

Title 11

PROBATE AND TRUST LAW

Chapters	
11.02	General provisions.
11.04	Descent and distribution.
11.05A	Uniform simultaneous death act.
11.07	Nonprobate assets on dissolution or invalidation of marriage.
11.08	Escheats.
11.10	Abatement of assets.
11.11	Testamentary disposition of nonprobate assets act.
11.12	Wills.
11.18	Liability of beneficiary of nonprobate asset.
11.20	Custody, proof, and probate of wills.
11.24	Will contests.
11.28	Letters testamentary and of administration.
11.32	Special administrators.
11.36	Qualifications of personal representatives.
11.40	Claims against estate.
11.42	Settlement of creditor claims for estates passing without probate.
11.44	Inventory and appraisal.
11.48	Personal representatives—General provisions—Actions by and against.
11.54	Family support and postdeath creditor's claim exemptions.
11.56	Sales, exchanges, leases, mortgages, and borrowing.
11.60	Performance of decedent's contracts.
11.62	Small estates—Disposition of property.
11.64	Partnership property.
11.66	Social security benefits.
11.68	Settlement of estates without administration.
11.72	Distribution before settlement.
11.76	Settlement of estates.
11.80	Estates of absentees.
11.84	Inheritance rights of slayers or abusers.
11.86	Disclaimer of interests.
11.90	Uniform adult guardianship and protective proceedings jurisdiction act.
11.95A	Uniform powers of appointment act.
11.96A	Trust and estate dispute resolution.
11.97	Effect of trust instrument.
11.98	Trusts.
11.98B	Uniform directed trust act.
11.99	Construction.
11.100	Investment of trust funds.
11.102	Common trust funds.
11.103	Revocable trusts.
11.104B	Uniform fiduciary income and principal act.
11.106	Trustees' accounting act.
11.107	Trusts—Decanting power.
11.108	Miscellaneous provisions for distributions made by a governing instrument.
11.110	Charitable trusts.
11.114	Uniform transfers to minors act.
11.118	Trusts—Animals.
11.120	Uniform fiduciary access to digital assets act.
11.125	Uniform power of attorney act.

11.130 Uniform guardianship, conservatorship, and other protective arrangements act.

Rules of court:
compensation, reports: SPR 98.12W.
guardians, receivers, personal representatives compromise and settlement: SPR 98.08W.
receivers, reports by: SPR 98.10W.
Cemetery plots, inheritance: Chapter 68.32 RCW.
Community property agreements: Chapter 26.16 RCW.
Coroner's duty as to property of deceased: RCW 36.24.130, 36.24.180.
Court commissioners, powers in probate matters: RCW 2.24.040.
Donation of human remains for medical purposes: Chapter 68.64 RCW.
Evidence, transaction with person since deceased: RCW 5.60.030.
Fees, collection by superior court clerk: RCW 27.24.070, 36.18.020.
Joint tenancy: Chapter 64.28 RCW.
Jurisdiction: RCW 2.08.010, 2.08.190; State Constitution Art. 4 §§ 4 and 6 (Amendment 28).
Life insurance payable to trustee named as beneficiary in policy or will: RCW 48.18.450, 48.18.452.
Partition of real property: Chapter 7.52 RCW.
Production of pretended heir: Chapter 9A.60 RCW.
Replacement of lost or destroyed probate records: RCW 5.48.060.
Stock certificates—Joint tenancy—Transfer pursuant to direction of survivor: RCW 23B.07.240.
Veterans' estates, appointment of director of veterans' affairs to act as fiduciary: RCW 73.04.130.
Wages
payment on death of employee: RCW 49.48.120.
preference on death of employer: RCW 49.56.020.
Written finding of presumed death, missing in action, etc.: RCW 5.40.020 through 5.40.040.

Chapter 11.02 RCW GENERAL PROVISIONS

Sections	
11.02.001	Section headings in Title 11 RCW not part of law.
11.02.005	Definitions and use of terms.
11.02.070	Community property—Disposition—Probate administration of.
11.02.080	Application and construction of act as to wills, proceedings, guardians, accrued rights, and pre-executed instruments—Severability—Effective date—1974 ex.s. c 117.
11.02.091	Written instrument—Limit on characterization as testamentary.
11.02.100	Transfer of shares of record—Dividends.
11.02.110	Transfer of shares or securities—Presumption of joint tenancy.
11.02.120	Transfer of shares—Liability.
11.02.130	Safe deposit repository—Lease provision ineffective to create joint tenancy or transfer at one lessee's death.
11.02.900	Short title—Washington trust act of 1984.
11.02.901	Application—1985 c 30—Application of 1984 c 149 as amended and reenacted in 1985.
11.02.902	Purpose—1985 c 30.
11.02.903	Severability—1985 c 30.

11.02.001 Section headings in Title 11 RCW not part of law. Section headings, as found in Title 11 RCW, do not

constitute any part of the law. [1985 c 30 § 3. Prior: 1984 c 149 § 179.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.02.005 Definitions and use of terms. When used in this title, unless otherwise required from the context:

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

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

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

(4) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(5) "Electronic presence" means the relationship of two or more individuals in different locations communicating in real time to the same extent as if the individuals were physically present in the same location.

(6) "Electronic will" means a will or codicil executed in compliance with RCW 11.12.400 through 11.12.491.

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

(8) "Guardian," "limited guardian," "conservator," or "limited conservator" means a personal representative of the person or estate of a person who has been placed under a guardianship under RCW 11.130.265 or who has been placed under a conservatorship under RCW 11.130.360 and the term may be used in lieu of "personal representative" wherever required by context.

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

(10) "Internal revenue code" means the United States internal revenue code of 1986, as amended or renumbered as of January 1, 2001.

(11) "Issue" means all the lineal descendants of an individual. An adopted individual is a lineal descendant of each of his or her adoptive parents and of all individuals with regard to which each adoptive parent is a lineal descendant. A child conceived prior to the death of a parent but born after the death of the deceased parent is considered to be the surviving issue of the deceased parent for purposes of this title.

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

(13) "Nonprobate asset" means those rights and interests of a person having beneficial ownership of an asset that pass on the person's death under a written instrument or arrangement other than the person's will. "Nonprobate asset"

includes, but is not limited to, a right or interest passing under a joint tenancy with right of survivorship, joint bank account with right of survivorship, transfer on death deed, payable on death or trust bank account, transfer on death security or security account, deed or conveyance if possession has been postponed until the death of the person, trust of which the person is grantor and that becomes effective or irrevocable only upon the person's death, community property agreement, individual retirement account or bond, or note or other contract the payment or performance of which is affected by the death of the person. "Nonprobate asset" does not include: A payable-on-death provision of a life insurance policy, annuity, or other similar contract, or of an employee benefit plan; a right or interest passing by descent and distribution under chapter 11.04 RCW; a right or interest if, before death, the person has irrevocably transferred the right or interest, the person has waived the power to transfer it or, in the case of contractual arrangement, the person has waived the unilateral right to rescind or modify the arrangement; or a right or interest held by the person solely in a fiduciary capacity. For the definition of "nonprobate asset" relating to revocation of a provision for a former spouse upon dissolution of marriage or declaration of invalidity of marriage, RCW 11.07.010(5) applies. For the definition of "nonprobate asset" relating to testamentary disposition of nonprobate assets, see RCW 11.11.010(7).

(14) "Personal representative" includes executor, administrator, special administrator, and conservator or limited conservator and special representative.

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

(16) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

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

(18) References to "section 2033A" of the internal revenue code in wills, trust agreements, powers of appointment, beneficiary designations, and other instruments governed by or subject to this title are deemed to refer to the comparable or corresponding provisions of section 2057 of the internal revenue code, as added by section 6006(b) of the internal revenue service restructuring act of 1998 (H.R. 2676, P.L. 105-206); and references to the section 2033A "exclusion" are deemed to mean the section 2057 deduction.

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

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

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

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

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

(24) "Will" means an instrument validly executed as required by RCW 11.12.020 or 11.12.400 through 11.12.491.

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

Words importing the masculine gender only may be extended to females also. [2021 c 140 § 1012; 2020 c 312 § 708; 2018 c 22 § 6; 2014 c 58 § 18. Prior: 2011 c 327 § 1; 2008 c 6 § 901; 2007 c 475 § 1; 2005 c 97 § 1; 2001 c 320 § 1; 2000 c 130 § 1; 1999 c 358 § 20; 1998 c 292 § 117; 1997 c 252 § 1; 1994 c 221 § 1; 1993 c 73 § 1; 1985 c 30 § 4; prior: 1984 c 149 § 4; 1977 ex.s. c 80 § 14; 1975-'76 2nd ex.s. c 42 § 23; 1965 c 145 § 11.02.005. Former RCW sections: Subd. (3), RCW 11.04.110; subd. (4), RCW 11.04.010; subd. (5), RCW 11.04.100; subd. (6), RCW 11.04.280; subd. (7), RCW 11.04.010; subd. (8) and (9), RCW 11.12.240; subd. (14) and (15), RCW 11.02.040.]

Effective date—2021 c 140 §§ 1001-1016: See note following RCW 11.12.400.

Effective dates—2020 c 312: See note following RCW 11.130.915.

Explanatory statement—2018 c 22: See note following RCW 1.20.051.

Uniformity of application and construction—Relation to electronic signatures in global and national commerce act—2014 c 58: See RCW 64.80.903 and 64.80.904.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Effect of decree of adoption: RCW 26.33.260.

Kindred of the half blood: RCW 11.04.035.

Additional notes found at www.leg.wa.gov

11.02.070 Community property—Disposition—Probate administration of. Except as provided in RCW 41.04.273 and 11.84.025, upon the death of a decedent, a one-half share of the community property shall be confirmed to the surviving spouse or surviving domestic partner, and the other one-half share shall be subject to testamentary disposition by the decedent, or shall descend as provided in chapter 11.04 RCW. The whole of the community property shall be

(2022 Ed.)

subject to probate administration for all purposes of this title, including the payment of obligations and debts of the community, the award in lieu of homestead, the allowance for family support, and any other matter for which the community property would be responsible or liable if the decedent were living. [2008 c 6 § 902; 1998 c 292 § 504; 1967 c 168 § 1.]

Descent and distribution of community property: RCW 11.04.015(1).

Disposition of quasi-community property: RCW 26.16.230.

Additional notes found at www.leg.wa.gov

11.02.080 Application and construction of act as to wills, proceedings, guardians, accrued rights, and pre-executed instruments—Severability—Effective date—1974 ex.s. c 117. On and after October 1, 1974:

(1) The provisions of chapter 117, Laws of 1974 ex. sess. shall apply to any wills of decedents dying thereafter;

(2) The provisions of chapter 117, Laws of 1974 ex. sess. shall apply to any proceedings in court then pending or thereafter commenced regardless of the time of the death of decedent except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of chapter 117, Laws of 1974 ex. sess.;

(3) Every personal representative including a person administering an estate of a minor or incompetent holding an appointment on October 1, 1974, continues to hold the appointment, has the powers conferred by chapter 117, Laws of 1974 ex. sess. and is subject to the duties imposed with respect to any act occurring or done thereafter;

(4) An act done before October 1, 1974 in any proceeding and any accrued right is not impaired by chapter 117, Laws of 1974 ex. sess. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before October 1, 1974, the provisions shall remain in force with respect to that right;

(5) Any rule of construction or presumption provided in chapter 117, Laws of 1974 ex. sess. applies to instruments executed before October 1, 1974 unless there is a clear indication of a contrary intent. [1974 ex.s. c 117 § 1.]

Legislative directive—Part headings not part of law: "(1) Sections 4 and 5 of this 1974 amendatory act shall constitute a new chapter in Title 11 RCW.

(2) Sections 52 and 53 of this 1974 amendatory act shall constitute a new chapter in Title 11 RCW.

(3) Part headings employed in this 1974 amendatory act do not constitute any part of the law and shall not be codified by the code reviser and shall not become a part of the Revised Code of Washington." [1974 ex.s. c 117 § 2.]

Additional notes found at www.leg.wa.gov

11.02.091 Written instrument—Limit on characterization as testamentary. (1) An otherwise effective written instrument of transfer may not be deemed testamentary solely because of a provision for a nonprobate transfer at death in the instrument.

(2) "Provision for a nonprobate transfer at death" as used in subsection (1) of this section includes, but is not limited to, a written provision that:

(a) Money or another benefit up to that time due to, controlled, or owned by a decedent before death must be paid after the decedent's death to a person whom the decedent designates either in the instrument or a separate writing, including a will, executed at any time;

(b) Money or another benefit due or to become due under the instrument ceases to be payable in the event of the death of the promisee or the promisor before payment or demand; or

(c) Property, controlled by or owned by the decedent before death, that is the subject of the instrument passes to a person the decedent designates either in the instrument or in a separate writing, including a will, executed at any time.

(3) "Otherwise effective written instrument of transfer" as used in subsection (1) of this section means: An insurance policy; a contract of employment; a bond; a mortgage; a promissory note; a certified or uncertified security; an account agreement; a compensation plan; a pension plan; an individual retirement plan; an employee benefit plan; a joint tenancy; a community property agreement; a trust; a conveyance; a deed of gift; a contract; or another written instrument of a similar nature that would be effective if it did not contain provision for a nonprobate transfer at death.

(4) This section only eliminates a requirement that instruments of transfer comply with formalities for executing wills under chapter 11.12 RCW. This section does not make a written instrument effective as a contract, gift, conveyance, deed, or trust that would not otherwise be effective as such for reasons other than failure to comply with chapter 11.12 RCW.

(5) This section does not limit the rights of a creditor under other laws of this state. [1993 c 291 § 2.]

11.02.100 Transfer of shares of record—Dividends.

Shares of record in the name of a spouse or domestic partner may be transferred by such person, such person's agent or attorney, without the signature of such person's spouse or domestic partner. All dividends payable upon any shares of a corporation standing in the name of a spouse or domestic partner, shall be paid to such spouse or domestic partner, such person's agent or attorney, in the same manner as if such person were unmarried or not in a state registered domestic partnership, and it shall not be necessary for the other spouse or domestic partner to join in a receipt therefor; and any proxy or power given by a spouse or domestic partner, touching any shares of any corporation standing in such person's name, shall be valid and binding without the signature of the other spouse or other domestic partner. [2008 c 6 § 903; 1990 c 180 § 7.]

Additional notes found at www.leg.wa.gov

11.02.110 Transfer of shares or securities—Presumption of joint tenancy. Whenever shares or other securities issued by domestic or foreign corporations are or have been issued or transferred to two or more persons in joint tenancy form on the books or records of the corporation, it is presumed in favor of the corporation, its registrar and its transfer agent that the shares or other securities are owned by such persons in joint tenancy and not otherwise. A domestic or foreign corporation or its registrar or transfer agent is not liable for transferring or causing to be transferred on the

books of the corporation to or pursuant to the direction of the surviving joint tenant or tenants any share or shares or other securities theretofore issued by the corporation to two or more persons in joint tenancy form on the books or records of the corporation, unless the transfer was made with actual knowledge by the corporation or by its registrar or transfer agent of the existence of any understanding, agreement, condition, or evidence that the shares or securities were held other than in joint tenancy, or of the invalidity of the joint tenancy or a breach of trust by the joint tenants. [1990 c 180 § 8.]

11.02.120 Transfer of shares—Liability. Neither a domestic or foreign corporation or its registrar or transfer agent shall be liable for transferring or causing to be transferred on the books of the corporation to or pursuant to the direction of the surviving spouse or the surviving domestic partner any share or shares or other securities theretofore issued by the corporation to the deceased or surviving spouse or both, or to the deceased or surviving domestic partner or both, if the corporation or its registrar or transfer agent shall be provided with the following:

(1) A copy of an agreement which shall have been entered into between the spouses or between the domestic partners pursuant to RCW 26.16.120 and certified by the auditor of the county in this state in whose office the same shall have been recorded;

(2) A certified copy of the death certificate of the deceased spouse or deceased domestic partner;

(3) An affidavit of the surviving spouse or surviving domestic partner that:

(a) The shares or other securities constituted community property of the spouses or the domestic partners at date of death of the deceased spouse or deceased domestic partner and their disposition is controlled by the community property agreement;

(b) No proceedings have been instituted to contest or set aside or cancel the agreement; and that

(c) The claims of creditors have been paid or provided for. [2008 c 6 § 904; 1990 c 180 § 9.]

Additional notes found at www.leg.wa.gov

11.02.130 Safe deposit repository—Lease provision ineffective to create joint tenancy or transfer at one lessee's death. A provision in a lease of a safety deposit repository to the effect that two or more persons have access to the repository, or that purports to create a joint tenancy in the repository or in the contents of the repository, or that purports to vest ownership of the contents of the repository in the surviving lessee, is ineffective to create joint ownership of the contents of the repository or to transfer ownership at death of one of the lessees to the survivor. Ownership of the contents of the repository and devolution of title to those contents is determined according to rules of law without regard to the lease provisions. [1993 c 291 § 3.]

11.02.900 Short title—Washington trust act of 1984. Chapter 149, Laws of 1984, as amended and reenacted in chapters 8, 9, 10, 11, 23, 30, and 31, Laws of 1985 shall be known as the Washington trust act of 1984. [1985 c 30 § 2.]

11.02.901 Application—1985 c 30—Application of 1984 c 149 as amended and reenacted in 1985. (1) Nothing in chapter 8, 9, 10, 11, 23, 30, or 31, Laws of 1985 shall invalidate or nullify:

(a) Any instrument or property relationship that is executed and irrevocable as of the April 10, 1985; or

(b) Any action undertaken in a proceeding where the action was commenced before April 10, 1985, as long as the instrument, property relationship, or action complies with chapter 149, Laws of 1984.

(2) Except as specifically provided otherwise in chapter 149, Laws of 1984 as amended and reenacted in 1985, chapter 149, Laws of 1984 as amended and reenacted in 1985 shall apply to all instruments, property relationships, and proceedings existing on January 1, 1985. [1985 c 30 § 139.]

11.02.902 Purpose—1985 c 30. The purpose of this act is to make technical corrections to chapter 149, Laws of 1984, and to ensure that the changes made in that chapter meet the constitutional requirements of Article II, section 19 of the state Constitution. [1985 c 30 § 1.]

11.02.903 Severability—1985 c 30. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 30 § 144.]

Chapter 11.04 RCW DESCENT AND DISTRIBUTION

Sections

11.04.015	Descent and distribution of real and personal estate.
11.04.035	Kindred of the half blood.
11.04.041	Advancements.
11.04.060	Tenancy in dower and by curtesy abolished.
11.04.071	Survivorship as incident of tenancy by the entireties abolished.
11.04.081	Inheritance by and from any child not dependent upon marriage of parents.
11.04.085	Inheritance by adopted child.
11.04.095	Inheritance from stepparent avoids escheat.
11.04.230	United States savings bond—Effect of death of co-owner.
11.04.240	United States savings bond—Effect of beneficiary's survival of registered owner.
11.04.250	When real estate vests—Rights of heirs.
11.04.290	Vesting of title.

Inheritance rights of slayers or abusers: Chapter 11.84 RCW.

11.04.015 Descent and distribution of real and personal estate. The net estate of a person dying intestate, or that portion thereof with respect to which the person shall have died intestate, shall descend subject to the provisions of RCW 11.04.250 and 11.02.070, and shall be distributed as follows:

(1) Share of surviving spouse or state registered domestic partner. The surviving spouse or state registered domestic partner shall receive the following share:

(a) All of the decedent's share of the net community estate; and

(b) One-half of the net separate estate if the intestate is survived by issue; or

(c) Three-quarters of the net separate estate if there is no surviving issue, but the intestate is survived by one or more of his or her parents, or by one or more of the issue of one or more of his or her parents; or

(2022 Ed.)

(d) All of the net separate estate, if there is no surviving issue nor parent nor issue of parent.

(2) Shares of others than surviving spouse or state registered domestic partner. The share of the net estate not distributable to the surviving spouse or state registered domestic partner, or the entire net estate if there is no surviving spouse or state registered domestic partner, shall descend and be distributed as follows:

(a) To the issue of the intestate; if they are all in the same degree of kinship to the intestate, they shall take equally, or if of unequal degree, then those of more remote degree shall take by representation.

(b) If the intestate not be survived by issue, then to the parent or parents who survive the intestate.

(c) If the intestate not be survived by issue or by either parent, then to those issue of the parent or parents who survive the intestate; if they are all in the same degree of kinship to the intestate, they shall take equally, or, if of unequal degree, then those of more remote degree shall take by representation.

(d) If the intestate not be survived by issue or by either parent, or by any issue of the parent or parents who survive the intestate, then to the grandparent or grandparents who survive the intestate; if both maternal and paternal grandparents survive the intestate, the maternal grandparent or grandparents shall take one-half and the paternal grandparent or grandparents shall take one-half.

(e) If the intestate not be survived by issue or by either parent, or by any issue of the parent or parents or by any grandparent or grandparents, then to those issue of any grandparent or grandparents who survive the intestate; taken as a group, the issue of the maternal grandparent or grandparents shall share equally with the issue of the paternal grandparent or grandparents, also taken as a group; within each such group, all members share equally if they are all in the same degree of kinship to the intestate, or, if some be of unequal degree, then those of more remote degree shall take by representation. [2010 c 8 § 2001; 2007 c 156 § 27; 1974 ex.s. c 117 § 6; 1967 c 168 § 2; 1965 ex.s. c 55 § 1; 1965 c 145 § 11.04.015. Formerly RCW 11.04.020, 11.04.030, 11.04.050.]

Appropriation to pay debts and expenses: Chapter 11.10 RCW.

Community property

disposition: RCW 11.02.070.

generally: Chapter 26.16 RCW.

Escheats: Chapter 11.08 RCW.

"Net estate" defined: RCW 11.02.005(12).

Payment of claims where estate insufficient: RCW 11.76.150.

Priority of sale, etc., as between realty and personalty: Chapter 11.10 RCW.

Additional notes found at www.leg.wa.gov

11.04.035 Kindred of the half blood. Kindred of the half blood shall inherit the same share which they would have inherited if they had been of the whole blood, unless the inheritance comes to the intestate by descent, devise, or gift from one of his or her ancestors, or kindred of such ancestor's blood, in which case all those who are not of the blood of such ancestors shall be excluded from such inheritance: PROVIDED, HOWEVER, That the words "kindred of such ancestor's blood" and "blood of such ancestors" shall be construed to include any child lawfully adopted by one who is in fact of the blood of such ancestors. [2010 c 8 § 2002; 1967 c

168 § 3; 1965 c 145 § 11.04.035. Formerly RCW 11.04.100, part.]

"Degree of kinship" defined: RCW 11.02.005(3).

11.04.041 Advancements. If a person dies intestate as to all his or her estate, property which he or she gave in his or her lifetime as an advancement to any person who, if the intestate had died at the time of making the advancement, would be entitled to inherit a part of his or her estate, shall be counted toward the advancee's intestate share, and to the extent that it does not exceed such intestate share shall be taken into account in computing the estate to be distributed. Every gratuitous inter vivos transfer is deemed to be an absolute gift and not an advancement unless shown to be an advancement. The advancement shall be considered as of its value at the time when the advancee came into possession or enjoyment or at the time of the death of the intestate, whichever first occurs. If the advancee dies before the intestate, leaving a lineal heir who takes from the intestate, the advancement shall be taken into account in the same manner as if it had been made directly to such heir. If such heir is entitled to a lesser share in the estate than the advancee would have been entitled had he or she survived the intestate, then the heir shall only be charged with such proportion of the advancement as the amount he or she would have inherited, had there been no advancement, bears to the amount which the advancee would have inherited, had there been no advancement. [2010 c 8 § 2003; 1965 c 145 § 11.04.041. Formerly RCW 11.04.040, 11.04.120, 11.04.130, 11.04.140, 11.04.150, 11.04.160, and 11.04.170.]

11.04.060 Tenancy in dower and by curtesy abolished. The provisions of RCW 11.04.015, as to the inheritance of the husband and wife from each other take the place of tenancy in dower and tenancy by curtesy, which are hereby abolished. [1965 c 145 § 11.04.060. Prior: Code 1881 § 3304; 1875 p 55 § 3; RRS § 1343.]

11.04.071 Survivorship as incident of tenancy by the entirety abolished. The right of survivorship as an incident of tenancy by the entirety is abolished. [1965 c 145 § 11.04.071.]

Joint tenancy: Chapter 64.28 RCW.

Safe deposit repository—Lease provision ineffective to create joint tenancy or transfer at one lessee's death: RCW 11.02.130.

11.04.081 Inheritance by and from any child not dependent upon marriage of parents. For the purpose of inheritance to, through, and from any child, the effects and treatment of the parent-child relationship shall not depend upon whether or not the parents have been married. [1975-'76 2nd ex.s. c 42 § 24; 1965 c 145 § 11.04.081. Formerly RCW 11.04.080 and 11.04.090.]

Effect of decree of adoption: RCW 26.33.260.

"Issue" includes all lawfully adopted children: RCW 11.02.005(11).

11.04.085 Inheritance by adopted child. A lawfully adopted child shall not be considered an "heir" of his or her natural parents for purposes of this title. [2010 c 8 § 2004; 1965 c 145 § 11.04.085.]

Effect of decree of adoption: RCW 26.33.260.

"Issue" includes lawfully adopted children: RCW 11.02.005(11).

11.04.095 Inheritance from stepparent avoids escheat. If a person dies leaving a surviving spouse or surviving domestic partner and issue by a former spouse or former domestic partner and leaving a will whereby all or substantially all of the deceased's property passes to the surviving spouse or surviving domestic partner or having before death conveyed all or substantially all his or her property to the surviving spouse or surviving domestic partner, and afterwards the latter dies without heirs and without disposing of his or her property by will so that except for this section the same would all escheat, the issue of the spouse or domestic partner first deceased who survive the spouse or domestic partner last deceased shall take and inherit from the spouse or domestic partner last deceased the property so acquired by will or conveyance or the equivalent thereof in money or other property; if such issue are all in the same degree of kinship to the spouse or domestic partner first deceased they shall take equally, or, if of unequal degree, then those of more remote degree shall take by representation with respect to such spouse or such domestic partner first deceased. [2008 c 6 § 905; 1965 c 145 § 11.04.095. Prior: 1919 c 197 § 1; RCW 11.08.010; RRS § 1356-1.]

Additional notes found at www.leg.wa.gov

11.04.230 United States savings bond—Effect of death of co-owner. If either co-owner of United States savings bonds registered in two names as co-owners (in the alternative) dies without having presented and surrendered the bond for payment to a federal reserve bank or the treasury department, the surviving co-owner will be the sole and absolute owner of the bond. [1965 c 145 § 11.04.230. Prior: 1943 c 14 § 1; Rem. Supp. 1943 § 11548-60.]

11.04.240 United States savings bond—Effect of beneficiary's survival of registered owner. If the registered owner of United States savings bonds registered in the name of one person payable on death to another dies without having presented and surrendered the bond for payment or authorized reissue to a federal reserve bank or the treasury department, and is survived by the beneficiary, the beneficiary will be the sole and absolute owner of the bond. [1965 c 145 § 11.04.240. Prior: 1943 c 14 § 2; Rem. Supp. 1943 § 11548-61.]

11.04.250 When real estate vests—Rights of heirs. When a person dies seized of lands, tenements or hereditaments, or any right thereto or entitled to any interest therein in fee or for the life of another, his or her title shall vest immediately in his or her heirs or devisees, subject to his or her debts, family allowance, expenses of administration, and any other charges for which such real estate is liable under existing laws. No administration of the estate of such decedent, and no decree of distribution or other finding or order of any court shall be necessary in any case to vest such title in the heirs or devisees, but the same shall vest in the heirs or devisees instantly upon the death of such decedent: PROVIDED, That no person shall be deemed a devisee until the will has been probated. The title and right to possession of such lands, tenements, or hereditaments so vested in such

heirs or devisees, together with the rents, issues, and profits thereof, shall be good and valid against all persons claiming adversely to the claims of any such heirs, or devisees, excepting only the personal representative when appointed, and persons lawfully claiming under such personal representative; and any one or more of such heirs or devisees, or their grantees, jointly or severally, may sue for and recover their respective shares or interests in any such lands, tenements, or hereditaments and the rents, issues, and profits thereof, whether letters testamentary or of administration be granted or not, from any person except the personal representative and those lawfully claiming under such personal representative. [2010 c 8 § 2005; 1965 c 145 § 11.04.250. Prior: 1895 c 105 § 1; RRS § 1366.]

Right to possession and management of estate: RCW 11.48.020.

11.04.290 Vesting of title. RCW 11.04.250 through 11.04.290 shall apply to community real property and also to separate estate; and upon the death of either spouse or either domestic partner, title of all community real property shall vest immediately in the person or persons to whom the same shall go, pass, descend or be devised, as provided in RCW 11.04.015, subject to all the charges mentioned in RCW 11.04.250. [2008 c 6 § 930; 1965 c 145 § 11.04.290. Prior: 1895 c 105 § 5; RRS § 1370.]

Additional notes found at www.leg.wa.gov

Chapter 11.05A RCW UNIFORM SIMULTANEOUS DEATH ACT

Sections

11.05A.010	Definitions.
11.05A.020	Minimum survival requirement—Probate code.
11.05A.030	Minimum survival requirement—Governing instruments.
11.05A.040	Minimum survival requirement—Co-owners.
11.05A.050	Evidence of death or status.
11.05A.060	Exceptions.
11.05A.070	Liability.
11.05A.900	Application—Construction.
11.05A.901	Short title.
11.05A.904	Application.

11.05A.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Co-owners with right of survivorship" includes joint tenants, tenants by the entirety, and other co-owners of property or accounts held under circumstances that entitle one or more to the whole of the property or account on the death of the other or others.

(2) "Governing instrument" means a deed, will, trust, insurance or annuity policy, account with pay on death designation, pension, profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type.

(3) "Payor" means a trustee, insurer, business entity, employer, government, governmental agency, subdivision, or instrumentality, or any other person authorized or obligated by law or a governing instrument to make payments.

(4) "POD" means pay on death.

(5) "TOD" means transfer on death. [2007 c 475 § 7.]

11.05A.020 Minimum survival requirement—Probate code. Except as provided in RCW 11.05A.060 and except for the purposes of the uniform TOD security registration act, if the title to property, the devolution of property, the right to elect an interest in property, or the right to exempt property, homestead, or family allowance depends upon an individual's survivorship of the death of another individual, an individual who is not established by clear and convincing evidence to have survived the other individual by one hundred twenty hours is deemed to have predeceased the other individual. This section does not apply if its application would result in a taking of intestate estate by the state. [2007 c 475 § 8.]

11.05A.030 Minimum survival requirement—Governing instruments. Except as provided in RCW 11.05A.060 and except for a security registered in beneficiary form (TOD) under the Uniform TOD Security Registration Act, for purposes of a provision of a governing instrument that relates to an individual surviving an event, including the death of another individual, an individual who is not established by clear and convincing evidence to have survived the event by one hundred twenty hours is deemed to have predeceased the event. [2007 c 475 § 9.]

11.05A.040 Minimum survival requirement—Co-owners. Except as provided in RCW 11.05A.060, if (1) it is not established by clear and convincing evidence that one of two co-owners with right of survivorship survived the other co-owner by one hundred twenty hours, one-half of the property passes as if one had survived by one hundred twenty hours and one-half as if the other had survived by one hundred twenty hours, and (2) there are more than two co-owners and it is not established by clear and convincing evidence that at least one of them survived the others by one hundred twenty hours, the property passes in the proportion that one bears to the whole number of co-owners. [2007 c 475 § 10.]

11.05A.050 Evidence of death or status. In addition to the rules of evidence in courts of general jurisdiction, the following rules relating to a determination of death and status apply:

(1) Death occurs when an individual is determined to be dead by the attending physician, county coroner, or county medical officer.

(2) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie evidence of the fact, place, date, and time of death and the identity of the decedent.

(3) A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that an individual is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report.

(4) In the absence of prima facie evidence of death under subsection (2) or (3) of this section, the fact of death may be established by clear and convincing evidence, including circumstantial evidence.

(5) An individual whose death is not established under this section who is absent for a continuous period of seven

years, during which he or she has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry, is presumed to be dead. His or her death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

(6) In the absence of evidence disputing the time of death stipulated on a document described in subsection (2) or (3) of this section, a document described in subsection (2) or (3) of this section that stipulates a time of death one hundred twenty hours or more after the time of death of another individual, however the time of death of the other individual is determined, establishes by clear and convincing evidence that the individual survived the other individual by one hundred twenty hours. [2007 c 475 § 11.]

11.05A.060 Exceptions. This chapter does not apply if:

(1) The governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and that language is operable under the facts of the case;

(2) The governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specified period or expressly requires the individual to survive the event for a stated period;

(3) The imposition of a one hundred twenty-hour requirement of survival would cause a nonvested property interest or a power of appointment to be invalid under RCW 11.98.130 through 11.98.160; or

(4) The application of this chapter to multiple governing instruments would result in an unintended failure or duplication of a disposition. [2007 c 475 § 12.]

11.05A.070 Liability. (1) Protection of Payors and Other Third Parties.

(a) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a person designated in a governing instrument who, under this chapter, is not entitled to the payment or item of property, or for having taken any other action in good faith reliance on the person's apparent entitlement under the terms of the governing instrument, before the payor or other third party received written notice of a claimed lack of entitlement under this chapter. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed lack of entitlement under this chapter.

(b) Written notice of a claimed lack of entitlement under (a) of this subsection must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed lack of entitlement under this chapter, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's resi-

dence. The court shall hold the funds or item of property and, upon its determination under this chapter, shall order disbursement in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(2) Protection of Bona Fide Purchasers—Personal Liability of Recipient.

(a) A person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this chapter to return the payment, item of property, or benefit nor liable under this chapter for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under this chapter is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this chapter.

(b) If this chapter or any part of this chapter is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this chapter, a person who, not for value, receives the payment, item of property, or any other benefit to which the person is not entitled under this chapter is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this chapter or part of this chapter not preempted. [2007 c 475 § 13.]

11.05A.900 Application—Construction. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. [2007 c 475 § 14.]

11.05A.901 Short title. This chapter may be cited as the uniform simultaneous death act. [2007 c 475 § 15.]

11.05A.904 Application. On July 22, 2007:

(1) An act done before July 22, 2007, in any proceeding and any accrued right is not impaired by this chapter. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time that has commenced to run by the provisions of any statute before July 22, 2007, the provisions remain in force with respect to that right; and

(2) Any rule of construction or presumption provided in this chapter applies to instruments executed and multiple-party accounts opened before July 22, 2007, unless there is a clear indication of a contrary intent. [2007 c 475 § 18.]

Chapter 11.07 RCW

NONPROBATE ASSETS ON DISSOLUTION OR INVALIDATION OF MARRIAGE

Sections

11.07.010 Nonprobate assets—Dissolution or invalidation of marriage or domestic partnership—Termination of domestic partnership.

11.07.010 Nonprobate assets—Dissolution or invalidation of marriage or domestic partnership—Termination of domestic partnership. (1) This section applies to all nonprobate assets, wherever situated, held at the time of entry of a decree of dissolution of marriage or state registered domestic partnership or a declaration of invalidity or certification of termination of a state registered domestic partnership.

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

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

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

(ii) The decree of dissolution, declaration of invalidity, or other court order requires that the decedent maintain a nonprobate asset for the benefit of a former spouse or former state registered domestic partner or children of the marriage or domestic partnership, payable on the decedent's death either outright or in trust, and other nonprobate assets of the decedent fulfilling such a requirement for the benefit of the former spouse or former state registered domestic partner or children of the marriage or domestic partnership do not exist at the decedent's death;

(iii) A court order requires that the decedent maintain a nonprobate asset for the benefit of another, payable on the decedent's death either outright or in a trust, and other nonprobate assets of the decedent fulfilling such a requirement do not exist at the decedent's death; or

(iv) If not for this subsection, the decedent could not have effected the revocation by unilateral action because of the terms of the decree, declaration, termination of state registered domestic partnership, or for any other reason, immediately after the entry of the decree of dissolution, declaration of invalidity, or termination of state registered domestic partnership.

(3)(a) A payor or other third party in possession or control of a nonprobate asset at the time of the decedent's death is not liable for making a payment or transferring an interest in a nonprobate asset to a decedent's former spouse or state registered domestic partner, whose interest in the nonprobate asset is revoked under this section, or for taking another action in reliance on the validity of the instrument governing disposition of the nonprobate asset, before the payor or other third party has actual knowledge of the dissolution or other invalidation of marriage or termination of the state registered domestic partnership. A payor or other third party is liable for a payment or transfer made or other action taken after the payor or other third party has actual knowledge of a revocation under this section.

(b) This section does not require a payor or other third party to pay or transfer a nonprobate asset to a beneficiary designated in a governing instrument affected by the dissolution or other invalidation of marriage or termination of state registered domestic partnership, or to another person claiming an interest in the nonprobate asset, if the payor or third party has actual knowledge of the existence of a dispute between the former spouse or former state registered domestic partner, and the beneficiaries or other persons concerning rights of ownership of the nonprobate asset as a result of the application of this section among the former spouse or former state registered domestic partner, and the beneficiaries or among other persons, or if the payor or third party is otherwise uncertain as to who is entitled to the nonprobate asset under this section. In such a case, the payor or third party may, without liability, notify in writing all beneficiaries or other persons claiming an interest in the nonprobate asset of either the existence of the dispute or its uncertainty as to who is entitled to payment or transfer of the nonprobate asset. The payor or third party may also, without liability, refuse to pay or transfer a nonprobate asset in such a circumstance to a beneficiary or other person claiming an interest until the time that either:

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

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

(c) Notwithstanding subsections (1) and (2) of this section and (a) and (b) of this subsection, a payor or other third party having actual knowledge of the existence of a dispute between beneficiaries or other persons concerning rights to a nonprobate asset as a result of the application of this section may condition the payment or transfer of the nonprobate asset on execution, in a form and with security acceptable to the payor or other third party, of a bond in an amount that is double the fair market value of the nonprobate asset at the time of the decedent's death or the amount of an adverse claim, whichever is the lesser, or of a similar instrument to provide security to the payor or other third party, indemnifying the payor or other third party for any liability, loss, damage, costs, and expenses for and on account of payment or transfer of the nonprobate asset.

(d) As used in this subsection, "actual knowledge" means, for a payor or other third party in possession or control of the nonprobate asset at or following the decedent's death, written notice to the payor or other third party, or to an officer of a payor or third party in the course of his or her employment, received after the decedent's death and within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge. The notice must identify the nonprobate asset with reasonable specificity. The notice also must be sufficient to inform the payor or other third party of the revocation of the provisions in favor of the decedent's spouse or state registered domestic partner, by reason of the dissolution or invalidation of marriage or termination of state registered domestic partnership, or to inform the payor or third party of a dispute concerning rights to a nonprobate asset as a result of the application of this section. Receipt of the notice for a period of more than thirty days is presumed to be received within a time that is sufficient

cient to afford the payor or third party a reasonable opportunity to act upon the knowledge, but receipt of the notice for a period of less than five business days is presumed not to be a sufficient time for these purposes. These presumptions may be rebutted only by clear and convincing evidence to the contrary.

(4)(a) A person who purchases a nonprobate asset from a former spouse, former state registered domestic partner, or other person, for value and without actual knowledge, or who receives from a former spouse, former state registered domestic partner, or other person payment or transfer of a nonprobate asset without actual knowledge and in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, property, or benefit nor is liable under this section for the amount of the payment or the value of the nonprobate asset. However, a former spouse, former state registered domestic partner, or other person who, with actual knowledge, not for value, or not in satisfaction of a legally enforceable obligation, receives payment or transfer of a nonprobate asset to which that person is not entitled under this section is obligated to return the payment or nonprobate asset, or is personally liable for the amount of the payment or value of the nonprobate asset, to the person who is entitled to it under this section.

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

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

(i) A payable-on-death provision of a life insurance policy, employee benefit plan, annuity or similar contract, or individual retirement account, unless provided otherwise by controlling federal law;

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

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

(iv) Transfer on death beneficiary designations of a transfer on death or pay on death security, or joint tenancy or joint tenancy with right of survivorship designations of a

security, if such designations are authorized under Washington law;

(v) A transfer on death, pay on death, joint tenancy, or joint tenancy with right of survivorship brokerage account;

(vi) A transfer on death deed;

(vii) Unless otherwise specifically provided therein, a contract wherein payment or performance under that contract is affected by the death of the person; or

(viii) Unless otherwise specifically provided therein, any other written instrument of transfer, within the meaning of RCW 11.02.091(3), containing a provision for the nonprobate transfer of an asset at death.

(b) For the general definition in this title of "nonprobate asset," see *RCW 11.02.005(10) and for the definition of "nonprobate asset" relating to testamentary disposition of nonprobate assets, see RCW 11.11.010(7). For the purposes of this chapter, a "bank account" includes an account into or from which cash deposits and withdrawals can be made, and includes demand deposit accounts, time deposit accounts, money market accounts, or certificates of deposit, maintained at a bank, savings and loan association, credit union, brokerage house, or similar financial institution.

(6) This section is remedial in nature and applies as of July 25, 1993, to decrees of dissolution and declarations of invalidity entered after July 24, 1993, and this section applies as of January 1, 1995, to decrees of dissolution and declarations of invalidity entered before July 25, 1993. [2014 c 58 § 19; 2008 c 6 § 906. Prior: 2007 c 475 § 2; 2007 c 156 § 13; 2002 c 18 § 1; 1998 c 292 § 118; 1997 c 252 § 2; 1994 c 221 § 2; 1993 c 236 § 1.]

*Reviser's note: RCW 11.02.005 was amended by 2021 c 140 § 1012, changing subsection (10) to subsection (13), effective January 1, 2022.

Uniformity of application and construction—Relation to electronic signatures in global and national commerce act—2014 c 58: See RCW 64.80.903 and 64.80.904.

Additional notes found at www.leg.wa.gov

Chapter 11.08 RCW ESCHEATS

Sections	
11.08.101	Property of deceased inmates of state institutions—Disposition after two years.
11.08.111	Property of deceased inmates of state institutions—Disposition within two years.
11.08.120	Property of deceased inmates of state institutions—Sale—Disposition of proceeds.
11.08.140	Escheat for want of heirs.
11.08.150	Title to property vests in state at death of owner.
11.08.160	Department of revenue—Jurisdiction—Duties.
11.08.170	Probate of escheat property—Notice to department of revenue.
11.08.180	Department of revenue to be furnished copies of documents and pleadings.
11.08.185	Escheat property—Records of department of revenue—Public record information.
11.08.200	Liability for use of escheated property.
11.08.205	Lease, sublease, or rental of escheated real property—Authorized—Expenses—Distribution of proceeds.
11.08.210	Allowance of claims, expenses, partial fees—Sale of property—Decree of distribution.
11.08.220	Certified copies of decree—Department of natural resources duties.
11.08.230	Appearance and claim of heirs—Notices to department of revenue.
11.08.240	Limitation on filing claim.
11.08.250	Order of court on establishment of claim—Parklands—Appraisal.
11.08.260	Payment of escheated funds to claimant.

- 11.08.270 Conveyance of escheated property to claimant.
 11.08.280 Limitation when claimant is minor or incompetent not under guardianship.
 11.08.290 Deposit of cash received by personal representative of escheat estate.
 11.08.300 Transfer of property to department of revenue.

Action to recover property forfeited to state: RCW 7.56.120.

Banks, disposition of unclaimed personalty: RCW 30A.44.150, 30A.44.180 through 30A.44.230.

Escheat of postal savings system accounts: Chapter 63.48 RCW.

Permanent common school fund, escheats as source of: RCW 28A.515.300.

Savings and loan associations, escheats: RCW 33.20.130, 33.40.110.

Social security benefits, payment to survivors or secretary of social and health services: RCW 11.66.010.

State land acquired by escheat, management: RCW 79.10.030.

Unclaimed estate, disposition: RCW 11.76.220.

Uniform unclaimed property act: Chapter 63.29 RCW.

11.08.101 Property of deceased inmates of state institutions—Disposition after two years. Where, upon the expiration of two years after the death of any inmate of any state institution, there remains in the custody of the superintendent of such institution, money or property belonging to said deceased inmate, the superintendent shall forward such money to the state treasurer for deposit in the general fund of the state, and shall report such transfer and any remaining property to the department of corrections, which department shall cause the sale of such property and proceeds thereof shall be forwarded to the state treasurer for deposit in the general fund. [1981 c 136 § 58; 1979 c 141 § 10; 1965 c 145 § 11.08.101. Prior: 1951 c 138 § 1; prior: 1923 c 113 § 1; RRS § 1363-1.]

Abandoned inmate personal property: RCW 63.42.030, 63.42.040.

State institutions: Title 72 RCW.

Additional notes found at www.leg.wa.gov

11.08.111 Property of deceased inmates of state institutions—Disposition within two years. Prior to the expiration of the two-year period provided for in RCW 11.08.101, the superintendent may transfer such money or property in his or her possession, upon request and satisfactory proof submitted to him or her, to the following designated persons:

- (1) To the personal representative of the estate of such deceased inmate; or
- (2) To the successor or successors defined in RCW 11.62.005, where such money and property does not exceed the amount specified in RCW 6.13.030, and the successor or successors shall have furnished proof of death and an affidavit made by said successor or successors meeting the requirements of RCW 11.62.010; or
- (3) In the case of money, to the person who may have deposited such money with the superintendent for the use of the decedent, where the sum involved does not exceed one thousand dollars; or

(4) To the department of social and health services, when there are moneys due and owing from such deceased person's estate for the cost of his or her care and maintenance at a state institution: PROVIDED, That transfer of such money or property may be made to the person first qualifying under this section and such transfer shall exonerate the superintendent from further responsibility relative to such money or property: AND PROVIDED FURTHER, That upon satisfactory

(2022 Ed.)

showing the funeral expenses of such decedent are unpaid, the superintendent may pay up to one thousand dollars from said deceased inmate's funds on said obligation. [2010 c 8 § 2006; 1990 c 225 § 2; 1973 1st ex.s. c 76 § 1; 1965 c 145 § 11.08.111. Prior: 1959 c 240 § 1; 1951 c 138 § 2.]

Abandoned inmate personal property: RCW 63.42.030, 63.42.040.

11.08.120 Property of deceased inmates of state institutions—Sale—Disposition of proceeds. The property, other than money, of such deceased inmate remaining in the custody of a superintendent of a state institution after the expiration of the above two-year period may be forwarded to the department of corrections at its request and may be appraised and sold at public auction to the highest bidder in the manner and form as provided for public sales of personal property, and all moneys realized upon such sale, after deducting the expenses thereof, shall be paid into the general fund of the state treasury. [1981 c 136 § 59; 1979 c 141 § 11; 1965 c 145 § 11.08.120. Prior: 1951 c 138 § 3; prior: 1923 c 113 § 2; RRS § 1363-2.]

Abandoned inmate personal property: RCW 63.42.030, 63.42.040.

Additional notes found at www.leg.wa.gov

11.08.140 Escheat for want of heirs. Whenever any person dies, whether a resident of this state or not, leaving property subject to the jurisdiction of this state and without being survived by any person entitled to the same under the laws of this state, such property shall be designated escheat property and shall be subject to the provisions of RCW 11.08.140 through 11.08.280. [1965 c 145 § 11.08.140. Prior: 1955 c 254 § 2.]

11.08.150 Title to property vests in state at death of owner. Title to escheat property, which shall include any intangible personalty, shall vest in the state at the death of the owner thereof. [1965 c 145 § 11.08.150. Prior: 1955 c 254 § 3.]

11.08.160 Department of revenue—Jurisdiction—Duties. The department of revenue of this state shall have supervision of and jurisdiction over escheat property and may institute and prosecute any proceedings, including any proceeding under chapter 11.62 RCW, deemed necessary or proper in the handling of such property, and it shall be the duty of the department of revenue to protect and conserve escheat property for the benefit of the permanent common school fund of the state until such property or the proceeds thereof have been forwarded to the state treasurer or the department of natural resources as hereinafter provided. [1988 c 128 § 1; 1988 c 64 § 23; 1975 1st ex.s. c 278 § 1; 1965 c 145 § 11.08.160. Prior: 1955 c 254 § 4.]

Reviser's note: This section was amended by 1988 c 64 § 23 and by 1988 c 128 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Additional notes found at www.leg.wa.gov

11.08.170 Probate of escheat property—Notice to department of revenue. Escheat property may be probated under the provisions of the probate laws of this state. Whenever such probate proceedings are instituted, whether by spe-

cial administration or otherwise, the petitioner shall promptly notify the department of revenue in writing thereof on forms furnished by the department of revenue to the county clerks. Thereafter, the department of revenue shall be served with written notice at least twenty days prior to any hearing on proceedings involving the valuation or sale of property, on any petition for the allowance of fees, and on all interim reports, final accounts or petitions for the determination of heirship. Like notice shall be given of the presentation of any claims to the court for allowance. Failure to furnish such notice shall be deemed jurisdictional and any order of the court entered without such notice shall be void. The department of revenue may waive the provisions of this section in its discretion. The department shall be deemed to have waived its right to administer in such probate proceedings under RCW 11.28.120(5) unless application for appointment of the director or the director's designee is made within forty days immediately following receipt of notice of institution of proceedings. [1994 c 221 § 3; 1990 c 225 § 1; 1975 1st ex.s. c 278 § 2; 1965 c 145 § 11.08.170. Prior: 1955 c 254 § 5.]

Additional notes found at www.leg.wa.gov

11.08.180 Department of revenue to be furnished copies of documents and pleadings. The department of revenue may demand copies of any papers, documents, or pleadings involving the escheat property or the probate thereof deemed by it to be necessary for the enforcement of RCW 11.08.140 through 11.08.280 and it shall be the duty of the administrator or his or her attorney to furnish such copies to the department. [2010 c 8 § 2007; 1975 1st ex.s. c 278 § 3; 1965 c 145 § 11.08.180. Prior: 1955 c 254 § 6.]

Additional notes found at www.leg.wa.gov

11.08.185 Escheat property—Records of department of revenue—Public record information. All records of the department of revenue relating to escheated property or property about to escheat shall be a public record and shall be made available by the department of revenue for public inspection. Without limitation, the records to be made public shall include all available information regarding possible heirs, descriptions and amounts of property escheated or about to escheat, and any information which might serve to identify the proper heirs. [1973 c 25 § 1.]

11.08.200 Liability for use of escheated property. If any person shall take possession of escheat property without proper authorization to do so, and shall have the use thereof for a period exceeding sixty days, he or she shall be liable to the state for the reasonable value of such use, payment of which may be enforced by the department of revenue or by the administrator of the estate. [2010 c 8 § 2008; 1975 1st ex.s. c 278 § 4; 1965 c 145 § 11.08.200. Prior: 1955 c 254 § 8.]

Additional notes found at www.leg.wa.gov

11.08.205 Lease, sublease, or rental of escheated real property—Authorized—Expenses—Distribution of proceeds. (1) The department of natural resources shall have the authority to lease real property from the administrator of an estate being probated under the escheat provisions, RCW 11.08.140 to 11.08.280.

(2) The department of natural resources shall have the authority to sublease or rent the real property, it has leased under subsection (1) of this section, during the period that the real property is under the authority of the court appointed administrator.

(3) Any moneys gained by the department of natural resources from leases or rentals shall be credited to an escheat reserve account bearing the name of the estate.

(4) The department of natural resources shall have the authority to expend moneys to preserve and maintain the real property during the probate period.

(5) Any expenses by the department of natural resources in preserving or maintaining the real property may be paid as follows:

(a) First, the expenses shall be charged to the escheat reserve account bearing the name of the estate; and

(b) Second, if the expenses exceed the escheat reserve account, then the expenses shall be paid as follows:

(i) If the land is distributed to the state by the administrator, the expenses shall be paid out of the sale price of the land as later sold by the department of natural resources, or shall be paid out of the general fund if the land is held for use by the state; or

(ii) If the land is distributed to the heirs by the administrator, the expenses shall be borne by the estate.

(6) Upon the final distribution of the real property, the escheat reserve account shall be closed out as follows:

(a) If the real property is distributed to the state, the balance of the account shall be paid into the permanent common school fund of the state; or

(b) If the real property is distributed to the heirs, the balance of the account shall be paid to the estate. [1969 ex.s. c 249 § 1.]

11.08.210 Allowance of claims, expenses, partial fees—Sale of property—Decree of distribution. If at the expiration of four months from the date of the first publication of notice to creditors no heirs have appeared and established their claim to the estate, the court may enter an interim order allowing claims, expenses, and partial fees. If at the expiration of ten months from the date of issuance of letters testamentary or of administration no heirs have appeared and established their claim to the estate, all personal property not in the form of cash shall be sold under order of the court. Personal property found by the court to be worthless shall be ordered abandoned. Real property shall not be sold for the satisfaction of liens thereon, or for the payment of the debts of decedent or expenses of administration until the proceeds of the personal property are first exhausted. The court shall then enter a decree allowing any additional fees and charges deemed proper and distributing the balance of the cash on hand, together with any real property, to the state. Remittance of cash on hand shall be made to the department of revenue which shall make proper records thereof and forthwith forward such funds to the state treasurer for deposit in the permanent common school fund of the state. [1979 ex.s. c 209 § 19; 1975 1st ex.s. c 278 § 5; 1965 c 145 § 11.08.210. Prior: 1955 c 254 § 9.]

Additional notes found at www.leg.wa.gov

11.08.220 Certified copies of decree—Department of natural resources duties. The department of revenue shall be furnished two certified copies of the decree of the court distributing any real property to the state, one of which shall be forwarded to the department of natural resources which shall thereupon assume supervision of and jurisdiction over such real property and thereafter handle it the same as state common school lands. The administrator shall also file a certified copy of the decree with the auditor of any county in which the escheated real property is situated. [1988 c 128 § 2; 1975 1st ex.s. c 278 § 6; 1965 c 145 § 11.08.220. Prior: 1957 c 125 § 1; 1955 c 254 § 10.]

Management of acquired lands by department of natural resources: RCW 79.10.030.

Additional notes found at www.leg.wa.gov

11.08.230 Appearance and claim of heirs—Notices to department of revenue. Upon the appearance of heirs and the establishment of their claim to the satisfaction of the court prior to entry of the decree of distribution to the estate, the provisions of RCW 11.08.140 through 11.08.280 shall not further apply, except for purposes of appeal: PROVIDED, That the department of revenue shall be promptly given written notice of such appearance by the claimants and furnished copies of all papers or documents on which such claim of heirship is based. Any documents in a foreign language shall be accompanied by translations made by a properly qualified translator, certified by him or her to be true and correct translations of the original documents. The administrator or his or her attorney shall also furnish the department of revenue with any other available information bearing on the validity of the claim. [2010 c 8 § 2009; 1975 1st ex.s. c 278 § 7; 1965 c 145 § 11.08.230. Prior: 1955 c 254 § 11.]

Additional notes found at www.leg.wa.gov

11.08.240 Limitation on filing claim. Any claimant to escheated funds or real property shall have seven years from the date of issuance of letters testamentary or of administration within which to file his or her claim. Such claim shall be filed with the court having original jurisdiction of the estate, and a copy thereof served upon the department of revenue, together with twenty days notice of the hearing thereon. [2010 c 8 § 2010; 1975 1st ex.s. c 278 § 8; 1965 c 145 § 11.08.240. Prior: 1955 c 254 § 12.]

Additional notes found at www.leg.wa.gov

11.08.250 Order of court on establishment of claim—Parklands—Appraisal. Upon establishment of the claim to the satisfaction of the court, it shall order payment to the claimant of any escheated funds and delivery of any escheated land, or the proceeds thereof, if sold. If, however, the escheated property shall have been transferred to the state parks and recreation commission or local jurisdiction for park purposes, the court shall order payment to the claimant for the fair market value of the property at the time of transfer, excluding the value of physical improvements to the property while managed by a state agency or local jurisdiction. The value shall be established by independent appraisal obtained by the department of revenue. [1993 c 49 § 2; 1965 c 145 § 11.08.250. Prior: 1955 c 254 § 13.]

Parkland: RCW 79.10.030.

(2022 Ed.)

11.08.260 Payment of escheated funds to claimant. In the event the order of the court requires the payment of escheated funds or the proceeds of the sale of escheated real property or the appraised value of escheated property transferred for park purposes, a certified copy of such order shall be served upon the department of revenue which shall thereupon take any steps necessary to effect payment to the claimant out of the general fund of the state. [1993 c 49 § 3; 1975 1st ex.s. c 278 § 9; 1965 c 145 § 11.08.260. Prior: 1955 c 254 § 14.]

Additional notes found at www.leg.wa.gov

11.08.270 Conveyance of escheated property to claimant. In the event the order of the court requires the delivery of real property to the claimant, a certified copy of such order shall be served upon the department of natural resources which shall thereupon make proper certification to the office of the governor for issuance of a quitclaim deed for the property to the claimant. [1988 c 128 § 3; 1965 c 145 § 11.08.270. Prior: 1955 c 254 § 15.]

11.08.280 Limitation when claimant is minor or incompetent not under guardianship. The claims of any persons to escheated funds or real property which are not filed within seven years as specified above are forever barred, excepting as to those persons who are minors or who are legally incompetent and not under guardianship, in which event the claim may be filed within seven years after their disability is removed. [1965 c 145 § 11.08.280. Prior: 1955 c 254 § 16.]

11.08.290 Deposit of cash received by personal representative of escheat estate. All cash received by the personal representative of an escheat estate shall be immediately deposited at interest for the benefit of the estate in a federally insured time or savings deposit or share account, except that the personal representative may maintain an amount not to exceed two hundred fifty dollars in a checking account. This arrangement may be changed by appropriate court order. [1979 ex.s. c 209 § 18.]

Additional notes found at www.leg.wa.gov

11.08.300 Transfer of property to department of revenue. Escheat property may be transferred to the department of revenue under the provisions of RCW 11.62.005 through 11.62.020. The department of revenue shall furnish proof of death and an affidavit made by the department which meets the requirements of RCW 11.62.010 to any person who is indebted to or has possession of any personal property belonging to the decedent or to the decedent and his or her surviving spouse or surviving domestic partner as a community, which debt or personal property is an asset which is subject to probate. Upon receipt of such proof of death and affidavit, the person shall pay the indebtedness or deliver the personal property, or as much of either as is claimed, to the department of revenue pursuant to RCW 11.62.010.

The department of revenue shall file a copy of its affidavit made pursuant to chapter 11.62 RCW with the clerk of the court where any probate administration of the decedent has been commenced, or, if no probate administration has been commenced, then with the clerk of the court of any county

provided by law as a place for probate administration of the estate of such person. The affidavit shall be indexed under the name of the decedent in the probate index upon payment of a fee of two dollars. Any claimant to escheated funds shall have seven years from the filing of the affidavit by the department of revenue within which to file the claim. The claim shall be filed with the clerk of the court where the affidavit of the department of revenue was filed, and a copy served upon the department of revenue, together with twenty days notice of a hearing to be held thereon, and the provisions of RCW 11.08.250 through 11.08.280 shall apply. [2008 c 6 § 907; 1990 c 225 § 3.]

Additional notes found at www.leg.wa.gov

Chapter 11.10 RCW ABATEMENT OF ASSETS

Sections

11.10.010	Abatement—Generally.
11.10.020	Gift from mixed separate and community property.
11.10.030	Allocation of separate and community assets.
11.10.040	Nonprobate assets.
11.10.900	Application of chapter.

11.10.010 Abatement—Generally. (1) Except as provided in subsection (2) of this section, property of a decedent abates, without preference as between real and personal property, in the following order:

- (a) Intestate property;
- (b) Residuary gifts;
- (c) General gifts;
- (d) Specific gifts.

For purposes of abatement a demonstrative gift, defined as a general gift charged on any specific property or fund, is deemed a specific gift to the extent of the value of the property or fund on which it is charged, and a general gift to the extent of a failure or insufficiency of that property or fund. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.

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

(3) If the subject of a preferred gift is sold, diminished, or exhausted incident to administration, not including satisfaction of debts or liabilities according to their community or separate status under RCW 11.10.030, abatement must be achieved by appropriate adjustments in, or contribution from, other interests in the remaining assets.

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

(5) If required under RCW 11.10.040, nonprobate assets must abate with those disposed of under the will and passing by intestacy. [2008 c 6 § 908; 1994 c 221 § 5.]

Additional notes found at www.leg.wa.gov

11.10.020 Gift from mixed separate and community property. To the extent that a gift is to be satisfied out of a source that consists of both separate and community property, unless otherwise indicated in the will it is presumed to be a gift from separate and community property in proportion to their relative value in the property or fund from which the gift is to be satisfied. [1994 c 221 § 6.]

Additional notes found at www.leg.wa.gov

11.10.030 Allocation of separate and community assets. (1) A community debt or liability is charged against the entire community property, with the surviving spouse's or surviving domestic partner's half and the decedent spouse's or decedent domestic partner's half charged equally.

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

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

(4) An expense of administration is charged against the separate property and the decedent's half of the community property in proportion to the relative value of the property, unless a different charging of expenses is shown to be appropriate under the circumstances including against the surviving spouse's or surviving domestic partner's share of the community property.

(5) Property of a similar type, community or separate, is appropriated in accordance with the abatement priorities of RCW 11.10.010.

(6) Property that is primarily chargeable for a debt or liability is exhausted, in accordance with the abatement priorities of RCW 11.10.010, before resort is had, also in accordance with RCW 11.10.010, to property that is secondarily chargeable. [2008 c 6 § 931; 1994 c 221 § 7.]

Additional notes found at www.leg.wa.gov

11.10.040 Nonprobate assets. (1) If abatement is necessary among takers of a nonprobate asset, the court shall adopt the abatement order and limitations set out in RCW 11.10.010, 11.10.020, and 11.10.030, assigning categories in accordance with subsection (2) of this section.

(2) A nonprobate transfer must be categorized for purposes of abatement, within the list of priorities set out in RCW 11.10.010(1), as follows:

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

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

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

(4) If the nonprobate instrument of transfer or the decedent's will expresses a different order of abatement, or if the decedent's overall dispositive plan or the express or implied purpose of the transfer would be defeated by the order of abatement stated in subsections (1) through (3) of this section, the nonprobate assets abate as may be found necessary to give effect to the intention of the decedent. [1994 c 221 § 8.]

Additional notes found at www.leg.wa.gov

11.10.900 Application of chapter. This chapter applies in all instances in which no other abatement scheme is expressly provided. [1994 c 221 § 4.]

Additional notes found at www.leg.wa.gov

Chapter 11.11 RCW

TESTAMENTARY DISPOSITION OF NONPROBATE ASSETS ACT

Sections

11.11.003	Purposes.
11.11.005	Construction.
11.11.007	Intent—Controversies between beneficiaries and testamentary beneficiaries.
11.11.010	Definitions.
11.11.020	Disposition of nonprobate assets under will.
11.11.030	Waiver of right to dispose of a nonprobate asset under will—Revocation of waiver.
11.11.040	Right to rely on form of nonprobate asset—Discharge of financial institution or other third party.
11.11.050	Notice—Affidavit—Form—Limitation on liability for failure to provide notice.
11.11.060	Vesting of rights and powers under chapter.
11.11.070	Ownership rights as between individuals preserved—Testamentary beneficiary may recover nonprobate asset from beneficiary—Limitation on action to recover.
11.11.080	Nonprobate assets not property of estate—Effect of notice on administration—Effect of preceding death of devisee or legatee.
11.11.090	Transfer of nonprobate asset to testamentary beneficiary.
11.11.100	Authority to withhold transfer—Notice—Expenses of obtaining consent, authorization, direction.
11.11.110	Adverse claim bond.
11.11.900	Short title.
11.11.901	Application of chapter.
11.11.903	Effective dates—1998 c 292.

11.11.003 Purposes. The purposes of this chapter are to:

- (1) Enhance and facilitate the power of testators to control the disposition of assets that pass outside their wills;
- (2) Provide simple procedures for resolution of disputes regarding entitlement to such assets; and
- (3) Protect any financial institution or other third party having possession of or control over such an asset and transferring it to a beneficiary duly designated by the testator, unless that third party has been provided notice of a testamentary disposition as required in this chapter. [1998 c 292 § 102.]

11.11.005 Construction. (1) When construing sections and provisions of this chapter, the sections and provisions must:

- (a) Be liberally construed and applied to promote the purposes of this chapter;
- (b) Be considered part of a general act that is intended as unified coverage of the subject matter, and no part of this

(2022 Ed.)

chapter may be deemed impliedly repealed by subsequent legislation if the construction can be reasonably avoided;

(c) Not be held invalid because of the invalidity of other sections or provisions of this chapter as long as the section or provision in question can be given effect without regard to the invalid section or provision, and to this end the sections or provisions of this chapter are severable;

(d) Not be construed by reference to section or subsection headings as used in this chapter, since these do not constitute any part of the law;

(e) Not be deemed to alter the community or separate property nature of any asset passing outside a testator's will or any individual's community or separate rights to the asset, and a testator's community or separate property rights to the asset are not affected by whether it passes outside the will or, under this chapter, by disposition under the will; and

(f) Not be construed as authorizing or extending the authority of any financial institution or other third party to sell or otherwise create assets that would pass outside a testator's will upon such terms as would contravene any other applicable federal or state law.

(2) The sections and provisions of this chapter apply to an owner who dies while a resident of this state on or after July 1, 1999, and to a nonprobate asset the disposition of which on the death of the owner would otherwise be governed by the law of this state. [1998 c 292 § 103.]

11.11.007 Intent—Controversies between beneficiaries and testamentary beneficiaries. This chapter is intended to establish ownership rights to nonprobate assets upon the death of the owner, as between beneficiaries and testamentary beneficiaries. This chapter is relevant only as to controversies between these persons, and has no bearing on the right of a person to transfer a nonprobate asset under its terms in the absence of a testamentary provision under this chapter. [1998 c 292 § 107.]

11.11.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1)(a) "Actual knowledge" means:

(i) For a financial institution, whether acting as personal representative or otherwise, or other third party in possession or control of a nonprobate asset, receipt of written notice that: (A) Complies with RCW 11.11.050; (B) pertains to the testamentary disposition or ownership of a nonprobate asset in its possession or control; and (C) is received by the financial institution or third party after the death of the owner in a time sufficient to afford the financial institution or third party a reasonable opportunity to act upon the knowledge; and

(ii) For a personal representative that is not a financial institution, personal knowledge or possession of documents relating to the testamentary disposition or ownership of a nonprobate asset of the owner sufficient to afford the personal representative reasonable opportunity to act upon the knowledge, including reasonable opportunity for the personal representative to provide the written notice under RCW 11.11.050.

(b) For the purposes of (a) of this subsection, notice of more than thirty days is presumed to be notice that is sufficient to afford the party a reasonable opportunity to act upon

the knowledge, but notice of less than five business days is presumed not to be a sufficient notice for these purposes. These presumptions may be rebutted only by clear and convincing evidence to the contrary.

(2) "Beneficiary" means the person designated to receive a nonprobate asset upon the death of the owner by means other than the owner's will.

(3) "Broker" means a person defined as a broker or dealer under the federal securities laws.

(4) "Date of will" means, as to any nonprobate asset, the date of signature of the will or codicil that refers to the asset and disposes of it.

(5) "Designate" means a written means by which the owner selects a beneficiary, including but not limited to instruments under contractual arrangements and registration of accounts, and "designation" means the selection.

(6) "Financial institution" means: A bank, trust company, mutual savings bank, savings and loan association, credit union, broker, or issuer of stock or its transfer agent.

(7)(a) "Nonprobate asset" means a nonprobate asset within the meaning of RCW 11.02.005, but excluding the following:

(i) A right or interest in real property passing under a joint tenancy with right of survivorship;

(ii) A deed or conveyance for which possession has been postponed until the death of the owner;

(iii) A transfer on death deed;

(iv) A right or interest passing under a community property agreement; and

(v) An individual retirement account or bond.

(b) For the definition of "nonprobate asset" relating to revocation of a provision for a former spouse or former domestic partner upon dissolution of marriage or state registered domestic partnership or declaration of invalidity of marriage or state registered domestic partnership, see RCW 11.07.010(5).

(8) "Owner" means a person who, during life, has beneficial ownership of the nonprobate asset.

(9) "Request" means a request by the beneficiary for transfer of a nonprobate asset after the death of the owner, if it complies with all conditions of the arrangement, including reasonable special requirements concerning necessary signatures and regulations of the financial institution or other third party, or by the personal representative of the owner's estate or the testamentary beneficiary, if it complies with the owner's will and any additional conditions of the financial institution or third party for such transfer.

(10) "Testamentary beneficiary" means a person named under the owner's will to receive a nonprobate asset under this chapter, including but not limited to the trustee of a testamentary trust.

(11) "Third party" means a person, including a financial institution, having possession of or control over a nonprobate asset at the death of the owner, including the trustee of a revocable living trust and surviving joint tenant or tenants. [2014 c 58 § 20; 2008 c 6 § 909; 1998 c 292 § 104.]

Uniformity of application and construction—Relation to electronic signatures in global and national commerce act—2014 c 58: See RCW 64.80.903 and 64.80.904.

Additional notes found at www.leg.wa.gov

11.11.020 Disposition of nonprobate assets under will. (1) Subject to community property rights, upon the death of an owner the owner's interest in any nonprobate asset specifically referred to in the owner's will belongs to the testamentary beneficiary named to receive the nonprobate asset, notwithstanding the rights of any beneficiary designated before the date of the will.

(2) A general residuary gift in an owner's will, or a will making general disposition of all of the owner's property, does not entitle the devisees or legatees to receive nonprobate assets of the owner.

(3) A disposition in a will of the owner's interest in "all nonprobate assets" or of all of a category of nonprobate asset under RCW 11.11.010(7), such as "all of my payable on death bank accounts" or similar language, is deemed to be a disposition of all the nonprobate assets the beneficiaries of which are designated before the date of the will.

(4) If the owner designates a beneficiary for a nonprobate asset after the date of the will, the specific provisions in the will that attempt to control the disposition of that asset do not govern the disposition of that nonprobate asset, even if the subsequent beneficiary designation is later revoked. If the owner revokes the later beneficiary designation, and there is no other provision controlling the disposition of the asset, the asset shall be treated as any other general asset of the owner's estate, subject to disposition under the other applicable provisions of the will. A beneficiary designation with respect to an asset that renews without the signature of the owner is deemed to have been made on the date on which the account was first opened. [2006 c 203 § 1; 1998 c 292 § 105.]

11.11.030 Waiver of right to dispose of a nonprobate asset under will—Revocation of waiver. An owner may waive the right to dispose of a specific nonprobate asset by will under this chapter, with or without consideration, by a written instrument signed by the owner and delivered to the financial institution or other third party, including but not limited to signature cards or deposit agreements. The waiver is revocable by written instrument delivered to the financial institution or other third party unless the owner has stated that the waiver is to be irrevocable. [1998 c 292 § 106.]

11.11.040 Right to rely on form of nonprobate asset—Discharge of financial institution or other third party. In transferring nonprobate assets, a personal representative, a financial institution, or other third party may rely conclusively and entirely upon the form of the nonprobate asset and the terms of the nonprobate asset arrangement in effect on the date of death of the owner, and a personal representative or third party may rely on information provided by a financial institution or other party who has possession or control of a nonprobate asset concerning the form of the nonprobate asset and the terms of the nonprobate asset arrangement in effect on the date of death of the owner, unless the personal representative, financial institution, or other third party has actual knowledge of the existence of a claim by a testamentary beneficiary. A financial institution or other third party is not required to inquire as to either the source or ownership of any nonprobate asset in its possession or under its control, or as to the proposed application of an asset so transferred. A transfer of a nonprobate asset in accordance with

this section constitutes a complete release and discharge of the financial institution or other third party from all claims relating to the nonprobate asset, regardless of whether or not the transfer is consistent with the actual ownership of the nonprobate asset. [2006 c 203 § 2; 1998 c 292 § 108.]

11.11.050 Notice—Affidavit—Form—Limitation on liability for failure to provide notice. (1) Written notice under this chapter must be served personally or by certified mail, return receipt requested and postage prepaid, on the financial institution or other third party having the nonprobate asset in its possession or control, on the beneficiary, on the testamentary beneficiary, and on the personal representative, and proof of the mailing or service must be made by affidavit and filed under the cause number assigned to the owner's estate. Notice to a financial institution must include notice delivered as follows:

- (a) If the nonprobate asset was maintained at a specific office of the financial institution, notice must be delivered to the office at which the nonprobate asset was maintained, which notice must be directed to the manager of the office;
- (b) If the nonprobate asset was held in a trust administered by a financial institution, notice must be delivered to the office at which the trust was administered, which notice must be directed to a named officer responsible for the administration of the trust; and
- (c) In all cases, notice must be delivered to any other location and in any other manner specifically designated in a written agreement signed by the owner and the financial institution, including but not limited to a signature card or deposit agreement.

(2) Written notice to a financial institution or other third party of the testamentary disposition of a nonprobate asset under this chapter must be in a form substantially similar to the following:

NOTICE OF TESTAMENTARY DISPOSITION OF NONPROBATE ASSET

The undersigned personal representative, petitioner for appointment as personal representative, attorney for the personal representative or petitioner, or testamentary beneficiary under the will of the decedent named above (as that term is defined in RCW 11.11.010) hereby notifies you that the decedent named above died on (DATE MUST BE SUPPLIED) and left a will dated (DATE OF WILL MUST BE SUPPLIED) disposing of the following nonprobate asset or assets in your possession or control:

(EACH SUCH ASSET MUST BE DESCRIBED WITH REASONABLE SPECIFICITY. FOR ACCOUNTS AT FINANCIAL INSTITUTIONS, THE WRITTEN NOTICE MUST SPECIFY THE OFFICE AT WHICH THE ACCOUNT WAS MAINTAINED, THE NAME OR NAMES IN WHICH THE ACCOUNT WAS HELD, AND THE FULL ACCOUNT NUMBER. FOR ASSETS HELD IN TRUST, THE WRITTEN NOTICE MUST SPECIFY THE NAME OR NAMES OF THE GRANTOR, THE NAME OF THE TRUST,

IF ANY, AND THE DATE OF THE TRUST INSTRUMENT.)

Under chapter 11.11 RCW, you may not transfer, deliver, or otherwise dispose of the asset or assets listed above in accordance with the beneficiary designation, account registration, or other arrangement made with you by the decedent. You may transfer, deliver, or otherwise dispose of the asset or assets listed above only upon receipt of the written direction of the personal representative or of the testamentary beneficiary, if the personal representative consents.

.....
.....
(CAPACITY OF SIGNER)

(3) The personal representative of the estate of the owner, a petitioner for appointment as personal representative, or the testamentary beneficiary may provide written notice under this section. The personal representative has no duty to provide written notice under this section and has no liability for failing or refusing to give the notice.

(4) Written notice under this section may be provided at any time after the death of the owner and before discharge of the personal representative on closing of the estate, and may be provided before admission to probate of the will. [1998 c 292 § 109.]

11.11.060 Vesting of rights and powers under chapter. The right to provide notice under RCW 11.11.050 and the entitlement of the testamentary beneficiary to the nonprobate asset vest immediately upon death of the owner. The power of the personal representative to direct the financial institution or other third party having the nonprobate asset in its possession or under its control to transfer or otherwise dispose of the asset arises upon the later of appointment of the personal representative or admission of the will to probate. [1998 c 292 § 110.]

11.11.070 Ownership rights as between individuals preserved—Testamentary beneficiary may recover nonprobate asset from beneficiary—Limitation on action to recover. (1) The protection accorded to financial institutions and other third parties under RCW 11.11.040 has no bearing on the actual rights of ownership to nonprobate assets as between beneficiaries and testamentary beneficiaries, and their heirs, successors, personal representatives, and assigns.

(2) A testamentary beneficiary entitled to a nonprobate asset otherwise transferred to a beneficiary not so entitled, and a personal representative of the owner's estate on behalf of the testamentary beneficiary, may petition the superior court having jurisdiction over the owner's estate for an order declaring that the testamentary beneficiary is so entitled, the hearing of the petition to be held in accordance with *chapter 11.96 RCW.

(3) A testamentary beneficiary claiming a nonprobate asset who has not filed such a petition within the earlier of: (a) Six months from the date of admission of the will to probate; and (b) one year from the date of the owner's death,

shall be forever barred from making such a claim or commencing such an action. [1998 c 292 § 111.]

*Reviser's note: Chapter 11.96 RCW was repealed by 1999 c 42 § 637, effective January 1, 2000.

11.11.080 Nonprobate assets not property of estate—Effect of notice on administration—Effect of preceding death of devisee or legatee. (1) Notwithstanding any provision of this chapter, a nonprobate asset disposed of under the owner's will may not be treated as a part of the owner's probate estate for any other purpose under this title, unless:

(a) The nonprobate asset is subject to liabilities and claims, estate taxes, and expenses of administration under RCW 11.18.200; or

(b) Any section of this title directs otherwise, by specifically referring to this section.

(2) Provision of notice under this chapter has no effect on the administration of other assets of the estate of the owner. The personal representative has no duty to administer upon a nonprobate asset because of providing the notice, unless specifically required by this chapter or under RCW 11.18.200.

(3) RCW 11.12.110, regarding death of a devisee or legatee before the testator, does not apply to disposition of a nonprobate asset under a will. [1998 c 292 § 112.]

11.11.090 Transfer of nonprobate asset to testamentary beneficiary. (1) A financial institution's or third party's obligation to transfer a nonprobate asset to a testamentary beneficiary arises only after it has actual knowledge of the claim of the testamentary beneficiary, and after receiving written direction from the personal representative of the owner's estate, or if the personal representative consents in writing, from the testamentary beneficiary, to make the transfer. The financial institution may also require that its customary procedures be followed in effectuating a transfer of the nonprobate asset.

(2) Subject to subsection (1) of this section, financial institutions and other third parties may transfer a nonprobate asset that has not already been distributed to the testamentary beneficiary entitled to the nonprobate asset under the owner's will, subject to liabilities and claims, estate taxes, and expenses of administration under RCW 11.18.200. [1998 c 292 § 113.]

11.11.100 Authority to withhold transfer—Notice—Expenses of obtaining consent, authorization, direction.

(1) This chapter does not require any financial institution or other third party to transfer a nonprobate asset to a beneficiary, testamentary beneficiary, or other person claiming an interest in the nonprobate asset if the financial institution or third party has actual knowledge of the existence of a dispute between beneficiaries, testamentary beneficiaries, or other persons concerning rights or ownership to the nonprobate asset under this chapter, or if the financial institution or third party is otherwise uncertain as to who is entitled to receive the nonprobate asset under this chapter. In any such case, the financial institution or third party may, without liability, notify in writing all beneficiaries, testamentary beneficiaries, or other persons claiming an interest in the nonprobate asset of either its uncertainty as to who is entitled to transfer of the

nonprobate asset or the existence of any dispute, and it may also, without liability, refuse to transfer a nonprobate asset to a beneficiary or a testamentary beneficiary until such time as either:

(a) All the beneficiaries, testamentary beneficiaries, and other interested persons have consented in writing to the transfer; or

(b) The transfer is authorized or directed by a court of proper jurisdiction.

(2) The expense of obtaining the written consent or court authorization or direction may, by order of the court, be paid by the personal representative as an expense of administration. [1998 c 292 § 114.]

11.11.110 Adverse claim bond. Notwithstanding RCW 11.11.100, a financial institution or other third party having actual knowledge of the existence of a dispute between beneficiaries, a testamentary beneficiary, or other persons concerning rights to a nonprobate asset under this chapter may condition transfer of the nonprobate asset on execution, in form and with security acceptable to the financial institution or other third party, of a bond in an amount that is double the fair market value of the nonprobate asset on the date of the owner's death or the amount of any adverse claim, whichever is the lesser, indemnifying the financial institution or other third party from any and all liability, loss, damage, costs, and expenses, for and on account of transfer of the nonprobate asset. [1998 c 292 § 115.]

11.11.900 Short title. This chapter may be known and cited as the testamentary disposition of nonprobate assets act. [1998 c 292 § 101.]

11.11.901 Application of chapter. This chapter applies to any will of an owner who dies while a resident of this state on or after July 1, 1999, regardless of whether the will was executed or republished before or after July 1, 1999, and regardless of whether the beneficiary of the nonprobate asset was designated before or after July 1, 1999. [1998 c 292 § 116.]

11.11.903 Effective dates—1998 c 292. (1) Sections 101 through 116 and 118 of this act take effect July 1, 1999.

(2) Sections 117, 201 through 205, 301, 401, 501 through 507, and 604 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [April 2, 1998]. [1998 c 292 § 603.]

Chapter 11.12 RCW WILLS

Sections

11.12.010	Who may make a will.
11.12.020	Requisites of wills—Foreign wills—Electronic presence.
11.12.025	Nuncupative wills.
11.12.030	Signature of testator at his or her direction—Signature by mark.
11.12.040	Revocation of will—How effected—Effect on codicils.
11.12.051	Dissolution, invalidation, or termination of marriage or domestic partnership.
11.12.060	Agreement to convey does not revoke.

- 11.12.070 Devise or bequeathal of property subject to encumbrance.
- 11.12.080 Revocation of later will or codicil—Effect—Evidence.
- 11.12.091 Omitted child.
- 11.12.095 Omitted spouse or omitted domestic partner.
- 11.12.110 Death of grantparent's issue before grantor.
- 11.12.120 Lapsed gift—Procedure and proof.
- 11.12.160 Interested witness—Effect on will.
- 11.12.170 Devise of land, what passes.
- 11.12.180 Rule in Shelley's Case abolished—Future distribution or interest to heirs.
- 11.12.185 Doctrine of Worthier Title abolished—Exception.
- 11.12.190 Will to operate on after-acquired property.
- 11.12.220 No interest on devise unless will so provides.
- 11.12.230 Intent of testator controlling.
- 11.12.250 Gift to trust.
- 11.12.255 Incorporation by reference.
- 11.12.260 Separate writing may direct disposition of tangible personal property—Requirements.
- 11.12.265 Filing of original will with court before death of testator.
- 11.12.400 Electronic wills—Short title.
- 11.12.410 Electronic wills—Definition.
- 11.12.420 Electronic wills—Applicable law.
- 11.12.430 Electronic wills—Execution—Choice of law.
- 11.12.440 Electronic wills—Execution—Procedure.
- 11.12.450 Electronic wills—Self-proving.
- 11.12.460 Electronic wills—Qualified custodians—Eligibility.
- 11.12.470 Electronic wills—Qualified custodians—Duties.
- 11.12.480 Electronic wills—Certified paper copies.
- 11.12.490 Electronic wills—Uniformity of application and construction.
- 11.12.491 Electronic wills—Applicability.

11.12.010 Who may make a will. Any person of sound mind who has attained the age of eighteen years may, by last will, devise all his or her estate, both real and personal.

All wills executed subsequent to September 16, 1940, and which meet the requirements of this section are hereby validated and shall have all the force and effect of wills executed subsequent to the taking effect of this section. [1970 ex.s. c 17 § 3; 1965 c 145 § 11.12.010. Prior: 1943 c 193 § 1; 1917 c 156 § 24; Rem. Supp. 1943 § 1394; prior: Code 1881 § 1318; 1863 p 207 § 51; 1860 p 169 § 18.]

11.12.020 Requisites of wills—Foreign wills—Electronic presence. (1) Except as provided in RCW 11.12.400 through 11.12.491, every will shall be in writing signed by the testator or by some other person under the testator's direction in the testator's presence or electronic presence, and shall be attested by two or more competent witnesses, by subscribing their names to the will, or by signing an affidavit that complies with RCW 11.20.020(2), while in the presence or electronic presence of the testator and at the testator's direction or request: PROVIDED, That a last will and testament, executed in the mode prescribed by the law of the place where executed or of the testator's domicile, either at the time of the will's execution or at the time of the testator's death, shall be deemed to be legally executed, and shall be of the same force and effect as if executed in the mode prescribed by the laws of this state. Any will executed by a testator and witnesses who are not in the same physical location but in the electronic presence of one another in accordance with this section may be executed, attested, or acknowledged in counterparts, which together shall be considered a single document.

(2) This section shall be applied to all wills, whenever executed, including those subject to pending probate proceedings. [2021 c 140 § 1013; 1990 c 79 § 1; 1965 c 145 § 11.12.020. Prior: 1929 c 21 § 1; 1917 c 156 § 25; RRS § 1395; prior: Code 1881 § 1319; 1863 p 207 §§ 53, 54; 1860 p

(2022 Ed.)

170 §§ 20, 21. FORMER PART OF SECTION; re nuncupative wills, now codified as RCW 11.12.025.]

Effective date—2021 c 140 §§ 1001-1016: See note following RCW 11.12.400.

11.12.025 Nuncupative wills. Nothing contained in this chapter shall prevent any member of the armed forces of the United States or person employed on a vessel of the United States merchant marine from disposing of his wages or personal property, or prevent any person competent to make a will from disposing of his or her personal property of the value of not to exceed one thousand dollars, by nuncupative will if the same be proved by two witnesses who were present at the making thereof, and it be proven that the testator, at the time of pronouncing the same, did bid some person present to bear witness that such was his will, or to that effect, and that such nuncupative will was made at the time of the last sickness of the testator, but no proof of any nuncupative will shall be received unless it be offered within six months after the speaking of the testamentary words, nor unless the words or the substance thereof be first committed to writing, and in all cases a citation be issued to the widow and/or heirs at law of the deceased that they may contest the will, and no real estate shall be devised by a nuncupative will. [1965 c 145 § 11.12.025. Formerly RCW 11.12.020, part.]

11.12.030 Signature of testator at his or her direction—Signature by mark. Every person who shall sign the testator's or testatrix's name to any will by his or her direction shall subscribe his or her own name to such will and state that he or she subscribed the testator's name at his or her request: PROVIDED, That such signing and statement shall not be required if the testator shall evidence the approval of the signature so made at his or her request by making his or her mark on the will. [2010 c 8 § 2011; 1965 c 145 § 11.12.030. Prior: 1927 c 91 § 1; 1917 c 156 § 27; RRS § 1397; prior: Code 1881 § 1320; 1863 p 207 § 54; 1860 p 170 § 21.]

11.12.040 Revocation of will—How effected—Effect on codicils. (1) A will, or any part thereof, can be revoked:

(a) By a subsequent will that revokes, or partially revokes, the prior will expressly or by inconsistency; or

(b) By being burnt, torn, canceled, obliterated, destroyed, or a physical act, with the intent and for the purpose of revoking the same, by the testator or by another person in the presence and by the direction of the testator. If such act is done by any person other than the testator, the direction of the testator and the facts of such injury or destruction must be proved by two witnesses.

(2) Revocation of a will in its entirety revokes its codicils, unless revocation of a codicil would be contrary to the testator's intent. [2021 c 140 § 1014; 1994 c 221 § 12; 1965 c 145 § 11.12.040. Prior: 1917 c 156 § 28; RRS § 1398; prior: Code 1881 § 1321; 1863 p 207 § 55; 1860 p 170 § 22.]

Effective date—2021 c 140 §§ 1001-1016: See note following RCW 11.12.400.

Additional notes found at www.leg.wa.gov

11.12.051 Dissolution, invalidation, or termination of marriage or domestic partnership. (1) If, after making a will, the testator's marriage or domestic partnership is dis-

[Title 11 RCW—page 19]

solved, invalidated, or terminated, all provisions in the will in favor of or granting any interest or power to the testator's former spouse or former domestic partner are revoked, unless the will expressly provides otherwise. Provisions affected by this section must be interpreted, and property affected passes, as if the former spouse or former domestic partner failed to survive the testator, having died at the time of entry of the decree of dissolution or declaration of invalidity. Provisions revoked by this section are revived by the testator's remarriage to the former spouse or reregistration of the domestic partnership with the former domestic partner. Revocation of certain nonprobate transfers is provided under RCW 11.07.010.

(2) This section is remedial in nature and applies to decrees of dissolution and declarations of invalidity entered before, on, or after January 1, 1995. [2008 c 6 § 910; 1994 c 221 § 11.]

Additional notes found at www.leg.wa.gov

11.12.060 Agreement to convey does not revoke. A bond, covenant, or agreement made for a valuable consideration by a testator to convey any property, devised or bequeathed in any last will previously made, shall not be deemed a revocation of such previous devise or bequest, but such property shall pass by the devise or bequest, subject to the same remedies on such bond, covenant, or agreement, for specific performance or otherwise, against devisees or legatees, as might be had by law against the heirs of the testator or his or her next of kin, if the same had descended to him or her. [2010 c 8 § 2012; 1965 c 145 § 11.12.060. Prior: 1917 c 156 § 30; RRS § 1400; prior: Code 1881 § 1323; 1863 p 208 § 58; 1860 p 170 § 25.]

11.12.070 Devise or bequeathal of property subject to encumbrance. When any real or personal property subject to a mortgage is specifically devised, the devisee shall take such property so devised subject to such mortgage unless the will provides that such mortgage be otherwise paid. The term "mortgage" as used in this section shall not include a pledge of personal property.

A charge or encumbrance upon any real or personal estate for the purpose of securing the payment of money, or the performance of any covenant or agreement, shall not be deemed a revocation of any will relating to the same estate, previously executed. The devises and legacies therein contained shall pass and take effect, subject to such charge or encumbrance. [1965 c 145 § 11.12.070. Prior: 1955 c 205 § 2; 1917 c 156 § 31; RRS § 1401; prior: Code 1881 § 1324; 1860 p 170 § 26.]

11.12.080 Revocation of later will or codicil—Effect—Evidence. (1) If, after making any will, the testator shall execute a later will that wholly revokes the former will, the destruction, cancellation, or revocation of the later will shall not revive the former will, unless it was the testator's intention to revive it.

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

(3) Evidence that revival was or was not intended includes, in addition to a writing by which the later will or codicil is revoked, the circumstances of the revocation or contemporary or subsequent declarations of the testator. [1994 c 221 § 13; 1965 c 145 § 11.12.080. Prior: 1917 c 156 § 35; RRS § 1405; prior: Code 1881 § 1328; 1863 p 208 § 63; 1860 p 171 § 30.]

Additional notes found at www.leg.wa.gov

11.12.091 Omitted child. (1) If a will fails to name or provide for a child of the decedent who is born or adopted by the decedent after the will's execution and who survives the decedent, referred to in this section as an "omitted child," the child must receive a portion of the decedent's estate as provided in subsection (3) of this section, unless it appears either from the will or from other clear and convincing evidence that the failure was intentional.

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

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

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

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

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

(4) In satisfying a share provided by this section, the bequests made by the will abate as provided in chapter 11.10 RCW. [1994 c 221 § 9.]

Additional notes found at www.leg.wa.gov

11.12.095 Omitted spouse or omitted domestic partner. (1) If a will fails to name or provide for a spouse or domestic partner of the decedent whom the decedent marries or enters into a domestic partnership after the will's execution and who survives the decedent, referred to in this section as an "omitted spouse" or "omitted domestic partner," the spouse or domestic partner must receive a portion of the decedent's estate as provided in subsection (3) of this section, unless it appears either from the will or from other clear and convincing evidence that the failure was intentional.

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

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

(b) A reference in a will to the decedent's future spouse or spouses or future domestic partner or partners, or words of similar import, constitutes a naming of a spouse or domestic partner whom the decedent later marries or with whom the decedent enters into a domestic partnership. A reference to another class such as the decedent's heirs or family does not constitute a naming of a spouse or domestic partner who falls within the class.

(c) A nominal interest in an estate does not constitute a provision for a spouse or domestic partner receiving the interest.

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

(4) In satisfying a share provided by this section, the bequests made by the will abate as provided in chapter 11.10 RCW. [2008 c 6 § 911; 1994 c 221 § 10.]

Additional notes found at www.leg.wa.gov

11.12.110 Death of grandparent's issue before grantor. Unless otherwise provided, when any property shall be given or any appointee appointed under a will, or under a trust of which the decedent is a grantor and which by its terms becomes irrevocable upon or before the grantor's death, to any issue of a grandparent of the decedent and that issue dies before the decedent, or dies before that issue's interest is no longer subject to a contingency, leaving descendants who survive the decedent, those descendants shall take that property or appointment as the predeceased issue would have done if the predeceased issue had survived the decedent. If those descendants are all in the same degree of kinship to the predeceased issue they shall take equally or, if of unequal degree, then those of more remote degree shall take by representation with respect to the predeceased issue. [2021 c 140 § 3604; 2005 c 97 § 2; 1994 c 221 § 14; 1965 c 145 § 11.12.110. Prior: 1947 c 44 § 1; 1917 c 156 § 34; Rem. Supp. 1947 § 1404; prior: Code 1881 § 1327; 1863 p 208 § 62; 1860 p 171 § 29.]

Effective date—2021 c 140 §§ 3101-3614: See RCW 11.95A.903.

When beneficiary with disclaimed interest deemed to have died: RCW 11.86.041.

Additional notes found at www.leg.wa.gov

11.12.120 Lapsed gift—Procedure and proof. (1) If a will makes a gift to a person on the condition that the person survive the testator and the person does not survive the testator, then, unless otherwise provided, the gift lapses and falls

(2022 Ed.)

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

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

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

(4) For purposes of this section, the appointment of an appointee under a will is a gift and may form part of the residue. [2021 c 140 § 3605; 1999 c 42 § 604; 1994 c 221 § 15; 1974 ex.s. c 117 § 51; 1965 c 145 § 11.12.120. Prior: 1937 c 151 § 1; RRS § 1404-1.]

Effective date—2021 c 140 §§ 3101-3614: See RCW 11.95A.903.

Additional notes found at www.leg.wa.gov

11.12.160 Interested witness—Effect on will. (1) An interested witness to a will is one who would receive a gift under the will.

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

(3) If the presumption established under subsection (2) of this section applies and the interested witness fails to rebut it, the interested witness shall take so much of the gift as does not exceed the share of the estate that would be distributed to the witness if the will were not established.

(4) The presumption established under subsection (2) of this section has no effect other than that stated in subsection (3) of this section. [1994 c 221 § 16; 1965 c 145 § 11.12.160. Prior: 1917 c 156 § 38; RRS § 1408; prior: Code 1881 § 1331; 1863 p 209 § 67; 1860 p 171 § 34.]

Additional notes found at www.leg.wa.gov

11.12.170 Devise of land, what passes. Every devise of land in any will shall be construed to convey all the estate of the devisor therein which he or she could lawfully devise, unless it shall clearly appear by the will that he or she intended to convey a less estate. [2010 c 8 § 2013; 1965 c 145 § 11.12.170. Prior: 1917 c 156 § 39; RRS § 1409; prior: Code 1881 § 1332; 1863 p 209 § 69; 1860 p 172 § 36.]

11.12.180 Rule in Shelley's Case abolished—Future distribution or interest to heirs. The Rule in Shelley's Case is abolished as a rule of law and as a rule of construction. If an applicable statute or a governing instrument calls for a future distribution to or creates a future interest in a designated individual's "heirs," "heirs at law," "next of kin," "relatives," or "family," or language of similar import, the prop-

[Title 11 RCW—page 21]

erty passes to those persons, including the state under chapter 11.08 RCW, that would succeed to the designated individual's estate under chapter 11.04 RCW. The property must pass to those persons as if the designated individual had died when the distribution or transfer of the future interest was to take effect in possession or enjoyment. For purposes of this section and RCW 11.12.185, the designated individual's surviving spouse or surviving domestic partner is deemed to be an heir, regardless of whether the surviving spouse or surviving domestic partner has remarried or entered into a subsequent domestic partnership. [2008 c 6 § 912; 1994 c 221 § 17; 1965 c 145 § 11.12.180. Prior: 1917 c 156 § 40; RRS § 1410; prior: Code 1881 § 1333; 1863 p 210 § 70; 1860 p 172 § 37.]

Additional notes found at www.leg.wa.gov

11.12.185 Doctrine of Worthier Title abolished—Exception. The Doctrine of Worthier Title is abolished as a rule of law and as a rule of construction. However, the Doctrine of Worthier Title is preserved as a rule of construction if:

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

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

(3) The words "heirs" or "heirs at law" are used by the grantor to describe the quality of the grantor's title in the reversion as an estate in fee simple in the event that the property reverts to the grantor.

In all other cases, language in a governing instrument describing the beneficiaries of a donative disposition as the transferor's "heirs," "heirs at law," "next of kin," "distributees," "relatives," or "family," or language of similar import, does not create or presumptively create a reversionary interest in the transferor. [1994 c 221 § 18.]

Additional notes found at www.leg.wa.gov

11.12.190 Will to operate on after-acquired property. Any estate, right or interest in property acquired by the testator after the making of his or her will may pass thereby and in like manner as if title thereto was vested in him or her at the time of making the will, unless the contrary manifestly appears by the will to have been the intention of the testator. [2010 c 8 § 2014; 1965 c 145 § 11.12.190. Prior: 1917 c 156 § 41; RRS § 1411; prior: Code 1881 § 1334; 1863 p 210 § 71; 1860 p 172 § 38.]

11.12.220 No interest on devise unless will so provides. No interest shall be allowed or calculated on any devise contained in any will unless such will expressly provides for such interest. [1965 c 145 § 11.12.220. Prior: 1917 c 156 § 26; RRS § 1396.]

11.12.230 Intent of testator controlling. All courts and others concerned in the execution of last wills shall have due regard to the direction of the will, and the true intent and meaning of the testator, in all matters brought before them. [1965 c 145 § 11.12.230. Prior: 1917 c 156 § 45; RRS § 1415; prior: Code 1881 § 1338; 1863 p 210 § 75; 1860 p 172 § 42.]

11.12.250 Gift to trust. A gift may be made by a will to a trustee of a trust executed by any trustor or testator (including a funded or unfunded life insurance trust, although the trustor has reserved any or all rights of ownership of the insurance contracts) if (1) the trust is identified in the testator's will and (2) its terms are evidenced either (a) in a written instrument other than a will, executed by the trustor prior to or concurrently with the execution of the testator's will or (b) in the will of a person who has predeceased the testator, regardless of when executed. The existence, size, or character of the corpus of the trust is immaterial to the validity of the gift. Such gift shall not be invalid because the trust is amendable or revocable, or both, or because the trust was amended after the execution of the testator's will or after the testator's death. Unless the will provides otherwise, the property so given shall not be deemed to be held under a testamentary trust of the testator but shall become a part of the trust to which it is given to be administered and disposed of in accordance with the terms of the instrument establishing the trust, including any amendments, made prior to the death of the testator, and regardless of whether made before or after the execution of the will. Unless the will provides otherwise, an express revocation of the trust prior to the testator's death invalidates the gift. Any termination of the trust other than by express revocation does not invalidate the gift. For purposes of this section, the term "gift" includes the exercise of any testamentary power of appointment. [1985 c 23 § 2. Prior: 1984 c 149 § 5; 1965 c 145 § 11.12.250; prior: 1959 c 116 § 1.]

Purpose—1985 c 23: "The purpose of this act is to make technical corrections to chapter 149, Laws of 1984, and to ensure that the changes made in that chapter meet the constitutional requirements of Article II, section 19 of the state Constitution." [1985 c 23 § 1.]

Trusts—Rule against perpetuities: Chapter 11.98 RCW.

Additional notes found at www.leg.wa.gov

11.12.255 Incorporation by reference. A will may incorporate by reference any writing in existence when the will is executed if the will itself manifests the testator's intent to incorporate the writing and describes the writing sufficiently to permit its identification. In the case of any inconsistency between the writing and the will, the will controls. [1985 c 23 § 3. Prior: 1984 c 149 § 6.]

Purpose—Application—Severability—1985 c 23: See notes following RCW 11.12.250.

Additional notes found at www.leg.wa.gov

11.12.260 Separate writing may direct disposition of tangible personal property—Requirements. (1) A will or a trust of which the decedent is a grantor and which by its terms becomes irrevocable upon or before the grantor's death may refer to a writing that directs disposition of tangible personal property not otherwise specifically disposed of by the will or trust other than property used primarily in trade or business. Such a writing shall not be effective unless: (a) An unrevoked will or trust refers to the writing, (b) the writing is either in the handwriting of, or signed by, the testator or grantor, and (c) the writing describes the items and the recipients of the property with reasonable certainty.

(2) The writing may be written or signed before or after the execution of the will or trust and need not have significance apart from its effect upon the dispositions of property

made by the will or trust. A writing that meets the requirements of this section shall be given effect as if it were actually contained in the will or trust itself, except that if any person designated to receive property in the writing dies before the testator or grantor, the property shall pass as further directed in the writing and in the absence of any further directions, the disposition shall lapse and, in the case of a will, RCW 11.12.110 shall not apply to such lapse.

(3) The testator or grantor may make subsequent handwritten or signed changes to any writing. If there is an inconsistent disposition of tangible personal property as between writings, the most recent writing controls.

(4) As used in this section "tangible personal property" means articles of personal or household use or ornament, for example, furniture, furnishings, automobiles, boats, airplanes, and jewelry, as well as precious metals in any tangible form, for example, bullion or coins. The term includes articles even if held for investment purposes and encompasses tangible property that is not real property. The term does not include mobile homes or intangible property, for example, money that is normal currency or normal legal tender, evidences of indebtedness, bank accounts or other monetary deposits, documents of title, or securities. [2007 c 475 § 3; 1985 c 23 § 4. Prior: 1984 c 149 § 7.]

Purpose—Application—Severability—1985 c 23: See notes following RCW 11.12.250.

Additional notes found at www.leg.wa.gov

11.12.265 Filing of original will with court before death of testator. Any person who has custody or control of any original will and who has not received knowledge of the death of the testator may deliver the will for filing under seal to any court having jurisdiction. The testator may withdraw the original will so filed upon proper identification. Any other person, including an attorney-in-fact or guardian of the testator, may withdraw the original will so filed only upon court order after showing of good cause. Upon request and presentation of a certified copy of the testator's death certificate, the clerk shall unseal the file. This section does not preclude filing a will not under seal and does not alter any duty of a person having knowledge of the testator's death to file the will. [2004 c 72 § 1.]

11.12.400 Electronic wills—Short title. RCW 11.12.410 through 11.12.491 may be known and cited as the uniform electronic wills act. [2021 c 140 § 1001.]

Effective date—2021 c 140 §§ 1001-1016: "Sections 1001 through 1016 of this act take effect January 1, 2022." [2021 c 140 § 1017.]

11.12.410 Electronic wills—Definition. The definition in this section applies throughout RCW 11.12.400 through 11.12.491 unless the context clearly requires otherwise.

"Sign" means, with present intent to authenticate or adopt a record, to affix to or logically associate with the record an electronic symbol, an electronic sound, or process. [2021 c 140 § 1002.]

Effective date—2021 c 140 §§ 1001-1016: See note following RCW 11.12.400.

11.12.420 Electronic wills—Applicable law. An electronic will is a will for all purposes of the law of this state.

(2022 Ed.)

The law of this state applicable to wills and principles of equity apply to an electronic will, except as modified by RCW 11.12.400 through 11.12.491. [2021 c 140 § 1003.]

Effective date—2021 c 140 §§ 1001-1016: See note following RCW 11.12.400.

11.12.430 Electronic wills—Execution—Choice of law. A will executed electronically but not in compliance with RCW 11.12.440(1) is an electronic will under RCW 11.12.400 through 11.12.491 if executed in compliance with the law of the jurisdiction where the testator is:

- (1) Physically located when the will is signed; or
- (2) Domiciled or resides when the will is signed or when the testator dies. [2021 c 140 § 1004.]

Effective date—2021 c 140 §§ 1001-1016: See note following RCW 11.12.400.

11.12.440 Electronic wills—Execution—Procedure.

- (1) Subject to RCW 11.12.450(4), an electronic will must be:
 - (a) A record that is readable as text at the time of signing under (b) of this subsection;
 - (b) Signed by:
 - (i) The testator; or
 - (ii) Another individual in the testator's name, in the testator's physical presence, and by the testator's direction; and
 - (c) Signed in the physical or electronic presence of the testator and at the testator's direction or request by at least two competent witnesses after:
 - (i) The signing of the will under (b) of this subsection; or
 - (ii) The testator's acknowledgment of the signing of the will under (b) of this subsection or acknowledgment of the will.
 - (2) Intent of a testator that the record under subsection (1)(a) of this section be the testator's electronic will may be established by extrinsic evidence. [2021 c 140 § 1005.]

Effective date—2021 c 140 §§ 1001-1016: See note following RCW 11.12.400.

11.12.450 Electronic wills—Self-proving. (1) An electronic will may be simultaneously executed, attested, and made self-proving if:

- (a) The affidavits of the attesting witnesses are affixed to or logically associated with the electronic will; and
- (b) The qualified custodian maintains custody of the electronic will at all times following execution by the testator and witnesses.

(2) The affidavits under subsection (1)(a) of this section must state such facts as the attesting witnesses would be required to testify to in court to prove such electronic will, and must be:

- (a) Made before an officer authorized to administer oaths or, if fewer than two attesting witnesses are physically present in the same location as the testator at the time of signing under RCW 11.12.440(1)(b), before an officer authorized under RCW 42.45.280; and
- (b) Evidenced by the officer's certificate under official seal affixed to or logically associated with the electronic will.

(3)(a) If made before an officer authorized to administer oaths, the acknowledgment and affidavits under subsection (1) of this section must be in substantially the following form:

I, (name), the testator, and, being sworn, declare to the undersigned officer that I sign this instrument as my electronic will, I willingly sign it or willingly direct another individual to sign it for me, I execute it as my voluntary act for the purposes expressed in this instrument, and I am 18 years of age or older, of sound mind, and under no constraint or undue influence.

..... (signature)

Testator

We, (name) and (name), witnesses, being sworn, declare to the undersigned officer that the testator signed this instrument as the testator's electronic will, that the testator willingly signed it or willingly directed another individual to sign for the testator, and that each of us, in the physical or electronic presence of the testator, signs this instrument as witness to the testator's signing, and to the best of our knowledge the testator is 18 years of age or older, of sound mind, and under no constraint or undue influence.

..... (signature)

Witness

..... (signature)

Witness

Certificate of officer:

State of

County of

Subscribed, sworn to, and acknowledged before me by (name), the testator, and subscribed and sworn to before me by (name) and (name), witnesses, this day of,

(Seal)

(Signed)

.....

(Capacity of officer)

(b) If made pursuant to chapter 5.50 RCW, the acknowledgment and affidavits under subsection (1) of this section must be in substantially the following form:

I, (name), the testator, declare under penalty of perjury under the law of Washington that the following is true and correct: That I sign this instrument as my electronic will, I willingly sign it or willingly direct another individual to sign it for me, I execute it as my voluntary act for the purposes expressed in this instrument, and I am 18 years of age or older, of sound mind, and under no constraint or undue influence.

..... (signature)

Testator

We, (name) and (name), witnesses, declare under penalty of perjury under the law of Washington that the following is true and correct: That the testator signed this instrument as the testator's electronic will, that the testator willingly signed it or willingly directed another individual to sign for the testator, and that each of us, in the physical or electronic presence of the testator, signs this instrument as witness to the testator's signing, and to the best of our knowledge the testator is 18 years of age or older, of sound mind, and under no constraint or undue influence.

..... (signature)

Witness

..... (signature)

Witness

(4) A signature physically or electronically affixed to an affidavit that is affixed to or logically associated with an electronic will under RCW 11.12.400 through 11.12.491 is deemed a signature of the electronic will under RCW 11.12.440(1). [2021 c 140 § 1006.]

Effective date—2021 c 140 §§ 1001-1016: See note following RCW 11.12.400.

11.12.460 Electronic wills—Qualified custodians—Eligibility. (1) The following may serve as a qualified custodian:

(a) Any suitable person over the age of 18 years, who is a resident of the state of Washington at the time the electronic will was signed;

(b) A trust company regularly organized under the laws of this state and national banks when authorized to do so;

(c) A nonprofit corporation, if the articles of incorporation or bylaws of that corporation permit the action and if the corporation is in compliance with all applicable provisions of Title 24 RCW;

(d) Any professional service corporations, professional limited liability companies, or limited liability partnerships, that are duly organized under the laws of this state and whose shareholders, members, or partners, respectively, are exclusively attorneys; and

(e) A will repository in the county in which the testator is domiciled.

(2) The following are disqualified to serve as a qualified custodian:

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

(b) An individual who is an heir, beneficiary, or otherwise has an interest in [the] testator's estate; and

(c) Corporations, limited liability companies, limited liability partnerships, except as provided in subsection (1) of this section. [2021 c 140 § 1007.]

Effective date—2021 c 140 §§ 1001-1016: See note following RCW 11.12.400.

11.12.470 Electronic wills—Qualified custodians—Duties. (1) The qualified custodian of an electronic will shall, within 30 days after he or she receives knowledge of the death of the testator:

(a) Deliver said electronic will to the court having jurisdiction or to the person named in the electronic will as executor; and

(b) Make an affidavit before any person authorized to administer oaths, stating (i) the manner in which the qualified custodian received the electronic will; (ii) that the electronic will was at all times in the custody of the qualified custodian; and (iii) that the electronic will in the possession of the qualified custodian has not been altered in any way since the custodian received the electronic will. Such affidavit must be delivered with the electronic will to the court having jurisdiction or the person named as executor under the electronic will.

(2) Any person who willfully violates any of the provisions of this section is liable to any party aggrieved for the damages which may be sustained by such violation. [2021 c 140 § 1008.]

Effective date—2021 c 140 §§ 1001-1016: See note following RCW 11.12.400.

11.12.480 Electronic wills—Certified paper copies. An individual may create a certified paper copy of an electronic will by affirming under penalty of perjury that a paper copy of the electronic will is a complete, true, and accurate copy of the electronic will. If the electronic will is made self-proving, the certified paper copy of the will must include the self-proving affidavits. [2021 c 140 § 1009.]

Effective date—2021 c 140 §§ 1001-1016: See note following RCW 11.12.400.

11.12.490 Electronic wills—Uniformity of application and construction. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [2021 c 140 § 1010.]

Effective date—2021 c 140 §§ 1001-1016: See note following RCW 11.12.400.

11.12.491 Electronic wills—Applicability. RCW 11.12.400 through 11.12.490 apply to the electronic will of a decedent who dies on or after January 1, 2022. [2021 c 140 § 1011.]

Effective date—2021 c 140 §§ 1001-1016: See note following RCW 11.12.400.

Chapter 11.18 RCW

LIABILITY OF BENEFICIARY OF NONPROBATE ASSET

Sections

11.18.200 Liability of beneficiary of nonprobate asset—Abatement.

11.18.200 Liability of beneficiary of nonprobate asset—Abatement. (1) Unless expressly exempted by statute, a beneficiary of a nonprobate asset that was subject to satisfaction of the decedent's general liabilities immediately before the decedent's death takes the asset subject to liabilities, claims, estate taxes, and the fair share of expenses of administration reasonably incurred by the personal representative in the transfer of or administration upon the asset. The beneficiary of such an asset is liable to account to the personal representative to the extent necessary to satisfy liabilities, claims, the asset's fair share of expenses of administration, and the asset's share of any applicable estate taxes under chapter 83.110A RCW. Before making demand that a beneficiary of a nonprobate asset account to the personal representative, the personal representative must give notice to the beneficiary, in the manner provided in chapter 11.96A RCW, that the beneficiary is liable to account under this section.

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

(a) A beneficiary of property passing at death under a community property agreement takes the property subject to the decedent's liabilities, claims, estate taxes, and administration expenses as described in subsection (1) of this section. However, assets existing as community or separate property immediately before the decedent's death under the community property agreement are subject to the decedent's liabilities

(2022 Ed.)

and claims to the same extent that they would have been had they been assets of the probate estate.

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

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

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

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

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

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

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

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

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

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

(4) Nonprobate assets that may be responsible for the satisfaction of the decedent's general liabilities and claims abate together with the probate assets of the estate in accord with chapter 11.10 RCW. [2014 c 58 § 21; 1999 c 42 § 605; 1997 c 252 § 3; 1994 c 221 § 19.]

Uniformity of application and construction—Relation to electronic signatures in global and national commerce act—2014 c 58: See RCW 64.80.903 and 64.80.904.

Additional notes found at www.leg.wa.gov

Chapter 11.20 RCW

CUSTODY, PROOF, AND PROBATE OF WILLS

Sections

11.20.010	Duty of custodian of will—Liability.
11.20.020	Application for probate—Hearing—Order—Proof—Record of testimony—Affidavits of attesting witnesses.
11.20.030	Commission to take testimony of witness.
11.20.040	Proof where one or more witnesses are unable or incompetent to testify, or absent from state.
11.20.050	Recording of wills.
11.20.060	Record of will as evidence.
11.20.070	Proof of lost or destroyed will.
11.20.080	Restraint of personal representative during pendency of application to prove lost or destroyed will.
11.20.090	Admission to probate of foreign will.
11.20.100	Laws applicable to foreign wills.

11.20.010 Duty of custodian of will—Liability. Any person having the custody or control of any will shall, within thirty days after he or she shall have received knowledge of the death of the testator, deliver said will to the court having jurisdiction or to the person named in the will as executor, and any executor having in his or her custody or control any will shall within forty days after he or she received knowledge of the death of the testator deliver the same to the court having jurisdiction. Any person who shall wilfully violate any of the provisions of this section shall be liable to any party aggrieved for the damages which may be sustained by such violation. [2010 c 8 § 2015; 1965 c 145 § 11.20.010. Prior: 1917 c 156 § 9; RRS § 1379; prior: Code 1881 §§ 1342, 1343; 1863 p 212 § 78; 1860 p 174 § 45.]

Refusal to serve as executor: RCW 11.28.010.

11.20.020 Application for probate—Hearing—Order—Proof—Record of testimony—Affidavits of attesting witnesses. (1) Applications for the probate of a will and for letters testamentary, or either, may be made to the judge of the court having jurisdiction and the court may immediately hear the proofs and either probate or reject such will as the testimony may justify. Upon such hearing the court shall make and cause to be entered a formal order, either establishing and probating such will, or refusing to establish and probate the same, and such order shall be conclusive except in the event of a contest of such will as herein-after provided. All testimony in support of the will shall be reduced to writing, signed by the witnesses, and certified by the judge of the court. If the application for probate of a will does not request the appointment of a personal representative and the court enters an adjudication of testacy establishing such will no further administration shall be required except as commenced pursuant to RCW 11.28.330 or 11.28.340.

(2) In addition to the foregoing procedure for the proof of wills, any or all of the attesting witnesses to a will may, at the request of the testator or, after his or her decease, at the request of the executor or any person interested under it, make an affidavit before any person authorized to administer oaths, stating such facts as they would be required to testify to in court to prove such will, which affidavit may be written

on the will or may be affixed or logically associated with the will or a photographic copy of the will or an electronic will. The sworn statement of any witness so taken shall be accepted by the court as if it had been taken before the court.

(3) An electronic will, the custody of which has not been maintained by a qualified custodian, must be treated as a lost or destroyed will under RCW 11.20.070. [2021 c 140 § 1015; 2010 c 8 § 2016; 1977 ex.s. c 234 § 2; 1974 ex.s. c 117 § 27; 1969 ex.s. c 126 § 1; 1965 c 145 § 11.20.020. Prior: 1917 c 156 § 10; RRS § 1380; prior: 1863 p 212 §§ 85, 86; 1860 p 175 §§ 52, 53.]

Effective date—2021 c 140 §§ 1001-1016: See note following RCW 11.12.400.

Will contests: Chapter 11.24 RCW.

Additional notes found at www.leg.wa.gov

11.20.030 Commission to take testimony of witness. If any witness be prevented by sickness from attending at the time any will is produced for probate, or reside out of the state or more than thirty miles from the place where the will is to be proven, such court may issue a commission annexed to such will, and directed to any judge, notary public, or other person authorized to administer an oath, empowering him or her to take and certify the attestation of such witness. [1987 c 202 § 171; 1965 c 145 § 11.20.030. Prior: 1923 c 142 § 1; 1917 c 156 § 11; RRS § 1381; prior: Code 1881 § 1351; 1863 p 212 § 87; 1860 p 175 § 54.]

Intent—1987 c 202: See note following RCW 2.04.190.

11.20.040 Proof where one or more witnesses are unable or incompetent to testify, or absent from state. The subsequent incompetency from whatever cause of one or more of the subscribing witnesses, or their inability to testify in open court or pursuant to commission, or their absence from the state, shall not prevent the probate of the will. In such cases the court shall admit the will to probate upon satisfactory testimony that the handwriting of the testator and of an incompetent or absent subscribing witness is genuine or the court may consider such other facts and circumstances, if any, as would tend to prove such will. [1967 c 168 § 5; 1965 c 145 § 11.20.040. Prior: 1945 c 39 § 1; 1943 c 219 § 1; 1917 c 156 § 12; Rem. Supp. 1945 § 1382; prior: Code 1881 § 1353; 1863 p 213 §§ 89, 90; 1860 p 175 §§ 56, 57.]

11.20.050 Recording of wills. All wills filed with the clerk of the superior court must be noted in the record required to be kept under RCW 36.23.030(7). They may be withdrawn from the record on the order of the court. [2002 c 271 § 1; 1967 c 168 § 17; 1965 c 145 § 11.20.050. Prior: 1915 c 156 § 13; RRS § 1383; prior: Code 1881 § 1356; 1863 p 213 § 92; 1860 p 175 § 59.]

Clerk to keep record of wills: RCW 36.23.030(7).

11.20.060 Record of will as evidence. The record of any will made, probated and recorded as herein provided, and the exemplification of such record by the clerk in whose custody the same may be, shall be received as evidence, and shall be as effectual in all cases as the original would be if produced and proven. [1965 c 145 § 11.20.060. Prior: 1917 c 156 § 14; RRS § 1384; prior: 1891 p 382 § 7; Code 1881 § 1358; 1863 p 213 § 94; 1860 p 175 § 61.]

Certified copies of recorded instruments as evidence: RCW 5.44.060.

11.20.070 Proof of lost or destroyed will. (1) If a will has been lost or destroyed under circumstances such that the loss or destruction does not have the effect of revoking the will, or is an electronic will, custody of which has not been maintained by a qualified custodian, the court may take proof of the execution and validity of the will and establish it, notice to all persons interested having been first given. The proof must be reduced to writing and signed by any witnesses who have testified as to the execution and validity, and must be filed with the clerk of the court.

(2) The provisions of a lost or destroyed will, or an electronic will, custody of which has not been maintained by a qualified custodian, must be proved by clear, cogent, and convincing evidence, consisting at least in part of a witness to either its contents or the authenticity of a copy of the will.

(3) When a lost or destroyed will, or an electronic will, custody of which has not been maintained by a qualified custodian, is established under subsections (1) and (2) of this section, its provisions must be distinctly stated in the judgment establishing it, and the judgment must be recorded as wills are required to be recorded. A personal representative may be appointed by the court in the same manner as is herein provided with reference to original wills presented to the court for probate. [2021 c 140 § 1016; 1994 c 221 § 20; 1965 c 145 § 11.20.070. Prior: 1955 c 205 § 1; 1917 c 156 § 20; RRS § 1390; prior: Code 1881 § 1367; 1860 p 177 § 70.]

Effective date—2021 c 140 §§ 1001-1016: See note following RCW 11.12.400.

Replacement of lost or destroyed probate records: RCW 5.48.060.

Additional notes found at www.leg.wa.gov

11.20.080 Restraint of personal representative during pendency of application to prove lost or destroyed will. If, before or during the pendency of an application to prove a lost or destroyed will, letters of administration shall have been granted on the estate of the testator, or letters testamentary of any previous will of the testator shall have been granted, the court shall have authority to restrain the personal representatives so appointed, from any acts or proceedings which would be injurious to the legatees or devisees claiming under the lost or destroyed will. [1965 c 145 § 11.20.080. Prior: 1917 c 156 § 21; RRS § 1391; prior: Code 1881 § 1369; 1863 p 215 § 105; 1860 p 177 § 72.]

Replacement of lost or destroyed probate records: RCW 5.48.060.

11.20.090 Admission to probate of foreign will. Wills probated in any other state or territory of the United States, or in any foreign country or state, shall be admitted to probate in this state on the production of a copy of such will and of the original record of probate thereof, certified by the attestation of the clerk of the court in which such probate was made; or if there be no clerk, certification by the attestation of the judge thereof, and by the seal of such officers, if they have a seal. [1977 ex.s. c 234 § 3; 1965 c 145 § 11.20.090. Prior: 1917 c 156 § 22; RRS § 1392; prior: Code 1881 § 1370; 1877 p 284 § 1.]

Additional notes found at www.leg.wa.gov

(2022 Ed.)

11.20.100 Laws applicable to foreign wills. All provisions of law relating to the carrying into effect of domestic wills after probate thereof shall, so far as applicable, apply to foreign wills admitted to probate in this state. [1965 c 145 § 11.20.100. Prior: 1917 c 156 § 23; RRS § 1393; prior: Code 1881 § 1371; 1877 p 284 § 2.]

Chapter 11.24 RCW WILL CONTESTS

Sections

11.24.010	Contest of probate or rejection—Limitation of action—Issues.
11.24.020	Filing of will contest petition—Notice.
11.24.030	Burden of proof.
11.24.040	Revocation of probate.
11.24.050	Costs.

11.24.010 Contest of probate or rejection—Limitation of action—Issues. If any person interested in any will shall appear within four months immediately following the probate or rejection thereof, and by petition to the court having jurisdiction contest the validity of said will, or appear to have the will proven which has been rejected, he or she shall file a petition containing his or her objections and exceptions to said will, or to the rejection thereof. Issues respecting the competency of the deceased to make a last will and testament, or respecting the execution by a deceased of the last will and testament under restraint or undue influence or fraudulent representations, or for any other cause affecting the validity of the will or a part of it, shall be tried and determined by the court.

For the purpose of tolling the four-month limitations period, a contest is deemed commenced when a petition is filed with the court and not when served upon the personal representative. The petitioner shall personally serve the personal representative within ninety days after the date of filing the petition. If, following filing, service is not so made, the action is deemed to not have been commenced for purposes of tolling the statute of limitations.

If no person files and serves a petition within the time under this section, the probate or rejection of such will shall be binding and final. [2007 c 475 § 4; 1994 c 221 § 21; 1971 c 7 § 1; 1967 c 168 § 6; 1965 c 145 § 11.24.010. Prior: 1917 c 156 § 15; RRS § 1385; prior: 1891 p 382 § 8; Code 1881 § 1360; 1863 p 213 § 96; 1860 p 176 § 63.]

Additional notes found at www.leg.wa.gov

11.24.020 Filing of will contest petition—Notice. Upon the filing of the petition referred to in RCW 11.24.010, notice shall be given as provided in RCW 11.96A.100 to the executors who have taken upon themselves the execution of the will, or to the administrators with the will annexed, to all legatees named in the will or to their guardians if any of them are minors, or their personal representatives if any of them are dead, and to all persons interested in the matter, as defined in *RCW 11.96A.030(5). [2006 c 360 § 9; 1965 c 145 § 11.24.020. Prior: 1917 c 156 § 16; RRS § 1386; prior: 1891 p 382 § 9; Code 1881 § 1361; 1863 p 214 § 97; 1860 p 176 § 64.]

***Reviser's note:** RCW 11.96A.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (5) to subsection (6).

Additional notes found at www.leg.wa.gov

11.24.030 Burden of proof. In any such contest proceedings the previous order of the court probating, or refusing to probate, such will shall be prima facie evidence of the legality of such will, if probated, or its illegality, if rejected, and the burden of proving the illegality of such will, if probated, or the legality of such will, if rejected by the court, shall rest upon the person contesting such probate or rejection of the will. [1965 c 145 § 11.24.030. Prior: 1917 c 156 § 17; RRS § 1387.]

11.24.040 Revocation of probate. If, upon the trial of said issue, it shall be decided that the will or a part of it is for any reason invalid, or that it is not sufficiently proved to have been the last will of the testator, the will or part and probate thereof shall be annulled and revoked and to that extent the powers of the personal representative shall cease, but the personal representative shall not be liable for any act done in good faith previous to such annulling or revoking. [1994 c 221 § 22; 1965 c 145 § 11.24.040. Prior: 1917 c 156 § 18; RRS § 1388; prior: Code 1881 § 1364; 1863 p 214 § 100; 1860 p 177 § 67.]

Additional notes found at www.leg.wa.gov

11.24.050 Costs. If the probate be revoked or the will annulled, assessment of costs shall be in the discretion of the court. If the will be sustained, the court may assess the costs against the contestant, including, unless it appears that the contestant acted with probable cause and in good faith, such reasonable attorney's fees as the court may deem proper. [1965 c 145 § 11.24.050. Prior: 1917 c 156 § 19; RRS § 1389; prior: Code 1881 § 1366; 1860 p 177 § 69.]

Rules of court: *SPR 98.12W.*

Personal representative

allowance of necessary expenses: RCW 11.48.050.
compensation—Attorney's fee: RCW 11.48.210.

Chapter 11.28 RCW

LETTERS TESTAMENTARY AND OF ADMINISTRATION

Sections

11.28.010	Letters to executors—Refusal to serve—Disqualification.
11.28.020	Objections to appointment.
11.28.030	Community property—Who entitled to letters—Waiver.
11.28.040	Procedure during minority or absence of executor.
11.28.050	Powers of remaining executors on removal of associate.
11.28.060	Administration with will annexed on death of executor.
11.28.070	Authority of administrator with will annexed.
11.28.085	Records and certification of letters—Record of bonds.
11.28.090	Execution and form of letters testamentary.
11.28.100	Form of letters with will annexed.
11.28.110	Application for letters of administration or adjudication of intestacy and heirship.
11.28.120	Persons entitled to letters.
11.28.131	Hearing on petition—Appointment—Issuance of letters—Notice to surviving spouse or surviving domestic partner.
11.28.140	Form of letters of administration.
11.28.150	Revocation of letters by discovery of will.
11.28.160	Cancellation of letters of administration.
11.28.170	Oath of personal representative.
11.28.185	Bond or other security of personal representative—When not required—Waiver—Corporate trustee—Additional bond—Reduction—Other security.
11.28.190	Examination of sureties—Additional security—Costs.
11.28.210	New or additional bond.
11.28.220	Persons disqualified as sureties.
11.28.230	Bond not void for want of form—Successive recoveries.
11.28.235	Limitation of action against sureties.

11.28.237	Notice of appointment as personal representative, pendency of probate—Proof by affidavit.
11.28.238	Notice of appointment as personal representative—Notice to department of revenue.
11.28.240	Request for special notice of proceedings in probate—Prohibitions.
11.28.250	Revocation of letters—Causes.
11.28.260	Revocation of letters—Proceedings in court or chambers.
11.28.270	Powers of remaining personal representatives if letters to associates revoked or surrendered or upon disqualification.
11.28.280	Successor personal representative.
11.28.290	Accounting on death, resignation, or revocation of letters.
11.28.300	Proceedings against delinquent personal representative.
11.28.330	Notice of adjudication of testacy or intestacy and heirship—Contents—Service or mailing.
11.28.340	Order of adjudication of testacy or intestacy and heirship—Entry—Time limitation—Deemed final decree of distribution, when—Purpose—Finality of adjudications.

Letters after final settlement: RCW 11.76.250.

Replacement of lost or destroyed probate records: RCW 5.48.060.

Trust company may not solicit appointment as personal representative: RCW 30A.04.260.

11.28.010 Letters to executors—Refusal to serve—Disqualification. After the entry of an order admitting a will to probate and appointing a personal representative, or personal representatives, letters testamentary shall be granted to the persons therein appointed executors. If a part of the persons thus appointed refuse to act, or be disqualified, the letters shall be granted to the other persons appointed therein. If all such persons refuse to act, letters of administration with the will annexed shall be granted to the person to whom administration would have been granted if there had been no will. [1974 ex.s. c 117 § 28; 1965 c 145 § 11.28.010. Prior: 1917 c 156 § 47; RRS § 1417; prior: Code 1881 § 1372; 1863 p 217 § 106; 1860 p 179 § 73.]

Additional notes found at www.leg.wa.gov

11.28.020 Objections to appointment. Any person interested in a will may file objections in writing to the granting of letters testamentary to the persons named as executors, or any of them, and the objection shall be heard and determined by the court. [1965 c 145 § 11.28.020. Prior: 1917 c 156 § 47; RRS § 1417; prior: Code 1881 § 1372; 1863 p 217 § 106; 1860 p 179 § 73.]

11.28.030 Community property—Who entitled to letters—Waiver. A surviving spouse or surviving domestic partner shall be entitled to administer upon the community property, notwithstanding any provisions of the will to the contrary, if the court find such spouse or such domestic partner to be otherwise qualified; but if such surviving spouse or surviving domestic partner do not make application for such appointment within forty days immediately following the death of the deceased spouse or deceased domestic partner, he or she shall be considered as having waived his or her right to administer upon such community property. If any person, other than the surviving spouse or surviving domestic partner, make application for letters testamentary on such property, prior to the expiration of such forty days, then the court, before making any such appointment, shall require notice of such application to be given the said surviving spouse or surviving domestic partner, for such time and in such manner as the court may determine, unless such applicant show to the satisfaction of the court that there is no surviving spouse or surviving domestic partner or that he or she has in writing

waived the right to administer upon such community property. [2008 c 6 § 913; 1965 c 145 § 11.28.030. Prior: 1917 c 156 § 49; RRS § 1419.]

Additional notes found at www.leg.wa.gov

11.28.040 Procedure during minority or absence of executor. If the executor be a minor or absent from the state, letters of administration with the will annexed shall be granted, during the time of such minority or absence, to some other person unless there be another executor who shall accept the trust, in which case the estate shall be administered by such other executor until the disqualification shall be removed, when such minor, having arrived at full age, or such absentee, having returned, shall be admitted as joint executor with the former, provided a nonresident of this state may qualify as provided in RCW 11.36.010. [1965 c 145 § 11.28.040. Prior: 1917 c 156 § 50; RRS § 1420; prior: Code 1881 § 1374; 1863 p 217 § 108; 1860 p 180 § 75.]

11.28.050 Powers of remaining executors on removal of associate. When any of the executors named shall not qualify or having qualified shall become disqualified or be removed, the remaining executor or executors shall have the authority to perform every act and discharge every trust required by the will, and their acts shall be effectual for every purpose. [1965 c 145 § 11.28.050. Prior: 1917 c 156 § 54; RRS § 1424; prior: Code 1881 § 1372; 1854 p 268 § 5.]

