

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

MORTGAGE ASSETS MANAGEMENT,
LLC,

Plaintiff,

vs.

UNKNOWN HEIRS AND DEVISEES OF
MARTHELLA J. WATERS; JOAN WATERS;
OCCUPANTS OF THE PROPERTY;
MIDLAND FUNDING LLC; CONVERGING
CAPITAL CORPORATION; DISCOVER
BANK; UNITED STATES OF AMERICA,

Defendants.

Case No.: 21CV46958

WRIT OF EXECUTION IN
FORECLOSURE

TO THE UMATILLA COUNTY SHERIFF:

A Judgment of Foreclosure was entered and docketed in this case on November 16, 2022.

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

Mortgage Assets Management, LLC
c/o John Thomas
Attorney for Plaintiff

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

1 With the adjudicated amount due of \$167,845.29, plus pre judgment interest from October 1,
2 2022 through November 16, 2022 at the Per Diem rate of \$20.05 in the amount of \$922.30, plus
3 post judgment interest at the statutory rate of 9.0% per annum from November 17, 2022 through
4 December 15, 2022 in the amount of \$1,158.82, and continuing with a per diem of \$41.39,
5 currently totaling \$169,926.41.

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 October 26, 2007, the date of the Deed of Trust, and also the interest that the Defendant
10 had thereafter, in the real property described as follows:

11 LOT 13, BLOCK 22, ARNOLD & RALEY'S ADDITION TO THE TOWN,
12 NOW CITY OF PENDLETON, UMATILLA COUNTY, OREGON.

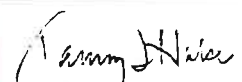
13 and commonly known as: 216 SW 7th Street, Pendleton, OR 97801.

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

19 **DATED:** ____ day of _____, 20____.

20 Title

21 By:



22 **Tammy Hulse, Court Clerk**

23 2/27/2023 10:50:08 AM

1 Dated: 2/27/23 and submitted by:

2 McCarthy & Holthus, LLP

3
4
5 s/ John Thomas

6 John Thomas OSB No. 024691

7 920 SW 3rd Ave, 1st Floor

8 Portland, OR 97204

9 Phone: (971) 201-3200

10 Fax: (971) 201-3202

11 jthomas@mccarthyholthus.com

12 Of Attorneys for Plaintiff

IN THE CIRCUIT COURT OF THE STATE OF OREGON
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MORTGAGE ASSETS MANAGEMENT,
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vs.

UNKNOWN HEIRS AND DEVISEES OF
MARTHELLA J. WATERS; JOAN
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PROPERTY; MIDLAND FUNDING LLC;
CONVERGING CAPITAL
CORPORATION; DISCOVER BANK;
UNITED STATES OF AMERICA,

Defendants.

Case No.: 21CV46958

GENERAL JUDGMENT OF
FORECLOSURE

1.

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

Defendants UNKNOWN HEIRS AND DEVISEES OF MARTELLA J. WATERS; JOAN WATERS; OCCUPANTS OF THE PROPERTY; MIDLAND FUNDING LLC; CONVERGING CAPITAL CORPORATION; DISCOVER BANK; ("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; and, further, Defendant UNITED STATES OF AMERICA having disclaimed interest in this matter

2.

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

1 a. The real property to which this judgment relates is located and situated in Umatilla County,
2 Oregon, and is commonly known as 216 SW 7th Street, Pendleton, OR 97801 (the "Subject
3 Property"), legally described as:

4 LOT 13, BLOCK 22, ARNOLD & RALEY'S ADDITION TO THE TOWN, NOW
5 CITY OF PENDLETON, UMATILLA COUNTY, OREGON.

6 APN/Parcel No. 108953.

7 b. Plaintiff is entitled to enforce the note dated October 26, 2007 and made, delivered, and
8 executed by Marthella J. Waters to Bank of America, N.A. in the amount of \$183,000.00 (the
9 "Note"). The Note was transferred to Plaintiff by delivery of possession and by indorsement
10 set forth on the Note.

11 c. A deed of trust was made, executed, and delivered by Defendant Marthella J. Waters on or
12 about October 26, 2007 (the "Deed of Trust"). The Deed of Trust was recorded on
13 November 1, 2007 as Instrument No. 2007-5280001 in the official records of Umatilla
14 County, Oregon. The Deed of Trust is a valid and perfected lien against all of the Property
15 for and securing the Amount Due. The lien of the Plaintiff is superior to any interest, lien, or
16 claim of the Defendants and shall remain in effect until issuance of a Sheriff's Deed.

17 d. The Borrower failed to make the payment that was due for May 24, 2019 and has not cured
18 the default. The amount of debt secured by the Deed of Trust that is now due and owing is
19 comprised of the following amounts (the "Amount Due"):

20 a) Unpaid principal balance: \$85,817.37

21 b) Deferred principal balance: \$29,823.33

22 c) Accrued interest through 8/31/2022 \$30,122.68

23 Intra Month Per Diem total through
9/22/2022 \$430.80

24 Interest from 9/23/2022 through
9/30/2022 at the Per Diem \$20.05 \$140.35

25 d) Additional amounts due under the \$15,590.53
26 terms of the loan:

27 e) Attorney fees and costs: \$5,835.23

f) Prevailing party fee (ORS 20.190 (1)(b)(A)): \$85.00

Total: \$167,845.29

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

e. The interest of the Defendants and any successor in interest in the Subject Property is foreclosed and terminated excepting only any statutory right of redemption as provided by Oregon law.

f. Pursuant to 38 U.S.C. § 3720 (d), because the United States' lien is subordinate to the Plaintiff's lien and is guaranteed/insured by the FHA, the federal government does not have a 28 U.S.C. § 2410(c) one-year redemption right in this case.

