

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

TAYLOR, BEAN & WHITAKER
MORTGAGE CORP.,
REO SPECIALISTS, LLC, and
HOME AMERICA MORTGAGE, INC.

Case No. 3:09-bk-07047-JAF
Case No. 3:09-bk-10022-JAF
Case No. 3:09-bk-10023-JAF

Debtors.

*Jointly Administered Under
Case No. 3:09-bk-7047-JAF*

**DEBTORS' APPLICATION FOR AUTHORITY TO
RETAIN, EMPLOY AND COMPENSATE PROFESSIONALS TO
REPRESENT THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS**

Debtors, Taylor Bean & Whitaker Mortgage Corp. (“**TBW**”), REO Specialists, LLC (“**REO**”), and Home America Mortgage, Inc. (“**HAM**”)(collectively, the “**Debtors**”), by and through their undersigned attorneys, hereby file their Application for Authority to Retain, Employ and Compensate Professionals to Represent the Debtors in the Ordinary Course of Business (the “**Motion**”). In support of this Motion, the Debtors respectfully represent as follows:

Background

1. On August 24, 2009, TBW filed its Voluntary Petition for relief under Chapter 11 of the Bankruptcy Code. On November 25, 2009 (together with August 24, 2009, the “**Petition Dates**”), HAM and REO, both wholly-owned subsidiaries of TBW, filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. The Debtors are managing their properties as debtors in possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code and order of this Court.

2. By order dated January 19, 2010, the Court ordered the joint administration of these cases.

3. By notice dated September 11, 2009, the United States Trustee in the TBW case appointed the members of the Official Committee of Unsecured Creditors (the “Committee”) pursuant to Section 1102 of the Bankruptcy Code (Doc. No. 203) and amended its appointment by notice dated December 11, 2009 (Doc. No. 761).

4. Prior to the Petition Dates, REO was in the business of preserving and managing TBW’s “Real Estate Owned” property. HAM was in the business of originating mortgage loans, which loans were assigned to TBW.

5. Until shortly before the Petition Dates, TBW was the largest independent (i.e. non-depository owned) mortgage lender in the United States. Headquartered in Ocala, Florida, TBW employed approximately 2,400 people across the country. The largest offices were in Ocala, Florida; Atlanta, Georgia; and Tampa, Florida. TBW's principal business was comprised of:

- Origination, underwriting, processing and funding of conforming conventional and Government-insured residential mortgage loans;
- Sale of mortgage loans into the “secondary market” to government-sponsored enterprises such as the Federal Loan Mortgage Corporation or the Government National Mortgage Association; and
- Mortgage payment processing and loan servicing. For a detailed description of TBW’s business operations and the reasons for this bankruptcy filing, please see the description contained in the Debtor’s Motion for Entry of Interim and Final Orders Authorizing Use of Cash Collateral and Granting Replacement Liens Pursuant to 11 U.S.C. §§ 105(a), 361, 363, 541 and 552 and Bankruptcy Rule 4001. (Docket No. 5).

6. No trustee or examiner has been appointed in these cases.

Relief Requested and Grounds for Relief

7. Due to the nature of their business operations, the Debtors retained the services of certain law firms and accounting firms prior to the Petition Dates to represent them in the ordinary course of their businesses (collectively, the “**Ordinary Course Professionals**”). The legal matters primarily handled by the Ordinary Course Professionals relate to the following areas: foreclosure, lawsuits by certain borrowers, labor and employee benefits, local real estate, environmental, and accounting. A schedule of the names and addresses of the Ordinary Course Professionals and their areas of service to the Debtors are set forth in Exhibit A attached hereto.

8. By this Application, the Debtors seek authority (i) to continue the retention of each of the Ordinary Course Professionals effective as of the Petition Dates without the necessity of a formal retention application approved by this Court, and (ii) to compensate each of the Ordinary Course Professionals on a monthly basis for postpetition services rendered without the necessity of a formal fee application approved by this Court, subject to certain monetary limitations as set forth below.

9. Because of the number and diversity of the professionals that are regularly retained by the Debtors, the Debtors believe it would be wasteful and burdensome both to the Debtors and this Court to require that each Ordinary Course Professional apply separately for approval of such Ordinary Course Professional's retention, employment and compensation. Instead, the Debtors propose that they be permitted to retain and employ each Ordinary Course Professional without filing any formal retention application with the Court. In addition, subject

to the provisions of paragraph 16 below, the Debtors propose that they be permitted to pay each Ordinary Course Professional, on a monthly basis and without any interim or final application to the Court by such professional, 100% of fees and disbursements incurred postpetition. Such payments by the Debtors would be made in the ordinary course of the Debtors' businesses following the submission to, and approval by, the Debtors, the Committee, and the U.S. Trustee's Office of an appropriate monthly invoice setting forth in reasonable detail the nature of the services rendered and the disbursements actually incurred.

