
SUBSTITUTE HOUSE BILL 1051

State of Washington

62nd Legislature

2011 Regular Session

By House Judiciary (originally sponsored by Representatives Pedersen, Rodne, Eddy, Goodman, Kelley, and Moeller; by request of Washington State Bar Association)

READ FIRST TIME 01/21/11.

1 AN ACT Relating to trusts and estates; amending RCW 11.02.005,
2 11.28.237, 11.68.090, 11.94.050, 11.96A.030, 11.96A.050, 11.96A.070,
3 11.96A.110, 11.96A.120, 11.97.010, 11.98.009, 11.98.039, 11.98.045,
4 11.98.051, 11.98.055, 11.98.070, and 11.100.090; adding new sections to
5 chapter 11.96A RCW; adding a new section to chapter 11.97 RCW; adding
6 new sections to chapter 11.98 RCW; adding a new chapter to Title 11
7 RCW; creating a new section; and providing an effective date.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

9 **Sec. 1.** RCW 11.02.005 and 2008 c 6 s 901 are each amended to read
10 as follows:

11 When used in this title, unless otherwise required from the
12 context:

13 (1) "Personal representative" includes executor, administrator,
14 special administrator, and guardian or limited guardian and special
15 representative.

16 (2) "Net estate" refers to the real and personal property of a
17 decedent exclusive of homestead rights, exempt property, the family
18 allowance and enforceable claims against, and debts of, the deceased or
19 the estate.

1 (3) "Representation" refers to a method of determining distribution
2 in which the takers are in unequal degrees of kinship with respect to
3 a decedent, and is accomplished as follows: After first determining
4 who, of those entitled to share in the estate, are in the nearest
5 degree of kinship, the estate is divided into equal shares, the number
6 of shares being the sum of the number of persons who survive the
7 decedent who are in the nearest degree of kinship and the number of
8 persons in the same degree of kinship who died before the decedent but
9 who left issue surviving the decedent; each share of a deceased person
10 in the nearest degree shall be divided among those of the deceased
11 person's issue who survive the decedent and have no ancestor then
12 living who is in the line of relationship between them and the
13 decedent, those more remote in degree taking together the share which
14 their ancestor would have taken had he or she survived the decedent.

15 (4) "Issue" means all the lineal descendants of an individual. An
16 adopted individual is a lineal descendant of each of his or her
17 adoptive parents and of all individuals with regard to which each
18 adoptive parent is a lineal descendant. A child conceived prior to the
19 death of a parent but born after the death of the deceased parent is
20 considered to be the surviving issue of the deceased parent for
21 purposes of this title.

22 (5) "Degree of kinship" means the degree of kinship as computed
23 according to the rules of the civil law; that is, by counting upward
24 from the intestate to the nearest common ancestor and then downward to
25 the relative, the degree of kinship being the sum of these two counts.

26 (6) "Heirs" denotes those persons, including the surviving spouse
27 or surviving domestic partner, who are entitled under the statutes of
28 intestate succession to the real and personal property of a decedent on
29 the decedent's death intestate.

30 (7) "Real estate" includes, except as otherwise specifically
31 provided herein, all lands, tenements, and hereditaments, and all
32 rights thereto, and all interest therein possessed and claimed in fee
33 simple, or for the life of a third person.

34 (8) "Will" means an instrument validly executed as required by RCW
35 11.12.020.

36 (9) "Codicil" means a will that modifies or partially revokes an
37 existing earlier will. A codicil need not refer to or be attached to
38 the earlier will.

1 (10) "Guardian" or "limited guardian" means a personal
2 representative of the person or estate of an incompetent or disabled
3 person as defined in RCW 11.88.010 and the term may be used in lieu of
4 "personal representative" wherever required by context.

5 (11) "Administrator" means a personal representative of the estate
6 of a decedent and the term may be used in lieu of "personal
7 representative" wherever required by context.

8 (12) "Executor" means a personal representative of the estate of a
9 decedent appointed by will and the term may be used in lieu of
10 "personal representative" wherever required by context.

11 (13) "Special administrator" means a personal representative of the
12 estate of a decedent appointed for limited purposes and the term may be
13 used in lieu of "personal representative" wherever required by context.

14 (14) "Trustee" means an original, added, or successor trustee and
15 includes the state, or any agency thereof, when it is acting as the
16 trustee of a trust to which chapter 11.98 RCW applies.

17 (15) "Nonprobate asset" means those rights and interests of a
18 person having beneficial ownership of an asset that pass on the
19 person's death under a written instrument or arrangement other than the
20 person's will. "Nonprobate asset" includes, but is not limited to, a
21 right or interest passing under a joint tenancy with right of
22 survivorship, joint bank account with right of survivorship, payable on
23 death or trust bank account, transfer on death security or security
24 account, deed or conveyance if possession has been postponed until the
25 death of the person, trust of which the person is grantor and that
26 becomes effective or irrevocable only upon the person's death,
27 community property agreement, individual retirement account or bond, or
28 note or other contract the payment or performance of which is affected
29 by the death of the person. "Nonprobate asset" does not include: A
30 payable-on-death provision of a life insurance policy, annuity, or
31 other similar contract, or of an employee benefit plan; a right or
32 interest passing by descent and distribution under chapter 11.04 RCW;
33 a right or interest if, before death, the person has irrevocably
34 transferred the right or interest, the person has waived the power to
35 transfer it or, in the case of contractual arrangement, the person has
36 waived the unilateral right to rescind or modify the arrangement; or a
37 right or interest held by the person solely in a fiduciary capacity.
38 For the definition of "nonprobate asset" relating to revocation of a

1 provision for a former spouse upon dissolution of marriage or
2 declaration of invalidity of marriage, RCW 11.07.010(5) applies. For
3 the definition of "nonprobate asset" relating to revocation of a
4 provision for a former spouse upon dissolution of marriage or
5 declaration of invalidity of marriage, see RCW 11.07.010(5). For the
6 definition of "nonprobate asset" relating to testamentary disposition
7 of nonprobate assets, see RCW 11.11.010(7).

8 (16) "Internal Revenue Code" means the United States Internal
9 Revenue Code of 1986, as amended or renumbered as of January 1, 2001.

10 (17) References to "section 2033A" of the Internal Revenue Code in
11 wills, trust agreements, powers of appointment, beneficiary
12 designations, and other instruments governed by or subject to this
13 title shall be deemed to refer to the comparable or corresponding
14 provisions of section 2057 of the Internal Revenue Code, as added by
15 section 6006(b) of the Internal Revenue Service Restructuring Act of
16 1998 (H.R. 2676, P.L. 105-206); and references to the section 2033A
17 "exclusion" shall be deemed to mean the section 2057 deduction.

18 (18) "Surviving spouse" or "surviving domestic partner" does not
19 include an individual whose marriage to or state registered domestic
20 partnership with the decedent has been terminated, dissolved, or
21 invalidated unless, by virtue of a subsequent marriage or state
22 registered domestic partnership, he or she is married to or in a
23 domestic partnership with the decedent at the time of death. A decree
24 of separation that does not terminate the status of spouses or domestic
25 partners is not a dissolution or invalidation for purposes of this
26 subsection.

27 (19) "Trustor" means a person, including a testator, who creates,
28 or contributes property to, a trust.

29 (20) "Settlor" has the same meaning as provided for "trustor" in
30 this section.

31 Words that import the singular number may also be applied to the
32 plural of persons and things.

33 Words importing the masculine gender only may be extended to
34 females also.

35 **Sec. 2.** RCW 11.28.237 and 1997 c 252 s 85 are each amended to read
36 as follows:

37 (1) Within twenty days after appointment, the personal

1 representative of the estate of a decedent shall cause written notice
2 of his or her appointment and the pendency of said probate proceedings,
3 to be served personally or by mail to each heir, legatee and devisee of
4 the estate and each beneficiary or transferee of a nonprobate asset of
5 the decedent whose names and addresses are known to him or her, and
6 proof of such mailing or service shall be made by affidavit and filed
7 in the cause. If a trust is a legatee or devisee of the estate or a
8 beneficiary or transferee of a nonprobate asset of the decedent, then
9 notice to the trustee is sufficient.

10 (2) If the personal representative does not otherwise give notice
11 to creditors under chapter 11.40 RCW within thirty days after
12 appointment, the personal representative shall cause written notice of
13 his or her appointment and the pendency of the probate proceedings to
14 be mailed to the state of Washington department of social and health
15 services' office of financial recovery, and proof of the mailing shall
16 be made by affidavit and filed in the cause.

17 **Sec. 3.** RCW 11.68.090 and 2003 c 254 s 3 are each amended to read
18 as follows:

19 (1) Any personal representative acting under nonintervention powers
20 may borrow money on the general credit of the estate and may mortgage,
21 encumber, lease, sell, exchange, convey, and otherwise have the same
22 powers, and be subject to the same limitations of liability, that a
23 trustee has under (~~RCW 11.98.070 and~~) chapters 11.98, 11.100, and
24 11.102 RCW with regard to the assets of the estate, both real and
25 personal, all without an order of court and without notice, approval,
26 or confirmation, and in all other respects administer and settle the
27 estate of the decedent without intervention of court. Except as
28 otherwise specifically provided in this title or by order of court, a
29 personal representative acting under nonintervention powers may
30 exercise the powers granted to a personal representative under chapter
31 11.76 RCW but is not obligated to comply with the duties imposed on
32 personal representatives by that chapter. A party to such a
33 transaction and the party's successors in interest are entitled to have
34 it conclusively presumed that the transaction is necessary for the
35 administration of the decedent's estate.

36 (2) Except as otherwise provided in chapter 11.108 RCW or elsewhere
37 in order to preserve a marital deduction from estate taxes, a testator

1 may by a will relieve the personal representative from any or all of
2 the duties, restrictions, and liabilities imposed: Under common law;
3 by chapters 11.54, 11.56, 11.100, 11.102, and 11.104A RCW; or by RCW
4 11.28.270 and 11.28.280, 11.68.095, and 11.98.070. In addition, a
5 testator may likewise alter or deny any or all of the privileges and
6 powers conferred by this title, and may add duties, restrictions,
7 liabilities, privileges, or powers to those imposed or granted by this
8 title. If any common law or any statute referenced earlier in this
9 subsection is in conflict with a will, the will controls whether or not
10 specific reference is made in the will to this section. However,
11 notwithstanding the rest of this subsection, a personal representative
12 may not be relieved of the duty to act in good faith and with honest
13 judgment.

14 **Sec. 4.** RCW 11.94.050 and 2001 c 203 s 12 are each amended to read
15 as follows:

16 (1) Although a designated attorney-in-fact or agent has all powers
17 of absolute ownership of the principal, or the document has language to
18 indicate that the attorney-in-fact or agent shall have all the powers
19 the principal would have if alive and competent, the attorney-in-fact
20 or agent shall not have the power to make, amend, alter, or revoke the
21 principal's wills or codicils, and shall not have the power, unless
22 specifically provided otherwise in the document: To make, amend,
23 alter, or revoke any of the principal's life insurance, annuity, or
24 similar contract beneficiary designations, employee benefit plan
25 beneficiary designations, trust agreements, registration of the
26 principal's securities in beneficiary form, payable on death or
27 transfer on death beneficiary designations, designation of persons as
28 joint tenants with right of survivorship with the principal with
29 respect to any of the principal's property, community property
30 agreements, or any other provisions for nonprobate transfer at death
31 contained in nontestamentary instruments described in RCW 11.02.091; to
32 make any gifts of property owned by the principal; to exercise the
33 principal's rights to distribute property in trust or cause a trustee
34 to distribute property in trust to the extent consistent with the terms
35 of the trust agreement; to make transfers of property to any trust
36 (whether or not created by the principal) unless the trust benefits the

1 principal alone and does not have dispositive provisions which are
2 different from those which would have governed the property had it not
3 been transferred into the trust((~~7~~))i or to disclaim property.

