

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

Darin C. Olson
SSN XXX-XX-1401
Kimberly J. Olson
SSN XXX-XX-9230

CASE NO. 03-36019 GFK

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 19, 2004, at 10:30 a.m., or as soon thereafter as counsel can be heard, before the Honorable Gregory F. Kishel in Courtroom 228B of the above entitled Court located at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered not later than October 14, 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 8, 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 December 8, 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 \$119,479.00, as evidenced by that certain Promissory Note dated November 7, 1997, 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 November 7, 1997, executed by Darin C. Olson and Kimberly J. Olson, husband and wife, a copy of which is attached hereto as Exhibit "B". The name and address of the original creditor is contained in the attached Exhibit "B". The property is located in Dakota County, Minnesota and is legally described as follows to-wit:

Lot 3, Block 7, East Farmington Second Addition, Dakota 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 28, 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 \$1,310.16 each; accruing late charges of \$209.64 and attorneys fees and costs of \$700.00. Debtor has failed to make any offer of adequate protection.

10. 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.

11. 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 28th day of September, 2004.

WILFORD & GESKE

By /e/ James A. Geske

James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Ste 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.

N491

6167837-850

Multistate
F 33

ADJUSTABLE RATE NOTE

FHA Case No.
271-7746823 729

NOVEMBER 07, 1997
(Date)

709 9TH STREET, FARMINGTON, MN 55024
(Property Address)

1. PARTIES

"Borrower" means each person signing at the end of this Note, and the person's successors and assigns. "Lender" means NORTH AMERICAN MORTGAGE COMPANY and its successors and assigns.

2. BORROWER'S PROMISE TO PAY; INTEREST

In return for a loan received from Lender, Borrower promises to pay the principal sum of ONE HUNDRED NINETEEN THOUSAND FOUR HUNDRED SEVENTY NINE AND 00/100 Dollars (U.S. \$ 119,479.00), plus interest, to the order of Lender. Interest will be charged on unpaid principal, from the date of disbursement of the loan proceeds by Lender, at a rate of SIX percent (6.00 %) per year until the full amount of principal has been paid. The interest rate may change in accordance with Paragraph 5(C) of this Note.

3. PROMISE TO PAY SECURED

Borrower's promise to pay is secured by a mortgage, deed of trust or similar security instrument that is dated the same date as this Note and called the "Security Instrument." That Security Instrument protects the Lender from losses which might result if Borrower defaults under this Note.

4. MANNER OF PAYMENT

(A) Time

Borrower shall make a payment of principal and interest to Lender on the first day of each month beginning on JANUARY 01, 1998. Any principal and interest remaining on the first day of DECEMBER 2027 will be due on that date, which is called the "Maturity Date."

(B) Place

Payments shall be made at 3883 AIRWAY DRIVE, SANTA ROSA, CA 95403 or at such other place as Lender may designate in writing by notice to Borrower.

(C) Amount

Initially, each monthly payment of principal and interest will be the amount of U.S. \$ 718.34. This amount will be part of a larger monthly payment required by the Security Instrument that shall be applied to principal, interest and other items in the order described in the Security Instrument. This amount may change in accordance with Paragraph 5(B) of this Note.

5. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Date

The interest rate may change on the first day of APRIL, 1999, and on that day of each succeeding year. "Change Date" means each date on which the interest rate could change.

FHA Multistate Adjustable Rate Note - 1095
© 1995

VIP MORTGAGE FORMS - 1000521-7287

Page 1 of 2



EXHIBIT A

We hereby certify that this is a true and correct copy of the original ~~document~~
NORTH STAR Title Inc
By: _____

9866649

(Space Above This Line For Recording Data)
State of Minnesota MFMN F 13 MORTGAGE
WHEN RECORDED MAIL TO:
NORTH AMERICAN MORTGAGE COMPANY
P. O. BOX 386
ALBION, NY 14411-0386
DOC MANAGEMENT ALL 054
FHA Case No.
271-7740923-728
5157837-858

THIS MORTGAGE ("Security Instrument") is given on NOVEMBER 07, 1997
The Mortgagor is DARIN C. OLSON AND, KIMBERLY J. OLSON, HUSBAND AND WIFE

("Borrower"). This Security Instrument is given to NORTH AMERICAN MORTGAGE COMPANY

which is organized and existing under the laws of DELAWARE
and whose address is 3883 AIRWAY DRIVE, SANTA ROSA, CA 95403
("Lender"). Borrower owes Lender the principal sum of
ONE HUNDRED NINETEEN THOUSAND FOUR HUNDRED SEVENTY NINE AND 00/100
Dollars (U.S. \$ 119,479.00).

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
DECEMBER 01, 2027 and for interest at the yearly rate of 6.000 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

FHA Minnesota Mortgage - 496
NDARMN 07/94
Page 1 of 7
ELECTRONIC LASER FORMS, INC. - 800337-0645



EXHIBIT B

98666623

Note. For this purpose, Borrower does hereby mortgage, grant and convey to the Lender, with power of sale, the following described property located in **DAKOTA** County, Minnesota:
LOT 3, BLOCK 7, EAST FARMINGTON SECOND ADDITION DAKOTA COUNTY, MINNESOTA.

which has the address _____ (Street, City),
 Minnesota 55024 (Zip Code) (Property Address):

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.

THIS SECURITY INSTRUMENT complies uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

Borrower and Lender covenant and agree as follows:

UNIFORM COVENANTS

1. Payment of Principal, Interest and Late Charge. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.

2. Monthly Payment of Taxes, Insurance and Other Charges. Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, a sum for (a) taxes and special assessments levied or to be levied against the Property, (b) less-than-half-yearly ground rents on the Property, and (c) premiums for insurance required under paragraph 4. In any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary"), or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary, in a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "Escrow Items" and the sums paid to Lender are called "Escrow Funds."

