

2 **SHB 2270** - CONF REPT
3 By Conference Committee

4 ADOPTED 3/9/94

5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 11.02.005 and 1993 c 73 s 1 are each amended to read
8 as follows:

9 When used in this title, unless otherwise required from the
10 context:

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

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

18 (3) "Representation" refers to a method of determining distribution
19 in which the takers are in unequal degrees of kinship with respect to
20 the intestate, and is accomplished as follows: After first determining
21 who, of those entitled to share in the estate, are in the nearest
22 degree of kinship, the estate is divided into equal shares, the number
23 of shares being the sum of the number of persons who survive the
24 intestate who are in the nearest degree of kinship and the number of
25 persons in the same degree of kinship who died before the intestate but
26 who left issue surviving the intestate; each share of a deceased person
27 in the nearest degree shall be divided among those of the
28 (~~intestate's~~) deceased person's issue who survive the intestate and
29 have no ancestor then living who is in the line of relationship between
30 them and the intestate, those more remote in degree taking together the
31 share which their ancestor would have taken had he or she survived the
32 intestate. Posthumous children are considered as living at the death
33 of their parent.

34 (4) "Issue" includes all the lawful lineal descendants of the
35 ancestor and all lawfully adopted children.

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

5 (6) "Heirs" denotes those persons, including the surviving spouse,
6 who are entitled under the statutes of intestate succession to the real
7 and personal property of a decedent on the decedent's death intestate.

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

12 (8) "Will" means an instrument validly executed as required by RCW
13 11.12.020 (~~and includes all codicils~~).

14 (9) "Codicil" means (~~an instrument that is validly executed in the~~
15 ~~manner provided by this title for a will and that refers to an existing~~
16 ~~will for the purpose of altering or changing the same, and which need~~
17 ~~not be attached thereto~~) a will that modifies or partially revokes an
18 existing earlier will. A codicil need not refer to or be attached to
19 the earlier will.

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

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

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

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

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

36 (15) "Nonprobate asset" means those rights and interests of a
37 person having beneficial ownership of an asset that pass on the
38 person's death under a written instrument or arrangement other than the
39 person's will. "Nonprobate asset" includes, but is not limited to, a

1 right or interest passing under a joint tenancy with right of
2 survivorship, joint bank account with right of survivorship, payable on
3 death or trust bank account or security, deed or conveyance if
4 possession has been postponed until the death of the person, trust of
5 which the person is grantor and that becomes effective or irrevocable
6 only upon the person's death, community property agreement, individual
7 retirement account or bond, or note or other contract the payment or
8 performance of which is affected by the death of the person.
9 "Nonprobate asset" does not include: A payable-on-death provision of
10 a life insurance policy, annuity, or other similar contract, or of an
11 employee benefit plan; a right or interest passing by descent and
12 distribution under chapter 11.04 RCW; a right or interest if, before
13 death, the person has irrevocably transferred the right or interest,
14 the person has waived the power to transfer it or, in the case of
15 contractual arrangement, the person has waived the unilateral right to
16 rescind or modify the arrangement; or a right or interest held by the
17 person solely in a fiduciary capacity.

18 (16) "Internal Revenue Code" means the United States Internal
19 Revenue Code of 1986, as amended or renumbered on (~~July 25, 1993~~) the
20 effective date of this section.

21 (~~(16)~~) Words that import the singular number may also be applied
22 to the plural of persons and things.

23 (~~(17)~~) Words importing the masculine gender only may be extended
24 to females also.

25 **Sec. 2.** RCW 11.07.010 and 1993 c 236 s 1 are each amended to read
26 as follows:

27 (1) This section applies to all nonprobate assets, wherever
28 situated, held at the time of entry by a superior court of this state
29 of a decree of dissolution of marriage or a declaration of invalidity.

30 (2)(a) If a marriage is dissolved or invalidated, a provision made
31 prior to that event that relates to the payment or transfer at death of
32 the decedent's interest in a nonprobate asset in favor of or granting
33 an interest or power to the decedent's former spouse is revoked. A
34 provision affected by this section must be interpreted, and the
35 nonprobate asset affected passes, as if the former spouse failed to
36 survive the decedent, having died at the time of entry of the decree of
37 dissolution or declaration of invalidity.

38 (b) This subsection does not apply if and to the extent that:

1 (i) The instrument governing disposition of the nonprobate asset
2 expressly provides otherwise;

3 (ii) The decree of dissolution or declaration of invalidity
4 requires that the decedent maintain a nonprobate asset for the benefit
5 of a former spouse or children of the marriage, payable on the
6 decedent's death either outright or in trust, and other nonprobate
7 assets of the decedent fulfilling such a requirement for the benefit of
8 the former spouse or children of the marriage do not exist at the
9 decedent's death; or

10 (iii) If not for this subsection, the decedent could not have
11 effected the revocation by unilateral action because of the terms of
12 the decree or declaration, or for any other reason, immediately after
13 the entry of the decree of dissolution or declaration of invalidity.

14 (3)(a) A payor or other third party in possession or control of a
15 nonprobate asset at the time of the decedent's death is not liable for
16 making a payment or transferring an interest in a nonprobate asset to
17 a decedent's former spouse whose interest in the nonprobate asset is
18 revoked under this section, or for taking another action in reliance on
19 the validity of the instrument governing disposition of the nonprobate
20 asset, before the payor or other third party has actual knowledge of
21 the dissolution or other invalidation of marriage. A payor or other
22 third party is liable for a payment or transfer made or other action
23 taken after the payor or other third party has actual knowledge of a
24 revocation under this section.

25 (b) This section does not require a payor or other third party to
26 pay or transfer a nonprobate asset to a beneficiary designated in a
27 governing instrument affected by the dissolution or other invalidation
28 of marriage, or to another person claiming an interest in the
29 nonprobate asset, if the payor or third party has actual knowledge of
30 the existence of a dispute between the former spouse and the
31 beneficiaries or other persons concerning rights of ownership of the
32 nonprobate asset as a result of the application of this section among
33 the former spouse and the beneficiaries or among other persons, or if
34 the payor or third party is otherwise uncertain as to who is entitled
35 to the nonprobate asset under this section. In such a case, the payor
36 or third party may, without liability, notify in writing all
37 beneficiaries or other persons claiming an interest in the nonprobate
38 asset of either the existence of the dispute or its uncertainty as to
39 who is entitled to payment or transfer of the nonprobate asset. The

1 payor or third party may also, without liability, refuse to pay or
2 transfer a nonprobate asset in such a circumstance to a beneficiary or
3 other person claiming an interest until the time that either:

4 (i) All beneficiaries and other interested persons claiming an
5 interest have consented in writing to the payment or transfer; or

6 (ii) The payment or transfer is authorized or directed by a court
7 of proper jurisdiction.

8 (c) Notwithstanding subsections (1) and (2) of this section and (a)
9 and (b) of this subsection, a payor or other third party having actual
10 knowledge of the existence of a dispute between beneficiaries or other
11 persons concerning rights to a nonprobate asset as a result of the
12 application of this section may condition the payment or transfer of
13 the nonprobate asset on execution, in a form and with security
14 acceptable to the payor or other third party, of a bond in an amount
15 that is double the fair market value of the nonprobate asset at the
16 time of the decedent's death or the amount of an adverse claim,
17 whichever is the lesser, or of a similar instrument to provide security
18 to the payor or other third party, indemnifying the payor or other
19 third party for any liability, loss, damage, costs, and expenses for
20 and on account of payment or transfer of the nonprobate asset.

21 (d) As used in this subsection, "actual knowledge" means, for a
22 payor or other third party in possession or control of the nonprobate
23 asset at or following the decedent's death, written notice to the payor
24 or other third party, or to an officer of a payor or third party in the
25 course of his or her employment, received after the decedent's death
26 and within a time that is sufficient to afford the payor or third party
27 a reasonable opportunity to act upon the knowledge. The notice must
28 identify the nonprobate asset with reasonable specificity. The notice
29 also must be sufficient to inform the payor or other third party of the
30 revocation of the provisions in favor of the decedent's spouse by
31 reason of the dissolution or invalidation of marriage, or to inform the
32 payor or third party of a dispute concerning rights to a nonprobate
33 asset as a result of the application of this section. Receipt of the
34 notice for a period of more than thirty days is presumed to be received
35 within a time that is sufficient to afford the payor or third party a
36 reasonable opportunity to act upon the knowledge, but receipt of the
37 notice for a period of less than five business days is presumed not to
38 be a sufficient time for these purposes. These presumptions may be
39 rebutted only by clear and convincing evidence to the contrary.

1 (4)(a) A person who purchases a nonprobate asset from a former
2 spouse or other person, for value and without actual knowledge, or who
3 receives from a former spouse or other person payment or transfer of a
4 nonprobate asset without actual knowledge and in partial or full
5 satisfaction of a legally enforceable obligation, is neither obligated
6 under this section to return the payment, property, or benefit nor is
7 liable under this section for the amount of the payment or the value of
8 the nonprobate asset. However, a former spouse or other person who,
9 with actual knowledge, not for value, or not in satisfaction of a
10 legally enforceable obligation, receives payment or transfer of a
11 nonprobate asset to which that person is not entitled under this
12 section is obligated to return the payment or nonprobate asset, or is
13 personally liable for the amount of the payment or value of the
14 nonprobate asset, to the person who is entitled to it under this
15 section.

16 (b) As used in this subsection, "actual knowledge" means, for a
17 person described in (a) of this subsection who purchases or receives a
18 nonprobate asset from a former spouse or other person, personal
19 knowledge or possession of documents relating to the revocation upon
20 dissolution or invalidation of marriage of provisions relating to the
21 payment or transfer at the decedent's death of the nonprobate asset,
22 received within a time after the decedent's death and before the
23 purchase or receipt that is sufficient to afford the person purchasing
24 or receiving the nonprobate asset reasonable opportunity to act upon
25 the knowledge. Receipt of the personal knowledge or possession of the
26 documents for a period of more than thirty days is presumed to be
27 received within a time that is sufficient to afford the payor or third
28 party a reasonable opportunity to act upon the knowledge, but receipt
29 of the notice for a period of less than five business days is presumed
30 not to be a sufficient time for these purposes. These presumptions may
31 be rebutted only by clear and convincing evidence to the contrary.

32 (5) As used in this section, "nonprobate asset" means those rights
33 and interests of a person having beneficial ownership of an asset that
34 pass on the person's death under only the following written instruments
35 or arrangements other than the decedent's will:

36 (a) A payable-on-death provision of a life insurance policy,
37 employee benefit plan, annuity or similar contract, or individual
38 retirement account;

1 (b) A payable-on-death, trust, or joint with right of survivorship
2 bank account;

3 (c) A trust of which the person is a grantor and that becomes
4 effective or irrevocable only upon the person's death; or

5 (d) Transfer on death beneficiary designations of a transfer on
6 death or pay on death security, if such designations are authorized
7 under Washington law.

8 (6) This section is remedial in nature and applies as of July 25,
9 1993, to decrees of dissolution and declarations of invalidity entered
10 after July 24, 1993, and this section applies as of the effective date
11 of this act to decrees of dissolution and declarations of invalidity
12 entered before July 25, 1993.

13 **Sec. 3.** RCW 11.08.170 and 1990 c 225 s 1 are each amended to read
14 as follows:

15 Escheat property may be probated under the provisions of the
16 probate laws of this state. Whenever such probate proceedings are
17 instituted, whether by special administration or otherwise, the
18 petitioner shall promptly notify the department of revenue in writing
19 thereof on forms furnished by the department of revenue to the county
20 clerks. Thereafter, the department of revenue shall be served with
21 written notice at least twenty days prior to any hearing on proceedings
22 involving the valuation or sale of property, on any petition for the
23 allowance of fees, and on all interim reports, final accounts or
24 petitions for the determination of heirship. Like notice shall be
25 given of the presentation of any claims to the court for allowance.
26 Failure to furnish such notice shall be deemed jurisdictional and any
27 order of the court entered without such notice shall be void. The
28 department of revenue may waive the provisions of this section in its
29 discretion. The department shall be deemed to have waived its right to
30 administer in such probate proceedings under RCW 11.28.120(~~(+3)~~) (5)
31 unless application for appointment of the director or the director's
32 designee is made within forty days immediately following receipt of
33 notice of institution of proceedings.

34 NEW SECTION. **Sec. 4.** This chapter applies in all instances in
35 which no other abatement scheme is expressly provided.

1 NEW SECTION. Sec. 5. (1) Except as provided in subsection (2) of
2 this section, property of a decedent abates, without preference as
3 between real and personal property, in the following order:

4 (a) Intestate property;

5 (b) Residuary gifts;

6 (c) General gifts;

7 (d) Specific gifts.

8 For purposes of abatement a demonstrative gift, defined as a
9 general gift charged on any specific property or fund, is deemed a
10 specific gift to the extent of the value of the property or fund on
11 which it is charged, and a general gift to the extent of a failure or
12 insufficiency of that property or fund. Abatement within each
13 classification is in proportion to the amounts of property each of the
14 beneficiaries would have received if full distribution of the property
15 had been made in accordance with the terms of the will.

16 (2) If the will expresses an order of abatement, or if the
17 testamentary plan or the express or implied purpose of the devise would
18 be defeated by the order of abatement stated in subsection (1) of this
19 section, a gift abates as may be found necessary to give effect to the
20 intention of the testator.

21 (3) If the subject of a preferred gift is sold, diminished, or
22 exhausted incident to administration, not including satisfaction of
23 debts or liabilities according to their community or separate status
24 under section 7 of this act, abatement must be achieved by appropriate
25 adjustments in, or contribution from, other interests in the remaining
26 assets.

27 (4) To the extent that the whole of the community property is
28 subject to abatement, the shares of the decedent and of the surviving
29 spouse in the community property abate equally.

30 (5) If required under section 8 of this act, nonprobate assets must
31 abate with those disposed of under the will and passing by intestacy.

