

RECEIVED
CLACKAMAS CNTY SHERIFF

18 MAR -1 AM 11:48

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 CLACKAMAS

NATIONSTAR MORTGAGE LLC D/B/A
CHAMPION MORTGAGE COMPANY,

Plaintiff,

vs.

SUSAN E. SNELL AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF
FREDERICK E. WEYER; UNITED STATES
OF AMERICA; STATE OF OREGON;
SCOTT A. WEYER; ROBERT E. WEYER;
OCCUPANTS OF THE PROPERTY,

Defendants.

Case No.: 16CV29072

WRIT OF EXECUTION IN
FORECLOSURE

TO THE CLACKAMAS COUNTY SHERIFF:

A Judgment of Foreclosure was entered and docketed in this case on December 15, 2017.

A true copy of the Judgment is attached hereto. The Judgment was entered in favor of the

Judgment Creditor:

NATIONSTAR MORTGAGE LLC D/B/A
CHAMPION MORTGAGE COMPANY
c/o Jeremy Clifford
Attorney for Plaintiff

McCarthy & Holthus, LLP
920 SW 3rd Ave, 1st Floor
Portland, OR 97204

1 With the adjudicated amount due of \$192,452.67, plus post judgment interest at the statutory rate
2 of 9.0% per annum from December 15, 2017 to January 29, 2018 in the amount of \$2,135.43,
3 and continuing with a per diem of \$47.45, currently totaling \$194,588.10.

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 May 23, 2008, the date of the Deed of Trust, and also the interest that the Defendant had
8 thereafter, in the real property described as follows in attached Exhibit 1, APN/Parcel #
9 00597072, and commonly known as: 16951 S Redland Road , Oregon City, OR 97045.

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.

15 *Dated: February 6, 2018.*

16 *Wendy Watson*



18 Dated: 1/25/18 and submitted by:

19 **McCarthy & Holthus, LLP**

20 
21 _____
22 Jeremy Clifford OSB No. 142987
23 920 SW 3rd Ave, 1st Floor
24 Portland, OR 97204
25 Phone: (971) 201-3200
26 Fax: (971) 201-3202
27 jelifford@mccarthyholthus.com
28 Of Attorneys for Plaintiff

COURT CLERK HAS NOT VERIFIED FIGURES IN THIS WRIT.
IF YOU HAVE ANY QUESTIONS REGARDING THIS WRIT,
PLEASE CONTACT YOUR LEGAL COUNSEL, THE ISSUING
ATTORNEY OR THE ISSUING COMPANY. DEBTOR MAY CONTEST
THIS WRIT BY FILING A CLAIM OF EXEMPTION.

Court Administrator relies on the information
provided by the person seeking issuance of
this writ of execution and is not liable for any
errors or omissions in the information

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF Clackamas, STATE OF OR, AND IS DESCRIBED AS FOLLOWS:

PARCEL I:

That portion of the Southeast one-quarter of the Southeast one-quarter of Section 35, Township 2 South, Range 2 East, of the Willamette Meridian, in the County of Clackamas and State of Oregon, lying Northerly of Redland Road, also known as County Road No. 20.

EXCEPT that portion described as a tract of land in the Southeast one-quarter of the Southeast one-quarter of Section 35, Township 2 South, Range 2 East, of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:

Beginning at the Northeast corner of said division, being the Northeast corner of that tract conveyed to Frederick E. Weyer, et ux, recorded August 20, 1971, Recorder's Fee No. 71-20526; thence West along the North line of said division and the North line of said Weyer tract 274.00 feet to the true point of beginning of the tract herein to be described; thence South parallel with the East line of said section 33.00 feet, more or less, to the Northeasterly line of Redland Road, Market Road No. 20; thence Northwesterly along said road line to the point of intersection with the North line of said division and the North line of said Weyer tract; thence Easterly along said North line to the true point of beginning.

FURTHER EXCEPTING a tract of land in the Southeast one-quarter of the Southeast one-quarter of Section 35, Township 2 South, Range 2 East, of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:

Beginning at the Northeast corner of said division, being the Northeast corner of that tract conveyed to Frederick E. Weyer, et ux, recorded August 20, 1971, Recorder's Fee No. 71-20526; thence West along the North line of said division 30.00 feet; thence South parallel with the East line of said section 130.00 feet, more or less, to a point on the Northeasterly line of Redland Road No. 20; thence Southeasterly along the said road line 31.00 feet, more or less, to the East line of said section; thence Northerly along the East line of said section 139.00 feet, more or less, to the point of beginning.

