

CERTIFICATION OF ENROLLMENT

**SENATE BILL 5196**

Chapter 42, Laws of 1999

56th Legislature  
1999 Regular Session

TRUST AND ESTATE DISPUTE RESOLUTION

EFFECTIVE DATE: 1/1/2000

Passed by the Senate March 4, 1999  
YEAS 48 NAYS 0

BRAD OWEN  
**President of the Senate**

Passed by the House April 7, 1999  
YEAS 90 NAYS 0

CLYDE BALLARD  
**Speaker of the  
House of Representatives**

FRANK CHOPP  
**Speaker of the  
House of Representatives**

Approved April 20, 1999

GARY LOCKE  
**Governor of the State of Washington**

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5196** as passed by the Senate and the House of Representatives on the dates hereon set forth.

TONY M. COOK  
**Secretary**

FILED

April 20, 1999 - 3:07 p.m.

**Secretary of State  
State of Washington**

---

**SENATE BILL 5196**

---

Passed Legislature - 1999 Regular Session

State of Washington

56th Legislature

1999 Regular Session

By Senators Johnson, Kline and Winsley

Read first time 01/15/1999. Referred to Committee on Judiciary.

1           AN ACT Relating to trust and estate dispute resolution; amending  
2 RCW 11.40.020, 4.16.370, 6.15.020, 11.12.120, 11.18.200, 11.28.240,  
3 11.40.040, 11.40.140, 11.42.010, 11.42.040, 11.42.085, 11.54.080,  
4 11.54.090, 11.68.065, 11.68.080, 11.92.140, 11.95.140, 11.98.039,  
5 11.98.051, 11.98.055, 11.98.080, 11.98.110, 11.98.170, 11.98.200,  
6 11.98.220, 11.98.240, 11.106.040, 11.106.050, 11.106.060, 11.108.040,  
7 11.108.900, 11.110.120, 11.114.020, 36.18.012, 36.18.020, and  
8 83.100.180; adding a new chapter to Title 11 RCW; creating new  
9 sections; repealing RCW 11.16.060, 11.16.070, 11.16.082, 11.16.083,  
10 11.96.009, 11.96.020, 11.96.030, 11.96.040, 11.96.050, 11.96.060,  
11 11.96.070, 11.96.080, 11.96.090, 11.96.100, 11.96.110, 11.96.120,  
12 11.96.130, 11.96.140, 11.96.150, 11.96.160, 11.96.170, 11.96.180,  
13 11.96.900, and 11.96.901; and providing an effective date.

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

15

**PART I**

16

**GENERAL PROVISIONS**

17           NEW SECTION.   **Sec. 101.** SHORT TITLE. This chapter may be known  
18 and cited as the trust and estate dispute resolution act or "TEDRA."

1        NEW SECTION.    **Sec. 102.**    PURPOSE.    The overall purpose of this  
2 chapter is to set forth generally applicable statutory provisions for  
3 the resolution of disputes and other matters involving trusts and  
4 estates in a single chapter under Title 11 RCW.    The provisions are  
5 intended to provide nonjudicial methods for the resolution of matters,  
6 such as mediation, arbitration, and agreement.    The chapter also  
7 provides for judicial resolution of disputes if other methods are  
8 unsuccessful.

9        NEW SECTION.    **Sec. 103.**    GENERAL POWER OF COURTS--LEGISLATIVE  
10 INTENT--PLENARY POWER OF THE COURT.    (1) It is the intent of the  
11 legislature that the courts shall have full and ample power and  
12 authority under this title to administer and settle:

13        (a) All matters concerning the estates and assets of incapacitated,  
14 missing, and deceased persons, including matters involving nonprobate  
15 assets and powers of attorney, in accordance with this title; and

16        (b) All trusts and trust matters.

17        (2) If this title should in any case or under any circumstance be  
18 inapplicable, insufficient, or doubtful with reference to the  
19 administration and settlement of the matters listed in subsection (1)  
20 of this section, the court nevertheless has full power and authority to  
21 proceed with such administration and settlement in any manner and way  
22 that to the court seems right and proper, all to the end that the  
23 matters be expeditiously administered and settled by the court.

