

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Kimberly A. Davis,

Debtor: Chapter 7 Case
Case No. BKY 04-50760-GFK.

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

TO: The Debtor, Debtor's Attorney, Chapter 7 Trustee, United States Trustee, and the other parties in interest specified in Local Rule 9013-3(a).

1. **Minnesota Housing Finance Agency (Movant)**, a secured creditor of the Debtor herein, 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 at 1:30 o'clock p.m., on September 8, 2004, before the Honorable Gregory F. Kishel, in Courtroom 2, 416 U.S. Courthouse, 515 West First Street, Duluth MN 55802, or as soon thereafter as counsel can be heard.

3. Any response to this motion must be filed and delivered not later than September 2, 2004, which is three (3) days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than August 27, 2004, which is seven (7) 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 RELIEF REQUESTED IN THE MOTION WITHOUT A HEARING.

4. This motion is filed pursuant to Bankruptcy Rule 4001 and Local Rule 9013-2 and Movant seeks relief from the automatic stay of 11 U.S.C. §362 with respect to certain real property owned by the Debtor and subject to Movant's first mortgage lien.

5. The Petition commencing this Chapter 7 Case was filed on June 30, 2004, and the case is now pending in this Court. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §157(a), §1334, 11 U.S.C. §362(d), Bankruptcy Rule 5005, Local Rule 1070-1 and other applicable rules. This proceeding is a core proceeding.

6. By certain mortgage dated November 30, 2000, in the original principal amount of \$64,966.00 (**Mortgage**), Movant acquired a first mortgagee's interest in the following real property (**Property**):

Lot 3, Block 78, West Duluth 4th Division, St. Louis County, Minnesota.

The Mortgage was filed for record in the office of the County Recorder, in and for St. Louis County, Minnesota, on December 20, 2000, as document number 804451.

7. The subject property has a market value of \$85,000.00. Furthermore, the subject real estate is encumbered in the amount of \$19,148.00 by other mortgage(s) and/or lien(s). The total amount of debt secured by the subject property is \$83,293.58, including Movant's mortgage. Hence, Debtor has little or no actual equity in the property.

8. Debtor's Four (4) month delinquency under the terms of the Mortgage constitute cause, within the meaning of 11 U.S.C. §362(d)(1), entitling Movant to relief from the automatic stay. Movant does not have, and has not been offered, adequate protection of its interest in the Property.

WHEREFORE, Movant, by its undersigned attorney, moves the Court for an order modifying the automatic stay of 11 U.S.C. §362(a) so as to permit Movant to foreclose its Mortgage on the Property and for such other relief as the Court may deem to be just, fair and equitable.

Dated this 9th day of August, 2004.

PETERSON, FRAM AND BERGMAN

A Professional Association

BY: /e/ Michael T. Oberle
Michael T. Oberle, Atty. Reg. #130126
Attorneys for Movant
Suite 300, 50 East Fifth Street
St. Paul, Minnesota 55101-1197
Telephone: (651) 291-8955

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Kimberly A. Davis,

Debtor: Chapter 7 Case
Case No. BKY 04-50760-GFK.

AFFIDAVIT IN SUPPORT OF
MOTION FOR RELIEF FROM STAY

STATE OF TEXAS)
) ss.
COUNTY OF TRAVIS)

I, LILIANA RAMIREZ, your affiant, being first duly sworn on
oath, state as follows:

1. I am an employee of Guaranty Residential Lending, Inc., the company which
is the duly authorized loan servicer for the subject mortgage which is held by **Minnesota
Housing Finance Agency (Movant)**, and I have personal knowledge of the facts stated herein.

2. I make this Affidavit in support of a motion to lift, modify or condition the
bankruptcy stay.

3. Debtor is the mortgagor on a mortgage dated November 30, 2000 which covers real property located in St. Louis County and legally described as follows:

Lot 3, Block 78, West Duluth 4th Division, St. Louis County, Minnesota,

and which is commonly known as: 306 South 61st Avenue West, Duluth, MN 55807. The mortgage was given to secure a promissory note. Copies of the note and the mortgage are attached hereto as Exhibit A and Exhibit B, respectively, and incorporated herein by this reference. The mortgage was assigned to Movant. A copy of the assignment is attached hereto as Exhibit and incorporated herein by this reference.

