

# **Lien Stripping**

## Consumer Litigation Toolbox

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## Relevant Code Sections

### ***§ 506. Determination of secured status***

**(a)**

(1) An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

(2) If the debtor is an individual in a case under chapter 7 or 13, such value with respect to personal property securing an allowed claim shall be determined based on the replacement value of such property as of the date of the filing of the petition without deduction for costs of sale or marketing. With respect to property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined.

**(b)** To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement or State statute under which such claim arose.

**(c)** The trustee may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim, including the payment of all ad valorem property taxes with respect to the property.

**(d)** To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void, unless—

(1) such claim was disallowed only under section 502 (b)(5) or 502 (e) of this title; or

(2) such claim is not an allowed secured claim due only to the failure of any entity to file a proof of such claim under section 501 of this title.

### ***§ 1322. Contents of plan***

**(a)** The plan shall—

(1) provide for the submission of all or such portion of future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan;

(2) provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507 of this title, unless the holder of a particular claim agrees to a different treatment of such claim;

(3) if the plan classifies claims, provide the same treatment for each claim within a particular class; and

(4) notwithstanding any other provision of this section, a plan may provide for less than full payment of all amounts owed for a claim entitled to priority under section 507 (a)(1)(B) only if the plan provides that all of the debtor's projected disposable income for a 5-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.

**(b)** Subject to subsections (a) and (c) of this section, the plan may—

(1) designate a class or classes of unsecured claims, as provided in section 1122 of this title, but may not discriminate unfairly against any class so designated; however, such plan may treat claims for a consumer debt of the debtor if an individual is liable on such consumer debt with the debtor differently than other unsecured claims;

(2) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims;

(3) provide for the curing or waiving of any default;

(4) provide for payments on any unsecured claim to be made concurrently with payments on any secured claim or any other unsecured claim;

- (5) notwithstanding paragraph (2) of this subsection, provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due;
- (6) provide for the payment of all or any part of any claim allowed under section 1305 of this title;
- (7) subject to section 365 of this title, provide for the assumption, rejection, or assignment of any executory contract or unexpired lease of the debtor not previously rejected under such section;
- (8) provide for the payment of all or part of a claim against the debtor from property of the estate or property of the debtor;
- (9) provide for the vesting of property of the estate, on confirmation of the plan or at a later time, in the debtor or in any other entity;
- (10) provide for the payment of interest accruing after the date of the filing of the petition on unsecured claims that are nondischargeable under section 1328 (a), except that such interest may be paid only to the extent that the debtor has disposable income available to pay such interest after making provision for full payment of all allowed claims; and
- (11) include any other appropriate provision not inconsistent with this title.
- (c) Notwithstanding subsection (b)(2) and applicable nonbankruptcy law—
- (1) a default with respect to, or that gave rise to, a lien on the debtor’s principal residence may be cured under paragraph (3) or (5) of subsection (b) until such residence is sold at a foreclosure sale that is conducted in accordance with applicable nonbankruptcy law; and
- (2) in a case in which the last payment on the original payment schedule for a claim secured only by a security interest in real property that is the debtor’s principal residence is due before the date on which the final payment under the plan is due, the plan may provide for the payment of the claim as modified pursuant to section 1325 (a)(5) of this title.
- (d)
- (1) If the current monthly income of the debtor and the debtor’s spouse combined, when multiplied by 12, is not less than—
- (A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;
- (B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or
- (C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus \$525 per month for each individual in excess of 4,
- the plan may not provide for payments over a period that is longer than 5 years.
- (2) If the current monthly income of the debtor and the debtor’s spouse combined, when multiplied by 12, is less than—
- (A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;
- (B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or
- (C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus \$525 per month for each individual in excess of 4,
- the plan may not provide for payments over a period that is longer than 3 years, unless the court, for cause, approves a longer period, but the court may not approve a period that is longer than 5 years.
- (e) Notwithstanding subsection (b)(2) of this section and sections 506 (b) and 1325 (a)(5) of this title, if it is proposed in a plan to cure a default, the amount necessary to cure the default, shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law.
- (f) A plan may not materially alter the terms of a loan described in section 362 (b)(19) and any amounts required to repay such loan shall not constitute “disposable income” under section 1325.

**§ 1325. Confirmation of plan**

- (a) Except as provided in subsection (b), the court shall confirm a plan if—
- (1) The plan complies with the provisions of this chapter and with the other applicable provisions of this title;
  - (2) any fee, charge, or amount required under chapter 123 of title 28, or by the plan, to be paid before confirmation, has been paid;
  - (3) the plan has been proposed in good faith and not by any means forbidden by law;
  - (4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date;
  - (5) with respect to each allowed secured claim provided for by the plan—
    - (A) the holder of such claim has accepted the plan;
    - (B)
      - (i) the plan provides that—
        - (I) the holder of such claim retain the lien securing such claim until the earlier of—
          - (aa) the payment of the underlying debt determined under nonbankruptcy law; or
          - (bb) discharge under section 1328; and
        - (II) if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law;
      - (ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; and
      - (iii) if—
        - (I) property to be distributed pursuant to this subsection is in the form of periodic payments, such payments shall be in equal monthly amounts; and
        - (II) the holder of the claim is secured by personal property, the amount of such payments shall not be less than an amount sufficient to provide to the holder of such claim adequate protection during the period of the plan; or
    - (C) the debtor surrenders the property securing such claim to such holder;
  - (6) the debtor will be able to make all payments under the plan and to comply with the plan;
  - (7) the action of the debtor in filing the petition was in good faith;
  - (8) the debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if the debtor is required by a judicial or administrative order, or by statute, to pay such domestic support obligation; and
  - (9) the debtor has filed all applicable Federal, State, and local tax returns as required by section 1308. For purposes of paragraph (5), section 506 shall not apply to a claim described in that paragraph if the creditor has a purchase money security interest securing the debt that is the subject of the claim, the debt was incurred within the 910-day preceding the date of the filing of the petition, and the collateral for that debt consists of a motor vehicle (as defined in section 30102 of title 49) acquired for the personal use of the debtor, or if collateral for that debt consists of any other thing of value, if the debt was incurred during the 1-year period preceding that filing.
- (b)
- (1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan—
    - (A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or
    - (B) the plan provides that all of the debtor’s projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.
  - (2) For purposes of this subsection, the term “disposable income” means current monthly income received by the debtor (other than child support payments, foster care payments, or disability payments for a dependent child made in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child) less amounts reasonably necessary to be expended—

- (A)

  - (i) for the maintenance or support of the debtor or a dependent of the debtor, or for a domestic support obligation, that first becomes payable after the date the petition is filed; and
  - (ii) for charitable contributions (that meet the definition of “charitable contribution” under section 548 (d)(3) <sup>11</sup> to a qualified religious or charitable entity or organization (as defined in section 548 (d)(4)) in an amount not to exceed 15 percent of gross income of the debtor for the year in which the contributions are made; and
  - (B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business.
- (3) Amounts reasonably necessary to be expended under paragraph (2), other than subparagraph (A)(ii) of paragraph (2), shall be determined in accordance with subparagraphs (A) and (B) of section 707 (b)(2), if the debtor has current monthly income, when multiplied by 12, greater than—

  - (A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;
  - (B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or
  - (C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus \$525 per month for each individual in excess of 4.
- (4) For purposes of this subsection, the “applicable commitment period”—

  - (A) subject to subparagraph (B), shall be—

    - (i) 3 years; or
    - (ii) not less than 5 years, if the current monthly income of the debtor and the debtor’s spouse combined, when multiplied by 12, is not less than—

      - (I) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;
      - (II) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or
      - (III) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus \$525 per month for each individual in excess of 4; and
  - (B) may be less than 3 or 5 years, whichever is applicable under subparagraph (A), but only if the plan provides for payment in full of all allowed unsecured claims over a shorter period.
- (c) After confirmation of a plan, the court may order any entity from whom the debtor receives income to pay all or any part of such income to the trustee.

## Cases of Interest

**Nobleman v. American Savings Bank**, 508 U.S. 324, 113 S. Ct. 2106, 124 L. Ed. 2d 228 (1993). The protection of Section 1322(b)(2) prevents the use of 11 U.S.C. § 506(a) to "strip down" the lien of a mortgage to the value of the mortgaged real estate when the creditor's claim is secured only by a lien on the debtor's principal residence. The holding in Nobleman is what courts must distinguish in allowing the stripping of wholly unsecured second and third mortgages in Chapter 13 cases – and until that issue gets to the U.S. Supreme Court, there is still some uncertainty around allowing mortgage strips.

**Dewsnup v. Timm**, 502 U.S. 410, 112 S. Ct. 773, 116 L. Ed. 2d 903 (1992). A Chapter 7 debtor's suit to "strip down" creditors' lien on the debtor's real property to equal the property's fair market value and declare the remainder void was dismissed because the creditors' claim had been "allowed" and was "secured."

**In re Talbert**, 344 F.3d 555, 556 (6<sup>th</sup> Cir. 2003). "A Chapter 7 debtor may not use §506 to "strip off" an allowed junior lien where the senior lien exceeds the fair market value of the real property in question."

**In re Pond**, 252 F.3d 122 (2d Cir. 2001). Chapter 13 debtors brought adversary proceeding to avoid second mortgage on residence. Circuit held that Chapter 13 antimodification exception did not protect junior mortgage lien against avoidance.

**In re Robert**, 313 B.R. 545 (Bankr. NDNY 2004). Bankruptcy court held that Chapter 13 debtors could proceed by motion rather than adversary proceeding to "strip off" wholly unsecured residential junior mortgage lien.

**In re Lavo**, 460 F.3d 289 (2d Cir. 2006). Circuit Court held that Chapter 13 confirmation order was *res judicata* as to post-confirmation attempt to avoid confirmed, recorded lien.

**In re Bennett**, 312 B.R. 843 (Bankr. W.D. Ky. 2004). Adversary proceeding not required for Chapter 13 debtors to "strip off" lien.

**In re Monas**, 309 B.R. 302 (Bankr. N.D. Ohio 2004). Prior default judgment had preclusive effect on unsecured nature of first mortgagor's claim where second mortgagor had obtained a default judgment in state court foreclosure sale prior to bankruptcy.

**In re Hill**, 304 B.R. 800 (Bankr. S.D. Ohio 2004). Chapter 13 debtors could avoid wholly unsecured junior mortgage without adversary proceeding.

**In re Jones**, 305 B.R. 276 (Bankr. S.D. Ohio 2004). Avoidable but unavoided liens cannot be included in exemption impairment calculation. For §522(f), you take the unavoidable liens and the debtor's exemption, to determine if the judgment lien impairs the exemption and can be avoided.

**In re Sbriglio**, 306 B.R. 445 (Bankr. D. Conn. 2004). Debtors could not avoid lien on property not included in bankruptcy estate.

**In re Sutton**, 302 B.R. 568 (Bankr. N.D. Ohio 2003). Judgment lien could not be avoided where it came ahead of IRS tax lien, where notice of tax lien was not filed by IRS until after judgment lien,

and there was sufficient equity for judgment lien, in that position, not to impair the debtor's exemption.

**In re Samala**, 295 B.R. 380 (Bankr. D.N.M. 2003). Chapter 13 debtors could "strip off" wholly unsecured junior mortgage liens.

**In re Bennett**, 312 B.R. 843 (Bankr. W.D. Ky. 2004). Adversary proceeding is not required for Chapter 13 Debtors to "strip-off" lien.

**In re Day**, 292 B.R. 109 (Bankr. N.D. Tex. 2003). Lien release must await completion of debtor's payments under Chapter 13 plan where creditor objected to requirement that lien be released upon payment of secured portion of claim.

**In re Tanner**, 217 F.3d 1357 (11th Cir.2000); **In re Dickerson**, 222 F.3d 924 (11th Cir. 2000); **In re Bartee**, 212 F.3d 277 (5th Cir. 2000); **In re McDonald**, 205 F.3d 606 (3d Cir. 2000); **In re Pond**, 252 F.3d 122 (2nd Cir.2001); **In re Lane**, 280 F.3d 663 (6th Cir. 2002); **In re Zimmer**, 313 F.3d 1220 (9th Cir. 2003); **In re Mann**, 249 B.R. 831, 835-37 (1st Cir. BAP 2000)(cited with approval in dicta in by **In re LaFata**, 483 F.3d 13 (1st Cir. 2007)); **Johnson v. Asset Management Group, LLC**, 226 B.R. 364 (D. Md. 1998). (All holding that wholly unsecured mortgages (or deeds of trust) can be stripped off in Chapter 13, and treated as unsecured claims.

## **PREPARATION STEPS FOR TRIAL**

1. Review the relevant statutes associated with the case.
2. Ensure an understanding of the Federal Rules of Evidence, especially those involving Hearsay.
3. Know the local court rules and procedures for trial(s) of the particular judge or jurisdiction.
4. Interview and prep your client and the witnesses.
5. Set up your Trial Notebook. Set up pleadings, opening statements, and argument sections.
6. Set up witness sections for each witness.
7. Set up exhibit sections.
8. Pre-mark exhibits and make up an Exhibit List as you progress.
9. Prepare a tentative order of proof as you go.
10. Design your Witness list and outlines.
11. Issue subpoenas if needed.
12. Interview witnesses and arrange for their assistance.
13. Turn over discovery materials.
14. Prepare trial brief if needed or required.
15. Prepare Joint Preliminary Statement if needed or required.
16. Prepare an Opening Statement.

*CAVEAT:* For trial work, preparation is essential. Organization is the key.

### Preparing the Evidence

Ascertain at least the following information:

1. When was the property purchased;
2. How much was paid for it when it was purchased;
3. Have there been any improvements made to the property;
4. Have there been any problems discovered with the property;
5. Have there been any changes in the neighborhood since the property was purchased;
6. What is the historical sale data for the property;
7. Were there any appraisals performed when the property was purchased or since;
8. Have similar properties sold recently in the area;
9. What does the client believe they could actually realize from a sale.

Preparation of the appraiser's testimony is the most crucial step in a mortgage lien avoidance trial. Debtor's counsel must not only become familiar with their own appraiser's report but that of the opponent as well.



Building the trial notebook for the appraiser's testimony requires the following at a minimum:

1. Gaining a working knowledge of the appraiser's educational requirements;
2. Reviewing licensing standards;
3. Familiarizing yourself with the appraiser's personal history:
  - a. How many appraisals have they performed?
  - b. Have they ever testified in Court?
  - c. What are some typical clients for whom the appraiser works?
  - d. How long has the appraiser been a certified appraiser;
4. Understanding appraisal procedures;
5. Familiarizing oneself with the different appraisal methods and understanding why one is employed over another;
6. Analyzing the comparable sales, if those are used;
7. Understanding the appraisal report itself and the numbers used;
8. Discussing the final value with the appraiser and determining a range for the value obtained;
9. Conferring together with the client and the appraiser. I believe that this step is vital.

Everyone needs to be on the same page if a successful conclusion is to be achieved.

The evidence should include the following items:

1. Recorded copy of the deed and mortgages;
2. Evidence of balances due to all lienholders, including taxes and superior liens;
3. Photographs of the subject property taken by either the testifying appraiser or the homeowner;
4. Auditor's valuation;
5. Sales history if relevant to establishing value;
6. Copies of any paid receipts for work performed on the property;
7. Copy of the appraiser's certification;
8. Copy of the appraisal.

## **A MOCK DIRECT EXAMINATION**

For purposes of developing these questions, certain assumptions and suppositions were made. They are illustrative only. Of course, the actual questions parties will ask will depend upon the actual facts of each case.

### ***PLAINTIFF/DEBTOR WITNESS 1: DEBTOR HIMSELF***

1. State your name.
2. Address.
3. Occupation.
4. Are you the Debtor in Bankruptcy Case number \_\_-\_\_\_\_?
5. When was the case filed?
6. At the time the case was filed, did you own a parcel of real estate at 1234 Paradise Alley in Heaven, Nebraska?
7. Do you still own that property?
8. When did you acquire it?
9. How much did you pay for it?
10. Are there any other owners?
11. State that person's name and address?
12. Is that your spouse?
13. And is she also a debtor in this proceeding?
14. Describe the property for the Bankruptcy Court? Is it a home or a commercial building? How large is the lot?
15. How large is the house?
16. What style is the house?
17. When was it built?
18. How many bedrooms? Bathrooms?
19. Are there any special features? Fireplace? Pool? Sauna? Wine Cellar? Wood floors throughout? Special view?

***Caveat:*** Be certain to develop all of the favorable aspects of the home in the Direct Examination because the other side in the Cross Examination will surely explore them.

20. Any special problems with regard to the location? Is it next to the airport, interstate, or railroad? Is it near a stockyard or industrial area?
21. What condition is the property in? Start with the yard. Any problems or concerns with the yard that affects its value?
22. How does the yard compare with the other homes in the neighborhood?
23. Please describe the house. What is its condition?
24. When was the home last remodeled?

