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1 of 8 DOCUMENTS

**LARRY D. JESINOSKI, et ux., Petitioners v. COUNTRYWIDE HOME LOANS, INC., et al.**

**No. 13-684**

**SUPREME COURT OF THE UNITED STATES**

**135 S. Ct. 790; 190 L. Ed. 2d 650; 2015 U.S. LEXIS 607; 83 U.S.L.W. 4039; 25 Fla. L. Weekly Fed. S 29**

**November 4, 2014, Argued  
January 13, 2015, Decided**

**NOTICE:**

The LEXIS pagination of this document is subject to change pending release of the final published version.

**PRIOR HISTORY:** [\*\*\*1] ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Jesinoski v. Countrywide Home Loans, Inc., 729 F.3d 1092, 2013 U.S. App. LEXIS 18757 (8th Cir. Minn., 2013)

**DISPOSITION:** Reversed and remanded.

**CASE SUMMARY:**

**OVERVIEW:** HOLDINGS: [1]-The language of 15 U.S.C.S. § 1635(a) left no doubt that rescission was effected when a borrower notified the creditor of his intention to rescind; [2]-So long as the borrower notified within three years after the transaction was consummated, his rescission under the Truth in Lending Act was timely, and there was no requirement that a borrower sue within three years; [3]-The borrowers' complaint was improperly dismissed as untimely where they had mailed the lenders a 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 the right to rescind under the Act.

**OUTCOME:** Judgment reversed; case remanded. Unanimous Decision.

**CORE TERMS:** rescission, borrower, right to rescind, rescind, lender, consummation, written notice, lawsuit-, consummated, common-law, consumer, Lending Act, judicial action, disclosure, notifying, effected, suffice, notifies, filed suit, condition precedent, disclosure requirements, required disclosures, implementing, declaration, unequivocal, foreclosure, purporting, borrowing, mortgage, replied

**LexisNexis(R) Headnotes**

***Banking Law > Consumer Protection > Truth in Lending > General Overview***

[HN1] The Truth in Lending Act gives borrowers the right to rescind certain loans for up to three years after the transaction is consummated.

***Banking Law > Consumer Protection > Truth in Lending > General Overview***

135 S. Ct. 790, \*; 190 L. Ed. 2d 650, \*\*;  
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[HN2] Congress passed the Truth in Lending Act to help consumers avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing. 15 U.S.C.S. § 1601(a). To this end, the Act grants borrowers the right to rescind a loan until midnight of the third business day following the consummation of the transaction or the delivery of the disclosures required by the Act, whichever is later, by notifying the creditor, in accordance with regulations of the Federal Reserve Board, of his intention to do so. 15 U.S.C.S. § 1635(a). This regime grants borrowers an unconditional right to rescind for three days, after which they may rescind only if the lender failed to satisfy the Act's disclosure requirements. But this conditional right to rescind does not last forever. Even if a lender never makes the required disclosures, the right of rescission shall expire three years after the date of consummation of the transaction or upon the sale of the property, whichever comes first.

***Banking Law > Consumer Protection > Truth in Lending > General Overview***

[HN3] 15 U.S.C.S. § 1635(a) explains in unequivocal terms how the right to rescind is to be exercised: It provides that a borrower shall have the right to rescind by notifying the creditor, in accordance with regulations of the Federal Reserve Board, of his intention to do so. The language leaves no doubt that rescission is effected when the borrower notifies the creditor of his intention to rescind. It follows that, so long as the borrower notifies within three years after the transaction is consummated, his rescission is timely. The statute does not also require him to sue within three years.

***Banking Law > Consumer Protection > Truth in Lending > General Overview***

[HN4] Although 15 U.S.C.S. § 1635(f) tells courts when the right to rescind must be exercised, it says nothing about how that right is exercised. The observation in judicial precedent that § 1635(f) governs the life of the underlying right is beside the point. That case concerned a borrower's attempt to rescind in the course of a foreclosure proceeding initiated six years after the loan's consummation. That precedent concludes only that there is no federal right to rescind, defensively or otherwise, after the three-year period of § 1635(f) has run, not that there is no rescission until a suit is filed.

***Banking Law > Consumer Protection > Truth in Lending > General Overview***

[HN5] 15 U.S.C.S. § 1635(g) states merely that, 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 15 U.S.C.S. § 1640 for violations of this subchapter not relating to the right to rescind.

