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**SUBSTITUTE SENATE BILL 5110**

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**State of Washington**

**55th Legislature**

**1997 Regular Session**

**By Senate Committee on Law & Justice (originally sponsored by Senators Johnson and Roach)**

Read first time 02/06/97.

1       AN ACT Relating to probate; amending RCW 11.02.005, 11.07.010,  
2 11.18.200, 11.28.240, 11.28.270, 11.28.280, 11.40.010, 11.40.020,  
3 11.40.030, 11.40.040, 11.40.060, 11.40.070, 11.40.080, 11.40.090,  
4 11.40.100, 11.40.110, 11.40.120, 11.40.130, 11.40.140, 11.40.150,  
5 11.42.010, 11.42.020, 11.42.030, 11.42.040, 11.42.050, 11.42.060,  
6 11.42.070, 11.42.080, 11.42.090, 11.42.100, 11.42.110, 11.42.120,  
7 11.42.130, 11.42.140, 11.42.150, 11.44.015, 11.44.025, 11.44.035,  
8 11.44.050, 11.44.070, 11.44.085, 11.44.090, 11.48.130, 11.68.050,  
9 11.68.060, 11.68.080, 11.68.090, 11.68.110, 11.76.080, 11.76.095,  
10 11.86.041, 11.95.140, 11.98.070, 11.98.240, 11.96.070, 11.104.010,  
11 11.104.110, 11.108.010, 11.108.020, 11.108.025, 11.108.050, and  
12 11.108.060; adding new sections to chapter 11.40 RCW; adding new  
13 sections to chapter 11.42 RCW; adding new sections to chapter 11.68  
14 RCW; adding a new section to chapter 11.104 RCW; adding a new chapter  
15 to Title 11 RCW; and repealing RCW 11.40.011, 11.40.012, 11.40.013,  
16 11.40.014, 11.40.015, 11.42.160, 11.42.170, 11.42.180, 11.44.066,  
17 11.52.010, 11.52.012, 11.52.014, 11.52.016, 11.52.020, 11.52.022,  
18 11.52.024, 11.52.030, 11.52.040, 11.52.050, 11.68.010, 11.68.020,  
19 11.68.030, and 11.68.040.

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

1       **Sec. 1.** RCW 11.02.005 and 1994 c 221 s 1 are each amended to read  
2 as follows:

3       When used in this title, unless otherwise required from the  
4 context:

5       (1) "Personal representative" includes executor, administrator,  
6 special administrator, and guardian or limited guardian and special  
7 representative.

8       (2) "Net estate" refers to the real and personal property of a  
9 decedent exclusive of homestead rights, exempt property, the family  
10 allowance and enforceable claims against, and debts of, the deceased or  
11 the estate.

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

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

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

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

37       (7) "Real estate" includes, except as otherwise specifically  
38 provided herein, all lands, tenements, and hereditaments, and all

1 rights thereto, and all interest therein possessed and claimed in fee  
2 simple, or for the life of a third person.

3 (8) "Will" means an instrument validly executed as required by RCW  
4 11.12.020.

5 (9) "Codicil" means a will that modifies or partially revokes an  
6 existing earlier will. A codicil need not refer to or be attached to  
7 the earlier will.

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

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

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

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

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

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

1 a right or interest if, before death, the person has irrevocably  
2 transferred the right or interest, the person has waived the power to  
3 transfer it or, in the case of contractual arrangement, the person has  
4 waived the unilateral right to rescind or modify the arrangement; or a  
5 right or interest held by the person solely in a fiduciary capacity.  
6 For the definition of "nonprobate asset" relating to revocation of a  
7 provision for a former spouse upon dissolution of marriage or  
8 declaration of invalidity of marriage, RCW 11.07.010(5) applies.

9 (16) "Internal Revenue Code" means the United States Internal  
10 Revenue Code of 1986, as amended or renumbered on January 1, (~~1995~~)  
11 1997.

12 Words that import the singular number may also be applied to the  
13 plural of persons and things.

14 Words importing the masculine gender only may be extended to  
15 females also.

16 **Sec. 2.** RCW 11.07.010 and 1994 c 221 s 2 are each amended to read  
17 as follows:

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

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

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

30 (i) The instrument governing disposition of the nonprobate asset  
31 expressly provides otherwise;

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

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

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

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

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

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

38 (c) Notwithstanding subsections (1) and (2) of this section and (a)  
39 and (b) of this subsection, a payor or other third party having actual

1 knowledge of the existence of a dispute between beneficiaries or other  
2 persons concerning rights to a nonprobate asset as a result of the  
3 application of this section may condition the payment or transfer of  
4 the nonprobate asset on execution, in a form and with security  
5 acceptable to the payor or other third party, of a bond in an amount  
6 that is double the fair market value of the nonprobate asset at the  
7 time of the decedent's death or the amount of an adverse claim,  
8 whichever is the lesser, or of a similar instrument to provide security  
9 to the payor or other third party, indemnifying the payor or other  
10 third party for any liability, loss, damage, costs, and expenses for  
11 and on account of payment or transfer of the nonprobate asset.

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

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

1 legally enforceable obligation, receives payment or transfer of a  
2 nonprobate asset to which that person is not entitled under this  
3 section is obligated to return the payment or nonprobate asset, or is  
4 personally liable for the amount of the payment or value of the  
5 nonprobate asset, to the person who is entitled to it under this  
6 section.

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

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

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

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

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

34 (d) Transfer on death beneficiary designations of a transfer on  
35 death or pay on death security, if such designations are authorized  
36 under Washington law.

37 However, for the general definition of "nonprobate asset" in this  
38 title, RCW 11.02.005 applies.

1 (6) This section is remedial in nature and applies as of July 25,  
2 1993, to decrees of dissolution and declarations of invalidity entered  
3 after July 24, 1993, and this section applies as of January 1, 1995, to  
4 decrees of dissolution and declarations of invalidity entered before  
5 July 25, 1993.

6 **Sec. 3.** RCW 11.18.200 and 1994 c 221 s 19 are each amended to read  
7 as follows:

8 (1) Unless expressly exempted by statute, a beneficiary of a  
9 nonprobate asset that was subject to satisfaction of the decedent's  
10 general liabilities immediately before the decedent's death takes the  
11 asset subject to liabilities, claims, estate taxes, and the fair share  
12 of expenses of administration reasonably incurred by the personal  
13 representative in the transfer of or administration upon the asset.  
14 The beneficiary of such an asset is liable to account to the personal  
15 representative to the extent necessary to satisfy liabilities, claims,  
16 the asset's fair share of expenses of administration, and the asset's  
17 share of estate taxes under chapter 83.110 RCW. Before making demand  
18 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 (4) Nonprobate assets that may be responsible for the satisfaction  
6 of the decedent's general liabilities and claims abate together with  
7 the probate assets of the estate in accord with chapter 11.10 RCW.

8 **Sec. 4.** RCW 11.28.240 and 1985 c 30 s 5 are each amended to read  
9 as follows:

10 (1) At any time after the issuance of letters testamentary or of  
11 administration or certificate of qualification upon the estate of any  
12 decedent, any person interested in the estate as an heir, devisee,  
13 distributee, legatee or creditor whose claim has been duly served and  
14 filed, or the lawyer for the heir, devisee, distributee, legatee, or  
15 creditor may serve upon the personal representative or upon the lawyer  
16 for the personal representative, and file with the clerk of the court  
17 wherein the administration of the estate is pending, a written request  
18 stating that the person desires special notice of any or all of the  
19 following named matters, steps or proceedings in the administration of  
20 the estate, to wit:

21 ~~((+1))~~ (a) Filing of petitions for sales, leases, exchanges or  
22 mortgages of any property of the estate.

23 ~~((+2))~~ (b) Petitions for any order of solvency or for  
24 nonintervention powers.

25 ~~((+3))~~ (c) Filing of accounts.

26 ~~((+4))~~ (d) Filing of petitions for distribution.

27 ~~((+5))~~ (e) Petitions by the personal representative for family  
28 allowances and homesteads.

29 ~~((+6))~~ (f) The filing of a declaration of completion.

30 ~~((+7))~~ (g) The filing of the inventory.

31 ~~((+8))~~ (h) Notice of presentation of personal representative's  
32 claim against the estate.

33 ~~((+9))~~ (i) Petition to continue a going business.

34 ~~((+10))~~ (j) Petition to borrow upon the general credit of the  
35 estate.

36 ~~((+11))~~ (k) Petition for judicial proceedings under chapter 11.96  
37 RCW.

38 ~~((+12))~~ (l) Petition to reopen an estate.

1       (~~(13)~~) (m) Intent to distribute estate assets, other than  
2 distributions in satisfaction of specific bequests or legacies of  
3 specific dollar amounts.

4       (~~(14)~~) (n) Intent to pay attorney's or personal representative's  
5 fees.

6       The requests shall state the post office address of the heir,  
7 devisee, distributee, legatee or creditor, or his or her lawyer, and  
8 thereafter a brief notice of the filing of any of the petitions,  
9 accounts, declaration, inventory or claim, except petitions for sale of  
10 perishable property, or other tangible personal property which will  
11 incur expense or loss by keeping, shall be addressed to the heir,  
12 devisee, distributee, legatee or creditor, or his or her lawyer, at the  
13 post office address stated in the request, and deposited in the United  
14 States post office, with prepaid postage, at least ten days before the  
15 hearing of the petition, account or claim or of the proposed  
16 distribution or payment of fees; or personal service of the notices may  
17 be made on the heir, devisee, distributee, legatee, creditor, or  
18 lawyer, not less than five days before the hearing, and the personal  
19 service shall have the same effect as deposit in the post office, and  
20 proof of mailing or of personal service must be filed with the clerk  
21 before the hearing of the petition, account or claim or of the proposed  
22 distribution or payment of fees. If the notice has been regularly  
23 given, any distribution or payment of fees and any order or judgment,  
24 made in accord therewith is final and conclusive.

25       (2) Notwithstanding subsection (1) of this section, a request for  
26 special notice may not be made by a person, and any request for special  
27 notice previously made by a person becomes null and void, when:

28       (a) That person qualifies to request special notice solely by  
29 reason of being a specific legatee, all of the property that person is  
30 entitled to receive from the decedent's estate has been distributed to  
31 that person, and that person's bequest is not subject to any subsequent  
32 abatement for the payment of the decedent's debts, expenses, or taxes;

33       (b) That person qualifies to request special notice solely by  
34 reason of being an heir of the decedent, none of the decedent's  
35 property is subject to the laws of descent and distribution, the  
36 decedent's will has been probated, and the time for contesting the  
37 probate of that will has expired; or

38       (c) That person qualifies to request special notice solely by  
39 reason of being a creditor of the decedent and that person has received

1 all of the property that the person is entitled to receive from the  
2 decedent's estate.

3 **Sec. 5.** RCW 11.28.270 and 1965 c 145 s 11.28.270 are each amended  
4 to read as follows:

5 If (~~there be~~) more than one personal representative of an  
6 estate(~~, and~~) is serving when the letters to (~~part~~) any of them  
7 (~~be~~) are revoked or surrendered(~~)~~ or (~~a part~~) when any part of  
8 them dies or in any way becomes disqualified, those who remain shall  
9 perform all the duties required by law unless the decedent provided  
10 otherwise in a duly probated will or unless the court orders otherwise.

11 **Sec. 6.** RCW 11.28.280 and 1974 ex.s. c 117 s 26 are each amended  
12 to read as follows:

13 Except as otherwise provided in RCW 11.28.270, if (~~the~~) a  
14 personal representative of an estate dies(~~)~~ or resigns(~~)~~ or the  
15 letters are revoked before the settlement of the estate, letters  
16 testamentary or letters of administration of the estate remaining  
17 unadministered shall be granted to those to whom (~~administration~~) the  
18 letters would have been granted if the original letters had not been  
19 obtained, or the person obtaining them had renounced administration,  
20 and the (~~administrator de bonis non~~) successor personal  
21 representative shall perform like duties and incur like liabilities as  
22 the (~~former personal representative, and shall serve as administrator~~  
23 ~~with will annexed de bonis non in the event a will has been admitted to~~  
24 ~~probate. Said administrator de bonis non may, upon satisfying the~~  
25 ~~requirements and complying with the procedures provided in chapter~~  
26 ~~11.68 RCW, administer the estate of the decedent without the~~  
27 ~~intervention of court~~) preceding personal representative, unless the  
28 decedent provided otherwise in a duly probated will or unless the court  
29 orders otherwise. A succeeding personal representative may petition  
30 for nonintervention powers under chapter 11.68 RCW.

31 **Sec. 7.** RCW 11.40.010 and 1995 1st sp.s. c 18 s 58 are each  
32 amended to read as follows:

33 (~~Every personal representative shall, after appointment and~~  
34 ~~qualification, give a notice to the creditors of the deceased, stating~~  
35 ~~such appointment and qualification as personal representative and~~  
36 ~~requiring all persons having claims against the deceased to serve the~~

1 same on the personal representative or the estate's attorney of record,  
2 and file an executed copy thereof with the clerk of the court, within  
3 four months after the date of the first publication of such notice  
4 described in this section or within four months after the date of the  
5 filing of the copy of such notice with the clerk of the court,  
6 whichever is the later, or within the time otherwise provided in RCW  
7 11.40.013. The four-month time period after the later of the date of  
8 the first publication of the notice to creditors or the date of the  
9 filing of such notice with the clerk of the court is referred to in  
10 this chapter as the "four-month time limitation." Such notice shall be  
11 given as follows:

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

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

18 (3) The personal representative shall file a copy of such notice  
19 with the clerk of the court; and

20 (4) The personal representative shall mail a copy of the notice,  
21 including the decedent's social security number, to the state of  
22 Washington, department of social and health services, office of  
23 financial recovery.

24 Except as otherwise provided in RCW 11.40.011 or 11.40.013, any  
25 claim not filed within the four-month time limitation shall be forever  
26 barred, if not already barred by any otherwise applicable statute of  
27 limitations. This bar is effective as to claims against both the  
28 decedent's probate assets and nonprobate assets as described in RCW  
29 11.18.200. Proof by affidavit of the giving and publication of such  
30 notice shall be filed with the court by the personal representative.

31 Acts of a notice agent in complying with chapter 221, Laws of 1994  
32 may be adopted and ratified by the personal representative as if done  
33 by the personal representative in complying with this chapter, except  
34 that if at the time of the appointment and qualification of the  
35 personal representative a notice agent had commenced nonprobate notice  
36 to creditors under chapter 11.42 RCW, the personal representative shall  
37 give published notice as provided in RCW 11.42.180.)) A person having  
38 a claim against the decedent may not maintain an action on the claim  
39 unless a personal representative has been appointed and the claimant

1 has presented the claim as set forth in this chapter. However, this  
2 chapter does not affect the notice under RCW 82.32.240 or the ability  
3 to maintain an action against a notice agent under chapter 11.42 RCW.

4 **Sec. 8.** RCW 11.40.020 and 1974 ex.s. c 117 s 34 are each amended  
5 to read as follows:

6 ~~((Every claim shall be signed by the claimant, or his attorney, or~~  
7 ~~any person who is authorized to sign claims on his, her, or its behalf,~~  
8 ~~and shall contain the following information:~~

9 ~~(1) The name and address of the claimant;~~

10 ~~(2) The name, business address (if different from that of the~~  
11 ~~claimant), and nature of authority of any person signing the claim on~~  
12 ~~behalf of the claimant;~~

13 ~~(3) A written statement of the facts or circumstances constituting~~  
14 ~~the basis upon which the claim is submitted;~~

15 ~~(4) The amount of the claim;~~

16 ~~(5) If the claim is secured, unliquidated or contingent, or not yet~~  
17 ~~due, the nature of the security, the nature of the uncertainty, and due~~  
18 ~~date of the claim:— PROVIDED HOWEVER, That failure to describe~~  
19 ~~correctly the security, nature of any uncertainty, or the due date of~~  
20 ~~a claim not yet due, if such failure is not substantially misleading,~~  
21 ~~does not invalidate the presentation made.~~

22 ~~Claims need not be supported by affidavit.))~~ A personal  
23 representative may give notice to the creditors of the decedent, as  
24 directed in RCW 11.40.030, announcing the personal representative's  
25 appointment and requiring that persons having claims against the  
26 decedent that arise before the decedent's death, present their claims  
27 within the time specified in section 11 of this act or be forever  
28 barred as to claims against the decedent's probate and nonprobate  
29 assets. If notice is given:

30 (1) The personal representative shall first file the original of  
31 the notice with the court;

32 (2) The personal representative shall then cause the notice to be  
33 published once each week for three successive weeks in a legal  
34 newspaper in the county in which the estate is being administered;

35 (3) The personal representative may, at any time during the probate  
36 proceeding, give actual notice to creditors who become known to the  
37 personal representative by serving the notice on the creditor or

1 mailing the notice to the creditor at the creditor's last known  
2 address, by regular first class mail, postage prepaid; and

3 (4) The personal representative shall also mail a copy of the  
4 notice, including the decedent's social security number, to the state  
5 of Washington department of social and health services office of  
6 financial recovery.

7 The personal representative shall file with the court proof by  
8 affidavit of the giving and publication of the notice.

9 **Sec. 9.** RCW 11.40.030 and 1989 c 333 s 7 are each amended to read  
10 as follows:

11 ~~((1) Unless the personal representative shall, within two months~~  
12 ~~after the expiration of the four month time limitation, or within two~~  
13 ~~months after receipt of an otherwise timely claim filed after~~  
14 ~~expiration of the four month time limitation, whichever is later, have~~  
15 ~~obtained an order extending the time for his allowance or rejection of~~  
16 ~~claims timely and properly served and filed, all claims not exceeding~~  
17 ~~one thousand dollars presented within the time and in the manner~~  
18 ~~provided in RCW 11.40.010, 11.40.013, or 11.40.020 as now or hereafter~~  
19 ~~amended, shall be deemed allowed and may not thereafter be rejected,~~  
20 ~~unless the personal representative shall, within two months after the~~  
21 ~~expiration of the four month time limitation, or as to an otherwise~~  
22 ~~timely claim filed after expiration of the four month time limitation,~~  
23 ~~within two months after receipt of such claim, or within any extended~~  
24 ~~time, notify the claimant of its rejection, in whole or in part.~~

25 ~~(2) When a claim exceeding one thousand dollars is presented within~~  
26 ~~the time and in the manner provided in RCW 11.40.010 and 11.40.020 as~~  
27 ~~now or hereafter amended, it shall be the duty of the personal~~  
28 ~~representative to indorse thereon his allowance or rejection. A~~  
29 ~~claimant after a claim has been on file for at least thirty days may~~  
30 ~~notify the personal representative that he will petition the court to~~  
31 ~~have the claim allowed. If the personal representative fails to file~~  
32 ~~an allowance or rejection of such claim twenty days after the receipt~~  
33 ~~of such notice, the claimant may note the matter up for hearing and the~~  
34 ~~court shall hear the matter and determine whether the claim should be~~  
35 ~~allowed or rejected, in whole or in part. If at the hearing the claim~~  
36 ~~is substantially allowed the court may allow petitioner reasonable~~  
37 ~~attorney's fees of not less than one hundred dollars chargeable against~~  
38 ~~the estate.~~

1 (3) If the personal representative shall reject the claim, in whole  
2 or in part, he shall notify the claimant of said rejection and file in  
3 the office of the clerk, an affidavit showing such notification and the  
4 date thereof. Said notification shall be by personal service or  
5 certified mail addressed to the claimant at his address as stated in  
6 the claim; if a person other than the claimant shall have signed said  
7 claim for or on behalf of the claimant, and said person's business  
8 address as stated in said claim is different from that of the claimant,  
9 notification of rejection shall also be made by personal service or  
10 certified mail upon said person; the date of the postmark shall be the  
11 date of notification. The notification of rejection shall advise the  
12 claimant, and the person making claim on his, her, or its behalf, if  
13 any, that the claimant must bring suit in the proper court against the  
14 personal representative within thirty days after notification of  
15 rejection or before expiration of the time for serving and filing  
16 claims against the estate, whichever period is longer, and that  
17 otherwise the claim will be forever barred.

