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HOUSE BILL 2270

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State of Washington                      53rd Legislature                      1994 Regular Session

By Representatives Johanson, Padden and Appelwick

Read first time 01/12/94. Referred to Committee on Judiciary.

1            AN ACT Relating to probate and trust matters; amending RCW  
2 11.02.005, 11.07.010, 11.08.170, 11.12.040, 11.12.080, 11.12.110,  
3 11.12.120, 11.12.160, 11.12.180, 11.20.070, 11.24.010, 11.24.040,  
4 11.28.120, 11.28.237, 11.40.010, 11.40.013, 11.40.015, 11.40.040,  
5 11.40.080, 11.48.010, 11.56.050, 11.68.010, 11.96.009, 11.96.020,  
6 11.96.050, 11.96.060, 11.96.070, 11.96.080, 11.96.090, 11.96.100,  
7 11.96.110, 11.96.130, 11.96.140, 11.96.160, 11.96.170, 11.96.180, and  
8 82.32.240; adding new sections to chapter 11.12 RCW; adding new  
9 chapters to Title 11 RCW; and repealing RCW 11.12.050, 11.12.090,  
10 11.12.130, 11.12.140, 11.12.150, 11.12.200, 11.12.210, 11.56.015,  
11 11.56.140, 11.56.150, 11.56.160, and 11.56.170.

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

13            **Sec. 1.** RCW 11.02.005 and 1993 c 73 s 1 are each amended to read  
14 as follows:

15            When used in this title, unless otherwise required from the  
16 context:

17            (1) "Personal representative" includes executor, administrator,  
18 special administrator, and guardian or limited guardian and special  
19 representative.

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

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

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

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

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

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

33 (8) "Will" means an instrument validly executed as required by RCW  
34 11.12.020 (~~and includes all codicils~~)).

35 (9) "Codicil" means (~~an instrument that is validly executed in the~~  
36 ~~manner provided by this title for a will and that refers to an existing~~  
37 ~~will for the purpose of altering or changing the same, and which need~~  
38 ~~not be attached thereto~~) a will that modifies or partially revokes an

1 existing earlier will. A codicil need not refer to or be attached to  
2 the earlier will.

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

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

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

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

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

19 (15) "Nonprobate asset" means those rights and interests of a  
20 person having beneficial ownership of an asset that pass on the  
21 person's death under a written instrument or arrangement other than the  
22 person's will. "Nonprobate asset" includes, but is not limited to, a  
23 right or interest passing under a joint tenancy with right of  
24 survivorship, joint bank account with right of survivorship, payable on  
25 death or trust bank account or security, deed or conveyance if  
26 possession has been postponed until the death of the person, trust of  
27 which the person is grantor and that becomes effective or irrevocable  
28 only upon the person's death, community property agreement, payable-on-  
29 death provision of a life insurance policy, annuity or other contract,  
30 employee benefit plan, individual retirement account or bond, or note  
31 or other contract the payment or performance of which is affected by  
32 the death of the person. "Nonprobate asset" does not include: A right  
33 or interest passing by descent and distribution under chapter 11.04  
34 RCW; a right or interest if, before death, the owner has irrevocably  
35 transferred the right or interest, the owner has waived the power to  
36 transfer it or, in the case of contractual arrangement, the owner has  
37 waived the unilateral right to rescind or modify the arrangement; or a  
38 right or interest held by an owner solely in a fiduciary capacity.

1       (16) "Internal Revenue Code" means the United States Internal  
2 Revenue Code of 1986, as amended or renumbered on July 25, 1993.

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

5       (~~(17)~~) Words importing the masculine gender only may be extended  
6 to females also.

7       **Sec. 2.** RCW 11.07.010 and 1993 c 236 s 1 are each amended to read  
8 as follows:

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

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

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

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

23       (ii) The decree of dissolution or declaration of invalidity  
24 requires that the decedent maintain a nonprobate asset for the benefit  
25 of a former spouse or children of the marriage, payable on the  
26 decedent's death either outright or in trust, and other nonprobate  
27 assets of the decedent fulfilling such a requirement for the benefit of  
28 the former spouse or children of the marriage do not exist at the  
29 decedent's death; or

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

34       (3)(a) A payor or other third party in possession or control of a  
35 nonprobate asset at the time of the decedent's death is not liable for  
36 making a payment or transferring an interest in a nonprobate asset to  
37 a decedent's former spouse whose interest in the nonprobate asset is  
38 revoked under this section, or for taking another action in reliance on

1 the validity of the instrument governing disposition of the nonprobate  
2 asset, before the payor or other third party has actual knowledge of  
3 the dissolution or other invalidation of marriage. A payor or other  
4 third party is liable for a payment or transfer made or other action  
5 taken after the payor or other third party has actual knowledge of a  
6 revocation under this section.

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

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

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

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

1 third party for any liability, loss, damage, costs, and expenses for  
2 and on account of payment or transfer of the nonprobate asset.

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

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

37 (b) As used in this subsection, "actual knowledge" means, for a  
38 person described in (a) of this subsection who purchases or receives a  
39 nonprobate asset from a former spouse or other person, personal

1 knowledge or possession of documents relating to the revocation upon  
2 dissolution or invalidation of marriage of provisions relating to the  
3 payment or transfer at the decedent's death of the nonprobate asset,  
4 received within a time after the decedent's death and before the  
5 purchase or receipt that is sufficient to afford the person purchasing  
6 or receiving the nonprobate asset reasonable opportunity to act upon  
7 the knowledge. Receipt of the personal knowledge or possession of the  
8 documents for a period of more than thirty days is presumed to be  
9 received within a time that is sufficient to afford the payor or third  
10 party a reasonable opportunity to act upon the knowledge, but receipt  
11 of the notice for a period of less than five business days is presumed  
12 not to be a sufficient time for these purposes. These presumptions may  
13 be rebutted only by clear and convincing evidence to the contrary.

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

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

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

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

25 (d) Transfer on death beneficiary designations of a transfer on  
26 death or pay on death security, if such designations are authorized  
27 under Washington law.

28 (6) This section is remedial in nature and applies as of July 25,  
29 1993, to decrees of dissolution and declarations of invalidity entered  
30 after July 24, 1993, and this section applies as of the effective date  
31 of this act to decrees of dissolution and declarations of invalidity  
32 entered before July 25, 1993.

33 **Sec. 3.** RCW 11.08.170 and 1990 c 225 s 1 are each amended to read  
34 as follows:

35 Escheat property may be probated under the provisions of the  
36 probate laws of this state. Whenever such probate proceedings are  
37 instituted, whether by special administration or otherwise, the  
38 petitioner shall promptly notify the department of revenue in writing

1 thereof on forms furnished by the department of revenue to the county  
2 clerks. Thereafter, the department of revenue shall be served with  
3 written notice at least twenty days prior to any hearing on proceedings  
4 involving the valuation or sale of property, on any petition for the  
5 allowance of fees, and on all interim reports, final accounts or  
6 petitions for the determination of heirship. Like notice shall be  
7 given of the presentation of any claims to the court for allowance.  
8 Failure to furnish such notice shall be deemed jurisdictional and any  
9 order of the court entered without such notice shall be void. The  
10 department of revenue may waive the provisions of this section in its  
11 discretion. The department shall be deemed to have waived its right to  
12 administer in such probate proceedings under RCW 11.28.120(~~(+3)~~) (5)  
13 unless application for appointment of the director or the director's  
14 designee is made within forty days immediately following receipt of  
15 notice of institution of proceedings.

16 NEW SECTION. **Sec. 4.** This chapter applies in all instances in  
17 which no other abatement scheme is expressly provided.

18 NEW SECTION. **Sec. 5.** (1) Except as provided in subsection (2) of  
19 this section, property of a decedent abates, without preference as  
20 between real and personal property, in the following order:

- 21 (a) Intestate property;
- 22 (b) Residuary gifts;
- 23 (c) General gifts;
- 24 (d) Specific gifts.

25 For purposes of abatement a demonstrative gift, defined as a  
26 general gift charged on any specific property or fund, is deemed a  
27 specific gift to the extent of the value of the property or fund on  
28 which it is charged, and a general gift to the extent of a failure or  
29 insufficiency of that property or fund. Abatement within each  
30 classification is in proportion to the amounts of property each of the  
31 beneficiaries would have received if full distribution of the property  
32 had been made in accordance with the terms of the will.

33 (2) If the will expresses an order of abatement, or if the  
34 testamentary plan or the express or implied purpose of the devise would  
35 be defeated by the order of abatement stated in subsection (1) of this  
36 section, a gift abates as may be found necessary to give effect to the  
37 intention of the testator.



1 (3) If the subject of a preferred gift is sold, diminished, or  
2 exhausted incident to administration, not including satisfaction of  
3 debts or liabilities according to their community or separate status  
4 under section 7 of this act, abatement must be achieved by appropriate  
5 adjustments in, or contribution from, other interests in the remaining  
6 assets.

7 (4) To the extent that the whole of the community property is  
8 subject to abatement, the shares of the decedent and of the surviving  
9 spouse in the community property abate equally.

10 (5) If required under section 8 of this act, nonprobate assets must  
11 abate with those disposed of under the will and passing by intestacy.

12 NEW SECTION. **Sec. 6.** To the extent that a gift is to be satisfied  
13 out of a source that consists of both separate and community property,  
14 unless otherwise indicated in the will it is presumed to be a gift from  
15 separate and community property in proportion to their relative value  
16 in the property or fund from which the gift is to be satisfied.

17 NEW SECTION. **Sec. 7.** (1) A community debt or liability is charged  
18 against the entire community property, with the surviving spouse's half  
19 and the decedent spouse's half charged equally.

20 (2) A separate debt or liability is charged first against separate  
21 property, and if that is insufficient against the balance of decedent's  
22 half of community property remaining after community debts and  
23 liabilities are satisfied.

24 (3) A community debt or liability that is also the separate debt or  
25 liability of the decedent is charged first against the whole of the  
26 community property and then against the decedent's separate property.

27 (4) An expense of administration is charged against the separate  
28 property and the decedent's half of the community property in  
29 proportion to the relative value of the property, unless a different  
30 charging of expenses is shown to be appropriate under the circumstances  
31 including against the surviving spouse's share of the community  
32 property.

33 (5) Property of a similar type, community or separate, is  
34 appropriated in accordance with the abatement priorities of section 5  
35 of this act.

36 (6) Property that is primarily chargeable for a debt or liability  
37 is exhausted, in accordance with the abatement priorities of section 5

1 of this act, before resort is had, also in accordance with section 5 of  
2 this act, to property that is secondarily chargeable.

3 NEW SECTION. **Sec. 8.** (1) If abatement is necessary among takers  
4 of a nonprobate asset, the court shall adopt the abatement order and  
5 limitations set out in sections 5, 6, and 7 of this act, assigning  
6 categories in accordance with subsection (2) of this section.

7 (2) A nonprobate transfer must be categorized for purposes of  
8 abatement, within the list of priorities set out in section 5(1) of  
9 this act, as follows:

10 (a) All nonprobate forms of transfer under which an identifiable  
11 nonprobate asset passes to a beneficiary or beneficiaries on the event  
12 of the decedent's death, such as, but not limited to, joint tenancies  
13 and payable-on-death accounts, are categorized as specific bequests.

14 (b) With respect to all other interests passing under nonprobate  
15 forms of transfer, each must be categorized in the manner that is most  
16 closely comparable to the nature of the transfer of that interest.

17 (3) If and to the extent that a nonprobate asset is subject to the  
18 same obligations as are assets disposed of under the decedent's will,  
19 the nonprobate assets abate ratably with the probate assets, within the  
20 categories set out in subsection (2) of this section.

21 (4) If the nonprobate instrument of transfer or the decedent's will  
22 expresses a different order of abatement, or if the decedent's overall  
23 dispositive plan or the express or implied purpose of the transfer  
24 would be defeated by the order of abatement stated in subsections (1)  
25 through (3) of this section, the nonprobate assets abate as may be  
26 found necessary to give effect to the intention of the decedent.

27 NEW SECTION. **Sec. 9.** A new section is added to chapter 11.12 RCW  
28 to read as follows:

29 (1) If a will fails to name or provide for a child of the decedent  
30 who is born or adopted by the decedent after the will's execution and  
31 who survives the decedent, referred to in this section as an "omitted  
32 child", the child must receive a portion of the decedent's estate as  
33 provided in subsection (3) of this section, unless it appears either  
34 from the will or from other clear and convincing evidence that the  
35 failure was intentional.