4. On or about June 30, 2004, Debtor filed a Petition under Chapter 7 of Title 11 U.S. Code in the United States Bankruptcy Court for the District of Minnesota.

5. Debtor has failed to make Four (4) payments, resulting in an arrearage of \$2,135.32, including late charges. The total mortgage debt is \$64,145.58, which includes accrued interest through August 31, 2004. Thereafter, interest accrues on the unpaid principal balance at \$11.10 per day. Movant has also incurred attorney's fees and costs in the bringing of this motion.

6. Based upon information and belief, the subject property has a market value of \$85,000.00. Furthermore, it is believed that the subject real estate is encumbered in the amount of \$19,148.00 by other mortgage(s) and/or lien(s). The total amount of debt

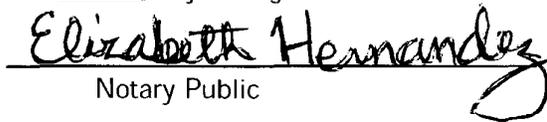
secured by the subject property is \$83,293.58, including Movant's mortgage.

7. I have read the Motion in this matter, and it is true to the best of my knowledge, information and belief.

8. Further, I saith not.


LILLIANA RAMIREZ

Subscribed and sworn to before me
this 05 day of August, 2004.


Notary Public



804451

Office of the County Recorder
St. Louis County, Minnesota

Recorded on 12/20/2000
at 09:53AM

Document No. 00804451

Mark A. Monacelli
County Recorder

By JENNY LEVITT DEPUTY
RFR 47174

Consolidated

APP # 47174

Cash

Chg 2050
1C10

No. 124991 Date DEC 08 2000
Registration Tax of \$ 149.50
Minneapolis Default County Auditor
By M. J. Tomm Deputy
Checked by SJA Cashier



00804451

DO NOT REMOVE

DEC 08 2000

[Space Above This Line For Recording Date]

State of Minnesota

MORTGAGE

FHA Case No.

2718398722703

1361670

MIN

THIS MORTGAGE ("Security Instrument") is given on November 30, 2000
The Mortgagor is
KIMBERLY A DAVIS A SINGLE PERSON

("Borrower"). This Security Instrument is given to Mortgage Electronic Registration Systems, Inc. ("MERS"), (solely as nominee for Lender, as hereinafter defined, and Lender's successors and assigns), as beneficiary. 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.

Temple-Inland Mortgage Corporation
("Lender") is organized and existing under the laws of NEVADA, and
has an address of 1300 South Mopac Expressway
Austin, TX 78746

Borrower owes Lender the principal sum of

SIXTY FOUR THOUSAND NINE HUNDRED SIXTY SIX & 00/100
Dollars (U.S. \$ 64,966.00).
This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on December 1, 2030 and for interest at the yearly rate of 6.500 percent. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph

FHA Minnesota Mortgage with MERS - 496
AMENDED 2/98
Page 1 of 8 006MNAK Initials: LAG
VMP MORTGAGE FORMS - (800)521-7281



804451

1361670

7 to protect the security of this Security Instrument; and (c) 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 St. Louis County, Minnesota:

LOT 3, BLOCK 78, WEST DULUTH 4TH DIVISION, ST. LOUIS COUNTY, MINNESOTA

which has the address of 306 SOUTH 61ST AVENUE WEST (Street)
DULUTH (City), Minnesota 55807 (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 understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument; but, if necessary to comply with law or custom, MERS, (as nominee for Lender and Lender's successors and assigns), has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing or canceling this Security Instrument.

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.

Borrower and Lender covenant and agree as follows:

UNIFORM COVENANTS.

1. Payment of Principal, Interest and Late Charge. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.

2. Monthly Payment of Taxes, Insurance and Other Charges. Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, a sum for (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold payments or ground rents on the Property, and (c) premiums for insurance required under paragraph 4. In any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary"), or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either: (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary, in a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "Escrow Items" and the sums paid to Lender are called "Escrow Funds."

Lender may, at any time, collect and hold amounts for Escrow Items in an aggregate amount not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement Procedures

INWIT: KAR

44-4N(MN) (8910) ORIGINAL

Page 2 of 8

1361670

If the Lender's interest in this Security Instrument is held by the Secretary and the Secretary requires immediate payment in full under Paragraph 9, the Secretary may invoke the nonjudicial power of sale provided in the Single Family Mortgage Foreclosure Act of 1994 ("Act") (12 U.S.C. 3751 et seq.) by requesting a foreclosure commissioner designated under the Act to commence foreclosure and to sell the Property as provided in the Act. Nothing in the preceding sentence shall deprive the Secretary of any rights otherwise available to a Lender under this Paragraph 18 or applicable law.

