

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
SIXTH DIVISION

-----  
In re: MICHAEL D. ERICKSON,  
TERRI L. ERICKSON,

BKY. No.: 04-60977  
Chapter 7

Debtors.

**NOTICE OF HEARING AND  
MOTION FOR RELIEF  
FROM AUTOMATIC STAY**

-----  
TO: MICHAEL D. ERICKSON, TERRI L. ERICKSON AND THEIR  
ATTORNEY, BRENDA VELDE, VELDE LAW FIRM, LTD., 1118  
BROADWAY, ALEXANDRIA, MN 56308.

1. Wells Fargo Bank, N.A. successor by merger to Wells Fargo Home  
Mortgage, Inc., by its undersigned attorneys, Reiter & Schiller, will make a motion for  
the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on September 28, 2004 at 1:00  
P.M. in Courtroom No. 2, at the United States Courthouse, at 118 South Mill Street, in  
Fergus Falls, Minnesota, or as soon as counsel may be heard before The Honorable  
Dennis D. O'Brien, United States Bankruptcy Court Judge.

3. Any response to this motion must be filed and delivered not later than  
September 23, 2004, which is three days before the time set for the hearing (excluding  
Saturdays, Sundays and holidays), or filed and served by mail not later than September  
17, 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.

## **MOTION TO LIFT AUTOMATIC STAY**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 7 case was filed on August 18, 2004. The case is now pending in this court.

5. This proceeding arises under 11 U.S.C. §362(d)(1), and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9013-1 through 9013-3. Movant requests relief from the automatic stay of 11 U.S.C. §362 with respect to real property as described in Exhibit A hereto of the Debtors that is subject to a perfected security interest in favor of the Movant as shown by the term of the mortgage, a copy of which is attached hereto as Exhibit A.

6. That pursuant to the provisions of 11 U.S.C. §362(d)(1)(a), the Movant alleges "cause" for relief from the stay and is entitled to relief from the automatic stay inasmuch as:

a) That the payments due under said mortgage are in default from June 1, 2004 to date in the amount of \$842.12 per month, plus accrued late charges and inspection fees.

b) That as of the date of filing herein, the amount due under said mortgage loan was approximately \$93,000.00. The property is encumbered by a second mortgage lien in the amount of approximately \$7,000.00. According to the Debtors the fair market value of the property is estimated at \$118,400.00.

7. By reason of the foregoing, good cause exists to lift the automatic stay imposed by 11 U.S.C. §362(a) to allow the Movant to pursue its remedies under state law.

WHEREFORE, Movant, Wells Fargo Bank, N.A. successor by merger to Wells Fargo Home Mortgage, Inc., by its undersigned attorneys, moves the Court for an Order pursuant to 11 U.S.C. §362(d), granting relief from the automatic stay with respect to the real property securing the Movant's claims to permit the Movant to pursue its rights under its mortgage and applicable state law, or in the alternative for such other relief as may be just and equitable.

REITER & SCHILLER

Dated: September 3, 2004

By:           /e/Thomas J. Reiter            
Thomas J. Reiter  
Rebecca F. Schiller  
Attorneys for Movant  
The Academy Professional Building  
25 North Dale Street, 2<sup>nd</sup> Floor  
St. Paul, MN 55102-2227  
(651) 209-9760  
Attorney Reg. 152262/231605  
(D1846)

**THIS IS A COMMUNICATION FROM A DEBT COLLECTOR.**

**VERIFICATION**

I, Karan Abernethy, Bankruptcy Supervisor with Wells Fargo Bank, N. A., declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: 9-3, 2004.

WELLS FARGO BANK, N.A.

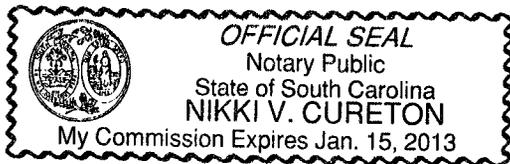
By: Karan Abernethy  
Karan Abernethy

Its: Bankruptcy Supervisor

Subscribed to and sworn before me this

3<sup>rd</sup> day of September, 2004.

Nikki Cureton  
Notary Public



138097

Office of County Recorder  
County of Clearwater, Minn.