36 (2) In determining whether an omitted child has been named or  
37 provided for, the following rules apply:

1 (a) A child identified in a will by name is considered named  
2 whether identified as a child or in any other manner.

3 (b) A reference in a will to a class described as the children,  
4 descendants, or issue of the decedent who are born after the execution  
5 of the will, or words of similar import, constitutes a naming of a  
6 person who falls within the class. A reference to another class, such  
7 as a decedent's heirs or family, does not constitute such a naming.

8 (c) A nominal interest in an estate does not constitute a provision  
9 for a child receiving the interest.

10 (3) The omitted child must receive an amount equal in value to that  
11 which the child would have received under RCW 11.04.015 if the decedent  
12 had died intestate, unless the court determines on the basis of clear  
13 and convincing evidence that a smaller share, including no share at  
14 all, is more in keeping with the decedent's intent. In making the  
15 determination, the court may consider, among other things, the various  
16 elements of the decedent's dispositive scheme, provisions for the  
17 omitted child outside the decedent's will, provisions for the  
18 decedent's other children under the will and otherwise, and provisions  
19 for the omitted child's other parent under the will and otherwise.

20 (4) In satisfying a share provided by this section, the bequests  
21 made by the will abate as provided in chapter 11.-- RCW (sections 4  
22 through 8 of this act).

23 NEW SECTION. **Sec. 10.** A new section is added to chapter 11.12 RCW  
24 to read as follows:

25 (1) If a will fails to name or provide for a spouse of the decedent  
26 whom the decedent marries after the will's execution and who survives  
27 the decedent, referred to in this section as an "omitted spouse", the  
28 spouse must receive a portion of the decedent's estate as provided in  
29 subsection (3) of this section, unless it appears either from the will  
30 or from other clear and convincing evidence that the failure was  
31 intentional.

32 (2) In determining whether an omitted spouse has been named or  
33 provided for, the following rules apply:

34 (a) A spouse identified in a will by name is considered named  
35 whether identified as a spouse or in any other manner.

36 (b) A reference in a will to the decedent's future spouse or  
37 spouses, or words of similar import, constitutes a naming of a spouse  
38 whom the decedent later marries. A reference to another class such as

1 the decedent's heirs or family does not constitute a naming of a spouse  
2 who falls within the class.

3 (c) A nominal interest in an estate does not constitute a provision  
4 for a spouse receiving the interest.

5 (3) The omitted spouse must receive an amount equal in value to  
6 that which the spouse would have received under RCW 11.04.015 if the  
7 decedent had died intestate, unless the court determines on the basis  
8 of clear and convincing evidence that a smaller share, including no  
9 share at all, is more in keeping with the decedent's intent. In making  
10 the determination the court may consider, among other things, the  
11 spouse's property interests under applicable community property or  
12 quasi-community property laws, the various elements of the decedent's  
13 dispositive scheme, and a marriage settlement or other provision and  
14 provisions for the omitted spouse outside the decedent's will.

15 (4) In satisfying a share provided by this section, the bequests  
16 made by the will abate as provided in chapter 11.-- RCW (sections 4  
17 through 8 of this act).

18 NEW SECTION. **Sec. 11.** A new section is added to chapter 11.12 RCW  
19 to read as follows:

20 (1) If, after making a will, the testator's marriage is dissolved  
21 or invalidated, all provisions in the will in favor of or granting any  
22 interest or power to the testator's former spouse are revoked, unless  
23 the will expressly provides otherwise. Provisions affected by this  
24 section must be interpreted, and property affected passes, as if the  
25 former spouse failed to survive the testator, having died at the time  
26 of entry of the decree of dissolution or declaration of invalidity.  
27 Provisions revoked by this section are revived by the testator's  
28 remarriage to the former spouse. Revocation of certain nonprobate  
29 transfers is provided under RCW 11.07.010.

30 (2) This section is remedial in nature and applies to decrees of  
31 dissolution and declarations of invalidity entered before, on, or after  
32 the effective date of this act.

33 **Sec. 12.** RCW 11.12.040 and 1965 c 145 s 11.12.040 are each amended  
34 to read as follows:

35 (1) A will, or any part thereof, can be revoked:

36 ((+1)) (a) By a ~~((written))~~ subsequent will that revokes, or  
37 partially revokes, the prior will expressly or by inconsistency; or

1       (~~(2)~~) (b) By being burnt, torn, canceled, obliterated, or  
2 destroyed, with the intent and for the purpose of revoking the same, by  
3 the testator (~~himself~~) or by another person in (~~his~~) the presence  
4 and by (~~his~~) the direction of the testator. If such act is done by  
5 any person other than the testator, the direction of the testator and  
6 the facts of such injury or destruction must be proved by two  
7 witnesses.

8       (2) Revocation of a will in its entirety revokes its codicils,  
9 unless revocation of a codicil would be contrary to the testator's  
10 intent.

11       **Sec. 13.** RCW 11.12.080 and 1965 c 145 s 11.12.080 are each amended  
12 to read as follows:

13       (1) If, after making any will, the testator shall (~~duly make and~~)  
14 execute a (~~second~~) later will that wholly revokes the former will,  
15 the destruction, cancellation, or revocation of (~~such second~~) the  
16 later will shall not revive the (~~first~~) former will, unless it was  
17 the testator's intention to revive it.

18       (2) Revocation of a codicil shall revive a prior will or part of a  
19 prior will that the codicil would have revoked had it remained in  
20 effect at the death of the testator, unless it was the testator's  
21 intention not to revive the prior will or part.

22       (3) Evidence that revival was or was not intended includes, in  
23 addition to a writing by which the later will or codicil is revoked,  
24 the circumstances of the revocation or contemporary or subsequent  
25 declarations of the testator.

26       **Sec. 14.** RCW 11.12.110 and 1965 c 145 s 11.12.110 are each amended  
27 to read as follows:

28       Unless otherwise provided, when any (~~estate shall be devised or~~  
29 bequeathed to any child, grandchild, or other relative of the testator,  
30 and such devisee or legatee shall die before the testator, having  
31 lineal descendants who survive the testator, such descendants shall  
32 take the estate, real and personal, as such devisee or legatee would  
33 have done in the case he had survived the testator; if such descendants  
34 are all in the same degree of kinship to the predeceased devisee or  
35 legatee)) property shall be given under a will, or under a trust of  
36 which the decedent is a grantor and which by its terms becomes  
37 irrevocable upon the grantor's death, to any issue of a grandparent of

1 the decedent and that issue dies before the decedent leaving  
2 descendants who survive the decedent, those descendants shall take that  
3 property as the predeceased issue would have done if the predeceased  
4 issue had survived the decedent. If those descendants are all in the  
5 same degree of kinship to the predeceased issue they shall take  
6 equally(( $\tau$ )) or, if of unequal degree, then those of more remote degree  
7 shall take by representation with respect to ((such)) the predeceased  
8 ((devisee or legatee. A spouse is not a relative under the provisions  
9 of this section)) issue.

10 **Sec. 15.** RCW 11.12.120 and 1974 ex.s. c 117 s 51 are each amended  
11 to read as follows:

12 ~~((Whenever any person having died leaving))~~ (1) If a will ((which  
13 has been admitted to probate or established by an adjudication of  
14 testacy, shall by said will have given, devised or bequeathed unto any  
15 person, a legacy or a devise upon the condition that said person  
16 survive him, and not otherwise, such legacy or devise shall lapse and  
17 fall into the residue of said estate to be distributed according to the  
18 residuary clause, if there be one, of said will, and if there be none  
19 then according to the laws of descent, unless said legatee or devisee,  
20 as the case may be, or his heirs, personal representative, or someone  
21 in behalf of such legatee or devisee, shall appear before the court  
22 which is administering said estate within three years from and after  
23 the date the said will was admitted to probate or established by an  
24 adjudication of testacy, and prove to the satisfaction of the court  
25 that the said legatee or devisee, as the case may be, did in fact  
26 survive the testator)) makes a gift to a person on the condition that  
27 the person survive the testator and the person does not survive the  
28 testator, then, unless otherwise provided, the gift lapses and falls  
29 into the residue of the estate to be distributed under the residuary  
30 clause of the will, if any, but otherwise according to the laws of  
31 descent and distribution.

32 (2) If the will gives the residue to two or more persons, the share  
33 of a person who does not survive the testator passes, unless otherwise  
34 provided, and subject to RCW 11.12.110, to the other person or persons  
35 receiving the residue, in proportion to the interest of each in the  
36 remaining part of the residue.

37 (3) The personal representative of the testator, a person who would  
38 be affected by the lapse or distribution of a gift under this section,

1 or a guardian ad litem or other representative appointed to represent  
2 the interests of a person so affected may petition the court for a  
3 determination under this section, and the petition must be heard under  
4 the procedures of chapter 11.96 RCW.

5 **Sec. 16.** RCW 11.12.160 and 1965 c 145 s 11.12.160 are each amended  
6 to read as follows:

7 ~~((All beneficial devises, legacies, and gifts whatever, made or~~  
8 ~~given in any will to a subscribing witness thereto, shall be void~~  
9 ~~unless there are two other competent witnesses to the same; but a mere~~  
10 ~~charge on the estate of the testator for the payment of debts shall not~~  
11 ~~prevent his creditors from being competent witnesses to his will. If~~  
12 ~~such witness, to whom any beneficial devise, legacy or gift may have~~  
13 ~~been made or given, would have been entitled to any share in the~~  
14 ~~testator's estate in case the will is not established, then so much of~~  
15 ~~the estate as would have descended or would have been distributed to~~  
16 ~~such witness shall be saved to him as will not exceed the value of the~~  
17 ~~devise or bequest made to him in the will; and he may recover the same~~  
18 ~~from the devisees or legatees named in the will in proportion to and~~  
19 ~~out of the parts devised and bequeathed to him.)) (1) An interested~~  
20 witness to a will is one who would receive a gift under the will.

21 (2) A will or any of its provisions is not invalid because it is  
22 signed by an interested witness. Unless there are at least two other  
23 subscribing witnesses to the will who are not interested witnesses, the  
24 fact that the will makes a gift to a subscribing witness creates a  
25 rebuttable presumption that the witness procured the gift by duress,  
26 menace, fraud, or undue influence.

27 (3) If the presumption established under subsection (2) of this  
28 section applies and the interested witness fails to rebut it, the  
29 interested witness shall take so much of the gift as does not exceed  
30 the share of the estate that would be distributed to the witness if the  
31 will were not established.

32 (4) The presumption established under subsection (2) of this  
33 section has no effect other than that stated in subsection (3) of this  
34 section.

35 **Sec. 17.** RCW 11.12.180 and 1965 c 145 s 11.12.180 are each amended  
36 to read as follows:

1       (~~If any person, by last will, devise any real estate to any person~~  
2 ~~for the term of such person's life, such devise vests in the devisee an~~  
3 ~~estate for life, and unless the remainder is specially devised, it~~  
4 ~~shall revert to the heirs at law of the testator.)) The Rule in  
5 Shelley's Case is abolished as a rule of law and as a rule of  
6 construction. If an applicable statute or a governing instrument calls  
7 for a future distribution to or creates a future interest in a  
8 designated individual's "heirs," "heirs at law," "next of kin,"  
9 "relatives," or "family," or language of similar import, the property  
10 passes to those persons, including the state under chapter 11.08 RCW,  
11 that would succeed to the designated individual's estate under chapter  
12 11.04 RCW. The property must pass to those persons as if the  
13 designated individual had died when the distribution or transfer of the  
14 future interest was to take effect in possession or enjoyment. For  
15 purposes of this section and section 18 of this act, the designated  
16 individual's surviving spouse is deemed to be an heir, regardless of  
17 whether the surviving spouse has remarried.~~

18       NEW SECTION. Sec. 18. A new section is added to chapter 11.12 RCW  
19 to read as follows:

20       The Doctrine of Worthier Title is abolished as a rule of law and as  
21 a rule of construction. However, the Doctrine of Worthier Title is  
22 preserved as a rule of construction if:

23       (1) A grantor has established in inter vivos trust of real  
24 property;

25       (2) The grantor has expressly reserved a reversion to himself or  
26 herself; and

27       (3) The words "heirs" or "heirs at law" are used by the grantor to  
28 describe the quality of the grantor's title in the reversion as an  
29 estate in fee simple in the event that the property reverts to the  
30 grantor.

