IN THE SUPERIOR COURT OF WASHINGTON

FOR MASON COUNTY

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| LAKE LIMERICK COUNTRY CLUB, a Washington not-for-profit corporation,  Plaintiff,  v.  THE UNKNOWN HEIRS OF ROSEMARY M. WILSON; KENNETH WILSON and JANE DOE WILSON, as a marital community, and as to KENNETH WILSON, individually and as heir of ROSEMARY M. WILSON; WORLD ALLIANCE FINANCIAL CORP., a New York corporation; LIBERTY TITLE COMPANY, now LIBERTY TITLE AND ESCROW COMPANY, a Washington State corporation**;** REVERSE MORTGAGE SOLUTIONS, INC., a Texas corporation; WORLD ALLIANCE FINANCIAL CORP., f/k/a VERTICAL LEND INC., a New York corporation; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC, a Delaware corporation, as nominee for BANK OF AMERICA, N.A.; BANK OF AMERICA, N.A. a National Association; U.S.DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, a governmental agency; ALL UNKNOWN OCCUPANTS OF THE SUBJECT PREMISES;  and ALL OTHER PERSONS OR PARTIES UNKNOWN CLAIMING ANY RIGHT, TITLE, ESTATE, LIEN, OR INTEREST IN THE REAL ESTATE DESCRIBED IN THE COMPLAINT HEREIN;  Defendants | NO.  MOTION AND  MEMORANDUM  FOR SERVICE BY PUBLICATION |

**I. MOTION**

Plaintiff moves this Court for entry of its Order allowing service by publication on the following:

the unknown heirs of Rosemary Wilson; and

all other persons or parties unknown claiming any right, title or interest in the real estate described in the Complaint herein.

DATED this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2014.

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ROBERT D. WILSON-HOSS, WSBA #8620

Attorney for Lake Limerick Country Club

**II. MEMORANDUM IN SUPPORT OF MOTION**

**A. Introduction.** We know that title is in the name of Rosemary M. Wilson, and she is deceased. We know that no probate of her estate has been filed. Her Death Certificate shows that she was widowed, and that the informant was her son, Kenneth Wilson, at the address we believe he still lives at. We know from Kenneth Wilson that she had three children and left no surviving spouse. We know that he has declined to name or provide a residence address for his two siblings, but that he has said that one is not doing well and may be homeless. We know that there is no Medicaid lien on her estate. We have searched public records, including obituaries, Accurint multiple times, Washington Courts website data, Auditor filings, Washington State digital archives, and general search engines. We cannot find the other heirs of Rosemary Wilson. This may be in part because they see no need to be found; there is no apparent equity in the subject property for them to inherit. It is encumbered by a "Home Equity Conversion Deed of Trust," or reverse mortgage. Plaintiff has exercised all reasonable diligence to discover the identities of and locate the other two heirs and is entitled to serve them by publication.

**B. Security Interest of Plaintiff.** Plaintiff has a secured interest in the subject property, based on the language of the covenants, as set out in the Complaint. Under Washington's Probate Code, where there is a security interest in property of the decedent, the creditor can realize on that security interest without following the creditor's claim provisions of RCW chapter 11.40: "[i]f a creditor's claim is secured by any property of the decedent, this chapter does not affect the right of a creditor to realize on the creditor's security, whether or not the creditor presented the claim in the manner provided in [RCW 11.40.070](http://web2.westlaw.com/find/default.wl?mt=Washington&db=1000259&rs=WLW14.01&docname=WAST11.40.070&rp=%2ffind%2fdefault.wl&findtype=L&ordoc=8630104&tc=-1&vr=2.0&fn=_top&sv=Split&tf=-1&pbc=F63196F1&utid=1)." RCW 11.40.135. This is significant primarily for context; this is a lien foreclosure action, and if the remedy is confined to the foreclosure of the lien, and no money judgment is taken against the (nonexistent) Estate of Rosemary Wilson, it may go forward on that basis. In addition, if there are any possible objections to the application of RCW 11.04.250, the vesting statute discussed below, RCW 11.40.135 makes those theoretical objections moot.

