
SENATE BILL 6597

State of Washington 59th Legislature 2006 Regular Session

By Senators Johnson, Kline, Weinstein and Esser

Read first time 01/16/2006. Referred to Committee on Judiciary.

1 AN ACT Relating to trusts and estates; amending RCW 11.104A.040,
2 11.104A.050, 11.108.010, 11.108.025, 11.108.060, 11.108.900, 11.95.070,
3 11.24.010, 11.24.020, 11.96A.030, 11.96A.100, 11.96A.110, 11.96A.150,
4 6.32.250, 19.36.020, and 11.62.005; adding a new section to chapter
5 11.108 RCW; adding a new section to chapter 11.96A RCW; adding a new
6 section to chapter 11.95 RCW; and creating a new section.

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

8 **Sec. 1.** RCW 11.104A.040 and 2002 c 345 s 106 are each amended to
9 read as follows:

10 (a)(1) In this section, "beneficiary" means a person who has an
11 interest in the trust to be converted and who has the legal capacity to
12 act in his, her, or its own right with respect to all actions that such
13 person may take under this section.

14 (2) In this section, "unitrust" means both a trust converted into
15 a unitrust under this section and a trust initially established as a
16 unitrust. Unless inconsistent with the terms of the trust or will,
17 subsections (f), (g), (h), (i), and (m) of this section apply to the
18 unitrust initially so established.

1 (b) Unless expressly prohibited by the terms of the trust, a
2 trustee may release the power to make adjustments under RCW 11.104A.020
3 and convert a trust into a unitrust as described in this section if all
4 of the following apply:

5 (1) The trustee determines that the conversion will enable the
6 trustee better to carry out the intent of the settlor or testator and
7 the purposes of the trust.

8 (2) The trustee gives written notice of the trustee's intention to
9 release the power to adjust and to convert the trust into a unitrust
10 and of how the unitrust will operate, including what initial decisions
11 the trustee will make under this section, to ~~((all beneficiaries))~~ each
12 beneficiary who, on the date the notice is given:

13 (i) ~~((Who are currently eligible to receive income from the trust))~~
14 Is a distributee or permissible distributee of trust income or
15 principal; or

16 (ii) ~~((Who would receive, if no powers of appointment were~~
17 ~~exercised, a distribution of principal if the trust were to terminate~~
18 ~~immediately before the notice is given))~~ Would be a distributee or
19 permissible distributee of trust principal if the interests of the
20 distributees described in (2)(i) of this subsection terminated and the
21 trust then terminated immediately before the notice was given and if no
22 powers of appointment were exercised.

23 (3) There is at least one beneficiary under (2)(i) of this
24 subsection and at least one other person who is a beneficiary under
25 (2)(ii) of this subsection.

26 (4) No beneficiary objects to the conversion to a unitrust in a
27 writing delivered to the trustee within sixty days after the notice is
28 given under (2) of this subsection.

29 (c) The parties, as defined by RCW 11.96A.030(4), may agree to
30 convert a trust to or from a unitrust by means of a binding agreement
31 under chapter 11.96A RCW.

32 (d)(1) The trustee may petition the court under chapter 11.96A RCW
33 to order a conversion to a unitrust if either of the following apply:

34 (i) A party, as defined by RCW 11.96A.030(4), timely objects to the
35 conversion to a unitrust; or

36 (ii) There are no beneficiaries under (2)(i) and (ii) of this
37 subsection.

1 (2) A party, as defined by RCW 11.96A.030(4), may request a trustee
2 to convert to a unitrust. If the trustee does not convert, the party,
3 as defined by RCW 11.96A.030(4), may petition the court to order the
4 conversion.

5 (3) The court shall approve the conversion or direct the requested
6 conversion if the court concludes that the conversion will enable the
7 trustee to better carry out the intent of the settlor or testator and
8 the purposes of the trust.

9 (e) In deciding whether to exercise a power to convert to a
10 unitrust under this section, a trustee may consider, among other
11 things, the factors set forth in RCW 11.104A.020(b).

12 (f) After a trust is converted to a unitrust, all of the following
13 apply:

14 (1) The trustee shall follow an investment policy seeking a total
15 return for the investments held by the trust, whether the return is to
16 be derived:

- 17 (i) From appreciation of principal;
- 18 (ii) From earnings and distributions from principal; or
- 19 (iii) From both.

20 (2) The trustee shall make regular distributions in accordance with
21 the terms of the trust, or the terms of the will, as the case may be,
22 construed in accordance with the provisions of this section.

23 (3) Unless expressly prohibited by the terms of the trust, the term
24 "income" in the terms of a trust or a will means an annual
25 distribution, the "unitrust distribution," equal to the percentage, the
26 "payout percentage," that is no less than three percent and no more
27 than five percent and that the trustee may determine in the trustee's
28 discretion from time to time, or, if the trustee makes no
29 determination, that shall be four percent(~~(, the "payout percentage,"~~)
30 of the net fair market value of the trust's assets, whether such assets
31 would be considered income or principal under other provisions of this
32 chapter, averaged over the lesser of:

- 33 (i) The three preceding years; or
- 34 (ii) The period during which the trust has been in existence.