31 In all other cases, language in a governing instrument describing the  
32 beneficiaries of a donative disposition as the transferor's "heirs,"  
33 "heirs at law," "next of kin," "distributees," "relatives," or  
34 "family," or language of similar import, does not create or  
35 presumptively create a reversionary interest in the transferor.

36       NEW SECTION. Sec. 19. (1) Unless expressly exempted by statute,  
37 a beneficiary of a nonprobate asset that was subject to satisfaction of



1 the decedent's general liabilities immediately before the decedent's  
2 death takes the asset subject to liabilities, claims, estate taxes, and  
3 the fair share of expenses of administration reasonably incurred by the  
4 personal representative in the transfer of or administration upon the  
5 asset. The beneficiary of such an asset is liable to account to the  
6 personal representative to the extent necessary to satisfy liabilities,  
7 claims, the asset's fair share of expenses of administration, and the  
8 asset's share of estate taxes under chapter 83.110 RCW. Before making  
9 demand that a beneficiary of a nonprobate asset account to the personal  
10 representative, the personal representative shall give notice to the  
11 beneficiary, in the manner provided in chapter 11.96 RCW, that the  
12 beneficiary is liable to account under this section.

13 (2) The following rules govern in applying subsection (1) of this  
14 section:

15 (a) A beneficiary of property passing at death under a community  
16 property agreement takes the property subject to the decedent's  
17 liabilities, claims, estate taxes, and administration expenses as  
18 described in subsection (1) of this section. However, assets existing  
19 as community or separate property immediately before the decedent's  
20 death under the community property agreement are subject to the  
21 decedent's liabilities and claims to the same extent that they would  
22 have been had they been assets of the probate estate.

23 (b) A beneficiary of property held in joint tenancy form with right  
24 of survivorship, including without limitation United States savings  
25 bonds or similar obligations, takes the property subject to the  
26 decedent's liabilities, claims, estate taxes, and administration  
27 expenses as described in subsection (1) of this section to the extent  
28 of the decedent's beneficial ownership interest in the property  
29 immediately before death.

30 (c) A beneficiary of payable-on-death or trust bank accounts,  
31 bonds, securities, or similar obligations, including without limitation  
32 United States bonds or similar obligations, takes the property subject  
33 to the decedent's liabilities, claims, estate taxes, and administration  
34 expenses as described in subsection (1) of this section, to the extent  
35 of the decedent's beneficial ownership interest in the property  
36 immediately before death.

37 (d) A beneficiary of deeds or conveyances made by the decedent if  
38 possession has been postponed until the death of the decedent takes the  
39 property subject to the decedent's liabilities, claims, estate taxes,

1 and administration expenses as described in subsection (1) of this  
2 section, to the extent of the decedent's beneficial ownership interest  
3 in the property immediately before death.

4 (e) A trust for the decedent's use of which the decedent is the  
5 grantor is subject to the decedent's liabilities, claims, estate taxes,  
6 and administration expenses as described in subsection (1) of this  
7 section, to the same extent as the trust was subject to claims of the  
8 decedent's creditors immediately before death under RCW 19.36.020.

9 (f) A trust not for the use of the grantor but of which the  
10 decedent is the grantor and that becomes effective or irrevocable only  
11 upon the decedent's death is subject to the decedent's claims,  
12 liabilities, estate taxes, and expenses of administration as described  
13 in subsection (1) of this section.

14 (g) Anything in this section to the contrary notwithstanding,  
15 nonprobate assets that existed as community property immediately before  
16 the decedent's death are subject to the decedent's liabilities and  
17 claims to the same extent that they would have been had they been  
18 assets of the probate estate.

19 (h) The liability of a beneficiary of life insurance is governed by  
20 chapter 48.18 RCW.

21 (i) The liability of a beneficiary of pension or retirement  
22 employee benefits is governed by chapter 6.15 RCW.

23 (j) An inference may not be drawn from (a) through (i) of this  
24 subsection that a beneficiary of nonprobate assets other than those  
25 assets specifically described in (a) through (i) of this subsection  
26 does or does not take the assets subject to claims, liabilities, estate  
27 taxes, and administration expenses as described in subsection (1) of  
28 this section.

29 (3) Nothing in this section derogates from the rights of a person  
30 interested in the estate to recover tax under chapter 83.110 RCW or  
31 from the liability of any beneficiary for estate tax under chapter  
32 83.110 RCW.

33 **Sec. 20.** RCW 11.20.070 and 1965 c 145 s 11.20.070 are each amended  
34 to read as follows:

35 ~~((Whenever any will is lost or destroyed, the court may take proof  
36 of the execution and validity of such will and establish it, notice to  
37 all persons interested having been first given. Such proof shall be~~

1 reduced to writing and signed by the witnesses and filed with the clerk  
2 of the court.

3 No will shall be allowed to be proved as a lost or destroyed will  
4 unless it is proved to have been in existence at the time of the death  
5 of the testator, or is shown to have been destroyed, canceled or  
6 mutilated in whole or in part as a result of actual or constructive  
7 fraud or in the course of an attempt to change the will in whole or in  
8 part, which attempt has failed, or as the result of a mistake of fact,  
9 nor unless its provisions are clearly and distinctly proved by at least  
10 two witnesses, and when any such will is so established, the provisions  
11 thereof shall be distinctly stated in the judgment establishing it, and  
12 such judgment shall be recorded as wills are required to be recorded.  
13 ~~Executors of such will or administrators with the will annexed))~~ (1) If  
14 a will has been lost or destroyed under circumstances such that the  
15 loss or destruction does not have the effect of revoking the will, the  
16 court may take proof of the execution and validity of the will and  
17 establish it, notice to all persons interested having been first given.  
18 The proof must be reduced to writing and signed by any witnesses who  
19 have testified as to the execution and validity, and must be filed with  
20 the clerk of the court.

21 (2) The provisions of a lost or destroyed will must be proved by  
22 clear, cogent, and convincing evidence, consisting at least in part of  
23 a witness to either its contents or the authenticity of a copy of the  
24 will.

25 (3) When a lost or destroyed will is established under subsections  
26 (1) and (2) of this section, its provisions must be distinctly stated  
27 in the judgment establishing it, and the judgment must be recorded as  
28 wills are required to be recorded. A personal representative may be  
29 appointed by the court in the same manner as is herein provided with  
30 reference to original wills presented to the court for probate.

31 **Sec. 21.** RCW 11.24.010 and 1971 c 7 s 1 are each amended to read  
32 as follows:

33 If any person interested in any will shall appear within four  
34 months immediately following the probate or rejection thereof, and by  
35 petition to the court having jurisdiction contest the validity of said  
36 will, or appear to have the will proven which has been rejected, he or  
37 she shall file a petition containing his or her objections and  
38 exceptions to said will, or to the rejection thereof. ~~((Issue shall be~~

1 made up, tried and determined in said court respecting the competency  
2 of the deceased to make a last will and testament, or respecting the  
3 execution by a deceased of such last will and testament under restraint  
4 or undue influence or fraudulent representations, or for any other  
5 cause affecting the validity of such will.)) Issues respecting the  
6 competency of the deceased to make a last will and testament, or  
7 respecting the execution by a deceased of the last will and testament  
8 under restraint or undue influence or fraudulent representations, or  
9 for any other cause affecting the validity of the will or a part of it,  
10 shall be tried and determined by the court.

11 If no person shall appear within the time ((aforesaid)) under this  
12 section, the probate or rejection of such will shall be binding and  
13 final.

14 **Sec. 22.** RCW 11.24.040 and 1965 c 145 s 11.24.040 are each amended  
15 to read as follows:

16 If, upon the trial of said issue, it shall be decided that the will  
17 or a part of it is for any reason invalid, or that it is not  
18 sufficiently proved to have been the last will of the testator, the  
19 will or part and probate thereof shall be annulled and revoked((~~and~~  
20 ~~thereupon and thereafter the powers of the executor or administrator~~  
21 ~~with the will annexed shall cease, but such executor or administrator~~))  
22 and to that extent the powers of the personal representative shall  
23 cease, but the personal representative shall not be liable for any act  
24 done in good faith previous to such annulling or revoking.

25 **Sec. 23.** RCW 11.28.120 and 1985 c 133 s 1 are each amended to read  
26 as follows:

27 Administration of ((the)) an estate ((of)) if the ((~~person dying~~))  
28 decedent died intestate or if the personal representative or  
29 representatives named in the will declined or were unable to serve  
30 shall be granted to some one or more of the persons hereinafter  
31 mentioned, and they shall be respectively entitled in the following  
32 order:

33 (1) The surviving ((~~husband or wife~~)) spouse, or such person as he  
34 or she may request to have appointed.

35 (2) The next of kin in the following order: (a) Child or children;  
36 (b) father or mother; (c) brothers or sisters; (d) grandchildren; (e)  
37 nephews or nieces.

1       (3) The trustee named by the decedent in an inter vivos trust  
2 instrument, testamentary trustee named in the will, guardian of the  
3 person or estate of the decedent, or attorney in fact appointed by the  
4 decedent, if any such a fiduciary controlled or potentially controlled  
5 substantially all of the decedent's probate and nonprobate assets.

6       (4) One or more of the beneficiaries or transferees of the  
7 decedent's probate or nonprobate assets.

8       (5) The director of revenue, or the director's designee, for those  
9 estates having property subject to the provisions of chapter 11.08 RCW;  
10 however, the director may waive this right.

11       (~~(4)~~) (6) One or more of the principal creditors.

12       (~~(5)~~) (7) If the persons so entitled shall fail for more than  
13 forty days after the death of the (~~intestate~~) decedent to present a  
14 petition for letters of administration, or if it appears to the  
15 satisfaction of the court that there (~~are~~) is no (~~relatives or~~)  
16 next of kin, as above specified eligible to appointment, or they waive  
17 their right, and there are no principal creditor or creditors, or such  
18 creditor or creditors waive their right, then the court may appoint any  
19 suitable person to administer such estate.

20       **Sec. 24.** RCW 11.28.237 and 1977 ex.s. c 234 s 6 are each amended  
21 to read as follows:

22       Within twenty days after appointment, the personal representative  
23 of the estate of a decedent shall cause written notice of his or her  
24 appointment and the pendency of said probate proceedings, to be served  
25 personally or by mail to each heir, legatee and devisee of the estate  
26 and each beneficiary or transferee of a nonprobate asset of the  
27 decedent whose names and addresses are known to him or her, and proof  
28 of such mailing or service shall be made by affidavit and filed in the  
29 cause.

30       **Sec. 25.** RCW 11.40.010 and 1991 c 5 s 1 are each amended to read  
31 as follows:

32       Every personal representative shall, after appointment and  
33 qualification, give a notice to the creditors of the deceased, stating  
34 such appointment and qualification as personal representative and  
35 requiring all persons having claims against the deceased to serve the  
36 same on the personal representative or the estate's attorney of record,  
37 and file an executed copy thereof with the clerk of the court, within

1 four months after the date of the first publication of such notice  
2 described in this section or within four months after the date of the  
3 filing of the copy of such notice with the clerk of the court,  
4 whichever is the later, or within the time otherwise provided in RCW  
5 11.40.013. The four-month time period after the later of the date of  
6 the first publication of the notice to creditors or the date of the  
7 filing of such notice with the clerk of the court is referred to in  
8 this chapter as the "four-month time limitation." Such notice shall be  
9 given as follows:

10 (1) The personal representative shall give actual notice, as  
11 provided in RCW 11.40.013, to such creditors who become known to the  
12 personal representative within such four-month time limitation;

13 (2) The personal representative shall cause such notice to be  
14 published once in each week for three successive weeks in the county in  
15 which the estate is being administered; and

16 (3) The personal representative shall file a copy of such notice  
17 with the clerk of the court.

18 Except as otherwise provided in RCW 11.40.011 or 11.40.013, any  
19 claim not filed within the four-month time limitation shall be forever  
20 barred, if not already barred by any otherwise applicable statute of  
21 limitations. This bar is effective as to claims against both the  
22 decendent's probate assets and nonprobate assets as described in section  
23 19 of this act. Proof by affidavit of the giving and publication of  
24 such notice shall be filed with the court by the personal  
25 representative.

26 Acts of a notice agent in complying with chapter ..., Laws of 1994  
27 (this act) may be adopted and ratified by the personal representative  
28 as if done by the personal representative in complying with this  
29 chapter, except that if at the time of the appointment and  
30 qualification of the personal representative a notice agent had  
31 commenced nonprobate notice to creditors under chapter 11.-- RCW  
32 (sections 31 through 48 of this act), the personal representative shall  
33 give published notice as provided in section 48 of this act.

