

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**CASE NO. 04-32888 DDO**

Michael G. Schak  
SSN XXX-XX-5369  
Cheryl A. Schak  
SSN XXX-XX-1036

**CHAPTER 13 CASE**

Debtor.

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**NOTICE OF OBJECTION TO CONFIRMATION OF PLAN**

TO: Debtor and other entities specified in Local Rule 3015-3.

1. Bank of America, N.A. (hereinafter "Secured Creditor") moves the Court for the relief requested below and gives notice of hearing.
2. The Court will hold a hearing on this objection at 10:30 a.m. on August 12, 2004, before the Honorable Dennis D. O'Brien in Courtroom 228A at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota.
3. Any reply to this objection must be filed and delivered not later than 10:30 a.m. on August 11, 2004, which is 24 hours before the time set for the hearing, or filed and served by mail not later than August 9, 2004, which is three days before the time set for the hearing. **UNLESS A REPLY OPPOSING THE OBJECTION IS TIMELY FILED, THE COURT MAY SUSTAIN THE OBJECTION WITHOUT A HEARING.**
4. This Court has jurisdiction over this objection 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 Chapter 13 case was filed May 12, 2004. The case is now pending before this Court.

5. This objection arises under 11 U.S.C. § 1322 and Local Rule 3007-1.

6. Debtor is indebted to Secured Creditor in the principal amount of \$180,000.00, as evidenced by that certain Promissory Note dated April 8, 2003, 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 April 8, 2003, executed by Michael G. Schak and Cheryl A. Schak, husband and wife, recorded July 1, 2003, as Document No. 3640974, 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".

8. Said plan is objected to on the basis that the plan, as proposed by Debtor, does not provide for payment of the arrears based on the Proof of Claim filed by Secured Creditor.

9. Said plan is also objected to on the basis that Debtor is delinquent in their pre-petition monthly mortgage payments to Secured Creditor for the months of May, 2004, in the total amount of \$1,624.63, including late charges. In In re Newton, 161 B.R. 207 (Bkrtcy.D.Minn. 1993), this Court reaffirmed its previous finding that more than 12 months is ordinarily not a reasonable time to cure a default in pre-petition homestead mortgage payments under 11 U.S.C. § 1322(b)(5). The plan, as proposed by Debtor, does not provide for payment of the arrears based on the Proof of Claim filed by Secured Creditor. Therefore, the plan does not comply with the provision of Chapter 13 of the Bankruptcy Code, as contemplated by 11 U.S.C. § 1325(a)(1).

10. The value of the property as scheduled by Debtor is \$190,000.00 subject to Secured Creditor's mortgage in excess of \$179,334.45.

11. The plan, as proposed, is not made in good faith by Debtor.

12. Therefore, it is requested that the Court deny confirmation of Debtor's plan.

Dated this 3rd day of August, 2004.

**WILFORD & GESKE**

By /e/ James A. Geske

James A. Geske  
Attorneys for Secured Creditor  
7650 Currell Blvd., Suite 300  
Woodbury, Minnesota 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.

LOAN NUMBER: 6167666288

**NOTE**

04/08/03 ST PAUL MN  
 [Date] [City] [State]  
 1270 EAST MARYLAND AVENUE, ST PAUL, MN 55119  
 [Property Address]

**1. BORROWER'S PROMISE TO PAY**

In return for a loan that I have received, I promise to pay U.S. \$ 180,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is BANK OF AMERICA, N.A.

I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

**2. INTEREST**

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 5.750 %.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

**3. PAYMENTS****(A) Time and Place of Payments**

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the 1ST day of each month beginning on JUNE 01, 2003.

I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on MAY 01, 2033 I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at BANK OF AMERICA, P.O. BOX 9000, GETZVILLE, NY 14068-9000 or at a different place if required by the Note Holder.