25. How old is the carpet? What condition is it in? Does it need replacement?
26. How old is the paint or siding on the exterior walls? What condition is it in? Does it need replacement?
27. How old is the paint or wallpaper on the interior walls? What condition is it in?
28. Does it need replacement?
29. How old is the heating and air conditioning equipment? What condition is it in?
30. Does it need replacement?
31. How old are the appliances? What condition are they in? Do they need replacement?
32. How old is the plumbing? What condition is it in? Does it need replacement?
33. How old is the electrical system? What condition is it in? Does it need replacement?
34. How old is the roof? What condition is it in? Does it need replacement?
35. How old are the gutters? What condition are they in? Do they need replacement?
36. Tell me about any problems with the house. Does the roof leak?
37. Does the basement have water problems?
38. Is there mold in the house?
39. Ask any more questions about problems, etc.
40. This was was filed on \_\_\_\_\_, 20\_\_\_. At that time, you listed the value of the house at \$\_\_\_\_\_, \_\_\_\_\_. Has the condition of the house changed since that time? If so, how has it changed?
41. Do you feel the value you listed for the property on Schedule A was a fair and accurate estimate of its value at that time?
42. Do you think the value has gone up or down since that time?

### ***Foundation for Photos of House***

1. I show you now what is marked for purposes of identification as Plaintiff's Exhibit # \_\_ (photo of the front of the house). Please identify what this is.
2. I show you now what is marked for purposes of identification as Plaintiff's Exhibit # \_\_ (photo of the side of the house). Please identify what this is.
3. I show you now what is marked for purposes of identification as Plaintiff's Exhibit # \_\_ (photo of the back of the house). Please identify what this is.
4. I show you now what is marked for purposes of identification as Plaintiff's Exhibit # \_\_ (photo of the special feature of the house). Please identify what this is.
5. I show you now what is marked for purposes of identification as Plaintiff's Exhibit # \_\_ (photo of the interior room of the house). Please identify what this is.
6. I show you now what is marked for purposes of identification as Plaintiff's Exhibit # \_\_ (photo of the another interior room of the house). Please identify

what this is.

7. I show you now what is marked for purposes of identification as Plaintiff's Exhibit # \_\_ (photo of the special interior feature of the house). Please identify what this is.
8. I show you now what is marked for purposes of identification as Plaintiff's Exhibit # \_\_ (photo of the another special interior feature of the house). Please identify what this is.

***Caveat:*** Be certain to repeat this as necessary to expand on earlier testimony.

9. Who took these photographs?
10. When were they taken?
11. Do each of these photos, Exhibits \_\_ through \_\_ fairly and accurately show the property in the actual condition it was in at the time the photographs were taken?
12. Did the condition of the property change between the date this case was filed and the date these photographs were taken?
13. So is it your testimony that these photographs fairly and accurately reflect the condition of the property at the time the case was filed?

#### OFFER THE PHOTOGRAPHS INTO EVIDENCE

1. You mentioned earlier that you felt the property could be sole for \$\_\_\_\_,\_\_\_\_.
2. How did you reach that conclusion?
3. How long have you lived in your present neighborhood?
4. During the time you have lived there, have other houses in the neighborhood sold?
5. Have you followed what these homes sold for?
6. How did you do that?
7. When was the last time a house similar to yours sold in your neighborhood?
8. What was the asking price?
9. What did it actually sell for?
10. How did the size and condition of that home compare to yours?
11. So would you consider your home more or less valuable than that home?
12. Why?
13. You mentioned that your home needed certain repairs. Have you ever obtained estimates or bids with regard to the needed repairs?
14. I am handing you now for purposes of identification Plaintiff's Exhibit # \_\_ (bid for repair of gutters, etc.). Please identify for the Court what this is.
15. When did you talk to that contractor?
16. What did he tell you he would charge for that work?

[OTHER SIDE WILL OBJECT TO THE QUESTION ON THE BASIS THAT IT IS "HEARSAY."]

RESPONSE:

"Your Honor, I am not offering this out-of-court statement to prove the cost of repairing the home. I am inquiring at this time into the Witness's opinion of the value of his home and how he arrived at that opinion. I will be offering this Exhibit, if at all, to show that the Witness's opinion of value is the product of thought and reason, and not simply a number of speculation or imagination."

16. I am handing you for purposes of identification Plaintiff's Exhibit # \_\_. (bid for repair of plumbing, etc.) Please identify for the Court what this is.
17. When did you talk to that contractor?
18. What did he tell you he would charge for that work?
19. Repeat as necessary for each problem.
20. Have you ever spoken with a realtor about your house?
21. Did you get his or her opinion of value?
22. What did he think it might sell it for?
23. Did he say why?
24. You testified earlier that you think your house was worth \$\_\_\_\_,\_\_\_\_\_ at the time the case was filed, is that correct?
25. And that opinion is based upon your familiarity with the sales prices of other similar houses in the neighborhood as well as the cost of placing your house in condition to sell for top dollar, is that correct?
26. Have your ever obtained a professional appraisal of your home?
27. From whom?
28. When?
29. I am handing you for purposes of identification Plaintiff's Exhibit # \_\_. (appraisal report) Please identify for the Court what this is.

PLAINTIFF/DEBTOR'S WITNESS #2: CO DEBTOR SPOUSE

PLAINTIFF/DEBTOR'S WITNESS #3: NEIGHBOR OF DEBTORS

1. Name.
2. Address.
3. Occupation.
4. You live near the Plaintiff, correct?
5. Are you familiar with his property?
6. Have you been inside his home?
7. Did you hear his testimony here today?
8. Do you consider it accurate?
9. I am handing you for purposes of identification Plaintiff's Exhibit # \_\_ through \_\_. (photographs of the debtors' home) In your estimation, do these fairly and accurately portray the home as it existed on the date they were

taken?

10. Please compare your home with the Plaintiff's home in terms of style, size, and present state of repair.
11. Since you have no special expertise with regard to appraising or selling real estate, I will not ask you what you think the Plaintiff's home is worth.
12. However, I can ask you about your house. What do you think you could sell your home for?
13. What is the basis of your opinion? (basis for his opinion – recent sales, discussion with realtor, has it been listed with a pending offer, etc.)

***PLAINTIFF/DEBTOR'S WITNESS #4: APPRAISER***

1. Name.
2. Address.
3. Occupation.
4. Have you inspected the house in question and prepared a report of its condition and value.
5. I am handing you for purposes of identification Plaintiff's Exhibit # \_\_\_. (appraisal report) Is this that report?
6. Before I ask you your opinion about the value of this house, we need to discuss your background. Where are you from?
7. Where did you go to high school?
8. What formal training or schooling do you have after high school?
9. What did that job (those jobs) involve?
10. Is there special training to become a licensed appraiser?
11. Describe that training.
12. Did you successfully complete that training?
13. When?
14. Are you in fact licensed as an appraiser?
15. By whom or by what organization or agency?
16. What is the procedure for obtaining that license? For example, is there a test or internship?
17. How long have you been an appraiser?
18. How many homes have you appraised?
19. Have you ever testified at a trial like this one before?
20. How many times?
21. Did you have occasion to visit and inspect the Plaintiff's property at 1234 Paradise Alley in Heaven, Nebraska?
22. When?
23. Describe the nature and extent of your inspection. Just what did you do while you were on the premises?
24. Would you describe the property at the time you saw it?
25. Style, size, condition?
26. Did you arrive at an opinion of its value?
27. How does one in your occupation go about arriving at an opinion of the value of a piece of property? Describe the process and the methods involved.
28. Did you go through that process here?

29. What comparable properties did you select for this house?
30. Why?
31. Did you physically inspect these houses?
32. Where did you get information about the sales prices?
33. How do persons involved in the real estate industry, such as real estate brokers, agents, and appraisers, generally rely upon that information?
34. Does the property need any repairs at this time?
35. What repairs are necessary?
36. Have you been able to estimate a cost of repair?
37. How did you arrive at that estimate?
38. What is that cost?
39. So after your inspection of the premises, after your assessment of its condition and the need for repair, and your review of sales data for comparable properties in the area, did you arrive at an opinion of the value of the debtor's home?
40. What is that opinion?
41. Did you prepare a report with regard to your inspection and review of area sales data?
42. Does the report contain your work product including notes of your findings?
43. Does it contain photographs taken by you of the property?
44. Do those photographs fairly and accurately show the condition of the home at the time of your inspection?
45. You earlier identified Plaintiff's Exhibit #\_\_ as a copy of your report, is that correct?
46. Your Honor, I offer Exhibit # \_\_ into evidence.

THE PLAINTIFF/DEBTOR RESTS.

### ***CROSS EXAMINATION OF ADVERSE PARTY AND EXPERT WITNESS***

The questions to ask during cross-examination will depend entirely upon what problems that have been identified in advance of the trial or that were developed during the direct examination.

An attorney who represents the creditor may wish to emphasize the length of time that expired between the filing of the case and the taking of the photographs and the visit of the appraiser. It is extremely important that the Plaintiff get an inspection at or about the time the case is filed. It would be even better if the inspection were done just before the case is filed, if possible, so that the appraisal value matches the value on Schedule A.

The debtor will also want to touch on any positive attributes about the house that were not mentioned in the direct examination, like the fact that Elvis used to own the house or that George Washington once slept here. Otherwise, focus will be on the appraiser.

A cross examination of the other party's expert will probably depend entirely upon the problems that were identified in advance of the trial from review of the expert's

report and examination of his or her qualifications and methods at the deposition. Each case will be different, and no script can be prepared without knowledge of the points to be made. At the very least, counsel will want to highlight the things the opposing expert did differently than his or her expert. This becomes the basis for which counsel's witness to discuss in the most respectful manner possible why the opposing expert's approach is flawed and produced the wrong conclusion.



### Acknowledgments

Sincere thanks to the following for permission to reprint:

**The NACTT Academy for Consumer Bankruptcy Education** - for use of articles from its website as follows: “A Variety of Views on Wholly Unsecured Mortgages” – Contributors Kathleen Laughlin, Chapter 13 Trustee, Omaha, Nebraska; John Cannizzaro, Esq., counsel for debtors, Columbus Ohio; and Lance Olson, counsel for creditors, Bellevue, Washington. [www.ConsiderChapter13.org](http://www.ConsiderChapter13.org)

**Tara Gaschler, Esq.** – portions repinted from her outline “Stripping Second Mortgages”. Tara Gaschler is the founder and managing attorney of The Gaschler Law Firm LLC. She graduated from the University of Colorado School of Law. Before law school, Mrs. Gaschler attended Colorado State University, graduating with a degree in History. She also attended London School of Economics as a Hansard Scholar while interning in the United Kingdom’s House of Commons. Mrs. Gaschler’s practice focuses on Chapter 7 and 13 bankruptcy and consumer law, including fair credit reporting and fair debt collection cases. She is a 2008 and 2009 graduate of Max Gardner’s Bankruptcy Boot Camp, the premier educational experience for attorneys challenging mortgage servicers and lenders. In 2007, she attended Fair Credit Reporting Act Boot Camp with FCRA expert, Lisa Wright.

**David Wm. Ruskin, C. Jason Cardasis and John Kapitan** – portions reprinted from their Powerpoint Presentation “Chapter 13 – Avoidance of Mortgages that Encumber a Principal Residence”.

**John Gustafson**, Standing Chapter 13 Trustee, Northern District of Ohio, Western Division – portions of his outline, “Stripping Secured Claims in Bankruptcy”.

## APPENDIX

1. Sample Motion
2. Appraisal
3. Sample Adversary Proceeding
4. Zillow valuation
5. Cyberhomes valuation
6. Valuation approaches for appraisals

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

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IN RE:

KEVIN GREENWOOD

Chapter 13  
Case No. 09-13289

Debtor.

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**NOTICE OF MOTION FOR AN ORDER DEEMING MORTGAGE LIEN AS AN  
UNSECURED CLAIM PURSUANT TO 11 U.S.C. §506 AND §1322**

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TO:

GMAC Mortgage, LLC  
3451 Hammond Ave.  
Waterloo, IA 50702

GMAC d/b/a Ditech.com  
3200 Part Centre Drive  
No. 150  
Costa Mesa, CA 92626

GMAC d/b/a Ditech.com  
P.O. Box 205  
Waterloo, IA 50704-0205

GMAC d/b/a Ditech.com  
c/o Steven J. Baum, PC  
220 Northpointe Parkway  
Suite G  
Amherst, NY 14228  
Attention: Randa R. Simmons, Esq.

PLEASE TAKE NOTICE, that Kevin Greenwood (the "Debtor"), by and through his attorneys, O'Connor, O'Connor, Bresee & First, P.C. (Michael J. O'Connor, Esq.), the undersigned moves this Court for a hearing to be held on December 17, 2009 at 9:00 a.m. in the forenoon, or as soon thereafter as counsel may be heard, in Room 306 of the James T. Foley U.S. Courthouse, 445 Broadway, Albany, New York, for an Order reclassifying and deeming the

Second Mortgage lien of GMAC d/b/a Ditech.com as a wholly unsecured claim pursuant to 11 U.S.C. §506 and 11 U.S.C. §1322.

PLEASE TAKE FURTHER NOTICE, that your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one. If you do not have an attorney, you may wish to consult one.

PLEASE TAKE FURTHER NOTICE, that the hearing described herein may be adjourned from time to time without further notice to creditors or parties in interest other than the announcement of the adjourned date at the time of the hearing.

PLEASE TAKE FURTHER NOTICE, that if you do not want the Court to grant the requested relief, or if you want the Court to consider your view on the Motion, then on or before three (3) business days prior to the return date of this Motion, you or your attorney must file a written response to the Motion, explaining your position, with the Clerk of the U.S. Bankruptcy Court for the Northern District of New York located in the James T. Foley U.S. Courthouse, 445 Broadway, Room 327, Albany, New York. If you mail your response to the Court for filing, you must mail it early enough so that the Court will receive it on or before the date stated above.

PLEASE TAKE FURTHER NOTICE, that you must also mail a copy of your written response to counsel for the Debtor, Michael J. O'Connor, Esq., O'Connor, O'Connor, Bresee & First, P.C., 20 Corporate Woods Boulevard, Fourth Floor, Albany, New York 12211, the Chapter 13 Trustee, Andrea E. Celli, Esq., 7 Southwoods Boulevard, 1<sup>st</sup> Floor, Albany, New York, and Office of the United States Trustee, 74 Chapel Street, Albany, New York 12207.

PLEASE TAKE FURTHER NOTICE, that if you or your attorney do not take steps, the Court may decide that you do not oppose the Motion and may enter an order granting the requested relief.

DATED: November 12, 2009

O'CONNOR, O'CONNOR,  
BRESEE & FIRST, P.C.

By: /s/ Michael J. O'Connor  
Michael J. O'Connor, Esq.  
Attorneys for the Debtor  
20 Corporate Woods Boulevard  
Albany, NY 12211  
(518) 465-0400

ALSO TO:

Andrea E. Celli, Esq.  
Chapter 13 Trustee  
7 Southwoods Blvd  
1st Floor  
Albany, NY 12211  
(Via ECF)

United States Trustee  
74 Chapel Street  
Albany, NY 12207  
(Via ECF)

Kevin Greenwood  
437 Third Avenue  
Watervliet, NY 12189

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

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IN RE:

KEVIN GREENWOOD

Chapter 13  
Case No. 09-13289

Debtor.

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**MOTION FOR AN ORDER DEEMING MORTGAGE LIEN AS AN UNSECURED  
CLAIM PURSUANT TO 11 U.S.C. §506 AND §1322**

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Kevin Greenwood (the "Debtor"), by and through his attorneys, O'Connor, O'Connor, Bresee & First, P.C. (Michael J. O'Connor, Esq.), respectfully represents the following in support of her Motion for an Order reclassifying and deeming the Second Mortgage lien of GMAC d/b/a Ditech.com as a wholly unsecured claim Pursuant to 11 U.S.C. §506 and 11 U.S.C. §1322 (the "Motion"):

1. The Debtor filed a voluntary petition for relief pursuant to Chapter of the United States Bankruptcy Code (the "Code") on August 31, 2009 (the "Petition").
2. The Debtor owns real property located at 437 3<sup>rd</sup> Avenue, Watervliet, NY (the "Property").
3. Attached as Exhibit A, is the appraisal of the above real property which shows the current market value to be \$100,000.00.
4. GMAC d/b/a Ditech.com holds a first mortgage on the Property with a balance approximating \$102,594.21, attached as Exhibit B (the "First Mortgage").
5. GMAC d/b/a Ditech.com holds a second mortgage on the Property with a balance approximating \$12,475.17 attached as Exhibit C (the "Second Mortgage").
7. In accordance with 11 U.S.C. §506(a), the value of the Property is such that the Second Mortgage is wholly unsecured.

