

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

-----  
In re: ROBERT G. CURTIS,  
DAWN D. CURTIS,

BKY. No.: 04-34339  
Chapter 13

Debtors.

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

-----  
TO: ROBERT G. CURTIS, DAWN D. CURTIS AND THEIR JEFFREY  
MICHAEL BRUZEK, PRESCOTT & PEARSON, 443 OLD HWY. 8,  
STE. 208, NEW BRIGHTON, MN 55112.

1. Mortgage Electronic Registration Systems, Inc., its successors and assigns, as nominee for Decision One Mortgage Company, LLC, 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 September 27, 2004 at 10:30 A.M. in Courtroom No. 228B, 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 Gregory F. Kishel, Chief Judge of the United States Bankruptcy Court.

3. Any response to this motion must be filed and delivered not later September 22, 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 16, 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 Chapter 13 case was filed on July 27, 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 Debtors that is subject to a perfected security interest in favor of the Movant as shown by the term of the mortgage, a copy of which is attached hereto as Exhibit A.

6. That pursuant to the provisions of 11 U.S.C. §362, the Movant alleges "cause" for relief from the stay and is entitled to relief from the automatic stay inasmuch as:

a) That pursuant to the proposed modified Chapter 13 Plan scheduled for confirmation on September 27, 2004 the Debtors did not include any provisions to cure the pre-petition mortgage arrears, as they do not intend to keep the subject real property.

b) To date, the Debtors are in default on said payments from June 22, 2004 to date in the amount of \$1,307.94 per month, plus post-petition late charges and inspection fees.

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 Decision One Mortgage Company, LLC, 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 foreclose its security interest, or in the alternative for such other relief as may be just and equitable.

REITER & SCHILLER

Dated: September 2, 2004

By: /e/Thomas J. Reiter

Thomas J. Reiter  
Rebecca F. Schiller  
Attorneys for Movant  
The St. Paul Building  
6 W. Fifth Street  
Seventh Floor  
St. Paul, MN 55102-1420  
(651) 297-6400  
Attorney Reg. 152262/231605  
(F0392)

**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 2, 2004

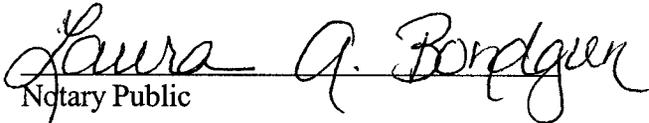
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC.

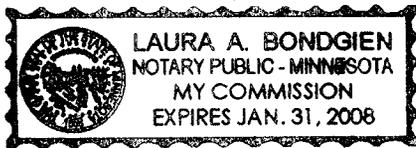
By:   
Scott Barnes

Its: Vice President

Subscribed to and sworn before me this

2nd day of September, 2004.

  
Notary Public



DOC. NO.

2014457

2014457

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

2003 MAR 13 PM 1:40

T. BECKMAN, COUNTY RECORDER

BY: [Signature] Deputy

18<sup>00</sup> SURCHARGE 5<sup>00</sup>

SH  CHECK  ESCROW

WELL  CHARGE

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

LAND TITLE (3)-3

DAKOTA COUNTY TREASURER-AUDITOR  
03/03/2003 10:55:29 748631 367.77  
REGISTRATION TAX 5.00  
COUNTY CONSERVATION FEE  
RECEIPT NUMBER 576097

DEED LABEL

CURTIS, ROBERT *T/D*

\$159,900.00

Investor Name

Household Financial Ser

Vendor Ref. # 000-68-95-627

Loan Number 2280021115490

MIN: 100077910000104295

### MORTGAGE

Status Sold  
Title Received 8/5/2003

[Redacted]

[above This Line For Recording Data]

Terms and conditions defined below and other words are defined in Sections 3, 11, 13, 18, 20  
words used in this document are also provided in Section 16.

- (A) "Security Instrument" means this document, which is dated NOVEMBER 22, 2002, together with all Riders to this document.
- (B) "Borrower" is ROBERT G. CURTIS AND DAWN D. CURTIS, HUSBAND AND WIFE. Borrower is the mortgagor under this Security Instrument.
- (C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.
- (D) "Lender" is Decision One Mortgage Company, LLC. Lender is a LIMITED LIABILITY COMPANY organized and existing under the laws of NORTH CAROLINA. Lender's address is 6060 J.A. JONES DRIVE, SUITE 1000, CHARLOTTE, NORTH CAROLINA 28287.
- (E) "Note" means the promissory note signed by Borrower and dated NOVEMBER 22, 2002. The Note states that Borrower owes Lender ONE HUNDRED FIFTY-NINE THOUSAND NINE HUNDRED AND 00/100ths Dollars (U.S.\$159,900.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than NOVEMBER 22, 2032.
- (F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."
- (G) "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.
- (H) "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
- Condominium Rider
- Second Home Rider
- Balloon Rider
- Planned Unit Development Rider
- Other(s) [specify] Floor Rate Rider
- 1-4 Family Rider
- Biweekly Payment Rider

HMS 6895627

*A*

(I) "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.

(J) "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.

(K) "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.

(L) "Escrow Items" means those items that are described in Section 3.

(M) "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.

(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(O) "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.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. § 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.

(Q) "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

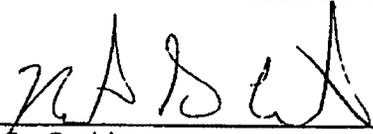
This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, with power of sale, the following described property located in the

County of DAKOTA:

[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

Unit 70, Common Interest Community Number 347, a planned community, Valley Ridge Townhomes, Dakota County, Minnesota

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Adjustable Rate Rider.

