

2018-009723

Klamath County, Oregon



00227021201800097230040043

08/16/2018 01:40:06 PM

Fee: \$97.00

RECORDING COVER SHEET

ORS 205.234

This cover sheet has been prepared by the person presenting the attached instrument for recording. Any error in this cover sheet DOES NOT affect the transaction(s) contained in the instrument itself.

1. AFTER RECORDING RETURN TO –

Required by ORS 205.180(4) & 205.238:

Thomas Keelin

2. TITLE(S) OF THE TRANSACTION(S) – Required by ORS 205.234(1)(a)

Note: "Transaction" means any action required or permitted by law to be recorded, including, but not limited to, any transfer, encumbrance or release affecting title to or an interest in real property. Enter descriptive title for the instrument:

Encroachment Affidavit

3. Between DIRECT PARTY / GRANTOR and Address

**Thomas Keelin
P.O. Box 930
32935 Hwy 97 N
Chiloquin, OR 97624**

4. And INDIRECT PARTY / GRANTEE and Address

**Herman B Lindow
3850 Clinton Ave
Klamath Falls, OR 97603**

- 5. For an instrument conveying or contracting to convey fee title, the information required by ORS 93.260:**

**UNTIL A CHANGE IS REQUESTED,
ALL TAX STATEMENTS SHALL BE
SENT TO THE FOLLOWING
ADDRESS:**

NA

- 6. TRUE AND ACTUAL
CONSIDERATION – Required by
ORS 93.030 for an instrument
conveying or contracting to convey
fee title or any memorandum of
such instrument:**

\$NA

7. TAX ACCOUNT NUMBER OF THE PROPERTY, IF THE INSTRUMENT CREATES A LIEN OR OTHER INTEREST THAT COULD BE SUBJECT TO TAX FORECLOSURE –

Required by ORS 312.125(4)(b)(B):

3507-01600-00400-000 and 3507-01600-00501-000

NOTICE OF ENCROACHMENT

I, Thomas W. Keelin, Manager of Keelin Family Partners, LLC, owner of Klamath County Tax Parcel 3705-01600-00501-000, declare that this parcel is being encroached upon by approximately 37 feet by a fence line, outbuildings, and equipment associated with the neighboring property on the north, Tax Parcel 3705-01600-00400-000, which is currently owned by Herman B Lindow. This encroachment was discovered during a survey of Tax Parcel 3705-01600-00500-000 conducted by Adkins Consulting Engineering, LLP in conjunction with Land Partition LP 3-15, which was approved by Klamath County on March 26, 2015.

The attached letter from Adkins' David Klooster to Klamath County Surveyor Mike Markus, dated May 13, 2015, confirms the existence of this encroachment. Moreover, it explains that the neighboring landowner's purported claim to the encroached-upon land (via a so-called Replacement Warranty Deed dated March 27, 1991 and recorded in Volume 2015-003446 on April 14, 2015) is invalid. The person, Carl Dawson, who "conveyed" this land to Mr. Lindow did not himself own it. As such, Mr. Dawson could not sell or otherwise convey it. Thus, it remains the property of Keelin Family Partners, LLC -- as part of a "parent tract" that was originally patented in 1919 and that has been sold in its original configuration ever since, including most recently to us.

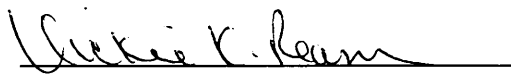

Thomas W. Keelin, Manager, Keelin Family Partners, LLC

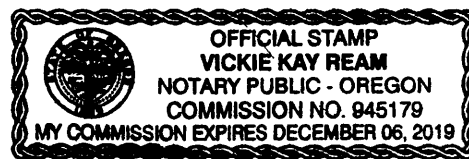
August 16, 2018

State of Oregon

County of Klamath

This record was acknowledged before me on August 16, 2018, by Thomas W. Keelin, Manager, Keelin Family Partners, LLC.


Notary Public – State of Oregon



May 13, 2015

Mike Markus, Klamath County Surveyor
305 Main Street
Klamath Falls, OR 97601

Re: Land Partition 3-15

Dear Mr. Markus:

Following is a summary of the chain of title for the property shown on the Klamath County Tax Map as tax lot R-3507-01600-00400, referred to herein as the Lindow property, as well as a summary of the chain of title of tax lot R-3507-01600-00500. The purpose of this letter is to provide an explanation as to why the document titled "Replacement Warranty Deed" recorded in Volume 2015 at Page 003446 cannot convey property south of the south line of Government Lot 11. The recorded documents referred to herein are attached.

