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13 UNITED STATES BANKRUPTCY COURT

14 DISTRICT OF ARIZONA

15 In re:

16 MORTGAGES LTD.,

17
18 Debtor.

Chapter 11

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

**MOTION FOR ORDER OF DISCHARGE
OF ORIGINAL TRUSTEE AND FOR
RELEASE OF TRUSTEE'S BOND**

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22 Original Liquidating Trustee, Kevin O'Halloran ("Mr. O'Halloran"), by and through
23 undersigned counsel, hereby requests an Order discharging Mr. O'Halloran, the Original
24 Trustee of the ML Liquidating Trust (the "Trust") and Chief Executive Officer and President of
25 ML Servicing Co., Inc. ("Servicing"), and for a release of the Bond posted by Mr. O'Halloran
26 in his capacity as Trustee of the Trust. The following memorandum of points and authorities
27 supports this motion.
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2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 1. By Order Confirming Investors' Committee's First Amended Plan of
4 Reorganization Dated March 12, 2009 entered on May 20, 2009 (the "Confirmation Order"),
5 this Court confirmed the Investor Committee's First Amended Plan of Reorganization (the
6 "Plan"). Paragraph F of the Confirmation Order approved the establishment of the Trust, and
7 approved the appointment of Mr. O'Halloran as the Liquidating Trustee of the Trust. Pursuant
8 to the Plan and the Confirmation Order, on June 11, 2009, the Board of the Trust entered into
9 the ML Liquidating Trust Agreement (the "Trust Agreement"), and Mr. O'Halloran accepted
10 his appointment as Liquidating Trustee of the Trust. Pursuant to Paragraph 24 of the Trust
11 Agreement, Mr. O'Halloran posted a bond which still remains in place at this time.

12 2. Pursuant to the Plan, the Debtor was renamed ML Servicing Co., Inc. In
13 accordance with Article 4.5 of the Plan, the Board of Directors of Servicing retained Mr.
14 O'Halloran as its Chief Executive Officer and President.

15 3. In July 2010, Mr. O'Halloran informally notified the Trust Board and the
16 Servicing Board of his intention to resign as Liquidating Trustee, Chief Executive Officer, and
17 President. By letter dated September 22, 2010, Mr. O'Halloran subsequently advised the Trust
18 Beneficiaries of his resignation as Liquidating Trustee, and as Chief Executive Officer and
19 President of Servicing. A copy of Mr. O'Halloran's resignation letter is attached hereto as
20 Exhibit "A" and incorporated herein by this reference.

21 4. Pursuant to Paragraph 21 of the Trust Agreement, Mr. O'Halloran's resignation
22 becomes effective only upon the appointment of a successor Trustee. Upon information and
23 belief, the Trust Board recently named Matt Hartley as successor Liquidating Trustee (the
24 "Successor Trustee"). Upon information and belief, the Successor Trustee has accepted his
25 appointment pursuant to the Trust Agreement. Upon information and belief, Mr. Hartley will
26 also be appointed as substitute Chief Executive Officer and President of Servicing. Upon
27 information and belief, Mr. Hartley has posted his own Trustee's bond in favor of the Trust.

28 5. Paragraph 16 of the Trust Agreement provides that the Liquidating Trustee shall

1 incur no liability to any holder of any Claim for any act or omission arising out of in connection
2 with the Bankruptcy Case, the administration of the assets of the Bankruptcy Estate, the
3 confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or
4 property to be distributed under the Liquidating Trust, except for bad faith, fraud, willful
5 misconduct, gross negligence, or reckless disregard of duty or law.

6 6. Paragraph 17 of the Trust Agreement provides for indemnification of the
7 Liquidating Trustee in connection with any claims that might be asserted against him, except
8 for claims premised on bad faith, fraud, willful misconduct, gross negligence or reckless
9 disregard of duty or law. Similarly, Section 10.1 of the Plan provides that the officers and
10 directors of the reorganized debtor shall have no liability in connection with the administration
11 of the estate or the Liquidating Trust, or the distribution of property under the Plan, except in
12 the event of willful misconduct.

