

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**CHAPTER 13 CASE**

Gregory Alan Ries  
SSN XXX-XX-2045  
Kathleen Anne Ries  
SSN XXX-XX-9045

**CASE NO. 04-33793 DDO**

Debtor.

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

TO: Debtor and other entities specified in Local Rule 9013-3(a).

1. Bank One, N.A., as trustee for the holders of ACE Securities Corp. Home Equity Loan Trust, Series 2002-HE1 Asset Backed Pass-Through Certificates (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 20, 2004, at 9:30 a.m., or as soon thereafter as counsel can be heard, before the Honorable Dennis D. O'Brien in Courtroom 228A 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 15, 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 11, 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 June 28, 2004. 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 \$201,450.00, as evidenced by that certain mortgage deed dated April 4, 2002, 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 4, 2002, executed by Kathleen A. Ries and Gregory A. Ries, husband and wife, as joint tenants, recorded on July 2, 2002, as Document No. 3247394, a copy of which is attached hereto as Exhibit "A". The name and address of the original creditor is contained in the attached Exhibit "A". The property is located in Washington County, Minnesota and is legally described as follows to-wit:

Lot 14, Block 1, the Highlands of Stillwater 2<sup>nd</sup> Addition, Washington 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 October 4, 2004, Debtor is delinquent in the making of post-petition monthly payments as required for the months of July, 2004 through October, 2004, inclusive, in the amount of \$2,128.91 each; accruing late charges and attorneys fees and costs of \$700.00. Debtor has failed to make any offer of adequate protection.

10. Debtor has no equity in the property and the property is not necessary to an effective reorganization. The value of the property as scheduled by Debtor is \$260,000.00 subject to Secured Creditor's

mortgage in excess of \$213,551.38.

The property is also subject to a second mortgage in favor of MorEquity in excess of \$24,213.00.

Considering selling costs of 10%, Debtor has no real equity in the property. The burden is on Debtor to establish that this property is necessary to an effective reorganization.

11. 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.

12. 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 4th day of October, 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.

3247394



Office of the  
County Recorder  
Washington County, MN

Certified filed and/or recorded on:  
2002/07/02 10:43:00 AM

3247394



Cindy Kosmann  
County Recorder

*Cindy Kosmann*

**WASHINGTON COUNTY**

Receipt No: 98393 Date: 05/31/2002  
Registration tax hereon of \$463.33 Paid  
MN Conservation Fund M.S. 473H \$5.00 Paid  
Molly F. O'Rourke, Auditor by B.J. Laritz

20.00

[Space Above This Line For Recording Data]

**MORTGAGE**

Return To:

Town and Country Credit  
2600 Michelson Drive, Suite  
300  
Irvine, CA 92612

**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 4, 2002 together with all Riders to this document.

0035078294

MINNESOTA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3024 1/01

6(MN) (0006)  
Page 1 of 15

*B. J. Laritz*

VMP MORTGAGE FORMS - (800)521-7231

04/04/2002 9:11:59

**EXHIBIT** A

(B) "Borrower" is Kathleen A. Ries and Gregory A. Ries, Husband and Wife, As Joint Tenants

Borrower is the mortgagor under this Security Instrument.

(C) "Lender" is Town and Country Credit

Lender is a Corporation organized and existing under the laws of Delaware Lender's address is 2600 Michelson Drive, Suite 300 Irvine, CA 92612

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated April 4, 2002 The Note states that Borrower owes Lender two hundred one thousand four hundred fifty and 00/100 Dollars (U.S. \$201,450.00 ) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than May 1, 2022

(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.

 0035078294  
Initials:

(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) "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.

(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 14, BLOCK 1, THE HIGHLANDS OF STILLWATER 2ND ADDITION, WASHINGTON COUNTY, MINNESOTA.

11211

Parcel ID Number: 3203020130050  
1284 Benson Blvd W  
STILLWATER  
("Property Address"):

which currently has the address of  
[Street]  
[City], Minnesota 55082 [Zip Code]

0035078294  
Initialed 

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**CHAPTER 13 CASE**

Gregory Alan Ries  
SSN XXX-XX-2045  
Kathleen Anne Ries  
SSN XXX-XX-9045

**CASE NO. 04-33793 DDO**

Debtor.

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**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 October 4, 2004, Debtor is delinquent for post-petition monthly payments as required for the months of July, 2004 through October, 2004, in the amount of \$2,128.91 each; accruing late charges and attorneys fees and costs of \$700.00.

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

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).

II. THE AUTOMATIC STAY SHOULD BE MODIFIED PURSUANT TO 11 U.S.C. § 362(d)(2) WHERE (1) DEBTOR DOES NOT HAVE ANY EQUITY IN THE PROPERTY, AND (2) THE PROPERTY IS NOT NECESSARY TO AN EFFECTIVE REORGANIZATION.

