

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

In re:

Chapter 11

TAYLOR, BEAN & WHITAKER  
MORTGAGE CORP.,

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

Debtor.

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**DEBTOR'S FIRST REQUEST FOR PRODUCTION  
OF DOCUMENTS, THINGS AND ELECTRONICALLY  
STORED INFORMATION TO WELLS FARGO BANK,  
NATIONAL ASSOCIATION**

TO: Wells Fargo Bank, National Association  
c/o John C. Weitnauer, Esquire  
Alston & Bird, LLP  
1201 West Peachtree Street  
One Atlantic Center  
Atlanta, GA 30309

and

Wells Fargo Bank, National Association  
Corporation Service Company  
1201 Hays Street  
Tallahassee FL 32301-2525  
Registered Agent

TAYLOR, BEAN & WHITAKER MORTGAGE CORP. ("Debtor"), by and through its undersigned counsel, in accordance with and as required by FED.R.BANKR.P. 7034, incorporating FED.R.CIV.P. 34, hereby serves its First Request for Production of Documents, Things and Electronically Stored Information ("Request") and requests that Wells Fargo Bank, National Association ("Wells Fargo"), produce all materials described herein relating to Wells Fargo's Motion for (i) Relief From the

**EXHIBIT A**

Automatic Stay and (ii) to Prohibit Use of Certain Funds (“Wells Fargo’s Motion”) [Docket No. 58] which are within your possession, custody or control or in the possession, custody or control or in the possession, custody or control of your agents, representatives or attorneys, within two (2) business days, or within such other time as the Court may direct or the parties may agree, and to permit the inspection, copying or reproduction thereof by Debtor, its attorneys or others acting on its behalf, at the offices of Stichter Riedel Blain & Prosser, P.A., 110 E. Madison Street, Suite 200, Tampa, Florida 33602, or at such time and place as may be mutually agreed upon by counsel for the parties.

#### **DEFINITIONS AND INSTRUCTIONS**

- A. An “affiliate” of a person means an individual or entity directly or indirectly controlling or controlled by such person or directly or indirectly under common control with such person.
- B. The term “all” includes the word “any” and “any” includes the word “all.”
- C. The terms “and” as well as “or” shall be construed disjunctively or conjunctively as necessary in order to bring within the scope of the request Documents or Electronically Stored Information which might otherwise be construed to be outside its scope.
- D. “August 13 Letters” means the letters dated August 13, 2009 attached as Exhibit 9 to Wells Fargo’s Motion.
- E. “August 20 Letters” means the August 20, 2009 Letters attached as Exhibit 12 and Exhibit 13 to Wells Fargo’s Motion.
- F. “Colonial Bank” means Colonial Bank, Montgomery, Alabama that was closed by the Alabama State Banking Department which appointed the FDIC as Receiver.
- G. The term “concerning” means concerning, evidencing, referring to, arising from, connected with, commenting on, responding to, showing, describing, analyzing, reflecting or constituting.

- H. "Debtor" means Taylor, Bean & Whitaker Mortgage Corp., as well as its individuals, agents, employees, officers, directors, shareholders and all other persons acting or purporting to act on its behalf.
- I. "Document" means all materials within the full scope of FED.R.CIV.P. 34 including, but not limited to, all writings and recordings, including the originals and all non-identical copies, whether different from the original by reason of any notation made on such copies or otherwise (including without limitation, e-mails and attachments, correspondence, memoranda, notes, diaries, minutes, statistics, statements, tags, labels, invoices, brochures, periodicals, telegrams, receipts, returns, summaries, pamphlets, books, inter-office and intra-office communications, offers, notations of any sort of conversations, working papers, applications, permits, file wrappers, indices, telephone calls, meetings or printouts, teletypes, telefax, invoices, work sheets, and all drafts, alterations, modifications, changes and amendments of any of the foregoing), graphic or aural representations of any kind (including without limitation, photographs, charts, microfiche, microfilm, video tape, recordings, motion pictures, plans, drawings, surveys).
- J. The term "each" includes the word "every" and "every" includes the word "each."
- K. "Electronically Stored Information" means any information created, stored, or utilized with computer technology of any type including, but not limited to, all electronic, mechanical, magnetic, or optical records or representations of any kind within the full scope of FED.R.CIV.P. 34. Electronically Stored Information includes, but is not limited to, word-processing documents; spreadsheets; presentation documents; graphics; animation; images; email and instant messages (including attachments); audio, video, and audiovisual recordings; voicemail stored on databases; networks; computers; laptop computers; computer systems; servers; archives; backup or disaster recovery systems; discs; CD; DVD; diskettes; drives; tapes; cartridges and other storage media; printers; the Internet; personal digital assistants; handheld wireless devices; cellular telephones; pagers; fax machines; and voicemail systems.
- L. "Final Evidentiary Hearing" means the hearing scheduled for October 8, 2009 on Wells Fargo's Motion.
- M. "FDIC" means the Federal Deposit Insurance Corporation.
- N. The term "individual" means any natural person.
- O. "Master Servicer" means Wells Fargo

