

SUBSTITUTE HOUSE BILL 2270

State of Washington 53rd Legislature 1994 Regular Session

By House Committee on Judiciary (originally sponsored by Representatives Johanson, Padden and Appelwick)

Read first time 01/28/94.

1 AN ACT Relating to probate and trust matters; amending RCW
2 11.02.005, 11.07.010, 11.08.170, 11.12.040, 11.12.080, 11.12.110,
3 11.12.120, 11.12.160, 11.12.180, 11.20.070, 11.24.010, 11.24.040,
4 11.28.120, 11.28.237, 11.40.010, 11.40.013, 11.40.015, 11.40.040,
5 11.40.080, 11.48.010, 11.56.050, 11.68.010, 11.96.009, 11.96.020,
6 11.96.050, 11.96.060, 11.96.070, 11.96.080, 11.96.090, 11.96.100,
7 11.96.110, 11.96.130, 11.96.140, 11.96.160, 11.96.170, 11.96.180, and
8 82.32.240; adding new sections to chapter 11.12 RCW; adding new
9 chapters to Title 11 RCW; repealing RCW 11.12.050, 11.12.090,
10 11.12.130, 11.12.140, 11.12.150, 11.12.200, 11.12.210, 11.56.015,
11 11.56.140, 11.56.150, 11.56.160, and 11.56.170; and providing an
12 effective date.

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

14 **Sec. 1.** RCW 11.02.005 and 1993 c 73 s 1 are each amended to read
15 as follows:

16 When used in this title, unless otherwise required from the
17 context:

1 (1) "Personal representative" includes executor, administrator,
2 special administrator, and guardian or limited guardian and special
3 representative.

4 (2) "Net estate" refers to the real and personal property of a
5 decedent exclusive of homestead rights, exempt property, the family
6 allowance and enforceable claims against, and debts of, the deceased or
7 the estate.

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

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

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

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

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

36 (8) "Will" means an instrument validly executed as required by RCW
37 11.12.020 (~~and includes all codicils~~).

38 (9) "Codicil" means (~~an instrument that is validly executed in the~~
39 ~~manner provided by this title for a will and that refers to an existing~~

1 ~~will for the purpose of altering or changing the same, and which need~~
2 ~~not be attached thereto))~~ a will that modifies or partially revokes an
3 existing earlier will. A codicil need not refer to or be attached to
4 the earlier will.

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

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

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

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

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

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

1 waived the unilateral right to rescind or modify the arrangement; or a
2 right or interest held by an owner solely in a fiduciary capacity.

3 (16) "Internal Revenue Code" means the United States Internal
4 Revenue Code of 1986, as amended or renumbered on July 25, 1993.

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

7 ((17)) Words importing the masculine gender only may be extended
8 to females also.

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

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

14 (2)(a) If a marriage is dissolved or invalidated, a provision made
15 prior to that event that relates to the payment or transfer at death of
16 the decedent's interest in a nonprobate asset in favor of or granting
17 an interest or power to the decedent's former spouse is revoked. A
18 provision affected by this section must be interpreted, and the
19 nonprobate asset affected passes, as if the former spouse failed to
20 survive the decedent, having died at the time of entry of the decree of
21 dissolution or declaration of invalidity.

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

23 (i) The instrument governing disposition of the nonprobate asset
24 expressly provides otherwise;

25 (ii) The decree of dissolution or declaration of invalidity
26 requires that the decedent maintain a nonprobate asset for the benefit
27 of a former spouse or children of the marriage, payable on the
28 decedent's death either outright or in trust, and other nonprobate
29 assets of the decedent fulfilling such a requirement for the benefit of
30 the former spouse or children of the marriage do not exist at the
31 decedent's death; or

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

36 (3)(a) A payor or other third party in possession or control of a
37 nonprobate asset at the time of the decedent's death is not liable for
38 making a payment or transferring an interest in a nonprobate asset to

1 a decedent's former spouse whose interest in the nonprobate asset is
2 revoked under this section, or for taking another action in reliance on
3 the validity of the instrument governing disposition of the nonprobate
4 asset, before the payor or other third party has actual knowledge of
5 the dissolution or other invalidation of marriage. A payor or other
6 third party is liable for a payment or transfer made or other action
7 taken after the payor or other third party has actual knowledge of a
8 revocation under this section.

9 (b) This section does not require a payor or other third party to
10 pay or transfer a nonprobate asset to a beneficiary designated in a
11 governing instrument affected by the dissolution or other invalidation
12 of marriage, or to another person claiming an interest in the
13 nonprobate asset, if the payor or third party has actual knowledge of
14 the existence of a dispute between the former spouse and the
15 beneficiaries or other persons concerning rights of ownership of the
16 nonprobate asset as a result of the application of this section among
17 the former spouse and the beneficiaries or among other persons, or if
18 the payor or third party is otherwise uncertain as to who is entitled
19 to the nonprobate asset under this section. In such a case, the payor
20 or third party may, without liability, notify in writing all
21 beneficiaries or other persons claiming an interest in the nonprobate
22 asset of either the existence of the dispute or its uncertainty as to
23 who is entitled to payment or transfer of the nonprobate asset. The
24 payor or third party may also, without liability, refuse to pay or
25 transfer a nonprobate asset in such a circumstance to a beneficiary or
26 other person claiming an interest until the time that either:

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

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

31 (c) Notwithstanding subsections (1) and (2) of this section and (a)
32 and (b) of this subsection, a payor or other third party having actual
33 knowledge of the existence of a dispute between beneficiaries or other
34 persons concerning rights to a nonprobate asset as a result of the
35 application of this section may condition the payment or transfer of
36 the nonprobate asset on execution, in a form and with security
37 acceptable to the payor or other third party, of a bond in an amount
38 that is double the fair market value of the nonprobate asset at the
39 time of the decedent's death or the amount of an adverse claim,

1 whichever is the lesser, or of a similar instrument to provide security
2 to the payor or other third party, indemnifying the payor or other
3 third party for any liability, loss, damage, costs, and expenses for
4 and on account of payment or transfer of the nonprobate asset.

5 (d) As used in this subsection, "actual knowledge" means, for a
6 payor or other third party in possession or control of the nonprobate
7 asset at or following the decedent's death, written notice to the payor
8 or other third party, or to an officer of a payor or third party in the
9 course of his or her employment, received after the decedent's death
10 and within a time that is sufficient to afford the payor or third party
11 a reasonable opportunity to act upon the knowledge. The notice must
12 identify the nonprobate asset with reasonable specificity. The notice
13 also must be sufficient to inform the payor or other third party of the
14 revocation of the provisions in favor of the decedent's spouse by
15 reason of the dissolution or invalidation of marriage, or to inform the
16 payor or third party of a dispute concerning rights to a nonprobate
17 asset as a result of the application of this section. Receipt of the
18 notice for a period of more than thirty days is presumed to be received
19 within a time that is sufficient to afford the payor or third party a
20 reasonable opportunity to act upon the knowledge, but receipt of the
21 notice for a period of less than five business days is presumed not to
22 be a sufficient time for these purposes. These presumptions may be
23 rebutted only by clear and convincing evidence to the contrary.

24 (4)(a) A person who purchases a nonprobate asset from a former
25 spouse or other person, for value and without actual knowledge, or who
26 receives from a former spouse or other person payment or transfer of a
27 nonprobate asset without actual knowledge and in partial or full
28 satisfaction of a legally enforceable obligation, is neither obligated
29 under this section to return the payment, property, or benefit nor is
30 liable under this section for the amount of the payment or the value of
31 the nonprobate asset. However, a former spouse or other person who,
32 with actual knowledge, not for value, or not in satisfaction of a
33 legally enforceable obligation, receives payment or transfer of a
34 nonprobate asset to which that person is not entitled under this
35 section is obligated to return the payment or nonprobate asset, or is
36 personally liable for the amount of the payment or value of the
37 nonprobate asset, to the person who is entitled to it under this
38 section.

