

**No. 302725-III
COURT OF APPEALS, DIVISION III,
OF THE STATE OF WASHINGTON**

**IN THE MATTER OF THE ESTATE OF
SHIRLEY E. WILSON,**

Deceased

BRIEF OF RESPONDENT

WALDO, SCHWEDA & MONTGOMERY, PS
John Montgomery, WSBA #7485
2206 North Pines Road
Spokane Valley, WA 99206-4756
(509) 924-3686

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I. INTRODUCTION

On the basis of a very scant record before this Court, the Appellant raises issues not considered by the Superior Court nor raised by the Respondent. Supplemental Clerk's papers have been requested by the Respondent and a separate motion filed to include proof of an Idaho ancillary probate.

II. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR

1. There Is No Issue Before This Court Involving the Conveyance of Residential Real Estate in 2005 or 2006.
2. There Is No Issue Before This Court Involving Lack of Consideration or the Making of a Gift.
3. All Property of the Estate Has Been Fully Accounted For and the Estate Closed.
4. There Is No Jurisdictional Defect With the Transfer of Idaho Property.

III. RESPONDENT'S STATEMENT OF THE CASE

Shirley E. Wilson ("Decedent") died intestate on April 30, 2008 in Spokane County, Washington (CP 1). On January 8, 2010, her son, LARRY D. WILSON (hereinafter "Larry") was appointed the Personal Representative of his mother's estate (hereinafter "Estate") without objection (CP 5-6). On January 14, 2010, the Decedent's grandson, JAMES WILSON, IV (hereinafter "James"), filed a Request for Notice of Special Proceedings (CP 7-9). On June 1, 2010, Larry filed an Inventory and Appraisalment of the Estate and such was received by James on the same date (CP 10-13). Because the Decedent died intestate, and because James' father died before the Decedent, James is an heir of the Estate of the Decedent by right of representation (CP 2).

The Petition for Appointment identified real property located in Kootenai County, Idaho, as the primary asset of the estate (CP 3). The Inventory and Appraisalment identified no other real property (CP 12), and the Estate was closed without inclusion of residential property originally transferred in 2005 (CP 29).

The residence of the decedent was transferred to LARRY WILSON on September 17, 2005, by a Quit Claim Deed signed by Larry as attorney in fact (CP 22). Ultimately the residence was sold on June 6, 2006 to a third party (CP 23). James' father, James Wilson III, died on August 26, 2006 (CP 2), more than two months after the sale.

James claims that at the time that the residence was deeded to Larry in 2005, "the Decedent was not competent" (CP 18, 24). James requests an accounting of the proceeds of the 2006 sale (CP 16).

On December 3, 2010, James filed a Petition to direct Larry to show cause "why the proceeds from the sale of Decedent's real estate should not be a part of the Decedent's estate" (CP 14). That Petition was denied on January 21, 2011, the Order stating the need for James to file "a separate action." (CP 19).

On June 14, 2011, James (without bringing a separate action) filed a Petition for Order to Issue Citation Removing Personal Representative. (CP 41-46).

James sought the removal of Larry as Personal Representative claiming a breach of fiduciary duty alleging the "failure to account for the proceeds" from the sale of the

Decedent's house (CP 25). Contemporaneously therewith Larry moved to close the Estate and for an Order approving the final accounting. (CP 57-59)

By an additional Petition filed August 4, 2011, James included other issues pertaining to the administration of the Estate (CP 20-27).

The Order of the Court entered August 26, 2011, by the Honorable Maryann Moreno, approved the accounting and closed the Estate (CP 28-31). The Court determining that the residential real property was not an asset of the Estate (CP 29). This appeal followed.

IV. STANDARD OF REVIEW

Under the limited record before this Court the standard of review in a probate action based upon declarations and written documents is de novo. In re Estate of Bowers, 132 Wn. App. 334, 339-340, 131 P.3d 916 (2006).