32 NEW SECTION. Sec. 6. To the extent that a gift is to be satisfied
33 out of a source that consists of both separate and community property,
34 unless otherwise indicated in the will it is presumed to be a gift from
35 separate and community property in proportion to their relative value
36 in the property or fund from which the gift is to be satisfied.

1 NEW SECTION. Sec. 7. (1) A community debt or liability is charged
2 against the entire community property, with the surviving spouse's half
3 and the decedent spouse's half charged equally.

4 (2) A separate debt or liability is charged first against separate
5 property, and if that is insufficient against the balance of decedent's
6 half of community property remaining after community debts and
7 liabilities are satisfied.

8 (3) A community debt or liability that is also the separate debt or
9 liability of the decedent is charged first against the whole of the
10 community property and then against the decedent's separate property.

11 (4) An expense of administration is charged against the separate
12 property and the decedent's half of the community property in
13 proportion to the relative value of the property, unless a different
14 charging of expenses is shown to be appropriate under the circumstances
15 including against the surviving spouse's share of the community
16 property.

17 (5) Property of a similar type, community or separate, is
18 appropriated in accordance with the abatement priorities of section 5
19 of this act.

20 (6) Property that is primarily chargeable for a debt or liability
21 is exhausted, in accordance with the abatement priorities of section 5
22 of this act, before resort is had, also in accordance with section 5 of
23 this act, to property that is secondarily chargeable.

24 NEW SECTION. Sec. 8. (1) If abatement is necessary among takers
25 of a nonprobate asset, the court shall adopt the abatement order and
26 limitations set out in sections 5, 6, and 7 of this act, assigning
27 categories in accordance with subsection (2) of this section.

28 (2) A nonprobate transfer must be categorized for purposes of
29 abatement, within the list of priorities set out in section 5(1) of
30 this act, as follows:

31 (a) All nonprobate forms of transfer under which an identifiable
32 nonprobate asset passes to a beneficiary or beneficiaries on the event
33 of the decedent's death, such as, but not limited to, joint tenancies
34 and payable-on-death accounts, are categorized as specific bequests.

35 (b) With respect to all other interests passing under nonprobate
36 forms of transfer, each must be categorized in the manner that is most
37 closely comparable to the nature of the transfer of that interest.

1 (3) If and to the extent that a nonprobate asset is subject to the
2 same obligations as are assets disposed of under the decedent's will,
3 the nonprobate assets abate ratably with the probate assets, within the
4 categories set out in subsection (2) of this section.

5 (4) If the nonprobate instrument of transfer or the decedent's will
6 expresses a different order of abatement, or if the decedent's overall
7 dispositive plan or the express or implied purpose of the transfer
8 would be defeated by the order of abatement stated in subsections (1)
9 through (3) of this section, the nonprobate assets abate as may be
10 found necessary to give effect to the intention of the decedent.

11 NEW SECTION. **Sec. 9.** A new section is added to chapter 11.12 RCW
12 to read as follows:

13 (1) If a will fails to name or provide for a child of the decedent
14 who is born or adopted by the decedent after the will's execution and
15 who survives the decedent, referred to in this section as an "omitted
16 child", the child must receive a portion of the decedent's estate as
17 provided in subsection (3) of this section, unless it appears either
18 from the will or from other clear and convincing evidence that the
19 failure was intentional.

20 (2) In determining whether an omitted child has been named or
21 provided for, the following rules apply:

22 (a) A child identified in a will by name is considered named
23 whether identified as a child or in any other manner.

24 (b) A reference in a will to a class described as the children,
25 descendants, or issue of the decedent who are born after the execution
26 of the will, or words of similar import, constitutes a naming of a
27 person who falls within the class. A reference to another class, such
28 as a decedent's heirs or family, does not constitute such a naming.

29 (c) A nominal interest in an estate does not constitute a provision
30 for a child receiving the interest.

31 (3) The omitted child must receive an amount equal in value to that
32 which the child would have received under RCW 11.04.015 if the decedent
33 had died intestate, unless the court determines on the basis of clear
34 and convincing evidence that a smaller share, including no share at
35 all, is more in keeping with the decedent's intent. In making the
36 determination, the court may consider, among other things, the various
37 elements of the decedent's dispositive scheme, provisions for the
38 omitted child outside the decedent's will, provisions for the

1 decedent's other children under the will and otherwise, and provisions
2 for the omitted child's other parent under the will and otherwise.

3 (4) In satisfying a share provided by this section, the bequests
4 made by the will abate as provided in chapter 11.-- RCW (sections 4
5 through 8 of this act).

6 NEW SECTION. **Sec. 10.** A new section is added to chapter 11.12 RCW
7 to read as follows:

8 (1) If a will fails to name or provide for a spouse of the decedent
9 whom the decedent marries after the will's execution and who survives
10 the decedent, referred to in this section as an "omitted spouse", the
11 spouse must receive a portion of the decedent's estate as provided in
12 subsection (3) of this section, unless it appears either from the will
13 or from other clear and convincing evidence that the failure was
14 intentional.

15 (2) In determining whether an omitted spouse has been named or
16 provided for, the following rules apply:

17 (a) A spouse identified in a will by name is considered named
18 whether identified as a spouse or in any other manner.

19 (b) A reference in a will to the decedent's future spouse or
20 spouses, or words of similar import, constitutes a naming of a spouse
21 whom the decedent later marries. A reference to another class such as
22 the decedent's heirs or family does not constitute a naming of a spouse
23 who falls within the class.

24 (c) A nominal interest in an estate does not constitute a provision
25 for a spouse receiving the interest.

26 (3) The omitted spouse must receive an amount equal in value to
27 that which the spouse would have received under RCW 11.04.015 if the
28 decedent had died intestate, unless the court determines on the basis
29 of clear and convincing evidence that a smaller share, including no
30 share at all, is more in keeping with the decedent's intent. In making
31 the determination the court may consider, among other things, the
32 spouse's property interests under applicable community property or
33 quasi-community property laws, the various elements of the decedent's
34 dispositive scheme, and a marriage settlement or other provision and
35 provisions for the omitted spouse outside the decedent's will.

36 (4) In satisfying a share provided by this section, the bequests
37 made by the will abate as provided in chapter 11.-- RCW (sections 4
38 through 8 of this act).

1 NEW SECTION. **Sec. 11.** A new section is added to chapter 11.12 RCW
2 to read as follows:

3 (1) If, after making a will, the testator's marriage is dissolved
4 or invalidated, all provisions in the will in favor of or granting any
5 interest or power to the testator's former spouse are revoked, unless
6 the will expressly provides otherwise. Provisions affected by this
7 section must be interpreted, and property affected passes, as if the
8 former spouse failed to survive the testator, having died at the time
9 of entry of the decree of dissolution or declaration of invalidity.
10 Provisions revoked by this section are revived by the testator's
11 remarriage to the former spouse. Revocation of certain nonprobate
12 transfers is provided under RCW 11.07.010.

13 (2) This section is remedial in nature and applies to decrees of
14 dissolution and declarations of invalidity entered before, on, or after
15 the effective date of this act.

16 **Sec. 12.** RCW 11.12.040 and 1965 c 145 s 11.12.040 are each amended
17 to read as follows:

18 (1) A will, or any part thereof, can be revoked:

19 ((+1)) (a) By a ~~((written))~~ subsequent will that revokes, or
20 partially revokes, the prior will expressly or by inconsistency; or

21 ((+2)) (b) By being burnt, torn, canceled, obliterated, or
22 destroyed, with the intent and for the purpose of revoking the same, by
23 the testator ~~((himself))~~ or by another person in ~~((his))~~ the presence
24 and by ~~((his))~~ the direction of the testator. If such act is done by
25 any person other than the testator, the direction of the testator and
26 the facts of such injury or destruction must be proved by two
27 witnesses.

28 (2) Revocation of a will in its entirety revokes its codicils,
29 unless revocation of a codicil would be contrary to the testator's
30 intent.

31 **Sec. 13.** RCW 11.12.080 and 1965 c 145 s 11.12.080 are each amended
32 to read as follows:

33 (1) If, after making any will, the testator shall ~~((duly make and))~~
34 execute a ~~((second))~~ later will that wholly revokes the former will,
35 the destruction, cancellation, or revocation of ~~((such second))~~ the
36 later will shall not revive the ((first)) former will, unless it was
37 the testator's intention to revive it.

1 (2) Revocation of a codicil shall revive a prior will or part of a
2 prior will that the codicil would have revoked had it remained in
3 effect at the death of the testator, unless it was the testator's
4 intention not to revive the prior will or part.

5 (3) Evidence that revival was or was not intended includes, in
6 addition to a writing by which the later will or codicil is revoked,
7 the circumstances of the revocation or contemporary or subsequent
8 declarations of the testator.

9 **Sec. 14.** RCW 11.12.110 and 1965 c 145 s 11.12.110 are each amended
10 to read as follows:

11 ~~Unless otherwise provided, when any ((estate shall be devised or~~
12 ~~bequeathed to any child, grandchild, or other relative of the testator,~~
13 ~~and such devisee or legatee shall die before the testator, having~~
14 ~~lineal descendants who survive the testator, such descendants shall~~
15 ~~take the estate, real and personal, as such devisee or legatee would~~
16 ~~have done in the case he had survived the testator; if such descendants~~
17 ~~are all in the same degree of kinship to the predeceased devisee or~~
18 ~~legatee)) property shall be given under a will, or under a trust of~~
19 ~~which the decedent is a grantor and which by its terms becomes~~
20 ~~irrevocable upon the grantor's death, to any issue of a grandparent of~~
21 ~~the decedent and that issue dies before the decedent leaving~~
22 ~~descendants who survive the decedent, those descendants shall take that~~
23 ~~property as the predeceased issue would have done if the predeceased~~
24 ~~issue had survived the decedent. If those descendants are all in the~~
25 ~~same degree of kinship to the predeceased issue they shall take~~
26 ~~equally((τ)) or, if of unequal degree, then those of more remote degree~~
27 ~~shall take by representation with respect to ((such)) the predeceased~~
28 ~~((devisee or legatee. A spouse is not a relative under the provisions~~
29 ~~of this section)) issue.~~

30 **Sec. 15.** RCW 11.12.120 and 1974 ex.s. c 117 s 51 are each amended
31 to read as follows:

32 ~~((Whenever any person having died leaving)) (1) If a will ((which~~
33 ~~has been admitted to probate or established by an adjudication of~~
34 ~~testacy, shall by said will have given, devised or bequeathed unto any~~
35 ~~person, a legacy or a devise upon the condition that said person~~
36 ~~survive him, and not otherwise, such legacy or devise shall lapse and~~
37 ~~fall into the residue of said estate to be distributed according to the~~

1 residuary clause, if there be one, of said will, and if there be none
2 then according to the laws of descent, unless said legatee or devisee,
3 as the case may be, or his heirs, personal representative, or someone
4 in behalf of such legatee or devisee, shall appear before the court
5 which is administering said estate within three years from and after
6 the date the said will was admitted to probate or established by an
7 adjudication of testacy, and prove to the satisfaction of the court
8 that the said legatee or devisee, as the case may be, did in fact
9 survive the testator)) makes a gift to a person on the condition that
10 the person survive the testator and the person does not survive the
11 testator, then, unless otherwise provided, the gift lapses and falls
12 into the residue of the estate to be distributed under the residuary
13 clause of the will, if any, but otherwise according to the laws of
14 descent and distribution.

15 (2) If the will gives the residue to two or more persons, the share
16 of a person who does not survive the testator passes, unless otherwise
17 provided, and subject to RCW 11.12.110, to the other person or persons
18 receiving the residue, in proportion to the interest of each in the
19 remaining part of the residue.

20 (3) The personal representative of the testator, a person who would
21 be affected by the lapse or distribution of a gift under this section,
22 or a guardian ad litem or other representative appointed to represent
23 the interests of a person so affected may petition the court for a
24 determination under this section, and the petition must be heard under
25 the procedures of chapter 11.96 RCW.

26 **Sec. 16.** RCW 11.12.160 and 1965 c 145 s 11.12.160 are each amended
27 to read as follows:

28 ~~((All beneficial devises, legacies, and gifts whatever, made or~~
29 ~~given in any will to a subscribing witness thereto, shall be void~~
30 ~~unless there are two other competent witnesses to the same; but a mere~~
31 ~~charge on the estate of the testator for the payment of debts shall not~~
32 ~~prevent his creditors from being competent witnesses to his will. If~~
33 ~~such witness, to whom any beneficial devise, legacy or gift may have~~
34 ~~been made or given, would have been entitled to any share in the~~
35 ~~testator's estate in case the will is not established, then so much of~~
36 ~~the estate as would have descended or would have been distributed to~~
37 ~~such witness shall be saved to him as will not exceed the value of the~~
38 ~~devise or bequest made to him in the will; and he may recover the same~~

1 ~~from the devisees or legatees named in the will in proportion to and~~
2 ~~out of the parts devised and bequeathed to him.))~~ (1) An interested
3 witness to a will is one who would receive a gift under the will.

4 (2) A will or any of its provisions is not invalid because it is
5 signed by an interested witness. Unless there are at least two other
6 subscribing witnesses to the will who are not interested witnesses, the
7 fact that the will makes a gift to a subscribing witness creates a
8 rebuttable presumption that the witness procured the gift by duress,
9 menace, fraud, or undue influence.

10 (3) If the presumption established under subsection (2) of this
11 section applies and the interested witness fails to rebut it, the
12 interested witness shall take so much of the gift as does not exceed
13 the share of the estate that would be distributed to the witness if the
14 will were not established.

15 (4) The presumption established under subsection (2) of this
16 section has no effect other than that stated in subsection (3) of this
17 section.

