

SB 5344 - H COMM AMD
By Committee on Judiciary

ADOPTED 04/15/2013

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

3 "Sec. 1. RCW 11.36.010 and 1983 c 51 s 1 are each amended to read
4 as follows:

5 (1) Except as provided in subsections (2), (3), and (4) of this
6 section, the following persons are not qualified to act as personal
7 representatives: Corporations, limited liability companies, limited
8 liability partnerships, minors, persons of unsound mind, or persons who
9 have been convicted of (a) any felony or (~~of a misdemeanor~~) (b) any
10 crime involving moral turpitude(~~(: PROVIDED, That)~~).

11 (2) Trust companies regularly organized under the laws of this
12 state and national banks when authorized so to do may act as the
13 personal representative of (~~decedents' or incompetents' estates~~) an
14 individual's estate or of the estate of an incapacitated person upon
15 petition of any person having a right to such appointment and may act
16 as (~~executors~~) personal representatives or guardians when so
17 appointed by will(~~(: PROVIDED FURTHER, That professional service~~
18 ~~corporations regularly organized under the laws of this state whose~~
19 ~~shareholder or shareholders are exclusively attorneys may act as~~
20 ~~personal representatives~~)). No trust company or national bank may
21 qualify as such (~~executor~~) personal representative or guardian under
22 any will hereafter drawn by it or its agents or employees, and no
23 salaried attorney of any such company may be allowed any attorney fee
24 for probating any such will or in relation to the administration or
25 settlement of any such estate, and no part of any attorney fee may
26 inure, directly or indirectly, to the benefit of any trust company or
27 national bank.

28 (3) Professional service corporations, professional limited
29 liability companies, or limited liability partnerships, that are duly

1 organized under the laws of this state and whose shareholders, members,
2 or partners, respectively, are exclusively attorneys, may act as
3 personal representatives.

4 (4) Any nonprofit corporation may act as personal representative if
5 the articles of incorporation or bylaws of that corporation permit the
6 action and the corporation is in compliance with all applicable
7 provisions of Title 24 RCW.

8 (5) When any person to whom letters testamentary or of
9 administration have been issued becomes disqualified to act because of
10 becoming of unsound mind or being convicted of (a) any felony or (b)
11 any crime ((or misdemeanor)) involving moral turpitude, the court
12 having jurisdiction ((shall)) must revoke his or her letters.

13 (6) A nonresident may be appointed to act as personal
14 representative if the nonresident appoints an agent who is a resident
15 of the county where such estate is being probated or who is an attorney
16 of record of the estate, upon whom service of all papers may be made;
17 such appointment to be made in writing and filed by the clerk with
18 other papers of such estate; and, unless bond has been waived as
19 provided by RCW 11.28.185, such nonresident personal representative
20 ((shall)) must file a bond to be approved by the court.

21 **Sec. 2.** RCW 11.36.021 and 1991 c 72 s 1 are each amended to read
22 as follows:

- 23 (1) The following may serve as trustees:
 - 24 (a) Any suitable persons over the age of eighteen years, if not
 - 25 otherwise disqualified;
 - 26 (b) Any trust company regularly organized under the laws of this
 - 27 state and national banks when authorized to do so;
 - 28 (c) Any nonprofit corporation, if the articles of incorporation or
 - 29 bylaws of that corporation permit the action and if the corporation is
 - 30 in compliance with all applicable provisions of Title 24 RCW;
 - 31 (d) Any professional service corporations ((regularly)),
 - 32 professional limited liability companies, or limited liability
 - 33 partnerships, that are duly organized under the laws of this state and
 - 34 whose ((shareholder or)) shareholders, members, or partners,
 - 35 respectively, are exclusively attorneys; ((and))
 - 36 (e) Any state or regional college or university, as those
 - 37 institutions are defined in RCW 28B.10.016;

1 (f) Any community or technical college, as those institutions are
2 defined in RCW 28B.50.030; and

3 (g) Any other entity so authorized under the laws of the state of
4 Washington.

5 (2) The following are disqualified to serve as trustees:

6 (a) Minors, persons of unsound mind, or persons who have been
7 convicted of (i) any felony or ((a misdemeanor)) (ii) any crime
8 involving moral turpitude; and

9 (b) A corporation organized under Title 23B RCW that is not
10 authorized under the laws of the state of Washington to act as a
11 fiduciary.

12 **Sec. 3.** RCW 11.96A.050 and 2011 c 327 s 6 are each amended to read
13 as follows:

14 (1) Venue for proceedings pertaining to trusts (~~shall be~~) is:

15 (a) For testamentary trusts established under wills probated in the
16 state of Washington, in the superior court of the county where the
17 probate of the will is being administered or was completed or, in the
18 alternative, the superior court of the county where any qualified
19 beneficiary of the trust ((entitled to notice under RCW 11.97.010)) as
20 defined in section 8 of this act resides, the county where any trustee
21 resides or has a place of business, or the county where any real
22 property that is an asset of the trust is located; and

23 (b) For all other trusts, in the superior court of the county where
24 any qualified beneficiary of the trust (~~entitled to notice under RCW~~
25 ~~11.97.010)) as defined in section 8 of this act resides, the county
26 where any trustee resides or has a place of business, or the county
27 where any real property that is an asset of the trust is located. If
28 no county has venue for proceedings pertaining to a trust under the
29 preceding sentence, then in any county.~~

30 (2) A party to a proceeding pertaining to a trust may request that
31 venue be changed. If the request is made within four months of the
32 giving of the first notice of a proceeding pertaining to the trust,
33 except for good cause shown, venue must be moved to the county with the
34 strongest connection to the trust as determined by the court,
35 considering such factors as the residence of a qualified beneficiary of
36 the trust (~~entitled to notice under RCW 11.97.010)) as defined in~~

1 section 8 of this act, the residence or place of business of a trustee,
2 and the location of any real property that is an asset of the trust.

3 (3) Venue for proceedings subject to chapter 11.88 or 11.92 RCW
4 (~~shall~~) must be determined under the provisions of those chapters.

5 (4) Venue for proceedings pertaining to the probate of wills, the
6 administration and disposition of a decedent's property, including
7 nonprobate assets, and any other matter not identified in subsection
8 (1), (2), or (3) of this section, (~~shall~~) must be in any county in
9 the state of Washington that the petitioner selects. A party to a
10 proceeding may request that venue be changed if the request is made
11 within four months of the mailing of the notice of appointment and
12 pendency of probate required by RCW 11.28.237, and except for good
13 cause shown, venue must be moved as follows:

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

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

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

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

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

22 (5) Once letters testamentary or of administration have been
23 granted in the state of Washington, all orders, settlements, trials,
24 and other proceedings under this title (~~shall~~) must be had or made in
25 the county in which such letters have been granted unless venue is
26 moved as provided in subsection (4) of this section.

27 (6) Venue for proceedings pertaining to powers of attorney
28 (~~shall~~) must be in the superior court of the county of the
29 principal's residence, except for good cause shown.

30 (7) If venue is moved, an action taken before venue is changed is
31 not invalid because of the venue.

32 (8) Any request to change venue that is made more than four months
33 after the commencement of the action may be granted in the discretion
34 of the court.

35 **Sec. 4.** RCW 11.96A.070 and 2011 c 327 s 7 are each amended to read
36 as follows:

37 (1)(a) A beneficiary of an express trust may not commence a

1 proceeding against a trustee for breach of trust more than three years
2 after the date a report was delivered in the manner provided in RCW
3 11.96A.110 to the beneficiary or to a representative of the beneficiary
4 (~~((was sent a report that))~~) if the report adequately disclosed the
5 existence of a potential claim for breach of trust and informed the
6 beneficiary of the time allowed for commencing a proceeding.

