

same or related parties or involved the same facts or was reviewed pursuant to RCW 50.32.120.

Passed the Senate February 11, 1988.

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CHAPTER 29

[House Bill No. 1504]

TRUSTS AND ESTATES

AN ACT Relating to trusts and estates; and amending RCW 11.28.340, 11.62.010, 11.68.090, 11.76.090, 11.76.095, 11.96.070, 11.96.170, 11.98.110, 30.22.200, and 64.28.020.

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

Sec. 1. Section 32, chapter 117, Laws of 1974 ex. sess. as amended by section 7, chapter 234, Laws of 1977 ex. sess. and RCW 11.28.340 are each amended to read as follows:

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

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

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

The right of an heir, legatee, or devisee to receive the assets of a decedent shall, to the extent otherwise provided by this title, be subject to the prior rights of the decedent's creditors and of any persons entitled to a homestead award or award in lieu of homestead or family allowance, and nothing contained in this section shall be deemed to alter or diminish such prior rights, or to prohibit any person for good cause shown, from obtaining the appointment of a personal representative to administer the estate of the decedent after the entry of an order adjudicating testacy or intestacy and heirship. However, if the petition for letters testamentary or of administration shall be filed more than four months after the date of the adjudication

of testacy or of intestacy and heirship, the issuance of such letters shall not affect the finality of said adjudications.

Any person paying, delivering, transferring, or issuing property to the person entitled thereto under an adjudication of testacy or intestacy and heirship that is deemed the equivalent of a final decree of distribution as set forth in this section is discharged and released to the same extent as if such person has dealt with a personal representative of the decedent.

Sec. 2. Section 4, chapter 117, Laws of 1974 ex. sess. as last amended by section 1, chapter 157, Laws of 1987 and RCW 11.62.010 are each amended to read as follows:

(1) At any time after forty days from the date of a decedent's death, any person who is indebted to or who has possession of any personal property belonging to the decedent or to the decedent and his or her surviving spouse as a community, which debt or personal property is an asset which is subject to probate, shall pay such indebtedness or deliver such personal property, or so much of either as is claimed, to a person claiming to be a successor of the decedent upon receipt of proof of death and of an affidavit made by said person which meets the requirements of subsection (2) of this section.

(2) An affidavit which is to be made pursuant to this section shall state:

(a) The claiming successor's name and address, and that the claiming successor is a "successor" as defined in RCW 11.62.005;

(b) That the decedent was a resident of the state of Washington on the date of his death;

(c) That the value of the decedent's entire estate subject to probate, not including the surviving spouse's community property interest in any assets which are subject to probate in the decedent's estate, wherever located, less liens and encumbrances, does not exceed ~~((ten thousand dollars))~~ the amount specified in RCW 6.12.050;

(d) That forty days have elapsed since the death of the decedent;

(e) That no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction;

(f) That all debts of the decedent including funeral and burial expenses have been paid or provided for;

(g) A description of the personal property and the portion thereof claimed, together with a statement that such personal property is subject to probate;

(h) That the claiming successor has given written notice, either by personal service or by mail, identifying his or her claim, and describing the property claimed, to all other successors of the decedent, and that at least ten days have elapsed since the service or mailing of such notice; and

(i) That the claiming successor is either personally entitled to full payment or delivery of the property claimed or is entitled to full payment or

delivery thereof on the behalf and with the written authority of all other successors who have an interest therein.

(3) A transfer agent of any security shall change the registered ownership of the security claimed from the decedent to the person claiming to be the successor with respect to such security upon the presentation of proof of death and of an affidavit made by such person which meets the requirements of subsection (2) of this section. Any governmental agency required to issue certificates of ownership or of license registration to personal property shall issue a new certificate of ownership or of license registration to a person claiming to be a successor of the decedent upon receipt of proof of death and of an affidavit made by such person which meets the requirements of subsection (2) of this section.

(4) ~~((Upon receipt of notification from the inheritance tax division of the state department of revenue that an inheritance tax report is requested, the holder of any property subject to claim by a successor hereunder shall withhold payment, delivery, transfer or issuance of such property until provided with an inheritance tax release.))~~ No release from any Washington state or local taxing authority may be required before any assets or debts are paid or delivered to a successor of a decedent as required under this section.

