

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In Re:	) Chapter 11
)
TAYLOR, BEAN AND WHITAKER MORTGAGE CORP	) Case No. 3:09-bk-07047-JAF
REO SPECIALISTS, LLC, and	) Case No. 3:09-bk-100022-JAF
HOME AMERICA MORTGAGE, INC.	) Case No. 3:09-bk-10023-JAF
)
	) Jointly Administered Under
Debtors	) Case No. 3:09-bk-07047
)
<u>APPLICABLE DEBTOR</u>)
)
TAYLOR, BEAN AND WHITAKER MORTGAGE CORP)
(Case No. 3:09-bk-07047-JAF))
)
)

FILED
JACKSONVILLE, FLORIDA

OCT 22 2012

CLERK, U. S. BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA

AFFIDAVIT OF JOHN A. CRAIN

1. I, John A. Crain, am over the age of eighteen (18) years, of sound mind and make this affidavit based upon my personal knowledge and own free will.
2. I am not making this Affidavit in order to prolong, slow down or delay this litigation but out of necessity.
3. Due to medical reasons beyond my control and of which I just found out about, I will be incapacitated and incapable of helping in the defense of my case for an unknown period of time from September 26, 2012.
4. I will be unable to effectively communicate with anyone, including my counsel, for an unknown period of time from September 26, 2012.

PAGE #1 OF 17

5. I anticipate that I will be unable to drive immediately and for some time from September 26, 2012, and for any distance until an unknown time in the future.

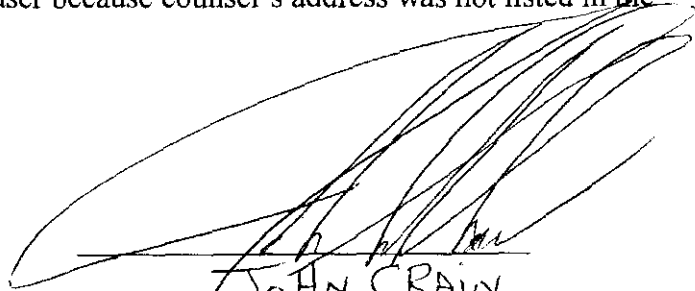
6. For privacy reasons, I do not wish to go into detail regarding the purposes of my involuntary medical incapacitation.

7. I request that this Honorable Court postpone any further action in my case until such time that I may be able to effectively participate in my defense.

FURTHER, AFFIANT SAYETH NAUGHT.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by U.S. Mail upon (1) Clerk Bryan Simpson of the Court the United States Bankruptcy 300 North Hogan Street Suite 3-350 Jacksonville, FL 32202 (2) The United States Trustee Elena L. Escamilla, Trial Attorney, Office of the United States Trustee. U.S. Department of Justice Florida Bar No: 898414, 135 W. Central Blvd, Suite 620 Orlando FL 32801(3) Jeffrey W. Kelley (GABN 412296) **TROUTMAN AND SANDERS LLP, (Special Needs Counsel to Defendants)** 600 Peachtree Street, Suite 5200, Atlanta, Georgia 30308 (4) Alisa Paige Mason, Esq., Berger Singerman LLP, 1450 Brickell Avenue, Suite 1900, Miami, FL 33131-3453 (5) Berger Singerman, Counsel to Neil F. Luria, Plan Trustee for the Taylor, Bean & Whitaker Plan Trust, James D. Gassenheimer Fl Bar No.959987, Alisa Paige Mason Fl Bar No. 084461, 1450 Brickell Avenue Suite 1900 Miami, FL 33131. any other parties requesting notice. Notice was not sent to counsel for the Purchaser because counsel's address was not listed in the motion.



JOHN CRAIN

P.O. Box 13

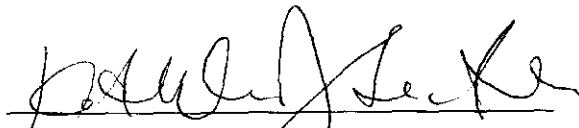
Melbourne, FL 32902

904-718-1418

AFFIDAVIT

STATE OF FLORIDA §
§
COUNTY OF BREVARD §

This instrument was acknowledged before me on the 19 day of Oct, 2012, by John Crain in the capacity stated therein.



