



Recent Developments Regarding the Truth in Lending Act's Transfer Notice to Mortgage Borrower

August 28, 2013

The Truth in Lending Act was amended in 2009 to require the new owner or assignee of a mortgage loan secured by a consumer's principal dwelling to send a written notice to the borrower within 30 days after the mortgage loan is sold or otherwise transferred or assigned. Recent cases have interpreted this section to apply when ownership of a mortgage loan is transferred as a result of a merger, but not when a creditor changes its name or when only servicing rights are sold. In addition, a case has clarified what the statute of limitations is for a claim under this provision.

Pursuant to Section 131(g)(1) of the Truth in Lending Act, not later than 30 days after the date on which a mortgage loan secured by a consumer's principal dwelling is sold or otherwise transferred or assigned to a third party, the creditor that is the new owner or assignee of the mortgage loan must notify the borrower in writing of such transfer. The notice must include:

- A. the identity, address, telephone number of the new creditor;
- B. the date of the transfer;
- C. how to reach an agent or party having authority to act on behalf of the new creditor;
- D. the location of the place where transfer of ownership of the debt is recorded; and
- E. any other relevant information regarding the new creditor.

The specific notice requirement is further expanded on in Section 1026.39 of Regulation Z. If a creditor fails to comply with the notification requirement, the borrower has one year from the date of the occurrence of the violation to bring an action to recover damages.

In a recent Federal District Court case from Tennessee, the judge ruled that when a creditor changes its name, a notification is not required since ownership of a loan was not transferred to a new entity. However, the judge noted that a merger between two institutions could obligate the new entity to send a transfer of ownership notice. The judge based this conclusion on the provisions of Section 1026.39 of Regulation Z and the commentary to that section. Accordingly, when a creditor merges with another entity or otherwise engages in a corporate reorganization, an analysis should be done whether a notice of transfer should be sent to applicable mortgage borrowers.

In another recent case, a Federal District Court judge in Florida confirmed that an entity to whom servicing of a mortgage loan is transferred would not have to notify the borrower of a transfer of the servicing rights if ownership of the debt is not transferred. The court also addressed the statute of limitations for bringing an action. It held that a violation of section 131(g)(1) occurs not at the time of the transfer to the new owner, but 30 days after the transfer if the new owner fails to notify the borrower of the transfer. Therefore, a borrower's action for damages would be timely if brought within one year and 30 days of the transfer.

Creditors should take these recent developments into account when determining whether a notice must be issued in connection with the transfer of a mortgage loan secured by a consumer's principal dwelling. If you have any questions about this or any other matter relating to the Truth in Lending Act, please feel free to contact Joseph D. Simon at 516-357-3710 or via email at jSimon@cullenanddykman.com, or Elizabeth A. Murphy at 516-296-9154 or via email at emurphy@cullenanddykman.com.

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