

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

In re:

Chapter 11 Case

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

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

Debtors.

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

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**PLAN TRUSTEE'S MOTION TO EXTEND TERMINATION DATE  
OF THE TAYLOR, BEAN & WHITAKER PLAN TRUST**

Neil F. Luria, as Plan Trustee (the "Plan Trustee") of the *Taylor, Bean & Whitaker Plan Trust* (the "Plan Trust") established pursuant to that certain Plan Trust Agreement by and between Taylor, Bean & Whitaker Mortgage Corp., Home America Mortgage, Inc. and REO Specialist, Inc., as Debtors, and Neil F. Luria, as Trustee, dated August 10, 2011 (the "Plan Trust Agreement"), by and through undersigned counsel, moves the Court for the entry of an Order extending the termination date of the Plan Trust for a period of eighteen (18) months, up through and including February 10, 2018. In support of this Motion, the Plan Trustee states:

**Background**

1. On August 24, 2009, Taylor, Bean & Whitaker Mortgage Corp. filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.
2. On November 24, 2009, REO Specialists, LLC and Home America Mortgage, Inc. also filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code.
3. On July 21, 2011, the Court entered its *Order Confirming Third and Restated Joint Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors* [ECF No.

3420] (the “Confirmation Order”), which approved and confirmed the *Third and Restated Joint Plan of Liquidation of Debtors and the Official Committee of Unsecured Creditors* (the “Plan”)<sup>1</sup> [ECF No. 3240]. In addition, the Plan Trust was approved, as set forth in the Confirmation Order, and the parties were authorized and directed to take all actions necessary or appropriate to enter into, implement and consummate the Plan Trust.

4. The Plan provides for the establishment of the Plan Trust for federal income tax purposes in which certain assets of the Debtors shall vest on the Plan’s Effective Date, August 10, 2011. The purpose of the Plan Trust is to appoint a trustee to liquidate the Assets of the respective Debtors and make the Distributions provided for under the Plan.

5. Section II.A. of the Plan Trust Agreement states as follows:

A. **Establishment.** Pursuant to the Plan, the Debtor and the Trustee hereby establish the “Taylor, Bean & Whitaker Plan Trust” (the “Plan Trust”) on behalf of, and for the benefit of, the Holders of Allowed Claims of the Debtors (whether such Claims are Allowed as of or subsequent to the Effective Date) (collectively, the “Beneficiaries”). Except as provided herein, the Plan Trust shall be vested with title to all Assets of each Debtor.

6. Section II.G. of the Plan Trust Agreement states as follows:

G. **Termination.** The Plan Trust shall terminate after the Distribution of all Trust Assets and the full performance of all other duties and functions of the Trustee under the Plan and this Agreement, or as otherwise ordered by the Bankruptcy Court. Notwithstanding the foregoing, the Plan Trust shall terminate no later than the fifth (5<sup>th</sup>) anniversary of the Effective Date; provided, however, the Bankruptcy Court, upon motion by a party in interest, may extend the term of the Plan Trust for a finite period if it is necessary to the liquidating purposes thereof. Multiple extensions can be obtained. Any extension shall be obtained within the six (6) month period prior to the fifth (5<sup>th</sup>) anniversary or the end of the immediately preceding extension, as applicable.

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<sup>1</sup> All capitalized terms used herein but not defined herein shall have the meaning ascribed to such terms in the Plan.

**Relief Requested**

7. Absent the entry of an Order by this Court, the Plan Trust will terminate on August 10, 2016 (the “Plan Trust Termination Date”). *See* Plan, Article VI, Section G.14.; Confirmation Order, at pg. 43; and Plan Trust Agreement, Section II.G. Accordingly, the Plan Trustee seeks the entry of an order, pursuant to (i) section II.G. of the Plan Trust Agreement; (ii) Article VI, Section G.14 of the Plan; (iii) section 105(a) of the Bankruptcy Code; and (iv) Bankruptcy Rule 9006(b)(1), extending the Plan Trust Termination Date for a period of eighteen (18) months, up through and including February 10, 2018. The Plan Trustee further requests that the extension proposed herein be without prejudice to his right to seek further extensions of the Plan Trust Termination Date, as necessary.

