CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1062

Chapter 6, Laws of 1991

52nd Legislature
1991 Regular Session

TRUSTS--POWER OF FIDUCIARY TO DIVIDE

EFFECTIVE DATE: 7/28/91

Passed by the House February 27, 1991
Yea 93   Nays 0

JOE KING
Speaker of the
House of Representatives

Passed by the Senate March 27, 1991
Yea 48   Nays 0

JOEL PRITCHARD
President of the Senate

Certified April 8, 1991

ALAN THOMPSON
Chief Clerk

FILED
April 8, 1991 - 3:32 p.m.

BOOTH GARDNER
Governor of the State of Washington

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is SUBSTITUTE HOUSE BILL 1062 as passed by the House of Representatives and the Senate on the dates hereon set forth.

ALAN THOMPSON
Chief Clerk

Secretary of State
State of Washington
AN ACT Relating to power of fiduciaries to divide trusts; and
amending RCW 11.108.025 and 11.98.080.

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

Sec. 1. RCW 11.108.025 and 1990 c 179 s 2 are each amended to read as follows:

Unless a governing instrument directs to the contrary:
(1) The fiduciary shall have the power to make elections, in whole or in part, to qualify property for the marital deduction as qualified terminable interest property under section 2056(b)(7) of the internal revenue code or, if the surviving spouse is not a citizen of the United States, under section 2056A of the internal revenue code.
(2) The fiduciary making an election under section 2056(b)(7) or 2056A of the internal revenue code or making an allocation under section 2632 of the internal revenue code may benefit personally from...
the election or allocation, with no duty to reimburse any other person interested in the election or allocation. The fiduciary shall have no duty to make any equitable adjustment and shall have no duty to treat interested persons impartially in respect of the election or allocation.

(3) ((The fiduciary making an election under section 2056(b)(7) or 2056A of the internal revenue code shall have the power to divide the trust into two or more separate trusts, of equal or unequal value, provided that the division shall not prevent a separate trust for which the election is made from qualifying for the marital deduction under the internal revenue code and its regulations.)) The fiduciary of a trust, if an election is made under section 2056(b)(7) or 2056A of the internal revenue code, if an allocation is made under section 2632 of the internal revenue code, or if division of a trust is of benefit to the persons interested in the trust, may divide the trust into two or more separate trusts, of equal or unequal value, provided that the terms of the separate trusts which result are substantially identical to the terms of the trust before division, and provided further, in the case of a trust otherwise qualifying for the marital deduction under the internal revenue code and its regulations, that the division shall not prevent a separate trust for which the election is made from qualifying for the marital deduction.

Sec. 2. RCW 11.98.080 and 1985 c 30 s 51 are each amended to read as follows:

(1) Two or more trusts may be consolidated if:

(a) The trusts so provide; or

(b) Whether provided in the trusts or not, in accordance with subsection (2) of this section, if all interested persons consent as
provided in subsection (2)(b) of this section and the requirements of subsection (1)(d) of this section are satisfied; or

(c) Whether provided in the trusts or not, in accordance with subsection (3) of this section if the requirements of subsection (1)(d) of this section are satisfied;

(d) Consolidation under subsection (2) or (3) of this section is permitted only if:

(i) The dispositive provisions of each trust to be consolidated are substantially similar;

(ii) Consolidation is not inconsistent with the intent of the trustor with regard to any trust to be consolidated; and

(iii) Consolidation would facilitate administration of the trusts and would not materially impair the interests of the beneficiaries;

(e) Trusts may be consolidated whether created inter vivos or by will, by the same or different instruments, by the same or different trustors, whether the trustees are the same, and regardless of where the trusts were created or administered.

(2) The trustees of two or more trusts may consolidate the trusts on such terms and conditions as appropriate without court approval as provided in RCW 11.96.170.

(a) The trustee shall give written notice of proposed consolidation by personal service or by certified mail to the beneficiaries of every trust affected by the consolidation as provided in RCW 11.96.100 and 11.96.110 and to any trustee of such trusts who does not join in the notice. The notice shall: (i) State the name and mailing address of the trustee; (ii) include a copy of the governing instrument of each trust to be consolidated; (iii) include a statement of assets and liabilities of each trust to be consolidated, dated within ninety days of the notice; (iv) fully describe the terms and manner of consolidation; and (v) state the reasons supporting the requirements of
subsection (1)(d) of this section. The notice shall advise the
recipient of the right to petition for a judicial determination of the
proposed consolidation as provided in subsection (3) of this section.
The notice shall include a form on which consent or objection to the
proposed consolidation may be indicated.

(b) If the trustee receives written consent to the proposed
consolidation from all persons entitled to notice as provided in RCW
11.96.100 and 11.96.110, the trustee may consolidate the trusts as
provided in the notice. Any person dealing with the trustee of the
resulting consolidated trust is entitled to rely on the authority of
that trustee to act and is not obliged to inquire into the validity or
propriety of the consolidation under this section.

(3)(a) Any trustee, beneficiary, or special representative may
petition the superior court of the county in which the principal place
of administration of a trust is located for an order consolidating two
or more trusts under chapter 11.96 RCW. If nonjudicial consolidation
has been commenced pursuant to subsection (2) of this section, a
petition may be filed under this section unless the trustee has
received all necessary consents. The principal place of administration
of the trust is the trustee’s usual place of business where the records
pertaining to the trust are kept, or the trustee’s residence if the
trustee has no such place of business.

(b) At the conclusion of the hearing, if the court finds that the
requirements of subsection (1)(d) of this section have been satisfied,
it may direct consolidation of two or more trusts on such terms and
conditions as appropriate. The court in its discretion may provide for
payment from one or more of the trusts of reasonable fees and expenses
for any party to the proceeding.

(4) This section applies to all trusts whenever created.

(5) For powers of fiduciaries to divide trusts, see RCW 11.108.025.
Passed the House February 27, 1991.
Passed the Senate March 27, 1991.
Approved by the Governor April 8, 1991.
Filed in Office of Secretary of State April 8, 1991.