

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**CHAPTER 7 CASE**

Jeffrey D. Reissner  
SSN XXX-XX-6551

Tracy L. Reissner  
SSN XXX-XX-6716

Debtor.

**CASE NO. 04-34774 DDO**

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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. Deutsche Bank National Trust Company, Trustee for the registered holders of Morgan Stanley Dean Witter Capital 1 Inc. Trust 2003-NC1, Mortgage Pass-Through Certificates, Series 2003-NC1 (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 25, 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 20, 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 14, 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 August 16, 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 \$209,700.00, as evidenced by that certain Promissory Note dated September 24, 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 September 24, 2002, executed by Jeffrey P. Reissner and Tracy L. Reissner, husband and wife as joint tenants, recorded on March 11, 2003, as Document No. 2012714, 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". The property is located in Dakota County, Minnesota and is legally described as follows to-wit:

Lot 15, Block 1, Riverwood 6<sup>th</sup> Addition.

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 11, 2004, Debtor is delinquent in the making of monthly payments as required for the months of June, 2004 through October, 2004, inclusive, in the amount of \$1,830.39 each; accruing late charges of 708.93 and attorneys fees and costs of \$700.00. Debtor has failed to make any offer of adequate protection.

10. 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.

11. 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 terminated 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 11th 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.

### ADJUSTABLE RATE RIDER

(LIBOR Six-Month Index (As Published In *The Wall Street Journal*) - Rate Caps)  
2 YEAR RATE LOCK

THIS ADJUSTABLE RATE RIDER is made this 24th day of September 2002, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to  
**NEW CENTURY MORTGAGE CORPORATION**

("Lender") of the same date and covering the property described in the Security Instrument and located at:  
**3451 VISTA COURT, HASTINGS, MN 55033**

[Property Address]

**THE NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN THE INTEREST RATE AND THE MONTHLY PAYMENT. THE NOTE LIMITS THE AMOUNT BORROWER'S INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.**

**ADDITIONAL COVENANTS.** In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

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

The Note provides for an initial interest rate of **8.2500** %. The Note provides for changes in the interest rate and the monthly payments, as follows:

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

**(A) Change Dates**

The interest rate I will pay may change on the first day of **October 2004** and on that day every **5th** month thereafter. Each date on which my interest rate could change is called a "Change Date."

0000706235

**MULTISTATE ADJUSTABLE RATE RIDER-LIBOR SIX-MONTH INDEX (AS PUBLISHED IN THE WALL STREET JOURNAL) - Single Family-Fannie Mae Uniform Instrument**

Form 3138 1/01  
Page 1 of 4  
VMP MORTGAGE FORMS - (800)521-7291  
Initials: *JDK*  
*TR*



**EXHIBIT**     A

JUN-07-2004 16:15

METRO LEGAL SERVICES

651

P.42/62

2012714

DOC. NO.

2012714

OFFICE OF THE COUNTY RECORDER  
DAKOTA COUNTY, MINNESOTA  
CERTIFIED THAT THE WRITEN INSTRUMENT  
WAS RECORDED IN THIS OFFICE ON AND AT

2003 MAR 11 AM 11:30

JOEL T. BECKMAN, COUNTY RECORDER

BY: DF Deputy  
FEE 210 SURCHARGE 500

CASH  CHECK  ESCROW

WELL  CHARGE

CHARGE TO: \_\_\_\_\_  
OPR \_\_\_\_\_

TITLE COMPANIES

DAKOTA COUNTY TREASURER-AUDITOR  
REGISTERED 09/12/02 765431  
REGISTRATION FOR THE  
COUNTY CONSERVATION FEE  
RECEIPT NUMBER 573339

(Space Above This Line For Recording Data)

### MORTGAGE

Return To:  
NEW CENTURY MORTGAGE CORPORATION

18400 VON KARMAN, SUITE 1000  
IRVINE, CA 92612

RECEIVED

JAN 14 2003

DAKOTA COUNTY  
TREASURER-AUDITOR

#### 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 September 24, 2002 together with all Riders to this document.

0000706235

Form 3024 1/01

MINNESOTA Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

0000-6(MN) (0009) 01

Page 1 of 16

Initials JD

VMP MORTGAGE FORMS - (000)521-7291

TR

RECEIVED

JAN 14 2003

DAKOTA COUNTY  
TREASURER-AUDITOR



EXHIBIT B

(B) "Borrower" is  
JEFFREY P. REISSNER AND TRACY L. REISSNER, HUSBAND AND WIFE AS JOINT  
TENANTS

Borrower is the mortgagor under this Security Instrument.  
(C) "Lender" is NEW CENTURY MORTGAGE CORPORATION

Lender is a CORPORATION  
organized and existing under the laws of CALIFORNIA  
Lender's address is 18400 VON KARMAN, SUITE 1000  
IRVINE, CA 92612

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated September 24, 2002  
The Note states that Borrower owes Lender Two Hundred Nine Thousand, Seven Hundred  
and No/100 \_\_\_\_\_ Dollars  
(U.S.S 209,700.00 ) plus interest. Borrower has promised to pay this debt in regular Periodic  
Payments and to pay the debt in full not later than October 1, 2032

(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 checked="" type="checkbox"/> Other(s) (specify)<br>Prepayment Rider<br>Arm Rider Addendum |

(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) "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 **DAKOTA** [Name of Recording Jurisdiction]:

**SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.**

*Lot 15, Block 1, Riverwood 6th Addition*

Parcel ID Number: **196438015001**  
**3451 VISTA COURT**  
**HASTINGS**  
("Property Address"):

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

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.