V. ARGUMENT

A. There Is No Issue Before this Court Involving the Conveyance of Residential Real Estate in 2005 or 2006.

The conveyance of the residential property was fully completed prior to commencement of the probate.

James, for the first time on appeal, seeks to void the

2005 transfer of the real property to Larry. Issues raised for the first time on appeal will generally not be recognized by an appellate court. RAP 2.5(a). The position of James to the trial court has consistently been that Larry has a duty to account. Larry has consistently maintained that the real property, or proceeds therefrom, were not property of the Estate. The latter position controls the disposition of this case. It is whether the property, or proceeds, are assets of the Estate. The property at issue was deeded to Larry by Quit Claim Deed in 2005. The Decedent died in 2008. The property is therefore not part of the Decedent's Estate. It was sold to Mr. Voves in 2006, nearly six years ago and nearly two years before the death of the Decedent. Consequently, the proceeds are not part of the Estate nor is the burden upon Larry to prove otherwise.

“An estate is a legal fiction, an entity devised to aid in the efficient transfer of property.” Klotz v. Dehkhoda, 134 Wn. App. 261, 268, 141 P.3d 67 (2006). When a personal representative creates an inventory of an estate, such inventory is presumed to be correct and the burden of proving otherwise rests upon a challenging party. In re Hamilton's Estate, 182 Wash 81, 89, 45 P.2d 36 (1935).

Consequently, there is a rebuttable presumption that the proceeds from the 2006 sale are not included in the Estate; and, James has the burden of proof to show otherwise. Indeed, the very purpose of an inventory "is to make a record of the property *belonging to the estate.*" Washington Probate Practice and Procedure 276 (John Richard Steincipher ed., Book Pub. Co. 1966) (emphasis added).

Here, James claims that the proceeds from the 2006 sale should be considered a part of the Estate. James provides absolutely no evidence to support this claim whatsoever. The Judge agreed, stating:

There's been some assertions, very bare assertions, that Larry Wilson has done something devious, that Shirley Wilson was not of sound mind. But there's nothing to back that up. There's nothing to support that. It's simply an allegation that has no - - no teeth in it. (RP 13).

Although RCW 11.44.035 permits a challenge to the filed inventory and appraisal it is unclear if James really did so, the statute stating that the "same may be contradicted or avoided by evidence". Id. However, the burden of proof still rests upon the one challenging it, and it is presumed to be correct. In re Shaner's Estate, 41 Wa.2d 236, 242, 248 P.2d 560 (1952).

The initial filing made by James on December 3,

2010, was denominated "Petition of Heir to Direct Personal Representative to Show Cause" (CP 14-16). Not originally a part of the record in this Court was James' "Petition for Order to Issue Citation Removing Personal Representative and Appointing Successor Personal Representative" filed June 14, 2011, (CP 41-56). On August 8, 2011, James filed a pleading denominated "Memorandum" (CP 20-27), seeking: (1) a final accounting, (2) a continuance to conduct discovery regarding the reasonableness of attorney fees, and (3) for an award of attorney fees.

The memorandum also requested "a show cause hearing on the issue of fees and costs...because the reasonableness of John Montgomery's attorney fees is at issue." (CP 22) It also speaks of the Heir's "Motion to Strike the Affidavits" of Larry and his attorney (CP 22). However, no Motion to Strike under CR 12(f) was filed nor was a Motion for a "show cause hearing" filed or served.

As to any issue over accounting involving the sale of the residence the Court determined that "no accounting is due and owing" (CR 12).

B. There Is No Issue Before the Court Involving Lack of Consideration or the Making of a Gift.

James claims a violation of laws involving Federal Taxation (Appellant's Brief p.5-6); and, assumptions involving the making of gifts (Id. p.6), neither of which involve issues raised in the Superior Court.