7 (b) A report adequately discloses the existence of a potential
8 claim for breach of trust if it provides sufficient information so that
9 the beneficiary or representative knows or should have known of the
10 potential claim (~~((or should have inquired into its existence))~~). A
11 report that includes (~~((the following information))~~) all of the items
12 described in this subsection (b) that are relevant for the reporting
13 period is presumed to have provided such sufficient information
14 regarding the existence of potential claims for breach of trust for
15 such period:

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

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

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

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

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

27 (vi) Disclosure of all transactions during the period that are
28 equivalent to one of the types of transactions described in RCW
29 11.98.078 or otherwise could have been affected by a conflict between
30 the trustee's fiduciary and personal interests;

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

35 (viii) A statement that claims against the trustee for breach of
36 trust may not be made after the expiration of three years from the date
37 the (~~((beneficiary receives the statement))~~) trustee delivers the report
38 in the manner provided in RCW 11.96A.110.

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

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

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

6 (iii) The termination of the trust.

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

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

21 (3) The legislature hereby confirms the long standing public policy
22 of promoting the prompt and efficient resolution of matters involving
23 trusts and estates. To further implement this policy, the legislature
24 adopts the following statutory provisions in order to:

25 (a) Encourage and facilitate the participation of qualified
26 individuals as special representatives;

27 (b) Serve the public's interest in having a prompt and efficient
28 resolution of matters involving trusts or estates; and

29 (c) Promote complete and final resolution of proceedings involving
30 trusts and estates.

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

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

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

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

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

27 **Sec. 5.** RCW 11.96A.120 and 2011 c 327 s 9 are each amended to read
28 as follows:

29 (1) (~~With respect to a particular matter that affects a trust,~~
30 ~~probate estate, guardianship estate, or property subject to a power of~~
31 ~~attorney, in which the interests of such fiduciary estate and the~~
32 ~~beneficiaries are not in conflict:)) Notice to a person who may
33 represent and bind another person under this section has the same
34 effect as if notice were given directly to the other person.~~

35 (2) The consent of a person who may represent and bind another
36 person under this section is binding on the person represented unless

1 the person represented objects to the representation before the consent
2 would otherwise have become effective.

3 (3) The following limitations on the ability to serve as a virtual
4 representative apply:

5 (a) A trustor may not represent and bind a beneficiary under this
6 section with respect to the termination and modification of an
7 irrevocable trust; and

8 (b) Representation of an incapacitated trustor with respect to his
9 or her powers over a trust is subject to the provisions of RCW
10 11.103.030, and chapters 11.96A, 11.88, and 11.92 RCW.

11 (4) To the extent there is no conflict of interest between the
12 representative and the person represented or among those being
13 represented with respect to the particular question or dispute:

14 (a) A guardian may represent and bind the estate that the guardian
15 controls, subject to chapters 11.96A, 11.88, and 11.92 RCW;

16 (b) A guardian of the person may represent and bind the
17 incapacitated person if a guardian of the incapacitated person's estate
18 has not been appointed;

19 (c) An agent having authority to act with respect to the particular
20 question or dispute may represent and bind the principal;

21 ~~((e))~~ (d) A trustee may represent and bind the beneficiaries of
22 the trust; ~~(and~~

23 ~~(d))~~ (e) A personal representative of a decedent's estate may
24 represent and bind persons interested in the estate(~~-~~

25 ~~(2) This section is intended to adopt the common law concept of~~
26 ~~virtual representation. This section supplements the common law~~
27 ~~relating to the doctrine of virtual representation and shall not be~~
28 ~~construed as limiting the application of that common law doctrine.~~

29 ~~(3) Any notice requirement in this title is satisfied if:~~

30 ~~(a)); and~~

31 (f) A parent may represent and bind the parent's minor or unborn
32 child or children if a guardian for the child or children has not been
33 appointed.

34 (5) Unless otherwise represented, a minor, incapacitated, or unborn
35 individual, or a person whose identity or location is unknown and not
36 reasonably ascertainable, may be represented by and bound by another
37 having a substantially identical interest with respect to the

1 particular question or dispute, but only to the extent there is no
2 conflict of interest between the representative and the person
3 represented with regard to the particular question or dispute.

4 ~~(6) Where an interest ((in an estate, trust, or nonprobate asset or~~
5 ~~an interest that may be affected by a power of attorney)) has been~~
6 given to persons who comprise a certain class upon the happening of a
7 certain event, ~~((notice may be given to the living persons who would~~
8 ~~constitute the class if the event had happened immediately before the~~
9 ~~commencement of the proceeding requiring notice, and the persons shall~~
10 ~~virtually represent all other members of the class;~~

11 ~~(b))~~ the living persons who would constitute the class as of the
12 date the representation is to be determined may virtually represent all
13 other members of the class as of that date, but only to the extent that
14 there is no conflict of interest between the representative and the
15 person(s) represented with regard to the particular question or
16 dispute.

17 ~~(7) Where an interest ((in an estate, trust, or nonprobate asset or~~
18 ~~an interest that may be affected by a power of attorney)) has been~~
19 given to a living person, and the same interest, or a share in it, is
20 to pass to the surviving spouse or surviving domestic partner or to
21 persons who are, or might be, the ~~((distributees,))~~ heirs, issue, or
22 other kindred of that living person ~~((upon the happening of a future~~
23 ~~event, notice may be given to that living person, and the living person~~
24 ~~shall virtually represent the surviving spouse or surviving domestic~~
25 ~~partner, distributees, heirs, issue, or other kindred of the person;~~

26 ~~(e))~~ or the distributees of the estate of that living person upon
27 the happening of a future event, that living person may virtually
28 represent the surviving spouse or surviving domestic partner, heirs,
29 issue, or other kindred of the person, and the distributees of the
30 estate of the person, but only to the extent that there is no conflict
31 of interest between the representative and the person(s) represented
32 with regard to the particular question or dispute.

33 (8) Except as otherwise provided in ((this)) subsection (7) of this
34 section, where an interest ((in an estate, trust, or nonprobate asset
35 or an interest that may be affected by a power of attorney)) has been
36 given to a person or a class of persons, or both, upon the happening of
37 any future event, and the same interest or a share of the interest is
38 to pass to another person or class of persons, or both, upon the

1 happening of an additional future event, (~~notice may be given to~~) the
2 living person or persons who would take the interest upon the happening
3 of the first event(~~, and the living person or persons shall~~) may
4 virtually represent the persons and classes of persons who might take
5 on the happening of the additional future event(~~and~~

6 ~~(d) The holder of a general power of appointment, exercisable~~
7 ~~either during the power holder's life or by will, or a limited power of~~
8 ~~appointment, exercisable either during the power holder's life or by~~
9 ~~will, that excludes as possible appointees only the power holder, his~~
10 ~~or her estate, his or her creditors, and the creditors of his or her~~
11 ~~estate, may accept notice and virtually represent and bind persons~~
12 ~~whose interests, as permissible appointees, takers in default, or~~
13 ~~otherwise, are subject to the power, to the extent there is no conflict~~
14 ~~of interest between the holder of the power of appointment and the~~
15 ~~persons represented with respect to the particular question or dispute.~~

16 ~~(4) A party is not virtually represented by a person receiving~~
17 ~~notice if a conflict of interest involving the matter is known to exist~~
18 ~~between the notified person and the party)), but only to the extent~~
19 ~~that there is no conflict of interest between the representative and~~
20 ~~the person(s) represented with regard to the particular question or~~
21 ~~dispute.~~

22 ~~((+5)) (9) To the extent there is no conflict of interest between~~
23 ~~the holder of the power of appointment and the persons represented with~~
24 ~~respect to the particular question or dispute, the holder of a lifetime~~
25 ~~or testamentary power of appointment may virtually represent and bind~~
26 ~~persons who are permissible appointees or takers in default (but only~~
27 ~~to the extent that they are permissible appointees in the case of a~~
28 ~~limited power of appointment) under the power, and who are not~~
29 ~~permissible distributees as defined in section 8 of this act.~~

30 ~~(10) The attorney general may virtually represent and bind a~~
31 ~~charitable organization if:~~

32 ~~(a) The charitable organization is not a qualified beneficiary as~~
33 ~~defined in section 8 of this act specified in the trust instrument or~~
34 ~~acting as trustee; or~~

35 ~~(b) The charitable organization is a qualified beneficiary, but is~~
36 ~~not a permissible distributee, as those terms are defined in section 8~~
37 ~~of this act, and its beneficial interest in the trust is subject to~~
38 ~~change by the trustor or by a person designated by the trustor.~~

1 (11) An action taken by the court is conclusive and binding upon
2 each person receiving actual or constructive notice or who is otherwise
3 represented under this section.