18 **Sec. 17.** RCW 11.12.180 and 1965 c 145 s 11.12.180 are each amended
19 to read as follows:

20 ~~((If any person, by last will, devise any real estate to any person~~
21 ~~for the term of such person's life, such devise vests in the devisee an~~
22 ~~estate for life, and unless the remainder is specially devised, it~~
23 ~~shall revert to the heirs at law of the testator.))~~ The Rule in
24 Shelley's Case is abolished as a rule of law and as a rule of
25 construction. If an applicable statute or a governing instrument calls
26 for a future distribution to or creates a future interest in a
27 designated individual's "heirs," "heirs at law," "next of kin,"
28 "relatives," or "family," or language of similar import, the property
29 passes to those persons, including the state under chapter 11.08 RCW,
30 that would succeed to the designated individual's estate under chapter
31 11.04 RCW. The property must pass to those persons as if the
32 designated individual had died when the distribution or transfer of the
33 future interest was to take effect in possession or enjoyment. For
34 purposes of this section and section 18 of this act, the designated
35 individual's surviving spouse is deemed to be an heir, regardless of
36 whether the surviving spouse has remarried.

1 NEW SECTION. **Sec. 18.** A new section is added to chapter 11.12 RCW
2 to read as follows:

3 The Doctrine of Worthier Title is abolished as a rule of law and as
4 a rule of construction. However, the Doctrine of Worthier Title is
5 preserved as a rule of construction if:

6 (1) A grantor has established in inter vivos trust of real
7 property;

8 (2) The grantor has expressly reserved a reversion to himself or
9 herself; and

10 (3) The words "heirs" or "heirs at law" are used by the grantor to
11 describe the quality of the grantor's title in the reversion as an
12 estate in fee simple in the event that the property reverts to the
13 grantor.

14 In all other cases, language in a governing instrument describing the
15 beneficiaries of a donative disposition as the transferor's "heirs,"
16 "heirs at law," "next of kin," "distributees," "relatives," or
17 "family," or language of similar import, does not create or
18 presumptively create a reversionary interest in the transferor.

19 NEW SECTION. **Sec. 19.** (1) Unless expressly exempted by statute,
20 a beneficiary of a nonprobate asset that was subject to satisfaction of
21 the decedent's general liabilities immediately before the decedent's
22 death takes the asset subject to liabilities, claims, estate taxes, and
23 the fair share of expenses of administration reasonably incurred by the
24 personal representative in the transfer of or administration upon the
25 asset. The beneficiary of such an asset is liable to account to the
26 personal representative to the extent necessary to satisfy liabilities,
27 claims, the asset's fair share of expenses of administration, and the
28 asset's share of estate taxes under chapter 83.110 RCW. Before making
29 demand that a beneficiary of a nonprobate asset account to the personal
30 representative, the personal representative shall give notice to the
31 beneficiary, in the manner provided in chapter 11.96 RCW, that the
32 beneficiary is liable to account under this section.

33 (2) The following rules govern in applying subsection (1) of this
34 section:

35 (a) A beneficiary of property passing at death under a community
36 property agreement takes the property subject to the decedent's
37 liabilities, claims, estate taxes, and administration expenses as
38 described in subsection (1) of this section. However, assets existing

1 as community or separate property immediately before the decedent's
2 death under the community property agreement are subject to the
3 decedent's liabilities and claims to the same extent that they would
4 have been had they been assets of the probate estate.

5 (b) A beneficiary of property held in joint tenancy form with right
6 of survivorship, including without limitation United States savings
7 bonds or similar obligations, takes the property subject to the
8 decedent's liabilities, claims, estate taxes, and administration
9 expenses as described in subsection (1) of this section to the extent
10 of the decedent's beneficial ownership interest in the property
11 immediately before death.

12 (c) A beneficiary of payable-on-death or trust bank accounts,
13 bonds, securities, or similar obligations, including without limitation
14 United States bonds or similar obligations, takes the property subject
15 to the decedent's liabilities, claims, estate taxes, and administration
16 expenses as described in subsection (1) of this section, to the extent
17 of the decedent's beneficial ownership interest in the property
18 immediately before death.

19 (d) A beneficiary of deeds or conveyances made by the decedent if
20 possession has been postponed until the death of the decedent takes the
21 property subject to the decedent's liabilities, claims, estate taxes,
22 and administration expenses as described in subsection (1) of this
23 section, to the extent of the decedent's beneficial ownership interest
24 in the property immediately before death.

25 (e) A trust for the decedent's use of which the decedent is the
26 grantor is subject to the decedent's liabilities, claims, estate taxes,
27 and administration expenses as described in subsection (1) of this
28 section, to the same extent as the trust was subject to claims of the
29 decedent's creditors immediately before death under RCW 19.36.020.

30 (f) A trust not for the use of the grantor but of which the
31 decedent is the grantor and that becomes effective or irrevocable only
32 upon the decedent's death is subject to the decedent's claims,
33 liabilities, estate taxes, and expenses of administration as described
34 in subsection (1) of this section.

35 (g) Anything in this section to the contrary notwithstanding,
36 nonprobate assets that existed as community property immediately before
37 the decedent's death are subject to the decedent's liabilities and
38 claims to the same extent that they would have been had they been
39 assets of the probate estate.

1 (h) The liability of a beneficiary of life insurance is governed by
2 chapter 48.18 RCW.

3 (i) The liability of a beneficiary of pension or retirement
4 employee benefits is governed by chapter 6.15 RCW.

5 (j) An inference may not be drawn from (a) through (i) of this
6 subsection that a beneficiary of nonprobate assets other than those
7 assets specifically described in (a) through (i) of this subsection
8 does or does not take the assets subject to claims, liabilities, estate
9 taxes, and administration expenses as described in subsection (1) of
10 this section.

11 (3) Nothing in this section derogates from the rights of a person
12 interested in the estate to recover tax under chapter 83.110 RCW or
13 from the liability of any beneficiary for estate tax under chapter
14 83.110 RCW.

15 **Sec. 20.** RCW 11.20.070 and 1965 c 145 s 11.20.070 are each amended
16 to read as follows:

17 ~~((Whenever any will is lost or destroyed, the court may take proof
18 of the execution and validity of such will and establish it, notice to
19 all persons interested having been first given. Such proof shall be
20 reduced to writing and signed by the witnesses and filed with the clerk
21 of the court.~~

22 ~~No will shall be allowed to be proved as a lost or destroyed will
23 unless it is proved to have been in existence at the time of the death
24 of the testator, or is shown to have been destroyed, canceled or
25 mutilated in whole or in part as a result of actual or constructive
26 fraud or in the course of an attempt to change the will in whole or in
27 part, which attempt has failed, or as the result of a mistake of fact,
28 nor unless its provisions are clearly and distinctly proved by at least
29 two witnesses, and when any such will is so established, the provisions
30 thereof shall be distinctly stated in the judgment establishing it, and
31 such judgment shall be recorded as wills are required to be recorded.
32 Executors of such will or administrators with the will annexed)) (1) If
33 a will has been lost or destroyed under circumstances such that the
34 loss or destruction does not have the effect of revoking the will, the
35 court may take proof of the execution and validity of the will and
36 establish it, notice to all persons interested having been first given.
37 The proof must be reduced to writing and signed by any witnesses who~~

1 have testified as to the execution and validity, and must be filed with
2 the clerk of the court.

3 (2) The provisions of a lost or destroyed will must be proved by
4 clear, cogent, and convincing evidence, consisting at least in part of
5 a witness to either its contents or the authenticity of a copy of the
6 will.

7 (3) When a lost or destroyed will is established under subsections
8 (1) and (2) of this section, its provisions must be distinctly stated
9 in the judgment establishing it, and the judgment must be recorded as
10 wills are required to be recorded. A personal representative may be
11 appointed by the court in the same manner as is herein provided with
12 reference to original wills presented to the court for probate.

13 **Sec. 21.** RCW 11.24.010 and 1971 c 7 s 1 are each amended to read
14 as follows:

15 If any person interested in any will shall appear within four
16 months immediately following the probate or rejection thereof, and by
17 petition to the court having jurisdiction contest the validity of said
18 will, or appear to have the will proven which has been rejected, he or
19 she shall file a petition containing his or her objections and
20 exceptions to said will, or to the rejection thereof. (~~Issue shall be~~
21 ~~made up, tried and determined in said court respecting the competency~~
22 ~~of the deceased to make a last will and testament, or respecting the~~
23 ~~execution by a deceased of such last will and testament under restraint~~
24 ~~or undue influence or fraudulent representations, or for any other~~
25 ~~cause affecting the validity of such will.)) Issues respecting the
26 competency of the deceased to make a last will and testament, or
27 respecting the execution by a deceased of the last will and testament
28 under restraint or undue influence or fraudulent representations, or
29 for any other cause affecting the validity of the will or a part of it,
30 shall be tried and determined by the court.~~

31 If no person shall appear within the time ((aforesaid)) under this
32 section, the probate or rejection of such will shall be binding and
33 final.

34 **Sec. 22.** RCW 11.24.040 and 1965 c 145 s 11.24.040 are each amended
35 to read as follows:

36 If, upon the trial of said issue, it shall be decided that the will
37 or a part of it is for any reason invalid, or that it is not

1 sufficiently proved to have been the last will of the testator, the
2 will or part and probate thereof shall be annulled and revoked(~~(, and~~
3 ~~thereupon and thereafter the powers of the executor or administrator~~
4 ~~with the will annexed shall cease, but such executor or administrator)~~)
5 and to that extent the powers of the personal representative shall
6 cease, but the personal representative shall not be liable for any act
7 done in good faith previous to such annulling or revoking.

8 **Sec. 23.** RCW 11.28.120 and 1985 c 133 s 1 are each amended to read
9 as follows:

10 Administration of ~~((the))~~ an estate ~~((of))~~ if the ~~((person dying))~~
11 decedent died intestate or if the personal representative or
12 representatives named in the will declined or were unable to serve
13 shall be granted to some one or more of the persons hereinafter
14 mentioned, and they shall be respectively entitled in the following
15 order:

16 (1) The surviving ~~((husband or wife))~~ spouse, or such person as he
17 or she may request to have appointed.

18 (2) The next of kin in the following order: (a) Child or children;
19 (b) father or mother; (c) brothers or sisters; (d) grandchildren; (e)
20 nephews or nieces.

21 (3) The trustee named by the decedent in an inter vivos trust
22 instrument, testamentary trustee named in the will, guardian of the
23 person or estate of the decedent, or attorney in fact appointed by the
24 decedent, if any such a fiduciary controlled or potentially controlled
25 substantially all of the decedent's probate and nonprobate assets.

26 (4) One or more of the beneficiaries or transferees of the
27 decedent's probate or nonprobate assets.

28 (5) The director of revenue, or the director's designee, for those
29 estates having property subject to the provisions of chapter 11.08 RCW;
30 however, the director may waive this right.

31 ~~((+4))~~ (6) One or more of the principal creditors.

32 ~~((+5))~~ (7) If the persons so entitled shall fail for more than
33 forty days after the death of the ~~((intestate))~~ decedent to present a
34 petition for letters of administration, or if it appears to the
35 satisfaction of the court that there ~~((are))~~ is no ~~((relatives or))~~
36 next of kin, as above specified eligible to appointment, or they waive
37 their right, and there are no principal creditor or creditors, or such

1 creditor or creditors waive their right, then the court may appoint any
2 suitable person to administer such estate.

3 **Sec. 24.** RCW 11.28.237 and 1977 ex.s. c 234 s 6 are each amended
4 to read as follows:

5 Within twenty days after appointment, the personal representative
6 of the estate of a decedent shall cause written notice of his or her
7 appointment and the pendency of said probate proceedings, to be served
8 personally or by mail to each heir, legatee and devisee of the estate
9 and each beneficiary or transferee of a nonprobate asset of the
10 decedent whose names and addresses are known to him or her, and proof
11 of such mailing or service shall be made by affidavit and filed in the
12 cause.

13 **Sec. 25.** RCW 11.40.010 and 1991 c 5 s 1 are each amended to read
14 as follows:

15 Every personal representative shall, after appointment and
16 qualification, give a notice to the creditors of the deceased, stating
17 such appointment and qualification as personal representative and
18 requiring all persons having claims against the deceased to serve the
19 same on the personal representative or the estate's attorney of record,
20 and file an executed copy thereof with the clerk of the court, within
21 four months after the date of the first publication of such notice
22 described in this section or within four months after the date of the
23 filing of the copy of such notice with the clerk of the court,
24 whichever is the later, or within the time otherwise provided in RCW
25 11.40.013. The four-month time period after the later of the date of
26 the first publication of the notice to creditors or the date of the
27 filing of such notice with the clerk of the court is referred to in
28 this chapter as the "four-month time limitation." Such notice shall be
29 given as follows:

30 (1) The personal representative shall give actual notice, as
31 provided in RCW 11.40.013, to such creditors who become known to the
32 personal representative within such four-month time limitation;

33 (2) The personal representative shall cause such notice to be
34 published once in each week for three successive weeks in the county in
35 which the estate is being administered; and

36 (3) The personal representative shall file a copy of such notice
37 with the clerk of the court.

1 Except as otherwise provided in RCW 11.40.011 or 11.40.013, any
2 claim not filed within the four-month time limitation shall be forever
3 barred, if not already barred by any otherwise applicable statute of
4 limitations. This bar is effective as to claims against both the
5 decedent's probate assets and nonprobate assets as described in section
6 19 of this act. Proof by affidavit of the giving and publication of
7 such notice shall be filed with the court by the personal
8 representative.

9 Acts of a notice agent in complying with chapter ..., Laws of 1994
10 (this act) may be adopted and ratified by the personal representative
11 as if done by the personal representative in complying with this
12 chapter, except that if at the time of the appointment and
13 qualification of the personal representative a notice agent had
14 commenced nonprobate notice to creditors under chapter 11.-- RCW
15 (sections 31 through 48 of this act), the personal representative shall
16 give published notice as provided in section 48 of this act.

