

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE HOUSE BILL 2270**

53rd Legislature  
1994 Regular Session

Passed by the House March 9, 1994  
Yeas 97 Nays 0

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**Speaker of the  
House of Representatives**

Passed by the Senate March 9, 1994  
Yeas 48 Nays 0

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**President of the Senate**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Marilyn Showalter, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2270** as passed by the House of Representatives and the Senate on the dates hereon set forth.

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**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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**SUBSTITUTE HOUSE BILL 2270**

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AS RECOMMENDED BY THE CONFERENCE COMMITTEE

Passed Legislature - 1994 Regular Session

**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,  
8 11.98.200, 11.98.240, 11.100.035, 82.32.240, 83.100.020, and  
9 83.110.010; adding new sections to chapter 11.12 RCW; adding a new  
10 section to chapter 11.94 RCW; adding new chapters to Title 11 RCW;  
11 creating a new section; repealing RCW 11.12.050, 11.12.090, 11.12.130,  
12 11.12.140, 11.12.150, 11.12.200, 11.12.210, 11.56.015, 11.56.140,  
13 11.56.150, 11.56.160, and 11.56.170; providing an effective date; and  
14 declaring an emergency.

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

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

18            When used in this title, unless otherwise required from the  
19 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  
18 (~~intestate's~~) deceased person's issue who survive the intestate and  
19 have no ancestor then living who is in the line of relationship between  
20 them and the intestate, those more remote in degree taking together the  
21 share which their ancestor would have taken had he or she survived the  
22 intestate. Posthumous children are considered as living at the death  
23 of their parent.

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

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

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

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

37 (8) "Will" means an instrument validly executed as required by RCW  
38 11.12.020 (~~and includes all codicils~~).

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

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

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

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

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

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

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

1 the person has waived the power to transfer it or, in the case of  
2 contractual arrangement, the person has waived the unilateral right to  
3 rescind or modify the arrangement; or a right or interest held by the  
4 person solely in a fiduciary capacity.

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

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

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

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

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

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

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

26 (i) The instrument governing disposition of the nonprobate asset  
27 expressly provides otherwise;

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

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

1           (3)(a) A payor or other third party in possession or control of a  
2 nonprobate asset at the time of the decedent's death is not liable for  
3 making a payment or transferring an interest in a nonprobate asset to  
4 a decedent's former spouse whose interest in the nonprobate asset is  
5 revoked under this section, or for taking another action in reliance on  
6 the validity of the instrument governing disposition of the nonprobate  
7 asset, before the payor or other third party has actual knowledge of  
8 the dissolution or other invalidation of marriage. A payor or other  
9 third party is liable for a payment or transfer made or other action  
10 taken after the payor or other third party has actual knowledge of a  
11 revocation under this section.

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

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

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

34           (c) Notwithstanding subsections (1) and (2) of this section and (a)  
35 and (b) of this subsection, a payor or other third party having actual  
36 knowledge of the existence of a dispute between beneficiaries or other  
37 persons concerning rights to a nonprobate asset as a result of the  
38 application of this section may condition the payment or transfer of  
39 the nonprobate asset on execution, in a form and with security

1 acceptable to the payor or other third party, of a bond in an amount  
2 that is double the fair market value of the nonprobate asset at the  
3 time of the decedent's death or the amount of an adverse claim,  
4 whichever is the lesser, or of a similar instrument to provide security  
5 to the payor or other third party, indemnifying the payor or other  
6 third party for any liability, loss, damage, costs, and expenses for  
7 and on account of payment or transfer of the nonprobate asset.

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

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

1 nonprobate asset, to the person who is entitled to it under this  
2 section.

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

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

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

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

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

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

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



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

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

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

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

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

31       For purposes of abatement a demonstrative gift, defined as a  
32 general gift charged on any specific property or fund, is deemed a  
33 specific gift to the extent of the value of the property or fund on  
34 which it is charged, and a general gift to the extent of a failure or  
35 insufficiency of that property or fund. Abatement within each  
36 classification is in proportion to the amounts of property each of the

1 beneficiaries would have received if full distribution of the property  
2 had been made in accordance with the terms of the will.

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

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

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

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

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

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

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

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

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

1 including against the surviving spouse's share of the community  
2 property.