8. Under the plain language of 11 U.S.C. §1322(b)(2), the Second Mortgage is not an allowed secured claim and, thus, its claim is unprotected by 11 U.S.C. §1322(b)(2) and is subject to cram down. See, In Re Lam, 211 B.R. 36 (9<sup>th</sup> Cir. BAP 1997), In Re McDonald, 205 F3d 606 (3d Cir. 2000), In Re Bartee, 212 F3d 377 (5<sup>th</sup> Cir. 2000) and In Re Pond, 252 F3d 122 (2nd Cir. 2001).

9. In accordance with 11 U.S.C. §506(a), the Second Mortgage held by GMAC d/b/a Ditech.com is not secured but is a wholly unsecured mortgage.

10. Based upon the valuation of the Property and in accordance with 11 U.S.C. §506(a), the junior lien held by the GMAC d/b/a Ditech.com is unsupported by any value in the Property after satisfaction of the First Mortgage.

11. The Debtor seeks confirmation of her Chapter 13 Plan which provides that, upon completion of the Plan, which provides that the Second Mortgage be treated as an unsecured claim, the Second Mortgage lien shall be deemed satisfied and a Satisfaction of Mortgage shall be filed by GMAC d/b/a Ditech.com.

12. As additional relief pursuant to 11 U.S.C. §1322(b)(2) and the Pond cases, the Debtor seeks an order of this Court directing GMAC d/b/a Ditech.com to deliver to counsel for the Debtor an original signed satisfaction of mortgage which counsel for the Debtor shall hold pending completion of the Debtor's Chapter 13 Plan.. Upon issuance of the Debtor's Chapter 13 discharge counsel for the Debtor shall either file the satisfaction of mortgage in the country clerk's office or send the original to the Debtor for the Debtor to file same.

WHEREFORE, it is respectfully requested that this Court issue an Order (1) reclassifying and deeming the Second Mortgage lien of GMAC d/b/a Ditech.com as an wholly unsecured claim pursuant to 11 U.S.C. §506(a); (2) granting such other relief as this Court deems just and proper.

DATED: November 12, 2009

O'CONNOR, O'CONNOR,  
BRESEE & FIRST, PC

By: /s/ Michael J. O'Connor  
Michael J. O'Connor, Esq.  
Attorneys for the Debtor  
20 Corporate Woods Boulevard  
Albany, NY 12211  
Telephone (518) 465-0400



UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

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IN RE:

KEVIN GREENWOOD

Chapter 13  
Case No. 09-13289

Debtor.

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**AFFIDAVIT OF SERVICE**

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Andrea Simmons, being duly sworn, deposes and says that deponent is over the age of 18 years of age and that on the 13th day of November, 2009, deponent served a copy of the Notice of Motion and Motion for an Order reclassifying and deeming the Second Mortgage lien as a wholly unsecured claim Pursuant to 11 U.S.C. §506 and 11 U.S.C. §1322 upon the following persons at the following addresses:

GMAC Mortgage, LLC  
3451 Hammond Ave.  
Waterloo, IA 50702

GMAC d/b/a Ditech.com  
3200 Part Centre Drive  
No. 150  
Costa Mesa, CA 92626

GMAC d/b/a Ditech.com  
P.O. Box 205  
Waterloo, IA 50704-0205

GMAC d/b/a Ditech.com  
c/o Steven J. Baum, PC  
220 Northpointe Parkway  
Suite G  
Amherst, NY 14228  
Attention: Randa R. Simmons, Esq.

Kevin Greenwood  
437 Third Avenue  
Watervliet, NY 12189

Andrea E. Celli, Esq.  
Chapter 13 Trustee  
7 Southwoods Blvd  
1st Floor  
Albany, NY 12211  
(Via ECF)

United States Trustee  
74 Chapel Street  
Albany, NY 12207  
(Via ECF)

by depositing a true and correct copy enclosed in a postpaid properly addressed wrapper in a post office depository under the exclusive care and custody of the United States Post Office Department within the State of New York.

/s/ Andrea Simmons  
Andrea Simmons

Sworn to before me this 13th  
day of November, 2009

/s/ Margaret R. Fiocco

Margaret R. Fiocco  
Notary Public, State of New York  
Qualified in Albany County  
No. 01F14637703  
Commission Expires April 30, 2010

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

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IN RE:

KEVIN GREENWOOD

Chapter 13  
Case No. 09-13289

Debtor.

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**ORDER**

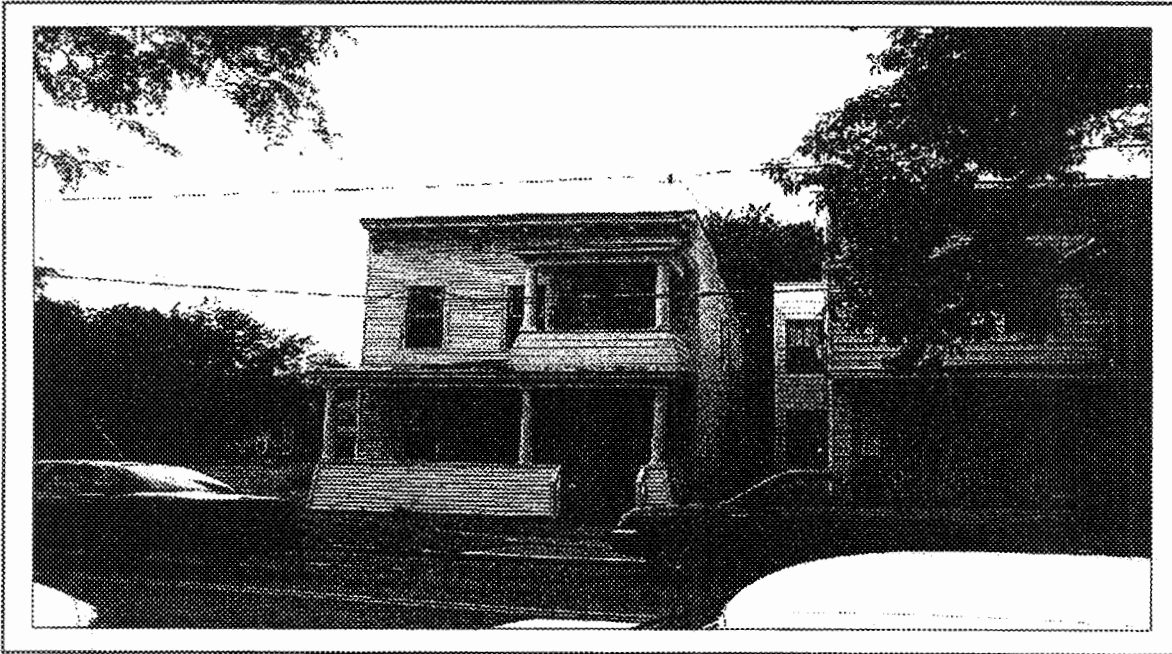
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Upon the Notice of Motion and Motion for an Order reclassifying and deeming the Second Mortgage lien of GMAC d/b/a Ditech.com as a wholly unsecured claim pursuant to 11 U.S.C. §506 and 11 U.S.C. §1322.(the "Motion") filed on behalf of Kevin Greenwood (the "Debtor"), by and through his attorneys, O'Connor, O'Connor, Bresee & First, PC (Michael J. O'Connor, Esq.), deeming the second mortgage of GMAC d/b/a Ditech.com, in the amount of 12,475.17 ,as a wholly unsecured creditor pursuant to 11 U.S.C. §506(a)and §1322; and a hearing on the Motion having been held on December 17, 2009, and no written opposition having been filed, and no appearances having been made, and the Court having considered the merits of the Motion, and due deliberation having been held, it is hereby

ORDERED, reclassifying and deeming the Second Mortgage lien of GMAC d/b/a Ditech.com, as a wholly unsecured claim in the amount of \$12,475.17.

###

Exhibit "A"



**SUMMARY APPRAISAL REPORT  
OF THE REAL PROPERTY LOCATED AT  
437 Third Avenue  
Watervliet, NY 12189**

for

**Kevin Greenwood  
437 Third Avenue  
Watervliet, NY  
12189**

as of

**08/20/2009**

by

**Brandon C. Spagnola  
212 Delaware Avenue  
Delmar, NY, 12054**

**Soulis & Associates, LLC**

Soulis & Associates, LLC  
212 Delaware Avenue  
Delmar, NY, 12054  
518-439-3622

---

August 25, 2009

*Kevin Greenwood  
437 Third Avenue  
Watervliet, NY  
12189*

*Property Address 437 Third Avenue  
Watervliet, NY 12189  
Borrower N/A  
File Number 291443  
Loan Number*

Dear :

In accordance with your request, I have prepared an appraisal of the real property located at 437 Third Avenue, Watervliet, NY.

The purpose of the appraisal is to provide an opinion of the market value of the property described in the body of this report.

Enclosed, please find the Summary Report which describes certain data gathered during our investigation of the property. The methods of approach and reasoning in the valuation of the various physical and economic factors of the subject property are contained in this report.

An inspection of the property and a study of pertinent factors, including valuation trends and an analysis of neighborhood data, led the appraiser to the conclusion that the market value, as of 08/20/2009 is :

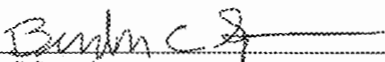
**\$100,000**

The opinion of value expressed in this report is contingent upon the Limiting Conditions attached to this report.

It has been a pleasure to assist you. If I may be of further service to you in the future, please let me know.

Respectfully submitted,

Soulis & Associates, LLC

  
\_\_\_\_\_  
Brandon C. Spagnola  
NY License #47000049363



**Small Residential Income Property Appraisal Report**

File # 291443

The purpose of this summary appraisal report is to provide the lender/client with an accurate, and adequately supported, opinion of the market value of the subject property.

Property Address: 437 Third Avenue, City: Watervliet, State: NY, Zip Code: 12189  
 Borrower: N/A, Owner of Public Record: Greenwood, Kevin, County: Albany  
 Legal Description: As per deed, SMSA: 10580  
 Assessor's Parcel #: SBI # 44 50-2-15, Tax Year: 2009, R. E. Taxes: \$ 2,600.00  
 Neighborhood Name: Third Avenue, Map Reference: 97 EB 104, Census Tract: 0134.00  
 Occupant:  Owner,  Tenant,  Vacant, Special Assessments: S/N/A, PUD:  HOA: S/N/A, per year:  per month:   
 Property Rights Appraised:  Fee Simple,  Leasehold,  Other (describe):  
 Assignment Type:  Purchase Transaction,  Refinance Transaction,  Other (describe): Appraisal for Fair Market Value  
 Lender/Client: Kevin Greenwood, Address: 437 Third Avenue, Watervliet, NY 12189  
 Is the subject property currently offered for sale or has it been offered for sale in the twelve months prior to the effective date of the appraisal?  Yes  No  
 Report date source(s) used, offering price(s), and date(s): As per MLS data and conversation with the property owner, the subject property has not been listed for sale within the past year.  
 I  did  did not analyze the contract for sale for the subject purchase transaction. Explain the results of the analysis of the contract for sale or why the analysis was not performed. Currently, the subject property is not under contract for sale.  
 Contract Price: N/A, Date of Contract: N/A, Is the property seller the owner of public record?  Yes  No, Data Source(s) Assessor  
 Is there any financial assistance (loan charges, sale concessions, gift or downpayment assistance, etc.) to be paid by any party on behalf of the borrower?  Yes  No  
 If Yes, report the total dollar amount and describe the items to be paid: N/A

Note: Race and the racial composition of the neighborhood are not appraisal factors.

Neighborhood	Characteristics	2-4 Unit Housing Trends			2-4 Unit Housing			Percent Land Use %	
		Property Values	Demand/Supply	Marketing Time	PRICE (\$ (000))	AGE (yrs)	2-4 Unit	Other	
Location	<input type="checkbox"/> Urban <input checked="" type="checkbox"/> Suburban <input type="checkbox"/> Rural	<input type="checkbox"/> Increasing <input checked="" type="checkbox"/> Stable <input type="checkbox"/> Declining	<input type="checkbox"/> Shortage <input checked="" type="checkbox"/> In Balance <input type="checkbox"/> Over Supply	<input type="checkbox"/> Under 3 mths <input checked="" type="checkbox"/> 3-6 mths <input type="checkbox"/> Over 6 mths	15	Low	New	Multi-Family	10 %
Built-Up	<input checked="" type="checkbox"/> Over 75% <input type="checkbox"/> 25-75% <input type="checkbox"/> Under 25%							Commercial	20 %
Growth	<input type="checkbox"/> Rapid <input checked="" type="checkbox"/> Stable <input type="checkbox"/> Slow							Other	5 %

Neighborhood Boundaries: to the north by NYS Route 7, to the south by the village of Menands, to the east by the Hudson River and to the west by Lincoln Avenue.  
 Neighborhood Description: The subject neighborhood is more immediately located in the city of Watervliet south of the Watervliet Arsenal. Municipal services include police force, fire department and the Watervliet central school district. The commercial land use noted consists primarily of small retail services and small office buildings which have no adverse impact on residential properties. The other land use noted consists primarily of industrial, manufacturing and institutional buildings.  
 Market Conditions (including support for the above conclusions): After several years of record sales activity and price appreciation, market values peaked in late 2006/early 2007 in the subject neighborhood. Market values in 2008, for most types of housing inventory, were anywhere from 4% - 20% lower from the price peak of late 2006/early 2007. Currently in 2009 property values are stable and demand/supply is in balance.

Dimensions: 33F x 82.7L x 32R x 90RS, Area: 0.07 +/- Acre, Shape: Irregular, View: Average  
 Specific Zoning Classification: R-3 Residential District, Zoning Description: Single & Two Family Residences, 0.09 Acre Minimum Lot Size  
 Zoning Compliance:  Legal,  Legal Nonconforming (Grandfathered Use),  No Zoning,  Illegal (describe):  
 Is the highest and best use of the subject property as improved (or as proposed per plans and specifications) the present use?  Yes  No if No, describe:  
 Utilities: Public Other (describe): Public Other (describe): Off-site Improvements--Type: Public Private  
 Electricity:  Water:  Street: Asphalt   
 Gas:  Sanitary Sewer:  Alley: None  
 FEMA Special Flood Hazard Area:  Yes  No, FEMA Flood Zone: Zone B, FEMA Map # 3600160001B, FEMA Map Date: 1/2/80  
 Are the utilities and off-site improvements typical for the market area?  Yes  No if No, describe:  
 Are there any adverse site conditions or external factors (assessments, encroachments, environmental conditions, land uses, etc.)?  Yes  No if Yes, describe:  
 No adverse easements or encroachments apparent. No driveway and average landscaping. \*\*\* See Additional Comments \*\*\*

General Description	Foundation	Exterior Description	materials/condition	Interior	materials/condition
Units: <input checked="" type="checkbox"/> Two <input type="checkbox"/> Three <input type="checkbox"/> Four Accessory Unit (describe below):	<input type="checkbox"/> Concrete Slab <input type="checkbox"/> Crawl Space <input checked="" type="checkbox"/> Full Basement <input type="checkbox"/> Partial Basement	Foundation Walls: Brick/Average Exterior Walls: Vinyl/Alum/Avg	Floors: Wd Vin/Carp/Avg Walls: Plaster/DW/Avg Yrwn/Finsh: Wood/Paint/Avg		
# of Stories: Two, # of Bldgs: One Type: <input checked="" type="checkbox"/> Det <input type="checkbox"/> Att <input type="checkbox"/> S-Det/End Unit	Basement Area: 1,143 sq. ft. Basement Finish: 0%	Roof Surface: Flat/Unobservable Gutters & Downspouts: None	Bath Floor: Vinyl/Average Bath Wainscot: Fiberglass/Avg		
<input checked="" type="checkbox"/> Existing <input type="checkbox"/> Proposed <input type="checkbox"/> Under Const. Design (Style): Up and Down	Outside Entry/Exit: <input type="checkbox"/> Sump Pump Evidence of: <input type="checkbox"/> Infestation	Window Type: Dble Hung/Avg Storm Sash/Insulated: Dbl Ins/Average	Car Storage		
Year Built: 1976 Effective Age (Yrs): 30 Years	<input checked="" type="checkbox"/> Dampness <input type="checkbox"/> Settlement	Screens: Inserts/Average	<input checked="" type="checkbox"/> None Driveway: # of Cars		
Attic: <input type="checkbox"/> None	FVA: <input checked="" type="checkbox"/> HVVBB <input type="checkbox"/> Radiant	Fireplace(s) #: <input type="checkbox"/> WoodStove(s) #:	Driveway Surface		
Drop Stair: <input type="checkbox"/> Stairs	Other Space: Fuel Gas	Patio/Deck: <input checked="" type="checkbox"/> Fence	Garage: # of Cars		
Floor: <input checked="" type="checkbox"/> Scuffite	Central Air Conditioning	Pool: <input checked="" type="checkbox"/> Porch	Carport: # of Cars		
Finish: <input type="checkbox"/> Heated	Individual: <input type="checkbox"/> Other	Other: <input type="checkbox"/>	Att: <input type="checkbox"/> Det: <input type="checkbox"/> Built-in		
# of Appliances: Refrigerator P2, Range/Oven P2, Dishwasher, Disposal P, Microwave P, Washer/Dryer, Other (describe):					
Unit # 1 contains: 6 Rooms, 3 Bedroom(s), 1 Bath(s), 1,143 Square Feet of Gross Living Area					
Unit # 2 contains: 5 Rooms, 3 Bedroom(s), 1 Bath(s), 1,143 Square Feet of Gross Living Area					
Unit # 3 contains: Rooms, Bedroom(s), Bath(s), Square Feet of Gross Living Area					
Unit # 4 contains: Rooms, Bedroom(s), Bath(s), Square Feet of Gross Living Area					

Additional features (special energy efficient items, etc.): (2) - 100 amp electrical service (circuit breakers), (1) Gas hot water baseboard heating system (unit #1) and a gas space heating system which is common and typical in the market place (unit #2) and (2) - 40 gallon gas water heater. Two covered front porches. Two rear enclosed porches. Chain link fenced yard.  
 Describe the condition of the property (including needed repairs, deterioration, renovations, remodeling, etc.): Average quality construction of a two story, up and down style, two unit dwelling in average condition. Floor plan is adequate. Unit #1 (level one) consists of a living room, den, kitchen, three bedrooms and bath with 1,143 square feet of living area. Unit #2 (level two) consists of a living room, kitchen, three bedrooms and bath with 1,143 square feet of living area. \*\*\* See Additional Comments \*\*\*



# Summary Appraisal Report

## Small Residential Income Property Appraisal Report

File # 291443

Are there any physical deficiencies or adverse conditions that affect the livability, soundness, or structural integrity of the property?  Yes  No If Yes, describe

No adverse conditions (functional obsolescence) apparent. Close proximity to an above average traffic pattern along Third Avenue creates external obsolescence.

