

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
AT INDEPENDENCE**

JOHN AND JEANETTE SCHWARTZ, et al.,	)	
	)	Case No. 00 CV 226639
Plaintiffs,	)	Case No. 00 CV 226639-01
	)	Case No. 00 CV 226639-02
v.	)	Case No. 00 CV 226639-03
	)	
BANN-COR MORTGAGE, et al.,	)	
	)	Division 14
Defendants.	)	

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT  
AND OF SETTLEMENT HEARING**

*A Court has authorized this Notice. This is not a solicitation from a lawyer.  
Please read this Notice carefully and completely.*

THIS NOTICE AND ANNOUNCEMENT APPLIES TO YOU BECAUSE YOU ARE AMONG A CLASS OF PERSONS WHO, ON OR AFTER OCTOBER 31, 1994, OBTAINED A "SECOND MORTGAGE LOAN" AS DEFINED UNDER MISSOURI LAW, THAT WAS SECURED BY A MORTGAGE OR A DEED OF TRUST ON RESIDENTIAL REAL PROPERTY LOCATED IN THE STATE OF MISSOURI, ORIGINATED BY BANN-COR MORTGAGE AND PURCHASED BY AND ASSIGNED TO TMS MORTGAGE, INC., D/B/A THE MONEY STORE.

YOU MAY BE ENTITLED TO RECEIVE A SUBSTANTIAL PAYMENT IN CONNECTION WITH THE SETTLEMENT. CLASS MEMBERS WHO DO NOT EXCLUDE THEMSELVES FROM THE SETTLEMENT WILL RECEIVE A SETTLEMENT PAYMENT RANGING FROM AN ESTIMATED \$6,737 TO \$82,069 (\$32,459 ON AVERAGE) PURSUANT TO A SETTLEMENT REACHED WITH WACHOVIA EQUITY SERVICING, LLC, AS SUCCESSOR IN INTEREST TO HOMEQ SERVICING CORP. (FORMERLY TMS MORTGAGE, INC.) AND THE MONEY STORE, LLC. CLASS MEMBERS CAN REVIEW WHAT PLAINTIFFS' COUNSEL CURRENTLY ESTIMATES THE AMOUNT OF THEIR SETTLEMENT PAYMENT TO BE BY VISITING THE WEBSITE OF PLAINTIFFS' COUNSEL, [www.wbsvlaw.com](http://www.wbsvlaw.com), AND CLICKING ON THE LINK "SCHWARTZ SETTLEMENT."

**THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ IT CAREFULLY!**

## 1. WHY SHOULD I READ THIS NOTICE?

This Notice has been mailed to you because the parties' records show that you obtained a second mortgage loan that was originated by Bann-Cor Mortgage on or after October 31, 1994, which was purchased by and assigned to TMS Mortgage Inc. doing business as "The Money Store." Your second mortgage loan is currently the subject of a class action lawsuit filed in the Circuit Court of Jackson County, Missouri styled *John and Jeannette Schwartz, et al. v. Bann-Cor Mortgage, et al.*, Case No. 00-CV-226639 (the "Lawsuit" or "Litigation"). You (and any co-borrower(s) on your second mortgage loan) may be eligible to receive money from a proposed settlement (the "Settlement") that John and Jeanette Schwartz, two of the named plaintiffs in the Lawsuit, and Wachovia Equity Servicing, LLC, as successor in interest to HomEq Servicing Corp. (f/k/a TMS Mortgage Inc.) and The Money Store, LLC (collectively, the "HomEq Defendants") reached on May 8, 2009. Please share this Notice with any co-borrower(s) on your loan(s).

This Notice generally describes the class action lawsuit; your rights under the proposed Settlement, which has been preliminarily approved by the Circuit Court of Jackson County, Missouri (the "Court"); and the date and time of a public Fairness Hearing that will be held by the Court to consider the fairness of the proposed Settlement.

