

CERTIFICATION OF ENROLLMENT

SENATE BILL 5344

63rd Legislature
2013 Regular Session

Passed by the Senate April 22, 2013
YEAS 45 NAYS 3

President of the Senate

Passed by the House April 15, 2013
YEAS 97 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5344** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SENATE BILL 5344

AS AMENDED BY THE HOUSE

Passed Legislature - 2013 Regular Session

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, limited liability companies, limited
14 liability partnerships, minors, persons of unsound mind, or persons who
15 have been convicted of (a) any felony or ((of a misdemeanor)) (b) any
16 crime involving moral turpitude((: PROVIDED, That)).

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

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

15 (3) Professional service corporations, professional limited
16 liability companies, or limited liability partnerships, that are duly
17 organized under the laws of this state and whose shareholders, members,
18 or partners, respectively, are exclusively attorneys, may act as
19 personal representatives.

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

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

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

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

3 (1) The following may serve as trustees:

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

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

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

11 (d) Any professional service corporations (~~regularly~~),
12 professional limited liability companies, or limited liability
13 partnerships, that are duly organized under the laws of this state and
14 whose (~~shareholder or~~) shareholders, members, or partners,
15 respectively, are exclusively attorneys; (~~and~~)

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

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

20 (g) Any other entity so authorized under the laws of the state of
21 Washington.

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

23 (a) Minors, persons of unsound mind, or persons who have been
24 convicted of (i) any felony or (~~a misdemeanor~~) (ii) any crime
25 involving moral turpitude; and

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

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

31 (1) Venue for proceedings pertaining to trusts (~~shall be~~) is:

32 (a) For testamentary trusts established under wills probated in the
33 state of Washington, in the superior court of the county where the
34 probate of the will is being administered or was completed or, in the
35 alternative, the superior court of the county where any qualified
36 beneficiary of the trust (~~entitled to notice under RCW 11.97.010~~) as

1 defined in section 8 of this act resides, the county where any trustee
2 resides or has a place of business, or the county where any real
3 property that is an asset of the trust is located; and

4 (b) For all other trusts, in the superior court of the county where
5 any qualified beneficiary of the trust (~~entitled to notice under RCW~~
6 ~~11.97.010~~) as defined in section 8 of this act resides, the county
7 where any trustee resides or has a place of business, or the county
8 where any real property that is an asset of the trust is located. If
9 no county has venue for proceedings pertaining to a trust under the
10 preceding sentence, then in any county.

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (1)(a) A beneficiary of an express trust may not commence a
17 proceeding against a trustee for breach of trust more than three years
18 after the date a report was delivered in the manner provided in RCW
19 11.96A.110 to the beneficiary or to a representative of the beneficiary
20 (~~was sent a report that~~) if the report adequately disclosed the
21 existence of a potential claim for breach of trust and informed the
22 beneficiary of the time allowed for commencing a proceeding.

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

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 RCW
9 11.98.078 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))~~ trustee delivers the report
18 in the manner provided in RCW 11.96A.110.

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

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

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

24 (iii) The termination of the trust.

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

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

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

5 (a) Encourage and facilitate the participation of qualified
6 individuals as special representatives;

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

9 (c) Promote complete and final resolution of proceedings involving
10 trusts and estates.

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

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

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

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

36 (4) The tolling provisions of RCW 4.16.190 apply to this chapter
37 except that the running of a statute of limitations under subsection
38 (1) or (2) of this section, or any other applicable statute of

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

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

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

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

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

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

23 (b) Representation of an incapacitated trustor with respect to his
24 or her powers over a trust is subject to the provisions of RCW
25 11.103.030, and chapters 11.96A, 11.88, and 11.92 RCW.

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

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

31 (b) A guardian of the person may represent and bind the
32 incapacitated person if a guardian of the incapacitated person's estate
33 has not been appointed;

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

36 ~~((+e))~~ (d) A trustee may represent and bind the beneficiaries of
37 the trust; ((and

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

3 ~~(2) This section is intended to adopt the common law concept of~~
4 ~~virtual representation. This section supplements the common law~~
5 ~~relating to the doctrine of virtual representation and shall not be~~
6 ~~construed as limiting the application of that common law doctrine.~~

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

8 ~~(a))~~; and

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

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

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

26 ~~(b))~~ the living persons who would constitute the class as of the
27 date the representation is to be determined may virtually represent all
28 other members of the class as of that date, but only to the extent that
29 there is no conflict of interest between the representative and the
30 person(s) represented with regard to the particular question or
31 dispute.

32 ~~(7) Where an interest ((in an estate, trust, or nonprobate asset or~~
33 ~~an interest that may be affected by a power of attorney)) has been~~
34 ~~given to a living person, and the same interest, or a share in it, is~~
35 ~~to pass to the surviving spouse or surviving domestic partner or to~~
36 ~~persons who are, or might be, the ((distributees,)) heirs, issue, or~~
37 ~~other kindred of that living person ((upon the happening of a future~~

1 event, notice may be given to that living person, and the living person
2 shall virtually represent the surviving spouse or surviving domestic
3 partner, distributees, heirs, issue, or other kindred of the person;

4 ~~(e))~~ or the distributees of the estate of that living person upon
5 the happening of a future event, that living person may virtually
6 represent the surviving spouse or surviving domestic partner, heirs,
7 issue, or other kindred of the person, and the distributees of the
8 estate of the person, but only to the extent that there is no conflict
9 of interest between the representative and the person(s) represented
10 with regard to the particular question or dispute.