Does the property generally conform to the neighborhood (functional utility, style, condition, use, construction, etc.)?  Yes  No If No, describe

The subject property conforms to the neighborhood.

Is the property subject to rent control?  Yes  No If Yes, describe Rent control does not exist in the subject market area.

The following properties represent the most current, similar, and proximate comparable rental properties to the subject property. This analysis is intended to support the opinion of the market rent for this subject property.

FEATURE	SUBJECT	COMPARABLE RENTAL # 1			COMPARABLE RENTAL # 2			COMPARABLE RENTAL # 3				
Address	437 Third Avenue Watervliet, City of Watervliet	806 Sixth Street Watervliet, Town of Colonie			1813 Third Avenue Watervliet, City of Watervliet			524 Third Avenue Watervliet, City of Watervliet				
Proximity to Subject		0.25 Mile Northwest			Same Street 1.25 Miles North			Same Street 0.01 Mile North				
Current Monthly Rent	\$ 500	\$ 1,120			\$ 1,200			\$ 1,500				
Rent/Gross Bldg. Area	\$ 0.22 sq. ft.	\$ 0.72 sq. ft.			\$ 0.55 sq. ft.			\$ 0.62 sq. ft.				
Rent Control	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
Date Source(s)	Inspection	MLS, Assessor			MLS, Assessor			MLS, Assessor				
Date of Lease(s)	Month to Month	Month to Month			Month to Month			Leased, Month to Month				
Location	Average	Superior			Average			Average				
Actual Age	103 +/- Years	76 +/- Years			99 +/- Years			132 +/- Years				
Condition	Average	Superior			Average			Average				
Gross Building Area	2,286	1,545			2,200			2,415				
Unit Breakdown	Room Count	Size Sq. Ft.		Monthly Rent	Room Count	Size Sq. Ft.		Monthly Rent	Room Count	Size Sq. Ft.		Monthly Rent
	Tot Br Ba				Tot Br Ba				Tot Br Ba			
Unit # 1	6 3 1	1,143	924	\$ 575	6 2 1	1,100	\$ 600	6 3 1	1,209	\$ 750		
Unit # 2	5 3 1	1,143	621	\$ 545	7 3 1	1,100	\$ 600	6 3 1	1,209	\$ 750		
Unit # 3				\$			\$			\$		
Unit # 4				\$			\$			\$		
Utilities Included	Water, Sewer, Trash	Water, Sewer, Trash			Water, Sewer, Trash			Water, Sewer, Trash				
Garage	None	2 Car Detached			None			None				
Other Amenities	Porches, Fenced Yd	Porches			Porches, Fenced Yd			Covered Porch				

Analysis of rental data and support for estimated market rents for the individual subject units reported below (including the adequacy of the comparables, rental concessions etc.) All three comparable rentals are similar to the subject property in market appeal and investment appeal and are located in the same rental market area. The adequacy of the comparable rentals and analysis of rental data is rated highly towards the estimated monthly market rent of the subject property.

**Rent Schedule:** The appraiser must reconcile the applicable indicated monthly market rents to provide an opinion of the market rent for each unit in the subject property.

Unit #	Leases		Actual Rent			Opinion Of Market Rent				
	Lease Date		Per Unit		Total Rent	Per Unit		Total Rent		
	Begin Date	End Date	Unfurnished	Furnished		Unfurnished	Furnished			
1	Owner	Occupied	\$ 0	\$ N/A	\$ 0	\$ 600	\$ N/A	\$ 600		
2	Family Members	Occupied	500	N/A	500	600	N/A	600		
3										
4										
Comment on lease data: Lease information was obtained from the owner.			Total Actual Monthly Rent		\$ 500	Total Gross Monthly Rent		\$ 1,200		
			Other Monthly Income (Items)		\$ 0	Other Monthly Income (Items)		\$ 0		
			Total Actual Monthly Income		\$ 500	Total Estimated Monthly Income		\$ 1,200		
Utilities included in estimated rents			Electric <input checked="" type="checkbox"/>	Water <input checked="" type="checkbox"/>	Sewer <input type="checkbox"/>	Gas <input type="checkbox"/>	Oil <input type="checkbox"/>	Cable <input checked="" type="checkbox"/>	Trash collection <input type="checkbox"/>	Other (describe)

Comments on actual or estimated rents and other monthly income (including personal property) The estimated market rents have been obtained from the current lease structure of the subject property (if available) and/or analysis of the rental data from the comparable rentals.

I did not research the sale or transfer history of the subject property and comparable sales. If not, explain The three year sale history of the subject property and the one year sale history of the comparable sales are noted below.

My research  did  did not reveal any prior sales or transfers of the subject property for the three years prior to the effective date of this appraisal.

Data Source(s) Assessor, MLS

My research  did  did not reveal any prior sales or transfers of the comparable sales for the year prior to the date of sale of the comparable sales.

Data Source(s) Assessor, MLS

Report the results of the research and analysis of the prior sale history of the subject property and comparable sales (report additional prior sales on page 4).

ITEM	SUBJECT	COMPARABLE SALE # 1	COMPARABLE SALE # 2	COMPARABLE SALE # 3
Date of Prior Sale/Transfer	No sale/transfer within last three years	No sale/transfer within last one year	No sale/transfer within last one year	No sale/transfer within last one year
Price of Prior Sale/Transfer				
Data Source(s)	Assessor, MLS	Assessor, MLS	Assessor, MLS	Assessor, MLS
Effective Date of Data Source(s)	12/5/08	12/5/08	12/5/08	12/5/08

Analysis of prior sale history for the subject property and comparable sales There has been no sale/transfer of the subject property within the last three years. There has been no sale/transfer of the comparable sales within the last one year.

**Small Residential Income Property Appraisal Report**

File # 291443

**BORROWER/CLIENT**  
 Borrower or Owner: N/A  
 Property Address: 437 Third Avenue  
 City: Watervliet County: Albany State: NY Zip Code: 12189  
 Lender or Client: Kevin Greenwood

FEATURE	SUBJECT	COMPARABLE SALE # 4	COMPARABLE SALE # 5	COMPARABLE SALE # 6
Address	437 Third Avenue Watervliet, City of Watervliet	439 Third Avenue Watervliet, City of Watervliet		
Proximity to Subject		Same Street, Adjacent Parcel		
Sale Price	\$ N/A	\$ 99,000	\$	\$
Sale Price/Gross Bldg. Area	\$ sq. ft.	\$ 41.95 sq. ft.	\$ sq. ft.	\$ sq. ft.
Gross Monthly Rent	\$ 1,200	\$ 1,200	\$	\$
Gross Rent Multiplier	N/A	83		
Price Per Unit	\$ N/A	\$ 49,500	\$	\$
Price Per Room	\$ N/A	\$ 9,000	\$	\$
Price Per Bedroom	\$ N/A	\$ 16,500	\$	\$
Rent Control	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Data Source(s)		Exterior Inspect., MLS, Assessor		
Verification Source(s)		List Brok., DOM 15, LP \$101,500		
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION + (-) Adjustment	DESCRIPTION + (-) Adjustment	DESCRIPTION + (-) Adjustment
Sale vs. Financing Concessions		None/Conventional		
Date of Sale/Time		MLS # 28120355		
Location	Average	Average		
Leasehold/Fee Simple	Fee Simple	Fee Simple		
Site	0.07 +/- Acre	0.07 +/- Acre		
View	Average	Average		
Design (Style)	U&D/2 Units	U&D/2 Units		
Quality of Construction	Average	Average		
Actual Age	103 +/- Years	97 +/- Years		
Condition	Average	Average		
Gross Building Area	2,286	2,360		
Unit Breakdown	Total Bedrooms Baths	Total Bedrooms Baths	Total Bedrooms Baths	Total Bedrooms Baths
Unit # 1	6 3 1	6 3 1		
Unit # 2	5 3 1	5 3 1		
Unit # 3				
Unit # 4				
Basement Description	100% Basement	100% Basement		
Basement Finished Rooms	None	5 Bath	-500	
Functional Utility	Average	Average		
Heating/Cooling	GHW Space/None	GHW Space/None		
Energy Efficient Items	None	None		
Parking On/Off Site	None	None		
Porch/Patio/Deck	Porches	Covered Porches	+3,000	
Other Amenities	Fenced Yard	None	+500	
Other Amenities	None	None		
Other Amenities	None	None		
Net Adjustment (Total)		<input checked="" type="checkbox"/> + <input type="checkbox"/> - \$ 3,000	<input type="checkbox"/> + <input type="checkbox"/> - \$	<input type="checkbox"/> + <input type="checkbox"/> - \$
Adjusted Sale Price of Comparables		Net Adj. 3.0% Gross Adj. 4.0% \$ 102,000	Net Adj. % Gross Adj. % \$	Net Adj. % Gross Adj. % \$
Adj. Price Per Unit (Adj. SP Comp / # of Comp Units)		\$ 51,000	\$	\$
Adj. Price Per Room (Adj. SP Comp / # of Comp Rooms)		\$ 9,273	\$	\$
Adj. Price Per Bedroom (Adj. SP Comp / # of Comp Bedrooms)		\$ 17,000	\$	\$

**SALERS**  
**COMPARISON**

Summary of Sales Comparison Approach

ITEM	SUBJECT	COMPARABLE SALE # 4	COMPARABLE SALE # 5	COMPARABLE SALE # 6
Date of Prior Sale/Transfer	No sale/transfer within	No sale/transfer within		
Price of Prior Sale/Transfer	last three years	last one year		
Data Source(s)	Assessor, MLS	Assessor, MLS		
Effective Date of Data Source(s)	12/5/08	12/5/08		

Analysis of prior sale history for the subject property and comparable sales: There has been no sale/transfer of the subject property within the last three years. There has been no sale/transfer of comparable sale #4 within the last one year.

# Small Residential Income Property Appraisal Report

File # 291443

There are 20 comparable properties currently offered for sale in the subject neighborhood ranging in price from \$74,900 to \$159,900  
 There are 29 comparable sales in the subject neighborhood within the past twelve months ranging in sale price from \$65,900 to \$166,000

FEATURE	SUBJECT	COMPARABLE SALE # 1	COMPARABLE SALE # 2	COMPARABLE SALE # 3			
Address	437 Third Avenue Watervliet, City of Watervliet	1027 Twenty Third Street Watervliet, City of Watervliet	1611 Fifth Avenue Watervliet, City of Watervliet	1337 Sixth Avenue Watervliet, City of Watervliet			
Proximity to Subject		1.50 Miles Northwest	1.0 Mile North	0.90 Mile Northwest			
Sale Price	\$ N/A	\$ 120,000	\$ 106,000	\$ 100,000			
Sale Price/Gross Bldg. Area	\$ sq. ft. N/A	\$ 55.02 sq. ft.	\$ 46.82 sq. ft.	\$ 36.23 sq. ft.			
Gross Monthly Rent	\$ 1,200	\$ 1,200	\$ 1,100	\$ 1,200			
Gross Rent Multiplier	N/A	100	96	83			
Price Per Unit	\$ N/A	\$ 60,000	\$ 53,000	\$ 50,000			
Price Per Room	\$ N/A	\$ 10,909	\$ 9,636	\$ 7,692			
Price Per Bedroom	\$ N/A	\$ 30,000	\$ 21,200	\$ 15,667			
Rent Control	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
Data Source(s)		Exterior Inspect. MLS Assessor	Exterior Inspect. MLS Assessor	Exterior Inspect. MLS Assessor			
Verification Source(s)		List Brok. DOM 53, LP \$139,900	List Brok. DOM 471, LP \$106,000	List Brok. DOM 6, LP \$119,000			
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	+ (-) Adjustment	DESCRIPTION	+ (-) Adjustment	DESCRIPTION	+ (-) Adjustment
Sale or Financing Concessions		None/Conventional		Seller Concession	-6,000	None/Conventional	
		MLS # 29105068		MLS # 28103503		MLS # 29107035	
Date of Sale/Time		6/29/09 (SD)		8/3/09 (SD)		6/12/09 (SD)	
Location	Average	Superior	-2,000	Superior	-2,000	Superior	-2,000
Leasehold/Fee Simple	Fee Simple	Fee Simple		Fee Simple		Fee Simple	
Site	0.07 +/- Acre	0.17 +/- Acre	-1,000	0.08 +/- Acre		0.07 +/- Acre	
View	Average	Average		Average		Average	
Design (Style)	U&D/2 Units	U&D/2 Units		U&D/2 Units		U&D/2 Units	
Quality of Construction	Average	Average		Average		Average	
Actual Age	103 +/- Years	149 +/- Years		129 +/- Years		134 +/- Years	
Condition	Average	Superior	-10,000	Average		Average	
Gross Building Area	2,286	2,181	+525	2,264		2,760	-2,370
Unit Breakdown	Total Bedrooms Baths	Total Bedrooms Baths		Total Bedrooms Baths		Total Bedrooms Baths	
Unit # 1	6 3 1	5 2 1		6 3 1		7 3 1	
Unit # 2	5 3 1	6 2 1		5 2 1		6 3 1	
Unit # 3							
Unit # 4							
Basement Description	100% Basement	Partial Basement	+1,000	100% Basement		Partial Basement	+1,000
Basement Finished Rooms	None	None		None		None	
Functional Utility	Average	Average		Average		Average	
Heating/Cooling	GHW/Space/None	GHW/None		GHW/None		GHW/None	
Energy Efficient Items	None	None		None		None	
Parking On/Off Site	None	None		None		None	
Porch/Patio/Deck	Porch	Covered Porches	+3,000	Porch		Covered Porch	+4,000
Other Amenities	Fenced Yard	None	+500	None	+500	Fireplace	-500
Other Amenities	None	None		None		None	
Other Amenities	None	None		None		None	
Net Adjustment (Total)			\$ -7,975		\$ -7,500		\$ 130
Adjusted Sale Price of Comparables		Net Adj. 6.6% Gross Adj. 15.0%	\$ 112,025	Net Adj. 7.1% Gross Adj. 8.0%	\$ 98,500	Net Adj. 0.1% Gross Adj. 9.9%	\$ 100,130
Adj. Price Per Unit (Adj. SP Comp / # of Comp Units)		\$ 56,013		\$ 49,250		\$ 50,065	
Adj. Price Per Room (Adj. SP Comp / # of Comp Rooms)		\$ 10,184		\$ 8,955		\$ 7,702	
Adj. Price Per Bedroom (Adj. SP Comp / # of Comp Bedrooms)		\$ 28,006		\$ 19,700		\$ 16,688	
Value Per Unit	\$ 50,000 X 2	Units = \$ 100,000		Value Per GBA \$ 45 X 2,286	GBA = \$ 102,870		
Value Per Rm.	\$ 9,500 X 11	Rooms = \$ 104,500		Value Per Bdrms. \$ 17,000 X 6	Bdrms. = \$ 102,000		

Summary of Sales Comparison Approach including reconciliation of the above indicators of value. All four comparable sales are two unit dwellings similar to the subject property in utility and appeal and are located within the subject neighborhood boundaries. Equal consideration has been given to all four comparable sales towards the indicated value. The location adjustment for comparable sale #1, #2 and #3 reflects the subject's close proximity to an above average traffic pattern. Comparable sale #4 is exposed to the same external influence, thus, no location adjustment. The condition adjustment to comparable sale #1 reflects its higher level of updating and maintenance. In order to obtain reasonable alternative housing choices for the subject property, it was necessary to expand the comparable sale search beyond one mile and over six months.