Notary Public, State of Florida

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION
www.flmb.uscourts.gov

In re:

TAYLOR, BEAN & WHITAKER
MORTGAGE CORP.,
REO SPECIALISTS, LLC, and
HOME AMERICA MORTGAGE, INC.,

Debtors.

Chapter 11 Cases

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

(Jointly Administered Under
Case No. 3:09-bk-07047-JAF)

**PLAN TRUSTEE'S MOTION TO STRIKE NOTICE OF APPEAL AND RELATED
STATEMENTS OF ISSUES FILED BY SANDY SMITH, JOHN CRAIN, JAY
OYLER, WESLEY AND TAMMY STOUT, MICHAEL AND DIANA ELLIOTT,
JEFF AND DARLENE GORRELL, LINDA BACON AND WANDA REED**

Neil F. Luria as Plan Trustee for the Taylor, Bean & Whitaker Plan Trust¹ (the "Plan Trust"), by and through undersigned counsel, files this Motion (the "Motion") requesting that the Court strike the *Notice of Appeal* (the "NOA") [D.E. 6112] and related statements of issue filed by Sandy Smith, John Crain, Jay Oyler, Wesley and Tammy Stout, Michael and Diana Elliott, Jeff and Darlene Gorrell, Linda Bacon, and Wanda Reed (collectively, the "Appellants") under Rules 8001, 8002, and 8006 of the Federal Rules of Bankruptcy Procedure on the basis that the NOA fails to designate the judgment, order or decree the Appellants seek to appeal, the NOA was improperly filed after the Appellants filed their statements of issue, and the NOA appears to be untimely to the extent it relates to an order [D.E. 5860] denying a request for reconsideration. In support of this Motion, the Plan Trustee states:

¹ As of the effective date of the *Third Amended and Restated Joint Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors* (D.E. 3240) (the "Third Amended Plan"), August 10, 2011, the Debtors and the Official Committee of Unsecured Creditors ("Committee") have been replaced by the Plan Trust.

Background

1. On August 8, 2012, the Court entered an order (the "Order") [D.E. 5860] denying the Appellants' request for reconsideration of the Court's order [D.E. 5704] striking a so-called *Motion Requesting Resolution Upon Court in Reference to Creditors as Listed Above and Taylor, Bean and Whitaker Mortgage Corp. and its Trust and between its Successors* (the "Resolution Motion") [D.E. 5641].

2. The Order reiterates that if the Resolution Motion's movants wish to appeal the Order, they must file a notice of appeal within fourteen days of the date of the Order. Accordingly, the deadline file a notice of appeal in connection with the Order was August 22, 2012.

3. On September 5, 2012, the Appellants² filed the NOA. However, the NOA fails to describe, list or otherwise identify a particular judgment, order or decree appealed from.

4. Further, the Appellants filed various statements of issues on appeal (collectively, the "Statements") [John Crain and Sandy Smith, D.E. 6053; Larry Wesley and Tammy Stout, D.E. 6053; Jay D. Oyler, D.E. 6054; Jeff and Darlene Gorrell, D.E. 6055; Michael and Dianna Elliott, D.E. 6056] before they filed the NOA. The Statements were filed between August 23, 20102 and August 30, 2012.

5. As the Court is well aware, the Appellants are part of a group of *pro se* plaintiffs/claimants who have initiated more than one purported class action against the Debtor(s), which the Court determined violated the injunction provisions of the confirmed Plan (Adv. Case No. 3:11-ap-326-JAF and Adv. Case No. 3:12-ap-109-JAF).

² At least two of the movants in the Resolution Motion, Joni Cox-Tanner and Charles Tanner, do not appear to be participants in the NOA. Accordingly, the designation "Appellants" shall not refer to Joni Cox-Tanner and Charles Tanner.

Argument

6. Rules 8001, 8002 and 8006 of the Federal Rules of Bankruptcy Procedure make it clear that the Appellants must designate a particular order, judgment or decree that they are appealing. Otherwise, it is impossible for the appellee to respond to and defend the Appellants' appeal.

7. The Appellants actually used the official Notice of Appeal form, but fail to complete the form properly in terms of identifying a particular order, judgment or decree. The subsequently filed Statements, which are largely incomprehensible, seem to indicate simply that the Appellants are generally disgruntled with the way the Debtors' chapter 11 cases have progressed. General unhappiness with a case's development and the retention of certain professionals, without actually designating a particular order, judgment or decree, is not a supportable basis for an appeal. Therefore, the Appellants' NOA and related Statements should be struck for the foregoing reasons.

