

2 SSB 6181 - CONF REPT
3 By Conference Committee

4 ADOPTED 3/12/98

5 Strike everything after the enacting clause and insert the
6 following:

7 **"PART I--TESTAMENTARY DISPOSITION OF NONPROBATE ASSETS**

8 NEW SECTION. **Sec. 101.** SHORT TITLE. This chapter may be known
9 and cited as the testamentary disposition of nonprobate assets act.

10 NEW SECTION. **Sec. 102.** PURPOSES. The purposes of this chapter
11 are to:

12 (1) Enhance and facilitate the power of testators to control the
13 disposition of assets that pass outside their wills;

14 (2) Provide simple procedures for resolution of disputes regarding
15 entitlement to such assets; and

16 (3) Protect any financial institution or other third party having
17 possession of or control over such an asset and transferring it to a
18 beneficiary duly designated by the testator, unless that third party
19 has been provided notice of a testamentary disposition as required in
20 this chapter.

21 NEW SECTION. **Sec. 103.** CONSTRUCTION--JURISDICTION. (1) When
22 construing sections and provisions of this chapter, the sections and
23 provisions must:

24 (a) Be liberally construed and applied to promote the purposes of
25 this chapter;

26 (b) Be considered part of a general act that is intended as unified
27 coverage of the subject matter, and no part of this chapter may be
28 deemed impliedly repealed by subsequent legislation if the construction
29 can be reasonably avoided;

30 (c) Not be held invalid because of the invalidity of other sections
31 or provisions of this chapter as long as the section or provision in
32 question can be given effect without regard to the invalid section or

1 provision, and to this end the sections or provisions of this chapter
2 are severable;

3 (d) Not be construed by reference to section or subsection headings
4 as used in this chapter, since these do not constitute any part of the
5 law;

6 (e) Not be deemed to alter the community or separate property
7 nature of any asset passing outside a testator's will or any
8 individual's community or separate rights to the asset, and a
9 testator's community or separate property rights to the asset are not
10 affected by whether it passes outside the will or, under this chapter,
11 by disposition under the will; and

12 (f) Not be construed as authorizing or extending the authority of
13 any financial institution or other third party to sell or otherwise
14 create assets that would pass outside a testator's will upon such terms
15 as would contravene any other applicable federal or state law.

16 (2) The sections and provisions of this chapter apply to an owner
17 who dies while a resident of this state on or after the effective date
18 of this section and to a nonprobate asset the disposition of which on
19 the death of the owner would otherwise be governed by the law of this
20 state.

21 NEW SECTION. **Sec. 104.** DEFINITIONS. The definitions in this
22 section apply throughout this chapter unless the context clearly
23 requires otherwise.

24 (1)(a) "Actual knowledge" means:

25 (i) For a financial institution, whether acting as personal
26 representative or otherwise, or other third party in possession or
27 control of a nonprobate asset, receipt of written notice that: (A)
28 Complies with section 109 of this act; (B) pertains to the testamentary
29 disposition or ownership of a nonprobate asset in its possession or
30 control; and (C) is received by the financial institution or third
31 party after the death of the owner in a time sufficient to afford the
32 financial institution or third party a reasonable opportunity to act
33 upon the knowledge; and

34 (ii) For a personal representative that is not a financial
35 institution, personal knowledge or possession of documents relating to
36 the testamentary disposition or ownership of a nonprobate asset of the
37 owner sufficient to afford the personal representative reasonable
38 opportunity to act upon the knowledge, including reasonable opportunity

1 for the personal representative to provide the written notice under
2 section 109 of this act.

3 (b) For the purposes of (a) of this subsection, notice of more than
4 thirty days is presumed to be notice that is sufficient to afford the
5 party a reasonable opportunity to act upon the knowledge, but notice of
6 less than five business days is presumed not to be a sufficient notice
7 for these purposes. These presumptions may be rebutted only by clear
8 and convincing evidence to the contrary.

9 (2) "Beneficiary" means the person designated to receive a
10 nonprobate asset upon the death of the owner by means other than the
11 owner's will.

12 (3) "Broker" means a person defined as a broker or dealer under the
13 federal securities laws.

14 (4) "Date of will" means, as to any nonprobate asset, the date of
15 signature of the will or codicil that refers to the asset and disposes
16 of it.

17 (5) "Designate" means a written means by which the owner selects a
18 beneficiary, including but not limited to instruments under contractual
19 arrangements and registration of accounts, and "designation" means the
20 selection.

21 (6) "Financial institution" means: A bank, trust company, mutual
22 savings bank, savings and loan association, credit union, broker, or
23 issuer of stock or its transfer agent.

24 (7)(a) "Nonprobate asset" means a nonprobate asset within the
25 meaning of RCW 11.02.005, but excluding the following:

26 (i) A right or interest in real property passing under a joint
27 tenancy with right of survivorship;

28 (ii) A deed or conveyance for which possession has been postponed
29 until the death of the owner;

30 (iii) A right or interest passing under a community property
31 agreement; and

32 (iv) An individual retirement account or bond.

33 (b) For the definition of "nonprobate asset" relating to revocation
34 of a provision for a former spouse upon dissolution of marriage or
35 declaration of invalidity of marriage, see RCW 11.07.010(5).

36 (8) "Owner" means a person who, during life, has beneficial
37 ownership of the nonprobate asset.

38 (9) "Request" means a request by the beneficiary for transfer of a
39 nonprobate asset after the death of the owner, if it complies with all

1 conditions of the arrangement, including reasonable special
2 requirements concerning necessary signatures and regulations of the
3 financial institution or other third party, or by the personal
4 representative of the owner's estate or the testamentary beneficiary,
5 if it complies with the owner's will and any additional conditions of
6 the financial institution or third party for such transfer.

7 (10) "Testamentary beneficiary" means a person named under the
8 owner's will to receive a nonprobate asset under this chapter,
9 including but not limited to the trustee of a testamentary trust.

10 (11) "Third party" means a person, including a financial
11 institution, having possession of or control over a nonprobate asset at
12 the death of the owner, including the trustee of a revocable living
13 trust and surviving joint tenant or tenants.

14 NEW SECTION. **Sec. 105.** DISPOSITION OF NONPROBATE ASSETS UNDER
15 WILL. (1) Subject to community property rights, upon the death of an
16 owner the owner's interest in any nonprobate asset specifically
17 referred to in the owner's will belongs to the testamentary beneficiary
18 named to receive the nonprobate asset, notwithstanding the rights of
19 any beneficiary designated before the date of the will.

20 (2) A general residuary gift in an owner's will, or a will making
21 general disposition of all of the owner's property, does not entitle
22 the devisees or legatees to receive nonprobate assets of the owner.

23 (3) A disposition in a will of the owner's interest in "all
24 nonprobate assets" or of all of a category of nonprobate asset under
25 section 104(7) of this act, such as "all of my payable on death bank
26 accounts" or similar language, is deemed to be a disposition of all the
27 nonprobate assets the beneficiaries of which are designated before the
28 date of the will.

