

CERTIFICATION OF ENROLLMENT  
**ENGROSSED SUBSTITUTE SENATE BILL 5052**

57th Legislature  
2001 Regular Session

Passed by the Senate February 16, 2001  
YEAS 43 NAYS 0

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**President of the Senate**

Passed by the House April 4, 2001  
YEAS 92 NAYS 0

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**Speaker of the  
House of Representatives**

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**Speaker of the  
House of Representatives**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5052** as passed by the Senate and the House of Representatives on the dates hereon set forth.

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**Secretary**

FILED

**Secretary of State  
State of Washington**

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**ENGROSSED SUBSTITUTE SENATE BILL 5052**

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Passed Legislature - 2001 Regular Session

**State of Washington**

**57th Legislature**

**2001 Regular Session**

**By** Senate Committee on Judiciary (originally sponsored by Senators Johnson and Constantine)

READ FIRST TIME 01/31/01.

1       AN ACT Relating to technical corrections to trust and estate  
2 dispute resolution; and amending RCW 11.96A.100, 11.96A.230,  
3 11.96A.250, 11.96A.300, and 11.96A.310.

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

5       **Sec. 1.** RCW 11.96A.100 and 1999 c 42 s 303 are each amended to  
6 read as follows:

7       Unless rules of court require or this title (~~((requires))~~) provides  
8 otherwise, or unless a court orders otherwise:

9       (1) A judicial proceeding under RCW 11.96A.090 is to be commenced  
10 by filing a petition with the court;

11       (2) A summons must be served in accordance with this chapter and,  
12 where not inconsistent with these rules, the procedural rules of court,  
13 however, if the proceeding is commenced as an action incidental to an  
14 existing judicial proceeding relating to the same trust or estate or  
15 nonprobate asset, notice must be provided by summons only with respect  
16 to those parties who were not already parties to the existing judicial  
17 proceedings;

18       (3) The summons need only contain the following language or  
19 substantially similar language:

1 SUPERIOR COURT OF WASHINGTON  
2 FOR (. . .) COUNTY

3 IN RE . . . . . )  
4 ) No. . . .  
5 ) Summons  
6 )

7 TO THE RESPONDENT OR OTHER INTERESTED PARTY: A petition has been filed  
8 in the superior court of Washington for (. . .) County. Petitioner's  
9 claim is stated in the petition, a copy of which is served upon you  
10 with this summons.

11 In order to defend against or to object to the petition, you must  
12 answer the petition by stating your defense or objections in writing,  
13 and by serving your answer upon the person signing this summons not  
14 later than five days before the date of the hearing on the petition.  
15 Your failure to answer within this time limit might result in a default  
16 judgment being entered against you without further notice. A default  
17 judgment grants the petitioner all that the petitioner seeks under the  
18 petition because you have not filed an answer.

19 If you wish to seek the advice of a lawyer, you should do so promptly  
20 so that your written answer, if any, may be served on time.

21 This summons is issued under RCW 11.96A.100(3).

22 (Signed) . . . . .

23 Print or Type Name

24 Dated: . . . . .

25 Telephone Number: . . . . .

26 (4) Subject to other applicable statutes and court rules, the clerk  
27 of each of the superior courts shall fix the time for any hearing on a  
28 matter on application by a party, and no order of the court shall be  
29 required to fix the time or to approve the form or content of the  
30 notice of a hearing;

31 (5) The answer to the petition and any counterclaims or cross-  
32 claims must be served on the parties or the parties' virtual  
33 representatives and filed with the court at least five days before the  
34 date of the hearing, and all replies to the counterclaims and cross-

1 claims must be served on the parties or the parties' virtual  
2 representatives and filed with the court at least two days before the  
3 date of the hearing;

4 (6) Proceedings under this chapter are subject to the mediation and  
5 arbitration provisions of this chapter. Except as specifically  
6 provided in RCW 11.96A.310, the provisions of chapter 7.06 RCW do not  
7 apply;