## 2. WHAT IS THE LAWSUIT ABOUT?

A class action lawsuit was commenced on October 31, 2000 in the Circuit Court of Jackson County, Missouri, at Kansas City, styled *John and Jeannette Schwartz, et al. v. Bann-Cor Mortgage, et al.*, Case No. 00-CV-226639. The plaintiffs filed the lawsuit on their own behalf, and on behalf of a proposed class of other borrowers who also obtained junior or "second" mortgage loans secured by Missouri residential real estate from Bann-Cor Mortgage ("Bann-Cor").

In the Lawsuit, the plaintiffs allege that Bann-Cor violated the Missouri Second Mortgage Loan Act, R.S. Mo. §§ 408.231, *et seq.* by directly or indirectly charging, contracting for and/or receiving a number of different settlement charges or loan fees in connection with its Missouri second mortgage loans. The plaintiffs also allege in the Lawsuit that Bann-Cor sold and assigned its Missouri second mortgage loans after making them, and that the entities that purchased and/or serviced the loans also violated the Missouri Second Mortgage Loan Act by directly or indirectly charging, contracting for and/or receiving the illegal settlement charges and loan fees, as well as interest on the loans. The plaintiffs also allege that the entities that purchased and/or serviced the Missouri loans are derivatively liable as the assignees and holders of the second mortgage loans for Bann-Cor's violations of Missouri law. The defendants deny these allegations.

On March 25, 2008, the Court certified a litigation class in the Lawsuit comprised of those persons who obtained a second mortgage loan from Bann-Cor Mortgage on or after October 31, 1994 (the "Litigation Class"). Notice was provided to the members of the Litigation Class of their opportunity to opt out or exclude themselves from the Litigation Class that had been certified. No class members timely elected to exercise his, her, or its right to opt out of the Litigation Class.

On March 26, 2008, the Court separated or “severed” the claims of those members of the Litigation Class whose Bann-Cor Loans were purchased by and assigned to TMS Mortgage, Inc. (doing business as “The Money Store”) (hereinafter referred to as the “Settlement Class”) from those members of the Litigation Class whose Bann-Cor Loans were purchased or assigned to someone other than TMS Mortgage, Inc. (hereinafter referred to as the “Non-HomEq Plaintiff Borrowers”).

Plaintiffs John and Jeannette Schwartz (as members and representatives of the Litigation Class whose Bann-Cor Loans were purchased by and assigned to TMS Mortgage, Inc. d/b/a The Money Store) and the HomEq Defendants have now agreed to settle and resolve the Lawsuit as between them on certain terms that are summarized in this Notice. The complete details of the proposed Settlement are contained in a “Settlement Agreement and Release” (the “Settlement Agreement”), which the Schwarzs and the HomEq Defendants (hereinafter, the “Parties”) filed with the Court.

On May 11, 2009, the Court preliminarily approved the proposed Settlement as fair, reasonable, and adequate. The Court will conduct a “fairness hearing” on **July 6, 2009 at 1:30 p.m.** to consider, among other things, whether the Settlement should be finally approved. The proposed Settlement will become effective only if it is finally approved by the Court.

### **3. WHO IS COVERED BY THE PROPOSED SETTLEMENT?**

According to the parties’ records, you are a member of the Settlement Class and will be covered by the Settlement. The Settlement Class includes all persons who, on or after October 31, 1994, obtained a “Second Mortgage Loan” as defined in R.S. Mo. § 408.231.1 that was secured by a mortgage or a deed of trust on residential real property located in the State of Missouri, originated by Bann-Cor Mortgage, and purchased by and assigned to TMS Mortgage, Inc., d/b/a The Money Store.

### **4. WHAT ARE THE TERMS OF THE PROPOSED SETTLEMENT?**

The following is only a summary of some of the terms and conditions of the proposed Settlement. For more information, you may obtain a copy of the executed Settlement Agreement by contacting Plaintiffs’ Counsel at the address listed in Section 6 of this Notice, or by visiting the website of Plaintiffs’ Counsel, [www.wbsvlaw.com](http://www.wbsvlaw.com), and clicking on the link “Schwartz Settlement.”