29 (4) If the owner designates a beneficiary for a nonprobate asset
30 after the date of the will, the will does not govern the disposition of
31 that nonprobate asset. If the owner revokes the later beneficiary
32 designation, the prior will does not govern the disposition of the
33 nonprobate asset. A beneficiary designation with respect to an asset
34 that renews without the signature of the owner is deemed to have been
35 made on the date on which the account was first opened.

36 NEW SECTION. **Sec. 106.** WAIVER OF RIGHT TO DISPOSE OF A NONPROBATE
37 ASSET UNDER WILL. An owner may waive the right to dispose of a

1 specific nonprobate asset by will under this chapter, with or without
2 consideration, by a written instrument signed by the owner and
3 delivered to the financial institution or other third party, including
4 but not limited to signature cards or deposit agreements. The waiver
5 is revocable by written instrument delivered to the financial
6 institution or other third party unless the owner has stated that the
7 waiver is to be irrevocable.

8 NEW SECTION. **Sec. 107.** CONTROVERSIES BETWEEN BENEFICIARIES AND
9 TESTAMENTARY BENEFICIARIES. This chapter is intended to establish
10 ownership rights to nonprobate assets upon the death of the owner, as
11 between beneficiaries and testamentary beneficiaries. This chapter is
12 relevant only as to controversies between these persons, and has no
13 bearing on the right of a person to transfer a nonprobate asset under
14 its terms in the absence of a testamentary provision under this
15 chapter.

16 NEW SECTION. **Sec. 108.** RIGHT TO RELY ON FORM OF NONPROBATE
17 ASSET--DISCHARGE OF FINANCIAL INSTITUTION OR OTHER THIRD PARTY. In
18 transferring nonprobate assets, a financial institution or other third
19 party may rely conclusively and entirely upon the form of the
20 nonprobate asset and the terms of the nonprobate asset arrangement in
21 effect on the date of death of the owner, unless the financial
22 institution or other third party has actual knowledge of the existence
23 of a claim by a testamentary beneficiary. A financial institution or
24 other third party is not required to inquire as to either the source or
25 ownership of any nonprobate asset in its possession or under its
26 control, or as to the proposed application of an asset so transferred.
27 A transfer of a nonprobate asset in accordance with this section
28 constitutes a complete release and discharge of the financial
29 institution or other third party from all claims relating to the
30 nonprobate asset, regardless of whether or not the transfer is
31 consistent with the actual ownership of the nonprobate asset.

32 NEW SECTION. **Sec. 109.** NOTICE--FORM--LIMITATION ON LIABILITY FOR
33 FAILURE TO PROVIDE NOTICE. (1) Written notice under this chapter must
34 be served personally or by certified mail, return receipt requested and
35 postage prepaid, on the financial institution or other third party
36 having the nonprobate asset in its possession or control, on the

1 beneficiary, on the testamentary beneficiary, and on the personal
2 representative, and proof of the mailing or service must be made by
3 affidavit and filed under the cause number assigned to the owner's
4 estate. Notice to a financial institution must include notice
5 delivered as follows:

6 (a) If the nonprobate asset was maintained at a specific office of
7 the financial institution, notice must be delivered to the office at
8 which the nonprobate asset was maintained, which notice must be
9 directed to the manager of the office;

10 (b) If the nonprobate asset was held in a trust administered by a
11 financial institution, notice must be delivered to the office at which
12 the trust was administered, which notice must be directed to a named
13 officer responsible for the administration of the trust; and

14 (c) In all cases, notice must be delivered to any other location
15 and in any other manner specifically designated in a written agreement
16 signed by the owner and the financial institution, including but not
17 limited to a signature card or deposit agreement.

18 (2) Written notice to a financial institution or other third party
19 of the testamentary disposition of a nonprobate asset under this
20 chapter must be in a form substantially similar to the following:

21 NOTICE OF TESTAMENTARY
22 DISPOSITION OF NONPROBATE ASSET

23 The undersigned personal representative, petitioner for
24 appointment as personal representative, attorney for the
25 personal representative or petitioner, or testamentary
26 beneficiary under the will of the decedent named above (as that
27 term is defined in section 104 of this act) hereby notifies you
28 that the decedent named above died on (DATE MUST BE SUPPLIED)
29 and left a will dated (DATE OF WILL MUST BE SUPPLIED) disposing
30 of the following nonprobate asset or assets in your possession
31 or control:

32 (EACH SUCH ASSET MUST BE DESCRIBED WITH REASONABLE SPECIFICITY.
33 FOR ACCOUNTS AT FINANCIAL INSTITUTIONS, THE WRITTEN NOTICE MUST
34 SPECIFY THE OFFICE AT WHICH THE ACCOUNT WAS MAINTAINED, THE
35 NAME OR NAMES IN WHICH THE ACCOUNT WAS HELD, AND THE FULL
36 ACCOUNT NUMBER. FOR ASSETS HELD IN TRUST, THE WRITTEN NOTICE
37 MUST SPECIFY THE NAME OR NAMES OF THE GRANTOR, THE NAME OF THE
38 TRUST, IF ANY, AND THE DATE OF THE TRUST INSTRUMENT.)

1 Under chapter 11.-- RCW (sections 101 through 116 of this act),
2 you may not transfer, deliver, or otherwise dispose of the
3 asset or assets listed above in accordance with the beneficiary
4 designation, account registration, or other arrangement made
5 with you by the decedent. You may transfer, deliver, or
6 otherwise dispose of the asset or assets listed above only upon
7 receipt of the written direction of the personal representative
8 or of the testamentary beneficiary, if the personal
9 representative consents.

10
11
12 (CAPACITY OF SIGNER)

13 (3) The personal representative of the estate of the owner, a
14 petitioner for appointment as personal representative, or the
15 testamentary beneficiary may provide written notice under this section.
16 The personal representative has no duty to provide written notice under
17 this section and has no liability for failing or refusing to give the
18 notice.

19 (4) Written notice under this section may be provided at any time
20 after the death of the owner and before discharge of the personal
21 representative on closing of the estate, and may be provided before
22 admission to probate of the will.

23 NEW SECTION. **Sec. 110.** VESTING OF RIGHTS AND POWERS UNDER
24 CHAPTER. The right to provide notice under section 109 of this act and
25 the entitlement of the testamentary beneficiary to the nonprobate asset
26 vest immediately upon death of the owner. The power of the personal
27 representative to direct the financial institution or other third party
28 having the nonprobate asset in its possession or under its control to
29 transfer or otherwise dispose of the asset arises upon the later of
30 appointment of the personal representative or admission of the will to
31 probate.

32 NEW SECTION. **Sec. 111.** OWNERSHIP RIGHTS AS BETWEEN INDIVIDUALS
33 PRESERVED--TESTAMENTARY BENEFICIARY MAY RECOVER NONPROBATE ASSET FROM
34 BENEFICIARY--LIMITATION ON ACTION TO RECOVER. (1) The protection
35 accorded to financial institutions and other third parties under
36 section 108 of this act has no bearing on the actual rights of

1 ownership to nonprobate assets as between beneficiaries and
2 testamentary beneficiaries, and their heirs, successors, personal
3 representatives, and assigns.

