

WTC 891422

2012-005587

Klamath County, Oregon



00118643201200055870070071

05/22/2012 03:11:00 PM

Fee: \$67.00

**RECORDING COVER SHEET**

This cover sheet was prepared by the person presenting the instrument for recording. The information on this sheet is a reflection of the attached instrument and was added for the purpose of meeting first page recording requirements in the State of Oregon, ORS 205.234, and does NOT affect the instrument.

**AFTER RECORDING RETURN TO:**

SHAPIRO & SUTHERLAND, LLC

1499 S.E. Tech Center Place, #255

Vancouver, WA 98683

S&S File No. 10-105984

**1) TITLE(S) OF THE TRANSACTION(S) ORS 205.234(a)**

Affidavit of Mailing/Amended Trustee's Notice of Sale

**2) DIRECT PARTY / GRANTOR(S) ORS 205.125(1)(b) and 205.160**

Smith, James Edward & Dottie S.  
3515 Bisbee Street, Klamath Falls, OR 97603

**3) INDIRECT PARTY / GRANTEE(S) ORS 205.125(1)(a) and 205.160**

PHH Mortgage Corporation  
2001 Bishops Gate Blvd.  
Mount Laurel, New Jersey 08054

KELLY D. SUTHERLAND  
1499 SE Tech Center Place, Suite 255  
Vancouver, WA 98683

**4) TRUE AND ACTUAL CONSIDERATION | 5) SEND TAX STATEMENTS TO:**

ORS 93.030(5) – Amount in dollars or other

\$ \_\_\_\_\_ Other \_\_\_\_\_

**6) SATISFACTION of ORDER or WARRANT |**

ORS 205.125(1)(e)

CHECK ONE: FULL

(If applicable) PARTIAL

**7) The amount of the monetary**

**obligation imposed by the order**

**or warrant. ORS 205.125(1)(c)**

\$ \_\_\_\_\_

**8) If this instrument is being Re-Recorded, complete the following statement, in accordance with ORS 205.244: "RERECORDED AT THE REQUEST OF \_\_\_\_\_ TO**

**CORRECT**

**\_\_\_\_\_ PREVIOUSLY RECORDED IN BOOK \_\_\_\_\_ AND PAGE \_\_\_\_\_, OR AS FEE NUMBER \_\_\_\_\_."**

WTC

AFTER RECORDING RETURN TO:  
Shapiro & Sutherland, LLC  
Kelly D. Sutherland, Successor Trustee  
1499 SE Tech Center Place, Suite 255  
Vancouver, WA 98683  
10-105984

**AFFIDAVIT OF MAILING AMENDED TRUSTEE'S NOTICE OF SALE**  
(After Release From Stay)

STATE OF WASHINGTON, County of Clark, ss:

I, Kelly D. Sutherland, being first duly sworn, depose, and say and certify that: At all times hereinafter mention I was and now am a resident of the State of Oregon, a competent person over the age of eighteen years and not the beneficiary or his successor in interest named in the attached original notice of sale given under the terms of that certain trust deed described in said notice.

I gave notice of the sale of the real property described in the attached Amended Trustee's Notice of Sale by mailing a copy thereof by registered or certified mail to each of the following named persons (or their legal representatives, where so indicated) at their respective last known addresses, to-wit:

James Edward Smith  
3515 Bisbee Street  
Klamath Falls, OR 97603

Dottie S. Smith  
3515 Bisbee Street  
Klamath Falls, OR 97603

James Edward Smith  
3505 Bisbee Street  
Klamath Falls, OR 97603

Dottie S. Smith  
3505 Bisbee Street  
Klamath Falls, OR 97603

James Edward Smith  
37070 Highway 62  
Chiloquin, OR 97624

Dottie S. Smith  
37070 Highway 62  
Chiloquin, OR 97624

Occupant(s)  
3515 Bisbee Street  
Klamath Falls, OR 97603

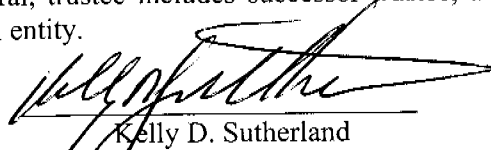
Lars H. Olsen, Esq.  
P.O. Box 12829  
Salem, OR 97309

Fred Long  
Chapter 13 Trustee  
P.O. Box 467  
Eugene, OR 97440

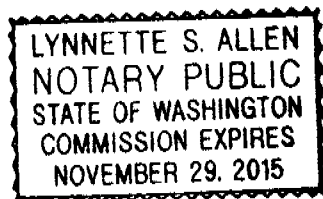
Said Amended Trustee's Notice of Sale was given in compliance with ORS 86.755(6), within 30 days after release from a stay of the foreclosure proceedings, and the above named persons listed in ORS 86.740 and ORS 86.750(1).