17 **Sec. 26.** RCW 11.40.013 and 1989 c 333 s 4 are each amended to read
18 as follows:

19 The actual notice described in RCW 11.40.010(1), as to creditors
20 becoming known to the personal representative within the four-month
21 time limitation, shall be given the creditors by personal service or
22 regular first class mail, addressed to the creditor's last known
23 address, postage prepaid. The actual notice shall be given before the
24 later of the expiration of the four-month time limitation or thirty
25 days after any creditor became known to the personal representative
26 within the four-month time limitation. Any known creditor is barred
27 unless the creditor has filed a claim, as otherwise provided in this
28 chapter, within the four-month time limitation or within thirty days
29 following the date of actual notice to that creditor, whichever is
30 later. If notice is given by mail, the date of mailing shall be the
31 date of notice. This bar is effective as to claims against both the
32 decedent's probate assets and nonprobate assets.

33 **Sec. 27.** RCW 11.40.015 and 1989 c 333 s 6 are each amended to read
34 as follows:

1 Notice under RCW 11.40.010 shall be in substantially the following
2 form:

3)
4 CAPTION) No.
5 OF CASE)
6) NOTICE TO CREDITORS
7)
8)

9 The personal representative named below has been appointed and has
10 qualified as personal representative of this estate. Persons having
11 claims against the ((deceased)) decedent must, prior to the time such
12 claims would be barred by any otherwise applicable statute of
13 limitations, serve their claims on the personal representative or the
14 attorneys of record at the address stated below and file an executed
15 copy of the claim with the Clerk of this Court within four months after
16 the date of first publication of this notice or within four months
17 after the date of the filing of the copy of this Notice with the Clerk
18 of the Court, whichever is later or, except under those provisions
19 included in RCW 11.40.011 or 11.40.013, the claim will be forever
20 barred. This bar is effective as to claims against both the probate
21 assets and nonprobate assets of the decedent.

22 DATE OF FILING COPY OF NOTICE TO CREDITORS with Clerk of
23 Court:
24 DATE OF FIRST PUBLICATION:
25 ,
26 Personal Representative
27 Address
28 Attorney for Estate:
29 Address:
30 Telephone:

31 **Sec. 28.** RCW 11.40.040 and 1974 ex.s. c 117 s 36 are each amended
32 to read as follows:

33 Every claim which has been allowed by the personal representative
34 shall be ranked among the acknowledged debts of the estate to be paid
35 expeditiously in the course of administration.

1 **Sec. 29.** RCW 11.40.080 and 1988 c 64 s 22 are each amended to read
2 as follows:

3 No holder of any claim against a decedent shall maintain an action
4 thereon, unless the claim shall have been first presented as (~~herein~~)
5 provided in this chapter. Nothing in this chapter affects (~~the notice~~
6 ~~under~~) RCW 82.32.240.

7 **Sec. 30.** RCW 11.48.010 and 1965 c 145 s 11.48.010 are each amended
8 to read as follows:

9 It shall be the duty of every personal representative to settle the
10 estate, including the administration of any nonprobate assets within
11 control of the personal representative under section 19 of this act, in
12 his or her hands as rapidly and as quickly as possible, without
13 sacrifice to the probate or nonprobate estate. ((He)) The personal
14 representative shall collect all debts due the deceased and pay all
15 debts as hereinafter provided. ((He)) The personal representative
16 shall be authorized in his or her own name to maintain and prosecute
17 such actions as pertain to the management and settlement of the estate,
18 and may institute suit to collect any debts due the estate or to
19 recover any property, real or personal, or for trespass of any kind or
20 character.

21 NEW SECTION. **Sec. 31.** (1) Subject to the conditions stated in
22 this section and if no personal representative has been appointed and
23 qualified in the decedent's estate in Washington, the following members
24 of a group, defined as the "qualified group", are qualified to give
25 "nonprobate notice to creditors" of the decedent:

- 26 (a) Decedent's surviving spouse;
27 (b) The person appointed in an agreement made under chapter 11.96
28 RCW to give nonprobate notice to creditors of the decedent;
29 (c) The trustee, except a testamentary trustee under the will of
30 the decedent not probated in another state, having authority over any
31 of the property of the decedent; and
32 (d) A person who has received any property of the decedent by
33 reason of the decedent's death.

34 (2) The "included property" means the property of the decedent that
35 was subject to satisfaction of the decedent's general liabilities
36 immediately before the decedent's death and that either:

- 37 (a) Constitutes a nonprobate asset; or

1 (b) Has been received, or is entitled to be received, either under
2 chapter 11.62 RCW or by the personal representative of the decedent's
3 probate estate administered outside the state of Washington, or both.

4 (3) The qualified person shall give the nonprobate notice to
5 creditors. The "qualified person" must be:

6 (a) The person in the qualified group who has received, or is
7 entitled to receive, by reason of the decedent's death, all, or
8 substantially all, of the included property; or

9 (b) If there is no person in (a) of this subsection, then the
10 person who has been appointed by those persons, including any
11 successors of those persons, in the qualified group who have received,
12 or are entitled to receive, by reason of the decedent's death, all, or
13 substantially all, of the included property.

14 (4) The requirement in subsection (3) of this section of the
15 receipt of all, or substantially all, of the included property is
16 satisfied if:

17 (a) The person described in subsection (3)(a) of this section at
18 the time of the filing of the declaration and oath referred to in
19 subsection (5) of this section in reasonable good faith believed that
20 the person had received, or was entitled to receive, by reason of the
21 decedent's death, all, or substantially all, of the included property;
22 or

23 (b) The persons described in subsection (3)(b) of this section at
24 the time of their entry into the agreement under chapter 11.96 RCW in
25 which they appoint the person to give the nonprobate notice to
26 creditors in reasonable good faith believed that they had received, or
27 were entitled to receive, by reason of the decedent's death, all, or
28 substantially all, of the included property.

29 (5) The "notice agent" means the qualified person who:

30 (a) Files a declaration and oath with the clerk of the superior
31 court in a county in which probate may be commenced regarding the
32 decedent as provided in RCW 11.96.050(2);

33 (b) Pays a filing fee to the clerk equal in amount to the filing
34 fee charged by the clerk for the probate of estates; and

35 (c) Receives from the clerk a cause number.

36 The county in which the notice agent files the declaration is the
37 "notice county." The declaration and oath must be made in affidavit
38 form or under penalty of perjury under the laws of the state in the
39 form provided in RCW 9A.72.085 and must state that the person making

1 the declaration believes in reasonable good faith that the person is
2 qualified under this chapter to act as the notice agent and that the
3 person faithfully will execute the duties of the notice agent as
4 provided in this chapter.

5 (6) The following persons may not act as notice agent:

6 (a) Corporations, trust companies, and national banks, except:

7 (i) Professional service corporations that are regularly organized
8 under the laws of this state whose shareholder or shareholders are
9 exclusively attorneys; and

10 (ii) Other corporations, trust companies, and national banks that
11 are authorized to do trust business in this state;

12 (b) Minors;

13 (c) Persons of unsound mind; or

14 (d) Persons who have been convicted of a felony or of a misdemeanor
15 involving moral turpitude.

16 (7) A person who has given notice under this chapter and who
17 thereafter becomes of unsound mind or is convicted of a crime or
18 misdemeanor involving moral turpitude is no longer qualified to act as
19 notice agent under this chapter. The disqualification does not bar
20 another person, otherwise qualified, from acting as notice agent under
21 this chapter.

22 (8) A nonresident may act as notice agent if the nonresident
23 appoints an agent who is a resident of the notice county or who is
24 attorney of record for the notice agent upon whom service of all papers
25 may be made. The appointment must be made in writing and filed by the
26 clerk of the notice county with the other papers relating to the notice
27 given under this chapter.

28 (9) The powers and authority of a notice agent cease, and the
29 office of notice agent becomes vacant, upon the appointment and
30 qualification of a personal representative for the estate of the
31 decedent. Except as provided in section 48 of this act, the cessation
32 of the powers and authority does not affect a published notice under
33 this chapter if the publication commenced before the cessation and does
34 not affect actual notice to creditors given by the notice agent before
35 the cessation.

36 NEW SECTION. **Sec. 32.** (1) The notice agent may give nonprobate
37 notice to the creditors of the decedent if:

1 (a) As of the date of the filing of a copy of the notice with the
2 clerk of the superior court for the notice county, the notice agent has
3 no knowledge of the appointment and qualification of a personal
4 representative in the decedent's estate in the state of Washington or
5 of another person becoming a notice agent; and

6 (b) According to the records of the clerk of the superior court for
7 the notice county as of 8:00 a.m. on the date of the filing, no
8 personal representative of the decedent's estate had been appointed and
9 qualified and no cause number regarding the decedent had been issued to
10 any other notice agent by the clerk under section 31 of this act.

11 (2) The notice must state that all persons having claims against
12 the decedent shall: (a) Serve the same on the notice agent if the
13 notice agent is a resident of the state of Washington upon whom service
14 of all papers may be made, or on the nonprobate resident agent for the
15 notice agent, if any, or on the attorneys of record of the notice agent
16 at their respective address in the state of Washington; and (b) file an
17 executed copy of the notice with the clerk of the superior court for
18 the notice county, within: (i) (A) Four months after the date of the
19 first publication of the notice described in this section; or (B) four
20 months after the date of the filing of the copy of the notice with the
21 clerk of the superior court for the notice county, whichever is later;
22 or (ii) the time otherwise provided in section 35 of this act. The
23 four-month time period after the later of the date of the first
24 publication of the notice to creditors or the date of the filing of the
25 notice with the clerk of the court is referred to in this chapter as
26 the "four-month time limitation."

27 (3) The notice agent shall declare in the notice in affidavit form
28 or under the penalty of perjury under the laws of the state of
29 Washington as provided in RCW 9A.72.085 that: (a) The notice agent is
30 entitled to give the nonprobate notice under subsection (1) of this
31 section; and (b) the notice is being given by the notice agent as
32 permitted by this section.

33 (4) The notice agent shall sign the notice and file it with the
34 clerk of the superior court for the notice county. The notice must be
35 given as follows:

36 (a) The notice agent shall give actual notice as to creditors of
37 the decedent who become known to the notice agent within the four-month
38 time limitation as required in section 35 of this act;

1 (b) The notice agent shall cause the notice to be published once in
2 each week for three successive weeks in the notice county; and

3 (c) The notice agent shall file a copy of the notice with the clerk
4 of the superior court for the notice county.

5 (5) A claim not filed within the four-month time limitation is
6 forever barred, if not already barred by an otherwise applicable
7 statute of limitations, except as provided in section 33 or 35 of this
8 act. The bar is effective to bar claims against both the probate
9 estate of the decedent and nonprobate assets that were subject to
10 satisfaction of the decedent's general liabilities immediately before
11 the decedent's death. If a notice to the creditors of a decedent is
12 published by more than one notice agent and the notice agents are not
13 acting jointly, the four-month time limitation means the four-month
14 time limitation that applies to the notice agent who first publishes
15 the notice. Proof by affidavit or perjury declaration made under RCW
16 9A.72.085 of the giving and publication of the notice must be filed
17 with the clerk of the superior court for the notice county by the
18 notice agent.

19 NEW SECTION. **Sec. 33.** The time limitations under this chapter for
20 serving and filing claims do not accrue to the benefit of a liability
21 or casualty insurer as to claims against either the decedent or the
22 marital community of which the decedent was a member, or both, and:

23 (1) The claims, subject to applicable statutes of limitation, may
24 at any time be: (a) Served on the duly acting notice agent, the duly
25 acting resident agent for the notice agent, or on the attorney for
26 either of them; and (b) filed with the clerk of the superior court for
27 the notice county; or

28 (2) If there is no duly acting notice agent or resident agent for
29 the notice agent, the claimant as a creditor shall proceed as provided
30 in chapter 11.40 RCW. However, if no personal representative ever has
31 been appointed for the decedent, a personal representative must be
32 appointed as provided in chapter 11.28 RCW and the estate opened, in
33 which case the claimant then shall proceed as provided in chapter 11.40
34 RCW.

35 A claim may be served and filed as provided in this section,
36 notwithstanding that there is no duly acting notice agent and that no
37 personal representative previously has been appointed. However, the
38 amount of recovery under the claim may not exceed the amount of

1 applicable insurance coverages and proceeds, and the claim so served
2 and filed may not constitute a cloud or lien upon the title to the
3 assets of the decedent or delay or prevent the transfer or distribution
4 of assets of the decedent. This section does not serve to extend the
5 applicable statute of limitations regardless of whether a declaration
6 and oath has been filed by a notice agent as provided in section 31 of
7 this act.

8 NEW SECTION. **Sec. 34.** The notice agent shall exercise reasonable
9 diligence to discover, within the four-month time limitation,
10 reasonably ascertainable creditors of the decedent. The notice agent
11 is deemed to have exercised reasonable diligence to ascertain the
12 creditors upon:

13 (1) Conducting, within the four-month time limitation, a reasonable
14 review of the decedent's correspondence including correspondence
15 received after the date of death and financial records including
16 checkbooks, bank statements, income tax returns, and similar materials,
17 that are in the possession of, or reasonably available to, the notice
18 agent; and

19 (2) Having made, with regard to claimants, inquiry of the
20 nonprobate takers of the decedent's property and of the presumptive
21 heirs, devisees, and legatees of the decedent, all of whose names and
22 addresses are known, or in the exercise of reasonable diligence should
23 have been known, to the notice agent.

24 If the notice agent conducts the review and makes an inquiry, the
25 notice agent is presumed to have exercised reasonable diligence to
26 ascertain creditors of the decedent, and creditors not ascertained in
27 the review or in an inquiry are presumed not reasonably ascertainable.
28 These presumptions may be rebutted only by clear, cogent, and
29 convincing evidence. The notice agent may evidence the review and
30 inquiry by filing an affidavit or declaration under penalty of perjury
31 form as provided in RCW 9A.72.085 to the effect in the nonprobate
32 proceeding in the notice county. The notice agent also may petition
33 the superior court of the notice county for an order declaring that the
34 notice agent has made a review and inquiry and that only creditors
35 known to the notice agent after the review and inquiry are reasonably
36 ascertainable. The petition and hearing must be under the procedures
37 provided in chapter 11.96 RCW, and the notice specified under RCW
38 11.96.100 must also be given by publication.