35 (g) The trustee may in the trustee's discretion from time to time
36 determine all of the following:

- 37 (1) The effective date of a conversion to a unitrust.

1 (2) The provisions for prorating a unitrust distribution for a
2 short year in which a beneficiary's right to payments commences or
3 ceases.

4 (3) The frequency of unitrust distributions during the year.

5 (4) The effect of other payments from or contributions to the trust
6 on the trust's valuation.

7 (5) Whether to value the trust's assets annually or more
8 frequently.

9 (6) What valuation dates to use.

10 (7) How frequently to value nonliquid assets and whether to
11 estimate their value.

12 (8) Whether to omit from the calculations trust property occupied
13 or possessed by a beneficiary.

14 (9) Any other matters necessary for the proper functioning of the
15 unitrust.

16 (h)(1) Expenses which would be deducted from income if the trust
17 were not a unitrust may not be deducted from the unitrust distribution.

18 (2) Unless otherwise provided by the terms of the trust, the
19 unitrust distribution shall be paid from net income, as such term would
20 be determined if the trust were not a unitrust. To the extent net
21 income is insufficient, the unitrust distribution shall be paid from
22 net realized short-term capital gains. To the extent net income and
23 net realized short-term capital gains are insufficient, the unitrust
24 distribution shall be paid from net realized long-term capital gains.
25 To the extent net income and net realized short-term and long-term
26 capital gains are insufficient, the unitrust distribution shall be paid
27 from the principal of the trust.

28 (3) To the extent necessary to cause gains from the sale or
29 exchange of unitrust assets to be treated as income under any federal,
30 state, or local income tax (for example, section 643 of the Internal
31 Revenue Code and its regulations, including Treasury Regulation §
32 1.643(b)-1, as amended or renumbered), the trustee has the
33 discretionary power to allocate the gains to income, so long as the
34 power is reasonably and impartially exercised.

35 (i) The trustee or, if the trustee declines to do so, a beneficiary
36 may petition the court:

37 (1) To (~~select a~~) change the payout percentage (~~(different than~~
38 ~~four percent)~~)).

1 (2) To provide for a distribution of net income, as would be
2 determined if the trust were not a unitrust, in excess of the unitrust
3 distribution if such distribution is necessary to preserve a tax
4 benefit.

5 (3) To average the valuation of the trust's net assets over a
6 period other than three years.

7 (4) To reconvert from a unitrust.

8 (j) Upon a reconversion, the power to adjust under RCW 11.104A.020
9 is revived.

10 (k) A conversion to a unitrust does not affect a provision in the
11 terms of a trust directing or authorizing the trustee to distribute
12 principal or authorizing a beneficiary to withdraw a portion or all of
13 the principal.

14 (l) A trustee may not possess or exercise any power under this
15 section in any of the following circumstances:

16 (1) The unitrust distribution would be made from any amount that is
17 permanently set aside for charitable purposes under the terms of a
18 trust and for which a charitable deduction from a federal gift or
19 estate tax has been taken unless both income and principal are so set
20 aside.

21 (2) The possession or exercise of the power would cause an
22 individual to be treated as the owner of all or part of the trust for
23 federal income tax purposes and the individual would not be treated as
24 the owner if the trustee did not possess or exercise the power.

25 (3) The possession or exercise of the power would cause all or any
26 part of the trust estate to be subject to any federal gift or estate
27 tax with respect to the individual and the trust estate would not be
28 subject to such taxation if the trustee did not possess or exercise the
29 power.

30 (4) The possession or exercise of the power would result in the
31 disallowance of a federal gift or estate tax marital deduction which
32 would be allowed if the trustee did not have the power.

33 (5) The trustee is a beneficiary of the trust.

34 (m) If subsection (1)(2), (3), or (5) of this section applies to a
35 trustee and there is more than one trustee or an additional trustee who
36 is appointed by a court order, a binding agreement, or otherwise under
37 chapter 11.96A RCW, a cotrustee to whom subsection (1)(2), (3), or (5)
38 of this section does not apply may possess and exercise the power

1 unless the possession or exercise of the power by the remaining trustee
2 or trustees is not permitted by the terms of the trust. If subsection
3 (1)(2), (3), or (5) of this section restricts all trustees from
4 possessing or exercising a power under this section, the trustee may
5 petition a court under chapter 11.96A RCW for the court to effect the
6 intended conversion or action.

7 (n) A trustee may release any power conferred by this section if
8 any of the following applies:

9 (1) The trustee is uncertain about whether possessing or exercising
10 the power will cause a result described in subsection (1)(2), (3), or
11 (4) of this section.

12 (2) The trustee determines that possessing or exercising the power
13 will or may deprive the trust of a tax benefit or impose a tax burden
14 not described in subsection (1) of this section.

