

CERTIFICATION OF ENROLLMENT
SUBSTITUTE SENATE BILL 5110

Chapter 252, Laws of 1997

55th Legislature
1997 Regular Session

PROBATE--REVISIONS

EFFECTIVE DATE: 7/27/97

Passed by the Senate April 19, 1997
YEAS 46 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House April 8, 1997
YEAS 97 NAYS 0

CLYDE BALLARD

**Speaker of the
House of Representatives**

Approved May 5, 1997

GARY LOCKE

Governor of the State of Washington

CERTIFICATE

I, Mike O Connell, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5110** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MIKE O'CONNELL

Secretary

FILED

May 5, 1997 - 4:27 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5110

AS AMENDED BY THE HOUSE

Passed Legislature - 1997 Regular Session

State of Washington 55th Legislature 1997 Regular Session

By Senate Committee on Law & Justice (originally sponsored by Senators Johnson and Roach)

Read first time 02/06/97.

1 AN ACT Relating to probate; amending RCW 11.02.005, 11.07.010,
2 11.18.200, 11.28.240, 11.28.270, 11.28.280, 11.40.010, 11.40.020,
3 11.40.030, 11.40.040, 11.40.060, 11.40.070, 11.40.080, 11.40.090,
4 11.40.100, 11.40.110, 11.40.120, 11.40.130, 11.40.140, 11.40.150,
5 11.42.010, 11.42.020, 11.42.030, 11.42.040, 11.42.050, 11.42.060,
6 11.42.070, 11.42.080, 11.42.090, 11.42.100, 11.42.110, 11.42.120,
7 11.42.130, 11.42.140, 11.42.150, 11.44.015, 11.44.025, 11.44.035,
8 11.44.050, 11.44.070, 11.44.085, 11.44.090, 11.48.130, 11.68.050,
9 11.68.060, 11.68.080, 11.68.090, 11.68.110, 11.76.080, 11.76.095,
10 11.86.041, 11.95.140, 11.98.070, 11.98.240, 11.96.070, 11.104.010,
11 11.104.110, 11.108.010, 11.108.020, 11.108.025, 11.108.050, 11.28.237,
12 and 11.108.060; adding new sections to chapter 11.40 RCW; adding new
13 sections to chapter 11.42 RCW; adding new sections to chapter 11.68
14 RCW; adding a new section to chapter 11.104 RCW; adding a new chapter
15 to Title 11 RCW; creating a new section; and repealing RCW 11.40.011,
16 11.40.012, 11.40.013, 11.40.014, 11.40.015, 11.42.160, 11.42.170,
17 11.42.180, 11.44.066, 11.52.010, 11.52.012, 11.52.014, 11.52.016,
18 11.52.020, 11.52.022, 11.52.024, 11.52.030, 11.52.040, 11.52.050,
19 11.68.010, 11.68.020, 11.68.030, and 11.68.040.

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

1 **Sec. 1.** RCW 11.02.005 and 1994 c 221 s 1 are each amended to read
2 as follows:

3 When used in this title, unless otherwise required from the
4 context:

5 (1) "Personal representative" includes executor, administrator,
6 special administrator, and guardian or limited guardian and special
7 representative.

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

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

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

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

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

37 (7) "Real estate" includes, except as otherwise specifically
38 provided herein, all lands, tenements, and hereditaments, and all

1 rights thereto, and all interest therein possessed and claimed in fee
2 simple, or for the life of a third person.

3 (8) "Will" means an instrument validly executed as required by RCW
4 11.12.020.

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

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

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

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

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

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

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

1 a right or interest if, before death, the person has irrevocably
2 transferred the right or interest, the person has waived the power to
3 transfer it or, in the case of contractual arrangement, the person has
4 waived the unilateral right to rescind or modify the arrangement; or a
5 right or interest held by the person solely in a fiduciary capacity.
6 For the definition of "nonprobate asset" relating to revocation of a
7 provision for a former spouse upon dissolution of marriage or
8 declaration of invalidity of marriage, RCW 11.07.010(5) applies.

9 (16) "Internal Revenue Code" means the United States Internal
10 Revenue Code of 1986, as amended or renumbered on January 1, (~~1995~~)
11 1997.

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

14 Words importing the masculine gender only may be extended to
15 females also.

16 **Sec. 2.** RCW 11.07.010 and 1994 c 221 s 2 are each amended to read
17 as follows:

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

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

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

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

32 (ii) The decree of dissolution or declaration of invalidity
33 requires that the decedent maintain a nonprobate asset for the benefit
34 of a former spouse or children of the marriage, payable on the
35 decedent's death either outright or in trust, and other nonprobate
36 assets of the decedent fulfilling such a requirement for the benefit of
37 the former spouse or children of the marriage do not exist at the
38 decedent's death; or

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

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

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

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

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

38 (c) Notwithstanding subsections (1) and (2) of this section and (a)
39 and (b) of this subsection, a payor or other third party having actual

1 knowledge of the existence of a dispute between beneficiaries or other
2 persons concerning rights to a nonprobate asset as a result of the
3 application of this section may condition the payment or transfer of
4 the nonprobate asset on execution, in a form and with security
5 acceptable to the payor or other third party, of a bond in an amount
6 that is double the fair market value of the nonprobate asset at the
7 time of the decedent's death or the amount of an adverse claim,
8 whichever is the lesser, or of a similar instrument to provide security
9 to the payor or other third party, indemnifying the payor or other
10 third party for any liability, loss, damage, costs, and expenses for
11 and on account of payment or transfer of the nonprobate asset.

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

31 (4)(a) A person who purchases a nonprobate asset from a former
32 spouse or other person, for value and without actual knowledge, or who
33 receives from a former spouse or other person payment or transfer of a
34 nonprobate asset without actual knowledge and in partial or full
35 satisfaction of a legally enforceable obligation, is neither obligated
36 under this section to return the payment, property, or benefit nor is
37 liable under this section for the amount of the payment or the value of
38 the nonprobate asset. However, a former spouse or other person who,
39 with actual knowledge, not for value, or not in satisfaction of a

1 legally enforceable obligation, receives payment or transfer of a
2 nonprobate asset to which that person is not entitled under this
3 section is obligated to return the payment or nonprobate asset, or is
4 personally liable for the amount of the payment or value of the
5 nonprobate asset, to the person who is entitled to it under this
6 section.

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

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

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

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

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

34 (d) Transfer on death beneficiary designations of a transfer on
35 death or pay on death security, if such designations are authorized
36 under Washington law.

37 However, for the general definition of "nonprobate asset" in this
38 title, RCW 11.02.005 applies.

1 (6) This section is remedial in nature and applies as of July 25,
2 1993, to decrees of dissolution and declarations of invalidity entered
3 after July 24, 1993, and this section applies as of January 1, 1995, to
4 decrees of dissolution and declarations of invalidity entered before
5 July 25, 1993.

6 **Sec. 3.** RCW 11.18.200 and 1994 c 221 s 19 are each amended to read
7 as follows:

8 (1) Unless expressly exempted by statute, a beneficiary of a
9 nonprobate asset that was subject to satisfaction of the decedent's
10 general liabilities immediately before the decedent's death takes the
11 asset subject to liabilities, claims, estate taxes, and the fair share
12 of expenses of administration reasonably incurred by the personal
13 representative in the transfer of or administration upon the asset.
14 The beneficiary of such an asset is liable to account to the personal
15 representative to the extent necessary to satisfy liabilities, claims,
16 the asset's fair share of expenses of administration, and the asset's
17 share of estate taxes under chapter 83.110 RCW. Before making demand
18 that a beneficiary of a nonprobate asset account to the personal
19 representative, the personal representative shall give notice to the
20 beneficiary, in the manner provided in chapter 11.96 RCW, that the
21 beneficiary is liable to account under this section.

22 (2) The following rules govern in applying subsection (1) of this
23 section:

24 (a) A beneficiary of property passing at death under a community
25 property agreement takes the property subject to the decedent's
26 liabilities, claims, estate taxes, and administration expenses as
27 described in subsection (1) of this section. However, assets existing
28 as community or separate property immediately before the decedent's
29 death under the community property agreement are subject to the
30 decedent's liabilities and claims to the same extent that they would
31 have been had they been assets of the probate estate.

32 (b) A beneficiary of property held in joint tenancy form with right
33 of survivorship, including without limitation United States savings
34 bonds or similar obligations, takes the property subject to the
35 decedent's liabilities, claims, estate taxes, and administration
36 expenses as described in subsection (1) of this section to the extent
37 of the decedent's beneficial ownership interest in the property
38 immediately before death.

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

8 (d) A beneficiary of deeds or conveyances made by the decedent if
9 possession has been postponed until the death of the decedent takes the
10 property subject to the decedent's liabilities, claims, estate taxes,
11 and administration expenses as described in subsection (1) of this
12 section, to the extent of the decedent's beneficial ownership interest
13 in the property immediately before death.

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

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

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

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

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

33 (j) An inference may not be drawn from (a) through (i) of this
34 subsection that a beneficiary of nonprobate assets other than those
35 assets specifically described in (a) through (i) of this subsection
36 does or does not take the assets subject to claims, liabilities, estate
37 taxes, and administration expenses as described in subsection (1) of
38 this section.

1 (3) Nothing in this section derogates from the rights of a person
2 interested in the estate to recover tax under chapter 83.110 RCW or
3 from the liability of any beneficiary for estate tax under chapter
4 83.110 RCW.

5 (4) Nonprobate assets that may be responsible for the satisfaction
6 of the decedent's general liabilities and claims abate together with
7 the probate assets of the estate in accord with chapter 11.10 RCW.

8 **Sec. 4.** RCW 11.28.240 and 1985 c 30 s 5 are each amended to read
9 as follows:

10 (1) At any time after the issuance of letters testamentary or of
11 administration or certificate of qualification upon the estate of any
12 decedent, any person interested in the estate as an heir, devisee,
13 distributee, legatee or creditor whose claim has been duly served and
14 filed, or the lawyer for the heir, devisee, distributee, legatee, or
15 creditor may serve upon the personal representative or upon the lawyer
16 for the personal representative, and file with the clerk of the court
17 wherein the administration of the estate is pending, a written request
18 stating that the person desires special notice of any or all of the
19 following named matters, steps or proceedings in the administration of
20 the estate, to wit:

21 ((+1)) (a) Filing of petitions for sales, leases, exchanges or
22 mortgages of any property of the estate.

23 ((+2)) (b) Petitions for any order of solvency or for
24 nonintervention powers.

25 ((+3)) (c) Filing of accounts.

26 ((+4)) (d) Filing of petitions for distribution.

27 ((+5)) (e) Petitions by the personal representative for family
28 allowances and homesteads.

29 ((+6)) (f) The filing of a declaration of completion.

30 ((+7)) (g) The filing of the inventory.

31 ((+8)) (h) Notice of presentation of personal representative's
32 claim against the estate.

33 ((+9)) (i) Petition to continue a going business.

34 ((+10)) (j) Petition to borrow upon the general credit of the
35 estate.

36 ((+11)) (k) Petition for judicial proceedings under chapter 11.96
37 RCW.

38 ((+12)) (l) Petition to reopen an estate.

1 (~~(13)~~) (m) Intent to distribute estate assets, other than
2 distributions in satisfaction of specific bequests or legacies of
3 specific dollar amounts.

4 (~~(14)~~) (n) Intent to pay attorney's or personal representative's
5 fees.

6 The requests shall state the post office address of the heir,
7 devisee, distributee, legatee or creditor, or his or her lawyer, and
8 thereafter a brief notice of the filing of any of the petitions,
9 accounts, declaration, inventory or claim, except petitions for sale of
10 perishable property, or other tangible personal property which will
11 incur expense or loss by keeping, shall be addressed to the heir,
12 devisee, distributee, legatee or creditor, or his or her lawyer, at the
13 post office address stated in the request, and deposited in the United
14 States post office, with prepaid postage, at least ten days before the
15 hearing of the petition, account or claim or of the proposed
16 distribution or payment of fees; or personal service of the notices may
17 be made on the heir, devisee, distributee, legatee, creditor, or
18 lawyer, not less than five days before the hearing, and the personal
19 service shall have the same effect as deposit in the post office, and
20 proof of mailing or of personal service must be filed with the clerk
21 before the hearing of the petition, account or claim or of the proposed
22 distribution or payment of fees. If the notice has been regularly
23 given, any distribution or payment of fees and any order or judgment,
24 made in accord therewith is final and conclusive.

25 (2) Notwithstanding subsection (1) of this section, a request for
26 special notice may not be made by a person, and any request for special
27 notice previously made by a person becomes null and void, when:

28 (a) That person qualifies to request special notice solely by
29 reason of being a specific legatee, all of the property that person is
30 entitled to receive from the decedent's estate has been distributed to
31 that person, and that person's bequest is not subject to any subsequent
32 abatement for the payment of the decedent's debts, expenses, or taxes;

33 (b) That person qualifies to request special notice solely by
34 reason of being an heir of the decedent, none of the decedent's
35 property is subject to the laws of descent and distribution, the
36 decedent's will has been probated, and the time for contesting the
37 probate of that will has expired; or

38 (c) That person qualifies to request special notice solely by
39 reason of being a creditor of the decedent and that person has received

1 all of the property that the person is entitled to receive from the
2 decedent's estate.

3 **Sec. 5.** RCW 11.28.270 and 1965 c 145 s 11.28.270 are each amended
4 to read as follows:

5 If (~~there be~~) more than one personal representative of an
6 estate(~~, and~~) is serving when the letters to (~~part~~) any of them
7 (~~be~~) are revoked or surrendered(~~)~~ or (~~a part~~) when any part of
8 them dies or in any way becomes disqualified, those who remain shall
9 perform all the duties required by law unless the decedent provided
10 otherwise in a duly probated will or unless the court orders otherwise.

11 **Sec. 6.** RCW 11.28.280 and 1974 ex.s. c 117 s 26 are each amended
12 to read as follows:

13 Except as otherwise provided in RCW 11.28.270, if (~~the~~) a
14 personal representative of an estate dies(~~)~~ or resigns(~~)~~ or the
15 letters are revoked before the settlement of the estate, letters
16 testamentary or letters of administration of the estate remaining
17 unadministered shall be granted to those to whom (~~administration~~) the
18 letters would have been granted if the original letters had not been
19 obtained, or the person obtaining them had renounced administration,
20 and the (~~administrator de bonis non~~) successor personal
21 representative shall perform like duties and incur like liabilities as
22 the (~~former personal representative, and shall serve as administrator~~
23 ~~with will annexed de bonis non in the event a will has been admitted to~~
24 ~~probate. Said administrator de bonis non may, upon satisfying the~~
25 ~~requirements and complying with the procedures provided in chapter~~
26 ~~11.68 RCW, administer the estate of the decedent without the~~
27 ~~intervention of court~~) preceding personal representative, unless the
28 decedent provided otherwise in a duly probated will or unless the court
29 orders otherwise. A succeeding personal representative may petition
30 for nonintervention powers under chapter 11.68 RCW.

31 **Sec. 7.** RCW 11.40.010 and 1995 1st sp.s. c 18 s 58 are each
32 amended to read as follows:

33 (~~Every personal representative shall, after appointment and~~
34 ~~qualification, give a notice to the creditors of the deceased, stating~~
35 ~~such appointment and qualification as personal representative and~~
36 ~~requiring all persons having claims against the deceased to serve the~~

1 same on the personal representative or the estate's attorney of record,
2 and file an executed copy thereof with the clerk of the court, within
3 four months after the date of the first publication of such notice
4 described in this section or within four months after the date of the
5 filing of the copy of such notice with the clerk of the court,
6 whichever is the later, or within the time otherwise provided in RCW
7 11.40.013. The four-month time period after the later of the date of
8 the first publication of the notice to creditors or the date of the
9 filing of such notice with the clerk of the court is referred to in
10 this chapter as the "four-month time limitation." Such notice shall be
11 given as follows:

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

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

18 (3) The personal representative shall file a copy of such notice
19 with the clerk of the court; and

20 (4) The personal representative shall mail a copy of the notice,
21 including the decedent's social security number, to the state of
22 Washington, department of social and health services, office of
23 financial recovery.

24 Except as otherwise provided in RCW 11.40.011 or 11.40.013, any
25 claim not filed within the four-month time limitation shall be forever
26 barred, if not already barred by any otherwise applicable statute of
27 limitations. This bar is effective as to claims against both the
28 decedent's probate assets and nonprobate assets as described in RCW
29 11.18.200. Proof by affidavit of the giving and publication of such
30 notice shall be filed with the court by the personal representative.

31 Acts of a notice agent in complying with chapter 221, Laws of 1994
32 may be adopted and ratified by the personal representative as if done
33 by the personal representative in complying with this chapter, except
34 that if at the time of the appointment and qualification of the
35 personal representative a notice agent had commenced nonprobate notice
36 to creditors under chapter 11.42 RCW, the personal representative shall
37 give published notice as provided in RCW 11.42.180.)) A person having
38 a claim against the decedent may not maintain an action on the claim
39 unless a personal representative has been appointed and the claimant

1 has presented the claim as set forth in this chapter. However, this
2 chapter does not affect the notice under RCW 82.32.240 or the ability
3 to maintain an action against a notice agent under chapter 11.42 RCW.

4 **Sec. 8.** RCW 11.40.020 and 1974 ex.s. c 117 s 34 are each amended
5 to read as follows:

6 ~~((Every claim shall be signed by the claimant, or his attorney, or~~
7 ~~any person who is authorized to sign claims on his, her, or its behalf,~~
8 ~~and shall contain the following information:~~

9 ~~(1) The name and address of the claimant;~~

10 ~~(2) The name, business address (if different from that of the~~
11 ~~claimant), and nature of authority of any person signing the claim on~~
12 ~~behalf of the claimant;~~

13 ~~(3) A written statement of the facts or circumstances constituting~~
14 ~~the basis upon which the claim is submitted;~~

15 ~~(4) The amount of the claim;~~

16 ~~(5) If the claim is secured, unliquidated or contingent, or not yet~~
17 ~~due, the nature of the security, the nature of the uncertainty, and due~~
18 ~~date of the claim:— PROVIDED HOWEVER, That failure to describe~~
19 ~~correctly the security, nature of any uncertainty, or the due date of~~
20 ~~a claim not yet due, if such failure is not substantially misleading,~~
21 ~~does not invalidate the presentation made.~~

22 ~~Claims need not be supported by affidavit.))~~ A personal
23 representative may give notice to the creditors of the decedent, as
24 directed in RCW 11.40.030, announcing the personal representative's
25 appointment and requiring that persons having claims against the
26 decedent present their claims within the time specified in section 11
27 of this act or be forever barred as to claims against the decedent's
28 probate and nonprobate assets. If notice is given:

29 (1) The personal representative shall first file the original of
30 the notice with the court;

31 (2) The personal representative shall then cause the notice to be
32 published once each week for three successive weeks in a legal
33 newspaper in the county in which the estate is being administered;

34 (3) The personal representative may, at any time during the probate
35 proceeding, give actual notice to creditors who become known to the
36 personal representative by serving the notice on the creditor or
37 mailing the notice to the creditor at the creditor's last known
38 address, by regular first class mail, postage prepaid; and

1 (4) The personal representative shall also mail a copy of the
2 notice, including the decedent's social security number, to the state
3 of Washington department of social and health services office of
4 financial recovery.

5 The personal representative shall file with the court proof by
6 affidavit of the giving and publication of the notice.

