

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re: TAYLOR, BEAN & WHITAKER MORTGAGE CORP., REO SPECIALISTS, LLC, and HOME AMERICA MORTGAGE, INC., Debtors.	Chapter 11 Case No. 3:09-bk-07047-JAF Case No. 3:09-bk-10022-JAF Case No. 3:09-bk-10023-JAF <i>Jointly Administered Under Case No. 3:09-bk-07047-JAF</i>
In re: TAYLOR, BEAN & WHITAKER MORTGAGE CORP., Applicable Debtor.	Chapter 11 Case No. 3:09-bk-07047-JAF

**DEBTOR TAYLOR, BEAN & WHITAKER MORTGAGE CORP.'S
AMENDED MOTION TO APPROVE DEBTOR'S ALLOCATION OF
DISPUTED LOANS AND RELATED ASSETS**

A hearing on this Amended Motion, by which the Debtor seeks approval of the allocation of disputed loans and related assets, will be held at 10:00 a.m. on December 17, 2010, in Courtroom 4D, Bryan Simpson United States Courthouse, 300 North Hogan Street, Jacksonville, Florida, before The Honorable Jerry A. Funk, United States Bankruptcy Judge.

Debtor TAYLOR, BEAN & WHITAKER MORTGAGE CORP. (“**TBW**” or the “**Debtor**”) files this *Amended Motion to Approve Debtor’s Allocation of Disputed Loans and Related Assets* (the “**Amended Motion**”).¹ In support of this Amended Motion, the Debtor shows this Court as follows:

¹ As more fully described below, this Motion is limited to the loans that are the subject of the settlement between the Debtor and the FDIC-Receiver (including loans that were removed from the settlement, as filed and approved by

BACKGROUND

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
2. On November 30, 2010, the Debtor filed its *Motion (I) to Approve Debtor's Allocation of Disputed Loans and Related Assets and (II) to Approve Summary Process for Resolution of Disputed Loan Issues* (the "**Original Motion**").
3. The "Jurisdiction, Venue and Status of the Debtor" and "Background" sections of the Original Motion are adopted and incorporated into this Amended Motion. Likewise, the defined terms in the Original Motion are incorporated and used herein.
4. The Debtor believes that the FDIC-Receiver, Freddie Mac, Ocala Funding, and the Debtor are the only parties who might have an ownership interest in any of the 1,952 Disputed Loans that are the subject of the Original Motion. Accordingly, both before and after the filing of the Original Motion, the Debtor engaged in extensive discussions regarding its recommended allocation with the FDIC-Receiver, Freddie Mac, and Bank of America, as indenture trustee for the Ocala Funding commercial paper facility.
5. Since the filing of the Original Motion, the Debtor has also had discussions with Deutsche Bank and BNP Paribas, the two investors in the Ocala Funding commercial paper facility. These two banks assert that they have a beneficial interest in certain loans, including some of the 1,952 Disputed Loans that were the subject of the Original Motion.
6. As a result of the communications with the parties described in Paragraphs 5 and 6, above, the Debtor has determined that it is appropriate to amend the Original Motion to

this Court) [Doc. No. 1936]. The Debtor anticipates filing at least one more similar motion regarding the allocation of other loans about which there are potentially competing claims of ownership.

remove 224 loans from the allocation of Disputed Loans set forth in the Original Motion. These 224 loans are listed in Exhibit "D" attached to this Amended Motion. The Debtor and affected parties will continue to analyze these 224 loans. The Debtor expects that one or more additional motions will be filed seeking allocation of these and other loans.

7. Hence, the Debtor amends the Original Motion by filing this Amended Motion seeking approval 1,728 Disputed Loans which are included among the following:

- (a) the 160 loans assigned to Ocala Funding in TBW's records that are currently being serviced by RoundPoint;
- (b) the 670 loans identified by Bank of America as described in Paragraph 18 of the Original Motion, which were removed from the FDIC Settlement prior to September 2;
- (c) 25 loans identified by the FDIC-Receiver in the custody of Freddie Mac's custodian as described in Paragraph 18 of the Original Motion, which were removed from the FDIC-Settlement prior to September 2;
- (d) 83 loans identified by the Debtor as described in Paragraph 19 of the Original Motion;
- (e) 847 loans identified by Freddie Mac as described in Paragraph 20 of the Original Motion; and,
- (f) 252 additional loans identified by Bank of America as described in Paragraph 24 of the Original Motion.

