

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Joseph Reich  
Rebecca Smith n/k/a Rebecca Reich

NOTICE OF HEARING AND  
MOTION FOR RELIEF FROM  
AUTOMATIC STAY

Debtors

Chapter 13, Case No. 04-32288

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TO: Joseph Reich and Rebecca Smith n/k/a Rebecca Reich, INCLUDING TRUSTEE AND  
OTHER INTERESTED PARTIES

1. Washington Mutual Bank, F.A., (*Movant*), a corporation, by its undersigned attorneys, moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion at 9:30 am on October 6, 2004, in Courtroom 228A, 316 North Robert Street, St. Paul, MN 55101 or as soon thereafter as counsel can be heard.

3. Any response to this motion must be filed and delivered not later than on 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.

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rules of Bankruptcy Procedure 5005 and Local Rule 1070-1, and is a core

proceeding. The petition commencing this Chapter 13 case was filed on April 15, 2004. The case is now pending in this court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rules of Bankruptcy Procedure 4001. This motion is filed under Federal Rules of Bankruptcy Procedure 9014 and Local Rules 1201-1215. Movant requests relief with respect to a mortgage lien encumbering real property of Debtors.

6. Debtors above-named are the owners of certain real property located at 1813 Prairie Drive, Centerville, MN 55038, legally described as follows, to-wit:

Lot 1, Block 1, Centerville Heights, Anoka County, Minnesota.

7. The indebtedness of Debtors is evidenced by a Promissory Note and Mortgage dated June 25, 2003, filed for registration in the Anoka Registrar of Titles' office on November 14, 2003, and memorialized as Document No. 451992 on Certificate of Title No. 100659. A true and correct copy of the front page of the recorded mortgage is attached as Exhibit A.

8. Movant has filed a Proof of Claim for delinquent payments. Upon information and belief, said Plan has now been confirmed.

9. Pursuant to said Plan, the Debtors were to maintain monthly payments due and payable pursuant to the indebtedness to Movant outside the Plan.

10. The Debtors have failed to pay the monthly payments on the indebtedness, outside the Plan for the months of June 1, 2004 to the present date and as of the hearing date October 1, 2004 will be due for a total delinquency of \$7,243.13 together with reasonable attorneys fees and costs incurred pursuant to the terms of the note and mortgage.

11. By reason of the foregoing, Debtors are in default on payments under the note, mortgage and the Chapter 13 Plan. Movant is inadequately secured and entitled to have the

automatic stay lifted and vacated so it can commence foreclosure against the property under the mortgage pursuant to Minnesota Statutes.

WHEREFORE, Movant by its undersigned attorney, moves the Court for an Order that the automatic stay provided by 11 U.S.C. Section 362 (A) be terminated to permit Movant to foreclose its mortgage on the subject property, and for such other and further relief as may be just and equitable.

Dated: September 13, 2004

USSET & WEINGARDEN P.L.L.P

By: /E/ Paul A. Weingarden/Brian H. Liebo  
Paul A. Weingarden, #115356  
Brian H. Liebo #277654  
Attorney for Movant  
4500 Park Glen Road, #120  
Minneapolis, MN 55416  
(952) 925-6888

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

IN RE:

Joseph W. Reich  
Rebecca J. Reich

AFFIDAVIT OF PETITIONER

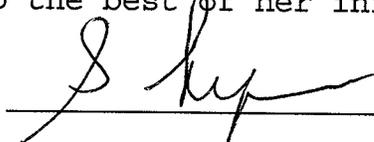
Debtors

Chapter 13, Case No. 04-32288  
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STATE OF GEORGIA

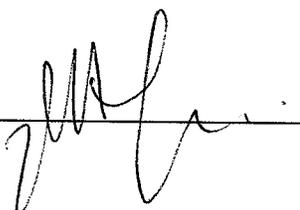
COUNTY OF FULTON

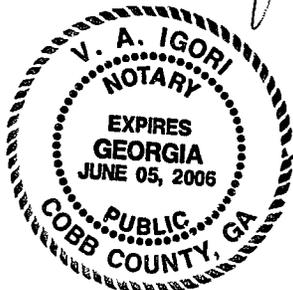
Sonya Lyons, being first duly sworn, deposes and states she is authorized representative of Movant and has direct real-time access to the computer records of Movant which are maintained in the ordinary course of business and that she has read the annexed Notice of Hearing and Motion for Relief From Automatic Stay, and that it is true of her knowledge to the best of her information.