34 **Sec. 26.** RCW 11.40.013 and 1989 c 333 s 4 are each amended to read  
35 as follows:

36 The actual notice described in RCW 11.40.010(1), as to creditors  
37 becoming known to the personal representative within the four-month  
38 time limitation, shall be given the creditors by personal service or

1 regular first class mail, addressed to the creditor's last known  
2 address, postage prepaid. The actual notice shall be given before the  
3 later of the expiration of the four-month time limitation or thirty  
4 days after any creditor became known to the personal representative  
5 within the four-month time limitation. Any known creditor is barred  
6 unless the creditor has filed a claim, as otherwise provided in this  
7 chapter, within the four-month time limitation or within thirty days  
8 following the date of actual notice to that creditor, whichever is  
9 later. If notice is given by mail, the date of mailing shall be the  
10 date of notice. This bar is effective as to claims against both the  
11 decendent's probate assets and nonprobate assets.

12 **Sec. 27.** RCW 11.40.015 and 1989 c 333 s 6 are each amended to read  
13 as follows:

14 Notice under RCW 11.40.010 shall be in substantially the following  
15 form:

16 )  
17 CAPTION ) No.  
18 OF CASE )  
19 ) NOTICE TO CREDITORS  
20 )  
21 . . . . . )

22 The personal representative named below has been appointed and has  
23 qualified as personal representative of this estate. Persons having  
24 claims against the ((deceased)) decendent must, prior to the time such  
25 claims would be barred by any otherwise applicable statute of  
26 limitations, serve their claims on the personal representative or the  
27 attorneys of record at the address stated below and file an executed  
28 copy of the claim with the Clerk of this Court within four months after  
29 the date of first publication of this notice or within four months  
30 after the date of the filing of the copy of this Notice with the Clerk  
31 of the Court, whichever is later or, except under those provisions  
32 included in RCW 11.40.011 or 11.40.013, the claim will be forever  
33 barred. This bar is effective as to claims against both the probate  
34 assets and nonprobate assets of the decendent.

35 DATE OF FILING COPY OF NOTICE TO CREDITORS with Clerk of  
36 Court: . . . . .

37 DATE OF FIRST PUBLICATION: . . . . .

1 . . . . . ,

2 Personal Representative

3 Address

4 Attorney for Estate:

5 Address:

6 Telephone:

7 **Sec. 28.** RCW 11.40.040 and 1974 ex.s. c 117 s 36 are each amended  
8 to read as follows:

9 Every claim which has been allowed by the personal representative  
10 shall be ranked among the acknowledged debts of the estate to be paid  
11 expeditiously in the course of administration.

12 **Sec. 29.** RCW 11.40.080 and 1988 c 64 s 22 are each amended to read  
13 as follows:

14 No holder of any claim against a decedent shall maintain an action  
15 thereon, unless the claim shall have been first presented as (~~herein~~)  
16 provided in this chapter. Nothing in this chapter affects (~~the notice~~  
17 ~~under~~) RCW 82.32.240.

18 **Sec. 30.** RCW 11.48.010 and 1965 c 145 s 11.48.010 are each amended  
19 to read as follows:

20 It shall be the duty of every personal representative to settle the  
21 estate, including the administration of any nonprobate assets within  
22 control of the personal representative under section 19 of this act, in  
23 his or her hands as rapidly and as quickly as possible, without  
24 sacrifice to the probate or nonprobate estate. (~~He~~) The personal  
25 representative shall collect all debts due the deceased and pay all  
26 debts as hereinafter provided. (~~He~~) The personal representative  
27 shall be authorized in his or her own name to maintain and prosecute  
28 such actions as pertain to the management and settlement of the estate,  
29 and may institute suit to collect any debts due the estate or to  
30 recover any property, real or personal, or for trespass of any kind or  
31 character.

32 NEW SECTION. **Sec. 31.** (1) Subject to the conditions stated in  
33 this section and if no personal representative has been appointed and  
34 qualified in the decedent's estate in Washington, the following members



1 of a group, defined as the "qualified group", are qualified to give  
2 "nonprobate notice to creditors" of the decedent:

3 (a) Decedent's surviving spouse;

4 (b) The person appointed in an agreement made under chapter 11.96  
5 RCW to give nonprobate notice to creditors of the decedent;

6 (c) The trustee, except a testamentary trustee under the will of  
7 the decedent not probated in another state, having authority over any  
8 of the property of the decedent; and

9 (d) A person who has received any property of the decedent by  
10 reason of the decedent's death.

11 (2) The "included property" means the property of the decedent that  
12 was subject to satisfaction of the decedent's general liabilities  
13 immediately before the decedent's death and that either:

14 (a) Constitutes a nonprobate asset; or

15 (b) Has been received, or is entitled to be received, either under  
16 chapter 11.62 RCW or by the personal representative of the decedent's  
17 probate estate administered outside the state of Washington, or both.

18 (3) The qualified person shall give the nonprobate notice to  
19 creditors. The "qualified person" must be:

20 (a) The person in the qualified group who has received, or is  
21 entitled to receive, by reason of the decedent's death, all, or  
22 substantially all, of the included property; or

23 (b) If there is no person in (a) of this subsection, then the  
24 person who has been appointed by those persons, including any  
25 successors of those persons, in the qualified group who have received,  
26 or are entitled to receive, by reason of the decedent's death, all, or  
27 substantially all, of the included property.

28 (4) The requirement in subsection (3) of this section of the  
29 receipt of all, or substantially all, of the included property is  
30 satisfied if:

31 (a) The person described in subsection (3)(a) of this section at  
32 the time of the filing of the declaration and oath referred to in  
33 subsection (5) of this section in reasonable good faith believed that  
34 the person had received, or was entitled to receive, by reason of the  
35 decedent's death, all, or substantially all, of the included property;  
36 or

37 (b) The persons described in subsection (3)(b) of this section at  
38 the time of their entry into the agreement under chapter 11.96 RCW in  
39 which they appoint the person to give the nonprobate notice to

1 creditors in reasonable good faith believed that they had received, or  
2 were entitled to receive, by reason of the decedent's death, all, or  
3 substantially all, of the included property.

4 (5) The "notice agent" means the qualified person who:

5 (a) Files a declaration and oath with the clerk of the superior  
6 court in a county in which probate may be commenced regarding the  
7 decedent as provided in RCW 11.96.050(2);

8 (b) Pays a filing fee to the clerk equal in amount to the filing  
9 fee charged by the clerk for the probate of estates; and

10 (c) Receives from the clerk a cause number.

11 The county in which the notice agent files the declaration is the  
12 "notice county." The declaration and oath must be made in affidavit  
13 form or under penalty of perjury under the laws of the state in the  
14 form provided in RCW 9A.72.085 and must state that the person making  
15 the declaration believes in reasonable good faith that the person is  
16 qualified under this chapter to act as the notice agent and that the  
17 person faithfully will execute the duties of the notice agent as  
18 provided in this chapter.

19 (6) The following persons may not act as notice agent:

20 (a) Corporations, trust companies, and national banks, except:

21 (i) Professional service corporations that are regularly organized  
22 under the laws of this state whose shareholder or shareholders are  
23 exclusively attorneys; and

24 (ii) Other corporations, trust companies, and national banks that  
25 are authorized to do trust business in this state;

26 (b) Minors;

27 (c) Persons of unsound mind; or

28 (d) Persons who have been convicted of a felony or of a misdemeanor  
29 involving moral turpitude.

30 (7) A person who has given notice under this chapter and who  
31 thereafter becomes of unsound mind or is convicted of a crime or  
32 misdemeanor involving moral turpitude is no longer qualified to act as  
33 notice agent under this chapter. The disqualification does not bar  
34 another person, otherwise qualified, from acting as notice agent under  
35 this chapter.

36 (8) A nonresident may act as notice agent if the nonresident  
37 appoints an agent who is a resident of the notice county or who is  
38 attorney of record for the notice agent upon whom service of all papers  
39 may be made. The appointment must be made in writing and filed by the

1 clerk of the notice county with the other papers relating to the notice  
2 given under this chapter.

3 (9) The powers and authority of a notice agent cease, and the  
4 office of notice agent becomes vacant, upon the appointment and  
5 qualification of a personal representative for the estate of the  
6 decedent. Except as provided in section 48 of this act, the cessation  
7 of the powers and authority does not affect a published notice under  
8 this chapter if the publication commenced before the cessation and does  
9 not affect actual notice to creditors given by the notice agent before  
10 the cessation.

11 NEW SECTION. **Sec. 32.** (1) The notice agent may give nonprobate  
12 notice to the creditors of the decedent if:

13 (a) As of the date of the filing of a copy of the notice with the  
14 clerk of the superior court for the notice county, the notice agent has  
15 no knowledge of the appointment and qualification of a personal  
16 representative in the decedent's estate in the state of Washington or  
17 of another person becoming a notice agent; and

18 (b) According to the records of the clerk of the superior court for  
19 the notice county as of 8:00 a.m. on the date of the filing, no  
20 personal representative of the decedent's estate had been appointed and  
21 qualified and no cause number regarding the decedent had been issued to  
22 any other notice agent by the clerk under section 31 of this act.

23 (2) The notice must state that all persons having claims against  
24 the decedent shall: (a) Serve the same on the notice agent if the  
25 notice agent is a resident of the state of Washington upon whom service  
26 of all papers may be made, or on the nonprobate resident agent for the  
27 notice agent, if any, or on the attorneys of record of the notice agent  
28 at their respective address in the state of Washington, within four  
29 months after the date of the first publication of the notice described  
30 in this section; and (b) file an executed copy of the claim with the  
31 clerk of the superior court for the notice county within four months of  
32 the date of the filing of the copy of the notice with the clerk of the  
33 superior court for the notice county or within the time otherwise  
34 provided in section 35 of this act, whichever is later. The four-month  
35 time period after the later of the date of the first publication of the  
36 notice to creditors or the date of the filing of the notice with the  
37 clerk of the court is referred to in this chapter as the "four-month  
38 time limitation."

1 (3) The notice agent shall declare in the notice in affidavit form  
2 or under the penalty of perjury under the laws of the state of  
3 Washington as provided in RCW 9A.72.085 that: (a) The notice agent is  
4 entitled to give the nonprobate notice under subsection (1) of this  
5 section; and (b) the notice is being given by the notice agent as  
6 permitted by this section.

7 (4) The notice agent shall sign the notice and file it with the  
8 clerk of the superior court for the notice county. The notice must be  
9 given as follows:

10 (a) The notice agent shall give actual notice as to creditors of  
11 the decedent who become known to the notice agent within the four-month  
12 time limitation as required in section 35 of this act;

13 (b) The notice agent shall cause the notice to be published once in  
14 each week for three successive weeks in the notice county; and

15 (c) The notice agent shall file a copy of the notice with the clerk  
16 of the superior court for the notice county.

17 (5) A claim not filed within the four-month time limitation is  
18 forever barred, if not already barred by an otherwise applicable  
19 statute of limitations, except as provided in section 33 or 35 of this  
20 act. The bar is effective to bar claims against both the probate  
21 estate of the decedent and nonprobate assets that were subject to  
22 satisfaction of the decedent's general liabilities immediately before  
23 the decedent's death. If a notice to the creditors of a decedent is  
24 published by more than one notice agent and the notice agents are not  
25 acting jointly, the four-month time limitation means the four-month  
26 time limitation that applies to the notice agent who first publishes  
27 the notice. Proof by affidavit or perjury declaration made under RCW  
28 9A.72.085 of the giving and publication of the notice must be filed  
29 with the clerk of the superior court for the notice county by the  
30 notice agent.

31 NEW SECTION. **Sec. 33.** The time limitations under this chapter for  
32 serving and filing claims do not accrue to the benefit of a liability  
33 or casualty insurer as to claims against either the decedent or the  
34 marital community of which the decedent was a member, or both, and:

35 (1) The claims, subject to applicable statutes of limitation, may  
36 at any time be: (a) Served on the duly acting notice agent, the duly  
37 acting resident agent for the notice agent, or on the attorney for

1 either of them; and (b) filed with the clerk of the superior court for  
2 the notice county; or

3 (2) If there is no duly acting notice agent or resident agent for  
4 the notice agent, the claimant as a creditor shall proceed as provided  
5 in chapter 11.40 RCW. However, if no personal representative ever has  
6 been appointed for the decedent, a personal representative must be  
7 appointed as provided in chapter 11.28 RCW and the estate opened, in  
8 which case the claimant then shall proceed as provided in chapter 11.40  
9 RCW.

