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Division III  
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Case No. 366111

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COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION III

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OKANOGAN COUNTY,

Respondent,

v.

VARIOUS PARCELS of REAL PROPERTY, et al.,

Appellant.

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RESPONDENT OKANOGAN COUNTY'S BRIEF

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## I. INTRODUCTION

Okanogan County, in preparation for its December 2017 property tax foreclosure sale, ordered a title report for a piece of real property. Neither Chase Bank, nor Newcastle Investment Trust, nor the alleged current holder of the note (Wilmington), showed up on the title report. None of these entities recorded an interest so that they would be entitled to notice of a tax sale.

Washington Mutual showed up on the title report as having an interest in the property (a deed of trust). The County mailed notice to Washington Mutual by certified mail at the address in the title report even though Washington Mutual ceased to exist approximately 10 years before the events requiring notice happened. When the notice came back undeliverable, the County took the additional step of posting notice of the upcoming sale on the property, and had already published notice in the newspaper. No one redeemed the property by paying off the delinquent tax debt, therefore a default judgment was entered against the former owners (Rosa, Roberto and Jose Covarrubius) and against Washington Mutual, and the county sold the property to Mr. and Mrs. Valdovinos at the property tax foreclosure sale.

Wilmington, six months after the sale, notified the County that the address in the title report for Washington Mutual was incorrect by one

number (the address in the title report was 201 3rd Ave Seattle WA, and the “correct” address was 1201 3rd Ave Seattle WA). Wilmington argued the County should have figured that out, and should have sent a corrective mailing to the “correct” address. “Correct” is in quotations because Washington Mutual moved out of 1201 3<sup>rd</sup> Ave (the “WaMu Tower”) and relocated to the “WaMu Center” in 2006<sup>1</sup> (renamed the Russell Investment Center in 2008 when WaMu collapsed).

Wilmington became involved in the case by filing a Motion for Order to Show Cause on Jul. 31, 2018. Wilmington argued the default order was void as to Washington Mutual’s deed of trust because inadequate notice to Washington Mutual deprived the court of jurisdiction. Wilmington asked for a remedy (vacating the default order only as to the deed of trust without vacating the sale of the property) that would result in the purchasers keeping the land for now, and the treasurer’s deed remaining good, but the land for which the purchaser paid \$21,000 would now be encumbered by a \$39,000 deed of trust. The purchaser would probably be unable to pay that amount, resulting in Wilmington conducting its own non-judicial foreclosure sale. Meaning the purchaser would end up losing both the purchase price and the land, and end up with nothing, forced to move her humble mobile home and young children off

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<sup>1</sup> [https://en.wikipedia.org/wiki/1201\\_Third\\_Avenue;](https://en.wikipedia.org/wiki/1201_Third_Avenue;)

of the land. And Wilmington would not even have to pay the tax debt, which they would have had to pay if they recorded their interest and were notified of the sale, otherwise the tax sale would have proceeded anyway, extinguishing all private liens.<sup>2</sup>

The Superior Court denied Wilmington's Motion to Vacate, holding: (1) Wilmington failed to establish that it has standing to claim insufficient notice to Washington Mutual, (2) Wilmington failed to establish that it is the successor in interest to Washington Mutual's deed of trust, or that Wilmington was the holder of the note, (3) Okanogan County satisfied the notice requirements by (a) sending the certified letter to the Washington Mutual address provided in the title report, (b) publishing notice in a local newspaper of general circulation, and (c) when the certified letter was returned undeliverable, posting notice on the property, and (4) the purchaser is not entitled to an award of attorney fees against the County because a tax sale is not a warranty sale and the doctrine of caveat emptor applies.<sup>3</sup> *Wingard v. Heinkel*, 70 Wn.2d 730, 732–33

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<sup>2</sup> The State and Federal courts have both rejected requests from mortgage companies to adopt that remedy. *Homeowners Sols., LLC v. Nguyen*, 148 Wn. App. 545, 551, 200 P.3d 743, 746 (Div. 1, 2009), *Rosholt v. Snohomish Cty.*, 19 Wn. App. 300, 305 (Div. 1, 1978), *In re Sienkiewicz*, 900 F.2d 206, 208 (9th Cir.1990). The correct remedy if someone with standing timely and successfully argues lack of jurisdiction based on insufficient notice is to vacate the sale of the subject property, cancel the tax deed, and require the county to pay back the purchase price plus interest to the purchaser. *In Re King County*, 117 Wash.2d 77, 84 (1991), *In re Foreclosure of Liens*, 130 Wn.2d 142, 146 (1996).