- P. "Wells Fargo's Motion" means the Motion for Relief from Automatic Stay [Docket No. 58] filed by Wells Fargo.
- Q. The term "person(s)" means any natural person, firm, corporation, partnership, sole proprietorship, estate, trust estate, joint venture, association, group or organization, or any agent thereof.
- R. "Petition Date" means TBW's filing of its voluntary petition for relief under Chapter 11 of the Bankruptcy Code on August 24, 2009.
- S. "Pooling Agreements" means the Pooling Agreements listed on Exhibit 2 to Wells Fargo's Motion, including any amendments, modifications or reconstitution to such Pooling Agreements.
- T. "Receiver" means the FDIC in its capacity as Receiver of Colonial Bank.
- U. The term "referring" or "relating" to any given subject, when used to specify a Document or Electronically Stored Information, means any Document or Electronically Stored Information that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.
- V. "Servicer" means Debtor or TBW.
- W. "Servicing Agreements" means the Servicing Agreements listed on Exhibit 4 to Wells Fargo's Motion, including any amendments, modifications or reconstitution to such Servicing Agreements.
- X. "Successor Servicer" means any person that claims to have succeeded to, or claims to have accepted the appointment of, TBW's rights as Servicer under the terms of each Servicing Agreement.
- Y. "TBW" means Debtor or Taylor, Bean & Whitaker Mortgage Corp.
- Z. "Trust" means the twelve residential mortgage-backed securities listed on Exhibit 1 to Wells Fargo's Motion, including any amendments, modifications or reconstitution of such Trusts.
- AA. "Wells Fargo" means Wells Fargo Bank, National Association, as well as its individuals, agents, employees, officers, directors, shareholders and all other persons acting or purporting to act on its behalf.
- BB. "You" or "Your" means Wells Fargo.

- CC. Any word written in the singular herein shall be construed as plural or *vice versa* when necessary to facilitate the response to any Request.
- DD. Every Request herein shall be deemed a continuing Request and You shall supplement Your answers promptly if and when You obtain responsive Documents or Electronically Stored Information which add to or are in any way inconsistent with Your initial production.
- EE. These discovery requests are not intended to be duplicative. All Requests should be responded to full and to the extent not covered by other Requests. If there are Documents or Electronically Stored Information that are responsive to more than one Request, then please so note and produce each such Document or Electronically Stored Information first in response to the Request that is more specifically directed to the subject matter of the particular Document or Electronically Stored Information.
- FF. The Documents and Electronically Stored Information produced in response to this Request shall be organized and designated to correspond to the categories in the Request and produced in a form that accurately reflects how they are maintained by You in the normal course of business. All Documents which cannot be produced as legible copies shall be produced in their original form. All Electronically Stored Information shall be produced in native format including metadata.
- GG. The laws and rules prohibiting destruction of evidence apply to Electronically Stored Information in the same manner as they apply to other types of documentary evidence. Due to its format, Electronically Stored Information is easily deleted, modified or corrupted. You must take every reasonable step to preserve all Electronically Stored Information concerning or relating to this matter until a final resolution. This includes, but is not limited to, Your obligation to cease any and all data destruction and backup tape recycling policies which are in any way related to this matter.
- HH. If You claim that any Document or Electronically Stored Information responsive to this Request has been lost, deleted or destroyed, or it is otherwise unavailable, describe and identify the Document or Electronically Stored Information by stating in writing the name(s) of the author(s), the name(s) of the person(s) receiving the original and all copies, the date and subject matter, the circumstances under which it was lost, destroyed or otherwise became unavailable, and Your efforts to locate it.
- II. If answering this Request, You claim any ambiguity in interpreting the Request or a definition or an instruction applicable thereto, You shall not utilize such claim as a basis for refusing to respond but You shall set forth in Your response that

language claimed to be ambiguous and the interpretation chosen or used by You in responding to the Request.

- JJ. When production of any Document or Electronically Stored Information in Your possession is requested, such request includes Documents and Electronically Stored Information subject to Your possession, custody, or control. In the event that You are able to provide only part of the Document or Electronically Stored Information called for in any particular Request, provide all Document or Electronically Stored Information that You are able to provide and state the reason, if any, for the inability to provide the remainder of the Document or Electronically Stored Information.
- KK. With respect to each Document and Electronically Stored Information which You presently intend to withhold from production under a claim of privilege or other exemption from discovery, state the title and nature of the Document, and furnish a list signed by the attorney of record giving the following information with respect to each Document and Electronically Stored Information withheld:
- (i) the name and title of the author and/or sender and the name and title of the recipient;
  - (ii) the date of the Document's and Electronically Stored Information origination;
  - (iii) the name of each person or persons (other than stenographic or clerical assistants) participating in the preparation of the Document and Electronically Stored Information;
  - (iv) the name and position, if any, of each person to whom the contents of the documents have previously been communicated by copy, exhibition, reading or substantial summarization;
  - (v) a statement of the specific basis upon which privilege is claimed and whether or not the subject matter or the contents of the Document or Electronically Stored Information is limited to legal advice or information provided for the purpose of securing legal advice; and
  - (vi) the identity and position, if any, of the person or persons supplying the attorney signing the list with the information requested in the subparagraphs above.

