

CHAPTER 145.

[Senate Bill No. 6.]

PROBATE CODE.

AN ACT establishing a code of probate law and procedure, including the making and probating of wills, administration of estates of deceased persons and appointment of guardians of the persons and estates of minors, insane and mentally incompetent persons and administration of their estates; enacting a title of the Revised Code of Washington to be known as Title 11—Probate Law and Procedure; providing penalties; repealing certain acts and parts of acts; and declaring an effective date.

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

Title 11

Probate Law and Procedure

Chapter 11.02

GENERAL PROVISIONS

SECTION 11.02.005 *Definitions and Use of Terms.*
When used in this title, unless otherwise required from the context:

Probate law and procedure. Definitions and use of terms.

(1) "Personal representative" includes executor, administrator, special administrator, and guardian.

(2) "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 estate.

(3) "Representation" refers to a method of determining distribution in which the takers are in unequal degrees of kinship with respect to the intestate, 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

Probate law
and procedure.
Definitions and
use of terms.

of the number of persons who survive the intestate who are in the nearest degree of kinship and the number of persons in the same degree of kinship who died before the intestate, but who left issue surviving the intestate; each share of a deceased person in the nearest degree shall be divided among those of his issue who survive the intestate and have no ancestor then living who is in the line of relationship between them and the intestate, those more remote in degree taking together the share which their ancestor would have taken had he survived the intestate. Posthumous children are considered as living at the death of their parent.

(4) "Issue" includes all the lawful lineal descendants of the ancestor, all lawfully adopted children, and illegitimates as specified in RCW 11.04.081.

(5) "Degree of kinship" shall mean 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.

(6) "Heirs" denotes those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the real and personal property of a decedent on his death intestate.

(7) "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.

(8) "Wills" includes all codicils.

(9) "Codicil" shall mean an instrument executed in the manner provided by this title for wills, which refers to an existing will for the purpose of altering or changing the same, and which need not be attached thereto.

(10) "Guardian" means a personal representative of the estate of an incompetent person as defined in RCW 11.88.010 and the term may be used in lieu of "personal representative" wherever required by context.

(11) "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.

(12) "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.

(13) "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.

(14) Words that import the singular number only, may also be applied to the plural of persons and things.

(15) Words importing the masculine gender only may be extended to females also.

SEC. 11.02.010 *Jurisdiction in Probate Matters—Powers of Courts.* The superior courts in the exercise of their jurisdiction of matters of probate shall have power to probate or refuse to probate wills, appoint personal representatives of deceased or incompetent persons and administer and settle all such estates, award processes and cause to come before them all persons whom they may deem it necessary to examine, and order and cause to be issued all such writs as may be proper or necessary, and do all things proper or incident to the exercise of such jurisdiction.

Jurisdiction
—Powers of
courts.

SEC. 11.02.020 *Powers of Courts When Law Inapplicable, Insufficient, or Doubtful.* It is the intention

—When law
inapplicable,
etc.

Probate law
and procedure.
Powers of
court—When
law inapplica-
ble, etc.

of this title that the courts mentioned shall have full and ample power and authority to administer and settle all estates of decedents and incompetent persons in this title mentioned. If the provisions of this title with reference to the administration and settlement of such estates should in any cases and under any circumstances be inapplicable or insufficient or doubtful, the court shall nevertheless have full power and authority to proceed with such administration and settlement in any manner and way which to the court seems right and proper, all to the end that such estates may be by the court administered upon and settled.

Exercise of
powers—Or-
ders, writs, etc.

SEC. 11.02.030 *Exercise of Powers—Orders, Writs, Process, Etc.* In exercising any of the jurisdiction or powers by this title given or intended to be given, the court is authorized to 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 not inconsistent with the provisions of this title, which may be considered proper or necessary in the exercise of such jurisdiction.

Power of clerk
to fix dates of
hearings.

SEC. 11.02.060 *Power of Clerk to Fix Dates of Hearings.* The clerk of each of the superior courts is authorized to fix the time of hearing of all applications, petitions and reports in probate and guardianship proceedings, except the time for hearings upon show cause orders and citations. The authority herein granted is in addition to the authority vested in the superior courts and superior court commissioners.

Chapter 11.04

DESCENT AND DISTRIBUTION

Descent and
distribution.

SEC. 11.04.015 *Descent and Distribution of Real and Personal Estate.* The net estate of a person dying

intestate shall descend subject to the provisions of RCW 11.04.250 and be distributed as follows: Real and personal estate.

(1) Share of surviving spouse. The surviving spouse shall receive the following share:

(a) *If the intestate is survived by issue or by either parent, three-fourths 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 parents, or by one or more of the issue of one or more of his parents; or

(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. The share of the net estate not distributable to the surviving spouse, or the entire net estate if there is no surviving spouse, 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 degrees 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 nor 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 nor by either parent, nor by any issue of the parent or parents who survive the intestate, then to the grandparent or grandparents who survive the intestate, the maternal grandparent or grandparents sharing

Probate law
and procedure.
Descent and
distribution of
real and per-
sonal estate.

equally with the paternal grandparent or grandpar-
ents.

(e) If the intestate not be survived by issue nor by either parent, nor by any issue of the parent or parents who survive the intestate, nor by any grandparent or grandparents who survive the intestate, then to the issue of any grandparent or grandparents who survive the intestate, the issue of any maternal grandparent or grandparents sharing equally with the issue of the paternal grandparent or grandpar-
ents.

Kindred of the
half blood.

SEC. 11.04.035 *Kindred of the Half Blood.* Kin-
dred of the half blood shall inherit the same share
which they would have inherited if they had been of
the whole blood.

Advancements.

SEC. 11.04.041 *Advancements.* If a person dies
intestate as to all his estate, property which he gave
in his 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 estate, shall be counted toward the advancee's
intestate share, and to the extent that it does not ex-
ceed 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 ad-
vancee came into possession or enjoyment or at the
time of the death of the intestate, whichever first oc-
curs. If the advancee dies before the intestate, leav-
ing a lineal heir who takes from the intestate, the ad-
vancement 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
survived the intestate, then the heir shall only be

charged with such proportion of the advancement as the amount he would have inherited, had there been no advancement, bears to the amount which the advancee would have inherited, had there been no advancement.

SEC. 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.

Tenancy in dower and by curtesy abolished.

SEC. 11.04.071 *Survivorship as Incident of Tenancy by the Entireties Abolished.* The right of survivorship as an incident of tenancy by the entireties is abolished.

Survivorship as incident, etc., abolished.

SEC. 11.04.081 *Inheritance By and From Illegitimate Child.* For the purpose of inheritance to, through and from an illegitimate child, such child shall be treated the same as if he were the legitimate child of his mother, so that he and his issue shall inherit from his mother and from his maternal kindred, in all degrees, and they may inherit from him. Such child shall also be treated the same as if he were a legitimate child of his mother for the purpose of determining homestead rights, the distribution of exempt property and the making of family allowances. When the parents of an illegitimate child shall marry subsequent to his birth, or the father shall acknowledge said child in writing, such child shall be deemed to have been made the legitimate child of both of the parents for purposes of intestate succession.

Inheritance by and from illegitimate child.

SEC. 11.04.085 *Inheritance by Adopted Child.* A lawfully adopted child shall not be considered an "heir" of his natural parents for purposes of this title.

Inheritance by adopted child.

SEC. 11.04.095 *Inheritance From Stepparent Avoids Escheat.* If a person die leaving a surviving

Inheritance from stepparent avoids escheat.

Probate law and procedure. Inheritance from step-parent avoids escheat.

spouse and issue by a former spouse and leaving a will whereby all or substantially all of the deceased's property passes to the surviving spouse or having before death conveyed all or substantially all his or her property to the surviving spouse, 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 first deceased who survive the spouse last deceased shall take and inherit from the spouse 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 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 first deceased.

U. S. savings bond—Effect of death of co-owner.

SEC. 11.04.230 *U. S. 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.

U. S. savings bond—Effect of beneficiary's survival of registered owner.

SEC. 11.04.240 *U. S. 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.

When real estate vests—Rights of heirs.

SEC. 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 title shall vest immediately in his heirs or devisees, subject to his 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.

SEC. 11.04.270 *Limitation of Liability for Debts.* The estate of a deceased person shall not be liable for his debts unless letters testamentary or of administration be granted within six years from the date of the death of such decedent: *Provided, however*, That this section shall not affect liens upon specific property, existing at the date of the death of such decedent.

**Limitation of
liability for
debts.**

Probate law and procedure. Vesting of title.

SEC. 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 husband or wife, 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.

Chapter 11.05

UNIFORM SIMULTANEOUS DEATH ACT

Devolution of property in case of simultaneous death.

SEC. 11.05.010 *Devolution of Property in Case of Simultaneous Death of Owners.* Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in this chapter.

Procedure when beneficiaries die simultaneously.

SEC. 11.05.020 *Procedure When Beneficiaries Die Simultaneously.* Where two or more beneficiaries are designated to take successively or alternately by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successive or alternate beneficiaries and the portion allocated to each beneficiary shall be distributed as if he had survived all the other beneficiaries.

Joint tenants - Simultaneous death.

SEC. 11.05.030 *Joint Tenants — Simultaneous Death.* Where there is no sufficient evidence that two joint tenants have died otherwise than simultaneously, the property so held shall be distributed one-half as if one had survived, and one-half as if the other had survived. If there are more than two joint

tenants and all of them have so died, the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

SEC. 11.05.040 *Distribution of Insurance Policy When Insured and Beneficiary Die Simultaneously.* Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

Distribution of insurance policy when insured and beneficiary die simultaneously.

SEC. 11.05.050 *Scope of Chapter Limited.* This chapter shall not apply in the case of wills, living trusts, deeds, or contracts of insurance wherein provision has been made for distribution of property different from the provisions of this chapter.

Scope of chapter limited.

SEC. 11.05.900 *Application of Chapter to Prior Deaths.* This chapter shall not apply to the distribution of the property of a person who has died before it takes effect.

Application of chapter to prior deaths.

SEC. 11.05.910 *Construction of Chapter.* This chapter shall be so construed and interpreted as to effectuate its general purpose to make uniform the law in those states which enact it.

Construction of chapter.

Chapter 11.08

ESCHEATS PROPERTY OF DECEASED INMATES OF STATE INSTITUTIONS

SEC. 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

Property of deceased inmates of state institutions—Disposition after two years.

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 institutions, 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.

Probate law
and procedure.
Property of
deceased
inmates of
state
institutions—
Disposition
within two
years.

SEC. 11.08.111 ————*Disposition Within Two Years.* Prior to the expiration of the above two-year period, the superintendent may transfer such money or property in his possession, upon request and satisfactory proof submitted to him, to the following designated persons:

(1) To the personal representative of the estate of such deceased inmate; or

(2) To the next of kin of the decedent, where such money and property does not exceed the value of five hundred dollars, and the person or persons requesting same shall have furnished an affidavit as to his or her being next of kin; 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 five hundred dollars; or

(4) To the department of institutions, when there are moneys due and owing from such deceased person's estate for the cost of his care and maintenance at such 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 showing the funeral expenses of such decedent are unpaid, the superintendent may pay up to three hundred dollars from said deceased inmate's funds on said obligation.

SEC. 11.08.120 —————*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 institutions 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.

—Sale—
Disposition of
proceeds.

SEC. 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.

Escheat for
want of heirs.

SEC. 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.

Title vests in
state at death.

SEC. 11.08.160 *Jurisdiction, Duties, of Tax Commission.* The tax commission of this state shall have supervision of and jurisdiction over escheat property and may institute and prosecute any proceedings deemed necessary or proper in the handling of such property, and it shall be the duty of the tax commission 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 state land commissioner as hereinafter provided.

Jurisdiction,
duties, of tax
commission.

SEC. 11.08.170 *Probate of Escheat Property—Notice to Tax Commission.* Escheat property may be

Probate of
escheat
property.

Probate law and procedure. Probate of escheat property—Notice to tax commission.

probated under the provisions of the probate laws of this state. Whenever such probate proceedings are instituted, whether by special administration or otherwise, the petitioner shall promptly notify the tax commission in writing thereof on forms furnished by the tax commission to the county clerks. Thereafter, the tax commission 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: *Provided*, That the tax commission may waive the provisions of this section in its discretion.

Tax commission furnished documents and pleadings.

SEC. 11.08.180 *Tax Commission to Be Furnished Copies of Documents and Pleadings.* The tax commission 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 attorney to furnish such copies to the commission.

Liability for use of escheated property.

SEC. 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 shall be liable to the state for the reasonable value of such use, payment of which may be enforced by the tax commission or by the administrator of the estate.

Allowance of claims, etc.

SEC. 11.08.210 *Allowance of Claims, Etc.—Sale of Property—Decree of Distribution.* If at the expira-

tion 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 sixteen 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 tax commission 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.

Sale of
property—
Decree of
distribution.

SEC. 11.08.220 *Certified Copies of Decree—Duties of Commissioner of Public Lands.* The tax commission 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 state land commissioner who 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.

Certified
copies of
decree—
Duties of
commissioner
of public
lands.

SEC. 11.08.230 *Appearance and Claim of Heirs—Notices to Tax Commission.* Upon the appearance of

Appearance
and claim of
heirs.

Probate law
and procedure.
Escheat for
want of heirs.
Claims—
Notices to tax
commission.

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 tax commission 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 to be true and correct translations of the original documents. The administrator or his attorney shall also furnish the tax commission with any other available information bearing on the validity of the claim.

Limitation on
filing claim.

SEC. 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 claim. Such claim shall be filed with the court having original jurisdiction of the estate, and a copy thereof served upon the tax commission, together with twenty days notice of the hearing thereon.

Order of court
on establish-
ment of claim.

SEC. 11.08.250 *Order of Court on Establishment of Claim.* 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.

Payment of
escheated
funds to
claimant.

SEC. 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, a certified copy of such order shall be served upon the tax commission which shall thereupon take any steps necessary

to effect payment to the claimant out of the general fund of the state.

SEC. 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 state land commissioner who shall thereupon make proper certification to the office of the governor for issuance of a quit claim deed for the property to the claimant.

Conveyance of escheated property to claimant.

SEC. 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.

Limitation when claimant is minor or incompetent not under guardianship.

Chapter 11.12

WILLS

SEC. 11.12.010 *Who May Make a Will.* The following persons of sound mind may, by last will, devise all his or her estate, both real and personal:

Who may make wills.

(1) Any person who has attained the age of majority.

(2) Any person who has legally married, and has attained the age of eighteen years.

(3) Any person who has attained the age of eighteen years and is actively engaged with the armed forces of the United States or employed on a vessel of the United States merchant marine.

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.

Probate law
and procedure.
Requisites of
wills. Foreign
wills.

SEC. 11.12.020 *Requisites of Wills. Foreign Wills.* Every will shall be in writing signed by the testator or by some other person under his direction in his presence, and shall be attested by two or more competent witnesses, subscribing their names to the will in the presence of the testator by his direction or request: *Provided*, That a last will and testament, executed without the state, in the mode prescribed by law, either of the place where executed or of the testator's domicile 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.

—Nuncupa-
tive wills.

SEC. 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.

SEC. 11.12.030 *Signature of Testator at His 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 own name to such will and state that he subscribed the testator's name at his 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 request by making his mark on the will.

Signature of testator—At his direction—By mark.

SEC. 11.12.040 *Revocation of Will, How Effected.* A will, or any part thereof, can be revoked

Revocation of will, how effected.

(1) By a written will; or

(2) By being burnt, torn, canceled, obliterated or destroyed, with the intent and for the purpose of revoking the same, by the testator himself or by another person in his presence and by his direction. 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.

SEC. 11.12.050 *Subsequent Marriage of Testator—Divorce.* If, after making any will, the testator shall marry and the spouse shall be living at the time of the death of the testator, such will shall be deemed revoked as to such spouse, unless provision shall have been made for such survivor by marriage settlement, or unless such survivor be provided for in the will or in such way mentioned therein as to show an intention not to make such provision, and no other evidence to rebut the presumption of revocation shall be received. A divorce, subsequent to the making of a will, shall revoke the will as to the divorced spouse.

Subsequent marriage of testator—Divorce.

SEC. 11.12.060 *Agreement to Convey Does Not Revoke.* A bond, covenant, or agreement made for a

Agreement to convey does not revoke.

Probate law and procedure. Wills. Agreement to convey does not revoke.

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 next of kin, if the same had descended to him.

Devise or bequeathal of property subject to encumbrance.

SEC. 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.

