

# FINAL BILL REPORT

## SHB 1051

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C 327 L 11  
Synopsis as Enacted

**Brief Description:** Amending trusts and estates statutes.

**Sponsors:** House Committee on Judiciary (originally sponsored by Representatives Pedersen, Rodne, Eddy, Goodman, Kelley and Moeller; by request of Washington State Bar Association).

**House Committee on Judiciary**  
**Senate Committee on Judiciary**

### **Background:**

Trusts are a means of transferring property. A trust is created by a trustor, who gives the trustor's property to a trustee. The trustee holds legal title to the property, but only manages the property for the benefit of other individuals specified by the trustor (beneficiaries). The beneficiaries hold equitable title to the property, meaning the beneficiaries enjoy the property, but do not have control over the trustee or how the trustee manages the legal title. Trusts may be made revocable or irrevocable by the trustor. Revocable living trusts are commonly used as an alternative to traditional wills as a way to pass property upon death.

Washington's laws of trusts and estates exist in both statute and common law. Washington statutes govern a range of trust issues, including the authority of trustees, trust administration, distribution of assets, liability issues, and the investment of trust funds. In 1999 the Trust and Estate Dispute Resolution Act was enacted, which updated and revised the laws on resolving trust disputes.

The National Conference of Commissioners on Uniform State Laws has proposed a Uniform Trust Code (UTC) for the purpose of providing a consistent and integrated framework of rules to deal with trusts. The Washington State Bar Association's Executive Committee of the Real Property, Probate and Trust Section appointed a task force to review the official version of the UTC and Washington's current trust laws. The task force recommended several amendments and additions to Washington's trust laws, including amending current sections and adopting new sections to change current law and adopting new sections to codify preexisting common law.

### **Summary:**

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Changes are made to many aspects of trust and estate law, and several areas of preexisting common law are codified.

#### Trust Situs.

The situs of a trust, or its location, is Washington if the trust instrument designates Washington as the situs and the trust has at least one connection to the state. A list of possible connections are set forth. If the trust instrument does not designate Washington as the situs, the trustee may register the trust in the state as long as the trust has a connection to the state. If there is no designation and the trustee does not register the trust, then the trust may qualify as a Washington trust in certain circumstances.

The transfer of the trust situs is permissible if the new jurisdiction has a connection to the trust. The trustee must provide beneficiaries with 60 days advance notice. If the beneficiaries do not object within that period, the trust situs may be transferred, and consent of the beneficiaries is no longer required.

#### Venue for Proceedings.

Venue for court proceedings is in the county where the beneficiary resides, where the trustee resides or has a place of business, or where the real property of the trust is located. If the trust was created by a will, then venue can be in the county where the will was administered. Venue may be changed by request within four months of a notice of court proceedings. Venue must be changed to the county with the strongest connection to the trust, rather than being determined by the location of the trust situs or of the county where the letters testamentary were granted to a personal representative of an estate subject to a will.

#### Trustee's Duty to Give Notice.

When a trust becomes irrevocable, the trustee must provide notice to all persons with an interest in the trust regarding the existence of the trust and their right to request information. The trustee must continue to keep all interested persons reasonably informed about the administration of the trust and the material facts necessary for them to protect their interests.

Electronic transmission, or e-mail, is added as an acceptable delivery method for all required notices.

#### Statute of Limitations.

A beneficiary's claims against a trustee for breach of trust must be commenced within three years from the date the beneficiary was sent a report that adequately disclosed the existence of a potential claim and informed the beneficiary of the time allowed for commencing a proceeding. The criteria for providing adequate disclosure are set forth. If the beneficiary did not receive adequate disclosure, then the proceeding must be commenced within three years from the earlier of: the discharge of the trustee; the termination of the beneficiary's interest in the trust; or the termination of the trust.

#### Certification of a Trust.

When a person other than a beneficiary requests information regarding the trust, the trustee may provide the person a certification of trust containing information in accordance with the provided list.

Termination of a Trust.

Before terminating a trust, a trustee may send notice to the beneficiaries of the proposed plan for termination and distribution of the remaining assets. After receiving notice of the plan, the beneficiary has 30 days to object to the distribution.

Virtual Representation.

Virtual representation refers to circumstances where an individual can be represented by a decision-making process without the ability to participate. Virtual representation is extended to apply to notice to fiduciaries where the fiduciary estate is the interested party.

Damages for Breach.

A trustee who commits a breach of trust is liable for the greater of the amount required to restore the value of the property or the profit the trustee made.

Correction of Mistakes.

The courts may change the terms of a trust to conform to the trustor's intent if it is proved by clear, cogent, and convincing evidence that a mistake of fact or law affected both the trustor's intent and the terms of the trust. The courts may also change the terms to conform to the trustor's intent if the parties to a binding nonjudicial agreement agree that there is clear, cogent, and convincing evidence to the same effect.

Noncharitable Trusts Without Beneficiaries.

Noncharitable trusts without ascertainable beneficiaries are enforceable as long as there is a valid purpose and the trust complies with the rule against perpetuities.

Revocable Living Trusts.

A new chapter is created in the code to supplement trust laws for revocable living trusts. The chapter codifies the common law related to amending or revoking revocable living trusts and the limitations of actions on the validity of a revocable living trust.

A beneficiary may commence judicial proceedings to contest the validity of a revocable living trust within the earlier of 24 months after the trustor's death or four months after receiving notice of the trust.

Codifying Areas of Common Law.

Several other areas of the common law on trusts and estates are codified and clarified, including the methods and requirements for creating a trust, trusts in other jurisdictions, the purposes of a trust, oral trusts, trustees' authority and duty of loyalty, the nonliability of third parties acting in good faith, and the cy pres doctrine.

**Votes on Final Passage:**

House	98	0	
Senate	48	0	(Senate amended)
House	96	0	(House concurred)

**Effective:** January 1, 2012