7 **Sec. 9.** RCW 11.40.030 and 1989 c 333 s 7 are each amended to read
8 as follows:

9 ~~((1) Unless the personal representative shall, within two months~~
10 ~~after the expiration of the four month time limitation, or within two~~
11 ~~months after receipt of an otherwise timely claim filed after~~
12 ~~expiration of the four month time limitation, whichever is later, have~~
13 ~~obtained an order extending the time for his allowance or rejection of~~
14 ~~claims timely and properly served and filed, all claims not exceeding~~
15 ~~one thousand dollars presented within the time and in the manner~~
16 ~~provided in RCW 11.40.010, 11.40.013, or 11.40.020 as now or hereafter~~
17 ~~amended, shall be deemed allowed and may not thereafter be rejected,~~
18 ~~unless the personal representative shall, within two months after the~~
19 ~~expiration of the four month time limitation, or as to an otherwise~~
20 ~~timely claim filed after expiration of the four month time limitation,~~
21 ~~within two months after receipt of such claim, or within any extended~~
22 ~~time, notify the claimant of its rejection, in whole or in part.~~

23 ~~(2) When a claim exceeding one thousand dollars is presented within~~
24 ~~the time and in the manner provided in RCW 11.40.010 and 11.40.020 as~~
25 ~~now or hereafter amended, it shall be the duty of the personal~~
26 ~~representative to indorse thereon his allowance or rejection. A~~
27 ~~claimant after a claim has been on file for at least thirty days may~~
28 ~~notify the personal representative that he will petition the court to~~
29 ~~have the claim allowed. If the personal representative fails to file~~
30 ~~an allowance or rejection of such claim twenty days after the receipt~~
31 ~~of such notice, the claimant may note the matter up for hearing and the~~
32 ~~court shall hear the matter and determine whether the claim should be~~
33 ~~allowed or rejected, in whole or in part. If at the hearing the claim~~
34 ~~is substantially allowed the court may allow petitioner reasonable~~
35 ~~attorney's fees of not less than one hundred dollars chargeable against~~
36 ~~the estate.~~

37 ~~(3) If the personal representative shall reject the claim, in whole~~
38 ~~or in part, he shall notify the claimant of said rejection and file in~~

1 the office of the clerk, an affidavit showing such notification and the
2 date thereof. Said notification shall be by personal service or
3 certified mail addressed to the claimant at his address as stated in
4 the claim; if a person other than the claimant shall have signed said
5 claim for or on behalf of the claimant, and said person's business
6 address as stated in said claim is different from that of the claimant,
7 notification of rejection shall also be made by personal service or
8 certified mail upon said person; the date of the postmark shall be the
9 date of notification. The notification of rejection shall advise the
10 claimant, and the person making claim on his, her, or its behalf, if
11 any, that the claimant must bring suit in the proper court against the
12 personal representative within thirty days after notification of
13 rejection or before expiration of the time for serving and filing
14 claims against the estate, whichever period is longer, and that
15 otherwise the claim will be forever barred.

16 (4) The personal representative may, either before or after
17 rejection of any claim compromise said claim, whether due or not,
18 absolute or contingent, liquidated or unliquidated, if it appears to
19 the personal representative that such compromise is in the best
20 interests of the estate.) Notice under RCW 11.40.020 must contain the
21 following elements in substantially the following form:

22	<u>CAPTION</u>)	<u>No.</u>
23	<u>OF CASE</u>)	<u>PROBATE NOTICE TO</u>
24)	<u>CREDITORS</u>
25	<u>.....</u>)	<u>RCW 11.40.030</u>

26 The personal representative named below has been appointed as
27 personal representative of this estate. Any person having a claim
28 against the decedent must, before the time the claim would be barred by
29 any otherwise applicable statute of limitations, present the claim in
30 the manner as provided in RCW 11.40.070 by serving on or mailing to the
31 personal representative or the personal representative's attorney at
32 the address stated below a copy of the claim and filing the original of
33 the claim with the court. The claim must be presented within the later
34 of: (1) Thirty days after the personal representative served or mailed
35 the notice to the creditor as provided under RCW 11.40.020(3); or (2)
36 four months after the date of first publication of the notice. If the
37 claim is not presented within this time frame, the claim is forever
38 barred, except as otherwise provided in section 11 of this act and RCW

1 11.40.060. This bar is effective as to claims against both the
2 decedent's probate and nonprobate assets.

3 Date of First
4 Publication:

5 Personal Representative:

6 Attorney for the Personal Representative:

7 Address for Mailing or Service:

8 **Sec. 10.** RCW 11.40.040 and 1994 c 221 s 28 are each amended to
9 read as follows:

10 ~~((Every claim which has been allowed by the personal representative~~
11 ~~shall be ranked among the acknowledged debts of the estate to be paid~~
12 ~~expeditiously in the course of administration.)) (1) For purposes of~~
13 section 11 of this act, a "reasonably ascertainable" creditor of the
14 decedent is one that the personal representative would discover upon
15 exercise of reasonable diligence. The personal representative is
16 deemed to have exercised reasonable diligence upon conducting a
17 reasonable review of the decedent's correspondence, including
18 correspondence received after the date of death, and financial records,
19 including personal financial statements, loan documents, checkbooks,
20 bank statements, and income tax returns, that are in the possession of
21 or reasonably available to the personal representative.

22 (2) If the personal representative conducts the review, the
23 personal representative is presumed to have exercised reasonable
24 diligence to ascertain creditors of the decedent and any creditor not
25 ascertained in the review is presumed not reasonably ascertainable
26 within the meaning of section 11 of this act. These presumptions may
27 be rebutted only by clear, cogent, and convincing evidence.

28 (3) The personal representative may evidence the review and
29 resulting presumption by filing with the court an affidavit regarding
30 the facts referred to in this section. The personal representative may
31 petition the court for an order declaring that the personal
32 representative has made a review and that any creditors not known to
33 the personal representative are not reasonably ascertainable. The
34 petition must be filed under RCW 11.96.070 and the notice specified
35 under RCW 11.96.100 must also be given by publication.

1 NEW SECTION. **Sec. 11.** A new section is added to chapter 11.40 RCW
2 to read as follows:

3 (1) Whether or not notice is provided under RCW 11.40.020, a person
4 having a claim against the decedent is forever barred from making a
5 claim or commencing an action against the decedent, if the claim or
6 action is not already barred by an otherwise applicable statute of
7 limitations, unless the creditor presents the claim in the manner
8 provided in RCW 11.40.070 within the following time limitations:

9 (a) If the personal representative provided notice under RCW
10 11.40.020 (1) and (2) and the creditor was given actual notice as
11 provided in RCW 11.40.020(3), the creditor must present the claim
12 within the later of: (i) Thirty days after the personal
13 representative's service or mailing of notice to the creditor; and (ii)
14 four months after the date of first publication of the notice;

15 (b) If the personal representative provided notice under RCW
16 11.40.020 (1) and (2) and the creditor was not given actual notice as
17 provided in RCW 11.40.020(3):

18 (i) If the creditor was not reasonably ascertainable, as defined in
19 RCW 11.40.040, the creditor must present the claim within four months
20 after the date of first publication of notice;

21 (ii) If the creditor was reasonably ascertainable, as defined in
22 RCW 11.40.040, the creditor must present the claim within twenty-four
23 months after the decedent's date of death; and

24 (c) If notice was not provided under this chapter or chapter 11.42
25 RCW, the creditor must present the claim within twenty-four months
26 after the decedent's date of death.

27 (2) An otherwise applicable statute of limitations applies without
28 regard to the tolling provisions of RCW 4.16.190.

29 (3) This bar is effective as to claims against both the decedent's
30 probate and nonprobate assets.

31 **Sec. 12.** RCW 11.40.060 and 1974 ex.s. c 117 s 37 are each amended
32 to read as follows:

33 (~~When a claim is rejected by the personal representative, the~~
34 ~~holder must bring suit in the proper court against the personal~~
35 ~~representative within thirty days after notification of the rejection~~
36 ~~or before expiration of the time for serving and filing claims against~~
37 ~~the estate, whichever period is longer, otherwise the claim shall be~~
38 ~~forever barred.)) The time limitations for presenting claims under this~~

1 chapter do not accrue to the benefit of any liability or casualty
2 insurer. Claims against the decedent or the decedent's marital
3 community that can be fully satisfied by applicable insurance coverage
4 or proceeds need not be presented within the time limitation of section
5 11 of this act, but the amount of recovery cannot exceed the amount of
6 the insurance. The claims may at any time be presented as provided in
7 RCW 11.40.070, subject to the otherwise relevant statutes of
8 limitations, and do not constitute a cloud, lien, or encumbrance upon
9 the title to the decedent's probate or nonprobate assets nor delay or
10 prevent the conclusion of probate proceedings or the transfer or
11 distribution of assets of the estate. This section does not serve to
12 extend any otherwise relevant statutes of limitations.

13 **Sec. 13.** RCW 11.40.070 and 1965 c 145 s 11.40.070 are each amended
14 to read as follows:

15 ~~((No claim shall be allowed by the personal representative or court~~
16 ~~which is barred by the statute of limitations.)) (1) The claimant, the~~

17 claimant's attorney, or the claimant's agent shall sign the claim and
18 include in the claim the following information:

19 (a) The name and address of the claimant;

20 (b) The name, address, if different from that of the claimant, and
21 nature of authority of an agent signing the claim on behalf of the
22 claimant;

23 (c) A statement of the facts or circumstances constituting the
24 basis of the claim;

25 (d) The amount of the claim; and

26 (e) If the claim is secured, unliquidated, contingent, or not yet
27 due, the nature of the security, the nature of the uncertainty, or the
28 date when it will become due.

29 Failure to describe correctly the information in (c), (d), or (e)
30 of this subsection, if the failure is not substantially misleading,
31 does not invalidate the claim.

32 (2) A claim does not need to be supported by affidavit.

33 (3) A claim must be presented within the time limits set forth in
34 section 11 of this act by: (a) Serving on or mailing to, by regular
35 first class mail, the personal representative or the personal
36 representative's attorney a copy of the signed claim; and (b) filing
37 the original of the signed claim with the court. A claim is deemed
38 presented upon the later of the date of postmark or service on the

1 personal representative, or the personal representative's attorney, and
2 filing with the court.

3 (4) Notwithstanding any other provision of this chapter, if a
4 claimant makes a written demand for payment within the time limits set
5 forth in section 11 of this act, the personal representative may waive
6 formal defects and elect to treat the demand as a claim properly filed
7 under this chapter if: (a) The claim was due; (b) the amount paid is
8 the amount of indebtedness over and above all payments and offsets; (c)
9 the estate is solvent; and (d) the payment is made in good faith.
10 Nothing in this chapter limits application of the doctrines of waiver,
11 estoppel, or detrimental claims or any other equitable principle.

12 **Sec. 14.** RCW 11.40.080 and 1994 c 221 s 29 are each amended to
13 read as follows:

14 ~~((No holder of any claim against a decedent shall maintain an~~
15 ~~action thereon, unless the claim shall have been first presented as~~
16 ~~provided in this chapter. Nothing in this chapter affects RCW~~
17 ~~82.32.240.)) (1) The personal representative shall allow or reject all
18 claims presented in the manner provided in RCW 11.40.070. The personal
19 representative may allow or reject a claim in whole or in part.~~

20 (2) If the personal representative has not allowed or rejected a
21 claim within the later of four months from the date of first
22 publication of the notice to creditors or thirty days from presentation
23 of the claim, the claimant may serve written notice on the personal
24 representative that the claimant will petition the court to have the
25 claim allowed. If the personal representative fails to notify the
26 claimant of the allowance or rejection of the claim within twenty days
27 after the personal representative's receipt of the claimant's notice,
28 the claimant may petition the court for a hearing to determine whether
29 the claim should be allowed or rejected, in whole or in part. If the
30 court substantially allows the claim, the court may allow the
31 petitioner reasonable attorneys' fees chargeable against the estate.

32 **Sec. 15.** RCW 11.40.090 and 1965 c 145 s 11.40.090 are each amended
33 to read as follows:

34 ~~((The time during which there shall be a vacancy in the~~
35 ~~administration shall not be included in any limitations herein~~
36 ~~prescribed.)) (1) If the personal representative allows a claim, the
37 personal representative shall notify the claimant of the allowance by~~

1 personal service or regular first class mail to the address stated on
2 the claim.

3 (2) A claim that on its face does not exceed one thousand dollars
4 presented in the manner provided in RCW 11.40.070 must be deemed
5 allowed and may not thereafter be rejected unless the personal
6 representative has notified the claimant of rejection of the claim
7 within the later of six months from the date of first publication of
8 the notice to creditors and two months from the personal
9 representative's receipt of the claim. The personal representative may
10 petition for an order extending the period for automatic allowance of
11 the claims.

12 (3) Allowed claims must be ranked among the acknowledged debts of
13 the estate to be paid expeditiously in the course of administration.

14 (4) A claim may not be allowed if it is barred by a statute of
15 limitations.

16 **Sec. 16.** RCW 11.40.100 and 1974 ex.s. c 117 s 47 are each amended
17 to read as follows:

18 ~~((If any action be pending against the testator or intestate at the~~
19 ~~time of his death, the plaintiff shall within four months after first~~
20 ~~publication of notice to creditors, or the filing of a copy of such~~
21 ~~notice, whichever is later, serve on the personal representative a~~
22 ~~motion to have such personal representative, as such, substituted as~~
23 ~~defendant in such action, and, upon the hearing of such motion, such~~
24 ~~personal representative shall be so substituted, unless, at or prior to~~
25 ~~such hearing, the claim of plaintiff, together with costs, be allowed~~
26 ~~by the personal representative and court. After the substitution of~~
27 ~~such personal representative, the court shall proceed to hear and~~
28 ~~determine the action as in other civil cases.)) (1) If the personal~~
29 representative rejects a claim, in whole or in part, the claimant must
30 bring suit against the personal representative within thirty days after
31 notification of rejection or the claim is forever barred. The personal
32 representative shall notify the claimant of the rejection and file an
33 affidavit with the court showing the notification and the date of the
34 notification. The personal representative shall notify the claimant of
35 the rejection by personal service or certified mail addressed to the
36 claimant or the claimant's agent, if applicable, at the address stated
37 in the claim. The date of service or of the postmark is the date of
38 notification. The notification must advise the claimant that the

1 claimant must bring suit in the proper court against the personal
2 representative within thirty days after notification of rejection or
3 the claim will be forever barred.

4 (2) The personal representative may, before or after rejection of
5 any claim, compromise the claim, whether due or not, absolute or
6 contingent, liquidated, or unliquidated, if it appears to the personal
7 representative that the compromise is in the best interests of the
8 estate.

9 **Sec. 17.** RCW 11.40.110 and 1974 ex.s. c 117 s 38 are each amended
10 to read as follows:

11 ~~((Whenever any claim shall have been filed and presented to a~~
12 ~~personal representative, and a part thereof shall be allowed, the~~
13 ~~amount of such allowance shall be stated in the indorsement. If the~~
14 ~~creditor shall refuse to accept the amount so allowed in satisfaction~~
15 ~~of his claim, he shall recover no costs in any action he may bring~~
16 ~~against the personal representative unless he shall recover a greater~~
17 ~~amount than that offered to be allowed, exclusive of interest and~~
18 ~~costs.))~~ If an action is pending against the decedent at the time of
19 the decedent's death, the plaintiff shall, within four months after
20 appointment of the personal representative, serve on the personal
21 representative a petition to have the personal representative
22 substituted as defendant in the action. Upon hearing on the petition,
23 the personal representative shall be substituted, unless, at or before
24 the hearing, the claim of the plaintiff, together with costs, is
25 allowed.

26 **Sec. 18.** RCW 11.40.120 and 1965 c 145 s 11.40.120 are each amended
27 to read as follows:

28 The effect of any judgment rendered against ~~((any))~~ a personal
29 representative shall be only to establish the amount of the judgment as
30 an allowed claim.

31 **Sec. 19.** RCW 11.40.130 and 1965 c 145 s 11.40.130 are each amended
32 to read as follows:

33 ~~((When any judgment has been rendered against the testator or~~
34 ~~intestate in his lifetime, no execution shall issue thereon after his~~
35 ~~death, but it shall be presented to the personal representative, as any~~
36 ~~other claim, but need not be supported by the affidavit of the~~

1 claimant, and if justly due and unsatisfied, shall be paid in due
2 course of administration: PROVIDED, HOWEVER, That if it be a lien on
3 any property of the deceased, the same may be sold for the satisfaction
4 thereof, and the officer making the sale shall account to the personal
5 representative for any surplus in his hands.)) If a judgment was
6 entered against the decedent during the decedent's lifetime, an
7 execution may not issue on the judgment after the death of the
8 decedent. The judgment must be presented in the manner provided in RCW
9 11.40.070, but if the judgment is a lien on any property of the
10 decedent, the property may be sold for the satisfaction of the judgment
11 and the officer making the sale shall account to the personal
12 representative for any surplus.

13 NEW SECTION. Sec. 20. A new section is added to chapter 11.40 RCW
14 to read as follows:

15 If a creditor's claim is secured by any property of the decedent,
16 this chapter does not affect the right of a creditor to realize on the
17 creditor's security, whether or not the creditor presented the claim in
18 the manner provided in RCW 11.40.070.

19 Sec. 21. RCW 11.40.140 and 1965 c 145 s 11.40.140 are each amended
20 to read as follows:

21 ~~((If the personal representative is himself a creditor of the~~
22 ~~testator or intestate, his claim, duly authenticated by affidavit,~~
23 ~~shall be filed and presented for allowance or rejection to the judge of~~
24 ~~the court, and its allowance by the judge shall be sufficient evidence~~
25 ~~of its correctness. This section shall apply to nonintervention and~~
26 ~~all other wills.)) If the personal representative has a claim against
27 the decedent, the personal representative must present the claim in the
28 manner provided in RCW 11.40.070 and petition the court for allowance
29 or rejection. The petition must be filed under RCW 11.96.070. This
30 section applies whether or not the personal representative is acting
31 under nonintervention powers.~~

32 Sec. 22. RCW 11.40.150 and 1965 c 145 s 11.40.150 are each amended
33 to read as follows:

34 ~~((In case of resignation, death or removal for any cause of any~~
35 ~~personal representative, and the appointment of another or others,~~
36 ~~after notice has been given by publication as required by RCW~~

1 ~~11.40.010, by such personal representative first appointed, to persons~~
2 ~~to file their claims against the decedent, it shall be the duty of the~~
3 ~~successor or personal representative to cause notice of such~~
4 ~~resignation, death or removal and such new appointment to be published~~
5 ~~two successive weeks in a legal newspaper published in the county in~~
6 ~~which the estate is being administered, but the time between the~~
7 ~~resignation, death or removal and such publication shall be added to~~
8 ~~the time within which claims shall be filed as fixed by the published~~
9 ~~notice to creditors unless such time shall have expired before such~~
10 ~~resignation or removal or death: PROVIDED, HOWEVER, That no such~~
11 ~~notice shall be required if the period for filing claims was fully~~
12 ~~expired during the time that the former personal representative was~~
13 ~~qualified.)) (1) If a personal representative has given notice under~~
14 RCW 11.40.020 and then resigns, dies, or is removed, the successor
15 personal representative shall:

16 (a) Publish notice of the vacancy and succession for two successive
17 weeks in the legal newspaper in which notice was published under RCW
18 11.40.020 if the vacancy occurred within twenty-four months after the
19 decedent's date of death; and

20 (b) Provide actual notice of the vacancy and succession to a
21 creditor if: (i) The creditor filed a claim and the claim had not been
22 accepted or rejected by the prior personal representative; or (ii) the
23 creditor's claim was rejected and the vacancy occurred within thirty
24 days after rejection of the claim.

25 (2) The time between the resignation, death, or removal and first
26 publication of the vacancy and succession or, in the case of actual
27 notice, the mailing of the notice of vacancy and succession must be
28 added to the time within which a claim must be presented or a suit on
29 a rejected claim must be filed. This section does not extend the
30 twenty-four month self-executing bar under section 11 of this act.

31 NEW SECTION. Sec. 23. A new section is added to chapter 11.40 RCW
32 to read as follows:

33 If a notice agent had commenced nonprobate notice to creditors
34 under chapter 11.42 RCW, the appointment of the personal representative
35 does not affect the filing and publication of notice to creditors and
36 does not affect actual notice to creditors given by the notice agent.
37 The personal representative is presumed to have adopted or ratified all
38 acts of the notice agent unless, within thirty days of appointment, the

1 personal representative provides notice of rejection or nullification
2 to the affected claimant or claimants by personal service or certified
3 mail addressed to the claimant or claimant's agent, if applicable, at
4 the address stated on the claim. The personal representative shall
5 also provide notice under RCW 11.42.150.

