Truth in Lending Act Case against Bank of America Gets New Life

December 9, 2011 - In what can only be described as a highly technical case, the US 7th Circuit Court of Appeals has breathed new life into a case against Band of America that had been killed by a lower court. The case, known as Marr vs. Bank of America, NA, could have a significant impact on foreclosures nationwide, and is another reminder to banks about what can happen when they don't follow the technical requirements of state and federal law.

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We've talked about the myriad of cases making their way through state courts right now over robosigning and foreclosures. While this particular Truth in Lending Act (TILA) case has nothing to do with robosigning, it does bear many similarities. Specifically, all of these cases could have been avoided if the banks involved had simply followed the procedures required of them by law.

What is disturbing about all of these cases is that for the most part, the parties are not disputing the fact that the borrowers being foreclosed upon actually owe the money associated with their loans. Instead, these legal disputes are focused on questions such as, "did the bank have the legal right to foreclose?" And unfortunately, since it appears that most large banks didn't follow the law, these cases will continue to drag out the foreclosure process and any hope of economic recovery.

This particular case revolves around a requirement in TILA known as Regulation Z. That portion of the law requires that lenders give borrowers two copies of a notice stating that the borrower has three days to rescind a loan after the closing date. If the lender doesn't provide the borrower both copies of the notice, then the period for the borrower to rescind the loan automatically increases to three years.

In February, 2007, Richard Marr refinanced his home through Countrywide (now owned by Bank of America). Marr Sued the bank in March, 2009 for return of all of his interest payments and attorney's fees after his attorney discovered that the bank only provided one copy of the rescission notice.

The case is important because anyone who has a loan less than three years old and who is now facing foreclosure may be able to rescind their loan if they didn't receive all of the appropriate TILA notices. Depending upon the outcome of the case, it may also open the door for people who have actually already lost their homes to foreclosure to go back and sue their banks for violating TILA procedures, if their foreclosures took place less than three years after purchasing or refinancing their homes.

byJim Malmberg
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