

The top portion of the slide features a photograph of a classical building facade. It shows a row of decorative balustrades with square balusters, and below them, the word "BANK" is carved in large, serif capital letters into the stone.

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# **Loss Mitigation Prohibitions - It Ain't Just Loan Mods**

Prepared by:  
Peter T. Roach  
Peter T. Roach & Associates, P.C.



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# Loss Mitigation Prohibitions - It Ain't Just Loan Mods



Many loan servicers are under the misimpression that the prohibition against dual tracking only applies to loan modifications. This is incorrect; it also applies to forbearance agreements, deeds in lieu of foreclosures and short sales. Once a borrower has submitted a completed application for any of these loss mitigation resolutions, the foreclosing plaintiff is not permitted to submit a judgment or schedule a foreclosure sale.

If the loss mitigation application is submitted 37 days or less, prior to the foreclosure sale, a servicer may proceed with the foreclosure sale; however, the servicer must still ensure that the loss mitigation application must still be reviewed.

All loss mitigation options, for which a borrower is qualified, should be considered during the review process at the same time in order to avoid multiple applications being submitted, and whatever loss mitigation options are being offered should all be offered at the same time. The borrower will select either a retention resolution (forbearance agreement or a loan modification) or a non-retention resolution (deed in lieu of foreclosure or a short sale).

**Regardless of the type of resolution sought, the following should be kept in mind:**

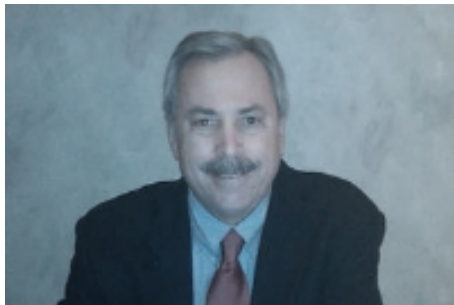
- The servicer must give the borrower sufficient time to accept any offer. If the servicer offers an alternative to foreclosure, the borrower must be given enough time to accept the written offer before foreclosure proceedings are commenced.
- If the servicer does not offer a loss mitigation resolution of any kind, the reason must be specified in writing to the borrower. The borrower then has the option to appeal this decision, in which case the servicer must conduct a secondary review.

**A servicer cannot submit a judgment or schedule a foreclosure sale if any of the following have occurred:**

- The loss mitigation application has been submitted by the borrower and is still pending.
- The borrower has entered into a loan modification or a forbearance agreement and is complying with the obligations contained therein.

- An application for a short sale or a deed in lieu has been approved, and the borrower is proceeding with that deed in lieu or short sale.

Failure to comply with these new rules and limitations with regard to “Dual Tracking” may not only result in a defective foreclosure, but may lead to sanctions by the courts, CFPB or other government agencies.



Peter Roach

Peter T. Roach & Associates, P.C.

[peter.roach@roachlawfirm.com](mailto:peter.roach@roachlawfirm.com)

[www.roachlawfirm.com](http://www.roachlawfirm.com)

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