8 (7) Testimony of witnesses may be by affidavit;

9 (8) Unless requested otherwise by a party in a petition or answer,  
10 the initial hearing must be a hearing on the merits to resolve all  
11 issues of fact and all issues of law;

12 (9) Any party may move the court for an order relating to a  
13 procedural matter, including discovery, and for summary judgment, in  
14 the original petition, answer, response, or reply, or in a separate  
15 motion, or at any other time; and

16 (10) If the initial hearing is not a hearing on the merits or does  
17 not result in a resolution of all issues of fact and all issues of law,  
18 the court may enter any order it deems appropriate, which order may (a)  
19 resolve such issues as it deems proper, (b) determine the scope of  
20 discovery, and (c) set a schedule for further proceedings for the  
21 prompt resolution of the matter.

22 **Sec. 2.** RCW 11.96A.230 and 1999 c 42 s 403 are each amended to  
23 read as follows:

24 (1) ~~((If a special representative has not commenced a proceeding~~  
25 ~~for approval of the agreement under RCW 11.96A.240,))~~ Any party, or a  
26 party's legal representative, may file the written agreement or a  
27 memorandum summarizing the written agreement with the court having  
28 jurisdiction over the estate or trust. ((However,)) The agreement or  
29 a memorandum of its terms may ((not)) be filed within thirty days of  
30 the agreement's execution by all parties ((without)) only with the  
31 written consent of the special representative. ((The person filing the  
32 agreement or memorandum shall within five days of the filing mail or  
33 deliver a copy of the agreement and a notice of the filing to each  
34 party whose address is known. Proof of mailing or delivery of the  
35 notice must be filed with the court.)) The agreement or a memorandum  
36 of its terms may be filed after a special representative has commenced  
37 a proceeding under RCW 11.96A.240 only after the court has determined  
38 that the special representative has adequately represented and

1 protected the parties represented. Failure to complete any action  
2 authorized or required under this subsection does not cause the written  
3 agreement to be ineffective and the agreement is nonetheless binding  
4 and conclusive on all persons interested in the estate or trust.  
5 (~~Notice must be in substantially the following form.~~

6 ~~CAPTION~~-----~~NOTICE OF FILING OF~~  
7 ~~OF CASE~~-----~~AGREEMENT OR MEMORANDUM~~  
8 ~~OF AGREEMENT~~

9 Notice is hereby given that the attached document or a memorandum  
10 summarizing its provisions was filed by the undersigned in the above  
11 entitled court on . . . .

12 DATED: . . . . .

13 . . . . .  
14 (~~Party or party's legal representative~~))

15 (2) On filing the agreement or memorandum, the agreement will be  
16 deemed approved by the court and is equivalent to a final court order  
17 binding on all persons interested in the estate or trust.

18 (~~(3) If all parties or their virtual representatives waive the~~  
19 ~~notice required by this section, the agreement will be deemed approved~~  
20 ~~by the court and is equivalent to a final court order binding on all~~  
21 ~~persons interested in the estate or trust effective upon the date of~~  
22 ~~filing.~~))

23 **Sec. 3.** RCW 11.96A.250 and 1999 c 42 s 405 are each amended to  
24 read as follows:

25 (1)(a) The personal representative or trustee may petition the  
26 court having jurisdiction over the matter for the appointment of a  
27 special representative to represent a person who is interested in the  
28 estate or trust and: (i) Who is a minor; (ii) who is incompetent or  
29 disabled; (iii) who is yet unborn or unascertained; or (iv) whose  
30 identity or address is unknown. The petition may be heard by the court  
31 without notice.

32 (b) In appointing the special representative the court shall give  
33 due consideration and deference to any nomination(s) made in the  
34 petition, the special skills required in the representation, and the  
35 need for a representative who will act independently and prudently.  
36 The nomination of a person as special representative by the personal

1 representative or trustee and the person's willingness to serve as  
2 special representative are not grounds by themselves for finding a lack  
3 of independence, however, the court may consider any interests that the  
4 nominating fiduciary may have in the estate or trust in making the  
5 determination.

