

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

In re:

TAYLOR, BEAN & WHITAKER  
MORTGAGE CORP.,

Debtor.

Chapter 11

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

**MOTION TO APPROVE DEBTOR'S (I) CONTRACT WITH  
INTERIM SERVICING AGENT; (II) TRANSFER INTERIM  
SERVICING OF LOANS; AND (III) TRANSFER OF RELATED  
BORROWER FUNDS TO SERVICING AGENT**

TAYLOR, BEAN & WHITAKER MORTGAGE CORP., as debtor and debtor in possession (“**TBW**” or the “**Debtor**”), by and through its undersigned attorneys, hereby files its Motion to Approve (i) Contract with Interim Servicing Agent; (ii) Transfer Interim Servicing of Loans; and (iii) Transfer of Related Borrower Funds to Servicing Agent (the “**Motion**”). In support of its Motion, the Debtor respectfully represents as follows:

**Jurisdiction and Venue**

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. The subject matter of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this district pursuant to 28 U.S.C. § 1408.

2. The statutory predicates for the relief sought in this Motion are Sections 363(b) and (c) of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rule 6004 of the Federal Rules of Bankruptcy Procedure.

## Background

### The Bankruptcy

3. On August 24, 2009, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

4. The Debtor continues to operate its business and manage its property as a debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

5. No trustee or examiner has been appointed in this case.

6. On September 11, 2009, the Office of the United States Trustee appointed an Official Committee of Unsecured Creditors.

7. Until very recently, TBW was the largest independent (i.e. non-depository owned) mortgage lender in the United States. Headquartered in Ocala, Florida, TBW employed approximately 2,400 people across the country. The largest offices were in Ocala Florida; Atlanta, Georgia; and Tampa, Florida. TBW's principal business was comprised of:

- origination, underwriting, processing and funding of conforming conventional and Government-insured residential mortgage loans;
- sale of mortgage loans into the "secondary market" to government-sponsored enterprises such as the Federal Home Loan Mortgage Corporation or the Government National Mortgage Association; and
- mortgage payment processing and loan servicing.

8. Following the precipitous events of early August, the members of TBW's board of directors and the company's corporate officers, including the Chairman, Vice Chairman, Chief Executive Officer, and Chief Financial Officer, resigned. New, independent members have been appointed to the board and the new board has appointed Neil F. Luria as the company's Chief

Restructuring Officer. The business and financial affairs and ongoing operations of the company are under the direction and control of the new board and the Chief Restructuring Officer.

9. For a detailed description of the Debtor's business operations and the reasons for this bankruptcy filing, please see the description contained in the Debtor's Emergency Motion for Entry of Interim and Final Orders Authorizing Use of Cash Collateral and Granting Replacement Liens Pursuant to 11 U.S.C. §§ 105(a), 361, 363, and 541 and 552 and Bankruptcy Rule 4001 (Docket No. 5).

*The Servicing Agreement*

10. On October 28, 2009, the Debtor executed, subject to Bankruptcy Court approval, the Selene Finance Interim Servicing Agreement (the "**Agreement**") with Selene Finance LP ("**Selene**"). A true and correct copy of the Agreement is attached hereto as Exhibit A. Under the Agreement, Debtor would transfer to Selene the servicing of (a) approximately 1,185 mortgage loans presently serviced by the Debtor and (b) 23 reverse mortgage loans owned and presently sub-serviced by Celinek. The mortgage loans have an approximate unpaid principal balance of approximately \$152 million, and the reverse mortgage loans have a current outstanding principal balance of approximately \$2.7 million (the aforesaid mortgage loans and reverse mortgage loans collectively, the "**Loans**"). A list of the Loans is attached hereto as Exhibit B.

11. The Debtor wishes and intends to extricate itself from the loan servicing business. At its peak, the Debtor serviced approximately 500,000 individual residential mortgage loans. The Loans are among the last remaining loans serviced by the Debtor and will be transferred solely for servicing purposes; ownership of the Loans will remain with the Debtor. To the extent

that additional Debtor-owned loans are identified, such additional loans will be transferred to Selene for interim servicing pursuant to the Agreement.

12. Finally, consistent with the transfer of the interim servicing of the Loans, the Debtor seeks authorization to transfer borrower funds currently on deposit in the Debtor's accounts at Regions Bank related to the Loans to Selene to facilitate the payment of borrower taxes and insurance and the payment of servicing fees related to the Loans. The current amount of such funds to be transferred to Selene is approximately \$617,000.

13. TBW's status as a chapter 11 debtor impedes its ability to properly service the Loans, as the Debtor does not have access to the tax and interest payments ("T & I") made on the Loans and, thus, is unable to transfer the funds to the appropriate parties. The transfer of servicing contemplated by the Agreement will allow TBW to stabilize the servicing of the Loans so as to maximize the value of the Loans and to ensure that the underlying consumers are properly protected.