11.28.060 Administration with will annexed on death of executor. No executor of an executor shall, as such, be authorized to administer upon the estate of the first testator, but on the death of the sole or surviving executor of any last will, letters of administration with the will annexed, on the estate of the first testator left unadministered, shall be issued. [1965 c 145 § 11.28.060. Prior: 1917 c 156 § 53; RRS § 1423; prior: Code 1881 § 1379; 1863 p 218 § 113; 1860 p 180 § 80.]

Executor of executor may not sue for estate of first testator: RCW 11.48.190.

11.28.070 Authority of administrator with will annexed. Administrators with the will annexed shall have the same authority as the executor named in the will would have had, and their acts shall be as effectual for every purpose: PROVIDED, That they shall not lease, mortgage, pledge, exchange, sell, or convey any real or personal property of the estate except under order of the court and pursuant to procedure under existing laws pertaining to the administration of estates in cases of intestacy, unless the powers expressed in the will are directory and not discretionary, or said administrator with will annexed shall have obtained non-intervention powers as provided in chapter 11.68 RCW. [1974 ex.s. c 117 § 25; 1965 c 145 § 11.28.070. Prior: 1955 c 205 § 3; 1917 c 156 § 55; RRS § 1425; prior: Code 1881 § 1381; 1860 p 180 § 82.]

Additional notes found at www.leg.wa.gov

11.28.085 Records and certification of letters—Record of bonds. See RCW 36.23.030.

11.28.090 Execution and form of letters testamentary. Letters testamentary to be issued to executors under the provisions of this chapter shall be signed by the clerk, and

(2022 Ed.)

issued under the seal of the court, and may be in the following form:

State of Washington, county of

In the superior court of the county of

Whereas, the last will of A B, deceased, was, on the day of, A.D. (year), duly exhibited, proven, and recorded in our said superior court; and whereas, it appears in and by said will that C D is appointed executor thereon, and, whereas, said C D has duly qualified, now, therefore, know all persons by these presents, that we do hereby authorize the said C D to execute said will according to law.

Witness my hand and the seal of said court this day of, A.D. (year) [2016 c 202 § 6; 2009 c 549 § 1004; 1965 c 145 § 11.28.090. Prior: (i) 1917 c 156 § 56; RCW 11.28.080; RRS § 1426; prior: Code 1881 § 1382; 1863 p 218 § 116; 1860 p 181 § 83. (ii) 1917 c 156 § 59; RRS § 1429; prior: Code 1881 § 1386; 1863 p 219 § 120; 1860 p 181 § 87.]

11.28.100 Form of letters with will annexed. Letters of administration with the will annexed shall be in substantially the same form as provided for letters testamentary. [1965 c 145 § 11.28.100. Prior: 1917 c 156 § 60; RRS § 1430; prior: Code 1881 § 1387; 1863 p 219 § 121.]

11.28.110 Application for letters of administration or adjudication of intestacy and heirship. Application for letters of administration, or, application for an adjudication of intestacy and heirship without the issuance of letters of administration shall be made by petition in writing, signed and verified by the applicant or his or her attorney, and filed with the court, which petition shall set forth the facts essential to giving the court jurisdiction of the case, and state, if known, the names, ages and addresses of the heirs of the deceased and that the deceased died without a will. If the application for an adjudication of intestacy and heirship does not request the appointment of a personal representative and the court enters an adjudication of intestacy no further administration shall be required except as set forth in RCW 11.28.330 or 11.28.340. [2010 c 8 § 2017; 1977 ex.s. c 234 § 4; 1974 ex.s. c 117 § 29; 1965 c 145 § 11.28.110. Prior: 1917 c 156 § 62; RRS § 1432; prior: Code 1881 § 1389; 1863 p 220 § 123; 1860 p 182 § 90.]

Additional notes found at www.leg.wa.gov

11.28.120 Persons entitled to letters. Administration of an estate if the decedent died intestate or if the personal representative or representatives named in the will declined or were unable to serve shall be granted to some one or more of the persons hereinafter mentioned, and they shall be respectively entitled in the following order:

(1) The surviving spouse or state registered domestic partner, or such person as he or she may request to have appointed.

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

(3) The trustee named by the decedent in an inter vivos trust instrument, testamentary trustee named in the will, guardian of the decedent, conservator of the decedent, or an agent named in a durable power of attorney appointed by the

decedent, if any such a fiduciary controlled or potentially controlled substantially all of the decedent's probate and non-probate assets.

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

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

(b) The secretary of the department of social and health services for those estates owing debts for long-term care services as defined in *RCW 74.39A.008; however the secretary may waive this right.

(6) One or more of the principal creditors.

(7) If the persons so entitled shall fail for more than forty days after the death of the decedent to present a petition for letters of administration, or if it appears to the satisfaction of the court that there is no next of kin, as above specified eligible to appointment, or they waive their right, and there are no principal creditor or creditors, or such creditor or creditors waive their right, then the court may appoint a contract service provider with the office of public guardianship and conservatorship under chapter 2.72 RCW or any suitable person to administer such estate. [2020 c 312 § 405; 2019 c 215 § 5; 2007 c 156 § 28; 1995 1st sp.s. c 18 § 61; 1994 c 221 § 23; 1985 c 133 § 1; 1965 c 145 § 11.28.120. Prior: 1927 c 76 § 1; 1917 c 156 § 61; RRS § 1431; prior: Code 1881 § 1388; 1863 p 219 § 122; 1860 p 181 § 89.]

*Reviser's note: RCW 74.39A.008 was repealed by 1997 c 392 § 530.

Effective dates—2020 c 312: See note following RCW 11.130.915.

Additional notes found at www.leg.wa.gov

11.28.131 Hearing on petition—Appointment—Issuance of letters—Notice to surviving spouse or surviving domestic partner. When a petition for general letters of administration or for letters of administration with the will annexed shall be filed, the matter may be heard forthwith, appointment made and letters of administration issued: PROVIDED, That if there be a surviving spouse or surviving domestic partner and a petition is presented by anyone other than the surviving spouse or surviving domestic partner, or any person designated by the surviving spouse or surviving domestic partner to serve as personal representative on his or her behalf, notice to the surviving spouse or surviving domestic partner shall be given of the time and place of such hearing at least ten days before the hearing, unless the surviving spouse or surviving domestic partner shall waive notice of the hearing in writing filed in the cause. [2008 c 6 § 914; 1974 ex.s. c 117 § 44.]

Additional notes found at www.leg.wa.gov

11.28.140 Form of letters of administration. Letters of administration shall be signed by the clerk, and be under the seal of the court, and may be substantially in the following form:

State of Washington, County of

Whereas, A.B., late of on or about the day of A.D. (year) died intestate, leaving at the time of his or her death, property in this state subject to administration: Now, therefore, know all persons by these presents, that we do hereby appoint administrator upon said

estate, and whereas said administrator has duly qualified, hereby authorize him or her to administer the same according to law.

Witness my hand and the seal of said court this day of A.D. (year) [2016 c 202 § 7; 2009 c 549 § 1005; 1965 c 145 § 11.28.140. Prior: 1917 c 156 § 65; RRS § 1435; prior: Code 1881 § 1392; 1863 p 220 § 125; 1860 p 182 § 92.]

11.28.150 Revocation of letters by discovery of will. If after letters of administration are granted a will of the deceased be found and probate thereof be granted, the letters shall be revoked and letters testamentary or of administration with the will annexed, shall be granted. [1965 c 145 § 11.28.150. Prior: 1917 c 156 § 51; RRS § 1421; prior: Code 1881 § 1375; 1863 p 218 § 109; 1860 p 180 § 76.]

11.28.160 Cancellation of letters of administration. The court appointing any personal representative shall have authority for any cause deemed sufficient, to cancel and annul such letters and appoint other personal representatives in the place of those removed. [1965 c 145 § 11.28.160. Prior: 1917 c 156 § 52; RRS § 1422.]

Revocation of letters—Causes: RCW 11.28.250.

11.28.170 Oath of personal representative. Before letters testamentary or of administration are issued, each personal representative or an officer of a bank or trust company qualified to act as a personal representative, must take and subscribe an oath, before some person authorized to administer oaths, that the duties of the trust as personal representative will be performed according to law, which oath must be filed in the cause. [2005 c 97 § 3; 1965 c 145 § 11.28.170. Prior: 1917 c 156 § 66; RRS § 1436; prior: Code 1881 § 1393; 1877 p 211 § 4; 1873 p 329 § 366.]

11.28.185 Bond or other security of personal representative—When not required—Waiver—Corporate trustee—Additional bond—Reduction—Other security. When the terms of the decedent's will manifest an intent that the personal representative appointed to administer the estate shall not be required to furnish bond or other security, or when the personal representative is the surviving spouse or surviving domestic partner of the decedent and it appears to the court that the entire estate, after provision for expenses and claims of creditors, will be distributable to such spouse or surviving domestic partner, then such personal representative shall not be required to give bond or other security as a condition of appointment. In all cases where a bank or trust company authorized to act as personal representative is appointed as personal representative, no bond shall be required. In all other cases, unless waived by the court, the personal representative shall give such bond or other security, in such amount and with such surety or sureties, as the court may direct.

Every person required to furnish bond must, before receiving letters testamentary or of administration, execute a bond to the state of Washington conditioned that the personal representative shall faithfully execute the duty of the trust according to law.

The court may at any time after appointment of the personal representative require said personal representative to give a bond or additional bond, the same to be conditioned and to be approved as provided in this section; or the court may allow a reduction of the bond upon a proper showing.

In lieu of bond, the court may in its discretion, substitute other security or financial arrangements, such as provided under RCW 11.130.445, or as the court may deem adequate to protect the assets of the estate. [2020 c 312 § 709; 2008 c 6 § 915; 1977 ex.s. c 234 § 5; 1974 ex.s. c 117 § 46.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

Additional notes found at www.leg.wa.gov

11.28.190 Examination of sureties—Additional security—Costs. Before the judge approves any bond required under this chapter, and after its approval, he or she may, of his or her own motion, or upon the motion of any person interested in the estate, supported by affidavit that the sureties, or some one or more of them, are not worth as much as they have justified to, order a citation to issue, requiring such sureties to appear before him or her at a designated time and place, to be examined touching their property and its value; and the judge must, at the same time, cause notice to be issued to the personal representative, requiring his or her appearance on the return of the citation, and on its return he or she may examine the sureties and such witnesses as may be produced touching the property of the sureties and its value; and if upon such examination he or she is satisfied that the bond is insufficient he or she must require sufficient additional security. If the bond and sureties are found by the court to be sufficient, the costs incident to such hearing shall be taxed against the party instituting such hearing. As a part of such costs the sureties appearing shall be allowed such fees and mileage as witnesses are allowed in civil proceedings: PROVIDED, That when the citation herein referred to is issued on the motion of the court, no costs shall be imposed. [2010 c 8 § 2018; 1965 c 145 § 11.28.190. Prior: 1917 c 156 § 68; RRS § 1438; prior: Code 1881 § 1400; 1877 p 212 § 4; 1863 p 221 § 129; 1860 p 183 § 96.]

Fees and allowances of witnesses: Chapter 2.40 RCW, RCW 5.56.010.

11.28.210 New or additional bond. Any person interested may at any time by verified petition to the court, or otherwise, complain of the sufficiency of any bond or sureties thereon, and the court may upon such petition, or upon its own motion, and with or without hearing upon the matter, require the personal representative to give a new, or additional bond, or bonds, and in all such matters the court may act in its discretion and make such orders and citations as to it may seem right and proper in the premises. [1965 c 145 § 11.28.210. Prior: 1917 c 156 § 70; RRS § 1440; prior: 1891 p 383 § 13 1/2; Code 1881 § 1404; 1877 p 212 § 4; 1863 p 221 § 131; 1860 p 183 § 98.]

11.28.220 Persons disqualified as sureties. No judge of the superior court, no sheriff, clerk of a court, or deputy of either, and no attorney-at-law shall be taken as surety on any bond required to be taken in any proceeding in probate. [1965 c 145 § 11.28.220. Prior: 1917 c 156 § 71; RRS § 1441; prior: 1891 p 383 § 14; Code 1881 § 1409; 1863 p 221 § 128; 1860 p 183 § 95.]

(2022 Ed.)

11.28.230 Bond not void for want of form—Successive recoveries. No bond required under the provisions of this chapter, and intended as such bond, shall be void for want of form, recital or condition; nor shall the principal or surety on such account be discharged, but all the parties thereto shall be held and bound to the full extent contemplated by the law requiring the same, to the amount specified in such bond. In all actions on such defective bond the plaintiff may state its legal effect in the same manner as though it were a perfect bond. The bond shall not be void upon the first recovery, but may be sued and recovered upon, from time to time, by any person aggrieved in his or her own name, until the whole penalty is exhausted. [2010 c 8 § 2019; 1965 c 145 § 11.28.230. Prior: 1917 c 156 § 73; RRS § 1443; prior: Code 1881 §§ 1412, 1397; 1877 p 211 § 4; 1854 p 219 § 489.]

Bond not to fail for want of form or substance: RCW 19.72.170.

11.28.235 Limitation of action against sureties. All actions against sureties shall be commenced within six years after the revocation or surrender of letters of administration or death of the principal. [1965 c 145 § 11.28.235. Prior: 1917 c 156 § 80; RCW 11.28.310; RRS § 1450; prior: 1891 p 385 § 21; Code 1881 § 1431; 1854 p 274 § 42.]

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

(2) If the personal representative does not otherwise give notice to creditors under chapter 11.40 RCW within thirty days after appointment, the personal representative shall cause written notice of his or her appointment and the pendency of the probate proceedings to be mailed to the state of Washington department of social and health services' office of financial recovery, and proof of the mailing shall be made by affidavit and filed in the cause. [2011 c 327 § 2; 1997 c 252 § 85; 1994 c 221 § 24; 1977 ex.s. c 234 § 6; 1974 ex.s. c 117 § 30; 1969 c 70 § 2; 1965 c 145 § 11.28.237. Prior: 1955 c 205 § 13, part; RCW 11.76.040, part.]

Additional notes found at www.leg.wa.gov

11.28.238 Notice of appointment as personal representative—Notice to department of revenue. Duty of personal representative to notify department of revenue of administration; personal liability for taxes upon failure to give notice: See RCW 82.32.240.

11.28.240 Request for special notice of proceedings in probate—Prohibitions. (1) At any time after the issuance of letters testamentary or of administration or certificate of qualification upon the estate of any decedent, any person interested in the estate as an heir, devisee, distributee, legatee or

creditor whose claim has been duly served and filed, or the lawyer for the heir, devisee, distributee, legatee, or creditor may serve upon the personal representative or upon the lawyer for the personal representative, and file with the clerk of the court wherein the administration of the estate is pending, a written request stating that the person desires special notice of any or all of the following named matters, steps or proceedings in the administration of the estate, to wit:

(a) Filing of petitions for sales, leases, exchanges or mortgages of any property of the estate.

(b) Petitions for any order of solvency or for nonintervention powers.

(c) Filing of accounts.

(d) Filing of petitions for distribution.

(e) Petitions by the personal representative for family allowances and homesteads.

(f) The filing of a declaration of completion.

(g) The filing of the inventory.

(h) Notice of presentation of personal representative's claim against the estate.

(i) Petition to continue a going business.

(j) Petition to borrow upon the general credit of the estate.

(k) Petition for judicial proceedings under chapter 11.96A RCW.

(l) Petition to reopen an estate.

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

(n) Intent to pay attorney's or personal representative's fees.

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

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

(a) That person qualifies to request special notice solely by reason of being a specific legatee, all of the property that person is entitled to receive from the decedent's estate has been distributed to that person, and that person's bequest is

not subject to any subsequent abatement for the payment of the decedent's debts, expenses, or taxes;

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

(c) That person qualifies to request special notice solely by reason of being a creditor of the decedent and that person has received all of the property that the person is entitled to receive from the decedent's estate. [1999 c 42 § 606; 1997 c 252 § 4; 1985 c 30 § 5. Prior: 1984 c 149 § 8; 1965 c 145 § 11.28.240; prior: 1941 c 206 § 1; 1939 c 132 § 1; 1917 c 156 § 64; Rem. Supp. 1941 § 1434.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Borrowing on general credit of estate—Petition—Notice—Hearing: RCW 11.56.280.

Claim of personal representative—Presentation and petition—Filing: RCW 11.40.140.

Continuation of decedent's business: RCW 11.48.025.

Purchase of claims by personal representative: RCW 11.48.080.

Report of personal representative, notice of hearing: RCW 11.76.020, 11.76.040.

Sales, exchanges, leases, mortgages and borrowing: Chapter 11.56 RCW.

Additional notes found at www.leg.wa.gov

11.28.250 Revocation of letters—Causes. Whenever the court has reason to believe that any personal representative has wasted, embezzled, or mismanaged, or is about to waste, or embezzle the property of the estate committed to his or her charge, or has committed, or is about to commit a fraud upon the estate, or is incompetent to act, or is permanently removed from the state, or has wrongfully neglected the estate, or has neglected to perform any acts as such personal representative, or for any other cause or reason which to the court appears necessary, it shall have power and authority, after notice and hearing to revoke such letters. The manner of the notice and of the service of the same and of the time of hearing shall be wholly in the discretion of the court, and if the court for any such reasons revokes such letters the powers of such personal representative shall at once cease, and it shall be the duty of the court to immediately appoint some other personal representative, as in this title provided. [2010 c 8 § 2020; 1965 c 145 § 11.28.250. Prior: 1917 c 156 § 74; RRS § 1444; prior: Code 1881 § 1414; 1863 p 218 § 112; 1860 p 186 § 114.]

Absentee estates, removal of trustee: RCW 11.80.060.

Accounting on revocation of letters: RCW 11.28.290.

Cancellation of letters of administration: RCW 11.28.160.

Effect on compensation of personal representative who fails to discharge duties: RCW 11.48.210.

Notice to creditors when personal representative removed—Limit tolled by vacancy: RCW 11.40.150.

Revocation of letters

by discovery of will: RCW 11.28.150.

upon conviction of crime or becoming of unsound mind: RCW 11.36.010.

Successor personal representative: RCW 11.28.280.

11.28.260 Revocation of letters—Proceedings in court or chambers. The applications and acts authorized by

RCW 11.28.250 may be heard and determined in court or at chambers. All orders made therein must be entered upon the minutes of the court. [1965 c 145 § 11.28.260. Prior: 1917 c 156 § 75; RRS § 1445; prior: 1891 p 384 § 17; Code 1881 § 1413; 1877 p 213 § 4.]

11.28.270 Powers of remaining personal representatives if letters to associates revoked or surrendered or upon disqualification. If more than one personal representative of an estate is serving when the letters to any of them are revoked or surrendered or when any part of them dies or in any way becomes disqualified, those who remain shall perform all the duties required by law unless the decedent provided otherwise in a duly probated will or unless the court orders otherwise. [1997 c 252 § 5; 1965 c 145 § 11.28.270. Prior: 1917 c 156 § 76; RRS § 1446; prior: Code 1881 § 1427; 1854 p 273 § 38.]

Additional notes found at www.leg.wa.gov

11.28.280 Successor personal representative. Except as otherwise provided in RCW 11.28.270, if a personal representative of an estate dies or resigns or the letters are revoked before the settlement of the estate, letters testamentary or letters of administration of the estate remaining unadministered shall be granted to those to whom the letters would have been granted if the original letters had not been obtained, or the person obtaining them had renounced administration, and the successor personal representative shall perform like duties and incur like liabilities as the preceding personal representative, unless the decedent provided otherwise in a duly probated will or unless the court orders otherwise. A succeeding personal representative may petition for nonintervention powers under chapter 11.68 RCW. [1997 c 252 § 6; 1974 ex.s. c 117 § 26; 1965 c 145 § 11.28.280. Prior: 1955 c 205 § 8; 1917 c 156 § 77; RRS § 1447; prior: Code 1881 § 1428.]

Additional notes found at www.leg.wa.gov

11.28.290 Accounting on death, resignation, or revocation of letters. If any personal representative resign, or his or her letters be revoked, or he or she die, he or she or his or her representatives shall account for, pay, and deliver to his or her successor or to the surviving or remaining personal representatives, all money and property of every kind, and all rights, credits, deeds, evidences of debt, and papers of every kind, of the deceased, at such time and in such manner as the court shall order on final settlement with such personal representative or his or her legal representatives. [2010 c 8 § 2021; 1965 c 145 § 11.28.290. Prior: 1917 c 156 § 78; RRS § 1448; prior: Code 1881 § 1429; 1854 p 273 § 40.]

11.28.300 Proceedings against delinquent personal representative. The succeeding administrator, or remaining personal representative may proceed by law against any delinquent former personal representative, or his or her personal representatives, or the sureties of either, or against any other person possessed of any part of the estate. [2010 c 8 § 2022; 1965 c 145 § 11.28.300. Prior: 1917 c 156 § 79; RRS § 1449; prior: 1891 p 384 § 20; Code 1881 § 1430; 1854 p 273 § 41.]

Limitation of action against sureties: RCW 11.28.235.

(2022 Ed.)

11.28.330 Notice of adjudication of testacy or intestacy and heirship—Contents—Service or mailing. If no personal representative is appointed to administer the estate of a decedent, the person obtaining the adjudication of testacy, or intestacy and heirship, within thirty days shall personally serve or mail a true copy of the adjudication to each heir, legatee, and devisee of the decedent, which copy shall contain the name of the decedent's estate and the probate cause number, and shall:

- (1) State the name and address of the applicant;
- (2) State that on the day of,, the applicant obtained an order from the superior court of county, state of Washington, adjudicating that the decedent died intestate, or testate, whichever shall be the case;
- (3) In the event the decedent died testate, enclose a copy of his or her will therewith, and state that the adjudication of testacy will become final and conclusive for all legal intents and purposes unless any heir, legatee, or devisee of the decedent shall contest said will within four months after the date the said will was adjudicated to be the last will and testament of the decedent;
- (4) In the event that the decedent died intestate, set forth the names and addresses of the heirs of the decedent, their relationship to the decedent, the distributive shares of the estate of the decedent which they are entitled to receive, and that said adjudication of intestacy and heirship shall become final and conclusive for all legal intents and purposes, unless, within four months of the date of said adjudication of intestacy, a petition shall be filed seeking the admission of a will of the decedent for probate, or contesting the adjudication of heirship.

Notices provided for in this section may be served personally or sent by regular mail, and proof of such service or mailing shall be made by an affidavit filed in the cause;

- (5) Mail a true copy of the adjudication, including the decedent's social security number and the name and address of the applicant, to the state of Washington department of social and health services office of financial recovery. [2010 c 8 § 2023; 2004 c 193 § 1; 1974 ex.s. c 117 § 31.]

Additional notes found at www.leg.wa.gov

11.28.340 Order of adjudication of testacy or intestacy and heirship—Entry—Time limitation—Deemed final decree of distribution, when—Purpose—Finality of adjudications. Unless, within four months after the entry of the order adjudicating testacy or intestacy and heirship, and the mailing or service of the notice required in RCW 11.28.330 any heir, legatee or devisee of the decedent shall offer a later will for probate or contest an adjudication of testacy in the manner provided in this title for will contests, or offer a will of the decedent for probate following an adjudication of intestacy and heirship, or contesting the determination of heirship, an order adjudicating testacy or intestacy and heirship without appointing a personal representative to administer a decedent's estate shall, as to those persons by whom notice was waived or to whom said notice was mailed or on whom served, be deemed the equivalent of the entry of a final decree of distribution in accordance with the provisions of chapter 11.76 RCW for the purpose of:

(1) Establishing the decedent's will as his or her last will and testament and persons entitled to receive his or her estate thereunder; or

(2) Establishing the fact that the decedent died intestate, and those persons entitled to receive his or her estate as his or her heirs at law.

The right of an heir, legatee, or devisee to receive the assets of a decedent shall, to the extent otherwise provided by this title, be subject to the prior rights of the decedent's creditors and of any persons entitled to a homestead award or award in lieu of homestead or family allowance, and nothing contained in this section shall be deemed to alter or diminish such prior rights, or to prohibit any person for good cause shown, from obtaining the appointment of a personal representative to administer the estate of the decedent after the entry of an order adjudicating testacy or intestacy and heirship. However, if the petition for letters testamentary or of administration shall be filed more than four months after the date of the adjudication of testacy or of intestacy and heirship, the issuance of such letters shall not affect the finality of said adjudications.

Four months after providing all notices as required in RCW 11.28.330, any person paying, delivering, transferring, or issuing property to the person entitled thereto under an adjudication of testacy or intestacy and heirship that is deemed the equivalent of a final decree of distribution as set forth in this section is discharged and released to the same extent as if such person has dealt with a personal representative of the decedent. [2010 c 8 § 2024; 2004 c 193 § 2; 1988 c 29 § 1; 1977 ex.s. c 234 § 7; 1974 ex.s. c 117 § 32.]

Additional notes found at www.leg.wa.gov

Chapter 11.32 RCW SPECIAL ADMINISTRATORS

Sections

11.32.010	Appointment.
11.32.020	Bond.
11.32.030	Powers and duties.
11.32.040	Succession by personal representative.
11.32.050	Not liable to creditors.
11.32.060	To render account.

11.32.010 Appointment. When, by reason of an action concerning the proof of a will, or from any other cause, there shall be a delay in granting letters testamentary or of administration, the judge may, in his or her discretion, appoint a special administrator (other than one of the parties) to collect and preserve the effects of the deceased; and in case of an appeal from the decree appointing such special administrator, he or she shall, nevertheless, proceed in the execution of his or her trust until he or she shall be otherwise ordered by the appellate court. [2010 c 8 § 2025; 1965 c 145 § 11.32.010. Prior: 1917 c 156 § 81; RRS § 1451; prior: 1891 p 384 § 19; Code 1881 § 1419; 1863 p 222 § 137; 1860 p 184 § 104.]

11.32.020 Bond. Every such administrator shall, before entering on the duties of his or her trust, give bond, with sufficient surety or sureties, in such sum as the judge shall order, payable to the state of Washington, with conditions as required of an executor or in other cases of administration: PROVIDED, That in all cases where a bank or trust company

authorized to act as administrator is appointed special administrator or acts as special administrator under an appointment as such heretofore made, no bond shall be required. [2010 c 8 § 2026; 1965 c 145 § 11.32.020. Prior: 1963 c 46 § 2; 1917 c 156 § 82; RRS § 1452; prior: Code 1881 § 1420; 1863 pp 220, 222 §§ 126, 138; 1860 pp 183, 184 §§ 93, 105.]

Bond of personal representative: RCW 11.28.185.

11.32.030 Powers and duties. Such special administrator shall collect all the goods, chattels, money, effects, and debts of the deceased, and preserve the same for the personal representative who shall thereafter be appointed; and for that purpose may commence and maintain suits as an administrator, and may also sell such perishable and other goods as the court shall order sold, and make family allowances under the order of the court. The appointment may be for a specified time, to perform duties respecting specific property, or to perform particular acts, as stated in the order of appointment. Such special administrator shall be allowed such compensation for his or her services as the said court shall deem reasonable, together with reasonable fees for his or her attorney. [2010 c 8 § 2027; 1965 c 145 § 11.32.030. Prior: 1917 c 156 § 83; RRS § 1453; prior: Code 1881 § 1421; 1863 p 222 § 139; 1860 p 185 § 106.]

11.32.040 Succession by personal representative. Upon granting letters testamentary or of administration the power of the special administrator shall cease, and he or she shall forthwith deliver to the personal representative all the goods, chattels, money, effects, and debts of the deceased in his or her hands, and the personal representative may be admitted to prosecute any suit commenced by the special administrator, in like manner as an administrator de bonis non is authorized to prosecute a suit commenced by a former personal representative. The estate shall be liable for obligations incurred by the special administrator pursuant to the order of appointment or approved by the court. [2010 c 8 § 2028; 1965 c 145 § 11.32.040. Prior: 1917 c 156 § 84; RRS § 1454; prior: Code 1881 § 1422; 1863 p 233 § 140; 1860 p 185 § 107.]

11.32.050 Not liable to creditors. Such special administrator shall not be liable to an action by any creditor of the deceased, and the time for limitation of all suits against the estate shall begin to run from the time of granting letters testamentary or of administration in the usual form, in like manner as if such special administration had not been granted. [1965 c 145 § 11.32.050. Prior: 1917 c 156 § 85; RRS § 1455; prior: Code 1881 § 1423; 1863 p 223 § 141; 1860 p 185 § 108.]

11.32.060 To render account. The special administrator shall also render an account, under oath, of his or her proceedings, in like manner as other administrators are required to do. [2010 c 8 § 2029; 1965 c 145 § 11.32.060. Prior: 1917 c 156 § 86; RRS § 1456; prior: Code 1881 § 1424; 1863 p 223 § 142; 1860 p 185 § 109.]

Settlement of estates: Chapter 11.76 RCW.

Chapter 11.36 RCW
QUALIFICATIONS OF PERSONAL
REPRESENTATIVES

Sections

- 11.36.010 Parties disqualified—Result of disqualification after appointment.
11.36.021 Trustees—Who may serve.

11.36.010 Parties disqualified—Result of disqualification after appointment. (1) Except as provided in subsections (2), (3), and (4) of this section, the following persons are not qualified to act as personal representatives: Corporations, limited liability companies, limited liability partnerships, minors, persons of unsound mind, or persons who have been convicted of (a) any felony or (b) any crime involving moral turpitude.

(2) Trust companies regularly organized under the laws of this state and national banks when authorized so to do may act as the personal representative of an individual's estate or of the estate of an incapacitated person upon petition of any person having a right to such appointment and may act as personal representatives or guardians when so appointed by will. No trust company or national bank may qualify as such personal representative or guardian under any will hereafter drawn by it or its agents or employees, and no salaried attorney of any such company may be allowed any attorney fee for probating any such will or in relation to the administration or settlement of any such estate, and no part of any attorney fee may inure, directly or indirectly, to the benefit of any trust company or national bank.

(3) Professional service corporations, professional limited liability companies, or limited liability partnerships, that are duly organized under the laws of this state and whose shareholders, members, or partners, respectively, are exclusively attorneys, may act as personal representatives.

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

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

(6) A nonresident may be appointed to act as personal representative if the nonresident appoints an agent who is a resident of the county where such estate is being probated or who is an attorney of record of the estate, upon whom service of all papers may be made; such appointment to be made in writing and filed by the clerk with other papers of such estate; and, unless bond has been waived as provided by RCW 11.28.185, such nonresident personal representative must file a bond to be approved by the court. [2013 c 272 § 1; 1983 c 51 § 1; 1983 c 3 § 14; 1965 c 145 § 11.36.010. Prior: 1959 c 43 § 1; 1917 c 156 § 87; RRS § 1457; prior: Code 1881 § 1409; 1863 p 227 § 164; 1860 p 189 § 131.]

Rules of court: *Counsel fees: SPR 98.12W.*

Application—2013 c 272: See note following RCW 11.98.002.

Procedure during minority or absence of executor: RCW 11.28.040.

Trust company may act as personal representative: RCW 30A.08.150.

(2022 Ed.)

11.36.021 Trustees—Who may serve. (1) The following may serve as trustees:

(a) Any suitable persons over the age of eighteen years, if not otherwise disqualified;

(b) Any trust company regularly organized under the laws of this state and national banks when authorized to do so;

(c) Any nonprofit corporation, if the articles of incorporation or bylaws of that corporation permit the action and if the corporation is in compliance with all applicable provisions of Title 24 RCW;

(d) Any professional service corporations, professional limited liability companies, or limited liability partnerships, that are duly organized under the laws of this state and whose shareholders, members, or partners, respectively, are exclusively attorneys;

(e) Any state or regional college or university, as those institutions are defined in RCW 28B.10.016;

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

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

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

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

(b) A corporation organized under Title 23B RCW that is not authorized under the laws of the state of Washington to act as a fiduciary. [2013 c 272 § 2; 1991 c 72 § 1; 1985 c 30 § 6. Prior: 1984 c 149 § 9.]

Application—2013 c 272: See note following RCW 11.98.002.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

Chapter 11.40 RCW
CLAIMS AGAINST ESTATE

Sections

- 11.40.010 Claims—Presentation—Other notice not affected.
11.40.020 Notice to creditors—Manner—Filings—Publication.
11.40.030 Notice to creditors—Form.
11.40.040 "Reasonably ascertainable" creditor—Definition—Reasonable diligence—Presumptions—Petition for order.
11.40.051 Claims against decedent—Time limits.
11.40.060 Claims involving liability or casualty insurance—Limitations—Exceptions to time limits.
11.40.070 Claims—Form—Manner of presentation—Waiver of defects.
11.40.080 Claims—Duty to allow or reject—Notice of petition to allow—Attorneys' fees.
11.40.090 Allowance of claims—Notice—Automatic allowance—Petition for extension—Ranking of claims—Barred claims.
11.40.100 Rejection of claim—Time limits—Notice—Compromise of claim.
11.40.110 Action pending at decedent's death—Personal representative as defendant.
11.40.120 Effect of judgment against personal representative.
11.40.130 Judgment against decedent—Execution barred upon decedent's death—Presentation—Sale of property.
11.40.135 Secured claim—Creditor's right.
11.40.140 Claim of personal representative—Presentation and petition—Filing.
11.40.150 Notice to creditors when personal representative resigns, dies, or is removed—Limit tolled by vacancy.
11.40.160 Personal representative as successor to notice agent—Notice not affected—Presumptions—Duties.
11.40.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

Action on claim not acted on—Contribution: RCW 11.76.170.
Contingent or disputed claims, procedure: RCW 11.76.190.
Evidence, transaction with person since deceased: RCW 5.60.030.
Judgment against executor or administrator, effect: RCW 4.56.050.
Liability of personal representative: RCW 11.76.160.
Limitation of actions: Chapter 4.16 RCW.
Order maturing claim not due: RCW 11.76.180.
Order of payment of debts: RCW 11.76.110.
Payment of claims where estate insufficient: RCW 11.76.150.
Quasi-community property—Lifetime transfers—Claims by surviving spouse or surviving domestic partner: RCW 26.16.240.
Sale, etc., of property—Priority as to realty or personalty: Chapter 11.10 RCW.
Survival of actions: Chapter 4.20 RCW.
Tax constitutes debt—Priority of lien: RCW 82.32.240.

11.40.010 Claims—Presentation—Other notice not affected. A person having a claim against the decedent may not maintain an action on the claim unless a personal representative has been appointed and the claimant has presented the claim as set forth in this chapter. However, this chapter does not affect the notice under RCW 82.32.240 or the ability to maintain an action against a notice agent under chapter 11.42 RCW. [1997 c 252 § 7; 1995 1st sp.s. c 18 § 58; 1994 c 221 § 25; 1991 c 5 § 1; 1989 c 333 § 1; 1974 ex.s. c 117 § 33; 1967 c 168 § 7; 1965 c 145 § 11.40.010. Prior: 1923 c 142 § 3; 1917 c 156 § 107; RRS § 1477; prior: Code 1881 § 1465; 1860 p 195 § 157; 1854 p 280 § 78.]

Publication of legal notices: Chapter 65.16 RCW.
 Additional notes found at www.leg.wa.gov

11.40.020 Notice to creditors—Manner—Filings—Publication. (1) Subject to subsection (2) of this section, a personal representative may give notice to the creditors of the decedent, in substantially the form set forth in RCW 11.40.030, announcing the personal representative's appointment and requiring that persons having claims against the decedent present their claims within the time specified in RCW 11.40.051 or be forever barred as to claims against the decedent's probate and nonprobate assets. If notice is given:

- (a) The personal representative shall file the notice with the court;
- (b) The personal representative shall cause the notice to be published once each week for three successive weeks in a legal newspaper in the county in which the estate is being administered;
- (c) The personal representative may, at any time during the probate proceeding, give actual notice to creditors who become known to the personal representative by serving the notice on the creditor or mailing the notice to the creditor at the creditor's last known address, by regular first-class mail, postage prepaid; and
- (d) The personal representative shall also mail a copy of the notice, including the decedent's social security number, to the state of Washington department of social and health services office of financial recovery.

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

(2) If the decedent was a resident of the state of Washington at the time of death and probate proceedings are com-

menced in a county other than the county of the decedent's residence, then instead of the requirements under subsection (1)(a) and (b) of this section, the personal representative shall cause the notice to creditors in substantially the form set forth in RCW 11.40.030 to be published once each week for three successive weeks in a legal newspaper in the county of the decedent's residence and shall file the notice with the superior court of the county in which the probate proceedings were commenced. [2005 c 97 § 4; 1999 c 42 § 601; 1997 c 252 § 8; 1974 ex.s. c 117 § 34; 1965 c 145 § 11.40.020. Prior: 1917 c 156 § 108; RRS § 1478; prior: 1883 p 29 § 1; Code 1881 § 1468.]

Additional notes found at www.leg.wa.gov

11.40.030 Notice to creditors—Form. Notice under RCW 11.40.020 must contain the following elements in substantially the following form:

CAPTION) No.
 OF CASE) PROBATE NOTICE TO
) CREDITORS
) RCW 11.40.030

The personal representative named below has been appointed as personal representative of this estate. Any person having a claim against the decedent must, before the time the claim would be barred by any otherwise applicable statute of limitations, present the claim in the manner as provided in RCW 11.40.070 by serving on or mailing to the personal representative or the personal representative's attorney at the address stated below a copy of the claim and filing the original of the claim with the court in which the probate proceedings were commenced. The claim must be presented within the later of: (1) Thirty days after the personal representative served or mailed the notice to the creditor as provided under RCW 11.40.020(1)(c); or (2) four months after the date of first publication of the notice. If the claim is not presented within this time frame, the claim is forever barred, except as otherwise provided in RCW 11.40.051 and 11.40.060. This bar is effective as to claims against both the decedent's probate and nonprobate assets.

Date of First
 Publication:

Personal Representative:

Attorney for the Personal Representative:
 Address for Mailing or Service:
 Court of probate proceedings and cause number:

[2005 c 97 § 5; 1997 c 252 § 9; 1989 c 333 § 7; 1977 ex.s. c 234 § 8; 1974 ex.s. c 117 § 35; 1965 c 145 § 11.40.030. Prior: 1963 c 43 § 1; 1917 c 156 § 109; RRS § 1479; prior: Code 1881 § 1469; 1873 p 285 § 156; 1854 p 281 § 82.]

Rules of court: *SPR 98.08W, 98.10W, 98.12W.*

Additional notes found at www.leg.wa.gov

11.40.040 "Reasonably ascertainable" creditor—Definition—Reasonable diligence—Presumptions—Petition for order. (1) For purposes of RCW 11.40.051, a "reasonably ascertainable" creditor of the decedent is one that the

personal representative would discover upon exercise of reasonable diligence. The personal representative is deemed to have exercised reasonable diligence upon conducting a reasonable review of the decedent's correspondence, including correspondence received after the date of death, and financial records, including personal financial statements, loan documents, checkbooks, bank statements, and income tax returns, that are in the possession of or reasonably available to the personal representative.

(2) If the personal representative conducts the review, the personal representative is presumed to have exercised reasonable diligence to ascertain creditors of the decedent and any creditor not ascertained in the review is presumed not reasonably ascertainable within the meaning of RCW 11.40.051. These presumptions may be rebutted only by clear, cogent, and convincing evidence.

(3) The personal representative may evidence the review and resulting presumption by filing with the court an affidavit regarding the facts referred to in this section. The personal representative may petition the court for an order declaring that the personal representative has made a review and that any creditors not known to the personal representative are not reasonably ascertainable. The petition must be filed under RCW 11.96A.080 and the notice specified under RCW 11.96A.110 must also be given by publication. [1999 c 42 § 607; 1997 c 252 § 10; 1994 c 221 § 28; 1974 ex.s. c 117 § 36; 1965 c 145 § 11.40.040. Prior: 1917 c 156 § 110; RRS § 1480; prior: Code 1881 § 1470; 1854 p 281 § 83.]

Order of payment of debts: RCW 11.76.110.

Additional notes found at www.leg.wa.gov

11.40.051 Claims against decedent—Time limits. (1)

Whether or not notice is provided under RCW 11.40.020, a person having a claim against the decedent is forever barred from making a claim or commencing an action against the decedent, if the claim or action is not already barred by an otherwise applicable statute of limitations, unless the creditor presents the claim in the manner provided in RCW 11.40.070 within the following time limitations:

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

(b) If the personal representative provided notice under RCW 11.40.020 and the creditor was not given actual notice as provided in RCW 11.40.020(1)(c):

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

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

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

(2022 Ed.)

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

(3) This bar is effective as to claims against both the decedent's probate and nonprobate assets. [2005 c 97 § 6; 1997 c 252 § 11.]

Additional notes found at www.leg.wa.gov

11.40.060 Claims involving liability or casualty insurance—Limitations—Exceptions to time limits. The time limitations for presenting claims under this chapter do not accrue to the benefit of any liability or casualty insurer. Claims against the decedent or the decedent's marital community that can be fully satisfied by applicable insurance coverage or proceeds need not be presented within the time limitation of RCW 11.40.051, but the amount of recovery cannot exceed the amount of the insurance. The claims may at any time be presented as provided in RCW 11.40.070, subject to the otherwise relevant statutes of limitations, and do not constitute a cloud, lien, or encumbrance upon the title to the decedent's probate or nonprobate assets nor delay or prevent the conclusion of probate proceedings or the transfer or distribution of assets of the estate. This section does not serve to extend any otherwise relevant statutes of limitations. [1997 c 252 § 12; 1974 ex.s. c 117 § 37; 1965 c 145 § 11.40.060. Prior: 1917 c 156 § 112; RRS § 1482; prior: Code 1881 § 1472; 1873 p 285 § 159; 1869 p 166 § 665; 1854 p 281 § 84.]

Additional notes found at www.leg.wa.gov

11.40.070 Claims—Form—Manner of presentation—Waiver of defects. (1) The claimant, the claimant's attorney, or the claimant's agent shall sign the claim and include in the claim the following information:

- (a) The name and address of the claimant;
- (b) The name, address, if different from that of the claimant, and nature of authority of an agent signing the claim on behalf of the claimant;
- (c) A statement of the facts or circumstances constituting the basis of the claim;
- (d) The amount of the claim; and
- (e) If the claim is secured, unliquidated, contingent, or not yet due, the nature of the security, the nature of the uncertainty, or the date when it will become due.

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

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

(3) A claim must be presented within the time limits set forth in RCW 11.40.051 by: (a) Serving on or mailing to, by regular first-class mail, the personal representative or the personal representative's attorney a copy of the signed claim; and (b) filing the original of the signed claim with the court in which probate proceedings were commenced. A claim is deemed presented upon the later of the date of postmark or service on the personal representative, or the personal representative's attorney, and filing with the court.

(4) Notwithstanding any other provision of this chapter, if a claimant makes a written demand for payment within the time limits set forth in RCW 11.40.051, the personal representative may waive formal defects and elect to treat the demand as a claim properly filed under this chapter if: (a) The

claim was due; (b) the amount paid is the amount of indebtedness over and above all payments and offsets; (c) the estate is solvent; and (d) the payment is made in good faith. Nothing in this chapter limits application of the doctrines of waiver, estoppel, or detrimental claims or any other equitable principle. [2005 c 97 § 7; 1997 c 252 § 13; 1965 c 145 § 11.40.070. Prior: 1917 c 156 § 113; RRS § 1483; prior: Code 1881 § 1473; 1854 p 281 § 85.]

Additional notes found at www.leg.wa.gov

11.40.080 Claims—Duty to allow or reject—Notice of petition to allow—Attorneys' fees. (1) The personal representative shall allow or reject all claims presented in the manner provided in RCW 11.40.070. The personal representative may allow or reject a claim in whole or in part.

(2) If the personal representative has not allowed or rejected a claim within the later of four months from the date of first publication of the notice to creditors or thirty days from presentation of the claim, the claimant may serve written notice on the personal representative that the claimant will petition the court to have the claim allowed. If the personal representative fails to notify the claimant of the allowance or rejection of the claim within twenty days after the personal representative's receipt of the claimant's notice, the claimant may petition the court for a hearing to determine whether the claim should be allowed or rejected, in whole or in part. If the court substantially allows the claim, the court may allow the petitioner reasonable attorneys' fees chargeable against the estate. [1997 c 252 § 14; 1994 c 221 § 29; 1988 c 64 § 22; 1965 c 145 § 11.40.080. Prior: 1917 c 156 § 114; RRS § 1484; prior: Code 1881 § 1474; 1854 p 281 § 86.]

Additional notes found at www.leg.wa.gov

11.40.090 Allowance of claims—Notice—Automatic allowance—Petition for extension—Ranking of claims—Barred claims. (1) If the personal representative allows a claim, the personal representative shall notify the claimant of the allowance by personal service or regular first-class mail to the address stated on the claim.

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

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

(4) A claim may not be allowed if it is barred by a statute of limitations. [1997 c 252 § 15; 1965 c 145 § 11.40.090. Prior: 1917 c 156 § 115; RRS § 1485; prior: Code 1881 § 1475; 1854 p 281 § 87.]

Additional notes found at www.leg.wa.gov

11.40.100 Rejection of claim—Time limits—Notice—Compromise of claim. (1) If the personal representative rejects a claim, in whole or in part, the claimant must bring suit against the personal representative within

thirty days after notification of rejection or the claim is forever barred. The personal representative shall notify the claimant of the rejection and file an affidavit with the court showing the notification and the date of the notification. The personal representative shall notify the claimant of the rejection by personal service or certified mail addressed to the claimant or the claimant's agent, if applicable, at the address stated in the claim. The date of service or of the postmark is the date of notification. The notification must advise the claimant that the claimant must bring suit in the proper court against the personal representative within thirty days after notification of rejection or the claim will be forever barred.

(2) The personal representative may, before or after rejection of any claim, compromise the claim, whether due or not, absolute or contingent, liquidated, or unliquidated, if it appears to the personal representative that the compromise is in the best interests of the estate. [1997 c 252 § 16; 1974 ex.s. c 117 § 47; 1965 c 145 § 11.40.100. Prior: 1917 c 156 § 116; RRS § 1486; prior: Code 1881 § 1476; 1854 p 281 § 88.]

Additional notes found at www.leg.wa.gov

11.40.110 Action pending at decedent's death—Personal representative as defendant. If an action is pending against the decedent at the time of the decedent's death, the plaintiff shall, within four months after appointment of the personal representative, serve on the personal representative a petition to have the personal representative substituted as defendant in the action. Upon hearing on the petition, the personal representative shall be substituted, unless, at or before the hearing, the claim of the plaintiff, together with costs, is allowed. [1997 c 252 § 17; 1974 ex.s. c 117 § 38; 1965 c 145 § 11.40.110. Prior: 1917 c 156 § 117; RRS § 1487; prior: Code 1881 § 1477; 1854 p 282 § 89.]

Rules of court: *SPR 98.08W*.

Additional notes found at www.leg.wa.gov

11.40.120 Effect of judgment against personal representative. The effect of any judgment rendered against a personal representative shall be only to establish the amount of the judgment as an allowed claim. [1997 c 252 § 18; 1965 c 145 § 11.40.120. Prior: 1917 c 156 § 118; RRS § 1488; prior: Code 1881 § 1478; 1854 p 282 § 90.]

Additional notes found at www.leg.wa.gov

11.40.130 Judgment against decedent—Execution barred upon decedent's death—Presentation—Sale of property. If a judgment was entered against the decedent during the decedent's lifetime, an execution may not issue on the judgment after the death of the decedent. The judgment must be presented in the manner provided in RCW 11.40.070, but if the judgment is a lien on any property of the decedent, the property may be sold for the satisfaction of the judgment and the officer making the sale shall account to the personal representative for any surplus. [1997 c 252 § 19; 1965 c 145 § 11.40.130. Prior: 1917 c 156 § 119; RRS § 1489; prior: Code 1881 § 1479; 1854 p 292 § 91.]

Additional notes found at www.leg.wa.gov

11.40.135 Secured claim—Creditor's right. If a creditor's claim is secured by any property of the decedent, this chapter does not affect the right of a creditor to realize on the

creditor's security, whether or not the creditor presented the claim in the manner provided in RCW 11.40.070. [1997 c 252 § 20.]

Additional notes found at www.leg.wa.gov

11.40.140 Claim of personal representative—Presentation and petition—Filing. If the personal representative has a claim against the decedent, the personal representative must present the claim in the manner provided in RCW 11.40.070, and the allowance or rejection of the claim shall be addressed, resolved, and settled under the procedures provided under chapter 11.96A RCW. This section applies whether or not the personal representative is acting under nonintervention powers. [2021 c 140 § 4001; 1999 c 42 § 608; 1997 c 252 § 21; 1965 c 145 § 11.40.140. Prior: 1917 c 156 § 120; RRS § 1490; prior: Code 1881 § 1482; 1854 p 283 § 94.]

Request for special notice of proceedings in probate—Prohibitions: RCW 11.28.240.

Additional notes found at www.leg.wa.gov

11.40.150 Notice to creditors when personal representative resigns, dies, or is removed—Limit tolled by vacancy. (1) If a personal representative has given notice under RCW 11.40.020 and then resigns, dies, or is removed, the successor personal representative shall:

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

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

(2) The time between the resignation, death, or removal and first publication of the vacancy and succession or, in the case of actual notice, the mailing of the notice of vacancy and succession must be added to the time within which a claim must be presented or a suit on a rejected claim must be filed. This section does not extend the twenty-four month self-executing bar under RCW 11.40.051. [1997 c 252 § 22; 1965 c 145 § 11.40.150. Prior: 1939 c 26 § 1; 1917 c 156 § 121; RRS § 1491; prior: 1891 c 155 § 28; Code 1881 § 1485; 1873 p 288 § 172; 1867 p 106 § 3.]

Additional notes found at www.leg.wa.gov

11.40.160 Personal representative as successor to notice agent—Notice not affected—Presumptions—Duties. If a notice agent had commenced nonprobate notice to creditors under chapter 11.42 RCW, the appointment of the personal representative does not affect the filing and publication of notice to creditors and does not affect actual notice to creditors given by the notice agent. The personal representative is presumed to have adopted or ratified all acts of the notice agent unless, within thirty days of appointment, the personal representative provides notice of rejection or nullification to the affected claimant or claimants by personal service or certified mail addressed to the claimant or claimant's agent, if applicable, at the address stated on the claim. The

(2022 Ed.)

personal representative shall also provide notice under RCW 11.42.150. [1997 c 252 § 23.]

Additional notes found at www.leg.wa.gov

11.40.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 31.]

Chapter 11.42 RCW

SETTLEMENT OF CREDITOR CLAIMS FOR ESTATES PASSING WITHOUT PROBATE

Sections

11.42.010	Notice agent—Qualifications.
11.42.020	Notice to creditors—Manner—Filing—Publication.
11.42.030	Notice to creditors—Form.
11.42.040	"Reasonably ascertainable" creditor—Definition—Reasonable diligence—Presumptions—Petition for order.
11.42.050	Claims against decedent—Time limits.
11.42.060	Claims involving liability or casualty insurance—Limitations—Exceptions to time limits.
11.42.070	Claims—Form—Manner of presentation—Waiver of defects.
11.42.080	Claims—Duty to allow or reject—Notice of petition to allow—Attorneys' fees.
11.42.085	Property liable for claims—Payment limits.
11.42.090	Allowance of claims—Notice—Payment order.
11.42.100	Rejection of claim—Time limits—Notice—Time limit for suit—Compromise of claim.
11.42.110	Effect of judgment against notice agent.
11.42.120	Execution barred upon decedent's death—Presentation—Sale of property.
11.42.125	Secured claim—Creditor's right.
11.42.130	Claim of notice agent or beneficiary—Payment.
11.42.140	Notice to creditors when notice agent resigns, dies, or is removed—Limit tolled by vacancy.
11.42.150	Appointment of personal representative—Cessation of notice agent powers and authority—Notice not affected—Personal representative's powers—Petition for reimbursement for allowance and payment of claims by notice agent.
11.42.900	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

11.42.010 Notice agent—Qualifications. (1) Subject to the conditions stated in this chapter, and if no personal representative has been appointed in this state, a beneficiary or trustee who has received or is entitled to receive by reason of the decedent's death substantially all of the decedent's probate and nonprobate assets, is qualified to give nonprobate notice to creditors under this chapter.

If no one beneficiary or trustee has received or is entitled to receive substantially all of the assets, then those persons, who in the aggregate have received or are entitled to receive substantially all of the assets, may, under an agreement under RCW 11.96A.220, appoint a person who is then qualified to give nonprobate notice to creditors under this chapter.

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

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

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

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

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

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

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

(b) Minors;

(c) Persons of unsound mind;

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

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

(5) A nonresident may act as notice agent if the nonresident appoints an agent who is a resident of the notice county or who is attorney of record for the notice agent upon whom service of all papers may be made. The appointment must be made in writing and filed with the court. [1999 c 42 § 609; 1997 c 252 § 24; 1994 c 221 § 31.]

Additional notes found at www.leg.wa.gov

11.42.020 Notice to creditors—Manner—Filings—

Publication. (1) Subject to subsection (2) of this section, a notice agent may give nonprobate notice to the creditors of the decedent if:

(a) As of the date of the filing of the notice to creditors with the court, the notice agent has no knowledge of another person acting as notice agent or of the appointment of a personal representative in the decedent's estate in the state of Washington; and

(b) According to the records of the court as are available on the date of the filing of the notice to creditors, no cause number regarding the decedent has been issued to any other notice agent and no personal representative of the decedent's estate had been appointed.

(2) The notice agent must give notice to the creditors of the decedent, in substantially the form set forth in RCW

11.42.030, announcing that the notice agent has elected to give nonprobate notice to creditors and requiring that persons having claims against the decedent present their claims within the time specified in RCW 11.42.050 or be forever barred as to claims against the decedent's probate and nonprobate assets.

(a) The notice agent shall file the notice with the court.

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

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

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

(e) If the decedent was a resident of the state of Washington at the time of death and the notice agent's declaration and oath were filed in a county other than the county of the decedent's residence, then instead of the requirements in (a) and (b) of this subsection, the notice agent shall cause the notice to creditors in substantially the form set forth in RCW 11.42.030 to be published once each week for three successive weeks in a legal newspaper in the county of the decedent's residence and shall file the notice with the superior court of the county in which the notice agent's declaration and oath were filed.

The notice agent shall file with the court proof by affidavit of the giving and publication of the notice. [2005 c 97 § 8; 1997 c 252 § 25; 1995 1st sp.s. c 18 § 59; 1994 c 221 § 32.]

Additional notes found at www.leg.wa.gov

11.42.030 Notice to creditors—Form. Notice under RCW 11.42.020 must contain the following elements in substantially the following form:

)))
CAPTION)	No.
OF CASE)	NONPROBATE
))	NOTICE TO CREDITORS
))	RCW 11.42.030
.....))

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

Any person having a claim against the decedent must, before the time the claim would be barred by any otherwise applicable statute of limitations, present the claim in the man-

ner as provided in RCW 11.42.070 by serving on or mailing to the notice agent or the notice agent's attorney at the address stated below a copy of the claim and filing the original of the claim with the court in which the notice agent's declaration and oath were filed. The claim must be presented within the later of: (1) Thirty days after the notice agent served or mailed the notice to the creditor as provided under RCW 11.42.020(2)(c); or (2) four months after the date of first publication of the notice. If the claim is not presented within this time frame, the claim is forever barred, except as otherwise provided in RCW 11.42.050 and 11.42.060. This bar is effective as to claims against both the decedent's probate and non-probate assets.

Date of First Publication:

The notice agent declares under penalty of perjury under the laws of the state of Washington on _____, [year], at _____ [city] _____, [state] _____ that the foregoing is true and correct.

..... Signature of Notice Agent

Notice Agent:

Attorney for the Notice Agent:

Address for Mailing or Service:

Court of Notice Agent's oath and declaration and cause number:

[2005 c 97 § 9; 1997 c 252 § 26; 1994 c 221 § 33.]

Additional notes found at www.leg.wa.gov

11.42.040 "Reasonably ascertainable" creditor—Definition—Reasonable diligence—Presumptions—Petition for order. (1) For purposes of RCW 11.42.050, a "reasonably ascertainable" creditor of the decedent is one that the notice agent would discover upon exercise of reasonable diligence. The notice agent is deemed to have exercised reasonable diligence upon conducting a reasonable review of the decedent's correspondence, including correspondence received after the date of death, and financial records, including personal financial statements, loan documents, check-books, bank statements, and income tax returns, that are in the possession of or reasonably available to the notice agent.

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

(3) The notice agent may evidence the review and resulting presumption by filing with the court an affidavit regarding the facts referred to in this section. The notice agent may petition the court for an order declaring that the notice agent has made a review and that any creditors not known to the notice agent are not reasonably ascertainable. The petition must be filed under RCW 11.96A.080, and the notice specified under RCW 11.96A.110 must also be given by publication. [1999 c 42 § 610; 1997 c 252 § 27; 1994 c 221 § 34.]

(2022 Ed.)

Additional notes found at www.leg.wa.gov

11.42.050 Claims against decedent—Time limits. (1)

If a notice agent provides notice under RCW 11.42.020, any person having a claim against the decedent is forever barred from making a claim or commencing an action against the decedent if the claim or action is not already barred by an otherwise applicable statute of limitations, unless the creditor presents the claim in the manner provided in RCW 11.42.070 within the following time limitations:

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

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

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

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

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

(3) This bar is effective as to claims against both the decedent's probate and nonprobate assets. [1997 c 252 § 28; 1994 c 221 § 35.]

Additional notes found at www.leg.wa.gov

11.42.060 Claims involving liability or casualty insurance—Limitations—Exceptions to time limits.

The time limitations for presenting claims under this chapter do not accrue to the benefit of any liability or casualty insurer. Claims against the decedent or the decedent's marital community that can be fully satisfied by applicable insurance coverage or proceeds need not be presented within the time limitation of RCW 11.42.050, but the amount of recovery cannot exceed the amount of the insurance. If a notice agent provides notice under RCW 11.42.020, the claims may at any time be presented as provided in RCW 11.42.070, subject to the otherwise relevant statutes of limitations, and does not constitute a cloud, lien, or encumbrance upon the title to the decedent's probate or nonprobate assets nor delay or prevent the transfer or distribution of the decedent's assets. This section does not serve to extend any otherwise relevant statutes of limitations. [1997 c 252 § 29; 1994 c 221 § 36.]

Additional notes found at www.leg.wa.gov

11.42.070 Claims—Form—Manner of presentation—Waiver of defects. (1) The claimant, the claimant's attorney, or the claimant's agent shall sign the claim and include in the claim the following information:

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

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

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

(d) The amount of the claim; and

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

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

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

(3) A claim must be presented within the time limits set forth in RCW 11.42.050 by: (a) Serving on or mailing to, by regular first-class mail, the notice agent or the notice agent's attorney a copy of the signed claim; and (b) filing the original of the signed claim with the court in which the notice agent's declaration and oath were filed. A claim is deemed presented upon the later of the date of postmark or service on the notice agent, or the notice agent's attorney, and filing with the court.

(4) Notwithstanding any other provision of this chapter, if a claimant makes a written demand for payment within the time limits set forth in RCW 11.42.050, the notice agent may waive formal defects and elect to treat the demand as a claim properly filed under this chapter if: (a) The claim was due; (b) the amount paid was the amount of indebtedness over and above all payments and offsets; (c) the estate is solvent; and (d) the payment is made in good faith. Nothing in this chapter limits application of the doctrines of waiver, estoppel, or detrimental claims or any other equitable principle. [2005 c 97 § 10; 1997 c 252 § 30; 1994 c 221 § 37.]

Additional notes found at www.leg.wa.gov

11.42.080 Claims—Duty to allow or reject—Notice of petition to allow—Attorneys' fees. (1) The notice agent shall allow or reject all claims presented in the manner provided in RCW 11.42.070. The notice agent may allow or reject a claim, in whole or in part.

(2) If the notice agent has not allowed or rejected a claim within the later of four months from the date of first publication of the notice to creditors and thirty days from presentation of the claim, the claimant may serve written notice on the notice agent that the claimant will petition the court to have the claim allowed. If the notice agent fails to notify the claimant of the allowance or rejection of the claim within twenty days after the notice agent's receipt of the claimant's notice, the claimant may petition the court for a hearing to determine whether the claim should be allowed or rejected, in whole or in part. If the court substantially allows the claim, the court may allow the petitioner reasonable attorneys' fees chargeable against the decedent's assets received by the notice agent or by those appointing the notice agent. [1997 c 252 § 31; 1994 c 221 § 38.]

Additional notes found at www.leg.wa.gov

11.42.085 Property liable for claims—Payment limits. (1) The decedent's nonprobate and probate assets that were subject to the satisfaction of the decedent's general liabilities immediately before the decedent's death are liable for claims. The decedent's probate assets may be liable, whether

or not there is a probate administration of the decedent's estate.

(2) The notice agent may pay a claim allowed by the notice agent or a judgment on a claim first prosecuted against a notice agent only out of assets received as a result of the death of the decedent by the notice agent or by those appointing the notice agent, except as may be provided by agreement under RCW 11.96A.220 or by court order issued in a judicial proceeding under RCW 11.96A.080. [1999 c 42 § 611; 1997 c 252 § 32.]

Additional notes found at www.leg.wa.gov

11.42.090 Allowance of claims—Notice—Payment order. (1) If the notice agent allows a claim, the notice agent shall notify the claimant of the allowance by personal service or regular first-class mail to the address stated on the claim. A claim may not be allowed if it is barred by a statute of limitations.

(2) The notice agent shall pay claims allowed in the following order from the assets of the decedent that are subject to the payment of claims as provided in RCW 11.42.085:

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

(b) Funeral expenses in a reasonable amount;

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

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

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

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

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

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

(3) The notice agent may not pay a claim of the notice agent or other person who has received property by reason of the decedent's death unless all other claims that have been filed under this chapter, and all debts having priority to the claim, are paid in full or otherwise settled by agreement, regardless of whether the other claims are allowed or rejected. [1997 c 252 § 33; 1994 c 221 § 39.]

Additional notes found at www.leg.wa.gov

11.42.100 Rejection of claim—Time limits—Notice—Time limit for suit—Compromise of claim. (1) If the notice agent rejects a claim, in whole or in part, the claimant must bring suit against the notice agent within thirty days after notification of rejection or the claim is forever barred. The notice agent shall notify the claimant of the rejection and file an affidavit with the court showing the notification and the date of the notification. The notice agent shall notify the claimant of the rejection by personal service or certified mail addressed to the claimant or claimant's agent, if applicable, at the address stated in the claim. The date of service or of the postmark is the date of notification. The notification must

advise the claimant that the claimant must bring suit in the proper court against the notice agent within thirty days after notification of rejection or the claim will be forever barred.

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

(3) The notice agent may, before or after rejection of any claim, compromise the claim, whether due or not, absolute or contingent, liquidated, or unliquidated. [1997 c 252 § 34; 1994 c 221 § 40.]

Additional notes found at www.leg.wa.gov

11.42.110 Effect of judgment against notice agent.

The effect of a judgment rendered against the notice agent shall be only to establish the amount of the judgment as an allowed claim. [1997 c 252 § 35; 1994 c 221 § 41.]

Additional notes found at www.leg.wa.gov

11.42.120 Execution barred upon decedent's death—Presentation—Sale of property. If a judgment was entered against the decedent during the decedent's lifetime, an execution may not issue on the judgment after the death of the decedent. If a notice agent is acting, the judgment must be presented in the manner provided in RCW 11.42.070, but if the judgment is a lien on any property of the decedent, the property may be sold for the satisfaction of the judgment and the officer making the sale shall account to the notice agent for any surplus. [1997 c 252 § 36; 1994 c 221 § 42.]

Additional notes found at www.leg.wa.gov

11.42.125 Secured claim—Creditor's right. If a creditor's claim is secured by any property of the decedent, this chapter does not affect the right of the creditor to realize on the creditor's security, whether or not the creditor presented the claim in the manner provided in RCW 11.42.070. [1997 c 252 § 37.]

Additional notes found at www.leg.wa.gov

11.42.130 Claim of notice agent or beneficiary—Payment. A claim of the notice agent or other person who has received property by reason of the decedent's death must be paid as set forth in RCW 11.42.090(3). [1997 c 252 § 38; 1994 c 221 § 43.]

Additional notes found at www.leg.wa.gov

11.42.140 Notice to creditors when notice agent resigns, dies, or is removed—Limit tolled by vacancy. (1) If a notice agent has given notice under RCW 11.42.020 and the notice agent resigns, dies, or is removed or a personal representative is appointed, the successor notice agent or the personal representative shall:

(a) Publish notice of the vacancy and succession for two successive weeks in the legal newspaper in which notice was

(2022 Ed.)

published under RCW 11.42.020, if the vacancy occurred within twenty-four months after the decedent's date of death; and

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

(2) The time between the resignation, death, or removal of the notice agent or appointment of a personal representative and the first publication of the vacancy and succession or, in the case of actual notice, the mailing of the notice of vacancy and succession must be added to the time within which a claim must be presented or a suit on a rejected claim must be filed. This section does not extend the twenty-four-month self-executing bar under RCW 11.42.050. [1997 c 252 § 39; 1994 c 221 § 45.]

Additional notes found at www.leg.wa.gov

11.42.150 Appointment of personal representative—Cessation of notice agent powers and authority—Notice not affected—Personal representative's powers—Petition for reimbursement for allowance and payment of claims by notice agent.

(1) The powers and authority of a notice agent immediately cease, and the office of notice agent becomes vacant, upon appointment of a personal representative for the estate of the decedent. Except as provided in RCW 11.42.140(2), the cessation of the powers and authority does not affect the filing and publication of notice to creditors and does not affect actual notice to creditors given by the notice agent.

(2) As set forth in RCW 11.40.160, a personal representative may adopt, ratify, nullify, or reject any actions of the notice agent.

(3) If a personal representative is appointed and the personal representative does not nullify the allowance of a claim that the notice agent allowed and paid, the person or persons whose assets were used to pay the claim may petition for reimbursement from the estate to the extent the payment was not in accordance with chapter 11.10 RCW. [1997 c 252 § 40; 1994 c 221 § 44.]

Additional notes found at www.leg.wa.gov

11.42.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 32.]

Chapter 11.44 RCW

INVENTORY AND APPRAISEMENT

Sections

11.44.015	Inventory and appraisal—Filing—Copy distribution.
11.44.025	Additional inventory and appraisal—Copy distribution.
11.44.035	Inventory and appraisal may be contradicted or avoided.
11.44.050	Inventory and appraisal—Failure to return or provide copy—Revocation of letters.
11.44.070	Persons assisting in appraisal—Compensation—Refund.
11.44.085	Claims against personal representative included.
11.44.090	Discharge of debt—Specific bequest and inclusion in inventory and appraisal.

Partnerships, inventory and appraisal: RCW 11.64.002.

11.44.015 Inventory and appraisal—Filing—Copy distribution. (1) Within three months after appointment, unless a longer time shall be granted by the court, every personal representative shall make and verify by affidavit a true inventory and appraisal of all of the property of the estate passing under the will or by laws of intestacy and which shall have come to the personal representative's possession or knowledge, including a statement of all encumbrances, liens, or other secured charges against any item. The personal representative shall determine the fair net value, as of the date of the decedent's death, of each item contained in the inventory after deducting the encumbrances, liens, and other secured charges on the item. Such property shall be classified as follows:

- (a) Real property, by legal description;
- (b) Stocks and bonds;
- (c) Mortgages, notes, and other written evidences of debt;
- (d) Bank accounts and money;
- (e) Furniture and household goods;
- (f) All other personal property accurately identified, including the decedent's proportionate share in any partnership, but no inventory of the partnership property shall be required of the personal representative.

(2) The inventory and appraisal may, but need not be, filed in the probate cause, but upon receipt of a written request for a copy of the inventory and appraisal from any heir, legatee, devisee, unpaid creditor who has filed a claim, or beneficiary of a nonprobate asset from whom contribution is sought under RCW 11.18.200, or from the department of revenue, the personal representative shall furnish to the person, within ten days of receipt of a request, a true and correct copy of the inventory and appraisal. [1997 c 252 § 41; 1967 c 168 § 9; 1965 c 145 § 11.44.015. Formerly RCW 11.44.010, part and 11.44.020, part.]

Inventory and appraisal on death of partner—Filing: RCW 11.64.002.

Additional notes found at www.leg.wa.gov

11.44.025 Additional inventory and appraisal—Copy distribution. Whenever any property of the estate not mentioned in the inventory and appraisal comes to the knowledge of a personal representative, the personal representative shall cause the property to be inventoried and appraised and shall make and verify by affidavit a true inventory and appraisal of the property within thirty days after the discovery thereof, unless a longer time shall be granted by the court, and shall provide a copy of the inventory and appraisal to every person who has properly requested a

copy of the inventory and appraisal under RCW 11.44.015(2). [1997 c 252 § 42; 1974 ex.s. c 117 § 48; 1965 c 145 § 11.44.025. Prior: 1917 c 156 § 100; RCW 11.44.060; RRS § 1470; prior: Code 1881 § 1453; 1873 p 281 § 138; 1854 p 277 § 64.]

Additional notes found at www.leg.wa.gov

11.44.035 Inventory and appraisal may be contradicted or avoided. In an action against the personal representative where the administration of the estate, or any part thereof, is put in issue and the inventory and appraisal of the estate by the personal representative is given in evidence, the same may be contradicted or avoided by evidence. Any party in interest in the estate may challenge the inventory and appraisal at any stage of the probate proceedings. [1997 c 252 § 43; 1965 c 145 § 11.44.035. Prior: Code 1881 § 721; 1877 p 146 § 725; 1869 p 166 § 662; RCW 11.48.170; RRS § 970.]

Additional notes found at www.leg.wa.gov

11.44.050 Inventory and appraisal—Failure to return or provide copy—Revocation of letters. If any personal representative shall neglect or refuse to make the inventory and appraisal within the period prescribed, or within such further time as the court may allow, or to provide a copy as provided under RCW 11.44.015, 11.44.025, or 11.44.035, the court may revoke the letters testamentary or of administration; and the personal representative shall be liable on his or her bond to any party interested for the injury sustained by the estate through his or her neglect. [1997 c 252 § 44; 1965 c 145 § 11.44.050. Prior: 1917 c 156 § 99; RRS § 1469; prior: Code 1881 § 1457; 1873 p 281 § 138; 1854 p 278 § 69.]

Additional notes found at www.leg.wa.gov

11.44.070 Persons assisting in appraisal—Compensation—Refund. The personal representative may employ a qualified and disinterested person to assist in ascertaining the fair market value as of the date of the decedent's death of any asset the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate. The amount of the fee to be paid to any persons assisting the personal representative in any appraisal shall be determined by the personal representative: PROVIDED HOWEVER, That the reasonableness of any such compensation shall, at the time of hearing on any final account as provided in chapter 11.76 RCW or on a request or petition under RCW 11.68.100 or 11.68.110, be reviewed by the court in accordance with the provisions of RCW 11.68.100, and if the court determines the compensation to be unreasonable, a personal representative may be ordered to make appropriate refund. [1997 c 252 § 45; 1974 ex.s. c 117 § 50; 1967 c 168 § 10; 1965 c 145 § 11.44.070. Formerly RCW 11.44.010, part.]

Additional notes found at www.leg.wa.gov

11.44.085 Claims against personal representative included. The naming or the appointment of any person as personal representative shall not operate as a discharge from any just claim which the testator or intestate had against the personal representative, but the claim shall be included in the inventory and appraisal and the personal representative

shall be liable to the same extent as the personal representative would have been had he or she not been appointed personal representative. [1997 c 252 § 46; 1965 c 145 § 11.44.085. Prior: 1917 c 156 § 97; RCW 11.44.030; RRS § 1467; prior: Code 1881 § 1449; 1860 p 63 § 5; 1854 p 277 § 60.]

Additional notes found at www.leg.wa.gov

11.44.090 Discharge of debt—Specific bequest and inclusion in inventory and appraisal. The discharge or bequest in a will of any debt or demand of the testator against any executor named in the testator's will or against any person shall not be valid against the creditors of the deceased, but shall be construed as a specific bequest of such debt or demand, and the amount thereof shall be included in the inventory and appraisal, and shall, if necessary, be applied in payment of the testator's debts; if not necessary for that purpose, it shall be paid in the same manner and proportions as other specific legacies. [1997 c 252 § 47; 1965 c 145 § 11.44.090. Prior: 1917 c 156 § 98; RCW 11.44.040; RRS § 1468; prior: Code 1881 § 1450; 1854 p 277 § 61.]

Additional notes found at www.leg.wa.gov

Chapter 11.48 RCW

PERSONAL REPRESENTATIVES—GENERAL PROVISIONS—ACTIONS BY AND AGAINST

Sections

- 11.48.010 General powers and duties.
- 11.48.020 Right to possession and management of estate.
- 11.48.025 Continuation of decedent's business.
- 11.48.030 Chargeable with whole estate.
- 11.48.040 Not chargeable on special promise to pay decedent's debts unless in writing.
- 11.48.050 Allowance of necessary expenses.
- 11.48.060 May recover for embezzled or alienated property of decedent.
- 11.48.070 Concealed or embezzled property—Proceedings for discovery.
- 11.48.080 Uncollectible debts—Liability—Purchase of claims by personal representative.
- 11.48.090 Actions for recovery of property and on contract.
- 11.48.120 Action on bond of previous personal representative.
- 11.48.130 Compromise of claims.
- 11.48.140 Recovery of decedent's fraudulent conveyances.
- 11.48.150 Several personal representatives considered as one.
- 11.48.160 Default judgment not evidence of assets—Exception.
- 11.48.180 Liability of executor de son tort.
- 11.48.190 Executor of executor may not sue for estate of first testator.
- 11.48.200 Arrest and attachment, when, authorized.
- 11.48.210 Compensation—Attorney's fees.

Rules of court: Executors

*compromises and settlements: SPR 98.08W, 98.10W.
fees, application for, notice: SPR 98.12W.*

Costs against fiduciaries: RCW 4.84.150.

District judge without jurisdiction as to actions against personal representative: RCW 3.66.030.

Ejectment and quieting title: Chapter 7.28 RCW.

Evidence, transaction with person since deceased: RCW 5.60.030.

Execution of writ—Levy: RCW 6.17.130.

Execution on judgments in name of personal representative: RCW 6.17.030.

Executor, administrator, subject to garnishment: RCW 6.27.050.

Fiduciary may sue in own name: Rules of court: CR 17.

Frauds, statute of, agreement of personal representative to answer damages from own estate: RCW 19.36.010.

Investment in certain federal securities authorized: Chapter 39.60 RCW.

Judgment against executor, administrator, effect: RCW 4.56.050.

(2022 Ed.)

Larceny: RCW 9A.56.100.

Limitation of actions

against executor, administrator for misconduct: RCW 4.16.110.

generally: Chapter 4.16 RCW.

recovery of realty sold by personal representative: RCW 4.16.070.

statutes tolled by death, personal disability, reversal of judgment: RCW 4.16.190, 4.16.200, 4.16.240.

Real estate broker's license requirement, exemption: RCW 18.85.151.

Replacement of lost or destroyed probate records: RCW 5.48.060.

Setoff, by and against executors, administrators: RCW 4.32.130, 4.32.140, 4.56.050.

Survival of actions: Chapter 4.20 RCW.

"Taxable person," personal representative defined as: RCW 82.04.030.

Unknown heirs, pleading, lis pendens, etc: RCW 4.28.140 through 4.28.160;

Rules of court: CR 10.

Witnesses, competency in actions involving representatives or fiduciaries: RCW 5.60.030.

11.48.010 General powers and duties. It shall be the duty of every personal representative to settle the estate, including the administration of any nonprobate assets within control of the personal representative under RCW 11.18.200, in his or her hands as rapidly and as quickly as possible, without sacrifice to the probate or nonprobate estate. The personal representative shall collect all debts due the deceased and pay all debts as hereinafter provided. The personal representative shall be authorized in his or her own name to maintain and prosecute such actions as pertain to the management and settlement of the estate, and may institute suit to collect any debts due the estate or to recover any property, real or personal, or for trespass of any kind or character. [1994 c 221 § 30; 1965 c 145 § 11.48.010. Prior: 1917 c 156 § 147; RRS § 1517; prior: Code 1881 § 1528; 1854 p 291 § 141.]

Additional notes found at www.leg.wa.gov

11.48.020 Right to possession and management of estate. Every personal representative shall, after having qualified, by giving bond as hereinbefore provided, have a right to the immediate possession of all the real as well as personal estate of the deceased, and may receive the rents and profits of the real estate until the estate shall be settled or delivered over, by order of the court, to the heirs or devisees, and shall keep in tenable repair all houses, buildings and fixtures thereon, which are under his or her control. [2010 c 8 § 2030; 1965 c 145 § 11.48.020. Prior: 1917 c 156 § 94; RRS § 1464; prior: Code 1881 § 1444; 1860 p 189 § 132; 1854 p 278 § 65.]

When title vests: RCW 11.04.250.

11.48.025 Continuation of decedent's business. Upon a showing of advantage to the estate the court may authorize a personal representative to continue any business of the decedent, other than the business of a partnership of which the decedent was a member: PROVIDED, That if decedent left a nonintervention will or a will specifically authorizing a personal representative to continue any business of decedent, and his or her estate is solvent, or a will providing that the personal representative liquidate any business of decedent, this section shall not apply.

The order shall specify:

(1) The extent of the authority of the personal representative to incur liabilities;

(2) The period of time during which he or she may operate the business;

(3) Any additional provisions or restrictions which the court may, at its discretion, include.

Any interested person may for good cause require the personal representative to show cause why the authority granted him or her should not be limited or terminated. The order to show cause shall set forth the manner of service thereof and the time and place of hearing thereon. [2010 c 8 § 2031; 1965 c 145 § 11.48.025. Prior: 1955 c 98 § 1.]

Request for special notice of proceedings in probate—Prohibitions: RCW 11.28.240.

11.48.030 Chargeable with whole estate. Every personal representative shall be chargeable in his or her accounts with the whole estate of the deceased which may come into his or her possession. He or she shall not be responsible for loss or decrease or destruction of any of the property or effects of the estate, without his or her fault. [2010 c 8 § 2032; 1965 c 145 § 11.48.030. Prior: 1917 c 156 § 155; RRS § 1525; prior: Code 1881 § 1538; 1860 p 210 § 241; 1854 p 295 § 161.]

11.48.040 Not chargeable on special promise to pay decedent's debts unless in writing. No personal representative shall be chargeable upon any special promise to answer damages, or to pay the debts of the testator or intestate out of his or her own estate, unless the agreement for that purpose, or some memorandum or note thereof, is in writing and signed by such personal representative, or by some other person by him or her thereunto specially authorized. [2010 c 8 § 2033; 1965 c 145 § 11.48.040. Prior: 1917 c 156 § 154; RRS § 1524; prior: Code 1881 § 1537; 1854 p 295 § 160.]

Agreement to answer damages from own estate must be in writing: RCW 19.36.010.

11.48.050 Allowance of necessary expenses. He or she shall be allowed all necessary expenses in the care, management, and settlement of the estate. [2010 c 8 § 2034; 1965 c 145 § 11.48.050. Prior: 1917 c 156 § 156; RRS § 1526; prior: Code 1881 § 1541; 1854 p 295 § 164.]

Rules of court: *SPR 98.12W.*

Attorney's fee to contestant of erroneous account or report: RCW 11.76.070.

Broker's fee and closing expenses—Sale, mortgage or lease: RCW 11.56.265.

Compensation—Attorney's fee: RCW 11.48.210.

Monument, expense of: RCW 11.76.130.

Order of payment of debts: RCW 11.76.110.

Will contests, costs: RCW 11.24.050.

11.48.060 May recover for embezzled or alienated property of decedent. If any person, before the granting of letters testamentary or of administration, shall embezzle or alienate any of the moneys, goods, chattels, or effects of any deceased person, he or she shall stand chargeable, and be liable to the personal representative of the estate, in the value of the property so embezzled or alienated, together with any damage occasioned thereby, to be recovered for the benefit of the estate. [2010 c 8 § 2035; 1965 c 145 § 11.48.060. Prior: 1917 c 156 § 101; RRS § 1471; prior: Code 1881 § 1455; 1854 p 278 § 67.]

Larceny: RCW 9A.56.100.

11.48.070 Concealed or embezzled property—Proceedings for discovery. The court shall have authority to bring before it any person or persons suspected of having in his or her possession or having concealed, embezzled, conveyed, or disposed of any of the property of the estate of decedents or incompetents subject to administration under this title, or who has in his or her possession or within his or her knowledge any conveyances, bonds, contracts, or other writings which contain evidence of or may tend to establish the right, title, interest, or claim of the deceased in and to any property. If such person be not in the county in which the letters were granted, he or she may be cited and examined either before the court of the county where found or before the court issuing the order of citation, and if he or she be found innocent of the charges he or she shall be entitled to recover costs of the estate, which costs shall be fees and mileage of witnesses, statutory attorney's fees, and such per diem and mileage for the person so charged as allowed to witnesses in civil proceedings. Such party may be brought before the court by means of citation such as the court may choose to issue, and if he or she refuses to answer such interrogatories as may be put to him or her touching such matters, the court may commit him or her to the county jail, there to remain until he or she shall be willing to make such answers. [2010 c 8 § 2036; 1965 c 145 § 11.48.070. Prior: 1917 c 156 § 102; RRS § 1472; prior: 1891 p 385 §§ 22, 23; Code 1881 §§ 1456, 1457; 1854 p 278 §§ 68, 69.]

Larceny: RCW 9A.56.100.

11.48.080 Uncollectible debts—Liability—Purchase of claims by personal representative. No personal representative shall be accountable for any debts due the estate, if it shall appear that they remain uncollected without his or her fault. No personal representative shall purchase any claim against the estate he or she represents, but the personal representative may make application to the court for permission to purchase certain claims, and if it appears to the court to be for the benefit of the estate that such purchase shall be made, the court may make an order allowing such claims and directing that the same may be purchased by the personal representative under such terms as the court shall order, and such claims shall thereafter be paid as are other claims, but the personal representative shall not profit thereby. [2010 c 8 § 2037; 1965 c 145 § 11.48.080. Prior: 1917 c 156 § 157; RRS § 1527; prior: Code 1881 § 1540; 1854 p 295 § 163.]

Request for special notice of proceedings in probate—Prohibitions: RCW 11.28.240.

11.48.090 Actions for recovery of property and on contract. Actions for the recovery of any property or for the possession thereof, and all actions founded upon contracts, may be maintained by and against personal representatives in all cases in which the same might have been maintained by and against their respective testators or intestates. [1965 c 145 § 11.48.090. Prior: 1917 c 156 § 148; RRS § 1518; prior: Code 1881 § 1529; 1860 p 206 § 222; 1854 p 291 § 142.]

Performance of decedent's contracts: Chapter 11.60 RCW.

Survival of actions: Chapter 4.20 RCW.

11.48.120 Action on bond of previous personal representative. Any personal representative may in his or her own name, for the benefit of all persons interested in the estate, as defined in RCW 11.96A.030(6) relative to a decedent's estate, maintain actions on the bond of a former personal representative of the same estate. [2021 c 140 § 4002; 2010 c 8 § 2038; 1965 c 145 § 11.48.120. Prior: 1917 c 156 § 151; RRS § 1521; prior: Code 1881 § 1532; 1854 p 291 § 145.]

11.48.130 Compromise of claims. The court may authorize the personal representative, without the necessary nonintervention powers, to compromise and compound any claim owing the estate. Unless the court has restricted the power to compromise or compound claims owing to the estate and except as provided in RCW 11.68.090, a personal representative with nonintervention powers may compromise and compound a claim owing the estate without the intervention of the court. [2021 c 140 § 4003; 1997 c 252 § 58; 1965 c 145 § 11.48.130. Prior: 1917 c 156 § 152; RRS § 1522; prior: Code 1881 § 1533; 1854 p 291 § 146.]

Rules of court: *SPR 98.08W.*

Application—2021 c 140 §§ 4003-4017, 4023, 4024, and 4026: "(1) Sections 4003 through 4017, 4023, and 4024 of this act apply to all probate estates, regardless of whether the probate action commenced before or after July 25, 2021.

(2) Section 4026 of this act applies to all accounts established under chapter 11.114 RCW, regardless of whether the account was established before or after July 25, 2021." [2021 c 140 § 4027.]

Additional notes found at www.leg.wa.gov

11.48.140 Recovery of decedent's fraudulent conveyances. When there shall be a deficiency of assets in the hands of a personal representative, and when the deceased shall in his or her lifetime have conveyed any real estate, or any rights, or interest therein, with intent to defraud his or her creditors or to avoid any right, duty, or debt of any person, or shall have so conveyed such estate, which deeds or conveyances by law are void as against creditors, the personal representative may, and it shall be his or her duty to, commence and prosecute to final judgment any proper action for the recovery of the same, and may recover for the benefit of the creditors all such real estate so fraudulently conveyed, and may also, for the benefit of the creditors, sue and recover all goods, chattels, rights, and credits which may have been so fraudulently conveyed by the deceased in his or her lifetime, whatever may have been the manner of such fraudulent conveyance. [2010 c 8 § 2039; 1965 c 145 § 11.48.140. Prior: 1917 c 156 § 153; prior: Code 1881 § 1534; 1854 p 291 § 147.]

11.48.150 Several personal representatives considered as one. In an action against several personal representatives, they shall all be considered as one person representing their testator or intestate, and judgment may be given and execution issued against all of them who are defendants in the action. [1965 c 145 § 11.48.150. Prior: Code 1881 § 719; 1877 p 146 § 723; 1869 p 165 § 660; RRS § 968.]

11.48.160 Default judgment not evidence of assets—Exception. When a judgment is given against a personal representative for want of answer, such judgment is not to be deemed evidence of assets in his or her hands, unless it

appear that the complaint alleged assets and that the notice was served upon him or her. [2010 c 8 § 2040; 1965 c 145 § 11.48.160. Prior: Code 1881 § 720; 1877 p 146 § 724; 1869 p 166 § 661; RRS § 969.]

11.48.180 Liability of executor de son tort. No person is liable to an action as executor of his or her own wrong for having taken, received, or interfered with the property of a deceased person, but is responsible to the personal representatives of such deceased person for the value of all property so taken or received, and for all injury caused by his or her interference with the estate of the deceased. [2010 c 8 § 2041; 1965 c 145 § 11.48.180. Prior: Code 1881 § 722; 1877 p 146 § 726; 1869 p 166 § 663; RRS § 971.]

11.48.190 Executor of executor may not sue for estate of first testator. An executor of an executor has no authority as such to commence or maintain an action or proceeding relating to the estate of the testator of the first executor, or to take any charge or control thereof. [1965 c 145 § 11.48.190. Prior: Code 1881 § 723; 1877 p 147 § 727; 1869 p 166 § 664; RRS § 972.]

Administrator with will annexed on death of executor: RCW 11.28.060.

11.48.200 Arrest and attachment, when, authorized. In an action against a personal representative as such, the remedies of arrest and attachment shall not be allowed on account of the acts of his or her testator or intestate, but for his or her own acts as such personal representative, such remedies shall be allowed for the same causes in the manner and with like effect as in actions at law generally. [2010 c 8 § 2042; 1965 c 145 § 11.48.200. Prior: Code 1881 § 724; 1877 p 147 § 729; 1869 p 167 § 666; RRS § 973.]

11.48.210 Compensation—Attorney's fees. If testator by will makes provision for the compensation of his or her personal representative, that shall be taken as his or her full compensation unless he or she files in the court a written instrument renouncing all claim for the compensation provided by the will before qualifying as personal representative. The personal representative, when no compensation is provided in the will, or when he or she renounces all claim to the compensation provided in the will, shall be allowed such compensation for his or her services as the court shall deem just and reasonable. Additional compensation may be allowed for his or her services as attorney and for other services not required of a personal representative. An attorney performing services for the estate at the instance of the personal representative shall have such compensation therefor out of the estate as the court shall deem just and reasonable. Such compensation may be allowed at the final account; but at any time during administration a personal representative or his or her attorney may apply to the court for an allowance upon the compensation of the personal representative and upon attorney's fees. If the court finds that the personal representative has failed to discharge his or her duties as such in any respect, it may deny him or her any compensation whatsoever or may reduce the compensation which would otherwise be allowed. [2010 c 8 § 2043; 1965 c 145 § 11.48.210. Prior: 1917 c 156 § 158; RRS § 1528; prior: Code 1881 § 1541; 1854 p 295 § 164.]

Rules of court: *SPR 98.12W.*

Allowance of necessary expenses: *RCW 11.48.050.*

Will contests, costs: *RCW 11.24.050.*

Chapter 11.54 RCW

FAMILY SUPPORT AND POSTDEATH CREDITOR'S CLAIM EXEMPTIONS

Sections

11.54.010	Award to surviving spouse, domestic partner, or children—Petition.
11.54.020	Amount of basic award.
11.54.030	Conditions to award.
11.54.040	Increase in amount of award—Factors for consideration.
11.54.050	Decrease in amount of award—Factors for consideration.
11.54.060	Priority of awarded property—Effect of purchase or encumbrance on property.
11.54.070	Immunity of award from debts and claims of creditors.
11.54.080	Exemption of additional assets from claims of creditors—Petition—Notice—Court order.
11.54.090	Venue for petition—Petition and hearing requirements—Notice of hearing.
11.54.100	Exhaustion of estate—Closure of estate—Discharge of personal representative.

11.54.010 Award to surviving spouse, domestic partner, or children—Petition. (1) Subject to RCW 11.54.030, the surviving spouse or surviving domestic partner of a decedent may petition the court for an award from the property of the decedent. If the decedent is survived by children of the decedent who are not also the children of the surviving spouse or surviving domestic partner, on petition of such a child the court may divide the award between the surviving spouse or surviving domestic partner and all or any of such children as it deems appropriate. If there is not a surviving spouse or surviving domestic partner, the minor children of the decedent may petition for an award.

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

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

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

(i) A personal representative has been appointed; or
(ii) A notice agent has filed a declaration and oath as required in RCW 11.42.010(3)(a)(ii); or

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

(c) Six years from the date of the death of the decedent. [2008 c 6 § 916; 1997 c 252 § 48.]

Additional notes found at www.leg.wa.gov

11.54.020 Amount of basic award. The amount of the basic award shall be the amount specified in *RCW 6.13.030(2) with regard to lands. If an award is divided between a surviving spouse or surviving domestic partner and the decedent's children who are not the children of the surviving spouse or surviving domestic partner, the aggregate amount awarded to all the claimants under this section shall

be the amount specified in *RCW 6.13.030(2) with respect to lands. The amount of the basic award may be increased or decreased in accordance with RCW 11.54.040 and 11.54.050. [2008 c 6 § 917; 1997 c 252 § 49.]

*Reviser's note: RCW 6.13.030 was amended by 2021 c 290 § 3, significantly changing subsection (2).

Additional notes found at www.leg.wa.gov

11.54.030 Conditions to award. (1) The court may not make an award unless the court finds that the funeral expenses, expenses of last sickness, and expenses of administration have been paid or provided for.

(2) The court may not make an award to a surviving spouse or surviving domestic partner or child who has participated, either as a principal or as an accessory before the fact, in the willful and unlawful killing of the decedent. [2008 c 6 § 918; 1997 c 252 § 50.]

Additional notes found at www.leg.wa.gov

11.54.040 Increase in amount of award—Factors for consideration. (1) If it is demonstrated to the satisfaction of the court with clear, cogent, and convincing evidence that a claimant's present and reasonably anticipated future needs during the pendency of any probate proceedings in the state of Washington with respect to basic maintenance and support will not otherwise be provided for from other resources, and that the award would not be inconsistent with the decedent's intentions, the amount of the award may be increased in an amount the court determines to be appropriate.

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

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

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

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

(c) If the claimant is the surviving spouse or surviving domestic partner, the duration and status of the marriage or the state registered domestic partnership of the decedent to the claimant at the time of the decedent's death;

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

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

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

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

(4)(a) A petition for an increased award may only be made if a petition for an award has been granted under RCW 11.54.010. The request for an increased award may be made

in conjunction with the petition for an award under RCW 11.54.010.

(b) Subject to (a) of this subsection, a request for an increased award may be made at any time during the pendency of the probate proceedings. A request to modify an increased award may also be made at any time during the pendency of the probate proceedings by a person having an interest in the decedent's estate that will be directly affected by the requested modification. [2008 c 6 § 919; 1997 c 252 § 51.]

***Reviser's note:** RCW 6.13.030 was amended by 2021 c 290 § 3, significantly changing subsection (2).

Additional notes found at www.leg.wa.gov

11.54.050 Decrease in amount of award—Factors for consideration. (1) The court may decrease the amount of the award below the amount provided in RCW 11.54.020 in the exercise of its discretion if the recipient is entitled to receive probate or nonprobate property, including insurance, by reason of the death of the decedent. In such a case the award must be decreased by no more than the value of such other property as is received by reason of the death of the decedent. The court shall consider the factors presented in RCW 11.54.040(2) in determining the propriety of the award and the proper amount of the award, if any.

(2) An award to a surviving spouse or surviving domestic partner is also discretionary and the amount otherwise allowable may be reduced if: (a) The decedent is survived by children who are not the children of the surviving spouse or surviving domestic partner and the award would decrease amounts otherwise distributable to such children; or (b) the award would have the effect of reducing amounts otherwise distributable to any of the decedent's minor children. In either case the court shall consider the factors presented in RCW 11.54.040 (2) and (3) and whether the needs of the minor children with respect to basic maintenance and support are and will be adequately provided for, both during and after the pendency of any probate proceedings if such proceedings are pending, considering support from any source, including support from the surviving spouse or surviving domestic partner. [2008 c 6 § 920; 1997 c 252 § 52.]

Additional notes found at www.leg.wa.gov

11.54.060 Priority of awarded property—Effect of purchase or encumbrance on property. (1) The award has priority over all other claims made in the estate. In determining which assets must be made available to satisfy the award, the claimant is to be treated as a general creditor of the estate, and unless otherwise ordered by the court the assets shall abate in satisfaction of the award in accordance with chapter 11.10 RCW.

(2) If the property awarded is being purchased on contract or is subject to any encumbrance, for purposes of the award the property must be valued net of the balance due on the contract and the amount of the encumbrance. The property awarded will continue to be subject to any such contract or encumbrance, and any award in excess of the basic award under RCW 11.54.010, whether of community property or the decedent's separate property, is not immune from any lien for costs of medical expenses recoverable under RCW 43.20B.080. [1997 c 252 § 53.]

(2022 Ed.)

Additional notes found at www.leg.wa.gov

11.54.070 Immunity of award from debts and claims of creditors. (1) Except as provided in RCW 11.54.060(2), property awarded and cash paid under this chapter is immune from all debts, including judgments and judgment liens, of the decedent and of the surviving spouse or surviving domestic partner existing at the time of death.

(2) Both the decedent's and the surviving spouse's or surviving domestic partner's interests in any community property awarded to the spouse or domestic partner under this chapter are immune from the claims of creditors. [2008 c 6 § 921; 1998 c 292 § 201; 1997 c 252 § 54.]

Additional notes found at www.leg.wa.gov

11.54.080 Exemption of additional assets from claims of creditors—Petition—Notice—Court order. (1) This section applies if the party entitled to petition for an award holds exempt property that is in an aggregate amount less than that specified in *RCW 6.13.030(2) with respect to lands.

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

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

(a) Set forth facts to establish that the petitioner is entitled to petition for an award under RCW 11.54.010;

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

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

(4) Notice of a petition for an order exempting assets from the claims of creditors must be given in accordance with RCW 11.96A.110.

(5) At the hearing on the petition, the court shall order that certain assets of the claimants are exempt from the claims of creditors so that the aggregate amount of exempt property held by the claimants after the entry of the order is in the amount specified in *RCW 6.13.030(2) with respect to lands. In the order the court shall designate those assets of the claimants that are so exempt. [1999 c 42 § 612; 1997 c 252 § 55.]

***Reviser's note:** RCW 6.13.030 was amended by 2021 c 290 § 3, significantly changing subsection (2).

Additional notes found at www.leg.wa.gov

11.54.090 Venue for petition—Petition and hearing requirements—Notice of hearing. The petition for an award, for an increased or modified award, or for the exemption of assets from the claims of creditors as authorized by this chapter must be made to the court of the county in which

[Title 11 RCW—page 49]

the probate is being administered. If probate proceedings have not been commenced in the state of Washington, the petition must be made to the court of a county in which the decedent was domiciled at the time of death. If the decedent was not domiciled in the state of Washington at the time of death, the petition may be made to the court of any county in which the decedent's estate could be administered under RCW 11.96A.050. The petition and the hearing must conform to RCW 11.96A.080 through 11.96A.200. Notice of the hearing on the petition must be given in accordance with RCW 11.96A.110. [1999 c 42 § 613; 1997 c 252 § 56.]

Additional notes found at www.leg.wa.gov

11.54.100 Exhaustion of estate—Closure of estate—Discharge of personal representative. If an award provided by this chapter will exhaust the estate, and probate proceedings have been commenced in the state of Washington, the court in the order of award or allowance shall order the estate closed, discharge the personal representative, and exonerate the personal representative's bond, if any. [1997 c 252 § 57.]

Additional notes found at www.leg.wa.gov

Chapter 11.56 RCW

SALES, EXCHANGES, LEASES, MORTGAGES, AND BORROWING

Sections

11.56.005	Authority to exchange.
11.56.010	Authority to sell, lease or mortgage.
11.56.020	Sale, lease or mortgage of personal property.
11.56.030	Sale, lease or mortgage of real estate—Petition—Notice—Hearing.
11.56.040	Order directing mortgage.
11.56.045	Order directing lease.
11.56.050	Order directing sale.
11.56.060	Public sales—Notice.
11.56.070	Postponement, adjournment of sale—Notice.
11.56.080	Private sales of realty—Notice—Bids.
11.56.090	Minimum price—Private sale—Sale by negotiation—Reappraisal.
11.56.100	Confirmation of sale—Approval—Resale.
11.56.110	Offer of increased bid—Duty of court.
11.56.115	Effect of confirmation.
11.56.120	Conveyance after confirmation of sale.
11.56.180	Sale of decedent's contract interest in land.
11.56.210	Assignment of decedent's contract.
11.56.220	Redemption of decedent's mortgaged estate.
11.56.230	Sale or mortgage to effect redemption.
11.56.240	Sale of mortgaged property if redemption inexpedient.
11.56.250	Sales directed by will.
11.56.265	Broker's fee and closing expenses—Sale, mortgage or lease.
11.56.280	Borrowing on general credit of estate—Petition—Notice—Hearing.

Limitation of actions, recovery of realty sold by executor or administrator: RCW 4.16.070.

Request for special notice of proceedings in probate—Prohibitions: RCW 11.28.240.

Sale of property to pay estate and transfer taxes: RCW 83.100.110.

11.56.005 Authority to exchange. Whenever it shall appear upon the petition of the personal representative or of any person interested in the estate to be to the best interests of the estate to exchange any real or personal property of the estate for other property, the court may authorize the exchange upon such terms and conditions as it may prescribe, which include the payment or receipt of part cash by the personal representative. If personal property of the estate is to be exchanged, the procedure required by this chapter for the sale

of such property shall apply so far as may be; if real property of the estate is to be exchanged, the procedure required by this chapter for the sale of such property shall apply so far as may be. [1965 c 145 § 11.56.005.]

11.56.010 Authority to sell, lease or mortgage. The court may order real or personal property sold, leased or mortgaged for the purposes hereinafter mentioned but no sale, lease or mortgage of any property of an estate shall be made except under an order of the court, unless otherwise provided by law. [1965 c 145 § 11.56.010. Prior: 1917 c 156 § 122; RRS § 1492; prior: 1895 c 157 § 1; 1883 p 29 § 1; Code 1881 § 1486; 1854 p 284 § 97.]

11.56.020 Sale, lease or mortgage of personal property. The court may at any time order any personal property, including for purposes of this section a vendor's interest in a contract for the sale of real estate, of the estate sold for the preservation of such property or for the payment of the debts of the estate or the expenses of administration or for the purpose of discharging any obligation of the estate or for any other reason which may to the court seem right and proper, and such order may be made either upon or without petition therefor, and such sales may be either at public or private sale or by negotiation and with or without notice of such sale, as the court may determine, and upon such terms and conditions as the court may decide upon. No notice of petition for sale of any personal property need be given, except as provided in RCW 11.28.240, unless the court expressly orders such notice.

Where personal property is sold prior to appraisal, the sale price shall be deemed the value for appraisal. Personal property may be mortgaged, pledged or leased for the same reasons and purposes, and in the same manner as is hereinafter provided for real property. [1965 c 145 § 11.56.020. Prior: (i) 1917 c 156 § 123; RRS § 1493; prior: 1891 c 155 §§ 29, 30; 1883 p 29 § 1; Code 1881 § 1488; 1854 p 284 § 99. (ii) 1955 c 205 § 12; RCW 11.56.025.]

Community property: Chapter 26.16 RCW.

Descent and distribution of real and personal estate: RCW 11.04.015.

Payment of claims where estate insufficient: RCW 11.76.150.

Performance of decedent's contracts: Chapter 11.60 RCW.

Sale of decedent's contract interest in land: RCW 11.56.180.

11.56.030 Sale, lease or mortgage of real estate—Petition—Notice—Hearing. Whenever it shall appear to the satisfaction of the court that any portion or all of the real property should be sold, mortgaged or leased for the purpose of raising money to pay the debts and obligations of the estate, and the expenses of administration, estate taxes, or for the support of the family, to make distribution, or for such other purposes as the court may deem right and proper, the court may order the sale, lease or mortgage of such portion of the property as appears to the court necessary for the purpose aforesaid. It shall be the duty of the personal representative to present a petition to the court giving a description of all the property of the estate and its character, the amount of the debts, expenses and obligations of the estate and such other things as will tend to assist the court in determining the necessity for the sale, lease or mortgage and the amount

thereof. Unless the court shall by order expressly so provide, no notice of the hearing of such petition for sale, lease or mortgage need be given, except as provided in RCW 11.28.240 hereof; if, however, the court should order notice of such hearing, it shall determine upon the kind, character and time thereof. At the hearing of such petition the court may have brought before it such testimony or information as it may see fit to receive, for the purpose of determining whether it should order any of the property of the estate sold, leased or mortgaged. The absence of any allegation in the petition shall not deprive the court of jurisdiction to order said sale, lease or mortgage, and the court may, if it see fit, order such sale, lease or mortgage without any petition having been previously presented. [1990 c 180 § 2; 1965 c 145 § 11.56.030. Prior: 1937 c 28 § 3; 1917 c 156 § 124; RRS § 1494; prior: Code 1881 § 1493; 1854 p 285 § 103.]

11.56.040 Order directing mortgage. If the court should determine that it is necessary or proper, for any of the said purposes, to mortgage any or all of said property, it may make an order directing the personal representative to mortgage such thereof as it may determine upon, and such order shall contain the terms and conditions of such transaction and authorize the personal representative to execute and deliver his or her note or notes and secure the same by mortgage, and thereafter it shall be the duty of such personal representative to comply with such order. The personal representative shall not deliver any such note, mortgage, or other evidence of indebtedness until he or she has first presented same to the court and obtained its approval of the form. Every mortgage so made and approved shall be effectual to mortgage and encumber all the right, title, and interest of the said estate in the property described therein at the time of the death of the said decedent, or acquired by his or her estate, and no irregularity in the proceedings shall impair or invalidate any mortgage given under such order of the court and approved by it. [2010 c 8 § 2044; 1965 c 145 § 11.56.040. Prior: 1917 c 156 § 125; RRS § 1495; prior: Code 1881 § 1494; 1854 p 285 § 104.]

11.56.045 Order directing lease. If the court should determine that it is necessary or proper, for any of the said purposes to lease any or all of said property, it may make an order directing the personal representative to lease such thereof as it may determine upon, and such order shall contain the terms and conditions of such transaction and authorize the personal representative to execute the lease and thereafter it shall be the duty of the personal representative to comply with such order. The personal representative shall not execute such lease until he or she has first presented the same to the court and obtained its approval of the form. [2010 c 8 § 2045; 1965 c 145 § 11.56.045.]

11.56.050 Order directing sale. If the court should determine that it is necessary to sell any or all of the real estate for the purposes mentioned in this title, then it may make and cause to be entered an order directing the personal representative to sell so much of the real estate as the court may determine necessary for the purposes aforesaid. Such order shall give a particular description of the property to be sold and the terms of such sale and shall provide whether

such property shall be sold at public or private sale, or by negotiation. After the giving of such order it shall be the duty of the personal representative to sell such real estate in accordance with the order of the court and as in this title provided with reference to the public or private sales of real estate. [1994 c 221 § 49; 1965 c 145 § 11.56.050. Prior: 1917 c 156 § 126; RRS § 1496; prior: Code 1881 § 1494; 1854 p 285 § 104.]

Abatement of assets: Chapter 11.10 RCW.

Additional notes found at www.leg.wa.gov

11.56.060 Public sales—Notice. When real property is directed to be sold by public sale, notice of the time and place of such sale shall be published in a legal newspaper of the county in which the estate is being administered, once each week for three successive weeks before such sale, in which notices the property ordered sold shall be described with proper certainty: PROVIDED, That where real property is located in a county other than the county in which the estate is being administered, publication shall also be made in a legal newspaper of that county. At the time and place named in such notices for the said sale, the personal representative shall proceed to sell the property upon the terms and conditions ordered by the court, and to the highest and best bidder. All sales of real estate at public sale shall be made at the front door of the courthouse of the county in which the lands are, unless the court shall by order otherwise direct. [1965 c 145 § 11.56.060. Prior: 1917 c 156 § 127; RRS § 1497; prior: 1888 p 187 § 1; Code 1881 § 1504; 1854 p 287 § 114.]

11.56.070 Postponement, adjournment of sale—Notice. The personal representative, should he or she deem it for the best interests of all concerned, may postpone such sale to a time fixed but not to exceed twenty days, and such postponement shall be made by proclamation of the personal representative at the time and place first appointed for the sale; if there be an adjournment of such sale for more than three days, then it shall be the duty of the personal representative to cause a notice of such adjournment to be published in a legal newspaper in the county in which notice was published as provided in RCW 11.56.060, in addition to making such proclamation. [2010 c 8 § 2046; 1965 c 145 § 11.56.070. Prior: 1917 c 156 § 128; RRS § 1498; prior: Code 1881 § 1505; 1854 p 287 § 115.]

11.56.080 Private sales of realty—Notice—Bids. When a sale of real property is ordered to be made at private sale, notice of the same must be published in a legal newspaper of the county in which the estate is being administered, once a week for at least two successive weeks before the day on or after which the sale is to be made, in which the lands and tenements to be sold must be described with common certainty: PROVIDED, That where real property is located in a county other than the county in which the estate is being administered, publication shall also be made in a legal newspaper of that county. The notice must state the day on or after which the sale will be made and the place where offers or bids will be received. The day last referred to must be at least fifteen days from the first publication of notice and the sale must not be made before that day, but if made, must be made within twelve months thereafter. The bids or offers must be in

writing, and may be left at the place designated in the notice or delivered to the personal representative personally, or may be filed in the office of the clerk of the court to which the return of sale must be made, at any time after the first publication of the notice and before the making of the sale. If it be shown that it will be for the best interest of the estate the court or judge may, by an order, shorten the time of notice, which shall not, however, be less than one week, and may provide that the sale may be made on or after a day less than fifteen, but not less than eight days from the first publication of the notice of sale, and the sale may be made to correspond with such order. [1965 c 145 § 11.56.080. Prior: 1917 c 156 § 129; RRS § 1499; prior: 1888 p 187 § 1; Code 1881 § 1504; 1854 p 287 § 114.]

11.56.090 Minimum price—Private sale—Sale by negotiation—Reappraisal. No sale of real estate at private sale or sale by negotiation shall be confirmed by the court unless the gross sum offered is at least ninety percent of the appraised value thereof, nor unless such real estate shall have been appraised within one year immediately prior to such sale. If it has not been so appraised, or if the court is satisfied that the appraisal is too high or too low, appraisers may be appointed, and they must make an appraisal thereof in the same manner as in the case of the original appraisal of the estate, and which appraisal may be made at any time before the sale or the confirmation thereof. [1965 c 145 § 11.56.090. Prior: 1917 c 156 § 130; RRS § 1500; prior: 1891 c 155 § 31; Code 1881 § 1508; 1854 p 287 § 118.]

11.56.100 Confirmation of sale—Approval—Resale. The personal representative making any sale of real estate, either at public or private sale, or sale by negotiation shall within ten days after making such sale file with the clerk of the court his or her return of such sale, the same being duly verified. In the case of a sale by negotiation the personal representative shall publish a notice in one issue of a legal newspaper of the county in which the estate is being administered; such notice shall include the legal description of the property sold, the selling price and the date after which the sale can be confirmed: PROVIDED, That such confirmation date shall be at least ten days after such notice is published. At any time after the expiration of ten days from the publication of such notice, in the case of sale by negotiation, and at any time after the expiration of ten days from the filing of such return, in the case of public or private sale the court may approve and confirm such sale and direct proper instruments of transfer to be executed and delivered. But if the court shall be of the opinion that the proceedings were unfair, or that the sum obtained was disproportionate to the value of the property sold, or if made at private sale or sale by negotiation that it did not sell for at least ninety percent of the appraised value as in RCW 11.56.090 provided, and that a sum exceeding said bid by at least ten percent exclusive of the expense of a new sale, may be obtained, the court may refuse to approve or confirm such sale and may order a resale. On a resale, notice shall be given and the sale shall be conducted in all respects as though no previous sale had been made. [2010 c 8 § 2047; 1965 c 145 § 11.56.100. Prior: 1917 c 156 § 131; RRS § 1501; prior: 1891 c 155 § 31; Code 1881 § 1508; 1854 p 287 § 118.]

11.56.110 Offer of increased bid—Duty of court. If, at any time before confirmation of any such sale, any person shall file with the clerk of the court a bid on such property in an amount not less than ten percent higher than the bid the acceptance of which was reported by the return of sale and shall deposit with the clerk not less than twenty percent of his or her bid in the form of cash, money order, cashier's check, or certified check made payable to the clerk, to be forfeited to the estate unless such bidder complies with his or her bid, the bidder whose bid was accepted shall be informed of such increased bid by registered or certified mail addressed to such bidder at any address which may have been given by him or her at the time of making such bid. Such bidder then shall have a period of five days, not including holidays, in which to make and file a bid better than that of the subsequent bidder. After the expiration of such five-day period the court may refuse to confirm the sale reported in the return of sale and direct a sale to the person making the best bid then on file, indicating which is the best bid, and a sale made pursuant to such direction shall need no further confirmation. Instead of such a direction, the court, upon application of the personal representative, may direct the reception of sealed bids. Thereupon the personal representative shall mail notice by registered or certified mail to all those who have made bids on such property, informing them that sealed bids will be received by the clerk of the court within ten days. At the expiration of such period the personal representative, in the presence of the clerk of the court, shall open such bids as shall have been submitted to the clerk within the time stated in the notice (whether by previous bidders or not) and shall file a recommendation of the acceptance of the bid which he or she deems best in view of the requirements of the particular estate. The court may thereupon direct a sale to the bidder whose bid is deemed best by the court and a sale made pursuant to such direction shall need no confirmation: PROVIDED, HOWEVER, That the court shall consider the net realization to the estate in determining the best bid. [2010 c 8 § 2048; 1967 ex.s. c 106 § 2; 1967 c 168 § 18; 1965 c 145 § 11.56.110. Prior: 1955 c 154 § 1; 1917 c 156 § 132; RRS § 1502.]

Additional notes found at www.leg.wa.gov

11.56.115 Effect of confirmation. No petition or allegation thereof for the sale of real estate shall be considered jurisdictional, and confirmation by the court of any sale shall be absolutely conclusive as to the regularity of all proceedings leading up to and including such sale, and no instrument of conveyance of real estate made after confirmation of sale by the court shall be open to attack upon any grounds whatsoever except for fraud, and the confirmation by the court of any such sale shall be conclusive proof that all statutory provisions and all orders of the court with reference to such sale have been complied with. [1965 c 145 § 11.56.115. Prior: 1917 c 156 § 134; RCW 11.56.130; RRS § 1504; prior: Code 1881 § 1510; 1854 p 287 § 120.]

Real estate sold by executor, etc., limitation of action: RCW 4.16.070.

11.56.120 Conveyance after confirmation of sale. Upon the confirmation of any such sale the court shall direct the personal representative to make, execute and deliver instruments conveying the title to the person to whom such

property may be sold, and such instruments of conveyance shall be deemed to convey all the estate, rights and interests of the testator or intestate at the death of the deceased and any interest acquired by the estate. [1965 c 145 § 11.56.120. Prior: 1917 c 156 § 133; RRS § 1503; prior: Code 1881 § 1510; 1854 p 287 § 120.]

11.56.180 Sale of decedent's contract interest in land.

If the deceased person at the time of his or her death was possessed of a contract for the purchase of lands, his or her interest in such lands under such contract may be sold on the application of his or her personal representative in the same manner as if he or she died seized of such lands; and the same proceedings may be had for that purpose as are prescribed in this title in respect to lands of which he or she died seized, except as hereinafter provided. [2010 c 8 § 2049; 1965 c 145 § 11.56.180. Prior: 1917 c 156 § 139; RRS § 1509; prior: Code 1881 § 1519; 1854 p 289 § 129.]

Performance of decedent's contracts: Chapter 11.60 RCW.

Sale of vendor's interest in contract for sale of real estate: RCW 11.56.020.

11.56.210 Assignment of decedent's contract.

Upon the confirmation of such sale, the personal representative shall execute to the purchaser an assignment of the contract and deed, which shall vest in the purchaser, his or her heirs and assigns, all the right, title, and interest of the persons entitled to the interest of the deceased in the land sold at the time of the sale, and such purchaser shall have the same rights and remedies against the vendor of such lands as the deceased would have had if living. [2010 c 8 § 2050; 1965 c 145 § 11.56.210. Prior: 1917 c 156 § 142; RRS § 1512; prior: Code 1881 § 1522; 1854 p 289 § 132.]

11.56.220 Redemption of decedent's mortgaged estate.

If any person die having mortgaged any real or personal estate, and shall not have devised the same, or provided for any redemption thereof by will, the court, upon the application of any person interested, may order the personal representative to redeem the estate out of the assets, if it should appear to the satisfaction of the court that such redemption would be beneficial to the estate and not injurious to creditors. [1965 c 145 § 11.56.220. Prior: 1917 c 156 § 143; RRS § 1513; prior: Code 1881 § 1523; 1854 p 289 § 133.]

11.56.230 Sale or mortgage to effect redemption.

If it shall be made to appear to the satisfaction of the court that it will be to the interest of the estate of any deceased person to sell or mortgage other personal estate or to sell or mortgage other real estate of the decedent than that mortgaged by him or her to redeem the property so mortgaged, the court may order the sale or mortgaging of any personal estate, or the sale or mortgaging of any real estate of the decedent which it may deem expedient to be sold or mortgaged for such purpose, which sale or mortgaging shall be conducted in all respects as other sales or mortgages of like property ordered by the court. [2010 c 8 § 2051; 1965 c 145 § 11.56.230. Prior: 1917 c 156 § 144; RRS § 1514; prior: 1895 c 157 § 11; 1888 p 185 § 1.]

11.56.240 Sale of mortgaged property if redemption

inexpedient. If such redemption be not deemed expedient, the court shall order such property to be sold at public or pri-

vate sale, which sale shall be with the same notice and conducted in the same manner as required in other cases of real estate or personal property provided for in this title, and shall be sold subject to such mortgage, and the personal representative shall thereupon execute a conveyance thereof to the purchaser, which conveyance shall be effectual to convey to the purchaser all the right, title, and interest which the deceased had in the property, and the purchase money, after paying the expenses of the sale, shall be applied to the residue in due course of administration. [1965 c 145 § 11.56.240. Prior: 1917 c 156 § 145; RRS § 1515; prior: Code 1881 § 1524; 1873 p 296 § 211; 1854 p 290 § 134.]

11.56.250 Sales directed by will. When property is directed by will to be sold, or authority is given in the will to sell property, the executor may sell any property of the estate without the order of the court, and without any notice, and it shall not be necessary under such circumstances to make any application to the court with reference to such sales or have the same confirmed by the court. [1965 c 145 § 11.56.250. Prior: 1917 c 156 § 146; RRS § 1516; prior: Code 1881 § 1527.]

11.56.265 Broker's fee and closing expenses—Sale, mortgage or lease.

In connection with the sale, mortgage or lease of property, the court may authorize the personal representative to pay, out of the proceeds realized therefrom or out of the estate, the customary and reasonable auctioneer's and broker's fees and any necessary expenses for abstracting, title insurance, survey, revenue stamps and other necessary costs and expenses in connection therewith. [1965 c 145 § 11.56.265.]

Allowance of necessary expenses to personal representative: RCW 11.48.050.

11.56.280 Borrowing on general credit of estate—Petition—Notice—Hearing.

Whenever it shall appear to the satisfaction of the court that money is needed to pay debts of the estate, expenses of administration, or estate taxes, the court may by order authorize the personal representative to borrow such money, on the general credit of the estate, as appears to the court necessary for the purposes aforesaid. The time for repayment, rate of interest and form of note authorized shall be as specified by the court in its order. The money borrowed pursuant thereto shall be an obligation of the estate repayable with the same priority as unsecured claims filed against the estate. It shall be the duty of the personal representative to present a petition to the court giving a description of all the property of the estate and its character, the amount of the debts, expenses and tax obligations and such other things as will tend to assist the court in determining the necessity for the borrowing and the amount thereof. Unless the court shall by order expressly so provide, no notice of the hearing of such petition need be given, except to persons who have requested notice under the provisions of RCW 11.28.240; if, however, the court should order notice of such hearing, it shall determine upon the kind, character and time thereof. At the hearing of such petition the court may have brought before it such testimony or information as it may see fit to receive, for the foregoing purpose. The absence of any allegation in the petition shall not deprive the court of juris-

diction to authorize such borrowing. [1990 c 180 § 3; 1965 c 145 § 11.56.280.]

Order of payment of debts: RCW 11.76.110.

Chapter 11.60 RCW

PERFORMANCE OF DECEDENT'S CONTRACTS

Sections

- 11.60.010 Order for performance on application of personal representative.
- 11.60.020 Petition, notice, and hearing when personal representative fails to make application.
- 11.60.030 Hearing.
- 11.60.040 Conveyance of real property—Effect.
- 11.60.060 Procedure on death of person entitled to performance.

Evidence, transaction with person since deceased: RCW 5.60.030.

Sale of vendor's interest in contract for sale of real estate: RCW 11.56.020.

Sale or assignment of decedent's contract interest in land: RCW 11.56.180, 11.56.210.

11.60.010 Order for performance on application of personal representative. If any person, who is bound by contract, in writing, shall die before performing said contract, the superior court of the county in which the estate is being administered, may upon application of the personal representative, without notice, make an order authorizing and directing the personal representative to perform such contract. [1965 c 145 § 11.60.010. Prior: 1917 c 156 § 188; RRS § 1558; prior: 1891 p 390 § 40; Code 1881 § 623; 1877 p 130 § 626; 1854 p 292 § 150.]

11.60.020 Petition, notice, and hearing when personal representative fails to make application. If the personal representative fails to make such application, then any person claiming to be entitled to such performance under such contract, may present a petition setting forth the facts upon which such claim is predicated. Notice of hearing shall be in accordance with the provisions of *RCW 11.16.081. [1965 c 145 § 11.60.020. Prior: 1917 c 156 § 189; RRS § 1559; prior: 1891 c 155 § 41; Code 1881 § 694; 1877 p 130 § 627; 1854 p 292 § 151.]

***Reviser's note:** RCW 11.16.081 was repealed by 1969 c 70 § 5.

Actions for recovery of property and on contract: RCW 11.48.090.

11.60.030 Hearing. At the time appointed for such hearing, or at such other time as the same may be adjourned to, upon proof of service of the notice as provided in *RCW 11.16.081, the court shall proceed to a hearing and determine the matter. [1965 c 145 § 11.60.030. Prior: 1917 c 156 § 190; RRS § 1560; prior: 1891 c 155 § 42; Code 1881 § 625; 1877 p 130 § 628; 1854 p 293 § 152.]

***Reviser's note:** RCW 11.16.081 was repealed by 1969 c 70 § 5.

11.60.040 Conveyance of real property—Effect. In the case of real property, a conveyance executed under the provisions of this title shall so refer to the order authorizing the conveyance that the same may be readily found, but need not recite the record in the case generally, and the conveyance made in pursuance of such order shall pass to the grantee all the estate, right, title, and interest contracted to be conveyed by the deceased, as fully as if the contracting party himself or herself were still living and executed the convey-

ance in pursuance of such contract. [2010 c 8 § 2052; 1965 c 145 § 11.60.040. Prior: 1917 c 156 § 191; RRS § 1561; prior: Code 1881 § 626; 1877 p 130 § 629; 1854 p 293 § 153.]

11.60.060 Procedure on death of person entitled to performance. If the person entitled to performance shall die before the commencement of the proceedings according to the provisions of this title or before the completion of performance, any person who would have been entitled to the performance under him or her, as heir, devisee, or otherwise, in case the performance had been made according to the terms of the contract, or the personal representative of such deceased person, for the benefit of persons entitled, may commence such proceedings, or prosecute the same if already commenced; and the performance shall inure to the persons who would have been entitled to it, or to the personal representative for their benefit. [2010 c 8 § 2053; 1965 c 145 § 11.60.060. Prior: 1917 c 156 § 193; RRS § 1563; prior: 1891 c 155 § 47; Code 1881 § 532; 1877 p 132 § 635; 1854 p 294 § 159.]

Chapter 11.62 RCW

SMALL ESTATES—DISPOSITION OF PROPERTY

Sections

- 11.62.005 Definitions.
- 11.62.010 Disposition of personal property, debts by affidavit, proof of death—Contents of affidavit—Procedure—Securities.
- 11.62.020 Effect of affidavit and proof of death—Discharge and release of transferor—Refusal to pay or deliver—Procedure—False affidavit—Conflicting affidavits—Accountability.
- 11.62.030 Payment to surviving spouse or surviving domestic partner of moneys on deposit of deceased credit union member—Limitation—Affidavit—Accounting to personal representative.

Reviser's note: Inheritance and gift taxes were repealed by 1981 2nd ex.s. c 7 § 83.100.160. For provisions relating to estate and transfer taxes, see chapter 83.100 RCW.

11.62.005 Definitions. As used in this chapter, the following terms shall have the meanings indicated.

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

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

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

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

(iii) The department of social and health services, to the extent of funds expended or paid, in the case of claims provided under RCW 43.20B.080; and/or

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

(b) Any person claiming to be a successor solely by reason of being a creditor of the decedent or of the decedent's estate, except for the state as set forth in (a)(iii) and (iv) of

this subsection, shall be excluded from the definition of "successor".

(3) "Person" shall mean any individual or organization, specifically including but not limited to a bank, credit union, brokerage firm or stock transfer agent, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity. [2008 c 6 § 922; 2006 c 360 § 15; 1994 c 21 § 1; 1988 c 64 § 24; 1977 ex.s. c 234 § 29.]

Legislative confirmation of effect of 1994 c 21: RCW 43.20B.090.

Additional notes found at www.leg.wa.gov

11.62.010 Disposition of personal property, debts by affidavit, proof of death—Contents of affidavit—Procedure—Securities. (1) At any time after forty days from the date of a decedent's death, any person who is indebted to or who has possession of any personal property belonging to the decedent or to the decedent and his or her surviving spouse or surviving domestic partner as a community, which debt or personal property is an asset which is subject to probate, shall pay such indebtedness or deliver such personal property, or so much of either as is claimed, to a person claiming to be a successor of the decedent upon receipt of proof of death and of an affidavit made by said person which meets the requirements of subsection (2) of this section.

(2) An affidavit which is to be made pursuant to this section shall state:

(a) The claiming successor's name and address, and that the claiming successor is a "successor" as defined in RCW 11.62.005;

(b) That the decedent was a resident of the state of Washington on the date of his or her death;

(c) That the value of the decedent's entire estate subject to probate, not including the surviving spouse's or surviving domestic partner's community property interest in any assets which are subject to probate in the decedent's estate, wherever located, less liens and encumbrances, does not exceed one hundred thousand dollars;

(d) That forty days have elapsed since the death of the decedent;

(e) That no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction;

(f) That all debts of the decedent including funeral and burial expenses have been paid or provided for;

(g) A description of the personal property and the portion thereof claimed, together with a statement that such personal property is subject to probate;

(h) That the claiming successor has given written notice, either by personal service or by mail, identifying his or her claim, and describing the property claimed, to all other successors of the decedent, and that at least ten days have elapsed since the service or mailing of such notice; and

(i) That the claiming successor is either personally entitled to full payment or delivery of the property claimed or is entitled to full payment or delivery thereof on the behalf and with the written authority of all other successors who have an interest therein.

(3) A transfer agent of any security shall change the registered ownership of the security claimed from the decedent

(2022 Ed.)

to the person claiming to be the successor with respect to such security upon the presentation of proof of death and of an affidavit made by such person which meets the requirements of subsection (2) of this section. Any governmental agency required to issue certificates of ownership or of license registration to personal property shall issue a new certificate of ownership or of license registration to a person claiming to be a successor of the decedent upon receipt of proof of death and of an affidavit made by such person which meets the requirements of subsection (2) of this section.

(4) No release from any Washington state or local taxing authority may be required before any assets or debts are paid or delivered to a successor of a decedent as required under this section.

(5) A copy of the affidavit, including the decedent's social security number, shall be mailed to the state of Washington, department of social and health services, office of financial recovery. [2008 c 6 § 923; 2006 c 360 § 16; 1995 1st sp.s. c 18 § 60; 1993 c 291 § 1. Prior: 1988 c 64 § 25; 1988 c 29 § 2; 1987 c 157 § 1; 1977 ex.s. c 234 § 11; 1974 ex.s. c 117 § 4.]

Additional notes found at www.leg.wa.gov

11.62.020 Effect of affidavit and proof of death—Discharge and release of transferor—Refusal to pay or deliver—Procedure—False affidavit—Conflicting affidavits—Accountability. The person paying, delivering, transferring, or issuing personal property pursuant to RCW 11.62.010 is discharged and released to the same extent as if such person has dealt with a personal representative of the decedent, unless at the time of such payment, delivery, transfer, or issuance, such person had actual knowledge of the falsity of any statement which is required by RCW 11.62.010(2) as now or hereafter amended to be contained in the successor's affidavit. Such person is not required to see to the application of the personal property, or to inquire into the truth of any matter specified in RCW 11.62.010 (1) or (2), or into the payment of any estate tax liability.

An organization shall not be deemed to have actual knowledge of the falsity of any statement contained in an affidavit made pursuant to RCW 11.62.010(2) as now or hereafter amended until such time as said knowledge shall have been brought to the personal attention of the individual making the transfer, delivery, payment, or issuance of the personal property claimed under RCW 11.62.010 as now or hereafter amended.

If any person to whom an affidavit and proof of death is delivered refuses to pay, deliver, or transfer any personal property, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled thereto. If more than one affidavit is delivered with reference to the same personal property, the person to whom an affidavit is delivered may pay, deliver, transfer, or issue any personal property in response to the first affidavit received, provided that proof of death has also been received, or alternately implead such property into court for payment over to the person entitled thereto. Any person to whom payment, delivery, transfer, or issuance of personal property is made pursuant to RCW 11.62.010 as now or hereafter amended is answerable and accountable therefor to any per-

sonal representative of the estate of the decedent or to any other person having a superior right thereto. [1990 c 180 § 4; 1977 ex.s. c 234 § 12; 1974 ex.s. c 117 § 5.]

Additional notes found at www.leg.wa.gov

11.62.030 Payment to surviving spouse or surviving domestic partner of moneys on deposit of deceased credit union member—Limitation—Affidavit—Accounting to personal representative. On the death of any member of any credit union organized under chapter 31.12 RCW or federal law, such credit union may pay to the surviving spouse or surviving domestic partner the moneys of such member on deposit to the credit of said deceased member, including moneys deposited as shares in said credit union, in cases where the amount of deposit does not exceed the sum of one thousand dollars, upon receipt of an affidavit from the surviving spouse or surviving domestic partner to the effect that the member died and no executor or administrator has been appointed for the member's estate, and the member had on deposit in said credit union money not exceeding the sum of one thousand dollars. The payment of such deposit made in good faith to the spouse or the domestic partner making the affidavit shall be a full acquittance and release of the credit union for the amount of the deposit so paid.

No probate proceeding shall be necessary to establish the right of said surviving spouse to withdraw said deposits upon the filing of said affidavit: PROVIDED, That whenever a personal representative is appointed in an estate where a withdrawal of deposits has been had in compliance with this section, the spouse so withdrawing said deposits shall account for the same to the personal representative. The credit union may also pay out the moneys on deposit to the credit of the deceased upon presentation of an affidavit as provided in RCW 11.62.010, as now or hereafter amended. [2008 c 6 § 924; 1980 c 41 § 10.]

Additional notes found at www.leg.wa.gov

Chapter 11.64 RCW PARTNERSHIP PROPERTY

Sections

11.64.002	Inventory—Appraisement.
11.64.008	Surviving partner may continue in possession.
11.64.016	Security may be required.
11.64.022	Failure to furnish inventory, list liabilities, permit appraisal, etc.—Show cause—Contempt of court—Receiver.
11.64.030	Surviving partner or partners may purchase deceased's interest—Valuation—Conditions of sale—Protection against partnership liabilities.
11.64.040	Surviving partner may operate under agreement with estate—Termination.

11.64.002 Inventory—Appraisement. Within three months after receiving written request from the personal representative the surviving partner or partners of the partnership shall furnish the personal representative with a verified inventory of the assets of the partnership. The inventory shall state the value of the assets as shown by the books of the partnership and list the liabilities of the partnership. At the request of the personal representative, the surviving partner or partners shall permit the assets of the partnership to be appraised, which appraisal shall include the value of the assets of the partnership and a list of the liabilities. [1977

ex.s. c 234 § 13; 1965 c 145 § 11.64.002. Prior: 1951 c 197 § 1; prior: (i) 1917 c 156 § 88; RRS § 1458. (ii) 1917 c 156 § 91; RRS § 1461.]

