

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
Jacksonville Division
www.flmb.uscourts.gov

In re:

TAYLOR, BEAN & WHITAKER
MORTGAGE CORP.,

CASE NO. 03:9-BK-07047-JAF

Chapter 11

Debtor.

_____ /

NOTICE OF SERVING SUBPOENA

PLEASE TAKE NOTICE that that Creditors Larry Hess and Ice Legal, P.A. (for convenience, "Ice"), creditors and interested party herein, by his attorney, David R. Softness, P.A. ("DRSPA"), hereby gives notice of serving the attached Subpoena upon Mark C. Holmberg, Esq.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date a true and correct copy of the foregoing was served via electronic mail and EM/ECF upon Debtor's counsel, Ed Peterson, Esq., Stichter, Riedel, Blain & Postler, P.A., 110 East Madison Street, Suite 200, Tampa, FL 33602(epeterson@srbp.com) and upon all other parties entitled to notice via the Court's electronic filing system.

Dated: November 23, 2015

Respectfully submitted,

By: **/s/ David R. Softness, Esq.**
FBN: 0513229
DAVID R. SOFTNESS, P.A.
201 South Biscayne Boulevard
Suite 2740
Miami, Florida 33131
Email david@softnesslaw.com
Tel: 305-341-3111

Counsel for Ice Legal, P.A.

AFFIDAVIT OF SERVICE

UNITED STATES BANKRUPTCY COURT
MIDDLE District of Florida

Case Number: 03:9-BK-07047-JAF
CHAPTER 11

DEBTOR:
IN RE: TAYLOR, BEAN & WHITAKER MORTGAGE CORP.,

For:
David R. Softness
DAVID R. SOFTNESS, P.A.
201 South Biscayne Blvd.
Suite 2740
Miami, FL 33131

Received by Caplan, Caplan & Caplan Process Servers on the 12th day of November, 2015 at 4:40 pm to be served on **MARK C. HOLMBERG, 6409 CONGRESS AVE, STE.100, BOCA RATON, FL 33487.**

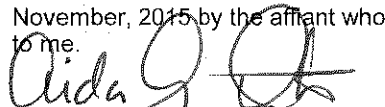
I, ANTHONY GARITO, being duly sworn, depose and say that on the **16th day of November, 2015 at 3:15 pm, I:**

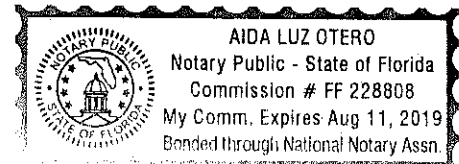
INDIVIDUALLY/PERSONALLY served by delivering a true copy of the **SUBPOENA FOR RULE 2004 EXAMINATION DUCES TECUM, NOTICE OF RULE 2004 EXAMINATION DUCES TECUM, DOCUMENTS TO BE PRODUCED INSTRUCTION AND DEFINITIONS**, with date, hour and initials of process server endorsed thereon by me, to: **MARK C. HOLMBERG** at the address of: **6409 CONGRESS AVE, STE.100, BOCA RATON, FL 33487**, and informed said person of the contents therein, in compliance with state statutes.

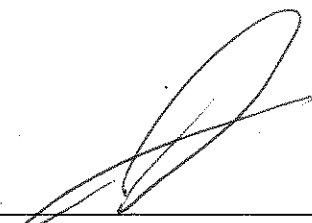
Description of Person Served: Age: 50+, Sex: M, Race/Skin Color: WHITE, Height: 5'9", Weight: 170, Hair: GRAY, Glasses: Y

I certify that I am over the age of 18, have no interest in the above action, and am a Certified Process Server, in good standing, in the judicial circuit in which the process was served. Pursuant to FS 92.525(2), no notary is required. **UNDER PENALTY OF PERJURY I DECLARE THAT I HAVE READ THE FOREGOIN RETURN OF SERVICE AND THAT FACTS STATED IN IT ARE TRUE AND CORRECT.**

STATE OF FLORIDA
COUNTY OF MIAMI-DADE/ BROWARD/PALM BEACH
Subscribed and Sworn to before me on the 18th day of
November, 2015 by the affiant who is personally known
to me.