4 (2) Nothing in subsection (1) of this section prohibits an
5 attorney-in-fact or agent from making any transfer of resources not
6 prohibited under chapter 74.09 RCW when the transfer is for the purpose
7 of qualifying the principal for medical assistance or the limited
8 casualty program for the medically needy.

9 **Sec. 5.** RCW 11.96A.030 and 2009 c 525 s 20 are each amended to
10 read as follows:

11 The definitions in this section apply throughout this chapter
12 unless the context clearly requires otherwise.

13 (1) "Citation" or "cite" and other similar terms, when required of
14 a person interested in the estate or trust or a party to a petition,
15 means to give notice as required under RCW 11.96A.100. "Citation" or
16 "cite" and other similar terms, when required of the court, means to
17 order, as authorized under RCW 11.96A.020 and 11.96A.060, and as
18 authorized by law.

19 (2) "Matter" includes any issue, question, or dispute involving:

20 (a) The determination of any class of creditors, devisees,
21 legatees, heirs, next of kin, or other persons interested in an estate,
22 trust, nonprobate asset, or with respect to any other asset or property
23 interest passing at death;

24 (b) The direction of a personal representative or trustee to do or
25 to abstain from doing any act in a fiduciary capacity;

26 (c) The determination of any question arising in the administration
27 of an estate or trust, or with respect to any nonprobate asset, or with
28 respect to any other asset or property interest passing at death, that
29 may include, without limitation, questions relating to: (i) The
30 construction of wills, trusts, community property agreements, and other
31 writings; (ii) a change of personal representative or trustee; (iii) a
32 change of the situs of a trust; (iv) an accounting from a personal
33 representative or trustee; or (v) the determination of fees for a
34 personal representative or trustee;

35 (d) The grant to a personal representative or trustee of any
36 necessary or desirable power not otherwise granted in the governing
37 instrument or given by law;

1 (e) An action or proceeding under chapter 11.84 RCW;

2 (f) The amendment, reformation, or conformation of a will or a
3 trust instrument to comply with statutes and regulations of the United
4 States internal revenue service in order to achieve qualification for
5 deductions, elections, and other tax requirements, including the
6 qualification of any gift thereunder for the benefit of a surviving
7 spouse who is not a citizen of the United States for the estate tax
8 marital deduction permitted by federal law, including the addition of
9 mandatory governing instrument requirements for a qualified domestic
10 trust under section 2056A of the internal revenue code, the
11 qualification of any gift thereunder as a qualified conservation
12 easement as permitted by federal law, or the qualification of any gift
13 for the charitable estate tax deduction permitted by federal law,
14 including the addition of mandatory governing instrument requirements
15 for a charitable remainder trust; (~~and~~)

16 (g) With respect to any nonprobate asset, or with respect to any
17 other asset or property interest passing at death, including joint
18 tenancy property, property subject to a community property agreement,
19 or assets subject to a pay on death or transfer on death designation:

20 (i) The ascertaining of any class of creditors or others for
21 purposes of chapter 11.18 or 11.42 RCW;

22 (ii) The ordering of a qualified person, the notice agent, or
23 resident agent, as those terms are defined in chapter 11.42 RCW, or any
24 combination of them, to do or abstain from doing any particular act
25 with respect to a nonprobate asset;

26 (iii) The ordering of a custodian of any of the decedent's records
27 relating to a nonprobate asset to do or abstain from doing any
28 particular act with respect to those records;

29 (iv) The determination of any question arising in the
30 administration under chapter 11.18 or 11.42 RCW of a nonprobate asset;

31 (v) The determination of any questions relating to the abatement,
32 rights of creditors, or other matter relating to the administration,
33 settlement, or final disposition of a nonprobate asset under this
34 title;

35 (vi) The resolution of any matter referencing this chapter,
36 including a determination of any questions relating to the ownership or
37 distribution of an individual retirement account on the death of the
38 spouse of the account holder as contemplated by RCW 6.15.020(6);

1 (vii) The resolution of any other matter that could affect the
2 nonprobate asset; and

3 (h) The reformation of a will or trust to correct a mistake under
4 section 11 of this act.

5 (3) "Nonprobate assets" has the meaning given in RCW 11.02.005.

6 (4) "Notice agent" has the meanings given in RCW 11.42.010.

7 (5) "Party" or "parties" means each of the following persons who
8 has an interest in the subject of the particular proceeding and whose
9 name and address are known to, or are reasonably ascertainable by, the
10 petitioner:

11 (a) The trustor if living;

12 (b) The trustee;

13 (c) The personal representative;

14 (d) An heir;

15 (e) A beneficiary, including devisees, legatees, and trust
16 beneficiaries;

17 (f) The surviving spouse or surviving domestic partner of a
18 decedent with respect to his or her interest in the decedent's
19 property;

20 (g) A guardian ad litem;

21 (h) A creditor;

22 (i) Any other person who has an interest in the subject of the
23 particular proceeding;

24 (j) The attorney general if required under RCW 11.110.120;

25 (k) Any duly appointed and acting legal representative of a party
26 such as a guardian, special representative, or attorney-in-fact;

27 (l) Where applicable, the virtual representative of any person
28 described in this subsection the giving of notice to whom would meet
29 notice requirements as provided in RCW 11.96A.120;

30 (m) Any notice agent, resident agent, or a qualified person, as
31 those terms are defined in chapter 11.42 RCW; and

32 (n) The owner or the personal representative of the estate of the
33 deceased owner of the nonprobate asset that is the subject of the
34 particular proceeding, if the subject of the particular proceeding
35 relates to the beneficiary's liability to a decedent's estate or
36 creditors under RCW 11.18.200.

37 (6) "Persons interested in the estate or trust" means the trustor,
38 if living, all persons beneficially interested in the estate or trust,

1 persons holding powers over the trust or estate assets, the attorney
2 general in the case of any charitable trust where the attorney general
3 would be a necessary party to judicial proceedings concerning the
4 trust, and any personal representative or trustee of the estate or
5 trust.

6 ~~(7) ("Principal place of administration of the trust" means the~~
7 ~~trustee's usual place of business where the day-to-day records~~
8 ~~pertaining to the trust are kept, or the trustee's residence if the~~
9 ~~trustee has no such place of business.~~

10 ~~(8))~~ "Representative" and other similar terms refer to a person
11 who virtually represents another under RCW 11.96A.120.

12 ~~((9) The "situs" of a trust means the place where the principal~~
13 ~~place of administration of the trust is located, unless otherwise~~
14 ~~provided in the instrument creating the trust.~~

15 ~~(10))~~ (8) "Trustee" means any acting and qualified trustee of the
16 trust.

17 **Sec. 6.** RCW 11.96A.050 and 2001 c 203 s 10 are each amended to
18 read as follows:

19 (1) Venue for proceedings pertaining to trusts shall be:

20 (a) For testamentary trusts established under wills probated in the
21 state of Washington, in the superior court of the county where
22 ~~((letters testamentary were granted to a personal representative of the~~
23 ~~estate subject to the will or, in the alternative, the superior court~~
24 ~~of the county of the situs of the trust; and~~

25 ~~(b) For all other trusts, in the superior court of the county in~~
26 ~~which the situs of the trust is located, or, if the situs is not~~
27 ~~located in the state of Washington, in any county)) the probate of the~~
28 ~~will is being administered or was completed or, in the alternative, the~~
29 ~~superior court of the county where any beneficiary of the trust~~
30 ~~entitled to notice under RCW 11.97.010 resides, the county where any~~
31 ~~trustee resides or has a place of business, or the county where any~~
32 ~~real property that is an asset of the trust is located; and~~

33 (b) For all other trusts, in the superior court of the county where
34 any beneficiary of the trust entitled to notice under RCW 11.97.010
35 resides, the county where any trustee resides or has a place of
36 business, or the county where any real property that is an asset of the

1 trust is located. If no county has venue for proceedings pertaining to
2 a trust under the preceding sentence, then in any county.

3 (2) A party to a proceeding pertaining to a trust may request that
4 venue be changed. If the request is made within four months of the
5 giving of the first notice of a proceeding pertaining to the trust,
6 except for good cause shown, venue must be moved to the county with the
7 strongest connection to the trust as determined by the court,
8 considering such factors as the residence of a beneficiary of the trust
9 entitled to notice under RCW 11.97.010, the residence or place of
10 business of a trustee, and the location of any real property that is an
11 asset of the trust.

12 (3) Venue for proceedings subject to chapter 11.88 or 11.92 RCW
13 shall be determined under the provisions of those chapters.

14 ~~((3))~~ (4) Venue for proceedings pertaining to the probate of
15 wills, the administration and disposition of a decedent's property,
16 including nonprobate assets, and any other matter not identified in
17 subsection (1) ~~((or))~~, (2), or (3) of this section, ~~((may))~~ shall be in
18 any county in the state of Washington that the petitioner selects. A
19 party to a proceeding may request that venue be changed if the request
20 is made within four months of the mailing of the notice of appointment
21 and pendency of probate required by RCW 11.28.237, and except for good
22 cause shown, venue must be moved as follows:

23 (a) If the decedent was a resident of the state of Washington at
24 the time of death, to the county of the decedent's residence; or

25 (b) If the decedent was not a resident of the state of Washington
26 at the time of death, to any of the following:

27 (i) Any county in which any part of the probate estate might be;

28 (ii) If there are no probate assets, any county where any
29 nonprobate asset might be; or

30 (iii) The county in which the decedent died.

31 ~~((4))~~ (5) Once letters testamentary or of administration have
32 been granted in the state of Washington, all orders, settlements,
33 trials, and other proceedings under this title shall be had or made in
34 the county in which such letters have been granted unless venue is
35 moved as provided in subsection ~~((2))~~ (4) of this section.

36 ~~((5))~~ (6) Venue for proceedings pertaining to powers of attorney
37 shall be in the superior court of the county of the principal's
38 residence, except for good cause shown.

1 ~~((6))~~ (7) If venue is moved, an action taken before venue is
2 changed is not invalid because of the venue.

3 ~~((7))~~ (8) Any request to change venue that is made more than four
4 months after the commencement of the action may be granted in the
5 discretion of the court.

6 **Sec. 7.** RCW 11.96A.070 and 1999 c 42 s 204 are each amended to
7 read as follows:

8 ~~(1)(a) ((An action against the trustee of an express trust for a~~
9 ~~breach of fiduciary duty must be brought within three years from the~~
10 ~~earlier of: (i) The time the alleged breach was discovered or~~
11 ~~reasonably should have been discovered; (ii) the discharge of a trustee~~
12 ~~from the trust as provided in RCW 11.98.041 or by agreement of the~~
13 ~~parties under RCW 11.96A.220; or (iii) the time of termination of the~~
14 ~~trust or the trustee's repudiation of the trust.~~

15 ~~(b) The provisions of (a) of this subsection apply to all express~~
16 ~~trusts, no matter when created, however it shall not apply to express~~
17 ~~trusts created before June 10, 1959, until the date that is three years~~
18 ~~after January 1, 2000.~~

19 ~~(c))~~ A beneficiary of an express trust may not commence a
20 proceeding against a trustee for breach of trust more than three years
21 after the date the beneficiary or a representative of the beneficiary
22 was sent a report that adequately disclosed the existence of a
23 potential claim for breach of trust and informed the beneficiary of the
24 time allowed for commencing a proceeding.