- A. If the Court approves the proposed Settlement, the members of the Settlement Class who do not exclude themselves from the Settlement will receive a settlement payment ranging from an estimated \$6,737 to \$82,069 (\$32,458 on average). The amount of each Settlement Payment is determined per loan as the sum of (a) the “Initial Class Member Payment” per loan; and (b) the Settlement Class Member’s pro rata share of 65% of the “Common Fund Recovery.” The “Initial Class Member Payment” per loan is the sum of the following: (a) all of the allegedly illegal loan fees that were charged, contracted for or received in connection with the loan; (b) all of the interest paid on the loan; (c)

“prejudgment” interest at a yearly rate of 9% on the total amount of the allegedly illegal loan fees from the date of the loan through May 11, 2009; (d) “prejudgment” interest at a yearly rate of 9% on the interest paid amounts from the date of each interest payment through May 11, 2009. The “Common Fund Recovery” is the amount by which the Final Settlement Amount exceeds (a) the “Initial Class Member Payment” for all of the Settlement Class Member loans, (b) the amount of any incentive award made to the Named Plaintiffs by the Court, and (c) the amount of any attorneys’ fees and expense awards made to Plaintiffs’ Counsel by the Court. The Common Fund Recovery is estimated to be \$768,968. The amount of the incentive award and the amount of the awards of attorneys’ fees and expenses that the Named Plaintiffs and Plaintiffs’ Counsel will ask the Court to make are explained below in Section 10 of this Notice. Class Members can review what Plaintiffs’ Counsel currently estimates the amount of their Settlement Payment to be by visiting the website of Plaintiffs’ Counsel, [www.wbsvlaw.com](http://www.wbsvlaw.com), and clicking on the link “Schwartz Settlement.”

- B. If the Court approves the Settlement, the members of the Settlement Class who do not exclude themselves from the Settlement will receive the Settlement Payment for the loan by check. The check will be mailed by first-class mail, postage prepaid, to the Settlement Class Members, or to the bankruptcy trustee if a Chapter 7 bankruptcy was filed. The check will be mailed by Plaintiffs’ Counsel and will not come from the HomEq Defendants directly. Joint borrowers, such as a husband and wife, will receive a single payment per loan. Any Settlement Class Member who receives a payment under the Settlement is solely responsible for distributing or allocating the payment between or among any co-borrower(s), regardless of whether the check is made payable to all or only some of the Settlement Class Member’s co-borrowers. **Settlement Class Members will also be responsible for paying any taxes due on the Settlement Payment received. Settlement Class Members are strongly encouraged to consult with their own tax advisor concerning the tax effects of any money received pursuant to this Settlement. Plaintiffs’ Counsel cannot provide you with any tax advice.**
- C. The proposed Settlement will only become effective if approved by the Court. If the proposed Settlement is approved, the Court will enter a judgment that releases and discharges the HomEq Defendants and certain other persons from certain claims that were or could have been asserted against them. The release is further discussed below, in Section 11 of this Notice.

## 5. WHAT DO I NEED TO DO TO PARTICIPATE IN THE SETTLEMENT?

Nothing. You are currently a member of the Settlement Class and will participate in the Settlement and will receive the estimated sum as stated above unless you exclude yourself from the Settlement as described in Section 6, below. If you filed for Chapter 7 bankruptcy protection after you received the loan, you will still be a member of the Settlement Class, but the Settlement Payment will be made payable to you and/or your Chapter 7 bankruptcy trustee, who will also receive this Notice. If you filed for bankruptcy protection, you should consult with a bankruptcy attorney about this Notice.

If you change your address, please contact Plaintiffs' Counsel by contacting them at the address provided in Section 7 below.

## 6. CAN I EXCLUDE MYSELF FROM THE SETTLEMENT?

Yes. If you exclude yourself from the Settlement, you will **not** receive any payment from the Settlement Funds, and you will **not** be bound by any Final Order and Judgment that may be entered in the case with respect to the Settlement Class. You will be free to continue pursuing whatever legal rights you may have.