8. To the extent the Appellants are appealing the Order, the NOA is untimely. Rule 8022 requires that "the notice of appeal shall be filed with the clerk within 14 days of the date of the entry of the judgment, order, or decree appealed from." If the deadline runs from the date of the order striking the Motion for Resolution, which was entered on July 17, 2012, the Appellants would have had to file a NOA by July 31, 2012.

9. However, the Order provides that the Appellants had 14 days from the August 8, 2012 to file a notice of appeal. The Appellants still did not comply with the time requirements of the Order because they filed their Notice of Appeal close to thirty days after the date of the Order. Accordingly, the NOA and the related Statements should be struck as untimely.

10. Finally, the Appellants failed to procedurally follow Rules 8002 and 8006 when filing the Statements prior to filing the NOA. Rule 8006 provides that a designation of the items

to be included in the record on appeal must be filed within fourteen days after the appellants file a notice of appeal. The Appellants actually filed their Statements, which appear to be their purported designations, before they filed the NOA. The filing of the record and issues on appeal designations after the notice of appeal triggers a deadline for the appellee to file its own designations, but that deadline was not properly triggered because the NOA was filed after the Statements.

11. In sum, the Appellants' NOA and related Statements should be stricken on the basis that they are untimely, they fail to properly designate particular order, decree or judgment that the Appellants are appealing, and are otherwise procedurally improper because they were not filed in the proper sequential order.

WHEREFORE, the Plan Trustee respectfully requests 1) the entry of an Order striking the NOA and the related Statements; 2) an additional 20 days to file its Appellee Designations if the Court does not strike the NOA and related Statements; and 3) for such other and further relief to which the Plan Trustee is entitled or is otherwise just and proper.

Dated: October 8, 2012

Respectfully submitted,

BERGER SINGERMAN LLP
*Counsel to Neil F. Luria, Plan Trustee for the
Taylor, Bean & Whitaker Plan Trust*
1450 Brickell Avenue, Suite 1900
Miami, FL 33131
Telephone: (305) 755-9500
Facsimile: (305) 714-4340

By: /s/ James D. Gassenheimer
James D. Gassenheimer
Florida Bar No. 959987
jgassenheimer@bergersingerman.com
Alisa Paige Mason
Florida Bar No. 084461
pmason@bergersingerman.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via U.S. Regular Mail, postage prepaid, upon all parties listed below on this 8th day of October, 2012.

/s/ James D. Gassenheimer

James D. Gassenheimer

Sandy S. Smith
1427 Wild Horse Lane
Stephenville, TX 76401

Djuana Reed
3967 Cain Mill Dr.
Lithonia, GA 30038

Larry Wesley and Tam Stout
145 Stout Farm Road
Taylorsville, NC 28681

John Crain
PO Box 13
Melbourne, FL 32902-1918

Linda Bacon
217 Kipling Way
Riversdale, GA 30274

Jay D. Oyler
28 Bradford Drive
Cartersville, GA 30120

Jeff and Darlene Gorrell
231 Ramblin Rd.
Newport, TN 37821

Michael & Dianna L. Elliott
133 Elliott Lane
Tolesboro, KY 41189

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

FILED
JACKSONVILLE, FLORIDA
SEP 28 2012

CLERK, U. S. BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA

In Re:	) Chapter 11
)
TAYLOR, BEAN AND WHITAKER MORTGAGE CORP	) Case No. 3:09-bk-07047-JAF
REO SPECIALISTS, LLC, and	) Case No. 3:09-bk-100022-JAF
HOME AMERICA MORTGAGE, INC.	) Case No. 3:09-bk-10023-JAF
)
	) Jointly Administered Under
Debtors	) Case No. 3:09-bk-07047
)
ADMINISTRATIVE PERSON)
)
TAYLOR, BEAN AND WHITAKER MORTGAGE CORP)
(Case No. 3:09-bk-07047-JAF))
)
)

AFFIDAVIT OF JOHN A. CRAIN

1. I, John A. Crain, am over the age of eighteen (18) years, of sound mind and make this affidavit based upon my personal knowledge and own free will.
2. I am not making this Affidavit in order to prolong, slow down or delay this litigation but out of necessity.
3. Due to medical reasons beyond my control and of which I just found out about, I will be incapacitated and incapable of helping in the defense of my case for an unknown period of time from September 26, 2012.
4. I will be unable to effectively communicate with anyone, including my counsel, for an unknown period of time from September 26, 2012.