24        NEW SECTION.    **Sec. 104.**    DEFINITIONS.    The definitions in this  
25 section apply throughout this chapter unless the context clearly  
26 requires otherwise.

27        (1) "Matter" includes any issue, question, or dispute involving:

28        (a) The determination of any class of creditors, devisees,  
29 legatees, heirs, next of kin, or other persons interested in an estate,  
30 trust, nonprobate asset, or with respect to any other asset or property  
31 interest passing at death;

32        (b) The direction of a personal representative or trustee to do or  
33 to abstain from doing any act in a fiduciary capacity;

34        (c) The determination of any question arising in the administration  
35 of an estate or trust, or with respect to any nonprobate asset, or with  
36 respect to any other asset or property interest passing at death, that  
37 may include, without limitation, questions relating to:    (i) The

1 construction of wills, trusts, community property agreements, and other  
2 writings; (ii) a change of personal representative or trustee; (iii) a  
3 change of the situs of a trust; (iv) an accounting from a personal  
4 representative or trustee; or (v) the determination of fees for a  
5 personal representative or trustee;

6 (d) The grant to a personal representative or trustee of any  
7 necessary or desirable power not otherwise granted in the governing  
8 instrument or given by law;

9 (e) The amendment, reformation, or conformation of a will or a  
10 trust instrument to comply with statutes and regulations of the United  
11 States internal revenue service in order to achieve qualification for  
12 deductions, elections, and other tax requirements, including the  
13 qualification of any gift thereunder for the benefit of a surviving  
14 spouse who is not a citizen of the United States for the estate tax  
15 marital deduction permitted by federal law, including the addition of  
16 mandatory governing instrument requirements for a qualified domestic  
17 trust under section 2056A of the internal revenue code, or the  
18 qualification of any gift for the charitable estate tax deduction  
19 permitted by federal law, including the addition of mandatory governing  
20 instrument requirements for a charitable remainder trust; and

21 (f) With respect to any nonprobate asset, or with respect to any  
22 other asset or property interest passing at death, including joint  
23 tenancy property, property subject to a community property agreement,  
24 or assets subject to a pay on death or transfer on death designation:

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

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

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

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

36 (v) The determination of any questions relating to the abatement,  
37 rights of creditors, or other matter relating to the administration,  
38 settlement, or final disposition of a nonprobate asset under this  
39 title;

1 (vi) The resolution of any matter referencing this chapter,  
2 including a determination of any questions relating to the ownership or  
3 distribution of an individual retirement account on the death of the  
4 spouse of the account holder as contemplated by RCW 6.15.020(6);

5 (vii) The resolution of any other matter that could affect the  
6 nonprobate asset.

7 (2) "Notice agent" has the meanings given in RCW 11.42.010.

8 (3) "Nonprobate assets" has the meaning given in RCW 11.02.005.

9 (4) "Party" or "parties" means each of the following persons who  
10 has an interest in the subject of the particular proceeding and whose  
11 name and address are known to, or are reasonably ascertainable by, the  
12 petitioner:

13 (a) The trustor if living;

14 (b) The trustee;

15 (c) The personal representative;

16 (d) An heir;

17 (e) A beneficiary, including devisees, legatees, and trust  
18 beneficiaries;

19 (f) The surviving spouse of a decedent with respect to his or her  
20 interest in the decedent's property;

21 (g) A guardian ad litem;

22 (h) A creditor;

23 (i) Any other person who has an interest in the subject of the  
24 particular proceeding;

25 (j) The attorney general if required under RCW 11.110.120;

26 (k) Any duly appointed and acting legal representative of a party  
27 such as a guardian, special representative, or attorney in fact;

28 (l) Where applicable, the virtual representative of any person  
29 described in this subsection the giving of notice to whom would meet  
30 notice requirements as provided in section 305 of this act;

31 (m) Any notice agent, resident agent, or a qualified person, as  
32 those terms are defined in chapter 11.42 RCW; and

33 (n) The owner or the personal representative of the estate of the  
34 deceased owner of the nonprobate asset that is the subject of the  
35 particular proceeding, if the subject of the particular proceeding  
36 relates to the beneficiary's liability to a decedent's estate or  
37 creditors under RCW 11.18.200.