To exclude yourself from the Settlement, you must send a request for exclusion by first-class mail, postage prepaid, to Plaintiffs' Counsel and Defendants' Counsel (names and addresses provided in Section 7, below). To be effective, your request for exclusion must be in writing and be **received** by Plaintiffs' Counsel **and** Defendants' Counsel at the addresses below on or before **June 11, 2009**. The request for exclusion must include: (a) your name, address, telephone number and the last four digits of your social security number; (b) your Bann-Cor (or The Money Store or HomEq Servicing Corp.) loan number(s) (if known); (c) a statement that you and all other borrowers named on your promissory note are seeking exclusion from the Settlement; (d) your signature and the signature of any other borrower(s) named on the promissory note for your loan; and (e) a reference to "Schwartz v. Bann-Cor Mortgage, Case No. 00 CV 226639." The request for exclusion must be signed personally by each Class Member who seeks to be excluded from the Settlement, or the personal representative of any deceased Class Member. No request for exclusion may be made on behalf of a group of Class Members. No Class Member may opt-out or exclude himself or herself by having a request to exclude submitted by an actual or purported agent or attorney acting on behalf of the Class Member.

**If the request for exclusion is not timely received, or if you choose not to exclude yourself from the Settlement, you will be included in the Settlement Class and will be bound by any Final Order and Judgment entered with respect to the Settlement Class.** You also will be legally bound by the proposed Settlement if it is approved, including the provisions releasing the HomEq Defendants and certain other entities for the Released Claims, as more fully described in the Settlement Agreement.

If you want to receive a Settlement Payment as described above in Section 4.A of this Notice, **DO NOT** submit a request for exclusion.

## 7. WHY, WHEN, AND WHERE WILL A FAIRNESS HEARING BE HELD?

A hearing on whether to grant final approval of the Settlement will be held before the Honorable John M. Torrence of the Circuit Court of Jackson County, Missouri (Division 14) on **July 6, 2009, at 1:30 p.m.**, in the Jackson County Courthouse (Independence), 308 W. Kansas Independence, MO 64050 (the "Fairness Hearing"). There is no need for you to attend the Fairness Hearing if you simply wish to benefit from the proposed Settlement. The purpose of the Fairness Hearing is to determine, among other things: (a) whether the terms and conditions of the Settlement are fair, reasonable and adequate; (b) whether named plaintiffs John and Jeanette

Schwartz (the "Named Plaintiffs") are adequate representatives of the Settlement Class; (c) whether Plaintiffs' Counsel are entitled to attorneys' fees and expenses and, if so, how much; (d) whether the Named Plaintiffs should be entitled to a payment for their services and, if so, how much; and (e) whether the Final Order and Judgment should be entered dismissing the Lawsuit with prejudice on the merits as to the HomEq Defendants.

The Court has the power to adjourn or reschedule the Fairness Hearing from time to time without further notice of any kind.

At the Fairness Hearing, the Court will consider the statements of the parties and any objections that may have been made. Any Class Member who has not filed a timely written Request for Exclusion has the right to object to the proposed Settlement. If you want to object, you must file a written objection with the Clerk of Court, Jackson County Courthouse (Independence), 308 W. Kansas, Independence, MO 64050, no later than **June 11, 2009**. All persons wishing to object must also send a copy of their written objection to Plaintiffs' Counsel and Defendants' Counsel (identified below). The objection must include: (a) your name, address, and telephone number; (b) a statement that you object to the proposed Settlement; (c) a specific statement explaining why you object to the proposed Settlement; (d) copies of all documents you wish the Court to consider; (e) the names of all witnesses, and the report from any proposed experts you intend to call at the Fairness Hearing; (f) copies of any other loan documents upon which you rely for your objection; and (g) a reference to "Schwartz v. Bann-Cor Mortgage, Case No. 00 CV 226639."

Any Settlement Class Member who has not filed a timely written Request for Exclusion has the right to appear and/or enter an appearance at the Fairness Hearing. If you wish to appear at the hearing you or your attorney must: (a) file a Notice of Appearance with the Clerk of Court no later than **June 11, 2009**; and (b) serve the Notice of Appearance on Plaintiffs' Counsel and Defendants' Counsel. Any subjects to be raised at the Fairness Hearing must be contained in a written objection filed with the Court in the manner set out above. If you wish to call witnesses or present other evidence at the Fairness Hearing, you must state the identity of the witnesses and identify any documents or other evidence you intend to present in your Notice of Appearance.