***Banking Law > Consumer Protection > Truth in Lending > General Overview***

[HN6] The Truth in Lending Act contemplates various situations in which the question of a lender's compliance with the Act's disclosure requirements may arise in a lawsuit, for example, a lender's foreclosure action in which the borrower raises inadequate disclosure as an affirmative defense. 15 U.S.C.S. § 1635(g) makes clear that a court may not only award rescission and thereby relieve the borrower of his financial obligation to the lender, but may also grant any of the remedies available under 15 U.S.C.S. § 1640 (including statutory damages). It has no bearing upon whether and how borrower-rescission under 15 U.S.C.S. § 1635(a) may occur.

***Governments > Legislation > Interpretation***

[HN7] Nothing in federal jurisprudence, and no tool of statutory interpretation, requires that a congressional Act must be construed as implementing its closest common-law analogue.

***Banking Law > Consumer Protection > Truth in Lending > General Overview***

[HN8] The clear import of 15 U.S.C.S. § 1635(a) is that a borrower need only provide written notice to a lender in order to exercise his right to rescind. To the extent 15 U.S.C.S. § 1635(b) alters the traditional process for unwinding such a unilaterally rescinded transaction, this is simply a case in which statutory law modifies common-law practice.

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2015 U.S. LEXIS 607, \*\*\*; 83 U.S.L.W. 4039

**DECISION:** **[\*\*650]** Borrowers' mailing of notice of intention to rescind within 3 years of loan's consummation held timely under Truth in Lending Act provision (15 U.S.C.S. § 1635(a)) regardless of whether borrowers sued within 3 years.

**SUMMARY: Overview:** **HOLDINGS:** [1]-The language of 15 U.S.C.S. § 1635(a) left no doubt that rescission was effected when a borrower notified the creditor of his intention to rescind; [2]-So long as the borrower notified within three years after the transaction was consummated, his rescission under the Truth in Lending Act was timely, and there was no requirement that a borrower sue within three years; [3]-The borrowers' complaint was improperly dismissed as untimely where they had mailed the lenders a 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 the right to rescind under the Act.

**Outcome:** Judgment reversed; case remanded. Unanimous Decision.

**LAWYERS' EDITION HEADNOTES:**

CONSUMER AND BORROWER PROTECTION AND CREDITORS' RIGHTS §5

TRUTH IN LENDING ACT

Headnote:[1]

The Truth in Lending Act gives borrowers the right to rescind certain loans for up to three years after the transaction is consummated.

**[\*\*651]**

CONSUMER AND BORROWER PROTECTION AND CREDITORS' RIGHTS §5

TRUTH IN LENDING ACT -- RIGHT TO RESCIND

Headnote:[2]

Congress passed the Truth in Lending Act to help consumers avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing. 15 U.S.C.S. § 1601(a). To this end, the Act grants borrowers the right to rescind a loan until midnight of the third business day following the consummation of the transaction or the delivery of the disclosures required by the Act, whichever is later, by notifying the creditor, in accordance with regulations of the Federal Reserve Board, of his intention to do so. 15 U.S.C.S. § 1635(a). This regime grants borrowers an unconditional right to rescind for three days, after which they may rescind only if the lender failed to satisfy the Act's disclosure requirements. But this conditional right to rescind does not last forever. Even if a lender never makes the required disclosures, the right of rescission shall expire three years after the date of consummation of the transaction or upon the sale of the property, whichever comes first.

CONSUMER AND BORROWER PROTECTION AND CREDITORS' RIGHTS §5

TRUTH IN LENDING ACT -- RIGHT TO RESCIND

Headnote:[3]

15 U.S.C.S. § 1635(a) explains in unequivocal terms how the right to rescind is to be exercised: It provides that a borrower shall have the right to rescind by notifying the creditor, in accordance with regulations of the Federal Reserve Board, of his intention to do so. The language leaves no doubt that rescission is effected when the borrower notifies the creditor of his intention to rescind. It follows that, so long as the borrower notifies within three years after the transaction is consummated, his rescission is timely. The statute does not also require him to sue within three years.

