

LINN COUNTY
SHERIFFS OFFICE

2017 NOV -8 PM 1:01

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Verified Correct Copy of Original 10/20/2017.

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF LINN

FEDERAL NATIONAL MORTGAGE
ASSOCIATION ("FANNIE MAE"), A
CORPORATION ORGANIZED AND
EXISTING UNDER THE LAWS OF THE
UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL A. FIALA AKA MICHAEL
ALAN FIALA; ANGEL LYNN FIALA AKA
ANGEL LYNN WILSON; STATE OF
OREGON; OCCUPANTS OF THE
PROPERTY,

Defendants.

Case No.: 17CV04045

WRIT OF EXECUTION IN
FORECLOSURE

TO THE LINN COUNTY SHERIFF:

A Judgment of Foreclosure was entered and docketed in this case on October 11, 2017.
A true copy of the Judgment is attached hereto. The Judgment was entered in favor of the
Plaintiff:

FEDERAL NATIONAL MORTGAGE ASSOCIATION ("FANNIE MAE"), A
CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE
UNITED STATES OF AMERICA
c/o Bryan Kidder
Attorney for Plaintiff
McCarthy & Holthus, LLP
920 SW 3rd Ave, 1st Floor
Portland, OR 97204

1 With the adjudicated amount due of \$163,181.64, plus post-judgment interest at the statutory rate
2 of 9.0% per annum from October 11, 2017 to October 25, 2017 in the amount of \$563.31, and
3 continuing at \$40.24 *per diem*, currently totaling \$163,744.95.

4 **NOW, THEREFORE, IN THE NAME OF THE STATE OF OREGON**, you are
5 hereby commanded to sell, in the manner prescribed by law for the sale of real property on
6 execution (subject to redemption of 180 days), all of the interest that the Defendant had on or
7 about February 12, 2003, the date of the Deed of Trust, and also the interest that the Defendant
8 had thereafter, in the real property described in attached Exhibit 1, APN/Parcel #R0842813, and
9 commonly known as 73 Oakway, Lebanon, OR 97355.

10 Sale of the property is to satisfy the sum listed above, plus the costs incurred in
11 performing this Writ. Pursuant to ORS 18.872, you are authorized to continue execution under
12 the writ and delay making a return on the writ to no later than 150 days from receipt of the writ.
13 You are to make the return within 60 days after you receive this Writ. Should the sale be
14 continued, the writ may be automatically extended for 30 days.



Signed 10/20/2017 04:13 PM

Katy Sims

Katy Sims, Administrative Authority

15
16
17 Dated: October 18, 2017 and submitted by

18 **McCarthy & Holthus, LLP**

19 s/ Bryan Kidder

20 _____
21 Bryan Kidder, OSB No. 140459
22 920 SW 3rd Ave, 1st Floor
23 Portland, OR 97204
24 Phone: (971) 201-3200
25 Fax: (971) 201-3202
26 bkidder@mccarthyholthus.com
27 Of Attorneys for Plaintiff
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EXHIBIT "1"

Legal Description

**LOT 10, BROWN'S OAK TERRACE SUBDIVISION, IN THE CITY OF LEBANON, COUNTY OF LINN
AND STATE OF OREGON.**

Verified Correct Copy of Original 10/20/2017.

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF LINN

FEDERAL NATIONAL MORTGAGE ASSOCIATION ("FANNIE MAE"), A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL A. FIALA AKA MICHAEL ALAN FIALA; ANGEL LYNN FIALA AKA ANGEL LYNN WILSON; STATE OF OREGON; OCCUPANTS OF THE PROPERTY,

Defendants.

Case No.: 17CV04045

GENERAL JUDGMENT OF FORECLOSURE

1.

THIS MATTER came before the Court on Plaintiff's motion. All defendants ("Defaulted Defendants") were duly served with process and failed to appear; the default has been entered against Defaulted Defendants, and it appearing that Defaulted Defendants are not incapacitated, protected persons, respondents as defined in ORS 125.005, minors, or in the military service of the United States;

2.

IT IS HEREBY ADJUDGED that Plaintiff shall have judgment as follows:

- a. The real property to which this judgment relates is located and situated in Linn County, Oregon, and is commonly known as 73 Oakway, Lebanon, OR 97355 (the "Subject Property"), legally described as shown in the attached *Exhibit 1*, and having APN/Parcel No. R0842813.

1 b. Plaintiff is entitled to enforce the note dated February 12, 2003 and made, delivered, and
2 executed by MICHAEL A. FIALA AKA MICHAEL ALAN FIALA to FLAGSTAR BANK,
3 FSB in the amount of \$166,150.00 (the "Note"). The Note was transferred to Plaintiff by
4 delivery of possession and by indorsement set forth on the Note.

5 c. A deed of trust was made, executed, and delivered by Defendant MICHAEL A. FIALA AKA
6 MICHAEL ALAN FIALA on or about February 25, 2003 (the "Deed of Trust"). The Deed
7 of Trust was recorded on February 28, 2003 as in the official records of Linn County,
8 Oregon, Volume 1391, Page 906, Microfilm Records. It was re-recorded on April 10, 2003
9 in Volume 1409, Page 562, Microfilm Records. The Deed of Trust is a valid and perfected
10 lien against all of the Property for and securing the Amount Due. The lien of the Plaintiff is
11 superior to any interest, lien, or claim of the Defendants and shall remain in effect until
12 issuance of a Sheriff's Deed.