25 (b) A report adequately discloses the existence of a potential
26 claim for breach of trust if it provides sufficient information so that
27 the beneficiary or representative knows of the potential claim or
28 should have inquired into its existence. A report that includes the
29 following information is presumed to have provided such sufficient
30 information regarding the existence of potential claims for breach of
31 trust:

32 (i) A statement of receipts and disbursements of principal and
33 income that have occurred during the accounting period;

34 (ii) A statement of the assets and liabilities of the trust and
35 their values at the beginning and end of the period;

36 (iii) The trustee's compensation for the period;

1 (iv) The agents hired by the trustee, their relationship to the
2 trustee, if any, and their compensation, for the period;

3 (v) Disclosure of any pledge, mortgage, option, or lease of trust
4 property, or other agreement affecting trust property binding for a
5 period of five years or more that was granted or entered into during
6 the accounting period;

7 (vi) Disclosure of all transactions during the period that are
8 equivalent to one of the types of transactions described in section 32
9 of this act or otherwise could have been affected by a conflict between
10 the trustee's fiduciary and personal interests;

11 (vii) A statement that the recipient of the account information may
12 petition the superior court pursuant to chapter 11.106 RCW to obtain
13 review of the statement and of acts of the trustee disclosed in the
14 statement; and

15 (viii) A statement that claims against the trustee for breach of
16 trust may not be made after the expiration of three years from the date
17 the beneficiary receives the statement.

18 (c) If (a) of this subsection does not apply, a judicial proceeding
19 by a beneficiary against a trustee for breach of trust must be
20 commenced within three years after the first to occur of:

21 (i) The removal, resignation, or death of the trustee;

22 (ii) The termination of the beneficiary's interest in the trust; or

23 (iii) The termination of the trust.

24 (d) For purposes of this section, "express trust" does not include
25 resulting trusts, constructive trusts, business trusts in which
26 certificates of beneficial interest are issued to the beneficiary,
27 investment trusts, voting trusts, trusts in the nature of mortgages or
28 pledges, (~~trusts created by the judgment or decree of a court not~~
29 ~~sitting in probate,~~) liquidation trusts, or trusts for the sole
30 purpose of paying dividends, interest, interest coupons, salaries,
31 wages, pensions, or profits, trusts created in deposits in any
32 financial institution under chapter 30.22 RCW, unless any such trust
33 that is created in writing specifically incorporates this chapter in
34 whole or in part.

35 (2) Except as provided in RCW 11.96A.250 with respect to special
36 representatives, an action against a personal representative for
37 alleged breach of fiduciary duty by an heir, legatee, or other

1 interested party must be brought before discharge of the personal
2 representative.

3 (3) The legislature hereby confirms the long standing public policy
4 of promoting the prompt and efficient resolution of matters involving
5 trusts and estates. To further implement this policy, the legislature
6 adopts the following statutory provisions in order to: (a) Encourage
7 and facilitate the participation of qualified individuals as special
8 representatives; (b) serve the public's interest in having a prompt and
9 efficient resolution of matters involving trusts or estates; and (c)
10 promote complete and final resolution of proceedings involving trusts
11 and estates.

12 (i) Actions against a special representative must be brought before
13 the earlier of:

14 (A) Three years from the discharge of the special representative as
15 provided in RCW 11.96A.250; or

16 (B) The entry of an order by a court of competent jurisdiction
17 under RCW 11.96A.240 approving the written agreement executed by all
18 interested parties in accord with the provisions of RCW 11.96A.220.

19 (ii) If a legal action is commenced against the special
20 representative after the expiration of the period during which claims
21 may be brought against the special representative as provided in (c)(i)
22 of this subsection, alleging property damage, property loss, or other
23 civil liability caused by or resulting from an alleged act or omission
24 of the special representative arising out of or by reason of the
25 special representative's duties or actions as special representative,
26 the special representative shall be indemnified: (A) From the assets
27 held in the trust or comprising the estate involved in the dispute; and
28 (B) by the persons bringing the legal action, for all expenses,
29 attorneys' fees, judgments, settlements, decrees, or amounts due and
30 owing or paid in satisfaction of or incurred in the defense of the
31 legal action. To the extent possible, indemnification must be made
32 first by the persons bringing the legal action, second from that
33 portion of the trust or estate that is held for the benefit of, or has
34 been distributed or applied to, the persons bringing the legal action,
35 and third from the other assets held in the trust or comprising the
36 estate involved in the dispute.

37 (4) The tolling provisions of RCW 4.16.190 apply to this chapter
38 except that the running of a statute of limitations under subsection

1 (1) or (2) of this section, or any other applicable statute of
2 limitations for any matter that is the subject of dispute under this
3 chapter, is not tolled as to an individual who had a guardian ad litem,
4 limited or general guardian of the estate, or a special representative
5 to represent the person during the probate or dispute resolution
6 proceeding.

7 **Sec. 8.** RCW 11.96A.110 and 1999 c 42 s 304 are each amended to
8 read as follows:

9 (1) Subject to RCW 11.96A.160, in all judicial proceedings under
10 this title that require notice, the notice must be personally served on
11 or mailed to all parties or the parties' virtual representatives at
12 least twenty days before the hearing on the petition unless a different
13 period is provided by statute or ordered by the court. The date of
14 service shall be determined under the rules of civil procedure.
15 Notwithstanding the foregoing, notice that is provided in an electronic
16 transmission and electronically transmitted complies with this section
17 if the party receiving notice has previously consented in a record
18 delivered to the party giving notice to receiving notice by electronic
19 transmission. Consent to receive notice by electronic transmission may
20 be revoked at any time by a record delivered to the party giving
21 notice. Consent is deemed revoked if the party giving notice is unable
22 to electronically transmit two consecutive notices given in accordance
23 with the consent.

24 (2) Proof of the service (~~(or)~~), mailing, or electronic delivery
25 required in this section must be made by affidavit or declaration filed
26 at or before the hearing.

27 (3) For the purposes of this title, the terms "electronic
28 transmission" and "electronically transmitted" have the same meaning as
29 set forth in RCW 23B.01.400.

30 **Sec. 9.** RCW 11.96A.120 and 2008 c 6 s 928 are each amended to read
31 as follows:

32 (1) With respect to a particular matter that affects a trust,
33 probate estate, guardianship estate, or property subject to a power of
34 attorney, in which the interests of such fiduciary estate and the
35 beneficiaries are not in conflict:

1 (a) A guardian may represent and bind the estate that the guardian
2 controls;

3 (b) An agent having authority to act with respect to the particular
4 question or dispute may represent and bind the principal;

5 (c) A trustee may represent and bind the beneficiaries of the
6 trust; and

7 (d) A personal representative of a decedent's estate may represent
8 and bind persons interested in the estate.

9 (2) This section is intended to adopt the common law concept of
10 virtual representation. This section supplements the common law
11 relating to the doctrine of virtual representation and shall not be
12 construed as limiting the application of that common law doctrine.

13 ~~((+2))~~ (3) Any notice requirement in this title is satisfied if
14 ~~((notice is given as follows))~~:

15 (a) Where an interest in an estate, trust, or nonprobate asset or
16 an interest that may be affected by a power of attorney has been given
17 to persons who comprise a certain class upon the happening of a certain
18 event, notice may be given to the living persons who would constitute
19 the class if the event had happened immediately before the commencement
20 of the proceeding requiring notice, and the persons shall virtually
21 represent all other members of the class;

22 (b) Where an interest in an estate, trust, or nonprobate asset or
23 an interest that may be affected by a power of attorney has been given
24 to a living person, and the same interest, or a share in it, is to pass
25 to the surviving spouse or surviving domestic partner or to persons who
26 are, or might be, the distributees, heirs, issue, or other kindred of
27 that living person upon the happening of a future event, notice may be
28 given to that living person, and the living person shall virtually
29 represent the surviving spouse or surviving domestic partner,
30 distributees, heirs, issue, or other kindred of the person; ~~((and))~~

31 (c) Except as otherwise provided in this subsection, where an
32 interest in an estate, trust, or nonprobate asset or an interest that
33 may be affected by a power of attorney has been given to a person or a
34 class of persons, or both, upon the happening of any future event, and
35 the same interest or a share of the interest is to pass to another
36 person or class of persons, or both, upon the happening of an
37 additional future event, notice may be given to the living person or
38 persons who would take the interest upon the happening of the first

1 event, and the living person or persons shall virtually represent the
2 persons and classes of persons who might take on the happening of the
3 additional future event((-

4 ~~(3) A party is not virtually represented by a person receiving~~
5 ~~notice if a conflict of interest involving the matter is known to exist~~
6 ~~between the notified person and the party.~~

7 ~~(4))~~; and

8 (d) The holder of a general power of appointment, exercisable
9 either during the power holder's life or by will, or a limited power of
10 appointment, exercisable either during the power holder's life or by
11 will, that excludes as possible appointees only the power holder, his
12 or her estate, his or her creditors, and the creditors of his or her
13 estate, may accept notice and virtually represent and bind persons
14 whose interests, as permissible appointees, takers in default, or
15 otherwise, are subject to the power, to the extent there is no conflict
16 of interest between the holder of the power of appointment and the
17 persons represented with respect to the particular question or dispute.

18 (4) A party is not virtually represented by a person receiving
19 notice if a conflict of interest involving the matter is known to exist
20 between the notified person and the party.

21 (5) An action taken by the court is conclusive and binding upon
22 each person receiving actual or constructive notice or who is otherwise
23 ((virtually)) represented under this section.

24 NEW SECTION. Sec. 10. A new section is added to chapter 11.96A
25 RCW to read as follows:

26 (1) Except as otherwise provided in subsection (2) of this section,
27 with respect to any charitable disposition made in a will or trust, if
28 a particular charitable purpose becomes unlawful, impracticable,
29 impossible to achieve, or wasteful:

30 (a) The disposition does not fail, in whole or in part;

31 (b) The subject property does not revert to the alternative,
32 residuary, or intestate heirs of the estate or, in the case of a trust,
33 the trustor or the trustor's successors in interest; and

34 (c) The court may modify or terminate the trust by directing that
35 the property be applied or distributed, in whole or in part, in a
36 manner consistent with the testator's or trustor's charitable purposes.

1 (2) A provision in the terms of a will or charitable trust that
2 would result in distribution of the property to a noncharitable
3 beneficiary prevails over the power of the court under subsection (1)
4 of this section to modify or terminate the will provision or trust only
5 if, when the provision takes effect:

6 (a) The property is to revert to the trustor and the trustor is
7 still living; or

8 (b) Fewer than twenty-one years have elapsed since the following:

9 (i) In the case of a charitable disposition in trust, the date of
10 the trust's creation or the date the trust became irrevocable; or

11 (ii) In the case of a charitable disposition in a will, the death
12 of the testator, in the case of a charitable disposition in a will.