PARCEL II:

A tract of land in the Northeast one-quarter of the Southeast one-quarter of Section 35, Township 2 South, Range 2 East, of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:

Beginning at the Southeast corner of said division, being the Southeast corner of that tract conveyed to Clarence F. Kyle, et ux, recorded September 16, 1965, in Book 663, Page 91, Deed Records; thence West along the South line of said division 30.00 feet to the true point of beginning of the tract herein to be described; thence West along the South line of said division and the South line of said Kyle tract 274.00 feet to a point thereon; thence North parallel with the West line of said section 20.00 feet; thence Easterly parallel with the South line of said Kyle tract 274.00 feet to a point that is West 30.00 feet from the East line of said section; thence Southerly 30.00 feet to the point of beginning.

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 CLACKAMAS

NATIONSTAR MORTGAGE LLC D/B/A
CHAMPION MORTGAGE COMPANY,

Case No.: 16CV29072

Plaintiff,

GENERAL JUDGMENT OF
FORECLOSURE

vs.

SUSAN E. SNELL AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF
FREDERICK E. WEYER; UNITED
STATES OF AMERICA; STATE OF
OREGON; SCOTT A. WEYER; ROBERT
E. WEYER; OCCUPANTS OF THE
PROPERTY;

Defendants.

1.

THIS MATTER came before the Court on Plaintiff's motion.

a. 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 Clackamas County, Oregon, and is commonly known as 16951 S Redland Road , Oregon City, OR 97045 (the "Subject Property"), legally described as shown in the attached *Exhibit I*, and having APN/Parcel No. 00597072.

- 1 b. Plaintiff is entitled to enforce the note dated May 23, 2008 and made, delivered, and executed
2 by ~~The Estate of~~ Frederick Weyer to BANK OF AMERICA, N.A., ANATIONAL
3 BANKING ASSOCIATION in the amount of \$366,000.00 (the "Note"). The Note was
4 transferred to Plaintiff by delivery of possession and by indorsement set forth on the Note.
- 5 c. A deed of trust was made, executed, and delivered by Defendant Frederick E. Weyer on or
6 about May 23, 2008 (the "Deed of Trust"). The Deed of Trust was recorded on May 29,
7 2008 as Instrument No. 2008-039328 in the official records of Clackamas 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 15, 2016 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:	\$150,232.70
15	b) Prejudgment interest accruing from	\$16,725.63
16	9/30/2012 through 6/30/2017 and	
17	continuing until the entry of	
	judgment at the current Note rate	
18	c) Additional amounts due under the	\$19,272.58
	terms of the loan:	
19	d) Attorney fees and costs	\$6,136.76
20	e) Prevailing party fee (ORS 20.190	\$85.00
21	(1)(a)):	
22	Total:	\$192,452.67

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
27
28

- 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. Pursuant to 38 U.S.C. § 3720 (d), because the United States' lien is subordinate to the
5 Plaintiff's lien and is guaranteed/insured by the FHA, the federal government does not have a
6 28 U.S.C. § 2410(c) one-year redemption right in this case.
- 7 g. The Defendants are not entitled to a homestead exception as against Plaintiff's judgment.
- 8 h. All right, title and interest in the Subject Property that Defendant Frederick E. Weyer had as
9 of the date of the Deed of Trust or thereafter acquired is hereby ordered to be sold by the
10 Clackamas County Sheriff's Office in accordance with the process for sale upon execution,
11 and the proceeds of sale shall be applied:
- 12 1) First, to the costs of sale not incurred by Plaintiff;
 - 13 2) Second, to the Amount Due, plus post-judgment interest accruing from the date of
14 entry of judgment through the date of the sale and any incurred costs of sale;
 - 15 3) Third, the surplus, if any, to the Defendants in the priority as their interest may
16 appear, described *infra*, or to the clerk of the court to be distributed by the Court to
17 such party or parties as they may establish their right thereto.
- 18 i. Plaintiff may become purchaser at the sale of the Subject Property and, pursuant to ORS
19 18.936 (2), may credit bid up to the Amount Due, plus post-judgment interest accruing from
20 the date of entry of judgment through the date of the sale and any incurred costs of sale.
- 21 j. The purchaser at the sale is entitled to exclusive and immediate possession of the Subject
22 Property from and after the date of the sale and is entitled to such remedies as are available at
23 law or in equity to secure possession. The purchaser at the sale may apply to the Court for a
24 writ of assistance if any Defendant, other party, or other person shall refuse to surrender
25 possession to the purchaser immediately upon the purchaser's demand for possession.
- 26 k. In the event the proceeds of sale are insufficient to pay the Amount Due, Plaintiff shall not be
27 entitled to any further or other judgment, including a judgment for the deficiency.
- 28

1 l. If, before the sale, the Amount Due is brought into court and paid to the clerk, the execution,
2 if issued, shall be recalled and the effect of the judgment as to the Amount Due shall be
3 terminated.