No revival of will by revocation of later one.

SEC. 11.12.080 *No Revival of Will by Revocation of Later One.* If, after making any will, the testator shall duly make and execute a second will, the destruction, cancellation, or revocation of such second will shall not revive the first will.

Intestacy as to pretermitted children.

SEC. 11.12.090 *Intestacy as to Pretermitted Children.* If any person make his last will and die leaving a child or children or descendants of such child or children not named or provided for in such will, although born after the making of such will or the death of the testator, every such testator, as to such

child or children not named or provided for, shall be deemed to die intestate, and such child or children or their descendants shall be entitled to such proportion of the estate of the testator, real and personal, as if he had died intestate, and the same shall be assigned to them, and all the other heirs, devisees and legatees shall refund their proportional part.

SEC. 11.12.110 *Death of Devisee or Legatee Before Testator.* When any estate shall be devised or bequeathed to any child, grandchild, or other relative of the testator, and such devisee or legatee shall die before the testator, having lineal descendants who survive the testator, such descendants shall take the estate, real and personal, as such devisee or legatee would have done in the case he had survived the testator; if such descendants are all in the same degree of kinship to the predeceased devisee or legatee they shall take equally, or, if of unequal degree, then those of more remote degree shall take by representation with respect to such predeceased devisee or legatee. A spouse is not a relative under the provisions of this section.

Death of
devisee or
legatee before
testator.

SEC. 11.12.120 *Lapsed Legacy or Devise—Procedure and Proof.* Whenever any person having died leaving a will which has been admitted to probate, shall by said will have given, devised or bequeathed unto any person, a legacy or a devise upon the condition that said person survive him, and not otherwise, such legacy or devise shall lapse and fall into the residue of said estate to be distributed according to the residuary clause, if there be one, of said will, and if there be none then according to the laws of descent, unless said legatee or devisee, as the case may be, or his heirs, personal representative, or someone in behalf of such legatee or devisee, shall appear before the court which is administering said estate within six years from and after the date the

Lapsed legacy
or devise—
Procedure and
proof.

said will was admitted to probate, and prove to the satisfaction of the court that the said legatee or devisee, as the case may be, did in fact survive the testator.

Probate law and procedure. Wills. Procedure where legatee or devisee is an absentee.

SEC. 11.12.130 *Procedure Where Legatee or Devisee Is an Absentee.* If it shall be made to appear to the satisfaction of said court within the time fixed by RCW 11.12.120 that such legatee or devisee, as the case may be, did in fact survive the testator, but that such legatee, or devisee, is an absentee within the meaning of chapter 11.80, then and in that event the court shall by appropriate order direct the said legacy or devise to be distributed to a trustee appointed and qualified as provided for in said chapter 11.80.

Order of court declaring lapse.

SEC. 11.12.140 *Order of Court Declaring Lapse.* The personal representative, residuary legatee, or any heir at law of any such estate, may by sworn petition call the attention of the court to the fact that the periods of time set forth in RCW 11.12.120 have elapsed, and that such legatee or devisee, his heirs, personal representative, or anyone in his behalf, has not appeared and proved to the satisfaction of the court that such legatee or devisee survived the testator, and if it appear from the records of the proceedings in said estate that the allegations of the petition are true, it shall be the duty of the court to enter an appropriate order declaring such legacy or devise to have lapsed, and directing its disposition as provided for in RCW 11.12.120.

Petition and notice where legatee or devisee unknown.

SEC. 11.12.150 *Petition and Notice Where Legatee or Devisee Unknown.* Every personal representative of such an estate shall, within two years after the said will has been admitted to probate, file in said probate proceedings a sworn petition which shall set out in detail the name and last known address of any such legatee or devisee, the circumstances of his de-

parture from that address, if known; his occupation or business, if known; the fact that the personal representative has been unable to locate him or to ascertain whether or not he survived the testator; and all other facts within the knowledge of the personal representative, which may aid the court in determining the best and most advantageous method to employ in attempting to locate said legatee or devisee. Upon such a petition being filed it shall be the duty of the court, and the court shall have the power, to call before it the personal representative and such witnesses as may be necessary, and examine them under oath as to the truth of the allegations in said petition. After the hearing the court may direct such notice to be given as it shall think will most likely come to the attention of said legatee or devisee, or persons who might know him. Such notice shall be given for such a length of time and in such places as the court may order, and shall set forth the fact that a legacy or devise, as the case may be, awaits the person therein named, and shall call upon all persons having any knowledge concerning the said person or his whereabouts to notify the court of all the facts within their knowledge concerning said person, within a time therein stated.

SEC. 11.12.160 *Witness as Devisee or Legatee—Effect of, on Will.* All beneficial devises, legacies, and gifts whatever, made or given in any will to a subscribing witness thereto, shall be void unless there are two other competent witnesses to the same; but a mere charge on the estate of the testator for the payment of debts shall not prevent his creditors from being competent witnesses to his will. If such witness, to whom any beneficial devise, legacy or gift may have been made or given, would have been entitled to any share in the testator's estate in case the will is not established, then so much of the estate as would have descended or would have

Witness as
devisee or
legatee—Effect
of, on will.

Probate law
and procedure.
Wills.

been distributed to such witness shall be saved to him as will not exceed the value of the devise or bequest made to him in the will; and he may recover the same from the devisees or legatees named in the will in proportion to and out of the parts devised and bequeathed to him.

Devise of land,
what passes.

SEC. 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 could lawfully devise, unless it shall clearly appear by the will that he intended to convey a less estate.

Estates for life
—Remainders.

SEC. 11.12.180 *Estates for Life—Remainders.* If any person, by last will, devise any real estate to any person for the term of such person's life, such devise vests in the devisee an estate for life, and unless the remainder is specially devised, it shall revert to the heirs at law of the testator.

Will to operate
on after-
acquired
property.

SEC. 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 will may pass thereby and in like manner as if title thereto was vested in him at the time of making the will, unless the contrary manifestly appears by the will to have been the intention of the testator.

Contribution
among de-
visees and
legatees.

SEC. 11.12.200 *Contribution Among Devisees and Legatees.* When any testator in his last will shall give any chattel or real estate to any person, and the same shall be taken in execution for the payment of the testator's debts, then all the other legatees, devisees and heirs shall refund their proportional part of such loss to such person from whom the bequest shall be taken.

Enforcement
of contribu-
tions.

SEC. 11.12.210 *Enforcement of Contribution.* When any devisees, legatees or heirs shall be required to refund any part of the estate received by them, for the purpose of making up the share, de-

visé or legacy of any other devisee, legatee or heir, the court, upon the petition of the person entitled to contribution or distribution of such estate, may order the same to be made and enforce such order.

SEC. 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.

No interest on devise unless will so provides.

SEC. 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.

Intent of testator controlling.

SEC. 11.12.250 *Devises or Bequests to Trusts.* A devise or bequest may be made by a will to a trustee or trustees of a trust created by the testator and/or some other person or persons (including a funded or unfunded life insurance trust, although the trustor has reserved any or all rights of ownership of the insurance contracts) established by written instrument executed before or concurrently with the execution of such will. Such devise or bequest shall not be invalid because the trust is amendable or revocable, or both, or because the trust was amended after the execution of the will. Unless the will provides otherwise, the property so devised or bequeathed 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 provisions of the instrument establishing such trust, including any amendments thereto, made prior to the death of the testator, regardless of whether made before or after the execution of the will. An entire revocation of the trust prior to the testator's death shall invalidate the devise or bequest.

Devises or bequests to trusts.

Chapter 11.16

JURISDICTION—VENUE—NOTICES

Probate law
and procedure.
Venue.

SEC. 11.16.050 *Venue.* Wills shall be proved and letters testamentary or of administration shall be granted:

(1) In the county of which deceased was a resident or had his place of abode at the time of his death.

(2) In the county in which he may have died, or in which any part of his estate may be, he not being a resident of the state.

(3) In the county in which any part of his estate may be, he having died out of the state, and not having been a resident thereof at the time of his death.

Property of
nonresident in
more than one
county—
Jurisdiction.

SEC. 11.16.060 *Property of Nonresident in More Than One County—Jurisdiction.* When the estate of the deceased is in more than one county, he not having been a resident of the state at the time of his death, the superior court of that county in which the application is first made for letters testamentary or of administration shall have exclusive jurisdiction of the settlement of the estate.

Proceedings
had in county
where letters
granted.

SEC. 11.16.070 *Proceedings Had in County Where Letters Granted.* All orders, settlements, trials and other proceedings, under this title shall be had or made in the county in which letters testamentary or of administration were granted.

Notice.

SEC. 11.16.081 *Notice.* (1) When notice to be given. No notice to interested persons need be given except as specifically provided for in this title or as ordered by the court in a particular case.

(2) Kinds of notice required. Unless waived and except as otherwise provided by law, all notices required by this title to be served upon any person shall be served either

(a) By delivering a copy of the same at least ten days before the hearing to such person personally; or

(b) By such publication as the court may direct;
or

(c) By registered or certified mail requesting a return receipt signed by addressee only, addressed to such person located in the United States at his address stated in the petition for the hearing, to be posted by depositing in any United States post office in this state at least fourteen days prior to the date set for hearing in said notice; or

(d) By any combination of two or more of the above.

(3) Service on attorney. If an attorney shall have entered his appearance in writing for any party in any probate proceeding or matter pending in the court, all notices required to be served on the party in such proceeding or matter shall be served on the attorney and such shall be in lieu of service upon the party for whom the attorney appears.

SEC. 11.16.082 *Proof of Service.* Proof of service in all cases requiring notice, whether by publication, mailing or otherwise, shall be filed in the cause. Proof of service.

SEC. 11.16.083 *Waiver of Notice.* Any person legally competent who is interested in any hearing in a probate proceeding may in person or by attorney waive in writing notice of such hearing. A guardian of the estate or a guardian ad litem may make such a waiver on behalf of his incompetent, and a trustee may make such a waiver on behalf of the beneficiary of his 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 such waiver of notice on behalf of such person. Any person who submits to the jurisdiction of the court in any hearing shall be deemed to have waived notice thereof. Waiver of notice.

Chapter 11.20

CUSTODY, PROOF AND PROBATE OF WILLS

Probate law and procedure. Wills, probate of. Duty of custodian of will—Liability.

SEC. 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 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 custody or control any will shall within forty days after he received knowledge of the death of the testator deliver the same to the court having jurisdiction. Any person who shall willfully 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.

Application for probate—Hearing—Order—Testimony of witnesses reduced to writing.

SEC. 11.20.020 *Application for Probate—Hearing—Order—Testimony of Witnesses Reduced to Writing.* 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 hereinafter 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.

Commission to take testimony of witness.

SEC. 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, justice of the peace, notary public, or other person authorized to administer an oath, empowering him to take and certify the attestation of such witness.

SEC. 11.20.040 *Proof Where One or More Witnesses Are Unable or Incompetent to Testify.* 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, 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.

Proof where witnesses unable or incompetent to testify.

SEC. 11.20.050 *Filing and Recording of Wills.* All wills shall be recorded in the book kept for that purpose, within thirty days after probate, and the original wills shall be carefully filed with the clerk, but may be withdrawn on the order of the court.

Filing and recording of wills.

SEC. 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.

Record of will as evidence.

SEC. 11.20.070 *Proof of Lost or Destroyed Will.* Whenever any will is lost or destroyed, the court may take proof of the execution and validity of such will and establish it, notice to all persons interested having been first given. Such proof shall be reduced to writing and signed by the witnesses and filed with the clerk of the court.

Proof of lost or destroyed will.

No will shall be allowed to be proved as a lost or

Probate law
and procedure.
Wills, probate
of.

destroyed will unless it is proved to have been in existence at the time of the death of the testator, or is shown to have been destroyed, canceled or mutilated in whole or in part as a result of actual or constructive fraud or in the course of an attempt to change the will in whole or in part, which attempt has failed, or as the result of a mistake of fact, nor unless its provisions are clearly and distinctly proved by at least two witnesses, and when any such will is so established, the provisions thereof shall be distinctly stated in the judgment establishing it, and such judgment shall be recorded as wills are required to be recorded. Executors of such will or administrators with the will annexed 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.

Restraint of
personal rep-
resentative
pending proof
of lost or de-
stroyed will.

SEC. 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.

Admission to
probate of
foreign will.

SEC. 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, authenticated by the attestation of the clerk of the court in which such probate was made; or if there be no clerk, by the

attestation of the judge thereof, and by the seal of such officers, if they have a seal.

SEC. 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.

Laws applicable to foreign wills.

Chapter 11.24

WILL CONTESTS

SEC. 11.24.010 *Contest of Admission or Rejection—Limitation of Action—Issues.* If any person interested in any will shall appear within six 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 shall file a petition containing his objections and exceptions to said will, or to the rejection thereof. Issue shall be made up, tried and determined in said court respecting the competency of the deceased to make a last will and testament, or respecting the execution by a deceased of such last will and testament under restraint or undue influence or fraudulent representations, or for any other cause affecting the validity of such will.

Wills—Contest of admission or rejection—Limitation of action—Issues.

If no person shall appear within the time aforesaid, the probate or rejection of such will shall be binding and final.

SEC. 11.24.020 *Citations on Contest.* Upon the filing of the petition referred to in RCW 11.24.010, a citation shall be issued to the executors who have taken upon themselves the execution of the will, or to the administrators with the will annexed, and to all legatees named in the will residing in the state, or to their guardians if any of them are minors, or their personal representatives if any of them are dead, requiring them to appear before the court, on a day

Citations on contest.

therein specified, to show cause why the petition should not be granted.

Probate law and procedure. Will contests. Burden of proof.

SEC. 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.

Revocation of probate.

SEC. 11.24.040 *Revocation of Probate.* If, upon the trial of said issue, it shall be decided that the will is for any reason invalid, or that it is not sufficiently proved to have been the last will of the testator, the will and probate thereof shall be annulled and revoked, and thereupon and thereafter the powers of the executor or administrator with the will annexed shall cease, but such executor or administrator shall not be liable for any act done in good faith previous to such annulling or revoking.

Costs.

SEC. 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.

Chapter 11.28

LETTERS TESTAMENTARY
AND OF ADMINISTRATION

Letters to executors—Refusal to serve—Disqualification.

SEC. 11.28.010 *Letters to Executors—Refusal to Serve—Disqualification.* After probate of any will, 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.

SEC. 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.

Objections to appointment.

SEC. 11.28.030 *Community Property — Who Entitled to Letters—Waiver.* A surviving spouse shall be entitled to administer upon the community property, notwithstanding any provisions of the will to the contrary, if the court find such spouse to be otherwise qualified; but if such surviving spouse do not make application for such appointment within forty days immediately following the death of the deceased spouse, 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, 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, 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 that he or she has in writing waived the right to administer upon such community property.

Community property—
Who entitled to letters—
Waivers.

SEC. 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

Procedure during minority or absence of executor.

Probate law
and procedure.
Letters testa-
mentary and
of adminis-
tration.

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.

Powers of
remaining
executors on
removal of
associate.

SEC. 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.

Administra-
tion with will
annexed on
death of
executor.

SEC. 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.

Authority of
administrator
with will
annexed.

SEC. 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.

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

Execution and form of letters testamentary.

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.,....., 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 men 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 thisday of, A. D. 19.....

SEC. 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.

Form of letters with will annexed.

SEC. 11.28.110 *Application for Letters of Administration.* Application for letters of administration shall be made by petition in writing, signed and verified by the applicant or his 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 residences of the heirs of the deceased and that the deceased died without a will.

Application for letters of administration.

SEC. 11.28.120 *Persons Entitled to Letters.* Administration of the estate of the person dying intestate shall be granted to some one or more of the persons hereinafter mentioned, and they shall be respectively entitled in the following order:

Persons entitled to letters.

Probate law and procedure. Letters testamentary and of administration. Persons entitled to.

(1) The surviving husband or wife, 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) One or more of the principal creditors.

(4) If the persons so entitled shall fail for more than forty days after the death of the intestate to present a petition for letters of administration, or if it appear to the satisfaction of the court that there are no relatives or 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 any suitable person to administer such estate.

Hearing on petition.

SEC. 11.28.130 *Hearing on Petition.* When a petition for general letters of administration or for letters of administration with the will annexed shall be filed, the matter shall not be heard for at least ten days thereafter and the clerk shall have authority to fix the time of hearing: *Provided*, That if the petition be presented by or on behalf of the surviving spouse, the court may at once hear the matter, make appointment, and cause letters of administration to be issued: *Provided further*, That if there be a surviving spouse, and the petition be presented by anyone other than the surviving spouse prior to forty days after the death of the decedent, notice to the surviving spouse shall be given of the time and place of such hearing at least ten days before the hearing. The surviving spouse may waive notice of hearing in a writing filed in the cause.

