

SHB 1051 - S COMM AMD
By Committee on Judiciary

ADOPTED 04/06/2011

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 11.02.005 and 2008 c 6 s 901 are each amended to read
4 as follows:

5 When used in this title, unless otherwise required from the
6 context:

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

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

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

28 (4) "Issue" means all the lineal descendants of an individual. An
29 adopted individual is a lineal descendant of each of his or her
30 adoptive parents and of all individuals with regard to which each

1 adoptive parent is a lineal descendant. A child conceived prior to the
2 death of a parent but born after the death of the deceased parent is
3 considered to be the surviving issue of the deceased parent for
4 purposes of this title.

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

9 (6) "Heirs" denotes those persons, including the surviving spouse
10 or surviving domestic partner, who are entitled under the statutes of
11 intestate succession to the real and personal property of a decedent on
12 the decedent's death intestate.

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

17 (8) "Will" means an instrument validly executed as required by RCW
18 11.12.020.

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

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

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

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

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

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

1 (15) "Nonprobate asset" means those rights and interests of a
2 person having beneficial ownership of an asset that pass on the
3 person's death under a written instrument or arrangement other than the
4 person's will. "Nonprobate asset" includes, but is not limited to, a
5 right or interest passing under a joint tenancy with right of
6 survivorship, joint bank account with right of survivorship, payable on
7 death or trust bank account, transfer on death security or security
8 account, deed or conveyance if possession has been postponed until the
9 death of the person, trust of which the person is grantor and that
10 becomes effective or irrevocable only upon the person's death,
11 community property agreement, individual retirement account or bond, or
12 note or other contract the payment or performance of which is affected
13 by the death of the person. "Nonprobate asset" does not include: A
14 payable-on-death provision of a life insurance policy, annuity, or
15 other similar contract, or of an employee benefit plan; a right or
16 interest passing by descent and distribution under chapter 11.04 RCW;
17 a right or interest if, before death, the person has irrevocably
18 transferred the right or interest, the person has waived the power to
19 transfer it or, in the case of contractual arrangement, the person has
20 waived the unilateral right to rescind or modify the arrangement; or a
21 right or interest held by the person solely in a fiduciary capacity.
22 For the definition of "nonprobate asset" relating to revocation of a
23 provision for a former spouse upon dissolution of marriage or
24 declaration of invalidity of marriage, RCW 11.07.010(5) applies. For
25 the definition of "nonprobate asset" relating to revocation of a
26 provision for a former spouse upon dissolution of marriage or
27 declaration of invalidity of marriage, see RCW 11.07.010(5). For the
28 definition of "nonprobate asset" relating to testamentary disposition
29 of nonprobate assets, see RCW 11.11.010(7).

30 (16) "Internal Revenue Code" means the United States Internal
31 Revenue Code of 1986, as amended or renumbered as of January 1, 2001.

32 (17) References to "section 2033A" of the Internal Revenue Code in
33 wills, trust agreements, powers of appointment, beneficiary
34 designations, and other instruments governed by or subject to this
35 title shall be deemed to refer to the comparable or corresponding
36 provisions of section 2057 of the Internal Revenue Code, as added by
37 section 6006(b) of the Internal Revenue Service Restructuring Act of

1 1998 (H.R. 2676, P.L. 105-206); and references to the section 2033A
2 "exclusion" shall be deemed to mean the section 2057 deduction.

3 (18) "Surviving spouse" or "surviving domestic partner" does not
4 include an individual whose marriage to or state registered domestic
5 partnership with the decedent has been terminated, dissolved, or
6 invalidated unless, by virtue of a subsequent marriage or state
7 registered domestic partnership, he or she is married to or in a
8 domestic partnership with the decedent at the time of death. A decree
9 of separation that does not terminate the status of spouses or domestic
10 partners is not a dissolution or invalidation for purposes of this
11 subsection.

12 (19) "Trustor" means a person, including a testator, who creates,
13 or contributes property to, a trust.

14 (20) "Settlor" has the same meaning as provided for "trustor" in
15 this section.

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

18 Words importing the masculine gender only may be extended to
19 females also.

20 **Sec. 2.** RCW 11.28.237 and 1997 c 252 s 85 are each amended to read
21 as follows:

22 (1) Within twenty days after appointment, the personal
23 representative of the estate of a decedent shall cause written notice
24 of his or her appointment and the pendency of said probate proceedings,
25 to be served personally or by mail to each heir, legatee and devisee of
26 the estate and each beneficiary or transferee of a nonprobate asset of
27 the decedent whose names and addresses are known to him or her, and
28 proof of such mailing or service shall be made by affidavit and filed
29 in the cause. If a trust is a legatee or devisee of the estate or a
30 beneficiary or transferee of a nonprobate asset of the decedent, then
31 notice to the trustee is sufficient.

32 (2) If the personal representative does not otherwise give notice
33 to creditors under chapter 11.40 RCW within thirty days after
34 appointment, the personal representative shall cause written notice of
35 his or her appointment and the pendency of the probate proceedings to
36 be mailed to the state of Washington department of social and health

1 services' office of financial recovery, and proof of the mailing shall
2 be made by affidavit and filed in the cause.

3 **Sec. 3.** RCW 11.68.090 and 2003 c 254 s 3 are each amended to read
4 as follows:

5 (1) Any personal representative acting under nonintervention powers
6 may borrow money on the general credit of the estate and may mortgage,
7 encumber, lease, sell, exchange, convey, and otherwise have the same
8 powers, and be subject to the same limitations of liability, that a
9 trustee has under ((~~RCW 11.98.070 and~~) chapters 11.98, 11.100, and
10 11.102 RCW with regard to the assets of the estate, both real and
11 personal, all without an order of court and without notice, approval,
12 or confirmation, and in all other respects administer and settle the
13 estate of the decedent without intervention of court. Except as
14 otherwise specifically provided in this title or by order of court, a
15 personal representative acting under nonintervention powers may
16 exercise the powers granted to a personal representative under chapter
17 11.76 RCW but is not obligated to comply with the duties imposed on
18 personal representatives by that chapter. A party to such a
19 transaction and the party's successors in interest are entitled to have
20 it conclusively presumed that the transaction is necessary for the
21 administration of the decedent's estate.

22 (2) Except as otherwise provided in chapter 11.108 RCW or elsewhere
23 in order to preserve a marital deduction from estate taxes, a testator
24 may by a will relieve the personal representative from any or all of
25 the duties, restrictions, and liabilities imposed: Under common law;
26 by chapters 11.54, 11.56, 11.100, 11.102, and 11.104A RCW; or by RCW
27 11.28.270 and 11.28.280, 11.68.095, and 11.98.070. In addition, a
28 testator may likewise alter or deny any or all of the privileges and
29 powers conferred by this title, and may add duties, restrictions,
30 liabilities, privileges, or powers to those imposed or granted by this
31 title. If any common law or any statute referenced earlier in this
32 subsection is in conflict with a will, the will controls whether or not
33 specific reference is made in the will to this section. However,
34 notwithstanding the rest of this subsection, a personal representative
35 may not be relieved of the duty to act in good faith and with honest
36 judgment.

1 **Sec. 4.** RCW 11.94.050 and 2001 c 203 s 12 are each amended to read
2 as follows:

3 (1) Although a designated attorney-in-fact or agent has all powers
4 of absolute ownership of the principal, or the document has language to
5 indicate that the attorney-in-fact or agent shall have all the powers
6 the principal would have if alive and competent, the attorney-in-fact
7 or agent shall not have the power to make, amend, alter, or revoke the
8 principal's wills or codicils, and shall not have the power, unless
9 specifically provided otherwise in the document: To make, amend,
10 alter, or revoke any of the principal's life insurance, annuity, or
11 similar contract beneficiary designations, employee benefit plan
12 beneficiary designations, trust agreements, registration of the
13 principal's securities in beneficiary form, payable on death or
14 transfer on death beneficiary designations, designation of persons as
15 joint tenants with right of survivorship with the principal with
16 respect to any of the principal's property, community property
17 agreements, or any other provisions for nonprobate transfer at death
18 contained in nontestamentary instruments described in RCW 11.02.091; to
19 make any gifts of property owned by the principal; to exercise the
20 principal's rights to distribute property in trust or cause a trustee
21 to distribute property in trust to the extent consistent with the terms
22 of the trust agreement; to make transfers of property to any trust
23 (whether or not created by the principal) unless the trust benefits the
24 principal alone and does not have dispositive provisions which are
25 different from those which would have governed the property had it not
26 been transferred into the trust((~~7~~)); or to disclaim property.

27 (2) Nothing in subsection (1) of this section prohibits an
28 attorney-in-fact or agent from making any transfer of resources not
29 prohibited under chapter 74.09 RCW when the transfer is for the purpose
30 of qualifying the principal for medical assistance or the limited
31 casualty program for the medically needy.

32 **Sec. 5.** RCW 11.96A.030 and 2009 c 525 s 20 are each amended to
33 read as follows:

34 The definitions in this section apply throughout this chapter
35 unless the context clearly requires otherwise.

36 (1) "Citation" or "cite" and other similar terms, when required of
37 a person interested in the estate or trust or a party to a petition,

1 means to give notice as required under RCW 11.96A.100. "Citation" or
2 "cite" and other similar terms, when required of the court, means to
3 order, as authorized under RCW 11.96A.020 and 11.96A.060, and as
4 authorized by law.