18 (4) The personal representative may, either before or after  
19 rejection of any claim compromise said claim, whether due or not,  
20 absolute or contingent, liquidated or unliquidated, if it appears to  
21 the personal representative that such compromise is in the best  
22 interests of the estate.) Notice under RCW 11.40.020 must contain the  
23 following elements in substantially the following form:

24           CAPTION                    )        No.  
25           OF CASE                    )        PROBATE NOTICE TO  
26    )        CREDITORS  
27           .....                    )        RCW 11.40.030

28       The personal representative named below has been appointed as  
29 personal representative of this estate. Any person having a claim  
30 against the decedent that arose before the decedent's death must,  
31 before the time the claim would be barred by any otherwise applicable  
32 statute of limitations, present the claim in the manner as provided in  
33 RCW 11.40.070 by serving on or mailing to the personal representative  
34 or the personal representative's attorney at the address stated below  
35 a copy of the claim and filing the original of the claim with the  
36 court. The claim must be presented within the later of: (1) Thirty  
37 days after the personal representative served or mailed the notice to  
38 the creditor as provided under RCW 11.40.020(3); or (2) four months



1 after the date of first publication of the notice. If the claim is not  
2 presented within this time frame, the claim is forever barred, except  
3 as otherwise provided in section 11 of this act and RCW 11.40.060.  
4 This bar is effective as to claims against both the decedent's probate  
5 and nonprobate assets.

6 Date of First  
7 Publication:

8 Personal Representative:

9 Attorney for the Personal Representative:

10 Address for Mailing or Service:

11 **Sec. 10.** RCW 11.40.040 and 1994 c 221 s 28 are each amended to  
12 read as follows:

13 ~~((Every claim which has been allowed by the personal representative~~  
14 ~~shall be ranked among the acknowledged debts of the estate to be paid~~  
15 ~~expeditiously in the course of administration.)) (1) For purposes of~~

16 section 11 of this act, a "reasonably ascertainable" creditor of the  
17 decedent is one that the personal representative would discover upon  
18 exercise of reasonable diligence. The personal representative is  
19 deemed to have exercised reasonable diligence upon conducting a  
20 reasonable review of the decedent's correspondence, including  
21 correspondence received after the date of death, and financial records,  
22 including personal financial statements, loan documents, checkbooks,  
23 bank statements, and income tax returns, that are in the possession of  
24 or reasonably available to the personal representative.

25 (2) If the personal representative conducts the review, the  
26 personal representative is presumed to have exercised reasonable  
27 diligence to ascertain creditors of the decedent and any creditor not  
28 ascertained in the review is presumed not reasonably ascertainable  
29 within the meaning of section 11 of this act. These presumptions may  
30 be rebutted only by clear, cogent, and convincing evidence.

31 (3) The personal representative may evidence the review and  
32 resulting presumption by filing with the court an affidavit regarding  
33 the facts referred to in this section. The personal representative may  
34 petition the court for an order declaring that the personal  
35 representative has made a review and that any creditors not known to  
36 the personal representative are not reasonably ascertainable. The

1 petition must be filed under RCW 11.96.070 and the notice specified  
2 under RCW 11.96.100 must also be given by publication.

3 NEW SECTION. **Sec. 11.** A new section is added to chapter 11.40 RCW  
4 to read as follows:

5 (1) Whether or not notice is provided under RCW 11.40.020, a person  
6 having a claim against the decedent that arose before the decedent's  
7 death is forever barred from making a claim or commencing an action  
8 against the decedent, if the claim or action is not already barred by  
9 an otherwise applicable statute of limitations, unless the creditor  
10 presents the claim in the manner provided in RCW 11.40.070 within the  
11 following time limitations:

12 (a) If the personal representative provided notice under RCW  
13 11.40.020 (1) and (2) and the creditor was given actual notice as  
14 provided in RCW 11.40.020(3), the creditor must present the claim  
15 within the later of: (i) Thirty days after the personal  
16 representative's service or mailing of notice to the creditor; and (ii)  
17 four months after the date of first publication of the notice;

18 (b) If the personal representative provided notice under RCW  
19 11.40.020 (1) and (2) and the creditor was not given actual notice as  
20 provided in RCW 11.40.020(3):

21 (i) If the creditor was not reasonably ascertainable, as defined in  
22 RCW 11.40.040, the creditor must present the claim within four months  
23 after the date of first publication of notice;

24 (ii) If the creditor was reasonably ascertainable, as defined in  
25 RCW 11.40.040, the creditor must present the claim within twenty-four  
26 months after the decedent's date of death; and

27 (c) If notice was not provided under this chapter or chapter 11.42  
28 RCW, the creditor must present the claim within twenty-four months  
29 after the decedent's date of death.

30 (2) An otherwise applicable statute of limitations applies without  
31 regard to the tolling provisions of RCW 4.16.190.

32 (3) This bar is effective as to claims against both the decedent's  
33 probate and nonprobate assets.

34 **Sec. 12.** RCW 11.40.060 and 1974 ex.s. c 117 s 37 are each amended  
35 to read as follows:

36 ~~((When a claim is rejected by the personal representative, the~~  
37 ~~holder must bring suit in the proper court against the personal~~

1 ~~representative within thirty days after notification of the rejection~~  
2 ~~or before expiration of the time for serving and filing claims against~~  
3 ~~the estate, whichever period is longer, otherwise the claim shall be~~  
4 ~~forever barred.)) The time limitations for presenting claims under this  
5 chapter do not accrue to the benefit of any liability or casualty  
6 insurer. Claims against the decedent or the decedent's marital  
7 community that can be fully satisfied by applicable insurance coverage  
8 or proceeds need not be presented within the time limitation of section  
9 11 of this act, but the amount of recovery cannot exceed the amount of  
10 the insurance. The claims may at any time be presented as provided in  
11 RCW 11.40.070, subject to the otherwise relevant statutes of  
12 limitations, and do not constitute a cloud, lien, or encumbrance upon  
13 the title to the decedent's probate or nonprobate assets nor delay or  
14 prevent the conclusion of probate proceedings or the transfer or  
15 distribution of assets of the estate. This section does not serve to  
16 extend any otherwise relevant statutes of limitations.~~

17 **Sec. 13.** RCW 11.40.070 and 1965 c 145 s 11.40.070 are each amended  
18 to read as follows:

19 ~~((No claim shall be allowed by the personal representative or court~~  
20 ~~which is barred by the statute of limitations.)) (1) The claimant, the  
21 claimant's attorney, or the claimant's agent shall sign the claim and  
22 include in the claim the following information:~~

23 (a) The name and address of the claimant;

24 (b) The name, address, if different from that of the claimant, and  
25 nature of authority of an agent signing the claim on behalf of the  
26 claimant;

27 (c) A statement of the facts or circumstances constituting the  
28 basis of the claim;

29 (d) The amount of the claim; and

30 (e) If the claim is secured, unliquidated, contingent, or not yet  
31 due, the nature of the security, the nature of the uncertainty, or the  
32 date when it will become due.

33 Failure to describe correctly the information in (c), (d), or (e)  
34 of this subsection, if the failure is not substantially misleading,  
35 does not invalidate the claim.

36 (2) A claim does not need to be supported by affidavit.

37 (3) A claim must be presented within the time limits set forth in  
38 section 11 of this act by: (a) Serving on or mailing to, by regular

1 first class mail, the personal representative or the personal  
2 representative's attorney a copy of the signed claim; and (b) filing  
3 the original of the signed claim with the court. A claim is deemed  
4 presented upon the later of the date of postmark or service on the  
5 personal representative, or the personal representative's attorney, and  
6 filing with the court.

7 (4) Notwithstanding any other provision of this chapter, if a  
8 claimant makes a written demand for payment within the time limits set  
9 forth in section 11 of this act, the personal representative may waive  
10 formal defects and elect to treat the demand as a claim properly filed  
11 under this chapter if: (a) The claim was due; (b) the amount paid was  
12 the amount of indebtedness over and above all payments and offsets; (c)  
13 the estate is solvent; and (d) the payment is made in good faith.  
14 Nothing in this chapter limits application of the doctrines of waiver,  
15 estoppel, or detrimental claims or any other equitable principle.

16 **Sec. 14.** RCW 11.40.080 and 1994 c 221 s 29 are each amended to  
17 read as follows:

18 ~~((No holder of any claim against a decedent shall maintain an~~  
19 ~~action thereon, unless the claim shall have been first presented as~~  
20 ~~provided in this chapter. Nothing in this chapter affects RCW~~  
21 ~~82.32.240.)) (1) The personal representative shall allow or reject all~~  
22 claims presented in the manner provided in RCW 11.40.070. The personal  
23 representative may allow or reject a claim in whole or in part.

24 (2) If the personal representative has not allowed or rejected a  
25 claim within the later of four months from the date of first  
26 publication of the notice to creditors or thirty days from presentation  
27 of the claim, the claimant may serve written notice on the personal  
28 representative that the claimant will petition the court to have the  
29 claim allowed. If the personal representative fails to notify the  
30 claimant of the allowance or rejection of the claim within twenty days  
31 after the personal representative's receipt of the claimant's notice,  
32 the claimant may petition the court for a hearing to determine whether  
33 the claim should be allowed or rejected, in whole or in part. If the  
34 court substantially allows the claim, the court may allow the  
35 petitioner reasonable attorneys' fees chargeable against the estate.

36 **Sec. 15.** RCW 11.40.090 and 1965 c 145 s 11.40.090 are each amended  
37 to read as follows:

1       ~~((The time during which there shall be a vacancy in the~~  
2 ~~administration shall not be included in any limitations herein~~  
3 ~~prescribed.))~~ (1) If the personal representative allows a claim, the  
4 personal representative shall notify the claimant of the allowance by  
5 personal service or regular first class mail to the address stated on  
6 the claim.

7       (2) A claim that on its face does not exceed one thousand dollars  
8 presented in the manner provided in RCW 11.40.070 must be deemed  
9 allowed and may not thereafter be rejected unless the personal  
10 representative has notified the claimant of rejection of the claim  
11 within the later of six months from the date of first publication of  
12 the notice to creditors and two months from the personal  
13 representative's receipt of the claim. The personal representative may  
14 petition for an order extending the period for automatic allowance of  
15 the claims.

16       (3) Allowed claims must be ranked among the acknowledged debts of  
17 the estate to be paid expeditiously in the course of administration.

18       (4) A claim may not be allowed if it is barred by a statute of  
19 limitations.

20       **Sec. 16.** RCW 11.40.100 and 1974 ex.s. c 117 s 47 are each amended  
21 to read as follows:

22       ~~((If any action be pending against the testator or intestate at the~~  
23 ~~time of his death, the plaintiff shall within four months after first~~  
24 ~~publication of notice to creditors, or the filing of a copy of such~~  
25 ~~notice, whichever is later, serve on the personal representative a~~  
26 ~~motion to have such personal representative, as such, substituted as~~  
27 ~~defendant in such action, and, upon the hearing of such motion, such~~  
28 ~~personal representative shall be so substituted, unless, at or prior to~~  
29 ~~such hearing, the claim of plaintiff, together with costs, be allowed~~  
30 ~~by the personal representative and court. After the substitution of~~  
31 ~~such personal representative, the court shall proceed to hear and~~  
32 ~~determine the action as in other civil cases.))~~ (1) If the personal  
33 representative rejects a claim, in whole or in part, the claimant must  
34 bring suit against the personal representative within thirty days after  
35 notification of rejection or the claim is forever barred. The personal  
36 representative shall notify the claimant of the rejection and file an  
37 affidavit with the court showing the notification and the date of the  
38 notification. The personal representative shall notify the claimant of

1 the rejection by personal service or certified mail addressed to the  
2 claimant or the claimant's agent, if applicable, at the address stated  
3 in the claim. The date of service or of the postmark is the date of  
4 notification. The notification must advise the claimant that the  
5 claimant must bring suit in the proper court against the personal  
6 representative within thirty days after notification of rejection or  
7 the claim will be forever barred.

8 (2) The personal representative may, before or after rejection of  
9 any claim, compromise the claim, whether due or not, absolute or  
10 contingent, liquidated, or unliquidated, if it appears to the personal  
11 representative that the compromise is in the best interests of the  
12 estate.

13 **Sec. 17.** RCW 11.40.110 and 1974 ex.s. c 117 s 38 are each amended  
14 to read as follows:

15 ~~((Whenever any claim shall have been filed and presented to a~~  
16 ~~personal representative, and a part thereof shall be allowed, the~~  
17 ~~amount of such allowance shall be stated in the indorsement. If the~~  
18 ~~creditor shall refuse to accept the amount so allowed in satisfaction~~  
19 ~~of his claim, he shall recover no costs in any action he may bring~~  
20 ~~against the personal representative unless he shall recover a greater~~  
21 ~~amount than that offered to be allowed, exclusive of interest and~~  
22 ~~costs.))~~ If an action is pending against the decedent at the time of  
23 the decedent's death, the plaintiff shall, within four months after  
24 appointment of the personal representative, serve on the personal  
25 representative a petition to have the personal representative  
26 substituted as defendant in the action. Upon hearing on the petition,  
27 the personal representative shall be substituted, unless, at or before  
28 the hearing, the claim of the plaintiff, together with costs, is  
29 allowed.

30 **Sec. 18.** RCW 11.40.120 and 1965 c 145 s 11.40.120 are each amended  
31 to read as follows:

32 The effect of any judgment rendered against ~~((any))~~ a personal  
33 representative shall be only to establish the amount of the judgment as  
34 an allowed claim.

35 **Sec. 19.** RCW 11.40.130 and 1965 c 145 s 11.40.130 are each amended  
36 to read as follows:

1       (~~When any judgment has been rendered against the testator or~~  
2 ~~intestate in his lifetime, no execution shall issue thereon after his~~  
3 ~~death, but it shall be presented to the personal representative, as any~~  
4 ~~other claim, but need not be supported by the affidavit of the~~  
5 ~~claimant, and if justly due and unsatisfied, shall be paid in due~~  
6 ~~course of administration: PROVIDED, HOWEVER, That if it be a lien on~~  
7 ~~any property of the deceased, the same may be sold for the satisfaction~~  
8 ~~thereof, and the officer making the sale shall account to the personal~~  
9 ~~representative for any surplus in his hands.)) If a judgment was  
10 entered against the decedent during the decedent's lifetime, an  
11 execution may not issue on the judgment after the death of the  
12 decedent. The judgment must be presented in the manner provided in RCW  
13 11.40.070, but if the judgment is a lien on any property of the  
14 decedent, the property may be sold for the satisfaction of the judgment  
15 and the officer making the sale shall account to the personal  
16 representative for any surplus.~~

17       **NEW SECTION. Sec. 20.** A new section is added to chapter 11.40 RCW  
18 to read as follows:

19       If a creditor's claim is secured by any property of the decedent,  
20 this chapter does not affect the right of a creditor to realize on the  
21 creditor's security, whether or not the creditor presented the claim in  
22 the manner provided in RCW 11.40.070.

23       **Sec. 21.** RCW 11.40.140 and 1965 c 145 s 11.40.140 are each amended  
24 to read as follows:

25       (~~If the personal representative is himself a creditor of the~~  
26 ~~testator or intestate, his claim, duly authenticated by affidavit,~~  
27 ~~shall be filed and presented for allowance or rejection to the judge of~~  
28 ~~the court, and its allowance by the judge shall be sufficient evidence~~  
29 ~~of its correctness. This section shall apply to nonintervention and~~  
30 ~~all other wills.)) If the personal representative has a claim against  
31 the decedent that arose prior to the decedent's death, the personal  
32 representative must present the claim in the manner provided in RCW  
33 11.40.070 and petition the court for allowance or rejection. The  
34 petition must be filed under RCW 11.96.070. This section applies  
35 whether or not the personal representative is acting under  
36 nonintervention powers.~~

1       **Sec. 22.** RCW 11.40.150 and 1965 c 145 s 11.40.150 are each amended  
2 to read as follows:

3       ~~((In case of resignation, death or removal for any cause of any  
4 personal representative, and the appointment of another or others,  
5 after notice has been given by publication as required by RCW  
6 11.40.010, by such personal representative first appointed, to persons  
7 to file their claims against the decedent, it shall be the duty of the  
8 successor or personal representative to cause notice of such  
9 resignation, death or removal and such new appointment to be published  
10 two successive weeks in a legal newspaper published in the county in  
11 which the estate is being administered, but the time between the  
12 resignation, death or removal and such publication shall be added to  
13 the time within which claims shall be filed as fixed by the published  
14 notice to creditors unless such time shall have expired before such  
15 resignation or removal or death: PROVIDED, HOWEVER, That no such  
16 notice shall be required if the period for filing claims was fully  
17 expired during the time that the former personal representative was  
18 qualified.))~~ (1) If a personal representative has given notice under  
19 RCW 11.40.020 and then resigns, dies, or is removed, the successor  
20 personal representative shall:

21       (a) Publish notice of the vacancy and succession for two successive  
22 weeks in the legal newspaper in which notice was published under RCW  
23 11.40.020 if the vacancy occurred within twenty-four months after the  
24 decedent's date of death; and

25       (b) Provide actual notice of the vacancy and succession to a  
26 creditor if: (i) The creditor filed a claim and the claim had not been  
27 accepted or rejected by the prior personal representative; or (ii) the  
28 creditor's claim was rejected and the vacancy occurred within thirty  
29 days after rejection of the claim.

30       (2) The time between the resignation, death, or removal and first  
31 publication of the vacancy and succession or, in the case of actual  
32 notice, the mailing of the notice of vacancy and succession must be  
33 added to the time within which a claim must be presented or a suit on  
34 a rejected claim must be filed. This section does not extend the  
35 twenty-four month self-executing bar under section 11 of this act.

36       NEW SECTION. **Sec. 23.** A new section is added to chapter 11.40 RCW  
37 to read as follows:



1 If a notice agent had commenced nonprobate notice to creditors  
2 under chapter 11.42 RCW, the appointment of the personal representative  
3 does not affect the filing and publication of notice to creditors and  
4 does not affect actual notice to creditors given by the notice agent.  
5 The personal representative is presumed to have adopted or ratified all  
6 acts of the notice agent unless, within thirty days of appointment, the  
7 personal representative provides notice of rejection or nullification  
8 to the affected claimant or claimants by personal service or certified  
9 mail addressed to the claimant or claimant's agent, if applicable, at  
10 the address stated on the claim. The personal representative shall  
11 also provide notice under RCW 11.42.150.

12 **Sec. 24.** RCW 11.42.010 and 1994 c 221 s 31 are each amended to  
13 read as follows:

14 (1) Subject to the conditions stated in this ~~((section))~~ chapter,  
15 and if no personal representative has been appointed ~~((and qualified in~~  
16 ~~the decedent's estate))~~ in ~~((Washington, the following members of a~~  
17 ~~group, defined as the "qualified group," are qualified to give~~  
18 ~~"nonprobate notice to creditors" of the decedent:~~

19 ~~(a) Decedent's surviving spouse;~~

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

22 ~~(c) The trustee, except a testamentary trustee under the will of~~  
23 ~~the decedent not probated in another state, having authority over any~~  
24 ~~of the property of the decedent; and~~

25 ~~(d) A person who has received any property of the decedent by~~  
26 ~~reason of the decedent's death.~~

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

30 (a) Constitutes a nonprobate asset; or

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

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

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

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

6       ~~(4) The requirement in subsection (3) of this section of the~~  
7 ~~receipt of all, or substantially all, of the included property is~~  
8 ~~satisfied if:~~

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

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

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

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

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

27       ~~(c) Receives from the clerk a cause number.~~

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

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

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

1       ~~(i) Professional service corporations that are regularly organized~~  
2 ~~under the laws of this state whose shareholder or shareholders are~~  
3 ~~exclusively attorneys; and~~

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

6       ~~(b) Minors;~~

7       ~~(c) Persons of unsound mind; or~~

8       ~~(d) Persons who have been convicted of a felony or of a misdemeanor~~  
9 ~~involving moral turpitude.~~

10       ~~(7) A person who has given notice under this chapter and who~~  
11 ~~thereafter becomes of unsound mind or is convicted of a crime or~~  
12 ~~misdemeanor involving moral turpitude is no longer qualified to act as~~  
13 ~~notice agent under this chapter. The disqualification does not bar~~  
14 ~~another person, otherwise qualified, from acting as notice agent under~~  
15 ~~this chapter.~~

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

22       ~~(9) The powers and authority of a notice agent cease, and the~~  
23 ~~office of notice agent becomes vacant, upon the appointment and~~  
24 ~~qualification of a personal representative for the estate of the~~  
25 ~~decedent. Except as provided in RCW 11.42.180, the cessation of the~~  
26 ~~powers and authority does not affect a published notice under this~~  
27 ~~chapter if the publication commenced before the cessation and does not~~  
28 ~~affect actual notice to creditors given by the notice agent before the~~  
29 ~~cessation.) this state, a beneficiary or trustee who has received or~~  
30 ~~is entitled to receive by reason of the decedent's death substantially~~  
31 ~~all of the decedent's probate and nonprobate assets, is qualified to~~  
32 ~~give nonprobate notice to creditors under this chapter.~~

33       If no one beneficiary or trustee has received or is entitled to  
34 receive substantially all of the assets, then those persons, who in the  
35 aggregate have received or are entitled to receive substantially all of  
36 the assets, may, under an agreement under RCW 11.96.170, appoint a  
37 person who is then qualified to give nonprobate notice to creditors  
38 under this chapter.