6 (c) The special representative may enter into a binding agreement  
7 on behalf of the person or beneficiary. The special representative may  
8 be appointed for more than one person or class of persons if the  
9 interests of such persons or class are not in conflict. The petition  
10 shall be verified. The petition and order appointing the special  
11 representative may be in the following form:

12 CAPTION PETITION FOR APPOINTMENT  
13 OF CASE OF SPECIAL REPRESENTATIVE  
14 UNDER RCW 11.96A.250

15 The undersigned petitioner petitions the court for the appointment  
16 of a special representative in accordance with RCW 11.96A.250 and shows  
17 the court as follows:

18 1. Petitioner. Petitioner . . . is the qualified and presently  
19 acting (personal representative) (trustee) of the above (estate)  
20 (trust) having been named (personal representative) (trustee) under  
21 (describe will and reference probate order or describe trust  
22 instrument).

23 2. Issue Concerning (Estate) (Trust) Administration. A question  
24 concerning administration of the (estate) (trust) has arisen as to  
25 (describe issue, for example: Related to interpretation, construction,  
26 administration, distribution). The issues are appropriate for  
27 determination under RCW 11.96A.250.

28 3. Beneficiaries. The beneficiaries of the (estate) (trust)  
29 include persons who are unborn, unknown, or unascertained persons, or  
30 who are under eighteen years of age.

31 4. Special Representative. The nominated special representative  
32 . . . is a lawyer licensed to practice before the courts of this state  
33 or an individual with special skill or training in the administration  
34 of estates or trusts. The nominated special representative does not  
35 have an interest in the affected estate or trust and is not related to  
36 any person interested in the estate or trust. The nominated special  
37 representative is willing to serve. The petitioner has no reason to  
38 believe that the nominated special representative will not act in an

1 independent and prudent manner and in the best interests of the  
2 represented parties. (It is recommended that the petitioner also  
3 include information specifying the particular skills of the nominated  
4 special representative that relate to the matter in issue.)

5 5. Resolution. Petitioner desires to achieve a resolution of the  
6 questions that have arisen concerning the (estate) (trust). Petitioner  
7 believes that proceeding in accordance with the procedures permitted  
8 under RCW 11.96A.210 through 11.96A.250 would be in the best interests  
9 of the (estate) (trust) and the beneficiaries.

10 ((5-)) 6. Request of Court. Petitioner requests that . . . , . . .  
11 an attorney licensed to practice in the State of Washington.

12 (OR)

13 . . . . an individual with special skill or training in the  
14 administration of estates or trusts  
15 be appointed special representative for those beneficiaries who are not  
16 yet adults, as well as for the unborn, unknown, and unascertained  
17 beneficiaries, as provided under RCW 11.96A.250.

18 DATED this . . . day of . . . . ., . . . . .

19 . . . . .  
20 (Petitioner or petitioner's  
21 legal representative)

22 VERIFICATION

23 I certify under penalty of perjury under the laws of the state of  
24 Washington that the foregoing is true and correct.

25 DATED . . . . ., 2000, at . . . . ., Washington.

26 . . . . .  
27 (Petitioner or other person  
28 having knowledge)

29 CAPTION ORDER FOR APPOINTMENT  
30 OF CASE OF SPECIAL REPRESENTATIVE

31 THIS MATTER having come on for hearing before this Court on  
32 Petition for Appointment of Special Representative filed herein, and it  
33 appearing that it would be in the best interests of the (estate)  
34 (trust) described in the Petition to appoint a special representative

1 to address the issues that have arisen concerning the (estate) (trust)  
2 and the Court finding that the facts stated in the Petition are true,  
3 now, therefore,

4 IT IS ORDERED that . . . is appointed under RCW 11.96A.250 as  
5 special representative for the (estate) (trust) beneficiaries who are  
6 not yet adult age, and for unborn, unknown, or unascertained  
7 beneficiaries to represent their respective interests in the (estate)  
8 (trust) as provided in RCW 11.96A.250. The special representative  
9 shall be discharged of responsibility with respect to the (estate)  
10 (trust) at such time as a written agreement is executed resolving the  
11 present issues, all as provided in that statute, or if an agreement is  
12 not reached within six months from entry of this Order, the special  
13 representative appointed under this Order shall be discharged of  
14 responsibility, subject to subsequent reappointment under RCW  
15 11.96A.250.