The addresses for Plaintiffs' Counsel and Defendants' Counsel are as follows:

**Plaintiffs' Counsel**

R. Frederick Walters  
Kip D. Richards  
Walters Bender Strohhahn  
& Vaughan, P.C.  
2500 City Center Square  
1100 Main Street  
Kansas City, MO 64105

**Defendants' Counsel**

Mary J. Hackett  
Reed Smith LLP  
435 Sixth Avenue  
Pittsburgh, PA 15219

Any Settlement Class Member who has not filed a timely written Request for Exclusion also may request to intervene in the Lawsuit, in person or through an attorney retained at the Settlement Class Member's own expense. A request or motion to intervene must be in writing and reference "Schwartz v. Bann-Cor Mortgage, Case No. 00 CV 226639" and otherwise comply

with the Missouri Rules of Civil Procedure and applicable law. A request to intervene must be filed with the Clerk of Court, Jackson County Courthouse (Independence), 308 W. Kansas, Independence, MO 64050, no later than **June 11, 2009**. Any persons wishing to intervene must also send a copy of their written request to intervene to Plaintiffs' Counsel and Defendants' Counsel as identified above.

Any Settlement Class Member who does not comply with the above requirements shall be deemed to have waived all objections to and shall be forever foreclosed from challenging the proposed Settlement.

#### **8. WHO REPRESENTS THE PLAINTIFFS?**

The Settlement Class is represented by Plaintiffs' Counsel: R. Frederick Walters, Kip D. Richards, David M. Skeens, J. Michael Vaughan, and Garrett M. Hodes of the law firm Walters Bender Strohhahn & Vaughan, P.C.. If you have questions regarding the Settlement, this Notice or your options, you can contact Plaintiffs' Counsel without charge by writing to them at the address provided above, or by calling 1-877-472-6620 or 816-421-6620 (KC Metro Area) or by visiting the website of Plaintiffs' Counsel, [www.wbsvlaw.com](http://www.wbsvlaw.com) and clicking on the link "Schwartz Settlement."

#### **9. WHAT ARE THE REASONS FOR SETTLEMENT?**

The Named Plaintiffs and the HomEq Defendants have agreed to the Settlement after considering, among other things, (i) the substantial benefits available to the Settlement Class under the terms of the Settlement Agreement; (ii) the attendant risks and uncertainty of litigation, especially in complex litigation such as this, as well as the difficulties and considerable delays inherent in such litigation; (iii) the vigorousness of the defenses asserted by the HomEq Defendants; and (iv) the desirability of consummating the Settlement promptly to provide effective relief to the Settlement Class.

The Court has not ruled on the merits of the claims or defenses in this case, and the HomEq Defendants have denied and continue to deny each and every claim asserted against them. The HomEq Defendants have denied and continue to deny all charges of wrongdoing or liability against them arising out of or relating to any of the conduct, statements, acts, or omissions alleged, or that could have been alleged in the Lawsuit. Nonetheless, the HomEq Defendants have concluded that further litigation would be protracted and expensive, and that it is desirable that the lawsuit be fully and finally settled in the manner and upon the terms and conditions set forth in the Settlement Agreement.

#### **10. WILL THE NAMED PLAINTIFFS OR PLAINTIFFS' COUNSEL RECEIVE COMPENSATION?**

Yes. The Named Plaintiffs, as representatives of the Settlement Class, will make an application to the Court for approval of what is called an "incentive award." Such awards are used and made in class action lawsuits to provide an "incentive" to individuals like the Mr. and Mrs. Schwartz to file and prosecute class action lawsuits for the benefit of a class or people they do not know. The

award also compensates the representatives of a class for their work and time (in this case over nine (9) years of service) as class representatives (being interviewed and deposed, reviewing documents, meeting and conferring with class counsel, etc.) The Named Plaintiffs will ask the Court to approve and make an incentive award to them in this case of up to \$18,000 for their, time, services and expenses throughout the course of the Lawsuit. The HomeEq Defendants will not object to the Named Plaintiffs' application, but the Court must still determine and approve the amount of any incentive award to be made. Any incentive award made to the Named Plaintiffs will be paid from the Final Settlement Amount before distribution to the Settlement Class.