10. Notwithstanding the foregoing, if any Ordinary Course Professional's fees and disbursements exceed a total of \$25,000 per month, then the payments to such Ordinary Course Professional for fees and disbursements for such month shall be subject to the prior approval of the Court in accordance with §§330 and 331 of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), the Local Bankruptcy Rules for the Middle District of Florida (the "**Local Rules**"), orders of this Court, and any guidelines or requirements promulgated by the United States Trustee. In such event, the Ordinary Course Professional may file an interim fee application with the Court for such month at any time following the last day of such month. The Debtors shall be authorized to pay the fees and disbursements for such month in accordance with any order entered by the Court. The Debtors further propose that only those Ordinary Course Professionals who receive total fees and disbursements in excess of \$100,000 during the pendency of these Chapter 11 cases (excluding any fees and disbursements already approved by the Court as described above) be required to file a final fee application with the Court in accordance with §§330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the

Local Rules, orders of this Court, and any guidelines or requirements promulgated by the United States Trustee.

11. The proposed ordinary course retention and payment procedures set forth herein will not apply to those professionals as to whom the Debtors have filed separate retention applications.

12. The Debtors request authorization to supplement the list of Ordinary Course Professionals from time to time, as necessary. In such event, the Debtors propose to file a supplemental list with this Court and to serve it on the Office of the United States Trustee and counsel for the Committee. The United States Trustee and the Committee shall have twenty-one days from the date of filing of the supplemental list within which to object in writing to the inclusion and approval of the professionals on the supplemental list. Such objection shall be emailed to Edward Peterson at epeterson@srbp.com such that it is received on or before the date that is twenty-one days after the filing of the supplemental list. If the parties are unable to resolve the objection, the Debtors will request the Court to set the matter for hearing. In the absence of objection, such list shall be deemed approved by the Court without the necessity of a hearing and the professionals included therein shall be deemed to be Ordinary Course Professionals and their employment, retention and compensation shall be governed by the terms of the order granting this Motion.

13. The Debtors submit that the continued employment and postpetition compensation of the Ordinary Course Professionals is in the best interest of the Debtors' estates, creditors, and other parties in interest. While Ordinary Course Professionals generally wish to

represent the Debtors on an ongoing basis, the Debtors expect that some of the Ordinary Course Professionals may be unwilling to do so if they are not paid on a regular basis for postpetition services rendered. Moreover, if the expertise and background knowledge of certain of these Ordinary Course Professionals with respect to the particular areas and matters for which they were responsible for representing the Debtors prior to the Petition Dates is lost, the estate will undoubtedly incur additional unnecessary expenses, as other professionals without such background and expertise will have to be retained and then be paid to do work already performed by the Ordinary Course Professionals. Finally, requiring these Ordinary Course Professionals to obtain frequent Court approval of their fees would be administratively burdensome and unduly expensive for both the Debtors and these Ordinary Course Professionals. It is thus in the best interests of the Debtors' estates that the Debtors avoid any disruption in the professional services they require in the day-to-day operation of their businesses and the costs of obtaining periodic approval of the fees of the Ordinary Course Professionals by continuing to retain and compensate the Ordinary Course Professionals.

14. To ensure that the retention and compensation of the Ordinary Course Professionals does not result in a side-stepping of the formalities of §§327 through 331 of the Bankruptcy Code, the Debtors propose the following terms and procedures for the retention of the Ordinary Course Professionals:

(a) Subject to the provisions set forth herein, the Debtors may, in the reasonable and ordinary conduct of business as debtors and debtors-in-possession, retain and employ professional persons for the performance of tasks related to the ordinary course of the Debtors' businesses. Professionals utilized by the Debtors to handle matters in connection with the bankruptcy cases, the Debtors' plans of reorganization or liquidation or related litigation, have been or will be retained by the Debtors pursuant to

individual retention applications and will not be eligible to be Ordinary Course Professionals.

