
SENATE BILL 5344

State of Washington 63rd Legislature 2013 Regular Session

By Senators Mullet, Hobbs, Kline, Fain, and Benton

Read first time 01/28/13. Referred to Committee on Financial Institutions, Housing & Insurance.

1 AN ACT Relating to revising state statutes concerning trusts;
2 amending RCW 11.36.010, 11.36.021, 11.96A.050, 11.96A.070, 11.96A.120,
3 11.96A.125, 11.97.010, 11.98.005, 11.98.019, 11.98.039, 11.98.041,
4 11.98.045, 11.98.051, 11.98.080, 11.103.040, 11.103.050, 11.96A.250,
5 11.98.015, 11.98.078, 11.103.030, 11.106.010, 11.106.020, and
6 11.118.050; adding new sections to chapter 11.98 RCW; creating a new
7 section; and repealing RCW 11.98.090.

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

9 **Sec. 1.** RCW 11.36.010 and 1983 c 51 s 1 are each amended to read
10 as follows:

11 (1) Except as provided in subsections (2), (3), and (4) of this
12 section, the following persons are not qualified to act as personal
13 representatives: Corporations, minors, persons of unsound mind, or
14 persons who have been convicted of any felony or of ((a)) any crime or
15 misdemeanor involving moral turpitude((~~PROVIDED, That~~)).

16 (2) Trust companies regularly organized under the laws of this
17 state and national banks when authorized so to do may act as the
18 personal representative of ((~~decedents' or incompetents' estates~~)) an
19 individual's estate or of the estate of an incapacitated person upon

1 petition of any person having a right to such appointment and may act
2 as ~~((executors))~~ personal representatives or guardians when so
3 appointed by will(~~(:— PROVIDED FURTHER, That professional service~~
4 ~~corporations regularly organized under the laws of this state whose~~
5 ~~shareholder or shareholders are exclusively attorneys may act as~~
6 ~~personal representatives)).~~ No trust company or national bank may
7 qualify as such ~~((executor))~~ personal representative or guardian under
8 any will hereafter drawn by it or its agents or employees, and no
9 salaried attorney of any such company may be allowed any attorney fee
10 for probating any such will or in relation to the administration or
11 settlement of any such estate, and no part of any attorney fee may
12 inure, directly or indirectly, to the benefit of any trust company or
13 national bank.

14 (3) Professional service corporations or professional limited
15 liability companies regularly organized under the laws of this state
16 whose shareholder or shareholders, or whose member or members, are
17 exclusively attorneys may act as personal representatives.

18 (4) Any nonprofit corporation may act as personal representative if
19 the articles of incorporation or bylaws of that corporation permit the
20 action and the corporation is in compliance with all applicable
21 provisions of Title 24 RCW.

22 (5) When any person to whom letters testamentary or of
23 administration have been issued becomes disqualified to act because of
24 becoming of unsound mind or being convicted of a felony or of any crime
25 or misdemeanor involving moral turpitude, the court having jurisdiction
26 ((shall)) must revoke his or her letters.

27 (6) A nonresident may be appointed to act as personal
28 representative if the nonresident appoints an agent who is a resident
29 of the county where such estate is being probated or who is an attorney
30 of record of the estate, upon whom service of all papers may be made;
31 such appointment to be made in writing and filed by the clerk with
32 other papers of such estate; and, unless bond has been waived as
33 provided by RCW 11.28.185, such nonresident personal representative
34 ((shall)) must file a bond to be approved by the court.

35 **Sec. 2.** RCW 11.36.021 and 1991 c 72 s 1 are each amended to read
36 as follows:

37 (1) The following may serve as trustees:

1 (a) Any suitable persons over the age of eighteen years, if not
2 otherwise disqualified;

3 (b) Any trust company regularly organized under the laws of this
4 state and national banks when authorized to do so;

5 (c) Any nonprofit corporation, if the articles of incorporation or
6 bylaws of that corporation permit the action and if the corporation is
7 in compliance with all applicable provisions of Title 24 RCW;

8 (d) Any professional service corporations or professional limited
9 liability companies regularly organized under the laws of this state
10 whose shareholder or shareholders, or whose member or members, are
11 exclusively attorneys; (~~and~~))

12 (e) Any state or regional college or university, as those
13 institutions are defined in RCW 28B.10.016;

14 (f) Any community or technical college, as those institutions are
15 defined in RCW 28B.50.030; and

16 (g) Any other entity so authorized under the laws of the state of
17 Washington.

18 (2) The following are disqualified to serve as trustees:

19 (a) Minors, persons of unsound mind, or persons who have been
20 convicted of any felony or (~~a~~) any crime or misdemeanor involving
21 moral turpitude; and

22 (b) A corporation organized under Title 23B RCW that is not
23 authorized under the laws of the state of Washington to act as a
24 fiduciary.

25 **Sec. 3.** RCW 11.96A.050 and 2011 c 327 s 6 are each amended to read
26 as follows:

27 (1) Venue for proceedings pertaining to trusts (~~shall be~~) are:

28 (a) For testamentary trusts established under wills probated in the
29 state of Washington, in the superior court of the county where the
30 probate of the will is being administered or was completed or, in the
31 alternative, the superior court of the county where any qualified
32 beneficiary of the trust (~~entitled to notice under RCW 11.97.010~~) as
33 defined in section 8 of this act resides, the county where any trustee
34 resides or has a place of business, or the county where any real
35 property that is an asset of the trust is located; and

36 (b) For all other trusts, in the superior court of the county where
37 any qualified beneficiary of the trust (~~entitled to notice under RCW~~

1 ~~11.97.010~~) as defined in section 8 of this act resides, the county
2 where any trustee resides or has a place of business, or the county
3 where any real property that is an asset of the trust is located. If
4 no county has venue for proceedings pertaining to a trust under the
5 preceding sentence, then in any county.

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

15 (3) Venue for proceedings subject to chapter 11.88 or 11.92 RCW
16 (~~shall~~) must be determined under the provisions of those chapters.

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

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

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

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

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

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

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

1 (6) Venue for proceedings pertaining to powers of attorney
2 (~~shall~~) must be in the superior court of the county of the
3 principal's residence, except for good cause shown.

4 (7) If venue is moved, an action taken before venue is changed is
5 not invalid because of the venue.

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

9 **Sec. 4.** RCW 11.96A.070 and 2011 c 327 s 7 are each amended to read
10 as follows:

11 (1)(a) A beneficiary of an express trust may not commence a
12 proceeding against a trustee for breach of trust more than three years
13 after the date a report was delivered in the manner provided in RCW
14 11.96A.110 to the beneficiary or to a representative of the beneficiary
15 (~~(was sent a report that)~~) if the report adequately disclosed the
16 existence of a potential claim for breach of trust and informed the
17 beneficiary of the time allowed for commencing a proceeding.