4 (2) A testamentary beneficiary entitled to a nonprobate asset
5 otherwise transferred to a beneficiary not so entitled, and a personal
6 representative of the owner's estate on behalf of the testamentary
7 beneficiary, may petition the superior court having jurisdiction over
8 the owner's estate for an order declaring that the testamentary
9 beneficiary is so entitled, the hearing of the petition to be held in
10 accordance with chapter 11.96 RCW.

11 (3) A testamentary beneficiary claiming a nonprobate asset who has
12 not filed such a petition within the earlier of: (a) Six months from
13 the date of admission of the will to probate; and (b) one year from the
14 date of the owner's death, shall be forever barred from making such a
15 claim or commencing such an action.

16 NEW SECTION. **Sec. 112.** NONPROBATE ASSETS NOT PROPERTY OF ESTATE.

17 (1) Notwithstanding any provision of this chapter, a nonprobate asset
18 disposed of under the owner's will may not be treated as a part of the
19 owner's probate estate for any other purpose under this title, unless:

20 (a) The nonprobate asset is subject to liabilities and claims,
21 estate taxes, and expenses of administration under RCW 11.18.200; or

22 (b) Any section of this title directs otherwise, by specifically
23 referring to this section.

24 (2) Provision of notice under this chapter has no effect on the
25 administration of other assets of the estate of the owner. The
26 personal representative has no duty to administer upon a nonprobate
27 asset because of providing the notice, unless specifically required by
28 this chapter or under RCW 11.18.200.

29 (3) RCW 11.12.110, regarding death of a devisee or legatee before
30 the testator, does not apply to disposition of a nonprobate asset under
31 a will.

32 NEW SECTION. **Sec. 113.** TRANSFER OF NONPROBATE ASSET TO

33 TESTAMENTARY BENEFICIARY. (1) A financial institution's or third
34 party's obligation to transfer a nonprobate asset to a testamentary
35 beneficiary arises only after it has actual knowledge of the claim of
36 the testamentary beneficiary, and after receiving written direction
37 from the personal representative of the owner's estate, or if the

1 personal representative consents in writing, from the testamentary
2 beneficiary, to make the transfer. The financial institution may also
3 require that its customary procedures be followed in effectuating a
4 transfer of the nonprobate asset.

5 (2) Subject to subsection (1) of this section, financial
6 institutions and other third parties may transfer a nonprobate asset
7 that has not already been distributed to the testamentary beneficiary
8 entitled to the nonprobate asset under the owner's will, subject to
9 liabilities and claims, estate taxes, and expenses of administration
10 under RCW 11.18.200.

11 NEW SECTION. **Sec. 114.** AUTHORITY TO WITHHOLD TRANSFER. (1) This
12 chapter does not require any financial institution or other third party
13 to transfer a nonprobate asset to a beneficiary, testamentary
14 beneficiary, or other person claiming an interest in the nonprobate
15 asset if the financial institution or third party has actual knowledge
16 of the existence of a dispute between beneficiaries, testamentary
17 beneficiaries, or other persons concerning rights or ownership to the
18 nonprobate asset under this chapter, or if the financial institution or
19 third party is otherwise uncertain as to who is entitled to receive the
20 nonprobate asset under this chapter. In any such case, the financial
21 institution or third party may, without liability, notify in writing
22 all beneficiaries, testamentary beneficiaries, or other persons
23 claiming an interest in the nonprobate asset of either its uncertainty
24 as to who is entitled to transfer of the nonprobate asset or the
25 existence of any dispute, and it may also, without liability, refuse to
26 transfer a nonprobate asset to a beneficiary or a testamentary
27 beneficiary until such time as either:

28 (a) All the beneficiaries, testamentary beneficiaries, and other
29 interested persons have consented in writing to the transfer; or

30 (b) The transfer is authorized or directed by a court of proper
31 jurisdiction.

32 (2) The expense of obtaining the written consent or court
33 authorization or direction may, by order of the court, be paid by the
34 personal representative as an expense of administration.

35 NEW SECTION. **Sec. 115.** ADVERSE CLAIM BOND. Notwithstanding
36 section 114 of this act, a financial institution or other third party
37 having actual knowledge of the existence of a dispute between

1 beneficiaries, a testamentary beneficiary, or other persons concerning
2 rights to a nonprobate asset under this chapter may condition transfer
3 of the nonprobate asset on execution, in form and with security
4 acceptable to the financial institution or other third party, of a bond
5 in an amount that is double the fair market value of the nonprobate
6 asset on the date of the owner's death or the amount of any adverse
7 claim, whichever is the lesser, indemnifying the financial institution
8 or other third party from any and all liability, loss, damage, costs,
9 and expenses, for and on account of transfer of the nonprobate asset.

10 NEW SECTION. **Sec. 116.** APPLICATION OF CHAPTER. This chapter
11 applies to any will of an owner who dies while a resident of this state
12 on or after the effective date of this section, regardless of whether
13 the will was executed or republished before or after the effective date
14 of this section and regardless of whether the beneficiary of the
15 nonprobate asset was designated before or after the effective date of
16 this section.

17 **Sec. 117.** RCW 11.02.005 and 1997 c 252 s 1 are each amended to
18 read as follows:

19 When used in this title, unless otherwise required from the
20 context:

21 (1) "Personal representative" includes executor, administrator,
22 special administrator, and guardian or limited guardian and special
23 representative.

24 (2) "Net estate" refers to the real and personal property of a
25 decedent exclusive of homestead rights, exempt property, the family
26 allowance and enforceable claims against, and debts of, the deceased or
27 the estate.

28 (3) "Representation" refers to a method of determining distribution
29 in which the takers are in unequal degrees of kinship with respect to
30 the intestate, and is accomplished as follows: After first determining
31 who, of those entitled to share in the estate, are in the nearest
32 degree of kinship, the estate is divided into equal shares, the number
33 of shares being the sum of the number of persons who survive the
34 intestate who are in the nearest degree of kinship and the number of
35 persons in the same degree of kinship who died before the intestate but
36 who left issue surviving the intestate; each share of a deceased person
37 in the nearest degree shall be divided among those of the deceased

1 person's issue who survive the intestate and have no ancestor then
2 living who is in the line of relationship between them and the
3 intestate, those more remote in degree taking together the share which
4 their ancestor would have taken had he or she survived the intestate.
5 Posthumous children are considered as living at the death of their
6 parent.

7 (4) "Issue" includes all the lawful lineal descendants of the
8 ancestor and all lawfully adopted children.

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

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

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

20 (8) "Will" means an instrument validly executed as required by RCW
21 11.12.020.

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

25 (10) "Guardian" or "limited guardian" means a personal
26 representative of the person or estate of an incompetent or disabled
27 person as defined in RCW 11.88.010 and the term may be used in lieu of
28 "personal representative" wherever required by context.