15 The release may be permanent or for a specified period, including
16 a period measured by the life of an individual.

17 **Sec. 2.** RCW 11.104A.050 and 2002 c 345 s 201 are each amended to
18 read as follows:

19 After a decedent dies, and subject to chapter 11.10 RCW, in the
20 case of an estate, or after an income interest in a trust ends, the
21 following rules apply:

22 (1) A fiduciary of an estate or of a terminating income interest
23 shall determine the amount of net income and net principal receipts
24 received from property specifically given to a beneficiary under the
25 rules in Articles 3 through 5 of this chapter which apply to trustees
26 and the rules in subsection (5) of this section. The fiduciary shall
27 distribute the net income and net principal receipts to the beneficiary
28 who is to receive the specific property.

29 (2) A fiduciary shall determine the remaining net income of a
30 decedent's estate or a terminating income interest under the rules in
31 Articles 3 through 5 of this chapter which apply to trustees, except to
32 the extent that the following apply:

33 (i) The fiduciary shall include in net income all income from
34 property used to discharge liabilities;

35 (ii) The fiduciary shall pay from income or principal, in the
36 fiduciary's discretion, family allowances; fees of attorneys,
37 accountants, and fiduciaries; court costs and other expenses of

1 administration; and interest on death taxes, but the fiduciary may pay
2 those expenses from income of property passing to a trust for which the
3 fiduciary claims an estate tax marital or charitable deduction only to
4 the extent that the payment of those expenses from income will not
5 cause the reduction or loss of the deduction; and

6 (iii) The fiduciary shall pay from principal all other
7 disbursements made or incurred in connection with the settlement of a
8 decedent's estate or the winding up of a terminating income interest,
9 including debts, funeral expenses, disposition of remains, and death
10 taxes and related penalties that are apportioned to the estate or
11 terminating income interest by the will, the terms of the trust, or
12 applicable law.

13 (3) A fiduciary shall distribute to a beneficiary who receives a
14 pecuniary amount outright the interest or any other amount provided by
15 the will, the terms of a trust, or applicable law from net income
16 determined under subsection (2) of this section or from principal to
17 the extent that net income is insufficient. Otherwise, no outright
18 gift of a pecuniary amount whether under a will, or under a trust after
19 an income interest ends shall receive interest or any other income.

20 (4) A fiduciary shall distribute the net income remaining after
21 distributions required by subsection (3) of this section in the manner
22 described in RCW 11.104A.060 to all other beneficiaries, including a
23 beneficiary who receives a pecuniary amount in trust, even if the
24 beneficiary holds an unqualified power to withdraw assets from the
25 trust or other presently exercisable general power of appointment over
26 the trust.

27 (5) A fiduciary may not reduce principal or income receipts from
28 property described in subsection (1) of this section because of a
29 payment described in RCW 11.104A.250 or 11.104A.260 to the extent that
30 the will, the terms of the trust, or applicable law requires the
31 fiduciary to make the payment from assets other than the property or to
32 the extent that the fiduciary recovers or expects to recover the
33 payment from a third party. The net income and principal receipts from
34 the property are determined by including all of the amounts the
35 fiduciary receives or pays with respect to the property, whether those
36 amounts accrued or became due before, on, or after the date of a
37 decedent's death or an income interest's terminating event, and by

1 making a reasonable provision for amounts that the fiduciary believes
2 the estate or terminating income interest may become obligated to pay
3 after the property is distributed.

4 **Sec. 3.** RCW 11.108.010 and 1997 c 252 s 81 are each amended to
5 read as follows:

6 Unless the context clearly requires otherwise, the definitions in
7 this section apply throughout this chapter.

8 (1) The term "pecuniary bequest" means a gift in a governing
9 instrument which either is expressly stated as a fixed dollar amount or
10 is a gift of a dollar amount determinable by the governing instrument,
11 and a gift expressed in terms of a "sum" or an "amount," unless the
12 context dictates otherwise, is a gift of a dollar amount.

13 (2) As the context might require, the term "marital deduction"
14 means either the federal or state estate tax deduction or the federal
15 gift tax deduction allowed for transfers to spouses under the Internal
16 Revenue Code or applicable state law.

17 (3) The term "maximum marital deduction" means the maximum amount
18 qualifying for the marital deduction.

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

23 (5) The term "governing instrument" includes, but is not limited
24 to: Will and codicils; revocable trusts and amendments or addenda to
25 revocable trusts; irrevocable trusts; beneficiary designations under
26 life insurance policies, annuities, employee benefit plans, and
27 individual retirement accounts; payable-on-death, trust, or joint with
28 right of survivorship bank or brokerage accounts; transfer on death
29 designations or transfer on death or pay on death securities; and
30 documents exercising powers of appointment.

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

34 (7) The term "gift" refers to all gifts, legacies, devises, and
35 bequests made in a governing instrument, whether outright or in trust,
36 and whether made during the life of the transferor or as a result of
37 the transferor's death.