6 **Sec. 24.** RCW 11.42.010 and 1994 c 221 s 31 are each amended to
7 read as follows:

8 (1) Subject to the conditions stated in this ~~((section))~~ chapter,
9 and if no personal representative has been appointed ~~((and qualified in~~
10 ~~the decedent's estate))~~ in ~~((Washington, the following members of a~~
11 ~~group, defined as the "qualified group," are qualified to give~~
12 ~~"nonprobate notice to creditors" of the decedent:~~

13 ~~(a) Decedent's surviving spouse;~~

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

16 ~~(c) The trustee, except a testamentary trustee under the will of~~
17 ~~the decedent not probated in another state, having authority over any~~
18 ~~of the property of the decedent; and~~

19 ~~(d) A person who has received any property of the decedent by~~
20 ~~reason of the decedent's death.~~

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

24 (a) Constitutes a nonprobate asset; or

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

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

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

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

1 ~~(4) The requirement in subsection (3) of this section of the~~
2 ~~receipt of all, or substantially all, of the included property is~~
3 ~~satisfied if:~~

4 ~~(a) The person described in subsection (3)(a) of this section at~~
5 ~~the time of the filing of the declaration and oath referred to in~~
6 ~~subsection (5) of this section in reasonable good faith believed that~~
7 ~~the person had received, or was entitled to receive, by reason of the~~
8 ~~decedent's death, all, or substantially all, of the included property;~~
9 ~~or~~

10 ~~(b) The persons described in subsection (3)(b) of this section at~~
11 ~~the time of their entry into the agreement under chapter 11.96 RCW in~~
12 ~~which they appoint the person to give the nonprobate notice to~~
13 ~~creditors in reasonable good faith believed that they had received, or~~
14 ~~were entitled to receive, by reason of the decedent's death, all, or~~
15 ~~substantially all, of the included property.~~

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

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

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

22 ~~(c) Receives from the clerk a cause number.~~

23 ~~The county in which the notice agent files the declaration is the~~
24 ~~"notice county." The declaration and oath must be made in affidavit~~
25 ~~form or under penalty of perjury under the laws of the state in the~~
26 ~~form provided in RCW 9A.72.085 and must state that the person making~~
27 ~~the declaration believes in reasonable good faith that the person is~~
28 ~~qualified under this chapter to act as the notice agent and that the~~
29 ~~person faithfully will execute the duties of the notice agent as~~
30 ~~provided in this chapter.~~

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

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

33 ~~(i) Professional service corporations that are regularly organized~~
34 ~~under the laws of this state whose shareholder or shareholders are~~
35 ~~exclusively attorneys; and~~

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

38 ~~(b) Minors;~~

39 ~~(c) Persons of unsound mind; or~~

1 ~~(d) Persons who have been convicted of a felony or of a misdemeanor~~
2 ~~involving moral turpitude.~~

3 ~~(7) A person who has given notice under this chapter and who~~
4 ~~thereafter becomes of unsound mind or is convicted of a crime or~~
5 ~~misdemeanor involving moral turpitude is no longer qualified to act as~~
6 ~~notice agent under this chapter. The disqualification does not bar~~
7 ~~another person, otherwise qualified, from acting as notice agent under~~
8 ~~this chapter.~~

9 ~~(8) A nonresident may act as notice agent if the nonresident~~
10 ~~appoints an agent who is a resident of the notice county or who is~~
11 ~~attorney of record for the notice agent upon whom service of all papers~~
12 ~~may be made. The appointment must be made in writing and filed by the~~
13 ~~clerk of the notice county with the other papers relating to the notice~~
14 ~~given under this chapter.~~

15 ~~(9) The powers and authority of a notice agent cease, and the~~
16 ~~office of notice agent becomes vacant, upon the appointment and~~
17 ~~qualification of a personal representative for the estate of the~~
18 ~~decedent. Except as provided in RCW 11.42.180, the cessation of the~~
19 ~~powers and authority does not affect a published notice under this~~
20 ~~chapter if the publication commenced before the cessation and does not~~
21 ~~affect actual notice to creditors given by the notice agent before the~~
22 ~~cessation.)) this state, a beneficiary or trustee who has received or~~
23 ~~is entitled to receive by reason of the decedent's death substantially~~
24 ~~all of the decedent's probate and nonprobate assets, is qualified to~~
25 ~~give nonprobate notice to creditors under this chapter.~~

26 If no one beneficiary or trustee has received or is entitled to
27 receive substantially all of the assets, then those persons, who in the
28 aggregate have received or are entitled to receive substantially all of
29 the assets, may, under an agreement under RCW 11.96.170, appoint a
30 person who is then qualified to give nonprobate notice to creditors
31 under this chapter.

32 (2) A person or group of persons is deemed to have received
33 substantially all of the decedent's probate and nonprobate assets if
34 the person or the group, at the time of the filing of the declaration
35 and oath referred to in subsection (3) of this section, in reasonable
36 good faith believed that the person or the group had received, or was
37 entitled to receive by reason of the decedent's death, substantially
38 all of the decedent's probate and nonprobate assets.

39 (3)(a) The "notice agent" means the qualified person who:

1 (i) Pays a filing fee to the clerk of the superior court in a
2 county in which probate may be commenced regarding the decedent, the
3 "notice county", and receives a cause number; and

4 (ii) Files a declaration and oath with the clerk.

5 (b) The declaration and oath must be made in affidavit form or
6 under penalty of perjury and must state that the person making the
7 declaration believes in reasonable good faith that the person is
8 qualified under this chapter to act as the notice agent and that the
9 person will faithfully execute the duties of the notice agent as
10 provided in this chapter.

11 (4) The following persons are not qualified to act as notice agent:

12 (a) Corporations, trust companies, and national banks, except: (i)
13 Such entities as are authorized to do trust business in this state; and
14 (ii) professional service corporations that are regularly organized
15 under the laws of this state whose shareholder or shareholders are
16 exclusively attorneys;

17 (b) Minors;

18 (c) Persons of unsound mind;

19 (d) Persons who have been convicted of a felony or of a misdemeanor
20 involving moral turpitude; and

21 (e) Persons who have given notice under this chapter and who
22 thereafter become of unsound mind or are convicted of a felony or
23 misdemeanor involving moral turpitude. This disqualification does not
24 bar another person, otherwise qualified, from acting as successor
25 notice agent.

26 (5) A nonresident may act as notice agent if the nonresident
27 appoints an agent who is a resident of the notice county or who is
28 attorney of record for the notice agent upon whom service of all papers
29 may be made. The appointment must be made in writing and filed with
30 the court.

31 **Sec. 25.** RCW 11.42.020 and 1995 1st sp.s. c 18 s 59 are each
32 amended to read as follows:

33 (1) The notice agent may give nonprobate notice to the creditors of
34 the decedent if:

35 (a) As of the date of the filing (~~of a copy~~) of the notice to
36 creditors with the ((clerk of the superior)) court ((for the notice
37 county)), the notice agent has no knowledge of another person acting as
38 notice agent or of the appointment ((and qualification)) of a personal

1 representative in the decedent's estate in the state of Washington ((or
2 of another person becoming a notice agent)); and

3 (b) According to the records of the ((clerk of the superior)) court
4 ((for the notice county as of 8:00 a.m.)) as are available on the date
5 of the filing of the notice to creditors, no cause number regarding the
6 decedent has been issued to any other notice agent and no personal
7 representative of the decedent's estate had been appointed ((and
8 qualified and no cause number regarding the decedent had been issued to
9 any other notice agent by the clerk under RCW 11.42.010)).

10 (2) ((The notice must state that all persons having claims against
11 the decedent shall:—(a) Serve the same on the notice agent if the
12 notice agent is a resident of the state of Washington upon whom service
13 of all papers may be made, or on the nonprobate resident agent for the
14 notice agent, if any, or on the attorneys of record of the notice agent
15 at their respective address in the state of Washington; and (b) file an
16 executed copy of the notice with the clerk of the superior court for
17 the notice county, within:—(i)(A) Four months after the date of the
18 first publication of the notice described in this section; or (B) four
19 months after the date of the filing of the copy of the notice with the
20 clerk of the superior court for the notice county, whichever is later;
21 or (ii) the time otherwise provided in RCW 11.42.050. The four month
22 time period after the later of the date of the first publication of the
23 notice to creditors or the date of the filing of the notice with the
24 clerk of the court is referred to in this chapter as the "four month
25 time limitation."

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

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

35 (a) The notice agent shall give actual notice as to creditors of
36 the decedent who become known to the notice agent within the four month
37 time limitation as required in RCW 11.42.050;

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

1 ~~(c) The notice agent shall file a copy of the notice with the clerk~~
2 ~~of the superior court for the notice county; and~~

3 ~~(d) The notice agent shall mail a copy of the notice, including the~~
4 ~~decedent's social security number, to the state of Washington,~~
5 ~~department of social and health services, office of financial recovery.~~

6 ~~(5) A claim not filed within the four month time limitation is~~
7 ~~forever barred, if not already barred by an otherwise applicable~~
8 ~~statute of limitations, except as provided in RCW 11.42.030 or~~
9 ~~11.42.050. The bar is effective to bar claims against both the probate~~
10 ~~estate of the decedent and nonprobate assets that were subject to~~
11 ~~satisfaction of the decedent's general liabilities immediately before~~
12 ~~the decedent's death. If a notice to the creditors of a decedent is~~
13 ~~published by more than one notice agent and the notice agents are not~~
14 ~~acting jointly, the four month time limitation means the four month~~
15 ~~time limitation that applies to the notice agent who first publishes~~
16 ~~the notice. Proof by affidavit or perjury declaration made under RCW~~
17 ~~9A.72.085 of the giving and publication of the notice must be filed~~
18 ~~with the clerk of the superior court for the notice county by the~~
19 ~~notice agent.))~~

20 The notice agent must give notice to the creditors of
21 the decedent, as directed in RCW 11.42.030, announcing that the notice
22 agent has elected to give nonprobate notice to creditors and requiring
23 that persons having claims against the decedent present their claims
24 within the time specified in RCW 11.42.050 or be forever barred as to
25 claims against the decedent's probate and nonprobate assets.

26 (a) The notice agent shall first file the original of the notice
27 with the court.

28 (b) The notice agent shall then cause the notice to be published
29 once each week for three successive weeks in a legal newspaper in the
30 notice county.

31 (c) The notice agent may at any time give actual notice to
32 creditors who become known to the notice agent by serving the notice on
33 the creditor or mailing the notice to the creditor at the creditor's
34 last known address, by regular first class mail, postage prepaid.

35 (d) The notice agent shall also mail a copy of the notice,
36 including the decedent's social security number, to the state of
37 Washington department of social and health services' office of
38 financial recovery.

39 The notice agent shall file with the court proof by affidavit of
the giving and publication of the notice.

1 a copy of this notice with the court, the notice agent has no knowledge
2 of any other person acting as notice agent or of the appointment of a
3 personal representative of the decedent's estate in the state of
4 Washington. According to the records of the court as are available on
5 the date of the filing of this notice with the court, a cause number
6 regarding the decedent has not been issued to any other notice agent
7 and a personal representative of the decedent's estate has not been
8 appointed.

9 Any person having a claim against the decedent must, before the
10 time the claim would be barred by any otherwise applicable statute of
11 limitations, present the claim in the manner as provided in RCW
12 11.42.070 by serving on or mailing to the notice agent or the notice
13 agent's attorney at the address stated below a copy of the claim and
14 filing the original of the claim with the court. The claim must be
15 presented within the later of: (1) Thirty days after the notice agent
16 served or mailed the notice to the creditor as provided under RCW
17 11.42.020(2)(c); or (2) four months after the date of first publication
18 of the notice. If the claim is not presented within this time frame,
19 the claim is forever barred, except as otherwise provided in RCW
20 11.42.050 and 11.42.060. This bar is effective as to claims against
21 both the decedent's probate and nonprobate assets.

22 Date of First
23 Publication:

24 The notice agent declares under penalty of perjury under the laws
25 of the state of Washington on _____, [year], at _____,
26 _____ [state] that the foregoing is true and correct.

27 _____
28 Signature of Notice Agent

29 Notice Agent:

30 Attorney for the Notice Agent:

31 Address for Mailing or Service:

32 **Sec. 27.** RCW 11.42.040 and 1994 c 221 s 34 are each amended to
33 read as follows:

34 ~~((The notice agent shall exercise reasonable diligence to discover,~~
35 ~~within the four-month time limitation, reasonably ascertainable~~

1 creditors of the decedent. The notice agent is deemed to have
2 exercised reasonable diligence to ascertain the creditors upon:

3 (1) Conducting, within the four-month time limitation, a reasonable
4 review of the decedent's correspondence including correspondence
5 received after the date of death and financial records including
6 checkbooks, bank statements, income tax returns, and similar materials,
7 that are in the possession of, or reasonably available to, the notice
8 agent; and

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

14 If the notice agent conducts the review and makes an inquiry, the
15 notice agent is presumed to have exercised reasonable diligence to
16 ascertain creditors of the decedent, and creditors not ascertained in
17 the review or in an inquiry are presumed not reasonably ascertainable.
18 These presumptions may be rebutted only by clear, cogent, and
19 convincing evidence. The notice agent may evidence the review and
20 inquiry by filing an affidavit or declaration under penalty of perjury
21 form as provided in RCW 9A.72.085 to the effect in the nonprobate
22 proceeding in the notice county. The notice agent also may petition
23 the superior court of the notice county for an order declaring that the
24 notice agent has made a review and inquiry and that only creditors
25 known to the notice agent after the review and inquiry are reasonably
26 ascertainable. The petition and hearing must be under the procedures
27 provided in chapter 11.96 RCW, and the notice specified under RCW
28 11.96.100 must also be given by publication.) (1) For purposes of RCW
29 11.42.050, a "reasonably ascertainable" creditor of the decedent is one
30 that the notice agent would discover upon exercise of reasonable
31 diligence. The notice agent is deemed to have exercised reasonable
32 diligence upon conducting a reasonable review of the decedent's
33 correspondence, including correspondence received after the date of
34 death, and financial records, including personal financial statements,
35 loan documents, checkbooks, bank statements, and income tax returns,
36 that are in the possession of or reasonably available to the notice
37 agent.

38 (2) If the notice agent conducts the review, the notice agent is
39 presumed to have exercised reasonable diligence to ascertain creditors

1 of the decedent and any creditor not ascertained in the review is
2 presumed not reasonably ascertainable within the meaning of RCW
3 11.42.050. These presumptions may be rebutted only by clear, cogent,
4 and convincing evidence.

5 (3) The notice agent may evidence the review and resulting
6 presumption by filing with the court an affidavit regarding the facts
7 referred to in this section. The notice agent may petition the court
8 for an order declaring that the notice agent has made a review and that
9 any creditors not known to the notice agent are not reasonably
10 ascertainable. The petition must be filed under RCW 11.96.070, and the
11 notice specified under RCW 11.96.100 must also be given by publication.

12 **Sec. 28.** RCW 11.42.050 and 1994 c 221 s 35 are each amended to
13 read as follows:

14 ~~((The actual notice described in RCW 11.42.020(4)(a), as to a~~
15 ~~creditor becoming known to the notice agent within the four-month time~~
16 ~~limitation, must be given the creditor by personal service or regular~~
17 ~~first class mail, addressed to the creditor's last known address,~~
18 ~~postage prepaid. The actual notice must be given before the later of~~
19 ~~the expiration of the four-month time limitation or thirty days after~~
20 ~~a creditor became known to the notice agent within the four-month time~~
21 ~~limitation. A known creditor is barred unless the creditor has filed~~
22 ~~a claim, as provided in this chapter, within the four-month time~~
23 ~~limitation or within thirty days following the date of actual notice to~~
24 ~~that creditor, whichever is later. If notice is given by mail, the~~
25 ~~date of mailing is the date of notice. This bar is effective as to~~
26 ~~claims against the included property as defined in RCW 11.42.010.)) (1)~~
27 If a notice agent provides notice under RCW 11.42.020, any person
28 having a claim against the decedent is forever barred from making a
29 claim or commencing an action against the decedent if the claim or
30 action is not already barred by an otherwise applicable statute of
31 limitations, unless the creditor presents the claim in the manner
32 provided in RCW 11.42.070 within the following time limitations:

33 (a) If the notice agent provided notice under RCW 11.42.020(2) (a)
34 and (b) and the creditor was given actual notice as provided in RCW
35 11.42.020(2)(c), the creditor must present the claim within the later
36 of: (i) Thirty days after the notice agent's service or mailing of
37 notice to the creditor; and (ii) four months after the date of first
38 publication of the notice;

1 (b) If the notice agent provided notice under RCW 11.42.020(2) (a)
2 and (b) and the creditor was not given actual notice as provided in RCW
3 11.42.020(2)(c):

4 (i) If the creditor was not reasonably ascertainable, as defined in
5 RCW 11.42.040, the creditor must present the claim within four months
6 after the date of first publication of the notice;

7 (ii) If the creditor was reasonably ascertainable, as defined in
8 RCW 11.42.040, the creditor must present the claim within twenty-four
9 months after the decedent's date of death.

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

12 (3) This bar is effective as to claims against both the decedent's
13 probate and nonprobate assets.

14 **Sec. 29.** RCW 11.42.060 and 1994 c 221 s 36 are each amended to
15 read as follows:

16 ~~((1) Whether or not notice under RCW 11.42.020 has been given or~~
17 ~~should have been given, if no personal representative has been~~
18 ~~appointed and qualified, a person having a claim against the decedent~~
19 ~~who has not filed the claim within eighteen months from the date of the~~
20 ~~decedent's death is forever barred from making a claim against the~~
21 ~~decedent, or commencing an action against the decedent, if the claim or~~
22 ~~action is not already barred by any otherwise applicable statute of~~
23 ~~limitations. However, this eighteen-month limitation does not apply~~
24 ~~to:~~

25 ~~(a) Claims described in RCW 11.42.030;~~

26 ~~(b) A claim if, during the eighteen-month period following the date~~
27 ~~of death, partial performance has been made on the obligation~~
28 ~~underlying the claim, and the notice agent has not given the actual~~
29 ~~notice described in RCW 11.42.020(4)(a); or~~

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

31 ~~(i) No notice agent has given the published notice described in RCW~~
32 ~~11.42.020(4)(b); and~~

33 ~~(ii) No personal representative has given the published notice~~
34 ~~described in RCW 11.40.010(2).~~

35 ~~Any otherwise applicable statute of limitations applies without~~
36 ~~regard to the tolling provisions of RCW 4.16.190.~~

37 ~~(2) Claims referred to in this section must be filed if there is no~~
38 ~~duly appointed, qualified, and acting personal representative and there~~

1 is a duly declared and acting notice agent or resident agent for the
2 notice agent. The claims, subject to applicable statutes of
3 limitation, may at any time be served on the duly declared and acting
4 notice agent or resident agent for the notice agent, or on the attorney
5 for either of them.

6 (3) A claim to be filed under this chapter if there is no duly
7 appointed, qualified, and acting personal representative but there is
8 a duly declared and acting notice agent or resident agent for the
9 notice agent and which claim is not otherwise barred under this chapter
10 must be made in the form and manner provided under RCW 11.42.020, as if
11 the notice under that section had been given.)) The time limitations
12 for presenting claims under this chapter do not accrue to the benefit
13 of any liability or casualty insurer. Claims against the decedent or
14 the decedent's marital community that can be fully satisfied by
15 applicable insurance coverage or proceeds need not be presented within
16 the time limitation of RCW 11.42.050, but the amount of recovery cannot
17 exceed the amount of the insurance. If a notice agent provides notice
18 under RCW 11.42.020, the claims may at any time be presented as
19 provided in RCW 11.42.070, subject to the otherwise relevant statutes
20 of limitations, and does not constitute a cloud, lien, or encumbrance
21 upon the title to the decedent's probate or nonprobate assets nor delay
22 or prevent the transfer or distribution of the decedent's assets. This
23 section does not serve to extend any otherwise relevant statutes of
24 limitations.

25 **Sec. 30.** RCW 11.42.070 and 1994 c 221 s 37 are each amended to
26 read as follows:

27 ((Notice under RCW 11.42.020 must be in substantially the following
28 form:

29 In the Matter of _____)
30) _____ No.
31)
32) NONPROBATE NOTICE TO CREDITORS
33 Deceased.)
34)

35, the undersigned Notice Agent,
36 has elected to give notice to creditors of the decedent above named
37 under RCW 11.42.020. As of the date of the filing of a copy of this

1 notice with the Clerk of this Court, the Notice Agent has no knowledge
2 of the appointment and qualification of a personal representative in
3 the decedent's estate in the state of Washington or of any other person
4 becoming a Notice Agent. According to the records of the Clerk of this
5 Court as of 8:00 a.m. on the date of the filing of this notice with the
6 Clerk, no personal representative of the decedent's estate had been
7 appointed and qualified and no cause number regarding the decedent had
8 been issued to any other Notice Agent by the Clerk of this Court under
9 RCW 11.42.010.

10 Persons having claims against the decedent named above must, before
11 the time the claims would be barred by any otherwise applicable statute
12 of limitations, serve their claims on: The Notice Agent if the Notice
13 Agent is a resident of the state of Washington upon whom service of all
14 papers may be made; the Nonprobate Resident Agent for the Notice Agent,
15 if any; or the attorneys of record for the Notice Agent at the
16 respective address in the state of Washington listed below, and file an
17 executed copy of the claim with the Clerk of this Court within four
18 months after the date of first publication of this notice, or within
19 four months after the date of the filing of the copy of this notice
20 with the Clerk of the Court, whichever is later, or, except under those
21 provisions included in RCW 11.42.030 or 11.42.050, the claim will be
22 forever barred. This bar is effective as to all assets of the decedent
23 that were subject to satisfaction of the decedent's general liabilities
24 immediately before the decedent's death regardless of whether those
25 assets are or would be assets of the decedent's probate estate or
26 nonprobate assets of the decedent.