Form of letters of administration.

SEC. 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 theday ofA.D.,.....died intestate, leaving at the time of his death, property in this state subject to administration: Now, therefore, know all men by these presents, that we do hereby appoint.....administrator upon said estate, and whereas said administrator has duly qualified, hereby authorize him to administer the same according to law.

Witness my hand and the seal of said court thisday ofA.D., 19.....

SEC. 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.

Revocation of letters by discovery of will.

SEC. 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.

Cancellation of letters of administration.

SEC. 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 and recorded.

Oath of personal representative.

SEC. 11.28.180 *Bond of Personal Representative—Exceptions.* Every person to whom letters testamentary or of administration are directed to issue must,

Bond of personal representative—Exceptions.

Probate law
and procedure.
Letters testa-
mentary and
of adminis-
tration. Bond
of personal
representative
—Exceptions.

before receiving them, execute a bond to the state of Washington, except as hereinafter provided, with such surety, or sureties, as the court may judge sufficient, which bond shall be in a sum to be fixed by the court, and which bond must be conditioned that the personal representative shall faithfully execute the duties of the trust according to law, and such bond shall be approved by the court. The court may at any time and for any reason require the personal representative to give additional bonds, the same to be conditioned and to be approved as above provided; or, the court may allow a reduction of the bond upon proper showing. When the petition for letters testamentary or of administration is made by or upon the written request of the surviving spouse and the court is satisfied from the petition and the evidence introduced at the hearing thereon that the value of the estate does not exceed the exemptions allowed by law to the surviving spouse, the court in its discretion may order that letters testamentary or of administration be issued without bond; and in all other estates where it appears from the petition for letters testamentary or of administration and from the evidence submitted at the hearing thereon that the value of the estate does not exceed five hundred dollars and that the rights of heirs and creditors will not be jeopardized thereby, the court may order that letters testamentary or of administration be issued without bond; and in all cases where a bank or trust company authorized to act as personal representative is appointed as personal representative or acts as personal representative under an appointment as such heretofore made, no bond shall be required.

Examination
of sureties—
Additional
security—
Costs.

SEC. 11.28.190 *Examination of Sureties — Additional Security—Costs.* Before the judge approves any bond required under this chapter, and after its approval, he may, of his 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 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 appearance on the return of the citation, and on its return he 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 is satisfied that the bond is insufficient he 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.

SEC. 11.28.200 *Waiver of Bond by Will.* When it is expressly provided in the will that no bonds shall be required of the executor, letters testamentary may issue and sale of real estate be made and confirmed without any bond, unless the court for good cause requires one to be executed; but the executor may at any time afterwards, if it appear from any cause necessary or proper, be required to file a bond, as in other cases.

Waiver of
bond by will.

SEC. 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

New or additional
bond.

Probate law
and procedure.
Letters testa-
mentary, etc.

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.

Persons dis-
qualified as
sureties.

SEC. 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.

Bond not void
for want of
form—Succes-
sive recov-
eries.

SEC. 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 own name, until the whole penalty is exhausted.

Limitation of
action against
sureties.

SEC. 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.

Notice of ap-
pointment as
personal rep-
resentative.

SEC. 11.28.237 *Notice of Appointment as Personal Representative.* Within twenty days after his appointment, the personal representative of the estate of a decedent shall cause written notice of his said appointment, and of the pendency of said probate proceedings, to be mailed to each heir, distributee, and, in addition, in the case of a will, to each person named therein whose names and addresses are known

to him, and proof of such mailing shall be made by affidavit and filed in the cause.

SEC. 11.28.240 *Request for Special Notice of Proceedings in Probate.* At any time after the issuance of letters testamentary or of administration upon the estate of any decedent, any person interested in said estate as heir, devisee, distributee, legatee or creditor whose claim has been duly served and filed, or attorney for such heir, devisee, distributee, legatee, or creditor may serve upon the personal representative (or upon the attorney for such personal representative) and file with the clerk of the court wherein the administration of such estate is pending, a written request stating that he desires special notice of any or all of the following named matters, steps or proceedings in the administration of said estate, to wit:

Request for special notice of proceedings in probate.

- (1) Filing of petitions for sales, leases, exchanges or mortgages of any property of the estate.
- (2) Petitions for any order of solvency.
- (3) Filing of accounts.
- (4) Filing of petitions for distribution.
- (5) Petitions by the personal representative for family allowances and homesteads.
- (6) The filing of a declaration of completion.
- (7) The filing of the inventory.
- (8) Notice of presentation of personal representative's claim against the estate.
- (9) Petition to continue a going business.
- (10) Petition to borrow upon the general credit of the estate.

Such requests shall state the post office address of such heir, devisee, distributee, legatee or creditor, or his attorney, and thereafter a brief notice of the filing of any of such petitions, accounts, declaration, inventory or claim, except petitions for sale of perishable property, or other personal property which will incur expense or loss by keeping, shall be addressed

Probate law
and procedure.
Letters testa-
mentary and
of adminis-
tration.

to such heir, devisee, distributee, legatee or creditor, or his attorney, at his stated post office address, and deposited in the United States post office, with the postage thereon prepaid, at least ten days before the hearing of such petition, account or claim; or personal service of such notices may be made on such heir, devisee, distributee, legatee, or creditor, or attorney, not less than five days before such hearing, and such personal service shall be equivalent to such deposit in the post office, and proof of mailing or of personal service must be filed with the clerk before the hearing of such petition, account or claim. If upon the hearing it shall appear to the satisfaction of the court that the said notice has been regularly given, the court shall so find in its order or judgment, and such judgment shall be final and conclusive.

Revocation of
letters—
Causes.

SEC. 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 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.

—Proceed-
ings in court
or chambers.

SEC. 11.28.260 ————*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.

SEC. 11.28.270 *Powers of Remaining Personal Representatives if Letters to Associates Revoked.* If there be more than one personal representative of an estate, and the letters to part of them be revoked or surrendered, or a part die or in any way become disqualified, those who remain shall perform all the duties required by law.

Powers of remaining representatives if letters to associates revoked.

SEC. 11.28.280 *Administrator de bonis non.* If the personal representative of an estate dies, resigns, or the letters are revoked before the settlement of the estate, letters of administration of the estate remaining unadministered shall be granted to those to whom administration would have been granted if the original letters had not been obtained, or the person obtaining them had renounced administration, and the administrator de bonis non shall perform like duties and incur like liabilities as the former personal representative, and shall serve as administrator with will annexed de bonis non in the event a will has been admitted to probate.

Administrator de bonis non.

SEC. 11.28.290 *Accounting on Death, Resignation, or Revocation of Letters.* If any personal representative resign, or his letters be revoked, or he die, he or his representatives shall account for, pay, and deliver to his 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 legal representatives.

Accounting on death, resignation, or revocation of letters.

SEC. 11.28.300 *Proceedings Against Delinquent Personal Representative.* The succeeding administra-

Proceedings against delinquent representative.

tor, or remaining personal representative may proceed by law against any delinquent former personal representative, or his personal representatives, or the sureties of either, or against any other person possessed of any part of the estate.

Chapter 11.32

SPECIAL ADMINISTRATORS

Probate law
and procedure.
Special admin-
istrators. Ap-
pointment of.

SEC. 11.32.010 *Appointment of.* 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 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 shall, nevertheless, proceed in the execution of his trust until he shall be otherwise ordered by the appellate court.

Bond.

SEC. 11.32.020 *Bond.* Every such administrator shall, before entering on the duties of his 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.

Powers and
duties.

SEC. 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 services as the said court shall deem reasonable, together with reasonable fees for his attorney.

SEC. 11.32.040 *Succession by Personal Representative.* Upon granting letters testamentary or of administration the power of the special administrator shall cease, and he shall forthwith deliver to the personal representative all the goods, chattels, money, effects, and debts of the deceased in his 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.

Succession by
personal
representative.

SEC. 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.

Not liable to
creditors.

SEC. 11.32.060 *To Render Account.* The special administrator shall also render an account, under oath, of his proceedings, in like manner as other administrators are required to do.

To render
account.

Chapter 11.36

QUALIFICATIONS OF PERSONAL REPRESENTATIVES

Probate law
and procedure.
Personal rep-
resentatives.
Parties dis-
qualified—
Result of dis-
qualification
after appoint-
ment.

SEC. 11.36.010 *Parties Disqualified — Result of Disqualification After Appointment.* The following persons are not qualified to act as personal representatives: Corporations, minors, persons of unsound mind, or who have been convicted of any felony or of a misdemeanor involving moral turpitude: *Provided*, That 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 decedents' or incompetents' estates upon petition of any person having a right to such appointment and may act as executors or guardians when so appointed by will. But no trust company or national bank shall be entitled to qualify as such executor or guardian under any will hereafter drawn by it, or its agents or employees, and no salaried attorney of any such company shall 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 shall inure, directly or indirectly, to the benefit of any trust company or national bank. And 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 any crime or misdemeanor involving moral turpitude, the court having jurisdiction shall revoke his or her letters. A nonresident may be appointed to act as personal representative if he shall appoint 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 11.28.200, such nonresi-

dent personal representative shall file a bond to be approved by the court.

Chapter 11.40

CLAIMS AGAINST ESTATE

SEC. 11.40.010 *Notice to Creditors—Limitation on Filing Claims.* Every personal representative shall, immediately after his appointment, cause to be published in a legal newspaper published in the county in which the estate is being administered, a notice that he has been appointed and has qualified as such personal representative, and therewith a notice to the creditors of the deceased, requiring all persons having claims against the deceased to serve the same on the personal representative or his attorney of record, and file with the clerk of the court, together with proof of such service, within four months after the date of the first publication of such notice. Such notice shall be published once in each week for three successive weeks. If a claim be not filed within the time aforesaid, it shall be barred. Proof by affidavit of the publication of such notice shall be filed with the court: *Provided, however,* In cases where all the property is awarded to the widow, husband or children as in this title provided, the notice to creditors herein provided for may be omitted.

Claims against estate. Notice to creditors—Limitation on filing claims.

SEC. 11.40.020 *Affidavit of Claimant.* Every claim served and filed as above provided shall be supported by the affidavit of the claimant that the amount is justly due, that no payments have been made thereon, and that there are no offsets to the same to the knowledge of the claimant.

Affidavit of claimant.

SEC. 11.40.030 *Allowance or Rejection of Claims—Failure to Act.* When a claim, accompanied by the affidavit required in RCW 11.40.020 has been served and filed, it shall be the duty of the personal representative to indorse thereon his allowance or rejection.

Allowance or rejection of claims—Failure to act.

Probate law
and procedure.
Claims against
estate. Allow-
ance or rejec-
tion—Failure
to act.

tion, with the day and date thereof. If he allow the claim, it shall be presented to the judge of the court, who shall in the same manner indorse on it his allowance or rejection, or he may by order allow or reject the claim. If the personal representative reject the claim in whole or in part, he shall notify the claimant forthwith of said rejection and file in the office of the clerk an affidavit showing such notification and the date thereof. Such notification shall be by personal service or registered or certified mail and shall state that the holder of the rejected claim must bring suit in the proper court against the personal representative within thirty days after notification of the rejection, otherwise the claim shall be forever barred.

If the personal representative shall neglect for the period of sixty days after service upon him or his attorney to act upon any such claim, the claimant may take the matter up before the court and the court may require the personal representative to act on such claim and in its discretion may impose costs and attorney's fees.

Effect of
allowance.

SEC. 11.40.040 *Effect of Allowance.* Every claim which has been allowed by the personal representative and the said judge, shall be ranked among the acknowledged debts of the estate to be paid in the course of administration.

Judge as cred-
itor of estate.

SEC. 11.40.050 *Judge as Creditor of Estate.* Any judge of a court may present a claim against the estate of any decedent for allowance; and if the personal representative allows such claim, he shall, in writing, designate some other judge of the superior court, who shall have the same power to allow or reject it as he would have, had letters issued in his court; and the claimant shall have, in the event of his claim being rejected, all the rights incident to any other creditor against the estate.

SEC. 11.40.060 *Suit on Rejected Claim.* When a claim is rejected by either the personal representative or the court, the holder must bring suit in the proper court against the personal representative within thirty days after notification of the rejection, otherwise the claim shall be forever barred.

Suit on re-
jected claim.

SEC. 11.40.070 *Outlawed Claims.* No claim shall be allowed by the personal representative or court which is barred by the statute of limitations.

Outlawed
claims.

SEC. 11.40.080 *Claims Must be Presented.* No holder of any claim against a decedent shall maintain an action thereon, unless the claim shall have been first presented as herein provided.

Claims must
be presented.

SEC. 11.40.090 *Limitation Tolloed by Vacancy.* The time during which there shall be a vacancy in the administration shall not be included in any limitations herein prescribed.

Limitation
tolloed by
vacancy.

SEC. 11.40.100 *Action Pending at Death of Testator—Substitution.* If any action be pending against the testator or intestate at the time of his death, the plaintiff shall within ninety days after first publication of notice to creditors, serve on the personal representative a motion to have such personal representative, as such, substituted as defendant in such action, and, upon the hearing of such motion, such personal representative shall be so substituted, unless, at or prior to such hearing, the claim of plaintiff, together with costs, be allowed by the personal representative and court. After the substitution of such personal representative, the court shall proceed to hear and determine the action as in other civil cases.

Action pend-
ing at death of
testator—
Substitution.

SEC. 11.40.110 *Partial Allowance of Claim.* Whenever any claim shall have been filed and presented to a personal representative and the court, and a part thereof shall be allowed, the amount of such allowance shall be stated in the indorsement. If the cred-

Partial allow-
ance of claim.

Probate law and procedure. Claims against estate.

itor shall refuse to accept the amount so allowed in satisfaction of his claim, he shall recover no costs in any action he may bring against the personal representative unless he shall recover a greater amount than that offered to be allowed, exclusive of interest and costs.

Effect of judgment against personal representative.

SEC. 11.40.120 *Effect of Judgment Against Personal Representative.* The effect of any judgment rendered against any personal representative shall be only to establish the amount of the judgment as an allowed claim.

Judgment against decedent—Payment.

SEC. 11.40.130 *Judgment Against Decedent—Payment.* When any judgment has been rendered against the testator or intestate in his lifetime, no execution shall issue thereon after his death, but it shall be presented to the personal representative, as any other claim, but need not be supported by the affidavit of the claimant, and if justly due and unsatisfied, shall be paid in due course of administration: *Provided, however,* That if it be a lien on any property of the deceased, the same may be sold for the satisfaction thereof, and the officer making the sale shall account to the personal representative for any surplus in his hands.

Claim of personal representative.

SEC. 11.40.140 *Claim of Personal Representative.* If the personal representative is himself a creditor of the testator or intestate, his claim, duly authenticated by affidavit, shall be filed and presented for allowance or rejection to the judge of the court, and its allowance by the judge shall be sufficient evidence of its correctness. This section shall apply to nonintervention and all other wills.

Notice to creditors when personal representative resigns, etc.

SEC. 11.40.150 *Notice to Creditors When Personal Representative Resigns, Dies, or Is Removed.* In case of resignation, death or removal for any cause of any personal representative, and the appointment of an-

other or others, after notice has been given by publication as required by RCW 11.40.010, by such personal representative first appointed, to persons to file their claims against the decedent, it shall be the duty of the successor or personal representative to cause notice of such resignation, death or removal and such new appointment to be published two successive weeks in a legal newspaper published in the county in which the estate is being administered, but the time between the resignation, death or removal and such publication shall be added to the time within which claims shall be filed as fixed by the published notice to creditors unless such time shall have expired before such resignation or removal or death: *Provided, however,* That no such notice shall be required if the period for filing claims was fully expired during the time that the former personal representative was qualified.

Chapter 11.44

INVENTORY AND APPRAISEMENT

SEC. 11.44.015 *Inventory.* Within three months after his appointment, unless a longer time shall be granted by the court, every personal representative shall make and return upon oath into the court a true inventory of all of the property of the estate which shall have come to his possession or knowledge, including a statement of all encumbrances, liens or other secured charges against any item. Such property shall be classified as follows:

- (1) Real property, by legal description and assessed valuation of land and improvements thereon;
- (2) Corporation stock;
- (3) Mortgages, bonds, notes and other written evidences of debt;
- (4) Bank accounts and money;
- (5) Furniture and household goods;

Probate law
and procedure.
Inventory and
appraisal.