The Lindow property was created by a sales contract between Carl Dawson (seller) and Herman Lindow (buyer) dated September 30, 1974 and recorded April 3, 1980 in Volume M80, Page 6240. The legal description on the contract describes the true point of beginning as being an iron pin ***on the South line of Lot 11*** (which is the north line of Government Lot 20) and then west ***along line*** to an iron pin on the east bank of the Williamson River the river. The description continues northerly along the east bank of the river to an iron pin, then east ***parallel to the South line of Lot 11*** to an iron pin, then south to an iron pin ***on the South line of said Lot 11*** and then west ***along said South line*** to the true point of beginning.

The words above referring to Lot 11 and its south line, italicized and in bold-face for emphasis, are taken verbatim from the legal description and clearly indicate, without any ambiguity, that the intent of the description was to make the south line of Lot 11 the south line of the property being conveyed and to make the north line of the tract parallel to the south line.

A warranty deed from Carl Dawson (grantor) to Herman Lindow (grantee) dated September 30, 1974 and recorded in Volume M99, Page 34734 contains the same description as M80-6240.

A document titled "Replacement Warranty Deed" from Carl Dawson (grantor) to Herman Lindow (grantee) dated March 27, 1991 and recorded in Volume 2015-003446 on April 14, 2015 contains an entirely different legal description from the original warranty deed. It describes property lying south of the south line of Lot 11, property lying Lot 20 that was not owned by Dawson. The effect of the 1991 deed is to move the Lindow property approximately 37 feet south from its original location with a portion overlapping land in Lot 20, owned by others, and the north line apparently being on a fence line instead of parallel to the south line of Lot 11. The relationship between the property described in the so-called "replacement warranty deed" and property to the north currently owned by Hilburt, has not been investigated. Notice that the original warranty deed executed in 1974 was recorded in 1999, eight years *after* this so-called "replacement warranty deed" was executed. It is clear that the original warranty deed takes precedence over the so-called "replacement warranty deed."



Even though the Lindow deed descriptions contain metes and bounds and refer to iron pins as corner monuments, there is no record of survey to indicate how the measurements were made nor when and by who the corner monuments were set.

Lot 20, which lies south of and adjacent to Lot 11, has always been part of a "parent" tract that was originally patented in 1919. Since then, the parent tract has been sold in its original configuration to various parties including to its current owner.

In September of 1974, when the Dawson/Lindow sales contract and deed were executed, Lot 20, as part of the parent tract, was owned by Wu as evidenced by the warranty deed dated May 12, 1971 and recorded June 18, 1971 in Volume M71, Page 6299.

In March of 1991, when the Dawson/Lindow so-called replacement warranty deed was executed, Lot 20, as part of the parent tract, was owned by Randy Wieting as evidenced by the bargain and sale deed dated November 6, 1990 and recorded on November 15, 1990 in Volume M90, Page 22828. Wieting continued to own it until he sold it to Hilbert by warranty deed dated March 31, 1999 and recorded April 1, 1999 in Volume M99, Page 11695. Hilbert subsequently sold it to Keelin in Volume 2013-007652 and Keelin remains the current owner.

As you can see, Lot 20 was part of Wieting's ownership during the time the Dawson/Lindow "replacement warranty deed" was executed. The portion of Lot 20 included in its legal description was not owned by Dawson and therefore could not be conveyed by him to Lindow. Lot 20 in its entirety remains the property of Keelin, the current owner, and is a part of the property included in Land Partition 3-15.

An east-west fence, presumably constructed by Lindow, currently encroaches on to the Keelin property (Lot 20.) Another east-west fence exists, also presumably constructed by Lindow as the north line of his property. Mr. Keelin together with Mr. Hilbert, the owner of the property north of Lindow, are currently proposing to reach an agreement with Mr. Lindow to formally establish the common property lines at the location of the existing fence lines, most likely through the land partition process.

Sincerely,

A handwritten signature in cursive script, appearing to read "David Klooster".

David Klooster, P.E.

Adkins Consulting Engineering, LLP

Enc. DV M80-6240, DV M99-34734, DV 2015-003446, DV M71-6299
DV M90-22828, DV M99-11695, DV 2013-007652

Cc: Tom Keelin
File 3256-0101