1 NEW SECTION. **Sec. 35.** The actual notice described in section
2 32(4)(a) of this act, as to a creditor becoming known to the notice
3 agent within the four-month time limitation, must be given the creditor
4 by personal service or regular first class mail, addressed to the
5 creditor's last known address, postage prepaid. The actual notice must
6 be given before the later of the expiration of the four-month time
7 limitation or thirty days after a creditor became known to the notice
8 agent within the four-month time limitation. A known creditor is
9 barred unless the creditor has filed a claim, as provided in this
10 chapter, within the four-month time limitation or within thirty days
11 following the date of actual notice to that creditor, whichever is
12 later. If notice is given by mail, the date of mailing is the date of
13 notice. This bar is effective as to claims against the included
14 property as defined in section 31 of this act.

15 NEW SECTION. **Sec. 36.** (1) Whether or not notice under section 32
16 of this act has been given or should have been given, if no personal
17 representative has been appointed and qualified, a person having a
18 claim against the decedent who has not filed the claim within eighteen
19 months from the date of the decedent's death is forever barred from
20 making a claim against the decedent, or commencing an action against
21 the decedent, if the claim or action is not already barred by any
22 otherwise applicable statute of limitations. However, this eighteen-
23 month limitation does not apply to:

24 (a) Claims described in section 33 of this act;

25 (b) A claim if, during the eighteen-month period following the date
26 of death, partial performance has been made on the obligation
27 underlying the claim, and the notice agent has not given the actual
28 notice described in section 32(4)(a) of this act; or

29 (c) Claims if, within twelve months after the date of death:

30 (i) No notice agent has given the published notice described in
31 section 32(4)(b) of this act; and

32 (ii) No personal representative has given the published notice
33 described in RCW 11.40.010(2).

34 Any otherwise applicable statute of limitations applies without
35 regard to the tolling provisions of RCW 4.16.190.

36 (2) Claims referred to in this section must be filed if there is no
37 duly appointed, qualified, and acting personal representative and there
38 is a duly declared and acting notice agent or resident agent for the

1 notice agent. The claims, subject to applicable statutes of
2 limitation, may at any time be served on the duly declared and acting
3 notice agent or resident agent for the notice agent, or on the attorney
4 for either of them.

5 (3) A claim to be filed under this chapter if there is no duly
6 appointed, qualified, and acting personal representative but there is
7 a duly declared and acting notice agent or resident agent for the
8 notice agent and which claim is not otherwise barred under this chapter
9 must be made in the form and manner provided under section 32 of this
10 act, as if the notice under that section had been given.

11 NEW SECTION. **Sec. 37.** Notice under section 32 of this act must be
12 in substantially the following form:

13 In the Matter of)
14) No.
15)
16) NONPROBATE NOTICE TO CREDITORS
17 Deceased.)
18 _____)

19 _____, the undersigned Notice
20 Agent, has elected to give notice to creditors of the decedent above
21 named under section 32 of this act. As of the date of the filing of a
22 copy of this notice with the Clerk of this Court, the Notice Agent has
23 no knowledge of the appointment and qualification of a personal
24 representative in the decedent's estate in the state of Washington or
25 of any other person becoming a Notice Agent. According to the records
26 of the Clerk of this Court as of 8:00 a.m. on the date of the filing of
27 this notice with the Clerk, no personal representative of the
28 decedent's estate had been appointed and qualified and no cause number
29 regarding the decedent had been issued to any other Notice Agent by the
30 Clerk of this Court under section 31 of this act.

31 Persons having claims against the decedent named above must, before
32 the time the claims would be barred by any otherwise applicable statute
33 of limitations, serve their claims on: The notice agent if the Notice
34 Agent is a resident of the state of Washington upon whom service of all
35 papers may be made; the Nonprobate Resident Agent for the Notice Agent,
36 if any; or the attorneys of record for the Notice Agent at the

1 respective address in the state of Washington listed below, and file an
2 executed copy of the claim with the Clerk of this Court within four
3 months after the date of first publication of this notice, or within
4 four months after the date of the filing of the copy of this notice
5 with the Clerk of the Court, whichever is later, or, except under those
6 provisions included in section 33 or 35 of this act, the claim will be
7 forever barred. This bar is effective as to all assets of the decedent
8 that were subject to satisfaction of the decedent's general liabilities
9 immediately before the decedent's death regardless of whether those
10 assets are or would be assets of the decedent's probate estate or
11 nonprobate assets of the decedent.

12 Date of filing of this notice with the
13 Clerk of the Court: _____

14 Date of first publication of this notice: _____

15 The Notice Agent declares under penalty of perjury under the laws
16 of the State of Washington on _____, 19__ at _____
17 [City] _____, _____ [State] _____ that the
18 foregoing is true and correct.

19 _____
20 Notice Agent [signature] Nonprobate Resident Agent [if appointed]
21 [address in Washington, if any] [address in Washington]

22 _____
23 Attorney for Notice Agent
24 [address in Washington]
25 [telephone]

26 NEW SECTION. **Sec. 38.** RCW 11.40.020 applies to claims subject to
27 this chapter.

28 NEW SECTION. **Sec. 39.** (1) Property of the decedent that was
29 subject to the satisfaction of the decedent's general liabilities
30 immediately before the decedent's death is liable for claims. The
31 property includes, but is not limited to, property of the decedent that

1 is includable in the decedent's probate estate, whether or not there is
2 a probate administration of the decedent's estate.

3 (2) A claim approved by the notice agent, and a judgment on a claim
4 first prosecuted against a notice agent, may be paid only out of assets
5 received as a result of the death of the decedent by the notice agent
6 or by those appointing the notice agent under chapter 11.96 RCW, except
7 as may be provided by agreement under RCW 11.96.170 or by court order
8 under RCW 11.96.070.

9 NEW SECTION. **Sec. 40.** (1) The notice agent shall approve or
10 reject claims no later than by the end of a period that is two months
11 after the end of the four-month time limitation defined as the "review
12 period."

13 (2) The notice agent may approve a claim, in whole or in part.

14 (3) If the notice agent rejects a claim, in whole or in part, the
15 notice agent shall notify the claimant of the rejection and file in the
16 office of the clerk of the court in the notice county an affidavit or
17 declaration under penalty of perjury under RCW 9A.72.085 showing the
18 notification and the date of the notification. The notification must
19 be by personal service or certified mail addressed to the claimant at
20 the claimant's address as stated in the claim. If a person other than
21 the claimant signed the claim for or on behalf of the claimant, and the
22 person's business address as stated in the claim is different from that
23 of the claimant, notification of the rejection also must be made by
24 personal service or certified mail upon that person. The date of the
25 postmark is the date of the notification. The notification of the
26 rejection must advise the claimant, and the person making claim on his,
27 her, or its behalf, if any, that the claimant must bring suit in the
28 proper court in the notice county against the notice agent: (a) Within
29 thirty days after notification of rejection if the notification is made
30 during or after the review period; or (b) before expiration of thirty
31 days after the end of the four-month time limitation, if the
32 notification is made during the four-month time limitation, and that
33 otherwise the claim is forever barred.

34 (4) A claimant whose claim either has been rejected by the notice
35 agent or has not been acted upon within twenty days of written demand
36 for the action having been given to the notice agent by the claimant
37 during or after the review period must commence an action against the

1 notice agent in the proper court in the notice county to enforce the
2 claim of the claimant within the earlier of:

3 (a) If the notice of the rejection of the claim has been sent as
4 provided in subsection (3) of this section: The time for filing an
5 action on a rejected claim is as provided in subsection (3) of this
6 section; or

7 (b) If written demand for approval or rejection is made on the
8 notice agent before the claim is rejected: Within 30 days following
9 the end of the twenty-day written demand period where the demand period
10 ends during or after the review period;
11 otherwise the claim is forever barred.

12 (5) The notice agent may, either before or after rejection of a
13 claim, compromise the claim, whether due or not, absolute or
14 contingent, liquidated or unliquidated.

15 (6) A personal representative of the decedent's estate may revoke
16 either or both of: (a) The rejection of a claim that has been rejected
17 by the notice agent; or (b) the approval of a claim that has been
18 either approved or compromised by the notice agent, or both.

19 (7) If a notice agent pays a claim that subsequently is revoked by
20 a personal representative of the decedent, the notice agent may file a
21 claim in the decedent's estate for the notice agent's payment, and the
22 claim may be allowed or rejected as other claims, at the election of
23 the personal representative.

24 (8) If the notice agent has not received substantially all assets
25 of the decedent that are liable for claims, then although an action may
26 be commenced on a rejected claim by a creditor against the notice
27 agent, the notice agent, notwithstanding any provision in this chapter,
28 may only make an appearance in the litigation. The Notice Agent may
29 not answer the action, but must, instead, cause a petition to be filed
30 for the appointment of a personal representative of the decedent within
31 thirty days of the service of the creditor's summons and complaint on
32 the notice agent. A judgment may not be entered in an action brought
33 by a creditor against the notice agent earlier than twenty days after
34 the duly appointed, qualified, and acting personal representative of
35 the decedent has been substituted in that action for the notice agent.

36 NEW SECTION. **Sec. 41.** If a claim has been filed and presented to
37 a notice agent, and a part of the claim is allowed, the amount of the
38 allowance must be stated in the indorsement. If the creditor refuses

1 to accept the amount so allowed in satisfaction of the claim, the
2 creditor may not recover costs in an action the creditor may bring
3 against the notice agent and against any substituted personal
4 representative unless the creditor recovers a greater amount than that
5 offered to be allowed, exclusive of interest and costs.

6 NEW SECTION. **Sec. 42.** A debt of a decedent for whose estate no
7 personal representative has been appointed must be paid in the
8 following order by the notice agent from the assets of the decedent
9 that are subject to the payment of claims as provided in section 39 of
10 this act:

11 (1) Costs of administering the assets subject to the payment of
12 claims, including a reasonable fee to the notice agent, the resident
13 agent for the notice agent, if any, reasonable attorneys' fees for the
14 attorney for each of them, filing fees, publication costs, mailing
15 costs, and similar costs and fees.

16 (2) Funeral expenses in a reasonable amount.

17 (3) Expenses of the last sickness in a reasonable amount.

18 (4) Wages due for labor performed within sixty days immediately
19 preceding the death of the decedent.

20 (5) Debts having preference by the laws of the United States.

21 (6) Taxes or any debts or dues owing to the state.

22 (7) Judgments rendered against the decedent in the decedent's
23 lifetime that are liens upon real estate on which executions might have
24 been issued at the time of the death of the decedent and debts secured
25 by mortgages in the order of their priority. However, the real estate
26 is subject to the payment of claims as provided in section 40 of this
27 act.

28 (8) All other demands against the assets subject to the payment of
29 claims as provided in section 40 of this act.

30 A claim of the notice agent or other person who has received
31 property by reason of the decedent's death may not be paid by the
32 notice agent unless all other claims that have been filed under this
33 chapter, and all debts having priority to the claim, are paid in full
34 or otherwise settled by agreement, regardless of whether the other
35 claims are allowed or rejected, or partly allowed or partly rejected.
36 In the event of the probate of the decedent's estate, the personal
37 representative's payment from estate assets of the claim of the notice
38 agent or other person who has received property by reason of the

1 decedent's death is not affected by the priority payment provisions of
2 this section.

3 NEW SECTION. **Sec. 43.** The notice agent may not allow a claim that
4 is barred by the statute of limitations.

5 NEW SECTION. **Sec. 44.** A holder of a claim against a decedent may
6 not maintain an action on the claim against a notice agent, unless the
7 claim has been first presented as provided in this chapter. This
8 chapter does not affect RCW 82.32.240.

9 NEW SECTION. **Sec. 45.** The time during which there is a vacancy in
10 the office of notice agent is not included in a limitation prescribed
11 in this chapter.

12 NEW SECTION. **Sec. 46.** If a judgment has been rendered against a
13 decedent in the decedent's lifetime, an execution may not issue on the
14 judgment after the death of the decedent, but the judgment must be
15 presented in the form of a claim to the notice agent, if any, as any
16 other claim. The claim need not be supported by the affidavit of the
17 claimant. If the claim is justly due and unsatisfied, it must be paid
18 in due course in accordance with this chapter for the payment of
19 claims. However, if the judgment is a lien on property classified
20 within the definition of the included property in section 31 of this
21 act, the property may be sold for the satisfaction of the judgment, and
22 the officer making the sale shall account to the notice agent for any
23 surplus.

24 NEW SECTION. **Sec. 47.** The personal claim of a Notice Agent, as a
25 creditor of the decedent, must be authenticated by affidavit, and must
26 be filed and presented for allowance to the superior court in the
27 notice county. The allowance of the claim by the court is sufficient
28 evidence of the correctness of the claim.

29 NEW SECTION. **Sec. 48.** In case the office of notice agent becomes
30 vacant for any reason, including resignation, death, removal, or
31 replacement, after notice by publication has been commenced as provided
32 in section 32 of this act, the personal representative of the decedent
33 or the successor notice agent shall publish notice of the vacancy and

1 succession for two successive weeks in a legal newspaper published in
2 the notice county. The time between the commencement of the vacancy
3 and the publication by the successor notice agent or personal
4 representative must be added to the time within which claims must be
5 filed: (1) As fixed by the first published nonprobate notice to
6 creditors; and (2) as extended in the case of actual notice under
7 section 35 of this act, unless the time expired before the vacancy.
8 Notice is not required if the period for filing claims has expired
9 during the time that the former notice agent was qualified.