4 (12) This section is intended to adopt the common law concept of
5 virtual representation. This section supplements the common law
6 relating to the doctrine of virtual representation and may not be
7 construed as limiting the application of that common law doctrine.

8 **Sec. 6.** RCW 11.96A.125 and 2011 c 327 s 11 are each amended to
9 read as follows:

10 The terms of a will or trust, even if unambiguous, may be reformed
11 by judicial proceedings (~~(or binding nonjudicial procedure)~~) under this
12 chapter to conform the terms to the intention of the testator or
13 trustor if it is proved by clear, cogent, and convincing evidence (~~(, or~~
14 ~~the parties to a binding nonjudicial agreement agree that there is~~
15 ~~clear, cogent, and convincing evidence,)~~) that both the intent of the
16 testator or trustor and the terms of the will or trust were affected by
17 a mistake of fact or law, whether in expression or inducement. This
18 does not limit the ability to reform the will or trust using the
19 binding nonjudicial procedures of RCW 11.96A.220.

20 **Sec. 7.** RCW 11.97.010 and 2011 c 327 s 12 are each amended to read
21 as follows:

22 ~~((1))~~ The trustor of a trust may by the provisions of the trust
23 relieve the trustee from any or all of the duties, restrictions, and
24 liabilities which would otherwise be imposed by chapters 11.95, 11.98,
25 11.100, and 11.104A RCW and RCW 11.106.020, or may alter or deny any or
26 all of the privileges and powers conferred by those provisions; or may
27 add duties, restrictions, liabilities, privileges, or powers to those
28 imposed or granted by those provisions. If any specific provision of
29 those chapters is in conflict with the provisions of a trust, the
30 provisions of the trust control whether or not specific reference is
31 made in the trust to any of those chapters, except as provided in RCW
32 6.32.250, 11.96A.190, 19.36.020, section 8 of this act, 11.98.200
33 through 11.98.240, section 16(1) of this act, 11.95.100 through
34 11.95.150, and chapter 11.103 RCW. In no event may a trustee be
35 relieved of the duty to act in good faith and with honest judgment (~~(or~~
36 ~~the duty to provide information to beneficiaries as required in this~~

1 section)). Notwithstanding the breadth of discretion granted to a
2 trustee in the terms of the trust, including the use of such terms as
3 "absolute," "sole," or "uncontrolled," the trustee (~~shall~~) must
4 exercise a discretionary power in good faith and in accordance with the
5 terms and purposes of the trust and the interests of the beneficiaries.

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

31 ~~(3) A trustee shall keep all persons interested in the trust, as
32 defined in RCW 11.96A.030, and who would be entitled to notice under
33 RCW 11.96A.110 and 11.96A.120 if they were a party to judicial
34 proceedings regarding the trust, reasonably informed about the
35 administration of the trust and of the material facts necessary for
36 them to protect their interests. A report that contains the following
37 is presumed to satisfy the trustee's duty to keep such persons
38 reasonably informed for the relevant period of trust administration:~~

1 ~~(a) A statement of receipts and disbursements of principal and~~
2 ~~income that have occurred during the accounting period;~~

3 ~~(b) A statement of the assets and liabilities of the trust and~~
4 ~~their values at the beginning and end of the period;~~

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

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

8 ~~(e) Disclosure of any pledge, mortgage, option, or lease of trust~~
9 ~~property, or other agreement affecting trust property binding for a~~
10 ~~period of five years or more that was granted or entered into during~~
11 ~~the accounting period;~~

12 ~~(f) Disclosure of all transactions during the period that are~~
13 ~~equivalent to one of the types of transactions described in RCW~~
14 ~~11.98.078 or otherwise could have been affected by a conflict between~~
15 ~~the trustee's fiduciary and personal interests;~~

16 ~~(g) A statement that the recipient of the account information may~~
17 ~~petition the superior court pursuant to chapter 11.106 RCW to obtain~~
18 ~~review of the statement and of acts of the trustee disclosed in the~~
19 ~~statement; and~~

20 ~~(h) A statement that claims against the trustee for breach of trust~~
21 ~~may not be made after the expiration of three years from the date the~~
22 ~~beneficiary receives the statement.~~

23 ~~(4) Unless unreasonable under the circumstances, a trustee shall~~
24 ~~promptly respond to any beneficiary's request for information related~~
25 ~~to the administration of the trust.~~

26 ~~(5) If a person entitled to notice under this section requests~~
27 ~~information reasonably necessary to enable the notified person to~~
28 ~~enforce his or her rights under the trust, then the trustee must~~
29 ~~provide such information within sixty days of receipt of such request.~~
30 ~~Delivery of the entire trust instrument to the persons entitled to~~
31 ~~notice under this section who request information concerning the terms~~
32 ~~of the trust reasonably necessary to enable the notified person to~~
33 ~~enforce his or her rights under the trust is deemed to satisfy the~~
34 ~~trustee's obligations under this subsection.)~~

35 NEW SECTION. **Sec. 8.** A new section is added to chapter 11.98 RCW
36 to be codified before RCW 11.98.005 to read as follows:

1 The definitions in this section apply throughout this chapter, and
2 throughout this title where specifically referenced, unless the context
3 clearly requires otherwise.

4 (1) "Permissible distributee" means a trust beneficiary who is
5 currently eligible to receive distributions of trust income or
6 principal, whether the distribution is mandatory or discretionary.

7 (2) "Qualified beneficiary" means a trust beneficiary who, on the
8 date that such beneficiary's qualification is determined:

9 (a) Is a permissible distributee;

10 (b) Would be a permissible distributee if the interests of the
11 distributees described in (a) of this subsection terminated on that
12 date; or

13 (c) Would be a permissible distributee if the trust terminated on
14 that date.

15 **Sec. 9.** RCW 11.98.005 and 2011 c 327 s 22 are each amended to read
16 as follows:

17 (1) If provisions of a trust instrument designate Washington as the
18 situs of the trust or designate Washington law to govern the trust or
19 any of its terms, then the situs of the trust is Washington provided
20 that one of the following conditions is met:

21 (a) A trustee has a place of business in or a trustee is a resident
22 of Washington; or

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

25 (c) The trustor resides in Washington at the time situs is being
26 established, or resided in Washington at the time the trust became
27 irrevocable; or

28 (d) One or more of the qualified beneficiaries resides in
29 Washington; or

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

32 (2)(a) Unless the trust instrument designates a state other than
33 Washington as the situs of the trust and does not expressly authorize
34 transfer of situs, the trustee may register the trust as a Washington
35 trust if any of the factors in subsection (1)(a) through (e) of this
36 section are present. The trustee (~~shall~~) must register the trust by

1 filing with the clerk of the court in any county where venue lies for
2 the trust under RCW 11.96A.050, a statement including the following
3 information:

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

5 (ii) The date of the trust, name of the trustor, and name of the
6 trust, if any;

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

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

29 (c) Unless a person receiving notice of the registration files a
30 petition with the court objecting to the registration within thirty
31 days of the date of filing the registration, the registration (~~shall~~)
32 will be deemed the equivalent of an order entered by the court
33 declaring that the situs of the trust is Washington. After expiration
34 of the thirty-day period following filing of the registration, the
35 trustee may obtain a certificate of registration signed by the clerk,
36 and issued under the seal of the court, which may be in the form
37 specified in (d) of this subsection.