  
\_\_\_\_\_

Subscribed and sworn to before me this  
23<sup>rd</sup> day of AUGUST, 2004.

Notary Public

  
\_\_\_\_\_



451992

ZMN1  
H80

MORTGAGE

3074109335-858

Return To  
WASHINGTON MUTUAL BANK, FA  
P.O. BOX 808043  
PETALUMA, CA 94975-8043  
FINAL REVIEW AU 052

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 JUNE 25, 2003, together with all Riders to this document.

(B) "Borrower" is JOSEPH REICH AND, REBECCA SMITH, BOTH SINGLE.

Stewart Title of Minnesota  
6300 Shingle Creek Parkway #195  
Brooklyn Center, MN 55430  
08005723 14

Borrower is the mortgagor under this Security Instrument.

MINNESOTA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT Form 3024 1/01

6(MN) 0005:

Page 1 of 16

Initials: JB JK

VMP MORTGAGE FORMS - (800)521-7291



(C) "Lender" is WASHINGTON MUTUAL BANK, FA

Lender is a FEDERAL SAVINGS BANK  
organized and existing under the laws of THE UNITED STATES OF AMERICA  
Lender's address is 3883 AIRWAY DRIVE, SANTA ROSA, CA 95403

Lender is the mortgagee under this Security Instrument

(D) "Note" means the promissory note signed by Borrower and dated JUNE 25, 2003  
The Note states that Borrower owes Lender ONE HUNDRED EIGHTY ONE THOUSAND EIGHT  
HUNDRED SEVENTY FIVE AND 00/100 Dollars  
(US \$ 181,875.00 ) plus interest Borrower has promised to pay this debt in regular  
Periodic Payments and to pay the debt in full not later than JULY 01, 2033

(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]

|  |   |   |
|--|---|---|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider              | <input type="checkbox"/> Second Home Rider  |
| <input type="checkbox"/> Balloon Rider         | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> 1-4 Family Rider   |
| <input type="checkbox"/> VA Rider              | <input type="checkbox"/> Biweekly Payment Rider         | <input type="checkbox"/> 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) "REBSPA" 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, "REBSPA" 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 REBSPA

(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 [Type of Recording Jurisdiction] of WASHINGTON [Name of Recording Jurisdiction]

LOT 1, BLOCK 1, CENTERVILLE HEIGHTS, ANOKA COUNTY, MINNESOTA

Parcel ID Number 143122430019  
1813 PRAIRIE DRIVE  
CENTERVILLE  
("Property Address")

which currently has the address of  
[Street]  
[City], Minnesota 55038 [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

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

UNIFORM COVENANTS Borrower and Lender covenant and agree as follows

1 Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note Borrower shall also pay funds for Escrow Items pursuant to Section 3 Payments due under the Note and this Security

**TORRENS**

|  |                   |  |
|--|-------------------|--|
| Receipt #  | 78519/443.3       | <input type="checkbox"/> Tax Lien/Release      |
| Date/Time  | NOV 14 2003/13:35 | <input type="checkbox"/> Transfer              |
| Doc Order  | 3 of 3            | <input type="checkbox"/> Division              |
| Recordability  | 90                | <input type="checkbox"/> Status                |
| Filing Fees  | \$ 20             | <input type="checkbox"/> New legal Description |
| Well Cert Rec'd                                      |                   | <input type="checkbox"/> GAC                   |
| <input type="checkbox"/> Certified Copy/             |                   | <input type="checkbox"/> Deferred Specials     |
| <input type="checkbox"/> Non-standard Document       |                   | <input checked="" type="checkbox"/> No Change  |
| <input checked="" type="checkbox"/> From Certificate | 100659            | # New Certificates                             |
| BK   | 266               | Page/Cert                                      |
|  |                   | 100659   |

