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SENATE BILL 5377

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State of Washington                      60th Legislature                      2007 Regular Session

By Senators Weinstein and Kline

Read first time 01/18/2007. Referred to Committee on Judiciary.

1            AN ACT Relating to the disposition of certain assets; amending RCW  
2 11.02.005, 11.07.010, 11.12.260, 11.24.010, and 11.96A.150; adding a  
3 new chapter to Title 11 RCW; and repealing RCW 11.05.010, 11.05.020,  
4 11.05.030, 11.05.040, 11.05.050, 11.05.900, and 11.05.910.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6            **Sec. 1.** RCW 11.02.005 and 2005 c 97 s 1 are each amended to read  
7 as follows:

8            When used in this title, unless otherwise required from the  
9 context:

10            (1) "Personal representative" includes executor, administrator,  
11 special administrator, and guardian or limited guardian and special  
12 representative.

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

17            (3) "Representation" refers to a method of determining distribution  
18 in which the takers are in unequal degrees of kinship with respect to  
19 (~~the intestate~~) a decedent, and is accomplished as follows: After

1 first determining who, of those entitled to share in the estate, are in  
2 the nearest degree of kinship, the estate is divided into equal shares,  
3 the number of shares being the sum of the number of persons who survive  
4 the ((intestate)) decedent who are in the nearest degree of kinship and  
5 the number of persons in the same degree of kinship who died before the  
6 ((intestate)) decedent but who left issue surviving the ((intestate))  
7 decedent; each share of a deceased person in the nearest degree shall  
8 be divided among those of the deceased person's issue who survive the  
9 ((intestate)) decedent and have no ancestor then living who is in the  
10 line of relationship between them and the ((intestate)) decedent, those  
11 more remote in degree taking together the share which their ancestor  
12 would have taken had he or she survived the ((intestate)) decedent.  
13 ~~((Posthumous children are considered as living at the death of their  
14 parent.))~~

15 (4) "Issue" means all the lineal descendants of an individual. An  
16 adopted individual is a lineal descendant of each of his or her  
17 adoptive parents and of all individuals with regard to which each  
18 adoptive parent is a lineal descendant. A child conceived prior to the  
19 death of a parent but born after the death of the deceased parent is  
20 considered as living at the death of the deceased parent.

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

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

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

32 (8) "Will" means an instrument validly executed as required by RCW  
33 11.12.020.

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

37 (10) "Guardian" or "limited guardian" means a personal

1 representative of the person or estate of an incompetent or disabled  
2 person as defined in RCW 11.88.010 and the term may be used in lieu of  
3 "personal representative" wherever required by context.

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

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

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

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

16 (15) "Nonprobate asset" means those rights and interests of a  
17 person having beneficial ownership of an asset that pass on the  
18 person's death under a written instrument or arrangement other than the  
19 person's will. "Nonprobate asset" includes, but is not limited to, a  
20 right or interest passing under a joint tenancy with right of  
21 survivorship, joint bank account with right of survivorship, payable on  
22 death or trust bank account, transfer on death security or security  
23 account, deed or conveyance if possession has been postponed until the  
24 death of the person, trust of which the person is grantor and that  
25 becomes effective or irrevocable only upon the person's death,  
26 community property agreement, individual retirement account or bond, or  
27 note or other contract the payment or performance of which is affected  
28 by the death of the person. "Nonprobate asset" does not include: A  
29 payable-on-death provision of a life insurance policy, annuity, or  
30 other similar contract, or of an employee benefit plan; a right or  
31 interest passing by descent and distribution under chapter 11.04 RCW;  
32 a right or interest if, before death, the person has irrevocably  
33 transferred the right or interest, the person has waived the power to  
34 transfer it or, in the case of contractual arrangement, the person has  
35 waived the unilateral right to rescind or modify the arrangement; or a  
36 right or interest held by the person solely in a fiduciary capacity.  
37 For the definition of "nonprobate asset" relating to revocation of a  
38 provision for a former spouse upon dissolution of marriage or

1 declaration of invalidity of marriage, RCW 11.07.010(5) applies. For  
2 the definition of "nonprobate asset" relating to revocation of a  
3 provision for a former spouse upon dissolution of marriage or  
4 declaration of invalidity of marriage, see RCW 11.07.010(5). For the  
5 definition of "nonprobate asset" relating to testamentary disposition  
6 of nonprobate assets, see RCW 11.11.010(7).