16 DONE IN OPEN COURT this . . . day of . . . . ., . . . . .

17 . . . . .

18 JUDGE/COURT COMMISSIONER

19 (2) Upon appointment by the court, the special representative shall  
20 file a certification made under penalty of perjury in accordance with  
21 RCW 9A.72.085 that he or she (a) is not interested in the estate or  
22 trust; (b) is not related to any person interested in the estate or  
23 trust; (c) is willing to serve; and (d) will act independently,  
24 prudently, and in the best interests of the represented parties.

25 (3) The special representative must be a lawyer licensed to  
26 practice before the courts of this state or an individual with special  
27 skill or training in the administration of estates or trusts. The  
28 special representative may not have an interest in the affected estate  
29 or trust, and may not be related to a person interested in the estate  
30 or trust. The special representative is entitled to reasonable  
31 compensation for services that must be paid from the principal of the  
32 estate or trust whose beneficiaries are represented.

33 ~~((+3))~~ (4) The special representative shall be discharged from any  
34 responsibility and shall have no further duties with respect to the  
35 estate or trust or with respect to any person interested in the estate  
36 or trust, on the earlier of: (a) The expiration of six months from the  
37 date the special representative was appointed unless the order  
38 appointing the special representative provides otherwise, or (b) the



1 execution of the written agreement by all parties or their virtual  
2 representatives. Any action against a special representative must be  
3 brought within the time limits provided by RCW 11.96A.070(3)(c)(i).

4 **Sec. 4.** RCW 11.96A.300 and 1999 c 42 s 505 are each amended to  
5 read as follows:

6 (1) Notice of mediation. A party may cause the matter to be  
7 subject to mediation by service of written notice of mediation on all  
8 parties or the parties' virtual representatives as follows:

9 (a) If no hearing has been set. If no hearing on the matter has  
10 been set, by serving notice in substantially the following form before  
11 any petition setting a hearing on the matter is filed with the court:

12 NOTICE OF MEDIATION UNDER RCW 11.96A.300

13 To: (Parties)

14 Notice is hereby given that the following matter shall be resolved by  
15 mediation under RCW 11.96A.300:

16 (State nature of matter)

17 This matter must be resolved using the mediation procedures of RCW  
18 11.96A.300 unless a petition objecting to mediation is filed with the  
19 superior court within twenty days of service of this notice. If a  
20 petition objecting to mediation is not filed within the twenty-day  
21 period, RCW 11.96A.300(4) requires you to furnish to all other parties  
22 or their virtual representatives a list of acceptable mediators within  
23 thirty days of your receipt of this notice.

24 (Optional: Our list of acceptable mediators is as follows:)

25 DATED: . . . . .

26 . . . . .

27 (Party or party's legal representative)

28 (b) If a hearing has been set. If a hearing on the matter has been  
29 set, by filing and serving notice in substantially the following form  
30 at least three days prior to the hearing that has been set on the  
31 matter:

32 NOTICE OF MEDIATION UNDER RCW 11.96A.300

33 To: (Parties)

1 Notice is hereby given that the following matter shall be resolved by  
2 mediation under RCW 11.96A.300:

3 (State nature of matter)

4 This matter must be resolved using the mediation procedures of RCW  
5 11.96A.300 unless the court determines at the hearing set for  
6 . . . o'clock on . . . . . , (identify place of already set hearing),  
7 that mediation shall not apply pursuant to RCW 11.96A.300(3). If the  
8 court determines that mediation shall not apply, the court may decide  
9 the matter at the hearing, require arbitration, or direct other  
10 judicial proceedings.