Sec. 3. Section 7, chapter 30, Laws of 1985 and RCW 11.68.090 are each amended to read as follows:

Any personal representative acting under nonintervention powers may borrow money on the general credit of the estate and may mortgage, encumber, lease, sell, exchange, convey, and otherwise do anything a trustee may do under RCW 11.98.070 and chapters 11.100 and 11.102 RCW with regard to the assets of the estate, both real and personal, all without an order of court and without notice, approval, or confirmation, and in all other respects administer and settle the estate of the decedent without intervention of court. Any party to any such transaction and his or her successors in interest shall be entitled to have it conclusively presumed that the transaction is necessary for the administration of the decedent's estate. Except as otherwise specifically provided in this chapter or by order of court, chapter 11.76 RCW shall not apply to the administration of an estate by a personal representative acting under nonintervention powers.

Sec. 4. Section 11.76.090, chapter 145, Laws of 1965 as last amended by section 11, chapter 117, Laws of 1974 ex. sess. and RCW 11.76.090 are each amended to read as follows:

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 eighteen years, of ~~((a sum of one))~~ property having a value of five thousand dollars or less, the court, in such order of distribution, ((shall)) may order the same distributed or paid, for the use and as the property of said minor, to the person named in said order of distribution to receive the

same, without requiring bond or appointment of any guardian. This section shall not bar distribution under RCW 11.93.020(4).

Sec. 5. Section 11.76.095, chapter 145, Laws of 1965 as last amended by section 12, chapter 117, Laws of 1974 ex. sess. and RCW 11.76.095 are each amended to read as follows:

When a decree of distribution is made by the court in administration upon a decedent's estate or when distribution is made by a personal representative under a nonintervention will and distribution is ordered under such decree or authorized under such nonintervention will to a person under the age of eighteen years, ~~((the court shall require either))~~ it shall be required that:

(1) The money be deposited in a bank or trust company or be invested in an account in an insured financial institution for the benefit of the minor subject to withdrawal only upon the order of the court in the original probate proceeding, or upon said minor's attaining the age of eighteen years and furnishing proof thereof satisfactory to the depository~~((or))~~;

(2) A general guardian shall be appointed and qualify and the money or property be paid or delivered to such guardian prior to the discharge of the personal representative in the original probate proceeding~~((:~~

~~This section shall not bar distribution under RCW 11.76.090 as now or hereafter amended))~~; or

(3) The provisions of either RCW 11.76.090 or 11.93.020(4) are complied with.

Sec. 6. Section 8, chapter 31, Laws of 1985 and RCW 11.96.070 are each amended to read as follows:

A trustor, grantor, personal representative, trustee, or other fiduciary, creditor, devisee, legatee, heir, or trust beneficiary interested in the administration of a trust, or the attorney general in the case of a charitable trust under RCW 11.110.120, or of the estate of a decedent, incompetent, or disabled person, may have a judicial proceeding for the declaration of rights or legal relations in respect to the trust or estate:

(1) To ascertain any class of creditors, devisees, legatees, heirs, next of kin, or others;

(2) To direct the personal representatives or trustees to do or abstain from doing any particular act in their fiduciary capacity;

(3) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings;

(4) To confer upon the personal representatives or trustees any necessary or desirable powers not otherwise granted in the instrument or given by law that the court determines are not inconsistent with the provisions or purposes of the will or trust;

(5) To amend or conform the will or the trust instrument in the manner required to qualify the gift thereunder for the charitable estate tax deduction permitted by federal law, including the addition of mandatory

governing instrument requirements for a charitable remainder trust as required by final regulations and rulings of the United States internal revenue service, in any case in which all parties interested in the trust have submitted written agreements to the proposed changes or written disclaimer of interest; or

(6) To resolve any other matter in this title referencing this judicial proceedings section.

The provisions of this chapter apply to disputes arising in connection with estates of incompetents or disabled persons unless otherwise covered by chapters 11.88 and 11.92 RCW. The provisions of this chapter shall not supersede the otherwise applicable provisions and procedures of chapter 11.24, 11.28, 11.40, 11.52, 11.56, or 11.60 RCW with respect to any rights or legal obligations that are subject to those chapters.

Sec. 7. Section 18, chapter 31, Laws of 1985 and RCW 11.96.170 are each amended to read as follows:

(1) If ~~((the persons listed))~~, as to the matter in dispute, the trustor, grantor, all parties beneficially interested in the estate or trust with respect to such matter, and any current fiduciary of such estate or trust, who are also included in RCW 11.96.070 and ~~((those))~~ who are entitled to notice under RCW 11.96.100 and 11.96.110 agree on any matter listed in RCW 11.96.070 or any other matter in Title 11 RCW referencing this nonjudicial resolution procedure, then the agreement shall be evidenced by a written agreement executed by all necessary persons as provided in this section. Those persons may reach an agreement concerning a matter in RCW 11.96.070(4) as long as those persons, rather than the court, determine that the powers to be conferred are not inconsistent with the provisions or purposes of the will or trust.

