

RCUD DCSOCUL 28JAN19 12:47

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 DESCHUTES

BANK OF AMERICA, N.A.,

Case No.: 17CV55612

Plaintiff,

vs.

WRIT OF EXECUTION IN  
FORECLOSURE

DANIEL R. ADAIR; AKA DANIEL ADAIR;  
THE UNKNOWN HEIRS AND DEVISEES  
OF KRISTINE L. ADAIR; AKA KRISTINE  
LOUISE ADAIR; UNITED STATES OF  
AMERICA, OREGON AFFORDABLE  
HOUSING ASSISTANCE CORPORATION;  
RAY KLEIN INC. DBA PROFESSIONAL  
CREDIT SERVICE; OCCUPANTS OF THE  
PROPERTY,

Defendants.

**TO THE DESCHUTES COUNTY SHERIFF:**

A Judgment of Foreclosure was entered and docketed in this case on 1/2/2019. A true copy of the Judgment is attached hereto. The Judgment was entered in favor of the Plaintiff:

BANK OF AMERICA, N.A.  
c/o Brady Godbout  
Attorney for Plaintiff  
McCarthy & Holthus, LLP  
920 SW 3rd Ave, 1st Floor  
Portland, OR 97204

1 With the adjudicated amount due of \$158,855.46, plus pre-judgment interest at plus post judgment  
2 interest at note rate of 4.50%, \$13.62 per diem from 12/31/2018 through 1/2/2019, in the amount  
3 of \$27.24, the statutory rate of 9.0%, per annum from 1/3/2019 to 1/22/2019 in the amount of  
4 \$744.23, and continuing with a per diem of \$39.17, currently totaling \$159,626.93.

5  
6 **NOW, THEREFORE, IN THE NAME OF THE STATE OF OREGON**, you are  
7 hereby commanded to sell, in the manner prescribed by law for the sale of real property on  
8 execution (subject to redemption of 180 days), all of the interest that the Defendant had on or  
9 about December 10, 2009, the date of the Deed of Trust, and also the interest that the Defendant  
10 had thereafter, in the real property described in the attached *Exhibit 1*.

11  
12 and commonly known as: 60296 Cinder Butte Rd, Bend, OR 97702-8911.

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

Signed: 1/17/2019 04:46 PM

  
Trial Court Administrator Jeffrey E. Hall



1 Dated: 1/16/2019 and submitted by:

2 **McCarthy & Holthus, LLP**

3 s/ Brady Godbout

---

4 \_ John Thomas OSB No. 024691

5 \_ Andreanna Smith OSB No. 131336

6 x Brady Godbout OSB No. 132708

7 \_ Cruz Turcott OSB No. 165531

8 \_ Jeremy Clifford OSB No. 142987

9 \_ Michael Scott OSB No. 973947

10 920 SW 3rd Ave, 1st Floor

11 Portland, OR 97204

12 Phone: (971) 201-3200

13 Fax: (971) 201-3202

14 bgodbout@mccarthyholthus.com

15 Of Attorneys for Plaintiff

# Exhibit "1"

# **Exhibit “1”**

Lot 7, Block S, DESCHUTES RIVER WOODS, Deschutes County, Oregon.

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 DESCHUTES

BANK OF AMERICA, N.A.,

Plaintiff,

vs.

DANIEL R. ADAIR AKA DANIEL  
ADAIR, THE UNKNOWN HEIRS AND  
DEWISEES OF KRISTINE L. ADAIR AKA  
KRISTINE LOUISE ADAIR; UNITED  
STATES OF AMERICA; OREGON  
AFFORDABLE HOUSING ASSISTANCE  
CORPORATION; RAY KLEIN INC. DBA  
PROFESSIONAL CREDIT SERVICE;  
OCCUPANTS OF THE PROPERTY,

Defendants.

Case No.: 17CV55612

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 Deschutes County, Oregon, and is commonly known as 60296 Cinder Butte Rd, Bend, OR 97702-8911 (the "Subject Property"), legally described as shown in the attached *Exhibit 1*, and having APN/Parcel No. 111549.

1 b. Plaintiff is entitled to enforce the note dated December 10, 2009 and made, delivered, and  
2 executed by Daniel Adair and Kristine Adair to Bank of America in the amount of  
3 \$153,893.00 (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 Defendant(s) Daniel R. Adair and  
6 Kristine L. Adair on or about December 10, 2009 (the "Deed of Trust"). The Deed of Trust  
7 was recorded on December 22, 2009 as Instrument No. 2009-53758 in the official records of  
8 Deschutes County, Oregon. The Deed of Trust is a valid and perfected lien against all of the  
9 Property for and securing the Amount Due. The lien of the Plaintiff is superior to any  
10 interest, lien, or claim of the Defendants and shall remain in effect until issuance of a  
11 Sheriff's Deed.

12 d. The Borrower failed to make the payment that was due for July 1, 2013 and has not cured the  
13 default. The amount of debt secured by the Deed of Trust that is now due and owing is  
14 comprised of the following amounts (the "Amount Due"):

- 15 a) Unpaid principal balance: \$108,963.64
- 16 b) Prejudgment interest accruing from \$27,376.86  
17 6/1/2013 through 12/31/2018 and  
18 continuing until the entry of  
judgment at the current Note rate of  
4.50%:
- 19 c) Additional amounts due under the \$15,989.90  
20 terms of the loan:
- 21 d) Attorney fees and costs: \$6,848.66
- 22 e) Prevailing party fee (ORS 20.190 \$85.00  
(1)(a)):
- 23 **Total: \$158,855.46**

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

- 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 Defendants Daniel R. Adair and  
9 Kristine L. Adair had as of the date of the Deed of Trust or thereafter acquired is hereby  
10 ordered to be sold by the Deschutes County Sheriff's Office in accordance with the process  
11 for sale upon execution, 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. Defendant UNITED STATES OF AMERICA may claim a junior interest in Subject  
7 Property by virtue of a Deed of Trust recorded on 8/02/2012 as Instrument No. 2012-  
8 29968 in the official records of Deschutes County, Oregon.

9 2. Defendant OREGON AFFORDABLE HOUSING ASSISTANCE CORPORATION  
10 may claim a junior interest in Subject Property by virtue of a Deed of Trust recorded  
11 on 6/04/2014 as Instrument No. 2014-17632 in the official records of Deschutes  
12 County, Oregon.

13 3. Defendant RAY KLEIN INC. DBA PROFESSIONAL CREDIT SERVICE may  
14 claim a junior interest in Subject Property by virtue of a judgment entered on  
15 8/06/2014 in Case No. SC140202 in the Circuit Court of Deschutes County, Oregon.

16 4. THE UNKNOWN HEIRS AND DEVISEES OF KRISTINE L. ADAIR AKA  
17 KRISTINE LOUISE ADAIR may claim a junior interest in Subject Property by  
18 virtue of operation of law, devise, or other transfer.

19  
20  
21  
22  
23 Signed: 1/2/2019 09:43 AM

24 

25 Circuit Court Judge Raymond D. Crutchley

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

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

3 The relief sought is against an opposing party who has been found in default.  
4

5 Dated: 12/31/2018 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"

# **Exhibit “1”**

Lot 7, Block S, DESCHUTES RIVER WOODS, Deschutes County, Oregon.