<sup>3</sup> CP 67-74

(1967); Brower v. Wells, 103 Wn.2d 96, 108 (1984). Wilmington appeals the Superior Court's denial of its Motion to Vacate the default judgment as to Washington Mutual's deed of trust.

## II. STATEMENT OF THE ISSUES

1. Whether the Court properly denied Wilmington's Motion to Vacate the Default Judgment as to Washington Mutual's deed of Trust.
2. Whether the Court properly held Wilmington does not have standing to raise personal jurisdiction objections for a party whom Wilmington claims did not receive notice.
3. Whether the Court properly held standing is required to claim the default judgment is void, and that Wilmington did not establish standing.
4. Whether the Court properly held the County complied with the notice statute RCW 84.64.050(4) by publishing notice, sending notice by certified mail to the only recorded lienholder (Washington Mutual) at the address in the title report, and when the letter was returned undeliverable taking the additional step of posting notice on the property.
5. Whether the Court properly held the County complied with due process notice requirements.

### III. STATEMENT OF THE CASE

This case concerns a piece of real property in Okanogan County formerly owned by Rosa, Roberto and Jose Covarrubias (the “property”).<sup>4</sup> In June of 1997, the Covarrubias’s obtained a \$43,000 loan for a Mobile Home from Washington Mutual Bank secured by a deed of trust against the parcel of real property the mobile home sits on, and recorded it with the County.<sup>5</sup> Washington Mutual collapsed and ceased to exist in 2008.<sup>6</sup> Wilmington Trust claims to be the most recent successor in interest to Washington Mutual’s deed of trust.<sup>7</sup> Washington Mutual is the only lienholder with a recorded interest in the deed of trust.<sup>8</sup>

Neither the Covarrubiuses, nor Washington Mutual or anyone else timely paid the tax delinquency on the property, the County obtained a default judgment, and auctioned the property at a tax foreclosure sale on Dec. 8, 2017. Christina and Edilberto Valdovinos purchased the property at the tax sale for \$21,000.<sup>9</sup> Okanogan County, before the sale, ordered a Title Report to find out if anyone recorded an interest in the property and was entitled to notice of the sale.<sup>10</sup> Washington Mutual was listed on the

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<sup>4</sup> CP 5-9

<sup>5</sup> CP 5-9

<sup>6</sup> *Bucci v. Nw. Tr. Servs., Inc.*, 197 Wn. App. 318, 323 (2016)

<sup>7</sup> CP 34

<sup>8</sup> CP 28, 53-54

<sup>9</sup> CP 10, 51-52

<sup>10</sup> CP 25-28

Title Report as having recorded an interest.<sup>11</sup> Okanogan County attempted to notify Washington Mutual by publication in the newspaper, and certified letter pursuant to RCW 84.64.050(4)(b).<sup>12</sup> The certified letter was returned to Okanogan County on Sep. 21, 2017 marked “RETURN TO SENDER NO SUCH NUMBER UNABLE TO FORWARD.”<sup>13</sup> On Oct. 5, 2017, Okanogan County took the additional step of physically posting notice of the tax sale at the property.<sup>14</sup>

On Jul. 25, 2018 Wilmington told the County that the County should have mailed notice to Washington Mutual at 1201 3rd Ave Seattle WA, not to the address in the title report which was 201 3rd Ave Seattle WA.<sup>15</sup> On July 31, 2018 Wilmington filed a Motion for Order to Show Cause why the default judgment entered in this case should not be declared void as to Washington Mutual’s deed of trust.<sup>16</sup> The Superior Court Commissioner heard the matter at several hearings and considered additional briefing from each of the parties.<sup>17</sup> The Superior Court Commissioner, in written Findings and Conclusions, denied Wilmington’s Motion to Vacate, and denied attorney’s fees to the purchasers.<sup>18</sup> On Dec.