RELIEF REQUESTED (AS AMENDED)

8. TBW requests that this Court approve its Allocation of Disputed Loans as set forth, below, and authorize and direct the Debtor and other affected parties to transfer the loans, along with all related REO, cash proceeds and other assets, to the party to whom the loans are allocated (subject, to the extent necessary and appropriate, to the terms of the FDIC-Settlement and confirmation of the Plan).

9. The allocation of these loans, if and as approved by this Court, will be a final allocation of these assets (subject to the terms of the FDIC-Settlement Agreement and Plan

of Liquidation). All other loans and related assets will continue to be administered as assets of the Debtor's bankruptcy estate, subject to the rights and claims of any party.

Debtor's Allocation of Disputed Loans

10. *No Allocation to Freddie Mac:* As indicated below, the Debtor has determined that the 847 loans included in the FDIC-Settlement that were flagged by Freddie Mac (*see* Paragraph 20 of the Original Motion) were repurchased by TBW and, therefore, Freddie Mac is not the owner of any of these loans. However, by virtue of this amendment, 165 of these loans have been removed from the Debtor's allocation, so that 682 of the loans flagged by Freddie Mac are being allocated now.

11. *Allocation to Ocala Funding:* Attached to this Motion as Exhibit "A" is a schedule of the 354 Disputed Loans that the Debtor has determined are owned by Ocala Funding. The schedule includes:

- (a) 160 loans assigned to Ocala Funding in TBW's records. (*See* Table 8 of the Final Reconciliation Report and Section 2.4 of the FDIC Settlement Agreement.) It appears that Bank of America (f/k/a LGTS) has possession of 127 of the 160 mortgage notes.
- (b) Three loans listed on Exhibit F to the FDIC-Settlement Agreement that were funded by both Ocala Funding and the AOT.
- (c) 93 loans on Exhibit H to the FDIC-Settlement Agreement that were previously assigned to Colonial as collateral for the Overline. (*See* Table 8 of the Final Reconciliation Report.) The Debtor has confirmed that a payment was made by Ocala Funding to purchase all 93 of these loans and that none of these 93 loans has an outstanding balance on the Overline.
- (d) 92 loans on Exhibit K to the FDIC-Settlement Agreement assigned to TBW. (*See* Table 8 of the Final Reconciliation Report.)
- (e) Six loans listed on Exhibit J to the FDIC-Settlement Agreement that have converted to REO. All six of these loans were purchased by Ocala Funding. While five of these loans are assigned to the Overline, no advances were made on the Overline.

In sum, each of the loans was either originally funded by Ocala Funding at the time of origination or included in a sale from TBW/Colonial to Ocala Funding and paid for by Ocala Funding. None of these loans was subsequently sold to and paid for by another investor.

12. *Allocation to FDIC-Receiver (Colonial):*² Attached to this Motion as Exhibit “B” is a schedule of the 695 Disputed Loans that the Debtor has determined are owned by Colonial. The schedule includes:

- (a) 670 loans financed on the COLB, shipped from Colonial to Ocala Funding, but for which Ocala Funding made no purchase payment. These loans were removed from the FDIC-Settlement (by amendment to Exhibit E to the FDIC Settlement Agreement) based on concerns raised by Bank of America. There is an inconsistency between the records of Bank of America (formerly LGTS) and the FDIC-Receiver regarding possession of these loans. According to Bank of America, it has possession of 433 of the loans, with the other 237 having been shipped to Colonial or TBW. The FDIC-Receiver’s records indicate that it has possession of 236 of the loans, Bank of America has possession of 428 loans, five are in the possession of TBW, and one is missing.
- (b) 25 loans removed from the FDIC-Settlement by the FDIC-Receiver as described in Paragraph 18 above. While currently in the possession of Freddie Mac’s custodian, these loans are assigned to Colonial in TBW’s records and are currently being serviced by RoundPoint. These 25 loans include one loan initially identified by Freddie Mac. This loan was one of the loans removed from the original Exhibit E after the FDIC discovered the loan documents were in the custody of Freddie Mac’s custodian.

In sum, these loans were originally financed by Colonial on the COLB and Colonial was not paid upon shipment to Ocala Funding.

13. *Allocation to the Debtor:* Attached to this Motion as Exhibit “C” is a schedule of the 679 Disputed Loans that the Debtor has determined are owned by the

² All of the loans allocated to the FDIC-Receiver and many of the loans allocated to the Debtor are the subject of the FDIC-Settlement. In the event that the FDIC-Settlement Agreement is terminated before the “Effective Date” as defined in that agreement, the Debtor and the FDIC-Receiver reserve all rights related to their respective rights, if any, in the Disputed Loans allocated to each of them. The allocations made to the FDIC-Receiver and TBW for the purposes of this Motion shall in no way prejudice either of them in the event that the FDIC-Settlement is not consummated.