Copied  
Indexed  
Tracked  
Checked  
Date: 1/15/02

I hereby certify that the within instrument  
was filed in this office for record on the  
15<sup>th</sup> day of January  
A. D. 2002 at 10:30 o'clock AM  
and was duly recorded in Book 150  
of Mortgages on page 183-190  
Allen D. Paulson  
County Recorder  
By Janet Fredrickson Deputy

Receipt No. 22540  
Registration tax of \$127.70 paid Jan  
15, 2002 Michael Erickson  
Treasurer Clearwater County, Minn  
Countersigned David C. Struening  
Auditor Clearwater County, Minn

MKS-3350

[Space Above This Line For Recording Data]

### MORTGAGE

Return To:  
WELLS FARGO HOME MORTGAGE, INC.  
3601 MINNESOTA DR. SUITE 200  
BLOOMINGTON, MN 55435

#### 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 16.

(A) "Security Instrument" means this document, which is dated JANUARY 07, 2002 together with all Riders to this document.

(B) "Borrower" is MICHAEL D ERICKSON AND TERRI A ERICKSON, HUSBAND AND WIFE

Borrower is the mortgagor under this Security Instrument.  
(C) "Lender" is WELLS FARGO HOME MORTGAGE, INC.

Lender is a CORPORATION  
organized and existing under the laws of THE STATE OF CALIFORNIA  
Lender's address is P.O. BOX 5137, DES MOINES, IA 503065137

Lender is the mortgagee under this Security Instrument.  
(D) "Note" means the promissory note signed by Borrower and dated JANUARY 07, 2002  
The Note states that Borrower owes Lender NINETY NINE THOUSAND AND 00/100

(U.S. \$\*\*\*\*\*99,000.00 ) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than FEBRUARY 01, 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.

(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

(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. Section 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 CLEARWATER  
SEE ATTACHED

[Name of Recording Jurisdiction]:

[Type of Recording Jurisdiction]

Lots 2 and 3,  
Section 13, Township 147, Range 37

Parcel ID Number:  
RR 1 BOX 434  
BAGLEY  
("Property Address"):

which currently has the address of

[Street]  
[City], Minnesota 56621 [Zip Code]

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.

Witnesses:

\_\_\_\_\_

  
MICHAEL D ERICKSON (Seal)  
-Borrower

\_\_\_\_\_

  
TERRI A ERICKSON (Seal)  
-Borrower

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
SIXTH DIVISION

-----  
In re: MICHAEL D. ERICKSON,  
TERRI A. ERICKSON,

BKY. No.: 04-60977  
Chapter 7

Debtors.

**AFFIDAVIT OF MOVANT'S  
BANKRUPTCY SUPERVISOR**

-----  
STATE OF SOUTH CAROLINA )

COUNTY OF YORK)

Karan Abernethy, being duly sworn on oath states:

1. That I am a Bankruptcy Supervisor in the Bankruptcy Department for Wells Fargo Bank, N.A. in the Fort Mill, South Carolina servicing center. In my capacity as a Bankruptcy Supervisor, I have had the opportunity to review the mortgage account of the Debtors.

2. That the payments due under said mortgage are in default from June 1, 2004 to date in the amount of \$842.12 per month, plus accrued late charges and inspection fees.

3. That as of the date of filing herein, the amount due under said mortgage loan was approximately \$93,000.00. The property is encumbered by a second mortgage lien in the amount of approximately \$7,000.00. According to the Debtors the fair market value of the property is estimated at \$118,400.00.

Further your affiant sayeth naught except that this Affidavit is made in support of the Movant's motion to lift the automatic stay for cause.

WELLS FARGO BANK, N.A.

Dated: 9-3-04

By: Karan Abernethy

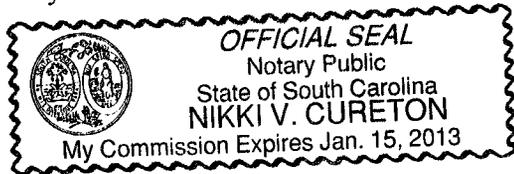
Karan Abernethy  
Bankruptcy Supervisor  
3476 Stateview Blvd.  
Fort Mill, SC 29715

Subscribed to and sworn before me this

3<sup>rd</sup> day of September, 2004.

Nikki V. Cureton

Notary



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
SIXTH DIVISION

-----  
In re: MICHAEL D. ERICKSON,  
TERRI A. ERICKSON,

BKY. No.: 04-60977  
Chapter 7

Debtors.

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

-----  
**MEMORANDUM OF LAW**

I. Factual Background

The Debtors filed their petition herein on August 18, 2004 under Chapter 7 of the Federal Bankruptcy Code and listed real property located in Clearwater County, Minnesota that is subject to a security interest held by Movant. Said real property is legally described as follows:

Lots 2 and 3, Section 13, Township 147, Range 37.

The amount due under the Movant's mortgage as of the date of filing herein is approximately \$93,000.00. The property is encumbered by a second mortgage lien in the amount of approximately \$7,000.00. According to the Debtors the fair market value of the property is estimated at \$118,400.00. The payments due under said mortgage are in default from June 1, 2004 to date in the amount of \$842.12 per month, plus accrued late charges and inspection fees.

