

grant further powers to appoint. The powerholder may designate the trustee, powers, situs, and governing law for property appointed in trust.

(2) The holder of a testamentary power may exercise the power only by the powerholder's last will, signed before or after the effective date of the instrument granting the power, that manifests an intent to exercise the power ((and that identifies the instrument granting the power and its date)). Unless the person holding the property subject to the power has within six months after the holder's death received written notice that the powerholder's last will has been admitted to probate or an adjudication of testacy has been entered with respect to the powerholder's last will in some jurisdiction, the person may, until the time the notice is received, transfer the property subject to appointment on the basis that the power has not been effectively exercised. The person holding the property shall not incur liability to anyone for transfers so made if the person had no knowledge that the power had been exercised and had made a reasonable effort to determine if the power had been exercised. A testamentary residuary clause which does not manifest an intent to exercise a power is not deemed the exercise of a testamentary power.

(3) The holder of a lifetime power of appointment shall exercise that power only by delivering a written instrument, signed by the holder, to the person holding the property subject to the power. If the holder conditions the distribution of the appointed property on a future event, the written instrument may be revoked in the same manner at any time before the property becomes distributable upon occurrence of the event specified, except that any contrary provisions in the written instrument exercising the power, including provisions stating the exercise of the power is irrevocable, shall be controlling. If the written instrument is revoked, the holder of the power may reappoint the property that was appointed in the instrument. In the absence of signing and delivery of such a written instrument, a lifetime power is not deemed exercised.

Passed the House February 1, 1989.

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## CHAPTER 34

[Substitute House Bill No. 1169]

### DECEDENTS' ESTATES—BENEFICIARIES—DISCLAIMER OF INTEREST

AN ACT Relating to disclaimers of interests by beneficiaries; amending RCW 11.86.090; adding new sections to chapter 11.86 RCW; and repealing RCW 11.86.010, 11.86.020, 11.86.030, 11.86.040, 11.86.050, 11.86.060, and 11.86.070.

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

**NEW SECTION.** Sec. 1. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Beneficiary" means the person entitled, but for the person's disclaimer, to take an interest.

(2) "Interest" includes the whole of any property, real or personal, legal or equitable, or any fractional part, share, or particular portion or specific assets thereof, any vested or contingent interest in any such property, any power to appoint, consume, apply, or expend property, or any other right, power, privilege, or immunity relating to property. "Interest" includes, but is not limited to, an interest created in any of the following manners:

- (a) By intestate succession;
- (b) Under a will;
- (c) Under a trust;
- (d) By succession to a disclaimed interest;
- (e) By virtue of an election to take against a will;
- (f) By creation of a power of appointment;
- (g) By exercise or nonexercise of a power of appointment;
- (h) By an inter vivos gift, whether outright or in trust;
- (i) By surviving the death of a depositor of a trust or P.O.D. account within the meaning of RCW 30.22.040;
- (j) Under an insurance or annuity contract;
- (k) By surviving the death of another joint tenant;
- (l) Under an employee benefit plan;
- (m) Under an individual retirement account, annuity, or bond;
- (n) Under a community property agreement; or
- (o) Any other interest created by any testamentary or inter vivos instrument or by operation of law.

(3) "Creator of the interest" means a person who establishes, declares, or otherwise creates an interest.

(4) "Disclaimer" means any writing which declines, refuses, renounces, or disclaims any interest that would otherwise be taken by a beneficiary.

(5) "Disclaimant" means a beneficiary who executes a disclaimer on his or her own behalf or a person who executes a disclaimer on behalf of a beneficiary.

(6) "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, or other entity.

(7) "Date of the transfer" means:

(a) For an inter vivos transfer, the date of the creation of the interest;  
or

(b) For a transfer upon the death of the creator of the interest, the date of the death of the creator.

A joint tenancy interest of a deceased joint tenant shall be deemed to be transferred at the death of the joint tenant rather than at the creation of the joint tenancy.

**NEW SECTION.** Sec. 2. (1) A beneficiary may disclaim an interest in whole or in part, or with reference to specific parts, shares or assets, in the manner provided in section 3 of this act.

(2) Likewise, a beneficiary may so disclaim through an agent or attorney so authorized by written instrument.

(3) A personal representative, guardian, attorney in fact if authorized under a durable power of attorney under chapter 11.94 RCW, or other legal representative of the estate of a minor, incompetent, or deceased beneficiary, may so disclaim on behalf of the beneficiary, with or without court order, if:

(a) The legal representative deems the disclaimer to be in the best interests of those interested in the estate of the beneficiary and of those who take the disclaimed interest because of the disclaimer, and not detrimental to the best interests of the beneficiary; and

(b) In the case of a guardian, no order has been issued under RCW 11.92.140 determining that the disclaimer is not in the best interests of the beneficiary.

**NEW SECTION.** Sec. 3. (1) The disclaimer shall:

(a) Be in writing;

(b) Be signed by the disclaimant;

(c) Identify the interest to be disclaimed; and

(d) State the disclaimer and the extent thereof.

(2) The disclaimer shall be delivered or mailed as provided in subsection (3) of this section at any time after the creation of the interest, but in all events by nine months after the latest of:

(a) The date the beneficiary attains the age of twenty-one years;

(b) The date of the transfer; or

(c) The date that the beneficiary is finally ascertained and the beneficiary's interest is indefeasibly vested.