10 A claim may be served and filed as provided in this section,  
11 notwithstanding that there is no duly acting notice agent and that no  
12 personal representative previously has been appointed. However, the  
13 amount of recovery under the claim may not exceed the amount of  
14 applicable insurance coverages and proceeds, and the claim so served  
15 and filed may not constitute a cloud or lien upon the title to the  
16 assets of the decedent or delay or prevent the transfer or distribution  
17 of assets of the decedent. This section does not serve to extend the  
18 applicable statute of limitations regardless of whether a declaration  
19 and oath has been filed by a notice agent as provided in section 31 of  
20 this act.

21 NEW SECTION. **Sec. 34.** The notice agent shall exercise reasonable  
22 diligence to discover, within the four-month time limitation,  
23 reasonably ascertainable creditors of the decedent. The notice agent  
24 is deemed to have exercised reasonable diligence to ascertain the  
25 creditors upon:

26 (1) Conducting, within the four-month time limitation, a reasonable  
27 review of the decedent's correspondence including correspondence  
28 received after the date of death and financial records including  
29 checkbooks, bank statements, income tax returns, and similar materials,  
30 that are in the possession of, or reasonably available to, the notice  
31 agent; and

32 (2) Having made, with regard to claimants, inquiry of the  
33 nonprobate takers of the decedent's property and of the presumptive  
34 heirs, devisees, and legatees of the decedent, all of whose names and  
35 addresses are known, or in the exercise of reasonable diligence should  
36 have been known, to the notice agent.

37 If the notice agent conducts the review and makes an inquiry, the  
38 notice agent is presumed to have exercised reasonable diligence to

1 ascertain creditors of the decedent, and creditors not ascertained in  
2 the review or in an inquiry are presumed not reasonably ascertainable.  
3 These presumptions may be rebutted only by clear, cogent, and  
4 convincing evidence. The notice agent may evidence the review and  
5 inquiry by filing an affidavit or declaration under penalty of perjury  
6 form as provided in RCW 9A.72.085 to the effect in the nonprobate  
7 proceeding in the notice county. The notice agent also may petition  
8 the superior court of the notice county for an order declaring that the  
9 notice agent has made a review and inquiry and that only creditors  
10 known to the notice agent after the review and inquiry are reasonably  
11 ascertainable. The petition and hearing must be under the procedures  
12 provided in chapter 11.96 RCW, and the notice specified under RCW  
13 11.96.100 must also be given by publication.

14 NEW SECTION. **Sec. 35.** The actual notice described in section  
15 32(4)(a) of this act, as to a creditor becoming known to the notice  
16 agent within the four-month time limitation, must be given the creditor  
17 by personal service or regular first class mail, addressed to the  
18 creditor's last known address, postage prepaid. The actual notice must  
19 be given before the later of the expiration of the four-month time  
20 limitation or thirty days after a creditor became known to the notice  
21 agent within the four-month time limitation. A known creditor is  
22 barred unless the creditor has filed a claim, as provided in this  
23 chapter, within the four-month time limitation or within thirty days  
24 following the date of actual notice to that creditor, whichever is  
25 later. If notice is given by mail, the date of mailing is the date of  
26 notice. This bar is effective as to claims against the included  
27 property as defined in section 31 of this act.

28 NEW SECTION. **Sec. 36.** (1) Whether or not notice under section 32  
29 of this act has been given or should have been given, if no personal  
30 representative has been appointed and qualified, a person having a  
31 claim against the decedent who has not filed the claim within eighteen  
32 months from the date of the decedent's death is forever barred from  
33 making a claim against the decedent, or commencing an action against  
34 the decedent, if the claim or action is not already barred by any  
35 otherwise applicable statute of limitations. However, this eighteen-  
36 month limitation does not apply to:

37 (a) Claims described in section 33 of this act;

1 (b) A claim if, during the eighteen-month period following the date  
2 of death, partial performance has been made on the obligation  
3 underlying the claim, and the notice agent has not given the actual  
4 notice described in section 32(4)(a) of this act; or

5 (c) Claims if, within twelve months after the date of death:

6 (i) No notice agent has given the published notice described in  
7 section 32(4)(b) of this act; and

8 (ii) No personal representative has given the published notice  
9 described in RCW 11.40.010(2).

10 Any otherwise applicable statute of limitations applies without  
11 regard to the tolling provisions of RCW 4.16.190.

12 (2) Claims referred to in this section must be filed if there is no  
13 duly appointed, qualified, and acting personal representative and there  
14 is a duly declared and acting notice agent or resident agent for the  
15 notice agent. The claims, subject to applicable statutes of  
16 limitation, may at any time be served on the duly declared and acting  
17 notice agent or resident agent for the notice agent, or on the attorney  
18 for either of them.

19 (3) A claim to be filed under this chapter if there is no duly  
20 appointed, qualified, and acting personal representative but there is  
21 a duly declared and acting notice agent or resident agent for the  
22 notice agent and which claim is not otherwise barred under this chapter  
23 must be made in the form and manner provided under section 32 of this  
24 act, as if the notice under that section had been given.

25 NEW SECTION. **Sec. 37.** Notice under section 32 of this act must be  
26 in substantially the following form:

27 In the Matter of )  
28 ) No.  
29 )  
30 ) NONPROBATE NOTICE TO CREDITORS  
31 Deceased. )  
32 \_\_\_\_\_)

33 \_\_\_\_\_, the undersigned Notice  
34 Agent, has elected to give notice to creditors of the decedent above  
35 named under section 32 of this act. As of the date of the filing of a  
36 copy of this notice with the Clerk of this Court, the Notice Agent has

1 no knowledge of the appointment and qualification of a personal  
2 representative in the decedent's estate in the state of Washington or  
3 of any other person becoming a Notice Agent. According to the records  
4 of the Clerk of this Court as of 8:00 a.m. on the date of the filing of  
5 this notice with the Clerk, no personal representative of the  
6 decedent's estate had been appointed and qualified and no cause number  
7 regarding the decedent had been issued to any other Notice Agent by the  
8 Clerk of this Court under section 31 of this act.

9 Persons having claims against the decedent named above must, before  
10 the time the claims would be barred by any otherwise applicable statute  
11 of limitations, serve their claims on: The notice agent if the Notice  
12 Agent is a resident of the state of Washington upon whom service of all  
13 papers may be made; the Nonprobate Resident Agent for the Notice Agent,  
14 if any; or the attorneys of record for the Notice Agent at the  
15 respective address in the state of Washington listed below, and file an  
16 executed copy of the claim with the Clerk of this Court within four  
17 months after the date of first publication of this notice, or within  
18 four months after the date of the filing of the copy of this notice  
19 with the Clerk of the Court, whichever is later, or, except under those  
20 provisions included in section 33 or 35 of this act, the claim will be  
21 forever barred. This bar is effective as to all assets of the decedent  
22 that were subject to satisfaction of the decedent's general liabilities  
23 immediately before the decedent's death regardless of whether those  
24 assets are or would be assets of the decedent's probate estate or  
25 nonprobate assets of the decedent.

26 Date of filing of this notice with the  
27 Clerk of the Court: \_\_\_\_\_

28 Date of first publication of this notice: \_\_\_\_\_

29 The Notice Agent declares under penalty of perjury under the laws  
30 of the State of Washington on \_\_\_\_\_, 19\_\_ at \_\_\_\_\_  
31 [City] \_\_\_\_\_, \_\_\_\_\_ [State] \_\_\_\_\_ that the  
32 foregoing is true and correct.

33 \_\_\_\_\_  
34 Notice Agent [signature] Nonprobate Resident Agent [if appointed]  
35 [address in Washington, if any] [address in Washington]



1 \_\_\_\_\_  
2 Attorney for Notice Agent  
3 [address in Washington]  
4 [telephone]

5 NEW SECTION. **Sec. 38.** RCW 11.40.020 applies to claims subject to  
6 this chapter.

7 NEW SECTION. **Sec. 39.** (1) Property of the decedent that was  
8 subject to the satisfaction of the decedent's general liabilities  
9 immediately before the decedent's death is liable for claims. The  
10 property includes, but is not limited to, property of the decedent that  
11 is includable in the decedent's probate estate, whether or not there is  
12 a probate administration of the decedent's estate.

13 (2) A claim approved by the notice agent, and a judgment on a claim  
14 first prosecuted against a notice agent, may be paid only out of assets  
15 received as a result of the death of the decedent by the notice agent  
16 or by those appointing the notice agent under chapter 11.96 RCW, except  
17 as may be provided by agreement under RCW 11.96.170 or by court order  
18 under RCW 11.96.070.

19 NEW SECTION. **Sec. 40.** (1) The notice agent shall approve or  
20 reject claims no later than by the end of a period that is two months  
21 after the end of the four-month time limitation defined as the "review  
22 period."

23 (2) The notice agent may approve a claim, in whole or in part.

24 (3) If the notice agent rejects a claim, in whole or in part, the  
25 notice agent shall notify the claimant of the rejection and file in the  
26 office of the clerk of the court in the notice county an affidavit or  
27 declaration under penalty of perjury under RCW 9A.72.085 showing the  
28 notification and the date of the notification. The notification must  
29 be by personal service or certified mail addressed to the claimant at  
30 the claimant's address as stated in the claim. If a person other than  
31 the claimant signed the claim for or on behalf of the claimant, and the  
32 person's business address as stated in the claim is different from that  
33 of the claimant, notification of the rejection also must be made by  
34 personal service or certified mail upon that person. The date of the  
35 postmark is the date of the notification. The notification of the  
36 rejection must advise the claimant, and the person making claim on his,

1 her, or its behalf, if any, that the claimant must bring suit in the  
2 proper court in the notice county against the notice agent: (a) Within  
3 thirty days after notification of rejection if the notification is made  
4 during or after the review period; or (b) before expiration of thirty  
5 days after the end of the four-month time limitation, if the  
6 notification is made during the four-month time limitation, and that  
7 otherwise the claim is forever barred.

8 (4) A claimant whose claim either has been rejected by the notice  
9 agent or has not been acted upon within twenty days of written demand  
10 for the action having been given to the notice agent by the claimant  
11 during or after the review period must commence an action against the  
12 notice agent in the proper court in the notice county to enforce the  
13 claim of the claimant within the earlier of:

14 (a) If the notice of the rejection of the claim has been sent as  
15 provided in subsection (3) of this section: The time for filing an  
16 action on a rejected claim is as provided in subsection (3) of this  
17 section; or

18 (b) If written demand for approval or rejection is made on the  
19 notice agent before the claim is rejected: Within 30 days following  
20 the end of the twenty-day written demand period where the demand period  
21 ends during or after the review period;  
22 otherwise the claim is forever barred.

23 (5) The notice agent may, either before or after rejection of a  
24 claim, compromise the claim, whether due or not, absolute or  
25 contingent, liquidated or unliquidated.

26 (6) A personal representative of the decedent's estate may revoke  
27 either or both of: (a) The rejection of a claim that has been rejected  
28 by the notice agent; or (b) the approval of a claim that has been  
29 either approved or compromised by the notice agent, or both.

30 (7) If a notice agent pays a claim that subsequently is revoked by  
31 a personal representative of the decedent, the notice agent may file a  
32 claim in the decedent's estate for the notice agent's payment, and the  
33 claim may be allowed or rejected as other claims, at the election of  
34 the personal representative.

35 (8) If the notice agent has not received substantially all assets  
36 of the decedent that are liable for claims, then although an action may  
37 be commenced on a rejected claim by a creditor against the notice  
38 agent, the notice agent, notwithstanding any provision in this chapter,  
39 may only make an appearance in the litigation. The Notice Agent may

1 not answer the action, but must, instead, cause a petition to be filed  
2 for the appointment of a personal representative of the decedent within  
3 thirty days of the service of the creditor's summons and complaint on  
4 the notice agent. A judgment may not be entered in an action brought  
5 by a creditor against the notice agent earlier than twenty days after  
6 the duly appointed, qualified, and acting personal representative of  
7 the decedent has been substituted in that action for the notice agent.

