The Truth-in-Lending law empowers the Borrower, to exercise his right in writing by notifying creditors of his cancellation by mail to rescind the mortgage loan transactions per (Reg. Z 226.15(a)(2), 226.23(a)(2), Official Staff Commentary 226.23(a)(2)-1) and 15 U.S.C. 1635(b).

The statute and regulation specify that the security interest, promissory note or lien arising by operation of law on the property becomes automatically void. (15 U.S.C. 1635(b); Reg. Z 226.15(d)(1), 226.23(d)(1). As noted by the Official Staff Commentary, the creditor's interest in the property is "automatically negated regardless of its status and whether or not it was recorded or perfected." (Official Staff Commentary 226.15(d)(1)-1, 226.23(d)(1)-1.). Also, the security interest is void and of no legal effect irrespective of whether the creditor makes any affirmative response to the notice. Also, strict construction of Regulation Z would dictate that the voiding be considered absolute and not subject to judicial modification. This requires the Lender to submit canceling documents creating the security interest and filing release or termination statements in the public record. (Official Staff Commentary 226.15(d)(2)-3, 226.23(d)(2)-

The statute and Regulation Z make it clear that, if the Borrower has the extended right and chooses to exercise it, the security interest and obligation to pay charges are automatically voided. (Cf. *Semar v. Platte Valley Fed. Sav. & Loan Ass'n*, 791 F.2d 699, 704-05 (9th Cir. 1986) (courts do not have equitable discretion to alter substantive provisions of TILA, so cases on equitable modification are irrelevant). The statute, section 1635(b) states: "When an obligor exercises his right to cancel, any security interest given by the obligor becomes void upon such rescission". Also, it is clear from the statutory language that the court's modification authority extends only to the procedures specified by section 1625(b).

The voiding of the security interest is not a procedure, in the sense of a step to be followed or an action to be taken. The statute makes no distinction between the right to rescind in three day or extended in three years for federal no statute give courts equitable discretion to alter TILA's substantive provisions. Since the rescission process was intended to be self-enforcing, failure to comply with the rescission obligations subjects the Lender to potential liability

Non-compliance is a violation of the act which gives rise to a claim for actual and statutory damages under 15 USC 1640. TIL rescission does not only cancel a security interest in the property but it also cancels any liability for Borrower to pay finance and other charges, including accrued interest, points, broker fees, closing costs and that the Lender must refund to Borrower, all finance charges and fees paid.

In case the Lender does not respond to the default letter, the Borrower has the option of enforcing the rescission right in the federal, bankruptcy or state court (See S. Rep. No. 368, 96th Cong. 2 Sess. 28 at 32 reprinted in 1980 U.S.C.A.N. 236, 268 ("The bill also makes explicit that a consumer may institute suit under section 130 [15 U.S.C., 1640] to enforce the right of rescission and recover costs and attorney fees").

TIL rescission does not only cancel a security interest in the property but it also cancels any liability for the Borrower to pay finance and other charges, including accrued interest, points, broker fees, closing costs and the Lender must refund all finance charges and fees paid. Thus, the Lender is obligated to return those charges to the Borrower, (*Pulphus v. Sullivan*, 2003 WL 1964333, at *17 (N.D. Apr. 28, 2003) (citing Lender's duty to return consumer's money as reason for allowing rescission of refinanced loan);

*McIntosh v. Irwing Union Bank & Trust Co*., 215 F.R.D. 26 (D. Mass. 2003) (citing borrower's right to be reimbursed for prepayment penalty as reason for allowing rescission of paid-off loan).

First, by operation of law, the security interest and promissory note automatically becomes void and the consumer is relieved of any obligation to pay any finance or other charges (15 USC 1635(b); Reg. Z-226.15 (d)(1), 226.23(d)(1). See Official Staff Commentary 226.23(d)(2)-1. (See *Willis v. Friedman*, Clearinghouse No. 54,564 (Md. Ct. Spec. App. May 2, 2002) (Once the right to rescind is exercised, the security interest in the property becomes void ab initio). Thus, the security interest is void and of no legal effect irrespective of whether the creditor makes any affirmative response to the notice. (See *Family Financial Services v. Spencer*, 677 A.2d 479 (Conn. App. 1996) (all that is required is notification of the intent to rescind, and the agreement is automatically rescinded).

It is clear from the statutory language that the court's modification authority extends only to the procedures specified by section 1635(b). The voiding of the security interest is not a procedure, in the sense of a step to be followed or an action to be taken. The statute makes no distinction between the right to rescind in 3-day or extended as neither cases nor statute give courts equitable discretion to alter TILA's substantive provisions. Also, after the security interest is voided, secured creditor becomes unsecured.

Second, since the Borrower has legally rescinded the loans transaction, the mortgage holders (the Lender) must return any money, including that which may have been passed on to a third party, such as a broker or an appraiser and to take any action necessary to reflect the termination of the security interest within 20 calendar days of receiving the rescission notice which has expired. The creditor's other task is to take any necessary or appropriate action to reflect the fact that the security interest was automatically terminated by the rescission within 20 days of the creditor's receipt of the rescission notice (15 USC 1635(b); Reg. Z-226.15 (d)(2), 226.23(d)(2).

The termination of the security interest is required before tendering and step 1 and 2 have to be respected by the Lender.

If the Borrower were to rescind within the context of a bankruptcy, courts have held that the rescission effectively voids the security interest, rendering the debt, if any, unsecured (See Exhibit #6). (See *In re Perkins*, 106 B.R. 863, 874 (Bankr. E.D.Pa. 1989); *In re Brown*, 134 B.R. 134 (Bankr. E.D.Pa. 1991); *In re Moore*, 117 B.R. 135 (Bankr.E.D. Pa. 1990)).

