

OUR PRACTICE

Residential Mortgage Lending and Servicing

Baker Donelson attorneys offer decades of experience and a deep commitment to the mortgage lending and servicing industry, working with lenders, servicers and investors on a full range of legal issues including contested matters, origination, bankruptcy, default and other litigation. We are known for our ability to quickly resolve complicated mortgage matters and return loans to performing status. We always keep in mind that success may mean different things to different clients.

Our mortgage team is comprised of attorneys from a wide range of disciplines, with extensive courtroom experience in state, federal and bankruptcy courts. We regularly handle litigation involving allegations of wrongful foreclosure and eviction, regulatory violations including class actions and individual actions, bankruptcy matters and title to property. Our attorneys manage multi-state litigation portfolios for servicing clients, which includes the management of budgets, local counsel and underlying foreclosure and bankruptcy cases.

We work closely with our lending and servicing clients to find creative, cost- and time-effective solutions to their problems, including loss mitigation, quality control and quality assurance. This includes the following:

- Litigation arising out of contested foreclosure, bankruptcy, eviction and REO
- Creditor representation in bankruptcy matters including Chapter 11 and bankruptcy adversary cases
- Lender liability defense
- Title clearance and title claims
- Litigation portfolio and budget management for in-house legal and default servicing departments
- Fair debt and collections practices claims and litigation
- Local, state and federal regulatory compliance, including Consumer Financial Protection Bureau (CFPB) investigations, code violations, public policy matters and statutory enforcement
- Environmental issues involving secured collateral
- Quality control and quality assurance review of suspect loans, including review of loans originated through subprime loan products thought to be part of mortgage fraud schemes
- "Best Practices" training



Case Studies

- [Summary Judgment for Mortgage Provider - Real Property Litigation](#)
- [Successful Trial in Defense of Reverse Mortgage Business Model - Real Property Litigation](#)



Representative Matters

- Defeated an appellate firm's urging of Fifth Circuit Court of Appeals to strike the four-year limitation period to bring claims under the Texas constitutional provisions governing home equity loans. A ruling for borrowers in this case would have had a draconian impact on note holders in Texas, opening the door to claims brought decades after origination.
- Obtained summary judgment dismissal of class action alleging lender violated the Fair Debt Collection Practices Act by sending monthly periodic statements to a borrower post-foreclosure.
- Obtained dismissal in several class action suits brought against mortgage lenders seeking damages based on claimed excessive real estate closing costs, usurious interest charges, and fees in violation of state and federal laws.

- Represented title insurer in loan dispute involving claims of fraud and mortgage reformation, resulting in a more than \$500,000 verdict for client.
- Obtained summary judgment dismissal for lender against breach of contract claim arising from alleged violations of required pre-foreclosure notice. The decision was affirmed on appeal by the Alabama Court of Civil Appeals and writ of certiorari was denied by the Alabama Supreme Court.
- Obtained dismissal from federal district court and Eleventh Circuit Court of Appeals of a case alleging wrongful foreclosure and violations of Fair Credit Reporting Act, Truth in Lending Act and Fair Debt Collection Practice Act.
- Defended a mortgage holder in a quiet title action involving allegations of fraud and wrongdoing relating to a Miami Beach home valued in excess of \$1 million. Obtained judgment in the client's favor after a non-jury trial, which permitted the holder to foreclose its mortgage in a first lien position.
- Defended a mortgage servicer in a class action brought in the Middle District of Florida alleging that a servicer client systematically failed to honor loan modifications offered to borrowers. The court ultimately dismissed the class action claims.
- Defended a lender in a class action suit alleging improper application of mortgage fees in bankruptcy claims.
- Acted as regional counsel for a mortgage servicer defending them in more than 200 consumer protection cases, including from TCPA, FCRA, TILA, RESPA, and FDCPA Claims.
- Obtained dismissals in numerous state court matters for a Fortune 500 mortgage lender for cases related to allegations of regulatory violations, mortgage fraud, predatory lending and wrongful foreclosure.
- Obtained precedent-setting opinion from Alabama Court of Civil Appeals establishing when and how a purchaser of real property at a delinquent property tax sale can challenge an owner's redemption from the tax sale.
- Prevailed before the U.S. 5th Circuit Court of Appeals, which upheld a district court judgment dismissing a suit which sought to annul a bank's "executory process" foreclosure and recover damages for the allegedly wrongful seizure and sale of the mortgaged premises. This decision established favorable federal precedent barring similar actions grounded upon technical procedural and/or evidentiary issues within Louisiana executory process foreclosure proceedings.
- Served as court-appointed Special Master for quiet title and condemnation cases involving tax sales, fraudulent conveyances, forged deeds, lost deeds, adverse possession, boundary disputes, legal description errors, recording errors, utility, and transportation easements.
- Defended mortgage servicers in multiple actions by mortgagors alleging wrongful foreclosure, gross negligence, intentional and negligent infliction of emotional distress, and other business torts.
- Represented mortgage lenders in multiple large scale mortgage fraud cases resulting in recovery of damages; during representation worked with federal and state prosecutors to provide information and training to assist in prosecution of criminal cases.
- Coordinated regional representation of several national lenders in Chapter 7 and Chapter 13 bankruptcy cases and the defense of class action litigation brought by a trustee in consumer cases.
- Won summary judgment dismissal of all claims asserted by borrowers who alleged their identity was stolen due to the transmission of their loan application via electronic mail.
- Obtained summary judgment dismissal of all claims for loan servicer on alleged "standing" issues and a challenge to the servicer's authority to exercise the power of sale as the holder of the debt obligation under the Uniform Commercial Code.
- Successfully obtained a judgment on behalf of a financial services provider for more than \$350,000 against a borrower for her misrepresentation and breach of warranties in connection with obtaining a home equity loan. The judgment is in addition to a \$120,000 cash recovery negotiated in settlement with the title insurer for the current owners of the property in question.
- Obtained summary judgment on behalf of a mortgage servicer where the borrower asserted standing and debt collection issues and sought to invalidate the debt and deed of trust. Successfully briefed

the mortgage servicing issues, including standing and statutory construction in nonjudicial foreclosure action before the U.S. Court of Appeals for the Fourth Circuit.

- Obtained the reversal of a trial court's denial of a motion to dismiss the claims against a national mortgage servicing company based on the Home Affordable Modification Program (HAMP), and established Tennessee law that there is no private right of action under HAMP.