(2) If necessary, the personal representative or trustee may petition the court for the appointment of a special representative to represent a person interested in the estate or trust who is a minor, incompetent, disabled, or who is yet unborn or unascertained, or a person whose identity or address is unknown. The special representative has authority to enter into a binding agreement on behalf of the person or beneficiary. The special representative may be appointed for more than one person or class of persons if the interests of such persons or class are not in conflict. Those entitled to receive notice for persons or beneficiaries described in RCW 11.96.110 may enter into a binding agreement on behalf of such persons or beneficiaries.

(3) The special representative shall be a lawyer licensed to practice before the courts of this state or an individual with special skill or training in the administration of estates or trusts. The special representative shall have no interest in any affected estate or trust, and shall not be related to any personal representative, trustee, beneficiary, or other person interested in the estate or trust. The special representative is entitled to reasonable

compensation for services which shall be paid from the principal of the estate or trust whose beneficiaries are represented. Upon execution of the written agreement, the special representative shall be discharged of any further responsibility with respect to the estate or trust.

(4) The written agreement or a memorandum summarizing the provisions of the written agreement may, at the option of any person interested in the estate or trust, be filed with the court having jurisdiction over the estate or trust. The person filing the agreement or memorandum shall within five days thereof mail a copy of the agreement and a notice of the filing to each person interested in the estate or trust whose address is known. Notice shall be in substantially the following form:

CAPTION  
OF CASE

NOTICE OF FILING OF  
AGREEMENT OR  
MEMORANDUM  
OF AGREEMENT

Notice is hereby given that the attached document was filed by the undersigned in the above entitled court on the ..... day of ....., 19... Unless you file a petition objecting to the agreement within 30 days of the above specified date the agreement will be deemed approved and will be equivalent to a final order binding on all persons interested in the estate or trust.

If you file and serve a petition within the period specified, you should ask the court to fix a time and place for the hearing on the petition and provide for at least a ten days' notice to all persons interested in the estate or trust.

DATED this ..... day of ....., 19...

.....  
(Party to the agreement)

(5) Unless a person interested in the estate or trust files a petition objecting to the agreement within thirty days of the filing of the agreement or the memorandum, the agreement will be deemed approved and will be equivalent to a final order binding on all persons interested in the estate or trust. If all persons interested in the estate or trust waive the notice required by this section, the agreement will be deemed approved and will be equivalent to a final order binding on all persons interested in the estate or trust effective upon the date of filing.

Sec. 8. Section 54, chapter 30, Laws of 1985 and RCW 11.98.110 are each amended to read as follows:

As used in this section, a trust includes a probate estate, and a trustee includes a personal representative. The words "trustee" and "as trustee" mean "personal representative" and "as personal representative" where this section is being construed in regard to personal representatives.

Actions on contracts which have been transferred to a trust and on contracts made by a trustee, and actions in tort for personal liability incurred by a trustee in the course of administration may be maintained by the party in whose favor the cause of action has accrued as follows:

(1) The plaintiff may sue the trustee in the trustee's representative capacity and any judgment rendered in favor of the plaintiff is collectible by execution out of the trust property: PROVIDED, HOWEVER, If the action is in tort, collection shall not be had from the trust property unless the court determines in the action that (a) the tort was a common incident of the kind of business activity in which the trustee or the trustee's predecessor was properly engaged for the trust; or (b) that, although the tort was not a common incident of such activity, neither the trustee nor the trustee's predecessor, nor any officer or employee of the trustee or the trustee's predecessor, was guilty of personal fault in incurring the liability; or (c) that, although the tort did not fall within classes (a) or (b) above, it increased the value of the trust property. If the tort is within classes (a) or (b) above, collection may be had of the full amount of damage proved, and if the tort is within class (c) above, collection may be had only to the extent of the increase in the value of the trust property.

(2) If the action is on a contract made by the trustee, the trustee may be held personally liable on the contract, if personal liability is not excluded. Either the addition by the trustee of the words "trustee" or "as trustee" after the signature of a trustee to a contract or the transaction of business as trustee under an assumed name in compliance with chapter 19.80 RCW excludes the trustee from personal liability. If the action is on a contract transferred to the trust or trustee, subject to any rights therein vested at time of the transfer, the trustee is personally liable only if he or she has in writing assumed that liability.