5 (2) "Matter" includes any issue, question, or dispute involving:

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

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

12 (c) The determination of any question arising in the administration
13 of an estate or trust, or with respect to any nonprobate asset, or with
14 respect to any other asset or property interest passing at death, that
15 may include, without limitation, questions relating to: (i) The
16 construction of wills, trusts, community property agreements, and other
17 writings; (ii) a change of personal representative or trustee; (iii) a
18 change of the situs of a trust; (iv) an accounting from a personal
19 representative or trustee; or (v) the determination of fees for a
20 personal representative or trustee;

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

24 (e) An action or proceeding under chapter 11.84 RCW;

25 (f) The amendment, reformation, or conformation of a will or a
26 trust instrument to comply with statutes and regulations of the United
27 States internal revenue service in order to achieve qualification for
28 deductions, elections, and other tax requirements, including the
29 qualification of any gift thereunder for the benefit of a surviving
30 spouse who is not a citizen of the United States for the estate tax
31 marital deduction permitted by federal law, including the addition of
32 mandatory governing instrument requirements for a qualified domestic
33 trust under section 2056A of the internal revenue code, the
34 qualification of any gift thereunder as a qualified conservation
35 easement as permitted by federal law, or the qualification of any gift
36 for the charitable estate tax deduction permitted by federal law,
37 including the addition of mandatory governing instrument requirements
38 for a charitable remainder trust; (~~and~~))

1 (g) With respect to any nonprobate asset, or with respect to any
2 other asset or property interest passing at death, including joint
3 tenancy property, property subject to a community property agreement,
4 or assets subject to a pay on death or transfer on death designation:

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

7 (ii) The ordering of a qualified person, the notice agent, or
8 resident agent, as those terms are defined in chapter 11.42 RCW, or any
9 combination of them, to do or abstain from doing any particular act
10 with respect to a nonprobate asset;

11 (iii) The ordering of a custodian of any of the decedent's records
12 relating to a nonprobate asset to do or abstain from doing any
13 particular act with respect to those records;

14 (iv) The determination of any question arising in the
15 administration under chapter 11.18 or 11.42 RCW of a nonprobate asset;

16 (v) The determination of any questions relating to the abatement,
17 rights of creditors, or other matter relating to the administration,
18 settlement, or final disposition of a nonprobate asset under this
19 title;

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

24 (vii) The resolution of any other matter that could affect the
25 nonprobate asset; and

26 (h) The reformation of a will or trust to correct a mistake under
27 section 11 of this act.

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

29 (4) "Notice agent" has the meanings given in RCW 11.42.010.

30 (5) "Party" or "parties" means each of the following persons who
31 has an interest in the subject of the particular proceeding and whose
32 name and address are known to, or are reasonably ascertainable by, the
33 petitioner:

34 (a) The trustor if living;

35 (b) The trustee;

36 (c) The personal representative;

37 (d) An heir;

1 (e) A beneficiary, including devisees, legatees, and trust
2 beneficiaries;

3 (f) The surviving spouse or surviving domestic partner of a
4 decedent with respect to his or her interest in the decedent's
5 property;

6 (g) A guardian ad litem;

7 (h) A creditor;

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

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

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

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

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

18 (n) The owner or the personal representative of the estate of the
19 deceased owner of the nonprobate asset that is the subject of the
20 particular proceeding, if the subject of the particular proceeding
21 relates to the beneficiary's liability to a decedent's estate or
22 creditors under RCW 11.18.200.

23 (6) "Persons interested in the estate or trust" means the trustor,
24 if living, all persons beneficially interested in the estate or trust,
25 persons holding powers over the trust or estate assets, the attorney
26 general in the case of any charitable trust where the attorney general
27 would be a necessary party to judicial proceedings concerning the
28 trust, and any personal representative or trustee of the estate or
29 trust.

30 ~~(7) ("Principal place of administration of the trust" means the~~
31 ~~trustee's usual place of business where the day-to-day records~~
32 ~~pertaining to the trust are kept, or the trustee's residence if the~~
33 ~~trustee has no such place of business.~~

34 ~~(8))~~ "Representative" and other similar terms refer to a person
35 who virtually represents another under RCW 11.96A.120.

36 ~~((9) The "situs" of a trust means the place where the principal~~
37 ~~place of administration of the trust is located, unless otherwise~~
38 ~~provided in the instrument creating the trust.~~

1 including nonprobate assets, and any other matter not identified in
2 subsection (1) ~~((or))~~, (2), or (3) of this section, ~~((may))~~ shall be in
3 any county in the state of Washington that the petitioner selects. A
4 party to a proceeding may request that venue be changed if the request
5 is made within four months of the mailing of the notice of appointment
6 and pendency of probate required by RCW 11.28.237, and except for good
7 cause shown, venue must be moved as follows:

8 (a) If the decedent was a resident of the state of Washington at
9 the time of death, to the county of the decedent's residence; or

10 (b) If the decedent was not a resident of the state of Washington
11 at the time of death, to any of the following:

12 (i) Any county in which any part of the probate estate might be;

13 (ii) If there are no probate assets, any county where any
14 nonprobate asset might be; or

15 (iii) The county in which the decedent died.

16 ~~((+4))~~ (5) Once letters testamentary or of administration have
17 been granted in the state of Washington, all orders, settlements,
18 trials, and other proceedings under this title shall be had or made in
19 the county in which such letters have been granted unless venue is
20 moved as provided in subsection ~~((+2))~~ (4) of this section.

21 ~~((+5))~~ (6) Venue for proceedings pertaining to powers of attorney
22 shall be in the superior court of the county of the principal's
23 residence, except for good cause shown.

24 ~~((+6))~~ (7) If venue is moved, an action taken before venue is
25 changed is not invalid because of the venue.

26 ~~((+7))~~ (8) Any request to change venue that is made more than four
27 months after the commencement of the action may be granted in the
28 discretion of the court.

29 **Sec. 7.** RCW 11.96A.070 and 1999 c 42 s 204 are each amended to
30 read as follows:

31 (1)(a) ~~((An action against the trustee of an express trust for a
32 breach of fiduciary duty must be brought within three years from the
33 earlier of: (i) The time the alleged breach was discovered or
34 reasonably should have been discovered; (ii) the discharge of a trustee
35 from the trust as provided in RCW 11.98.041 or by agreement of the
36 parties under RCW 11.96A.220; or (iii) the time of termination of the
37 trust or the trustee's repudiation of the trust.~~

1 ~~(b) The provisions of (a) of this subsection apply to all express~~
2 ~~trusts, no matter when created, however it shall not apply to express~~
3 ~~trusts created before June 10, 1959, until the date that is three years~~
4 ~~after January 1, 2000.~~

5 (c)) A beneficiary of an express trust may not commence a
6 proceeding against a trustee for breach of trust more than three years
7 after the date the beneficiary or a representative of the beneficiary
8 was sent a report that adequately disclosed the existence of a
9 potential claim for breach of trust and informed the beneficiary of the
10 time allowed for commencing a proceeding.

11 (b) A report adequately discloses the existence of a potential
12 claim for breach of trust if it provides sufficient information so that
13 the beneficiary or representative knows of the potential claim or
14 should have inquired into its existence. A report that includes the
15 following information is presumed to have provided such sufficient
16 information regarding the existence of potential claims for breach of
17 trust:

18 (i) A statement of receipts and disbursements of principal and
19 income that have occurred during the accounting period;

20 (ii) A statement of the assets and liabilities of the trust and
21 their values at the beginning and end of the period;

22 (iii) The trustee's compensation for the period;

23 (iv) The agents hired by the trustee, their relationship to the
24 trustee, if any, and their compensation, for the period;

25 (v) Disclosure of any pledge, mortgage, option, or lease of trust
26 property, or other agreement affecting trust property binding for a
27 period of five years or more that was granted or entered into during
28 the accounting period;

29 (vi) Disclosure of all transactions during the period that are
30 equivalent to one of the types of transactions described in section 32
31 of this act or otherwise could have been affected by a conflict between
32 the trustee's fiduciary and personal interests;

33 (vii) A statement that the recipient of the account information may
34 petition the superior court pursuant to chapter 11.106 RCW to obtain
35 review of the statement and of acts of the trustee disclosed in the
36 statement; and

37 (viii) A statement that claims against the trustee for breach of

1 trust may not be made after the expiration of three years from the date
2 the beneficiary receives the statement.

3 (c) If (a) of this subsection does not apply, a judicial proceeding
4 by a beneficiary against a trustee for breach of trust must be
5 commenced within three years after the first to occur of:

6 (i) The removal, resignation, or death of the trustee;

7 (ii) The termination of the beneficiary's interest in the trust; or

8 (iii) The termination of the trust.

9 (d) For purposes of this section, "express trust" does not include
10 resulting trusts, constructive trusts, business trusts in which
11 certificates of beneficial interest are issued to the beneficiary,
12 investment trusts, voting trusts, trusts in the nature of mortgages or
13 pledges, (~~trusts created by the judgment or decree of a court not~~
14 sitting in probate,)) liquidation trusts, or trusts for the sole
15 purpose of paying dividends, interest, interest coupons, salaries,
16 wages, pensions, or profits, trusts created in deposits in any
17 financial institution under chapter 30.22 RCW, unless any such trust
18 that is created in writing specifically incorporates this chapter in
19 whole or in part.

20 (2) Except as provided in RCW 11.96A.250 with respect to special
21 representatives, an action against a personal representative for
22 alleged breach of fiduciary duty by an heir, legatee, or other
23 interested party must be brought before discharge of the personal
24 representative.

25 (3) The legislature hereby confirms the long standing public policy
26 of promoting the prompt and efficient resolution of matters involving
27 trusts and estates. To further implement this policy, the legislature
28 adopts the following statutory provisions in order to: (a) Encourage
29 and facilitate the participation of qualified individuals as special
30 representatives; (b) serve the public's interest in having a prompt and
31 efficient resolution of matters involving trusts or estates; and (c)
32 promote complete and final resolution of proceedings involving trusts
33 and estates.

34 (i) Actions against a special representative must be brought before
35 the earlier of:

36 (A) Three years from the discharge of the special representative as
37 provided in RCW 11.96A.250; or

1 (B) The entry of an order by a court of competent jurisdiction
2 under RCW 11.96A.240 approving the written agreement executed by all
3 interested parties in accord with the provisions of RCW 11.96A.220.

