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13 **IN THE UNITED STATES BANKRUPTCY COURT**

14 **FOR THE DISTRICT OF ARIZONA**

15 In re:

16 MORTGAGES LTD.,

17 Debtor.

18 Chapter 11 Proceedings

19 Case No. 2:08-bk-07465-RJH

20 **MOTION FOR PROTECTIVE ORDER**

21 The Federal Deposit Insurance Corporation, as Receiver for Irwin Union Bank, F.S.B.
22 (“Receiver”), respectfully requests that the Court enter a protective order governing certain
23 materials described below that are produced in response to the Mortgages Ltd. Liquidating
24 Trust’s (“ML Trust”) Rule 2004 discovery requests to Irwin Union Bank. This Motion is
25 supported by the following Memorandum of Points and Authorities.

26 **MEMORANDUM OF POINTS AND AUTHORITIES**

27 **I. BACKGROUND FACTS**

28 On October 9, 2009, ML Trust requested an order from the Court requiring Irwin Union
Bank to produce approximately 90 categories of information related to the bank accounts of the
Debtor and its affiliates, consultants, representatives, and employees, among others (the
“Discovery Requests”). ML Trust’s Discovery Requests seek documents evidencing such
things as (i) the Debtor’s account activity; (ii) Irwin Union Bank policies regarding account
maintenance, extension of credit, determination of credit worthiness, and internal audit
procedures; (iii) loans or other forms of credit extended to Debtor and its affiliates; (iv)

1 suspicious activity reports; (iv) credit worthiness of the Debtor and its affiliates; and (v) wire
2 transfers to and from the Debtor. On October 13, 2009, the Court issued an order requiring
3 Irwin Union Bank to produce the documents in response to ML Trust's Discovery Requests.

4 The Federal Deposit Insurance Corporation has been appointed as Receiver of Irwin
5 Union Bank and has succeeded to all rights, titles, powers, and privileges of Irwin Union Bank.
6 12 U.S.C. § 1821(d)(2)(A). After reviewing documents in its possession that are believed to be
7 responsive to ML Trust's Discovery Requests, the Receiver has determined that the documents
8 contain confidential personal, identifying, and/or non-public financial information about Irwin
9 Union Bank's current or former customers, and third-parties unrelated to this action. Further,
10 the responsive documents are likely subject to various federal privacy laws such as the Fair
11 Credit Reporting Act and the Gramm-Leach-Bliley Act. See 15 U.S.C.A § 1681b(f); 15
12 U.S.C.A. § 6801. The Receiver is concerned that it may violate these privacy laws by producing
13 the information in an unredacted format without an appropriate protective order. For these
14 reasons, the Receiver requests the Court to enter a protective order governing the materials that
15 are produced or disclosed by the Receiver in response to ML Trust's Discovery Requests.

16 **II. LEGAL AUTHORITY**

17 Disclosure of personal and financial information in possession of the Receiver is
18 governed by various federal privacy laws. The Federal Deposit Insurance Corporation is
19 prohibited from disclosing records in its possession without consent unless an exception applies.
20 12 C.F.R. § 310.10. The Gramm-Leach-Bliley Act, 15 U.S.C.A. § 6801, places certain
21 limitations on financial institutions with respect to disclosure of their customers' personal
22 information. Specifically, a financial institution may not disclose to a non-affiliated third party
23 any non-public personal information of its customers, without first complying with certain
24 notice provisions or unless an exception applies. 15 U.S.C.A. § 6802(a), (e).

25 With respect to credit reports, the Fair Credit Report Act prohibits both a user and one
26 who has obtained a consumer credit report from releasing such reports absent a permissible
27 purpose. 15 U.S.C.A. § 1681b(f). Tax returns are also confidential under federal law. 26
28 U.S.C.A. § 6103(a). This protection extends to the returns themselves, and certain information
29 contained on a person's tax returns. *Id.*

1 Here, the Court has ordered the Receiver to produce documents in response to ML
2 Trust's Discovery Requests. Although the Receiver does not oppose production, it still has a
3 legitimate interest in preventing the general disclosure of customer financial information. *In re*
4 *Financial Corp. of America*, 119 B.R. 728, 736 (Bankr. C.D. Cal. 1990); 15 U.S.C.A. § 6801(a)
5 ("It is the policy of the Congress that each financial institution has an affirmative and continuing
6 obligation to respect the privacy of its customers"). To that end, a protective order that limits
7 the general disclosure of customer financial information is appropriate. *In re Financial Corp.*,
8 119 B.R. at 736. Further, because Irwin Union Bank's home office and records are located in
9 Indiana, and the present case is in Arizona, it is unclear whether Indiana or Arizona state privacy
10 acts will apply. A protective order covering the Receiver's response to the ML Trust's
11 Discovery Requests is necessary to avoid the possibility of improper disclosure of confidential
12 personal and financial information, particularly when that information pertains to third-parties
13 not involved in this case.

13 **III. CONCLUSION**

14 For the foregoing reasons, the Receiver respectfully requests that the Court enter a
15 protective order prior to the Receiver's production of documents in response to ML Trust's
16 Discovery Requests. The proposed form of order is attached hereto.

17 RESPECTFULLY SUBMITTED this 25th day of November, 2009.

18 **RYLEY CARLOCK & APPLEWHITE**

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