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

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

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

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

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

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

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

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

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

36 (1) If a will fails to name or provide for a child of the decedent  
37 who is born or adopted by the decedent after the will's execution and

1 who survives the decedent, referred to in this section as an "omitted  
2 child", the child must receive a portion of the decedent's estate as  
3 provided in subsection (3) of this section, unless it appears either  
4 from the will or from other clear and convincing evidence that the  
5 failure was intentional.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 ~~((2))~~ (b) By being burnt, torn, canceled, obliterated, or  
10 destroyed, with the intent and for the purpose of revoking the same, by  
11 the testator ~~((himself))~~ or by another person in ~~((his))~~ the presence  
12 and by ~~((his))~~ the direction of the testator. If such act is done by  
13 any person other than the testator, the direction of the testator and  
14 the facts of such injury or destruction must be proved by two  
15 witnesses.

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

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

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

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

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

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

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

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

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

1 into the residue of the estate to be distributed under the residuary  
2 clause of the will, if any, but otherwise according to the laws of  
3 descent and distribution.

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

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

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

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

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

37 (3) If the presumption established under subsection (2) of this  
38 section applies and the interested witness fails to rebut it, the



1 interested witness shall take so much of the gift as does not exceed  
2 the share of the estate that would be distributed to the witness if the  
3 will were not established.

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

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

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

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

28 The Doctrine of Worthier Title is abolished as a rule of law and as  
29 a rule of construction. However, the Doctrine of Worthier Title is  
30 preserved as a rule of construction if:

31 (1) A grantor has established in inter vivos trust of real  
32 property;

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

35 (3) The words "heirs" or "heirs at law" are used by the grantor to  
36 describe the quality of the grantor's title in the reversion as an

1 estate in fee simple in the event that the property reverts to the  
2 grantor.

3 In all other cases, language in a governing instrument describing the  
4 beneficiaries of a donative disposition as the transferor's "heirs,"  
5 "heirs at law," "next of kin," "distributees," "relatives," or  
6 "family," or language of similar import, does not create or  
7 presumptively create a reversionary interest in the transferor.

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

22 (2) The following rules govern in applying subsection (1) of this  
23 section:

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

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

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

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

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

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

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

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

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

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

1 (3) Nothing in this section derogates from the rights of a person  
2 interested in the estate to recover tax under chapter 83.110 RCW or  
3 from the liability of any beneficiary for estate tax under chapter  
4 83.110 RCW.

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

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

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

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

34 (3) When a lost or destroyed will is established under subsections  
35 (1) and (2) of this section, its provisions must be distinctly stated  
36 in the judgment establishing it, and the judgment must be recorded as  
37 wills are required to be recorded. A personal representative may be

1 appointed by the court in the same manner as is herein provided with  
2 reference to original wills presented to the court for probate.

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

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

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

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

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

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

1 Administration of ~~((the))~~ an estate ~~((of))~~ if the ~~((person dying))~~  
2 decedent died intestate or if the personal representative or  
3 representatives named in the will declined or were unable to serve  
4 shall be granted to some one or more of the persons hereinafter  
5 mentioned, and they shall be respectively entitled in the following  
6 order:

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

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

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

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

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

22 ~~((+4))~~ (6) One or more of the principal creditors.

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

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

33 Within twenty days after appointment, the personal representative  
34 of the estate of a decedent shall cause written notice of his or her  
35 appointment and the pendency of said probate proceedings, to be served  
36 personally or by mail to each heir, legatee and devisee of the estate  
37 and each beneficiary or transferee of a nonprobate asset of the  
38 decedent whose names and addresses are known to him or her, and proof

1 of such mailing or service shall be made by affidavit and filed in the  
2 cause.

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

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

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

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

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

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

36 Acts of a notice agent in complying with chapter ..., Laws of 1994  
37 (this act) may be adopted and ratified by the personal representative  
38 as if done by the personal representative in complying with this





1 attorneys of record at the address stated below and file an executed  
2 copy of the claim with the Clerk of this Court within four months after  
3 the date of first publication of this notice or within four months  
4 after the date of the filing of the copy of this Notice with the Clerk  
5 of the Court, whichever is later or, except under those provisions  
6 included in RCW 11.40.011 or 11.40.013, the claim will be forever  
7 barred. This bar is effective as to claims against both the probate  
8 assets and nonprobate assets of the decedent.