1 (d) Notice of registration and certificates of registration may be
2 in the following form:

3 (i) Notice form:

4 NOTICE OF FILING OF REGISTRATION OF [NAME AND DATE OF TRUST] AS A
5 WASHINGTON TRUST

6 NOTICE IS GIVEN that the attached Registration of Trust was filed
7 by the undersigned in the above-entitled court on the day of
8, 20. . .; unless you file a petition in the above-entitled
9 court objecting to such registration and requesting the court to issue
10 an order that Washington is not the proper situs of the trust, and
11 serve a copy thereof upon the trustee or the trustee's lawyer, within
12 thirty days after the date of the filing, the registration will be
13 deemed the equivalent of an order entered by the court declaring that
14 the situs of the trust is Washington.

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

20 (ii) Certificate of Registration:

21 State of Washington, County of
22 In the superior court of the county of

23 Whereas, the attached Registration of Trust was filed with this
24 court on, the attached Notice of Filing Registration of Trust
25 and Affidavit of Mailing Notice of Filing Registration of Trust were
26 filed with this court on, and no objections to such
27 Registration have been filed with this court, the trust known as
28, under trust agreement dated, between as
29 Trustor and as Trustee, is hereby registered as a Washington
30 trust.

31 Witness my hand and the seal of said court this . . . day of
32, 20

33 (3) If the instrument establishing a trust does not designate
34 (~~Washington as the situs or designate Washington~~) any jurisdiction as
35 the situs or designate any jurisdiction's governing law to apply to the
36 trust, and the trustee of the trust has not registered the trust as
37 allowed in subsection (2) of this section, the situs of the trust is

1 Washington if (~~the~~) situs has not previously been established by any
2 court proceeding and the additional conditions specified in this
3 subsection (3) are met.

4 (a) For a testamentary trust, the situs of the trust is Washington
5 if:

6 (i) The will was admitted to probate in Washington; or

7 (ii) The will has not been admitted to probate in Washington, but
8 any trustee of the trust resides or has a place of business in
9 Washington, any qualified beneficiary (~~entitled to notice under RCW~~
10 ~~11.97.010~~) resides in Washington, or any real property that is an
11 asset of the trust is located in Washington.

12 (b) For an inter vivos trust (~~where the trustor is domiciled in~~
13 ~~Washington either when the trust becomes irrevocable or, in the case of~~
14 ~~a revocable trust, when judicial proceedings under chapter 11.96A RCW~~
15 ~~are commenced)), the situs of the trust is Washington if:~~

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

19 (ii) The trustor is deceased(~~(, situs has not previously been~~
20 ~~established by any court proceeding,)); and:~~

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

22 (B) The trustor's will was not admitted to probate in Washington,
23 but any (~~person entitled to notice under RCW 11.97.010~~) qualified
24 beneficiary resides in Washington, any trustee resides or has a place
25 of business in Washington, or any real property that is an asset of the
26 trust is located in Washington.

27 (c) If the situs of the trust is not determined under (a) or (b) of
28 this subsection, the determination regarding the situs of the trust is
29 a matter for purposes of RCW 11.96A.030. Whether Washington is the
30 situs (~~shall~~) must be determined by a court in a judicial proceeding
31 conducted under RCW 11.96A.080 if:

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

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

36 (iii) One or more of the qualified beneficiaries resides in
37 Washington; or

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

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

5 NEW SECTION. **Sec. 10.** A new section is added to chapter 11.98 RCW
6 to be codified between RCW 11.98.016 and 11.98.019 to read as follows:

7 (1) Except as otherwise provided in subsection (3) of this section,
8 a person designated as trustee accepts the trusteeship:

9 (a) By substantially complying with a method of acceptance provided
10 in the terms of the trust; or

11 (b) If the terms of the trust do not provide a method of acceptance
12 or the method provided in the terms is not expressly made exclusive, by
13 accepting delivery of the trust property, exercising powers or
14 performing duties as trustee, or otherwise indicating acceptance of the
15 trusteeship.

16 (2) A person designated as trustee who has not yet accepted the
17 trusteeship may decline the trusteeship by delivering a written
18 declination of the trusteeship to the trustor or, if the trustor is
19 deceased or is incapacitated, to a successor trustee, if any, and if
20 none, to a qualified beneficiary.

21 (3) A person designated as trustee, without accepting the
22 trusteeship, may:

23 (a) Act to preserve the trust property if, within a reasonable time
24 after acting, the person sends a written declination of the trusteeship
25 to the trustor or, if the trustor is dead or is incapacitated, to a
26 successor trustee, if any, and if none, to a qualified beneficiary; and

27 (b) Inspect or investigate trust property to determine potential
28 liability under environmental or other law or for any other purpose.

29 **Sec. 11.** RCW 11.98.019 and 1985 c 30 s 42 are each amended to read
30 as follows:

31 Any trustee may, by written instrument delivered to any then acting
32 co-trustee and to the (~~current adult income beneficiaries~~)
33 permissible distributees of the trust, relinquish to any extent and
34 upon any terms any or all of the trustee's powers, rights, authorities,
35 or discretions that are or may be tax sensitive in that they cause or
36 may cause adverse tax consequences to the trustee or the trust. Any

1 trustee not relinquishing such a power, right, authority, or discretion
2 and upon whom it is conferred continues to have full power to exercise
3 it.

4 **Sec. 12.** RCW 11.98.039 and 2011 c 327 s 21 are each amended to
5 read as follows:

6 (1) Where a vacancy occurs in the office of the trustee and there
7 is a successor trustee who is willing to serve as trustee and (a) is
8 named in the governing instrument as successor trustee or (b) has been
9 selected to serve as successor trustee under the procedure established
10 in the governing instrument for the selection of a successor trustee,
11 the outgoing trustee, or any other interested party, (~~shall~~) must
12 give notice of such vacancy, whether arising because of the trustee's
13 resignation or because of any other reason, and of the successor
14 trustee's agreement to serve as trustee, to each (~~adult distributee or~~
15 ~~permissible distributee of trust income or of trust principal or of~~
16 ~~both trust income and trust principal. If there are no such adults, no~~
17 ~~notice need be given~~) permissible distributee. The successor trustee
18 named in the governing instrument or selected pursuant to the procedure
19 therefor established in the governing instrument (~~shall be~~) is
20 entitled to act as trustee except for good cause or disqualification.
21 The successor trustee (~~shall serve~~) is deemed to have accepted the
22 trusteeship as of the effective date of the discharge of the
23 predecessor trustee as provided in RCW 11.98.041.

24 (2) Where a vacancy exists or occurs in the office of the trustee
25 and there is no successor trustee who is named in the governing
26 instrument or who has been selected to serve as successor trustee under
27 the procedure established in the governing instrument for the selection
28 of a successor trustee, and who is willing to serve as trustee, then
29 all parties with an interest in the trust may agree to a nonjudicial
30 change of the trustee under RCW 11.96A.220. The successor trustee
31 (~~shall serve~~) is deemed to have accepted the trusteeship as of the
32 effective date of the discharge of the predecessor trustee as provided
33 in RCW 11.98.041 or, in circumstances where there is no predecessor
34 trustee, as of the effective date of the trustee's appointment.

35 (3) When there is a desire to name one or more cotrustees to serve
36 with the existing trustee, then all parties with an interest in the
37 trust may agree to the nonjudicial addition of one or more cotrustees

1 under RCW 11.96A.220. The additional cotrustee (~~shall serve~~) is
2 deemed to have accepted the trusteeship as of the effective date of the
3 cotrustee's appointment.

4 (4) Unless subsection (1), (2), or (3) of this section applies, any
5 beneficiary of a trust, the trustor, if alive, or the trustee may
6 petition the superior court having jurisdiction for the appointment or
7 change of a trustee or cotrustee under the procedures provided in RCW
8 11.96A.080 through 11.96A.200: (a) Whenever the office of trustee
9 becomes vacant; (b) upon filing of a petition of resignation by a
10 trustee; or (c) for any other reasonable cause.