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

- 6 1) SUSAN E. SNELL AS PERSONAL REPRESENTATIVE OF THE ESTATE OF
7 FREDERICK E. WEYER may claim a junior interest in the Property by virtue of a
8 probate case opened on 09/23/2016 as Case Number 16PB06546 in the circuit court
9 of Clackamas County.
- 10 2) UNITED STATES OF AMERICA may claim an interest in the Subject Property
11 under the terms of an additional, subordinate note and deed of trust, associated with
12 this loan issued to the Secretary of Housing and Urban Development (the "HUD
13 Loan") in the amount of \$366,000.00. The deed of trust associated with the HUD
14 Loan is recorded in the official records of Clackamas County as Instrument No. 2008-
15 039329 on 05/29/2008.
- 16 3) STATE OF OREGON has or may have a lien against the Property under the State of
17 Oregon tax deferral program.
- 18 4) SCOTT A. WEYER and ROBERT E. WEYER may claim a junior interest in the
19 Property by virtue of intestate succession, devise or operation of law.
- 20 5) STATE OF OREGON May also claim an interest on the Property by virtue of a
21 Request for Notice of Transfer or Encumbrance recorded on 07/25/2016 as
22 instrument number 2016-048745 in the official records of Clackamas County.

Signed: 12/12/2017 02:45 PM

23
24
25
26

27
28
Circuit Court Judge Michael C. Wetzel

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

1 This proposed Judgment Of Foreclosure is ready for judicial signature because:
2

3 An order of default is being requested with this proposed judgment.
4

5 Dated: August 14, 2017 and submitted by:

6 **McCarthy & Holthus, LLP**

7 s/ Brady Godbout

8 Brady Godbout OSB No. 132708

9 920 SW 3rd Ave, 1st Floor

10 Portland, OR 97204

11 Phone: (971) 201-3200

12 Fax: (971) 201-3202

13 bgodbout@mccarthyholthus.com

14 Of Attorneys for Plaintiff
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT " 1 "

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF Clackamas, STATE OF OR, AND IS DESCRIBED AS FOLLOWS:

PARCEL I:

That portion of the Southeast one-quarter of the Southeast one-quarter of Section 35, Township 2 South, Range 2 East, of the Willamette Meridian, in the County of Clackamas and State of Oregon, lying Northerly of Redland Road, also known as County Road No. 20.

EXCEPT that portion described as a tract of land in the Southeast one-quarter of the Southeast one-quarter of Section 35, Township 2 South, Range 2 East, of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:

Beginning at the Northeast corner of said division, being the Northeast corner of that tract conveyed to Frederick E. Weyer, et ux, recorded August 20, 1971, Recorder's Fee No. 71-20526; thence West along the North line of said division and the North line of said Weyer tract 274.00 feet to the true point of beginning of the tract herein to be described; thence South parallel with the East line of said section 33.00 feet, more or less, to the Northeasterly line of Redland Road, Market Road No. 20; thence Northwesterly along said road line to the point of intersection with the North line of said division and the North line of said Weyer tract; thence Easterly along said North line to the true point of beginning.

FURTHER EXCEPTING a tract of land in the Southeast one-quarter of the Southeast one-quarter of Section 35, Township 2 South, Range 2 East, of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:

Beginning at the Northeast corner of said division, being the Northeast corner of that tract conveyed to Frederick E. Weyer, et ux, recorded August 20, 1971, Recorder's Fee No. 71-20526; thence West along the North line of said division 30.00 feet; thence South parallel with the East line of said section 130.00 feet, more or less, to a point on the Northeasterly line of Redland Road No. 20; thence Southeasterly along the said road line 31.00 feet, more or less, to the East line of said section; thence Northerly along the East line of said section 139.00 feet, more or less, to the point of beginning.

PARCEL II:

A tract of land in the Northeast one-quarter of the Southeast one-quarter of Section 35, Township 2 South, Range 2 East, of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:

Beginning at the Southeast corner of said division, being the Southeast corner of that tract conveyed to Clarence F. Kyle, et ux, recorded September 16, 1965, in Book 663, Page 91, Deed Records; thence West along the South line of said division 30.00 feet to the true point of beginning of the tract herein to be described; thence West along the South line of said division and the South line of said Kyle tract 274.00 feet to a point thereon; thence North parallel with the West line of said section 20.00 feet; thence Easterly parallel with the South line of said Kyle tract 274.00 feet to a point that is West 30.00 feet from the East line of said section; thence Southerly 30.00 feet to the point of beginning.