27 Date of filing of this notice with the
28 Clerk of the Court:

29 Date of first publication of this notice:

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

33

34 Notice Agent [signature] _____ Nonprobate Resident Agent
35 [if appointed]
36 [address in Washington, if any] _____ [address in Washington]

37

1 ~~Attorney for Notice Agent~~

2 ~~{address in Washington}~~

3 ~~{telephone}})) (1) The claimant, the claimant's attorney, or the
4 claimant's agent shall sign the claim and include in the claim the
5 following information:~~

6 (a) The name and address of the claimant;

7 (b) The name, address, if different from that of the claimant, and
8 nature of authority of an agent signing the claim on behalf of the
9 claimant;

10 (c) A statement of the facts or circumstances constituting the
11 basis of the claim;

12 (d) The amount of the claim; and

13 (e) If the claim is secured, unliquidated, contingent, or not yet
14 due, the nature of the security, the nature of the uncertainty, or the
15 date when it will become due.

16 Failure to describe correctly the information in (c), (d), or (e)
17 of this subsection, if the failure is not substantially misleading,
18 does not invalidate the claim.

19 (2) A claim does not need to be supported by affidavit.

20 (3) A claim must be presented within the time limits set forth in
21 RCW 11.42.050 by: (a) Serving on or mailing to, by regular first class
22 mail, the notice agent or the notice agent's attorney a copy of the
23 signed claim; and (b) filing the original of the signed claim with the
24 court. A claim is deemed presented upon the later of the date of
25 postmark or service on the notice agent, or the notice agent's
26 attorney, and filing with the court.

27 (4) Notwithstanding any other provision of this chapter, if a
28 claimant makes a written demand for payment within the time limits set
29 forth in RCW 11.42.050, the notice agent may waive formal defects and
30 elect to treat the demand as a claim properly filed under this chapter
31 if: (a) The claim was due; (b) the amount paid was the amount of
32 indebtedness over and above all payments and offsets; (c) the estate is
33 solvent; and (d) the payment is made in good faith. Nothing in this
34 chapter limits application of the doctrines of waiver, estoppel, or
35 detrimental claims or any other equitable principle.

36 **Sec. 31.** RCW 11.42.080 and 1994 c 221 s 38 are each amended to
37 read as follows:

1 (~~RCW 11.40.020 applies to claims subject to this chapter.~~) (1)
2 The notice agent shall allow or reject all claims presented in the
3 manner provided in RCW 11.42.070. The notice agent may allow or reject
4 a claim, in whole or in part.

5 (2) If the notice agent has not allowed or rejected a claim within
6 the later of four months from the date of first publication of the
7 notice to creditors and thirty days from presentation of the claim, the
8 claimant may serve written notice on the notice agent that the claimant
9 will petition the court to have the claim allowed. If the notice agent
10 fails to notify the claimant of the allowance or rejection of the claim
11 within twenty days after the notice agent's receipt of the claimant's
12 notice, the claimant may petition the court for a hearing to determine
13 whether the claim should be allowed or rejected, in whole or in part.
14 If the court substantially allows the claim, the court may allow the
15 petitioner reasonable attorneys' fees chargeable against the decedent's
16 assets received by the notice agent or by those appointing the notice
17 agent.

18 **NEW SECTION. Sec. 32.** A new section is added to chapter 11.42 RCW
19 to read as follows:

20 (1) The decedent's nonprobate and probate assets that were subject
21 to the satisfaction of the decedent's general liabilities immediately
22 before the decedent's death are liable for claims. The decedent's
23 probate assets may be liable, whether or not there is a probate
24 administration of the decedent's estate.

25 (2) The notice agent may pay a claim allowed by the notice agent or
26 a judgment on a claim first prosecuted against a notice agent only out
27 of assets received as a result of the death of the decedent by the
28 notice agent or by those appointing the notice agent, except as may be
29 provided by agreement under RCW 11.96.170 or by court order under RCW
30 11.96.070.

31 **Sec. 33.** RCW 11.42.090 and 1994 c 221 s 39 are each amended to
32 read as follows:

33 (~~(1) Property of the decedent that was subject to the satisfaction~~
34 ~~of the decedent's general liabilities immediately before the decedent's~~
35 ~~death is liable for claims. The property includes, but is not limited~~
36 ~~to, property of the decedent that is includable in the decedent's~~

1 probate estate, whether or not there is a probate administration of the
2 decedent's estate.

3 ~~(2) A claim approved by the notice agent, and a judgment on a claim~~
4 ~~first prosecuted against a notice agent, may be paid only out of assets~~
5 ~~received as a result of the death of the decedent by the notice agent~~
6 ~~or by those appointing the notice agent under chapter 11.96 RCW, except~~
7 ~~as may be provided by agreement under RCW 11.96.170 or by court order~~
8 ~~under RCW 11.96.070.)~~) (1) If the notice agent allows a claim, the

9 notice agent shall notify the claimant of the allowance by personal
10 service or regular first class mail to the address stated on the claim.
11 A claim may not be allowed if it is barred by a statute of limitations.

12 (2) The notice agent shall pay claims allowed in the following
13 order from the assets of the decedent that are subject to the payment
14 of claims as provided in section 32 of this act:

15 (a) Costs of administering the assets subject to the payment of
16 claims, including a reasonable fee to the notice agent, any resident
17 agent for the notice agent, reasonable attorneys' fees for the attorney
18 for each of them, filing fees, publication costs, mailing costs, and
19 similar costs and fees;

20 (b) Funeral expenses in a reasonable amount;

21 (c) Expenses of the last sickness in a reasonable amount;

22 (d) Wages due for labor performed within sixty days immediately
23 preceding the death of the decedent;

24 (e) Debts having preference by the laws of the United States;

25 (f) Taxes, debts, or dues owing to the state;

26 (g) Judgments rendered against the decedent in the decedent's
27 lifetime that are liens upon real estate on which executions might have
28 been issued at the time of the death of the decedent and debts secured
29 by mortgages in the order of their priority; and

30 (h) All other demands against the assets subject to the payment of
31 claims.

32 (3) The notice agent may not pay a claim of the notice agent or
33 other person who has received property by reason of the decedent's
34 death unless all other claims that have been filed under this chapter,
35 and all debts having priority to the claim, are paid in full or
36 otherwise settled by agreement, regardless of whether the other claims
37 are allowed or rejected.

1 **Sec. 34.** RCW 11.42.100 and 1994 c 221 s 40 are each amended to
2 read as follows:

3 ~~((1) The notice agent shall approve or reject claims no later than~~
4 ~~by the end of a period that is two months after the end of the four-~~
5 ~~month time limitation defined as the "review period."~~

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

7 ~~(3) If the notice agent rejects a claim, in whole or in part, the~~
8 ~~notice agent shall notify the claimant of the rejection and file in the~~
9 ~~office of the clerk of the court in the notice county an affidavit or~~
10 ~~declaration under penalty of perjury under RCW 9A.72.085 showing the~~
11 ~~notification and the date of the notification. The notification must~~
12 ~~be by personal service or certified mail addressed to the claimant at~~
13 ~~the claimant's address as stated in the claim. If a person other than~~
14 ~~the claimant signed the claim for or on behalf of the claimant, and the~~
15 ~~person's business address as stated in the claim is different from that~~
16 ~~of the claimant, notification of the rejection also must be made by~~
17 ~~personal service or certified mail upon that person. The date of the~~
18 ~~postmark is the date of the notification. The notification of the~~
19 ~~rejection must advise the claimant, and the person making claim on his,~~
20 ~~her, or its behalf, if any, that the claimant must bring suit in the~~
21 ~~proper court in the notice county against the notice agent: (a) Within~~
22 ~~thirty days after notification of rejection if the notification is made~~
23 ~~during or after the review period; or (b) before expiration of thirty~~
24 ~~days after the end of the four month time limitation, if the~~
25 ~~notification is made during the four month time limitation, and that~~
26 ~~otherwise the claim is forever barred.~~

27 ~~(4) A claimant whose claim either has been rejected by the notice~~
28 ~~agent or has not been acted upon within twenty days of written demand~~
29 ~~for the action having been given to the notice agent by the claimant~~
30 ~~during or after the review period must commence an action against the~~
31 ~~notice agent in the proper court in the notice county to enforce the~~
32 ~~claim of the claimant within the earlier of:~~

33 ~~(a) If the notice of the rejection of the claim has been sent as~~
34 ~~provided in subsection (3) of this section: The time for filing an~~
35 ~~action on a rejected claim is as provided in subsection (3) of this~~
36 ~~section; or~~

37 ~~(b) If written demand for approval or rejection is made on the~~
38 ~~notice agent before the claim is rejected: Within thirty days~~

1 following the end of the twenty day written demand period where the
2 demand period ends during or after the review period;
3 otherwise the claim is forever barred.

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

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

11 (7) If a notice agent pays a claim that subsequently is revoked by
12 a personal representative of the decedent, the notice agent may file a
13 claim in the decedent's estate for the notice agent's payment, and the
14 claim may be allowed or rejected as other claims, at the election of
15 the personal representative.

16 (8) If the notice agent has not received substantially all assets
17 of the decedent that are liable for claims, then although an action may
18 be commenced on a rejected claim by a creditor against the notice
19 agent, the notice agent, notwithstanding any provision in this chapter,
20 may only make an appearance in the litigation. The notice agent may
21 not answer the action, but must, instead, cause a petition to be filed
22 for the appointment of a personal representative of the decedent within
23 thirty days of the service of the creditor's summons and complaint on
24 the notice agent. A judgment may not be entered in an action brought
25 by a creditor against the notice agent earlier than twenty days after
26 the duly appointed, qualified, and acting personal representative of
27 the decedent has been substituted in that action for the notice
28 agent.))

29 (1) If the notice agent rejects a claim, in whole or in part,
30 the claimant must bring suit against the notice agent within thirty
31 days after notification of rejection or the claim is forever barred.
32 The notice agent shall notify the claimant of the rejection and file an
33 affidavit with the court showing the notification and the date of the
34 rejection by personal service or certified mail addressed to the
35 claimant or claimant's agent, if applicable, at the address stated in
36 the claim. The date of service or of the postmark is the date of
37 notification. The notification must advise the claimant that the
38 claimant must bring suit in the proper court against the notice agent

1 within thirty days after notification of rejection or the claim will be
2 forever barred.

3 (2) If a claimant brings suit against the notice agent on a
4 rejected claim and the notice agent has not received substantially all
5 assets of the decedent that are liable for claims, the notice agent may
6 only make an appearance in the action and may not answer the action but
7 must cause a petition to be filed for the appointment of a personal
8 representative within thirty days after service of the creditor's
9 action on the notice agent. Under these circumstances, a judgment may
10 not be entered in an action brought by a creditor against the notice
11 agent earlier than twenty days after the personal representative has
12 been substituted in that action for the notice agent.

13 (3) The notice agent may, before or after rejection of any claim,
14 compromise the claim, whether due or not, absolute or contingent,
15 liquidated, or unliquidated.

16 **Sec. 35.** RCW 11.42.110 and 1994 c 221 s 41 are each amended to
17 read as follows:

18 ~~((If a claim has been filed and presented to a notice agent, and a~~
19 ~~part of the claim is allowed, the amount of the allowance must be~~
20 ~~stated in the indorsement. If the creditor refuses to accept the~~
21 ~~amount so allowed in satisfaction of the claim, the creditor may not~~
22 ~~recover costs in an action the creditor may bring against the notice~~
23 ~~agent and against any substituted personal representative unless the~~
24 ~~creditor recovers a greater amount than that offered to be allowed,~~
25 ~~exclusive of interest and costs.)) The effect of a judgment rendered
26 against the notice agent shall be only to establish the amount of the
27 judgment as an allowed claim.~~

28 **Sec. 36.** RCW 11.42.120 and 1994 c 221 s 42 are each amended to
29 read as follows:

30 ~~((A debt of a decedent for whose estate no personal representative~~
31 ~~has been appointed must be paid in the following order by the notice~~
32 ~~agent from the assets of the decedent that are subject to the payment~~
33 ~~of claims as provided in RCW 11.42.090:~~

34 ~~(1) Costs of administering the assets subject to the payment of~~
35 ~~claims, including a reasonable fee to the notice agent, the resident~~
36 ~~agent for the notice agent, if any, reasonable attorneys' fees for the~~

1 attorney for each of them, filing fees, publication costs, mailing
2 costs, and similar costs and fees.

3 (2) Funeral expenses in a reasonable amount.

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

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

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

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

9 (7) Judgments rendered against the decedent in the decedent's
10 lifetime that are liens upon real estate on which executions might have
11 been issued at the time of the death of the decedent and debts secured
12 by mortgages in the order of their priority. However, the real estate
13 is subject to the payment of claims as provided in RCW 11.42.100.

14 (8) All other demands against the assets subject to the payment of
15 claims as provided in RCW 11.42.100.

16 A claim of the notice agent or other person who has received
17 property by reason of the decedent's death may not be paid by the
18 notice agent unless all other claims that have been filed under this
19 chapter, and all debts having priority to the claim, are paid in full
20 or otherwise settled by agreement, regardless of whether the other
21 claims are allowed or rejected, or partly allowed or partly rejected.
22 In the event of the probate of the decedent's estate, the personal
23 representative's payment from estate assets of the claim of the notice
24 agent or other person who has received property by reason of the
25 decedent's death is not affected by the priority payment provisions of
26 this section.)) If a judgment was entered against the decedent during
27 the decedent's lifetime, an execution may not issue on the judgment
28 after the death of the decedent. If a notice agent is acting, the
29 judgment must be presented in the manner provided in RCW 11.42.070, but
30 if the judgment is a lien on any property of the decedent, the property
31 may be sold for the satisfaction of the judgment and the officer making
32 the sale shall account to the notice agent for any surplus.

33 NEW SECTION. Sec. 37. A new section is added to chapter 11.42 RCW
34 to read as follows:

35 If a creditor's claim is secured by any property of the decedent,
36 this chapter does not affect the right of the creditor to realize on
37 the creditor's security, whether or not the creditor presented the
38 claim in the manner provided in RCW 11.42.070.

1 **Sec. 38.** RCW 11.42.130 and 1994 c 221 s 43 are each amended to
2 read as follows:

3 ~~((The notice agent may not allow a claim that is barred by the~~
4 ~~statute of limitations.))~~ A claim of the notice agent or other person
5 who has received property by reason of the decedent's death must be
6 paid as set forth in RCW 11.42.090(3).

7 **Sec. 39.** RCW 11.42.140 and 1994 c 221 s 45 are each amended to
8 read as follows:

9 ~~((The time during which there is a vacancy in the office of notice~~
10 ~~agent is not included in a limitation prescribed in this chapter.))~~ (1)
11 If a notice agent has given notice under RCW 11.42.020 and the notice
12 agent resigns, dies, or is removed or a personal representative is
13 appointed, the successor notice agent or the personal representative
14 shall:

15 (a) Publish notice of the vacancy and succession for two successive
16 weeks in the legal newspaper in which notice was published under RCW
17 11.42.020, if the vacancy occurred within twenty-four months after the
18 decedent's date of death; and

19 (b) Provide actual notice of the vacancy and succession to a
20 creditor if: (i) The creditor filed a claim and the claim had not been
21 allowed or rejected by the prior notice agent; or (ii) the creditor's
22 claim was rejected and the vacancy occurred within thirty days after
23 rejection of the claim.

24 (2) The time between the resignation, death, or removal of the
25 notice agent or appointment of a personal representative and the first
26 publication of the vacancy and succession or, in the case of actual
27 notice, the mailing of the notice of vacancy and succession must be
28 added to the time within which a claim must be presented or a suit on
29 a rejected claim must be filed. This section does not extend the
30 twenty-four-month self-executing bar under RCW 11.42.050.

31 **Sec. 40.** RCW 11.42.150 and 1994 c 221 s 44 are each amended to
32 read as follows:

33 ~~((A holder of a claim against a decedent may not maintain an action~~
34 ~~on the claim against a notice agent, unless the claim has been first~~
35 ~~presented as provided in this chapter. This chapter does not affect~~
36 ~~RCW 82.32.240.))~~ (1) The powers and authority of a notice agent
37 immediately cease, and the office of notice agent becomes vacant, upon

1 appointment of a personal representative for the estate of the
2 decedent. Except as provided in RCW 11.42.140(2), the cessation of the
3 powers and authority does not affect the filing and publication of
4 notice to creditors and does not affect actual notice to creditors
5 given by the notice agent.

6 (2) As set forth in section 23 of this act, a personal
7 representative may adopt, ratify, nullify, or reject any actions of the
8 notice agent.

9 (3) If a personal representative is appointed and the personal
10 representative does not nullify the allowance of a claim that the
11 notice agent allowed and paid, the person or persons whose assets were
12 used to pay the claim may petition for reimbursement from the estate to
13 the extent the payment was not in accordance with chapter 11.10 RCW.

14 **Sec. 41.** RCW 11.44.015 and 1967 c 168 s 9 are each amended to read
15 as follows:

16 (1) Within three months after ((his)) appointment, unless a longer
17 time shall be granted by the court, every personal representative shall
18 make and ((return upon oath into the court)) verify by affidavit a true
19 inventory and appraisal of all of the property of the estate passing
20 under the will or by laws of intestacy and which shall have come to
21 ((his)) the personal representative's possession or knowledge,
22 including a statement of all encumbrances, liens, or other secured
23 charges against any item. The personal representative shall determine
24 the fair net value, as of the date of the decedent's death, of each
25 item contained in the inventory after deducting the encumbrances,
26 liens, and other secured charges on the item. Such property shall be
27 classified as follows:

28 ((+1)) (a) Real property, by legal description ((and assessed
29 valuation of land and improvements thereon));

30 ((+2)) (b) Stocks and bonds;

31 ((+3)) (c) Mortgages, notes, and other written evidences of debt;

32 ((+4)) (d) Bank accounts and money;

33 ((+5)) (e) Furniture and household goods;

34 ((+6)) (f) All other personal property accurately identified,
35 including the decedent's proportionate share in any partnership, but no
36 inventory of the partnership property shall be required of the personal
37 representative.

1 (2) The inventory and appraisement may, but need not be, filed in
2 the probate cause, but upon receipt of a written request for a copy of
3 the inventory and appraisement from any heir, legatee, devisee, unpaid
4 creditor who has filed a claim, or beneficiary of a nonprobate asset
5 from whom contribution is sought under RCW 11.18.200, or from the
6 department of revenue, the personal representative shall furnish to the
7 person, within ten days of receipt of a request, a true and correct
8 copy of the inventory and appraisement.

9 **Sec. 42.** RCW 11.44.025 and 1974 ex.s. c 117 s 48 are each amended
10 to read as follows:

11 Whenever any property of the estate not mentioned in the inventory
12 and appraisement comes to the knowledge of a personal representative,
13 ~~((he))~~ the personal representative shall cause the ~~((same))~~ property to
14 be inventoried and appraised and shall make and ~~((return upon oath into~~
15 ~~the court))~~ verify by affidavit a true inventory and appraisement of
16 ~~((said))~~ the property within thirty days after the discovery thereof,
17 unless a longer time shall be granted by the court, and shall provide
18 a copy of the inventory and appraisement to every person who has
19 properly requested a copy of the inventory and appraisement under RCW
20 11.44.015(2).

21 **Sec. 43.** RCW 11.44.035 and 1965 c 145 s 11.44.035 are each amended
22 to read as follows:

23 In an action against the personal representative where ~~((his))~~ the
24 administration of the estate, or any part thereof, is put in issue and
25 the inventory and appraisement of the estate ~~((returned))~~ by ~~((him, or~~
26 ~~the appraisal thereof))~~ the personal representative is given in
27 evidence, the same may be contradicted or avoided by evidence. Any
28 party in interest in the estate may challenge the inventory ~~((or))~~ and
29 appraisement at any stage of the probate proceedings.

30 **Sec. 44.** RCW 11.44.050 and 1965 c 145 s 11.44.050 are each amended
31 to read as follows:

32 If any personal representative shall neglect or refuse to
33 ~~((return))~~ make the inventory and appraisement within the period
34 prescribed, or within such further time as the court may allow, or to
35 provide a copy as provided under RCW 11.44.015, 11.44.025, or
36 11.44.035, the court may revoke the letters testamentary or of

1 administration; and the personal representative shall be liable on his
2 or her bond to any party interested for the injury sustained by the
3 estate through his or her neglect.