**Jurisdiction and Venue**

8. This Court has jurisdiction over this Motion under 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

9. Venue of this Motion is properly in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

**Basis for Relief Requested**

10. As noted above, each of the Plan, Confirmation Order and Plan Trust Agreement specifically contemplates an extension of the Plan Trust Termination Date provided that “within six months prior to such date or any extended termination date, the Bankruptcy Court, upon motion by the Plan Trustee or other party in interest, may extend the term of the Plan Trust for a finite period if it is necessary to the liquidating purpose thereof.” *See id.*

11. In addition, this Court has the authority to extend the Plan Trust Termination Date pursuant to section 105(a) of the Bankruptcy Code, which provides that “the court may issue any

order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). In doing so, the court is not precluded from “taking any action or making any determination necessary or appropriate to enforce or implement court orders [such as Confirmation Order], or rules, or to prevent an abuse of process.” *Id.*

12. Furthermore, Bankruptcy Rule 9006(b)(1) permits this Court, in its discretion, to extend the Plan Trust Termination Date for cause, with or without motion or notice. Bankruptcy Rule 9006(b)(1) provides:

[W]hen an act is required or allowed to be done at or within a specified period . . . by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefore is made before expiration of the period prescribed or as extended by a previous order . . .

Fed. R. Bank. P. 9006(b)(1). Here, the Plan Trustee is making this request prior to the current Plan Trust Termination Date and within the timeframe outlined in each of the Plan, the Confirmation Order and the Plan Trust Agreement. Accordingly, this request complies with Bankruptcy Rule 9006(b)(1).

13. Although Bankruptcy Rule 9006 does not define “cause”, it has been noted that “courts should be liberal in granting extensions of time sought before the period to act has elapsed, as long as the moving party has not been guilty of negligence or bad faith and the privilege extensions has not been abused . . .” 10 *Collier on Bankruptcy* ¶ 9006.06 (Alan N. Resnick & Henry J. Sommers eds., 16<sup>th</sup> ed.). In the context of determining whether “cause” exists regarding extensions of time, courts have considered such factors as the size and complexity of the issues involved, the debtors’ good faith progress in resolving issues, the amount of time elapsed in the case, and whether any prejudice will result to the creditors. *See, e.g. In re Express One Int’l.*, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996).

14. Since the Effective Date, the Plan Trustee has worked diligently with his professionals to reconcile the over 4,600 claims asserted against the Debtors seeking an aggregate of \$12.4 billion against the Debtors' estates and to liquidate the Debtors' remaining assets. With respect to the claims, the Plan Trustee has (i) reviewed and reconciled each of the claims against the Debtors' estates; (ii) engaged with claimants to resolve claims, whenever possible, and (iii) prosecuted and litigated objections to hundreds of claims, resulting in a reduction in claims asserted against the Debtors' estates.

15. Considerable progress has been made by the Trustee and his professionals in the claim evaluation process, including filing over 70 omnibus objections to claims. Total dollar amount of amount of claims has been reduced to just about \$6 billion. Most of the results were achieved with minimal impact on the Court but additional work remains.

16. To date, objections have been filed to over 3,000 claims, and the Plan Trustee has resolved the vast majority through out of court negotiations. However, there remain unresolved objections to claims and potential new objections that the Plan Trustee may file. The Plan Trustee continues to work diligently to resolve the claims without the need to file a written objection or pursue litigation.

17. As a result of the Plan Trustee's diligent efforts, the claims reconciliation process is significantly advanced but there are numerous claims that remain unresolved, including some subject to negotiations with the applicable claimants, as well as remaining unresolved avoidance actions and litigation matters, which the Plan Trust is involved as either a plaintiff or a defendant that are not avoidance action in nature.

