

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

---

In Re:

**CASE NO. 04-34739 GFK**

Tracey Aakre  
SSN XXX-XX-5431  
Nathan Aakre  
SSN XXX-XX-9807

**CHAPTER 13 CASE**

Debtor.

---

**NOTICE OF OBJECTION TO CONFIRMATION OF PLAN**

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

1. Bank One, N.A., as Trustee for the registered holders of ACE Securities Corp. Home Equity Loan Trust, Series 2003-HE1, Asset Backed Pass-Through Certificates *c/o* Ocwen Federal Bank, FSB (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 October 28, 2004, before the Honorable Gregory F. Kishel 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 October 27, 2004, which is 24 hours before the time set for the hearing, or filed and served by mail not later than October 25, 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 August 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 \$312,000.00, as evidenced by that certain Promissory Note dated July 25, 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 July 25, 2003, executed by Nathan H. Aakre and Tracey J. Aakre, husband and wife, recorded September 11, 2003, as Document No. 2107851, 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 it is not feasible and that Debtor will not be able to make all payments under the plan and to comply with the plan as contemplated by 11 U.S.C. § 1325 (a)(6).

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 April, 2004 through August, 2004, in the total amount of \$10,728.29, including late charges and that said delinquency existing in Debtor's mortgage loan cannot be cured within a reasonable time as required by 11 U.S.C. § 1322(b)(5). In In re Newton, 161 B.R. 207 (Bkrcty.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, would require approximately 29 months to complete 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 \$390,000.00 subject to Secured Creditor's mortgage in excess of \$320,852.71. The property is also subject to another Secured Creditor's

mortgage in favor of Beneficial in excess of \$78,000.00 and another lien in favor of Dakota County Tax Assessor in excess of \$3,200.00 as scheduled by Debtor.

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 13th day of October, 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.

Guaranteed to be a true and correct copy. Copying this instrument is strictly prohibited. *[Signature]*

Loan Number 10061867

**ADJUSTABLE RATE NOTE**  
(LIBOR Six-Month Index (As Published in The Wall Street Journal)-Rate Caps)

**THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.**

07/28/2003  
[Date]

NAPERVILLE  
[City]

ILLINOIS  
[State]

1585 STONEGATE ROAD, HASTINGS, MINNESOTA 55033  
[Property Address]

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

In return for a loan that I have received, I promise to pay U.S. \$ 312,000.00 (this amount is called "Principal"), plus interest, to the order of Lender. Lender is PEOPLE'S CHOICE HOME LOAN, INC. a WYOMING CORPORATION.

I will make all payments under this Note in the form of cash, check or money order. I understand that Lender may transfer this Note. 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 7.850% . The interest rate I will pay may change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(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 payments on the 1st day of each month beginning on September 1, 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 August 1, 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 P.O.Box 512800, Los Angeles, CA 90051-5128 or at a different place if required by the Note Holder.

**(B) Amount of My Initial Monthly Payments**

Each of my initial monthly payments will be in the amount of U.S. \$ 2,268.81 . This amount may change.

**(C) Monthly Payment Changes**

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

**4. INTEREST RATE AND MONTHLY PAYMENT CHANGES**

**(A) Change Date(s)**

The interest rate I will pay may change on the 1st day of August, 2005 and every 6th month(s) thereafter. Each date on which my interest rate could change is called a "Change Date."

**(B) The Index**

Beginning with the first Change Date, my interest rate will be based on an index. The "Index" is the average of interbank offered rates for six month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in the Wall Street Journal. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index."

**EXHIBIT** *[Signature]*

Certified to be a true and correct copy  
Dated 7/25/03 by [Signature]  
[Signature]

[Space Above This Line For Recording Data]

### MORTGAGE

Return To:  
PEOPLE'S CHOICE HOME LOAN,  
INC.  
7525 IRVINE CENTER DR. SUITE  
250, IRVINE, CA 92618

#### 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 July 25, 2003 together with all Riders to this document.

10061867

MINNESOTA Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3024 1/01

© 2001-02 (MIN) 00061.02

Page 1 of 16

Initials: *[Handwritten Signature]*

VSP MORTGAGE FORMS - 000621-7281

**EXHIBIT B**

(B) "Borrower" is NATHAN H AAKRE AND TRACEY J AAKRE, husband and wife

Borrower is the mortgagor under this Security Instrument.  
(C) "Lender" is People's Choice Home Loan, Inc.

Lender is a  
organized and existing under the laws of WYOMING  
Lender's address is 7525 IRVINE CENTER DR. SUITE 250, IRVINE, CA 92618

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated July 25, 2003  
The Note states that Borrower owes Lender THREE HUNDRED TWELVE THOUSAND AND 00/100

Dollars  
(U.S. \$312,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic  
Payments and to pay the debt in full not later than August 1, 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 checked="" 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.

10061867

0000-6(MN) 0000002

(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.

(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]:

[Name of Recording Jurisdiction]:

Lot 9, Block 3, Wallin 5th Addition, Dakota County, Minnesota.

Parcel ID Number: 108323409003  
1585 STONEGATE ROAD  
HASTINGS  
("Property Address"):

which currently has the address of [Street]  
[City], Minnesota 55033 [Zip Code]

10061867  
© 2004 - GEMINI 00061.02

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:

\_\_\_\_\_  
*Nathan H. Aakre* (Seal)  
NATHAN H AAKRE -Borrower

\_\_\_\_\_  
*Tracy J. Aakre* (Seal)  
TRACY J AAKRE -Borrower

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

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

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

10061867

 GIMM 100061867

STATE OF MINNESOTA,

Hennepin

County is:

On this 25th day of July, 2003  
Nathan H. Askre and Tracey J. Askre, husband and wife

, before me appeared

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.

*Donna A. Kras*

Notary Public  
My Commission Expires:



This instrument was drafted by:  
People's Choice Home Loan, Inc.  
7525 Irvine Center Drive Suite 250  
Irvine CA 92618

Tax statements for the real property described in this instrument should be sent to:  
Nathan and Tracey Askre  
1585 Stongate Road  
Hastings MN 55033

10061867

MINN 00000.02

*NA*  
*TH*

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

---

In Re:

**CHAPTER 13 CASE**

Tracey Aakre  
SSN XXX-XX-5431  
Nathan Aakre  
SSN XXX-XX-9807

**CASE NO. 04-34739 GFK**

Debtor.

**UNSWORN DECLARATION  
FOR PROOF OF SERVICE**

---

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 October 13, 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:

Tracey Aakre  
Nathan Aakre  
1585 Stonegate Rd  
Hastings, MN 55033

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

Barbara J. May  
4105 N Lexington Ste 310  
Arden Hills, MN 55126

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 13th day of October, 2004.

/e/ Diana Waletzko

Diana Waletzko

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

---

In Re:

**ORDER DENYING CONFIRMATION  
OF PLAN**

Tracey Aakre  
SSN XXX-XX-5431  
Nathan Aakre  
SSN XXX-XX-9807

Debtor.

---

**CASE NO. 04-34739 GFK**

This Chapter 13 Case came on before the Court on October 28, 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 August 12, 2004, is denied.

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