Once the court finds a violation such as not responding to the TILA rescission letter, no matter how technical, it has no discretion with respect to liability (*In re Wright*, supra. At 708; *In re Porter v. Mid-Penn Consumer Discount Co*., 961 F, 2d 1066, 1078 (3d. Cir. 1992); *Smith v. Fidelity Consumer Discount Co*., Supra. At 898. Any misgivings creditors may have about the technical nature of the requirements should be addressed to Congress or the Federal Reserve Board, not the courts.

The Lender is to take any necessary or appropriate action to reflect the fact that the security interest was automatically terminated by the rescission (15 USC 1635(b); Reg. Z-226.15 (d)(2), 226.23(d)(2). This requires canceling documents creating the security interest and filing release or termination statements in the public record of FREE and CLEAR TITLE to Borrower.

TILA Achieves its Remedial Goals by A System of Strict Liability To further this congressional policy TILA achieves its remedial goals by a system of strict liability in favor of consumers when mandated disclosures have not been made. 15 U.S.C. 1640(a) (emphasis added). The standard

applied is considered "strict liability in the sense that absolute compliance is required and even technical violations will form the basis for liability." *Shepeard v. Quality Siding & Window Factory, Inc*., supra. at 1299*; In re McElvany*, 98 B.R. 237, 240 (Bankr. W.D. Pa. 1989). This means "technical or minor violations of TILA, or Reg. Z, as well as major violations impose liability on the creditor and entitle the borrower to rescind [the loan]." *Smith v. Wells Fargo Credit Corp*., 713 F.Supp. 354, 355 (D.Ariz. 1989); *Jackson v. Grant*, 890 F.2d. 118, 120 (9th Cir. 1989); *Semar v. Platte Valley Fed. S & L Assoc*., supra. at 704.

This rule is inviolate and is followed by courts in all jurisdictions. See, e.g., *Smith v. Fidelity Consumer Discount Co*., 989 F.2d 896, 898 (3rd Cir. 1990)(The federal Truth in Lending Act (TILA) achieves its remedial goals by a system of strict liability in favor of consumers when mandated disclosures have not been made); *Lewis v. Dodge*, 620 F.Supp. 135, 138 (D. Conn. 1985); In re Porter, 961 F.2d 1066 (3rd Cir. 1992); *Rowland (John M., Carol S.) v. Magna Millikin Bank of Decatur*, N.A., 812 F.Supp. 875 (C.D. Ill. 1992) ("even technical violations will form the basis for liability"); *New Maine Nat. Bank v. Gendron*, 780 F.Supp. 52 (D. Me. 1992); *Dixon v. S & S Loan Service of Waycross, Inc*., 754 F.Supp. 1567 (S.D. Ga. 1990); *Woolfolk v. Van Ru Credit Corp*., 783 F.Supp. 724 (D. Conn. 1990) (same with Unfair Debt Collection Practices Act); *Morris v. Lomas and Nettleton Co*., 708 F.Supp. 1198 (D. Kan. 1989); *Jenkins v. Landmark Mortg. Corp. of Virginia*, 696 F.Supp. 1089 (W.D. Va. 1988); *Laubach v. Fidelity Consumer Discount Co*., 686 F.Supp. 504 (E.D. Pa. 1988); *Searles v. Clarion Mortg. Co*., 1987 WL 61932 (E.D. Pa. 1987); "Liability will flow from even minute deviations from requirements of the statute and Regulation Z." *Dixon v. S & S Loan Service of Waycross, Inc*., 754 F.Supp. 1567, 1570 (S.D. Ga. 1990); *Shroder v. Suburban Coastal Corp*., supra. at 1380; *Charles v. Krauss Co., Ltd*., 572 F.2d 544 (5th Cir. 1978). *Shroder v. Suburban Coastal Corp*., 729 F.2d 1371, 1380 (11th Cir. 1984); *Goldberg v. Delaware Olds, Inc*., 670 F.Supp. 125 (D. Del. 1987); *Curry v. Fidelity Consumer Discount Co*., 656 F.Supp. 1129 (E.D. Pa. 1987); *Laubach v. Fidelity Consumer Discount Co*., 1986 WL 4464 (E.D. Pa. 1986); *In re Wright*, 133 B.R. 704 (E.D. Pa. 1991); *Moore v. Mid-Penn Consumer Discount Co*., 1991 WL 146241 (E.D. Pa. 1991); *In re Marshall*, 121 B.R. 814 (Bankr.C.D. Ill. 1990); *In re Steinbrecher*, 110 B.R. 155 (Bankr.E.D. Pa. 1990); *Nichols v. Mid-Penn Consumer Discount Co*., 1989 WL 46682 (E.D. Pa. 1989); *In re McElvany*, 98 B.R. 237 (Bankr.W.D. Pa. 1989); *In re Johnson-Allen*, 67 B.R. 968 (Bankr.E.D. Pa. 1986); *In re Cervantes*, 67 B.R. 816 (Bankr.E.D. Pa. 1986); In re McCausland, 63 B.R. 665, 55 U.S.L.W. 2214, 1 UCC Rep.Serv.2d 1372 (Bankr.E.D. Pa. 1986); *In re Perry*, 59 B.R. 947 (Bankr.E.D. Pa. 1986); *In re Schultz*, 58 B.R. 945 (Bankr, E.D. Pa. 1986); *Solis v. Fidelity Consumer Discount Co*., 58 B.R. 983 (E.D. Pa. 1986).

Once TILA notice of rescission is given, the lien or security interest in plaintiff's property becomes void ab initio, even if a court has not yet ruled on the validity of the plaintiff's rescission (*Willis v. Friedman*, Clearinghouse No. 54,564 (Md. Ct. Spec. App. May 2, 2002)).