18. The Plan Trustee has obtained extensions of time to allow for the extended work. On November 30, 2015, the Plan Trustee filed the Eighth Motion for Extension of Time to Object

to Claims (the “Eighth Extension Motion”) [ECF No. 8329], which the Court granted on December 3, 2015. In the Eighth Extension Motion, the Plan Trustee sought to extend the January 3, 2016 deadline by 365 days. The Order granting the Eighth Extension Motion [ECF No. 8338] extended the January 3, 2016 deadline for claim objections to January 3, 2017.

19. In addition, the Plan Trustee has liquidated substantially all of the Debtors’ assets and made several distributions to Class 8 and Class 9 general unsecured creditors totaling over \$200 million. However, further and final distributions remain to be made once the claims reconciliation process has been completed and all remaining assets have been liquidated.

20. The Plan Trust still owns a significant number of illiquid assets, including non-performing loans and REO properties which continue to be run off, as well as litigation matters against third parties, which are ongoing. The Plan Trustee continues the process of liquidating remaining Assets for the benefit of the Beneficiaries of the Plan Trust and requires additional time to complete his duties under the Plan Trust.

21. The Plan Trustee submits that the relief requested herein is in the best interest of creditors (now, the Beneficiaries of the Plan Trust), all parties-in-interest and judicial economy.

22. This Motion is not being made for purposes of delay, and no party will be prejudiced by the granting of this Motion.

23. The Motion is in compliance with Section 3.06 of Revenue Procedure 94-45, 1994-2 C.B. 684.

**Extension is Warranted**

24. As noted above, the Plan Trustee continues to liquidate the Plan Trust’s assets and resolve the claims in order to ultimately make a final distribution. Although the Plan Trustee has acted diligently to discharge his responsibilities and duties under the Plan and Plan Trust

Agreement, it is doubtful that the remaining issues can be fully resolved prior to the Plan Trust Termination Date.

25. The Plan Trustee respectfully submits that an extension of the Plan Trust Termination Date is warranted. . Accordingly the Trustee requests that an order extending the Plan Trust Termination Date through and including February 10, 2018 be entered. Out of an abundance of caution, the Plan Trustee reserves the right to seek further extensions of the Plan Trust Termination Date as necessary.

**WHEREFORE**, the Plan Trustee respectfully requests entry of an Order in the form attached hereto as Exhibit A: (i) granting this Motion, (ii) extending the Plan Trust Termination Date for a period of eighteen (18) months, up through and including February 10, 2018, without prejudice to seeking further extensions and (iii) granting such other relief as is just and proper.

Date: January 12, 2016

Respectfully submitted,

BERGER SINGERMAN LLP  
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Bean & Whitaker Plan Trust*  
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By: /s/ Paul Steven Singerman

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**EXHIBIT A**



UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

In re:

Chapter 11

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

Debtors.

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)

**ORDER GRANTING PLAN TRUSTEE'S MOTION TO EXTEND  
TERMINATION DATE OF THE TAYLOR, BEAN & WHITAKER PLAN TRUST**

THIS MATTER came before the Court for consideration, on \_\_\_\_\_, 2016 at \_\_\_\_\_  
a.m./p.m., upon the *Plan Trustee's Motion to Extend Termination Date of the Taylor, Bean &  
Whitaker Plan Trust* [ECF No. \_\_\_\_] (the "Motion"). The Court having reviewed the Motion and  
the record in this case, and having heard argument of counsel, does

**ORDER** as follows:

1. The Motion is **GRANTED**.

2. The Plan Termination Date<sup>1</sup> is extended for a period of eighteen (18) months, up through and including February 10, 2018, without prejudice to the Plan Trustee seeking further extensions.

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*(Paul Steven Singerman, Esq. is directed to serve a copy of this order on interested parties and file a proof of service within 3 days of the entry of the order.)*

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<sup>1</sup> All capitalized terms not otherwise defined herein shall have the same meaning ascribed to them in the Motion.