

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

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

Plaintiff,

v.

THE UNKNOWN HEIRS AND DEVISEES OF ROBERT V. WETHERN, SR.; IRMA WETHERN; OCCUPANTS OF THE PROPERTY,

Defendants.

Case No.: 17CV02113

WRIT OF EXECUTION IN FORECLOSURE

**TO THE KLAMATH COUNTY SHERIFF:**

A Judgment of Foreclosure was entered and docketed in this case on August 22, 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 \$127,924.79, plus post-judgment interest at the statutory rate  
2 of 9.0% per annum from August 22, 2017 to September 28, 2017 in the amount of \$1,167.09,  
3 and continuing at \$31.54 *per diem*, currently totaling \$129,091.88.

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 August 4, 2000, the date of the Deed of Trust, and also the interest that the Defendant had  
8 thereafter, in the real property described as follows:

9 *See attached Exhibit 1*

10 and commonly known as: 7015 Widgeon Drive, Bonanza, OR 97623.

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



16  
17  
18  
19  
20 DATED September 26, 2017 and submitted by:

21 **McCarthy & Holthus, LLP**

22 s/ Bryan Kidder

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

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

Plaintiff,

v.

THE UNKNOWN HEIRS AND DEVISEES OF ROBERT V. WETHERN, SR.; IRMA WETHERN; OCCUPANTS OF THE PROPERTY,

Defendants.

Case No.: 17CV02113

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. 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 Klamath County, Oregon, and is commonly known as 7015 Widgeon Drive, Bonanza, OR 97623 (the "Subject Property"), legally described as shown in the attached *Exhibit 1*, and having APN/Parcel No. R463821.

1 b. Plaintiff is entitled to enforce the note dated August 4, 2000 and made, delivered, and  
2 executed by ROBERT V. WETHERN, SR. to INDYMAC BANK, F.S.B. in the amount of  
3 \$113,400.00 (the "Note"). The Note was transferred to Plaintiff by delivery of possession  
4 and by indorsement set forth on the Note.

5 c. A deed of trust was made, executed, and delivered by Borrower ROBERT V. WETHERN,  
6 SR. on or about August 7, 2000 (the "Deed of Trust"). The Deed of Trust was recorded on  
7 August 14, 2000 as Vol. M00 Page 29719 in the official records of Klamath County, Oregon.  
8 The Deed of Trust is a valid and perfected lien against all of the Property for and securing the  
9 Amount Due. The lien of the Plaintiff is superior to any interest, lien, or claim of the  
10 Defendants and shall remain in effect until issuance of a Sheriff's Deed.

11 d. The Borrower failed to make the payment that was due for March 1, 2014 and has not cured  
12 the default. The amount of debt secured by the Deed of Trust that is now due and owing is  
13 comprised of the following amounts (the "Amount Due"):

14	a) Unpaid principal balance:	\$87,848.73
15	b) Prejudgment interest accruing from	
16	2/1/2014 through 8/16/2017 and	
17	continuing until the entry of	
18	judgment at the current Note rate of	
19	6.875%:	\$21,396.58
20	c) Additional amounts due under the	\$14,372.55
21	terms of the loan:	
22	d) Attorney fees and costs:	\$4,221.93
23	e) Prevailing party fee (ORS 20.190	\$85.00
24	(1)(b)):	
25	<b>Total:</b>	<b>\$127,924.79</b>

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

- 1 e. The interest of the Defendants and any successor in interest in the Subject Property is  
2 foreclosed and terminated excepting only any statutory right of redemption as provided by  
3 Oregon law.
- 4 f. The Defendants are not entitled to a homestead exception as against Plaintiff's judgment.
- 5 g. All right, title and interest in the Subject Property that Borrower ROBERT V. WETHERN,  
6 SR. had as of the date of the Deed of Trust or thereafter acquired is hereby ordered to be sold  
7 by the Klamath County Sheriff's Office in accordance with the process for sale upon  
8 execution, and the proceeds of sale shall be applied:
- 9       1) First, to the costs of sale not incurred by Plaintiff;
- 10       2) Second, to the Amount Due, plus post-judgment interest accruing from the date of  
11 entry of judgment through the date of the sale and any incurred costs of sale;
- 12       3) Third, the surplus, if any, to the Defendants in the priority as their interest may  
13 appear, described *infra*, or to the clerk of the court to be distributed by the Court to  
14 such party or parties as they may establish their right thereto.
- 15 h. Plaintiff may become purchaser at the sale of the Subject Property and, pursuant to ORS  
16 18.936 (2), may credit bid up to the Amount Due, plus post-judgment interest accruing from  
17 the date of entry of judgment through the date of the sale and any incurred costs of sale.
- 18 i. The purchaser at the sale is entitled to exclusive and immediate possession of the Subject  
19 Property from and after the date of the sale and is entitled to such remedies as are available at  
20 law or in equity to secure possession. The purchaser at the sale may apply to the Court for a  
21 writ of assistance if any Defendant, other party, or other person shall refuse to surrender  
22 possession to the purchaser immediately upon the purchaser's demand for possession.
- 23 j. In the event the proceeds of sale are insufficient to pay the Amount Due, Plaintiff shall not be  
24 entitled to any further or other judgment, including a judgment for the deficiency.
- 25 k. If, before the sale, the Amount Due is brought into court and paid to the clerk, the execution,  
26 if issued, shall be recalled and the effect of the judgment as to the Amount Due shall be  
27 terminated.
- 28

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

- 3 1) Defendant IRMA WETHERN may claim a junior interest in Subject Property by  
4 virtue of a Deed Creating an Estate by the Entirety conveyed by Robert V. Wethern  
5 and recorded on July 26, 2006 as Instrument No. M06-15051 in the official records of  
6 Klamath County, Oregon.

Signed: 8/18/2017 11:02 AM



**Circuit Court Judge Dan Bunch**

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

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

14  Each opposing party affected by this order or judgment has stipulated to the order or  
15 judgment, as shown by each opposing party's signature on the document being  
16 submitted.

17  Each opposing party affected by this order or judgment has approved the order or  
18 judgment, as shown by signature on the document being submitted or by written  
19 confirmation of approval sent to me.

20  I have served a copy of this order or judgment on all parties entitled to service and:

21  No objection has been served on me.

22  I received objections that I could not resolve with the opposing party despite  
23 reasonable efforts to do so. I have filed a copy of the objections I received and  
24 indicated which objections remain unresolved.

25  After conferring about objections, \_\_\_\_\_ agreed to independently file  
26 any remaining objection.

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

28  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.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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: August 16, 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  
Fax: (971) 201-3202  
bkidder@mccarthyholthus.com  
Of Attorneys for Plaintiff

# **EXHIBIT "1"**



## Legal Description

Lot 31 & Lot 32 in Block 37, KLAMATH FALLS FOREST ESTATES HIGHWAY 66 UNIT, PLAT NO. 2, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.