Indicated Value by Sales Comparison Approach \$100,000  
 Total gross monthly rent \$1,200 X gross rent multiplier (GRM) 90 = \$108,000 Indicated Value by the Income Approach

Comments on income approach including reconciliation of the GRM. The GRM (Gross Rent Multiplier) was derived from numerous sales of similar multi-family properties located in the subject rental market area and is supported by the comparable sales.

Indicated Value by: Sales Comparison Approach \$100,000 Income Approach \$108,000 Cost Approach (if developed) \$2,000  
 The final estimate of value is supported by the Sales Comparison Approach and the Income Approach with greater emphasis placed on the Sales Comparison Approach. The cost approach was not used as it is not considered to be a reliable indicator of value due to the age of the subject property.

This appraisal is made  "as is",  subject to completion per plans and specifications on the basis of a hypothetical condition that the improvements have been completed,  subject to the following repairs or alterations on the basis of a hypothetical condition that the repairs or alterations have been completed, or  subject to the following required inspection based on the extraordinary assumption that the condition or deficiency does not require alteration or repair:

Based on a complete visual inspection of the interior and exterior areas of the subject property, defined scope of work, statement of assumptions and limiting conditions, and appraiser's certification, my (our) opinion of the market value, as defined, of the real property that is the subject of this report is \$ 100,000 as of 08/20/2009, which is the date of inspection and the effective date of this appraisal.

Small Residential Income Property Appraisal Report

File # 291443

The majority of the photos taken by the appraiser of the MLS data comparables (closed sales, pending sales, active listings) that have been selected for use in the appraisal report are actual office stock photos of each comparable taken at the time of their listing date. Photos taken at this time best reflect their physical appearance, condition and amenities of each property when the listing price and subsequent purchase price have been established and are considered better representations than photos taken after their closing date. Photos of comparables taken after their closing date may not be accurate in their physical appearance, condition or amenities compared to the time that they were listed for sale. For example, materials and amenities may have been added or deleted such as exterior siding, windows, roof, garages, decks, porches, landscaping, etc. or partial or total renovation may now be taking place or in extreme circumstances, the dwelling may have been removed from the site. As per Fannie Mae/Freddie Mac guidelines all comparables used in the appraisal report have been observed from the exterior by the appraiser. Any comparables used in the appraisal report that are selected from assessor data records only (private sales) are photos taken subsequent to their closing dates and may not be 100% accurate as far as their physical appearance, condition and amenities are concerned at the time when the purchase price was established.

ADDITIONAL COMMENTS

COST APPROACH TO VALUE (not required by Fannie Mae)

Provide adequate information for the lender/client to replicate the below cost figures and calculations.

Support for the opinion of site value (summary of comparable land sales or other methods for estimating site value) The cost approach is not considered a good indicator of value due to the age of the subject property.

COST APPROACH TO VALUE

ESTIMATED	REPRODUCTION OR	REPLACEMENT COST NEW	OPINION OF SITE VALUE	= \$
Source of cost data			Dwelling	Sq. Ft. @ \$ = \$
Quality rating from cost service	Effective date of cost data			Sq. Ft. @ \$ = \$
Comments on Cost Approach (gross living area calculations, depreciation, etc.)			Garage/Carport	Sq. Ft. @ \$ = \$
			Total Estimate of Cost-New	= \$
			Less Physical	Functional
			Depreciation	= \$( )
			Depreciated Cost of Improvements	= \$
			"As-Is" Value of Site Improvements	= \$
Estimated Remaining Economic Life (HUD and VA only) 40 Years			Indicated Value By Cost Approach	= \$

PROJECT INFORMATION FOR PUDs (if applicable)

Is the developer/builder in control of the Homeowners' Association (HOA)?  Yes  No Unit type(s)  Detached  Attached

Provide the following information for PUDs ONLY if the developer/builder is in control of the HOA and the subject property is an attached dwelling unit.

Legal name of project \_\_\_\_\_

Total number of phases \_\_\_\_\_ Total number of units \_\_\_\_\_ Total number of units sold \_\_\_\_\_

Total number of units rented \_\_\_\_\_ Total number of units for sale \_\_\_\_\_ Data Source(s) \_\_\_\_\_

Was the project created by the conversion of existing building(s) into a PUD?  Yes  No If Yes, date of conversion \_\_\_\_\_

Does the project contain any multi-dwelling units?  Yes  No Data Source(s) \_\_\_\_\_

Are the units, common elements, and recreation facilities complete?  Yes  No If No, describe the status of completion. \_\_\_\_\_

Are the common elements leased to or by the Homeowners' Association?  Yes  No If Yes, describe the rental terms and options. \_\_\_\_\_

Describe common elements and recreational facilities \_\_\_\_\_

This report form is designed to report an appraisal of a two- to four-unit property, including a two- to four-unit property in a planned unit development (PUD). A two- to four-unit property located in either a condominium or cooperative project requires the appraiser to inspect the project and complete the project information section of the Individual Condominium Unit Appraisal Report or the Individual Cooperative Interest Appraisal Report and attach it as an addendum to this report.

This appraisal report is subject to the following scope of work, intended use, intended user, definition of market value, statement of assumptions and limiting conditions, and certifications. Modifications, additions, or deletions to the intended use, intended user, definition of market value, or assumptions and limiting conditions are not permitted. The appraiser may expand the scope of work to include any additional research or analysis necessary based on the complexity of this appraisal assignment. Modifications or deletions to the certifications are also not permitted. However, additional certifications that do not constitute material alterations to this appraisal report, such as those required by law or those related to the appraiser's continuing education or membership in an appraisal organization, are permitted.

**SCOPE OF WORK:** The scope of work for this appraisal is defined by the complexity of this appraisal assignment and the reporting requirements of this appraisal report form, including the following definition of market value, statement of assumptions and limiting conditions, and certifications. The appraiser must, at a minimum: (1) perform a complete visual inspection of the interior and exterior areas of the subject property, (2) inspect the neighborhood, (3) inspect each of the comparable sales from at least the street, (4) research, verify, and analyze data from reliable public and/or private sources, and (5) report his or her analysis, opinions, and conclusions in this appraisal report.

**INTENDED USE:** The intended use of this appraisal report is for the lender/client to evaluate the property that is the subject of this appraisal for a mortgage finance transaction.

**INTENDED USER:** The intended user of this appraisal report is the lender/client.

**DEFINITION OF MARKET VALUE:** The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he or she considers his or her own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions\* granted by anyone associated with the sale.

\*Adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs which are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institutional lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concession but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgment.

**STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS:** The appraiser's certification in this report is subject to the following assumptions and limiting conditions:

1. The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it, except for information that he or she became aware of during the research involved in performing this appraisal. The appraiser assumes that the title is good and marketable and will not render any opinions about the title.
2. The appraiser has provided a sketch in this appraisal report to show the approximate dimensions of the improvements, including each of the units. The sketch is included only to assist the reader in visualizing the property and understanding the appraiser's determination of its size.
3. The appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in this appraisal report whether any portion of the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
4. The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand, or as otherwise required by law.
5. The appraiser has noted in this appraisal report any adverse conditions (such as needed repairs, deterioration, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property or that he or she became aware of during the research involved in performing this appraisal. Unless otherwise stated in this appraisal report, the appraiser has no knowledge of any hidden or unapparent physical deficiencies or adverse conditions of the property (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) that would make the property less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, this appraisal report must not be considered as an environmental assessment of the property.
6. The appraiser has based his or her appraisal report and valuation conclusion for an appraisal that is subject to satisfactory completion, repairs, or alterations on the assumption that the completion, repairs, or alterations of the subject property will be performed in a professional manner.

**APPRAISER'S CERTIFICATION:** The Appraiser certifies and agrees that:

1. I have, at a minimum, developed and reported this appraisal in accordance with the scope of work requirements stated in this appraisal report.
2. I performed a complete visual inspection of the interior and exterior areas of the subject property, including all units. I reported the condition of the improvements in factual, specific terms. I identified and reported the physical deficiencies that could affect the livability, soundness, or structural integrity of the property.
3. I performed this appraisal in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.
4. I developed my opinion of the market value of the real property that is the subject of this report based on the sales comparison and income approaches to value. I have adequate market data to develop reliable sales comparison and income approaches to value for this appraisal assignment. I further certify that I considered the cost approach to value but did not develop it, unless otherwise indicated in this report.
5. I researched, verified, analyzed, and reported on any current agreement for sale for the subject property, any offering for sale of the subject property in the twelve months prior to the effective date of this appraisal, and the prior sales of the subject property for a minimum of three years prior to the effective date of this appraisal, unless otherwise indicated in this report.
6. I researched, verified, analyzed, and reported on the prior sales of the comparable sales for a minimum of one year prior to the date of sale of the comparable sale, unless otherwise indicated in this report.
7. I selected and used comparable sales that are locationally, physically, and functionally the most similar to the subject property.
8. I have not used comparable sales that were the result of combining a land sale with the contract purchase price of a home that has been built or will be built on the land.
9. I have reported adjustments to the comparable sales that reflect the market's reaction to the differences between the subject property and the comparable sales.
10. I verified, from a disinterested source, all information in this report that was provided by parties who have a financial interest in the sale or financing of the subject property.
11. I have knowledge and experience in appraising this type of property in this market area.
12. I am aware of, and have access to, the necessary and appropriate public and private data sources, such as multiple listing services, tax assessment records, public land records and other such data sources for the area in which the property is located.
13. I obtained the information, estimates, and opinions furnished by other parties and expressed in this appraisal report from reliable sources that I believe to be true and correct.
14. I have taken into consideration the factors that have an impact on value with respect to the subject neighborhood, subject property, and the proximity of the subject property to adverse influences in the development of my opinion of market value. I have noted in this appraisal report any adverse conditions (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) observed during the inspection of the subject property or that I became aware of during the research involved in performing this appraisal. I have considered these adverse conditions in my analysis of the property value, and have reported on the effect of the conditions on the value and marketability of the subject property.
15. I have not knowingly withheld any significant information from this appraisal report and, to the best of my knowledge, all statements and information in this appraisal report are true and correct.
16. I stated in this appraisal report my own personal, unbiased, and professional analysis, opinions, and conclusions, which are subject only to the assumptions and limiting conditions in this appraisal report.
17. I have no present or prospective interest in the property that is the subject of this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction. I did not base, either partially or completely, my analysis and/or opinion of market value in this appraisal report on the race, color, religion, sex, age, marital status, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property or on any other basis prohibited by law.
18. My employment and/or compensation for performing this appraisal or any future or anticipated appraisals was not conditioned on any agreement or understanding, written or otherwise, that I would report (or present analysis supporting) a predetermined specific value, a predetermined minimum value, a range or direction in value, a value that favors the cause of any party, or the attainment of a specific result or occurrence of a specific subsequent event (such as approval of a pending mortgage loan application).
19. I personally prepared all conclusions and opinions about the real estate that were set forth in this appraisal report. If I relied on significant real property appraisal assistance from any individual or individuals in the performance of this appraisal or the preparation of this appraisal report, I have named such individual(s) and disclosed the specific tasks performed in this appraisal report. I certify that any individual so named is qualified to perform the tasks. I have not authorized anyone to make a change to any item in this appraisal report; therefore, any change made to this appraisal is unauthorized and I will take no responsibility for it.
20. I identified the lender/client in this appraisal report who is the individual, organization, or agent for the organization that ordered and will receive this appraisal report.

21. The lender/client may disclose or distribute this appraisal report to: the borrower; another lender at the request of the borrower; the mortgagee or its successors and assigns; mortgage insurers; government sponsored enterprises; other secondary market participants; data collection or reporting services; professional appraisal organizations; any department, agency, or instrumentality of the United States; and any state, the District of Columbia, or other jurisdictions; without having to obtain the appraiser's or supervisory appraiser's (if applicable) consent. Such consent must be obtained before this appraisal report may be disclosed or distributed to any other party (including, but not limited to, the public through advertising, public relations, news, sales, or other media).

22. I am aware that any disclosure or distribution of this appraisal report by me or the lender/client may be subject to certain laws and regulations. Further, I am also subject to the provisions of the Uniform Standards of Professional Appraisal Practice that pertain to disclosure or distribution by me.

23. The borrower, another lender at the request of the borrower, the mortgagee or its successors and assigns, mortgage insurers, government sponsored enterprises, and other secondary market participants may rely on this appraisal report as part of any mortgage finance transaction that involves any one or more of these parties.

24. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

25. Any intentional or negligent misrepresentation(s) contained in this appraisal report may result in civil liability and/or criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, United States Code, Section 1001, et seq., or similar state laws.

**SUPERVISORY APPRAISER'S CERTIFICATION:** The Supervisory Appraiser certifies and agrees that:

- I directly supervised the appraiser for this appraisal assignment, have read the appraisal report, and agree with the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.
- I accept full responsibility for the contents of this appraisal report including, but not limited to, the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.
- The appraiser identified in this appraisal report is either a sub-contractor or an employee of the supervisory appraiser (or the appraisal firm), is qualified to perform this appraisal, and is acceptable to perform this appraisal under the applicable state law.
- This appraisal report complies with the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.
- If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

**APPRAISER**

Signature *Brandon C. Spagnola*  
 Name Brandon C. Spagnola  
 Company Name Soulis & Associates, LLC  
 Company Address 212 Delaware Avenue  
Delmar, NY 12054  
 Telephone Number 518-439-3522  
 Email Address \_\_\_\_\_  
 Date of Signature and Report August 25, 2009  
 Effective Date of Appraisal 08/20/2009  
 State Certification # \_\_\_\_\_  
 or State License # 47090049363  
 or Other (describe) \_\_\_\_\_ State # \_\_\_\_\_  
 State NY  
 Expiration Date of Certification or License 03/11/2011

ADDRESS OF PROPERTY APPRAISED  
437 Third Avenue  
Watervliet, NY 12189

APPRAISED VALUE OF SUBJECT PROPERTY \$ 100,000

**LENDER/CLIENT**

Name \_\_\_\_\_  
 Company Name Kevin Greenwood  
 Company Address 437 Third Avenue  
Watervliet, NY 12189  
 Email Address \_\_\_\_\_

**SUPERVISORY APPRAISER (ONLY IF REQUIRED)**

Signature \_\_\_\_\_  
 Name \_\_\_\_\_  
 Company Name \_\_\_\_\_  
 Company Address \_\_\_\_\_  
 Telephone Number \_\_\_\_\_  
 Email Address \_\_\_\_\_  
 Date of Signature \_\_\_\_\_  
 State Certification # \_\_\_\_\_  
 or State License # \_\_\_\_\_  
 State \_\_\_\_\_  
 Expiration Date of Certification or License \_\_\_\_\_

**SUBJECT PROPERTY**

Did not inspect subject property  
 Did inspect exterior of subject property from street  
 Date of Inspection \_\_\_\_\_  
 Did inspect interior and exterior of subject property  
 Date of Inspection \_\_\_\_\_

**COMPARABLE SALES**

Did not inspect exterior of comparable sales from street  
 Did inspect exterior of comparable sales from street  
 Date of Inspection \_\_\_\_\_

**ADDITIONAL COMMENTS**

Borrower or Owner N/A

Property Address 437 Third Avenue

City Watervliet

County Albany

State NY

Zip Code 12189

Lender or Client Kevin Greenwood

**SCOPE OF WORK - GEOGRAPHIC MARKET COMPETENCY**

The subject property is located approximately 29 miles from the appraiser's office. The assignment requires geographic/market competency as part of the Scope of Work. I am confirming that I have spent sufficient time to gain adequate knowledge, experience and resources to communicate a credible opinion of market value for the subject property. The necessary understanding of local market conditions provides the connection between a sale and a comparable sale and/or a rental and a comparable rental. This opinion is based on the appraiser's full time working knowledge of the subject's specific marketing area (upstate New York, 11 county territory of the "Capital Region" market area), including local supply and demand factors which relate to the subject property's type and specific location. Additionally, the appraiser's credentials include on-going formal education, analysis of current market driven statistics, subscriptions and review of published real estate periodicals and cost manuals and regularly networking with individuals involved in real estate transactions.

**SITE COMMENTS**

The current site use (two family dwelling with a substandard lot size) is classified as a legal nonconforming use which can be rebuilt to original footprint if damaged or destroyed.

