

IN THE SUPREME COURT OF OHIO

SHARON WILBORN, et al., )  
 )  
 Appellants, )  
 )  
 v. )  
 )  
 BANK ONE CORPORATION, et al., )  
 )  
 Appellees. )

CASE NO. 07-0558

On Appeal from the Mahoning  
County Court of Appeals,  
Seventh Appellate District  
(C.A. No. 04-MA-182)

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MOTION TO SUBSTITUTE FEDERAL DEPOSIT INSURANCE CORPORATION, AS  
RECEIVER OF WASHINGTON MUTUAL BANK, SUCCESSOR TO HOMESIDE  
LENDING, INC.

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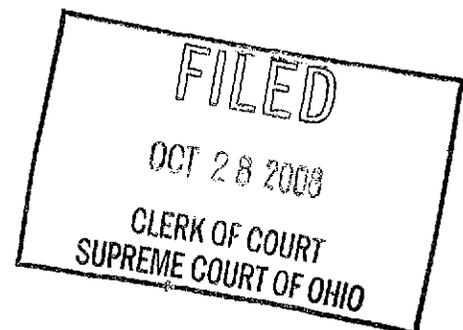
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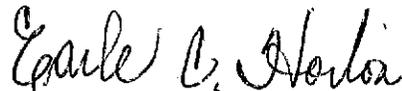
Now comes the Appellee, Federal Deposit Insurance Corporation as Receiver of Washington Mutual Bank, Successor to Homeside Lending, Inc., by and through counsel, and hereby respectfully moves this Honorable Court for an Order, substituting the Federal Deposit Insurance Corporation, as Receiver for Washington Mutual Bank, Successor to Homeside Lending, Inc.

A Memorandum and Certification in support of this Motion is attached hereto and incorporated herein by reference.

OF COUNSEL:

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Respectfully submitted,



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Successor to Homeside Lending, Inc.

**CERTIFICATE OF SERVICE**

A copy of the foregoing Motion to Substitute Federal Deposit Insurance Corporation, as Receiver of Washington Mutual Bank, Successor to Homeside Lending, Inc. has been sent by regular U.S. mail on this 27<sup>th</sup> day of October 2008 to:

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Washtenaw Mortgage Company,  
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Earle C. Horton, Esq.  
Brett E. Horton, Esq.

Counsel for Appellees,  
Federal Deposit Insurance Corporation,  
as Receiver of Washington Mutual Bank,  
Successor to Homeside Lending, Inc.

## MEMORANDUM

On or about September 25, 2008, the Office of Thrift Supervision declared Washington Mutual Bank insolvent and appointed the Federal Deposit Insurance Corporation (hereinafter the "Corporation") its Receiver.<sup>1</sup> On this same date, the Corporation accepted the appointment as Receiver of Washington Mutual Bank pursuant to 12 U.S.C. § 1821 (c)(3)(A).<sup>2</sup> Accordingly, the Corporation is now the real party in interest and must substitute as the Appellee in place of Washington Mutual Bank in this matter.



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Earle C. Horton, Esq.  
Brett E. Horton, Esq.

Attorneys for Appellees,  
Federal Deposit Insurance Corporation,  
as Receiver of Washington Mutual Bank,  
Successor to Homeside Lending, Inc.

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<sup>1</sup> A copy of the certification of the Office of Thrift Supervision, Order No. 2008-36, executed on September 25, 2008, appointing a receiver for Washington Mutual Bank, Henderson, Nevada is attached hereto as Exhibit "A" and incorporated herein by reference.

<sup>2</sup> A copy of the correspondence dated September 25, 2008, from the Federal Deposit Insurance Corporation to the Office of Thrift Supervision is attached hereto as Exhibit "B" and incorporated herein by reference.

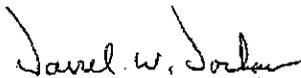
**Office of Thrift Supervision**  
**Department of the Treasury**



**I certify that annexed hereto is a true copy of the document described below made from records of the Office of Thrift Supervision, Department of the Treasury.**

**Copy of the Office of Thrift Supervision  
Order Number 2008-36, executed on September  
25, 2008, appointing a receiver for Washington  
Mutual Bank, Henderson, Nevada, consisting of  
three (3) pages.**

**Signed this 25<sup>th</sup> day of September, 2008**



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**Darrel W. Dochow  
Regional Director  
West Region**

**Exhibit  
"A"**

## OFFICE OF THRIFT SUPERVISION

### Receivership Of A Federal Savings Association

**Date:** September 25, 2008  
**Order No.:** 2008-36  
**OTS No.:** 08551

The Director of the Office of Thrift Supervision (OTS), or his designee, in cooperation with the Federal Deposit Insurance Corporation (FDIC), has determined to appoint the FDIC as receiver of Washington Mutual Bank, Henderson, Nevada (Savings Bank).