1 (8) The term "transferor" means the testator, donor, grantor, or
2 other person making a gift.

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

5 NEW SECTION. **Sec. 4.** A new section is added to chapter 11.108 RCW
6 to read as follows:

7 (1) The legislature finds that the citizens and residents of the
8 state, and nonresidents of the state having property located in
9 Washington, desire to take full advantage of the exemptions,
10 exclusions, deductions, and credits allowable under the federal estate,
11 gift, income, and generation-skipping transfer taxes, and the
12 Washington counterparts to those taxes, if any, unless the facts and
13 circumstances indicate otherwise, or the transferor has expressed a
14 contrary intent in the governing instrument.

15 (2) In interpreting, construing, or administering a governing
16 instrument, absent a clear expression of intent by the transferor to
17 the contrary, the following presumptions apply and may only be rebutted
18 by clear, cogent, and convincing evidence to the contrary, but these
19 presumptions of intent do not require the making of any particular
20 voluntary tax election:

21 (a) The transferor intended to take advantage of the maximum
22 benefit of tax deductions, exemptions, exclusions, or credits;

23 (b) The transferor intended any gift to a spouse made outright and
24 free of trust is to qualify for the gift or estate tax marital
25 deduction and to be a marital deduction gift; and

26 (c) If the governing instrument refers to a trust as a marital
27 trust, QTIP trust, or spousal trust, or refers to qualified terminal
28 terminable interest property, QTIP, or QTIP property, sections 2044,
29 2056, and 2523 of the Internal Revenue Code or similar provisions of
30 applicable state law, the transferor intended the property passing to
31 such a trust and the trust to qualify for the applicable gift or estate
32 tax marital deduction, and for the gift to qualify for a marital
33 deduction gift.

34 (3) References in this chapter to provisions of the Internal
35 Revenue Code include references to similar provisions, if any, of
36 applicable state law.

1 **Sec. 5.** RCW 11.108.025 and 1997 c 252 s 83 are each amended to
2 read as follows:

3 Unless a governing instrument directs to the contrary:

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

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

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

26 (a) The terms of the separate trusts which result are substantially
27 identical to the terms of the trust before division;

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

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

34 (4) For state and federal estate tax purposes, a fiduciary may make
35 inconsistent elections under section 2056(b)(7) or 2056A of the
36 Internal Revenue Code and under similar provisions of applicable state
37 law.

1 **Sec. 6.** RCW 11.108.060 and 1999 c 44 s 1 are each amended to read
2 as follows:

3 For an estate that exceeds the amount exempt from state or federal
4 tax by virtue of the credit under section 2010 of the Internal Revenue
5 Code, if taking into account applicable adjusted taxable gifts as
6 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 or which may exceed six months,
12 other than survival by a spouse of a common disaster resulting in the
13 death of the transferor, does not apply to property passing under the
14 marital deduction gift, and for the gift, the survivorship requirement
15 (~~is limited to a six month period beginning with the transferor's~~
16 ~~death~~) may not exceed the period ending six months following the
17 transferor's date of death, as established under section 2056(b)(3) of
18 the Internal Revenue Code.

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

28 **Sec. 7.** RCW 11.108.900 and 1999 c 42 s 631 are each amended to
29 read as follows:

30 (1) This chapter applies to all estates, trusts, and governing
31 instruments in existence on or any time after March 7, 1984, and to all
32 proceedings with respect thereto after that date, whether the
33 proceedings commenced before or after that date, and including
34 distributions made after that date. This chapter shall not apply to
35 any governing instrument the terms of which expressly or by necessary
36 implication make this chapter inapplicable. The judicial and

1 nonjudicial dispute resolution procedures of chapter 11.96A RCW apply
2 to this chapter.

3 (2) Sections 3 through 6, chapter -- (this act), Laws of 2006 are
4 remedial in nature and shall be liberally applied in order to achieve
5 the purposes of this act.

6 **Sec. 8.** RCW 11.95.070 and 1985 c 30 s 37 are each amended to read
7 as follows:

8 (1) This chapter does not apply to any power as trustee described
9 in and subject to RCW 11.98.019.

10 (2) This chapter does not apply to the powers of a personal
11 representative of the estate of a decedent when acting in the capacity
12 of personal representative.

13 (3) Sections 33 through 36, 38, and 39, chapter 149, Laws of 1984
14 and the 1984 recodification of RCW 64.24.050 as RCW 11.95.050 apply as
15 of January 1, 1985, to all existing or subsequently created powers of
16 appointment, but not to any power of appointment that expressly or by
17 necessary implication (~~make[s]~~) makes those 1984 changes
18 inapplicable.

19 **Sec. 9.** RCW 11.24.010 and 1994 c 221 s 21 are each amended to read
20 as follows:

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

33 For the purpose of tolling the four-month limitations period, a
34 will contest commences when a petition is filed with the court. The
35 petitioner shall personally serve the personal representative within

1 ninety days of the date of filing the petition. If following filing,
2 service is not so made, the action has not commenced for purposes of
3 tolling the statute of limitations.