1 (b) As used in this subsection, "actual knowledge" means, for a
2 person described in (a) of this subsection who purchases or receives a
3 nonprobate asset from a former spouse or other person, personal
4 knowledge or possession of documents relating to the revocation upon
5 dissolution or invalidation of marriage of provisions relating to the
6 payment or transfer at the decedent's death of the nonprobate asset,
7 received within a time after the decedent's death and before the
8 purchase or receipt that is sufficient to afford the person purchasing
9 or receiving the nonprobate asset reasonable opportunity to act upon
10 the knowledge. Receipt of the personal knowledge or possession of the
11 documents for a period of more than thirty days is presumed to be
12 received within a time that is sufficient to afford the payor or third
13 party a reasonable opportunity to act upon the knowledge, but receipt
14 of the notice for a period of less than five business days is presumed
15 not to be a sufficient time for these purposes. These presumptions may
16 be rebutted only by clear and convincing evidence to the contrary.

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

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

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

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

28 (d) Transfer on death beneficiary designations of a transfer on
29 death or pay on death security, if such designations are authorized
30 under Washington law.

31 (6) This section is remedial in nature and applies as of July 25,
32 1993, to decrees of dissolution and declarations of invalidity entered
33 after July 24, 1993, and this section applies as of the effective date
34 of this act to decrees of dissolution and declarations of invalidity
35 entered before July 25, 1993.

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

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

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

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

- 25 (a) Intestate property;
- 26 (b) Residuary gifts;
- 27 (c) General gifts;
- 28 (d) Specific gifts.

29 For purposes of abatement a demonstrative gift, defined as a
30 general gift charged on any specific property or fund, is deemed a
31 specific gift to the extent of the value of the property or fund on
32 which it is charged, and a general gift to the extent of a failure or
33 insufficiency of that property or fund. Abatement within each
34 classification is in proportion to the amounts of property each of the
35 beneficiaries would have received if full distribution of the property
36 had been made in accordance with the terms of the will.

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

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

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

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

17 NEW SECTION. **Sec. 6.** To the extent that a gift is to be satisfied
18 out of a source that consists of both separate and community property,
19 unless otherwise indicated in the will it is presumed to be a gift from
20 separate and community property in proportion to their relative value
21 in the property or fund from which the gift is to be satisfied.

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

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

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

32 (4) An expense of administration is charged against the separate
33 property and the decedent's half of the community property in
34 proportion to the relative value of the property, unless a different
35 charging of expenses is shown to be appropriate under the circumstances
36 including against the surviving spouse's share of the community
37 property.

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

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

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

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

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

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

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

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

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

34 (1) If a will fails to name or provide for a child of the decedent
35 who is born or adopted by the decedent after the will's execution and
36 who survives the decedent, referred to in this section as an "omitted
37 child", the child must receive a portion of the decedent's estate as

1 provided in subsection (3) of this section, unless it appears either
2 from the will or from other clear and convincing evidence that the
3 failure was intentional.

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

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

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

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

15 (3) The omitted child must receive an amount equal in value to that
16 which the child would have received under RCW 11.04.015 if the decedent
17 had died intestate, unless the court determines on the basis of clear
18 and convincing evidence that a smaller share, including no share at
19 all, is more in keeping with the decedent's intent. In making the
20 determination, the court may consider, among other things, the various
21 elements of the decedent's dispositive scheme, provisions for the
22 omitted child outside the decedent's will, provisions for the
23 decedent's other children under the will and otherwise, and provisions
24 for the omitted child's other parent under the will and otherwise.

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

28 NEW SECTION. Sec. 10. A new section is added to chapter 11.12 RCW
29 to read as follows:

30 (1) If a will fails to name or provide for a spouse of the decedent
31 whom the decedent marries after the will's execution and who survives
32 the decedent, referred to in this section as an "omitted spouse", the
33 spouse must receive a portion of the decedent's estate as provided in
34 subsection (3) of this section, unless it appears either from the will
35 or from other clear and convincing evidence that the failure was
36 intentional.

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

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

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

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

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

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

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

25 (1) If, after making a will, the testator's marriage is dissolved
26 or invalidated, all provisions in the will in favor of or granting any
27 interest or power to the testator's former spouse are revoked, unless
28 the will expressly provides otherwise. Provisions affected by this
29 section must be interpreted, and property affected passes, as if the
30 former spouse failed to survive the testator, having died at the time
31 of entry of the decree of dissolution or declaration of invalidity.
32 Provisions revoked by this section are revived by the testator's
33 remarriage to the former spouse. Revocation of certain nonprobate
34 transfers is provided under RCW 11.07.010.

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

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

3 (1) A will, or any part thereof, can be revoked:
4 ~~((1))~~ (a) By a ~~((written))~~ subsequent will that revokes, or
5 partially revokes, the prior will expressly or by inconsistency; or
6 ~~((2))~~ (b) By being burnt, torn, canceled, obliterated, or
7 destroyed, with the intent and for the purpose of revoking the same, by
8 the testator ~~((himself))~~ or by another person in ~~((his))~~ the presence
9 and by ~~((his))~~ the direction of the testator. If such act is done by
10 any person other than the testator, the direction of the testator and
11 the facts of such injury or destruction must be proved by two
12 witnesses.

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

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

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

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

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

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

33 ~~Unless otherwise provided, when any ~~((estate shall be devised or~~~~
34 ~~bequeathed to any child, grandchild, or other relative of the testator,~~
35 ~~and such devisee or legatee shall die before the testator, having~~
36 ~~lineal descendants who survive the testator, such descendants shall~~
37 ~~take the estate, real and personal, as such devisee or legatee would~~

1 ~~have done in the case he had survived the testator; if such descendants~~
2 ~~are all in the same degree of kinship to the predeceased devisee or~~
3 ~~legatee)) property shall be given under a will, or under a trust of~~
4 ~~which the decedent is a grantor and which by its terms becomes~~
5 ~~irrevocable upon the grantor's death, to any issue of a grandparent of~~
6 ~~the decedent and that issue dies before the decedent leaving~~
7 ~~descendants who survive the decedent, those descendants shall take that~~
8 ~~property as the predeceased issue would have done if the predeceased~~
9 ~~issue had survived the decedent. If those descendants are all in the~~
10 ~~same degree of kinship to the predeceased issue they shall take~~
11 ~~equally((7)) or, if of unequal degree, then those of more remote degree~~
12 ~~shall take by representation with respect to ((such)) the predeceased~~
13 ~~((devisee or legatee. A spouse is not a relative under the provisions~~
14 ~~of this section)) issue.~~

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

17 ~~((Whenever any person having died leaving)) (1) If a will ((which~~
18 ~~has been admitted to probate or established by an adjudication of~~
19 ~~testacy, shall by said will have given, devised or bequeathed unto any~~
20 ~~person, a legacy or a devise upon the condition that said person~~
21 ~~survive him, and not otherwise, such legacy or devise shall lapse and~~
22 ~~fall into the residue of said estate to be distributed according to the~~
23 ~~residuary clause, if there be one, of said will, and if there be none~~
24 ~~then according to the laws of descent, unless said legatee or devisee,~~
25 ~~as the case may be, or his heirs, personal representative, or someone~~
26 ~~in behalf of such legatee or devisee, shall appear before the court~~
27 ~~which is administering said estate within three years from and after~~
28 ~~the date the said will was admitted to probate or established by an~~
29 ~~adjudication of testacy, and prove to the satisfaction of the court~~
30 ~~that the said legatee or devisee, as the case may be, did in fact~~
31 ~~survive the testator)) makes a gift to a person on the condition that~~
32 ~~the person survive the testator and the person does not survive the~~
33 ~~testator, then, unless otherwise provided, the gift lapses and falls~~
34 ~~into the residue of the estate to be distributed under the residuary~~
35 ~~clause of the will, if any, but otherwise according to the laws of~~
36 ~~descent and distribution.~~

37 (2) If the will gives the residue to two or more persons, the share
38 of a person who does not survive the testator passes, unless otherwise

1 provided, and subject to RCW 11.12.110, to the other person or persons
2 receiving the residue, in proportion to the interest of each in the
3 remaining part of the residue.