9 DATE OF FILING COPY OF NOTICE TO CREDITORS with Clerk of  
10 Court: . . . . .

11 DATE OF FIRST PUBLICATION: . . . . .  
12 . . . . . ,

13 Personal Representative

14 Address

15 Attorney for Estate:

16 Address:

17 Telephone:

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

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

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

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

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

31 It shall be the duty of every personal representative to settle the  
32 estate, including the administration of any nonprobate assets within  
33 control of the personal representative under section 19 of this act, in  
34 his or her hands as rapidly and as quickly as possible, without  
35 sacrifice to the probate or nonprobate estate. (~~He~~) The personal

1 representative shall collect all debts due the deceased and pay all  
2 debts as hereinafter provided. ((He)) The personal representative  
3 shall be authorized in his or her own name to maintain and prosecute  
4 such actions as pertain to the management and settlement of the estate,  
5 and may institute suit to collect any debts due the estate or to  
6 recover any property, real or personal, or for trespass of any kind or  
7 character.

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

13 (a) Decedent's surviving spouse;

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

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

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

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

24 (a) Constitutes a nonprobate asset; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (b) Minors;

39 (c) Persons of unsound mind; or

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

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

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

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

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

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

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

35 (2) The notice must state that all persons having claims against  
36 the decedent shall: (a) Serve the same on the notice agent if the  
37 notice agent is a resident of the state of Washington upon whom service  
38 of all papers may be made, or on the nonprobate resident agent for the

1 notice agent, if any, or on the attorneys of record of the notice agent  
2 at their respective address in the state of Washington; and (b) file an  
3 executed copy of the notice with the clerk of the superior court for  
4 the notice county, within: (i) (A) Four months after the date of the  
5 first publication of the notice described in this section; or (B) four  
6 months after the date of the filing of the copy of the notice with the  
7 clerk of the superior court for the notice county, whichever is later;  
8 or (ii) the time otherwise provided in section 35 of this act. The  
9 four-month time period after the later of the date of the first  
10 publication of the notice to creditors or the date of the filing of the  
11 notice with the clerk of the court is referred to in this chapter as  
12 the "four-month time limitation."

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

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

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

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

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

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

1 9A.72.085 of the giving and publication of the notice must be filed  
2 with the clerk of the superior court for the notice county by the  
3 notice agent.

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

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

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

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

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

36 (1) Conducting, within the four-month time limitation, a reasonable  
37 review of the decedent's correspondence including correspondence

1 received after the date of death and financial records including  
2 checkbooks, bank statements, income tax returns, and similar materials,  
3 that are in the possession of, or reasonably available to, the notice  
4 agent; and

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

10 If the notice agent conducts the review and makes an inquiry, the  
11 notice agent is presumed to have exercised reasonable diligence to  
12 ascertain creditors of the decedent, and creditors not ascertained in  
13 the review or in an inquiry are presumed not reasonably ascertainable.  
14 These presumptions may be rebutted only by clear, cogent, and  
15 convincing evidence. The notice agent may evidence the review and  
16 inquiry by filing an affidavit or declaration under penalty of perjury  
17 form as provided in RCW 9A.72.085 to the effect in the nonprobate  
18 proceeding in the notice county. The notice agent also may petition  
19 the superior court of the notice county for an order declaring that the  
20 notice agent has made a review and inquiry and that only creditors  
21 known to the notice agent after the review and inquiry are reasonably  
22 ascertainable. The petition and hearing must be under the procedures  
23 provided in chapter 11.96 RCW, and the notice specified under RCW  
24 11.96.100 must also be given by publication.

25 NEW SECTION. **Sec. 35.** The actual notice described in section  
26 32(4)(a) of this act, as to a creditor becoming known to the notice  
27 agent within the four-month time limitation, must be given the creditor  
28 by personal service or regular first class mail, addressed to the  
29 creditor's last known address, postage prepaid. The actual notice must  
30 be given before the later of the expiration of the four-month time  
31 limitation or thirty days after a creditor became known to the notice  
32 agent within the four-month time limitation. A known creditor is  
33 barred unless the creditor has filed a claim, as provided in this  
34 chapter, within the four-month time limitation or within thirty days  
35 following the date of actual notice to that creditor, whichever is  
36 later. If notice is given by mail, the date of mailing is the date of  
37 notice. This bar is effective as to claims against the included  
38 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 The special representative may be appointed for more than one person or  
2 class of persons if the interests of such persons or ~~((class))~~ classes  
3 are not in conflict. Those entitled to receive notice for persons or  
4 beneficiaries described in RCW 11.96.110 may enter into a binding  
5 agreement on behalf of such persons or beneficiaries.