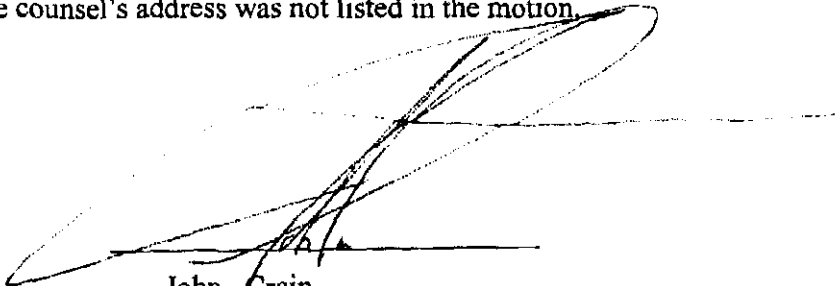
Page #9 of 17

5. I anticipate that I will be unable to drive immediately and for some time from September 26, 2012, and for any distance until an unknown time in the future.
6. For privacy reasons, I do not wish to go into detail regarding the purposes of my involuntary medical incapacitation.
7. I request that this Honorable Court postpone any further action in my case until such time that I may be able to effectively participate in my defense.

FURTHER, AFFIANT SAYETH NAUGHT.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by U.S. Mail upon (1) Clerk Bryan Simpson of the Court the United States Bankruptcy 300 North Hogan Street Suite 3-350 Jacksonville, FL 32202 (2) The United States Trustee Elena L. Escamilla, Trial Attorney, Office of the United States Trustee. U.S. Department of Justice Florida Bar No: 898414, 135 W. Central Blvd, Suite 620 Orlando FL 32801(3) Jeffrey W. Kelley (GABN 412296) TROUTMAN AND SANDERS LLP, (*Special Needs Counsel to Defendants*) 600 Peachtree Street, Suite 5200, Atlanta, Georgia 30308 (4)Alisa Paige Mason, Esq., Berger Singerman LLP, 1450 Brickell Avenue, Suite 1900, Miami, FL 33131-3453 (5) Berger Singerman, *Counsel to Neil F. Luria, Plan Trustee for the Taylor, Bean & Whitaker Plan Trust*, James D. Gassenheimer Fl Bar No.959987, Alisa Paige Mason Fl Bar No. 084461, 1450 Brickell Avenue Suite 1900 Miami, FL 33131. any other parties requesting notice. Notice was not sent to counsel for the Purchaser because counsel's address was not listed in the motion.

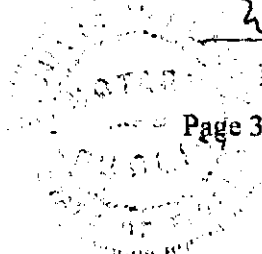
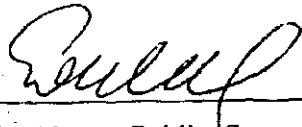
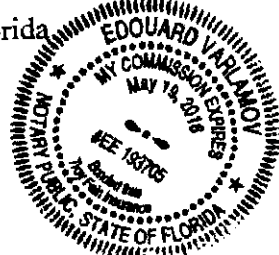


John Crain
P.O. Box 13
Melbourne, FL 32902
904-718-1418

AFFIDAVIT

STATE OF FLORIDA §
 §
COUNTY OF BREVARD §

This instrument was acknowledged before me on the 25 day of September 2012, by John Crain in the capacity stated therein.



Notary Public, State of Florida
Page 3 of 3


PREPARED BY [Handwritten initials]

PRESS HARD. YOU ARE MAKING 3 COPIES.