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

13 (a) Except as otherwise provided in the governing instrument, a
14 successor fiduciary, absent actual knowledge of a breach of fiduciary
15 duty: (i) Is not liable for any act or omission of a predecessor
16 fiduciary and is not obligated to inquire into the validity or
17 propriety of any such act or omission; (ii) is authorized to accept as
18 conclusively accurate any accounting or statement of assets tendered to
19 the successor fiduciary by a predecessor fiduciary; and (iii) is
20 authorized to receipt only for assets actually delivered and has no
21 duty to make further inquiry as to undisclosed assets of the trust or
22 estate.

23 (b) Nothing in this section relieves a successor fiduciary from
24 liability for retaining improper investments, nor does this section in
25 any way bar the successor fiduciary, trust beneficiaries, or other
26 party in interest from bringing an action against a predecessor
27 fiduciary arising out of the acts or omissions of the predecessor
28 fiduciary, nor does it relieve the successor fiduciary of liability for
29 its own acts or omissions except as specifically stated or authorized
30 in this section.

31 (6) A change of trustee to a foreign trustee does not change the
32 situs of the trust. Transfer of situs of a trust to another
33 jurisdiction requires compliance with RCW 11.98.005 and RCW 11.98.045
34 through 11.98.055.

35 **Sec. 13.** RCW 11.98.041 and 1985 c 30 s 141 are each amended to
36 read as follows:

37 Where a vacancy occurs in the office of trustee under the

1 circumstances described in RCW 11.98.039 (1) or (2), the outgoing
2 trustee (~~shall be~~) is discharged upon the agreement of all parties
3 entitled to notice or upon the expiration of thirty days after notice
4 is given of such vacancy as required by the applicable subsection of
5 RCW 11.98.039, whichever occurs first, or if no notice is required
6 under RCW 11.98.039(1), upon the date the vacancy occurs, unless before
7 the effective date of such discharge a petition is filed under RCW
8 11.98.039(~~(+3)~~) (4) regarding the appointment or change of a trustee
9 of the trust. Where a petition is filed under RCW 11.98.039(~~(+3)~~) (4)
10 regarding the appointment or change of a trustee, the superior court
11 having jurisdiction may discharge the trustee from the trust and may
12 appoint a successor trustee upon such terms as the court may require.

13 **Sec. 14.** RCW 11.98.045 and 2011 c 327 s 23 are each amended to
14 read as follows:

15 (1) If a trust is a Washington trust under RCW 11.98.005, a trustee
16 may transfer the situs of the trust to a jurisdiction other than
17 Washington if the trust instrument so provides or in accordance with
18 RCW 11.98.051 or 11.98.055.

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

20 (a) The transfer would facilitate the economic and convenient
21 administration of the trust;

22 (b) The transfer would not materially impair the interests of the
23 qualified beneficiaries or others interested in the trust;

24 (c) The transfer does not violate the terms of the trust;

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

27 (e) The trust meets at least one condition for situs listed in RCW
28 11.98.005(1) with respect to the new jurisdiction.

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

33 **Sec. 15.** RCW 11.98.051 and 2011 c 327 s 24 are each amended to
34 read as follows:

35 (1) The trustee may transfer trust situs (a) in accordance with RCW
36 11.96A.220; or (b) by giving written notice to (~~those persons entitled~~

1 ~~to notice as provided for under RCW 11.96A.110 and to~~) the attorney
2 general in the case of a charitable trust subject to chapter 11.110 RCW
3 and to the qualified beneficiaries not less than sixty days before
4 initiating the transfer. The notice must:

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

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

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

9 (d) State the name and mailing address of the trustee to whom the
10 trust will be transferred together with evidence that the trustee has
11 agreed to accept the trust in the manner provided by law of the new
12 situs. The notice must also contain a statement of the trustee's
13 qualifications and the name of the court, if any, having jurisdiction
14 of that trustee or in which a proceeding with respect to the
15 administration of the trust may be heard;

16 (e) State the facts supporting the requirements of RCW
17 11.98.045(2);

18 (f) Advise the ~~((beneficiaries))~~ recipients of the notice of the
19 date, not less than sixty days after the giving of the notice, by which
20 ~~((the beneficiary))~~ such recipients must notify the trustee of an
21 objection to the proposed transfer; and

22 (g) Include a form on which the recipient may ~~((indicate consent or~~
23 ~~objection))~~ object to the proposed transfer.

24 (2) If the date upon which the ~~((beneficiaries⁺))~~ right to object
25 to the transfer expires without receipt by the trustee of any
26 objection, the trustee may transfer the trust situs as provided in the
27 notice. If the trust was registered under RCW 11.98.045(2), the
28 trustee must file a notice of transfer of situs and termination of
29 registration with the court of the county where the trust was
30 registered.

31 (3) The authority of a trustee under this section to transfer a
32 trust's situs terminates if a ~~((beneficiary))~~ recipient of the notice
33 notifies the trustee of an objection to the proposed transfer on or
34 before the date specified in the notice.

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

1 NEW SECTION. **Sec. 16.** A new section is added to chapter 11.98 RCW
2 between RCW 11.98.070 and 11.98.080 to read as follows:

3 (1) A trustee must keep all qualified beneficiaries of a trust
4 reasonably informed about the administration of the trust and of the
5 material facts necessary for them to protect their interests. Unless
6 unreasonable under the circumstances, a trustee must promptly respond
7 to any beneficiary's request for information related to the
8 administration of the trust. The trustee is deemed to have satisfied
9 the request of a qualified beneficiary who requests information
10 concerning the terms of the trust reasonably necessary to enable such
11 beneficiary to enforce his or her rights under the trust if the trustee
12 provides a copy of the entire trust instrument. If a qualified
13 beneficiary must compel production of information from the trustee by
14 order of the court, then the court may order costs, including
15 reasonable attorneys' fees, to be awarded to such beneficiary pursuant
16 to RCW 11.96A.150.

17 (2)(a) Except to the extent waived or modified as provided in
18 subsection (5) of this section, within sixty days after the date of
19 acceptance of the position of trustee, the trustee must give notice to
20 the qualified beneficiaries of the trust of:

- 21 (i) The existence of the trust;
22 (ii) The identity of the trustor or trustors;
23 (iii) The trustee's name, address, and telephone number; and
24 (iv) The right to request such information as is reasonably
25 necessary to enable the notified person to enforce his or her rights
26 under the trust.

27 (b) The notice required under this subsection (2) applies only to
28 irrevocable trusts created after December 31, 2011, and revocable
29 trusts that become irrevocable after December 31, 2011.

30 (3) Despite any other provision of this section, and except to the
31 extent waived or modified as provided in subsection (5) of this
32 section, the trustee may not be required to provide any information
33 described in subsection (1) or (2) of this section to any beneficiary
34 of a trust other than the trustor's spouse or domestic partner if:

- 35 (a) Such spouse or domestic partner has capacity;
36 (b) Such spouse or domestic partner is the only permissible
37 distributee of the trust; and

1 (c) All of the other qualified beneficiaries of the trust are the
2 descendants of the trustor and the trustor's spouse or domestic
3 partner.

4 (4) While the trustor of a revocable trust is living, no
5 beneficiary other than the trustor is entitled to receive any
6 information under this section.

7 (5) The trustor may waive or modify the notification requirements
8 of subsections (2) and (3) of this section in the trust document or in
9 a separate writing, made at any time, that is delivered to the trustee.