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

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

32 (4) A party is not virtually represented by a person receiving
33 notice if a conflict of interest involving the matter is known to exist
34 between the notified person and the party)), but only to the extent
35 that there is no conflict of interest between the representative and
36 the person(s) represented with regard to the particular question or
37 dispute.

1 ~~((+5))~~ (9) To the extent there is no conflict of interest between
2 the holder of the power of appointment and the persons represented with
3 respect to the particular question or dispute, the holder of a lifetime
4 or testamentary power of appointment may virtually represent and bind
5 persons who are permissible appointees or takers in default (but only
6 to the extent that they are permissible appointees in the case of a
7 limited power of appointment) under the power, and who are not
8 permissible distributees as defined in section 8 of this act.

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

11 (a) The charitable organization is not a qualified beneficiary as
12 defined in section 8 of this act specified in the trust instrument or
13 acting as trustee; or

14 (b) The charitable organization is a qualified beneficiary, but is
15 not a permissible distributee, as those terms are defined in section 8
16 of this act, and its beneficial interest in the trust is subject to
17 change by the trustor or by a person designated by the trustor.

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

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

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

27 The terms of a will or trust, even if unambiguous, may be reformed
28 by judicial proceedings (~~or binding nonjudicial procedure~~) under this
29 chapter to conform the terms to the intention of the testator or
30 trustor if it is proved by clear, cogent, and convincing evidence (~~or~~
31 ~~the parties to a binding nonjudicial agreement agree that there is~~
32 ~~clear, cogent, and convincing evidence,~~) that both the intent of the
33 testator or trustor and the terms of the will or trust were affected by
34 a mistake of fact or law, whether in expression or inducement. This
35 does not limit the ability to reform the will or trust using the
36 binding nonjudicial procedures of RCW 11.96A.220.

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

3 (~~(1)~~) The trustor of a trust may by the provisions of the trust
4 relieve the trustee from any or all of the duties, restrictions, and
5 liabilities which would otherwise be imposed by chapters 11.95, 11.98,
6 11.100, and 11.104A RCW and RCW 11.106.020, or may alter or deny any or
7 all of the privileges and powers conferred by those provisions; or may
8 add duties, restrictions, liabilities, privileges, or powers to those
9 imposed or granted by those provisions. If any specific provision of
10 those chapters is in conflict with the provisions of a trust, the
11 provisions of the trust control whether or not specific reference is
12 made in the trust to any of those chapters, except as provided in RCW
13 6.32.250, 11.96A.190, 19.36.020, section 8 of this act, 11.98.200
14 through 11.98.240, section 16(1) of this act, 11.95.100 through
15 11.95.150, and chapter 11.103 RCW. In no event may a trustee be
16 relieved of the duty to act in good faith and with honest judgment (~~or~~
17 ~~the duty to provide information to beneficiaries as required in this~~
18 ~~section~~). Notwithstanding the breadth of discretion granted to a
19 trustee in the terms of the trust, including the use of such terms as
20 "absolute," "sole," or "uncontrolled," the trustee (~~shall~~) must
21 exercise a discretionary power in good faith and in accordance with the
22 terms and purposes of the trust and the interests of the beneficiaries.

23 (~~(2)~~ ~~Within sixty days after the date of acceptance of the~~
24 ~~position of trustee of an irrevocable trust, or the date the trustee of~~
25 ~~a formerly revocable trust acquires knowledge that the trust has become~~
26 ~~irrevocable, whether by the death of the trustor or otherwise, the~~
27 ~~trustee shall give notice of: (a) The existence of the trust, (b) the~~
28 ~~identity of the trustor or trustors, (c) the trustee's name, address,~~
29 ~~and telephone number, and (d) the right to request such information as~~
30 ~~is reasonably necessary to enable the notified person to enforce his or~~
31 ~~her rights under the trust, to all persons interested in the trust, as~~
32 ~~defined in RCW 11.96A.030, and who would be entitled to notice under~~
33 ~~RCW 11.96A.110 and 11.96A.120 if they were a party to judicial~~
34 ~~proceedings regarding the trust. If any such person is a minor and no~~
35 ~~guardian has been appointed for such person by any court, then such~~
36 ~~notice may be given to a parent of the person. If a person otherwise~~
37 ~~entitled to notice under this section is a charitable organization, and~~
38 ~~the charitable organization's only interest in the trust is a future~~

1 interest that may be revoked, then such notice shall instead be given
2 to the attorney general. A trustee who gives notice pursuant to this
3 section satisfies the duty to inform the beneficiaries of the existence
4 of the trust. The notice required under this subsection (2) applies
5 only to irrevocable trusts created after December 31, 2011, and
6 revocable trusts that become irrevocable after December 31, 2011,
7 provided that all common law duties of a trustee to notify
8 beneficiaries applicable to trusts created or that became irrevocable
9 before such date are not affected.