1       (2) A person or group of persons is deemed to have received  
2 substantially all of the decedent's probate and nonprobate assets if  
3 the person or the group, at the time of the filing of the declaration  
4 and oath referred to in subsection (3) of this section, in reasonable  
5 good faith believed that the person or the group had received, or was  
6 entitled to receive by reason of the decedent's death, substantially  
7 all of the decedent's probate and nonprobate assets.

8       (3)(a) The "notice agent" means the qualified person who:

9       (i) Pays a filing fee to the clerk of the superior court in a  
10 county in which probate may be commenced regarding the decedent, the  
11 "notice county", and receives a cause number; and

12       (ii) Files a declaration and oath with the clerk.

13       (b) The declaration and oath must be made in affidavit form or  
14 under penalty of perjury and must state that the person making the  
15 declaration believes in reasonable good faith that the person is  
16 qualified under this chapter to act as the notice agent and that the  
17 person will faithfully execute the duties of the notice agent as  
18 provided in this chapter.

19       (4) The following persons are not qualified to act as notice agent:

20       (a) Corporations, trust companies, and national banks, except: (i)  
21 Such entities as are authorized to do trust business in this state; and  
22 (ii) professional service corporations that are regularly organized  
23 under the laws of this state whose shareholder or shareholders are  
24 exclusively attorneys;

25       (b) Minors;

26       (c) Persons of unsound mind;

27       (d) Persons who have been convicted of a felony or of a misdemeanor  
28 involving moral turpitude; and

29       (e) Persons who have given notice under this chapter and who  
30 thereafter become of unsound mind or are convicted of a felony or  
31 misdemeanor involving moral turpitude. This disqualification does not  
32 bar another person, otherwise qualified, from acting as successor  
33 notice agent.

34       (5) A nonresident may act as notice agent if the nonresident  
35 appoints an agent who is a resident of the notice county or who is  
36 attorney of record for the notice agent upon whom service of all papers  
37 may be made. The appointment must be made in writing and filed with  
38 the court.

1       **Sec. 25.** RCW 11.42.020 and 1995 1st sp.s. c 18 s 59 are each  
2 amended to read as follows:

3       (1) The notice agent may give nonprobate notice to the creditors of  
4 the decedent if:

5       (a) As of the date of the filing (~~((of a copy))~~) of the notice to  
6 creditors with the (~~((clerk of the superior))~~) court (~~((for the notice~~  
7 ~~county))~~), the notice agent has no knowledge of another person acting as  
8 notice agent or of the appointment (~~((and qualification))~~) of a personal  
9 representative in the decedent's estate in the state of Washington (~~((or~~  
10 ~~of another person becoming a notice agent))~~); and

11       (b) According to the records of the (~~((clerk of the superior))~~) court  
12 (~~((for the notice county as of 8:00 a.m.))~~) as are available on the date  
13 of the filing of the notice to creditors, no cause number regarding the  
14 decedent has been issued to any other notice agent and no personal  
15 representative of the decedent's estate had been appointed (~~((and~~  
16 ~~qualified and no cause number regarding the decedent had been issued to~~  
17 ~~any other notice agent by the clerk under RCW 11.42.010))~~).

18       (2) (~~((The notice must state that all persons having claims against~~  
19 ~~the decedent shall:—(a) Serve the same on the notice agent if the~~  
20 ~~notice agent is a resident of the state of Washington upon whom service~~  
21 ~~of all papers may be made, or on the nonprobate resident agent for the~~  
22 ~~notice agent, if any, or on the attorneys of record of the notice agent~~  
23 ~~at their respective address in the state of Washington; and (b) file an~~  
24 ~~executed copy of the notice with the clerk of the superior court for~~  
25 ~~the notice county, within:—(i)(A) Four months after the date of the~~  
26 ~~first publication of the notice described in this section; or (B) four~~  
27 ~~months after the date of the filing of the copy of the notice with the~~  
28 ~~clerk of the superior court for the notice county, whichever is later;~~  
29 ~~or (ii) the time otherwise provided in RCW 11.42.050. The four month~~  
30 ~~time period after the later of the date of the first publication of the~~  
31 ~~notice to creditors or the date of the filing of the notice with the~~  
32 ~~clerk of the court is referred to in this chapter as the "four month~~  
33 ~~time limitation."~~

34       (3) The notice agent shall declare in the notice in affidavit form  
35 or under the penalty of perjury under the laws of the state of  
36 Washington as provided in RCW 9A.72.085 that:—(a) The notice agent is  
37 entitled to give the nonprobate notice under subsection (1) of this  
38 section; and (b) the notice is being given by the notice agent as  
39 permitted by this section.

1       ~~(4) The notice agent shall sign the notice and file it with the~~  
2 ~~clerk of the superior court for the notice county. The notice must be~~  
3 ~~given as follows:~~

4       ~~(a) The notice agent shall give actual notice as to creditors of~~  
5 ~~the decedent who become known to the notice agent within the four-month~~  
6 ~~time limitation as required in RCW 11.42.050;~~

7       ~~(b) The notice agent shall cause the notice to be published once in~~  
8 ~~each week for three successive weeks in the notice county;~~

9       ~~(c) The notice agent shall file a copy of the notice with the clerk~~  
10 ~~of the superior court for the notice county; and~~

11       ~~(d) The notice agent shall mail a copy of the notice, including the~~  
12 ~~decedent's social security number, to the state of Washington,~~  
13 ~~department of social and health services, office of financial recovery.~~

14       ~~(5) A claim not filed within the four-month time limitation is~~  
15 ~~forever barred, if not already barred by an otherwise applicable~~  
16 ~~statute of limitations, except as provided in RCW 11.42.030 or~~  
17 ~~11.42.050. The bar is effective to bar claims against both the probate~~  
18 ~~estate of the decedent and nonprobate assets that were subject to~~  
19 ~~satisfaction of the decedent's general liabilities immediately before~~  
20 ~~the decedent's death. If a notice to the creditors of a decedent is~~  
21 ~~published by more than one notice agent and the notice agents are not~~  
22 ~~acting jointly, the four-month time limitation means the four-month~~  
23 ~~time limitation that applies to the notice agent who first publishes~~  
24 ~~the notice. Proof by affidavit or perjury declaration made under RCW~~  
25 ~~9A.72.085 of the giving and publication of the notice must be filed~~  
26 ~~with the clerk of the superior court for the notice county by the~~  
27 ~~notice agent.)) The notice agent must give notice to the creditors of~~  
28 ~~the decedent, as directed in RCW 11.42.030, announcing that the notice~~  
29 ~~agent has elected to give nonprobate notice to creditors and requiring~~  
30 ~~that persons having claims against the decedent that arose before the~~  
31 ~~decedent's death present their claims within the time specified in RCW~~  
32 ~~11.42.050 or be forever barred as to claims against the decedent's~~  
33 ~~probate and nonprobate assets.~~

34       ~~(a) The notice agent shall first file the original of the notice~~  
35 ~~with the court.~~

36       ~~(b) The notice agent shall then cause the notice to be published~~  
37 ~~once each week for three successive weeks in a legal newspaper in the~~  
38 ~~notice county.~~

1       (c) The notice agent may at any time give actual notice to  
2 creditors who become known to the notice agent by serving the notice on  
3 the creditor or mailing the notice to the creditor at the creditor's  
4 last known address, by regular first class mail, postage prepaid.

5       (d) The notice agent shall also mail a copy of the notice,  
6 including the decedent's social security number, to the state of  
7 Washington department of social and health services' office of  
8 financial recovery.

9       The notice agent shall file with the court proof by affidavit of  
10 the giving and publication of the notice.

11       **Sec. 26.** RCW 11.42.030 and 1994 c 221 s 33 are each amended to  
12 read as follows:

13       ~~((The time limitations under this chapter for serving and filing~~  
14 ~~claims do not accrue to the benefit of a liability or casualty insurer~~  
15 ~~as to claims against either the decedent or the marital community of~~  
16 ~~which the decedent was a member, or both, and:~~

17       ~~(1) The claims, subject to applicable statutes of limitation, may~~  
18 ~~at any time be: (a) Served on the duly acting notice agent, the duly~~  
19 ~~acting resident agent for the notice agent, or on the attorney for~~  
20 ~~either of them; and (b) filed with the clerk of the superior court for~~  
21 ~~the notice county; or~~

22       ~~(2) If there is no duly acting notice agent or resident agent for~~  
23 ~~the notice agent, the claimant as a creditor shall proceed as provided~~  
24 ~~in chapter 11.40 RCW. However, if no personal representative ever has~~  
25 ~~been appointed for the decedent, a personal representative must be~~  
26 ~~appointed as provided in chapter 11.28 RCW and the estate opened, in~~  
27 ~~which case the claimant then shall proceed as provided in chapter 11.40~~  
28 ~~RCW.~~

29       ~~A claim may be served and filed as provided in this section,~~  
30 ~~notwithstanding that there is no duly acting notice agent and that no~~  
31 ~~personal representative previously has been appointed. However, the~~  
32 ~~amount of recovery under the claim may not exceed the amount of~~  
33 ~~applicable insurance coverages and proceeds, and the claim so served~~  
34 ~~and filed may not constitute a cloud or lien upon the title to the~~  
35 ~~assets of the decedent or delay or prevent the transfer or distribution~~  
36 ~~of assets of the decedent. This section does not serve to extend the~~  
37 ~~applicable statute of limitations regardless of whether a declaration~~  
38 ~~and oath has been filed by a notice agent as provided in RCW~~

1 11.42.010-)) Notice under RCW 11.42.020 must contain the following  
2 elements in substantially the following form:

3 )  
4 CAPTION ) No.  
5 OF CASE ) NONPROBATE  
6 ) NOTICE TO CREDITORS  
7 ) RCW 11.42.030  
8 . . . . . )

9 The notice agent named below has elected to give notice to  
10 creditors of the above-named decedent. As of the date of the filing of  
11 a copy of this notice with the court, the notice agent has no knowledge  
12 of any other person acting as notice agent or of the appointment of a  
13 personal representative of the decedent's estate in the state of  
14 Washington. According to the records of the court as are available on  
15 the date of the filing of this notice with the court, a cause number  
16 regarding the decedent has not been issued to any other notice agent  
17 and a personal representative of the decedent's estate has not been  
18 appointed.

19 Any person having a claim against the decedent that arose before  
20 the decedent's death must, before the time the claim would be barred by  
21 any otherwise applicable statute of limitations, present the claim in  
22 the manner as provided in RCW 11.42.070 by serving on or mailing to the  
23 notice agent or the notice agent's attorney at the address stated below  
24 a copy of the claim and filing the original of the claim with the  
25 court. The claim must be presented within the later of: (1) Thirty  
26 days after the notice agent served or mailed the notice to the creditor  
27 as provided under RCW 11.42.020(2)(c); or (2) four months after the  
28 date of first publication of the notice. If the claim is not presented  
29 within this time frame, the claim is forever barred, except as  
30 otherwise provided in RCW 11.42.050 and 11.42.060. This bar is  
31 effective as to claims against both the decedent's probate and  
32 nonprobate assets.

33 Date of First  
34 Publication:

35 The notice agent declares under penalty of perjury under the laws  
36 of the state of Washington on \_\_\_\_\_, [year], at \_\_\_\_\_,  
37 \_\_\_\_\_ [state] that the foregoing is true and correct.



Notice Agent:

Attorney for the Notice Agent:

Address for Mailing or Service:

Sec. 27. RCW 11.42.040 and 1994 c 221 s 34 are each amended to read as follows:

((The notice agent shall exercise reasonable diligence to discover, within the four-month time limitation, reasonably ascertainable creditors of the decedent. The notice agent is deemed to have exercised reasonable diligence to ascertain the creditors upon:

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

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

If the notice agent conducts the review and makes an inquiry, the notice agent is presumed to have exercised reasonable diligence to ascertain creditors of the decedent, and creditors not ascertained in the review or in an inquiry are presumed not reasonably ascertainable. These presumptions may be rebutted only by clear, cogent, and convincing evidence. The notice agent may evidence the review and inquiry by filing an affidavit or declaration under penalty of perjury form as provided in RCW 9A.72.085 to the effect in the nonprobate proceeding in the notice county. The notice agent also may petition the superior court of the notice county for an order declaring that the notice agent has made a review and inquiry and that only creditors known to the notice agent after the review and inquiry are reasonably ascertainable. The petition and hearing must be under the procedures provided in chapter 11.96 RCW, and the notice specified under RCW 11.96.100 must also be given by publication.)) (1) For purposes of RCW

1 11.42.050, a "reasonably ascertainable" creditor of the decedent is one  
2 that the notice agent would discover upon exercise of reasonable  
3 diligence. The notice agent is deemed to have exercised reasonable  
4 diligence upon conducting a reasonable review of the decedent's  
5 correspondence, including correspondence received after the date of  
6 death, and financial records, including personal financial statements,  
7 loan documents, checkbooks, bank statements, and income tax returns,  
8 that are in the possession of or reasonably available to the notice  
9 agent.

10 (2) If the notice agent conducts the review, the notice agent is  
11 presumed to have exercised reasonable diligence to ascertain creditors  
12 of the decedent and any creditor not ascertained in the review is  
13 presumed not reasonably ascertainable within the meaning of RCW  
14 11.42.050. These presumptions may be rebutted only by clear, cogent,  
15 and convincing evidence.

16 (3) The notice agent may evidence the review and resulting  
17 presumption by filing with the court an affidavit regarding the facts  
18 referred to in this section. The notice agent may petition the court  
19 for an order declaring that the notice agent has made a review and that  
20 any creditors not known to the notice agent are not reasonably  
21 ascertainable. The petition must be filed under RCW 11.96.070, and the  
22 notice specified under RCW 11.96.100 must also be given by publication.

23 **Sec. 28.** RCW 11.42.050 and 1994 c 221 s 35 are each amended to  
24 read as follows:

25 ~~((The actual notice described in RCW 11.42.020(4)(a), as to a~~  
26 ~~creditor becoming known to the notice agent within the four-month time~~  
27 ~~limitation, must be given the creditor by personal service or regular~~  
28 ~~first class mail, addressed to the creditor's last known address,~~  
29 ~~postage prepaid. The actual notice must be given before the later of~~  
30 ~~the expiration of the four-month time limitation or thirty days after~~  
31 ~~a creditor became known to the notice agent within the four-month time~~  
32 ~~limitation. A known creditor is barred unless the creditor has filed~~  
33 ~~a claim, as provided in this chapter, within the four-month time~~  
34 ~~limitation or within thirty days following the date of actual notice to~~  
35 ~~that creditor, whichever is later. If notice is given by mail, the~~  
36 ~~date of mailing is the date of notice. This bar is effective as to~~  
37 ~~claims against the included property as defined in RCW 11.42.010.)) (1)~~  
38 If a notice agent provides notice under RCW 11.42.020, any person

1 having a claim against the decedent that arose before the decedent's  
2 death is forever barred from making a claim or commencing an action  
3 against the decedent if the claim or action is not already barred by an  
4 otherwise applicable statute of limitations, unless the creditor  
5 presents the claim in the manner provided in RCW 11.42.070 within the  
6 following time limitations:

7 (a) If the notice agent provided notice under RCW 11.42.020(2) (a)  
8 and (b) and the creditor was given actual notice as provided in RCW  
9 11.42.020(2)(c), the creditor must present the claim within the later  
10 of: (i) Thirty days after the notice agent's service or mailing of  
11 notice to the creditor; and (ii) four months after the date of first  
12 publication of the notice;

13 (b) If the notice agent provided notice under RCW 11.42.020(2) (a)  
14 and (b) and the creditor was not given actual notice as provided in RCW  
15 11.42.020(2)(c):

16 (i) If the creditor was not reasonably ascertainable, as defined in  
17 RCW 11.42.040, the creditor must present the claim within four months  
18 after the date of first publication of the notice;

19 (ii) If the creditor was reasonably ascertainable, as defined in  
20 RCW 11.42.040, the creditor must present the claim within twenty-four  
21 months after the decedent's date of death.

22 (2) Any otherwise applicable statute of limitations applies without  
23 regard to the tolling provisions of RCW 4.16.190.

24 (3) This bar is effective as to claims against both the decedent's  
25 probate and nonprobate assets.

26 **Sec. 29.** RCW 11.42.060 and 1994 c 221 s 36 are each amended to  
27 read as follows:

28 ~~((1) Whether or not notice under RCW 11.42.020 has been given or~~  
29 ~~should have been given, if no personal representative has been~~  
30 ~~appointed and qualified, a person having a claim against the decedent~~  
31 ~~who has not filed the claim within eighteen months from the date of the~~  
32 ~~decedent's death is forever barred from making a claim against the~~  
33 ~~decedent, or commencing an action against the decedent, if the claim or~~  
34 ~~action is not already barred by any otherwise applicable statute of~~  
35 ~~limitations. However, this eighteen-month limitation does not apply~~  
36 ~~to:~~

37 ~~(a) Claims described in RCW 11.42.030;~~

1       ~~(b) A claim if, during the eighteen month period following the date~~  
2 ~~of death, partial performance has been made on the obligation~~  
3 ~~underlying the claim, and the notice agent has not given the actual~~  
4 ~~notice described in RCW 11.42.020(4)(a); or~~

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

6       ~~(i) No notice agent has given the published notice described in RCW~~  
7 ~~11.42.020(4)(b); and~~

8       ~~(ii) No personal representative has given the published notice~~  
9 ~~described in RCW 11.40.010(2).~~

10       ~~Any otherwise applicable statute of limitations applies without~~  
11 ~~regard to the tolling provisions of RCW 4.16.190.~~

12       ~~(2) Claims referred to in this section must be filed if there is no~~  
13 ~~duly appointed, qualified, and acting personal representative and there~~  
14 ~~is a duly declared and acting notice agent or resident agent for the~~  
15 ~~notice agent. The claims, subject to applicable statutes of~~  
16 ~~limitation, may at any time be served on the duly declared and acting~~  
17 ~~notice agent or resident agent for the notice agent, or on the attorney~~  
18 ~~for either of them.~~

19       ~~(3) A claim to be filed under this chapter if there is no duly~~  
20 ~~appointed, qualified, and acting personal representative but there is~~  
21 ~~a duly declared and acting notice agent or resident agent for the~~  
22 ~~notice agent and which claim is not otherwise barred under this chapter~~  
23 ~~must be made in the form and manner provided under RCW 11.42.020, as if~~  
24 ~~the notice under that section had been given.)) The time limitations~~  
25 ~~for presenting claims under this chapter do not accrue to the benefit~~  
26 ~~of any liability or casualty insurer. Claims against the decedent or~~  
27 ~~the decedent's marital community that can be fully satisfied by~~  
28 ~~applicable insurance coverage or proceeds need not be presented within~~  
29 ~~the time limitation of RCW 11.42.050, but the amount of recovery cannot~~  
30 ~~exceed the amount of the insurance. If a notice agent provides notice~~  
31 ~~under RCW 11.42.020, the claims may at any time be presented as~~  
32 ~~provided in RCW 11.42.070, subject to the otherwise relevant statutes~~  
33 ~~of limitations, and does not constitute a cloud, lien, or encumbrance~~  
34 ~~upon the title to the decedent's probate or nonprobate assets nor delay~~  
35 ~~or prevent the transfer or distribution of the decedent's assets. This~~  
36 ~~section does not serve to extend any otherwise relevant statutes of~~  
37 ~~limitations.~~



1 ~~assets are or would be assets of the decedent's probate estate or~~  
2 ~~nonprobate assets of the decedent.~~

3 ~~Date of filing of this notice with the~~  
4 ~~Clerk of the Court: . . . . .~~

5 ~~Date of first publication of this notice: . . . . .~~

6 ~~The Notice Agent declares under penalty of perjury under the laws~~  
7 ~~of the State of Washington on . . . . ., 19. . . at~~  
8 ~~[City], [State] that the foregoing is true and correct.~~

9 ~~. . . . .~~

10 Notice Agent [signature] ~~Nonprobate Resident Agent~~  
11 ~~{if appointed}~~  
12 ~~{address in Washington, if any} [address in Washington]~~

13 ~~. . . . .~~

14 ~~Attorney for Notice Agent~~

15 ~~{address in Washington}~~

16 ~~{telephone})) (1) The claimant, the claimant's attorney, or the~~  
17 ~~claimant's agent shall sign the claim and include in the claim the~~  
18 ~~following information:~~

19 ~~(a) The name and address of the claimant;~~

20 ~~(b) The name, address, if different from that of the claimant, and~~  
21 ~~nature of authority of an agent signing the claim on behalf of the~~  
22 ~~claimant;~~

23 ~~(c) A statement of the facts or circumstances constituting the~~  
24 ~~basis of the claim;~~

25 ~~(d) The amount of the claim; and~~

26 ~~(e) If the claim is secured, unliquidated, contingent, or not yet~~  
27 ~~due, the nature of the security, the nature of the uncertainty, or the~~  
28 ~~date when it will become due.~~

29 ~~Failure to describe correctly the information in (c), (d), or (e)~~  
30 ~~of this subsection, if the failure is not substantially misleading,~~  
31 ~~does not invalidate the claim.~~

32 ~~(2) A claim does not need to be supported by affidavit.~~

33 ~~(3) A claim must be presented within the time limits set forth in~~  
34 ~~RCW 11.42.050 by: (a) Serving on or mailing to, by regular first class~~  
35 ~~mail, the notice agent or the notice agent's attorney a copy of the~~  
36 ~~signed claim; and (b) filing the original of the signed claim with the~~  
37 ~~court. A claim is deemed presented upon the later of the date of~~

1 postmark or service on the notice agent, or the notice agent's  
2 attorney, and filing with the court.