18 (b) A report adequately discloses the existence of a potential
19 claim for breach of trust if it provides sufficient information so that
20 the beneficiary or representative knows or should have known of the
21 potential claim (~~(or should have inquired into its existence)~~). A
22 report that includes (~~(the following information)~~) all of the items
23 described in this subsection (b) that are relevant for the reporting
24 period is presumed to have provided such sufficient information
25 regarding the existence of potential claims for breach of trust for
26 such period:

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

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

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

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

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

1 (vi) Disclosure of all transactions during the period that are
2 equivalent to one of the types of transactions described in RCW
3 11.98.078 or otherwise could have been affected by a conflict between
4 the trustee's fiduciary and personal interests;

5 (vii) A statement that the recipient of the account information may
6 petition the superior court pursuant to chapter 11.106 RCW to obtain
7 review of the statement and of acts of the trustee disclosed in the
8 statement; and

9 (viii) A statement that claims against the trustee for breach of
10 trust may not be made after the expiration of three years from the date
11 the ~~((beneficiary receives the statement))~~ trustee delivers the report
12 in the manner provided in RCW 11.96A.110.

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

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

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

18 (iii) The termination of the trust.

19 (d) For purposes of this section, "express trust" does not include
20 resulting trusts, constructive trusts, business trusts in which
21 certificates of beneficial interest are issued to the beneficiary,
22 investment trusts, voting trusts, trusts in the nature of mortgages or
23 pledges, liquidation trusts, or trusts for the sole purpose of paying
24 dividends, interest, interest coupons, salaries, wages, pensions, or
25 profits, trusts created in deposits in any financial institution under
26 chapter 30.22 RCW, unless any such trust that is created in writing
27 specifically incorporates this chapter in whole or in part.

28 (2) Except as provided in RCW 11.96A.250 with respect to special
29 representatives, an action against a personal representative for
30 alleged breach of fiduciary duty by an heir, legatee, or other
31 interested party must be brought before discharge of the personal
32 representative.

33 (3) The legislature hereby confirms the long standing public policy
34 of promoting the prompt and efficient resolution of matters involving
35 trusts and estates. To further implement this policy, the legislature
36 adopts the following statutory provisions in order to:

37 (a) Encourage and facilitate the participation of qualified
38 individuals as special representatives;

1 (b) Serve the public's interest in having a prompt and efficient
2 resolution of matters involving trusts or estates; and

3 (c) Promote complete and final resolution of proceedings involving
4 trusts and estates.

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

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

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

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

30 (4) The tolling provisions of RCW 4.16.190 apply to this chapter
31 except that the running of a statute of limitations under subsection
32 (1) or (2) of this section, or any other applicable statute of
33 limitations for any matter that is the subject of dispute under this
34 chapter, is not tolled as to an individual who had a guardian ad litem,
35 limited or general guardian of the estate, or a special representative
36 to represent the person during the probate or dispute resolution
37 proceeding.

1 **Sec. 5.** RCW 11.96A.120 and 2011 c 327 s 9 are each amended to read
2 as follows:

3 (1) ~~((With respect to a particular matter that affects a trust,~~
4 ~~probate estate, guardianship estate, or property subject to a power of~~
5 ~~attorney, in which the interests of such fiduciary estate and the~~
6 ~~beneficiaries are not in conflict:)) Notice to a person who may
7 represent and bind another person under this section has the same
8 effect as if notice were given directly to the other person.~~

9 (2) The consent of a person who may represent and bind another
10 person under this section is binding on the person represented unless
11 the person represented objects to the representation before the consent
12 would otherwise have become effective.

13 (3) The following limitations on the ability to serve as a virtual
14 representative apply:

15 (a) A trustor may not represent and bind a beneficiary under this
16 section with respect to the termination and modification of an
17 irrevocable trust; and

18 (b) Representation of an incapacitated trustor with respect to his
19 or her powers over a trust is subject to the provisions of RCW
20 11.103.030, and chapters 11.96A, 11.88, and 11.92 RCW.

21 (4) To the extent there is no conflict of interest between the
22 representative and the person represented or among those being
23 represented with respect to the particular question or dispute:

24 (a) A guardian may represent and bind the estate that the guardian
25 controls, subject to chapters 11.96A, 11.88, and 11.92 RCW;

26 (b) A guardian of the person may represent and bind the
27 incapacitated person if a guardian of the incapacitated person's estate
28 has not been appointed;

29 (c) An agent having authority to act with respect to the particular
30 question or dispute may represent and bind the principal;

31 ~~((e))~~ (d) A trustee may represent and bind the beneficiaries of
32 the trust; ~~((and~~

33 ~~((d))~~ (e) A personal representative of a decedent's estate may
34 represent and bind persons interested in the estate~~((-~~

35 ~~(2) This section is intended to adopt the common law concept of~~
36 ~~virtual representation. This section supplements the common law~~
37 ~~relating to the doctrine of virtual representation and shall not be~~
38 ~~construed as limiting the application of that common law doctrine.~~

1 ~~(3) Any notice requirement in this title is satisfied if:~~

2 ~~(a))~~; and

3 (f) A parent may represent and bind the parent's minor or unborn
4 child or children if a guardian for the child or children has not been
5 appointed.

6 (5) Unless otherwise represented, a minor, incapacitated, or unborn
7 individual, or a person whose identity or location is unknown and not
8 reasonably ascertainable, may be represented by and bound by another
9 having a substantially identical interest with respect to the
10 particular question or dispute, but only to the extent there is no
11 conflict of interest between the representative and the person
12 represented with regard to the particular question or dispute.

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

20 ~~(b))~~ the living persons who would constitute the class as of the
21 date the representation is to be determined may virtually represent all
22 other members of the class as of that date, but only to the extent that
23 there is no conflict of interest between the representative and the
24 person(s) represented with regard to the particular question or
25 dispute.

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

35 ~~(e))~~ or the distributees of the estate of that living person upon
36 the happening of a future event, that living person may virtually
37 represent the surviving spouse or surviving domestic partner, heirs,
38 issue, or other kindred of the person, and the distributees of the

1 estate of the person, but only to the extent that there is no conflict
2 of interest between the representative and the person(s) represented
3 with regard to the particular question or dispute.

4 (8) Except as otherwise provided in ((this)) subsection (7) of this
5 section, where an interest ((in an estate, trust, or nonprobate asset
6 or an interest that may be affected by a power of attorney)) has been
7 given to a person or a class of persons, or both, upon the happening of
8 any future event, and the same interest or a share of the interest is
9 to pass to another person or class of persons, or both, upon the
10 happening of an additional future event, ((notice may be given to)) the
11 living person or persons who would take the interest upon the happening
12 of the first event((, and the living person or persons shall)) may
13 virtually represent the persons and classes of persons who might take
14 on the happening of the additional future event((; and

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

25 ~~(4) A party is not virtually represented by a person receiving~~
26 ~~notice if a conflict of interest involving the matter is known to exist~~
27 ~~between the notified person and the party)), but only to the extent~~
28 that there is no conflict of interest between the representative and
29 the person(s) represented with regard to the particular question or
30 dispute.

31 ~~((+5)) (9) To the extent there is no conflict of interest between~~
32 the holder of the power of appointment and the persons represented with
33 respect to the particular question or dispute, the holder of a lifetime
34 or testamentary power of appointment may virtually represent and bind
35 persons who are permissible appointees or takers in default (but only
36 to the extent that they are permissible appointees in the case of a
37 limited power of appointment) under the power, and who are not
38 permissible distributees.