14. Section 3(b) of the Agreement requires an initial deposit of \$300,000 by Debtor into the "Operating Account" to be established under the Agreement to enable Selene to carry out its duties under the Agreement. A schedule of the servicing fees to be paid by Debtor to Selene is attached as Exhibit A to the Agreement. Prior to entering into the Agreement, Debtor undertook a review of competitive pricing to ensure that Selene's fees were appropriate. Based on discussions with two other interim servicers, the Debtor believes in its reasonable business judgment that Selene's proposal is price competitive (given the high delinquency rate of the Loans), and that Selene has the necessary capabilities to service the Loans. Moreover, the Debtor intends to recoup from principal and interest payments received by it under the

Agreement servicing advances and other out of pocket costs incurred by the Debtor with respect to the Loans.

### **Relief Requested**

15. Pursuant to Section 363 of the Bankruptcy Code, the Debtor seeks the Court's approval to (i) enter into and perform the Agreement with Selene (including the deposits into the Operating Agreement required under the Agreement); (ii) transfer the interim servicing of the Loans to Selene; and (iii) transfer to Selene all borrower funds related to the Loans received post-petition that are currently on deposit in the Debtor's accounts at Regions Bank to facilitate the payment of borrower T & I and the payment of servicing fees.

### **Basis for Relief**

16. Section 363(c)(1) of the Bankruptcy Code provides that a debtor-in-possession may enter into a transaction "in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing." 11 U.S.C. § 363(c)(1).

17. The Debtor believes it has executed the Agreement in the ordinary course of its business. In an abundance of caution, however, to the extent that entering the Agreement is deemed to be outside the ordinary course of the Debtor's business, the Debtor seeks Court authority to enter into the Agreement pursuant to Section 363(b) of the Bankruptcy Code.

18. Section 363(b) of the Bankruptcy Code provides that a debtor in possession "after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b). To approve a use, sale or lease of property out of

the ordinary course of business, this Court must find “some articulated business justification.” Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070 (2d Cir. 1983). See also In re Abbots Dairies of Pa., Inc., 788 F.2d 143, 145-47 (3d Cir. 1986) (implicitly adopting the articulated business justification test of Lionel Corp. and requiring show of good faith); In re Delaware & Hudson R. Co., 124 B.R. 169, 176 (D. Del. 1991) (concluding that Third Circuit adopted the “sound business purpose” test after the Abbots Dairies decision); In re Titusville Country Club, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991) (same).

19. The transfer of the Loans pursuant to the Agreement has several advantages, among them ensuring that TBW satisfies state regulators with respect to consumer protection. Additionally, the Agreement benefits consumer-borrowers in that Selene will have access to T & I funds and the ability to make such funds available to the appropriate parties, thus relieving consumers of any servicing issues arising from TBW’s inability to access T & I funds – this is particularly important given the fact that fall is the season during which property taxes are often due to municipalities. Furthermore, the ongoing servicing of the Loans is not cost effective for TBW, as TBW would have to retain, solely for the purpose of servicing the Loans, a full cadre of servicing staff that is no longer needed as a result of the decrease in the size of TBW’s operations.

20. Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale or lease of property . . . is stayed until expiration of ten (10) days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). The Debtors request the Court to rule that the ten (10) day stay pursuant to Bankruptcy Rule 6004(h) does not apply, such that an order granting the Motion will be immediately effective

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

- A. granting this Motion;
- B. authorizing the Debtor to enter into and perform the Agreement;
- C. authorizing the Debtor to transfer the interim servicing of the Loans to Selene;
- D. authorizing the Debtor to transfer all borrower funds received post-petition related to the Loans that are currently on deposit in the Debtor's accounts at Regions Bank to Selene to facilitate the payment of borrower T & I and the payment of servicing fees;
- E. vacating the ten (10) day stay provided for in Bankruptcy Rule 6004(h); and
- F. providing such other and further relief as is just and proper.

Dated this 28th day of October 2009.

/s/ Edward J. Peterson, III  
Russell M. Blain (FBN 236314)  
rblain@srbp.com  
Edward J. Peterson, III (FBN 014612)  
epeterson@srbp.com  
Amy Denton Harris (FBN 0634506)  
aharris@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 THE DEBTOR**

/s/ Jeffrey W. Kelley  
Jeffrey W. Kelley (Ga. Bar No. 412296)  
jeffrey.kelley@troutmansanders.com

Alisa H. Aczel (Ga. Bar No. 141268)  
alisa.aczel@troutmansanders.com

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**TROUTMAN SANDERS LLP**  
Bank of America Plaza  
Suite 5200  
600 Peachtree Street, N.E.  
Atlanta, Georgia 30308-2216  
Telephone No.: (404) 885-3000  
Facsimile No.: (404) 885-3900

*Special Counsel for Debtor*