4 If no person shall (~~appear~~) file and serve a petition within the
5 time under this section, the probate or rejection of such will shall be
6 binding and final.

7 **Sec. 10.** RCW 11.24.020 and 1965 c 145 s 11.24.020 are each amended
8 to read as follows:

9 Upon the filing of the petition referred to in RCW 11.24.010, (~~a~~
10 ~~citation shall be issued~~) notice shall be given as provided in RCW
11 11.96A.100 to the executors who have taken upon themselves the
12 execution of the will, or to the administrators with the will annexed,
13 (~~and~~) to all legatees named in the will (~~residing in the state,~~) or
14 to their guardians if any of them are minors, or their personal
15 representatives if any of them are dead, (~~requiring them to appear~~
16 ~~before the court, on a day therein specified, to show cause why the~~
17 ~~petition should not be granted~~) and to all persons interested in the
18 matter, as defined in RCW 11.96A.030(5).

19 **Sec. 11.** RCW 11.96A.030 and 2002 c 66 s 2 are each amended to read
20 as follows:

21 The definitions in this section apply throughout this chapter
22 unless the context clearly requires otherwise.

23 (1) "Matter" includes any issue, question, or dispute involving:

24 (a) The determination of any class of creditors, devisees,
25 legatees, heirs, next of kin, or other persons interested in an estate,
26 trust, nonprobate asset, or with respect to any other asset or property
27 interest passing at death;

28 (b) The direction of a personal representative or trustee to do or
29 to abstain from doing any act in a fiduciary capacity;

30 (c) The determination of any question arising in the administration
31 of an estate or trust, or with respect to any nonprobate asset, or with
32 respect to any other asset or property interest passing at death, that
33 may include, without limitation, questions relating to: (i) The
34 construction of wills, trusts, community property agreements, and other
35 writings; (ii) a change of personal representative or trustee; (iii) a

1 change of the situs of a trust; (iv) an accounting from a personal
2 representative or trustee; or (v) the determination of fees for a
3 personal representative or trustee;

4 (d) The grant to a personal representative or trustee of any
5 necessary or desirable power not otherwise granted in the governing
6 instrument or given by law;

7 (e) The amendment, reformation, or conformation of a will or a
8 trust instrument to comply with statutes and regulations of the United
9 States internal revenue service in order to achieve qualification for
10 deductions, elections, and other tax requirements, including the
11 qualification of any gift thereunder for the benefit of a surviving
12 spouse who is not a citizen of the United States for the estate tax
13 marital deduction permitted by federal law, including the addition of
14 mandatory governing instrument requirements for a qualified domestic
15 trust under section 2056A of the internal revenue code, the
16 qualification of any gift thereunder as a qualified conservation
17 easement as permitted by federal law, or the qualification of any gift
18 for the charitable estate tax deduction permitted by federal law,
19 including the addition of mandatory governing instrument requirements
20 for a charitable remainder trust; and

21 (f) With respect to any nonprobate asset, or with respect to any
22 other asset or property interest passing at death, including joint
23 tenancy property, property subject to a community property agreement,
24 or assets subject to a pay on death or transfer on death designation:

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

27 (ii) 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 (iii) 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 (iv) The determination of any question arising in the
35 administration under chapter 11.18 or 11.42 RCW of a nonprobate asset;

36 (v) The determination of any questions relating to the abatement,
37 rights of creditors, or other matter relating to the administration,

1 settlement, or final disposition of a nonprobate asset under this
2 title;

3 (vi) The resolution of any matter referencing this chapter,
4 including a determination of any questions relating to the ownership or
5 distribution of an individual retirement account on the death of the
6 spouse of the account holder as contemplated by RCW 6.15.020(6);

7 (vii) The resolution of any other matter that could affect the
8 nonprobate asset.

9 (2) "Notice agent" has the meanings given in RCW 11.42.010.

10 (3) "Nonprobate assets" has the meaning given in RCW 11.02.005.

11 (4) "Party" or "parties" means each of the following persons who
12 has an interest in the subject of the particular proceeding and whose
13 name and address are known to, or are reasonably ascertainable by, the
14 petitioner:

15 (a) The trustor if living;

16 (b) The trustee;

17 (c) The personal representative;

18 (d) An heir;

19 (e) A beneficiary, including devisees, legatees, and trust
20 beneficiaries;

21 (f) The surviving spouse of a decedent with respect to his or her
22 interest in the decedent's property;

23 (g) A guardian ad litem;

24 (h) A creditor;

25 (i) Any other person who has an interest in the subject of the
26 particular proceeding;

27 (j) The attorney general if required under RCW 11.110.120;

28 (k) Any duly appointed and acting legal representative of a party
29 such as a guardian, special representative, or attorney in fact;

30 (l) Where applicable, the virtual representative of any person
31 described in this subsection the giving of notice to whom would meet
32 notice requirements as provided in RCW 11.96A.120;

33 (m) Any notice agent, resident agent, or a qualified person, as
34 those terms are defined in chapter 11.42 RCW; and

35 (n) The owner or the personal representative of the estate of the
36 deceased owner of the nonprobate asset that is the subject of the
37 particular proceeding, if the subject of the particular proceeding

1 relates to the beneficiary's liability to a decedent's estate or
2 creditors under RCW 11.18.200.