4 (3) The personal representative of the testator, a person who would
5 be affected by the lapse or distribution of a gift under this section,
6 or a guardian ad litem or other representative appointed to represent
7 the interests of a person so affected may petition the court for a
8 determination under this section, and the petition must be heard under
9 the procedures of chapter 11.96 RCW.

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

12 ~~((All beneficial devises, legacies, and gifts whatever, made or~~
13 ~~given in any will to a subscribing witness thereto, shall be void~~
14 ~~unless there are two other competent witnesses to the same; but a mere~~
15 ~~charge on the estate of the testator for the payment of debts shall not~~
16 ~~prevent his creditors from being competent witnesses to his will. If~~
17 ~~such witness, to whom any beneficial devise, legacy or gift may have~~
18 ~~been made or given, would have been entitled to any share in the~~
19 ~~testator's estate in case the will is not established, then so much of~~
20 ~~the estate as would have descended or would have been distributed to~~
21 ~~such witness shall be saved to him as will not exceed the value of the~~
22 ~~devise or bequest made to him in the will; and he may recover the same~~
23 ~~from the devisees or legatees named in the will in proportion to and~~
24 ~~out of the parts devised and bequeathed to him.)) (1) An interested~~
25 witness to a will is one who would receive a gift under the will.

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

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

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

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

6 ~~((If any person, by last will, devise any real estate to any person~~
7 ~~for the term of such person's life, such devise vests in the devisee an~~
8 ~~estate for life, and unless the remainder is specially devised, it~~
9 ~~shall revert to the heirs at law of the testator.)) The Rule in
10 Shelley's Case is abolished as a rule of law and as a rule of
11 construction. If an applicable statute or a governing instrument calls
12 for a future distribution to or creates a future interest in a
13 designated individual's "heirs," "heirs at law," "next of kin,"
14 "relatives," or "family," or language of similar import, the property
15 passes to those persons, including the state under chapter 11.08 RCW,
16 that would succeed to the designated individual's estate under chapter
17 11.04 RCW. The property must pass to those persons as if the
18 designated individual had died when the distribution or transfer of the
19 future interest was to take effect in possession or enjoyment. For
20 purposes of this section and section 18 of this act, the designated
21 individual's surviving spouse is deemed to be an heir, regardless of
22 whether the surviving spouse has remarried.~~

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

25 The Doctrine of Worthier Title is abolished as a rule of law and as
26 a rule of construction. However, the Doctrine of Worthier Title is
27 preserved as a rule of construction if:

28 (1) A grantor has established in inter vivos trust of real
29 property;

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

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

36 In all other cases, language in a governing instrument describing the
37 beneficiaries of a donative disposition as the transferor's "heirs,"

1 "heirs at law," "next of kin," "distributees," "relatives," or
2 "family," or language of similar import, does not create or
3 presumptively create a reversionary interest in the transferor.

4 NEW SECTION. **Sec. 19.** (1) Unless expressly exempted by statute,
5 a beneficiary of a nonprobate asset that was subject to satisfaction of
6 the decedent's general liabilities immediately before the decedent's
7 death takes the asset subject to liabilities, claims, estate taxes, and
8 the fair share of expenses of administration reasonably incurred by the
9 personal representative in the transfer of or administration upon the
10 asset. The beneficiary of such an asset is liable to account to the
11 personal representative to the extent necessary to satisfy liabilities,
12 claims, the asset's fair share of expenses of administration, and the
13 asset's share of estate taxes under chapter 83.110 RCW. Before making
14 demand that a beneficiary of a nonprobate asset account to the personal
15 representative, the personal representative shall give notice to the
16 beneficiary, in the manner provided in chapter 11.96 RCW, that the
17 beneficiary is liable to account under this section.

18 (2) The following rules govern in applying subsection (1) of this
19 section:

20 (a) A beneficiary of property passing at death under a community
21 property agreement takes the property subject to the decedent's
22 liabilities, claims, estate taxes, and administration expenses as
23 described in subsection (1) of this section. However, assets existing
24 as community or separate property immediately before the decedent's
25 death under the community property agreement are subject to the
26 decedent's liabilities and claims to the same extent that they would
27 have been had they been assets of the probate estate.

28 (b) A beneficiary of property held in joint tenancy form with right
29 of survivorship, including without limitation United States savings
30 bonds or similar obligations, takes the property subject to the
31 decedent's liabilities, claims, estate taxes, and administration
32 expenses as described in subsection (1) of this section to the extent
33 of the decedent's beneficial ownership interest in the property
34 immediately before death.

35 (c) A beneficiary of payable-on-death or trust bank accounts,
36 bonds, securities, or similar obligations, including without limitation
37 United States bonds or similar obligations, takes the property subject
38 to the decedent's liabilities, claims, estate taxes, and administration

1 expenses as described in subsection (1) of this section, to the extent
2 of the decedent's beneficial ownership interest in the property
3 immediately before death.

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

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

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

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

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

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

29 (j) An inference may not be drawn from (a) through (i) of this
30 subsection that a beneficiary of nonprobate assets other than those
31 assets specifically described in (a) through (i) of this subsection
32 does or does not take the assets subject to claims, liabilities, estate
33 taxes, and administration expenses as described in subsection (1) of
34 this section.

35 (3) Nothing in this section derogates from the rights of a person
36 interested in the estate to recover tax under chapter 83.110 RCW or
37 from the liability of any beneficiary for estate tax under chapter
38 83.110 RCW.

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

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

8 ~~No will shall be allowed to be proved as a lost or destroyed will
9 unless it is proved to have been in existence at the time of the death
10 of the testator, or is shown to have been destroyed, canceled or
11 mutilated in whole or in part as a result of actual or constructive
12 fraud or in the course of an attempt to change the will in whole or in
13 part, which attempt has failed, or as the result of a mistake of fact,
14 nor unless its provisions are clearly and distinctly proved by at least
15 two witnesses, and when any such will is so established, the provisions
16 thereof shall be distinctly stated in the judgment establishing it, and
17 such judgment shall be recorded as wills are required to be recorded.
18 Executors of such will or administrators with the will annexed)) (1) If
19 a will has been lost or destroyed under circumstances such that the
20 loss or destruction does not have the effect of revoking the will, the
21 court may take proof of the execution and validity of the will and
22 establish it, notice to all persons interested having been first given.
23 The proof must be reduced to writing and signed by any witnesses who
24 have testified as to the execution and validity, and must be filed with
25 the clerk of the court.~~

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

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

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

1 If any person interested in any will shall appear within four
2 months immediately following the probate or rejection thereof, and by
3 petition to the court having jurisdiction contest the validity of said
4 will, or appear to have the will proven which has been rejected, he or
5 she shall file a petition containing his or her objections and
6 exceptions to said will, or to the rejection thereof. (~~Issue shall be~~
7 ~~made up, tried and determined in said court respecting the competency~~
8 ~~of the deceased to make a last will and testament, or respecting the~~
9 ~~execution by a deceased of such last will and testament under restraint~~
10 ~~or undue influence or fraudulent representations, or for any other~~
11 ~~cause affecting the validity of such will.)) Issues respecting the
12 competency of the deceased to make a last will and testament, or
13 respecting the execution by a deceased of the last will and testament
14 under restraint or undue influence or fraudulent representations, or
15 for any other cause affecting the validity of the will or a part of it,
16 shall be tried and determined by the court.~~

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

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

22 If, upon the trial of said issue, it shall be decided that the will
23 or a part of it is for any reason invalid, or that it is not
24 sufficiently proved to have been the last will of the testator, the
25 will or part and probate thereof shall be annulled and revoked(~~(, and~~
26 ~~thereupon and thereafter the powers of the executor or administrator~~
27 ~~with the will annexed shall cease, but such executor or administrator))
28 and to that extent the powers of the personal representative shall
29 cease, but the personal representative shall not be liable for any act
30 done in good faith previous to such annulling or revoking.~~

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

33 Administration of ((the)) an estate ((of)) if the ((~~person dying~~))
34 decedent died intestate or if the personal representative or
35 representatives named in the will declined or were unable to serve
36 shall be granted to some one or more of the persons hereinafter

1 mentioned, and they shall be respectively entitled in the following
2 order:

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

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

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

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

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

18 (~~(4)~~) (6) One or more of the principal creditors.