4 (ii) If a legal action is commenced against the special
5 representative after the expiration of the period during which claims
6 may be brought against the special representative as provided in (c)(i)
7 of this subsection, alleging property damage, property loss, or other
8 civil liability caused by or resulting from an alleged act or omission
9 of the special representative arising out of or by reason of the
10 special representative's duties or actions as special representative,
11 the special representative shall be indemnified: (A) From the assets
12 held in the trust or comprising the estate involved in the dispute; and
13 (B) by the persons bringing the legal action, for all expenses,
14 attorneys' fees, judgments, settlements, decrees, or amounts due and
15 owing or paid in satisfaction of or incurred in the defense of the
16 legal action. To the extent possible, indemnification must be made
17 first by the persons bringing the legal action, second from that
18 portion of the trust or estate that is held for the benefit of, or has
19 been distributed or applied to, the persons bringing the legal action,
20 and third from the other assets held in the trust or comprising the
21 estate involved in the dispute.

22 (4) The tolling provisions of RCW 4.16.190 apply to this chapter
23 except that the running of a statute of limitations under subsection
24 (1) or (2) of this section, or any other applicable statute of
25 limitations for any matter that is the subject of dispute under this
26 chapter, is not tolled as to an individual who had a guardian ad litem,
27 limited or general guardian of the estate, or a special representative
28 to represent the person during the probate or dispute resolution
29 proceeding.

30 **Sec. 8.** RCW 11.96A.110 and 1999 c 42 s 304 are each amended to
31 read as follows:

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

1 Notwithstanding the foregoing, notice that is provided in an electronic
2 transmission and electronically transmitted complies with this section
3 if the party receiving notice has previously consented in a record
4 delivered to the party giving notice to receiving notice by electronic
5 transmission. Consent to receive notice by electronic transmission may
6 be revoked at any time by a record delivered to the party giving
7 notice. Consent is deemed revoked if the party giving notice is unable
8 to electronically transmit two consecutive notices given in accordance
9 with the consent.

10 (2) Proof of the service ~~((or))~~, mailing, or electronic delivery
11 required in this section must be made by affidavit or declaration filed
12 at or before the hearing.

13 (3) For the purposes of this title, the terms "electronic
14 transmission" and "electronically transmitted" have the same meaning as
15 set forth in RCW 23B.01.400.

16 **Sec. 9.** RCW 11.96A.120 and 2008 c 6 s 928 are each amended to read
17 as follows:

18 (1) With respect to a particular matter that affects a trust,
19 probate estate, guardianship estate, or property subject to a power of
20 attorney, in which the interests of such fiduciary estate and the
21 beneficiaries are not in conflict:

22 (a) A guardian may represent and bind the estate that the guardian
23 controls;

24 (b) An agent having authority to act with respect to the particular
25 question or dispute may represent and bind the principal;

26 (c) A trustee may represent and bind the beneficiaries of the
27 trust; and

28 (d) A personal representative of a decedent's estate may represent
29 and bind persons interested in the estate.

30 (2) This section is intended to adopt the common law concept of
31 virtual representation. This section supplements the common law
32 relating to the doctrine of virtual representation and shall not be
33 construed as limiting the application of that common law doctrine.

34 ~~((+2))~~ (3) Any notice requirement in this title is satisfied if
35 ~~((notice is given as follows))~~:

36 (a) Where an interest in an estate, trust, or nonprobate asset or
37 an interest that may be affected by a power of attorney has been given

1 to persons who comprise a certain class upon the happening of a certain
2 event, notice may be given to the living persons who would constitute
3 the class if the event had happened immediately before the commencement
4 of the proceeding requiring notice, and the persons shall virtually
5 represent all other members of the class;

6 (b) Where an interest in an estate, trust, or nonprobate asset or
7 an interest that may be affected by a power of attorney has been given
8 to a living person, and the same interest, or a share in it, is to pass
9 to the surviving spouse or surviving domestic partner or to persons who
10 are, or might be, the distributees, heirs, issue, or other kindred of
11 that living person upon the happening of a future event, notice may be
12 given to that living person, and the living person shall virtually
13 represent the surviving spouse or surviving domestic partner,
14 distributees, heirs, issue, or other kindred of the person; ((and))

15 (c) Except as otherwise provided in this subsection, where an
16 interest in an estate, trust, or nonprobate asset or an interest that
17 may be affected by a power of attorney has been given to a person or a
18 class of persons, or both, upon the happening of any future event, and
19 the same interest or a share of the interest is to pass to another
20 person or class of persons, or both, upon the happening of an
21 additional future event, notice may be given to the living person or
22 persons who would take the interest upon the happening of the first
23 event, and the living person or persons shall virtually represent the
24 persons and classes of persons who might take on the happening of the
25 additional future event((-

26 ~~(3) A party is not virtually represented by a person receiving~~
27 ~~notice if a conflict of interest involving the matter is known to exist~~
28 ~~between the notified person and the party.~~

29 ~~(4))~~; and

30 (d) The holder of a general power of appointment, exercisable
31 either during the power holder's life or by will, or a limited power of
32 appointment, exercisable either during the power holder's life or by
33 will, that excludes as possible appointees only the power holder, his
34 or her estate, his or her creditors, and the creditors of his or her
35 estate, may accept notice and virtually represent and bind persons
36 whose interests, as permissible appointees, takers in default, or
37 otherwise, are subject to the power, to the extent there is no conflict

1 of interest between the holder of the power of appointment and the
2 persons represented with respect to the particular question or dispute.

3 (4) A party is not virtually represented by a person receiving
4 notice if a conflict of interest involving the matter is known to exist
5 between the notified person and the party.

6 (5) An action taken by the court is conclusive and binding upon
7 each person receiving actual or constructive notice or who is otherwise
8 ((virtually)) represented under this section.

9 NEW SECTION. Sec. 10. A new section is added to chapter 11.96A
10 RCW to read as follows:

11 (1) Except as otherwise provided in subsection (2) of this section,
12 with respect to any charitable disposition made in a will or trust, if
13 a particular charitable purpose becomes unlawful, impracticable,
14 impossible to achieve, or wasteful:

15 (a) The disposition does not fail, in whole or in part;

16 (b) The subject property does not revert to the alternative,
17 residuary, or intestate heirs of the estate or, in the case of a trust,
18 the trustor or the trustor's successors in interest; and

19 (c) The court may modify or terminate the trust by directing that
20 the property be applied or distributed, in whole or in part, in a
21 manner consistent with the testator's or trustor's charitable purposes.

22 (2) A provision in the terms of a will or charitable trust that
23 would result in distribution of the property to a noncharitable
24 beneficiary prevails over the power of the court under subsection (1)
25 of this section to modify or terminate the will provision or trust only
26 if, when the provision takes effect:

27 (a) The property is to revert to the trustor and the trustor is
28 still living; or

29 (b) Fewer than twenty-one years have elapsed since the following:

30 (i) In the case of a charitable disposition in trust, the date of
31 the trust's creation or the date the trust became irrevocable; or

32 (ii) In the case of a charitable disposition in a will, the death
33 of the testator, in the case of a charitable disposition in a will.

34 (3) For purposes of this title, a charitable purpose is one for the
35 relief of poverty, the advancement of education or religion, the
36 promotion of health, governmental or municipal purposes, or other
37 purposes the achievement of which is beneficial to a community.

1 NEW SECTION. **Sec. 11.** A new section is added to chapter 11.96A
2 RCW to read as follows:

3 The terms of a will or trust, even if unambiguous, may be reformed
4 by judicial proceedings or binding nonjudicial procedure under this
5 chapter to conform the terms to the intention of the testator or
6 trustor if it is proved by clear, cogent, and convincing evidence, or
7 the parties to a binding nonjudicial agreement agree that there is
8 clear, cogent, and convincing evidence, that both the intent of the
9 testator or trustor and the terms of the will or trust were affected by
10 a mistake of fact or law, whether in expression or inducement.

11 **Sec. 12.** RCW 11.97.010 and 2003 c 254 s 4 are each amended to read
12 as follows:

13 (1) The trustor of a trust may by the provisions of the trust
14 relieve the trustee from any or all of the duties, restrictions, and
15 liabilities which would otherwise be imposed by chapters 11.95, 11.98,
16 11.100, and 11.104A RCW and RCW 11.106.020, or may alter or deny any or
17 all of the privileges and powers conferred by those provisions; or may
18 add duties, restrictions, liabilities, privileges, or powers to those
19 imposed or granted by those provisions. If any specific provision of
20 those chapters is in conflict with the provisions of a trust, the
21 provisions of the trust control whether or not specific reference is
22 made in the trust to any of those chapters, except as provided in RCW
23 6.32.250, 11.96A.190, 19.36.020, 11.98.200 through 11.98.240 (~~and~~),
24 11.95.100 through 11.95.150, and chapter 11.--- RCW (the new chapter
25 created in section 39 of this act). In no event may a trustee be
26 relieved of the duty to act in good faith and with honest judgment or
27 the duty to provide information to beneficiaries as required in this
28 section. Notwithstanding the breadth of discretion granted to a
29 trustee in the terms of the trust, including the use of such terms as
30 "absolute," "sole," or "uncontrolled," the trustee shall exercise a
31 discretionary power in good faith and in accordance with the terms and
32 purposes of the trust and the interests of the beneficiaries.

33 (2) Within sixty days after the date of acceptance of the position
34 of trustee of an irrevocable trust, or the date the trustee of a
35 formerly revocable trust acquires knowledge that the trust has become
36 irrevocable, whether by the death of the trustor or otherwise, the
37 trustee shall give notice of: (a) The existence of the trust, (b) the

1 identity of the trustor or trustors, (c) the trustee's name, address,
2 and telephone number, and (d) the right to request such information as
3 is reasonably necessary to enable the notified person to enforce his or
4 her rights under the trust, to all persons interested in the trust, as
5 defined in RCW 11.96A.030, and who would be entitled to notice under
6 RCW 11.96A.110 and 11.96A.120 if they were a party to judicial
7 proceedings regarding the trust. If any such person is a minor and no
8 guardian has been appointed for such person by any court, then such
9 notice may be given to a parent of the person. If a person otherwise
10 entitled to notice under this section is a charitable organization, and
11 the charitable organization's only interest in the trust is a future
12 interest that may be revoked, then such notice shall instead be given
13 to the attorney general. A trustee who gives notice pursuant to this
14 section satisfies the duty to inform the beneficiaries of the existence
15 of the trust. The notice required under this subsection (2) applies
16 only to irrevocable trusts created after December 31, 2011, and
17 revocable trusts that become irrevocable after December 31, 2011,
18 provided that all common law duties of a trustee to notify
19 beneficiaries applicable to trusts created or that became irrevocable
20 before such date are not affected.

