

## **BEAUVAIS AND BARTRAM APPLIED IN REVERSE MORTGAGE**

On November 21, 2018, the Third District, in a case of first impression, extended the notable decisions in Deutsche Bank Trust Co. Americas v. Beauvais, 188 So. 3d 938 (Fla. 3d DCA 2016) and Bartram v. U.S. Bank Nat. Ass'n., 211 So. 3d 1009 (Fla. 2016) to a reverse mortgage. In the case of Hayes v. Reverse Mortgage Solutions, Inc., 2018 WL 6071448, the Third District Court of appeals held that the five-year statute of limitation begins to run at maturation of the loan, which in that case would have been the stated date of maturity, November 25, 2079.

Ruby Hayes (the “Borrower”) took out a reverse mortgage on October 26, 2007. The reverse mortgage had a stated maturity date of November 25, 2079. The reverse mortgage contained a common acceleration clause, with two conditions allowing acceleration – including death of the borrower or the transfer of title. Less than a year after executing the mortgage, the Borrower passed away and her will devised the property to Judith Hayes, her daughter. An initial foreclosure action was filed on July 6, 2009, but that case was “closed” in 2013. Over five years later, a second foreclosure action was filed. During trial in the second action, Judith Hayes argued for dismissal, alleging the foreclosure was barred by the statute of limitations, claiming that the cause of action accrued upon the death of the Borrower OR when the first foreclosure was filed (acceleration). The lower Court denied the dismissal and entered judgment, from which Judith Hayes appealed. The Third District affirmed the lower court's entry of judgment. In reaching its conclusion, the Third District reasoned that the death of the Borrower is an optional acceleration and, therefore, does not trigger the statute of limitations. Dealing with acceleration based on the prior foreclosure, the Third District discussed Beauvais, 188 So. 3d 938; Bartram, 211 So. 3d 1009; and Singleton v. Greymar Assocs., 882 So. 2d 1004 (Fla. 2004) and agreed that **A PRIOR, UNSUCCESSFUL FORECLOSURE ACTION DOES NOT BAR A SUBSEQUENT FORECLOSURE ACTION WHEN THE NOTE HAS NOT YET MATURED.** The Third District then applied the same reasoning to the reverse mortgage at hand and held that the statute of limitations does not begin to run on a reverse mortgage with an optional acceleration clause until the date of maturation.