11 (Optional: Our list of acceptable mediators is as follows:)

12 DATED: . . . . .

13 . . . . .

14 (Party or party's legal representative)

15 (2) Procedure when notice of mediation served before a hearing is  
16 set. The following provisions apply when notice of mediation is served  
17 before a hearing on the matter is set:

18 (a) The written notice required in subsection (1)(a) of this  
19 section may be served at any time without leave of the court.

20 (b) Any party may object to a notice of mediation under subsection  
21 (1)(a) of this section by filing a petition with the superior court and  
22 serving the petition on all parties or the parties' virtual  
23 representatives. The party objecting to notice of mediation under  
24 subsection (1)(a) of this section must file and serve the petition  
25 objecting to mediation no later than twenty days after receipt of the  
26 written notice of mediation. The petition may include a request for  
27 determination of matters subject to judicial resolution under RCW  
28 11.96A.080 through 11.96A.200, and may also request that the matters in  
29 issue be decided at the hearing.

30 (c) The hearing on the petition objecting to mediation must be  
31 heard no later than twenty days after the filing of that petition.

32 (d) The party objecting to mediation must give notice of the  
33 hearing to all other parties at least ten days before the hearing and  
34 must include a copy of the petition.

35 At the hearing, the court shall order that mediation proceed except for  
36 good cause shown. Such order shall not be subject to appeal or

1 revision. If the court determines that the matter should not be  
2 subject to mediation, the court shall dispose of the matter by: (i)  
3 Deciding the matter at that hearing, but only if the petition objecting  
4 to mediation contains a request for that relief, (ii) requiring  
5 arbitration, or (iii) directing other judicial proceedings.

6 (3) Procedure when notice of mediation served after hearing set.  
7 If the written notice of mediation required in subsection (1)(b) of  
8 this section is timely filed and served by a party and another party  
9 objects to mediation, by petition or orally at the hearing, the court  
10 shall order that mediation proceed except for good cause shown. Such  
11 order shall not be subject to appeal or revision. If the court  
12 determines that the matter should not be subject to mediation, the  
13 court shall dispose of the matter by: (a) Deciding the matter at that  
14 hearing, (b) requiring arbitration, or (c) directing other judicial  
15 proceedings.

16 (4) Selection of mediator; mediator qualifications.

17 (a) If a petition objecting to mediation is not filed as provided  
18 in subsection (3) of this section, or if a court determines that  
19 mediation shall apply, each party shall, within thirty days of receipt  
20 of the initial notice or within twenty days after the court  
21 determination, whichever is later, furnish all other parties or the  
22 parties' virtual representatives a list of qualified and acceptable  
23 mediators. If the parties cannot agree on a mediator within ten days  
24 after the list is required to be furnished, a party may petition the  
25 court to appoint a mediator. All parties may submit a list of  
26 qualified and acceptable mediators to the court no later than the date  
27 on which the hearing on the petition is to be held. At the hearing the  
28 court shall select a qualified mediator from lists of acceptable  
29 mediators provided by the parties.

30 (b) A qualified mediator must be: (i) An attorney licensed to  
31 practice before the courts of this state having at least five years of  
32 experience in estate and trust matters, (ii) an individual, who may be  
33 an attorney, with special skill or training in the administration of  
34 trusts and estates, or (iii) an individual, who may be an attorney,  
35 with special skill or training as a mediator. The mediator may not  
36 have an interest in an affected estate, trust, or nonprobate asset, and  
37 may not be related to a party.

38 (5) Date for mediation. Upon designation of a mediator by the  
39 parties or court appointment of a mediator, the mediator and the

1 parties or the parties' virtual representatives shall establish a date  
2 for the mediation. If a date cannot be agreed upon within ten days of  
3 the designation or appointment of the mediator, a party may petition  
4 the court to set a date for the mediation session.