6 (3) The special representative shall be a lawyer licensed to  
7 practice before the courts of this state or an individual with special  
8 skill or training in the administration of estates ~~((or))~~, trusts, or  
9 nonprobate assets, as applicable. The special representative shall  
10 have no interest in any affected estate ~~((or))~~, trust, or nonprobate  
11 asset, and shall not be related to any personal representative,  
12 trustee, beneficiary, or other person interested in the estate ~~((or))~~,  
13 trust, or nonprobate asset. The special representative is entitled to  
14 reasonable compensation for services ~~((which))~~ and, if applicable, that  
15 compensation shall be paid from the principal of the estate ~~((or))~~,  
16 trust, or nonprobate asset whose beneficiaries are represented. Upon  
17 execution of the written agreement, the special representative shall be  
18 discharged of any further responsibility with respect to the estate  
19 ~~((or))~~, trust, or nonprobate asset.

20 (4) The written agreement or a memorandum summarizing the  
21 provisions of the written agreement may, at the option of any ~~((person~~  
22 ~~interested in the estate or trust))~~ of the required parties to the  
23 dispute, be filed with the court having jurisdiction over the estate  
24 ~~((or))~~, trust, nonprobate asset, or other matter affected by the  
25 agreement. The person filing the agreement or memorandum shall, within  
26 five days ~~((thereof))~~ after the agreement or memorandum is filed with  
27 the court, mail a copy of the agreement, the summarizing memorandum if  
28 one was filed with the court, and a notice of the filing to each  
29 ~~((person interested in the estate or trust))~~ of the required parties to  
30 the dispute whose address is known or is reasonably ascertainable by  
31 the person. Notice shall be in substantially the following form:

32 CAPTION                    NOTICE OF FILING OF  
33 OF CASE                    AGREEMENT OR  
34                                MEMORANDUM  
35                                OF AGREEMENT

36 Notice is hereby given that the attached document was filed by the  
37 undersigned in the above entitled court on the . . . . . day of  
38 . . . . ., ~~((19--))~~ . . . . . Unless you file a petition objecting

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 11.98.200 and 1993 c 339 s 2 are each amended to  
21 read as follows:

22 Due to the inherent conflict of interest that exists between a  
23 trustee and a beneficiary of a trust, unless the terms of a trust refer  
24 specifically to RCW 11.98.200 through 11.98.240 and provide expressly  
25 to the contrary, the powers conferred upon a trustee who is a  
26 beneficiary of the trust, other than the trustor as a trustee, ~~((and~~  
27 ~~other than the decedent's spouse or the testator's spouse where the~~  
28 ~~spouse is the trustee of a trust for which a marital deduction is or~~  
29 ~~was otherwise allowed or allowable, whether or not an appropriate~~  
30 ~~marital deduction election was in fact made,))~~ cannot be exercised by  
31 the trustee to make:

32 (1) Discretionary distributions of either principal or income to  
33 or for the benefit of the trustee, except to provide for the trustee's  
34 health, education, maintenance, or support as described under section  
35 2041 or 2514 of the Internal Revenue Code and the applicable  
36 regulations adopted under that section;

37 (2) Discretionary allocations of receipts or expenses as between  
38 principal and income, unless the trustee acts in a fiduciary capacity

1 whereby the trustee has no power to enlarge or shift a beneficial  
2 interest except as an incidental consequence of the discharge of the  
3 trustee's fiduciary duties; or

4 (3) Discretionary distributions of either principal or income to  
5 satisfy a legal ((support)) obligation of the trustee.

6 A proscribed power under this section that is conferred upon two  
7 or more trustees may be exercised by the trustees that are not  
8 disqualified under this section. If there is no trustee qualified to  
9 exercise a power proscribed under this section, a person described in  
10 RCW 11.96.070 who is entitled to seek judicial proceedings with respect  
11 to a trust may apply to a court of competent jurisdiction to appoint  
12 another trustee who would not be disqualified, and the power may be  
13 exercised by another trustee appointed by the court. Alternatively,  
14 another trustee who would not be disqualified may be appointed in  
15 accordance with the provisions of the trust instrument if the  
16 procedures are provided, or as set forth in RCW 11.98.039 as if the  
17 office of trustee were vacant, or by a nonjudicial dispute resolution  
18 agreement under RCW 11.96.170.