#### **GROUND'S FOR APPOINTMENT OF FDIC AS RECEIVER FOR THE SAVINGS BANK**

The Director, or his designee, based upon the administrative record finds and determines the following:

- (i) The Savings Bank is likely to be unable to pay its obligations or meet its depositors' demands in the normal course of business; and
- (ii) The Institution is in an unsafe or unsound condition to transact business.

The Savings Bank is a Federally chartered savings bank, the accounts of which are insured by the Deposit Insurance Fund (DIF). The Savings Bank has its home office in Henderson, Nevada. As of June 30, 2008, the Savings Bank reported total assets of \$307 billion.

#### **DISCUSSION OF GROUNDS FOR APPOINTMENT OF A RECEIVER FOR THE SAVINGS BANK**

Section 5(d)(2)(A) of the Home Owners' Loan Act (HOLA), 12 U.S.C. § 1464(d)(2)(A), provides that the Director may appoint a receiver for any insured savings association if the Director determines that one or more grounds specified in section 11(c)(5) of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. § 1821(c)(5), exist.

Under section 11(c)(5)(F) of the FDIA, the Director may appoint a receiver if a savings association is likely to be unable to pay its obligations or meet its depositors' demands in the normal course of business because it does not have sufficient liquid assets to fund expected withdrawals. The Savings Bank has insufficient cash and liquid assets convertible to cash necessary to pay its obligations and the expected withdrawal demands of its depositors. The Savings Bank has suffered significant cash outflows, exceeding

\$22 billion since July 2008, in part because of adverse publicity. The Savings Bank has limited and diminishing liquidity sources available to it and the current rate of outflow will deplete the Savings Bank's cash resources and liquidity within a short period of time.

Therefore, the Director concludes that the Savings Bank is likely to be unable to pay its obligations or meet its depositors' demands in the normal course of business because it does not have sufficient liquid assets to pay those obligations and fund the expected withdrawals.

Under section 11(c)(5)(C) of the FDIA, the Director may appoint a receiver if a savings association is in an unsafe or unsound condition to transact business. The Savings Bank is in an unsafe and unsound condition as a result of its severe liquidity strain, deteriorating asset quality, and continuing significant negative operating earnings with no realistic prospects for raising capital to ensure that it can repay all of its liabilities, including deposits.

The Director, or his designee, therefore, has determined that grounds for the appointment for a receiver for the Savings Bank exist under section 5(d)(2) of the HOLA, and sections 11(c)(5)(C) and (F) of the FDIA, 12 U.S.C. §§ 1821(c)(5)(C) and (F).

#### **ACTIONS ORDERED OR APPROVED**

##### **Appointment of a Receiver**

The Director, or his designee, hereby appoints the FDIC as receiver for the Savings Bank, for the purpose of liquidation, pursuant to section 5(d)(2) of the HOLA, and section 11(c)(6)(B) of the FDIA, 12 U.S.C. § 1821(c)(6)(B).

##### **Delegation of Authority to Act for OTS**

The Director, or his designee, hereby authorizes the OTS West Regional Director, or his designee, and the Deputy Chief Counsel for the Business Transactions Division of the Chief Counsel's office, or his designee, to: (i) certify orders; (ii) sign, execute, attest, or certify other documents of OTS issued or authorized by this Order; (iii) designate the persons or entity that will give notice of the appointment of a receiver for the Savings Bank and serve the Savings Bank with a copy of this Order pursuant to 12 C.F.R. § 558.2; and (iv) perform such other functions of OTS necessary or appropriate for implementation of this Order. All documents to be issued under the authority of this Order must be first approved, in form and content, by the Chief Counsel's Office. In addition, the Director, or his designee, hereby authorizes the Deputy Chief Counsel for the Business Transactions Division of the Chief Counsel's office, or his designee, to

Order No.: 2008-36

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make any subsequent technical corrections, that might be necessary, to this Order, or any documents issued under the authority of this Order.

By Order of the Director of OTS, effective September 25, 2008.



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John M. Reich  
Director



**FDIC**

**Division of Resolutions and Receiverships  
Dallas Regional Office**

1601 Bryan Street  
Dallas, Texas 75201

Telephone (214) 754-0098

September 25, 2008

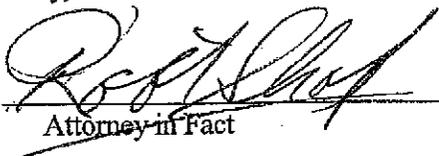
Office of Thrift Supervision  
Washington, D.C.

**Subject: Washington Mutual Bank  
Henderson, NV – In Receivership  
Acceptance of Appointment as Receiver**

Dear Sir or Madam:

Please be advised that the Federal Deposit Insurance Corporation accepts its appointment as Receiver of the captioned depository institution, in accordance with the Federal Deposit Insurance Act, as amended.

Sincerely,

By: 

Attorney in Fact

Printed Name: Robert Schoppe

**Exhibit  
"B"**