Plaintiffs' Counsel has prosecuted this litigation on a contingent basis and has incurred or advanced all of the costs associated with the lawsuit since its inception in 2000. Plaintiffs' Counsel has not yet been paid for their work or received reimbursement for the expenses incurred or advanced on behalf of the Plaintiffs and the Class. The Court must also determine and approve the amount of any awards to be made to Plaintiffs' Counsel for attorneys' fees and litigation expenses. The amount of any such award must be reasonable based on a number of factors including, but not limited to, the nature and extent of the work involved, the difficulty of the case and the issues presented, the skill needed to conduct the case properly, the experience, reputation and ability of the lawyers, the contingency or certainty of compensation, the customary charges for similar work, and the amount involved in the controversy and the benefits resulting to the client.

Based on these and other factors, and as a part of the Settlement, Plaintiffs' Counsel will request the Court to approve an award of attorneys' fees and litigation expenses not to exceed the following: (a) \$1,875,000 as reimbursement for actual attorney and paraprofessional time expended in connection with the Lawsuit over the past nine (9) years, plus 35% of the "Common Fund Recovery" as defined above in Section 4.A of this Notice; and (b) \$150,000 for the litigation expenses and court cost that Plaintiffs' Counsel has also incurred and advanced in connection with the Lawsuit over the past nine (9) years. The amounts of any attorneys' fees and expense awards made to Plaintiffs' Counsel will be paid from the Final Settlement Amount before distribution. The Common Fund Recovery is that amount that remains after the Settlement Class and Plaintiffs' Counsel have been made whole as to 100% of the alleged actual damages for the Settlement Class by payment of the Initial Payment (\$1,188,032) and Plaintiffs Counsel have been paid 100% of their actual time investment (not to exceed \$1,875,000) and expense investment (not to exceed \$150,000). The Common Fund Recovery is estimated to be \$768,968. The Settlement Class will receive 65% or \$499,829 and Plaintiffs Counsel will receive 35% or \$269,139 from the estimated Common Fund Recovery.

The HomeEq Defendants will not object to the above application for attorneys' fees and expenses by Plaintiffs' Counsel but the Court must still determine and approve the amount of any attorneys' fee and expenses awards to be made. Any attorneys' fee and expenses awards made to Plaintiffs' Counsel also will be paid from the settlement monies before distribution to the Settlement Class.

The range and average of the Settlement Payments described above in Section 4.A of this Notice have been estimated with the expectation that the Court will approve the applications for an

incentive award and an award of attorneys' fees and expense as reasonable given, among other things, the Named Plaintiffs' years of service, the complexity of the case, the nature and extent of the legal work provided by Plaintiffs' Counsel since 2000, and the extraordinary results obtained for the Settlement Class. If the Court approves an incentive award or an award of attorneys' fees and expenses in an amount less than that applied for, the difference shall be reallocated to the Net Settlement Funds.

## **11. WHAT CLAIMS WILL BE RELEASED UNDER THE SETTLEMENT?**

If approved by the Court, the proposed Settlement will be legally binding upon all members of the Settlement Class who did not timely request exclusion from the Settlement Class. The Settlement will fully, finally and forever release, settle, compromise relinquish and discharge any and all of the Released Persons of and from any and all Released Claims.

This means that you could not bring any lawsuit against the HomEq Defendants, or any other Released Persons identified in the Settlement Agreement, for any reason whatsoever relating to the Released Claims. You would still be able to enforce your rights under the Settlement Agreement, if necessary. If you or someone acting on your behalf are currently litigating similar claims against the HomEq Defendants, either individually or as part of a plaintiff class, you may be barred from pursuing such claims if you do not timely exclude yourself from the Settlement Class. You should consult with an attorney concerning your rights.