38 (5) "Persons interested in the estate or trust" means the trustor,  
39 if living, all persons beneficially interested in the estate or trust,

1 persons holding powers over the trust or estate assets, the attorney  
2 general in the case of any charitable trust where the attorney general  
3 would be a necessary party to judicial proceedings concerning the  
4 trust, and any personal representative or trustee of the estate or  
5 trust.

6 (6) "Principal place of administration of the trust" means the  
7 trustee's usual place of business where the day-to-day records  
8 pertaining to the trust are kept, or the trustee's residence if the  
9 trustee has no such place of business.

10 (7) The "situs" of a trust means the place where the principal  
11 place of administration of the trust is located, unless otherwise  
12 provided in the instrument creating the trust.

13 (8) "Trustee" means any acting and qualified trustee of the trust.

14 (9) "Representative" and other similar terms refer to a person who  
15 virtually represents another under section 305 of this act.

16 **PART II**

17 **JURISDICTION, VENUE, SITUS, LIMITATIONS**

18 NEW SECTION. **Sec. 201.** ORIGINAL JURISDICTION IN PROBATE AND TRUST  
19 MATTERS--POWERS OF COURT. (1) The superior court of every county has  
20 original subject matter jurisdiction over the probate of wills and the  
21 administration of estates of incapacitated, missing, and deceased  
22 individuals in all instances, including without limitation:

23 (a) When a resident of the state dies;

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

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

26 (2) The superior court of every county has original subject matter  
27 jurisdiction over trusts and all matters relating to trusts.

28 (3) The superior courts may: Probate or refuse to probate wills,  
29 appoint personal representatives, administer and settle the affairs and  
30 the estates of incapacitated, missing, or deceased individuals  
31 including but not limited to decedents' nonprobate assets; administer  
32 and settle matters that relate to nonprobate assets and arise under  
33 chapter 11.18 or 11.42 RCW; administer and settle all matters relating  
34 to trusts; award processes and cause to come before them all persons  
35 whom the courts deem it necessary to examine; order and cause to be  
36 issued all such writs and any other orders as are proper or necessary;

1 and do all other things proper or incident to the exercise of  
2 jurisdiction under this section.

3 (4) The subject matter jurisdiction of the superior court applies  
4 without regard to venue. A proceeding or action by or before a  
5 superior court is not defective or invalid because of the selected  
6 venue if the court has jurisdiction of the subject matter of the  
7 action.

8 NEW SECTION. Sec. 202. VENUE IN PROCEEDINGS INVOLVING PROBATE OR  
9 TRUST MATTERS. (1) Venue for proceedings pertaining to trusts shall  
10 be:

11 (a) For testamentary trusts established under wills probated in the  
12 state of Washington, in the superior court of the county where letters  
13 testamentary were granted to a personal representative of the estate  
14 subject to the will or, in the alternative, the superior court of the  
15 county of the situs of the trust; and

16 (b) For all other trusts, in the superior court of the county in  
17 which the situs of the trust is located, or, if the situs is not  
18 located in the state of Washington, in any county.

19 (2) Venue for proceedings subject to chapter 11.88 or 11.92 RCW  
20 shall be determined under the provisions of those chapters.

21 (3) Venue for proceedings pertaining to the probate of wills, the  
22 administration and disposition of a decedent's property, including  
23 nonprobate assets, and any other matter not identified in subsection  
24 (1) or (2) of this section, may be in any county in the state of  
25 Washington. A party to a proceeding may request that venue be changed  
26 if the request is made within four months of the mailing of the notice  
27 of appointment and pendency of probate required by RCW 11.28.237, and  
28 except for good cause shown, venue must be moved as follows:

29 (a) If the decedent was a resident of the state of Washington at  
30 the time of death, to the county of the decedent's residence; or

31 (b) If the decedent was not a resident of the state of Washington  
32 at the time of death, to any of the following:

33 (i) Any county in which any part of the probate estate might be;

34 (ii) If there are no probate assets, any county where any  
35 nonprobate asset might be; or

36 (iii) The county in which the decedent died.

