

1 Robert J. Miller, Esq. (#013334)  
2 Bryce A. Suzuki, Esq. (#022721)  
3 **BRYAN CAVE LLP**  
4 Two North Central Avenue, Suite 2200  
5 Phoenix, Arizona 85004-4406  
6 Telephone: (602) 364-7000  
7 Facsimile: (602) 364-7070  
8 Internet: [rjmiller@bryancave.com](mailto:rjmiller@bryancave.com)  
9 [bryce.suzuki@bryancave.com](mailto:bryce.suzuki@bryancave.com)

7 Counsel for the Rev Op Group and the  
8 Sternberg Enterprises Profit Sharing Plan

9 **IN THE UNITED STATES BANKRUPTCY COURT**  
10 **FOR THE DISTRICT OF ARIZONA**

11 In re:  
12 MORTGAGES LTD.,

13 Debtor.

In Proceedings Under Chapter 11  
Case No. 2:08-bk-07465-RJH

**EX PARTE MOTION TO FILE UNDER  
SEAL DECLARATION OF WILLIAM  
HAWKINS IN OPPOSITION TO  
REMOVAL MOTION**

Hearing Date: N/A  
Hearing Time: N/A

18 This Motion is filed by the Rev Op investors who collectively hold approximately  
19 \$58.4 million in Rev Op investments (collectively, the “**Rev Op Group**”) and the  
20 Sternberg Enterprises Profit Sharing Plan (the “**Sternberg Plan**”), in opposition to the  
21 ML Manager’s Emergency Motion For Order Concerning Removal Of William Hawkins  
22 From The Board of Managers (the “**Removal Motion**”). In support of this Motion, the  
23 Rev Op Group and the Sternberg Plan submit as follows:

24 1. On November 25, 2009, the ML Manager filed the Removal Motion.  
25 When it is boiled down, the Removal Motion is an attack by a majority of the members of  
26 the ML Manager board against another board member, William Hawkins. Mr. Hawkins  
27 is the court-approved board designee of all Rev Op investors in this chapter 11  
28 proceeding.

1           2.       In the Removal Motion, movant accuses Mr. Hawkins of (among other  
2 things) failing to perform his duties as a board member. Thus, the ML Manager has  
3 placed at issue a wide range of boardroom activities, many of which are confidential and  
4 involve attorney-client communications. Mr. Hawkins has prepared a declaration in  
5 support of the Rev Op Group's and the Sternberg Plan's opposition to the Removal  
6 Motion.

7           3.       Counsel for the ML Manager, in the past, has accused Mr. Hawkins of  
8 failing to maintain attorney-client privilege that applies to the ML Manager and its  
9 counsel. Counsel for the Rev Op Group and the Sternberg Plan requested that the ML  
10 Manager stipulate to the granting of this Motion, since Mr. Hawkins' declaration will  
11 necessarily address various matters that are subject to attorney-client privilege.<sup>1</sup> The ML  
12 Manager has refused to so stipulate.

13           4.       Section 107(b) of the Bankruptcy Code requires courts to preserve the  
14 confidentiality of certain types of information. This section provides, in relevant part:

15                   On request of a party in interest, the bankruptcy court shall, and on the  
16 bankruptcy court's own motion, the bankruptcy court may (1) protect an  
17 entity with respect to a trade secret or confidential research, development,  
or commercial information . . . .

18       11 U.S.C. § 107(b). Bankruptcy Rule 9018 further defines the procedure by which a  
19 party may obtain relief under section 107(b). Bankruptcy Rule 9018 provides, in relevant  
20 part:

21                   On motion or its own initiative, with or without notice, the court may make  
22 any order which justice requires (1) to protect the estate or any entity in  
23 respect of a trade secret or other confidential research, development, or  
commercial information . . . .

