

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

Timmie S. Coil
SSN XXX-XX-9358
Karen A. Coil
SSN XXX-XX-6002

CASE NO. 03-40682 RJK

Debtor.

NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

TO: Debtor and other entities specified in Local Rule 9013-3(a).

1. Countrywide Home Loans, Inc. (hereinafter "Secured Creditor"), by its undersigned attorney moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on October 14, 2004, at 2:00 p.m., or as soon thereafter as counsel can be heard, before the Honorable Robert J. Kressel in Courtroom 8 West of the above entitled Court located at U.S. Courthouse, 300 South 4th Street, Minneapolis, Minnesota.

3. Any response to this motion must be filed and delivered not later than October 11, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or served and filed by mail not later than October 5, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on January 29, 2003. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rule of Bankruptcy Procedure 4001.

This motion is filed under Federal Rule of Bankruptcy Procedure 9014 and Local Rules 9013-1 - 9019-1. Movant requests relief from the automatic stay with respect to property subject to a lien. Movant requests said relief be effective immediately notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3).

6. Debtor is indebted to Secured Creditor in the original principal amount of \$121,500.00, as evidenced by that certain mortgage deed dated March 14, 2002, a copy of which is attached hereto as Exhibit "A", together with interest thereon.

7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain mortgage deed dated March 14, 2002, executed by Timmie S. Coil and Karen A. Coil, husband and wife, recorded on March 20, 2002, as Document No. 1002966, a copy of which is attached hereto as Exhibit "A". The name and address of the original creditor is contained in the attached Exhibit "A". The property is located in Stearns County, Minnesota and is legally described as follows to-wit:

Lot 7 in Block 9 of Westwood Park Three according to the plat and survey thereof on file and of record in the office of the County Recorder, in and for Stearns County, Minnesota.

Secured Creditor is now the holder of said mortgage and is entitled to enforce the terms thereof.

8. At all times material, Debtor was in default of the payments and performance of obligations to Secured Creditor.

9. Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. This secured creditor's interest in the property is not adequately protected where, as of September 16, 2004, Debtor is delinquent in the making of post-petition monthly payments as required for the months of June, 2004 through September, 2004, inclusive, in the amount of \$1,361.99 each; accruing late charges and attorneys fees and costs of \$675.00. Debtor has failed to make any offer of adequate protection.

10. Debtor has no equity in the property and the property is not necessary to an effective reorganization. The value of the property as scheduled by Debtor is \$125,000.00 subject to Secured Creditor's mortgage in excess of \$113,644.72.

Considering selling costs of 10%, Debtor has no real equity in the property. The burden is on Debtor

to establish that this property is necessary to an effective reorganization.

11. Secured Creditor desires to protect its interest in the aforementioned property and requests the Court to vacate the stay of actions and allow foreclosure pursuant to Minnesota law.

12. Secured Creditor has incurred and will incur legal fees and costs to protect and enforce its rights in the subject property.

WHEREFORE, Secured Creditor, by its undersigned attorney, moves the Court for an order for judgment that the automatic stay provided by 11 U.S.C. § 362(a) be modified so to permit the movant to commence mortgage foreclosure proceedings under Minnesota law and for such other relief as may be just and equitable.

Dated this 16th day of September, 2004.

WILFORD & GESKE

By /e/ James A. Geske
James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Suite 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

2000

MORTGAGE REGISTRATION TAX 279.45

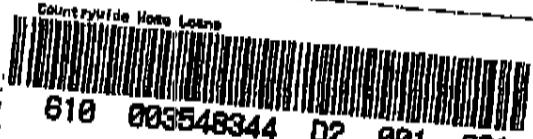
Randy R. Schield
STEARNS COUNTY AUDITOR

M.H. Smith
DEPUTY AUDITOR

1002966

02 MAR 20 PM 1:38

COUNTY RECORDER
STEARNS CO. MN
PATRICIA M. OVERMAN
BY Patricia M. Overman
RETURN DEEDS
Title Professionals and
Abstract Company
PO Box 879
St. Cloud, MN 56302
FILE# 02-088362



610 003548344 02 001 001

[his Line For Recording Data]

MORTGAGE

COIL
LOAN NUMBER: 131697
PARCEL NUMBER: 82-52629-486

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 15.

- (A) "Security Instrument" means this document, which is dated **MARCH 14, 2002** together with all Riders to this document.
- (B) "Borrower" is **TIMMIE S. COIL AND KAREN A. COIL, HUSBAND AND WIFE**

Borrower is the mortgagor under this Security Instrument.
(C) "Lender" is **HOME FEDERAL MORTGAGE SERVICES, LLC**

Lender is a **LIMITED LIABILITY COMPANY** organized and existing under the laws of **DELAWARE**. Lender's address is **7101 NORTHLAND CIRCLE SUITE 200 BROOKLYN PARK, MN 55428**

Lender is the mortgagee under this Security Instrument.
(D) "Note" means the promissory note signed by Borrower and dated **MARCH 14, 2002**. The Note states that Borrower owes Lender