37 (4) Once letters testamentary or of administration have been  
38 granted in the state of Washington, all orders, settlements, trials,

1 and other proceedings under this title shall be had or made in the  
2 county in which such letters have been granted unless venue is moved as  
3 provided in subsection (2) of this section.

4 (5) If venue is moved, an action taken before venue is changed is  
5 not invalid because of the venue.

6 (6) Any request to change venue that is made more than four months  
7 after the commencement of the action may be granted in the discretion  
8 of the court.

9 NEW SECTION. **Sec. 203.** EXERCISE OF POWERS--ORDERS, WRITS,  
10 PROCESS, ETC. The court may make, issue, and cause to be filed or  
11 served, any and all manner and kinds of orders, judgments, citations,  
12 notices, summons, and other writs and processes that might be  
13 considered proper or necessary in the exercise of the jurisdiction or  
14 powers given or intended to be given by this title.

15 NEW SECTION. **Sec. 204.** STATUTES OF LIMITATION. (1)(a) An action  
16 against the trustee of an express trust for a breach of fiduciary duty  
17 must be brought within three years from the earlier of: (i) The time  
18 the alleged breach was discovered or reasonably should have been  
19 discovered; (ii) the discharge of a trustee from the trust as provided  
20 in RCW 11.98.041 or by agreement of the parties under section 402 of  
21 this act; or (iii) the time of termination of the trust or the  
22 trustee's repudiation of the trust.

23 (b) The provisions of (a) of this subsection apply to all express  
24 trusts, no matter when created, however it shall not apply to express  
25 trusts created before June 10, 1959, until the date that is three years  
26 after the effective date of this act.

27 (c) For purposes of this section, "express trust" does not include  
28 resulting trusts, constructive trusts, business trusts in which  
29 certificates of beneficial interest are issued to the beneficiary,  
30 investment trusts, voting trusts, trusts in the nature of mortgages or  
31 pledges, trusts created by the judgment or decree of a court not  
32 sitting in probate, liquidation trusts, or trusts for the sole purpose  
33 of paying dividends, interest, interest coupons, salaries, wages,  
34 pensions, or profits, trusts created in deposits in any financial  
35 institution under chapter 30.22 RCW, unless any such trust that is  
36 created in writing specifically incorporates this chapter in whole or  
37 in part.



1 (2) Except as provided in section 405 of this act with respect to  
2 special representatives, an action against a personal representative  
3 for alleged breach of fiduciary duty by an heir, legatee, or other  
4 interested party must be brought before discharge of the personal  
5 representative.

6 (3) The legislature hereby confirms the long standing public policy  
7 of promoting the prompt and efficient resolution of matters involving  
8 trusts and estates. To further implement this policy, the legislature  
9 adopts the following statutory provisions in order to: (a) Encourage  
10 and facilitate the participation of qualified individuals as special  
11 representatives; (b) serve the public's interest in having a prompt and  
12 efficient resolution of matters involving trusts or estates; and (c)  
13 promote complete and final resolution of proceedings involving trusts  
14 and estates.

15 (i) Actions against a special representative must be brought before  
16 the earlier of:

17 (A) Three years from the discharge of the special representative as  
18 provided in section 405 of this act; or

19 (B) The entry of an order by a court of competent jurisdiction  
20 under section 404 of this act approving the written agreement executed  
21 by all interested parties in accord with the provisions of section 402  
22 of this act.

