

When land against which fire patrol assessments are outstanding is acquired for delinquent taxes and sold at public auction, the state shall have a prior lien on the proceeds of sale over and above the amount necessary to satisfy the county's delinquent tax judgment, and the county treasurer in case the proceeds of sale exceed the amount of the delinquent tax judgment shall forthwith remit to the supervisor of natural resources the amount of the outstanding patrol assessments.

Supervisor's
bond.

The supervisor of natural resources shall furnish a good and sufficient surety company bond running to the state, in a sum as great as the probable amount of money annually coming into his hands under the provisions of this chapter, conditioned for the faithful performance of his duties and for a faithful accounting for all sums received and expended thereunder, which bond shall be approved by the attorney general.

Passed the Senate February 28, 1959.

Passed the House March 6, 1959.

Approved by the Governor March 16, 1959.

CHAPTER 124.

[S. B. 106.]

WASHINGTON TRUST ACT.

AN ACT relating to trusts.

Be it enacted by the Legislature of the State of Washington:

Act applies to
express trusts.

SECTION 1. This act shall apply to express trusts, except as hereinafter limited, which are executed by the trustor after the effective date hereof. This act shall 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, trusts created by the judgment or decree of a court not sitting in probate, 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 banking institution pursuant to RCW 30.20.035 or RCW 32.12.030, or in accounts in savings and loan associations pursuant to RCW 33.20.070, unless any such trust which is created in writing incorporates this act in whole or in part.

SEC. 2. The trustor of a trust may by the provisions thereof relieve the trustee from any or all of the duties, restrictions and liabilities which would otherwise be imposed by this act, or may alter or deny any or all of the privileges and powers conferred by this act; or may add duties, restrictions, liabilities, privileges, or powers to those imposed or granted by this act. If any specific provision of this act is in conflict with or inconsistent with the provisions of a trust, the provisions of the trust shall control whether or not specific reference is made therein to this act.

Trust provisions control over act.

SEC. 3. 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 shall be liable to the beneficiaries or to others for the consequences of such exercise; nor shall a dissenting trustee be liable for the consequences of an act in which he joins at the direction of the majority of the trustees, if he expressed his dissent in writing to each of his co-trustees at or before the time of such joinder.

Action by co-trustees—Liability.

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.

Nothing in this section shall excuse a co-trustee from liability for failure either to participate in the administration of the trust or to attempt to prevent a breach of trust.

Discharge of trustee, procedure.

SEC. 4. Upon petition of the trustee of a trust, the superior court having jurisdiction may accept his resignation and discharge him from the trust upon such notice, if any, and upon such terms as such court may require.

Appointment of successor trustee, procedure.

SEC. 5. Any beneficiary of a trust, the trustor if alive, or the trustee may in writing petition the superior court having jurisdiction for the appointment of a successor trustee whenever the office of trustee becomes vacant or upon filing of a petition of resignation by a trustee. The court shall make an order fixing the time and place for hearing the petition and the notice thereof shall be signed by the clerk of said court. Petitioner shall cause a copy of the notice to be mailed to each beneficiary, the trustor if alive, and to the incumbent trustee, if any, whose names and addresses are known to him, not less than ten days before the date of the hearing. Proof of the mailing of such notice shall be made by affidavit which shall be filed at or before the hearing. All those whose names or addresses are not known or are not legally competent and any beneficiary who is not ascertained shall be represented at the hearing by a guardian ad litem appointed by the court when it sets the time of hearing. Upon conclusion of the hearing the court shall appoint a successor trustee after giving due consideration to the individual or corporate character of trustor's original trustee, any nominations by those entitled to petition for the appointment or by the guardian ad litem, and all other relevant and material facts.

SEC. 6. A successor trustee of a trust shall succeed to all the powers, duties and discretionary authority of the original trustee.

Authority of
successor
trustee.

SEC. 7. A trustee, or the trustees jointly, of a trust shall, in addition to the authority otherwise given by law, have the power and the exercise of discretion in the application thereof, to acquire, invest, re-invest, exchange, sell, convey and manage the trust property in accordance with the standards provided by law, and in so doing may:

Powers and
duties of
trustees.