8 NEW SECTION. **Sec. 41.** If a claim has been filed and presented to  
9 a notice agent, and a part of the claim is allowed, the amount of the  
10 allowance must be stated in the indorsement. If the creditor refuses  
11 to accept the amount so allowed in satisfaction of the claim, the  
12 creditor may not recover costs in an action the creditor may bring  
13 against the notice agent and against any substituted personal  
14 representative unless the creditor recovers a greater amount than that  
15 offered to be allowed, exclusive of interest and costs.

16 NEW SECTION. **Sec. 42.** A debt of a decedent for whose estate no  
17 personal representative has been appointed must be paid in the  
18 following order by the notice agent from the assets of the decedent  
19 that are subject to the payment of claims as provided in section 39 of  
20 this act:

21 (1) Costs of administering the assets subject to the payment of  
22 claims, including a reasonable fee to the notice agent, the resident  
23 agent for the notice agent, if any, reasonable attorneys' fees for the  
24 attorney for each of them, filing fees, publication costs, mailing  
25 costs, and similar costs and fees.

26 (2) Funeral expenses in a reasonable amount.

27 (3) Expenses of the last sickness in a reasonable amount.

28 (4) Wages due for labor performed within sixty days immediately  
29 preceding the death of the decedent.

30 (5) Debts having preference by the laws of the United States.

31 (6) Taxes or any debts or dues owing to the state.

32 (7) Judgments rendered against the decedent in the decedent's  
33 lifetime that are liens upon real estate on which executions might have  
34 been issued at the time of the death of the decedent and debts secured  
35 by mortgages in the order of their priority. However, the real estate  
36 is subject to the payment of claims as provided in section 40 of this  
37 act.

1 (8) All other demands against the assets subject to the payment of  
2 claims as provided in section 40 of this act.

3 A claim of the notice agent or other person who has received  
4 property by reason of the decedent's death may not be paid by the  
5 notice agent unless all other claims that have been filed under this  
6 chapter, and all debts having priority to the claim, are paid in full  
7 or otherwise settled by agreement, regardless of whether the other  
8 claims are allowed or rejected, or partly allowed or partly rejected.  
9 In the event of the probate of the decedent's estate, the personal  
10 representative's payment from estate assets of the claim of the notice  
11 agent or other person who has received property by reason of the  
12 decedent's death is not affected by the priority payment provisions of  
13 this section.

14 NEW SECTION. **Sec. 43.** The notice agent may not allow a claim that  
15 is barred by the statute of limitations.

16 NEW SECTION. **Sec. 44.** A holder of a claim against a decedent may  
17 not maintain an action on the claim against a notice agent, unless the  
18 claim has been first presented as provided in this chapter. This  
19 chapter does not affect RCW 82.32.240.

20 NEW SECTION. **Sec. 45.** The time during which there is a vacancy in  
21 the office of notice agent is not included in a limitation prescribed  
22 in this chapter.

23 NEW SECTION. **Sec. 46.** If a judgment has been rendered against a  
24 decedent in the decedent's lifetime, an execution may not issue on the  
25 judgment after the death of the decedent, but the judgment must be  
26 presented in the form of a claim to the notice agent, if any, as any  
27 other claim. The claim need not be supported by the affidavit of the  
28 claimant. If the claim is justly due and unsatisfied, it must be paid  
29 in due course in accordance with this chapter for the payment of  
30 claims. However, if the judgment is a lien on property classified  
31 within the definition of the included property in section 31 of this  
32 act, the property may be sold for the satisfaction of the judgment, and  
33 the officer making the sale shall account to the notice agent for any  
34 surplus.

1        NEW SECTION.    **Sec. 47.**    The personal claim of a Notice Agent, as a  
2 creditor of the decedent, must be authenticated by affidavit, and must  
3 be filed and presented for allowance to the superior court in the  
4 notice county.    The allowance of the claim by the court is sufficient  
5 evidence of the correctness of the claim.

6        NEW SECTION.    **Sec. 48.**    In case the office of notice agent becomes  
7 vacant for any reason, including resignation, death, removal, or  
8 replacement, after notice by publication has been commenced as provided  
9 in section 32 of this act, the personal representative of the decedent  
10 or the successor notice agent shall publish notice of the vacancy and  
11 succession for two successive weeks in a legal newspaper published in  
12 the notice county.    The time between the commencement of the vacancy  
13 and the publication by the successor notice agent or personal  
14 representative must be added to the time within which claims must be  
15 filed:    (1) As fixed by the first published nonprobate notice to  
16 creditors; and (2) as extended in the case of actual notice under  
17 section 35 of this act, unless the time expired before the vacancy.  
18 Notice is not required if the period for filing claims has expired  
19 during the time that the former notice agent was qualified.

20        **Sec. 49.**    RCW 11.56.050 and 1965 c 145 s 11.56.050 are each amended  
21 to read as follows:

22        If the court should determine that it is necessary to sell any or  
23 all of the real estate for the purposes mentioned in this title, then  
24 it may make and cause to be entered an order directing the personal  
25 representative to sell so much of the real estate as the court may  
26 determine necessary for the purposes aforesaid.    Such order shall give  
27 a particular description of the property to be sold and the terms of  
28 such sale and shall provide whether such property shall be sold at  
29 public or private sale, or by negotiation.    (~~The court shall order  
30 sold that part of the real estate which is generally devised, rather  
31 than any part which may have been specifically devised, but the court  
32 may, if it appears necessary, sell any or all of the real estate so  
33 devised.~~)    After the giving of such order it shall be the duty of the  
34 personal representative to sell such real estate in accordance with the  
35 order of the court and as in this title provided with reference to the  
36 public or private sales of real estate.

1       **Sec. 50.** RCW 11.68.010 and 1977 ex.s. c 234 s 18 are each amended  
2 to read as follows:

3       Subject to the provisions of this chapter, if the estate of a  
4 decedent, who died either testate or intestate, is solvent taking into  
5 account both probate and nonprobate assets of the decedent, and if the  
6 personal representative is other than a creditor of the decedent not  
7 designated as personal representative in the decedent's will, such  
8 estate shall be managed and settled without the intervention of the  
9 court; the fact of solvency shall be established by the entry of an  
10 order of solvency. An order of solvency may be entered at the time of  
11 the appointment of the personal representative or at any time  
12 thereafter where it appears to the court by the petition of the  
13 personal representative, or the inventory filed, and/or other proof  
14 submitted, that the estate of the decedent is solvent, and that notice  
15 of the application for an order of solvency has been given to those  
16 persons entitled thereto when required by RCW 11.68.040 as now or  
17 hereafter amended.

18       **Sec. 51.** RCW 11.96.009 and 1985 c 31 s 2 are each amended to read  
19 as follows:

20       (1) The superior court shall have original subject-matter  
21 jurisdiction over ((probates in the following instances)) the probate  
22 of wills and the administration of estates of incapacitated, missing,  
23 and deceased individuals in all instances, including without  
24 limitation:

25       (a) When a resident of the state dies; or

26       (b) When a nonresident of the state dies in the state; or

27       (c) When a nonresident of the state dies outside the state.

28       (2) The superior court shall have original subject-matter  
29 jurisdiction over trusts and ((trust)) matters relating to trusts.

30       (3) The superior courts in the exercise of their jurisdiction of  
31 matters of ((probate and)) trusts and estates shall have the power to  
32 probate or refuse to probate wills, appoint personal representatives  
33 ((of deceased, incompetent, or disabled persons and)), administer and  
34 settle ((all such estates, and)) the affairs and the estates of  
35 incapacitated, missing, or deceased individuals including but not  
36 limited to decedents' estates only containing nonprobate assets,  
37 administer and settle matters that relate to nonprobate assets and  
38 arise under chapter 11.-- (section 19 of this act) or 11.-- RCW

1 (sections 31 through 48 of this act), administer and settle all trusts  
2 and trust matters, award processes and cause to come before them all  
3 persons whom they may deem it necessary to examine, and order and cause  
4 to be issued all such writs as may be proper or necessary, and do all  
5 things proper or incident to the exercise of such jurisdiction.

6 **Sec. 52.** RCW 11.96.020 and 1985 c 31 s 3 are each amended to read  
7 as follows:

8 It is the intention of ~~((this title))~~ the legislature that the  
9 courts ~~((mentioned))~~ shall have full and ample power and authority  
10 under this title to:

11 (1) Administer and settle ~~((all estates of decedents and~~  
12 ~~incompetent and disabled persons in this title mentioned and to))~~ the  
13 affairs and the estates of all incapacitated, missing, and deceased  
14 persons in accordance with this title;

15 (2) Administer and settle all trusts and trust matters; and

16 (3) Administer and settle matters arising with respect to  
17 nonprobate assets under chapters 11.-- (section 19 of this act) and  
18 11.-- RCW (sections 31 through 48 of this act).

19 If the provisions of this title with reference to the  
20 administration and settlement of such ~~((estates or trusts))~~ matters  
21 should in any cases and under any circumstances be inapplicable ~~((or))~~,  
22 insufficient, or doubtful, the court shall nevertheless have full power  
23 and authority to proceed with such administration and settlement in any  
24 manner and way which to the court seems right and proper, all to the  
25 end that such ~~((estates or trusts may be by the court administered upon~~  
26 ~~and settled))~~ matters may be administered and settled by the court.

27 **Sec. 53.** RCW 11.96.050 and 1985 c 31 s 6 are each amended to read  
28 as follows:

29 For purposes of venue in proceedings involving: The probate of  
30 wills; the administration and disposition of estates of incapacitated,  
31 missing, or deceased individuals, including but not limited to estates  
32 only containing nonprobate assets; or trusts and trust matters, the  
33 following shall apply:

34 (1) Proceedings under Title 11 RCW pertaining to trusts shall be  
35 commenced ~~((either))~~:

36 (a) In the superior court of the county in which the situs of the  
37 trust is located as provided in RCW 11.96.040; or

1       (b) (~~In the superior court of the county in which a trustee~~  
2 ~~resides or has its principal place of business; or~~  
3 ~~(e)~~) With respect to testamentary trusts, in the superior court of  
4 the county where letters testamentary were granted to a personal  
5 representative(~~(, and in the absence of)~~) or, where no such letters  
6 have been granted to a personal representative, then in any county  
7 where letters testamentary could have been granted in accordance with  
8 subsection (2) of this section.

9       (2) Wills shall be proven, letters testamentary or of  
10 administration granted, and other proceedings pertaining to the probate  
11 of wills, the administration and disposition of estates including but  
12 not limited to estates containing only nonprobate assets under Title 11  
13 RCW (~~pertaining to probate~~) shall be commenced(~~(, either)~~):

14       (a) In the county in which the decedent was a resident at the time  
15 of death;

16       (b) In the county in which the decedent died, or in which any part  
17 of the estate may be, if the decedent was not a resident of this state;  
18 (~~or~~)

19       (c) In the county in which any part of the estate may be, if the  
20 decedent (~~having~~) died out-of-state(~~(,)~~) and was not (~~having been~~)  
21 a resident (~~in~~) of this state at the time of death; or

22       (d) In the county in which any nonprobate asset may be, if the  
23 decedent died out-of-state, was not a resident of this state at the  
24 time of death, and left no assets subject to probate administration in  
25 this state.

26       (3) No action undertaken is defective or invalid because of  
27 improper venue if the court has jurisdiction of the matter.

28       **Sec. 54.** RCW 11.96.060 and 1985 c 31 s 7 are each amended to read  
29 as follows:

30       (1) Any action against the trustee of an express trust, excluding  
31 those trusts excluded from the definition of express trusts under RCW  
32 11.98.009, but including all express trusts, whenever executed, for any  
33 breach of fiduciary duty, must be brought within three years from the  
34 earlier of (a) the time the alleged breach was discovered or reasonably  
35 should have been discovered, (b) the discharge of a trustee from the  
36 trust as provided in RCW (~~11.98.040~~) 11.98.041, or (c) the time of  
37 termination of the trust or the trustee's repudiation of the trust.



1 (2) Any action by an heir, legatee, or other interested party, to  
2 whom proper notice was given if required, against a personal  
3 representative for alleged breach of fiduciary duty must be brought  
4 prior to discharge of the personal representative.