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<sup>11</sup> CP 28

<sup>12</sup> CP 30-31

<sup>13</sup> CP 31

<sup>14</sup> CP 32

<sup>15</sup> CP 12

<sup>16</sup> CP 1

<sup>17</sup> CP 15-66

<sup>18</sup> CP 67-74

19, 2018 Wilmington filed a Motion for Revision with the Superior Court Judge.<sup>19</sup> The Superior Court Judge heard arguments on the Motion for Revision and denied it on Feb. 4, 2019, adopting the Commissioner's Findings and Conclusions with the exception of Finding Number 10.<sup>20</sup> The Superior Court Judge did not adopt Finding 10 because he thought it could be misinterpreted as a finding that the County had an obligation to notify Chase Bank, who had not recorded any interest, and may not have had any interest in 2017.<sup>21</sup> Wilmington appeals the Superior Court's ruling.

#### IV. ARGUMENT

##### A. Standard of Review

The issue of standing is reviewed de novo by appellate courts. *Jevne v. Pass, LLC*, 416 P.3d 1257, 1259 (Wash. Ct. App. 2018). A party has standing to pursue an action when they are within the protected zone of interests and have suffered an injury in fact. *Branson v. Port of Seattle*, 152 Wn.2d 862, 875–76, 101 P.3d 67, 74 (2004).

Wilmington did not cite CR 60 in its motion to vacate the judgment, and did not file a motion to intervene pursuant to CR 24(c). Assuming the motion to vacate was based on CR 60, an appeals court normally reviews a trial court's decision on a CR 60 motion to vacate a

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<sup>19</sup> CP 75-79

<sup>20</sup> CP 175-177

<sup>21</sup> CP 176-177

judgment for abuse of discretion. Mitchell v. Wash. State Inst. Of Pub. Policy, 153 wn.App. 803, 821 (2009) (citing Haller v. Wallis, 89 Wn.2d 539, 543, 573 P.2d 1302 (1978)). However, a trial court's denial of a CR 60(b)(5) motion to declare a judgement void for lack of jurisdiction is reviewed de novo. Ahten v. Barnes, 158 Wn.App. 343, 350 (2010).

**B. Wilmington Lacks Standing to Bring this Action.**

Wilmington failed to establish it suffered injury as a result of the default judgment against Washington Mutual, therefore the Superior Court correctly held Wilmington lacks standing. It is undisputed Wilmington was not entitled to notice of the tax sale because Wilmington never recorded an interest in the deed of trust.<sup>22</sup> In Re King County, 117 Wash.2d 77, 92 (1991) (A beneficiary to a Deed of Trust whose interest was not recorded until after the filing of the Certificate of Delinquency is not entitled to notice). Nevertheless, Wilmington argues (1) it has standing because it is the current holder of the original note, and (2) it does not need standing.

Regarding (1), the burden of producing competent evidence of standing is on Wilmington. Magart v. Fierce, 35 Wn. App. 264, 266 (Div. 3, 1983) ("Under the above cited authority, Magart has the burden of proving ownership of the land in question and standing as a real party in

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<sup>22</sup> CP 53-54, 25-28

interest.”).<sup>23</sup> Wilmington attempted to prove it has standing as the holder of the original note by filing a Declaration by Richard Franklin, along with a non-original, uncertified, blurry, unreadable copy of a promissory note.<sup>24</sup>