7 (16) "Internal Revenue Code" means the United States Internal  
8 Revenue Code of 1986, as amended or renumbered as of January 1, 2001.

9 (17) References to "section 2033A" of the Internal Revenue Code in  
10 wills, trust agreements, powers of appointment, beneficiary  
11 designations, and other instruments governed by or subject to this  
12 title shall be deemed to refer to the comparable or corresponding  
13 provisions of section 2057 of the Internal Revenue Code, as added by  
14 section 6006(b) of the Internal Revenue Service Restructuring Act of  
15 1998 (H.R. 2676, P.L. 105-206); and references to the section 2033A  
16 "exclusion" shall be deemed to mean the section 2057 deduction.

17 (18) "Surviving spouse" does not include an individual whose  
18 marriage to the decedent has been dissolved or invalidated unless, by  
19 virtue of a subsequent marriage, he or she is married to the decedent  
20 at the time of death. A decree of separation that does not terminate  
21 the status of husband and wife is not a dissolution or invalidation for  
22 purposes of this subsection.

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

25 Words importing the masculine gender only may be extended to  
26 females also.

27 **Sec. 2.** RCW 11.07.010 and 2002 c 18 s 1 are each amended to read  
28 as follows:

29 (1) This section applies to all nonprobate assets, wherever  
30 situated, held at the time of entry (~~by a superior court of this~~  
31 ~~state~~) of a decree of dissolution of marriage or a declaration of  
32 invalidity.

33 (2)(a) If a marriage is dissolved or invalidated, a provision made  
34 prior to that event that relates to the payment or transfer at death of  
35 the decedent's interest in a nonprobate asset in favor of or granting  
36 an interest or power to the decedent's former spouse is revoked. A  
37 provision affected by this section must be interpreted, and the

1 nonprobate asset affected passes, as if the former spouse failed to  
2 survive the decedent, having died at the time of entry of the decree of  
3 dissolution or declaration of invalidity.

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

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

7 (ii) The decree of dissolution or declaration of invalidity  
8 requires that the decedent maintain a nonprobate asset for the benefit  
9 of a former spouse or children of the marriage, payable on the  
10 decedent's death either outright or in trust, and other nonprobate  
11 assets of the decedent fulfilling such a requirement for the benefit of  
12 the former spouse or children of the marriage do not exist at the  
13 decedent's death; or

14 (iii) If not for this subsection, the decedent could not have  
15 effected the revocation by unilateral action because of the terms of  
16 the decree or declaration, or for any other reason, immediately after  
17 the entry of the decree of dissolution or declaration of invalidity.

18 (3)(a) A payor or other third party in possession or control of a  
19 nonprobate asset at the time of the decedent's death is not liable for  
20 making a payment or transferring an interest in a nonprobate asset to  
21 a decedent's former spouse whose interest in the nonprobate asset is  
22 revoked under this section, or for taking another action in reliance on  
23 the validity of the instrument governing disposition of the nonprobate  
24 asset, before the payor or other third party has actual knowledge of  
25 the dissolution or other invalidation of marriage. A payor or other  
26 third party is liable for a payment or transfer made or other action  
27 taken after the payor or other third party has actual knowledge of a  
28 revocation under this section.

