

CASE STUDIES

Successful Trial in Defense of Reverse Mortgage Business Model

Real Property Litigation

Client: One of the nation's largest providers of mortgage products

Type of case: Real property

Court: Federal District Court, Western District of Arkansas

Length of trial: Three days

Result: Defense verdict for client

After a three-day jury trial, Baker Donelson obtained a full defense verdict for one of the nation's largest providers of mortgage products. The plaintiff, who was the borrower's son, asserted that his mother was not able to understand the loan documents associated with the reverse mortgage she agreed to or to enter into the contract for the loan. Considering that reverse mortgage loans are only available to individuals over 62 years of age, making sure that borrowers are of sound mind and able to enter into the loan contract is of paramount importance. Federal law requires that applicants for reverse mortgages undergo counseling to understand what a reverse mortgage is, that it fits the borrower's need and that the borrower understands how to pay off or terminate the loan.

Knowing the federal requirements, we introduced the borrower's counseling documents as evidence to the jury, and also presented testimony from the counselor who met with the borrower to prove that at the time of the loan, the borrower was of sound mind and well informed about the reverse mortgage. By the time of trial, however, the borrower was suffering from early stage Alzheimer's, so she did not testify but was at trial each day, increasing the concern that the jury would be sympathetic and allow that sympathy to overcome the evidence presented. Fortunately, the jury focused on the evidence and determined that when the loan was obtained, the borrower was well informed about the reverse mortgage and of sufficient mind to enter into the loan contract.

This matter was significant for the client as it was a fundamental attack on the business model of providing reverse mortgages to persons who have all or most of their assets tied up in their primary residence. While all of these borrowers are seniors, they must undergo counseling and have the mental ability to enter into a contract. The client is very circumspect in making sure its borrowers can enter into a contract and it declines applications from any borrower it deems to be compromised, either mentally or by pressure from another family member. Because of the significance of the claim, the client did not make any offers of settlement prior to trial. Both the client and Baker Donelson were very pleased with the jury's defense verdict.