For the first time on appeal James seeks to identify the transfer of the residence property to Larry as a gift. The argument was not raised previously by James or as a defense by Larry. It is an issue raised for the time on appeal and should not be considered under RAP 2.5(a), particularly when such involves an attempt to shift the burden of proof upon Larry. (Appellants Brief p. 7)

C. All Property of the Estate Has Been Fully Accounted For and the Estate Closed.

On June 1, 2010, Larry filed an "Inventory and Appraisalment" with the Court and provided James with a copy thereof (CP 10-13). Thereafter, on July 22, 2011, Larry moved to close the Estate (CP 57-59), and which "accounted" for the property of the Estate. The Estate was ultimately closed (CP 28-30).

In re Estate of Jones, 152 Wn.2d 1, 100 P.3d 805 (2004), as cited by James, is distinguished. Jones states that "Superior court jurisdiction over nonintervention probate

is statutorily limited. Id. at 9. The Court noted that “[w]here the findings do not support removal of a personal representative, the removal is arbitrary and improper.” Id. at 8. Also, grounds for removal “must be supported in the record.” Id. at 10. The Court based jurisdiction to remove a Personal Representative on RCW 11.28.250, which allows removal for breach of fiduciary duties concerning the “Property of the estate.” Id. Here the proceeds from the 2005 or 2006 conveyance are not part of this Estate; therefore, neither Jones nor RCW 11.28.250 allows a Court to have jurisdiction to remove a Personal Representative for conduct unrelated to the “property of the estate”. Also, the “record” contains no evidence to support any claim of wrongdoing.

Furthermore, in Jones, the Personal Representative was removed because he took possession of a house that was part of the estate in probate, failed to use the fair market value of the house in distribution and failed to pay rent, utilities, property taxes and insurance while living in the house. Id. at 12. The distinction between Jones and the present case is clear. In that case, the Personal Representative took property indisputably part of the estate

and took it for himself at the expense of the other heirs. In contrast, the proceeds at issue here are not part of this Estate, they having been procured well over two years before the Decedent died.

James also cites In the Matter of the Estate of Morin, 2004 WL 2650984, 6 (Wash .App. Div. 3 2004), as precedent. However, he fails to mention that Morin is an unpublished decision and thus has *no precedential value*. See RCW 2.06.040. Nevertheless, the facts of Morin are entirely distinguishable from the present case. In Morin, the Personal Representative failed to account for attorney's fees charged to the Estate. Id. at 4.

Here, the requested accounting has nothing to do with Estate property. The proceeds at issue here are from an earlier sale that placed the residential property and its proceeds beyond the Estate. Thus Morin, even if it had precedential value, does nothing to support James' desire to have this Court hear a claim about the 2005 and 2006 conveyances. Here, James produces no evidence to support any claim of wrong doing. Instead, James claims the need for discovery "to determine whether" that claim, is true. If discovery is needed to determine the validity of the claim,

then there is no evidence of wrong doing by Larry, and consequently, this court does not have jurisdiction to remove Larry as Personal Representative.

A case from a sister jurisdiction (New York) illustrates the need to bring a separate action outside the probate proceeding if the Heir wishes to challenge the validity of the 2005 or 2006 conveyances. In In re Moulton's Estate, 57 Hun 598, 10 N.Y.S. 717 (N.Y. Gen. Term 1890), the Court stated that where an administrator was alleged to have fraudulently taken ownership of a mortgage interest formerly belonging to the Estate, that was not grounds for removal; because, the challengers could maintain a separate action. Id. at 724. Although this case is not controlling precedent in Washington, it shows the propriety of James bringing a separate action if he wishes to claim that either conveyance was improper necessitating a need for an accounting. Thus, this Court should refuse to consider his claim in this probate proceeding.

James also argues that the guardianship statute, specifically RCW 11.92.040(2) (Appellant's brief p. 9-10), requires inclusion (delivery) of the asset to the Estate. Here no guardianship was ever commenced and the statute is

specifically limited thereto. James improperly equates an attorney-in-fact to a guardian. Id. Finally, Kwiatkowski v. Drews, 142 Wn. App. 463, 176 P.3d 510 (2008), involved a direct action by a ward against guardians of his estate for failure to account according to law. It is not applicable to the present case.