The Superior Court held Mr. Franklin’s declaration does not authenticate the note or establish standing because (1) the declaration does not say Mr. Franklin works for Wilmington (it says he works for Ditech Financial LLC), (2) it does not say Mr. Franklin personally compared the original note to the copy, and (3) it does not say Mr. Franklin has personal knowledge that Wilmington is the holder of the original note. Instead it says “Ditech employees entered, or caused to be entered, information in its systems of record at a time when *they* had personal knowledge of that information.”<sup>25</sup> *emph. added.* See Discover Bank v. Bridges, 154 Wn. App. 722, 726 (Div. 2, 2010) (describing elements of declaration that justified court’s reliance on it); Deutsche Bank v. Slotke, 192 Wash.App. 166, 175 (Div. 1, 2016) (“This record makes clear that the bank presented the original note for inspection by the court at the summary judgment

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<sup>23</sup> The same rule applies in criminal and administrative cases. State v. Link, 136 Wn. App. 685, 692 (“When a defendant seeks to suppress evidence on privacy grounds and the State contests the defendant’s standing, the defendant has the burden to establish that the search violated *his own* privacy rights”), 1 Hall, Search & Seizure § 6:1, at 278 (2d ed. 1991) (“*Standing is not assumed*; it must be shown by the record.”), KS Tacoma Holdings, LLC v. Shorelines Hearings Bd., 166 Wn. App. 117 (2012) (“Party challenging administrative decision bears the burden of establishing its standing to contest decision.”).

<sup>24</sup> CP 60-62, 96-97

<sup>25</sup> CP 60-62

hearing.”). Although, in cases where a successor in interest *did* timely record its interest, courts have taken judicial notice of the successor’s interest. Jackson v. Quality Loan Serv. Corp., 186 Wn. App. 838, 844–45 (Div. 1, 2015); ER 201(b). Wilmington’s failure to establish concrete injury to Wilmington’s own interests also means Wilmington does not have third party standing. Jevne v. Pass, LLC, 416 P.3d 1257, 1259 (Wash. Ct. App. 2018) (the three part test for third party standing includes “[t]he litigant must have suffered an ‘injury in fact,’ thus giving him or her a ‘sufficiently concrete interest’ in the outcome of the issue in dispute, ...”) citing Powers v. Ohio, 499 U.S. 400, 411, 111 S.Ct. 1364, 113 L.Ed. 2d 411 (1991).

Regarding (2), Wilmington argues it does not need standing, and faults the County for not citing authority that says standing is required to argue a tax foreclosure judgment is void. First, “Only an aggrieved party may seek review by the appellate court.” RAP 3.1. While RAP 3.1 does not define the term “aggrieved,” Washington courts have long held that for a party to be aggrieved, the decision must adversely affect that party’s property or pecuniary rights, or a personal right, or impose on a party a burden or obligation. Randy Reynolds & Associates, Inc. v. Harmon, 437 P.3d 677, 681 (Wash. 2019). Wilmington is not an aggrieved party

because Wilmington failed to establish the decisions below adversely affect Wilmington's own rights.

Second, Courts have implied standing is required to argue a tax foreclosure judgment is void. In re King Cty. for Foreclosure of Liens for Delinquent Real Prop. Taxes for Years 1985 Through 1988, 117 Wn.2d 77, 85 (1991) ("A judgment which does not contain an adequate description is void on its face and may be attacked *by anyone having a direct interest in the property*") *emph. added*; In re Foreclosure of Liens, 130 Wn.2d 142, 922 P.2d 73 (1996) (lack of notice to owner renders sale and tax deed *voidable at suit of record owners or their grantee*).

Wilmington argues it is "absurd" to require standing because such a rule could prevent a void judgement from being vacated.<sup>26</sup> That would not be absurd. In fact the 3 year Statute of Limitations for declaring a tax deed void can prevent void judgments from being vacated as well. Fish v. Fear, 64 Wash. 414, 414-15, 116 P. 1083, 1083 (1911), Anderson v. Spokane, P. & S. Ry. Co., 57 Wash. 439, 440 (1910) (even actions to declare a tax deed void for lack of jurisdiction must be brought within the SOL), RCW 4.16.090 (containing 3 yr SOL to cancel tax deed). The real absurdity is Wilmington's request to vacate a judgment based on failure to

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<sup>26</sup> Appellant's Opening Brief pg.10

mail notice to a non-existent company at an address that has not been correct since 2006.