10 **Sec. 17.** RCW 11.98.080 and 1999 c 42 s 621 are each amended to
11 read as follows:

12 (1)(a) Two or more trusts may be consolidated if:

13 ((+a)) (i) The trusts so provide; or

14 ((+b)) (ii) Whether provided in the trusts or not, ~~((in accordance
15 with subsection (2) of this section, if all interested persons consent
16 as provided in subsection (2)(b) of this section and the requirements
17 of subsection (1)(d) of this section are satisfied; or~~

18 ~~(c) Whether provided in the trusts or not, in accordance with
19 subsection (3) of this section if the requirements of subsection (1)(d)
20 of this section are satisfied;~~

21 ~~(d)) the requirements of subsection (2), (3), or (4) of this
22 section are satisfied.~~

23 (b) Consolidation under subsection (2) ((or)), (3), or (4) of this
24 section is permitted only if:

25 (i) The dispositive provisions of each trust to be consolidated are
26 substantially similar;

27 (ii) Consolidation is not inconsistent with the intent of the
28 trustor with regard to any trust to be consolidated; and

29 (iii) Consolidation would facilitate administration of the trusts
30 and would not materially impair the interests of the beneficiaries(~~(+~~
31 ~~e))~~.

32 (c) Trusts may be consolidated whether created inter vivos or by
33 will, by the same or different instruments, by the same or different
34 trustors, whether the trustees are the same, and regardless of where
35 the trusts were created or administered.

36 ~~(2) ((The trustees of two or more trusts may consolidate the trusts~~

1 on such terms and conditions as appropriate without court approval as
2 provided in RCW 11.96A.220.)

3 (a) (~~The trustee shall give written notice of proposed~~
4 ~~consolidation by personal service or by certified mail to the~~) A
5 trustee must deliver sixty days in advance written notice of a proposed
6 consolidation in the manner provided in RCW 11.96A.110 to the qualified
7 beneficiaries of every trust affected by the consolidation (~~as~~
8 ~~provided in RCW 11.96A.110~~) and to any trustee of such trusts who does
9 not join in the notice. The notice (~~shall~~) must: (i) State the name
10 and mailing address of the trustee; (ii) include a copy of the
11 governing instrument of each trust to be consolidated; (iii) include a
12 statement of assets and liabilities of each trust to be consolidated,
13 dated within ninety days of the notice; (iv) fully describe the terms
14 and manner of consolidation; and (v) state the reasons supporting the
15 requirements of subsection (1)(~~d~~) (b) of this section. The notice
16 (~~shall~~) must advise the recipient of the right to petition for a
17 judicial determination of the proposed consolidation as provided in
18 subsection (~~3~~) (4) of this section(~~. The notice shall include a~~
19 ~~form on which consent or objection to the proposed consolidation may be~~
20 ~~indicated.~~

21 (b) ~~If the trustee receives written consent to the proposed~~
22 ~~consolidation from all persons entitled to notice as provided in RCW~~
23 ~~11.96A.110 or from their representatives, the trustee may consolidate~~
24 ~~the trusts as provided in the notice. Any person dealing with the~~
25 ~~trustee of the resulting consolidated trust is entitled to rely on the~~
26 ~~authority of that trustee to act and is not obliged to inquire into the~~
27 ~~validity or propriety of the consolidation under this section.~~

28 (3)(a) ~~Any trustee, beneficiary, or special representative may~~
29 ~~petition the superior court of the county in which the principal place~~
30 ~~of administration of a trust is located for an order consolidating two~~
31 ~~or more trusts under RCW 11.96A.080 through 11.96A.200. If nonjudicial~~
32 ~~consolidation has been commenced pursuant to subsection (2) of this~~
33 ~~section, a petition may be filed under this section unless the trustee~~
34 ~~has received all necessary consents. The principal place of~~
35 ~~administration of the trust is the trustee's usual place of business~~
36 ~~where the records pertaining to the trust are kept, or the trustee's~~
37 ~~residence if the trustee has no such place of business)), and must~~

1 indicate that the recipient has thirty days to object to the proposed
2 consolidation.

3 (b) If the trustee receives written objection to the proposed
4 consolidation from any trustee or beneficiary entitled to notice or
5 from their representatives within the objection period provided in
6 subsection (a) of this section, the trustee(s) may not consolidate the
7 trusts as provided in the notice, though an objection does not preclude
8 the trustee or a beneficiary's right to petition for a judicial
9 determination of the proposed consolidation as provided in subsection
10 (4) of this section. If the trustee does not receive any objection
11 within the objection period provided above, then the trustee may
12 consolidate the trusts, and such will be deemed the equivalent of an
13 order entered by the court declaring that the trusts were combined in
14 the manner provided in the initial notice.

15 (3) The trustees of two or more trusts may consolidate the trusts
16 on such terms and conditions as appropriate without court approval as
17 provided in RCW 11.96A.220.

18 (4)(a) Any trustee, beneficiary, or special representative may
19 petition the superior court of the county in which the situs of a trust
20 is located for an order consolidating two or more trusts under RCW
21 11.96A.080 through 11.96A.200.

22 (b) At the conclusion of the hearing, if the court finds that the
23 requirements of subsection (1)~~((d))~~ (b) of this section have been
24 satisfied, it may direct consolidation of two or more trusts on such
25 terms and conditions as appropriate. The court in its discretion may
26 provide for payment from one or more of the trusts of reasonable fees
27 and expenses for any party to the proceeding.

28 ~~((4))~~ (5) This section applies to all trusts whenever created.
29 Any person dealing with the trustee of the resulting consolidated trust
30 is entitled to rely on the authority of that trustee to act and is not
31 obliged to inquire into the validity or propriety of the consolidation
32 under this section.

33 ~~((5))~~ (6) For powers of fiduciaries to divide trusts, see RCW
34 11.108.025.

35 NEW SECTION. Sec. 18. RCW 11.98.090 (Nonliability of third
36 persons without knowledge of breach) and 1985 c 30 s 52 are each
37 repealed.

1 **Sec. 19.** RCW 11.103.040 and 2011 c 327 s 37 are each amended to
2 read as follows:

3 While (~~a trust is revocable by the trustor,~~) the trustor of a
4 revocable trust is living, the rights of the beneficiaries are subject
5 to the control of, and the duties of the trustee are owed exclusively
6 to, the trustor. If a revocable trust has more than one trustor, the
7 duties of the trustee are owed to all of the living trustors having the
8 right to revoke the trust.

9 **Sec. 20.** RCW 11.103.050 and 2011 c 327 s 38 are each amended to
10 read as follows:

11 (1) A person may commence a judicial proceeding to contest the
12 validity of a trust that was revocable at the trustor's death within
13 the earlier of:

- 14 (a) Twenty-four months after the trustor's death; or
- 15 (b) Four months after the trustee sent to the person by personal
16 service, mail, or in an electronic transmission if there is a consent
17 of the recipient to electronic transmission then in effect under the
18 terms of RCW 11.96A.110, a notice (~~with the information required in~~
19 ~~RCW 11.97.010, and~~) including:

- 20 (i) The name and date of the trust;
- 21 (ii) The identity of the trustor or trustors;
- 22 (iii) The trustee's name, address, and telephone number; and
- 23 (iv) Notice of the time allowed for commencing a proceeding.

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

- 27 (a) The trustee knows of a pending judicial proceeding contesting
28 the validity of the trust; or
- 29 (b) A potential contestant has notified the trustee of a possible
30 judicial proceeding to contest the trust and a judicial proceeding is
31 commenced within sixty days after the contestant sent the notification.

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

34 **Sec. 21.** RCW 11.96A.250 and 2001 c 14 s 3 are each amended to read
35 as follows:

36 (1)(a) (~~The personal representative or trustee may petition the~~

1 ~~court having jurisdiction over the matter for the appointment of a~~
2 ~~special representative to represent a person who is interested in the~~
3 ~~estate or trust and))~~ Any party or the parent of a minor or unborn
4 party may petition the court for the appointment of a special
5 representative to represent a party: (i) Who is a minor; (ii) who is
6 ~~((incompetent or disabled))~~ incapacitated without an appointed guardian
7 of his or her estate; (iii) who is yet unborn or unascertained; or (iv)
8 whose identity or address is unknown. The petition may be heard by the
9 court without notice.