**C. Ownership of subject property.** We know that the heirs of the decedent are the vested owners of the subject property:

**RCW 11.04.250. When real estate vests--Rights of heirs**

When a person dies seized of lands, tenements or hereditaments, or any right thereto or entitled to any interest therein in fee or for the life of another, his or her title shall vest immediately in his or her heirs or devisees, subject to his or her debts, family allowance, expenses of administration, and any other charges for which such real estate is liable under existing laws. No administration of the estate of such decedent, and no decree of distribution or other finding or order of any court shall be necessary in any case to vest such title in the heirs or devisees, but the same shall vest in the heirs or devisees instantly upon the death of such decedent: PROVIDED, That no person shall be deemed a devisee until the will has been probated. The title and right to possession of such lands, tenements, or hereditaments so vested in such heirs or devisees, together with the rents, issues, and profits thereof, shall be good and valid against all persons claiming adversely to the claims of any such heirs, or devisees, excepting only the personal representative when appointed, and persons lawfully claiming under such personal representative; and any one or more of such heirs or devisees, or their grantees, jointly or severally, may sue for and recover their respective shares or interests in any such lands, tenements, or hereditaments and the rents, issues, and profits thereof, whether letters testamentary or of administration be granted or not, from any person except the personal representative and those lawfully claiming under such personal representative.

This immediate vesting is not entirely immediate. It is subject to administration by the Personal Representative, if a probate has been filed, and with or without a probate, title vests, but subject to payment of certain debts of the decedent:

This vesting is subject to the trusteeship of the executor during the probate of the estate. In re Estate of Peterson, 12 Wash.2d 686, 123 P.2d 733 (1942); In re Estate of Henderson, 46 Wash.2d 401, 281 P.2d 857 (1955). However, by terms of the statute, this vesting is subject to the debts, family allowance, expenses of administration, and other charges for which the real estate is liable. See In re Estate of Binge, 5 Wash.2d 446, 105 P.2d 689 (1940).

*In re Eberle's Estate,* 4 Wash. App. 638, 646 (1971).

Under this statute, title is vested in the three heirs. The exceptions do not apply. There is no available family support allowance under RCW 11.54.010, as there is no surviving spouse or domestic partner, or minor children. The adult children cannot seek an award unless there is a surviving spouse or domestic partner. [*In re Estate of Garwood,* 109 Wn. App. 811 (Div. 2, 2002)](http://web2.westlaw.com/find/default.wl?mt=Washington&db=0004645&rs=WLW13.10&tc=-1&rp=%2ffind%2fdefault.wl&findtype=Y&ordoc=0356308881&serialnum=2002055454&vr=2.0&fn=_top&sv=Split&tf=-1&pbc=3236FA91&utid=1). There are no known creditors of the Estate. And there is no purpose for any estate administration:

Under these statutes, it is plain that there is no necessity for an administration of this property. There are no debts to which it can be subjected, and the title is fully vested in those who are rightfully entitled thereto. If it should be delivered over to the administrator, he could do nothing more than deliver it back to those rightfully entitled to it burdened with the costs of administration caused solely by his interference.

*Duvall v. Healy Lumber Co*., 57 Wash. 446, 450, *aff'd on reh'g,* 57 Wash. 446 (1910).

Although there are no recent Washington cases directly on point, in *In re Field's Estate*, 33 Wash. 63, 71-72 (1903), under circumstances where there was a sole heir to an intestate estate, the heir was entitled to determine incidents of title:

We think, under the testimony, that Mr. Field was the only real party in interest; that, for the purpose of settling the title to the real estate-a matter which was of no importance to anyone but himself, and which he might have proceeded with or not according to his own option and best judgment-he had a right to enter into the contract which he did enter into which Moore in relation to the formal duties of the administrator and the fees which he was to receive; in other words, that he had a right to make a special contract with relation to payment for Moore's services before he would agree to recommend him for an appointment as administrator