CONSUMER AND BORROWER PROTECTION AND CREDITORS' RIGHTS §5

135 S. Ct. 790, \*; 190 L. Ed. 2d 650, \*\*;  
2015 U.S. LEXIS 607, \*\*\*; 83 U.S.L.W. 4039

#### TRUTH IN LENDING ACT -- RIGHT TO RESCIND

Headnote:[4]

Although 15 U.S.C.S. § 1635(f) tells courts when the right to rescind must be exercised, it says nothing about how that right is exercised. The observation in judicial precedent that § 1635(f) governs the life of the underlying right is beside the point. That case concerned a borrower's attempt to rescind in the course of a foreclosure proceeding initiated six years after the loan's consummation. That precedent concludes only that there is no federal right to rescind, defensively or otherwise, after the three-year period of § 1635(f) has run, not that there is no rescission until a suit is filed.

#### CONSUMER AND BORROWER PROTECTION AND CREDITORS' RIGHTS §5

##### TRUTH IN LENDING ACT -- RELIEF

Headnote:[5]

15 U.S.C.S. § 1635(g) states merely that, 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 15 U.S.C.S. § 1640 for violations of this subchapter not relating to the right to rescind.

#### CONSUMER AND BORROWER PROTECTION AND CREDITORS' RIGHTS §5

##### TRUTH IN LENDING ACT -- REMEDIES

Headnote:[6]

The Truth in Lending Act contemplates various situations in which the question of a lender's compliance with the Act's disclosure requirements may arise in a lawsuit, for example, a lender's foreclosure action in which the borrower raises inadequate disclosure as an affirmative defense. 15 U.S.C.S. § 1635(g) makes clear that a court may not only award rescission and thereby relieve the borrower of his financial obligation to the lender, but may also grant any of the remedies available under 15 U.S.C.S. § 1640 (including statutory damages). It has no bearing upon whether and how borrower-rescission under 15 U.S.C.S. § 1635(a) may occur.

#### STATUTES §125

##### COMMON LAW

Headnote:[7]

Nothing in federal jurisprudence, and no tool of statutory interpretation, requires that a congressional act must be construed as implementing its closest common-law analogue.

**[\*\*652]**

#### CONSUMER AND BORROWER PROTECTION AND CREDITORS' RIGHTS §5

##### TRUTH IN LENDING ACT -- RIGHT TO RESCIND

Headnote:[8]

The clear import of 15 U.S.C.S. § 1635(a) is that a borrower need only provide written notice to a lender in order to exercise his right to rescind. To the extent 15 U.S.C.S. § 1635(b) alters the traditional process for unwinding such a unilaterally rescinded transaction, this is simply a case in which statutory law modifies common-law practice.

#### **SYLLABUS**

**[\*790]** Exactly three years after borrowing money from respondent Countrywide Home Loans, Inc., to refinance their home mortgage, petitioners Larry and Cheryl Jesinoski sent Countrywide and respondent Bank of America Home Loans, which had acquired Countrywide, a letter purporting to rescind the transac-

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tion. Bank of America replied, refusing to acknowledge the rescission's validity. One year and one day later, the Jesinoskis filed suit in federal court, seeking a declaration of rescission and damages. The District Court entered judgment on the pleadings for respondents, concluding that a borrower can exercise the Truth in Lending Act's right to rescind a loan, see 15 U. S. C. §1635(a), (f), only by filing a lawsuit **[\*\*653]** within three years of the date the loan was consummated. The Jesinoskis' complaint, filed four years and one day after the loan's consummation, was ineffective. The Eighth Circuit affirmed.

*Held:* A borrower exercising his right to rescind under the Act need only provide written notice to his lender within the 3-year period, not file suit within that period. Section 1635(a)'s unequivocal terms--a borrower "shall have **[\*\*\*2]** the right to rescind . . . by notifying the creditor . . . of his intention to do so" (emphasis added)--leave no doubt that rescission is effected when the borrower notifies the creditor of his intention to rescind. This conclusion is not altered by §1635(f), which states **[\*791]** when the right to rescind must be exercised, but says nothing about *how* that right is exercised. Nor does §1635(g)--which states that "in addition to rescission the court may award relief . . . not relating to the right to rescind"--support respondents' view that rescission is necessarily a consequence of judicial action. And the fact that the Act modified the common-law condition precedent to rescission at law, see §1635(b), hardly implies that the Act thereby codified rescission in equity. Pp. \_\_\_ - \_\_\_, 190 L. Ed. 2d, at 653-655.