5 (6) Duration of mediation. The mediation must last at least three  
6 hours unless the matter is earlier resolved.

7 (7) Mediation agreement. A resolution of the matter that is the  
8 subject of the mediation must be evidenced by a nonjudicial dispute  
9 resolution agreement under RCW (~~11.96A.090~~) 11.96A.220.

10 (8) Costs of mediation. Costs of the mediation, including  
11 reasonable compensation for the mediator's services, shall be borne  
12 equally by the parties. The details of those costs and fees, including  
13 the compensation of the mediator, must be set forth in a mediation  
14 agreement between the mediator and all parties to the matter. Each  
15 party shall bear its own costs and expenses, including legal fees and  
16 witness expenses, in connection with the mediation proceeding: (a)  
17 Except as may occur otherwise as provided in RCW 11.96A.320, or (b)  
18 unless the matter is not resolved by mediation and the arbitrator or  
19 court finally resolving the matter directs otherwise.

20 **Sec. 5.** RCW 11.96A.310 and 1999 c 42 s 506 are each amended to  
21 read as follows:

22 (1) When arbitration available. Arbitration under RCW 11.96A.260  
23 through 11.96A.320 is available only if:

24 (a) A party has first petitioned for mediation under RCW 11.96A.300  
25 and such mediation has been concluded;

26 (b) The court has determined that mediation under RCW 11.96A.300 is  
27 not required and has not ordered that the matter be disposed of in some  
28 other manner;

29 (c) All of the parties or the parties' virtual representatives have  
30 agreed not to use the mediation procedures of RCW 11.96A.300; or

31 (d) The court has ordered that the matter must be submitted to  
32 arbitration.

33 (2) Commencement of arbitration. Arbitration must be commenced as  
34 follows:

35 (a) If the matter is not settled through mediation under RCW  
36 11.96A.300, or the court orders that mediation is not required, a party  
37 may commence arbitration by serving written notice of arbitration on  
38 all other parties or the parties' virtual representatives. The notice

1 must be served no later than twenty days after the later of the  
2 conclusion of the mediation procedure, if any, or twenty days after  
3 entry of the order providing that mediation is not required. If  
4 arbitration is ordered by the court under RCW 11.96A.300(3),  
5 arbitration must proceed in accordance with the order.

6 (b) If the parties or the parties' virtual representatives agree  
7 that mediation does not apply and have not agreed to another procedure  
8 for resolving the matter, a party may commence arbitration without  
9 leave of the court by serving written notice of arbitration on all  
10 other parties or the parties' virtual representatives at any time  
11 before or at the initial judicial hearing on the matter. After the  
12 initial judicial hearing on the matter, the written notice required in  
13 subsection (1) of this section may only be served with leave of the  
14 court.

15 Any notice required by this section must be in substantially the  
16 following form:

17 NOTICE OF ARBITRATION UNDER RCW 11.96A.310

18 To: (Parties)

19 Notice is hereby given that the following matter must be resolved by  
20 arbitration under RCW 11.96A.310:

21 (State nature of matter)

22 The matter must be resolved using the arbitration procedures of RCW  
23 11.96A.310 unless a petition objecting to arbitration is filed with the  
24 superior court within twenty days of receipt of this notice. If a  
25 petition objecting to arbitration is not filed within the twenty-day  
26 period, RCW 11.96A.310 requires you to furnish to all other parties or  
27 the parties' virtual representatives a list of acceptable (~~mediators~~)  
28 arbitrators within thirty days of your receipt of this notice.

