

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.,

Debtors.

In re:

TAYLOR, BEAN & WHITAKER  
MORTGAGE CORP.,

Applicable Debtor.

Chapter 11

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

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

**MOTION TO APPROVE STIPULATION AND CONSENT  
AGREEMENT IN CONNECTION WITH THE SALE OF  
CERTAIN OF THE DEBTOR'S MORTGAGE LOANS**

TAYLOR, BEAN & WHITAKER MORTGAGE CORP., as debtor and debtor in possession (“**Taylor Bean**” or the “**Debtor**”), by and through its undersigned counsel, hereby moves this Court (the “**Motion**”), pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, for an order approving the Stipulation and Consent Agreement between Taylor Bean and the Commonwealth of Kentucky, Department of Financial Institutions (“**DFI**”). In support of its Motion, the Debtor respectfully represents as follows:

1. On December 10, 2010, the Debtor filed with the Court its *Motion for an Order (I) Approving the Sale of Certain Mortgage Loans Free and Clear of All Liens, Claims and Interests, (II) Approving Bidding Procedures and Terms of Auction, (III) Setting Hearing Date for Approval of Proposed Sale, (IV) Fixing Deadline for Objections to Proposed Sale,*

(V) *Approving Form and Manner of Service for Sale Notice and Procedures Order*, (VI) *Approving Stalking Horse Protections*, (VII) *Authorizing Expense Reimbursement and* (VIII) *Granting Related Relief* (the “**Sale Motion**”) [Docket No. 2263].

2. As outlined in the Sale Motion, the Debtor and Selene Finance LP (“**Selene**”) entered into a Mortgage Loan Purchase and Sale Agreement, dated December 10, 2010, and attached to the Sale Motion as Exhibit A (the “**Stalking Horse Agreement**”) whereby Selene agreed to purchase the Debtor’s rights and interests in approximately 678 mortgage loans (the “**Mortgage Loans**”).

3. Certain Mortgage Loans contemplated under the Stalking Horse Agreement are subject to C&D Orders<sup>1</sup> issued by four states: Connecticut, Illinois, Kentucky, and North Carolina (the “**C&D Mortgage Loans**”). The C&D orders restrict the ability of the Debtor or other party to foreclosure or otherwise take certain action with respect to the underlying collateral securing the C&D Mortgage Loans. Pursuant to the Stalking Horse Agreement, Selene could elect, on or before January 10, 2011 (the “**C&D Withdrawal Date**”), to withdraw from the Mortgage Loan Schedule those C&D Mortgage Loans where no Vacation Agreement had been issued by the respective state.

4. As of the C&D Withdrawal Date, the Debtor had not obtained Vacation Agreements with respect to the C&D Mortgage Loans from any issuing state. Therefore, the Debtor and Selene amended the Stalking Horse Agreement pursuant to the terms of a First Amendment to Mortgage Loan Purchase and Sale Agreement (the “**Amendment**”). The Amendment was filed with the Court on January 18, 2011 [Docket No. 2490].

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<sup>1</sup> All capitalized terms not defined herein shall have the meaning ascribed thereto in the Stalking Horse Agreement.

5. The material provisions of the Amendment provide that Selene, rather than withdrawing the C&D Mortgage Loans from the Mortgage Loan Schedule, will defer closing on the C&D Mortgage Loans (the “**Deferred Purchase Mortgage Loans**”). If, on or before March 15, 2011, a state enters into a Vacation Agreement with regard to the respective C&D Mortgage Loans, the closing of such Deferred Purchase Mortgage Loans shall occur within five (5) business days after delivery of the Vacation Agreement to the Debtor. If, however, any issuing state has not entered into a Vacation Agreement with regard to the respective C&D Mortgage Loans on or before March 15, 2011, Selene shall be deemed to have withdrawn from the Mortgage Loan Schedule all of the Deferred Purchase Mortgage Loans originating from such state. Those Deferred Mortgage Loans removed from the Mortgage Loan Schedule shall be deemed Purchaser Excluded Mortgage Loans, Selene’s right and obligation to purchase such Deferred Purchase Mortgage Loans shall terminate, and any deposit remaining with respect to such Deferred Purchase Mortgage Loans shall be returned to Selene.