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

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

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

~~(b) A trustee who commits a tort which increases the value of the trust property is entitled to exoneration or reimbursement with respect thereto to~~

~~the extent of such increase in value, even though the trustee would not otherwise be entitled to exoneration or reimbursement))~~ only if, and to the extent that, damages for the tort are not collectible from trust property as provided in and pursuant to subsection (1) of this section.

(5) The procedure for all actions provided in this section is as provided in chapter 11.96 RCW.

(6) Nothing in this section shall be construed to change the existing law with regard to the liability of the trustee of a charitable trust for the torts of the trustee.

Sec. 9. Section 20, chapter 192, Laws of 1981 and RCW 30.22.200 are each amended to read as follows:

In each case where it is provided in this chapter that payment may be made to the personal representative of the estate of a deceased depositor or trust or P.O.D. account beneficiary, financial institutions may make payment of the funds on deposit in a deceased depositor's or beneficiary's account to the personal representative of the decedent's estate appointed under the laws of any other state or territory or country after:

(1) At least ~~((ninety))~~ sixty days have elapsed since the date of the deceased depositor's death; and

(2) Upon receipt of the following:

(a) Proof of death of the deceased depositor or beneficiary;

(b) Proof of the appointment and continuing authority of the personal representative requesting payment; ~~((and))~~

(c) The personal representative's, or its agent's, affidavit to the effect that to the best of his or her knowledge no personal representative has been or will be appointed under the laws of this state; and

(d) Receipt of either an ~~((inheritance))~~ estate tax release from the department of revenue or the personal representative's, or its agent's, affidavit that the estate is not subject to Washington estate tax. However, if a personal representative of the deceased depositor's or beneficiary's estate is appointed and qualified as such under the laws of this state, and delivers proof of the appointment and qualification to the office or branch of the financial institution in which the deposit is maintained prior to the transmissions of the sums on deposit to the foreign personal representative, then the funds shall be paid to the personal representative of the deceased depositor's or beneficiary's estate who has been appointed and qualified in this state.

(3) The financial institution paying, delivering, transferring, or issuing funds on deposit in a deceased depositor's or beneficiary's account in accordance with the provisions of this section is discharged and released to the same extent as if such person has dealt with a personal representative of the decedent, unless at the time of such payment, delivery, transfer, or issuance such institution had actual knowledge of the falsity of any statement or affidavit required to be provided under this section. Such institution is not required to see to the application of funds, or to inquire into the truth of any



matter specified in any statement or affidavit required to be provided under this section.

Sec. 10. Section 2, chapter 2, Laws of 1961 and RCW 64.28.020 are each amended to read as follows:

(1) Every interest created in favor of two or more persons in their own right is an interest in common, unless acquired by them in partnership, for partnership purposes, or unless declared in its creation to be a joint tenancy, as provided in RCW 64.28.010, ~~((or unless acquired as community property))~~ or unless acquired by executors or trustees.

(2) Interests in common held in the names of a husband and wife, whether or not in conjunction with others, are presumed to be their community property.

(3) Subsection (2) of this section applies as of the effective date of this 1988 section, to all existing or subsequently created interests in common.

Passed the House February 10, 1988.

Passed the Senate February 29, 1988.

Approved by the Governor March 11, 1988.

Filed in Office of Secretary of State March 11, 1988.

## CHAPTER 30

[Senate Bill No. 5451]

### PASSENGER CHARTER CARRIERS

AN ACT Relating to passenger charter carriers; amending RCW 81.70.020; adding new sections to chapter 81.70 RCW; and repealing RCW 81.70.040, 81.70.050, 81.70.060, 81.70.070, 81.70.080, 81.70.090, 81.70.095, 81.70.100, 81.70.110, 81.70.120, 81.70.130, 81.70.140, 81.70.150, 81.70.160, 81.70.170, 81.70.180, 81.70.190, 81.70.200, 81.70.210, 81.70.900, and 81.70.910.

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

Sec. 1. Section 3, chapter 150, Laws of 1965 as amended by section 1, chapter 132, Laws of 1969 and RCW 81.70.020 are each amended to read as follows:

Unless the context otherwise requires, the definitions and general provisions set forth in this section shall govern the construction of this chapter:

(1) "Commission" means the Washington utilities and transportation commission;

(2) "Person or persons" means an individual, a corporation, association, joint stock association, and partnership, their lessees, trustees or receivers;

(3) "Public highway" includes every public street, road or highway in this state;

(4) "Motor vehicle" means every self-propelled vehicle with seating capacity for seven or more persons, excluding the driver;