D. There Are No Jurisdictional Defect With the Transfer of Idaho Property.

The Ancillary Probate in Idaho transferred the Idaho real property to both James and Larry in accordance with order of the Spokane County Superior Court.

Contrary to the assertion of James (Brief of Appellant p.14), an ancillary probate was commenced in the First Judicial District, County of Kootenai, State of Idaho, under Cause No. CV 11 6775. A deed and deed of trust were likewise recorded. As an offer of proof copies of said documents are attached hereto as an appendix. A motion is pending under RAP 10.3(a)(8) for approval of their inclusion.

An Idaho ancillary probate was commended under Idaho Code § 15-4-204, which states:

PROOF OF AUTHORITY – BOND. If no local administration or application or petition therefore is pending in this state, a domiciliary foreign personal representative may file with a court in this state in a county in which property belonging to the decedent is

located, authenticated copies of his appointment and of any official bond he has given.

With appropriate authority the Idaho property was transferred in conformance with the order of the Spokane County Superior Court and is in accord with the holding in Estate of Tolson, 89 Wn. App. 21, 31, 947 P.2d 1242 (1997); as cited by Appellant, stating:

In the context of a probate action, it is fundamental that the law of the domicile governs the distribution of the assets of a decedent. *In re Estate of Stein*, 78 Wn. App. At 261-62; *In re Estate of Olson*, 194 Wash. 219, 227, 77 P. 781 (1938). Although the law of the domicile determines the right to succession and distribution of the personal property that has its physical situs in a foreign jurisdiction, the existence of an estate belonging to a nonresident decedent in a foreign state may make it subject to an ancillary administration under the laws of such state. *In re Estate of Glassford*, 114, Cal. App. 2d 181, 189, 249 P.2d 908, 34 A.L.R.2p 1259 (1952). Generally speaking, courts of ancillary jurisdiction are bound by the Full Faith and Credit Clause to accept the adjudication of courts of domiciliary jurisdiction on the question of a will's validity. *In re Estate of Randall*, 8 Wn.2d 622, 629, 113 P.2d 54 (1941).

There exists no issue involving jurisdiction over the conveyance of Idaho real property and which has been fully accomplished into the names of both James and Larry as tenants in common, subject to the obligations of the Washington probate. Any motivation for challenging the transfer is perplexing and likely frivolous.

VI. ATTORNEYS' FEES

RCW 11.96A.150 provides in part,

(1) Either the Superior Court or any Court on an appeal may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party: (a) From any party to the proceedings; (b) from the assets of the estate or trust involved in the proceedings; or (c) from any non-probate asset that is the subject of the proceedings.

Below, the trial court entered an order approving attorneys' fees. (CP 28-31). Pursuant to RCW 11.96A.150 and RAP 18.1 the Estate's Personal Representative requests an award of attorneys' fees against James, for those fees incurred in the defense of this appeal, and particularly involving frivolous assertions and arguments. Alternatively, that the fees be awarded from the assets of the estate.

VII. CONCLUSION

The Estate of Shirley E. Wilson has been fully and completely administered. It was properly closed under supervision of the Superior Court despite the suspicions and unsubstantiated assertions of a disgruntled heir. While other remedies may exist they are not within the realm of this

particular action. The decision of the Superior Court is requested to be affirmed.

DATED this 21st day of February, 2012.

Waldo, Schweda & Montgomery, P.S.



John Montgomery, WSBA #7485
Attorney for Respondent

APPENDIX A-1

Larry D. Wilson, Pro Se
4126 E. 16th Street
Spokane, WA 99223

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED

2011 AUG 19 PM 4:52

COPY
CLERK DISTRICT COURT

DEPUTY

Assigned to Judge Stow

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

In the Matter of the Estate of:

SHIRLEY E. WILSON,

} NO. CV11-6775
}
} FEE CATEGORY
}
} PROOF OF AUTHORITY OF
} DOMICILIARY FOREIGN
} PERSONAL REPRESENTATIVE

The undersigned LARRY D. WILSON, Pro Se, as Foreign Personal Representative of the Estate of Shirley E. Wilson, deceased, represents as follows:

1. The Decedent, Shirley E. Wilson, died on the 30th day of April, 2008, at Spokane County, Washington, being a resident of Spokane County, Washington
2. Decedent owns real property in Kootenai County, State of Idaho, as a result of inheritance from the Estate of James L. Wilson, III, as evidenced by Personal Representative Deed filed for record on May 18, 2009, as Recorder's File No. 2211852000.
3. On the 8th day of January, 2010, Larry D. Wilson was appointed Personal Representative of the Decedent's Estate in Spokane County, Washington, under Cause No. 09-4-01585-8.

SUBSCRIBED AND SWORN to before me this 12th day of August, 2011.



NOTARY PUBLIC and for the State
of Washington, residing at Spokane
Commission Expires: 10-04-13



In re the Estates of: _____

Shirley E. Wilson, deceased

Plaintiff/ Petitioner

Vs./and

No.09-4-01585-8

Defendant/ Respondent

STATE OF WASHINGTON)
County of Spokane) ss.

I, THOMAS R. FALLQUIST, County Clerk of Spokane County and ex-officio Clerk of the Superior Court of the State of Washington for the County of Spokane, do hereby certify that I have compared the foregoing copy(s) with the original

LETTERS OF ADMINISTRATION

(continue on reverse if necessary)

in the above entitled cause as the same appears on file and of record in my office, and the same is a true and perfect transcript of said original and the whole thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of said Court this 15th day of August, 2011.

Handwritten signature of Thomas R. Fallquist

THOMAS R. FALLQUIST, County Clerk

STATE OF WASHINGTON)
County of Spokane) ss.

I, MARYANN MORENO, Judge of the Superior Court of the State of Washington for the County of Spokane, the same being a Court of Record and having a Clerk and Seal, do hereby certify that THOMAS R. FALLQUIST who has signed the foregoing attestation, is the duly elected and qualified Clerk of Spokane County and ex-officio Clerk of the Superior Court of the State of Washington, for the County of Spokane, and the legal custodian of the Records and Seal of said Superior Court, that said signature is his genuine handwriting and that all his official acts as such Clerk are entitled to full faith and credit, and I further certify that said certificate of attestation is in due form according to the laws of the State of Washington.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of said Court to be hereunto affixed this 15th day of AUGUST, 2011.

Handwritten signature of M. Moreno

Presiding Judge

Attest: Handwritten signature of Thomas R. Fallquist

THOMAS R. FALLQUIST, County Clerk

STATE OF WASHINGTON)
County of Spokane) ss.

I, THOMAS R. FALLQUIST, County Clerk of Spokane County and ex-officio Clerk of the Superior Court of the State of Washington for the County of Spokane, do hereby certify that the Honorable MARYANN MORENO who has signed the foregoing certificate, is the duly elected and qualified Judge of said Court, and that the signature of said Judge to said certificate is his genuine handwriting.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of said Court this 15th day of AUGUST, 2011.

Handwritten signature of Thomas R. Fallquist

THOMAS R. FALLQUIST, County Clerk

FILED

AUG 15 2011

THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

(Clerk's Data Stamp)



SUPERIOR COURT OF WASHINGTON, COUNTY OF SPOKANE

ESTATE OF:

Shirley E. Wilson,

Deceased.

CASE NO. 09-4-01585-8

LETTERS OF ADMINISTRATION
(NO WILL) (LTRAD)

I. BASIS

- 1.1 The decedent(s), late of Spokane County, Washington died intestate on or about: **April 30, 2008** leaving property in this state subject to administration.
- 1.2 On: **JANUARY 8TH, 2010** the court appointed: **LARRY D. WILSON** to administer the estate of the decedent according to law.
- 1.3 The personal representative has qualified.

II. AUTHORIZATION

THIS CERTIFIES: **LARRY D. WILSON** is authorized by this court to administer the estate of the above decedent according to law.