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

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

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

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

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

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

29 (f) Disclosure of all transactions during the period that are
30 equivalent to one of the types of transactions described in RCW
31 11.98.078 or otherwise could have been affected by a conflict between
32 the trustee's fiduciary and personal interests;

33 (g) A statement that the recipient of the account information may
34 petition the superior court pursuant to chapter 11.106 RCW to obtain
35 review of the statement and of acts of the trustee disclosed in the
36 statement; and

37 (h) A statement that claims against the trustee for breach of trust

1 may not be made after the expiration of three years from the date the
2 beneficiary receives the statement.

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

6 ~~(5) If a person entitled to notice under this section requests~~
7 ~~information reasonably necessary to enable the notified person to~~
8 ~~enforce his or her rights under the trust, then the trustee must~~
9 ~~provide such information within sixty days of receipt of such request.~~
10 ~~Delivery of the entire trust instrument to the persons entitled to~~
11 ~~notice under this section who request information concerning the terms~~
12 ~~of the trust reasonably necessary to enable the notified person to~~
13 ~~enforce his or her rights under the trust is deemed to satisfy the~~
14 ~~trustee's obligations under this subsection.)~~

15 NEW SECTION. **Sec. 8.** A new section is added to chapter 11.98 RCW
16 to be codified before RCW 11.98.005 to read as follows:

17 The definitions in this section apply throughout this chapter, and
18 throughout this title where specifically referenced, unless the context
19 clearly requires otherwise.

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

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

25 (a) Is a permissible distributee;

26 (b) Would be a permissible distributee if the interests of the
27 distributees described in (a) of this subsection terminated on that
28 date; or

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

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

33 (1) If provisions of a trust instrument designate Washington as the
34 situs of the trust or designate Washington law to govern the trust or
35 any of its terms, then the situs of the trust is Washington provided
36 that one of the following conditions is met:

1 (a) A trustee has a place of business in or a trustee is a resident
2 of Washington; or
3 (b) More than an insignificant part of the trust administration
4 occurs in Washington; or
5 (c) The trustor resides in Washington at the time situs is being
6 established, or resided in Washington at the time the trust became
7 irrevocable; or
8 (d) One or more of the qualified beneficiaries resides in
9 Washington; or
10 (e) An interest in real property located in Washington is an asset
11 of the trust.
12 (2)(a) Unless the trust instrument designates a state other than
13 Washington as the situs of the trust and does not expressly authorize
14 transfer of situs, the trustee may register the trust as a Washington
15 trust if any of the factors in subsection (1)(a) through (e) of this
16 section are present. The trustee (~~shall~~) must register the trust by
17 filing with the clerk of the court in any county where venue lies for
18 the trust under RCW 11.96A.050, a statement including the following
19 information:
20 (i) The name and address of the trustee;
21 (ii) The date of the trust, name of the trustor, and name of the
22 trust, if any;
23 (iii) The factor or factors listed in subsection (1)(a) through (e)
24 of this section that are present for the trust and which qualify the
25 trust for registration.
26 (b) Within five days of filing the registration with the court, the
27 trustee (~~shall~~) must mail a copy of the registration to each (~~person~~
28 ~~who would be entitled to notice under RCW 11.97.010 and~~) qualified
29 beneficiary who has not waived notice of the registration, in writing,
30 filed in the cause, together with a notice that must be in
31 substantially the same form as set forth in this section. Persons
32 receiving such notice (~~shall~~) have thirty days from the date of
33 filing the registration to file a petition in the court objecting to
34 such registration and requesting the court to issue an order that
35 Washington is not the proper situs of the trust, and to serve a copy of
36 such petition upon the trustee or the trustee's lawyer. If a petition
37 objecting to the registration is filed within thirty days of the date
38 of filing the registration, the trustee must request the court to fix

1 a time and place for the hearing of the petition and notify by mail,
2 personal service or electronic transmission, if a valid consent to
3 electronic transmission is in effect under the terms of RCW 11.96A.110,
4 all ((persons who were entitled to notice of the registration))
5 qualified beneficiaries of the time and place of the hearing, not less
6 than ten days before the hearing on the petition.

7 (c) Unless a person receiving notice of the registration files a
8 petition with the court objecting to the registration within thirty
9 days of the date of filing the registration, the registration ((shall))
10 will be deemed the equivalent of an order entered by the court
11 declaring that the situs of the trust is Washington. After expiration
12 of the thirty-day period following filing of the registration, the
13 trustee may obtain a certificate of registration signed by the clerk,
14 and issued under the seal of the court, which may be in the form
15 specified in (d) of this subsection.

16 (d) Notice of registration and certificates of registration may be
17 in the following form:

18 (i) Notice form:

19 NOTICE OF FILING OF REGISTRATION OF [NAME AND DATE OF TRUST] AS A
20 WASHINGTON TRUST

21 NOTICE IS GIVEN that the attached Registration of Trust was filed
22 by the undersigned in the above-entitled court on the day of
23, 20. . .; unless you file a petition in the above-entitled
24 court objecting to such registration and requesting the court to issue
25 an order that Washington is not the proper situs of the trust, and
26 serve a copy thereof upon the trustee or the trustee's lawyer, within
27 thirty days after the date of the filing, the registration will be
28 deemed the equivalent of an order entered by the court declaring that
29 the situs of the trust is Washington.