13 (3) For purposes of this title, a charitable purpose is one for the
14 relief of poverty, the advancement of education or religion, the
15 promotion of health, governmental or municipal purposes, or other
16 purposes the achievement of which is beneficial to a community.

17 NEW SECTION. **Sec. 11.** A new section is added to chapter 11.96A
18 RCW to read as follows:

19 The terms of a will or trust, even if unambiguous, may be reformed
20 by judicial proceedings or binding nonjudicial procedure under this
21 chapter to conform the terms to the intention of the testator or
22 trustor if it is proved by clear, cogent, and convincing evidence, or
23 the parties to a binding nonjudicial agreement agree that there is
24 clear, cogent, and convincing evidence, that both the intent of the
25 testator or trustor and the terms of the will or trust were affected by
26 a mistake of fact or law, whether in expression or inducement.

27 **Sec. 12.** RCW 11.97.010 and 2003 c 254 s 4 are each amended to read
28 as follows:

29 (1) The trustor of a trust may by the provisions of the trust
30 relieve the trustee from any or all of the duties, restrictions, and
31 liabilities which would otherwise be imposed by chapters 11.95, 11.98,
32 11.100, and 11.104A RCW and RCW 11.106.020, or may alter or deny any or
33 all of the privileges and powers conferred by those provisions; or may
34 add duties, restrictions, liabilities, privileges, or powers to those
35 imposed or granted by those provisions. If any specific provision of
36 those chapters is in conflict with the provisions of a trust, the

1 provisions of the trust control whether or not specific reference is
2 made in the trust to any of those chapters, except as provided in RCW
3 6.32.250, 11.96A.190, 19.36.020, 11.98.200 through 11.98.240 ((and)),
4 11.95.100 through 11.95.150, and chapter 11.--- RCW (the new chapter
5 created in section 39 of this act). In no event may a trustee be
6 relieved of the duty to act in good faith and with honest judgment or
7 the duty to provide information to beneficiaries as required in this
8 section. Notwithstanding the breadth of discretion granted to a
9 trustee in the terms of the trust, including the use of such terms as
10 "absolute," "sole," or "uncontrolled," the trustee shall exercise a
11 discretionary power in good faith and in accordance with the terms and
12 purposes of the trust and the interests of the beneficiaries.

13 (2) Within sixty days after the date of acceptance of the position
14 of trustee of an irrevocable trust, or the date the trustee of a
15 formerly revocable trust acquires knowledge that the trust has become
16 irrevocable, whether by the death of the trustor or otherwise, the
17 trustee shall give notice of: (a) The existence of the trust, (b) the
18 identity of the trustor or trustors, (c) the trustee's name, address,
19 and telephone number, and (d) the right to request such information as
20 is reasonably necessary to enable the notified person to enforce his or
21 her rights under the trust, to all persons interested in the trust, as
22 defined in RCW 11.96A.030, and who would be entitled to notice under
23 RCW 11.96A.110 and 11.96A.120 if they were a party to judicial
24 proceedings regarding the trust. If any such person is a minor and no
25 guardian has been appointed for such person by any court, then such
26 notice may be given to a parent of the person. If a person otherwise
27 entitled to notice under this section is a charitable organization, and
28 the charitable organization's only interest in the trust is a future
29 interest that may be revoked, then such notice shall instead be given
30 to the attorney general. A trustee who gives notice pursuant to this
31 section satisfies the duty to inform the beneficiaries of the existence
32 of the trust. The notice required under this subsection (2) applies
33 only to irrevocable trusts created after December 31, 2011, and
34 revocable trusts that become irrevocable after December 31, 2011,
35 provided that all common law duties of a trustee to notify
36 beneficiaries applicable to trusts created or that became irrevocable
37 before such date are not affected.

1 (3) A trustee shall keep all persons interested in the trust, as
2 defined in RCW 11.96A.030, and who would be entitled to notice under
3 RCW 11.96A.110 and 11.96A.120 if they were a party to judicial
4 proceedings regarding the trust, reasonably informed about the
5 administration of the trust and of the material facts necessary for
6 them to protect their interests. A report that contains the following
7 is presumed to satisfy the trustee's duty to keep such persons
8 reasonably informed for the relevant period of trust administration:

9 (a) A statement of receipts and disbursements of principal and
10 income that have occurred during the accounting period;

11 (b) A statement of the assets and liabilities of the trust and
12 their values at the beginning and end of the period;

13 (c) The trustee's compensation for the period;

14 (d) The agents hired by the trustee, their relationship to the
15 trustee, if any, and their compensation, for the period;

16 (e) Disclosure of any pledge, mortgage, option, or lease of trust
17 property, or other agreement affecting trust property binding for a
18 period of five years or more that was granted or entered into during
19 the accounting period;

20 (f) Disclosure of all transactions during the period that are
21 equivalent to one of the types of transactions described in section 32
22 of this act or otherwise could have been affected by a conflict between
23 the trustee's fiduciary and personal interests;

24 (g) A statement that the recipient of the account information may
25 petition the superior court pursuant to chapter 11.106 RCW to obtain
26 review of the statement and of acts of the trustee disclosed in the
27 statement; and

28 (h) A statement that claims against the trustee for breach of trust
29 may not be made after the expiration of three years from the date the
30 beneficiary receives the statement.

31 (4) Unless unreasonable under the circumstances, a trustee shall
32 promptly respond to any beneficiary's request for information related
33 to the administration of the trust.

34 (5) If a person entitled to notice under this section requests
35 information reasonably necessary to enable the notified person to
36 enforce his or her rights under the trust, then the trustee must
37 provide such information within sixty days of receipt of such request.
38 Delivery of the entire trust instrument to the persons entitled to

1 notice under this section who request information concerning the terms
2 of the trust reasonably necessary to enable the notified person to
3 enforce his or her rights under the trust is deemed to satisfy the
4 trustee's obligations under this subsection.

5 NEW SECTION. **Sec. 13.** A new section is added to chapter 11.97 RCW
6 to read as follows:

7 The rules of construction that apply in this state to the
8 interpretation of a will and disposition of property by will also apply
9 as appropriate to the interpretation of the terms of a trust and the
10 disposition of the trust property.

11 **Sec. 14.** RCW 11.98.009 and 1985 c 30 s 40 are each amended to read
12 as follows:

13 Except as provided in this section, this chapter applies to express
14 trusts executed by the trustor after June 10, 1959, and does not apply
15 to resulting trusts, constructive trusts, business trusts where
16 certificates of beneficial interest are issued to the beneficiary,
17 investment trusts, voting trusts, trusts in the nature of mortgages or
18 pledges, (~~trusts created by the judgment or decree of a court not~~
19 ~~sitting in probate,~~) liquidation trusts, or trusts for the sole
20 purpose of paying dividends, interest, interest coupons, salaries,
21 wages, pensions or profits, trusts created in deposits in any financial
22 institution pursuant to chapter 30.22 RCW, unless any such trust which
23 is created in writing incorporates this chapter in whole or in part.

24 NEW SECTION. **Sec. 15.** A new section is added to chapter 11.98 RCW
25 to read as follows:

- 26 METHODS OF CREATING A TRUST. A trust may be created by:
- 27 (1) Transfer of property to another person as trustee during the
 - 28 trustor's lifetime or by will or other disposition taking effect upon
 - 29 the trustor's death;
 - 30 (2) Declaration by the owner of property that the owner holds
 - 31 identifiable property as trustee; or
 - 32 (3) Exercise of a power of appointment in favor of a trustee.

33 NEW SECTION. **Sec. 16.** A new section is added to chapter 11.98 RCW
34 to read as follows:

1 REQUIREMENTS FOR CREATION. (1) A trust is created only if:

2 (a) The trustor has capacity to create a trust;

3 (b) The trustor indicates an intention to create the trust;

4 (c) The trust has a definite beneficiary or is:

5 (i) A charitable trust;

6 (ii) A trust for the care of an animal, as provided in chapter
7 11.118 RCW; or

8 (iii) A trust for a noncharitable purpose, as provided in section
9 20 of this act;

10 (d) The trustee has duties to perform; and

11 (e) The same person is not the sole trustee and sole beneficiary.

12 (2) A beneficiary is definite if the beneficiary can be ascertained
13 now or in the future, subject to any applicable rule against
14 perpetuities.

15 (3) A power in a trustee to select a beneficiary from an indefinite
16 class is valid, except to the extent that the trustee may distribute
17 trust property to himself or herself. If the power is not exercised
18 within a reasonable time, the power fails and the property subject to
19 the power passes to the persons who would have taken the property had
20 the power not been conferred.

21 NEW SECTION. **Sec. 17.** A new section is added to chapter 11.98 RCW
22 to read as follows:

23 TRUSTS CREATED IN OTHER JURISDICTIONS. A trust not created by will
24 is validly created if its creation complies with the law of the
25 jurisdiction in which the trust instrument was executed, or the law of
26 the jurisdiction in which, at the time of creation or in the case of a
27 revocable trust, at the time the trust became irrevocable:

28 (1) The trustor was domiciled, had a residence, or was a national;

29 (2) The trustee was domiciled or had a place of business; or

30 (3) Any trust property was located.

31 NEW SECTION. **Sec. 18.** A new section is added to chapter 11.98 RCW
32 to read as follows:

33 TRUST PURPOSES. A trust may be created only to the extent its
34 purposes are lawful, not contrary to public policy, and possible to
35 achieve.

1 NEW SECTION. **Sec. 19.** A new section is added to chapter 11.98 RCW
2 to read as follows:

3 EVIDENCE OF ORAL TRUST. Except as required by a statute other than
4 this title, a trust need not be evidenced by a trust instrument, but
5 the creation of an oral trust and its terms may be established only by
6 clear, cogent, and convincing evidence.

7 NEW SECTION. **Sec. 20.** A new section is added to chapter 11.98 RCW
8 to read as follows:

9 NONCHARITABLE TRUST WITHOUT ASCERTAINABLE BENEFICIARY. Except as
10 otherwise provided in chapter 11.118 RCW or by another statute, the
11 following rules apply:

12 (1) A trust may be created for a noncharitable purpose without a
13 definite or definitely ascertainable beneficiary or for a noncharitable
14 but otherwise valid purpose to be selected by the trustee. The trust
15 may not be enforced for longer than the time period specified in RCW
16 11.98.130 as the period during which a trust cannot be deemed to
17 violate the rule against perpetuities;

18 (2) A trust authorized by this section may be enforced by a person
19 appointed in the terms of the trust or, if no person is so appointed,
20 by a person appointed by the court; and

21 (3) Property of a trust authorized by this section may be applied
22 only to its intended use, except to the extent the court determines
23 that the value of the trust property exceeds the amount required for
24 the intended use. Except as otherwise provided in the terms of the
25 trust, property not required for the intended use must be distributed
26 to the trustor, if then living, otherwise to the trustor's successors
27 in interest. Successors in interest include the beneficiaries under
28 the trustor's will, if the trustor has a will, or, in the absence of an
29 effective will provision, the trustor's heirs.

