

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re: LLOYD H. SEAMANS,
JANICE A. SEAMANS,

BKY. No.: 00-33512
Chapter 13

Debtors.

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

TO: LLOYD H. SEAMANS, JANICE A. SEAMANS AND THEIR
ATTORNEY, BARBARA J. MAY, ATTORNEY AT LAW, 4105 N.
LEXINGTON, STE. 310, ARDEN HILLS, MN 55126.

1. GE Mortgage Services, LLC, 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 October 6, 2004 at 9:30 A.M. in Courtroom No. 228A, at the United States Courthouse, at 316 North Robert Street, in St. Paul, 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 October 1, 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 27, 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 13 case was filed on August 23, 2000. 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 and assignments of mortgage, copies of which are attached hereto as Exhibits A, B & C, respectively.

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

a) That pursuant to the Chapter 13 Plan confirmed on October 12, 2000 the Debtors were to make all current monthly payments due on said mortgage outside of the plan.

b) To date, the Debtors are in default on said payments from July 1, 2004 to date in the amount of \$1,424.25 per month, plus post-petition late charges and inspection fees.

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, GE Mortgage Services, LLC, 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 foreclose its security interest, or in the alternative for such other relief as may be just and equitable.

REITER & SCHILLER

Dated: September 8, 2004

By: /e/Thomas J. Reiter
Thomas J. Reiter
Rebecca F. Schiller
Attorneys for Movant
The Academy Professional Building
25 North Dale Street, 2nd Floor
St. Paul, MN 55102-2227
(651) 209-9760
Attorney Reg. 152262/231605
(D1816)

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: 9-8, 2004.

WELLS FARGO BANK, N.A.

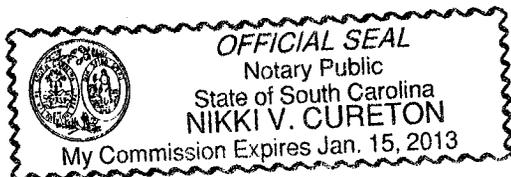
By: Karan Atully
Karan Abernethy

Its: Bankruptcy Supervisor

Subscribed to and sworn before me this

8th day of September, 2004.

Nikki V. Cureton
Notary Public



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Document No. _____ File 4283
Volume 20 Page 351 Certificate 21774

Office of Registrar of Titles
Scott County, Minnesota

I hereby certify that the within instrument
was filed in this office for record on
the 7 day of Oct

19 71 at 10:15 o'clock AM
Lester E. Erickson
Registrar of Title

By Erickson Deput

Registration tax thereon of \$ 267.75 paid

Treasurer's Receipt No. 22685
Thomas J. Neulta
County Treasurer

Countersigned:
T. V. Keenan
County Auditor

MINNESOTA FEE PAID

[Space Above This Line For Recording Data]

ISB # 0247379

MORTGAGE

THIS MORTGAGE ("Security Instrument") is given on September 30
19 91. The mortgagor is Lloyd H. Seamans and Janice A. Seamans, husband and wife
("Borrower"). This Security Instrument is given to

INVESTORS SAVINGS BANK, F.S.B., which is organized and existing
under the laws of the United States of America, and whose address is
200 East Lake Street, Wayzata, MN 55391 ("Lender").

Borrower owes Lender the principal sum of One hundred sixteen thousand four hundred seventy
one and no/100's Dollars (U.S. \$ 116,471.00). This debt is evidenced by Borrower's note
dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not
paid earlier, due and payable on October 1, 2021 and for interest at the
yearly rate of 9.000 percent. This Security Instrument secures to Lender: (a) the repayment of the
debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of
all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) 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, with power of sale, the following described property located in
Scott County, Minnesota:

Lot 2, Block 1, Fellon's 1st Addition, Scott County, Minnesota, according to
the plat thereof on file and of record in the Office of the Registrar of
Titles, Scott County, Minnesota. Together with and Easement for travel over
Tract A, Registered Land Survey No. 2, Files of the Registrar of Titles, Scott
County, Minnesota.

which has the address of 14988 Pixie Point Circle, Prior Lake
[Street] [City]
Minnesota 55372 ("Property Address");
[Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances,
and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security
Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage,
grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants
and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

(A)

If Lender invokes the power of sale, Lender shall cause a copy of a notice of sale to be served upon any person in possession of the Property. Lender shall publish a notice of sale, and the Property shall be sold at public auction in the manner prescribed by applicable law. Lender or its designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

22. Release. Upon payment of all sums secured by this Security Instrument, Lender shall discharge this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

23. Waiver of Homestead. Borrower waives all right of homestead exemption in the Property.

24. Interest on Advances. The interest rate on advances made by Lender under paragraph 7 shall not exceed the maximum rate allowed by applicable law.

25. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. [Check applicable box(es)]

- | | | |
|--|--|---|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> 1-4 Family Rider |
| <input type="checkbox"/> Graduated Payment Rider | <input checked="" type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> Biweekly Payment Rider |
| <input type="checkbox"/> Balloon Rider | <input type="checkbox"/> Rate Improvement Rider | <input type="checkbox"/> Second Home Rider |
| <input type="checkbox"/> Other(s) [specify] | | |

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument

and in any rider(s) executed by Borrower and recorded with it.

Witnesses:

[Signature] (Seal)
Lloyd H. Seamans - Borrower

Social Security Number 63-34-3668

[Signature] (Seal)
Janice A. Seamans - Borrower

Social Security Number 469487162

[Space Below This Line For Acknowledgment]

STATE OF MINNESOTA,

COUNTY ss: Dakota

On this 30th day of September, 19 91, before me appeared

Lloyd H. Seamans and Janice A. Seamans, husband and wife, to me personally

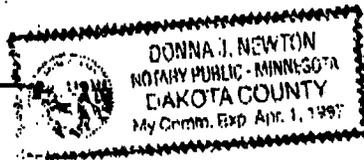
known to be the person(s) described in and who executed the foregoing instrument and

acknowledged that they executed the same as their free act and deed.

Commission Expires:

(Seal)

[Signature]
Notary Public



This Instrument was prepared by: Universal Title Insurance Company Form 3024 9/90 (page 6 of 6 pages)
15025 Glazier Avenue, Suite 211, Apple Valley, Minnesota 55124

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LOT 2, BLOCK 1, FELLON'S 1ST ADDITION, SCOTT COUNTY, MINNESOTA, ACCORDING TO THE PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE REGISTRAR OF TITLES, SCOTT COUNTY, MINNESOTA. TOGETHER WITH AND EASEMENT FOR TRAVEL OVER TRACT A, REGISTERED LAND SURVEY NO. 2, FILES OF THE REGISTRAR OF TITLES, SCOTT COUNTY, MINNESOTA.

POOL NUMBER 50491C

LOAN NUMBER 0247379

Assignment of Mortgage / Deed of Trust

For Value Received. Investors Savings Bank, F.S.B., a United States of America Corporation hereby sells,

assigns and transfers to FORTUNE BANK a Savings Bank
STATE OF FLORIDA a FLORIDA CORPORATION
16120 U.S Highway 19 North
Clearwater, FL 34624-6895

It's successors and assigns all its right, title and interest in and to a certain mortgage deed of trust executed by LLOYD H. SEAMANS AND JANICE A. SEAMANS, HUSBAND AND WIFE to Investors Savings Bank, F.S.B. and bearing date the 30TH day of SEPTEMBER A.D. 19 91 and recorded in the office of the Registrar of Title/~~RECORDS~~ of SCOTT County, State of Minnesota in Book No. 70 on Page 259 as Document No 54617 on the 7TH day of OCTOBER A.D. 19 91
Signed the 31ST day of JULY A.D. 19 92

INVESTORS SAVINGS BANK, F.S.B.
By [Signature]
Title ASSISTANT VICE PRESIDENT

STATE OF MINNESOTA SS.
COUNTY OF HENNEPIN

The foregoing instrument was acknowledged before me this 31ST day of JULY 19 92 by NANCY SCHREIBER the ASSISTANT VICE PRESIDENT of INVESTORS SAVINGS BANK, F.S.B. a corporation under the laws of the United States of America, on behalf of the corporation.

[Signature]
Signature of Person Taking Acknowledgment

Notarial Stamp:

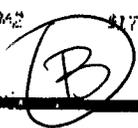
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THIS INSTRUMENT WAS DRAFTED BY:
INVESTORS SAVINGS BANK, F.S.B.
200 East Lake Street
Wayzata, MN 55391

9AM
+ 10 Box 59283
Mob 55459-9881

58723 4283
Volume 70 Page 259 Certificate R1774
Office of Registrar of Titles
Scott County, Minnesota
I hereby certify that the within instrument was filed in this office for record on the 10 day of Aug 19 92 at 9:00 o'clock AM by Lloyd Seamans Registrar of Titles
[Signature]

UNIVERSITY 6-10-92M042 \$17.5070



UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re: LLOYD H. SEAMANS,
JANICE A. SEAMANS,

BKY. No.: 00-33512
Chapter 13

Debtors.

**AFFIDAVIT OF WELLS FARGO
BANK, N.A.'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. Wells Fargo Bank, N.A. services loans for Movant, GE Mortgage Services, LLC. In my capacity as a Bankruptcy Supervisor, I have had the opportunity to review the mortgage account of the Debtors.

