motion to dismiss was allowed and debtor's appeal of denial of his motion for reconsideration was dismissed. *Augustin v Chase Home Fin., LLC (2008, DC Mass) 383 BR 359.*

Lender's disclosure for purposes of Truth in Lending Act, *15 USCS §§ 1601*-*1666j*, which borrower had signed, showed annual percentage rate and monthly payments increasing annually for loan's life, three-day right to cancel, and good faith estimate; thus, record suggested that borrower's TILA violation claims were dubious at best, she failed to demonstrate likelihood of success on merits of her claims, and court agreed with lender and holder of deed of trust that action and motion for preliminary injunctive relief were transparent attempt to stall foreclosure. *Alcaraz v Wachovia Mortg. FSB (2009, ED Cal) 592 F Supp 2d 1296.*

District court rejected contention that homeowner's complaint seeking rescission under *15 USCS § 1635(b)* was deficient for failure to plead ability to tender loan proceeds because under applicable case law, district court lacked discretion at pleading stage to require Truth in Lending Act, *15 USCS §§ 1601* et seq., plaintiffs to allege present ability to tender. *Botelho v U.S. Bank, N.A. (2010, ND Cal) 692 F Supp 2d 1174.*

Pursuant to Rooker-Feldman doctrine, court lacked jurisdiction over plaintiff's claim for rescission under Truth in Lending Act; rescission claim would negate default judgment in state court foreclosure action and render it unenforceable;

thus, rescission claim was inextricably intertwined with state court adjudication. *Perkins v Beltway Capital, LLC (2011, ED Pa) 773 F Supp 2d 553.*

Borrowers were allowed to amend their claim, alleging that lender's use of H-8 form rather than H-9 form, did not provide clear and conspicuous notice of effects of rescission where their right to rescind was limited by refinancing exception of *15 USCS § 1635(e)(2)*, as nature of their claim was clear from their complaint, and allowing them to amend in order to amplify their claim was deemed appropriate. *Karakus v Wells Fargo Bank, N.A. (2013, ED NY) 941 F Supp 2d 318.*

Where mortgage creditor failed to object to confirmation of Chapter 13 plan that included provision declaring mortgage transaction rescinded by reason of Truth in Lending Act violations, confirmation of plan had res judicata effect and entitled debtors to partial summary judgment that mortgage was rescinded and void; rescission provision served as notice to creditor that debtors were exercising their right to rescind. *Bilal v Household Fin. Corp. (In re Bilal) (2003, BC DC Kan) 296 BR 828.*

"Remedy-based" focus of Rooker-Feldman doctrine compelled conclusion that court lacked jurisdiction over debtors' request for judicial enforcement of their rescission of mortgage, even though they first exercised right to rescind after entry of state court foreclosure judgment; regardless when alleged right of rescission demand was exercised, remedy requested by debtors in federal court included invalidation of mortgage which was subject of state court foreclosure judgment, that judgment being "dependent upon existence of valid mortgage." *Stuart v Decision One Mortg. Co., LLC (In re Stuart) (2007, BC ED Pa) 367 BR 541.*

Entry of money judgment for civil penalty under Truth in Lending Act (TILA) was not "inextricably intertwined" with state foreclosure judgment because creditor's rights under foreclosure judgment (i.e., mortgage's validity and right to foreclose) were not impaired if money judgment was entered against creditor for violating TILA; viewed in its proper context, debtors' affirmative TILA damages claim for failure to rescind was relatively insignificant compared to other TILA rescission remedies (and as to which court lacked jurisdiction), and in interest of justice, and in interest of comity with state courts, court abstained from hearing debtors' claim for TILA damages. *Stuart v Decision One Mortg. Co., LLC (In re Stuart) (2007, BC ED Pa) 367 BR 541.*

When mortgagors asserted right to rescission for alleged Truth in Lending Act (TILA), *15 USCS §§ 1601* et seq., violations, after default foreclosure judgment was entered against mortgagors, within three-year period provided by *15 USCS §*

1635(f), Hawai'i res judicata principles barred assertion of this claim because, (1) under Hawai'i law, there was final judgment on merits when time to appeal foreclosure judgment expired, as foreclosure had legal effect of terminating mortgagors' interest in subject property, constituting final judgment, and res judicata principles applied to default judgments, (2) both mortgagors and mortgagee were parties to prior foreclosure proceeding, and (3) TILA rescission claim would have been properly litigated in foreclosure action as counterclaim or affirmative defense. *Eastern Sav. Bank, FSB v Esteban (2013) 129 Hawaii 154, 296 P3d 1062.*

Unpublished Opinions

Unpublished: District court properly found that, even assuming plaintiffs' testimony that they did not receive two copies of "Notice of Right to Cancel" at closing was credible, they would not have been able to rescind mortgage obligation because they were unable to return money defendant mortgage company advanced to them in reliance on their performance under contract. *Jobe v Argent Mortg. Co., LLC (2010, CA3 Pa) 373 Fed Appx 260.*

Unpublished: In case in which two homeowners appealed judgment in favor of two mortgage companies on their claim of violation of Truth in Lending Act (TILA), one owner admitted that mortgage companies complied with their obligation under TILA to deliver to them statement containing material disclosures about their loan. *Hixson v French (2013, CA11 Fla) 2013 US App LEXIS 7935.*

Research References & Practice Aids

Related Statutes & Rules:

This section is referred to in *15 USCS §§ 1605*, *1610*, *1631*, *1639*, *1640*, *1641*, *1649*.

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17 Am Jur 2d, Consumer and Borrower Protection §§ 113-120, *122-125*, *127*, *134*.

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1 Debtor-Creditor Law (Matthew Bender), ch 2, High Rate Home Equity Loan Protections §§ 2.03, 2.05.

1A Debtor-Creditor Law (Matthew Bender), ch 13, Foreclosure Defense §§ 13.07, 13.18.

3 Debtor-Creditor Law (Matthew Bender), ch 26, Confession of Judgment § 26.03.

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8 Kintner, Federal Antitrust Law (Matthew Bender), ch 58, Direct Sales and Mail Order Marketing § 58.7.

8 Kintner, Federal Antitrust Law (Matthew Bender), ch 62, Federal Trade Commission Regulation of Credit and Collection Practices §§ 62.1, 62.12-62.14.

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Right to Private Action Under State Consumer Protection Act--Preconditions to Action. *117 ALR5th 155.*

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5 Banking Law (Matthew Bender), ch 118, Holder in Due Course: Defenses § 118.04.

7 Banking Law (Matthew Bender), ch 152, Truth in Lending Act §§ 152.02-152.04, 152.06, 152.08.

10 Banking Law (Matthew Bender), ch 174, Consummation §§ 174.07, 174.15.

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