29 (Optional: Our list of acceptable arbitrators is as follows:)

30 DATED: . . . . .

31 . . . . .  
32 (Party or party's legal representative)

33 (3) Objection to arbitration. A party may object to arbitration by  
34 filing a petition with the superior court and serving the petition on  
35 all parties or the parties' virtual representatives. The objection to

1 arbitration may be filed at any time unless a written notice of  
2 arbitration has been served, in which case the objection to arbitration  
3 must be filed and served no later than twenty days after receipt of the  
4 written notice of arbitration. The hearing on the objection to  
5 arbitration must be heard no later than twenty days after the filing of  
6 that petition. The party objecting to arbitration must give notice of  
7 the hearing to all parties at least ten days before the hearing and  
8 shall include a copy of the petition. At the hearing, the court shall  
9 order that arbitration proceed except for good cause shown. Such order  
10 shall not be subject to appeal or revision. If the court determines  
11 that the matter should not be subject to arbitration, the court shall  
12 dispose of the matter by: (a) Deciding the matter at that hearing, but  
13 only if the petition objecting to arbitration contains a request for  
14 such relief; or (b) directing other judicial proceedings.

15 (4) Selection of arbitrator; qualifications of arbitrator.

16 (a) If a petition objecting to arbitration is not filed as provided  
17 in subsection (3) of this section, or if a court determines that  
18 arbitration must apply, each party shall, within thirty days of receipt  
19 of the initial notice or within twenty days after the court  
20 determination, whichever is later, furnish all other parties or the  
21 parties' virtual representatives a list of acceptable arbitrators. If  
22 the parties cannot agree on an arbitrator within ten days after the  
23 list is required to be furnished, a party may petition the court to  
24 appoint an arbitrator. All parties may submit a list of qualified and  
25 acceptable arbitrators to the court no later than the date on which the  
26 hearing on the petition is to be held. At the hearing the court shall  
27 select a qualified arbitrator from lists of acceptable arbitrators  
28 provided by the parties.

29 (b) A qualified arbitrator must be an attorney licensed to practice  
30 before the courts of this state having at least five years of  
31 experience in trust or estate matters or five years of experience in  
32 litigation or other formal dispute resolution involving trusts or  
33 estates, or an individual, who may be an attorney, with special skill  
34 or training with respect to the matter. The arbitrator may be the same  
35 person selected and used as a mediator under the mediation procedures  
36 of RCW 11.96A.300.

37 (5) Arbitration rules. Arbitration must be under chapter 7.06 RCW,  
38 mandatory arbitration of civil actions, as follows:

1 (a) Chapter 7.06 RCW, the superior court mandatory arbitration  
2 rules adopted by the supreme court, and any local rules for mandatory  
3 arbitration adopted by the superior court apply to this title. If the  
4 superior court has not adopted chapter 7.06 RCW, then the local rules  
5 for mandatory arbitration applicable in King county apply, except all  
6 the duties of the director of arbitration must be performed by the  
7 presiding judge of the superior court.

8 (b) If a party has already filed a petition with the court with  
9 respect to the matter that will be the subject of the arbitration  
10 proceedings, then all other parties to the arbitration proceedings who  
11 have not yet filed a reply thereto must file a reply with the  
12 arbitrator within ten days of the date on which the arbitrator is  
13 selected or appointed.

14 (c) The arbitration provisions of this subsection apply to all  
15 matters in dispute. The dollar limits and restrictions to monetary  
16 damages of RCW 7.06.020 do not apply to arbitrations under this  
17 subsection. To the extent any provision in this title is inconsistent  
18 with chapter 7.06 RCW or the rules referenced in (a) of this  
19 subsection, the provisions of this title control.

20 (d) The compensation of the arbitrator must be set by written  
21 agreement between the parties and the arbitrator. The arbitrator must  
22 be compensated at the arbitrator's stated rate of compensation for  
23 acting as an arbitrator of disputes in trusts, estates, and nonprobate  
24 matters unless the parties or the parties' virtual representatives  
25 agree otherwise.