(6) 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.

Additional
inventory.

SEC. 11.44.025 *Additional Inventory.* Whenever any property not mentioned in the inventory comes to the knowledge of a personal representative, he shall cause the same to be inventoried and appraised within thirty days after the discovery thereof, unless a longer time shall be granted by the court.

Inventory or
appraisal
may be con-
tradicted.

SEC. 11.44.035 *Inventory or Appraisal May be Contradicted.* In an action against the personal representative where his administration of the estate, or any part thereof, is put in issue and the inventory of the estate returned by him, or the appraisal thereof is given in evidence, the same may be contradicted or avoided by evidence. Any party in interest in the estate may challenge the inventory or appraisal at any stage of the probate proceedings.

Failure to re-
turn inventory
—Revocation
of letters.

SEC. 11.44.050 *Failure to Return Inventory—Revocation of Letters.* If any personal representative shall neglect or refuse to return the inventory within the period prescribed, or within such further time as the court may allow, the court may revoke the letters testamentary or of administration; and the personal representative shall be liable on his bond to any party interested for the injury sustained by the estate through his neglect.

Appointment
of appraiser.

SEC. 11.44.055 *Appointment of Appraiser.* The personal representative shall apply to the court for the appointment of a suitable disinterested person to appraise the property inventoried and the court shall appoint such appraiser.

If any part of the estate shall be in a county other than that in which the letters are issued, an appraiser

residing in that county may be appointed or the same appraiser may act.

SEC. 11.44.060 The value of the estate and effects of deceased persons determined under the probate law shall be the value for appraisement and inheritance tax purposes, except where the same estate is valued for federal estate tax purposes, and the valuation is adjusted according to federal appraisement in accordance with RCW 83.40.040.

Value for appraisement, inheritance tax purposes.

SEC. 11.44.065 *Duties of Appraiser.* The appraiser shall determine and state in figures opposite each item contained in the inventory the fair net value thereof, as of the date of decedent's death, after deducting the encumbrances, liens and other secured charges thereon, and shall deliver such inventory and appraisement, certified by him under oath to the personal representative within thirty days following his appointment, unless a longer time shall be granted by the court.

Duties of appraiser.

SEC. 11.44.070 *Compensation of Appraiser.* The appraiser shall receive as compensation for his service an amount as to the court shall seem just and reasonable, but not less than ten dollars nor more than one-tenth of one percent of the assets of the estate actually appraised by him.

Compensation of appraiser.

SEC. 11.44.080 *Dispensing with Appraisement.* Where it is shown by the filing of the inventory, or other proof to the satisfaction of the court, that the whole estate consists of personal property of less value than one thousand dollars, exclusive of moneys, drafts, bank and savings and loan association accounts, checks, and of bonds or securities listed with a recognized securities market or exchange, an appraisement may be dispensed with, in the discretion of the court, and the court may accept the verified appraisal of the personal representative in lieu of an

Dispensing with appraisement.

appraisal by an appraiser; and in such case the court need not appoint an appraiser or may revoke his appointment if already made.

Probate law and procedure. Inventory. Claims against personal representative to be included.

SEC. 11.44.085 *Claims Against Personal Representative to be 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 the personal representative shall be liable to the same extent as he would have been had he not been appointed personal representative.

Discharge of debt construed as specific bequest and included.

SEC. 11.44.090 *Discharge of Debt to be Construed as Specific Bequest and Included.* The discharge or bequest in a will of any debt or demand of the testator against any executor named in his 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 shall, if necessary, be applied in payment of his debts; if not necessary for that purpose, it shall be paid in the same manner and proportions as other specific legacies.

Chapter 11.48

PERSONAL REPRESENTATIVES—GENERAL PROVISIONS—ACTIONS BY AND AGAINST

Personal representatives. General powers and duties.

SEC. 11.48.010 *General Powers and Duties.* It shall be the duty of every personal representative to settle the estate in his hands as rapidly and as quickly as possible, without sacrifice to the estate. He shall collect all debts due the deceased and pay all debts as hereinafter provided. He shall be authorized in his 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.

SEC. 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 control.

Right to possession and management of estate.

SEC. 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 estate is solvent, or a will providing that the personal representative liquidate any business of decedent, this section shall not apply.

Continuation of decedent's business.

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 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 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.

Probate law
and procedure.
Personal rep-
resentatives.
Chargeable
with whole
estate.

SEC. 11.48.030 *Chargeable With Whole Estate.*

Every personal representative shall be chargeable in his accounts with the whole estate of the deceased which may come into his possession. He shall not be responsible for loss or decrease or destruction of any of the property or effects of the estate, without his fault.

Not chargeable
on special
promise to pay
decendent's
debts unless
in writing.

SEC. 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 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 thereunto specially authorized.

Allowance of
necessary
expenses.

SEC. 11.48.050 *Allowance of Necessary Expenses.*

He shall be allowed all necessary expenses in the care, management and settlement of the estate.

May recover
for embezzled,
alienated
property of
decendent.

SEC. 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 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.

Concealed or
embezzled
property—
Proceedings
for discovery.

SEC. 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 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 possession or within his 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 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 be found innocent of the charges he 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 refuse to answer such interrogatories as may be put to him touching such matters, the court may commit him to the county jail, there to remain until he shall be willing to make such answers.

SEC. 11.48.080 *Uncollectible Debts, Liability for—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 fault. No personal representative shall purchase any claim against the estate he 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.

Uncollectible debts, liability for—Purchase of claims by personal representative.

Probate law
and procedure.
Personal rep-
resentatives.
Actions for
recovery of
property and
on contract.

SEC. 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.

Action on bond
of previous
representative.

SEC. 11.48.120 *Action on Bond of Previous Personal Representative.* Any personal representative may in his own name, for the benefit of all parties interested in the estate, maintain actions on the bond of a former personal representative of the same estate.

Compromise
of claims.

SEC. 11.48.130 *Compromise of Claims.* The court shall have power to authorize the personal representative to compromise and compound any claim owing the estate.

Recovery of
decendent's
fraudulent
conveyances.

SEC. 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 lifetime have conveyed any real estate, or any rights, or interest therein, with intent to defraud his 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 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 lifetime, whatever may have been the manner of such fraudulent conveyance.

SEC. 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.

Several representatives as one.

SEC. 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 hands, unless it appear that the complaint alleged assets and that the notice was served upon him.

Default judgment not evidence of assets—Exception.

SEC. 11.48.180 *Liability of Executor de Son Tort.* No person is liable to an action as executor of his 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 interference with the estate of the deceased.

Liability of executor de son tort.

SEC. 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.

Executor of executor may not sue for estate of first testator.

SEC. 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 testator or intestate, but for his 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.

Arrest and attachment, when authorized.

SEC. 11.48.210 *Compensation—Attorney's Fee.* If testator by will makes provision for the compensation

Compensation—Attorney's fee.

Probate law
and procedure.
Personal rep-
resentatives.
Compensation
—Attorney's
fee.

of his personal representative, that shall be taken as his full compensation unless he 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 renounces all claim to the compensation provided in the will, shall be allowed such compensation for his services as the court shall deem just and reasonable. Additional compensation may be allowed for his 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 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 duties as such in any respect, it may deny him any compensation whatsoever or may reduce the compensation which would otherwise be allowed.

Chapter 11.52

PROVISIONS FOR FAMILY SUPPORT

Award in lieu
of homestead
—Amount—
Time
for filing
petition.

SEC. 11.52.010 *Award in Lieu of Homestead—Amount—Time for Filing Petition.* If it is made to appear to the satisfaction of the court that no homestead has been claimed in the manner provided by law, either prior or subsequent to the death of the person whose estate is being administered, then the court, after hearing and upon being satisfied that the funeral expenses, expenses of last sickness and of administration have been paid or provided for, and

upon petition for that purpose, shall award and set off to the surviving spouse, if any, property of the estate, either community or separate, not exceeding the value of ten thousand dollars at the time of death, exclusive of general taxes and special assessments which were liens at the time of the death of the deceased spouse, and exclusive of any mortgage or mechanic's, laborer's or materialmen's or vendor's liens upon the property so set off, and exclusive of funeral expenses, expenses of last sickness and administration, which expenses may be deducted from the gross value in determining the value to be set off to the surviving spouse; provided that the court shall have no jurisdiction to make such award unless the petition therefor is filed with the clerk within six years from the date of the death of the person whose estate is being administered.

SEC. 11.52.012 *Award—Effect—Conditions Under Which Award May Be Denied or Reduced.* Such award shall be made by an order or judgment of the court and shall vest the absolute title, and thereafter there shall be no further administration upon such portion of the estate so set off, but the remainder of the estate shall be settled as other estates: *Provided*, That no property of the estate shall be awarded or set off, as in RCW 11.52.010 through 11.52.024 provided, to a surviving spouse who has feloniously killed the deceased spouse: *Provided further*, That if it shall appear to the court, either (1) that there are minor or incompetent children of the deceased by a former marriage or by adoption prior to decedent's marriage to petitioner, or (2) that the petitioning surviving spouse has abandoned his or her minor children or wilfully and wrongfully failed to provide for them, or (3) if such surviving spouse or minor children are entitled to receive property including insurance by reason of the death of the deceased spouse in the sum of ten thousand dollars,

—Effect—
Conditions
under which
award may be
denied or
reduced.

Probate law and procedure. Award in lieu of homestead.

or more, then the award in lieu of homestead and exemptions shall lie in the discretion of the court, and that whether there shall be an award and the amount thereof shall be determined by the court, who shall enter such decree as shall be just and equitable but not in excess of the award provided herein.

—Notice of hearing—Appointment of guardian ad litem for incompetents.

SEC. 11.52.014 *Award—Notice of Hearing—Appointment of Guardian Ad Litem for Incompetents.* Notice of such hearing shall be given in the manner prescribed in RCW 11.76.040. If there be any incompetent heir of the decedent, the court shall appoint a guardian ad litem for such incompetent heir, who shall appear at the hearing and represent the interest of such incompetent heir.

—Finality—Is in lieu—Exempt from debts—Which law applies.

SEC. 11.52.016 *Award—Finality—Is in Lieu—Exempt from Debts—Which Law Applies.* The order of judgment of the court making the award or awards provided for in RCW 11.52.010 through 11.52.024 shall be conclusive and final, except on appeal and except for fraud. The awards in RCW 11.52.010 through 11.52.024 provided shall be in lieu of all homestead provisions of the law and of exemptions. The said property, when set aside as herein provided, shall be exempt from all claims for the payment of any debt of the deceased or of the surviving spouse existing at the time of death, whether such debt be individual or community. Under RCW 11.52.010 through 11.52.024, the court shall not award more property than could be awarded under the law in effect at the time of the death of the deceased spouse.

Homestead may be awarded to survivor—Appointment of guardian ad litem.

SEC. 11.52.020 *Homestead May Be Awarded to Survivor—Appointment of Guardian Ad Litem.* In event a homestead has been, or shall be selected in the manner provided by law, whether the selection of such homestead results in vesting the complete or partial title in the survivor, it shall be the duty

of the court, upon petition of any person interested, and upon being satisfied that the value thereof does not exceed ten thousand dollars at the time of the death, exclusive of general taxes and special assessments which were liens at the time of the death of the deceased and exclusive of mortgages, mechanic's, laborer's, materialmen's or vendor's liens thereon, and exclusive of funeral expenses, expenses of last sickness and of administration, which expenses may be deducted from the gross value in determining the value to be set off to the surviving spouse, to enter a decree, upon notice as provided in RCW 11.52.014 or upon longer notice if the court so orders, setting off and awarding such homestead to the survivor, thereby vesting the title thereto in fee simple in the survivor: *Provided*, That if there be any incompetent heirs of the decedent, the court shall appoint a guardian ad litem for such incompetent heir who shall appear at the hearing and represent the interest of such incompetent heir.

SEC. 11.52.022 *Award in Addition to Homestead—Conditions Under Which Such Award May Be Denied or Reduced.* If the value of the homestead, exclusive of all such liens, be less than ten thousand dollars, the court, upon being satisfied that the funeral expenses, expenses of last sickness and of administration, have been paid or provided for, shall set off and award additional property, either separate or community, in lieu of such deficiency, so that the value of the homestead, exclusive of all such liens and expenses when added to the value of the other property awarded, exclusive of all such liens and expenses shall equal ten thousand dollars: *Provided*, That if it shall appear to the court, either (1) there are incompetent children of the deceased by a former marriage or by adoption prior to decedent's marriage to petitioner, or (2) that the petitioning surviving spouse has abandoned

Award in addition to homestead—Conditions under which award denied or reduced.

Probate law and procedure. Family support.

his or her minor children or wilfully and wrongfully failed to provide for them, or (3) if such surviving spouse or incompetent children are entitled to receive property including insurance by reason of the death of the deceased spouse in the sum of ten thousand dollars, or more, then the award of property in addition to the homestead, where the homestead is of less than ten thousand dollars in value, shall lie in the discretion of the court, and that whether there shall be an award in addition to the homestead and the amount thereof shall be determined by the court, who shall enter such decree as shall be just and equitable, but not in excess of the award provided herein.

Homestead and additional award—Finality—Is in lieu—Exempt from debts—Which law applies.

SEC. 11.52.024 *Homestead and Additional Award—Finality—Is in Lieu—Exempt from Debts—Which Law Applies.* Said decree shall particularly describe the said homestead and other property so awarded, and such homestead and other property so awarded shall not be subject to further administration, and such decree shall be conclusive and final, except on appeal, and except for fraud, and such awards shall be in lieu of all further homestead rights and of all exemptions. The property in addition to the homestead, when set aside as herein provided, shall be exempt from all claims for the payment of any debt of deceased or of the surviving spouse existing at the time of death, whether such debt be individual or community. Under RCW 11.52.010 through 11.52.024, the court shall not award more property than could be awarded under the law in effect at the time of the death of the deceased spouse.

Support of minor children.

SEC. 11.52.030 *Support of Minor Children.* If there be no surviving spouse, the court shall award and set aside to the minor child or children, if any, and in such proportions as he considers proper, property of the estate as the court may consider neces-

sary for the care and support of said minor or minors until they become of legal age, not exceeding in value the amount which the court is now or hereafter empowered to award to a surviving spouse.

SEC. 11.52.040 *Further Allowance for Family Maintenance.* In addition to the awards herein provided for, the court may make such further reasonable allowance of cash out of the estate as may be necessary for the maintenance of the family according to their circumstances, during the progress of the settlement of the estate, and any such allowance shall be paid by the personal representative in preference to all other charges, except funeral charges, expenses of last sickness and expenses of administration.

Further allowance for family maintenance.

SEC. 11.52.050 *Closure of Estate—Discharge of Personal Representative.* If it is made to appear to the court that the amount of funeral expenses, expenses of last illness, expenses of administration, general taxes and special assessments which were liens at the time of the death of the deceased spouse together with the unpaid balance of any mortgage or mechanic's, laborer's or materialmen's, or vendor's liens upon the property to be set off under the provisions of RCW 11.52.010 through 11.52.024 together with the amount of the award to be made by the court under the provisions of RCW 11.52.010 through 11.52.040 shall be equal to the gross value of the decedent's estate subject to probate, then the court at the time of making such award shall enter its judgment setting aside all of the property of the estate, subject to the aforementioned charges, to the petitioner, shall order the estate closed, discharge the executor or administrator and exonerate the executor's or administrator's bond.

Closure of estate—Discharge of personal representative.

Chapter 11.56

SALES, EXCHANGES, LEASES, MORTGAGES AND BORROWING

Probate law and procedure. Property. Authority to exchange.

SEC. 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.

Authority to sell, lease or mortgage.

SEC. 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.

Priority.

SEC. 11.56.015 Priority. In determining what property of the estate shall be sold, mortgaged or leased for any purpose provided by RCW 11.56.020 and 11.56.030, there shall be no priority as between real and personal property, except as provided by will, if any.

Sale, lease, mortgage of personal property.

SEC. 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 preserva-

tion 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.

SEC. 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, inheritance and federal death tax 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

Sale, lease,
mortgage of
real estate—
Petition—
Notice—
Hearing.

Probate law
and procedure.
Property, ex-
change, lease,
sale or
mortgage of.

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.

Order direct-
ing mortgage.

SEC. 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 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 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 estate, and no irregularity in the proceedings shall impair or invalidate any mortgage

given under such order of the court and approved by it.

