

Chapter 11.07 RCW
NONPROBATE ASSETS ON DISSOLUTION OR INVALIDATION OF MARRIAGE

Sections

11.07.010 Nonprobate assets—Dissolution or invalidation of marriage or domestic partnership—Termination of domestic partnership.

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(1) This section applies to all nonprobate assets, wherever situated, held at the time of entry of a decree of dissolution of marriage or state registered domestic partnership or a declaration of invalidity or certification of termination of a state registered domestic partnership.

(2) (a) If a marriage or state registered domestic partnership is dissolved or invalidated, or a state registered domestic partnership terminated, a provision made prior to that event that relates to the payment or transfer at death of the decedent's interest in a nonprobate asset in favor of or granting an interest or power to the decedent's former spouse or state registered domestic partner, is revoked. A provision affected by this section must be interpreted, and the nonprobate asset affected passes, as if the former spouse or former state registered domestic partner, failed to survive the decedent, having died at the time of entry of the decree of dissolution or declaration of invalidity or termination of state registered domestic partnership.

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

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

(ii) The decree of dissolution, declaration of invalidity, or other court order requires that the decedent maintain a nonprobate asset for the benefit of a former spouse or former state registered domestic partner or children of the marriage or domestic partnership, payable on the decedent's death either outright or in trust, and other nonprobate assets of the decedent fulfilling such a requirement for the benefit of the former spouse or former state registered domestic partner or children of the marriage or domestic partnership do not exist at the decedent's death;

(iii) A court order requires that the decedent maintain a nonprobate asset for the benefit of another, payable on the decedent's death either outright or in a trust, and other nonprobate assets of the decedent fulfilling such a requirement do not exist at the decedent's death; or

(iv) If not for this subsection, the decedent could not have effected the revocation by unilateral action because of the terms of the decree, declaration, termination of state registered domestic partnership, or for any other reason, immediately after the entry of the decree of dissolution, declaration of invalidity, or termination of state registered domestic partnership.

(3) (a) A payor or other third party in possession or control of a nonprobate asset at the time of the decedent's death is not liable for making a payment or transferring an interest in a nonprobate asset to a decedent's former spouse or state registered domestic partner, whose interest in the nonprobate asset is revoked under this section, or for

taking another action in reliance on the validity of the instrument governing disposition of the nonprobate asset, before the payor or other third party has actual knowledge of the dissolution or other invalidation of marriage or termination of the state registered domestic partnership. A payor or other third party is liable for a payment or transfer made or other action taken after the payor or other third party has actual knowledge of a revocation under this section.

(b) This section does not require a payor or other third party to pay or transfer a nonprobate asset to a beneficiary designated in a governing instrument affected by the dissolution or other invalidation of marriage or termination of state registered domestic partnership, or to another person claiming an interest in the nonprobate asset, if the payor or third party has actual knowledge of the existence of a dispute between the former spouse or former state registered domestic partner, and the beneficiaries or other persons concerning rights of ownership of the nonprobate asset as a result of the application of this section among the former spouse or former state registered domestic partner, and the beneficiaries or among other persons, or if the payor or third party is otherwise uncertain as to who is entitled to the nonprobate asset under this section. In such a case, the payor or third party may, without liability, notify in writing all beneficiaries or other persons claiming an interest in the nonprobate asset of either the existence of the dispute or its uncertainty as to who is entitled to payment or transfer of the nonprobate asset. The payor or third party may also, without liability, refuse to pay or transfer a nonprobate asset in such a circumstance to a beneficiary or other person claiming an interest until the time that either:

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

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

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

(d) As used in this subsection, "actual knowledge" means, for a payor or other third party in possession or control of the nonprobate asset at or following the decedent's death, written notice to the payor or other third party, or to an officer of a payor or third party in the course of his or her employment, received after the decedent's death and within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge. The notice must identify the nonprobate asset with reasonable specificity. The notice also must be sufficient to inform the payor or other third party of the revocation of the provisions in favor of the decedent's spouse or state registered domestic partner, by reason of the dissolution or invalidation of marriage or termination of state

registered domestic partnership, or to inform the payor or third party of a dispute concerning rights to a nonprobate asset as a result of the application of this section. Receipt of the notice for a period of more than thirty days is presumed to be received within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge, but receipt of the notice for a period of less than five business days is presumed not to be a sufficient time for these purposes. These presumptions may be rebutted only by clear and convincing evidence to the contrary.

(4) (a) A person who purchases a nonprobate asset from a former spouse, former state registered domestic partner, or other person, for value and without actual knowledge, or who receives from a former spouse, former state registered domestic partner, or other person payment or transfer of a nonprobate asset without actual knowledge and in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, property, or benefit nor is liable under this section for the amount of the payment or the value of the nonprobate asset. However, a former spouse, former state registered domestic partner, or other person who, with actual knowledge, not for value, or not in satisfaction of a legally enforceable obligation, receives payment or transfer of a nonprobate asset to which that person is not entitled under this section is obligated to return the payment or nonprobate asset, or is personally liable for the amount of the payment or value of the nonprobate asset, to the person who is entitled to it under this section.

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

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

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

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

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

(iv) Transfer on death beneficiary designations of a transfer on death or pay on death security, or joint tenancy or joint tenancy with

right of survivorship designations of a security, if such designations are authorized under Washington law;

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

(vi) A transfer on death deed;

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

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

(b) For the general definition in this title of "nonprobate asset," see *RCW 11.02.005(10) and for the definition of "nonprobate asset" relating to testamentary disposition of nonprobate assets, see RCW 11.11.010(7). For the purposes of this chapter, a "bank account" includes an account into or from which cash deposits and withdrawals can be made, and includes demand deposit accounts, time deposit accounts, money market accounts, or certificates of deposit, maintained at a bank, savings and loan association, credit union, brokerage house, or similar financial institution.

(6) This section is remedial in nature and applies as of July 25, 1993, to decrees of dissolution and declarations of invalidity entered after July 24, 1993, and this section applies as of January 1, 1995, to decrees of dissolution and declarations of invalidity entered before July 25, 1993. [2014 c 58 s 19; 2008 c 6 s 906. Prior: 2007 c 475 s 2; 2007 c 156 s 13; 2002 c 18 s 1; 1998 c 292 s 118; 1997 c 252 s 2; 1994 c 221 s 2; 1993 c 236 s 1.]

***Reviser's note:** RCW 11.02.005 was amended by 2021 c 140 s 1012, changing subsection (10) to subsection (13), effective January 1, 2022.

Uniformity of application and construction—Relation to electronic signatures in global and national commerce act—2014 c 58: See RCW 64.80.903 and 64.80.904.

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Effective dates—1998 c 292: See RCW 11.11.903.

Application—1997 c 252 ss 1-73: See note following RCW 11.02.005.

Effective dates—1994 c 221: See note following RCW 11.100.035.