The site is located in close proximity to an above average traffic pattern.

**CONDITION OF THE IMPROVEMENTS**

Deferred maintenance items observed:

- 1) A section of the basement foundation wall is pushing in and/or buckling.
- 2) Rear roof of the enclosed porch is leaking.
- 3) Asbestos insulation around basement heating pipes appears to be in a friable condition and could present a safety hazard.
- 4) Vinyl kitchen floor is worn and tearing.
- 5) Various old water stains in the interior of the dwelling which according to home owner have been repaired; no current evidence of leakage observed.
- 6) Dampness in the basement, there was no standing water at the time of inspection.

Deferred maintenance items are reflected in the overall condition of the subject property.



## SUPPLEMENTAL ADDENDUM

Borrower or Owner	N/A		
Property Address	437 Third Avenue		
City	Watervliet	County	Albany
		State	NY
		Zip Code	12189
Lender or Client	Kevin Greenwood		

The Intended User of this report is the Lender/Client. The Intended Use is to evaluate the property that is the subject of this appraisal for a mortgage finance transaction, subject to the stated Scope of Work, the purpose of the appraisal, the reporting requirements of this appraisal report form and the Definition of Market Value. No additional Intended Users are identified by the appraiser.

Exhibit "B"

B 18 (Official Form 18) (12/08)

UNITED STATES BANKRUPTCY COURT Northern District of New York		PROOF OF CLAIM
Name of Debtor: Kevin Greenwood		Case Number: 09-13289
<i>NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.</i>		
Name of Creditor (the person or other entity to whom the debtor owes money or property): GMAC Mortgage, LLC		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.
Name and address where notices should be sent: GMAC Mortgage, LLC 3451 Hammond Ave. Waterloo, IA 50702 Telephone number:		Court Claim Number: _____ (If known)
Name and address where payment should be sent (if different from above): GMAC Mortgage, LLC 3451 Hammond Ave. Waterloo, IA 50702 Telephone number:		Filed on: _____
1. Amount of Claim as of Date Case Filed: \$ <u>102,594.21</u>		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.  <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.  If all or part of your claim is entitled to priority, complete item 5.  <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		
2. Basis for Claim: <u>Money Loaned</u> (See instruction #2 on reverse side.)		5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.  Specify the priority of the claim.
3. Last four digits of any number by which creditor identifies debtor: <u>6720</u>  3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)		
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.  Nature of property or right of setoff: <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe:  Value of Property: \$ _____ Annual Interest Rate _____ %  Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ <u>0.00</u> Basis for perfection: <u>Mortgage</u>  Amount of Secured Claim: \$ <u>102,594.21</u> Amount Unsecured: \$ _____		<input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).  <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. §507 (a)(4).  <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §507 (a)(5).  <input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507 (a)(7).  <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507 (a)(8).  <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507 (a)(____).
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.		Amount entitled to priority: \$ _____
7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.)  DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.  If the documents are not available, please explain:		*Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.
Date: 10/06/2009	Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.  Randa R. Simmons, Esq. /s/ Randa R. Simmons	FOR COURT USE ONLY

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

Kevin Greenwood  
Case No. 09-13289  
Loan No. \*\*\*\*\*6720

TOTAL AMOUNT OF DEBT

Principal Balance	\$	102,594.21
TOTAL	\$	102,594.21

\*\*\*This proof of claim is filed without waiving any and all rights the Secured Creditor may have under 11 U.S.C. Section 362, if applicable.

EXHIBIT "C"  
CONSOLIDATED NOTE

This Note amends and restates in their entirety, and is given in substitution for, the Notes described in Exhibit A of the New York Consolidation, Extension, and Modification Agreement dated the same date as this Note.

July 14, 2008                      Watervliet                      NY  
[Date]    [City]    [State]

437 3rd Avenue, Watervliet, NY 12189-3808  
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay: U.S. \$ 104,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is GMAC Mortgage, LLC dba ditech

I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The 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 6.000 %.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(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 payment on the First day of each month beginning on September 1, 2008. 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, 2038, 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 79135, Phoenix, AZ 85062-9135 or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$ 623.53

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

NEW YORK FIXED RATE NOTE-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

58(NY) (000) Form 3233 1/01

VMP MORTGAGE FORMS - (800)571-7291

*[Handwritten Signature]*



#### 5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

#### 6. BORROWER'S FAILURE TO PAY AS REQUIRED

##### (A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of **Fifteen** calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be **2.000** % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

##### (B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

##### (C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

##### (D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

##### (E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

#### 7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

#### 8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

#### 9. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

10. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

Lender may require immediate payment in full of all Sums Secured by this Security Instrument if all or any part of the Property, or if any right in the Property, is sold or transferred without Lender's prior written permission. If Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred without Lender's prior written permission, Lender also may require immediate payment in full. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender requires immediate payment in full under this Section 18, Lender will give me a notice which states this requirement. The notice will give me at least 30 days to make the required payment. The 30-day period will begin on the date the notice is given to me in the manner required by Section 15 of this Security Instrument. If I do not make the required payment during that period, Lender may act to enforce its rights under this Security Instrument without giving me any further notice or demand for payment.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

*Kevin R. Greenwood* (Seal) \_\_\_\_\_ (Seal)  
Kevin R. Greenwood -Borrower -Borrower

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

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

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

[Sign Original Only]



*AmoD*

**Albany County Clerk  
32 North Russell Rd.  
Albany, NY 12206-1324**

**Return to:**

GMAC MORTGAGE LLC  
3200 PARK CENTER DR STE 150  
COSTA MESA CA 92626

**Instrument Mortgage Agreement**

**Document Number: 10259414 Book: 5733 Page: 45**

**Mortgagor**

GREENWOOD, KEVIN R

**Mortgagee**

GMAC MORTGAGE LLC

**Number of Pages: 31**

**Recorded Date/Time 09/03/2008 at 1:26 PM**

**Receipt Number 475111**

**Note: \*\* DO NOT REMOVE - THIS PAGE IS PART OF THE DOCUMENT \*\***

**THIS PAGE CONSTITUTES THE CLERK'S ENDORSEMENT, REQUIRED BY SECTION 316-a(5) &  
319 OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK.**

*Thomas G. Clingan*  
Thomas G. Clingan, County Clerk



30  
50

Return To:  
GMAC Mortgage, LLC dba ditech  
3200 Park Center Drive, Suite 150  
Costa Mesa, CA 92626

Albany County Clerk  
Mortgage Books (Record Room)  
Book 5733 Page 46



Loan # [REDACTED]

[Space Above This Line For Recording Data]

MODIFICATION AGREEMENT

MIN: [REDACTED]

WORDS USED OFTEN IN THIS DOCUMENT

- (A) "Agreement," This document, which is dated July 14, 2008 and exhibits and riders attached to this document will be called the "Agreement."
- (B) "Borrower."

Kevin R. Greenwood

will be called "Borrower" and sometimes "I" or "me." Borrower's address is

437 3rd Avenue, Watervliet, NY 12189-3808

- (C) "Lender" GMAC Mortgage, dba Ditech will be called "Lender" and sometimes "Note Holder." Lender is a corporation or association, which exists under the laws of the United States . Lender's address is 3200 Park Center Drive, Suite 150 Costa Mesa, CA 92626.

- (D) "Mortgages." The mortgages, deeds of trust, or other security instruments and any additional security instruments and related agreements (such as assignments, extensions, modifications, or consolidations of mortgages) identified in Exhibit A to this Agreement will be call the "Mortgages."

- (E) "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 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. **FOR PURPOSES OF RECORDING THIS AGREEMENT, MERS IS THE MORTGAGEE OF RECORD.**

- (F) "Note Holder." Lender or anyone who succeeds to Lender's rights under this Agreement and who is entitled to receive the payments I agree to make under this Agreement may be called the "Note Holder."

- (G) "Notes." The Notes which are identified in Exhibit A to this Agreement, and which are secured by the Mortgages, will be called the "Notes."

NEW YORK CONSOLIDATION, EXTENSION, AND MODIFICATION AGREEMENT--Single Party--Fannie Mae/Freddie Mac UNIFORM INSTRUMENT Form 3172 (01) (rev. 5/01)

1 of 7

Initials

Albany County Clerk  
Document Number 10259414  
Rcvd 09/03/2008 1:26:33 PM



(H) "Property." The property, which is described in the Mortgage(s) and in Exhibit B (Property Description) to this Agreement, will be called the "Property." The Property is located at:

437 3rd Avenue, Watervliet, NY 12189-3808

I promise and I agree with Lender as follows:

I. BORROWER'S AGREEMENT ABOUT OBLIGATION UNDER THE NOTES AND MORTGAGES

I agree to take over all of the obligations under the Notes and Mortgages as Modified by this Agreement as Borrower. This means that I will keep all of the promises and agreements made in the Notes and Mortgages even if some other person made those promises and agreements before me. The new modified principal balance of the Notes is U.S. \$104,000.00

AGREEMENT TO COMBINE NOTES AND MORTGAGES

(A) By signing this Agreement, Lender and I are combining into one set of rights and obligations all of the promises and agreements stated in the Notes and Mortgages including any earlier agreements which combined, modified, or extended rights and obligations under any of the Notes and Mortgages. This means that all of the Lender's rights in the Property are combined so that under the law Lender has one mortgage and I have one loan obligation which I will pay as provided in this Agreement. This combining of notes and mortgages is known as a "Consolidation."

(B) In the event that Exhibit A indicates that all of the Notes and Mortgages have already been combined by a previous agreement, then Lender and I agree to change the terms of Section II, paragraph (A) of this Agreement to the following:

Lender and I agree that all of the promises and agreement stated in the Notes and Mortgages -- including any earlier agreements which combined, modified, or extended rights and obligations under any of the Notes and Mortgages -- have been combined into one set of rights and obligations by an earlier agreement which is referred to in Exhibit A. This means that all of the Lender's rights in the Property have already been combined so that under the law Lender already has one mortgage and I have one loan obligation which I will pay as provided in this Agreement. The combining of notes and mortgages is known as a "Consolidation."

II. AGREEMENT TO CHANGE TERMS OF THE CONSOLIDATED NOTE

Lender and I agree that the terms of the Notes are changed and restated to be the terms of the "Consolidated Note" which is attached to this Agreement as Exhibit C. The Consolidated Note contains the terms of payment for the amounts that I owe to Note Holder. I agree to pay the amounts due under the Notes in accordance with the terms of the Consolidated Note. The Consolidated Note will supersede all terms, covenants, and provisions of the Notes.

III. AGREEMENT TO CHANGE TERMS OF THE CONSOLIDATED MORTGAGE

Lender and I agree that the terms of the Mortgages are changed and restated to be the terms of the "Consolidated Mortgage" which is attached to this Agreement as Exhibit D. The Consolidated Mortgage secures the Consolidated Note and will constitute in law a single lien upon the Property. I agree to be

bound by the terms set forth in the Consolidated Mortgage, which will supersede all terms, covenants, and provisions of the Mortgages.

IV. NO SET-OFF, DEFENSES

I agree that I have no right of set-off or counterclaim, or any defense to the obligations of the Consolidated Note or the Consolidated Mortgage.

V. BORROWER'S INTEREST IN THE PROPERTY

I promise that I am the lawful owner occupying the Property and that I have the right to consolidate, modify, and extend the Notes and Mortgages.

VI. WRITTEN TERMINATION OR CHANGE OF THIS AGREEMENT

This Agreement may not be terminated, changed, or amended except by a written agreement signed by the party whose rights or obligations are being changed by that agreement.

VIII. OBLIGATIONS OF BORROWERS AND OF PERSONS TAKING OVER BORROWER'S OR LENDER'S RIGHTS OR OBLIGATIONS

If more than one person signs this Agreement as Borrower, each of us is fully and personally obligated to keep all of Borrower's promises and obligations contained in this Agreement. The Note Holder may enforce its rights under this Agreement against each of us individually or against all of us together.

The terms of the Consolidated Note and the Consolidated Mortgage may not allow any person to take over my rights or obligations under this Agreement. Lender and I agree that if any person is permitted to take over my rights and obligations under this Agreement, that person will have all of my rights and will be obligated to keep all of my promises and agreements made in this Agreement. Similarly, any person who takes over Lender's rights or obligations under this Agreement will have all of Lender's rights and will be obligated to keep all of Lender's agreements made in this Agreement.

IX. LIEN LAW

I will receive all amounts lent to me by Lender subject to the trust fund provisions of Section 13 of the New York Lien Law. This means that I will: (A) hold all amounts which I receive and which I have a right to receive from Lender under the Consolidated Note as a "trust fund;" and (B) use those amounts to pay for "cost of improvement" (as defined in the New York Lien Law) before I use them for any other purpose. The fact that I am holding those amounts as a "trust fund" means that for any building or other improvement located on the Property I have a special responsibility under the law to use the amount in the manner described in this Section IX.

X. TYPE OF PROPERTY


Check box(es) as applicable.

This Agreement covers real property principally improved, or to be improved, by one or more structures containing, in the aggregate, not more than six(6) residential dwelling units with each dwelling unit having its own separate cooking facilities.

This Agreement covers real property improved, or to be improved, by one (1) or two (2) family dwelling.

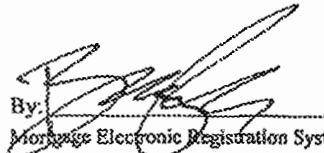
This Agreement does not cover real property improved as described above.

By signing this Agreement, Lender and I agree to all of the above.

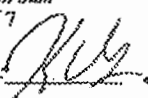
By:   
GMAC Mortgage, LLC dba Ditech  
- Lender

 (seal)  
Kevin R. Greenwood Borrower

\_\_\_\_\_  
Borrower (seal)

By:   
Mortgage Electronic Registration Systems, Inc  
- Mortgagee

\_\_\_\_\_  
Borrower (seal)

4 of 7  
Initials 

State of New York, County of Albany:

On the 14<sup>th</sup> day of July in the year 2008, before me, the undersigned, a Public Notary in and for said State, personally appeared Kevin R. Greenwood

personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

*Susan M. Beard*  
Notary Public, State of New York  
Notary Seal/Stamp

SUSAN M. BEARD  
Notary Public, State of New York  
Qualified in Washington County  
Registration #01BE6016942  
Commission Expires Nov. 30, 2010

State of Arizona

On the 17<sup>th</sup> day of July in the year 2008 before me, the undersigned, personally appeared Bryan Kerr

personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in the

Phoenix in Arizona  
(insert City or political subdivision) (insert the State or Country or other place the acknowledgment was taken)

*Dave Nielson*  
(signature and office of individual taking acknowledgement)



Notary Seal/Stamp

State of Arizona

On the 17<sup>th</sup> day of July in the year 2008 before me, the undersigned, personally appeared Bryan Kerr

personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in the

Phoenix in Arizona  
(insert City or political subdivision) (insert the State or Country or other place the acknowledgment was taken)

*Dave Nielson*  
(signature and office of individual taking acknowledgement)



Notary Seal/Stamp

10/08/09

10/08/09

10/08/09

**Exhibit A**

(List of Mortgages, Notes and Agreements)

(1) The first mortgage given by Kevin R. Greenwood to New Century Mortgage Corporation in the amount of \$117,000.00 dated 11/14/2005 and recorded 03/14/2006 in Reel 5190 Page 310 in Albany County records. Which mortgage secures the note dated 11/14/2005 for \$117,000.00. At that time all mortgage taxes and mortgage recording taxes were paid in the amount of \$1,437.50. Assigned from New Century Mortgage Corporation to Mortgage Electronic Registration Systems, Inc. dated 06/06/2006 and recorded 06/06/2006 in Reel 5261 Page 732. Further assigned to Mortgage Electronic Registration Systems, Inc. ("MERS"), solely as nominee for lender, GMAC Mortgage, LLC. Which assignment is to be recorded simultaneously herein, in Albany County records.

(2) The Mortgage given by \_\_\_\_\_  
and dated \_\_\_\_\_ in favor of \_\_\_\_\_  
securing the original principal amount of U.S. \$ \_\_\_\_\_

The Mortgage was recorded on \_\_\_\_\_  
of \_\_\_\_\_, State of \_\_\_\_\_  
at \_\_\_\_\_

At this date, the unpaid principal balance secured by this Mortgage is U.S. \$ \_\_\_\_\_  
(Strike if not applicable)

6 of 7  
Initials: KRG

Title Number 110880-DTALB

## EXHIBIT B

Page 1

ALL that lot, piece or parcel of land, situate, lying and being in the City of Watervliet (formerly Village of West Troy), County of Albany, State of New York, in the first Ward of said City, and known and distinguished on a map of said village of West Troy, made by Everett Van Allen as Lot Number 368, bounded and described as follows:

BEGINNING at a point in the west line of the McAdam (now Third Avenue) where said line is intersected by the south line of Lot Number 368;

RUNNING THENCE westerly along the south line of said Lot Number 368 ninety feet, more or less to an alley;

THENCE northerly along the east line of said alley thirty-two feet;

THENCE easterly on a line parallel with the south line of said Lot Number 368 one hundred feet, more or less to McAdam Road; and

THENCE south along the west line of McAdam Road thirty-two feet, more or less to the point or place of BEGINNING.