SEC. 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 has first presented the same to the court and obtained its approval of the form.

Order directing lease.

SEC. 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. The court shall order sold that part of the real estate which is generally devised, rather than any part which may have been specifically devised, but the court may, if it appears necessary, sell any or all of the real estate so devised. 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.

Order directing sale.

SEC. 11.56.060 *Public Sales—Notice*. When real property is directed to be sold by public sale, notice

Public sales—Notice.

Probate law
and procedure.
Property, ex-
change, lease,
sale or mort-
gage of.

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 court house of the county in which the lands are, unless the court shall by order otherwise direct.

Postponement,
adjournment
of sale—
Notice.

SEC. 11.56.070 *Postponement, Adjournment of Sale—Notice.* The personal representative, should he 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.

Private sales
of realty—
Notice—Bids.

SEC. 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.

SEC. 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

Minimum price—Private sale—Sale by negotiation—Reappraisal.

estate, and which appraisalment may be made at any time before the sale or the confirmation thereof.

Probate law
and procedure.
Property, ex-
change, lease,
sale, or mort-
gage of. Con-
firmation of
sale—Approval
—Resale.

SEC. 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 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.

Offer of in-
creased bid—
Duty of Court.

SEC. 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 bid, to be forfeited to the estate unless such bidder complies with his 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 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 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.

Probate law and procedure. Property exchange, lease, sale or mortgage of. Sales. Effect of confirmation.

SEC. 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.

Conveyance after confirmation of sale.

SEC. 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.

Sale, lease, mortgage of realty to pay legacy.

SEC. 11.56.140 *Sale, Lease or Mortgage of Realty to Pay Legacy.* When a testator shall have given any legacy by will that is effectual to charge real estate, and his goods, chattels, rights and credits shall be insufficient to pay such legacy, together with the debts and charges of administration, the personal representative, with the will annexed, may obtain an order to sell, mortgage or lease his real estate for that purpose in the same manner and upon the same terms and conditions as prescribed in this chapter in case of a sale, mortgage or lease for the payments of the debts.

SEC. 11.56.150 *Appropriation to Pay Debts and Expenses.* If the provision made by the will or the estate appropriated be not sufficient to pay the debts and expenses of administration and family expenses, such part of the estate as shall not have been disposed of by the will, if any, shall be appropriated for that purpose, according to the provisions of this chapter.

Appropriation to pay debts and expenses.

SEC. 11.56.160 *Liability of Devisees and Legatees for Debts and Expenses.* The estate, real and personal, given by the will to any legatees or devisees, shall be held liable for the payment of the debts, the expenses of administration and allowances to the family, in proportion to the value or amount of the several devises or legacies, if there shall not be other sufficient estate, except that specific devises or legacies may be exempted, if it appear to the court necessary to carry into effect the intention of the testator.

Liability of devisees and legatees for debts and expenses.

SEC. 11.56.170 *Contribution Among Devisees and Legatees.* When the estate given by any will has been sold for the payment of debts and expenses, all the devisees and legatees shall be liable to contribute, according to their respective interests, to any devisee or legatee from whom the estate devised to him may be taken for the payments of the debts or expenses; and the court, when distribution is made, shall by decree for that purpose, settle the amount of the several liabilities and decree how much each person shall contribute.

Contribution among devisees and legatees.

SEC. 11.56.180 *Sale of Decedent's Contract Interest in Land.* If the deceased person at the time of his death was possessed of a contract for the purchase of lands, his interest in such lands under such contract may be sold on the application of his personal representative in the same manner as if he died seized of such lands; and the same proceedings may be had

Sale of decedent's contract interest in land.

for that purpose as are prescribed in this title in respect to lands of which he died seized, except as hereinafter provided.

Probate law and procedure. Property, exchange, lease, sale, or mortgage of. Assignment of decedent's contract.

SEC. 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 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.

Redemption of decedent's mortgaged estate.

SEC. 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.

Sale or mortgage to effect redemption.

SEC. 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 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.

SEC. 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 private 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.

Sale of mortgaged property if redemption inexpedient.

SEC. 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.

Sales directed by will.

SEC. 11.56.265 *Brokers 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.

Brokers fee and closing expenses—Sale, mortgage or lease.

SEC. 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, inheritance tax, or estate tax, the

Borrowing on general credit of estate—Petition—Notice—Hearing.

Probate law and procedure. Borrowing on general credit of estate—Petition—Notice—Hearing.

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 jurisdiction to authorize such borrowing.

Chapter 11.60

PERFORMANCE OF DECEDENT'S CONTRACTS

Decedent's contracts. Order for performance on application of representative.

SEC. 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.

SEC. 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.

Petition, notice, hearing, when representative fails to make application.

SEC. 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.

Hearing.

SEC. 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 were still living and executed the conveyance in pursuance of such contract.

Conveyance of real property—Effect.

SEC. 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, 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

Procedure on death of person entitled to performance.

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.

Chapter 11.64

PARTNERSHIP PROPERTY

Probate law
and procedure.
Partnership
property. In-
ventory and
appraisement
on death of
partner—
Filing.

SEC. 11.64.002 *Inventory and Appraisement on Death of Partner—Filing.* Within thirty days after the death of a partner the surviving partner or partners shall file a verified inventory of the assets of the partnership in the superior court in which letters testamentary or of administration are issued on the estate of the decedent, or, if no letters are issued, in the court of the county of which the decedent was resident at the time of his death. The inventory shall state the value of the assets as shown by the books of the partnership and a list of the liabilities of the partnership. If letters testamentary or of administration have been issued on the estate of the decedent, the surviving partner or partners shall cause the assets of the partnership to be appraised in like manner as the individual property of a deceased person, which appraisal shall include the value of the assets of the partnership and a list of the liabilities. The appraisers appointed by the court under RCW 11.44.055 to appraise the property of the deceased partner may appraise the partnership property, and the surviving partner or partners shall file the inventory and appraisal with the court in which the estate of the deceased partner is being administered: *Provided*, That if the surviving partner or partners cannot prepare an inventory within thirty days after the death of the decedent, the court may, on application made within said thirty day period and for good cause shown, grant an extension of time not to exceed an additional three months, within which time such inventory may be filed.

SEC. 11.64.008 *Surviving Partner May Continue in Possession—Accounting.* 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. Upon the verified petition of the personal representative, or on its own motion, the court, whenever it appears necessary, may order the surviving partner or partners to account to said court.

Surviving partner may continue in possession—Accounting.

SEC. 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 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.

Security may be required.

SEC. 11.64.022 *Failure to File Inventory, Appraisal, Etc.—Show Cause—Receiver.* If the surviving partner or partners fail or refuse to file the inventory, list of liabilities or appraisal, or if it appears proper to order the surviving partner or partners to account to the court or to file a bond, said court shall order a citation to issue requiring the surviving partner or partners to appear and show cause why they have not filed an inventory, list of liabilities or appraisal or why they should not account to the court or file a bond. The citation shall be served not less than ten days before the return day designated therein. If the surviving partner or partners neglect or refuse to file an inventory, list of liabilities or 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 or the court may commit them to jail until they comply with the order of the court. Where

Failure to file inventory, appraisal, etc.—Show cause—Receiver.

Probate law
and procedure.
Partnership
property.

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 with like powers and duties of receivers in equity, and 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.

Survivor may
purchase
deceased's in-
terest—Protec-
tion against
partnership
liabilities.

SEC. 11.64.030 *Survivor May Purchase Deceased's Interest—Protection Against Partnership Liabilities.* The surviving 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 such petition being presented the court shall, in such manner as it sees fit, learn and by order fix the value of the interest of the deceased over and above all partnership debts and obligations, and the terms and conditions upon which the surviving partner or partners may purchase, and thereafter the surviving partner or partners shall have the preference right for such length of time as the court may fix, to purchase the interest of the deceased partner at the price and upon the terms and conditions fixed by the court. If any such surviving partner be also the personal representative of the estate of the deceased partner, such fact shall not affect his 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.

SEC. 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.

Surviving partner may operate under agreement with estate—Termination.

Chapter 11.68

SETTLEMENT OF ESTATES WITHOUT ADMINISTRATION

SEC. 11.68.010 *Settlement Without Court Intervention—Solvency—Closing of Estate.* In all cases where it is provided in the last will and testament of the deceased that the estate shall be settled in a manner provided in such last will and testament, and that such estate shall be settled without the intervention of any court or courts, and where it duly appears to the court, by the inventory filed, and other proof, that the estate is fully solvent, which fact may be established by an order of the court on the filing of the inventory, it shall not be necessary to take out letters testamentary or of administration, except to admit the will to probate and to file a true inventory of all the property of such estate and give notice to creditors and to the body having charge of the collection of inheritance tax, in the manner required by law.

Settlement of estate without court intervention—Solvency—Closing of estate.

After the probate of any such will and the filing of the inventory all such estates may be managed and settled without the intervention of the court, if the last will and testament so provides. However, when

Probate law and procedure. Settlement of estate without administration.

the estate is ready to be closed the court, upon application, shall have authority and it shall be its duty, to make and cause to be entered a decree finding and adjudging that all debts have been paid, finding and adjudging also the heirs and those entitled to take under the will and distributing the property to the persons entitled thereto. Such decree shall be made after notice given as provided for like decrees in the estates of persons dying intestate. If no application for a final decree is filed, the executor shall, when the administration of the estate has been completed, file a written declaration to that effect, and thereupon his powers shall cease.

The obtaining of any interim order by the executor of a nonintervention will shall not be deemed to be a waiver of the nonintervention powers of such executor.

Executor of nonintervention will may decline.

SEC. 11.68.020 *Executor of Nonintervention Will May Decline.* In all cases, if the party named in such will as executor declines to execute the trust or dies or is otherwise disabled for any cause from acting as such executor, letters testamentary or of administration shall issue and the estate be settled as in other cases.

Procedure when executor recreant to trust.

SEC. 11.68.030 *Procedure When Executor Recreant to Trust.* If the person named in the will fails to execute the trust faithfully and to take care and promote the interest of all parties, then, upon petition of a creditor of the estate, or of any of the heirs, or of any person on behalf of any minor heir, the court shall cite such person to appear before it, and if, upon hearing of the petition it appears that the trust in such will is not faithfully discharged, and that the parties interested, or any of them, have been or are about to be damaged by the doings of the executor, then, in the discretion of the court, administration may be had and required as is required in the ad-

ministration of estates, and in all such cases the costs of the citation and hearing shall be charged against the party failing and neglecting to execute the trust as required in the will.

SEC. 11.68.040 *Powers of Executor Under Nonintervention Will—Presumption of Necessity.* Executors acting under nonintervention wills may, if the estate has been adjudged solvent, mortgage, lease, sell, exchange, and convey the real and personal property of the testator, and borrow money on the general credit of the estate, without an order of the court for that purpose and without notice, approval, or confirmation, and in all other respects administer and settle the estate without the intervention of the court. The other party to any such transaction and his successors in interest shall be entitled to have it conclusively presumed that such transaction is necessary for the administration of the estate.

Powers of executor under nonintervention will—Presumption of necessity.

Chapter 11.72

DISTRIBUTION BEFORE SETTLEMENT

SEC. 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 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 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.

Distribution before settlement. Delivery of specific property to distributee before final decree.

SEC. 11.72.006 *Partial Distribution—Distribution of Part of Estate.* After the expiration of the time

Partial distribution.

Probate law
and procedure.
Distribution
before
settlement.
Distribution of
part of estate.

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.

Chapter 11.76

SETTLEMENT OF ESTATES

Settlement of
estates. Report
of personal
representative
—Contents—
Interim
reports.

SEC. 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 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 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 hands, and give a detailed statement of all sums collected by him, 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 done or which should be done. Such personal representative may at any time, however, make, verify, and file any reports which in his judgment would be proper or which the court may order to be made.

SEC. 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.

Notice of hearing—Settlement of report.

SEC. 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 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 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

Final report and petition for distribution—Contents.

Probate law
and procedure.
Settlement of
estates. Final
report.

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.

Time and place
of hearing—
Notices.

SEC. 11.76.040 *Time and Place of Hearing—Notices.* 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, distributee, and, in

addition, in the case of a will, to each person named therein, whose names and addresses are known to him, and proof of such mailing shall be made by affidavit and filed at or before the hearing.

SEC. 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 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.

Hearing on
final report—
Decree of dis-
tribution.

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

Probate law and procedure. Settlement of estates. Hearing on final report—Decree of distribution.

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.

Continuance to cite in sureties on bond when account incorrect.

SEC. 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 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 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 trust in any amount, the court may thereupon enter final judgment against said personal representative and the surety upon his bond, which judgment shall be enforceable in the same manner and to the same extent as judgments in ordinary civil actions.

SEC. 11.76.070 *Attorney's Fee 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 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 ac-

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

Probate law
and procedure.
Settlement of
estates.

count 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.

Representation
of incompetent
by guardian ad
litem.

SEC. 11.76.080 *Representation of Incompetent by Guardian ad Litem.* If there be any incompetent or person under disability interested in the estate who has no legally appointed guardian, the court shall appoint some disinterested person, as guardian ad litem, to represent such incompetent or person under disability, with reference to any petition or proceeding in which the incompetent or person under disability may have an interest, who, on behalf of the incompetent or person under disability, may contest the same as any other person interested might contest it, and who shall be allowed by the court reasonable compensation for his services.

Distribution of
five hundred
dollars or less
to minor.

SEC. 11.76.090 *Distribution of Five Hundred Dollars or Less to Minor.* When a decree of distribution is made by the court in administration upon a decedent's estate and distribution is ordered to a person under the age of twenty-one years, of a sum of five hundred dollars or less, the court, in such order of distribution, shall order the same paid to the clerk of the court wherein administration of such estate is pending, and the same shall be paid by the clerk, for the use and as the property of said minor, to the per-

son named in said order of distribution to receive the same, without requiring bond or appointment of any guardian.

SEC. 11.76.095 *Distribution of Estates to Minors.* 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 an executor under a nonintervention will and distribution is ordered under such decree or authorized under such nonintervention will to a person under the age of twenty-one years, and the value of such property or money is five thousand dollars or less and there is no general guardian of the incompetent, the court may require that

(1) the money be deposited in a bank or trust company or be invested in an account in an insured savings and loan association for the benefit of the incompetent subject to withdrawal only upon the order of the court in the original probate proceeding, or

(2) in all other cases a general guardian shall be appointed and qualify and the money or other property be paid or delivered to such guardian prior to the discharge of the personal representative in the original probate proceeding.

This section shall not bar distribution under RCW 11.76.090.

SEC. 11.76.100 *Receipts for Expenses to Be Produced by Personal Representative.* Receipts for expenses to be produced by personal representative. In rendering his accounts or reports the personal representative shall produce receipts or canceled checks for the expenses and charges which he shall have paid, which receipts shall be filed and remain in court; however, he may be allowed any item of expenditure, not exceeding twenty dollars, for which no receipt is produced, if such item be supported by his own oath, but such allowances without receipts shall not exceed the sum of three hundred dollars in any one estate.

Probate law and procedure. Settlement of estates. Order of payment of debts.

SEC. 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 lifetime which are liens upon real estate on which executions might have been issued at the time of his death, and debts secured by mortgages in the order of their priority.

(7) All other demands against the estate.

Limitation on preference to mortgage or judgment.

SEC. 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.

Expense of monument.

SEC. 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.

Allowance of claims must precede payment.

SEC. 11.76.140 *Allowance of Claims Must Precede Payment.* No claim against the estate shall be paid until the same shall first have been allowed by both the personal representative and the court.

SEC. 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 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.

Payment of claims where estate insufficient.

SEC. 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 claim or the dividend thereon, except when his inability to make the payment thereof from the property of the estate shall result without fault upon his part. The personal representative shall likewise be liable on his bond to each creditor.

Liability of personal representative.

SEC. 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 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 sureties be required to make any payment in this section provided for, he or they shall have a right of action against said distributees and creditors to compel them to contribute their just share.

Action on claim not acted on—Contribution.

SEC. 11.76.180 *Order Maturing Claim Not Due.* If there be any claim not due the court may in its di-

Order maturing claim not due.

Probate law
and procedure.
Settlement of
estates.

secretion, 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.

Procedure on
contingent and
disputed
claims.

SEC. 11.76.190 *Procedure on Contingent and Disputed Claims.* 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 shall become entitled thereto; or if he fail to establish his claim, to be paid over or distributed as the circumstances of the case may require.

Agent for non-
resident dis-
tributee.

SEC. 11.76.200 *Agent for Nonresident 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.