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

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

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

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

4 (15) "Nonprobate asset" means those rights and interests of a
5 person having beneficial ownership of an asset that pass on the
6 person's death under a written instrument or arrangement other than the
7 person's will. "Nonprobate asset" includes, but is not limited to, a
8 right or interest passing under a joint tenancy with right of
9 survivorship, joint bank account with right of survivorship, payable on
10 death or trust bank account, transfer on death security or security
11 account, deed or conveyance if possession has been postponed until the
12 death of the person, trust of which the person is grantor and that
13 becomes effective or irrevocable only upon the person's death,
14 community property agreement, individual retirement account or bond, or
15 note or other contract the payment or performance of which is affected
16 by the death of the person. "Nonprobate asset" does not include: A
17 payable-on-death provision of a life insurance policy, annuity, or
18 other similar contract, or of an employee benefit plan; a right or
19 interest passing by descent and distribution under chapter 11.04 RCW;
20 a right or interest if, before death, the person has irrevocably
21 transferred the right or interest, the person has waived the power to
22 transfer it or, in the case of contractual arrangement, the person has
23 waived the unilateral right to rescind or modify the arrangement; or a
24 right or interest held by the person solely in a fiduciary capacity.
25 For the definition of "nonprobate asset" relating to revocation of a
26 provision for a former spouse upon dissolution of marriage or
27 declaration of invalidity of marriage, RCW 11.07.010(5) applies. For
28 the definition of "nonprobate asset" relating to revocation of a
29 provision for a former spouse upon dissolution of marriage or
30 declaration of invalidity of marriage, see RCW 11.07.010(5). For the
31 definition of "nonprobate asset" relating to testamentary disposition
32 of nonprobate assets, see section 104(7) of this act.

33 (16) "Internal Revenue Code" means the United States Internal
34 Revenue Code of 1986, as amended or renumbered on January 1, (~~1997~~)
35 1998.

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

38 Words importing the masculine gender only may be extended to
39 females also.

1 **Sec. 118.** RCW 11.07.010 and 1997 c 252 s 2 are each amended to
2 read as follows:

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

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

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

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

17 (ii) The decree of dissolution or declaration of invalidity
18 requires that the decedent maintain a nonprobate asset for the benefit
19 of a former spouse or children of the marriage, payable on the
20 decedent's death either outright or in trust, and other nonprobate
21 assets of the decedent fulfilling such a requirement for the benefit of
22 the former spouse or children of the marriage do not exist at the
23 decedent's death; or

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

28 (3)(a) A payor or other third party in possession or control of a
29 nonprobate asset at the time of the decedent's death is not liable for
30 making a payment or transferring an interest in a nonprobate asset to
31 a decedent's former spouse whose interest in the nonprobate asset is
32 revoked under this section, or for taking another action in reliance on
33 the validity of the instrument governing disposition of the nonprobate
34 asset, before the payor or other third party has actual knowledge of
35 the dissolution or other invalidation of marriage. A payor or other
36 third party is liable for a payment or transfer made or other action
37 taken after the payor or other third party has actual knowledge of a
38 revocation under this section.

1 (b) This section does not require a payor or other third party to
2 pay or transfer a nonprobate asset to a beneficiary designated in a
3 governing instrument affected by the dissolution or other invalidation
4 of marriage, or to another person claiming an interest in the
5 nonprobate asset, if the payor or third party has actual knowledge of
6 the existence of a dispute between the former spouse and the
7 beneficiaries or other persons concerning rights of ownership of the
8 nonprobate asset as a result of the application of this section among
9 the former spouse and the beneficiaries or among other persons, or if
10 the payor or third party is otherwise uncertain as to who is entitled
11 to the nonprobate asset under this section. In such a case, the payor
12 or third party may, without liability, notify in writing all
13 beneficiaries or other persons claiming an interest in the nonprobate
14 asset of either the existence of the dispute or its uncertainty as to
15 who is entitled to payment or transfer of the nonprobate asset. The
16 payor or third party may also, without liability, refuse to pay or
17 transfer a nonprobate asset in such a circumstance to a beneficiary or
18 other person claiming an interest until the time that either:

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

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

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

36 (d) As used in this subsection, "actual knowledge" means, for a
37 payor or other third party in possession or control of the nonprobate
38 asset at or following the decedent's death, written notice to the payor
39 or other third party, or to an officer of a payor or third party in the

1 course of his or her employment, received after the decedent's death
2 and within a time that is sufficient to afford the payor or third party
3 a reasonable opportunity to act upon the knowledge. The notice must
4 identify the nonprobate asset with reasonable specificity. The notice
5 also must be sufficient to inform the payor or other third party of the
6 revocation of the provisions in favor of the decedent's spouse by
7 reason of the dissolution or invalidation of marriage, or to inform the
8 payor or third party of a dispute concerning rights to a nonprobate
9 asset as a result of the application of this section. Receipt of the
10 notice for a period of more than thirty days is presumed to be received
11 within a time that is sufficient to afford the payor or third party a
12 reasonable opportunity to act upon the knowledge, but receipt of the
13 notice for a period of less than five business days is presumed not to
14 be a sufficient time for these purposes. These presumptions may be
15 rebutted only by clear and convincing evidence to the contrary.

16 (4)(a) A person who purchases a nonprobate asset from a former
17 spouse or other person, for value and without actual knowledge, or who
18 receives from a former spouse or other person payment or transfer of a
19 nonprobate asset without actual knowledge and in partial or full
20 satisfaction of a legally enforceable obligation, is neither obligated
21 under this section to return the payment, property, or benefit nor is
22 liable under this section for the amount of the payment or the value of
23 the nonprobate asset. However, a former spouse or other person who,
24 with actual knowledge, not for value, or not in satisfaction of a
25 legally enforceable obligation, receives payment or transfer of a
26 nonprobate asset to which that person is not entitled under this
27 section is obligated to return the payment or nonprobate asset, or is
28 personally liable for the amount of the payment or value of the
29 nonprobate asset, to the person who is entitled to it under this
30 section.

31 (b) As used in this subsection, "actual knowledge" means, for a
32 person described in (a) of this subsection who purchases or receives a
33 nonprobate asset from a former spouse or other person, personal
34 knowledge or possession of documents relating to the revocation upon
35 dissolution or invalidation of marriage of provisions relating to the
36 payment or transfer at the decedent's death of the nonprobate asset,
37 received within a time after the decedent's death and before the
38 purchase or receipt that is sufficient to afford the person purchasing
39 or receiving the nonprobate asset reasonable opportunity to act upon

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

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

12 (a) A payable-on-death provision of a life insurance policy,
13 employee benefit plan, annuity or similar contract, or individual
14 retirement account;

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

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

19 (d) Transfer on death beneficiary designations of a transfer on
20 death or pay on death security, if such designations are authorized
21 under Washington law.

22 (~~However, for the general definition of "nonprobate asset" in this~~
23 ~~title, RCW 11.02.005 applies.)) For the general definition in this
24 title of "nonprobate asset," see RCW 11.02.005(15) and for the
25 definition of "nonprobate asset" relating to testamentary disposition
26 of nonprobate assets, see section 104(7) of this act.~~

27 (6) This section is remedial in nature and applies as of July 25,
28 1993, to decrees of dissolution and declarations of invalidity entered
29 after July 24, 1993, and this section applies as of January 1, 1995, to
30 decrees of dissolution and declarations of invalidity entered before
31 July 25, 1993.