NOTARY PUBLIC





ANTHONY GARITO
1228

Caplan, Caplan & Caplan Process Servers
12555 Orange Drive
Suite 106
Davie, FL 33330
(954) 462-1800

Our Job Serial Number: CPN-2015038668
Service Fee: _____

B

United States Bankruptcy Court
Middle District of Florida

Jacksonville Division
www.flmb.uscourts.gov

DATE 11/16/15 TIME 3:15pm
INITIAL [Signature] BADGE# CPS1228

In re:

TAYLOR, BEAN & WHITAKER
MORTGAGE CORP.,

Case No. 03:9-BK-07047-JAF

Personal

Chapter 11

Debtor

NOV 12 2015
SUBPOENA FOR RULE 2004 EXAMINATION
DUCES TECUM

To: Mark C. Holmberg, 301 S. Ocean Blvd # 403 Boca Raton, FL 33432

(17) 6409 Congress Ave Ste 100 Boca Raton, FL 33487

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at an examination under Rule 2004, Federal Rules of Bankruptcy Procedure and Local Rule 2004-1.

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PLACE: LAWYERS REPORTING 2385 N.W. Executive Center Drive Boca Raton, FL 33431	DATE AND TIME Wednesday, December 16, 2015 at 9:30 a.m. The deponent shall produce the documents identified in the attached request
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The examination will be recorded by this method: Court Reporter

Production: You, or your representatives, must also bring with you to the examination the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material. Please see attached Exhibit "A". Please mail or deliver copies of items to be produced to David R. Softness, P.A. by December 9, 2015.

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached - Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: November 12, 2015

CLERK OF COURT'

OR

[Signature]

Attorney's Signature

MUST PROVIDE FOLLOWING INFORMATION
AGE: 50 (M) F: RACE: W HEIGHT: 5ft 9in
WEIGHT: 170 HAIR: GRAY GLASSES: YN

The name, address, email address, and telephone number of the attorney representing (name of party) Ice Legal, P.A., who issues or requests this subpoena, are:
David R. Softness, Esq 201 S. Biscayne Blvd, Suite 2740 Miami, FL 33131 Tel: 305-341-3111
email: david@softnesslaw.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

38668

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for (name of individual and title, if any): _____
on (date) _____.

I served the subpoena by delivering a copy to the named person as follows: _____
_____ on (date) _____; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount
of \$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true and correct.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information concerning attempted service, etc.:

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)
(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
 (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 (i) is a party or a party's officer; or
 (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
 (B) inspection of premises, at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
 (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
 (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
 (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
 (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
 (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
 (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) *Contempt.* The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

Access to Subpoena Materials

Fed. R. Civ. P. 45(a) Committee Note (2013)

- Parties desiring access to information produced in response to this subpoena will need to follow up with the party serving the subpoena to obtain such access.
- The party serving the subpoena should make reasonable provisions for prompt access.
- The court for the district where compliance with the subpoena is required has authority to order notice of receipt of produced materials or access to them.

UNITED STATES BANKRUPTCY COURT
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In re:

TAYLOR, BEAN & WHITAKER
MORTGAGE CORP.,

CASE NO. 03:9-BK-07047-JAF

Chapter 11

Debtor.

_____ /

NOTICE OF RULE 2004 EXAMINATION
DUCES TECUM

PLEASE TAKE NOTICE that Larry Hess and Ice Legal, P.A. (for convenience, "Ice"), an interested party herein, by their attorneys David R. Softness, P.A. ("DRSPA"), and pursuant to Rules 9014 and 2004 of the Federal Rules of Bankruptcy Procedure (a "Rule" or the "Rules") and Rule 2004-1 of the Local Rules for the United States Bankruptcy Court for the Middle District of Florida (a "Local Rule" or the "Local Rules") hereby gives this notice that it will examine Mark Holmberg (the "Deponent") on **Wednesday, December 16, 2015, at 9:30 a.m. at Lawyers Reporting, 2385 N.W. Executive Center Drive, Boca Raton, FL 33431** The examination will continue from day to day until completed. If the examinee receives this notice less than seven (7) business days prior to the scheduled examination date, the examination will be rescheduled upon timely request to a mutually agreeable time.

Examinee is directed to provide the documents identified on schedule A attached hereto at least 7 days in advance of the deposition.

The examination is pursuant to Rules 9014 and 2004 and Local Rule 2004-1, and will be taken under oath before an officer authorized to record testimony. The

scope of the examination shall be as described in Bankruptcy Rule 2004, and shall include – without limitation - the facts and circumstances in Ice’s Motion for Relief from Stay (CP # 8267).

Pursuant to Local Rule 2004-1 no order is necessary.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date a true and correct copy of the foregoing was served via electronic mail and EM/ECF upon Debtor’s counsel, Ed Peterson, Esq., Stichter, Riedel, Blain & Postler, P.A., 110 East Madison Street, Suite 200, Tampa, FL 33602 (epeterson@srbp.com) and upon all other parties entitled to notice via the Court's electronic filing system.