Inventory of estate to identify decedent's share in partnership: RCW 11.44.015(1)(f).

Additional notes found at www.leg.wa.gov

11.64.008 Surviving partner may continue in possession. The surviving partner or partners may continue in possession of the partnership estate, pay its debts, and settle its business, and shall account to the personal representative of the decedent and shall pay over such balances as may, from time to time, be payable to him or her. [2010 c 8 § 2054; 1977 ex.s. c 234 § 14; 1965 c 145 § 11.64.008. Prior: 1951 c 197 § 2.]

Additional notes found at www.leg.wa.gov

11.64.016 Security may be required. If the surviving partner or partners commit waste, or if it appears to the court that it is for the best interest of the estate of the decedent, such court may, after a hearing, order the surviving partner or partners to give security for the faithful settlement of the partnership affairs and the payment to the personal representative of any amount due the estate. [1977 ex.s. c 234 § 15; 1965 c 145 § 11.64.016. Prior: 1951 c 197 § 3.]

Additional notes found at www.leg.wa.gov

11.64.022 Failure to furnish inventory, list liabilities, permit appraisal, etc.—Show cause—Contempt of court—Receiver. If the surviving partner or partners fail or refuse to furnish an inventory or list of liabilities, to permit an appraisal, or to account to the personal representative, or to furnish a bond when required pursuant to RCW 11.64.016, the court shall order a citation to issue requiring the surviving partner or partners to appear and show cause why they have not furnished an inventory list of liabilities, or permitted an appraisal or why they should not account to the personal representative or file a bond. The citation shall be served not less than ten days before the return day designated therein, or such shorter period as the court upon a showing of good cause deems appropriate. If the surviving partner or partners neglect or refuse to file an inventory or list of liabilities, or to permit an appraisal, or fail to account to the court or to file a bond, after they have been directed to do so, they may be punished for a contempt of court as provided in chapter 7.21 RCW. Where the surviving partner or partners fail to file a bond after being ordered to do so by the court, the court may also appoint a receiver of the partnership estate under chapter 7.60 RCW, and may order the costs and expenses of the proceedings to be paid out of the partnership estate or out of the estate of the decedent, or by the surviving partner or partners personally, or partly by each of the parties. [2004 c 165 § 39; 1989 c 373 § 15; 1977 ex.s. c 234 § 16; 1965 c 145 § 11.64.022. Prior: 1951 c 197 § 4.]

Purpose—Captions not law—2004 c 165: See notes following RCW 7.60.005.

Additional notes found at www.leg.wa.gov

11.64.030 Surviving partner or partners may purchase deceased's interest—Valuation—Conditions of sale—Protection against partnership liabilities. The sur-

living partner or the surviving partners jointly, shall have the right at any time to petition the court to purchase the interests of a deceased partner in the partnership. Upon a hearing pursuant to such petition the court shall, in such manner as it sees fit, determine and by order fix the value of the interest of the deceased partner over and above all partnership debts and obligations, the price, terms, and conditions of such sale and the period of time during which the surviving partner or partners shall have the prior right to purchase the interest of the deceased partner. If any such surviving partner be also the personal representative of the estate of the deceased partner, such fact shall not affect his or her right to purchase, or to join with the other surviving partners to purchase such interest in the manner hereinbefore provided.

The court shall make such orders in connection with such sale as it deems proper or necessary to protect the estate of the deceased against any liability for partnership debts or obligations. [2010 c 8 § 2055; 1977 ex.s. c 234 § 17; 1965 c 145 § 11.64.030. Prior: 1951 c 197 § 5; prior: 1917 c 156 § 89; 1859 p 186 §§ 120-130; 1854 p 274 §§ 46-53; RRS § 1459.]

Additional notes found at www.leg.wa.gov

11.64.040 Surviving partner may operate under agreement with estate—Termination. The court may, in instances where it is deemed advisable, authorize and direct the personal representative of the estate of a deceased partner to enter into an agreement with the surviving partner or partners under which the surviving partner or partners may continue to operate any going business of the former partnership until the further order of the court. The court may, in its discretion, revoke such authority and direction and thereby terminate such agreement at any time by further order, entered upon the application of the personal representative or the surviving partner or partners or any interested person or on its own motion. [1965 c 145 § 11.64.040. Prior: 1951 c 197 § 6; prior: 1917 c 156 § 90; 1859 p 186 §§ 120-130; 1854 p 274 §§ 46-53; RRS § 1460.]

Chapter 11.66 RCW

SOCIAL SECURITY BENEFITS

Sections

- | | |
|-----------|---------------------------------------------------------------------------------------------------|
| 11.66.010 | Social security benefits—Payment to survivors or department of social and health services—Effect. |
| 11.66.900 | Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. |

11.66.010 Social security benefits—Payment to survivors or department of social and health services—Effect. (1) If not less than thirty days after the death of an individual entitled at the time of death to a monthly benefit or benefits under Title II of the social security act, all or part of the amount of such benefit or benefits, not in excess of one thousand dollars, is paid by the United States to (a) the surviving spouse, (b) one or more of the deceased's children, or descendants of his or her deceased children, (c) the secretary of social and health services if the decedent was a resident of a state institution at the date of death and liable for the cost of his or her care in an amount at least as large as the amount of such benefits, (d) the deceased's father or mother, or (e) the

(2022 Ed.)

deceased's brother or sister, preference being given in the order named if more than one request for payment shall have been made by or for such individuals, such payment shall be deemed to be a payment to the legal representative of the decedent and shall constitute a full discharge and release from any further claim for such payment to the same extent as if such payment had been made to an executor or administrator of the decedent's estate.

(2) The provisions of subsection (1) of this section shall apply only if an affidavit has been made and filed with the United States department of health, education, and welfare by the surviving spouse or other relative by whom or on whose behalf request for payment is made and such affidavit shows (a) the date of death of the deceased, (b) the relationship of the affiant to the deceased, (c) that no executor or administrator for the deceased has qualified or been appointed, nor to the affiant's knowledge is administration of the deceased's estate contemplated, and (d) that, to the affiant's knowledge, there exists at the time of the filing of such affidavit, no relative of a closer degree of kindred to the deceased than the affiant: PROVIDED, That the affidavit filed by the secretary of social and health services shall meet the requirements of (a) and (c) of this subsection and, in addition, show that the decedent left no known surviving spouse or children and died while a resident of a state institution at the date of death and liable for the cost of his or her care in an amount at least as large as the amount of such benefits. [2010 c 8 § 2056; 1979 c 141 § 12; 1967 c 175 § 2.]

Disposition of property of deceased inmate of state institution: RCW 11.08.101, 11.08.111, 11.08.120.

Additional notes found at www.leg.wa.gov

11.66.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 33.]

Chapter 11.68 RCW

SETTLEMENT OF ESTATES WITHOUT ADMINISTRATION

Sections

- | | |
|-----------|-----------------------------------------------------------------------|
| 11.68.011 | Settlement without court intervention—Petition—Conditions—Exceptions. |
| 11.68.021 | Hearing on petition for nonintervention powers. |
| 11.68.041 | Petition for nonintervention powers—Notice requirements—Exceptions. |
| 11.68.050 | Objections to granting of nonintervention powers—Restrictions. |

[Title 11 RCW—page 57]

- 11.68.060 Death, resignation, or disablement of personal representative—Successor to administer nonintervention powers—Petition.
- 11.68.065 Report of affairs of estate—Petition by beneficiary—Filing—Notice—Hearing—Other accounting and information.
- 11.68.070 Procedure when personal representative recant to trust or subject to removal.
- 11.68.080 Vacation or restriction of nonintervention powers following insolvency—Notice—Determinations affecting prior grants of nonintervention powers upon petition—Endorsement on prior orders.
- 11.68.085 Nonintervention powers—Generally.
- 11.68.090 Nonintervention powers—Powers, duties, restrictions, and liabilities—Effect of will provisions.
- 11.68.095 Co-personal representatives—Powers.
- 11.68.100 Closing of estate—Alternative decrees—Notice—Hearing—Fees.
- 11.68.110 Declaration of completion of probate—Contents—Notice—Discharge of personal representative—Waiver of notice.
- 11.68.112 Final distribution upon declaration and notice of filing of declaration of completion of probate—Special powers of personal representative—Discharge from liability.
- 11.68.114 Declaration of completion of probate—Special powers of personal representative to hold reserve and deal with taxing authorities—Notice of filing of declaration—Discharge from liability.
- 11.68.120 Nonintervention powers not deemed waived by obtaining order or decree.
- 11.68.130 Power to construe and interpret will.
- 11.68.140 Party to transactions—Presumption of necessity.
- 11.68.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

11.68.011 Settlement without court intervention—Petition—Conditions—Exceptions. (1) A personal representative may petition the court for nonintervention powers, whether the decedent died testate or intestate.

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

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

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

(c) The personal representative was not a creditor of the decedent at the time of the decedent's death and the administration and settlement of the decedent's will or estate with nonintervention powers would be in the best interests of the decedent's beneficiaries and creditors. However, the administration and settlement of the decedent's will or estate with nonintervention powers will be presumed to be in the beneficiaries' and creditors' best interest until a person entitled to notice under RCW 11.68.041 rebuts that presumption by coming forward with evidence that the grant of nonintervention powers would not be in the beneficiaries' or creditors' best interests.

(3) The court may base its findings of facts necessary for the grant of nonintervention powers on: (a) Statements of witnesses appearing before the court; (b) representations contained in a verified petition for nonintervention powers, in an

inventory made and returned upon oath into the court, or in an affidavit filed with the court; or (c) other proof submitted to the court. [2008 c 6 § 925; 1997 c 252 § 59.]

Additional notes found at www.leg.wa.gov

11.68.021 Hearing on petition for nonintervention powers. A hearing on a petition for nonintervention powers may be held at the time of the appointment of the personal representative or at any later time. [1997 c 252 § 60.]

Additional notes found at www.leg.wa.gov

11.68.041 Petition for nonintervention powers—Notice requirements—Exceptions. (1) Advance notice of the hearing on a petition for nonintervention powers referred to in RCW 11.68.011 is not required in those circumstances in which the court is required to grant nonintervention powers under RCW 11.68.011(2) (a) and (b).

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

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

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

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

(a) The personal representative has petitioned the superior court of the state of Washington for county, for the entry of an order granting nonintervention powers and a hearing on that petition will be held on , the day of , , at o'clock, . . M.;

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

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

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

(4) If notice is not required, or all persons entitled to notice have either waived notice of the hearing or consented to the entry of an order granting nonintervention powers as provided in this section, the court may hear the petition for an order granting nonintervention powers at any time. [2021 c 140 § 4004; 1997 c 252 § 61.]

Application—2021 c 140 §§ 4003-4017, 4023, 4024, and 4026: See note following RCW 11.48.130.

Additional notes found at www.leg.wa.gov

11.68.050 Objections to granting of nonintervention powers—Restrictions. (1) If at the time set for the hearing upon a petition for nonintervention powers, any person entitled to notice of the hearing on the petition under RCW 11.68.041 shall appear and object to the granting of nonintervention powers to the personal representative of the estate, the court shall consider the objections, if any, in connection with its determination under RCW 11.68.011(2)(c) of whether a grant of nonintervention powers would be in the best interests of the decedent's beneficiaries.

(2) The nonintervention powers of a personal representative may not be restricted at a hearing on a petition for nonintervention powers in which the court is required to grant nonintervention powers under RCW 11.68.011(2) (a) and (b), unless a will specifies that the nonintervention powers of a personal representative may be restricted when the powers are initially granted. [2021 c 140 § 4005; 1997 c 252 § 62; 1977 ex.s. c 234 § 21; 1974 ex.s. c 117 § 17.]

Application—2021 c 140 §§ 4003-4017, 4023, 4024, and 4026: See note following RCW 11.48.130.

Additional notes found at www.leg.wa.gov

11.68.060 Death, resignation, or disablement of personal representative—Successor to administer nonintervention powers—Petition. If any personal representative of the estate of the decedent dies, resigns, or otherwise becomes disabled from any cause from acting as the nonintervention personal representative, the successor personal representative, or a person who has petitioned to be appointed as a successor personal representative, may petition the court for nonintervention powers, and the court shall act, in accordance with RCW 11.68.011 through 11.68.041 and 11.68.050. [1997 c 252 § 63; 1977 ex.s. c 234 § 22; 1974 ex.s. c 117 § 18.]

Additional notes found at www.leg.wa.gov

11.68.065 Report of affairs of estate—Petition by beneficiary—Filing—Notice—Hearing—Other accounting and information. A beneficiary who has not acknowledged in writing that his, her, or its interest in an estate has been fully paid or distributed may petition the court for an order directing the personal representative to deliver a report of the affairs of the estate signed and verified by the personal representative. The petition may be filed at any time after one year from the day on which the report was last delivered, or, if none, then one year after the order appointing the personal representative. Upon hearing of the petition after due notice as required in RCW 11.96A.110, the court may, for good cause shown, order the personal representative to deliver to the petitioner the report for any period not covered by a previous report. The report for the period shall include such of the following as the court may order: A description of the amount and nature of all property, real and personal, that has come into the hands of the personal representative; a statement of all property collected and paid out or distributed by the personal representative; a statement of claims filed and allowed against the estate and those rejected; any estate, inheritance, or fiduciary income tax returns filed by the personal representative; and such other information as the order may require. This subsection does not limit any power the court might otherwise have at any time during the administra-

(2022 Ed.)

tion of the estate to require the personal representative to account or furnish other information to any person interested in the estate. [2021 c 140 § 4008; 1999 c 42 § 614; 1997 c 252 § 64.]

Application—2021 c 140 §§ 4003-4017, 4023, 4024, and 4026: See note following RCW 11.48.130.

Additional notes found at www.leg.wa.gov

11.68.070 Procedure when personal representative recreant to trust or subject to removal. (1)(a) A party, as defined in RCW 11.96A.030, may petition the court under chapter 11.96A RCW for a determination that a personal representative:

- (i) Has breached a fiduciary duty;
- (ii) Has exceeded the personal representative's authority;
- (iii) Has abused the personal representative's discretion in exercising a power;
- (iv) Has otherwise failed to execute the trust faithfully;
- (v) Has violated a statute or common law affecting the estate; or
- (vi) Is subject to removal for a reason specified in RCW 11.28.250.

(b) The petition submitted under (a) of this subsection must allege facts in support of the claim and must be verified or be supported by an affidavit showing facts in support of the claim.

(2) If the court finds that the personal representative has committed one or more of the acts listed in subsection (1)(a) of this section, the court may order such remedy in law or in equity as it deems appropriate. The remedy may include, but not be limited to, awarding money damages, surcharging the personal representative, directing the personal representative to take a specific action, restricting the powers of the personal representative, removing the personal representative and appointing a successor, and awarding fees and costs under RCW 11.96A.150. If the court restricts the powers of the personal representative, it shall endorse the words "powers restricted" upon the original order granting the personal representative nonintervention powers and upon the letters testamentary or of administration together with the date of the endorsement. [2021 c 140 § 4009; 2010 c 8 § 2057; 1977 ex.s. c 234 § 23; 1974 ex.s. c 117 § 19.]

Application—2021 c 140 §§ 4003-4017, 4023, 4024, and 4026: See note following RCW 11.48.130.

Additional notes found at www.leg.wa.gov

11.68.080 Vacation or restriction of nonintervention powers following insolvency—Notice—Determinations affecting prior grants of nonintervention powers upon petition—Endorsement on prior orders. (1) Within ten days after the personal representative has received from alleged creditors under chapter 11.40 RCW claims that have an aggregate face value that, when added to the other debts and to the taxes and expenses of greater priority under applicable law, would appear to cause the estate to be insolvent, the personal representative shall notify in writing all beneficiaries under the decedent's will and, if any of the decedent's property will pass according to the laws of intestate succession, all heirs, together with any unpaid creditors, other than a creditor whose claim is then barred under chapter 11.40 RCW or the otherwise applicable statute of limitations, that

the estate might be insolvent. The personal representative shall file a copy of the written notice with the court.

(2) Within ten days after an estate becomes insolvent, the personal representative shall petition under RCW 11.96A.080 for a determination of whether the court should reaffirm, rescind, or restrict in whole or in part any prior grant of nonintervention powers. Notice of the hearing must be given in accordance with RCW 11.96A.110.

(3) If, upon a petition under RCW 11.96A.080 of any personal representative, beneficiary under the decedent's will, heir if any of the decedent's property passes according to the laws of intestate succession, or any unpaid creditor with a claim that has been accepted or judicially determined to be enforceable, the court determines that the decedent's estate is insolvent, the court shall reaffirm, rescind, or restrict in whole or in part any prior grant of nonintervention powers to the extent necessary to protect the best interests of the beneficiaries and creditors of the estate.

(4) If the court rescinds or restricts a prior grant of nonintervention powers, the court shall endorse the term "powers rescinded" or "powers restricted" upon the prior order together with the date of the endorsement. [1999 c 42 § 615; 1997 c 252 § 65; 1977 ex.s. c 234 § 24; 1974 ex.s. c 117 § 20.]

Additional notes found at www.leg.wa.gov

11.68.085 Nonintervention powers—Generally. A personal representative with nonintervention powers may administer and settle the estate without supervision or intervention by the court except as otherwise provided in this chapter. [2021 c 140 § 4006.]

Application—2021 c 140 §§ 4003-4017, 4023, 4024, and 4026: See note following RCW 11.48.130.

11.68.090 Nonintervention powers—Powers, duties, restrictions, and liabilities—Effect of will provisions. (1) Except as otherwise provided in this chapter, a personal representative with nonintervention powers has:

(a) All powers that are granted by common law or statute to a personal representative without nonintervention powers or that a court supervising the settlement and administration of a decedent's estate may grant to a personal representative without nonintervention powers;

(b) The power to borrow money on the general credit of the estate;

(c) The power to mortgage, encumber, lease, sell, exchange, convey, assign, and otherwise transfer the decedent's real and personal property;

(d) The power to perform the decedent's contracts;

(e) The power to determine the persons entitled to the estate; to partition property, sell property, and/or distribute property pro rata or nonpro rata, and otherwise to administer and settle the decedent's estate;

(f) The powers, privileges, and limitations of liability of a trustee under chapters 11.98, 11.100, and 11.102 RCW and under the principles of equity with regard to the assets of the estate, both real and personal;

(g) Any further power appropriate to the exercise or non-exercise of a power granted under this subsection (1); and

(h) The right and authority to exercise the powers under this subsection (1) without an order of the court and without

notice to, direction from, approval by, confirmation by, or intervention of any court.

(2) Except as otherwise provided in this chapter, a personal representative with nonintervention powers has the same duties, restrictions, and liabilities as a personal representative without nonintervention powers and shall act for the benefit of all persons interested in the estate, as defined in RCW 11.96A.030(6) relative to a decedent's estate, except that:

(a) A personal representative with nonintervention powers may act without an order of the court and without notice to, direction from, approval by, confirmation by, or intervention of any court;

(b) A personal representative with nonintervention powers has no duty to follow the procedures of RCW 11.76.010 through 11.76.080 or chapter 11.56 RCW; and

(c) A personal representative with nonintervention powers must exercise a discretionary power in good faith, with honest judgment, and in accordance with the terms and purposes of the probated will and the interests of the beneficiaries.

(3) Except as provided in subsection (4) of this section, a testator may by will:

(a) Add to, alter, or deny any or all of the powers and privileges conferred upon the personal representative with nonintervention powers to administer and settle the testator's estate by common law, statute, or the principles of equity; and

(b) Add to, alter, or remove any or all of the duties, restrictions, or liabilities imposed on a personal representative with nonintervention powers relative to the administration and settlement of the testator's estate by common law, statute, or the principles of equity.

(4) No testamentary provisions may limit the effect of RCW 6.32.250, 11.20.080, 11.48.010, 11.48.020 (although without the necessity of any order of a court), 11.48.030, 11.48.140, 11.68.065, 11.68.070, 11.68.080, 11.68.090, 11.76.110, 11.76.150, 11.76.160, 11.76.170, or 11.96A.190, or of chapters 11.36, 11.44, 11.54, and 11.108 RCW or any other laws that preserve a marital deduction from estate taxes; and in no event may a personal representative with nonintervention powers be relieved of the duty to act in good faith, with honest judgment, and in accordance with the terms and purposes of the probated will and the interests of the beneficiaries.

(5) The common law and the principles of equity supplement this chapter. [2021 c 140 § 4010; 2011 c 327 § 3; 2003 c 254 § 3; 1997 c 252 § 66; 1988 c 29 § 3; 1985 c 30 § 7. Prior: 1984 c 149 § 10; 1974 ex.s. c 117 § 21.]

Application—2021 c 140 §§ 4003-4017, 4023, 4024, and 4026: See note following RCW 11.48.130.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.68.095 Co-personal representatives—Powers. Except as otherwise provided by the probated will or by order of a court, all of the provisions of RCW 11.98.016 regarding the exercise of powers by co-trustees of a trust shall apply to the co-personal representatives of an estate in which the co-personal representatives have been granted nonintervention

powers, as if, for purposes of the interpretation of that law, co-personal representatives were co-trustees and an estate were a trust. [2021 c 140 § 4011; 1997 c 252 § 67.]

Application—2021 c 140 §§ 4003-4017, 4023, 4024, and 4026: See note following RCW 11.48.130.

Additional notes found at www.leg.wa.gov

11.68.100 Closing of estate—Alternative decrees—Notice—Hearing—Fees. (1) When the estate is ready to be closed, the court, upon application by the personal representative who has nonintervention powers, shall make and cause to be entered a decree that either:

(a) Finds and adjudges that all approved claims against the decedent have been paid, finds and adjudges the heirs of the decedent or those persons entitled to take under the decedent's will, and distributes the decedent's property to the persons entitled to it; or

(b) Approves the accounting of the personal representative and settles the estate of the decedent in the manner provided for in the administration of those estates in which the personal representative has not acquired nonintervention powers.

(2) Either decree provided for in this section shall be made after notice given as provided for in the settlement of estates by a personal representative who has not acquired nonintervention powers. The petition for either decree provided for in this section shall state the fees paid or proposed to be paid to the personal representative, the personal representative's attorneys, accountants, and appraisers, and any heir, devisee, or legatee whose interest in the assets of a decedent's estate would be reduced by the payment of said fees shall receive a copy of said petition with the notice of hearing thereon; at the request of the personal representative or any said heir, devisee, or legatee, the court shall, at the time of the hearing on either petition, determine the reasonableness of said fees. The court shall take into consideration all criteria forming the basis for the determination of the amount of such fees as contained in the code of professional responsibility; in determining the reasonableness of the fees charged by any personal representative, accountants, and appraisers the court shall take into consideration the criteria forming the basis for the determination of attorney's fees, to the extent applicable, and any other factors which the court determines to be relevant in the determination of the amount of fees to be paid to such personal representative. [2021 c 140 § 4013; 2010 c 8 § 2058; 1977 ex.s. c 234 § 25; 1974 ex.s. c 117 § 22.]

Application—2021 c 140 §§ 4003-4017, 4023, 4024, and 4026: See note following RCW 11.48.130.

Additional notes found at www.leg.wa.gov

11.68.110 Declaration of completion of probate—Contents—Notice—Discharge of personal representative—Waiver of notice. (1) If a personal representative who has acquired nonintervention powers does not apply to the court for either of the final decrees provided for in RCW 11.68.100 as now or hereafter amended, the personal representative shall, when the administration of the estate has been completed, file a declaration that must state as follows:

(a) The date of the decedent's death and the decedent's residence at the time of death;

(b) Whether or not the decedent died testate or intestate;

(c) If the decedent died testate, the date of the decedent's last will and testament and the date of the order probating the will;

(d) That each creditor's claim which was justly due and properly presented as required by law has been paid or otherwise disposed of by agreement with the creditor, and that the amount of taxes assessable against the estate has been determined, settled, and paid or otherwise provided for;

(e) That the personal representative has completed the administration of the decedent's estate without court intervention, and the estate is ready to be settled and distributed;

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

(g) The amount of fees paid or to be paid to each of the following: (i) Personal representative or representatives; (ii) lawyer or lawyers; (iii) appraiser or appraisers; and (iv) accountant or accountants; and that the personal representative believes the fees to be reasonable and does not intend to obtain court approval of the amount of the fees or to submit an estate accounting to the court for approval.

(2) If:

(a)(i) The personal representative with nonintervention powers files a declaration as specified in subsection (1) of this section;

(ii) The personal representative provides the notice as required by subsection (4) of this section; and

(iii) No party, as defined in RCW 11.96A.030, petitions the court under subsection (3) of this section; then:

(b)(i) The filing of the declaration will be the legal equivalent of the entry of a decree of distribution under chapter 11.76 RCW;

(ii) The amount of fees paid or to be paid will be deemed reasonable and will be approved;

(iii) The acts of the personal representative will be approved;

(iv) The personal representative, and any bond ensuring the proper actions of the personal representative, will be discharged; and

(v) The estate will be determined to have been properly and fully distributed and settled.

(3) If the personal representative provides the notice as required by subsection (4) of this section, then, within 30 days following the filing of a declaration of completion of probate under this section, any party, as defined in RCW 11.96A.030, may petition the court under chapter 11.96A RCW to enforce the party's rights, to review the reasonableness of the fees, and/or to compel the personal representative to close the estate under RCW 11.68.100.

(4) Within five days of the date of the filing of the declaration of completion, the personal representative or the personal representative's lawyer shall mail a copy of the declaration of completion to each party as defined in RCW 11.96A.030, who: (a) Has not waived notice of the filing, in writing, filed in the cause; and (b) either has not received the full amount of the distribution to which the party is entitled or has a property right that might be affected adversely by the discharge of the personal representative under this section, together with a notice which shall be substantially as follows:

CAPTION OF CASE NOTICE OF FILING OF DECLARATION OF COMPLETION OF PROBATE

NOTICE IS GIVEN that the attached Declaration of Completion of Probate was filed by the undersigned in the above-entitled court on the . . . day of . . . , (year) . . . ; unless you petition the above-entitled court under chapter 11.96A RCW to enforce your rights, to review the reasonableness of the fees, and/or to compel the personal representative to close the estate under RCW 11.68.100, within thirty days after the date of the filing of the Declaration of Completion of Probate, the schedule of fees set forth in the Declaration of Completion of Probate will be deemed reasonable, the acts of the personal representative will be deemed approved and the payment of those fees will be approved, the personal representative (and any bond ensuring the proper action of the personal representative) will be automatically discharged without further order of the court, the estate will be deemed to have been properly and fully distributed and settled, and the Declaration of Completion of Probate will be final and deemed the equivalent of a Decree of Distribution entered under chapter 11.76 RCW.

Personal Representative's Name

(5) If all parties as defined in RCW 11.96A.030 of the decedent entitled to notice under this section waive, in writing, the notice required by this section, the personal representative will be automatically discharged without further order of the court and the declaration of completion of probate will become effective as a decree of distribution upon the date of filing thereof. In those instances where the personal representative has been required to furnish bond, and a declaration of completion is filed pursuant to this section, any bond furnished by the personal representative shall be automatically discharged upon the discharge of the personal representative. [2021 c 140 § 4014; 2016 c 202 § 8; 1998 c 292 § 202; 1997 c 252 § 68; 1990 c 180 § 5; 1985 c 30 § 8. Prior: 1984 c 149 § 11; 1977 ex.s. c 234 § 26; 1974 ex.s. c 117 § 23.]

Application—2021 c 140 §§ 4003-4017, 4023, 4024, and 4026: See note following RCW 11.48.130.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.68.112 Final distribution upon declaration and notice of filing of declaration of completion of probate—Special powers of personal representative—Discharge from liability. If the declaration of completion of probate and the notice of filing of declaration of completion of probate state that the personal representative intends to make final distribution within five business days after the final date on which a party as defined in RCW 11.96A.030 entitled to notice under RCW 11.68.110 could file a petition under RCW 11.68.110(3), which date is referred to in this section as the "effective date of the declaration of completion," if the notice of filing of declaration of completion of probate sent to each party as defined in RCW 11.96A.030 entitled to notice under RCW 11.68.110 specifies the amount of the minimum distribution to be made to that party, and if no party as defined in RCW 11.96A.030 entitled to notice under RCW

11.68.110 petitions the court under RCW 11.68.110(3) within 30 days from the date of filing a declaration of completion of probate, the personal representative retains, for five business days following the effective date of the declaration of completion, the power to make the stated minimum distributions. In this case, the personal representative is discharged from all liability other than any liability relating to the actual distribution of the reserve, at the effective date of the declaration of completion. The personal representative is only discharged from liability for the distribution of the reserve when the whole reserve has been distributed and each beneficiary has received at least the distribution which that beneficiary's notice stated that the beneficiary would receive. [2021 c 140 § 4015; 1997 c 252 § 69.]

Application—2021 c 140 §§ 4003-4017, 4023, 4024, and 4026: See note following RCW 11.48.130.

Additional notes found at www.leg.wa.gov

11.68.114 Declaration of completion of probate—Special powers of personal representative to hold reserve and deal with taxing authorities—Notice of filing of declaration—Discharge from liability.

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

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

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

and

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

CAPTION OF CASE NOTICE OF FILING OF DECLARATION OF COMPLETION OF PROBATE

NOTICE IS GIVEN that the attached Declaration of Completion of Probate was filed by the undersigned in the above-entitled court on the . . . day of . . . , . . . ; unless you petition the above-entitled court under chapter 11.96A RCW to enforce your rights, to review the reasonableness of the fees, and/or to compel the personal representative to close the estate under RCW 11.68.100, within thirty days after the date of the filing of the Declaration of Completion of Probate:

(i) The schedule of fees set forth in the Declaration of Completion of Probate will be deemed reasonable and the payment of those fees will be approved;

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

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

(iv) The personal representative will retain the power to deal with the taxing authorities, together with \$. . . for the determination and payment of all remaining tax obligations. Only that portion of the reserve that remains after the settlement of any tax liability, and the payment of any expenses associated with such settlement, will be distributed to the persons legally entitled to the reserve. The personal representative (and any bond ensuring the proper action of the personal representative) will be discharged from liability for the settlement of any tax obligations and the distribution of the reserve, and the personal representative's powers will cease, thirty days after the personal representative has mailed to those persons who would have shared in the distribution of the reserve had the reserve remained intact and has filed with the court copies of checks or receipts showing how the reserve was in fact distributed, unless a person with an interest in the reserve petitions the court earlier within the thirty-day period for an order requiring an accounting of the reserve or an order determining the reasonableness, or lack of reasonableness, of distributions made from the reserve.

Personal Representative's Name

(2) If the requirements in subsection (1) of this section are met and if no party as defined in RCW 11.96A.030 entitled to notice under RCW 11.68.110 petitions the court under chapter 11.96A RCW to enforce the party's rights, to review the reasonableness of the fees, and/or to compel the personal representative to close the estate under RCW 11.68.100, within 30 days from the date of filing a declaration of completion of probate, the personal representative is discharged from all liability other than liability relating to the settlement of any tax obligations and the actual distribution of the reserve, at the final date on which a beneficiary could petition the court under subsection (1) of this section, which date is referred to in this section as the "effective date of the declaration of completion." The personal representative is discharged from liability for the settlement of any tax obligations and the distribution of the reserve, the personal representative's powers cease, and the declaration of completion of probate will be final and deemed the equivalent of a decree of distribution entered under chapter 11.76 RCW with respect to the distribution of the reserve, 30 days after the personal representative has mailed to those persons who would have

shared in the distribution of the reserve had the reserve remained intact and has filed with the court copies of checks or receipts showing how the reserve was in fact distributed, unless a person with an interest in the reserve petitions the court earlier within the 30-day period for an order requiring an accounting of the reserve or an order determining the reasonableness, or lack of reasonableness, of distributions made from the reserve. If the personal representative has been required to furnish a bond, any bond furnished by the personal representative is automatically discharged upon the final discharge of the personal representative. [2021 c 140 § 4016; 1998 c 292 § 203; 1997 c 252 § 70.]

Application—2021 c 140 §§ 4003-4017, 4023, 4024, and 4026: See note following RCW 11.48.130.

Additional notes found at www.leg.wa.gov

11.68.120 Nonintervention powers not deemed waived by obtaining order or decree. A personal representative who has acquired nonintervention powers in accordance with this chapter may present a matter, as defined in RCW 11.96A.030, to the court for resolution or for instructions under chapter 11.96A RCW at any time. A personal representative shall not be deemed to have waived the personal representative's nonintervention powers by seeking or obtaining any order or decree during the course of the administration of the estate. [2021 c 140 § 4017; 2010 c 8 § 2059; 1974 ex.s. c 117 § 24.]

Application—2021 c 140 §§ 4003-4017, 4023, 4024, and 4026: See note following RCW 11.48.130.

Additional notes found at www.leg.wa.gov

11.68.130 Power to construe and interpret will. (1) A personal representative with nonintervention powers has the power to construe and interpret the terms of a probated will, except as the probated will or an order of the court may otherwise direct.

(2) Unless otherwise provided in the probated will:

(a) A party, as defined in RCW 11.96A.030, may either petition the court under chapter 11.96A RCW to have an ambiguous provision of a probated will construed by the court or may otherwise address, resolve, and settle the matter under the procedures provided under chapter 11.96A RCW; and

(b) There is a rebuttable presumption that the construction of an ambiguous provision that is made by a personal representative with nonintervention powers is consistent with the intent of the testator.

(3) A party, as defined in RCW 11.96A.030, may commence an action to reform the terms of a will as provided in RCW 11.96A.125. [2021 c 140 § 4007.]

Application—2021 c 140 §§ 4003-4017, 4023, 4024, and 4026: See note following RCW 11.48.130.

11.68.140 Party to transactions—Presumption of necessity. A party to a transaction with a personal representative with nonintervention powers and the party's successors in interest are entitled to have it conclusively presumed that the transaction is necessary for the administration of the decedent's estate. [2021 c 140 § 4012.]

Application—2021 c 140 §§ 4003-4017, 4023, 4024, and 4026: See note following RCW 11.48.130.

11.68.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 34.]

Chapter 11.72 RCW

DISTRIBUTION BEFORE SETTLEMENT

Sections

- 11.72.002 Delivery of specific property to distributee before final decree.
11.72.006 Decree of partial distribution—Distribution of part of estate.

11.72.002 Delivery of specific property to distributee before final decree. Upon application of the personal representative, with or without notice as the court may direct, the court may order the personal representative to deliver to any distributee who consents to it, possession of any specific real or personal property to which he or she is entitled under the terms of the will or by intestacy, provided that other distributees and claimants are not prejudiced thereby. The court may at any time prior to the decree of final distribution order him or her to return such property to the personal representative, if it is for the best interests of the estate. The court may require the distributee to give security for such return. [2010 c 8 § 2060; 1965 c 145 § 11.72.002.]

11.72.006 Decree of partial distribution—Distribution of part of estate. After the expiration of the time limited for the filing of claims and before final settlement of the accounts of the personal representative, a partial distribution may be decreed, with notice to interested persons, as the court may direct. Such distribution shall be as conclusive as a decree of final distribution with respect to the estate distributed except to the extent that other distributees and claimants are deprived of the fair share or amount which they would otherwise receive on final distribution. Before a partial distribution is so decreed, the court may require that security be given for the return of the property so distributed to the extent necessary to satisfy any distributees and claimants who may be prejudiced as aforesaid by the distribution. In the event of a request for a partial distribution asked by a person other than the personal representative of the estate, the costs of such proceedings and a reasonable allowance for attorneys fees shall be assessed against the applicant or applicants for the benefit of the estate. [1965 c 145 § 11.72.006. Formerly RCW 11.72.010 through 11.72.070.]

Chapter 11.76 RCW

SETTLEMENT OF ESTATES

Sections

- 11.76.010 Report of personal representative—Contents—Interim reports.
11.76.020 Notice of hearing—Settlement of report.
11.76.030 Final report and petition for distribution—Contents.
11.76.040 Time and place of hearing—Notice.
11.76.050 Hearing on final report—Decree of distribution.
11.76.060 Continuance to cite in sureties on bond when account incorrect.
11.76.070 Attorney's fees to contestant of erroneous account or report.
11.76.080 Representation of incapacitated person by guardian ad litem—Exception.
11.76.095 Distribution of estates to minors.
11.76.100 Receipts for expenses from personal representative.
11.76.110 Order of payment of debts.
11.76.120 Limitation on preference to mortgage or judgment.
11.76.130 Expense of monument.
11.76.150 Payment of claims where estate insufficient.
11.76.160 Liability of personal representative.
11.76.170 Action on claim not acted on—Contribution.
11.76.180 Order maturing claim not due.
11.76.190 Procedure on contingent and disputed claim.
11.76.200 Agent for absentee distributee.
11.76.210 Agent's bond.
11.76.220 Sale of unclaimed estate—Remittance of proceeds to department of revenue.
11.76.230 Liability of agent.
11.76.240 Claimant to proceeds of sale.
11.76.243 Heirs may institute probate proceedings if no claimant appears.
11.76.245 Procedure when claim made after time limitation.
11.76.247 When court retains jurisdiction after entry of decree of distribution.
11.76.250 Letters after final settlement.

Destruction of receipts for expenses under probate proceedings: RCW 36.23.065.

Estate and transfer taxes: Chapter 83.100 RCW.

11.76.010 Report of personal representative—Contents—Interim reports. Not less frequently than annually from the date of qualification, unless a final report has theretofore been rendered, the personal representative shall make, verify by his or her oath, and file with the clerk of the court a report of the affairs of the estate. Such report shall contain a statement of the claims filed and allowed and all those rejected, and if it be necessary to sell, mortgage, lease, or exchange any property for the purpose of paying debts or settling any obligations against the estate or expenses of administration or allowance to the family, he or she may in such report set out the facts showing such necessity and ask for such sale, mortgage, lease, or exchange; such report shall likewise state the amount of property, real and personal, which has come into his or her hands, and give a detailed statement of all sums collected by him or her, and of all sums paid out, and it shall state such other things and matters as may be proper or necessary to give the court full information regarding any transactions by him or her done or which should be done. Such personal representative may at any time, however, make, verify, and file any reports which in his or her judgment would be proper or which the court may order to be made. [2010 c 8 § 2061; 1965 c 145 § 11.76.010. Prior: 1917 c 156 § 159; RRS § 1529; prior: Code 1881 § 1544; 1854 p 296 § 167.]

11.76.020 Notice of hearing—Settlement of report. It shall not be necessary for the personal representative to give any notice of the hearing of any report prior to the final report, except as in RCW 11.28.240 provided, but the court may require notice of the hearing of any such report. [1965 c 145 § 11.76.020. Prior: 1917 c 156 § 160; RRS § 1530.]

11.76.030 Final report and petition for distribution—Contents. When the estate shall be ready to be closed, such personal representative shall make, verify, and file with the court his or her final report and petition for distribution. Such final report and petition shall, among other things, show that the estate is ready to be settled and shall show any moneys collected since the previous report, and any property which may have come into the hands of the personal representative since his or her previous report, and debts paid, and generally the condition of the estate at that time. It shall likewise set out the names and addresses, as nearly as may be, of all the legatees and devisees in the event there shall have been a will, and the names and addresses, as nearly as may be, of all the heirs who may be entitled to share in such estate, and shall give a particular description of all the property of the estate remaining undisposed of, and shall set out such other matters as may tend to inform the court of the condition of the estate, and it may ask the court for a settlement of the estate and distribution of property and the discharge of the personal representative. If the personal representative has been discharged without having legally closed the estate, without having legally obtained an adjudication as to the heirs, or without having legally procured a decree of distribution or final settlement the court may in its discretion upon petition of any person interested, cause all such steps to be taken in such estate as were omitted or defective. [2010 c 8 § 2062; 1965 c 145 § 11.76.030. Prior: 1917 c 156 § 161; RRS § 1531; prior: 1891 c 155 § 34; Code 1881 § 1556; 1873 p 305 § 251; 1854 p 297 § 178.]

Discharge of personal representative for cause: RCW 11.28.160, 11.28.250.

11.76.040 Time and place of hearing—Notice. When such final report and petition for distribution, or either, has been filed, the court, or the clerk of the court, shall fix a day for hearing it which must be at least twenty days subsequent to the day of the publication as hereinafter provided. Notice of the time and place fixed for the hearing shall be given by the personal representative by publishing a notice thereof in a legal newspaper published in the county for one publication at least twenty days preceding the time fixed for the hearing. It shall state in substance that a final report and petition for distribution have, or either thereof has, been filed with the clerk of the court and that the court is asked to settle such report, distribute the property to the heirs or persons entitled thereto, and discharge the personal representative, and it shall give the time and place fixed for the hearing of such final report and petition and shall be signed by the personal representative or the clerk of the court.

Whenever a final report and petition for distribution, or either, shall have been filed in the estate of a decedent and a day fixed for the hearing of the same, the personal representative of such estate shall, not less than twenty days before the hearing, cause to be mailed a copy of the notice of the time and place fixed for hearing to each heir, legatee, devisee and

distributee whose name and address are known to him or her, and proof of such mailing shall be made by affidavit and filed at or before the hearing. [2010 c 8 § 2063; 1969 c 70 § 3; 1965 c 145 § 11.76.040. Prior: 1955 c 205 § 13; 1919 c 31 § 1; 1917 c 156 § 162; RRS § 1532. FORMER PART OF SECTION: re Notice of appointment as personal representative, now codified as RCW 11.28.237.]

Request for special notice of proceedings in probate—Prohibitions: RCW 11.28.240.

11.76.050 Hearing on final report—Decree of distribution. Upon the date fixed for the hearing of such final report and petition for distribution, or either thereof, or any day to which such hearing may have been adjourned by the court, if the court be satisfied that the notice of the time and place of hearing has been given as provided herein, it may proceed to the hearing aforesaid. Any person interested may file objections to the said report and petition for distribution, or may appear at the time and place fixed for the hearing thereof and present his or her objections thereto. The court may take such testimony as to it appears proper or necessary to determine whether the estate is ready to be settled, and whether the transactions of the personal representative should be approved, and to determine who are the legatees or heirs or persons entitled to have the property distributed to them, and the court shall, if it approves such report, and finds the estate ready to be closed, cause to be entered a decree approving such report, find and adjudge the persons entitled to the remainder of the estate, and that all debts have been paid, and by such decree shall distribute the real and personal property to those entitled to the same. Upon the production of receipts from the beneficiaries or distributees for their portions of the estate, the court shall, if satisfied with the correctness thereof, adjudge the estate closed and discharge the personal representative.

The court may, upon such final hearing, partition among the persons entitled thereto, the estate held in common and undivided, and designate and distribute their respective shares; or assign the whole or any part of said estate to one or more of the persons entitled to share therein. The person or persons to whom said estate is assigned shall pay or secure to the other parties interested in said estate their just proportion of the value thereof as determined by the court from the appraisal, or from any other evidence which the court may require.

If it shall appear to the court at or prior to any final hearing that the estate cannot be fairly divided, then the whole or any part of said estate may be sold or mortgaged in the manner provided by law for the sale or mortgaging of property by personal representatives and the proceeds thereof distributed to the persons entitled thereto as provided in the final decree.

The court shall have the authority to make partition, distribution and settlement of all estates in any manner which to the court seems right and proper, to the end that such estates may be administered and distributed to the persons entitled thereto. No estate shall be partitioned, nor sale thereof made where partition is impracticable except upon a hearing before the court and the court shall fix the values of the several pieces or parcels to be partitioned at the time of making such order of partition or sale; and may order the property sold and the proceeds distributed, or may order partition and distribute

the several pieces or parcels, subject to such charges or burdens as shall be proper and equitable.

The provisions of this section shall be concurrent with and not in derogation of other statutes as to partition of property or sale. [2010 c 8 § 2064; 1965 c 145 § 11.76.050. Prior: 1921 c 93 § 1; 1917 c 156 § 163; RRS § 1533; prior: Code 1881 § 1557; 1854 p 297 § 179.]

Partition: Chapter 7.52 RCW.

11.76.060 Continuance to cite in sureties on bond when account incorrect. If, at any hearing upon any report of any personal representative, it shall appear to the court before which said proceeding is pending that said personal representative has not fully accounted to the beneficiaries of his or her trust and that said report should not be approved as rendered, the court may continue said hearing to a day certain and may cite the surety upon the bond of said personal representative to appear upon the date fixed in said citation and show cause why the account should not be disapproved and judgment entered for any deficiency against said personal representative and the surety upon his or her bond. Said citation shall be personally served upon said surety in the manner provided by law for the service of summons in civil actions and shall be served not less than twenty days previous to said hearing. At said hearing any interested party, including the surety so cited, shall have the right to introduce any evidence which shall be material to the matter before the court. If, at said hearing, the report of said personal representative shall not be approved and the court shall find that said personal representative is indebted to the beneficiary of his or her trust in any amount, the court may thereupon enter final judgment against said personal representative and the surety upon his or her bond, which judgment shall be enforceable in the same manner and to the same extent as judgments in ordinary civil actions. [2010 c 8 § 2065; 1965 c 145 § 11.76.060. Prior: 1937 c 28 § 1; RRS § 1590-1.]

11.76.070 Attorney's fees to contestant of erroneous account or report. If, in any probate or guardianship proceeding, any personal representative shall fail or neglect to report to the court concerning his or her trust and any beneficiary or other interested party shall be reasonably required to employ legal counsel to institute legal proceedings to compel an accounting, or if an erroneous account or report shall be rendered by any personal representative and any beneficiary of said trust or other interested party shall be reasonably required to employ legal counsel to resist said account or report as rendered, and upon a hearing an accounting shall be ordered, or the account as rendered shall not be approved, and the said personal representative shall be charged with further liability, the court before which said proceeding is pending may, in its discretion, in addition to statutory costs, enter judgment for reasonable attorney's fees in favor of the person or persons instituting said proceedings and against said personal representative, and in the event that the surety or sureties upon the bond of said personal representative be made a party to said proceeding, then jointly against said surety and said personal representative, which judgment shall be enforced in the same manner and to the same extent as judgments in ordinary civil actions. [2010 c 8 § 2066; 1965 c 145 § 11.76.070. Prior: 1937 c 28 § 2; RRS § 1590-2.]

Rules of court: *SPR 98.12W.*

11.76.080 Representation of incapacitated person by guardian ad litem—Exception. If there be any alleged incapacitated person interested in the estate who has no legally appointed conservator or limited conservator under RCW 11.130.360, the court:

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

(2) For hearings held under RCW 11.54.010, 11.68.041, 11.68.100, and 11.76.050 or for entry of an order adjudicating testacy or intestacy and heirship when no personal representative is appointed to administer the estate of the decedent, shall appoint some disinterested person as guardian ad litem to represent the allegedly incapacitated person with reference to any petition, proceeding report, or adjudication of testacy or intestacy without the appointment of a personal representative to administer the estate of decedent in which the alleged incapacitated person may have an interest, who, on behalf of the alleged incapacitated person, may contest the same as any other person interested might contest it, and who shall be allowed by the court reasonable compensation for his or her services: PROVIDED, HOWEVER, That where a surviving spouse or surviving domestic partner is the sole beneficiary under the terms of a will, the court may grant a motion by the personal representative to waive the appointment of a guardian ad litem for a person who is the minor child of the surviving spouse or surviving domestic partner and the decedent and who is incapacitated solely for the reason of his or her being under eighteen years of age. [2020 c 312 § 710; 2008 c 6 § 806; 1997 c 252 § 71; 1977 ex.s. c 80 § 15; 1974 ex.s. c 117 § 45; 1971 c 28 § 1; 1969 c 70 § 4; 1965 c 145 § 11.76.080. Prior: 1917 c 156 § 164; RRS § 1534; prior: Code 1881 § 1558; 1854 p 297 § 180.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Additional notes found at www.leg.wa.gov

11.76.095 Distribution of estates to minors. When a decree of distribution is made by the court in administration upon a decedent's estate or when distribution is made by a personal representative under a nonintervention will and distribution is ordered under such decree or authorized under such nonintervention will to a person under the age of eighteen years, it shall be required that:

(1) The money be deposited in a bank or trust company or be invested in an account in an insured financial institution for the benefit of the minor subject to withdrawal only upon the order of the court in the original probate proceeding, or upon said minor's attaining the age of eighteen years and furnishing proof thereof satisfactory to the depository;

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

(3) A custodian be selected and the money or property be transferred to the custodian subject to chapter 11.114 RCW. [1997 c 252 § 72; 1991 c 193 § 28; 1988 c 29 § 5; 1974 ex.s. c 117 § 12; 1971 c 28 § 3; 1965 c 145 § 11.76.095.]

Additional notes found at www.leg.wa.gov

11.76.100 Receipts for expenses from personal representative. In rendering his or her accounts or reports the personal representative shall produce receipts or canceled checks for the expenses and charges which he or she shall have paid, which receipts shall be filed and remain in court until the probate has been completed and the personal representative has been discharged; however, he or she may be allowed any item of expenditure, not exceeding twenty dollars, for which no receipt is produced, if such item be supported by his or her own oath, but such allowances without receipts shall not exceed the sum of three hundred dollars in any one estate. [2010 c 8 § 2067; 1987 c 363 § 2; 1965 c 145 § 11.76.100. Prior: 1917 c 156 § 170; RRS § 1540; prior: Code 1881 § 1553; 1854 p 297 § 176.]

11.76.110 Order of payment of debts. After payment of costs of administration the debts of the estate shall be paid in the following order:

- (1) Funeral expenses in such amount as the court shall order.
- (2) Expenses of the last sickness, in such amount as the court shall order.
- (3) Wages due for labor performed within sixty days immediately preceding the death of decedent.
- (4) Debts having preference by the laws of the United States.
- (5) Taxes, or any debts or dues owing to the state.
- (6) Judgments rendered against the deceased in his or her lifetime which are liens upon real estate on which executions might have been issued at the time of his or her death, and debts secured by mortgages in the order of their priority.
- (7) All other demands against the estate. [2010 c 8 § 2068; 1965 c 145 § 11.76.110. Prior: 1917 c 156 § 171; RRS § 1541; prior: Code 1881 § 1562; 1860 p 213 § 264; 1854 p 298 § 184.]

Borrowing on general credit of estate: RCW 11.56.280.

Claims against estate: Chapter 11.40 RCW.

Sale, etc., of property—Priority as to realty or personalty: Chapter 11.10 RCW.

Tax constitutes debt—Priority of lien: RCW 82.32.240.

Wages, preference on death of employer: RCW 49.56.020.

11.76.120 Limitation on preference to mortgage or judgment. The preference given in RCW 11.76.110 to a mortgage or judgment shall only extend to the proceeds of the property subject to the lien of such mortgage or judgment. [1965 c 145 § 11.76.120. Prior: 1917 c 156 § 172; RRS § 1542; prior: 1897 c 22 § 1; Code 1881 § 1653; 1854 p 298 § 185.]

11.76.130 Expense of monument. Personal representatives of the estate of any deceased person are hereby authorized to expend a reasonable amount out of the estate of the decedent to erect a monument or tombstone suitable to mark the grave or crypt of the said decedent, and the expense thereof shall be paid as the funeral expenses are paid. [1965 c 145 § 11.76.130. Prior: 1917 c 156 § 175; RRS § 1545; prior: Code 1881 § 1555; 1875 p 127 § 1.]

(2022 Ed.)

11.76.150 Payment of claims where estate insufficient. If the estate shall be insufficient to pay the debts of any class, each creditor shall be paid in proportion to his or her claim, and no other creditor of any lower class shall receive any payment until all those of the preceding class shall have been fully paid. [2010 c 8 § 2069; 1965 c 145 § 11.76.150. Prior: 1917 c 156 § 174; RRS § 1544; prior: Code 1881 § 1564; 1854 p 298 § 186.]

Appropriation to pay debts and expenses: Chapter 11.10 RCW.

Community property: Chapter 26.16 RCW.

Descent and distribution of real and personal estate: RCW 11.04.015.

Priority of sale, etc. as between realty and personalty: Chapter 11.10 RCW.

11.76.160 Liability of personal representative. Whenever a decree shall have been made by the court for the payment of creditors, the personal representative shall be personally liable to each creditor for his or her claim or the dividend thereon, except when his or her inability to make the payment thereof from the property of the estate shall result without fault upon his or her part. The personal representative shall likewise be liable on his or her bond to each creditor. [2010 c 8 § 2070; 1965 c 145 § 11.76.160. Prior: 1917 c 156 § 176; RRS § 1546; prior: 1891 c 155 § 35; Code 1881 § 1568; 1854 p 299 § 190.]

11.76.170 Action on claim not acted on—Contribution. If, after the accounts of the personal representative have been settled and the property distributed, it shall appear that there is a creditor or creditors whose claim or claims have been duly filed and not paid or disallowed, the said claim or claims shall not be a lien upon any of the property distributed, but the said creditor or creditors shall have a cause of action against the personal representative and his or her bond, for such an amount as such creditor or creditors would have been entitled to receive had the said claim been duly allowed and paid, and shall also have a cause of action against the distributees and creditors for a contribution from them in proportion to the amount which they have received. If the personal representative or his or her sureties be required to make any payment in this section provided for, he or she or they shall have a right of action against said distributees and creditors to compel them to contribute their just share. [2010 c 8 § 2071; 1965 c 145 § 11.76.170. Prior: 1917 c 156 § 177; RRS § 1547; prior: Code 1881 § 1569; 1860 p 214 § 271; 1854 p 299 § 191.]

11.76.180 Order maturing claim not due. If there be any claim not due the court may in its discretion, after hearing upon such notice as may be determined by it, mature such claim and direct that the same be paid in the due course of the administration. [1965 c 145 § 11.76.180. Prior: 1917 c 156 § 178; RRS § 1548; prior: Code 1881 § 1567; 1854 p 298 § 189.]

11.76.190 Procedure on contingent and disputed claim. If there be any contingent or disputed claim against the estate, the amount thereof, or such part thereof as the holder would be entitled to, if the claim were established or absolute, shall be paid into the court, where it shall remain to be paid over to the party when he or she shall become entitled thereto; or if he or she fails to establish his or her claim, to be

paid over or distributed as the circumstances of the case may require. [2010 c 8 § 2072; 1965 c 145 § 11.76.190. Prior: 1917 c 156 § 179; RRS § 1549; prior: Code 1881 § 1567; 1854 p 298 § 189.]

11.76.200 Agent for absentee distributee. When any estate has been or is about to be distributed by decree of the court as provided in this chapter, to any person who has not been located, the court shall appoint an agent for the purpose of representing the interests of such person and of taking possession and charge of said estate for the benefit of such absentee person: PROVIDED, That no public official may be appointed as agent under this section. [1965 c 145 § 11.76.200. Prior: 1955 ex.s. c 7 § 1; 1917 c 156 § 165; RRS § 1535.]

11.76.210 Agent's bond. Such agent shall make, subscribe and file an oath for the faithful performance of his or her duties, and shall give a bond to the state, to be approved by the court, conditioned faithfully to manage and account for such estate, before he or she shall be authorized to receive any property of said estate. [2010 c 8 § 2073; 1965 c 145 § 11.76.210. Prior: 1955 ex.s. c 7 § 2; 1917 c 156 § 166; RRS § 1536.]

11.76.220 Sale of unclaimed estate—Remittance of proceeds to department of revenue. If the estate remains in the hands of the agent unclaimed for three years, any property not in the form of cash shall be sold under order of the court, and all funds, after deducting a reasonable sum for expenses and services of the agent, to be fixed by the court, shall be paid into the county treasury. The county treasurer shall issue triplicate receipts therefor, one of which shall be filed with the county auditor, one with the court, and one with the department of revenue. If the funds remain in the county treasury unclaimed for a period of four years and ninety days, the county treasurer shall forthwith remit them to the department of revenue for deposit in the state treasury in the fund in which escheats and forfeitures are by law required to be deposited. [1975 1st ex.s. c 278 § 10; 1965 c 145 § 11.76.220. Prior: 1955 ex.s. c 7 § 4; 1917 c 156 § 167; RRS § 1537.]

Escheats: Chapter 11.08 RCW.

Additional notes found at www.leg.wa.gov

11.76.230 Liability of agent. The agent shall be liable on his or her bond for the care and preservation of the estate while in his or her hands, and for the payment of the funds to the county treasury, and may be sued thereon by any person interested including the state. [2010 c 8 § 2074; 1965 c 145 § 11.76.230. Prior: 1955 ex.s. c 7 § 5; 1917 c 156 § 168; RRS § 1538.]

11.76.240 Claimant to proceeds of sale. During the time the estate is held by the agent, or within four years after it is delivered to the county treasury, claim may be made thereto only by the absentee person or his or her legal representative, excepting that if it clearly appears that such person died prior to the decedent in whose estate distribution was made to him or her, but leaving lineal descendants surviving, such lineal descendants may claim. If any claim to the estate

is made during the period specified above, the claimant shall forthwith notify the department of revenue in writing of such claim. The court, being first satisfied as to the right of such person to the estate, and after the filing of a clearance from the department of revenue, shall order the agent, or the county treasurer, as the case may be, to forthwith deliver the estate, or the proceeds thereof, if sold, to such person. [2010 c 8 § 2075; 1975 1st ex.s. c 278 § 11; 1965 c 145 § 11.76.240. Prior: 1955 ex.s. c 7 § 6; 1917 c 156 § 169; RRS § 1539.]

Additional notes found at www.leg.wa.gov

11.76.243 Heirs may institute probate proceedings if no claimant appears. If no person appears to claim the estate within four years after it is delivered to the county treasury, as provided by RCW 11.76.240, any heirs of the absentee person may institute probate proceedings on the estate of such absentee within ninety days thereafter. The fact that no claim has been made to the estate by the absentee person during the specified time shall be deemed prima facie proof of the death of such person for the purpose of issuing letters of administration in his or her estate. In the event letters of administration are issued within the period provided above, the county treasurer shall make payment of the funds held by him or her to the administrator upon being furnished a certified copy of the letters of administration. [2010 c 8 § 2076; 1965 c 145 § 11.76.243. Prior: 1955 ex.s. c 7 § 7.]

11.76.245 Procedure when claim made after time limitation. After any time limitation prescribed in RCW 11.76.220, 11.76.240 or 11.76.243, the absentee claimant may, at any time, if the assets of the estate have not been claimed under the provisions of RCW 11.76.240 and 11.76.243, notify the department of revenue of his or her claim to the estate, and file in the court which had jurisdiction of the original probate a petition claiming the assets of the estate. The department of revenue may appear in answer to such petition. Upon proof being made to the probate court that the claimant is entitled to the estate assets, the court shall render its judgment to that effect and the assets shall be paid to the claimant without interest, upon appropriation made by the legislature. [2010 c 8 § 2077; 1975 1st ex.s. c 278 § 12; 1965 c 145 § 11.76.245. Prior: 1955 ex.s. c 7 § 8.]

Additional notes found at www.leg.wa.gov

11.76.247 When court retains jurisdiction after entry of decree of distribution. After the entry of the decree of distribution in the probate proceedings the court shall retain jurisdiction for the purpose of carrying out the provisions of RCW 11.76.200, 11.76.210, 11.76.220, 11.76.230, 11.76.240, 11.76.243 and 11.76.245. [1965 c 145 § 11.76.247. Prior: 1955 ex.s. c 7 § 3.]

11.76.250 Letters after final settlement. A final settlement of the estate shall not prevent a subsequent issuance of letters of administration, should other property of the estate be discovered, or if it should become necessary and proper from any cause that letters should be again issued. [1965 c 145 § 11.76.250. Prior: 1917 c 156 § 180; RRS § 1550; prior: Code 1881 § 1603; 1854 p 304 § 224.]

Chapter 11.80 RCW
ESTATES OF ABSENTEES

Sections

- 11.80.010 Petition—Notice—Hearing—Appointment of trustee.
- 11.80.020 Inventory and appraisal—Bond of trustee.
- 11.80.030 Reports of trustee.
- 11.80.040 Sale of property—Application of proceeds and income.
- 11.80.050 Allowance for support of dependents—Sale of property.
- 11.80.055 Continuation of absentee's business—Performance of absentee's contracts.
- 11.80.060 Removal or resignation of trustee—Final account.
- 11.80.070 Period of trusteeship.
- 11.80.080 Provisional distribution—Notice of hearing—Will.
- 11.80.090 Hearing—Distribution—Bond of distributees.
- 11.80.100 Final distribution—Notice of hearing—Decree.
- 11.80.110 Escheat for want of presumptive heirs.
- 11.80.120 Personnel missing in action, interned, or captured construed as "absentee."
- 11.80.130 Summary procedure without full trustee proceeding—When permitted—Application for order—Form.

Unknown heirs, etc.—Pleading, etc.: RCW 4.28.140 through 4.28.160;
Rules of court: CR 10.

Written finding of presumed death, missing in action, etc.: RCW 5.40.020 through 5.40.040.

11.80.010 Petition—Notice—Hearing—Appointment of trustee. Whenever it shall be made to appear by petition to any judge of the superior court of any county that there is property in such county, either real or personal, that requires care and attention, or is in such a condition that it is a menace to the public health, safety or welfare, or that the custodian of such property appointed by the owner thereof is either unable or unwilling to continue longer in the care and custody thereof, and that the owner of such property has absented himself or herself from the county and that his or her whereabouts is unknown and cannot with reasonable diligence be ascertained, or that the absentee owner is a person defined in RCW 11.80.120, which petition shall state the name of the absent owner, his or her approximate age, his or her last known place of residence, the circumstances under which he or she left and the place to which he or she was going, if known, his or her business or occupation and his or her physical appearance and habits so far as known, the judge to whom such petition is presented shall set a time for hearing such petition not less than six weeks from the date of filing, and shall by order direct that a notice of such hearing be published for three successive weeks in a legal newspaper published in the county where such petition is filed and in such other counties and states as will in the judgment of the court be most likely to come to the attention of the absentee or of persons who may know his or her whereabouts, which notice shall state the object of the petition and the date of hearing, and set forth such facts and circumstances as in the judgment of the court will aid in identifying the absentee, and shall contain a request that all persons having knowledge concerning the absentee shall advise the court of the facts: PROVIDED, HOWEVER, That the court may, upon the filing of said petition, appoint a temporary trustee, who shall have the powers, duties and qualifications of a special administrator.

If it shall appear at such hearing that the whereabouts of the absentee is unknown, but there is reason to believe that upon further investigation and inquiry he or she may be found, the judge may continue the hearing and order such inquiry and advertisement as will in his or her discretion be liable to disclose the whereabouts of the absentee, but when it

shall appear to the judge at such hearing or any adjournment thereof that the whereabouts of the absentee cannot be ascertained, he or she shall appoint a suitable person resident of the county as trustee of such property, taking into consideration the character of the property and the fitness of such trustee to care for the same, preferring in such appointment the spouse or the domestic partner of the absentee to his or her presumptive heirs, the presumptive heirs to kin more remote, the kin to strangers, and creditors to those who are not otherwise interested, provided they are fit persons to have the care and custody of the particular property in question and will accept the appointment and qualify as hereinafter provided. [2008 c 6 § 932; 1972 ex.s. c 83 § 1; 1965 c 145 § 11.80.010. Prior: 1915 c 39 § 1; RRS § 1715-1.]

Special administrators: Chapter 11.32 RCW.

Additional notes found at www.leg.wa.gov

11.80.020 Inventory and appraisal—Bond of trustee. The trustee so appointed shall make, subscribe and file in the office of the clerk of the court an oath for the faithful performance of his or her duties, and shall, within such time as may be fixed by the judge, prepare and file an inventory of such property, and the judge shall thereupon appoint a disinterested and qualified person to appraise such property, and report his or her appraisal to the court within such time as the court may fix. Upon the coming in of the inventory and appraisal, the judge shall fix the amount of the bond to be given by the trustee, which bond shall in no case be less than the appraised value of the personal property and the annual rents and profits of the real property, and the trustee shall thereupon file with the clerk of the court a good and sufficient bond in the amount fixed and with surety to be approved by the court, conditioned for the faithful performance of his or her duties as trustee, and for accounting for such property, its rents, issues, profits, and increase. [2010 c 8 § 2078; 1967 c 168 § 15; 1965 c 145 § 11.80.020. Prior: 1915 c 39 § 2; RRS § 1715-2.]

11.80.030 Reports of trustee. The trustee shall, at the expiration of one year from the date of his or her appointment and annually thereafter and at such times as the court may direct, make and file a report and account of his or her trusteeship, setting forth specifically the amounts received and expended and the conditions of the property. [2010 c 8 § 2079; 1965 c 145 § 11.80.030. Prior: 1915 c 39 § 3; RRS § 1715-3.]

11.80.040 Sale of property—Application of proceeds and income. If necessary to pay debts against the absentee which have been duly approved and allowed in the same form and manner as provided for the approving and allowing of claims against the estate of a deceased person or for such other purpose as the court may deem proper for the preservation of the estate, the trustee may sell, lease, or mortgage real or personal property of the estate under order of the court so to do, which order shall specify the particular property affected and the method, whether by public sale, private sale, or by negotiation, and the terms thereof, and the trustee shall hold the proceeds of such sale, after deducting the necessary expenses thereof, subject to the order of the court. The trustee is authorized and empowered to, by order of the court,

expend the proceeds received from the sale of such property, and also the rents, issues, and profits accruing therefrom in the care, maintenance, and upkeep of the property, so long as the trusteeship shall continue, and the trustee shall receive out of such property such compensation for his or her services and those of his or her attorney as may be fixed by the court. The notices and procedures in conducting sales, leases, and mortgages hereunder shall be as provided in chapter 11.56 RCW. [2010 c 8 § 2080; 1965 c 145 § 11.80.040. Prior: 1915 c 39 § 4; RRS § 1715-4.]

Rules of court: *SPR 98.12W.*

11.80.050 Allowance for support of dependents—Sale of property. Whenever a petition is filed in said estate from which it appears to the satisfaction of the court that the owner of such property left a spouse or domestic partner, child or children, dependent upon such absentee for support or upon the property in the estate of such absentee, either in whole or in part, the court shall hold a hearing on said petition, after such notice as the court may direct, and upon such hearing shall enter such order as it deems advisable and may order an allowance to be paid out of any of the property of such estate, either community or separate, as the court shall deem reasonable and necessary for the support and maintenance of such dependent or dependents, pending the return of the absentee, or until such time as the property of said estate may be provisionally distributed to the presumptive heirs or to the devisees and legatees. Such allowance shall be paid by the trustee to such persons and in such manner and at such periods of time as the court may direct. For the purpose of carrying out the provisions of this section the court may direct the sale of any of the property of the estate, either real or personal, in accordance with the provisions of RCW 11.80.040. [2008 c 6 § 933; 1965 c 145 § 11.80.050. Prior: 1925 ex.s. c 80 § 1; RRS § 1715-4a.]

Additional notes found at www.leg.wa.gov

11.80.055 Continuation of absentee's business—Performance of absentee's contracts. Upon a showing of advantage to the estate of the absentee, the court may authorize the trustee to continue any business of the absentee in accordance with the provisions of RCW 11.48.025. The trustee may also obtain an order allowing the performance of the absentee's contracts in accordance with the provisions of chapter 11.60 RCW. [1965 c 145 § 11.80.055.]

11.80.060 Removal or resignation of trustee—Final account. The court shall have the power to remove or to accept the resignation of such trustee and appoint another in his or her stead. At the termination of his or her trust, as hereinafter provided or in case of his or her resignation or removal, the trustee shall file a final account, which account shall be settled in the manner provided by law for settling the final accounts of personal representatives. [2010 c 8 § 2081; 1965 c 145 § 11.80.060. Prior: 1915 c 39 § 5; RRS § 1715-5.]

11.80.070 Period of trusteeship. Such trusteeship shall continue until such time as the owner of such property shall return or shall appoint a duly authorized agent or attorney-in-fact to care for such property, or until such time as the property shall be provisionally distributed to the presumptive

heirs, or to the devisees and legatees of the absentee as hereinafter provided, or until such time as the property shall escheat to the state as hereinafter provided. [1965 c 145 § 11.80.070. Prior: 1915 c 39 § 6; RRS § 1715-6.]

11.80.080 Provisional distribution—Notice of hearing—Will. Whenever the owner of such property shall have been absent from the county for the space of five years and his or her whereabouts are unknown and cannot with reasonable diligence be ascertained, his or her presumptive heirs at law may apply to the court for an order of provisional distribution of such property, and to be let into provisional possession thereof: PROVIDED, That such provisional distribution may be made at any time prior to the expiration of five years, when it shall be made to appear to the satisfaction of the court that there are strong presumptions that the absentee is dead; and in determining the question of presumptive death, the court shall take into consideration the habits of the absentee, the motives of and the circumstances surrounding the absence, and the reasons which may have prevented the absentee from being heard of.

Notice of hearing upon application for provisional distribution shall be published in like manner as notices for the appointment of trustees are published.

If the absentee left a will in the possession of any person such person shall present such will at the time of hearing of the application for provisional distribution and if it shall be made to appear to the court that the absentee has left a will and the person in possession thereof shall fail to present it, a citation shall issue requiring him or her so to do, and such will shall be opened, read, proven, filed, and recorded in the case, as are the wills of decedents. [2010 c 8 § 2082; 1965 c 145 § 11.80.080. Prior: 1915 c 39 § 7; RRS § 1715-7.]

Notice for appointment of trustees: RCW 11.80.010.

11.80.090 Hearing—Distribution—Bond of distributees. If it shall appear to the satisfaction of the court upon the hearing of the application for provisional distribution that the absentee has been absent and his or her whereabouts unknown for the space of five years, or there are strong presumptions that he or she is dead, the court shall enter an order directing that the property in the hands of the trustee shall be provisionally distributed to the presumptive heirs, or to the devisees and legatees under the will, as the case may be, upon condition that such heirs, devisees, and legatees respectively give and file in the court bonds with good and sufficient surety to be approved by the court, conditioned for the return of or accounting for the property provisionally distributed in case the absentee shall return and demand the same, which bonds shall be respectively in twice the amount of the value of the personal property distributed, and in ten times the amount of estimated annual rents, issues, and profits of any real property so provisionally distributed. [2010 c 8 § 2083; 1965 c 145 § 11.80.090. Prior: 1915 c 39 § 8; RRS § 1715-8.]

11.80.100 Final distribution—Notice of hearing—Decree. Whenever the owner of such property shall have been absent from the county for a space of seven years and his or her whereabouts are unknown and cannot with reasonable diligence be ascertained, his or her presumptive heirs at law or the legatees and devisees under the will, as the case

may be, to whom the property has been provisionally distributed, may apply to the court for a decree of final distribution of such property and satisfaction, discharge and exoneration of the bonds given upon provisional distribution. Notice of hearing of such application shall be given in the same manner as notice of hearing of application for the appointment of trustee and for provisional distribution and if at the final hearing it shall appear to the satisfaction of the court that the owner of the property has been absent and unheard of for the space of seven years and his or her whereabouts are unknown, the court shall exonerate the bonds given on provisional distribution and enter a decree of final distribution, distributing the property to the presumptive heirs at law of the absentee or to his or her devisees and legatees, as the case may be. [2010 c 8 § 2084; 1965 c 145 § 11.80.100. Prior: 1915 c 39 § 9; RRS § 1715-9.]

11.80.110 Escheat for want of presumptive heirs.

Whenever the owner of such property for which a trustee has been appointed under the provisions of this chapter shall have been absent and unheard of for a period of seven years and no presumptive heirs at law have appeared and applied for the provisional distribution of such property and no will of the absentee has been presented and proven, the trustee appointed under the provisions of the chapter shall apply to the court for a final settlement of his or her account and upon the settlement of such final account the property of the absentee shall be escheated in the manner provided by law for escheating property of persons who die intestate leaving no heirs. [2010 c 8 § 2085; 1965 c 145 § 11.80.110. Prior: 1915 c 39 § 10; RRS § 1715-10.]

Escheats: Chapter 11.08 RCW.

Uniform unclaimed property act: Chapter 63.29 RCW.

11.80.120 Personnel missing in action, interned, or captured construed as "absentee."

Any person serving in or with the armed forces of the United States, in or with the Red Cross, or in or with the merchant marine or otherwise, during any period of time when a state of hostilities exists between the United States and any other power and for one year thereafter, who has been reported or listed as missing in action, or interned in a neutral country, or captured by the enemy, shall be an "absentee" within the meaning of this chapter. [1972 ex.s. c 83 § 2.]

11.80.130 Summary procedure without full trustee proceeding—When permitted—Application for order—Form.

(1) If the spouse or domestic partner of any absentee owner, or his or her next of kin, if said absentee has no spouse or domestic partner, shall wish to sell or transfer any property of the absentee which has a gross value of less than five thousand dollars, or shall require the consent of the absentee in any matter regarding the absentee's children, or any other matter in which the gross value of the subject matter is less than five thousand dollars, such spouse or such domestic partner or next of kin may apply to the superior court for an order authorizing said sale, transfer, or consent without opening a full trustee proceeding as provided in this chapter. The applicant may make the application without the assistance of an attorney. Said application shall be made by petition on the

(2022 Ed.)

following form, which form shall be made readily available to the applicant by the clerk of the superior court.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF

Plaintiff, vs. Defendant. No. PETITION FOR SUMMARY RELIEF

Petitioner,, whose residence is, and, Washington, and who is the of the absentee,, states that the absentee has been since, when Petitioner desires to sell/transfer of the value of, because The terms of the sale/transfer are Petitioner requires the consent of the absentee for the purpose of

Petitioner

(Affidavit of Acknowledgment)

(2) The court may, without notice, enter an order on said petition if it deems the relief requested in said petition necessary to protect the best interests of the absentee or his or her dependents.

(3) Such order shall be prima facie evidence of the validity of the proceedings and the authority of the petitioner to make a conveyance or transfer of the property or to give the absentee's consent in any manner described by subsection (1) of this section. [2008 c 6 § 926; 1972 ex.s. c 83 § 3.]

Additional notes found at www.leg.wa.gov

Chapter 11.84 RCW INHERITANCE RIGHTS OF SLAYERS OR ABUSERS

Sections 11.84.010 Definitions. 11.84.020 Slayer or abuser not to benefit from death. 11.84.025 Disposition of retirement system proceeds payable to slayer or abuser. 11.84.030 Slayer or abuser deemed to predecease decedent. 11.84.040 Distribution of decedent's property. 11.84.050 Distribution of property held jointly with slayer or abuser. 11.84.060 Reversion and vested remainder. 11.84.070 Property subject to divestment, etc. 11.84.080 Contingent remainders and future interests. 11.84.090 Property appointed—Powers of revocation or appointment. 11.84.100 Insurance proceeds. 11.84.110 Payment by insurance company, bank, etc.—No additional liability. 11.84.120 Rights of persons without notice dealing with slayer or abuser. 11.84.130 Record of conviction as evidence against claimant of property. 11.84.140 Slayer determination—Conviction—Preponderance of evidence. 11.84.150 Abuser determination—Conviction—Clear, cogent, and convincing evidence. 11.84.160 Abuser determination—Evidence factors. 11.84.170 Abuser—When entitled to property interest. 11.84.180 Application—Relation to other laws. 11.84.900 Chapter to be construed broadly.

11.84.010 Definitions. As used in this chapter:

(1) "Abuser" means any person who participates, either as a principal or an accessory before the fact, in the willful and unlawful financial exploitation of a vulnerable adult.

(2) "Decedent" means:

(a) Any person whose life is taken by a slayer; or

(b) Any deceased person who, at any time during life in which he or she was a vulnerable adult, was the victim of financial exploitation by an abuser.

(3) "Financial exploitation" has the same meaning as provided in RCW 74.34.020, as enacted or hereafter amended.

(4) "Property" includes any real and personal property and any right or interest therein.

(5) "Slayer" means any person who participates, either as a principal or an accessory before the fact, in the willful and unlawful killing of any other person as determined under RCW 11.84.140.

(6) "Vulnerable adult" has the same meaning as provided in RCW 74.34.020. [2016 c 211 § 1; 2009 c 525 § 1; 1965 c 145 § 11.84.010. Prior: 1955 c 141 § 1.]

Short title—2016 c 211: "This act may be known and cited as Carol's law." [2016 c 211 § 3.]

11.84.020 Slayer or abuser not to benefit from death.

No slayer or abuser shall in any way acquire any property or receive any benefit as the result of the death of the decedent, but such property shall pass as provided in the sections following. [2009 c 525 § 2; 1965 c 145 § 11.84.020. Prior: 1955 c 141 § 2.]

11.84.025 Disposition of retirement system proceeds payable to slayer or abuser. Proceeds payable to a slayer or abuser as the beneficiary of any benefits flowing from one of the retirement systems listed in RCW 41.50.030, by virtue of the decedent's membership in the department of retirement systems or by virtue of the death of decedent, shall be paid instead as designated in RCW 41.04.273. [2009 c 525 § 3; 1998 c 292 § 502.]

Additional notes found at www.leg.wa.gov

11.84.030 Slayer or abuser deemed to predecease decedent. The slayer or abuser shall be deemed to have predeceased the decedent as to property which would have passed from the decedent or his or her estate to the slayer or abuser under the statutes of descent and distribution or have been acquired by statutory right as surviving spouse or surviving domestic partner or under any agreement made with the decedent under the provisions of RCW 26.16.120 as it now exists or is hereafter amended. [2009 c 525 § 4; 2008 c 6 § 624; 1965 c 145 § 11.84.030. Prior: 1955 c 141 § 3.]

Additional notes found at www.leg.wa.gov

11.84.040 Distribution of decedent's property. Property which would have passed to or for the benefit of the slayer or abuser by devise or legacy from the decedent shall be distributed as if he or she had predeceased the decedent. [2009 c 525 § 5; 1965 c 145 § 11.84.040. Prior: 1955 c 141 § 4.]

11.84.050 Distribution of property held jointly with slayer or abuser. (1) One-half of any property held by the slayer or abuser and the decedent as joint tenants, joint owners or joint obligees shall pass upon the death of the decedent to his or her estate, and the other half shall pass to his or her estate upon the death of the slayer or abuser, unless the slayer or abuser obtains a separation or severance of the property or a decree granting partition.

(2) As to property held jointly by three or more persons, including the slayer or abuser and the decedent, any enrichment which would have accrued to the slayer or abuser as a result of the death of the decedent shall pass to the estate of the decedent. If the slayer or abuser becomes the final survivor, one-half of the property shall immediately pass to the estate of the decedent and the other half shall pass to his or her estate upon the death of the slayer or abuser, unless the slayer or abuser obtains a separation or severance of the property or a decree granting partition.

(3) The provisions of this section shall not affect any enforceable agreement between the parties or any trust arising because a greater proportion of the property has been contributed by one party than by the other. [2009 c 525 § 6; 1965 c 145 § 11.84.050. Prior: 1955 c 141 § 5.]

11.84.060 Reversion and vested remainder. Property in which the slayer holds a reversion or vested remainder and would have obtained the right of present possession upon the death of the decedent shall pass to the estate of the decedent during the period of the life expectancy of decedent; if he or she held the particular estate or if the particular estate is held by a third person it shall remain in his or her hands for such period. [2010 c 8 § 2086; 1965 c 145 § 11.84.060. Prior: 1955 c 141 § 6.]

11.84.070 Property subject to divestment, etc. Any interest in property whether vested or not, held by the slayer or abuser, subject to be divested, diminished in any way or extinguished, if the decedent survives him or her or lives to a certain age, shall be held by the slayer or abuser during his or her lifetime or until the decedent would have reached such age, but shall then pass as if the decedent had died immediately thereafter. [2009 c 525 § 7; 1965 c 145 § 11.84.070. Prior: 1955 c 141 § 7.]

11.84.080 Contingent remainders and future interests. As to any contingent remainder or executory or other future interest held by the slayer or abuser, subject to become vested in him or her or increased in any way for him or her upon the condition of the death of the decedent:

(1) If the interest would not have become vested or increased if he or she had predeceased the decedent, he or she shall be deemed to have so predeceased the decedent;

(2) In any case the interest shall not be vested or increased during the period of the life expectancy of the decedent. [2009 c 525 § 8; 1965 c 145 § 11.84.080. Prior: 1955 c 141 § 8.]

11.84.090 Property appointed—Powers of revocation or appointment. (1) Property appointed by the will of the decedent to or for the benefit of the slayer or abuser shall

be distributed as if the slayer or abuser had predeceased the decedent.

(2) Property held either presently or in remainder by the slayer or abuser, subject to be divested by the exercise by the decedent of a power of revocation or a general power of appointment shall pass to the estate of the decedent, and property so held by the slayer or abuser, subject to be divested by the exercise by the decedent of a power of appointment to a particular person or persons or to a class of persons, shall pass to such person or persons, or in equal shares to the members of such class of persons, exclusive of the slayer or abuser. [2009 c 525 § 9; 1965 c 145 § 11.84.090. Prior: 1955 c 141 § 9.]

11.84.100 Insurance proceeds. (1) Insurance proceeds payable to the slayer or abuser as the beneficiary or assignee of any policy or certificate of insurance on the life of the decedent, or as the survivor of a joint life policy, shall be paid instead to the estate of the decedent, unless the policy or certificate designate some person other than the slayer or abuser or his or her estate as secondary beneficiary to him or her and in which case such proceeds shall be paid to such secondary beneficiary in accordance with the applicable terms of the policy.

(2) If the decedent is beneficiary or assignee of any policy or certificate of insurance on the life of the slayer or abuser, the proceeds shall be paid to the estate of the decedent upon the death of the slayer or abuser, unless the policy names some person other than the slayer or abuser or his or her estate as secondary beneficiary, or unless the slayer or abuser by naming a new beneficiary or assigning the policy performs an act which would have deprived the decedent of his or her interest in the policy if he or she had been living. [2009 c 525 § 10; 1965 c 145 § 11.84.100. Prior: 1955 c 141 § 10.]

11.84.110 Payment by insurance company, bank, etc.—No additional liability. Any insurance company making payment according to the terms of its policy or any bank or other person performing an obligation for the slayer or abuser as one of several joint obligees shall not be subjected to additional liability by the terms of this chapter if such payment or performance is made without written notice, at its home office or at an individual's home or business address, of the killing by a slayer or financial exploitation by an abuser. [2009 c 525 § 11; 1965 c 145 § 11.84.110. Prior: 1955 c 141 § 11.]

11.84.120 Rights of persons without notice dealing with slayer or abuser. The provisions of this chapter shall not affect the rights of any person who, before the interests of the slayer or abuser have been adjudicated, purchases or has agreed to purchase, from the slayer or abuser for value and without notice property which the slayer or abuser would have acquired except for the terms of this chapter, but all proceeds received by the slayer or abuser from such sale shall be held by him or her in trust for the persons entitled to the property under the provisions of this chapter, and the slayer or abuser shall also be liable both for any portion of such proceeds which he or she may have dissipated and for any difference between the actual value of the property and the amount

of such proceeds. [2009 c 525 § 12; 1965 c 145 § 11.84.120. Prior: 1955 c 141 § 12.]

11.84.130 Record of conviction as evidence against claimant of property. Any record of conviction for having participated in the willful and unlawful killing of the decedent or for conduct constituting financial exploitation against the decedent, including but not limited to theft, forgery, fraud, identity theft, robbery, burglary, or extortion, shall be admissible in evidence against a claimant of property in any civil proceeding arising under this chapter. [2009 c 525 § 13; 1965 c 145 § 11.84.130. Prior: 1955 c 141 § 13.]

Evidence, proof of public documents: Chapter 5.44 RCW; Rules of court: CR 44.

11.84.140 Slayer determination—Conviction—Preponderance of evidence. (1) A final judgment of conviction for the willful and unlawful killing of the decedent is conclusive for purposes of determining whether a person is a slayer under this section. A finding of not guilty by reason of insanity for the willful and unlawful killing of the decedent carries the same meaning as a judgment of conviction.

(2) In the absence of a criminal conviction or a finding of not guilty by reason of insanity, a superior court finding by a preponderance of the evidence that a person participated in the willful and unlawful killing of the decedent is conclusive for purposes of determining whether a person is a slayer under this section. [2016 c 211 § 2; 2009 c 525 § 14.]

Short title—2016 c 211: See note following RCW 11.84.010.

11.84.150 Abuser determination—Conviction—Clear, cogent, and convincing evidence. (1) A final judgment of conviction for conduct constituting financial exploitation against the decedent, including but not limited to theft, forgery, fraud, identity theft, robbery, burglary, or extortion, is conclusive for purposes of determining whether a person is an abuser under this section.

(2) In the absence of a criminal conviction, a superior court finding by clear, cogent, and convincing evidence that a person participated in conduct constituting financial exploitation against the decedent is conclusive for purposes of determining whether a person is an abuser under this section. [2009 c 525 § 15.]

11.84.160 Abuser determination—Evidence factors. (1) In determining whether a person is an abuser for purposes of this chapter, the court must find by clear, cogent, and convincing evidence that:

(a) The decedent was a vulnerable adult at the time the alleged financial exploitation took place; and

(b) The conduct constituting financial exploitation was willful action or willful inaction causing injury to the property of the vulnerable adult.

(2) A finding of abuse by the department of social and health services is not admissible for any purpose in any claim or proceeding under this chapter.

(3) Except as provided in subsection (2) of this section, evidence of financial exploitation is admissible if it is not inadmissible pursuant to the rules of evidence. [2009 c 525 § 16.]

11.84.170 Abuser—When entitled to property interest. Notwithstanding the provisions of this chapter:

(1) An abuser is entitled to acquire or receive an interest in property or any other benefit described in this chapter if the court determines by clear, cogent, and convincing evidence that the decedent:

(a) Knew of the financial exploitation; and

(b) Subsequently ratified his or her intent to transfer the property interest or benefit to that person.

(2) The court may consider the record of proceedings and in its discretion allow an abuser to acquire or receive an interest in property or any other benefit described in this chapter in any manner the court deems equitable. In determining what is equitable, the court may consider, among other things:

(a) The various elements of the decedent's dispositive scheme;

(b) The decedent's likely intent given the totality of the circumstances; and

(c) The degree of harm resulting from the abuser's financial exploitation of the decedent. [2009 c 525 § 17.]

11.84.180 Application—Relation to other laws. The provisions of this act are supplemental to, and do not derogate from, any other statutory or common law proceedings, theories, or remedies including, but not limited to, the common law allocation of the burden of proof or production among the parties. [2009 c 525 § 21.]

11.84.900 Chapter to be construed broadly. This chapter shall be construed broadly to effect the policy of this state that no person shall be allowed to profit by his or her own wrong, wherever committed. [2010 c 8 § 2087; 1998 c 292 § 503; 1965 c 145 § 11.84.900. Prior: 1955 c 141 § 14.]

Additional notes found at www.leg.wa.gov

Chapter 11.86 RCW DISCLAIMER OF INTERESTS

Sections

11.86.011	Definitions.
11.86.021	Disclaimer of interest authorized.
11.86.031	Contents of disclaimer—Time and filing requirements—Fee.
11.86.041	Disposition of disclaimed interest.
11.86.051	When disclaimer barred—Exception.
11.86.061	Effect of spendthrift or similar restriction.
11.86.071	Liability for distribution—Effect of disclaimer.
11.86.080	Rights under other statutes or rules not abridged.
11.86.090	Interests existing on June 7, 1973.

11.86.011 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Beneficiary" means the person entitled, but for the person's disclaimer, to take an interest.

(2) "Creator of the interest" means a person who establishes, declares, or otherwise creates an interest.

(3)(a) "Date of the transfer" means:

(i) For an inter vivos transfer, the date of the creation of the interest; or

(ii) For a transfer upon the death of the creator of the interest, the date of the death of the creator.

(b) A joint tenancy interest of a deceased joint tenant is deemed to be transferred at the death of the joint tenant rather than at the creation of the joint tenancy.

(4) "Disclaimant" means a beneficiary who executes a disclaimer on his or her own behalf or a person who executes a disclaimer on behalf of a beneficiary.

(5) "Disclaimer" means any writing which declines, refuses, renounces, or disclaims any interest that would otherwise be taken by a beneficiary.

(6) "Interest" includes the whole of any property, real or personal, legal or equitable, or any fractional part, share, or particular portion or specific assets thereof, any vested or contingent interest in any such property, any power to appoint, consume, apply, or expend property, or any other right, power, privilege, or immunity relating to property. "Interest" includes, but is not limited to, an interest created in any of the following manners:

(a) By intestate succession;

(b) Under a will;

(c) Under a trust;

(d) By succession to a disclaimed interest;

(e) By virtue of an election to take against a will;

(f) By creation of a power of appointment;

(g) By exercise or nonexercise of a power of appointment;

(h) By an inter vivos gift, whether outright or in trust;

(i) By surviving the death of a depositor of a trust or P.O.D. account within the meaning of *RCW 30.22.040;

(j) Under an insurance or annuity contract;

(k) By surviving the death of another joint tenant;

(l) Under an employee benefit plan;

(m) Under an individual retirement account, annuity, or bond;

(n) Under a community property agreement;

(o) By surviving the death of a transferor of a transfer on death deed; or

(p) Any other interest created by any testamentary or inter vivos instrument or by operation of law.

(7) "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, or other entity. [2014 c 58 § 22; 1989 c 34 § 1.]

Reviser's note: *(1) RCW 30.22.040 was recodified as RCW 30A.22.040 pursuant to 2014 c 37 § 4, effective January 5, 2015.

(2) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Uniformity of application and construction—Relation to electronic signatures in global and national commerce act—2014 c 58: See RCW 64.80.903 and 64.80.904.

11.86.021 Disclaimer of interest authorized. (1) A beneficiary may disclaim an interest in whole or in part, or with reference to specific parts, shares or assets, in the manner provided in RCW 11.86.031.

(2) Likewise, a beneficiary may so disclaim through an agent or attorney so authorized by written instrument.

(3) A personal representative, guardian, attorney-in-fact if authorized under a durable power of attorney under chapter 11.125 RCW, or other legal representative of the estate of a minor, incompetent, or deceased beneficiary, may so disclaim on behalf of the beneficiary, with or without court order, if:

(a) The legal representative deems the disclaimer to be in the best interests of those interested in the estate of the beneficiary and of those who take the disclaimed interest because of the disclaimer, and not detrimental to the best interests of the beneficiary; and

(b) In the case of a conservatorship, no order has been issued under RCW 11.130.435 determining that the disclaimer is not in the best interests of the beneficiary. [2020 c 312 § 711; 2016 c 209 § 402; 1989 c 34 § 2.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

Short title—Application—Uniformity—Federal law application—Federal electronic signatures in global and national commerce act—Application—Dates—Effective date—2016 c 209: See RCW 11.125.010 and 11.125.900 through 11.125.903.

11.86.031 Contents of disclaimer—Time and filing requirements—Fee. (1) The disclaimer must:

- (a) Be in writing;
- (b) Be signed by the disclaimant;
- (c) Identify the interest to be disclaimed; and
- (d) State the disclaimer and the extent thereof.

(2) The disclaimer must be delivered or mailed as provided in subsection (3) of this section at any time after the creation of the interest, but in all events by nine months after the latest of:

- (a) The date the beneficiary attains the age of twenty-one years;
- (b) The date of the transfer;
- (c) The date that the beneficiary is finally ascertained and the beneficiary's interest is indefeasibly vested; or
- (d) December 17, 2010, if the date of the transfer is the date of the death of the creator of the interest and the creator dies after December 31, 2009, and before December 18, 2010.

(3) The disclaimer shall be mailed by first-class mail, or otherwise delivered, to the creator of the interest, the creator's legal representative, or the holder of the legal title to the property to which the interest relates or, if the creator is dead and there is no legal representative or holder of legal title, to the person having possession of the property.

(4) If the date of the transfer is the date of the death of the creator of the interest, a copy of the disclaimer may be filed with the clerk of the probate court in which the estate of the creator is, or has been, administered, or, if no probate administration has been commenced, then with the clerk of the court of any county provided by law as the place for probate administration of such person, where it shall be indexed under the name of the decedent in the probate index upon the payment of a fee established under *RCW 36.18.016.

(5) The disclaimer of an interest in real property may be recorded, but shall constitute notice to all persons only from and after the date of recording. If recorded, a copy of the disclaimer shall be recorded in the office of the auditor in the county or counties where the real property is situated. [2011 c 113 § 3; 1995 c 292 § 4; 1989 c 34 § 3.]

***Reviser's note:** The fee specified in RCW 36.18.016 for the filing of a disclaimer was deleted by section 18, chapter 457, Laws of 2005.

Finding—Retroactive application—Application—Construction—Effective date—2011 c 113: See notes following RCW 11.108.090.

11.86.041 Disposition of disclaimed interest. (1) Unless the instrument creating an interest directs to the con-

(2022 Ed.)

trary, the interest disclaimed shall pass as if the beneficiary had died immediately prior to the date of the transfer of the interest. The disclaimer shall relate back to this date for all purposes.

(2) Unless the beneficiary provides otherwise in the disclaimer, in addition to the interests disclaimed, the beneficiary shall also be deemed to have disclaimed the minimum of all interests in the disclaimed property necessary to make the disclaimer a qualified disclaimer for purposes of section 2518 of the Internal Revenue Code.

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

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

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

(6) In the case of a disclaimer of property over which the disclaimant has any power to direct the beneficial enjoyment of the disclaimed property, the disclaimant shall also be deemed to have disclaimed any power to direct the beneficial enjoyment of the disclaimed property, unless the power is limited by an ascertainable standard relating to the health, education, support, or maintenance of any person as described in section 2041 or 2514 of the Internal Revenue Code and applicable regulations adopted under those sections. This subsection applies unless the disclaimer specifically provides otherwise. This subsection shall not be deemed to otherwise prevent such a disclaimant from acting as trustee or personal representative over disclaimed property. [1999 c 43 § 1; 1997 c 252 § 73; 1991 c 7 § 1; 1989 c 34 § 4.]

Additional notes found at www.leg.wa.gov

11.86.051 When disclaimer barred—Exception. (1) A beneficiary may not disclaim an interest if:

- (a) The beneficiary has accepted the interest or a benefit thereunder;
- (b) The beneficiary has assigned, conveyed, encumbered, pledged, or otherwise transferred the interest, or has contracted therefor;
- (c) The interest has been sold or otherwise disposed of pursuant to judicial process; or
- (d) The beneficiary has waived the right to disclaim in writing. The written waiver of the right to disclaim also is binding upon all persons claiming through or under the beneficiary.

(2) Notwithstanding the provisions of subsection (1)(a) through (c) of this section, a beneficiary's receipt of a benefit from property shall not necessarily bar such beneficiary's disclaimer of an interest in the same property when, prior to the date of the transfer of the interest to be disclaimed, the beneficiary already owned an interest in such property in joint tenancy, as community property, or otherwise. Any such receipt, in the absence of clear and convincing evidence to the contrary, shall be presumed to be an enjoyment or use of the interest the beneficiary already owned, and only after such interest and any benefit from such interest have been

exhausted, shall the beneficiary be deemed to have received or accepted any part of the interest to be disclaimed. [2000 c 24 § 1; 1989 c 34 § 5.]

11.86.061 Effect of spendthrift or similar restriction.

A beneficiary may disclaim under this chapter notwithstanding any limitation on the interest of the beneficiary in the nature of a spendthrift provision or similar restriction. [1989 c 34 § 6.]

11.86.071 Liability for distribution—Effect of disclaimer.

No legal representative of a creator of the interest, holder of legal title to property an interest in which is disclaimed, or person having possession of the property shall be liable for any otherwise proper distribution or other disposition made without actual knowledge of the disclaimer, or in reliance upon the disclaimer and without actual knowledge that the disclaimer is barred as provided in RCW 11.86.051. [1989 c 34 § 7.]

11.86.080 Rights under other statutes or rules not abridged.

This chapter shall not abridge the right of any person, apart from this chapter, under any existing or future statute or rule of law, to disclaim any interest or to assign, convey, release, renounce or otherwise dispose of any interest. [1973 c 148 § 9.]

11.86.090 Interests existing on June 7, 1973.

Any interest which exists on June 7, 1973 but which has not then become indefeasibly vested, or the taker of which has not then become finally ascertained, or of the existence of the transfer of which the beneficiary lacks knowledge, may be disclaimed after June 7, 1973 in the manner provided in RCW 11.86.031. However, for the purposes of RCW 11.86.031(2), the date on which the beneficiary first knows of the existence of the transfer shall be deemed to be the date of the transfer. [1989 c 34 § 8; 1973 c 148 § 10.]

Chapter 11.90 RCW

UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

Sections

GENERAL PROVISIONS

- 11.90.010 Short title.
- 11.90.020 Definitions.
- 11.90.030 Foreign country treatment.
- 11.90.040 Communications with out-of-state courts.
- 11.90.050 Requests between in-state and out-of-state courts.
- 11.90.060 Testimony and documentary evidence from another state.

JURISDICTION

- 11.90.200 Definitions.
- 11.90.210 Exclusive jurisdictional basis.
- 11.90.220 Appointing a guardian or issuing a protective order.
- 11.90.230 Special jurisdiction.
- 11.90.240 Exclusive jurisdiction for court appointing a guardian or issuing a protective order.
- 11.90.250 In-state court declining jurisdiction.
- 11.90.260 Jurisdiction required by unjustifiable conduct.
- 11.90.270 Notice of petition requirements when not respondent's home state on filing date.
- 11.90.280 Rules when guardian appointment or protective order petition is filed in Washington and another state.

TRANSFER OF GUARDIANSHIP

- 11.90.400 Procedure for transfer of guardianship or conservatorship to an out-of-state court.
- 11.90.410 Procedures for transfer of guardianship or conservatorship to Washington.
- 11.90.420 Registering out-of-state guardianship.
- 11.90.430 Registering an out-of-state protective order.
- 11.90.440 Enforcement of guardianship or protective order from another state.

MISCELLANEOUS PROVISIONS

- 11.90.450 Uniformity.
- 11.90.460 Application of the federal electronic signatures in global and national commerce act.
- 11.90.470 Application.

GENERAL PROVISIONS

11.90.010 Short title. This chapter may be cited as the uniform adult guardianship and protective proceedings jurisdiction act. [2009 c 81 § 1.]

Additional notes found at www.leg.wa.gov

11.90.020 Definitions. In this chapter:

- (1) "Adult" means an individual who has attained eighteen years of age.
- (2) "Conservator" means a person appointed by the court to administer the property of an adult, including a person appointed under chapter 11.130 RCW, and includes a conservator appointed by the court in another state.
- (3) "Guardian" means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under chapter 11.130 RCW, and includes a guardian appointed by the court in another state.
- (4) "Guardianship order" means an order appointing a guardian.
- (5) "Guardianship proceeding" means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued.
- (6) "Party" means the respondent, petitioner, guardian, conservator, or any other person allowed by the court to participate in a guardianship or protective proceeding.
- (7) "Person," except in the term person under a guardianship, person under a conservatorship, or protected person, means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- (8) "Person subject to a guardianship" means an adult for whom a guardian has been appointed.
- (9) "Protected person" means an adult for whom a protective order has been issued.
- (10) "Protective order" means an order appointing a conservator or other order related to management of an adult's property.
- (11) "Protective proceeding" means a judicial proceeding in which a protective order is sought or has been issued.
- (12) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (13) "Respondent" means an adult for whom a protective order or the appointment of a guardian is sought.

(14) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States. [2020 c 312 § 501; 2009 c 81 § 2.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

Additional notes found at www.leg.wa.gov

11.90.030 Foreign country treatment. A court of this state may treat a foreign country as if it were a state for the purpose of applying this chapter. [2009 c 81 § 3.]

Additional notes found at www.leg.wa.gov

11.90.040 Communications with out-of-state courts.

(1) A court of this state may communicate with a court in another state concerning a proceeding arising under this chapter. The court may allow the parties to participate in the communication. Except as otherwise provided in subsection (2) of this section, the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

(2) Courts may communicate concerning schedules, calendars, court records, and other administrative matters without making a record. [2009 c 81 § 4.]

Additional notes found at www.leg.wa.gov

11.90.050 Requests between in-state and out-of-state courts. (1) In a guardianship or protective proceeding in this state, a court of this state may request the appropriate court of another state to do any of the following:

- (a) Hold an evidentiary hearing;
- (b) Order a person in that state to produce evidence or give testimony pursuant to procedures of that state;
- (c) Order that an evaluation or assessment be made of the respondent;
- (d) Order any appropriate investigation of a person involved in a proceeding;
- (e) Forward to the court of this state a certified copy of the transcript or other record of a hearing under (a) of this subsection or any other proceeding, any evidence otherwise produced under (b) of this subsection, and any evaluation or assessment prepared in compliance with an order under (c) or (d) of this subsection;
- (f) Issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person;
- (g) Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in 45 C.F.R. Sec. 164.504.

(2) If a court of another state in which a guardianship or protective proceeding is pending requests assistance of the kind provided in subsection (1) of this section, a court of this state has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request. [2009 c 81 § 5.]

Additional notes found at www.leg.wa.gov

11.90.060 Testimony and documentary evidence from another state. (1) In a guardianship or protective proceeding,

(2022 Ed.)

in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

(2) In a guardianship or protective proceeding, a court in this state may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of this state shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

(3) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the best evidence rule. [2009 c 81 § 6.]

Additional notes found at www.leg.wa.gov

JURISDICTION

11.90.200 Definitions. (1) In this chapter:

(a) "Emergency" means a circumstance that likely will result in substantial harm to a respondent's health, safety, or welfare, and for which the appointment of a guardian is necessary because no other person has authority and is willing to act on the respondent's behalf.

(b) "Home state" means the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian; or if none, the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition.

(c) "Significant-connection state" means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.

(2) In determining under RCW 11.90.220 and 11.90.400(5) whether a respondent has a significant connection with a particular state, the court shall consider:

- (a) The location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding;
- (b) The length of time the respondent at any time was physically present in the state and the duration of any absence;
- (c) The location of the respondent's property; and
- (d) The extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship, and receipt of services. [2009 c 81 § 7.]

Additional notes found at www.leg.wa.gov

11.90.210 Exclusive jurisdictional basis. This chapter provides the exclusive jurisdictional basis for a court of this state to appoint a guardian or issue a protective order for an adult under chapter 11.130 RCW. [2020 c 312 § 712; 2009 c 81 § 8.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

Additional notes found at www.leg.wa.gov

11.90.220 Appointing a guardian or issuing a protective order. A court of this state has jurisdiction to appoint a guardian or issue a protective order for a respondent if:

- (1) This state is the respondent's home state;
- (2) On the date the petition is filed, this state is a significant-connection state and:
 - (a) The respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because this state is a more appropriate forum; or
 - (b) The respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state, and, before the court makes the appointment or issues the order:
 - (i) A petition for an appointment or order is not filed in the respondent's home state;
 - (ii) An objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and
 - (iii) The court in this state concludes that it is an appropriate forum under the factors set forth in RCW 11.90.250;
 - (3) This state does not have jurisdiction under either subsection (1) or (2) of this section, the respondent's home state and all significant-connection states have declined to exercise jurisdiction because this state is the more appropriate forum, and jurisdiction in this state is consistent with the constitutions of this state and the United States; or
 - (4) The requirements for special jurisdiction under RCW 11.90.230 are met. [2009 c 81 § 9.]

Additional notes found at www.leg.wa.gov

11.90.230 Special jurisdiction. (1) A court of this state lacking jurisdiction under RCW 11.90.220 has special jurisdiction to do any of the following:

- (a) Appoint a guardian in an emergency for a term not exceeding sixty days for a respondent who is physically present in this state;
- (b) Issue a protective order with respect to real or tangible personal property located in this state if a petition for appointment of a guardian or a conservator for the respondent is pending or has been approved in another state;
- (c) Appoint a guardian or conservator for a person under a guardianship, person under a conservatorship, or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to RCW 11.90.400.

(2) If a petition for the appointment of a guardian in an emergency is brought in this state and this state was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment. [2020 c 312 § 502; 2009 c 81 § 10.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

Additional notes found at www.leg.wa.gov

11.90.240 Exclusive jurisdiction for court appointing a guardian or issuing a protective order. Except as otherwise provided in RCW 11.90.230, a court that has appointed a guardian or issued a protective order consistent with this

chapter has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms. [2009 c 81 § 11.]

Additional notes found at www.leg.wa.gov

11.90.250 In-state court declining jurisdiction. (1) A court of this state having jurisdiction under RCW 11.90.220 to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

(2) If a court of this state declines to exercise its jurisdiction under subsection (1) of this section, it shall either dismiss or stay the proceeding. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.

(3) In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:

- (a) Any expressed preference of the respondent;
- (b) Whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation;
- (c) The length of time the respondent was physically present in or was a legal resident of this or another state;
- (d) The distance of the respondent from the court in each state;
- (e) The financial circumstances of the respondent's estate;
- (f) The nature and location of the evidence;
- (g) The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;
- (h) The familiarity of the court of each state with the facts and issues in the proceeding; and
- (i) If an appointment were made, the court's ability to monitor the conduct of the guardian or conservator. [2020 c 312 § 503; 2009 c 81 § 12.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

Additional notes found at www.leg.wa.gov

11.90.260 Jurisdiction required by unjustifiable conduct. (1) If at any time a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:

- (a) Decline to exercise jurisdiction;
- (b) Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or
- (c) Continue to exercise jurisdiction after considering:
 - (i) The extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;
 - (ii) Whether it is a more appropriate forum than the court of any other state under the factors set forth in RCW 11.90.250(3); and

(iii) Whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of RCW 11.90.220.

(2) If a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorneys' fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of this state unless authorized by law other than this chapter. [2009 c 81 § 13.]

Additional notes found at www.leg.wa.gov

11.90.270 Notice of petition requirements when not respondent's home state on filing date. If a petition for the appointment of a guardian or issuance of a protective order is brought in this state and this state was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of this state, notice of the petition must be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice must be given in the same manner as notice is required to be given in this state. [2009 c 81 § 14.]

Additional notes found at www.leg.wa.gov

11.90.280 Rules when guardian appointment or protective order petition is filed in Washington and another state. Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in this state under RCW 11.90.230(1) (a) or (b), if a petition for the appointment of a guardian or issuance of a protective order is filed in this state and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

(1) If the court in this state has jurisdiction under RCW 11.90.220, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to RCW 11.90.220 before the appointment or issuance of the order.

(2) If the court in this state does not have jurisdiction under RCW 11.90.220, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this state shall dismiss the petition unless the court in the other state determines that the court in this state is a more appropriate forum. [2009 c 81 § 15.]

Additional notes found at www.leg.wa.gov

TRANSFER OF GUARDIANSHIP

11.90.400 Procedure for transfer of guardianship or conservatorship to an out-of-state court. (1) A guardian or conservator appointed in this state may petition the court to transfer the guardianship or conservatorship to another state.

(2022 Ed.)

(2) Notice of a petition under subsection (1) of this section must be given to the persons that would be entitled to notice of a petition in this state for the appointment of a guardian or conservator.

(3) On the court's own motion or on request of the guardian or conservator, the person under a guardianship, person under a conservatorship, or protected person, or other person required to be notified of the petition, the court shall hold a hearing on a petition filed pursuant to subsection (1) of this section.

(4) The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds that:

(a) The person under a guardianship is physically present in or is reasonably expected to move permanently to the other state;

(b) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the person under a guardianship; and

(c) Plans for care and services for the person under a guardianship in the other state are reasonable and sufficient.

(5) The court shall issue a provisional order granting a petition to transfer a conservatorship and shall direct the conservator to petition for conservatorship in the other state if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds that:

(a) The protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors in RCW 11.90.200(2);

(b) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person; and

(c) Adequate arrangements will be made for management of the protected person's property.

(6) The court shall issue a final order confirming the transfer and terminating the guardianship or conservatorship upon its receipt of:

(a) A provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to RCW 11.90.410; and

(b) The documents required to terminate a guardianship or conservatorship in this state. [2020 c 312 § 504; 2009 c 81 § 16.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

Additional notes found at www.leg.wa.gov

11.90.410 Procedures for transfer of guardianship or conservatorship to Washington. (1) To confirm transfer of a guardianship or conservatorship transferred to this state under provisions similar to RCW 11.90.400, the guardian or conservator must petition the court in this state to accept the guardianship or conservatorship. The petition must include a certified copy of the other state's provisional order of transfer.

(2) Notice of a petition under subsection (1) of this section must be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a

guardian or issuance of a protective order in both the transferring state and this state. The notice must be given in the same manner as notice is required to be given in this state.

(3) On the court's own motion or on request of the guardian or conservator, the person under a guardianship, person under a conservatorship, or protected person, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to subsection (1) of this section.

(4) The court shall issue an order provisionally granting a petition filed under subsection (1) of this section unless:

(a) An objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the person under a guardianship, person under a conservatorship, or protected person; or

(b) The guardian or conservator is ineligible for appointment in this state.

(5) The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this state upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to RCW 11.90.400 transferring the proceeding to this state.

(6) Not later than ninety days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship needs to be modified to conform to the law of this state.

(7) In granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the person under a guardianship, person under a conservatorship, or protected person's incapacity and the appointment of the guardian or conservator.

(8) The denial by a court of this state of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this state if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer. [2020 c 312 § 505; 2009 c 81 § 17.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

Additional notes found at www.leg.wa.gov

11.90.420 Registering out-of-state guardianship. If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this state, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this state by filing as a foreign judgment in a court, in any appropriate county of this state, certified copies of the order and letters of office. [2009 c 81 § 18.]

Additional notes found at www.leg.wa.gov

11.90.430 Registering an out-of-state protective order. If a guardian of the estate or conservator has been appointed in another state and a petition for a protective order is not pending in this state, the guardian of the estate or conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this state by filing as a foreign judgment in a

court of this state, in any county in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond. [2009 c 81 § 19.]

Additional notes found at www.leg.wa.gov

11.90.440 Enforcement of guardianship or protective order from another state. (1) Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this state all powers authorized in the order of appointment except as prohibited under the laws of this state, including maintaining actions and proceedings in this state and, if the guardian or conservator is not a resident of this state, subject to any conditions imposed upon nonresident parties.

(2) A court of this state may grant any relief available under this chapter and other law of this state to enforce a registered order. [2009 c 81 § 20.]

Additional notes found at www.leg.wa.gov

MISCELLANEOUS PROVISIONS

11.90.450 Uniformity. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [2009 c 81 § 21.]

Additional notes found at www.leg.wa.gov

11.90.460 Application of the federal electronic signatures in global and national commerce act. This chapter modifies, limits, and supersedes the federal electronic signatures in global and national commerce act, 15 U.S.C. Sec. 7001, et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. Sec. 7003(b). [2009 c 81 § 22.]

Additional notes found at www.leg.wa.gov

11.90.470 Application. (1) This chapter applies to guardianship and protective proceedings filed on or after January 1, 2010.

(2) RCW 11.90.010 through 11.90.060 and 11.90.400 through 11.90.460 apply to proceedings filed before January 1, 2010, regardless of whether a guardianship or protective order has been issued. [2009 c 81 § 23.]

Additional notes found at www.leg.wa.gov

Chapter 11.95A RCW UNIFORM POWERS OF APPOINTMENT ACT

Sections

ARTICLE 1 GENERAL PROVISIONS

- 11.95A.001 Short title.
- 11.95A.010 Definitions.
- 11.95A.020 Governing law.
- 11.95A.030 Common law and principles of equity supplement.

ARTICLE 2 CREATION, REVOCATION, AND AMENDMENT OF POWER OF APPOINTMENT

- 11.95A.100 Creation of power of appointment.
- 11.95A.110 Power not transferable.
- 11.95A.120 Presumption of unlimited authority.

- 11.95A.130 Presumption of unlimited authority—Exception.
 11.95A.140 Rules of classification.
 11.95A.150 Power to revoke or amend.

ARTICLE 3

EXERCISE OF POWER OF APPOINTMENT

- 11.95A.200 Requisites for exercise of power of appointment.
 11.95A.210 Intent to exercise—Determining intent from residuary clause.
 11.95A.220 Intent to exercise—After-acquired power.
 11.95A.230 Substantial compliance with donor-imposed formal requirement.
 11.95A.240 Permissible appointment.
 11.95A.250 Appointment to deceased appointee or permissible appointee's descendant.
 11.95A.260 Impermissible appointment.
 11.95A.270 Selective allocation doctrine.
 11.95A.280 Capture doctrine—Disposition of ineffectively appointed property under general power.
 11.95A.290 Disposition of unappointed property—Released or unexercised general power.
 11.95A.300 Disposition of unappointed property—Released or unexercised nongeneral power.
 11.95A.310 Disposition of unappointed property—Partial appointment to taker in default.
 11.95A.320 Appointment to taker in default.
 11.95A.330 Powerholder's authority to revoke or amend exercise.
 11.95A.340 Notice of exercise of testamentary power.
 11.95A.350 Exercise of power in favor of holder—Limitations.
 11.95A.355 Exercise of power in favor of holder—Disregard of provision conferring absolute or similar power—Power of removal.
 11.95A.360 Exercise of power in favor of holder—Income under marital deduction—Spousal power of appointment.
 11.95A.365 Exercise of power in favor of holder—Inference of law.
 11.95A.370 Exercise of power in favor of holder—Applicability.
 11.95A.375 Exercise of power in favor of holder—Cause of action.

ARTICLE 4

DISCLAIMER OR RELEASE—CONTRACT TO APPOINT OR NOT TO APPOINT

- 11.95A.400 Disclaimer.
 11.95A.410 Authority to release.
 11.95A.420 Method of release.
 11.95A.430 Revocation or amendment of release.
 11.95A.440 Power to contract—Presently exercisable power of appointment.
 11.95A.450 Power to contract—Power of appointment not presently exercisable.
 11.95A.460 Remedy for breach of contract to appoint or not to appoint.

ARTICLE 5

RIGHTS OF POWERHOLDER'S CREDITORS IN APPOINTIVE PROPERTY

- 11.95A.500 Creditor claims—General power created by powerholder.
 11.95A.510 Creditor claims—General power not created by powerholder.
 11.95A.520 Power to withdraw.
 11.95A.530 Creditor claims—Nongeneral power.

ARTICLE 6

MISCELLANEOUS PROVISIONS

- 11.95A.900 Uniformity of application and construction.
 11.95A.901 Relation to electronic signatures in global and national commerce act.
 11.95A.902 Application—Existing relationships.
 11.95A.903 Effective date—2021 c 140 §§ 3101-3614.

ARTICLE 1

GENERAL PROVISIONS

11.95A.001 Short title. This chapter may be known and cited as the uniform powers of appointment act. [2021 c 140 § 3101.]

11.95A.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Appointee" means a person to which a powerholder makes an appointment of appointive property.

(2) "Appointive property" means the property or property interest subject to a power of appointment.

(3) "Blanket-exercise clause" means a clause in an instrument which exercises a power of appointment and is not a specific-exercise clause. The term includes a clause that:

(a) Expressly uses the words "any power" in exercising any power of appointment the powerholder has;

(b) Expressly uses the words "any property" in appointing any property over which the powerholder has a power of appointment; or

(c) Disposes of all property subject to disposition by the powerholder.

(4) "Donor" means a person that creates a power of appointment.

(5) "Exclusionary power of appointment" means a power of appointment exercisable in favor of any one or more of the permissible appointees to the exclusion of the other permissible appointees.

(6) "General power of appointment" means a power of appointment exercisable in favor of the powerholder, the powerholder's estate, a creditor of the powerholder, or a creditor of the powerholder's estate.

(7) "Gift-in-default clause" means a clause identifying a taker in default of appointment.

(8) "Impermissible appointee" means a person that is not a permissible appointee.

(9) "Instrument" means a record.

(10) "Nongeneral power of appointment" means a power of appointment that is not a general power of appointment.

(11) "Permissible appointee" means a person in whose favor a powerholder may exercise a power of appointment.

(12) "Person" means an individual, estate, trust, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(13) "Power of appointment" means a power that enables a powerholder acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over the appointive property. The term does not include a power of attorney.

(14) "Powerholder" means a person in which a donor creates a power of appointment.

(15) "Presently exercisable power of appointment" means a power of appointment exercisable by the powerholder at the relevant time. The term:

(a) Includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified time only after:

(i) The occurrence of the specified event;

(ii) The satisfaction of the ascertainable standard; or

(iii) The passage of the specified time; and

(b) Does not include a power exercisable only at the powerholder's death.

(16) "Specific-exercise clause" means a clause in an instrument which specifically refers to and exercises a particular power of appointment.

(17) "Taker in default of appointment" means a person that takes all or part of the appointive property to the extent

the powerholder does not effectively exercise the power of appointment.

(18) "Terms of the instrument" means the manifestation of the intent of the maker of the instrument regarding the instrument's provisions as expressed in the instrument or as may be established by other evidence that would be admissible in a legal proceeding. [2021 c 140 § 3102.]

11.95A.020 Governing law. Unless the terms of the instrument creating a power of appointment manifest a contrary intent:

(1) The creation, revocation, or amendment of the power is governed by the law of the donor's domicile at the time the action is taken; and

(2) The exercise, release, lapse, or disclaimer of the power, or the revocation or amendment of the exercise, release, lapse, or disclaimer of the power, is governed by the law of the powerholder's domicile at the time the action is taken. [2021 c 140 § 3103.]

11.95A.030 Common law and principles of equity supplement. The common law and principles of equity supplement this chapter, except to the extent modified by this chapter or law of this state other than this chapter. [2021 c 140 § 3104.]

ARTICLE 2

CREATION, REVOCATION, AND AMENDMENT OF POWER OF APPOINTMENT

11.95A.100 Creation of power of appointment. (1) A power of appointment is created only if:

(a) The instrument creating the power:

(i) Is valid under applicable law; and

(ii) Except as otherwise provided in subsection (2) of this section, transfers the appointive property; and

(b) The terms of the instrument creating the power manifest the donor's intent to create in a powerholder a power of appointment over the appointive property exercisable in favor of a permissible appointee.

(2) Subsection (1)(a)(ii) of this section does not apply to the creation of a power of appointment by the exercise of a power of appointment.

(3) A power of appointment may not be created in a deceased individual.

(4) Subject to an applicable rule against perpetuities, a power of appointment may be created in an unborn or unascertained powerholder. [2021 c 140 § 3201.]

11.95A.110 Power not transferable. A powerholder may not transfer a power of appointment. If a powerholder dies without exercising or releasing a power, the power lapses. [2021 c 140 § 3202.]

11.95A.120 Presumption of unlimited authority. Subject to RCW 11.95A.140 and 11.95A.350 through 11.95A.375, and unless the terms of the instrument creating a power of appointment manifest a contrary intent, the power is:

(1) Presently exercisable;

(2) Exclusionary; and

(3) Except as otherwise provided in RCW 11.95A.130, general. [2021 c 140 § 3203.]

11.95A.130 Presumption of unlimited authority—Exception. Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the power is nongeneral if:

(1) The power is exercisable only at the powerholder's death; and

(2) The permissible appointees of the power are a defined and limited class that does not include the powerholder's estate, the powerholder's creditors, or the creditors of the powerholder's estate. [2021 c 140 § 3204.]

11.95A.140 Rules of classification. (1) In this section, "adverse party" means a person with a substantial beneficial interest in property which would be affected adversely by a powerholder's exercise or nonexercise of a power of appointment in favor of the powerholder, the powerholder's estate, a creditor of the powerholder, or a creditor of the powerholder's estate.

(2) If a powerholder may exercise a power of appointment only with the consent or joinder of an adverse party, the power is nongeneral.

(3) If the permissible appointees of a power of appointment are not defined and limited, the power is exclusionary. [2021 c 140 § 3205.]

11.95A.150 Power to revoke or amend. A donor may revoke or amend a power of appointment only to the extent that:

(1) The instrument creating the power is revocable by the donor; or

(2) The donor reserves a power of revocation or amendment in the instrument creating the power of appointment. [2021 c 140 § 3206.]

ARTICLE 3

EXERCISE OF POWER OF APPOINTMENT

11.95A.200 Requisites for exercise of power of appointment. A power of appointment is exercised only:

(1) If the instrument exercising the power is valid under applicable law;

(2) If the terms of the instrument exercising the power:

(a) Manifest the powerholder's intent to exercise the power; and

(b) Subject to RCW 11.95A.230, satisfy the requirements of exercise, if any, imposed by the donor; and

(3) To the extent the appointment is a permissible exercise of the power. [2021 c 140 § 3301.]

11.95A.210 Intent to exercise—Determining intent from residuary clause. (1) In this section:

(a) "Residuary clause" does not include a residuary clause containing a blanket-exercise clause or a specific-exercise clause.

(b) "Will" includes a codicil and a testamentary instrument that revises another will.

(2) A residuary clause in a powerholder's will, or a comparable clause in the powerholder's revocable trust, manifests

the powerholder's intent to exercise a power of appointment only if:

- (a) The terms of the instrument containing the residuary clause do not manifest a contrary intent;
- (b) The power is a general power exercisable in favor of the powerholder's estate;
- (c) There is no gift-in-default clause or the clause is ineffective; and
- (d) The powerholder did not release the power. [2021 c 140 § 3302.]

11.95A.220 Intent to exercise—After-acquired power. Unless the terms of the instrument exercising a power of appointment manifest a contrary intent:

- (1) Except as otherwise provided in subsection (2) of this section, a blanket-exercise clause extends to a power acquired by the powerholder after executing the instrument containing the clause; and
- (2) If the powerholder is also the donor of the power, the clause does not extend to the power unless there is no gift-in-default clause or the gift-in-default clause is ineffective. [2021 c 140 § 3303.]

11.95A.230 Substantial compliance with donor-imposed formal requirement. A powerholder's substantial compliance with a formal requirement of appointment imposed by the donor, including a requirement that the instrument exercising the power of appointment make reference or specific reference to the power, is sufficient if:

- (1) The powerholder knows of and intends to exercise the power; and
- (2) The powerholder's manner of attempted exercise of the power does not impair a material purpose of the donor in imposing the requirement. [2021 c 140 § 3304.]

11.95A.240 Permissible appointment. (1) A powerholder of a general power of appointment that permits appointment to the powerholder or the powerholder's estate may make any appointment, including an appointment in trust or creating a new power of appointment, that the powerholder could make in disposing of the powerholder's own property.

(2) A powerholder of a general power of appointment that permits appointment only to the creditors of the powerholder or of the powerholder's estate may appoint only to those creditors.

(3) Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the powerholder of a nongeneral power may:

- (a) Make an appointment in any form, including an appointment in trust, in favor of a permissible appointee;
- (b) Create a general power in a permissible appointee;
- (c) Create a nongeneral power in any person to appoint to one or more of the permissible appointees of the original nongeneral power; or
- (d) Create a nongeneral power in a permissible appointee to appoint to one or more persons if the permissible appointees of the new nongeneral power include the permissible appointees of the original nongeneral power. [2021 c 140 § 3305.]

(2022 Ed.)

11.95A.250 Appointment to deceased appointee or permissible appointee's descendant. (1) Subject to RCW 11.12.110 and 11.12.120, an appointment to a deceased appointee is ineffective.

(2) Unless the terms of the instrument creating a power of appointment manifest a contrary intent, a powerholder of a nongeneral power may exercise the power in favor of, or create a new power of appointment in, a descendant of a deceased permissible appointee whether or not the descendant is described by the donor as a permissible appointee. [2021 c 140 § 3306.]

11.95A.260 Impermissible appointment. (1) Except as otherwise provided in RCW 11.95A.250, an exercise of a power of appointment in favor of an impermissible appointee is ineffective.

(2) An exercise of a power of appointment in favor of a permissible appointee is ineffective to the extent the appointment is a fraud on the power. [2021 c 140 § 3307.]

11.95A.270 Selective allocation doctrine. If a powerholder exercises a power of appointment in a disposition that also disposes of property the powerholder owns, the owned property and the appointive property must be allocated in the permissible manner that best carries out the powerholder's intent. [2021 c 140 § 3308.]

11.95A.280 Capture doctrine—Disposition of ineffectively appointed property under general power. To the extent a powerholder of a general power of appointment, other than a power to withdraw property from, revoke, or amend a trust, makes an ineffective appointment:

- (1) The gift-in-default clause controls the disposition of the ineffectively appointed property; or
- (2) If there is no gift-in-default clause or to the extent the clause is ineffective, the ineffectively appointed property:
 - (a) Passes to:
 - (i) The powerholder if the powerholder is a permissible appointee and living; or
 - (ii) If the powerholder is an impermissible appointee or deceased, the powerholder's estate if the estate is a permissible appointee; or
 - (b) If there is no taker under (a) of this subsection, passes under a reversionary interest to the donor or the donor's transferee or successor in interest. [2021 c 140 § 3309.]

11.95A.290 Disposition of unappointed property—Released or unexercised general power. To the extent a powerholder releases or fails to exercise a general power of appointment other than a power to withdraw property from, revoke, or amend a trust:

- (1) The gift-in-default clause controls the disposition of the unappointed property; or
- (2) If there is no gift-in-default clause or to the extent the clause is ineffective:
 - (a) Except as otherwise provided in (b) of this subsection, the unappointed property passes to:
 - (i) The powerholder if the powerholder is a permissible appointee and living; or

(ii) If the powerholder is an impermissible appointee or deceased, the powerholder's estate if the estate is a permissible appointee; or

(b) To the extent the powerholder released the power, or if there is no taker under (a) of this subsection, the unappointed property passes under a reversionary interest to the donor or the donor's transferee or successor in interest. [2021 c 140 § 3310.]

11.95A.300 Disposition of unappointed property—Released or unexercised nongeneral power. To the extent a powerholder releases, ineffectively exercises, or fails to exercise a nongeneral power of appointment:

(1) The gift-in-default clause controls the disposition of the unappointed property; or

(2) If there is no gift-in-default clause or to the extent the clause is ineffective, the unappointed property:

(a) Passes to the permissible appointees if:

(i) The permissible appointees are defined and limited; and

(ii) The terms of the instrument creating the power do not manifest a contrary intent; or

(b) If there is no taker under (a) of this subsection, passes under a reversionary interest to the donor or the donor's transferee or successor in interest. [2021 c 140 § 3311.]

11.95A.310 Disposition of unappointed property—Partial appointment to taker in default. Unless the terms of the instrument creating or exercising a power of appointment manifest a contrary intent, if the powerholder makes a valid partial appointment to a taker in default of appointment, the taker in default of appointment may share fully in unappointed property. [2021 c 140 § 3312.]

11.95A.320 Appointment to taker in default. If a powerholder makes an appointment to a taker in default of appointment and the appointee would have taken the property in the same manner and with the same conditions under a gift-in-default clause had the property not been appointed, the power of appointment is deemed not to have been exercised and the appointee takes under the clause. [2021 c 140 § 3313.]

11.95A.330 Powerholder's authority to revoke or amend exercise. A powerholder may revoke or amend an exercise of a power of appointment only to the extent that:

(1) The powerholder reserves a power of revocation or amendment in the instrument exercising the power of appointment and, if the power is nongeneral, the terms of the instrument creating the power of appointment do not prohibit the reservation; or

(2) The terms of the instrument creating the power of appointment provide that the exercise is revocable or amendable. [2021 c 140 § 3314.]

11.95A.340 Notice of exercise of testamentary power. Unless the person holding property subject to a testamentary power of appointment has within six months after the holder's death received written notice that the powerholder's last will has been admitted to probate or an adjudication of testacy has been entered with respect to the powerholder's last will in

some jurisdiction, the person may, until the time the notice is received, transfer the property subject to appointment on the basis that the power has not been effectively exercised. [2021 c 140 § 3315.]

11.95A.350 Exercise of power in favor of holder—Limitations. If the standard governing the exercise of a lifetime or a testamentary power of appointment does not clearly indicate that a broader or more restrictive power of appointment is intended, the holder of the power of appointment may exercise it in his or her favor only for his or her health, education, support, or maintenance as described in section 2041 or 2514 of the Internal Revenue Code and the applicable regulations adopted under the section. [1993 c 339 § 7. Formerly RCW 11.95.100.]

Additional notes found at www.leg.wa.gov

11.95A.355 Exercise of power in favor of holder—Disregard of provision conferring absolute or similar power—Power of removal. If the holder of a lifetime or testamentary power of appointment may exercise the power in his or her own favor only for his or her health, education, support, or maintenance as described in section 2041 or 2514 of the Internal Revenue Code and the applicable regulations adopted under that section, then a provision of the instrument creating the power of appointment that purports to confer "absolute," "sole," "complete," "conclusive," or a similar discretion shall be disregarded in the exercise of that power in favor of the holder, and that power may then only be exercised reasonably and in accordance with the ascertainable standards set forth in RCW 11.95A.350 and this section. A person who has the right to remove or replace a trustee does not possess nor may the person be deemed to possess, by virtue of having that right, the power of the trustee who is subject to removal or to replacement. [2021 c 140 § 3606; 1993 c 339 § 8. Formerly RCW 11.95.110.]

Additional notes found at www.leg.wa.gov

11.95A.360 Exercise of power in favor of holder—Income under marital deduction—Spousal power of appointment. Notwithstanding any provision of RCW 11.95A.350 through 11.95A.375 seemingly to the contrary, RCW 11.95A.350 through 11.95A.375 do not limit or restrict the distribution of income of a trust that qualifies or that otherwise could have qualified for the marital deduction under section 2056 or 2523 of the Internal Revenue Code, those Internal Revenue Code sections requiring that all income be distributed to the spouse of the decedent or of the trustor at least annually, whether or not an election was in fact made under section 2056(b)(7) or 2523(f) of the Internal Revenue Code. Further, RCW 11.95A.350 through 11.95A.375 do not limit or restrict the power of a spouse of the trustor or the spouse of the decedent to exercise a power of appointment described in section 2056(b)(5) or 2523(e) of the Internal Revenue Code with respect to that portion of the trust that could otherwise qualify for the marital deduction under either of those Internal Revenue Code sections. [2021 c 140 § 3607; 1993 c 339 § 9. Formerly RCW 11.95.120.]

Additional notes found at www.leg.wa.gov

11.95A.365 Exercise of power in favor of holder—Inference of law. RCW 11.95A.350 through 11.95A.375 do not raise an inference that the law of this state prior to July 25, 1993, was different than contained in RCW 11.95A.350 through 11.95A.375. [2021 c 140 § 3608; 1993 c 339 § 10. Formerly RCW 11.95.130.]