3 (4) Notwithstanding any other provision of this chapter, if a  
4 claimant makes a written demand for payment within the time limits set  
5 forth in RCW 11.42.050, the notice agent may waive formal defects and  
6 elect to treat the demand as a claim properly filed under this chapter  
7 if: (a) The claim was due; (b) the amount paid was the amount of  
8 indebtedness over and above all payments and offsets; (c) the estate is  
9 solvent; and (d) the payment is made in good faith. Nothing in this  
10 chapter limits application of the doctrines of waiver, estoppel, or  
11 detrimental claims or any other equitable principle.

12 **Sec. 31.** RCW 11.42.080 and 1994 c 221 s 38 are each amended to  
13 read as follows:

14 ~~((RCW 11.40.020 applies to claims subject to this chapter.))~~ (1)  
15 The notice agent shall allow or reject all claims presented in the  
16 manner provided in RCW 11.42.070. The notice agent may allow or reject  
17 a claim, in whole or in part.

18 (2) If the notice agent has not allowed or rejected a claim within  
19 the later of four months from the date of first publication of the  
20 notice to creditors and thirty days from presentation of the claim, the  
21 claimant may serve written notice on the notice agent that the claimant  
22 will petition the court to have the claim allowed. If the notice agent  
23 fails to notify the claimant of the allowance or rejection of the claim  
24 within twenty days after the notice agent's receipt of the claimant's  
25 notice, the claimant may petition the court for a hearing to determine  
26 whether the claim should be allowed or rejected, in whole or in part.  
27 If the court substantially allows the claim, the court may allow the  
28 petitioner reasonable attorneys' fees chargeable against the decedent's  
29 assets received by the notice agent or by those appointing the notice  
30 agent.

31 **NEW SECTION. Sec. 32.** A new section is added to chapter 11.42 RCW  
32 to read as follows:

33 (1) The decedent's nonprobate and probate assets that were subject  
34 to the satisfaction of the decedent's general liabilities immediately  
35 before the decedent's death are liable for claims. The decedent's  
36 probate assets may be liable, whether or not there is a probate  
37 administration of the decedent's estate.

1 (2) The notice agent may pay a claim allowed by the notice agent or  
2 a judgment on a claim first prosecuted against a notice agent only out  
3 of assets received as a result of the death of the decedent by the  
4 notice agent or by those appointing the notice agent, except as may be  
5 provided by agreement under RCW 11.96.170 or by court order under RCW  
6 11.96.070.

7 **Sec. 33.** RCW 11.42.090 and 1994 c 221 s 39 are each amended to  
8 read as follows:

9 ~~((1) Property of the decedent that was subject to the satisfaction  
10 of the decedent's general liabilities immediately before the decedent's  
11 death is liable for claims. The property includes, but is not limited  
12 to, property of the decedent that is includable in the decedent's  
13 probate estate, whether or not there is a probate administration of the  
14 decedent's estate.~~

15 ~~(2) A claim approved by the notice agent, and a judgment on a claim  
16 first prosecuted against a notice agent, may be paid only out of assets  
17 received as a result of the death of the decedent by the notice agent  
18 or by those appointing the notice agent under chapter 11.96 RCW, except  
19 as may be provided by agreement under RCW 11.96.170 or by court order  
20 under RCW 11.96.070.))~~ (1) If the notice agent allows a claim, the  
21 notice agent shall notify the claimant of the allowance by personal  
22 service or regular first class mail to the address stated on the claim.  
23 A claim may not be allowed if it is barred by a statute of limitations.

24 (2) The notice agent shall pay claims allowed in the following  
25 order from the assets of the decedent that are subject to the payment  
26 of claims as provided in section 32 of this act:

27 (a) Costs of administering the assets subject to the payment of  
28 claims, including a reasonable fee to the notice agent, any resident  
29 agent for the notice agent, reasonable attorneys' fees for the attorney  
30 for each of them, filing fees, publication costs, mailing costs, and  
31 similar costs and fees;

32 (b) Funeral expenses in a reasonable amount;

33 (c) Expenses of the last sickness in a reasonable amount;

34 (d) Wages due for labor performed within sixty days immediately  
35 preceding the death of the decedent;

36 (e) Debts having preference by the laws of the United States;

37 (f) Taxes, debts, or dues owing to the state;



1 (g) Judgments rendered against the decedent in the decedent's  
2 lifetime that are liens upon real estate on which executions might have  
3 been issued at the time of the death of the decedent and debts secured  
4 by mortgages in the order of their priority; and

5 (h) All other demands against the assets subject to the payment of  
6 claims.

7 (3) The notice agent may not pay a claim of the notice agent or  
8 other person who has received property by reason of the decedent's  
9 death unless all other claims that have been filed under this chapter,  
10 and all debts having priority to the claim, are paid in full or  
11 otherwise settled by agreement, regardless of whether the other claims  
12 are allowed or rejected.

13 **Sec. 34.** RCW 11.42.100 and 1994 c 221 s 40 are each amended to  
14 read as follows:

15 ~~((1) The notice agent shall approve or reject claims no later than~~  
16 ~~by the end of a period that is two months after the end of the four-~~  
17 ~~month time limitation defined as the "review period."~~

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

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

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

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

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

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

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

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

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

1 ~~agent.))~~ (1) If the notice agent rejects a claim, in whole or in part,  
2 the claimant must bring suit against the notice agent within thirty  
3 days after notification of rejection or the claim is forever barred.  
4 The notice agent shall notify the claimant of the rejection and file an  
5 affidavit with the court showing the notification and the date of the  
6 notification. The notice agent shall notify the claimant of the  
7 rejection by personal service or certified mail addressed to the  
8 claimant or claimant's agent, if applicable, at the address stated in  
9 the claim. The date of service or of the postmark is the date of  
10 notification. The notification must advise the claimant that the  
11 claimant must bring suit in the proper court against the notice agent  
12 within thirty days after notification of rejection or the claim will be  
13 forever barred.

14 (2) If a claimant brings suit against the notice agent on a  
15 rejected claim and the notice agent has not received substantially all  
16 assets of the decedent that are liable for claims, the notice agent may  
17 only make an appearance in the action and may not answer the action but  
18 must cause a petition to be filed for the appointment of a personal  
19 representative within thirty days after service of the creditor's  
20 action on the notice agent. Under these circumstances, a judgment may  
21 not be entered in an action brought by a creditor against the notice  
22 agent earlier than twenty days after the personal representative has  
23 been substituted in that action for the notice agent.

24 (3) The notice agent may, before or after rejection of any claim,  
25 compromise the claim, whether due or not, absolute or contingent,  
26 liquidated, or unliquidated.

27 **Sec. 35.** RCW 11.42.110 and 1994 c 221 s 41 are each amended to  
28 read as follows:

29 ~~((If a claim has been filed and presented to a notice agent, and a~~  
30 ~~part of the claim is allowed, the amount of the allowance must be~~  
31 ~~stated in the indorsement. If the creditor refuses to accept the~~  
32 ~~amount so allowed in satisfaction of the claim, the creditor may not~~  
33 ~~recover costs in an action the creditor may bring against the notice~~  
34 ~~agent and against any substituted personal representative unless the~~  
35 ~~creditor recovers a greater amount than that offered to be allowed,~~  
36 ~~exclusive of interest and costs.))~~ The effect of a judgment rendered  
37 against the notice agent shall be only to establish the amount of the  
38 judgment as an allowed claim.

1       **Sec. 36.** RCW 11.42.120 and 1994 c 221 s 42 are each amended to  
2 read as follows:

3       (~~(A debt of a decedent for whose estate no personal representative~~  
4 ~~has been appointed must be paid in the following order by the notice~~  
5 ~~agent from the assets of the decedent that are subject to the payment~~  
6 ~~of claims as provided in RCW 11.42.090:~~

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

12       ~~(2) Funeral expenses in a reasonable amount.~~

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

14       ~~(4) Wages due for labor performed within sixty days immediately~~  
15 ~~preceding the death of the decedent.~~

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

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

18       ~~(7) Judgments rendered against the decedent in the decedent's~~  
19 ~~lifetime that are liens upon real estate on which executions might have~~  
20 ~~been issued at the time of the death of the decedent and debts secured~~  
21 ~~by mortgages in the order of their priority. However, the real estate~~  
22 ~~is subject to the payment of claims as provided in RCW 11.42.100.~~

23       ~~(8) All other demands against the assets subject to the payment of~~  
24 ~~claims as provided in RCW 11.42.100.~~

25       A claim of the notice agent or other person who has received  
26 property by reason of the decedent's death may not be paid by the  
27 notice agent unless all other claims that have been filed under this  
28 chapter, and all debts having priority to the claim, are paid in full  
29 or otherwise settled by agreement, regardless of whether the other  
30 claims are allowed or rejected, or partly allowed or partly rejected.  
31 In the event of the probate of the decedent's estate, the personal  
32 representative's payment from estate assets of the claim of the notice  
33 agent or other person who has received property by reason of the  
34 decedent's death is not affected by the priority payment provisions of  
35 this section.)) If a judgment was entered against the decedent during  
36 the decedent's lifetime, an execution may not issue on the judgment  
37 after the death of the decedent. If a notice agent is acting, the  
38 judgment must be presented in the manner provided in RCW 11.42.070, but  
39 if the judgment is a lien on any property of the decedent, the property

1 may be sold for the satisfaction of the judgment and the officer making  
2 the sale shall account to the notice agent for any surplus.

3 NEW SECTION. Sec. 37. A new section is added to chapter 11.42 RCW  
4 to read as follows:

5 If a creditor's claim is secured by any property of the decedent,  
6 this chapter does not affect the right of the creditor to realize on  
7 the creditor's security, whether or not the creditor presented the  
8 claim in the manner provided in RCW 11.42.070.

9 **Sec. 38.** RCW 11.42.130 and 1994 c 221 s 43 are each amended to  
10 read as follows:

11 ~~((The notice agent may not allow a claim that is barred by the~~  
12 ~~statute of limitations.))~~ A claim of the notice agent or other person  
13 who has received property by reason of the decedent's death must be  
14 paid as set forth in RCW 11.42.090(3).

15 **Sec. 39.** RCW 11.42.140 and 1994 c 221 s 45 are each amended to  
16 read as follows:

17 ~~((The time during which there is a vacancy in the office of notice~~  
18 ~~agent is not included in a limitation prescribed in this chapter.))~~ (1)  
19 If a notice agent has given notice under RCW 11.42.020 and the notice  
20 agent resigns, dies, or is removed or a personal representative is  
21 appointed, the successor notice agent or the personal representative  
22 shall:

23 (a) Publish notice of the vacancy and succession for two successive  
24 weeks in the legal newspaper in which notice was published under RCW  
25 11.42.020, if the vacancy occurred within twenty-four months after the  
26 decedent's date of death; and

27 (b) Provide actual notice of the vacancy and succession to a  
28 creditor if: (i) The creditor filed a claim and the claim had not been  
29 allowed or rejected by the prior notice agent; or (ii) the creditor's  
30 claim was rejected and the vacancy occurred within thirty days after  
31 rejection of the claim.

32 (2) The time between the resignation, death, or removal of the  
33 notice agent or appointment of a personal representative and the first  
34 publication of the vacancy and succession or, in the case of actual  
35 notice, the mailing of the notice of vacancy and succession must be  
36 added to the time within which a claim must be presented or a suit on

1 a rejected claim must be filed. This section does not extend the  
2 twenty-four-month self-executing bar under RCW 11.42.050.

3 **Sec. 40.** RCW 11.42.150 and 1994 c 221 s 44 are each amended to  
4 read as follows:

5 ~~((A holder of a claim against a decedent may not maintain an action~~  
6 ~~on the claim against a notice agent, unless the claim has been first~~  
7 ~~presented as provided in this chapter. This chapter does not affect~~  
8 ~~RCW 82.32.240.))~~ (1) The powers and authority of a notice agent  
9 immediately cease, and the office of notice agent becomes vacant, upon  
10 appointment of a personal representative for the estate of the  
11 decedent. Except as provided in RCW 11.42.140(2), the cessation of the  
12 powers and authority does not affect the filing and publication of  
13 notice to creditors and does not affect actual notice to creditors  
14 given by the notice agent.

15 (2) As set forth in section 23 of this act, a personal  
16 representative may adopt, ratify, nullify, or reject any actions of the  
17 notice agent.

18 (3) If a personal representative is appointed and the personal  
19 representative does not nullify the allowance of a claim that the  
20 notice agent allowed and paid, the person or persons whose assets were  
21 used to pay the claim may petition for reimbursement from the estate to  
22 the extent the payment was not in accordance with chapter 11.10 RCW.

23 **Sec. 41.** RCW 11.44.015 and 1967 c 168 s 9 are each amended to read  
24 as follows:

25 (1) Within three months after ((his)) appointment, unless a longer  
26 time shall be granted by the court, every personal representative shall  
27 make and ((return upon oath into the court)) verify by affidavit a true  
28 inventory and appraisal of all of the property of the estate passing  
29 under the will or by laws of intestacy and which shall have come to  
30 ((his)) the personal representative's possession or knowledge,  
31 including a statement of all encumbrances, liens, or other secured  
32 charges against any item. The personal representative shall determine  
33 the fair net value, as of the date of the decedent's death, of each  
34 item contained in the inventory after deducting the encumbrances,  
35 liens, and other secured charges on the item. Such property shall be  
36 classified as follows:

1       ~~((1))~~ (a) Real property, by legal description ~~((and assessed~~  
2 ~~valuation of land and improvements thereon))~~);  
3       ~~((2))~~ (b) Stocks and bonds;  
4       ~~((3))~~ (c) Mortgages, notes, and other written evidences of debt;  
5       ~~((4))~~ (d) Bank accounts and money;  
6       ~~((5))~~ (e) Furniture and household goods;  
7       ~~((6))~~ (f) All other personal property accurately identified,  
8 including the decedent's proportionate share in any partnership, but no  
9 inventory of the partnership property shall be required of the personal  
10 representative.

11       (2) The inventory and appraisalment may, but need not be, filed in  
12 the probate cause, but upon receipt of a written request for a copy of  
13 the inventory and appraisalment from any heir, legatee, devisee, unpaid  
14 creditor who has filed a claim, or beneficiary of a nonprobate asset  
15 from whom contribution is sought under RCW 11.18.200, or from the  
16 department of revenue, the personal representative shall furnish to the  
17 person, within ten days of receipt of a request, a true and correct  
18 copy of the inventory and appraisalment.

19       **Sec. 42.** RCW 11.44.025 and 1974 ex.s. c 117 s 48 are each amended  
20 to read as follows:

21       Whenever any property of the estate not mentioned in the inventory  
22 and appraisalment comes to the knowledge of a personal representative,  
23 ~~((he))~~ the personal representative shall cause the ~~((same))~~ property to  
24 be inventoried and appraised and shall make and ~~((return upon oath into~~  
25 ~~the court))~~ verify by affidavit a true inventory and appraisalment of  
26 ~~((said))~~ the property within thirty days after the discovery thereof,  
27 unless a longer time shall be granted by the court, and shall provide  
28 a copy of the inventory and appraisalment to every person who has  
29 properly requested a copy of the inventory and appraisalment under RCW  
30 11.44.015(2).

31       **Sec. 43.** RCW 11.44.035 and 1965 c 145 s 11.44.035 are each amended  
32 to read as follows:

33       In an action against the personal representative where ~~((his))~~ the  
34 administration of the estate, or any part thereof, is put in issue and  
35 the inventory and appraisalment of the estate ~~((returned))~~ by ~~((him, or~~  
36 ~~the appraisal thereof))~~ the personal representative is given in  
37 evidence, the same may be contradicted or avoided by evidence. Any

1 party in interest in the estate may challenge the inventory ((~~or~~)) and  
2 appraisement at any stage of the probate proceedings.

3 **Sec. 44.** RCW 11.44.050 and 1965 c 145 s 11.44.050 are each amended  
4 to read as follows:

5 If any personal representative shall neglect or refuse to  
6 ((~~return~~)) make the inventory and appraisement within the period  
7 prescribed, or within such further time as the court may allow, or to  
8 provide a copy as provided under RCW 11.44.015, 11.44.025, or  
9 11.44.035, the court may revoke the letters testamentary or of  
10 administration; and the personal representative shall be liable on his  
11 or her bond to any party interested for the injury sustained by the  
12 estate through his or her neglect.

13 **Sec. 45.** RCW 11.44.070 and 1974 ex.s. c 117 s 50 are each amended  
14 to read as follows:

15 The personal representative may employ a qualified and  
16 disinterested person to assist in ascertaining the fair market value as  
17 of the date of the decedent's death of any asset the value of which may  
18 be subject to reasonable doubt. Different persons may be employed to  
19 appraise different kinds of assets included in the estate. The amount  
20 of the fee to be paid to any persons assisting the personal  
21 representative in any appraisement shall be determined by the personal  
22 representative: PROVIDED HOWEVER, That the reasonableness of any such  
23 compensation shall, at the time of hearing on any final account as  
24 provided in chapter 11.76 RCW or on a request or petition under RCW  
25 11.68.100 or 11.68.110, be reviewed by the court in accordance with the  
26 provisions of RCW 11.68.100, and if the court determines the  
27 compensation to be unreasonable, a personal representative may be  
28 ordered to make appropriate refund.

29 **Sec. 46.** RCW 11.44.085 and 1965 c 145 s 11.44.085 are each amended  
30 to read as follows:

31 The naming or the appointment of any person as personal  
32 representative shall not operate as a discharge from any just claim  
33 which the testator or intestate had against the personal  
34 representative, but the claim shall be included in the inventory and  
35 appraisement and the personal representative shall be liable to the



1 same extent as ((he)) the personal representative would have been had  
2 he or she not been appointed personal representative.

3 **Sec. 47.** RCW 11.44.090 and 1965 c 145 s 11.44.090 are each amended  
4 to read as follows:

5 The discharge or bequest in a will of any debt or demand of the  
6 testator against any executor named in ((his)) the testator's will or  
7 against any person shall not be valid against the creditors of the  
8 deceased, but shall be construed as a specific bequest of such debt or  
9 demand, and the amount thereof shall be included in the inventory and  
10 appraisement, and shall, if necessary, be applied in payment of ((his))  
11 the testator's debts; if not necessary for that purpose, it shall be  
12 paid in the same manner and proportions as other specific legacies.

13 NEW SECTION. **Sec. 48.** (1) Subject to section 50 of this act, the  
14 surviving spouse of a decedent may petition the court for an award from  
15 the property of the decedent. If the decedent is survived by children  
16 of the decedent who are not also the children of the surviving spouse,  
17 on petition of such a child the court may divide the award between the  
18 surviving spouse and all or any of such children as it deems  
19 appropriate. If there is not a surviving spouse, the minor children of  
20 the decedent may petition for an award.

21 (2) The award may be made from either the community property or  
22 separate property of the decedent. Unless otherwise ordered by the  
23 court, the probate and nonprobate assets of the decedent abate in  
24 accordance with chapter 11.10 RCW in satisfaction of the award.

