

Accepting Trial Payments Does Not Obligate Lender to Make a HAMP Loan Modification

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The federal Home Affordable Mortgage Program (“HAMP”) provides incentives to mortgage servicers to modify home loans, in order to avoid foreclosure.

While a loan is being considered by the loan servicer for possible HAMP modification, the borrowers submit information for review, and make trial loan payments, i.e., reduced loan payments.

In a recent decision, *Nungaray v. Litton Loan Servicing, LP*, judgment was upheld in favor of a servicer and lender who had foreclosed, and against the borrowers who had made trial payments while seeking a HAMP loan modification. The borrowers were delinquent, and nonjudicial foreclosure proceedings had begun.

Attempting to avoid foreclosure and obtain a HAMP loan modification, the borrowers signed a “Loan Workout Plan,” which was not signed by the servicer or lender.

The Plan stated that the lender would provide the borrowers with a “Loan Modification Agreement” if the borrowers complied with the Plan. The Plan required the borrowers to make “Trial Period Payments,” which they did. The Plan also required the borrowers to provide financial information.

The servicer did not receive all the required information, and notified the borrowers that the foreclosure proceedings would resume. The property was sold at a nonjudicial foreclosure sale.

The borrowers sued, claiming (among other defenses) that the Plan itself was an enforceable loan modification, even though it had not been signed by the servicer or lender, because trial payments had been accepted.

But, a borrower does not have an entitlement to a loan modification under HAMP.

And the Plan was not a contract. The Plan itself stated that:

- The Plan was not a loan modification
- The lender and servicer would determine whether the borrowers qualified for a loan modification
- The loan would not be modified unless the borrowers met all of the conditions for a loan modification

Moreover, neither the servicer nor the lender had led the borrowers to believe a loan modification was forthcoming.

Conclusion. Under the circumstances of a HAMP workout plan, the acceptance of trial payments by a loan servicer and lender while they evaluate a loan for a possible HAMP modification does not entitle the borrower to receive a loan modification.