

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

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In re: MARGARET ELIZABETH DAVIES,  
  
Debtor.

BKY. No.: 04-31232  
Chapter 7

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

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TO: MARGARET ELIZABETH DAVIES AND HER ATTORNEY, CRAIG  
W. ANDRESEN, ATTORNEY AT LAW, 2001 KILLEBREW DR., STE.  
330, BLOOMINGTON, MN 55425.

1. Mortgage Electronic Registration Systems, Inc., its successors and assigns, as nominee for Household Financial Services, Inc., its successors and assigns, 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 October 13, 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 than October 7, 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 October 1, 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 case was originally filed on March 2, 2004 under Chapter 13 of the Federal Bankruptcy Code and converted to a Chapter 7 case on July 16, 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 Debtor that is subject to a perfected security interest in favor of the Movant as shown by the term of the mortgage and assignment of mortgage, copies of which are attached hereto as Exhibits A & B, respectively.

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 November 11, 2003 to date in the amount of \$493.38 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 \$90,000.00. The property is encumbered by an association lien and IRS lien in the combined amount of approximately \$97,246.00. According to the Dakota County Tax Records the fair market value of the property is estimated at \$181,800.00.

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, Mortgage Electronic Registration Systems, Inc., its successors and assigns, as nominee for Household Financial Services, Inc., its successors and assigns, 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 20, 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  
(F0418)

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

VERIFICATION

I, Scott Barnes, Vice President with Mortgage Electronic Registration Systems, Inc. declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: September 20, 2004

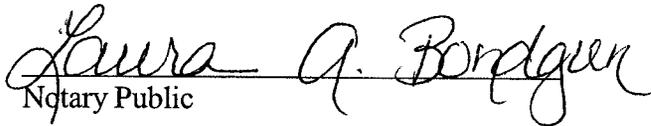
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC.

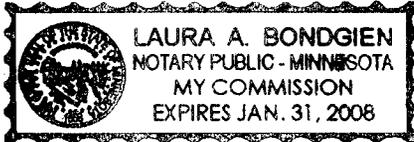
By:   
Scott Barnes

Its: Vice President

Subscribed to and sworn before me this

20th day of September, 2004

  
Notary Public





OFFICE OF THE COUNTY RECORDER  
DAKOTA COUNTY, MINNESOTA  
CERTIFIED THAT THE WITHIN INSTRUMENT  
WAS RECORDED IN THIS OFFICE ON JAN

JUN 20 3 51 PM '94

1230064

DOC. NO.

JAMES N. DOLAN, COUNTY RECORDER

BY: *ll* Deputy

FEE *15.00* SURCHARGE *4.50*

CASH  CHECK  ENCROW

WELL  CHARGE

CHARGE TO: \_\_\_\_\_

REFUND \_\_\_\_\_

DO NOT REMOVE

COUNTY CONSERVATION FEE \$5.00

# MORTGAGE

THOMAS V. NOVAK *ll*  
DAKOTA COUNTY TREASURER

THIS MORTGAGE ("Security Instrument") is given on JULY 6  
1994. The mortgagor is MARGARET E. DAVIES, A SINGLE PERSON

\_\_\_\_\_ ("Borrower"). This Security  
Instrument is given to BENEFICIAL LOAN & THRIFT CO., which is organized and existing under the laws of  
Minnesota, and whose address is 4816 HWY 101, MINNETONKA, MN, 55345

\_\_\_\_\_ ("Lender"). Borrower owes Lender the principal sum of SEVENTY-SIX THOUSAND,  
SEVEN HUNDRED AND 00/100 Dollars (U.S.\$ 76,700.00\*\*). 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 JULY 11, 2009 and for interest at the yearly  
rate of 10.50 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 6 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 DAKOTA County, Minnesota:

LOT TWENTY-ONE (21), BLOCK TWO (2), DIAMOND PATH FIFTH ADDITION, TOGETHER WITH  
THE BENEFITS AND SUBJECT TO THE BURDENS OF THAT CERTAIN DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS, AS DOCUMENT NO 562865 AND FIRST  
SUPPLEMENTARY RESTRICTION AS DOCUMENT NO. 636139.