19. Release. Upon payment of all sums secured by this Security Instrument, Lender shall discharge this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

20. Waiver of Homestead. Borrower waives all right of homestead exemption in the Property.

21. Interest on Advances. The interest rate on advances made by Lender under paragraph 7 shall not exceed the maximum rate allowed by applicable law.

22. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. (Check applicable box(es)).

- Condominium Rider
- Growing Equity Rider
- Other [specify] TAX-EXEMPT FINANCING RIDER
- Planned Unit Development Rider
- Graduated Payment Rider

BY SIGNING BELOW, Borrower accepts and agrees to the terms contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.
Witnesses:

_____ (Seal) _____ (Seal)
 _____ (Seal) _____ (Seal)
 _____ (Seal) _____ (Seal)
 _____ (Seal) _____ (Seal)
 _____ (Seal) _____ (Seal)

Kimberly A. Davis
 KIMBERLY A. DAVIS
 -Borrower

-Borrower
 -Borrower
 -Borrower
 -Borrower
 -Borrower

818479

Office of the County Recorder
St. Louis County, Minnesota
Recorded on 06/07/2001
at 03:26PM
Document No. 00818479

Mark A. Monacelli
County Recorder

By SALLY ABELL DEPUTY
AFR APS70



Prepared by, and
after recording return to:
TEMPLE-INLAND MORTGAGE CORPORATION
P.O. Box 2198
Austin, TX 78768-2198
Attn: Connie S. Jones

Loan No: 1361670
Borrower: DAVIS
306 SOUTH 61ST AVENUE WEST
DULUTH, MN 55807
APP: 104500670
MIN:
MERS VRD: 1-888-679-6377

ASSIGNMENT OF SECURITY INSTRUMENT

For Value Received, the undersigned holder of a Mortgage (herein "Assignor") whose address is
P.O. Box 2026 Flint, Michigan 48501-2026, does hereby
grant, sell, assign, transfer and convey, unto MINNESOTA HOUSING FINANCE AGENCY
(herein "Assignee"), whose address is 400 Sibley, STE 300 St. Paul, MN 55101
a certain Mortgage, dated November 30, 2000, made and executed by
KIMBERLY A DAVIS A SINGLE PERSON

to and in favor of Mortgage Electronic Registration Systems, Inc. solely as nominee for
Temple-Inland Mortgage Corporation
upon the following described property situated St. Louis County, State of MINNESOTA
LOT 3, BLOCK 78, WEST DULUTH 4TH DIVISION, ST. LOUIS COUNTY, MINNESOTA
104500

such Mortgage having been given to secure payment of 64,966.00 which Mortgage is recorded on
12/20/2000 in Book, Volume, or Liber No. N/A, at page N/A (or at
No. 804451) of the Deed Records (or Registrar of Title) of St. Louis County, State of
MINNESOTA, together with the note(s) and obligations therein described, the money due and to become due
thereon with interest, and all rights accrued or to accrue under such Mortgage.

TO HAVE AND TO HOLD the same unto Assignee, its successor and assigns, forever, subject only to the terms
and conditions of the above-described Mortgage.

IN WITNESS WHEREOF, the undersigned Assignor has executed this Assignment of Mortgage on
May 9, 2001 effective January 29, 2001

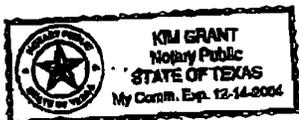


Mortgage Electronic Registration Systems, Inc.
By: *[Signature]*
Kathy J. Razman
Assistant Secretary

State of Texas
County of Travis

The foregoing instrument was acknowledged before me this day, May 9, 2001
by Kathy J. Razman, Assistant Secretary
of Mortgage Electronic Registration Systems, Inc., a Delaware
corporation, on behalf of the corporation.

Temple Inland
APP # 42970
Cont # 9, 50 170



Kim Grant
Notary Public in and for the State of Texas

TS00303(0010)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Kimberly A. Davis,

Debtor: Chapter 7 Case
Case No. BKY 04-50760-GFK.