3 (5) "Persons interested in the estate or trust" means the trustor,
4 if living, all persons beneficially interested in the estate or trust,
5 persons holding powers over the trust or estate assets, the attorney
6 general in the case of any charitable trust where the attorney general
7 would be a necessary party to judicial proceedings concerning the
8 trust, and any personal representative or trustee of the estate or
9 trust.

10 (6) "Principal place of administration of the trust" means the
11 trustee's usual place of business where the day-to-day records
12 pertaining to the trust are kept, or the trustee's residence if the
13 trustee has no such place of business.

14 (7) The "situs" of a trust means the place where the principal
15 place of administration of the trust is located, unless otherwise
16 provided in the instrument creating the trust.

17 (8) "Trustee" means any acting and qualified trustee of the trust.

18 (9) "Representative" and other similar terms refer to a person who
19 virtually represents another under RCW 11.96A.120.

20 (10) "Citation" or "cite" and other similar terms, when required of
21 a person interested in the estate or trust or a party to a petition,
22 means to give notice as required under RCW 11.96A.100. "Citation" or
23 "cite" and other similar terms, when required of the court, means to
24 order, as authorized under RCW 11.96A.020 and 11.96A.060, and as
25 authorized by law.

26 **Sec. 12.** RCW 11.96A.100 and 2001 c 14 s 1 are each amended to read
27 as follows:

28 Unless rules of court require or this title provides otherwise, or
29 unless a court orders otherwise:

30 (1) A judicial proceeding under RCW 11.96A.090 is to be commenced
31 by filing a petition with the court;

32 (2) A summons must be served in accordance with this chapter and,
33 where not inconsistent with these rules, the procedural rules of court,
34 however, if the proceeding is commenced as an action incidental to an
35 existing judicial proceeding relating to the same trust or estate or
36 nonprobate asset, notice must be provided by summons only with respect

1 to those parties who were not already parties to the existing judicial
2 proceedings;

3 (3) The summons need only contain the following language or
4 substantially similar language:

5 SUPERIOR COURT OF WASHINGTON
6 FOR (...) COUNTY

7 IN RE.....)
8) No....
9) Summons
10)

11 TO THE RESPONDENT OR OTHER INTERESTED PARTY: A petition has been filed
12 in the superior court of Washington for (. . .) County. Petitioner's
13 claim is stated in the petition, a copy of which is served upon you
14 with this summons.

15 In order to defend against or to object to the petition, you must
16 answer the petition by stating your defense or objections in writing,
17 and by serving your answer upon the person signing this summons not
18 later than five days before the date of the hearing on the petition.
19 Your failure to answer within this time limit might result in a default
20 judgment being entered against you without further notice. A default
21 judgment grants the petitioner all that the petitioner seeks under the
22 petition because you have not filed an answer.

23 If you wish to seek the advice of a lawyer, you should do so promptly
24 so that your written answer, if any, may be served on time.

25 This summons is issued under RCW 11.96A.100(3).

26 (Signed)
27 Print or Type Name
28 Dated:
29 Telephone Number:

30 (4) Subject to other applicable statutes and court rules, the clerk
31 of each of the superior courts shall fix the time for any hearing on a
32 matter on application by a party, and no order of the court shall be
33 required to fix the time or to approve the form or content of the
34 notice of a hearing;

1 (5) Unless a party requests in its petition or answer that the
2 initial hearing not be a hearing on the merits, the answer to the
3 original petition and any counterclaims or cross-claims to the original
4 petition must be served on the parties or the parties' virtual
5 representatives and filed with the court at least five days before the
6 date of the hearing on the original petition, and all replies to the
7 counterclaims and cross-claims to the original petition must be served
8 on the parties or the parties' virtual representatives and filed with
9 the court at least two days before the date of the hearing on the
10 original petition. Thereafter, all amendments to the petition,
11 counterclaims, or cross-claims shall be served as provided by the civil
12 rules.

13 (a) If a party requests in its petition that the initial hearing
14 not be a hearing on the merits, it shall include in its original
15 petition a proposed order setting forth (i) the scope of discovery, if
16 any, and (ii) a schedule for further proceedings for the prompt
17 resolution of the matter.

18 (b) If a party in answer to a petition requests that the initial
19 hearing not be a hearing on the merits, its answer to the petition
20 shall be filed as provided in this section, and the party shall file
21 with the court and serve on the parties or the parties' virtual
22 representatives at least five days before the date of the hearing a
23 proposed order setting forth (i) the scope of discovery, if any, and
24 (ii) a schedule for further proceedings for the prompt resolution of
25 the matter.