II. Argument

GOOD CAUSE EXISTS TO GRANT THE MOVANT  
RELIEF FROM THE STAY FOR CAUSE.

Section 362(d) (1) of the Bankruptcy Code, 11 U.S. C. §362 (d)(1), specifies the following conditions that must be met in order for a party in interest to be entitled to relief from the automatic stay provisions of that section:

On request of a party in interest and after notice and hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay; for cause, including the lack of adequate protection of an interest in property of such party in interest; or . . .

The Debtors have not offered any form of adequate protection to the Movant as the loan debt increases. The combined encumbrances on the property total approximately \$100,000.00 and the fair market value of the property is estimated at \$118,400.00. Any purported equity in said real property would be consumed by per diem interest and marketing costs.

In view of the Debtors' inability to make payments toward their loan obligation, the Movant's interest in the real property of the Debtors is not adequately protected. A continuing default by the Debtors will impair the Movant's interest without adequate protection or just compensation. The only protection of the Movant's interest proffered by the Debtors is for the Movant to retain its lien awaiting future mortgage payments to be made by the Debtors. The Debtors' offer of future payments will not provide adequate protection of the Movant's interest and therefore cause exists to terminate the automatic stay.

## CONCLUSION

For the reasons stated above, the Movant's motion to terminate the automatic stay should be granted.

REITER & SCHILLER

Dated: September 3, 2004

By:           /e/ Thomas J. Reiter          

Thomas J. Reiter  
Rebecca F. Schiller  
Attorneys for Movant  
The Academy Professional Building  
25 North Dale Street, 2<sup>nd</sup> Floor  
St. Paul, MN 55102-2227  
(651) 209-9760  
Atty. Reg. 152262/231605  
(D1846)

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
SIXTH DIVISION

-----  
In re: MICHAEL D. ERICKSON,  
TERRI A. ERICKSON,

BKY. No.: 04-60977  
Chapter 7

Debtors.  
-----

**UNSWORN DECLARATION FOR PROOF OF SERVICE**

Thomas J. Reiter, an attorney licensed to practice law in this Court, with an office address of The St. Paul Building, 6 West 5th St., St. Paul, Minnesota 55102 declares that on September 8, 2004 he served the annexed Notice of Hearing and Motion, Memorandum, Affidavit and Proposed Order upon each of the individuals named below, to each of them a true and correct copy thereof, enclosed in an envelope, and mailed by First Class Mail with postage prepaid and depositing same in the post office at St. Paul, Minnesota.

Tamara L. Yon  
Trustee  
P.O. Box 605  
Crookston, MN 56716

United States Trustee  
1015 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

Michael D. Erickson  
Terri A. Erickson  
Route 1 Box 434  
Bagley, MN 56621

Brenda Velde  
Velde Law Firm, Ltd.  
1118 Broadway  
Alexandria, MN 56308

Wells Fargo Home Mortgage  
P.O. Box 10335  
Des Moines, IA 50306-0355

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

REITER & SCHILLER

Dated: September 8, 2004

By: /e/Thomas J. Reiter

Thomas J. Reiter

Attorney at Law

The Academy Professional Building

25 North Dale Street, 2<sup>nd</sup> Floor

St. Paul, MN 55102-2227

(651) 209-9760

Attorney Reg. 152262

(D1846)

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
SIXTH DIVISION

-----  
In re: R MICHAEL D. ERICKSON,  
TERRI A. ERICKSON,

BKY. No.: 04-60977  
Chapter 7

Debtors.

**ORDER TERMINATING STAY**

-----  
This matter came on before the undersigned Judge of the above entitled Court, upon motion filed with the Court on September 28, 2004 in Courtroom No. 2, at the United States Courthouse, at 118 South Mill Street, in Fergus Falls, Minnesota. The movant, Wells Fargo Bank, N.A. successor by merger to Wells Fargo Home Mortgage, Inc., was represented at the hearing by Reiter & Schiller. Other appearances, if any, are noted on the record.

Based upon all the files and proceedings herein, and the Court having considered the arguments of counsel,

IT IS HEREBY ORDERED THAT:

1. The automatic stay imposed by 11 U.S.C. §362 is hereby terminated as to the real property over which the Movant, its successors or assigns, has an interest, said property legally described as:

Lots 2 and 3, Section 13, Township 147, Range 37,  
Clearwater County, Minnesota.

2. Notwithstanding Fed. R. Bankr. P. 4001 (a) (3), this order is effective immediately.

Dated: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Dennis D. O'Brien  
Judge of the U.S. Bankruptcy Court