19 (~~(5)~~) (7) If the persons so entitled shall fail for more than
20 forty days after the death of the (~~(intestate)~~) decedent to present a
21 petition for letters of administration, or if it appears to the
22 satisfaction of the court that there (~~(are)~~) is no (~~(relatives or)~~)
23 next of kin, as above specified eligible to appointment, or they waive
24 their right, and there are no principal creditor or creditors, or such
25 creditor or creditors waive their right, then the court may appoint any
26 suitable person to administer such estate.

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

29 Within twenty days after appointment, the personal representative
30 of the estate of a decedent shall cause written notice of his or her
31 appointment and the pendency of said probate proceedings, to be served
32 personally or by mail to each heir, legatee and devisee of the estate
33 and each beneficiary or transferee of a nonprobate asset of the
34 decedent whose names and addresses are known to him or her, and proof
35 of such mailing or service shall be made by affidavit and filed in the
36 cause.

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

3 Every personal representative shall, after appointment and
4 qualification, give a notice to the creditors of the deceased, stating
5 such appointment and qualification as personal representative and
6 requiring all persons having claims against the deceased to serve the
7 same on the personal representative or the estate's attorney of record,
8 and file an executed copy thereof with the clerk of the court, within
9 four months after the date of the first publication of such notice
10 described in this section or within four months after the date of the
11 filing of the copy of such notice with the clerk of the court,
12 whichever is the later, or within the time otherwise provided in RCW
13 11.40.013. The four-month time period after the later of the date of
14 the first publication of the notice to creditors or the date of the
15 filing of such notice with the clerk of the court is referred to in
16 this chapter as the "four-month time limitation." Such notice shall be
17 given as follows:

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

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

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

26 Except as otherwise provided in RCW 11.40.011 or 11.40.013, any
27 claim not filed within the four-month time limitation shall be forever
28 barred, if not already barred by any otherwise applicable statute of
29 limitations. This bar is effective as to claims against both the
30 decendent's probate assets and nonprobate assets as described in section
31 19 of this act. Proof by affidavit of the giving and publication of
32 such notice shall be filed with the court by the personal
33 representative.

34 Acts of a notice agent in complying with chapter ..., Laws of 1994
35 (this act) may be adopted and ratified by the personal representative
36 as if done by the personal representative in complying with this
37 chapter, except that if at the time of the appointment and
38 qualification of the personal representative a notice agent had
39 commenced nonprobate notice to creditors under chapter 11.-- RCW

1 (sections 31 through 48 of this act), the personal representative shall
2 give published notice as provided in section 48 of this act.

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

5 The actual notice described in RCW 11.40.010(1), as to creditors
6 becoming known to the personal representative within the four-month
7 time limitation, shall be given the creditors by personal service or
8 regular first class mail, addressed to the creditor's last known
9 address, postage prepaid. The actual notice shall be given before the
10 later of the expiration of the four-month time limitation or thirty
11 days after any creditor became known to the personal representative
12 within the four-month time limitation. Any known creditor is barred
13 unless the creditor has filed a claim, as otherwise provided in this
14 chapter, within the four-month time limitation or within thirty days
15 following the date of actual notice to that creditor, whichever is
16 later. If notice is given by mail, the date of mailing shall be the
17 date of notice. This bar is effective as to claims against both the
18 decendent's probate assets and nonprobate assets.

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

21 Notice under RCW 11.40.010 shall be in substantially the following
22 form:

23)
24 CAPTION) No.
25 OF CASE)
26) NOTICE TO CREDITORS
27)
28)

29 The personal representative named below has been appointed and has
30 qualified as personal representative of this estate. Persons having
31 claims against the ((deceased)) decendent must, prior to the time such
32 claims would be barred by any otherwise applicable statute of
33 limitations, serve their claims on the personal representative or the
34 attorneys of record at the address stated below and file an executed
35 copy of the claim with the Clerk of this Court within four months after
36 the date of first publication of this notice or within four months

1 after the date of the filing of the copy of this Notice with the Clerk
2 of the Court, whichever is later or, except under those provisions
3 included in RCW 11.40.011 or 11.40.013, the claim will be forever
4 barred. This bar is effective as to claims against both the probate
5 assets and nonprobate assets of the decedent.

6 DATE OF FILING COPY OF NOTICE TO CREDITORS with Clerk of
7 Court:

8 DATE OF FIRST PUBLICATION:
9 ,

10 Personal Representative

11 Address

12 Attorney for Estate:

13 Address:

14 Telephone:

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

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

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

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

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

28 It shall be the duty of every personal representative to settle the
29 estate, including the administration of any nonprobate assets within
30 control of the personal representative under section 19 of this act, in
31 his or her hands as rapidly and as quickly as possible, without
32 sacrifice to the probate or nonprobate estate. (~~He~~) The personal
33 representative shall collect all debts due the deceased and pay all
34 debts as hereinafter provided. (~~He~~) The personal representative
35 shall be authorized in his or her own name to maintain and prosecute

1 such actions as pertain to the management and settlement of the estate,
2 and may institute suit to collect any debts due the estate or to
3 recover any property, real or personal, or for trespass of any kind or
4 character.

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

10 (a) Decedent's surviving spouse;

11 (b) The person appointed in an agreement made under chapter 11.96
12 RCW to give nonprobate notice to creditors of the decedent;

13 (c) The trustee, except a testamentary trustee under the will of
14 the decedent not probated in another state, having authority over any
15 of the property of the decedent; and

16 (d) A person who has received any property of the decedent by
17 reason of the decedent's death.

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

21 (a) Constitutes a nonprobate asset; or

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

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

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

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

35 (4) The requirement in subsection (3) of this section of the
36 receipt of all, or substantially all, of the included property is
37 satisfied if:

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

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

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

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

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

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

20 The county in which the notice agent files the declaration is the
21 "notice county." The declaration and oath must be made in affidavit
22 form or under penalty of perjury under the laws of the state in the
23 form provided in RCW 9A.72.085 and must state that the person making
24 the declaration believes in reasonable good faith that the person is
25 qualified under this chapter to act as the notice agent and that the
26 person faithfully will execute the duties of the notice agent as
27 provided in this chapter.

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

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

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

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

35 (b) Minors;

36 (c) Persons of unsound mind; or

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

1 (7) A person who has given notice under this chapter and who
2 thereafter becomes of unsound mind or is convicted of a crime or
3 misdemeanor involving moral turpitude is no longer qualified to act as
4 notice agent under this chapter. The disqualification does not bar
5 another person, otherwise qualified, from acting as notice agent under
6 this chapter.

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

13 (9) The powers and authority of a notice agent cease, and the
14 office of notice agent becomes vacant, upon the appointment and
15 qualification of a personal representative for the estate of the
16 decedent. Except as provided in section 48 of this act, the cessation
17 of the powers and authority does not affect a published notice under
18 this chapter if the publication commenced before the cessation and does
19 not affect actual notice to creditors given by the notice agent before
20 the cessation.

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

23 (a) As of the date of the filing of a copy of the notice with the
24 clerk of the superior court for the notice county, the notice agent has
25 no knowledge of the appointment and qualification of a personal
26 representative in the decedent's estate in the state of Washington or
27 of another person becoming a notice agent; and

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

33 (2) The notice must state that all persons having claims against
34 the decedent shall: (a) Serve the same on the notice agent if the
35 notice agent is a resident of the state of Washington upon whom service
36 of all papers may be made, or on the nonprobate resident agent for the
37 notice agent, if any, or on the attorneys of record of the notice agent
38 at their respective address in the state of Washington; and (b) file an

1 executed copy of the notice with the clerk of the superior court for
2 the notice county, within: (i) (A) Four months after the date of the
3 first publication of the notice described in this section; or (B) four
4 months after the date of the filing of the copy of the notice with the
5 clerk of the superior court for the notice county, whichever is later;
6 or (ii) the time otherwise provided in section 35 of this act. The
7 four-month time period after the later of the date of the first
8 publication of the notice to creditors or the date of the filing of the
9 notice with the clerk of the court is referred to in this chapter as
10 the "four-month time limitation."