MEMORANDUM OF LAW

Minnesota Housing Finance Agency (**Movant**) submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Movant holds a valid, duly perfected mortgage on certain real property owned by Debtor. The Debtor is delinquent with respect to payments due under the mortgage for the months of May 2004 through August 2004 in a total amount of \$2,135.32, including late charges. The total mortgage debt is \$64,145.58, which includes accrued interest through August 31, 2004. Thereafter, interest accrues on the unpaid principal balance at \$11.10 per day.

The subject property has a market value of \$85,000.00. Furthermore, the subject real estate is encumbered in the amount of \$19,148.00 by other mortgage(s) and/or lien(s). The total amount of debt secured by the subject property is \$83,293.58, including Movant's mortgage.

ARGUMENT

Under §362(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such [creditor]." 11 U.S.C. §362(d)(1). Debtor has failed to make payments due under the terms of the mortgage for a period of over Four (4) months. Debtor has little or no actual equity in the property; hence, Movant lacks adequate protection in the form of an equity cushion in the property. Furthermore, debtor has otherwise failed to provide Movant with adequate protection of its interest in the property.

Such circumstances constitute cause, within the meaning of §362(d)(1), justifying relief from the stay. In Re Tainan, 48 B.R. 250 (Bkrtcy E.D. Pa. 1985); In Re Quinlan, 12 B.R. 516 (Bkrtcy. W.D. Wis. 1981).

Accordingly, Movant is entitled to an order terminating the stay of 11 U.S.C. §362(a) and authorizing it to foreclose its mortgage on the property.

Dated this 9th day of August, 2004.

PETERSON, FRAM AND BERGMAN
A Professional Association

BY: /e/ Michael T. Oberle
Michael T. Oberle
Atty. Reg. #130126

Attorneys for Movant
Suite 300, 50 East Fifth Street
St. Paul, Minnesota 55101
Telephone: (651) 291-8955

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re: Kimberly A. Davis,

**Debtor: Chapter 7 Case
Case No. BKY 04-50760-GFK.**

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

I, Michael T. Oberle, employed by **PETERSON, FRAM AND BERGMAN, P.A.**, attorneys licensed to practice in this court, with an office at Suite 300, 50 East Fifth Street, St. Paul, MN, 55101, declare that on August 9, 2004 I served the annexed: a) Notice of Hearing and Motion for Relief from Stay, b) Affidavit in Support of Motion for Relief from Stay, c) Memorandum of Law, and d) proposed Order for Relief upon each of the parties listed below by mailing to each of them a copy of each thereof, enclosed in an envelope, first class postage prepaid, and by depositing same in the post office at St. Paul, Minnesota, directed to them at their last known addresses, as follows:

United States Trustee
300 S 4th St # 1015
Minneapolis MN 55415-1329

Citimortgage
P.O. Box 8003
So. Hackensack, NJ 07606-8003

Kimberly A. Davis
306 South 61st Avenue West
Duluth, MN 55807

Robert R. Kanuit
Chapter 7 Trustee
4815 West Arrowhead Road, Suite 230
Hermantown, MN 55811

Peter C. Greenlee, Esq.
P.O. Box 1067
Twig, MN 55791

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

Signed: /e/ Michael T. Oberle

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Kimberly A. Davis,

Debtor: Chapter 7 Case
Case No. BKY 04-50760-GFK.

ORDER FOR RELIEF FROM AUTOMATIC STAY

The above-entitled matter came before the Court on September 8, 2004, on the motion of Minnesota Housing Finance Agency (**Movant**) seeking relief from the automatic stay of 11 U.S.C. §362(a). Based upon the statements of counsel and all of the files, records and proceedings herein, the Court now finds that cause exists entitling Movant to the requested relief.

NOW, THEREFORE, IT IS HEREBY ORDERED that the automatic stay of 11 U.S.C. §362(a) is immediately terminated as to Movant; and, Movant, its successors or assigns, are hereby authorized to foreclose pursuant to Minnesota law that certain Mortgage dated November 30, 2000, filed for record in the office of the County Recorder in and for St. Louis County, Minnesota, on December 20, 2000, and recorded as Document No. 804451 and covering real property located in St. Louis County, Minnesota, which is legally described as follows:

Lot 3, Block 78, West Duluth 4th Division, St. Louis County, Minnesota.

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

Dated this ____ day of _____, 2004.

Gregory F. Kishel
United States Bankruptcy Judge