Agent's bond.

SEC. 11.76.210 *Agent's Bond.* Such agent shall make, subscribe, and file an oath for the faithful performance of his 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 shall be authorized to receive any property of said estate.

Sale of un-
claimed estate
—Remittance
of proceeds to
tax commis-
sion.

SEC. 11.76.220 *Sale of Unclaimed Estate—Remittance of Proceeds to Tax Commission.* 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 tax commission. 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 tax commission for deposit in the state treasury in the fund in which escheats and forfeitures are by law required to be deposited.

SEC. 11.76.230 *Liability of Agent.* The agent shall be liable on his bond for the care and preservation of the estate while in his hands, and for the payment of the funds to the county treasury, and may be sued thereon by any person interested including the state.

Liability of agent.

SEC. 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 legal representative, excepting that if it clearly appears that such person died prior to the decedent in whose estate distribution was made to him, 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 tax commission 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 tax commission, 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.

Claimant to proceeds of sale.

SEC. 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

Heirs may institute probate proceedings if no claimant appears.

Probate law
and procedure.
Settlement of
estates.

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 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 to the administrator upon being furnished a certified copy of the letters of administration.

Procedure.
When claim
made after
time limita-
tion.

SEC. 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 tax commission of his 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 tax commission 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.

When court
retains juris-
diction after
entry of decree
of distribution.

SEC. 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.

Letters after
final settle-
ment.

SEC. 11.76.250 *Letters after Final Settlement.* A final settlement of the estate shall not prevent a sub-

sequent 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.

Chapter 11.80

ESTATES OF ABSENTEES

SEC. 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 from the county and that his whereabouts is unknown and cannot with reasonable diligence be ascertained, which petition shall state the name of the absent owner, his approximate age, his last known place of residence, the circumstances under which he left and the place to which he was going, if known, his business or occupation and his 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 whereabouts, which notice shall state the object of the petition and the date of hearing, and set forth such facts and circumstances

Estates of
absentees.
Petition—
Notice—Hear-
ing—Appoint-
ment of
trustee.

Probate law
and procedure.
Estates of
absentees.

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 may be found, the judge may continue the hearing and order such inquiry and advertisement as will in his 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 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 husband or wife of the absentee to his 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.

Inventory and
appraisalment
—Bond of
trustee.

SEC. 11.80.020 *Inventory and Appraisalment—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 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 three disinterested and qualified persons to appraise

such property, and report their appraisalment to the court within such time as the court may fix. Upon the coming in of the inventory and appraisalment, 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 duties as trustee, and for accounting for such property, its rents, issues, profits and increase.

SEC. 11.80.030 *Reports of Trustee.* The trustee shall, at the expiration of one year from the date of his appointment and annually thereafter and at such times as the court may direct, make and file a report and account of his trusteeship, setting forth specifically the amounts received and expended and the conditions of the property.

Reports of trustee.

SEC. 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

Sale of property—Application of proceeds and income.

Probate law
and procedure.
Estates of
absentees.

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 services and those of his 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.

Allowance for
support of
dependents—
Sale of prop-
erty.

SEC. 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 husband or wife, 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.

Continuation
of absentee's
business.

SEC. 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.

Performance of absentee's contracts.

SEC. 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 stead. At the termination of his trust, as hereinafter provided or in case of his 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.

Removal or resignation of trustee—Final account.

SEC. 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.

Period of trusteeship.

SEC. 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 whereabouts are unknown and cannot with reasonable diligence be ascertained, his 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

Provisional distribution—Notice of hearing—Will.

Probate law
and procedure.
Estates of
absentees.

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 so to do, and such will shall be opened, read, proven, filed and recorded in the case, as are the wills of decedents.

Hearing—Dis-
tribution—
Bond of dis-
tributees.

SEC. 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 whereabouts unknown for the space of five years, or there are strong presumptions that he 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 an-

nual rents, issues and profits of any real property so provisionally distributed.

SEC. 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 whereabouts are unknown and cannot with reasonable diligence be ascertained, his 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 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 devisees and legatees, as the case may be.

Final distribution—Notice of hearing—Decree.

SEC. 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 account and upon the settlement of such final account the property of the absentee shall be es-

Escheat for want of presumptive heirs.

cheated in the manner provided by law for escheating property of persons who die intestate leaving no heirs.

Chapter 11.84

INHERITANCE RIGHTS OF SLAYERS

Probate law and procedure. Inheritance rights of slayers. Definitions.

SEC. 11.84.010 *Definitions.* As used in this chapter:

(1) "Slayer" shall mean any person who participates, either as a principal or as an accessory before the fact, in the wilful and unlawful killing of any other person.

(2) "Decedent" shall mean any person whose life is so taken.

(3) "Property" shall include any real and personal property and any right or interest therein.

Slayer not to benefit from death.

SEC. 11.84.020 *Slayer Not to Benefit from Death.* No slayer 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.

Slayer deemed to predecease decedent.

SEC. 11.84.030 *Slayer Deemed to Predecease Decedent.* The slayer shall be deemed to have predeceased the decedent as to property which would have passed from the decedent or his estate to the slayer under the statutes of descent and distribution or have been acquired by statutory right as surviving spouse or under any agreement made with the decedent under the provisions of RCW 26.16.120 as it now exists or is hereafter amended.

Distribution of decedent's property.

SEC. 11.84.040 *Distribution of Decedent's Property.* Property which would have passed to or for the benefit of the slayer by devise or legacy from the decedent shall be distributed as if he had predeceased the decedent.

SEC. 11.84.050 *Distribution of Property Held Jointly With Slayer.* (1) One-half of any property held by the slayer and the decedent as joint tenants, joint owners or joint obligees shall pass upon the death of the decedent to his estate, and the other half shall pass to his estate upon the death of the slayer, unless the slayer obtains a separation or severance of the property or a decree granting partition.

Distribution of property held jointly with slayer.

(2) As to property held jointly by three or more persons, including the slayer and the decedent, any enrichment which would have accrued to the slayer as a result of the death of the decedent shall pass to the estate of the decedent. If the slayer 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 estate upon the death of the slayer, unless the slayer 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.

SEC. 11.84.060 *Reversions and Vested Remainders.* 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 held the particular estate or if the particular estate is held by a third person it shall remain in his hands for such period.

Reversions and vested remainders.

SEC. 11.84.070 *Property Subject to Divestment, Etc.* Any interest in property whether vested or not, held by the slayer, subject to be divested, diminished in any way or extinguished, if the decedent survives

Property subject to divestment, etc.

Probate law
and procedure.
Inheritance
rights of
slayers.

him or lives to a certain age, shall be held by the slayer during his lifetime or until the decedent would have reached such age, but shall then pass as if the decedent had died immediately thereafter.

Contingent
remainders
and future
interests.

SEC. 11.84.080 *Contingent Remainders and Future Interests.* As to any contingent remainder or executory or other future interest held by the slayer, subject to become vested in him or increased in any way for him upon the condition of the death of the decedent:

(1) If the interest would not have become vested or increased if he had predeceased the decedent, he 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.

Property
appointed—
Powers of
revocation or
appointment.

SEC. 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 shall be distributed as if the slayer had predeceased the decedent.

(2) Property held either presently or in remainder by the slayer, 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, 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.

Insurance
proceeds.

SEC. 11.84.100 *Insurance Proceeds.* (1) Insurance proceeds payable to the slayer 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 his estate as secondary beneficiary to him 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, the proceeds shall be paid to the estate of the decedent upon the death of the slayer, unless the policy names some person other than the slayer or his estate as secondary beneficiary, or unless the slayer by naming a new beneficiary or assigning the policy performs an act which would have deprived the decedent of his interest in the policy if he had been living.

SEC. 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 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.

Payment by insurance company, bank, etc.—No additional liability.

SEC. 11.84.120 *Rights of Persons Without Notice Dealing With Slayer.* The provisions of this chapter shall not affect the rights of any person who, before the interests of the slayer have been adjudicated, purchases or has agreed to purchase, from the slayer for value and without notice property which the slayer would have acquired except for the terms of this chapter, but all proceeds received by the slayer from such sale shall be held by him in trust for the persons entitled to the property under the provisions of this chapter, and the slayer shall also be liable both for any portion of such proceeds which he may

Rights of persons without notice dealing with slayer.

Probate law and procedure. Inheritance rights of slayers.

have dissipated and for any difference between the actual value of the property and the amount of such proceeds.

Record of conviction as evidence against claimant of property.

SEC. 11.84.130 *Record of Conviction as Evidence Against Claimant of Property.* The record of his conviction of having participated in the wilful and unlawful killing of the decedent shall be admissible in evidence against a claimant of property in any civil action arising under this chapter.

Chapter not to be construed as final.

SEC. 11.84.900 *Chapter Not to Be Construed as Penal.* This chapter shall not be considered penal in nature, but shall be construed broadly in order to effect the policy of this state that no person shall be allowed to profit by his own wrong, wherever committed.

Chapter 11.88

GUARDIANSHIP—APPOINTMENT, QUALIFICATION, REMOVAL OF GUARDIANS

Guardianship—Guardians. Authority to appoint.

SEC. 11.88.010 *Authority to Appoint.* The superior court of each county shall have power to appoint guardians for the persons and estates, or either thereof, of incompetent persons resident of the county, and guardians for the estates of all such persons who are nonresidents of the state but who have property in such county needing care and attention.

An "incompetent" is any person who is either

(1) Under the age of majority, as defined in RCW 11.92.010, or

(2) Incapable by reason of insanity, mental illness, imbecility, idiocy, senility, habitual drunkenness, excessive use of drugs, or other mental incapacity, of either managing his property or caring for himself or both.

Qualifications.

SEC. 11.88.020 *Qualifications.* Any suitable person over the age of twenty-one years, or any parent under the age of twenty-one years may, if not other-

wise disqualified, be appointed guardian of the person and/or the estate of an incompetent; any trust company regularly organized under the laws of this state and national banks when authorized so to do may act as guardian of the estate of an incompetent. No person is qualified to serve as a domiciliary guardian who is

- (1) under twenty-one years of age except as otherwise provided herein;
- (2) of unsound mind;
- (3) convicted of a felony or of a misdemeanor involving moral turpitude;
- (4) 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;
- (5) a corporation not authorized to act as a fiduciary in the state;
- (6) a person whom the court finds unsuitable.

SEC. 11.88.030 *Petition—Contents.* Any interested person may file a petition for the appointment of himself or some other qualified person as guardian of an incompetent. Such petition shall state:

Petition—
Contents.

- (1) The name, age, residence and post office address of the incompetent;
- (2) The nature of his incapacity in accordance with RCW 11.88.010;
- (3) The approximate value and description of his property, including any compensation, pension, insurance or allowance to which he may be entitled;
- (4) Whether there is, in any state, a guardian for the person or estate of the incompetent;
- (5) The residence and post office address of the person whom petitioner asks to be appointed guardian;
- (6) The names and addresses, so far as known or can be reasonably ascertained, of the persons most

Probate law
and procedure.
Guardianship
—Guardians.
Appointment.

closely related by blood or marriage to the incompetent;

(7) The name and address of the person or institution having the care and custody of the incompetent;

(8) The reason why the appointment of a guardian is sought and the interest of the petitioner in the appointment, and whether the appointment is sought as guardian of the person, the estate, or both.

Notice and
hearing, when
required—
Service.

SEC. 11.88.040 *Notice and Hearing, When Required—Service.* Before appointing a guardian, notice of a hearing, to be held not less than ten days after service thereof, shall be given by registered or certified mail requesting a return receipt signed by the addressee only, or by personal service in the manner provided for services of summons, to the following:

(1) The incompetent or minor, if over fourteen years of age;

(2) A parent, if the incompetent is a minor, and the spouse of the incompetent, if any;

(3) Any other person who has been appointed as guardian, or the person having the care and custody of the incompetent, if any. No notice need be given to those persons named in subsections (2) and (3) of this section if they have signed the petition for the appointment of the guardian or have waived notice of the hearing. If the petition is by a parent asking for his appointment as guardian of a minor child under the age of fourteen years, or if the petition be accompanied by the written consent of a minor of the age of fourteen years or upward, consenting to the appointment of the guardian asked for, or if the petition be by a nonresident guardian of any minor, then the court may appoint the guardian without notice of the hearing. The court for good cause may reduce the number of days of notice, but in every

case, at least three days notice shall be given. It shall not be necessary that the person for whom guardianship is sought shall be represented by a guardian ad litem in the proceedings.

SEC. 11.88.080 *Testamentary Guardians.* When either parent is deceased, the surviving parent of any minor child may, by his last will in writing appoint a guardian or guardians of the person, or of the estate or both, of his minor child, whether born at the time of making such will or afterwards, to continue during the minority of such child, or for any less time, and every such testamentary guardian of the estate of such child shall give bond in like manner and with like conditions as required by RCW 11.88.100 and RCW 11.88.110, and he shall have the same powers and perform the same duties with regard to the person and estate of the minor as a guardian appointed as aforesaid. Testamentary guardians.

SEC. 11.88.090 *Guardian ad Litem.* Nothing contained in RCW 11.88.080 through 11.88.120, 11.92.010 through 11.92.040, 11.92.060 through 11.92.120, 11.92.170 and 11.92.180 shall affect or impair the power of any court to appoint a guardian to defend the interests of any incompetent person interested in any suit or matter pending therein, or to commence and prosecute any suit in his behalf. Guardian ad litem.

SEC. 11.88.100 *Oath and Bond of Guardian.* Before letters of guardianship are issued, each guardian shall take and subscribe an oath and, unless dispensed with by order of the court as provided in RCW 11.88.105, file a bond, with sureties to be approved by the court, payable to the state, in such sum as the court may fix, taking into account the character of the assets on hand or anticipated and the income to be received and disbursements to be made, and such bond shall be conditioned substantially as follows: Oath and bond of guardian.

Probate law
and procedure.
Guardianship
—Guardians.
Oath and
bond.

The condition of this obligation is such, that if the above bound A.B., who has been appointed guardian for C.D., shall faithfully discharge the office and trust of such guardian according to law and shall render a fair and just account of his guardianship to the superior court of the county of, from time to time as he shall thereto be required by such court, and comply with all orders of the court, lawfully made, relative to the goods, chattels, moneys, care, management, and education of such incompetent person, or his or her property, and render and pay to such incompetent person all moneys, goods, chattels, title papers, and effects which may come into the hands or possession of such guardian, at such time and in such manner as the court may order or adjudge, then this obligation shall be void, otherwise to be and remain in full force and effect.

The bond shall be for the use of the incompetent person, and shall not become void upon the first recovery, but may be put in suit from time to time against all or any one of the obligors, in the name and for the use and benefit of any person entitled by the breach thereof, until the whole penalty is recovered thereon. The court may require an additional bond whenever for any reason it appears to the court that an additional bond should be given.

Reduction in
amount of
bond.

SEC. 11.88.105 *Reduction in Amount of Bond.* In cases where all or a portion of the estate consisting of cash or securities or both, has been placed in possession of savings and loan associations or banks, trust companies, escrow corporations, or other corporations approved by the court and a receipt is filed by the guardian in court therefor stating that such corporations hold the same subject to order of court then in such case the court may in its discretion dispense with the giving of a bond or reduce the same by the amount of such deposits of cash

or securities, and may order that no further reports by said guardian be required until such time as the guardian desires to withdraw such funds or change the investment thereof.

SEC. 11.88.107 *When Bond May Be Dispensed With.* In all cases where a bank or trust company, authorized to act as guardian, is appointed as guardian, or acts as guardian under an appointment as such heretofore made, no bond shall be required.

When bond may be dispensed with.

SEC. 11.88.110 *Law on Executors' and Administrators' Bonds Applicable.* All the provisions of this title relative to bonds given by executors and administrators shall apply to bonds given by guardians.

Law on executors' and administrators' bonds applicable.

SEC. 11.88.120 *Procedure on Removal or Death of Guardian—Delivery of Estate to Successor.* The court in all cases shall have power to remove guardians for good and sufficient reasons, which shall be entered of record, and to appoint others in their place or in the place of those who may die, who shall give bond and security for the faithful discharge of their duties as prescribed in RCW 11.88.100; and when any guardian shall be removed or die, and a successor be appointed, the court shall have power to compel such guardian removed to deliver up to such successor all goods, chattels, moneys, title papers, or other effects belonging to such incompetent person, which may be in the possession of such guardian so removed, or of the personal representatives of a deceased guardian, or in the possession of any other person or persons, and upon failure, to commit the party offending to prison, until he complies with the order of the court.

