

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA – JACKSONVILLE DIVISION**

In re:

**CASE NO. 09-07047-JAF
CHAPTER 11**

**TAYLOR, BEAN & WHITAKER
MORTGAGE CORP.,**

Debtors.

**THE BANK OF NEW YORK MELLON’S MOTION
FOR RELIEF FROM THE AUTOMATIC STAY**

COMES NOW, The Bank of New York Mellon, As Trustee for TBW Mortgage-Backed Trust 2007-1, Mortgage Pass-Through Certificates, Series 2007-1 (“Secured Creditor”), by and through its undersigned counsel, moves for Relief from the Automatic Stay and states as follows:

1. The Court has jurisdiction over this matter pursuant to 11 U.S.C. § 362, FRBP 4001(a) and the various other applicable provisions of the United States Bankruptcy Code, Federal Rules of Bankruptcy Procedure and the laws of the United States of America.
2. The Debtors listed above filed a voluntary petition pursuant to Chapter 11 of the Bankruptcy Code on August 24, 2009.
3. Secured Creditor holds a security interest in the real property located at 19304 N. 68th Avenue, Glendale, AZ 85308, by virtue of a Mortgage dated January 2, 2007, which was recorded in the Public Records of Maricopa County, Arizona, on January 5, 2007. The original parties to the mortgage were Michael J. Elmore as Mortgagor and Mortgage Electronic Registration Systems, Inc. Acting Solely as Nominee for Taylor, Bean & Whitaker Mortgage Corp. as Mortgagee. Said Mortgage secures a Note in the amount of \$293,600.00. See Exhibit “A” attached hereto.

4. The aforementioned Mortgage gives Secured Creditor a first lien position on said property, legally described as:

LOT 118, HAMILTON ARROWHEAD RANCH TWO, A SUBDIVISION RECORDED IN BOOK 273 OF MAPS, PAGE 35, AND CERTIFICATE OF CORRECTION RECORDED JULY 28, 1987 IN DOCUMENT NO. 87-477047, RECORDS OF MARICOPA COUNTY, ARIZONA

5. Secured Creditor is due pursuant to the loan documents, the principal balance sum of \$293,515.84, together with the current per diem interest at the rate of \$55.29, plus any additional interest, advances, costs and attorney's fees advanced by Secured Creditor. See Exhibit "B" attached.

6. The payments due pursuant to the terms contained in the note and mortgage are presently in default. The payment due on January 1, 2011 and all subsequent payments have not been made. Therefore, the interests of Secured Creditor are not being adequately protected.

7. The property has not been claimed exempt and the confirmed plan does not include payments to Secured Creditor thus the property is not necessary for an effective reorganization.

8. According to the Maricopa County Property Appraiser, the estimated market value of the subject property is \$161,300.00. Thus, there is no equity in the subject property for the benefit of unsecured creditors of the estate. See Exhibit "C" attached hereto.

9. Secured Creditor's interest in the subject property is being significantly jeopardized by the Mortgagor's failure to make regular mortgage payments under the subject loan documents while Secured Creditor is prohibited from pursuing its lawful remedies to protect such interest.

10. Secured Creditor maintains that cause exists pursuant to 11 U.S.C § 362(d)(1) for the automatic stay to be lifted to allow Secured Creditor to pursue its *in rem* remedies.

11. Pursuant to 11 U.S.C. § 362(e), Secured Creditor requests that, in the event a hearing is necessary, said hearing be held within thirty (30) days.

12. Secured Creditor requests that any communications sent by Secured Creditor in connection with proceeding against the property including, but not limited to, notices required by state law and communications to offer and provide information with regard to a potential Forbearance Agreement, Loan Modification, Refinance Agreement, Loss Mitigation Agreement or other loan workout, may be sent directly to the Debtors.

13. Secured Creditor has incurred attorney's fees and costs in the amount of \$650.00 and \$150.00 as a result of the necessity of filing this Motion. Secured Creditor seeks an award of its fees and costs or, alternatively, leave to seek recovery of its reasonable bankruptcy attorney's fees and costs in any pending or subsequent foreclosure action.

WHEREFORE, Secured Creditor respectfully requests that the automatic stay be lifted so that it may pursue *in rem* remedies to protect its interests in the Debtors' property outside of the bankruptcy forum, that in the event a hearing is necessary, said hearing be held within thirty (30) days, that Secured Creditor's attorneys' fees and costs incurred in filing this motion be recoverable as part of the mortgage debt but shall not be a personal liability of the Debtors and for such other relief as the Court may deem just and proper.

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Relief From the Automatic Stay was served electronically via CM/ECF transmission and/or by U.S. Mail, first-class postage prepaid, to: Taylor, Bean & Whitaker Mortgage Corp., Debtors, 4901 Vineland Road, Suite 120, Orlando, Florida 32811; Michael J. Elmore, Mortgagor, 19304 N. 68th Avenue, Glendale, AZ 85308; Edward J. Peterson, III, Amy Denton Harris, Russell M. Blain and Richard C. Prosser, Attorneys for the Debtors, Stichter, Riedel, Blain & Prosser, P.A., 110 East Madison Street, Suite 200, Tampa, FL 33602; U.S. Trustee, United States Trustee-JAX 11, 135 W. Central Boulevard, Suite 620, Orlando, FL 32801 and the attached Parties in Interest List 1007(d) this 25th day of October, 2011.

Respectfully Submitted:

Frenkel Lambert Weiss Weisman & Gordon, LLP
Attorney for Secured Creditor
440 North Andrews Avenue
Fort Lauderdale, Florida 33301
Phone: (954) 522-3233 x 603
Fax: (954) 522-3234
SEspinoza@flwlaw.com

/s/ Suly M. Espinoza, Esq.
SULY M. ESPINOZA, ESQ.
FBN # 14282