

## ClientAlert

An informational bulletin from Goodwin Procter

### Recent Massachusetts Federal Court Case May Spur Truth In Lending Class Actions Seeking Rescission of Mortgage Loans

A recent court decision may trigger a new wave of Truth in Lending litigation in Massachusetts. *McIntosh v. Irwin Union Bank & Trust Co.*, 215 F.R.D. 26 (D. Mass. 2003), holds that a suit seeking rescission of a mortgage loan due to Truth in Lending Act (TILA) violations can properly be maintained as a class action. The decision, by Chief Judge Young of the United States District Court for the District of Massachusetts, may well be followed by other judges in that jurisdiction, or even further afield (particularly by other jurisdictions within the First Circuit, such as Rhode Island and Maine).

Prior to this ruling, the weight of legal authority held that – because rescission is an individualized form of relief – only individual borrowers could sue for rescission. Chief Judge Young, however, rejected that authority, and found that a class action is an appropriate mechanism for declaring loans rescindable.

While we believe the decision is not correct and it is being appealed, the *McIntosh* ruling is likely to increase the frequency and magnitude of litigation under the Truth in Lending Act and the Massachusetts correlate, M.G.L. c. 140D. Prior to this, it was relatively well-accepted that only TILA actions for actual and statutory damages could be brought as a class action; the law limited statutory damages to

\$500,000 for the entire class. The ability to seek rescission on behalf of a class, however, makes TILA violations a more inviting target for the plaintiffs' bar. Rescission remedies include the requirement that the creditor refund all finance charges it collected – including interest over the loan – and apply to any error within the last three years (four years in Massachusetts). When multiplied across a class of borrowers, the potential exposure associated with a rescission class may be quite significant.

In the wake of *McIntosh*, we expect to see a number of demands for rescission and filings of rescission class actions in federal court in Massachusetts. At least one purported class case has already been filed. This disturbing possibility suggests that Massachusetts lenders take at least two important steps. First, as always, mortgage lenders should pay close attention to compliance with TILA and Chapter 140D. Second, all lenders should treat any loan rescission letters – especially if they are from the law firms of Edelman, Combs & Latturmer in Chicago or the Law Offices of Claude Lefebvre & Sons in Rhode Island – as a prelude to a possible lawsuit. These letters need to be investigated and responded to with even greater care than usual, in light of the increased stakes.

For further information, please contact the attorneys below or your usual Goodwin Procter contact:

U. Gwyn Williams	gwilliams@goodwinprocter.com	617.570.1158
Margaret B. Crockett	mcrockett@goodwinprocter.com	617.570.1884

This publication, which may be considered advertising under the ethical rules of certain jurisdictions, is provided with the understanding that it does not constitute the rendering of legal advice or other professional advice by Goodwin Procter LLP or its attorneys. © 2003 Goodwin Procter LLP. All rights reserved.