

## You Have to Sweat the Small Stuff When It's All Small Stuff

August 31, 2016 | [Thomas B. Hudson](#)

A lawyer I know represents a car dealership that found itself on the pointy end of a Truth in Lending lawsuit. The lawyer doesn't do Truth in Lending legal work and is unfamiliar with the statute and its accompanying federal regulation. The consumer's complaint alleged that the dealership had not correctly disclosed a deferred downpayment. The lawyer's email to me said, "What is our exposure under TILA? Is it true that our liability could exceed \$6,500 for such a minor infraction?"

That question took me back over 40 years, to 1973, when I had to deal with a similar reaction to the requirements of federal disclosure laws.

I had been out of law school just a few months before my legal fate was sealed for me. I was working for a big firm in Baltimore, under the supervision of Geoff Mitchell, a lawyer with six or seven years of experience. His main client was Maryland National Bank, which, like other creditors, was just beginning to grapple with the new federal Truth in Lending Act. The bank had been sued, and Geoff gave me the chore of analyzing the complaint and drafting a response to it.

I had barely completed that task when the bank got its second TILA complaint, and, of course, that one landed in my lap, as well. With a big firm, back in the day, if you'd done something twice, you were the expert on whatever that something was, so I was the expert on Truth in Lending.

The firm had another creditor as a client - one of the most prominent state savings banks in Maryland. One of the partners in my firm - one of my bosses - was a fellow named Tommy Waxter. Tommy also was a member of the board of directors of the savings bank. When word got around the firm that I had learned a bit about TILA, he called me to his office and asked if I'd like to do TILA work for the savings bank. Figuring that I really didn't have much of a choice in the matter, I accepted.

TILA and the accompanying Federal Reserve Board Regulation Z were designed to require creditors to tell consumers a number of specific things about the credit extended to them. At first, TILA and Reg. Z were almost exclusively about disclosing the pertinent details of credit transactions. Basically, the Feds didn't care what the credit terms were, as long as they were described according to the rules. And the rules were, as rules often are, technical and arbitrary.

Creditors trying to adjust to this new landscape weren't particularly receptive to it. The management folks at the savings bank pushed back when I told them what the new rules required. They didn't want to do what I told them they had to do to comply with the new rules. When I didn't back down, the managers, frustrated, went over my head and appealed to Tommy, who called me on the carpet and complained that I was requiring the bankers to do things they didn't want to do "because of a bunch of

technicalities." If that was correct, he said, he'd have to take me off the case.

After several unsuccessful attempts, I was finally able to convince Tommy that TILA and Reg. Z were basically nothing but technical requirements, and there was no such thing as a "small" TILA violation. When I finally convinced him, he backed me against the rebellious bankers, and my career as a credit lawyer stayed on track.

Since then, TILA has been amended - simplified, if you will - in a way that does distinguish between some violations when imposing penalties. The violation my lawyer friend was inquiring about, however, was one that did not qualify for a reduced penalty.

So, the answer to my lawyer friend is, "Yes, your liability could exceed \$6,500 for such a minor infraction." A creditor violating TILA is liable to the consumer in an individual action for the consumer's actual damages, a statutory penalty - imposed without regard as to whether the consumer has suffered actual damages - of twice the amount of any finance charge in connection with the transaction (but not less than \$200 or more than \$2,000), court costs, and attorneys' fees. And the real kicker in the equation is attorneys' fees, which can add up quickly. On top of that, the dealership will have to pay its own lawyers to mount a defense.

And there's more bad news - penalties that can be imposed in class action suits can be very substantial, and there are criminal penalties for certain TILA violations.

So, the answer is: What might seem to a dealer to be a minor infraction of TILA can lead to a major hole in the dealer's wallet.

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7037 Ridge Road, Suite 300, Hanover, Maryland 21076  
410.684.3200

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