21 (3) A trustee shall keep all persons interested in the trust, as
22 defined in RCW 11.96A.030, and who would be entitled to notice under
23 RCW 11.96A.110 and 11.96A.120 if they were a party to judicial
24 proceedings regarding the trust, reasonably informed about the
25 administration of the trust and of the material facts necessary for
26 them to protect their interests. A report that contains the following
27 is presumed to satisfy the trustee's duty to keep such persons
28 reasonably informed for the relevant period of trust administration:

29 (a) A statement of receipts and disbursements of principal and
30 income that have occurred during the accounting period;

31 (b) A statement of the assets and liabilities of the trust and
32 their values at the beginning and end of the period;

33 (c) The trustee's compensation for the period;

34 (d) The agents hired by the trustee, their relationship to the
35 trustee, if any, and their compensation, for the period;

36 (e) Disclosure of any pledge, mortgage, option, or lease of trust
37 property, or other agreement affecting trust property binding for a

1 period of five years or more that was granted or entered into during
2 the accounting period;

3 (f) Disclosure of all transactions during the period that are
4 equivalent to one of the types of transactions described in section 32
5 of this act or otherwise could have been affected by a conflict between
6 the trustee's fiduciary and personal interests;

7 (g) A statement that the recipient of the account information may
8 petition the superior court pursuant to chapter 11.106 RCW to obtain
9 review of the statement and of acts of the trustee disclosed in the
10 statement; and

11 (h) A statement that claims against the trustee for breach of trust
12 may not be made after the expiration of three years from the date the
13 beneficiary receives the statement.

14 (4) Unless unreasonable under the circumstances, a trustee shall
15 promptly respond to any beneficiary's request for information related
16 to the administration of the trust.

17 (5) If a person entitled to notice under this section requests
18 information reasonably necessary to enable the notified person to
19 enforce his or her rights under the trust, then the trustee must
20 provide such information within sixty days of receipt of such request.
21 Delivery of the entire trust instrument to the persons entitled to
22 notice under this section who request information concerning the terms
23 of the trust reasonably necessary to enable the notified person to
24 enforce his or her rights under the trust is deemed to satisfy the
25 trustee's obligations under this subsection.

26 NEW SECTION. Sec. 13. A new section is added to chapter 11.97 RCW
27 to read as follows:

28 The rules of construction that apply in this state to the
29 interpretation of a will and disposition of property by will also apply
30 as appropriate to the interpretation of the terms of a trust and the
31 disposition of the trust property.

32 **Sec. 14.** RCW 11.98.009 and 1985 c 30 s 40 are each amended to read
33 as follows:

34 Except as provided in this section, this chapter applies to express
35 trusts executed by the trustor after June 10, 1959, and does not apply
36 to resulting trusts, constructive trusts, business trusts where

1 certificates of beneficial interest are issued to the beneficiary,
2 investment trusts, voting trusts, trusts in the nature of mortgages or
3 pledges, (~~(trusts created by the judgment or decree of a court not~~
4 ~~sitting in probate,)~~) liquidation trusts, or trusts for the sole
5 purpose of paying dividends, interest, interest coupons, salaries,
6 wages, pensions or profits, trusts created in deposits in any financial
7 institution pursuant to chapter 30.22 RCW, unless any such trust which
8 is created in writing incorporates this chapter in whole or in part.

9 NEW SECTION. **Sec. 15.** A new section is added to chapter 11.98 RCW
10 to read as follows:

11 METHODS OF CREATING A TRUST. A trust may be created by:

12 (1) Transfer of property to another person as trustee during the
13 trustor's lifetime or by will or other disposition taking effect upon
14 the trustor's death;

15 (2) Declaration by the owner of property that the owner holds
16 identifiable property as trustee; or

17 (3) Exercise of a power of appointment in favor of a trustee.

18 NEW SECTION. **Sec. 16.** A new section is added to chapter 11.98 RCW
19 to read as follows:

20 REQUIREMENTS FOR CREATION. (1) A trust is created only if:

21 (a) The trustor has capacity to create a trust;

22 (b) The trustor indicates an intention to create the trust;

23 (c) The trust has a definite beneficiary or is:

24 (i) A charitable trust;

25 (ii) A trust for the care of an animal, as provided in chapter
26 11.118 RCW; or

27 (iii) A trust for a noncharitable purpose, as provided in section
28 20 of this act;

29 (d) The trustee has duties to perform; and

30 (e) The same person is not the sole trustee and sole beneficiary.

31 (2) A beneficiary is definite if the beneficiary can be ascertained
32 now or in the future, subject to any applicable rule against
33 perpetuities.

34 (3) A power in a trustee to select a beneficiary from an indefinite
35 class is valid, except to the extent that the trustee may distribute
36 trust property to himself or herself. If the power is not exercised

1 within a reasonable time, the power fails and the property subject to
2 the power passes to the persons who would have taken the property had
3 the power not been conferred.

4 NEW SECTION. **Sec. 17.** A new section is added to chapter 11.98 RCW
5 to read as follows:

6 TRUSTS CREATED IN OTHER JURISDICTIONS. A trust not created by will
7 is validly created if its creation complies with the law of the
8 jurisdiction in which the trust instrument was executed, or the law of
9 the jurisdiction in which, at the time of creation or in the case of a
10 revocable trust, at the time the trust became irrevocable:

- 11 (1) The trustor was domiciled, had a residence, or was a national;
- 12 (2) The trustee was domiciled or had a place of business; or
- 13 (3) Any trust property was located.

14 NEW SECTION. **Sec. 18.** A new section is added to chapter 11.98 RCW
15 to read as follows:

16 TRUST PURPOSES. A trust may be created only to the extent its
17 purposes are lawful, not contrary to public policy, and possible to
18 achieve.

19 NEW SECTION. **Sec. 19.** A new section is added to chapter 11.98 RCW
20 to read as follows:

21 EVIDENCE OF ORAL TRUST. Except as required by a statute other than
22 this title, a trust need not be evidenced by a trust instrument, but
23 the creation of an oral trust and its terms may be established only by
24 clear, cogent, and convincing evidence.

25 NEW SECTION. **Sec. 20.** A new section is added to chapter 11.98 RCW
26 to read as follows:

27 NONCHARITABLE TRUST WITHOUT ASCERTAINABLE BENEFICIARY. Except as
28 otherwise provided in chapter 11.118 RCW or by another statute, the
29 following rules apply:

- 30 (1) A trust may be created for a noncharitable purpose without a
31 definite or definitely ascertainable beneficiary or for a noncharitable
32 but otherwise valid purpose to be selected by the trustee. The trust
33 may not be enforced for longer than the time period specified in RCW

1 11.98.130 as the period during which a trust cannot be deemed to
2 violate the rule against perpetuities;

3 (2) A trust authorized by this section may be enforced by a person
4 appointed in the terms of the trust or, if no person is so appointed,
5 by a person appointed by the court; and

6 (3) Property of a trust authorized by this section may be applied
7 only to its intended use, except to the extent the court determines
8 that the value of the trust property exceeds the amount required for
9 the intended use. Except as otherwise provided in the terms of the
10 trust, property not required for the intended use must be distributed
11 to the trustor, if then living, otherwise to the trustor's successors
12 in interest. Successors in interest include the beneficiaries under
13 the trustor's will, if the trustor has a will, or, in the absence of an
14 effective will provision, the trustor's heirs.

15 **Sec. 21.** RCW 11.98.039 and 2005 c 97 s 13 are each amended to read
16 as follows:

17 (1) Where a vacancy occurs in the office of the trustee and there
18 is a successor trustee who is willing to serve as trustee and (a) is
19 named in the governing instrument as successor trustee or (b) has been
20 selected to serve as successor trustee under the procedure established
21 in the governing instrument for the selection of a successor trustee,
22 the outgoing trustee, or any other interested party, shall give notice
23 of such vacancy, whether arising because of the trustee's resignation
24 or because of any other reason, and of the successor trustee's
25 agreement to serve as trustee, to each adult distributee or permissible
26 distributee of trust income or of trust principal or of both trust
27 income and trust principal. If there are no such adults, no notice
28 need be given. The successor trustee named in the governing instrument
29 or selected pursuant to the procedure therefor established in the
30 governing instrument shall be entitled to act as trustee except for
31 good cause or disqualification. The successor trustee shall serve as
32 of the effective date of the discharge of the predecessor trustee as
33 provided in RCW 11.98.041.

34 (2) Where a vacancy exists or occurs in the office of the trustee
35 and there is no successor trustee who is named in the governing
36 instrument or who has been selected to serve as successor trustee under
37 the procedure established in the governing instrument for the selection

1 of a successor trustee, and who is willing to serve as trustee, then
2 all parties with an interest in the trust may agree to a nonjudicial
3 change of the trustee under RCW 11.96A.220. The successor trustee
4 shall serve as of the effective date of the discharge of the
5 predecessor trustee as provided in RCW 11.98.041 or, in circumstances
6 where there is no predecessor trustee, as of the effective date of the
7 trustee's appointment.

8 (3) When there is a desire to name one or more cotrustees to serve
9 with the existing trustee, then all parties with an interest in the
10 trust may agree to the nonjudicial addition of one or more cotrustees
11 under RCW 11.96A.220. The additional cotrustee shall serve as of the
12 effective date of the cotrustee's appointment.

13 (4) Unless subsection (1), (2), or (3) of this section applies, any
14 beneficiary of a trust, the trustor, if alive, or the trustee may
15 petition the superior court having jurisdiction for the appointment or
16 change of a trustee or cotrustee under the procedures provided in RCW
17 11.96A.080 through 11.96A.200: (a) Whenever the office of trustee
18 becomes vacant; (b) upon filing of a petition of resignation by a
19 trustee; or (c) for any other reasonable cause.