Procedure on removal or death of guardian—Delivery of estate to successor.

SEC. 11.88.130 *Transfer of Jurisdiction and Venue.* The court of any county having jurisdiction of any guardianship proceeding is authorized to transfer jurisdiction and venue of the guardianship

Transfers of jurisdiction and venue.

Probate law
and procedure.
Guardianship
—Guardians.

proceeding to the court of any other county of the state upon application of the guardian and such notice to an incompetent or other interested party as the court may require. Such transfers of guardianship proceedings shall be made to the court of a county wherein either the guardian or incompetent resides, as the court may deem appropriate, at the time of making application for such transfer. The original order providing for any such transfer shall be retained as a permanent record by the clerk of the court in which such order is entered, and a certified copy thereof together with the original file in such guardianship proceeding and a certified transcript of all record entries up to and including the order for such change shall be transmitted to the clerk of the court to which such proceeding is transferred.

Termination of
guardianship.

SEC. 11.88.140 *Termination of Guardianship.* (1) Termination without court order. A guardianship is terminated

(a) Upon the attainment of full and legal age, as defined in RCW 11.92.010, of any person defined as an incompetent pursuant to RCW 11.88.010 solely by reason of youth, RCW 26.28.020 to the contrary notwithstanding.

(b) By an adjudication of competency.

(c) By the death of the incompetent.

(2) Termination on court order. A guardianship may be terminated by court order after such notice as the court may require

(a) If the guardianship is of the estate and the estate is exhausted;

(b) If the guardianship is no longer necessary for any other reason.

(3) Effect of termination. When a guardianship terminates otherwise than by the death of the incompetent, the powers of the guardian cease, except that a guardian of the estate may make disburse-

ments for claims that are or may be allowed by the court, for liabilities already properly incurred for the estate or for the incompetent, and for expenses of administration. When a guardianship terminates by death of the incompetent, the guardian of the estate may proceed under RCW 11.88.150, but the rights of all creditors against the incompetent's estate shall be determined by the law of decedents' estates.

SEC. 11.88.150 *Administration of Deceased Incompetent's Estate.* Upon the death of an incompetent intestate the guardian of his estate has power under the letters issued to him and subject to the direction of the court to administer the estate as the estate of the deceased incompetent without further letters unless within forty days after death of the incompetent a petition is filed for letters of administration or for letters testamentary and the petition is granted. If the guardian elects to administer the estate under his letters of guardianship, he shall petition the court for an order transferring the guardianship proceeding to a probate proceeding, and upon court approval, the clerk of the court shall re-index the cause as a decedent's estate, using the same file number which is assigned to the guardianship proceeding. The guardian shall then be authorized to continue administration of the estate without the necessity for any further petition or hearing. Notice to creditors and other persons interested in the estate shall be published and may be combined with the notice of the guardian's final account. This notice shall be published in the manner provided in RCW 11.40.010, once each week for three successive weeks, with proof by affidavit of the publication of such notice to be filed with the court. All claims which are not filed within four months after first publication shall be barred against the estate. Upon the hearing, the account may be allowed and the

Administra-
tion of
deceased in-
competent's
estate.

Probate law and procedure. Guardianship—Guardians. Administration of deceased incompetent's estate.

balance distributed to the persons entitled thereto, after the payment of such claims as may be allowed. Liability on the guardian's bond shall continue until exonerated on settlement of his account, and may apply to the complete administration of the estate of the deceased incompetent with the consent of the surety. If letters of administration or letters testamentary are granted upon petition filed within forty days after the death of the incompetent, the personal representative shall supersede the guardian in the administration of the estate and the estate shall be administered as a decedent's estate as provided in this title, including the publication of notice to creditors and other interested persons and the barring of creditors claims.

Chapter 11.92

GUARDIANSHIP—POWERS AND DUTIES OF GUARDIAN

Guardians under court control—Legal age.

SEC. 11.92.010 *Guardians Under Court Control. Legal Age.* Guardians herein provided for shall at all times be under the general direction and control of the court making the appointment. For the purposes of chapters 11.88 and 11.92 RCW, all persons shall be of full and legal age when they shall be twenty-one years old.

Claims.

SEC. 11.92.035 *Claims.* (1) Duty of guardian to pay. A guardian of the estate is under a duty to pay from the estate all just claims against the estate of his incompetent, whether they constitute liabilities of the incompetent which arose prior to the guardianship or liabilities properly incurred by the guardian for the benefit of the incompetent or his estate and whether arising in contract or in tort or otherwise, upon allowance of the claim by the court or upon approval of the court in a settlement of the guardian's accounts. The duty of the guardian to pay from the estate shall not preclude his personal liability for his

own contracts and acts made and performed on behalf of the estate as it exists according to the common law. If it appears that the estate is likely to be exhausted before all existing claims are paid, preference shall be given to prior claims for the care, maintenance and education of the incompetent and of his dependents and existing claims for expenses of administration over other claims.

(2) Claims may be presented. Any person having a claim against the estate of an incompetent, or against the guardian of his estate as such, may file a written claim with the court for determination at any time before it is barred by the statute of limitations, and, upon proof thereof, procure an order for its allowance and payment from the estate. Any action against the guardian of the estate as such shall be deemed a claim duly filed.

SEC. 11.92.040 *Duties of Guardian in General.* It shall be the duty of the guardian

Duties of
guardian in
general.

(1) To make out and file within three months after his appointment a verified inventory of all the property of the incompetent which shall come to his possession or knowledge, including a statement of all encumbrances, liens, and other secured charges on any item.

(2) Unless otherwise directed by the court, to file with the court annually within thirty days after the anniversary date of his appointment, and also within thirty days after termination of his appointment, a written verified account of his administration.

(3) If he is a guardian of the person, to care for and maintain the incompetent, and if the incompetent is a minor, to see that the incompetent is properly trained and educated and that the incompetent has the opportunity to learn a trade, occupation or profession. The guardian of the person may be required to report the condition of his incompetent to the

Probate law
and procedure.
Guardianship
—Guardians.
Duties of
guardian in
general.

court, at regular intervals or otherwise as the court may direct.

(4) If he is a guardian of the estate, to protect and preserve it, to apply it as provided in this chapter, to account for it faithfully, to perform all of the duties required of him by law, and at the termination of the guardianship, to deliver the assets of the incompetent to the persons entitled thereto. Except as provided to the contrary herein, the court may authorize a guardian to do anything that a trustee can do under the provisions of RCW 30.99.070 for periods not exceeding one year from the date of the order.

(5) To invest and reinvest the property of the incompetent in accordance with the rules applicable to investment of trust estates by trustees as provided in chapter 30.24 RCW, except that:

(a) No investments shall be made without prior order of the court in any property other than unconditional interest bearing obligations of this state or of the United States and in obligations the interest and principal of which are unconditionally guaranteed by the United States, and in share accounts or deposits which are insured by an agency of the United States government. Such prior order of the court may authorize specific investments, or, in the discretion of the court, may authorize the guardian during a period of not exceeding one year following the date of the order to invest and reinvest as provided in chapter 30.24 RCW without further order of the court.

(b) If it is for the best interests of the incompetent that a specific property be used by the incompetent rather than sold and the proceeds invested, the court may so order.

(6) To apply to the court for an order authorizing any disbursement on behalf of the incompetent; provided, however, that the guardian of the estate, or

the person, department, bureau, agency or charitable organization having the care and custody of an incompetent, may apply to the court for an order directing the guardian of the estate to pay to the person, department, bureau, agency or charitable organization having the care and custody of an incompetent, or if the guardian of the estate has the care and custody of the incompetent, directing the guardian of the estate to apply an amount weekly, monthly, quarterly, semi-annually or annually, as the court may direct, to be expended in the care, maintenance and education of the incompetent and of his dependents. In proper cases, the court may order payment of amounts directly to the incompetent for his maintenance or incidental expenses. The amounts authorized under this section may be decreased or increased from time to time by direction of the court. If payments are made to another under such order of the court, the guardian of the estate is not bound to see to the application thereof.

SEC. 11.92.050 *Intermediate Accounts—Hearing—Order.* Upon the filing of any intermediate guardianship account required by statute, or of any intermediate account required by court rule or order, the guardian may petition the court for an order settling his account with regard to any and all receipts, expenditures and investments made and acts done by the guardian to the date of said interim report. Upon such petition being filed, the court may in its discretion, where the size or condition of the estate warrants it, set a date for the hearing of such petition and require the service of the petition and a notice of such hearing as provided in RCW 11.88.040; and, in the event such a hearing be ordered, the court shall also appoint a guardian ad litem, whose duty it shall be to investigate the report of the guardian of the estate and to advise the court thereon at said hearing, in writing. At such hearing on said report of the

Intermediate
accounts—
Hearing—
Order.

Probate law
and procedure.
Guardianship
—Guardians.
Powers, duties
of guardian.

guardian, if the court be satisfied that the actions of the guardian have been proper, and that the guardian has in all respects discharged his trust with relation to such receipts, expenditures, investments, and acts, then, in such event, the court shall enter an order approving such account, and such order shall be final and binding upon the incompetent, subject only to the right of appeal as upon a final order; provided that at the time of final account of said guardian or within one year after said incompetent attains his majority any such interim account may be challenged by said incompetent on the ground of fraud.

Settlement of
estate upon
termination
other than by
death
intestate.

SEC. 11.92.053 *Settlement of Estate Upon Termination Other Than by Death Intestate.* Within ninety days after the termination of a guardianship for any reason other than the death of the incompetent intestate, the guardian of the estate shall petition the court for an order settling his account as filed in accordance with RCW 11.92.040 (2) with regard to any and all receipts, expenditures and investments made and acts done by the guardian to the date of said termination. Upon such petition being filed, the court shall set a date for the hearing of such petition after notice has been given in accordance with RCW 11.88-.040. Any person interested may file objections to such petition or may appear at the time and place fixed for the hearing thereof and present his objections thereto. The court may take such testimony as it deems proper or necessary to determine whether an order settling the account should be issued and the transactions of the guardian be approved.

At such hearing on said petition of the guardian, if the court be satisfied that the actions of the guardian have been proper, and that the guardian has in all respects discharged his trust with relation to such receipts, expenditures, investments, and acts, then, in such event, the court shall enter an order approv-

ing such account, and such order shall be final and binding upon the incompetent, subject only to the right of appeal as upon a final order: *Provided*, That within one year after said incompetent attains his majority any such account may be challenged by said incompetent on the ground of fraud.

SEC. 11.92.056 *Citation of Surety on Bond*. If, at any hearing upon a petition to settle the account of any guardian, it shall appear to the court that said guardian has not fully accounted or that said account should not be settled, the court may continue said hearing to a day certain and may cite the surety or sureties upon the bond of said guardian 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 guardian and the surety or sureties upon his or her bond. Said citation shall be personally served upon said surety or sureties 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 final account of said guardian shall not be approved and the court shall find that said guardian is indebted to the incompetent in any amount, said court may thereupon enter final judgment against said guardian and the surety or sureties 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.

Citation of
surety on
bond.

SEC. 11.92.060 *Guardian to Represent Incompetent—Compromise of Claims*. (1) Guardian may sue and be sued. When there is a guardian of the estate, all actions between the incompetent or the

Guardian to
represent in-
competent—
Compromise
of claims.

Probate law
and procedure.
Guardianship
—Guardians.
Powers, duties.
Representing
incompetent—
Compromise of
claims.

guardian and third persons in which it is sought to charge or benefit the estate of the incompetent shall be prosecuted by or against the guardian of the estate as such. He shall represent the interests of the incompetent in the action and all process shall be served on him.

(2) Joinder, amendment and substitution. When the guardian of the estate is under personal liability for his own contracts and acts made and performed on behalf of the estate he may be sued both as guardian and in his personal capacity in the same action. Misnomer or the bringing of the action by or against the incompetent shall not be grounds for dismissal of the action and leave to amend or substitute shall be freely granted. If an action was commenced by or against the incompetent before the appointment of a guardian of his estate, such guardian when appointed may be substituted as a party for the incompetent. If the appointment of the guardian of the estate is terminated, his successor may be substituted; if the incompetent dies, his personal representative may be substituted; if the incompetent becomes competent, he may be substituted.

(3) Garnishment, attachment and execution. When there is a guardian of the estate, the property and rights of action of the incompetent shall not be subject to garnishment or attachment, except for the foreclosure of a mortgage or other lien, and execution shall not issue to obtain satisfaction of any judgment against the incompetent or the guardian of his estate as such.

(4) Compromise by guardian. Whenever it is proposed to compromise or settle any claim by or against the incompetent or the guardian as such, whether arising as a result of personal injury or otherwise, and whether arising before or after appointment of a guardian, the court on petition of the guardian of the estate, if satisfied that such compro-

mise or settlement will be for the best interests of the incompetent, may enter an order authorizing the settlement or compromise to be made.

SEC. 11.92.090 *Sale, Exchange, Lease, or Mortgage of Property.* Whenever it shall appear to the satisfaction of a court by the petition of any guardian, that it is necessary or proper to sell, exchange, lease, mortgage, or grant an easement, license or similar interest in any of the real or personal property of the estate of such incompetent for the purpose of paying debts or for the care, support and education of such incompetent, or to redeem any property of such incompetent's estate covered by mortgage or other lien, or for the purpose of making any investments, or for any other purpose which to the court may seem right and proper, the court may make an order directing such sale, exchange, lease, mortgage, or grant of easement, license or similar interest of such part or parts of the real or personal property as shall to the court seem proper.

Sale, exchange, lease or mortgage of property.

SEC. 11.92.100 *Petition—Contents.* Such application shall be by petition, verified by the oath of the guardian, and shall substantially set forth:

Petition—Contents.

(1) The value and character of all personal estate belonging to such incompetent that has come to the knowledge or possession of such guardian.

(2) The disposition of such personal estate.

(3) The amount and condition of the incompetent's personal estate, if any, dependent upon the settlement of any estate, or the execution of any trust.

(4) The annual income of the real estate of the incompetent.

(5) The amount of rent received and the application thereof.

(6) The proposed manner of reinvesting the proceeds of the sale, if asked for that purpose.

Probate law
and procedure.
Guardianship
—Guardians.
Powers,
duties.

(7) Each item of indebtedness, or the amount and character of the lien, if the sale is prayed for the liquidation thereof.

(8) The age of the incompetent, where and with whom residing.

(9) All other facts connected with the estate and condition of the incompetent necessary to enable the court to fully understand the same. If there is no personal estate belonging to such incompetent in possession or expectancy, and none has come into the hands of such guardian, and no rents have been received, the fact shall be stated in the application.

Law govern-
ing sales of
real estate.

SEC. 11.92.110 *Law Governing Sales of Real Estate.* The order directing the sale of any of the real property of the estate of such incompetent shall specify the particular property affected and the method, whether by public or private sale or by negotiation, and terms thereof, and with regard to the procedure and notices to be employed in conducting such sale, the provisions of RCW 11.56.060, 11.56.070, 11.56.080, and 11.56.110 shall be followed unless the court otherwise directs.

Return and
confirmation
of sale.

SEC. 11.92.115 *Return and Confirmation of Sale.* The guardian 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 return of such sale, the same being duly verified. At any time after the expiration of ten days from the filing of such return, the court may, without notice, approve and confirm such sale and direct proper instruments of transfer to be executed and delivered. Upon the confirmation of any such sale, the court shall direct the guardian 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 interest of the in-

competent and of his estate. In the case of a sale by negotiation the guardian shall publish a notice in one issue of a legal newspaper published in the county in which the estate is being administered; the substance of such notice shall include the legal description of the property sold, the selling price and the date after which the sale may be confirmed: *Provided*, That such confirmation date shall be at least ten days after such notice is published.

SEC. 11.92.120 *Confirmation Conclusive*. No sale by any guardian of real or personal property shall be void or be set aside or be attacked because of any irregularities whatsoever, and none of the steps leading up to such sale or the confirmation thereof shall be jurisdictional, and the confirmation by the court of any such sale shall be conclusive as to the regularity and legality of such sale or sales, and the passing of title after confirmation by the court shall vest an absolute title in the purchaser, and such instrument of transfer may not be attacked for any purpose or any reason, except for fraud.

Confirmation conclusive.

SEC. 11.92.125 *Broker's Fee and Closing Expenses—Sale, Exchange, Mortgage or Lease of Real Estate*. In connection with the sale, exchange, mortgage, lease or grant of easement or license in any 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.

Broker's fee and closing expenses—Sale, exchange, mortgage or lease of real estate.