32 **PART II--PROBATE**

33 **Sec. 201.** RCW 11.54.070 and 1997 c 252 s 54 are each amended to
34 read as follows:

35 (1) Except as provided in (~~subsection~~) RCW 11.54.060(2) (~~of this~~
36 ~~section~~)), property awarded and cash paid under this chapter is immune

1 from all debts, including judgments and judgment liens, of the decedent
2 and of the surviving spouse existing at the time of death.

3 (2) Both the decedent's and the surviving spouse's interests in any
4 community property awarded to the spouse under this chapter are immune
5 from the claims of creditors.

6 **Sec. 202.** RCW 11.68.110 and 1997 c 252 s 68 are each amended to
7 read as follows:

8 (1) If a personal representative who has acquired nonintervention
9 powers does not apply to the court for either of the final decrees
10 provided for in RCW 11.68.100 as now or hereafter amended, the personal
11 representative shall, when the administration of the estate has been
12 completed, file a declaration that must state as follows:

13 (a) The date of the decedent's death and the decedent's residence
14 at the time of death;

15 (b) Whether or not the decedent died testate or intestate;

16 (c) If the decedent died testate, the date of the decedent's last
17 will and testament and the date of the order probating the will;

18 (d) That each creditor's claim which was justly due and properly
19 presented as required by law has been paid or otherwise disposed of by
20 agreement with the creditor, and that the amount of estate taxes due as
21 the result of the decedent's death has been determined, settled, and
22 paid;

23 (e) That the personal representative has completed the
24 administration of the decedent's estate without court intervention, and
25 the estate is ready to be closed;

26 (f) If the decedent died intestate, the names, addresses (if
27 known), and relationship of each heir of the decedent, together with
28 the distributive share of each heir; and

29 (g) The amount of fees paid or to be paid to each of the following:

30 (i) Personal representative or representatives; (ii) lawyer or lawyers;
31 (iii) appraiser or appraisers; and (iv) accountant or accountants; and
32 that the personal representative believes the fees to be reasonable and
33 does not intend to obtain court approval of the amount of the fees or
34 to submit an estate accounting to the court for approval.

35 (2) Subject to the requirement of notice as provided in this
36 section, unless an heir, devisee, or legatee of a decedent petitions
37 the court either for an order requiring the personal representative to
38 obtain court approval of the amount of fees paid or to be paid to the

1 personal representative, lawyers, appraisers, or accountants, or for an
2 order requiring an accounting, or both, within thirty days from the
3 date of filing a declaration of completion of probate, the personal
4 representative will be automatically discharged without further order
5 of the court and the representative's powers will cease thirty days
6 after the filing of the declaration of completion of probate, and the
7 declaration of completion of probate shall, at that time, be the
8 equivalent of the entry of a decree of distribution in accordance with
9 chapter 11.76 RCW for all legal intents and purposes.

10 (3) Within five days of the date of the filing of the declaration
11 of completion, the personal representative or the personal
12 representative's lawyer shall mail a copy of the declaration of
13 completion to each heir, legatee, or devisee of the decedent, who: (a)
14 Has not waived notice of the filing, in writing, filed in the cause((~~7~~
15 ~~or who, not having waived notice,~~)); and (b) either has not received
16 the full amount of the distribution to which the heir, legatee, or
17 devisee is entitled or has a property right that might be affected
18 adversely by the discharge of the personal representative under this
19 section, together with a notice which shall be substantially as
20 follows:

21	CAPTION	NOTICE OF FILING OF
22	OF	DECLARATION OF COMPLETION
23	CASE	OF PROBATE

24 NOTICE IS GIVEN that the attached Declaration of Completion of
25 Probate was filed by the undersigned in the above-entitled court on the
26 day of, 19. . . ; unless you shall file a petition
27 in the above-entitled court requesting the court to approve the
28 reasonableness of the fees, or for an accounting, or both, and serve a
29 copy thereof upon the personal representative or the personal
30 representative's lawyer, within thirty days after the date of the
31 filing, the amount of fees paid or to be paid will be deemed
32 reasonable, the acts of the personal representative will be deemed
33 approved, the personal representative will be automatically discharged
34 without further order of the court, and the Declaration of Completion
35 of Probate will be final and deemed the equivalent of a Decree of
36 Distribution entered under chapter 11.76 RCW.

37 If you file and serve a petition within the period specified, the
38 undersigned will request the court to fix a time and place for the

1 hearing of your petition, and you will be notified of the time and
2 place thereof, by mail, or personal service, not less than ten days
3 before the hearing on the petition.

4 Dated this day of, 19. . .

5

6 Personal Representative

7 (4) If all heirs, devisees, and legatees of the decedent entitled
8 to notice under this section waive, in writing, the notice required by
9 this section, the personal representative will be automatically
10 discharged without further order of the court and the declaration of
11 completion of probate will become effective as a decree of distribution
12 upon the date of filing thereof. In those instances where the personal
13 representative has been required to furnish bond, and a declaration of
14 completion is filed pursuant to this section, any bond furnished by the
15 personal representative shall be automatically discharged upon the
16 discharge of the personal representative.

17 **Sec. 203.** RCW 11.68.114 and 1997 c 252 s 70 are each amended to
18 read as follows:

19 (1) The personal representative retains the powers to: Deal with
20 the taxing authority of any federal, state, or local government; hold
21 a reserve in an amount not to exceed three thousand dollars, for the
22 determination and payment of any additional taxes, interest, and
23 penalties, and of all reasonable expenses related directly or
24 indirectly to such determination or payment; pay from the reserve the
25 reasonable expenses, including compensation for services rendered or
26 goods provided by the personal representative or by the personal
27 representative's employees, independent contractors, and other agents,
28 in addition to any taxes, interest, or penalties assessed by a taxing
29 authority; receive and hold any credit, including interest, from any
30 taxing authority; and distribute the residue of the reserve to the
31 intended beneficiaries of the reserve; if:

32 (a) In lieu of the statement set forth in RCW 11.68.110(1)(e), the
33 declaration of completion of probate states that:

34 The personal representative has completed the
35 administration of the decedent's estate without court
36 intervention, and the estate is ready to be closed, except for

1 the determination of taxes and of interest and penalties
2 thereon as permitted under this section;

3 and

4 (b) The notice of the filing of declaration of completion of
5 probate must be in substantially the following form:

6 CAPTION NOTICE OF FILING OF
7 OF DECLARATION OF COMPLETION
8 CASE OF PROBATE

9 NOTICE IS GIVEN that the attached Declaration of
10 Completion of Probate was filed by the undersigned in the
11 above-entitled court on the . . . day of , ;
12 unless you file a petition in the above-entitled court
13 requesting the court to approve the reasonableness of the fees,
14 or for an accounting, or both, and serve a copy thereof upon
15 the personal representative or the personal representative's
16 lawyer, within thirty days after the date of the filing:

17 (i) The schedule of fees set forth in the Declaration of
18 Completion of Probate will be deemed reasonable;

19 (ii) The Declaration of Completion of Probate will be
20 final and deemed the equivalent of a Decree of Distribution
21 entered under chapter 11.76 RCW;

22 (iii) The acts that the personal representative
23 performed before the Declaration of Completion of Probate was
24 filed will be deemed approved, and the personal representative
25 will be automatically discharged without further order of the
26 court with respect to all such acts; and

27 (iv) The personal representative will retain the power
28 to deal with the taxing authorities, together with \$. . . . for
29 the determination and payment of all remaining tax obligations.
30 Only that portion of the reserve that remains after the
31 settlement of any tax liability, and the payment of any
32 expenses associated with such settlement, will be distributed
33 to the persons legally entitled to the reserve.