2. That pursuant to the Chapter 13 Plan confirmed on October 12, 2000 the Debtors were to make all current monthly payments due on said mortgage outside of the plan.

3. That to date, the Debtors are in default on said payments from July 1, 2004 to date in the amount of \$1,424.25 per month, plus post-petition late charges.

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.

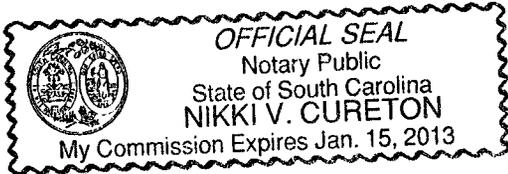
Dated: 9-8-04

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

Subscribed to and sworn before me this

8th day of September, 2004.

Nikki Cureton
Notary



UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re: LLOYD H. SEAMANS,
JANICE A. SEAMANS,

BKY. No.: 00-33512
Chapter 13

Debtors.

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

MEMORANDUM OF LAW

I. Factual Background

The Debtors originally filed their petition herein on August 23, 2000 under Chapter 13 of the Federal Bankruptcy Code and listed real property located in Scott County, Minnesota that is subject to a security interest held by Movant. Said real property is legally described as on Exhibit A attached to the Notice of Hearing and Motion for Relief from Automatic Stay.

The amount due under said mortgage loan is approximately \$90,000.00. Pursuant to the Chapter 13 Plan confirmed on October 12, 2000 the Debtors were to make all current monthly payments due on said mortgage outside of the plan. The Debtors are in default on said payments from July 1, 2004 to date in the amount of \$1,424.25 per month, plus post-petition late charges.

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 failed to meet their contractual obligation in making payments as they become due after the filing of this petition, and such a failure constitutes “cause” entitling the Movant to relief from the automatic stay under 11 U.S.C. §362 (d)(1). A continued failure by a debtor to maintain regular payments to a secured creditor is sufficient “cause” to entitle a creditor to relief from stay. In re Whitebread, 18 B.R. 193 (Bkrctcy. D. Minn. 1982); In re Keays, 36 B.R. 1016 (Bkrctcy. E.D. Pa. 1984); In re David, 64 B.R. 358 (Bkrctcy. S.C.N.Y. 1986).

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 8, 2004

By: /e/Thomas J. Reiter

Thomas J. Reiter
Rebecca F. Schiller
Attorneys for Movant
The Academy Professional Building
25 North Dale Street, 2nd Floor
St. Paul, MN 55102-2227
(651) 209-9760
Attorney Reg. 152262
(D1816)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re: LLOYD H. SEAMANS,
JANICE A. SEAMANS,

BKY. No.: 00-33512
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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 Academy Professional Building, 25 North Dale Street, 2nd Floor, St. Paul, MN 55102-2227 declares that on September 13, 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.

Jasmine Z. Keller
Trustee
12 South Sixth Street, Suite 310
Minneapolis, MN 55402

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

Lloyd D. Seamans
Janice A. Seamans
14988 Pixie Pt. Cir.
Prior Lake, MN 55372

Barbara J. May
Attorney at Law
4105 N. Lexington, Ste. 310
Arden Hills, MN 55126

Firststar Bank of Minnesota, N.A.
101 East Fifth Street
St. Paul, MN 55101

GE Capital Mortgage Services
c/o Sharpiro & Nordmeyer
7300 Metro Blvd., Ste. 390
Edina, MN 55439-2306

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

REITER & SCHILLER

Dated: September 13, 2004

By: /e/Thomas J. Reiter

Thomas J. Reiter

Attorney at Law

The Academy Professional Building

25 North Dale Street, 2nd Floor

St. Paul, MN 55102-2227

(651) 209-9760

(D1816)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re: LLOYD H. SEAMANS,
JANICE A. SEAMANS,

BKY. No.: 00-33512
Chapter 13

Debtors.

ORDER TERMINATING STAY

This matter came on before the undersigned Judge of the above entitled Court, upon motion filed with the Court on October 6, 2004 in Courtroom No. 228A, at the United States Courthouse, at 316 North Robert Street, in St. Paul, Minnesota. The movant, GE Mortgage Services, LLC, 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:

Lot 2, Block 1, Fellon's 1st Addition, Scott County, Minnesota, according to the plat thereof on file and of record in the Office of the Registrar of Titles, Scott County, Minnesota. Together with an Easement for travel over Tract A, Registered Land Survey No. 2, Files of the Registrar of Titles, Scott County, Minnesota,
REGISTERED PROPERTY.

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

Dated: _____

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