Additional notes found at www.leg.wa.gov

11.95A.370 Exercise of power in favor of holder—Applicability. (1)(a) RCW 11.95A.350 and 11.95A.355 respectively apply to a power of appointment created:

(i) Under a will, codicil, trust agreement, or declaration of trust, deed, power of attorney, or other instrument executed after July 25, 1993, unless the terms of the instrument refer specifically to RCW 11.95A.350 or 11.95A.355 respectively and provide expressly to the contrary; or

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

(A) The trust is revoked, or amended to provide otherwise, and the terms of any amendment specifically refer to RCW 11.95A.350 or 11.95A.355, respectively, and provide expressly to the contrary;

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

(C) A person entitled to judicial proceedings for a declaration of rights or legal relations under RCW 11.96A.080 obtains a judicial determination that the application of this subsection (1)(a)(ii) to the trust is inconsistent with the provisions or purposes of the will or trust.

(b) Notwithstanding (a) of this subsection, for the purposes of this section a codicil to a will, an amendment to a trust, or an amendment to another instrument that created the power of appointment in question shall not be deemed to cause that instrument to be executed after July 25, 1993, unless the codicil or amendment clearly shows an intent to have RCW 11.95A.350 or 11.95A.355 apply.

(2) Notwithstanding subsection (1) of this section, RCW 11.95A.350 through 11.95A.375 shall apply to a power of appointment created under a will, codicil, trust agreement, or declaration of trust, deed, power of attorney, or other instrument executed prior to July 25, 1993, if the person who created the power of appointment had on July 25, 1993, the power to revoke, amend, or modify the instrument creating the power of appointment, unless:

(a) The terms of the instrument specifically refer to RCW 11.95A.350 or 11.95A.355 respectively and provide expressly to the contrary; or

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

(3) For purposes of this section, a reference in an instrument to:

(2022 Ed.)

(a) RCW 11.95.100 is a reference to RCW 11.95A.350; and

(b) RCW 11.95.110 is a reference to RCW 11.95A.355. [2021 c 140 § 3609; 1999 c 42 § 617; 1997 c 252 § 74; 1993 c 339 § 11. Formerly RCW 11.95.140.]

Additional notes found at www.leg.wa.gov

11.95A.375 Exercise of power in favor of holder—Cause of action. RCW 11.95A.350 through 11.95A.370 neither create a new cause of action nor impair an existing cause of action that, in either case, relates to a power that was exercised before July 25, 1993. RCW 11.95A.350 through 11.95A.370 neither create a new cause of action nor impair an existing cause of action that in either case relates to a power proscribed, limited, or qualified under RCW 11.95A.350 through 11.95A.370. [2021 c 140 § 3610; 1993 c 339 § 12. Formerly RCW 11.95.150.]

Additional notes found at www.leg.wa.gov

ARTICLE 4

DISCLAIMER OR RELEASE—CONTRACT TO APPOINT OR NOT TO APPOINT

11.95A.400 Disclaimer. As provided by chapter 11.86 RCW:

(1) A powerholder may disclaim all or part of a power of appointment.

(2) A permissible appointee, appointee, or taker in default of appointment may disclaim all or part of an interest in appointive property. [2021 c 140 § 3401.]

11.95A.410 Authority to release. A powerholder may release a power of appointment, in whole or in part, except to the extent the terms of the instrument creating the power prevent the release. [2021 c 140 § 3402.]

11.95A.420 Method of release. A powerholder of a releasable power of appointment may release the power in whole or in part:

(1) By substantial compliance with a method provided in the terms of the instrument creating the power; or

(2) If the terms of the instrument creating the power do not provide a method or the method provided in the terms of the instrument is not expressly made exclusive, by a record manifesting the powerholder's intent by clear and convincing evidence. [2021 c 140 § 3403.]

11.95A.430 Revocation or amendment of release. A powerholder may revoke or amend a release of a power of appointment only to the extent that:

(1) The instrument of release is revocable by the powerholder; or

(2) The powerholder reserves a power of revocation or amendment in the instrument of release. [2021 c 140 § 3404.]

11.95A.440 Power to contract—Presently exercisable power of appointment. A powerholder of a presently exercisable power of appointment may contract:

(1) Not to exercise the power; or

(2) To exercise the power if the contract when made does not confer a benefit on an impermissible appointee. [2021 c 140 § 3405.]

11.95A.450 Power to contract—Power of appointment not presently exercisable. A powerholder of a power of appointment that is not presently exercisable may contract to exercise or not to exercise the power only if the powerholder:

- (1) Is also the donor of the power; and
- (2) Has reserved the power in a revocable trust. [2021 c 140 § 3406.]

11.95A.460 Remedy for breach of contract to appoint or not to appoint. The remedy for a powerholder's breach of a contract to appoint or not to appoint appointive property is limited to damages payable out of the appointive property or, if appropriate, specific performance of the contract. [2021 c 140 § 3407.]

ARTICLE 5

RIGHTS OF POWERHOLDER'S CREDITORS IN APPOINTIVE PROPERTY

11.95A.500 Creditor claims—General power created by powerholder. (1) In this section, "power of appointment created by the powerholder" includes a power of appointment created in a transfer by another person to the extent the powerholder contributed value to the transfer.

(2) Appointive property subject to a general power of appointment created by the powerholder is subject to a claim of a creditor of the powerholder or of the powerholder's estate to the extent provided in chapter 19.40 RCW.

(3) Subject to subsection (2) of this section, appointive property subject to a general power of appointment created by the powerholder is not subject to a claim of a creditor of the powerholder or the powerholder's estate to the extent the powerholder irrevocably appointed the property in favor of a person other than the powerholder or the powerholder's estate.

(4) Subject to subsections (2) and (3) of this section, and notwithstanding the presence of a spendthrift provision or whether the claim arose before or after the creation of the power of appointment, appointive property subject to a general power of appointment created by the powerholder is subject to a claim of a creditor of:

(a) The powerholder, to the same extent as if the powerholder owned the appointive property, if the power is presently exercisable; and

(b) The powerholder's estate, to the extent the estate is insufficient to satisfy the claim and subject to the right of a decedent to direct the source from which liabilities are paid, if the power is exercisable at the powerholder's death. [2021 c 140 § 3501.]

11.95A.510 Creditor claims—General power not created by powerholder. (1) Except as otherwise provided in subsection (2) of this section, appointive property subject to a general power of appointment created by a person other than the powerholder is subject to a claim of a creditor of:

(a) The powerholder, to the extent the powerholder's property is insufficient, if the power is presently exercisable; and

(b) The powerholder's estate, to the extent the estate is insufficient, subject to the right of a decedent to direct the source from which liabilities are paid.

(2) Subject to RCW 11.95A.530(3), a power of appointment created by a person other than the powerholder which is subject to an ascertainable standard relating to an individual's health, education, support, or maintenance within the meaning of 26 U.S.C. Sec. 2041(b)(1)(A) or 26 U.S.C. Sec. 2514(c)(1), on January 1, 2022, is treated for purposes of RCW 11.95A.500 through 11.95A.530 as a nongeneral power. [2021 c 140 § 3502.]

11.95A.520 Power to withdraw. (1) For purposes of RCW 11.95A.500 through 11.95A.530, and except as otherwise provided in subsection (2) of this section, a power to withdraw property from a trust is treated, during the time the power may be exercised, as a presently exercisable general power of appointment to the extent of the property subject to the power to withdraw.

(2) On the lapse, release, or waiver of a power to withdraw property from a trust, the power is treated as a presently exercisable general power of appointment only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in 26 U.S.C. Sec. 2041(b)(2) and 26 U.S.C. Sec. 2514(e) or the amount specified in 26 U.S.C. Sec. 2503(b), on January 1, 2022. [2021 c 140 § 3503.]

11.95A.530 Creditor claims—Nongeneral power. (1) Except as otherwise provided in subsections (2) and (3) of this section, appointive property subject to a nongeneral power of appointment is exempt from a claim of a creditor of the powerholder or the powerholder's estate.

(2) Appointive property subject to a nongeneral power of appointment is subject to a claim of a creditor of the powerholder or the powerholder's estate to the extent that the powerholder owned the property and, reserving the nongeneral power, transferred the property in violation of chapter 19.40 RCW.

(3) If the initial gift in default of appointment is to the powerholder or the powerholder's estate, a nongeneral power of appointment is treated for purposes of this section and RCW 11.95A.500 through 11.95A.520 as a general power. [2021 c 140 § 3504.]

ARTICLE 6

MISCELLANEOUS PROVISIONS

11.95A.900 Uniformity of application and construction. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [2021 c 140 § 3601.]

11.95A.901 Relation to electronic signatures in global and national commerce act. This chapter modifies, limits, or supersedes the electronic signatures in global and

national commerce act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. Sec. 7003(b). [2021 c 140 § 3602.]

11.95A.902 Application—Existing relationships. (1)

Except as otherwise provided in this chapter, on and after January 1, 2022:

(a) This chapter applies to a power of appointment created before, on, or after January 1, 2022;

(b) This chapter applies to a judicial proceeding concerning a power of appointment commenced on or after January 1, 2022;

(c) This chapter applies to a judicial proceeding concerning a power of appointment commenced before January 1, 2022, unless the court finds that application of a particular provision of this chapter would interfere substantially with the effective conduct of the judicial proceeding or prejudice a right of a party, in which case the particular provision of this chapter does not apply and the superseded law applies;

(d) A rule of construction or presumption provided in this chapter applies to an instrument executed before January 1, 2022, unless there is a clear indication of a contrary intent in the terms of the instrument; and

(e) Except as otherwise provided in (a) through (d) of this subsection, an action done before January 1, 2022, is not affected by this chapter.

(2) If a right is acquired, extinguished, or barred on the expiration of a prescribed period that commenced under law of this state other than this chapter before January 1, 2022, the law continues to apply to the right. [2021 c 140 § 3603.]

11.95A.903 Effective date—2021 c 140 §§ 3101-3614.

Sections 3101 through 3614 of this act take effect January 1, 2022. [2021 c 140 § 3616.]

Chapter 11.96A RCW

TRUST AND ESTATE DISPUTE RESOLUTION

Sections

11.96A.010	Purpose.
11.96A.020	General power of courts—Intent—Plenary power of the court.
11.96A.030	Definitions.
11.96A.040	Original jurisdiction in probate and trust matters—Powers of court.
11.96A.050	Venue in proceedings involving probate or trust matters.
11.96A.060	Exercise of powers—Orders, writs, process, etc.
11.96A.070	Statutes of limitation.
11.96A.080	Persons entitled to judicial proceedings for declaration of rights or legal relations.
11.96A.090	Judicial proceedings.
11.96A.100	Procedural rules.
11.96A.110	Notice in judicial proceedings under this title requiring notice.
11.96A.115	Discovery.
11.96A.120	Application of doctrine of virtual representation.
11.96A.125	Mistake of fact or law in terms of will or trust—Judicial and nonjudicial reform.
11.96A.127	Charitable dispositions by will or trust.
11.96A.130	Other notice requirements not impaired.
11.96A.140	Waiver of notice.
11.96A.150	Costs—Attorneys' fees.
11.96A.160	Appointment of guardian ad litem.
11.96A.170	Trial by jury.
11.96A.180	Execution on judgments.
11.96A.190	Execution upon trust income or vested remainder—Permitted, when.
11.96A.200	Appellate review.

(2022 Ed.)

11.96A.210	Purpose.
11.96A.220	Binding agreement.
11.96A.230	Entry of agreement with court—Effect.
11.96A.240	Judicial approval of agreement.
11.96A.250	Special representative.
11.96A.260	Findings—Intent.
11.96A.270	Intent—Parties can agree otherwise.
11.96A.280	Scope.
11.96A.290	Superior court—Venue.
11.96A.300	Mediation procedure.
11.96A.310	Arbitration procedure.
11.96A.320	Petition for order compelling compliance.
11.96A.900	Short title.
11.96A.902	Effective date—1999 c 42.

11.96A.010 Purpose. The overall purpose of this chapter is to set forth generally applicable statutory provisions for the resolution of disputes and other matters involving trusts and estates in a single chapter under Title 11 RCW. The provisions are intended to provide nonjudicial methods for the resolution of matters, such as mediation, arbitration, and agreement. The [This] chapter also provides for judicial resolution of disputes if other methods are unsuccessful. [1999 c 42 § 102.]

11.96A.020 General power of courts—Intent—Plenary power of the court. (1) It is the intent of the legislature that the courts shall have full and ample power and authority under this title to administer and settle:

(a) All matters concerning the estates and assets of incapacitated, missing, and deceased persons, including matters involving nonprobate assets and powers of attorney, in accordance with this title; and

(b) All trusts and trust matters.

(2) If this title should in any case or under any circumstance be inapplicable, insufficient, or doubtful with reference to the administration and settlement of the matters listed in subsection (1) of this section, the court nevertheless has full power and authority to proceed with such administration and settlement in any manner and way that to the court seems right and proper, all to the end that the matters be expeditiously administered and settled by the court. [1999 c 42 § 103.]

11.96A.030 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

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

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

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

(c) The determination of any question arising in the administration of an estate or trust, or with respect to any nonprobate asset, or with respect to any other asset or prop-

erty interest passing at death, that may include, without limitation, questions relating to: (i) The construction of wills, trusts, community property agreements, and other writings; (ii) a change of personal representative or trustee; (iii) a change of the situs of a trust; (iv) an accounting from a personal representative or trustee; (v) the determination of fees for a personal representative or trustee; or (vi) the powers and duties of a statutory trust director or directed trustee of a directed trust under chapter 11.98B RCW;

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

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

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

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

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

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

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

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

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

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

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

(h) With respect to any custodianship under a uniform transfers to minors act, the determination of any issues subject to court determination under chapter 11.114 RCW; and

(i) The reformation of a will or trust to correct a mistake under RCW 11.96A.125.

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

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

(5) "Party" or "parties" means any person who has a legal or equitable interest in, or who holds a power or a claim with respect to, the subject of a matter. Each of the terms "party" or "parties" must be construed liberally in its context to fulfill the purposes of the procedural rules contained in this chapter as supplemented by the court rules and to promote justice, without creating new substantive rights that do not otherwise exist under the laws of this state or principles of equity, and may include without limitation the following:

(a) With respect to any property held subject to a revocable trust:

(i) Each trustee of the property subject to the trust; and

(ii) Each trustor who transferred the property;

(b) With respect to any property held subject to an irrevocable trust:

(i) Each trustee of the trust holding the property;

(ii) Each qualified beneficiary, as defined in RCW 11.98.002, of the property subject to the trust and any other beneficiary whose interest is protected under the constitutional principles of due process; and

(iii) Each holder of a power relating to the property;

(c) With respect to any testate property:

(i) Each personal representative appointed to execute the will governing that property;

(ii) Each devisee or legatee of that testate property;

(iii) Each holder of a power relating to the testate property following the testator's death; and

(iv) Each creditor whose claim has been established by allowance or judgment;

(d) With respect to any intestate property:

(i) Each personal representative appointed to administer that property;

(ii) Each heir of the decedent who owned that property;

(iii) Each holder of a power relating to the intestate property following the owner's death; and

(iv) Each creditor whose claim has been established by allowance or judgment;

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

(i) Each custodian of the property;

(ii) Each transferee and beneficiary of the property; and

(iii) Each qualified person, the notice agent, or resident agent, as those terms are defined in chapter 11.42 RCW;

(f) With respect to any custodial property subject to a uniform transfers to minors act:

(i) Each custodian of the custodial property;

(ii) The minor, as defined in RCW 11.114.010, for whose benefit the custodian holds the custodial property; and

(iii) Each other person who holds a power under chapter 11.114 RCW to act on behalf of the minor;

(g) With respect to any community property, each spouse;

(h) With respect to a matter relating to the powers and duties of a trust director or a directed trustee, or both:

(i) Each trust director with an interest in the matter;
 (ii) Each directed trustee;
 (iii) Each beneficiary, holder of a power, or other person whose interest or power is affected by the matter and is protected under the constitutional principles of due process;

(i) Each creditor whose claim has been allowed but has not been paid;

(j) The attorney general to the extent that the attorney general is a necessary and proper party under RCW 11.110.120 and corresponding common law;

(k) Each person who claims a legal right, title, or interest in property being subjected to probate or trust administration, nonprobate assets, other property passing at death, or custodial property, including without limitation the resolution of rights and duties under RCW 11.18.200 and questions relating to legal ownership or abatement; and

(l) When necessary, a party's representative or representatives, which may include without limitation guardians; custodians; guardians ad litem; special representatives; virtual representatives; attorneys in fact; fiduciaries; and notice agents, resident agents, and qualified persons, as those terms are defined in chapter 11.42 RCW.

(6) "Persons interested in the estate, trust, nonprobate asset, other property passing at death, or custodial property" means all persons legally or beneficially interested in the estate, trust, nonprobate asset, other property passing at death, or custodial property; all persons holding powers with respect to the trust, estate, nonprobate asset, other property passing at death, or custodial property; the attorney general in the case of any charitable trust where the attorney general would be a necessary party to judicial proceedings concerning the trust; all fiduciaries of the estate, trust, nonprobate asset, or other property passing at death; and all custodians of custodial property.

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

(8) "Virtual representative" and other similar terms refer to a person who virtually represents another under RCW 11.96A.120 or other applicable law. [2021 c 140 § 4018; 2015 c 115 § 1. Prior: 2011 c 327 § 5; 2009 c 525 § 20; 2008 c 6 § 927; 2006 c 360 § 10; 2002 c 66 § 2; 1999 c 42 § 104.]

Additional notes found at www.leg.wa.gov

11.96A.040 Original jurisdiction in probate and trust matters—Powers of court. (1) The superior court of every county has original subject matter jurisdiction over the probate of wills and the administration of estates of incapacitated, missing, and deceased individuals in all instances, including without limitation:

- (a) When a resident of the state dies;
- (b) When a nonresident of the state dies in the state; or
- (c) When a nonresident of the state dies outside the state.

(2) The superior court of every county has original subject matter jurisdiction over trusts and all matters relating to trusts.

(3) The superior courts may: Probate or refuse to probate wills, appoint personal representatives, administer and settle the affairs and the estates of incapacitated, missing, or deceased individuals including but not limited to decedents' nonprobate assets; administer and settle matters that relate to nonprobate assets and arise under chapter 11.18 or 11.42

RCW; administer and settle all matters relating to trusts; administer and settle matters that relate to powers of attorney; award processes and cause to come before them all persons whom the courts deem it necessary to examine; order and cause to be issued all such writs and any other orders as are proper or necessary; and do all other things proper or incident to the exercise of jurisdiction under this section.

(4) The subject matter jurisdiction of the superior court applies without regard to venue. A proceeding or action by or before a superior court is not defective or invalid because of the selected venue if the court has jurisdiction of the subject matter of the action. [2001 c 203 § 9; 1999 c 42 § 201.]

11.96A.050 Venue in proceedings involving probate or trust matters. (1) Venue for proceedings pertaining to trusts is:

(a) For testamentary trusts established under wills probated in the state of Washington, in the superior court of the county where the probate of the will is being administered or was completed or, in the alternative, the superior court of the county where any qualified beneficiary of the trust as defined in RCW 11.98.002 resides, the county where any trustee resides or has a place of business, or the county where any real property that is an asset of the trust is located; and

(b) For all other trusts, in the superior court of the county where any qualified beneficiary of the trust as defined in RCW 11.98.002 resides, the county where any trustee resides or has a place of business, or the county where any real property that is an asset of the trust is located. If no county has venue for proceedings pertaining to a trust under the preceding sentence, then in any county.

(2) A party to a proceeding pertaining to a trust may request that venue be changed. If the request is made within four months of the giving of the first notice of a proceeding pertaining to the trust, except for good cause shown, venue must be moved to the county with the strongest connection to the trust as determined by the court, considering such factors as the residence of a qualified beneficiary of the trust as defined in RCW 11.98.002, the residence or place of business of a trustee, and the location of any real property that is an asset of the trust.

(3) Venue for proceedings subject to chapter 11.130 RCW must be determined under the provisions of those chapters [that chapter].

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

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

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

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

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

(iii) The county in which the decedent died.

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

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

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

(8) Any request to change venue that is made more than four months after the commencement of the action may be granted in the discretion of the court. [2020 c 312 § 713; 2013 c 272 § 3; 2011 c 327 § 6; 2001 c 203 § 10; 1999 c 42 § 202.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

Application—2013 c 272: See note following RCW 11.98.002.

Additional notes found at www.leg.wa.gov

11.96A.060 Exercise of powers—Orders, writs, process, etc. The court may make, issue, and cause to be filed or served, any and all manner and kinds of orders, judgments, citations, notices, summons, and other writs and processes that might be considered proper or necessary in the exercise of the jurisdiction or powers given or intended to be given by this title. [1999 c 42 § 203.]

11.96A.070 Statutes of limitation. (1)(a) A beneficiary of an express trust may not commence a proceeding against a trustee for breach of trust more than three years after the date a report was delivered in the manner provided in RCW 11.96A.110 to the beneficiary or to a representative of the beneficiary if the report adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding.

(b) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative knows or should have known of the potential claim. A report that includes all of the items described in this subsection [(1)](b) that are relevant for the reporting period is presumed to have provided such sufficient information regarding the existence of potential claims for breach of trust for such period:

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

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

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

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

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

(vi) Disclosure of all transactions during the period that are equivalent to one of the types of transactions described in

RCW 11.98.078 or otherwise could have been affected by a conflict between the trustee's fiduciary and personal interests;

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

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

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

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

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

(iii) The termination of the trust.

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

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

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

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

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

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

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

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

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

(ii) If a legal action is commenced against the special representative after the expiration of the period during which claims may be brought against the special representative as provided in (c)(i) of this subsection, alleging property damage, property loss, or other civil liability caused by or resulting from an alleged act or omission of the special representative arising out of or by reason of the special representative's duties or actions as special representative, the special representative must be indemnified: (A) From the assets held in

the trust or comprising the estate involved in the dispute; and (B) by the persons bringing the legal action, for all expenses, attorneys' fees, judgments, settlements, decrees, or amounts due and owing or paid in satisfaction of or incurred in the defense of the legal action. To the extent possible, indemnification must be made first by the persons bringing the legal action, second from that portion of the trust or estate that is held for the benefit of, or has been distributed or applied to, the persons bringing the legal action, and third from the other assets held in the trust or comprising the estate involved in the dispute.

(4) The tolling provisions of RCW 4.16.190 apply to this chapter except that the running of a statute of limitations under subsection (1) or (2) of this section, or any other applicable statute of limitations for any matter that is the subject of dispute under this chapter, is not tolled as to an individual who had a guardian ad litem, limited or general guardian of the estate, or a special representative to represent the person during the probate or dispute resolution proceeding. [2013 c 272 § 4; 2011 c 327 § 7; 1999 c 42 § 204.]

*Reviser's note: Chapter 30.22 RCW was recodified as chapter 30A.22 RCW pursuant to 2014 c 37 § 4, effective January 5, 2015.

Application—2013 c 272: See note following RCW 11.98.002.

Additional notes found at www.leg.wa.gov

11.96A.080 Persons entitled to judicial proceedings for declaration of rights or legal relations. (1) Subject to the provisions of RCW 11.96A.260 through 11.96A.320, any party may have a judicial proceeding for the declaration of rights or legal relations with respect to any matter, as defined by RCW 11.96A.030; the resolution of any other case or controversy that arises under the Revised Code of Washington and references judicial proceedings under this title; or the determination of the persons entitled to notice under RCW 11.96A.110 or 11.96A.120.

(2) The provisions of this chapter apply to disputes arising in connection with estates of individuals subject to conservatorship under RCW 11.130.360 unless otherwise covered by chapter 11.130 RCW. The provisions of this chapter shall not supersede, but shall supplement, any otherwise applicable provisions and procedures contained in this title, including without limitation those contained in chapter 11.20, 11.24, 11.28, 11.40, 11.42, or 11.56 RCW. The provisions of this chapter shall not apply to actions for wrongful death under chapter 4.20 RCW. [2020 c 312 § 714; 1999 c 42 § 301.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.96A.090 Judicial proceedings. (1) A judicial proceeding under this title is a special proceeding under the civil rules of court. The provisions of this title governing such actions control over any inconsistent provision of the civil rules.

(2) A judicial proceeding under this title must be commenced as a new action.

(3) Once commenced, the action may be consolidated with an existing proceeding upon the motion of a party for good cause shown, or by the court on its own motion.

(4) The procedural rules of court apply to judicial proceedings under this title only to the extent that they are consistent with this title, unless otherwise provided by statute or

ordered by the court under RCW 11.96A.020 or 11.96A.050, or other applicable rules of court. [2013 c 246 § 2; 1999 c 42 § 302.]

11.96A.100 Procedural rules. Unless rules of court require or this title provides otherwise, or unless a court orders otherwise:

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

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

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

SUPERIOR COURT OF WASHINGTON
FOR (. . .) COUNTY

IN RE)
) No. . . .
) Summons
)

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

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

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

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

(Signed)
Print or Type Name

Dated:

Telephone Number:

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

(5) The answer to the petition and any counterclaims or cross-claims must be served on the parties or the parties' vir-

tual representatives and filed with the court at least five days before the date of the hearing, and all replies to the counterclaims and cross-claims must be served on the parties or the parties' virtual representatives and filed with the court at least two days before the date of the hearing;

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

(7) Testimony of witnesses may be by affidavit;

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

(9) Any party may move the court for an order relating to a procedural matter, including discovery, and for summary judgment, in the original petition, answer, response, or reply, or in a separate motion, or at any other time; and

(10) If the initial hearing is not a hearing on the merits or does not result in a resolution of all issues of fact and all issues of law, the court may enter any order it deems appropriate, which order may (a) resolve such issues as it deems proper, (b) determine the scope of discovery, and (c) set a schedule for further proceedings for the prompt resolution of the matter. [2001 c 14 § 1; 1999 c 42 § 303.]

11.96A.110 Notice in judicial proceedings under this title requiring notice. (1) Subject to RCW 11.96A.160, in all judicial proceedings under this title that require notice, the notice must be personally served on or mailed to all parties or the parties' legal or virtual representatives and to any other persons to whom notice may be required under applicable law at least twenty days before the hearing on the petition unless a different period is provided by statute or ordered by the court. The date of service shall be determined under the rules of civil procedure. Notwithstanding the foregoing, notice that is provided in an electronic transmission and electronically transmitted complies with this section if the party receiving notice has previously consented in a record delivered to the party giving notice to receiving notice by electronic transmission. Consent to receive notice by electronic transmission may be revoked at any time by a record delivered to the party giving notice. Consent is deemed revoked if the party giving notice is unable to electronically transmit two consecutive notices given in accordance with the consent.

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

(3) For the purposes of this title, the terms "electronic transmission" and "electronically transmitted" have the same meaning as set forth in RCW 23B.01.400. [2021 c 140 § 4019; 2011 c 327 § 8; 1999 c 42 § 304.]

Additional notes found at www.leg.wa.gov

11.96A.115 Discovery. In all matters governed by this title, discovery shall be permitted only in the following matters:

(1) A judicial proceeding that places one or more specific issues in controversy that has been commenced under RCW 11.96A.100, in which case discovery shall be con-

ducted in accordance with the superior court civil rules and applicable local rules; or

(2) A matter in which the court orders that discovery be permitted on a showing of good cause, in which case discovery shall be conducted in accordance with the superior court civil rules and applicable local rules unless otherwise limited by the order of the court. [2006 c 360 § 11.]

Additional notes found at www.leg.wa.gov

11.96A.120 Application of doctrine of virtual representation. (1) Notice to a person who may represent and bind another person under this section has the same effect as if notice were given directly to the other person.

(2) The consent of a person who may represent and bind another person under this section is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.

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

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

(b) Representation of an incapacitated trustor with respect to his or her powers over a trust is subject to the provisions of RCW 11.103.030, and chapters 11.96A and 11.130 RCW.

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

(a) A guardian may represent and bind the estate that the guardian controls, subject to chapters 11.96A and 11.130 RCW;

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

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

(d) A trustee may represent and bind the beneficiaries of the trust;

(e) A personal representative of a decedent's estate may represent and bind persons interested in the estate; and

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

(5) Unless otherwise represented, a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person represented with regard to the particular question or dispute.

(6) Where an interest has been given to persons who comprise a certain class upon the happening of a certain event, the living persons who would constitute the class as of the date the representation is to be determined may virtually represent all other members of the class as of that date, but only to the extent that there is no conflict of interest between

the representative and the person(s) represented with regard to the particular question or dispute.

(7) Where an interest has been given to a living person, and the same interest, or a share in it, is to pass to the surviving spouse or surviving domestic partner or to persons who are, or might be, the heirs, issue, or other kindred of that living person or the distributees of the estate of that living person upon the happening of a future event, that living person may virtually represent the surviving spouse or surviving domestic partner, heirs, issue, or other kindred of the person, and the distributees of the estate of the person, but only to the extent that there is no conflict of interest between the representative and the person(s) represented with regard to the particular question or dispute.

(8) Except as otherwise provided in subsection (7) of this section, where an interest has been given to a person or a class of persons, or both, upon the happening of any future event, and the same interest or a share of the interest is to pass to another person or class of persons, or both, upon the happening of an additional future event, the living person or persons who would take the interest upon the happening of the first event may virtually represent the persons and classes of persons who might take on the happening of the additional future event, but only to the extent that there is no conflict of interest between the representative and the person(s) represented with regard to the particular question or dispute.

(9) To the extent there is no conflict of interest between the holder of the power of appointment and the persons represented with respect to the particular question or dispute, the holder of a lifetime or testamentary power of appointment may virtually represent and bind persons who are permissible appointees or takers in default (but only to the extent that they are permissible appointees in the case of a limited power of appointment) under the power, and who are not permissible distributees as defined in RCW 11.98.002.

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

(a) The charitable organization is not a qualified beneficiary as defined in RCW 11.98.002 specified in the trust instrument or acting as trustee; or

(b) The charitable organization is a qualified beneficiary, but is not a permissible distributee, as those terms are defined in RCW 11.98.002, and its beneficial interest in the trust is subject to change by the trustor or by a person designated by the trustor.

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

(12) This section is intended to adopt the common law concept of virtual representation. This section supplements the common law relating to the doctrine of virtual representation and may not be construed as limiting the application of that common law doctrine. [2020 c 312 § 715; 2013 c 272 § 5; 2011 c 327 § 9; 2008 c 6 § 928; 2001 c 203 § 11; 1999 c 42 § 305.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

Application—2013 c 272: See note following RCW 11.98.002.

Additional notes found at www.leg.wa.gov

11.96A.125 Mistake of fact or law in terms of will or trust—Judicial and nonjudicial reform. The terms of a

(2022 Ed.)

will or trust, even if unambiguous, may be reformed by judicial proceedings under this chapter to conform the terms to the intention of the testator or trustor if it is proved by clear, cogent, and convincing evidence that both the intent of the testator or trustor and the terms of the will or trust were affected by a mistake of fact or law, whether in expression or inducement. This does not limit the ability to reform the will or trust using the binding nonjudicial procedures of RCW 11.96A.220. [2013 c 272 § 6; 2011 c 327 § 11.]

Application—2013 c 272: See note following RCW 11.98.002.

Additional notes found at www.leg.wa.gov

11.96A.127 Charitable dispositions by will or trust.

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

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

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

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

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

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

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

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

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

(3) For purposes of this title, a charitable purpose is one for the relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes, or other purposes the achievement of which is beneficial to a community. [2011 c 327 § 10.]

Additional notes found at www.leg.wa.gov

11.96A.130 Other notice requirements not impaired.

Nothing in this chapter eliminates the requirement to give notice to a person who has requested special notice under RCW 11.28.240 or notice under RCW 11.130.080. [2020 c 312 § 716; 1999 c 42 § 306.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.96A.140 Waiver of notice. Notwithstanding any other provision of this title, notice of a hearing does not need to be given to a legally competent person who has waived in writing notice of the hearing in person or by attorney, or who has appeared at the hearing without objecting to the lack of proper notice or personal jurisdiction. The waiver of notice may apply either to a specific hearing or to any and all hear-

[Title 11 RCW—page 93]

ings and proceedings to be held, in which event the waiver of notice is of continuing effect unless subsequently revoked by the filing of a written notice of revocation of the waiver and the mailing of a copy of the notice of revocation of the waiver to the other parties. Unless notice of a hearing is required to be given by publication, if all persons entitled to notice of the hearing waive the notice or appear at the hearing without objecting to the lack of proper notice or personal jurisdiction, the court may hear the matter immediately. A guardian of the estate or a guardian ad litem may make the waivers on behalf of the incapacitated person, and a trustee may make the waivers on behalf of any competent or incapacitated beneficiary of the trust. A consul or other representative of a foreign government, whose appearance has been entered as provided by law on behalf of any person residing in a foreign country, may make the waiver of notice on behalf of the person. [1999 c 42 § 307.]

11.96A.150 Costs—Attorneys' fees. (1) Either the superior court or any court on an appeal may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party: (a) From any party to the proceedings; (b) from the assets of the estate or trust involved in the proceedings; or (c) from any nonprobate asset that is the subject of the proceedings. The court may order the costs, including reasonable attorneys' fees, to be paid in such amount and in such manner as the court determines to be equitable. In exercising its discretion under this section, the court may consider any and all factors that it deems to be relevant and appropriate, which factors may but need not include whether the litigation benefits the estate or trust involved.

(2) This section applies to all proceedings governed by this title, including but not limited to proceedings involving trusts, decedent's estates and properties, and guardianship matters. This section shall not be construed as being limited by any other specific statutory provision providing for the payment of costs, including RCW 11.68.070 and 11.24.050, unless such statute specifically provides otherwise. This section shall apply to matters involving guardians and guardians ad litem. [2020 c 312 § 717; 2007 c 475 § 5; 1999 c 42 § 308.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.96A.160 Appointment of guardian ad litem. (1) The court, upon its own motion or upon request of one or more of the parties, at any stage of a judicial proceeding or at any time in a nonjudicial resolution procedure, may appoint a guardian ad litem to represent the interests of a minor, incapacitated, unborn, or unascertained person, person whose identity or address is unknown, or a designated class of persons who are not ascertained or are not in being. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests.

(2) The court-appointed guardian ad litem supersedes the special representative if so provided in the court order.

(3) The court may appoint the guardian ad litem at an ex parte hearing, or the court may order a hearing as provided in RCW 11.96A.090 with notice as provided in this section and RCW 11.96A.110.

(4) The guardian ad litem is entitled to reasonable compensation for services. Such compensation is to be paid from

the principal of the estate or trust whose beneficiaries are represented. [1999 c 42 § 309.]

11.96A.170 Trial by jury. If a party is entitled to a trial by jury and a jury is demanded, and the issues are not sufficiently made up by the written pleadings on file, the court, on due notice, shall settle and frame the issues to be tried. If a jury is not demanded, the court shall try the issues, and sign and file its findings and decision in writing, as provided for in civil actions. [1999 c 42 § 310.]

11.96A.180 Execution on judgments. Judgment on the issues, as well as for costs, may be entered and enforced by execution or otherwise by the court as in civil actions. [1999 c 42 § 311.]

11.96A.190 Execution upon trust income or vested remainder—Permitted, when. Nothing in RCW 6.32.250 shall forbid execution upon the income of any trust created by a person other than the judgment debtor for debt arising through the furnishing of the necessities of life to the beneficiary of such trust; or as to such income forbid the enforcement of any order of the superior court requiring the payment of support for the children under the age of eighteen of any beneficiary; or forbid the enforcement of any order of the superior court subjecting the vested remainder of any such trust upon its expiration to execution for the debts of the remainderman. [1999 c 42 § 312.]

11.96A.200 Appellate review. An interested party may seek appellate review of a final order, judgment, or decree of the court respecting a judicial proceeding under this title. The review must be done in the manner and way provided by law for appeals in civil actions. [1999 c 42 § 313.]

11.96A.210 Purpose. The purpose of RCW 11.96A.220 through 11.96A.250 is to provide a binding non-judicial procedure to resolve matters through written agreements among the parties interested in the estate or trust. The procedure is supplemental to, and may not derogate from, any other proceeding or provision authorized by statute or the common law. [1999 c 42 § 401.]

11.96A.220 Binding agreement. RCW 11.96A.210 through 11.96A.250 shall be applicable to the resolution of any matter, as defined by RCW 11.96A.030, other than matters subject to chapter 11.130 RCW, or a trust for a minor or other incapacitated person created at its inception by the judgment or decree of a court unless the judgment or decree provides that RCW 11.96A.210 through 11.96A.250 shall be applicable. If all parties agree to a resolution of any such matter, then the agreement shall be evidenced by a written agreement signed by all parties. Subject to the provisions of RCW 11.96A.240, the written agreement shall be binding and conclusive on all persons interested in the estate, trust, nonprobate asset, other property passing at death, or custodial property. The agreement shall identify the subject matter of the dispute and the parties. If the agreement or a memorandum of the agreement is to be filed with the court under RCW 11.96A.230, the agreement may, but need not, include provisions specifically addressing jurisdiction, governing law, the

waiver of notice of the filing as provided in RCW 11.96A.230, and the discharge of any special representative who has acted with respect to the agreement.

If a party who virtually represents another under RCW 11.96A.120 signs the agreement, then the party's signature constitutes the signature of all persons whom the party virtually represents, and all the virtually represented persons shall be bound by the agreement. [2021 c 140 § 4021; (2021 c 140 § 4020 expired January 1, 2022); 2020 c 312 § 718; 1999 c 42 § 402.]

Effective date—2021 c 140 § 4021: "Section 4021 of this act takes effect January 1, 2022." [2021 c 140 § 4029.]

Expiration date—2021 c 140 § 4020: "Section 4020 of this act expires January 1, 2022." [2021 c 140 § 4028.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.96A.230 Entry of agreement with court—Effect.

(1) Any party, or a party's legal representative, may file the written agreement or a memorandum summarizing the written agreement with the court having jurisdiction over the estate or trust. The agreement or a memorandum of its terms may be filed within thirty days of the agreement's execution by all parties only with the written consent of the special representative. The agreement or a memorandum of its terms may be filed after a special representative has commenced a proceeding under RCW 11.96A.240 only after the court has determined that the special representative has adequately represented and protected the parties represented. Failure to complete any action authorized or required under this subsection does not cause the written agreement to be ineffective and the agreement is nonetheless binding and conclusive on all persons interested in the estate or trust.

(2) On filing the agreement or memorandum, the agreement will be deemed approved by the court and is equivalent to a final court order binding on all persons interested in the estate, trust, nonprobate asset, other property passing at death, or custodial property. [2021 c 140 § 4022; 2001 c 14 § 2; 1999 c 42 § 403.]

11.96A.240 Judicial approval of agreement. Within thirty days of execution of the agreement by all parties, the special representative may note a hearing for presentation of the written agreement to a court of competent jurisdiction. The special representative shall provide notice of the time and date of the hearing to each party to the agreement whose address is known, unless such notice has been waived. Proof of mailing or delivery of the notice must be filed with the court. At such hearing the court shall review the agreement on behalf of the parties represented by the special representative. The court shall determine whether or not the interests of the represented parties have been adequately represented and protected, and an order declaring the court's determination shall be entered. If the court determines that such interests have not been adequately represented and protected, the agreement shall be declared of no effect. [1999 c 42 § 404.]

11.96A.250 Special representative. (1)(a) Any party or the parent of a minor or unborn party may petition the court for the appointment of a special representative to represent a party: (i) Who is a minor; (ii) who is incapacitated without an appointed guardian of his or her estate; (iii) who is

yet unborn or unascertained; or (iv) whose identity or address is unknown. The petition may be heard by the court without notice.

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

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

CAPTION OF CASE	PETITION FOR APPOINTMENT OF SPECIAL REPRESENTATIVE UNDER RCW 11.96A.250
--------------------	-------------------------------------------------------------------------------

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

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

2. Matter. A question concerning . . . has arisen as to (describe issue, for example: Related to interpretation, construction, administration, distribution). The issue is a matter as defined in RCW 11.96A.030 and is appropriate for determination under RCW 11.96A.210 through 11.96A.250.

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

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

5. Resolution. Petitioner desires to achieve a resolution of the questions that have arisen in this matter. Petitioner

believes that proceeding in accordance with the procedures permitted under RCW 11.96A.210 through 11.96A.250 would be in the best interests of the parties, including the party requiring a special representative.

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

. . . . an individual with special skill or training in the administration of estates or trusts

be appointed special representative for . . . (describe party or parties being represented), who is/are (minors), (incapacitated and without an appointed guardian), (unborn or unascertained) (whose identity or address is unknown), as provided under RCW 11.96A.250.

DATED this . . . day of,

.
(Petitioner)

VERIFICATION

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

DATED, (year), at, Washington.

.
(Petitioner or other person
having knowledge)

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

THIS MATTER having come on for hearing before this Court on Petition for Appointment of Special Representative filed herein, and it appearing that it would be in the best interests of the parties related to the matter described in the Petition to appoint a special representative to address the issues that have arisen in the matter and the Court finding that the facts stated in the Petition are true, now, therefore,

IT IS ORDERED that . . . is appointed under RCW 11.96A.250 as special representative (describe party or parties being represented) who is/are (minors), (incapacitated and without an appointed guardian), (unborn or unascertained) (whose identity or address is unknown), to represent their respective interests in the matter as provided in RCW 11.96A.250. The special representative shall be discharged of responsibility with respect to the matter as provided in RCW 11.96A.250. The special representative is discharged of responsibility with respect to the matter at such time as a written agreement is executed resolving the present issues, all as provided in that statute, or if an agreement is not reached within six months from entry of this Order, the special representative appointed under this Order is discharged of responsibility, subject to subsequent reappointment under RCW 11.96A.250.

DONE IN OPEN COURT this . . . day of,

.
JUDGE/COURT
COMMISSIONER

(2) Upon appointment by the court, the special representative must file a certification made under penalty of perjury in accordance with chapter 5.50 RCW that he or she (a) is not interested in the matter; (b) is not related to any person interested in the matter; (c) is willing to serve; and (d) will act independently, prudently, and in the best interests of the represented parties.

(3) The special representative must be a lawyer licensed to practice before the courts of this state or an individual with special skill or training in the administration of estates or trusts. The special representative may not have an interest in the matter, and may not be related to a person interested in the matter. The special representative is entitled to reasonable compensation for services that must be paid from the principal of an asset involved in the matter.

(4) The special representative is discharged from any responsibility and will have no further duties with respect to the matter or with respect to any party, on the earlier of: (a) The expiration of six months from the date the special representative was appointed unless the order appointing the special representative provides otherwise, or (b) the execution of the written agreement by all parties or their virtual representatives. Any action against a special representative must be brought within the time limits provided by RCW 11.96A.070(3)(c)(i). [2019 c 232 § 12; 2013 c 272 § 21; 2001 c 14 § 3; 1999 c 42 § 405.]

Application—2013 c 272: See note following RCW 11.98.002.
Additional notes found at www.leg.wa.gov

11.96A.260 Findings—Intent. The legislature finds that it is in the interest of the citizens of the state of Washington to encourage the prompt and early resolution of disputes in trust, estate, and nonprobate matters. The legislature endorses the use of dispute resolution procedures by means other than litigation. The legislature also finds that the former chapter providing for the nonjudicial resolution of trust, estate, and nonprobate disputes, *chapter 11.96 RCW, has resulted in the successful resolution of thousands of disputes since 1984. The nonjudicial procedure has resulted in substantial savings of public funds by removing those disputes from the court system. Enhancement of the statutory framework supporting the nonjudicial process in *chapter 11.96 RCW would be beneficial and would foster even greater use of nonjudicial dispute methods to resolve trust, estate, and nonprobate disputes. The legislature further finds that it would be beneficial to allow parties to disputes involving trusts, estates, and nonprobate assets to have access to a process for required mediation followed by arbitration using mediators and arbitrators experienced in trust, estate, and nonprobate matters. Finally, the legislature also believes it would be beneficial to parties with disputes in trusts, estates, and nonprobate matters to clarify and streamline the statutory framework governing the procedures governing these cases in the court system.

Therefore, the legislature adopts RCW 11.96A.270 through 11.96A.320, that enhance *chapter 11.96 RCW and allow required mediation and arbitration in disputes involving trusts, estates, and nonprobate matters that are brought to the courts. RCW 11.96A.270 through 11.96A.320 also set forth specific civil procedures for handling trust and estate disputes in the court system. It is intended that the adoption of

RCW 11.96A.270 through 11.96A.320 will encourage and direct all parties in trust, estate, and nonprobate matter disputes, and the court system, to provide for expeditious, complete, and final decisions to be made in disputed trust, estate, and nonprobate matters. [1999 c 42 § 501.]

*Reviser's note: Chapter 11.96 RCW was repealed by 1999 c 42 § 637, effective January 1, 2000.

11.96A.270 Intent—Parties can agree otherwise. The intent of RCW 11.96A.260 through 11.96A.320 is to provide for the efficient settlement of disputes in trust, estate, and nonprobate matters through mediation and arbitration by providing any party the right to proceed first with mediation and then arbitration before formal judicial procedures may be utilized. Accordingly, any of the requirements or rights under RCW 11.96A.260 through 11.96A.320 are subject to any contrary agreement between the parties or the parties' virtual representatives. [1999 c 42 § 502.]

11.96A.280 Scope. A party may cause the matter to be presented for mediation and then arbitration, as provided under RCW 11.96A.260 through 11.96A.320. If a party causes the matter to be presented for resolution under RCW 11.96A.260 through 11.96A.320, then judicial resolution of the matter, as provided in RCW 11.96A.060 or by any other civil action, is available only by complying with the mediation and arbitration provisions of RCW 11.96A.260 through 11.96A.320. [1999 c 42 § 503.]

11.96A.290 Superior court—Venue. As used in RCW 11.96A.260 through 11.96A.320, "superior court" means: (1) Before the commencement of any legal proceedings, the appropriate superior court with respect to the matter as provided in RCW 11.96A.040; and (2) if legal proceedings have been commenced with respect to the matter, the superior court in which the proceedings are pending. [1999 c 42 § 504.]

11.96A.300 Mediation procedure. (1) Notice of mediation. A party may cause the matter to be subject to mediation by service of written notice of mediation on all parties or the parties' virtual representatives as follows:

(a) If no hearing has been set. If no hearing on the matter has been set, by serving notice in substantially the following form before any petition setting a hearing on the matter is filed with the court:

NOTICE OF MEDIATION UNDER RCW 11.96A.300

To: (Parties)

Notice is hereby given that the following matter shall be resolved by mediation under RCW 11.96A.300:

(State nature of matter)

This matter must be resolved using the mediation procedures of RCW 11.96A.300 unless a petition objecting to mediation is filed with the superior court within twenty days of service of this notice. If a petition objecting to mediation is not filed within the twenty-day period, RCW 11.96A.300(4) requires you to furnish to all other parties or their virtual representa-

tives a list of acceptable mediators within thirty days of your receipt of this notice.

(Optional: Our list of acceptable mediators is as follows:)

DATED:

.....
(Party or party's legal representative)

(b) If a hearing has been set. If a hearing on the matter has been set, by filing and serving notice in substantially the following form at least three days prior to the hearing that has been set on the matter:

NOTICE OF MEDIATION UNDER RCW 11.96A.300

To: (Parties)

Notice is hereby given that the following matter shall be resolved by mediation under RCW 11.96A.300:

(State nature of matter)

This matter must be resolved using the mediation procedures of RCW 11.96A.300 unless the court determines at the hearing set for . . . o'clock on, (identify place of already set hearing), that mediation shall not apply pursuant to RCW 11.96A.300(3). If the court determines that mediation shall not apply, the court may decide the matter at the hearing, require arbitration, or direct other judicial proceedings.

(Optional: Our list of acceptable mediators is as follows:)

DATED:

.....
(Party or party's legal representative)

(2) Procedure when notice of mediation served before a hearing is set. The following provisions apply when notice of mediation is served before a hearing on the matter is set:

(a) The written notice required in subsection (1)(a) of this section may be served at any time without leave of the court.

(b) Any party may object to a notice of mediation under subsection (1)(a) of this section by filing a petition with the superior court and serving the petition on all parties or the parties' virtual representatives. The party objecting to notice of mediation under subsection (1)(a) of this section must file and serve the petition objecting to mediation no later than twenty days after receipt of the written notice of mediation. The petition may include a request for determination of matters subject to judicial resolution under RCW 11.96A.080 through 11.96A.200, and may also request that the matters in issue be decided at the hearing.

(c) The hearing on the petition objecting to mediation must be heard no later than twenty days after the filing of that petition.

(d) The party objecting to mediation must give notice of the hearing to all other parties at least ten days before the hearing and must include a copy of the petition.

At the hearing, the court shall order that mediation proceed except for good cause shown. Such order shall not be subject to appeal or revision. If the court determines that the matter should not be subject to mediation, the court shall dispose of the matter by: (i) Deciding the matter at that hearing, but only

if the petition objecting to mediation contains a request for that relief, (ii) requiring arbitration, or (iii) directing other judicial proceedings.

(3) Procedure when notice of mediation served after hearing set. If the written notice of mediation required in subsection (1)(b) of this section is timely filed and served by a party and another party objects to mediation, by petition or orally at the hearing, the court shall order that mediation proceed except for good cause shown. Such order shall not be subject to appeal or revision. If the court determines that the matter should not be subject to mediation, the court shall dispose of the matter by: (a) Deciding the matter at that hearing, (b) requiring arbitration, or (c) directing other judicial proceedings.

(4) Selection of mediator; mediator qualifications.

(a) If a petition objecting to mediation is not filed as provided in subsection (3) of this section, or if a court determines that mediation shall apply, each party shall, within thirty days of receipt of the initial notice or within twenty days after the court determination, whichever is later, furnish all other parties or the parties' virtual representatives a list of qualified and acceptable mediators. If the parties cannot agree on a mediator within ten days after the list is required to be furnished, a party may petition the court to appoint a mediator. All parties may submit a list of qualified and acceptable mediators to the court no later than the date on which the hearing on the petition is to be held. At the hearing the court shall select a qualified mediator from lists of acceptable mediators provided by the parties.

(b) A qualified mediator must be: (i) An attorney licensed to practice before the courts of this state having at least five years of experience in estate and trust matters, (ii) an individual, who may be an attorney, with special skill or training in the administration of trusts and estates, or (iii) an individual, who may be an attorney, with special skill or training as a mediator. The mediator may not have an interest in an affected estate, trust, or nonprobate asset, and may not be related to a party.

(5) Date for mediation. Upon designation of a mediator by the parties or court appointment of a mediator, the mediator and the parties or the parties' virtual representatives shall establish a date for the mediation. If a date cannot be agreed upon within ten days of the designation or appointment of the mediator, a party may petition the court to set a date for the mediation session.

(6) Duration of mediation. The mediation must last at least three hours unless the matter is earlier resolved.

(7) Mediation agreement. A resolution of the matter that is the subject of the mediation must be evidenced by a nonjudicial dispute resolution agreement under RCW 11.96A.220.

(8) Costs of mediation. Costs of the mediation, including reasonable compensation for the mediator's services, shall be borne equally by the parties. The details of those costs and fees, including the compensation of the mediator, must be set forth in a mediation agreement between the mediator and all parties to the matter. Each party shall bear its own costs and expenses, including legal fees and witness expenses, in connection with the mediation proceeding: (a) Except as may occur otherwise as provided in RCW 11.96A.320, or (b) unless the matter is not resolved by mediation and the arbitra-

tor or court finally resolving the matter directs otherwise. [2001 c 14 § 4; 1999 c 42 § 505.]

11.96A.310 Arbitration procedure. (1) When arbitration available. Arbitration under RCW 11.96A.260 through 11.96A.320 is available only if:

(a) A party has first petitioned for mediation under RCW 11.96A.300 and such mediation has been concluded;

(b) The court has determined that mediation under RCW 11.96A.300 is not required and has not ordered that the matter be disposed of in some other manner;

(c) All of the parties or the parties' virtual representatives have agreed not to use the mediation procedures of RCW 11.96A.300; or

(d) The court has ordered that the matter must be submitted to arbitration.

(2) Commencement of arbitration. Arbitration must be commenced as follows:

(a) If the matter is not settled through mediation under RCW 11.96A.300, or the court orders that mediation is not required, a party may commence arbitration by serving written notice of arbitration on all other parties or the parties' virtual representatives. The notice must be served no later than twenty days after the later of the conclusion of the mediation procedure, if any, or twenty days after entry of the order providing that mediation is not required. If arbitration is ordered by the court under RCW 11.96A.300(3), arbitration must proceed in accordance with the order.

(b) If the parties or the parties' virtual representatives agree that mediation does not apply and have not agreed to another procedure for resolving the matter, a party may commence arbitration without leave of the court by serving written notice of arbitration on all other parties or the parties' virtual representatives at any time before or at the initial judicial hearing on the matter. After the initial judicial hearing on the matter, the written notice required in subsection (1) of this section may only be served with leave of the court.

Any notice required by this section must be in substantially the following form:

NOTICE OF ARBITRATION UNDER RCW 11.96A.310

To: (Parties)

Notice is hereby given that the following matter must be resolved by arbitration under RCW 11.96A.310:

(State nature of matter)

The matter must be resolved using the arbitration procedures of RCW 11.96A.310 unless a petition objecting to arbitration is filed with the superior court within twenty days of receipt of this notice. If a petition objecting to arbitration is not filed within the twenty-day period, RCW 11.96A.310 requires you to furnish to all other parties or the parties' virtual representatives a list of acceptable arbitrators within thirty days of your receipt of this notice.

(Optional: Our list of acceptable arbitrators is as follows:)

DATED:

.....
(Party or party's legal representative)

(3) Objection to arbitration. A party may object to arbitration by filing a petition with the superior court and serving the petition on all parties or the parties' virtual representatives. The objection to arbitration may be filed at any time unless a written notice of arbitration has been served, in which case the objection to arbitration must be filed and served no later than twenty days after receipt of the written notice of arbitration. The hearing on the objection to arbitration must be heard no later than twenty days after the filing of that petition. The party objecting to arbitration must give notice of the hearing to all parties at least ten days before the hearing and shall include a copy of the petition. At the hearing, the court shall order that arbitration proceed except for good cause shown. Such order shall not be subject to appeal or revision. If the court determines that the matter should not be subject to arbitration, the court shall dispose of the matter by: (a) Deciding the matter at that hearing, but only if the petition objecting to arbitration contains a request for such relief; or (b) directing other judicial proceedings.

(4) Selection of arbitrator; qualifications of arbitrator.

(a) If a petition objecting to arbitration is not filed as provided in subsection (3) of this section, or if a court determines that arbitration must apply, each party shall, within thirty days of receipt of the initial notice or within twenty days after the court determination, whichever is later, furnish all other parties or the parties' virtual representatives a list of acceptable arbitrators. If the parties cannot agree on an arbitrator within ten days after the list is required to be furnished, a party may petition the court to appoint an arbitrator. All parties may submit a list of qualified and acceptable arbitrators to the court no later than the date on which the hearing on the petition is to be held. At the hearing the court shall select a qualified arbitrator from lists of acceptable arbitrators provided by the parties.

(b) A qualified arbitrator must be an attorney licensed to practice before the courts of this state having at least five years of experience in trust or estate matters or five years of experience in litigation or other formal dispute resolution involving trusts or estates, or an individual, who may be an attorney, with special skill or training with respect to the matter. The arbitrator may be the same person selected and used as a mediator under the mediation procedures of RCW 11.96A.300.

(5) Arbitration rules. Arbitration must be under *chapter 7.06 RCW, mandatory arbitration of civil actions, as follows:

(a) Chapter 7.06 RCW, the superior court mandatory arbitration rules adopted by the supreme court, and any local rules for mandatory arbitration adopted by the superior court apply to this title. If the superior court has not adopted chapter 7.06 RCW, then the local rules for mandatory arbitration applicable in King county apply, except all the duties of the director of arbitration must be performed by the presiding judge of the superior court.

(b) If a party has already filed a petition with the court with respect to the matter that will be the subject of the arbitration proceedings, then all other parties to the arbitration proceedings who have not yet filed a reply thereto must file a reply with the arbitrator within ten days of the date on which the arbitrator is selected or appointed.

(c) The arbitration provisions of this subsection apply to all matters in dispute. The dollar limits and restrictions to

monetary damages of RCW 7.06.020 do not apply to arbitrations under this subsection. To the extent any provision in this title is inconsistent with chapter 7.06 RCW or the rules referenced in (a) of this subsection, the provisions of this title control.

(d) The compensation of the arbitrator must be set by written agreement between the parties and the arbitrator. The arbitrator must be compensated at the arbitrator's stated rate of compensation for acting as an arbitrator of disputes in trusts, estates, and nonprobate matters unless the parties or the parties' virtual representatives agree otherwise.

(e) Unless directed otherwise by the arbitrator in accord with subsection (6) of this section or RCW 11.96A.320, or unless the matter is not resolved by arbitration and the court finally resolving the matter directs otherwise:

(i) Costs of the arbitration, including compensation for the arbitrator's services, must be borne equally by the parties participating in the arbitration, with the details of those costs and fees to be set forth in an arbitration agreement between the arbitrator and all parties to the matter; and

(ii) A party shall bear its own costs and expenses, including legal fees and witness expenses, in connection with the arbitration proceeding.

(f) The arbitrator and the parties shall execute a written agreement setting forth the terms of the arbitration and the process to be followed. This agreement must also contain the fee agreement provided in (d) of this subsection. A dispute as to this agreement must be resolved by the director of arbitration.

(g) The rules of evidence and discovery applicable to civil causes of action before the superior court as defined in RCW 11.96A.290 apply, unless the parties have agreed otherwise or the arbitrator rules otherwise.

(6) Costs of arbitration. The arbitrator may order costs, including reasonable attorneys' fees and expert witness fees, to be paid by any party to the proceedings as justice may require.

(7) Decision of arbitrator. The arbitrator shall issue a final decision in writing within thirty days of the conclusion of the final arbitration hearing. Promptly after the issuance of the decision, the arbitrator shall serve each of the parties to the proceedings with a copy of the written arbitration decision. Proof of service shall be filed with the court. Service shall be made in conformity with CR 5(b) of the rules for superior court.

(8) Arbitration decision may be filed with the court. The arbitrator or any party to the arbitration may file the arbitrator's decision with the clerk of the superior court at any time after its issuance. Notice of such filing shall be promptly given to each party to the arbitration proceedings.

(9) Appeal. (a) The final decision of the arbitrator may be appealed by filing a notice of appeal with the superior court requesting a trial de novo on all issues of law and fact. The notice of appeal must be filed within thirty days after the date on which the decision was served on the party filing the notice of appeal. A trial de novo shall then be held, including a right to jury, if demanded.

(b) If an appeal is not filed within the time provided in (a) of this subsection, the arbitration decision is conclusive and binding on all parties. If the arbitrator's decision has been filed with the clerk of the superior court, a judgment shall be

entered and may be presented to the court by any party on ten days' prior notice. The judgment when entered shall have the same force and effect as judgments in civil actions.

(10) Costs on appeal of arbitration decision. The prevailing party in any such de novo superior court decision after an arbitration result must be awarded costs, including expert witness fees and attorneys' fees, in connection with the judicial resolution of the matter. Such costs shall be charged against the nonprevailing parties in such amount and in such manner as the court determines to be equitable. The provisions of this subsection take precedence over the provisions of RCW 11.96A.150 or any other similar provision. [2001 c 14 § 5; 1999 c 42 § 506.]

*Reviser's note: Chapter 7.06 RCW was renamed "arbitration of civil actions" June 2018.

11.96A.320 Petition for order compelling compliance. If a party does not comply with any procedure of RCW 11.96A.260 through 11.96A.310, the other party or parties may petition the superior court for an order compelling compliance. A party obtaining an order compelling compliance is entitled to reimbursement of costs and attorneys' fees incurred in connection with: The petition and any other actions taken after the issuance of the order to compel compliance with the order, unless the court at the hearing on the petition determines otherwise for good cause shown. Reimbursement must be from the party or parties whose failure to comply was the basis for the petition. [1999 c 42 § 507.]

11.96A.900 Short title. This chapter may be known and cited as the trust and estate dispute resolution act or "TEDRA." [1999 c 42 § 101.]

11.96A.902 Effective date—1999 c 42. This act takes effect January 1, 2000. [1999 c 42 § 703.]

Chapter 11.97 RCW EFFECT OF TRUST INSTRUMENT

Sections

11.97.010	Power of trustor—Trust provisions control.
11.97.020	Trust term interpretation and property disposition—Rules of construction.
11.97.900	Application of chapter.

11.97.010 Power of trustor—Trust provisions control. The trustor of a trust may by the provisions of the trust relieve the trustee from any or all of the duties, restrictions, and liabilities which would otherwise be imposed by chapters 11.95A, 11.98, 11.100, and 11.104B RCW and RCW 11.106.020, or may alter or deny any or all of the privileges and powers conferred by those provisions; or may add duties, restrictions, liabilities, privileges, or powers to those imposed or granted by those provisions. If any specific provision of those chapters is in conflict with the provisions of a trust, the provisions of the trust control whether or not specific reference is made in the trust to any of those chapters, except as provided in RCW 6.32.250, 11.96A.190, 19.36.020, 11.98.002, 11.98.200 through 11.98.240, 11.98.072(1), 11.95A.350 through 11.95A.375, and chapter 11.103 RCW. In no event may a trustee be relieved of the duty to act in good faith and with honest judgment. Notwithstanding the

[Title 11 RCW—page 100]

breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as "absolute," "sole," or "uncontrolled," the trustee must exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries. [2021 c 140 § 3611; 2013 c 272 § 7; 2011 c 327 § 12; 2003 c 254 § 4; 1993 c 339 § 1; 1985 c 30 § 38. Prior: 1984 c 149 § 64; 1959 c 124 § 2. Formerly RCW 30.99.020.]

Effective date—2021 c 140 §§ 3101-3614: See RCW 11.95A.903.

Application—2013 c 272: See note following RCW 11.98.002.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.97.020 Trust term interpretation and property disposition—Rules of construction. The rules of construction that apply in this state to the interpretation of a will and disposition of property by will also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property. [2011 c 327 § 13.]

Additional notes found at www.leg.wa.gov

11.97.900 Application of chapter. This chapter applies to the provisions of chapters 11.95A, 11.98, 11.100, and 11.104B RCW and to RCW 11.106.020. [2021 c 140 § 3612; 2003 c 254 § 5; 1985 c 30 § 39. Prior: 1984 c 149 § 65.]

Effective date—2021 c 140 §§ 3101-3614: See RCW 11.95A.903.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

Chapter 11.98 RCW TRUSTS

Sections

11.98.002	Definitions.
11.98.005	Trust situs and governing law.
11.98.008	Trust creation—Methods.
11.98.009	Application of chapter.
11.98.011	Trust creation—Requirements.
11.98.012	Trust creation—Other jurisdictions.
11.98.013	Trust creation—Allowable purposes.
11.98.014	Trust creation—Oral trusts.
11.98.015	Noncharitable trusts without ascertainable beneficiaries.
11.98.016	Exercise of powers by co-trustees.
11.98.017	Trusteeship—Accepting and declining—Powers without acceptance.
11.98.019	Relinquishment of powers by trustee.
11.98.029	Resignation of trustee.
11.98.039	Nonjudicial change of trustee—Judicial appointment or change of trustee—Liability and duties of successor fiduciary.
11.98.041	Change of trustee—Discharge of outgoing trustee, when.
11.98.045	Criteria for transfer of trust assets or administration.
11.98.051	Nonjudicial transfer of trust assets or administration—Notice—Consent required.
11.98.055	Judicial transfer of situs of trusts.
11.98.060	Power of successor trustee.
11.98.065	Change in form of corporate trustee.
11.98.070	Power of trustee.
11.98.071	Trustee's delegation of duties.
11.98.072	Trustee—Notification requirements.
11.98.075	Certification of trust.
11.98.078	Trustee duty of loyalty.
11.98.080	Consolidation of trusts.
11.98.085	Trustee—Breach of trust—Damages.
11.98.100	Nonliability for action or inaction based on lack of knowledge of events.
11.98.105	Nonliability of third persons without knowledge of breach.
11.98.107	Trustee exculpation.

(2022 Ed.)

11.98.108 Nonliability of trustee—Beneficiary's consent, release, or ratification.

11.98.110 Contract and tort liability.

11.98.130 Rule against perpetuities.

11.98.140 Distribution and vesting of assets.

11.98.145 Distribution upon termination.

11.98.150 Distribution of assets after one hundred fifty-year period.

11.98.160 Effective date of irrevocable inter vivos trust—Effective date of revocable inter vivos or testamentary trust.

11.98.170 Designation of trustee as beneficiary of life insurance policy or retirement plan—Determination of proper recipient of proceeds—Definitions—Beneficiary designations executed before January 1, 1985, not invalidated.

11.98.200 Beneficiary trustee—Limitations on power.

11.98.210 Beneficiary trustee—Disregard of provision conferring absolute or similar power—Power of removal.

11.98.220 Beneficiary trustee—Inferences of law—Judicial review.

11.98.230 Beneficiary trustee—Income under marital deduction—Spousal power of appointment.

11.98.240 Beneficiary trustee—Applicability—Exceptions—Election of exception—Cause of action.

11.98.900 Application of RCW 11.98.130 through 11.98.160—RCW 11.68.090 prevails.

11.98.920 Short title.

11.98.930 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

Assignment for the benefit of creditors: Chapter 7.08 RCW.

Assignments to trustees, priority of wages: RCW 49.56.010.

Banks and trust companies: Title 30A RCW.

Cemeteries
endowment and nonendowment care: Chapter 68.40 RCW.
endowment care fund: Chapter 68.44 RCW.

Conveyances and encumbrances of realty when held in trust: RCW 64.04.010.

Corporate
powers of trust companies, bond liability, securities, etc.: RCW 30A.08.150 through 30A.08.170.
seals, effect of absence from instrument: RCW 64.04.105.

Corporations
articles to state if trust company: RCW 30A.08.020.
sole, property held in trust: RCW 24.12.030.

Costs against trustees, civil actions: RCW 4.84.150.

Employee benefit plans, trusts, duration, etc.: Chapter 49.64 RCW.

Employees' benefit deductions from wages are trust funds: RCW 49.52.010.

Execution against property in trustee's hands: RCW 6.17.110.

Fiduciary bonds: RCW 48.28.020.

Gifts for benefit of trust: RCW 11.12.250.

Guardianship: Chapter 73.36 RCW.

Insurance
deposits held in trust: RCW 48.16.020, 48.16.070.
trustee group life insurance: RCW 48.24.070.

Investment of trust funds: Chapter 11.100 RCW.

Investment of trust funds in certain federally secured obligations: RCW 39.60.010.

Loan agencies: Title 31 RCW.

Loans to officers of trust corporation from trust funds prohibited: RCW 30A.12.120.

Mandamus: Chapter 7.16 RCW.

Married persons and domestic partners, property rights and liabilities: Chapter 26.16 RCW.

Massachusetts trusts: Chapter 23.90 RCW.

Mortgages and trust receipts: Title 61 RCW.

Partnerships: Title 25 RCW.

Personal property: Title 63 RCW.

Pleadings, setoff against beneficiary or trustee of trust estate: RCW 4.32.120, 4.32.140.

Powers of appointment, powers in trust: Chapter 11.95A RCW.

Private seals abolished: RCW 64.04.090.

Proceedings to impeach: RCW 42.04.040.

(2022 Ed.)

Prohibition: Chapter 7.16 RCW.

Property taxes

exemptions: Chapter 84.36 RCW.
generally: Title 84 RCW.

Prudent person rule: Chapter 11.100 RCW.

Recording, county auditor's duties: Chapter 65.04 RCW.

Recording and publication: Title 65 RCW.

Resulting state bank, provisions when not exercising trust powers: RCW 30A.49.100.

Retail sales tax, "buyer" includes trust, business trust, etc.: RCW 82.08.010.

Savings banks

limitation on deposits: RCW 32.12.010.

not to locate in same room with trust company: RCW 32.04.030.

State depositories: Chapter 43.85 RCW.

Statute of frauds: Chapter 19.36 RCW.

Trust business to be kept separate: RCW 30A.04.240.

Trust companies

capital requirements: RCW 30A.08.010.

limitation to act as executor or administrator: RCW 11.36.010.

Trust company

as legal representative, advertising: RCW 30A.04.260, 30A.12.130.

defined: RCW 30A.04.010.

Trust provisions may relieve trustee from duty, restriction, or liability imposed by statute: RCW 11.97.010.

Trustees' accounting act: Chapter 11.106 RCW.

Trusts and monopolies: State Constitution Art. 12 § 22.

Unclaimed property in hands of city police: Chapter 63.32 RCW.

Uniform

common trust fund act: Chapter 11.102 RCW.

transfers to minors act: Chapter 11.114 RCW.

unclaimed property act: Chapter 63.29 RCW.

Use tax, "purchaser" includes trust, business trust, etc.: RCW 82.12.010.

Washington savings association act: Title 33 RCW.

Washington savings bank act: Title 32 RCW.

Wills, generally: Chapter 11.12 RCW.

Witnesses, competency in actions involving fiduciaries: RCW 5.60.030.

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

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

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

- (a) Is a permissible distributee;
- (b) Would be a permissible distributee if the interests of the distributees described in (a) of this subsection terminated on that date; or
- (c) Would be a permissible distributee if the trust terminated on that date. [2013 c 272 § 8.]

Application—2013 c 272: "Except as otherwise provided in this act:

- (1) This act applies to all trusts created before, on, or after January 1, 2013;
- (2) This act applies to all judicial proceedings concerning trusts commenced on or after January 1, 2013;
- (3) An action taken before January 1, 2013, is not affected by this act; and
- (4) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before

January 1, 2013, that statute continues to apply to the right even if it has been repealed or superseded." [2013 c 272 § 28.]

11.98.005 Trust situs and governing law. (1) If provisions of a trust instrument designate Washington as the situs of the trust or designate Washington law to govern the trust or any of its terms, then the situs of the trust is Washington provided that one of the following conditions is met:

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

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

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

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

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

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

(i) The name and address of the trustee;

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

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

(b) Within five days of filing the registration with the court, the trustee must mail a copy of the registration to each qualified beneficiary who has not waived notice of the registration, in writing, filed in the cause, together with a notice that must be in substantially the same form as set forth in this section. Persons receiving such notice have thirty days from the date of filing the registration to file a petition in the court objecting to such registration and requesting the court to issue an order that Washington is not the proper situs of the trust, and to serve a copy of such petition upon the trustee or the trustee's lawyer. If a petition objecting to the registration is filed within thirty days of the date of filing the registration, the trustee must request the court to fix a time and place for the hearing of the petition and notify by mail, personal service or electronic transmission, if a valid consent to electronic transmission is in effect under the terms of RCW 11.96A.110, all qualified beneficiaries of the time and place of the hearing, not less than ten days before the hearing on the petition.

(c) Unless a person receiving notice of the registration files a petition with the court objecting to the registration within thirty days of the date of filing the registration, the registration will be deemed the equivalent of an order entered by the court declaring that the situs of the trust is Washington. After expiration of the thirty-day period following filing of the registration, the trustee may obtain a certificate of registration signed by the clerk, and issued under the seal of the

court, which may be in the form specified in (d) of this subsection.

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

(i) Notice form:

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

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

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

(ii) Certificate of Registration:

State of Washington, County of

In the superior court of the county of

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

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

(3) If the instrument establishing a trust does not designate any jurisdiction as the situs or designate any jurisdiction's governing law to apply to the trust, and the trustee of the trust has not registered the trust as allowed in subsection (2) of this section, the situs of the trust is Washington if situs has not previously been established by any court proceeding and the additional conditions specified in this subsection (3) are met.

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

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

(ii) The will has not been admitted to probate in Washington, but any trustee of the trust resides or has a place of business in Washington, any qualified beneficiary resides in Washington, or any real property that is an asset of the trust is located in Washington.

(b) For an inter vivos trust, the situs of the trust is Washington if:

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

(ii) The trustor is deceased; and:

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

(B) The trustor's will was not admitted to probate in Washington, but any qualified beneficiary resides in Washington, any trustee resides or has a place of business in Washington, or any real property that is an asset of the trust is located in Washington.

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

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

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

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

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

(d) Determination of situs under (c) of this subsection (3) cannot be made by nonjudicial agreement under RCW 11.96A.220. [2013 c 272 § 9; 2011 c 327 § 22.]

Application—2013 c 272: See note following RCW 11.98.002.

Additional notes found at www.leg.wa.gov

11.98.008 Trust creation—Methods. A trust may be created by:

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

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

(3) Exercise of a power of appointment in favor of a trustee. [2011 c 327 § 15.]

Additional notes found at www.leg.wa.gov

11.98.009 Application of chapter. Except as provided in this section, this chapter applies to express trusts executed by the trustor after June 10, 1959, and does not apply to resulting trusts, constructive trusts, business trusts where certificates of beneficial interest are issued to the beneficiary, investment trusts, voting trusts, trusts in the nature of mortgages or pledges, liquidation trusts, or trusts for the sole purpose of paying dividends, interest, interest coupons, salaries, wages, pensions or profits, trusts created in deposits in any financial institution pursuant to *chapter 30.22 RCW, unless any such trust which is created in writing incorporates this chapter in whole or in part. [2011 c 327 § 14; 1985 c 30 § 40. Prior: 1984 c 149 § 67; 1983 c 3 § 49; 1959 c 124 § 1. Formerly RCW 30.99.010.]

***Reviser's note:** Chapter 30.22 RCW was recodified as chapter 30A.22 RCW pursuant to 2014 c 37 § 4, effective January 5, 2015.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.98.011 Trust creation—Requirements. (1) A trust is created only if:

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

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

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

(i) A charitable trust;

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

(iii) A trust for a noncharitable purpose, as provided in RCW 11.98.015;

(d) The trustee has duties to perform; and

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

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

(3) A power in a trustee to select a beneficiary from an indefinite class is valid, except to the extent that the trustee may distribute trust property to himself or herself. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred. [2011 c 327 § 16.]

Additional notes found at www.leg.wa.gov

11.98.012 Trust creation—Other jurisdictions. A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which, at the time of creation or in the case of a revocable trust, at the time the trust became irrevocable:

(1) The trustor was domiciled, had a residence, or was a national;

(2) The trustee was domiciled or had a place of business;

or

(3) Any trust property was located. [2011 c 327 § 17.]

Additional notes found at www.leg.wa.gov

11.98.013 Trust creation—Allowable purposes. A trust may be created only to the extent its purposes are lawful, not contrary to public policy, and possible to achieve. [2011 c 327 § 18.]

Additional notes found at www.leg.wa.gov

11.98.014 Trust creation—Oral trusts. Except as required by a statute other than this title, a trust need not be evidenced by a trust instrument, but the creation of an oral trust and its terms may be established only by clear, cogent, and convincing evidence. [2011 c 327 § 19.]

Additional notes found at www.leg.wa.gov

11.98.015 Noncharitable trusts without ascertainable beneficiaries. Except as otherwise provided in chapter 11.118 RCW or by another statute, the following rules apply:

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

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

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the trustor, if then living, otherwise to the trustor's successors in interest. Successors in interest include the beneficiaries under the trustor's will, if the trustor has a will, or, in the absence of an effective will provision, the trustor's heirs. [2013 c 272 § 22; 2011 c 327 § 20.]

Application—2013 c 272: See note following RCW 11.98.002.

Additional notes found at www.leg.wa.gov

11.98.016 Exercise of powers by co-trustees. (1) Any power vested in three or more trustees jointly may be exercised by a majority of such trustees; but no trustee who has not joined in exercising a power is liable to the beneficiaries or to others for the consequences of such exercise; nor is a dissenting trustee liable for the consequences of an act in which that trustee joins at the direction of the majority of the trustees, if that trustee expressed his or her dissent in writing to each of the co-trustees at or before the time of such joinder.

(2) Where two or more trustees are appointed to execute a trust and one or more of them for any reason does not accept the appointment or having accepted ceases to be a trustee, the survivor or survivors shall execute the trust and shall succeed to all the powers, duties and discretionary authority given to the trustees jointly.

(3) An individual trustee, with a co-trustee's consent, may, by a signed, written instrument, delegate any power, duty, or authority as trustee to that co-trustee. This delegation is effective upon delivery of the instrument to that co-trustee and may be revoked at any time by delivery of a similar signed, written instrument to that co-trustee. However, if a power, duty, or authority is expressly conferred upon only one trustee, it shall not be delegated to a co-trustee. If that power, duty, or authority is expressly excluded from exercise by a trustee, it shall not be delegated to the excluded trustee.

(4) If one trustee gives written notice to all other co-trustees of an action that the trustee proposes be taken, then the failure of any co-trustee to deliver a written objection to the proposal to the trustee, at the trustee's then address of record and within fifteen days from the date the co-trustee actually receives the notice, constitutes formal approval by the co-trustee, unless the co-trustee had previously given written notice that was unrevoked at the time of the trustee's notice, to that trustee that this fifteen-day notice provision is inoperative.

(5) As to any effective delegation made under subsection (3) of this section, a co-trustee has no liability for failure to participate in the administration of the trust.

Nothing in this section, however, otherwise excuses a co-trustee from liability for failure to participate in the administration of the trust and nothing in this section, including subsection (3) of this section, excuses a co-trustee from liability for the failure to attempt to prevent a breach of trust. [1985 c 30 § 41. Prior: 1984 c 149 § 68; 1959 c 124 § 3. Formerly RCW 30.99.030.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

[Title 11 RCW—page 104]

Additional notes found at www.leg.wa.gov

11.98.017 Trusteeship—Accepting and declining—Powers without acceptance. (1) Except as otherwise provided in subsection (3) of this section, a person designated as trustee accepts the trusteeship:

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

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

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

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

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

(b) Inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose. [2013 c 272 § 10.]

Application—2013 c 272: See note following RCW 11.98.002.

11.98.019 Relinquishment of powers by trustee. Any trustee may, by written instrument delivered to any then acting co-trustee and to the permissible distributees of the trust, relinquish to any extent and upon any terms any or all of the trustee's powers, rights, authorities, or discretions that are or may be tax sensitive in that they cause or may cause adverse tax consequences to the trustee or the trust. Any trustee not relinquishing such a power, right, authority, or discretion and upon whom it is conferred continues to have full power to exercise it. [2013 c 272 § 11; 1985 c 30 § 42. Prior: 1984 c 149 § 69.]

Application—2013 c 272: See note following RCW 11.98.002.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.98.029 Resignation of trustee. Any trustee may resign, without judicial proceedings, by a writing signed by the trustee and filed with the trust records, to be effective upon the trustee's discharge as provided in RCW 11.98.041. [1989 c 10 § 3. Prior: 1985 c 30 § 43; prior: 1959 c 124 § 4. Formerly RCW 30.99.040.]

Intent—1989 c 10 § 3: "It is the intent of the legislature that RCW 11.98.029 be restored to full force and effect." [1989 c 10 § 2.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.98.039 Nonjudicial change of trustee—Judicial appointment or change of trustee—Liability and duties of successor fiduciary. (1) Where a vacancy occurs in the office of the trustee and there is a successor trustee who is

(2022 Ed.)

willing to serve as trustee and (a) is named in the governing instrument as successor trustee or (b) has been selected to serve as successor trustee under the procedure established in the governing instrument for the selection of a successor trustee, the outgoing trustee, or any other interested party, must give notice of such vacancy, whether arising because of the trustee's resignation or because of any other reason, and of the successor trustee's agreement to serve as trustee, to each permissible distributee. The successor trustee named in the governing instrument or selected pursuant to the procedure therefor established in the governing instrument is entitled to act as trustee except for good cause or disqualification. The successor trustee is deemed to have accepted the trusteeship as of the effective date of the discharge of the predecessor trustee as provided in RCW 11.98.041.

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

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

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

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

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

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

cessor fiduciary of liability for its own acts or omissions except as specifically stated or authorized in this section.

(6) A change of trustee to a foreign trustee does not change the situs of the trust. Transfer of situs of a trust to another jurisdiction requires compliance with RCW 11.98.005 and RCW 11.98.045 through 11.98.055. [2013 c 272 § 12; 2011 c 327 § 21; 2005 c 97 § 13; 1999 c 42 § 618; 1985 c 30 § 44. Prior: 1984 c 149 § 72; 1959 c 124 § 5. Formerly RCW 30.99.050.]

Application—2013 c 272: See note following RCW 11.98.002.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.98.041 Change of trustee—Discharge of outgoing trustee, when. Where a vacancy occurs in the office of trustee under the circumstances described in RCW 11.98.039 (1) or (2), the outgoing trustee is discharged upon the agreement of all parties entitled to notice or upon the expiration of thirty days after notice is given of such vacancy as required by the applicable subsection of RCW 11.98.039, whichever occurs first, or if no notice is required under RCW 11.98.039(1), upon the date the vacancy occurs, unless before the effective date of such discharge a petition is filed under RCW 11.98.039(4) regarding the appointment or change of a trustee of the trust. Where a petition is filed under RCW 11.98.039(4) regarding the appointment or change of a trustee, the superior court having jurisdiction may discharge the trustee from the trust and may appoint a successor trustee upon such terms as the court may require. [2013 c 272 § 13; 1985 c 30 § 141.]

Application—2013 c 272: See note following RCW 11.98.002.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.98.045 Criteria for transfer of trust assets or administration. (1) If a trust is a Washington trust under RCW 11.98.005, a trustee may transfer the situs of the trust to a jurisdiction other than Washington if the trust instrument so provides or in accordance with RCW 11.98.051 or 11.98.055.

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

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

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

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

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

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

(3) Acceptance of such transfer by a foreign corporate trustee or trust company under this section or RCW 11.98.051 or 11.98.055 may not be construed to be doing a "trust business" as described in *RCW 30.08.150(9). [2013 c 272 § 14; 2011 c 327 § 23; 1985 c 30 § 45. Prior: 1984 c 149 § 74.]

***Reviser's note:** RCW 30.08.150 was recodified as RCW 30A.08.150 pursuant to 2014 c 37 § 4 and amended by 2014 c 37 § 167, deleting subsection (9), effective January 5, 2015.

Application—2013 c 272: See note following RCW 11.98.002.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.98.051 Nonjudicial transfer of trust assets or administration—Notice—Consent required. (1) The trustee may transfer trust situs (a) in accordance with RCW 11.96A.220; or (b) by giving written notice to the attorney general in the case of a charitable trust subject to chapter 11.110 RCW and to the qualified beneficiaries not less than sixty days before initiating the transfer. The notice must:

(a) State the name and mailing address of the trustee;
 (b) Include a copy of the governing instrument of the trust;

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

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

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

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

(g) Include a form on which the recipient may object to the proposed transfer.

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

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

(4) A change of trust situs does not authorize a change of trustee. Change of trustee of a trust requires compliance with RCW 11.98.039. [2013 c 272 § 15; 2011 c 327 § 24; 1999 c 42 § 619; 1985 c 30 § 46. Prior: 1984 c 149 § 75.]

Application—2013 c 272: See note following RCW 11.98.002.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.98.055 Judicial transfer of situs of trusts. (1) Any trustee, beneficiary, or beneficiary representative may petition the superior court of the county of the situs of the trust for a transfer of the situs of a trust in accordance with RCW 11.96A.080 through 11.96A.200.

(2) At the conclusion of the hearing, if the court finds the requirements of RCW 11.98.045(2) have been satisfied, it may direct the transfer of the situs of a trust on such terms and conditions as it deems appropriate. The court in its discretion

may provide for payment from the trust of reasonable fees and expenses for any party to the proceeding. Delivery of trust assets in accordance with the court's order is a full discharge of the trustee's duties in relation to all transferred property.

(3) A change of trust situs does not authorize a change of trustee. Change of trustee of a trust requires compliance with RCW 11.98.039. [2011 c 327 § 25; 1999 c 42 § 620; 1985 c 30 § 47. Prior: 1984 c 149 § 76.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.98.060 Power of successor trustee. A successor trustee of a trust shall succeed to all the powers, duties and discretionary authority of the original trustee. [1985 c 30 § 48. Prior: 1959 c 124 § 6. Formerly RCW 30.99.060.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.98.065 Change in form of corporate trustee. Any appointment of a specific bank, trust company, or corporation as trustee is conclusively presumed to authorize the appointment or continued service of that entity's successor in interest in the event of a merger, acquisition, or reorganization, and no court proceeding is necessary to affirm the appointment or continuance of service. [1985 c 30 § 49. Prior: 1984 c 149 § 78.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

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

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

(2) Sell on credit;

(3) Grant, purchase or exercise options;

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

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

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

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

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

(9) Grant leases of trust property, with or without options to purchase or renew, to begin within a reasonable period and for terms within or extending beyond the duration of the trust, for any purpose including exploration for and removal of oil,

gas and other minerals; enter into community oil leases, pooling and unitization agreements;

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

(11) Compromise or submit claims to arbitration;

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

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

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

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

(16)(a) Pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(l) To satisfy contractual and tort liabilities arising out of an unincorporated business, including any partnership, first out of the business and second out of the estate or trust, but in

no event may there be a liability of the trustee, except as provided in RCW 11.98.110 (2) and (4), and if the trustee is liable, the trustee is entitled to indemnification from the business and the trust, respectively;

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

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

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

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

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

(27) Engage persons, including lawyers, accountants, investment advisors, or agents, even if they are associated with the trustee, to advise or assist the trustee in the performance of the trustee's duties or to perform any act, subject to RCW 11.98.071;

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

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

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

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

(32) Determine at any time that the corpus of any trust is insufficient to implement the intent of the trust, and upon this determination by the trustee, terminate the trust by distribution of the trust to the current income beneficiary or beneficiaries of the trust or their legal representatives, except that this determination may only be made by the trustee if the

trustee is neither the grantor nor the beneficiary of the trust, and if the trust has no charitable beneficiary;

(33) Continue to be a party to any existing voting trust agreement or enter into any new voting trust agreement or renew an existing voting trust agreement with respect to any assets contained in trust;

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

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

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

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

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

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

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

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

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

(39) Select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds. [2015 c 115 § 2; 2011 c 327 § 26; 2010 c 8 § 2091; 2002 c 66 § 1; 1997 c 252 § 75; 1989 c 40 § 7; 1985 c 30 § 50. Prior: 1984 c 149 § 80; 1959 c 124 § 7. Formerly RCW 30.99.070.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.98.071 Trustee's delegation of duties. (1) A trustee may delegate duties and powers that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

(a) Selecting a delegate;

(b) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust;

(c) Periodically reviewing the delegate's actions in order to monitor the delegate's performance and compliance with the terms of the delegation; and

(d) Enforcing the delegate's duties under the terms of the delegation.

(2) In performing a delegated function, in addition to any other duty inherent in the delegation, a delegate owes a duty to the trustee to exercise reasonable care to comply with the terms of the delegation.

(3) A trustee who complies with subsection (1) of this section is not liable to the beneficiaries or to the trust for an action of the delegate to whom the function was delegated. Nothing in this section relieves the trustee from any existing duty to compel the delegate to account for the delegate's actions.

(4) By accepting a delegation of powers or duties from the trustee of a trust that is subject to the law of this state, a delegate submits to the jurisdiction of the courts of this state.

(5) A delegation among co-trustees is governed by RCW 11.98.016. [2015 c 115 § 3.]

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

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

- (i) The existence of the trust;
- (ii) The identity of the trustor or trustors;
- (iii) The trustee's name, address, and telephone number;

and

(iv) The right to request such information as is reasonably necessary to enable the notified person to enforce his or her rights under the trust.

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

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

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

(2022 Ed.)

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

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

(5) The trustor may waive or modify the notification requirements of subsections (2) and (3) of this section in the trust document or in a separate writing, made at any time, that is delivered to the trustee. [2013 c 272 § 16.]

Application—2013 c 272: See note following RCW 11.98.002.

11.98.075 Certification of trust. (1) Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee may furnish to the person a certification of trust containing the following information:

(a) That the trust exists and the date the trust instrument was executed;

(b) The identity of the trustor;

(c) The identity and address of the currently acting trustee;

(d) Relevant powers of the trustee;

(e) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust;

(f) The authority of cotrustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee; and

(g) The name of the trust or the titling of the trust property.

(2) A certification of trust may be signed or otherwise authenticated by any trustee or by an attorney for the trust.

(3) A certification of trust must state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.

(4) A certification of trust need not contain the dispositive terms of a trust.

(5) A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments which designate the trustee and confer upon the trustee the power to act in the pending transaction or any other reasonable information.

(6) A person who acts in reliance upon a certification of trust without knowledge that the representations contained therein are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the facts contained in the certification. Knowledge of the terms of the trust may not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying upon the certification.

(7) A person who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.

(8) A person making a demand for the trust instrument in addition to a certification of trust or excerpts is liable for damages, including reasonable attorney fees, if the court determines that the person did not act in good faith in demanding the trust instrument.

(9) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust. [2011 c 327 § 31.]

Additional notes found at www.leg.wa.gov

11.98.078 Trustee duty of loyalty. (1) A trustee must administer the trust solely in the interests of the beneficiaries.

(2) Subject to the rights of persons dealing with or assisting the trustee as provided in RCW 11.98.105, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

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

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

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

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

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

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

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

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

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

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

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

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

(5) An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment complies with the prudent investor rule of chapter 11.100 RCW. In addition to its compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the trustee must at least

annually notify the permissible distributees of the rate and method by which that compensation was determined. The obligation of the trustee to provide the notice described in this section may be waived or modified by the trustor in the trust document or in a separate writing, made at any time, that is delivered to the trustee.

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

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

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

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

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

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

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

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

(8) If a trust has two or more beneficiaries, the trustee must act impartially in administering the trust and distributing the trust property, giving due regard to the beneficiaries' respective interests. [2013 c 272 § 23; 2011 c 327 § 32.]

Application—2013 c 272: See note following RCW 11.98.002.

Additional notes found at www.leg.wa.gov

11.98.080 Consolidation of trusts. (1)(a) Two or more trusts may be consolidated if:

(i) The trusts so provide; or

(ii) Whether provided in the trusts or not, the requirements of subsection (2), (3), or (4) of this section are satisfied.

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

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

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

(iii) Consolidation would facilitate administration of the trusts and would not materially impair the interests of the beneficiaries.

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

(2)(a) A trustee must deliver sixty days in advance written notice of a proposed consolidation in the manner provided in RCW 11.96A.110 to the qualified beneficiaries of every trust affected by the consolidation and to any trustee of such trusts who does not join in the notice. The notice must: (i) State the name and mailing address of the trustee; (ii) include a copy of the governing instrument of each trust to be consolidated; (iii) include a statement of assets and liabilities of each trust to be consolidated, dated within ninety days of

the notice; (iv) fully describe the terms and manner of consolidation; and (v) state the reasons supporting the requirements of subsection (1)(b) of this section. The notice must advise the recipient of the right to petition for a judicial determination of the proposed consolidation as provided in subsection (4) of this section, and must indicate that the recipient has thirty days to object to the proposed consolidation.

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

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

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

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

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

(6) For powers of fiduciaries to divide trusts, see RCW 11.108.025. [2013 c 272 § 17; 1999 c 42 § 621; 1991 c 6 § 2; 1985 c 30 § 51. Prior: 1984 c 149 § 81.]

Application—2013 c 272: See note following RCW 11.98.002.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.98.085 Trustee—Breach of trust—Damages. (1) A trustee who commits a breach of trust is liable for the greater of:

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

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

(2) Except as otherwise provided in this subsection, if more than one trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees. A trustee is not entitled to contribution if the trustee was substantially more at fault than another trustee or if the trustee committed the breach of trust in bad faith or with reckless indifference to the purposes of the trust

(2022 Ed.)

or the interests of the beneficiaries. A trustee who received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received. [2011 c 327 § 33.]

Additional notes found at www.leg.wa.gov

11.98.100 Nonliability for action or inaction based on lack of knowledge of events. When the happening of any event, including but not limited to such events as marriage, divorce, performance of educational requirements, or death, affects the administration or distribution of the trust, then a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for any action or inaction based on lack of knowledge of the event. A corporate trustee is not liable prior to receiving such knowledge or notice in its trust department office where the trust is being administered. [1985 c 30 § 53. Prior: 1984 c 149 § 84; 1959 c 124 § 9. Formerly RCW 30.99.090.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.98.105 Nonliability of third persons without knowledge of breach. (1) A person other than a beneficiary who in good faith assists a trustee, or who in good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising the trustee's powers is protected from liability as if the trustee properly exercised the power.

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

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

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

(5) Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section. [2011 c 327 § 28.]

Additional notes found at www.leg.wa.gov

11.98.107 Trustee exculpation. (1) An exculpatory term which was inserted as the result of an abuse of a fiduciary or confidential relationship between the trustor and the trustee is unenforceable.

(2) An exculpatory term drafted or caused to be drafted by the trustee is invalid as an abuse of a fiduciary or confidential relationship unless the trustee proves that the exculpatory term is fair under the circumstances and that its existence and contents were adequately communicated to the trustor. [2011 c 327 § 29.]

Additional notes found at www.leg.wa.gov

11.98.108 Nonliability of trustee—Beneficiary's consent, release, or ratification. A trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from lia-

bility for the breach, or ratified the transaction constituting the breach, unless:

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

(2) At the time of the consent, release, or ratification, the beneficiary did not know of the beneficiary's rights or of the material facts relating to the breach. [2011 c 327 § 30.]

Additional notes found at www.leg.wa.gov

11.98.110 Contract and tort liability. As used in this section, a trust includes a probate estate, and a trustee includes a personal representative. The words "trustee" and "as trustee" mean "personal representative" and "as personal representative" where this section is being construed in regard to personal representatives.

Actions on contracts which have been transferred to a trust and on contracts made by a trustee, and actions in tort for personal liability incurred by a trustee in the course of administration may be maintained by the party in whose favor the cause of action has accrued as follows:

(1) The plaintiff may sue the trustee in the trustee's representative capacity and any judgment rendered in favor of the plaintiff is collectible by execution out of the trust property: PROVIDED, HOWEVER, If the action is in tort, collection shall not be had from the trust property unless the court determines in the action that (a) the tort was a common incident of the kind of business activity in which the trustee or the trustee's predecessor was properly engaged for the trust; or (b) that, although the tort was not a common incident of such activity, neither the trustee nor the trustee's predecessor, nor any officer or employee of the trustee or the trustee's predecessor, was guilty of personal fault in incurring the liability; or (c) that, although the tort did not fall within classes (a) or (b) above, it increased the value of the trust property. If the tort is within classes (a) or (b) above, collection may be had of the full amount of damage proved, and if the tort is within class (c) above, collection may be had only to the extent of the increase in the value of the trust property.

(2) If the action is on a contract made by the trustee, the trustee may be held personally liable on the contract, if personal liability is not excluded. Either the addition by the trustee of the words "trustee" or "as trustee" after the signature of a trustee to a contract or the transaction of business as trustee under an assumed name in compliance with chapter 19.80 RCW excludes the trustee from personal liability. If the action is on a contract transferred to the trust or trustee, subject to any rights therein vested at time of the transfer, the trustee is personally liable only if he or she has in writing assumed that liability.

(3) In any such action against the trustee in the trustee's representative capacity the plaintiff need not prove that the trustee could have secured reimbursement from the trust fund if the trustee had paid the plaintiff's claim.

(4) The trustee may also be held personally liable for any tort committed by him or her, or by his or her agents or employees in the course of their employments only if, and to the extent that, damages for the tort are not collectible from trust property as provided in and pursuant to subsection (1) of this section.

(5) The procedure for all actions provided in this section is as provided in RCW 11.96A.080 through 11.96A.200.

(6) Nothing in this section shall be construed to change the existing law with regard to the liability of the trustee of a charitable trust for the torts of the trustee. [1999 c 42 § 622; 1988 c 29 § 8; 1985 c 30 § 54. Prior: 1984 c 149 § 85; 1983 c 3 § 50; 1959 c 124 § 10. Formerly RCW 30.99.100.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.98.130 Rule against perpetuities. No provision of an instrument creating a trust, including the provisions of any further trust created, and no other disposition of property made pursuant to exercise of a power of appointment granted in or created through authority under such instrument is invalid under the rule against perpetuities, or any similar statute or common law, during the one hundred fifty years following the effective date of the instrument.

Thereafter, unless the trust assets have previously become distributable or vested, the provision or other disposition of property is deemed to have been rendered invalid under the rule against perpetuities. [2001 c 60 § 1; 1985 c 30 § 55. Prior: 1984 c 149 § 87; 1965 c 145 § 11.98.010; prior: 1959 c 146 § 1. Formerly RCW 11.98.010.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.98.140 Distribution and vesting of assets. If, during the one hundred fifty years following the effective date of an instrument creating a trust, any of the trust assets should by the terms of the instrument or pursuant to any further trust or other disposition resulting from exercise of the power of appointment granted in or created through authority under such instrument, become distributable or any beneficial interest in any of the trust assets should by the terms of the instrument, or such further trust or other disposition become vested, such assets shall be distributed and such beneficial interest shall validly vest in accordance with the instrument, or such further trust or other disposition. [2001 c 60 § 2; 1985 c 30 § 56. Prior: 1984 c 149 § 88; 1965 c 145 § 11.98.020; prior: 1959 c 146 § 2. Formerly RCW 11.98.020.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

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

(2) Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expedi-

tiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes. [2011 c 327 § 27.]

Additional notes found at www.leg.wa.gov

11.98.150 Distribution of assets after one hundred fifty-year period. If, at the end of the one hundred fifty years following the effective date of an instrument creating a trust, any of the trust assets have not by the terms of the trust instrument become distributable or vested, then the assets shall be distributed as the superior court having jurisdiction directs, giving effect to the general intent of the creator of the trust or person exercising a power of appointment in the case of any further trust or other disposition of property made pursuant to the exercise of a power of appointment. [2001 c 60 § 3; 1985 c 30 § 57. Prior: 1984 c 149 § 89; 1965 c 145 § 11.98.030; prior: 1959 c 146 § 3. Formerly RCW 11.98.030.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.98.160 Effective date of irrevocable inter vivos trust—Effective date of revocable inter vivos or testamentary trust. For the purposes of RCW 11.98.130 through 11.98.150 the effective date of an instrument purporting to create an irrevocable inter vivos trust is the date on which it is executed by the trustor, and the effective date of an instrument purporting to create either a revocable inter vivos trust or a testamentary trust is the date of the trustor's or testator's death. [1989 c 14 § 2; 1985 c 30 § 58. Prior: 1984 c 149 § 90; 1965 c 145 § 11.98.040; prior: 1959 c 146 § 4. Formerly RCW 11.98.040.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.98.170 Designation of trustee as beneficiary of life insurance policy or retirement plan—Determination of proper recipient of proceeds—Definitions—Beneficiary designations executed before January 1, 1985, not invalidated. (1) Any life insurance policy or retirement plan payment provision may designate as beneficiary:

(a) A trustee named or to be named by will, and immediately after the proving of the will, the proceeds of such insurance or of such plan designated as payable to that trustee, in part or in whole, shall be paid to the trustee in accordance with the beneficiary designation, to be held and disposed of under the terms of the will governing the testamentary trust; or

(b) A trustee named or to be named under a trust agreement executed by the insured, the plan participant, or any other person, and the proceeds of such insurance or retirement plan designated as payable to such trustee, in part or in whole, shall be paid to the trustee in accordance with the beneficiary designation, to be held and disposed of by the trustee as provided in such trust agreement; a trust is valid even if the only corpus consists of the right of the trustee to receive as beneficiary insurance or retirement plan proceeds; any such trustee may also receive assets, other than insurance or retirement plan proceeds, by testamentary disposition or otherwise

(2022 Ed.)

and, unless directed otherwise by the transferor of the assets, shall administer all property of the trust according to the terms of the trust agreement.

(2) If no qualified trustee makes claim to the insurance policy or retirement plan proceeds from the insurance company or the plan administrator within twelve months after the death of the insured or plan participant, determination of the proper recipient of the proceeds shall be made pursuant to the judicial or nonjudicial dispute resolution procedures of chapter 11.96A RCW, unless prior to the institution of the judicial procedures, a qualified trustee makes claim to the proceeds, except that (a) if satisfactory evidence is furnished the insurance company or plan administrator within the twelve-month period showing that no trustee can or will qualify to receive such proceeds, payment shall be made to those otherwise entitled to the proceeds under the terms of the policy or retirement plan, including the terms of the beneficiary designation except that (b) if there is any dispute as to the proper recipient of insurance policy or retirement plan proceeds, the dispute shall be resolved pursuant to the judicial or nonjudicial resolution procedures in chapter 11.96A RCW.

(3) The proceeds of the insurance or retirement plan as collected by the trustee are not subject to debts of the insured or the plan participant to any greater extent than if the proceeds were payable to any named beneficiary other than the personal representative or the estate of the insured or of the plan participant.

(4) For purposes of this section the following definitions apply:

(a) "Plan administrator" means the person upon whom claim must be made in order for retirement plan proceeds to be paid upon the death of the plan participant.

(b) "Retirement plan" means any plan, account, deposit, annuity, or benefit, other than a life insurance policy, that provides for payment to a beneficiary designated by the plan participant for whom the plan is established. The term includes, without limitation, such plans regardless of source of funding, and, for example, includes pensions, annuities, stock bonus plans, employee stock ownership plans, profit sharing plans, self-employed retirement plans, individual retirement accounts, individual retirement annuities, and retirement bonds, as well as any other retirement plan or program.

(c) "Trustee" includes any custodian under chapter 11.114 RCW or any similar statutory provisions of any other state and the terms "trust agreement" and "will" refer to the provisions of chapter 11.114 RCW or such similar statutory provisions of any other state.

(5) Enactment of this section does not invalidate life insurance policy or retirement plan beneficiary designations executed prior to January 1, 1985, naming a trustee established by will or by trust agreement. [1999 c 42 § 623; 1991 c 193 § 29; 1985 c 30 § 59. Prior: 1984 c 149 § 91.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.98.200 Beneficiary trustee—Limitations on power. Due to the inherent conflict of interest that exists between a trustee and a beneficiary of a trust, unless the terms of a trust refer specifically to RCW 11.98.200 through

11.98.240 and provide expressly to the contrary, the powers conferred upon a trustee who is a beneficiary of the trust, other than the trustor as a trustee, cannot be exercised by the trustee to make:

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

(2) Discretionary allocations of receipts or expenses as between principal and income, unless the trustee acts in a fiduciary capacity whereby the trustee has no power to enlarge or shift a beneficial interest except as an incidental consequence of the discharge of the trustee's fiduciary duties; or

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

A proscribed power under this section that is conferred upon two or more trustees may be exercised by the trustees that are not disqualified under this section. If there is no trustee qualified to exercise a power proscribed under this section, a person described in RCW 11.96A.080 who is entitled to seek judicial proceedings with respect to a trust may apply to a court of competent jurisdiction to appoint another trustee who would not be disqualified, and the power may be exercised by another trustee appointed by the court. Alternatively, another trustee who would not be disqualified may be appointed in accordance with the provisions of the trust instrument if the procedures are provided, or as set forth in RCW 11.98.039 as if the office of trustee were vacant, or by a nonjudicial dispute resolution agreement under RCW 11.96A.220. [1999 c 42 § 624; 1994 c 221 § 65; 1993 c 339 § 2.]

Additional notes found at www.leg.wa.gov

11.98.210 Beneficiary trustee—Disregard of provision conferring absolute or similar power—Power of removal. If a trustee is a beneficiary of the trust and the trust instrument confers the power to make distributions of principal or income for the trustee's health, education, support, or maintenance as described in section 2041 or 2514 of the Internal Revenue Code and the applicable regulations adopted under that section, then a trust provision purporting to confer "absolute," "sole," "complete," "conclusive," or a similar discretion relating to the exercise of such trustee powers shall be disregarded in the exercise of the power, and the power may then only be exercised reasonably and in accordance with the ascertainable standard as set forth in RCW 11.98.200 and this section. A person who has the right to remove or to replace a trustee does not possess nor may the person be deemed to possess by virtue of having that right the powers of the trustee who is subject to removal or replacement. [1993 c 339 § 3.]

Additional notes found at www.leg.wa.gov

11.98.220 Beneficiary trustee—Inferences of law—Judicial review. RCW 11.98.200 through 11.98.240 do not raise any inference that the law of this state prior to July 25, 1993, was different than under RCW 11.98.200 through 11.98.240. Further, RCW 11.98.200 through 11.98.240 do

not raise an inference that prior to July 25, 1993, a trustee's exercise or failure to exercise a power described in RCW 11.98.200 through 11.98.240 was not subject to review by a court of competent jurisdiction for abuse of discretion or breach of fiduciary duty under chapter 11.96A RCW or other applicable law. Following July 25, 1993, the power of judicial review continues to apply. [1999 c 42 § 625; 1993 c 339 § 4.]

Additional notes found at www.leg.wa.gov

11.98.230 Beneficiary trustee—Income under marital deduction—Spousal power of appointment. Notwithstanding any provision of RCW 11.98.200 through 11.98.240 seemingly to the contrary, RCW 11.98.200 through 11.98.240 do not limit or restrict the distribution of income of a trust that qualifies or that otherwise could have qualified for the marital deduction under section 2056 or 2523 of the Internal Revenue Code, those Internal Revenue Code sections requiring that all income be distributed to the spouse of the decedent or of the trustor at least annually, whether or not an election was in fact made under section 2056(b)(7) or 2523(f) of the Internal Revenue Code. Further, RCW 11.98.200 through 11.98.240 do not limit or restrict the power of a spouse of the trustor or the spouse of the decedent to exercise a power of appointment described in section 2056(b)(5) or 2523(e) of the Internal Revenue Code with respect to that portion of the trust that could otherwise qualify for the marital deduction under either of those Internal Revenue Code sections. [1993 c 339 § 5.]

Additional notes found at www.leg.wa.gov

11.98.240 Beneficiary trustee—Applicability—Exceptions—Election of exception—Cause of action.

(1)(a) RCW 11.98.200 and 11.98.210 respectively apply to:

(i) A trust established under a will, codicil, trust agreement, declaration of trust, deed, or other instrument executed after July 25, 1993, unless the instrument's terms refer specifically to RCW 11.98.200 or 11.98.210 respectively and provide expressly to the contrary. However, except for RCW 11.98.200(3), the 1994 c 221 amendments to RCW 11.98.200 apply to a trust established under a will, codicil, trust agreement, declaration of trust, deed, or other instrument executed after January 1, 1995, unless the instrument's terms refer specifically to RCW 11.98.200 and provide expressly to the contrary.

(ii) A trust created under a will, codicil, trust agreement, declaration of trust, deed, or other instrument executed before July 25, 1993, unless:

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

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

(C) A person entitled to judicial proceedings for a declaration of rights or legal relations under RCW 11.96A.080 obtains a judicial determination that the application of this

subsection (1)(a)(ii) to the trust is inconsistent with the provisions or purposes of the will or trust.

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

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

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

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

(3) For the purpose of subsection (1)(a)(ii) of this section, "parties in interest" means those persons identified as "parties" under *RCW 11.96A.030(4).

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

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

(b) Through a nonjudicial dispute resolution agreement described in RCW 11.96A.220. [1999 c 42 § 626; 1997 c 252 § 76; 1994 c 221 § 66; 1993 c 339 § 6.]

*Reviser's note: RCW 11.96A.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (4) to subsection (5).

Additional notes found at www.leg.wa.gov

11.98.900 Application of RCW 11.98.130 through 11.98.160—RCW 11.68.090 prevails. (1) The provisions of RCW 11.98.130 through 11.98.160 are applicable to any instrument purporting to create a trust regardless of the date such instrument bears, unless it has been previously adjudicated in the courts of this state.

(2) To the extent that this chapter is in conflict with RCW 11.68.090, RCW 11.68.090 prevails. [2021 c 140 § 4023; 1985 c 30 § 60. Prior: 1984 c 149 § 93; 1971 ex.s. c 229 § 1; 1965 c 145 § 11.98.050; prior: 1959 c 146 § 5. Formerly RCW 11.98.050.]

Application—2021 c 140 §§ 4003-4017, 4023, 4024, and 4026: See note following RCW 11.48.130.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.98.920 Short title. This act shall be known as the "Washington Trust Act." [1985 c 30 § 62. Prior: 1959 c 124 § 12. Formerly RCW 30.99.910.]

(2022 Ed.)

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.98.930 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 39.]

Chapter 11.98B RCW UNIFORM DIRECTED TRUST ACT

Sections

- 11.98B.005 Short title.
- 11.98B.010 Definitions.
- 11.98B.020 Applicability—Principal place of administration.
- 11.98B.030 Applicability—Exclusions—Power of appointment.
- 11.98B.040 Common law and principles of equity supplement.
- 11.98B.050 Trust director—Power of direction.
- 11.98B.060 Trust director—Power of direction—Limitations.
- 11.98B.070 Trust director—Duties and liability.
- 11.98B.080 Directed trustee—Duties and liability.
- 11.98B.090 Duty to provide information to trust director or trustee.
- 11.98B.100 No duty to monitor, inform, or advise trust director or trustee.
- 11.98B.110 Application to cotrustee.
- 11.98B.120 Trust director—Action against—Limitation.
- 11.98B.130 Trust director—Action against—Defenses.
- 11.98B.140 Trust director—Personal jurisdiction.
- 11.98B.150 Trust director—Rules applicable to trustees apply.
- 11.98B.900 Uniformity of application and construction.
- 11.98B.901 Relation to electronic signatures in global and national commerce act.
- 11.98B.902 Effective date—2020 c 303.

11.98B.005 Short title. This chapter may be known and cited as the uniform directed trust act. [2020 c 303 § 1.]

11.98B.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Breach of trust" includes a violation by a trust director or trustee of a duty imposed on that director or trustee by the terms of the trust, this chapter, or law of this state other than this chapter pertaining to trusts.

(2) "Directed trust" means a trust for which the terms of the trust grant a power of direction.

(3) "Directed trustee" means a trustee that is subject to a trust director's power of direction.

(4) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(5) "Power of direction" means a power over a trust granted to a person by the terms of the trust to the extent the power is exercisable while the person is not serving as a

trustee. The term includes a power over the investment, management, or distribution of trust property or other matters of trust administration. The term excludes the powers described in RCW 11.98B.030(2).

(6) "Settlor" means a person, including a testator, that creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.

(7) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any other territory or possession subject to the jurisdiction of the United States.

(8) "Terms of a trust" means:

(a) Except as otherwise provided in (b) of this subsection, the manifestation of the settlor's intent regarding a trust's provisions as:

(i) Expressed in the trust instrument; or

(ii) Established by other evidence that would be admissible in a judicial proceeding; or

(b) The trust's provisions as established, determined, or amended by:

(i) A trustee or trust director in accordance with applicable law;

(ii) Court order; or

(iii) A nonjudicial settlement agreement under chapter 11.96A RCW.

(9) "Trust director" means a person that is granted a power of direction by the terms of a trust to the extent the power is exercisable while the person is not serving as a trustee. The person is a trust director whether or not the terms of the trust refer to the person as a trust director and whether or not the person is a beneficiary or settlor of the trust.

(10) "Trustee" includes an original, additional, and successor trustee, and a cotrustee. [2020 c 303 § 2.]

11.98B.020 Applicability—Principal place of administration. (1) This chapter applies to a trust, whenever created, that has its principal place of administration in this state, subject to the following rules:

(a) If the trust was created before January 1, 2021, this chapter applies only to a decision or action occurring on or after January 1, 2021.

(b) If the principal place of administration of the trust is changed to this state on or after January 1, 2021, this chapter applies only to a decision or action occurring on or after the date of the change.

(2) Without precluding other means to establish a sufficient connection with the designated jurisdiction in a directed trust, terms of the trust which designate the principal place of administration of the trust are valid and controlling if:

(a) A trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction;

(b) A trust director's principal place of business is located in or a trust director is a resident of the designated jurisdiction; or

(c) All or part of the administration occurs in the designated jurisdiction. [2020 c 303 § 3.]

11.98B.030 Applicability—Exclusions—Power of appointment. (1) In this section, "power of appointment" means a power that enables a person acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over trust property.

(2) This chapter does not apply to a:

(a) Power of appointment;

(b) Power to appoint or remove a trustee or trust director;

(c) Power of a settlor over a trust to the extent the settlor has a power to revoke the trust;

(d) Power of a beneficiary over a trust to the extent the exercise or nonexercise of the power affects the beneficial interest of:

(i) The beneficiary; or

(ii) Another beneficiary represented by the beneficiary with respect to the exercise or nonexercise of the power; or

(e) Power over a trust if:

(i) The terms of the trust provide that the power is held in a nonfiduciary capacity; and

(ii) The power must be held in a nonfiduciary capacity to achieve the settlor's tax objectives under the federal internal revenue code of 1986, as amended, as of January 1, 2021.

(3) Unless the terms of a trust provide otherwise, a power granted to a person to designate a recipient of an ownership interest in or power of appointment over trust property which is exercisable while the person is not serving as a trustee is a power of appointment and not a power of direction. [2020 c 303 § 5.]

11.98B.040 Common law and principles of equity supplement. The common law and principles of equity supplement this chapter, except to the extent modified by this chapter or law of this state other than this chapter. [2020 c 303 § 4.]

11.98B.050 Trust director—Power of direction. (1) Subject to RCW 11.98B.060, the terms of a trust may grant a power of direction to a trust director.

(2) Unless the terms of a trust provide otherwise:

(a) A trust director may exercise any further power appropriate to the exercise or nonexercise of a power of direction granted to the director under subsection (1) of this section; and

(b) Trust directors with joint powers must act by majority decision. [2020 c 303 § 6.]

11.98B.060 Trust director—Power of direction—Limitations. A trust director is subject to the same rules as a trustee in a like position and under similar circumstances in the exercise or nonexercise of a power of direction or further power under RCW 11.98B.050(2)(a) regarding:

(1) A payback provision in the terms of a trust necessary to comply with the reimbursement requirements of medicaid law in section 1917 of the social security act, 42 U.S.C. Sec. 1396p(d)(4)(A), as amended, as of January 1, 2021; and

(2) A charitable interest in the trust. [2020 c 303 § 7.]

11.98B.070 Trust director—Duties and liability. (1) Subject to subsection (2) of this section, with respect to a power of direction or further power under RCW 11.98B.050(2)(a):

(a) A trust director has the same fiduciary duty and liability in the exercise or nonexercise of the power:

(i) If the power is held individually, as a sole trustee in a like position and under similar circumstances; or

(ii) If the power is held jointly with a trustee or another trust director, as a cotrustee in a like position and under similar circumstances; and

(b) The terms of the trust may vary the director's duty or liability to the same extent the terms of the trust could vary the duty or liability of a trustee in a like position and under similar circumstances.

(2) Unless the terms of a trust provide otherwise, if a trust director is licensed, certified, or otherwise authorized or permitted by law other than this chapter to provide health care in the ordinary course of the director's business or practice of a profession, to the extent the director acts in that capacity, the director has no duty or liability under this chapter.

(3) The terms of a trust may impose a duty or liability on a trust director in addition to the duties and liabilities under this section. [2020 c 303 § 8.]

11.98B.080 Directed trustee—Duties and liability.

(1) Subject to subsection (2) of this section, a directed trustee shall take reasonable action to comply with a trust director's exercise or nonexercise of a power of direction or further power under RCW 11.98B.050(2)(a), and the trustee is not liable for the action.

(2) A directed trustee must not comply with a trust director's exercise or nonexercise of a power of direction or further power under RCW 11.98B.050(2)(a) to the extent that by complying the trustee would engage in willful misconduct.

(3) An exercise of a power of direction under which a trust director may release a trustee or another trust director from liability for breach of trust is not effective if:

(a) The breach involved the trustee's or other director's willful misconduct;

(b) The release was induced by improper conduct of the trustee or other director in procuring the release; or

(c) At the time of the release, the director did not know the material facts relating to the breach.

(4) A directed trustee that has reasonable doubt about its duty under this section may petition the superior court for instructions in the county where venue lies for the trust under RCW 11.96A.050.

(5) The terms of a trust may impose a duty or liability on a directed trustee in addition to the duties and liabilities under this section. [2020 c 303 § 9.]

11.98B.090 Duty to provide information to trust director or trustee. (1) Subject to RCW 11.98B.100, a trustee shall provide information to a trust director to the extent the information is reasonably related both to:

(a) The powers or duties of the trustee; and

(b) The powers or duties of the director.

(2) Subject to RCW 11.98B.100, a trust director shall provide information to a trustee or another trust director to the extent the information is reasonably related both to:

(a) The powers or duties of the director; and

(b) The powers or duties of the trustee or other director.

(3) A trustee that acts in reliance on information provided by a trust director is not liable for a breach of trust to the extent the breach resulted from the reliance, unless by so acting the trustee engages in willful misconduct.

(4) A trust director that acts in reliance on information provided by a trustee or another trust director is not liable for a breach of trust to the extent the breach resulted from the reliance, unless by so acting the trust director engages in willful misconduct. [2020 c 303 § 10.]

11.98B.100 No duty to monitor, inform, or advise trust director or trustee. (1) Unless the terms of a trust provide otherwise:

(a) A trustee does not have a duty to:

(i) Monitor a trust director; or

(ii) Inform or give advice to a settlor, beneficiary, trustee, or trust director concerning an instance in which the trustee might have acted differently than the director; and

(b) By taking an action described in (a) of this subsection, a trustee does not assume the duty excluded by (a) of this subsection.

(2) Unless the terms of a trust provide otherwise:

(a) A trust director does not have a duty to:

(i) Monitor a trustee or another trust director; or

(ii) Inform or give advice to a settlor, beneficiary, trustee, or another trust director concerning an instance in which the director might have acted differently than a trustee or another trust director; and

(b) By taking an action described in (a) of this subsection, a trust director does not assume the duty excluded by (a) of this subsection. [2020 c 303 § 11.]

11.98B.110 Application to cotrustee. The terms of a trust may relieve a cotrustee from duty and liability with respect to another cotrustee's exercise or nonexercise of a power of the other cotrustee to the same extent that in a directed trust a directed trustee is relieved from duty and liability with respect to a trust director's power of direction under RCW 11.98B.080 through 11.98B.100. [2020 c 303 § 12.]

11.98B.120 Trust director—Action against—Limitation. (1) An action against a trust director for breach of trust must be commenced within the same limitation period under RCW 11.96A.070 as for an action for breach of trust against a trustee in a like position and under similar circumstances.

(2) A report or accounting has the same effect on the limitation period for an action against a trust director for breach of trust that the report or accounting would have under RCW 11.96A.070 in an action for breach of trust against a trustee in a like position and under similar circumstances. [2020 c 303 § 13.]

11.98B.130 Trust director—Action against—Defenses. In an action against a trust director for breach of trust, the director may assert the same defenses a trustee in a like position and under similar circumstances could assert in an action for breach of trust against the trustee. [2020 c 303 § 14.]

11.98B.140 Trust director—Personal jurisdiction.

(1) By accepting appointment as a trust director of a trust subject to this chapter, the director submits to personal jurisdiction of the courts of this state regarding any matter related to a power or duty of the director.

(2) This section does not preclude other methods of obtaining jurisdiction over a trust director. [2020 c 303 § 15.]

11.98B.150 Trust director—Rules applicable to trustees apply. Unless the terms of a trust provide otherwise, the rules applicable to a trustee apply to a trust director regarding the following matters:

- (1) Acceptance;
- (2) Giving of bond to secure performance;
- (3) Reasonable compensation;
- (4) Resignation;
- (5) Removal; and
- (6) Vacancy and appointment of successor. [2020 c 303 § 16.]

11.98B.900 Uniformity of application and construction. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [2020 c 303 § 17.]

11.98B.901 Relation to electronic signatures in global and national commerce act. This chapter modifies, limits, or supersedes the electronic signatures in global and national commerce act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act (15 U.S.C. Sec. 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. Sec. 7003(b)). [2020 c 303 § 18.]

11.98B.902 Effective date—2020 c 303. This act takes effect January 1, 2021. [2020 c 303 § 20.]

Chapter 11.99 RCW CONSTRUCTION

Sections

- | | |
|-----------|-------------------------------------|
| 11.99.010 | Effective date of title. |
| 11.99.013 | Headings not part of law. |
| 11.99.015 | Repeal. |
| 11.99.020 | Savings clause—Rights not affected. |

11.99.010 Effective date of title. This title shall take effect and be in force on and after the first day of July, 1967; except that sections 11.44.055, 11.44.065, 11.44.070 and 11.44.080 shall take effect on July 1, 1965, and the repeal of the following acts or parts of acts as listed in section 11.99.015 shall also take effect on July 1, 1965, to wit: In subsection (10), section 1444, Code of 1881; in subsection (47), section 95, chapter 156, Laws of 1917; in subsection (48), section 1, chapter 23, Laws of 1919; in subsection (64), section 1, chapter 112, Laws of 1929; in subsection (66), section 123, chapter 180, Laws of 1935; in subsection (71), section 8, chapter 202, Laws of 1939; and in subsection (111), section 83.16.040, chapter 15, Laws of 1961. Except as above provided the procedures herein prescribed shall govern all proceedings in probate brought after the effective date of the

title and, also, all further procedure and proceedings in probate then pending, except to the extent that in the opinion of the court their application in particular proceedings or part thereof would not be feasible or would work injustice, in which event the former procedure shall apply. [1965 c 145 § 11.99.010.]

11.99.013 Headings not part of law. Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1965 c 145 § 11.99.013.]

11.99.015 Repeal. See 1965 c 145 s 11.99.015.

11.99.020 Savings clause—Rights not affected. No act done in any proceeding commenced before this title takes effect and no accrued right shall be impaired by its provisions. When a right is acquired, extinguished or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute in force before this title takes effect, such provisions shall remain in force and be deemed a part of this code with respect to such right. [1965 c 145 § 11.99.020.]

Chapter 11.100 RCW

INVESTMENT OF TRUST FUNDS

Sections

- | | |
|------------|-------------------------------------------------------------------------------------------------------------------------------------------------|
| 11.100.010 | Provisions of chapter to control—Alteration by controlling instrument. |
| 11.100.015 | Guardians, guardianships and funds are subject to chapter. |
| 11.100.020 | Management of trust assets by fiduciary. |
| 11.100.023 | Authority of fiduciary to invest in certain enterprises. |
| 11.100.025 | Spousal or domestic partnership deduction interests. |
| 11.100.030 | Investment in savings accounts—Requirements. |
| 11.100.035 | Investments in securities of certain investment trusts. |
| 11.100.037 | Investment or distribution of funds held in fiduciary capacity—Deposit in other departments authorized—Collateral security required, exception. |
| 11.100.040 | Court may permit deviation from terms of trust instrument. |
| 11.100.045 | Fiduciary—Duty to beneficiaries. |
| 11.100.047 | Fiduciary—Duty to diversify. |
| 11.100.050 | Scope of chapter—RCW 11.68.090 prevails. |
| 11.100.060 | Fiduciary may hold and retain trust property—Investments—Liability. |
| 11.100.070 | Meaning of terms in trust instrument. |
| 11.100.090 | Dealings with self or affiliate. |
| 11.100.120 | Use of trust funds for life insurance. |
| 11.100.130 | Person to whom power or authority to direct or control acts of fiduciary or investments of a trust is conferred deemed a fiduciary—Liability. |
| 11.100.140 | Notice and procedure for nonroutine transactions. |

Trust provisions may relieve trustee from duty, restriction, or liability imposed by statute: RCW 11.97.010.

11.100.010 Provisions of chapter to control—Alteration by controlling instrument. Any corporation, association, or person handling or investing trust funds as a fiduciary shall be governed in the handling and investment of such funds as in this chapter specified. A fiduciary who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with requirements of this chapter. The specific requirements of this chapter may be expanded, restricted, eliminated, or otherwise altered by provisions of the controlling instrument. [1995 c 307 § 1; 1985 c 30 § 63. Prior: 1955 c 33 § 30.24.010; prior: 1947 c 100 § 1; Rem. Supp. 1947 § 3255-10a. Formerly RCW 30.24.010.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.100.015 Guardians, guardianships and funds are subject to chapter. In addition to other fiduciaries, a guardian of any estate is a fiduciary within the meaning of this chapter; and in addition to other trusts, a guardianship of any estate is a trust within the meaning of this chapter; and in addition to other trust funds, guardianship funds are trust funds within the meaning of this chapter. [1985 c 30 § 64. Prior: 1955 c 33 § 30.24.015; prior: 1951 c 218 § 1. Formerly RCW 30.24.015.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.100.020 Management of trust assets by fiduciary.

(1) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(2) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(3) Among the circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

- (a) General economic conditions;
- (b) The possible effect of inflation or deflation;
- (c) The expected tax consequences of investment decisions or strategies;
- (d) The role that each investment or course of action plays within the overall portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;
- (e) The expected total return from income and the appreciation of capital;
- (f) Other resources of the beneficiaries;
- (g) Needs for liquidity, regularity of income, and preservation or appreciation of capital; and
- (h) An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(4) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(5) A trustee may invest in any kind of property or type of investment consistent with the standards of this section.

(6) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise. [2015 c 115 § 18; 1995 c 307 § 2; 1985 c 30 § 65. Prior: 1984 c 149 § 97; 1955 c 33 § 30.24.020; prior: 1947 c 100 § 2; Rem. Supp. 1947 § 3255-10b. Formerly RCW 30.24.020.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Endowment care funds to be invested in accordance with RCW 11.100.020: RCW 68.44.030.

(2022 Ed.)

Additional notes found at www.leg.wa.gov

11.100.023 Authority of fiduciary to invest in certain enterprises. Subject to the standards of RCW 11.100.020, a fiduciary is authorized to invest in new, unproven, untried, or other enterprises with a potential for significant growth whether producing a current return, either by investing directly therein or by investing as a limited partner or otherwise in one or more commingled funds which in turn invest primarily in such enterprises. The aggregate amount of investments held by a fiduciary under the authority of this section valued at cost shall not exceed ten percent of the net fair market value of the trust corpus, including investments made under the authority of this section valued at fair market value, immediately after any such investment is made. Any investment which would have been authorized by this section if in force at the time the investment was made is hereby authorized. [1985 c 30 § 66. Prior: 1984 c 149 § 98.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.100.025 Spousal or domestic partnership deduction interests. Notwithstanding RCW 11.98.070(21)(a), 11.100.060, or any other statutory provisions to the contrary, with respect to trusts which require by their own terms or by operation of law that all income be paid at least annually to the spouse or domestic partner of the trust's creator, which do not provide that on the termination of the income interest that the entire then remaining trust estate be paid to the estate of the spouse or domestic partner of the trust's creator, and for which a federal estate or gift tax marital deduction is claimed, any investment in or retention of unproductive property is subject to a power in the spouse or domestic partner of the trust's creator to require either that any such asset be made productive, or that it be converted to productive assets within a reasonable period of time unless the instrument creating the interest provides otherwise. [2008 c 6 § 929; 1985 c 30 § 67. Prior: 1984 c 149 § 99.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.100.030 Investment in savings accounts—Requirements. A corporation doing a trust business may invest trust funds in savings accounts with itself to the extent that deposits are insured by an agency of the federal government. Additional trust funds may be so invested by the corporation only if it first sets aside under the control of its trust department as collateral security:

(1) Direct obligations of the United States or other obligations fully guaranteed by the United States as to principal and interest; or

(2) Bonds or other obligations which constitute general obligations of any state of the United States or municipal subdivision thereof.

The securities so deposited or securities substituted therefor as collateral shall at all times be at least equal in market value to the amount of the funds so deposited. [1985 c 30 § 68. Prior: 1984 c 149 § 101; 1967 c 133 § 3; 1955 c 33 §

30.24.030; prior: 1947 c 100 § 3; Rem. Supp. 1947 § 3255-10c. Formerly RCW 30.24.030.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

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

(2) Within the limitations of subsection (1) of this section, whenever the trust instrument directs, requires, authorizes, or permits investment in obligations of the United States government, the fiduciary may invest in and hold such obligations either directly or in the form of securities of, or other interests in, an open-end or closed-end management type investment company or investment trust registered under the federal investment company act of 1940, as now or hereafter amended, if both of the following conditions are met:

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

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

(3) If the fiduciary is a bank or trust company, then the fact that the fiduciary, or an affiliate of the fiduciary, provides services to the investment company or investment trust such as that of an investment advisor, custodian, transfer agent, registrar, sponsor, distributor, manager, or otherwise, and is receiving reasonable compensation for those services does not preclude the bank or trust company from investing or reinvesting in the securities of the open-end or closed-end management investment company or investment trust. The fiduciary shall furnish a copy of the prospectus relating to the securities to each person to whom a regular periodic accounting would ordinarily be rendered under the trust instrument or under RCW 11.106.020, upon the request of that person. The restrictions set forth under RCW 11.100.090 may not be construed as prohibiting the fiduciary powers granted under this subsection. [1995 c 307 § 3; 1994 c 221 § 68; 1989 c 97 § 1; 1985 c 30 § 69. Prior: 1955 c 33 § 30.24.035; prior: 1951 c 132 § 1. Formerly RCW 30.24.035.]

***Reviser's note:** "Section 3 of this act" is erroneous. This reference was apparently intended to be to section 67. The error arose in the renumbering of sections in the engrossing of amendments to Substitute House Bill No. 2270 (1994 c 221).

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.100.037 Investment or distribution of funds held in fiduciary capacity—Deposit in other departments

[Title 11 RCW—page 120]

authorized—Collateral security required, exception. Funds held by a bank or trust company in a fiduciary capacity awaiting investment or distribution shall not be held uninvested or undistributed any longer than is reasonable for the proper management of the account. These funds, including managing agency accounts, may, unless prohibited by the instrument creating the trust or by other statutes of this state, be deposited in the commercial or savings or other department of the bank or trust company, only if the bank or trust company first sets aside under control of the trust department as collateral security:

(1) Direct obligations of the United States or other obligations fully guaranteed by the United States as to principal and interest; or

(2) Bonds or other obligations which constitute general obligations of any state of the United States or municipal subdivision thereof.