25 (3) The award may be made whether or not probate proceedings have  
26 been commenced in the state of Washington. The court may not make this  
27 award unless the petition for the award is filed before the earliest  
28 of:

29 (a) Eighteen months from the date of the decedent's death if within  
30 twelve months of the decedent's death either:

31 (i) A personal representative has been appointed; or

32 (ii) A notice agent has filed a declaration and oath as required in  
33 RCW 11.42.010(3)(a)(ii); or

34 (b) The termination of any probate proceeding for the decedent's  
35 estate that has been commenced in the state of Washington; or

36 (c) Six years from the date of the death of the decedent.

1        NEW SECTION.    **Sec. 49.**    The amount of the basic award shall be the  
2 amount specified in RCW 6.13.030(2) with regard to lands.  If an award  
3 is divided between a surviving spouse and the decedent's children who  
4 are not the children of the surviving spouse, the aggregate amount  
5 awarded to all the claimants under this section shall be the amount  
6 specified in RCW 6.13.030(2) with respect to lands.  The amount of the  
7 basic award may be increased or decreased in accordance with sections  
8 51 and 52 of this act.

9        NEW SECTION.    **Sec. 50.**    (1) The court may not make an award unless  
10 the court finds that the funeral expenses, expenses of last sickness,  
11 and expenses of administration have been paid or provided for.

12        (2) The court may not make an award to a surviving spouse or child  
13 who has participated, either as a principal or as an accessory before  
14 the fact, in the willful and unlawful killing of the decedent.

15        NEW SECTION.    **Sec. 51.**    (1) If it is demonstrated to the  
16 satisfaction of the court with clear, cogent, and convincing evidence  
17 that a claimant's present and reasonably anticipated future needs  
18 during the pendency of any probate proceedings in the state of  
19 Washington with respect to basic maintenance and support will not  
20 otherwise be provided for from other resources, and that the award  
21 would not be inconsistent with the decedent's intentions, the amount of  
22 the award may be increased in an amount the court determines to be  
23 appropriate.

24        (2) In determining the needs of the claimant, the court shall  
25 consider, without limitation, the resources available to the claimant  
26 and the claimant's dependents, and the resources reasonably expected to  
27 be available to the claimant and the claimant's dependents during the  
28 pendency of the probate, including income related to present or future  
29 employment and benefits flowing from the decedent's probate and  
30 nonprobate estate.

31        (3) In determining the intentions of the decedent, the court shall  
32 consider, without limitation:

33        (a) Provisions made for the claimant by the decedent under the  
34 terms of the decedent's will or otherwise;

35        (b) Provisions made for third parties or other entities under the  
36 decedent's will or otherwise that would be affected by an increased  
37 award;

1 (c) If the claimant is the surviving spouse, the duration and  
2 status of the marriage of the decedent to the claimant at the time of  
3 the decedent's death;

4 (d) The effect of any award on the availability of any other  
5 resources or benefits to the claimant;

6 (e) The size and nature of the decedent's estate; and

7 (f) Oral or written statements made by the decedent that are  
8 otherwise admissible as evidence.

9 The fact that the decedent has named beneficiaries other than the  
10 claimant as recipients of the decedent's estate is not of itself  
11 adequate to evidence such an intent as would prevent the award of an  
12 amount in excess of that provided for in RCW 6.13.030(2) with respect  
13 to lands.

14 (4)(a) A petition for an increased award may only be made if a  
15 petition for an award has been granted under section 48 of this act.  
16 The request for an increased award may be made in conjunction with the  
17 petition for an award under section 48 of this act.

18 (b) Subject to (a) of this subsection, a request for an increased  
19 award may be made at any time during the pendency of the probate  
20 proceedings. A request to modify an increased award may also be made  
21 at any time during the pendency of the probate proceedings by a person  
22 having an interest in the decedent's estate that will be directly  
23 affected by the requested modification.

24 NEW SECTION. **Sec. 52.** (1) The court may decrease the amount of  
25 the award below the amount provided in section 49 of this act in the  
26 exercise of its discretion if the recipient is entitled to receive  
27 probate or nonprobate property, including insurance, by reason of the  
28 death of the decedent. In such a case the award must be decreased by  
29 no more than the value of such other property as is received by reason  
30 of the death of the decedent. The court shall consider the factors  
31 presented in section 51(2) of this act in determining the propriety of  
32 the award and the proper amount of the award, if any.

33 (2) An award to a surviving spouse is also discretionary and the  
34 amount otherwise allowable may be reduced if: (a) The decedent is  
35 survived by children who are not the children of the surviving spouse  
36 and the award would decrease amounts otherwise distributable to such  
37 children; or (b) the award would have the effect of reducing amounts  
38 otherwise distributable to any of the decedent's minor children. In

1 either case the court shall consider the factors presented in section  
2 51 (2) and (3) of this act and whether the needs of the minor children  
3 with respect to basic maintenance and support are and will be  
4 adequately provided for, both during and after the pendency of any  
5 probate proceedings if such proceedings are pending, considering  
6 support from any source, including support from the surviving spouse.

7 NEW SECTION. **Sec. 53.** (1) The award has priority over all other  
8 claims made in the estate. In determining which assets must be made  
9 available to satisfy the award, the claimant is to be treated as a  
10 general creditor of the estate, and unless otherwise ordered by the  
11 court the assets shall abate in satisfaction of the award in accordance  
12 with chapter 11.10 RCW.

13 (2) If the property awarded is being purchased on contract or is  
14 subject to any encumbrance, for purposes of the award the property must  
15 be valued net of the balance due on the contract and the amount of the  
16 encumbrance. The property awarded will continue to be subject to any  
17 such contract or encumbrance.

18 NEW SECTION. **Sec. 54.** (1) Except as provided in subsection (2) of  
19 this section, property awarded and cash paid under this chapter is  
20 immune from all debts, including judgments and judgment liens, of the  
21 decedent and of the surviving spouse existing at the time of death.

22 (2) Both the decedent's and the surviving spouse's interests in any  
23 community property awarded to the spouse under this chapter are immune  
24 from the claims of creditors.

25 NEW SECTION. **Sec. 55.** (1) This section applies if the party  
26 entitled to petition for an award holds exempt property that is in an  
27 aggregate amount less than that specified in RCW 6.13.030(2) with  
28 respect to lands.

29 (2) For purposes of this section, the party entitled to petition  
30 for an award is referred to as the "claimant." If multiple parties are  
31 entitled to petition for an award, all of them are deemed a "claimant"  
32 and may petition for an exemption of additional assets as provided in  
33 this section, if the aggregate amount of exempt property to be held by  
34 all the claimants after the making of the award does not exceed the  
35 amount specified in RCW 6.13.030(2) with respect to lands.

1 (3) A claimant may petition the court for an order exempting other  
2 assets from the claims of creditors so that the aggregate amount of  
3 exempt property held by the claimants equals the amount specified in  
4 RCW 6.13.030(2) with respect to lands. The petition must:

5 (a) Set forth facts to establish that the petitioner is entitled to  
6 petition for an award under section 48 of this act;

7 (b) State the nature and value of those assets then held by all  
8 claimants that are exempt from the claims of creditors; and

9 (c) Describe the nonexempt assets then held by the claimants,  
10 including any interest the claimants may have in any probate or  
11 nonprobate property of the decedent.

12 (4) Notice of a petition for an order exempting assets from the  
13 claims of creditors must be given in accordance with RCW 11.96.100.

14 (5) At the hearing on the petition, the court shall order that  
15 certain assets of the claimants are exempt from the claims of creditors  
16 so that the aggregate amount of exempt property held by the claimants  
17 after the entry of the order is in the amount specified in RCW  
18 6.13.030(2) with respect to lands. In the order the court shall  
19 designate those assets of the claimants that are so exempt.

20 NEW SECTION. **Sec. 56.** The petition for an award, for an increased  
21 or modified award, or for the exemption of assets from the claims of  
22 creditors as authorized by this chapter must be made to the court of  
23 the county in which the probate is being administered. If probate  
24 proceedings have not been commenced in the state of Washington, the  
25 petition must be made to the court of a county in which the decedent's  
26 estate could be administered under RCW 11.96.050 if the decedent held  
27 personal property subject to probate in the county of the decedent's  
28 domicile. The petition and the hearing must conform to RCW 11.96.070.  
29 Notice of the hearing on the petition must be given in accordance with  
30 RCW 11.96.100.

31 NEW SECTION. **Sec. 57.** If an award provided by this chapter will  
32 exhaust the estate, and probate proceedings have been commenced in the  
33 state of Washington, the court in the order of award or allowance shall  
34 order the estate closed, discharge the personal representative, and  
35 exonerate the personal representative's bond, if any.

1       **Sec. 58.** RCW 11.48.130 and 1965 c 145 s 11.48.130 are each amended  
2 to read as follows:

3       The court (~~shall have power to~~) may authorize the personal  
4 representative, without the necessary nonintervention powers, to  
5 compromise and compound any claim owing the estate. Unless the court  
6 has restricted the power to compromise or compound claims owing to the  
7 estate, a personal representative with nonintervention powers may  
8 compromise and compound a claim owing the estate without the  
9 intervention of the court.

10       **NEW SECTION. Sec. 59.** A new section is added to chapter 11.68 RCW  
11 to read as follows:

12       (1) A personal representative may petition the court for  
13 nonintervention powers, whether the decedent died testate or intestate.

14       (2) Unless the decedent has specified in the decedent's will, if  
15 any, that the court not grant nonintervention powers to the personal  
16 representative, the court shall grant nonintervention powers to a  
17 personal representative who petitions for the powers if the court  
18 determines that the decedent's estate is solvent, taking into account  
19 probate and nonprobate assets, and that:

20       (a) The petitioning personal representative was named in the  
21 decedent's probated will as the personal representative;

22       (b) The decedent died intestate, the petitioning personal  
23 representative is the decedent's surviving spouse, the decedent's  
24 estate is composed of community property only, and the decedent had no  
25 issue: (i) Who is living or in gestation on the date of the petition;  
26 (ii) whose identity is reasonably ascertainable on the date of the  
27 petition; and (iii) who is not also the issue of the petitioning  
28 spouse; or

29       (c) The personal representative was not a creditor of the decedent  
30 at the time of the decedent's death and the administration and  
31 settlement of the decedent's will or estate with nonintervention powers  
32 would be in the best interests of the decedent's beneficiaries and  
33 creditors. However, the administration and settlement of the  
34 decedent's will or estate with nonintervention powers will be presumed  
35 to be in the beneficiaries' and creditors' best interest until a person  
36 entitled to notice under section 61 of this act rebuts that presumption  
37 by coming forward with evidence that the grant of nonintervention  
38 powers would not be in the beneficiaries' or creditors' best interests.

1 (3) The court may base its findings of facts necessary for the  
2 grant of nonintervention powers on: (a) Statements of witnesses  
3 appearing before the court; (b) representations contained in a verified  
4 petition for nonintervention powers, in an inventory made and returned  
5 upon oath into the court, or in an affidavit filed with the court; or  
6 (c) other proof submitted to the court.

7 NEW SECTION. **Sec. 60.** A new section is added to chapter 11.68 RCW  
8 to read as follows:

9 A hearing on a petition for nonintervention powers may be held at  
10 the time of the appointment of the personal representative or at any  
11 later time.

12 NEW SECTION. **Sec. 61.** A new section is added to chapter 11.68 RCW  
13 to read as follows:

14 (1) Advance notice of the hearing on a petition for nonintervention  
15 powers referred to in section 59 of this act is not required in those  
16 circumstances in which the court is required to grant nonintervention  
17 powers under section 59(2) (a) and (b) of this act.

18 (2) In all other cases, if the petitioner wishes to obtain  
19 nonintervention powers, the personal representative shall give notice  
20 of the petitioner's intention to apply to the court for nonintervention  
21 powers to all heirs, all beneficiaries of a gift under the decedent's  
22 will, and all persons who have requested, and who are entitled to,  
23 notice under RCW 11.28.240, except that:

24 (a) A person is not entitled to notice if the person has, in  
25 writing, either waived notice of the hearing or consented to the grant  
26 of nonintervention powers; and

27 (b) An heir who is not also a beneficiary of a gift under a will is  
28 not entitled to notice if the will has been probated and the time for  
29 contesting the validity of the will has expired.

30 (3) The notice required by this section must be either personally  
31 served or sent by regular mail at least ten days before the date of the  
32 hearing, and proof of mailing of the notice must be by affidavit filed  
33 in the cause. The notice must contain the decedent's name, the probate  
34 cause number, the name and address of the personal representative, and  
35 must state in substance as follows:

36 (a) The personal representative has petitioned the superior court  
37 of the state of Washington for . . . . county, for the entry of an

1 order granting nonintervention powers and a hearing on that petition  
2 will be held on . . . . ., the . . . . . day of . . . . ., . . . . ., at  
3 . . . . . o'clock, . . M.;

4 (b) The petition for an order granting nonintervention powers has  
5 been filed with the court;

6 (c) Following the entry by the court of an order granting  
7 nonintervention powers, the personal representative is entitled to  
8 administer and close the decedent's estate without further court  
9 intervention or supervision; and

10 (d) A person entitled to notice has the right to appear at the time  
11 of the hearing on the petition for an order granting nonintervention  
12 powers and to object to the granting of nonintervention powers to the  
13 personal representative.

14 (4) If notice is not required, or all persons entitled to notice  
15 have either waived notice of the hearing or consented to the entry of  
16 an order granting nonintervention powers as provided in this section,  
17 the court may hear the petition for an order granting nonintervention  
18 powers at any time.

19 **Sec. 62.** RCW 11.68.050 and 1977 ex.s. c 234 s 21 are each amended  
20 to read as follows:

21 (1) If at the time set for the hearing upon ((the)) a petition for  
22 ((the entry of an order of solvency)) nonintervention powers, any  
23 person entitled to notice of the hearing on the petition under ((the  
24 provisions of RCW 11.68.040 as now or hereafter amended,)) section 61  
25 of this act shall appear and object to the granting of nonintervention  
26 powers to the personal representative of the estate, the court shall  
27 consider ((said objections, if any, and the entry of an order of  
28 solvency shall be discretionary with the court upon being satisfied by  
29 proof as required in RCW 11.68.010 as now or hereafter amended. If an  
30 order of solvency is entered)) the objections, if any, in connection  
31 with its determination under section 59(2)(c) of this act of whether a  
32 grant of nonintervention powers would be in the best interests of the  
33 decedent's beneficiaries.

34 (2) The nonintervention powers of a personal representative may not  
35 be restricted at a hearing on a petition for nonintervention powers in  
36 which the court is required to grant nonintervention powers under  
37 section 59(2) (a) and (b) of this act, unless a will specifies that the  
38 nonintervention powers of a personal representative may be restricted



1 when the powers are initially granted. In all other cases, including  
2 without limitation any hearing on a petition that alleges that the  
3 personal representative has breached its duties to the beneficiaries of  
4 the estate, the court may restrict the powers of the personal  
5 representative in such manner as the court determines(~~(.——If no~~  
6 ~~objection is made at the time of the hearing by any person entitled to~~  
7 ~~notice thereof, the court shall enter an order of solvency upon being~~  
8 ~~satisfied by proof as required in RCW 11.68.010 as now or hereafter~~  
9 ~~amended)) to be in the best interests of the decedent's beneficiaries.~~

10 **Sec. 63.** RCW 11.68.060 and 1977 ex.s. c 234 s 22 are each amended  
11 to read as follows:

12 ~~If(, after the entry of an order of solvency,))~~ any personal  
13 representative of the estate of the decedent (~~shall~~) dies, resigns,  
14 or otherwise becomes disabled from any cause from acting as the  
15 nonintervention personal representative, (~~the successor personal~~  
16 ~~representative, other than a creditor of a decedent not designated as~~  
17 ~~a personal representative in the decedent's will, shall administer the~~  
18 ~~estate of the decedent without the intervention of court after notice~~  
19 ~~and hearing as required by RCW 11.68.040 and 11.68.050 as now or~~  
20 ~~hereafter amended, unless at the time of said hearing objections to the~~  
21 ~~granting of nonintervention powers to such successor personal~~  
22 ~~representative shall be made by an heir, legatee, devisee, or other~~  
23 ~~person entitled to notice pursuant to RCW 11.28.240 as now existing or~~  
24 ~~hereafter amended, and unless the court, after hearing said objections~~  
25 ~~shall refuse to grant nonintervention powers to such successor personal~~  
26 ~~representative. If no heir, legatee, devisee, or other person entitled~~  
27 ~~to notice shall appear at the time of the hearing to object to the~~  
28 ~~granting of nonintervention powers to such successor personal~~  
29 ~~representative, the court shall enter an order granting nonintervention~~  
30 ~~powers to))~~ the successor personal representative, or a person who has  
31 petitioned to be appointed as a successor personal representative, may  
32 petition the court for nonintervention powers, and the court shall act,  
33 in accordance with sections 59 through 61 of this act and RCW  
34 11.68.050.

35 NEW SECTION. **Sec. 64.** A new section is added to chapter 11.68 RCW  
36 to read as follows:

1 A beneficiary whose interest in an estate has not been fully paid  
2 or distributed may petition the court for an order directing the  
3 personal representative to deliver a report of the affairs of the  
4 estate signed and verified by the personal representative. The  
5 petition may be filed at any time after one year from the day on which  
6 the report was last delivered, or, if none, then one year after the  
7 order appointing the personal representative. Upon hearing of the  
8 petition after due notice as required in chapter 11.96 RCW, the court  
9 may, for good cause shown, order the personal representative to deliver  
10 to the petitioner the report for any period not covered by a previous  
11 report. The report for the period shall include such of the following  
12 as the court may order: A description of the amount and nature of all  
13 property, real and personal, that has come into the hands of the  
14 personal representative; a statement of all property collected and paid  
15 out or distributed by the personal representative; a statement of  
16 claims filed and allowed against the estate and those rejected; any  
17 estate, inheritance, or fiduciary income tax returns filed by the  
18 personal representative; and such other information as the order may  
19 require. This subsection does not limit any power the court might  
20 otherwise have at any time during the administration of the estate to  
21 require the personal representative to account or furnish other  
22 information to any person interested in the estate.

23 **Sec. 65.** RCW 11.68.080 and 1977 ex.s. c 234 s 24 are each amended  
24 to read as follows:

25 ~~((After such notice as the court may require, the order of solvency  
26 shall be vacated or restricted upon the petition of any personal  
27 representative, heir, legatee, devisee, or creditor, if supported by  
28 proof satisfactory to the court that said estate has become insolvent.~~

29 ~~If, after hearing, the court shall vacate or restrict the prior  
30 order of solvency, the court shall endorse the term "Vacated" or  
31 "Powers restricted" upon the original order of solvency))~~ (1) Within  
32 ten days after the personal representative has received from alleged  
33 creditors under chapter 11.40 RCW claims that have an aggregate face  
34 value that, when added to the other debts and to the taxes and expenses  
35 of greater priority under applicable law, would appear to cause the  
36 estate to be insolvent, the personal representative shall notify in  
37 writing all beneficiaries under the decedent's will and, if any of the  
38 decedent's property will pass according to the laws of intestate

1 succession, all heirs, together with any unpaid creditors, other than  
2 a creditor whose claim is then barred under chapter 11.40 RCW or the  
3 otherwise applicable statute of limitations, that the estate might be  
4 insolvent. The personal representative shall file a copy of the  
5 written notice with the court.

6 (2) Within ten days after an estate becomes insolvent, the personal  
7 representative shall petition under chapter 11.96 RCW for a  
8 determination of whether the court should reaffirm, rescind, or  
9 restrict in whole or in part any prior grant of nonintervention powers.  
10 Notice of the hearing must be given in accordance with RCW 11.96.100  
11 and 11.96.110.

12 (3) If, upon a petition under chapter 11.96 RCW of any personal  
13 representative, beneficiary under the decedent's will, heir if any of  
14 the decedent's property passes according to the laws of intestate  
15 succession, or any unpaid creditor with a claim that has been accepted  
16 or judicially determined to be enforceable, the court determines that  
17 the decedent's estate is insolvent, the court shall reaffirm, rescind,  
18 or restrict in whole or in part any prior grant of nonintervention  
19 powers to the extent necessary to protect the best interests of the  
20 beneficiaries and creditors of the estate.

21 (4) If the court rescinds or restricts a prior grant of  
22 nonintervention powers, the court shall endorse the term "powers  
23 rescinded" or "powers restricted" upon the prior order together with  
24 the date of ((said)) the endorsement.

