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 matters involving contested proceedings, origination issues, residential and commercial foreclosures, bankruptcy, default issues, consumer protection issues, 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 issues with title to property. Our attorneys manage multi-state litigation portfolios for servicing clients, which includes the management of budgets, local counsel and underlying foreclosure, consumer protection, 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 (residential and commercial), 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
- Consumer protection claims and litigation, including Fair Credit Reporting Act and Telephone Consumer Protection Act claims (and state-law equivalents)
- Local, state and federal regulatory compliance, including Consumer Financial Protection Bureau (CFPB) investigations, code violations with local municipalities, 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

Results may vary depending on your particular facts and legal circumstances.

- Summary Judgment for Mortgage Provider - Real Property Litigation
- Successful Trial in Defense of Reverse Mortgage Business Model - Real Property Litigation

Representative Matters

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- 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.

- Prevailed on behalf of multiple mortgage servicers in an action before the U.S. District Court for the Eastern District of Louisiana in a federal civil RICO Act suit brought on behalf of multiple Louisiana parish clerks, related to alleged improprieties involving the recordation and administration of mortgage loan assignments; court dismissed the entire action with prejudice.
- 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.
- 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.
- 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.
- 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.
- 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.
- 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.
- Won summary judgment on behalf of banking client in a fact-intensive case about how a loan modification was handled during the depths of the financial crisis and in the early days of the federal loan modification program for residential mortgages. The case pertained to how the client communicated – in writing and verbally through its many customer service employees – the requirements for a loan modification in 2010. The court concluded that there was no enforceable promise for a permanent modification contained in our client's written documents or in the numerous telephone calls recorded at the time. The 6th Circuit Court of Appeals affirmed.
- Successfully defended a national bank and residential mortgage lender against allegations of racketeering and fraud-based RICO claims involving acts of mail and wire fraud alleged to have occurred over a long period of time.
- Successfully represented a mortgage company in a case before the Florida Supreme Court, which found that foreclosures in Florida are not barred by the statute of limitations where an earlier foreclosure on the same loan was involuntarily dismissed. Baker Donelson further obtained a favorable ruling in the U.S. Court of Appeals for the Fifth Circuit in the same matter. This decision ended a trend by Florida appellate courts of finding that mortgage servicers lacked standing to

foreclose and created the blueprint for the mortgage industry in Florida to prove standing in future actions.

- Obtained a defense verdict for a mortgage lending corporation in a case in which the plaintiff alleged that the defendant provided a reverse mortgage to a borrower who did not have sufficient capacity and/or was not provided with required disclosures. After a two-day trial the jury ruled in favor of the lender in less than two hours.
- Secured dismissal with prejudice of all claims against a national mortgage servicing company in federal court.
- After being retained post-trial, successfully represented a national mortgage servicer by overturning a jury verdict for violation of the Tennessee Consumer Protection Act and obtaining an affirming opinion from the Tennessee Court of Appeals.