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*Jesinoski v. Countrywide Home Loans, Inc.*, No. 13-684, (described in the April 28, 2014, Docket Report)

The Truth in Lending Act (TILA) gives certain borrowers an unconditional right to rescind a home loan “until midnight of the third business day following the consummation of the transaction or the delivery of the information and rescission forms” required by the TILA. 15 U.S.C. § 1635(a). The borrower exercises this right to rescind by “notifying the creditor ... of his intention to do so.” *Id.* After the three-day period expires, the borrower may rescind the loan only if the creditor has not delivered the required “information and rescission forms.” *Id.* And in all events, the borrower’s right to rescind “shall expire three years after the date of consummation of the transaction.” 15 U.S.C. § 1635(f). Today, the Supreme Court unanimously held that borrowers exercising the right to rescind under § 1635(a) need only provide written notice to their lender within the three-year period, and need not file suit within that period.

The Jesinoskis sent Countrywide written notice of rescission of their home loan three years to the day after consummating the loan but did not file suit to rescind the loan until one year later. The Eighth Circuit held that the suit was untimely because it was not filed within three years after the date of the loan transaction. In a unanimous opinion by Justice Scalia, the Supreme Court reversed. The Court held that “Section 1635(a) explains in unequivocal terms how the right to rescind shall be exercised: It provides that a borrower ‘shall have the right to rescind ... *by notifying the creditor, in accordance with the regulations of the Board, of his intention to do so.*’”

The Court rejected Countrywide’s argument that suit was barred by § 1635(f) (the three-year limitation provision), because that provision “tells us *when* the right to rescind must be exercised” and “says nothing about *how* that right is exercised.” The Court further rejected Countrywide’s reliance on *Beach v. Ocwen Federal Bank*, 523 U.S. 410 (1998), as that case “concluded only that there was ‘no federal right to rescind, defensively or otherwise, after the 3-year period of § 1635(f) has run,’ not that there was no rescission until a suit is filed.”

The decision in *Jesinoski* is of obvious importance to lenders who provide residential loans to consumers. It represents a significant change in law, as the majority of courts of appeals had previously held that the TILA did require suit, not just notice of rescission, within 3 years of consummation.

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