20 (5) For purposes of this subsection, the term fiduciary includes
21 both trustee and personal representative.

22 (a) Except as otherwise provided in the governing instrument, a
23 successor fiduciary, absent actual knowledge of a breach of fiduciary
24 duty: (i) Is not liable for any act or omission of a predecessor
25 fiduciary and is not obligated to inquire into the validity or
26 propriety of any such act or omission; (ii) is authorized to accept as
27 conclusively accurate any accounting or statement of assets tendered to
28 the successor fiduciary by a predecessor fiduciary; and (iii) is
29 authorized to receipt only for assets actually delivered and has no
30 duty to make further inquiry as to undisclosed assets of the trust or
31 estate.

32 (b) Nothing in this section relieves a successor fiduciary from
33 liability for retaining improper investments, nor does this section in
34 any way bar the successor fiduciary, trust beneficiaries, or other
35 party in interest from bringing an action against a predecessor
36 fiduciary arising out of the acts or omissions of the predecessor
37 fiduciary, nor does it relieve the successor fiduciary of liability for

1 its own acts or omissions except as specifically stated or authorized
2 in this section.

3 (6) A change of trustee to a foreign trustee does not change the
4 situs of the trust. Transfer of situs of a trust to another
5 jurisdiction requires compliance with section 22 of this act and RCW
6 11.98.045 through 11.98.055.

7 NEW SECTION. Sec. 22. A new section is added to chapter 11.98 RCW
8 to read as follows:

9 SITUS OF TRUST AND GOVERNING LAW. (1) If provisions of a trust
10 instrument designate Washington as the situs of the trust or designate
11 Washington law to govern the trust or any of its terms, then the situs
12 of the trust is Washington provided that one of the following
13 conditions is met:

14 (a) A trustee has a place of business in or a trustee is a resident
15 of Washington; or

16 (b) More than an insignificant part of the trust administration
17 occurs in Washington; or

18 (c) The trustor resides in Washington at the time situs is being
19 established, or resided in Washington at the time the trust became
20 irrevocable; or

21 (d) One or more of the beneficiaries resides in Washington; or

22 (e) An interest in real property located in Washington is an asset
23 of the trust.

24 (2)(a) Unless the trust instrument designates a state other than
25 Washington as the situs of the trust and does not expressly authorize
26 transfer of situs, the trustee may register the trust as a Washington
27 trust if any of the factors in subsection (1)(a) through (e) of this
28 section are present. The trustee shall register the trust by filing
29 with the clerk of the court in any county where venue lies for the
30 trust under RCW 11.96A.050, a statement including the following
31 information:

32 (i) The name and address of the trustee;

33 (ii) The date of the trust, name of the trustor, and name of the
34 trust, if any;

35 (iii) The factor or factors listed in subsection (1)(a) through (e)
36 of this section that are present for the trust and which qualify the
37 trust for registration.

1 (b) Within five days of filing the registration with the court, the
2 trustee shall mail a copy of the registration to each person who would
3 be entitled to notice under RCW 11.97.010 and has not waived notice of
4 the registration, in writing, filed in the cause, together with a
5 notice that must be in substantially the same form as set forth in this
6 section. Persons receiving such notice shall have thirty days from the
7 date of filing the registration to file a petition in the court
8 objecting to such registration and requesting the court to issue an
9 order that Washington is not the proper situs of the trust, and to
10 serve a copy of such petition upon the trustee or the trustee's lawyer.
11 If a petition objecting to the registration is filed within thirty days
12 of the date of filing the registration, the trustee must request the
13 court to fix a time and place for the hearing of the petition and
14 notify by mail, personal service or electronic transmission, if a valid
15 consent to electronic transmission is in effect under the terms of RCW
16 11.96A.110, all persons who were entitled to notice of the registration
17 of the time and place of the hearing, not less than ten days before the
18 hearing on the petition.

19 (c) Unless a person receiving notice of the registration files a
20 petition with the court objecting to the registration within thirty
21 days of the date of filing the registration, the registration shall be
22 deemed the equivalent of an order entered by the court declaring that
23 the situs of the trust is Washington. After expiration of the
24 thirty-day period following filing of the registration, the trustee may
25 obtain a certificate of registration signed by the clerk, and issued
26 under the seal of the court, which may be in the form specified in (d)
27 of this subsection.

28 (d) Notice of registration and certificates of registration may be
29 in the following form:

30 (i) Notice form:

31 NOTICE OF FILING OF REGISTRATION OF [NAME AND DATE OF TRUST] AS A
32 WASHINGTON TRUST

33 NOTICE IS GIVEN that the attached Registration of Trust was filed
34 by the undersigned in the above-entitled court on the day of
35, 20. . .; unless you file a petition in the above-entitled
36 court objecting to such registration and requesting the court to issue
37 an order that Washington is not the proper situs of the trust, and
38 serve a copy thereof upon the trustee or the trustee's lawyer, within

1 thirty days after the date of the filing, the registration will be
2 deemed the equivalent of an order entered by the court declaring that
3 the situs of the trust is Washington.

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

9 (ii) Certificate of Registration:

10 State of Washington, County of
11 In the superior court of the county of

12 Whereas, the attached Registration of Trust was filed with this
13 court on , the attached Notice of Filing Registration of Trust
14 and Affidavit of Mailing Notice of Filing Registration of Trust were
15 filed with this court on , and no objections to such
16 Registration have been filed with this court, the trust known as
17 , under trust agreement dated , between as
18 Trustor and as Trustee, is hereby registered as a Washington
19 trust.

20 Witness my hand and the seal of said court this . . . day of
21, 20

22 (3) If the instrument establishing a trust does not designate
23 Washington as the situs or designate Washington law to apply to the
24 trust, and the trustee of the trust has not registered the trust as
25 allowed in subsection (2) of this section, the situs of the trust is
26 Washington if the conditions specified in this subsection (3) are met.

27 (a) For a testamentary trust, the situs of the trust is Washington
28 if:

- 29 (i) The will was admitted to probate in Washington; or
- 30 (ii) The will has not been admitted to probate in Washington, but
31 any trustee of the trust resides or has a place of business in
32 Washington, any beneficiary entitled to notice under RCW 11.97.010
33 resides in Washington, or any real property that is an asset of the
34 trust is located in Washington.

35 (b) For an intervivos trust where the trustor is domiciled in
36 Washington either when the trust becomes irrevocable or, in the case of
37 a revocable trust, when judicial proceedings under chapter 11.96A RCW
38 are commenced, the situs of the trust is Washington if:

1 (i) The trustor is living and Washington is the trustor's domicile
2 or any of the trustees reside in or have a place of business in
3 Washington; or

4 (ii) The trustor is deceased, situs has not previously been
5 established by any court proceeding, and:

6 (A) The trustor's will was admitted to probate in Washington;

7 (B) The trustor's will was not admitted to probate in Washington,
8 but any person entitled to notice under RCW 11.97.010 resides in
9 Washington, any trustee resides or has a place of business in
10 Washington, or any real property that is an asset of the trust is
11 located in Washington.

12 (c) If the situs of the trust is not determined under (a) or (b) of
13 this subsection, the determination regarding the situs of the trust is
14 a matter for purposes of RCW 11.96A.030. Whether Washington is the
15 situs shall be determined by a court in a judicial proceeding conducted
16 under RCW 11.96A.080 if:

17 (i) A trustee has a place of business in or a trustee is a resident
18 of Washington; or

19 (ii) More than an insignificant part of the trust administration
20 occurs in Washington; or

21 (iii) One or more of the beneficiaries resides in Washington; or

22 (iv) An interest in real property located in Washington is an asset
23 of the trust.

24 (d) Determination of situs under (c) of this subsection (3) cannot
25 be made by nonjudicial agreement under RCW 11.96A.220.

26 **Sec. 23.** RCW 11.98.045 and 1985 c 30 s 45 are each amended to read
27 as follows:

28 (1) (~~A trustee may transfer trust assets to a trustee in another~~
29 ~~jurisdiction or may transfer the place of administration of a trust to~~
30 ~~another jurisdiction)) If a trust is a Washington trust under section
31 22 of this act, a trustee may transfer the situs of the trust to a
32 jurisdiction other than Washington if the trust instrument so provides
33 or in accordance with RCW 11.98.051 or 11.98.055.~~

34 (2) Transfer under this section is permitted only if:

35 (a) The transfer would facilitate the economic and convenient
36 administration of the trust;

1 (b) The transfer would not materially impair the interests of the
2 beneficiaries or others interested in the trust;

3 (c) The transfer does not violate the terms of the trust; ~~((and))~~

4 (d) The new trustee is qualified and able to administer the trust
5 or such assets on the terms set forth in the trust; and

6 (e) The trust meets at least one condition for situs listed in
7 section 22(1) of this act with respect to the new jurisdiction.

8 (3) Acceptance of such transfer by a foreign corporate trustee or
9 trust company under this section~~((7))~~ or RCW 11.98.051~~((7))~~ or
10 11.98.055 shall not be construed to be doing a "trust business" as
11 described in RCW 30.08.150(9).

12 **Sec. 24.** RCW 11.98.051 and 1999 c 42 s 619 are each amended to
13 read as follows:

14 (1) The trustee may transfer ~~((trust assets or the place of~~
15 ~~administration))~~ trust situs (a) in accordance with RCW 11.96A.220~~((-~~
16 ~~In addition, the trustee shall give))~~; or (b) by giving written notice
17 to those persons entitled to notice as provided for under RCW
18 11.96A.110 and to the attorney general in the case of a charitable
19 trust subject to chapter 11.110 RCW not less than sixty days before
20 initiating the transfer. The notice ~~((shall))~~ must:

21 (a) State the name and mailing address of the trustee;

22 (b) Include a copy of the governing instrument of the trust;

23 (c) Include a statement of assets and liabilities of the trust
24 dated within ninety days of the notice;

25 (d) State the name and mailing address of the trustee to whom the
26 ~~((assets or administration))~~ trust will be transferred together with
27 evidence that the trustee has agreed to accept the ~~((assets or))~~ trust
28 ~~((administration))~~ in the manner provided by law of the new ~~((place of~~
29 ~~administration))~~ situs. The notice ~~((shall))~~ must also contain a
30 statement of the trustee's qualifications and the name of the court, if
31 any, having jurisdiction of that trustee or in which a proceeding with
32 respect to the administration of the trust may be heard;

33 (e) State the facts supporting the requirements of RCW
34 11.98.045(2);

35 (f) Advise the beneficiaries of the ~~((right to petition for~~
36 ~~judicial determination of the proposed transfer as provided in RCW~~

1 ~~11.98.055~~) date, not less than sixty days after the giving of the
2 notice, by which the beneficiary must notify the trustee of an
3 objection to the proposed transfer; and

4 (g) Include a form on which the recipient may indicate consent or
5 objection to the proposed transfer.