ONE HUNDRED TWENTY-ONE THOUSAND FIVE HUNDRED AND 00/100 Dollars (U.S. \$ 121,500.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **APRIL 1, 2017**

- (E) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."
- (F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

MINNESOTA--Single Family--Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
DOCUMENT
DOCUMENT.VVX 12/20/2000 (Page 1 of 12pages)

Form 3024 1/01

√TPA

EXHIBIT A

27
TREASOR

020008744 3/20/2002
NR STATE 1 12:20:05
P A I D
6279.45

SCR 1 of 12

(G) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- Adjustable Rate Rider
- Condominium Rider
- Second Home Rider
- Balloon Rider
- Planned Unit Development Rider
- Biweekly Payment Rider
- 1-4 Family Rider
- Other(s)[specify]

(H) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(I) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(J) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(K) "Escrow Items" means those items that are described in Section 3.

(L) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(M) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(N) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(P) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns, with power of sale, the following described property located in the

COUNTY of STEARNS
(Type of Recording Jurisdiction) (Name of Recording Jurisdiction)

LOT 7 IN BLOCK 9 OF WESTWOOD PARK THREE ACCORDING TO THE PLAT AND SURVEY THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE COUNTY RECORDER, IN AND FOR STEARNS COUNTY, MINNESOTA.

which currently has the address of 1712 HAZELWOOD CIRCLE

ST. CLOUD, Minnesota 56303 [street] ("Property Address")
[City] [Zip Code]

1002966

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

(Seal)
Borrower

(Seal)
Borrower

Timmie S. Coil

TIMMIE S. COIL (Seal)
Borrower

Karen A. Coil

KAREN A. COIL (Seal)
Borrower

(Seal)
Borrower

(Seal)
Borrower

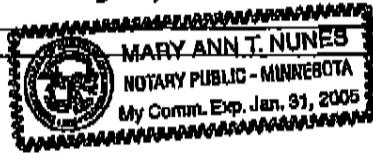
(Space Below This Line For Acknowledgment)

State of MINNESOTA
County of STEARNS

This instrument was acknowledged before me on March 14, 2002, by
Timmie S. Coil and Karen A. Coil, husband and wife,

Mary Ann J. Nunes

(Signature of person taking acknowledgment)
(Title or Rank)
My Commission Expires: _____



This instrument was drafted (or prepared) by:
HOME FEDERAL MORTGAGE SERVICES,
LLC
7101 NORTHLAND CIRCLE, SUITE 200
BROOKLYN PARK, MN 55428
NANCY YANG

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

Timmie S. Coil
SSN XXX-XX-9358
Karen A. Coil
SSN XXX-XX-6002

CASE NO. 03-40682 RJK

Debtor.

**MEMORANDUM IN SUPPORT OF
MOTION FOR RELIEF FROM STAY**

ARGUMENT

I. CAUSE EXISTS FOR THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1) WHERE THE INTEREST OF THIS SECURED CREDITOR IS NOT ADEQUATELY PROTECTED.

Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. Secured Creditor's interest in the property is not adequately protected where:

1. As of September 16, 2004, Debtor is delinquent for post-petition monthly payments as required for the months of June, 2004 through September, 2004, in the amount of \$1,361.99 each; accruing late charges and attorneys fees and costs of \$675.00.

2. Debtor has failed to make any offer of adequate protection.

Furthermore, Debtor has failed to meet its contractual obligations to make payments as they become due after the filing of the bankruptcy petition, which failure constitutes "cause" entitling the Secured Creditor to relief from the automatic stay under 11 U.S.C. § 362(d)(1). A continued failure by Debtor to maintain regular payments to Secured Creditor is sufficient cause to entitle Secured Creditor to relief from the automatic stay. See In re Taylor, 151 B.R. 646 (E.D.N.Y., 1993) and In re Davis, 64 B.R. 358 (Bkrtcy. S.D.N.Y., 1986).

II. THE AUTOMATIC STAY SHOULD BE MODIFIED PURSUANT TO 11 U.S.C. § 362(d)(2) WHERE (1) DEBTOR DOES NOT HAVE ANY EQUITY IN THE PROPERTY, AND (2) THE PROPERTY IS NOT NECESSARY TO AN EFFECTIVE REORGANIZATION.

The first requirement under § 362(d)(2) is met where the total of all the encumbrances against the property is in excess of the value of the property. The value of the property as scheduled by Debtor is \$125,000.00 subject to Secured Creditor's mortgage in excess of \$113,644.72.

Considering selling costs of 10%, Debtor has no real equity in the property. The burden is on Debtor to establish that this property is necessary to an effective reorganization.

CONCLUSION

Secured Creditor is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) for cause, and where its interest in the secured property is not adequately protected. Secured Creditor is also entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(2) where Debtor has no equity in the property, and where the property is not necessary to an effective reorganization.

Secured Creditor respectfully requests an order of this Court modifying the automatic stay consistent with the attached proposed Order.

Dated this 16th day of September, 2004.