26 (e) Unless directed otherwise by the arbitrator in accord with  
27 subsection (6) of this section or RCW 11.96A.320, or unless the matter  
28 is not resolved by arbitration and the court finally resolving the  
29 matter directs otherwise:

30 (i) Costs of the arbitration, including compensation for the  
31 arbitrator's services, must be borne equally by the parties  
32 participating in the arbitration, with the details of those costs and  
33 fees to be set forth in an arbitration agreement between the arbitrator  
34 and all parties to the matter; and

35 (ii) A party shall bear its own costs and expenses, including legal  
36 fees and witness expenses, in connection with the arbitration  
37 proceeding.

38 (f) The arbitrator and the parties shall execute a written  
39 agreement setting forth the terms of the arbitration and the process to

1 be followed. This agreement must also contain the fee agreement  
2 provided in (d) of this subsection. A dispute as to this agreement  
3 must be resolved by the director of arbitration.

4 (g) The rules of evidence and discovery applicable to civil causes  
5 of action before the superior court as defined in RCW 11.96A.290 apply,  
6 unless the parties have agreed otherwise or the arbitrator rules  
7 otherwise.

8 (6) Costs of arbitration. The arbitrator may order costs,  
9 including reasonable attorneys' fees and expert witness fees, to be  
10 paid by any party to the proceedings as justice may require.

11 (7) Decision of arbitrator. The arbitrator shall issue a final  
12 decision in writing within thirty days of the conclusion of the final  
13 arbitration hearing. ~~((The final decision may be appealed by filing a  
14 notice of appeal with the superior court within thirty days of the  
15 issuance of the written decision in the arbitration proceeding. If an  
16 appeal is not filed as provided in this section, the arbitration  
17 decision is conclusive and binding on all parties.))~~ Promptly after  
18 the issuance of the decision, the arbitrator shall serve each of the  
19 parties to the proceedings with a copy of the written arbitration  
20 decision. Proof of service shall be filed with the court. Service  
21 shall be made in conformity with CR 5(b) of the rules for superior  
22 court.

23 (8) Arbitration decision may be filed with the court~~((; appeal))~~.  
24 The arbitrator or any party to the arbitration may file the  
25 arbitrator's decision with the clerk of the superior court~~((, together  
26 with proof of service thereof on the parties. Within twenty days after  
27 such filing, any aggrieved party may file with the clerk a written  
28 notice of appeal and request for a trial de novo in the superior court  
29 on all issues of law and fact. Such trial de novo shall thereupon be  
30 held, including a right to jury, if demanded.~~

31 If no appeal has been filed at the expiration of twenty days  
32 following filing of the arbitrator's decision and award, a judgment  
33 shall be entered and may be presented to the court by any party, on  
34 notice, which judgment when entered shall have the same force and  
35 effect as judgments in civil actions)) at any time after its issuance.  
36 Notice of such filing shall be promptly given to each party to the  
37 arbitration proceedings.

38 (9) Appeal. (a) The final decision of the arbitrator may be  
39 appealed by filing a notice of appeal with the superior court



1 requesting a trial de novo on all issues of law and fact. The notice  
2 of appeal must be filed within thirty days after the date on which the  
3 decision was served on the party filing the notice of appeal. A trial  
4 de novo shall then be held, including a right to jury, if demanded.

5 (b) If an appeal is not filed within the time provided in (a) of  
6 this subsection, the arbitration decision is conclusive and binding on  
7 all parties. If the arbitrator's decision has been filed with the  
8 clerk of the superior court, a judgment shall be entered and may be  
9 presented to the court by any party on ten days' prior notice. The  
10 judgment when entered shall have the same force and effect as judgments  
11 in civil actions.

12 (10) Costs on appeal of arbitration decision. The prevailing party  
13 in any such de novo superior court decision after an arbitration result  
14 must be awarded costs, including expert witness fees and attorneys'  
15 fees, in connection with the judicial resolution of the matter. Such  
16 costs shall be charged against the nonprevailing parties in such amount  
17 and in such manner as the court determines to be equitable. The  
18 provisions of this subsection take precedence over the provisions of  
19 RCW 11.96A.150 or any other similar provision.

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