6 (2) If the ~~((trustee receives written consent to the proposed~~
7 ~~transfer from all persons entitled to notice))~~ date upon which the
8 beneficiaries' right to object to the transfer expires without receipt
9 by the trustee of any objection, the trustee may transfer the trust
10 ~~((assets or place of administration))~~ situs as provided in the notice.
11 ~~((Transfer in accordance with the notice is a full discharge of the~~
12 ~~trustee's duties in relation to all property referred to therein. Any~~
13 ~~person dealing with the trustee is entitled to rely on the authority of~~
14 ~~the trustee to act and is not obliged to inquire into the validity or~~
15 ~~propriety of the transfer.))~~ If the trust was registered under RCW
16 11.98.045(2), the trustee must file a notice of transfer of situs and
17 termination of registration with the court of the county where the
18 trust was registered.

19 (3) The authority of a trustee under this section to transfer a
20 trust's situs terminates if a beneficiary notifies the trustee of an
21 objection to the proposed transfer on or before the date specified in
22 the notice.

23 (4) A change of trust situs does not authorize a change of trustee.
24 Change of trustee of a trust requires compliance with RCW 11.98.039.

25 **Sec. 25.** RCW 11.98.055 and 1999 c 42 s 620 are each amended to
26 read as follows:

27 (1) Any trustee, beneficiary, or beneficiary representative may
28 petition the superior court of the county of the situs of the trust for
29 a transfer of ~~((trust assets or transfer of the place of~~
30 ~~administration))~~ the situs of a trust in accordance with RCW 11.96A.080
31 through 11.96A.200.

32 (2) At the conclusion of the hearing, if the court finds the
33 requirements of RCW 11.98.045(2) have been satisfied, it may direct the
34 transfer of ~~((trust assets or the place of trust administration))~~ the
35 situs of a trust on such terms and conditions as it deems appropriate.
36 The court in its discretion may provide for payment from the trust of
37 reasonable fees and expenses for any party to the proceeding. Delivery

1 of trust assets in accordance with the court's order is a full
2 discharge of the trustee's duties in relation to all transferred
3 property.

4 (3) A change of trust situs does not authorize a change of trustee.
5 Change of trustee of a trust requires compliance with RCW 11.98.039.

6 **Sec. 26.** RCW 11.98.070 and 2010 c 8 s 2091 are each amended to
7 read as follows:

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

13 (1) Receive property from any source as additions to the trust or
14 any fund of the trust to be held and administered under the provisions
15 of the trust;

16 (2) Sell on credit;

17 (3) Grant, purchase or exercise options;

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

20 (5) Deposit stock or other corporate securities with any protective
21 or other similar committee;

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

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

25 (8) Register and hold any stocks, securities, or other property in
26 the name of a nominee or nominees without mention of the trust
27 relationship, provided the trustee or trustees are liable for any loss
28 occasioned by the acts of any nominee, except that this subsection
29 shall not apply to situations covered by subsection (31) of this
30 section;

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

36 (10) Subdivide, develop, dedicate to public use, make or obtain the

1 vacation of public plats, adjust boundaries, partition real property,
2 and on exchange or partition to adjust differences in valuation by
3 giving or receiving money or money's worth;

4 (11) Compromise or submit claims to arbitration;

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

8 (13) Make loans, either secured or unsecured, at such interest as
9 the trustee may determine to any person, including any beneficiary of
10 a trust, except that no trustee who is a beneficiary of a trust may
11 participate in decisions regarding loans to such beneficiary from the
12 trust(~~(, unless the loan is as described in RCW 83.110.020(2),)~~) and
13 then only to the extent of the loan, and also except that if a
14 beneficiary or the grantor of a trust has the power to change a trustee
15 of the trust, the power to loan shall be limited to loans at a
16 reasonable rate of interest and for adequate security;

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

19 (15) Select any part of the trust estate in satisfaction of any
20 partition or distribution, in kind, in money or both; make nonpro rata
21 distributions of property in kind; allocate particular assets or
22 portions of them or undivided interests in them to any one or more of
23 the beneficiaries without regard to the income tax basis of specific
24 property allocated to any beneficiary and without any obligation to
25 make an equitable adjustment;

26 (16)(a) Pay ((~~any income or principal distributable to or for the~~
27 ~~use of any beneficiary, whether that beneficiary is under legal~~
28 ~~disability, to the beneficiary or for the beneficiary's use to the~~
29 ~~beneficiary's parent, guardian, custodian under the uniform gifts to~~
30 ~~minors act of any state, person with whom he or she resides, or third~~
31 ~~person)) an amount distributable to a beneficiary who is under a legal~~
32 ~~disability or who the trustee reasonably believes is incapacitated, by~~
33 ~~paying it directly to the beneficiary or applying it for the~~
34 ~~beneficiary's benefit, or by:~~

35 (i) Paying it to the beneficiary's guardian;

36 (ii) Paying it to the beneficiary's custodian under chapter 11.114
37 RCW, and, for that purpose, creating a custodianship;

1 (iii) If the trustee does not know of a guardian or custodian,
2 paying it to an adult relative or other person having legal or physical
3 care or custody of the beneficiary, with instructions to expend the
4 funds on the beneficiary's behalf; or

5 (iv) Managing it as a separate fund on the beneficiary's behalf,
6 subject to the beneficiary's continuing right to withdraw the
7 distribution.

8 (b) If the trustee pays any amount to a third party under (a)(i)
9 through (iii) of this subsection, the trustee has no further
10 obligations regarding the amounts so paid;

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

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

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

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

23 (21) Manage any business interest, including any farm or ranch
24 interest, regardless of form, received by the trustee from the trustor
25 of the trust, as a result of the death of a person, or by gratuitous
26 transfer from any other transferor, and with respect to the business
27 interest, have the following powers:

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

31 (b) To enlarge or diminish the scope or nature or the activities of
32 any business;

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

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

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

4 (f) To leave to the discretion of the trustee the manner and degree
5 of the trustee's active participation in the management of the
6 business, and the trustee is authorized to delegate all or any part of
7 the trustee's power to supervise, manage, or operate to such persons as
8 the trustee may select, including any partner, associate, director,
9 officer, or employee of the business; and also including electing or
10 employing directors, officers, or employees of the trustee to take part
11 in the management of the business as directors or officers or
12 otherwise, and to pay that person reasonable compensation for services
13 without regard to the fees payable to the trustee;

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

18 (h) To cause or agree that surplus be accumulated or that dividends
19 be paid;

20 (i) To accept as correct financial or other statements rendered by
21 any accountant for any sole proprietorship or by any partnership or
22 corporation as to matters pertaining to the business except upon actual
23 notice to the contrary;

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

28 (k) To exercise with respect to the retention, continuance, or
29 disposition of any such business all the rights and powers that the
30 trustor of the trust would have if alive at the time of the exercise,
31 including all powers as are conferred on the trustee by law or as are
32 necessary to enable the trustee to administer the trust in accordance
33 with the instrument governing the trust, subject to any limitations
34 provided for in the instrument; and

35 (l) To satisfy contractual and tort liabilities arising out of an
36 unincorporated business, including any partnership, first out of the
37 business and second out of the estate or trust, but in no event may
38 there be a liability of the trustee, except as provided in RCW

1 11.98.110 (2) and (4), and if the trustee is liable, the trustee is
2 entitled to indemnification from the business and the trust,
3 respectively;

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

8 (23) Cause or participate in, directly or indirectly, the
9 formation, reorganization, merger, consolidation, dissolution, or other
10 change in the form of any corporate or other business undertaking where
11 trust property may be affected and retain any property received
12 pursuant to the change;

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

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

19 (26) Pay reasonable compensation to the trustee or co-trustees
20 considering all circumstances including the time, effort, skill, and
21 responsibility involved in the performance of services by the trustee
22 and reimburse the trustee, with interest as appropriate, for expenses
23 that were properly incurred in the administration of the trust;

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

30 (a) A trustee may not delegate all of the trustee's duties and
31 responsibilities;

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

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

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

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

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

12 (30) Issue proxies to any adult beneficiary of a trust for the
13 purpose of voting stock of a corporation acting as the trustee of the
14 trust;

15 (31) Place all or any part of the securities at any time held by
16 the trustee in the care and custody of any bank, trust company, or
17 member firm of the New York Stock Exchange with no obligation while the
18 securities are so deposited to inspect or verify the same and with no
19 responsibility for any loss or misapplication by the bank, trust
20 company, or firm, so long as the bank, trust company, or firm was
21 selected and retained with reasonable care, and have all stocks and
22 registered securities placed in the name of the bank, trust company, or
23 firm, or in the name of its nominee, and to appoint such bank, trust
24 company, or firm agent as attorney to collect, receive, receipt for,
25 and disburse any income, and generally may perform, but is under no
26 requirement to perform, the duties and services incident to a so-called
27 "custodian" account;

28 (32) Determine at any time that the corpus of any trust is
29 insufficient to implement the intent of the trust, and upon this
30 determination by the trustee, terminate the trust by distribution of
31 the trust to the current income beneficiary or beneficiaries of the
32 trust or their legal representatives, except that this determination
33 may only be made by the trustee if the trustee is neither the grantor
34 nor the beneficiary of the trust, and if the trust has no charitable
35 beneficiary;

36 (33) Continue to be a party to any existing voting trust agreement
37 or enter into any new voting trust agreement or renew an existing

1 voting trust agreement with respect to any assets contained in trust;
2 (~~and~~)

3 (34)(a) Donate a qualified conservation easement, as defined by
4 (~~section~~) 26 U.S.C. Sec. 2031(c) of the federal internal revenue
5 code, on any real property, or consent to the donation of a qualified
6 conservation easement on any real property by a personal representative
7 of an estate of which the trustee is a devisee, to obtain the benefit
8 of the estate tax exclusion allowed under (~~section~~) 26 U.S.C. Sec.
9 2031(c) of the federal internal revenue code or the deduction allowed
10 under (~~section~~) 26 U.S.C. Sec. 2055(f) of the federal internal
11 revenue code as long as:

12 (i)(A) The governing instrument authorizes the donation of a
13 qualified conservation easement on the real property; or

14 (B) Each beneficiary that may be affected by the qualified
15 conservation easement consents to the donation under the provisions of
16 chapter 11.96A RCW; and

17 (ii) The donation of a qualified conservation easement will not
18 result in the insolvency of the decedent's estate.