g. The Defendant are not entitled to a homestead exception as against Plaintiff's judgment.

h. All right, title and interest in the Subject Property that Defendant Marthella J. Waters had as of the date of the Deed of Trust or thereafter acquired is hereby ordered to be sold by the Umatilla County Sheriff's Office in accordance with the process for sale upon execution, and the proceeds of sale shall be applied:

- 1) First, to the costs of sale not incurred by Plaintiff;
- 2) Second, to the Amount Due, plus post-judgment interest accruing from the date of entry of judgment through the date of the sale and any incurred costs of sale;
- 3) Third, the surplus, if any, to the Defendants in the priority as their interest may appear, described *infra*, or to the clerk of the court to be distributed by the Court to such party or parties as they may establish their right thereto.

i. Plaintiff may become purchaser at the sale of the Subject Property and, pursuant to ORS 18.936 (2), may credit bid up to the Amount Due, plus post-judgment interest accruing from the date of entry of judgment through the date of the sale and any incurred costs of sale.

1 j. The purchaser at the sale is entitled to exclusive and immediate possession of the Subject
2 Property from and after the date of the sale and is entitled to such remedies as are available at
3 law or in equity to secure possession. The purchaser at the sale may apply to the Court for a
4 writ of assistance if any Defendant, other party, or other person shall refuse to surrender
5 possession to the purchaser immediately upon the purchaser's demand for possession.

6 k. In the event the proceeds of sale are insufficient to pay the Amount Due, Plaintiff shall not be
7 entitled to any further or other judgment, including a judgment for the deficiency.

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

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

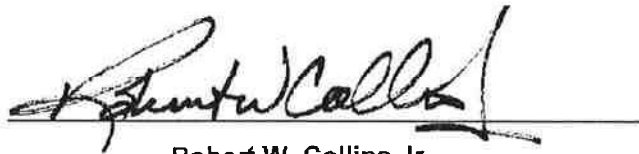
13 1) Defendant United States of America, Secretary of Housing and Urban Development,
14 may have a junior interest in the Property by virtue of a Junior Deed of Trust
15 (Adjustable Rate Home Equity Conversion Line of Credit) granted by Marthella J.
16 Waters, recorded on 11/1/2007 as Instrument No. 2007-5280002 in the official
17 records of Umatilla County, Oregon.

18 2) Defendant discover Bank may have a junior interest in the Property by virtue of a
19 Judgment entered on 10/30/2013 as Case No. CV131489 in the official records of
20 Umatilla County, Oregon.

21 3) Defendant Converging Capital Corporation may have a junior interest in the Property
22 by virtue of a Judgment entered on 9/17/2014 as Case No. CV141366 in the official
23 records of Umatilla County, Oregon.

1 4) Defendant Midland Funding LLC may have a junior interest in the Property by virtue
2 of a Judgment entered on 12/1/2014 as Case No. CV141582 in the official records of
3 Umatilla County, Oregon.
4
5
6
7

8 11/16/2022 1:56:41 PM

9 

10 Robert W. Collins Jr.,
11 Circuit Court Judge

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

13 On 10/31/22, a copy of the Motion For Entry Of Judgment, Declaration Of Attorney Fees
14 And Costs For Plaintiff, Declaration Of Amounts Due, Proposed Judgment Of Foreclosure was:

15 [X] Served on:

16 Jessie D. Young
17 U.S. Attorney's Office, District of Oregon
18 1000 SW Third Avenue, Suite 600
19 Portland, OR 97204

20 not less than 3 days prior to submission to the court.

21 [] Accompanied by a stipulation by Opposing Attorney: Jessie D. Young and Firm: U.S.
22 Attorney's Office, District of Oregon that no objection exists as to the judgment or
23 order.

24 [X] Mailed to:

25 Converging Capital Corporation
26 522 SW 5th Ave, Ste 1300
27 Portland, OR 97204

28 Discover Bank
502 E. Market Street
Greenwood, DE 19950

Joan Waters
1066 Shade Street NE
Salem, OR 97301



CERTIFIED TO BE A TRUE AND
CORRECT COPY OF THE ORIGINAL

Dated: 2/27, 2023

TRIAL COURT ADMINISTRATOR

By: Tammy Hulse

Tammy Hulse

1 Midland Funding LLC
2 P.O. Box 632149
3 Aurora, CO 80011

4 Occupants of the Property
5 216 SW 7th Street
6 Pendleton, OR 97801

7 Unknown Heirs and Devisees of Marthella J. Waters
8 216 SW 7th Street
9 Pendleton, OR 97801

10 not less than 7 days prior to submission to the court with a notice of the time period to
11 object.

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

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

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

19 [X] I have served a copy of this order or judgment on all parties entitled to service and:

20 [X] No objection has been served on me.

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

24 [] After conferring about objections, _____ agreed to independently file
25 any remaining objection.

26 [X] The relief sought is against an opposing party who has been found in default.

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

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

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

4 [] Other: _____

5 Dated: 11/15/22 and submitted by:

6 **McCarthy & Holthus, LLP**

7 s/ John Thomas

8 John Thomas OSB No. 024691

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 jthomas@mccarthyholthus.com

15 Of Attorneys for Plaintiff

16 **NO OBJECTION**

17 s/ Jessie D. Young

10/31/22

18 Jessie D. Young, OSB 135246

19 U.S. Attorney's Office, District of Oregon

20 1000 SW Third Avenue, Suite 600

21 Portland, OR 97204

22 503-727-1003

23 Jessie.young@usdoj.gov