4 **Sec. 45.** RCW 11.44.070 and 1974 ex.s. c 117 s 50 are each amended
5 to read as follows:

6 The personal representative may employ a qualified and
7 disinterested person to assist in ascertaining the fair market value as
8 of the date of the decedent's death of any asset the value of which may
9 be subject to reasonable doubt. Different persons may be employed to
10 appraise different kinds of assets included in the estate. The amount
11 of the fee to be paid to any persons assisting the personal
12 representative in any appraisal shall be determined by the personal
13 representative: PROVIDED HOWEVER, That the reasonableness of any such
14 compensation shall, at the time of hearing on any final account as
15 provided in chapter 11.76 RCW or on a request or petition under RCW
16 11.68.100 or 11.68.110, be reviewed by the court in accordance with the
17 provisions of RCW 11.68.100, and if the court determines the
18 compensation to be unreasonable, a personal representative may be
19 ordered to make appropriate refund.

20 **Sec. 46.** RCW 11.44.085 and 1965 c 145 s 11.44.085 are each amended
21 to read as follows:

22 The naming or the appointment of any person as personal
23 representative shall not operate as a discharge from any just claim
24 which the testator or intestate had against the personal
25 representative, but the claim shall be included in the inventory and
26 appraisal and the personal representative shall be liable to the
27 same extent as ((he)) the personal representative would have been had
28 he or she not been appointed personal representative.

29 **Sec. 47.** RCW 11.44.090 and 1965 c 145 s 11.44.090 are each amended
30 to read as follows:

31 The discharge or bequest in a will of any debt or demand of the
32 testator against any executor named in ((his)) the testator's will or
33 against any person shall not be valid against the creditors of the
34 deceased, but shall be construed as a specific bequest of such debt or
35 demand, and the amount thereof shall be included in the inventory and
36 appraisal, and shall, if necessary, be applied in payment of ((his))

1 the testator's debts; if not necessary for that purpose, it shall be
2 paid in the same manner and proportions as other specific legacies.

3 NEW SECTION. Sec. 48. (1) Subject to section 50 of this act, the
4 surviving spouse of a decedent may petition the court for an award from
5 the property of the decedent. If the decedent is survived by children
6 of the decedent who are not also the children of the surviving spouse,
7 on petition of such a child the court may divide the award between the
8 surviving spouse and all or any of such children as it deems
9 appropriate. If there is not a surviving spouse, the minor children of
10 the decedent may petition for an award.

11 (2) The award may be made from either the community property or
12 separate property of the decedent. Unless otherwise ordered by the
13 court, the probate and nonprobate assets of the decedent abate in
14 accordance with chapter 11.10 RCW in satisfaction of the award.

15 (3) The award may be made whether or not probate proceedings have
16 been commenced in the state of Washington. The court may not make this
17 award unless the petition for the award is filed before the earliest
18 of:

19 (a) Eighteen months from the date of the decedent's death if within
20 twelve months of the decedent's death either:

21 (i) A personal representative has been appointed; or

22 (ii) A notice agent has filed a declaration and oath as required in
23 RCW 11.42.010(3)(a)(ii); or

24 (b) The termination of any probate proceeding for the decedent's
25 estate that has been commenced in the state of Washington; or

26 (c) Six years from the date of the death of the decedent.

27 NEW SECTION. Sec. 49. The amount of the basic award shall be the
28 amount specified in RCW 6.13.030(2) with regard to lands. If an award
29 is divided between a surviving spouse and the decedent's children who
30 are not the children of the surviving spouse, the aggregate amount
31 awarded to all the claimants under this section shall be the amount
32 specified in RCW 6.13.030(2) with respect to lands. The amount of the
33 basic award may be increased or decreased in accordance with sections
34 51 and 52 of this act.

1 NEW SECTION. **Sec. 50.** (1) The court may not make an award unless
2 the court finds that the funeral expenses, expenses of last sickness,
3 and expenses of administration have been paid or provided for.

4 (2) The court may not make an award to a surviving spouse or child
5 who has participated, either as a principal or as an accessory before
6 the fact, in the willful and unlawful killing of the decedent.

7 NEW SECTION. **Sec. 51.** (1) If it is demonstrated to the
8 satisfaction of the court with clear, cogent, and convincing evidence
9 that a claimant's present and reasonably anticipated future needs
10 during the pendency of any probate proceedings in the state of
11 Washington with respect to basic maintenance and support will not
12 otherwise be provided for from other resources, and that the award
13 would not be inconsistent with the decedent's intentions, the amount of
14 the award may be increased in an amount the court determines to be
15 appropriate.

16 (2) In determining the needs of the claimant, the court shall
17 consider, without limitation, the resources available to the claimant
18 and the claimant's dependents, and the resources reasonably expected to
19 be available to the claimant and the claimant's dependents during the
20 pendency of the probate, including income related to present or future
21 employment and benefits flowing from the decedent's probate and
22 nonprobate estate.

23 (3) In determining the intentions of the decedent, the court shall
24 consider, without limitation:

25 (a) Provisions made for the claimant by the decedent under the
26 terms of the decedent's will or otherwise;

27 (b) Provisions made for third parties or other entities under the
28 decedent's will or otherwise that would be affected by an increased
29 award;

30 (c) If the claimant is the surviving spouse, the duration and
31 status of the marriage of the decedent to the claimant at the time of
32 the decedent's death;

33 (d) The effect of any award on the availability of any other
34 resources or benefits to the claimant;

35 (e) The size and nature of the decedent's estate; and

36 (f) Oral or written statements made by the decedent that are
37 otherwise admissible as evidence.

1 The fact that the decedent has named beneficiaries other than the
2 claimant as recipients of the decedent's estate is not of itself
3 adequate to evidence such an intent as would prevent the award of an
4 amount in excess of that provided for in RCW 6.13.030(2) with respect
5 to lands.

6 (4)(a) A petition for an increased award may only be made if a
7 petition for an award has been granted under section 48 of this act.
8 The request for an increased award may be made in conjunction with the
9 petition for an award under section 48 of this act.

10 (b) Subject to (a) of this subsection, a request for an increased
11 award may be made at any time during the pendency of the probate
12 proceedings. A request to modify an increased award may also be made
13 at any time during the pendency of the probate proceedings by a person
14 having an interest in the decedent's estate that will be directly
15 affected by the requested modification.

16 NEW SECTION. Sec. 52. (1) The court may decrease the amount of
17 the award below the amount provided in section 49 of this act in the
18 exercise of its discretion if the recipient is entitled to receive
19 probate or nonprobate property, including insurance, by reason of the
20 death of the decedent. In such a case the award must be decreased by
21 no more than the value of such other property as is received by reason
22 of the death of the decedent. The court shall consider the factors
23 presented in section 51(2) of this act in determining the propriety of
24 the award and the proper amount of the award, if any.

25 (2) An award to a surviving spouse is also discretionary and the
26 amount otherwise allowable may be reduced if: (a) The decedent is
27 survived by children who are not the children of the surviving spouse
28 and the award would decrease amounts otherwise distributable to such
29 children; or (b) the award would have the effect of reducing amounts
30 otherwise distributable to any of the decedent's minor children. In
31 either case the court shall consider the factors presented in section
32 51 (2) and (3) of this act and whether the needs of the minor children
33 with respect to basic maintenance and support are and will be
34 adequately provided for, both during and after the pendency of any
35 probate proceedings if such proceedings are pending, considering
36 support from any source, including support from the surviving spouse.

1 NEW SECTION. **Sec. 53.** (1) The award has priority over all other
2 claims made in the estate. In determining which assets must be made
3 available to satisfy the award, the claimant is to be treated as a
4 general creditor of the estate, and unless otherwise ordered by the
5 court the assets shall abate in satisfaction of the award in accordance
6 with chapter 11.10 RCW.

7 (2) If the property awarded is being purchased on contract or is
8 subject to any encumbrance, for purposes of the award the property must
9 be valued net of the balance due on the contract and the amount of the
10 encumbrance. The property awarded will continue to be subject to any
11 such contract or encumbrance, and any award in excess of the basic
12 award under section 48 of this act, whether of community property or
13 the decedent's separate property, is not immune from any lien for costs
14 of medical expenses recoverable under RCW 43.20B.080.

15 NEW SECTION. **Sec. 54.** (1) Except as provided in subsection (2) of
16 this section, property awarded and cash paid under this chapter is
17 immune from all debts, including judgments and judgment liens, of the
18 decedent and of the surviving spouse existing at the time of death.

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

22 NEW SECTION. **Sec. 55.** (1) This section applies if the party
23 entitled to petition for an award holds exempt property that is in an
24 aggregate amount less than that specified in RCW 6.13.030(2) with
25 respect to lands.

26 (2) For purposes of this section, the party entitled to petition
27 for an award is referred to as the "claimant." If multiple parties are
28 entitled to petition for an award, all of them are deemed a "claimant"
29 and may petition for an exemption of additional assets as provided in
30 this section, if the aggregate amount of exempt property to be held by
31 all the claimants after the making of the award does not exceed the
32 amount specified in RCW 6.13.030(2) with respect to lands.

33 (3) A claimant may petition the court for an order exempting other
34 assets from the claims of creditors so that the aggregate amount of
35 exempt property held by the claimants equals the amount specified in
36 RCW 6.13.030(2) with respect to lands. The petition must:

1 (a) Set forth facts to establish that the petitioner is entitled to
2 petition for an award under section 48 of this act;

3 (b) State the nature and value of those assets then held by all
4 claimants that are exempt from the claims of creditors; and

5 (c) Describe the nonexempt assets then held by the claimants,
6 including any interest the claimants may have in any probate or
7 nonprobate property of the decedent.

8 (4) Notice of a petition for an order exempting assets from the
9 claims of creditors must be given in accordance with RCW 11.96.100.

10 (5) At the hearing on the petition, the court shall order that
11 certain assets of the claimants are exempt from the claims of creditors
12 so that the aggregate amount of exempt property held by the claimants
13 after the entry of the order is in the amount specified in RCW
14 6.13.030(2) with respect to lands. In the order the court shall
15 designate those assets of the claimants that are so exempt.

16 NEW SECTION. **Sec. 56.** The petition for an award, for an increased
17 or modified award, or for the exemption of assets from the claims of
18 creditors as authorized by this chapter must be made to the court of
19 the county in which the probate is being administered. If probate
20 proceedings have not been commenced in the state of Washington, the
21 petition must be made to the court of a county in which the decedent's
22 estate could be administered under RCW 11.96.050 if the decedent held
23 personal property subject to probate in the county of the decedent's
24 domicile. The petition and the hearing must conform to RCW 11.96.070.
25 Notice of the hearing on the petition must be given in accordance with
26 RCW 11.96.100.

27 NEW SECTION. **Sec. 57.** If an award provided by this chapter will
28 exhaust the estate, and probate proceedings have been commenced in the
29 state of Washington, the court in the order of award or allowance shall
30 order the estate closed, discharge the personal representative, and
31 exonerate the personal representative's bond, if any.

32 **Sec. 58.** RCW 11.48.130 and 1965 c 145 s 11.48.130 are each amended
33 to read as follows:

34 The court (~~shall have power to~~) may authorize the personal
35 representative, without the necessary nonintervention powers, to
36 compromise and compound any claim owing the estate. Unless the court

1 has restricted the power to compromise or compound claims owing to the
2 estate, a personal representative with nonintervention powers may
3 compromise and compound a claim owing the estate without the
4 intervention of the court.

5 NEW SECTION. Sec. 59. A new section is added to chapter 11.68 RCW
6 to read as follows:

7 (1) A personal representative may petition the court for
8 nonintervention powers, whether the decedent died testate or intestate.

9 (2) Unless the decedent has specified in the decedent's will, if
10 any, that the court not grant nonintervention powers to the personal
11 representative, the court shall grant nonintervention powers to a
12 personal representative who petitions for the powers if the court
13 determines that the decedent's estate is solvent, taking into account
14 probate and nonprobate assets, and that:

15 (a) The petitioning personal representative was named in the
16 decedent's probated will as the personal representative;

17 (b) The decedent died intestate, the petitioning personal
18 representative is the decedent's surviving spouse, the decedent's
19 estate is composed of community property only, and the decedent had no
20 issue: (i) Who is living or in gestation on the date of the petition;
21 (ii) whose identity is reasonably ascertainable on the date of the
22 petition; and (iii) who is not also the issue of the petitioning
23 spouse; or

24 (c) The personal representative was not a creditor of the decedent
25 at the time of the decedent's death and the administration and
26 settlement of the decedent's will or estate with nonintervention powers
27 would be in the best interests of the decedent's beneficiaries and
28 creditors. However, the administration and settlement of the
29 decedent's will or estate with nonintervention powers will be presumed
30 to be in the beneficiaries' and creditors' best interest until a person
31 entitled to notice under section 61 of this act rebuts that presumption
32 by coming forward with evidence that the grant of nonintervention
33 powers would not be in the beneficiaries' or creditors' best interests.

34 (3) The court may base its findings of facts necessary for the
35 grant of nonintervention powers on: (a) Statements of witnesses
36 appearing before the court; (b) representations contained in a verified
37 petition for nonintervention powers, in an inventory made and returned

1 upon oath into the court, or in an affidavit filed with the court; or
2 (c) other proof submitted to the court.

3 NEW SECTION. **Sec. 60.** A new section is added to chapter 11.68 RCW
4 to read as follows:

5 A hearing on a petition for nonintervention powers may be held at
6 the time of the appointment of the personal representative or at any
7 later time.

8 NEW SECTION. **Sec. 61.** A new section is added to chapter 11.68 RCW
9 to read as follows:

10 (1) Advance notice of the hearing on a petition for nonintervention
11 powers referred to in section 59 of this act is not required in those
12 circumstances in which the court is required to grant nonintervention
13 powers under section 59(2) (a) and (b) of this act.

14 (2) In all other cases, if the petitioner wishes to obtain
15 nonintervention powers, the personal representative shall give notice
16 of the petitioner's intention to apply to the court for nonintervention
17 powers to all heirs, all beneficiaries of a gift under the decedent's
18 will, and all persons who have requested, and who are entitled to,
19 notice under RCW 11.28.240, except that:

20 (a) A person is not entitled to notice if the person has, in
21 writing, either waived notice of the hearing or consented to the grant
22 of nonintervention powers; and

23 (b) An heir who is not also a beneficiary of a gift under a will is
24 not entitled to notice if the will has been probated and the time for
25 contesting the validity of the will has expired.

26 (3) The notice required by this section must be either personally
27 served or sent by regular mail at least ten days before the date of the
28 hearing, and proof of mailing of the notice must be by affidavit filed
29 in the cause. The notice must contain the decedent's name, the probate
30 cause number, the name and address of the personal representative, and
31 must state in substance as follows:

32 (a) The personal representative has petitioned the superior court
33 of the state of Washington for county, for the entry of an
34 order granting nonintervention powers and a hearing on that petition
35 will be held on, the day of,, at
36 o'clock, . . M.;

1 (b) The petition for an order granting nonintervention powers has
2 been filed with the court;

3 (c) Following the entry by the court of an order granting
4 nonintervention powers, the personal representative is entitled to
5 administer and close the decedent's estate without further court
6 intervention or supervision; and

7 (d) A person entitled to notice has the right to appear at the time
8 of the hearing on the petition for an order granting nonintervention
9 powers and to object to the granting of nonintervention powers to the
10 personal representative.

11 (4) If notice is not required, or all persons entitled to notice
12 have either waived notice of the hearing or consented to the entry of
13 an order granting nonintervention powers as provided in this section,
14 the court may hear the petition for an order granting nonintervention
15 powers at any time.

16 **Sec. 62.** RCW 11.68.050 and 1977 ex.s. c 234 s 21 are each amended
17 to read as follows:

18 (1) If at the time set for the hearing upon ((the)) a petition for
19 ((the entry of an order of solvency)) nonintervention powers, any
20 person entitled to notice of the hearing on the petition under ((the
21 provisions of RCW 11.68.040 as now or hereafter amended,)) section 61
22 of this act shall appear and object to the granting of nonintervention
23 powers to the personal representative of the estate, the court shall
24 consider ((said objections, if any, and the entry of an order of
25 solvency shall be discretionary with the court upon being satisfied by
26 proof as required in RCW 11.68.010 as now or hereafter amended. If an
27 order of solvency is entered)) the objections, if any, in connection
28 with its determination under section 59(2)(c) of this act of whether a
29 grant of nonintervention powers would be in the best interests of the
30 decedent's beneficiaries.

31 (2) The nonintervention powers of a personal representative may not
32 be restricted at a hearing on a petition for nonintervention powers in
33 which the court is required to grant nonintervention powers under
34 section 59(2) (a) and (b) of this act, unless a will specifies that the
35 nonintervention powers of a personal representative may be restricted
36 when the powers are initially granted. In all other cases, including
37 without limitation any hearing on a petition that alleges that the
38 personal representative has breached its duties to the beneficiaries of

1 the estate, the court may restrict the powers of the personal
2 representative in such manner as the court determines(~~((.——If no~~
3 ~~objection is made at the time of the hearing by any person entitled to~~
4 ~~notice thereof, the court shall enter an order of solvency upon being~~
5 ~~satisfied by proof as required in RCW 11.68.010 as now or hereafter~~
6 ~~amended))~~ to be in the best interests of the decedent's beneficiaries.

7 **Sec. 63.** RCW 11.68.060 and 1977 ex.s. c 234 s 22 are each amended
8 to read as follows:

9 If(~~(, after the entry of an order of solvency,))~~ any personal
10 representative of the estate of the decedent (~~(shall))~~ dies, resigns,
11 or otherwise becomes disabled from any cause from acting as the
12 nonintervention personal representative, (~~(the successor personal~~
13 ~~representative, other than a creditor of a decedent not designated as~~
14 ~~a personal representative in the decedent's will, shall administer the~~
15 ~~estate of the decedent without the intervention of court after notice~~
16 ~~and hearing as required by RCW 11.68.040 and 11.68.050 as now or~~
17 ~~hereafter amended, unless at the time of said hearing objections to the~~
18 ~~granting of nonintervention powers to such successor personal~~
19 ~~representative shall be made by an heir, legatee, devisee, or other~~
20 ~~person entitled to notice pursuant to RCW 11.28.240 as now existing or~~
21 ~~hereafter amended, and unless the court, after hearing said objections~~
22 ~~shall refuse to grant nonintervention powers to such successor personal~~
23 ~~representative. If no heir, legatee, devisee, or other person entitled~~
24 ~~to notice shall appear at the time of the hearing to object to the~~
25 ~~granting of nonintervention powers to such successor personal~~
26 ~~representative, the court shall enter an order granting nonintervention~~
27 ~~powers to))~~ the successor personal representative, or a person who has
28 petitioned to be appointed as a successor personal representative, may
29 petition the court for nonintervention powers, and the court shall act,
30 in accordance with sections 59 through 61 of this act and RCW
31 11.68.050.

32 NEW SECTION. **Sec. 64.** A new section is added to chapter 11.68 RCW
33 to read as follows:

34 A beneficiary whose interest in an estate has not been fully paid
35 or distributed may petition the court for an order directing the
36 personal representative to deliver a report of the affairs of the
37 estate signed and verified by the personal representative. The

1 petition may be filed at any time after one year from the day on which
2 the report was last delivered, or, if none, then one year after the
3 order appointing the personal representative. Upon hearing of the
4 petition after due notice as required in chapter 11.96 RCW, the court
5 may, for good cause shown, order the personal representative to deliver
6 to the petitioner the report for any period not covered by a previous
7 report. The report for the period shall include such of the following
8 as the court may order: A description of the amount and nature of all
9 property, real and personal, that has come into the hands of the
10 personal representative; a statement of all property collected and paid
11 out or distributed by the personal representative; a statement of
12 claims filed and allowed against the estate and those rejected; any
13 estate, inheritance, or fiduciary income tax returns filed by the
14 personal representative; and such other information as the order may
15 require. This subsection does not limit any power the court might
16 otherwise have at any time during the administration of the estate to
17 require the personal representative to account or furnish other
18 information to any person interested in the estate.

