



Ninth Circuit Adopts *Wigod* Reasoning in Holding Trial Payment Plans Enforceable

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On August 8, 2013, the Ninth Circuit issued its decision addressing whether a bank is contractually obligated under the terms of a HAMP trial payment plan (TPP) to offer a permanent modification to borrowers who comply with the TPP terms by submitting accurate documentation and making trial payments. *Corvello v. Wells Fargo Bank*, No. 11-16234; *Lucia v. Wells Fargo Bank*, No. 11-16242. The court, heavily relying on *Wigod v. Wells Fargo Bank*, N.A., 673 F.3d 547 (7th Cir. 2012), held that the servicer “must send a signed Modification Agreement offering to modify the loan once borrowers meet their end of the bargain.”

However, the court also states that “the TPP gives the bank a chance, after borrowers submit the completed TPP, to notify them if they do not qualify.” Thus, the latter part of the court’s decision suggests that so long as the servicer promptly tells the borrowers they do not qualify for a permanent modification, it cannot be liable for failing to provide such a modification.

The Ninth Circuit’s decision resulted from an appeal of an order granting a motion to dismiss a complaint for failure to state a claim. In the complaint, the plaintiffs had alleged that they made all the required payments under the TPP and submitted all of the documents requested, and that they were never notified that they did not qualify for a permanent modification. The court noted that these allegations had to be taken as true given the procedural context, and that it could not consider the bank’s factual assertions that the plaintiffs were in fact notified that they did not qualify.

Although many District Court judges had already issued decisions adopting the *Wigod* reasoning, this is the Ninth Circuit’s first published decision on this subject and will be binding on District Courts within this circuit.

For more information on the matters discussed in this *Locke Lord QuickStudy*, please contact the author:

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