

And the Truth (in lending) Shall Set You Free

By Cathy Moran, California Bankruptcy Attorney

In the midst of the mortgage meltdown, I'm searching for every tool that might provide a lever to modify a mortgage. In every case involving a home, I'm inquiring about when the existing loans were made, since the borrower has three years from the transaction to rescind a loan for violations of the Truth in Lending Act.

The neat thing about TILA violations is that they are strict liability causes of action: the aggrieved borrower doesn't have to prove they were defrauded or misled, or that they had actual damages. The fact that the disclosures were defective gives the borrower the right to rescind the loan and deprives the lender of the right to interest on the loan. Pretty powerful stuff.

Powerful stuff is what we need to keep people in their homes: tools to bring the lender to the table to revisit the loan and find an alternative to foreclosure. Because absent some sort of restructuring, a tremendous number of these impossible loans will otherwise be foreclosed. In the long run, a foreclosure benefits neither party.

My small sample, unscientific sample says that I am finding TILA violations in at least half of the loans I'm reviewing these days. TILA doesn't apply to financing of investment property, but for me, it's the family homes that I'm intent on saving.

So, if you have a loan taken out in the past three years, gather all of the documents you got at closing and see a lawyer immediately. Get the transaction reviewed for Truth in Lending compliance. Once those three years are past, there is little that TILA can do for you.