Plaintiff is not in a position to name The Estate of Rosemary Wilson as a defendant, because no estate has been filed. Plaintiff as a creditor could file an estate, but a nonprofit can do so only if its governing documents grant it the authority to file probates as creditor, and such is not the case with this Plaintiff. So, there will not be an estate filed, and therefore no estate to be sued through its personal representative. The only conclusion is that the statute that provides that real property vests in the heirs at the date of death means that title is vested in the heirs. Therefore, Plaintiff must sue the heirs, not the nonexistent estate. To do so, under these circumstances, Plaintiff must name the unknown heirs and serve them by publication.

**D. Publication Rules.**

**CR 10(a)(3) Unknown Heirs.**

When the heirs of any deceased person are proper parties defendant to any action relating to real property in this state, and when the names and residences of such heirs are unknown, such heirs may be proceeded against under the name and title of the “unknown heirs” of the deceased. In any action brought to determine any adverse claim, estate, lien, or interest in real property, or to quiet title to real property, unknown parties shall be designated as “also all other persons or parties unknown claiming any right, title, estate, lien, or interest in the real estate described in the complaint herein.”

[**4.28.100. Service of summons by publication--When authorized**](http://web2.westlaw.com/find/default.wl?mt=Washington&db=WA-ST-ANN&rs=WLW14.01&docname=LK(%22WAST4.28.100%22)&rp=%2ffind%2fdefault.wl&findtype=l&ordoc=NE4C3C8106FC511DE9328ED266CBDF61C&tc=-1&vr=2.0&fn=_top&sv=Split&tf=-1&pbc=889F2C72&utid=1)

When the defendant cannot be found within the state, and upon the filing of an affidavit of the plaintiff, his or her agent, or attorney, with the clerk of the court, stating that he or she believes that the defendant is not a resident of the state, or cannot be found therein, and that he or she has deposited a copy of the summons (substantially in the form prescribed in[RCW 4.28.110](http://web2.westlaw.com/find/default.wl?mt=Washington&db=1000259&rs=WLW14.01&docname=WAST4.28.110&rp=%2ffind%2fdefault.wl&findtype=L&ordoc=NE4C3C8106FC511DE9328ED266CBDF61C&tc=-1&vr=2.0&fn=_top&sv=Split&tf=-1&pbc=889F2C72&utid=1)) and complaint in the post office, directed to the defendant at his or her place of residence, unless it is stated in the affidavit that such residence is not known to the affiant, and stating the existence of one of the cases hereinafter specified, the service may be made by publication of the summons, by the plaintiff or his or her attorney in any of the following cases:

(1) When the defendant is a foreign corporation, and has property within the state;

(2) When the defendant, being a resident of this state, has departed therefrom with intent to defraud his or her creditors, or to avoid the service of a summons, or keeps himself or herself concealed therein with like intent;

(3) When the defendant is not a resident of the state, but has property therein and the court has jurisdiction of the subject of the action;

(4) When the action is for (a) establishment or modification of a parenting plan or residential schedule; or (b) dissolution of marriage, legal separation, or declaration of invalidity, in the cases prescribed by law;

(5) When the action is for nonparental custody under chapter 26.10 RCW and the child is in the physical custody of the petitioner;

(6) When the subject of the action is real or personal property in this state, and the defendant has or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly, or partly, in excluding the defendant from any interest or lien therein;

(7) When the action is to foreclose, satisfy, or redeem from a mortgage, or to enforce a lien of any kind on real estate in the county where the action is brought, or satisfy or redeem from the same;

(8) When the action is against any corporation, whether private or municipal, organized under the laws of the state, and the proper officers on whom to make service do not exist or cannot be found;