Standing is a justiciability requirement, not a “red herring” argument. *Washington Beauty Coll., Inc. v. Huse*, 195 Wash. 160, 164-65 (1938) (the parties must have a direct and substantial interest in the case to meet the requirements of justiciability, and to avoid rendering advisory opinions); *To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 414, 27 P.3d 1149, 1154 (2001) (“This third justiciability requirement of a direct, substantial interest in the dispute encompasses the doctrine of standing.”).

The concepts of standing and CR 17(a) “real party in interest” are often combined by courts. *Magart v. Fierce*, 35 Wash. App. 264 (Div. 3 1983) (plaintiff had no standing to bring action as he was not the real party in interest). *Mochizuki v. King County*, 15 Wn.App. 296, 299 (1976) (Generally, persons without a right, title or interest in property affected by government action lack standing to challenge that action); *Paris Am. Corp. v. McCausland*, 52 Wn.App. 434, 438 (Div. 2, 1988)(“[a] party has standing to raise an issue if that party has a distinct and personal interest in the issue”).

Wilmington misreads *Mueller v. Miller*, 82 Wash. App. 236 (Div. 2, 1996) as saying standing is not required, and that anyone can bring an action to declare a foreclosure judgment void due to alleged insufficient

notice to someone else. The court in Mueller never said that. The plaintiff in Mueller had standing, and the court did not address whether standing was required to claim a foreclosure judgment void. Id. at 250 (“Similarly, Mueller, *having an interest in the property* as the purchaser from Griffin’s estate, made a collateral attack on the validity of the Sheriff’s sale through this quiet title action.” *emph.* added).

Wilmington’s failure to establish an interest in the property also means Wilmington cannot intervene. In Re Foreclosure of Liens, 130 Wn.2d 142, (1996):

We agree, and hold that Respondent does not have an interest in the property sufficient to come within CR 24(b)(2). Her motion to intervene in these proceedings should have been denied. We reverse the trial court’s order granting leave for Respondent to intervene, and reverse the order vacating the judgment of foreclosure and order of sale and voiding the tax deed delivered to Clallam County.

Wilmington’s Opening Brief changes the title of the case from “Okanogan County v. Various Parcels of Real Property” (which was the title under Superior Court Cause number 17-2-00317-6) to “Wilmington Trust, National Association, As Trustee for Newcastle Investment Trust 2014-MH1, v. Okanogan County and Christina and Edilberto Valdovinos.” But Wilmington never filed a Motion to Intervene under CR 24(c), nor was Wilmington’s motion a collateral attack filed under a different case number.

**C. Okanogan County Complied with the Notice Statute.**

First, Wilmington argues “Strict compliance is required of a statute conferring jurisdiction.” citing *Hatch v. Princess Louise corp.*, 13 Wn.App. 378, 379 (1975). *Hatch* was referring to *long-arm statutes* (RCW 4.28.185), not to *all* notice statutes conferring jurisdiction. “Statutes allowing service outside of the state are ‘in derogation of common law’ and must be ‘strictly construed.’” *Ralph’s Concrete v. Concord Concrete*, 154 Wash. App. 581, 585 (Div. 1, 2010). By contrast, “substantial compliance rather than strict compliance is all that is necessary under RCW 84.64.050.” *Homeowners Solutions, LLC v. Nguyen*, 148 Wash.App. 545, 554 (Div. 1, 2009).

If the Court in *In Re King County* had strictly construed the notice statute then it would have declared the foreclosure void because the notice did not contain the street address of the property to be foreclosed. RCW 84.64.050(4) (“and the notice must include the local street address”). Instead, the Court remanded for determination of whether the property description was sufficient for a reasonable person to identify which property was going to be foreclosed despite the missing street address. *In Re King County*, 117 Wn.2d 77, 83.

