

1 FENNEMORE CRAIG, P.C.
Cathy L. Reece (No. 005932)
2 Keith L. Hendricks (No. 012750)
3003 North Central Avenue
3 Suite 2600
Phoenix, AZ 85012-2913
4 Telephone: (602) 916-5000
Email: creece@fclaw.com
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6 Attorneys for ML Manager LLC
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8 IN THE UNITED STATES BANKRUPTCY COURT
9 FOR THE DISTRICT OF ARIZONA

10 In re
11 MORTGAGES, LTD.,
12 Debtor.

Chapter 11
2:08-BK-07465-RJH

**EMERGENCY MOTION FOR EX
PARTE ORDER ENFORCING THE
COURT'S JANUARY 20, 2011 ORDER
APPROVING THE DISTRIBUTION OF
FUNDS**

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17 Apparently, as a result of a clerical error, funds were erroneously distributed to
18 Ron Barness, principal of Barness Investment Limited Partnership (collectively
19 "Barness"). Barness has refused to return these funds. Accordingly, ML Manager
20 requests that the Court immediately enter the order attached hereto as Exhibit A requiring
21 Barness to return the funds and freezing the account into which Barness has deposited the
22 funds. Entry of this order will permit ML Manager to obtain a return of the erroneously
23 deposited funds and implement this Court's prior order.

24 **I. FACTUAL BACKGROUND**

25 ML Manager liquidated six loans, collateral, or other properties included in the
26 loans defined as the ML Loans in the Plan of Reorganization (the "Loans"). On

1 January 20, 2011, this Court entered an order approving ML Manager’s distribution of
2 funds to investors (the “Distribution Order”) [Docket 3051]. Barness was an investor in
3 the Loans. Accordingly, a portion of the proceeds from the resolution or liquidation of the
4 Loans was earmarked for Barness. However, the Town of Gilbert holds a recorded
5 judgment lien against Barness. Accordingly, the Distribution Order required the funds
6 earmarked for Barness to be distributed to the Town of Gilbert - not to Barness. Barness
7 was provided notice of the Distribution Motion and the form of the Distribution Order.
8 He did not appear or object to either.

9 On or about February 22, 2011, Canyon State Servicing Co., LLC (“Canyon
10 State”) issued checks to 1600 investors, including a check to Barness in the amount of
11 \$112,075.31 (the “Funds”). The Funds should have been disbursed to the Town of
12 Gilbert. However apparently due to the numbers of investors who received distributions,
13 a clerical error, or inadvertence the check was issued to Barness. These funds were
14 deposited by Barness in to an account at Bank of America ending in 3678 (the
15 “Account”). The error was just discovered.

16 **II. LEGAL ARGUMENT**

17 Pursuant to section 105 of the Bankruptcy Code, this Court maintains the powers to
18 issue any order that is appropriate to carry out the provisions of the Code and to enforce
19 and implement its own orders. 11 U.S.C. §105(a). Here, as a result of a clerical error, the
20 wrong party received funds. Accordingly, ML Manager requests that the Court enter the
21 attached order to prevent further frustration of the Distribution Order.

22 Additionally, entry of the attached order *ex parte* is appropriate as ML Manager
23 needs an immediate solution to this issue. As the situation currently stands, Barness is in
24 complete control of the Funds and has made no indication that he intends to return the
25 Funds to ML Manager. ML Manager has no control over what Barness will do with the
26 Funds. Barness may dispose of the Funds in any number of ways and in such a way that it

1 will become very difficult if not impossible to recover any portion of the Funds from
2 Barness. Further, Barness was aware that it was not entitled to the Funds and knew the
3 Funds should have gone to the Town of Gilbert. Nevertheless, Barness proceeded to
4 deposit the Funds in the Account and not return the Funds. Furthermore, Barness has
5 refused to return calls, emails and letters from ML Manager seeking to rectify the
6 situation. This demonstrates that there is a substantial likelihood Barness will dispose of
7 the Funds to its own benefit and has every intention of keeping the Funds. Thus,
8 providing some notice to Barness will likely frustrate the purposes of this order as it
9 would provide Barness with an additional chance to sequester the Funds.

10 **III. CONCLUSION**

11 The Court may utilize its equitable powers to in order to implement its own orders.
12 Here, ML Manager's request for an ex parte order requiring Barness to return the Funds is
13 an appropriate exercise of this Court's powers and will permit the Court to correct a
14 clerical error. Accordingly, ML Manager respectfully requests that this Court enter the
15 attached order requiring Barness to return the Funds and freezing any money in Barness's
16 Bank of America account in excess of the Funds.

17 DATED this 28th day of March, 2011.

18 FENNEMORE CRAIG, P.C.

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By /s/ Keith L. Hendricks

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Cathy L. Reece

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Keith L. Hendricks

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Attorneys for ML Manager LLC

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