30 **Sec. 21.** RCW 11.98.039 and 2005 c 97 s 13 are each amended to read
31 as follows:

32 (1) Where a vacancy occurs in the office of the trustee and there
33 is a successor trustee who is willing to serve as trustee and (a) is
34 named in the governing instrument as successor trustee or (b) has been
35 selected to serve as successor trustee under the procedure established
36 in the governing instrument for the selection of a successor trustee,

1 the outgoing trustee, or any other interested party, shall give notice
2 of such vacancy, whether arising because of the trustee's resignation
3 or because of any other reason, and of the successor trustee's
4 agreement to serve as trustee, to each adult distributee or permissible
5 distributee of trust income or of trust principal or of both trust
6 income and trust principal. If there are no such adults, no notice
7 need be given. The successor trustee named in the governing instrument
8 or selected pursuant to the procedure therefor established in the
9 governing instrument shall be entitled to act as trustee except for
10 good cause or disqualification. The successor trustee shall serve as
11 of the effective date of the discharge of the predecessor trustee as
12 provided in RCW 11.98.041.

13 (2) Where a vacancy exists or occurs in the office of the trustee
14 and there is no successor trustee who is named in the governing
15 instrument or who has been selected to serve as successor trustee under
16 the procedure established in the governing instrument for the selection
17 of a successor trustee, and who is willing to serve as trustee, then
18 all parties with an interest in the trust may agree to a nonjudicial
19 change of the trustee under RCW 11.96A.220. The successor trustee
20 shall serve as of the effective date of the discharge of the
21 predecessor trustee as provided in RCW 11.98.041 or, in circumstances
22 where there is no predecessor trustee, as of the effective date of the
23 trustee's appointment.

24 (3) When there is a desire to name one or more cotrustees to serve
25 with the existing trustee, then all parties with an interest in the
26 trust may agree to the nonjudicial addition of one or more cotrustees
27 under RCW 11.96A.220. The additional cotrustee shall serve as of the
28 effective date of the cotrustee's appointment.

29 (4) Unless subsection (1), (2), or (3) of this section applies, any
30 beneficiary of a trust, the trustor, if alive, or the trustee may
31 petition the superior court having jurisdiction for the appointment or
32 change of a trustee or cotrustee under the procedures provided in RCW
33 11.96A.080 through 11.96A.200: (a) Whenever the office of trustee
34 becomes vacant; (b) upon filing of a petition of resignation by a
35 trustee; or (c) for any other reasonable cause.

36 (5) For purposes of this subsection, the term fiduciary includes
37 both trustee and personal representative.

1 (a) Except as otherwise provided in the governing instrument, a
2 successor fiduciary, absent actual knowledge of a breach of fiduciary
3 duty: (i) Is not liable for any act or omission of a predecessor
4 fiduciary and is not obligated to inquire into the validity or
5 propriety of any such act or omission; (ii) is authorized to accept as
6 conclusively accurate any accounting or statement of assets tendered to
7 the successor fiduciary by a predecessor fiduciary; and (iii) is
8 authorized to receipt only for assets actually delivered and has no
9 duty to make further inquiry as to undisclosed assets of the trust or
10 estate.

11 (b) Nothing in this section relieves a successor fiduciary from
12 liability for retaining improper investments, nor does this section in
13 any way bar the successor fiduciary, trust beneficiaries, or other
14 party in interest from bringing an action against a predecessor
15 fiduciary arising out of the acts or omissions of the predecessor
16 fiduciary, nor does it relieve the successor fiduciary of liability for
17 its own acts or omissions except as specifically stated or authorized
18 in this section.

19 (6) A change of trustee to a foreign trustee does not change the
20 situs of the trust. Transfer of situs of a trust to another
21 jurisdiction requires compliance with section 22 of this act and RCW
22 11.98.045 through 11.98.055.

23 NEW SECTION. Sec. 22. A new section is added to chapter 11.98 RCW
24 to read as follows:

25 SITUS OF TRUST AND GOVERNING LAW. (1) If provisions of a trust
26 instrument designate Washington as the situs of the trust or designate
27 Washington law to govern the trust or any of its terms, then the situs
28 of the trust is Washington provided that one of the following
29 conditions is met:

30 (a) A trustee has a place of business in or a trustee is a resident
31 of Washington; or

32 (b) More than an insignificant part of the trust administration
33 occurs in Washington; or

34 (c) The trustor resides in Washington at the time situs is being
35 established, or resided in Washington at the time the trust became
36 irrevocable; or

37 (d) One or more of the beneficiaries resides in Washington; or

1 (e) An interest in real property located in Washington is an asset
2 of the trust.

3 (2)(a) Unless the trust instrument designates a state other than
4 Washington as the situs of the trust and does not expressly authorize
5 transfer of situs, the trustee may register the trust as a Washington
6 trust if any of the factors in subsection (1)(a) through (e) of this
7 section are present. The trustee shall register the trust by filing
8 with the clerk of the court in any county where venue lies for the
9 trust under RCW 11.96A.050, a statement including the following
10 information:

11 (i) The name and address of the trustee;

12 (ii) The date of the trust, name of the trustor, and name of the
13 trust, if any;

14 (iii) The factor or factors listed in subsection (1)(a) through (e)
15 of this section that are present for the trust and which qualify the
16 trust for registration.

17 (b) Within five days of filing the registration with the court, the
18 trustee shall mail a copy of the registration to each person who would
19 be entitled to notice under RCW 11.97.010 and has not waived notice of
20 the registration, in writing, filed in the cause, together with a
21 notice that must be in substantially the same form as set forth in this
22 section. Persons receiving such notice shall have thirty days from the
23 date of filing the registration to file a petition in the court
24 objecting to such registration and requesting the court to issue an
25 order that Washington is not the proper situs of the trust, and to
26 serve a copy of such petition upon the trustee or the trustee's lawyer.
27 If a petition objecting to the registration is filed within thirty days
28 of the date of filing the registration, the trustee must request the
29 court to fix a time and place for the hearing of the petition and
30 notify by mail, personal service or electronic transmission, if a valid
31 consent to electronic transmission is in effect under the terms of RCW
32 11.96A.110, all persons who were entitled to notice of the registration
33 of the time and place of the hearing, not less than ten days before the
34 hearing on the petition.

35 (c) Unless a person receiving notice of the registration files a
36 petition with the court objecting to the registration within thirty
37 days of the date of filing the registration, the registration shall be
38 deemed the equivalent of an order entered by the court declaring that

1 the situs of the trust is Washington. After expiration of the
2 thirty-day period following filing of the registration, the trustee may
3 obtain a certificate of registration signed by the clerk, and issued
4 under the seal of the court, which may be in the form specified in (d)
5 of this subsection.

6 (d) Notice of registration and certificates of registration may be
7 in the following form:

8 (i) Notice form:

9 NOTICE OF FILING OF REGISTRATION OF [NAME AND DATE OF TRUST] AS A
10 WASHINGTON TRUST

11 NOTICE IS GIVEN that the attached Registration of Trust was filed
12 by the undersigned in the above-entitled court on the day of
13, 20. . .; unless you file a petition in the above-entitled
14 court objecting to such registration and requesting the court to issue
15 an order that Washington is not the proper situs of the trust, and
16 serve a copy thereof upon the trustee or the trustee's lawyer, within
17 thirty days after the date of the filing, the registration will be
18 deemed the equivalent of an order entered by the court declaring that
19 the situs of the trust is Washington.

20 If you file and serve a petition within the period specified, the
21 undersigned will request the court to fix a time and place for the
22 hearing of your petition, and you will be notified of the time and
23 place thereof, by mail, or personal service, not less than ten days
24 before the hearing on the petition.

25 (ii) Certificate of Registration:

26 State of Washington, County of
27 In the superior court of the county of

28 Whereas, the attached Registration of Trust was filed with this
29 court on, the attached Notice of Filing Registration of Trust
30 and Affidavit of Mailing Notice of Filing Registration of Trust were
31 filed with this court on, and no objections to such
32 Registration have been filed with this court, the trust known as
33, under trust agreement dated, between as
34 Trustor and as Trustee, is hereby registered as a Washington
35 trust.

36 Witness my hand and the seal of said court this . . . day of
37, 20

1 (3) If the instrument establishing a trust does not designate
2 Washington as the situs or designate Washington law to apply to the
3 trust, and the trustee of the trust has not registered the trust as
4 allowed in subsection (2) of this section, the situs of the trust is
5 Washington if the conditions specified in this subsection (3) are met.

6 (a) For a testamentary trust, the situs of the trust is Washington
7 if:

8 (i) The will was admitted to probate in Washington; or

9 (ii) The will has not been admitted to probate in Washington, but
10 any trustee of the trust resides or has a place of business in
11 Washington, any beneficiary entitled to notice under RCW 11.97.010
12 resides in Washington, or any real property that is an asset of the
13 trust is located in Washington.

14 (b) For an intervivos trust where the trustor is domiciled in
15 Washington either when the trust becomes irrevocable or, in the case of
16 a revocable trust, when judicial proceedings under chapter 11.96A RCW
17 are commenced, the situs of the trust is Washington if:

18 (i) The trustor is living and Washington is the trustor's domicile
19 or any of the trustees reside in or have a place of business in
20 Washington; or

21 (ii) The trustor is deceased, situs has not previously been
22 established by any court proceeding, and:

23 (A) The trustor's will was admitted to probate in Washington;

24 (B) The trustor's will was not admitted to probate in Washington,
25 but any person entitled to notice under RCW 11.97.010 resides in
26 Washington, any trustee resides or has a place of business in
27 Washington, or any real property that is an asset of the trust is
28 located in Washington.

29 (c) If the situs of the trust is not determined under (a) or (b) of
30 this subsection, the determination regarding the situs of the trust is
31 a matter for purposes of RCW 11.96A.030. Whether Washington is the
32 situs shall be determined by a court in a judicial proceeding conducted
33 under RCW 11.96A.080 if:

34 (i) A trustee has a place of business in or a trustee is a resident
35 of Washington; or

36 (ii) More than an insignificant part of the trust administration
37 occurs in Washington; or

38 (iii) One or more of the beneficiaries resides in Washington; or

1 (iv) An interest in real property located in Washington is an asset
2 of the trust.

3 (d) Determination of situs under (c) of this subsection (3) cannot
4 be made by nonjudicial agreement under RCW 11.96A.220.

5 **Sec. 23.** RCW 11.98.045 and 1985 c 30 s 45 are each amended to read
6 as follows:

7 (1) (~~(A trustee may transfer trust assets to a trustee in another~~
8 ~~jurisdiction or may transfer the place of administration of a trust to~~
9 ~~another jurisdiction)) If a trust is a Washington trust under section
10 22 of this act, a trustee may transfer the situs of the trust to a
11 jurisdiction other than Washington if the trust instrument so provides
12 or in accordance with RCW 11.98.051 or 11.98.055.~~

13 (2) Transfer under this section is permitted only if:

14 (a) The transfer would facilitate the economic and convenient
15 administration of the trust;

16 (b) The transfer would not materially impair the interests of the
17 beneficiaries or others interested in the trust;

18 (c) The transfer does not violate the terms of the trust; (~~and~~)

19 (d) The new trustee is qualified and able to administer the trust
20 or such assets on the terms set forth in the trust; and

21 (e) The trust meets at least one condition for situs listed in
22 section 22(1) of this act with respect to the new jurisdiction.

23 (3) Acceptance of such transfer by a foreign corporate trustee or
24 trust company under this section(~~(7)~~) or RCW 11.98.051(~~(7)~~) or
25 11.98.055 shall not be construed to be doing a "trust business" as
26 described in RCW 30.08.150(9).