29 (b) This section does not require a payor or other third party to  
30 pay or transfer a nonprobate asset to a beneficiary designated in a  
31 governing instrument affected by the dissolution or other invalidation  
32 of marriage, or to another person claiming an interest in the  
33 nonprobate asset, if the payor or third party has actual knowledge of  
34 the existence of a dispute between the former spouse and the  
35 beneficiaries or other persons concerning rights of ownership of the  
36 nonprobate asset as a result of the application of this section among  
37 the former spouse and the beneficiaries or among other persons, or if  
38 the payor or third party is otherwise uncertain as to who is entitled

1 to the nonprobate asset under this section. In such a case, the payor  
2 or third party may, without liability, notify in writing all  
3 beneficiaries or other persons claiming an interest in the nonprobate  
4 asset of either the existence of the dispute or its uncertainty as to  
5 who is entitled to payment or transfer of the nonprobate asset. The  
6 payor or third party may also, without liability, refuse to pay or  
7 transfer a nonprobate asset in such a circumstance to a beneficiary or  
8 other person claiming an interest until the time that either:

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

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

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

26 (d) As used in this subsection, "actual knowledge" means, for a  
27 payor or other third party in possession or control of the nonprobate  
28 asset at or following the decedent's death, written notice to the payor  
29 or other third party, or to an officer of a payor or third party in the  
30 course of his or her employment, received after the decedent's death  
31 and within a time that is sufficient to afford the payor or third party  
32 a reasonable opportunity to act upon the knowledge. The notice must  
33 identify the nonprobate asset with reasonable specificity. The notice  
34 also must be sufficient to inform the payor or other third party of the  
35 revocation of the provisions in favor of the decedent's spouse by  
36 reason of the dissolution or invalidation of marriage, or to inform the  
37 payor or third party of a dispute concerning rights to a nonprobate  
38 asset as a result of the application of this section. Receipt of the

1 notice for a period of more than thirty days is presumed to be received  
2 within a time that is sufficient to afford the payor or third party a  
3 reasonable opportunity to act upon the knowledge, but receipt of the  
4 notice for a period of less than five business days is presumed not to  
5 be a sufficient time for these purposes. These presumptions may be  
6 rebutted only by clear and convincing evidence to the contrary.

7 (4)(a) A person who purchases a nonprobate asset from a former  
8 spouse or other person, for value and without actual knowledge, or who  
9 receives from a former spouse or other person payment or transfer of a  
10 nonprobate asset without actual knowledge and in partial or full  
11 satisfaction of a legally enforceable obligation, is neither obligated  
12 under this section to return the payment, property, or benefit nor is  
13 liable under this section for the amount of the payment or the value of  
14 the nonprobate asset. However, a former spouse or other person who,  
15 with actual knowledge, not for value, or not in satisfaction of a  
16 legally enforceable obligation, receives payment or transfer of a  
17 nonprobate asset to which that person is not entitled under this  
18 section is obligated to return the payment or nonprobate asset, or is  
19 personally liable for the amount of the payment or value of the  
20 nonprobate asset, to the person who is entitled to it under this  
21 section.

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

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

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

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

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

13 (d) Transfer on death beneficiary designations of a transfer on  
14 death or pay on death security, or joint tenancy or joint tenancy with  
15 right of survivorship designations of a security, if such designations  
16 are authorized under Washington law;

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

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

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

26 For the general definition in this title of "nonprobate asset," see  
27 RCW 11.02.005(15) and for the definition of "nonprobate asset" relating  
28 to testamentary disposition of nonprobate assets, see RCW 11.11.010(7).  
29 For the purposes of this chapter, a "bank account" includes an account  
30 into or from which cash deposits and withdrawals can be made, and  
31 includes demand deposit accounts, time deposit accounts, money market  
32 accounts, or certificates of deposit, maintained at a bank, savings and  
33 loan association, credit union, brokerage house, or similar financial  
34 institution.

35 (6) This section is remedial in nature and applies as of July 25,  
36 1993, to decrees of dissolution and declarations of invalidity entered  
37 after July 24, 1993, and this section applies as of January 1, 1995, to



1 decrees of dissolution and declarations of invalidity entered before  
2 July 25, 1993.