THOMAS R. FALLQUIST, SPOKANE COUNTY CLERK

Dated: August 15, 2011

{Seal}

By M. Maynard
Deputy Clerk

III. CERTIFICATE OF COPY

State of Washington)
County of Spokane)

As clerk of the superior court of this county, I certify that the above is a true and correct copy of the Letters of Administration (No Will) in the above-named case which was entered of record on: **8/15/11**

I further certify that these letters are now in full force and effect.

THOMAS R. FALLQUIST, SPOKANE COUNTY CLERK

Dated:

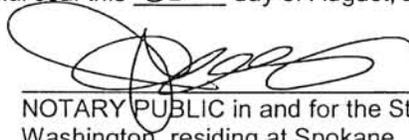
{Seal}

By _____
Deputy Clerk

APPENDIX A-2

signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 2nd day of August, 2011.



NOTARY PUBLIC in and for the State of Washington, residing at Spokane
My commission Expires: 10-04-13



APPENDIX A-3

Waldo, Schweda, & Montgomery, P.S.
North 2206 Pines Road
Spokane, WA 99206

DEED OF TRUST

THIS DEED OF TRUST, made this 25th day of August, 2011, between LARRY D. WILSON, as the duly appointed, qualified and acting personal representative of the ESTATE OF SHIRLEY E. WILSON, deceased, in Spokane County Superior Court Probate Cause No. 09-4-01585-5, ancillary probate, First Judicial District Court, County of Kootenai, State of Idaho, File No. CV116775, herein called GRANTOR, whose address is 4126 E. 16th Ave., Spokane, WA 99223; and Kootenai County Title Company, 1450 Northwest Blvd., Ste. 200, Coeur d'Alene, ID 83814 whose address is , herein called TRUSTEE, and John Montgomery, herein called BENEFICIARY, whose address is 2206 N. Pines Road, Spokane, WA 99206, in Trust for the benefit of Waldo, Schweda and Montgomery, P.S., and Larry D. Wilson, individually, WITNESSETH: That Grantor(s) does hereby irrevocably GRANT, BARGAIN, SELL AND CONVEY TO TRUSTEE IN TRUST, WITH POWER OF SALE, that property in the County of Kootenai, State of Idaho, described as follows, and containing not more than forty acres:

**Lot 8, Block 6, SCHAEFFERS 1st ADDITION, Section 34,
Township 54 North, Range 02 West of W.M., in said County
of Kootenai, State of Idaho.**

Tax Parcel No.: B49990060080

TOGETHER WITH the rents, issues and profits thereof, SUBJECT, HOWEVER, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits, for the purpose of securing payment of the indebtedness evidence by a promissory note, of even date herewith, executed by Grantor in the sum of **Five Thousand Four Hundred Fifty-Seven and .50/100 (\$5,457.50)**, and to secure payment of all such further sums as may hereafter be loaned or advanced by the Beneficiary herein to the Grantor herein, or any or either of them, while record owner of present interest, for any purpose, and of any notes, drafts or other instruments representing such further loans, advances or expenditures together with interest on all such sums at the rate therein provided. Provided, however, that the making of such further loans, advances or expenditures shall be optional with the Beneficiary, and provided, further, that it is the express intention of the parties to this Deed of Trust that it shall stand as continuing security until paid for all such advances together with interest thereon.

A. To protect the security of this Deed of Trust, Grantor agrees:

1. To keep said property in good condition and repair, and to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.
2. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear.
3. To pay, at least ten days before delinquency all taxes and assessments affecting said

property, when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses, of this Trust. Grantor's failure to pay shall constitute a default under this Trust.

4. To pay immediately and without demand all sums expended by Beneficiary or Trustee pursuant to the provisions hereof, with interest from date of expenditure at the rate of interest specified in the above described promissory note.

5. Should Grantor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Grantor and without releasing Grantor from any obligations hereof, may; make or do the same in such manner and such an extent as either may deem necessary to protect this security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, or in enforcing this Deed of Trust by judicial foreclosure, pay necessary expenses, employ counsel and pay his reasonable fees.

