# Can You Rescind Your Mortgage Under Federal Law?

By Frederic M. Douglas; freddouglas.wordpress.com

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*Frederic M. Douglas (fdouglas@cox.net) is a solo practitioner specializing in litigation involving intellectual property (patents, trademarks, trade secrets, copyright, and more).*

Often homeowners look for technicalities in their lending documents to seek defending themselves against foreclosure. Often, such efforts are unsuccessful, in part, because of the complicate procedures and the uneven playing field when fighting a bank. Still, a little knowledge of the Truth In Lending Act can help avoid mistakes and provide a better understanding of a homeowner's rights.

The Truth In Lending Act (TILA) is a federal consumer protection statute designed to provide informed use of credit and to make sure that consumers are clear on the loan terms. For example, the TILA requires that the original lender for the home make certain disclosures. These disclosures include informing the homebuyer of a three-day right to cancel the loan agreement. If the lender fails to make the proper disclosure, the lender may have violated the TILA.

TILA allows rescission (cancellation) of predatory loans in some situations. For any reason, the homebuyer can cancel the loan agreement up to three days after signing. If the lender fails to provide the required disclosures at the time of signing, then the homeowner may rescind the agreement up to three years after signing. Filing bankruptcy may extend the three-year rescission deadline.

The homeowner must formally provide the lender written notice of an intent to rescind the loan. However, the notice does not work to automatically rescind your loan agreement. If the bank does not rescind the agreement as requested (which is very likely), the homeowner still must sue the bank to get the agreement rescinded by a court. Such a lawsuit must also be filed within three years from the document signing date. Thus, one cannot expect to send the written notice to the bank and sue the bank on the last day of the three-year period.

Another concern is that a suit for money damages for a lender's violation of TILA must be filed within one year of the violation (e.g., when signing the loan documents).

The Real Estate Settlement Procedures Act (RESPA) is another federal law to regulate lending. RESPA is designed to ensure that the borrower participates in fair settlement proceedings through early disclosure of settlement costs. RESPA also acts to prevent "kickbacks" and "illegal referral fees" that increase borrowing costs to the consumer.

Unfortunately, in California resorting to such mortgage consumer protection laws is nearly impossible as California courts usually require a homeowner to pay back the amount borrowed, and almost always at least require payment of all past due amounts to assert your rights in court. It is little surprise that most homeowners that are current in their mortgage payments are not very motivated to assert their rights to tear up the mortgage agreement.