25 **Sec. 66.** RCW 11.68.090 and 1988 c 29 s 3 are each amended to read  
26 as follows:

27 (1) Any personal representative acting under nonintervention powers  
28 may borrow money on the general credit of the estate and may mortgage,  
29 encumber, lease, sell, exchange, convey, and otherwise ((do anything a  
30 trustee may do)) have the same powers, and be subject to the same  
31 limitations of liability, that a trustee has under RCW 11.98.070 and  
32 chapters 11.100 and 11.102 RCW with regard to the assets of the estate,  
33 both real and personal, all without an order of court and without  
34 notice, approval, or confirmation, and in all other respects administer  
35 and settle the estate of the decedent without intervention of court.  
36 ((Any party to any such transaction and his or her successors in  
37 interest shall be entitled to have it conclusively presumed that the  
38 transaction is necessary for the administration of the decedent's

1 estate.)) Except as otherwise specifically provided in this  
2 ((chapter)) title or by order of court, ((chapter 11.76 RCW shall not  
3 apply to the administration of an estate by)) a personal representative  
4 acting under nonintervention powers may exercise the powers granted to  
5 a personal representative under chapter 11.76 RCW but is not obligated  
6 to comply with the duties imposed on personal representatives by that  
7 chapter. A party to such a transaction and the party's successors in  
8 interest are entitled to have it conclusively presumed that the  
9 transaction is necessary for the administration of the decedent's  
10 estate.

11 (2) Except as otherwise provided in chapter 11.108 RCW or elsewhere  
12 in order to preserve a marital deduction from estate taxes, a testator  
13 may by a will relieve the personal representative from any or all of  
14 the duties, restrictions, and liabilities imposed: Under common law;  
15 by chapters 11.-- (sections 48 through 57 of this act), 11.56, 11.100,  
16 11.102, and 11.104 RCW; or by RCW 11.28.270 and 11.28.280, section 67  
17 of this act, and RCW 11.98.070. In addition, a testator may likewise  
18 alter or deny any or all of the privileges and powers conferred by this  
19 title, and may add duties, restrictions, liabilities, privileges, or  
20 powers to those imposed or granted by this title. If any common law or  
21 any statute referenced earlier in this subsection is in conflict with  
22 a will, the will controls whether or not specific reference is made in  
23 the will to this section. However, notwithstanding the rest of this  
24 subsection, a personal representative may not be relieved of the duty  
25 to act in good faith and with honest judgment.

26 **NEW SECTION. Sec. 67.** A new section is added to chapter 11.68 RCW  
27 to read as follows:

28 All of the provisions of RCW 11.98.016 regarding the exercise of  
29 powers by co-trustees of a trust shall apply to the co-personal  
30 representatives of an estate in which the co-personal representatives  
31 have been granted nonintervention powers, as if, for purposes of the  
32 interpretation of that law, co-personal representatives were co-  
33 trustees and an estate were a trust.

34 **Sec. 68.** RCW 11.68.110 and 1990 c 180 s 5 are each amended to read  
35 as follows:

36 (1) If a personal representative who has acquired nonintervention  
37 powers does not apply to the court for either of the final decrees

1 provided for in RCW 11.68.100 as now or hereafter amended, the personal  
2 representative shall, when the administration of the estate has been  
3 completed, file a declaration ~~((to that effect, which declaration  
4 shall))~~ that must state as follows:

5 ~~((1))~~ (a) The date of the decedent's death~~((τ))~~ and the  
6 decedent's residence at the time of death~~((τ))~~i

7 (b) Whether or not the decedent died testate or intestate~~((τ and  
8 if))~~i

9 (c) If the decedent died testate, the date of the decedent's last  
10 will and testament and the date of the order ~~((admitting the will to  
11 probate))~~ probating the will;

12 ~~((2))~~ (d) That each creditor's claim which was justly due and  
13 properly presented as required by law has been paid or otherwise  
14 disposed of by agreement with the creditor, and that the amount of  
15 estate taxes due as the result of the decedent's death has been  
16 determined, settled, and paid;

17 ~~((3))~~ (e) That the personal representative has completed the  
18 administration of the decedent's estate without court intervention, and  
19 the estate is ready to be closed;

20 ~~((4))~~ (f) If the decedent died intestate, the names, addresses  
21 (if known), and relationship of each heir of the decedent, together  
22 with the distributive share of each heir; and

23 ~~((5))~~ (g) The amount of fees paid or to be paid to each of the  
24 following: ~~((a))~~ (i) Personal representative or representatives~~((τ  
25 b))~~i; (ii) lawyer or lawyers~~((τ—(c))~~i; (iii) appraiser or  
26 appraisers~~((τ))~~i and ~~((d))~~ (iv) accountant or accountants; and that  
27 the personal representative believes the fees to be reasonable and does  
28 not intend to obtain court approval of the amount of the fees or to  
29 submit an estate accounting to the court for approval.

30 (2) Subject to the requirement of notice as provided in this  
31 section, unless an heir, devisee, or legatee of a decedent petitions  
32 the court either for an order requiring the personal representative to  
33 obtain court approval of the amount of fees paid or to be paid to the  
34 personal representative, lawyers, appraisers, or accountants, or for an  
35 order requiring an accounting, or both, within thirty days from the  
36 date of filing a declaration of completion of probate, the personal  
37 representative will be automatically discharged without further order  
38 of the court and the representative's powers will cease thirty days  
39 after the filing of the declaration of completion of probate, and the

1 declaration of completion of probate shall, at that time, be the  
2 equivalent of the entry of a decree of distribution in accordance with  
3 chapter 11.76 RCW for all legal intents and purposes.

4 (3) Within five days of the date of the filing of the declaration  
5 of completion, the personal representative or the personal  
6 representative's lawyer shall mail a copy of the declaration of  
7 completion to each heir, legatee, or devisee of the decedent ((+)), who  
8 has not waived notice of (~~said~~) the filing, in writing, filed in the  
9 cause((+)), or who, not having waived notice, either has not received  
10 the full amount of the distribution to which the heir, legatee, or  
11 devisee is entitled or has a property right that might be affected  
12 adversely by the discharge of the personal representative under this  
13 section, together with a notice which shall be substantially as  
14 follows:

15	CAPTION	NOTICE OF FILING OF
16	OF	DECLARATION OF COMPLETION
17	CASE	OF PROBATE

18 NOTICE IS GIVEN that the attached Declaration of Completion of  
19 Probate was filed by the undersigned in the above-entitled court on the  
20 . . . . day of . . . . ., 19. . .; unless you shall file a petition  
21 in the above-entitled court requesting the court to approve the  
22 reasonableness of the fees, or for an accounting, or both, and serve a  
23 copy thereof upon the personal representative or the personal  
24 representative's lawyer, within thirty days after the date of the  
25 filing, the amount of fees paid or to be paid will be deemed  
26 reasonable, the acts of the personal representative will be deemed  
27 approved, the personal representative will be automatically discharged  
28 without further order of the court, and the Declaration of Completion  
29 of Probate will be final and deemed the equivalent of a Decree of  
30 Distribution entered under chapter 11.76 RCW.

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

1 Dated this . . . . day of . . . . ., 19. . .  
2 . . . . .  
3 Personal Representative

4 (4) If all heirs, devisees, and legatees of the decedent entitled  
5 to notice under this section waive, in writing, the notice required by  
6 this section, the personal representative will be automatically  
7 discharged without further order of the court and the declaration of  
8 completion of probate will become effective as a decree of distribution  
9 upon the date of filing thereof. In those instances where the personal  
10 representative has been required to furnish bond, and a declaration of  
11 completion is filed pursuant to this section, any bond furnished by the  
12 personal representative shall be automatically discharged upon the  
13 discharge of the personal representative.

14 NEW SECTION. Sec. 69. A new section is added to chapter 11.68 RCW  
15 to read as follows:

16 If the declaration of completion of probate and the notice of  
17 filing of declaration of completion of probate state that the personal  
18 representative intends to make final distribution within five business  
19 days after the final date on which a beneficiary could petition for an  
20 order to approve fees or to require an accounting, which date is  
21 referred to in this section as the "effective date of the declaration  
22 of completion," and if the notice of filing of declaration of  
23 completion of probate sent to each beneficiary who has not received  
24 everything to which that beneficiary is entitled from the decedent's  
25 estate specifies the amount of the minimum distribution to be made to  
26 that beneficiary, the personal representative retains, for five  
27 business days following the effective date of the declaration of  
28 completion, the power to make the stated minimum distributions. In  
29 this case, the personal representative is discharged from all claims  
30 other than those relating to the actual distribution of the reserve, at  
31 the effective date of the declaration of completion. The personal  
32 representative is only discharged from liability for the distribution  
33 of the reserve when the whole reserve has been distributed and each  
34 beneficiary has received at least the distribution which that  
35 beneficiary's notice stated that the beneficiary would receive.

1        NEW SECTION. Sec. 70. A new section is added to chapter 11.68 RCW  
2 to read as follows:

3        (1) The personal representative retains the powers to: Deal with  
4 the taxing authority of any federal, state, or local government; hold  
5 a reserve in an amount not to exceed three thousand dollars, for the  
6 determination and payment of any additional taxes, interest, and  
7 penalties, and of all reasonable expenses related directly or  
8 indirectly to such determination or payment; pay from the reserve the  
9 reasonable expenses, including compensation for services rendered or  
10 goods provided by the personal representative or by the personal  
11 representative's employees, independent contractors, and other agents,  
12 in addition to any taxes, interest, or penalties assessed by a taxing  
13 authority; receive and hold any credit, including interest, from any  
14 taxing authority; and distribute the residue of the reserve to the  
15 intended beneficiaries of the reserve; if:

16        (a) In lieu of the statement set forth in RCW 11.68.110(1)(e), the  
17 declaration of completion of probate states that:

18                The personal representative has completed the  
19 administration of the decedent's estate without court  
20 intervention, and the estate is ready to be closed, except for  
21 the determination of taxes and of interest and penalties  
22 thereon as permitted under this section;

23 and

24        (b) The notice of the filing of declaration of completion of  
25 probate must be in substantially the following form:

26                                CAPTION                                NOTICE OF FILING OF  
27                                OF    DECLARATION OF COMPLETION  
28                                CASE    OF PROBATE

29                NOTICE IS GIVEN that the attached Declaration of  
30 Completion of Probate was filed by the undersigned in the  
31 above-entitled court on the . . . day of . . . , . . . ;  
32 unless you file a petition in the above-entitled court  
33 requesting the court to approve the reasonableness of the fees,  
34 or for an accounting, or both, and serve a copy thereof upon  
35 the personal representative or the personal representative's  
36 lawyer, within thirty days after the date of the filing:



1 (i) The schedule of fees set forth in the Declaration of  
2 Completion of Probate will be deemed reasonable;

3 (ii) The Declaration of Completion of Probate will be  
4 final and deemed the equivalent of a Decree of Distribution  
5 entered under chapter 11.76 RCW;

6 (iii) The acts that the personal representative  
7 performed before the Declaration of Completion of Probate was  
8 filed will be deemed approved, and the personal representative  
9 will be automatically discharged without further order of the  
10 court with respect to all such acts; and

11 (iv) The personal representative will retain the power  
12 to deal with the taxing authorities, together with \$. . . . for  
13 the determination and payment of all remaining tax obligations.  
14 Only that portion of the reserve that remains after the  
15 settlement of any tax liability, and the payment of any  
16 expenses associated with such settlement, will be distributed  
17 to the persons legally entitled to the reserve.

18 (2) If the requirements in subsection (1) of this section are met,  
19 the personal representative is discharged from all claims other than  
20 those relating to the settlement of any tax obligations and the actual  
21 distribution of the reserve, at the effective date of the declaration  
22 of completion. The personal representative is discharged from  
23 liability from the settlement of any tax obligations and the  
24 distribution of the reserve, and the personal representative's powers  
25 cease, thirty days after the personal representative:

26 (a) Has mailed to those persons who would have shared in the  
27 distribution of the reserve had the reserve remained intact; and

28 (b) Has filed with the court copies of checks or receipts showing  
29 how the reserve was in fact distributed, unless a person with an  
30 interest in the reserve petitions the court earlier within the thirty-  
31 day period for an order requiring an accounting of the reserve or an  
32 order determining the reasonableness, or lack of reasonableness, of  
33 distributions made from the reserve. If the personal representative  
34 has been required to furnish a bond, any bond furnished by the personal  
35 representative is automatically discharged upon the final discharge of  
36 the personal representative.

37 **Sec. 71.** RCW 11.76.080 and 1977 ex.s. c 80 s 15 are each amended  
38 to read as follows:

1 If there be any alleged (~~incompetent or disabled~~) incapacitated  
2 person as defined in RCW 11.88.010 interested in the estate who has no  
3 legally appointed guardian or limited guardian, the court:

4 (1) At any stage of the proceeding in its discretion and for such  
5 purpose or purposes as it shall indicate, may() appoint; and

6 (2) For hearings held (~~pursuant to RCW 11.52.010, 11.52.020,~~  
7 ~~11.68.040~~) under sections 48 and 61 of this act, RCW 11.68.100, and  
8 11.76.050(~~, each as now or hereafter amended,~~) or for entry of an  
9 order adjudicating testacy or intestacy and heirship when no personal  
10 representative is appointed to administer the estate of the decedent,  
11 shall appoint some disinterested person as guardian ad litem to  
12 represent (~~such~~) the allegedly (~~incompetent or disabled~~)  
13 incapacitated person with reference to any petition, proceeding report,  
14 or adjudication of testacy or intestacy without the appointment of a  
15 personal representative to administer the estate of decedent in which  
16 the alleged (~~incompetent or disabled~~) incapacitated person may have  
17 an interest, who, on behalf of the alleged (~~incompetent or disabled~~)  
18 incapacitated person, may contest the same as any other person  
19 interested might contest it, and who shall be allowed by the court  
20 reasonable compensation for his or her services: PROVIDED, HOWEVER,  
21 That where a surviving spouse is the sole beneficiary under the terms  
22 of a will, the court may grant a motion by the personal representative  
23 to waive the appointment of a guardian ad litem for a person who is the  
24 minor child of (~~such~~) the surviving spouse and the decedent and who  
25 is (~~incompetent~~) incapacitated solely for the reason of his or her  
26 being under eighteen years of age.

27 **Sec. 72.** RCW 11.76.095 and 1991 c 193 s 28 are each amended to  
28 read as follows:

29 When a decree of distribution is made by the court in  
30 administration upon a decedent's estate or when distribution is made by  
31 a personal representative under a nonintervention will and distribution  
32 is ordered under such decree or authorized under such nonintervention  
33 will to a person under the age of eighteen years, it shall be required  
34 that:

35 (1) The money be deposited in a bank or trust company or be  
36 invested in an account in an insured financial institution for the  
37 benefit of the minor subject to withdrawal only upon the order of the  
38 court in the original probate proceeding, or upon said minor's

1 attaining the age of eighteen years and furnishing proof thereof  
2 satisfactory to the depository;

3 (2) A general guardian shall be appointed and qualify and the money  
4 or property be paid or delivered to such guardian prior to the  
5 discharge of the personal representative in the original probate  
6 proceeding; or

7 ~~((The provisions of RCW 11.76.090 are complied with; or  
8 (4)))~~ A custodian be selected and the money or property be  
9 transferred to the custodian subject to chapter ~~((11.93))~~ 11.114 RCW.

10 **Sec. 73.** RCW 11.86.041 and 1991 c 7 s 1 are each amended to read  
11 as follows:

12 (1) Unless the instrument creating an interest directs to the  
13 contrary, the interest disclaimed shall pass as if the beneficiary had  
14 died immediately prior to the date of the transfer of the interest.  
15 The disclaimer shall relate back to this date for all purposes.

16 (2) Unless the ~~((disclaimer directs to the contrary, the  
17 beneficiary may receive another interest in the property subject to the  
18 disclaimer))~~ beneficiary is the surviving spouse of a deceased creator  
19 of the interest, the beneficiary shall also be deemed to have  
20 disclaimed all interests in the property, including all beneficial  
21 interests in any trust into which the disclaimed property may pass.  
22 This subsection applies unless the disclaimer specifically refers to  
23 this subsection and states to the contrary.

24 (3) Any future interest taking effect in possession or enjoyment  
25 after termination of the interest disclaimed takes effect as if the  
26 beneficiary had died prior to the date of the beneficiary's final  
27 ascertainment as a beneficiary and the indefeasible vesting of the  
28 interest.

29 (4) The disclaimer is binding upon the beneficiary and all persons  
30 claiming through or under the beneficiary.

31 (5) Unless the instrument creating the interest directs to the  
32 contrary, a beneficiary whose interest in a devise or bequest under a  
33 will has been disclaimed shall be deemed to have died for purposes of  
34 RCW 11.12.110.

35 (6) In the case of a disclaimer that results in property passing to  
36 a trust over which the disclaimant has any power to direct the  
37 beneficial enjoyment of the disclaimed property, the disclaimant shall  
38 also be deemed to have disclaimed any power to direct the beneficial

1 enjoyment of the disclaimed property, unless the power is limited by an  
2 ascertainable standard for the health, education, support, or  
3 maintenance of any person as described in section 2041 or 2514 of the  
4 Internal Revenue Code and the applicable regulations adopted under  
5 those sections. This subsection applies unless the disclaimer  
6 specifically refers to this subsection and states to the contrary.  
7 This subsection shall not be deemed to otherwise prevent such a  
8 disclaimant from acting as trustee or executor over disclaimed  
9 property.

10 **Sec. 74.** RCW 11.95.140 and 1993 c 339 s 11 are each amended to  
11 read as follows:

12 (1)(a) RCW 11.95.100 and 11.95.110 respectively apply to a power of  
13 appointment created:

14 (i) Under a will, codicil, trust agreement, or declaration of  
15 trust, deed, power of attorney, or other instrument executed after July  
16 25, 1993, unless the terms of the instrument refer specifically to RCW  
17 11.95.100 or 11.95.110 respectively and provide expressly to the  
18 contrary; or

19 (ii) Under a testamentary trust, trust agreement, or declaration of  
20 trust executed before July 25, 1993, unless:

21 (A) The trust is revoked, or amended to provide otherwise, and the  
22 terms of any amendment specifically refer to RCW 11.95.100 or  
23 11.95.110, respectively, and provide expressly to the contrary;

24 (B) All parties in interest, as defined in RCW 11.98.240(3), elect  
25 affirmatively, in the manner prescribed in RCW 11.98.240(4), not to be  
26 subject to the application of this subsection. The election must be  
27 made by the later of September 1, 2000, or three years after the date  
28 on which the trust becomes irrevocable; or

29 (C) A person entitled to judicial proceedings for a declaration of  
30 rights or legal relations under RCW 11.96.070 obtains a judicial  
31 determination, under chapter 11.96 RCW, that the application of this  
32 subsection (1)(a)(ii) to the trust is inconsistent with the provisions  
33 or purposes of the will or trust.

34 (b) Notwithstanding (a) of this subsection, for the purposes of  
35 this section a codicil to a will, an amendment to a trust, or an  
36 amendment to another instrument that created the power of appointment  
37 in question shall not be deemed to cause that instrument to be executed  
38 after July 25, 1993, unless the codicil(~~(7)~~) or amendment(~~(7)~~ ~~or~~ other

1 instrument)) clearly shows an intent to have RCW 11.95.100 or 11.95.110  
2 apply.

3 (2) Notwithstanding subsection (1) of this section, RCW 11.95.100  
4 through 11.95.150 shall apply to a power of appointment created under  
5 a will, codicil, trust agreement, or declaration of trust, deed, power  
6 of attorney, or other instrument executed prior to July 25, 1993, if  
7 the person who created the power of appointment had on July 25, 1993,  
8 the power to revoke, amend, or modify the instrument creating the power  
9 of appointment, unless:

10 (a) The terms of the instrument specifically refer to RCW 11.95.100  
11 or 11.95.110 respectively and provide expressly to the contrary; or

12 (b) The person creating the power of appointment was not competent,  
13 on July 25, 1993, to revoke, amend, or modify the instrument creating  
14 the power of appointment and did not regain his or her competence to  
15 revoke, amend, or modify the instrument creating the power of  
16 appointment on or before his or her death or before the time at which  
17 the instrument could no longer be revoked, amended, or modified by the  
18 person.