The securities so deposited or securities substituted therefor as collateral shall at all times be at least equal in market value to the amount of the funds so deposited, but such security shall not be required to the extent that the funds so deposited are insured by an agency of the federal government. [1985 c 30 § 70. Prior: 1984 c 149 § 104; 1967 c 133 § 4. Formerly RCW 30.24.037.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.100.040 Court may permit deviation from terms of trust instrument. Nothing contained in this chapter shall be construed as restricting the power of a court of proper jurisdiction to permit a fiduciary to deviate from the terms of any will, agreement, or other instrument relating to the acquisition, investment, reinvestment, exchange, retention, sale, or management of fiduciary property. [1985 c 30 § 71. Prior: 1955 c 33 § 30.24.040; prior: 1947 c 100 § 4; Rem. Supp. 1947 § 3255-10d. Formerly RCW 30.24.040.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.100.045 Fiduciary—Duty to beneficiaries. A fiduciary shall invest and manage the trust assets solely in the interests of the trust beneficiaries. If a trust has two or more beneficiaries, the fiduciary shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries. [1995 c 307 § 4.]

Additional notes found at www.leg.wa.gov

11.100.047 Fiduciary—Duty to diversify. Subject to the provisions of RCW 11.100.060 and any express provisions in the trust instrument to the contrary, a fiduciary shall diversify the investments of the trust unless the fiduciary reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying. [1995 c 307 § 5.]

Additional notes found at www.leg.wa.gov

11.100.050 Scope of chapter—RCW 11.68.090 prevails. (1) The provisions of this chapter govern fiduciaries acting under wills, agreements, court orders, and other instruments effective before or after January 1, 1985.

(2) To the extent that this chapter is in conflict with RCW 11.68.090, RCW 11.68.090 prevails. [2021 c 140 § 4024; 1985 c 30 § 72. Prior: 1984 c 149 § 107; 1955 c 33 § 30.24.050; prior: 1947 c 100 § 5; Rem. Supp. 1947 § 3255-10e. Formerly RCW 30.24.050.]

Application—2021 c 140 §§ 4003-4017, 4023, 4024, and 4026: See note following RCW 11.48.130.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.100.060 Fiduciary may hold and retain trust property—Investments—Liability. Subject to express provisions to the contrary in the trust instrument, any fiduciary may hold and retain any real or personal property received into or acquired by the trust from any source. Except as to trust property acquired for consideration, a fiduciary may hold and retain any such property without need for diversification as to kinds or amount and whether or not the property is income producing.

Any fiduciary may invest funds held in trust under an instrument creating the trust in any manner and in any investment or in any class of investments authorized by the instrument.

The investments described in this section are permissible even though the securities or other property are not permitted under other provisions of this chapter, and even though the securities may be securities issued by the corporation that is the fiduciary.

A fiduciary is not liable for any loss incurred with respect to any investment held under the authority of or pursuant to this section if that investment was permitted when received or when the investment was made by the fiduciary, and if the fiduciary exercises due care and prudence in the disposition or retention of any such investment. [1985 c 30 § 73. Prior: 1984 c 149 § 108.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.100.070 Meaning of terms in trust instrument. The terms "legal investment" or "authorized investment" or words of similar import, as used in any such instrument, shall be taken to mean any investment which is permitted by the terms of RCW 11.100.020. [1985 c 30 § 74. Prior: 1984 c 149 § 110; 1955 c 33 § 30.24.070; prior: 1947 c 100 § 7; 1941 c 41 § 13; Rem. Supp. 1947 § 3255-13. Formerly RCW 30.24.070.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.100.090 Dealings with self or affiliate. Unless the instrument creating the trust expressly provides to the contrary and except as authorized in RCW 11.98.078, any fiduciary in carrying out the obligations of the trust, may not buy or sell investments from or to himself, herself, or itself or any affiliated or subsidiary company or association. This section shall not be construed as prohibiting the trustee's powers under RCW 11.98.070(12). [2011 c 327 § 34; 1985 c 30 § 75. Prior: 1984 c 149 § 111; 1955 c 33 § 30.24.090; prior: 1947 c

(2022 Ed.)

100 § 9; 1941 c 41 § 17; Rem. Supp. 1947 § 3255-17. Formerly RCW 30.24.090.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.100.120 Use of trust funds for life insurance. Subject to the standards of RCW 11.100.020, a fiduciary is authorized to use trust funds to acquire life insurance upon the life of any beneficiary or upon the life of another in whose life such beneficiary has an insurable interest. [1985 c 30 § 76. Prior: 1984 c 149 § 112; 1973 1st ex.s. c 89 § 1. Formerly RCW 30.24.120.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Insurable interest, guardian, trustee or other fiduciary: RCW 48.18.030(3)(c).

Additional notes found at www.leg.wa.gov

11.100.130 Person to whom power or authority to direct or control acts of fiduciary or investments of a trust is conferred deemed a fiduciary—Liability. Whenever power or authority to direct or control the acts of a fiduciary or the investments of a trust is conferred directly or indirectly upon any person other than the designated trustee of the trust, such person shall be deemed to be a fiduciary and shall be liable to the beneficiaries of the trust and to the designated trustee to the same extent as if he or she were a designated trustee in relation to the exercise or nonexercise of such power or authority. [1995 c 307 § 6; 1985 c 30 § 77. Prior: 1973 1st ex.s. c 89 § 2. Formerly RCW 30.24.130.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.100.140 Notice and procedure for nonroutine transactions. (1) A trustee shall not enter into a significant nonroutine transaction in the absence of a compelling circumstance without:

(a) Providing the written notice called for by subsection (4) of this section; and

(b) If the significant nonroutine transaction is of the type described in subsection (2)(a) of this section, obtaining an independent appraisal, or selling in an open-market transaction.

(2) A "significant nonroutine transaction" for the purpose of this section is defined as any of the following:

(a) Any sale, option, lease, or other agreement, binding for a period of ten years or more, dealing with any interest in real estate other than real estate purchased by the trustee or a vendor's interest in a real estate contract, the value of which constitutes twenty-five percent or more of the net fair market value of trust principal at the time of the transaction; or

(b) The sale of any item or items of tangible personal property, including a sale of precious metals or investment gems other than precious metals or investment gems purchased by the trustee, the value of which constitutes twenty-five percent or more of the net fair market value of trust principal at the time of the transaction; or

(c) The sale of shares of stock in a corporation whose stock is not traded on the open market, if the stock in question

constitutes more than twenty-five percent of the corporation's outstanding shares; or

(d) The sale of shares of stock in any corporation where the stock to be sold constitutes a controlling interest, or would cause the trust to no longer own a controlling interest, in the corporation.

(3) A "compelling circumstance" for the purpose of this section is defined as a condition, fact, or event that the trustee believes necessitates action without compliance with this section in order to avoid immediate and significant detriment to the trust. If faced with a compelling circumstance, the trustee shall give the notice called for in subsection (4) of this section and may thereafter enter into the significant nonroutine transaction without waiting for the expiration of the twenty-day period.

(4) The written notice required by this section shall set forth such material facts as necessary to advise properly the recipient of the notice of the nature and terms of the intended transaction. This notice shall be given to the trustor, if living, to each person who is eighteen years or older and to whom income is presently payable or for whom income is presently being accumulated for distribution as income and for whom an address is known to the trustee, and to the attorney general if the trust is a charitable trust under RCW 11.110.020. The notice shall be mailed by United States certified mail, postage prepaid, return receipt requested, to the recipient's last-known address, or may be personally served, at least twenty days prior to the trustee entering into any binding agreements.

(5) The trustor, if living, or persons entitled to notice under this section may, by written instrument, waive any requirement imposed by this section.

(6) Except as required by this section for nonroutine transactions defined in subsection (2) of this section, a trustee shall not be required to notify beneficiaries of a trust of the trustee's intended action, to obtain an independent appraisal, or to sell in an open-market transaction.

(7) Any person dealing with a trustee may rely upon the trustee's written statement that the requirements of this section have been met for a particular transaction. If a trustee gives such a statement, the transaction shall be final unless the party relying on the statement has actual knowledge that the requirements of this section have not been met.

(8) The requirements of this section, and any similar requirements imposed by prior case law, shall not apply to personal representatives or to those trusts excluded from the definition of express trusts under RCW 11.98.009. [1985 c 30 § 78. Prior: 1984 c 149 § 114.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

Chapter 11.102 RCW COMMON TRUST FUNDS

Sections

- 11.102.010 Funds authorized—Investment—Rules and regulations—"Affiliated" defined.
- 11.102.020 Accounting.
- 11.102.030 Applicability of chapter.
- 11.102.040 Interpretation of chapter.
- 11.102.050 Short title.

11.102.010 Funds authorized—Investment—Rules and regulations—"Affiliated" defined. Any bank or trust company qualified to act as fiduciary in this state, or in any other state if affiliated with a bank or trust company qualified to act as fiduciary in this state, may establish common trust funds for the purpose of furnishing investments to itself and its affiliated or related bank or trust company as fiduciary, or to itself and its affiliated or related bank or trust company, and others, as cofiduciaries; and may, as such fiduciary or cofiduciary, invest funds which it lawfully holds for investment in interests in such common trust funds, if such investment is not prohibited by the instrument, judgment, decree, or order creating such fiduciary relationship, and if, in the case of cofiduciaries, the bank or trust company procures the consent of its cofiduciary or cofiduciaries to such investment: PROVIDED, That any bank or trust company qualified to act as fiduciary in the state of its charter, which is not a member of the federal reserve system, shall, in the operation of such common trust fund, comply with the rules and regulations as made from time to time by the director of financial institutions in the state where chartered and in Washington the director is hereby authorized and empowered to make such rules and regulations as he or she may deem necessary and proper in the premises.

"Affiliated" as used in this section means two or more banks or trust companies:

(1) In which twenty-five percent or more of their voting shares, excluding shares owned by the United States or by any company wholly owned by the United States, are directly or indirectly owned or controlled by a holding company; or

(2) In which the election of a majority of the directors is controlled in any manner by a holding company. [1994 c 92 § 1; 1985 c 30 § 79. Prior: 1979 c 105 § 1; 1955 c 33 § 30.28.010; prior: 1943 c 55 § 1; Rem. Supp. 1943 § 3388. Formerly RCW 30.28.010.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.102.020 Accounting. Unless ordered by a court of competent jurisdiction the bank or trust company operating such common trust funds is not required to render a court accounting with regard to such funds; but it may, by application to the superior court, secure approval of such an accounting on such conditions as the court may establish. [1985 c 30 § 80. Prior: 1955 c 33 § 30.28.020; prior: 1943 c 55 § 2; Rem. Supp. 1943 § 3388-1. Formerly RCW 30.28.020.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.102.030 Applicability of chapter. This chapter shall apply to fiduciary relationships in existence on June 11, 1943, or thereafter established. [1985 c 30 § 81. Prior: 1955 c 33 § 30.28.030; prior: 1943 c 55 § 7; Rem. Supp. 1943 § 3388-6. Formerly RCW 30.28.030.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.102.040 Interpretation of chapter. This chapter shall be so interpreted and construed to effectuate its general purpose to make uniform the laws of those states which enact it. [1985 c 30 § 82. Prior: 1955 c 33 § 30.28.040; prior: 1943

c 55 § 3; Rem. Supp. 1943 § 3388-2. Formerly RCW 30.28.040.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.102.050 Short title. This chapter may be cited as the uniform common trust fund act. [1985 c 30 § 83. Prior: 1955 c 33 § 30.28.050; prior: 1943 c 55 § 4; Rem. Supp. 1943 § 3388-3. Formerly RCW 30.28.050.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

**Chapter 11.103 RCW
REVOCABLE TRUSTS**

Sections

- 11.103.020 Trustor capacity.
- 11.103.030 Revocation or amendment.
- 11.103.040 Trustor's powers—Powers of withdrawal.
- 11.103.050 Limitation on action contesting validity of revocable trust—
Distribution of trust property.

11.103.020 Trustor capacity. The capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will. [2011 c 327 § 35.]

Additional notes found at www.leg.wa.gov

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

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

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

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

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

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

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

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

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

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

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

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

(2022 Ed.)

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

(5) A trustor's powers with respect to the revocation or amendment of a trust or distribution of the property of a trust may be exercised by the trustor's agent under a power of attorney only to the extent specified in the power of attorney document, as provided in RCW 11.125.240 and to the extent consistent with or expressly authorized by the trust agreement.

(6) A conservator of the trustor may exercise a trustor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the guardianship pursuant to chapter 11.130 RCW.

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

(8) This section does not limit or affect operation of RCW 11.96A.220 through 11.96A.240. [2020 c 312 § 719; 2016 c 209 § 404; 2013 c 272 § 24; 2011 c 327 § 36.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

Short title—Application—Uniformity—Federal law application—Federal electronic signatures in global and national commerce act—Application—Dates—Effective date—2016 c 209: See RCW 11.125.010 and 11.125.900 through 11.125.903.

Application—2013 c 272: See note following RCW 11.98.002.

Additional notes found at www.leg.wa.gov

11.103.040 Trustor's powers—Powers of withdrawal. While the trustor of a revocable trust is living, the rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the trustor. If a revocable trust has more than one trustor, the duties of the trustee are owed to all of the living trustors having the right to revoke the trust. [2013 c 272 § 19; 2011 c 327 § 37.]

Application—2013 c 272: See note following RCW 11.98.002.

Additional notes found at www.leg.wa.gov

11.103.050 Limitation on action contesting validity of revocable trust—Distribution of trust property. (1) A person may commence a judicial proceeding to contest the validity of a trust that was revocable at the trustor's death within the earlier of:

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

(b) Four months after the trustee sent to the person by personal service, mail, or in an electronic transmission if there is a consent of the recipient to electronic transmission then in effect under the terms of RCW 11.96A.110, a notice including:

(i) The name and date of the trust;

(ii) The identity of the trustor or trustors;

(iii) The trustee's name, address, and telephone number;

and

(iv) Notice of the time allowed for commencing a proceeding.

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

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

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

(3) A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received. [2013 c 272 § 20; 2011 c 327 § 38.]

Application—2013 c 272: See note following RCW 11.98.002.

Additional notes found at www.leg.wa.gov

Chapter 11.104B RCW

UNIFORM FIDUCIARY INCOME AND PRINCIPAL ACT

Sections

ARTICLE 1 GENERAL PROVISIONS

- 11.104B.001 Short title.
- 11.104B.005 Definitions.
- 11.104B.010 Scope.
- 11.104B.020 Governing law.

ARTICLE 2 FIDUCIARY DUTIES—JUDICIAL REVIEW

- 11.104B.050 Fiduciary duties—General principles.
- 11.104B.060 Fiduciary duties—Judicial review of exercise of discretionary power—Request for instruction.
- 11.104B.070 Fiduciary duties—Power to adjust.

ARTICLE 3 UNITRUSTS

- 11.104B.100 Unitrusts—Definitions.
- 11.104B.110 Unitrusts—Application—Duties and remedies.
- 11.104B.120 Unitrusts—Authority of fiduciary.
- 11.104B.130 Unitrusts—Notice.
- 11.104B.140 Unitrusts—Unitrust policies.
- 11.104B.150 Unitrusts—Unitrust rates.
- 11.104B.160 Unitrusts—Applicable value.
- 11.104B.170 Unitrusts—Period.
- 11.104B.180 Unitrust—Special tax benefits—Other rules.

ARTICLE 4 ALLOCATION OF RECEIPTS

- 11.104B.200 Receipts from entities—Character.
- 11.104B.210 Receipts from entities—Distributions from trusts and estates.
- 11.104B.220 Receipts from entities—Businesses and other activities conducted by fiduciary.
- 11.104B.230 Receipts not normally apportioned—Principal receipts.
- 11.104B.240 Receipts not normally apportioned—Rental property.
- 11.104B.250 Receipts not normally apportioned—Receipt on obligation to be paid in money.
- 11.104B.260 Receipts not normally apportioned—Insurance policies and contracts.
- 11.104B.270 Receipts normally apportioned—Insubstantial allocation not required.
- 11.104B.280 Receipts normally apportioned—Deferred compensation, annuities, and similar payments.
- 11.104B.290 Receipts normally apportioned—Liquidating assets.
- 11.104B.300 Receipts normally apportioned—Minerals, water, and other natural resources.
- 11.104B.310 Receipts normally apportioned—Timber.
- 11.104B.320 Receipts normally apportioned—Marital deduction property not productive of income.
- 11.104B.330 Receipts normally apportioned—Derivatives and options.
- 11.104B.340 Receipts normally apportioned—Asset-backed securities.
- 11.104B.350 Receipts normally apportioned—Other financial instruments and arrangements.

ARTICLE 5 ALLOCATION OF DISBURSEMENTS

- 11.104B.400 Disbursements—Disbursement from income.
- 11.104B.410 Disbursements—Disbursement from principal.

- 11.104B.420 Disbursements—Transfer from income to principal for depreciation.
- 11.104B.430 Disbursements—Reimbursement of income from principal.
- 11.104B.440 Disbursements—Reimbursement of principal from income.
- 11.104B.450 Disbursements—Income taxes.
- 11.104B.460 Disbursements—Adjustment between income and principal because of taxes.

ARTICLE 6

DEATH OF INDIVIDUAL OR TERMINATION OF INCOME INTEREST

- 11.104B.500 Death or termination of interest—Determination and distribution of net income.
- 11.104B.510 Death or termination of interest—Distribution to successor beneficiary.

ARTICLE 7

APPORTIONMENT AT BEGINNING AND END OF INCOME INTEREST

- 11.104B.550 Death or termination of interest—When right to income begins and ends.
- 11.104B.560 Death or termination of interest—Apportionment of receipts and disbursements when decedent dies or income interest begins.
- 11.104B.570 Death or termination of interest—Apportionment when income interest ends.

ARTICLE 8

MISCELLANEOUS PROVISIONS

- 11.104B.900 Uniformity of application and construction.
- 11.104B.901 Relation to electronic signatures in global and national commerce act.
- 11.104B.902 Application.
- 11.104B.903 Application of chapter 11.96A RCW.
- 11.104B.904 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.
- 11.104B.905 Effective date—2021 c 140 §§ 2101-2806.

ARTICLE 1 GENERAL PROVISIONS

11.104B.001 Short title. This chapter may be known and cited as the uniform fiduciary income and principal act. [2021 c 140 § 2101.]

11.104B.005 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Accounting period" means a calendar year, unless a fiduciary selects another period of 12 calendar months or approximately 12 calendar months. The term includes a part of a calendar year or another period of 12 calendar months which begins when an income interest begins or ends when an income interest ends.

(2) "Asset-backed security" means a security that is serviced primarily by the cash flows of a discrete pool of fixed or revolving receivables or other financial assets that by their terms convert into cash within a finite time. The term includes rights or other assets that ensure the servicing or timely distribution of proceeds to the holder of the asset-backed security. The term does not include an asset to which RCW 11.104B.200, 11.104B.280, or 11.104B.330 applies.

(3) "Beneficiary" includes:

(a) For a trust:

- (i) A current beneficiary, including a current income beneficiary and a beneficiary that may receive only principal;
 - (ii) A remainder beneficiary; and
 - (iii) Any other successor beneficiary; and
- (b) For an estate, an heir, legatee, and devisee.

(4) "Court" means the court in this state having jurisdiction relating to a trust or estate.

(5) "Current income beneficiary" means a beneficiary to which a fiduciary may distribute net income, whether or not the fiduciary also may distribute principal to the beneficiary.

(6) "Distribution" means a payment or transfer by a fiduciary to a beneficiary in the beneficiary's capacity as a beneficiary, made under the terms of the trust, without consideration other than the beneficiary's right to receive the payment or transfer under the terms of the trust. "Distribute," "distributed," and "distributee" have corresponding meanings.

(7) "Estate" means a decedent's estate. The term includes the property of the decedent as the estate is originally constituted and the property of the estate as it exists at any time during administration.

(8) "Fiduciary" includes a trustee, personal representative, and person acting under a delegation from a fiduciary. The term includes a person that holds property for a successor beneficiary whose interest may be affected by an allocation of receipts and expenditures between income and principal. If there are two or more cofiduciaries, the term includes all cofiduciaries acting under the terms of the trust and applicable law.

(9) "Income" means money or other property a fiduciary receives as current return from principal. The term includes a part of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in Article 4 of this chapter.

(10) "Income interest" means the right of a current income beneficiary to receive all or part of net income, whether the terms of the trust require the net income to be distributed or authorize the net income to be distributed in the fiduciary's discretion. The term includes the right of a current beneficiary to use property held by a fiduciary.

(11) "Independent person" means a person that is not:

(a) For a trust:

(i) A beneficiary that is a distributee or permissible distributee of trust income or principal or would be a distributee or permissible distributee of trust income or principal if either the trust or the interests of the distributees or permissible distributees of trust income or principal were terminated, assuming no power of appointment is exercised;

(ii) A settlor of the trust; or

(iii) An individual whose legal obligation to support a beneficiary may be satisfied by a distribution from the trust;

(b) For an estate, a beneficiary;

(c) A spouse, parent, brother, sister, or issue of an individual described in (a) or (b) of this subsection;

(d) A corporation, partnership, limited liability company, or other entity in which persons described in (a) through (c) of this subsection, in the aggregate, have voting control; or

(e) An employee of a person described in (a), (b), (c), or (d) of this subsection.

(12) "Mandatory income interest" means the right of a current income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

(13) "Net income" means the total allocations during an accounting period to income under the terms of a trust and this chapter minus the disbursements during the period, other than distributions, allocated to income under the terms of the trust and this chapter. To the extent the trust is a unitrust under Article 3 of this chapter, the term means the unitrust amount determined under Article 3 of this chapter. The term

includes an adjustment from principal to income under RCW 11.104B.070. The term does not include an adjustment from income to principal under RCW 11.104B.070.

(14) "Person" means an individual, estate, trust, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(15) "Personal representative" means an executor, administrator, successor personal representative, special administrator, or person that performs substantially the same function with respect to an estate under the law governing the person's status.

(16) "Principal" means property held in trust for distribution to, production of income for, or use by a current or successor beneficiary.

(17) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(18) "Settlor" means a person, including a testator, that creates or contributes property to a trust. If more than one person creates or contributes property to a trust, the term includes each person, to the extent of the trust property attributable to that person's contribution, except to the extent another person has the power to revoke or withdraw that portion.

(19) "Special tax benefit" means:

(a) Exclusion of a transfer to a trust from gifts described in 26 U.S.C. Sec. 2503(b) of the federal internal revenue code of 1986, as amended, as of January 1, 2022, because of the qualification of an income interest in the trust as a present interest in property;

(b) Status as a qualified subchapter S trust described in 26 U.S.C. Sec. 1361(d)(3) of the federal internal revenue code of 1986, as amended, as of January 1, 2022, at a time the trust holds stock of an S corporation described in 26 U.S.C. Sec. 1361(a)(1) of the federal internal revenue code of 1986, as amended, as of January 1, 2022;

(c) An estate or gift tax marital deduction for a transfer to a trust under 26 U.S.C. Sec. 2056 or 2523 of the federal internal revenue code of 1986, as amended, as of January 1, 2022, which depends or depended in whole or in part on the right of the settlor's spouse to receive the net income of the trust;

(d) Exemption in whole or in part of a trust from the federal generation-skipping transfer tax imposed by 26 U.S.C. Sec. 2601 of the federal internal revenue code of 1986, as amended, as of January 1, 2022, because the trust was irrevocable on September 25, 1985, if there is any possibility that:

(i) A taxable distribution, as defined in 26 U.S.C. Sec. 2612(b) of the federal internal revenue code of 1986, as amended, as of January 1, 2022, could be made from the trust; or

(ii) A taxable termination, as defined in 26 U.S.C. Sec. 2612(a) of the federal internal revenue code of 1986, as amended, as of January 1, 2022, could occur with respect to the trust; or

(e) An inclusion ratio, as defined in 26 U.S.C. Sec. 2642(a) of the federal internal revenue code of 1986, as amended, as of January 1, 2022, of the trust which is less than one, if there is any possibility that:

(i) A taxable distribution, as defined in 26 U.S.C. Sec. 2612(b) of the federal internal revenue code of 1986, as

amended, as of January 1, 2022, could be made from the trust; or

(ii) A taxable termination, as defined in 26 U.S.C. Sec. 2612(a) of the federal internal revenue code of 1986, as amended, as of January 1, 2022, could occur with respect to the trust.

(20) "Successive interest" means the interest of a successor beneficiary.

(21) "Successor beneficiary" means a person entitled to receive income or principal or to use property when an income interest or other current interest ends.

(22) "Terms of a trust" means:

(a) Except as otherwise provided in (b) of this subsection, the manifestation of the settlor's intent regarding a trust's provisions as:

(i) Expressed in the trust instrument; or

(ii) Established by other evidence that would be admissible in a judicial proceeding;

(b) The trust's provisions as established, determined, or amended by:

(i) A trustee or trust director in accordance with applicable law;

(ii) Court order; or

(iii) A nonjudicial settlement agreement under *chapter 11.98A RCW; or

(c) For an estate, a will.

(23) "Trust":

(a) Includes:

(i) An express trust, private or charitable, with additions to the trust, wherever and however created; and

(ii) A trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust; and

(b) Does not include:

(i) A constructive trust;

(ii) A resulting trust, conservatorship, guardianship, multiparty account, custodial arrangement for a minor, business trust, voting trust, security arrangement, liquidation trust, or trust for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, retirement benefits, or employee benefits of any kind; or

(iii) An arrangement under which a person is a nominee, escrowee, or agent for another.

(24) "Trustee" means a person, other than a personal representative, that owns or holds property for the benefit of a beneficiary. The term includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

(25) "Will" means any testamentary instrument recognized by applicable law which makes a legally effective disposition of an individual's property, effective at the individual's death. The term includes a codicil or other amendment to a testamentary instrument. [2021 c 140 § 2102.]

*Reviser's note: Chapter 11.98A RCW was repealed in its entirety by 2020 c 303 § 19.

11.104B.010 Scope. Except as otherwise provided in the terms of a trust or this chapter, this chapter applies to a trust or estate. [2021 c 140 § 2103.]

11.104B.020 Governing law. (1) Except as otherwise provided in the terms of a trust or this chapter, this chapter applies when this state is the principal place of administration of a trust or estate, subject to the following rules:

(a) If the trust was created before January 1, 2022, this chapter applies only to a decision or action occurring on or after January 1, 2022; and

(b) If the principal place of administration of the trust is changed to this state on or after January 1, 2022, this chapter applies only to a decision or action occurring on or after the date of the change.

(2) Without precluding other means to establish a sufficient connection with the designated jurisdiction in a directed trust, terms of the trust which designate the principal place of administration of the trust are valid and controlling if:

(a) A trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction;

(b) A trust director's principal place of business is located in or a trust director is a resident of the designated jurisdiction; or

(c) All or part of the administration occurs in the designated jurisdiction.

(3) By accepting the trusteeship of a trust having its principal place of administration in this state or by moving the principal place of administration of a trust to this state, the trustee submits to the application of this chapter to any matter within the scope of this chapter involving the trust. [2021 c 140 § 2104.]

ARTICLE 2

FIDUCIARY DUTIES—JUDICIAL REVIEW

11.104B.050 Fiduciary duties—General principles.

(1) In making an allocation or determination or exercising discretion under this chapter, a fiduciary shall:

(a) Act in good faith, based on what is fair and reasonable to all beneficiaries;

(b) Administer a trust or estate impartially, except to the extent the terms of the trust manifest an intent that the fiduciary shall or may favor one or more beneficiaries;

(c) Administer the trust or estate in accordance with the terms of the trust, even if there is a different provision in this chapter; and

(d) Administer the trust or estate in accordance with this chapter, except to the extent the terms of the trust provide otherwise or authorize the fiduciary to determine otherwise.

(2) A fiduciary's allocation, determination, or exercise of discretion under this chapter is presumed to be fair and reasonable to all beneficiaries. A fiduciary may exercise a discretionary power of administration given to the fiduciary by the terms of the trust, and an exercise of the power which produces a result different from a result required or permitted by this chapter does not create an inference that the fiduciary abused the fiduciary's discretion.

(3) A fiduciary shall:

(a) Add a receipt to principal, to the extent neither the terms of the trust nor this chapter allocates the receipt between income and principal; and

(b) Charge a disbursement to principal, to the extent neither the terms of the trust nor this chapter allocates the disbursement between income and principal.

(4) A fiduciary may exercise the power to adjust under RCW 11.104B.070, convert an income trust to a unitrust under RCW 11.104B.120(1)(a), change the percentage or method used to calculate a unitrust amount under RCW 11.104B.120(1)(b), or convert a unitrust to an income trust under RCW 11.104B.120(1)(c), if the fiduciary determines the exercise of the power is necessary to administer the trust or estate in accordance with the requirements of subsection (1) of this section.

(5) Factors the fiduciary must consider in making the determination under subsection (4) of this section include:

- (a) The terms of the trust;
- (b) The nature, distribution standards, and expected duration of the trust;
- (c) The effect of the allocation rules, including specific adjustments between income and principal, under Articles 4 through 7 of this chapter;
- (d) The desirability of liquidity and regularity of income;
- (e) The desirability of the preservation and appreciation of principal;
- (f) The extent to which an asset is used or may be used by a beneficiary;
- (g) The increase or decrease in the value of principal assets, reasonably determined by the fiduciary;
- (h) Whether and to what extent the terms of the trust give the fiduciary power to accumulate income or invade principal or prohibit the fiduciary from accumulating income or invading principal;
- (i) The extent to which the fiduciary has accumulated income or invaded principal in preceding accounting periods;
- (j) The effect of current and reasonably expected economic conditions; and
- (k) The reasonably expected tax consequences of the exercise of the power. [2021 c 140 § 2201.]

11.104B.060 Fiduciary duties—Judicial review of exercise of discretionary power—Request for instruction.

(1) In this section, "fiduciary decision" means:

- (a) A fiduciary's allocation between income and principal or other determination regarding income and principal required or authorized by the terms of the trust or this chapter;
- (b) The fiduciary's exercise or nonexercise of a discretionary power regarding income and principal granted by the terms of the trust or this chapter, including the power to adjust under RCW 11.104B.070, convert an income trust to a unitrust under RCW 11.104B.120(1)(a), change the percentage or method used to calculate a unitrust amount under RCW 11.104B.120(1)(b), or convert a unitrust to an income trust under RCW 11.104B.120(1)(c); or
- (c) The fiduciary's implementation of a decision described in (a) or (b) of this subsection.

(2) The court may not order a fiduciary to change a fiduciary decision unless the court determines that the fiduciary decision was an abuse of the fiduciary's discretion.

(3) If the court determines that a fiduciary decision was an abuse of the fiduciary's discretion, the court may order a remedy authorized by law. To place the beneficiaries in the positions the beneficiaries would have occupied if there had not been an abuse of the fiduciary's discretion, the court may order:

(a) The fiduciary to exercise or refrain from exercising the power to adjust under RCW 11.104B.070;

(b) The fiduciary to exercise or refrain from exercising the power to convert an income trust to a unitrust under RCW 11.104B.120(1)(a), change the percentage or method used to calculate a unitrust amount under RCW 11.104B.120(1)(b), or convert a unitrust to an income trust under RCW 11.104B.120(1)(c);

(c) The fiduciary to distribute an amount to a beneficiary;

(d) A beneficiary to return some or all of a distribution; or

(e) The fiduciary to withhold an amount from one or more future distributions to a beneficiary.

(4) On petition by a fiduciary for instruction, the court may determine whether a proposed fiduciary decision will result in an abuse of the fiduciary's discretion. If the petition describes the proposed decision, contains sufficient information to inform the beneficiary of the reasons for making the proposed decision and the facts on which the fiduciary relies, and explains how the beneficiary will be affected by the proposed decision, a beneficiary that opposes the proposed decision has the burden to establish that it will result in an abuse of the fiduciary's discretion. [2021 c 140 § 2202.]

11.104B.070 Fiduciary duties—Power to adjust. (1) Except as otherwise provided in the terms of a trust or this section, a fiduciary, in a record, without court approval, may adjust between income and principal if the fiduciary determines the exercise of the power to adjust is necessary to administer the trust or estate in accordance with the requirements of RCW 11.104B.050(1).

(2) This section does not create a duty to exercise or consider the power to adjust under subsection (1) of this section or to inform a beneficiary about the applicability of this section.

(3) A fiduciary that in good faith exercises or fails to exercise the power to adjust under subsection (1) of this section is not liable to a person affected by the exercise or failure to exercise.

(4) In deciding whether and to what extent to exercise the power to adjust under subsection (1) of this section, a fiduciary shall consider all factors the fiduciary considers relevant, including relevant factors in RCW 11.104B.050(5) and the application of RCW 11.104B.200(9), 11.104B.270, or 11.104B.320.

(5) A fiduciary may not exercise the power under subsection (1) of this section to make an adjustment or under RCW 11.104B.270 to make a determination that an allocation is insubstantial if:

(a) The adjustment or determination would reduce the amount payable to a current income beneficiary from a trust that qualifies for a special tax benefit, except to the extent the adjustment is made to provide for a reasonable apportionment of the total return of the trust between the current income beneficiary and successor beneficiaries;

(b) The adjustment or determination would change the amount payable to a beneficiary, as a fixed annuity or a fixed fraction of the value of the trust assets, under the terms of the trust;

(c) The adjustment or determination would reduce an amount that is permanently set aside for a charitable purpose under the terms of the trust, unless both income and principal are set aside for the charitable purpose;

(d) Possessing or exercising the power would cause a person to be treated as the owner of all or part of the trust for federal income tax purposes;

(e) Possessing or exercising the power would cause all or part of the value of the trust assets to be included in the gross estate of an individual for federal estate tax purposes;

(f) Possessing or exercising the power would cause an individual to be treated as making a gift for federal gift tax purposes;

(g) The fiduciary is not an independent person;

(h) The trust is irrevocable and provides for income to be paid to the settlor and possessing or exercising the power would cause the adjusted principal or income to be considered an available resource or available income under a public benefit program; or

(i) The trust is a unitrust under Article 3 of this chapter.

(6) If subsection (5)(d), (e), (f), or (g) of this section applies to a fiduciary:

(a) A cofiduciary to which subsection (5)(d) through (g) of this section does not apply may exercise the power to adjust, unless the exercise of the power by the remaining cofiduciary or cofiduciaries is not permitted by the terms of the trust or law other than this chapter; or

(b) If there is no cofiduciary to which subsection (5)(d) through (g) of this section does not apply, the fiduciary may appoint a cofiduciary to which subsection (5)(d) through (g) of this section does not apply, which may be a special fiduciary with limited powers, and the appointed cofiduciary may exercise the power to adjust under subsection (1) of this section, unless the appointment of a cofiduciary or the exercise of the power by a cofiduciary is not permitted by the terms of the trust or law other than this chapter.

(7) A fiduciary may release or delegate to a cofiduciary the power to adjust under subsection (1) of this section if the fiduciary determines that the fiduciary's possession or exercise of the power will or may:

(a) Cause a result described in subsection (5)(a) through (f) or (h) of this section; or

(b) Deprive the trust of a tax benefit or impose a tax burden not described in subsection (5)(a) through (f) of this section.

(8) A fiduciary's release or delegation to a cofiduciary under subsection (7) of this section of the power to adjust under subsection (1) of this section:

(a) Must be in a record;

(b) Applies to the entire power, unless the release or delegation provides a limitation, which may be a limitation to the power to adjust:

(i) From income to principal;

(ii) From principal to income;

(iii) For specified property; or

(iv) In specified circumstances;

(c) For a delegation, may be modified by a redelegation under this subsection by the cofiduciary to which the delegation is made; and

(d) Subject to (c) of this subsection (8), is permanent, unless the release or delegation provides a specified period,

including a period measured by the life of an individual or the lives of more than one individual.

(9) Terms of a trust which deny or limit the power to adjust between income and principal do not affect the application of this section, unless the terms of the trust expressly deny or limit the power to adjust under subsection (1) of this section.

(10) The exercise of the power to adjust under subsection (1) of this section in any accounting period may apply to the current period, the immediately preceding period, and one or more subsequent periods.

(11) A description of the exercise of the power to adjust under subsection (1) of this section must be:

(a) Included in a report, if any, sent to all beneficiaries; or

(b) Communicated at least annually to all beneficiaries that receive or are entitled to receive income from the trust or would be entitled to receive a distribution of principal if the trust were terminated at the time the notice is sent, assuming no power of appointment is exercised. [2021 c 140 § 2203.]

ARTICLE 3 UNITRUSTS

11.104B.100 Unitrusts—Definitions. The definitions in this section apply throughout this article unless the context clearly requires otherwise.

(1) "Applicable value" means the amount of the net fair market value of a trust taken into account under RCW 11.104B.160.

(2) "Express unitrust" means a trust for which, under the terms of the trust without regard to this article, income or net income must or may be calculated as a unitrust amount.

(3) "Income trust" means a trust that is not a unitrust.

(4) "Net fair market value of a trust" means the fair market value of the assets of the trust, less the noncontingent liabilities of the trust.

(5) "Unitrust" means a trust for which net income is a unitrust amount. The term includes an express unitrust.

(6) "Unitrust amount" means an amount computed by multiplying a determined value of a trust by a determined percentage. For a unitrust administered under a unitrust policy, the term means the applicable value, multiplied by the unitrust rate.

(7) "Unitrust policy" means a policy described in RCW 11.104B.140 through 11.104B.180 and adopted under RCW 11.104B.120.

(8) "Unitrust rate" means the rate used to compute the unitrust amount under subsection (6) of this section for a unitrust administered under a unitrust policy. [2021 c 140 § 2301.]

11.104B.110 Unitrusts—Application—Duties and remedies. (1) Except as otherwise provided in subsection (2) of this section, this article applies to:

(a) An income trust, unless the terms of the trust expressly prohibit use of this article by a specific reference to this article or an explicit expression of intent that net income not be calculated as a unitrust amount; and

(b) An express unitrust, except to the extent the terms of the trust explicitly:

(i) Prohibit use of this article by a specific reference to this article;

(ii) Prohibit conversion to an income trust; or

(iii) Limit changes to the method of calculating the unitrust amount.

(2) This article does not apply to a trust described in 26 U.S.C. Sec. 170(f)(2)(B), 642(c)(5), 664(d), or 2702(a)(3)(A)(ii) or (iii) or (b), as amended, as of January 1, 2022.

(3) An income trust to which this article applies under subsection (1)(a) of this section may be converted to a unitrust under this article regardless of the terms of the trust concerning distributions. Conversion to a unitrust under this article does not affect other terms of the trust concerning distributions of income or principal.

(4) This article applies to an estate only to the extent a trust is a beneficiary of the estate. To the extent of the trust's interest in the estate, the estate may be administered as a unitrust, the administration of the estate as a unitrust may be discontinued, or the percentage or method used to calculate the unitrust amount may be changed, in the same manner as for a trust under this article.

(5) This article does not create a duty to take or consider action under this article or to inform a beneficiary about the applicability of this article.

(6) A fiduciary that in good faith takes or fails to take an action under this article is not liable to a person affected by the action or inaction. [2021 c 140 § 2302.]

11.104B.120 Unitrusts—Authority of fiduciary. (1) A fiduciary, without court approval, by complying with subsections (2) and (6) of this section, may:

(a) Convert an income trust to a unitrust if the fiduciary adopts in a record a unitrust policy for the trust providing:

(i) That in administering the trust the net income of the trust will be a unitrust amount rather than net income determined without regard to this article; and

(ii) The percentage and method used to calculate the unitrust amount;

(b) Change the percentage or method used to calculate a unitrust amount for a unitrust if the fiduciary adopts in a record a unitrust policy or an amendment or replacement of a unitrust policy providing changes in the percentage or method used to calculate the unitrust amount; or

(c) Convert a unitrust to an income trust if the fiduciary adopts in a record a determination that, in administering the trust, the net income of the trust will be net income determined without regard to this article rather than a unitrust amount.

(2) A fiduciary may take an action under subsection (1) of this section if:

(a) The fiduciary determines that the action will assist the fiduciary to administer a trust impartially;

(b) The fiduciary sends a notice in a record, in the manner required by RCW 11.104B.130, describing and proposing to take the action;

(c) The fiduciary sends a copy of the notice under (b) of this subsection (2) to each settlor of the trust which is:

(i) If an individual, living; or

(ii) If not an individual, in existence;

(d) At least one member of each class of beneficiaries receiving the notice under (b) of this subsection (2) is:

(i) If an individual, legally competent;

(ii) If not an individual, in existence; or

(iii) Represented in the manner provided in RCW 11.104B.130(2); and

(e) The fiduciary does not receive, by the date specified in the notice under RCW 11.104B.130(3)(f), an objection in a record to the action proposed under (b) of this subsection (2) from a person to which the notice under (b) of this subsection (2) is sent.

(3) If a fiduciary receives, not later than the date stated in the notice under RCW 11.104B.130(3)(e), an objection in a record described in RCW 11.104B.130(3)(d) to a proposed action, the fiduciary or a beneficiary may request the court to have the proposed action taken as proposed, taken with modifications, or prevented. A person described in RCW 11.104B.130(1) may oppose the proposed action in the proceeding under this subsection, whether or not the person:

(a) Consented under RCW 11.104B.130(2); or

(b) Objected under RCW 11.104B.130(3)(d).

(4) If, after sending a notice under subsection (2)(b) of this section, a fiduciary decides not to take the action proposed in the notice, the fiduciary shall notify in a record each person described in RCW 11.104B.130(1) of the decision not to take the action and the reasons for the decision.

(5) If a beneficiary requests in a record that a fiduciary take an action described in subsection (1) of this section and the fiduciary declines to act or does not act within 90 days after receiving the request, the beneficiary may request the court to direct the fiduciary to take the action requested.

(6) In deciding whether and how to take an action authorized by subsection (1) of this section, or whether and how to respond to a request by a beneficiary under subsection (5) of this section, a fiduciary shall consider all factors relevant to the trust and the beneficiaries, including relevant factors in RCW 11.104B.050(5).

(7) A fiduciary may release or delegate the power to convert an income trust to a unitrust under subsection (1)(a) of this section, change the percentage or method used to calculate a unitrust amount under subsection (1)(b) of this section, or convert a unitrust to an income trust under subsection (1)(c) of this section, for a reason described in RCW 11.104B.070(7) and in the manner described in RCW 11.104B.070(8). [2021 c 140 § 2303.]

11.104B.130 Unitrusts—Notice. (1) A notice required by RCW 11.104B.120(2)(b) must be sent to:

(a) All beneficiaries that receive or are entitled to receive income from the trust or would be entitled to receive a distribution of principal if the trust were terminated at the time the notice is sent, assuming no power of appointment is exercised; and

(b) Each person that is granted a power over the trust by the terms of the trust, to the extent the power is exercisable when the person is not then serving as a trustee:

(i) Including a:

(A) Power over the investment, management, or distribution of trust property or other matters of trust administration; and

(B) Power to appoint or remove a trustee or person described in this subsection; and

(ii) Excluding a:

(A) Power of appointment;

(B) Power of a beneficiary over the trust, to the extent the exercise or nonexercise of the power affects the beneficial interest of the beneficiary; and

(C) Power over the trust if the terms of the trust provide that the power is held in a nonfiduciary capacity and the power must be held in a nonfiduciary capacity to achieve a tax objective under the federal internal revenue code of 1986, as amended, as of January 1, 2022.

(2) A person may consent in a record at any time to action proposed under RCW 11.104B.120(2)(b). A notice required by RCW 11.104B.120(2)(b) need not be sent to a person that consents under this subsection.

(3) A notice required by RCW 11.104B.120(2)(b) must include:

(a) The action proposed under RCW 11.104B.120(2)(b);

(b) For a conversion of an income trust to a unitrust, a copy of the unitrust policy adopted under RCW 11.104B.120(1)(a);

(c) For a change in the percentage or method used to calculate the unitrust amount, a copy of the unitrust policy or amendment or replacement of the unitrust policy adopted under RCW 11.104B.120(1)(b);

(d) A statement that the person to which the notice is sent may object to the proposed action by stating in a record the basis for the objection and sending or delivering the record to the fiduciary;

(e) The date by which an objection under (d) of this subsection (3) must be received by the fiduciary, which must be at least 30 days after the date the notice is sent;

(f) The date on which the action is proposed to be taken and the date on which the action is proposed to take effect;

(g) The name and contact information of the fiduciary; and

(h) The name and contact information of a person that may be contacted for additional information. [2021 c 140 § 2304.]

11.104B.140 Unitrusts—Unitrust policies. (1) In administering a unitrust under this article, a fiduciary shall follow a unitrust policy adopted under RCW 11.104B.120(1) (a) or (b) or amended or replaced under RCW 11.104B.120(1)(b).

(2) A unitrust policy must provide:

(a) The unitrust rate or the method for determining the unitrust rate under RCW 11.104B.150;

(b) The method for determining the applicable value under RCW 11.104B.160; and

(c) The rules described in RCW 11.104B.150 through 11.104B.180, which apply in the administration of the unitrust, whether the rules are:

(i) Mandatory, as provided in RCW 11.104B.160(1) and 11.104B.170(1); or

(ii) Optional, as provided in RCW 11.104B.150, 11.104B.160(2), 11.104B.170(2), and 11.104B.180(1), to the extent the fiduciary elects to adopt those rules. [2021 c 140 § 2305.]

11.104B.150 Unitrusts—Unitrust rates. (1) Except as otherwise provided in RCW 11.104B.180(2)(a), a unitrust rate may be:

(a) A fixed unitrust rate; or

(b) A unitrust rate that is determined for each period using:

(i) A market index or other published data; or

(ii) A mathematical blend of market indices or other published data over a stated number of preceding periods.

(2) Except as otherwise provided in RCW 11.104B.180(2)(a), a unitrust policy may provide:

(a) A limit on how high the unitrust rate determined under subsection (1)(b) of this section may rise;

(b) A limit on how low the unitrust rate determined under subsection (1)(b) of this section may fall;

(c) A limit on how much the unitrust rate determined under subsection (1)(b) of this section may increase over the unitrust rate for the preceding period or a mathematical blend of unitrust rates over a stated number of preceding periods;

(d) A limit on how much the unitrust rate determined under subsection (1)(b) of this section may decrease below the unitrust rate for the preceding period or a mathematical blend of unitrust rates over a stated number of preceding periods; or

(e) A mathematical blend of any of the unitrust rates determined under subsection (1)(b) of this section and (a) through (d) of this subsection. [2021 c 140 § 2306.]

11.104B.160 Unitrusts—Applicable value. (1) A unitrust policy must provide the method for determining the fair market value of an asset for the purpose of determining the unitrust amount, including:

(a) The frequency of valuing the asset, which need not require a valuation in every period; and

(b) The date for valuing the asset in each period in which the asset is valued.

(2) Except as otherwise provided in RCW 11.104B.180(2)(b), a unitrust policy may provide methods for determining the amount of the net fair market value of the trust to take into account in determining the applicable value, including:

(a) Obtaining an appraisal of an asset for which fair market value is not readily available;

(b) Exclusion of specific assets or groups or types of assets;

(c) Other exceptions or modifications of the treatment of specific assets or groups or types of assets;

(d) Identification and treatment of cash or property held for distribution;

(e) Use of:

(i) An average of fair market values over a stated number of preceding periods; or

(ii) Another mathematical blend of fair market values over a stated number of preceding periods;

(f) A limit on how much the applicable value of all assets, groups of assets, or individual assets may increase over:

(i) The corresponding applicable value for the preceding period; or

(ii) A mathematical blend of applicable values over a stated number of preceding periods;

(g) A limit on how much the applicable value of all assets, groups of assets, or individual assets may decrease below:

- (i) The corresponding applicable value for the preceding period; or
- (ii) A mathematical blend of applicable values over a stated number of preceding periods;
- (h) The treatment of accrued income and other features of an asset which affect value; and
- (i) Determining the liabilities of the trust, including treatment of liabilities to conform with the treatment of assets under (a) through (h) of this subsection (2). [2021 c 140 § 2307.]

11.104B.170 Unitrusts—Period. (1) A unitrust policy must provide the period used under RCW 11.104B.150 and 11.104B.160. Except as otherwise provided in RCW 11.104B.180(2)(c), the period may be:

- (a) A calendar year;
 - (b) A 12-month period other than a calendar year;
 - (c) A calendar quarter;
 - (d) A three-month period other than a calendar quarter;
- or
- (e) Another period.
- (2) Except as otherwise provided in RCW 11.104B.180(2), a unitrust policy may provide standards for:
- (a) Using fewer preceding periods under RCW 11.104B.150 (1)(b)(ii) or (2)(c) or (d) if:
 - (i) The trust was not in existence in a preceding period;
- or
- (ii) Market indices or other published data are not available for a preceding period;
- (b) Using fewer preceding periods under RCW 11.104B.160(2) (e)(i) or (ii), (f)(ii), or (g)(ii) if:
 - (i) The trust was not in existence in a preceding period;
- or
- (ii) Fair market values are not available for a preceding period; and
- (c) Prorating the unitrust amount on a daily basis for a part of a period in which the trust or the administration of the trust as a unitrust or the interest of any beneficiary commences or terminates. [2021 c 140 § 2308.]

11.104B.180 Unitrust—Special tax benefits—Other rules. (1) A unitrust policy may:

- (a) Provide methods and standards for:
 - (i) Determining the timing of distributions;
 - (ii) Making distributions in cash or in-kind or partly in cash and partly in-kind; or
 - (iii) Correcting an underpayment or overpayment to a beneficiary based on the unitrust amount if there is an error in calculating the unitrust amount;
 - (b) Specify sources and the order of sources, including categories of income for federal income tax purposes, from which distributions of a unitrust amount are paid; or
 - (c) Provide other standards and rules the fiduciary determines serve the interests of the beneficiaries.
- (2) If a trust qualifies for a special tax benefit or a fiduciary is not an independent person:
- (a) The unitrust rate established under RCW 11.104B.150 may not be less than three percent or more than five percent;
 - (b) The only provisions of RCW 11.104B.160 that apply are RCW 11.104B.160 (1) and (2)(a), (d), (e)(i), and (i);

(2022 Ed.)

(c) The only period that may be used under RCW 11.104B.170 is a calendar year under RCW 11.104B.170 (1)(a); and

(d) The only other provisions of RCW 11.104B.170 that apply are RCW 11.104B.170(2) (b)(i) and (c). [2021 c 140 § 2309.]

ARTICLE 4 ALLOCATION OF RECEIPTS

11.104B.200 Receipts from entities—Character. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Capital distribution" means an entity distribution of money that is a:

- (i) Return of capital; or
- (ii) Distribution in total or partial liquidation of the entity.

(b) "Entity":

(i) Means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization or arrangement in which a fiduciary owns or holds an interest, whether or not the entity is a taxpayer for federal income tax purposes; and

(ii) Does not include:

(A) A trust or estate to which RCW 11.104B.210 applies;

(B) A business or other activity to which RCW 11.104B.220 applies, which is not conducted by an entity described in (b)(i) of this subsection (1);

(C) An asset-backed security; or

(D) An instrument or arrangement to which RCW 11.104B.350 applies.

(c) "Entity distribution" means a payment or transfer by an entity made to a person in the person's capacity as an owner or holder of an interest in the entity.

(2) In this section, an attribute or action of an entity includes an attribute or action of any other entity in which the entity owns or holds an interest, including an interest owned or held indirectly through another entity.

(3) Except as otherwise provided in subsection (4)(b) through (d) of this section, a fiduciary shall allocate to income:

(a) Money received in an entity distribution; and

(b) Tangible personal property of nominal value received from the entity.

(4) A fiduciary shall allocate to principal:

(a) Property received in an entity distribution which is not:

(i) Money; or

(ii) Tangible personal property of nominal value;

(b) Money received in an entity distribution in an exchange for part or all of the fiduciary's interest in the entity, to the extent the entity distribution reduces the fiduciary's interest in the entity relative to the interests of other persons that own or hold interests in the entity;

(c) Money received in an entity distribution that the fiduciary determines or estimates is a capital distribution; and

(d) Money received in an entity distribution from an entity that is:

(i) A regulated investment company or real estate investment trust if the money received is a capital gain dividend for federal income tax purposes; or

(ii) Treated for federal income tax purposes comparably to the treatment described in (d)(i) of this subsection (4).

(5) A fiduciary may determine or estimate that money received in an entity distribution is a capital distribution:

(a) By relying without inquiry or investigation on a characterization of the entity distribution provided by or on behalf of the entity, unless the fiduciary:

(i) Determines, on the basis of information known to the fiduciary, that the characterization is or may be incorrect; or

(ii) Owns or holds more than 50 percent of the voting interest in the entity;

(b) By determining or estimating, on the basis of information known to the fiduciary or provided to the fiduciary by or on behalf of the entity, that the total amount of money and property received by the fiduciary in the entity distribution or a series of related entity distributions is or will be greater than 20 percent of the fair market value of the fiduciary's interest in the entity; or

(c) If neither (a) or (b) of this subsection (5) applies, by considering the factors in subsection (6) of this section and the information known to the fiduciary or provided to the fiduciary by or on behalf of the entity.

(6) In making a determination or estimate under subsection (5)(c) of this section, a fiduciary may consider:

(a) A characterization of an entity distribution provided by or on behalf of the entity;

(b) The amount of money or property received in:

(i) The entity distribution; or

(ii) What the fiduciary determines is or will be a series of related entity distributions;

(c) The amount described in (b) of this subsection compared to the amount the fiduciary determines or estimates is, during the current or preceding accounting periods:

(i) The entity's operating income;

(ii) The proceeds of the entity's sale or other disposition

of:

(A) All or part of the business or other activity conducted by the entity;

(B) One or more business assets that are not sold to customers in the ordinary course of the business or other activity conducted by the entity; or

(C) One or more assets other than business assets, unless the entity's primary activity is to invest in assets to realize gain on the disposition of all or some of the assets;

(iii) If the entity's primary activity is to invest in assets to realize gain on the disposition of all or some of the assets, the gain realized on the disposition;

(iv) The entity's regular, periodic entity distributions;

(v) The amount of money the entity has accumulated;

(vi) The amount of money the entity has borrowed;

(vii) The amount of money the entity has received from the sources described in RCW 11.104B.260, 11.104B.290, 11.104B.300, and 11.104B.310; and

(viii) The amount of money the entity has received from a source not otherwise described in this subsection; and

(d) Any other factor the fiduciary determines is relevant.

(7) If, after applying subsections (3) through (6) of this section, a fiduciary determines that a part of an entity distri-

bution is a capital distribution but is in doubt about the amount of the entity distribution which is a capital distribution, the fiduciary shall allocate to principal the amount of the entity distribution which is in doubt.

(8) If a fiduciary receives additional information about the application of this section to an entity distribution before the fiduciary has paid part of the entity distribution to a beneficiary, the fiduciary may consider the additional information before making the payment to the beneficiary and may change a decision to make the payment to the beneficiary.

(9) If a fiduciary receives additional information about the application of this section to an entity distribution after the fiduciary has paid part of the entity distribution to a beneficiary, the fiduciary is not required to change or recover the payment to the beneficiary but may consider that information in determining whether to exercise the power to adjust under RCW 11.104B.070. [2021 c 140 § 2401.]

11.104B.210 Receipts from entities—Distributions from trusts and estates. A fiduciary shall allocate to income an amount received as a distribution of income, including a unitrust distribution under Article 3 of this chapter, from a trust or estate in which the fiduciary has an interest, other than an interest the fiduciary purchased in a trust that is an investment entity, and shall allocate to principal an amount received as a distribution of principal from the trust or estate. If a fiduciary purchases, or receives from a settlor, an interest in a trust that is an investment entity, RCW 11.104B.200, 11.104B.340, or 11.104B.350 applies to a receipt from the trust. [2021 c 140 § 2402.]

11.104B.220 Receipts from entities—Businesses and other activities conducted by fiduciary. (1) This section applies to a business or other activity conducted by a fiduciary if the fiduciary determines that it is in the interests of the beneficiaries to account separately for the business or other activity instead of:

(a) Accounting for the business or other activity as part of the fiduciary's general accounting records; or

(b) Conducting the business or other activity through an entity described in RCW 11.104B.200(1)(b)(i).

(2) A fiduciary may account separately under this section for the transactions of a business or other activity, whether or not assets of the business or other activity are segregated from other assets held by the fiduciary.

(3) A fiduciary that accounts separately under this section for a business or other activity:

(a) May determine:

(i) The extent to which the net cash receipts of the business or other activity must be retained for:

(A) Working capital;

(B) The acquisition or replacement of fixed assets; and

(C) Other reasonably foreseeable needs of the business or other activity; and

(ii) The extent to which the remaining net cash receipts are accounted for as principal or income in the fiduciary's general accounting records for the trust;

(b) May make a determination under (a) of this subsection (3) separately and differently from the fiduciary's decisions concerning distributions of income or principal; and

(c) Shall account for the net amount received from the sale of an asset of the business or other activity, other than a sale in the ordinary course of the business or other activity, as principal in the fiduciary's general accounting records for the trust, to the extent the fiduciary determines that the net amount received is no longer required in the conduct of the business or other activity.

(4) Activities for which a fiduciary may account separately under this section include:

- (a) Retail, manufacturing, service, and other traditional business activities;
- (b) Farming;
- (c) Raising and selling livestock and other animals;
- (d) Managing rental properties;
- (e) Extracting minerals, water, and other natural resources;
- (f) Growing and cutting timber;
- (g) An activity to which RCW 11.104B.330, 11.104B.340, or 11.104B.350 applies; and
- (h) Any other business conducted by the fiduciary. [2021 c 140 § 2403.]

11.104B.230 Receipts not normally apportioned—Principal receipts. A fiduciary shall allocate to principal:

- (1) To the extent not allocated to income under this chapter, an asset received from:
 - (a) An individual during the individual's lifetime;
 - (b) An estate;
 - (c) A trust on termination of an income interest; or
 - (d) A payor under a contract naming the fiduciary as beneficiary;
- (2) Except as otherwise provided in this article, money or other property received from the sale, exchange, liquidation, or change in form of a principal asset;
- (3) An amount recovered from a third party to reimburse the fiduciary because of a disbursement described in RCW 11.104B.410(1) or for another reason to the extent not based on loss of income;
- (4) Proceeds of property taken by eminent domain, except that proceeds awarded for loss of income in an accounting period are income if a current income beneficiary had a mandatory income interest during the period;
- (5) Net income received in an accounting period during which there is no beneficiary to which a fiduciary may or must distribute income; and
- (6) Other receipts as provided in RCW 11.104B.270 through 11.104B.350. [2021 c 140 § 2404.]

11.104B.240 Receipts not normally apportioned—Rental property. To the extent a fiduciary does not account for the management of rental property as a business under RCW 11.104B.220, the fiduciary shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods:

(1) Must be added to principal and held subject to the terms of the lease, except as otherwise provided by law other than this chapter; and

(2022 Ed.)

(2) Is not allocated to income or available for distribution to a beneficiary until the fiduciary's contractual obligations have been satisfied with respect to that amount. [2021 c 140 § 2405.]

11.104B.250 Receipts not normally apportioned—Receipt on obligation to be paid in money. (1) This section does not apply to an obligation to which RCW 11.104B.280, 11.104B.290, 11.104B.300, 11.104B.310, 11.104B.330, 11.104B.340, or 11.104B.350 applies.

(2) A fiduciary shall allocate to income, without provision for amortization of premium, an amount received as interest on an obligation to pay money to the fiduciary, including an amount received as consideration for prepaying principal.

(3) A fiduciary shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the fiduciary. A fiduciary shall allocate to income the increment in value of a bond or other obligation for the payment of money bearing no stated interest but payable or redeemable, at maturity or another future time, in an amount that exceeds the amount in consideration of which it was issued. [2021 c 140 § 2406.]

11.104B.260 Receipts not normally apportioned—Insurance policies and contracts. (1) This section does not apply to a contract to which RCW 11.104B.280 applies.

(2) Except as otherwise provided in subsection (3) of this section, a fiduciary shall allocate to principal the proceeds of a life insurance policy or other contract received by the fiduciary as beneficiary, including a contract that insures against damage to, destruction of, or loss of title to an asset. The fiduciary shall allocate dividends on an insurance policy to income to the extent premiums on the policy are paid from income and to principal to the extent premiums on the policy are paid from principal.

(3) A fiduciary shall allocate to income proceeds of a contract that insures the fiduciary against loss of:

- (a) Occupancy or other use by a current income beneficiary;
- (b) Income; or
- (c) Subject to RCW 11.104B.220, profits from a business. [2021 c 140 § 2407.]

11.104B.270 Receipts normally apportioned—Insubstantial allocation not required. (1) If a fiduciary determines that an allocation between income and principal required by RCW 11.104B.280, 11.104B.290, 11.104B.300, 11.104B.310, or 11.104B.340 is insubstantial, the fiduciary may allocate the entire amount to principal, unless RCW 11.104B.070(5) applies to the allocation.

(2) A fiduciary may presume an allocation is insubstantial under subsection (1) of this section if:

- (a) The amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than 10 percent; and
- (b) The asset producing the receipt to be allocated has a fair market value less than 10 percent of the total fair market value of the assets owned or held by the fiduciary at the beginning of the accounting period.

(3) The power to make a determination under subsection (1) of this section may be:

(a) Exercised by a cofiduciary in the manner described in RCW 11.104B.070(6); or

(b) Released or delegated for a reason described in RCW 11.104B.070(7) and in the manner described in RCW 11.104B.070(8). [2021 c 140 § 2408.]

11.104B.280 Receipts normally apportioned—Deferred compensation, annuities, and similar payments.

(1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Internal income of a separate fund" means the amount determined under subsection (2) of this section.

(b) "Marital trust" means a trust:

(i) Of which the settlor's surviving spouse is the only current income beneficiary and is entitled to a distribution of all the current net income of the trust; and

(ii) That qualifies for a marital deduction with respect to the settlor's estate under 26 U.S.C. Sec. 2056 of the federal internal revenue code of 1986, as amended, as of January 1, 2022, because:

(A) An election to qualify for a marital deduction under 26 U.S.C. Sec. 2056(b)(7) of the federal internal revenue code of 1986, as amended, as of January 1, 2022, has been made; or

(B) The trust qualifies for a marital deduction under 26 U.S.C. Sec. 2056(b)(5) of the federal internal revenue code of 1986, as amended, as of January 1, 2022.

(c) "Payment" means an amount a fiduciary may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payor in exchange for future amounts the fiduciary may receive. The term includes an amount received in money or property from the payor's general assets or from a separate fund created by the payor.

(d) "Separate fund" includes a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock bonus, or stock ownership plan.

(2) For each accounting period, the following rules apply to a separate fund:

(a) The fiduciary shall determine the internal income of the separate fund as if the separate fund were a trust subject to this chapter.

(b) If the fiduciary cannot determine the internal income of the separate fund under (a) of this subsection (2), the internal income of the separate fund is deemed to equal four percent of the value of the separate fund, according to the most recent statement of value preceding the beginning of the accounting period.

(c) If the fiduciary cannot determine the value of the separate fund under (b) of this subsection (2), the value of the separate fund is deemed to equal the present value of the expected future payments, as determined under 26 U.S.C. Sec. 7520 of the federal internal revenue code of 1986, as amended, as of January 1, 2022, for the month preceding the beginning of the accounting period for which the computation is made.

(3) A fiduciary shall allocate a payment received from a separate fund during an accounting period to income, to the

extent of the internal income of the separate fund during the period, and the balance to principal.

(4) The fiduciary of a marital trust shall:

(a) Withdraw from a separate fund the amount the current income beneficiary of the trust requests the fiduciary to withdraw, not greater than the amount by which the internal income of the separate fund during the accounting period exceeds the amount the fiduciary otherwise receives from the separate fund during the period;

(b) Transfer from principal to income the amount the current income beneficiary requests the fiduciary to transfer, not greater than the amount by which the internal income of the separate fund during the period exceeds the amount the fiduciary receives from the separate fund during the period after the application of (a) of this subsection (2) [(4)]; and

(c) Distribute to the current income beneficiary as income:

(i) The amount of the internal income of the separate fund received or withdrawn during the period; and

(ii) The amount transferred from principal to income under (b) of this subsection (2) [(4)].

(5) For a trust, other than a marital trust, of which one or more current income beneficiaries are entitled to a distribution of all the current net income, the fiduciary shall transfer from principal to income the amount by which the internal income of a separate fund during the accounting period exceeds the amount the fiduciary receives from the separate fund during the period. [2021 c 140 § 2409.]

11.104B.290 Receipts normally apportioned—Liquidating assets.

(1) In this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a limited time. The term includes a leasehold, patent, copyright, royalty right, and right to receive payments during a period of more than one year under an arrangement that does not provide for the payment of interest on the unpaid balance.

(2) This section does not apply to a receipt subject to RCW 11.104B.200, 11.104B.280, 11.104B.300, 11.104B.310, 11.104B.330, 11.104B.340, 11.104B.350, or 11.104B.420.

(3) A fiduciary shall allocate to income 10 percent of the receipts from a liquidating asset and the balance to principal. [2021 c 140 § 2410.]

11.104B.300 Receipts normally apportioned—Minerals, water, and other natural resources.

(1) To the extent a fiduciary accounts for a receipt from an interest in minerals, water, or other natural resources pursuant to this section, the fiduciary shall allocate the receipt:

(a) If received as nominal delay rental or nominal annual rent on a lease, a receipt must be allocated to income;

(b) If received from a production payment, a receipt must be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal;

(c) If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, 90 percent must be allocated to principal and the balance to income; or

(d) If an amount is received from a working interest or any other interest not provided for in (a), (b), or (c) of this subsection, 90 percent of the net amount received must be allocated to principal and the balance to income.

(2) An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, 90 percent of the amount must be allocated to principal and the balance to income.

(3) This chapter applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

(4) If a fiduciary owns or holds an interest in minerals, water, or other natural resources on January 1, 2022, the fiduciary may allocate receipts from the interest as provided in this chapter or in the manner used by the fiduciary before January 1, 2022. If the fiduciary acquires an interest in minerals, water, or other natural resources after January 1, 2022, the fiduciary shall allocate receipts from the interest as provided in this chapter. [2021 c 140 § 2411.]

11.104B.310 Receipts normally apportioned—Timber. (1) To the extent a fiduciary does not account for receipts from the sale of timber and related products as a business under RCW 11.104B.220, the fiduciary shall allocate the net receipts:

(a) To income, to the extent the amount of timber cut from the land does not exceed the rate of growth of the timber;

(b) To principal, to the extent the amount of timber cut from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;

(c) Between income and principal if the net receipts are from the lease of land used for growing and cutting timber or from a contract to cut timber from land, by determining the amount of timber cut from the land under the lease or contract and applying the rules in (a) or (b) of this subsection; or

(d) To principal, to the extent advance payments, bonuses, and other payments are not allocated under (a), (b), or (c) of this subsection.

(2) In determining net receipts to be allocated under subsection (1) of this section, a fiduciary shall deduct and transfer to principal a reasonable amount for depletion.

(3) This section applies to land owned or held by a fiduciary whether or not a settlor was cutting timber from the land before the fiduciary owned or held the property.

(4) If a fiduciary owns or holds an interest in land used for growing and cutting timber before January 1, 2022, the fiduciary may allocate net receipts from the sale of timber and related products as provided in this section or in the manner used by the fiduciary before January 1, 2022. If the fiduciary acquires an interest in land used for growing and cutting timber on or after January 1, 2022, the fiduciary shall allocate net receipts from the sale of timber and related products as provided in this section. [2021 c 140 § 2412.]

11.104B.320 Receipts normally apportioned—Marital deduction property not productive of income. (1) If a trust received property for which a gift or estate tax marital deduction was allowed and the settlor's spouse holds a mandatory income interest in the trust, the spouse may require the trustee, to the extent the trust assets otherwise do not provide

the spouse with sufficient income from or use of the trust assets to qualify for the deduction, to:

(a) Make property productive of income;

(b) Convert property to property productive of income within a reasonable time; or

(c) Exercise the power to adjust under RCW 11.104B.070.

(2) The trustee may decide which action or combination of actions in subsection (1) of this section to take. [2021 c 140 § 2413.]

11.104B.330 Receipts normally apportioned—Derivatives and options. (1) In this section, "derivative" means a contract, instrument, other arrangement, or combination of contracts, instruments, or other arrangements, the value, rights, and obligations of which are, in whole or in part, dependent on or derived from an underlying tangible or intangible asset, group of tangible or intangible assets, index, or occurrence of an event. The term includes stocks, fixed income securities, and financial instruments and arrangements based on indices, commodities, interest rates, weather-related events, and credit default events.

(2) To the extent a fiduciary does not account for a transaction in derivatives as a business under RCW 11.104B.220, the fiduciary shall allocate all receipts from the transaction and all disbursements made in connection with the transaction to principal.

(3) Subsection (4) of this section applies if:

(a) A fiduciary:

(i) Grants an option to buy property from a trust, whether or not the trust owns the property when the option is granted;

(ii) Grants an option that permits another person to sell property to the trust; or

(iii) Acquires an option to buy property for the trust or an option to sell an asset owned by the trust; and

(b) The fiduciary or other owner of the asset is required to deliver the asset if the option is exercised.

(4) If this subsection applies, the fiduciary shall allocate 10 percent to income and the balance to principal of the following amounts:

(a) An amount received for granting the option;

(b) An amount paid to acquire the option; and

(c) Gain or loss realized on the exercise, exchange, settlement, offset, closing, or expiration of the option. [2021 c 140 § 2414.]

11.104B.340 Receipts normally apportioned—Asset-backed securities. (1) If a fiduciary receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the fiduciary shall allocate to income the portion of the payment which the payer identifies as being from interest or other current return and shall allocate the balance of the payment to principal.

(2) If a fiduciary receives one or more payments in exchange for the fiduciary's entire interest in an asset-backed security in one accounting period, the fiduciary shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's interest in the security over more than one accounting period, the fiduciary shall allocate 10 percent of the payment to income and the balance to principal. [2021 c 140 § 2415.]

11.104B.350 Receipts normally apportioned—Other financial instruments and arrangements. A fiduciary shall allocate receipts from or related to a financial instrument or arrangement not otherwise addressed by this chapter. The allocation must be consistent with RCW 11.104B.330 and 11.104B.340. [2021 c 140 § 2416.]

ARTICLE 5
ALLOCATION OF DISBURSEMENTS

11.104B.400 Disbursements—Disbursement from income. Subject to RCW 11.104B.430, and except as otherwise provided in RCW 11.104B.500(3) (b) or (c), a fiduciary shall disburse from income:

(1) One-half of:

(a) The regular compensation of the fiduciary and any person providing investment advisory, custodial, or other services to the fiduciary, to the extent income is sufficient; and

(b) An expense for an accounting, judicial or nonjudicial proceeding, or other matter that involves both income and successive interests, to the extent income is sufficient;

(2) The balance of the disbursements described in subsection (1) of this section, to the extent a fiduciary that is an independent person determines that making those disbursements from income would be in the interests of the beneficiaries;

(3) Another ordinary expense incurred in connection with administration, management, or preservation of property and distribution of income, including interest, an ordinary repair, regularly recurring tax assessed against principal, and an expense of an accounting, judicial or nonjudicial proceeding, or other matter that involves primarily an income interest, to the extent income is sufficient; and

(4) A premium on insurance covering loss of a principal asset or income from or use of the asset. [2021 c 140 § 2501.]

11.104B.410 Disbursements—Disbursement from principal. (1) Subject to RCW 11.104B.440, and except as otherwise provided in RCW 11.104B.500(3)(b), a fiduciary shall disburse from principal:

(a) The balance of the disbursements described in RCW 11.104B.400 (1) and (3) after application of RCW 11.104B.400(2);

(b) The fiduciary's compensation calculated on principal as a fee for acceptance, distribution, or termination;

(c) A payment of an expense to prepare for or execute a sale or other disposition of property;

(d) A payment on the principal of a trust debt;

(e) A payment of an expense of an accounting, judicial or nonjudicial proceeding, or other matter that involves primarily principal, including a proceeding to construe the terms of the trust or protect property;

(f) A payment of a premium for insurance, including title insurance, not described in RCW 11.104B.400(4), of which the fiduciary is the owner and beneficiary;

(g) A payment of an estate or inheritance tax or other tax imposed because of the death of a decedent, including penalties, apportioned to the trust; and

(h) A payment:

(i) Related to environmental matters, including:

(A) Reclamation;

(B) Assessing environmental conditions;

(C) Remedying and removing environmental contamination;

(D) Monitoring remedial activities and the release of substances;

(E) Preventing future releases of substances;

(F) Collecting amounts from persons liable or potentially liable for the costs of activities described in (h)(i)(A) through (E) of this subsection (1);

(G) Penalties imposed under environmental laws or regulations;

(H) Other actions to comply with environmental laws or regulations;

(I) Statutory or common law claims by third parties; and

(J) Defending claims based on environmental matters; and

(ii) For a premium for insurance for matters described in (h)(i) of this subsection (1).

(2) If a principal asset is encumbered with an obligation that requires income from the asset to be paid directly to a creditor, the fiduciary shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation. [2021 c 140 § 2502.]

11.104B.420 Disbursements—Transfer from income to principal for depreciation. (1) In this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a tangible asset having a useful life of more than one year.

(2) A fiduciary may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but may not transfer any amount for depreciation:

(a) Of the part of real property used or available for use by a beneficiary as a residence;

(b) Of tangible personal property held or made available for the personal use or enjoyment of a beneficiary; or

(c) Under this section, to the extent the fiduciary accounts:

(i) Under RCW 11.104B.290 for the asset; or

(ii) Under RCW 11.104B.220 for the business or other activity in which the asset is used.

(3) An amount transferred to principal under this section need not be separately held. [2021 c 140 § 2503.]

11.104B.430 Disbursements—Reimbursement of income from principal. (1) If a fiduciary makes or expects to make an income disbursement described in subsection (2) of this section, the fiduciary may transfer an appropriate amount from principal to income in one or more accounting periods to reimburse income.

(2) To the extent the fiduciary has not been and does not expect to be reimbursed by a third party, income disbursements to which subsection (1) of this section applies include:

(a) An amount chargeable to principal but paid from income because principal is illiquid;

(b) A disbursement made to prepare property for sale, including improvements and commissions; and

(c) A disbursement described in RCW 11.104B.410(1).

(3) If an asset whose ownership gives rise to an income disbursement becomes subject to a successive interest after an income interest ends, the fiduciary may continue to make transfers under subsection (1) of this section. [2021 c 140 § 2504.]

11.104B.440 Disbursements—Reimbursement of principal from income. (1) If a fiduciary makes or expects to make a principal disbursement described in subsection (2) of this section, the fiduciary may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or provide a reserve for future principal disbursements.

(2) To the extent a fiduciary has not been and does not expect to be reimbursed by a third party, principal disbursements to which subsection (1) of this section applies include:

(a) An amount chargeable to income but paid from principal because income is not sufficient;

(b) The cost of an improvement to principal, whether a change to an existing asset or the construction of a new asset, including a special assessment;

(c) A disbursement made to prepare property for rental, including tenant allowances, leasehold improvements, and commissions;

(d) A periodic payment on an obligation secured by a principal asset, to the extent the amount transferred from income to principal for depreciation is less than the periodic payment; and

(e) A disbursement described in RCW 11.104B.410(1).

(3) If an asset whose ownership gives rise to a principal disbursement becomes subject to a successive interest after an income interest ends, the fiduciary may continue to make transfers under subsection (1) of this section. [2021 c 140 § 2505.]

11.104B.450 Disbursements—Income taxes. (1) A tax required to be paid by a fiduciary based on receipts allocated to income must be charged to income.

(2) A tax required to be paid by a fiduciary based on receipts allocated to principal must be charged to principal, even if the tax is called an income tax by the taxing authority.

(3) A tax required to be paid by a fiduciary on a share of an entity's taxable income must be charged:

(a) To income to the extent that receipts from the entity are allocated only to income;

(b) To principal to the extent that receipts from the entity are allocated only to principal;

(c) Proportionately to income and principal to the extent that receipts from the entity are allocated to both income and principal.

(4) Before applying subsections (1) through (3) of this section, the trustee must adjust income or principal receipts by the distributions to a beneficiary for which the trust receives an income tax deduction. [2021 c 140 § 2506.]

11.104B.460 Disbursements—Adjustment between income and principal because of taxes. (1) A fiduciary may make an adjustment between income and principal to offset the shifting of economic interests or tax benefits between current income beneficiaries and successor beneficiaries which arises from:

(a) An election or decision the fiduciary makes regarding a tax matter, other than a decision to claim an income tax deduction to which subsection (2) of this section applies;

(b) An income tax or other tax imposed on the fiduciary or a beneficiary as a result of a transaction involving the fiduciary or a distribution by the fiduciary; or

(c) Ownership by the fiduciary of an interest in an entity a part of whose taxable income, whether or not distributed, is includable in the taxable income of the fiduciary or a beneficiary.

(2) If the amount of an estate tax marital or charitable deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes and, as a result, estate taxes paid from principal are increased and income taxes paid by the fiduciary or a beneficiary are decreased, the fiduciary shall charge each beneficiary that benefits from the decrease in income tax to reimburse the principal from which the increase in estate tax is paid. The total reimbursement must equal the increase in the estate tax, to the extent the principal used to pay the increase would have qualified for a marital or charitable deduction but for the payment. The share of the reimbursement for each fiduciary or beneficiary whose income taxes are reduced must be the same as its share of the total decrease in income tax.

(3) A fiduciary that charges a beneficiary under subsection (2) of this section may offset the charge by obtaining payment from the beneficiary, withholding an amount from future distributions to the beneficiary, or adopting another method or combination of methods. [2021 c 140 § 2507.]

ARTICLE 6

DEATH OF INDIVIDUAL OR TERMINATION OF INCOME INTEREST

11.104B.500 Death or termination of interest—Determination and distribution of net income. (1) This section applies when:

(a) The death of an individual results in the creation of an estate or trust; or

(b) An income interest in a trust terminates, whether the trust continues or is distributed.

(2) A fiduciary of an estate or trust with an income interest that terminates shall determine, under subsection (7) of this section and Articles 4, 5, and 7 of this chapter, the amount of net income and net principal receipts received from property specifically given to a beneficiary. The fiduciary shall distribute the net income and net principal receipts to the beneficiary that is to receive the specific property.

(3) A fiduciary shall determine the income and net income of an estate or income interest in a trust which terminates, other than the amount of net income determined under subsection (2) of this section, under Articles 4, 5, and 7 of this chapter and by:

(a) Including in net income all income from property used or sold to discharge liabilities;

(b) Paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants, and fiduciaries, court costs and other expenses of administration, and interest on estate and inheritance taxes and other taxes imposed because of the decedent's death, but the fiduciary may pay the

expenses from income of property passing to a trust for which the fiduciary claims a federal estate tax marital or charitable deduction only to the extent:

(i) The payment of the expenses from income will not cause the reduction or loss of the deduction; or

(ii) The fiduciary makes an adjustment under RCW 11.104B.460(2); and

(c) Paying from principal other disbursements made or incurred in connection with the settlement of the estate or the winding up of an income interest that terminates, including:

(i) To the extent authorized by the decedent's will, the terms of the trust, or applicable law, debts, funeral expenses, disposition of remains, family allowances, estate and inheritance taxes, and other taxes imposed because of the decedent's death; and

(ii) Related penalties that are apportioned, by the decedent's will, the terms of the trust, or applicable law, to the estate or income interest that terminates.

(4) If a decedent's will, the terms of a trust, or applicable law provides for the payment of interest or the equivalent of interest to a beneficiary that receives a pecuniary amount outright, the fiduciary shall make the payment from net income determined under subsection (3) of this section or from principal to the extent net income is insufficient.

(5) If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends because of an income beneficiary's death, and no payment of interest or the equivalent of interest is provided for by the terms of the trust or applicable law, the fiduciary shall pay the interest or the equivalent of interest to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will.

(6) A fiduciary shall distribute net income remaining after payments required by subsections (4) and (5) of this section in the manner described in RCW 11.104B.510 to all other beneficiaries, including a beneficiary that receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

(7) A fiduciary may not reduce principal or income receipts from property described in subsection (2) of this section because of a payment described in RCW 11.104B.400 or 11.104B.410, to the extent the decedent's will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property must be determined by including the amount the fiduciary receives or pays regarding the property, whether the amount accrued or became due before, on, or after the date of the decedent's death or an income interest's terminating event, and making a reasonable provision for an amount the estate or income interest may become obligated to pay after the property is distributed. [2021 c 140 § 2601.]

11.104B.510 Death or termination of interest—Distribution to successor beneficiary. (1) Except to the extent Article 3 of this chapter applies for a beneficiary that is a trust, each beneficiary described in RCW 11.104B.500(6) is entitled to receive a share of the net income equal to the ben-

eficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to which this section applies, each beneficiary, including a beneficiary that does not receive part of the distribution, is entitled, as of each distribution date, to a share of the net income the fiduciary received after the decedent's death, an income interest's other terminating event, or the preceding distribution by the fiduciary.

(2) In determining a beneficiary's share of net income under subsection (1) of this section, the following rules apply:

(a) The beneficiary is entitled to receive a share of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date.

(b) The beneficiary's fractional interest under (a) of this subsection must be calculated:

(i) On the aggregate value of the assets as of the distribution date without reducing the value by any unpaid principal obligation; and

(ii) Without regard to:

(A) Property specifically given to a beneficiary under the decedent's will or the terms of the trust; and

(B) Property required to pay pecuniary amounts not in trust.

(c) The distribution date under (a) of this subsection may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which the assets are distributed.

(3) To the extent a fiduciary does not distribute under this section all the collected but undistributed net income to each beneficiary as of a distribution date, the fiduciary shall maintain records showing the interest of each beneficiary in the net income.

(4) If this section applies to income from an asset, a fiduciary may apply the rules in this section to net gain or loss realized from the disposition of the asset after the decedent's death, an income interest's terminating event, or the preceding distribution by the fiduciary. [2021 c 140 § 2602.]

ARTICLE 7 APPORTIONMENT AT BEGINNING AND END OF INCOME INTEREST

11.104B.550 Death or termination of interest—When right to income begins and ends. (1) An income beneficiary is entitled to net income in accordance with the terms of the trust from the date an income interest begins. The income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to:

(a) The trust for the current income beneficiary; or

(b) A successive interest for a successor beneficiary.

(2) An asset becomes subject to a trust under subsection (1)(a) of this section:

(a) For an asset that is transferred to the trust during the settlor's life, on the date the asset is transferred;

(b) For an asset that becomes subject to the trust because of a decedent's death, on the date of the decedent's death,

even if there is an intervening period of administration of the decedent's estate; or

(c) For an asset that is transferred to a fiduciary by a third party because of a decedent's death, on the date of the decedent's death.

(3) An asset becomes subject to a successive interest under subsection (1)(b) of this section on the day after the preceding income interest ends, as determined under subsection (4) of this section, even if there is an intervening period of administration to wind up the preceding income interest.

(4) An income interest ends on the day before an income beneficiary dies or another terminating event occurs or on the last day of a period during which there is no beneficiary to which a fiduciary may or must distribute income. [2021 c 140 § 2701.]

11.104B.560 Death or termination of interest—Apportionment of receipts and disbursements when decedent dies or income interest begins. (1) A fiduciary shall allocate an income receipt or disbursement, other than a receipt to which RCW 11.104B.500(2) applies, to principal if its due date occurs before the date on which:

(a) For an estate, the decedent died; or

(b) For a trust or successive interest, an income interest begins.

(2) If the due date of a periodic income receipt or disbursement occurs on or after the date on which a decedent died or an income interest begins, a fiduciary shall allocate the receipt or disbursement to income.

(3) If an income receipt or disbursement is not periodic or has no due date, a fiduciary shall treat the receipt or disbursement under this section as accruing from day to day. The fiduciary shall allocate to principal the portion of the receipt or disbursement accruing before the date on which a decedent died or an income interest begins, and to income the balance.

(4) A receipt or disbursement is periodic under subsections (2) and (3) of this section if:

(a) The receipt or disbursement must be paid at regular intervals under an obligation to make payments; or

(b) The payor customarily makes payments at regular intervals.

(5) An item of income or obligation is due under this section on the date the payor is required to make a payment. If a payment date is not stated, there is no due date.

(6) Distributions to shareholders or other owners from an entity to which RCW 11.104B.200 applies are due:

(a) On the date fixed by or on behalf of the entity for determining the persons entitled to receive the distribution;

(b) If no date is fixed, on the date of the decision by or on behalf of the entity to make the distribution; or

(c) If no date is fixed and the fiduciary does not know the date of the decision by or on behalf of the entity to make the distribution, on the date the fiduciary learns of the decision. [2021 c 140 § 2702.]

11.104B.570 Death or termination of interest—Apportionment when income interest ends. (1) In this section, "undistributed income" means net income received on or before the date on which an income interest ends. The term does not include an item of income or expense which is due

(2022 Ed.)

or accrued or net income that has been added or is required to be added to principal under the terms of the trust.

(2) Except as otherwise provided in subsection (3) of this section, when a mandatory income interest of a beneficiary ends, the fiduciary shall pay the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust to the beneficiary or, if the beneficiary does not survive the date the interest ends, to the beneficiary's estate.

(3) If a beneficiary has an unqualified power to withdraw more than five percent of the value of a trust immediately before an income interest ends:

(a) The fiduciary shall allocate to principal the undistributed income from the portion of the trust which may be withdrawn; and

(b) Subsection (2) of this section applies only to the balance of the undistributed income.

(4) When a fiduciary's obligation to pay a fixed annuity or a fixed fraction of the value of assets ends, the fiduciary shall prorate the final payment as required to preserve an income tax, gift tax, estate tax, or other tax benefit. [2021 c 140 § 2703.]

ARTICLE 8

MISCELLANEOUS PROVISIONS

11.104B.900 Uniformity of application and construction. (1) In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

(2) To the extent that this chapter is in conflict with RCW 11.68.090, RCW 11.68.090 prevails. [2021 c 140 § 2801.]

11.104B.901 Relation to electronic signatures in global and national commerce act. This chapter modifies, limits, or supersedes the electronic signatures in global and national commerce act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act (15 U.S.C. Sec. 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. Sec. 7003(b)). [2021 c 140 § 2802.]

11.104B.902 Application. This chapter applies to a trust or estate existing or created on or after January 1, 2022, except as otherwise expressly provided in the terms of the trust or RCW 11.104B.001 through 11.104B.901. [2021 c 140 § 2803.]

11.104B.903 Application of chapter 11.96A RCW. Nothing in chapter 345, Laws of 2002 is intended to restrict the application of chapter 11.96A RCW to issues, questions, or disputes that arise under or that relate to chapter 345, Laws of 2002. Any and all such issues, questions, or disputes shall be resolved judicially or nonjudicially under chapter 11.96A RCW. [2002 c 345 § 603. Formerly RCW 11.104A.901.]

11.104B.904 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, mar-

ital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 40. Formerly RCW 11.104A.907.]

11.104B.905 Effective date—2021 c 140 §§ 2101-2806. Sections 2101 through 2806 of this act take effect January 1, 2022. [2021 c 140 § 2809.]

Chapter 11.106 RCW TRUSTEES' ACCOUNTING ACT

Sections

11.106.010	Scope of chapter—Exceptions.
11.106.020	Trustee's annual statement.
11.106.030	Intermediate and final accounts—Contents—Filing.
11.106.040	Petition for statement of account.
11.106.050	Account filed—Return day—Notice.
11.106.060	Account filed—Objections—Appointment of guardians ad litem—Representatives.
11.106.070	Court to determine accuracy, validity—Decree.
11.106.080	Effect of decree.
11.106.090	Appeal from decree.
11.106.100	Waiver of accounting by beneficiary.
11.106.110	Modification under chapter 11.97 RCW—How constituted.

11.106.010 Scope of chapter—Exceptions. This chapter does not apply to resulting trusts, constructive trusts, business trusts where certificates of beneficial interest are issued to the beneficiaries, investment trusts, voting trusts, insurance trusts prior to the death of the insured, trusts in the nature of mortgages or pledges, liquidation trusts or trusts for the sole purpose of paying dividends, interest or interest coupons, salaries, wages or pensions; nor does this chapter apply to personal representatives. [2013 c 272 § 25; 1985 c 30 § 95. Prior: 1984 c 149 § 128; 1955 c 33 § 30.30.010; prior: 1951 c 226 § 10. Formerly RCW 30.30.010.]

Application—2013 c 272: See note following RCW 11.98.002.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.106.020 Trustee's annual statement. The trustee or trustees appointed by any will, deed, or agreement executed must mail or deliver at least annually to each permissible distributee, as defined in RCW 11.98.002, a written itemized statement of all current receipts and disbursements made by the trustee of the funds of the trust both principal and income, and upon the request of any such beneficiary must furnish the beneficiary an itemized statement of all property then held by that trustee, and may also file any such statement in the superior court of the county in which the trustee or one of the trustees resides. [2013 c 272 § 26; 1985 c 30 § 96. Prior:

1984 c 149 § 129; 1955 c 33 § 30.30.020; prior: 1951 c 226 § 2. Formerly RCW 30.30.020.]

Application—2013 c 272: See note following RCW 11.98.002.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Trust provisions may relieve trustee from duty, restriction, or liability imposed by statute: RCW 11.97.010.

Additional notes found at www.leg.wa.gov

11.106.030 Intermediate and final accounts—Contents—Filing. In addition to the statement required by RCW 11.106.020 any such trustee or trustees whenever it or they so desire, may file in the superior court of the county in which the trustees or one of the trustees resides an intermediate account under oath showing:

- (1) The period covered by the account;
- (2) The total principal with which the trustee is chargeable according to the last preceding account or the inventory if there is no preceding account;
- (3) An itemized statement of all principal funds received and disbursed during such period;
- (4) An itemized statement of all income received and disbursed during such period, unless waived;
- (5) The balance of such principal and income remaining at the close of such period and how invested;
- (6) The names and addresses of all living beneficiaries, including contingent beneficiaries, of the trust, and a statement as to any such beneficiary known to be under legal disability;
- (7) A description of any possible unborn or unascertained beneficiary and his or her interest in the trust fund.

After the time for termination of the trust has arrived, the trustee or trustees may also file a final account in similar manner. [2010 c 8 § 2092; 1985 c 30 § 97. Prior: 1984 c 149 § 130; 1955 c 33 § 30.30.030; prior: 1951 c 226 § 3. Formerly RCW 30.30.030.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.106.040 Petition for statement of account. At any time after the later of one year from the inception of the trust or one year after the day on which a report was last filed, any settlor or beneficiary of a trust may file a petition under RCW 11.96A.080 with the superior court in the county where the trustee or one of the trustees resides asking the court to direct the trustee or trustees to file in the court an account. At the hearing on such petition the court may order the trustee to file an account for good cause shown. [1999 c 42 § 627; 1985 c 30 § 98. Prior: 1984 c 149 § 131; 1955 c 33 § 30.30.040; prior: 1951 c 226 § 4. Formerly RCW 30.30.040.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.106.050 Account filed—Return day—Notice. When any account has been filed pursuant to RCW 11.106.030 or 11.106.040, the clerk of the court where filed shall fix a return day therefor as provided in RCW 11.96A.100(4) and issue a notice. The notice shall state the time and place for the return date, the name or names of the

trustee or trustees who have filed the account, that the account has been filed, that the court is asked to settle the account, and that any objections or exceptions to the account must be filed with the clerk of the court on or before the return date. The notice shall be given as provided for notices under RCW 11.96A.110. [1999 c 42 § 628; 1985 c 30 § 99. Prior: 1984 c 149 § 132; 1955 c 33 § 30.30.050; prior: 1951 c 226 § 5. Formerly RCW 30.30.050.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.106.060 Account filed—Objections—Appointment of guardians ad litem—Representatives. Upon or before the return date any beneficiary of the trust may file the beneficiary's written objections or exceptions to the account filed or to any action of the trustee or trustees set forth in the account. The court shall appoint guardians ad litem as provided in RCW 11.96A.160 and the court may allow representatives to be appointed under RCW 11.96A.120 or 11.96A.250 to represent the persons listed in those sections. [1999 c 42 § 629; 1985 c 30 § 100. Prior: 1984 c 149 § 133; 1977 ex.s. c 80 § 31; 1955 c 33 § 30.30.060; prior: 1951 c 226 § 6. Formerly RCW 30.30.060.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Additional notes found at www.leg.wa.gov

11.106.070 Court to determine accuracy, validity—Decree. Upon the return date or at some later date fixed by the court if so requested by one or more of the parties, the court without the intervention of a jury and after hearing all the evidence submitted shall determine the correctness of the account and the validity and propriety of all actions of the trustee or trustees set forth in the account including the purchase, retention, and disposition of any of the property and funds of the trust, and shall render its decree either approving or disapproving the account or any part of it, and surcharging the trustee or trustees for all losses, if any, caused by negligent or wilful breaches of trust. [1985 c 30 § 101. Prior: 1984 c 149 § 134; 1955 c 33 § 30.30.070; prior: 1951 c 226 § 7. Formerly RCW 30.30.070.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.106.080 Effect of decree. The decree rendered under RCW 11.106.070 shall be deemed final, conclusive, and binding upon all the parties interested including all incompetent, unborn, and unascertained beneficiaries of the trust subject only to the right of appeal under RCW 11.106.090. [1985 c 30 § 102. Prior: 1984 c 149 § 135; 1955 c 33 § 30.30.080; prior: 1951 c 226 § 8. Formerly RCW 30.30.080.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

(2022 Ed.)

11.106.090 Appeal from decree. The decree rendered under RCW 11.106.070 shall be a final order from which any party in interest may appeal as in civil actions to the supreme court or the court of appeals of the state of Washington. [1985 c 30 § 103. Prior: 1984 c 149 § 136; 1971 c 81 § 80; 1955 c 33 § 30.30.090; prior: 1951 c 226 § 9. Formerly RCW 30.30.090.]

Rules of court: *Method of appellate review superseded by RAP 2.2(a)(3), 18.22.*

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.106.100 Waiver of accounting by beneficiary. Any adult beneficiary entitled to an accounting under either RCW 11.106.020 or 11.106.030 may waive such an accounting by a separate instrument delivered to the trustee. [1985 c 30 § 104. Prior: 1984 c 149 § 137; 1955 c 33 § 30.30.100; prior: 1951 c 226 § 11. Formerly RCW 30.30.100.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.106.110 Modification under chapter 11.97 RCW—How constituted. This chapter is declared to be of similar import to the uniform trustees' accounting act. Any modification under chapter 11.97 RCW, including waiver, of the requirements of this chapter in any will, deed, or agreement heretofore or hereafter executed shall be given effect whether the waiver refers to the uniform trustees' accounting act by name or other reference or to any other act of like or similar import. [1985 c 30 § 105. Prior: 1984 c 149 § 138; 1955 c 33 § 30.30.110; prior: 1951 c 226 § 12. Formerly RCW 30.30.110.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

Chapter 11.107 RCW TRUSTS—DECANTING POWER

Sections

11.107.010	Definitions.
11.107.020	Decanting power under expanded discretion.
11.107.030	Decanting power under limited discretion.
11.107.040	Decanting statute—Procedure to exercise decanting power.
11.107.050	Decanting statute—Effects and consequences of an exercise of the decanting power.
11.107.060	Decanting statute—Trust for beneficiary with a disability.
11.107.070	Decanting statute—Specific prohibitions.
11.107.080	Application—Miscellaneous.

11.107.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Ascertainable standard" means a standard relating to an individual's health, education, support, or maintenance within the meaning of Title 26 U.S.C. Sec. 2041(b)(1)(A) or 2514(c)(1) of the federal internal revenue code and any applicable regulations, as amended, as of July 23, 2017.

(2) "Charitable interest" means an interest in a trust that:

- Is held by a charitable organization;
- Benefits charitable organizations;
- Is held for charitable purposes; or

(d) Holds assets subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes.

(3) "Charitable purpose" means a purpose that is for: The relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes, or other purposes the achievement of which are beneficial to a community.

(4) "Decanting power" or "the decanting power" means the power of a trustee under this chapter to distribute income and principal of a first trust to one or more second trusts or to modify the terms of the first trust.

(5) "Expanded discretion" means a discretionary power of distribution that is not limited to an ascertainable standard or a reasonably definite standard.

(6) "First trust" means a trust over which a trustee may exercise the decanting power.

(7) "Limited discretion" means a discretionary power of distribution that is limited to an ascertainable standard or a reasonably definite standard.

(8) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(9) "Qualified beneficiary" means a beneficiary that on the date of qualification is described in RCW 11.98.002(2).

(10) "Reasonably definite standard" means a clearly measurable standard under which a holder of a power of distribution is legally accountable within the meaning of Title 26 U.S.C. Sec. 674(b)(5)(A) of the federal internal revenue code and any applicable regulations, as amended, as of July 23, 2017.

(11) "Second trust" means:

(a) A first trust after modification under this chapter; or

(b) A trust to which a distribution of income and principal from a first trust is or may be made under this chapter. [2017 c 29 § 1.]

11.107.020 Decanting power under expanded discretion. (1) Subject to (a) of this subsection and RCW 11.107.070, a trustee that has expanded discretion to distribute the principal of a first trust to one or more current beneficiaries may exercise the decanting power over the principal of the first trust, subject to the following:

(a) Except as provided in RCW 11.107.060, a second trust may not in an exercise of the decanting power under this section:

(i) Include as a current beneficiary a person that is not a current beneficiary of the first trust, except as otherwise provided in (b) of this subsection;

(ii) Include as a presumptive remainder beneficiary or successor beneficiary a person that is not a current beneficiary, presumptive remainder beneficiary, or successor beneficiary of the first trust, except as otherwise provided in (b) of this subsection; or

(iii) Reduce or eliminate a vested interest;

(b) Subject to (a)(iii) of this subsection and RCW 11.107.070, a second trust may in an exercise of the decanting power under this section:

(i) Retain a power of appointment granted in the first trust;

(ii) Omit a power of appointment granted in the first trust, other than a presently exercisable general power of appointment;

(iii) Create or modify a power of appointment if the powerholder is a current beneficiary of the first trust and the trustee has expanded discretion to distribute principal to the current beneficiary; and

(iv) Create or modify a power of appointment if the powerholder is a presumptive remainder beneficiary or successor beneficiary of the first trust, but the exercise of the power may take effect only after the powerholder becomes, or would have become if then living, a current beneficiary;

(c) A power of appointment described in (b) of this subsection may be general or nongeneral. The class of permissible appointees in favor of which the power may be exercised may be broader than or different from the beneficiaries of the first trust;

(d) In an exercise of the decanting power under this section, a second trust may be a trust created or administered under the law of any jurisdiction; and

(e) If a trustee has expanded discretion to distribute part but not all of the principal of a first trust, the trustee may exercise the decanting power under this section only over that part of the principal.

(2) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Presumptive remainder beneficiary" means a qualified beneficiary other than a current beneficiary.

(b) "Successor beneficiary" means a beneficiary that on the date of the beneficiary's qualification is determined not to be a qualified beneficiary. The term does not include a person that is a beneficiary only because the person holds a nongeneral power of appointment.

(c) "Vested interest" means:

(i) A right to a mandatory distribution that is noncontingent as of the date of the exercise of the decanting power;

(ii) A current and noncontingent right, annually or more frequently, to either a mandatory distribution of income or to withdraw income, a specified dollar amount, or a percentage of value of some or all of the trust income or principal;

(iii) A presently exercisable general power of appointment; or

(iv) A right to receive an ascertainable part of the trust principal on trust termination that is not subject to the exercise of discretion or the occurrence of a specified event that is not certain to occur. [2017 c 29 § 2.]

11.107.030 Decanting power under limited discretion. Subject to RCW 11.107.070, a trustee that has limited discretion to distribute the principal of a first trust to one or more current beneficiaries may exercise the decanting power over the principal of the first trust, subject to the following:

(1) Second trusts under this section, in the aggregate, must grant each beneficiary of the first trust beneficial interests in the second trusts which are substantially similar to the beneficial interests of the beneficiary in the first trust;

(2) A power to make a distribution under the second trust for the benefit of a beneficiary who is an individual is substantially similar to a power under the first trust to make a distribution directly to the beneficiary. A distribution is for the benefit of a beneficiary if:

(a) The distribution is made for the benefit of the beneficiary;

(b) The beneficiary is incapacitated or otherwise under a legal disability or the trustee reasonably believes the beneficiary is incapacitated or under a legal disability, and the distribution is made as permitted by the first trust instrument or otherwise as permitted by law; or

(c) The distribution is made as permitted under the terms of the first trust instrument and the second trust instrument for the benefit of the beneficiary;

(3) In an exercise of the decanting power under this section, a second trust may be a trust created or administered under the law of any jurisdiction; and

(4) If a trustee has limited discretion to distribute part but not all of the principal of a first trust, the trustee may exercise the decanting power under this section only over that part of the principal. [2017 c 29 § 3.]

11.107.040 Decanting statute—Procedure to exercise decanting power. (1) The trustee of the first trust may exercise the decanting power under RCW 11.107.020 and 11.107.030 if:

(a) The trustee determines that the exercise of the decanting power is consistent with the trustee's fiduciary duties described in RCW 11.107.080(1);

(b) In the event that the first trust contains a charitable interest, the trustee gives written notice to the attorney general of the trustee's intention to exercise the decanting power; and

(c) The trustee gives written notice of the trustee's intention to exercise the decanting power to each qualified beneficiary, each holder of a presently exercisable power of appointment over any part of the first trust, and each person that currently has the right to remove or replace the trustee not less than sixty days prior to the effective date of the exercise.

(2) The trustee of the first trust, qualified beneficiaries, and any other party as defined by RCW 11.96A.030(5) may agree to exercise by the trustee of the decanting power by means of a binding agreement under RCW 11.96A.220.

(3) The trustee of the first trust, a qualified beneficiary, a holder of a presently exercisable power of appointment over any part of the first trust, and a person that currently has the right to remove or replace the trustee may petition the court under chapter 11.96A RCW regarding exercise of the decanting power for the following relief, to:

(a) Provide instructions to the trustee regarding whether a proposed exercise of the decanting power is permitted under this chapter and consistent with the fiduciary duties of the trustee;

(b) Approve an exercise of the decanting power;

(c) Determine that a proposed or attempted exercise of the decanting power is ineffective because the proposed or attempted exercise does not or did comply with this chapter or the proposed or attempted exercise would be or was an abuse of the trustee's discretion or a breach of fiduciary duty; or

(d) Order other relief to carry out the purposes of this chapter.

(2022 Ed.)

(4) The trustee of the first trust may petition the court under chapter 11.96A RCW regarding exercise of the decanting power for the following relief:

(a) An increase of the trustee's compensation under RCW 11.107.070(2)(a)(ii); or

(b) Modification under RCW 11.107.070(4)(b) of a provision granting a person the right to remove or replace the trustee.

(5) If there is at least one qualified beneficiary who is not a minor or who has a representative, the trustee is not required to give notice under subsection (1)(c) of this section to a qualified beneficiary who is a minor and has no representative. If all qualified beneficiaries are minors and none has a representative, the trustee must petition for appointment of a guardian ad litem under RCW 11.98A.160 [11.96A.160].

(6) The trustee is not required to give notice under this section to a person who is not known to the trustee or is known to the trustee but cannot be located by the trustee after reasonable diligence.

(7) A notice under subsection (1) of this section or petition under subsection (3) or (4) of this section must:

(a) Specify the manner in which the trustee must exercise the decanting power;

(b) Specify the proposed effective date for exercise of the decanting power;

(c) Include a copy of all governing instruments of the first trust; and

(d) Include a copy of all governing instruments of the second trust. An exercise of the decanting power under this section must be made in a record signed by the trustee; for this purpose, a "record signed by the trustee" must include a court order under subsection (3) of this section.

(8) The decanting power may be exercised before expiration of the notice period under subsection (1) of this section if all persons entitled to receive notice waive the period in writing. An exercise of the decanting power is not ineffective because of the failure to give notice to one or more persons under subsection (1) of this section if the trustee acted with reasonable care to comply with this section. [2017 c 29 § 4.]

11.107.050 Decanting statute—Effects and consequences of an exercise of the decanting power. (1) A trustee or other person that reasonably relies on the validity of a distribution of part or all of the income and principal of a trust to another trust, or a modification of a trust, under this chapter or the law of another jurisdiction is not liable to any person for any action or failure to act as a result of the reliance.

(2) A debt, liability, or other obligation enforceable against income and principal of a first trust is enforceable to the same extent against that income and principal when held by the second trust after exercise of the decanting power.

(3) For purposes of the law of this state other than this chapter and subject to this subsection, a settlor of a first trust is deemed to be the settlor of the second trust with respect to the portion of the principal of the first trust subject to the exercise of the decanting power. In determining settlor intent with respect to a second trust, the intent of a settlor of the first trust and the intent of a settlor of the second trust, if different, may be considered. The intent of the trustee may also be considered.

(4) If the trustee intends to distribute all of the principal of a first trust to a second trust and the trustee makes a good faith effort to do so, the distribution of all of the principal of a first trust to a second trust includes subsequently discovered assets otherwise belonging to the first trust and principal paid to or acquired by the first trust after the distribution of the first trust's principal. If the trustee does not intend to distribute all of the principal of a first trust to a second trust, the distribution of part of the principal of a first trust to a second trust does not include subsequently discovered assets belonging to the first trust or principal paid to or acquired by the first trust after the distribution of principal from the first trust to the second trust, and those assets or that principal remain the assets or principal of the first trust.

(5) A reference under this title to a trust instrument or to terms of the trust includes the second trust, the second trust instrument, and the terms of the second trust.

(6) The title to all real estate and other property, both tangible and intangible, owned by the first trust remains vested in the second trust without reversion or impairment.

(7) An action or proceeding pending by or against the first trust may be continued by or against the second trust as if the decanting had not occurred.

(8) Except as otherwise provided by this chapter, all of the rights, privileges, immunities, powers, and purposes of the first trust remain vested in the second trust. [2017 c 29 § 5.]

11.107.060 Decanting statute—Trust for beneficiary with a disability. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Beneficiary with a disability" means a beneficiary of the first trust who the trustee believes may qualify for governmental benefits based on disability, whether or not the beneficiary currently receives those benefits or is an individual who has been placed under a guardianship or conservatorship under chapter 11.130 RCW.

(b) "Governmental benefits" means financial aid or services from a state, federal, or other public agency.

(c) "Special needs trust" means a trust the trustee believes would not be considered a resource for purposes of determining whether the beneficiary with a disability is eligible for governmental benefits.

(2) A trustee may exercise the decanting power under RCW 11.107.020 and 11.107.030 over the property of the first trust as if the trustee had authority to distribute principal to a beneficiary with a disability subject to expanded discretion if:

(a) The second trust is a special needs trust that benefits the beneficiary with a disability; and

(b) The trustee determines that exercise of the decanting power will further the purposes of the first trust.

(3) In an exercise of the decanting power under this section, the following rules apply:

(a) The provisions of the second trust for a beneficiary with a disability may:

(i) Meet the medicaid law requirements for an account in a pooled trust for a beneficiary with a disability under 42 U.S.C. Sec. 1369p(d)(4)(C), as amended, including requiring

a payback to the state of medicaid expenditures of funds not retained by the pooled trust; or

(ii) Meet the medicaid law requirements for a trust for the sole benefit of a beneficiary with a disability under age sixty-five under 42 U.S.C. Sec. 1369(d)(4)(A), as amended, including requiring a payback to the state of medicaid expenditures.

(b) RCW 11.107.020(1)(a)(iii) does not apply to the interests of the beneficiary with a disability.

(c) Except as affected by any change to the interests of the beneficiary with a disability, the second trusts, in the aggregate, must grant each other beneficiary of the first trust beneficial interests in the second trusts which are substantially similar to the beneficiary's beneficial interests in the first trust unless inconsistent with (a)(i) or (ii) of this subsection (3). [2020 c 312 § 720; 2017 c 29 § 6.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.107.070 Decanting statute—Specific prohibitions.

(1) A trustee may not exercise the decanting power to the extent the first trust instrument expressly prohibits exercise of the decanting power or a power granted by state law to the trustee to modify the trust including, but not limited to, modification pursuant to chapter 11.96A RCW, and any exercise of the decanting power is subject to the prohibition and the prohibition must be included in the second trust instrument or modified first trust instrument. If the first trust instrument contains an express restriction on exercise of the decanting power or such a power to modify the trust, the exercise of the decanting power is subject to the restriction and the restriction must be included in the second trust instrument or modified first trust instrument.

(2)(a) Whether or not a first trust instrument specifies a trustee's compensation, the trustee may not exercise the decanting power to increase the trustee's compensation beyond any compensation specified or above the compensation permitted by RCW 11.98.070(26) unless:

(i) All qualified beneficiaries of the second trust consent to the increase in a signed record; or

(ii) The increase is approved by the court.

(b) A change in a trustee's compensation which is incidental to other changes made by the exercise of the decanting power is not an increase in the trustee's compensation for purposes of this subsection (2).

(3) Except as otherwise provided in subsection (2)(a)(i) or (ii) or (b) of this section, a second trust instrument may not relieve a trustee from liability for breach of trust to a greater extent than the first trust instrument.

(a) A second trust instrument may provide for indemnification of a trustee of the first trust or another person acting in a fiduciary capacity under the first trust for any liability or claim that would have been payable from the first trust if the decanting power had not been exercised.

(b) A second trust instrument may not reduce fiduciary liability in the aggregate.

(c) Subject to (b) of this subsection, a second trust instrument may divide and reallocate fiduciary powers among fiduciaries, including one or more trustees or statutory trust advisors, and relieve a fiduciary from liability for an act or failure to act of another fiduciary as permitted by law of this state

other than this chapter. This includes but is not limited to directed trusts.

(4) A trustee may not exercise the decanting power to modify a provision in the first trust instrument granting another person power to remove or replace the trustee unless:

(a) All qualified beneficiaries of the second trust consent to the modification in a signed record; or

(b) The court approves the modification and the modification grants a substantially similar power to another person.

(5) A second trust may have a duration that is the same as or different from the duration of the first trust. Notwithstanding the foregoing, to the extent that income and principal of a second trust is attributable to income and principal of the first trust, the second trust is subject to any maximum perpetuity, accumulation, or suspension of the power of alienation rules that were applicable to income and principal of the first trust.

(6) If a first trust contains a charitable interest, the attorney general has the rights of a qualified beneficiary and may represent and bind the charitable interest and the attorney general has the authority to participate in any proceedings in accordance with chapter 11.110 RCW. If a first trust contains a charitable interest, the second trusts, in the aggregate, may not:

(a) Diminish the charitable interest;

(b) Diminish the interest of any entity that holds the charitable interest; or

(c) Alter any charitable purpose stated in the first trust instrument.

(7) If the first trust contains assets that qualified, or would have qualified but for the provisions of this chapter other than this subsection, for a tax benefit as defined in this subsection, the second trust instrument must not include or omit a term which would have prevented the first trust from qualifying in the same manner for, or would have reduced the amount of, that tax benefit.

(a) For the purposes of this subsection, "tax benefit" includes any federal or state tax deduction, exemption, exclusion, or other tax benefit under federal or state statute, regulation, or other law, except for the benefit of being a grantor trust other than under Title 26 U.S.C. Sec. 672(f)(2)(A) of the federal internal revenue code, as amended, as of July 23, 2017, including but not limited to the following:

(i) The marital deduction for gift, estate, or inheritance tax purposes, including but not limited to the deductions under Title 26 U.S.C. Sec. 2056 of the federal internal revenue code, as amended, as of July 23, 2017, and RCW 83.100.047;

(ii) The charitable deduction for purposes of the income, gift, or estate tax under the internal revenue code or a state income, gift, estate, or inheritance tax;

(iii) The exclusion from the gift tax described in 26 U.S.C. Sec. 2503(b), including by application of Title 26 U.S.C. Sec. 2503(c) of the internal revenue code, as amended;

(iv) Status as a permitted shareholder in an S corporation, as defined in Title 26 U.S.C. Sec. 1361 of the federal internal revenue code, as amended, as of July 23, 2017, including as a qualified subchapter S trust within the meaning of Title 26 U.S.C. Sec. 1361(c)(2) of the federal internal revenue code;

(v) Qualification for a zero inclusion ratio for purposes of the generation-skipping transfer tax under Title 26 U.S.C. Sec. 2642(c) of the federal internal revenue code, as amended, as of July 23, 2017;

(vi) Meeting required minimum distribution and any similar requirements under Title 26 U.S.C. Sec. 401(a)(9) of the federal internal revenue code, as amended, as of July 23, 2017, and any applicable regulations; or

(vii) Qualification as a grantor trust because of the application of Title 26 U.S.C. Sec. 672(f)(2)(A) of the federal internal revenue code, as amended, as of July 23, 2017.

(b) Subject to (a)(vii) of this subsection, the second trust may be a nongrantor trust, even if the first trust is a grantor trust, and except as otherwise provided in this subsection (7)(b) the second trust may be a grantor trust, even if the first trust is a nongrantor trust. The trustee may not exercise the decanting power if the settlor objects in a written instrument delivered to the trustee within the notice period under RCW 11.107.040(1)(c); and

(i)(A) The first trust and second trust are both grantor trusts, in whole or in part;

(B) The first trust grants the settlor or another person the power to cause the first trust to cease to be a grantor trust; and

(C) The second trust does not grant an equivalent power to the settlor or other person; or

(ii) The first trust is a nongrantor trust and the second trust is a grantor trust, in whole or in part, with respect to the settlor unless:

(A) The settlor has the power at all times to cause the second trust to cease to be a grantor trust; or

(B) The first trust instrument contains a provision granting the settlor or another person the power to cause the first trust to cease to be a grantor trust and the second trust instrument contains the same provision.

(8) A trustee may not exercise the decanting power if RCW 11.98.200 applies to the first trust and exercise would cause RCW 11.98.200 not to apply to the second trust or modified first trust instrument.

(9) A general prohibition of the amendment or revocation of a first trust, a spendthrift clause, or a clause restraining the voluntary or involuntary transfer of a beneficiary's interest does not preclude exercise of the decanting power. [2017 c 29 § 7.]

11.107.080 Application—Miscellaneous. (1) This chapter applies to any express trust, within the meaning of RCW 11.98.009, other than a trust during such time as the grantor has retained the right to revoke or amend. In exercising the decanting power, the trustee must act in accordance with the trustee's fiduciary duties, including the duty to act in accordance with the purposes of the first trust. Except as otherwise provided in the first trust instrument, for purposes of this chapter the terms of the first trust are deemed to include the decanting power.

(2) This chapter does not limit the power of a trustee, powerholder, or other person to distribute or appoint income and principal in further trust or to modify a trust under the trust instrument, law of this state other than this title, a court order, or a nonjudicial agreement. This chapter does not increase or modify the requirements for a binding agreement under RCW 11.96A.220 or the requirements for a directed

trust under *chapter 11.98A RCW. This chapter does not affect the ability of a settlor to provide in a trust instrument for the distribution or appointment in further trust of the trust income and principal or for modification of the trust instrument.

(3) This chapter does not apply to a trust held solely for charitable purposes.

(4) This chapter does not create or imply a duty to exercise the decanting power or to inform beneficiaries about the applicability of this chapter.

(5) This chapter applies to a trust created before, on, or after July 23, 2017, that:

(a) Has its situs in this state, including a trust whose situs has been changed to this state; or

(b) Provides by its trust instrument that it is governed by the law of this state or is governed by the law of this state for purposes of:

(i) Administration, including a trust whose governing law for purposes of administration has been changed to the law of this state;

(ii) Construction of terms of the trust; or

(iii) Determining the meaning or effect of terms of the trust.

(6) A trustee may exercise the decanting power whether or not the trustee would have made or could have been compelled to make a discretionary distribution of principal at the time of the exercise.

(7) If exercise of the decanting power would be effective under this chapter except that the second trust instrument in part does not comply with this chapter, the exercise of the decanting power is effective and the following rules apply to the principal of the first trust subject to the exercise of the power:

(a) A provision in the second trust instrument which is not permitted under this chapter is void to the extent necessary to comply with this chapter.

(b) A provision required by this chapter to be in the second trust instrument which is not contained in the instrument is deemed to be included in the instrument to the extent necessary to comply with this chapter.

(8) If a trustee of a second trust discovers that subsection (7) of this section applies to a prior exercise of the decanting power, the trustee must take such appropriate corrective action as is consistent with the trustee's duties. [2017 c 29 § 8.]

*Reviser's note: Chapter 11.98A RCW was repealed in its entirety by 2020 c 303 § 19, effective January 1, 2021.

Chapter 11.108 RCW

MISCELLANEOUS PROVISIONS FOR DISTRIBUTIONS MADE BY A GOVERNING INSTRUMENT

(Formerly: Trust gift distribution)

Sections

- 11.108.010 Definitions.
- 11.108.020 Marital deduction gift—Compliance with Internal Revenue Code—Fiduciary powers.
- 11.108.025 Election to qualify property for the marital deduction—Generation-skipping transfer tax allocations.
- 11.108.030 Pecuniary bequests—Valuation of assets if distribution other than money.
- 11.108.040 Construction of certain marital deduction formula bequests.

- 11.108.050 Marital deduction gift in trust.
- 11.108.060 Marital deduction gift—Survivorship requirement—Limits—Property to be held in trust.
- 11.108.070 Presumptions for the interpretation, construction, and administration of governing instrument.
- 11.108.080 Generation-skipping transfer tax—Federal law application.
- 11.108.090 Generation-skipping transfer tax—Dispute resolution of federal law application.
- 11.108.900 Application of chapter—Application of 2006 c 360.
- 11.108.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

11.108.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

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

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

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

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

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

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

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

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

(9) The term "spouse" includes the transferor's surviving spouse in the case of a deceased transferor. [2006 c 360 § 3; 1997 c 252 § 81; 1993 c 73 § 2; 1990 c 224 § 2; 1988 c 64 § 27; 1985 c 30 § 106. Prior: 1984 c 149 § 140.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.108.020 Marital deduction gift—Compliance with Internal Revenue Code—Fiduciary powers. (1) If a governing instrument contains a marital deduction gift, the governing instrument shall be construed to comply with the mar-

ital deduction provisions of the Internal Revenue Code in every respect.

(2) If a governing instrument contains a marital deduction gift, any fiduciary operating under the governing instrument has all the powers, duties, and discretionary authority necessary to comply with the marital deduction provisions of the Internal Revenue Code. The fiduciary shall not take any action or have any power that may impair that deduction, but this does not require the fiduciary to make the elections under either section 2056(b)(7) or 2523(f) of the Internal Revenue Code that is referred to in RCW 11.108.025. [1997 c 252 § 82; 1993 c 73 § 3; 1988 c 64 § 28; 1985 c 30 § 107. Prior: 1984 c 149 § 141.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.108.025 Election to qualify property for the marital deduction—Generation-skipping transfer tax allocations. Unless a governing instrument directs to the contrary:

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

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

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

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

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

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

(4) For state and federal estate tax purposes, a fiduciary may make inconsistent elections under section 2056(b)(7) or 2056A of the Internal Revenue Code and under similar provisions of applicable state law. [2006 c 360 § 5; 1997 c 252 § 83; 1993 c 73 § 4; 1991 c 6 § 1; 1990 c 179 § 2; 1988 c 64 § 29.]

Additional notes found at www.leg.wa.gov

(2022 Ed.)

11.108.030 Pecuniary bequests—Valuation of assets if distribution other than money. (1) If a governing instrument authorizes the fiduciary to satisfy a pecuniary bequest in whole or in part by distribution of property other than money, the assets selected for that purpose shall be valued at their respective fair market values on the date or dates of distribution, unless the governing instrument expressly provides otherwise. If the governing instrument permits the fiduciary to value the assets selected for the distribution as of a date other than the date or dates of distribution, then, unless the governing instrument expressly provides otherwise, the assets selected by the fiduciary for that purpose shall have an aggregate fair market value on the date or dates of distribution which, when added to any cash distributed, will amount to no less than the amount of that gift as stated in, or determined by, the governing instrument.

(2) A marital deduction gift shall be satisfied only with assets that qualify for those deductions. [1985 c 30 § 108. Prior: 1984 c 149 § 142.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.108.040 Construction of certain marital deduction formula bequests. (1) If a testator, under the terms of a governing instrument executed prior to September 12, 1981, leaves outright to or in trust for the benefit of that testator's surviving spouse an amount or fractional share of that testator's estate or a trust estate expressed in terms of one-half of that testator's federal adjusted gross estate, or by any other reference to the maximum estate tax marital deduction allowable under federal law without referring, either in that governing instrument or in any codicil or amendment thereto, specifically to the unlimited federal estate tax marital deduction enacted as part of the economic recovery tax act of 1981, such expression shall, unless subsection (2) or (3) of this section applies, be construed as referring to the unlimited federal estate tax marital deduction, and also as expressing such amount or fractional share, as the case may be, in terms of the minimum amount which will cause the least possible amount of federal estate tax to be payable as a result of the testator's death, taking into account other property passing to the surviving spouse that qualifies for the marital deduction, at the value at which it qualifies, and also taking into account all credits against the federal estate tax, but only to the extent that the use of these credits do not increase the death tax payable.

(2) If this subsection applies to a testator, such expression shall be construed as referring to the estate tax marital deduction allowed by federal law immediately prior to the enactment of the unlimited estate tax marital deduction as a part of the economic recovery tax act of 1981. This subsection applies if subsection (3) of this section does not apply and:

(a) The application of this subsection to the testator will not cause an increase in the federal estate taxes payable as a result of the testator's death over the amount of such taxes which would be payable if subsection (1) of this section applied; or

(b) The testator is survived by a blood or adopted descendant who is not also a blood or adopted descendant of

the testator's surviving spouse, unless such person or persons have entered into an agreement under RCW 11.96A.220; or

(c) The testator amended the governing instrument containing such expression after December 31, 1981, without amending such expression to refer expressly to the unlimited federal estate tax marital deduction.

(3) If the governing instrument contains language expressly stating that federal law of a particular time prior to January 1, 1982, is to govern the construction or interpretation of such expression, the expression shall be construed as referring to the marital deduction allowable under federal law in force and effect as of that time.

(4) If subsection (2) or (3) of this section applies to the testator, the expression shall not be construed as referring to any property that the personal representative of the testator's estate or other authorized fiduciary elects to qualify for the federal estate tax marital deduction as qualified terminable interest property. If subsection (1) of this section applies to the testator, any provision shall be construed as referring to any property that the personal representative of the testator's estate or other authorized fiduciary elects to qualify for the federal estate tax marital deduction as qualified terminable interest property, but only to the extent that such construction does not cause the amount or fractional share left to or for the benefit of the surviving spouse to be reduced below the amount that would pass under subsection (2) or (3) of this section, whichever is applicable.

(5) This section is effective with respect to testators dying after December 31, 1982. [1999 c 42 § 630; 1985 c 30 § 109. Prior: 1984 c 149 § 143.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.108.050 Marital deduction gift in trust. If a governing instrument contains a marital deduction gift in trust, then in addition to the other provisions of this chapter, each of the following applies to the trust to the extent necessary to qualify the gift for the marital deduction:

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

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

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

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

(d) The transferor's spouse may, alone and in all events, dispose of all of the trust property, including accrued or undistributed income, remaining after the spouse's death under a testamentary general power of appointment, as defined in section 2041 of the Internal Revenue Code. However, this subsection (1)(d) does not apply to: (i) A marital deduction gift in trust which is described in subsection (2) of this section; (ii) that portion of a marital deduction gift in trust that has qualified for the marital deduction as a result of an election under section 2056(b)(7) or 2523(f) of the Internal

Revenue Code; and (iii) that portion of marital deduction gift in trust that would have qualified for the marital deduction but for the fiduciary's decision not to make the election under section 2056(b)(7) or 2523(f) of the Internal Revenue Code;

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

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

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

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

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

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

(b) An interest of the transferor's spouse in a charitable remainder annuity trust or charitable remainder unitrust described in section 664 of the Internal Revenue Code, if the transferor's spouse is the only noncharitable beneficiary. [1997 c 252 § 84; 1993 c 73 § 5; 1990 c 179 § 3; 1985 c 30 § 110. Prior: 1984 c 149 § 144.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.108.060 Marital deduction gift—Survivorship requirement—Limits—Property to be held in trust. For an estate that exceeds the amount exempt from state or federal tax by virtue of the credit under section 2010 of the Internal Revenue Code, if taking into account applicable adjusted taxable gifts as defined in section 2001(b) of the Internal Revenue Code, any marital deduction gift that is conditioned upon the transferor's spouse surviving the transferor for a period of more than six months, is governed by the following:

(1) A survivorship requirement expressed in the governing instrument in excess of six months or which may exceed six months, other than survival by a spouse of a common disaster resulting in the death of the transferor, does not apply

to property passing under the marital deduction gift, and for the gift, the survivorship requirement may not exceed the period ending six months following the transferor's date of death, as established under section 2056(b)(3) of the Internal Revenue Code.

(2) If the property that is the subject of the marital deduction gift is passing or is to be held in trust, as opposed to passing outright, it must be held in a trust meeting the requirements of section 2056(b)(7) of the Internal Revenue Code the corpus of which must: (a) Pass as though the spouse failed to survive the transferor if the spouse, in fact, fails to survive the term specified in the governing instrument; and (b) pass to the spouse under the terms of the governing instrument if the spouse, in fact, survives the term specified in the governing instrument. [2006 c 360 § 6; 1999 c 44 § 1; 1997 c 252 § 86; 1989 c 35 § 1; 1985 c 30 § 111. Prior: 1984 c 149 § 145.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.108.070 Presumptions for the interpretation, construction, and administration of governing instrument.

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

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

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

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

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

(3) References in this chapter to provisions of the Internal Revenue Code include references to similar provisions, if any, of applicable state law. [2006 c 360 § 4.]

Additional notes found at www.leg.wa.gov

11.108.080 Generation-skipping transfer tax—Federal law application. (1) A will or trust of a decedent who dies after December 31, 2009, and before January 1, 2011, is

(2022 Ed.)

deemed to refer to the federal estate and generation-skipping transfer tax laws as they applied with respect to estates of decedents dying on December 31, 2009, if the will or trust contains a formula that:

(a) Refers to any of the following: "Unified credit," "estate tax exemption," "applicable exemption amount," "applicable credit amount," "applicable exclusion amount," "generation-skipping transfer tax exemption," "marital deduction," "maximum marital deduction," or "unlimited marital deduction;"

(b) Measures a share of an estate or trust based on the amount that can pass free of federal estate taxes or the amount that can pass free of federal generation-skipping transfer taxes; or

(c) Is otherwise based on a provision of federal estate tax or federal generation-skipping transfer tax law similar to the provisions in (a) or (b) of this subsection.

(2) This section is presumed to not apply with respect to a will or trust that (a) is executed or amended after December 31, 2009, or (b) clearly manifests an intent that a contrary rule applies in cases where the decedent dies on a date on which there is no then-applicable federal estate or federal generation-skipping transfer tax and such tax has been permanently repealed and not merely temporarily repealed for calendar year 2010.

(3) The reference to January 1, 2011, in this section refers, if the federal estate and generation-skipping transfer tax becomes effective before that date, to the first date on which such tax becomes legally effective.

(4) Construction of a will or trust under this section may be confirmed pursuant to the procedures set forth in the trust and estate dispute resolution act in chapter 11.96A RCW. [2010 c 11 § 2.]

Finding—2010 c 11: "The legislature finds in order to carry out the intent of decedents in the construction of wills and trusts, and in order to promote judicial economy in the administration of trusts and estates, that it is necessary to construe certain formula clauses to refer to federal estate and generation-skipping transfer tax rules applicable to estates of decedents dying on December 31, 2009." [2010 c 11 § 1.]

Additional notes found at www.leg.wa.gov

11.108.090 Generation-skipping transfer tax—Dispute resolution of federal law application.

The personal representative, trustee, or any affected beneficiary under a will or trust may bring a proceeding under the trust and estate dispute resolution act in chapter 11.96A RCW, to determine whether the decedent intended that the references, presumptions, or rules of construction under RCW 11.108.080 be construed with respect to the federal law as it existed after December 31, 2009, including but not limited to the amendments made to federal law by the federal tax relief, unemployment insurance reauthorization, and job creation act of 2010, federal House Resolution No. 4853, P.L. 111-312. In making such determinations, extrinsic evidence may be considered, whether or not the governing instrument is found to be ambiguous, including but not limited to, information provided by the decedent to the decedent's attorney or personal representative. Such a proceeding must be commenced not later than two years following the death of the testator or grantor, and not thereafter. [2011 c 113 § 2; 2010 c 11 § 3.]

Finding—2011 c 113: "On December 17, 2010, the federal tax relief, unemployment insurance reauthorization, and job creation act of 2010,

House Resolution No. 4853, P.L. 111-312, was enacted into law. Federal House Resolution No. 4853 amended the federal gift, estate, and generation-skipping transfer taxes by retroactively reinstating those taxes to January 1, 2010, with an increased applicable exemption amount per taxpayer of five million dollars. House Resolution No. 4853 also extended the time for making certain qualified disclaimers. In light of these changes in federal law, the legislature finds in order: To carry out the intent of decedents and grantors in the construction of wills, trusts, and other dispositive instruments; to continue the uniformity of the Washington disclaimer law with federal law; and to promote judicial economy in the administration of trusts and estates, it is necessary to amend certain time limitations and to clarify procedures to construe certain formula clauses that refer to federal estate, gift, and generation-skipping transfer tax rules applicable to estates of decedents dying after December 31, 2009, and prior to December 18, 2010." [2011 c 113 § 1.]

Finding—Retroactive application—Application—Construction—Effective date—2010 c 11: See notes following RCW 11.108.080.

Additional notes found at www.leg.wa.gov

11.108.900 Application of chapter—Application of 2006 c 360. (1) This chapter applies to all estates, trusts, and governing instruments in existence on or any time after March 7, 1984, and to all proceedings with respect thereto after that date, whether the proceedings commenced before or after that date, and including distributions made after that date. This chapter shall not apply to any governing instrument the terms of which expressly or by necessary implication make this chapter inapplicable. The judicial and nonjudicial dispute resolution procedures of chapter 11.96A RCW apply to this chapter.

(2) Sections 3 through 6, chapter 360, Laws of 2006 are remedial in nature and shall be liberally applied in order to achieve the purposes of chapter 360, Laws of 2006. [2006 c 360 § 7; 1999 c 42 § 631; 1985 c 30 § 112. Prior: 1984 c 149 § 146.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.108.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 41.]