1 (10) The attorney general may virtually represent and bind a
2 charitable organization if:

3 (a) The charitable organization is not a qualified beneficiary
4 specified in the trust instrument or acting as trustee; or

5 (b) The charitable organization is a qualified beneficiary, but is
6 not a permissible distributee, and its beneficial interest in the trust
7 is subject to change by the trustor or by a person designated by the
8 trustor.

9 (11) An action taken by the court is conclusive and binding upon
10 each person receiving actual or constructive notice or who is otherwise
11 represented under this section.

12 (12) This section is intended to adopt the common law concept of
13 virtual representation. This section supplements the common law
14 relating to the doctrine of virtual representation and may not be
15 construed as limiting the application of that common law doctrine.

16 **Sec. 6.** RCW 11.96A.125 and 2011 c 327 s 11 are each amended to
17 read as follows:

18 The terms of a will or trust, even if unambiguous, may be reformed
19 by judicial proceedings (~~(or binding nonjudicial procedure)~~) under this
20 chapter to conform the terms to the intention of the testator or
21 trustor if it is proved by clear, cogent, and convincing evidence (~~(, or~~
22 ~~the parties to a binding nonjudicial agreement agree that there is~~
23 ~~clear, cogent, and convincing evidence,)~~) that both the intent of the
24 testator or trustor and the terms of the will or trust were affected by
25 a mistake of fact or law, whether in expression or inducement. This
26 does not limit the ability to reform the will or trust using the
27 binding nonjudicial procedures of RCW 11.96A.220.

28 **Sec. 7.** RCW 11.97.010 and 2011 c 327 s 12 are each amended to read
29 as follows:

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

1 those chapters is in conflict with the provisions of a trust, the
2 provisions of the trust control whether or not specific reference is
3 made in the trust to any of those chapters, except as provided in RCW
4 6.32.250, 11.96A.190, 19.36.020, section 8 of this act, 11.98.200
5 through 11.98.240, section 16(1) of this act, 11.95.100 through
6 11.95.150, and chapter 11.103 RCW. In no event may a trustee be
7 relieved of the duty to act in good faith and with honest judgment (~~or~~
8 ~~the duty to provide information to beneficiaries as required in this~~
9 ~~section~~). Notwithstanding the breadth of discretion granted to a
10 trustee in the terms of the trust, including the use of such terms as
11 "absolute," "sole," or "uncontrolled," the trustee (~~shall~~) must
12 exercise a discretionary power in good faith and in accordance with the
13 terms and purposes of the trust and the interests of the beneficiaries.

14 ~~((2) Within sixty days after the date of acceptance of the~~
15 ~~position of trustee of an irrevocable trust, or the date the trustee of~~
16 ~~a formerly revocable trust acquires knowledge that the trust has become~~
17 ~~irrevocable, whether by the death of the trustor or otherwise, the~~
18 ~~trustee shall give notice of: (a) The existence of the trust, (b) the~~
19 ~~identity of the trustor or trustors, (c) the trustee's name, address,~~
20 ~~and telephone number, and (d) the right to request such information as~~
21 ~~is reasonably necessary to enable the notified person to enforce his or~~
22 ~~her rights under the trust, to all persons interested in the trust, as~~
23 ~~defined in RCW 11.96A.030, and who would be entitled to notice under~~
24 ~~RCW 11.96A.110 and 11.96A.120 if they were a party to judicial~~
25 ~~proceedings regarding the trust. If any such person is a minor and no~~
26 ~~guardian has been appointed for such person by any court, then such~~
27 ~~notice may be given to a parent of the person. If a person otherwise~~
28 ~~entitled to notice under this section is a charitable organization, and~~
29 ~~the charitable organization's only interest in the trust is a future~~
30 ~~interest that may be revoked, then such notice shall instead be given~~
31 ~~to the attorney general. A trustee who gives notice pursuant to this~~
32 ~~section satisfies the duty to inform the beneficiaries of the existence~~
33 ~~of the trust. The notice required under this subsection (2) applies~~
34 ~~only to irrevocable trusts created after December 31, 2011, and~~
35 ~~revocable trusts that become irrevocable after December 31, 2011,~~
36 ~~provided that all common law duties of a trustee to notify~~
37 ~~beneficiaries applicable to trusts created or that became irrevocable~~
38 ~~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 RCW~~
22 ~~11.98.078 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. 8.** A new section is added to chapter 11.98 RCW
6 to be codified before RCW 11.98.005 to read as follows:

7 The definitions in this section apply throughout this chapter, and
8 throughout this title where specifically referenced, unless the context
9 clearly requires otherwise.

10 (1) "Permissible distributee" means a trust beneficiary who is
11 currently eligible to receive distributions of trust income or
12 principal, whether the distribution is mandatory or discretionary.

13 (2) "Qualified beneficiary" means a trust beneficiary who, on the
14 date that such beneficiary's qualification is determined:

15 (a) Is a permissible distributee;

16 (b) Would be a permissible distributee if the interests of the
17 distributees described in (a) of this subsection terminated on that
18 date; or

19 (c) Would be a permissible distributee if the trust terminated on
20 that date.

21 **Sec. 9.** RCW 11.98.005 and 2011 c 327 s 22 are each amended to read
22 as follows:

23 (1) If provisions of a trust instrument designate Washington as the
24 situs of the trust or designate Washington law to govern the trust or
25 any of its terms, then the situs of the trust is Washington provided
26 that one of the following conditions is met:

27 (a) A trustee has a place of business in or a trustee is a resident
28 of Washington; or

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

31 (c) The trustor resides in Washington at the time situs is being
32 established, or resided in Washington at the time the trust became
33 irrevocable; or

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

36 (c) Unless a person receiving notice of the registration files a
37 petition with the court objecting to the registration within thirty
38 days of the date of filing the registration, the registration (~~shall~~)

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

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

9 (i) Notice form:

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

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

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

26 (ii) Certificate of Registration:

27 State of Washington, County of

28 In the superior court of the county of

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

37 Witness my hand and the seal of said court this . . . day of
38, 20

1 (3) If the instrument establishing a trust does not designate
2 (~~Washington as the situs or designate Washington~~) any jurisdiction as
3 the situs or designate any jurisdiction's governing law to apply to the
4 trust, and the trustee of the trust has not registered the trust as
5 allowed in subsection (2) of this section, the situs of the trust is
6 Washington if (~~the~~) situs has not previously been established by any
7 court proceeding and the additional conditions specified in this
8 subsection (3) are met.

9 (a) For a testamentary trust, the situs of the trust is Washington
10 if:

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

12 (ii) The will has not been admitted to probate in Washington, but
13 any trustee of the trust resides or has a place of business in
14 Washington, any qualified beneficiary (~~entitled to notice under RCW~~
15 ~~11.97.010~~) resides in Washington, or any real property that is an
16 asset of the trust is located in Washington.