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

21 (1)(a)(i) RCW 11.98.200 and 11.98.210 respectively apply to a  
22 trust established under a will, codicil, trust agreement, declaration  
23 of trust, deed, or other instrument executed after July 25, 1993,  
24 unless the instrument's terms refer specifically to RCW 11.98.200 or  
25 11.98.210 respectively and provide expressly to the contrary. However,  
26 except for RCW 11.98.200(3), the 1994 c ... (this act) amendments to  
27 RCW 11.98.200 apply to a trust established under a will, codicil, trust  
28 agreement, declaration of trust, deed, or other instrument executed  
29 after the effective date of this section, unless the instrument's terms  
30 refer specifically to RCW 11.98.200 and provide expressly to the  
31 contrary.

32 (ii) Notwithstanding (a)(i) of this subsection, for the purposes  
33 of this subsection a codicil to a will or an amendment to a trust does  
34 not cause that instrument to be executed after ((the aforementioned  
35 date)) July 25, 1993, unless the codicil or amendment clearly shows an  
36 intent to have RCW 11.98.200 or 11.98.210 apply.

37 (b) Notwithstanding (a) of this subsection, RCW 11.98.200 and  
38 11.98.210 respectively apply to a trust established under a will or

1 codicil of a decedent dying on or after July 25, 1993, and to an inter  
2 vivos trust to which the trustor had on or after July 25, 1993, the  
3 power to terminate, revoke, amend, or modify, unless:

4 (i) The terms of the instrument specifically refer to RCW  
5 11.98.200 or 11.98.210 respectively and provide expressly to the  
6 contrary; or

7 (ii) The decedent or the trustor was not competent, on July 25,  
8 1993, to change the disposition of his or her property, or to  
9 terminate, revoke, amend, or modify the trust, and did not regain his  
10 or her competence to dispose, terminate, revoke, amend, or modify  
11 before the date of the decedent's death or before the trust could not  
12 otherwise be revoked, terminated, amended, or modified by the decedent  
13 or trustor.

14 (2) RCW 11.98.200 neither creates a new cause of action nor  
15 impairs an existing cause of action that, in either case, relates to a  
16 power proscribed under RCW 11.98.200 that was exercised before July 25,  
17 1993. RCW 11.98.210 neither creates a new cause of action nor impairs  
18 an existing cause of action that, in either case, relates to a power  
19 proscribed, limited, or qualified under RCW 11.98.210.

20 NEW SECTION. **Sec. 67.** A new section is added to chapter 11.94  
21 RCW to read as follows:

22 (1) The restrictions in RCW 11.95.100 through 11.95.150 on the  
23 power of a person holding a power of appointment apply to attorneys-in-  
24 fact holding the power to appoint to or for the benefit of the  
25 powerholder.

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

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

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

36 (2) Within the limitations of subsection (1) of this section,  
37 whenever the trust instrument directs, requires, authorizes, or permits

1 investment in obligations of the United States government, the trustee  
2 may invest in and hold such obligations either directly or in the form  
3 of securities of, or other interests in, an open-end or closed-end  
4 management type investment company or investment trust registered under  
5 the federal investment company act of 1940, as now or hereafter  
6 amended, if both of the following conditions are met:

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

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

13 (3) If the fiduciary is a bank or trust company, then the fact  
14 that the fiduciary, or an affiliate of the fiduciary, provides services  
15 to the investment company or investment trust such as that of an  
16 investment advisor, custodian, transfer agent, registrar, sponsor,  
17 distributor, manager, or otherwise, and is receiving reasonable  
18 compensation for those services does not preclude the bank or trust  
19 company from investing or reinvesting in the securities of the open-end  
20 or closed-end management investment company or investment trust. The  
21 fiduciary shall furnish a copy of the prospectus relating to the  
22 securities to each person to whom a regular periodic accounting would  
23 ordinarily be rendered under the trust instrument or under RCW  
24 11.106.020, upon the request of that person. The restrictions set  
25 forth under RCW 11.100.090 may not be construed as prohibiting the  
26 fiduciary powers granted under this subsection.