Chapter 11.110 RCW CHARITABLE TRUSTS

Sections

11.110.010	Purpose of chapter.
11.110.020	Definitions.
11.110.040	Information, documents, and reports are public records— Inspection—Publication.
11.110.051	Registration of trustee—Requirements—Exception—Applica- tion of chapter to nonregistered trustees.

11.110.060	Instrument establishing trust, inventory of assets, registration status, successor trustee information, and amendments to be filed.
11.110.070	Tax or information return or report—Filing—Rules—Forms.
11.110.075	Trust not exclusively for charitable purposes—Instrument and information not public—Access.
11.110.090	Uniformity of chapter with laws of other states.
11.110.100	Investigations by attorney general authorized—Appearance and production of books, papers, documents, etc., may be required.
11.110.110	Order to appear—Effect—Enforcement—Appellate review.
11.110.120	Proceedings to secure compliance and proper trust administra- tion—Attorney general to be notified of judicial proceedings involving charitable trust—Powers and duties additional.
11.110.125	Violations—Refusal to file reports, perform duties, etc.
11.110.130	Violations—Civil action may be prosecuted.
11.110.140	Penalty.
11.110.200	Tax Reform Act of 1969, state implementation—Application of RCW 11.110.200 through 11.110.260 to certain trusts defined in federal code.
11.110.210	Tax Reform Act of 1969, state implementation—Trust instru- ments deemed to contain prohibiting provisions.
11.110.220	Tax Reform Act of 1969, state implementation—Trust instru- ments deemed to contain certain provisions for distribution.
11.110.230	Tax Reform Act of 1969, state implementation—Rights, pow- ers, of courts, attorney general, not impaired.
11.110.250	Tax Reform Act of 1969, state implementation—Application to trust created after June 10, 1971, or amendment to existing trust.
11.110.260	Tax Reform Act of 1969, state implementation—Severabil- ity—RCW 11.110.200 through 11.110.260.
11.110.270	Tax Reform Act of 1969, state implementation—Not for profit corporations.

Fees—Charitable trusts—Charitable solicitations: RCW 43.07.125.

11.110.010 Purpose of chapter. The purpose of this chapter is to facilitate public supervision over the administration of public charitable trusts and similar relationships and to clarify and implement the powers and duties of the attorney general and the secretary of state with relation thereto. [1993 c 471 § 25; 1985 c 30 § 113. Prior: 1967 ex.s. c 53 § 1. Formerly RCW 19.10.010.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.110.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Person" means an individual, organization, group, association, partnership, corporation, or any combination of them.

(2)(a) "Trustee" means:

(i) Any person holding property in trust for a public charitable purpose; except the United States, its states, territories, and possessions, the District of Columbia, Puerto Rico, and their agencies and subdivisions;

(ii) A corporation formed for the administration of a charitable trust; and

(iii) Any person holding assets subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes.

(b) Unless they are described in (a)(i) or (ii) of this subsection, the term "trustee" does not apply to:

(i) Washington nonprofit corporations incorporated under chapter 24.03A RCW or to which chapter 24.03A RCW applies through operation of RCW 24.03A.035;

(ii) Religious corporations duly organized and operated in good faith as religious organizations, which have received a declaration of current tax exempt status from the govern-

ment of the United States; their duly organized branches or chapters; and charities, agencies, and organizations affiliated with and forming an integral part of said organization, or operated, supervised, or controlled directly by such religious corporations nor any officer of any such religious organization who holds property for religious purposes. However, if such organization has not received from the United States government a declaration of current tax exempt status prior to the time it receives property under the terms of a charitable trust, this exemption shall be applicable for two years only from the time of receiving such property, or until such tax exempt status is finally declared, whichever is sooner; or

(iii) An educational institution which is nonprofit and charitable, having a program of primary, secondary, or collegiate instruction comparable in scope to that of any public school or college operated by the state of Washington or any of its school districts. [2021 c 176 § 5101; 1985 c 30 § 114. Prior: 1971 ex.s. c 226 § 1; 1967 ex.s. c 53 § 2. Formerly RCW 19.10.020.]

Effective date—2021 c 176: See note following RCW 24.03A.005.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.110.040 Information, documents, and reports are public records—Inspection—Publication. All information, documents, and reports filed with the secretary of state under this chapter are matters of public record and shall be open to public inspection, subject to reasonable regulation: PROVIDED, That the secretary of state shall withhold from public inspection any trust instrument so filed whose content is not exclusively for charitable purposes. The secretary of state may publish, on a periodic or other basis, such information as may be necessary or appropriate in the public interest concerning the registration, reports, and information filed with the secretary of state or any other matters relevant to the administration and enforcement of this chapter. [1993 c 471 § 26; 1985 c 30 § 115. Prior: 1967 ex.s. c 53 § 4. Formerly RCW 19.10.040.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.110.051 Registration of trustee—Requirements—Exception—Application of chapter to nonregistered trustees. (1) Except as provided in subsection (2) of this section, a trustee, as defined by RCW 11.110.020, must register with the secretary of state if, as to a particular charitable trust:

(a) The trustee holds assets in trust, invested for income-producing purposes, exceeding a value established by the secretary of state by rule;

(b) Under the terms of the trust all or part of the principal or income of the trust can or must currently be expended for charitable purposes; and

(c) The trust instrument does not require the distribution of the entire trust corpus within a period of one year or less.

(2) A trustee of a trust, in which the only charitable interest is in the nature of a remainder, is not required to register during any life estate or other term that precedes the charitable interest. This exclusion from registration applies to trusts which have more than one noncharitable life income benefi-

ciary, even if the death of one such beneficiary obligates the trustee to distribute a remainder interest to charity.

(3) A trustee of a charitable trust that is not required to register pursuant to this section is subject to all requirements of this chapter other than those governing registration and reporting to the secretary of state. [1997 c 124 § 1.]

11.110.060 Instrument establishing trust, inventory of assets, registration status, successor trustee information, and amendments to be filed. (1) Every trustee required to file under RCW 11.110.051 shall file with the secretary of state within four months after receiving possession or control of the trust corpus, or after the trust becomes a trust described by RCW 11.110.051(1):

(a) A copy of the instrument establishing his or her title, powers, or duties;

(b) An inventory of the assets of such charitable trust; and

(c) A registration form setting forth the trustee's name, mailing address, physical address if different, and additional identifying information required by the secretary by rule.

(2) A successor trustee to a previously registered trust shall file a registration form and inventory of assets within four months after receiving possession or control of the trust corpus.

(3) A trustee required to register shall file with the secretary of state copies of all amendments to the trust instrument within four months of the making of the amendment. [1997 c 124 § 2; 1993 c 471 § 28; 1985 c 30 § 117. Prior: 1984 c 149 § 150; 1971 ex.s. c 226 § 2; 1967 ex.s. c 53 § 6. Formerly RCW 19.10.060.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.110.070 Tax or information return or report—Filing—Rules—Forms. Every trustee required to register under RCW 11.110.051 shall file with the secretary of state a copy of each publicly available United States tax or information return or report of the trust at the time that the trustee files with the internal revenue service. The secretary may provide by rule for the exemption from reporting under this section by some or all trusts not required to file a federal tax or information return, and for a substitute form containing similar information to be used by any trusts not so exempted. [1997 c 124 § 3; 1993 c 471 § 29; 1985 c 30 § 118. Prior: 1971 ex.s. c 226 § 3; 1967 ex.s. c 53 § 7. Formerly RCW 19.10.070.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.110.075 Trust not exclusively for charitable purposes—Instrument and information not public—Access. A trust is not exclusively for charitable purposes, within the meaning of RCW 11.110.040, when the instrument creating it contains a trust for several or mixed purposes, and any one or more of such purposes is not charitable within the meaning of RCW 11.110.020, as enacted or hereafter amended. Such instrument shall be withheld from public inspection by the secretary of state and no information as to such noncharitable

purpose shall be made public. The attorney general shall have free access to such information. [1997 c 124 § 4; 1993 c 471 § 30; 1985 c 30 § 120. Prior: 1984 c 149 § 154; 1971 ex.s. c 226 § 5. Formerly RCW 19.10.075.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.110.090 Uniformity of chapter with laws of other states. It is the purpose of this chapter to make uniform the laws of this and other states on the subject of charitable trusts and similar relationships. Recognizing the necessity for uniform application and enforcement of this chapter, its provisions are hereby declared mandatory and they shall not be superseded by the provisions of any trust instrument or similar instrument to the contrary. [1985 c 30 § 122. Prior: 1967 ex.s. c 53 § 9. Formerly RCW 19.10.090.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.110.100 Investigations by attorney general authorized—Appearance and production of books, papers, documents, etc., may be required. The attorney general may investigate transactions and relationships of trustees and other persons subject to this chapter for the purpose of determining whether the trust or other relationship is administered according to law and the terms and purposes of the trust, or to determine compliance with this chapter in any other respect. He or she may require any officer, agent, trustee, fiduciary, beneficiary, or other person, to appear, at a time and place designated by the attorney general in the county where the person resides or is found, to give information under oath and to produce books, memoranda, papers, documents of title, and evidence of assets, liabilities, receipts, or disbursements in the possession or control of the person ordered to appear. [2010 c 8 § 2093; 1985 c 30 § 123. Prior: 1967 ex.s. c 53 § 10. Formerly RCW 19.10.100.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.110.110 Order to appear—Effect—Enforcement—Appellate review. When the attorney general requires the attendance of any person, as provided in RCW 11.110.100, he or she shall issue an order setting forth the time when and the place where attendance is required and shall cause the same to be delivered to or sent by registered mail to the person at least fourteen days before the date fixed for attendance. Such order shall have the same force and effect as a subpoena, and, upon application of the attorney general, obedience to the order may be enforced by any superior court judge in the county where the person receiving it resides or is found, in the same manner as though the notice were a subpoena. The court, after hearing, for good cause, and upon application of any person aggrieved by the order, shall have the right to alter, amend, revise, suspend, or postpone all or any part of its provisions. In any case where the order is not enforced by the court according to its terms, the reasons for the court's actions shall be clearly stated in the record, and shall be subject to review by the supreme court or the court of appeals. [2010 c 8 § 2094; 1988 c 202 § 20; 1985

c 30 § 124. Prior: 1984 c 149 § 157; 1971 c 81 § 64; 1967 ex.s. c 53 § 11. Formerly RCW 19.10.110.]

Rules of court: *Writ procedure superseded by RAP 2.1(b), 2.2, 18.22.*

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.110.120 Proceedings to secure compliance and proper trust administration—Attorney general to be notified of judicial proceedings involving charitable trust—Powers and duties additional. The attorney general may institute appropriate proceedings to secure compliance with this chapter and to secure the proper administration of any trust or other relationship to which this chapter applies. He or she shall be notified of all judicial proceedings involving or affecting the charitable trust or its administration in which, at common law, he or she is a necessary or proper party as representative of the public beneficiaries. The notification shall be given as provided in RCW 11.96A.110, but this notice requirement may be waived at the discretion of the attorney general. The powers and duties of the attorney general provided in this chapter are in addition to his or her existing powers and duties, and are not to be construed to limit or to restrict the exercise of the powers or the performance of the duties of the attorney general or of any prosecuting attorney which they may exercise or perform under any other provision of law. Except as provided herein, nothing in this chapter shall impair or restrict the jurisdiction of any court with respect to any of the matters covered by it. [2010 c 8 § 2095; 1999 c 42 § 632; 1985 c 30 § 125. Prior: 1984 c 149 § 158; 1967 ex.s. c 53 § 12. Formerly RCW 19.10.120.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.110.125 Violations—Refusal to file reports, perform duties, etc. The willful refusal by a trustee to make or file any report or to perform any other duties expressly required by this chapter, or to comply with any valid rule adopted by the secretary of state under this chapter, shall constitute a breach of trust and a violation of this chapter. [1993 c 471 § 32; 1985 c 30 § 126. Prior: 1971 ex.s. c 226 § 6. Formerly RCW 19.10.125.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.110.130 Violations—Civil action may be prosecuted. A civil action for a violation of this chapter may be prosecuted by the attorney general or by a prosecuting attorney. [1993 c 471 § 33; 1985 c 30 § 127. Prior: 1967 ex.s. c 53 § 13. Formerly RCW 19.10.130.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.110.140 Penalty. Every false statement of material fact knowingly made or caused to be made by any person in any statement or report filed under this chapter and every other violation of this chapter is a gross misdemeanor. [1985

c 30 § 128. Prior: 1967 ex.s. c 53 § 14. Formerly RCW 19.10.140.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.110.200 Tax Reform Act of 1969, state implementation—Application of RCW 11.110.200 through 11.110.260 to certain trusts defined in federal code. RCW 11.110.200 through 11.110.260 shall apply only to trusts which are "private foundations" as defined in section 509 of the Internal Revenue Code, "charitable trusts" as described in section 4947(a)(1) of the Internal Revenue Code, or "split-interest trusts" as described in section 4947(a)(2) of the Internal Revenue Code. With respect to any such trust created after December 31, 1969, RCW 11.110.200 through 11.110.260 shall apply from such trust's creation. With respect to any such trust created before January 1, 1970, RCW 11.110.200 through 11.110.260 shall apply only to such trust's federal taxable years beginning after December 31, 1971. [1993 c 73 § 6; 1985 c 30 § 129. Prior: 1984 c 149 § 161; 1971 c 58 § 1. Formerly RCW 19.10.200.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.110.210 Tax Reform Act of 1969, state implementation—Trust instruments deemed to contain prohibiting provisions. The trust instrument of each trust to which RCW 11.110.200 through 11.110.260 applies shall be deemed to contain provisions prohibiting the trustee from:

(1) Engaging in any act of "self-dealing," as defined in section 4941(d) of the Internal Revenue Code, which would give rise to any liability for the tax imposed by section 4941(a) of the Internal Revenue Code;

(2) Retaining any "excess business holdings," as defined in section 4943(c) of the Internal Revenue Code, which would give rise to any liability for the tax imposed by section 4943(a) of the Internal Revenue Code;

(3) Making any investments which would jeopardize the carrying out of any of the exempt purposes of the trust, within the meaning of section 4944 of the Internal Revenue Code, so as to give rise to any liability for the tax imposed by section 4944(a) of the Internal Revenue Code; and

(4) Making any "taxable expenditures," as defined in section 4945(d) of the Internal Revenue Code, which would give rise to any liability for the tax imposed by section 4945(a) of the Internal Revenue Code:

PROVIDED, That this section shall not apply either to those split-interest trusts or to amounts thereof which are not subject to the prohibitions applicable to private foundations by reason of the provisions of section 4947 of the Internal Revenue Code. [1993 c 73 § 7; 1985 c 30 § 130. Prior: 1984 c 149 § 162; 1971 c 58 § 2. Formerly RCW 19.10.210.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.110.220 Tax Reform Act of 1969, state implementation—Trust instruments deemed to contain certain provisions for distribution. The trust instrument of each trust to which RCW 11.110.200 through 11.110.260 applies, except

(2022 Ed.)

"split-interest" trusts, shall be deemed to contain a provision requiring the trustee to distribute, for the purposes specified in the trust instrument, for each taxable year of the trust, amounts at least sufficient to avoid liability for the tax imposed by section 4942(a) of the Internal Revenue Code. [1993 c 73 § 8; 1985 c 30 § 131. Prior: 1984 c 149 § 163; 1971 c 58 § 3. Formerly RCW 19.10.220.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.110.230 Tax Reform Act of 1969, state implementation—Rights, powers, of courts, attorney general, not impaired. Nothing in RCW 11.110.200 through 11.110.260 shall impair the rights and powers of the courts or the attorney general of this state with respect to any trust. [1985 c 30 § 132. Prior: 1984 c 149 § 164; 1971 c 58 § 4. Formerly RCW 19.10.230.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.110.250 Tax Reform Act of 1969, state implementation—Application to trust created after June 10, 1971, or amendment to existing trust. Nothing in RCW 11.110.200 through 11.110.260 shall limit the power of a person who creates a trust after June 10, 1971 or the power of a person who has retained or has been granted the right to amend a trust created before June 10, 1971, to include a specific provision in the trust instrument or an amendment thereto, as the case may be, which provides that some or all of the provisions of RCW 11.110.210 and 11.110.220 shall have no application to such trust. [1985 c 30 § 134. Prior: 1984 c 149 § 167; 1971 c 58 § 6. Formerly RCW 19.10.250.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.110.260 Tax Reform Act of 1969, state implementation—Severability—RCW 11.110.200 through 11.110.260. If any provision of RCW 11.110.200 through 11.110.260 or the application thereof to any trust is held invalid, such invalidity shall not affect the other provisions or applications of RCW 11.110.200 through 11.110.260 which can be given effect without the invalid provision or application, and to this end the provisions of RCW 11.110.200 through 11.110.260 are declared to be severable. [1985 c 30 § 135. Prior: 1984 c 149 § 168; 1971 c 58 § 7. Formerly RCW 19.10.260.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.110.270 Tax Reform Act of 1969, state implementation—Not for profit corporations. See RCW 24.40.010 through 24.40.070.

Chapter 11.114 RCW
UNIFORM TRANSFERS TO MINORS ACT

Sections

11.114.010	Definitions.
11.114.020	Scope and jurisdiction.
11.114.030	Nomination of custodian—Designation of custodian by representative or specified person.
11.114.040	Transfer by gift or exercise of power of appointment.
11.114.050	Transfer authorized by will or trust.
11.114.060	Other transfer by fiduciary.
11.114.070	Transfer by obligor.
11.114.080	Receipt for custodial property.
11.114.090	Form and manner of creating custodial property and effecting transfer.
11.114.100	Single custodianship.
11.114.110	Validity and effect of transfer.
11.114.120	Care of custodial property.
11.114.130	Powers of custodian.
11.114.140	Use of custodial property.
11.114.150	Custodian's expenses, compensation, and bond.
11.114.160	Exemption of third person from liability.
11.114.170	Liability to third persons.
11.114.180	Renunciation, resignation, death, or removal of custodian—Designation of successor custodian.
11.114.190	Accounting by and determination of liability of custodian.
11.114.200	Termination of custodianship—Extension.
11.114.210	Applicability.
11.114.220	Effect on existing custodianships.
11.114.230	Uniformity of application and construction.
11.114.900	Short title.
11.114.902	Savings—1991 c 193.
11.114.903	Effective date—1991 c 193.

11.114.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Adult" means an individual other than the minor who has attained the age of twenty-one years and is older than the minor.

(2) "Benefit plan" means an employer's plan for the benefit of an employee or partner.

(3) "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.

(4) "Guardian" means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions. Conservator means guardian for transfers made under another state's law but enforceable in this state's courts.

(5) "Court" means a superior court of the state of Washington.

(6) "Custodial property" means (a) any interest in property transferred to a custodian under this chapter and (b) the income from and proceeds of that interest in property.

(7) "Custodian" means a person so designated under RCW 11.114.090 or a successor or substitute custodian designated under RCW 11.114.180.

(8) "Financial institution" means a bank, trust company, savings institution, or credit union, chartered and supervised under state or federal law.

(9) "Legal representative" means an individual's personal representative or guardian.

(10) "Member of the minor's family" means the minor's parent, stepparent, spouse, domestic partner, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

(11) "Minor" means an individual who has not attained the age of twenty-five years.

(12) "Person" means an individual, corporation, organization, or other legal entity.

(13) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(14) "Transfer" means a transaction that creates custodial property under RCW 11.114.090.

(15) "Transferor" means a person who makes a transfer under this chapter.

(16) "Trust company" means a financial institution, corporation, or other legal entity, authorized to exercise general trust powers. [2008 c 6 § 934; 2006 c 204 § 1; 1991 c 193 § 1.]

Additional notes found at www.leg.wa.gov

11.114.020 Scope and jurisdiction. (1) This chapter applies to a transfer that refers to this chapter in the designation under RCW 11.114.090(1) by which the transfer is made if at the time of the transfer, the transferor, the minor, or the custodian is a resident of this state or the custodial property is located in this state. The custodianship so created remains subject to this chapter despite a subsequent change in residence of a transferor, the minor, or the custodian, or the removal of custodial property from this state.

(2) A person designated as custodian under this chapter is subject to personal jurisdiction in this state with respect to any matter relating to the custodianship.

(3) A transfer that purports to be made and which is valid under the uniform transfers to minors act, the uniform gifts to minors act, or a substantially similar act of another state is governed by the law of the designated state and may be executed and is enforceable in this state if at the time of the transfer, the transferor, the minor, or the custodian is a resident of the designated state or the custodial property is located in the designated state.

(4) A matter, whether at law or in equity, involving an account established under this chapter shall be addressed, resolved, and settled under the procedures provided under chapter 11.96A RCW. [2021 c 140 § 4026; 2006 c 204 § 2; 1999 c 42 § 633; 1991 c 193 § 2.]

Application—2021 c 140 §§ 4003-4017, 4023, 4024, and 4026: See note following RCW 11.48.130.

Additional notes found at www.leg.wa.gov

11.114.030 Nomination of custodian—Designation of custodian by representative or specified person. (1) A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian followed in substance by the words: ". . . . as custodian for (name of minor) under the Washington uniform transfers to minors act." The nomination may name one or more persons as substitute custodians to whom the property shall be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines, or is ineligible to serve. The nomination may be made in a will, a trust, a deed, an instrument exercis-

ing a power of appointment, or in a writing designating a beneficiary of contractual rights which is registered with or delivered to the payor, issuer, or other obligor of the contractual rights.

As an alternative to naming a specific person as custodian, the nomination may provide that the custodian may be designated by the legal representative of, or other person specified by, the person having the right to designate the recipient of the property described in this subsection. The person having the right of designation of the custodian is authorized to designate himself or herself as custodian, if he or she falls within the class of persons eligible to serve as custodian under RCW 11.114.090(1).

(2) A custodian nominated under this section shall be a person to whom a transfer of property of that kind may be made under RCW 11.114.090(1).

(3) Instead of designating one specific minor, the designation may specify multiple persons or a class or classes of persons, but when the custodial property is actually created under subsection (4) of this section, it must be constituted as a separate custodianship for each beneficiary, and each beneficiary's interest in it must be determined in accordance with the governing instrument and applicable law.

(4) The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under RCW 11.114.090. Unless the nomination of a custodian has been revoked, upon the occurrence of the future event the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property pursuant to RCW 11.114.090. [1998 c 292 § 301; 1991 c 193 § 3.]

Additional notes found at www.leg.wa.gov

11.114.040 Transfer by gift or exercise of power of appointment. A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor pursuant to RCW 11.114.090. [1991 c 193 § 4.]

11.114.050 Transfer authorized by will or trust. (1) A personal representative or trustee may make an irrevocable transfer pursuant to RCW 11.114.090 to a custodian for the benefit of a minor as authorized in the governing will or trust. The personal representative or trustee may designate himself or herself as custodian provided he or she falls within the class of persons eligible to serve as custodian under RCW 11.114.090(1).

(2) If the testator or grantor has nominated a custodian under RCW 11.114.030 to receive the custodial property, the transfer shall be made to that person.

(3) If the testator or grantor has not nominated a custodian under RCW 11.114.030, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, the personal representative or the trustee, as the case may be, shall designate the custodian from among those eligible to serve as custodian for property of that kind under RCW 11.114.090(1). The personal representative or trustee may designate himself or herself as custodian, provided he or she falls within the class of persons eligible to

serve as custodian under RCW 11.114.090(1). [1991 c 193 § 5.]

11.114.060 Other transfer by fiduciary. (1) A personal representative or trustee may make an irrevocable transfer to an adult or trust company for the benefit of a minor pursuant to RCW 11.114.090, in the absence of a will or under a will or trust that does not contain an authorization to do so, but only if:

(a) The personal representative or trustee, or the court if an order is requested under (c) of this subsection, considers the transfer to be in the best interest of the minor;

(b) The transfer is not prohibited by or inconsistent with provisions of the applicable will, trust instrument, or other governing instrument; and

(c) The transfer is authorized by the court if it exceeds thirty thousand dollars in value.

The personal representative, the trustee, or a member of the minor's family may select the custodian, subject to court approval. The personal representative or trustee may serve as custodian, provided he or she falls within the class of persons eligible to serve as custodian under RCW 11.114.090(1).

(2) A member of the minor's family may request that the court establish a custodianship if a custodianship has not already been established, regardless of the value of the transfer. [1991 c 193 § 6.]

11.114.070 Transfer by obligor. (1) Subject to subsections (2) and (3) of this section, a person not subject to RCW 11.114.050 or 11.114.060 who holds property of or owes a liquidated debt to a minor not having a guardian may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to RCW 11.114.090.

(2) If a person having the right to do so under RCW 11.114.030 has nominated a custodian under that section to receive the custodial property, the transfer shall be made to that person.

(3) If no custodian has been nominated under RCW 11.114.030, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds thirty thousand dollars in value.

(4) A member of the minor's family or the person who holds the property of the minor or who owes a debt to the minor may request that the court establish a custodianship if not previously established, regardless of the value of the transfer. [1991 c 193 § 7.]

11.114.080 Receipt for custodial property. A written confirmation of delivery by a custodian constitutes a sufficient receipt and discharge of the transferor for custodial property transferred to the custodian under this chapter. [1991 c 193 § 8.]

11.114.090 Form and manner of creating custodial property and effecting transfer. (1) Custodial property is created and a transfer is made if:

(a) An uncertificated security or a certificated security in registered form is either:

(i) Registered in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: " as custodian for (name of minor) under the Washington uniform transfers to minors act"; or

(ii) Delivered if in certificated form, or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary endorsement to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form set forth in subsection (2) of this section;

(b) Money is paid or delivered, or a security held in the name of a broker, financial institution, or its nominee is transferred, to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: " as custodian for (name of minor) under the Washington uniform transfers to minors act";

(c) The ownership of a life or endowment insurance policy or annuity contract is either:

(i) Registered with the issuer in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: " as custodian for (name of minor) under the Washington uniform transfers to minors act"; or

(ii) Assigned in a writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words: " as custodian for (name of minor) under the Washington uniform transfers to minors act";

(d) An irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of a written notification delivered to the payor, issuer, or other obligor that the right is transferred to the transferor, an adult other than the transferor, or a trust company, whose name in the notification is followed in substance by the words: " as custodian for (name of minor) under the Washington uniform transfers to minors act";

(e) An interest in real property is recorded in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: " as custodian for (name of minor) under the Washington uniform transfers to minors act";

(f) A certificate of title issued by a department or agency of a state or of the United States which evidences title to tangible personal property is either:

(i) Issued in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: " as custodian for (name of minor) under the Washington uniform transfers to minors act"; or

(ii) Delivered to an adult other than the transferor or to a trust company, endorsed to that person followed in substance by the words: " as custodian for (name of minor) under the Washington uniform transfers to minors act"; or

(g) An interest in any property not described in (a) through (f) of this subsection is transferred to an adult other than the transferor or to a trust company by a written instru-

ment in substantially the form set forth in subsection (2) of this section.

(2) An instrument in the following form satisfies the requirements of subsection (1)(a)(ii) and (g) of this section:

"TRANSFER UNDER THE WASHINGTON UNIFORM TRANSFERS TO MINORS ACT

I, (name of transferor or name and representative capacity if a fiduciary) hereby transfer to (name of custodian), as custodian for (name of minor) under the Washington uniform transfers to minors act, the following: (insert a description of the custodial property sufficient to identify it).

(Electing the following paragraph is optional to the transferor):

□ If (name of custodian) is or becomes unable to act or to continue to act as custodian, the alternate or successor custodian shall be the first of the following persons, in order of preference and succession, who is then able and willing to act as custodian: (insert the name(s) of the alternate or successor custodian(s)).

- 1.
2.
3.

(Electing the following paragraph is optional to the transferor):

□ I elect to extend the custodianship to the minor's twenty-fifth birthday. I UNDERSTAND THAT ELECTING TO EXTEND CUSTODIANSHIP TO AGE TWENTY-FIVE MAY CAUSE ME TO LOSE MY ANNUAL EXCLUSION FROM FEDERAL GIFT TAX AND THAT I SHOULD CONSULT WITH AN ATTORNEY OR TAX ADVISOR BEFORE MAKING THIS ELECTION.

Dated:

(Signature)

. (name of custodian) acknowledges receipt of the property described above as custodian for the minor named above under the Washington uniform transfers to minors act.

Dated:

. "
(Signature of Custodian)

(3) A transferor shall place the custodian in control of the custodial property as soon as practicable. [2006 c 204 § 3; 1991 c 193 § 9.]

Additional notes found at www.leg.wa.gov

11.114.100 Single custodianship. A transfer may be made only for one minor, and only one person may be the custodian. All custodial property held under this chapter by the same custodian for the benefit of the same minor constitutes a single custodianship. [1991 c 193 § 10.]

11.114.110 Validity and effect of transfer. (1) The validity of a transfer made in a manner prescribed in this chapter is not affected by:

(a) Failure of the transferor to comply with RCW 11.114.090(3) concerning possession and control;

(b) Designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under RCW 11.114.090(1); or

(c) Death or incapacity of a person nominated under RCW 11.114.030 or designated under RCW 11.114.090 as custodian or the disclaimer of the office by that person.

(2) A transfer made pursuant to RCW 11.114.090 is irrevocable, and the custodial property is indefeasibly vested in the minor, but the custodian has all the rights, powers, duties, and authority provided in this chapter, and neither the minor nor the minor's legal representative has any right, power, duty, or authority with respect to the custodial property except as provided in this chapter.

(3) By making a transfer, the transferor incorporates in the disposition all the provisions of this chapter and grants to the custodian, and to any third person dealing with a person designated as custodian, the respective powers, rights, and immunities provided in this chapter. [1991 c 193 § 11.]

11.114.120 Care of custodial property. (1) A custodian shall, as soon as custodial property is made available to the custodian:

(a) Take control of custodial property;

(b) Register or record title to custodial property if appropriate; and

(c) Collect, hold, manage, invest, and reinvest custodial property.

(2) In dealing with custodial property, a custodian shall observe the standard of care applicable to fiduciaries under chapter 11.100 RCW. If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use that skill or expertise. A custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received from a transferor according to the same standards as apply to a fiduciary holding trust funds under RCW 11.100.060. However, the provisions of RCW 11.100.025, 11.100.040, and 11.100.140 shall not apply to a custodian.

(3) A custodian may invest in or pay premiums on life insurance or endowment policies on (a) the life of the minor only if the minor or the minor's estate is the sole beneficiary, or (b) the life of another person in whom the minor has an insurable interest only to the extent that the minor, the minor's estate, or the custodian in the capacity of custodian, is the irrevocable beneficiary.

(4) A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property consisting of an undivided interest is so identified if the minor's interest is held as a tenant in common and is fixed. Custodial property subject to recordation is so identified if it is recorded, and custodial property subject to registration is so identified if it is either registered, or held in an account designated, in the name of the custodian, followed

(2022 Ed.)

in substance by the words: ". as custodian for (name of minor) under the Washington uniform transfers to minors act."

(5) A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make them available upon request for inspection by a parent or legal representative of the minor or by the minor if the minor has attained the age of eighteen years. [2006 c 204 § 4; 1991 c 193 § 12.]

Additional notes found at www.leg.wa.gov

11.114.130 Powers of custodian. (1) A custodian, acting in a custodial capacity, has all the rights, powers, and authority over custodial property that unmarried adult owners have over their own property, including without limitation all the powers granted to a trustee under RCW 11.98.070, but a custodian may exercise those rights, powers, and authority only in a custodial capacity.

(2) This section does not relieve a custodian from liability for breach of RCW 11.114.120. [1991 c 193 § 13.]

11.114.140 Use of custodial property. (1) A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to (a) the duty or ability of the custodian personally or of any other person to support the minor, or (b) any other income or property of the minor which may be applicable or available for that purpose.

(2) On petition of an interested person or the minor if the minor has attained the age of eighteen years, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.

(3) A delivery, payment, or expenditure under this section is in addition to, not in substitution for, and does not affect any obligation of a person to support the minor. [2006 c 204 § 5; 1991 c 193 § 14.]

Additional notes found at www.leg.wa.gov

11.114.150 Custodian's expenses, compensation, and bond. (1) A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(2) Except for one who is a transferor under RCW 11.114.040, a custodian has a noncumulative election during each calendar year to charge reasonable compensation for services performed during that year.

(3) Except as provided in RCW 11.114.180(6), a custodian need not give a bond.

(4) Notwithstanding RCW 11.114.190, a custodian not compensated for services is not liable for losses to the custodial property unless they result from bad faith, intentional wrongdoing, or gross negligence, or from failure to maintain the standard of prudence in investing the custodial property provided in this chapter. [1991 c 193 § 15.]

11.114.160 Exemption of third person from liability. A third person in good faith and without court order may act

on the instructions of or otherwise deal with any person purporting to make a transfer or purporting to act in the capacity of a custodian or successor custodian and, in the absence of knowledge, is not responsible for determining:

- (1) The validity of the purported custodian's designation;
- (2) The propriety of, or the authority under this chapter for, any act of the purported custodian;
- (3) The validity or propriety under this chapter of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian; or
- (4) The propriety of the application of any property of the minor delivered to the purported custodian. [1991 c 193 § 16.]

11.114.170 Liability to third persons. (1) A claim based on:

- (a) A contract entered into by a custodian acting in a custodial capacity;
- (b) An obligation arising from the ownership or control of custodial property;
- (c) A tort committed during the custodianship, may be asserted against the custodial property by proceeding against the custodian in the custodial capacity, whether or not the custodian or the minor is personally liable therefor; or
- (d) A noncontractual obligation, including obligations in tort, is collectible from the custodial property only if:
 - (i) The obligation was a common incident of the kind of business activity in which the custodian or the custodian's predecessor was properly engaged for the custodianship;
 - (ii) Neither the custodian nor the custodian's predecessor, nor any officer or employee of the custodian or the custodian's predecessor was personally at fault in incurring the obligation; or
 - (iii) Although the obligation did not fall within (d)(i) or (ii) of this subsection, the incident that gave rise to the obligation increased the value of the custodial property.

If the obligation is within (d)(i) or (ii) or [of] this subsection, collection may be had of the full amount of damage proved. If the obligation is within (d)(iii) of this subsection, collection may be had only to the extent of the increase in the value of the trust property.

(2) A custodian is not personally liable:

- (a) On a contract properly entered into in the custodial capacity unless the custodian fails to reveal that capacity. The addition of the words "custodian" or "as custodian" after the signature of a custodian is adequate revelation of this capacity; or
- (b) For an obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodial property is not liable for the obligation under *(b) of this subsection and unless the custodian is personally at fault.

(3) A minor is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the minor is personally at fault. [1991 c 193 § 17.]

*Reviser's note: The reference to (b) of this subsection appears erroneous. Reference to subsection (1)(b) of this section was apparently intended.

11.114.180 Renunciation, resignation, death, or removal of custodian—Designation of successor custodian. (1) A person nominated under RCW 11.114.030 or designated under RCW 11.114.090 as custodian may decline to serve. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing, and eligible to serve was nominated under RCW 11.114.030, the person who made the nomination may nominate a substitute custodian under RCW 11.114.030; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under RCW 11.114.090(1). The custodian so designated has the rights of a successor custodian.

(2) A custodian at any time may designate a trust company or an adult other than a transferor under RCW 11.114.040 as successor custodian by executing and dating an instrument of designation. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated, or is removed, and custodial property is transferred to the successor custodian.

(3) A custodian may resign at any time by delivering written notice to the minor, if the minor has attained the age of eighteen years, and to the successor custodian, and by delivering the custodial property to the successor custodian.

(4) If a custodian is ineligible, dies, or becomes incapacitated and no successor custodian has been designated as provided in this chapter, and the minor has attained the age of eighteen years, the minor may designate as successor custodian, in the manner prescribed in subsection (2) of this section, an adult member of the minor's family, a guardian of the minor, or a trust company. If the minor has not attained the age of eighteen years or fails to act within sixty days after the ineligibility, death, or incapacity, the guardian of the minor becomes successor custodian. If the minor has no guardian or the guardian declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family, or any other interested person may petition the court to designate a successor custodian.

(5) A custodian who declines to serve under subsection (1) of this section or resigns under subsection (3) of this section, or the legal representative of a deceased or incapacitated custodian, as soon as practicable, shall put the custodial property and records in the possession and control of the successor custodian. The successor custodian by action may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

(6) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the minor, or the minor if the minor has attained the age of eighteen years may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under RCW 11.114.040 or to require the custodian to give appropriate bond. [2006 c 204 § 6; 1991 c 193 § 18.]

Additional notes found at www.leg.wa.gov

11.114.190 Accounting by and determination of liability of custodian. (1) A minor who has attained the age of eighteen years, the minor's legal representative, an adult

member of the minor's family, a transferor, or a transferor's legal representative may petition the court (a) for an accounting by the custodian or the custodian's legal representative; or (b) for a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under RCW 11.114.170 to which the minor or the minor's legal representative was a party.

(2) A successor custodian may petition the court for an accounting by the predecessor custodian.

(3) The court, in a proceeding under this chapter or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.

(4) If a custodian is removed under RCW 11.114.180(6), the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property. [2006 c 204 § 7; 1991 c 193 § 19.]

Additional notes found at www.leg.wa.gov

11.114.200 Termination of custodianship—Extension. (1) Subject to RCW 11.114.220, the custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

(a) The minor's attainment of twenty-one years of age with respect to custodial property transferred under RCW 11.114.040 or 11.114.050;

(b) The minor's attainment of eighteen years of age with respect to custodial property transferred under RCW 11.114.060 or 11.114.070; or

(c) The minor's death.

(2) The transferor may, in the initial nomination of custodian, extend the custodianship to the earlier of the minor's attainment of twenty-five years of age or the minor's death unless:

(a) The governing will, trust, or instrument creating the power of appointment specifically provides otherwise if the custodial property is transferred under RCW 11.114.040, 11.114.050, or 11.114.060; or

(b) The custodial property is transferred under RCW 11.114.070. In that case, the person nominating the custodian under RCW 11.114.030 may elect to extend the custodianship. If no custodian has been nominated under RCW 11.114.030, the court establishing the custodianship under RCW 11.114.070(4) may extend the custodianship if it determines that doing so would not be contrary to the interest of the minor.

(3) An extension of the custodianship under subsection (2) of this section will be valid only if the transfer creating the custodianship is made on or after July 1, 2007.

(4) Any bank, trust company, insurance company, registered broker-dealer, investment company regulated under the federal Investment Company Act of 1940, investment advisor regulated under the federal Investment Advisors Act of 1940, or other person who makes custodianship forms available for adoption in contemplation of selling assets to or managing assets for a custodianship shall include, in any form made available on or after July 1, 2007, an option to extend the custodianship under subsection (2) of this section and a warning to the transferor that exercising the option to extend

(2022 Ed.)

may result in the transfer not qualifying for annual exclusion from federal gift tax. An instrument in the form described in RCW 11.114.090(2) will satisfy the requirements of this subsection. [2006 c 204 § 8; 1991 c 193 § 20.]

Additional notes found at www.leg.wa.gov

11.114.210 Applicability. This chapter applies to a transfer within the scope of RCW 11.114.020 made after July 1, 1991, if:

(1) The transfer purports to have been made under the Washington uniform gifts to minors act; or

(2) The instrument by which the transfer purports to have been made uses in substance the designation "as custodian under the uniform gifts to minors act" or "as custodian under the uniform transfers to minors act" of any other state, and the application of this chapter is necessary to validate the transfer. [1991 c 193 § 21.]

11.114.220 Effect on existing custodianships. (1) Any transfer of custodial property as now defined in this chapter made before July 1, 1991, is validated notwithstanding that there was no specific authority in the Washington uniform gifts to minors act for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(2) This chapter applies to all transfers made before July 1, 1991, in a manner and form prescribed in the Washington uniform gifts to minors act, except insofar as the application impairs constitutionally vested rights or extends the duration of custodianships in existence on July 1, 1991. However, as to any custodianship established after August 9, 1971, but prior to January 1, 1985, a minor has the right after attaining the age of eighteen to demand delivery from the custodian of all or any portion of the custodial property. [1991 c 193 § 22.]

11.114.230 Uniformity of application and construction. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. [1991 c 193 § 23.]

11.114.900 Short title. This chapter may be cited as the uniform transfers to minors act. [1991 c 193 § 24.]

11.114.902 Savings—1991 c 193. To the extent that this chapter, by virtue of RCW 11.114.220(2), does not apply to transfers made in a manner prescribed in the uniform gifts to minors act of Washington or to the powers, duties, and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of the uniform gifts to minors act of Washington does not affect those transfers or those powers, duties, and immunities. [1991 c 193 § 26.]

11.114.903 Effective date—1991 c 193. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991. [1991 c 193 § 34.]

Chapter 11.118 RCW TRUSTS—ANIMALS

Sections

11.118.005	Purpose—Intent.
11.118.010	Definition.
11.118.020	Validity of animal trust.
11.118.030	Use of trust principal or income.
11.118.040	Termination of trust.
11.118.050	Enforcement of trust provisions.
11.118.060	Accounting requirements.
11.118.070	Appointment and removal of trustee.
11.118.080	Construction of trust language.
11.118.090	Application of rule against perpetuities—Effective date of trust.
11.118.100	Trustee powers.
11.118.110	Application of chapter.

11.118.005 Purpose—Intent. The purpose of this chapter is to recognize and validate certain trusts that are established for the benefit of animals. Under the common law such trusts were unenforceable at law. The legislature intends that such trusts be recognized as valid, and that such trusts be enforceable in accordance with their terms. [2001 c 327 § 1.]

11.118.010 Definition. As used in this chapter, "animal" means a nonhuman animal with vertebrae. [2001 c 327 § 2.]

11.118.020 Validity of animal trust. A trust for the care of one or more animals is valid. The animals that are to be benefited by the trust may be individually identified, or may be identified in such other manner that they can be readily identified. Unless otherwise provided in the trust instrument or in this chapter, the trust will terminate when no animal that is designated as a beneficiary of the trust remains living. [2001 c 327 § 3.]

11.118.030 Use of trust principal or income. Except as expressly provided otherwise in the trust instrument or in RCW 11.118.070, and except as may be necessary to pay the trustee reasonable compensation and to reimburse the trustee for reasonable costs incurred on behalf of the trust, no portion of the principal or income of the trust may be converted to the use of the trustee or to any use other than for the trust's purpose or for the benefit of the designated animal or animals. [2001 c 327 § 4.]

11.118.040 Termination of trust. Upon termination of the trust, the trustee shall transfer the unexpended trust property in the following order:

- (1) As directed in the instrument;
- (2) If the trust was created in a nonresiduary clause in the trustor's will or in a codicil to the trustor's will and the will or codicil does not direct otherwise, under the residuary clause in the trustor's will, which shall be read as though the testator died on the date the trust terminated; and
- (3) If no taker is produced by the application of subsection (1) or (2) of this section, to the trustor's heirs under RCW 11.04.015, as it exists at the time of the trust's termination. [2001 c 327 § 5.]

11.118.050 Enforcement of trust provisions. The intended use of the principal or income can be enforced by a person designated for that purpose in the trust instrument, by

the person having custody of an animal that is a beneficiary of the trust, or by a person appointed by a court upon application to it by any person. Such person is considered to be a permissible distributee, as defined in RCW 11.98.002, of the trust. A person with an interest in the welfare of the animal may petition for an order appointing or removing a person designated or appointed to enforce the trust. [2013 c 272 § 27; 2001 c 327 § 6.]

Application—2013 c 272: See note following RCW 11.98.002.

11.118.060 Accounting requirements. Except as ordered by the court or required by the trust instrument, no filing, report, registration, or periodic accounting shall be required of the trust or the trustee. [2001 c 327 § 7.]

11.118.070 Appointment and removal of trustee. If no trustee is designated or no designated trustee is willing or able to serve, the court shall name a trustee. The court may order the removal of an acting trustee and the transfer of the property to another trustee if it is necessary or appropriate in order to assure that the intended use is carried out. A court may also make such other orders and determinations as shall be advisable to carry out the intent of the trustor and the purpose of this chapter. [2001 c 327 § 8.]

11.118.080 Construction of trust language. In construing the language of a trust for an animal, the governing instrument shall be liberally construed to provide the protections of this chapter. It is presumed that language contained in a trust for an animal is not merely precatory or honorary in nature unless it can be shown by clear and cogent evidence that such was the trustor's intent. Extrinsic evidence is admissible in determining the trustor's intent. [2001 c 327 § 9.]

11.118.090 Application of rule against perpetuities—Effective date of trust. RCW 11.98.130 through 11.98.160 apply to trusts that are subject to this chapter. [2001 c 327 § 11.]

11.118.100 Trustee powers. Except as otherwise provided in the trust instrument or in this chapter, all powers and duties conferred on a trustee under Washington law also apply to the trustee of a trust for animals. [2001 c 327 § 12.]

11.118.110 Application of chapter. This chapter applies to trusts that are created on or after July 22, 2001, and to trusts that are in existence on July 22, 2001, but that are revocable by the trustor on July 22, 2001. If a trustor is incompetent to exercise a power of revocation on July 22, 2001, this chapter does not apply to such trust unless the trustor later becomes competent to exercise such power of revocation, in which case this chapter applies to such trust. [2001 c 327 § 13.]

Chapter 11.120 RCW UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT

Sections

11.120.010	Short title—2016 c 140.
11.120.020	Definitions.

- 11.120.030 Applicability.
- 11.120.040 User direction for disclosure of digital assets.
- 11.120.050 Terms-of-service agreement.
- 11.120.060 Procedure for disclosing digital assets.
- 11.120.070 Disclosure of content of electronic communications of deceased user.
- 11.120.080 Disclosure of other digital assets of deceased user.
- 11.120.090 Disclosure of content of electronic communications of principal.
- 11.120.100 Disclosure of other digital assets of principal.
- 11.120.110 Disclosure of digital assets held in trust when trustee is original user.
- 11.120.120 Disclosure of content of electronic communications held in trust when trustee not original user.
- 11.120.130 Disclosure of other digital assets held in trust when trustee not original user.
- 11.120.140 Disclosure of digital assets to guardian or conservator of incapacitated person.
- 11.120.150 Fiduciary duty and authority.
- 11.120.160 Custodian compliance and immunity.
- 11.120.900 Uniformity of application and construction.
- 11.120.901 Relation to electronic signatures in global and national commerce act.

11.120.010 Short title—2016 c 140. This act may be known and cited as the revised uniform fiduciary access to digital assets act. [2016 c 140 § 1.]

11.120.020 Definitions. In this chapter:

- (1) "Account" means an arrangement under a terms-of-service agreement in which a custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides goods or services to the user.
- (2) "Agent" means an attorney-in-fact granted authority under a durable or nondurable power of attorney.
- (3) "Carries" means engages in the transmission of an electronic communication.
- (4) "Catalogue of electronic communications" means information that identifies each person with which a user has had an electronic communication, the time and date of the communication, and the electronic address of the person.
- (5) "Content of an electronic communication" means information concerning the substance or meaning of the communication which:
 - (a) Has been sent or received by a user;
 - (b) Is in electronic storage by a custodian providing an electronic communication service to the public or is carried or maintained by a custodian providing a remote computing service to the public; and
 - (c) Is not readily accessible to the public.
- (6) "Court" means the superior court of each county.
- (7) "Custodian" means a person that carries, maintains, processes, receives, or stores a digital asset of a user.
- (8) "Designated recipient" means a person chosen by a user using an online tool to administer digital assets of the user.
- (9) "Digital asset" means an electronic record in which an individual has a right or interest. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record.

(10) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(11) "Electronic communication" has the meaning set forth in 18 U.S.C. Sec. 2510(12), as it existed on June 9, 2016.

(12) "Electronic communication service" means a custodian that provides to a user the ability to send or receive an electronic communication.

(13) "Fiduciary" means an original, additional, or successor personal representative, guardian, agent, or trustee.

(14) "Guardian" means a person appointed by a court to manage the estate or person, or both, of a living individual. The term includes a limited guardian or certified professional guardian.

(15) "Incapacitated person" means an individual for whom a guardian has been appointed.

(16) "Information" means data, text, images, videos, sounds, codes, computer programs, software, databases, or the like.

(17) "Online tool" means an electronic service provided by a custodian that allows the user, in an agreement distinct from the terms-of-service agreement between the custodian and user, to provide directions for disclosure or nondisclosure of digital assets to a third person.

(18) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(19) "Personal representative" means an executor, administrator, special administrator, or person that performs substantially the same function under law of this state other than this chapter.

(20) "Power of attorney" means a record that grants an agent authority to act in the place of a principal.

(21) "Principal" means an individual who grants authority to an agent in a power of attorney.

(22) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(23) "Remote computing service" means a custodian that provides to a user computer processing services or the storage of digital assets by means of an electronic communications system, as defined in 18 U.S.C. Sec. 2510(14), as it existed on June 9, 2016.

(24) "Terms-of-service agreement" means an agreement that controls the relationship between a user and a custodian.

(25) "Trustee" means a fiduciary with legal title to property under an agreement or declaration that creates a beneficial interest in another. The term includes a successor trustee.

(26) "User" means a person that has an account with a custodian.

(27) "Will" includes a codicil, testamentary instrument that only appoints an executor, and instrument that revokes or revises a testamentary instrument. [2016 c 140 § 2.]

11.120.030 Applicability. (1) This chapter applies to:

- (a) A fiduciary acting under a will or power of attorney executed before, on, or after June 9, 2016;
- (b) A personal representative acting for a decedent who died before, on, or after June 9, 2016;
- (c) A guardian acting for an incapacitated person appointed before, on, or after June 9, 2016;
- (d) A trustee acting under a trust created before, on, or after June 9, 2016; and
- (e) A custodian if the user resides in this state or resided in this state at the time of the user's death.

(2) This chapter does not apply to a digital asset of an employer used by an employee in the ordinary course of the employer's business. [2016 c 140 § 3.]

11.120.040 User direction for disclosure of digital assets. (1) A user may use an online tool to direct the custodian to disclose to a designated recipient or not to disclose some or all of the user's digital assets, including the content of electronic communications. If the online tool allows the user to modify or delete a direction at all times, a direction regarding disclosure using an online tool overrides a contrary direction by the user in a will, trust, power of attorney, or other record.

(2) If a user has not used an online tool to give direction under subsection (1) of this section or if the custodian has not provided an online tool, the user may allow or prohibit in a will, trust, power of attorney, or other record, disclosure to a fiduciary of some or all of the user's digital assets, including the content of electronic communications sent or received by the user.

(3) A user's direction under subsection (1) or (2) of this section overrides a contrary provision in a terms-of-service agreement that does not require the user to act affirmatively and distinctly from the user's assent to the terms-of-service agreement. [2016 c 140 § 4.]

11.120.050 Terms-of-service agreement. (1) This chapter does not change or impair a right of a custodian or a user under a terms-of-service agreement to access and use digital assets of the user.

(2) This chapter does not give a fiduciary or a designated recipient any new or expanded rights other than those held by the user for whom, or for whose estate, the fiduciary or designated recipient acts or represents.

(3) A fiduciary's or designated recipient's access to digital assets may be modified or eliminated by a user, by federal law, or by a terms-of-service agreement if the user has not provided direction under RCW 11.120.040. [2016 c 140 § 5.]

11.120.060 Procedure for disclosing digital assets. (1) When disclosing digital assets of a user under this chapter, the custodian may at its sole discretion:

(a) Grant a fiduciary or designated recipient full access to the user's account;

(b) Grant a fiduciary or designated recipient partial access to the user's account sufficient to perform the tasks with which the fiduciary or designated recipient is charged; or

(c) Provide a fiduciary or designated recipient a copy in a record of any digital asset that, on the date the custodian received the request for disclosure, the user could have accessed if the user were alive and had full capacity and access to the account.

(2) A custodian may assess a reasonable administrative charge for the cost of disclosing digital assets under this chapter.

(3) A custodian need not disclose under this chapter a digital asset deleted by a user.

(4) If a user directs or a fiduciary or designated recipient requests a custodian to disclose under this chapter some, but not all, of the user's digital assets, the custodian need not dis-

close the assets if segregation of the assets would impose an undue burden on the custodian. If the custodian believes the direction or request imposes an undue burden, the custodian or the fiduciary or designated recipient may seek an order from the court to disclose:

(a) A subset limited by date of the user's digital assets;

(b) All of the user's digital assets to the fiduciary or designated recipient;

(c) None of the user's digital assets; or

(d) All of the user's digital assets to the court for review in camera. [2016 c 140 § 6.]

11.120.070 Disclosure of content of electronic communications of deceased user. If a deceased user consented to or a court directs disclosure of the contents of electronic communications of the user, the custodian shall disclose to the personal representative of the estate of the user the content of an electronic communication sent or received by the user if the personal representative gives the custodian:

(1) A written request for disclosure in physical or electronic form;

(2) A certified copy of the death certificate of the user;

(3) A certified copy of the letter of appointment of the representative, or a small estate affidavit or court order;

(4) Unless the user provided direction using an online tool, a copy of the user's will, trust, power of attorney, or other record evidencing the user's consent to disclosure of the content of electronic communications; and

(5) If requested by the custodian:

(a) A number, user name, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(b) Evidence linking the account to the user; or

(c) A finding by the court that:

(i) The user had a specific account with the custodian, identifiable by the information specified in (a) of this subsection;

(ii) Disclosure of the content of electronic communications of the user would not violate 18 U.S.C. Sec. 2701 et seq. and 47 U.S.C. Sec. 222, existing on June 9, 2016, or other applicable law;

(iii) Unless the user provided direction using an online tool, the user consented to disclosure of the content of electronic communications; or

(iv) Disclosure of the content of electronic communications of the user is reasonably necessary for administration of the estate. [2016 c 140 § 7.]

11.120.080 Disclosure of other digital assets of deceased user. Unless the user prohibited disclosure of digital assets or the court directs otherwise, a custodian shall disclose to the personal representative of the estate of a deceased user a catalogue of electronic communications sent or received by the user and digital assets, other than the content of electronic communications of the user, if the representative gives the custodian:

(1) A written request for disclosure in physical or electronic form;

(2) A certified copy of the death certificate of the user;

(3) A certified copy of the letter of appointment of the representative, or a small estate affidavit or court order; and

(4) If requested by the custodian:

(a) A number, user name, or address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(b) Evidence linking the account to the user;

(c) An affidavit stating that disclosure of the user's digital assets is reasonably necessary for administration of the estate; or

(d) A finding by the court that:

(i) The user had a specific account with the custodian, identifiable by the information specified in (a) of this subsection; or

(ii) Disclosure of the user's digital assets is reasonably necessary for administration of the estate. [2016 c 140 § 8.]

11.120.090 Disclosure of content of electronic communications of principal. To the extent a power of attorney expressly grants an agent authority over the content of electronic communications sent or received by the principal and unless directed otherwise by the principal or the court, a custodian shall disclose to the agent the content if the agent gives the custodian:

(1) A written request for disclosure in physical or electronic form;

(2) An original or copy of the power of attorney expressly granting the agent authority over the content of electronic communications of the principal;

(3) A certification by the agent, under penalty of perjury, that the power of attorney is in effect; and

(4) If requested by the custodian:

(a) A number, user name, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or

(b) Evidence linking the account to the principal. [2016 c 140 § 9.]

11.120.100 Disclosure of other digital assets of principal. Unless otherwise ordered by the court, directed by the principal, or provided by a power of attorney, a custodian shall disclose to an agent with specific authority over digital assets or general authority to act on behalf of a principal a catalogue of electronic communications sent or received by the principal and digital assets, other than the content of electronic communications of the principal, if the agent gives the custodian:

(1) A written request for disclosure in physical or electronic form;

(2) An original or a copy of the power of attorney that gives the agent specific authority over digital assets or general authority to act on behalf of the principal;

(3) A certification by the agent, under penalty of perjury, that the power of attorney is in effect; and

(4) If requested by the custodian:

(a) A number, user name, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or

(b) Evidence linking the account to the principal. [2016 c 140 § 10.]

11.120.110 Disclosure of digital assets held in trust when trustee is original user. Unless otherwise ordered by

(2022 Ed.)

the court or provided in a trust, a custodian shall disclose to a trustee that is an original user of an account any digital asset of that account held in trust, including a catalogue of electronic communications of the trustee and the content of electronic communications. [2016 c 140 § 11.]

11.120.120 Disclosure of content of electronic communications held in trust when trustee not original user.

Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose to a trustee that is not an original user of an account the content of an electronic communication sent or received by an original or successor user and carried, maintained, processed, received, or stored by the custodian in the account of the trust if the trustee gives the custodian:

(1) A written request for disclosure in physical or electronic form;

(2) A certified copy of the trust instrument, or a certification of the trust under RCW 11.98.075, that includes consent to disclosure of the content of electronic communications to the trustee;

(3) A certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and

(4) If requested by the custodian:

(a) A number, user name, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or

(b) Evidence linking the account to the trust. [2016 c 140 § 12.]

11.120.130 Disclosure of other digital assets held in trust when trustee not original user. Unless otherwise

ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose, to a trustee that is not an original user of an account, a catalogue of electronic communications sent or received by an original or successor user and stored, carried, or maintained by the custodian in an account of the trust and any digital assets, other than the content of electronic communications in which the trust has a right or interest, if the trustee gives the custodian:

(1) A written request for disclosure in physical or electronic form;

(2) A certified copy of the trust instrument or a certification of the trust under RCW 11.98.075;

(3) A certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and

(4) If requested by the custodian:

(a) A number, user name, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or

(b) Evidence linking the account to the trust. [2016 c 140 § 13.]

11.120.140 Disclosure of digital assets to guardian or conservator of incapacitated person. (1) Unless otherwise

ordered by the court, a guardian or conservator appointed under chapter 11.130 RCW has the right to access an incapacitated person's digital assets other than the content of electronic communications.

(2) Unless otherwise ordered by the court or directed by the user, a custodian shall disclose to a guardian the catalogue of electronic communications sent or received by an incapacitated person and any digital assets, other than the content of electronic communications, if the guardian gives the custodian:

(a) A written request for disclosure in physical or electronic form;

(b) Certified copies of letters of guardianship and the court order appointing the guardian; and

(c) If requested by the custodian:

(i) A number, user name, address, or other unique subscriber or account identifier assigned by the custodian to identify the account of the person; or

(ii) Evidence linking the account to the incapacitated person.

(3) A guardian may request a custodian of the incapacitated person's digital assets to suspend or terminate an account of the incapacitated person for good cause. A request made under this section must be accompanied by certified copies of letters of guardianship and the court order appointing the guardian. [2020 c 312 § 721; 2016 c 140 § 14.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.120.150 Fiduciary duty and authority. (1) The legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, including:

(a) The duty of care;

(b) The duty of loyalty; and

(c) The duty of confidentiality.

(2) A fiduciary's or designated recipient's authority with respect to a digital asset of a user:

(a) Except as otherwise provided in RCW 11.120.040, is subject to the applicable terms-of-service agreement;

(b) Is subject to other applicable law, including copyright law;

(c) In the case of a fiduciary, is limited by the scope of the fiduciary's duties; and

(d) May not be used to impersonate the user.

(3) A fiduciary with authority over the property of a decedent, incapacitated person, principal, or settlor has the right to access any digital asset in which the decedent, incapacitated person, principal, or settlor had a right or interest and that is not held by a custodian or subject to a terms-of-service agreement.

(4) A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the property of the decedent, incapacitated person, principal, or settlor for the purpose of applicable computer fraud and unauthorized computer access laws.

(5) A fiduciary with authority over the tangible, personal property of a decedent, incapacitated person, principal, or settlor:

(a) Has the right to access the property and any digital asset stored in it; and

(b) Is an authorized user for the purpose of computer fraud and unauthorized computer access laws.

(6) A custodian may disclose information in an account to a fiduciary of the user when the information is required to

terminate an account used to access digital assets licensed to the user.

(7) A fiduciary of a user may request a custodian to terminate the user's account. A request for termination must be in writing, in either physical or electronic form, and accompanied by:

(a) If the user is deceased, a certified copy of the death certificate of the user;

(b) A certified copy of the letter of appointment of the representative or a small estate affidavit or court order, court order, power of attorney, or trust giving the fiduciary authority over the account; and

(c) If requested by the custodian:

(i) A number, user name, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(ii) Evidence linking the account to the user; or

(iii) A finding by the court that the user had a specific account with the custodian, identifiable by the information specified in (c)(i) of this subsection. [2016 c 140 § 15.]

11.120.160 Custodian compliance and immunity. (1) Not later than sixty days after receipt of the information required under RCW 11.120.070 through 11.120.150, a custodian shall comply with a request under this chapter from a fiduciary or designated recipient to disclose digital assets or terminate an account. If the custodian fails to comply, the fiduciary or designated recipient may apply to the court for an order directing compliance.

(2) An order under subsection (1) of this section directing compliance must contain a finding that compliance is not in violation of 18 U.S.C. Sec. 2702, as it existed on June 9, 2016.

(3) A custodian may notify the user that a request for disclosure or to terminate an account was made under this chapter.

(4) A custodian may deny a request under this chapter from a fiduciary or designated recipient for disclosure of digital assets or to terminate an account if the custodian is aware of any lawful access to the account following the receipt of the fiduciary's request.

(5) This section does not limit a custodian's ability to obtain or require a fiduciary or designated recipient requesting disclosure or termination under this chapter to obtain a court order which:

(a) Specifies that an account belongs to the incapacitated person, trustor, decedent, or principal;

(b) Specifies that there is sufficient consent from the incapacitated person, trustor, decedent, or principal to support the requested disclosure; and

(c) Contains a finding required by law other than this chapter.

(6) A custodian and its officers, employees, and agents are immune from liability for an act or omission done in good faith in compliance with this chapter. [2016 c 140 § 16.]

11.120.900 Uniformity of application and construction. In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [2016 c 140 § 17.]

11.120.901 Relation to electronic signatures in global and national commerce act. This chapter modifies, limits, or supersedes the electronic signatures in global and national commerce act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede 15 U.S.C. Sec. 7001(c) or authorize electronic delivery of any of the notices described in 15 U.S.C. Sec. 7003(b). [2016 c 140 § 18.]

Chapter 11.125 RCW

UNIFORM POWER OF ATTORNEY ACT

Sections

11.125.010	Short title—2016 c 209.
11.125.020	Definitions.
11.125.030	Application—Exceptions.
11.125.040	Power of attorney—Termination.
11.125.050	Power of attorney—Requirements.
11.125.060	Power of attorney—Validity.
11.125.070	Power of attorney—Meaning and effect.
11.125.080	Conservator of principal's estate or guardian of principal's person.
11.125.090	Power of attorney—When effective—Principal's personal representative for health care.
11.125.100	Power of attorney termination—Agent authority termination.
11.125.110	Coagents—Successor agents—Liability.
11.125.120	Reimbursement of expenses for agents.
11.125.130	Accepting appointment as an agent.
11.125.140	Agents—Duties—Liability—Disclosures.
11.125.150	Power of attorney provisions relieving agent liability—When allowed.
11.125.160	Court petition—Who may file—Reasons may file.
11.125.170	Chapter violations—Agent liability.
11.125.180	Agent resignation—Procedure.
11.125.190	Acknowledged power of attorney—When may rely upon—Certification or translation request.
11.125.200	Acknowledged power of attorney—Acceptance—Refusal to accept.
11.125.210	Principles of law and equity—Supplemental to chapter.
11.125.220	Conflicting laws.
11.125.230	Remedies—Not exclusive.
11.125.240	Agent—Authority over principal's property.
11.125.250	Agent—General authority—When created—When can be modified.
11.125.260	Agent authority—General powers.
11.125.270	Agent authority—Real property.
11.125.280	Agent authority—Tangible personal property.
11.125.290	Agent authority—Stocks, bonds, and financial instruments.
11.125.300	Agent authority—Banks and financial institutions.
11.125.310	Agent authority—Operation of a business or entity.
11.125.320	Agent authority—Insurance and annuities.
11.125.330	Agent authority—Estates, trusts, and other beneficial interests.
11.125.340	Agent authority—Claims and litigation.
11.125.350	Agent authority—Personal and family maintenance.
11.125.360	Agent authority—Government program and civil and military service benefits.
11.125.370	Agent authority—Retirement benefits and deferred compensation.
11.125.380	Agent authority—Taxes.
11.125.390	Agent authority—Gifts.
11.125.400	Agent authority—Health care.
11.125.410	Agent authority—Principal's minor children.
11.125.420	Death with dignity act.
11.125.430	Agent's certification form—Power of attorney and agent authority validity.
11.125.900	Application—Uniformity—2016 c 209.
11.125.901	Federal law application—Federal electronic signatures in global and national commerce act—2016 c 209.
11.125.902	Application—Dates—2016 c 209.
11.125.903	Effective date—2016 c 209.

11.125.010 Short title—2016 c 209. Chapter 209, Laws of 2016 may be known and cited as the uniform power of attorney act. [2016 c 209 § 101.]

(2022 Ed.)

11.125.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agent" means a person granted authority to act for a principal under a power of attorney, whether denominated an agent, attorney-in-fact, or otherwise. The term includes an original agent, coagent, successor agent, and a person to which an agent's authority is delegated.

(2) "Durable," with respect to a power of attorney, means not terminated by the principal's incapacity.

(3) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(4) "Good faith" means honesty in fact.

(5) "Incapacity" means inability of an individual to manage property, business, personal, or health care affairs because the individual:

(a) Has an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance; or

(b) Is:

(i) An absentee, as defined in chapter 11.80 RCW; or

(ii) Outside the United States and unable to return.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(7) "Power of attorney" means a writing that uses the term "power of attorney" and grants authority to an agent to act in the place of the principal.

(8) "Presently exercisable general power of appointment," with respect to property or a property interest subject to a power of appointment, means power exercisable at the time in question to vest absolute ownership in the principal individually, the principal's estate, the principal's creditors, or the creditors of the principal's estate. The term includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified period only after the occurrence of the specified event, the satisfaction of the ascertainable standard, or the passage of the specified period. The term does not include a power exercisable in a fiduciary capacity or only by will.

(9) "Principal" means an individual who grants authority to an agent in a power of attorney.

(10) "Property" means anything that may be the subject of ownership, whether real or personal, legal or equitable, tangible or intangible, or any interest or right therein.

(11) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(12) "Stocks, bonds, and financial instruments" means stocks, bonds, mutual funds, and all other types of securities and financial instruments, whether held directly, indirectly, or in any other manner. The term shall also include but not be limited to commodity futures contracts, call or put options on stocks or stock indexes, derivatives, and margin accounts. [2016 c 209 § 102.]

11.125.030 Application—Exceptions. (1) This chapter applies to all powers of attorney except:

(a) A power to the extent it is coupled with an interest in the subject of the power, including a power given to or for the benefit of a creditor in connection with a credit transaction;

(b) A proxy or other delegation to exercise voting rights or management rights with respect to an entity; and

(c) A power created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose.

(2) Notwithstanding subsection (1) of this section, RCW 11.125.170 shall not apply to a power to make health care decisions under RCW 11.125.400 and 11.125.410, nor shall it apply to the power to nominate a guardian for a minor child under RCW 11.125.410. [2016 c 209 § 103.]

11.125.040 Power of attorney—Termination. The authority conferred under a power of attorney created prior to January 1, 2017, and also for a power of attorney created on or after January 1, 2017, terminates upon the incapacity of the principal unless the writing contains the words "This power of attorney shall not be affected by disability of the principal," or "This power of attorney shall become effective upon the disability of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's incapacity. [2016 c 209 § 104.]

11.125.050 Power of attorney—Requirements. (1) A power of attorney must be signed and dated by the principal, and the signature must be either acknowledged before a notary public or other individual authorized by law to take acknowledgments, or attested by two or more competent witnesses who are neither home care providers for the principal nor care providers at an adult family home or long-term care facility in which the principal resides, and who are unrelated to the principal or agent by blood, marriage, or state registered domestic partnership, by subscribing their names to the power of attorney, while in the presence of the principal and at the principal's direction or request.

(2) A power of attorney shall be considered signed in accordance with this section if, in the case of a principal who is physically unable to sign his or her name, the principal makes a mark in accordance with RCW 11.12.030, or in the case of a principal who is physically unable to make a mark, the power of attorney is executed in accordance with RCW 64.08.100.

(3) A signature on a power of attorney is presumed to be genuine if the principal acknowledges the signature before a notary public or other individual authorized by law to take acknowledgments. [2016 c 209 § 105.]

11.125.060 Power of attorney—Validity. (1) A power of attorney executed in this state on or after January 1, 2017, is valid if its execution complies with RCW 11.125.050.

(2) A power of attorney executed in this state before January 1, 2017, is valid if its execution complied with the law of this state as it existed at the time of execution.

(3) A power of attorney executed other than in this state is valid in this state if, when the power of attorney was executed, the execution complied with:

(a) The law of the jurisdiction that determines the meaning and effect of the power of attorney pursuant to RCW 11.125.070; or

(b) The requirements for a military power of attorney pursuant to 10 U.S.C. Sec. 1044b, as amended.

(4) Except as otherwise provided by statute other than chapter 209, Laws of 2016, a photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original. [2016 c 209 § 106.]

11.125.070 Power of attorney—Meaning and effect. The meaning and effect of a power of attorney is determined by the law of the jurisdiction indicated in the power of attorney and, in the absence of an indication of jurisdiction, by the law of the jurisdiction in which the power of attorney was executed. [2016 c 209 § 107.]

11.125.080 Conservator of principal's estate or guardian of principal's person. (1) In a power of attorney, a principal may nominate a conservator of the estate or guardian of the person for consideration by the court if protective proceedings for the principal's estate or person are begun after the principal executes the power of attorney. Except for good cause shown or disqualification, the court shall make its appointment in accordance with the principal's most recent nomination.

(2) If, after a principal executes a power of attorney, a court appoints a conservator of the estate or other fiduciary charged with the management of some or all of the principal's property, the agent is accountable to the fiduciary as well as to the principal. The power of attorney is not terminated and the agent's authority continues, subject to the provisions of RCW 11.130.335(1) and 11.130.435(4), unless limited, suspended, or terminated by the court.

(3) If, after a principal executes a power of attorney that includes health care decisions, a court appoints a guardian of the person, the agent is accountable to the fiduciary as well as to the principal. The power of attorney is not terminated and the agent's authority continues, subject to the provisions of RCW 11.130.335(1) and 11.130.435(4), unless limited, suspended, or terminated by the court. [2020 c 312 § 320; 2019 c 437 § 316; 2016 c 209 § 108.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.125.090 Power of attorney—When effective—Principal's personal representative for health care. (1) A power of attorney is effective when executed unless the principal provides in the power of attorney that it becomes effective at a future date or upon the occurrence of a future event or contingency.

(2) If a power of attorney becomes effective upon the occurrence of a future event or contingency, the principal, in the power of attorney, may authorize one or more persons to determine in a writing that the event or contingency has occurred.

(3) If a power of attorney becomes effective upon the principal's incapacity and the principal has not authorized a person to determine whether the principal is incapacitated, or the person authorized is unable or unwilling to make the determination, the power of attorney becomes effective upon a determination in a writing by:

(a) A physician or licensed psychologist, unrelated to the principal or agent by blood or marriage, who has personally examined the principal, that the principal is incapacitated within the meaning of RCW 11.125.020(5)(a); or

(b) A judge or an appropriate governmental official that the principal is incapacitated within the meaning of RCW 11.125.020(5)(b).

(4) A person authorized by the principal in the power of attorney to determine that the principal is incapacitated may act as the principal's personal representative pursuant to the health insurance portability and accountability act, sections 1171 through 1179 of the social security act, 42 U.S.C. Sec. 1320d, as amended, and applicable regulations, to obtain access to the principal's health care information and communicate with the principal's health care provider. [2016 c 209 § 109.]

11.125.100 Power of attorney termination—Agent authority termination. (1) A power of attorney terminates when:

(a) The principal dies;

(b) The principal becomes incapacitated, if the power of attorney is not durable;

(c) The principal revokes the power of attorney;

(d) The power of attorney provides that it terminates;

(e) The purpose of the power of attorney is accomplished; or

(f) The principal revokes the agent's authority or the agent dies, becomes incapacitated, or resigns, and the power of attorney does not provide for another agent to act under the power of attorney.

(2) An agent's authority terminates when:

(a) The principal revokes the authority;

(b) The agent dies, becomes incapacitated, or resigns;

(c) An action is filed for the dissolution or annulment of the agent's marriage to the principal or for their legal separation, or an action is filed for dissolution or annulment of the agent's state registered domestic partnership with the principal or for their legal separation, unless the power of attorney otherwise provides; or

(d) The power of attorney terminates.

(3) An agent's authority which has been terminated under subsection (2)(c) of this section shall be reinstated effective immediately in the event that such action is dismissed with the consent of both parties or the petition for dissolution, annulment, or legal separation is withdrawn.

(4) Unless the power of attorney otherwise provides, an agent's authority is exercisable until the authority terminates under subsection (2) of this section, notwithstanding a lapse of time since the execution of the power of attorney.

(5) Termination of an agent's authority or of a power of attorney is not effective as to the agent or another person that, without actual knowledge of the termination, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

(6) Incapacity of the principal of a power of attorney that is not durable does not revoke or terminate the power of attorney as to an agent or other person that, without actual knowledge of the incapacity, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or

(2022 Ed.)

unenforceable, binds the principal and the principal's successors in interest.

(7) The execution of a power of attorney does not revoke a power of attorney previously executed by the principal unless the subsequent power of attorney provides that the previous power of attorney is revoked or that all other powers of attorney are revoked. [2016 c 209 § 110.]

11.125.110 Coagents—Successor agents—Liability.

(1) A principal may designate in a power of attorney two or more persons to act as coagents. Unless the power of attorney otherwise provides, all coagents must exercise their authority jointly; provided, however, a coagent may delegate that coagent's authority to another coagent.

(2) A principal may designate one or more successor agents to act if an agent resigns, dies, becomes incapacitated, is not qualified to serve, or declines to serve. A principal may grant authority to designate one or more successor agents to an agent or other person designated by name, office, or function. Unless the power of attorney otherwise provides, a successor agent:

(a) Has the same authority as that granted to the original agent; and

(b) May not act until all predecessor agents have resigned, died, become incapacitated, are no longer qualified to serve, or have declined to serve.

(3) Except as otherwise provided in the power of attorney and subsection (4) of this section, an agent that does not participate in or conceal a breach of fiduciary duty committed by another agent, including a predecessor agent, is not liable for the actions of the other agent.

(4) An agent that has actual knowledge of a breach or imminent breach of fiduciary duty by another agent shall notify the principal and, if the principal is incapacitated, take any action reasonably appropriate in the circumstances to safeguard the principal's best interest. An agent that fails to notify the principal or take action as required by this subsection is liable for the reasonably foreseeable damages that could have been avoided if the agent had notified the principal or taken such action. [2016 c 209 § 111.]

11.125.120 Reimbursement of expenses for agents.

Unless the power of attorney otherwise provides, an agent is entitled to reimbursement of expenses reasonably incurred on behalf of the principal and to reasonable compensation. [2016 c 209 § 112.]

11.125.130 Accepting appointment as an agent.

Except as otherwise provided in the power of attorney, a person accepts appointment as an agent under a power of attorney by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance. [2016 c 209 § 113.]

11.125.140 Agents—Duties—Liability—Disclosures. (1) Notwithstanding provisions in the power of attorney, an agent that has accepted appointment shall:

(a) Act in accordance with the principal's reasonable expectations to the extent actually known by the agent and, otherwise, in the principal's best interest;

(b) Act in good faith; and

(c) Act only within the scope of authority granted in the power of attorney.

(2) Except as otherwise provided in the power of attorney, an agent that has accepted appointment shall:

(a) Act loyally for the principal's benefit;

(b) Act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest;

(c) Act with the care, competence, and diligence ordinarily exercised by agents in similar circumstances;

(d) Keep a record of all receipts, disbursements, and transactions made on behalf of the principal;

(e) Cooperate with a person that has authority to make health care decisions for the principal to carry out the principal's reasonable expectations to the extent actually known by the agent and, otherwise, act in the principal's best interest; and

(f) Attempt to preserve the principal's estate plan, to the extent actually known by the agent, if preserving the plan is consistent with the principal's best interest based on all relevant factors, including:

(i) The value and nature of the principal's property;

(ii) The principal's foreseeable obligations and need for maintenance;

(iii) Minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes; and

(iv) Eligibility for a benefit, a program, or assistance under a statute or rule.

(3) An agent that acts in good faith is not liable to any beneficiary of the principal's estate plan for failure to preserve the plan.

(4) An agent that acts with care, competence, and diligence for the best interest of the principal is not liable solely because the agent also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the principal.

(5) If an agent is selected by the principal because of special skills or expertise possessed by the agent or in reliance on the agent's representation that the agent has special skills or expertise, the special skills or expertise must be considered in determining whether the agent has acted with care, competence, and diligence under the circumstances.

(6) Absent a breach of duty to the principal, an agent is not liable if the value of the principal's property declines.

(7) An agent that engages another person on behalf of the principal is not liable for an act, error of judgment, or default of that person if the agent exercises care, competence, and diligence in selecting and monitoring the person, provided however that the agent shall not be relieved of liability for such person's discretionary acts, that, if done by the agent, would result in liability to the agent.

(8) Unless RCW 11.125.110(1) applies, an agent may only delegate authority to another person if expressly authorized to do so in the power of attorney and may delegate some, but not all, of the authority granted by the principal. An agent that exercises authority to delegate to another person the authority granted by the principal is not liable for an act, error of judgment, or default of that person if the agent exercises care, competence, and diligence in selecting and monitoring the person, provided however that the agent shall not be relieved of liability for such person's discretionary acts,

that, if done by the agent, would result in liability to the agent.

(9) Except as otherwise provided in the power of attorney, an agent is not required to disclose receipts, disbursements, or transactions conducted on behalf of the principal unless ordered by a court or requested in writing by the principal, a guardian, a conservator, another fiduciary acting for the principal, a governmental agency having authority to protect the welfare of the principal, or, upon the death of the principal, by the personal representative or successor in interest of the principal's estate. Such request by a guardian, conservator, or another fiduciary acting for the principal must be limited to information reasonably related to that guardian, conservator, or fiduciary's duties. If so requested, within thirty days the agent shall comply with the request or provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional thirty days. [2016 c 209 § 114.]

11.125.150 Power of attorney provisions relieving agent liability—When allowed. A provision in a power of attorney relieving an agent of liability for breach of duty is binding on the principal and the principal's successors in interest except to the extent the provision:

(1) Relieves the agent of liability for breach of duty committed dishonestly, with an improper motive, or with gross negligence to the purposes of the power of attorney or the best interest of the principal; or

(2) Was inserted as a result of an abuse of a confidential or fiduciary relationship with the principal. [2016 c 209 § 115.]

11.125.160 Court petition—Who may file—Reasons may file. (1) Except as otherwise provided in the power of attorney, the following persons may bring a petition described in subsection (2) of this section:

(a) The principal or the agent;

(b) The spouse or state registered domestic partner of the principal;

(c) The guardian of the estate or person of the principal;

(d) Any other interested person, as long as the person demonstrates to the court's satisfaction that the person is interested in the welfare of the principal and has a good faith belief that the court's intervention is necessary, and that the principal is incapacitated at the time of filing the petition or otherwise unable to protect his or her own interests; and

(e) A person asked to accept the power of attorney.

(2) A person designated in subsection (1) of this section may file a petition requesting the court to construe a power of attorney or grant any other appropriate relief, including but not limited to:

(a) Determination of whether the power of attorney is in effect or has terminated;

(b) Compelling the agent to submit the agent's accounts or report the agent's acts as agent to the principal, the spouse or state registered domestic partner of the principal, the guardian of the person or the estate of the principal, or to any other person required by the court in its discretion, if the agent has not timely complied with a request under RCW 11.125.140(9). However, a governmental agency having authority to protect the welfare of the principal may file a

petition upon the agent's refusal or failure to submit an accounting upon written request and shall not be required to wait sixty days;

(c) Ratification of past acts or approval of proposed acts of the agent;

(d) Issuance of an order directing the agent to exercise or refrain from exercising authority in a power of attorney in a particular manner or for a particular purpose;

(e) Modification of the authority of an agent under a power of attorney;

(f) Removal of the agent on a determination by the court of both of the following:

(i) Determination that the agent has violated or is unfit to perform the fiduciary duties under the power of attorney; and

(ii) Determination that the removal of the agent is in the best interest of the principal;

(g) Approval of the resignation of the agent and approval of the final accountings of the resigning agent if submitted, subject to any orders the court determines are necessary to protect the principal's interests;

(h) Confirmation of the authority of a successor agent to act under a power of attorney upon removal or resignation of the previous agent;

(i) Compelling a third person to honor the authority of an agent, provided that a third person may not be compelled to honor the agent's authority if the principal could not compel the third person to act in the same circumstances;

(j) Order the agent to furnish a bond in an amount the court determines to be appropriate.

(3) Any action commenced under this section shall be subject to the notice requirements of chapter 11.96A RCW.

(4) Upon motion by the principal, the court shall dismiss a petition filed under this section, unless the court finds that the principal lacks capacity to revoke the agent's authority or the power of attorney.

(5) Except as otherwise provided in RCW 11.125.200(3)(b), any action commenced under this section shall be subject to the provisions of RCW 11.96A.150. [2016 c 209 § 116.]

11.125.170 Chapter violations—Agent liability. An agent that violates this chapter is liable to the principal or the principal's successors in interest for the amount required to restore the value of the principal's property to what it would have been had the violation not occurred. [2016 c 209 § 117.]

11.125.180 Agent resignation—Procedure. Unless the power of attorney has been terminated in accordance with RCW 11.125.080, or the power of attorney provides a different method for an agent's resignation, an agent may resign by giving notice to the principal and, if the principal is incapacitated:

(1) To the conservator or guardian, if one has been appointed for the principal, and a coagent or successor agent, if designated; or

(2) If there is no person described in subsection (1) of this section:

(a) To any person reasonably believed by the agent to have sufficient interest in the principal's welfare;

(b) To a governmental agency having authority to protect the welfare of the principal; or

(c) By filing notice with the county recorder's office in the county where the principal resides. [2016 c 209 § 118.]

11.125.190 Acknowledged power of attorney—When may rely upon—Certification or translation request. (1) For purposes of this section and RCW 11.125.200, "acknowledged" means purportedly verified before a notary public or other individual authorized to take acknowledgments.

(2) A person that in good faith accepts an acknowledged power of attorney without actual knowledge that the signature is not genuine may rely upon the presumption under RCW 11.125.050 that the signature is genuine.

(3) A person that in good faith accepts an acknowledged power of attorney without actual knowledge that the power of attorney is void, invalid, or terminated, that the purported agent's authority is void, invalid, or terminated, or that the agent is exceeding or improperly exercising the agent's authority may rely upon the power of attorney as if the power of attorney were genuine, valid and still in effect, the agent's authority were genuine, valid and still in effect, and the agent had not exceeded and had properly exercised the authority.

(4) A person that is asked to accept an acknowledged power of attorney may request, and rely upon, without further investigation:

(a) An agent's certification given under penalty of perjury meeting the requirements of subsection (5) of this section; and

(b) An English translation of the power of attorney if the power of attorney contains, in whole or in part, language other than English.

(5) A certification presented pursuant to subsection (4) of this section or pursuant to RCW 11.125.200 shall state that:

(a) The person presenting himself or herself as the agent and signing the affidavit or declaration is the person so named in the power of attorney;

(b) If the agent is named in the power of attorney as a successor agent, the circumstances or conditions stated in the power of attorney that would cause that person to become the acting agent have occurred;

(c) To the best of the agent's knowledge, the principal is still alive;

(d) To the best of the agent's knowledge, at the time the power of attorney was signed, the principal was competent to execute the document and was not under undue influence to sign the document;

(e) All events necessary to making the power of attorney effective have occurred;

(f) The agent does not have actual knowledge of the revocation, termination, limitation, or modification of the power of attorney or of the agent's authority;

(g) The agent does not have actual knowledge of the existence of other circumstances that would limit, modify, revoke, or terminate the power of attorney or the agent's authority to take the proposed action;

(h) If the agent was married to or in a state registered domestic partnership with the principal at the time of execution of the power of attorney, then at the time of signing the affidavit or declaration, the marriage or state registered domestic partnership of the principal and the agent has not been dissolved or declared invalid, and no action is pending

for the dissolution of the marriage or domestic partnership or for legal separation; and

(i) The agent is acting in good faith pursuant to the authority given under the power of attorney.

(6) An English translation requested under this section must be provided at the principal's expense unless the request is made more than seven business days after the power of attorney is presented for acceptance.

(7) For purposes of this section and RCW 11.125.200, a person that conducts activities through employees is without actual knowledge of a fact relating to a power of attorney, a principal, or an agent if the employee conducting the transaction involving the power of attorney is without actual knowledge of the fact. [2016 c 209 § 119.]

11.125.200 Acknowledged power of attorney—Acceptance—Refusal to accept. (1) Except as otherwise provided in subsection (2) of this section:

(a) A person shall either accept an acknowledged power of attorney or request a certification or a translation no later than seven business days after presentation of the power of attorney for acceptance;

(b) If a person requests a certification or a translation, the person shall accept the power of attorney no later than five business days after receipt of the certification or translation; and

(c) A person may not require an additional or different form of power of attorney for authority granted in the power of attorney presented.

(2) A person is not required to accept an acknowledged power of attorney if:

(a) The person is not otherwise required to engage in a transaction with the principal in the same circumstances;

(b) Engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with federal law;

(c) The person has actual knowledge of the termination of the agent's authority or of the power of attorney before exercise of the power;

(d) A request for a certification or a translation is refused;

(e) The person in good faith believes that the power is not valid or that the agent does not have the authority to perform the act requested, whether or not a certification or a translation has been requested or provided; or

(f) The person makes, or has actual knowledge that another person has made, a report to the department of social and health services stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent.

(3) A person that refuses in violation of this section to accept an acknowledged power of attorney is subject to:

(a) A court order mandating acceptance of the power of attorney; and

(b) Liability for reasonable attorneys' fees and costs incurred in any action or proceeding that confirms the validity of the power of attorney or mandates acceptance of the power of attorney. [2016 c 209 § 120.]

11.125.210 Principles of law and equity—Supplemental to chapter. Unless displaced by a provision of this chapter, the principles of law and equity supplement this chapter. [2016 c 209 § 121.]

11.125.220 Conflicting laws. This chapter does not supersede any other law applicable to financial institutions or other entities, and the other law controls if inconsistent with this chapter. [2016 c 209 § 122.]

11.125.230 Remedies—Not exclusive. The remedies under this chapter are not exclusive and do not abrogate any right or remedy under the law of this state other than this chapter. [2016 c 209 § 123.]

11.125.240 Agent—Authority over principal's property. (1) An agent under a power of attorney may, subject to the requirements of RCW 11.125.140, and in particular RCW 11.125.140(2)(f), do the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants the agent the authority and exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject:

(a) Create, amend, revoke, or terminate an inter vivos trust;

(b) Make a gift;

(c) Create or change rights of survivorship;

(d) Create or change a beneficiary designation;

(e) Delegate some but not all of the authority granted under the power of attorney, except as otherwise provided in RCW 11.125.110(1);

(f) Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;

(g) Exercise fiduciary powers that the principal has authority to delegate;

(h) Exercise any power of appointment in favor of anyone other than the principal;

(i) Create, amend, or revoke a community property agreement;

(j) Cause a trustee to make distributions of property held in trust under the same conditions that the principal could;

(k) Make any other provisions for nonprobate transfer at death contained in nontestamentary instruments described in RCW 11.02.091;

(l) Make health care decisions for the principal, or give informed consent to health care decisions on the principal's behalf.

(2) Notwithstanding the provisions of subsection (1)(a) of this section, an agent may, even in the absence of a specific grant of authority, make transfers of property to any trust that benefits the principal alone and does not have dispositive provisions that are different from those that would have governed the property had it not been transferred into such trust.

(3) Notwithstanding the provisions of subsection (1)(b) of this section, an agent may, even in the absence of a specific grant of authority, make any transfer of resources not prohibited under chapter 74.09 RCW when the transfer is for the purpose of qualifying the principal for medical assistance or the limited casualty program for the medically needy.

(4) Notwithstanding a grant of authority to do an act described in subsection (1) of this section, unless the power of attorney otherwise provides, an agent that is not an ancestor, spouse, state registered domestic partner, or descendant of the principal, may not exercise authority under a power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise.

(5) Unless the power of attorney otherwise provides, a grant of authority to make a gift is subject to RCW 11.125.390.

(6) Subject to subsections (1) through (5) of this section, if the subjects over which authority is granted in a power of attorney are similar or overlap, the broadest authority controls.

(7) Authority granted in a power of attorney is exercisable with respect to property that the principal has when the power of attorney is executed or acquires later, whether or not the property is located in this state and whether or not the authority is exercised or the power of attorney is executed in this state.

(8) An act performed by an agent pursuant to a power of attorney has the same effect and inures to the benefit of and binds the principal and the principal's successors in interest as if the principal had performed the act. [2016 c 209 § 201.]

11.125.250 Agent—General authority—When created—When can be modified. (1) Subject to the provisions of RCW 11.125.240, if a power of attorney grants to an agent authority to do all acts that a principal could do or contains words of similar effect, the agent has the general authority described in RCW 11.125.260 through 11.125.410.

(2) An agent has authority described in chapter 209, Laws of 2016 if the power of attorney refers to general authority with respect to the descriptive term for the subjects stated in RCW 11.125.270 through 11.125.410 or cites the section in which the authority is described.

(3) A reference in a power of attorney to general authority with respect to the descriptive term for a subject in RCW 11.125.270 through 11.125.410 or a citation to a section of RCW 11.125.270 through 11.125.410 incorporates the entire section as if it were set out in full in the power of attorney.

(4) A principal may modify authority incorporated by reference. [2016 c 209 § 202.]

11.125.260 Agent authority—General powers. Except as otherwise provided in the power of attorney, by executing a power of attorney that incorporates by reference a subject described in RCW 11.125.270 through 11.125.410 or that grants to an agent authority to do all acts that a principal could do pursuant to RCW 11.125.250(1), a principal authorizes the agent, with respect to that subject, to:

(1) Demand, receive, and obtain by litigation or otherwise, declaratory or injunctive relief, money, or another thing of value to which the principal is, may become, or claims to be entitled, and conserve, invest, disburse, or use anything so received or obtained for the purposes intended;

(2) Contract in any manner with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction and perform, rescind, cancel, terminate, reform, restate,

release, or modify the contract or another contract made by or on behalf of the principal;

(3) Execute, acknowledge, seal, deliver, file, or record any instrument or communication the agent considers desirable to accomplish a purpose of a transaction, including creating at any time a schedule listing some or all of the principal's property and attaching it to the power of attorney;

(4) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to a claim existing in favor of or against the principal or intervene in litigation relating to the claim;

(5) Seek on the principal's behalf the assistance of a court or other governmental agency to carry out an act authorized in the power of attorney;

(6) Engage, compensate, and discharge an attorney, accountant, investment manager, expert witness, or other advisor;

(7) Prepare, execute, and file a record, report, or other document to safeguard or promote the principal's interest under a statute or regulation;

(8) Communicate with any representative or employee of a government or governmental subdivision, agency, or instrumentality, on behalf of the principal;

(9) Access communications intended for, and communicate on behalf of the principal, whether by mail, electronic transmission, telephone, or other means; and

(10) Do any lawful act with respect to the subject and all property related to the subject. [2016 c 209 § 203.]

11.125.270 Agent authority—Real property. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to real property authorizes the agent to:

(1) Demand; buy; sublease; license; receive; accept as a gift or as security for an extension of credit; or otherwise acquire or reject an interest in real property or a right incident to real property;

(2) Sell; exchange; convey with or without reservations, covenants, representations, or warranties; quitclaim; release; surrender; retain title for security; encumber; partition; consent to partitioning; subject to an easement or covenant, common interest regime; subdivide; apply for zoning or other governmental permits; plat or consent to platting; develop; grant an option concerning; lease; sublease; license; contribute to an entity in exchange for an interest in that entity; or, subject to RCW 11.125.240, otherwise grant or dispose of an interest in real property or a right incident to real property;

(3) Pledge or mortgage an interest in real property or right incident to real property as security to borrow money or pay, renew, extend the time of payment of a debt of the principal or a debt guaranteed by the principal, or as security for a nonmonetary obligation;

(4) Release, assign, satisfy, or enforce by litigation or otherwise a mortgage, deed of trust, conditional sale contract, encumbrance, lien, or other claim to real property which exists or is asserted;

(5) Manage or conserve an interest in real property or a right incident to real property owned or claimed to be owned by the principal, including:

(a) Insuring against liability or casualty or other loss;

(b) Obtaining or regaining possession of or protecting the interest or right by litigation or otherwise;

(c) Paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with them; and

(d) Purchasing supplies, hiring assistance or labor, and making repairs or alterations to the real property;

(6) Use, develop, alter, replace, remove, erect, or install structures or other improvements upon real property in or incident to which the principal has, or claims to have, an interest or right;

(7) Participate in a reorganization with respect to real property or an entity that owns an interest in or right incident to real property and receive, and hold, and act with respect to stocks and bonds or other property received in a plan of reorganization, including:

(a) Selling or otherwise disposing of them;

(b) Exercising or selling an option, right of conversion, or similar right with respect to them; and

(c) Exercising any voting rights in person or by proxy;

(8) Change the form of title of an interest in or right incident to real property; and

(9) Dedicate to public use, with or without consideration, easements or other real property in which the principal has, or claims to have, an interest. [2016 c 209 § 204.]

11.125.280 Agent authority—Tangible personal property. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to tangible personal property authorizes the agent to:

(1) Demand, buy, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject ownership or possession of tangible personal property or an interest in tangible personal property;

(2) Sell; exchange; convey with or without covenants, representations, or warranties; quitclaim; release; surrender; create a security interest in; grant options concerning; lease; sublease; or, otherwise dispose of tangible personal property or an interest in tangible personal property;

(3) Grant a security interest in tangible personal property or an interest in tangible personal property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

(4) Release, assign, satisfy, or enforce by litigation or otherwise, a security interest, lien, or other claim on behalf of the principal, with respect to tangible personal property or an interest in tangible personal property;

(5) Manage or conserve tangible personal property or an interest in tangible personal property on behalf of the principal, including:

(a) Insuring against liability or casualty or other loss;

(b) Obtaining or regaining possession of or protecting the property or interest, by litigation or otherwise;

(c) Paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments;

(d) Moving the property from place to place;

(e) Storing the property for hire or on a gratuitous bailment; and

(f) Using and making repairs, alterations, or improvements to the property; and

(6) Change the form of title of an interest in tangible personal property. [2016 c 209 § 205.]

11.125.290 Agent authority—Stocks, bonds, and financial instruments. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to stocks, bonds, and financial instruments authorizes the agent to:

(1) Buy, sell, and exchange stocks, bonds, and financial instruments;

(2) Establish, continue, modify, or terminate an account with respect to stocks, bonds, and financial instruments;

(3) Pledge stocks, bonds, and financial instruments as security to borrow, pay, renew, or extend the time of payment of a debt of the principal;

(4) Receive certificates and other evidences of ownership with respect to stocks, bonds, and financial instruments;

(5) Exercise voting rights with respect to stocks, bonds, and financial instruments in person or by proxy, enter into voting trusts, and consent to limitations on the right to vote;

(6) Buy, sell, exchange, assign, settle, and exercise commodity futures contracts and call or put options on stocks or stock indexes traded on a regulated option exchange; and

(7) Establish, continue, modify, and terminate option accounts. [2016 c 209 § 206.]

11.125.300 Agent authority—Banks and financial institutions. Except as otherwise expressly provided in chapter 209, Laws of 2016 and in chapter 30A.22 RCW, unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to banks and other financial institutions authorizes the agent to:

(1) Continue, modify, and terminate an account or other banking arrangement made by or on behalf of the principal;

(2) Establish, modify, and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution selected by the agent;

(3) Contract for services available from a financial institution, including renting a safe deposit box or space in a vault;

(4) Withdraw, by check, order, electronic funds transfer, or otherwise, money or property of the principal deposited with or left in the custody of a financial institution;

(5) Receive statements of account, vouchers, notices, and similar documents from a financial institution and act with respect to them;

(6) Enter a safe deposit box or vault and withdraw or add to the contents;

(7) Borrow money and pledge as security personal property of the principal necessary to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

(8) Make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, checks, drafts, and other negotiable or nonnegotiable paper of the principal or payable to the principal or the principal's order, transfer money, receive the cash or other proceeds of those transactions, and

accept a draft drawn by a person upon the principal and pay it when due;

(9) Receive for the principal and act upon a sight draft, warehouse receipt, or other document of title whether tangible or electronic, or other negotiable or nonnegotiable instrument;

(10) Apply for, receive, and use letters of credit, credit and debit cards, electronic transaction authorizations, and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit; and

(11) Consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution. [2016 c 209 § 207.]

11.125.310 Agent authority—Operation of a business or entity. Subject to the terms of a document or an agreement governing an entity or an entity ownership interest, and unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to operation of an entity or business authorizes the agent to:

(1) Operate, buy, sell, enlarge, reduce, or terminate an ownership interest;

(2) Perform a duty or discharge a liability and exercise in person or by proxy a right, power, privilege, or option that the principal has, may have, or claims to have;

(3) Enforce the terms of an ownership agreement;

(4) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to which the principal is a party because of an ownership interest;

(5) Exercise in person or by proxy, or enforce by litigation or otherwise, a right, power, privilege, or option the principal has or claims to have as the holder of stocks, bonds, and financial instruments;

(6) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to which the principal is a party concerning stocks, bonds, and financial instruments;

(7) With respect to an entity or business owned solely by the principal:

(a) Continue, modify, renegotiate, extend, and terminate a contract made by or on behalf of the principal with respect to the entity or business before execution of the power of attorney;

(b) Determine:

(i) The location of its operation;

(ii) The nature and extent of its business;

(iii) The methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in its operation;

(iv) The amount and types of insurance carried; and

(v) The mode of engaging, compensating, and dealing with its employees and accountants, attorneys, or other advisors;

(c) Change the name or form of organization under which the entity or business is operated and enter into an ownership agreement with other persons to take over all or part of the operation of the entity or business; and

(d) Demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the

(2022 Ed.)

entity or business and control and disburse the money in the operation of the entity or business;

(8) Put additional capital into an entity or business in which the principal has an interest;

(9) Join in a plan of reorganization, consolidation, conversion, domestication, or merger of the entity or business;

(10) Sell or liquidate all or part of an entity or business;

(11) Establish through agreement or independent appraisal the value of an entity or business to which the principal is a party;

(12) Prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to an entity or business and make related payments; and

(13) Pay, compromise, or contest taxes, assessments, fines, or penalties and perform any other act to protect the principal from illegal or unnecessary taxation, assessments, fines, or penalties, with respect to an entity or business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney. [2016 c 209 § 208.]

11.125.320 Agent authority—Insurance and annuities. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to insurance and annuities authorizes the agent to:

(1) Continue, pay the premium or make a contribution on, modify, exchange, sell, rescind, release, or terminate a contract procured by or on behalf of the principal which insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract;

(2) Procure new, different, and additional contracts of insurance and annuities for the benefit of the principal and the principal's spouse, state registered domestic partner, children, and other dependents, and select the amount, type of insurance or annuity, and mode of payment;

(3) Pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract of insurance or annuity procured by the agent;

(4) Apply for and receive a loan secured by a contract of insurance or annuity;

(5) Surrender and receive the cash surrender value on a contract of insurance or annuity;

(6) Exercise an election;

(7) Exercise investment powers available under a contract of insurance or annuity;

(8) Change the manner of paying premiums on a contract of insurance or annuity;

(9) Change or convert the type of insurance or annuity with respect to which the principal has or claims to have authority described in this section;

(10) Apply for and procure a benefit or assistance under a statute or regulation to guarantee or pay premiums of a contract of insurance on the life of the principal;

(11) Collect, sell, assign, hypothecate, borrow against, or pledge the interest of the principal in a contract of insurance or annuity;

(12) Select the form and timing of the payment of proceeds from a contract of insurance or annuity; and

(13) Pay, from proceeds or otherwise, compromise or contest, and apply for refunds in connection with, a tax or

assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment. [2016 c 209 § 209.]

11.125.330 Agent authority—Estates, trusts, and other beneficial interests. (1) In this section, "estates, trusts, and other beneficial interests" means a trust, probate estate, guardianship, conservatorship, escrow, or custodianship or a fund from which the principal is, may become, or claims to be, entitled to a share or payment.

(2) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to estates, trusts, and other beneficial interests authorizes the agent to:

(a) Accept, receive, receipt for, sell, assign, pledge, or exchange a share in or payment from the fund;

(b) Demand or obtain money or another thing of value to which the principal is, may become, or claims to be, entitled by reason of the fund, by litigation or otherwise;

(c) Exercise for the benefit of the principal a presently exercisable general power of appointment held by the principal;

(d) Exercise for the benefit of the principal a presently exercisable limited power of appointment held by the principal;

(e) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal;

(f) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to remove, substitute, or surcharge a fiduciary, and any other matter as defined under RCW 11.96A.030;

(g) Conserve, invest, disburse, or use anything received for an authorized purpose;

(h) Transfer an interest of the principal in real property, stocks, bonds, and financial instruments, accounts with financial institutions or securities intermediaries, insurance, annuities, and other property to the trustee of a revocable trust created by the principal as settlor, subject to the limitations in RCW 11.125.240(1); and

(i) Reject, renounce, disclaim, release, or consent to a reduction in or modification of a share in or payment from the fund. [2016 c 209 § 210.]

11.125.340 Agent authority—Claims and litigation. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to claims and litigation authorizes the agent, without the need for appointment of a guardian or guardian ad litem under Title 4 RCW, to:

(1) Assert and maintain before a court or administrative agency a claim, claim for relief, cause of action, counterclaim, offset, recoupment, or defense, including an action to recover property or other thing of value, recover damages sustained by the principal, eliminate or modify tax liability, or seek an injunction, specific performance, or other relief;

(2) Bring or defend an action to determine adverse claims or intervene or otherwise participate in litigation;

(3) Seek an attachment, garnishment, order of arrest, or other preliminary, provisional, or intermediate relief and use an available procedure to effect or satisfy a judgment, order, or decree;

(4) Make or accept a tender, offer of judgment, or admission of facts, submit a controversy on an agreed statement of facts, consent to examination, and bind the principal in litigation;

(5) Submit to alternative dispute resolution, settle, and propose or accept a compromise, subject to special proceeding rule 98.16W;

(6) Waive the issuance and service of process upon the principal, accept service of process, appear for the principal, designate persons upon which process directed to the principal may be served, execute, and file or deliver stipulations on the principal's behalf, verify pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay for the preparation and printing of records and briefs, receive, execute, and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument in connection with the prosecution, settlement, or defense of a claim or litigation;

(7) Act for the principal with respect to bankruptcy or insolvency, whether voluntary or involuntary, concerning the principal or some other person, or with respect to a reorganization, receivership, or application for the appointment of a receiver or trustee which affects an interest of the principal in property or other thing of value;

(8) Pay a judgment, award, or order against the principal or a settlement made in connection with a claim or litigation; and

(9) Receive money or other thing of value paid in settlement of or as proceeds of a claim or litigation. [2016 c 209 § 211.]

11.125.350 Agent authority—Personal and family maintenance. (1) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to personal and family maintenance authorizes the agent to:

(a) Perform the acts necessary to maintain the customary standard of living of the principal, the principal's spouse or state registered domestic partner, and the following individuals, whether living when the power of attorney is executed or later born:

(i) The principal's children;

(ii) Other individuals legally entitled to be supported by the principal; and

(iii) The individuals whom the principal has customarily supported or indicated the intent to support;

(b) Make periodic payments of child support and other family maintenance required by a court or governmental agency or an agreement to which the principal is a party;

(c) Provide living quarters for the individuals described in subsection (1) of this section by:

(i) Purchase, lease, or other contract; or

(ii) Paying the operating costs, including interest, amortization payments, repairs, improvements, and taxes, for premises owned by the principal or occupied by those individuals;

(d) Provide reasonable domestic help, usual vacations and travel expenses, and funds for shelter, clothing, food, appropriate education, including postsecondary and vocational education, and other current living costs for the individuals described in subsection (1) of this section;

(e) Pay expenses for necessary health care and custodial care on behalf of the individuals described in subsection (1) of this section;

(f) Act as the principal's personal representative pursuant to the health insurance portability and accountability act, sections 1171 through 1179 of the social security act, 42 U.S.C. Sec. 1320d, as amended, and applicable regulations, for the limited purpose of making decisions regarding the payment of costs and expenses arising from past, present, or future health care provided to the principal which was consented to by the principal or anyone authorized under the law of this state to consent to health care on behalf of the principal;

(g) Continue any provision made by the principal for automobiles or other means of transportation, including registering, licensing, insuring, and replacing them, for the individuals described in subsection (1) of this section;

(h) Maintain credit and debit accounts for the convenience of the individuals described in subsection (1) of this section and open new accounts; and

(i) Continue payments incidental to the membership or affiliation of the principal in a religious institution, club, society, order, or other organization or to continue contributions to those organizations.

(2) Authority with respect to personal and family maintenance is neither dependent upon, nor limited by, authority that an agent may or may not have with respect to gifts under chapter 209, Laws of 2016. [2016 c 209 § 212.]

11.125.360 Agent authority—Government program and civil and military service benefits. (1) In this section, "benefits from governmental programs or civil or military service" means any benefit, program or assistance provided under a statute or regulation including social security, medicare, and medicaid.

(2) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to benefits from governmental programs or civil or military service authorizes the agent to:

(a) Execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described in RCW 11.125.350(1)(a), and for shipment of their household effects;

(b) Take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock, or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument for that purpose;

(c) Enroll in, apply for, select, reject, change, amend, or discontinue, on the principal's behalf, a benefit or program;

(d) Prepare, file, and maintain a claim of the principal for a benefit or assistance, financial or otherwise, to which the principal may be entitled under a statute or regulation;

(e) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation concerning any benefit or assistance the principal may be entitled to receive under a statute or regulation; and

(f) Receive the financial proceeds of a claim described in (d) of this subsection and conserve, invest, disburse, or use for a lawful purpose anything so received. [2016 c 209 § 213.]

11.125.370 Agent authority—Retirement benefits and deferred compensation. (1) In this section, "retirement plan" means a plan or account created by an employer, the principal, or another individual to provide retirement benefits or deferred compensation of which the principal is a participant, beneficiary, or owner, including but not limited to a plan or account under the following sections of the internal revenue code:

(a) An individual retirement account under internal revenue code section 408, 26 U.S.C. Sec. 408, as amended;

(b) A roth individual retirement account under internal revenue code section 408A, 26 U.S.C. Sec. 408A, as amended;

(c) A deemed individual retirement account under internal revenue code section 408(q), 26 U.S.C. Sec. 408(q), as amended;

(d) An annuity or mutual fund custodial account under internal revenue code section 403(b), 26 U.S.C. Sec. 403(b), as amended;

(e) A pension, profit-sharing, stock bonus, or other retirement plan qualified under internal revenue code section 401(a), 26 U.S.C. Sec. 401(a), as amended;

(f) A plan under internal revenue code section 457(b), 26 U.S.C. Sec. 457(b), as amended; and

(g) A nonqualified deferred compensation plan under internal revenue code section 409A, 26 U.S.C. Sec. 409A, as amended.

(2) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to retirement plans authorizes the agent to:

(a) Select the form and timing of payments under a retirement plan and withdraw benefits from a plan;

(b) Make a rollover, including a direct trustee-to-trustee rollover, of benefits from one retirement plan to another;

(c) Establish a retirement plan in the principal's name;

(d) Make contributions to a retirement plan;

(e) Exercise investment powers available under a retirement plan; and

(f) Borrow from, sell assets to, or purchase assets from a retirement plan. [2016 c 209 § 214.]

11.125.380 Agent authority—Taxes. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to taxes authorizes the agent to:

(1) Prepare, sign, and file federal, state, local, and foreign income, gift, payroll, property, federal insurance contributions act, and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters, and any other tax-related documents, including receipts, offers, waivers, consents, including consents and agreements under inter-

nal revenue code section 2032A, 26 U.S.C. Sec. 2032A, as amended, closing agreements, and any power of attorney required by the internal revenue service or other taxing authority including, but not limited to, an internal revenue service form 2848 in favor of any third party with respect to a tax year upon which the statute of limitations has not run and the following twenty-five tax years;

(2) Pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the internal revenue service or other taxing authority;

(3) Exercise any election available to the principal under federal, state, local, or foreign tax law; and

(4) Act for the principal in all tax matters for all periods before the internal revenue service, or other taxing authority. [2016 c 209 § 215.]

11.125.390 Agent authority—Gifts. (1) In this section, a gift "for the benefit of" a person includes but is not limited to a gift to a trust, an account under the uniform transfers to minors act of any jurisdiction, and a tuition savings account or prepaid tuition plan as defined under internal revenue code section 529, 26 U.S.C. Sec. 529, as amended. Notwithstanding the terms of RCW 11.125.240(1)(a), the power to make a gift pursuant to RCW 11.125.240(1)(b) shall include the power to create a trust, an account under the uniform transfers to minors act, or a tuition savings account or prepaid tuition plan as defined under internal revenue code section 529, 26 U.S.C. Sec. 529, as amended, into which a gift is to be made.

(2) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to gifts authorizes the agent only to:

(a) Make outright to, or for the benefit of, a person, a gift of any of the principal's property, including by the exercise of a presently exercisable general power of appointment held by the principal, in an amount per donee not to exceed the annual dollar limits of the federal gift tax exclusion under internal revenue code section 2503(b), 26 U.S.C. Sec. 2503(b), as amended, without regard to whether the federal gift tax exclusion applies to the gift, or if the principal's spouse agrees to consent to a split gift pursuant to internal revenue code section 2513, 26 U.S.C. Sec. 2513, as amended, in an amount per donee not to exceed twice the annual federal gift tax exclusion limit; and

(b) Consent, pursuant to internal revenue code section 2513, 26 U.S.C. Sec. 2513, as amended, to the splitting of a gift made by the principal's spouse in an amount per donee not to exceed the aggregate annual gift tax exclusions for both spouses.

(3) An agent may make a gift outright to, or for the benefit of, a person of the principal's property only as the agent determines is consistent with the principal's objectives if actually known by the agent and, if unknown, as the agent determines is consistent with the principal's best interest based on all relevant factors, including but not limited to:

(a) The value and nature of the principal's property;

(b) The principal's foreseeable obligations and need for maintenance;

(c) Minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes;

(d) Eligibility for a benefit, a program, or assistance under a statute or rule; and

(e) The principal's personal history of making or joining in making gifts. [2016 c 209 § 216.]

11.125.400 Agent authority—Health care. Unless the power of attorney otherwise provides, where language in a power of attorney grants general authority with respect to health care matters:

(1) The agent shall be authorized to act as the principal's personal representative pursuant to the health insurance portability and accountability act, sections 1171 through 1179 of the social security act, 42 U.S.C. Sec. 1320d, as amended, and applicable regulations for all purposes thereunder, including but not limited to accessing and acquiring the principal's health care related information.

(2) The agent shall be authorized to provide informed consent for health care decisions on the principal's behalf. If a principal has appointed more than one agent with authority to make mental health treatment decisions in accordance with a directive under chapter 71.32 RCW, to the extent of any conflict, the most recently appointed agent shall be treated as the principal's agent for mental health treatment decisions unless provided otherwise in either appointment.

(3) Unless he or she is the spouse, state registered domestic partner, father or mother, or adult child or brother or sister of the principal, none of the following persons may act as the agent for the principal: Any of the principal's physicians, the physicians' employees, or the owners, administrators, or employees of the health care facility or long-term care facility as defined in RCW 43.190.020 where the principal resides or receives care. Except when the principal has consented in a mental health advance directive executed under chapter 71.32 RCW to inpatient admission or electroconvulsive therapy, this authorization is subject to the same limitations as those that apply to a guardian under chapter 11.130 RCW. [2020 c 312 § 722; 2016 c 209 § 217.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.125.410 Agent authority—Principal's minor children. Unless the power of attorney otherwise provides, the following general provisions shall apply to any power of attorney making reference to the care of the principal's minor children:

(1) A parent or guardian, through a power of attorney, may authorize an agent to make health care decisions on behalf of one or more of his or her children, or children for whom he or she is the legal guardian, who are under the age of majority as defined in RCW 26.28.015, to be effective if the child has no other parent or legal representative readily available and authorized to give such consent.

(2) A principal may further nominate a guardian or guardians of the person, or of the estate or both, of a minor child, whether born at the time of making the durable power of attorney or afterwards, to continue during the disability of the principal, during the minority of the child or for any less time by including such a provision in his or her power of attorney.

(3) The authority of any guardian of the person of any minor child shall supersede the authority of a designated

agent to make health care decisions for the minor only after such designated guardian has been appointed by the court.

(4) In the event a conflict between the provisions of a will nominating a testamentary guardian under chapter 11.130 RCW and the nomination of a guardian under the authority of this statute, the most recent designation shall control. [2020 c 312 § 723; 2016 c 209 § 218.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.125.420 Death with dignity act. Notwithstanding any provision in chapter 209, Laws of 2016, or any provision in a power of attorney, no rights under Washington's death with dignity act, chapter 70.245 RCW, may be exercised through a power of attorney. [2016 c 209 § 219.]

11.125.430 Agent's certification form—Power of attorney and agent authority validity. The following optional form may be used by an agent to certify facts concerning a power of attorney.

AGENT'S CERTIFICATION AS TO THE VALIDITY OF POWER OF ATTORNEY AND AGENT'S AUTHORITY

State of _____
[County] of _____]

I, _____ (Name of Agent), [certify] under penalty of perjury that _____ (Name of Principal) granted me authority as an agent or successor agent in a power of attorney dated _____.

I further [certify] that to my knowledge:

- (1) I am acting in good faith pursuant to the authority given under the power of attorney;
- (2) The principal is alive and has not terminated, revoked, limited, or modified the power of attorney or my authority to act under the power of attorney; nor has the power of attorney or my authority to act under the power of attorney been terminated, revoked, limited, or modified by any other circumstances;
- (3) When the power of attorney was signed, the principal was competent to execute it and was not under undue influence to sign;
- (4) All events necessary to making the power of attorney effective have occurred;
- (5) If I was married or a registered domestic partner of the principal when the power of attorney was executed, there has been no subsequent dissolution, annulment, or legal separation, and no action is pending for the dissolution of the marriage or domestic partnership or for legal separation;
- (6) If the power of attorney was drafted to become effective upon the happening of an event or contingency, the event or contingency has occurred;
- (7) If I was named as a successor agent, the prior agent is no longer able or willing to serve, or the conditions stated in the power of attorney that cause me to become the acting agent have occurred; and
- (8) _____

(Insert other relevant statements)

SIGNATURE AND ACKNOWLEDGMENT

Agent's Signature

Date

Agent's Name Printed

Agent's Address

Agent's Telephone Number

This document was acknowledged before me on _____ ,
(Date)

by _____
(Name of Agent)

(Seal, if any)

Signature of Notary _____

My commission expires: _____

[This document prepared by: _____]

[2016 c 209 § 301.]

11.125.900 Application—Uniformity—2016 c 209. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it. [2016 c 209 § 501.]

11.125.901 Federal law application—Federal electronic signatures in global and national commerce act—2016 c 209. Chapter 209, Laws of 2016 modifies, limits, and supersedes the federal electronic signatures in global and national commerce act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. Sec. 7003(b). [2016 c 209 § 502.]

11.125.902 Application—Dates—2016 c 209. Except as otherwise provided in chapter 209, Laws of 2016, on January 1, 2017:

(1) Chapter 209, Laws of 2016 applies to a power of attorney created before, on, or after January 1, 2017;

(2) Chapter 209, Laws of 2016 applies to a judicial proceeding concerning a power of attorney commenced on or after January 1, 2017;

(3) Chapter 209, Laws of 2016 applies to a judicial proceeding concerning a power of attorney commenced before January 1, 2017, unless the court finds that application of a provision of chapter 209, Laws of 2016 would substantially interfere with the effective conduct of the judicial proceeding or prejudice the rights of a party, in which case that provision does not apply and the superseded law applies; and

(4) An act done before January 1, 2017, is not affected by chapter 209, Laws of 2016. [2016 c 209 § 503.]

11.125.903 Effective date—2016 c 209. This act takes effect January 1, 2017. [2016 c 209 § 506.]

**Chapter 11.130 RCW
UNIFORM GUARDIANSHIP, CONSERVATORSHIP,
AND OTHER PROTECTIVE ARRANGEMENTS ACT**

Sections

**ARTICLE 1
GENERAL PROVISIONS**

- 11.130.001 Intent.
- 11.130.005 Short title.
- 11.130.010 Definitions.
- 11.130.015 Supplemental principles of law and equity applicable.
- 11.130.020 Subject matter jurisdiction.
- 11.130.025 Transfer of proceeding.
- 11.130.030 Venue.
- 11.130.035 Practice in court.
- 11.130.037 Presumption of legal capacity.
- 11.130.040 Letters of office.
- 11.130.045 Effect of acceptance of appointment.

- 11.130.050 Co-guardian—Co-conservator.
- 11.130.055 Judicial appointment of successor guardian or successor conservator.
- 11.130.060 Effect of death, removal, or resignation of guardian or conservator.
- 11.130.065 Notice of hearing generally.
- 11.130.070 Waiver of notice.
- 11.130.075 Guardian ad litem.
- 11.130.080 Request for notice.
- 11.130.085 Disclosure of bankruptcy or criminal history.
- 11.130.090 Qualifications.
- 11.130.095 Multiple nominations.
- 11.130.100 Compensation and expenses—In general.
- 11.130.105 Compensation of guardian or conservator.
- 11.130.110 Liability of guardian or conservator for act of individual subject to guardianship or conservatorship.
- 11.130.115 Petition after appointment for instruction or ratification.
- 11.130.120 Third-party acceptance of authority of guardian or conservator.
- 11.130.125 Use of agent by guardian or conservator.
- 11.130.130 Temporary substitute guardian or conservator.
- 11.130.135 Registration of order—Effect.
- 11.130.140 Grievance or complaint against guardian or conservator.
- 11.130.145 Delegation by parent.
- 11.130.150 Ex parte communications—Removal.
- 11.130.155 Registry for guardians ad litem and visitors.
- 11.130.160 Guardianship/conservatorship summary.
- 11.130.165 Guardianship/conservatorship courthouse facilitator program.
- 11.130.170 Filing fee.
- 11.130.175 Guardianships involving veterans.
- 11.130.180 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

**ARTICLE 2
GUARDIANSHIP OF MINOR**

- 11.130.185 Basis for appointment of guardian for minor.
- 11.130.190 Petition for appointment of guardian for minor.
- 11.130.195 Notice of hearing for appointment of guardian for minor.
- 11.130.200 Attorney for minor or parent.
- 11.130.205 Attendance and participation at hearing for appointment of guardian for minor.
- 11.130.210 Custody orders—Background information to be consulted.
- 11.130.215 Order of appointment—Priority of nominee—Limited guardianship for minor.
- 11.130.220 Standby guardian for minor.
- 11.130.225 Emergency guardian for minor.
- 11.130.230 Duties of guardian for minor.
- 11.130.235 Powers of guardian for minor.
- 11.130.240 Removal of guardian for minor—Termination of guardianship—Appointment of successor.
- 11.130.245 Prior court order validity.
- 11.130.250 Application of the Indian child welfare act.
- 11.130.255 Child support.
- 11.130.257 Temporary support, restraining, and protective orders—Effect—Support debts to state.
- 11.130.259 Order for relocation.
- 11.130.260 Health insurance coverage—Conditions.

**ARTICLE 3
GUARDIANSHIP OF ADULT**

- 11.130.265 Basis for appointment of guardian for adult.
- 11.130.270 Petition for appointment of guardian for adult.
- 11.130.275 Notice of hearing for appointment of guardian for adult.
- 11.130.280 Appointment and role of court visitor.
- 11.130.285 Appointment and role of attorney for adult.
- 11.130.290 Professional evaluation.
- 11.130.295 Attendance and rights at hearing.
- 11.130.300 Confidentiality of records.
- 11.130.305 Who may be guardian for adult—Order of priority.
- 11.130.310 Order of appointment for guardian.
- 11.130.315 Notice of order of appointment—Rights.
- 11.130.320 Emergency guardian for adult.
- 11.130.325 Duties of guardian for adult.
- 11.130.330 Powers of guardian for adult.

- 11.130.335 Special limitations on guardian's power.
- 11.130.340 Guardian's plan.
- 11.130.345 Guardian's report—Monitoring of guardianship.
- 11.130.350 Removal of guardian for adult—Appointment of successor.
- 11.130.355 Termination or modification of guardianship for adult.

ARTICLE 4
CONSERVATORSHIP

- 11.130.360 Basis for appointment of conservator.
- 11.130.365 Petition for appointment of conservator.
- 11.130.370 Notice and hearing for appointment of conservator.
- 11.130.375 Order to preserve or apply property while proceeding pending.
- 11.130.380 Appointment and role of court visitor.
- 11.130.385 Appointment and role of attorney.
- 11.130.390 Professional evaluation.
- 11.130.400 Attendance and rights at hearing.
- 11.130.410 Confidentiality of records.
- 11.130.415 Who may be conservator—Order of priority.
- 11.130.420 Order of appointment of conservator.
- 11.130.425 Notice of order of appointment—Rights.
- 11.130.430 Emergency conservator.
- 11.130.435 Powers of conservator requiring court approval.
- 11.130.440 Petition for order after appointment.
- 11.130.445 Bond—Alternative verified receipt.
- 11.130.500 Terms and requirements of bond.
- 11.130.505 Duties of conservator.
- 11.130.510 Conservator's plan.
- 11.130.515 Inventory—Records.
- 11.130.520 Administrative powers of conservator not requiring court approval.
- 11.130.525 Distribution from conservatorship estate.
- 11.130.530 Conservator's report and accounting—Monitoring.
- 11.130.535 Attempted transfer of property by individual subject to conservatorship.
- 11.130.540 Transaction involving conflict of interest.
- 11.130.545 Protection of person dealing with conservator.
- 11.130.547 Access of conservator to certain assets.
- 11.130.550 Death of individual subject to conservatorship.
- 11.130.555 Presentation and allowance of claim.
- 11.130.560 Personal liability of conservator.
- 11.130.565 Removal of conservator—Appointment of successor.
- 11.130.570 Termination or modification of conservatorship.
- 11.130.575 Transfer for benefit of minor without appointment of conservator.

ARTICLE 5
OTHER PROTECTIVE ARRANGEMENTS

- 11.130.580 Authority for protective arrangement.
- 11.130.585 Basis for protective arrangement instead of guardianship for adult.
- 11.130.590 Basis for protective arrangement instead of conservatorship for adult or minor.
- 11.130.595 Petition for protective arrangement.
- 11.130.600 Notice and hearing.
- 11.130.605 Appointment and role of court visitor.
- 11.130.610 Appointment and role of attorney.
- 11.130.615 Professional evaluation.
- 11.130.620 Attendance and rights at hearing.
- 11.130.625 Notice of order.
- 11.130.630 Confidentiality of records.
- 11.130.635 Appointment of special agent.

ARTICLE 6
FORMS

- 11.130.640 Use of forms.
- 11.130.645 Petition for guardianship for minor.
- 11.130.650 Petition for guardianship, conservatorship, or protective arrangement.
- 11.130.655 Notification of rights for adult subject to guardianship or conservatorship.
- 11.130.657 Notification of petition for guardianship or conservatorship.
- 11.130.660 Letters of office.
- 11.130.665 Guardianship/conservatorship summary.

ARTICLE 7
CERTIFIED PROFESSIONAL GUARDIANSHIP BOARD
OF RESOLUTION GRIEVANCES

- 11.130.670 Certified professional guardianship board—Grievances.
- SUPPORTED DECISION-MAKING AGREEMENTS

- 11.130.700 Definitions.
- 11.130.705 Purpose.

- 11.130.710 Presumption of capacity.
- 11.130.715 Scope.
- 11.130.720 Authority of supporter.
- 11.130.725 Term.
- 11.130.730 Disqualification of supporter.
- 11.130.735 Access of supporter to personal information.
- 11.130.740 Execution of agreement.
- 11.130.745 Form.
- 11.130.750 Reliance on agreement—Limitation of liability.
- 11.130.755 Reporting of suspected abuse, abandonment, neglect, exploitation.

ARTICLE 8
MISCELLANEOUS PROVISIONS

- 11.130.900 Uniformity of application and construction.
 - 11.130.905 Relation to electronic signatures in global and national commerce act.
 - 11.130.910 Applicability.
 - 11.130.915 Effective date—2020 c 312; 2019 c 437.
- Allowing child to work without permit, penalty: RCW 26.28.060.*
- Bank soliciting appointment as guardian, penalty: RCW 30A.04.260.*
- Costs against guardian of infant plaintiff: RCW 4.84.140.*
- Declaratory judgments: Chapter 7.24 RCW.*
- Eminent domain service of notice on guardian: RCW 8.04.020, 8.20.020.*
- Excise taxes, liability for, notice to department of revenue: RCW 82.32.240.*
- Habeas corpus, granting of writ to guardian: RCW 7.36.020.*
- Incapacitated person, appearance by guardian: RCW 4.08.060.*
- Industrial insurance benefits, appointment of guardian to manage: RCW 51.04.070.*
- Investments, authorized*
- housing authority bonds: RCW 35.82.220.*
 - United States corporation bonds: RCW 39.60.010.*
- Jurors, challenge of, guardian and ward relationship ground for implied bias: RCW 4.44.180.*
- Limitation of actions by ward against guardian, recovery of real estate sold by guardian: RCW 4.16.070.*
- Mental illness, proceedings: Chapter 71.05 RCW.*
- Minor's personal service contracts, recovery by guardian barred: RCW 26.28.050.*
- Motor vehicle financial responsibility, release by injured minor executed by guardian: RCW 46.29.120.*
- Name, action for change of—Fees: RCW 4.24.130.*
- Partition: Chapter 7.52 RCW.*
- Public assistance grants, appointment of guardian to receive: RCW 74.08.280, 74.12.250.*
- Real estate licenses, guardian exemption: RCW 18.85.151.*
- Savings and loan association, guardian may be member of: RCW 33.20.060.*
- Seduction, action for seduction of ward: RCW 4.24.020.*
- State hospital patients, superintendent custodian of estate: RCW 72.23.230.*
- Support and care of dependent child, liability of guardian, procedure, judgment: RCW 13.34.160, 13.34.161.*
- Uniform veterans' guardianship act: Chapter 73.36 RCW.*
- Veterans: RCW 73.04.140.*
- Volunteer firefighters' relief, appointment of guardian for firefighter: RCW 41.24.140.*
- Washington uniform transfers to minors act: Chapter 11.114 RCW.*
- Witness, guardian as: RCW 5.60.030.*
- Wrongfully obtaining property: RCW 9A.56.010.*

ARTICLE 1
GENERAL PROVISIONS

11.130.001 Intent. It is the intent of the legislature to protect the liberty and autonomy of all people of this state, and to enable them to exercise their rights under the law to the maximum extent, consistent with the capacity of each person.

The legislature recognizes that people with incapacities have unique abilities and needs, and that some people with incapacities cannot exercise their rights or provide for their basic needs without the help of a guardian. However, their liberty and autonomy should be restricted through guardianship, conservatorship, emergency guardianship, emergency conservatorship, and other protective arrangements only to the minimum extent necessary to adequately provide for their own health or safety, or to adequately manage their financial affairs. [2020 c 312 § 801.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.005 Short title. This chapter may be cited as the uniform guardianship, conservatorship, and other protective arrangements act. [2019 c 437 § 101.]

11.130.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adult" means an individual at least eighteen years of age or an emancipated individual under eighteen years of age.

(2) "Adult subject to conservatorship" means an adult for whom a conservator has been appointed under this chapter.

(3) "Adult subject to guardianship" means an adult for whom a guardian has been appointed under this chapter.

(4) "Claim" includes a claim against an individual or conservatorship estate, whether arising in contract, tort, or otherwise.

(5) "Conservator" means a person appointed by a court to make decisions with respect to the property or financial affairs of an individual subject to conservatorship. The term includes a co-conservator.

(6) "Conservatorship estate" means the property subject to conservatorship under this chapter.

(7) "Court visitor" means the person appointed by the court pursuant to this chapter.

(8) "Evaluation and treatment facility" has the same meaning as provided in RCW 71.05.020.

(9) "Full conservatorship" means a conservatorship that grants the conservator all powers available under this chapter.

(10) "Full guardianship" means a guardianship that grants the guardian all powers available under this chapter.

(11) "Guardian" means a person appointed by the court to make decisions with respect to the personal affairs of an individual. The term includes a co-guardian but does not include a guardian ad litem.

(12) "Guardian ad litem" means a person appointed to inform the court about, or to represent, the needs and best interests of a minor.

(13) "Individual subject to conservatorship" means an adult or minor for whom a conservator has been appointed under this chapter.

(14) "Individual subject to guardianship" means an adult or minor for whom a guardian has been appointed under this chapter.

(15) "Less restrictive alternative" means an approach to meeting an individual's needs which restricts fewer rights of the individual than would the appointment of a guardian or conservator. The term includes supported decision making, appropriate technological assistance, appointment of a representative payee, and appointment of an agent by the individ-

ual, including appointment under a power of attorney for health care or power of attorney for finances.

(16) "Letters of office" means a record issued by a court certifying a guardian's or conservator's authority to act.

(17) "Limited conservatorship" means a conservatorship that grants the conservator less than all powers available under this chapter, grants powers over only certain property, or otherwise restricts the powers of the conservator.

(18) "Limited guardianship" means a guardianship that grants the guardian less than all powers available under this chapter or otherwise restricts the powers of the guardian.

(19) "Long-term care facility" has the same meaning as provided in RCW 70.129.010.

(20) "Minor" means an unemancipated individual under eighteen years of age.

(21) "Minor subject to conservatorship" means a minor for whom a conservator has been appointed under this chapter.