WILFORD & GESKE

By /e/ James A. Geske

James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Suite 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 14969X

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA
MINNEAPOLIS DIVISION**

IN RE:

**TIMMIE S. COIL
SSN XXX-XX-9358
KAREN A. COIL
SSN XXX-XX-6002**

DEBTORS

§
§
§
§
§
§
§
§
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CASE NO. 03-40682-RJK

CHAPTER 13

AFFIDAVIT OF CLAGGETT "BUTCH" UPTON

Claggett "Butch" Upton, being duly sworn to oath, deposes and states:

1. That he/she is the custodian of records of Countrywide Home Loans, Inc..

2. Countrywide Home Loans, Inc. is now the holder and/or servicing agent of a mortgage on real property on which the Debtors have an interest. The Debtors' indebtedness is evidenced by that certain mortgage deed dated March 14, 2002, executed by Timmie S. Coil and Karen A. Coil. The property is located in Stearns County, Minnesota and is legally described as follows, to-wit:

SEE ATTACHED EXHIBIT A

3. That he/she has reviewed the account records relating to Coil mortgage loan, account no. xxx8344.

4. That as of September 8, 2004, the following amounts were owing on this account:

Unpaid principal	\$	110,814.88
Interest from May 1, 2004 through September 8, 2004	\$	2,621.08
Attorney's Fees	\$	(0.00)
Late Charges	\$	158.76
Escrow Advance	\$	(0.00)
Other Charges	\$	50.00

Total	\$	<u>\$113,644.72</u>
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5. That the mortgage loan is delinquent for monthly mortgage payments for the months of June 2004, July 2004, August 2004, September 2004.

6. Countrywide Home Loans, Inc. has had to obtain counsel to represent it in bringing this Motion and will incur additional legal expenses and attorney fees.

7. This affidavit is given in support of the Motion of Countrywide Home Loans, Inc., as servicing agent for Federal National Mortgage Association ("Fannie Mae") for relief from the automatic stay.

The foregoing facts are of my own personal knowledge and belief, and if called upon to appear as a witness, I could, and would, testify competently thereto. I declare under penalty of perjury that to the best of my knowledge the foregoing facts are true and correct.

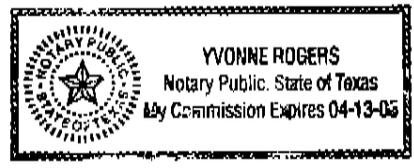
Countrywide Home Loans, Inc.

By: *Claggett "Bryon" Upton*
Claggett "Bryon" Upton
Bankruptcy Representative

DATED: *Sept 8, 2004*

SUBSCRIBED AND SWORN TO BEFORE ME on *September 8, 2004*.

Yvonne Rogers
Notary Public in and for the State of _____



8312-N-0229
minn

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Timmie S. Coil
SSN XXX-XX-9358
Karen A. Coil
SSN XXX-XX-6002

CHAPTER 13 CASE

CASE NO. 03-40682 RJK

Debtor.

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

Diana Waletzko, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Suite 300, Woodbury, Minnesota, declares that on September 16, 2004, I served the annexed Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion for Relief, Affidavit of Clagget "Butch" Upton, and proposed Order to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Woodbury, Minnesota addressed to each of them as follows:

Timmie S. Coil
Karen A. Coil
1712 Hazelwood Cir
St. Cloud, MN 56303

Michael J. Farrell
PO Box 519
Barnesville, MN 56514

Ian Traquair Ball
12 S 6th St Ste 326
Minneapolis, MN 55402

U.S. Trustee
1015 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

Countrywide Home Loans, Inc.
c/o Brice, Vander Linden & Wernick, P.C.
P.O. Box 829009
Dallas, TX 75382-9009

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated this 16th day of September, 2004.

/e/ Diana Waletzko
Diana Waletzko

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Timmie S. Coil
SSN XXX-XX-9358
Karen A. Coil
SSN XXX-XX-6002

CHAPTER 13 CASE

CASE NO. 03-40682 RJK

Debtor.

ORDER

The above entitled matter came on for hearing upon motion of Countrywide Home Loans, Inc. (hereinafter "Secured Creditor"), pursuant to 11 U.S.C. § 362 on October 14, 2004, at U.S. Courthouse, 300 South 4th Street, Minneapolis, Minnesota. Appearances were as noted in the record. The Chapter 13 Trustee filed her Report of Standing Trustee in response to this motion. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED that Secured Creditor, its assignees and/or successors in interest, is granted relief from the stay of actions imposed by 11 U.S.C. § 362 with regard to that certain mortgage deed dated March 14, 2002, executed by Timmie S. Coil and Karen A. Coil, husband and wife, recorded on March 20, 2002, as Document No. 1002966 covering real estate located in Stearns County, Minnesota, legally described as follows, to-wit:

Lot 7 in Block 9 of Westwood Park Three according to the plat and survey thereof on file and of record
in the office of the County Recorder, in and for Stearns County, Minnesota

and may pursue its remedies under state law in connection with the subject note and mortgage deed.

Notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3),

this Order is effective immediately.

Dated: _____

Judge of Bankruptcy Court