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

35 (ii) Certificate of Registration:

36 State of Washington, County of
37 In the superior court of the county of

1 Whereas, the attached Registration of Trust was filed with this
2 court on, the attached Notice of Filing Registration of Trust
3 and Affidavit of Mailing Notice of Filing Registration of Trust were
4 filed with this court on, and no objections to such
5 Registration have been filed with this court, the trust known as
6, under trust agreement dated, between as
7 Trustor and as Trustee, is hereby registered as a Washington
8 trust.

9 Witness my hand and the seal of said court this . . . day of
10, 20

11 (3) If the instrument establishing a trust does not designate
12 (~~Washington as the situs or designate Washington~~) any jurisdiction as
13 the situs or designate any jurisdiction's governing law to apply to the
14 trust, and the trustee of the trust has not registered the trust as
15 allowed in subsection (2) of this section, the situs of the trust is
16 Washington if (~~the~~) situs has not previously been established by any
17 court proceeding and the additional conditions specified in this
18 subsection (3) are met.

19 (a) For a testamentary trust, the situs of the trust is Washington
20 if:

- 21 (i) The will was admitted to probate in Washington; or
- 22 (ii) The will has not been admitted to probate in Washington, but
23 any trustee of the trust resides or has a place of business in
24 Washington, any qualified beneficiary (~~entitled to notice under RCW~~
25 ~~11.97.010~~) resides in Washington, or any real property that is an
26 asset of the trust is located in Washington.

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

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

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

- 36 (A) The trustor's will was admitted to probate in Washington; or
- 37 (B) The trustor's will was not admitted to probate in Washington,
38 but any (~~person entitled to notice under RCW 11.97.010~~) qualified

1 beneficiary resides in Washington, any trustee resides or has a place
2 of business in Washington, or any real property that is an asset of the
3 trust is located in Washington.

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

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

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

13 (iii) One or more of the qualified beneficiaries resides in
14 Washington; or

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

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

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

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

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

25 (b) If the terms of the trust do not provide a method of acceptance
26 or the method provided in the terms is not expressly made exclusive, by
27 accepting delivery of the trust property, exercising powers or
28 performing duties as trustee, or otherwise indicating acceptance of the
29 trusteeship.

30 (2) A person designated as trustee who has not yet accepted the
31 trusteeship may decline the trusteeship by delivering a written
32 declination of the trusteeship to the trustor or, if the trustor is
33 deceased or is incapacitated, to a successor trustee, if any, and if
34 none, to a qualified beneficiary.

35 (3) A person designated as trustee, without accepting the
36 trusteeship, may:

1 (a) Act to preserve the trust property if, within a reasonable time
2 after acting, the person sends a written declination of the trusteeship
3 to the trustor or, if the trustor is dead or is incapacitated, to a
4 successor trustee, if any, and if none, to a qualified beneficiary; and
5 (b) Inspect or investigate trust property to determine potential
6 liability under environmental or other law or for any other purpose.

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

9 Any trustee may, by written instrument delivered to any then acting
10 co-trustee and to the ~~((current adult income beneficiaries))~~
11 permissible distributees of the trust, relinquish to any extent and
12 upon any terms any or all of the trustee's powers, rights, authorities,
13 or discretions that are or may be tax sensitive in that they cause or
14 may cause adverse tax consequences to the trustee or the trust. Any
15 trustee not relinquishing such a power, right, authority, or discretion
16 and upon whom it is conferred continues to have full power to exercise
17 it.

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

20 (1) Where a vacancy occurs in the office of the trustee and there
21 is a successor trustee who is willing to serve as trustee and (a) is
22 named in the governing instrument as successor trustee or (b) has been
23 selected to serve as successor trustee under the procedure established
24 in the governing instrument for the selection of a successor trustee,
25 the outgoing trustee, or any other interested party, ~~((shall))~~ must
26 give notice of such vacancy, whether arising because of the trustee's
27 resignation or because of any other reason, and of the successor
28 trustee's agreement to serve as trustee, to each ~~((adult distributee or~~
29 ~~permissible distributee of trust income or of trust principal or of~~
30 ~~both trust income and trust principal. If there are no such adults, no~~
31 ~~notice need be given))~~ permissible distributee. The successor trustee
32 named in the governing instrument or selected pursuant to the procedure
33 therefor established in the governing instrument ~~((shall be))~~ is
34 entitled to act as trustee except for good cause or disqualification.
35 The successor trustee ~~((shall serve))~~ is deemed to have accepted the

1 trusteeship as of the effective date of the discharge of the
2 predecessor trustee as provided in RCW 11.98.041.

3 (2) Where a vacancy exists or occurs in the office of the trustee
4 and there is no successor trustee who is named in the governing
5 instrument or who has been selected to serve as successor trustee under
6 the procedure established in the governing instrument for the selection
7 of a successor trustee, and who is willing to serve as trustee, then
8 all parties with an interest in the trust may agree to a nonjudicial
9 change of the trustee under RCW 11.96A.220. The successor trustee
10 (~~shall serve~~) is deemed to have accepted the trusteeship as of the
11 effective date of the discharge of the predecessor trustee as provided
12 in RCW 11.98.041 or, in circumstances where there is no predecessor
13 trustee, as of the effective date of the trustee's appointment.