17 (b) For an inter vivos trust (~~where the trustor is domiciled in~~
18 ~~Washington either when the trust becomes irrevocable or, in the case of~~
19 ~~a revocable trust, when judicial proceedings under chapter 11.96A RCW~~
20 ~~are commenced~~), the situs of the trust is Washington if:

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

24 (ii) The trustor is deceased(~~(, situs has not previously been~~
25 ~~established by any court proceeding,~~); and:

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

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

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

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

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

3 (iii) One or more of the qualified beneficiaries resides in
4 Washington; or

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

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

9 NEW SECTION. **Sec. 10.** A new section is added to chapter 11.98 RCW
10 to be codified between RCW 11.98.016 and 11.98.019 to read as follows:

11 (1) Except as otherwise provided in subsection (3) of this section,
12 a person designated as trustee accepts the trusteeship:

13 (a) By substantially complying with a method of acceptance provided
14 in the terms of the trust; or

15 (b) If the terms of the trust do not provide a method of acceptance
16 or the method provided in the terms is not expressly made exclusive, by
17 accepting delivery of the trust property, exercising powers or
18 performing duties as trustee, or otherwise indicating acceptance of the
19 trusteeship.

20 (2) A person designated as trustee who has not yet accepted the
21 trusteeship may decline the trusteeship by delivering a written
22 declination of the trusteeship to the trustor or, if the trustor is
23 deceased or is incapacitated, to a successor trustee, if any, and if
24 none, to a qualified beneficiary.

25 (3) A person designated as trustee, without accepting the
26 trusteeship, may:

27 (a) Act to preserve the trust property if, within a reasonable time
28 after acting, the person sends a written declination of the trusteeship
29 to the trustor or, if the trustor is dead or is incapacitated, to a
30 successor trustee, if any, and if none, to a qualified beneficiary; and

31 (b) Inspect or investigate trust property to determine potential
32 liability under environmental or other law or for any other purpose.

33 **Sec. 11.** RCW 11.98.019 and 1985 c 30 s 42 are each amended to read
34 as follows:

35 Any trustee may, by written instrument delivered to any then acting
36 co-trustee and to the (~~current adult income beneficiaries~~)

1 permissible distributees of the trust, relinquish to any extent and
2 upon any terms any or all of the trustee's powers, rights, authorities,
3 or discretions that are or may be tax sensitive in that they cause or
4 may cause adverse tax consequences to the trustee or the trust. Any
5 trustee not relinquishing such a power, right, authority, or discretion
6 and upon whom it is conferred continues to have full power to exercise
7 it.

8 **Sec. 12.** RCW 11.98.039 and 2011 c 327 s 21 are each amended to
9 read as follows:

10 (1) Where a vacancy occurs in the office of the trustee and there
11 is a successor trustee who is willing to serve as trustee and (a) is
12 named in the governing instrument as successor trustee or (b) has been
13 selected to serve as successor trustee under the procedure established
14 in the governing instrument for the selection of a successor trustee,
15 the outgoing trustee, or any other interested party, (~~shall~~) must
16 give notice of such vacancy, whether arising because of the trustee's
17 resignation or because of any other reason, and of the successor
18 trustee's agreement to serve as trustee, to each (~~adult distributee or~~
19 ~~permissible distributee of trust income or of trust principal or of~~
20 ~~both trust income and trust principal. If there are no such adults, no~~
21 ~~notice need be given~~) permissible distributee. The successor trustee
22 named in the governing instrument or selected pursuant to the procedure
23 therefor established in the governing instrument (~~shall be~~) is
24 entitled to act as trustee except for good cause or disqualification.
25 The successor trustee (~~shall serve~~) is deemed to have accepted the
26 trusteeship as of the effective date of the discharge of the
27 predecessor trustee as provided in RCW 11.98.041.

28 (2) Where a vacancy exists or occurs in the office of the trustee
29 and there is no successor trustee who is named in the governing
30 instrument or who has been selected to serve as successor trustee under
31 the procedure established in the governing instrument for the selection
32 of a successor trustee, and who is willing to serve as trustee, then
33 all parties with an interest in the trust may agree to a nonjudicial
34 change of the trustee under RCW 11.96A.220. The successor trustee
35 (~~shall serve~~) is deemed to have accepted the trusteeship as of the
36 effective date of the discharge of the predecessor trustee as provided

1 in RCW 11.98.041 or, in circumstances where there is no predecessor
2 trustee, as of the effective date of the trustee's appointment.

3 (3) When there is a desire to name one or more cotrustees to serve
4 with the existing trustee, then all parties with an interest in the
5 trust may agree to the nonjudicial addition of one or more cotrustees
6 under RCW 11.96A.220. The additional cotrustee (~~(shall serve)~~) is
7 deemed to have accepted the trusteeship as of the effective date of the
8 cotrustee's appointment.

9 (4) Unless subsection (1), (2), or (3) of this section applies, any
10 beneficiary of a trust, the trustor, if alive, or the trustee may
11 petition the superior court having jurisdiction for the appointment or
12 change of a trustee or cotrustee under the procedures provided in RCW
13 11.96A.080 through 11.96A.200: (a) Whenever the office of trustee
14 becomes vacant; (b) upon filing of a petition of resignation by a
15 trustee; or (c) for any other reasonable cause.

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

18 (a) Except as otherwise provided in the governing instrument, a
19 successor fiduciary, absent actual knowledge of a breach of fiduciary
20 duty: (i) Is not liable for any act or omission of a predecessor
21 fiduciary and is not obligated to inquire into the validity or
22 propriety of any such act or omission; (ii) is authorized to accept as
23 conclusively accurate any accounting or statement of assets tendered to
24 the successor fiduciary by a predecessor fiduciary; and (iii) is
25 authorized to receipt only for assets actually delivered and has no
26 duty to make further inquiry as to undisclosed assets of the trust or
27 estate.

28 (b) Nothing in this section relieves a successor fiduciary from
29 liability for retaining improper investments, nor does this section in
30 any way bar the successor fiduciary, trust beneficiaries, or other
31 party in interest from bringing an action against a predecessor
32 fiduciary arising out of the acts or omissions of the predecessor
33 fiduciary, nor does it relieve the successor fiduciary of liability for
34 its own acts or omissions except as specifically stated or authorized
35 in this section.

36 (6) A change of trustee to a foreign trustee does not change the
37 situs of the trust. Transfer of situs of a trust to another

1 jurisdiction requires compliance with RCW 11.98.005 and RCW 11.98.045
2 through 11.98.055.

3 **Sec. 13.** RCW 11.98.041 and 1985 c 30 s 141 are each amended to
4 read as follows:

5 Where a vacancy occurs in the office of trustee under the
6 circumstances described in RCW 11.98.039 (1) or (2), the outgoing
7 trustee (~~(shall be)~~) is discharged upon the agreement of all parties
8 entitled to notice or upon the expiration of thirty days after notice
9 is given of such vacancy as required by the applicable subsection of
10 RCW 11.98.039, whichever occurs first, or if no notice is required
11 under RCW 11.98.039(1), upon the date the vacancy occurs, unless before
12 the effective date of such discharge a petition is filed under RCW
13 11.98.039(~~(+3)~~) (4) regarding the appointment or change of a trustee
14 of the trust. Where a petition is filed under RCW 11.98.039(~~(+3)~~) (4)
15 regarding the appointment or change of a trustee, the superior court
16 having jurisdiction may discharge the trustee from the trust and may
17 appoint a successor trustee upon such terms as the court may require.

