
HOUSE BILL 1077

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By Representatives Ludwig, Padden, Appelwick, Orr, Johanson and Karahalios

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1 AN ACT Relating to the revocation of nonprobate asset arrangements
2 for divorce or invalidation of marriage; amending RCW 11.02.005; and
3 adding a new chapter to Title 11 RCW.

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

5 NEW SECTION. **Sec. 1.** (1) This section applies to all nonprobate
6 assets, wherever situated, held at the time of entry by a superior
7 court of this state of a decree of dissolution of marriage or a
8 declaration of invalidity.

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

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

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

1 (ii) The decree of dissolution or declaration of invalidity
2 requires that the decedent maintain a nonprobate asset for the benefit
3 of a former spouse or children of the marriage, payable on the
4 decedent's death either outright or in trust, and other nonprobate
5 assets of the decedent fulfilling such a requirement for the benefit of
6 the former spouse or children of the marriage do not exist at the
7 decedent's death do not exist; or

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

12 (3)(a) A payor or other third party in possession or control of a
13 nonprobate asset at the time of the decedent's death is not liable for
14 making a payment or transferring an interest in a nonprobate asset to
15 a decedent's former spouse whose interest in the nonprobate asset is
16 revoked under this section, or for taking another action in reliance on
17 the validity of the instrument governing disposition of the nonprobate
18 asset, before the payor or other third party has actual knowledge of
19 the dissolution or other invalidation of marriage. A payor or other
20 third party is liable for a payment or transfer made or other action
21 taken after the payor or other third party has actual knowledge of a
22 revocation under this section.

23 (b) This section does not require a payor or other third party to
24 pay or transfer a nonprobate asset to a beneficiary designated in a
25 governing instrument affected by the dissolution or other invalidation
26 of marriage, or to another person claiming an interest in the
27 nonprobate asset, if the payor or third party has actual knowledge of
28 the existence of a dispute between the former spouse and the
29 beneficiaries or other persons concerning rights of ownership of the
30 nonprobate asset as a result of the application of this section among
31 the former spouse and the beneficiaries or among other persons, or if
32 the payor or third party is otherwise uncertain as to who is entitled
33 to the nonprobate asset under this section. In such a case, the payor
34 or third party may, without liability, notify in writing all
35 beneficiaries or other persons claiming an interest in the nonprobate
36 asset of either the existence of the dispute or its uncertainty as to
37 who is entitled to payment or transfer of the nonprobate asset. The
38 payor or third party may also, without liability, refuse to pay or

1 transfer a nonprobate asset in such a circumstance to a beneficiary or
2 other person claiming an interest until the time that either:

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

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

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

20 (d) As used in this subsection, "actual knowledge" means, for a
21 payor or other third party in possession or control of the nonprobate
22 asset at or following the decedent's death, written notice to the payor
23 or other third party, or to an officer of a payor or third party in the
24 course of his or her employment, received after the decedent's death
25 and within a time that is sufficient to afford the payor or third party
26 a reasonable opportunity to act upon the knowledge. The notice must
27 identify the nonprobate asset with reasonable specificity. The notice
28 also must be sufficient to inform the payor or other third party of the
29 revocation of the provisions in favor of the decedent's spouse by
30 reason of the dissolution or invalidation of marriage, or to inform the
31 payor or third party of a dispute concerning rights to a nonprobate
32 asset as a result of the application of this section. Receipt of the
33 notice for a period of more than thirty days must be presumed to be
34 received within a time that is sufficient to afford the payor or third
35 party a reasonable opportunity to act upon the knowledge, but receipt
36 of the notice for a period of less than five business days must be
37 presumed not to be a sufficient time for these purposes. These
38 presumptions may be rebutted only by clear and convincing evidence to
39 the contrary.