19 (b) The authority granted under this subsection includes the
20 authority to amend a previously donated qualified conservation
21 easement, as defined under (~~section~~) 26 U.S.C. Sec. 2031(c)(8)(B) of
22 the federal internal revenue code, and to amend a previously donated
23 unqualified conservation easement for the purpose of making the
24 easement a qualified conservation easement under (~~section~~) 26 U.S.C.
25 Sec. 2031(c)(8)(B);

26 (35) Pay or contest any claim, settle a claim by or against the
27 trust, and release, in whole or in part, a claim belonging to the
28 trust;

29 (36) Exercise elections with respect to federal, state, and local
30 taxes;

31 (37) Prosecute or defend an action, claim, or judicial proceeding
32 in any jurisdiction to protect trust property and the trustee in the
33 performance of the trustee's duties;

34 (38) On termination of the trust, exercise the powers appropriate
35 to wind up the administration of the trust and distribute the trust
36 property to the persons entitled to it; and

37 (39) Select a mode of payment under any employee benefit or
38 retirement plan, annuity, or life insurance payable to the trustee,

1 exercise rights thereunder, including exercise of the right to
2 indemnification for expenses and against liabilities, and take
3 appropriate action to collect the proceeds.

4 NEW SECTION. **Sec. 27.** A new section is added to chapter 11.98 RCW
5 to read as follows:

6 DISTRIBUTION UPON TERMINATION. (1) Upon termination or partial
7 termination of a trust, the trustee may send, by personal service,
8 certified mail with return receipt requested, or in an electronic
9 transmission if there is a consent of the recipient to electronic
10 transmission then in effect under the terms of RCW 11.96A.110, to the
11 beneficiaries a proposed plan to distribute existing trust assets. The
12 right of any beneficiary to object to the plan to distribute existing
13 trust assets, including the right to object to nonpro rata
14 distributions authorized under RCW 11.98.070(15), terminates if the
15 beneficiary does not notify the trustee of an objection within thirty
16 days after the proposal was sent but only if the proposal informed the
17 beneficiary of the right to object and of the time allowed for
18 objection.

19 (2) Upon the occurrence of an event terminating or partially
20 terminating a trust, the trustee shall proceed expeditiously to
21 distribute the trust property to the persons entitled to it, subject to
22 the right of the trustee to retain a reasonable reserve for the payment
23 of debts, expenses, and taxes.

24 NEW SECTION. **Sec. 28.** A new section is added to chapter 11.98 RCW
25 to read as follows:

26 NONLIABILITY OF THIRD PERSONS WITHOUT KNOWLEDGE OF BREACH. (1) A
27 person other than a beneficiary who in good faith assists a trustee, or
28 who in good faith and for value deals with a trustee, without knowledge
29 that the trustee is exceeding or improperly exercising the trustee's
30 powers is protected from liability as if the trustee properly exercised
31 the power.

32 (2) A person other than a beneficiary who in good faith deals with
33 a trustee is not required to inquire into the extent of the trustee's
34 powers or the propriety of their exercise.

35 (3) A person who in good faith delivers assets to a trustee need
36 not ensure their proper application.

1 (4) A person other than a beneficiary who in good faith assists a
2 former trustee, or who in good faith and for value deals with a former
3 trustee, without knowledge that the trusteeship has terminated is
4 protected from liability as if the former trustee were still a trustee.

5 (5) Comparable protective provisions of other laws relating to
6 commercial transactions or transfer of securities by fiduciaries
7 prevail over the protection provided by this section.

8 NEW SECTION. **Sec. 29.** A new section is added to chapter 11.98 RCW
9 to read as follows:

10 EXCULPATION OF TRUSTEE. (1) An exculpatory term which was inserted
11 as the result of an abuse of a fiduciary or confidential relationship
12 between the trustor and the trustee is unenforceable.

13 (2) An exculpatory term drafted or caused to be drafted by the
14 trustee is invalid as an abuse of a fiduciary or confidential
15 relationship unless the trustee proves that the exculpatory term is
16 fair under the circumstances and that its existence and contents were
17 adequately communicated to the trustor.

18 NEW SECTION. **Sec. 30.** A new section is added to chapter 11.98 RCW
19 to read as follows:

20 BENEFICIARY'S CONSENT, RELEASE, OR RATIFICATION. A trustee is not
21 liable to a beneficiary for breach of trust if the beneficiary
22 consented to the conduct constituting the breach, released the trustee
23 from liability for the breach, or ratified the transaction constituting
24 the breach, unless:

25 (1) The consent, release, or ratification of the beneficiary was
26 induced by improper conduct of the trustee; or

27 (2) At the time of the consent, release, or ratification, the
28 beneficiary did not know of the beneficiary's rights or of the material
29 facts relating to the breach.

30 NEW SECTION. **Sec. 31.** A new section is added to chapter 11.98 RCW
31 to read as follows:

32 CERTIFICATION OF TRUST. (1) Instead of furnishing a copy of the
33 trust instrument to a person other than a beneficiary, the trustee may
34 furnish to the person a certification of trust containing the following
35 information:

- 1 (a) That the trust exists and the date the trust instrument was
2 executed;
- 3 (b) The identity of the trustor;
- 4 (c) The identity and address of the currently acting trustee;
- 5 (d) Relevant powers of the trustee;
- 6 (e) The revocability or irrevocability of the trust and the
7 identity of any person holding a power to revoke the trust;
- 8 (f) The authority of cotrustees to sign or otherwise authenticate
9 and whether all or less than all are required in order to exercise
10 powers of the trustee; and
- 11 (g) The name of the trust or the titling of the trust property.
- 12 (2) A certification of trust may be signed or otherwise
13 authenticated by any trustee or by an attorney for the trust.
- 14 (3) A certification of trust must state that the trust has not been
15 revoked, modified, or amended in any manner that would cause the
16 representations contained in the certification of trust to be
17 incorrect.
- 18 (4) A certification of trust need not contain the dispositive terms
19 of a trust.
- 20 (5) A recipient of a certification of trust may require the trustee
21 to furnish copies of those excerpts from the original trust instrument
22 and later amendments which designate the trustee and confer upon the
23 trustee the power to act in the pending transaction or any other
24 reasonable information.
- 25 (6) A person who acts in reliance upon a certification of trust
26 without knowledge that the representations contained therein are
27 incorrect is not liable to any person for so acting and may assume
28 without inquiry the existence of the facts contained in the
29 certification. Knowledge of the terms of the trust may not be inferred
30 solely from the fact that a copy of all or part of the trust instrument
31 is held by the person relying upon the certification.
- 32 (7) A person who in good faith enters into a transaction in
33 reliance upon a certification of trust may enforce the transaction
34 against the trust property as if the representations contained in the
35 certification were correct.
- 36 (8) A person making a demand for the trust instrument in addition
37 to a certification of trust or excerpts is liable for damages,

1 including reasonable attorney fees, if the court determines that the
2 person did not act in good faith in demanding the trust instrument.

3 (9) This section does not limit the right of a person to obtain a
4 copy of the trust instrument in a judicial proceeding concerning the
5 trust.

6 NEW SECTION. **Sec. 32.** A new section is added to chapter 11.98 RCW
7 to read as follows:

8 DUTY OF LOYALTY. (1) A trustee shall administer the trust solely
9 in the interests of the beneficiaries.

10 (2) Subject to the rights of persons dealing with or assisting the
11 trustee as provided in RCW 11.98.090, a sale, encumbrance, or other
12 transaction involving the investment or management of trust property
13 entered into by the trustee for the trustee's own personal account or
14 which is otherwise affected by a conflict between the trustee's
15 fiduciary and personal interests is voidable by a beneficiary affected
16 by the transaction unless:

17 (a) The transaction was authorized by the terms of the trust;

18 (b) The transaction was approved by the court or approved in a
19 nonjudicial binding agreement in compliance with RCW 11.96A.210 through
20 11.96A.250;

21 (c) The beneficiary did not commence a judicial proceeding within
22 the time allowed by RCW 11.96A.070;

23 (d) The beneficiary consented to the trustee's conduct, ratified
24 the transaction, or released the trustee in compliance with section 30
25 of this act; or

26 (e) The transaction involves a contract entered into or claim
27 acquired by the trustee before the person became or contemplated
28 becoming trustee.

29 (3)(a) A sale, encumbrance, or other transaction involving the
30 investment or management of trust property is presumed to be "otherwise
31 affected" by a conflict between fiduciary and personal interests under
32 this section if it is entered into by the trustee with:

33 (i) The trustee's spouse or registered domestic partner;

34 (ii) The trustee's descendants, siblings, parents, or their spouses
35 or registered domestic partners;

36 (iii) An agent or attorney of the trustee; or

1 (iv) A corporation or other person or enterprise in which the
2 trustee, or a person that owns a significant interest in the trustee,
3 has an interest that might affect the trustee's best judgment.