19 **Sec. 75.** RCW 11.98.070 and 1989 c 40 s 7 are each amended to read  
20 as follows:

21 A trustee, or the trustees jointly, of a trust, in addition to the  
22 authority otherwise given by law, have discretionary power to acquire,  
23 invest, reinvest, exchange, sell, convey, control, divide, partition,  
24 and manage the trust property in accordance with the standards provided  
25 by law, and in so doing may:

26 (1) Receive property from any source as additions to the trust or  
27 any fund of the trust to be held and administered under the provisions  
28 of the trust;

29 (2) Sell on credit;

30 (3) Grant, purchase or exercise options;

31 (4) Sell or exercise subscriptions to stock or other corporate  
32 securities and to exercise conversion rights;

33 (5) Deposit stock or other corporate securities with any protective  
34 or other similar committee;

35 (6) Assent to corporate sales, leases, and encumbrances;

36 (7) Vote trust securities in person or by proxy with power of  
37 substitution; and enter into voting trusts;

1 (8) Register and hold any stocks, securities, or other property in  
2 the name of a nominee or nominees without mention of the trust  
3 relationship, provided the trustee or trustees are liable for any loss  
4 occasioned by the acts of any nominee, except that this subsection  
5 shall not apply to situations covered by RCW 11.98.070(31);

6 (9) Grant leases of trust property, with or without options to  
7 purchase or renew, to begin within a reasonable period and for terms  
8 within or extending beyond the duration of the trust, for any purpose  
9 including exploration for and removal of oil, gas and other minerals;  
10 enter into community oil leases, pooling and unitization agreements;

11 (10) Subdivide, develop, dedicate to public use, make or obtain the  
12 vacation of public plats, adjust boundaries, partition real property,  
13 and on exchange or partition to adjust differences in valuation by  
14 giving or receiving money or money's worth;

15 (11) Compromise or submit claims to arbitration;

16 (12) Borrow money, secured or unsecured, from any source, including  
17 a corporate trustee's banking department, or from the individual  
18 trustee's own funds;

19 (13) Make loans, either secured or unsecured, at such interest as  
20 the trustee may determine to any person, including any beneficiary of  
21 a trust, except that no trustee who is a beneficiary of a trust may  
22 participate in decisions regarding loans to such beneficiary from the  
23 trust, unless the loan is as described in RCW 83.110.020(2), and then  
24 only to the extent of the loan, and also except that if a beneficiary  
25 or the grantor of a trust has the power to change a trustee of the  
26 trust, the power to loan shall be limited to loans at a reasonable rate  
27 of interest and for adequate security;

28 (14) Determine the hazards to be insured against and maintain  
29 insurance for them;

30 (15) Select any part of the trust estate in satisfaction of any  
31 partition or distribution, in kind, in money or both; make nonpro rata  
32 distributions of property in kind; allocate particular assets or  
33 portions of them or undivided interests in them to any one or more of  
34 the beneficiaries without regard to the income tax basis of specific  
35 property allocated to any beneficiary and without any obligation to  
36 make an equitable adjustment;

37 (16) Pay any income or principal distributable to or for the use of  
38 any beneficiary, whether that beneficiary is under legal disability, to  
39 the beneficiary or for the beneficiary's use to the beneficiary's

1 parent, guardian, custodian under the uniform gifts to minors act of  
2 any state, person with whom he resides, or third person;

3 (17) Change the character of or abandon a trust asset or any  
4 interest in it;

5 (18) Mortgage, pledge the assets or the credit of the trust estate,  
6 or otherwise encumber trust property, including future income, whether  
7 an initial encumbrance or a renewal or extension of it, for a term  
8 within or extending beyond the term of the trust, in connection with  
9 the exercise of any power vested in the trustee;

10 (19) Make ordinary or extraordinary repairs or alterations in  
11 buildings or other trust property, demolish any improvements, raze  
12 existing structures, and make any improvements to trust property;

13 (20) Create restrictions, easements, including easements to public  
14 use without consideration, and other servitudes;

15 (21) Manage any business interest, including any farm or ranch  
16 interest, regardless of form, received by the trustee from the trustor  
17 of the trust, as a result of the death of a person, or by gratuitous  
18 transfer from any other transferor, and with respect to the business  
19 interest, have the following powers:

20 (a) To hold, retain, and continue to operate that business interest  
21 solely at the risk of the trust, without need to diversify and without  
22 liability on the part of the trustee for any resulting losses;

23 (b) To enlarge or diminish the scope or nature or the activities of  
24 any business;

25 (c) To authorize the participation and contribution by the business  
26 to any employee benefit plan, whether or not qualified as being tax  
27 deductible, as may be desirable from time to time;

28 (d) To use the general assets of the trust for the purpose of the  
29 business and to invest additional capital in or make loans to such  
30 business;

31 (e) To endorse or guarantee on behalf of the trust any loan made to  
32 the business and to secure the loan by the trust's interest in the  
33 business or any other property of the trust;

34 (f) To leave to the discretion of the trustee the manner and degree  
35 of the trustee's active participation in the management of the  
36 business, and the trustee is authorized to delegate all or any part of  
37 the trustee's power to supervise, manage, or operate to such persons as  
38 the trustee may select, including any partner, associate, director,  
39 officer, or employee of the business; and also including electing or

1 employing directors, officers, or employees of the trustee to take part  
2 in the management of the business as directors or officers or  
3 otherwise, and to pay that person reasonable compensation for services  
4 without regard to the fees payable to the trustee;

5 (g) To engage, compensate, and discharge or to vote for the  
6 engaging, compensating, and discharging of managers, employees, agents,  
7 lawyers, accountants, consultants, or other representatives, including  
8 anyone who may be a beneficiary of the trust or any trustee;

9 (h) To cause or agree that surplus be accumulated or that dividends  
10 be paid;

11 (i) To accept as correct financial or other statements rendered by  
12 any accountant for any sole proprietorship or by any partnership or  
13 corporation as to matters pertaining to the business except upon actual  
14 notice to the contrary;

15 (j) To treat the business as an entity separate from the trust, and  
16 in any accounting by the trustee it is sufficient if the trustee  
17 reports the earning and condition of the business in a manner  
18 conforming to standard business accounting practice;

19 (k) To exercise with respect to the retention, continuance, or  
20 disposition of any such business all the rights and powers that the  
21 trustor of the trust would have if alive at the time of the exercise,  
22 including all powers as are conferred on the trustee by law or as are  
23 necessary to enable the trustee to administer the trust in accordance  
24 with the instrument governing the trust, subject to any limitations  
25 provided for in the instrument; and

26 (l) To satisfy contractual and tort liabilities arising out of an  
27 unincorporated business, including any partnership, first out of the  
28 business and second out of the estate or trust, but in no event may  
29 there be a liability of the trustee, except as provided in RCW  
30 11.98.110 (2) and (4), and if the trustee is liable, the trustee is  
31 entitled to indemnification from the business and the trust,  
32 respectively;

33 (22) Participate in the establishment of, and thereafter in the  
34 operation of, any business or other enterprise according to subsection  
35 (21) of this section except that the trustee shall not be relieved of  
36 the duty to diversify;

37 (23) Cause or participate in, directly or indirectly, the  
38 formation, reorganization, merger, consolidation, dissolution, or other  
39 change in the form of any corporate or other business undertaking where



1 trust property may be affected and retain any property received  
2 pursuant to the change;

3 (24) Limit participation in the management of any partnership and  
4 act as a limited or general partner;

5 (25) Charge profits and losses of any business operation, including  
6 farm or ranch operation, to the trust estate as a whole and not to the  
7 trustee; make available to or invest in any business or farm operation  
8 additional moneys from the trust estate or other sources;

9 (26) Pay reasonable compensation to the trustee or co-trustees  
10 considering all circumstances including the time, effort, skill, and  
11 responsibility involved in the performance of services by the trustee;

12 (27) Employ persons, including lawyers, accountants, investment  
13 advisors, or agents, even if they are associated with the trustee, to  
14 advise or assist the trustee in the performance of the trustee's duties  
15 or to perform any act, regardless of whether the act is discretionary,  
16 and to act without independent investigation upon their  
17 recommendations, except that:

18 (a) A trustee may not delegate all of the trustee's duties and  
19 responsibilities(, and except that this employment does not relieve  
20 the trustee of liability for the discretionary acts of a person, which  
21 if done by the trustee, would result in liability to the trustee, or of  
22 the duty to select and retain a person with reasonable care))i

23 (b) This power to employ and to delegate duties does not relieve  
24 the trustee of liability for such person's discretionary acts, that, if  
25 done by the trustee, would result in liability to the trustee;

26 (c) This power to employ and to delegate duties does not relieve  
27 the trustee of the duty to select and retain a person with reasonable  
28 care;

29 (d) The trustee, or a successor trustee, may sue the person to  
30 collect any damages suffered by the trust estate even though the  
31 trustee might not be personally liable for those damages, subject to  
32 the statutes of limitation that would have applied had the claim been  
33 one against the trustee who was serving when the act or failure to act  
34 occurred;

35 (28) Appoint an ancillary trustee or agent to facilitate management  
36 of assets located in another state or foreign country;

37 (29) Retain and store such items of tangible personal property as  
38 the trustee selects and pay reasonable storage charges thereon from the  
39 trust estate;

1 (30) Issue proxies to any adult beneficiary of a trust for the  
2 purpose of voting stock of a corporation acting as the trustee of the  
3 trust;

4 (31) Place all or any part of the securities at any time held by  
5 the trustee in the care and custody of any bank, trust company, or  
6 member firm of the New York Stock Exchange with no obligation while the  
7 securities are so deposited to inspect or verify the same and with no  
8 responsibility for any loss or misapplication by the bank, trust  
9 company, or firm, so long as the bank, trust company, or firm was  
10 selected and retained with reasonable care, and have all stocks and  
11 registered securities placed in the name of the bank, trust company, or  
12 firm, or in the name of its nominee, and to appoint such bank, trust  
13 company, or firm agent as attorney to collect, receive, receipt for,  
14 and disburse any income, and generally may perform, but is under no  
15 requirement to perform, the duties and services incident to a so-called  
16 "custodian" account;

17 (32) Determine at any time that the corpus of any trust is  
18 insufficient to implement the intent of the trust, and upon this  
19 determination by the trustee, terminate the trust by distribution of  
20 the trust to the current income beneficiary or beneficiaries of the  
21 trust or their legal representatives, except that this determination  
22 may only be made by the trustee if the trustee is neither the grantor  
23 nor the beneficiary of the trust, and if the trust has no charitable  
24 beneficiary; and

25 ~~(33) ((Rely with acquittance on advice of counsel on questions of  
26 law; and~~

27 ~~(34)))~~ Continue to be a party to any existing voting trust  
28 agreement or enter into any new voting trust agreement or renew an  
29 existing voting trust agreement with respect to any assets contained in  
30 trust.

31 **Sec. 76.** RCW 11.98.240 and 1994 c 221 s 66 are each amended to  
32 read as follows:

33 (1)(a)((~~i~~)) RCW 11.98.200 and 11.98.210 respectively apply to:  
34 (i) A trust established under a will, codicil, trust agreement,  
35 declaration of trust, deed, or other instrument executed after July 25,  
36 1993, unless the instrument's terms refer specifically to RCW 11.98.200  
37 or 11.98.210 respectively and provide expressly to the contrary.  
38 However, except for RCW 11.98.200(3), the 1994 c 221 amendments to RCW

1 11.98.200 apply to a trust established under a will, codicil, trust  
2 agreement, declaration of trust, deed, or other instrument executed  
3 after January 1, 1995, unless the instrument's terms refer specifically  
4 to RCW 11.98.200 and provide expressly to the contrary.

5 ~~(ii) ((Notwithstanding (a)(i) of this subsection, for the purposes~~  
6 ~~of this subsection a codicil to a will or an amendment to a trust does~~  
7 ~~not cause that instrument to be executed after July 25, 1993, unless~~  
8 ~~the codicil or amendment clearly shows an intent to have RCW 11.98.200~~  
9 ~~or 11.98.210 apply.))~~ A trust created under a will, codicil, trust  
10 agreement, declaration of trust, deed, or other instrument executed  
11 before July 25, 1993, unless:

12 (A) The trust is revoked or amended and the terms of the amendment  
13 refer specifically to RCW 11.98.200 and provide expressly to the  
14 contrary;

15 (B) All parties in interest, as defined in subsection (3) of this  
16 section elect affirmatively, in the manner prescribed in subsection (4)  
17 of this section, not to be subject to the application of this  
18 subsection. The election must be made by the later of September 1,  
19 2000, or three years after the date on which the trust becomes  
20 irrevocable; or

21 (C) A person entitled to judicial proceedings for a declaration of  
22 rights or legal relations under RCW 11.96.070 obtains a judicial  
23 determination, under chapter 11.96 RCW, that the application of this  
24 subsection (1)(a)(ii) to the trust is inconsistent with the provisions  
25 or purposes of the will or trust.

26 (b) Notwithstanding (a) of this subsection, RCW 11.98.200 and  
27 11.98.210 respectively apply to a trust established under a will or  
28 codicil of a decedent dying on or after July 25, 1993, and to an inter  
29 vivos trust to which the trustor had on or after July 25, 1993, the  
30 power to terminate, revoke, amend, or modify, unless:

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

33 (ii) The decedent or the trustor was not competent, on July 25,  
34 1993, to change the disposition of his or her property, or to  
35 terminate, revoke, amend, or modify the trust, and did not regain his  
36 or her competence to dispose, terminate, revoke, amend, or modify  
37 before the date of the decedent's death or before the trust could not  
38 otherwise be revoked, terminated, amended, or modified by the decedent  
39 or trustor.

1 (2) RCW 11.98.200 neither creates a new cause of action nor impairs  
2 an existing cause of action that, in either case, relates to a power  
3 proscribed under RCW 11.98.200 that was exercised before July 25, 1993.  
4 RCW 11.98.210 neither creates a new cause of action nor impairs an  
5 existing cause of action that, in either case, relates to a power  
6 proscribed, limited, or qualified under RCW 11.98.210.

7 (3) For the purpose of subsection (1)(a)(ii) of this section,  
8 "parties in interest" means those persons identified as "required  
9 parties to the dispute" under RCW 11.96.170(6)(b).

10 (4) The affirmative election required under subsection  
11 (1)(a)(ii)(B) of this section must be made in the following manner;

12 (a) If the trust is revoked or amended, through a revocation of or  
13 an amendment to the trust; or

14 (b) Through a nonjudicial dispute resolution agreement described in  
15 RCW 11.96.170.

16 **Sec. 77.** RCW 11.96.070 and 1994 c 221 s 55 are each amended to  
17 read as follows:

18 (1) A person with an interest in or right respecting the  
19 administration, settlement, or disposition of an interest in a trust or  
20 in the estate of an incapacitated, missing, or deceased person may have  
21 a judicial proceeding for the declaration of rights or legal relations  
22 under this title including but not limited to the following:

23 (a) The ascertaining of any class of creditors, devisees, legatees,  
24 heirs, next of kin, or others;

25 (b) The ordering of the personal representatives or trustees to do  
26 or abstain from doing any particular act in their fiduciary capacity;

27 (c) The determination of any question arising in the administration  
28 of the estate or trust, including without limitation questions of  
29 construction of wills and other writings;

30 (d) The grant to the personal representatives or trustees of any  
31 necessary or desirable powers not otherwise granted in the instrument  
32 or given by law that the court determines are not inconsistent with the  
33 provisions or purposes of the will or trust;

34 (e) The modification of the will or the trust instrument in the  
35 manner required to qualify the gift thereunder for the charitable  
36 estate tax deduction permitted by federal law, including the addition  
37 of mandatory governing instrument requirements for a charitable  
38 remainder trust as required by final regulations and rulings of the

1 United States internal revenue service, in any case in which all  
2 parties interested in the trust have submitted written agreements to  
3 the proposed changes or written disclaimer of interest;

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

14 (g) The determination of the persons entitled to notice under RCW  
15 11.96.100 and 11.96.110 for the purposes of any judicial proceeding  
16 under this subsection (1) and for the purposes of an agreement under  
17 RCW 11.96.170; or

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

20 (2) Any person with an interest in or right respecting the  
21 administration of a nonprobate asset under this title may have a  
22 judicial proceeding for the declaration of rights or legal relations  
23 under this title with respect to the nonprobate asset, including  
24 without limitation the following:

25 (a) The ascertaining of any class of creditors or others for  
26 purposes of chapter 11.18 or 11.42 RCW;

27 (b) The ordering of a qualified person, the notice agent, or  
28 resident agent, as those terms are defined in chapter 11.42 RCW, or any  
29 combination of them, to do or abstain from doing any particular act  
30 with respect to a nonprobate asset;

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

34 (d) The determination of any question arising in the administration  
35 under chapter 11.18 or 11.42 RCW of a nonprobate asset;

36 (e) The determination of the persons entitled to notice under RCW  
37 11.96.100 and 11.96.110 for the purposes of any judicial proceeding  
38 under this subsection (2) and for the purposes of an agreement under  
39 RCW 11.96.170; and

1 (f) The determination of any questions relating to the abatement,  
2 rights of creditors, or other matter relating to the administration,  
3 settlement, or final disposition of a nonprobate asset under this  
4 title.

5 (3) The provisions of this chapter apply to disputes arising in  
6 connection with estates of incapacitated persons unless otherwise  
7 covered by chapters 11.88 and 11.92 RCW. The provisions of this  
8 chapter shall not supersede the otherwise applicable provisions and  
9 procedures of chapter 11.24, 11.28, 11.40, (~~(11.527)~~) 11.42, 11.56, or  
10 11.60 RCW with respect to any rights or legal obligations that are  
11 subject to those chapters.

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

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

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

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

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

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

29 (a) The notice agent, the resident agent, or a qualified person, as  
30 those terms are defined in chapter 11.42 RCW;

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

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

36 (d) The legal representatives of any of the persons named in this  
37 subsection.

1       **Sec. 78.** RCW 11.104.010 and 1985 c 30 s 84 are each amended to  
2 read as follows:

3       As used in this chapter:

4       (1) "Income beneficiary" means the person to whom income is  
5 presently payable or for whom it is accumulated for distribution as  
6 income;

7       (2) Except as provided in RCW 11.104.110, "inventory value" means  
8 the cost of property purchased by the trustee and the cost or adjusted  
9 basis for federal income tax purposes of other property at the time it  
10 became subject to the trust, but in the case of a trust asset that is  
11 included on any death tax return the trustee may, but need not, use the  
12 value finally determined for the purposes of the federal estate tax if  
13 applicable, otherwise for another estate or inheritance tax;

14       (3) "Remainderman" means the person entitled to principal,  
15 including income which has been accumulated and added to principal.

16       NEW SECTION. **Sec. 79.** A new section is added to chapter 11.104  
17 RCW to read as follows:

18       (1) Notwithstanding any contrary provision of this chapter, if the  
19 trust instrument adopts this section by specific reference, an increase  
20 in the value of the following investments, over the value of the  
21 investments at the time of acquisition by the trust, is distributable  
22 as income when it becomes available for distribution:

23       (a) A zero coupon bond;

24       (b) An annuity contract before annuitization;

25       (c) A life insurance contract before the death of the insured;

26       (d) An interest in a common trust fund as defined in section 584 of  
27 the Internal Revenue Code;

28       (e) An interest in a partnership as defined in section 7701 of the  
29 Internal Revenue Code; or

30       (f) Any other obligation for the payment of money that is payable  
31 at a future time in accordance with a fixed, variable, or discretionary  
32 schedule of appreciation in excess of the price at which it was issued.

33       (2) The increase in value of the investments described in  
34 subsection (1) of this section is allocable to the beneficiary who is  
35 the beneficiary to whom income may be distributed at the time when the  
36 trustee receives cash on account of the investment, notwithstanding RCW  
37 11.104.070.

1 (3) For purposes of this section, the increase in value of an  
2 investment described in subsection (1) of this section is available for  
3 distribution only when the trustee receives cash on account of the  
4 investment.

5 **Sec. 80.** RCW 11.104.110 and 1971 c 74 s 11 are each amended to  
6 read as follows:

7 (~~Except as provided in RCW 11.104.090 and 11.104.100, if the~~  
8 ~~principal consists of property subject to depletion, including~~  
9 ~~leaseholds, patents, copyrights, royalty rights, and rights to receive~~  
10 ~~payments on a contract for deferred compensation, receipts from the~~  
11 ~~property, not in excess of five percent per year of its inventory~~  
12 ~~value, are income, and the balance is principal.)) (1) Subject to  
13 subsection (3) of this section, if the principal of a trust includes a  
14 deferred payment right including the right to receive deferred  
15 compensation, the proceeds of the right or the amount of deferred  
16 compensation, on receipt, are income to the extent determinable without  
17 reference to this section, or if not so determinable, are income up to  
18 five percent of the inventory value of the right or amount, determined  
19 separately for each year in which the right or amount is subject to the  
20 trust. The remainder of the proceeds or amount is principal. If not  
21 otherwise determinable, the allocation to income is computed in the  
22 same manner in which interest under a loan of the initial inventory  
23 amount would be computed, at five percent interest compounded annually,  
24 as if annual payments were made by the borrower to the lender.~~

25 (2) If income is determined under this section, for the first year,  
26 inventory value is determined as provided by this chapter or by this  
27 section for deferred compensation. For each year after the first year,  
28 the inventory value is:

29 (a) Reduced to the extent that the proceeds of the right or amount  
30 received during the preceding year were allocated to principal; and

31 (b) Increased to the extent that the proceeds received during the  
32 preceding year were less than five percent of the inventory value of  
33 that year.