3 **Sec. 3.** RCW 11.12.260 and 1985 c 23 s 4 are each amended to read  
4 as follows:

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

14 (2) The writing may be written or signed before or after the  
15 execution of the will or trust and need not have significance apart  
16 from its effect upon the dispositions of property made by the will or  
17 trust. A writing that meets the requirements of this section shall be  
18 given effect as if it were actually contained in the will or trust  
19 itself, except that if any person designated to receive property in the  
20 writing dies before the testator or grantor, the property shall pass as  
21 further directed in the writing and in the absence of any further  
22 directions, the disposition shall lapse and, in the case of a will, RCW  
23 11.12.110 shall not apply to such lapse.

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

28 (4) As used in this section "tangible personal property" means  
29 articles of personal or household use or ornament, for example,  
30 furniture, furnishings, automobiles, boats, airplanes, and jewelry, as  
31 well as precious metals in any tangible form, for example, bullion or  
32 coins. The term includes articles even if held for investment purposes  
33 and encompasses tangible property that is not real property. The term  
34 does not include mobile homes or intangible property, for example,  
35 money that is normal currency or normal legal tender, evidences of  
36 indebtedness, bank accounts or other monetary deposits, documents of  
37 title, or securities.

1       **Sec. 4.** RCW 11.24.010 and 1994 c 221 s 21 are each amended to read  
2 as follows:

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

14       For the purpose of tolling the four-month limitations period, a  
15 will contest is deemed commenced when a petition is filed with the  
16 court. The petitioner shall personally serve the personal  
17 representative within ninety days of the date of filing the petition.  
18 If, following filing, service is not so made, the action is deemed to  
19 not have been commenced for purposes of tolling the statute of  
20 limitations.

21       If no person (~~shall appear~~) files and serves a petition within  
22 the time under this section, the probate or rejection of such will  
23 shall be binding and final.

24       **Sec. 5.** RCW 11.96A.150 and 1999 c 42 s 308 are each amended to  
25 read as follows:

26       (1) Either the superior court or (~~the~~) any court on an appeal  
27 may, in its discretion, order costs, including reasonable attorneys'  
28 fees, to be awarded to any party: (a) From any party to the  
29 proceedings; (b) from the assets of the estate or trust involved in the  
30 proceedings; or (c) from any nonprobate asset that is the subject of  
31 the proceedings. The court may order the costs, including reasonable  
32 attorneys' fees, to be paid in such amount and in such manner as the  
33 court determines to be equitable. In exercising its discretion under  
34 this section, the court may consider any and all factors that it deems  
35 to be relevant and appropriate, which factors may but need not include  
36 whether the litigation benefits the estate or trust involved.

1 (2) This section applies to all proceedings governed by this title,  
2 including but not limited to proceedings involving trusts, decedent's  
3 estates and properties, and guardianship matters. This section shall  
4 not be construed as being limited by any other specific statutory  
5 provision providing for the payment of costs, including RCW 11.68.070  
6 and 11.24.050, unless such statute specifically provides otherwise.  
7 This (~~statute~~[~~section~~]) section shall apply to matters involving  
8 guardians and guardians ad litem and shall not be limited or controlled  
9 by the provisions of RCW 11.88.090(~~(+9)~~) (10).

10 NEW SECTION. Sec. 6. The following acts or parts of acts are each  
11 repealed:

12 (1) RCW 11.05.010 (Devolution of property in case of simultaneous  
13 death of owners) and 1965 c 145 s 11.05.010;

14 (2) RCW 11.05.020 (Procedure when beneficiaries die simultaneously)  
15 and 1965 c 145 s 11.05.020;

16 (3) RCW 11.05.030 (Joint tenants--Simultaneous death) and 1965 c  
17 145 s 11.05.030;

18 (4) RCW 11.05.040 (Distribution of insurance policy when insured  
19 and beneficiary die simultaneously) and 1965 c 145 s 11.05.040;

20 (5) RCW 11.05.050 (Scope of chapter limited) and 1965 c 145 s  
21 11.05.050;

22 (6) RCW 11.05.900 (Application of chapter to prior deaths) and 1965  
23 c 145 s 11.05.900; and

24 (7) RCW 11.05.910 (Construction of chapter) and 1965 c 145 s  
25 11.05.910.