11 (3) The notice agent shall declare in the notice in affidavit form
12 or under the penalty of perjury under the laws of the state of
13 Washington as provided in RCW 9A.72.085 that: (a) The notice agent is
14 entitled to give the nonprobate notice under subsection (1) of this
15 section; and (b) the notice is being given by the notice agent as
16 permitted by this section.

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

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

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

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

27 (5) A claim not filed within the four-month time limitation is
28 forever barred, if not already barred by an otherwise applicable
29 statute of limitations, except as provided in section 33 or 35 of this
30 act. The bar is effective to bar claims against both the probate
31 estate of the decedent and nonprobate assets that were subject to
32 satisfaction of the decedent's general liabilities immediately before
33 the decedent's death. If a notice to the creditors of a decedent is
34 published by more than one notice agent and the notice agents are not
35 acting jointly, the four-month time limitation means the four-month
36 time limitation that applies to the notice agent who first publishes
37 the notice. Proof by affidavit or perjury declaration made under RCW
38 9A.72.085 of the giving and publication of the notice must be filed

1 with the clerk of the superior court for the notice county by the
2 notice agent.

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

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

12 (2) If there is no duly acting notice agent or resident agent for
13 the notice agent, the claimant as a creditor shall proceed as provided
14 in chapter 11.40 RCW. However, if no personal representative ever has
15 been appointed for the decedent, a personal representative must be
16 appointed as provided in chapter 11.28 RCW and the estate opened, in
17 which case the claimant then shall proceed as provided in chapter 11.40
18 RCW.

19 A claim may be served and filed as provided in this section,
20 notwithstanding that there is no duly acting notice agent and that no
21 personal representative previously has been appointed. However, the
22 amount of recovery under the claim may not exceed the amount of
23 applicable insurance coverages and proceeds, and the claim so served
24 and filed may not constitute a cloud or lien upon the title to the
25 assets of the decedent or delay or prevent the transfer or distribution
26 of assets of the decedent. This section does not serve to extend the
27 applicable statute of limitations regardless of whether a declaration
28 and oath has been filed by a notice agent as provided in section 31 of
29 this act.

30 NEW SECTION. **Sec. 34.** The notice agent shall exercise reasonable
31 diligence to discover, within the four-month time limitation,
32 reasonably ascertainable creditors of the decedent. The notice agent
33 is deemed to have exercised reasonable diligence to ascertain the
34 creditors upon:

35 (1) Conducting, within the four-month time limitation, a reasonable
36 review of the decedent's correspondence including correspondence
37 received after the date of death and financial records including

1 checkbooks, bank statements, income tax returns, and similar materials,
2 that are in the possession of, or reasonably available to, the notice
3 agent; and

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

9 If the notice agent conducts the review and makes an inquiry, the
10 notice agent is presumed to have exercised reasonable diligence to
11 ascertain creditors of the decedent, and creditors not ascertained in
12 the review or in an inquiry are presumed not reasonably ascertainable.
13 These presumptions may be rebutted only by clear, cogent, and
14 convincing evidence. The notice agent may evidence the review and
15 inquiry by filing an affidavit or declaration under penalty of perjury
16 form as provided in RCW 9A.72.085 to the effect in the nonprobate
17 proceeding in the notice county. The notice agent also may petition
18 the superior court of the notice county for an order declaring that the
19 notice agent has made a review and inquiry and that only creditors
20 known to the notice agent after the review and inquiry are reasonably
21 ascertainable. The petition and hearing must be under the procedures
22 provided in chapter 11.96 RCW, and the notice specified under RCW
23 11.96.100 must also be given by publication.

24 NEW SECTION. **Sec. 35.** The actual notice described in section
25 32(4)(a) of this act, as to a creditor becoming known to the notice
26 agent within the four-month time limitation, must be given the creditor
27 by personal service or regular first class mail, addressed to the
28 creditor's last known address, postage prepaid. The actual notice must
29 be given before the later of the expiration of the four-month time
30 limitation or thirty days after a creditor became known to the notice
31 agent within the four-month time limitation. A known creditor is
32 barred unless the creditor has filed a claim, as provided in this
33 chapter, within the four-month time limitation or within thirty days
34 following the date of actual notice to that creditor, whichever is
35 later. If notice is given by mail, the date of mailing is the date of
36 notice. This bar is effective as to claims against the included
37 property as defined in section 31 of this act.

1) No.
2)
3) NONPROBATE NOTICE TO CREDITORS
4 Deceased.)
5 _____)

6 _____, the undersigned Notice
7 Agent, has elected to give notice to creditors of the decedent above
8 named under section 32 of this act. As of the date of the filing of a
9 copy of this notice with the Clerk of this Court, the Notice Agent has
10 no knowledge of the appointment and qualification of a personal
11 representative in the decedent's estate in the state of Washington or
12 of any other person becoming a Notice Agent. According to the records
13 of the Clerk of this Court as of 8:00 a.m. on the date of the filing of
14 this notice with the Clerk, no personal representative of the
15 decedent's estate had been appointed and qualified and no cause number
16 regarding the decedent had been issued to any other Notice Agent by the
17 Clerk of this Court under section 31 of this act.

18 Persons having claims against the decedent named above must, before
19 the time the claims would be barred by any otherwise applicable statute
20 of limitations, serve their claims on: The notice agent if the Notice
21 Agent is a resident of the state of Washington upon whom service of all
22 papers may be made; the Nonprobate Resident Agent for the Notice Agent,
23 if any; or the attorneys of record for the Notice Agent at the
24 respective address in the state of Washington listed below, and file an
25 executed copy of the claim with the Clerk of this Court within four
26 months after the date of first publication of this notice, or within
27 four months after the date of the filing of the copy of this notice
28 with the Clerk of the Court, whichever is later, or, except under those
29 provisions included in section 33 or 35 of this act, the claim will be
30 forever barred. This bar is effective as to all assets of the decedent
31 that were subject to satisfaction of the decedent's general liabilities
32 immediately before the decedent's death regardless of whether those
33 assets are or would be assets of the decedent's probate estate or
34 nonprobate assets of the decedent.

35 Date of filing of this notice with the
36 Clerk of the Court: _____

1 Date of first publication of this notice: _____

2 The Notice Agent declares under penalty of perjury under the laws
3 of the State of Washington on _____, 19__ at _____
4 [City] _____, _____ [State] _____ that the
5 foregoing is true and correct.

6 _____
7 Notice Agent [signature] Nonprobate Resident Agent [if appointed]
8 [address in Washington, if any] [address in Washington]

9 _____
10 Attorney for Notice Agent
11 [address in Washington]
12 [telephone]

13 NEW SECTION. **Sec. 38.** RCW 11.40.020 applies to claims subject to
14 this chapter.

15 NEW SECTION. **Sec. 39.** (1) Property of the decedent that was
16 subject to the satisfaction of the decedent's general liabilities
17 immediately before the decedent's death is liable for claims. The
18 property includes, but is not limited to, property of the decedent that
19 is includable in the decedent's probate estate, whether or not there is
20 a probate administration of the decedent's estate.

21 (2) A claim approved by the notice agent, and a judgment on a claim
22 first prosecuted against a notice agent, may be paid only out of assets
23 received as a result of the death of the decedent by the notice agent
24 or by those appointing the notice agent under chapter 11.96 RCW, except
25 as may be provided by agreement under RCW 11.96.170 or by court order
26 under RCW 11.96.070.