### TIME PERIOD

Unless otherwise indicated, this Request refers to the period from January 1, 2005, through and including the date of the Final Evidentiary Hearing on Wells Fargo's Motion.

### REQUEST FOR PRODUCTION


The following Documents, Things and Electronically Stored Information within Your possession, custody or control shall be produced:

1. All Servicing Agreements related to Wells Fargo's Motion.
2. All Pooling Agreements related to Wells Fargo's Motion.
3. All Trusts related to Wells Fargo's Motion.
4. All Documents, Things or Electronically Stored Information concerning or relating to the communications by or among the Master Servicer and agents of the Trusts and/or Pooling Agreements concerning or relating to the asserted termination of TBW as Servicer.
5. All Documents, Things or Electronically Stored Information concerning or relating to any employee manuals, guidelines or procedures established by Wells Fargo concerning or relating to the Servicing Agreements, Pooling Agreements and Trusts including, but not limited to, all manuals, guidelines or procedures concerning or relating to the termination of a servicer or the appointment of a successor servicer.
6. All Documents, Things or Electronically Stored Information concerning or relating to proof of delivery of the August 13 Letters by Wells Fargo to TBW.
7. All Documents, Things or Electronically Stored Information concerning or relating to proof of delivery of the August 20 Letters by Wells Fargo to TBW.
8. All Documents, Things or Electronically Stored Information concerning or relating to the receipt by TBW of the August 13 Letters.
9. All Documents, Things or Electronically Stored Information concerning or relating to the receipt by TBW of the August 20 Letters.

10. All Documents, Things or Electronically Stored Information concerning or relating to Wells Fargo's attempts to terminate TBW as the Servicer under each of the Servicing Agreements.
11. All Documents, Things or Electronically Stored Information concerning or relating to the assertion in Wells Fargo's Motion that it "intends to fully transition servicing of the mortgage loans in each Trust to a third party servicer as quickly as it is able and has engaged in discussions with potential successor servicers to eventually assume full responsibilities as Servicer."
12. All Documents, Things or Electronically Stored Information concerning or relating to the appointment of any Successor Servicer to TBW by Wells Fargo on or before the Petition Date.
13. All Documents, Things or Electronically Stored Information concerning or relating to the succession to, or acceptance of the appointment of, TBW's rights as Servicer under each of the Servicing Agreements.
14. All Documents, Things or Electronically Stored Information concerning or relating to any notification to TBW by Wells Fargo that a Successor Servicer was appointed under each Servicing Agreement prior to the Petition Date.
15. All Documents, Things or Electronically Stored Information concerning or relating to any notification that any person claims to have succeeded to, or claims to have accepted the appointment of, TBW's rights as Servicer under each of the Servicing Agreements.
16. All Documents, Things or Electronically Stored Information concerning or relating to any notices sent to TBW concerning or relating to the Servicing Agreements other than the August 13 Letters and the August 20 Letters.
17. All Documents, Things or Electronically Stored Information concerning or relating to any communications between Wells Fargo and the Receiver.
18. All Documents, Things or Electronically Stored Information concerning or relating to Wells Fargo, in its capacity as Master Servicer, monitoring, overseeing or enforcing TBW's obligations to service the mortgage loans in accordance with the terms of the applicable Servicing Agreements.
19. All Documents, Things or Electronically Stored Information intended by Wells Fargo to be admitted into evidence at the Final Evidentiary Hearing on Wells Fargo's Motion.



20. All Documents, Things or Electronically Stored Information intended by Wells Fargo to be utilized at the Final Evidentiary Hearing on Wells Fargo's Motion whether or not such Document, Thing or Electronically Stored Information is introduced into evidence.



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Attorneys for Debtor

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing DEBTOR'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS, THINGS AND ELECTRONICALLY STORED INFORMATION TO WELLS FARGO BANK, NATIONAL ASSOCIATION has been furnished on the 29<sup>th</sup> day of September, 2009 to:

via Electronic Mail, Overnight Mail and U.S. Mail to:

Wells Fargo Bank, National Association  
c/o John C. Weitnauer, Esquire  
Alston & Bird, LLP  
1201 West Peachtree Street  
One Atlantic Center  
Atlanta, GA 30309  
[kit.weitnauer@alston.com](mailto:kit.weitnauer@alston.com)

and via Overnight Mail and U.S. Mail to:

Wells Fargo Bank, National Association  
Corporation Service Company  
1201 Hays Street  
Tallahassee, FL 32301-2525  
Registered Agent

on this 29<sup>th</sup> day of September, 2009.



Richard C. Prosser