13 7. To provide financial security to support the indemnification obligations set forth
14 in the Plan and the Trust Agreement, the Trust secured officers' and directors' liability
15 insurance, including excess coverage, providing total coverage of \$30,000,000 for the benefit
16 of Mr. O'Halloran, the successor Trustee, the directors of the Trust, and the officers and
17 directors of Servicing (the "Insurance Policies"). The Insurance Policies currently expire on
18 June 11, 2011. Mr. O'Halloran has been advised by the insurance broker for the Trust that the
19 current renewal premiums for the Insurance Policies is approximately \$80,000, but that amount
20 may change if any claims are made on the Policies. Mr. O'Halloran further understands that at
21 least one director has submitted, or intends to submit, a claim on the Insurance Policies. Each
22 of the Policies is a "claims made" policy, providing coverage for the insureds only if a claim is
23 made during the policy period. If the Policies are allowed to lapse, any claims asserted against
24 Mr. O'Halloran, the successor Trustee, the directors of the Trust, and/or the officers or directors
25 of Servicing will not be covered by any insurance.

26 8. Based on the current financial condition of the Trust, Mr. O'Halloran believes
27 that the Trust will not have sufficient resources to pay renewal premiums for the Insurance
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1 Policies in June of 2011, when they come due. In particular, Mr. O'Halloran understands that
2 the Trust currently holds approximately \$400,000, but the historic operating expenses of the
3 Trust have generally averaged approximately \$100,000 per month. In addition, a \$300,000
4 payment is due to DLA Piper as of June 10, 2011, in resolution of its disputed application for
5 professional fees in the bankruptcy case. As of this time, no revenues are anticipated from any
6 of the litigation being prosecuted by the Trust in the next six months. If the Insurance Policies
7 are allowed to lapse, and if any claims are in fact asserted against Mr. O'Halloran, the Trust
8 will be incapable of performing its obligation to indemnify Mr. O'Halloran in connection with
9 the defense of any such claims.

10 9. Mr. O'Halloran is not aware of any claims against him as the original
11 Liquidating Trustee that would fall within the exclusions set forth in Paragraph 16 and 17 of the
12 Trust Agreement or Section 10.1 of the Plan.¹ In addition, the illiquidity of the Trust renders
13 the Trust incapable of paying renewal premiums for the insurance policies as and when they
14 come due. Consequently, Mr. O'Halloran requests an Order discharging him from any further
15 liability to the Liquidating Trust, the Trust Board, the Trust Beneficiaries, Servicing, the Board
16 of Directors, officers, and shareholders of Servicing, in connection with his service as
17 Liquidating Trustee, and Chief Executive Officer and President of Servicing, and that any and
18 all claims against Mr. O'Halloran in connection with his service as Liquidating Trustee and
19 Chief Executive Officer and President of Servicing be barred. In the alternative, Mr.
20 O'Halloran requests that Mr. Hartley, the successor Trustee, be directed to escrow from funds
21 available in the Trust the sum of \$160,000, an amount which should be sufficient to fund
22 renewal premiums for the insurance policies for an additional two years, thereby providing Mr.
23 O'Halloran with the assured indemnification for which he bargained when agreeing to accept
24 his appointment as Liquidating Trustee. In addition, Mr. O'Halloran requests entry of an Order
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26 ¹ In fact, Mr. O'Halloran had hoped to stipulate and file a joint motion with the Trust and
27 Servicing to obtain a discharge of his duties as Liquidating Trustee, but the Board refused and
28 instead wanted 4-6 months to investigate Mr. O'Halloran for any improprieties while acting in
his capacity as Liquidating Trustee. It has now been nearly 6 months since Mr. O'Halloran
first gave informal notice of his intent to resign and no adverse claims have been made against
him.

1 releasing and discharging the \$1.5 million bond that he has posted in favor of the Liquidating
2 Trust, and refunding to the Liquidating Trust any unearned premium related thereto.

3 WHEREFORE, Original Liquidating Trustee, Kevin O'Halloran, requests an Order
4 providing for (a) the discharge of Mr. O'Halloran as Liquidating Trustee and as Chief
5 Executive Officer and President of Servicing and the release and discharge of any and all
6 claims that might be asserted by any party against Mr. O'Halloran arising out of his service as
7 Liquidating Trustee or Chief Executive Officer and President of Servicing, or, in the
8 alternative, the escrow of the sum of \$160,000 by the successor Liquidating Trustee, to be used
9 solely for the payment of renewal premiums on the Insurance Policies when they come due,
10 and (b) the release of his bond.

11 DATED: January 5, 2011

12 **KELLY McCOY, PLC**

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15 By: /s/ Kevin C. McCoy

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All creditors listed on the Master Mailing List

/s/ Lisa Plisko