SEC. 11.92.130 *Performance of Contracts*. If any person who is bound by contract in writing to perform shall become incompetent before making the performance, the court having jurisdiction of the guardianship of such property may, upon applica-

Performance of contracts.

Probate law
and procedure.
Guardianship
—Guardians.
Powers, duties.

tion of the guardian of such incompetent person, or upon application of the person claiming to be entitled to the performance, make an order authorizing and directing the guardian to perform such contract. The application and the proceedings, shall, as nearly as may be, be the same as provided in chapter 11-.60 RCW.

Request for
special notice
of proceedings.

SEC. 11.92.150 *Request for Special Notice of Proceedings.* At any time after the issuance of letters of guardianship in the estate of any incompetent person, any person interested in said estate, or in such incompetent person, or any relative of such incompetent person, or any authorized representative of any agency, bureau, or department of the United States government from or through which any compensation, insurance, pension or other benefit is being paid, or is payable, may serve upon such guardian, or upon the attorney for such guardian, and file with the clerk of the court wherein the administration of such guardianship estate is pending, a written request stating that special written notice is desired of any or all of the following matters, steps or proceedings in the administration of such estate:

(1) Filing of petition for sales, exchanges, leases, mortgages, or grants of easements, licenses or similar interests in any property of the estate.

(2) Filing of all intermediate or final accountings or accountings of any nature whatsoever.

(3) Petitions by the guardian for family allowances or allowances for the incompetent or any other allowance of every nature from the funds of the estate.

(4) Petitions for the investment of the funds of the estate.

Such request for special written notice shall designate the name, address and post office address of the person upon whom such notice is to be served and no service shall be required under this section and

RCW 11.92.160 other than in accordance with such designation unless and until a new designation shall have been made.

When any account, petition, or proceeding is filed in such estate of which special written notice is requested as herein provided, the court shall fix a time for hearing thereon which shall allow at least ten days for service of such notice before such hearing; and notice of such hearing shall be served upon the person designated in such written request at least ten days before the date fixed for such hearing. The service may be made by leaving a copy with the person designated, or his authorized representative, or by mailing through the United States mail, with postage prepaid to the person and place designated.

SEC. 11.92.160 *Citation for Failure to File Account or Report.* Whenever any request for special written notice is served as provided in this section and RCW 11.92.150, the person making such request may, upon failure of any guardian for any incompetent person, to file any account or report required by law, petition the court administering such estate for a citation requiring such guardian to file such report or account, or to show cause for failure to do so, and thereupon the court shall issue such citation and hold a hearing thereon and enter such order as is required by the law and the facts.

Citation for failure to file account or report.

SEC. 11.92.170 *Removal of Property of Nonresident Incompetent.* Whenever it is made to appear that it would be in the best interests of the incompetent, the court may order the transfer of property in this state to a guardian of the estate of the incompetent appointed in another jurisdiction.

Removal of property of nonresident incompetent.

SEC. 11.92.180 *Compensation and Expenses of Guardian—Attorney's Fee.* A guardian shall be allowed such compensation for his services as guardian as the court shall deem just and reasonable. Addi-

Compensation and expenses of guardian—Attorney's fee.

Probate law and procedure. Guardianship—Guardians. Compensation and expense of guardian—Attorney's fees.

tional compensation may be allowed for his necessary services as attorney and for other necessary services not required of a guardian. He may also be allowed compensation for necessary expenses in the administration of his trust, including reasonable attorney's fees if the employment of an attorney for the particular purpose is necessary. In all cases, compensation of the guardian and his expenses including attorney's fees shall be fixed by the court and may be allowed at any annual or final accounting; but at any time during the administration of the estate, the guardian or his attorney may apply to the court for an allowance upon the compensation or necessary expenses of the guardian and for attorney's fees for services already performed. If the court finds that the guardian has failed to discharge his duties as such in any respect, it may deny him any compensation whatsoever or may reduce the compensation which would otherwise be allowed.

Concealed or embezzled property—Proceedings for discovery.

SEC. 11.92.185 *Concealed or Embezzled Property—Proceedings for Discovery.* The court shall have authority to bring before it, in the manner prescribed by RCW 11.48.070, any person or persons suspected of having in his possession or having concealed, embezzled, conveyed or disposed of any of the property of the estate of incompetents subject to administration under this title.

Chapter 11.96

APPEALS

Appeals to supreme court.

SEC. 11.96.010 *Appeals to Supreme Court.* Any interested party may appeal to the supreme court from any final order, judgment or decree of the court, and such appeals shall be in the manner and way provided by law for appeals in civil actions.

Chapter 11.98

TRUSTS

SEC. 11.98.010 *Violation of Rule Against Perpetuities by Instrument—Periods During Which Trust Not Invalid.* If any provision of an instrument creating a trust shall violate the rule against perpetuities, neither such provision nor any other provisions of the trust shall thereby be rendered invalid during any of the following periods:

Trusts.
Violation of
rule against
perpetuities by
instruments—
Periods during
which trust
not invalid.

(1) The twenty-one years following the effective date of the instrument.

(2) The period measured by any life or lives in being or conceived at the effective date of the instrument if by the terms of the instrument the trust is to continue for such life or lives.

(3) The period measured by any portion of any life or lives in being or conceived at the effective date of the instrument if by the terms of the instrument the trust is to continue for such portion of such life or lives; and

(4) The twenty-one years following the expiration of the periods specified in (2) and (3) above.

SEC. 11.98.020 *Distribution of Assets and Vesting of Interest During Period Trust Not Invalid.* If, during any period in which an instrument creating a trust or any provision thereof is not to be rendered invalid by the rule against perpetuities, any of the trust assets should by the terms of the instrument become distributable or any beneficial interest therein should by the terms of the instrument become vested, such assets shall be distributed and such beneficial interest shall validly vest in accordance with the instrument.

Distribution of
assets and
vesting of
interest during
period trust
not invalid.

SEC. 11.98.030 *Distribution of Assets at Expiration of Period.* If, at the expiration of any period in which an instrument creating a trust or any provision thereof is not to be rendered invalid by the rule

Distribution of
assets at
expiration of
period.

Probate law and procedure. Trusts.

against perpetuities, any of the trust assets have not by the terms of the trust instrument become distributable or vested, then such assets shall be then distributed as the superior court having jurisdiction shall direct, giving effect to the general intent of the creator of the trust.

Effective date of creation of trust.

SEC. 11.98.040 *Effective Date of Creation of Trust.* For the purposes of this chapter the effective date of an instrument purporting to create an irrevocable inter vivos trust shall be its date of delivery, and the effective date of an instrument purporting to create either a revocable inter vivos trust or a testamentary trust shall be the date of the trustor's or testator's death.

Application of chapter.

SEC. 11.98.050 *Application of Chapter.* The provisions hereof shall be applicable to any instrument purporting to create a trust which has an effective date subsequent to the effective date of this chapter.

Chapter 11.99
CONSTRUCTION

Effective date of title.

SEC. 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 pro-

ceedings 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.

SEC. 11.99.013 *Title, Chapter, Section 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. Title, chapter, section headings, not law.

SEC. 11.99.015 *Repeal.* The following acts or parts of acts are repealed: Repeal.

(1) Sections 1 and 2, page 53, Laws of 1875 entitled AN ACT In relation to the duties of probate judges.

(2) Sections 1 through 18, pages 53 through 59, Laws of 1875.

(3) Section 1, page 127, Laws of 1875.

(4) Sections 626 through 637, chapter 49, page 130, Laws of 1877.

(5) Sections 721 through 729, chapter LVIII, page 145, Laws of 1877.

(6) Sections 1 and 2, page 284, Laws of 1877.

(7) Sections 12 and 13, pages 78 and 79, Laws of 1879.

(8) Sections 623 through 634, chapter LII, Code of 1881.

(9) Sections 717 through 724, chapter LXI, Code of 1881.

(10) Sections 1297 through 1666, chapter XCV through CXI, Code of 1881.

(11) Sections 1667 through 1670, chapter CXII, Code of 1881.

(12) Sections 1678 through 1680, chapter CXIV, Code of 1881.

Probate law
and procedure.
Repeal.

(13) Sections 1681 through 1686, chapter CXV, Laws of 1881.

(14) Section 2138, chapter CLV, Code of 1881.

(15) Sections 2411, 2412 and 2414, chapter CLXXXIII, Laws of 1881.

(16) Sections 3302 through 3315, chapter CCLIII, Laws of 1881.

(17) Sections 3316 and 3317, chapter CCLIV, Code of 1881.

(18) Section 1, page 29, Laws of 1883.

(19) Sections 1 through 4, page 57, Laws of 1883.

(20) Sections 1 through 3, page 165, Laws of 1885 entitled AN ACT To abolish the right of survivorship in estates held in joint tenancy.

(21) Sections 1 through 3, pages 170 and 177, Laws of 1885.

(22) Chapter 99, page 185, Laws of 1887.

(23) Chapter 100, page 186, Laws of 1887.

(24) Chapter 101, page 187, Laws of 1887.

(25) Sections 2 and 3, page 82, Laws of 1889.

(26) Sections 14 and 15, chapter 54, Laws of 1891.

(27) Chapter 86, Laws of 1891.

(28) Sections 1 through 49, chapter 155, Laws of 1891.

(29) Chapter 32, Laws of 1893.

(30) Chapter 54, Laws of 1893.

(31) Sections 1 through 9, chapter 120, Laws of 1893.

(32) Chapter 42, Laws of 1895.

(33) Chapter 105, Laws of 1895.

(34) Chapter 157, Laws of 1895.

(35) Chapter 22, Laws of 1897.

(36) Chapter 25, Laws of 1897.

(37) Chapter 75, Laws of 1897.

(38) Chapter 98, Laws of 1897.

(39) Chapter 100, Laws of 1903.

(40) Chapter 130, Laws of 1903.

(41) Chapter 17, Laws of 1905.

- (42) Chapter 50, Laws of 1907.
- (43) Chapter 133, Laws of 1907.
- (44) Chapter 118, Laws of 1909.
- (45) Chapter 8, Laws of 1911.
- (46) Chapter 39, Laws of 1915.
- (47) Sections 1, 3 through 56, 58 through 71, and 73 through 221, chapter 156, Laws of 1917.
- (48) Chapter 23, Laws of 1919.
- (49) Chapter 31, Laws of 1919.
- (50) Chapter 197, Laws of 1919.
- (51) Chapter 93, Laws of 1921.
- (52) Section 1, chapter 72, Laws of 1923.
- (53) Chapter 113, Laws of 1923.
- (54) Chapter 142, Laws of 1923.
- (55) Chapter 80, Laws of 1925 extraordinary session.
- (56) Chapter 104, Laws of 1925 extraordinary session.
- (57) Chapter 76, Laws of 1927.
- (58) Chapter 91, Laws of 1927.
- (59) Chapter 104, Laws of 1927.
- (60) Chapter 160, Laws of 1927.
- (61) Sections 1 through 3, chapter 170, Laws of 1927.
- (62) Section 1, chapter 185, Laws of 1927.
- (63) Section 1, chapter 21, Laws of 1929.
- (64) Chapter 112, Laws of 1929.
- (65) Chapter 218, Laws of 1929.
- (66) Section 123, chapter 180, Laws of 1935.
- (67) Chapter 28, Laws of 1937.
- (68) Chapter 151, Laws of 1937.
- (69) Chapter 26, Laws of 1939.
- (70) Chapter 132, Laws of 1939.
- (71) Section 8, chapter 202, Laws of 1939.
- (72) Sections 1 and 2, chapter 206, Laws of 1941.
- (73) Chapter 83, Laws of 1941.
- (74) Chapter 14, Laws of 1943.
- (75) Chapter 29, Laws of 1943.

Probate law
and procedure.
Repeal.

- (76) Chapter 113, Laws of 1943.
- (77) Chapter 193, Laws of 1943.
- (78) Chapter 219, Laws of 1943.
- (79) Chapter 39, Laws of 1945.
- (80) Chapter 41, Laws of 1945.
- (81) Chapter 72, Laws of 1945.
- (82) Chapter 197, Laws of 1945.
- (83) Chapter 198, Laws of 1945.
- (84) Chapter 44, Laws of 1947.
- (85) Chapter 54, Laws of 1947.
- (86) Chapter 145, Laws of 1947.
- (87) Chapter 11, Laws of 1949.
- (88) Chapter 102, Laws of 1949.
- (89) Sections 1 through 3, chapter 138, Laws of 1951.
- (90) Sections 1 through 6, chapter 197, Laws of 1951.
- (91) Chapter 242, Laws of 1951.
- (92) Chapter 264, Laws of 1951.
- (93) Section 2, chapter 270, Laws of 1953.
- (94) Chapter 45, Laws of 1955.
- (95) Chapter 98, Laws of 1955.
- (96) Chapter 141, Laws of 1955.
- (97) Chapter 154, Laws of 1955.
- (98) Chapter 205, Laws of 1955.
- (99) Chapter 254, Laws of 1955.
- (100) Chapter 7, Laws of 1955 extraordinary session.
- (101) Chapter 64, Laws of 1957.
- (102) Chapter 125, Laws of 1957.
- (103) Chapter 43, Laws of 1959.
- (104) Chapter 116, Laws of 1959.
- (105) Chapter 146, Laws of 1959.
- (106) Chapter 240, Laws of 1959.
- (107) Chapter 155, Laws of 1961.
- (108) Chapter 43, Laws of 1963.
- (109) Chapter 46, Laws of 1963.

(110) Chapter 185, Laws of 1963.

(111) Section 83.16.040, chapter 15, Laws of 1961.

SEC. 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.

Savings clause
—Rights not
affected.

SEC. 11.99.030 *Severability*. If any provisions of this title or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the title which can be given effect without the invalid provision or application, and, to this end, provisions of this title are declared to be severable.

Severability.

Passed the Senate March 11, 1965.

Passed the House March 11, 1965.

Approved by the Governor March 20, 1965, with the exception of a certain item in section 11.04.015 which was vetoed.

NOTE: Governor's explanation of partial veto is as follows:

Veto message.

"This bill culminates three years of work by the Washington State Bar Association to modernize the state probate code. Its enactment will eliminate unnecessary expense in the administration of estates, accelerate the settlement of decedent's estates, and liberalize the administration of small estates.

"I am particularly pleased that the legislature chose to use this bill as a vehicle for the removal of appraisals of decedent's property from the area of political patronage. This provision of the bill will greatly assist in my desire to create confidence of the people of our state in clean government, and will reduce unnecessary expense to the survivors of a decedent.

"The section of the bill numbered RCW 11.04.015 (1) (a) originally provided that if a person died without a will, the surviving spouse would receive all the net community estate. This section was amended by the legislature to provide that in certain situations the surviving spouse would receive only three-quarters of the net community estate.

"The effect of this amendment is as follows:

Probate law and procedure. Veto message.

- "1. If a person dies, leaving no children, one-half of the community property passes to the parents rather than the surviving spouse.
- "2. If no parents or children survive the decedent, one-half of the community property passes to brothers and sisters rather than the surviving spouse.
- "3. If no children, parents, or collateral heirs survive the decedent, one-half the community estate will escheat to the state.

"This unintended effect would obviously defeat the entire purpose of enactment of a new probate code. To allow it to remain in the law during the next two years, even though the new code will not become effective, would be a disservice to the legislature. I have therefore vetoed the following language of section 11.04.015 (1) (a):

"If the intestate is survived by issue or by either parent, three-fourths of'

"The section will therefore read:

"(1) Share of surviving spouse. The surviving spouse shall receive the following share:

"(a) The net community estate; and'

"I urge that the legislature reenact this language at the next session of the legislature to insure that it accurately expresses their intent.

"The remainder of Senate Bill 6 is approved."

DANIEL J. EVANS,
Governor.

CHAPTER 146.

[House Bill No. 74.]

WALLACE FALLS STATE PARK.

AN ACT relating to state parks and recreation; establishing Wallace Falls State Park; and providing for the acquisition of certain lands for park purposes.

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

Wallace Falls State Park. Created.

SECTION 1. There is hereby created a state park to be known as Wallace Falls State Park.

Property acquisition for.

SEC. 2. In addition to all other powers and duties provided by law, the state parks and recreation commission is hereby directed to acquire such real property upon which Wallace Falls on the Wallace River in Snohomish county is located together with such real property in the vicinity thereof as it deems necessary for park purposes.

The state parks and recreation commission shall acquire such property in any manner authorized by law for the acquisition of lands for park and parkway purposes other than by condemnation.