Witnesses:

\_\_\_\_\_

*Jeffrey P. Reissner* (Seal)  
JEFFREY P. REISSNER -Borrower

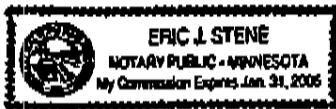
\_\_\_\_\_

*Tracy L. Reissner* (Seal)  
TRACY L. REISSNER -Borrower

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

STATE OF MINNESOTA, *Dakota*  
 On this *24<sup>th</sup>* day of *September, 2002*, before me appeared  
*Jeffrey P. Reissner and Tracy L. Reissner*  
*Husband and wife as joint tenants*

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/her/their free act and deed



*[Signature]*  
 Notary Public

My Commission Expires: *1-31-05*

This instrument was drafted by:  
 NEW CENTURY MORTGAGE CORPORATION  
*1270 Nathland Drive*  
*Menota Heights, MN 55120*

Tax statements for the real property described in this instrument should be sent to:  
 NEW CENTURY MORTGAGE CORPORATION  
 18400 VON KARMAN, SUITE 1000  
 IRVINE, CA 92612

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

---

In Re:

**CHAPTER 7 CASE**

Jeffrey D. Reissner  
SSN XXX-XX-6551  
Tracy L. Reissner  
SSN XXX-XX-6716

**CASE NO. 04-34774 DDO**

Debtor.

---

**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 11, 2004, Debtor is delinquent for monthly payments for the months of monthly payments as required for the months of June, 2004 through October, 2004, in the amount of \$1,830.39 each; accruing late charges of 708.93 and attorneys fees and costs of \$700.00.

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

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

Dated this 11th 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 7 CASE

CASE NO. 04-34774 DDO

Jeffrey D. Reissner  
SSN XXX-XX-6551  
Tracy L. Reissner  
SSN XXX-XX-6716

**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. Deutsche Bank National Trust Company, Trustee for the registered holders of Morgan Stanley Dean Witter Capital I Inc. Trust 2003-NC1, Mortgage Pass-Through Certificates, Series 2003-NC1, 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 September 24, 2002, executed by Jeffrey P. Reissner and Tracy L. Reissner, husband and wife as joint tenants, recorded March 11, 2003, as Document No. 2012714. The property is located in Dakota County, Minnesota and is legally described as follows, to-wit:

Lot 15, Block 1, Riverwood 6th Addition.

3. That she has reviewed the account records relating to the Reissner's mortgage loan, account no. 31831399.

4. That as of September 29, 2004, the following amounts were owing on this account:

|                                     |              |
|-------------------------------------|--------------|
| Unpaid Principal:                   | \$206,995.77 |
| Interest through September 21, 2004 | 6,679.27     |
| Attorney's Fees:                    | 700.00       |
| Late Charges:                       | 708.93       |
| Property Inspection Fee:            | 10.50        |
| Title Report Fee:                   | 250.00       |
| Property Valuation Fee - BPO:       | 120.00       |
| Foreclosure Cost:                   | 350.00       |
| Certified Mail Cost:                | 11.34        |
| Suspense Credit (-):                | (385.04)     |
| Escrow Advance:                     | 775.10       |

TOTAL: \$216,215.87

5. That the mortgage loan is delinquent for monthly mortgage payments for the months of June, 2004 through September, 2004 in the amount of \$1,830.39 each.

6. This affidavit is given in support of the motion of Deutsche Bank National Trust Company, Trustee for the registered holders of Morgan Stanley Dean Witter Capital I Inc. Trust 2003-NC1, Mortgage Pass-Through Certificates, Series 2003-NC1 for relief from the automatic stay.

OCWEN FEDERAL BANK, FSB

By

*Tarsha Rucker*  
TARSHA RUCKER  
U.S. Facilitator

Subscribed and sworn to before me  
this \_\_\_ day of September, 2004. \_\_\_ Notary Public

*Heather A. Snider*



Heather A. Snider  
My Commission DD229481  
Expires July 06, 2007

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

Jeffrey D. Reissner  
SSN XXX-XX-6551  
Tracy L. Reissner  
SSN XXX-XX-6716

**CHAPTER 7 CASE**

**CASE NO. 04-34774 DDO**

Debtor.

**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 11, 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:

Jeffrey D. Reissner  
Tracy L. Reissner  
3451 Vista Ct  
Hastings, MN 55033

Nauni Jo Manty  
Rider, Bennett, LLP  
333 South 7<sup>th</sup> St Ste 2000  
Minneapolis, MN 55402

Richard M. Schreiber  
Schreiber Law Office, LLC  
PO Box 2273  
Inver Grove Heights, MN 55076

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

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

Dated this 11th day of October, 2004.

/e/ Joanna Cheyka  
Joanna Cheyka

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

Jeffrey D. Reissner  
SSN XXX-XX-6551  
Tracy L. Reissner  
SSN XXX-XX-6716

**CHAPTER 7 CASE**

**CASE NO. 04-34774 DDO**

Debtor.

**ORDER**

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The above entitled matter came on for hearing upon motion of Deutsche Bank National Trust Company, Trustee for the registered holders of Morgan Stanley Dean Witter Capital 1 Inc. Trust 2003-NC1, Mortgage Pass-Through Certificates, Series 2003-NC1 (hereinafter "Secured Creditor"), pursuant to 11 U.S.C. § 362 on October 25, 2004, at U.S. Courthouse, 316 North Robert Street, 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 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 September 24, 2002, executed by Jeffrey P. Reissner and Tracy L. Reissner, husband and wife as joint tenants, recorded on March 11, 2003, as Document No. 2012714 covering real estate located in Dakota County, Minnesota, legally described as follows, to-wit:

Lot 15, Block 1, Riverwood 6<sup>th</sup> Addition

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