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

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

33 In all cases of probate, insolvency, assignment for the benefit of  
34 creditors, or bankruptcy, involving any taxpayer who is, or decedent  
35 who was, engaging in business, the claim of the state for said taxes  
36 and all increases and penalties thereon shall be a lien upon all real  
37 and personal property of the taxpayer, and the mere existence of such  
38 cases or conditions shall be sufficient to create such lien without any

1 prior or subsequent action by the state, and in all such cases it shall  
2 be the duty of all administrators, executors, guardians, receivers,  
3 trustees in bankruptcy or assignees for the benefit of creditors, to  
4 notify the department of revenue of such administration, receivership  
5 or assignment within sixty days from the date of their appointment and  
6 qualification.

7 The lien provided for by this section shall attach as of the date  
8 of the assignment for the benefit of creditors or of the initiation of  
9 the probate, insolvency, or bankruptcy proceedings: PROVIDED, That  
10 this sentence shall not be construed as affecting the validity or  
11 priority of any earlier lien that may have attached previously in favor  
12 of the state under any other section of this title.

13 Any administrator, executor, guardian, receiver or assignee for  
14 the benefit of creditors not giving the notification as provided for  
15 above shall become personally liable for payment of the taxes and all  
16 increases and penalties thereon to the extent of the value of the  
17 property subject to administration that otherwise would have been  
18 available for the payment of such taxes, increases, and penalties by  
19 the administrator, executor, guardian, receiver, or assignee.

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

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

26 As used in this chapter:

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

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

31 (3) "Federal credit" means (a) for a transfer, the maximum amount  
32 of the credit for state taxes allowed by section 2011 of the Internal  
33 Revenue Code; and (b) for a generation-skipping transfer, the maximum  
34 amount of the credit for state taxes allowed by section 2604 of the  
35 Internal Revenue Code;

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (2) "Excise tax" means the federal excise tax imposed by section  
5 4980A(d) of the Internal Revenue Code, and interest and penalties  
6 imposed in addition to the excise tax;

7 (3) "Fiduciary" means executor, administrator of any description,  
8 and trustee;

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

12 (5) "Person" means any individual, partnership, association, joint  
13 stock company, corporation, government, political subdivision,  
14 governmental agency, or local governmental agency;

15 (6) "Persons interested in retirement distributions" means any  
16 person determined as of the date the excise tax is due, including a  
17 personal representative, guardian, trustee, or beneficiary, entitled to  
18 receive, or who has received, by reason of or following the death of a  
19 decedent, any property or interest therein which constitutes a  
20 retirement distribution as defined in section 4980A(e) of the Internal  
21 Revenue Code, but this definition excludes any alternate payee under a  
22 qualified domestic relations order as such terms are defined in section  
23 414(p) of the Internal Revenue Code;

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

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

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

35 (10) "State" means any state, territory, or possession of the  
36 United States, the District of Columbia, or the Commonwealth of Puerto  
37 Rico; and

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

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

- 6 (1) RCW 11.12.050 and 1965 c 145 s 11.12.050;
- 7 (2) RCW 11.12.090 and 1965 c 145 s 11.12.090;
- 8 (3) RCW 11.12.130 and 1965 c 145 s 11.12.130;
- 9 (4) RCW 11.12.140 and 1965 c 145 s 11.12.140;
- 10 (5) RCW 11.12.150 and 1965 c 145 s 11.12.150.
- 11 (6) RCW 11.12.200 and 1965 c 145 s 11.12.200;
- 12 (7) RCW 11.12.210 and 1965 c 145 s 11.12.210;
- 13 (8) RCW 11.56.015 and 1965 c 145 s 11.56.015;
- 14 (9) RCW 11.56.140 and 1965 c 145 s 11.56.140;
- 15 (10) RCW 11.56.150 and 1965 c 145 s 11.56.150;
- 16 (11) RCW 11.56.160 and 1965 c 145 s 11.56.160; and
- 17 (12) RCW 11.56.170 and 1965 c 145 s 11.56.170.

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

20 (2) Section 19 of this act shall constitute a new chapter in Title  
21 11 RCW.

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

24 NEW SECTION. **Sec. 74.** The 1994 c ... (this act) amendments to  
25 RCW 11.98.200(3) are remedial in nature and apply retroactively to July  
26 25, 1993.

27 NEW SECTION. **Sec. 75.** (1) Except as provided in section 74 of  
28 this act, sections 1 through 72 of this act shall take effect January  
29 1, 1995.

30 (2) Section 3 of this act is necessary for the immediate  
31 preservation of the public peace, health, or safety, or support of the  
32 state government and its existing public institutions, and shall take  
33 effect immediately.

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