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

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

32 (3) If the notice agent rejects a claim, in whole or in part, the
33 notice agent shall notify the claimant of the rejection and file in the

1 office of the clerk of the court in the notice county an affidavit or
2 declaration under penalty of perjury under RCW 9A.72.085 showing the
3 notification and the date of the notification. The notification must
4 be by personal service or certified mail addressed to the claimant at
5 the claimant's address as stated in the claim. If a person other than
6 the claimant signed the claim for or on behalf of the claimant, and the
7 person's business address as stated in the claim is different from that
8 of the claimant, notification of the rejection also must be made by
9 personal service or certified mail upon that person. The date of the
10 postmark is the date of the notification. The notification of the
11 rejection must advise the claimant, and the person making claim on his,
12 her, or its behalf, if any, that the claimant must bring suit in the
13 proper court in the notice county against the notice agent: (a) Within
14 thirty days after notification of rejection if the notification is made
15 during or after the review period; or (b) before expiration of thirty
16 days after the end of the four-month time limitation, if the
17 notification is made during the four-month time limitation, and that
18 otherwise the claim is forever barred.

19 (4) A claimant whose claim either has been rejected by the notice
20 agent or has not been acted upon within twenty days of written demand
21 for the action having been given to the notice agent by the claimant
22 during or after the review period must commence an action against the
23 notice agent in the proper court in the notice county to enforce the
24 claim of the claimant within the earlier of:

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

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

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

37 (6) A personal representative of the decedent's estate may revoke
38 either or both of: (a) The rejection of a claim that has been rejected

1 by the notice agent; or (b) the approval of a claim that has been
2 either approved or compromised by the notice agent, or both.

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

8 (8) If the notice agent has not received substantially all assets
9 of the decedent that are liable for claims, then although an action may
10 be commenced on a rejected claim by a creditor against the notice
11 agent, the notice agent, notwithstanding any provision in this chapter,
12 may only make an appearance in the litigation. The Notice Agent may
13 not answer the action, but must, instead, cause a petition to be filed
14 for the appointment of a personal representative of the decedent within
15 thirty days of the service of the creditor's summons and complaint on
16 the notice agent. A judgment may not be entered in an action brought
17 by a creditor against the notice agent earlier than twenty days after
18 the duly appointed, qualified, and acting personal representative of
19 the decedent has been substituted in that action for the notice agent.

20 NEW SECTION. **Sec. 41.** If a claim has been filed and presented to
21 a notice agent, and a part of the claim is allowed, the amount of the
22 allowance must be stated in the indorsement. If the creditor refuses
23 to accept the amount so allowed in satisfaction of the claim, the
24 creditor may not recover costs in an action the creditor may bring
25 against the notice agent and against any substituted personal
26 representative unless the creditor recovers a greater amount than that
27 offered to be allowed, exclusive of interest and costs.

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

33 (1) Costs of administering the assets subject to the payment of
34 claims, including a reasonable fee to the notice agent, the resident
35 agent for the notice agent, if any, reasonable attorneys' fees for the
36 attorney for each of them, filing fees, publication costs, mailing
37 costs, and similar costs and fees.

- 1 (2) Funeral expenses in a reasonable amount.
- 2 (3) Expenses of the last sickness in a reasonable amount.
- 3 (4) Wages due for labor performed within sixty days immediately
- 4 preceding the death of the decedent.
- 5 (5) Debts having preference by the laws of the United States.
- 6 (6) Taxes or any debts or dues owing to the state.
- 7 (7) Judgments rendered against the decedent in the decedent's
- 8 lifetime that are liens upon real estate on which executions might have
- 9 been issued at the time of the death of the decedent and debts secured
- 10 by mortgages in the order of their priority. However, the real estate
- 11 is subject to the payment of claims as provided in section 40 of this
- 12 act.

13 (8) All other demands against the assets subject to the payment of

14 claims as provided in section 40 of this act.

15 A claim of the notice agent or other person who has received

16 property by reason of the decedent's death may not be paid by the

17 notice agent unless all other claims that have been filed under this

18 chapter, and all debts having priority to the claim, are paid in full

19 or otherwise settled by agreement, regardless of whether the other

20 claims are allowed or rejected, or partly allowed or partly rejected.

21 In the event of the probate of the decedent's estate, the personal

22 representative's payment from estate assets of the claim of the notice

23 agent or other person who has received property by reason of the

24 decedent's death is not affected by the priority payment provisions of

25 this section.

26 NEW SECTION. **Sec. 43.** The notice agent may not allow a claim that

27 is barred by the statute of limitations.

28 NEW SECTION. **Sec. 44.** A holder of a claim against a decedent may

29 not maintain an action on the claim against a notice agent, unless the

30 claim has been first presented as provided in this chapter. This

31 chapter does not affect RCW 82.32.240.

32 NEW SECTION. **Sec. 45.** The time during which there is a vacancy in

33 the office of notice agent is not included in a limitation prescribed

34 in this chapter.

1 NEW SECTION. **Sec. 46.** If a judgment has been rendered against a
2 decedent in the decedent's lifetime, an execution may not issue on the
3 judgment after the death of the decedent, but the judgment must be
4 presented in the form of a claim to the notice agent, if any, as any
5 other claim. The claim need not be supported by the affidavit of the
6 claimant. If the claim is justly due and unsatisfied, it must be paid
7 in due course in accordance with this chapter for the payment of
8 claims. However, if the judgment is a lien on property classified
9 within the definition of the included property in section 31 of this
10 act, the property may be sold for the satisfaction of the judgment, and
11 the officer making the sale shall account to the notice agent for any
12 surplus.

13 NEW SECTION. **Sec. 47.** The personal claim of a Notice Agent, as a
14 creditor of the decedent, must be authenticated by affidavit, and must
15 be filed and presented for allowance to the superior court in the
16 notice county. The allowance of the claim by the court is sufficient
17 evidence of the correctness of the claim.

18 NEW SECTION. **Sec. 48.** In case the office of notice agent becomes
19 vacant for any reason, including resignation, death, removal, or
20 replacement, after notice by publication has been commenced as provided
21 in section 32 of this act, the personal representative of the decedent
22 or the successor notice agent shall publish notice of the vacancy and
23 succession for two successive weeks in a legal newspaper published in
24 the notice county. The time between the commencement of the vacancy
25 and the publication by the successor notice agent or personal
26 representative must be added to the time within which claims must be
27 filed: (1) As fixed by the first published nonprobate notice to
28 creditors; and (2) as extended in the case of actual notice under
29 section 35 of this act, unless the time expired before the vacancy.
30 Notice is not required if the period for filing claims has expired
31 during the time that the former notice agent was qualified.

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

34 If the court should determine that it is necessary to sell any or
35 all of the real estate for the purposes mentioned in this title, then
36 it may make and cause to be entered an order directing the personal

1 representative to sell so much of the real estate as the court may
2 determine necessary for the purposes aforesaid. Such order shall give
3 a particular description of the property to be sold and the terms of
4 such sale and shall provide whether such property shall be sold at
5 public or private sale, or by negotiation. (~~The court shall order
6 sold that part of the real estate which is generally devised, rather
7 than any part which may have been specifically devised, but the court
8 may, if it appears necessary, sell any or all of the real estate so
9 devised.~~) After the giving of such order it shall be the duty of the
10 personal representative to sell such real estate in accordance with the
11 order of the court and as in this title provided with reference to the
12 public or private sales of real estate.

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

15 Subject to the provisions of this chapter, if the estate of a
16 decedent, who died either testate or intestate, is solvent taking into
17 account both probate and nonprobate assets of the decedent, and if the
18 personal representative is other than a creditor of the decedent not
19 designated as personal representative in the decedent's will, such
20 estate shall be managed and settled without the intervention of the
21 court; the fact of solvency shall be established by the entry of an
22 order of solvency. An order of solvency may be entered at the time of
23 the appointment of the personal representative or at any time
24 thereafter where it appears to the court by the petition of the
25 personal representative, or the inventory filed, and/or other proof
26 submitted, that the estate of the decedent is solvent, and that notice
27 of the application for an order of solvency has been given to those
28 persons entitled thereto when required by RCW 11.68.040 as now or
29 hereafter amended.