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

20 (4) Unless subsection (1), (2), or (3) of this section applies, any
21 beneficiary of a trust, the trustor, if alive, or the trustee may
22 petition the superior court having jurisdiction for the appointment or
23 change of a trustee or cotrustee under the procedures provided in RCW
24 11.96A.080 through 11.96A.200: (a) Whenever the office of trustee
25 becomes vacant; (b) upon filing of a petition of resignation by a
26 trustee; or (c) for any other reasonable cause.

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

29 (a) Except as otherwise provided in the governing instrument, a
30 successor fiduciary, absent actual knowledge of a breach of fiduciary
31 duty: (i) Is not liable for any act or omission of a predecessor
32 fiduciary and is not obligated to inquire into the validity or
33 propriety of any such act or omission; (ii) is authorized to accept as
34 conclusively accurate any accounting or statement of assets tendered to
35 the successor fiduciary by a predecessor fiduciary; and (iii) is
36 authorized to receipt only for assets actually delivered and has no
37 duty to make further inquiry as to undisclosed assets of the trust or
38 estate.

1 (b) Nothing in this section relieves a successor fiduciary from
2 liability for retaining improper investments, nor does this section in
3 any way bar the successor fiduciary, trust beneficiaries, or other
4 party in interest from bringing an action against a predecessor
5 fiduciary arising out of the acts or omissions of the predecessor
6 fiduciary, nor does it relieve the successor fiduciary of liability for
7 its own acts or omissions except as specifically stated or authorized
8 in this section.

9 (6) A change of trustee to a foreign trustee does not change the
10 situs of the trust. Transfer of situs of a trust to another
11 jurisdiction requires compliance with RCW 11.98.005 and RCW 11.98.045
12 through 11.98.055.

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

15 Where a vacancy occurs in the office of trustee under the
16 circumstances described in RCW 11.98.039 (1) or (2), the outgoing
17 trustee (~~(shall be)~~) is discharged upon the agreement of all parties
18 entitled to notice or upon the expiration of thirty days after notice
19 is given of such vacancy as required by the applicable subsection of
20 RCW 11.98.039, whichever occurs first, or if no notice is required
21 under RCW 11.98.039(1), upon the date the vacancy occurs, unless before
22 the effective date of such discharge a petition is filed under RCW
23 11.98.039(~~(+3)~~) (4) regarding the appointment or change of a trustee
24 of the trust. Where a petition is filed under RCW 11.98.039(~~(+3)~~) (4)
25 regarding the appointment or change of a trustee, the superior court
26 having jurisdiction may discharge the trustee from the trust and may
27 appoint a successor trustee upon such terms as the court may require.

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

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

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

35 (a) The transfer would facilitate the economic and convenient
36 administration of the trust;

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

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

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

6 (e) The trust meets at least one condition for situs listed in RCW
7 11.98.005(1) with respect to the new jurisdiction.

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

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

14 (1) The trustee may transfer trust situs (a) in accordance with RCW
15 11.96A.220; or (b) by giving written notice to (~~those persons entitled~~
16 ~~to notice as provided for under RCW 11.96A.110 and to~~) the attorney
17 general in the case of a charitable trust subject to chapter 11.110 RCW
18 and to the qualified beneficiaries not less than sixty days before
19 initiating the transfer. The notice must:

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

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

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

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

31 (e) State the facts supporting the requirements of RCW
32 11.98.045(2);

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

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

3 (2) If the date upon which the (~~beneficiaries~~) right to object
4 to the transfer expires without receipt by the trustee of any
5 objection, the trustee may transfer the trust situs as provided in the
6 notice. If the trust was registered under RCW 11.98.045(2), the
7 trustee must file a notice of transfer of situs and termination of
8 registration with the court of the county where the trust was
9 registered.

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

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

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

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

32 (2)(a) Except to the extent waived or modified as provided in
33 subsection (5) of this section, within sixty days after the date of
34 acceptance of the position of trustee, the trustee must give notice to
35 the qualified beneficiaries of the trust of:

36 (i) The existence of the trust;

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

1 (iii) The trustee's name, address, and telephone number; and
2 (iv) The right to request such information as is reasonably
3 necessary to enable the notified person to enforce his or her rights
4 under the trust.

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

8 (3) Despite any other provision of this section, and except to the
9 extent waived or modified as provided in subsection (5) of this
10 section, the trustee may not be required to provide any information
11 described in subsection (1) or (2) of this section to any beneficiary
12 of a trust other than the trustor's spouse or domestic partner if:

- 13 (a) Such spouse or domestic partner has capacity;
14 (b) Such spouse or domestic partner is the only permissible
15 distributee of the trust; and
16 (c) All of the other qualified beneficiaries of the trust are the
17 descendants of the trustor and the trustor's spouse or domestic
18 partner.

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

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

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

- 27 (1)~~(a)~~ (a) Two or more trusts may be consolidated if:
28 ~~((a))~~ (i) The trusts so provide; or
29 ~~((b))~~ (ii) Whether provided in the trusts or not, ~~((in accordance~~
30 ~~with subsection (2) of this section, if all interested persons consent~~
31 ~~as provided in subsection (2)(b) of this section and the requirements~~
32 ~~of subsection (1)(d) of this section are satisfied; or~~
33 ~~(c) Whether provided in the trusts or not, in accordance with~~
34 ~~subsection (3) of this section if the requirements of subsection (1)(d)~~
35 ~~of this section are satisfied;~~
36 ~~(d))~~ the requirements of subsection (2), (3), or (4) of this
37 section are satisfied.