10 **Sec. 49.** RCW 11.56.050 and 1965 c 145 s 11.56.050 are each amended
11 to read as follows:

12 If the court should determine that it is necessary to sell any or
13 all of the real estate for the purposes mentioned in this title, then
14 it may make and cause to be entered an order directing the personal
15 representative to sell so much of the real estate as the court may
16 determine necessary for the purposes aforesaid. Such order shall give
17 a particular description of the property to be sold and the terms of
18 such sale and shall provide whether such property shall be sold at
19 public or private sale, or by negotiation. (~~The court shall order
20 sold that part of the real estate which is generally devised, rather
21 than any part which may have been specifically devised, but the court
22 may, if it appears necessary, sell any or all of the real estate so
23 devised.~~) After the giving of such order it shall be the duty of the
24 personal representative to sell such real estate in accordance with the
25 order of the court and as in this title provided with reference to the
26 public or private sales of real estate.

27 **Sec. 50.** RCW 11.68.010 and 1977 ex.s. c 234 s 18 are each amended
28 to read as follows:

29 Subject to the provisions of this chapter, if the estate of a
30 decedent, who died either testate or intestate, is solvent taking into
31 account both probate and nonprobate assets of the decedent, and if the
32 personal representative is other than a creditor of the decedent not
33 designated as personal representative in the decedent's will, such
34 estate shall be managed and settled without the intervention of the
35 court; the fact of solvency shall be established by the entry of an
36 order of solvency. An order of solvency may be entered at the time of
37 the appointment of the personal representative or at any time

1 thereafter where it appears to the court by the petition of the
2 personal representative, or the inventory filed, and/or other proof
3 submitted, that the estate of the decedent is solvent, and that notice
4 of the application for an order of solvency has been given to those
5 persons entitled thereto when required by RCW 11.68.040 as now or
6 hereafter amended.

7 **Sec. 51.** RCW 11.96.009 and 1985 c 31 s 2 are each amended to read
8 as follows:

9 (1) The superior court shall have original subject-matter
10 jurisdiction over ((probates in the following instances)) the probate
11 of wills and the administration of estates of incapacitated, missing,
12 and deceased individuals in all instances, including without
13 limitation:

14 (a) When a resident of the state dies; or

15 (b) When a nonresident of the state dies in the state; or

16 (c) When a nonresident of the state dies outside the state.

17 (2) The superior court shall have original subject-matter
18 jurisdiction over trusts and ((trust)) matters relating to trusts.

19 (3) The superior courts in the exercise of their jurisdiction of
20 matters of ((probate and)) trusts and estates shall have the power to
21 probate or refuse to probate wills, appoint personal representatives
22 ((of deceased, incompetent, or disabled persons and)), administer and
23 settle ((all such estates, and)) the affairs and the estates of
24 incapacitated, missing, or deceased individuals including but not
25 limited to decedents' estates only containing nonprobate assets,
26 administer and settle matters that relate to nonprobate assets and
27 arise under chapter 11.-- (section 19 of this act) or 11.-- RCW
28 (sections 31 through 48 of this act), administer and settle all trusts
29 and trust matters, award processes and cause to come before them all
30 persons whom they may deem it necessary to examine, and order and cause
31 to be issued all such writs as may be proper or necessary, and do all
32 things proper or incident to the exercise of such jurisdiction.

33 **Sec. 52.** RCW 11.96.020 and 1985 c 31 s 3 are each amended to read
34 as follows:

35 It is the intention of ((this title)) the legislature that the
36 courts ((mentioned)) shall have full and ample power and authority
37 under this title to:

1 (1) Administer and settle ((all estates of decedents and
2 incompetent and disabled persons in this title mentioned and to)) the
3 affairs and the estates of all incapacitated, missing, and deceased
4 persons in accordance with this title;

5 (2) Administer and settle all trusts and trust matters; and

6 (3) Administer and settle matters arising with respect to
7 nonprobate assets under chapters 11.-- (section 19 of this act) and
8 11.-- RCW (sections 31 through 48 of this act).

9 If the provisions of this title with reference to the
10 administration and settlement of such ((estates or trusts)) matters
11 should in any cases and under any circumstances be inapplicable ((or)),
12 insufficient, or doubtful, the court shall nevertheless have full power
13 and authority to proceed with such administration and settlement in any
14 manner and way which to the court seems right and proper, all to the
15 end that such ((estates or trusts may be by the court administered upon
16 and settled)) matters may be administered and settled by the court.

17 **Sec. 53.** RCW 11.96.050 and 1985 c 31 s 6 are each amended to read
18 as follows:

19 For purposes of venue in proceedings involving: The probate of
20 wills; the administration and disposition of estates of incapacitated,
21 missing, or deceased individuals, including but not limited to estates
22 only containing nonprobate assets; or trusts and trust matters, the
23 following shall apply:

24 (1) Proceedings under Title 11 RCW pertaining to trusts shall be
25 commenced ((either)):

26 (a) In the superior court of the county in which the situs of the
27 trust is located as provided in RCW 11.96.040; or

28 (b) ((In the superior court of the county in which a trustee
29 resides or has its principal place of business; or

30 (e)) With respect to testamentary trusts, in the superior court of
31 the county where letters testamentary were granted to a personal
32 representative((, and in the absence of)) or, where no such letters
33 have been granted to a personal representative, then in any county
34 where letters testamentary could have been granted in accordance with
35 subsection (2) of this section.

36 (2) Wills shall be proven, letters testamentary or of
37 administration granted, and other proceedings pertaining to the probate
38 of wills, the administration and disposition of estates including but

1 not limited to estates containing only nonprobate assets under Title 11
2 RCW (~~(pertaining to probate)~~) shall be commenced(~~(, either)~~):

3 (a) In the county in which the decedent was a resident at the time
4 of death;

5 (b) In the county in which the decedent died, or in which any part
6 of the estate may be, if the decedent was not a resident of this state;
7 (~~or~~)

8 (c) In the county in which any part of the estate may be, if the
9 decedent (~~(having)~~) died out-of-state(~~(,)~~) and was not (~~(having been)~~)
10 a resident (~~(in)~~) of this state at the time of death; or

11 (d) In the county in which any nonprobate asset may be, if the
12 decedent died out-of-state, was not a resident of this state at the
13 time of death, and left no assets subject to probate administration in
14 this state.

15 (3) No action undertaken is defective or invalid because of
16 improper venue if the court has jurisdiction of the matter.

17 **Sec. 54.** RCW 11.96.060 and 1985 c 31 s 7 are each amended to read
18 as follows:

19 (1) Any action against the trustee of an express trust, excluding
20 those trusts excluded from the definition of express trusts under RCW
21 11.98.009, but including all express trusts, whenever executed, for any
22 breach of fiduciary duty, must be brought within three years from the
23 earlier of (a) the time the alleged breach was discovered or reasonably
24 should have been discovered, (b) the discharge of a trustee from the
25 trust as provided in RCW (~~(11.98.040)~~) 11.98.041, or (c) the time of
26 termination of the trust or the trustee's repudiation of the trust.

27 (2) Any action by an heir, legatee, or other interested party, to
28 whom proper notice was given if required, against a personal
29 representative for alleged breach of fiduciary duty must be brought
30 prior to discharge of the personal representative.

31 (3) The tolling provisions of RCW 4.16.190 apply to this chapter
32 except that the running of any statute of limitations stated in
33 subsection (1) or (2) of this section, or any other applicable statute
34 of limitations for any matter that is the subject of dispute under
35 chapter 11.96 RCW, is not tolled if the unascertained or unborn heir,
36 beneficiary, or class of persons, or minor(~~(, incompetent, or~~
37 ~~disabled)~~) or incapacitated person, or person identified in RCW
38 11.96.170(2) or 11.96.180 whose identity or address is unknown, had a

1 guardian ad litem, limited or general guardian of the estate, or a
2 special representative to represent the person during the probate or
3 dispute resolution proceeding.

4 ~~((4) Notwithstanding subsections (2) and (3) of this section, any~~
5 ~~cause of action against a trustee of an express trust, as provided for~~
6 ~~in subsection (1) of this section is not barred by the statute of~~
7 ~~limitations if it is brought within three years from January 1, 1985.~~
8 ~~In addition, any action as specified in subsection (2) of this section~~
9 ~~against the personal representative is not barred by this statute of~~
10 ~~limitations if it is brought within one year of January 1, 1985.))~~

11 **Sec. 55.** RCW 11.96.070 and 1990 c 179 s 1 are each amended to read
12 as follows:

13 ~~((A trustor, grantor, personal representative, trustee, or other~~
14 ~~fiduciary, creditor, devisee, legatee, heir, or trust beneficiary~~
15 ~~interested in the administration of a trust, or the attorney general in~~
16 ~~the case of a charitable trust under RCW 11.110.120, or of the estate~~
17 ~~of a decedent, incompetent, or disabled person,)) (1) A person with an~~
18 ~~interest in or right respecting the administration, settlement, or~~
19 ~~disposition of an interest in a trust or in the estate of an~~
20 ~~incapacitated, missing, or deceased person may have a judicial~~
21 ~~proceeding for the declaration of rights or legal relations ~~((in~~~~
22 ~~respect to the trust or estate)) under this title including but not~~
23 ~~limited to the following:~~

24 ~~((1) To ascertain)) (a) The ascertaining of any class of~~
25 ~~creditors, devisees, legatees, heirs, next of kin, or others;~~

26 ~~((2) To direct)) (b) The ordering of the personal representatives~~
27 ~~or trustees to do or abstain from doing any particular act in their~~
28 ~~fiduciary capacity;~~

29 ~~((3) To determine)) (c) The determination of any question arising~~
30 ~~in the administration of the estate or trust, including without~~
31 ~~limitation questions of construction of wills and other writings;~~

32 ~~((4) To confer upon)) (d) The grant to the personal~~
33 ~~representatives or trustees of any necessary or desirable powers not~~
34 ~~otherwise granted in the instrument or given by law that the court~~
35 ~~determines are not inconsistent with the provisions or purposes of the~~
36 ~~will or trust;~~

37 ~~((5) To amend or conform)) (e) The modification of the will or the~~
38 ~~trust instrument in the manner required to qualify the gift thereunder~~

1 for the charitable estate tax deduction permitted by federal law,
2 including the addition of mandatory governing instrument requirements
3 for a charitable remainder trust as required by final regulations and
4 rulings of the United States internal revenue service, in any case in
5 which all parties interested in the trust have submitted written
6 agreements to the proposed changes or written disclaimer of interest;
7 ((or

8 ~~(6) To amend or conform))~~ (f) The modification of the will or the
9 trust instrument in the manner required to qualify any gift thereunder
10 for the benefit of a surviving spouse who is not a citizen of the
11 United States for the estate tax marital deduction permitted by federal
12 law, including the addition of mandatory governing instrument
13 requirements for a qualified domestic trust under section 2056A of the
14 internal revenue code as required by final regulations and rulings of
15 the United States treasury department or internal revenue service, in
16 any case in which all parties interested in the trust have submitted
17 written agreements to the proposed changes or written disclaimer of
18 interest; ((or

19 ~~(7) To resolve any other matter in this title referencing this~~
20 ~~judicial proceedings section.))~~ (g) The determination of the persons
21 entitled to notice under RCW 11.96.100 and 11.96.110 for the purposes
22 of any judicial proceeding under this subsection (1) and for the
23 purposes of an agreement under RCW 11.96.170; or

24 (h) The resolution of any other matter that arises under this title
25 and references this section.

26 (2) Any person with an interest in or right respecting the
27 administration of a nonprobate asset under this title may have a
28 judicial proceeding for the declaration of rights or legal relations
29 under this title with respect to the nonprobate asset, including
30 without limitation the following:

31 (a) The ascertaining of any class of creditors or others for
32 purposes of chapter 11.-- (section 19 of this act) or 11.-- RCW
33 (sections 31 through 48 of this act);

34 (b) The ordering of a qualified person, the notice agent, or
35 resident agent, as those terms are defined in chapter 11.-- RCW
36 (sections 31 through 48 of this act), or any combination of them, to do
37 or abstain from doing any particular act with respect to a nonprobate
38 asset;

1 (c) The ordering of a custodian of any of the decedent's records
2 relating to a nonprobate asset to do or abstain from doing any
3 particular act with respect to those records;

4 (d) The determination of any question arising in the administration
5 under chapter 11.-- (section 19 of this act) or 11.-- RCW (sections 31
6 through 48 of this act) of a nonprobate asset;

7 (e) The determination of the persons entitled to notice under RCW
8 11.96.100 and 11.96.110 for the purposes of any judicial proceeding
9 under this subsection (2) and for the purposes of an agreement under
10 RCW 11.96.170; and

11 (f) The determination of any questions relating to the abatement,
12 rights of creditors, or other matter relating to the administration,
13 settlement, or final disposition of a nonprobate asset under this
14 title.

15 (3) The provisions of this chapter apply to disputes arising in
16 connection with estates of (~~incompetents or disabled~~) incapacitated
17 persons unless otherwise covered by chapters 11.88 and 11.92 RCW. The
18 provisions of this chapter shall not supersede the otherwise applicable
19 provisions and procedures of chapter 11.24, 11.28, 11.40, 11.52, 11.56,
20 or 11.60 RCW with respect to any rights or legal obligations that are
21 subject to those chapters.

22 (4) For the purposes of this section, "a person with an interest in
23 or right respecting the administration, settlement, or disposition of
24 an interest in a trust or in the estate of an incapacitated, missing,
25 or deceased person" includes but is not limited to:

26 (a) The trustor if living, trustee, beneficiary, or creditor of a
27 trust and, for a charitable trust, the attorney general if acting
28 within the powers granted under RCW 11.110.120;

29 (b) The personal representative, heir, devisee, legatee, and
30 creditor of an estate;

31 (c) The guardian, guardian ad litem, and ward of a guardianship,
32 and a creditor of an estate subject to a guardianship; and

33 (d) Any other person with standing to sue with respect to any of
34 the matters for which judicial proceedings are authorized in subsection
35 (1) of this section.