18 **Sec. 14.** RCW 11.98.045 and 2011 c 327 s 23 are each amended to
19 read as follows:

20 (1) If a trust is a Washington trust under RCW 11.98.005, a trustee
21 may transfer the situs of the trust to a jurisdiction other than
22 Washington if the trust instrument so provides or in accordance with
23 RCW 11.98.051 or 11.98.055.

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

25 (a) The transfer would facilitate the economic and convenient
26 administration of the trust;

27 (b) The transfer would not materially impair the interests of the
28 qualified beneficiaries or others interested in the trust;

29 (c) The transfer does not violate the terms of the trust;

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

32 (e) The trust meets at least one condition for situs listed in RCW
33 11.98.005(1) with respect to the new jurisdiction.

34 (3) Acceptance of such transfer by a foreign corporate trustee or
35 trust company under this section or RCW 11.98.051 or 11.98.055

1 ((shall)) may not be construed to be doing a "trust business" as
2 described in RCW 30.08.150(9).

3 **Sec. 15.** RCW 11.98.051 and 2011 c 327 s 24 are each amended to
4 read as follows:

5 (1) The trustee may transfer trust situs (a) in accordance with RCW
6 11.96A.220; or (b) by giving written notice to (~~those persons entitled~~
7 ~~to notice as provided for under RCW 11.96A.110 and to~~) the attorney
8 general in the case of a charitable trust subject to chapter 11.110 RCW
9 and to the qualified beneficiaries not less than sixty days before
10 initiating the transfer. The notice must:

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

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

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

15 (d) State the name and mailing address of the trustee to whom the
16 trust will be transferred together with evidence that the trustee has
17 agreed to accept the trust in the manner provided by law of the new
18 situs. The notice must also contain a statement of the trustee's
19 qualifications and the name of the court, if any, having jurisdiction
20 of that trustee or in which a proceeding with respect to the
21 administration of the trust may be heard;

22 (e) State the facts supporting the requirements of RCW
23 11.98.045(2);

24 (f) Advise the (~~beneficiaries~~) recipients of the notice of the
25 date, not less than sixty days after the giving of the notice, by which
26 (~~the beneficiary~~) such recipients must notify the trustee of an
27 objection to the proposed transfer; and

28 (g) Include a form on which the recipient may (~~indicate consent or~~
29 ~~objection~~) object to the proposed transfer.

30 (2) If the date upon which the (~~beneficiaries~~) right to object
31 to the transfer expires without receipt by the trustee of any
32 objection, the trustee may transfer the trust situs as provided in the
33 notice. If the trust was registered under RCW 11.98.045(2), the
34 trustee must file a notice of transfer of situs and termination of
35 registration with the court of the county where the trust was
36 registered.

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

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

7 NEW SECTION. Sec. 16. A new section is added to chapter 11.98 RCW
8 between RCW 11.98.070 and 11.98.080 to read as follows:

9 (1) A trustee must keep all qualified beneficiaries of a trust
10 reasonably informed about the administration of the trust and of the
11 material facts necessary for them to protect their interests. Unless
12 unreasonable under the circumstances, a trustee must promptly respond
13 to any beneficiary's request for information related to the
14 administration of the trust. The trustee is deemed to have satisfied
15 the request of a qualified beneficiary who requests information
16 concerning the terms of the trust reasonably necessary to enable such
17 beneficiary to enforce his or her rights under the trust if the trustee
18 provides a copy of the entire trust instrument. If a qualified
19 beneficiary must compel production of information from the trustee by
20 order of the court, then the court may order costs, including
21 reasonable attorneys' fees, to be awarded to such beneficiary pursuant
22 to RCW 11.96A.150.

23 (2)(a) Except to the extent waived or modified as provided in
24 subsection (5) of this section, within sixty days after the date of
25 acceptance of the position of trustee, the trustee must give notice of:

- 26 (i) The existence of the trust;
27 (ii) The identity of the trustor or trustors;
28 (iii) The trustee's name, address, and telephone number; and
29 (iv) The right to request such information as is reasonably
30 necessary to enable the notified person to enforce his or her rights
31 under the trust, to the qualified beneficiaries of the trust.

32 (b) The notice required under this subsection (2) applies only to
33 irrevocable trusts created after December 31, 2011, and revocable
34 trusts that become irrevocable after December 31, 2011.

35 (3) Despite any other provision of this section, and except to the
36 extent waived or modified as provided in subsection (5) of this

1 section, the trustee may not be required to provide any information
2 described in subsection (1) or (2) of this section to any beneficiary
3 of a trust other than the trustor's spouse or domestic partner if:

4 (a) Such spouse or domestic partner has capacity;

5 (b) Such spouse or domestic partner is the only permissible
6 distributee of the trust; and

7 (c) All of the other qualified beneficiaries of the trust are the
8 descendants of the trustor and the trustor's spouse or domestic
9 partner.

10 (4) While the trustor of a revocable trust is living, no
11 beneficiary other than the trustor is entitled to receive any
12 information under this section.

13 (5) The trustor may waive or modify the notification requirements
14 of subsections (2) and (3) of this section in the trust document or in
15 a separate writing, made at any time, that is delivered to the trustee.

16 **Sec. 17.** RCW 11.98.080 and 1999 c 42 s 621 are each amended to
17 read as follows:

18 (1)~~(a)~~ Two or more trusts may be consolidated if:

19 ~~((a))~~ (i) The trusts so provide; or

20 ~~((b))~~ (ii) Whether provided in the trusts or not, ~~((in accordance~~
21 ~~with subsection (2) of this section, if all interested persons consent~~
22 ~~as provided in subsection (2)(b) of this section and the requirements~~
23 ~~of subsection (1)(d) of this section are satisfied; or~~

24 ~~(c) Whether provided in the trusts or not, in accordance with~~
25 ~~subsection (3) of this section if the requirements of subsection (1)(d)~~
26 ~~of this section are satisfied;~~

27 ~~(d))~~ the requirements of subsection (2), (3), or (4) of this
28 section are satisfied.

29 (b) Consolidation under subsection (2) ~~((or))~~, (3), or (4) of this
30 section is permitted only if:

31 (i) The dispositive provisions of each trust to be consolidated are
32 substantially similar;

33 (ii) Consolidation is not inconsistent with the intent of the
34 trustor with regard to any trust to be consolidated; and

35 (iii) Consolidation would facilitate administration of the trusts
36 and would not materially impair the interests of the beneficiaries~~((+~~

37 ~~(e))~~.

1 (c) Trusts may be consolidated whether created inter vivos or by
2 will, by the same or different instruments, by the same or different
3 trustors, whether the trustees are the same, and regardless of where
4 the trusts were created or administered.