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

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

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

7 (iii) Consolidation would facilitate administration of the trusts
8 and would not materially impair the interests of the beneficiaries ~~((+~~
9 ~~e+))~~.

10 (c) Trusts may be consolidated whether created inter vivos or by
11 will, by the same or different instruments, by the same or different
12 trustors, whether the trustees are the same, and regardless of where
13 the trusts were created or administered.

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

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

35 ~~(b) If the trustee receives written consent to the proposed~~
36 ~~consolidation from all persons entitled to notice as provided in RCW~~
37 ~~11.96A.110 or from their representatives, the trustee may consolidate~~
38 ~~the trusts as provided in the notice. Any person dealing with the~~

1 trustee of the resulting consolidated trust is entitled to rely on the
2 authority of that trustee to act and is not obliged to inquire into the
3 validity or propriety of the consolidation under this section.

4 ~~(3)(a) Any trustee, beneficiary, or special representative may~~
5 ~~petition the superior court of the county in which the principal place~~
6 ~~of administration of a trust is located for an order consolidating two~~
7 ~~or more trusts under RCW 11.96A.080 through 11.96A.200. If nonjudicial~~
8 ~~consolidation has been commenced pursuant to subsection (2) of this~~
9 ~~section, a petition may be filed under this section unless the trustee~~
10 ~~has received all necessary consents. The principal place of~~
11 ~~administration of the trust is the trustee's usual place of business~~
12 ~~where the records pertaining to the trust are kept, or the trustee's~~
13 ~~residence if the trustee has no such place of business)), and must~~
14 indicate that the recipient has thirty days to object to the proposed
15 consolidation.

16 (b) If the trustee receives written objection to the proposed
17 consolidation from any trustee or beneficiary entitled to notice or
18 from their representatives within the objection period provided in
19 subsection (a) of this section, the trustee(s) may not consolidate the
20 trusts as provided in the notice, though an objection does not preclude
21 the trustee or a beneficiary's right to petition for a judicial
22 determination of the proposed consolidation as provided in subsection
23 (4) of this section. If the trustee does not receive any objection
24 within the objection period provided above, then the trustee may
25 consolidate the trusts, and such will be deemed the equivalent of an
26 order entered by the court declaring that the trusts were combined in
27 the manner provided in the initial notice.

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

31 (4)(a) Any trustee, beneficiary, or special representative may
32 petition the superior court of the county in which the situs of a trust
33 is located for an order consolidating two or more trusts under RCW
34 11.96A.080 through 11.96A.200.

35 (b) At the conclusion of the hearing, if the court finds that the
36 requirements of subsection (1)~~((d))~~ (b) of this section have been
37 satisfied, it may direct consolidation of two or more trusts on such

1 terms and conditions as appropriate. The court in its discretion may
2 provide for payment from one or more of the trusts of reasonable fees
3 and expenses for any party to the proceeding.

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

9 ~~((+5))~~ (6) For powers of fiduciaries to divide trusts, see RCW
10 11.108.025.

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

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

16 While ~~((a trust is revocable by the trustor,))~~ the trustor of a
17 revocable trust is living, the rights of the beneficiaries are subject
18 to the control of, and the duties of the trustee are owed exclusively
19 to, the trustor. If a revocable trust has more than one trustor, the
20 duties of the trustee are owed to all of the living trustors having the
21 right to revoke the trust.

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (1)(a) (~~The personal representative or trustee may petition the~~
15 ~~court having jurisdiction over the matter for the appointment of a~~
16 ~~special representative to represent a person who is interested in the~~
17 ~~estate or trust and~~) Any party or the parent of a minor or unborn
18 party may petition the court for the appointment of a special
19 representative to represent a party: (i) Who is a minor; (ii) who is
20 ((incompetent or disabled)) incapacitated without an appointed guardian
21 of his or her estate; (iii) who is yet unborn or unascertained; or (iv)
22 whose identity or address is unknown. The petition may be heard by the
23 court without notice.

24 (b) In appointing the special representative the court shall give
25 due consideration and deference to any nomination(s) made in the
26 petition, the special skills required in the representation, and the
27 need for a representative who will act independently and prudently.
28 The nomination of a person as special representative by the (~~personal~~
29 ~~representative or trustee~~) petitioner and the person's willingness to
30 serve as special representative are not grounds by themselves for
31 finding a lack of independence, however, the court may consider any
32 interests that the nominating (~~fiduciary~~) party may have in the
33 estate or trust in making the determination.

34 (c) The special representative may enter into a binding agreement
35 on behalf of the person or beneficiary. The special representative may
36 be appointed for more than one person or class of persons if the

1 interests of such persons or class are not in conflict. The petition
2 (~~shall~~) must be verified. The petition and order appointing the
3 special representative may be in the following form:

4 CAPTION PETITION FOR APPOINTMENT
5 OF CASE OF SPECIAL REPRESENTATIVE
6 UNDER RCW 11.96A.250

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

10 1. Petitioner. Petitioner . . . [is the qualified and presently
11 acting (personal representative) (trustee) of the above (estate)
12 (trust) having been named (personal representative) (trustee) under
13 (describe will and reference probate order or describe trust
14 instrument)] or [is the (describe relationship of the petitioner to the
15 party to be represented or to the matter at issue)].