(9) When the action is brought under [RCW 4.08.160](http://web2.westlaw.com/find/default.wl?mt=Washington&db=1000259&rs=WLW14.01&docname=WAST4.08.160&rp=%2ffind%2fdefault.wl&findtype=L&ordoc=NE4C3C8106FC511DE9328ED266CBDF61C&tc=-1&vr=2.0&fn=_top&sv=Split&tf=-1&pbc=889F2C72&utid=1) and [4.08.170](http://web2.westlaw.com/find/default.wl?mt=Washington&db=1000259&rs=WLW14.01&docname=WAST4.08.170&rp=%2ffind%2fdefault.wl&findtype=L&ordoc=NE4C3C8106FC511DE9328ED266CBDF61C&tc=-1&vr=2.0&fn=_top&sv=Split&tf=-1&pbc=889F2C72&utid=1) to determine conflicting claims to property in this state.

[**4.28.140. Affidavit as to unknown heirs**](http://web2.westlaw.com/find/default.wl?mt=Washington&db=WA-ST-ANN&rs=WLW14.01&docname=LK(%22WAST4.28.140%22)&rp=%2ffind%2fdefault.wl&findtype=l&ordoc=NE4C3C8106FC511DE9328ED266CBDF61C&tc=-1&vr=2.0&fn=_top&sv=Split&tf=-1&pbc=889F2C72&utid=1)

Upon presenting an affidavit to the court or judge, showing to his or her satisfaction that the heirs of such deceased person are proper parties to the action, and that their names and residences cannot with use of reasonable diligence be ascertained, such court or judge may grant an order that service of the summons in such action be made on such “Unknown heirs” by publication thereof in the same manner as in actions against nonresident defendants.

[**4.28.150. Title of cause--Unknown claimants--Service by publication**](http://web2.westlaw.com/find/default.wl?mt=Washington&db=WA-ST-ANN&rs=WLW14.01&docname=LK(%22WAST4.28.150%22)&rp=%2ffind%2fdefault.wl&findtype=l&ordoc=NE4C3C8106FC511DE9328ED266CBDF61C&tc=-1&vr=2.0&fn=_top&sv=Split&tf=-1&pbc=889F2C72&utid=1)

In any action brought to determine any adverse claim, estate, lien, or interest in real property, or to quiet title to real property, the plaintiff may include as a defendant in such action, and insert in the title thereof, in addition to the names of such persons or parties as appear of record to have, and other persons or parties who are known to have, some title, claim, estate, lien, or interest in the lands in controversy, the following, viz.: “Also all other persons or parties unknown claiming any right, title, estate, lien, or interest in the real estate described in the complaint herein.” And service of summons may be had upon all such unknown persons or parties defendant by publication as provided by law in case of nonresident defendants.

**E. Discussion.** The Court Rule allows Unknown Heirs (and all other persons, etc.) to be made defendants. The Statute allows an affidavit as to unknown heirs to support an order for service by publication on the unknown heirs, but does not address all other persons, etc. But all other persons, etc. who are made defendants can be served by publication under related statutes, RCW 4.28.100(6) and (7).

The provisions of the title vesting statute, RCW 11.04.250, provide for vesting, subject to prior claims of creditors, for administrative expenses, and for family support. In this matter, we believe that none of these exist. However, if they did exist, they would still be subject to the prior assessment lien of Plaintiff, which it can foreclose directly as discussed above. So if no deficiency judgment is awarded against any party, and the result of the action is the foreclosure of the lien, then there is no source of assets that the action will reach that would even theoretically be used for payment of debts, administrative expenses, family support, or anything else.

Finally, under the general statutes, no order authorizing publication is needed, but under the statute that provides for service on unknown heirs, RCW 4.28.140, an order is required.

**F. Summary.** Plaintiff is entitled to an Order for Service by Publication on the unknown heirs of Rosemary Wilson; and all other persons or parties unknown claiming any right, title or interest in the real estate described in the Complaint herein. Such an Order is consistent with applicable court rules and statutes, and will not result in any disadvantage to any heir or any other potential party.

Respectfully submitted this \_\_\_\_\_ day of \_\_\_\_\_\_, 2014.

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Robert D. Wilson-Hoss, WSBA #8620

Attorney for Plaintiff