5 (2) ~~((The trustees of two or more trusts may consolidate the trusts
6 on such terms and conditions as appropriate without court approval as
7 provided in RCW 11.96A.220.))~~

8 (a) ~~((The trustee shall give written notice of proposed
9 consolidation by personal service or by certified mail to the))~~ A
10 trustee must deliver sixty days in advance written notice of a proposed
11 consolidation in the manner provided in RCW 11.96A.110 to the qualified
12 beneficiaries of every trust affected by the consolidation ~~((as~~
13 ~~provided in RCW 11.96A.110))~~ and to any trustee of such trusts who does
14 not join in the notice. The notice ~~((shall))~~ must: (i) State the name
15 and mailing address of the trustee; (ii) include a copy of the
16 governing instrument of each trust to be consolidated; (iii) include a
17 statement of assets and liabilities of each trust to be consolidated,
18 dated within ninety days of the notice; (iv) fully describe the terms
19 and manner of consolidation; and (v) state the reasons supporting the
20 requirements of subsection (1)~~((+d))~~ (b) of this section. The notice
21 ~~((shall))~~ must advise the recipient of the right to petition for a
22 judicial determination of the proposed consolidation as provided in
23 subsection ~~((+3))~~ (4) of this section~~((The notice shall include a
24 form on which consent or objection to the proposed consolidation may be
25 indicated.~~

26 **~~(b)~~** ~~If the trustee receives written consent to the proposed
27 consolidation from all persons entitled to notice as provided in RCW
28 11.96A.110 or from their representatives, the trustee may consolidate
29 the trusts as provided in the notice. Any person dealing with the
30 trustee of the resulting consolidated trust is entitled to rely on the
31 authority of that trustee to act and is not obliged to inquire into the
32 validity or propriety of the consolidation under this section.~~

33 ~~(3)(a) Any trustee, beneficiary, or special representative may
34 petition the superior court of the county in which the principal place
35 of administration of a trust is located for an order consolidating two
36 or more trusts under RCW 11.96A.080 through 11.96A.200. If nonjudicial
37 consolidation has been commenced pursuant to subsection (2) of this
38 section, a petition may be filed under this section unless the trustee~~

1 ~~has received all necessary consents. The principal place of~~
2 ~~administration of the trust is the trustee's usual place of business~~
3 ~~where the records pertaining to the trust are kept, or the trustee's~~
4 ~~residence if the trustee has no such place of business)), and must~~
5 indicate that the recipient has thirty days to object to the proposed
6 consolidation.

7 (b) If the trustee receives written objection to the proposed
8 consolidation from any trustee or beneficiary entitled to notice or
9 from their representatives within the objection period provided in
10 subsection (a) of this section, the trustee(s) may not consolidate the
11 trusts as provided in the notice, though an objection does not preclude
12 the trustee or a beneficiary's right to petition for a judicial
13 determination of the proposed consolidation as provided in subsection
14 (4) of this section. If the trustee does not receive any objection
15 within the objection period provided above, then the trustee may
16 consolidate the trusts, and such will be deemed the equivalent of an
17 order entered by the court declaring that the trusts were combined in
18 the manner provided in the initial notice.

19 (3) The trustees of two or more trusts may consolidate the trusts
20 on such terms and conditions as appropriate without court approval as
21 provided in RCW 11.96A.220.

22 (4)(a) Any trustee, beneficiary, or special representative may
23 petition the superior court of the county in which the situs of a trust
24 is located for an order consolidating two or more trusts under RCW
25 11.96A.080 through 11.96A.200.

26 (b) At the conclusion of the hearing, if the court finds that the
27 requirements of subsection (1)~~((d))~~ (b) of this section have been
28 satisfied, it may direct consolidation of two or more trusts on such
29 terms and conditions as appropriate. The court in its discretion may
30 provide for payment from one or more of the trusts of reasonable fees
31 and expenses for any party to the proceeding.

32 ~~((4))~~ (5) This section applies to all trusts whenever created.
33 Any person dealing with the trustee of the resulting consolidated trust
34 is entitled to rely on the authority of that trustee to act and is not
35 obliged to inquire into the validity or propriety of the consolidation
36 under this section.

37 ~~((5))~~ (6) For powers of fiduciaries to divide trusts, see RCW
38 11.108.025.

1 NEW SECTION. **Sec. 18.** RCW 11.98.090 (Nonliability of third
2 persons without knowledge of breach) and 1985 c 30 s 52 are each
3 repealed.

4 **Sec. 19.** RCW 11.103.040 and 2011 c 327 s 37 are each amended to
5 read as follows:

6 While (~~a trust is revocable by the trustor,~~) the trustor of a
7 revocable trust is living, the rights of the beneficiaries are subject
8 to the control of, and the duties of the trustee are owed exclusively
9 to, the trustor. If a revocable trust has more than one trustor, the
10 duties of the trustee are owed to all of the living trustors having the
11 right to revoke the trust.

12 **Sec. 20.** RCW 11.103.050 and 2011 c 327 s 38 are each amended to
13 read as follows:

14 (1) A person may commence a judicial proceeding to contest the
15 validity of a trust that was revocable at the trustor's death within
16 the earlier of:

17 (a) Twenty-four months after the trustor's death; or

18 (b) Four months after the trustee sent to the person by personal
19 service, mail, or in an electronic transmission if there is a consent
20 of the recipient to electronic transmission then in effect under the
21 terms of RCW 11.96A.110, a notice (~~with the information required in~~
22 ~~RCW 11.97.010, and~~) including:

23 (i) The name and date of the trust;

24 (ii) The identity of the trustor or trustors;

25 (iii) The trustee's name, address, and telephone number; and

26 (iv) Notice of the time allowed for commencing a proceeding.

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

30 (a) The trustee knows of a pending judicial proceeding contesting
31 the validity of the trust; or

32 (b) A potential contestant has notified the trustee of a possible
33 judicial proceeding to contest the trust and a judicial proceeding is
34 commenced within sixty days after the contestant sent the notification.

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

1 **Sec. 21.** RCW 11.96A.250 and 2001 c 14 s 3 are each amended to read
2 as follows:

3 (1)(a) (~~The personal representative or trustee may petition the~~
4 ~~court having jurisdiction over the matter for the appointment of a~~
5 ~~special representative to represent a person who is interested in the~~
6 ~~estate or trust and~~) Any party or the parent of a minor or unborn
7 party may petition the court for the appointment of a special
8 representative to represent a party: (i) Who is a minor; (ii) who is
9 (~~incompetent or disabled~~) incapacitated without an appointed guardian
10 of his or her estate; (iii) who is yet unborn or unascertained; or (iv)
11 whose identity or address is unknown. The petition may be heard by the
12 court without notice.

13 (b) In appointing the special representative the court shall give
14 due consideration and deference to any nomination(s) made in the
15 petition, the special skills required in the representation, and the
16 need for a representative who will act independently and prudently.
17 The nomination of a person as special representative by the (~~personal~~
18 ~~representative or trustee~~) petitioner and the person's willingness to
19 serve as special representative are not grounds by themselves for
20 finding a lack of independence, however, the court may consider any
21 interests that the nominating (~~fiduciary~~) party may have in the
22 estate or trust in making the determination.