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

21 3. ~~Beneficiaries.~~ The beneficiaries of the (estate) (trust)
22 include persons who are unborn, unknown, or unascertained persons, or
23 who are under eighteen years of age) issue is a matter as defined in
24 RCW 11.96A.030 and is appropriate for determination under RCW
25 11.96A.210 through 11.96A.250.

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

32 4. Special Representative. The nominated special representative
33 . . . is a lawyer licensed to practice before the courts of this state
34 or an individual with special skill or training in the administration
35 of estates or trusts. The nominated special representative does not
36 have an interest in the (~~affected estate or trust~~) matter and is not
37 related to any person interested in the (~~estate or trust~~) matter.
38 The nominated special representative is willing to serve. The

1 petitioner has no reason to believe that the nominated special
2 representative will not act in an independent and prudent manner and in
3 the best interests of the represented parties. (It is recommended that
4 the petitioner also include information specifying the particular
5 skills of the nominated special representative that relate to the
6 matter in issue.)

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

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

15 (OR)

16 an individual with special skill or training in the
17 administration of estates or trusts
18 be appointed special representative for (~~(those beneficiaries who are~~
19 ~~not yet adults, as well as for the unborn, unknown, and unascertained~~
20 ~~beneficiaries))~~ . . . (describe party or parties being represented),
21 who is/are (minors), (incapacitated and without an appointed guardian),
22 (unborn or unascertained) (whose identity or address is unknown), as
23 provided under RCW 11.96A.250.

24 DATED this . . . day of,

25
26 (Petitioner (~~(or petitioner's~~
27 ~~legal representative))~~)

28 VERIFICATION

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

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

32
33 (Petitioner or other person
34 having knowledge)

35 CAPTION ORDER FOR APPOINTMENT

2 THIS MATTER having come on for hearing before this Court on
3 Petition for Appointment of Special Representative filed herein, and it
4 appearing that it would be in the best interests of the (~~(estate)~~
5 ~~(trust)~~) parties related to the matter described in the Petition to
6 appoint a special representative to address the issues that have arisen
7 (~~(concerning the (estate) (trust))~~) in the matter and the Court finding
8 that the facts stated in the Petition are true, now, therefore,

9 IT IS ORDERED that . . . is appointed under RCW 11.96A.250 as
10 special representative (~~(for the (estate) (trust) beneficiaries who are~~
11 ~~not yet adult age, and for unborn, unknown, or unascertained~~
12 ~~beneficiaries to represent their respective interests in the (estate)~~
13 ~~(trust))~~) (describe party or parties being represented) who is/are
14 (minors), (incapacitated and without an appointed guardian), (unborn or
15 unascertained) (whose identity or address is unknown), to represent
16 their respective interests in the matter as provided in RCW 11.96A.250.
17 The special representative shall be discharged of responsibility with
18 respect to the matter as provided in RCW 11.96A.250. The special
19 representative (~~(shall be)~~) is discharged of responsibility with
20 respect to the (~~(estate) (trust)~~) matter at such time as a written
21 agreement is executed resolving the present issues, all as provided in
22 that statute, or if an agreement is not reached within six months from
23 entry of this Order, the special representative appointed under this
24 Order (~~(shall be)~~) is discharged of responsibility, subject to
25 subsequent reappointment under RCW 11.96A.250.

26 DONE IN OPEN COURT this . . . day of,

27
28 JUDGE/COURT COMMISSIONER

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

36 (3) The special representative must be a lawyer licensed to
37 practice before the courts of this state or an individual with special

1 skill or training in the administration of estates or trusts. The
2 special representative may not have an interest in the (~~affected~~
3 ~~estate or trust~~) matter, and may not be related to a person interested
4 in the (~~estate or trust~~) matter. The special representative is
5 entitled to reasonable compensation for services that must be paid from
6 the principal of (~~the estate or trust whose beneficiaries are~~
7 ~~represented~~) an asset involved in the matter.

8 (4) The special representative (~~shall be~~) is discharged from any
9 responsibility and (~~shall~~) will have no further duties with respect
10 to the (~~estate or trust~~) matter or with respect to any (~~person~~
11 ~~interested in the estate or trust~~) party, on the earlier of: (a) The
12 expiration of six months from the date the special representative was
13 appointed unless the order appointing the special representative
14 provides otherwise, or (b) the execution of the written agreement by
15 all parties or their virtual representatives. Any action against a
16 special representative must be brought within the time limits provided
17 by RCW 11.96A.070(3)(c)(i).

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

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

22 (1) A trust may be created for a noncharitable purpose without a
23 definite or definitely ascertainable beneficiary or for a noncharitable
24 but otherwise valid purpose to be selected by the trustee. The trust
25 may not be enforced for longer than the time period specified in RCW
26 11.98.130 as the period during which a trust cannot be deemed to
27 violate the rule against perpetuities;

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

32 (3) Property of a trust authorized by this section may be applied
33 only to its intended use, except to the extent the court determines
34 that the value of the trust property exceeds the amount required for
35 the intended use. Except as otherwise provided in the terms of the
36 trust, property not required for the intended use must be distributed
37 to the trustor, if then living, otherwise to the trustor's successors

1 in interest. Successors in interest include the beneficiaries under
2 the trustor's will, if the trustor has a will, or, in the absence of an
3 effective will provision, the trustor's heirs.