729 F. 3d 1092, reversed and remanded.

**COUNSEL:** David C. Frederick argued the cause for petitioners.

Elaine J. Goldenberg argued the cause for petitioner as amicus curiae, by special leave of court.

Seth P. Waxman argued the cause for respondents.

**JUDGES:** Scalia, J., delivered the opinion for a unanimous Court.

**OPINION BY:** Scalia

## OPINION

JUSTICE **Scalia** delivered the opinion of the Court.

[HN1] **[\*\*LEdHR1]** [1] The Truth in Lending Act gives borrowers the right to rescind certain loans for up to three years after the transaction is consummated. The question presented is whether a borrower exercises this right by providing written notice to his lender, or whether he must also file a lawsuit before the 3-year period elapses. **[\*\*\*3]**

On February 23, 2007, petitioners Larry and Cheryle Jesinoski refinanced the mortgage on their home by borrowing \$611,000 from respondent Countrywide Home Loans, Inc. Exactly three years later, on February 23, 2010, the Jesinoskis mailed respondents a letter purporting to rescind the loan. Respondent Bank of America Home Loans replied on March 12, 2010, refusing to acknowledge the validity of the rescission. On February 24, 2011, the Jesinoskis filed suit in Federal District Court seeking a declaration of rescission and damages.

Respondents moved for judgment on the pleadings, which the District Court granted. The court concluded that the Act requires a borrower seeking rescission to file a lawsuit within three years of the transaction's consummation. Although the Jesinoskis notified respondents of their intention to rescind within that time, they did not file their first complaint until four years and one day after the loan's consummation. 2012 U.S. Dist. LEXIS 54811, 2012 WL 1365751, \*3 (D Minn., Apr. 19, 2012). The Eighth Circuit affirmed. 729 F. 3d 1092, 1093 (2013) (*per curiam*).

[HN2] **[\*\*LEdHR2]** [2] Congress passed the Truth in Lending Act, 82 Stat. 146, as amended, to help consumers "avoid the uninformed use of **[\*792]** credit, and to protect the consumer against inaccurate and unfair credit billing." 15 U. S. C. §1601(a). **[\*\*654]** To this end, the **[\*\*\*4]** Act grants borrowers the right to rescind a loan "until midnight of the third business day following the consummation of the transaction or the delivery of the [disclosures required by the Act], whichever is later, by notifying the creditor, in accordance with regulations of the [Federal Reserve] Board, of his intention to do so." §1635(a) (2006 ed.). This regime

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grants borrowers an unconditional right to rescind for three days, after which they may rescind only if the lender failed to satisfy the Act's disclosure requirements. But this conditional right to rescind does not last forever. Even if a lender *never* makes the required disclosures, the "right of rescission shall expire three years after the date of consummation of the transaction or upon the sale of the property, whichever comes first." §1635(f). The Eighth Circuit's affirmance in the present case rested upon its holding in *Keiran v. Home Capital, Inc.*, 720 F. 3d 721, 727-728 (2013) that, unless a borrower has filed a suit for rescission within three years of the transaction's consummation, §1635(f) extinguishes the right to rescind and bars relief.

\* Following the events in this case, Congress transferred the authority to promulgate rules implementing the Act to the Consumer Finance Protection Bureau. See [\*\*\*5] Dodd-Frank Wall Street Reform and Consumer Protection Act, §§1061(b)(1), 1100A(2), 1100H, 124 Stat. 2036, 2107, 2113.

That was error. [HN3] [\*\*LEdHR3] [3] Section 1635(a) explains in unequivocal terms how the right to rescind is to be exercised: It provides that a borrower "shall have the right to rescind . . . *by notifying the creditor, in accordance with regulations of the Board, of his intention to do so*" (emphasis added). The language leaves no doubt that rescission is effected when the borrower notifies the creditor of his intention to rescind. It follows that, so long as the borrower notifies within three years after the transaction is consummated, his rescission is timely. The statute does not also require him to sue within three years.