26 NEW SECTION. Sec. 7. DEFINITIONS. The definitions in this  
27 section apply throughout this chapter unless the context clearly  
28 requires otherwise.

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

33 (2) "Governing instrument" means a deed, will, trust, insurance or  
34 annuity policy, account with pay on death designation, pension,  
35 profit-sharing, retirement, or similar benefit plan, instrument

1 creating or exercising a power of appointment or a power of attorney,  
2 or a dispositive, appointive, or nominative instrument of any similar  
3 type.

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

8 (4) "POD" means pay on death.

9 (5) "TOD" means transfer on death.

10 NEW SECTION. **Sec. 8.** REQUIREMENT OF SURVIVAL BY ONE HUNDRED  
11 TWENTY HOURS UNDER PROBATE CODE. Except as provided in section 12 of  
12 this act and except for the purposes of the Uniform TOD Security  
13 Registration Act, if the title to property, the devolution of property,  
14 the right to elect an interest in property, or the right to exempt  
15 property, homestead, or family allowance depends upon an individual's  
16 survivorship of the death of another individual, an individual who is  
17 not established by clear and convincing evidence to have survived the  
18 other individual by one hundred twenty hours is deemed to have  
19 predeceased the other individual. This section does not apply if its  
20 application would result in a taking of intestate estate by the state.

21 NEW SECTION. **Sec. 9.** REQUIREMENT OF SURVIVAL BY ONE HUNDRED  
22 TWENTY HOURS UNDER GOVERNING INSTRUMENTS. Except as provided in  
23 section 12 of this act and except for a security registered in  
24 beneficiary form (TOD) under the Uniform TOD Security Registration Act,  
25 for purposes of a provision of a governing instrument that relates to  
26 an individual surviving an event, including the death of another  
27 individual, an individual who is not established by clear and  
28 convincing evidence to have survived the event by one hundred twenty  
29 hours is deemed to have predeceased the event.

30 NEW SECTION. **Sec. 10.** CO-OWNERS WITH RIGHT OF SURVIVORSHIP--  
31 REQUIREMENT OF SURVIVAL BY ONE HUNDRED TWENTY HOURS. Except as  
32 provided in section 12 of this act, if (1) it is not established by  
33 clear and convincing evidence that one of two co-owners with right of  
34 survivorship survived the other co-owner by one hundred twenty hours,  
35 one-half of the property passes as if one had survived by one hundred

1 twenty hours and one-half as if the other had survived by one hundred  
2 twenty hours, and (2) there are more than two co-owners and it is not  
3 established by clear and convincing evidence that at least one of them  
4 survived the others by one hundred twenty hours, the property passes in  
5 the proportion that one bears to the whole number of co-owners.

6 NEW SECTION. **Sec. 11.** EVIDENCE OF DEATH OR STATUS. In addition  
7 to the rules of evidence in courts of general jurisdiction, the  
8 following rules relating to a determination of death and status apply:

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

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

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

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

24 (5) An individual whose death is not established under this section  
25 who is absent for a continuous period of seven years, during which he  
26 or she has not been heard from, and whose absence is not satisfactorily  
27 explained after diligent search or inquiry, is presumed to be dead.  
28 His or her death is presumed to have occurred at the end of the period  
29 unless there is sufficient evidence for determining that death occurred  
30 earlier.

31 (6) In the absence of evidence disputing the time of death  
32 stipulated on a document described in subsection (2) or (3) of this  
33 section, a document described in subsection (2) or (3) of this section  
34 that stipulates a time of death one hundred twenty hours or more after  
35 the time of death of another individual, however the time of death of  
36 the other individual is determined, establishes by clear and convincing

1 evidence that the individual survived the other individual by one  
2 hundred twenty hours.