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

32 (1) The superior court shall have original subject-matter
33 jurisdiction over ((probates in the following instances)) the probate
34 of wills and the administration of estates of incapacitated, missing,
35 and deceased individuals in all instances, including without
36 limitation:

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

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

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

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

5 (3) The superior courts in the exercise of their jurisdiction of
6 matters of (~~probate and~~) trusts and estates shall have the power to
7 probate or refuse to probate wills, appoint personal representatives
8 (~~of deceased, incompetent, or disabled persons and~~), administer and
9 settle (~~all such estates, and~~) the affairs and the estates of
10 incapacitated, missing, or deceased individuals including but not
11 limited to decedents' estates only containing nonprobate assets,
12 administer and settle matters that relate to nonprobate assets and
13 arise under chapter 11.-- (section 19 of this act) or 11.-- RCW
14 (sections 31 through 48 of this act), administer and settle all trusts
15 and trust matters, award processes and cause to come before them all
16 persons whom they may deem it necessary to examine, and order and cause
17 to be issued all such writs as may be proper or necessary, and do all
18 things proper or incident to the exercise of such jurisdiction.

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

21 It is the intention of (~~this title~~) the legislature that the
22 courts (~~mentioned~~) shall have full and ample power and authority
23 under this title to:

24 (1) Administer and settle (~~all estates of decedents and~~
25 incompetent and disabled persons in this title mentioned and to) the
26 affairs and the estates of all incapacitated, missing, and deceased
27 persons in accordance with this title;

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

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

32 If the provisions of this title with reference to the
33 administration and settlement of such (~~estates or trusts~~) matters
34 should in any cases and under any circumstances be inapplicable (~~or~~),
35 insufficient, or doubtful, the court shall nevertheless have full power
36 and authority to proceed with such administration and settlement in any
37 manner and way which to the court seems right and proper, all to the

1 end that such (~~estates or trusts may be by the court administered upon~~
2 ~~and settled~~) matters may be administered and settled by the court.

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

5 For purposes of venue in proceedings involving: The probate of
6 wills; the administration and disposition of estates of incapacitated,
7 missing, or deceased individuals, including but not limited to estates
8 only containing nonprobate assets; or trusts and trust matters, the
9 following shall apply:

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

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

14 (~~In the superior court of the county in which a trustee~~
15 ~~resides or has its principal place of business; or~~

16 ~~(e))~~ With respect to testamentary trusts, in the superior court of
17 the county where letters testamentary were granted to a personal
18 representative(~~, and in the absence of~~) or, where no such letters
19 have been granted to a personal representative, then in any county
20 where letters testamentary could have been granted in accordance with
21 subsection (2) of this section.

22 (2) Wills shall be proven, letters testamentary or of
23 administration granted, and other proceedings pertaining to the probate
24 of wills, the administration and disposition of estates including but
25 not limited to estates containing only nonprobate assets under Title 11
26 RCW (~~pertaining to probate~~) shall be commenced(~~, either~~):

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

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

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

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

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

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

5 (1) Any action against the trustee of an express trust, excluding
6 those trusts excluded from the definition of express trusts under RCW
7 11.98.009, but including all express trusts, whenever executed, for any
8 breach of fiduciary duty, must be brought within three years from the
9 earlier of (a) the time the alleged breach was discovered or reasonably
10 should have been discovered, (b) the discharge of a trustee from the
11 trust as provided in RCW (~~11.98.040~~) 11.98.041, or (c) the time of
12 termination of the trust or the trustee's repudiation of the trust.

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

17 (3) The tolling provisions of RCW 4.16.190 apply to this chapter
18 except that the running of any statute of limitations stated in
19 subsection (1) or (2) of this section, or any other applicable statute
20 of limitations for any matter that is the subject of dispute under
21 chapter 11.96 RCW, is not tolled if the unascertained or unborn heir,
22 beneficiary, or class of persons, or minor(~~, incompetent, or~~
23 ~~disabled~~) or incapacitated person, or person identified in RCW
24 11.96.170(2) or 11.96.180 whose identity or address is unknown, had a
25 guardian ad litem, limited or general guardian of the estate, or a
26 special representative to represent the person during the probate or
27 dispute resolution proceeding.

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

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

1 (~~(A trustor, grantor, personal representative, trustee, or other~~
2 ~~fiduciary, creditor, devisee, legatee, heir, or trust beneficiary~~
3 ~~interested in the administration of a trust, or the attorney general in~~
4 ~~the case of a charitable trust under RCW 11.110.120, or of the estate~~
5 ~~of a decedent, incompetent, or disabled person,)) (1) A person with an
6 interest in or right respecting the administration, settlement, or
7 disposition of an interest in a trust or in the estate of an
8 incapacitated, missing, or deceased person may have a judicial
9 proceeding for the declaration of rights or legal relations (~~(in~~
10 ~~respect to the trust or estate)) under this title including but not
11 limited to the following:~~~~

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

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

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

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

25 (~~((5) To amend or conform)) (e) The modification of the will or the
26 trust instrument in the manner required to qualify the gift thereunder
27 for the charitable estate tax deduction permitted by federal law,
28 including the addition of mandatory governing instrument requirements
29 for a charitable remainder trust as required by final regulations and
30 rulings of the United States internal revenue service, in any case in
31 which all parties interested in the trust have submitted written
32 agreements to the proposed changes or written disclaimer of interest;~~

33 (~~or~~

34 ~~((6) To amend or conform)) (f) The modification of the will or the
35 trust instrument in the manner required to qualify any gift thereunder
36 for the benefit of a surviving spouse who is not a citizen of the
37 United States for the estate tax marital deduction permitted by federal
38 law, including the addition of mandatory governing instrument
39 requirements for a qualified domestic trust under section 2056A of the~~

1 internal revenue code as required by final regulations and rulings of
2 the United States treasury department or internal revenue service, in
3 any case in which all parties interested in the trust have submitted
4 written agreements to the proposed changes or written disclaimer of
5 interest; ((or

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

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

13 (2) Any person with an interest in or right respecting the
14 administration of a nonprobate asset under this title may have a
15 judicial proceeding for the declaration of rights or legal relations
16 under this title with respect to the nonprobate asset, including
17 without limitation the following:

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

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

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

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

32 (e) The determination of the persons entitled to notice under RCW
33 11.96.100 and 11.96.110 for the purposes of any judicial proceeding
34 under this subsection (2) and for the purposes of an agreement under
35 RCW 11.96.170; and

36 (f) The determination of any questions relating to the abatement,
37 rights of creditors, or other matter relating to the administration,
38 settlement, or final disposition of a nonprobate asset under this
39 title.

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

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

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

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

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

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

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

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

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

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

33 (d) The legal representatives of any of the persons named in this
34 subsection.

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

37 Unless rules of court or a provision of this title requires
38 otherwise, a judicial proceeding under RCW 11.96.070 may be commenced

1 by petition. The court shall make an order fixing the time and place
2 for hearing the petition. The court shall approve the form and content
3 of the notice. Notice of hearing shall be signed by the clerk of the
4 court.

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

7 The clerk of each of the superior courts is authorized to fix the
8 time of hearing of all applications, petitions and reports in probate
9 and guardianship proceedings, except the time for hearings upon show
10 cause orders and citations and except for the time of hearings set
11 under RCW 11.96.080. The authority (~~herein~~) granted in this section
12 is in addition to the authority vested in the superior courts and
13 superior court commissioners.

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

16 (1) Subject to RCW 11.96.110, in all judicial proceedings under
17 Title 11 RCW that require notice, such notice shall be personally
18 served (~~or mailed to each trustee, personal representative, heir,~~
19 beneficiary including devisees, legatees, and heirs, guardian ad litem,
20 and person having an interest in the trust or estate whose name and
21 address are known to the petitioner)) on or mailed to all parties to
22 the dispute at least twenty days prior to the hearing on the
23 petition(~~(7)~~) unless (~~otherwise~~) a different period is provided by
24 statute or ordered by the court under RCW 11.96.080.

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

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

29 (a) When used in connection with a judicial proceeding under RCW
30 11.96.070(1), "parties to the dispute" means each:

31 (i) Trustor if living;

32 (ii) Trustee;

33 (iii) Personal representative;

34 (iv) Heir;

35 (v) Beneficiary including devisees, legatees, and trust
36 beneficiaries;

37 (vi) Guardian ad litem; or

1 (vii) Other person
2 who has an interest in the subject of the particular proceeding and
3 whose name and address are known to, or are reasonably ascertainable
4 by, the petitioner, and also includes the attorney general if required
5 under RCW 11.110.120.