(3) The disclaimer shall be mailed by first-class mail, or otherwise delivered, to the creator of the interest, the creator's legal representative, or the holder of the legal title to the property to which the interest relates or, if the creator is dead and there is no legal representative or holder of legal title, to the person having possession of the property.

(4) If the date of the transfer is the date of the death of the creator of the interest, a copy of the disclaimer may be filed with the clerk of the probate court in which the estate of the creator is, or has been, administered, or, if no probate administration has been commenced, then with the clerk of the court of any county provided by law as the place for probate administration of such person, where it shall be indexed under the name of the decedent in the probate index upon the payment of a fee of two dollars.

(5) The disclaimer of an interest in real property may be recorded, but shall constitute notice to all persons only from and after the date of recording. If recorded, a copy of the disclaimer shall be recorded in the office of the auditor in the county or counties where the real property is situated.

**NEW SECTION.** Sec. 4. (1) Unless the instrument creating an interest directs to the contrary, the interest disclaimed shall pass as if the beneficiary had died immediately prior to the date of the transfer of the interest. The disclaimer shall relate back to this date for all purposes.

(2) Unless the disclaimer directs to the contrary, the beneficiary may receive another interest in the property subject to the disclaimer.

(3) Any future interest taking effect in possession or enjoyment after termination of the interest disclaimed takes effect as if the beneficiary had died prior to the date of the beneficiary's final ascertainment as a beneficiary and the indefeasible vesting of the interest.

(4) The disclaimer is binding upon the beneficiary and all persons claiming through or under the beneficiary.

(5) Notwithstanding subsection (1) or (3) of this section, no beneficiary whose interest has been disclaimed shall be deemed to have died for purposes of RCW 11.12.120.

**NEW SECTION.** Sec. 5. A beneficiary may not disclaim an interest if:

(1) The beneficiary has accepted the interest or a benefit thereunder;

(2) The beneficiary has assigned, conveyed, encumbered, pledged, or otherwise transferred the interest, or has contracted therefor;

(3) The interest has been sold or otherwise disposed of pursuant to judicial process; or

(4) The beneficiary has waived the right to disclaim in writing. The written waiver of the right to disclaim also is binding upon all persons claiming through or under the beneficiary.

**NEW SECTION.** Sec. 6. A beneficiary may disclaim under this chapter notwithstanding any limitation on the interest of the beneficiary in the nature of a spendthrift provision or similar restriction.

**NEW SECTION.** Sec. 7. No legal representative of a creator of the interest, holder of legal title to property an interest in which is disclaimed, or person having possession of the property shall be liable for any otherwise proper distribution or other disposition made without actual knowledge of the disclaimer, or in reliance upon the disclaimer and without actual knowledge that the disclaimer is barred as provided in section 5 of this act.

Sec. 8. Section 10, chapter 148, Laws of 1973 and RCW 11.86.090 are each amended to read as follows:

Any interest which exists on June 7, 1973 but which has not then become indefeasibly (~~fixed both in quality and quantity~~) vested, or the taker of which has not then become finally ascertained, or of the existence of the

transfer of which the beneficiary lacks knowledge, may be disclaimed after June 7, 1973 in the manner provided in ((RCW 11.86.030 and 11.86.040)) section 3 of this act. However, for the purposes of section 3(2) of this act, the date on which the beneficiary first knows of the existence of the transfer shall be deemed to be the date of the transfer.

**NEW SECTION.** Sec. 9. The following acts or parts of acts are each repealed:

(1) Section 2, chapter 148, Laws of 1973, section 42, chapter 209, Laws of 1979 ex. sess. and RCW 11.86.010;

(2) Section 3, chapter 148, Laws of 1973, section 43, chapter 209, Laws of 1979 ex. sess. and RCW 11.86.020;

(3) Section 4, chapter 148, Laws of 1973, section 44, chapter 209, Laws of 1979 ex. sess. and RCW 11.86.030;

(4) Section 5, chapter 148, Laws of 1973, section 45, chapter 209, Laws of 1979 ex. sess. and RCW 11.86.040;

(5) Section 6, chapter 148, Laws of 1973, section 46, chapter 209, Laws of 1979 ex. sess. and RCW 11.86.050;

(6) Section 7, chapter 148, Laws of 1973, section 47, chapter 209, Laws of 1979 ex. sess. and RCW 11.86.060; and

(7) Section 8, chapter 148, Laws of 1973, section 48, chapter 209, Laws of 1979 ex. sess. and RCW 11.86.070.

**NEW SECTION.** Sec. 10. Sections 1 through 7 of this act are each added to chapter 11.86 RCW.

Passed the House February 1, 1989.

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Approved by the Governor April 18, 1989.

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## CHAPTER 35

[House Bill No. 1350]

### MARITAL DEDUCTION GIFTS—COMMON DISASTERS—EFFECT ON SURVIVORSHIP REQUIREMENTS

AN ACT Relating to marital deduction gifts; and amending RCW 11.108.060.

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

Sec. 1. Section 111, chapter 30, Laws of 1985 and RCW 11.108.060 are each amended to read as follows:

If a governing instrument contains a marital deduction gift, whether outright or in trust and whether there is a specific reference to this section, any survivorship requirement expressed in the governing instrument in excess of six months, other than survival by a spouse of a common disaster resulting in the death of the decedent, does not apply to property passing