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FILED  
2011 FEB -2 PM 2:01  
CLERK  
U.S. BANKRUPTCY  
DISTRICT OF ARIZONA

8 UNITED STATES BANKRUPTCY COURT  
9 DISTRICT OF ARIZONA

10 In Re: ) In Proceedings Under  
11 MORTGAGES LTD., ) Chapter 11  
12 Debtor. ) Case No. 2-08-bk-07465 RJH  
13 ) MOTION FOR CLARIFICATION OF  
14 ) ORDER FOR DISTRIBUTION OF  
15 ) PROCEEDS

16 Pursuant to Rule 9023 of the Federal Rules of Bankruptcy Procedure and Rule 59 (e) of  
17 the Federal Rules of Civil Procedure, Sternberg Enterprises Profit Sharing Plan ("Sternberg")  
18 requests the Court to supplement its Order Regarding Distribution of Proceeds dated January 20,  
19 2011, to clarify that the Order was not intended to determine the issues related to the termination  
20 of the Sternberg agency as such issues remain reserved by the court for a future ruling.

21 **Background**

22 In its Objection to ML Manager's proposed allocation model, Sternberg asserted that  
23 Sternberg's agency was terminated effective February 7, 2010, and that on January 23, 2010, it  
24 instructed ML Manager to provide a prompt accounting of all costs, fees and expenses incurred  
25 to the effective date of termination. Sternberg referred to paragraph 3.g Sternberg's Agency  
26 Agreement as amended, that provides: "*Upon the effective date of termination, ... the rights and*  
27 *duties of Mortgages Ltd. will cease, ... and Beneficiary shall immediately reimburse Agent for*  
28 *any and all fees, costs, advances and compensation due.*" (Emphasis added). Upon termination  
of the agency ML Manager could not sell Sternberg's interest in any loan or the collateral related

1 thereto, collect proceeds or make distributions.

2 Pages 23 and 24 of ML Manager's Reply to Sternberg's Objection, includes the  
3 following: "ML Manager has recognized in the past and continues to recognize that Sternberg is  
4 or may be unique. ML Manager further recognizes that it may require an evidentiary hearing to  
5 resolve this issue. ... If the court concludes that Sternberg's Agency Agreement was terminated  
6 as of February 7, 2010, arguably it would terminate his obligation for accruing of further interest  
7 and general costs. However ML Manager believes that he would be liable for his share of Loan  
8 Specific costs under, at the very least, an unjust enrichment theory." The Agency Termination  
9 issue was not judicially determined when the Reply was filed.

### 10 **Court's Reservation of Ruling Regarding Sternberg Agency Termination Issue**

11 At the September 21, 2010 hearing, the Court recognized that Sternberg may be a  
12 potential exception to the general allocation rules. The Court stated "with the potential exception  
13 of the 401 (K) and Sternberg the general rule will be that all investors will share the costs on a  
14 fair, equitable, and non-discriminatory manner". (Docket 2964 page 23). One page 25, of the  
15 transcript the Court said "And I agree with you it's appropriate to carve out, at least for now the  
16 401 (K) and Sternberg issues. "The Court suggested that the parties meet and if a status  
17 conference or evidentiary hearing is required one should be requested (Docket #2964page 60).

### 18 **Subsequent Events**

19 Subsequently, ML Manager decided to no longer contest Sternberg's claim that the  
20 agency was terminated. Pursuant to stipulation, orders were entered recognizing that the Agency  
21 between Sternberg and Mortgages Ltd, LLC was terminated effective February 7, 2010 and  
22 Sternberg had the sole right to deal with and act regarding Sternberg's loan interests.


23 ML Manager has recently provided Sternberg with an accounting showing Sternberg's  
24 share of the actual expenses incurred though February 7, 2010, including general costs, specific  
25 costs, exit financing and interest. ML Manager orally has accepted in principal Sternberg's,  
26 payment and sharing of subsequent co-tenancy costs, proposal. A written accounting settlement  
27 agreement was drafted and submitted to ML Manager and Sternberg is waiting for a response..  
28

1 **Request for Clarification of Court's Order**

2 Sternberg had no interest in any of the loans that were the subject of the Court's Order  
3 Regarding Distribution of Proceeds. Sternberg's specific issues were not addressed at the  
4 January 11, 2011 hearing and therefore the Court made no ruling dealing with such issues.  
5 Nevertheless ML Manager prepared an order for approval of the allocation model that exempted  
6 the 401 (k) Plan from the effect of the order to distribute proceeds but omitted Sternberg from  
7 the exemption. Because of the broad language of the Order and the omission of language  
8 reserving the issues related to the agency termination, Sternberg is concerned about a potential  
9 claim that the Sternberg agency termination issues were effectively determined against  
10 Sternberg.

11 Sternberg requests a supplement to the Court's Order, using the language the Court used  
12 at the September 21, 2010 hearing, to make it clear that the Court did not rule on whether or to  
13 what extent Sternberg will share the costs on a fair, equitable and non-discriminatory manner and  
14 if a resolution the issues has not been agreed upon, either ML Manager or Sternberg may request  
15 a status conference or an evidentiary hearing.

16  
17 DATED this 2<sup>nd</sup> day of February, 2011

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21 Sheldon Sternberg, Trustee  
22 Sternberg Enterprises Profit Sharing Plan

23 Copies of the foregoing via mail, e-mail  
24 this 2<sup>nd</sup> day of February, 2011 upon

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