TOGETHER with the easement in a strip of land four feet wide adjoining the premises hereby conveyed on the north and reserved in a deed made by Annie M. O'Brien to Florence G. Carnoross, and others, dated October 14, 1908, and recorded October 15, 1908, in Book of Deeds Number 576 at Page 186 in the Albany County Clerk's Office.

SUBJECT to any enforceable covenants, conditions, restrictions and easements of record affecting said property.

EXCEPTIONS, granting and subject to an instrument between Mary A. Bannon, Joseph L. Bannon and others and John Mabin dated March 14, 1934 and recorded on April 5, 1934 in the Albany County Clerk's Office in Book of Deeds 857 at Page 228.





Exhibit "C"

Mail Billing and Other Inquiries  
and Report Lost Checks to:

ditech  
PO Box 205  
Waterloo IA 50704-0205

or Phone: 800-852-0656  
Telephoning Does Not Protect Your Rights.



<b>ACCOUNT NUMBER</b>	8657026016	<b>BEGINNING BALANCE</b>	\$12,575.17
<b>CREDIT LIMIT</b>	\$13,000.00	<b>TOTAL PAYMENTS</b>	\$100.00
<b>CREDIT AVAILABLE</b>	\$524.83	<b>TOTAL ADVANCES</b>	\$0.00
<b>STATEMENT CLOSING DATE</b>	06/30/09	<b>DAYS IN CYCLE</b>	30
		<b>TOTAL ADJUSTMENTS/CREDITS</b>	\$0.00
		<b>CURRENT FEES/SPECIAL CHARGES</b>	\$0.00
		<b>TOTAL FINANCE CHARGE</b>	\$59.05
		<b>NEW BALANCE</b>	\$12,534.22

1041509 15 15 000220 20060701 600221010000 01 1 02 03M 5064210000 150947 10

#BWMHJBY  
#KW87704823370#



KEVIN R GREENWOOD  
437 3RD AVENUE  
WATERVLIET NY 12189-3808



POSTING DATE	TRAN. DATE	TRANSACTION DESCRIPTION	ADVANCE DESCRIPTION	CHECK #	TRAN AMOUNT	PRINCIPAL	FINANCE CHARGE	OTHER	OUTSTANDING BALANCE
06/16/09	06/16/09	Payment			\$61.24	\$0.00	\$61.24	\$0.00	\$12,513.93
06/16/09	06/16/09	Principal Curt			\$36.76	\$36.76	\$0.00	\$0.00	\$12,475.17

**SPECIAL MESSAGES**

You can arrange to have your payment automatically deducted each month from your checking or savings account. To sign up, call our toll-free number displayed on the top of this statement.

**See Reverse Side For Important Information**

FINANCE CHARGE CALCULATION / RATE HISTORY									
DATE		CORRESPONDING ANNUAL PERCENTAGE RATE	DAILY RATE	NO. OF DAYS DAILY RATE IN EFFECT	DAILY EARNING BAL. OUTSTANDING (BAL. SUBJECT TO FINANCE CHARGE)	FINANCE CHARGE	TOTAL FINANCE CHARGE	ANNUAL PERCENTAGE RATE	
FROM	TO								
06/01/09	06/16/09	5.75000	0.01575	15	\$12,513.93	\$29.57			
06/16/09	07/01/09	5.75000	0.01575	X 15	X \$12,475.17	\$29.48	\$59.05	5.750	

**Method H. Finance Charge Disclosure:**

The balance subject to **FINANCE CHARGE** is computed as follows: At the end of each day, the Lender will multiply the daily Earning Balance Outstanding (to get the daily Earning Balance Outstanding, the Lender takes the beginning balance of the account each day (which includes any Initial Charges 60 days after the Trigger Date, monies previously advanced for Checks, wire transfers, cashier's checks, cash advances and/or Purchases) and adds all monies advanced on that day for Checks, wire transfers, cashier's checks, cash advances then the Lender subtracts any payments or credits posted as of that day; that gives the Lender the daily Earnings Balance Outstanding) by a Daily Rate equal to the **ANNUAL PERCENTAGE RATE** for that day divided by 365 (366 days in a leap year). The results is the **FINANCE CHARGE** for that day. The sum of these daily **FINANCE CHARGES** during a monthly billing cycle is the **FINANCE CHARGE** for the billing cycle. The Daily Rate and corresponding **ANNUAL PERCENTAGE RATE** is variable and may vary each day. There is no free ride period when **FINANCE CHARGES** do not accrue.

**PAYMENT DISCLOSURE:** During the Draw Period, a Minimum Payment will equal the amount of any credit insurance premiums that are due; earned fees and charges; and the amount of Accrued Interest on the last day of the billing cycle or \$100 or 1.000 percent of the Loan Account Balance (principal plus interest), whichever is greater. This amount will be rounded up to the nearest \$0.01.

During the Repayment Period, a Minimum Payment will equal the amount of any credit insurance premiums; earned fees and charges; and the amount of Accrued Interest on the last day of the billing cycle plus 0.8333 percent of the Principal at the end of the Draw Period. This amount will be rounded up to the nearest \$0.01.

PLAINTIFFS JOSEPH A. SHORKEY and CATHERINE E. SHORKEY,	DEFENDANTS BENEFICIAL HOMEOWNER SERVICE CORPORATION,
ATTORNEYS (Firm Name, Address and Telephone No.) MARC S. EHRLICH, ESQ. EHRLICH, HANFT, BAIRD & ARCODIA 64 2 <sup>ND</sup> STREET TROY, NY 12180	ATTORNEYS (If Known) <b>FILED</b> SEP 11 2003

PARTY (Check one box only)  1 U.S. Plaintiff  2 U.S. Defendant  3 U.S. Not a Party

OFFICE OF THE BANKRUPTCY CLERK  
ALBANY, NY

CAUSE OF ACTION (Write a Brief Statement of Cause of Action, Including all U.S. Statutes Involved)

WHEREFORE, the plaintiff requests that the Court determine, pursuant to 11 U.S.C. Section 506(a) that the mortgage lien of Beneficial secured in real property locate at 25 Sterup Drive, Troy, NY, is wholly unsecured and modify the right of Beneficial to avoid Mortgage Lien securing their and that the Court grant such other and further relief as to the Court may deem just and proper.

NATURE OF SUIT

(Check the one most appropriate box only)

- |   |   |  |
|---|---|--|
| <input checked="" type="checkbox"/> 454 To recover Money or Property  | <input type="checkbox"/> 455 To revoke an order of confirmation of a Chap. 11, Chap. 12, or Chap. 13 Plan                       | <input type="checkbox"/> 456 To obtain a declaratory judgment relating to any of foregoing of action |
| <input type="checkbox"/> 435 To determine Validity, Priority, or Extent of a lien or Other Interest in Property               | <input type="checkbox"/> 426 To determine the dischargeability Of a debt 11 U.S.C. §523   | <input type="checkbox"/> 459 To determine a claim or cause of action removed to a bankruptcy Court   |
| <input type="checkbox"/> 458 To obtain approval for the sale of Both the interest if the estate and Of a co-owner in property | <input type="checkbox"/> 434 To obtain an Injunction or other Equitable relief  | <input type="checkbox"/> 498 Other (specify)   |
| <input type="checkbox"/> 424 To object or to revoke a discharge 11 U.S.C. §727  | <input type="checkbox"/> 457 To subordinate any allowed claim or interest except where such subordination is provided in a plan |  |

ORIGIN OF PROCEEDINGS  1 Original Proceeding  2 Removed Proceeding  4 Reinstated or Reopened  5 Transferred from Another Bankruptcy Court

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND	NEAREST THOUSAND \$	OTHER RELIEF SOUGHT	<input type="checkbox"/> JURY DEMAND
--------	---------------------	---------------------	--------------------------------------

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES

NAME OF DEBTOR JOSEPH A. SHORKEY and CATHERINE E. SHORKEY	BANKRUPTCY CASE NO. 03-15015	
DISTRICT IN WHICH CASE IS PENDING NORTHERN	DIVISIONAL OFFICE ALBANY	NAME OF JUDGE ROBERT E. LITTLEFIELD, JR.

RELATED ADVERSARY PROCEEDING (IF ANY)

PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT	DIVISIONAL OFFICE	NAME OF JUDGE

FILING FEE (check one box only)  FEE ATTACHED  FEE NOT REQUIRED  FEE IS DEFERRED

DATE September 5, 2003	PRINT NAME MARC S. EHRLICH, ESQ.	SIGNATURE OF ATTORNEY (PLAINTIFF) 
---------------------------	-------------------------------------	---

**FILED**

SEP 11 2003

OFFICE OF THE BANKRUPTCY CLERK  
ALBANY, NY

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

---

In Re:

JOSEPH A. SHORKEY  
and CATHERINE E. SHORKEY,

Debtors

ADVERSARY COMPLAINT

Case No. 03-15015

---

JOSEPH A. SHORKEY  
and CATHERINE E. SHORKEY,

Plaintiffs

Adv. Case No.

against

BENEFICIAL HOMEOWNER SERVICE CORPORATION,

Defendant

---

The Complaint of Marc S. Ehrlich, attorney for the debtor, respectfully represents:

1. Plaintiffs are the Chapter 13 debtors in the above referenced case.
2. The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. Sections 1334 and 157. The adversary arises in and relates to the above captioned bankruptcy case under Chapter 13 now pending in this court.
3. This is a core proceeding, pursuant to 28 U.S.C. Section 157.
4. The plaintiffs have initiated this adversary proceeding to have the Court determine, pursuant to 11 U.S.C. Section 506(a), that the mortgage lien of defendant, Beneficial Homeowner Service Corporation (hereinafter referred to as "Beneficial"), is wholly unsecured and to void the mortgage lien securing said secured claim.
5. The plaintiffs, Joseph A. and Catherine E. Shorkey, are the owners of real property located at 25 Sterup Drive, City of Troy, County of Rensselaer and State of New

York.

6. The real property at issue is debtors' residence.
7. The real property at issue has a value of Ninety Thousand Two Hundred Ten Dollars (\$90,210.00), as claimed on Schedule A of debtors' bankruptcy petition.
8. Countrywide Home Loans has a first mortgage against said real property and is owed approximately One Hundred Twenty-Five Thousand Dollars (\$125,000.00) on its first mortgage lien.
9. Beneficial has a second mortgage against said real property and is owed approximately Eight Thousand Six Hundred and Seventy-Two Dollars (\$8,672.00) on its second mortgage lien.
10. The mortgage lien held by Beneficial is wholly unsecured.
11. The Court has the power, pursuant to U.S.C. Section 506(a) to modify the rights of a junior secured creditor if the priority lien of the first mortgage holder exceeds the fair market value of the real property at issue resulting in no equity attaching to the lien of the junior secured creditor. See In Re Ponds, 250 B.R. 8 (NDNY 2000) aff'd 252 F3d 122(2d Cir 2001).

WHEREFORE, the plaintiffs request that the Court determine, pursuant to 11 U.S.C. Section 506(a), that the mortgage lien of Beneficial, secured in real property located at 25 Sterup Drive, Troy, New York is wholly unsecured and modify the rights of Beneficial to void the mortgage lien securing their claim and that the Court grant such other and further relief as to the Court may seem just and proper.

Dated: September 3, 2003



Marc S. Ehrlich, Esq.  
Ehrlich Hanft Baird & Arcodia  
64 Second Street  
Troy, NY 12180  
(518) 272-2110

To: Hon. Robert E. Littlefield, Jr.  
U.S. Bankruptcy Court  
James T. Foley U.S. Courthouse  
445 Broadway  
Albany, NY 12207

Andrea E. Celli, Esq.  
350 Northern Boulevard  
Albany, NY 12204

U.S. Trustee's Office  
74 Chapel Street  
Albany, NY 12207

William F. Aldinger, Chairman & CEO  
Beneficial Homeowner Service Corporation  
2700 Sanders Road  
Prospect Heights, IL 60070

(By regular and certified mail)

Joseph A. Shorkey  
Catherine E. Shorkey  
25 Sterup Drive  
Troy, NY 12180

In the United States Bankruptcy Court for the  
Northern District of New York

RECEIVED

SEP 11 2003

OFFICE OF THE BANKRUPTCY CLERK  
ALBANY, NY

IN RE

JOSEPH A. SHORKEY  
and CATHERINE E. SHORKEY,

Debtor(s)

Case Number: 03-15015  
Chapter: 13

Adv. Proc. No.:

03-90265

JOSEPH A. SHORKEY  
and CATHERINE E. SHORKEY,

Plaintiff(s)

v.

BENEFICIAL HOMEOWNER SERVICE CORPORATION,

Defendant(s)

CASE NO. AND ADVERSARY DOCKET NO.  
MUST APPEAR ON ALL PAPERS SUBMITTED  
FOR FILING IN THIS PROCEEDING.

SUMMONS IN AN ADVERSARY PROCEEDING

YOU ARE SUMMONED and required to submit a motion or answer to the complaint which is attached to this summons to the clerk of the bankruptcy court within 30 days after the date of issuance of this summons, except that the United States and its offices and agencies shall submit an answer to the complaint within 35 days.

Address of the Clerk: 445 Broadway  
Suite 327  
Albany, NY 12207

At the same time, you must also serve a copy of the motion or answer upon the plaintiff's attorney:

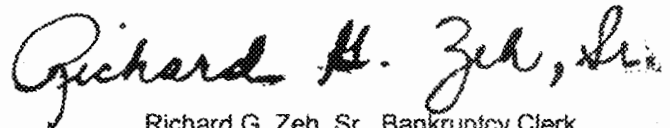
Marc S. Ehrlich, Esq.  
64 2<sup>nd</sup> Street  
Troy, NY 12180  
518-272-2110

If you make a motion, your time to answer is governed by Bankruptcy rule 7012.

IF YOU FAIL TO RESPOND TO THIS SUMMONS, YOUR FAILURE WILL BE DEEMED TO BE YOUR CONSENT TO ENTRY OF A JUDGMENT BY THE BANKRUPTCY COURT AND JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT.

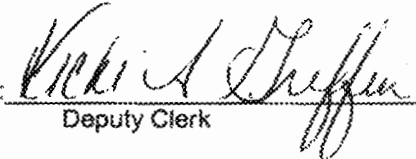
Date:

9/11/03



Richard G. Zeh, Sr., Bankruptcy Clerk

By:

  
Deputy Clerk

# UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF NEW YORK  
OFFICE OF THE CLERK  
RICHARD G. ZEH, SR - CLERK

ALBANY DIVISION  
JAMES T. FOLEY COURTHOUSE  
445 BROADWAY, SUITE 330  
ALBANY, NEW YORK 12207  
(518) 257-1661  
Fax:(518) 257-1650

UTICA DIVISION  
ALEXANDER PIRNIE FEDERAL BUILDING  
10 BROAD ST, ROOM 230  
UTICA NEW YORK 13501  
(315) 793-8101  
Fax:(315)793-8128

REPLY: ALBANY

Date: 12/3/03

To: Marc S. Ehrlich  
64 Second St.  
Troy NY 12180

Re: Catherine E. & Joseph A. Shorkey VS Beneficial Homeowner Service Corp  
Case No. 03-15015  
Adv. Pro. No. 03-90265

Dear Mr. Ehrlich :

A review of the file of the above referenced adversary proceeding indicates that the Defendant's time to answer has expired pursuant to Fed. R. Bankr. P. 7012, and that no answer has been filed with the Clerk of this Court. If you have not served the summons and complaint, you must make written request to the Clerk for re-issuance of a summons.

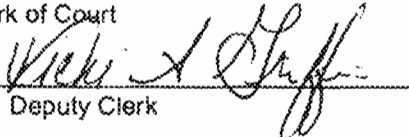
If you believe that the Defendant Beneficial Homeowner Svc. is in default for failure to appear and/or plead, it is requested that you proceed with entry of a default judgment pursuant to Fed. R. Bankr. P. 7055 (which incorporates by reference Fed. R. Civ. P. 55). The Clerk is permitted to comply with a request for entry of default only upon being presented with an affidavit attesting to the following:

1. Date of issuance of the summons;
2. Statement of whether the court fixed a deadline for the filing of answer or motion, and whether the 30 (or 35) day limit applies under Fed. R. Bankr. P. 7012(a);
3. Date of service of the complaint or motion;
4. Date of filing of affidavit of service;
5. Statement that no answer or motion has been received within the time limit fixed by the court or by Fed. R. Bankr. P. 7012(a); and
6. Statement that the defendant is not in the military service, as required by 50 U.S.C. Sec. 520.

No judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator or other such representative who has appeared therein. Fed. R. Bankr. P. 7005; Fed. R. Civ. P. 55(b)(2). In the event the court believes a hearing will be necessary pursuant to Fed. R. Civ. P. 55(b)(2), you will be notified.

Be advised that failure to proceed under Fed. R. Civ. P. 55 or file a written application for other relief within thirty (30) days of the date of this notice shall result in an Order to Show Cause Why the Adversary Proceeding Should not be Dismissed for Failure to Prosecute.

RICHARD G. ZEH, SR.  
Clerk of Court

By:   
Deputy Clerk



UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

---

In Re:

JOSEPH A. SHORKEY,  
and CATHERINE E. SHORKEY,

AFFIDAVIT

Case No. 03-15015

Debtors

---

JOSEPH A. SHORKEY,  
and CATHERINE E. SHORKEY,

Plaintiffs

Adv. No. 03-90265

-against-

BENEFICIAL HOMEOWNER SERVICE CORP.,

Defendant

---

Marc S. Ehrlich, Esq., being duly sworn, deposes and says:

1. I am the attorney for plaintiff-debtors in the above-referenced adversary proceeding.
2. I am making this affidavit in support of my motion in this case for a default judgment against defendant Beneficial Homeowner Service Corporation (hereinafter referred to as "Beneficial") for failure to answer or otherwise respond to plaintiffs' complaint within the statutory time period to answer or otherwise respond, pursuant to FRBP 7055, and for certain additional related relief.
3. The adversary complaint was filed on September 11, 2003.
4. The Court issued a Summons in this case on September 11, 2003.
5. Defendant was served with both Summons and Complaint by mail. Certified mail service was completed on September 18, 2003. The affidavit of service was filed

September 18, 2003. Copies of the affidavit of service and delivery receipt are attached

6. No answer or motion has been received from defendant Beneficial within the time period fixed by FRBP 7012(a).
7. Defendant is not in the military service
8. Plaintiffs seek the entry of a default judgment against Beneficial, pursuant to FRBP 7055.
9. Plaintiffs seek an additional relief requesting that the Court issue an Order that Beneficial shall prepare and submit a duly executed lien release concerning its mortgage secured in real property located at 25 Sterup Drive, Troy, New York, and deliver the same to the Chapter 13 Trustee within 10 days following service of this Order upon the defendant to be held in escrow by Andrea E. Celli, Chapter 13 Trustee, to be released back to Beneficial, upon dismissal or conversion of debtor's petition, and only to be released to Marc S. Ehrlich, Esq., attorney for debtors/plaintiffs, for recording upon completion of debtor's Chapter 13 Plan.

WHEREFORE, plaintiff-debtors request that the Court issue an Order issuing a default judgment against defendant Beneficial for failure to answer or otherwise respond to plaintiffs' summons and complaint, pursuant to FRBP 7012(a) and for an Order that Beneficial shall prepare and submit a duly executed lien release concerning its mortgage on real property located at 25 Sterup Drive, Troy, New York and deliver same to the Chapter 13 Trustee within 10 days following service of this Order upon the attorney for the defendant to be held in escrow by Andrea E. Celli, Chapter 13 Trustee, to be released back to Beneficial, upon dismissal or conversion of debtors' petition, and only to be


released to Marc S. Ehrlich, Esq., attorney for debtors/plaintiffs, for recording upon completion of debtors' Chapter 13 Plan.



---

Marc S. Ehrlich

Sworn to before me the 10th day of December, 2003



---

Notary Public  
My Commission Expires 12/31/06

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

In Re:

JOSEPH A. SHORKEY  
and CATHERINE E. SHORKEY,

Debtors

AFFIDAVIT OF SERVICE  
BY MAIL

Case No. 03-15015

JOSEPH A. SHORKEY  
and CATHERINE E. SHORKEY,

Plaintiffs

Adv. Case No. 03-90265

against

BENEFICIAL HOMEOWNER SERVICE CORPORATION,

Defendant

STATE OF NEW YORK :  
COUNTY OF RENSSELAER: ss.

Nancy Tement, being duly sworn, deposes and says:

On September 15, 2003, your deponent served a copy of Summons and Adversary Complaint, by regular mail, on the following:

Andrea E. Celli, Esq.  
350 Northern Boulevard  
Albany, NY 12204

U.S. Trustee's Office  
74 Chapel Street  
Albany, NY 12207

William F. Aldinger, Chairman & CEO  
Beneficial Homeowner Service Corporation  
2700 Sanders Road  
Prospect Heights, IL 60070

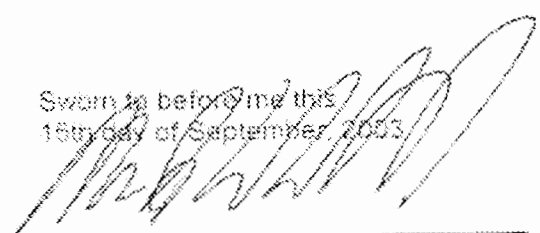
Joseph A. Shorkey & Catherine E. Shorkey  
25 Sterup Drive  
Troy, NY 12180

**FILED**  
**SEP 18 2003**  
OFFICE OF THE BANKRUPTCY CLERK  
ALBANY, NY

And by certified mail/RRR

  
Nancy Tement

Sworn to before me this  
15th day of September, 2003.

  
Notary Public State of New York

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

William F. Aldinger, Chair & CEO  
Beneficial Homeowner Service Corp.  
2700 Sanders Road  
Prospect Heights, IL 60070

(Shorkey)

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  
**X KEVIN TAYLOR**  Addressee

B. Recipient **HOUSEHOLD**  Day of Delivery

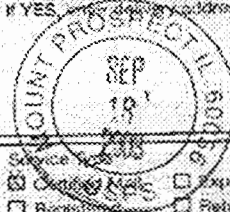
D. Is delivery address different from that of the sender?  Yes  
If YES, delivery address below  No

3. Service Type  Certified Mail  Express Mail  
 Registered Mail  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

2. Article Number  
(Transfer from service label)

7003 0500 0001 4814 4889



UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

---

In Re:

NOTICE OF MOTION

JOSEPH A. SHORKEY,  
and CATHERINE E. SHORKEY,

Case No. 03-15015

Debtors

---

JOSEPH A. SHORKEY,  
and CATHERINE E. SHORKEY,

Plaintiffs

Adv. No. 03-90265

-against-

BENEFICIAL HOMEOWNER SERVICE CORP.,

Defendant

---

Motion made by:

Marc S. Ehrlich, Esq.  
Attorney for Debtors

Date, Time, and Place of Motion:

January 8, 2004  
1:00 o'clock P.M.  
U.S. Bankruptcy Court  
James T. Foley US  
Courthouse, 445 Broadway  
Albany, NY 12207  
Room 306

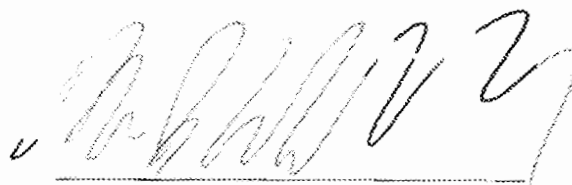
Object of Motion:

Motion for default judgment against  
Beneficial Homeowner Service Corp.  
pursuant to FRBP 7012(a) and for certain  
additional related relief.

Opposing Papers:

Opposing papers, if any, are to be  
served on the undersigned,  
the Court, and the Office of the  
United States Trustee not less  
than three (3) days before the  
return date of this motion

Dated December 10, 2003



Marc S. Ehrlich, Esq.  
Attorney for Debtor  
Ehrlich Hanft Baird & Arcodia  
64 Second Street  
Troy, NY 12180  
(518) 272-2110

To: Hon. Robert E. Littlefield, Jr.  
U.S. Bankruptcy Court Judge  
445 Broadway  
Albany, NY 12207

Office of the U.S. Trustee  
74 Chapel Street  
Albany, NY 12207

Andrea E. Celli, Esq.  
Chapter 13 Trustee  
350 Northern Boulevard  
Albany, NY 12204

William F. Aldinger, chairman and CEO  
Beneficial Homeowner Service Corporation  
2700 Sanders Road  
Prospect Heights, IL 60070

(By both regular and certified mail)

Joseph A. Shorkey  
Catherine E. Shorkey  
25 Sterup Drive  
Troy, NY 12180

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

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In Re: NOTICE OF MOTION

JOSEPH A. SHORKEY,  
and CATHERINE E. SHORKEY,

Case No. 03-15015

Debtors

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JOSEPH A. SHORKEY,  
and CATHERINE E. SHORKEY,

Plaintiffs

Adv. No. 03-90265

-against-

BENEFICIAL HOMEOWNER SERVICE CORP.

Defendant

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STATE OF NEW YORK            )  
  ) SS.:  
COUNTY OF RENSSELAER    )

Holly Danielle Wiles, being duly sworn, deposes and says: that she is over the age of 18 years; that she served one copy of a Motion on the parties listed below on December 11, 2003, by regular mail.

Hon. Robert E. Littlefield, Jr.  
U.S. Bankruptcy Court Judge  
445 Broadway  
Albany, NY 12207

Office of the U.S. Trustee  
74 Chapel Street  
Albany, NY 12207

Andrea E. Celli, Esq.  
Chapter 13 Trustee  
350 Northern Boulevard  
Albany, NY 12204

William F. Aldinger, chairman and CEO  
Beneficial Homeowner Service Corporation  
2700 Sanders Road  
Prospect Heights, IL 60070

(By both regular and certified mail)



Joseph A. Shorkey  
Catherine E. Shorkey  
25 Sterup Drive  
Troy, NY 12180



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Holly Danielle Wiles

Sworn to before me this  
December 11, 2003



---

Notary Public

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK**

In re Joseph A. Shorkey and Catherine E. Shorkey ,  
Debtor(s)

Social Security No(s): xxx-xx- 2872 , xxx-xx- 3271 or  
Employer's Tax Identification No(s). [if any] ,

Catherine E. Shorkey , et al.

Plaintiff

v.

Beneficial Homeowner Service Corp.

Defendant

Case No. 03-15015-1-rel

Chapter 13

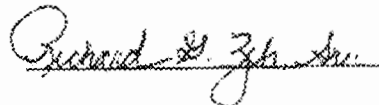
Adv. Proc. No.  
03-90265-1-rel

**ENTRY OF DEFAULT**

It appears from the record that the following defendant failed to plead or otherwise defend in this case as required by law.

Name: Beneficial Homeowner Service Corp.

Therefore, default is entered against the defendant as authorized by Bankruptcy Rule 7055.



Clerk of the Bankruptcy Court

12/12/03  
Date

By: Vicki A. Griffin  
Deputy Clerk

**RECEIVED & FILED**

JAN 13 2004

**RECEIVED**

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

OFFICE OF THE BANKRUPTCY CLERK  
ALBANY, NY

2004 JAN 12 AM 11:49

In Re:

ORDER

JOSEPH A. SHORKEY,  
and CATHERINE E. SHORKEY,

Case No. 03-15015

OFFICE OF THE  
BANKRUPTCY CLERK  
N.D. OF NY  
ALBANY

Debtors

JOSEPH A. SHORKEY,  
and CATHERINE E. SHORKEY,

Plaintiffs

Adv. No. 03-90265

-against-

**RECEIVED**

BENEFICIAL HOMEOWNER SERVICE CORP.,

JAN 12 2004

Defendant

BANKRUPTCY JUDGE  
ALBANY, NEW YORK


Upon the Notice of Motion for default judgment by Marc S. Ehrlich, Esq., attorney for debtors, dated December 10, 2003, and there having been no other papers submitted in opposition and no other appearances in opposition thereto, and upon hearing Anthony Arcodia, Jr., Esq., and Andrea E. Celli, Chapter 13 Trustee, both appearing in Court on January 8, 2004, and upon due deliberation by the Court, it is hereby

ORDERED that a default judgment be issued against defendant, Beneficial Homeowner Service Corp., for failure to answer or otherwise respond to plaintiffs' summons and complaint, pursuant to FRBP 7012(a). And it is further

ORDERED that defendant, Beneficial Homeowner Service Corp., shall prepare and submit a duly executed lien release concerning its mortgage against debtors' property located at 25 Sterup Drive, City of Troy, County of Rensselaer, and State of New York, in proper form for recording, and deliver the same to the Chapter 13 Trustee within 10 days

following service of this Order upon the attorney for the defendant to be held in escrow by Andrea E. Celli, Chapter 13 Trustee, to be released back to Beneficial Homeowner Service Corp., upon dismissal or conversion of debtors' petition, and only to be released to Marc S. Ehrlich, Esq., attorney for debtors/plaintiffs, for recording upon completion of debtors' Chapter 13 Plan.

Dated: **JAN 13 2011**  
Albany, New York

  
\_\_\_\_\_  
Hon. Robert E. Littlefield, Jr.  
U.S. Bankruptcy Court Judge

**437 3rd Ave**

Watervliet NY 12189

6 beds, 2.0 baths, 2,360 sq ft

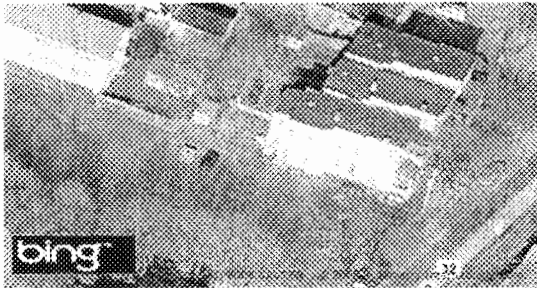
Zestimate®: \$120,500

My Estimate:

Monthly Payment: \$ 512 edit

Check Your Credit Score for \$0

**Bird's Eye View**



See 2

**Home Info**

**Public Facts:**

- Multi-family
- 6 beds
- 2.0 bath
- 2,360 sqft
- Lat 2,970 sqft
- Built in 1906

**Neighborhood**

**Nearby Schools:**

**District:**

**Primary:**

Public School 12

**Middle:**

Doyle Middle School

**High:**

Watervliet Jr/Sr ...

See more Watervliet schools

**Charts & Data**

**ZESTIMATE®: \$120,500**

Value Range: \$95,195 -

\$136,165

30-day change: \$2,500

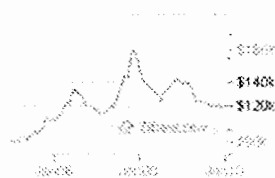
Zestimate updated: 01/11/2010

**Last sale and tax info**

**2009 Property Tax:**

\$0

: 45 - Car-Dependent



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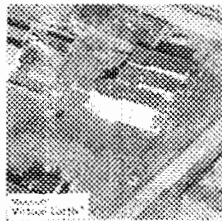
Home values 437 3rd Ave, Watervliet, NY 12189

[Search options](#)

Home

## 437 3rd Ave, Watervliet, NY 12189

[Back to search results](#)  
[Prev](#) [Next](#)



Water View Loop

-advertisement-

Business

**\$98,677**

Change over last month: **-\$2,828** Estimate Range: **\$88,809 -- \$113,478**  
 Last Update: **December 14, 2009**

**MARKET FORECAST**

See how much home prices are expected to **decrease** in this Neighborhood in the coming months. [Get Full Report](#)

30-Year Rates are low! 200k for \$1,830/month

### Estimated Home Value [About...](#)

Compared to:  ZIP 12189  Watervliet  NY

Change over: 1 year | All

This House  12189  Watervliet  NY



### Home Facts

Estimate Range	<b>\$88,809 -- \$113,478</b>
Bedrooms	<b>6</b>
Bathrooms	<b>2</b>
Living Area	<b>2,360 Sq feet</b>
Lot Size	---
Type	<b>Multifamily</b>
Parcel	<b>011800 44.50-2-15</b>
County	<b>Albany</b>
Year Built	<b>1906</b>
Total Rooms	---
Heating	<b>Hot Water</b>
Cooling	---
Number of Stories	---
Legal Description	---

### Sales and Tax Info

Tax Year	Improvements - Land	Total
2008	\$54,600 + \$16,000 =	<b>\$70,600</b>
2007	\$54,600 + \$16,000 =	<b>\$70,600</b>
2006	\$54,600 + \$16,000 =	<b>\$70,600</b>

## Appraisals

### Sales comparison approach

Also known as the Market data approach, the Sales comparison approach involves the comparison of the subject property to recently sold comparable properties. The comparable properties are adjusted up or down to account for the differences between the comparable properties and the subject property.

Differences such as the following are taken into account: the actual structure, the age, the condition, the rights being transferred and any encumbrances.

### Cost approach

This approach considers what the land, without any structures thereon, would cost, then the cost of actually building the structures is added, and depreciation is subtracted. This approach is generally employed for public buildings as comparable properties are generally not available.

### Income approach

The income approach values property by the income it has potential to generate and is generally employed to value apartment buildings, office buildings, malls and other income generating properties.