

Judge's loan modification order sends bank scrambling

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WEST PALM BEACH —

A Palm Beach County judge's order requiring a bank to modify a homeowner's mortgage instead of foreclosing has lender lawyers scrambling for a do-over and defense attorneys at attention.

The order, signed by Judge Howard Harrison last month in a Royal Palm Beach foreclosure case, specifies payment amounts, a fixed 3.15 percent interest rate for 40 years, and requires the bank to mitigate damage done to the homeowner's credit -- details foreclosure defense attorneys said they have never before seen in a ruling.

In fact, several said they were surprised and intrigued by the unusual order, which attempts to enforce a trial loan modification the homeowner received in 2009 but which may ultimately overstep the judge's legal authority.

"It seemed like the bank was trying to get payments out of the homeowner but never really had any intention of modifying the loan," said attorney Jeff Harrington, who is defending homeowner Paul Posti. **"Our argument is, if you look at it closely, it's a binding contract."**

The bank has asked for a rehearing in a 64-page request that includes the assertion that a trial loan modification is not an enforceable contract.

"We disagree with the ruling in this case for a number of reasons, including that compliance with the decision would require us to violate several federal laws and it imposes a modification with terms that were never agreed to by the Bank," Wells Fargo said in a statement Wednesday.

Posti, who defaulted on his more than \$470,000 loan in 2009, said Wachovia Bank granted him a trial loan modification through the federal Home Affordable Modification Program that was supposed to convert to a permanent agreement after he made three successful payments.

But after six payments and a bank takeover by Wells Fargo, he said he was given different terms, never got a final approval, and was never given an explanation as to why the terms changed.

Posti said he made "over 40 telephone calls attempting to find out why the bank was not honoring their agreement."

Confusion surrounding the loan modification process is repeated in stories by thousands of homeowners nationwide. Their claims of lost paperwork and wrongly denied applications were recently bolstered by former Bank of America employees who said in sworn statements they were told to lie to homeowners, purposefully delay modifications and reject eligible applicants. Bank of America said the statements, filed as part of a federal lawsuit, are "rife with factual inaccuracies."

Foreclosure defense attorney Tom Ice said he won't be surprised if Wells Fargo wins a rehearing in Posti's judgment strictly on legal principles, but that the case exposes the "sordid underbelly" of the federal loan modification program.

"We've always viewed it as a government-issued license for the mortgage servicer to steal a few more payments before it takes the home," Ice said. "Often, these one-sided contracts are not even signed by the bank, so even if it said the bank would modify, it would be impossible to enforce."

According to the order, Posti will pay no more than \$2,584-a-month on a loan balance of \$493,370. But Wells Fargo says Posti owes more than \$625,000 including interest accrued while the loan was in default and taxes the bank paid.

"Even with an interest rate as low as 5 percent, if monthly payments cannot exceed \$2,584, it would take over 100 years to repay the loan," attorneys for Wells Fargo wrote in their rehearing request.

Regardless of the outcome of this case, foreclosure defense attorney Michael Wasylik said he believes the order will push homeowners to be more aggressive in pursuing the enforcement of a trial loan modification.

"The way the industry has handled loan modifications, just stringing them along and misleading people all the time, is really obvious abuse," Wasylik said. "Everything is carefully worded in the bank's favor."