Nothing in §1635(f) changes this conclusion. [HN4] [\*\*LEdHR4] [4] Although §1635(f) tells us *when* the right to rescind must be exercised, it says nothing about *how* that right is exercised. Our observation in *Beach v. Ocwen Fed. Bank*, 523 U. S. 410, 417, 118 S. Ct. 1408, 140 L. Ed. 2d 566 (1998), that §1635(f) "govern[s] the life of the underlying right" is beside the point. That case concerned a borrower's attempt to rescind in the course of a foreclosure proceeding initiated six years after the loan's consummation. We concluded only that there was "no federal right to rescind, defensively or otherwise, after the 3-year period of §1635(f) has run," *id.*, at 419, 118 S. Ct. 1408, 140 L. Ed. 2d 566, not that there was no [\*\*\*6] rescission until a suit is filed.

Respondents do not dispute that §1635(a) requires only written notice of rescission. Indeed, they concede that written notice suffices to rescind a loan within the first three days after the transaction is consummated. They further concede that written notice suffices after that period if the parties agree that the lender failed to make the required disclosures. Respondents argue, however, that if the parties dispute the adequacy of the disclosures--and thus the continued availability of the right to rescind--then written notice *does not* suffice.

Section 1635(a) nowhere suggests a distinction between disputed and undisputed rescissions, much less that a lawsuit would be required for the latter. [\*\*655] In an effort to sidestep this problem, respondents point to a neighboring provision, §1635(g), which they believe provides support for their interpretation [\*\*793] of the Act. [HN5] [\*\*LEdHR5] [5] Section 1635(g) states merely that, "[i]n 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 1640 of this title for violations of this subchapter not relating to the right to rescind." Respondents argue that the phrase "award relief" "in addition to rescission" confirms [\*\*\*7] that rescission is a consequence of judicial action. But the fact that it can be a consequence of judicial action when §1635(g) is triggered in no way suggests that it can *only* follow from such action. [HN6] The Act contemplates various situations in which the question of a lender's compliance with the Act's disclosure requirements may arise in a lawsuit--for example, a lender's foreclosure action in which the borrower raises inadequate disclosure as an affirmative defense. Section 1635(g) makes clear that a court may not only award rescission and thereby relieve the borrower of his financial obligation to the lender, but may also grant any of the remedies available under §1640 (including statutory damages). It has no bearing upon whether and how borrower-rescission under §1635(a) may occur.

Finally, respondents invoke the common law. It is true that rescission traditionally required either that the rescinding party return what he received before a rescission could be effected (rescission at law), or else that a court affirmatively decree rescission (rescission in equity). 2 D. Dobbs, *Law of Remedies* §9.3(3), pp. 585-586 (2d ed. 1993). It is also true that the Act disclaims the common-law condition precedent to rescission at law that [\*\*\*8] the borrower tender the proceeds received under the transaction. 15 U. S. C. §1635(b). But the negation of rescission-at-law's tender requirement hardly implies that the Act codifies re-

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scission in equity. [HN7] Nothing in our jurisprudence, and no tool of statutory interpretation, requires that a congressional Act must be construed as implementing its closest common-law analogue. Cf. *Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U. S. 104, 108-109, 111 S. Ct. 2166, 115 L. Ed. 2d 96 (1991). [HN8] The clear import of §1635(a) is that a borrower need only provide written notice to a lender in order to exercise his right to rescind. To the extent §1635(b) alters the traditional process for unwinding such a unilaterally rescinded transaction, this is simply a case in which statutory law modifies common-law practice.

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The Jesinoskis mailed respondents written notice of their intention to rescind within three years of their loan's consummation. Because this is all that a borrower must do in order to exercise his right to rescind under the Act, the court below erred in dismissing the complaint. Accordingly, we reverse the judgment of the Eighth Circuit and remand the case for further proceedings consistent with this opinion.

It is so ordered.

#### **REFERENCES**

15 U.S.C.S. § 1635(a)

3 Moore's Federal Practice § 13.12 (Matthew Bender 3d ed.)

L Ed Digest, Consumer and Borrower Protection and Creditors' Rights § 5

L Ed Index, [\*\*\*9] Truth in Lending Act

Supreme Court's views as to validity, construction, and application of Truth in Lending Act (TILA), as amended (15 U.S.C.S. § 1601 et seq.). 160 L. Ed. 2d 1141.

The Supreme Court and the post-Erie federal common law. 31 L. Ed. 2d 1006.