**(B) Amount of Monthly Payments**

My monthly payment will be in the amount of U.S. \$ 1,090.44

**4. BORROWER'S RIGHT TO PREPAY**

I HAVE THE RIGHT TO MAKE PAYMENTS OF PRINCIPAL AT ANY TIME BEFORE THEY ARE DUE. A PAYMENT OF PRINCIPAL ONLY IS KNOWN AS A "PREPAYMENT." WHEN I MAKE A PREPAYMENT, I WILL TELL THE NOTE HOLDER IN WRITING THAT I AM DOING SO. I MAY NOT DESIGNATE A PAYMENT AS A PREPAYMENT IF I HAVE NOT MADE ALL THE MONTHLY PAYMENTS DUE UNDER THIS NOTE.

I MAY MAKE A FULL PREPAYMENT OR PARTIAL PREPAYMENT WITHOUT PAYING ANY PREPAYMENT CHARGE. AFTER PAYING ANY LATE FEES OR OUTSTANDING FEES THAT I OWE, THE NOTE HOLDER WILL USE MY PREPAYMENTS TO REDUCE THE AMOUNT OF PRINCIPAL THAT I OWE UNDER THIS NOTE. HOWEVER, THE NOTE HOLDER MAY APPLY MY PREPAYMENT TO THE ACCRUED AND UNPAID INTEREST ON THE PREPAYMENT AMOUNT BEFORE APPLYING MY PREPAYMENT TO REDUCE THE PRINCIPAL AMOUNT OF THIS NOTE. IF I MAKE A PARTIAL PREPAYMENT, THERE WILL BE NO CHANGES IN THE DUE DATES OR IN THE AMOUNT OF MY MONTHLY PAYMENT UNLESS THE NOTE HOLDER AGREES IN WRITING TO THOSE CHANGES.

MULTISTATE FIXED RATE NOTE - Single Family  
 855N 10 11

Page 1 of 3  
 VAMP MORTGAGE FORMS - 0401021-7201

BSSR 04/07/03 5:57 AM 6157666288



**EXHIBIT**     A

0910  
for  
file  
57

DOC# 3640974  
Certified Recorded On  
JULY 01, 2003 AT 10:00AM

OFFICE CL RECORDER  
BUNEE COUNTY NM

Fee Amount: 128.00  
\*\*\*\*\*

### MORTGAGE

Return To: LOAN # 615786288  
FLS-700-01-01, JACKSONVILLE POST CLOSING  
BANK OF AMERICA  
9000 SOUTHSIDE BLVD., BLDG 700, FILE RECEIPT DEPT.  
JACKSONVILLE, FL 32256

6454 002 \* 05/10/03 10:40  
HTG TAX 432.00

6454 002 \* 05/10/03 10:08  
C.STAMPS 5.00

#### 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 APRIL 06, 2003 together with all Riders to this document.
- (B) "Borrower" is MICHAEL G SCHAK AND CHERYL A SCHAK, HUSBAND AND WIFE

Borrower is the mortgagor under this Security Instrument.

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

3024 - ORIGIN (M000)  
Page 1 of 10  
FORM MORTGAGE FORMS - (904)821-7381

Label: *Ed Miller*

DATE 04/07/03 9:37 AM 615786288



Title Recording Services, Inc. 357244  
1040 Grand Avenue #200  
St. Paul, MN 55105 3015  
RAMSEY A FIRST USA JUNIOR  
JACKSONVILLE FL 32256  
HTG

10/15

57

EXHIBIT B

(C) "Lender" is BANK OF AMERICA, N.A.

Lender is a NATIONAL BANKING ASSOCIATION organized and existing under the laws of THE UNITED STATES OF AMERICA. Lender's address is 1201 MAIN STREET, 7TH FLOOR, DALLAS, TX 752020000

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated APRIL 08, 2003. The Note states that Borrower owes Lender ONE HUNDRED EIGHTY THOUSAND AND 00/100 Dollars

(U.S. \$ 180,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than MAY 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):

- Adjustable Rate Rider
- Balloon Rider
- VA Rider
- Condominium Rider
- Planned Unit Development Rider
- Biweekly Payment Rider
- Second Home Rider
- 1-4 Family Rider
- 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 3) 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.