(22) "Minor subject to guardianship" means a minor for whom a guardian has been appointed under this chapter.

(23) "Notice party" means a person entitled to notice under this chapter or otherwise determined by the court to be entitled to notice.

(24) "Parent" does not include an individual whose parental rights have been terminated.

(25) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(26) "Professional guardian or conservator" means a guardian or conservator appointed under this chapter who is not a relative of the person subject to guardianship or conservatorship established under this chapter and who charges fees for carrying out the duties of court-appointed guardian or conservator for three or more persons.

(27) "Property" includes tangible and intangible property.

(28) "Protective arrangement instead of conservatorship" means a court order entered under RCW 11.130.590.

(29) "Protective arrangement instead of guardianship" means a court order entered under RCW 11.130.585.

(30) "Protective arrangement under Article 5 of this chapter" means a court order entered under RCW 11.130.585 or 11.130.590.

(31) "Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(32) "Relative" means any person related by blood or by law to the person subject to guardianship, conservatorship, or other protective arrangements.

(33) "Respondent" means an individual for whom appointment of a guardian or conservator or a protective arrangement instead of guardianship or conservatorship is sought.

(34) "Sign" means, with present intent to authenticate or adopt a record:

(a) To execute or adopt a tangible symbol; or

(b) To attach to or logically associate with the record an electronic symbol, sound, or process.

(35) "Special agent" means the person appointed by the court pursuant to RCW 11.130.375 or 11.130.635.

(36) "Standby guardian" means a person appointed by the court under RCW 11.130.220.

(37) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe.

(38) "Supported decision making" means assistance from one or more persons of an individual's choosing in understanding the nature and consequences of potential personal and financial decisions, which enables the individual to make the decisions, and in communicating a decision once made if consistent with the individual's wishes.

(39) "Verified receipt" is a verified receipt signed by the custodian of funds stating that a savings and loan association or bank, trust company, escrow corporation, or other corporations approved by the court hold the cash or securities of the individual subject to conservatorship subject to withdrawal only by order of the court.

(40) "Visitor" means a court visitor. [2022 c 243 § 5; 2020 c 312 § 301; 2019 c 437 § 102.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.015 Supplemental principles of law and equity applicable. Unless displaced by a particular provision of this chapter, the principles of law and equity supplement its provisions. [2019 c 437 § 103.]

11.130.020 Subject matter jurisdiction. (1) Except to the extent jurisdiction is precluded by the uniform child custody jurisdiction and enforcement act (chapter 26.27 RCW), the superior court of each county has jurisdiction over a guardianship for a minor domiciled or present in this state. The court has jurisdiction over a conservatorship or protective arrangement instead of conservatorship for a minor domiciled or having property in this state.

(2) The superior court of each county has jurisdiction over a guardianship, conservatorship, or protective arrangement under Article 5 of this chapter for an adult as provided in the uniform adult guardianship and protective proceedings jurisdiction act (chapter 11.90 RCW).

(3) After notice is given in a proceeding for a guardianship, conservatorship, or protective arrangement under Article 5 of this chapter and until termination of the proceeding, the court in which the petition is filed has:

(a) Exclusive jurisdiction to determine the need for the guardianship, conservatorship, or protective arrangement;

(b) Exclusive jurisdiction to determine how property of the respondent must be managed, expended, or distributed to or for the use of the respondent, an individual who is dependent in fact on the respondent, or other claimant;

(c) Nonexclusive jurisdiction to determine the validity of a claim against the respondent or property of the respondent or a question of title concerning the property; and

(d) If a guardian or conservator is appointed, exclusive jurisdiction over issues related to administration of the guardianship or conservatorship.

(4) A court that appoints a guardian or conservator, or authorizes a protective arrangement under Article 5 of this chapter, has exclusive and continuing jurisdiction over the proceeding until the court terminates the proceeding or the

(2022 Ed.)

appointment or protective arrangement expires by its terms. [2019 c 437 § 104.]

11.130.025 Transfer of proceeding. (1) This section does not apply to a guardianship or conservatorship for an adult that is subject to the transfer provisions of the uniform adult guardianship and protective proceedings jurisdiction act (chapter 11.90 RCW).

(2) After appointment of a guardian or conservator, the court that made the appointment may transfer the proceeding to a court in another county in this state or another state if transfer is in the best interest of the individual subject to the guardianship or conservatorship.

(3) If a proceeding for a guardianship or conservatorship is pending in another state or a foreign country and a petition for guardianship or conservatorship for the same individual is filed in a court in this state, the court shall notify the court in the other state or foreign country and, after consultation with that court, assume or decline jurisdiction, whichever is in the best interest of the respondent.

(4) A guardian or conservator appointed in another state or country may petition the court for appointment as a guardian or conservator in this state for the same individual if jurisdiction in this state is or will be established. The appointment may be made on proof of appointment in the other state or foreign country and presentation of a certified copy of the part of the court record in the other state or country specified by the court in this state.

(5) Notice of hearing on a petition under subsection (4) of this section, together with a copy of the petition, must be given to the respondent, if the respondent is at least twelve years of age at the time of the hearing, and to the persons that would be entitled to notice if the procedures for appointment of a guardian or conservator under this chapter were applicable. The court shall make the appointment unless it determines the appointment would not be in the best interest of the respondent.

(6) Not later than fourteen days after appointment under subsection (5) of this section, the guardian or conservator shall give a copy of the order of appointment to the individual subject to guardianship or conservatorship, if the individual is at least twelve years of age, and to all persons given notice of the hearing on the petition. [2019 c 437 § 105.]

11.130.030 Venue. (1) Venue for a guardianship proceeding for a minor is in:

(a) The county in which the minor resides or is present at the time the proceeding commences; or

(b) The county in which another proceeding concerning the custody or parental rights of the minor is pending.

(2) Venue for a guardianship proceeding or protective arrangement instead of guardianship for an adult is in:

(a) The county in which the respondent resides;

(b) If the respondent has been admitted to an institution by court order, the county in which the court is located; or

(c) If the proceeding is for appointment of an emergency guardian for an adult, the county in which the respondent is present.

(3) Venue for a conservatorship proceeding or protective arrangement instead of conservatorship is in:

(a) The county in which the respondent resides, whether or not a guardian has been appointed in another county or other jurisdiction; or

(b) If the respondent does not reside in this state, in any county in which property of the respondent is located.

(4) If proceedings under this chapter are brought in more than one county, the court of the county in which the first proceeding is brought has the exclusive right to proceed unless the court determines venue is properly in another court or the interest of justice otherwise requires transfer of the proceeding. [2019 c 437 § 106.]

11.130.035 Practice in court. (1) Except as otherwise provided in this chapter, the rules of evidence and civil procedure, including rules concerning appellate review, govern a proceeding under this chapter.

(2) If proceedings for a guardianship, conservatorship, or protective arrangement under Article 5 of this chapter for the same individual are commenced or pending in the same court, the proceedings may be consolidated.

(3) An adult respondent may demand a jury trial in a proceeding under this chapter on the issue of whether a basis exists for the appointment of a guardian under RCW 11.130.265 or a conservator under RCW 11.130.360(2) and on the rights to be retained or restricted if a guardian or conservator is appointed.

(4) Upon the motion of the respondent or the court visitor, prior to the appointment of a guardian or a conservator or the establishment of a protective arrangement for an adult, or upon the motion of the respondent, guardian, conservator, or any notice party subsequent to such appointment, whenever it appears that the adult respondent could benefit from mediation, the court may require the petitioner, adult respondent, guardian, conservator, and any notice party to participate in mediation pursuant to RCW 11.96A.300. [2020 c 312 § 302; 2019 c 437 § 107.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.037 Presumption of legal capacity. For the purposes of this chapter, an adult is presumed to have legal capacity. [2020 c 312 § 226.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.040 Letters of office. (1) The court shall issue letters of guardianship to a guardian on filing by the guardian of an acceptance of appointment.

(2) The court shall issue letters of conservatorship to a conservator on filing by the conservator of an acceptance of appointment and filing of any required bond or compliance with any other verified receipt required by the court.

(3) Limitations on the powers of a guardian or conservator or on the property subject to conservatorship must be included on the form prescribed by RCW 11.130.660.

(4) The court at any time may limit the powers conferred on a guardian or conservator. The court shall issue new letters of office to reflect the limitation.

(5) A guardian or conservator may not act on behalf of a person under guardianship or conservatorship without valid letters of office.

(6) The clerk of the superior court shall issue letters of guardianship or conservatorship in or substantially in the same form as set forth in RCW 11.130.660.

(7) Letters of office issued to a guardian or conservator who is a nonresident of this state must include the name and contact information for the resident agent of the guardian or conservator, appointed pursuant to RCW 11.130.090(1)(c).

(8) This chapter does not affect the validity of letters of office issued under *chapter 11.88 RCW prior to January 1, 2022. [2021 c 65 § 104; 2020 c 312 § 303; 2019 c 437 § 108.]

***Reviser's note:** Chapter 11.88 RCW was repealed by 2020 c 312 § 904, effective January 1, 2022.

Explanatory statement—2021 c 65: See note following RCW 53.54.030.

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.045 Effect of acceptance of appointment. On acceptance of appointment, a guardian or conservator submits to personal jurisdiction of the court in this state in any proceeding relating to the guardianship or conservatorship. [2019 c 437 § 109.]

11.130.050 Co-guardian—Co-conservator. (1) The court at any time may appoint a co-guardian or co-conservator to serve immediately or when a designated event occurs.

(2) A co-guardian or co-conservator appointed to serve immediately may act when that co-guardian or co-conservator complies with RCW 11.130.040.

(3) A co-guardian or co-conservator appointed to serve when a designated event occurs may act when:

(a) The event occurs; and

(b) That co-guardian or co-conservator complies with RCW 11.130.040.

(4) Unless an order of appointment under subsection (1) of this section or subsequent order states otherwise, co-guardians or co-conservators shall make decisions jointly. [2019 c 437 § 110.]

11.130.055 Judicial appointment of successor guardian or successor conservator. (1) The court at any time may appoint a successor guardian or successor conservator to serve immediately or when a designated event occurs.

(2) A person entitled under RCW 11.130.190 or 11.130.270 to petition the court to appoint a guardian may petition the court to appoint a successor guardian. A person entitled under RCW 11.130.365 to petition the court to appoint a conservator may petition the court to appoint a successor conservator.

(3) A successor guardian or successor conservator appointed to serve when a designated event occurs may act as guardian or conservator when:

(a) The event occurs; and

(b) The successor complies with RCW 11.130.040.

(4) A successor guardian or successor conservator has the predecessor's powers unless otherwise provided by the court. [2019 c 437 § 111.]

11.130.060 Effect of death, removal, or resignation of guardian or conservator. (1) Appointment of a guardian or conservator terminates on the death or removal of the guardian or conservator, or when the court under subsection (2) of

this section approves a resignation of the guardian or conservator.

(2) A guardian or conservator must petition the court to resign. The petition may include a request that the court appoint a successor. Resignation of a guardian or conservator is effective on the date the resignation is approved by the court.

(3) Death, removal, or resignation of a guardian or conservator does not affect liability for a previous act or the obligation to account for:

(a) An action taken on behalf of the individual subject to guardianship or conservatorship; or

(b) The individual's funds or other property. [2019 c 437 § 112.]

11.130.065 Notice of hearing generally. (1) Except as otherwise provided in RCW 11.130.195, 11.130.220, 11.130.275, 11.130.370, and 11.130.600, if notice of a hearing under this chapter is required, the movant shall give notice of the date, time, and place of the hearing to the person to be notified unless otherwise ordered by the court for good cause. Except as otherwise provided in this chapter, notice must be given in compliance with the local superior court's rule of civil procedure at least fourteen days before the hearing.

(2) Proof of notice of a hearing under this chapter must be made before or at the hearing and filed in the proceeding.

(3) Notice of a hearing under this chapter must be in at least sixteen-point font, in plain language, and, to the extent feasible, in a language in which the person to be notified is proficient. [2019 c 437 § 113.]

11.130.070 Waiver of notice. (1) Except as otherwise provided in subsection (2) of this section, a person may waive notice under this chapter in a record signed by the person or person's attorney and filed in the proceeding.

(2) A respondent, individual subject to guardianship, individual subject to conservatorship, or individual subject to a protective arrangement under Article 5 of this chapter may not waive notice under this chapter. [2019 c 437 § 114.]

11.130.075 Guardian ad litem. The court at any time may appoint a guardian ad litem for an individual if the court determines the individual's interest otherwise would not be adequately represented. If no conflict of interest exists, a guardian ad litem may be appointed to represent multiple individuals or interests. The guardian ad litem may not be the same individual as the attorney representing the respondent. The court shall state the duties of the guardian ad litem and the reasons for the appointment. [2019 c 437 § 115.]

11.130.080 Request for notice. (1) A person may file with the court a request for notice under this chapter if the person is:

(a) Not otherwise entitled to notice; and

(b) Interested in the welfare of a respondent, individual subject to guardianship or conservatorship, or individual subject to a protective arrangement under Article 5 of this chapter.

(2) A request under subsection (1) of this section must include a statement showing the interest of the person making

(2022 Ed.)

the request and the address of the person or an attorney for the person to whom notice is to be given.

(3) If the court approves a request under subsection (1) of this section, the approved individual shall give notice of the approval to the guardian or conservator, if one has been appointed, or the respondent if no guardian or conservator has been appointed. [2020 c 312 § 312; 2019 c 437 § 116.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.085 Disclosure of bankruptcy or criminal history. (1) Before accepting appointment as a guardian or conservator, a person shall disclose to the court whether the person:

(a) Is or has been a debtor in a bankruptcy, insolvency, or receivership proceeding;

(b) Has been convicted of:

(i) A felony;

(ii) A crime involving dishonesty, neglect, violence, or use of physical force; or

(iii) Other crimes relevant to the functions the individual would assume as guardian or conservator; or

(c) Has any court finding of a breach of fiduciary duty or a violation of any state's consumer protection act, or violation of any other statute proscribing unfair or deceptive acts or practices in the conduct of any business.

(2) A guardian or conservator that engages or anticipates engaging an agent the guardian or conservator knows has been convicted of a felony, a crime involving dishonesty, neglect, violence, or use of physical force, or other crimes relevant to the functions the agent is being engaged to perform promptly shall disclose that knowledge to the court.

(3) If a conservator engages or anticipates engaging an agent to manage finances of the individual subject to conservatorship and knows the agent is or has been a debtor in a bankruptcy, insolvency, or receivership proceeding, the conservator promptly shall disclose that knowledge to the court.

(4) If a guardian or conservator that engages or anticipates engaging an agent and knows the agent has any court finding of a breach of fiduciary duty or a violation of any state's consumer protection act, or violation of any other statute proscribing unfair or deceptive acts or practices in the conduct of any business, the guardian or conservator promptly shall disclose that knowledge to the court.

(5) A court may not be able to access certain databases. The parties and not the court are responsible for confirming the accuracy of what is represented. [2022 c 243 § 6; 2019 c 437 § 117.]

11.130.090 Qualifications. (1) Any suitable person over the age of twenty-one years, or any parent under the age of twenty-one years or, if the petition is for appointment of a professional guardian or conservator, any individual or guardianship or conservatorship service that meets any certification requirements established by the administrator for the courts, may, if not otherwise disqualified, be appointed guardian or conservator of a person subject to guardianship, conservatorship, or both. A financial institution subject to the jurisdiction of the department of financial institutions and authorized to exercise trust powers, and a federally chartered financial institution when authorized to do so, may be appointed to act as a guardian or conservator of a person sub-

ject to guardianship, conservatorship, or both without having to meet the certification requirements established by the administrator for the courts. No person is qualified to serve as a guardian or conservator who is:

(a) Under eighteen years of age except as otherwise provided herein;

(b)(i) Except as provided otherwise in (b)(ii) of this subsection, convicted of a crime involving dishonesty, neglect, or use of physical force or other crime relevant to the functions the individual would assume as guardian;

(ii) A court may, upon consideration of the facts, find that a relative convicted of a crime is qualified to serve as a guardian or conservator;

(c) A nonresident of this state who has not appointed a resident agent to accept service of process in all actions or proceedings with respect to the estate and caused such appointment to be filed with the court;

(d) A corporation not authorized to act as a fiduciary, guardian, or conservator in the state;

(e) A person whom the court finds unsuitable.

(2) If a guardian, or conservator is not a certified professional guardian, conservator, or financial institution authorized under this section, the guardian or conservator must complete any standardized training video or web cast for lay guardians or conservators made available by the administrative office of the courts and the superior court where the petition is filed unless granted a waiver by the court. The training video or web cast must be provided at no cost to the guardian, or conservator.

(a) If a petitioner requests the appointment of a specific individual to act as a guardian or conservator, the petition for guardianship or conservatorship must include evidence of the successful completion of the required training video or web cast by the proposed guardian or conservator. The superior court may defer the completion of the training requirement to a date no later than ninety days after appointment if the petitioner requests expedited appointment due to emergent circumstances.

(b) If no person is identified to be appointed guardian or conservator at the time the petition is filed, then the court must require that the petitioner identify within fourteen days from the filing of the petition a specific individual to act as guardian subject to the training requirements set forth herein. [2019 c 437 § 118.]

11.130.095 Multiple nominations. If a respondent or other person makes more than one nomination of a guardian or conservator, the latest in time governs. [2019 c 437 § 119.]

11.130.100 Compensation and expenses—In general.

(1) Unless otherwise compensated or reimbursed, an attorney for a respondent in a proceeding under this chapter is entitled to reasonable compensation for services and reimbursement of reasonable expenses from the property of the respondent.

(2) Unless otherwise compensated or reimbursed, an attorney or other person whose services resulted in an order beneficial to an individual subject to guardianship or conservatorship or for whom a protective arrangement under Article 5 of this chapter was ordered is entitled to reasonable compensation for services and reimbursement of reasonable expenses from the property of the individual.

(3) Where the person subject to guardianship or conservatorship is a department of social and health services client, or health care authority client, and is required to contribute a portion of their income towards the cost of long-term care services or room and board, the amount of compensation or reimbursement shall not exceed the amount allowed by the department of social and health services or health care authority by rule.

(4) Where the person subject to guardianship or conservatorship receives guardianship, conservatorships, or other protective services from the *office of public guardianship, the amount of compensation or reimbursement shall not exceed the amount allowed by the *office of public guardianship.

(5) The court must approve compensation and expenses payable under this section before payment. Approval is not required before a service is provided or an expense is incurred.

(6) If the court dismisses a petition under this chapter and determines the petition was filed in bad faith, the court may assess the cost of any court-ordered professional evaluation or court visitor against the petitioner. [2020 c 312 § 304; 2019 c 437 § 120.]

**Reviser's note:* The "office of public guardianship" was renamed the "office of public guardianship and conservatorship" by 2020 c 312 § 403, effective January 1, 2022.

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.105 Compensation of guardian or conservator.

(1) Subject to court approval, a guardian is entitled to reasonable compensation for services as guardian and to reimbursement for room, board, clothing, and other appropriate expenses advanced for the benefit of the individual subject to guardianship. The court shall determine if the fees charged by a guardian and conservator are just and reasonable.

(2) Subject to court approval, a conservator is entitled to reasonable compensation for services and reimbursement for appropriate expenses from the property of the individual subject to conservatorship.

(3) In determining reasonable compensation for a guardian or conservator, the court, or a conservator in determining reasonable compensation for a guardian as provided in subsection (1) of this section, shall approve compensation that shall not exceed the typical amounts paid for comparable services in the community, at a rate for which the service can be performed in the most efficient and cost-effective manner, considering:

(a) The necessity and quality of the services provided;

(b) The experience, training, professional standing, and skills of the guardian or conservator;

(c) The difficulty of the services performed, including the degree of skill and care required;

(d) The conditions and circumstances under which a service was performed, including whether the service was provided outside regular business hours or under dangerous or extraordinary conditions;

(e) The effect of the services on the individual subject to guardianship or conservatorship;

(f) The extent to which the services provided were or were not consistent with the guardian's plan under RCW

11.130.340 or conservator's plan under RCW 11.130.510; and

(g) The fees customarily paid to a person that performs a like service in the community.

(4) A guardian or conservator need not use personal funds of the guardian or conservator for the expenses of the individual subject to guardianship or conservatorship.

(5) Where the person subject to guardianship or conservatorship is a department of social and health services client, or health care authority client, and is required to contribute a portion of their income towards the cost of long-term care services or room and board, the amount of compensation or reimbursement shall not exceed the amount allowed by the department of social and health services or health care authority by rule.

(6) Where the person subject to guardianship or conservatorship receives guardianship, conservatorship, or other protective services from the *office of public guardianship, the amount of compensation or reimbursement shall not exceed the amount allowed by the *office of public guardianship.

(7) If an individual subject to guardianship or conservatorship seeks to modify or terminate the guardianship or conservatorship or remove the guardian or conservator, the court may order compensation to the guardian or conservator for time spent opposing modification, termination, or removal only to the extent the court determines the opposition was reasonably necessary to protect the interests of the individual subject to guardianship or conservatorship. [2020 c 312 § 305; 2019 c 437 § 121.]

***Reviser's note:** The "office of public guardianship" was renamed the "office of public guardianship and conservatorship" by 2020 c 312 § 403, effective January 1, 2022.

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.110 Liability of guardian or conservator for act of individual subject to guardianship or conservatorship. A guardian or conservator is not personally liable to another person solely because of the guardianship or conservatorship for an act or omission of the individual subject to guardianship or conservatorship. [2019 c 437 § 122.]

11.130.115 Petition after appointment for instruction or ratification. (1) A guardian or conservator may petition the court for instruction concerning fiduciary responsibility or ratification of a particular act related to the guardianship or conservatorship.

(2) Fourteen days after notice of a petition under subsection (1) of this section, the court may give an instruction and issue an appropriate order.

(3) The petitioner must provide reasonable notice of the petition and hearing to the individual subject to a guardianship or conservatorship and any notice party. [2020 c 312 § 306; 2019 c 437 § 123.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.120 Third-party acceptance of authority of guardian or conservator. (1) A person must not recognize the authority of a guardian or conservator to act on behalf of an individual subject to guardianship or conservatorship if:

(a) The person has actual knowledge or a reasonable belief that the letters of office of the guardian or conservator are invalid or the conservator or guardian is exceeding or improperly exercising authority granted by the court; or

(b) The person has actual knowledge that the individual subject to guardianship or conservatorship is subject to physical or financial abuse, neglect, exploitation, or abandonment by the guardian or conservator or a person acting for or with the guardian or conservator.

(2) A person may refuse to recognize the authority of a guardian or conservator to act on behalf of an individual subject to guardianship or conservatorship if:

(a) The guardian's or conservator's proposed action would be inconsistent with this chapter; or

(b) The person makes, or has actual knowledge that another person has made, a report to the department of children, youth, and families or the department of social and health services stating a good faith belief that the individual subject to guardianship or conservatorship is subject to physical or financial abuse, neglect, exploitation, or abandonment by the guardian or conservator or a person acting for or with the guardian or conservator.

(3) A person that refuses to accept the authority of a guardian or conservator in accordance with subsection (2) of this section may report the refusal and the reason for refusal to the court. The court on receiving the report shall consider whether removal of the guardian or conservator or other action is appropriate.

(4) A guardian or conservator may petition the court to require a third party to accept a decision made by the guardian or conservator on behalf of the individual subject to guardianship or conservatorship.

(5) If the court determines that a third party has failed to recognize the legitimate authority of a guardian or conservator, or requires a third party to accept a decision made by the guardian on behalf of the individual subject to guardianship, the court may order that third party to compensate the guardian or conservator, for the time spent only to the extent the court determines the opposition was reasonably necessary to protect the interests of the individual subject to guardianship. [2020 c 312 § 313; 2019 c 437 § 124.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.125 Use of agent by guardian or conservator.

(1) Except as otherwise provided in subsection (3) of this section, a guardian or conservator may delegate a power to an agent which a prudent guardian or conservator of comparable skills could delegate prudently under the circumstances if the delegation is consistent with the guardian's or conservator's fiduciary duties and the guardian's plan under RCW 11.130.340 or the conservator's plan under RCW 11.130.510.

(2) In delegating a power under subsection (1) of this section, the guardian or conservator shall exercise reasonable care, skill, and caution in:

(a) Selecting the agent;

(b) Establishing the scope and terms of the agent's work in accordance with the guardian's plan under RCW 11.130.340 or the conservator's plan under RCW 11.130.510;

(c) Monitoring the agent's performance and compliance with the delegation;

(d) Redressing an act or omission of the agent which would constitute a breach of the guardian's or conservator's duties if done by the guardian or conservator; and

(e) Ensuring a background check is conducted on the agent, or conducted on persons employed by the agent when those persons are providing services to the individual subject to a guardianship or conservatorship.

(3) A guardian or conservator may not delegate all powers to an agent.

(4) In performing a power delegated under this section, an agent shall:

(a) Exercise reasonable care to comply with the terms of the delegation and use reasonable care in the performance of the power; and

(b) If the guardian or conservator has delegated to the agent the power to make a decision on behalf of the individual subject to guardianship or conservatorship, use the same decision-making standard the guardian or conservator would be required to use.

(5) By accepting a delegation of a power under subsection (1) of this section from a guardian or conservator, an agent submits to the personal jurisdiction of the courts of this state in an action involving the agent's performance as agent.

(6) A guardian or conservator that delegates and monitors a power in compliance with this section is not liable for the decision, act, or omission of the agent. [2019 c 437 § 125.]

11.130.130 Temporary substitute guardian or conservator. (1) The court may appoint a temporary substitute guardian for an individual subject to guardianship for a period not exceeding six months if:

(a) A proceeding to remove a guardian for the individual is pending; or

(b) The court finds a guardian is not effectively performing the guardian's duties and the welfare of the individual requires immediate action.

(2) The court may appoint a temporary substitute conservator for an individual subject to conservatorship for a period not exceeding six months if:

(a) A proceeding to remove a conservator for the individual is pending; or

(b) The court finds that a conservator for the individual is not effectively performing the conservator's duties and the welfare of the individual or the conservatorship estate requires immediate action.

(3) The court shall hold a hearing to appoint a temporary substitute guardian pursuant to subsection (1)(a) or (b) of this section, or to appoint a temporary substitute conservator pursuant to subsection (2)(a) or (b) of this section. The court shall give notice under RCW 11.130.065 to the adult subject to guardianship or conservatorship and to any other person the court determines should receive notice. The adult subject to guardianship or conservatorship shall have the right to attend the hearing and to be represented by counsel of the adult subject to guardianship or conservatorship's choosing.

(4) Except as otherwise ordered by the court, a temporary substitute guardian or temporary substitute conservator appointed under this section has the powers stated in the order of appointment of the guardian or conservator. The authority of the existing guardian or conservator is suspended

for as long as the temporary substitute guardian or conservator has authority.

(5) The court shall give notice of appointment of a temporary substitute guardian or temporary substitute conservator, not later than five days after the appointment, to:

(a) The individual subject to guardianship or conservatorship;

(b) The affected guardian or conservator; and

(c) In the case of a minor, each parent of the minor and any person currently having care or custody of the minor.

(6) The court may remove a temporary substitute guardian or temporary substitute conservator at any time. The temporary substitute guardian or temporary substitute conservator shall make any report the court requires. [2019 c 437 § 126.]

11.130.135 Registration of order—Effect. (1) If a guardian has been appointed in another state for an individual, and a petition for guardianship for the individual is not pending in this state, the guardian appointed in the other state, after giving notice to the appointing court, may register the guardianship order in this state by filing as a foreign judgment, in a court of an appropriate county of this state, certified copies of the order and letters of office.

(2) If a conservator has been appointed in another state for an individual, and a petition for conservatorship for the individual is not pending in this state, the conservator appointed for the individual in the other state, after giving notice to the appointing court, may register the conservatorship in this state by filing as a foreign judgment, in a court of a county in which property belonging to the individual subject to conservatorship is located, certified copies of the order of conservatorship, letters of office, and any bond or other verified receipt required by the court.

(3) On registration under this section of a guardianship or conservatorship order from another state, the guardian or conservator may exercise in this state all powers authorized in the order except as prohibited by this chapter and law of this state other than this chapter. If the guardian or conservator is not a resident of this state, the guardian or conservator may maintain an action or proceeding in this state subject to any condition imposed by this state on an action or proceeding by a nonresident party.

(4) The court may grant any relief available under this chapter and law of this state other than this chapter to enforce an order registered under this section. [2019 c 437 § 127.]

11.130.140 Grievance or complaint against guardian or conservator. (1) An individual who is subject to guardianship or conservatorship, or person interested in the welfare of an individual subject to guardianship or conservatorship, that reasonably believes the guardian or conservator is breaching the guardian's or conservator's fiduciary duty or otherwise acting in a manner inconsistent with this chapter may file a grievance in a record with the court.

(2)(a) An unrepresented person or entity may submit a complaint to the court. Complaints must be addressed to one of the following designees of the court: The clerk of the court having jurisdiction in the guardianship, the court administrator, or the guardianship monitoring program, and must identify the complainant and the person who is the subject of the

guardianship or conservatorship. The complaint must also provide the complainant's address, the case number (if available), and the address of the person subject to a guardianship or conservatorship (if available). The complaint must state facts to support the claim.

(b) By the next judicial day after receipt of a complaint from an unrepresented person, the court's designee must ensure the original complaint is filed and deliver the complaint to the court.

(c) Within fourteen days of being presented with a complaint, the court must enter an order to do one or more of the following actions:

(i) To show cause, with fourteen days' notice, directing the guardian or conservator to appear at a hearing set by the court in order to respond to the complaint;

(ii) To appoint a court visitor or other court representative to investigate the issues raised by the complaint or to take any emergency action the court deems necessary to protect the person subject to a guardianship or conservatorship until a hearing can be held;

(iii) To dismiss the complaint without scheduling a hearing, if it appears to the court that the complaint: Is without merit on its face; is filed in other than good faith; is filed for an improper purpose; regards issues that have already been adjudicated; or is frivolous. In making a determination, the court may review the matter and consider previous behavior of the complainant that is documented in the guardianship or conservatorship record;

(iv) To direct the guardian or conservator to provide, in not less than fourteen days, a written report to the court on the issues raised in the complaint;

(v) To defer consideration of the complaint until the next regularly scheduled hearing in the guardianship or conservatorship, if the date of that hearing is within the next three months, provided that there is no indication that the person subject to a guardianship or conservatorship will suffer physical, emotional, financial, or other harm as a result of the court's deferral of consideration;

(vi) To order other action, in the court's discretion, in addition to doing one or more of the actions set out in this subsection.

(3) Subject to subsection (4) of this section, after receiving a grievance under subsection (1) of this section, the court:

(a) Shall promptly review the grievance against a guardian and shall act to protect the autonomy, values, preferences, and independence of the individual subject to guardianship or conservatorship;

(b) Shall schedule a hearing if the individual subject to guardianship or conservatorship is an adult and the grievance supports a reasonable belief that:

(i) Removal of the guardian and appointment of a successor may be appropriate under RCW 11.130.350;

(ii) Termination or modification of the guardianship may be appropriate under RCW 11.130.355;

(iii) Removal of the conservator and appointment of a successor may be appropriate under RCW 11.130.565;

(iv) Termination or modification of the conservatorship may be appropriate under RCW 11.130.570; or

(v) A hearing is necessary to resolve the allegations set forth in the grievance; and

(c) May take any action supported by the evidence, including:

(i) Ordering the guardian or conservator to provide the court a report, accounting, inventory, updated plan, or other information;

(ii) Appointing a court visitor;

(iii) Appointing an attorney for the individual subject to guardianship or conservatorship; or

(iv) Holding a hearing.

(4) The court may decline to act under subsection (3) of this section if a similar grievance was filed within the six months preceding the filing of the current grievance and the court followed the procedures of subsection (3) of this section in considering the earlier grievance; and may levy necessary sanctions, including but not limited to the imposition of reasonable attorney fees, costs, striking pleadings, or other appropriate relief, if after consideration the court finds that the grievance is made for reason to harass, delay, with malice, or other bad faith.

(5) In any court action under this section where the court finds the professional guardian or conservator breached a fiduciary duty, the court must direct the clerk of the court to send a copy of the order entered under this section to the certified professional guardianship board.

(6) A court shall not dismiss a grievance that has been filed against a guardian or conservator due to an inability to resolve the grievance in a timely manner. [2020 c 312 § 307; 2019 c 437 § 128.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.145 Delegation by parent. Except as otherwise provided in RCW 11.125.410, a parent of a minor, by a power of attorney, may delegate to another person for a period not exceeding twenty-four months any of the parent's powers regarding care, custody, or property of the minor, other than power to consent to marriage or adoption. [2019 c 437 § 129.]

11.130.150 Ex parte communications—Removal. A guardian ad litem or visitor shall not engage in ex parte communications with any judicial officer involved in the matter for which he or she is appointed during the pendency of the proceeding, except as permitted by court rule or statute for ex parte motions. Ex parte motions shall be heard in open court on the record. The record may be preserved in a manner deemed appropriate by the county where the matter is heard. The court, upon its own motion, or upon the motion of a party, may consider the removal of any guardian ad litem or visitor who violates this section from any pending case or from any court-authorized registry, and if so removed may require forfeiture of any fees for professional services on the pending case. [2019 c 437 § 130.]

11.130.155 Registry for guardians ad litem and visitors. (1) The superior court of each county shall develop and maintain a registry of persons who are willing and qualified to serve as guardians ad litem and visitors in guardianship and conservatorship matters. The court shall choose as guardian ad litem or visitor a person whose name appears on the registry in a system of consistent rotation, except in extraordinary circumstances such as the need for particular exper-

tise. The court shall develop procedures for periodic review of the persons on the registry and for probation, suspension, or removal of persons on the registry for failure to perform properly their duties as guardian ad litem or visitor. In the event the court does not select the person next on the list, it shall include in the order of appointment a written reason for its decision.

(2) To be eligible for the registry a person shall:

(a) Present a written statement outlining his or her background and qualifications. The background statement shall include, but is not limited to, the following information:

(i) Level of formal education;

(ii) Training related to the duties of a guardian ad litem or visitor;

(iii) Number of years' experience as a guardian ad litem or visitor;

(iv) Number of appointments as a guardian ad litem or visitor and the county or counties of appointment;

(v) Criminal history, as defined in RCW 9.94A.030; and

(vi) Evidence of the person's knowledge, training, and experience in each of the following: Needs of impaired elderly people, physical disabilities, mental illness, developmental disabilities, and other areas relevant to the needs of persons subject to guardianship or conservatorship, legal procedure, and the requirements of this chapter.

The written statement of qualifications shall include the names of any counties in which the person was removed from a guardian ad litem or visitor registry pursuant to a grievance action, and the name of the court and the cause number of any case in which the court has removed the person for cause; and

(b) Complete the training as described in subsection (5) of this section. The training is not applicable to guardians ad litem appointed pursuant to special proceeding rule 98.16W.

(3) The superior court shall remove any person from the guardian ad litem or visitor registry who misrepresents his or her qualifications pursuant to a grievance procedure established by the court.

(4) The background and qualification information shall be updated annually.

(5) The department of social and health services shall convene an advisory group to develop a model lay guardian, guardian ad litem, and visitor training program and shall update the program biennially. The advisory group shall consist of representatives from consumer, advocacy, and professional groups knowledgeable in developmental disabilities, neurological impairment, physical disabilities, mental illness, domestic violence, aging, legal, court administration, the Washington state bar association, and other interested parties.

(6) The superior court shall require utilization of the model program developed by the advisory group as described in subsection (5) of this section to assure that candidates applying for registration as a qualified guardian ad litem or visitor shall have satisfactorily completed training to attain these essential minimum qualifications to act as guardian ad litem or visitor. [2019 c 437 § 131.]

11.130.160 Guardianship/conservatorship summary.

Every order appointing a guardian or conservator and every court order approving accounts or reports filed by a guardian or conservator must include a guardianship/conservatorship summary placed directly below the case caption or on a sep-

arate cover page in or substantially in the same form as set forth in RCW 11.130.665. [2019 c 437 § 132.]

11.130.165 Guardianship/conservatorship courthouse facilitator program. A county may create a guardianship/conservatorship courthouse facilitator program to provide basic services to pro se litigants in guardianship and conservatorship cases. The legislative authority of any county may impose user fees or may impose a surcharge of up to twenty dollars, or both, on superior court cases filed under this chapter, chapter 11.90 RCW, and chapter 73.36 RCW to pay for the expenses of the guardianship/conservatorship courthouse facilitator program. Fees collected under this section shall be collected and deposited in the same manner as other county funds are collected and deposited, and shall be maintained in a separate guardianship/conservatorship courthouse facilitator account to be used as provided in this section. [2019 c 437 § 133.]

11.130.170 Filing fee. (1)(a) The attorney general may petition for the appointment of a guardian, conservator, or other protective arrangement under RCW 11.130.270, 11.130.365, and 11.130.595 in which there is cause to believe that a guardianship, conservatorship, or protective arrangement is necessary and no private party is able and willing to petition.

(b) Prepayment of a filing fee shall not be required in any guardianship, conservatorship, or protective arrangement proceeding brought by the attorney general. Payment of the filing fee shall be ordered from the estate of the respondent person at the hearing on the merits of the petition, unless in the judgment of the court, such payment would impose a hardship upon the respondent, in which case the filing shall be waived.

(2) No filing fee shall be charged by the court for filing a petition for guardianship, conservatorship, or other protective arrangement filed under RCW 11.130.270, 11.130.365, and 11.130.595 if the petition alleges that the respondent has total assets of a value of less than three thousand dollars.

(3) No filing fee shall be charged by the court for filing a petition for guardianship or conservatorship filed under Article 2 of this chapter, where the potential guardian is a relative and not a professional guardian or conservator. [2019 c 437 § 134.]

11.130.175 Guardianships involving veterans. For guardianships involving veterans see chapter 73.36 RCW. [2019 c 437 § 135.]

11.130.180 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and relative shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of

2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2019 c 437 § 136.]

ARTICLE 2
GUARDIANSHIP OF MINOR

11.130.185 Basis for appointment of guardian for minor. (1) A person becomes a guardian for a minor only on appointment by the court.

(2) The court may appoint a guardian for a minor who does not have a guardian if the court finds the appointment is in the minor's best interest and:

(a) Each parent of the minor, after being fully informed of the nature and consequences of guardianship, consents;

(b) All parental rights have been terminated; or

(c) There is clear and convincing evidence that no parent of the minor is willing or able to exercise parenting functions as defined in RCW 26.09.004. [2020 c 312 § 101; 2019 c 437 § 201.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.190 Petition for appointment of guardian for minor. (1) A person interested in the welfare of a minor, including the minor, may petition for appointment of a guardian for the minor.

(2) A petition under subsection (1) of this section must state the petitioner's name, principal residence, current street address, if different, relationship to the minor, interest in the appointment, the name and address of any attorney representing the petitioner, and, to the extent known, the following:

(a) The minor's name, age, principal residence, current street address, if different, and, if different, address of the dwelling in which it is proposed the minor will reside if the appointment is made;

(b) The name and current street address of the minor's parents;

(c) The name and address, if known, of each person that had primary care or custody of the minor for at least sixty days during the two years immediately before the filing of the petition or for at least seven hundred thirty days during the five years immediately before the filing of the petition;

(d) The name and address of any attorney for the minor and any attorney for each parent of the minor;

(e) The legal basis for the guardianship. Factual reasons why the guardianship is sought and would be in the best interest of the minor shall be set out in a separate supplemental declaration;

(f) The name and address of any proposed guardian and the reason the proposed guardian should be selected;

(g) If the minor has property other than personal effects, a general statement of the minor's property with an estimate of its value;

(h) Whether the minor needs an interpreter, translator, or other form of support to communicate effectively with the court or understand court proceedings;

(i) Whether any parent of the minor needs an interpreter, translator, or other form of support to communicate effectively with the court or understand court proceedings; and

(2022 Ed.)

(j) Whether any other proceeding concerning the care or custody of the minor is pending in any court in this state or another jurisdiction.

(3) The court may, upon a showing of good cause, order that the information concerning the reasons for the guardianship contained in the supplemental declaration to the petition and all subsequently filed pleadings and evidence by any party not be served on the minor if the minor is unrepresented. A minor entitled to service under this subsection may request access to the court pleadings and evidence filed in the court record.

(4) Courts may develop forms for the purpose of filing petitions under subsection (1) of this section. [2020 c 312 § 102; 2019 c 437 § 202.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.195 Notice of hearing for appointment of guardian for minor. (1) If a petition is filed under RCW 11.130.190, the court shall schedule a hearing and the petitioner shall:

(a) Serve notice of the date, time, and place of the hearing, together with a copy of the petition and supplemental declaration, personally on each of the following that is not the petitioner:

(i) The minor, if the minor is twelve years of age or older. The court may, upon a showing of good cause, order that information concerning the reasons for the guardianship contained in the petition, the supplemental declaration, and all subsequently filed pleadings and evidence by any party, not be served on the minor if the minor is unrepresented. A minor entitled to service under this subsection may request access to the court pleadings and evidence filed in the court record;

(ii) Each parent of the minor or, if there is none, the adult nearest in kinship who can be found with reasonable diligence;

(iii) Any guardian or person with nonparental custody of the minor issued under *chapter 26.10 RCW; and

(iv) Any other person the court determines should receive personal service of notice; and

(b)(i) Give notice by mail or other action reasonably calculated to give notice under RCW 11.130.065 of the date, time, and place of the hearing, together with a copy of the petition, to:

(A) Any adult with primary care and custody of the minor who is not a parent, guardian, or person with nonparental custody issued under *chapter 26.10 RCW;

(B) Each person that had primary care or custody of the minor for at least sixty days during the two years immediately before the filing of the petition or for at least seven hundred thirty days during the five years immediately before the filing of the petition, if known;

(C) Any person nominated as guardian by the minor, if the minor is twelve years of age or older;

(D) Any nominee of a parent;

(E) Each grandparent and adult sibling of the minor, if known;

(F) Any conservator acting for the minor in any jurisdiction; and

(G) Any other person the court determines.

(ii) The court may waive notice to persons listed under (b)(i) of this subsection for good cause. Good cause includes an allegation that giving notice may risk harm to the minor.

(2) Notice required by subsection (1) of this section must include a statement of the right to request appointment of an attorney for the minor or object to appointment of a guardian and a description of the nature, purpose, and consequences of appointment of a guardian. Notice for the minor must specifically state all rights retained by the minor including the right to request counsel, the right to attend, and the right to participate and communicate with the court. Notice for the minor must also state whether the court has entered any prior order limiting information served upon the minor, and that the minor may ask the court to reconsider the court's order at any time. Notice for the minor must include information on how the minor can respond to the petition.

(3) The court may not grant a petition for guardianship of a minor if notice substantially complying with subsection (1)(a) of this section is not served on:

(a) The minor, if the minor is twelve years of age or older; and

(b) Each parent of the minor, unless the court finds by clear and convincing evidence that the parent cannot with due diligence be located and served or the parent waived, in a record, the right to notice.

(4) If a petitioner is unable to serve notice under subsection (1)(a) of this section on a parent of a minor or alleges that the parent waived, in a record, the right to notice under this section, and in all cases involving a minor twelve years of age and older when the minor is unrepresented, the court shall appoint a court visitor who shall:

(a) Interview the petitioner and the minor;

(b) Meet with the minor and explain the rights retained by the minor as outlined in the notice requirements under this section. The court visitor shall ascertain the minor's views or positions regarding the guardianship and shall file a report with the court regarding the minor's views or positions. If the minor wishes the court to reconsider any prior order limiting information served upon the minor, the court visitor shall inform the court of the minor's request;

(c) If the petitioner alleges the parent cannot be located, ascertain whether the parent cannot be located with due diligence;

(d) Investigate any other matter relating to the petition the court directs; and

(e) Ascertain whether the parent consents to the guardian for the minor. [2020 c 312 § 103; 2019 c 437 § 203.]

*Reviser's note: Chapter 26.10 RCW was repealed by 2020 c 312 § 905, effective January 1, 2021.

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.200 Attorney for minor or parent. (1) The court is not required, but may appoint an attorney to represent a minor who is the subject of a proceeding under RCW 11.130.190 if:

(a) Requested by the minor and the minor is twelve years of age or older;

(b) Recommended by a guardian ad litem; or

(c) The court determines the minor needs representation.

(2) An attorney appointed under subsection (1) of this section shall:

(a) Make a reasonable effort to ascertain the minor's wishes;

(b) Advocate for the minor's wishes to the extent reasonably ascertainable; and

(c) If the minor's wishes are not reasonably ascertainable, advocate for the minor's legal rights.

(3) A minor who is the subject of a proceeding under RCW 11.130.190 may retain an attorney to represent the minor in the proceeding.

(4) A parent of a minor who is the subject of a proceeding under RCW 11.130.190 may retain an attorney to represent the parent in the proceeding.

(5) The court must appoint an attorney to represent a parent of a minor who is the subject of a proceeding under RCW 11.130.190 if:

(a) The parent has appeared in the proceeding;

(b) The parent is indigent; and

(c) Any of the following is true:

(i) The parent objects to appointment of a guardian for the minor; or

(ii) The court determines that counsel is needed to ensure that consent to appointment of a guardian is informed; or

(iii) The court otherwise determines the parent needs representation.

(6) The court must inquire about whether a parent is indigent to ensure that counsel is appointed in a timely manner. For purposes of this section, "indigent" has the same meaning as under RCW 10.101.010.

(7) The court is not required, but may appoint an attorney to represent a parent of a minor who is the subject of a proceeding under RCW 11.130.190, even if the parent is not indigent, if:

(a) The parent objects to appointment of a guardian for the minor;

(b) The court determines that counsel is needed to ensure that consent to appointment of a guardian is informed; or

(c) The court otherwise determines that the parent needs representation.

(8) A party represented by an attorney in proceedings under this article has the right to introduce evidence, to be heard in his or her own behalf, and to examine witnesses. If a party to an action under this article is represented by counsel, no order may be provided to that party for signature without prior notice and provision of the order to counsel. [2019 c 437 § 204.]

11.130.205 Attendance and participation at hearing for appointment of guardian for minor. (1) The court shall allow a minor who is the subject of a hearing under RCW 11.130.195 to attend the hearing and allow the minor to participate in the hearing unless the court determines that:

(a) The minor lacks the ability or maturity to participate meaningfully in the hearing; or

(b) Attendance would be harmful to the minor.

(2) Unless excused by the court for good cause, the person proposed to be appointed as guardian for a minor shall attend a hearing under RCW 11.130.195.

(3) Each parent of a minor who is the subject of a hearing under RCW 11.130.195 has the right to attend the hearing.

(4) A person may request permission to participate in a hearing under RCW 11.130.195. The court may grant the

request, with or without hearing, on determining that it is in the best interest of the minor who is the subject of the hearing. The court may impose appropriate conditions on the person's participation. [2020 c 312 § 104; 2019 c 437 § 205.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.210 Custody orders—Background information to be consulted. (1) Before granting any order under this chapter, the court must consult the judicial information system, if available, to determine the existence of any information and proceedings that are relevant to the placement of the child.

(2) Before entering a final order, the court must:

(a) Direct the department of children, youth, and families to release information regarding all proposed guardians and all adult members of any proposed guardian's household as provided under RCW 13.50.100; and

(b) Require the petitioner to provide the results of an examination of state and national criminal identification data provided by the Washington state patrol criminal identification system as described in chapter 43.43 RCW for all proposed guardians as well as all adult members of the proposed guardian's household. [2022 c 243 § 7; 2020 c 312 § 105; 2019 c 437 § 206.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.215 Order of appointment—Priority of nominee—Limited guardianship for minor. (1) After a hearing under RCW 11.130.195, the court may appoint a guardian for a minor, if appointment is proper under RCW 11.130.185, dismiss the proceeding, or take other appropriate action consistent with this chapter or law of this state other than this chapter.

(2) In appointing a guardian under subsection (1) of this section, the following rules apply:

(a) The court shall appoint a person nominated as guardian by a parent of the minor in a probated will or other record unless the court finds the appointment is contrary to the best interest of the minor. Any "other record" must be a declaration or other sworn document and may include a power of attorney or other sworn statement as to the care, custody, or control of the minor child.

(b) If multiple parents have nominated different persons to serve as guardian, the court shall appoint the nominee whose appointment is in the best interest of the minor, unless the court finds that appointment of none of the nominees is in the best interest of the minor.

(c) If a guardian is not appointed under (a) or (b) of this subsection, the court shall appoint the person nominated by the minor if the minor is twelve years of age or older unless the court finds that appointment is contrary to the best interest of the minor. In that case, the court shall appoint as guardian a person whose appointment is in the best interest of the minor.

(3) In the interest of maintaining or encouraging involvement by a minor's parent in the minor's life, developing self-reliance of the minor, or for other good cause, the court, at the time of appointment of a guardian for the minor or later, on its own or on motion of the minor or other interested person, may create a limited guardianship by limiting the powers otherwise granted by this article to the guardian. Following the

(2022 Ed.)

same procedure, the court may grant additional powers or withdraw powers previously granted.

(4) The court, as part of an order appointing a guardian for a minor, shall state rights retained by any parent of the minor, which shall preserve the parent-child relationship through an order for parent-child visitation and other contact, unless the court finds the relationship should be limited or restricted under RCW 26.09.191; and which may include decision making regarding the minor's health care, education, or other matter, or access to a record regarding the minor.

(5) An order granting a guardianship for a minor must state that each parent of the minor is entitled to notice that:

(a) The guardian has delegated custody of the minor subject to guardianship;

(b) The court has modified or limited the powers of the guardian; or

(c) The court has removed the guardian.

(6) An order granting a guardianship for a minor must identify any person in addition to a parent of the minor which is entitled to notice of the events listed in subsection (5) of this section.

(7) An order granting guardianship for a minor must direct the clerk of the court to issue letters of office to the guardian containing an expiration date which should be the minor's eighteenth birthday. [2022 c 243 § 8; 2020 c 312 § 106; 2019 c 437 § 207.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.220 Standby guardian for minor. (1) A standby guardian appointed under this section may act as guardian, with all duties and powers of a guardian under RCW 11.130.230 and 11.130.235, when no parent of the minor is willing or able to exercise the duties and powers granted to the guardian.

(2) A parent of a minor, in a signed record, may nominate a person to be appointed by the court as standby guardian for the minor. The parent, in a signed record, may state desired limitations on the powers to be granted the standby guardian. The parent, in a signed record, may revoke or amend the nomination at any time before the court appoints a standby guardian.

(3) The court may appoint a standby guardian for a minor on:

(a) Petition by a parent of the minor or a person nominated under subsection (2) of this section; and

(b) Finding that, within two years after the appointment, no parent of the minor likely will be able or willing to perform parenting functions as defined in RCW 26.09.004.

(4) A petition under subsection (3)(a) of this section must include the same information required under RCW 11.130.190 for the appointment of a guardian for a minor.

(5) On filing a petition under subsection (3)(a) of this section, the petitioner shall:

(a) Serve a copy of the petition personally on:

(i) The minor, if the minor is twelve years of age or older, and the minor's attorney, if any;

(ii) Each parent of the minor;

(iii) The person nominated as standby guardian; and

(iv) Any other person the court determines; and

(b) Include with the copy of the petition served under (a) of this subsection a statement of the right to request appoint-

ment of an attorney for the minor or to object to appointment of the standby guardian, and a description of the nature, purpose, and consequences of appointment of a standby guardian.

(6) The court may, upon a showing of good cause, order that the information concerning the reasons for the standby guardianship contained in the petition and all subsequently filed pleadings and evidence by any party not be served on the minor if the minor is unrepresented. A minor entitled to service under this subsection may request access to the court pleadings and evidence filed in the court record.

(7) A person entitled to notice under subsection (5) of this section, not later than sixty days after service of the petition and statement, may object to appointment of the standby guardian by filing an objection with the court and giving notice of the objection to each other person entitled to notice under subsection (5) of this section.

(8) If an objection is filed under subsection (7) of this section, the court shall hold a hearing to determine whether a standby guardian should be appointed and, if so, the person that should be appointed. If no objection is filed, the court may make the appointment.

(9) The court may not grant a petition for a standby guardian of the minor if notice substantially complying with subsection (5) of this section is not served on:

(a) The minor, if the minor is twelve years of age or older; and

(b) Each parent of the minor, unless the court finds by clear and convincing evidence that the parent, in a record, waived the right to notice or cannot be located and served with due diligence.

(10) If a petitioner is unable to serve notice under subsection (5) of this section on a parent of the minor or alleges that a parent of the minor waived the right to notice under this section, the court shall appoint a court visitor who shall:

(a) Interview the petitioner and the minor;

(b) If the petitioner alleges the parent cannot be located and served, ascertain whether the parent cannot be located with due diligence; and

(c) Investigate any other matter relating to the petition the court directs.

(11) If the court finds under subsection (3) of this section that a standby guardian should be appointed, the following rules apply:

(a) The court shall appoint the person nominated under subsection (2) of this section unless the court finds the appointment is contrary to the best interest of the minor.

(b) If the parents have nominated different persons to serve as standby guardian, the court shall appoint the nominee whose appointment is in the best interest of the minor, unless the court finds that appointment of none of the nominees is in the best interest of the minor.

(12) An order appointing a standby guardian under this section must state that each parent of the minor is entitled to notice, and identify any other person entitled to notice, if:

(a) The standby guardian assumes the duties and powers of the guardian;

(b) The guardian delegates custody of the minor;

(c) The court modifies or limits the powers of the guardian; or

(d) The court removes the guardian.

(13) Before assuming the duties and powers of a guardian, a standby guardian must file with the court an acceptance of appointment as guardian and give notice of the acceptance to:

(a) Each parent of the minor, unless the parent, in a record, waived the right to notice or cannot be located and served with due diligence;

(b) The minor, if the minor is twelve years of age or older; and

(c) Any person, other than the parent, having care or custody of the minor.

(14) A person that receives notice under subsection (13) of this section or any other person interested in the welfare of the minor may file with the court an objection to the standby guardian's assumption of duties and powers of a guardian. The court shall hold a hearing if the objection supports a reasonable belief that the conditions for assumption of duties and powers have not been satisfied. [2020 c 312 § 107; 2019 c 437 § 208.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.225 Emergency guardian for minor. (1) On its own, on motion when a guardianship petition is filed under RCW 11.130.190, or on petition by a person interested in a minor's welfare, including the minor, the court may appoint an emergency guardian for the minor if the court finds:

(a) Appointment of an emergency guardian is likely to prevent substantial harm to the minor's health, safety, or welfare; and

(b) No other person appears to have authority, ability, and the willingness to act to prevent substantial harm to the minor's health, safety, or welfare.

(2) The duration of authority of an emergency guardian for a minor may not exceed sixty days and the emergency guardian may exercise only the powers specified in the order of appointment. The emergency guardian's authority may be extended once for not more than sixty days if the court finds that the conditions for appointment of an emergency guardian in subsection (1) of this section continue.

(3) Except as otherwise provided in subsection (4) of this section, reasonable notice of the date, time, and place of a hearing on a motion for or a petition for appointment of an emergency guardian for a minor must be given to:

(a) The minor, if the minor is twelve years of age or older;

(b) Any attorney appointed under RCW 11.130.200;

(c) Each parent of the minor;

(d) Any person, other than a parent, having care or custody of the minor; and

(e) Any other person the court determines.

(4) The court may appoint an emergency guardian for a minor without notice under subsection (3) of this section and a hearing only if the court finds from an affidavit or testimony that the minor's health, safety, or welfare will be substantially harmed before a hearing with notice on the appointment can be held. If the court appoints an emergency guardian without notice to an unrepresented minor or the attorney for a represented minor, notice of the appointment must be given not later than forty-eight hours after the appointment to the individuals listed in subsection (3) of this section. Not

later than five days after the appointment, the court shall hold a hearing on the appropriateness of the appointment.

(5) Appointment of an emergency guardian under this section, with or without notice, is not a determination that a basis exists for appointment of a guardian under RCW 11.130.185.

(6) The court may remove an emergency guardian appointed under this section at any time. The emergency guardian shall make any report the court requires.

(7) Notwithstanding subsection (2) of this section, the court may extend an emergency guardianship pending the outcome of a full hearing under RCW 11.130.190 or 11.130.220.

(8) If a petition for guardianship under RCW 11.130.215 is pending, or is subsequently filed after a petition under this section, the cases shall be linked or consolidated. [2022 c 243 § 1; 2020 c 312 § 108; 2019 c 437 § 209.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.230 Duties of guardian for minor. (1) A guardian for a minor is a fiduciary. Except as otherwise limited by the court, a guardian for a minor has the duties and responsibilities of a parent regarding the minor's support, care, education, health, safety, and welfare. A guardian shall act in the minor's best interest and exercise reasonable care, diligence, and prudence.

(2) A guardian for a minor shall:

(a) Be personally acquainted with the minor and maintain sufficient contact with the minor to know the minor's abilities, limitations, needs, opportunities, and physical and mental health;

(b) Take reasonable care of the minor's personal effects and bring a proceeding for a conservatorship or protective arrangement instead of conservatorship if necessary to protect other property of the minor;

(c) Expend funds of the minor which have been received by the guardian for the minor's current needs for support, care, education, health, safety, and welfare;

(d) Conserve any funds of the minor not expended under (c) of this subsection for the minor's future needs, but if a conservator is appointed for the minor, pay the funds at least quarterly to the conservator to be conserved for the minor's future needs;

(e) Report the condition of the minor and account for funds and other property of the minor in the guardian's possession or subject to the guardian's control, if ordered by the court on its own motion or on application of a person interested in the minor's welfare;

(f) Inform the court of any change in the minor's dwelling or address; and

(g) In determining what is in the minor's best interest, take into account the minor's preferences to the extent actually known or reasonably ascertainable by the guardian. [2020 c 312 § 109; 2019 c 437 § 210.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.235 Powers of guardian for minor. (1) Except as otherwise limited by court order, a guardian of a minor has the powers a parent otherwise would have regarding the minor's support, care, education, health, safety, and welfare.

(2022 Ed.)

(2) Except as otherwise limited by court order, a guardian for a minor may:

(a) Apply for and receive funds and benefits otherwise payable for the support of the minor to the minor's parent, guardian, or custodian under a statutory system of benefits or insurance or any private contract, devise, trust, conservatorship, or custodianship;

(b) Unless inconsistent with a court order entitled to recognition in this state, take custody of the minor and establish the minor's place of dwelling in this state and, after following the process in RCW 26.09.405 through 26.09.560 and on authorization of the court, establish or move the minor's dwelling outside this state;

(c) If the minor is not subject to conservatorship, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel a person to support the minor, pay child support, or make other payments for the benefit of the minor;

(d) Consent to health or other care, treatment, or service for the minor; or

(e) To the extent reasonable, delegate to the minor responsibility for a decision affecting the minor's well-being.

(3) The court may authorize a guardian for a minor to consent to the adoption of the minor if the minor does not have a parent. [2019 c 437 § 211.]

11.130.240 Removal of guardian for minor—Termination of guardianship—Appointment of successor. (1) Guardianship under this chapter for a minor terminates:

(a) On the minor's death, adoption, emancipation, or attainment of majority; or

(b) When the court finds that the basis in RCW 11.130.185 for appointment of a guardian no longer exists, unless the court finds that:

(i) Termination of the guardianship would be harmful to the minor; and

(ii) The minor's interest in the continuation of the guardianship outweighs the interest of any parent of the minor in restoration of the parent's right to make decisions for the minor.

(2) A minor subject to guardianship or a person interested in the welfare of the minor, including a parent, may petition the court to terminate the guardianship, modify the guardianship, remove the guardian and appoint a successor guardian, or remove a standby guardian and appoint a different standby guardian.

(3) A petitioner under subsection (2) of this section shall give notice of the hearing on the petition to the minor, if the minor is twelve years of age or older and is not the petitioner, the guardian, each parent of the minor, and any other person the court determines.

(4) The court shall follow the priorities in RCW 11.130.215(2) when selecting a successor guardian for a minor.

(5) Not later than thirty days after appointment of a successor guardian for a minor, the court shall give notice of the appointment to the minor subject to guardianship, if the minor is twelve years of age or older, each parent of the minor, and any other person the court determines.

(6) When terminating a guardianship for a minor under this section, the court may issue an order providing for tran-

sitional arrangements that will assist the minor with a transition of custody and is in the best interest of the minor.

(7) A guardian for a minor that is removed shall cooperate with a successor guardian to facilitate transition of the guardian's responsibilities and protect the best interest of the minor. [2020 c 312 § 110; 2019 c 437 § 212.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.245 Prior court order validity. (1) This chapter does not affect the validity of any court order issued under chapter 26.10 RCW prior to the repeal of chapter 26.10 RCW. Orders issued under chapter 26.10 RCW prior to the repeal of chapter 26.10 RCW, remain in effect and do not need to be reissued in a new order under this chapter.

(2) All orders issued under chapter 26.10 RCW prior to the effective date of chapter 437, Laws of 2019 remain operative after the effective date of chapter 437, Laws of 2019. After the effective date of chapter 437, Laws of 2019, if an order issued under chapter 26.10 RCW is modified, the modification is subject to the requirements of this chapter. [2021 c 65 § 105; 2020 c 312 § 111; 2019 c 437 § 213.]

Explanatory statement—2021 c 65: See note following RCW 53.54.030.

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.250 Application of the Indian child welfare act. (1) Every petition filed in proceedings under this chapter shall contain a statement alleging whether the child is or may be an Indian child as defined in RCW 13.38.040. If the child is an Indian child, chapter 13.38 RCW shall apply.

(2) Every order or decree entered in any proceeding under this chapter shall contain a finding that the federal Indian child welfare act or chapter 13.38 RCW does or does not apply. Where there is a finding that the federal Indian child welfare act or chapter 13.38 RCW does apply, the decree or order must also contain a finding that all notice, evidentiary requirements, and placement preferences under the federal Indian child welfare act and chapter 13.38 RCW have been satisfied. [2020 c 312 § 113; 2019 c 437 § 214.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.255 Child support. In entering or modifying an order under this chapter, the court may order one or more parents of the child to pay an amount reasonable or necessary for the child's support pursuant to chapter 26.19 RCW. [2019 c 437 § 215.]

11.130.257 Temporary support, restraining, and protective orders—Effect—Support debts to state. (1) In a proceeding under this chapter either party may file a motion for temporary support of children entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amount requested.

(2) In a proceeding under this chapter either party may file a motion for a temporary restraining order or preliminary injunction, providing relief proper in the circumstances, and restraining or enjoining another party from:

(a) Molesting or disturbing the peace of the other party or of any child;

(b) Entering the family home or the home of the other party upon a showing of the necessity therefor;

(c) Knowingly coming within, or knowingly remaining within, a specified distance from a specified location; and

(d) Removing a child from the jurisdiction of the court.

(3) Either party may request a domestic violence protection order or an antiharassment protection order under chapter 7.105 RCW on a temporary basis by filing an appropriate separate civil cause of action. The petitioner shall inform the court of the existence of the action under this title. The court shall set all future protection hearings on the guardianship calendar to be heard concurrent with the action under this title and the clerk shall relate the cases in the case management system. The court may grant any of the relief provided in RCW 7.105.310 except relief pertaining to residential provisions for the children which provisions shall be provided for under this chapter. Ex parte orders issued under this subsection shall be effective for a fixed period not to exceed fourteen days, or upon court order, not to exceed twenty-four days if necessary to ensure that all temporary motions in the case can be heard at the same time.

(4) In issuing the order, the court shall consider the provisions of RCW 9.41.800, and shall order the respondent to surrender, and prohibit the respondent from possessing, all firearms, dangerous weapons, and any concealed pistol license as required in RCW 9.41.800. Such orders may only be made in the civil protection case related to the action under this title.

(5) The court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury could result if an order is not issued until the time for responding has elapsed.

(6) The court may issue a temporary restraining order or preliminary injunction and an order for temporary support in such amounts and on such terms as are just and proper in the circumstances.

(7) A temporary order, temporary restraining order, or preliminary injunction:

(a) Does not prejudice the rights of a party or any child which are to be adjudicated at subsequent hearings in the proceeding;

(b) May be revoked or modified;

(c) Terminates when the final order is entered or when the motion is dismissed;

(d) May be entered in a proceeding for the modification of an existing order.

(8) A support debt owed to the state for public assistance expenditures which has been charged against a party pursuant to RCW 74.20A.040 and/or 74.20A.055 shall not be merged in, or otherwise extinguished by, the final decree or order, unless the office of support enforcement has been given notice of the final proceeding and an opportunity to present its claim for the support debt to the court and has failed to file an affidavit as provided in this subsection. Notice of the proceeding shall be served upon the office of support enforcement personally, or by certified mail, and shall be given no fewer than thirty days prior to the date of the final proceeding. An original copy of the notice shall be filed with the court either before service or within a reasonable time thereafter. The office of support enforcement may present its claim, and thereby preserve the support debt, by filing an affidavit setting forth the amount of the debt with the court, and

by mailing a copy of the affidavit to the parties or their attorney prior to the date of the final proceeding. [2021 c 215 § 125; 2020 c 312 § 112.]

Effective date—2022 c 268; 2021 c 215: See note following RCW 7.105.900.

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.259 Order for relocation. Any order for the relocation of a minor under a guardianship must comply with the notice requirements of RCW 26.09.430 through 26.09.490. [2020 c 312 § 122.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.260 Health insurance coverage—Conditions.

(1) In entering or modifying a custody order under this chapter, the court must require one or more parents to maintain or provide health insurance coverage for any dependent child if the following conditions are met:

(a) Health insurance that can be extended to cover the child is available to that parent through an employer or other organization; and

(b) The employer or other organization offering health insurance will contribute all or a part of the premium for coverage of the child.

(2) A parent who is required to extend insurance coverage to a child under this section is liable for any covered health care costs for which the parent receives direct payment from an insurer.

(3) This section may not be construed to limit the authority of the court to enter or modify support orders containing provisions for payment of medical expenses, medical costs, or insurance premiums which are in addition to and not inconsistent with this section. "Health insurance" as used in this section does not include medical assistance provided under chapter 74.09 RCW. [2019 c 437 § 216.]

ARTICLE 3 GUARDIANSHIP OF ADULT

11.130.265 Basis for appointment of guardian for adult. (1) On petition and after notice and hearing, the court may:

(a) Appoint a guardian for an adult if the court finds by clear and convincing evidence that:

(i) The respondent lacks the ability to meet essential requirements for physical health, safety, or self-care because the respondent is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance, or supported decision making;

(ii) Appointment is necessary to prevent significant risk of harm to the adult respondent's physical health, safety, or self-care; and

(iii) The respondent's identified needs cannot be met by a protective arrangement instead of guardianship or other less restrictive alternative; or

(b) With appropriate findings, treat the petition as one for a conservatorship under Article 4 of this chapter or protective arrangement under Article 5 of this chapter, issue any appropriate order, or dismiss the proceeding.

(2022 Ed.)

(2) The court shall grant a guardian appointed under subsection (1) of this section only those powers necessitated by the demonstrated needs and limitations of the respondent and issue orders that will encourage development of the respondent's maximum self-determination and independence. The court may not establish a full guardianship if a limited guardianship, protective arrangement instead of guardianship, or other less restrictive alternative would meet the needs of the respondent.

(3) A determination by the court that a basis exists under subsection (1) of this section for the appointment of a guardian and on the issue of the rights that will be retained or restricted by the appointment of a guardian is a legal decision, not a medical decision. The determination must be based on a demonstration of management insufficiencies over time in the area of physical health, safety, or self-care. Age, eccentricity, poverty, or medical diagnosis alone are not sufficient basis under subsection (1) of this section to justify a determination that a guardian should be appointed for the respondent. [2020 c 312 § 308; 2019 c 437 § 301.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.270 Petition for appointment of guardian for adult. (1) A person interested in an adult's welfare, including the adult for whom the order is sought, may petition for appointment of a guardian for the adult.

(2) A petition under subsection (1) of this section must state the petitioner's name, principal residence, current street address, if different, relationship to the respondent, interest in the appointment, the name and address of any attorney representing the petitioner, and, to the extent known, the following:

(a) The respondent's name, age, principal residence, current street address, if different, and, if different, address of the dwelling in which it is proposed the respondent will reside if the petition is granted;

(b) The name and address of the respondent's:

(i) Spouse or domestic partner or, if the respondent has none, an adult with whom the respondent has shared household responsibilities for more than six months in the twelve-month period immediately before the filing of the petition;

(ii) Adult children or, if none, each parent and adult sibling of the respondent, or, if none, at least one adult nearest in kinship to the respondent who can be found with reasonable diligence; and

(iii) Adult stepchildren whom the respondent actively parented during the stepchildren's minor years and with whom the respondent had an ongoing relationship in the two-year period immediately before the filing of the petition;

(c) The name and current address of each of the following, if applicable:

(i) A person responsible for care of the respondent;

(ii) Any attorney currently representing the respondent;

(iii) Any representative payee appointed by the social security administration for the respondent;

(iv) A guardian or conservator acting for the respondent in this state or in another jurisdiction;

(v) A trustee or custodian of a trust or custodianship of which the respondent is a beneficiary;

(vi) Any fiduciary for the respondent appointed by the department of veterans affairs;

(vii) An agent designated under a power of attorney for health care in which the respondent is identified as the principal;

(viii) An agent designated under a power of attorney for finances in which the respondent is identified as the principal;

(ix) A person nominated as guardian by the respondent;

(x) A person nominated as guardian by the respondent's parent or spouse or domestic partner in a will or other signed record;

(xi) A proposed guardian and the reason the proposed guardian should be selected; and

(xii) A person known to have routinely assisted the respondent with decision making during the six months immediately before the filing of the petition;

(d) The reason a guardianship is necessary, including a brief description of:

(i) The nature and extent of the respondent's alleged need;

(ii) Any protective arrangement instead of guardianship or other less restrictive alternatives for meeting the respondent's alleged need which have been considered or implemented;

(iii) If no protective arrangement instead of guardianship or other less restrictive alternatives have been considered or implemented, the reason they have not been considered or implemented; and

(iv) The reason a protective arrangement instead of guardianship or other less restrictive alternative is insufficient to meet the respondent's alleged need;

(e) Whether the petitioner seeks a limited guardianship or full guardianship;

(f) If the petitioner seeks a full guardianship, the reason a limited guardianship or protective arrangement instead of guardianship is not appropriate;

(g) If a limited guardianship is requested, the powers to be granted to the guardian;

(h) The name and current address, if known, of any person with whom the petitioner seeks to limit the respondent's contact;

(i) If the respondent has property other than personal effects, a general statement of the respondent's property, with an estimate of its value, including any insurance or pension, and the source and amount of other anticipated income or receipts; and

(j) Whether the respondent needs an interpreter, translator, or other form of support to communicate effectively with the court or understand court proceedings. [2019 c 437 § 302.]

11.130.275 Notice of hearing for appointment of guardian for adult. (1) All petitions filed under RCW 11.130.270 for appointment of a guardian for an adult shall be heard within sixty-days unless an extension of time is requested by a party or the court visitor within such sixty-day period and granted for good cause shown. If an extension is granted, the court shall set a new hearing date.

(2)(a) A copy of a petition under RCW 11.130.270 and notice of a hearing on the petition must be served personally on the respondent and the court visitor appointed under RCW

11.130.280 not more than five court days after the petition under RCW 11.130.270 has been filed.

(b) Notice under this subsection shall include a clear and easily readable statement of the legal rights of the respondent that could be restricted or transferred to a guardian by a guardianship order as well as the right to counsel of choice and to a jury trial on whether a basis exists under RCW 11.130.265 for the appointment of a guardian and the issue of the respondent's rights that will be retained or restricted if a guardian is appointed. Such notice must be in substantially the same form as set forth in RCW 11.130.657 and must be double-spaced and in a type size not smaller than sixteen point font. The court may not grant the petition if notice substantially complying with this subsection is not served on the respondent.

(3) In a proceeding on a petition under RCW 11.130.270, the notice required under subsection (2) of this section must be given to the persons required to be listed in the petition under RCW 11.130.270(2) (a) through (c) and any other notice party. Failure to give notice under this subsection does not preclude the court from appointing a guardian.

(4) After the appointment of a guardian, notice of a hearing on a petition for an order under this article, together with a copy of the petition, must be given to:

(a) The adult subject to guardianship;

(b) The guardian; and

(c) Any other notice party or person the court determines pursuant to RCW 11.130.310(5) or a subsequent court order. [2020 c 312 § 201; 2019 c 437 § 303.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.280 Appointment and role of court visitor. (1) On receipt of a petition under RCW 11.130.270 for appointment of a guardian for an adult, the court shall appoint a court visitor. The court visitor must be an individual with training or experience in the type of abilities, limitations, and needs alleged in the petition.

(2) The court, in the order appointing a court visitor, shall specify the hourly rate the court visitor may charge for his or her services, and shall specify the maximum amount the court visitor may charge without additional court review and approval. The fee shall be charged to the person subject to a guardianship or conservatorship proceeding unless the court finds that such payment would result in substantial hardship upon such person, in which case the county shall be responsible for such costs: PROVIDED, That the court may charge such fee to the petitioner, the person subject to a guardianship or conservatorship proceeding, or any person who has appeared in the action; or may allocate the fee, as it deems just. If the petition is found to be frivolous or not brought in good faith, the court visitor fee shall be charged to the petitioner. The court shall not be required to provide for the payment of a fee to any salaried employee of a public agency.

(3)(a) The court visitor appointed under subsection (1) of this section shall within five days of receipt of notice of appointment file with the court and serve, either personally or by certified mail with return receipt, the respondent or his or her legal counsel, the petitioner or his or her legal counsel, and any interested party entitled to notice under RCW 11.130.080 with a statement including: His or her training

relating to the duties as a court visitor; his or her criminal history as defined in RCW 9.94A.030 for the period covering ten years prior to the appointment; his or her hourly rate, if compensated; whether the court visitor has had any contact with a party to the proceeding prior to his or her appointment; and whether he or she has an apparent conflict of interest. Within three days of the later of the actual service or filing of the court visitor's statement, any party may set a hearing and file and serve a motion for an order to show cause why the court visitor should not be removed for one of the following three reasons:

- (i) Lack of expertise necessary for the proceeding;
- (ii) An hourly rate higher than what is reasonable for the particular proceeding; or
- (iii) A conflict of interest.

(b) Notice of the hearing shall be provided to the court visitor and all parties. If, after a hearing, the court enters an order replacing the court visitor, findings shall be included, expressly stating the reasons for the removal. If the court visitor is not removed, the court has the authority to assess to the moving party attorneys' fees and costs related to the motion. The court shall assess attorneys' fees and costs for frivolous motions.

(4) A court visitor appointed under subsection (1) of this section shall interview the respondent in person and, in a manner the respondent is best able to understand:

(a) Explain to the respondent the substance of the petition, the nature, purpose, and effect of the proceeding, the respondent's rights at the hearing on the petition, and the general powers and duties of a guardian;

(b) Determine the respondent's views about the appointment sought by the petitioner, including views about a proposed guardian, the guardian's proposed powers and duties, and the scope and duration of the proposed guardianship; and

(c) Inform the respondent that all costs and expenses of the proceeding, including the respondent's attorney's fees, may be paid from the respondent's assets.

(5) The court visitor appointed under subsection (1) of this section shall:

(a) Interview the petitioner and proposed guardian, if any;

(b) Visit the respondent's present dwelling and any dwelling in which it is reasonably believed the respondent will live if the appointment is made;

(c) Obtain information from any physician or other person known to have treated, advised, or assessed the respondent's relevant physical or mental condition; and

(d) Investigate the allegations in the petition and any other matter relating to the petition the court directs.

(6) A court visitor appointed under subsection (1) of this section shall file a report in a record with the court and provide a copy of the report to the respondent, petitioner, and any interested party entitled to notice under RCW 11.130.080 at least fifteen days prior to the hearing on the petition filed under RCW 11.130.270, which must include:

(a) A summary of self-care and independent living tasks the respondent can manage without assistance or with existing supports, could manage with the assistance of appropriate supportive services, technological assistance, or supported decision making, and cannot manage;

(b) A recommendation regarding the appropriateness of guardianship, including whether a protective arrangement instead of guardianship or other less restrictive alternative for meeting the respondent's needs is available and:

(i) If a guardianship is recommended, whether it should be full or limited; and

(ii) If a limited guardianship is recommended, the powers to be granted to the guardian;

(c) A statement of the qualifications of the proposed guardian and whether the respondent approves or disapproves of the proposed guardian;

(d) A statement whether the proposed dwelling meets the respondent's needs and whether the respondent has expressed a preference as to residence;

(e) A statement whether the respondent declined a professional evaluation under RCW 11.130.290 and what other information is available to determine the respondent's needs and abilities without the professional evaluation;

(f) A statement whether the respondent is able to attend a hearing at the location court proceedings typically are held;

(g) A statement whether the respondent is able to participate in a hearing and which identifies any technology or other form of support that would enhance the respondent's ability to participate; and

(h) Any other matter the court directs.

(7) The appointment of a court visitor has no effect on the determination of the adult respondent's legal capacity and does not overcome the presumption of legal capacity or full legal and civil rights of the adult respondent. [2020 c 312 § 309; 2019 c 437 § 304.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.285 Appointment and role of attorney for adult.

(1)(a) The respondent shall have the right to be represented by a willing attorney of their choosing at any stage in guardianship proceedings. Any attorney purporting to represent a respondent or person subject to guardianship shall petition the court to be appointed to represent the respondent or person subject to guardianship.

(b) Unless the respondent in a proceeding for appointment of a guardian for an adult is represented by an attorney, the court is not required, but may appoint an attorney to represent the respondent, regardless of the respondent's ability to pay, except as provided otherwise in (c) of this subsection.

(c)(i) The court must appoint an attorney to represent the respondent at public expense when either:

(A) The respondent is unable to afford an attorney;

(B) The expense of an attorney would result in substantial hardship to the respondent; or

(C) The respondent does not have practical access to funds with which to pay an attorney. If the respondent can afford an attorney but lacks practical access to funds, the court must provide an attorney and may impose a reimbursement requirement as part of a final order.

(ii) When, in the opinion of the court, the rights and interests of the respondent cannot otherwise be adequately protected and represented, the court on its own motion must appoint an attorney at any time to represent the respondent.

(iii) An attorney must be provided under this subsection (1)(c) as soon as practicable after a petition is filed and long enough before any final hearing to allow adequate time for

consultation and preparation. Absent a convincing showing in the record to the contrary, a period of less than three weeks is presumed by a reviewing court to be inadequate time for consultation and preparation.

(2) An attorney representing the respondent in a proceeding for appointment of a guardian for an adult shall:

(a) Make reasonable efforts to ascertain the respondent's wishes;

(b) Advocate for the respondent's wishes to the extent reasonably ascertainable; and

(c) If the respondent's wishes are not reasonably ascertainable, advocate for the result that is the least restrictive in type, duration, and scope, consistent with the respondent's interests. [2020 c 312 § 202; 2019 c 437 § 305.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.290 Professional evaluation. (1) On receipt of a petition under RCW 11.130.270 and at the time the court appoints a court visitor under RCW 11.130.280, the court shall order a professional evaluation of the respondent.

(2) The respondent must be examined by a physician licensed to practice under chapter 18.71 or 18.57 RCW, psychologist licensed under chapter 18.83 RCW, advanced registered nurse practitioner licensed under chapter 18.79 RCW, or physician assistant licensed under chapter 18.71A RCW selected by the court visitor who is qualified to evaluate the respondent's alleged cognitive and functional abilities and limitations and will not be advantaged or disadvantaged by a decision to grant the petition or otherwise have a conflict of interest. If the respondent opposes the professional selected by the court visitor, the court visitor shall obtain a professional evaluation from the professional selected by the respondent. The court visitor, after receiving a professional evaluation from the individual selected by the respondent, may obtain a supplemental evaluation from a different professional.

(3) The individual conducting the evaluation shall provide the completed evaluation report to the court visitor within thirty days of the examination of the respondent. The court visitor shall file the report in a sealed record with the court. Unless otherwise directed by the court, the report must contain:

(a) The professional's name, address, education, and experience;

(b) A description of the nature, type, and extent of the respondent's cognitive and functional abilities and limitations;

(c) An evaluation of the respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior, and social skills;

(d) A prognosis for improvement and recommendation for the appropriate treatment, support, or habilitation plan;

(e) A description of the respondent's current medications, and the effect of the medications on the respondent's cognitive and functional abilities;

(f) Identification or persons with whom the professional has met or spoken with regarding the respondent; and

(g) The date of the examination on which the report is based.

(4) If the respondent declines to participate in an evaluation ordered under subsection (1) of this section, the court

may proceed with the hearing under RCW 11.130.275 if the court finds that it has sufficient information to determine the respondent's needs and abilities without the professional evaluation. [2020 c 312 § 203; 2019 c 437 § 306.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.295 Attendance and rights at hearing. (1) Except as otherwise provided in subsection (2) of this section, a hearing under RCW 11.130.275 may not proceed unless the respondent attends the hearing. If it is not reasonably feasible for the respondent to attend a hearing at the location court proceedings typically are held, the court shall make reasonable efforts to hold the hearing at an alternative location convenient to the respondent or allow the respondent to attend the hearing using real-time audio-visual technology.

(2) A hearing under RCW 11.130.275 may proceed without the respondent in attendance if the court finds by clear and convincing evidence that:

(a) The respondent has refused to attend the hearing after having been fully informed of the right to attend and the potential consequences of failing to do so; or

(b) There is no practicable way for the respondent to attend and participate in the hearing even with appropriate supportive services and technological assistance.

(3) The respondent may be assisted in a hearing under RCW 11.130.275 by a person or persons of the respondent's choosing, assistive technology, or an interpreter or translator, or a combination of these supports. If assistance would facilitate the respondent's participation in the hearing, but is not otherwise available to the respondent, the court shall make reasonable efforts to provide it.

(4) The respondent has a right to choose an attorney to represent the respondent at a hearing under RCW 11.130.275.

(5) At a hearing held under RCW 11.130.275, the respondent may:

(a) Present evidence and subpoena witnesses and documents;

(b) Examine witnesses, including any court-appointed evaluator and the court visitor; and

(c) Otherwise participate in the hearing.

(6) Unless excused by the court for good cause, a proposed guardian shall attend a hearing under RCW 11.130.275.

(7) A hearing under RCW 11.130.275 must be closed on request of the respondent and a showing of good cause.

(8) Any person may request to participate in a hearing under RCW 11.130.275. The court may grant the request, with or without a hearing, on determining that the best interest of the respondent will be served. The court may impose appropriate conditions on the person's participation. [2020 c 312 § 314; 2019 c 437 § 307.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.300 Confidentiality of records. (1) The existence of a proceeding for or the existence of a guardianship for an adult is a matter of public record unless the court seals the record after:

(a) The respondent or individual subject to guardianship requests the record be sealed; and

(b) Either:

(i) The petition for guardianship is dismissed; or

(ii) The guardianship is terminated.

(2) An adult subject to a proceeding for a guardianship, whether or not a guardian is appointed, an attorney designated by the adult, and a person entitled to notice under RCW 11.130.310(5) or a subsequent order are entitled to access court records of the proceeding and resulting guardianship, including the guardian's plan under RCW 11.130.340 and report under RCW 11.130.345. A person not otherwise entitled to access court records under this subsection for good cause may petition the court for access to court records of the guardianship, including the guardian's report and plan. The court shall grant access if access is in the best interest of the respondent or adult subject to guardianship or furthers the public interest and does not endanger the welfare or financial interests of the adult.

(3) A report under RCW 11.130.280 of a visitor or a professional evaluation under RCW 11.130.290 is confidential and must be sealed on filing, but is available to:

- (a) The court;
- (b) The individual who is the subject of the report or evaluation, without limitation as to use;
- (c) The petitioner, visitor, and petitioner's and respondent's attorneys, for purposes of the proceeding;
- (d) Unless the court orders otherwise, an agent appointed under a power of attorney for health care or power of attorney for finances in which the respondent is the principal; and
- (e) Any other person if it is in the public interest or for a purpose the court orders for good cause. [2019 c 437 § 308.]

11.130.305 Who may be guardian for adult—Order of priority. (1) Except as otherwise provided in subsection (3) of this section, the court in appointing a guardian for an adult shall consider persons qualified to be guardian in the following order of priority:

- (a) A guardian, other than a temporary or emergency guardian, currently acting for the respondent in another jurisdiction;
- (b) A person nominated as guardian by the respondent, including the respondent's most recent nomination made in a power of attorney;
- (c) An agent appointed by the respondent under a power of attorney for health care;
- (d) A spouse or domestic partner of the respondent;
- (e) A relative or other individual who has shown special care and concern for the respondent; and
- (f) A certified professional guardian or conservator.

(2) If two or more persons have equal priority under subsection (1) of this section, the court shall select as guardian the person the court considers best qualified. In determining the best qualified person, the court shall consider the person's relationship with the respondent, the person's skills, the expressed wishes of the respondent, the extent to which the person and the respondent have similar values and preferences, and the likelihood the person will be able to perform the duties of a guardian successfully.

(3) The court, acting in the best interest of the respondent, may decline to appoint as guardian a person having priority under subsection (1) of this section and appoint a person having a lower priority or no priority.

(4) A person that provides paid services to the respondent, or an individual who is employed by a person that pro-

vides paid services to the respondent or is the spouse, domestic partner, parent, or child of an individual who provides or is employed to provide paid services to the respondent, may not be appointed as guardian unless:

- (a) The individual is related to the respondent by blood, marriage, or adoption; or
- (b) The court finds by clear and convincing evidence that the person is the best qualified person available for appointment and the appointment is in the best interest of the respondent.

(5) An owner, operator, or employee of a long-term care facility at which the respondent is receiving care may not be appointed as guardian unless the owner, operator, or employee is related to the respondent by blood, marriage, or adoption. [2019 c 437 § 309.]

11.130.310 Order of appointment for guardian. (1) A court order appointing a guardian for an adult must:

- (a) Include a specific finding that clear and convincing evidence established that the identified needs of the respondent cannot be met by a protective arrangement instead of guardianship or other less restrictive alternative, including use of appropriate supportive services, technological assistance, or supported decision making;
- (b) Include a specific finding that clear and convincing evidence established the respondent was given proper notice of the hearing on the petition;
- (c) State whether the adult subject to guardianship retains the right to vote and, if the adult does not retain the right to vote, include findings that support removing that right which must include a finding that the adult cannot communicate, with or without support, a specific desire to participate in the voting process; and
- (d) State whether the adult subject to guardianship retains the right to marry and, if the adult does not retain the right to marry, include findings that support removing that right.

(2) An adult subject to guardianship retains the right to vote unless the order under subsection (1) of this section includes the statement required by subsection (1)(c) of this section. An adult subject to guardianship retains the right to marry unless the order under subsection (1) of this section includes the findings required by subsection (1)(d) of this section.

(3) A court order establishing a full guardianship for an adult must state the basis for granting a full guardianship and include specific findings that support the conclusion that a limited guardianship would not meet the functional needs of the adult subject to guardianship.

(4) A court order establishing a limited guardianship for an adult must state the specific powers granted to the guardian.

(5) The court, as part of an order establishing a guardianship for an adult, shall identify any person that subsequently is entitled to:

- (a) Notice of the rights of the adult under RCW 11.130.315(2);
- (b) Notice of a change in the primary dwelling of the adult;
- (c) Notice that the guardian has delegated:
 - (i) The power to manage the care of the adult;

- (ii) The power to make decisions about where the adult lives;
 - (iii) The power to make major medical decisions on behalf of the adult;
 - (iv) A power that requires court approval under RCW 11.130.335; or
 - (v) Substantially all powers of the guardian;
 - (d) Notice that the guardian will be unavailable to visit the adult for more than two months or unavailable to perform the guardian's duties for more than one month;
 - (e) A copy of the guardian's plan under RCW 11.130.340 and the guardian's report under RCW 11.130.345;
 - (f) Access to court records relating to the guardianship;
 - (g) Notice of the death or significant change in the condition of the adult;
 - (h) Notice that the court has limited or modified the powers of the guardian; and
 - (i) Notice of the removal of the guardian.
- (6) A spouse, domestic partner, and adult children of an adult subject to guardianship are entitled to notice under subsection (5) of this section unless the court determines notice would be contrary to the preferences or prior directions of the adult subject to guardianship or not in the best interest of the adult.
- (7) All orders establishing a guardianship for an adult must contain:
- (a) A guardianship summary placed directly below the case caption or on a separate cover page in the form or substantially the same form as set forth in RCW 11.130.665;
 - (b) The date which the limited guardian or guardian must file the guardian's plan under RCW 11.130.340(1);
 - (c) The date by which the court will review the guardian's plan as required by RCW 11.130.340(4);
 - (d) The report interval which the guardian shall file its guardian's plan under RCW 11.130.345. The report interval may be annual, biennial, or triennial;
 - (e) The date the limited guardian or guardian must file its guardian's plan under RCW 11.130.345. The due date of the filing of the report shall be within ninety days after the anniversary date of the appointment;
 - (f) The date for the court to review the guardian's plan under RCW 11.130.345 and enter its order. The court shall conduct the review within one hundred twenty days after the anniversary date of the appointment. [2019 c 437 § 310.]

11.130.315 Notice of order of appointment—Rights.

- (1) A guardian appointed under RCW 11.130.305 shall give the adult subject to guardianship and all other persons given notice under RCW 11.130.275 a copy of the order of appointment, together with notice of the right to request termination or modification. The order and notice must be given not later than fourteen days after the appointment.
- (2) Not later than thirty days after appointment of a guardian under RCW 11.130.305, the guardian shall give to the adult subject to guardianship and any other person entitled to notice under RCW 11.130.310(5) or a subsequent order a statement of the rights of the adult subject to guardianship and procedures to seek relief if the adult is denied those rights. The statement must be in at least sixteen-point font, in plain language, and, to the extent feasible, in a language in which the adult subject to guardianship is proficient.

The statement must notify the adult subject to guardianship of the right to:

- (a) Seek termination or modification of the guardianship, or removal of the guardian, and choose an attorney to represent the adult in these matters;
- (b) Be involved in decisions affecting the adult, including decisions about the adult's care, dwelling, activities, or social interactions, to the extent reasonably feasible;
- (c) Be involved in health care decision making to the extent reasonably feasible and supported in understanding the risks and benefits of health care options to the extent reasonably feasible;
- (d) Be notified at least fourteen days before a change in the adult's primary dwelling or permanent move to a nursing home, mental health facility, or other facility that places restrictions on the individual's ability to leave or have visitors unless the change or move is proposed in the guardian's plan under RCW 11.130.340 or authorized by the court by specific order;
- (e) Object to a change or move described in (d) of this subsection and the process for objecting;
- (f) Communicate, visit, or interact with others, including receiving visitors, and making or receiving telephone calls, personal mail, or electronic communications, including through social media, unless:
 - (i) The guardian has been authorized by the court by specific order to restrict communications, visits, or interactions;
 - (ii) A protective order or protective arrangement instead of guardianship is in effect that limits contact between the adult and a person; or
 - (iii) The guardian has good cause to believe restriction is necessary because interaction with a specified person poses a risk of significant physical, psychological, or financial harm to the adult, and the restriction is:
 - (A) For a period of not more than seven business days if the person has a relative or preexisting social relationship with the adult; or
 - (B) For a period of not more than sixty days if the person does not have a relative or preexisting social relationship with the adult;
- (g) Receive a copy of the guardian's plan under RCW 11.130.340 and the guardian's report under RCW 11.130.345;
- (h) Object to the guardian's plan or report; and
- (i) Associate with persons of their choosing as provided in RCW 11.130.335(5). [2019 c 437 § 311.]

11.130.320 Emergency guardian for adult. (1) A person interested in an adult's welfare, including the adult for whom the order is sought, may petition for appointment of an emergency guardian for the adult.

(2) An emergency petition under subsection (1) of this section must state the petitioner's name, principal residence, and current street address, if different, and[,] to the extent known, the following:

- (a) The respondent's name, age, principal residence[,] and current street address, if different;
- (b) The name and address of the respondent's:
 - (i) Spouse or domestic partner or, if the respondent has none, an adult with whom the respondent has shared household responsibilities for more than six months in the twelve-

month period immediately before the filing of the emergency petition;

(ii) Adult children or, if none, each parent and adult sibling of the respondent, or, if none, at least one adult nearest in kinship to the respondent who can be found with reasonable diligence; and

(iii) Adult stepchildren whom the respondent actively parented during the stepchildren's minor years and with whom the respondent had an ongoing relationship in the two-year period immediately before the filing of the emergency petition;

(c) The name and current address of each of the following, if applicable:

(i) A person responsible for care of the respondent;

(ii) Any attorney currently representing the respondent;

(iii) Any representative payee appointed by the social security administration for the respondent;

(iv) A guardian or conservator acting for the respondent in this state or in another jurisdiction;

(v) A trustee or custodian of a trust or custodianship of which the respondent is a beneficiary;

(vi) Any fiduciary for the respondent appointed by the department of veterans affairs;

(vii) Any representative payee or authorized representative or protective payee;

(viii) An agent designated under a power of attorney for health care in which the respondent is identified as the principal;

(ix) An agent designated under a power of attorney for finances in which the respondent is identified as the principal;

(x) A person nominated as guardian by the respondent;

(xi) A person nominated as guardian by the respondent's parent or spouse or domestic partner in a will or other signed record;

(xii) A proposed emergency guardian, and the reason the proposed emergency guardian should be selected; and

(xiii) A person known to have routinely assisted the respondent with decision making during the six months immediately before the filing of the emergency petition;

(d) The reason an emergency guardianship is necessary, including a specific description of:

(i) The nature and extent of the emergency situation;

(ii) The nature and extent of the respondent's alleged emergency need that arose because of the emergency situation;

(iii) The substantial and irreparable harm to the respondent's health, safety, welfare, or rights that is likely to be prevented by the appointment of an emergency guardian;

(iv) All protective arrangements or other less restrictive alternatives that have been considered or implemented to meet the respondent's alleged emergency need instead of emergency guardianship;

(v) If no protective arrangements or other less restrictive alternatives have been considered or implemented instead of emergency guardianship, the reason they have not been considered or implemented; and

(vi) The reason a protective arrangement or other less restrictive alternative instead of emergency guardianship is insufficient to meet the respondent's alleged emergency need;

(2022 Ed.)

(e) The reason the petitioner believes that a basis for appointment of a guardian under RCW 11.130.265 exists;

(f) Whether the petitioner intends to also seek guardianship for an adult under RCW 11.130.270;

(g) The reason the petitioner believes that no other person appears to have authority and willingness to act to address the respondent's identified needs caused by the emergency circumstances;

(h) The specific powers to be granted to the proposed emergency guardian and a description of how those powers will be used to meet the respondent's alleged emergency need;

(i) If the respondent has property other than personal effects, a general statement of the respondent's property, with an estimate of its value, including any insurance or pension, and the source and amount of other anticipated income or receipts; and

(j) Whether the respondent needs an interpreter, translator, or other form of support to communicate effectively with the court or understand court proceedings.

(3) The requirements of RCW 11.130.090 apply to an emergency guardian appointed for an adult with the following exceptions for any proposed emergency guardian required to complete the training under RCW 11.130.090:

(a) The proposed emergency guardian shall present evidence of the successful completion of the required training video or web cast to the court no later than the hearing on the petition for appointment of an emergency guardian for an adult; and

(b) The superior court may defer the completion of the training requirement to a date no later than fourteen days after appointment if the petitioner requests an extension of time to complete the training due to emergent circumstances beyond the control of [the] petitioner.

(4) On its own after a petition has been filed under RCW 11.130.270, or on petition for appointment of an emergency guardian for an adult, the court may appoint an emergency guardian for the adult if the court makes specific findings based on clear and convincing evidence that:

(a) An emergency exists such that appointment of an emergency guardian is likely to prevent substantial and irreparable harm to the adult's physical health, safety, or welfare;

(b) The respondent's identified needs caused by the emergency cannot be met by a protective arrangement or other less restrictive alternative instead of emergency guardianship;

(c) No other person appears to have authority and willingness to act to address the respondent's identified needs caused by the emergency circumstances; and

(d) There is reason to believe that a basis for appointment of a guardian under RCW 11.130.265 exists.

(5) If the court acts on its own to appoint an emergency guardian after a petition has been filed under RCW 11.130.270, all requirements of this section shall be met.

(6) A court order appointing an emergency guardian for an adult shall:

(a) Grant only the specific powers necessary to meet the adult's identified emergency need and to prevent substantial and irreparable harm to the adult's physical health, safety, or welfare;

(b) Include a specific finding that clear and convincing evidence established that an emergency exists such that appointment of an emergency guardian is likely to prevent substantial and irreparable harm to the respondent's health, safety, or welfare;

(c) Include a specific finding that the identified emergency need of the respondent cannot be met by a protective arrangement instead of guardianship or other less restrictive alternative, including any relief available under chapter 74.34 RCW or use of appropriate supportive services, technological assistance, or supported decision making;

(d) Include a specific finding that clear and convincing evidence established the respondent was given proper notice of the hearing on the petition;

(e) State that the adult subject to emergency guardianship retains all rights the adult enjoyed prior to the emergency guardianship with the exception of the rights not retained during the period of emergency guardianship;

(f) Include the date that the sixty-day period of emergency guardianship ends, and the date the emergency guardian's report, required by this section, is due to the court; and

(g) Identify any person or notice party that subsequently is entitled to:

- (i) Notice of the rights of the adult;
- (ii) Notice of a change in the primary dwelling of the adult;
- (iii) Notice of the removal of the guardian;
- (iv) A copy of the emergency guardian's plan and the emergency guardian's report under this section;
- (v) Access to court records relating to the emergency guardianship;
- (vi) Notice of the death or significant change in the condition of the adult;
- (vii) Notice that the court has limited or modified the powers of the emergency guardian; and
- (viii) Notice of the removal of the emergency guardian.

(7) A spouse, a domestic partner, and adult children of an adult subject to emergency guardianship are entitled to notice under this section unless the court orders otherwise based on good cause. Good cause includes the court's determination that notice would be contrary to the preferences or prior directions of the adult subject to emergency guardianship or not in the best interest of the adult subject to the emergency guardianship.

(8) The duration of authority of an emergency guardian for an adult may not exceed sixty days, and the emergency guardian may exercise only the powers specified in the order of appointment. Upon a motion by the petitioner, adult subject to emergency guardianship, court visitor, or the emergency guardian, with notice served upon all applicable notice parties, the emergency guardian's authority may be extended once for not more than sixty days if the court finds that the conditions for appointment of an emergency guardian in subsection (4) of this section continue.

(9) Immediately on filing of a petition for appointment of an emergency guardian for an adult, the court shall appoint an attorney to represent the respondent in the proceeding. Except as otherwise provided in subsection (10) of this section, an order appointing an emergency guardian for the respondent may not be entered unless the respondent, the respondent's attorney, and the court visitor appointed under

subsection (11) of this section have received a minimum of fourteen days' notice of the date, time, and place of a hearing on the petition. A copy of the emergency petition and notice of a hearing on the petition must be served personally on the respondent, the respondent's attorney, and the court visitor not more than two court days after the petition has been filed. The notice must inform the respondent of the respondent's rights at the hearing, including the right to an attorney and to attend the hearing. The notice must include a description of the nature, purpose, and consequences of granting the emergency petition. The court shall not grant the emergency petition if notice substantially complying with this subsection is not served on the respondent.

(10) The court may appoint an emergency guardian for an adult without notice to the adult and any attorney for the adult only if the court finds from an affidavit or testimony that the respondent's physical health, safety, or welfare will be substantially harmed before a hearing with notice on the appointment can be held. If the court appoints an emergency guardian without giving notice under subsection (9) of this section, the court must:

(a) Give notice of the appointment not later than forty-eight hours after the appointment to:

- (i) The respondent;
 - (ii) The respondent's attorney; and
 - (iii) Any other person the court determines; and
- (b) Hold a hearing on the appropriateness of the appointment not later than five days after the appointment.

(11) On receipt of a petition for appointment of emergency guardian for an adult, the court shall appoint a court visitor. Notice of appointment of the court visitor must be served upon the court visitor within two days of appointment. The court visitor must be an individual with training or experience in the type of abilities, limitations, and needs alleged in the emergency petition. The court, in the order appointing a court visitor, shall specify the hourly rate the [court] visitor may charge for his or her services, and shall specify the maximum amount the court visitor may charge without additional court review and approval.

(a) The court visitor shall within two days of service of notice of appointment file with the court and serve, either personally or by certified mail with return receipt, the respondent or the respondent's legal counsel, the petitioner or the petitioner's legal counsel, and any notice party with a statement including the court visitor's: Training relating to the duties as a court visitor; criminal history as defined in RCW 9.94A.030 for the period covering ten years prior to the appointment; hourly rate, if compensated; contact, if any, with a party to the proceeding prior to appointment; and apparent or actual conflicts of interest.

(b) A court visitor appointed under this section shall use due diligence to attempt to interview the respondent in person and, in a manner the respondent is best able to understand:

(i) Explain to the respondent the substance of the emergency petition, the nature, purpose, and effect of the proceeding, the respondent's rights at the hearing on the petition, and the proposed specific powers and duties of the proposed guardian as stated in the emergency petition;

(ii) Determine the respondent's views about the emergency appointment sought by the petitioner, including views about a proposed emergency guardian, the emergency guard-

ian's proposed powers and duties, and the scope and duration of the proposed emergency guardianship; and

(ii) Inform the respondent that all costs and expenses of the proceeding, including but not limited to the respondent's attorneys' fees, the appointed guardian's fees, and the appointed guardian's attorneys' fees, will be paid from the respondent's assets upon approval by the court.

(c) The court visitor appointed under this section shall:

(i) Interview the petitioner and proposed emergency guardian;

(ii) Use due diligence to attempt to visit the respondent's present dwelling;

(iii) Use due diligence to attempt to obtain information from any physician or other person known to have treated, advised, or assessed the respondent's relevant physical or mental condition; and

(iv) Investigate the allegations in the emergency petition and any other matter relating to the emergency petition the court directs.

(d) A court visitor appointed under this section shall file a report in a record with the court and provide a copy of the report to the respondent, petitioner, and any notice party at least seven days prior to the hearing on the emergency petition, which must include:

(i) A summary of self-care and independent living tasks the respondent can manage without assistance or with existing supports, could manage with the assistance of appropriate supportive services, technological assistance, or supported decision making, and cannot manage;

(ii) A recommendation regarding the appropriateness of emergency guardianship, including whether a protective arrangement instead of guardianship or other less restrictive alternative for meeting the respondent's needs is available, and if an emergency guardianship is recommended;

(iii) A detailed summary of the alleged emergency and the substantial and irreparable harm to the respondent's health, safety, welfare, or rights that is likely to be prevented by the appointment of an emergency guardian;

(iv) A statement as to whether the alleged emergency and the respondent's alleged needs are likely to require an extension of sixty days as authorized under this section;

(v) The specific powers to be granted to the emergency guardian and how the specific powers will address the alleged emergency and the respondent's alleged need;

(vi) A recommendation regarding the appropriateness of an ongoing guardianship for an adult, including whether a protective arrangement instead of guardianship or other less restrictive alternative for meeting the respondent's needs is available;

(vii) A statement of the qualifications of the proposed emergency guardian and whether the respondent approves or disapproves of the proposed emergency guardian, and the reasons for such approval or disapproval;

(viii) A recommendation whether a professional evaluation under RCW 11.130.290 is necessary;

(ix) A statement whether the respondent is able to attend a hearing at the location court proceedings typically are held;

(x) A statement whether the respondent is able to participate in a hearing which identifies any technology or other form of support that would enhance the respondent's ability to participate;

(xi) A statement, as needed when the petition seeks emergency authority to change the respondent's place of dwelling, as to whether the proposed dwelling meets the respondent's needs and whether the respondent has expressed a preference as to residence; and

(xii) Any other matter the court directs.

(12) An emergency guardian shall:

(a) Comply with the requirements of RCW 11.130.325, the requirements regarding the adult's right to association under RCW 11.130.335, and the requirements of this chapter that pertain to the rights of an adult subject to guardianship;

(b) Not have authority to make decisions or take actions that a guardian for an adult is prohibited by law from having; and

(c) Be subject to the same special limitations on a guardian's power that apply to a guardian for an adult.

(13) Appointment of an emergency guardian under this section is not a determination that a basis exists for appointment of a guardian under RCW 11.130.265.

(14) The court may remove an emergency guardian appointed under this section at any time.

(15) The emergency guardian shall file a report in a record with the court and provide a copy of the report to the adult subject to emergency guardianship, and any notice party no later than forty-five days after appointment. The report shall include specific and updated information regarding the emergency alleged in the emergency petition, the adult's emergency needs, all actions and decisions by the emergency guardian, and a recommendation as to whether a guardian for an adult should be appointed. If the appointment of the emergency guardian is extended for an additional sixty days, the emergency guardian shall file a second report in a record with the court and provide a copy of the report to the adult subject to emergency guardianship, and any notice party no later than forty-five days after extension of the appointment is granted by the court, which shall include the same information required for the first report. The emergency guardian shall make any other report the court requires.

(16) The court shall issue letters of emergency guardianship to the emergency guardian in compliance with RCW 11.130.040. Such letters shall be issued on an expedited basis. [2020 c 312 § 204; 2019 c 437 § 312.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.325 Duties of guardian for adult. (1) A guardian for an adult is a fiduciary and owes the highest duty of good faith and care to the person under a guardianship. The guardian shall not substitute his or her moral or religious values, opinions, or philosophical beliefs for those of the person under a guardianship. Except as otherwise limited by the court, a guardian for an adult shall make decisions regarding the support, care, education, health, and welfare of the adult subject to guardianship to the extent necessitated by the adult's limitations.

(2) A guardian for an adult shall promote the self-determination of the adult and, to the extent reasonably feasible, encourage the adult to participate in decisions, act on the adult's own behalf, and develop or regain the capacity to manage the adult's personal affairs. In furtherance of this duty, the guardian shall:

(a) Become or remain personally acquainted with the adult and maintain sufficient contact with the adult, including through regular visitation, to know the adult's abilities, limitations, needs, opportunities, and physical and mental health;

(b) To the extent reasonably feasible, identify the values and preferences of the adult and involve the adult in decisions affecting the adult, including decisions about the adult's care, dwelling, activities, or social interactions; and

(c) Make reasonable efforts to identify and facilitate supportive relationships and services for the adult.

(3) A guardian for an adult at all times shall exercise reasonable care, diligence, and prudence when acting on behalf of or making decisions for the adult. In furtherance of this duty, the guardian shall:

(a) Take reasonable care of the personal effects, pets, and service or support animals of the adult and bring a proceeding for a conservatorship or protective arrangement instead of conservatorship if necessary to protect the adult's property;

(b) Expend funds and other property of the adult received by the guardian for the adult's current needs for support, care, education, health, and welfare;

(c) Conserve any funds and other property of the adult not expended under (b) of this subsection for the adult's future needs, but if a conservator has been appointed for the adult, pay the funds and other property at least quarterly to the conservator to be conserved for the adult's future needs; and

(d) Monitor the quality of services, including long-term care services, provided to the adult.

(4) In making a decision for an adult subject to guardianship, the guardian shall make the decision the guardian reasonably believes the adult would make if the adult were able unless doing so would unreasonably harm or endanger the welfare or personal or financial interests of the adult. To determine the decision the adult subject to guardianship would make if able, the guardian shall consider the adult's previous or current directions, preferences, opinions, values, and actions, to the extent actually known or reasonably ascertainable by the guardian.

(5) If a guardian for an adult cannot make a decision under subsection (4) of this section because the guardian does not know and cannot reasonably determine the decision the adult probably would make if able, or the guardian reasonably believes the decision the adult would make would unreasonably harm or endanger the welfare or personal or financial interests of the adult, the guardian shall act in accordance with the best interests of the adult. In determining the best interests of the adult, the guardian shall consider:

(a) Information received from professionals and persons that demonstrate sufficient interest in the welfare of the adult;

(b) Other information the guardian believes the adult would have considered if the adult were able to act; and

(c) Other factors a reasonable person in the circumstances of the adult would consider, including consequences for others.

(6) A guardian for an adult immediately shall notify the court if the condition of the adult has changed so that the adult is capable of exercising rights previously removed.

(7) The guardian shall file with the court within thirty days of any substantial change in the condition of the person under guardianship or any changes in the residence of the

person under guardianship and shall provide a copy of the notice to the adult subject to guardianship, a person entitled to notice under RCW 11.130.310(5) or a subsequent order, and any other person the court has determined is entitled to notice.

(8) To inform any person entitled to notice under RCW 11.130.310(5) or a subsequent order, and any other person the court has determined is entitled to notice, but in no case more than five business days, after the person subject to guardianship:

(a) Makes a change in residence that is intended or likely to last more than fourteen calendar days;

(b) Has been admitted to a medical facility for acute care in response to a life-threatening injury or medical condition that requires inpatient care;

(c) Has been treated in an emergency room setting or kept for hospital observation for more than twenty-four hours; or

(d) Dies, in which case the notification must be made in person, by telephone, or by certified mail. [2019 c 437 § 313.]

11.130.330 Powers of guardian for adult. (1) Except as limited by court order, a guardian for an adult may:

(a) Apply for and receive funds and benefits as a representative payee or an authorized representative or protective payee for the support of the adult, unless a conservator is appointed for the adult and the application or receipt is within the powers of the conservator;

(b) Unless inconsistent with a court order, establish the adult's place of dwelling;

(c) Consent to health or other care, treatment, or service for the adult;

(d) If a conservator for the adult has not been appointed, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel another person to support the adult or pay funds for the adult's benefit;

(e) To the extent reasonable, delegate to the adult responsibility for a decision affecting the adult's well-being; and

(f) Receive personally identifiable health care information regarding the adult.

(2) The court by specific order may authorize a guardian for an adult to consent to the adoption of the adult.

(3) The court by specific order may authorize a guardian for an adult to:

(a) Consent or withhold consent to the marriage of the adult if the adult's right to marry has been removed under RCW 11.130.310;

(b) Petition for divorce, dissolution, or annulment of marriage of the adult or a declaration of invalidity of the adult's marriage; or

(c) Support or oppose a petition for divorce, dissolution, or annulment of marriage of the adult or a declaration of invalidity of the adult's marriage.

(4) In determining whether to authorize a power under subsection (2) or (3) of this section, the court shall consider whether the underlying act would be in accordance with the adult's preferences, values, and prior directions and whether the underlying act would be in the adult's best interest.

(5) In exercising a guardian's power under subsection (1)(b) of this section to establish the adult's place of dwelling, the guardian shall:

(a) Select a residential setting the guardian believes the adult would select if the adult were able, in accordance with the decision-making standard in RCW 11.130.325 (4) and (5). If the guardian does not know and cannot reasonably determine what setting the adult subject to guardianship probably would choose if able, or the guardian reasonably believes the decision the adult would make would unreasonably harm or endanger the welfare or personal or financial interests of the adult, the guardian shall choose in accordance with RCW 11.130.325(5) a residential setting that is consistent with the adult's best interest;

(b) In selecting among residential settings, give priority to a residential setting in a location that will allow the adult to interact with persons important to the adult and meet the adult's needs in the least restrictive manner reasonably feasible unless to do so would be inconsistent with the decision-making standard in RCW 11.130.325 (4) and (5);

(c) Not later than thirty days after a change in the dwelling of the adult:

(i) Give notice of the change to the court, the adult, and any other notice party; and

(ii) Include in the notice the address and nature of the new dwelling and state whether the adult received advance notice of the change and whether the adult objected to the change;

(d) Establish or move the permanent place of dwelling of the adult to a care setting that places restrictions on the adult's ability to leave or have visitors only if:

(i) The establishment or move is in the guardian's plan under RCW 11.130.340;

(ii) The court authorizes the establishment or move; or

(iii) The guardian gives notice of the establishment or move at least fourteen days before the establishment or move to the adult and all persons entitled to notice under RCW 11.130.310(5)(b) or a subsequent order, and no objection is filed;

(e) Establish or move the place of dwelling of the adult outside this state only if consistent with the guardian's plan and authorized by the court by specific order; and

(f) Take action that would result in the sale of or surrender of the lease to the primary dwelling of the adult only if:

(i) The action is specifically included in the guardian's plan under RCW 11.130.340;

(ii) The court authorizes the action by specific order; or

(iii) Notice of the action was given at least fourteen days before the action to the adult and all persons entitled to the notice under RCW 11.130.310(5)(b) or a subsequent order and no objection has been filed.

(6) In exercising a guardian's power under subsection (1)(c) of this section to make health care decisions, the guardian shall:

(a) Involve the adult in decision making to the extent reasonably feasible, including, when practicable, by encouraging and supporting the adult in understanding the risks and benefits of health care options;

(b) Defer to a decision by an agent under a power of attorney for health care executed by the adult and cooperate to the extent feasible with the agent making the decision; and

(c) Take into account:

(i) The risks and benefits of treatment options; and

(ii) The current and previous wishes and values of the adult, if known or reasonably ascertainable by the guardian.

(7) Notwithstanding subsection (1)(b) of this section no care setting which provides nursing or other care may detain a person within such facility against their will. Any court order, other than an order issued in accordance with the involuntary treatment provisions of chapters 10.77, 71.05, and 72.23 RCW, which purports to authorize such involuntary detention or purports to authorize a guardian or limited guardian to consent to such involuntary detention on behalf of an individual subject to a guardianship shall be void and of no force or effect.

(8) Nothing in this section shall be construed to require a court order authorizing placement of an incapacitated person in a care setting if such order is not otherwise required by law: PROVIDED, That notice of any residential placement of an individual subject to a guardianship shall be served, either before or after placement, by the guardian or limited guardian on such individual, any court visitor of record, any guardian ad litem of record, and any attorney of record. [2020 c 312 § 205; 2019 c 437 § 314.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.335 Special limitations on guardian's power.

(1) A guardian for an adult does not have the power to revoke or amend a power of attorney for health care or power of attorney for finances executed by the adult. If a power of attorney for health care is in effect, unless there is a court order to the contrary, a health care decision of an agent takes precedence over that of the guardian and the guardian shall cooperate with the agent to the extent feasible. If a power of attorney for finances is in effect, unless there is a court order to the contrary, a decision by the agent which the agent is authorized to make under the power of attorney for finances takes precedence over that of the guardian and the guardian shall cooperate with the agent to the extent feasible. The court has authority to revoke or amend any power of attorney executed by the adult.

(2) A guardian for an adult shall not initiate the commitment of the adult to an evaluation and treatment facility except in accordance with the provisions of chapter 10.77, 71.05, or 72.23 RCW.

(3) Unless authorized by the court in accordance with subsection (4) of this section within the past thirty days, a guardian for an adult may not consent to any of the following procedures for the adult:

(a) Therapy or other procedure to induce convulsion;

(b) Surgery solely for the purpose of psychosurgery; or

(c) Other psychiatric or mental health procedures that restrict physical freedom of movement or the rights set forth in RCW 71.05.217.

(4) The court may order a procedure listed in subsection (3) of this section only after giving notice to the adult's attorney and holding a hearing. If the adult does not have an attorney, the court must appoint an attorney for the adult prior to entering an order under this subsection.

(5) Persons under a guardianship, conservatorship, or other protective arrangements—Right to associate with persons of their choosing.

(a) Except as otherwise provided in this section, an adult subject to a guardianship, conservatorship, or other protective arrangement retains the right to associate with other persons of the adult's choosing. This right includes, but is not limited to, the right to freely communicate and interact with other persons, whether through in-person visits, telephone calls, electronic communication, personal mail, or other means. If the adult subject to a guardianship, conservatorship, or other protective arrangement is unable to express consent for communication, visitation, or interaction with another person, or is otherwise unable to make a decision regarding association with another person, the guardian, conservator, or person acting under a protective arrangement, whether full or limited, must:

(i) Personally inform the adult subject to a guardianship, conservatorship, or other protective arrangement of the decision under consideration, using plain language, in a manner calculated to maximize the understanding of the adult;

(ii) Maximize the adult's participation in the decision-making process to the greatest extent possible, consistent with the adult's abilities; and

(iii) Give substantial weight to the adult's preferences, both expressed and historical.

(b) A guardian or limited guardian, a conservator or limited conservator, or a person acting under a protective arrangement may not restrict an adult's right to communicate, visit, interact, or otherwise associate with persons of the adult's choosing, unless:

(i) The restriction is specifically authorized by the court in the court order establishing or modifying the guardianship or limited guardianship, the conservatorship or limited conservatorship, or the protective arrangement under this chapter;

(ii) The restriction is pursuant to a protection order issued under chapter 7.105 RCW, or other law, that limits contact between the adult under a guardianship, conservatorship, or other protective arrangement and other persons;

(iii)(A) The guardian or limited guardian, the conservator or limited conservator, or the person acting under the protective arrangement has good cause to believe that there is an immediate need to restrict the adult's right to communicate, visit, interact, or otherwise associate with persons of the adult's choosing in order to protect the adult from abuse, neglect, abandonment, or financial exploitation, as those terms are defined in RCW 74.34.020, or to protect the adult from activities that unnecessarily impose significant distress on the adult; and

(B) Within fourteen calendar days of imposing the restriction under (b)(iii)(A) of this subsection, the guardian or limited guardian, the conservator or limited conservator, or the person acting under the protective arrangement files a petition for a vulnerable adult protection order under chapter 7.105 RCW. The immediate need restriction may remain in place until the court has heard and issued an order or decision on the petition; or

(iv) The restriction is pursuant to participation in the community protection program under chapter 71A.12 RCW.

(6) A vulnerable adult protection order under chapter 7.105 RCW issued to protect the adult under a guardianship, conservatorship, or other protective arrangement as described in subsection (5)(b)(iii)(B) of this section:

(a) Must include written findings of fact and conclusions of law;

(b) May not be more restrictive than necessary to protect the adult from abuse, neglect, abandonment, or financial exploitation as those terms are defined in RCW 7.105.010; and

(c) May not deny communication, visitation, interaction, or other association between the adult and another person unless the court finds that placing reasonable time, place, or manner restrictions is unlikely to sufficiently protect the adult from abuse, neglect, abandonment, or financial exploitation as those terms are defined in RCW 7.105.010. [2021 c 215 § 126; 2020 c 312 § 206; 2019 c 437 § 315.]

Effective date—2022 c 268; 2021 c 215: See note following RCW 7.105.900.

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.340 Guardian's plan. (1) A guardian for an adult, not later than ninety days after appointment, shall file with the court a plan for the care of the adult and shall provide a copy of the plan to the adult subject to guardianship and any other notice party. The plan must be based on the needs of the adult and take into account the best interest of the adult as well as the adult's preferences, values, and prior directions, to the extent known to or reasonably ascertainable by the guardian. The guardian shall include in the plan:

(a) The living arrangement, services, and supports the guardian expects to arrange, facilitate, or continue for the adult;

(b) Social and educational activities the guardian expects to facilitate on behalf of the adult;

(c) Any person with whom the adult has a close personal relationship or relationship involving regular visitation and any plan the guardian has for facilitating visits with the person;

(d) The anticipated nature and frequency of the guardian's visits and communication with the adult;

(e) Goals for the adult, including any goal related to the restoration of the adult's rights, and how the guardian anticipates achieving the goals;

(f) Whether the adult has an existing plan and, if so, whether the guardian's plan is consistent with the adult's plan; and

(g) A statement or list of the amount the guardian proposes to charge for each service the guardian anticipates providing to the adult.

(2) A guardian shall give notice of the filing of the guardian's plan under subsection (1) of this section, together with a copy of the plan, to the adult subject to guardianship and any other notice party. The notice must include a statement of the right to object to the plan and be given not later than fourteen days after the filing.

(3) An adult subject to guardianship and any person entitled under subsection (2) of this section to receive notice and a copy of the guardian's plan may object to the plan.

(4) The court shall review the guardian's plan filed under subsection (1) of this section and determine whether to approve the plan or require a new plan. In deciding whether to approve the plan, the court shall consider an objection under subsection (3) of this section and whether the plan is consistent with the guardian's duties and powers under RCW

11.130.325 and 11.130.330. The court may not approve the plan until thirty days after its filing.

(5) After the guardian's plan filed under this section is approved by the court, the guardian shall provide a copy of the order approving the plan to the adult subject to guardianship and any other notice party. [2020 c 312 § 207; 2019 c 437 § 317.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.345 Guardian's report—Monitoring of guardianship. (1) A guardian for an adult shall file with the court by the date established by the court a report in a record regarding the condition of the adult and accounting for funds and other property in the guardian's possession or subject to the guardian's control. The guardian shall provide a copy of the report to the adult subject to guardianship and any other notice party.

(2) A report under subsection (1) of this section must state or contain:

(a) The mental, physical, and social condition of the adult;

(b) The living arrangements of the adult during the reporting period;

(c) A summary of the supported decision making, technological assistance, medical services, educational and vocational services, and other supports and services provided to the adult and the guardian's opinion as to the adequacy of the adult's care;

(d) A summary of the guardian's visits with the adult, including the dates of the visits;

(e) Action taken on behalf of the adult;

(f) The extent to which the adult has participated in decision making;

(g) If the adult is living in a care setting, whether the guardian considers the facility's current plan for support, care, treatment, or habilitation consistent with the adult's preferences, values, prior directions, and best interests;

(h) Anything of more than de minimis value which the guardian, any individual who resides with the guardian, or the spouse, domestic partner, parent, child, or sibling of the guardian has received from an individual providing goods or services to the adult. A professional guardian must abide by the standards of practice regarding the acceptance of gifts;

(i) If the guardian delegated a power to an agent, the power delegated and the reason for the delegation;

(j) Any business relation the guardian has with a person the guardian has paid or that has benefited from the property of the adult;

(k) A copy of the guardian's most recently approved plan under RCW 11.130.340 and a statement whether the guardian has deviated from the plan and, if so, how the guardian has deviated and why;

(l) Plans for future care and support of the adult;

(m) A recommendation as to the need for continued guardianship and any recommended change in the scope of the guardianship; and

(n) Whether any co-guardian or successor guardian appointed to serve when a designated event occurs is alive and able to serve.

(3) The court may appoint a court visitor to review a report submitted under this section or a guardian's plan sub-

mitted under RCW 11.130.340, interview the guardian or adult subject to guardianship, or investigate any other matter involving the guardianship.

(4) Notice of the filing under this section of a guardian's report, together with a copy of the report, must be given to the adult subject to guardianship and any other notice party. The notice and report must be given not later than fourteen days after the filing.

(5) The court shall establish procedures for monitoring a report submitted under this section and review each report to determine whether:

(a) The report provides sufficient information to establish the guardian has complied with the guardian's duties;

(b) The guardianship should continue; and

(c) The guardian's requested fees, if any, should be approved.

(6) If the court determines there is reason to believe a guardian for an adult has not complied with the guardian's duties or the guardianship should be modified or terminated, the court:

(a) Shall notify the adult, the guardian, and any other person entitled to notice under RCW 11.130.310(5) or a subsequent order;

(b) May require additional information from the guardian;

(c) May appoint a court visitor to interview the adult or guardian or investigate any matter involving the guardianship; and

(d) Consistent with this section and RCW 11.130.350, may hold a hearing to consider removal of the guardian, termination of the guardianship, or a change in the powers granted to the guardian or terms of the guardianship.

(7) If the court has reason to believe fees requested by a guardian for an adult are not reasonable, the court shall hold a hearing to determine whether to adjust the requested fees.

(8) A guardian for an adult must petition the court for approval of a report filed under this section. The court after review may approve the report. If the court approves the report, there is a rebuttable presumption the report is accurate as to a matter adequately disclosed in the report.

(9) If the court approves a report filed under this section, the order approving the report shall set the due date for the filing of the next report to be filed under this section. The court may set the review interval at annual, biennial, or triennial with the report due date to be within ninety days of the anniversary date of appointment. When determining the report interval, the court can consider: The length of time the guardian has been serving the person under guardianship; whether the guardian has timely filed all required reports with the court; whether the guardian is monitored by other state or local agencies; and whether there have been any allegations of abuse, neglect, or a breach of fiduciary duty against the guardian.

(10) If the court approves a report filed under this section, the order approving the report shall contain a guardianship summary or be accompanied by a guardianship summary in the form or substantially in the same form as set forth in RCW 11.130.665.

(11) If the court approves a report filed under this section, the order approving the report shall direct the clerk of the court to reissue letters of office in the form or substan-

tially in the same form as set forth in RCW 11.130.660 to the guardian containing an expiration date which will be within one hundred twenty days after the date the court directs the guardian file its next report.

(12) Any requirement to establish a monitoring program under this section is subject to appropriation. [2020 c 312 § 208; 2019 c 437 § 318.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.350 Removal of guardian for adult—Appointment of successor. (1) The court may remove a guardian for an adult for failure to perform the guardian's duties or for other good cause and appoint a successor guardian to assume the duties of guardian.

(2) The court shall hold a hearing to determine whether to remove a guardian for an adult and appoint a successor guardian on:

(a) Petition of the adult, guardian, or person interested in the welfare of the adult, which contains allegations that, if true, would support a reasonable belief that removal of the guardian and appointment of a successor guardian may be appropriate, but the court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed during the preceding six months;

(b) Communication from the adult, guardian, or person interested in the welfare of the adult which supports a reasonable belief that removal of the guardian and appointment of a successor guardian may be appropriate; or

(c) Determination by the court that a hearing would be in the best interest of the adult.

(3) Notice of a hearing under subsection (2)(a) of this section and notice of the adult subject to guardianship's right to be represented at the hearing by counsel of the individual's choosing must be given to the adult subject to guardianship, the guardian, and any other person the court determines.

(4) An adult subject to guardianship who seeks to remove the guardian and have a successor guardian appointed has the right to choose an attorney to represent the adult in this matter. The court shall award reasonable attorneys' fees to the attorney for the adult as provided in RCW 11.130.100.

(5) In selecting a successor guardian for an adult, the court shall follow the priorities under RCW 11.130.305.

(6) Not later than fourteen days after appointing a successor guardian, the successor guardian shall give notice of the appointment to the adult subject to guardianship and any person entitled to notice under RCW 11.130.310(5) or a subsequent order. [2019 c 437 § 319.]

11.130.355 Termination or modification of guardianship for adult. (1) An adult subject to guardianship, the guardian for the adult, or a person interested in the welfare of the adult may petition for:

(a) Termination of the guardianship on the ground that a basis for appointment under RCW 11.130.265 does not exist or termination would be in the best interest of the adult or for other good cause; or

(b) Modification of the guardianship on the ground that the extent of protection or assistance granted is not appropriate or for other good cause.

(2) The court shall hold a hearing to determine whether termination or modification of a guardianship for an adult is appropriate on:

(a) Petition under subsection (1) of this section that contains allegations that, if true, would support a reasonable belief that termination or modification of the guardianship may be appropriate, but the court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed during the preceding six months;

(b) Communication from the adult, guardian, or person interested in the welfare of the adult which supports a reasonable belief that termination or modification of the guardianship may be appropriate, including because the functional needs of the adult or supports or services available to the adult have changed;

(c) A report from a guardian or conservator which indicates that termination or modification may be appropriate because the functional needs of the adult or supports or services available to the adult have changed or a protective arrangement instead of guardianship or other less restrictive alternative for meeting the adult's needs is available; or

(d) A determination by the court that a hearing would be in the best interest of the adult.

(3) Notice of a petition under subsection (2)(a) of this section must be given to the adult subject to guardianship, the guardian, and any other person the court determines.

(4) On presentation of prima facie evidence for termination of a guardianship for an adult, the court shall order termination unless it is proven that a basis for appointment of a guardian under RCW 11.130.265 exists.

(5) The court shall modify the powers granted to a guardian for an adult if the powers are excessive or inadequate due to a change in the abilities or limitations of the adult, the adult's supports, or other circumstances.

(6) Unless the court otherwise orders for good cause, before terminating or modifying a guardianship for an adult, the court shall follow the same procedures to safeguard the rights of the adult which apply to a petition for guardianship.

(7) An adult subject to guardianship who seeks to terminate or modify the terms of the guardianship has the right to choose an attorney to represent the adult in the matter. The court shall award reasonable attorneys' fees to the attorney for the adult as provided in RCW 11.130.100. [2019 c 437 § 320.]

ARTICLE 4 CONSERVATORSHIP

11.130.360 Basis for appointment of conservator. (1) On petition and after notice and hearing, the court may appoint a conservator for the property or financial affairs of a minor if the court finds by a preponderance of evidence that appointment of a conservator is in the minor's best interest, and:

(a) If the minor has a parent, the court gives weight to any recommendation of the parent whether an appointment is in the minor's best interest; and

(b) Either:

(i) The minor owns funds or other property requiring management or protection that otherwise cannot be provided;

(ii) The minor has or may have financial affairs that may be put at unreasonable risk or hindered because of the minor's age; or

(iii) Appointment is necessary or desirable to obtain or provide funds or other property needed for the support, care, education, health, or welfare of the minor.

(2) On petition and after notice and hearing, the court may appoint a conservator for the property or financial affairs of an adult if the court finds by clear and convincing evidence that:

(a) The adult is unable to manage property or financial affairs because:

(i) Of a limitation in the adult's ability to receive and evaluate information or make or communicate decisions, even with the use of appropriate supportive services, technological assistance, or supported decision making; or

(ii) The adult is missing, detained, or unable to return to the United States;

(b) Appointment is necessary to:

(i) Avoid harm to the adult or significant dissipation of the property of the adult; or

(ii) Obtain or provide funds or other property needed for the support, care, education, health, or welfare of the adult or of an individual entitled to the adult's support; and

(c) The adult's identified needs cannot be met by a protective arrangement instead of conservatorship or other less restrictive alternatives.

(3) The court shall grant a conservator only those powers necessitated by demonstrated limitations and needs of the respondent and issue orders that will encourage development of the respondent's maximum self-determination and independence. The court may not establish a full conservatorship if a limited conservatorship, protective arrangement instead of conservatorship, or other less restrictive alternative would meet the needs of the respondent.

(4) A determination by the court that a basis under subsection (2) of this section exists for the appointment of a conservator for an adult and on the issue of the rights that will be retained or restricted by the appointment of a conservator is a legal, not a medical decision. The determination must be based on demonstrated management insufficiencies over time in the area of property or financial affairs. Age, eccentricity, poverty, or medical diagnosis alone are not a sufficient basis under subsection (2) of this section to justify a determination that a conservator should be appointed for the respondent.