19 **Sec. 65.** RCW 11.68.080 and 1977 ex.s. c 234 s 24 are each amended
20 to read as follows:

21 ~~((After such notice as the court may require, the order of solvency
22 shall be vacated or restricted upon the petition of any personal
23 representative, heir, legatee, devisee, or creditor, if supported by
24 proof satisfactory to the court that said estate has become insolvent.~~

25 ~~If, after hearing, the court shall vacate or restrict the prior
26 order of solvency, the court shall endorse the term "Vacated" or
27 "Powers restricted" upon the original order of solvency))~~ (1) Within
28 ten days after the personal representative has received from alleged
29 creditors under chapter 11.40 RCW claims that have an aggregate face
30 value that, when added to the other debts and to the taxes and expenses
31 of greater priority under applicable law, would appear to cause the
32 estate to be insolvent, the personal representative shall notify in
33 writing all beneficiaries under the decedent's will and, if any of the
34 decedent's property will pass according to the laws of intestate
35 succession, all heirs, together with any unpaid creditors, other than
36 a creditor whose claim is then barred under chapter 11.40 RCW or the
37 otherwise applicable statute of limitations, that the estate might be

1 insolvent. The personal representative shall file a copy of the
2 written notice with the court.

3 (2) Within ten days after an estate becomes insolvent, the personal
4 representative shall petition under chapter 11.96 RCW for a
5 determination of whether the court should reaffirm, rescind, or
6 restrict in whole or in part any prior grant of nonintervention powers.
7 Notice of the hearing must be given in accordance with RCW 11.96.100
8 and 11.96.110.

9 (3) If, upon a petition under chapter 11.96 RCW of any personal
10 representative, beneficiary under the decedent's will, heir if any of
11 the decedent's property passes according to the laws of intestate
12 succession, or any unpaid creditor with a claim that has been accepted
13 or judicially determined to be enforceable, the court determines that
14 the decedent's estate is insolvent, the court shall reaffirm, rescind,
15 or restrict in whole or in part any prior grant of nonintervention
16 powers to the extent necessary to protect the best interests of the
17 beneficiaries and creditors of the estate.

18 (4) If the court rescinds or restricts a prior grant of
19 nonintervention powers, the court shall endorse the term "powers
20 rescinded" or "powers restricted" upon the prior order together with
21 the date of ((said)) the endorsement.

22 **Sec. 66.** RCW 11.68.090 and 1988 c 29 s 3 are each amended to read
23 as follows:

24 (1) Any personal representative acting under nonintervention powers
25 may borrow money on the general credit of the estate and may mortgage,
26 encumber, lease, sell, exchange, convey, and otherwise ((do anything a
27 trustee may do)) have the same powers, and be subject to the same
28 limitations of liability, that a trustee has under RCW 11.98.070 and
29 chapters 11.100 and 11.102 RCW with regard to the assets of the estate,
30 both real and personal, all without an order of court and without
31 notice, approval, or confirmation, and in all other respects administer
32 and settle the estate of the decedent without intervention of court.
33 ((Any party to any such transaction and his or her successors in
34 interest shall be entitled to have it conclusively presumed that the
35 transaction is necessary for the administration of the decedent's
36 estate.)) Except as otherwise specifically provided in this
37 ((chapter)) title or by order of court, ((chapter 11.76 RCW shall not
38 apply to the administration of an estate by)) a personal representative

1 acting under nonintervention powers may exercise the powers granted to
2 a personal representative under chapter 11.76 RCW but is not obligated
3 to comply with the duties imposed on personal representatives by that
4 chapter. A party to such a transaction and the party's successors in
5 interest are entitled to have it conclusively presumed that the
6 transaction is necessary for the administration of the decedent's
7 estate.

8 (2) Except as otherwise provided in chapter 11.108 RCW or elsewhere
9 in order to preserve a marital deduction from estate taxes, a testator
10 may by a will relieve the personal representative from any or all of
11 the duties, restrictions, and liabilities imposed: Under common law;
12 by chapters 11.-- (sections 48 through 57 of this act), 11.56, 11.100,
13 11.102, and 11.104 RCW; or by RCW 11.28.270 and 11.28.280, section 67
14 of this act, and RCW 11.98.070. In addition, a testator may likewise
15 alter or deny any or all of the privileges and powers conferred by this
16 title, and may add duties, restrictions, liabilities, privileges, or
17 powers to those imposed or granted by this title. If any common law or
18 any statute referenced earlier in this subsection is in conflict with
19 a will, the will controls whether or not specific reference is made in
20 the will to this section. However, notwithstanding the rest of this
21 subsection, a personal representative may not be relieved of the duty
22 to act in good faith and with honest judgment.

23 NEW SECTION. Sec. 67. A new section is added to chapter 11.68 RCW
24 to read as follows:

25 All of the provisions of RCW 11.98.016 regarding the exercise of
26 powers by co-trustees of a trust shall apply to the co-personal
27 representatives of an estate in which the co-personal representatives
28 have been granted nonintervention powers, as if, for purposes of the
29 interpretation of that law, co-personal representatives were co-
30 trustees and an estate were a trust.

31 **Sec. 68.** RCW 11.68.110 and 1990 c 180 s 5 are each amended to read
32 as follows:

33 (1) If a personal representative who has acquired nonintervention
34 powers does not apply to the court for either of the final decrees
35 provided for in RCW 11.68.100 as now or hereafter amended, the personal
36 representative shall, when the administration of the estate has been

1 completed, file a declaration (~~to that effect, which declaration~~
2 ~~shall~~) that must state as follows:

3 ~~((1))~~ (a) The date of the decedent's death(~~(τ)~~) and the
4 decedent's residence at the time of death(~~(τ)~~)i

5 (b) Whether or not the decedent died testate or intestate(~~(τ and~~
6 ~~if))~~)i

7 (c) If the decedent died testate, the date of the decedent's last
8 will and testament and the date of the order (~~admitting the will to~~
9 ~~probate~~) probating the will;

10 ~~((2))~~ (d) That each creditor's claim which was justly due and
11 properly presented as required by law has been paid or otherwise
12 disposed of by agreement with the creditor, and that the amount of
13 estate taxes due as the result of the decedent's death has been
14 determined, settled, and paid;

15 ~~((3))~~ (e) That the personal representative has completed the
16 administration of the decedent's estate without court intervention, and
17 the estate is ready to be closed;

18 ~~((4))~~ (f) If the decedent died intestate, the names, addresses
19 (if known), and relationship of each heir of the decedent, together
20 with the distributive share of each heir; and

21 ~~((5))~~ (g) The amount of fees paid or to be paid to each of the
22 following: ~~((a))~~ (i) Personal representative or representatives(~~(τ~~
23 ~~(b))~~)i (ii) lawyer or lawyers(~~(τ—(c))~~)i (iii) appraiser or
24 appraisers(~~(τ)~~)i and ~~((d))~~ (iv) accountant or accountants; and that
25 the personal representative believes the fees to be reasonable and does
26 not intend to obtain court approval of the amount of the fees or to
27 submit an estate accounting to the court for approval.

28 (2) Subject to the requirement of notice as provided in this
29 section, unless an heir, devisee, or legatee of a decedent petitions
30 the court either for an order requiring the personal representative to
31 obtain court approval of the amount of fees paid or to be paid to the
32 personal representative, lawyers, appraisers, or accountants, or for an
33 order requiring an accounting, or both, within thirty days from the
34 date of filing a declaration of completion of probate, the personal
35 representative will be automatically discharged without further order
36 of the court and the representative's powers will cease thirty days
37 after the filing of the declaration of completion of probate, and the
38 declaration of completion of probate shall, at that time, be the

1 equivalent of the entry of a decree of distribution in accordance with
2 chapter 11.76 RCW for all legal intents and purposes.

3 (3) Within five days of the date of the filing of the declaration
4 of completion, the personal representative or the personal
5 representative's lawyer shall mail a copy of the declaration of
6 completion to each heir, legatee, or devisee of the decedent ((+)), who
7 has not waived notice of ((said)) the filing, in writing, filed in the
8 cause((+)), or who, not having waived notice, either has not received
9 the full amount of the distribution to which the heir, legatee, or
10 devisee is entitled or has a property right that might be affected
11 adversely by the discharge of the personal representative under this
12 section, together with a notice which shall be substantially as
13 follows:

14 CAPTION NOTICE OF FILING OF
15 OF DECLARATION OF COMPLETION
16 CASE OF PROBATE

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

30 If you file and serve a petition within the period specified, the
31 undersigned will request the court to fix a time and place for the
32 hearing of your petition, and you will be notified of the time and
33 place thereof, by mail, or personal service, not less than ten days
34 before the hearing on the petition.

35 Dated this day of, 19. . .
36
37 Personal Representative

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

11 NEW SECTION. Sec. 69. A new section is added to chapter 11.68 RCW
12 to read as follows:

13 If the declaration of completion of probate and the notice of
14 filing of declaration of completion of probate state that the personal
15 representative intends to make final distribution within five business
16 days after the final date on which a beneficiary could petition for an
17 order to approve fees or to require an accounting, which date is
18 referred to in this section as the "effective date of the declaration
19 of completion," and if the notice of filing of declaration of
20 completion of probate sent to each beneficiary who has not received
21 everything to which that beneficiary is entitled from the decedent's
22 estate specifies the amount of the minimum distribution to be made to
23 that beneficiary, the personal representative retains, for five
24 business days following the effective date of the declaration of
25 completion, the power to make the stated minimum distributions. In
26 this case, the personal representative is discharged from all claims
27 other than those relating to the actual distribution of the reserve, at
28 the effective date of the declaration of completion. The personal
29 representative is only discharged from liability for the distribution
30 of the reserve when the whole reserve has been distributed and each
31 beneficiary has received at least the distribution which that
32 beneficiary's notice stated that the beneficiary would receive.

33 NEW SECTION. Sec. 70. A new section is added to chapter 11.68 RCW
34 to read as follows:

35 (1) The personal representative retains the powers to: Deal with
36 the taxing authority of any federal, state, or local government; hold
37 a reserve in an amount not to exceed three thousand dollars, for the

1 determination and payment of any additional taxes, interest, and
2 penalties, and of all reasonable expenses related directly or
3 indirectly to such determination or payment; pay from the reserve the
4 reasonable expenses, including compensation for services rendered or
5 goods provided by the personal representative or by the personal
6 representative's employees, independent contractors, and other agents,
7 in addition to any taxes, interest, or penalties assessed by a taxing
8 authority; receive and hold any credit, including interest, from any
9 taxing authority; and distribute the residue of the reserve to the
10 intended beneficiaries of the reserve; if:

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

13 The personal representative has completed the
14 administration of the decedent's estate without court
15 intervention, and the estate is ready to be closed, except for
16 the determination of taxes and of interest and penalties
17 thereon as permitted under this section;

18 and

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

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

24 NOTICE IS GIVEN that the attached Declaration of
25 Completion of Probate was filed by the undersigned in the
26 above-entitled court on the . . . day of . . . , . . . ;
27 unless you file a petition in the above-entitled court
28 requesting the court to approve the reasonableness of the fees,
29 or for an accounting, or both, and serve a copy thereof upon
30 the personal representative or the personal representative's
31 lawyer, within thirty days after the date of the filing:

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

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

1 (iii) The acts that the personal representative
2 performed before the Declaration of Completion of Probate was
3 filed will be deemed approved, and the personal representative
4 will be automatically discharged without further order of the
5 court with respect to all such acts; and

6 (iv) The personal representative will retain the power
7 to deal with the taxing authorities, together with \$. . . . for
8 the determination and payment of all remaining tax obligations.
9 Only that portion of the reserve that remains after the
10 settlement of any tax liability, and the payment of any
11 expenses associated with such settlement, will be distributed
12 to the persons legally entitled to the reserve.

13 (2) If the requirements in subsection (1) of this section are met,
14 the personal representative is discharged from all claims other than
15 those relating to the settlement of any tax obligations and the actual
16 distribution of the reserve, at the effective date of the declaration
17 of completion. The personal representative is discharged from
18 liability from the settlement of any tax obligations and the
19 distribution of the reserve, and the personal representative's powers
20 cease, thirty days after the personal representative:

21 (a) Has mailed to those persons who would have shared in the
22 distribution of the reserve had the reserve remained intact; and

23 (b) Has filed with the court copies of checks or receipts showing
24 how the reserve was in fact distributed, unless a person with an
25 interest in the reserve petitions the court earlier within the thirty-
26 day period for an order requiring an accounting of the reserve or an
27 order determining the reasonableness, or lack of reasonableness, of
28 distributions made from the reserve. If the personal representative
29 has been required to furnish a bond, any bond furnished by the personal
30 representative is automatically discharged upon the final discharge of
31 the personal representative.

32 **Sec. 71.** RCW 11.76.080 and 1977 ex.s. c 80 s 15 are each amended
33 to read as follows:

34 If there be any alleged (~~incompetent or disabled~~) incapacitated
35 person as defined in RCW 11.88.010 interested in the estate who has no
36 legally appointed guardian or limited guardian, the court:

37 (1) At any stage of the proceeding in its discretion and for such
38 purpose or purposes as it shall indicate, may(~~(-)~~) appoint; and

1 (2) For hearings held (~~pursuant to RCW 11.52.010, 11.52.020,~~
2 ~~11.68.040~~) under sections 48 and 61 of this act, RCW 11.68.100, and
3 11.76.050(~~(, each as now or hereafter amended,)~~) or for entry of an
4 order adjudicating testacy or intestacy and heirship when no personal
5 representative is appointed to administer the estate of the decedent,
6 shall appoint some disinterested person as guardian ad litem to
7 represent (~~such~~) the allegedly (~~incompetent or disabled~~)
8 incapacitated person with reference to any petition, proceeding report,
9 or adjudication of testacy or intestacy without the appointment of a
10 personal representative to administer the estate of decedent in which
11 the alleged (~~incompetent or disabled~~) incapacitated person may have
12 an interest, who, on behalf of the alleged (~~incompetent or disabled~~)
13 incapacitated person, may contest the same as any other person
14 interested might contest it, and who shall be allowed by the court
15 reasonable compensation for his or her services: PROVIDED, HOWEVER,
16 That where a surviving spouse is the sole beneficiary under the terms
17 of a will, the court may grant a motion by the personal representative
18 to waive the appointment of a guardian ad litem for a person who is the
19 minor child of (~~such~~) the surviving spouse and the decedent and who
20 is (~~incompetent~~) incapacitated solely for the reason of his or her
21 being under eighteen years of age.

22 **Sec. 72.** RCW 11.76.095 and 1991 c 193 s 28 are each amended to
23 read as follows:

24 When a decree of distribution is made by the court in
25 administration upon a decedent's estate or when distribution is made by
26 a personal representative under a nonintervention will and distribution
27 is ordered under such decree or authorized under such nonintervention
28 will to a person under the age of eighteen years, it shall be required
29 that:

30 (1) The money be deposited in a bank or trust company or be
31 invested in an account in an insured financial institution for the
32 benefit of the minor subject to withdrawal only upon the order of the
33 court in the original probate proceeding, or upon said minor's
34 attaining the age of eighteen years and furnishing proof thereof
35 satisfactory to the depository;

36 (2) A general guardian shall be appointed and qualify and the money
37 or property be paid or delivered to such guardian prior to the

1 discharge of the personal representative in the original probate
2 proceeding; or

3 ~~(3) ((The provisions of RCW 11.76.090 are complied with; or~~
4 ~~(4)))~~ A custodian be selected and the money or property be
5 transferred to the custodian subject to chapter ~~((11.93))~~ 11.114 RCW.

6 **Sec. 73.** RCW 11.86.041 and 1991 c 7 s 1 are each amended to read
7 as follows:

8 (1) Unless the instrument creating an interest directs to the
9 contrary, the interest disclaimed shall pass as if the beneficiary had
10 died immediately prior to the date of the transfer of the interest.
11 The disclaimer shall relate back to this date for all purposes.

12 (2) Unless the ~~((disclaimer directs to the contrary, the~~
13 ~~beneficiary may receive another interest in the property subject to the~~
14 ~~disclaimer))~~ beneficiary is the surviving spouse of a deceased creator
15 of the interest, the beneficiary shall also be deemed to have
16 disclaimed all interests in the property, including all beneficial
17 interests in any trust into which the disclaimed property may pass.
18 This subsection applies unless the disclaimer specifically refers to
19 this subsection and states to the contrary.

20 (3) Any future interest taking effect in possession or enjoyment
21 after termination of the interest disclaimed takes effect as if the
22 beneficiary had died prior to the date of the beneficiary's final
23 ascertainment as a beneficiary and the indefeasible vesting of the
24 interest.

25 (4) The disclaimer is binding upon the beneficiary and all persons
26 claiming through or under the beneficiary.

27 (5) Unless the instrument creating the interest directs to the
28 contrary, a beneficiary whose interest in a devise or bequest under a
29 will has been disclaimed shall be deemed to have died for purposes of
30 RCW 11.12.110.

31 (6) In the case of a disclaimer that results in property passing to
32 a trust over which the disclaimant has any power to direct the
33 beneficial enjoyment of the disclaimed property, the disclaimant shall
34 also be deemed to have disclaimed any power to direct the beneficial
35 enjoyment of the disclaimed property, unless the power is limited by an
36 ascertainable standard for the health, education, support, or
37 maintenance of any person as described in section 2041 or 2514 of the
38 Internal Revenue Code and the applicable regulations adopted under

1 those sections. This subsection applies unless the disclaimer
2 specifically refers to this subsection and states to the contrary.
3 This subsection shall not be deemed to otherwise prevent such a
4 disclaimant from acting as trustee or executor over disclaimed
5 property.

6 **Sec. 74.** RCW 11.95.140 and 1993 c 339 s 11 are each amended to
7 read as follows:

8 (1)(a) RCW 11.95.100 and 11.95.110 respectively apply to a power of
9 appointment created:

10 (i) Under a will, codicil, trust agreement, or declaration of
11 trust, deed, power of attorney, or other instrument executed after July
12 25, 1993, unless the terms of the instrument refer specifically to RCW
13 11.95.100 or 11.95.110 respectively and provide expressly to the
14 contrary; or

15 (ii) Under a testamentary trust, trust agreement, or declaration of
16 trust executed before July 25, 1993, unless:

17 (A) The trust is revoked, or amended to provide otherwise, and the
18 terms of any amendment specifically refer to RCW 11.95.100 or
19 11.95.110, respectively, and provide expressly to the contrary;

20 (B) All parties in interest, as defined in RCW 11.98.240(3), elect
21 affirmatively, in the manner prescribed in RCW 11.98.240(4), not to be
22 subject to the application of this subsection. The election must be
23 made by the later of September 1, 2000, or three years after the date
24 on which the trust becomes irrevocable; or

25 (C) A person entitled to judicial proceedings for a declaration of
26 rights or legal relations under RCW 11.96.070 obtains a judicial
27 determination, under chapter 11.96 RCW, that the application of this
28 subsection (1)(a)(ii) to the trust is inconsistent with the provisions
29 or purposes of the will or trust.

30 (b) Notwithstanding (a) of this subsection, for the purposes of
31 this section a codicil to a will, an amendment to a trust, or an
32 amendment to another instrument that created the power of appointment
33 in question shall not be deemed to cause that instrument to be executed
34 after July 25, 1993, unless the codicil(~~(7)~~) or amendment(~~(7~~~~or other~~
35 ~~instrument)~~) clearly shows an intent to have RCW 11.95.100 or 11.95.110
36 apply.

37 (2) Notwithstanding subsection (1) of this section, RCW 11.95.100
38 through 11.95.150 shall apply to a power of appointment created under

1 a will, codicil, trust agreement, or declaration of trust, deed, power
2 of attorney, or other instrument executed prior to July 25, 1993, if
3 the person who created the power of appointment had on July 25, 1993,
4 the power to revoke, amend, or modify the instrument creating the power
5 of appointment, unless:

6 (a) The terms of the instrument specifically refer to RCW 11.95.100
7 or 11.95.110 respectively and provide expressly to the contrary; or

8 (b) The person creating the power of appointment was not competent,
9 on July 25, 1993, to revoke, amend, or modify the instrument creating
10 the power of appointment and did not regain his or her competence to
11 revoke, amend, or modify the instrument creating the power of
12 appointment on or before his or her death or before the time at which
13 the instrument could no longer be revoked, amended, or modified by the
14 person.