EI 129520036 US

ORIGIN (POSTAL SERVICE USE ONLY)

PO ZIP Code: _____ Day of Delivery: _____ Postage: \$ _____
 Return Receipt Fee: \$ _____

Date Accepted: _____ Scheduled Date of Delivery: _____
 Scheduled Time of Delivery: _____

Mo. Day Year Month Day Day
 Time Accepted: _____ AM/PM
 Flat Rate or Weight Flat Rate or Weight

Int'l Alpha Country Code: _____ Acceptance Emp. Initials: _____

lbs. ozs. _____

FROM: (PLEASE PRINT) PHONE: 904-718-1418

JOHN CRAIG
 PO BOX 13
 MELBOURNE FL
 32902-0013

DELIVERY (POSTAL SERVICE USE ONLY)

Delivery Attempt: _____ Time: _____ Employee Signature: _____

Mo. Day Year Month Day Day
 Delivery Date: _____ Time: _____ Employee Signature: _____

CUSTOMER USE ONLY

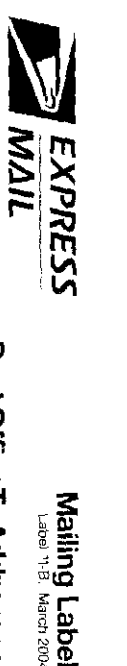
NO DELIVERY Weekend Holiday Waiver Signature: _____

TO: (PLEASE PRINT) PHONE: _____

STARK BRYAN SIMPSON of THE COURT
 THE UNITED STATES BANKRUPTCY
 300 NORTH HOGAN STREET (SUITE 3-350)
 JACKSONVILLE, FL

ZIP + 4 U.S. ADDRESSES ONLY. DO NOT USE FOR FOREIGN POSTAL COPIES!
 3 2 2 2 0 2 +

FOR INTERNATIONAL DESTINATIONS, WRITE COUNTRY NAME BELOW.

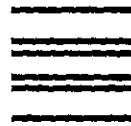


UNITED STATES POSTAL SERVICE® Post Office To Addressee

Mailing Label Label 7-B, March 2004

PAGE #12 OF 17
 VERGELIC OF 17

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

JOHN CRAIG
PO Box 13
MELBOURNE, FL
32902-0013

PAGE # 13 OF 17
PAGE # 13 OF 17

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to: *Clark Bryan Simpson*
OF THE COURT, THE WHITE DIXIES
BANKRUPTCY
300 NORTH HOGAN STREET
(Suite 3-350)
JACKSONVILLE FL
32202-

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent

B. Received by (Printed Name) Addressee

C. Date of Delivery

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type

Certified Mail Express Mail

Registered Return Receipt for Merchandise

Insured Mail C.O.D.

4. Restricted Delivery (Extra Fee) Yes

2. Article Number
 (Transfer from service label)
 PS Form 3811, February 2004

E1J29520036US
 Domestic Return Receipt

102595-02-N-1540

PAGE #14 OF 17

JOHN CRAIG
PO Box 13
MELOURNE FL

32902-0013

CLERK BRYAN SIMPSON OF THE COURT
THE UNITED STATES BANKRUPTCY
300 NORTH HOGAN STREET (SUITE 3-350)
JACKSONVILLE, FL 32202

JOHN CRAIG

2012-09-25(2)

PO Box 13
MELOURNE FL
32902-0013

THE UNITED STATES TRUSTEE
ELENA L. ESCAMILLA, TRAIL ATTORNEY,
OFFICE OF THE UNITED STATES TRUSTEE,
U.S. DEPARTMENT OF JUSTICE, FL BAR # 898414,
135 W. CENTRAL BLVD, SUITE 620
ORLANDO FL 32801

2012-09-25(4)

JOHN CRAND
PO Box 13
MELBOURNE FL
32902-0013

JEFFREY W. KELLEY (GABN-412296)
TRAUMAN & SANDERS, LLP, (SN0702)
600 Peachtree Street, (Suite 5200)
ATLANTA, Georgia 30308

2012-09-25(4)

JOHN CRAND
PO Box 13
MELBOURNE FL
32902-0013

ALISA FAIGE MASSEY, Esq., Berger Singerman LLP
1450 Brickell Avenue (Suite 1900)
Miami, FL 33131-3453

JOHN CRAIG

2012-09-28 (5)

PO Box 13

MELBOURNE, FL

32902-0013

BERGEN SINGELMAN, Counselor At Law, L.L.C.,
AND TRUSTEE FOR THE TAYLOR BEARD & WHITAKER TRUST,
JAMES D GASSEHEIMER FL BAR # 959987,
ALISA PAIGE MASON FL BAR # 084461
1450 Brickell Avenue (Suite 1900)
Miami, FL 33131