"Released Persons" shall be defined to include the HomEq Defendants and each of their partners, affiliates, parent companies, subsidiaries, divisions or other organizational units of any kind doing business in their own names, and doing business under any other names, any entity now or in the past controlled by, controlling or under the common control with any of the foregoing and doing business under any other names, including but not limited to Wachovia Corporation and Wells Fargo & Co., and any and all of their respective affiliates and subsidiaries, and each of their respective predecessors, successors and assigns, and each of their past and present officers, directors, partners, shareholders, associates, trustees, employees, agents, attorneys (including any consultants hired by counsel), accountants, representatives, beneficial owners, investment advisors, investment bankers, insurers, independent contractors, heirs, executors, and administrators, and each of their respective predecessors, successors, and assigns. Notwithstanding the above, the term "Released Persons" does not include (a) Bann-Cor Mortgage, (b) the Master Financial Defendants, (c) any former defendant named in the Litigation and/or the companion case entitled John A. and Jeanette A. Schwartz, et al. v. Bann-Cor Mortgage, et al., Case No. 03 CV 224614, other than the HomEq Defendants, (d) or any other person, association or entity who is not a Released Party including, but not limited to, Residential Funding Company, LLC, Franklin Credit Management Corporation, Bank One, and any other person, association or entity that serviced the loans of any of the Non-HomEq Plaintiff Borrowers, and/or any person, association or entity to whom the loans of any of the Non-HomEq Plaintiff Borrowers were sold, assigned or otherwise transferred or conveyed.

"Releasers" means the Named Plaintiffs, all Settlement Class Members, and each of their respective heirs, executors, administrators, assigns, predecessors, and successors, and any other

person claiming by or through any or all of them. The Releasors shall not include any members of the Settlement Class who opt out of the Settlement Class.

“Released Claims” means any and all claims, demands, actions, causes of action, rights, offsets, setoffs, suits, damages, lawsuits, liens, costs, surcharges, losses, attorneys’ fees, expenses or liabilities of any kind whatsoever, in law or in equity, for any relief whatsoever, including monetary, injunctive or declaratory relief, rescission, general, compensatory, special, liquidated, indirect, incidental, consequential or punitive damages, as well as any and all claims for treble damages, penalties, attorneys’ fees, costs or expenses, whether known or unknown, alleged or not alleged in the Litigation, suspected or unsuspected, contingent or vested, accrued or not accrued, liquidated or unliquidated, matured or unmatured, that in any way concern, relate to, or arise out of the Class Members’ Bann-Cor Loans, and which any of the Releasors have, had, or now have, from the beginning of time up through and including the Effective Date, against the Released Persons (“Claims”), including but not limited to, any and all Claims arising out of or relating to: (1) allegations that were or could have been asserted in the Litigation in any way relating to the Class Members’ Bann-Cor Loans; (2) the Fifth Amended Petition or the facts and circumstances giving rise thereto; (3) any activities the Released Persons took with respect to the Class Members’ Bann-Cor Loans; (4) any conduct undertaken by any of the Released Persons to defend the Litigation, including but not limited to, any alleged improper discovery conduct and/or any request for sanctions in this Litigation; and/or (5) any alleged representations, misrepresentations, disclosures, incorrect disclosures, failures to disclose, acts (legal or illegal), omissions, failures to act, deceptions, acts of unconscionability, unfair business practices, breaches of contract, usury, unfulfilled promises, breaches of warranty or fiduciary duty, conspiracy, excessive fees collected, or violations of any consumer protection statute, any state unfair trade practice statute, or any other body of case, statutory or common law or regulation, federal or state, including but not limited to the Missouri Second Mortgage Loan Act, R.S. Mo. § 408.231, *et seq.*, or any other similar state statute; Truth in Lending Act, 15 U.S.C. § 1601, *et seq.*, and its implementing regulations, 12 C.F.R. part 226; the Home Ownership and Equity Protection Act, 15 U.S.C. § 1639, *et seq.*, and its implementing regulation, 12 C.F.R. part 226.31-32; the Real Estate Settlement Procedures Act 12 U.S.C. § 2601, and its implementing regulation, 24 C.F.R. part 3500; the Equal Credit Opportunity Act, 15 U.S.C. § 1691, *et seq.*, and its implementing regulation, 12 C.F.R. part 202; the Home Mortgage Disclosure Act, 12 U.S.C. § 2801, *et seq.*, and its implementing regulation, 12 C.F.R. part 203; the Fair Housing Act, 42 U.S.C. §§ 3601, *et seq.*; the Fair Credit Reporting Act, 15 U.S.C. §§ 1681, *et seq.*; the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692, *et seq.*; and the Federal Trade Commission Act, 15 U.S.C. §§ 45, *et seq.* Released Claims also include, without limitation, any allegation that any Released Party has conspired with, aided and abetted, or otherwise acted in concert with any other third parties, including, but not limited to, Bann-Cor Mortgage, with regard to any of the facts, acts, events, transactions, occurrences, courses of conduct, business practices, representations, omissions, circumstances or other matters related to the Litigation or to discovery in the Litigation. It is the intention of Releasors to provide a general release of all Released Claims against the Released Persons; provided, however, that, to the extent a Settlement Class Member obtained another loan originated by a third-party other than Bann-Cor Mortgage, which was subsequently purchased by and assigned to one or both of the HomeEq Defendants, this Release does not apply as to that loan and/or loan transaction. To the extent a Settlement Class Member does not have such a “non-Bann-Cor Loan,” all of his, her