Lender may, at any time, collect and hold amounts for Escrow Items in an separate account not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. Section 2601 et seq, and implementing regulations, 24 CFR Part 3502, as they may be amended from time to time ("RESPA"), except that the cushion or reserve permitted by RESPA for anticipated disbursements or disbursements before the Borrower's payments are available in the account may not be based on amounts due for the mortgage insurance premium.

Initials EE KSO

00000624

22. Riders to this Security Instrument: If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants 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)].

Condominium Rider
 Growing Equity Rider
 Other (Specify) ARM RIDER
 Planned Unit Development Rider
 Graduated Payment Rider

BY SIGNING BELOW, Borrower accepts and agrees to the terms contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:

_____ (Seal) _____ (Seal)
 _____ Borrower _____ Borrower
 _____ (Seal) _____ (Seal)
 _____ Borrower _____ Borrower
 _____ (Seal) _____ (Seal)
 _____ Borrower _____ Borrower

County is: _____

ST. TER OF MINNESOTA, DAKOTA

On this 7th day of November, 1997, before me appeared DARIN C. OLSON, KIMBERLY J. OLSON, Husband and Wife

personally known to me 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.

My Commission Expires _____ (Seal)



_____ (Seal)
 Notary Public

This instrument was prepared by LEELE ANDERSON
 NORTH AMERICAN MORTGAGE COMPANY
 7780 FRANCE AVE. SO., STE. 320
 BLOOMINGTON, MN 55438

NDARRM 09/04

000000629

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

Darin C. Olson
SSN XXX-XX-1401
Kimberly J. Olson
SSN XXX-XX-9230

CASE NO. 03-36019 GFK

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 28, 2004, Debtor is delinquent for post-petition monthly payments as required for the months of June, 2004 through September, 2004, in the amount of \$1,310.16 each; accruing late charges of \$209.64 and attorneys fees and costs of \$700.00.

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

The property is also subject to a second mortgage in favor of US Bank in excess of \$20,000.00.

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).

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

Dated this 28th day of September, 2004.

WILFORD & GESKE

By /e/ James A. Geske

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

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

CASE NO. 03-36019 GFK

Darin C. Olson
SSN XXX-XX-1401
Kimberly J. Olson
SSN XXX-XX-9230

**AFFIDAVIT OF
CARMEN VALDIVIA**

Debtor.

Carmen Valdivia, being first duly sworn on oath, deposes and states:

1. That she is the Bankruptcy Specialist of Countrywide Home Loans, Inc.

2. Countrywide Home Loans, Inc., is now the holder of a mortgage on real property in which the debtor has an interest. The debtor's indebtedness is evidenced by that certain mortgage deed dated November 7, 1997, executed by Darin C. Olson and, Kimberly J. Olson, husband and wife. The property is located in Dakota County, Minnesota and is legally described as follows, to-wit:

Lot 3, Block 7, East Farmington Second Addition Dakota County, Minnesota.

3. That she has reviewed the account records relating to the Olson's mortgage loan, account no. 9866649.

4. That as of September 20, 2004, the following amounts were owing on this account:

Unpaid Principal:	\$122,708.84
Interest through September 30, 2004	13,907.04
Attorney's Fees:	700.00
Late Charges:	1,029.80
Mortgage Ins Premium:	44.11
Recording Fee:	19.50
Fees Due:	259.50
Escrow Balance:	2,495.55
Partial Payment Bal. (-):	(305.59)
TOTAL:	\$140,858.75

5. That the mortgage loan is delinquent for post-petition monthly mortgage payments for the months of June, 2004 through September, 2004 in the amount of \$1,310.16 each.

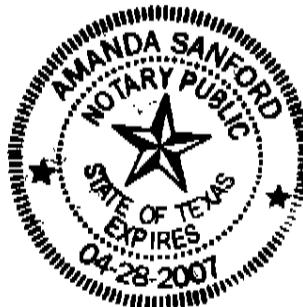
6. This affidavit is given in support of the motion of Countrywide Home Loans, Inc. for relief from the automatic stay.

COUNTRYWIDE HOME LOANS, INC.

By Carmen Valdivia
Its Bankruptcy Specialist

Subscribed and sworn to before me
this 30 day of September, 2004.

Amanda Sanford
Notary Public



**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

Darin C. Olson
SSN XXX-XX-1401
Kimberly J. Olson
SSN XXX-XX-9230

CASE NO. 03-36019 GFK

Debtor.

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

Joanna Cheyka, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Ste 300, Woodbury, Minnesota, declares that on September 28, 2004, I served the annexed Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion for Relief, Affidavit of Carmen Valdivia, 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:

Darin C. Olson
Kimberly J. Olson
709 9th Street
Farmington, MN 55034

Jasmine Z. Keller
12 South 6th St Ste 310
Minneapolis, MN 55402

Robert J. Everhart
PO Box 120534
New Brighton, MN 55112

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

US Bank
c/o Arthur Ayers
4521 190th Street
Estherville, IA 51334

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

Dated this 28th day of September, 2004.

/e/ Joanna Cheyka
Joanna Cheyka

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Darin C. Olson
SSN XXX-XX-1401
Kimberly J. Olson
SSN XXX-XX-9230

CHAPTER 13 CASE

CASE NO. 03-36019 GFK

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 19, 2004, at U.S. Courthouse, 316 North Robert Street, St. Paul, 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 November 7, 1997, executed by Darin C. Olson and Kimberly J. Olson, husband and wife, covering real estate located in Dakota County, Minnesota, legally described as follows, to-wit:

Lot 3, Block 7, East Farmington Second Addition, Dakota 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