6. On March 4, 2011, the Debtor and Selene entered into a Second Amendment to Mortgage Loan Purchase and Sale Agreement (the “**Second Amendment**”), filed with the Court contemporaneously herewith. The Second Amendment provides, among other things, that the date on which Selene shall be deemed to have withdrawn from the Mortgage Loan Schedule the Deferred Purchase Mortgage Loans originating in states that have not entered into a Vacation Agreement shall be extended from March 15, 2011, until April 30, 2011.

7. The Debtor received no additional bids with respect to the Mortgage Loans, and the sale of the Mortgage Loans to Selene was approved by order of the Court, entered on February 4, 2011 [Docket No. 2630] (the “**Sale Order**”).

8. Following entry of the Sale Order, Taylor Bean reached an agreement with the Connecticut Banking Commissioner whereby any language contained in the Connecticut C&D Orders prohibiting Taylor Bean, any servicer, or purchaser of mortgage loans currently or previously owned, originated, or serviced by Taylor Bean from commencing or proceeding with foreclosure proceedings was vacated. Such agreement was filed with the Court on February 28, 2011 [Docket No. 2742] and subsequently approved by the Court.

9. The Debtor has reached a similar agreement with the DFI regarding the C&D Orders issued by Kentucky. The terms and conditions of the agreement were memorialized in a Stipulation and Consent Agreement attached hereto as Exhibit A (the “**Agreement**”).

10. The material terms of the Agreement provide for the following:

- i. Taylor Bean agrees to a permanent revocation of its mortgage lender license and all branch licenses;
- ii. Taylor Bean is permanently barred from obtaining a license from the DFI;
- iii. The DFI is not prohibited by the automatic stay provision of 11 U.S.C § 362 from filing a claim against Taylor Bean’s surety bond issued by Fidelity and Deposit Company of Maryland to collect fines and costs outlined in paragraphs 20 and 21 of the Agreement;
- iv. Subject to bankruptcy court approval, DFI shall have a general unsecured TBW Class 8 claim to recover amounts set forth in paragraphs 20 and 21 of the Agreement in the event such amounts are not recovered from the surety bond referenced in subparagraph (ii) above, but in no event shall such claim against the Debtor’s estate exceed \$221,434.72;
- v. The Cease and Desist Order and Final Order Affirming the Cease and Desist Order will be vacated in their entirety, including any language prohibiting Taylor Bean, any servicer, or purchaser of mortgage loans currently or previously owned, originated, or serviced by Taylor Bean from commencing or proceeding with foreclosure proceedings;
- vi. Taylor Bean and DFI agree to a mutual release of all claims and causes of action arising out of the Agreement, its administration, and the underlying investigation and disciplinary action; and

vii. Taylor Bean agrees to withdraw its appeals, with prejudice, currently pending in the Franklin Circuit Court.

11. The Agreement is expressly conditioned upon Bankruptcy Court approval.

12. The Debtor has determined that approval of the Agreement is in the best interests of the Debtor's estate and creditors, as its terms will likely lead to an increased monetary recovery for the sale of the Mortgage Loans.

**WHEREFORE**, the Debtor respectfully requests that the Court enter an order:

- A. approving the Agreement; and
- B. providing such other and further relief as is just and proper.

Dated this 29th day of March, 2011.

/s/ Jeffrey W. Kelley

Jeffrey W. Kelley (Ga. Bar No. 412296)

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**CERTIFICATE OF SERVICE**

I, Jeffrey W. Kelley, certify that I am over the age of 18 and that, on March 29, 2011, I caused a copy of the foregoing *Motion to Approve Stipulation and Consent Agreement in Connection with the Sale of Certain of the Debtor's Mortgage Loans* to be served upon those persons or entities receiving notice through this Court's CM/ECF system.

/s/ Jeffrey W. Kelley  
Troutman Sanders LLP  
(404) 885-3000