26 (c) If a party in answer to a counterclaim or cross-claim requests
27 that the initial hearing not be a hearing on the merits, its answer to
28 the counterclaim or cross-claim shall be filed as provided in this
29 section, and the party shall file with the court and serve on the
30 parties or the parties' virtual representatives at least two days
31 before the date of the hearing a proposed order setting forth (i) the
32 scope of discovery, if any, and (ii) a schedule for further proceedings
33 for the prompt resolution of the matter;

34 (6) Proceedings under this chapter are subject to the mediation and
35 arbitration provisions of this chapter. Except as specifically
36 provided in RCW 11.96A.310, the provisions of chapter 7.06 RCW do not
37 apply;

38 (7) Testimony of witnesses may be by affidavit;

1 (8) Unless requested otherwise by a party in a petition or answer,
2 the initial hearing must be a hearing on the merits to resolve all
3 issues of fact and all issues of law;

4 (9) Any party may move the court for an order relating to a
5 procedural matter, including discovery, and for summary judgment, in
6 the original petition, answer, response, or reply, or in a separate
7 motion, or at any other time, with all motions subsequent to the
8 original petition governed by superior court civil rules and applicable
9 local rules; and

10 (10) If the initial hearing is not a hearing on the merits or does
11 not result in a resolution of all issues of fact and all issues of law,
12 the court may enter any order it deems appropriate, which order may (a)
13 resolve such issues as it deems proper, (b) determine the scope of
14 discovery, and (c) set a schedule for further proceedings for the
15 prompt resolution of the matter.

16 NEW SECTION. Sec. 13. A new section is added to chapter 11.96A
17 RCW to read as follows:

18 In all matters governed by this title, discovery shall be permitted
19 only in the following matters:

20 (1) A judicial proceeding that places one or more specific issues
21 in controversy that has been commenced under RCW 11.96A.100, in which
22 case discovery shall be conducted in accordance with the superior court
23 civil rules and applicable local rules; or

24 (2) A matter in which the court orders that discovery be permitted
25 on a showing of good cause, in which case discovery shall be conducted
26 in accordance with the superior court civil rules and applicable local
27 rules unless otherwise limited by the order of the court.

28 **Sec. 14.** RCW 11.96A.110 and 1999 c 42 s 304 are each amended to
29 read as follows:

30 (1) Subject to RCW 11.96A.160, in all judicial proceedings under
31 this title that require notice, the notice must be (~~personally served~~
32 ~~on or mailed~~) served in person, by mail, or by any other commercial
33 delivery service to all parties or the parties' virtual representatives
34 at least twenty days before the hearing on the petition unless a
35 different period is provided by statute or ordered by the court. (~~The~~
36 ~~date of service shall be determined under the rules of civil~~

1 ~~procedure-))~~ When original service is made by mail or a commercial
2 delivery service, service is complete upon the third day following the
3 day upon which the petition and summons are deposited in the mail or
4 provided to the commercial delivery service, unless the third day falls
5 on a Saturday, Sunday, or legal holiday, in which event service is
6 complete on the first day other than a Saturday, Sunday, or legal
7 holiday, following the third day.

8 (2) No affirmative monetary or injunctive relief, including an
9 award of costs under RCW 11.96A.150, may be awarded against any party
10 in a judicial proceeding absent proof of actual notice of such
11 proceeding having been served on that party in accordance with
12 subsection (1) of this section. The following constitutes proof of
13 actual notice for purposes of this subsection: (a) Proof of mailing or
14 sending, together with a return receipt or acknowledgment of delivery
15 signed by the party; (b) other written acknowledgment by the party of
16 having received actual notice of the proceedings; or (c) proof of
17 personal service on the party in accordance with RCW 4.28.080.

18 (3) Upon a showing that a party's address cannot be ascertained
19 with reasonable effort, that a party has failed to sign or acknowledge
20 receipt of a mailing or delivery, or that a party is evading personal
21 service, the court may order service by publication pursuant to RCW
22 4.28.100 and 4.28.110 or other alternative means of personal service
23 allowed under the superior court civil rules.

24 (4) Proof of the service (~~(or)~~), mailing, or actual notice required
25 in this section must be made by affidavit or declaration filed at or
26 before the hearing.

27 **Sec. 15.** RCW 11.96A.150 and 1999 c 42 s 308 are each amended to
28 read as follows:

29 (1) Either the superior court or (~~the~~) any court on an appeal to
30 that court may, in its discretion, order costs, including reasonable
31 attorneys' fees, to be awarded to any party: (a) From any party to the
32 proceedings; (b) from the assets of the estate or trust involved in the
33 proceedings; or (c) from any nonprobate asset that is the subject of
34 the proceedings. The court may order the costs, including reasonable
35 attorneys' fees, to be paid in such amount and in such manner as the
36 court determines to be equitable, considering any and all factors that

1 it deems relevant and appropriate. The court need not make a finding
2 of benefit to any trust or estate.