23 (c) The special representative may enter into a binding agreement
24 on behalf of the person or beneficiary. The special representative may
25 be appointed for more than one person or class of persons if the
26 interests of such persons or class are not in conflict. The petition
27 (~~shall~~) must be verified. The petition and order appointing the
28 special representative may be in the following form:

29 CAPTION PETITION FOR APPOINTMENT
30 OF CASE OF SPECIAL REPRESENTATIVE
31 UNDER RCW 11.96A.250

32 The undersigned petitioner petitions the court for the appointment
33 of a special representative in accordance with RCW 11.96A.250 and shows
34 the court as follows:

35 1. Petitioner. Petitioner . . . [is the qualified and presently
36 acting (personal representative) (trustee) of the above (estate)
37 (trust) having been named (personal representative) (trustee) under

1 (describe will and reference probate order or describe trust
2 instrument)] or [is the (describe relationship of the petitioner to the
3 party to be represented or to the matter at issue).].

4 2. (~~Issue Concerning (Estate) (Trust) Administration~~) Matter. A
5 question concerning (~~administration of the (estate) (trust)~~)
6 has arisen as to (describe issue, for example: Related to
7 interpretation, construction, administration, distribution). The
8 (~~issues are appropriate for determination under RCW 11.96A.250.~~

9 ~~3. Beneficiaries. The beneficiaries of the (estate) (trust)~~
10 ~~include persons who are unborn, unknown, or unascertained persons, or~~
11 ~~who are under eighteen years of age)~~ issue is a matter as defined in
12 RCW 11.96A.030 and is appropriate for determination under RCW
13 11.96A.210 through 11.96A.250.

14 3. Party/Parties to be Represented. This matter involves (include
15 description of asset(s) and related beneficiaries and/or interested
16 parties). Resolution of this matter will require the involvement of
17 (name of person or class of persons), who is/are (minors),
18 (incapacitated and without an appointed guardian), (unborn or
19 unascertained) (whose identity or address is unknown).

20 4. Special Representative. The nominated special representative
21 . . . is a lawyer licensed to practice before the courts of this state
22 or an individual with special skill or training in the administration
23 of estates or trusts. The nominated special representative does not
24 have an interest in the (~~affected estate or trust~~) matter and is not
25 related to any person interested in the (~~estate or trust~~) matter.
26 The nominated special representative is willing to serve. The
27 petitioner has no reason to believe that the nominated special
28 representative will not act in an independent and prudent manner and in
29 the best interests of the represented parties. (It is recommended that
30 the petitioner also include information specifying the particular
31 skills of the nominated special representative that relate to the
32 matter in issue.)

33 5. Resolution. Petitioner desires to achieve a resolution of the
34 questions that have arisen (~~concerning the (estate) (trust)~~) in this
35 matter. Petitioner believes that proceeding in accordance with the
36 procedures permitted under RCW 11.96A.210 through 11.96A.250 would be
37 in the best interests of the (~~(estate) (trust) and the beneficiaries~~)
38 parties, including the party requiring a special representative.

1 6. Request of Court. Petitioner requests that . . .((7)) . . . an
2 attorney licensed to practice in the State of Washington((7)),

3 (OR)

4 an individual with special skill or training in the
5 administration of estates or trusts

6 be appointed special representative for ~~((those beneficiaries who are
7 not yet adults, as well as for the unborn, unknown, and unascertained
8 beneficiaries))~~ . . . ((describe party or parties being represented),
9 who is/are (minors), (incapacitated and without an appointed guardian),
10 (unborn or unascertained) (whose identity or address is unknown), as
11 provided under RCW 11.96A.250.

12 DATED this . . . day of,

13
14 (Petitioner ~~((or petitioner's
15 legal representative)))~~)

16 VERIFICATION

17 I certify under penalty of perjury under the laws of the state of
18 Washington that the foregoing is true and correct.

19 DATED, ~~((2000))~~ 20.., at, Washington.

20
21 (Petitioner or other person
22 having knowledge)

23 CAPTION ORDER FOR APPOINTMENT
24 OF CASE OF SPECIAL REPRESENTATIVE

25 THIS MATTER having come on for hearing before this Court on
26 Petition for Appointment of Special Representative filed herein, and it
27 appearing that it would be in the best interests of the ~~((estate)
28 (trust))~~ parties related to the matter described in the Petition to
29 appoint a special representative to address the issues that have arisen
30 ~~((concerning the (estate) (trust))~~ in the matter and the Court finding
31 that the facts stated in the Petition are true, now, therefore,

32 IT IS ORDERED that . . . is appointed under RCW 11.96A.250 as
33 special representative ~~((for the (estate) (trust) beneficiaries who are
34 not yet adult age, and for unborn, unknown, or unascertained
35 beneficiaries to represent their respective interests in the (estate)~~

1 ~~(trust))~~ (describe party or parties being represented) who is/are
2 (minors), (incapacitated and without an appointed guardian), (unborn or
3 unascertained) (whose identity or address is unknown), to represent
4 their respective interests in the matter as provided in RCW 11.96A.250.
5 The special representative shall be discharged of responsibility with
6 respect to the matter as provided in RCW 11.96A.250. The special
7 representative (~~(shall be)~~) is discharged of responsibility with
8 respect to the (~~(estate) (trust))~~ matter at such time as a written
9 agreement is executed resolving the present issues, all as provided in
10 that statute, or if an agreement is not reached within six months from
11 entry of this Order, the special representative appointed under this
12 Order (~~(shall be)~~) is discharged of responsibility, subject to
13 subsequent reappointment under RCW 11.96A.250.

14 DONE IN OPEN COURT this . . . day of,
15
16 JUDGE/COURT COMMISSIONER

17 (2) Upon appointment by the court, the special representative
18 (~~(shall)~~) must file a certification made under penalty of perjury in
19 accordance with RCW 9A.72.085 that he or she (a) is not interested in
20 the (~~(estate or trust))~~ matter; (b) is not related to any person
21 interested in the (~~(estate or trust))~~ matter; (c) is willing to serve;
22 and (d) will act independently, prudently, and in the best interests of
23 the represented parties.

24 (3) The special representative must be a lawyer licensed to
25 practice before the courts of this state or an individual with special
26 skill or training in the administration of estates or trusts. The
27 special representative may not have an interest in the (~~(affected~~
28 ~~estate or trust))~~ matter, and may not be related to a person interested
29 in the (~~(estate or trust))~~ matter. The special representative is
30 entitled to reasonable compensation for services that must be paid from
31 the principal of (~~(the estate or trust whose beneficiaries are~~
32 ~~represented))~~ an asset involved in the matter.