34 (2) If the requirements in subsection (1) of this section are met,
35 the personal representative is discharged from all claims other than
36 those relating to the settlement of any tax obligations and the actual
37 distribution of the reserve, at the effective date of the declaration

1 of completion. The personal representative is discharged from
2 liability from the settlement of any tax obligations and the
3 distribution of the reserve, and the personal representative's powers
4 cease, thirty days after the personal representative(~~(+~~
5 ~~(a))~~) has mailed to those persons who would have shared in the
6 distribution of the reserve had the reserve remained intact(~~(+)~~) and
7 ~~((b))~~) has filed with the court copies of checks or receipts
8 showing how the reserve was in fact distributed, unless a person with
9 an interest in the reserve petitions the court earlier within the
10 thirty-day period for an order requiring an accounting of the reserve
11 or an order determining the reasonableness, or lack of reasonableness,
12 of distributions made from the reserve. If the personal representative
13 has been required to furnish a bond, any bond furnished by the personal
14 representative is automatically discharged upon the final discharge of
15 the personal representative.

16 **Sec. 204.** 1997 c 252 s 87 (uncodified) is amended to read as
17 follows:

18 The following acts or parts of acts are each repealed, effective
19 December 31, 1997, for estates of decedents dying after December 31,
20 1997:

- 21 (1) RCW 11.40.011 and 1989 c 333 s 2, 1983 c 201 s 1, & 1967 ex.s.
22 c 106 s 3;
- 23 (2) RCW 11.40.012 and 1989 c 333 s 3;
- 24 (3) RCW 11.40.013 and 1994 c 221 s 26 & 1989 c 333 s 4;
- 25 (4) RCW 11.40.014 and 1989 c 333 s 5;
- 26 (5) RCW 11.40.015 and 1994 c 221 s 27 & 1989 c 333 s 6;
- 27 (6) RCW 11.42.160 and 1994 c 221 s 46;
- 28 (7) RCW 11.42.170 and 1994 c 221 s 47;
- 29 (8) RCW 11.42.180 and 1994 c 221 s 48;
- 30 (9) RCW 11.44.066 and 1990 c 180 s 1 & 1974 ex.s. c 117 s 49;
- 31 (10) RCW 11.52.010 and 1987 c 442 s 1116, 1984 c 260 s 17, 1974
32 ex.s. c 117 s 7, 1971 ex.s. c 12 s 2, 1967 c 168 s 12, & 1965 c 145 s
33 11.52.010;
- 34 (11) RCW 11.52.012 and 1985 c 194 s 1, 1984 c 260 s 18, 1977 ex.s.
35 c 234 s 9, 1974 ex.s. c 117 s 8, & 1965 c 145 s 11.52.012;
- 36 (12) RCW 11.52.014 and 1965 c 145 s 11.52.014;
- 37 (13) RCW 11.52.016 and 1988 c 202 s 18, 1972 ex.s. c 80 s 1, & 1965
38 c 145 s 11.52.016;

1 (14) RCW 11.52.020 and 1985 c 194 s 2, 1984 c 260 s 19, 1974 ex.s.
2 c 117 s 9, 1971 ex.s. c 12 s 3, 1967 c 168 s 13, & 1965 c 145 s
3 11.52.020;

4 (15) RCW 11.52.022 and 1985 c 194 s 3, 1984 c 260 s 20, 1977 ex.s.
5 c 234 s 10, 1974 ex.s. c 117 s 10, 1971 ex.s. c 12 s 4, & 1965 c 145 s
6 11.52.022;

7 (16) RCW 11.52.024 and 1972 ex.s. c 80 s 2 & 1965 c 145 s
8 11.52.024;

9 (17) RCW 11.52.030 and 1965 c 145 s 11.52.030;

10 (18) RCW 11.52.040 and 1965 c 145 s 11.52.040;

11 (19) RCW 11.52.050 and 1967 c 168 s 14;

12 (20) RCW 11.68.010 and 1994 c 221 s 50, 1977 ex.s. c 234 s 18, 1974
13 ex.s. c 117 s 13, 1969 c 19 s 1, & 1965 c 145 s 11.68.010;

14 (21) RCW 11.68.020 and 1974 ex.s. c 117 s 14 & 1965 c 145 s
15 11.68.020;

16 (22) RCW 11.68.030 and 1977 ex.s. c 234 s 19, 1974 ex.s. c 117 s
17 15, & 1965 c 145 s 11.68.030; and

18 (23) RCW 11.68.040 and 1977 ex.s. c 234 s 20, 1974 ex.s. c 117 s
19 16, & 1965 c 145 s 11.68.040.

20 **Sec. 205.** 1997 c 252 s 89 (uncodified) is amended to read as
21 follows:

22 Sections 1 through (~~(73 of this act)~~) 72, chapter 252, Laws of 1997
23 apply to estates of decedents dying after December 31, 1997. Sections
24 81 through 86, chapter 252, Laws of 1997 apply to all estates, trusts,
25 and governing instruments in existence on or at any time after March 7,
26 1984, and to all proceedings with respect thereto after March 7, 1984,
27 whether the proceedings commenced before or after March 7, 1984, and
28 including distributions made after March 7, 1984. Sections 81 through
29 86, chapter 252, Laws of 1997 do not apply to any governing instrument,
30 the terms of which expressly or by necessary implication make the
31 application of sections 81 through 86, chapter 252, Laws of 1997
32 inapplicable. The judicial and nonjudicial dispute resolution
33 procedures of chapter 11.96 RCW apply to sections 81 through 86,
34 chapter 252, Laws of 1997.

35 **PART III--UNIFORM TRANSFERS TO MINORS ACT**

1 **Sec. 301.** RCW 11.114.030 and 1991 c 193 s 3 are each amended to
2 read as follows:

3 (1) A person having the right to designate the recipient of
4 property transferable upon the occurrence of a future event may
5 revocably nominate a custodian to receive the property for a minor
6 beneficiary upon the occurrence of the event by naming the custodian
7 followed in substance by the words: ". as custodian for
8 (name of minor) under the Washington uniform transfers to
9 minors act." The nomination may name one or more persons as substitute
10 custodians to whom the property shall be transferred, in the order
11 named, if the first nominated custodian dies before the transfer or is
12 unable, declines, or is ineligible to serve. The nomination may be
13 made in a will, a trust, a deed, an instrument exercising a power of
14 appointment, or in a writing designating a beneficiary of contractual
15 rights which is registered with or delivered to the payor, issuer, or
16 other obligor of the contractual rights.