13 d. The Borrower failed to make the payment that was due for April 1, 2015 and has not cured
14 the default. The amount of debt secured by the Deed of Trust that is now due and owing is
15 comprised of the following amounts (the "Amount Due"):

16	a) Unpaid principal balance:	\$130,665.61
17	b) Prejudgment interest accruing from 3/1/2015 through 10/06/2017 and	\$19,936.48
18	continuing until the entry of judgment at the current Note rate of	
	5.875% (\$21.03 per diem):	
19	c) Additional amounts due under the terms of the loan:	\$7,177.87
20	d) Attorney fees and costs:	\$5,316.68
21	e) Prevailing party fee (ORS 20.190 (1)(b)):	\$85.00
22	Total:	\$163,181.64

23 Pursuant to ORS 82.010 (2), post-judgment interest shall accrue on the Amount Due from the
24 date of entry of this judgment through the sale of the Subject Property at the rate of 9.00%
25 per annum.

26 e. The interest of the Defendants and any successor in interest in the Subject Property is
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- 1 foreclosed and terminated excepting only any statutory right of redemption as provided by
- 2 Oregon law.
- 3 f. The Defendants is not entitled to a homestead exception as against Plaintiff's judgment.
- 4 g. All right, title and interest in the Subject Property that Defendant MICHAEL A. FIALA
- 5 AKA MICHAEL ALAN FIALA had as of the date of the Deed of Trust or thereafter
- 6 acquired is hereby ordered to be sold by the Linn County Sheriff's Office in accordance with
- 7 the process for sale upon execution, and the proceeds of sale shall be applied:
- 8 1) First, to the costs of sale not incurred by Plaintiff,
- 9 2) Second, to the Amount Due, plus post-judgment interest accruing from the date of
- 10 entry of judgment through the date of the sale and any incurred costs of sale;
- 11 3) Third, the surplus, if any, to the Defendants in the priority as their interest may
- 12 appear, described *infra*, or to the clerk of the court to be distributed by the Court to
- 13 such party or parties as they may establish their right thereto.
- 14 h. Plaintiff may become purchaser at the sale of the Subject Property and, pursuant to ORS
- 15 18.936 (2), may credit bid up to the Amount Due, plus post-judgment interest accruing from
- 16 the date of entry of judgment through the date of the sale and any incurred costs of sale.
- 17 i. The purchaser at the sale is entitled to exclusive and immediate possession of the Subject
- 18 Property from and after the date of the sale and is entitled to such remedies as are available at
- 19 law or in equity to secure possession. The purchaser at the sale may apply to the Court for a
- 20 writ of assistance if any Defendant, other party, or other person shall refuse to surrender
- 21 possession to the purchaser immediately upon the purchaser's demand for possession.
- 22 j. In the event the proceeds of sale are insufficient to pay the Amount Due, Plaintiff shall not be
- 23 entitled to any further or other judgment, including a judgment for the deficiency.
- 24 k. If, before the sale, the Amount Due is brought into court and paid to the clerk, the execution,
- 25 if issued, shall be recalled and the effect of the judgment as to the Amount Due shall be
- 26 terminated.

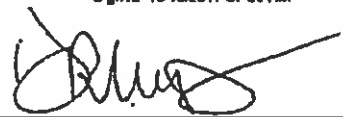
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1. Pursuant to ORS 18.950 (4), the apparent priority of liens subsequent and inferior to the Deed of Trust are as follows:

- 1) Defendant, STATE OF OREGON, may claim a junior interest in Subject Property, to the extent it has provided benefits to the below obligee or is collecting for the obligee, by virtue of a judgment for Dissolution of Marriage (which includes child support) entered on April 26, 2011 as Case No. 110331 in the Circuit Court of Linn County, Oregon.
- 2) Defendant, ANGEL LYNN FIALA AKA ANGEL LYNN WILSON, may claim a junior interest in Subject Property, by virtue of a judgment for Dissolution of Marriage (which includes child support) entered on April 26, 2011 as Case No. 110331 in the Circuit Court of Linn County, Oregon.

Signed: 10/10/2017 07:36 AM



Circuit Court Judge, Daniel R. Murphy

I hereby certify that the requirements of UTCR 5.100 have been satisfied.

This proposed Judgment of Foreclosure is ready for judicial signature because:

- Each opposing party affected by this order or judgment has stipulated to the order or judgment, as shown by each opposing party's signature on the document being submitted.
- Each opposing party affected by this order or judgment has approved the order or judgment, as shown by signature on the document being submitted or by written confirmation of approval sent to me.
- I have served a copy of this order or judgment on all parties entitled to service and:
 - No objection has been served on me.
 - I received objections that I could not resolve with the opposing party despite reasonable efforts to do so. I have filed a copy of the objections I received and indicated which objections remain unresolved.
 - After conferring about objections, _____ agreed to independently file any remaining objection.

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The relief sought is against an opposing party who has been found in default.

An order of default is being requested with this proposed judgment.

Service is not required pursuant to subsection (3) of this rule, or by statute, rule, or otherwise.

This is a proposed judgment that includes an award of punitive damages and notice has been served on the Director of the Crime Victims' Assistance Section as required by subsection (4) of this rule.

Other: _____

DATED October 3, 2017 and submitted by:

McCarthy & Holthus, LLP

s/ Bryan Kidder

Bryan Kidder, OSB No. 140459

920 SW 3rd Ave, 1st Floor

Portland, OR 97204

Phone: (971) 201-3200

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Of Attorneys for Plaintiff

LOT 10, BROWN'S OAK TERRACE SUBDIVISION, IN THE CITY OF LEBANON, COUNTY OF LINN
AND STATE OF OREGON.