33 (4) The special representative (~~(shall be)~~) is discharged from any
34 responsibility and (~~(shall)~~) will have no further duties with respect
35 to the (~~(estate or trust))~~ matter or with respect to any (~~(person~~
36 ~~interested in the estate or trust))~~ party, on the earlier of: (a) The
37 expiration of six months from the date the special representative was

1 appointed unless the order appointing the special representative
2 provides otherwise, or (b) the execution of the written agreement by
3 all parties or their virtual representatives. Any action against a
4 special representative must be brought within the time limits provided
5 by RCW 11.96A.070(3)(c)(i).

6 **Sec. 22.** RCW 11.98.015 and 2011 c 327 s 20 are each amended to
7 read as follows:

8 Except as otherwise provided in chapter 11.118 RCW or by another
9 statute, the following rules apply:

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

16 (2) A trust authorized by this section may be enforced by a person
17 appointed in the terms of the trust or, if no person is so appointed,
18 by a person appointed by the court. Such person is considered to be a
19 permissible distributee of the trust; and

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

29 **Sec. 23.** RCW 11.98.078 and 2011 c 327 s 32 are each amended to
30 read as follows:

31 (1) A trustee (~~shall~~) must administer the trust solely in the
32 interests of the beneficiaries.

33 (2) Subject to the rights of persons dealing with or assisting the
34 trustee as provided in RCW (~~11.98.090~~) 11.98.105, a sale,
35 encumbrance, or other transaction involving the investment or
36 management of trust property entered into by the trustee for the

1 trustee's own personal account or which is otherwise affected by a
2 conflict between the trustee's fiduciary and personal interests is
3 voidable by a beneficiary affected by the transaction unless:

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

5 (b) The transaction was approved by the court or approved in a
6 nonjudicial binding agreement in compliance with RCW 11.96A.210 through
7 11.96A.250;

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

10 (d) The beneficiary consented to the trustee's conduct, ratified
11 the transaction, or released the trustee in compliance with RCW
12 11.98.108; or

13 (e) The transaction involves a contract entered into or claim
14 acquired by the trustee before the person became or contemplated
15 becoming trustee.

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

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

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

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

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

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

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

34 (5) An investment by a trustee in securities of an investment
35 company or investment trust to which the trustee, or its affiliate,
36 provides services in a capacity other than as trustee is not presumed
37 to be affected by a conflict between personal and fiduciary interests
38 if the investment complies with the prudent investor rule of chapter

1 11.100 RCW. In addition to its compensation for acting as trustee, the
2 trustee may be compensated by the investment company or investment
3 trust for providing those services out of fees charged to the trust.
4 If the trustee receives compensation from the investment company or
5 investment trust for providing investment advisory or investment
6 management services, the trustee must at least annually notify the
7 (~~persons entitled under RCW 11.106.020 to receive a copy of the~~
8 ~~trustee's annual report of the rate and method by which that~~
9 ~~compensation was determined~~) permissible distributees of the rate and
10 method by which that compensation was determined. The obligation of
11 the trustee to provide the notice described in this section may be
12 waived or modified by the trustor in the trust document or in a
13 separate writing, made at any time, that is delivered to the trustee.

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

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

18 (b) Payment of reasonable compensation to the trustee and any
19 affiliate providing services to the trust, provided total compensation
20 is reasonable;

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

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

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

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

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

33 (8) If a trust has two or more beneficiaries, the trustee (~~shall~~)
34 must act impartially in administering the trust and distributing the
35 trust property, giving due regard to the beneficiaries' respective
36 interests.

1 **Sec. 24.** RCW 11.103.030 and 2011 c 327 s 36 are each amended to
2 read as follows:

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

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

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

11 (b) To the extent the trust consists of property other than
12 community property, each trustor may revoke or amend the trust with
13 regard to the portion of the trust property attributable to that
14 trustor's contribution;

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

17 (d) Upon the revocation or amendment of the trust by fewer than all
18 of the trustors, the trustee (~~shall~~) must promptly notify the other
19 trustors of the revocation or amendment.

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

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

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

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

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

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

33 (4) Upon revocation of a revocable trust, the trustee (~~shall~~)
34 must deliver the trust property as the trustor directs.

35 (5) A trustor's powers with respect to (~~revocation, amendment, or~~
36 ~~distribution of trust property may be exercised by an agent under a~~
37 ~~power of attorney only to the extent expressly authorized by the terms~~
38 ~~of the power)) the revocation or amendment of a trust or distribution~~

1 of the property of a trust, may be exercised by the trustor's agent
2 under a power of attorney only to the extent specified in the power of
3 attorney document, as provided in RCW 11.94.050(1) and to the extent
4 consistent with or expressly authorized by the trust agreement.

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

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

13 (8) This section does not limit or affect operation of RCW
14 11.96A.220 through 11.96A.240.

15 **Sec. 25.** RCW 11.106.010 and 1985 c 30 s 95 are each amended to
16 read as follows:

17 This chapter does not apply to resulting trusts, constructive
18 trusts, business trusts where certificates of beneficial interest are
19 issued to the beneficiaries, investment trusts, voting trusts,
20 insurance trusts prior to the death of the insured, trusts in the
21 nature of mortgages or pledges(~~(, trusts created by judgment or decree~~
22 ~~of a federal court or of the superior court when not sitting in~~
23 ~~probate)), liquidation trusts or trusts for the sole purpose of paying
24 dividends, interest or interest coupons, salaries, wages or pensions;
25 nor does this chapter apply to personal representatives.~~

26 **Sec. 26.** RCW 11.106.020 and 1985 c 30 s 96 are each amended to
27 read as follows:

28 The trustee or trustees appointed by any will, deed, or agreement
29 executed (~~(shall)~~) must mail or deliver at least annually to each
30 (~~(adult income trust beneficiary)~~) permissible distributee, as defined
31 in section 8 of this act, a written itemized statement of all current
32 receipts and disbursements made by the trustee of the funds of the
33 trust both principal and income, and upon the request of any such
34 beneficiary (~~(shall)~~) must furnish the beneficiary an itemized
35 statement of all property then held by that trustee, and may also file

1 any such statement in the superior court of the county in which the
2 trustee or one of the trustees resides.

3 **Sec. 27.** RCW 11.118.050 and 2001 c 327 s 6 are each amended to
4 read as follows:

5 The intended use of the principal or income can be enforced by a
6 person designated for that purpose in the trust instrument, by the
7 person having custody of an animal that is a beneficiary of the trust,
8 or by a person appointed by a court upon application to it by any
9 person. Such person is considered to be a permissible distributee, as
10 defined in section 8 of this act, of the trust. A person with an
11 interest in the welfare of the animal may petition for an order
12 appointing or removing a person designated or appointed to enforce the
13 trust.

14 NEW SECTION. **Sec. 28.** Except as otherwise provided in this act:

15 (1) This act applies to all trusts created before, on, or after
16 January 1, 2013;

17 (2) This act applies to all judicial proceedings concerning trusts
18 commenced on or after January 1, 2013;

19 (3) An action taken before January 1, 2013, is not affected by this
20 act; and

21 (4) If a right is acquired, extinguished, or barred upon the
22 expiration of a prescribed period that has commenced to run under any
23 other statute before January 1, 2013, that statute continues to apply
24 to the right even if it has been repealed or superseded.

--- END ---