17 As an alternative to naming a specific person as custodian, the
18 nomination may provide that the custodian may be designated by the
19 legal representative of, or other person specified by, the person
20 having the right to designate the recipient of the property described
21 in this subsection. The person having the right of designation of the
22 custodian is authorized to designate himself or herself as custodian,
23 if he or she falls within the class of persons eligible to serve as
24 custodian under RCW 11.114.090(1).

25 (2) A custodian nominated under this section shall be a person to
26 whom a transfer of property of that kind may be made under RCW
27 11.114.090(1).

28 (3) Instead of designating one specific minor, the designation may
29 specify multiple persons or a class or classes of persons, but when the
30 custodial property is actually created under subsection (4) of this
31 section, it must be constituted as a separate custodianship for each
32 beneficiary, and each beneficiary's interest in it must be determined
33 in accordance with the governing instrument and applicable law.

34 (4) The nomination of a custodian under this section does not
35 create custodial property until the nominating instrument becomes
36 irrevocable or a transfer to the nominated custodian is completed under
37 RCW 11.114.090. Unless the nomination of a custodian has been revoked,
38 upon the occurrence of the future event the custodianship becomes

1 effective and the custodian shall enforce a transfer of the custodial
2 property pursuant to RCW 11.114.090.

3 **PART IV--INTERNAL REVENUE CODE REFERENCES**

4 **Sec. 401.** RCW 83.100.020 and 1994 c 221 s 70 are each amended to
5 read as follows:

6 As used in this chapter:

7 (1) "Decedent" means a deceased individual;

8 (2) "Department" means the department of revenue, the director of
9 that department, or any employee of the department exercising authority
10 lawfully delegated to him by the director;

11 (3) "Federal credit" means (a) for a transfer, the maximum amount
12 of the credit for state taxes allowed by section 2011 of the Internal
13 Revenue Code; and (b) for a generation-skipping transfer, the maximum
14 amount of the credit for state taxes allowed by section 2604 of the
15 Internal Revenue Code;

16 (4) "Federal return" means any tax return required by chapter 11 or
17 13 of the Internal Revenue Code;

18 (5) "Federal tax" means (a) for a transfer, a tax under chapter 11
19 of the Internal Revenue Code; and (b) for a generation-skipping
20 transfer, the tax under chapter 13 of the Internal Revenue Code;

21 (6) "Generation-skipping transfer" means a "generation-skipping
22 transfer" as defined and used in section 2611 of the Internal Revenue
23 Code;

24 (7) "Gross estate" means "gross estate" as defined and used in
25 section 2031 of the Internal Revenue Code;

26 (8) "Nonresident" means a decedent who was domiciled outside
27 Washington at his death;

28 (9) "Person" means any individual, estate, trust, receiver,
29 cooperative association, club, corporation, company, firm, partnership,
30 joint venture, syndicate, or other entity and, to the extent permitted
31 by law, any federal, state, or other governmental unit or subdivision
32 or agency, department, or instrumentality thereof;

33 (10) "Person required to file the federal return" means any person
34 required to file a return required by chapter 11 or 13 of the Internal
35 Revenue Code, such as the personal representative of an estate; or a
36 transferor, trustee, or beneficiary of a generation-skipping transfer;

1 or a qualified heir with respect to qualified real property, as defined
2 and used in section 2032A(c) of the Internal Revenue Code;

3 (11) "Property" means (a) for a transfer, property included in the
4 gross estate; and (b) for a generation-skipping transfer, all real and
5 personal property subject to the federal tax;

6 (12) "Resident" means a decedent who was domiciled in Washington at
7 time of death;

8 (13) "Transfer" means "transfer" as used in section 2001 of the
9 Internal Revenue Code, or a disposition or cessation of qualified use
10 as defined and used in section 2032A(c) of the Internal Revenue Code;

11 (14) "Trust" means "trust" under Washington law and any arrangement
12 described in section 2652 of the Internal Revenue Code; and

13 (15) "Internal Revenue Code" means, for the purposes of this
14 chapter and RCW 83.110.010, the United States Internal Revenue Code of
15 1986, as amended or renumbered on January 1, (~~1995~~) 1998.

16 **Sec. 402.** RCW 83.110.010 and 1994 c 221 s 71 are each amended to
17 read as follows:

18 As used in this chapter, the following terms have the meanings
19 indicated unless the context clearly requires otherwise.

20 (1) "Estate" means the gross estate of a decedent as determined for
21 the purpose of federal estate tax and the estate tax payable to this
22 state;

23 (2) "Excise tax" means the federal excise tax imposed by section
24 4980A(d) of the Internal Revenue Code, and interest and penalties
25 imposed in addition to the excise tax;

26 (3) "Fiduciary" means executor, administrator of any description,
27 and trustee;

28 (4) "Internal Revenue Code" means the United States Internal
29 Revenue Code of 1986, as (~~amended or renumbered on January 1, 1995~~)
30 defined in and as of the date specified in RCW 83.100.020;

31 (5) "Person" means any individual, partnership, association, joint
32 stock company, corporation, government, political subdivision,
33 governmental agency, or local governmental agency;

34 (6) "Persons interested in retirement distributions" means any
35 person determined as of the date the excise tax is due, including a
36 personal representative, guardian, trustee, or beneficiary, entitled to
37 receive, or who has received, by reason of or following the death of a
38 decedent, any property or interest therein which constitutes a

1 retirement distribution as defined in section 4980A(e) of the Internal
2 Revenue Code, but this definition excludes any alternate payee under a
3 qualified domestic relations order as such terms are defined in section
4 414(p) of the Internal Revenue Code;

5 (7) "Person interested in the estate" means any person, including
6 a personal representative, guardian, or trustee, entitled to receive,
7 or who has received, from a decedent while alive or by reason of the
8 death of a decedent any property or interest therein included in the
9 decedent's taxable estate;

10 (8) "Qualified heir" means a person interested in the estate who is
11 entitled to receive, or who has received, an interest in qualified real
12 property;

13 (9) "Qualified real property" means real property for which the
14 election described in section 2032A of the Internal Revenue Code has
15 been made;

16 (10) "State" means any state, territory, or possession of the
17 United States, the District of Columbia, or the Commonwealth of Puerto
18 Rico; and

19 (11) "Tax" means the federal estate tax, the excise tax defined in
20 subsection (2) of this section, and the estate tax payable to this
21 state and interest and penalties imposed in addition to the tax.

22

PART V--SLAYER'S STATUTE

23 NEW SECTION. **Sec. 501.** A new section is added to chapter 41.04
24 RCW to read as follows:

25 (1) For purposes of this section, the following definitions shall
26 apply:

27 (a) "Slayer" means a slayer as defined in RCW 11.84.010.

28 (b) "Decedent" means any person whose life is taken by a slayer,
29 and who is entitled to benefits from the Washington state department of
30 retirement systems by written designation or by operation of law.

31 (2) Property that would have passed to or for the benefit of a
32 beneficiary under one of the retirement systems listed in RCW 41.50.030
33 shall not pass to that beneficiary if the beneficiary was a slayer of
34 the decedent and the property shall be distributed as if the slayer had
35 predeceased the decedent.