*7-15-94*  
Registration tax hereon of \$ *176.41*  
paid. Treasurer's Receipt No. *243083*  
Thomas V. Novak *ll*  
County Treasurer  
Norma B. Marsh *SS*  
County Auditor

which has the address of 5359 UPPER 147TH STREET WEST, APPLEVALLEY,  
[Street] [City]  
Minnesota 55124 ("Property Address");  
[Zip Code]

If this box is checked, this Mortgage is subject to a prior mortgage dated \_\_\_\_\_, 19\_\_\_\_, with  
\_\_\_\_\_ as mortgagee. That prior mortgage  
secures payment of a note in the principal amount of \$ \_\_\_\_\_ and was recorded on \_\_\_\_\_, 19\_\_\_\_  
with the Recorder of the County of \_\_\_\_\_, Minnesota in Book \_\_\_\_\_ of Mortgages at  
page \_\_\_\_\_.

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 seised 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.

070894



1230064

10366735

NORTH STAR TITLE  
BOX 70



0945071

1744690

OFFICE OF THE COUNTY RECORDER  
 DAKOTA COUNTY, MINNESOTA  
 CERTIFIED THAT THE WITHIN INSTRUMENT  
 WAS RECORDED IN THIS OFFICE ON AND AT

2001 JAN 17 A 9 00

DOC. NO. 1744690  
 JOEL T. BECKMAN, COUNTY RECORDER  
 BY BY [Signature] Deputy 1/50  
 FEE 5.00 SURCHARGE   
 CASH  CHECK  ESCROW

WELL  CHARGE   
 CHARGE TO: \_\_\_\_\_  
 O/R \_\_\_\_\_

DO NOT REMOVE

NATIONWIDE TITLE CLEARING

21/2 Diamond Path  
5th ASSIGNMENT OF MORTGAGE

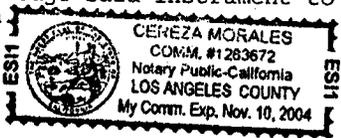
1744690

HFS#:0945071  
 FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, BENEFICIAL LOAN & THRIFT CO., a Minnesota Corporation, whose address is 577 Lamont Road, Elmhurst, IL 60126, (assignor), by these presents does convey, grant, sell, assign, transfer and set over the described mortgage together with the certain note(s) described therein together with all interest secured thereby, all liens, and any rights due or to become due thereon to MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a Delaware Corporation, its successors or assigns, as nominee for HOUSEHOLD FINANCIAL SERVICES, INC., a Michigan Corporation, c/o P.O. Box 2026, Flint, MI 48501-2026, (assignee). Said mortgage dated 07/06/94 executed by MARGARET E DAVIES, A Single Person to BENEFICIAL LOAN & THRIFT CO. and filed for record on 07/20/94 as Doc No.1230064 (or Book \_\_\_\_\_ Page \_\_\_\_\_), in the office of the County recorder of DAKOTA, MN. Dated: 12/21/00  
 BENEFICIAL LOAN & THRIFT CO.

By [Signature]  
KANSAS WILSON  
VICE PRESIDENT

By [Signature]  
CONNIE RAY  
ASST. SECRETARY

STATE OF CALIFORNIA COUNTY OF LOS ANGELES  
 I HEREBY CERTIFY that on 12/21/00, before me, an officer duly authorized in the State and County aforesaid to take acknowledgements personally appeared KANSAS WILSON and CONNIE RAY personally known, who, being each by me duly sworn both did say that they are respectively the VICE PRESIDENT and ASST. SECRETARY of BENEFICIAL LOAN & THRIFT CO., the corporation named in the foregoing instrument, and that said instrument was signed in behalf of said corporation by authority of its board of directors and said KANSAS WILSON and CONNIE RAY acknowledge said instrument to be the free act and deed of said corporation



CEREZA MORALES Notary Public  
 My commission expires: 11/10/2004  
 Drafted: D.Colon/NTC 101 N.Brand #1800, Glendale CA 91203 (800)346-9152  
 when recorded return to: Nationwide Title Clearing  
 101 N. Brand #1800  
 Glendale, CA 91203

HFSMS RP 134RP  
 MIN 100046000009450713 MERS PHONE 1-888-679-MERS

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

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In re: MARGARET ELIZABETH DAVIES,  
Debtor.

