A working knowledge of the Truth in Lending Act (TILA) can help attorneys evaluating clients’ prospective credit transactions. A TILA analysis will reveal whether a transaction is a sound value, a Christmas tree loan, loaded with expensive and unnecessary charges, or a potential disaster for the borrower, such as a loan with an unaffordable balloon payment or an unmanageable variable rate feature.

Unfortunately, most practitioners do not have the chance to engage in preventive legal care. Instead they see the client when trouble arises—a problem with the goods or services purchased on credit, or an unexpected financial crisis that led to default. In that case, an understanding of the Truth in Lending Act serves a dual purpose for the practitioner. If there are violations of the Act, the consumer is entitled to significant remedies, including, in some transactions, the right of rescission. Further, the required TILA disclosures can help a practitioner parse a transaction to see if there are other viable claims.

A violation of specified provisions of the Act gives the consumer the right to:

- Collect statutory damages for certain violations (calculated in many cases as double the finance charge), without having to prove actual damages;
- Collect actual damages;
- Recover costs and reasonable attorney fees; and
- File class actions.

If the transaction involves non-purchase money home equity credit, the Act provides an important remedy for specified violations. A consumer may have up to three years to cancel, or rescind, a credit transaction secured by his or her home. If there are valid grounds for rescission, the mortgage can be rendered void and the creditor is not entitled to collect finance charges (including those already accrued) or loan closing costs. This remedy is particularly important in cases involving home equity fraud or overreaching, when the client is faced with the threat of foreclosure. The right of rescission can be a powerful and fundamental tool for borrowers who face the loss of their home, and given the tremendous role of home equity lending in the market, it is the rare consumer lawyer who will not see some of these cases. Attorneys representing consumers in such transactions should not limit themselves to TILA, but they should always evaluate the case for the possibility of Truth in Lending remedies, including rescission.

Yet a different remedy is available if a creditor violates the special restrictions and protections mandated by the Home Ownership and Equity Protection Act of 1994 (HOEPA) for certain high-cost home loans or the newer requirements imposed by the Dodd-Frank Wall Street Reform and Consumer Protection Act (hereinafter the Dodd-Frank Act) regarding loan affordability and mortgage originator compensation. Consumers can seek enhanced damages of all finance charges and fees paid by the consumer, in addition to the regular remedies of actual damages, statutory damages, and attorney fees. HOEPA also casts broader liability on assignees. For violations of the loan originator compensation rules by the originator, a consumer can recover the greater of actual damages or three times originator compensation.

TILA disclosures also provide the attorney with the factual information necessary to evaluate the transaction to see if there are claims under other statutes—some of which may even offer greater remedies—such as state unfair and deceptive acts and practices statutes, or usury or similar regulatory laws. The TILA disclosures may enable the practitioner to determine if the creditor has imposed charges greater than are allowable under state law: charging $10 for filing fees when the state law maximum is $5; charging more for credit insurance than is authorized by the state; or failing to make required rebates of unearned charges in a refinancing. A practitioner who can use the Truth in Lending Act to analyze the mathematics of a credit transaction, may then be able to use state common law or statutory claims to challenge creditor overreaching or fraud.

To competently evaluate a client’s credit transaction, a practitioner must:

- Make sure the consumer received all documents required by TILA, i.e., the TILA disclosure statement, including any required early disclosures, the proper number of notices of the right to cancel if applicable, the HOEPA advance-look disclosure in the case of a HOEPA loan, the special variable rate disclosures, etc.;
- Obtain all the relevant documents, including both the early and the final disclosure statements, the underlying contract and security agreement or mortgage, and documentation of the itemization of the amount financed and disbursements;
- Break down the transaction mathematically, identifying all the components of the transaction, and verifying the accuracy of the math;
- Evaluate each component to see that it is properly categorized, properly calculated, properly imposed and properly
disclosed under both the Truth in Lending Act and state credit regulation or usury laws;
• Verify that the disclosed terms accurately reflect the terms of the contract;
• Check to see if the transaction is a non-purchase-money mortgage, and, of critical importance, check to see if it is a
rescindable transaction;
• If it is a closed-end mortgage, determine compliance with the Dodd-Frank Act rules (or, if earlier rules apply to the loan,
the Federal Reserve Board’s (FRB) previous regulations) regarding loan affordability, income verification, and loan
steering, including mortgage originator compensation limitations, as well as rules regarding the TILA-RESPA
integrated disclosure regime, credit insurance, prepayment penalties, arbitration clauses, and servicing;
• If it is a closed-end mortgage secured by the consumer’s principal dwelling, check for compliance with the applicable
appraisal and servicing requirements;
• Determine whether it is a higher-priced or higher-risk mortgage loan and thus subject to special rules regarding escrow or
appraisals;
• Determine whether it is a high-cost home loan regulated by HOEPA and, if it is, whether the creditor complied with all of
HOEPA’s requirements, noting that prior to the effective date of the Dodd-Frank Act only non-purchase-money
mortgages are covered;
• If it is a credit card transaction, review for compliance with disclosure rules under the Credit Card Accountability,
Responsibility, and Disclosure (CARD) Act of 2009 (hereinafter the Credit CARD Act),\(^{24}\)
• Be prepared to do further investigation and discovery to review compliance with applicable substantive credit
protections, including those under the FRB’s 2008 rulemaking, the Dodd-Frank Act, or the Credit CARD Act.\(^{25}\)

Having done all that, the practitioner may be able to use TILA to prevent foreclosure on the client’s family home and even
may find that the creditor actually owes the borrower money, rather than the other way around. Not a bad day’s work.

Footnotes

13 \(^{13}\) See generally Chs. 3 [1] and § 2, infra.

14 \(^{14}\) See generally Chs. 5–9 [2], infra.

15 \(^{15}\) 15 U.S.C. §§ 1640, 1641. See generally Ch. 11 [3], infra.

16 \(^{16}\) This includes credit secured by a borrower’s principal residence other than credit used to finance the acquisition or
initial construction of that residence. (There are some limited exceptions.) See 15 U.S.C. § 1635; Reg. Z, 12 C.F.R. §§
1026.15 (open-end credit), 1026.23 (closed-end credit); § 10.2 [4], infra.

17 \(^{17}\) See generally Ch. 10 [5], infra.

18 \(^{18}\) Prior to the effective date of the Dodd-Frank amendments, HOEPA was limited to non-purchase-money loans. See
§ 9.6.1 [6], infra.

19 \(^{19}\) 15 U.S.C. § 1640(a)(4). See Ch. 9 [7], infra.


1.1.2 The Role of Truth in Lending Act in Consumer Advocacy


See Chs. 7 [12], 9 [7], infra.

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