or its Released Claims against the Released Persons are released. Notwithstanding the above, the term "Released Claims" does not include (a) any existing or future claims, causes of action, remedies, motions for sanctions and/or rights to relief that James Wong, Daniel and Wanda Jenson, and any of the other Non-HomEq Plaintiff Borrowers are asserting or may hereafter assert in the Litigation against any person, association or entity who is not a Released Person as defined above; (b) any claims or causes of action by any person or entity other than a Releasor including, without limitation, the claims, causes of action, remedies, motions or requests for sanctions and/or any other rights to relief arising from, related to or based on the alleged improper discovery conduct, fraud on the court, representations, misrepresentations, disclosures, incorrect disclosures, failures to disclose, acts (legal or illegal), omissions, failures to act, and/or deceptions of the Released Persons, or any one or more of them, by the plaintiffs and/or the plaintiffs' class in the lawsuit entitled Steven R. and Ruth E. Mitchell v. Residential Funding Company LLC, et al., Case No. 03 CV220489 (currently on appeal), or any lawsuit or proceeding other than this Litigation.

## **12. WHAT IF THE SETTLEMENT IS NOT APPROVED BY THE COURT?**

If the proposed Settlement is not approved by the Court as being fair, reasonable, and adequate, the Settlement Agreement will be null and void and the Named Plaintiffs will proceed with their claims in the Lawsuit. In that event, no payments will be made under the terms of the Settlement Agreement. The HomEq Defendants and the Named Plaintiffs could also attempt to enter into another settlement.

## **13. WHERE DO I GET ADDITIONAL INFORMATION?**

This Notice is only a summary of the proposed Settlement and does not describe all of the details of the Settlement Agreement. Accordingly, you are referred to the Settlement Agreement and the other documents filed with the Court in the lawsuit, all of which are available upon request from Plaintiffs' Counsel, or by visiting the website of Settlement Class Counsel, [www.wbsvlaw.com](http://www.wbsvlaw.com) and clicking on the link "Schwartz Settlement."

## **14. WHAT ARE THE RELEVANT DATES?**

If you wish to request exclusion from the Settlement Class or appear at the Fairness Hearing, these are the relevant dates:

- **Deadline for mailing a request for exclusion (must be received by): June 11, 2009**
- **Deadline for filing and serving notice of appearance, motion to intervene or written objection (must be received by the court by): June 11, 2009**
- **Date and time of Fairness Hearing: July 6, 2009 at 1:30 p.m.**

**PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE FOR INFORMATION.** This Notice provides only a summary of matters about the lawsuit. You may also contact Plaintiffs' Counsel at the address listed in Section 7 of this Notice. If you have any questions, please contact Plaintiffs' Counsel in writing at the address provided above or call 816-421-6620.

THIS NOTICE IS SENT PURSUANT TO RULE 52.08 OF THE MISSOURI RULES OF CIVIL PROCEDURE AND BY ORDER OF THE COURT

DATED: *May 12, 2009*