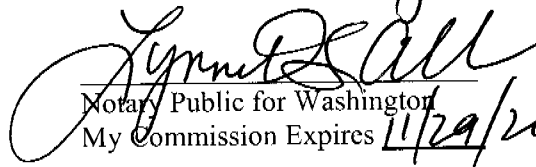
Each of the notices so mailed was certified to be a true copy of the original notice of sale; each such copy was contained in a sealed envelope, with postage thereof fully prepaid, and was deposited in the United States post office at Vancouver, Washington, on May 21, 2012, which was within 30 days after release from a stay of the foreclosure proceeding set forth therein.

As used herein, the singular includes the plural, trustee includes successor trustee, and person includes corporation and any other legal or commercial entity.

  
Kelly D. Sutherland

Subscribed and sworn to before me this 21st day of May, 2012, by Kelly D. Sutherland, Successor Trustee.



  
Notary Public for Washington  
My Commission Expires 11/29/2015

**AMENDED TRUSTEE'S NOTICE OF SALE**  
(After Release From Stay)

Reference is made to that certain trust deed made by James Edward Smith, a married person, Dottie S. Smith, a married person, as grantor, to First American Title, as trustee, in favor of PHH Mortgage Services, as beneficiary, dated November 15, 2005, recorded November 16, 2005, in the mortgage records of Klamath County, Oregon, in Volume M05, at 69198, beneficial interest now held by PHH Mortgage Corporation, fka Cendant Mortgage Corporation, fka PHH Mortgage Services, covering the described real property in said county and state, to-wit:

The South One-Half of Lot 4, Block 8, ALTAMONT ACRES, according to the official plat thereof on file in the office of the Clerk of Klamath County, Oregon.

Commonly Known as: 3515 Bisbee Street, Klamath Falls, OR 97603

Both the beneficiary and the trustee have elected to sell the said real property to satisfy the obligations secured by said trust deed and a notice of default has been recorded pursuant to Oregon Revised Statutes 86.735(3); the default for which the foreclosure is made is grantor's failure to pay when due the following sums:

Monthly payments in the sum of \$788.91 from October 1, 2010, together with all costs, disbursements, and/or fees incurred or paid by the beneficiary and/or trustee, their employees, agents or assigns.

By reason of said default the beneficiary has declared all sums owing on the obligation secured by said trust deed immediately due and payable, said sums being the following, to-wit:

\$98,866.51, together with interest thereon at the rate of 8.125% per annum from September 1, 2010, together with all costs, disbursements, and/or fees incurred or paid by the beneficiary and/or trustee, their employees, agents or assigns.

The Notice of Default and original Notice of Sale given pursuant thereto stated that the property would be sold on May 12, 2011, at 10:00 AM PT, in accord with the standard of time established by ORS 187.110, at the main entrance of the Klamath County Courthouse, located at 316 Main Street, in the City of Klamath Falls, OR, County of Klamath, State of Oregon; however, subsequent to the recording of said Notice of Default the original sale proceedings were stayed by order of the court or by proceedings under the National Bankruptcy Act or for other lawful reason. The beneficiary did not participate in obtaining such stay. Said stay was terminated on May 17, 2012.

WHEREFORE, notice hereby is given that the undersigned trustee will on June 20, 2012, at 10:00 AM PT, in accord with the standard of time established by ORS 187.110, at the main entrance of the Klamath County Courthouse, located at 316 Main Street, in the City of Klamath Falls, OR, County of Klamath, State of Oregon, (which is the new date, time and place set for sale) sell at public auction to the highest bidder foreclose the interest in the said described real property which the grantor has or had power to convey at the time of the execution by him of the said trust deed, together with any interest which the grantor or his successors in interest acquired after the execution of said trust deed, to satisfy the foregoing

obligations thereby secured and the costs and expenses of sale, including a reasonable charge by the trustee. Notice is further given that any person named in ORS 86.753 has the right, at any time prior to five days before the date last set for the sale, to have this foreclosure proceeding dismissed and the trust deed reinstate by payment to the beneficiary of the entire amount then due (other than such portion of the principal as would not then to be due had no default occurred) and by curing any other default complained of herein that is capable of being cured by tendering the performance required under the obligation or trust deed, and in addition to paying said sums or tendering the performance necessary to cure the default, by paying all costs and expenses actually incurred in enforcing the obligation and trust deed, together with trustee's and attorney's fees not exceeding the amount provided by said ORS 86.753.

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### **NOTICE TO RESIDENTIAL TENANTS**

The property in which you are living is in foreclosure. A foreclosure sale is scheduled for June 20, 2012. The date of this sale may be postponed. Unless the lender that is foreclosing on this property is paid before the sale date, the foreclosure will go through and someone new will own this property. After the sale, the new owner is required to provide you with contact information and notice that the sale took place.

The following information applies to you only if you are a bona fide tenant occupying and renting this property as a residential dwelling under a legitimate rental agreement. The information does not apply to you if you own this property or if you are not a bona fide residential tenant.

If the foreclosure sale goes through, the new owner will have the right to require you to move out. Before the new owner can require you to move, the new owner must provide you with written notice that specifies the date by which you must move out. If you do not leave before the move-out date, the new owner can have the sheriff remove you from the property after a court hearing. You will receive notice of the court hearing.