(b) The acceptance of employment by Ordinary Course Professionals shall constitute a representation by the Debtors and the involved professionals that:

- i. To the best of the Debtors' knowledge, after reasonable inquiry, such Ordinary Course Professionals do not represent or hold any interest adverse to either the Debtors or their estates with respect to the matters upon which such Ordinary Course Professionals are to be employed;
- ii. The arrangement for postpetition compensation reached between the Debtors and such Ordinary Course Professionals is reasonably based upon the nature, extent, and value of such services, the time spent on such services, and the cost of comparable services other than in a case under the Bankruptcy Code. Furthermore, the reimbursement of disbursements will be only for actual and necessary expenses not exceeding the value of such expenses; and
- iii. All transactions between the Debtors and such Ordinary Course Professionals shall be subject to Section 329 of the Bankruptcy Code as well as to all other provisions of the Bankruptcy Code regulating the fairness and reasonable worth of services rendered by professionals seeking and receiving compensation.

(c) Ordinary Course Professionals retained and employed pursuant to the terms of the order granting this Motion shall be authorized to draw down any retainers in payment of such fees and expenses without further order of this Court.

(d) No firm or individual shall be entitled to payments of more than \$25,000 for any one month, without further order of this Court. If an Ordinary Course Professional seeks more than \$25,000 for any month, then such Ordinary Course Professional shall prepare and file with this Court a fee application seeking approval of all its fees for that month, and the Debtors shall pay such professional's fees for that month only after and to the extent that its fee application is approved.

(e) Only those Ordinary Course Professionals who receive total fees and disbursements in excess of \$100,000 during the pendency of the Chapter 11 cases (excluding any fees and disbursements already approved by the Court as described above) shall be required to file a final fee application with the Court in accordance with

§§330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, orders of this Court, and any guidelines or requirements promulgated by the United States Trustee.

15. Based upon the foregoing, the Debtors respectfully submit that ample cause exists to justify the retention and compensation procedures described herein. Counsel for the Committee has advised the Debtors that the Committee has no objection to the relief requested herein.

WHEREFORE, the Debtors respectfully request entry of an order granting the relief requested herein and such other and further relief as is just.

DATED: April 22, 2010

/s/ Edward J. Peterson, III
Russell M. Blain (Florida Bar No. 236314)
rblain@srbp.com
Edward J. Peterson, III (Florida Bar No. 014612)
epeterson@srbp.com
STICHTER, RIEDEL, BLAIN & PROSSER, P.A.
110 East Madison Street, Suite 200
Tampa, Florida 33602
Telephone: (813) 229-0144
Facsimile: (813) 229-1811
CHAPTER 11 COUNSEL TO DEBTORS

EXHIBIT A

Professionals	Address	Service Provided
Butler Snow	210 East Capitol Street Jackson, MS 39201-2370	Representation of Debtor in state licensing proceeding in Mississippi, styled <i>In the Matter of Taylor, Bean & Whitaker Mortgage Corp.</i> , pending with the Department of Banking and Consumer Finance, State of Mississippi. Future legal work should be minimal.
Crowe Horwath LLP	P.O. Box 145415 Cincinnati, OH 45250	Services relating to TBW's ESOP Plan, including preparation of Form 500 and other necessary forms.
Gray, Ackerman & Haines, P.A.	125 NE 1st Ave., Ste. 1 Ocala, Florida 34470-6675	Defense of complaint for reformation of loan in the lawsuit styled <i>W. Scott Wynn v. MERS, Inc. and Taylor, Bean & Whitaker Mortgage Corporation</i> , pending in the Circuit Court of the Fifth Judicial Circuit in and for Lake County, Florida, Case No: 2009-CA-002316. The stay was lifted to allow the plaintiff to pursue the reformation claim.
James Moore & Co.	5931 NW 1st Place Gainesville, FL 32607-2063	Accounting services, including preparation of tax returns, ESOP audits, and 401(k) audits.
Ray & Sherman, LLC	One Securities Centre 3490 Piedmont Rd. Ste. 700 Atlanta, GA 30305	Representation of Debtor in lawsuit filed by borrower styled <i>Cassandra Boyd-Bay v. Taylor, Bean & Whitaker Mortgage Corp., et. al.</i> , pending in the Superior Court of Dekalb County, Georgia, Case No. 08cv10145-10. The state court required attendance at a hearing despite the automatic stay. In the absence of an order lifting the stay, future legal work should be minimal. Representation in lawsuit styled <i>Dondrea L. Crosby v. TBW, MERS, Anthony DeMarlo & McCurdy & Candler, P.C.</i> , pending in the Superior Court of Fulton County, Georgia, Case No. 10-181016.
R. William Futch, P.A.	610 S.E. 17 th Street Ocala, FL 34471	Transactional work for TBW regarding Ocala Raceway and Jumbolair