34 (3) While the deferred payment right is under administration in a  
35 decedent's estate, income and principal are determined by using the  
36 fiscal year of the estate and ending on the date the trust is funded  
37 with the right. After the administration of the estate, the fiscal



1 year of the trust is used. The five percent allocation to income is  
2 prorated for any year that is less than twelve months.

3 (4) The proceeds of a deferred payment right include all receipts  
4 relating to the right, whether or not the receipts are periodic. After  
5 the proceeds are received by the trustee and allocated in accordance  
6 with this section, this section does not apply to the proceeds except  
7 to the extent the proceeds include a continuing deferred payment right  
8 or right to receive deferred compensation.

9 (5) In this section:

10 (a) "Deferred compensation" means an amount receivable under an  
11 arrangement for the payment of compensation in a year after the year in  
12 which the compensation was earned, whether the obligation to pay is  
13 funded or unfunded and includes the right to payment:

14 (i) Of benefits under a nonqualified plan of deferred compensation  
15 or similar arrangement or agreement; or

16 (ii) Of benefits under an employee benefit plan as defined in this  
17 section;

18 (b) "Deferred payment right" means a depletable asset, other than  
19 natural resources governed by RCW 11.104.090 or timber governed by RCW  
20 11.104.100, consisting of the right to property under a contract,  
21 account, or other arrangement that is payable not earlier than twelve  
22 months after the date the right becomes subject to the trust. A  
23 deferred payment right includes the right to receive a periodic,  
24 annuity, installment, or single-sum future payment:

25 (i) Under a leasehold, patent, copyright, or royalty;

26 (ii) Of income in respect of a decedent under section 691 of the  
27 Internal Revenue Code of 1986; or

28 (iii) Of death benefits;

29 (c) "Employee benefit plan" means any of the following, whether  
30 funded by a trust, custodian account, annuity, or retirement bond:

31 (i) A plan, individual retirement account, or deferred compensation  
32 plan or arrangement that is described in RCW 49.64.020, section 401(a),  
33 403(a), 403(b), 408, or 457 of the Internal Revenue Code of 1986, as  
34 amended, or in section 409 of the Internal Revenue Code in effect  
35 before January 1, 1984; or

36 (ii) An employee benefit plan established or maintained by:

37 (A) The government of the United States;

38 (B) The state of Washington;

39 (C) A state or territory of the United States;

1       (D) The District of Columbia; or  
2       (E) A political subdivision, agency, or instrumentality of the  
3 entities in (c)(ii)(A) through (D) of this subsection; and  
4       (d) "Year" means the fiscal year of the estate or trust for federal  
5 income tax purposes.

6       (6) The deferred compensation payable consisting of the account  
7 balance or accrued benefit as of the date of death of the owner of such  
8 amount receivable or, if elected, the alternate valuation date for  
9 federal estate tax purposes, shall be the inventory value of the  
10 deferred compensation as used in this chapter as of that date.

11       **Sec. 81.** RCW 11.108.010 and 1993 c 73 s 2 are each amended to read  
12 as follows:

13       Unless the context clearly requires otherwise, the definitions in  
14 this section apply throughout this chapter.

15       (1) The term "pecuniary bequest" means a gift in a governing  
16 instrument which either is expressly stated as a fixed dollar amount or  
17 is a gift of a dollar amount determinable by the governing instrument,  
18 and a gift expressed in terms of a "sum" or an "amount," unless the  
19 context dictates otherwise, is a gift of a dollar amount.

20       (2) As the context might require, the term "marital deduction"  
21 means either the federal estate tax deduction or the federal gift tax  
22 deduction allowed for transfers to spouses under the Internal Revenue  
23 Code.

24       (3) The term "maximum marital deduction" means the maximum amount  
25 qualifying for the marital deduction.

26       (4) The term "marital deduction gift" means a gift intended to  
27 qualify for the marital deduction as indicated by a preponderance of  
28 the evidence including the governing instrument and extrinsic evidence  
29 whether or not the governing instrument is found to be ambiguous.

30       (5) The term "governing instrument" includes ((a)), but is not  
31 limited to: Will and codicils((7)); ((irrevocable, and)) revocable  
32 trusts and amendments or addenda to revocable trusts; irrevocable  
33 trusts; beneficiary designations under life insurance policies,  
34 annuities, employee benefit plans, and individual retirement accounts;  
35 payable-on-death, trust, or joint with right of survivorship bank or  
36 brokerage accounts; transfer on death designations or transfer on death  
37 or pay on death securities; and documents exercising powers of  
38 appointment.

1       (6) The term "fiduciary" means trustee or personal representative.  
2 Reference to a fiduciary in the singular includes the plural where the  
3 context requires.

4       (7) The term "gift" refers to all legacies, devises, and bequests  
5 made in a governing instrument.

6       (8) The term "transferor" means the testator, grantor, or other  
7 person making a gift.

8       (9) The term "spouse" includes the transferor's surviving spouse in  
9 the case of a deceased transferor.

10       **Sec. 82.** RCW 11.108.020 and 1993 c 73 s 3 are each amended to read  
11 as follows:

12       (1) If a governing instrument contains a marital deduction gift,  
13 the governing instrument shall be construed to comply with the marital  
14 deduction provisions of the Internal Revenue Code in every respect.

15       (2) If a governing instrument contains a marital deduction gift,  
16 ((the governing instrument, including any power, duty, or discretionary  
17 authority given to the fiduciary, shall be construed to comply with the  
18 marital deduction provisions of the Internal Revenue Code in order to  
19 conform to that intent. Whether the governing instrument contains a  
20 marital deduction gift depends upon the intent of the testator,  
21 grantor, or other transferor at the time the governing instrument is  
22 executed. If the testator, grantor, or other transferor has adequately  
23 evidenced an intention to make a marital deduction gift, the fiduciary  
24 shall not take any action or have any power that may impair that  
25 deduction, but this does not require the fiduciary to make the election  
26 under section 2056(b)(7) of the Internal Revenue Code that is referred  
27 to in RCW 11.108.025)) any fiduciary operating under the governing  
28 instrument has all the powers, duties, and discretionary authority  
29 necessary to comply with the marital deduction provisions of the  
30 Internal Revenue Code. The fiduciary shall not take any action or have  
31 any power that may impair that deduction, but this does not require the  
32 fiduciary to make the elections under either section 2056(b)(7) or  
33 2523(f) of the Internal Revenue Code that is referred to in RCW  
34 11.108.025.

35       **Sec. 83.** RCW 11.108.025 and 1993 c 73 s 4 are each amended to read  
36 as follows:

37       Unless a governing instrument directs to the contrary:

1 (1) The fiduciary shall have the power to make elections, in whole  
2 or in part, to qualify property for the marital deduction as qualified  
3 terminable interest property under section 2056(b)(7) or 2523(f) of the  
4 Internal Revenue Code or, if the surviving spouse is not a citizen of  
5 the United States, under section 2056A of the Internal Revenue Code.  
6 Further, the fiduciary shall have the power to make generation-skipping  
7 transfer tax allocations under section 2632 of the Internal Revenue  
8 Code.

9 (2) The fiduciary making an election under section 2056(b)(7),  
10 2523(f), or 2056A of the Internal Revenue Code or making an allocation  
11 under section 2632 of the Internal Revenue Code may benefit personally  
12 from the election or allocation, with no duty to reimburse any other  
13 person interested in the election or allocation. The fiduciary shall  
14 have no duty to make any equitable adjustment and shall have no duty to  
15 treat interested persons impartially in respect of the election or  
16 allocation.

17 (3) The fiduciary of a trust, if an election is made under section  
18 2056(b)(7), 2523(f), or 2056A of the Internal Revenue Code, if an  
19 allocation is made under section 2632 of the Internal Revenue Code, or  
20 if division of a trust is of benefit to the persons interested in the  
21 trust, may divide the trust into two or more separate trusts, of equal  
22 or unequal value, ~~((provided that))~~ if:

23 (a) The terms of the separate trusts which result are substantially  
24 identical to the terms of the trust before division~~((, and provided~~  
25 ~~further,))~~;

26 (b) In the case of a trust otherwise qualifying for the marital  
27 deduction under the Internal Revenue Code, ~~((that))~~ the division shall  
28 not prevent a separate trust for which the election is made from  
29 qualifying for the marital deduction; and

30 (c) The allocation of assets shall be based upon the fair market  
31 value of the assets at the time of the division.

32 **Sec. 84.** RCW 11.108.050 and 1993 c 73 s 5 are each amended to read  
33 as follows:

34 ~~((1))~~ If a governing instrument ~~((indicates the testator's~~  
35 ~~intention to make))~~ contains a marital deduction gift in trust, then in  
36 addition to the other provisions of this ~~((section))~~ chapter, each of  
37 the following ~~((also))~~ applies to the trust ~~((; provided, however, that~~  
38 ~~such provisions shall not apply to any trust which provides for the~~

1 entire then remaining trust estate to be paid on the termination of the  
2 income interest to the estate of the spouse of the trust's creator, or  
3 to a charitable beneficiary, contributions to which are tax deductible  
4 for federal income tax purposes:

5 (a) The only income beneficiary of a marital deduction trust is the  
6 testator's surviving spouse;

7 (b) The income beneficiary is entitled to all of the trust income  
8 until the trust terminates;

9 (c) The trust income is payable to the income beneficiary not less  
10 frequently than annually; and

11 (d) Except in the case of a marital deduction gift in trust,  
12 described in subsection (2) of this section, or property that has or  
13 would otherwise have qualified for the marital deduction only as the  
14 result of an election under section 2056(b)(7) of the Internal Revenue  
15 Code, upon termination of the trust, all of the remaining trust assets,  
16 including accrued or undistributed income, pass either to the income  
17 beneficiary or under the exercise of a general power of appointment  
18 granted to the income beneficiary in favor of the income beneficiary's  
19 estate or to any other person or entity in trust or outright. The  
20 general power of appointment is exercisable by the income beneficiary  
21 alone and in all events.

22 (2) If a governing instrument indicates the testator's intention to  
23 make a marital deduction gift in trust and the surviving spouse is not  
24 a citizen of the United States, subsection (1)(a), (b), and (c) of this  
25 section and each of the following shall apply to the trust:

26 (a) At least one trustee of the trust shall be an individual  
27 citizen of the United States or a domestic corporation, and no  
28 distribution, other than a distribution of income, may be made from the  
29 trust unless a trustee who is an individual citizen of the United  
30 States or a domestic corporation has the right to withhold from the  
31 distribution the tax imposed under section 2056A of the Internal  
32 Revenue Code on the distribution;

33 (b) The trust shall meet such requirements as the secretary of the  
34 treasury of the United States may by regulations prescribe to ensure  
35 collection of estate tax, under section 2056A(b) of the Internal  
36 Revenue Code; and

37 (c) (a) and (b) of this subsection shall no longer apply to the  
38 trust if the surviving spouse becomes a citizen of the United States  
39 and (i) the surviving spouse is a resident of the United States at all

1 ~~times after the testator's death and before becoming a citizen, or (ii)~~  
2 ~~no tax has been imposed on the trust under section 2056A(b)(1)(A) of~~  
3 ~~the Internal Revenue Code before the surviving spouse becomes a~~  
4 ~~citizen, or (iii) the surviving spouse makes an election under section~~  
5 ~~2056A(b)(12)(C) of the Internal Revenue Code regarding tax imposed on~~  
6 ~~distributions from the trust before becoming a citizen.~~

7 ~~(3) The exercise of the general power of appointment provided in~~  
8 ~~this section shall be done only by the income beneficiary in the manner~~  
9 ~~provided by RCW 11.95.060)) to the extent necessary to qualify the gift~~  
10 ~~for the marital deduction:~~

11 (1) If the transferor's spouse is a citizen of the United States at  
12 the time of the transfer:

13 (a) The transferor's spouse is entitled to all of the income from  
14 the trust, payable annually or at more frequent intervals, during the  
15 spouse's life;

16 (b) During the life of the transferor's spouse, a person may not  
17 appoint or distribute any part of the trust property to a person other  
18 than the transferor's spouse;

19 (c) The transferor's spouse may compel the trustee of the trust to  
20 make any unproductive property of the trust productive, or to convert  
21 the unproductive property into productive property, within a reasonable  
22 time; and

23 (d) The transferor's spouse may, alone and in all events, dispose  
24 of all of the trust property, including accrued or undistributed  
25 income, remaining after the spouse's death under a testamentary general  
26 power of appointment, as defined in section 2041 of the Internal  
27 Revenue Code. However, this subsection (1)(d) does not apply to: (i)  
28 A marital deduction gift in trust which is described in subsection (2)  
29 of this section; (ii) that portion of a marital deduction gift in trust  
30 that has qualified for the marital deduction as a result of an election  
31 under section 2056(b)(7) or 2523(f) of the Internal Revenue Code; and  
32 (iii) that portion of marital deduction gift in trust that would have  
33 qualified for the marital deduction but for the fiduciary's decision  
34 not to make the election under section 2056(b)(7) or 2523(f) of the  
35 Internal Revenue Code;

36 (2) If the transferor's spouse is not a citizen of the United  
37 States at the time of the transfer, then to the extent necessary to  
38 qualify the gift for the marital deduction, subsection (1)(a), (b), and  
39 (c) of this section and each of the following applies to the trust:

1 (a) At least one trustee of the trust must be an individual citizen  
2 of the United States or a domestic corporation, and a distribution,  
3 other than a distribution of income, may not be made from the trust  
4 unless a trustee who is an individual citizen of the United States or  
5 a domestic corporation has the right to withhold from the distribution  
6 the tax imposed under section 2056A of the Internal Revenue Code on the  
7 distribution;

8 (b) The trust must meet such requirements as the secretary of the  
9 treasury of the United States by regulations prescribes to ensure  
10 collection of estate tax, under section 2056A(b) of the Internal  
11 Revenue Code; and

12 (c) Subsection (2)(a) and (b) of this section no longer apply to  
13 the trust if the transferor's spouse becomes a citizen of the United  
14 States and: (i) The transferor's spouse was a resident of the United  
15 States at all times after the transferor's death and before becoming a  
16 citizen; (ii) tax has not been imposed on the trust under section  
17 2056A(b)(1)(A) of the Internal Revenue Code before the transferor's  
18 spouse becomes a citizen; or (iii) the transferor's spouse makes an  
19 election under section 2056A(b)(12)(C) of the Internal Revenue Code  
20 regarding tax imposed on distributions from the trust before becoming  
21 a citizen; and

22 (3) Subsection (1) of this section does not apply to:

23 (a) A trust: (i) That provides for a life estate or term of years  
24 for the exclusive benefit of the transferor's spouse, with the  
25 remainder payable to the such spouse's estate; or (ii) created  
26 exclusively for the benefit of the estate of the transferor's spouse;  
27 and

28 (b) An interest of the transferor's spouse in a charitable  
29 remainder annuity trust or charitable remainder unitrust described in  
30 section 664 of the Internal Revenue Code, if the transferor's spouse is  
31 the only noncharitable beneficiary.

32 **Sec. 85.** RCW 11.108.060 and 1989 c 35 s 1 are each amended to read  
33 as follows:

34 ~~((If a governing instrument contains a marital deduction gift,~~  
35 ~~whether outright or in trust and whether there is a specific reference~~  
36 ~~to this section, any survivorship requirement expressed in the~~  
37 ~~governing instrument in excess of six months, other than survival by a~~  
38 ~~spouse of a common disaster resulting in the death of the decedent,~~

1 ~~does not apply to property passing under a marital deduction gift, and~~  
2 ~~in addition, is limited to a six month period beginning with the~~  
3 ~~testator's death.)~~ For an estate that exceeds the amount exempt from  
4 tax by virtue of the unified credit under section 2010 of the Internal  
5 Revenue Code, if taking into account applicable adjusted taxable gifts  
6 as defined in section 2001(b) of the Internal Revenue Code, any marital  
7 deduction gift that is conditioned upon the transferor's spouse  
8 surviving the transferor for a period of more than six months, is  
9 governed by the following:

10 (1) A survivorship requirement expressed in the governing  
11 instrument in excess of six months, other than survival by a spouse of  
12 a common disaster resulting in the death of the transferor, does not  
13 apply to property passing under the marital deduction gift, and for the  
14 gift, the survivorship requirement is limited to a six-month period  
15 beginning with the transferor's death.

16 (2) The property that is the subject of the marital deduction gift  
17 must be held in a trust meeting the requirements of section 2056(b)(7)  
18 of the Internal Revenue Code the corpus of which must: (a) Pass as  
19 though the spouse failed to survive the transferor if the spouse, in  
20 fact, fails to survive the term specified in the governing instrument;  
21 and (b) pass to the spouse under the terms of the governing instrument  
22 if the spouse, in fact, survives the term specified in the governing  
23 instrument.

24 NEW SECTION. Sec. 86. The following acts or parts of acts are  
25 each repealed:

26 (1) RCW 11.40.011 and 1989 c 333 s 2, 1983 c 201 s 1, & 1967 ex.s.  
27 c 106 s 3;

28 (2) RCW 11.40.012 and 1989 c 333 s 3;

29 (3) RCW 11.40.013 and 1994 c 221 s 26 & 1989 c 333 s 4;

30 (4) RCW 11.40.014 and 1989 c 333 s 5;

31 (5) RCW 11.40.015 and 1994 c 221 s 27 & 1989 c 333 s 6;

32 (6) RCW 11.42.160 and 1994 c 221 s 46;

33 (7) RCW 11.42.170 and 1994 c 221 s 47;

34 (8) RCW 11.42.180 and 1994 c 221 s 48;

35 (9) RCW 11.44.066 and 1990 c 180 s 1 & 1974 ex.s. c 117 s 49;

36 (10) RCW 11.52.010 and 1987 c 442 s 1116, 1984 c 260 s 17, 1974  
37 ex.s. c 117 s 7, 1971 ex.s. c 12 s 2, 1967 c 168 s 12, & 1965 c 145 s  
38 11.52.010;



1 (11) RCW 11.52.012 and 1985 c 194 s 1, 1984 c 260 s 18, 1977 ex.s.  
2 c 234 s 9, 1974 ex.s. c 117 s 8, & 1965 c 145 s 11.52.012;  
3 (12) RCW 11.52.014 and 1965 c 145 s 11.52.014;  
4 (13) RCW 11.52.016 and 1988 c 202 s 18, 1972 ex.s. c 80 s 1, & 1965  
5 c 145 s 11.52.016;  
6 (14) RCW 11.52.020 and 1985 c 194 s 2, 1984 c 260 s 19, 1974 ex.s.  
7 c 117 s 9, 1971 ex.s. c 12 s 3, 1967 c 168 s 13, & 1965 c 145 s  
8 11.52.020;  
9 (15) RCW 11.52.022 and 1985 c 194 s 3, 1984 c 260 s 20, 1977 ex.s.  
10 c 234 s 10, 1974 ex.s. c 117 s 10, 1971 ex.s. c 12 s 4, & 1965 c 145 s  
11 11.52.022;  
12 (16) RCW 11.52.024 and 1972 ex.s. c 80 s 2 & 1965 c 145 s  
13 11.52.024;  
14 (17) RCW 11.52.030 and 1965 c 145 s 11.52.030;  
15 (18) RCW 11.52.040 and 1965 c 145 s 11.52.040;  
16 (19) RCW 11.52.050 and 1967 c 168 s 14;  
17 (20) RCW 11.68.010 and 1994 c 221 s 50, 1977 ex.s. c 234 s 18, 1974  
18 ex.s. c 117 s 13, 1969 c 19 s 1, & 1965 c 145 s 11.68.010;  
19 (21) RCW 11.68.020 and 1974 ex.s. c 117 s 14 & 1965 c 145 s  
20 11.68.020;  
21 (22) RCW 11.68.030 and 1977 ex.s. c 234 s 19, 1974 ex.s. c 117 s  
22 15, & 1965 c 145 s 11.68.030; and  
23 (23) RCW 11.68.040 and 1977 ex.s. c 234 s 20, 1974 ex.s. c 117 s  
24 16, & 1965 c 145 s 11.68.040.

25 NEW SECTION. **Sec. 87.** Sections 48 through 57 of this act  
26 constitute a new chapter in Title 11 RCW.

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