27 **Sec. 24.** RCW 11.98.051 and 1999 c 42 s 619 are each amended to
28 read as follows:

29 (1) The trustee may transfer (~~(trust assets or the place of~~
30 ~~administration)) trust situs (a) in accordance with RCW 11.96A.220(~~(-~~
31 ~~In addition, the trustee shall give)); or (b) by giving written notice
32 to those persons entitled to notice as provided for under RCW
33 11.96A.110 and to the attorney general in the case of a charitable
34 trust subject to chapter 11.110 RCW not less than sixty days before
35 initiating the transfer. The notice (~~(shall)~~) must:~~~~

36 (a) State the name and mailing address of the trustee;

1 (b) Include a copy of the governing instrument of the trust;

2 (c) Include a statement of assets and liabilities of the trust
3 dated within ninety days of the notice;

4 (d) State the name and mailing address of the trustee to whom the
5 (~~assets or administration~~) trust will be transferred together with
6 evidence that the trustee has agreed to accept the (~~assets or~~) trust
7 (~~administration~~) in the manner provided by law of the new (~~place of~~
8 ~~administration~~) situs. The notice (~~shall~~) must also contain a
9 statement of the trustee's qualifications and the name of the court, if
10 any, having jurisdiction of that trustee or in which a proceeding with
11 respect to the administration of the trust may be heard;

12 (e) State the facts supporting the requirements of RCW
13 11.98.045(2);

14 (f) Advise the beneficiaries of the (~~right to petition for~~
15 ~~judicial determination of the proposed transfer as provided in RCW~~
16 ~~11.98.055~~) date, not less than sixty days after the giving of the
17 notice, by which the beneficiary must notify the trustee of an
18 objection to the proposed transfer; and

19 (g) Include a form on which the recipient may indicate consent or
20 objection to the proposed transfer.

21 (2) If the (~~trustee receives written consent to the proposed~~
22 ~~transfer from all persons entitled to notice~~) date upon which the
23 beneficiaries' right to object to the transfer expires without receipt
24 by the trustee of any objection, the trustee may transfer the trust
25 (~~assets or place of administration~~) situs as provided in the notice.
26 (~~Transfer in accordance with the notice is a full discharge of the~~
27 ~~trustee's duties in relation to all property referred to therein. Any~~
28 ~~person dealing with the trustee is entitled to rely on the authority of~~
29 ~~the trustee to act and is not obliged to inquire into the validity or~~
30 ~~propriety of the transfer.~~) If the trust was registered under RCW
31 11.98.045(2), the trustee must file a notice of transfer of situs and
32 termination of registration with the court of the county where the
33 trust was registered.

34 (3) The authority of a trustee under this section to transfer a
35 trust's situs terminates if a beneficiary notifies the trustee of an
36 objection to the proposed transfer on or before the date specified in
37 the notice.

1 (4) A change of trust situs does not authorize a change of trustee.
2 Change of trustee of a trust requires compliance with RCW 11.98.039.

3 **Sec. 25.** RCW 11.98.055 and 1999 c 42 s 620 are each amended to
4 read as follows:

5 (1) Any trustee, beneficiary, or beneficiary representative may
6 petition the superior court of the county of the situs of the trust for
7 a transfer of (~~trust assets or transfer of the place of~~
8 ~~administration~~) the situs of a trust in accordance with RCW 11.96A.080
9 through 11.96A.200.

10 (2) At the conclusion of the hearing, if the court finds the
11 requirements of RCW 11.98.045(2) have been satisfied, it may direct the
12 transfer of (~~trust assets or the place of trust administration~~) the
13 situs of a trust on such terms and conditions as it deems appropriate.
14 The court in its discretion may provide for payment from the trust of
15 reasonable fees and expenses for any party to the proceeding. Delivery
16 of trust assets in accordance with the court's order is a full
17 discharge of the trustee's duties in relation to all transferred
18 property.

19 (3) A change of trust situs does not authorize a change of trustee.
20 Change of trustee of a trust requires compliance with RCW 11.98.039.

21 **Sec. 26.** RCW 11.98.070 and 2010 c 8 s 2091 are each amended to
22 read as follows:

23 A trustee, or the trustees jointly, of a trust, in addition to the
24 authority otherwise given by law, have discretionary power to acquire,
25 invest, reinvest, exchange, sell, convey, control, divide, partition,
26 and manage the trust property in accordance with the standards provided
27 by law, and in so doing may:

28 (1) Receive property from any source as additions to the trust or
29 any fund of the trust to be held and administered under the provisions
30 of the trust;

31 (2) Sell on credit;

32 (3) Grant, purchase or exercise options;

33 (4) Sell or exercise subscriptions to stock or other corporate
34 securities and to exercise conversion rights;

35 (5) Deposit stock or other corporate securities with any protective
36 or other similar committee;

- 1 (6) Assent to corporate sales, leases, and encumbrances;
- 2 (7) Vote trust securities in person or by proxy with power of
3 substitution; and enter into voting trusts;
- 4 (8) Register and hold any stocks, securities, or other property in
5 the name of a nominee or nominees without mention of the trust
6 relationship, provided the trustee or trustees are liable for any loss
7 occasioned by the acts of any nominee, except that this subsection
8 shall not apply to situations covered by subsection (31) of this
9 section;
- 10 (9) Grant leases of trust property, with or without options to
11 purchase or renew, to begin within a reasonable period and for terms
12 within or extending beyond the duration of the trust, for any purpose
13 including exploration for and removal of oil, gas and other minerals;
14 enter into community oil leases, pooling and unitization agreements;
- 15 (10) Subdivide, develop, dedicate to public use, make or obtain the
16 vacation of public plats, adjust boundaries, partition real property,
17 and on exchange or partition to adjust differences in valuation by
18 giving or receiving money or money's worth;
- 19 (11) Compromise or submit claims to arbitration;
- 20 (12) Borrow money, secured or unsecured, from any source, including
21 a corporate trustee's banking department, or from the individual
22 trustee's own funds;
- 23 (13) Make loans, either secured or unsecured, at such interest as
24 the trustee may determine to any person, including any beneficiary of
25 a trust, except that no trustee who is a beneficiary of a trust may
26 participate in decisions regarding loans to such beneficiary from the
27 trust(~~(, unless the loan is as described in RCW 83.110.020(2),)~~) and
28 then only to the extent of the loan, and also except that if a
29 beneficiary or the grantor of a trust has the power to change a trustee
30 of the trust, the power to loan shall be limited to loans at a
31 reasonable rate of interest and for adequate security;
- 32 (14) Determine the hazards to be insured against and maintain
33 insurance for them;
- 34 (15) Select any part of the trust estate in satisfaction of any
35 partition or distribution, in kind, in money or both; make nonpro rata
36 distributions of property in kind; allocate particular assets or
37 portions of them or undivided interests in them to any one or more of

1 the beneficiaries without regard to the income tax basis of specific
2 property allocated to any beneficiary and without any obligation to
3 make an equitable adjustment;

4 ~~(16)(a) Pay ((any income or principal distributable to or for the~~
5 ~~use of any beneficiary, whether that beneficiary is under legal~~
6 ~~disability, to the beneficiary or for the beneficiary's use to the~~
7 ~~beneficiary's parent, guardian, custodian under the uniform gifts to~~
8 ~~minors act of any state, person with whom he or she resides, or third~~
9 ~~person)) an amount distributable to a beneficiary who is under a legal~~
10 ~~disability or who the trustee reasonably believes is incapacitated, by~~
11 ~~paying it directly to the beneficiary or applying it for the~~
12 ~~beneficiary's benefit, or by:~~

13 (i) Paying it to the beneficiary's guardian;

14 (ii) Paying it to the beneficiary's custodian under chapter 11.114
15 RCW, and, for that purpose, creating a custodianship;

16 (iii) If the trustee does not know of a guardian or custodian,
17 paying it to an adult relative or other person having legal or physical
18 care or custody of the beneficiary, with instructions to expend the
19 funds on the beneficiary's behalf; or

20 (iv) Managing it as a separate fund on the beneficiary's behalf,
21 subject to the beneficiary's continuing right to withdraw the
22 distribution.

23 (b) If the trustee pays any amount to a third party under (a)(i)
24 through (iii) of this subsection, the trustee has no further
25 obligations regarding the amounts so paid;

26 (17) Change the character of or abandon a trust asset or any
27 interest in it;

28 (18) Mortgage, pledge the assets or the credit of the trust estate,
29 or otherwise encumber trust property, including future income, whether
30 an initial encumbrance or a renewal or extension of it, for a term
31 within or extending beyond the term of the trust, in connection with
32 the exercise of any power vested in the trustee;

33 (19) Make ordinary or extraordinary repairs or alterations in
34 buildings or other trust property, demolish any improvements, raze
35 existing structures, and make any improvements to trust property;

36 (20) Create restrictions, easements, including easements to public
37 use without consideration, and other servitudes;

1 (21) Manage any business interest, including any farm or ranch
2 interest, regardless of form, received by the trustee from the trustor
3 of the trust, as a result of the death of a person, or by gratuitous
4 transfer from any other transferor, and with respect to the business
5 interest, have the following powers:

6 (a) To hold, retain, and continue to operate that business interest
7 solely at the risk of the trust, without need to diversify and without
8 liability on the part of the trustee for any resulting losses;

9 (b) To enlarge or diminish the scope or nature or the activities of
10 any business;

11 (c) To authorize the participation and contribution by the business
12 to any employee benefit plan, whether or not qualified as being tax
13 deductible, as may be desirable from time to time;

14 (d) To use the general assets of the trust for the purpose of the
15 business and to invest additional capital in or make loans to such
16 business;

17 (e) To endorse or guarantee on behalf of the trust any loan made to
18 the business and to secure the loan by the trust's interest in the
19 business or any other property of the trust;

20 (f) To leave to the discretion of the trustee the manner and degree
21 of the trustee's active participation in the management of the
22 business, and the trustee is authorized to delegate all or any part of
23 the trustee's power to supervise, manage, or operate to such persons as
24 the trustee may select, including any partner, associate, director,
25 officer, or employee of the business; and also including electing or
26 employing directors, officers, or employees of the trustee to take part
27 in the management of the business as directors or officers or
28 otherwise, and to pay that person reasonable compensation for services
29 without regard to the fees payable to the trustee;

30 (g) To engage, compensate, and discharge or to vote for the
31 engaging, compensating, and discharging of managers, employees, agents,
32 lawyers, accountants, consultants, or other representatives, including
33 anyone who may be a beneficiary of the trust or any trustee;

34 (h) To cause or agree that surplus be accumulated or that dividends
35 be paid;

36 (i) To accept as correct financial or other statements rendered by
37 any accountant for any sole proprietorship or by any partnership or

1 corporation as to matters pertaining to the business except upon actual
2 notice to the contrary;

3 (j) To treat the business as an entity separate from the trust, and
4 in any accounting by the trustee it is sufficient if the trustee
5 reports the earning and condition of the business in a manner
6 conforming to standard business accounting practice;

7 (k) To exercise with respect to the retention, continuance, or
8 disposition of any such business all the rights and powers that the
9 trustor of the trust would have if alive at the time of the exercise,
10 including all powers as are conferred on the trustee by law or as are
11 necessary to enable the trustee to administer the trust in accordance
12 with the instrument governing the trust, subject to any limitations
13 provided for in the instrument; and