5 (3) The tolling provisions of RCW 4.16.190 apply to this chapter  
6 except that the running of any statute of limitations stated in  
7 subsection (1) or (2) of this section, or any other applicable statute  
8 of limitations for any matter that is the subject of dispute under  
9 chapter 11.96 RCW, is not tolled if the unascertained or unborn heir,  
10 beneficiary, or class of persons, or minor(~~(, incompetent, or~~  
11 ~~disabled)) or incapacitated person, or person identified in RCW  
12 11.96.170(2) or 11.96.180 whose identity or address is unknown, had a  
13 guardian ad litem, limited or general guardian of the estate, or a  
14 special representative to represent the person during the probate or  
15 dispute resolution proceeding.~~

16 (~~((4) Notwithstanding subsections (2) and (3) of this section, any~~  
17 ~~cause of action against a trustee of an express trust, as provided for~~  
18 ~~in subsection (1) of this section is not barred by the statute of~~  
19 ~~limitations if it is brought within three years from January 1, 1985.~~  
20 ~~In addition, any action as specified in subsection (2) of this section~~  
21 ~~against the personal representative is not barred by this statute of~~  
22 ~~limitations if it is brought within one year of January 1, 1985.))~~)

23 **Sec. 55.** RCW 11.96.070 and 1990 c 179 s 1 are each amended to read  
24 as follows:

25 (~~(A trustor, grantor, personal representative, trustee, or other~~  
26 ~~fiduciary, creditor, devisee, legatee, heir, or trust beneficiary~~  
27 ~~interested in the administration of a trust, or the attorney general in~~  
28 ~~the case of a charitable trust under RCW 11.110.120, or of the estate~~  
29 ~~of a decedent, incompetent, or disabled person,)) (1) A person with an  
30 interest in or right respecting the administration, settlement, or  
31 disposition of an interest in a trust or in the estate of an  
32 incapacitated, missing, or deceased person may have a judicial  
33 proceeding for the declaration of rights or legal relations ((in  
34 respect to the trust or estate)) under this title including but not  
35 limited to the following:~~

36 (~~((1) To ascertain)) (a) The ascertaining of any class of  
37 creditors, devisees, legatees, heirs, next of kin, or others;~~

1       (~~((2) To direct~~)) (b) The ordering of the personal representatives  
2 or trustees to do or abstain from doing any particular act in their  
3 fiduciary capacity;

4       (~~((3) To determine~~)) (c) The determination of any question arising  
5 in the administration of the estate or trust, including without  
6 limitation questions of construction of wills and other writings;

7       (~~((4) To confer upon~~)) (d) The grant to the personal  
8 representatives or trustees of any necessary or desirable powers not  
9 otherwise granted in the instrument or given by law that the court  
10 determines are not inconsistent with the provisions or purposes of the  
11 will or trust;

12       (~~((5) To amend or conform~~)) (e) The modification of the will or the  
13 trust instrument in the manner required to qualify the gift thereunder  
14 for the charitable estate tax deduction permitted by federal law,  
15 including the addition of mandatory governing instrument requirements  
16 for a charitable remainder trust as required by final regulations and  
17 rulings of the United States internal revenue service, in any case in  
18 which all parties interested in the trust have submitted written  
19 agreements to the proposed changes or written disclaimer of interest;  
20 (~~or~~

21       ~~(6) To amend or conform~~)) (f) The modification of the will or the  
22 trust instrument in the manner required to qualify any gift thereunder  
23 for the benefit of a surviving spouse who is not a citizen of the  
24 United States for the estate tax marital deduction permitted by federal  
25 law, including the addition of mandatory governing instrument  
26 requirements for a qualified domestic trust under section 2056A of the  
27 internal revenue code as required by final regulations and rulings of  
28 the United States treasury department or internal revenue service, in  
29 any case in which all parties interested in the trust have submitted  
30 written agreements to the proposed changes or written disclaimer of  
31 interest; (~~or~~

32       ~~(7) To resolve any other matter in this title referencing this~~  
33 ~~judicial proceedings section.~~)) (g) The determination of the persons  
34 entitled to notice under RCW 11.96.100 and 11.96.110 for the purposes  
35 of any judicial proceeding under this subsection (1) and for the  
36 purposes of an agreement under RCW 11.96.170; or

37       (h) The resolution of any other matter that arises under this title  
38 and references this section.

1       (2) Any person with an interest in or right respecting the  
2 administration of a nonprobate asset under this title may have a  
3 judicial proceeding for the declaration of rights or legal relations  
4 under this title with respect to the nonprobate asset, including  
5 without limitation the following:

6       (a) The ascertaining of any class of creditors or others for  
7 purposes of chapter 11.-- (section 19 of this act) or 11.-- RCW  
8 (sections 31 through 48 of this act);

9       (b) The ordering of a qualified person, the notice agent, or  
10 resident agent, as those terms are defined in chapter 11.-- RCW  
11 (sections 31 through 48 of this act), or any combination of them, to do  
12 or abstain from doing any particular act with respect to a nonprobate  
13 asset;

14       (c) The ordering of a custodian of any of the decedent's records  
15 relating to a nonprobate asset to do or abstain from doing any  
16 particular act with respect to those records;

17       (d) The determination of any question arising in the administration  
18 under chapter 11.-- (section 19 of this act) or 11.-- RCW (sections 31  
19 through 48 of this act) of a nonprobate asset;

20       (e) The determination of the persons entitled to notice under RCW  
21 11.96.100 and 11.96.110 for the purposes of any judicial proceeding  
22 under this subsection (2) and for the purposes of an agreement under  
23 RCW 11.96.170; and

24       (f) The determination of any questions relating to the abatement,  
25 rights of creditors, or other matter relating to the administration,  
26 settlement, or final disposition of a nonprobate asset under this  
27 title.

28       (3) The provisions of this chapter apply to disputes arising in  
29 connection with estates of (~~incompetents or disabled~~) incapacitated  
30 persons unless otherwise covered by chapters 11.88 and 11.92 RCW. The  
31 provisions of this chapter shall not supersede the otherwise applicable  
32 provisions and procedures of chapter 11.24, 11.28, 11.40, 11.52, 11.56,  
33 or 11.60 RCW with respect to any rights or legal obligations that are  
34 subject to those chapters.

35       (4) For the purposes of this section, "a person with an interest in  
36 or right respecting the administration, settlement, or disposition of  
37 an interest in a trust or in the estate of an incapacitated, missing,  
38 or deceased person" includes but is not limited to:

1 (a) The trustor if living, trustee, beneficiary, or creditor of a  
2 trust and, for a charitable trust, the attorney general if acting  
3 within the powers granted under RCW 11.110.120;

4 (b) The personal representative, heir, devisee, legatee, and  
5 creditor of an estate;

6 (c) The guardian, guardian ad litem, and ward of a guardianship,  
7 and a creditor of an estate subject to a guardianship; and

8 (d) Any other person with standing to sue with respect to any of  
9 the matters for which judicial proceedings are authorized in subsection  
10 (1) of this section.

11 (5) For the purposes of this section, "any person with an interest  
12 in or right respecting the administration of a nonprobate asset under  
13 this title" includes but is not limited to:

14 (a) The notice agent, the resident agent, or a qualified person, as  
15 those terms are defined in chapter 11.-- RCW (sections 31 through 48 of  
16 this act);

17 (b) The recipient of the nonprobate asset with respect to any  
18 matter arising under this title;

19 (c) Any other person with standing to sue with respect to any  
20 matter for which judicial proceedings are authorized in subsection (2)  
21 of this section; and

22 (d) The legal representatives of any of the persons named in this  
23 subsection.

24 **Sec. 56.** RCW 11.96.080 and 1985 c 31 s 9 are each amended to read  
25 as follows:

26 Unless rules of court or a provision of this title requires  
27 otherwise, a judicial proceeding under RCW 11.96.070 may be commenced  
28 by petition. The court shall make an order fixing the time and place  
29 for hearing the petition. The court shall approve the form and content  
30 of the notice. Notice of hearing shall be signed by the clerk of the  
31 court.

32 **Sec. 57.** RCW 11.96.090 and 1985 c 31 s 10 are each amended to read  
33 as follows:

34 The clerk of each of the superior courts is authorized to fix the  
35 time of hearing of all applications, petitions and reports in probate  
36 and guardianship proceedings, except the time for hearings upon show  
37 cause orders and citations and except for the time of hearings set

1 under RCW 11.96.080. The authority ((herein)) granted in this section  
2 is in addition to the authority vested in the superior courts and  
3 superior court commissioners.

4 **Sec. 58.** RCW 11.96.100 and 1985 c 31 s 11 are each amended to read  
5 as follows:

6 (1) Subject to RCW 11.96.110, in all judicial proceedings under  
7 Title 11 RCW that require notice, such notice shall be personally  
8 served ((or mailed to each trustee, personal representative, heir,  
9 beneficiary including devisees, legatees, and heirs, guardian ad litem,  
10 and person having an interest in the trust or estate whose name and  
11 address are known to the petitioner)) on or mailed to all parties to  
12 the dispute at least twenty days prior to the hearing on the  
13 petition((~~r~~)) unless ((otherwise)) a different period is provided by  
14 statute or ordered by the court under RCW 11.96.080.

15 (2) Proof of ((such)) the service or mailing required in this  
16 section shall be made by affidavit filed at or before the hearing.

17 ((In addition, notice shall also be given to)) (3) For the purposes  
18 of this section:

19 (a) When used in connection with a judicial proceeding under RCW  
20 11.96.070(1), "parties to the dispute" means each:

21 (i) Trustor if living;

22 (ii) Trustee;

23 (iii) Personal representative;

24 (iv) Heir;

25 (v) Beneficiary including devisees, legatees, and trust  
26 beneficiaries;

27 (vi) Guardian ad litem; or

28 (vii) Other person

29 who has an interest in the subject of the particular proceeding and  
30 whose name and address are known to, or are reasonably ascertainable  
31 by, the petitioner, and also includes the attorney general if required  
32 under RCW 11.110.120.

33 (b) When used in connection with a judicial proceeding under RCW  
34 11.96.070(2), "parties to the dispute" means each notice agent, if any,  
35 or other person, who has an interest in the subject of the particular  
36 proceeding and whose name and address are known to, or are reasonably  
37 ascertainable by, the petitioner, and also includes the personal  
38 representatives of the estate of the owner of the nonprobate asset that

1 is the subject of the particular proceeding, if the subject of the  
2 particular proceeding relates to the beneficiary's liability to a  
3 decedent's estate or creditors under section 19 of this act.

4 (c) "Notice agent" has the meanings given in section 31 of this  
5 act.

6 **Sec. 59.** RCW 11.96.110 and 1985 c 31 s 12 are each amended to read  
7 as follows:

8 Notwithstanding provisions of this chapter to the contrary, there  
9 is compliance with the ~~((notice))~~ requirements of Title 11 RCW for  
10 notice to the beneficiaries of, ~~((or))~~ and other persons interested in,  
11 an estate ~~((or))~~, a trust, or ~~((to beneficiaries or remaindermen))~~ a  
12 nonprobate asset, including without limitation all living persons who  
13 may participate in the corpus or income of the trust or estate, if  
14 notice is given as follows:

15 (1) If an interest in an estate ~~((or))~~, trust, or nonprobate asset  
16 has been given to persons who compose a certain class upon the  
17 happening of a certain event, notice shall be given to the living  
18 persons who would constitute the class if the event had happened  
19 immediately before the commencement of the proceeding requiring notice.

20 (2) If an interest in an estate ~~((or))~~, trust, or nonprobate asset  
21 has been given to a living person, and the same interest, or a share in  
22 it, is to pass to the surviving spouse or to persons who are, or may  
23 be, the distributees, heirs, issue, or other kindred of that living  
24 person upon the happening of a future event, notice shall be given to  
25 that living person.

26 (3) Except as otherwise provided in subsection (2) of this section,  
27 if an interest in an estate ~~((or))~~, trust, or nonprobate asset has been  
28 given to a person, a class of persons, or both upon the happening of  
29 any future event, and the same interest or a share of such interest is  
30 to pass to another person, class of persons, or both, upon the  
31 happening of an additional future event, notice shall be given to the  
32 living person or persons who would take the interest upon the happening  
33 of the first event.

34 (4) Notice shall be given to persons who would not otherwise be  
35 entitled to notice by law if a conflict of interest involving the  
36 subject matter of the ~~((trust or estate))~~ proceeding relating to an  
37 estate, trust, or nonprobate asset is known to exist between a person

1 to whom notice is given and a person to whom notice need not be given  
2 under Title 11 RCW.

3 Any action taken by the court is conclusive and binding upon each  
4 person receiving actual or constructive notice in the manner provided  
5 in this section.

