

HOUSE BILL REPORT

HB 1125

As Passed House:
February 4, 2005

Title: An act relating to trust and estate management.

Brief Description: Managing trusts and estates.

Sponsors: By Representatives Serben, Lantz, Priest, Shabro and Ahern.

Brief History:

Committee Activity:

Judiciary: 1/25/05 [DP].

Floor Activity:

Passed House: 2/4/05, 96-0.

Brief Summary of Bill

- Makes changes regarding the management of trusts and estates including changes affecting the right to inherit, notice to creditors, nomination of guardians for minors, changing trustees, and other provisions.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 8 members: Representatives Lantz, Chair; Flannigan, Vice Chair; Williams, Vice Chair; Priest, Ranking Minority Member; Campbell, Assistant Ranking Minority Member; Kirby, Serben and Wood.

Staff: Bill Perry (786-7123).

Background:

A large and complex set of statutes governs the control and disposition of a person's property through the use of wills or trusts or through intestacy.

Right to Inherit

Over the years, the Legislature has generally removed the requirement that a child be the "lawful issue" of a person in order to inherit from that person. For instance, inheritance "to, through or from" a child is not affected by the marital status of the child's parents. Also, adopted children are afforded the same rights of inheritance as children who are biological descendants of deceased parents. A definition section in the probate and trust law, however, continues to use the word "lawful" with respect to "issue" who are the lineal descendants of a person.

Anti-Lapse Statute

Sometimes a will identifies a person who is to receive property from the estate, but fails to address the possibility that the identified person may die before the testator dies. The so-called "anti-lapse" statute provides a default system that allows descendants of such an already deceased person to receive that person's share of the estate. The anti-lapse provision applies to the descendants of any person who is a descendant of a grandparent of the testator. The anti-lapse provision applies only when the testator has not otherwise directed the outcome.

The anti-lapse provision also applies to property given under a trust. The anti-lapse provision does not, however, explicitly cover a situation in which property is left subject to a contingency, such as when an estate goes first in trust to a surviving spouse of the testator and then after the death of the spouse, to children of the testator. In such a situation, if a child of the testator dies after the testator, but before the spouse of the testator, the anti-lapse provision does not explicitly preserve the interests of any descendants of the deceased child.

Notice to Creditors

Various statutes govern the timing, manner, and form required when notice must be given to the creditors of a deceased person. There are separate but parallel provisions for creditors of an estate subject to a will and for creditors of an estate subject to the laws on intestacy. Different notice and filing requirements apply to personal representatives of estates, to nonprobate notice agents, and to creditors depending on whether a probate proceeding is begun in the county of the decedent's residence or in a different county.

Designation of Guardians for Minors and Use of Powers of Attorney

When one parent has died, the surviving parent of a minor child is authorized to use a will to "appoint" a guardian for the child. This provision does not account for single parenthood. It also implies that a person may appoint a guardian when in fact only a court can do so.

A person may designate another to be his or her "attorney in fact" through a power of attorney. A person may execute a power of attorney that expressly continues should the person become disabled, or that expressly takes affect when the person becomes disabled. Such a power of attorney may extend to making decisions about the medical care of the person, as well as to management of the person's financial and other affairs.

Changing Trustees

The statute controlling how changes in trustees are accomplished refers to adult "income beneficiaries" of a trust as among those persons who are to be given notice of a change in a trusteeship. Not all trusts have income beneficiaries. The statute also requires notice to be given even if all interested parties have agreed to a change of trustees.

Uniform Transfer on Death Registration Act

The Uniform Transfer on Death Registration Act is a uniform Act that has been adopted by the state of Washington, as well as a majority of the other states. The Act allows the owner of a security account to register the account and designate a beneficiary to take possession of the account upon the owner's death without going through the probate process. The primary purpose of the Act is to provide for the non-probate transfer of specially registered securities.

In 2003, the Legislature amended the Act to allow "investment management or custody accounts" to be transferred to a beneficiary without going through the probate process following the death of the owner of the account. The term "investment management account" may not precisely describe some of the accounts the Act was intended to cover.

Time Limit of Liability for Debts

As part of a major rewrite of the probate code in 1997, various time limits were established for bringing claims against an estate. These periods vary depending on categories of creditors and types of notice given. At the outside, if no notice to creditors has been given, creditors have 24 months after the decedent's death to present a claim against the estate. One statute in the chapter of law dealing with the distribution of property in an intestacy, however, was not addressed by the 1997 amendments. That statute continues to imply a six-year period for creditor claims.

Summary of Bill:

A variety of changes are made to the state's probate and trust law.

Right to Inherit

The definition of "issue" for purposes of inheritance is clarified. The reference to "lawful" issue is removed. Adopted persons are expressly included as lineal descendants of their adoptive parents and of persons from whom those parents are lineal descendants.

Anti-Lapse Statute

The anti-lapse statute is expressly made to cover situations in which a person named in a will dies after the testator but before the happening of some event upon which the named person's right to receive property is contingent. The descendants of such a named person will receive the property absent a contrary provision in the will.

Notice to Creditors

The manner in which publication of notice is to be made is clarified. Creditors are required to file claims in the county of the estate proceeding, rather than in the county of the decedent's residence, if the two counties are different.

Designation of Guardians for Minors and Use of Powers of Attorney

A sole parent, as well as a surviving parent, is authorized to "nominate" a guardian for his or her minor child. The reference to "appointment" of a guardian by a parent is removed.

A power of attorney may include authority for the attorney in fact to provide for the care of a minor child. The authority is effective only if the minor child has no other parent or legal representative who is available and authorized to make health care decisions for the child. The power of attorney may also include the nomination of a guardian for the child. Once a guardian has been appointed by the court, the guardian's authority supersedes any authority of the attorney in fact. If a nomination of a guardian under a will conflicts with the nomination

of a guardian under a power of attorney, the nomination authorized by the most recent designation controls.

Uniform Transfer on Death Registration Act

The definition of "security account" is expanded to include expressly "agency accounts" and "investment advisory accounts."

Changing Trustees

The term "income beneficiaries" is removed so that notice requirements apply to adult "distributees" of a trust, whether or not those distributees include income beneficiaries. If all parties with an interest in a trust agree to a change in a trustee, then notice need not be given.

Time Limit of Liability for Debts

The statute implying a six-year period for bringing a claim against an estate is repealed.

Miscellaneous Changes

A provision that requires the oath of a personal representative to be "recorded," rather than simply filed, is removed. The definition of "authorized agent" for purposes of allowing access to a safe deposit box is expanded to expressly include the personal representative of an estate, an attorney in fact, a special representative, and a trustee under a revocable living trust. Several cross-reference citations to sections of law are corrected or updated.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: The need for the bill arose from the experiences of practitioners. The bill closes some gaps in the coverage of various provisions in the trust and estate laws, updates other provisions, and clarifies some ambiguities.

Testimony Against: None.

Persons Testifying: Representative Serben, prime sponsor; and Al Falk, Real Property, Probate and Trust Section of the Washington State Bar Association.

Persons Signed In To Testify But Not Testifying: None.