36 (5) For the purposes of this section, "any person with an interest
37 in or right respecting the administration of a nonprobate asset under
38 this title" includes but is not limited to:

1 (a) The notice agent, the resident agent, or a qualified person, as
2 those terms are defined in chapter 11.-- RCW (sections 31 through 48 of
3 this act);

4 (b) The recipient of the nonprobate asset with respect to any
5 matter arising under this title;

6 (c) Any other person with standing to sue with respect to any
7 matter for which judicial proceedings are authorized in subsection (2)
8 of this section; and

9 (d) The legal representatives of any of the persons named in this
10 subsection.

11 **Sec. 56.** RCW 11.96.080 and 1985 c 31 s 9 are each amended to read
12 as follows:

13 Unless rules of court or a provision of this title requires
14 otherwise, a judicial proceeding under RCW 11.96.070 may be commenced
15 by petition. The court shall make an order fixing the time and place
16 for hearing the petition. The court shall approve the form and content
17 of the notice. Notice of hearing shall be signed by the clerk of the
18 court.

19 **Sec. 57.** RCW 11.96.090 and 1985 c 31 s 10 are each amended to read
20 as follows:

21 The clerk of each of the superior courts is authorized to fix the
22 time of hearing of all applications, petitions and reports in probate
23 and guardianship proceedings, except the time for hearings upon show
24 cause orders and citations and except for the time of hearings set
25 under RCW 11.96.080. The authority (~~(herein)~~) granted in this section
26 is in addition to the authority vested in the superior courts and
27 superior court commissioners.

28 **Sec. 58.** RCW 11.96.100 and 1985 c 31 s 11 are each amended to read
29 as follows:

30 (1) Subject to RCW 11.96.110, in all judicial proceedings under
31 Title 11 RCW that require notice, such notice shall be personally
32 served (~~(or mailed to each trustee, personal representative, heir,~~
33 beneficiary including devisees, legatees, and heirs, guardian ad litem,
34 and person having an interest in the trust or estate whose name and
35 address are known to the petitioner)) on or mailed to all parties to
36 the dispute at least twenty days prior to the hearing on the

1 petition(~~(7)~~) unless (~~(otherwise)~~) a different period is provided by
2 statute or ordered by the court under RCW 11.96.080.

3 (2) Proof of (~~(such)~~) the service or mailing required in this
4 section shall be made by affidavit filed at or before the hearing.

5 (~~(In addition, notice shall also be given to)~~) (3) For the purposes
6 of this section:

7 (a) When used in connection with a judicial proceeding under RCW
8 11.96.070(1), "parties to the dispute" means each:

9 (i) Trustor if living;

10 (ii) Trustee;

11 (iii) Personal representative;

12 (iv) Heir;

13 (v) Beneficiary including devisees, legatees, and trust
14 beneficiaries;

15 (vi) Guardian ad litem; or

16 (vii) Other person

17 who has an interest in the subject of the particular proceeding and
18 whose name and address are known to, or are reasonably ascertainable
19 by, the petitioner, and also includes the attorney general if required
20 under RCW 11.110.120.

21 (b) When used in connection with a judicial proceeding under RCW
22 11.96.070(2), "parties to the dispute" means each notice agent, if any,
23 or other person, who has an interest in the subject of the particular
24 proceeding and whose name and address are known to, or are reasonably
25 ascertainable by, the petitioner, and also includes the personal
26 representatives of the estate of the owner of the nonprobate asset that
27 is the subject of the particular proceeding, if the subject of the
28 particular proceeding relates to the beneficiary's liability to a
29 decedent's estate or creditors under section 19 of this act.

30 (c) "Notice agent" has the meanings given in section 31 of this
31 act.

32 **Sec. 59.** RCW 11.96.110 and 1985 c 31 s 12 are each amended to read
33 as follows:

34 Notwithstanding provisions of this chapter to the contrary, there
35 is compliance with the (~~(notice)~~) requirements of Title 11 RCW for
36 notice to the beneficiaries of, (~~(or)~~) and other persons interested in,
37 an estate (~~(or)~~), a trust, or (~~(to beneficiaries or remaindermen)~~) a
38 nonprobate asset, including without limitation all living persons who

1 may participate in the corpus or income of the trust or estate, if
2 notice is given as follows:

3 (1) If an interest in an estate (~~(or)~~), trust, or nonprobate asset
4 has been given to persons who compose a certain class upon the
5 happening of a certain event, notice shall be given to the living
6 persons who would constitute the class if the event had happened
7 immediately before the commencement of the proceeding requiring notice.

8 (2) If an interest in an estate (~~(or)~~), trust, or nonprobate asset
9 has been given to a living person, and the same interest, or a share in
10 it, is to pass to the surviving spouse or to persons who are, or may
11 be, the distributees, heirs, issue, or other kindred of that living
12 person upon the happening of a future event, notice shall be given to
13 that living person.

14 (3) Except as otherwise provided in subsection (2) of this section,
15 if an interest in an estate (~~(or)~~), trust, or nonprobate asset has been
16 given to a person, a class of persons, or both upon the happening of
17 any future event, and the same interest or a share of such interest is
18 to pass to another person, class of persons, or both, upon the
19 happening of an additional future event, notice shall be given to the
20 living person or persons who would take the interest upon the happening
21 of the first event.

22 (4) Notice shall be given to persons who would not otherwise be
23 entitled to notice by law if a conflict of interest involving the
24 subject matter of the (~~(trust or estate)~~) proceeding relating to an
25 estate, trust, or nonprobate asset is known to exist between a person
26 to whom notice is given and a person to whom notice need not be given
27 under Title 11 RCW.

28 Any action taken by the court is conclusive and binding upon each
29 person receiving actual or constructive notice in the manner provided
30 in this section.

31 **Sec. 60.** RCW 11.96.130 and 1985 c 31 s 14 are each amended to read
32 as follows:

33 All issues of fact (~~(joined in probate or trust proceedings)~~) in
34 any judicial proceeding under this title shall be tried in conformity
35 with the requirements of the rules of practice in civil actions(~~(. The~~
36 ~~probate or trust)~~), except as otherwise provided by statute or ordered
37 by the court under RCW 11.96.030 or other applicable law or rules of
38 court. The judicial proceeding may be commenced as a new action or as

1 an action incidental to an existing (~~probate or trust~~) judicial
2 proceeding relating to the same trust or estate or nonprobate asset.
3 Once commenced, the action may be consolidated with an existing
4 (~~probate or trust~~) proceeding or converted to a separate action upon
5 the motion of any party for good cause shown, or by the court on its
6 own motion. If a party is entitled to a trial by jury and a jury is
7 demanded, and the issues are not sufficiently made up by the written
8 pleadings on file, the court, on due notice, shall settle and frame the
9 issues to be tried. If no jury is demanded, the court shall try the
10 issues (~~joined~~), and sign and file its findings and decision in
11 writing, as provided for in civil actions. Judgment on the (~~issue~~
12 ~~joined~~) issues, as well as for costs, may be entered and enforced by
13 execution or otherwise by the court as in civil actions.

14 **Sec. 61.** RCW 11.96.140 and 1985 c 31 s 15 are each amended to read
15 as follows:

16 Either the superior court or the court on appeal, may, in its
17 discretion, order costs, including (~~attorneys~~) attorneys' fees, to be
18 paid by any party to the proceedings or out of the assets of the estate
19 or trust or nonprobate asset, as justice may require.

20 **Sec. 62.** RCW 11.96.160 and 1988 c 202 s 19 are each amended to
21 read as follows:

22 Any interested party may seek appellate review of any final order,
23 judgment, or decree of the court(~~, and such~~) respecting any judicial
24 proceedings under this title. The review shall be in the manner and
25 way provided by law for appeals in civil actions.

26 **Sec. 63.** RCW 11.96.170 and 1988 c 29 s 7 are each amended to read
27 as follows:

28 (1) If(~~, as to the~~) all required parties to the dispute agree as
29 to a matter in dispute, the (~~trustor, grantor, all parties~~
30 ~~beneficially interested in the estate or trust with respect to such~~
31 ~~matter, and any current fiduciary of such estate or trust, who are also~~
32 ~~included in RCW 11.96.070 and who are entitled to notice under RCW~~
33 ~~11.96.100 and 11.96.110 agree on any matter listed in RCW 11.96.070 or~~
34 ~~any other matter in Title 11 RCW referencing this nonjudicial~~
35 ~~resolution procedure, then the~~) agreement shall be evidenced by a
36 written agreement executed by all (~~necessary persons as provided in~~

1 ~~this section~~) required parties to the dispute. Those persons may
2 reach an agreement concerning a matter in RCW 11.96.070(~~(+4)~~) (1)(d)
3 as long as those persons, rather than the court, determine that the
4 powers to be conferred are not inconsistent with the provisions or
5 purposes of the will or trust.

6 (2) If necessary, (~~the personal representative or trustee~~) any
7 one or more of the required parties to the dispute may petition the
8 court for the appointment of a special representative to represent a
9 (~~person interested in the estate or trust who is a minor, incompetent,~~
10 ~~disabled, or~~) required party to the dispute who is incapacitated by
11 reason of being a minor or otherwise, who is yet unborn or
12 unascertained, or (a person) whose identity or address is unknown.
13 The special representative has authority to enter into a binding
14 agreement under this section on behalf of the person or beneficiary.
15 The special representative may be appointed for more than one person or
16 class of persons if the interests of such persons or (~~class~~) classes
17 are not in conflict. Those entitled to receive notice for persons or
18 beneficiaries described in RCW 11.96.110 may enter into a binding
19 agreement on behalf of such persons or beneficiaries.

20 (3) The special representative shall be a lawyer licensed to
21 practice before the courts of this state or an individual with special
22 skill or training in the administration of estates (~~or~~) , trusts, or
23 nonprobate assets, as applicable. The special representative shall
24 have no interest in any affected estate (~~or~~) , trust, or nonprobate
25 asset, and shall not be related to any personal representative,
26 trustee, beneficiary, or other person interested in the estate (or),
27 trust, or nonprobate asset. The special representative is entitled to
28 reasonable compensation for services (~~which~~) and, if applicable, that
29 compensation shall be paid from the principal of the estate (or),
30 trust, or nonprobate asset whose beneficiaries are represented. Upon
31 execution of the written agreement, the special representative shall be
32 discharged of any further responsibility with respect to the estate
33 (~~or~~) , trust, or nonprobate asset.

34 (4) The written agreement or a memorandum summarizing the
35 provisions of the written agreement may, at the option of any (~~person~~
36 ~~interested in the estate or trust~~) of the required parties to the
37 dispute, be filed with the court having jurisdiction over the estate
38 (~~or~~) , trust, nonprobate asset, or other matter affected by the
39 agreement. The person filing the agreement or memorandum shall, within

1 (a) "Matter in dispute" includes without limitation any matter
2 listed in RCW 11.96.070 or any other matter in this title referencing
3 this nonjudicial resolution procedure;

4 (b) "Parties to the dispute" has the meaning given to that term in
5 RCW 11.96.100(3) (a) and (b), as applicable;

6 (c) "Required parties to the dispute" means those parties to the
7 dispute who are entitled to notice under RCW 11.96.100 and 11.96.110,
8 and, when used in the singular, means any one of the required parties
9 to the dispute; and

10 (d) "Estate" includes the estate of a deceased, missing, or
11 incapacitated person.

12 **Sec. 64.** RCW 11.96.180 and 1985 c 31 s 19 are each amended to
13 read as follows:

14 (1) The court, upon its own motion or on request of ~~((a person~~
15 ~~interested in the trust or estate))~~ any one or more of the required
16 parties to the dispute as that term is defined in RCW 11.96.170(6)(c),
17 at any stage of a judicial proceeding or at any time in a nonjudicial
18 resolution procedure, may appoint a guardian ad litem to represent the
19 interests of a minor, incapacitated, unborn, or unascertained person,
20 or person whose identity ~~((and))~~ or address ~~((are))~~ is unknown, or a
21 designated class of persons who are not ascertained or are not in
22 being. When not precluded by a conflict of interest, a guardian ad
23 litem may be appointed to represent several persons or interests.

24 ~~((2))~~ ~~((For the purposes of this section, a trustee is a person~~
25 ~~interested in the trust and a personal representative is a person~~
26 ~~interested in an estate.~~

27 ~~((3))~~ The court-appointed guardian ad litem supersedes the special
28 representative if so provided in the court order.

29 ~~((4))~~ (3) The court may appoint the guardian ad litem at an ex
30 parte hearing, or the court may order a hearing as provided in RCW
31 11.96.070 with notice as provided in RCW 11.96.080, 11.96.100, and
32 11.96.110.

33 **Sec. 65.** RCW 11.98.200 and 1993 c 339 s 2 are each amended to
34 read as follows:

35 Due to the inherent conflict of interest that exists between a
36 trustee and a beneficiary of a trust, unless the terms of a trust refer
37 specifically to RCW 11.98.200 through 11.98.240 and provide expressly

1 to the contrary, the powers conferred upon a trustee who is a
2 beneficiary of the trust, other than the trustor as a trustee, (~~and~~
3 ~~other than the decedent's spouse or the testator's spouse where the~~
4 ~~spouse is the trustee of a trust for which a marital deduction is or~~
5 ~~was otherwise allowed or allowable, whether or not an appropriate~~
6 ~~marital deduction election was in fact made,~~) cannot be exercised by
7 the trustee to make:

8 (1) Discretionary distributions of either principal or income to
9 or for the benefit of the trustee, except to provide for the trustee's
10 health, education, maintenance, or support as described under section
11 2041 or 2514 of the Internal Revenue Code and the applicable
12 regulations adopted under that section;

13 (2) Discretionary allocations of receipts or expenses as between
14 principal and income, unless the trustee acts in a fiduciary capacity
15 whereby the trustee has no power to enlarge or shift a beneficial
16 interest except as an incidental consequence of the discharge of the
17 trustee's fiduciary duties; or

18 (3) Discretionary distributions of either principal or income to
19 satisfy a legal (~~support~~) obligation of the trustee.