10 (b) In appointing the special representative the court shall give
11 due consideration and deference to any nomination(s) made in the
12 petition, the special skills required in the representation, and the
13 need for a representative who will act independently and prudently.
14 The nomination of a person as special representative by the ~~((personal~~
15 ~~representative or trustee))~~ petitioner and the person's willingness to
16 serve as special representative are not grounds by themselves for
17 finding a lack of independence, however, the court may consider any
18 interests that the nominating ~~((fiduciary))~~ party may have in the
19 estate or trust in making the determination.

20 (c) The special representative may enter into a binding agreement
21 on behalf of the person or beneficiary. The special representative may
22 be appointed for more than one person or class of persons if the
23 interests of such persons or class are not in conflict. The petition
24 ~~((shall))~~ must be verified. The petition and order appointing the
25 special representative may be in the following form:

26 CAPTION PETITION FOR APPOINTMENT
27 OF CASE OF SPECIAL REPRESENTATIVE
28 UNDER RCW 11.96A.250

29 The undersigned petitioner petitions the court for the appointment
30 of a special representative in accordance with RCW 11.96A.250 and shows
31 the court as follows:

32 1. Petitioner. Petitioner . . . [is the qualified and presently
33 acting (personal representative) (trustee) of the above (estate)
34 (trust) having been named (personal representative) (trustee) under
35 (describe will and reference probate order or describe trust
36 instrument)] or [is the (describe relationship of the petitioner to the
37 party to be represented or to the matter at issue)].

1 2. (~~Issue Concerning (Estate) (Trust) Administration~~) Matter. A
2 question concerning (~~administration of the (estate) (trust)~~)
3 has arisen as to (describe issue, for example: Related to
4 interpretation, construction, administration, distribution). The
5 (~~issues are appropriate for determination under RCW 11.96A.250.~~

6 ~~3. Beneficiaries. The beneficiaries of the (estate) (trust)~~
7 ~~include persons who are unborn, unknown, or unascertained persons, or~~
8 ~~who are under eighteen years of age)~~ issue is a matter as defined in
9 RCW 11.96A.030 and is appropriate for determination under RCW
10 11.96A.210 through 11.96A.250.

11 3. Party/Parties to be Represented. This matter involves (include
12 description of asset(s) and related beneficiaries and/or interested
13 parties). Resolution of this matter will require the involvement of
14 (name of person or class of persons), who is/are (minors),
15 (incapacitated and without an appointed guardian), (unborn or
16 unascertained) (whose identity or address is unknown).

17 4. Special Representative. The nominated special representative
18 . . . is a lawyer licensed to practice before the courts of this state
19 or an individual with special skill or training in the administration
20 of estates or trusts. The nominated special representative does not
21 have an interest in the (~~affected estate or trust~~) matter and is not
22 related to any person interested in the (~~estate or trust~~) matter.
23 The nominated special representative is willing to serve. The
24 petitioner has no reason to believe that the nominated special
25 representative will not act in an independent and prudent manner and in
26 the best interests of the represented parties. (It is recommended that
27 the petitioner also include information specifying the particular
28 skills of the nominated special representative that relate to the
29 matter in issue.)

30 5. Resolution. Petitioner desires to achieve a resolution of the
31 questions that have arisen (~~concerning the (estate) (trust)~~) in this
32 matter. Petitioner believes that proceeding in accordance with the
33 procedures permitted under RCW 11.96A.210 through 11.96A.250 would be
34 in the best interests of the (~~(estate) (trust) and the beneficiaries~~)
35 parties, including the party requiring a special representative.

36 6. Request of Court. Petitioner requests that . . . (7) . . . an
37 attorney licensed to practice in the State of Washington(7),
38

(OR)

1 an individual with special skill or training in the
2 administration of estates or trusts
3 be appointed special representative for (~~those beneficiaries who are~~
4 ~~not yet adults, as well as for the unborn, unknown, and unascertained~~
5 ~~beneficiaries~~) (describe party or parties being represented),
6 who is/are (minors), (incapacitated and without an appointed guardian),
7 (unborn or unascertained) (whose identity or address is unknown), as
8 provided under RCW 11.96A.250.

9 DATED this day of,

10
11 (Petitioner (~~or petitioner's~~
12 ~~legal representative~~)))

13 VERIFICATION

14 I certify under penalty of perjury under the laws of the state of
15 Washington that the foregoing is true and correct.

16 DATED, (~~2000~~) 20.., at, Washington.

17
18 (Petitioner or other person
19 having knowledge)

20 CAPTION ORDER FOR APPOINTMENT
21 OF CASE OF SPECIAL REPRESENTATIVE

22 THIS MATTER having come on for hearing before this Court on
23 Petition for Appointment of Special Representative filed herein, and it
24 appearing that it would be in the best interests of the (~~(estate)~~
25 ~~(trust)~~) parties related to the matter described in the Petition to
26 appoint a special representative to address the issues that have arisen
27 (~~(concerning the (estate) (trust))~~) in the matter and the Court finding
28 that the facts stated in the Petition are true, now, therefore,

29 IT IS ORDERED that is appointed under RCW 11.96A.250 as
30 special representative (~~(for the (estate) (trust) beneficiaries who are~~
31 ~~not yet adult age, and for unborn, unknown, or unascertained~~
32 ~~beneficiaries to represent their respective interests in the (estate)~~
33 ~~(trust))~~) (describe party or parties being represented) who is/are
34 (minors), (incapacitated and without an appointed guardian), (unborn or
35 unascertained) (whose identity or address is unknown), to represent

1 their respective interests in the matter as provided in RCW 11.96A.250.
2 The special representative shall be discharged of responsibility with
3 respect to the matter as provided in RCW 11.96A.250. The special
4 representative (~~((shall-be))~~) is discharged of responsibility with
5 respect to the (~~((estate)-(trust))~~) matter at such time as a written
6 agreement is executed resolving the present issues, all as provided in
7 that statute, or if an agreement is not reached within six months from
8 entry of this Order, the special representative appointed under this
9 Order (~~((shall-be))~~) is discharged of responsibility, subject to
10 subsequent reappointment under RCW 11.96A.250.

11 DONE IN OPEN COURT this . . . day of,
12
13 JUDGE/COURT COMMISSIONER

14 (2) Upon appointment by the court, the special representative
15 (~~((shall))~~) must file a certification made under penalty of perjury in
16 accordance with RCW 9A.72.085 that he or she (a) is not interested in
17 the (~~((estate-or-trust))~~) matter; (b) is not related to any person
18 interested in the (~~((estate-or-trust))~~) matter; (c) is willing to serve;
19 and (d) will act independently, prudently, and in the best interests of
20 the represented parties.

21 (3) The special representative must be a lawyer licensed to
22 practice before the courts of this state or an individual with special
23 skill or training in the administration of estates or trusts. The
24 special representative may not have an interest in the (~~((affected~~
25 ~~estate-or-trust))~~) matter, and may not be related to a person interested
26 in the (~~((estate-or-trust))~~) matter. The special representative is
27 entitled to reasonable compensation for services that must be paid from
28 the principal of (~~((the-estate-or-trust-whose-beneficiaries-are~~
29 ~~represented))~~) an asset involved in the matter.

30 (4) The special representative (~~((shall-be))~~) is discharged from any
31 responsibility and (~~((shall))~~) will have no further duties with respect
32 to the (~~((estate-or-trust))~~) matter or with respect to any (~~((person~~
33 ~~interested-in-the-estate-or-trust))~~) party, on the earlier of: (a) The
34 expiration of six months from the date the special representative was
35 appointed unless the order appointing the special representative
36 provides otherwise, or (b) the execution of the written agreement by

1 all parties or their virtual representatives. Any action against a
2 special representative must be brought within the time limits provided
3 by RCW 11.96A.070(3)(c)(i).

