

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

TAYLOR, BEAN & WHITAKER
MORTGAGE CORP.,

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

Chapter 11

Debtor.

**STIPULATION OF SETTLEMENT BY AND BETWEEN
FEDERAL HOME LOAN MORTGAGE CORPORATION AND THE DEBTOR
REGARDING STAY RELIEF AND TRANSFER OF LOAN SERVICING**

A. WHEREAS, on August 24, 2009 (the “Petition Date”), Taylor, Bean & Whitaker Mortgage Corporation (the “Debtor” or “TBW”) commenced this case by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Middle District of Florida (the “Bankruptcy Court”);

B. WHEREAS, prior to the Petition Date and through August 4, 2009, the Debtor had the conditional, non-delegable right to service certain single-family mortgages (the “Servicing”) for the Federal Home Loan Mortgage Corporation (“Freddie Mac”), pursuant to and in accordance with the provision of the Freddie Mac Single Family Seller/Service Guide (the “Guide”);

C. WHEREAS, on August 4, 2009, Freddie Mac notified the Debtor pursuant to the Guide that the Debtor’s eligibility to sell mortgages to and service mortgages for Freddie Mac was terminated “with cause” effective immediately, and began the process

of transferring the servicing of Freddie Mac loans to Cenlar, Saxon and Ocwen (the “Interim Servicers”);

D. WHEREAS, Freddie Mac has filed a motion for relief from the automatic stay pursuant to Section 362(d) of the Bankruptcy Code (“Stay Relief Motion”); and

E. WHEREAS, in order to resolve certain issues raised in the Stay Relief Motion and to avoid further prejudice and harm to affected borrowers and deterioration of the value of the mortgage servicing rights, the parties wish to compromise and settle certain controversies between them on the terms and conditions hereinafter set forth;

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between Freddie Mac and that Debtor, as follows:

1. TBW agrees to cooperate fully with Freddie Mac in effectuating the transfer of the Servicing to the Interim Servicers (the “Interim Servicing Transfer”) in accordance with the Guide, by taking, *inter alia*, the following actions:

- a. **Electronic Servicing Files.** TBW shall as soon as practical, but no later than October 15, 2009, complete the transmission of all electronic servicing files maintained in the Debtor’s servicing system (in “LSAMS” or any other form, format or system readily available to Debtors) to Freddie Mac, or its designees.
- b. **Hard Copy/Imaged Documents.** TBW shall as soon as practical, but no later than October 15, 2009, complete the turn over to Freddie Mac, or its designees, of all loan files, collateral files, and servicing files, in any and all formats, including, but not limited to, paper files, microfiche, and electronically imaged documents in TBW’s possession

or control, including documents held for TBW by third party storage vendors, provided that, the hard copy servicing file transfer shall be completed on or before October 9, 2009.

c. **Unaccounted Custodial Funds.** TBW shall on an ongoing basis promptly provide available information to Freddie Mac regarding any funds or accounts attributable to Freddie Mac loans not previously provided as such information is subsequently identified, including but not limited to funds currently held in accounts recently established by the Debtor or TBW at Wachovia Bank and Regions Bank.

d. **Unendorsed Borrower Checks / Incomplete ACH Transfers.** Subject to Paragraph 3 in the stipulation between TBW and the FDIC dated September 11, 2009, TBW shall execute such powers of attorney or other documents required to permit Freddie Mac or its interim servicers to endorse and to negotiate or otherwise process, for any and all purposes, all checks, drafts or other negotiable paper, wire transfers and transfers via Automated Clearing House transactions, related to mortgage loans owned by Freddie Mac that are payable to the Debtor or to its order, and to receive the cash or other proceeds of any such transactions or alternatively to cancel such transfers and seek replacements thereof from the applicable borrowers.

2. Freddie Mac agrees to pay for any reasonable third-party costs and expenses incurred in connection with compliance with paragraph 1 of this Stipulation

(other than *de minimus* items), including costs incurred and payments due to Iron Mountain in connection with Paragraph 1(a), above.

3. In light of allegations and concerns that multiple investors assert an ownership interest in certain mortgages that were originated, sold and serviced by TBW, Freddie Mac agrees that if funds are distributed to it with respect to such mortgages, and it is later adjudicated or agreed that Freddie Mac is not the owner of such mortgage, Freddie Mac, in conjunction with TBW, will cooperate with the owner of the loan (whether or not the owner of the loan is a party to this Stipulation) to transfer such ownership and any related servicing, files, escrows, funds—including, but not limited to any principal and interest payments received by the receiving party prior to the adjudication or agreement—and information to the proper owner of such mortgage. Likewise, if it is determined that Freddie Mac is the owner of mortgages that have been transferred to another investor, who is not a party to this Stipulation, TBW will cooperate with Freddie Mac to transfer such ownership and any related servicing, files, escrows, funds—including, but not limited to any principal and interest payments received by the receiving party prior to the adjudication or agreement—and information to Freddie Mac of such mortgage.

4. Debtor and Freddie Mac agree that they shall work collaboratively to create a framework for the orderly disposition of the servicing rights related to Freddie Mac loans.

5. Debtor and Freddie Mac shall work cooperatively in the exchange of information and use their best efforts to accomplish the objectives set forth in this Stipulation. Accordingly, the Debtor is authorized to enter into any related or ancillary

agreements necessary or required to effectuate this Stipulation without obtaining further Court approval of such related or ancillary agreements. The parties expressly acknowledge and agree that they will act in good faith with each other in the performance of the activities set forth in this Stipulation and any ancillary agreements.

6. To the fullest extent required by law and consistent with and pursuant to the terms of this Stipulation, Freddie Mac is granted relief from the automatic stay pursuant to 11 U.S.C. § 362(d), in order to implement the terms of this Stipulation.

7. Except as specifically resolved by the terms of this Stipulation, the parties hereby reserve the right to assert claims against each other.

8. Upon entry an order of the Bankruptcy Court authorizing and approving the Debtor's entry into this Stipulation and the terms and provisions hereof, this Stipulation shall be binding upon and inure to the benefit of the parties, and their respective legal representatives, successors and assigns, including any Chapter 11 trustee that may be appointed or Chapter 7 trustee in the event this Bankruptcy proceeding is converted to a case under Chapter 7 of the Bankruptcy Code.

9. This Stipulation may be executed in counterparts, each of which may be transmitted by facsimile, and each of which should be deemed an original and all of which together shall constitute one and the same instrument.

10. No amendment, modification or waiver of any provision of this Stipulation shall be effective unless the same shall be in writing and signed by the parties hereto and then such amendment, modification or waiver shall be effective only in the specific instance and for the specific purpose for which given.

11. Nothing in this Stipulation shall create a negative implication, waiver, release, estoppel, admission against interest, or law of the case and all rights of the parties are fully reserved.

Dated: September 20, 2009

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