The first requirement under § 362(d)(2) is met where the total of all the encumbrances against the property is in excess of the value of the property. The value of the property as scheduled by Debtor is \$260,000.00 subject to Secured Creditor's mortgage in excess of \$213,551.38.

The property is also subject to a second mortgage in favor of MorEquity in excess of \$24,213.00.

Considering selling costs of 10%, Debtor has no real equity in the property. The burden is on Debtor to establish that this property is necessary to an effective reorganization.

### **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 is also entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(2) where Debtor has no equity in the property, and where the property is not necessary to an effective reorganization.

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

Dated this 4th day of October, 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

Gregory Alan Ries  
SSN XXX-XX-2045  
Kathleen Anne Ries  
SSN XXX-XX-9045

CASE NO. 04-33793 DDO

**AFFIDAVIT OF  
TARSHA RUCKER**

Debtor.

Tarsha Rucker, being first duly sworn on oath, deposes and states:

1. That she is the U.S. Facilitator of OCWEN Federal Bank, FSB.

2. Bank One, N.A., as trustee for the holders of ACE Securities Corp. Home Equity Loan Trust, Series 2002-HE1 Asset Backed Pass-Through Certificates, 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 April 4, 2002, executed by Kathleen A. Ries, Husband and Wife, As Joint Tenants, recorded July 2, 2002, as Document No. 3247394. The property is located in Washington County, Minnesota and is legally described as follows, to-wit:

Lot 14, Block 1, The Highlands of Stillwater 2nd Addition, Washington County, Minnesota.

3. That she has reviewed the account records relating to the Ries' mortgage loan, account no. 31270010.

4. That as of September 21, 2004, the following amounts were owing on this account:

Unpaid Principal:	\$195,129.96
Interest through September 15, 2004	13,409.31
Attorney's Fees:	700.00
Late Charges:	1,335.15
Pre-Petition Credit (-):	(409.99)
Return Check Fee:	25.00
Bankruptcy Cost:	150.00
Attorney Fee & Collection Cost:	190.00
Certified Mail Cost:	10.64
Stipulation Setup:	200.00
Foreclosure Cost:	1,763.56
Property Valuation Fee - BPO:	238.00
Title Report Fee:	50.00
Property Inspection Fee:	21.00
Suspense Credit(-):	(1,653.78)
Escrow Advance:	2,392.53

**TOTAL:** **\$213,551.38**

5. That the mortgage loan is delinquent for post-petition monthly mortgage payments for the months of July, 2004 through September, 2004 in the amount of \$2,128.91 each.

6. This affidavit is given in support of the motion of Bank One, N.A., as trustee for the holders of ACE Securities Corp. Home Equity Loan Trust, Series 2002-HE1 Asset Backed Pass-Through Certificates for relief from the automatic stay.

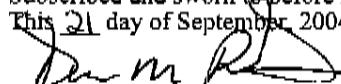
OCWEN FEDERAL BANK, FSB

By



TARSHA RUCKER  
U.S. Facilitator

Subscribed and sworn to before me  
This 21 day of September, 2004.

  
Notary Public



Queen Michelle Roberts  
My Commission DD145947  
Expires August 28, 2006

**UNITED STATES BANKRUPTCY COURT  
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**UNSWORN DECLARATION  
FOR PROOF OF SERVICE**

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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 October 4, 2004, I served the annexed Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion for Relief, Affidavit of Tarsha Rucker, 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:

Gregory A. Ries  
Kathleen A. Ries  
1284 Benson Blvd W  
Stillwater, MN 55082

Jasmine Z. Keller  
12 South 6<sup>th</sup> St Ste 310  
Minneapolis, MN 55402

Craig W. Andresen  
2001 Killebrew Dr Ste 330  
Bloomington, MN 55425

U.S. Trustee  
1015 U.S. Courthouse  
300 South 4<sup>th</sup> Street  
Minneapolis, MN 55415

MorEquity  
PO Box 5110  
Carol Stream, IL 60197

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

Dated this 4th day of October, 2004.

/e/ Joanna Cheyka  
Joanna Cheyka

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

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SSN XXX-XX-2045  
Kathleen Anne Ries  
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**CHAPTER 13 CASE**

**CASE NO. 04-33793 DDO**

Debtor.

**ORDER**

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The above entitled matter came on for hearing upon motion of Bank One, N.A., as trustee for the holders of ACE Securities Corp. Home Equity Loan Trust, Series 2002-HE1 Asset Backed Pass-Through Certificates (hereinafter "Secured Creditor"), pursuant to 11 U.S.C. § 362 on October 20, 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 April 4, 2002, executed by Kathleen A. Ries and Gregory A. Ries, husband and wife, as joint tenants, recorded on July 2, 2002, as Document No. 3247394 covering real estate located in Washington County, Minnesota, legally described as follows, to-wit:

Lot 14, Block 1, the Highlands of Stillwater 2<sup>nd</sup> Addition, Washington 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