  
\_\_\_\_\_  
Robert G. Curtis (Seal)  
-Borrower

  
\_\_\_\_\_  
Dawn D. Curtis (Seal)  
-Borrower

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

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

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DAWN D. CURTIS,

BKY. No.: 04-34339  
Chapter 13

Debtors.

**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 pursuant to the proposed modified Chapter 13 Plan scheduled for confirmation on September 27, 2004 the Debtors did not include any provisions to cure the pre-petition mortgage arrears, as they do not intend to keep the subject real property.

3. That to date, the Debtors are in default on said payments from June 22, 2004 to date in the amount of \$1,307.94 per month, plus post-petition late charges and inspection fees.

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.

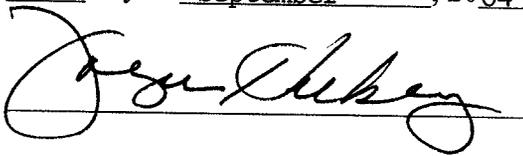
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC.

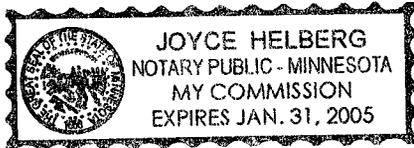
Dated: September 2, 2004

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

Subscribed to and sworn before me this

2nd day of September, 2004.





UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

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In re: ROBERT G. CURTIS,  
DAWN D. CURTIS,

BKY. No.: 04-34339  
Chapter 13

Debtors.

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

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**MEMORANDUM OF LAW**

I. Factual Background

The Debtors filed their petition herein on July 27, 2004 under Chapter 13 of the Federal Bankruptcy Code and 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:

Unit 70, Common Interest Community Number 347,  
a planned community, Valley Ridge Townhomes.

The amount due under said mortgage loan was approximately \$161,000.00. Pursuant to the proposed modified Chapter 13 Plan scheduled for confirmation on September 27, 2004 the Debtors did not include any provisions to cure the pre-petition mortgage arrears, as they do not intend to keep the subject real property. The Debtors are in default on said payments from June 22, 2004 to date in the amount of \$1,307.94 per month, plus post-petition 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 Debtors have failed to meet their contractual obligation in making payments as they become due after the filing of this petition, and such a failure constitutes “cause” entitling the Movant to relief from the automatic stay under 11 U.S.C. §362 (d)(1). A continued failure by a debtor to maintain regular payments to a secured creditor is sufficient “cause” to entitle a creditor to relief from stay. In re Whitebread, 18 B.R. 193 (Bkrcty. D. Minn. 1982); In re Keays, 36 B.R. 1016 (Bkrcty. E.D. Pa. 1984); In re David, 64 B.R. 358 (Bkrcty. S.C.N.Y. 1986).

In view of the Debtors’ inability to make payments toward their loan obligation, the Movant's interest in the real property of the Debtors is not adequately protected. A continuing default by the Debtors will impair the Movant's interest without adequate protection or just compensation. The only protection of the Movant's interest proffered by the Debtors is for the Movant to retain its lien awaiting future mortgage payments to be made by the Debtors. The Debtors’ 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 2, 2004

By: /e/Thomas J. Reiter  
Thomas J. Reiter  
Rebecca F. Schiller  
Attorneys for Movant  
The Saint Paul Building  
6 W. Fifth Street  
Seventh Floor  
St. Paul, MN 55102-1420  
(651) 297-6400  
Attorney Reg. 152262  
(F0392)

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**UNSWORN DECLARATION FOR PROOF OF SERVICE**

Thomas J. Reiter, an attorney licensed to practice law in this Court, with an office address of The St. Paul Building, 6 West 5th St., St. Paul, Minnesota 55102 declares that on September 3, 2004 he served the annexed Notice of Hearing and Motion, Memorandum, Affidavit and Proposed Order upon each of the individuals named below, to each of them a true and correct copy thereof, enclosed in an envelope, and mailed by First Class Mail with postage prepaid and depositing same in the post office at St. Paul, Minnesota.

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

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

Robert G. Curtis  
Dawn D. Curtis  
10193 Grand Isle Pl.  
Woodbury, MN 55129

Jeffrey Michael Bruzek  
Prescott & Pearson  
443 Old Hwy. 8, Ste. 208  
New Brighton, MN 55112

Household Industrial Finance Co.  
1270 Northland Drive, Ste. 200  
Mendota Heights, MN 55120

Wells Fargo Financial National Bank  
c/o Stewart Zlimen & Jungers  
430 Oak Grove Street, #200  
Minneapolis, MN 55403

Valley Ridge Townhome Assn.  
C/o Community Assn. Group  
15753 France Way  
Apple Valley, MN 55124

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

REITER & SCHILLER

Dated: September 3, 2004

By: /e/Thomas J. Reiter  
Thomas J. Reiter  
Attorney at Law  
6 W. Fifth Street  
Seventh Floor  
St. Paul, MN 55102-1420  
(651) 297-6400  
Attorney Reg. 152262  
(F0392)

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

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In re: ROBERT G. CURTIS,  
DAWN D. CURTIS,

BKY. No.: 04-34339  
Chapter 13

Debtors.

**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 September 27, 2004 in Courtroom No. 228B, 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 Decision One Mortgage Company, LLC, 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:

Unit 70, Common Interest Community Number 37, a planned community,  
Valley Ridge Townhomes,  
Dakota County, Minnesota.

2. Notwithstanding Fed. R. Bankr. P. 4001 (a) (3), this order is effective immediately.

Dated: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Gregory F. Kishel  
Chief Judge of U.S. Bankruptcy Court