B. It is mutually agreed that:

1. Any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

2. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

3. At any time or from time to time, without liability, therefore and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: Reconvey all or any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

4. Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention upon payment of its fees, Trustee shall reconvey without warranty, the property then held hereunder. The Grantee in such reconveyance may be described as 'the person or persons legally entitled thereto.

5. As additional security, Grantor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect rents, issues and profits of said property, reserving unto Grantor the right, prior to any default by Grantor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon and indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

6. Upon default by Grantor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, all sums secured hereby shall immediately become due and payable at the option of the Beneficiary. In the event of default, Beneficiary shall execute or cause the Trustee to execute a written notice of such default and of his election to cause to be sold the herein described property to satisfy the obligations hereof, and shall cause such notice to be recorded in the office of the recorder of each county wherein said real property or some part thereof is situated. Notice of sale having been given as then required by law, and not less than the time then required by law having elapsed, Trustee, without demand on Grantor, shall sell property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee shall deliver to the purchaser its Deed conveying the property so sold, but without any covenant or warranty expressed or implied. The recitals in such Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Grantor, Trustee, or Beneficiary, may purchase at such sale. After deducting such costs, fees and expenses, of Trustee and of this Trust, including cost of evidence of title and reasonable counsel fees in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof not then repaid, with accrued interest at the rate specified in the above described promissory note; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

7. This Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the holder and owner of the note secured hereby; or, if the note has been pledged, the pledge thereof. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

8. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Grantor, Beneficiary or Trustee shall be a party unless brought by Trustee.

9. In the event of dissolution or resignation of the Trustee, the Beneficiary may substitute a trustee or trustees to execute the trust hereby created and when any such substitution has been filed for record in the office of the Recorder of the county in which the property herein described is situated, it shall be conclusive evidence of the appointment of such trustee or trustees, and such new trustee or trustees shall succeed to all of the powers and duties of the trustee or trustees named herein. Request is hereby made that a copy of any Notice of Default and a copy of any Notice of Sale hereunder be mailed to the Grantor at his address hereinbefore set forth.

Dated this ²⁵~~26~~ day of August, 2011

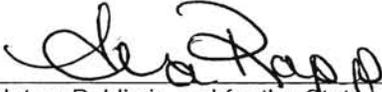
THE ESTATE OF SHIRLEY E. WILSON, DECEASED:

BY: Larry D. Wilson
LARRY D. WILSON, Personal Representative

STATE OF Washington)
) ss.
COUNTY OF Spokane)

On this day personally appeared before me **Larry D. Wilson**, to me known to be the **Personal Representative of the Estate of Shirley E. Wilson, deceased**, described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act of such party for the uses and purposes mentioned in this instrument.

Dated: 8-25-11



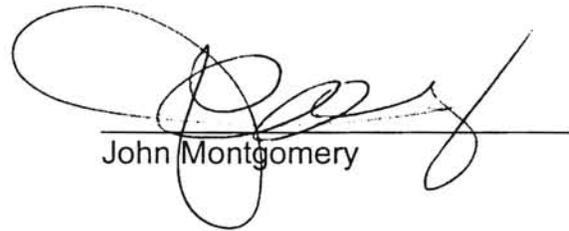
Notary Public in and for the State of
Washington Residing at Spokane
My Commission Expires: 5-29-12



CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury that on the 24 day of February, 2012, at Spokane, Washington, the foregoing was caused to be served on the following persons in the manner indicated:

Robert E. Kovacevich	By Regular Mail	<input type="checkbox"/>
Attorney at Law	By Certified Mail	<input type="checkbox"/>
818 W. Riverside, #525	Hand Delivered	<input checked="" type="checkbox"/>
Spokane, WA 99201	By Email	<input type="checkbox"/>
Attorney for Appellant	By Facsimile	<input type="checkbox"/>


John Montgomery