4 (b) The presumption is rebutted if the trustee establishes that the
5 conflict did not adversely affect the interests of the beneficiaries.

6 (4) A sale, encumbrance, or other transaction involving the
7 investment or management of trust property entered into by the trustee
8 for the trustee's own personal account that is voidable under
9 subsection (2) of this section may be voided by a beneficiary without
10 further proof.

11 (5) An investment by a trustee in securities of an investment
12 company or investment trust to which the trustee, or its affiliate,
13 provides services in a capacity other than as trustee is not presumed
14 to be affected by a conflict between personal and fiduciary interests
15 if the investment complies with the prudent investor rule of chapter
16 11.100 RCW. In addition to its compensation for acting as trustee, the
17 trustee may be compensated by the investment company or investment
18 trust for providing those services out of fees charged to the trust.
19 If the trustee receives compensation from the investment company or
20 investment trust for providing investment advisory or investment
21 management services, the trustee must at least annually notify the
22 persons entitled under RCW 11.106.020 to receive a copy of the
23 trustee's annual report of the rate and method by which that
24 compensation was determined.

25 (6) The following transactions, if fair to the beneficiaries,
26 cannot be voided under this section:

27 (a) An agreement between a trustee and a beneficiary relating to
28 the appointment or compensation of the trustee;

29 (b) Payment of reasonable compensation to the trustee and any
30 affiliate providing services to the trust, provided total compensation
31 is reasonable;

32 (c) A transaction between a trust and another trust, decedent's
33 estate, or guardianship of which the trustee is a fiduciary or in which
34 a beneficiary has an interest;

35 (d) A deposit of trust money in a regulated financial-service
36 institution operated by the trustee or its affiliate;

37 (e) A delegation and any transaction made pursuant to the

1 delegation from a trustee to an agent that is affiliated or associated
2 with the trustee; or

3 (f) Any loan from the trustee or its affiliate.

4 (7) The court may appoint a special fiduciary to make a decision
5 with respect to any proposed transaction that might violate this
6 section if entered into by the trustee.

7 (8) If a trust has two or more beneficiaries, the trustee shall act
8 impartially in administering the trust and distributing the trust
9 property, giving due regard to the beneficiaries' respective interests.

10 NEW SECTION. **Sec. 33.** A new section is added to chapter 11.98 RCW
11 to read as follows:

12 DAMAGES FOR BREACH OF TRUST. (1) A trustee who commits a breach of
13 trust is liable for the greater of:

14 (a) The amount required to restore the value of the trust property
15 and trust distributions to what they would have been had the breach not
16 occurred; or

17 (b) The profit the trustee made by reason of the breach.

18 (2) Except as otherwise provided in this subsection, if more than
19 one trustee is liable to the beneficiaries for a breach of trust, a
20 trustee is entitled to contribution from the other trustee or trustees.
21 A trustee is not entitled to contribution if the trustee was
22 substantially more at fault than another trustee or if the trustee
23 committed the breach of trust in bad faith or with reckless
24 indifference to the purposes of the trust or the interests of the
25 beneficiaries. A trustee who received a benefit from the breach of
26 trust is not entitled to contribution from another trustee to the
27 extent of the benefit received.

28 **Sec. 34.** RCW 11.100.090 and 1985 c 30 s 75 are each amended to
29 read as follows:

30 Unless the instrument creating the trust expressly provides to the
31 contrary and except as authorized in section 32 of this act, any
32 fiduciary in carrying out the obligations of the trust, may not buy or
33 sell investments from or to himself, herself, or itself or any
34 affiliated or subsidiary company or association. This section shall
35 not be construed as prohibiting the trustee's powers under RCW
36 11.98.070(12).

1 NEW SECTION. **Sec. 35.** CAPACITY OF TRUSTOR OF REVOCABLE TRUST.

2 The capacity required to create, amend, revoke, or add property to a
3 revocable trust, or to direct the actions of the trustee of a revocable
4 trust, is the same as that required to make a will.

5 NEW SECTION. **Sec. 36.** REVOCATION OR AMENDMENT OF REVOCABLE TRUST.

6 (1) Unless the terms of a trust expressly provide that the trust is
7 revocable, the trustor may not revoke or amend the trust.

8 (2) If a revocable trust is created or funded by more than one
9 trustor and unless the trust agreement provides otherwise:

10 (a) To the extent the trust consists of community property, the
11 trust may be revoked by either spouse or either domestic partner acting
12 alone but may be amended only by joint action of both spouses or both
13 domestic partners;

14 (b) To the extent the trust consists of property other than
15 community property, each trustor may revoke or amend the trust with
16 regard to the portion of the trust property attributable to that
17 trustor's contribution;

18 (c) The character of community property or separate property is
19 unaffected by its transfer to and from a revocable trust; and

20 (d) Upon the revocation or amendment of the trust by fewer than all
21 of the trustors, the trustee shall promptly notify the other trustors
22 of the revocation or amendment.

23 (3) The trustor may revoke or amend a revocable trust:

24 (a) By substantial compliance with a method provided in the terms
25 of the trust; or

26 (b)(i) If the terms of the trust do not provide a method or the
27 method provided in the terms is not expressly made exclusive, by:

28 (A) A later will or codicil that expressly refers to the trust or
29 specifically devises property that would otherwise have passed
30 according to the terms of the trust; or

31 (B) A written instrument signed by the trustor evidencing intent to
32 revoke or amend.

33 (ii) The requirements of chapter 11.11 RCW do not apply to
34 revocation or amendment of a revocable trust under (b)(i) of this
35 subsection.

36 (4) Upon revocation of a revocable trust, the trustee shall deliver
37 the trust property as the trustor directs.

1 (5) A trustor's powers with respect to revocation, amendment, or
2 distribution of trust property may be exercised by an agent under a
3 power of attorney only to the extent expressly authorized by the terms
4 of the power, as provided in RCW 11.94.050(1) and to the extent
5 consistent with or expressly authorized by the trust agreement.

6 (6) A guardian of the trustor may exercise a trustor's powers with
7 respect to revocation, amendment, or distribution of trust property
8 only with the approval of the court supervising the guardianship
9 pursuant to RCW 11.92.140.

10 (7) A trustee who does not know that a trust has been revoked or
11 amended is not liable to the trustor or trustor's successors in
12 interest for distributions made and other actions taken on the
13 assumption that the trust had not been amended or revoked.

14 (8) This section does not limit or affect operation of RCW
15 11.96A.220 through 11.96A.240.

16 NEW SECTION. **Sec. 37.** TRUSTOR'S POWERS--POWERS OF WITHDRAWAL.
17 While a trust is revocable by the trustor, rights of the beneficiaries
18 are subject to the control of, and the duties of the trustee are owed
19 exclusively to, the trustor. If a revocable trust has more than one
20 trustor, the duties of the trustee are owed to all of the trustors
21 having the right to revoke the trust.

22 NEW SECTION. **Sec. 38.** LIMITATION ON ACTION CONTESTING VALIDITY OF
23 REVOCABLE TRUST--DISTRIBUTION OF TRUST PROPERTY. (1) A person may
24 commence a judicial proceeding to contest the validity of a trust that
25 was revocable at the trustor's death within the earlier of:

26 (a) Twenty-four months after the trustor's death; or

27 (b) Four months after the trustee sent to the person by personal
28 service, mail, or in an electronic transmission if there is a consent
29 of the recipient to electronic transmission then in effect under the
30 terms of RCW 11.96A.110, a notice with the information required in RCW
31 11.97.010, and notice of the time allowed for commencing a proceeding.

32 (2) Upon the death of the trustor of a trust that was revocable at
33 the trustor's death, the trustee may proceed to distribute the trust
34 property in accordance with the terms of the trust, unless:

35 (a) The trustee knows of a pending judicial proceeding contesting
36 the validity of the trust; or

1 (b) A potential contestant has notified the trustee of a possible
2 judicial proceeding to contest the trust and a judicial proceeding is
3 commenced within sixty days after the contestant sent the notification.

4 (3) A beneficiary of a trust that is determined to have been
5 invalid is liable to return any distribution received.

6 NEW SECTION. **Sec. 39.** Sections 35 through 38 of this act
7 constitute a new chapter in Title 11 RCW.

8 NEW SECTION. **Sec. 40.** APPLICATION. Except as otherwise provided
9 in this act:

10 (1) This act applies to all trusts created before, on, or after
11 January 1, 2012;

12 (2) This act applies to all judicial proceedings concerning trusts
13 commenced on or after January 1, 2012;

14 (3) Any rule of construction or presumption provided in this act
15 applies to trust instruments executed before January 1, 2012, unless
16 there is a clear indication of a contrary intent in the terms of the
17 trust;

18 (4) An action taken before January 1, 2012, is not affected by this
19 act; and

20 (5) If a right is acquired, extinguished, or barred upon the
21 expiration of a prescribed period that has commenced to run under any
22 other statute before January 1, 2012, that statute continues to apply
23 to the right even if it has been repealed or superseded.

24 NEW SECTION. **Sec. 41.** EFFECTIVE DATE. This act takes effect
25 January 1, 2012."

SHB 1051 - S COMM AMD
By Committee on Judiciary

ADOPTED 04/06/2011

26 On page 1, line 1 of the title, after "estates;" strike the
27 remainder of the title and insert "amending RCW 11.02.005, 11.28.237,

1 11.68.090, 11.94.050, 11.96A.030, 11.96A.050, 11.96A.070, 11.96A.110,
2 11.96A.120, 11.97.010, 11.98.009, 11.98.039, 11.98.045, 11.98.051,
3 11.98.055, 11.98.070, and 11.100.090; adding new sections to chapter
4 11.96A RCW; adding a new section to chapter 11.97 RCW; adding new
5 sections to chapter 11.98 RCW; adding a new chapter to Title 11 RCW;
6 creating a new section; and providing an effective date."

EFFECT: Provides that upon termination of a trust, the notice a trustee sends to a beneficiary detailing the proposed plan to distribute existing trust assets may be sent by certified mail with return receipt requested, instead of by standard postal mail.

--- END ---