(5) For purposes of subsection (2) of this section, an adult who resides in a long-term care facility, resides in another care setting, or is the subject of an involuntary commitment order is not considered missing or detained. [2020 c 312 § 209; 2019 c 437 § 401.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.365 Petition for appointment of conservator.

(1) The following may petition for the appointment of a conservator:

(a) The individual for whom the order is sought;

(b) A person interested in the estate, financial affairs, or welfare of the individual, including a person that would be adversely affected by lack of effective management of property or financial affairs of the individual; or

(c) The guardian for the individual.

(2) A petition under subsection (1) of this section must state the petitioner's name, principal residence, current street address, if different, relationship to the respondent, interest in the appointment, the name and address of any attorney representing the petitioner, and, to the extent known, the following:

(a) The respondent's name, age, principal residence, current street address, if different, and, if different, address of the dwelling in which it is proposed the respondent will reside if the petition is granted;

(b) The name and address of the respondent's:

(i) Spouse or domestic partner or, if the respondent has none, an adult with whom the respondent has shared household responsibilities for more than six months in the twelve-month period before the filing of the petition;

(ii) Adult children or, if none, each parent and adult sibling of the respondent, or, if none, at least one adult nearest in kinship to the respondent who can be found with reasonable diligence; and

(iii) Adult stepchildren whom the respondent actively parented during the stepchildren's minor years and with whom the respondent had an ongoing relationship during the two years immediately before the filing of the petition;

(c) The name and current address of each of the following, if applicable:

(i) A person responsible for the care or custody of the respondent;

(ii) Any attorney currently representing the respondent;

(iii) The representative payee appointed by the social security administration for the respondent;

(iv) A guardian or conservator acting for the respondent in this state or another jurisdiction;

(v) A trustee or custodian of a trust or custodianship of which the respondent is a beneficiary;

(vi) The fiduciary appointed for the respondent by the department of veterans affairs;

(vii) An agent designated under a power of attorney for health care in which the respondent is identified as the principal;

(viii) An agent designated under a power of attorney for finances in which the respondent is identified as the principal;

(ix) A person known to have routinely assisted the respondent with decision making in the six-month period immediately before the filing of the petition;

(x) Any proposed conservator, including a person nominated by the respondent, if the respondent is twelve years of age or older; and

(xi) If the individual for whom a conservator is sought is a minor:

(A) An adult not otherwise listed with whom the minor resides; and

(B) Each person not otherwise listed that had primary care or custody of the minor for at least sixty days during the two years immediately before the filing of the petition or for at least seven hundred thirty days during the five years immediately before the filing of the petition;

(d) A general statement of the respondent's property with an estimate of its value, including any insurance or pension,

and the source and amount of other anticipated income or receipts;

(e) The reason conservatorship is necessary, including a brief description of:

(i) The nature and extent of the respondent's alleged need;

(ii) If the petition alleges the respondent is missing, detained, or unable to return to the United States, the relevant circumstances, including the time and nature of the disappearance or detention and any search or inquiry concerning the respondent's whereabouts;

(iii) Any protective arrangement instead of conservatorship or other less restrictive alternative for meeting the respondent's alleged need which has been considered or implemented;

(iv) If no protective arrangement or other less restrictive alternatives have been considered or implemented, the reason it has not been considered or implemented; and

(v) The reason a protective arrangement or other less restrictive alternative is insufficient to meet the respondent's need;

(f) Whether the petitioner seeks a limited conservatorship or a full conservatorship;

(g) If the petitioner seeks a full conservatorship, the reason a limited conservatorship or protective arrangement instead of conservatorship is not appropriate;

(h) If the petition includes the name of a proposed conservator, the reason the proposed conservator should be appointed;

(i) If the petition is for a limited conservatorship, a description of the property to be placed under the conservator's control and any requested limitation on the authority of the conservator;

(j) Whether the respondent needs an interpreter, translator, or other form of support to communicate effectively with the court or understand court proceedings; and

(k) The name and address of an attorney representing the petitioner, if any. [2019 c 437 § 402.]

11.130.370 Notice and hearing for appointment of conservator. (1) All petitions filed under RCW 11.130.365 for appointment of a conservator shall be heard within sixty days unless an extension of time is requested by a party or the court visitor within such sixty-day period and granted for good cause shown. If an extension is granted, the court shall set a new hearing date.

(2)(a) A copy of a petition under RCW 11.130.365 and notice of a hearing on the petition must be served personally on the respondent, the court visitor appointed under RCW 11.130.380, and the appointed or proposed guardian not more than five court days after the petition under RCW 11.130.365 has been filed. If the respondent's whereabouts are unknown or personal service cannot be made, service on the respondent must be made by publication.

(b) Notice under this subsection shall include a clear and easily readable statement of the legal rights of the respondent that could be restricted or transferred to a conservator by a conservatorship order as well as the right to counsel of choice and to a jury trial whether a basis exists under RCW 11.130.360(2) for the appointment of a conservator and the issue of the respondent's rights that will be retained or

restricted if a conservator is appointed. Such notice must be in substantially the same form as set forth in RCW 11.130.657 and must be double-spaced and in a type size not smaller than sixteen-point font. The court may not grant the petition if notice substantially complying with this subsection is not served on the respondent.

(3) In a proceeding on a petition under RCW 11.130.365, the notice required under subsection (2) of this section must be served upon the persons required to be listed in the petition under RCW 11.130.365(2) (a) through (c) and any other notice party. Failure to give notice under this subsection does not preclude the court from appointing a conservator.

(4) After the appointment of a conservator, notice of a hearing on a petition for an order under this article, together with a copy of the petition, must be given to:

(a) The individual subject to conservatorship, if the individual is twelve years of age or older and not missing, detained, or unable to return to the United States;

(b) The conservator; and

(c) Any other notice party or person the court determines pursuant to RCW 11.130.420(6) or a subsequent court order. [2020 c 312 § 210; 2019 c 437 § 403.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.375 Order to preserve or apply property while proceeding pending. While a petition under RCW 11.130.365 is pending, after preliminary hearing and without notice to others, the court may issue an order to preserve and apply property of the respondent as required for the support of the respondent or an individual who is in fact dependent on the respondent. The court may appoint a special agent to assist in implementing the order. [2019 c 437 § 404.]

11.130.380 Appointment and role of court visitor. (1) If the respondent in a proceeding to appoint a conservator is a minor, the court may appoint a court visitor to investigate a matter related to the petition or inform the minor or a parent of the minor about the petition or a related matter.

(2) If the respondent in a proceeding to appoint a conservator is an adult, the court shall appoint a court visitor. The duties and reporting requirements of the court visitor are limited to the relief requested in the petition. The court visitor must be an individual with training or experience in the type of abilities, limitations, and needs alleged in the petition.

(3) The court, in the order appointing court visitor, shall specify the hourly rate the court visitor may charge for his or her services, and shall specify the maximum amount the court visitor may charge without additional court review and approval. The fee shall be charged to the person subject to a guardianship or conservatorship proceeding unless the court finds that such payment would result in substantial hardship upon such person, in which case the county shall be responsible for such costs: PROVIDED, That the court may charge such fee to the petitioner, the person subject to a guardianship or conservatorship proceeding, or any person who has appeared in the action; or may allocate the fee, as it deems just. If the petition is found to be frivolous or not brought in good faith, the court visitor fee shall be charged to the petitioner. The court shall not be required to provide for the payment of a fee to any salaried employee of a public agency.

(4)(a) The court visitor appointed under subsection (1) or (2) of this section shall within five days of receipt of notice of appointment file with the court and serve, either personally or by certified mail with return receipt, the respondent or his or her legal counsel, the petitioner or his or her legal counsel, and any interested party entitled to notice under RCW 11.130.080 with a statement including: His or her training relating to the duties as a court visitor; his or her criminal history as defined in RCW 9.94A.030 for the period covering ten years prior to the appointment; his or her hourly rate, if compensated; whether the court visitor has had any contact with a party to the proceeding prior to his or her appointment; and whether he or she has an apparent conflict of interest. Within three days of the later of the actual service or filing of the court visitor's statement, any party may set a hearing and file and serve a motion for an order to show cause why the court visitor should not be removed for one of the following three reasons:

- (i) Lack of expertise necessary for the proceeding;
- (ii) An hourly rate higher than what is reasonable for the particular proceeding; or
- (iii) A conflict of interest.

(b) Notice of the hearing shall be provided to the court visitor and all parties. If, after a hearing, the court enters an order replacing the court visitor, findings shall be included, expressly stating the reasons for the removal. If the court visitor is not removed, the court has the authority to assess to the moving party attorneys' fees and costs related to the motion. The court shall assess attorneys' fees and costs for frivolous motions.

(5) A court visitor appointed under subsection (2) of this section for an adult shall interview the respondent in person and in a manner the respondent is best able to understand:

(a) Explain to the respondent the substance of the petition, the nature, purpose, and effect of the proceeding, the respondent's rights at the hearing on the petition, and the general powers and duties of a conservator;

(b) Determine the respondent's views about the appointment sought by the petitioner, including views about a proposed conservator, the conservator's proposed powers and duties, and the scope and duration of the proposed conservatorship; and

(c) Inform the respondent that all costs and expenses of the proceeding, including respondent's attorneys' fees, may be paid from the respondent's assets.

(6) A court visitor appointed under subsection (2) of this section for an adult shall:

(a) Interview the petitioner and proposed conservator, if any;

(b) Review financial records of the respondent, if relevant to the court visitor's recommendation under subsection (7)(b) of this section;

(c) Investigate whether the respondent's needs could be met by a protective arrangement instead of conservatorship or other less restrictive alternative and, if so, identify the arrangement or other less restrictive alternative; and

(d) Investigate the allegations in the petition and any other matter relating to the petition the court directs.

(7) A court visitor appointed under subsection (2) of this section for an adult shall file a report in a record with the court and provide a copy of the report to the respondent, peti-

tioner, and any interested party entitled to notice under RCW 11.130.080 at least fifteen days prior to the hearing on the petition filed under RCW 11.130.365, which must include:

(a) A recommendation:

(i) Regarding the appropriateness of conservatorship, or whether a protective arrangement instead of conservatorship or other less restrictive alternative for meeting the respondent's needs is available;

(ii) If a conservatorship is recommended, whether it should be full or limited;

(iii) If a limited conservatorship is recommended, the powers to be granted to the conservator, and the property that should be placed under the conservator's control; and

(iv) If a conservatorship is recommended, the amount of the bond or other verified receipt needed under RCW 11.130.445 and 11.130.500;

(b) A statement of the qualifications of the proposed conservator and whether the respondent approves or disapproves of the proposed conservator;

(c) A statement whether the respondent declined a professional evaluation under RCW 11.130.390 and what other information is available to determine the respondent's needs and abilities without the professional evaluation;

(d) A statement whether the respondent is able to attend a hearing at the location court proceedings typically are held;

(e) A statement whether the respondent is able to participate in a hearing and which identifies any technology or other form of support that would enhance the respondent's ability to participate; and

(f) Any other matter the court directs.

(8) The appointment of a court visitor has no effect on the determination of the adult respondent's legal capacity and does not overcome the presumption of legal capacity or full legal and civil rights of the adult respondent. [2020 c 312 § 310; 2019 c 437 § 405.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.385 Appointment and role of attorney. (1)(a)

The respondent shall have the right to be represented by a willing attorney of their choosing at any stage in conservatorship proceedings. Any attorney purporting to represent a respondent or person subject to conservatorship shall petition the court to be appointed to represent the respondent or person subject to conservatorship.

(b) Unless the respondent in a proceeding for appointment of a conservator is represented by an attorney, the court is not required, but may appoint an attorney to represent the respondent, regardless of the respondent's ability to pay, except as provided otherwise in (c) of this subsection.

(c)(i) The court must appoint an attorney to represent the respondent at public expense when either:

(A) The respondent is unable to afford an attorney;

(B) The expense of an attorney would result in substantial hardship to the respondent; or

(C) The respondent does not have practical access to funds with which to pay an attorney. If the respondent can afford an attorney but lacks practical access to funds, the court must provide an attorney and may impose a reimbursement requirement as part of a final order.

(ii) When, in the opinion of the court, the rights and interests of the respondent cannot otherwise be adequately

protected and represented, the court on its own motion must appoint an attorney at any time to represent the respondent.

(iii) An attorney must be provided under this subsection (1)(c) as soon as practicable after a petition is filed and long enough before any final hearing to allow adequate time for consultation and preparation. Absent a convincing showing in the record to the contrary, a period of less than three weeks is presumed by a reviewing court to be inadequate time for consultation and preparation.

(2) An attorney representing the respondent in a proceeding for appointment of a conservator shall:

(a) Make reasonable efforts to ascertain the respondent's wishes;

(b) Advocate for the respondent's wishes to the extent reasonably ascertainable; and

(c) If the respondent's wishes are not reasonably ascertainable, advocate for the result that is the least restrictive in type, duration, and scope, consistent with the respondent's interests.

(3) The court is not required, but may appoint an attorney to represent a parent of a minor who is the subject of a proceeding under RCW 11.130.365 if:

(a) The parent objects to appointment of a conservator;

(b) The court determines that counsel is needed to ensure that consent to appointment of a conservator is informed; or

(c) The court otherwise determines the parent needs representation. [2020 c 312 § 211; 2019 c 437 § 406.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.390 Professional evaluation. (1) On receipt of a petition under RCW 11.130.360 and at the time the court appoints a court visitor under RCW 11.130.380, the court shall order a professional evaluation of the respondent.

(2) The respondent must be examined by a physician licensed to practice under chapter 18.71 or 18.57 RCW, psychologist licensed under chapter 18.83 RCW, advanced registered nurse practitioner licensed under chapter 18.79 RCW, or physician assistant licensed under chapter 18.71A RCW, selected by the court visitor who is qualified to evaluate the respondent's alleged cognitive and functional abilities and limitations and will not be advantaged or disadvantaged by a decision to grant the petition or otherwise have a conflict of interest. If the respondent opposes the professional selected by the court visitor, the court visitor shall obtain a professional evaluation from the professional selected by the respondent. The court visitor, after receiving a professional evaluation from the individual selected by the respondent, may obtain a supplemental evaluation from a different professional.

(3) The individual conducting the evaluation shall promptly provide the completed evaluation report to the court visitor who shall file the report in a sealed record with the court. Unless otherwise directed by the court, the report must contain:

(a) The professional's name, address, education, and experience;

(b) A description of the nature, type, and extent of the respondent's cognitive and functional abilities and limitations with regard to the management of the respondent's property and financial affairs;

(c) An evaluation of the respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior, and social skills;

(d) A prognosis for improvement with regard to the ability to manage the respondent's property and financial affairs;

(e) A description of the respondent's current medications, and the effect of the medications on the respondent's cognitive and functional abilities;

(f) Identification of persons with whom the professional has met or spoken with regarding the respondent; and

(g) The date of the examination on which the report is based.

(4) If the respondent declines to participate in an evaluation ordered under subsection (1) of this section, the court may proceed with the hearing under RCW 11.130.370 if the court finds that it has sufficient information to determine the respondent's needs and abilities without the professional evaluation.

(5) A professional evaluation is not required if a petition for appointment of a conservator under RCW 11.130.360 is for a conservator for the property or financial affairs of a minor or for an adult missing, detained, or unable to return to the United States. [2020 c 312 § 212; 2019 c 437 § 407.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.400 Attendance and rights at hearing. (1) Except as otherwise provided in subsection (2) of this section, a hearing under RCW 11.130.370 may not proceed unless the respondent attends the hearing. If it is not reasonably feasible for the respondent to attend a hearing at the location court proceedings typically are held, the court shall make reasonable efforts to hold the hearing at an alternative location convenient to the respondent or allow the respondent to attend the hearing using real-time audio-visual technology.

(2) A hearing under RCW 11.130.370 may proceed without the respondent in attendance if the court finds by clear and convincing evidence that:

(a) The respondent consistently and repeatedly has refused to attend the hearing after having been fully informed of the right to attend and the potential consequences of failing to do so;

(b) There is no practicable way for the respondent to attend and participate in the hearing even with appropriate supportive services or technological assistance; or

(c) The respondent is a minor who has received proper notice and attendance would be harmful to the minor.

(3) The respondent may be assisted in a hearing under RCW 11.130.370 by a person or persons of the respondent's choosing, assistive technology, or an interpreter or translator, or a combination of these supports. If assistance would facilitate the respondent's participation in the hearing, but is not otherwise available to the respondent, the court shall make reasonable efforts to provide it.

(4) The respondent has a right to choose an attorney to represent the respondent at a hearing under RCW 11.130.370.

(5) At a hearing under RCW 11.130.370, the respondent may:

(a) Present evidence and subpoena witnesses and documents;

(b) Examine witnesses, including any court-appointed evaluator and the visitor; and

(c) Otherwise participate in the hearing.

(6) Unless excused by the court for good cause, a proposed conservator shall attend a hearing under RCW 11.130.370.

(7) A hearing under RCW 11.130.370 must be closed on request of the respondent and a showing of good cause.

(8) Any person may request to participate in a hearing under RCW 11.130.370. The court may grant the request, with or without a hearing, on determining that the best interest of the respondent will be served. The court may impose appropriate conditions on the person's participation. [2019 c 437 § 408.]

11.130.410 Confidentiality of records. (1) The existence of a proceeding for or the existence of conservatorship is a matter of public record unless the court seals the record after:

(a) The respondent, the individual subject to conservatorship, or the parent of a minor subject to conservatorship requests the record be sealed; and

(b) Either:

(i) The petition for conservatorship is dismissed; or

(ii) The conservatorship is terminated.

(2) An individual subject to a proceeding for a conservatorship, whether or not a conservator is appointed, an attorney designated by the individual, and a person entitled to notice under RCW 11.130.420(6) or a subsequent order may access court records of the proceeding and resulting conservatorship, including the conservator's plan under RCW 11.130.510 and the conservator's report under RCW 11.130.530. A person not otherwise entitled access to court records under this section for good cause may petition the court for access to court records of the conservatorship, including the conservator's plan and report. The court shall grant access if access is in the best interest of the respondent or individual subject to conservatorship or furthers the public interest and does not endanger the welfare or financial interests of the respondent or individual.

(3) A report under RCW 11.130.380 of a court visitor or professional evaluation under RCW 11.130.390 is confidential and must be sealed on filing, but is available to:

(a) The court;

(b) The individual who is the subject of the report or evaluation, without limitation as to use;

(c) The petitioner, court visitor, petitioner's and respondent's attorneys, and proposed guardians, for purposes of the proceeding;

(d) Unless the court directs otherwise, an agent appointed under a power of attorney for finances in which the respondent is identified as the principal; and

(e) Any other person if it is in the public interest or for a purpose the court orders for good cause. [2020 c 312 § 213; 2019 c 437 § 409.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.415 Who may be conservator—Order of priority. (1) Except as otherwise provided in subsection (3) of this section, the court in appointing a conservator shall consider persons qualified to be a conservator in the following order of priority:

(2022 Ed.)

(a) A conservator, other than a temporary or emergency conservator, currently acting for the respondent in another jurisdiction;

(b) A person nominated as conservator by the respondent, including the respondent's most recent nomination made in a power of attorney for finances;

(c) An agent appointed by the respondent to manage the respondent's property under a power of attorney for finances;

(d) A spouse or domestic partner of the respondent;

(e) A relative or other individual who has shown special care and concern for the respondent; and

(f) A certified professional guardian or conservator or other entity the court determines is suitable.

(2) If two or more persons have equal priority under subsection (1) of this section, the court shall select as conservator the person the court considers best qualified. In determining the best qualified person, the court shall consider the person's relationship with the respondent, the person's skills, the expressed wishes of the respondent, the extent to which the person and the respondent have similar values and preferences, and the likelihood the person will be able to perform the duties of a conservator successfully.

(3) The court, acting in the best interest of the respondent, may decline to appoint as conservator a person having priority under subsection (1) of this section and appoint a person having a lower priority or no priority.

(4) A person that provides paid services to the respondent, or an individual who is employed by a person that provides paid services to the respondent or is the spouse, domestic partner, parent, or child of an individual who provides or is employed to provide paid services to the respondent, may not be appointed as conservator unless:

(a) The individual is related to the respondent by blood or law; or

(b) The court finds by clear and convincing evidence that the person is the best qualified person available for appointment and the appointment is in the best interest of the respondent.

(5) An owner, operator, or employee of a long-term care facility at which the respondent is receiving care may not be appointed as conservator unless the owner, operator, or employee is related to the respondent by blood or law. [2020 c 312 § 214; 2019 c 437 § 410.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.420 Order of appointment of conservator. (1) A court order appointing a conservator for a minor must include findings to support appointment of a conservator and, if a full conservatorship is granted, the reason a limited conservatorship would not meet the identified needs of the minor.

(2) A court order appointing a conservator for a minor may dispense with the requirement for the conservator to file reports with the court under RCW 11.130.530 if all the property of the minor subject to the conservatorship is protected by a verified receipt.

(3) A court order appointing a conservator for an adult must:

(a) Include a specific finding that clear and convincing evidence has established that the identified needs of the respondent cannot be met by a protective arrangement

instead of conservatorship or other less restrictive alternatives, including use of appropriate supportive services, technological assistance, or supported decision making; and

(b) Include a specific finding that clear and convincing evidence established the respondent was given proper notice of the hearing on the petition.

(4) A court order establishing a full conservatorship for an adult must state the basis for granting a full conservatorship and include specific findings to support the conclusion that a limited conservatorship would not meet the functional needs of the adult.

(5) A court order establishing a limited conservatorship must state the specific property placed under the control of the conservator and the powers granted to the conservator.

(6) The court, as part of an order establishing a conservatorship, shall identify any person that subsequently is entitled to:

(a) Notice of the rights of the individual subject to conservatorship under RCW 11.130.425(2);

(b) Notice of a sale of or surrender of a lease to the primary dwelling of the individual;

(c) Notice that the conservator has delegated a power that requires court approval under RCW 11.130.435 or substantially all powers of the conservator;

(d) Notice that the conservator will be unavailable to perform the conservator's duties for more than one month;

(e) A copy of the conservator's plan under RCW 11.130.510 and the conservator's report under RCW 11.130.530;

(f) Access to court records relating to the conservatorship;

(g) Notice of a transaction involving a substantial conflict between the conservator's fiduciary duties and personal interests;

(h) Notice of the death or significant change in the condition of the individual;

(i) Notice that the court has limited or modified the powers of the conservator; and

(j) Notice of the removal of the conservator.

(7) If an individual subject to conservatorship is an adult, the spouse, domestic partner, and adult children of the adult subject to conservatorship are entitled under subsection (6) of this section to notice unless the court orders otherwise based on good cause. Good cause includes the court's determination that notice would be contrary to the preferences or prior directions of the adult subject to conservatorship.

(8) If an individual subject to conservatorship is a minor, each parent and adult sibling of the minor is entitled under subsection (6) of this section to notice unless the court determines notice would not be in the best interest of the minor.

(9) All orders establishing a conservatorship for an adult must contain:

(a) A conservatorship summary placed directly below the case caption or on a separate cover page in the form or substantially the same form as set forth in RCW 11.130.665;

(b) The date which the limited conservator or conservator must file the conservator's plan under RCW 11.130.510;

(c) The date which the limited conservator or conservator must file an inventory under RCW 11.130.515;

(d) The date by which the court will review the conservator's plan as required by RCW 11.130.510;

(e) The report interval which the conservator must file its report under RCW 11.130.530. The report interval may be annual, biennial, or triennial;

(f) The date the limited conservator or conservator must file its report under RCW 11.130.530. The due date of the filing of the report shall be within ninety days after the anniversary date of the appointment;

(g) The date for the court to review the report under RCW 11.130.530 and enter its order. The court shall conduct the review within one hundred twenty days after the anniversary date of the appointment. [2020 c 312 § 215; 2019 c 437 § 411.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.425 Notice of order of appointment—Rights.

(1) A conservator appointed under RCW 11.130.420 shall give to the individual subject to conservatorship and to all other persons entitled to notice pursuant to an order under RCW 11.130.420(6) or a subsequent order a copy of the order of appointment, together with notice of the right to request termination or modification. The order and notice must be given not later than fourteen days after the appointment.

(2) Not later than thirty days after appointment of a conservator under RCW 11.130.420, the conservator shall give to the individual subject to conservatorship and any other person entitled to notice under RCW 11.130.420(6) a statement of the rights of the individual subject to conservatorship and procedures to seek relief if the individual is denied those rights. The statement must be in plain language, in at least sixteen-point font, and to the extent feasible, in a language in which the individual subject to conservatorship is proficient. The statement must notify the individual subject to conservatorship of the right to:

(a) Seek termination or modification of the conservatorship, or removal of the conservator, and choose an attorney to represent the individual in these matters;

(b) Participate in decision making to the extent reasonably feasible;

(c) Receive a copy of the conservator's plan under RCW 11.130.510, the conservator's inventory under RCW 11.130.515, and the conservator's report under RCW 11.130.530; and

(d) Object to the conservator's inventory, plan, or report.

(3) If a conservator is appointed for the reasons stated in RCW 11.130.360(2)(a)(ii) and the individual subject to conservatorship is missing, notice under this section to the individual is not required. [2020 c 312 § 216; 2019 c 437 § 412.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.430 Emergency conservator. (1) A person interested in an individual's welfare, including the individual for whom the order is sought, may petition for appointment of an emergency conservator for the individual.

(2) An emergency petition under subsection (1) of this section must state the petitioner's name, principal residence, and current street address, if different, and[,] to the extent known, the following:

(a) The respondent's name, age, principal residence[,] and current street address, if different;

(b) The name and address of the respondent's:

(i) Spouse or domestic partner or, if the respondent has none, an adult with whom the respondent has shared household responsibilities for more than six months in the twelve-month period immediately before the filing of the emergency petition;

(ii) Adult children or, if none, each parent and adult sibling of the respondent, or, if none, at least one adult nearest in kinship to the respondent who can be found with reasonable diligence; and

(iii) Adult stepchildren whom the respondent actively parented during the stepchildren's minor years and with whom the respondent had an ongoing relationship in the two-year period immediately before the filing of the emergency petition;

(c) The name and current address of each of the following, if applicable:

(i) A person responsible for care of the respondent;

(ii) Any attorney currently representing the respondent;

(iii) Any representative payee appointed by the social security administration for the respondent;

(iv) A guardian or conservator acting for the respondent in this state or in another jurisdiction;

(v) A trustee or custodian of a trust or custodianship of which the respondent is a beneficiary;

(vi) Any fiduciary for the respondent appointed by the department of veterans affairs;

(vii) Any representative payee or authorized representative or protective payee;

(viii) An agent designated under a power of attorney for health care in which the respondent is identified as the principal;

(ix) An agent designated under a power of attorney for finances in which the respondent is identified as the principal;

(x) A person nominated as conservator by the respondent;

(xi) A person nominated as conservator by the respondent's parent or spouse or domestic partner in a will or other signed record;

(xii) A proposed emergency conservator, and the reason the proposed emergency conservator should be selected; and

(xiii) A person known to have routinely assisted the respondent with decision making during the six months immediately before the filing of the emergency petition;

(d) The reason an emergency conservatorship is necessary, including a specific description of:

(i) The nature and extent of the emergency situation;

(ii) The nature and extent of the individual's alleged emergency need that arose because of the emergency situation;

(iii) The substantial and irreparable harm to the individual's property or financial interests that is likely to be prevented by the appointment of an emergency conservator;

(iv) All protective arrangements or other less restrictive alternatives that have been considered or implemented to meet the individual's alleged emergency needs instead of emergency conservatorship;

(v) If no protective arrangements or other less restrictive alternatives have been considered or implemented instead of emergency conservatorship, the reason they have not been considered or implemented; and

(vi) The reason a protective arrangement or other less restrictive alternative instead of emergency conservatorship is insufficient to meet the individual's alleged emergency need;

(e) The reason the petitioner believes that a basis for appointment of a conservator under RCW 11.130.360 exists;

(f) Whether the petitioner intends to also seek conservatorship for an individual under RCW 11.130.365;

(g) The reason the petitioner believes that no other person appears to have authority and willingness to act to address the individual's identified needs caused by the emergency circumstances;

(h) The specific powers to be granted to the proposed emergency conservator and a description of how those powers will be used to meet the individual's alleged emergency need;

(i) If the individual has property other than personal effects, a general statement of the individual's property, with an estimate of its value, including any insurance or pension, and the source and amount of other anticipated income or receipts; and

(j) Whether the individual needs an interpreter, translator, or other form of support to communicate effectively with the court or understand court proceedings.

(3) The requirements of RCW 11.130.090 apply to an emergency conservator appointed for an individual with the following exceptions for any proposed emergency conservator required to complete the training under RCW 11.130.090:

(a) The proposed emergency conservator shall present evidence of the successful completion of the required training video or web cast to the court no later than the hearing on the petition for appointment of an emergency conservator for an individual; and

(b) The superior court may defer the completion of the training requirement to a date no later than fourteen days after appointment if the petitioner requests an extension of time to complete the training due to emergent circumstances beyond the control of [the] petitioner.

(4) On its own or on petition for appointment of an emergency conservator for an individual after a petition has been filed under RCW 11.130.365, the court may appoint an emergency conservator for the individual if the court makes specific findings based on clear and convincing evidence that:

(a) An emergency exists such that appointment of an emergency conservator is likely to prevent substantial and irreparable harm to the individual's property or financial interests;

(b) The individual's identified needs caused by the emergency cannot be met by a protective arrangement or other less restrictive alternative instead of emergency conservatorship;

(c) No other person appears to have authority and willingness to act to address the individual's identified needs caused by the emergency circumstances; and

(d) There is reason to believe that a basis for appointment of a conservator under RCW 11.130.360 exists.

(5) If the court acts on its own to appoint an emergency conservator after a petition has been filed under RCW 11.130.365, all requirements of this section shall be met.

(6) A court order appointing an emergency conservator for an individual shall:

(a) Grant only the specific powers necessary to meet the individual's identified emergency need and to prevent substantial and irreparable harm to the individual's property or financial interests;

(b) Include a specific finding that clear and convincing evidence established that an emergency exists such that appointment of an emergency conservator is likely to prevent substantial and irreparable harm to the individual's property or financial interests;

(c) Include a specific finding that the identified emergency need of the individual cannot be met by a protective arrangement instead of conservatorship or other less restrictive alternative, including any relief available under chapter 74.34 RCW or use of appropriate supportive services, technological assistance, or supported decision making;

(d) Include a specific finding that clear and convincing evidence established the adult respondent was given proper notice of the hearing on the petition;

(e) State that the individual subject to emergency conservatorship retains all rights the individual enjoyed prior to the emergency conservatorship with the exception of the rights not retained during the period of emergency conservatorship;

(f) Require the emergency conservator to furnish a bond or other security under RCW 11.130.445;

(g) Include the date that the sixty-day period of emergency conservatorship ends, and the date the emergency conservator's report, required by this section, is due to the court; and

(h) Identify any person or notice party that subsequently is entitled to:

(i) Notice of the rights of the individual;

(ii) Notice of a change in the primary dwelling of the individual;

(iii) Notice of the removal of the conservator;

(iv) A copy of the emergency conservator's plan and the emergency conservator's report under this section;

(v) Access to court records relating to the emergency conservatorship;

(vi) Notice of the death or significant change in the condition of the individual;

(vii) Notice that the court has limited or modified the powers of the emergency conservator; and

(viii) Notice of the removal of the emergency conservator.

(7) A spouse, a domestic partner, and adult children of an adult subject to emergency conservatorship are entitled to notice under this section unless the court orders otherwise based on good cause. Good cause includes the court's determination that notice would be contrary to the preferences or prior directions of the individual subject to emergency conservatorship or in the best interest of the individual.

(8) The duration of authority of an emergency conservator may not exceed sixty days and the emergency conservator may exercise only the powers specified in the order of appointment. Upon a motion by the emergency conservator, with notice served upon all applicable notice parties, the emergency conservator's authority may be extended once for not more than sixty days if the court finds that the conditions for appointment of an emergency conservator under subsection (4) of this section continue.

(9) Immediately on filing of a petition for an emergency conservator for an adult, the court shall appoint an attorney to represent the adult in the proceeding. An order appointing an emergency conservator for an adult may not be entered unless the adult respondent, the adult respondent's attorney, and the court visitor appointed under subsection (10) of this section have received a minimum of fourteen days' notice of the date, time, and place of a hearing on the petition. A copy of the emergency petition and notice of a hearing on the petition must be served personally on the adult respondent, the adult respondent's attorney, and the court visitor appointed under subsection (10) of this section not more than two court days after the petition has been filed. The notice must inform the respondent of the adult respondent's rights at the hearing, including the right to an attorney and to attend the hearing. The notice must include a description of the nature, purpose, and consequences of granting the emergency petition. The court shall not grant the emergency petition if notice substantially complying with this subsection is not served on the respondent.

(10)(a) On receipt of a petition for appointment of emergency conservator for an individual, the court:

(i) Shall appoint a court visitor if an emergency conservator is sought for an adult; or

(ii) May appoint a court visitor if an emergency conservator is sought for a minor.

(b) Notice of appointment of the court visitor must be served upon the court visitor within two days of appointment. The court visitor must be an individual with training or experience in the type of abilities, limitations, and needs alleged in the emergency petition. The court, in the order appointing a court visitor, shall specify the hourly rate the [court] visitor may charge for his or her services, and shall specify the maximum amount the court visitor may charge without additional court review and approval.

(c) The court visitor shall within two days of service of notice of appointment file with the court and serve, either personally or by certified mail with return receipt, the respondent or the respondent's legal counsel, the petitioner or the petitioner's legal counsel, and any notice party with a statement including the court visitor's: Training relating to the duties as a court visitor; criminal history as defined in RCW 9.94A.030 for the period covering ten years prior to the appointment; hourly rate, if compensated; contact, if any, with a party to the proceeding prior to appointment; and apparent or actual conflicts of interest.

(d) A court visitor appointed under this section shall use due diligence to attempt to interview the adult respondent in person and, in a manner the individual is best able to understand:

(i) Explain to the adult respondent the substance of the emergency petition, the nature, purpose, and effect of the proceeding, the respondent's rights at the hearing on the petition, and the proposed specific powers and duties of the proposed conservator as stated in the emergency petition;

(ii) Determine the adult respondent's views about the emergency appointment sought by the petitioner, including views about a proposed emergency conservator, the emergency conservator's proposed powers and duties, and the scope and duration of the proposed emergency conservatorship; and

(iii) Inform the adult respondent that all costs and expenses of the proceeding, including but not limited to the adult respondent's attorneys' fees, the appointed conservator's fees, and the appointed conservator's attorneys' fees, will be paid from the individual's assets upon approval by the court.

(e) The court visitor appointed under this section shall:

(i) Interview the petitioner and proposed emergency conservator;

(ii) Use due diligence to attempt to visit the adult respondent's present dwelling;

(iii) Use due diligence to attempt to obtain information from any physician or other person known to have treated, advised, or assessed the adult respondent's relevant physical or mental condition; and

(iv) Investigate the allegations in the emergency petition and any other matter relating to the emergency petition the court directs.

(f) A court visitor appointed under this section shall file a report in a record with the court and provide a copy of the report to the petitioner, the adult subject to the emergency conservatorship, and any notice party at least seven days prior to the hearing on the emergency petition, which must include:

(i) A recommendation regarding the appropriateness of emergency conservatorship, including whether a protective arrangement instead of conservatorship or other less restrictive alternative for meeting the respondent's needs is available, and if an emergency conservatorship is recommended;

(ii) A detailed summary of the alleged emergency and the substantial and irreparable harm to the individual's property or finances that is likely to be prevented by the appointment of an emergency conservator;

(iii) A statement as to whether the alleged emergency and the respondent's alleged needs are likely to require an extension of sixty days as authorized under this section;

(iv) The specific powers to be granted to the emergency conservator and how the specific powers will address the alleged emergency and the respondent's alleged need;

(v) A recommendation regarding the appropriateness of an ongoing conservatorship for an individual, including whether a protective arrangement instead of conservatorship or other less restrictive alternative for meeting the respondent's needs is available;

(vi) A statement of the qualifications of the proposed emergency conservator and whether the respondent approves or disapproves of the proposed emergency conservator, and the reasons for such approval or disapproval;

(vii) A recommendation whether a professional evaluation under RCW 11.130.390 is necessary;

(viii) A statement whether the respondent is able to attend a hearing at the location court proceedings typically are held;

(ix) A statement whether the respondent is able to participate in a hearing which identifies any technology or other form of support that would enhance the respondent's ability to participate; and

(x) Any other matter the court directs.

(11) An emergency conservator shall:

(a) Comply with the requirements of RCW 11.130.505 and the requirements of this chapter that pertain to the rights of an individual subject to conservatorship;

(b) Not have authority to make decisions or take actions that a conservator for an individual is prohibited by law from having; and

(c) Be subject to the same special limitations on a conservator's power that apply to a conservator for an individual.

(12) Appointment of an emergency conservator under this section is not a determination that a basis exists for appointment of a conservator under RCW 11.130.360.

(13) The court may remove an emergency conservator appointed under this section at any time.

(14) The emergency conservator shall file a report in a record with the court and provide a copy of the report to the individual subject to emergency conservatorship, and any notice party no later than forty-five days after appointment. The report shall include specific and updated information regarding the emergency alleged in the emergency petition, the individual's emergency needs, all actions and decisions by the emergency conservator, and a recommendation as to whether a conservator for an individual should be appointed. If the appointment of the emergency conservator is extended for an additional sixty days, the emergency conservator shall file a second report in a record with the court and provide a copy of the report to the individual subject to emergency conservatorship, and any notice party no later than forty-five days after the emergency conservatorship is extended by the court, which shall include the same information required for the first report. The emergency conservator shall make any other report the court requires.

(15) The court shall issue letters of emergency conservatorship to the emergency conservator in compliance with RCW 11.130.040. [2020 c 312 § 217; 2019 c 437 § 413.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.435 Powers of conservator requiring court approval. (1) Except as otherwise ordered by the court, a conservator must give notice to persons entitled to notice under RCW 11.130.370(4) and receive specific authorization by the court before the conservator may exercise with respect to the conservatorship the power to:

(a) Make a gift, except a gift of de minimis value;

(b) Sell, encumber an interest in, or surrender a lease to the primary dwelling of the individual subject to conservatorship;

(c) Sell, or encumber an interest in, any other real estate;

(d) Convey, release, or disclaim a contingent or expectant interest in property, including marital property and any right of survivorship incident to joint tenancy or tenancy by the entirety;

(e) Exercise or release a power of appointment;

(f) Create a revocable or irrevocable trust of property of the conservatorship estate, whether or not the trust extends beyond the duration of the conservatorship, or revoke or amend a trust revocable by the individual subject to conservatorship;

(g) Exercise a right to elect an option or change a beneficiary under an insurance policy or annuity or surrender the policy or annuity for its cash value;

(h) Exercise a right to a quasi-community property share under RCW 26.16.230 or a right to an elective share under other law in the estate of a deceased spouse or domestic partner

ner of the individual subject to conservatorship or renounce or disclaim a property interest;

(i) Grant a creditor priority for payment over creditors of the same or higher class if the creditor is providing property or services used to meet the basic living and care needs of the individual subject to conservatorship and preferential treatment otherwise would be impermissible under RCW 11.130.555(5);

(j) Make, modify, amend, or revoke the will of the individual subject to conservatorship in compliance with chapter 11.12 RCW;

(k) Acquire or dispose of property, including real property in another state, for cash or on credit, at public or private sale, and manage, develop, improve, exchange, partition, change the character of, or abandon property;

(l) Make ordinary or extraordinary repairs or alterations in a building or other structure, demolish any improvement, or raze an existing or erect a new party wall or building;

(m) Subdivide or develop land, dedicate land to public use, make or obtain the vacation of a plat and adjust a boundary, adjust a difference in valuation of land, exchange or partition land by giving or receiving consideration, and dedicate an easement to public use without consideration;

(n) Enter for any purpose into a lease of property as lessor or lessee, with or without an option to purchase or renew, for a term within or extending beyond the term of the conservatorship; and

(o) Structure the finances of the individual subject to conservatorship to establish eligibility for a public benefit including by making gifts consistent with the individual's preferences, values, and prior directions, if the conservator's action does not jeopardize the individual's welfare and otherwise is consistent with the conservator's duties.

(2) In approving a conservator's exercise of a power listed in subsection (1) of this section, the court shall consider primarily the decision the individual subject to conservatorship would make if able, to the extent the decision can be ascertained.

(3) To determine under subsection (2) of this section the decision the individual subject to conservatorship would make if able, the court shall consider the individual's prior or current directions, preferences, opinions, values, and actions, to the extent actually known or reasonably ascertainable by the conservator. The court also shall consider:

(a) The financial needs of the individual subject to conservatorship and individuals who are in fact dependent on the individual subject to conservatorship for support, and the interests of creditors of the individual;

(b) Possible reduction of income, estate, inheritance, or other tax liabilities;

(c) Eligibility for governmental assistance;

(d) The previous pattern of giving or level of support provided by the individual;

(e) Any existing estate plan or lack of estate plan of the individual;

(f) The life expectancy of the individual and the probability the conservatorship will terminate before the individual's death; and

(g) Any other relevant factor.

(4) A conservator may not revoke or amend a power of attorney for finances executed by the individual subject to

conservatorship. If a power of attorney for finances is in effect, a decision of the agent within the scope of the agent's authority takes precedence over that of the conservator, unless the court orders otherwise. The court has authority to revoke or amend any power of attorney executed by the adult. [2020 c 312 § 218; 2019 c 437 § 414.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.440 Petition for order after appointment. An individual subject to conservatorship or a person interested in the welfare of the individual may petition for an order:

(1) Requiring the conservator to furnish a bond or collateral or additional bond or collateral or allowing a reduction in a bond or collateral previously furnished;

(2) Requiring an accounting for the administration of the conservatorship estate;

(3) Directing distribution;

(4) Removing the conservator and appointing a temporary or successor conservator;

(5) Modifying the type of appointment or powers granted to the conservator, if the extent of protection or management previously granted is excessive or insufficient to meet the individual's needs, including because the individual's abilities or supports have changed;

(6) Rejecting or modifying the conservator's plan under RCW 11.130.510, the conservator's inventory under RCW 11.130.515, or the conservator's report under RCW 11.130.530; or

(7) Granting other appropriate relief. [2019 c 437 § 415.]

11.130.445 Bond—Alternative verified receipt. (1) Except as otherwise provided in subsections (3) and (4) of this section, the court shall require a conservator to furnish a bond with a surety the court specifies, or require a verified receipt, conditioned on faithful discharge of all duties of the conservator. The court may waive the requirement only if the court finds that a bond or other verified receipt is not necessary to protect the interests of the individual subject to conservatorship. Except as otherwise provided in subsections (3) and (4) of this section, the court may not waive the requirement if the conservator is in the business of serving as a conservator and is being paid for the conservator's service.

(2) Unless the court directs otherwise, the bond required under this section must be in the amount of the aggregate capital value of the conservatorship estate, plus the estimated income for the accounting and report review interval, less the value of property deposited under a verified receipt requiring a court order for its removal and real property the conservator lacks power to sell or convey without specific court authorization. The court, in place of surety on a bond, may accept collateral for the performance of the bond, including a pledge of securities or a mortgage of real property.

(3) A regulated financial institution qualified to do trust business in this state is not required to give a bond under this section.

(4) In all conservatorships where the person subject to conservatorship has total assets of a value of less than three thousand dollars, the court may dispense with the requirement of a bond: PROVIDED, That the conservator swears to report to the court any changes in the total assets of the person

subject to conservatorship increasing their value to over three thousand dollars: PROVIDED FURTHER, That the conservator files a yearly statement showing the monthly income of the person subject to conservatorship if such monthly income, excluding moneys from state or federal benefits, is over the sum of five hundred dollars per month for any three consecutive months. [2019 c 437 § 416.]

11.130.500 Terms and requirements of bond. (1) The following rules apply to the bond required under RCW 11.130.445:

(a) Except as otherwise provided by the bond, the surety and the conservator are jointly and severally liable.

(b) By executing a bond provided by a conservator, the surety submits to the personal jurisdiction of the court that issued letters of office to the conservator in a proceeding relating to the duties of the conservator in which the surety is named as a party. Notice of the proceeding must be given to the surety at the address shown in the records of the court in which the bond is filed and any other address of the surety then known to the person required to provide the notice.

(c) On petition of a successor conservator or person affected by a breach of the obligation of the bond, a proceeding may be brought against the surety for breach of the obligation of the bond.

(d) A proceeding against the bond may be brought until liability under the bond is exhausted.

(2) A proceeding may not be brought under this section against a surety of a bond on a matter as to which a proceeding against the conservator is barred.

(3) If a bond under RCW 11.130.445 is not renewed by the conservator, the surety or sureties immediately shall give notice to the court and the individual subject to conservatorship. [2019 c 437 § 417.]

11.130.505 Duties of conservator. (1) A conservator is a fiduciary and has duties of prudence and loyalty to the individual subject to conservatorship.

(2) A conservator shall promote the self-determination of the individual subject to conservatorship and, to the extent feasible, encourage the individual to participate in decisions, act on the individual's own behalf, and develop or regain the capacity to manage the individual's personal affairs.

(3) In making a decision for an individual subject to conservatorship, the conservator shall make the decision the conservator reasonably believes the individual would make if able, unless doing so would fail to preserve the resources needed to maintain the individual's well-being and lifestyle or otherwise unreasonably harm or endanger the welfare or personal or financial interests of the individual. To determine the decision the individual would make if able, the conservator shall consider the individual's prior or current directions, preferences, opinions, values, and actions, to the extent actually known or reasonably ascertainable by the conservator.

(4) If a conservator cannot make a decision under subsection (3) of this section because the conservator does not know and cannot reasonably determine the decision the individual subject to conservatorship probably would make if able, or the conservator reasonably believes the decision the individual would make would fail to preserve resources needed to maintain the individual's well-being and lifestyle or

otherwise unreasonably harm or endanger the welfare or personal or financial interests of the individual, the conservator shall act in accordance with the best interests of the individual. In determining the best interests of the individual, the conservator shall consider:

(a) Information received from professionals and persons that demonstrate sufficient interest in the welfare of the individual;

(b) Other information the conservator believes the individual would have considered if the individual were able to act; and

(c) Other factors a reasonable person in the circumstances of the individual would consider, including consequences for others.

(5) Except when inconsistent with the conservator's duties under subsections (1) through (4) of this section, a conservator shall invest and manage the conservatorship estate as a prudent investor would, by considering:

(a) The circumstances of the individual subject to conservatorship and the conservatorship estate;

(b) General economic conditions;

(c) The possible effect of inflation or deflation;

(d) The expected tax consequences of an investment decision or strategy;

(e) The role of each investment or course of action in relation to the conservatorship estate as a whole;

(f) The expected total return from income and appreciation of capital;

(g) The need for liquidity, regularity of income, and preservation or appreciation of capital; and

(h) The special relationship or value, if any, of specific property to the individual subject to conservatorship.

(6) The propriety of a conservator's investment and management of the conservatorship estate is determined in light of the facts and circumstances existing when the conservator decides or acts and not by hindsight.

(7) A conservator shall make a reasonable effort to verify facts relevant to the investment and management of the conservatorship estate.

(8) A conservator that has special skills or expertise, or is named conservator in reliance on the conservator's representation of special skills or expertise, has a duty to use the special skills or expertise in carrying out the conservator's duties.

(9) In investing, selecting specific property for distribution, and invoking a power of revocation or withdrawal for the use or benefit of the individual subject to conservatorship, a conservator shall consider any estate plan of the individual known or reasonably ascertainable to the conservator and may examine the will or other donative, nominative, or appointive instrument of the individual.

(10) A conservator shall maintain insurance on the insurable real and personal property of the individual subject to conservatorship, unless the conservatorship estate lacks sufficient funds to pay for insurance or the court finds:

(a) The property lacks sufficient equity; or

(b) Insuring the property would unreasonably dissipate the conservatorship estate or otherwise not be in the best interest of the individual.

(11) If a power of attorney for finances is in effect, a conservator shall cooperate with the agent to the extent feasible.

(12) A conservator has access to and authority over a digital asset of the individual subject to conservatorship to the extent provided by the revised uniform fiduciary access to digital assets act (chapter 11.120 RCW) or court order.

(13) A conservator for an adult shall notify the court if the condition of the adult has changed so that the adult is capable of exercising rights previously removed. The notice must be given immediately on learning of the change.

(14) A conservator shall notify the court within thirty days of any substantial change in the value of the property of the person subject to conservatorship and shall provide a copy of the notice to the person subject to guardianship, a person entitled to notice under RCW 11.130.420(6) or a subsequent court order, and any other person the court has determined is entitled to notice and schedule a hearing for the court to review the adequacy of the bond or other verified receipt under RCW 11.130.445 and 11.130.500. [2020 c 312 § 219; 2019 c 437 § 418.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.510 Conservator's plan. (1) A conservator, not later than ninety days after appointment, shall file with the court a plan for protecting, managing, expending, and distributing the assets of the conservatorship estate. The plan must be based on the needs of the individual subject to conservatorship and take into account the best interest of the individual as well as the individual's preferences, values, and prior directions, to the extent known to or reasonably ascertainable by the conservator. The conservator shall include in the plan:

(a) A budget containing projected expenses and resources, including an estimate of the total amount of fees the conservator anticipates charging per year and a statement or list of the amount the conservator proposes to charge for each service the conservator anticipates providing to the individual;

(b) How the conservator will involve the individual in decisions about management of the conservatorship estate;

(c) Any step the conservator plans to take to develop or restore the ability of the individual to manage the conservatorship estate; and

(d) An estimate of the duration of the conservatorship.

(2) A conservator shall give notice of the filing of the conservator's plan under subsection (1) of this section, together with a copy of the plan, to the individual subject to conservatorship, a person entitled to notice under RCW 11.130.420(6) or a subsequent order, and any other person the court determines. The notice must include a statement of the right to object to the plan and be given not later than fourteen days after the filing.

(3) An individual subject to conservatorship and any person entitled under subsection (2) of this section to receive notice and a copy of the conservator's plan may object to the plan.

(4) The court shall review the conservator's plan filed under subsection (1) of this section and determine whether to approve the plan or require a new plan. In deciding whether to approve the plan, the court shall consider an objection under subsection (3) of this section and whether the plan is consistent with the conservator's duties and powers. The court may not approve the plan until thirty days after its filing.

(5) After a conservator's plan under this section is approved by the court, the conservator shall provide a copy of the plan to the individual subject to conservatorship, a person entitled to notice under RCW 11.130.420(6) or a subsequent order, and any other person the court determines. [2019 c 437 § 419.]

11.130.515 Inventory—Records. (1) Not later than ninety days after appointment, a conservator shall prepare and file with the appointing court a detailed inventory of the conservatorship estate, together with an oath or affirmation that the inventory is believed to be complete and accurate as far as information permits.

(2) A conservator shall give notice of the filing of an inventory to the individual subject to conservatorship, a person entitled to notice under RCW 11.130.420(6) or a subsequent order, and any other person the court determines. The notice must be given not later than fourteen days after the filing.

(3) A conservator shall keep records of the administration of the conservatorship estate and make them available for examination on reasonable request of the individual subject to conservatorship, a guardian for the individual, or any other person the conservator or the court determines. [2020 c 312 § 220; 2019 c 437 § 420.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.520 Administrative powers of conservator not requiring court approval. (1) Except as otherwise provided in RCW 11.130.435 or qualified or limited in the court's order of appointment and stated in the letters of office, a conservator has all powers granted in this section and any additional power granted to a trustee by law of this state other than this chapter.

(2) A conservator, acting reasonably and consistent with the fiduciary duties of the conservator to accomplish the purpose of the conservatorship, without specific court authorization or confirmation, may with respect to the conservatorship estate:

(a) Collect, hold, and retain property, including property in which the conservator has a personal interest and real property in another state, until the conservator determines disposition of the property should be made;

(b) Receive additions to the conservatorship estate;

(c) Continue or participate in the operation of a business or other enterprise;

(d) Acquire an undivided interest in property in which the conservator, in a fiduciary capacity, holds an undivided interest;

(e) Invest assets;

(f) Deposit funds or other property in a financial institution, including one operated by the conservator;

(g) Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or a pooling or unitization agreement;

(h) Grant an option involving disposition of property or accept or exercise an option for the acquisition of property;

(i) Vote a security, in person or by general or limited proxy;

(j) Pay a call, assessment, or other sum chargeable or accruing against or on account of a security;

(k) Sell or exercise a stock subscription or conversion right;

(l) Consent, directly or through a committee or agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(m) Hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery;

(n) Insure:

(i) The conservatorship estate, in whole or in part, against damage or loss in accordance with RCW 11.130.505(10); and

(ii) The conservator against liability with respect to a third person;

(o) Borrow funds, with or without security, to be repaid from the conservatorship estate or otherwise;

(p) Advance funds for the protection of the conservatorship estate or the individual subject to conservatorship and all expenses, losses, and liability sustained in the administration of the conservatorship estate or because of holding any property for which the conservator has a lien on the conservatorship estate;

(q) Pay or contest a claim, settle a claim by or against the conservatorship estate or the individual subject to conservatorship by compromise, arbitration, or otherwise, or release, in whole or in part, a claim belonging to the conservatorship estate to the extent the claim is uncollectible;

(r) Pay a tax, assessment, compensation of the conservator or any guardian, and other expense incurred in the collection, care, administration, and protection of the conservatorship estate;

(s) Pay a sum distributable to the individual subject to conservatorship or an individual who is in fact dependent on the individual subject to conservatorship by paying the sum to the distributee or for the use of the distributee:

(i) To the guardian for the distributee;

(ii) To the custodian of the distributee under the uniform transfers to minors act (chapter 11.114 RCW); or

(iii) If there is no guardian, custodian, or custodial trustee, to a relative or other person having physical custody of the distributee;

(t) Bring or defend an action, claim, or proceeding in any jurisdiction for the protection of the conservatorship estate or the conservator in the performance of the conservator's duties; and

(u) Execute and deliver any instrument that will accomplish or facilitate the exercise of a power of the conservator. [2020 c 312 § 221; 2019 c 437 § 421.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.525 Distribution from conservatorship estate.

Except as otherwise provided in RCW 11.130.435 or qualified or limited in the court's order of appointment and stated in the letters of office, and unless contrary to a conservator's plan under RCW 11.130.510, the conservator may expend or distribute income or principal of the conservatorship estate without specific court authorization or confirmation for the support, care, education, health, or welfare of the individual subject to conservatorship or an individual who is in fact dependent on the individual subject to conservatorship,

(2022 Ed.)

including the payment of child or spousal support, in accordance with the following rules:

(1) The conservator shall consider a recommendation relating to the appropriate standard of support, care, education, health, or welfare for the individual subject to conservatorship or individual who is dependent on the individual subject to conservatorship, made by a guardian for the individual subject to conservatorship, if any, and, if the individual subject to conservatorship is a minor, a recommendation made by a parent of the minor.

(2) The conservator acting in compliance with the conservator's duties under RCW 11.130.505 is not liable for an expenditure or distribution made based on a recommendation under subsection (1) of this section unless the conservator knows the expenditure or distribution is not in the best interest of the individual subject to conservatorship.

(3) In making an expenditure or distribution under this section, the conservator shall consider:

(a) The size of the conservatorship estate, the estimated duration of the conservatorship, and the likelihood the individual subject to conservatorship, at some future time, may be fully self-sufficient and able to manage the individual's financial affairs and the conservatorship estate;

(b) The accustomed standard of living of the individual subject to conservatorship and individual who is dependent on the individual subject to conservatorship;

(c) Other funds or source used for the support of the individual subject to conservatorship; and

(d) The preferences, values, and prior directions of the individual subject to conservatorship.

(4) Funds expended or distributed under this section may be paid by the conservator to any person, including the individual subject to conservatorship, as reimbursement for expenditures the conservator might have made, or in advance for services to be provided to the individual subject to conservatorship or individual who is dependent on the individual subject to conservatorship if it is reasonable to expect the services will be performed and advance payment is customary or reasonably necessary under the circumstances. [2019 c 437 § 422.]

11.130.530 Conservator's report and accounting—Monitoring. (1) A conservator shall file with the court by the date established by the court a report in a record regarding the administration of the conservatorship estate unless the court otherwise directs, on resignation or removal, on termination of the conservatorship, and at any other time the court directs.

(2) A report under subsection (1) of this section must state or contain:

(a) An accounting that lists property included in the conservatorship estate and the receipts, disbursements, liabilities, and distributions during the period for which the report is made;

(b) A list of the services provided to the individual subject to conservatorship;

(c) A copy of the conservator's most recently approved plan and a statement whether the conservator has deviated from the plan and, if so, how the conservator has deviated and why;

(d) A recommendation as to the need for continued conservatorship and any recommended change in the scope of the conservatorship;

(e) To the extent feasible, a copy of the most recent reasonably available financial statements evidencing the status of bank accounts, investment accounts, and mortgages or other debts of the individual subject to conservatorship with all but the last four digits of the account numbers and social security number redacted;

(f) Anything of more than de minimis value which the conservator, any individual who resides with the conservator, or the spouse, domestic partner, parent, child, or sibling of the conservator has received from a person providing goods or services to the individual subject to conservatorship;

(g) Any business relation the conservator has with a person the conservator has paid or that has benefited from the property of the individual subject to conservatorship; and

(h) Whether any co-conservator or successor conservator appointed to serve when a designated event occurs is alive and able to serve.

(3) The court may appoint a court visitor to review a report under this section or conservator's plan under RCW 11.130.510, interview the individual subject to conservatorship or conservator, or investigate any other matter involving the conservatorship. In connection with the report, the court may order the conservator to submit the conservatorship estate to appropriate examination in a manner the court directs.

(4) Notice of the filing under this section of a conservator's report, together with a copy of the report, must be provided to the individual subject to conservatorship, a person entitled to notice under RCW 11.130.420(6) or a subsequent order, and other persons the court determines. The notice and report must be given not later than fourteen days after filing.

(5) The court shall establish procedures for monitoring a report submitted under this section and review each report at least annually to determine whether:

(a) The reports provide sufficient information to establish the conservator has complied with the conservator's duties;

(b) The conservatorship should continue; and

(c) The conservator's requested fees, if any, should be approved.

(6) If the court determines there is reason to believe a conservator has not complied with the conservator's duties or the conservatorship should not continue, the court:

(a) Shall notify the individual subject to conservatorship, the conservator, and any other person entitled to notice under RCW 11.130.420(6) or a subsequent order;

(b) May require additional information from the conservator;

(c) May appoint a court visitor to interview the individual subject to conservatorship or conservator or investigate any matter involving the conservatorship; and

(d) Consistent with RCW 11.130.565 and 11.130.570, may hold a hearing to consider removal of the conservator, termination of the conservatorship, or a change in the powers granted to the conservator or terms of the conservatorship.

(7) If the court has reason to believe fees requested by a conservator are not reasonable, the court shall hold a hearing to determine whether to adjust the requested fees.

(8) A conservator must petition the court for approval of a report filed under this section. The court after review may approve the report. If the court approves the report, there is a rebuttable presumption the report is accurate as to a matter adequately disclosed in the report.

(9) An order, after notice and hearing, approving an interim report of a conservator filed under this section adjudicates liabilities concerning a matter adequately disclosed in the report, as to a person given notice of the report or accounting.

(10) If the court approves a report filed under this section, the order approving the report shall set the due date for the filing of the next report to be filed under this section. The court may set the review at annual, biennial, or triennial intervals with the report due date to be within ninety days of the anniversary date of appointment. When determining the report interval, the court can consider: The length of time the conservator has been serving the person under conservatorship; whether the conservator has timely filed all required reports with the court; whether the conservator is monitored by other state or local agencies; the income of the person subject to conservatorship; the value of the property of the person subject to conservatorship; the adequacy of the bond and other verified receipt; and whether there have been any allegations of abuse, neglect, or a breach of fiduciary duty against the conservator.

(11) If the court approves a report filed under this section, the order approving the report shall contain a conservatorship summary or accompanied by a conservatorship summary in the form or substantially in the same form as set forth in RCW 11.130.665.

(12) If the court approves a report filed under this section, the order approving the report shall direct the clerk of the court to reissue letters of office in the form or substantially in the same form as set forth in RCW 11.130.660 to the conservator containing an expiration date which will be within one hundred eighty days after the date the court directs the conservator file its next report.

(13) An order, after notice and hearing, approving a final report filed under this section discharges the conservator from all liabilities, claims, and causes of action by a person given notice of the report and the hearing as to a matter adequately disclosed in the report.

(14) Any requirement to establish a monitoring program under this section is subject to appropriation. [2020 c 312 § 222; 2019 c 437 § 423.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.535 Attempted transfer of property by individual subject to conservatorship. (1) The interest of an individual subject to conservatorship in property included in the conservatorship estate is not transferable or assignable by the individual and is not subject to levy, garnishment, or similar process for claims against the individual unless allowed under RCW 11.130.555.

(2) If an individual subject to conservatorship enters into a contract after having the right to enter the contract removed by the court, the contract is void against the individual and the individual's property but is enforceable against the person that contracted with the individual.

(3) A person other than the conservator that deals with an individual subject to conservatorship with respect to property included in the conservatorship estate is entitled to protection provided by law of this state other than this chapter. [2019 c 437 § 424.]

11.130.540 Transaction involving conflict of interest.

A transaction involving a conservatorship estate which is affected by a substantial conflict between the conservator's fiduciary duties and personal interests is voidable unless the transaction is authorized by court order after notice to persons entitled to notice under RCW 11.130.420(6) or a subsequent order. A transaction affected by a substantial conflict includes a sale, encumbrance, or other transaction involving the conservatorship estate entered into by the conservator, an individual with whom the conservator resides, the spouse, domestic partner, descendant, sibling, agent, or attorney of the conservator, or a corporation or other enterprise in which the conservator has a substantial beneficial interest. [2019 c 437 § 425.]

11.130.545 Protection of person dealing with conservator.

(1) A person that assists or deals with a conservator in good faith and for value in any transaction, other than a transaction requiring a court order under RCW 11.130.435, is protected as though the conservator properly exercised any power in question. Knowledge by a person that the person is dealing with a conservator alone does not require the person to inquire into the existence of authority of the conservator or the propriety of the conservator's exercise of authority, but restrictions on authority stated in letters of office, or otherwise provided by law, are effective as to the person. A person that pays or delivers property to a conservator is not responsible for proper application of the property.

(2) Protection under subsection (1) of this section extends to a procedural irregularity or jurisdictional defect in the proceeding leading to the issuance of letters of office and does not substitute for protection for a person that assists or deals with a conservator provided by comparable provisions in law of this state other than this chapter relating to a commercial transaction or simplifying a transfer of securities by a fiduciary. [2019 c 437 § 426.]

11.130.547 Access of conservator to certain assets.

(1) For purposes of this section, "institution" means all financial institutions as defined in RCW 30A.22.041, all insurance companies holding a certificate of authority under chapter 48.05 RCW, or any agent who constitutes a salesperson or broker-dealer of securities under the definitions of RCW 21.20.005, individually and collectively.

(2) Institutions shall provide the conservator access and control over the assets described in (a)(vii) of this subsection, including but not limited to delivery of the asset to the conservator, upon receipt of the following:

(a) An affidavit containing as an attachment a true and correct copy of the conservator's letters of conservatorship and stating:

(i) That as of the date of the affidavit, the affiant is a duly appointed conservator with authority over assets held by the institution but owned or subject to withdrawal or delivery to a client or depositor of the institution;

(ii) The cause number of the conservatorship;

(iii) The name of the person under conservatorship and the name of the client or depositor, which names must be the same;

(iv) The account or the safety deposit box number or numbers;

(v) The address of the client or depositor;

(vi) The name and address of the affiant-conservator being provided assets or access to assets;

(vii) A description of and the value of the asset or assets, or, where the value cannot be readily ascertained, a reasonable estimate thereof, and a statement that the conservator receives delivery or control of each asset solely in its capacity as conservator;

(viii) The date the conservator assumed control over the assets; and

(ix) That a true and correct copy of the letters of conservatorship duly issued by a court to the conservator is attached to the affidavit; and

(b) An envelope, with postage prepaid, addressed to the clerk of the court issuing the letters of conservatorship. The affidavit must be sent in the envelope by the institution to the clerk of the court together with a statement signed by an agent of the institution that the description of the asset set forth in the affidavit appears to be accurate, and confirming in the case of cash assets, the value of the asset.

(3) Any conservator provided with access to a safe deposit box pursuant to subsection (1) of this section shall make an inventory of the contents of the box and attach this inventory to the affidavit before the affidavit is sent to the clerk of the court and before the contents of the box are released to the conservator. Any inventory must be prepared in the presence of an employee of the institution and the statement of the institution required under subsection (1) of this section must include a statement executed by the employee that the inventory appears to be accurate. The institution may require payment by the conservator of any fees or charges then due in connection with the asset or account and of a reasonable fee for witnessing preparation of the inventory and preparing the statement required by this subsection or subsection (1) of this section.

(4) Any institution to which an affidavit complying with subsection (1) of this section is submitted may rely on the affidavit without inquiry and is not subject to any liability of any nature whatsoever to any person whatsoever, including but not limited to the institution's client or depositor or any other person with an ownership or other interest in or right to the asset, for the reliance or for providing the conservator access and control over the asset, including but not limited to delivery of the asset to the conservator. [2020 c 312 § 224.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.550 Death of individual subject to conservatorship. (1) Upon the death of an individual subject to conservatorship, a conservator shall:

(a) Have authority to disburse or commit those funds under the control of the conservator as are prudent and within the means of the estate for the disposition of the deceased individual subject to conservatorship's remains. Consent for such arrangement must be secured according to RCW 68.50.160. If no person authorized by RCW 68.50.160

accepts responsibility for giving consent, the conservator may consent, subject to the provisions of this section and to the known directives of the deceased individual subject to conservatorship. Reasonable financial commitments made by a conservator pursuant to this section are binding against the estate of the deceased individual subject to conservatorship;

(b) Deliver to the court for safekeeping any will of the individual in the conservator's possession and inform the personal representative named in the will if feasible, or if not feasible, a beneficiary named in the will, of the delivery.

(2) If forty days after the death of an individual subject to conservatorship no personal representative has been appointed and no application or petition for appointment is before the court, the conservator may apply to exercise the powers and duties of a personal representative to administer and distribute the decedent's estate. The conservator shall give notice of his or her appointment and the pendency of any probate proceedings as provided in RCW 11.28.237 and shall also give notice to a person nominated as personal representative by a will of the decedent of which the conservator is aware. The court may grant the application if there is no objection and endorse the letters of office to note that the individual formerly subject to conservatorship is deceased and the conservator has acquired the powers and duties of a personal representative.

(3) On the death of an individual subject to conservatorship, the conservator shall conclude the administration of the conservatorship estate as provided in RCW 11.130.570. [2020 c 312 § 223; 2019 c 437 § 427.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.555 Presentation and allowance of claim. (1)

A conservator may pay, or secure by encumbering property included in the conservatorship estate, a claim against the conservatorship estate or the individual subject to conservatorship arising before or during the conservatorship, on presentation and allowance in accordance with the priorities under subsection (4) of this section. A claimant may present a claim by:

(a) Sending or delivering to the conservator a statement in a record of the claim, indicating its basis, the name and address of the claimant, and the amount claimed; or

(b) Filing the claim with the court, in a form acceptable to the court, and sending or delivering a copy of the claim to the conservator.

(2) A claim under subsection (1) of this section is presented on receipt by the conservator of the statement of the claim or the filing with the court of the claim, whichever first occurs. A presented claim is allowed if it is not disallowed in whole or in part by the conservator in a record sent or delivered to the claimant not later than sixty days after its presentation. Before payment, the conservator may change an allowance of the claim to a disallowance in whole or in part, but not after allowance under a court order or order directing payment of the claim. Presentation of a claim tolls until thirty days after disallowance of the claim the running of a statute of limitations that has not expired relating to the claim.

(3) A claimant whose claim under subsection (1) of this section has not been paid may petition the court to determine the claim at any time before it is barred by a statute of limitations, and the court may order its allowance, payment, or

security by encumbering property included in the conservatorship estate. If a proceeding is pending against the individual subject to conservatorship at the time of appointment of the conservator or is initiated thereafter, the moving party shall give the conservator notice of the proceeding if it could result in creating a claim against the conservatorship estate.

(4) If a conservatorship estate is likely to be exhausted before all existing claims are paid, the conservator shall distribute the estate in money or in kind in payment of claims in the following order:

(a) Costs and expenses of administration;

(b) A claim of the federal or state government having priority under law other than this chapter;

(c) A claim incurred by the conservator for support, care, education, health, or welfare previously provided to the individual subject to conservatorship or an individual who is in fact dependent on the individual subject to conservatorship;

(d) A claim arising before the conservatorship; and

(e) All other claims.

(5) Preference may not be given in the payment of a claim under subsection (4) of this section over another claim of the same class. A claim due and payable may not be preferred over a claim not due unless:

(a) Doing so would leave the conservatorship estate without sufficient funds to pay the basic living and health care expenses of the individual subject to conservatorship; and

(b) The court authorizes the preference under *RCW 11.130.435(1)(h).

(6) If assets of a conservatorship estate are adequate to meet all existing claims, the court, acting in the best interest of the individual subject to conservatorship, may order the conservator to grant a security interest in the conservatorship estate for payment of a claim at a future date. [2019 c 437 § 428.]

***Reviser's note:** RCW 11.130.435 was amended by 2020 c 312 § 218, changing subsection (1)(h) to subsection (1)(i), effective January 1, 2022.

11.130.560 Personal liability of conservator. (1)

Except as otherwise agreed by a conservator, the conservator is not personally liable on a contract properly entered into in a fiduciary capacity in the course of administration of the conservatorship estate unless the conservator fails to reveal the conservator's representative capacity in the contract or before entering into the contract.

(2) A conservator is personally liable for an obligation arising from control of property of the conservatorship estate or an act or omission occurring in the course of administration of the conservatorship estate only if the conservator is personally at fault.

(3) A claim based on a contract entered into by a conservator in a fiduciary capacity, an obligation arising from control of property included in the conservatorship estate, or a tort committed in the course of administration of the conservatorship estate may be asserted against the conservatorship estate in a proceeding against the conservator in a fiduciary capacity, whether or not the conservator is personally liable for the claim.

(4) A question of liability between a conservatorship estate and the conservator personally may be determined in a proceeding for accounting, surcharge, or indemnification or

another appropriate proceeding or action. [2019 c 437 § 429.]

11.130.565 Removal of conservator—Appointment of successor. (1) The court may remove a conservator for failure to perform the conservator's duties or other good cause and appoint a successor conservator to assume the duties of the conservator.

(2) The court shall hold a hearing to determine whether to remove a conservator and appoint a successor on:

(a) Petition of the individual subject to conservatorship, conservator, or person interested in the welfare of the individual which contains allegations that, if true, would support a reasonable belief that removal of the conservator and appointment of a successor may be appropriate, but the court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed during the preceding six months;

(b) Communication from the individual subject to conservatorship, conservator, or person interested in the welfare of the individual which supports a reasonable belief that removal of the conservator and appointment of a successor may be appropriate; or

(c) Determination by the court that a hearing would be in the best interest of the individual subject to conservatorship.

(3) Notice of a hearing under subsection (2)(a) of this section and notice of the individual's right to be represented at the hearing by counsel of the individual's choosing must be given to the individual subject to conservatorship, the conservator, and any other person the court determines.

(4) An individual subject to conservatorship who seeks to remove the conservator and have a successor appointed has the right to choose an attorney to represent the individual in this matter. The court shall award reasonable attorneys' fees to the attorney as provided in RCW 11.130.100.

(5) In selecting a successor conservator, the court shall follow the priorities under RCW 11.130.415.

(6) Not later than fourteen days after appointing a successor conservator, the successor conservator shall give notice of the appointment to the individual subject to conservatorship and any person entitled to notice under RCW 11.130.420(6) or a subsequent order. [2019 c 437 § 430.]

11.130.570 Termination or modification of conservatorship. (1) A conservatorship for a minor terminates on the earliest of:

(a) A court order terminating the conservatorship;

(b) The minor becoming an adult or, if the minor consents or the court finds by clear and convincing evidence that substantial harm to the minor's interests is otherwise likely, attaining twenty-one years of age;

(c) Emancipation of the minor; or

(d) Death of the minor.

(2) A conservatorship for an adult terminates on order of the court or when the adult dies.

(3) An individual subject to conservatorship, the conservator, or a person interested in the welfare of the individual may petition for:

(a) Termination of the conservatorship on the ground that a basis for appointment under RCW 11.130.360 does not

exist or termination would be in the best interest of the individual or for other good cause; or

(b) Modification of the conservatorship on the ground that the extent of protection or assistance granted is not appropriate or for other good cause.

(4) The court shall hold a hearing to determine whether termination or modification of a conservatorship is appropriate on:

(a) Petition under subsection (3) of this section that contains allegations that, if true, would support a reasonable belief that termination or modification of the conservatorship may be appropriate, but the court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed within the preceding six months;

(b) A communication from the individual subject to conservatorship, conservator, or person interested in the welfare of the individual which supports a reasonable belief that termination or modification of the conservatorship may be appropriate, including because the functional needs of the individual or supports or services available to the individual have changed;

(c) A report from a guardian or conservator which indicates that termination or modification may be appropriate because the functional needs or supports or services available to the individual have changed or a protective arrangement instead of conservatorship or other less restrictive alternative is available; or

(d) A determination by the court that a hearing would be in the best interest of the individual.

(5) Notice of a petition under subsection (3) of this section must be given to the individual subject to conservatorship, the conservator, and any such other person the court determines.

(6) On presentation of prima facie evidence for termination of a conservatorship, the court shall order termination unless it is proven that a basis for appointment of a conservator under RCW 11.130.360 exists.

(7) The court shall modify the powers granted to a conservator if the powers are excessive or inadequate due to a change in the abilities or limitations of the individual subject to conservatorship, the individual's supports, or other circumstances.

(8) Unless the court otherwise orders for good cause, before terminating a conservatorship, the court shall follow the same procedures to safeguard the rights of the individual subject to conservatorship which apply to a petition for conservatorship.

(9) An individual subject to conservatorship who seeks to terminate or modify the terms of the conservatorship has the right to choose an attorney to represent the individual in this matter. The court shall award reasonable attorneys' fees to the attorney as provided in RCW 11.130.100.

(10) On termination of a conservatorship other than by reason of the death of the individual subject to conservatorship, property of the conservatorship estate passes to the individual. The order of termination must direct the conservator to file a final report and petition for discharge on approval by the court of the final report.

(11) On termination of a conservatorship by reason of the death of the individual subject to conservatorship, the conservator shall file a final report and petition for discharge

on approval by the court of the final report within ninety days of death of the person subject to conservatorship. On approval of the final report, the conservator shall proceed expeditiously to distribute the conservatorship estate to the individual's estate or as otherwise ordered by the court. The conservator may take reasonable measures necessary to preserve the conservatorship estate until distribution can be made.

(12) The court shall issue a final order of discharge on the approval by the court of the final report and satisfaction by the conservator of any other condition the court imposed on the conservator's discharge. [2019 c 437 § 431.]

11.130.575 Transfer for benefit of minor without appointment of conservator. (1) Unless a person required to transfer funds or other property to a minor knows that a conservator for the minor has been appointed or a proceeding is pending for conservatorship, the person may transfer an amount or value not exceeding fifteen thousand dollars in a twelve-month period to:

- (a) A person that has care or custody of the minor and with whom the minor resides;
- (b) A guardian for the minor;
- (c) A custodian under the uniform transfers to minors act (chapter 11.114 RCW); or
- (d) A financial institution as a deposit in an interest-bearing account or certificate solely in the name of the minor and shall give notice to the minor of the deposit.

(2) A person that transfers funds or other property under this section is not responsible for its proper application.

(3) A person that receives funds or other property for a minor under subsection (1)(a) or (b) of this section may apply it only to the support, care, education, health, or welfare of the minor, and may not derive a personal financial benefit from it, except for reimbursement for necessary expenses. Funds not applied for these purposes must be preserved for the future support, care, education, health, or welfare of the minor, and the balance, if any, transferred to the minor when the minor becomes an adult or otherwise is emancipated. [2019 c 437 § 432.]

ARTICLE 5

OTHER PROTECTIVE ARRANGEMENTS

11.130.580 Authority for protective arrangement.

(1) Under this article, a court:

- (a) On receiving a petition for a guardianship for an adult may order a protective arrangement instead of guardianship as a less restrictive alternative to guardianship; and
- (b) On receiving a petition for a conservatorship for an individual may order a protective arrangement instead of conservatorship as a less restrictive alternative to conservatorship.

(2) A person interested in an adult's welfare, including the adult or a conservator for the adult, may petition under this article for a protective arrangement instead of guardianship.

(3) The following persons may petition under this article for a protective arrangement instead of conservatorship:

- (a) The individual for whom the protective arrangement is sought;

(b) A person interested in the property, financial affairs, or welfare of the individual, including a person that would be affected adversely by lack of effective management of property or financial affairs of the individual; and

(c) The guardian for the individual. [2019 c 437 § 501.]

11.130.585 Basis for protective arrangement instead of guardianship for adult. (1) After the hearing on a petition under RCW 11.130.270 for a guardianship or under RCW 11.130.580(2) for a protective arrangement instead of guardianship, the court may issue an order under subsection (2) of this section for a protective arrangement instead of guardianship if the court finds by clear and convincing evidence that:

(a) The respondent lacks the ability to meet essential requirements for physical health, safety, or self-care because the respondent is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance, or supported decision making; and

(b) The respondent's identified needs cannot be met by a less restrictive alternative.

(2) If the court makes the findings under subsection (1) of this section, the court, instead of appointing a guardian, may:

(a) Authorize or direct a transaction necessary to meet the respondent's need for health, safety, or care, including:

- (i) A particular medical treatment or refusal of a particular medical treatment; or
- (ii) Visitation or supervised visitation between the respondent and another person;

(b) Restrict access to the respondent by a specified person whose access places the respondent at serious risk of physical, psychological, or financial harm; and

(c) Reorder other arrangements on a limited basis that are appropriate.

(3) In deciding whether to issue an order under this section, the court shall consider the factors under RCW 11.130.330 and 11.130.335 that a guardian must consider when making a decision on behalf of an adult subject to guardianship. [2020 c 312 § 315; 2019 c 437 § 502.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.590 Basis for protective arrangement instead of conservatorship for adult or minor. (1) After the hearing on a petition under RCW 11.130.365 for conservatorship for an adult or under RCW 11.130.580(3) for a protective arrangement instead of a conservatorship for an adult, the court may issue an order under subsection (3) of this section for a protective arrangement instead of conservatorship for the adult if the court finds by clear and convincing evidence that:

(a) The adult is unable to manage property or financial affairs because:

- (i) Of a limitation in the ability to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance, or supported decision making; or
- (ii) The adult is missing, detained, or unable to return to the United States;

(b) An order under subsection (3) of this section is necessary to:

(i) Avoid harm to the adult or significant dissipation of the property of the adult; or

(ii) Obtain or provide funds or other property needed for the support, care, education, health, or welfare of the adult or an individual entitled to the adult's support; and

(c) The respondent's identified needs cannot be met by a less restrictive alternative.

(2) After the hearing on a petition under RCW 11.130.365 for conservatorship for a minor or under RCW 11.130.580(3) for a protective arrangement instead of conservatorship for a minor, the court may issue an order under subsection (3) of this section for a protective arrangement instead of conservatorship for the respondent if the court finds by a preponderance of the evidence that the arrangement is in the minor's best interest, and:

(a) If the minor has a parent, the court gives weight to any recommendation of the parent whether an arrangement is in the minor's best interest;

(b) Either:

(i) The minor owns money or property requiring management or protection that otherwise cannot be provided;

(ii) The minor has or may have financial affairs that may be put at unreasonable risk or hindered because of the minor's age; or

(iii) The arrangement is necessary or desirable to obtain or provide funds or other property needed for the support, care, education, health, or welfare of the minor; and

(iv) The order under subsection (3) of this section is necessary or desirable to obtain or provide money needed for the support, care, education, health, or welfare of the minor.

(3) If the court makes the findings under subsection (1) or (2) of this section, the court, instead of appointing a conservator, may:

(a) Authorize or direct a transaction necessary to protect the financial interest or property of the respondent, including:

(i) An action to establish eligibility for benefits;

(ii) Payment, delivery, deposit, or retention of funds or property;

(iii) Sale, mortgage, lease, or other transfer of property;

(iv) Purchase of an annuity;

(v) Entry into a contractual relationship, including a contract to provide for personal care, supportive services, education, training, or employment;

(vi) Addition to or establishment of a trust;

(vii) Ratification or invalidation of a contract, trust, will, or other transaction, including a transaction related to the property or business affairs of the respondent; or

(viii) Settlement of a claim; or

(b) Restrict access to the respondent's property by a specified person whose access to the property places the respondent at serious risk of financial harm.

(4) After the hearing on a petition under RCW 11.130.580(1)(b), whether or not the court makes the findings under subsection (1) or (2) of this section, the court may issue an order to restrict access to the respondent or the respondent's property by a specified person that the court finds by clear and convincing evidence:

(a) Through fraud, coercion, duress, or the use of deception and control caused or attempted to cause an action that

would have resulted in financial harm to the respondent or the respondent's property; and

(b) Poses a serious risk of substantial financial harm to the respondent or the respondent's property.

(5) Before issuing an order under subsection (3) or (4) of this section, the court shall consider the factors under RCW 11.130.505 a conservator must consider when making a decision on behalf of an individual subject to conservatorship.

(6) Before issuing an order under subsection (3) or (4) of this section for a respondent who is a minor, the court also shall consider the best interest of the minor, the preference of the parents of the minor, and the preference of the minor, if the minor is twelve years of age or older. [2019 c 437 § 503.]

11.130.595 Petition for protective arrangement. A petition for a protective arrangement instead of guardianship or conservatorship must state the petitioner's name, principal residence, current street address, if different, relationship to the respondent, interest in the protective arrangement, the name and address of any attorney representing the petitioner, and, to the extent known, the following:

(1) The respondent's name, age, principal residence, current street address, if different, and, if different, address of the dwelling in which it is proposed the respondent will reside if the petition is granted;

(2) The name and address of the respondent's:

(a) Spouse or domestic partner or, if the respondent has none, an adult with whom the respondent has shared household responsibilities for more than six months in the twelve-month period before the filing of the petition;

(b) Adult children or, if none, each parent and adult sibling of the respondent, or, if none, at least one adult nearest in kinship to the respondent who can be found with reasonable diligence; and

(c) Adult stepchildren whom the respondent actively parented during the stepchildren's minor years and with whom the respondent had an ongoing relationship in the two-year period immediately before the filing of the petition;

(3) The name and current address of each of the following, if applicable:

(a) A person responsible for the care or custody of the respondent;

(b) Any attorney currently representing the respondent;

(c) The representative payee appointed by the social security administration for the respondent;

(d) A guardian or conservator acting for the respondent in this state or another jurisdiction;

(e) A trustee or custodian of a trust or custodianship of which the respondent is a beneficiary;

(f) The fiduciary appointed for the respondent by the department of veterans affairs;

(g) An agent designated under a power of attorney for health care in which the respondent is identified as the principal;

(h) An agent designated under a power of attorney for finances in which the respondent is identified as the principal;

(i) A person nominated as guardian or conservator by the respondent if the respondent is twelve years of age or older;

(j) A person nominated as guardian by the respondent's parent, spouse, or domestic partner in a will or other signed record;

(k) A person known to have routinely assisted the respondent with decision making in the six-month period immediately before the filing of the petition; and

(l) If the respondent is a minor:

(i) An adult not otherwise listed with whom the respondent resides; and

(ii) Each person not otherwise listed that had primary care or custody of the respondent for at least sixty days during the two years immediately before the filing of the petition or for at least seven hundred thirty days during the five years immediately before the filing of the petition;

(4) The nature of the protective arrangement sought;

(5) The reason the protective arrangement sought is necessary, including a brief description of:

(a) The nature and extent of the respondent's alleged need;

(b) Any less restrictive alternative for meeting the respondent's alleged need which has been considered or implemented;

(c) If no less restrictive alternative has been considered or implemented, the reason less restrictive alternatives have not been considered or implemented; and

(d) The reason other less restrictive alternatives are insufficient to meet the respondent's alleged need;

(6) The name and current address, if known, of any person with whom the petitioner seeks to limit the respondent's contact;

(7) Whether the respondent needs an interpreter, translator, or other form of support to communicate effectively with the court or understand court proceedings;

(8) If a protective arrangement instead of guardianship is sought and the respondent has property other than personal effects, a general statement of the respondent's property with an estimate of its value, including any insurance or pension, and the source and amount of any other anticipated income or receipts; and

(9) If a protective arrangement instead of conservatorship is sought, a general statement of the respondent's property with an estimate of its value, including any insurance or pension, and the source and amount of other anticipated income or receipts. [2019 c 437 § 504.]

11.130.600 Notice and hearing. (1) All petitions filed under RCW 11.130.595 for the establishment of a protective arrangement shall be heard within sixty days unless an extension of time is requested by a party or the court visitor within such sixty-day period and granted for good cause shown.

(2)(a) A copy of a petition under RCW 11.130.580 and notice of a hearing on the petition must be served personally on the respondent and the court visitor appointed under RCW 11.130.605 not more than five court days after the petition under RCW 11.130.595 has been filed.

(b) A copy of a petition under RCW 11.130.580 and notice of a hearing on the petition must be served personally on the respondent and the court visitor appointed under RCW 11.130.605 not more than five court days after the petition under RCW 11.130.595 has been filed. The notice must inform the respondent of the respondent's rights at the hear-

ing, including the right to an attorney and to attend the hearing. The notice must include a description of the nature, purpose, and consequences of granting the petition for a protective arrangement. The court may not grant the petition if notice substantially complying with this subsection is not served on the respondent.

(3) In a proceeding on a petition under RCW 11.130.580, the notice required under subsection (2) of this section must be given to the persons required to be listed in the petition under RCW 11.130.595 (1) through (3) and any other person interested in the respondent's welfare the court determines. Failure to give notice under this subsection does not preclude the court from granting the petition.

(4) After the court has ordered a protective arrangement under this article, notice of a hearing on a petition filed under this chapter, together with a copy of the petition, must be given to the respondent and any other person the court determines. [2020 c 312 § 316; 2019 c 437 § 505.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.605 Appointment and role of court visitor. (1) On filing of a petition under RCW 11.130.580 for a protective arrangement instead of guardianship, the court shall appoint a court visitor. The court visitor must be an individual with training or experience in the type of abilities, limitations, and needs alleged in the petition.

(2) On filing of a petition under RCW 11.130.580 for a protective arrangement instead of conservatorship for a minor, the court may appoint a court visitor to investigate a matter related to the petition or inform the minor or a parent of the minor about the petition or a related matter.

(3) On filing of a petition under RCW 11.130.580 or a protective arrangement instead of conservatorship for an adult, the court shall appoint a court visitor unless the respondent is represented by an attorney appointed by the court. The court visitor must be an individual with training or experience in the types of abilities, limitations, and needs alleged in the petition.

(4) The court, in the order appointing a court visitor, shall specify the hourly rate the court visitor may charge for his or her services, and shall specify the maximum amount the court visitor may charge without additional court review and approval. The fee shall be charged to the person subject to a guardianship, conservatorship, or other protective arrangement proceeding unless the court finds that such payment would result in substantial hardship upon such person, in which case the county shall be responsible for such costs: PROVIDED, That the court may charge such fee to the petitioner, the person subject to a guardianship or conservatorship proceeding, or any person who has appeared in the action; or may allocate the fee, as it deems just. If the petition is found to be frivolous or not brought in good faith, the court visitor fee shall be charged to the petitioner. The court shall not be required to provide for the payment of a fee to any salaried employee of a public agency.

(5)(a) The court visitor appointed under subsection (1) or (3) of this section shall within five days of receipt of notice of appointment file with the court and serve, either personally or by certified mail with return receipt, the respondent or his or her legal counsel, the petitioner or his or her legal counsel, and any interested party entitled to notice under RCW

11.130.080 with a statement including: His or her training relating to the duties as a court visitor; his or her criminal history as defined in RCW 9.94A.030 for the period covering ten years prior to the appointment; his or her hourly rate, if compensated; whether the court visitor has had any contact with a party to the proceeding prior to his or her appointment; and whether he or she has an apparent conflict of interest. Within three days of the later of the actual service or filing of the court visitor's statement, any party may set a hearing and file and serve a motion for an order to show cause why the court visitor should not be removed for one of the following three reasons:

- (i) Lack of expertise necessary for the proceeding;
 - (ii) An hourly rate higher than what is reasonable for the particular proceeding; or
 - (iii) A conflict of interest.
- (b) Notice of the hearing shall be provided to the court visitor and all parties. If, after a hearing, the court enters an order replacing the court visitor, findings shall be included, expressly stating the reasons for the removal. If the court visitor is not removed, the court has the authority to assess to the moving party attorneys' fees and costs related to the motion. The court shall assess attorneys' fees and costs for frivolous motions.

(6) A court visitor appointed under subsection (1) or (3) of this section shall interview the respondent in person and in a manner the respondent is best able to understand:

- (a) Explain to the respondent the substance of the petition, the nature, purpose, and effect of the proceeding, and the respondent's rights at the hearing on the petition;
- (b) Determine the respondent's views with respect to the order sought;
- (c) Inform the respondent that all costs and expenses of the proceeding, including respondent's attorneys' fees, may be paid from the respondent's assets;
- (d) If the petitioner seeks an order related to the dwelling of the respondent, visit the respondent's present dwelling and any dwelling in which it is reasonably believed the respondent will live if the order is granted;
- (e) If a protective arrangement instead of guardianship is sought, obtain information from any physician or other person known to have treated, advised, or assessed the respondent's relevant physical or mental condition;
- (f) If a protective arrangement instead of conservatorship is sought, review financial records of the respondent, if relevant to the court visitor's recommendation under subsection (7)(b) of this section; and
- (g) Investigate the allegations in the petition and any other matter relating to the petition the court directs.

(7) A court visitor under subsection (1), (2), or (3) of this section promptly shall file a report in a record with the court and provide a copy of the report to the respondent, petitioner, and any interested party entitled to notice under RCW 11.130.580 (1) through (3), at least fifteen days prior to the hearing on the petition filed under RCW 11.130.585, 11.130.590, or 11.130.595, which must include:

- (a) To the extent relevant to the order sought, a summary of self-care, independent living tasks, and financial management tasks the respondent:
 - (i) Can manage without assistance or with existing supports;

(2022 Ed.)

- (ii) Could manage with the assistance of appropriate supportive services, technological assistance, or supported decision making; and

- (iii) Cannot manage;

- (b) A recommendation regarding the appropriateness of the protective arrangement sought and whether a less restrictive alternative for meeting the respondent's needs is available;

- (c) If the petition seeks to change the physical location of the dwelling of the respondent, a statement whether the proposed dwelling meets the respondent's needs and whether the respondent has expressed a preference as to the respondent's dwelling;

- (d) A statement whether the respondent declined a professional evaluation under RCW 11.130.615 and what other information is available to determine the respondent's needs and abilities without the professional evaluation;

- (e) A statement whether the respondent is able to attend a hearing at the location court proceedings typically are held;

- (f) A statement whether the respondent is able to participate in a hearing and which identifies any technology or other form of support that would enhance the respondent's ability to participate; and

- (g) Any other matter the court directs. [2020 c 312 § 311; 2019 c 437 § 506.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.610 Appointment and role of attorney. (1)(a) The respondent shall have the right to be represented by a willing attorney of their choosing at any stage in protective arrangement proceedings. Any attorney purporting to represent a respondent or person subject to a protective arrangement shall petition the court to be appointed to represent the respondent or person subject to a protective arrangement.

(b) Unless the respondent in a proceeding under this article is represented by an attorney, the court is not required, but may appoint an attorney to represent the respondent, regardless of the respondent's ability to pay, except as provided otherwise in (c) of this subsection.

(c)(i) The court must appoint an attorney to represent the respondent at public expense when either:

- (A) The respondent is unable to afford an attorney;

- (B) The expense of an attorney would result in substantial hardship to the respondent; or

- (C) The respondent does not have practical access to funds with which to pay an attorney. If the respondent can afford an attorney but lacks practical access to funds, the court must provide an attorney and may impose a reimbursement requirement as part of a final order.

- (ii) When, in the opinion of the court, the rights and interests of the respondent cannot otherwise be adequately protected and represented, the court on its own motion must appoint an attorney at any time to represent the respondent.

- (iii) An attorney must be provided under this subsection (1)(c) as soon as practicable after a petition is filed and long enough before any final hearing to allow adequate time for consultation and preparation. Absent a convincing showing in the record to the contrary, a period of less than three weeks is presumed by a reviewing court to be inadequate time for consultation and preparation.

(2) An attorney representing the respondent in a proceeding under this article shall:

(a) Make reasonable efforts to ascertain the respondent's wishes;

(b) Advocate for the respondent's wishes to the extent reasonably ascertainable; and

(c) If the respondent's wishes are not reasonably ascertainable, advocate for the result that is the least restrictive alternative in type, duration, and scope, consistent with the respondent's interests.

(3) The court is not required, but may appoint an attorney to represent a parent of a minor who is the subject of a proceeding under this article if:

(a) The parent objects to the entry of an order for a protective arrangement instead of guardianship or conservatorship;

(b) The court determines that counsel is needed to ensure that consent to the entry of an order for a protective arrangement is informed; or

(c) The court otherwise determines the parent needs representation. [2020 c 312 § 318; 2019 c 437 § 507.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.615 Professional evaluation. (1) On receipt of a petition under RCW 11.130.595 and at the time the court appoints a court visitor under RCW 11.130.605, the court shall order a professional evaluation of the respondent.

(2) The respondent must be examined by a physician licensed to practice under chapter 18.71 or 18.57 RCW, psychologist licensed under chapter 18.83 RCW, advanced registered nurse practitioner licensed under chapter 18.79 RCW, or physician assistant licensed under chapter 18.71A RCW selected by the court visitor who is qualified to evaluate the respondent's alleged cognitive and functional abilities and limitations and will not be advantaged or disadvantaged by a decision to grant the petition or otherwise have a conflict of interest. If the respondent opposes the professional selected by the court visitor, the court visitor shall obtain a professional evaluation from the professional selected by the respondent. The court visitor, after receiving a professional evaluation from the individual selected by the respondent, may obtain a supplemental evaluation from a different professional.

(3) The individual conducting the evaluation shall provide the completed evaluation report to the court visitor within thirty days of the examination of the respondent. The court visitor shall file the report in a sealed record with the court. Unless otherwise directed by the court, the report must contain:

(a) The professional's name, address, education, and experience;

(b) A description of the nature, type, and extent of the respondent's cognitive and functional abilities and limitations;

(c) An evaluation of the respondent's mental and physical condition and, if appropriate, education potential, adaptive behavior, and social skills;

(d) A prognosis for improvement and recommendation for the appropriate treatment, support, or habilitation plan;

(e) A description of the respondent's current medications, and the effect of the medications on the respondent's cognitive and functional abilities;

(f) Identification or persons with whom the professional has met or spoken with regarding the respondent; and

(g) The date of the examination on which the report is based.

(4) If the respondent declines to participate in an evaluation ordered under subsection (1) of this section, the court may proceed with the hearing under RCW 11.130.600 if the court finds that it has sufficient information to determine the respondent's needs and abilities without the professional evaluation. [2020 c 312 § 319; 2019 c 437 § 508.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.620 Attendance and rights at hearing. (1) Except as otherwise provided in subsection (2) of this section, a hearing under this article may not proceed unless the respondent attends the hearing. If it is not reasonably feasible for the respondent to attend a hearing at the location court proceedings typically are held, the court shall make reasonable efforts to hold the hearing at an alternative location convenient to the respondent or allow the respondent to attend the hearing using real-time audio-visual technology.

(2) A hearing under this article may proceed without the respondent in attendance if the court finds by clear and convincing evidence that:

(a) The respondent consistently and repeatedly has refused to attend the hearing after having been fully informed of the right to attend and the potential consequences of failing to do so;

(b) There is no practicable way for the respondent to attend and participate in the hearing even with appropriate supportive services and technological assistance; or

(c) The respondent is a minor who has received proper notice and attendance would be harmful to the minor.

(3) The respondent may be assisted in a hearing under this article by a person or persons of the respondent's choosing, assistive technology, or an interpreter or translator, or a combination of these supports. If assistance would facilitate the respondent's participation in the hearing, but is not otherwise available to the respondent, the court shall make reasonable efforts to provide it.

(4) The respondent has a right to choose an attorney to represent the respondent at a hearing under this article.

(5) At a hearing under this article, the respondent may:

(a) Present evidence and subpoena witnesses and documents;

(b) Examine witnesses, including any court-appointed evaluator and the visitor; and

(c) Otherwise participate in the hearing.

(6) A hearing under this article must be closed on request of the respondent and a showing of good cause.

(7) Any person may request to participate in a hearing under this article. The court may grant the request, with or without a hearing, on determining that the best interests of the respondent will be served. The court may impose appropriate conditions on the person's participation. [2019 c 437 § 509.]

11.130.625 Notice of order. The petitioner shall give notice of an order under this article to the individual who is

subject to the protective arrangement instead of guardianship or conservatorship, a person whose access to the individual is restricted by the order, and any other person the court determines. [2020 c 312 § 317; 2019 c 437 § 510.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.630 Confidentiality of records. (1) The existence of a proceeding for or the existence of a protective arrangement instead of guardianship or conservatorship is a matter of public record unless the court seals the record after:

- (a) The respondent, the individual subject to the protective arrangement, or the parent of a minor subject to the protective arrangement requests the record be sealed; and
(b) Either:
(i) The proceeding is dismissed;
(ii) The protective arrangement is no longer in effect; or
(iii) An act authorized by the order granting the protective arrangement has been completed.

(2) A respondent, an individual subject to a protective arrangement instead of guardianship or conservatorship, an attorney designated by the respondent or individual, a parent of a minor subject to a protective arrangement, and any other person the court determines are entitled to access court records of the proceeding and resulting protective arrangement. A person not otherwise entitled access to court records under this subsection for good cause may petition the court for access. The court shall grant access if access is in the best interest of the respondent or individual subject to the protective arrangement or furthers the public interest and does not endanger the welfare or financial interests of the respondent or individual.

(3) A report of a visitor or professional evaluation generated in the course of a proceeding under this article must be sealed on filing but is available to:

- (a) The court;
(b) The individual who is the subject of the report or evaluation, without limitation as to use;
(c) The petitioner, visitor, and petitioner's and respondent's attorneys, for purposes of the proceeding;
(d) Unless the court orders otherwise, an agent appointed under a power of attorney for finances in which the respondent is the principal;
(e) If the order is for a protective arrangement instead of guardianship and unless the court orders otherwise, an agent appointed under a power of attorney for health care in which the respondent is identified as the principal; and
(f) Any other person if it is in the public interest or for a purpose the court orders for good cause. [2019 c 437 § 511.]

11.130.635 Appointment of special agent. The court may appoint a special agent, to assist in implementing a protective arrangement under this article. The special agent has the authority conferred by the order of appointment and serves until discharged by court order. [2019 c 437 § 512.]

ARTICLE 6
FORMS

11.130.640 Use of forms. Unless otherwise provided in this chapter, use of the forms contained in this article is

optional. Failure to use these forms does not prejudice any party. [2019 c 437 § 601.]

11.130.645 Petition for guardianship for minor. This form may be used to petition for guardianship for a minor.

Petition for Guardianship for Minor

State of:

County of:

Name and address of attorney representing petitioner, if applicable:

Note to petitioner: This form can be used to petition for a guardian for a minor. A court may appoint a guardian for a minor who does not have a guardian if the court finds the appointment is in the minor's best interest, and: The parents, after being fully informed of the nature and consequences of guardianship, consent; all parental rights have been terminated; or the court finds by clear and convincing evidence that the parents are unwilling or unable to exercise their parental rights.

(1) Information about the person filing this petition (the petitioner.)

(a) Name:

(b) Principal residence:

(c) Current street address (if different):

(d) Relationship to minor:

(e) Interest in this petition:

(f) Telephone number (optional):

(g) Email address (optional):

(2) Information about the minor alleged to need a guardian. Provide the following information to the extent known.

(a) Name:

(b) Age:

(c) Principal residence:

(d) Current street address (if different):

(e) If petitioner anticipates the minor moving, or seeks to move the minor, proposed new address:

(f) Does the minor need an interpreter, translator, or other form of support to communicate with the court or understand court proceedings? If so, please explain:

(g) Telephone number (optional):

(h) Email address (optional):

(3) Information about the minor's parent(s).

(a) Name(s) of living parent(s):

(b) Current street address(es) of living parent(s):

(c) Does any parent need an interpreter, translator, or other form of support to communicate with the court or understand court proceedings? If so, please explain:

(4) People who are required to be notified of this petition. State the name and current address of the people listed in Appendix A.

(5) Appointment requested. State the name and address of any proposed guardian and the reason the proposed guardian should be selected.

.....
.....
(6) State why petitioner seeks the appointment. Include a description of the nature and extent of the minor's alleged need.
.....

(7) Property. If the minor has property other than personal effects, state the minor's property with an estimate of its value.
.....

(8) Other proceedings. If there are any other proceedings concerning the care or custody of the minor currently pending in any court in this state or another jurisdiction, please describe them.
.....

(9) Attorney(s). If the minor or the minor's parent is represented by an attorney in this matter, state the name, telephone number, email address, and address of the attorney(s).
.....
.....

SIGNATURE

.....
Signature of Petitioner Date

.....
Signature of Petitioner's Attorney if Date
Petitioner is Represented by Counsel

APPENDIX A:

People whose name and address must be listed in subsection (4) of this petition if they are not the petitioner:

The minor, if the minor is twelve years of age or older;

Each parent of the minor or, if there are none, the adult nearest in kinship that can be found;

An adult with whom the minor resides;

Each person that had primary care or custody of the minor for at least sixty days during the two years immediately before the filing of the petition or for at least seven hundred thirty days during the five years immediately before the filing of the petition;

If the minor is twelve years of age or older, any person nominated as guardian by the minor;

Any person nominated as guardian by a parent of the minor;

The grandparents of the minor;

Adult siblings of the minor; and

Any current guardian or conservator for the minor appointed in this state or another jurisdiction. [2019 c 437 § 602.]

11.130.650 Petition for guardianship, conservatorship, or protective arrangement. This form may be used to petition for:

Guardianship for an adult;

Conservatorship for an adult or minor;

A protective arrangement instead of guardianship for an adult; or

A protective arrangement instead of conservatorship for an adult or minor.

Petition for Guardianship, Conservatorship, or Protective Arrangement

State of:

County of:

Name and address of attorney representing petitioner, if applicable:

Note to petitioner: This form can be used to petition for a guardian, conservator, or both, or for a protective arrangement instead of either a guardianship or conservatorship. This form should not be used to petition for guardianship for a minor.

The court may appoint a guardian or order a protective arrangement instead of guardianship for an adult if the adult lacks the ability to meet essential requirements for physical health, safety, or self-care because (1) the adult is unable to receive and evaluate information or make or communicate decisions even with the use of supportive services, technological assistance, and supported decision making, and (2) the adult's identified needs cannot be met by a less restrictive alternative.

The court may appoint a conservator or order a protective arrangement instead of conservatorship for an adult if (1) the adult is unable to manage property and financial affairs because of a limitation in the ability to receive and evaluate information or make or communicate decisions even with the use of supportive services, technological assistance, and supported decision making or the adult is missing, detained, or unable to return to the United States, and (2) appointment is necessary to avoid harm to the adult or significant dissipation of the property of the adult, or to obtain or provide funds or other property needed for the support, care, education, health, or welfare of the adult, or of an individual who is entitled to the adult's support, and protection is necessary or desirable to provide funds or other property for that purpose.

The court may appoint a conservator or order a protective arrangement instead of conservatorship for a minor if: (1) The minor owns funds or other property requiring management or protection that cannot otherwise be provided; or (2) it would be in the minor's best interests, and the minor has or may have financial affairs that may be put at unreasonable risk or hindered because of the minor's age, or appointment is necessary or desirable to provide funds or other property needed for the support, care, education, health, or welfare of the minor.

The court may also order a protective arrangement instead of conservatorship that restricts access to an individual or an individual's property by a person that the court finds: (1) Through fraud, coercion, duress, or the use of deception and control, caused, or attempted to cause, an action that would have resulted in financial harm to the individual or the individual's property; and (2) poses a serious risk of substantial financial harm to the individual or the individual's property.

(1) Information about the person filing this petition (the petitioner.)

- (a) Name:
(b) Principal residence:
(c) Current street address (if different):
(d) Relationship to respondent:
(e) Interest in this petition:
(f) Telephone number (optional):
(g) Email address (optional):

(2) Information about the individual alleged to need protection (the "respondent"). Provide the following information to the extent known.

- (a) Name:
(b) Age:
(c) Principal residence:
(d) Current street address (if different):
(e) If petitioner anticipates respondent moving, or seeks to move respondent, proposed new address:

(f) Does respondent need an interpreter, translator, or other form of support to communicate with the court or understand court proceedings? If so, please explain:

- (g) Telephone number (optional):
(h) Email address (optional):

(3) People who are required to be notified of this petition. State the name and address of the people listed in Appendix A.

(4) Existing agents. State the name and address of any person appointed as an agent under a power of attorney for finances or power of attorney for health care, or who has been appointed as the individual's representative for payment of benefits.

(5) Action requested. State whether petitioner is seeking appointment of a guardian, a conservator, or a protective arrangement instead of an appointment.

(6) Order requested or appointment requested. If seeking a protective arrangement instead of a guardianship or conservatorship, state the transaction or other action you want the court to order. If seeking appointment of a guardian or conservator, state the powers petitioner requests the court grant to a guardian or conservator.

(7) State why the appointment or protective arrangement sought is necessary. Include a description of the nature and extent of respondent's alleged need.

(8) State all less restrictive alternatives to meeting respondent's alleged need that have been considered or implemented. Less restrictive alternatives could include supported decision making, technological assistance, or the appointment of an agent by respondent including appointment under a power of attorney for health care or

power of attorney for finances. If no alternative has been considered or implemented, state the reason why not.

(9) Explain why less restrictive alternatives will not meet respondent's alleged need.

(10) Provide a general statement of respondent's property and an estimate of its value. Include any real property such as a house or land, insurance or pension, and the source and amount of any other anticipated income or receipts. As part of this statement, indicate, if known, how the property is titled (for example, is it jointly owned?).

(11) For a petition seeking appointment of a conservator. (Skip this section if not asking for appointment of a conservator.)

(a) If seeking appointment of a conservator with all powers permissible under this state's law, explain why appointment of a conservator with fewer powers (i.e., a "limited conservatorship") or other protective arrangement instead of conservatorship will not meet the individual's alleged needs.

(b) If seeking a limited conservatorship, state the property petitioner requests be placed under the conservator's control and any proposed limitation on the conservator's powers and duties.

(c) State the name and address of any proposed conservator and the reason the proposed conservator should be selected.

(d) If respondent is twelve years of age or older, state the name and address of any person respondent nominates as conservator.

(e) If alleging a limitation in respondent's ability to receive and evaluate information, provide a brief description of the nature and extent of respondent's alleged limitation.

(f) If alleging that respondent is missing, detained, or unable to return to the United States, state the relevant circumstances, including the time and nature of the disappearance or detention and a description of any search or inquiry concerning respondent's whereabouts.

(12) For a petition seeking appointment of a guardian. (Skip this section if not asking for appointment of a guardian.)

(a) If seeking appointment of a guardian with all powers permissible under this state's law, explain why appointment of a guardian with fewer powers (i.e., a "limited guardianship") or other protective arrangement instead of guardianship will not meet the individual's alleged needs.

.....
.....

(b) If seeking a limited guardianship, state the powers petitioner requests be granted to the guardian.

.....
.....

(c) State the name and address of any proposed guardian and the reason the proposed guardian should be selected.

.....
.....

(d) State the name and address of any person nominated as guardian by respondent, or, in a will or other signed writing or other record, by respondent's parent or spouse or domestic partner.

.....
.....

(13) Attorney. If petitioner, respondent, or, if respondent is a minor, respondent's parent is represented by an attorney in this matter, state the name, telephone number, email address, and address of the attorney(s).

.....
.....

SIGNATURE

.....
Signature of Petitioner Date

.....
Signature of Petitioner's Attorney if Date
Petitioner is Represented by Counsel

APPENDIX A:

People whose name and address must be listed in subsection (3) of this petition, if they are not the petitioner.

Respondent's spouse or domestic partner, or if respondent has none, any adult with whom respondent has shared household responsibilities in the past six months;

Respondent's adult children, or, if respondent has none, respondent's parents and adult siblings, or if respondent has none, one or more adults nearest in kinship to respondent who can be found with reasonable diligence;

Respondent's adult stepchildren whom respondent actively parented during the stepchildren's minor years and with whom respondent had an ongoing relationship within two years of this petition;

Any person responsible for the care or custody of respondent;

Any attorney currently representing respondent;

Any representative payee for respondent appointed by the social security administration;

Any current guardian or conservator for respondent appointed in this state or another jurisdiction;

Any trustee or custodian of a trust or custodianship of which respondent is a beneficiary;

Any veterans administration fiduciary for respondent;

Any person respondent has designated as agent under a power of attorney for finances;

Any person respondent has designated as agent under a power of attorney for health care;

Any person known to have routinely assisted the individual with decision making in the previous six months;

Any person respondent nominates as guardian or conservator; and

Any person nominated as guardian by respondent's parent or spouse or domestic partner in a will or other signed writing or other record. [2019 c 437 § 603.]

11.130.655 Notification of rights for adult subject to guardianship or conservatorship. This form may be used to notify an adult subject to guardianship or conservatorship of the adult's rights under RCW 11.130.315 and 11.130.425.

Notification of Rights

You are getting this notice because a guardian, conservator, or both have been appointed for you. It tells you about some important rights you have. It does not tell you about all your rights. If you have questions about your rights, you can ask an attorney or another person, including your guardian or conservator, to help you understand your rights.

General rights:

You have the right to exercise any right the court has not given to your guardian or conservator.

You also have the right to ask the court to:

End your guardianship, conservatorship, or both;

Increase or decrease the powers granted to your guardian, conservator, or both;

Make other changes that affect what your guardian or conservator can do or how they do it; and

Replace the person that was appointed with someone else.

You also have a right to hire an attorney to help you do any of these things.

Additional rights for persons for whom a guardian has been appointed:

As an adult subject to guardianship, you have a right to:

(1) Be involved in decisions affecting you, including decisions about your care, where you live, your activities, and your social interactions, to the extent reasonably feasible;

(2) Be involved in decisions about your health care to the extent reasonably feasible, and to have other people help you understand the risks and benefits of health care options;

(3) Be notified at least fourteen days in advance of a change in where you live or a permanent move to a nursing home, mental health facility, or other facility that places restrictions on your ability to leave or have visitors, unless the guardian has proposed this change in the guardian's plan or the court has expressly authorized it;

(4) Ask the court to prevent your guardian from changing where you live or selling or surrendering your primary dwelling by following the appropriate process for objecting to such a move in compliance with RCW 11.130.330(5);

(5) Vote and get married unless the court order appointing your guardian states that you cannot do so;

(6) Receive a copy of your guardian's report and your guardian's plan; and

(7) Communicate, visit, or interact with other people (this includes the right to have visitors, to make and receive telephone calls, personal mail, or electronic communications) unless:

(a) Your guardian has been authorized by the court by specific order to restrict these communications, visits, or interactions;

(b) A protective order is in effect that limits contact between you and other people; or

(c) Your guardian has good cause to believe the restriction is needed to protect you from significant physical, psychological, or financial harm and the restriction is for not more than seven business days if the person has a relative or preexisting social relationship with you or not more than sixty days if the person does not have that kind of relationship with you.

Additional rights for persons for whom a conservator has been appointed:

As an adult subject to conservatorship, you have a right to:

Participate in decisions about how your property is managed to the extent feasible; and

Receive a copy of your conservator's inventory, report, and plan. [2019 c 437 § 604.]

11.130.657 Notification of petition for guardianship or conservatorship. This form must be used to notify an adult respondent of the respondent's rights that could be restricted if a guardianship petition under RCW 11.130.270

or a conservatorship petition under RCW 11.130.365 is granted.

**IMPORTANT NOTICE
PLEASE READ CAREFULLY**

A petition to have a guardian or conservator appointed for you has been filed in the . . . county superior court by . . . If a guardian or conservator is appointed, you could lose one or more of the following rights:

- (1) To marry, divorce, or enter into or end a state registered domestic partnership;
- (2) To vote or hold an elected office;
- (3) To enter into a contract or make or revoke a will;
- (4) To appoint someone to act on your behalf;
- (5) To sue and be sued other than through a guardian;
- (6) To possess a license to drive;
- (7) To buy, sell, own, mortgage, or lease property;
- (8) To consent to or refuse medical treatment;
- (9) To decide who shall provide care and assistance;
- (10) To make decisions regarding social aspects of your life.

Under the law, you have certain rights.

You have the right to be represented by a lawyer of your own choosing. The court will appoint a lawyer to represent you if you are unable to pay or payment would result in a substantial hardship to you.

You have the right to ask for a jury trial on the issue of capacity.

You have the right to be present in court and testify when the hearing is held to decide whether or not you need a guardian or conservator. If a court visitor is appointed, you have the right to request the court to replace that person.

You have the right to ask the court to establish a protective arrangement instead of a guardianship or conservatorship. [2020 c 312 § 321.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.660 Letters of office. All letters of guardianship/conservatorship must be in the following form or a substantially similar form:

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON IN AND FOR THE
COUNTY OF

IN THE MATTER OF THE
GUARDIANSHIP/
CONSERVATORSHIP OF
.....

Cause No.

LETTERS OF
GUARDIANSHIP/CONSERVATORSHIP

Date letters expire

THESE LETTERS OF GUARDIANSHIP/CONSERVATORSHIP PROVIDE OFFICIAL VERIFICATION OF THE FOLLOWING:

On the day of, (year) the Court appointed to serve as:

- Guardian of the Person Full Limited
- Conservator of the Estate Full Limited

for, in the above referenced matter.

The Guardian/Conservator has fulfilled all legal requirements to serve including, but not limited to: Taking and filing the oath; filing any bond consistent with the court's order; filing any blocked account agreement consistent with the court's order; and appointing a resident agent for a nonresident guardian.

The Court, having found the Guardian/Conservator duly qualified, now makes it known is authorized as the Guardian for designated in the Court's order as referenced above.

The next filing and reporting deadline in this matter is on the . . . day of,

THESE LETTERS ARE NO LONGER VALID ON

These letters can only be renewed by a new court order. If the court grants an extension, new letters will be issued.

This matter is before the Honorable of Superior Court, the seal of the Court being affixed this day of

State of Washington)

) ss.

County of)

I,, Clerk of the Superior Court of said County and State, certify that this document represents true and correct Letters of Guardianship/Conservatorship in the above entitled case, entered upon the record on this day of,

These letters remain in full force and effect until the date of expiration set forth above.

The seal of Superior Court has been affixed and witnessed by my hand this day of,

., Clerk of Superior Court

By, Deputy

.....

(Signature of Deputy)

[2019 c 437 § 605.]

11.130.665 Guardianship/conservatorship summary.

The guardianship/conservatorship summary shall be in or substantially similar form:

GUARDIANSHIP/CONSERVATORSHIP SUMMARY

Date Guardian/Conservator Appointed:
Due Date for Report and Accounting:
Date of Next Review:
Letters Expire On:
Bond Amount: \$
Restricted Account Agreements Required:
Due Date for Inventory, if applicable:
Due Date for Guardian's Plan, if applicable:

Person subject to guardianship/conservatorship	Guardian/Conservator
Name:	Name:
Address:	Address:
Phone:	Phone:
Facsimile:	Facsimile:

Interested Parties	Address	Relation

[2019 c 437 § 606.]

**ARTICLE 7
CERTIFIED PROFESSIONAL GUARDIANSHIP BOARD
OF RESOLUTION GRIEVANCES**

11.130.670 Certified professional guardianship board—Grievances. (1) The certified professional guardianship board must resolve grievances against professional guardians and/or conservators within a reasonable time for alleged violations of the certified professional guardianship board's standards of practice, statutes, regulations, or rules, that relate to the conduct of a certified professional guardian or conservator.

(a) All grievances must initially be reviewed within thirty days by certified professional guardianship board members, or a subset thereof, to determine if the grievance is complete, states facts that describe a violation of the standards of practice, statutes, regulations, or rules, and relates to the conduct of a professional guardian and/or conservator, before investigating, requesting a response from the professional guardian or conservator, or forwarding to the superior courts. To be complete, grievances must provide sufficient details of the alleged conduct to demonstrate that a violation of the statute, regulation, standard of practice, or rule, relating to the conduct of a certified professional guardian or conservator could have occurred, the dates the alleged conduct occurred, and must be signed and dated by the person filing

the grievance. Grievance investigations by the board are limited to the allegations contained in the grievance unless, after review by a majority of the members of the certified professional guardianship board, further investigation is justified.

(b) If the certified professional guardianship board determines the grievance is complete, states facts that allege a violation of the certified professional guardianship board's standards of practice, and relates to the conduct of a professional guardian and/or conservator, the certified professional guardianship board must forward that grievance within ten days to the superior court for that guardianship or conservatorship and to the professional guardian and/or conservator. The court must review the matter as set forth in RCW 11.130.140, and must direct the clerk of the court to send a copy of the order entered under this section to the certified professional guardianship board. The certified professional guardianship board must accept as facts any finding of fact contained in the order. The certified professional guardianship board must act consistently with any finding of fact issued in that order.

(2) Grievances received by the certified professional guardianship board must be investigated and the resolution determined and in process within one hundred eighty days of receipt. The one hundred eighty days is tolled during any period of time when:

(a) The certified professional guardianship board has provided a certified professional guardian or conservator an opportunity to respond to a grievance against the certified professional guardian or conservator and the certified professional guardianship board is awaiting the certified professional guardian or conservator's response;

(b) The certified professional guardianship board has forwarded a grievance to the superior court for review under subsection (1)(b) of this section and is awaiting receipt of the court's entered order with findings; or

(c) A certified professional guardianship board disciplinary hearing has been requested or is in process and during the time of posthearing board review of the hearing officer's recommendations through issuance of a final certified professional guardianship board's order on the matter.

(3) If the grievance cannot be resolved within one hundred eighty days, the certified professional guardianship board must notify the professional guardian and/or conservator. The professional guardian or conservator may propose a resolution of the grievance with facts and/or arguments. The certified professional guardianship board may accept the proposed resolution or determine that an additional ninety days are needed to review the grievance. If the certified professional guardianship board has not resolved the grievance within the additional ninety days the professional guardian or conservator may:

(a) File a motion for a court order to compel the certified professional guardianship board to resolve the grievance within a reasonable time; or

(b) Move for the superior court to resolve the grievance instead of being resolved by the certified professional guardianship board.

(4) The superior court has authority to enforce the certified professional guardianship board's standards of practice in this article to the extent those standards are related to statutory or fiduciary duties of guardians and conservators.

including medical, psychological, financial, educational, or

(2022 Ed.)

(5) Any unresolved grievances filed with the certified professional guardianship board one year or more before January 1, 2022, must be forwarded to the superior court for that guardianship or conservatorship for review by the superior court as set forth in RCW 11.130.140 if the grievance is not in process of a hearing or final resolution. [2021 c 65 § 106; 2020 c 312 § 225; 2019 c 437 § 701.]

Effective date—2021 c 65 §§ 106 and 107: "Sections 106 and 107 of this act take effect January 1, 2022." [2021 c 65 § 108.]

Explanatory statement—2021 c 65: See note following RCW 53.54.030.

Effective dates—2020 c 312: See note following RCW 11.130.915.

SUPPORTED DECISION-MAKING AGREEMENTS

11.130.700 Definitions. The definitions in this section apply throughout this section and RCW 11.130.705 through 11.130.755 unless the context clearly requires otherwise.

(1) "Disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more major life activities.

(2) "Supported decision-making agreement" is an agreement between an adult with a disability and one or more supporters entered into under this chapter.

(3) "Supporter" means an adult who has entered into a supported decision-making agreement with an adult with a disability. [2020 c 312 § 601.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.705 Purpose. The purpose of RCW 11.130.700 through 11.130.755 is to recognize a less restrictive alternative to guardianship for adults with disabilities who need assistance with decisions regarding daily living. [2020 c 312 § 602.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.710 Presumption of capacity. (1) All adults are presumed to be capable of managing their affairs.

(2) The manner in which an adult communicates with others is not grounds for deciding that the adult is incapable of managing the adult's affairs.

(3) Execution of a supported decision-making agreement may not be used as evidence for the petition or appointment of a guardianship or conservatorship under this chapter, and does not preclude the ability of the adult who has entered into such an agreement to act independently of the agreement. [2020 c 312 § 603.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.715 Scope. An adult with a disability may voluntarily, without undue influence or coercion, enter into a supported decision-making agreement with a supporter under which the adult with a disability authorizes the supporter to do any or all of the following:

(1) Provide supported decision making, including assistance in understanding the options, responsibilities, and consequences of the adult's life decisions, without making those decisions on behalf of the adult with a disability;

(2) Assist the adult in accessing, collecting, and obtaining information that is relevant to a given life decision, treatment records, from any person;

(3) Assist the adult with a disability in understanding the information described in subsection (2) of this section; and

(4) Assist the adult in communicating the adult's decisions to appropriate persons. [2020 c 312 § 604.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.720 Authority of supporter. A supporter may exercise the authority granted to the supporter in the supported decision-making agreement. [2020 c 312 § 605.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.725 Term. (1) Except as provided by subsection (2) of this section, the supported decision-making agreement extends until terminated by either party or by the terms of the agreement.

(2) The supported decision-making agreement is terminated if:

(a) The department of social and health services finds that the adult with a disability has been abused, neglected, or exploited by the supporter;

(b) The supporter is found criminally liable for conduct described in (a) of this subsection;

(c) The person with a disability gives notice to the supporter orally, in writing, through an assistive technology device, or by any other means or act showing a specific intent to terminate the agreement; or

(d) The supporter provides written notice of the supporter's resignation to the person with a disability. If a supported decision-making agreement includes more than one supporter, each supporter can terminate the agreement only as to that supporter. [2020 c 312 § 606.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.730 Disqualification of supporter. The following are disqualified from acting as a supporter:

(1) A person who is an employer or employee of the adult with a disability, unless the person is an immediate family member of the adult with a disability;

(2) A person directly providing paid support services to the adult with a disability, unless the person is an immediate family member of the adult with a disability; and

(3) An individual against whom the person with a disability has obtained an order of protection from abuse, or an individual who is the subject of a civil or criminal order prohibiting contact with the adult with a disability. [2020 c 312 § 607.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.735 Access of supporter to personal information. (1) A supporter is only authorized to assist the adult with a disability in accessing, collecting, or obtaining information that is relevant to a decision authorized under the supported decision-making agreement.

(2) If a supporter assists an adult with a disability in accessing, collecting, or obtaining personal information, including protected health information under the federal health insurance portability and accountability act of 1996, P.L. 104-191, or educational records under the federal family educational rights and privacy act of 1974, 20 U.S.C. Sec. 1232g, the supporter shall ensure the information is kept priv-

ileged and confidential, as applicable, and is not subject to unauthorized access, use, or disclosure.

(3) The existence of a supported decision-making agreement does not preclude an adult with a disability from seeking personal information without the assistance of a supporter. [2020 c 312 § 608.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.740 Execution of agreement. (1) A supported decision-making agreement must be in writing, dated, and signed voluntarily, without coercion or undue influence, by the adult with a disability and the supporter in the presence of two or more subscribing witnesses or a notary public.

(2) If signed before two witnesses, the attesting witnesses must be at least eighteen years of age.

(3) The witnesses required by subsection (1) of this section may not be any of the following:

(a) A supporter for the person with a disability;

(b) An employee or agent of a supporter named in the supported decision-making agreement;

(c) A paid provider of services to the person with a disability; or

(d) Any person who does not understand the type of communication the person with a disability uses, unless an individual who understands the person with a disability's means of communication is present to assist during the execution of the supported decision-making agreement. [2020 c 312 § 609.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.745 Form. (1) Subject to subsection (2) of this section, a supported decision-making agreement is valid only if it is in substantially the following form:

SUPPORTED DECISION-MAKING AGREEMENT
Appointment of Supporter

I, (name of supported adult), make this agreement of my own free will.

I agree and designate that:

Name: (name of supporter)

Address: (address of supporter)

Phone Number: (phone number of supporter)

Email Address: (email address of supporter)

is my supporter.

My supporter may help me with making everyday life decisions relating to the following:

(Y/N) Obtaining food, clothing, and shelter.

(Y/N) Taking care of my health.

(Y/N) Managing my financial affairs.

(Y/N) Other matters: (specify).

My supporter is not allowed to make decisions for me. To help me with my decisions, my supporter may:

1. Help me access, collect, or obtain information that is relevant to a decision, including medical, psychological, financial, educational, or treatment records;

2. Help me understand my options so I can make an informed decision; and

3. Help me communicate my decision to appropriate persons.

(Y/N) A release allowing my supporter to see protected health information under the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, is attached.

(Y/N) A release allowing my supporter to see educational records under the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. Sec. 1232g, is attached.

Effective Date of Supported Decision-Making Agreement

This supported decision-making agreement is effective immediately and will continue until (insert date) or until the agreement is terminated by my supporter or me or by operation of law.

Signed this (day) day of (month), (year)

Consent of Supporter

I, (name of supporter), acknowledge my responsibilities and consent to act as a supporter under this agreement.

(Signature of supporter)
(Printed name of supporter)
Supporter

(Signature of supported adult)
(Printed name of supported adult)
Supported Adult

(Signature of witness 1)
(Printed name of witness 1)
Witness 1

(Signature of witness 2)
(Printed name of witness 2)
Witness 2

State of
County of
This record was acknowledged before me on (date) by (name(s) of individuals).

.....
(Signature of notary public)

(Stamp)

.....
(Title of office)

My commission expires:
.....
(Date)

WARNING: PROTECTION FOR VULNERABLE ADULTS AS DEFINED UNDER CHAPTER 74.34 RCW. IF A PERSON WHO RECEIVES A COPY OF THIS AGREEMENT OR IS AWARE OF THE

EXISTENCE OF THIS AGREEMENT HAS CAUSE TO BELIEVE THAT A VULNERABLE ADULT IS BEING ABUSED, ABANDONED, NEGLECTED (INCLUDING SELF-NEGLECT), OR PERSONALLY OR FINANCIALLY EXPLOITED BY THE SUPPORTER, THE PERSON SHALL REPORT THE ALLEGED ABUSE, ABANDONMENT, NEGLECT, SELF-NEGLECT, OR PERSONAL OR FINANCIAL EXPLOITATION TO THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES BY CALLING THE ABUSE HOTLINE AT 1-800-END-HARM.

(2) A supported decision-making agreement may be in any form not inconsistent with subsection (1) of this section and the other requirements of this chapter. [2020 c 312 § 610.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.750 Reliance on agreement—Limitation of liability. (1) A person who receives the original or a copy of a supported decision-making agreement shall rely on the agreement.

(2) A person is not subject to criminal or civil liability and has not engaged in professional misconduct for an act or omission if the act or omission is done in good faith and in reliance on a supported decision-making agreement. [2020 c 312 § 611.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

11.130.755 Reporting of suspected abuse, abandonment, neglect, exploitation. If a person who receives a copy of a supported decision-making agreement or is aware of the existence of a supported decision-making agreement has cause to believe that a vulnerable adult as defined in RCW 74.34.020 is being abused, abandoned, neglected (including self-neglect), or personally or financially exploited by the supporter, the person shall make a report to the department of social and health services, except where the person is exempted from the requirements to report abuse due to a confidential relationship recognized in statute, regulation, or professional standards. [2020 c 312 § 612.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

ARTICLE 8
MISCELLANEOUS PROVISIONS

11.130.900 Uniformity of application and construction. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [2019 c 437 § 802.]

11.130.905 Relation to electronic signatures in global and national commerce act. Chapter 437, Laws of 2019 modifies, limits, or supersedes the electronic signatures in global and national commerce act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. Sec. 7003(b). [2019 c 437 § 803.]

11.130.910 Applicability. This chapter applies to:

(1) A proceeding for appointment of a guardian or conservator or for a protective arrangement instead of guardianship or conservatorship commenced after January 1, 2022; and

(2) A guardianship, conservatorship, or protective arrangement instead of a guardianship or conservatorship in existence on January 1, 2022, unless the court finds application of a particular provision of chapter 437, Laws of 2019 would substantially interfere with the effective conduct of the proceeding or prejudice the rights of a party, in which case the particular provision of chapter 437, Laws of 2019 does not apply and the superseded law applies. [2021 c 65 § 107; 2019 c 437 § 804.]

Effective date—2021 c 65 §§ 106 and 107: See note following RCW 11.130.670.

Explanatory statement—2021 c 65: See note following RCW 53.54.030.

11.130.915 Effective date—2020 c 312; 2019 c 437.

This act takes effect January 1, 2022, except that:

(1) Section 129, chapter 437, Laws of 2019 takes effect on June 11, 2020; and

(2) With respect to minors, sections 101 through 128, 130 through 136, 201 through 216, 602, 802, 803, and 805, chapter 437, Laws of 2019 take effect January 1, 2021. [2020 c 312 § 902; 2019 c 437 § 807.]

Effective dates—2020 c 312: "(1) Except for sections 101 through 122, 301 through 307, 312, 313, 725, 801, 902, 903, 905, and 906 of this act, this act takes effect January 1, 2022.

(2) Sections 101 through 122, 301 through 307, 312, 313, 725, 801, 905, and 906 of this act take effect January 1, 2021." [2020 c 312 § 907.]