1 (4)(a) A person who purchases a nonprobate asset from a former
2 spouse or other person, for value and without actual knowledge, or who
3 receives from a former spouse or other person payment or transfer of a
4 nonprobate asset without actual knowledge and in partial or full
5 satisfaction of a legally enforceable obligation, is neither obligated
6 under this section to return the payment, property, or benefit nor is
7 liable under this section for the amount of the payment or the value of
8 the nonprobate asset. However, a former spouse or other person who,
9 with actual knowledge, not for value, or not in satisfaction of a
10 legally enforceable obligation, receives payment or transfer of a
11 nonprobate asset to which that person is not entitled under this
12 section is obligated to return the payment or nonprobate asset, or is
13 personally liable for the amount of the payment or value of the
14 nonprobate asset, to the person who is entitled to it under this
15 section.

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

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

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

- 1 (b) A payable-on-death or trust bank account; or
2 (c) A trust of which the person is a grantor and that becomes
3 effective or irrevocable only upon the person's death.

4 **Sec. 2.** RCW 11.02.005 and 1985 c 30 s 4 are each amended to read
5 as follows:

6 When used in this title, unless otherwise required from the
7 context:

8 (1) "Personal representative" includes executor, administrator,
9 special administrator, and guardian or limited guardian and special
10 representative.

11 (2) "Net estate" refers to the real and personal property of a
12 decedent exclusive of homestead rights, exempt property, the family
13 allowance and enforceable claims against, and debts of, the estate.

14 (3) "Representation" refers to a method of determining distribution
15 in which the takers are in unequal degrees of kinship with respect to
16 the intestate, and is accomplished as follows: After first determining
17 who, of those entitled to share in the estate, are in the nearest
18 degree of kinship, the estate is divided into equal shares, the number
19 of shares being the sum of the number of persons who survive the
20 intestate who are in the nearest degree of kinship and the number of
21 persons in the same degree of kinship who died before the intestate but
22 who left issue surviving the intestate; each share of a deceased person
23 in the nearest degree shall be divided among those of the intestate's
24 issue who survive the intestate and have no ancestor then living who is
25 in the line of relationship between them and the intestate, those more
26 remote in degree taking together the share which their ancestor would
27 have taken had he or she survived the intestate. Posthumous children
28 are considered as living at the death of their parent.

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

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

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

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

5 (8) "Will" means an instrument validly executed as required by RCW
6 11.12.020 and includes all codicils.

7 (9) "Codicil" means an instrument that is validly executed in the
8 manner provided by this title for a will and that refers to an existing
9 will for the purpose of altering or changing the same, and which need
10 not be attached thereto.

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

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

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

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

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

27 (15) "Nonprobate asset" means a right or interest of a person
28 having beneficial ownership or an asset that passes on the person's
29 death under a written instrument or arrangement other than the person's
30 will. "Nonprobate asset" includes, but is not limited to: A right or
31 interest passing under a joint tenancy with right of survivorship; a
32 joint bank account with right of survivorship; a payable on death or
33 trust bank account; a deed or conveyance if possession has been
34 postponed until the death of the person; a trust of which the person is
35 grantor and that becomes effective or irrevocable only upon the
36 person's death; a community property agreement; a payable on death
37 provision of a life insurance policy; an annuity or other contract; an
38 employee benefit plan; an individual retirement account or bond; and a
39 note or other contract the payment or performance of which is affected

1 by the death of the person. "Nonprobate asset" does not include: A
2 right or interest passing by descent and distribution under chapter
3 11.04 RCW; a right or interest if, prior to death, the owner has
4 irrevocably transferred the right or interest, the owner has waived the
5 power to transfer it or, for a contractual arrangement, the owner has
6 waived the unilateral right to rescind or modify the arrangement; or a
7 right or interest held by an owner solely in a fiduciary capacity.

8 (16) Words that import the singular number may also be applied to
9 the plural of persons and things.

10 ((16)) (17) Words importing the masculine gender only may be
11 extended to females also.

12 NEW SECTION. Sec. 3. Section 1 of this act shall constitute a new
13 chapter in Title 11 RCW.

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