14 (l) To satisfy contractual and tort liabilities arising out of an
15 unincorporated business, including any partnership, first out of the
16 business and second out of the estate or trust, but in no event may
17 there be a liability of the trustee, except as provided in RCW
18 11.98.110 (2) and (4), and if the trustee is liable, the trustee is
19 entitled to indemnification from the business and the trust,
20 respectively;

21 (22) Participate in the establishment of, and thereafter in the
22 operation of, any business or other enterprise according to subsection
23 (21) of this section except that the trustee shall not be relieved of
24 the duty to diversify;

25 (23) Cause or participate in, directly or indirectly, the
26 formation, reorganization, merger, consolidation, dissolution, or other
27 change in the form of any corporate or other business undertaking where
28 trust property may be affected and retain any property received
29 pursuant to the change;

30 (24) Limit participation in the management of any partnership and
31 act as a limited or general partner;

32 (25) Charge profits and losses of any business operation, including
33 farm or ranch operation, to the trust estate as a whole and not to the
34 trustee; make available to or invest in any business or farm operation
35 additional moneys from the trust estate or other sources;

36 (26) Pay reasonable compensation to the trustee or co-trustees
37 considering all circumstances including the time, effort, skill, and

1 responsibility involved in the performance of services by the trustee
2 and reimburse the trustee, with interest as appropriate, for expenses
3 that were properly incurred in the administration of the trust;

4 (27) Employ persons, including lawyers, accountants, investment
5 advisors, or agents, even if they are associated with the trustee, to
6 advise or assist the trustee in the performance of the trustee's duties
7 or to perform any act, regardless of whether the act is discretionary,
8 and to act without independent investigation upon their
9 recommendations, except that:

10 (a) A trustee may not delegate all of the trustee's duties and
11 responsibilities;

12 (b) This power to employ and to delegate duties does not relieve
13 the trustee of liability for such person's discretionary acts, that, if
14 done by the trustee, would result in liability to the trustee;

15 (c) This power to employ and to delegate duties does not relieve
16 the trustee of the duty to select and retain a person with reasonable
17 care;

18 (d) The trustee, or a successor trustee, may sue the person to
19 collect any damages suffered by the trust estate even though the
20 trustee might not be personally liable for those damages, subject to
21 the statutes of limitation that would have applied had the claim been
22 one against the trustee who was serving when the act or failure to act
23 occurred;

24 (28) Appoint an ancillary trustee or agent to facilitate management
25 of assets located in another state or foreign country;

26 (29) Retain and store such items of tangible personal property as
27 the trustee selects and pay reasonable storage charges thereon from the
28 trust estate;

29 (30) Issue proxies to any adult beneficiary of a trust for the
30 purpose of voting stock of a corporation acting as the trustee of the
31 trust;

32 (31) Place all or any part of the securities at any time held by
33 the trustee in the care and custody of any bank, trust company, or
34 member firm of the New York Stock Exchange with no obligation while the
35 securities are so deposited to inspect or verify the same and with no
36 responsibility for any loss or misapplication by the bank, trust
37 company, or firm, so long as the bank, trust company, or firm was
38 selected and retained with reasonable care, and have all stocks and

1 registered securities placed in the name of the bank, trust company, or
2 firm, or in the name of its nominee, and to appoint such bank, trust
3 company, or firm agent as attorney to collect, receive, receipt for,
4 and disburse any income, and generally may perform, but is under no
5 requirement to perform, the duties and services incident to a so-called
6 "custodian" account;

7 (32) Determine at any time that the corpus of any trust is
8 insufficient to implement the intent of the trust, and upon this
9 determination by the trustee, terminate the trust by distribution of
10 the trust to the current income beneficiary or beneficiaries of the
11 trust or their legal representatives, except that this determination
12 may only be made by the trustee if the trustee is neither the grantor
13 nor the beneficiary of the trust, and if the trust has no charitable
14 beneficiary;

15 (33) Continue to be a party to any existing voting trust agreement
16 or enter into any new voting trust agreement or renew an existing
17 voting trust agreement with respect to any assets contained in trust;
18 ((and))

19 (34)(a) Donate a qualified conservation easement, as defined by
20 ((section)) 26 U.S.C. Sec. 2031(c) of the federal internal revenue
21 code, on any real property, or consent to the donation of a qualified
22 conservation easement on any real property by a personal representative
23 of an estate of which the trustee is a devisee, to obtain the benefit
24 of the estate tax exclusion allowed under ((section)) 26 U.S.C. Sec.
25 2031(c) of the federal internal revenue code or the deduction allowed
26 under ((section)) 26 U.S.C. Sec. 2055(f) of the federal internal
27 revenue code as long as:

28 (i)(A) The governing instrument authorizes the donation of a
29 qualified conservation easement on the real property; or

30 (B) Each beneficiary that may be affected by the qualified
31 conservation easement consents to the donation under the provisions of
32 chapter 11.96A RCW; and

33 (ii) The donation of a qualified conservation easement will not
34 result in the insolvency of the decedent's estate.

35 (b) The authority granted under this subsection includes the
36 authority to amend a previously donated qualified conservation
37 easement, as defined under ((section)) 26 U.S.C. Sec. 2031(c)(8)(B) of
38 the federal internal revenue code, and to amend a previously donated

1 unqualified conservation easement for the purpose of making the
2 easement a qualified conservation easement under (~~section~~) 26 U.S.C.
3 Sec. 2031(c)(8)(B);

4 (35) Pay or contest any claim, settle a claim by or against the
5 trust, and release, in whole or in part, a claim belonging to the
6 trust;

7 (36) Exercise elections with respect to federal, state, and local
8 taxes;

9 (37) Prosecute or defend an action, claim, or judicial proceeding
10 in any jurisdiction to protect trust property and the trustee in the
11 performance of the trustee's duties;

12 (38) On termination of the trust, exercise the powers appropriate
13 to wind up the administration of the trust and distribute the trust
14 property to the persons entitled to it; and

15 (39) Select a mode of payment under any employee benefit or
16 retirement plan, annuity, or life insurance payable to the trustee,
17 exercise rights thereunder, including exercise of the right to
18 indemnification for expenses and against liabilities, and take
19 appropriate action to collect the proceeds.

20 NEW SECTION. Sec. 27. A new section is added to chapter 11.98 RCW
21 to read as follows:

22 DISTRIBUTION UPON TERMINATION. (1) Upon termination or partial
23 termination of a trust, the trustee may send, by personal service,
24 mail, or in an electronic transmission if there is a consent of the
25 recipient to electronic transmission then in effect under the terms of
26 RCW 11.96A.110, to the beneficiaries a proposed plan to distribute
27 existing trust assets. The right of any beneficiary to object to the
28 plan to distribute existing trust assets, including the right to object
29 to nonpro rata distributions authorized under RCW 11.98.070(15),
30 terminates if the beneficiary does not notify the trustee of an
31 objection within thirty days after the proposal was sent but only if
32 the proposal informed the beneficiary of the right to object and of the
33 time allowed for objection.

34 (2) Upon the occurrence of an event terminating or partially
35 terminating a trust, the trustee shall proceed expeditiously to
36 distribute the trust property to the persons entitled to it, subject to

1 the right of the trustee to retain a reasonable reserve for the payment
2 of debts, expenses, and taxes.

3 NEW SECTION. **Sec. 28.** A new section is added to chapter 11.98 RCW
4 to read as follows:

5 NONLIABILITY OF THIRD PERSONS WITHOUT KNOWLEDGE OF BREACH. (1) A
6 person other than a beneficiary who in good faith assists a trustee, or
7 who in good faith and for value deals with a trustee, without knowledge
8 that the trustee is exceeding or improperly exercising the trustee's
9 powers is protected from liability as if the trustee properly exercised
10 the power.

11 (2) A person other than a beneficiary who in good faith deals with
12 a trustee is not required to inquire into the extent of the trustee's
13 powers or the propriety of their exercise.

14 (3) A person who in good faith delivers assets to a trustee need
15 not ensure their proper application.

16 (4) A person other than a beneficiary who in good faith assists a
17 former trustee, or who in good faith and for value deals with a former
18 trustee, without knowledge that the trusteeship has terminated is
19 protected from liability as if the former trustee were still a trustee.

20 (5) Comparable protective provisions of other laws relating to
21 commercial transactions or transfer of securities by fiduciaries
22 prevail over the protection provided by this section.

23 NEW SECTION. **Sec. 29.** A new section is added to chapter 11.98 RCW
24 to read as follows:

25 EXCULPATION OF TRUSTEE. (1) An exculpatory term which was inserted
26 as the result of an abuse of a fiduciary or confidential relationship
27 between the trustor and the trustee is unenforceable.

28 (2) An exculpatory term drafted or caused to be drafted by the
29 trustee is invalid as an abuse of a fiduciary or confidential
30 relationship unless the trustee proves that the exculpatory term is
31 fair under the circumstances and that its existence and contents were
32 adequately communicated to the trustor.

33 NEW SECTION. **Sec. 30.** A new section is added to chapter 11.98 RCW
34 to read as follows:

35 BENEFICIARY'S CONSENT, RELEASE, OR RATIFICATION. A trustee is not

1 liable to a beneficiary for breach of trust if the beneficiary
2 consented to the conduct constituting the breach, released the trustee
3 from liability for the breach, or ratified the transaction constituting
4 the breach, unless:

5 (1) The consent, release, or ratification of the beneficiary was
6 induced by improper conduct of the trustee; or

7 (2) At the time of the consent, release, or ratification, the
8 beneficiary did not know of the beneficiary's rights or of the material
9 facts relating to the breach.

10 NEW SECTION. **Sec. 31.** A new section is added to chapter 11.98 RCW
11 to read as follows:

12 CERTIFICATION OF TRUST. (1) Instead of furnishing a copy of the
13 trust instrument to a person other than a beneficiary, the trustee may
14 furnish to the person a certification of trust containing the following
15 information:

16 (a) That the trust exists and the date the trust instrument was
17 executed;

18 (b) The identity of the trustor;

19 (c) The identity and address of the currently acting trustee;

20 (d) Relevant powers of the trustee;

21 (e) The revocability or irrevocability of the trust and the
22 identity of any person holding a power to revoke the trust;

23 (f) The authority of cotrustees to sign or otherwise authenticate
24 and whether all or less than all are required in order to exercise
25 powers of the trustee; and

26 (g) The name of the trust or the titling of the trust property.

27 (2) A certification of trust may be signed or otherwise
28 authenticated by any trustee or by an attorney for the trust.

29 (3) A certification of trust must state that the trust has not been
30 revoked, modified, or amended in any manner that would cause the
31 representations contained in the certification of trust to be
32 incorrect.

33 (4) A certification of trust need not contain the dispositive terms
34 of a trust.

35 (5) A recipient of a certification of trust may require the trustee
36 to furnish copies of those excerpts from the original trust instrument

1 and later amendments which designate the trustee and confer upon the
2 trustee the power to act in the pending transaction or any other
3 reasonable information.

4 (6) A person who acts in reliance upon a certification of trust
5 without knowledge that the representations contained therein are
6 incorrect is not liable to any person for so acting and may assume
7 without inquiry the existence of the facts contained in the
8 certification. Knowledge of the terms of the trust may not be inferred
9 solely from the fact that a copy of all or part of the trust instrument
10 is held by the person relying upon the certification.