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

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

8 (2) Subject to the rights of persons dealing with or assisting the
9 trustee as provided in RCW (~~11.98.090~~) 11.98.105, a sale,
10 encumbrance, or other transaction involving the investment or
11 management of trust property entered into by the trustee for the
12 trustee's own personal account or which is otherwise affected by a
13 conflict between the trustee's fiduciary and personal interests is
14 voidable by a beneficiary affected by the transaction unless:

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

16 (b) The transaction was approved by the court or approved in a
17 nonjudicial binding agreement in compliance with RCW 11.96A.210 through
18 11.96A.250;

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

21 (d) The beneficiary consented to the trustee's conduct, ratified
22 the transaction, or released the trustee in compliance with RCW
23 11.98.108; or

24 (e) The transaction involves a contract entered into or claim
25 acquired by the trustee before the person became or contemplated
26 becoming trustee.

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

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

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

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

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

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

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

8 (5) An investment by a trustee in securities of an investment
9 company or investment trust to which the trustee, or its affiliate,
10 provides services in a capacity other than as trustee is not presumed
11 to be affected by a conflict between personal and fiduciary interests
12 if the investment complies with the prudent investor rule of chapter
13 11.100 RCW. In addition to its compensation for acting as trustee, the
14 trustee may be compensated by the investment company or investment
15 trust for providing those services out of fees charged to the trust.
16 If the trustee receives compensation from the investment company or
17 investment trust for providing investment advisory or investment
18 management services, the trustee must at least annually notify the
19 ~~((persons entitled under RCW 11.106.020 to receive a copy of the~~
20 ~~trustee's annual report of the rate and method by which that~~
21 ~~compensation was determined)) permissible distributees of the rate and
22 method by which that compensation was determined. The obligation of
23 the trustee to provide the notice described in this section may be
24 waived or modified by the trustor in the trust document or in a
25 separate writing, made at any time, that is delivered to the trustee.~~

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

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

30 (b) Payment of reasonable compensation to the trustee and any
31 affiliate providing services to the trust, provided total compensation
32 is reasonable;

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

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

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

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

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

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

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

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

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

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

22 (b) To the extent the trust consists of property other than
23 community property, each trustor may revoke or amend the trust with
24 regard to the portion of the trust property attributable to that
25 trustor's contribution;

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

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

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

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

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

36 (A) A later will or codicil that expressly refers to the trust or

1 specifically devises property that would otherwise have passed
2 according to the terms of the trust; or

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

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

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

10 (5) A trustor's powers with respect to (~~revocation, amendment, or~~
11 ~~distribution of trust property may be exercised by an agent under a~~
12 ~~power of attorney only to the extent expressly authorized by the terms~~
13 ~~of the power)) the revocation or amendment of a trust or distribution
14 of the property of a trust, may be exercised by the trustor's agent
15 under a power of attorney only to the extent specified in the power of
16 attorney document, as provided in RCW 11.94.050(1) and to the extent
17 consistent with or expressly authorized by the trust agreement.~~

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

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

26 (8) This section does not limit or affect operation of RCW
27 11.96A.220 through 11.96A.240.

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

30 This chapter does not apply to resulting trusts, constructive
31 trusts, business trusts where certificates of beneficial interest are
32 issued to the beneficiaries, investment trusts, voting trusts,
33 insurance trusts prior to the death of the insured, trusts in the
34 nature of mortgages or pledges(~~, trusts created by judgment or decree~~
35 ~~of a federal court or of the superior court when not sitting in~~
36 ~~probate)), liquidation trusts or trusts for the sole purpose of paying~~

1 dividends, interest or interest coupons, salaries, wages or pensions;
2 nor does this chapter apply to personal representatives.

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

5 The trustee or trustees appointed by any will, deed, or agreement
6 executed (~~(shall)~~) must mail or deliver at least annually to each
7 (~~(adult income trust beneficiary)~~) permissible distributee, as defined
8 in section 8 of this act, a written itemized statement of all current
9 receipts and disbursements made by the trustee of the funds of the
10 trust both principal and income, and upon the request of any such
11 beneficiary (~~(shall)~~) must furnish the beneficiary an itemized
12 statement of all property then held by that trustee, and may also file
13 any such statement in the superior court of the county in which the
14 trustee or one of the trustees resides.

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

17 The intended use of the principal or income can be enforced by a
18 person designated for that purpose in the trust instrument, by the
19 person having custody of an animal that is a beneficiary of the trust,
20 or by a person appointed by a court upon application to it by any
21 person. Such person is considered to be a permissible distributee, as
22 defined in section 8 of this act, of the trust. A person with an
23 interest in the welfare of the animal may petition for an order
24 appointing or removing a person designated or appointed to enforce the
25 trust.

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

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

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

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

33 (4) If a right is acquired, extinguished, or barred upon the
34 expiration of a prescribed period that has commenced to run under any

1 other statute before January 1, 2013, that statute continues to apply
2 to the right even if it has been repealed or superseded.

--- END ---