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25       <sup>1</sup>       To be clear, Mr. Hawkins is the representative of a number of entities that are part  
26 of the Rev Op Group. Neither the other Rev Op Group members nor representatives of  
27 the Sternberg Plan have received the Hawkins declaration. Counsel for the Rev Op  
28 Group and the Sternberg Plan has received a copy of the Hawkins Declaration, but has an  
obligation to keep the contents of the declaration strictly confidential.

1 Fed. R. Bankr. P. 9018.

2 5. Where information falls within a category set forth by section 107(b) and  
3 Bankruptcy Rule 9018(1), “the court is required to protect a requesting interested party  
4 and has no discretion to deny the application.” *Video Software Dealers Ass’n v. Orion*  
5 *Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27 (2d Cir. 1994); *see In re*  
6 *Food Mgmt. Group LLC*, 359 B.R. 543, 554 (Bankr. S.D.N.Y. 2007) (“[I]f a paper falls  
7 within one of the express exceptions in § 107(b), on the request of a party in interest, the  
8 bankruptcy court shall protect a person.”).

9 6. “[C]ommercial information that is entitled to protection under Code  
10 section 107(b) and Bankruptcy Rule 9018 must be viewed from the practical perspective  
11 of damage to the estate or its creditors . . . .” *In re Global Crossing Ltd.*, 295 B.R. 720,  
12 725 (Bankr. S.D.N.Y. 2003). Thus, section 107(b) requires the Court, on motion of a  
13 party, to preserve the confidentiality of filed documents where disclosure could frustrate  
14 the plan process or impair a debtor’s ability to maximize estate values. *See, e.g., In re*  
15 *Lomas Fin. Corp.*, No. 90-7827, 1991 WL 21231 (S.D.N.Y. Feb. 11, 1991) (affirming  
16 order sealing information related to proposed plan of reorganization where disclosure  
17 could, inter alia, “have a chilling effect on negotiations”).

18 7. Movants believe that the interests of investors are paramount in this chapter  
19 11 proceeding. It is in the best interests of all investors that the Court allow Mr.  
20 Hawkins’ declaration to be filed under seal. The relief requested herein is necessary to  
21 maintain the confidential nature of the matters discussed in the boardroom of the ML  
22 Manager. Moreover, Mr. Hawkins also necessarily discusses certain matters therein  
23 which are subject to the attorney-client privilege held by the ML Manager.

24 8. Thus, the Rev Op Group and the Sternberg Plan are requesting that the  
25 Court enter an order authorizing their filing of the Hawkins declaration under seal.  
26 Notice of this Motion has been given to the Office of the United States Trustee and  
27 counsel for the ML Manager. Upon entry of the order, the Rev Op Group and the  
28

1 Sternberg Plan will provide a full and complete copy of the Hawkins declaration to  
2 counsel for the ML Manager.

3 **CONCLUSION**

4 For all of the foregoing reasons, the Rev Op Group respectfully requests that the  
5 Court grant the relief requested herein; and any other relief as is just and proper in the  
6 circumstances presented herein.

7 DATED this 4<sup>th</sup> day of January, 2010.

8 BRYAN CAVE LLP

9 By /s/ RJM, #013334

10 Robert J. Miller  
11 Bryce A. Suzuki  
12 Two North Central Avenue, Suite 2200  
13 Phoenix, AZ 85004-4406  
14 Counsel for the Rev Op Group and  
15 the Sternberg Enterprises Profit  
16 Sharing Plan

17 COPY of the foregoing served this  
18 4<sup>th</sup> day of January, 2010:

19 Via Email:

20 Cathy Reece, Esq.  
21 Fennemore Craig, P.C.  
22 3003 North Central Avenue, Suite 2600  
23 Phoenix, Arizona 85012-2913  
24 Counsel for the ML Manager, LLC  
25 [creece@fclaw.com](mailto:creece@fclaw.com)

26 Larry Watson  
27 Office of the United States Trustee  
28 230 N. First Avenue, Suite 204  
Phoenix, Arizona 85003  
[larry.watson@usdoj.gov](mailto:larry.watson@usdoj.gov)

/s/ Sally Erwin