36 (3) A slayer is deemed to have predeceased the decedent as to
37 property which, by designation or by operation of law, would have

1 passed from the decedent to the slayer because of the decedent's
2 entitlement to benefits under one of the retirement systems listed in
3 RCW 41.50.030.

4 (4)(a) The department of retirement systems has no affirmative duty
5 to determine whether a beneficiary is, or is alleged to be, a slayer.
6 However, upon receipt of written notice that a beneficiary is a
7 defendant in a civil lawsuit that alleges the beneficiary is a slayer
8 or is charged with a crime that, if committed, means the beneficiary is
9 a slayer, the department of retirement systems shall determine whether
10 the beneficiary is a defendant in such a civil suit or has been
11 formally charged in court with the crime, or both. If so, the
12 department shall withhold payment of any benefits until:

13 (i) The case or charges, or both if both are pending, are
14 dismissed;

15 (ii) The beneficiary is found not guilty in the criminal case or
16 prevails in the civil suit, or both if both are pending; or

17 (iii) The beneficiary is convicted or is found to be a slayer in
18 the civil suit.

19 (b) If the case or charges, or both if both are pending, are
20 dismissed or if a beneficiary is found not guilty or prevails in the
21 civil suit, or both if both are pending, the department shall pay the
22 beneficiary the benefits the beneficiary is entitled to receive. If
23 the beneficiary is convicted or found to be a slayer in a civil suit,
24 the department shall distribute the benefits according to subsection
25 (2) of this section.

26 (5) The slayer's conviction for having participated in the willful
27 and unlawful killing of the decedent shall be admissible in evidence
28 against a claimant of property in any civil action arising under this
29 section.

30 (6) This section shall not subject the department of retirement
31 systems to liability for payment made to a slayer or alleged slayer
32 prior to the department's receipt of written notice that the slayer has
33 been convicted of, or the alleged slayer has been formally criminally
34 or civilly charged in court with, the death of the decedent. If the
35 conviction or civil judgment of a slayer is reversed on appeal, the
36 department of retirement systems shall not be liable for payment made
37 prior to the receipt of written notice of the reversal to a beneficiary
38 other than the person whose conviction or civil judgment is reversed.

1 NEW SECTION. **Sec. 502.** A new section is added to chapter 11.84
2 RCW to read as follows:

3 Proceeds payable to a slayer as the beneficiary of any benefits
4 flowing from one of the retirement systems listed in RCW 41.50.030, by
5 virtue of the decedent's membership in the department of retirement
6 systems or by virtue of the death of decedent, shall be paid instead as
7 designated in section 501 of this act.

8 **Sec. 503.** RCW 11.84.900 and 1965 c 145 s 11.84.900 are each
9 amended to read as follows:

10 This chapter shall (~~not be considered penal in nature, but shall~~)
11 be construed broadly (~~in order~~) to effect the policy of this state
12 that no person shall be allowed to profit by his own wrong, wherever
13 committed.

14 **Sec. 504.** RCW 11.02.070 and 1967 c 168 s 1 are each amended to
15 read as follows:

16 Except as provided in sections 501 and 502 of this act, upon the
17 death of a decedent, a one-half share of the community property shall
18 be confirmed to the surviving spouse, and the other one-half share
19 shall be subject to testamentary disposition by the decedent, or shall
20 descend as provided in chapter 11.04 RCW. The whole of the community
21 property shall be subject to probate administration for all purposes of
22 this title, including the payment of obligations and debts of the
23 community, the award in lieu of homestead, the allowance for family
24 support, and any other matter for which the community property would be
25 responsible or liable if the decedent were living.

26 **Sec. 505.** RCW 26.16.120 and Code 1881 s 2416 are each amended to
27 read as follows:

28 Nothing contained in any of the provisions of this chapter or in
29 any law of this state, shall prevent the husband and wife from jointly
30 entering into any agreement concerning the status or disposition of the
31 whole or any portion of the community property, then owned by them or
32 afterwards to be acquired, to take effect upon the death of either.
33 But such agreement may be made at any time by the husband and wife by
34 the execution of an instrument in writing under their hands and seals,
35 and to be witnessed, acknowledged and certified in the same manner as
36 deeds to real estate are required to be, under the laws of the state,

1 and the same may at any time thereafter be altered or amended in the
2 same manner(~~(: PROVIDED, HOWEVER, That)~~). Such agreement shall not
3 derogate from the right of creditors((~~r~~))i nor be construed to curtail
4 the powers of the superior court to set aside or cancel such agreement
5 for fraud or under some other recognized head of equity jurisdiction,
6 at the suit of either party; nor prevent the application of laws
7 governing the community property and inheritance rights of slayers
8 under chapter 11.84 RCW.

9 NEW SECTION. Sec. 506. Sections 501 through 505 of this act apply
10 to acts that result in unlawful killings of decedents by slayers on and
11 after the effective date of this section.

12 NEW SECTION. Sec. 507. If any part of sections 501 through 505 of
13 this act is found to be in conflict with federal requirements, the
14 conflicting part of sections 501 through 505 of this act is hereby
15 declared to be inoperative solely to the extent of the conflict, and
16 such finding or determination does not affect the operation of the
17 remainder of sections 501 through 505 of this act. Rules adopted under
18 sections 501 through 505 of this act must meet federal requirements.

19 **PART VI--MISCELLANEOUS--EFFECTIVE DATES**

20 NEW SECTION. Sec. 601. Part headings and section captions used in
21 this act are not any part of the law.

22 NEW SECTION. Sec. 602. Sections 101 through 116 of this act
23 constitute a new chapter in Title 11 RCW.

24 NEW SECTION. Sec. 603. (1) Sections 101 through 116 and 118 of
25 this act take effect July 1, 1999.

26 (2) Sections 117, 201 through 205, 301, 401, 501 through 507, and
27 604 of this act are necessary for the immediate preservation of the
28 public peace, health, or safety, or support of the state government and
29 its existing public institutions, and take effect immediately.

30 NEW SECTION. Sec. 604. (1) Sections 201 through 205 of this act
31 are remedial in nature and apply retroactively to July 27, 1997, and
32 thereafter.

1 (2) Section 301 of this act is remedial in nature and applies
2 retroactively to July 1, 1991, and thereafter."

3 **SSB 6181** - CONF REPT
4 By Conference Committee

5 ADOPTED 3/12/98

6 On page 1, line 1 of the title, after "law;" strike the remainder
7 of the title and insert "amending RCW 11.02.005, 11.07.010, 11.54.070,
8 11.68.110, 11.68.114, 11.114.030, 83.100.020, 83.110.010, 11.84.900,
9 11.02.070, and 26.16.120; amending 1997 c 252 s 87 (uncodified);
10 amending 1997 c 252 s 89 (uncodified); adding a new section to chapter
11 41.04 RCW; adding a new section to chapter 11.84 RCW; adding a new
12 chapter to Title 11 RCW; creating new sections; providing an effective
13 date; and declaring an emergency."

--- END ---