**DOCUMENT NO 451992.0 TORRENS  
ANOKA COUNTY MINNESOTA**

I HEREBY CERTIFY THAT THE WITHIN INSTRUMENT WAS FILED IN THIS OFFICE  
FOR RECORD ON NOV 14 2003  
AT 1:35 PM AND WAS DULY RECORDED  
FEES AND TAXES IN THE AMOUNT OF \$443.31 PAID  
2003178519

RECEIPT NO  
MAUREEN J DEVINE  
ANOKA COUNTY PROPERTY TAX ADMINISTRATOR/RECORDER/REGISTRAR OF TITLES  
JMD  
BY \_\_\_\_\_  
DEPUTY PROPERTY TAX ADMINISTRATOR/RECORDER/REGISTRAR OF TITLES

451992.0 TORRENS  
SILWART TITLE  
6100 SHINGO CREEK PARKY  
ANOKA RECORDING DEPT SUITE 125  
BROOKLYN CENTER, MN 55430

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Joseph Reich  
Rebecca Smith n/k/a Rebecca Reich

MEMORANDUM OF LAW

Debtors

Chapter 13, Case No. 04-32288  
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11 U.S.C. Section 362(d) provides that on request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under section (a) of this section for cause, including lack of adequate protection of an interest in property of such party in interest. Failure of a Chapter 13 debtor to make postconfirmation payments to a mortgagee is sufficient cause for relief from the automatic stay. Reinbold vs. Dewey County Bank, 942 F.2d 1304 (8th Cir. 1991). Following the debtors' filing of the petition on April 15, 2004 no payment has been made to movant for the month(s) of June 1, 2004 to the present and as of the hearing date October 1, 2004 will be due. Accordingly, cause exists for the granting of relief from the automatic stay.

WHEREFORE, Washington Mutual Bank, F.A. respectfully requests this Court to grant movant relief from the automatic stay of 11 U.S.C. Section 362(a).

Dated: September 13, 2004. USSET & WEINGARDEN P.L.L.P

By: /E/ Paul A. Weingarden/Brian H. Liebo  
Paul A. Weingarden, #115356  
Brian H. Liebo #277654  
Attorney for Movant  
4500 Park Glen Road, #120  
Minneapolis, MN 55416  
(952) 925-6888

U.S. BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Joseph Reich  
Rebecca Smith n/k/a Rebecca Reich

Debtors

UNSWORN DECLARATION  
FOR PROOF OF SERVICE

Chapter 13, Case No. 04-32288  
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Erin Kay Buss, employed on this date by USSET & WEINGARDEN, attorney(s) licensed to practice law in this court, with office address of Suite 120, 4500 Park Glen Road, Minneapolis, Minnesota 55416, upon penalty of perjury, declares that on September 13, 2004, I served the annexed Notice of Hearing and Motion for Relief from Automatic Stay upon each of the entities named below by mailing to them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota, addressed to each of them as follows:

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

Jasmine Z. Keller  
Chapter 13 Trustee  
310 Plymouth Building  
12 South 6th Street  
Minneapolis, MN 55402

Gregory J. Wald, Esq.  
Attorney at Law  
3601 Minnesota Drive, Ste. 800  
Edina, MN 55435

Joseph Reich  
Rebecca Smith n/k/a Rebecca Reich  
1813 Prairie Drive  
Centerville, MN 55038

/E/ Erin Kay Buss  
Erin Kay Buss

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

Joseph Reich  
Rebecca Smith n/k/a Rebecca Reich

ORDER

Debtors.

Chapter 13, Case No. 04-32288  
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The above entitled matter came on for hearing upon motion of Washington Mutual Bank, F.A., (*Movant*) pursuant to 11 U.S.C. Section 362 on October 6, 2004 at the U.S. Bankruptcy Court, St. Paul, Minnesota. Appearances were as noted in the record. 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:

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 1, Block 1, Centerville Heights, Anoka County, Minnesota.

Movant may proceed to foreclose its mortgage in accordance with Minnesota Statutes. Movant's request for attorneys fees and costs shall not be considered as this is governed by state law. Notwithstanding Federal Rules of Bankruptcy Procedure 4001(a)(3), this order is effective immediately.

Dated this \_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Judge of the Bankruptcy Court