20 A proscribed power under this section that is conferred upon two
21 or more trustees may be exercised by the trustees that are not
22 disqualified under this section. If there is no trustee qualified to
23 exercise a power proscribed under this section, a person described in
24 RCW 11.96.070 who is entitled to seek judicial proceedings with respect
25 to a trust may apply to a court of competent jurisdiction to appoint
26 another trustee who would not be disqualified, and the power may be
27 exercised by another trustee appointed by the court. Alternatively,
28 another trustee who would not be disqualified may be appointed in
29 accordance with the provisions of the trust instrument if the
30 procedures are provided, or as set forth in RCW 11.98.039 as if the
31 office of trustee were vacant, or by a nonjudicial dispute resolution
32 agreement under RCW 11.96.170.

33 **Sec. 66.** RCW 11.98.240 and 1993 c 339 s 6 are each amended to
34 read as follows:

35 (1)(a)(i) RCW 11.98.200 and 11.98.210 respectively apply to a
36 trust established under a will, codicil, trust agreement, declaration
37 of trust, deed, or other instrument executed after July 25, 1993,
38 unless the instrument's terms refer specifically to RCW 11.98.200 or

1 11.98.210 respectively and provide expressly to the contrary. However,
2 except for RCW 11.98.200(3), the 1994 c ... (this act) amendments to
3 RCW 11.98.200 apply to a trust established under a will, codicil, trust
4 agreement, declaration of trust, deed, or other instrument executed
5 after the effective date of this section, unless the instrument's terms
6 refer specifically to RCW 11.98.200 and provide expressly to the
7 contrary.

8 (ii) Notwithstanding (a)(i) of this subsection, for the purposes
9 of this subsection a codicil to a will or an amendment to a trust does
10 not cause that instrument to be executed after (~~the aforementioned~~
11 ~~date~~) July 25, 1993, unless the codicil or amendment clearly shows an
12 intent to have RCW 11.98.200 or 11.98.210 apply.

13 (b) Notwithstanding (a) of this subsection, RCW 11.98.200 and
14 11.98.210 respectively apply to a trust established under a will or
15 codicil of a decedent dying on or after July 25, 1993, and to an inter
16 vivos trust to which the trustor had on or after July 25, 1993, the
17 power to terminate, revoke, amend, or modify, unless:

18 (i) The terms of the instrument specifically refer to RCW
19 11.98.200 or 11.98.210 respectively and provide expressly to the
20 contrary; or

21 (ii) The decedent or the trustor was not competent, on July 25,
22 1993, to change the disposition of his or her property, or to
23 terminate, revoke, amend, or modify the trust, and did not regain his
24 or her competence to dispose, terminate, revoke, amend, or modify
25 before the date of the decedent's death or before the trust could not
26 otherwise be revoked, terminated, amended, or modified by the decedent
27 or trustor.

28 (2) RCW 11.98.200 neither creates a new cause of action nor
29 impairs an existing cause of action that, in either case, relates to a
30 power proscribed under RCW 11.98.200 that was exercised before July 25,
31 1993. RCW 11.98.210 neither creates a new cause of action nor impairs
32 an existing cause of action that, in either case, relates to a power
33 proscribed, limited, or qualified under RCW 11.98.210.

34 NEW SECTION. Sec. 67. A new section is added to chapter 11.94
35 RCW to read as follows:

36 (1) The restrictions in RCW 11.95.100 through 11.95.150 on the
37 power of a person holding a power of appointment apply to attorneys-in-

1 fact holding the power to appoint to or for the benefit of the
2 powerholder.

3 (2) This section applies retroactively to July 25, 1993.

4 **Sec. 68.** RCW 11.100.035 and 1989 c 97 s 1 are each amended to
5 read as follows:

6 (1) Within the standards of judgment and care established by law,
7 and subject to any express provisions or limitations contained in any
8 particular trust instrument, guardians, trustees and other fiduciaries,
9 whether individual or corporate, are authorized to acquire and retain
10 securities of any open-end or closed-end management type investment
11 company or investment trust registered under the federal investment
12 company act of 1940 as now or hereafter amended.

13 (2) Within the limitations of subsection (1) of this section,
14 whenever the trust instrument directs, requires, authorizes, or permits
15 investment in obligations of the United States government, the trustee
16 may invest in and hold such obligations either directly or in the form
17 of securities of, or other interests in, an open-end or closed-end
18 management type investment company or investment trust registered under
19 the federal investment company act of 1940, as now or hereafter
20 amended, if both of the following conditions are met:

21 (a) The portfolio of the investment company or investment trust is
22 limited to obligations of the United States and to repurchase
23 agreements fully collateralized by such obligations; and

24 (b) The investment company or investment trust takes delivery of
25 the collateral for any repurchase agreement either directly or through
26 an authorized custodian.

27 (3) If the fiduciary is a bank or trust company, then the fact
28 that the fiduciary, or an affiliate of the fiduciary, provides services
29 to the investment company or investment trust such as that of an
30 investment advisor, custodian, transfer agent, registrar, sponsor,
31 distributor, manager, or otherwise, and is receiving reasonable
32 compensation for those services does not preclude the bank or trust
33 company from investing or reinvesting in the securities of the open-end
34 or closed-end management investment company or investment trust. The
35 fiduciary shall furnish a copy of the prospectus relating to the
36 securities to each person to whom a regular periodic accounting would
37 ordinarily be rendered under the trust instrument or under RCW
38 11.106.020, upon the request of that person. The restrictions set

1 forth under RCW 11.100.090 may not be construed as prohibiting the
2 fiduciary powers granted under this subsection.

3 **Sec. 69.** RCW 82.32.240 and 1988 c 64 s 21 are each amended to
4 read as follows:

5 Any tax due and unpaid and all increases and penalties thereon,
6 shall constitute a debt to the state and may be collected by court
7 proceedings in the same manner as any other debt in like amount, which
8 remedy shall be in addition to any and all other existing remedies.

9 In all cases of probate, insolvency, assignment for the benefit of
10 creditors, or bankruptcy, involving any taxpayer who is, or decedent
11 who was, engaging in business, the claim of the state for said taxes
12 and all increases and penalties thereon shall be a lien upon all real
13 and personal property of the taxpayer, and the mere existence of such
14 cases or conditions shall be sufficient to create such lien without any
15 prior or subsequent action by the state, and in all such cases it shall
16 be the duty of all administrators, executors, guardians, receivers,
17 trustees in bankruptcy or assignees for the benefit of creditors, to
18 notify the department of revenue of such administration, receivership
19 or assignment within sixty days from the date of their appointment and
20 qualification.

21 The lien provided for by this section shall attach as of the date
22 of the assignment for the benefit of creditors or of the initiation of
23 the probate, insolvency, or bankruptcy proceedings: PROVIDED, That
24 this sentence shall not be construed as affecting the validity or
25 priority of any earlier lien that may have attached previously in favor
26 of the state under any other section of this title.

27 Any administrator, executor, guardian, receiver or assignee for
28 the benefit of creditors not giving the notification as provided for
29 above shall become personally liable for payment of the taxes and all
30 increases and penalties thereon to the extent of the value of the
31 property subject to administration that otherwise would have been
32 available for the payment of such taxes, increases, and penalties by
33 the administrator, executor, guardian, receiver, or assignee.

34 As used in this section, "probate" includes the nonprobate claim
35 settlement procedure under chapter 11.-- RCW (sections 31 through 48 of
36 this act), and "executor" and "administrator" includes any notice agent
37 acting under chapter 11.-- RCW (sections 31 through 48 of this act).

1 **Sec. 70.** RCW 83.100.020 and 1993 c 73 s 9 are each amended to
2 read as follows:

3 As used in this chapter:

4 (1) "Decedent" means a deceased individual;

5 (2) "Department" means the department of revenue, the director of
6 that department, or any employee of the department exercising authority
7 lawfully delegated to him by the director;

8 (3) "Federal credit" means (a) for a transfer, the maximum amount
9 of the credit for state taxes allowed by section 2011 of the Internal
10 Revenue Code; and (b) for a generation-skipping transfer, the maximum
11 amount of the credit for state taxes allowed by section 2604 of the
12 Internal Revenue Code;

13 (4) "Federal return" means any tax return required by chapter 11
14 or 13 of the Internal Revenue Code;

15 (5) "Federal tax" means (a) for a transfer, a tax under chapter 11
16 of the Internal Revenue Code; and (b) for a generation-skipping
17 transfer, the tax under chapter 13 of the Internal Revenue Code;

18 (6) "Generation-skipping transfer" means a "generation-skipping
19 transfer" as defined and used in section 2611 of the Internal Revenue
20 Code;

21 (7) "Gross estate" means "gross estate" as defined and used in
22 section 2031 of the Internal Revenue Code;

23 (8) "Nonresident" means a decedent who was domiciled outside
24 Washington at his death;

25 (9) "Person" means any individual, estate, trust, receiver,
26 cooperative association, club, corporation, company, firm, partnership,
27 joint venture, syndicate, or other entity and, to the extent permitted
28 by law, any federal, state, or other governmental unit or subdivision
29 or agency, department, or instrumentality thereof;

30 (10) "Person required to file the federal return" means any person
31 required to file a return required by chapter 11 or 13 of the Internal
32 Revenue Code, such as the personal representative of an estate; or a
33 transferor, trustee, or beneficiary of a generation-skipping transfer;
34 or a qualified heir with respect to qualified real property, as defined
35 and used in section 2032A(c) of the Internal Revenue Code;

36 (11) "Property" means (a) for a transfer, property included in the
37 gross estate; and (b) for a generation-skipping transfer, all real and
38 personal property subject to the federal tax;

1 (12) "Resident" means a decedent who was domiciled in Washington
2 at time of death;

3 (13) "Transfer" means "transfer" as used in section 2001 of the
4 Internal Revenue Code, or a disposition or cessation of qualified use
5 as defined and used in section 2032A(c) of the Internal Revenue Code;

6 (14) "Trust" means "trust" under Washington law and any
7 arrangement described in section 2652 of the Internal Revenue Code; and

8 (15) "Internal Revenue Code" means the United States Internal
9 Revenue Code of 1986, as amended or renumbered on (~~July 25, 1993~~) the
10 effective date of this section.

11 **Sec. 71.** RCW 83.110.010 and 1993 c 73 s 10 are each amended to
12 read as follows:

13 As used in this chapter, the following terms have the meanings
14 indicated unless the context clearly requires otherwise.

15 (1) "Estate" means the gross estate of a decedent as determined
16 for the purpose of federal estate tax and the estate tax payable to
17 this state;

18 (2) "Excise tax" means the federal excise tax imposed by section
19 4980A(d) of the Internal Revenue Code, and interest and penalties
20 imposed in addition to the excise tax;

21 (3) "Fiduciary" means executor, administrator of any description,
22 and trustee;

23 (4) "Internal Revenue Code" means the United States Internal
24 Revenue Code of 1986, as amended or renumbered on (~~July 25, 1993~~) the
25 effective date of this section;

26 (5) "Person" means any individual, partnership, association, joint
27 stock company, corporation, government, political subdivision,
28 governmental agency, or local governmental agency;

29 (6) "Persons interested in retirement distributions" means any
30 person determined as of the date the excise tax is due, including a
31 personal representative, guardian, trustee, or beneficiary, entitled to
32 receive, or who has received, by reason of or following the death of a
33 decedent, any property or interest therein which constitutes a
34 retirement distribution as defined in section 4980A(e) of the Internal
35 Revenue Code, but this definition excludes any alternate payee under a
36 qualified domestic relations order as such terms are defined in section
37 414(p) of the Internal Revenue Code;

1 (7) "Person interested in the estate" means any person, including
2 a personal representative, guardian, or trustee, entitled to receive,
3 or who has received, from a decedent while alive or by reason of the
4 death of a decedent any property or interest therein included in the
5 decedent's taxable estate;

6 (8) "Qualified heir" means a person interested in the estate who
7 is entitled to receive, or who has received, an interest in qualified
8 real property;

9 (9) "Qualified real property" means real property for which the
10 election described in section 2032A of the Internal Revenue Code has
11 been made;

12 (10) "State" means any state, territory, or possession of the
13 United States, the District of Columbia, or the Commonwealth of Puerto
14 Rico; and

15 (11) "Tax" means the federal estate tax, the excise tax defined in
16 subsection (2) of this section, and the estate tax payable to this
17 state and interest and penalties imposed in addition to the tax.

18 NEW SECTION. **Sec. 72.** The following acts or parts of acts are
19 each repealed:

- 20 (1) RCW 11.12.050 and 1965 c 145 s 11.12.050;
- 21 (2) RCW 11.12.090 and 1965 c 145 s 11.12.090;
- 22 (3) RCW 11.12.130 and 1965 c 145 s 11.12.130;
- 23 (4) RCW 11.12.140 and 1965 c 145 s 11.12.140;
- 24 (5) RCW 11.12.150 and 1965 c 145 s 11.12.150.
- 25 (6) RCW 11.12.200 and 1965 c 145 s 11.12.200;
- 26 (7) RCW 11.12.210 and 1965 c 145 s 11.12.210;
- 27 (8) RCW 11.56.015 and 1965 c 145 s 11.56.015;
- 28 (9) RCW 11.56.140 and 1965 c 145 s 11.56.140;
- 29 (10) RCW 11.56.150 and 1965 c 145 s 11.56.150;
- 30 (11) RCW 11.56.160 and 1965 c 145 s 11.56.160; and
- 31 (12) RCW 11.56.170 and 1965 c 145 s 11.56.170.

32 NEW SECTION. **Sec. 73.** (1) Sections 4 through 8 of this act shall
33 constitute a new chapter in Title 11 RCW.

34 (2) Section 19 of this act shall constitute a new chapter in Title
35 11 RCW.

36 (3) Sections 31 through 48 of this act shall constitute a new
37 chapter in Title 11 RCW.