6 (b) When used in connection with a judicial proceeding under RCW
7 11.96.070(2), "parties to the dispute" means each notice agent, if any,
8 or other person, who has an interest in the subject of the particular
9 proceeding and whose name and address are known to, or are reasonably
10 ascertainable by, the petitioner, and also includes the personal
11 representatives of the estate of the owner of the nonprobate asset that
12 is the subject of the particular proceeding, if the subject of the
13 particular proceeding relates to the beneficiary's liability to a
14 decedent's estate or creditors under section 19 of this act.

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

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

19 Notwithstanding provisions of this chapter to the contrary, there
20 is compliance with the ~~((notice))~~ requirements of Title 11 RCW for
21 notice to the beneficiaries of, ~~((or))~~ and other persons interested in,
22 an estate ~~((or))~~, a trust, or ~~((to beneficiaries or remaindermen))~~ a
23 nonprobate asset, including without limitation all living persons who
24 may participate in the corpus or income of the trust or estate, if
25 notice is given as follows:

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

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

37 (3) Except as otherwise provided in subsection (2) of this section,
38 if an interest in an estate ~~((or))~~, trust, or nonprobate asset has been

1 given to a person, a class of persons, or both upon the happening of
2 any future event, and the same interest or a share of such interest is
3 to pass to another person, class of persons, or both, upon the
4 happening of an additional future event, notice shall be given to the
5 living person or persons who would take the interest upon the happening
6 of the first event.

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

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

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

18 All issues of fact ~~((joined in probate or trust proceedings))~~ in
19 any judicial proceeding under this title shall be tried in conformity
20 with the requirements of the rules of practice in civil actions~~((The~~
21 ~~probate or trust))~~, except as otherwise provided by statute or ordered
22 by the court under RCW 11.96.030 or other applicable law or rules of
23 court. The judicial proceeding may be commenced as a new action or as
24 an action incidental to an existing ~~((probate or trust))~~ judicial
25 proceeding relating to the same trust or estate or nonprobate asset.
26 Once commenced, the action may be consolidated with an existing
27 ~~((probate or trust))~~ proceeding or converted to a separate action upon
28 the motion of any party for good cause shown, or by the court on its
29 own motion. If a party is entitled to a trial by jury and a jury is
30 demanded, and the issues are not sufficiently made up by the written
31 pleadings on file, the court, on due notice, shall settle and frame the
32 issues to be tried. If no jury is demanded, the court shall try the
33 issues ~~((joined))~~, and sign and file its findings and decision in
34 writing, as provided for in civil actions. Judgment on the ~~((issue~~
35 ~~joined))~~ issues, as well as for costs, may be entered and enforced by
36 execution or otherwise by the court as in civil actions.

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

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

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

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

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

15 (1) If(~~(, as to the)~~) all required parties to the dispute agree as
16 to a matter in dispute, the (~~(trustor, grantor, all parties~~
17 ~~beneficially interested in the estate or trust with respect to such~~
18 ~~matter, and any current fiduciary of such estate or trust, who are also~~
19 ~~included in RCW 11.96.070 and who are entitled to notice under RCW~~
20 ~~11.96.100 and 11.96.110 agree on any matter listed in RCW 11.96.070 or~~
21 ~~any other matter in Title 11 RCW referencing this nonjudicial~~
22 ~~resolution procedure, then the)~~) agreement shall be evidenced by a
23 written agreement executed by all (~~(necessary persons as provided in~~
24 ~~this section)~~) required parties to the dispute. Those persons may
25 reach an agreement concerning a matter in RCW 11.96.070(~~(+4)~~) (1)(d)
26 as long as those persons, rather than the court, determine that the
27 powers to be conferred are not inconsistent with the provisions or
28 purposes of the will or trust.

29 (2) If necessary, (~~(the personal representative or trustee)~~) any
30 one or more of the required parties to the dispute may petition the
31 court for the appointment of a special representative to represent a
32 (~~(person interested in the estate or trust who is a minor, incompetent,~~
33 ~~disabled, or)~~) required party to the dispute who is incapacitated by
34 reason of being a minor or otherwise, who is yet unborn or
35 unascertained, or (~~(a person)~~) whose identity or address is unknown.
36 The special representative has authority to enter into a binding
37 agreement under this section on behalf of the person or beneficiary.

1 to the agreement within 30 days of the above specified date the
2 agreement will be deemed approved and will be equivalent to a final
3 order binding on all persons interested in the ~~((estate or trust))~~
4 subject of the agreement.

5 If you file and serve a petition within the period specified, you
6 should ask the court to fix a time and place for the hearing on the
7 petition and provide for at least ~~((a))~~ ten days' notice to all persons
8 interested in the ~~((estate or trust))~~ subject of the agreement.

9 DATED this day of, ~~((19.))~~

10
11 ~~((Party to the agreement))~~ Name of
12 person filing the agreement or memorandum with the court)

13 (5) Unless a ~~((person interested in the estate or trust))~~ required
14 party to the dispute files a petition objecting to the agreement within
15 thirty days ~~((of))~~ after the filing of the agreement or the memorandum,
16 the agreement will be deemed approved and will be equivalent to a final
17 order binding on all ~~((persons interested in the estate or trust. If~~
18 ~~all persons interested in the estate or trust))~~ parties to the dispute.
19 If all required parties to the dispute waive the notice required by
20 this section, the agreement will be deemed approved and will be
21 equivalent to a final order binding on all such persons ~~((interested in~~
22 ~~the estate or trust))~~ effective upon the date of filing.

23 (6) For the purposes of this section:

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

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

29 (c) "Required parties to the dispute" means those parties to the
30 dispute who are entitled to notice under RCW 11.96.100 and 11.96.110,
31 and, when used in the singular, means any one of the required parties
32 to the dispute; and

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

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

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

11 ~~((For the purposes of this section, a trustee is a person~~
12 ~~interested in the trust and a personal representative is a person~~
13 ~~interested in an estate.~~

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

16 ~~((4))~~ (3) The court may appoint the guardian ad litem at an ex
17 parte hearing, or the court may order a hearing as provided in RCW
18 11.96.070 with notice as provided in RCW 11.96.080, 11.96.100, and
19 11.96.110.

20 **Sec. 65.** RCW 82.32.240 and 1988 c 64 s 21 are each amended to
21 read as follows:

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

26 In all cases of probate, insolvency, assignment for the benefit of
27 creditors, or bankruptcy, involving any taxpayer who is, or decedent
28 who was, engaging in business, the claim of the state for said taxes
29 and all increases and penalties thereon shall be a lien upon all real
30 and personal property of the taxpayer, and the mere existence of such
31 cases or conditions shall be sufficient to create such lien without any
32 prior or subsequent action by the state, and in all such cases it shall
33 be the duty of all administrators, executors, guardians, receivers,
34 trustees in bankruptcy or assignees for the benefit of creditors, to
35 notify the department of revenue of such administration, receivership
36 or assignment within sixty days from the date of their appointment and
37 qualification.

1 The lien provided for by this section shall attach as of the date
2 of the assignment for the benefit of creditors or of the initiation of
3 the probate, insolvency, or bankruptcy proceedings: PROVIDED, That
4 this sentence shall not be construed as affecting the validity or
5 priority of any earlier lien that may have attached previously in favor
6 of the state under any other section of this title.

7 Any administrator, executor, guardian, receiver or assignee for
8 the benefit of creditors not giving the notification as provided for
9 above shall become personally liable for payment of the taxes and all
10 increases and penalties thereon to the extent of the value of the
11 property subject to administration that otherwise would have been
12 available for the payment of such taxes, increases, and penalties by
13 the administrator, executor, guardian, receiver, or assignee.

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

18 NEW SECTION. Sec. 66. 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. 67. (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.

1 NEW SECTION. **Sec. 68.** This act shall take effect January 1,
2 1995.

--- END ---