3 (2) This section applies to all proceedings governed by this title,
4 including but not limited to proceedings involving trusts, decedent's
5 estates and properties, and guardianship matters. This section shall
6 not be construed as being limited by any other specific statutory
7 provision providing for the payment of costs, including RCW 11.68.070
8 and 11.24.050, unless such statute specifically provides otherwise.
9 This (~~statute~~ ~~[section]~~) section shall apply to matters involving
10 guardians and guardians ad litem and shall not be limited or controlled
11 by the provisions of RCW 11.88.090(~~(+9)~~).

12 NEW SECTION. Sec. 16. A new section is added to chapter 11.95 RCW
13 to read as follows:

14 A person shall not be treated as having made a disposition in trust
15 for the use of that individual by reason of a lapse of a power of
16 withdrawal over the income or corpus of a trust created by another
17 person. For this purpose, notification to the trustee of the trust of
18 an intent not to exercise the power of withdrawal shall not be treated
19 as a release of the power of withdrawal, but shall be treated as a
20 lapse of the power.

21 **Sec. 17.** RCW 6.32.250 and 1987 c 442 s 1115 are each amended to
22 read as follows:

23 This chapter does not authorize the seizure of, or other
24 interference with, (1) any property which is expressly exempt by law
25 from levy and sale by virtue of an execution, attachment, or
26 garnishment; or (2) any money, thing in action or other property held
27 in trust for a judgment debtor where the trust has been created by, or
28 the fund so held in trust has proceeded from, a person other than the
29 judgment debtor; or (3) the earnings of the judgment debtor for
30 personal services to the extent they would be exempt against
31 garnishment of the employer under RCW 6.27.150. For purposes of this
32 section, a person shall not be treated as having made a disposition in
33 trust for the use of that person by reason of a lapse of a power of
34 withdrawal over the income or corpus of a trust created by another
35 person. For this purpose, notification to the trustee of the trust of

1 an intent not to exercise the power of withdrawal shall not be treated
2 as a release of the power of withdrawal, but shall be treated as a
3 lapse of the power.

4 **Sec. 18.** RCW 19.36.020 and Code 1881 s 2324 are each amended to
5 read as follows:

6 That all deeds of gift, all conveyances, and all transfers or
7 assignments, verbal or written, of goods, chattels or things in action,
8 made in trust for the use of the person making the same, shall be void
9 as against the existing or subsequent creditors of such person. For
10 purposes of this section, a person shall not be treated as having made
11 a disposition in trust for the use of that person by reason of a lapse
12 of a power of withdrawal over the income or corpus of a trust created
13 by another person. For this purpose, notification to the trustee of
14 the trust of an intent not to exercise the power of withdrawal shall
15 not be treated as a release of the power of withdrawal, but shall be
16 treated as a lapse of the power.

17 **Sec. 19.** RCW 11.62.005 and 1994 c 21 s 1 are each amended to read
18 as follows:

19 As used in this chapter, the following terms shall have the
20 meanings indicated.

21 (1) "Personal property" shall include any tangible personal
22 property, any instrument evidencing a debt, obligation, stock, chose in
23 action, license or ownership, any debt or any other intangible
24 property.

25 (2)(a) "Successor" and "successors" shall mean (subject to
26 subsection (2)(b) of this section):

27 (i) That person or those persons who are entitled to the claimed
28 property pursuant to the terms and provisions of the last will and
29 testament of the decedent or by virtue of the laws of intestate
30 succession contained in this title; and/or

31 (ii) The surviving spouse of the decedent to the extent that the
32 surviving spouse is entitled to the property claimed as his or her
33 undivided one-half interest in the community property of said spouse
34 and the decedent; and/or

35 (iii) The department of social and health services, to the extent

1 of funds expended or paid, in the case of claims provided under RCW
2 43.20B.080; and/or

3 (iv) This state, in the case of escheat property.

4 (b) Any person claiming to be a successor solely by reason of being
5 a creditor of the decedent or of the decedent's estate, except for the
6 state as set forth in (a)(iii) and (iv) of this subsection, shall be
7 excluded from the definition of "successor".

8 (3) "Person" shall mean any individual or organization(~~-~~

9 ~~(4) "Organization" shall include a)), specifically including but
10 not limited to a bank, credit union, brokerage firm or stock transfer
11 agent, corporation, government or governmental subdivision or agency,
12 business trust, estate, trust, partnership or association, two or more
13 persons having a joint or common interest, or any other legal or
14 commercial entity.~~

15 NEW SECTION. Sec. 20. This act clarifies and declares the
16 existing laws of this state. This act is enforceable as to all persons
17 and all trusts regardless of when the trust was created.

18 NEW SECTION. Sec. 21. If any provision of this act or its
19 application to any person or circumstance is held invalid, the
20 remainder of the act or the application of the provision to other
21 persons or circumstances is not affected.

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