15 **Sec. 75.** RCW 11.98.070 and 1989 c 40 s 7 are each amended to read
16 as follows:

17 A trustee, or the trustees jointly, of a trust, in addition to the
18 authority otherwise given by law, have discretionary power to acquire,
19 invest, reinvest, exchange, sell, convey, control, divide, partition,
20 and manage the trust property in accordance with the standards provided
21 by law, and in so doing may:

22 (1) Receive property from any source as additions to the trust or
23 any fund of the trust to be held and administered under the provisions
24 of the trust;

25 (2) Sell on credit;

26 (3) Grant, purchase or exercise options;

27 (4) Sell or exercise subscriptions to stock or other corporate
28 securities and to exercise conversion rights;

29 (5) Deposit stock or other corporate securities with any protective
30 or other similar committee;

31 (6) Assent to corporate sales, leases, and encumbrances;

32 (7) Vote trust securities in person or by proxy with power of
33 substitution; and enter into voting trusts;

34 (8) Register and hold any stocks, securities, or other property in
35 the name of a nominee or nominees without mention of the trust
36 relationship, provided the trustee or trustees are liable for any loss
37 occasioned by the acts of any nominee, except that this subsection
38 shall not apply to situations covered by RCW 11.98.070(31);

1 (9) Grant leases of trust property, with or without options to
2 purchase or renew, to begin within a reasonable period and for terms
3 within or extending beyond the duration of the trust, for any purpose
4 including exploration for and removal of oil, gas and other minerals;
5 enter into community oil leases, pooling and unitization agreements;

6 (10) Subdivide, develop, dedicate to public use, make or obtain the
7 vacation of public plats, adjust boundaries, partition real property,
8 and on exchange or partition to adjust differences in valuation by
9 giving or receiving money or money's worth;

10 (11) Compromise or submit claims to arbitration;

11 (12) Borrow money, secured or unsecured, from any source, including
12 a corporate trustee's banking department, or from the individual
13 trustee's own funds;

14 (13) Make loans, either secured or unsecured, at such interest as
15 the trustee may determine to any person, including any beneficiary of
16 a trust, except that no trustee who is a beneficiary of a trust may
17 participate in decisions regarding loans to such beneficiary from the
18 trust, unless the loan is as described in RCW 83.110.020(2), and then
19 only to the extent of the loan, and also except that if a beneficiary
20 or the grantor of a trust has the power to change a trustee of the
21 trust, the power to loan shall be limited to loans at a reasonable rate
22 of interest and for adequate security;

23 (14) Determine the hazards to be insured against and maintain
24 insurance for them;

25 (15) Select any part of the trust estate in satisfaction of any
26 partition or distribution, in kind, in money or both; make nonpro rata
27 distributions of property in kind; allocate particular assets or
28 portions of them or undivided interests in them to any one or more of
29 the beneficiaries without regard to the income tax basis of specific
30 property allocated to any beneficiary and without any obligation to
31 make an equitable adjustment;

32 (16) Pay any income or principal distributable to or for the use of
33 any beneficiary, whether that beneficiary is under legal disability, to
34 the beneficiary or for the beneficiary's use to the beneficiary's
35 parent, guardian, custodian under the uniform gifts to minors act of
36 any state, person with whom he resides, or third person;

37 (17) Change the character of or abandon a trust asset or any
38 interest in it;

1 (18) Mortgage, pledge the assets or the credit of the trust estate,
2 or otherwise encumber trust property, including future income, whether
3 an initial encumbrance or a renewal or extension of it, for a term
4 within or extending beyond the term of the trust, in connection with
5 the exercise of any power vested in the trustee;

6 (19) Make ordinary or extraordinary repairs or alterations in
7 buildings or other trust property, demolish any improvements, raze
8 existing structures, and make any improvements to trust property;

9 (20) Create restrictions, easements, including easements to public
10 use without consideration, and other servitudes;

11 (21) Manage any business interest, including any farm or ranch
12 interest, regardless of form, received by the trustee from the trustor
13 of the trust, as a result of the death of a person, or by gratuitous
14 transfer from any other transferor, and with respect to the business
15 interest, have the following powers:

16 (a) To hold, retain, and continue to operate that business interest
17 solely at the risk of the trust, without need to diversify and without
18 liability on the part of the trustee for any resulting losses;

19 (b) To enlarge or diminish the scope or nature or the activities of
20 any business;

21 (c) To authorize the participation and contribution by the business
22 to any employee benefit plan, whether or not qualified as being tax
23 deductible, as may be desirable from time to time;

24 (d) To use the general assets of the trust for the purpose of the
25 business and to invest additional capital in or make loans to such
26 business;

27 (e) To endorse or guarantee on behalf of the trust any loan made to
28 the business and to secure the loan by the trust's interest in the
29 business or any other property of the trust;

30 (f) To leave to the discretion of the trustee the manner and degree
31 of the trustee's active participation in the management of the
32 business, and the trustee is authorized to delegate all or any part of
33 the trustee's power to supervise, manage, or operate to such persons as
34 the trustee may select, including any partner, associate, director,
35 officer, or employee of the business; and also including electing or
36 employing directors, officers, or employees of the trustee to take part
37 in the management of the business as directors or officers or
38 otherwise, and to pay that person reasonable compensation for services
39 without regard to the fees payable to the trustee;

1 (g) To engage, compensate, and discharge or to vote for the
2 engaging, compensating, and discharging of managers, employees, agents,
3 lawyers, accountants, consultants, or other representatives, including
4 anyone who may be a beneficiary of the trust or any trustee;

5 (h) To cause or agree that surplus be accumulated or that dividends
6 be paid;

7 (i) To accept as correct financial or other statements rendered by
8 any accountant for any sole proprietorship or by any partnership or
9 corporation as to matters pertaining to the business except upon actual
10 notice to the contrary;

11 (j) To treat the business as an entity separate from the trust, and
12 in any accounting by the trustee it is sufficient if the trustee
13 reports the earning and condition of the business in a manner
14 conforming to standard business accounting practice;

15 (k) To exercise with respect to the retention, continuance, or
16 disposition of any such business all the rights and powers that the
17 trustor of the trust would have if alive at the time of the exercise,
18 including all powers as are conferred on the trustee by law or as are
19 necessary to enable the trustee to administer the trust in accordance
20 with the instrument governing the trust, subject to any limitations
21 provided for in the instrument; and

22 (l) To satisfy contractual and tort liabilities arising out of an
23 unincorporated business, including any partnership, first out of the
24 business and second out of the estate or trust, but in no event may
25 there be a liability of the trustee, except as provided in RCW
26 11.98.110 (2) and (4), and if the trustee is liable, the trustee is
27 entitled to indemnification from the business and the trust,
28 respectively;

29 (22) Participate in the establishment of, and thereafter in the
30 operation of, any business or other enterprise according to subsection
31 (21) of this section except that the trustee shall not be relieved of
32 the duty to diversify;

33 (23) Cause or participate in, directly or indirectly, the
34 formation, reorganization, merger, consolidation, dissolution, or other
35 change in the form of any corporate or other business undertaking where
36 trust property may be affected and retain any property received
37 pursuant to the change;

38 (24) Limit participation in the management of any partnership and
39 act as a limited or general partner;

1 (25) Charge profits and losses of any business operation, including
2 farm or ranch operation, to the trust estate as a whole and not to the
3 trustee; make available to or invest in any business or farm operation
4 additional moneys from the trust estate or other sources;

5 (26) Pay reasonable compensation to the trustee or co-trustees
6 considering all circumstances including the time, effort, skill, and
7 responsibility involved in the performance of services by the trustee;

8 (27) Employ persons, including lawyers, accountants, investment
9 advisors, or agents, even if they are associated with the trustee, to
10 advise or assist the trustee in the performance of the trustee's duties
11 or to perform any act, regardless of whether the act is discretionary,
12 and to act without independent investigation upon their
13 recommendations, except that:

14 (a) A trustee may not delegate all of the trustee's duties and
15 responsibilities(, and except that this employment does not relieve
16 the trustee of liability for the discretionary acts of a person, which
17 if done by the trustee, would result in liability to the trustee, or of
18 the duty to select and retain a person with reasonable care))i

19 (b) This power to employ and to delegate duties does not relieve
20 the trustee of liability for such person's discretionary acts, that, if
21 done by the trustee, would result in liability to the trustee;

22 (c) This power to employ and to delegate duties does not relieve
23 the trustee of the duty to select and retain a person with reasonable
24 care;

25 (d) The trustee, or a successor trustee, may sue the person to
26 collect any damages suffered by the trust estate even though the
27 trustee might not be personally liable for those damages, subject to
28 the statutes of limitation that would have applied had the claim been
29 one against the trustee who was serving when the act or failure to act
30 occurred;

31 (28) Appoint an ancillary trustee or agent to facilitate management
32 of assets located in another state or foreign country;

33 (29) Retain and store such items of tangible personal property as
34 the trustee selects and pay reasonable storage charges thereon from the
35 trust estate;

36 (30) Issue proxies to any adult beneficiary of a trust for the
37 purpose of voting stock of a corporation acting as the trustee of the
38 trust;

1 (31) Place all or any part of the securities at any time held by
2 the trustee in the care and custody of any bank, trust company, or
3 member firm of the New York Stock Exchange with no obligation while the
4 securities are so deposited to inspect or verify the same and with no
5 responsibility for any loss or misapplication by the bank, trust
6 company, or firm, so long as the bank, trust company, or firm was
7 selected and retained with reasonable care, and have all stocks and
8 registered securities placed in the name of the bank, trust company, or
9 firm, or in the name of its nominee, and to appoint such bank, trust
10 company, or firm agent as attorney to collect, receive, receipt for,
11 and disburse any income, and generally may perform, but is under no
12 requirement to perform, the duties and services incident to a so-called
13 "custodian" account;

14 (32) Determine at any time that the corpus of any trust is
15 insufficient to implement the intent of the trust, and upon this
16 determination by the trustee, terminate the trust by distribution of
17 the trust to the current income beneficiary or beneficiaries of the
18 trust or their legal representatives, except that this determination
19 may only be made by the trustee if the trustee is neither the grantor
20 nor the beneficiary of the trust, and if the trust has no charitable
21 beneficiary; and

22 ~~(33) ((Rely with acquittance on advice of counsel on questions of~~
23 ~~law; and~~

24 ~~(34))~~) Continue to be a party to any existing voting trust
25 agreement or enter into any new voting trust agreement or renew an
26 existing voting trust agreement with respect to any assets contained in
27 trust.

28 **Sec. 76.** RCW 11.98.240 and 1994 c 221 s 66 are each amended to
29 read as follows:

30 (1)(a)((~~+~~)) RCW 11.98.200 and 11.98.210 respectively apply to:
31 (i) A trust established under a will, codicil, trust agreement,
32 declaration of trust, deed, or other instrument executed after July 25,
33 1993, unless the instrument's terms refer specifically to RCW 11.98.200
34 or 11.98.210 respectively and provide expressly to the contrary.
35 However, except for RCW 11.98.200(3), the 1994 c 221 amendments to RCW
36 11.98.200 apply to a trust established under a will, codicil, trust
37 agreement, declaration of trust, deed, or other instrument executed

1 after January 1, 1995, unless the instrument's terms refer specifically
2 to RCW 11.98.200 and provide expressly to the contrary.

3 ~~(ii) ((Notwithstanding (a)(i) of this subsection, for the purposes~~
4 ~~of this subsection a codicil to a will or an amendment to a trust does~~
5 ~~not cause that instrument to be executed after July 25, 1993, unless~~
6 ~~the codicil or amendment clearly shows an intent to have RCW 11.98.200~~
7 ~~or 11.98.210 apply.))~~ A trust created under a will, codicil, trust
8 agreement, declaration of trust, deed, or other instrument executed
9 before July 25, 1993, unless:

10 (A) The trust is revoked or amended and the terms of the amendment
11 refer specifically to RCW 11.98.200 and provide expressly to the
12 contrary;

13 (B) All parties in interest, as defined in subsection (3) of this
14 section elect affirmatively, in the manner prescribed in subsection (4)
15 of this section, not to be subject to the application of this
16 subsection. The election must be made by the later of September 1,
17 2000, or three years after the date on which the trust becomes
18 irrevocable; or

19 (C) A person entitled to judicial proceedings for a declaration of
20 rights or legal relations under RCW 11.96.070 obtains a judicial
21 determination, under chapter 11.96 RCW, that the application of this
22 subsection (1)(a)(ii) to the trust is inconsistent with the provisions
23 or purposes of the will or trust.

24 (b) Notwithstanding (a) of this subsection, RCW 11.98.200 and
25 11.98.210 respectively apply to a trust established under a will or
26 codicil of a decedent dying on or after July 25, 1993, and to an inter
27 vivos trust to which the trustor had on or after July 25, 1993, the
28 power to terminate, revoke, amend, or modify, unless:

29 (i) The terms of the instrument specifically refer to RCW 11.98.200
30 or 11.98.210 respectively and provide expressly to the contrary; or

31 (ii) The decedent or the trustor was not competent, on July 25,
32 1993, to change the disposition of his or her property, or to
33 terminate, revoke, amend, or modify the trust, and did not regain his
34 or her competence to dispose, terminate, revoke, amend, or modify
35 before the date of the decedent's death or before the trust could not
36 otherwise be revoked, terminated, amended, or modified by the decedent
37 or trustor.

38 (2) RCW 11.98.200 neither creates a new cause of action nor impairs
39 an existing cause of action that, in either case, relates to a power

1 proscribed under RCW 11.98.200 that was exercised before July 25, 1993.
2 RCW 11.98.210 neither creates a new cause of action nor impairs an
3 existing cause of action that, in either case, relates to a power
4 proscribed, limited, or qualified under RCW 11.98.210.

5 (3) For the purpose of subsection (1)(a)(ii) of this section,
6 "parties in interest" means those persons identified as "required
7 parties to the dispute" under RCW 11.96.170(6)(b).

8 (4) The affirmative election required under subsection
9 (1)(a)(ii)(B) of this section must be made in the following manner;

10 (a) If the trust is revoked or amended, through a revocation of or
11 an amendment to the trust; or

12 (b) Through a nonjudicial dispute resolution agreement described in
13 RCW 11.96.170.

14 **Sec. 77.** RCW 11.96.070 and 1994 c 221 s 55 are each amended to
15 read as follows:

16 (1) A person with an interest in or right respecting the
17 administration, settlement, or disposition of an interest in a trust or
18 in the estate of an incapacitated, missing, or deceased person may have
19 a judicial proceeding for the declaration of rights or legal relations
20 under this title including but not limited to the following:

21 (a) The ascertaining of any class of creditors, devisees, legatees,
22 heirs, next of kin, or others;

23 (b) The ordering of the personal representatives or trustees to do
24 or abstain from doing any particular act in their fiduciary capacity;

25 (c) The determination of any question arising in the administration
26 of the estate or trust, including without limitation questions of
27 construction of wills and other writings;

28 (d) The grant to the personal representatives or trustees of any
29 necessary or desirable powers not otherwise granted in the instrument
30 or given by law that the court determines are not inconsistent with the
31 provisions or purposes of the will or trust;

32 (e) The modification of the will or the trust instrument in the
33 manner required to qualify the gift thereunder for the charitable
34 estate tax deduction permitted by federal law, including the addition
35 of mandatory governing instrument requirements for a charitable
36 remainder trust as required by final regulations and rulings of the
37 United States internal revenue service, in any case in which all

1 parties interested in the trust have submitted written agreements to
2 the proposed changes or written disclaimer of interest;

3 (f) The modification of the will or the trust instrument in the
4 manner required to qualify any gift thereunder for the benefit of a
5 surviving spouse who is not a citizen of the United States for the
6 estate tax marital deduction permitted by federal law, including the
7 addition of mandatory governing instrument requirements for a qualified
8 domestic trust under section 2056A of the internal revenue code as
9 required by final regulations and rulings of the United States treasury
10 department or internal revenue service, in any case in which all
11 parties interested in the trust have submitted written agreements to
12 the proposed changes or written disclaimer of interest;

13 (g) The determination of the persons entitled to notice under RCW
14 11.96.100 and 11.96.110 for the purposes of any judicial proceeding
15 under this subsection (1) and for the purposes of an agreement under
16 RCW 11.96.170; or

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

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

24 (a) The ascertaining of any class of creditors or others for
25 purposes of chapter 11.18 or 11.42 RCW;

26 (b) The ordering of a qualified person, the notice agent, or
27 resident agent, as those terms are defined in chapter 11.42 RCW, or any
28 combination of them, to do or abstain from doing any particular act
29 with respect to a nonprobate asset;

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

33 (d) The determination of any question arising in the administration
34 under chapter 11.18 or 11.42 RCW of a nonprobate asset;

35 (e) The determination of the persons entitled to notice under RCW
36 11.96.100 and 11.96.110 for the purposes of any judicial proceeding
37 under this subsection (2) and for the purposes of an agreement under
38 RCW 11.96.170; and

1 (f) The determination of any questions relating to the abatement,
2 rights of creditors, or other matter relating to the administration,
3 settlement, or final disposition of a nonprobate asset under this
4 title.

5 (3) The provisions of this chapter apply to disputes arising in
6 connection with estates of incapacitated persons unless otherwise
7 covered by chapters 11.88 and 11.92 RCW. The provisions of this
8 chapter shall not supersede the otherwise applicable provisions and
9 procedures of chapter 11.24, 11.28, 11.40, (~~(11.527)~~) 11.42, 11.56, or
10 11.60 RCW with respect to any rights or legal obligations that are
11 subject to those chapters.

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

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

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

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

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

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

29 (a) The notice agent, the resident agent, or a qualified person, as
30 those terms are defined in chapter 11.42 RCW;

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

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

36 (d) The legal representatives of any of the persons named in this
37 subsection.

1 **Sec. 78.** RCW 11.104.010 and 1985 c 30 s 84 are each amended to
2 read as follows:

3 As used in this chapter:

4 (1) "Income beneficiary" means the person to whom income is
5 presently payable or for whom it is accumulated for distribution as
6 income;

7 (2) Except as provided in RCW 11.104.110, "inventory value" means
8 the cost of property purchased by the trustee and the cost or adjusted
9 basis for federal income tax purposes of other property at the time it
10 became subject to the trust, but in the case of a trust asset that is
11 included on any death tax return the trustee may, but need not, use the
12 value finally determined for the purposes of the federal estate tax if
13 applicable, otherwise for another estate or inheritance tax;

14 (3) "Remainderman" means the person entitled to principal,
15 including income which has been accumulated and added to principal.

16 NEW SECTION. **Sec. 79.** A new section is added to chapter 11.104
17 RCW to read as follows:

18 (1) Notwithstanding any contrary provision of this chapter, if the
19 trust instrument adopts this section by specific reference, an increase
20 in the value of the following investments, over the value of the
21 investments at the time of acquisition by the trust, is distributable
22 as income when it becomes available for distribution:

23 (a) A zero coupon bond;

24 (b) An annuity contract before annuitization;

25 (c) A life insurance contract before the death of the insured;

26 (d) An interest in a common trust fund as defined in section 584 of
27 the Internal Revenue Code;

28 (e) An interest in a partnership as defined in section 7701 of the
29 Internal Revenue Code; or

30 (f) Any other obligation for the payment of money that is payable
31 at a future time in accordance with a fixed, variable, or discretionary
32 schedule of appreciation in excess of the price at which it was issued.

33 (2) The increase in value of the investments described in
34 subsection (1) of this section is allocable to the beneficiary who is
35 the beneficiary to whom income may be distributed at the time when the
36 trustee receives cash on account of the investment, notwithstanding RCW
37 11.104.070.

1 (3) For purposes of this section, the increase in value of an
2 investment described in subsection (1) of this section is available for
3 distribution only when the trustee receives cash on account of the
4 investment.

5 **Sec. 80.** RCW 11.104.110 and 1971 c 74 s 11 are each amended to
6 read as follows:

7 (~~Except as provided in RCW 11.104.090 and 11.104.100, if the~~
8 ~~principal consists of property subject to depletion, including~~
9 ~~leaseholds, patents, copyrights, royalty rights, and rights to receive~~
10 ~~payments on a contract for deferred compensation, receipts from the~~
11 ~~property, not in excess of five percent per year of its inventory~~
12 ~~value, are income, and the balance is principal.)) (1) Subject to
13 subsection (3) of this section, if the principal of a trust includes a
14 deferred payment right including the right to receive deferred
15 compensation, the proceeds of the right or the amount of deferred
16 compensation, on receipt, are income to the extent determinable without
17 reference to this section, or if not so determinable, are income up to
18 five percent of the inventory value of the right or amount, determined
19 separately for each year in which the right or amount is subject to the
20 trust. The remainder of the proceeds or amount is principal. If not
21 otherwise determinable, the allocation to income is computed in the
22 same manner in which interest under a loan of the initial inventory
23 amount would be computed, at five percent interest compounded annually,
24 as if annual payments were made by the borrower to the lender.~~

25 (2) If income is determined under this section, for the first year,
26 inventory value is determined as provided by this chapter or by this
27 section for deferred compensation. For each year after the first year,
28 the inventory value is:

29 (a) Reduced to the extent that the proceeds of the right or amount
30 received during the preceding year were allocated to principal; and

31 (b) Increased to the extent that the proceeds received during the
32 preceding year were less than five percent of the inventory value of
33 that year.