Second, the notice statute requires the treasurer to order a title report *or* conduct a title search before the sale. RCW 84.64.050(4) (“...prior to the sale of property the treasurer must order *or* conduct a title search of the property ...”). This indicates that using the address in the title report complies with the notice statute, even if the address turns out to be incorrect. The statute says “if such notice is returned unclaimed the treasurer must send notice by regular first-class mail.” *Id.*

The reason for this requirement is that certified mail will be returned if unclaimed, but regular mail will just sit there, increasing the chance it will be received. Here, the letter was not returned “unclaimed,” it was returned undeliverable. Re-sending undeliverable mail does not serve any purpose, and is not required. A plain reading of the notice statute only requires the county to re-send the notice by regular first-class mail when the certified letter is returned marked “unclaimed,” not when it is returned undeliverable. RCW 84.64.050(4)

Third, publication alone is sufficient notice to all “unknown owners.” RCW 84.64.050(4) (“... and if unknown may be therein named as unknown owners, and the publication of such notice is sufficient service thereof on all persons interested in the property described therein.”) Washington Mutual should be considered an “unknown owner” since it no

longer existed, and notice to unknown owners by publication alone is sufficient.

In fact, Washington Mutual was arguably not entitled to any notice since it no longer had any property interest when foreclosure proceedings began. *In Re King County*, 117 Wn.2d 77, 91 (1991) (“Since no property interest was affected, no notice of the impending sale was required”). And since the successors in interest did not record their interest, they were not entitled to notice either. *Id.* at 92

The Superior Court correctly held the County substantially complied with the notice statute by publishing notice in the newspaper, mailing notice to Washington Mutual at the address provided in the title report, and when the mail came back undeliverable, taking the additional step of posting notice on the property.<sup>27</sup> Nothing in the statute requires county treasurers to track down successors in interest who fail to record their interest.

**D. Okanogan County Complied with Due Process.**

Wilmington relies primarily on *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791 (1983) in arguing the County violated Washington Mutual’s due process rights. The Court in *Mennonite* said notice to a recorded mortgagee by publication and posting alone, without mailing,

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<sup>27</sup> CP 30-32 (Publication, returned certified mail, and log showing posting); CP 67-74 (Commissioner’s Order); CP 175-177 (Judge’s Order)

violated the mortgagee's due process rights. Mennonite Bd. of Missions v. Adams, 462 U.S. 791, 799 (1983) citing Mullane v. Cent. Hanover Bank & Tr. Co., 339 U.S. 306, 313 (1950). Mennonite is distinguishable because (1) the plaintiff/mortgagee/recorded lienholder (Mennonite Board of Missions, or "MBM") was claiming a denial of its own due process rights, (2) the recorded lienholder MBM still existed, and its property interest was publically recorded under its own name at all relevant times, and (3) the county in Mennonite never even attempted mailing notice to MBM, so the court never discussed whether the mailing was sufficient, or what if anything more would be required if the mailing was returned.

Note, MBM's recorded interest did not contain a city or street address. It just read "Mennonite Board of Missions a corporation, of Wayne County, in the State of Ohio." Mennonite Bd. of Missions v. Adams, 462 U.S. 791, FN 4 (1983). But the court said:

"Simply mailing a letter to 'Mennonite Board of Missions, Wayne County, Ohio,' quite likely would have provided actual notice, given 'the well-known skill of postal officials and employees in making proper delivery of letters defectively addressed.' Id. *emph* added, citing Grannis v. Ordean, 234 U.S. 385, 397-398 (1914).

If the same reasoning is applied here, then simply mailing to Washington Mutual with a street address that was off by one number complied with due process because the postal carrier surely knew who

Washington Mutual was, and would have delivered it to them if they existed.

Due process does not require *any* mailing unless the lienholder's address and identity are "reasonably ascertainable." Mennonite, 462 U.S. 791, 800 (1983). The address of a company that has not existed or had a valid address for 10 years, is not "reasonably ascertainable." Wilmington attempts to shift the burden to the County to figure out who owned the deed of trust in 2017 when none of the alleged successors recorded an interest. Nothing in Mennonite requires that.

If Wilmington wanted the County to know they held the deed of trust, and wanted the County to send notice to the correct place, they should have publically recorded their interest and address, so they would appear on the title report. There is no doubt Wilmington could have safeguarded its interests with *minimal* effort. Wilmington was unreasonable in failing to protect its interests despite its ability to do so. Due process does not require the state to save a party from its own carelessness, especially when doing so would substantially harm another party (the Valdovinoses).