6 **Sec. 60.** RCW 11.96.130 and 1985 c 31 s 14 are each amended to read  
7 as follows:

8 All issues of fact (~~((joined in probate or trust proceedings))~~) in  
9 any judicial proceeding under this title shall be tried in conformity  
10 with the requirements of the rules of practice in civil actions(~~((The~~  
11 ~~probate or trust))~~), except as otherwise provided by statute or ordered  
12 by the court under RCW 11.96.030 or other applicable law or rules of  
13 court. The judicial proceeding may be commenced as a new action or as  
14 an action incidental to an existing (~~((probate or trust))~~) judicial  
15 proceeding relating to the same trust or estate or nonprobate asset.  
16 Once commenced, the action may be consolidated with an existing  
17 (~~((probate or trust))~~) proceeding or converted to a separate action upon  
18 the motion of any party for good cause shown, or by the court on its  
19 own motion. If a party is entitled to a trial by jury and a jury is  
20 demanded, and the issues are not sufficiently made up by the written  
21 pleadings on file, the court, on due notice, shall settle and frame the  
22 issues to be tried. If no jury is demanded, the court shall try the  
23 issues (~~((joined))~~), and sign and file its findings and decision in  
24 writing, as provided for in civil actions. Judgment on the (~~((issue~~  
25 ~~joined))~~) issues, as well as for costs, may be entered and enforced by  
26 execution or otherwise by the court as in civil actions.

27 **Sec. 61.** RCW 11.96.140 and 1985 c 31 s 15 are each amended to read  
28 as follows:

29 Either the superior court or the court on appeal, may, in its  
30 discretion, order costs, including (~~((attorneys))~~) attorneys' fees, to be  
31 paid by any party to the proceedings or out of the assets of the estate  
32 or trust or nonprobate asset, as justice may require.

33 **Sec. 62.** RCW 11.96.160 and 1988 c 202 s 19 are each amended to  
34 read as follows:

35 Any interested party may seek appellate review of any final order,  
36 judgment, or decree of the court(~~((, and such))~~) respecting any judicial

1 proceedings under this title. The review shall be in the manner and  
2 way provided by law for appeals in civil actions.

3 **Sec. 63.** RCW 11.96.170 and 1988 c 29 s 7 are each amended to read  
4 as follows:

5 (1) If(~~(, as to the)~~) all required parties to the dispute agree as  
6 to a matter in dispute, the ((trustor, grantor, all parties  
7 beneficially interested in the estate or trust with respect to such  
8 matter, and any current fiduciary of such estate or trust, who are also  
9 included in RCW 11.96.070 and who are entitled to notice under RCW  
10 11.96.100 and 11.96.110 agree on any matter listed in RCW 11.96.070 or  
11 any other matter in Title 11 RCW referencing this nonjudicial  
12 resolution procedure, then the)) agreement shall be evidenced by a  
13 written agreement executed by all ((necessary persons as provided in  
14 this section)) required parties to the dispute. Those persons may  
15 reach an agreement concerning a matter in RCW 11.96.070(~~(+4)~~) (1)(d)  
16 as long as those persons, rather than the court, determine that the  
17 powers to be conferred are not inconsistent with the provisions or  
18 purposes of the will or trust.

19 (2) If necessary, (~~the personal representative or trustee~~) any  
20 one or more of the required parties to the dispute may petition the  
21 court for the appointment of a special representative to represent a  
22 ((person interested in the estate or trust who is a minor, incompetent,  
23 disabled, or)) required party to the dispute who is incapacitated by  
24 reason of being a minor or otherwise, who is yet unborn or  
25 unascertained, or ((a person)) whose identity or address is unknown.  
26 The special representative has authority to enter into a binding  
27 agreement under this section on behalf of the person or beneficiary.  
28 The special representative may be appointed for more than one person or  
29 class of persons if the interests of such persons or (~~class~~) classes  
30 are not in conflict. Those entitled to receive notice for persons or  
31 beneficiaries described in RCW 11.96.110 may enter into a binding  
32 agreement on behalf of such persons or beneficiaries.

33 (3) The special representative shall be a lawyer licensed to  
34 practice before the courts of this state or an individual with special  
35 skill or training in the administration of estates (~~or~~), trusts, or  
36 nonprobate assets, as applicable. The special representative shall  
37 have no interest in any affected estate (~~or~~), trust, or nonprobate  
38 asset, and shall not be related to any personal representative,



1 trustee, beneficiary, or other person interested in the estate ((or)),  
2 trust, or nonprobate asset. The special representative is entitled to  
3 reasonable compensation for services ((which)) and, if applicable, that  
4 compensation shall be paid from the principal of the estate ((or)),  
5 trust, or nonprobate asset whose beneficiaries are represented. Upon  
6 execution of the written agreement, the special representative shall be  
7 discharged of any further responsibility with respect to the estate  
8 ((or)), trust, or nonprobate asset.

9 (4) The written agreement or a memorandum summarizing the  
10 provisions of the written agreement may, at the option of any ((person  
11 interested in the estate or trust)) of the required parties to the  
12 dispute, be filed with the court having jurisdiction over the estate  
13 ((or)), trust, nonprobate asset, or other matter affected by the  
14 agreement. The person filing the agreement or memorandum shall, within  
15 five days ((thereof)) after the agreement or memorandum is filed with  
16 the court, mail a copy of the agreement, the summarizing memorandum if  
17 one was filed with the court, and a notice of the filing to each  
18 ((person interested in the estate or trust)) of the required parties to  
19 the dispute whose address is known or is reasonably ascertainable by  
20 the person. Notice shall be in substantially the following form:

21 CAPTION                   NOTICE OF FILING OF  
22 OF CASE                    AGREEMENT OR  
23                               MEMORANDUM  
24                               OF AGREEMENT

25 Notice is hereby given that the attached document was filed by the  
26 undersigned in the above entitled court on the . . . . . day of  
27 . . . . ., ((19--)) . . . . . Unless you file a petition objecting  
28 to the agreement within 30 days of the above specified date the  
29 agreement will be deemed approved and will be equivalent to a final  
30 order binding on all persons interested in the ((estate or trust))  
31 subject of the agreement.

32 If you file and serve a petition within the period specified, you  
33 should ask the court to fix a time and place for the hearing on the  
34 petition and provide for at least ((a)) ten days' notice to all persons  
35 interested in the ((estate or trust)) subject of the agreement.

36 DATED this . . . . . day of . . . . ., ((19--)) . . . . .

1 . . . . .  
2 ~~((Party to the agreement))~~ Name of  
3 person filing the agreement or memorandum with the court)

4 (5) Unless a ~~((person interested in the estate or trust))~~ required  
5 party to the dispute files a petition objecting to the agreement within  
6 thirty days ~~((of))~~ after the filing of the agreement or the memorandum,  
7 the agreement will be deemed approved and will be equivalent to a final  
8 order binding on all ~~((persons interested in the estate or trust. If~~  
9 ~~all persons interested in the estate or trust))~~ parties to the dispute.  
10 If all required parties to the dispute waive the notice required by  
11 this section, the agreement will be deemed approved and will be  
12 equivalent to a final order binding on all such persons ~~((interested in~~  
13 ~~the estate or trust))~~ effective upon the date of filing.

14 (6) For the purposes of this section:

15 (a) "Matter in dispute" includes without limitation any matter  
16 listed in RCW 11.96.070 or any other matter in this title referencing  
17 this nonjudicial resolution procedure;

18 (b) "Parties to the dispute" has the meaning given to that term in  
19 RCW 11.96.100(3) (a) and (b), as applicable;

20 (c) "Required parties to the dispute" means those parties to the  
21 dispute who are entitled to notice under RCW 11.96.100 and 11.96.110,  
22 and, when used in the singular, means any one of the required parties  
23 to the dispute; and

24 (d) "Estate" includes the estate of a deceased, missing, or  
25 incapacitated person.

26 **Sec. 64.** RCW 11.96.180 and 1985 c 31 s 19 are each amended to  
27 read as follows:

28 (1) The court, upon its own motion or on request of ~~((a person~~  
29 ~~interested in the trust or estate))~~ any one or more of the required  
30 parties to the dispute as that term is defined in RCW 11.96.170(6)(c),  
31 at any stage of a judicial proceeding or at any time in a nonjudicial  
32 resolution procedure, may appoint a guardian ad litem to represent the  
33 interests of a minor, incapacitated, unborn, or unascertained person,  
34 or person whose identity ~~((and))~~ or address ~~((are))~~ is unknown, or a  
35 designated class of persons who are not ascertained or are not in  
36 being. When not precluded by a conflict of interest, a guardian ad  
37 litem may be appointed to represent several persons or interests.

1           (2) (~~For the purposes of this section, a trustee is a person~~  
2 ~~interested in the trust and a personal representative is a person~~  
3 ~~interested in an estate.~~

4           ~~(3))~~) The court-appointed guardian ad litem supersedes the special  
5 representative if so provided in the court order.

6           (~~(4))~~) (3) The court may appoint the guardian ad litem at an ex  
7 parte hearing, or the court may order a hearing as provided in RCW  
8 11.96.070 with notice as provided in RCW 11.96.080, 11.96.100, and  
9 11.96.110.

10           **Sec. 65.** RCW 82.32.240 and 1988 c 64 s 21 are each amended to  
11 read as follows:

12           Any tax due and unpaid and all increases and penalties thereon,  
13 shall constitute a debt to the state and may be collected by court  
14 proceedings in the same manner as any other debt in like amount, which  
15 remedy shall be in addition to any and all other existing remedies.

16           In all cases of probate, insolvency, assignment for the benefit of  
17 creditors, or bankruptcy, involving any taxpayer who is, or decedent  
18 who was, engaging in business, the claim of the state for said taxes  
19 and all increases and penalties thereon shall be a lien upon all real  
20 and personal property of the taxpayer, and the mere existence of such  
21 cases or conditions shall be sufficient to create such lien without any  
22 prior or subsequent action by the state, and in all such cases it shall  
23 be the duty of all administrators, executors, guardians, receivers,  
24 trustees in bankruptcy or assignees for the benefit of creditors, to  
25 notify the department of revenue of such administration, receivership  
26 or assignment within sixty days from the date of their appointment and  
27 qualification.

28           The lien provided for by this section shall attach as of the date  
29 of the assignment for the benefit of creditors or of the initiation of  
30 the probate, insolvency, or bankruptcy proceedings: PROVIDED, That  
31 this sentence shall not be construed as affecting the validity or  
32 priority of any earlier lien that may have attached previously in favor  
33 of the state under any other section of this title.

34           Any administrator, executor, guardian, receiver or assignee for  
35 the benefit of creditors not giving the notification as provided for  
36 above shall become personally liable for payment of the taxes and all  
37 increases and penalties thereon to the extent of the value of the  
38 property subject to administration that otherwise would have been

1 available for the payment of such taxes, increases, and penalties by  
2 the administrator, executor, guardian, receiver, or assignee.

3 As used in this section, "probate" includes the nonprobate claim  
4 settlement procedure under chapter 11.-- RCW (sections 31 through 48 of  
5 this act), and "executor" and "administrator" includes any notice agent  
6 acting under chapter 11.-- RCW (sections 31 through 48 of this act).

7 NEW SECTION. Sec. 66. The following acts or parts of acts are  
8 each repealed:

- 9 (1) RCW 11.12.050 and 1965 c 145 s 11.12.050;
- 10 (2) RCW 11.12.090 and 1965 c 145 s 11.12.090;
- 11 (3) RCW 11.12.130 and 1965 c 145 s 11.12.130;
- 12 (4) RCW 11.12.140 and 1965 c 145 s 11.12.140;
- 13 (5) RCW 11.12.150 and 1965 c 145 s 11.12.150.
- 14 (6) RCW 11.12.200 and 1965 c 145 s 11.12.200;
- 15 (7) RCW 11.12.210 and 1965 c 145 s 11.12.210;
- 16 (8) RCW 11.56.015 and 1965 c 145 s 11.56.015;
- 17 (9) RCW 11.56.140 and 1965 c 145 s 11.56.140;
- 18 (10) RCW 11.56.150 and 1965 c 145 s 11.56.150;
- 19 (11) RCW 11.56.160 and 1965 c 145 s 11.56.160; and
- 20 (12) RCW 11.56.170 and 1965 c 145 s 11.56.170.

21 NEW SECTION. Sec. 67. (1) Sections 4 through 8 of this act shall  
22 constitute a new chapter in Title 11 RCW.

23 (2) Section 19 of this act shall constitute a new chapter in Title  
24 11 RCW.

25 (3) Sections 31 through 48 of this act shall constitute a new  
26 chapter in Title 11 RCW.

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