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

(2) Sell on credit; and grant, purchase or exercise options;

(3) Sell or exercise subscriptions to stock or other corporate securities and to exercise conversion rights; deposit stock or other corporate securities with any protective or other similar committee; and assent to corporate sales, leases and encumbrances;

(4) Vote trust securities in person or by proxy with power of substitutions; and enter into voting trusts;

(5) 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 shall be liable for any loss occasioned by the acts of any such nominee.

(6) 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; create restrictions, easements and other servitudes; alter, renovate, add to or demolish any building, subdivide, develop, improve, 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;

(7) Cause or participate in the formation, reorganization, merger, consolidation and dissolution of corporate or other business undertakings where trust property may be affected and retain any property received pursuant thereto; limit management participation in any partnership and to act as a limited partner; charge profits and losses of any business or farm operation to the trust estate as a whole and not to the trustee; and make available to or invest in any business or farm operation additional moneys from the trust estate or other sources;

(8) Compromise or submit claims to arbitration; advance funds and borrow money, secured or unsecured, from any source, including a corporate trustee's banking department; and mortgage, pledge the assets or credit of the trust estate or otherwise encumber trust property, including future income;

(9) Determine the hazards to be insured against and maintain insurance therefor;

(10) Select any part of the trust estate in satisfaction of any partition or distribution, in kind, in money or both; pay any income or principal distributable to or for the use of any beneficiary, whether or not such beneficiary is under legal disability, to him or for his use to his parent, guardian, person with whom he resides or third persons.

Trustee
responsibility
presumed.

SEC. 8. In the absence of knowledge of a breach of trust, no party dealing with a trustee shall be required to see to the application of any moneys or other properties delivered to the trustee.

Trustee
responsibility
limited.

SEC. 9. 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 such event shall not be liable for any action or inaction based on lack of knowledge of such event. A corporate trustee shall not be liable prior to receiving such knowledge or notice in its trust department office where the trust is being administered.

SEC. 10. 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 his administration may be maintained by the party in whose favor the cause of action has accrued as follows:

Procedure
in actions
against trustee—Personal
liability.

(1) The plaintiff may sue the trustee in his representative capacity and any judgment rendered in favor of the plaintiff shall be 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 shall determine in such action that (a) the tort was a common incident of the kind of business activity in which the trustee or his 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 his predecessor, nor any officer or employee of the trustee or his 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.

Collection
when action
in tort.

(2) If the action is on a contract made by the trustee, the trustee may be held personally liable on such contract, if personal liability is not excluded.

Collection
when action
on contract.

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 RCW 19.80.010 to 19.80.050 inclusive shall exclude 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 such transfer, the trustee shall be personally liable only if he has in writing assumed such liability.

(3) In any such action against the trustee in his representative capacity the plaintiff need not prove that the trustee could have secured reimbursement from the trust fund if he had paid the plaintiff's claim.

Personal liability of trustee for tort.

(4) The trustee may also be held personally liable for any tort committed by him, or by his agents or employees in the course of their employments, subject to the rights of exoneration or reimbursement:

Exoneration, when.

(a) A trustee who has incurred personal liability for a tort committed in the administration of the trust is entitled to exoneration therefor from the trust property if (i) the tort was a common incident of the kind of business activity in which the trustee was properly engaged for the trust, or (ii) although the tort was not a common incident of such activity, if neither the trustee nor any officer or employee of the trustee was guilty of personal fault in incurring the liability;

Reimbursement, when.

(b) A trustee who commits a tort which increases the value of the trust property shall be entitled to exoneration or reimbursement with respect thereto to the extent of such increase in value, even though he would not otherwise be entitled to exoneration or reimbursement.

(5) No judgment shall be rendered in favor of

the plaintiff in any such action unless the plaintiff shall cause a copy of the notice of the hearing on such action to be mailed not less than twenty days before the date therefor to the trustor, if living, the trustee and to each beneficiary whose name and address is known to him. Proof of the mailing of such notice shall be made by affidavit which shall be filed at or before the hearing. All those whose names or addresses are not known or are not legally competent and any beneficiary who is not ascertained shall be represented at the hearing by a guardian ad litem appointed by the court when it sets the time of hearing.

(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. Saving existing law.

SEC. 11. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable. Severability.

SEC. 12. This act shall be known as the "Washington Trust Act". Short title.

Passed the Senate February 17, 1959.

Passed the House March 8, 1959.

Approved by the Governor March 16, 1959.