11 (7) A person who in good faith enters into a transaction in
12 reliance upon a certification of trust may enforce the transaction
13 against the trust property as if the representations contained in the
14 certification were correct.

15 (8) A person making a demand for the trust instrument in addition
16 to a certification of trust or excerpts is liable for damages,
17 including reasonable attorney fees, if the court determines that the
18 person did not act in good faith in demanding the trust instrument.

19 (9) This section does not limit the right of a person to obtain a
20 copy of the trust instrument in a judicial proceeding concerning the
21 trust.

22 NEW SECTION. **Sec. 32.** A new section is added to chapter 11.98 RCW
23 to read as follows:

24 DUTY OF LOYALTY. (1) A trustee shall administer the trust solely
25 in the interests of the beneficiaries.

26 (2) Subject to the rights of persons dealing with or assisting the
27 trustee as provided in RCW 11.98.090, a sale, encumbrance, or other
28 transaction involving the investment or management of trust property
29 entered into by the trustee for the trustee's own personal account or
30 which is otherwise affected by a conflict between the trustee's
31 fiduciary and personal interests is voidable by a beneficiary affected
32 by the transaction unless:

33 (a) The transaction was authorized by the terms of the trust;

34 (b) The transaction was approved by the court or approved in a
35 nonjudicial binding agreement in compliance with RCW 11.96A.210 through
36 11.96A.250;

1 (c) The beneficiary did not commence a judicial proceeding within
2 the time allowed by RCW 11.96A.070;

3 (d) The beneficiary consented to the trustee's conduct, ratified
4 the transaction, or released the trustee in compliance with section 30
5 of this act; or

6 (e) The transaction involves a contract entered into or claim
7 acquired by the trustee before the person became or contemplated
8 becoming trustee.

9 (3)(a) A sale, encumbrance, or other transaction involving the
10 investment or management of trust property is presumed to be "otherwise
11 affected" by a conflict between fiduciary and personal interests under
12 this section if it is entered into by the trustee with:

13 (i) The trustee's spouse or registered domestic partner;

14 (ii) The trustee's descendants, siblings, parents, or their spouses
15 or registered domestic partners;

16 (iii) An agent or attorney of the trustee; or

17 (iv) A corporation or other person or enterprise in which the
18 trustee, or a person that owns a significant interest in the trustee,
19 has an interest that might affect the trustee's best judgment.

20 (b) The presumption is rebutted if the trustee establishes that the
21 conflict did not adversely affect the interests of the beneficiaries.

22 (4) A sale, encumbrance, or other transaction involving the
23 investment or management of trust property entered into by the trustee
24 for the trustee's own personal account that is voidable under
25 subsection (2) of this section may be voided by a beneficiary without
26 further proof.

27 (5) An investment by a trustee in securities of an investment
28 company or investment trust to which the trustee, or its affiliate,
29 provides services in a capacity other than as trustee is not presumed
30 to be affected by a conflict between personal and fiduciary interests
31 if the investment complies with the prudent investor rule of chapter
32 11.100 RCW. In addition to its compensation for acting as trustee, the
33 trustee may be compensated by the investment company or investment
34 trust for providing those services out of fees charged to the trust.
35 If the trustee receives compensation from the investment company or
36 investment trust for providing investment advisory or investment
37 management services, the trustee must at least annually notify the

1 persons entitled under RCW 11.106.020 to receive a copy of the
2 trustee's annual report of the rate and method by which that
3 compensation was determined.

4 (6) The following transactions, if fair to the beneficiaries,
5 cannot be voided under this section:

6 (a) An agreement between a trustee and a beneficiary relating to
7 the appointment or compensation of the trustee;

8 (b) Payment of reasonable compensation to the trustee and any
9 affiliate providing services to the trust, provided total compensation
10 is reasonable;

11 (c) A transaction between a trust and another trust, decedent's
12 estate, or guardianship of which the trustee is a fiduciary or in which
13 a beneficiary has an interest;

14 (d) A deposit of trust money in a regulated financial-service
15 institution operated by the trustee or its affiliate;

16 (e) A delegation and any transaction made pursuant to the
17 delegation from a trustee to an agent that is affiliated or associated
18 with the trustee; or

19 (f) Any loan from the trustee or its affiliate.

20 (7) The court may appoint a special fiduciary to make a decision
21 with respect to any proposed transaction that might violate this
22 section if entered into by the trustee.

23 (8) If a trust has two or more beneficiaries, the trustee shall act
24 impartially in administering the trust and distributing the trust
25 property, giving due regard to the beneficiaries' respective interests.

26 NEW SECTION. **Sec. 33.** A new section is added to chapter 11.98 RCW
27 to read as follows:

28 DAMAGES FOR BREACH OF TRUST. (1) A trustee who commits a breach of
29 trust is liable for the greater of:

30 (a) The amount required to restore the value of the trust property
31 and trust distributions to what they would have been had the breach not
32 occurred; or

33 (b) The profit the trustee made by reason of the breach.

34 (2) Except as otherwise provided in this subsection, if more than
35 one trustee is liable to the beneficiaries for a breach of trust, a
36 trustee is entitled to contribution from the other trustee or trustees.
37 A trustee is not entitled to contribution if the trustee was

1 substantially more at fault than another trustee or if the trustee
2 committed the breach of trust in bad faith or with reckless
3 indifference to the purposes of the trust or the interests of the
4 beneficiaries. A trustee who received a benefit from the breach of
5 trust is not entitled to contribution from another trustee to the
6 extent of the benefit received.

7 **Sec. 34.** RCW 11.100.090 and 1985 c 30 s 75 are each amended to
8 read as follows:

9 Unless the instrument creating the trust expressly provides to the
10 contrary and except as authorized in section 32 of this act, any
11 fiduciary in carrying out the obligations of the trust, may not buy or
12 sell investments from or to himself, herself, or itself or any
13 affiliated or subsidiary company or association. This section shall
14 not be construed as prohibiting the trustee's powers under RCW
15 11.98.070(12).

16 NEW SECTION. **Sec. 35.** CAPACITY OF TRUSTOR OF REVOCABLE TRUST.
17 The capacity required to create, amend, revoke, or add property to a
18 revocable trust, or to direct the actions of the trustee of a revocable
19 trust, is the same as that required to make a will.

20 NEW SECTION. **Sec. 36.** REVOCATION OR AMENDMENT OF REVOCABLE TRUST.

21 (1) Unless the terms of a trust expressly provide that the trust is
22 revocable, the trustor may not revoke or amend the trust.

23 (2) If a revocable trust is created or funded by more than one
24 trustor and unless the trust agreement provides otherwise:

25 (a) To the extent the trust consists of community property, the
26 trust may be revoked by either spouse or either domestic partner acting
27 alone but may be amended only by joint action of both spouses or both
28 domestic partners;

29 (b) To the extent the trust consists of property other than
30 community property, each trustor may revoke or amend the trust with
31 regard to the portion of the trust property attributable to that
32 trustor's contribution;

33 (c) The character of community property or separate property is
34 unaffected by its transfer to and from a revocable trust; and

1 (d) Upon the revocation or amendment of the trust by fewer than all
2 of the trustors, the trustee shall promptly notify the other trustors
3 of the revocation or amendment.

4 (3) The trustor may revoke or amend a revocable trust:

5 (a) By substantial compliance with a method provided in the terms
6 of the trust; or

7 (b)(i) If the terms of the trust do not provide a method or the
8 method provided in the terms is not expressly made exclusive, by:

9 (A) A later will or codicil that expressly refers to the trust or
10 specifically devises property that would otherwise have passed
11 according to the terms of the trust; or

12 (B) A written instrument signed by the trustor evidencing intent to
13 revoke or amend.

14 (ii) The requirements of chapter 11.11 RCW do not apply to
15 revocation or amendment of a revocable trust under (b)(i) of this
16 subsection.

17 (4) Upon revocation of a revocable trust, the trustee shall deliver
18 the trust property as the trustor directs.

19 (5) A trustor's powers with respect to revocation, amendment, or
20 distribution of trust property may be exercised by an agent under a
21 power of attorney only to the extent expressly authorized by the terms
22 of the power, as provided in RCW 11.94.050(1) and to the extent
23 consistent with or expressly authorized by the trust agreement.

24 (6) A guardian of the trustor may exercise a trustor's powers with
25 respect to revocation, amendment, or distribution of trust property
26 only with the approval of the court supervising the guardianship
27 pursuant to RCW 11.92.140.

28 (7) A trustee who does not know that a trust has been revoked or
29 amended is not liable to the trustor or trustor's successors in
30 interest for distributions made and other actions taken on the
31 assumption that the trust had not been amended or revoked.

32 (8) This section does not limit or affect operation of RCW
33 11.96A.220 through 11.96A.240.

34 NEW SECTION. **Sec. 37.** TRUSTOR'S POWERS--POWERS OF WITHDRAWAL.
35 While a trust is revocable by the trustor, rights of the beneficiaries
36 are subject to the control of, and the duties of the trustee are owed

1 exclusively to, the trustor. If a revocable trust has more than one
2 trustor, the duties of the trustee are owed to all of the trustors
3 having the right to revoke the trust.

4 NEW SECTION. **Sec. 38.** LIMITATION ON ACTION CONTESTING VALIDITY OF
5 REVOCABLE TRUST--DISTRIBUTION OF TRUST PROPERTY. (1) A person may
6 commence a judicial proceeding to contest the validity of a trust that
7 was revocable at the trustor's death within the earlier of:

- 8 (a) Twenty-four months after the trustor's death; or
- 9 (b) Four months after the trustee sent to the person by personal
10 service, mail, or in an electronic transmission if there is a consent
11 of the recipient to electronic transmission then in effect under the
12 terms of RCW 11.96A.110, a notice with the information required in RCW
13 11.97.010, and notice of the time allowed for commencing a proceeding.

14 (2) Upon the death of the trustor of a trust that was revocable at
15 the trustor's death, the trustee may proceed to distribute the trust
16 property in accordance with the terms of the trust, unless:

- 17 (a) The trustee knows of a pending judicial proceeding contesting
18 the validity of the trust; or
- 19 (b) A potential contestant has notified the trustee of a possible
20 judicial proceeding to contest the trust and a judicial proceeding is
21 commenced within sixty days after the contestant sent the notification.

22 (3) A beneficiary of a trust that is determined to have been
23 invalid is liable to return any distribution received.

24 NEW SECTION. **Sec. 39.** Sections 35 through 38 of this act
25 constitute a new chapter in Title 11 RCW.

26 NEW SECTION. **Sec. 40.** APPLICATION. Except as otherwise provided
27 in this act:

28 (1) This act applies to all trusts created before, on, or after
29 January 1, 2012;

30 (2) This act applies to all judicial proceedings concerning trusts
31 commenced on or after January 1, 2012;

32 (3) Any rule of construction or presumption provided in this act
33 applies to trust instruments executed before January 1, 2012, unless
34 there is a clear indication of a contrary intent in the terms of the
35 trust;

1 (4) An action taken before January 1, 2012, is not affected by this
2 act; and

3 (5) If a right is acquired, extinguished, or barred upon the
4 expiration of a prescribed period that has commenced to run under any
5 other statute before January 1, 2012, that statute continues to apply
6 to the right even if it has been repealed or superseded.

7 NEW SECTION. **Sec. 41.** EFFECTIVE DATE. This act takes effect
8 January 1, 2012.

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