34 (3) While the deferred payment right is under administration in a
35 decedent's estate, income and principal are determined by using the
36 fiscal year of the estate and ending on the date the trust is funded
37 with the right. After the administration of the estate, the fiscal

1 year of the trust is used. The five percent allocation to income is
2 prorated for any year that is less than twelve months.

3 (4) The proceeds of a deferred payment right include all receipts
4 relating to the right, whether or not the receipts are periodic. After
5 the proceeds are received by the trustee and allocated in accordance
6 with this section, this section does not apply to the proceeds except
7 to the extent the proceeds include a continuing deferred payment right
8 or right to receive deferred compensation.

9 (5) In this section:

10 (a) "Deferred compensation" means an amount receivable under an
11 arrangement for the payment of compensation in a year after the year in
12 which the compensation was earned, whether the obligation to pay is
13 funded or unfunded and includes the right to payment:

14 (i) Of benefits under a nonqualified plan of deferred compensation
15 or similar arrangement or agreement; or

16 (ii) Of benefits under an employee benefit plan as defined in this
17 section;

18 (b) "Deferred payment right" means a depletable asset, other than
19 natural resources governed by RCW 11.104.090 or timber governed by RCW
20 11.104.100, consisting of the right to property under a contract,
21 account, or other arrangement that is payable not earlier than twelve
22 months after the date the right becomes subject to the trust. A
23 deferred payment right includes the right to receive a periodic,
24 annuity, installment, or single-sum future payment:

25 (i) Under a leasehold, patent, copyright, or royalty;

26 (ii) Of income in respect of a decedent under section 691 of the
27 Internal Revenue Code of 1986; or

28 (iii) Of death benefits;

29 (c) "Employee benefit plan" means any of the following, whether
30 funded by a trust, custodian account, annuity, or retirement bond:

31 (i) A plan, individual retirement account, or deferred compensation
32 plan or arrangement that is described in RCW 49.64.020, section 401(a),
33 403(a), 403(b), 408, or 457 of the Internal Revenue Code of 1986, as
34 amended, or in section 409 of the Internal Revenue Code in effect
35 before January 1, 1984; or

36 (ii) An employee benefit plan established or maintained by:

37 (A) The government of the United States;

38 (B) The state of Washington;

39 (C) A state or territory of the United States;

1 (D) The District of Columbia; or
2 (E) A political subdivision, agency, or instrumentality of the
3 entities in (c)(ii)(A) through (D) of this subsection; and
4 (d) "Year" means the fiscal year of the estate or trust for federal
5 income tax purposes.

6 (6) The deferred compensation payable consisting of the account
7 balance or accrued benefit as of the date of death of the owner of such
8 amount receivable or, if elected, the alternate valuation date for
9 federal estate tax purposes, shall be the inventory value of the
10 deferred compensation as used in this chapter as of that date.

11 **Sec. 81.** RCW 11.108.010 and 1993 c 73 s 2 are each amended to read
12 as follows:

13 Unless the context clearly requires otherwise, the definitions in
14 this section apply throughout this chapter.

15 (1) The term "pecuniary bequest" means a gift in a governing
16 instrument which either is expressly stated as a fixed dollar amount or
17 is a gift of a dollar amount determinable by the governing instrument,
18 and a gift expressed in terms of a "sum" or an "amount," unless the
19 context dictates otherwise, is a gift of a dollar amount.

20 (2) As the context might require, the term "marital deduction"
21 means either the federal estate tax deduction or the federal gift tax
22 deduction allowed for transfers to spouses under the Internal Revenue
23 Code.

24 (3) The term "maximum marital deduction" means the maximum amount
25 qualifying for the marital deduction.

26 (4) The term "marital deduction gift" means a gift intended to
27 qualify for the marital deduction as indicated by a preponderance of
28 the evidence including the governing instrument and extrinsic evidence
29 whether or not the governing instrument is found to be ambiguous.

30 (5) The term "governing instrument" includes ((a)), but is not
31 limited to: Will and codicils((7)); ((irrevocable, and)) revocable
32 trusts and amendments or addenda to revocable trusts; irrevocable
33 trusts; beneficiary designations under life insurance policies,
34 annuities, employee benefit plans, and individual retirement accounts;
35 payable-on-death, trust, or joint with right of survivorship bank or
36 brokerage accounts; transfer on death designations or transfer on death
37 or pay on death securities; and documents exercising powers of
38 appointment.

1 (6) The term "fiduciary" means trustee or personal representative.
2 Reference to a fiduciary in the singular includes the plural where the
3 context requires.

4 (7) The term "gift" refers to all legacies, devises, and bequests
5 made in a governing instrument.

6 (8) The term "transferor" means the testator, grantor, or other
7 person making a gift.

8 (9) The term "spouse" includes the transferor's surviving spouse in
9 the case of a deceased transferor.

10 **Sec. 82.** RCW 11.108.020 and 1993 c 73 s 3 are each amended to read
11 as follows:

12 (1) If a governing instrument contains a marital deduction gift,
13 the governing instrument shall be construed to comply with the marital
14 deduction provisions of the Internal Revenue Code in every respect.

15 (2) If a governing instrument contains a marital deduction gift,
16 ((the governing instrument, including any power, duty, or discretionary
17 authority given to the fiduciary, shall be construed to comply with the
18 marital deduction provisions of the Internal Revenue Code in order to
19 conform to that intent. Whether the governing instrument contains a
20 marital deduction gift depends upon the intent of the testator,
21 grantor, or other transferor at the time the governing instrument is
22 executed. If the testator, grantor, or other transferor has adequately
23 evidenced an intention to make a marital deduction gift, the fiduciary
24 shall not take any action or have any power that may impair that
25 deduction, but this does not require the fiduciary to make the election
26 under section 2056(b)(7) of the Internal Revenue Code that is referred
27 to in RCW 11.108.025)) any fiduciary operating under the governing
28 instrument has all the powers, duties, and discretionary authority
29 necessary to comply with the marital deduction provisions of the
30 Internal Revenue Code. The fiduciary shall not take any action or have
31 any power that may impair that deduction, but this does not require the
32 fiduciary to make the elections under either section 2056(b)(7) or
33 2523(f) of the Internal Revenue Code that is referred to in RCW
34 11.108.025.

35 **Sec. 83.** RCW 11.108.025 and 1993 c 73 s 4 are each amended to read
36 as follows:

37 Unless a governing instrument directs to the contrary:

1 (1) The fiduciary shall have the power to make elections, in whole
2 or in part, to qualify property for the marital deduction as qualified
3 terminable interest property under section 2056(b)(7) or 2523(f) of the
4 Internal Revenue Code or, if the surviving spouse is not a citizen of
5 the United States, under section 2056A of the Internal Revenue Code.
6 Further, the fiduciary shall have the power to make generation-skipping
7 transfer tax allocations under section 2632 of the Internal Revenue
8 Code.

9 (2) The fiduciary making an election under section 2056(b)(7),
10 2523(f), or 2056A of the Internal Revenue Code or making an allocation
11 under section 2632 of the Internal Revenue Code may benefit personally
12 from the election or allocation, with no duty to reimburse any other
13 person interested in the election or allocation. The fiduciary shall
14 have no duty to make any equitable adjustment and shall have no duty to
15 treat interested persons impartially in respect of the election or
16 allocation.

17 (3) The fiduciary of a trust, if an election is made under section
18 2056(b)(7), 2523(f), or 2056A of the Internal Revenue Code, if an
19 allocation is made under section 2632 of the Internal Revenue Code, or
20 if division of a trust is of benefit to the persons interested in the
21 trust, may divide the trust into two or more separate trusts, of equal
22 or unequal value, ~~((provided that))~~ if:

23 (a) The terms of the separate trusts which result are substantially
24 identical to the terms of the trust before division~~((, and provided~~
25 ~~further,))~~;

26 (b) In the case of a trust otherwise qualifying for the marital
27 deduction under the Internal Revenue Code, ~~((that))~~ the division shall
28 not prevent a separate trust for which the election is made from
29 qualifying for the marital deduction; and

30 (c) The allocation of assets shall be based upon the fair market
31 value of the assets at the time of the division.

32 **Sec. 84.** RCW 11.108.050 and 1993 c 73 s 5 are each amended to read
33 as follows:

34 ~~((1))~~ If a governing instrument ~~((indicates the testator's~~
35 ~~intention to make))~~ contains a marital deduction gift in trust, then in
36 addition to the other provisions of this ~~((section))~~ chapter, each of
37 the following ~~((also))~~ applies to the trust ~~((; provided, however, that~~
38 ~~such provisions shall not apply to any trust which provides for the~~

1 entire then remaining trust estate to be paid on the termination of the
2 income interest to the estate of the spouse of the trust's creator, or
3 to a charitable beneficiary, contributions to which are tax deductible
4 for federal income tax purposes:

5 (a) The only income beneficiary of a marital deduction trust is the
6 testator's surviving spouse;

7 (b) The income beneficiary is entitled to all of the trust income
8 until the trust terminates;

9 (c) The trust income is payable to the income beneficiary not less
10 frequently than annually; and

11 (d) Except in the case of a marital deduction gift in trust,
12 described in subsection (2) of this section, or property that has or
13 would otherwise have qualified for the marital deduction only as the
14 result of an election under section 2056(b)(7) of the Internal Revenue
15 Code, upon termination of the trust, all of the remaining trust assets,
16 including accrued or undistributed income, pass either to the income
17 beneficiary or under the exercise of a general power of appointment
18 granted to the income beneficiary in favor of the income beneficiary's
19 estate or to any other person or entity in trust or outright. The
20 general power of appointment is exercisable by the income beneficiary
21 alone and in all events.

22 (2) If a governing instrument indicates the testator's intention to
23 make a marital deduction gift in trust and the surviving spouse is not
24 a citizen of the United States, subsection (1)(a), (b), and (c) of this
25 section and each of the following shall apply to the trust:

26 (a) At least one trustee of the trust shall be an individual
27 citizen of the United States or a domestic corporation, and no
28 distribution, other than a distribution of income, may be made from the
29 trust unless a trustee who is an individual citizen of the United
30 States or a domestic corporation has the right to withhold from the
31 distribution the tax imposed under section 2056A of the Internal
32 Revenue Code on the distribution;

33 (b) The trust shall meet such requirements as the secretary of the
34 treasury of the United States may by regulations prescribe to ensure
35 collection of estate tax, under section 2056A(b) of the Internal
36 Revenue Code; and

37 (c) (a) and (b) of this subsection shall no longer apply to the
38 trust if the surviving spouse becomes a citizen of the United States
39 and (i) the surviving spouse is a resident of the United States at all

1 ~~times after the testator's death and before becoming a citizen, or (ii)~~
2 ~~no tax has been imposed on the trust under section 2056A(b)(1)(A) of~~
3 ~~the Internal Revenue Code before the surviving spouse becomes a~~
4 ~~citizen, or (iii) the surviving spouse makes an election under section~~
5 ~~2056A(b)(12)(C) of the Internal Revenue Code regarding tax imposed on~~
6 ~~distributions from the trust before becoming a citizen.~~

7 ~~(3) The exercise of the general power of appointment provided in~~
8 ~~this section shall be done only by the income beneficiary in the manner~~
9 ~~provided by RCW 11.95.060)) to the extent necessary to qualify the gift~~
10 ~~for the marital deduction:~~

11 (1) If the transferor's spouse is a citizen of the United States at
12 the time of the transfer:

13 (a) The transferor's spouse is entitled to all of the income from
14 the trust, payable annually or at more frequent intervals, during the
15 spouse's life;

16 (b) During the life of the transferor's spouse, a person may not
17 appoint or distribute any part of the trust property to a person other
18 than the transferor's spouse;

19 (c) The transferor's spouse may compel the trustee of the trust to
20 make any unproductive property of the trust productive, or to convert
21 the unproductive property into productive property, within a reasonable
22 time; and

23 (d) The transferor's spouse may, alone and in all events, dispose
24 of all of the trust property, including accrued or undistributed
25 income, remaining after the spouse's death under a testamentary general
26 power of appointment, as defined in section 2041 of the Internal
27 Revenue Code. However, this subsection (1)(d) does not apply to: (i)
28 A marital deduction gift in trust which is described in subsection (2)
29 of this section; (ii) that portion of a marital deduction gift in trust
30 that has qualified for the marital deduction as a result of an election
31 under section 2056(b)(7) or 2523(f) of the Internal Revenue Code; and
32 (iii) that portion of marital deduction gift in trust that would have
33 qualified for the marital deduction but for the fiduciary's decision
34 not to make the election under section 2056(b)(7) or 2523(f) of the
35 Internal Revenue Code;

36 (2) If the transferor's spouse is not a citizen of the United
37 States at the time of the transfer, then to the extent necessary to
38 qualify the gift for the marital deduction, subsection (1)(a), (b), and
39 (c) of this section and each of the following applies to the trust:

1 (a) At least one trustee of the trust must be an individual citizen
2 of the United States or a domestic corporation, and a distribution,
3 other than a distribution of income, may not be made from the trust
4 unless a trustee who is an individual citizen of the United States or
5 a domestic corporation has the right to withhold from the distribution
6 the tax imposed under section 2056A of the Internal Revenue Code on the
7 distribution;

8 (b) The trust must meet such requirements as the secretary of the
9 treasury of the United States by regulations prescribes to ensure
10 collection of estate tax, under section 2056A(b) of the Internal
11 Revenue Code; and

12 (c) Subsection (2)(a) and (b) of this section no longer apply to
13 the trust if the transferor's spouse becomes a citizen of the United
14 States and: (i) The transferor's spouse was a resident of the United
15 States at all times after the transferor's death and before becoming a
16 citizen; (ii) tax has not been imposed on the trust under section
17 2056A(b)(1)(A) of the Internal Revenue Code before the transferor's
18 spouse becomes a citizen; or (iii) the transferor's spouse makes an
19 election under section 2056A(b)(12)(C) of the Internal Revenue Code
20 regarding tax imposed on distributions from the trust before becoming
21 a citizen; and

22 (3) Subsection (1) of this section does not apply to:

23 (a) A trust: (i) That provides for a life estate or term of years
24 for the exclusive benefit of the transferor's spouse, with the
25 remainder payable to the such spouse's estate; or (ii) created
26 exclusively for the benefit of the estate of the transferor's spouse;
27 and

28 (b) An interest of the transferor's spouse in a charitable
29 remainder annuity trust or charitable remainder unitrust described in
30 section 664 of the Internal Revenue Code, if the transferor's spouse is
31 the only noncharitable beneficiary.

32 **Sec. 85.** RCW 11.28.237 and 1994 c 221 s 24 are each amended to
33 read as follows:

34 (1) Within twenty days after appointment, the personal
35 representative of the estate of a decedent shall cause written notice
36 of his or her appointment and the pendency of said probate proceedings,
37 to be served personally or by mail to each heir, legatee and devisee of
38 the estate and each beneficiary or transferee of a nonprobate asset of

1 the decedent whose names and addresses are known to him or her, and
2 proof of such mailing or service shall be made by affidavit and filed
3 in the cause.

4 (2) If the personal representative does not otherwise give notice
5 to creditors under chapter 11.40 RCW within thirty days after
6 appointment, the personal representative shall cause written notice of
7 his or her appointment and the pendency of the probate proceedings to
8 be mailed to the state of Washington department of social and health
9 services office of financial recovery, and proof of the mailing shall
10 be made by affidavit and filed in the cause.

11 **Sec. 86.** RCW 11.108.060 and 1989 c 35 s 1 are each amended to read
12 as follows:

13 ~~((If a governing instrument contains a marital deduction gift,~~
14 ~~whether outright or in trust and whether there is a specific reference~~
15 ~~to this section, any survivorship requirement expressed in the~~
16 ~~governing instrument in excess of six months, other than survival by a~~
17 ~~spouse of a common disaster resulting in the death of the decedent,~~
18 ~~does not apply to property passing under a marital deduction gift, and~~
19 ~~in addition, is limited to a six-month period beginning with the~~
20 ~~testator's death.)) For an estate that exceeds the amount exempt from
21 tax by virtue of the unified credit under section 2010 of the Internal
22 Revenue Code, if taking into account applicable adjusted taxable gifts
23 as defined in section 2001(b) of the Internal Revenue Code, any marital
24 deduction gift that is conditioned upon the transferor's spouse
25 surviving the transferor for a period of more than six months, is
26 governed by the following:~~

27 (1) A survivorship requirement expressed in the governing
28 instrument in excess of six months, other than survival by a spouse of
29 a common disaster resulting in the death of the transferor, does not
30 apply to property passing under the marital deduction gift, and for the
31 gift, the survivorship requirement is limited to a six-month period
32 beginning with the transferor's death.

33 (2) The property that is the subject of the marital deduction gift
34 must be held in a trust meeting the requirements of section 2056(b)(7)
35 of the Internal Revenue Code the corpus of which must: (a) Pass as
36 though the spouse failed to survive the transferor if the spouse, in
37 fact, fails to survive the term specified in the governing instrument;
38 and (b) pass to the spouse under the terms of the governing instrument

1 if the spouse, in fact, survives the term specified in the governing
2 instrument.

3 NEW SECTION. **Sec. 87.** The following acts or parts of acts are
4 each repealed:

5 (1) RCW 11.40.011 and 1989 c 333 s 2, 1983 c 201 s 1, & 1967 ex.s.
6 c 106 s 3;

7 (2) RCW 11.40.012 and 1989 c 333 s 3;

8 (3) RCW 11.40.013 and 1994 c 221 s 26 & 1989 c 333 s 4;

9 (4) RCW 11.40.014 and 1989 c 333 s 5;

10 (5) RCW 11.40.015 and 1994 c 221 s 27 & 1989 c 333 s 6;

11 (6) RCW 11.42.160 and 1994 c 221 s 46;

12 (7) RCW 11.42.170 and 1994 c 221 s 47;

13 (8) RCW 11.42.180 and 1994 c 221 s 48;

14 (9) RCW 11.44.066 and 1990 c 180 s 1 & 1974 ex.s. c 117 s 49;

15 (10) RCW 11.52.010 and 1987 c 442 s 1116, 1984 c 260 s 17, 1974
16 ex.s. c 117 s 7, 1971 ex.s. c 12 s 2, 1967 c 168 s 12, & 1965 c 145 s
17 11.52.010;

18 (11) RCW 11.52.012 and 1985 c 194 s 1, 1984 c 260 s 18, 1977 ex.s.
19 c 234 s 9, 1974 ex.s. c 117 s 8, & 1965 c 145 s 11.52.012;

20 (12) RCW 11.52.014 and 1965 c 145 s 11.52.014;

21 (13) RCW 11.52.016 and 1988 c 202 s 18, 1972 ex.s. c 80 s 1, & 1965
22 c 145 s 11.52.016;

23 (14) RCW 11.52.020 and 1985 c 194 s 2, 1984 c 260 s 19, 1974 ex.s.
24 c 117 s 9, 1971 ex.s. c 12 s 3, 1967 c 168 s 13, & 1965 c 145 s
25 11.52.020;

26 (15) RCW 11.52.022 and 1985 c 194 s 3, 1984 c 260 s 20, 1977 ex.s.
27 c 234 s 10, 1974 ex.s. c 117 s 10, 1971 ex.s. c 12 s 4, & 1965 c 145 s
28 11.52.022;

29 (16) RCW 11.52.024 and 1972 ex.s. c 80 s 2 & 1965 c 145 s
30 11.52.024;

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

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

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

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

36 (21) RCW 11.68.020 and 1974 ex.s. c 117 s 14 & 1965 c 145 s
37 11.68.020;

1 (22) RCW 11.68.030 and 1977 ex.s. c 234 s 19, 1974 ex.s. c 117 s
2 15, & 1965 c 145 s 11.68.030; and
3 (23) RCW 11.68.040 and 1977 ex.s. c 234 s 20, 1974 ex.s. c 117 s
4 16, & 1965 c 145 s 11.68.040.

5 NEW SECTION. **Sec. 88.** Sections 48 through 57 of this act
6 constitute a new chapter in Title 11 RCW.

7 NEW SECTION. **Sec. 89.** Sections 1 through 73 of this act apply to
8 estates of decedents dying after December 31, 1997.

Passed the Senate April 19, 1997.

Passed the House April 8, 1997.

Approved by the Governor May 5, 1997.

Filed in Office of Secretary of State May 5, 1997.