The Court in Mennonite did not address what additional steps, if any, are required when mailed notice is returned. For that, we need to look at Jones v. Flowers, 547 US 220, (2006). Wilmington argues "in no

way does Jones help the County” because “[i]n Jones it was held that a tax foreclosure notice mailed to a homeowner and returned as undeliverable did not satisfy due process.”<sup>28</sup> However, the Court in Jones said an additional step the State *could* have taken to *satisfy* due process, when the certified letter was returned unclaimed, was to post the notice on the property that was to be forfeited. *Id.* 235. And here, unlike in Jones, the County took that additional step.<sup>29</sup>

Wilmington ignores this step because the older Mennonite case said publishing notice, combined with posting notice on the property, is insufficient notice to a mortgagee. But, as discussed above, the Court in Mennonite was not talking about the adequacy of additional minimal steps required when mailed notice is returned (since no mailing was attempted in Mennonite). And the Court in Jones knew Jones no longer lived at the property where the county sent notice, and knew that was why he did not receive it. Jones v. Flowers, 547 US 220, 235. Nevertheless, the Court in Jones said posting notice at property where he no longer lived would have satisfied due process. Thus, the fact that a mortgagee is less likely to visit the property should not matter in the context of follow up efforts.

The Court in Jones also said: “additional reasonable steps to attempt to provide notice to the property owner” are only necessary “*if it is*

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<sup>28</sup> Appellant’s Opening Brief pg. 9

<sup>29</sup> CP 31-32

*practicable to do so.” emph. added Jones v. Flowers, 547 US 220, 225. It is unlikely the Court in Jones would have found it necessary or practicable in this case, where the mortgagee ceased to exist 10 years ago, and where there has never been a requirement to search for unrecorded successors.*

Financial assets frequently change hands, and ten years is a long time.

The Court rejected Jones’s argument that due process requires the county to search phone books and other government records for alternative addresses when notice is returned unclaimed. *Jones v. Flowers, 547 U.S. 220, 222:*

“Contrary to Jones' claim, the Commissioner was not required to search the local phone book and other government records. Such an open-ended search imposes burdens on the State significantly greater than the several relatively easy options outlined here.”

Actual notice is not required, nor are heroic efforts to locate someone (even when that someone exists). *Dusenbery v. United States, 534 U.S. 161, 162, 169-170 (2002)* cited approvingly in *Jones v. Flowers, 547 U.S. 220, 226.*

### CONCLUSION

Okanogan County respectfully asks this honorable Court to affirm the Superior Court’s denial of Wilmington’s Motion to Vacate the default judgment as to the deed of trust. Wilmington does not have standing to bring this action because it has not established that it has suffered injury,

and because it cannot raise personal jurisdiction objections on behalf of Washington Mutual. Standing is necessary to challenge a default judgment. Okanogan County substantially complied with the notice statute RCW 84.64.050(4), and with Due Process under the circumstances.

DATED: Jul. 12<sup>th</sup>, 2019

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COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

VARIOUS PARCELS of )  
REAL PROPERTY, et al., )  
Appellant, ) COA No. 366111  
vs. ) Okanogan County Superior Court  
OKANOGAN COUNTY, ) # 17-2-00317-6  
Respondent. )  
\_\_\_\_\_ )  
CERTIFICATE OF SERVICE

I, Teresia A. Hargraves, do hereby certify under penalty of perjury that on the 12th day of July, 2019, I caused the original RESPONDENT OKANOGAN COUNTY'S BRIEF, to be filed in the Court of Appeals Division III and a true copy of the same to be served on the following in the manner indicated below:

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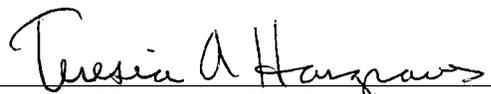
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Signed in Okanogan, Washington this 12th day of July, 2019.

  
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