BKY. No.: 04-31232  
Chapter 7

**AFFIDAVIT OF MOVANT'S  
VICE PRESIDENT**

-----  
STATE OF MINNESOTA )

COUNTY OF DAKOTA)

Scott Barnes, being duly sworn on oath states:

1. That I am a Vice President for Mortgage Electronic Registration Systems, Inc., in the Mendota Heights, Minnesota servicing center. In my capacity as a Vice President, 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 November 11, 2003 to date in the amount of \$493.38 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 \$90,000.00. The property is encumbered by an association lien and IRS lien in the combined amount of approximately \$97,246.00. According to the Dakota County Tax Records the fair market value of the property is estimated at \$181,800.00.

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.

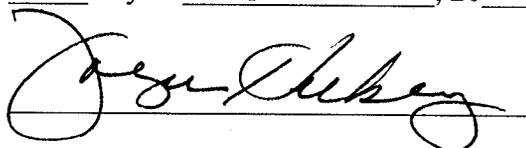
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC.

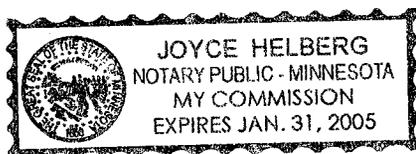
Dated: September 20, 2004

By:   
Scott Barnes  
Vice President  
1270 Northland Drive, Ste. 200  
Mendota Heights, MN 55120

Subscribed to and sworn before me this

20th day of September, 2004.





UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

-----  
In re: MARGARET ELIZABETH DAVIES,  
  
Debtor.

BKY. No.: 04-31232  
Chapter 7

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

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**MEMORANDUM OF LAW**

I. Factual Background

The Debtor originally filed her petition herein on March 2, 2004 under Chapter 13 of the Federal Bankruptcy Code and converted to a Chapter 7 case on July 16, 2004. The Debtor listed real property located in Dakota County, Minnesota that is subject to a security interest held by Movant. Said real property is legally described as follows:

Lot Twenty-one (21), Block Two (2), Diamond Path Fifth Addition, together with the benefits and subject to the burdens of that certain declaration of covenants, conditions and restrictions, as Document No. 562865 and First Supplementary Restrictions as Document No. 636139.

The amount due under the Movant's mortgage as of the date of filing herein is approximately \$90,000.00. The property is encumbered by an association lien and an IRS lien in the combined amount of approximately \$97,246.00. According to the Dakota County Tax Records the fair market value of the property is estimated at \$181,800.00. The payments due under said mortgage are in default from November 11, 2003 to date in the amount of \$493.38 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 Debtor has not offered any form of adequate protection to the Movant as the loan debt increases. The combined encumbrances on the property total approximately \$187,246.00 and the fair market value of the property is estimated at \$181,800.00. The Debtor lacks any equity in said real property.

In view of the Debtor's inability to make payments toward her loan obligation, the Movant's interest in the real property of the Debtor is not adequately protected. A continuing default by the Debtor will impair the Movant's interest without adequate protection or just compensation. The only protection of the Movant's interest proffered by the Debtor is for the Movant to retain its lien awaiting future mortgage payments to be made by the Debtor. The Debtor's 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 20, 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  
(F0418)



REITER & SCHILLER

Dated: September 21, 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

(F0418)

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

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In re: MARGARET ELIZABETH DAVIES,      BKY. No.: 04-31232  
Chapter 7

Debtor.

**ORDER TERMINATING STAY**

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This matter came on before the undersigned Judge of the above entitled Court, upon motion filed with the Court on October 13, 2004 in Courtroom No. 228A, at the United States Courthouse, at 316 North Robert Street, in St. Paul, Minnesota. The movant, Mortgage Electronic Registration Systems, Inc., its successors and assigns, as nominee for Household Financial Services, Inc., its successors and assigns, 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 Twenty-one (21), Block Two (2), Diamond Path Fifth Addition, together with the benefits and subject to the burdens of that certain Declaration of Covenants,

Conditions and Restrictions, as Document No. 562865 and First Supplementary  
Restrictions as Document No. 636139,  
Dakota 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