4 **Sec. 22.** RCW 11.98.015 and 2011 c 327 s 20 are each amended to
5 read as follows:

6 Except as otherwise provided in chapter 11.118 RCW or by another
7 statute, the following rules apply:

8 (1) A trust may be created for a noncharitable purpose without a
9 definite or definitely ascertainable beneficiary or for a noncharitable
10 but otherwise valid purpose to be selected by the trustee. The trust
11 may not be enforced for longer than the time period specified in RCW
12 11.98.130 as the period during which a trust cannot be deemed to
13 violate the rule against perpetuities;

14 (2) A trust authorized by this section may be enforced by a person
15 appointed in the terms of the trust or, if no person is so appointed,
16 by a person appointed by the court. Such person is considered to be a
17 permissible distributee of the trust; and

18 (3) Property of a trust authorized by this section may be applied
19 only to its intended use, except to the extent the court determines
20 that the value of the trust property exceeds the amount required for
21 the intended use. Except as otherwise provided in the terms of the
22 trust, property not required for the intended use must be distributed
23 to the trustor, if then living, otherwise to the trustor's successors
24 in interest. Successors in interest include the beneficiaries under
25 the trustor's will, if the trustor has a will, or, in the absence of an
26 effective will provision, the trustor's heirs.

27 **Sec. 23.** RCW 11.98.078 and 2011 c 327 s 32 are each amended to
28 read as follows:

29 (1) A trustee (~~shall~~) must administer the trust solely in the
30 interests of the beneficiaries.

31 (2) Subject to the rights of persons dealing with or assisting the
32 trustee as provided in RCW (~~11.98.090~~) 11.98.105, a sale,
33 encumbrance, or other transaction involving the investment or
34 management of trust property entered into by the trustee for the
35 trustee's own personal account or which is otherwise affected by a

1 conflict between the trustee's fiduciary and personal interests is
2 voidable by a beneficiary affected by the transaction unless:

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

4 (b) The transaction was approved by the court or approved in a
5 nonjudicial binding agreement in compliance with RCW 11.96A.210 through
6 11.96A.250;

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

9 (d) The beneficiary consented to the trustee's conduct, ratified
10 the transaction, or released the trustee in compliance with RCW
11 11.98.108; or

12 (e) The transaction involves a contract entered into or claim
13 acquired by the trustee before the person became or contemplated
14 becoming trustee.

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

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

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

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

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

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

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

33 (5) An investment by a trustee in securities of an investment
34 company or investment trust to which the trustee, or its affiliate,
35 provides services in a capacity other than as trustee is not presumed
36 to be affected by a conflict between personal and fiduciary interests
37 if the investment complies with the prudent investor rule of chapter
38 11.100 RCW. In addition to its compensation for acting as trustee, the

1 trustee may be compensated by the investment company or investment
2 trust for providing those services out of fees charged to the trust.
3 If the trustee receives compensation from the investment company or
4 investment trust for providing investment advisory or investment
5 management services, the trustee must at least annually notify the
6 (~~persons entitled under RCW 11.106.020 to receive a copy of the~~
7 ~~trustee's annual report of the rate and method by which that~~
8 ~~compensation was determined~~) permissible distributees of the rate and
9 method by which that compensation was determined. The obligation of
10 the trustee to provide the notice described in this section may be
11 waived or modified by the trustor in the trust document or in a
12 separate writing, made at any time, that is delivered to the trustee.

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

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

17 (b) Payment of reasonable compensation to the trustee and any
18 affiliate providing services to the trust, provided total compensation
19 is reasonable;

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

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

25 (e) A delegation and any transaction made pursuant to the
26 delegation from a trustee to an agent that is affiliated or associated
27 with the trustee; or

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

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

32 (8) If a trust has two or more beneficiaries, the trustee (~~shall~~)
33 must act impartially in administering the trust and distributing the
34 trust property, giving due regard to the beneficiaries' respective
35 interests.

36 **Sec. 24.** RCW 11.103.030 and 2011 c 327 s 36 are each amended to
37 read as follows:

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

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

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

9 (b) To the extent the trust consists of property other than
10 community property, each trustor may revoke or amend the trust with
11 regard to the portion of the trust property attributable to that
12 trustor's contribution;

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

15 (d) Upon the revocation or amendment of the trust by fewer than all
16 of the trustors, the trustee (~~shall~~) must promptly notify the other
17 trustors of the revocation or amendment.

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

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

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

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

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

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

31 (4) Upon revocation of a revocable trust, the trustee (~~shall~~)
32 must deliver the trust property as the trustor directs.

33 (5) A trustor's powers with respect to (~~revocation, amendment, or~~
34 ~~distribution of trust property may be exercised by an agent under a~~
35 ~~power of attorney only to the extent expressly authorized by the terms~~
36 ~~of the power)) the revocation or amendment of a trust or distribution
37 of the property of a trust, may be exercised by the trustor's agent~~

1 under a power of attorney only to the extent specified in the power of
2 attorney document, as provided in RCW 11.94.050(1) and to the extent
3 consistent with or expressly authorized by the trust agreement.

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

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

12 (8) This section does not limit or affect operation of RCW
13 11.96A.220 through 11.96A.240.

14 **Sec. 25.** RCW 11.106.010 and 1985 c 30 s 95 are each amended to
15 read as follows:

16 This chapter does not apply to resulting trusts, constructive
17 trusts, business trusts where certificates of beneficial interest are
18 issued to the beneficiaries, investment trusts, voting trusts,
19 insurance trusts prior to the death of the insured, trusts in the
20 nature of mortgages or pledges(~~(, trusts created by judgment or decree~~
21 ~~of a federal court or of the superior court when not sitting in~~
22 ~~probate)), liquidation trusts or trusts for the sole purpose of paying
23 dividends, interest or interest coupons, salaries, wages or pensions;
24 nor does this chapter apply to personal representatives.~~

25 **Sec. 26.** RCW 11.106.020 and 1985 c 30 s 96 are each amended to
26 read as follows:

27 The trustee or trustees appointed by any will, deed, or agreement
28 executed (~~(shall))~~ must mail or deliver at least annually to each
29 (~~(adult income trust beneficiary))~~ permissible distributee, as defined
30 in section 8 of this act, a written itemized statement of all current
31 receipts and disbursements made by the trustee of the funds of the
32 trust both principal and income, and upon the request of any such
33 beneficiary (~~(shall))~~ must furnish the beneficiary an itemized
34 statement of all property then held by that trustee, and may also file
35 any such statement in the superior court of the county in which the
36 trustee or one of the trustees resides.

1 **Sec. 27.** RCW 11.118.050 and 2001 c 327 s 6 are each amended to
2 read as follows:

3 The intended use of the principal or income can be enforced by a
4 person designated for that purpose in the trust instrument, by the
5 person having custody of an animal that is a beneficiary of the trust,
6 or by a person appointed by a court upon application to it by any
7 person. Such person is considered to be a permissible distributee, as
8 defined in section 8 of this act, of the trust. A person with an
9 interest in the welfare of the animal may petition for an order
10 appointing or removing a person designated or appointed to enforce the
11 trust.

12 NEW SECTION. **Sec. 28.** Except as otherwise provided in this act:

13 (1) This act applies to all trusts created before, on, or after
14 January 1, 2013;

15 (2) This act applies to all judicial proceedings concerning trusts
16 commenced on or after January 1, 2013;

17 (3) An action taken before January 1, 2013, is not affected by this
18 act; and

19 (4) If a right is acquired, extinguished, or barred upon the
20 expiration of a prescribed period that has commenced to run under any
21 other statute before January 1, 2013, that statute continues to apply
22 to the right even if it has been repealed or superseded."

23 Correct the title.

EFFECT: Provides that Washington limited liability partnerships
all of whose partners are attorneys may serve as trustees or personal
representatives. Clarifies that only Washington limited liability
companies all of whose members are attorneys may serve as personal
representatives. Makes a number of housekeeping amendments for
consistency and clarity.

--- END ---