Debtor. The schedule includes:

- (a) Certain loans identified by Bank of America, as indenture trustee of Ocala Funding, as follows:
 - (i) 20 loans listed on Exhibit F to the FDIC-Settlement Agreement assigned to the AOT. Ocala Funding did not make a purchase payment for 19 of these loans. With respect to the remaining one loan, it was repurchased from Ocala Funding and Ocala Funding received the sales proceeds. (Note: Thirteen (13) of the 20 loans were also flagged by Freddie Mac.)
 - (ii) 11 of the loans listed on Exhibit H to the FDIC-Settlement Agreement assigned to the Overline. Ocala Funding did not make a purchase payment for 11 of these loans. (Note: Four (4) of these 17 loans were also flagged by Freddie Mac.)
 - (iii) Five of the loans listed on Exhibit J to the FDIC-Settlement Agreement that have converted to REO. All five of these loans are assigned to either the Overline (three loans) or the AOT (two loans). Ocala Funding did not make a purchase payment for any of these loans. (Note: Four (4) of these five loans were also flagged by Freddie Mac.)
- (b) Of the 846 loans identified by Freddie Mac that were initially being allocated to the Debtor in the Original Motion,³ 182 have been removed from this amended allocation.⁴ The remaining 664 loans are allocated to the Debtor (as part of the FDIC Settlement), as follows:
 - (i) 158 loans listed on Exhibits F to the FDIC-Settlement Agreement (thirteen (13) of which are also included in the allocation in subparagraph (a)(i) above);
 - (ii) 154 loans listed on Exhibits H to the FDIC-Settlement Agreement (four (4) of which are also included in the allocation in subparagraph (a)(ii) above);
 - (iii) 150 loans listed on Exhibit J to the FDIC-Settlement Agreement, which have converted to REO (four (4) of which are also included in the allocation in subparagraph (a)(iii) above); and,

³ Freddie Mac also flagged one loan that is allocated to the FDIC-Receiver.

⁴ In addition to the 165 loans removed from this allocation at the request of Freddie Mac, 17 loans identified have been removed from the original allocation to the Debtor at the request of Bank of America. These 17 additional loans were originally flagged by both Freddie Mac and Bank of America.

- (iv) 202 loans listed on Exhibit K to the FDIC-Settlement Agreement being serviced by Selene.

14. To the extent that any of the REO and loans allocated to the Debtor are subject to the FDIC Settlement Agreement, the Debtor will administer those loans in accordance with the provisions of that agreement.

15. *Summary of Allocation of Disputed Loans:* There are 1,728 Disputed Loans that are the subject of this Motion. The Debtor believes that those loans should be allocated among four parties as follows:

Freddie Mac	0 Loans
Ocala Funding	354 Loans (Exhibit A to this Motion)
FDIC-Receiver	695 Loans (Exhibit B to this Motion)
Debtor	679 Loans (Exhibit C to this Motion)

The Debtor is unaware of any other party that asserts an interest in any Disputed Loan and further is unaware of any facts that indicate that any other party might be an owner of any Disputed Loan.

NOTICE

16. Notice of this Amended Motion and of the hearing of December 17, 2010 has been or will be provided to the Office of the United States Trustee, parties that have filed requests for service of documents in these cases, the Local Rule 1007(d) Parties in Interest List, and all creditors and equity security holders of the Debtors. In light of the nature of the relief requested, the Debtor submits that no further notice is necessary.

CONCLUSION AND PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing, the Debtor respectfully requests that this Court—

- (A) conduct a hearing on the Debtor's Allocation of Disputed Loans as set forth in this Amended Motion and enter an order approving such allocation; and
- (B) grant such other and further relief as is just and proper.

Dated: December 13, 2010.

/s/ J. David Dantzler, Jr.
Jeffrey W. Kelley (Ga. Bar No. 412296)
jeff.kelley@troutmansanders.com
J. David Dantzler, Jr. (Ga. Bar No. 205125)
david.dantzler@troutmansanders.com
TROUTMAN SANDERS LLP
600 Peachtree Street, Suite 5200
Atlanta, Georgia 30308
Telephone: (404) 885-3000
Facsimile: (404) 885-3900
**SPECIAL COUNSEL FOR DEBTOR AND DEBTOR
IN POSSESSION**

/s/ Russell M. Blain
Russell M. Blain (Fla. Bar No. 0236314)
rblain@srbp.com
Edward J. Peterson (Fla. Bar No. 0014612)
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
ATTORNEYS FOR DEBTOR