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Initials: CD MB Form 3024 1/01

(F) "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 RAMSEY (Type of Recording Jurisdiction) (Name of Recording Jurisdiction) X LOT 20 EXCEPT THE WESTERLY 30 FEET AND ALL OF LOT 21, BLOCK 4, HAZEL PARK DIVISION NO. 8, ST PAUL, RAMSEY COUNTY, STATE OF MINNESOTA (City, State and County)

Parcel ID Number 23222342091 which currently has the address of 1978 EAST MARYLAND AVENUE (Street) ST PAUL (City), Minnesota 55119 (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 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

*CF* *MSD*

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.

Witness:

\_\_\_\_\_  
MICHAEL S. SCHMIDT (Seal)  
-Borrower

\_\_\_\_\_  
CEREN A. SCHMIDT (Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

FORM 3024 1/01

FORM 3024 1/01

FORM 3024 1/01

STATE OF MINNESOTA, *Kenecoo*

County of:

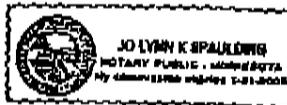
On this *8<sup>th</sup>* day of *April* 2003

, before me appeared

*MICHAEL G SCHUK and CHARLIS A SCHUK,*  
*HUSBAND and WIFE*

to me personally known to be the person(s) described in and who executed the foregoing instrument and acknowledged that he/she/they executed the same as his/hers/their free act and deed.

*Jo Lynn K Spaulding*  
Notary Public  
My Commission Expires *01-31-05*



This instrument was drafted by:  
VICKI ALVAREZ  
BANK OF AMERICA, N.A.  
1201 MAIN STREET, 7TH FLOOR  
DALLAS, TX 752020000

Tax statements for the real property described in this instrument should be sent to:  
TRANSAMERICA REAL ESTATE TAX SERVICE, LENDER # 2318  
6053 SO FASHION SQUARE DR #200  
MURRAY, UT 84107

*AK MDR*  
Witness  
Form 3024 1/01

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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**CHAPTER 13 CASE**

Michael G. Schak  
SSN XXX-XX-5369  
Cheryl A. Schak  
SSN XXX-XX-1036

**CASE NO. 04-32888 DDO**

Debtor.

**UNSWORN DECLARATION  
FOR PROOF OF SERVICE**

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Diana Waletzko, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Suite 300, Woodbury, Minnesota, declares that on August 3, 2004, I served the annexed Notice of Objection to Confirmation of Plan and proposed Order Denying Confirmation of Plan 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:

Michael G. Schak  
Cheryl A. Schak  
1979 Maryland Ave E  
St. Paul, MN 55119

Jasmine Z. Keller  
12 South 6th Street, Suite 310  
Minneapolis, MN 55402

Ian Traquair Ball  
12 S 6<sup>th</sup> St. Ste 326  
Minneapolis, MN 55402

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

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

Dated this 3rd day of August, 2004.

/e/ Diana Waletzko  
Diana Waletzko

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**ORDER DENYING CONFIRMATION  
OF PLAN**

Michael G. Schak  
SSN XXX-XX-5369  
Cheryl A. Schak  
SSN XXX-XX-1036

Debtor.

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**CASE NO. 04-32888 DDO**

This Chapter 13 Case came on before the Court on August 12, 2004, for hearing on Debtor's plan of debt adjustment. Appearances were as noted in the record. Upon the record made at hearing, and all other files and records in this case,

IT IS HEREBY ORDERED that confirmation of Debtor's plan of debt adjustment, as filed May 12, 2004, is denied.

Dated: \_\_\_\_\_  
Judge of Bankruptcy Court