Respectfully submitted,

By: **/s/ David R. Softness, Esq.**
FBN: 0513229
DAVID R. SOFTNESS, P.A.
201 South Biscayne Boulevard
Suite 2740
Miami, Florida 33131
Email david@softnesslaw.com
Tel: 305-341-3111
Fax: 305-402-0234

Counsel for Ice Legal, P.A.

cc: Court Reporter

DOCUMENTS TO BE PRODUCED

INSTRUCTIONS AND DEFINITIONS

A. "Case" or the ("Case") means the above-captioned bankruptcy case.

B. "Concerning" means relating to, referring to, refuting, supporting, describing, evidencing or constituting.

C. "Contracts" means all contracts or other types of agreements, in whatever form.

D. "Debtor" means Taylor, Bean & Whitaker Mortgage Corp., as well as - where the context allows or requires - their employees, representatives, attorneys, accountants, financial advisors, consultants, agents, and all persons who act or acted on behalf of Defendant.

E. "Document" means any paper, writing or record of any type or source of authorship in your possession, custody or control, or of which you have knowledge, wherever located, however produced or reproduced, or whether a draft, original or copy. By way of illustration and not limitation, the term "document" shall include memoranda of telephone conversations, summaries, diaries, or other records of personal conversation or interviews, and minutes, summaries, or other records of any meetings, discussions or conferences, as well as other notes, reports, records, data, memoranda, correspondence, notebooks, scrapbooks, diaries, minutes, summaries, financial statements, ledgers, magnetic tape or other sound recordings, electronic mail, telegrams, letters, studies, manuals, instructions, bids, specifications, graphs, microfilm,

computer records, photocopies, descriptions, purchase orders, agreements, contracts, invoices, bills of lading, published or unpublished speeches, manuscripts or articles, transcripts, affidavits, depositions, printed matter, publications and any other retrievable intelligence, however recorded, memorialized or preserved. Any original or copy containing or having attached thereto any alterations, notes, comments or other material not included in each other original or copy shall be deemed a separate document within the foregoing definition.

F. "Identify" in the case of any document means either to produce the document or to state: (a) its locations; (b) the location of all copies which are not identical duplicates of the original; (c) the name and title of all persons presently in charge of the custody and maintenance of the original and all non-identical copies; (d) the date of the original and all non-identical copies; (e) the author and signatories of the original and all non-identical copies; (f) its length; (g) the original document's contents and how each non-identical copy differs from the original; and (h) each person who received the original or a copy of the document. If the document was, but no longer is, in your possession, custody or control, state or identify: (a) what disposition was made of the document; (b) the date of any such disposition; and (c) each person that either authorized or has knowledge relating to such disposition.

G. "Identify" in the case of a natural person means to state his or her: (a) name; (b) title or position; (c) present or last known business address and telephone number; and (d) present or last known home address and telephone number. If such person is no longer employed by the person for whom he/she engaged in the activity

that is the subject of the interrogatory, state the date on which he/she left the employ of the person and his/her title or position when he/she engaged in the activity which is the subject of the Discovery Request.

H. "Identify" in the case of a non-natural person means to state: (a) the full name of the person; (b) the address of its principal place of business; (c) the telephone number of its principal place of business; (d) the name of the title of each person who (i) is or was an officer, director, general partner, limited partner, member, or beneficiary of the person, or (ii) represented the person with respect to the subject matter of the Discovery Request; and (c) the relationship of the entity to the parties to this proceeding.

I. "Identify" in the case of a communication means to state or identify: (a) the date, time and place of the communication; (b) the form of communication (such as memorandum, letter or conversation); (c) each person who has believed to have firsthand knowledge of the communication; (d) the substance of the communication; and (e) each document relating to the communication.

J. "Person" means any natural person or any business, legal or governmental entity or association.

K. These requests call for documents within your possession, custody or control, whether directly or indirectly. A document is in your possession, custody or control for purposes of these requests if it is within the possession of your attorneys, accountants, financial advisors, consultants, agents or representatives.

L. The use of the singular form of any word includes the plural, and vice versa.

M. These requests are continuing in nature, and any information obtained subsequent to the service of your response to these requests shall promptly be supplied by supplemental response whenever you find, locate, acquire or create the information.

PRIVILEGE

I. Identify in detail all information which is responsive to a specific request, but which Taylor, Bean & Whitaker Mortgage Corp., does not intend to produce based upon the assertion of a claim of privilege or other asserted justification for not responding and specifically identify the privilege asserted.

EXHIBIT "A"

1. All correspondence between you, Robertson, Anschutz & Schneid, P.L., and your client, US, Bank, on the one hand, and on the other hand, the Debtor, Taylor Bean & Whitaker, or its attorneys, including – without limitation – Edward Peterson and Stichter, Reidel, Blain and Prosser, or other advisors, which relate to the underlying litigation between Ice and US Bank or the mortgage at issue therein.