### **PROTECTION FROM EVICTION**

**IF YOU ARE A BONA FIDE TENANT OCCUPYING AND RENTING THIS PROPERTY AS A RESIDENTIAL DWELLING, YOU HAVE THE RIGHT TO CONTINUE LIVING IN THIS PROPERTY AFTER THE FORECLOSURE SALE FOR:**

**THE REMAINDER OF YOUR FIXED TERM LEASE, IF YOU HAVE A FIXED TERM LEASE; OR**

**AT LEAST 90 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMINATION NOTICE.**

If the new owner wants to move in and use this property as a primary residence, the new owner can give you written notice and require you to move out after 90 days, even though you have a fixed term lease with more than 90 days left.

You must be provided with at least 90 days' written notice after the foreclosure sale before you can be required to move.

A bona fide tenant is a residential tenant who is not the borrower (property owner) or a child, spouse or parent of the borrower, and whose rental agreement:

- Is the result of an arm's-length transaction;
- Requires the payment of rent that is not substantially less than fair market rent for the property, unless the rent is reduced or subsidized due to a federal, state or local subsidy; and
- Was entered into prior to the date of the foreclosure sale.

#### **ABOUT YOUR TENANCY BETWEEN NOW AND THE FORECLOSURE SALE:**

##### **RENT**

**YOU SHOULD CONTINUE TO PAY RENT TO YOUR LANDLORD UNTIL THE PROPERTY IS SOLD OR UNTIL A COURT TELLS YOU OTHERWISE. IF YOU DO NOT PAY RENT, YOU CAN BE EVICTED. BE SURE TO KEEP PROOF OF ANY PAYMENTS YOU MAKE.**

##### **SECURITY DEPOSIT**

You may apply your security deposit and any rent you paid in advance against the current rent you owe your landlord as provided in ORS 90.367. To do this, you must notify your landlord in writing that you want to subtract the amount of your security deposit or prepaid rent from your rent payment. You may do this only for the rent you owe your current landlord. If you do this, you must do so before the foreclosure sale. The business or individual who buys this property at the foreclosure sale is not responsible to you for any deposit or prepaid rent you paid to your landlord.

#### **ABOUT YOUR TENANCY AFTER THE FORECLOSURE SALE**

The new owner that buys this property at the foreclosure sale may be willing to allow you to stay as a tenant instead of requiring you to move out after 90 days or at the end of your fixed term lease. After the sale, you should receive a written notice informing you that the sale took place and giving you the new owner's name and contact information. You should contact the new owner if you would like to stay. If the new owner accepts rent from you, signs a new residential rental agreement with you or does not notify you in writing within 30 days after the date of the foreclosure sale that you must move out, the new owner becomes your new landlord and must maintain the property. Otherwise:

- You do not owe rent;
- The new owner is not your landlord and is not responsible for maintaining the property on your behalf; and
- You must move out by the date the new owner specifies in a notice to you.

The new owner may offer to pay your moving expenses and any other costs or amounts you and the new owner agree on in exchange for your agreement to leave the premises in less than 90 days or before your fixed term lease expires. You should speak with a lawyer to fully understand your rights before making any decisions regarding your tenancy.

**IT IS UNLAWFUL FOR ANY PERSON TO TRY TO FORCE YOU TO LEAVE YOUR DWELLING UNIT WITHOUT FIRST GIVING YOU WRITTEN NOTICE the Oregon State Bar and ask for the lawyer referral service AND GOING TO COURT TO EVICT YOU. FOR MORE INFORMATION ABOUT YOUR RIGHTS, YOU SHOULD CONSULT A LAWYER. If you**

believe you need legal assistance, contact information for the Oregon State Bar is included with this notice. If you do not have enough money to pay a lawyer and are otherwise eligible, you may be able to receive legal assistance for free. Information about whom to contact for free legal assistance is included with this notice.

OREGON STATE BAR, 16037 S.W. Upper Boones Ferry Road, Tigard, Oregon 97224, Phone (503) 620-0222, Toll-free 1-800-452-8260 Website: <http://www.osbar.org>

Directory of Legal Aid Programs: <http://www.oregonlawhelp.org>

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In construing this notice, the masculine gender includes the feminine and the neuter, the singular includes the plural, the word "grantor" includes any successor in interest to the grantor as well as any other person owing an obligation, the performance of which is secured by said trust deed, and the words "trustee" and "beneficiary" include their respective successors in interest, if any.

KELLY D. SUTHERLAND, Successor Trustee

Dated 5/21/2012

By 

The Fair Debt Collection Practice Act requires that we state the following: This is an attempt to collect a debt, and any information obtained will be used for that purpose. If a discharge has been obtained by any party through bankruptcy proceedings: This shall not be construed to be an attempt to collect the outstanding indebtedness or hold you personally liable for the debt.

State of Washington, County of Clark, ss:

I, the undersigned certify that the foregoing instrument is a complete and exact copy of the original Amended Trustee's Notice of Sale

SHAPIRO & SUTHERLAND, LLC  
1499 SE Tech Center Place, Suite 255  
Vancouver, WA 98683  
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Toll-free: 1-800-970-5647  
[www.shapiroattorneys.com/wa](http://www.shapiroattorneys.com/wa)