3 NEW SECTION. **Sec. 12.** EXCEPTIONS. This chapter does not apply  
4 if:

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

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

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

15 (4) The application of this chapter to multiple governing  
16 instruments would result in an unintended failure or duplication of a  
17 disposition.

18 NEW SECTION. **Sec. 13.** PROTECTION OF PAYORS, BONA FIDE PURCHASERS,  
19 AND OTHER THIRD PARTIES--PERSONAL LIABILITY OF RECIPIENT. (1)  
20 Protection of Payors and Other Third Parties.

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

32 (b) Written notice of a claimed lack of entitlement under (a) of  
33 this subsection must be mailed to the payor's or other third party's  
34 main office or home by registered or certified mail, return receipt  
35 requested, or served upon the payor or other third party in the same  
36 manner as a summons in a civil action. Upon receipt of written notice

1 of a claimed lack of entitlement under this chapter, a payor or other  
2 third party may pay any amount owed or transfer or deposit any item of  
3 property held by it to or with the court having jurisdiction of the  
4 probate proceedings relating to the decedent's estate, or if no  
5 proceedings have been commenced, to or with the court having  
6 jurisdiction of probate proceedings relating to decedents' estates  
7 located in the county of the decedent's residence. The court shall  
8 hold the funds or item of property and, upon its determination under  
9 this chapter, shall order disbursement in accordance with the  
10 determination. Payments, transfers, or deposits made to or with the  
11 court discharge the payor or other third party from all claims for the  
12 value of amounts paid to or items of property transferred to or  
13 deposited with the court.

14 (2) Protection of Bona Fide Purchasers--Personal Liability of  
15 Recipient.

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

28 (b) If this chapter or any part of this chapter is preempted by  
29 federal law with respect to a payment, an item of property, or any  
30 other benefit covered by this chapter, a person who, not for value,  
31 receives the payment, item of property, or any other benefit to which  
32 the person is not entitled under this chapter is obligated to return  
33 the payment, item of property, or benefit, or is personally liable for  
34 the amount of the payment or the value of the item of property or  
35 benefit, to the person who would have been entitled to it were this  
36 chapter or part of this chapter not preempted.

1        NEW SECTION.    **Sec. 14.**    UNIFORMITY OF APPLICATION AND CONSTRUCTION.  
2        This chapter shall be applied and construed to effectuate its general  
3        purpose to make uniform the law with respect to the subject of this  
4        chapter among states enacting it.

5        NEW SECTION.    **Sec. 15.**    SHORT TITLE.    This chapter may be cited as  
6        the Uniform Simultaneous Death Act.

7        NEW SECTION.    **Sec. 16.**    CAPTIONS.    Captions used in sections 7  
8        through 18 of this act are not any part of the law.

9        NEW SECTION.    **Sec. 17.**    SEVERABILITY CLAUSE.    If any provision of  
10       this act or its application to any person or circumstance is held  
11       invalid, the remainder of the act or the application of the provision  
12       to other persons or circumstances is not affected.

13       NEW SECTION.    **Sec. 18.**    APPLICATION.    On the effective date of this  
14       section:

15       (1) An act done before the effective date of this section in any  
16       proceeding and any accrued right is not impaired by this chapter.    If  
17       a right is acquired, extinguished, or barred upon the expiration of a  
18       prescribed period of time that has commenced to run by the provisions  
19       of any statute before the effective date of this section, the  
20       provisions remain in force with respect to that right; and

21       (2) Any rule of construction or presumption provided in this  
22       chapter applies to instruments executed and multiple-party accounts  
23       opened before the effective date of this section unless there is a  
24       clear indication of a contrary intent.

25       NEW SECTION.    **Sec. 19.**    Sections 7 through 18 of this act  
26       constitute a new chapter in Title 11 RCW.

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