23 (ii) If a legal action is commenced against the special  
24 representative after the expiration of the period during which claims  
25 may be brought against the special representative as provided in (c)(i)  
26 of this subsection, alleging property damage, property loss, or other  
27 civil liability caused by or resulting from an alleged act or omission  
28 of the special representative arising out of or by reason of the  
29 special representative's duties or actions as special representative,  
30 the special representative shall be indemnified: (A) From the assets  
31 held in the trust or comprising the estate involved in the dispute; and  
32 (B) by the persons bringing the legal action, for all expenses,  
33 attorneys' fees, judgments, settlements, decrees, or amounts due and  
34 owing or paid in satisfaction of or incurred in the defense of the  
35 legal action. To the extent possible, indemnification must be made  
36 first by the persons bringing the legal action, second from that  
37 portion of the trust or estate that is held for the benefit of, or has  
38 been distributed or applied to, the persons bringing the legal action,

1 and third from the other assets held in the trust or comprising the  
2 estate involved in the dispute.

3 (4) The tolling provisions of RCW 4.16.190 apply to this chapter  
4 except that the running of a statute of limitations under subsection  
5 (1) or (2) of this section, or any other applicable statute of  
6 limitations for any matter that is the subject of dispute under this  
7 chapter, is not tolled as to an individual who had a guardian ad litem,  
8 limited or general guardian of the estate, or a special representative  
9 to represent the person during the probate or dispute resolution  
10 proceeding.

11 **PART III**  
12 **JUDICIAL DISPUTE RESOLUTION**

13 NEW SECTION. **Sec. 301.** PERSONS ENTITLED TO JUDICIAL PROCEEDINGS  
14 FOR DECLARATION OF RIGHTS OR LEGAL RELATIONS. (1) Subject to the  
15 provisions of sections 501 through 507 of this act, any party may have  
16 a judicial proceeding for the declaration of rights or legal relations  
17 with respect to any matter, as defined by section 104 of this act; the  
18 resolution of any other case or controversy that arises under the  
19 Revised Code of Washington and references judicial proceedings under  
20 this title; or the determination of the persons entitled to notice  
21 under section 304 or 305 of this act.

22 (2) The provisions of this chapter apply to disputes arising in  
23 connection with estates of incapacitated persons unless otherwise  
24 covered by chapters 11.88 and 11.92 RCW. The provisions of this  
25 chapter shall not supersede, but shall supplement, any otherwise  
26 applicable provisions and procedures contained in this title, including  
27 without limitation those contained in chapter 11.20, 11.24, 11.28,  
28 11.40, 11.42, or 11.56 RCW. The provisions of this chapter shall not  
29 apply to actions for wrongful death under chapter 4.20 RCW.

30 NEW SECTION. **Sec. 302.** JUDICIAL PROCEEDINGS. (1) A judicial  
31 proceeding under this title is a special proceeding under the civil  
32 rules of court. The provisions of this title governing such actions  
33 control over any inconsistent provision of the civil rules.

34 (2) A judicial proceeding under this title may be commenced as a  
35 new action or as an action incidental to an existing judicial  
36 proceeding relating to the same trust or estate or nonprobate asset.

1 (3) Once commenced, the action may be consolidated with an existing  
2 proceeding or converted to a separate action upon the motion of a party  
3 for good cause shown, or by the court on its own motion.

4 (4) The procedural rules of court apply to judicial proceedings  
5 under this title only to the extent that they are consistent with this  
6 title, unless otherwise provided by statute or ordered by the court  
7 under section 103 or 202 of this act, or other applicable rules of  
8 court.

9 NEW SECTION. **Sec. 303.** PROCEDURAL RULES. Unless rules of court  
10 or this title requires otherwise, or unless a court orders otherwise:

11 (1) A judicial proceeding under section 302 of this act is to be  
12 commenced by filing a petition with the court;

13 (2) A summons must be served in accordance with this chapter and,  
14 where not inconsistent with these rules, the procedural rules of court;

15 (3) The summons need only contain the following language or  
16 substantially similar language:

17 SUPERIOR COURT OF WASHINGTON  
18 FOR (. . .) COUNTY

19 IN RE . . . . . )  
20 ) No. . . .  
21 ) Summons  
22 )

23 TO THE RESPONDENT OR OTHER INTERESTED PARTY: A petition has been filed  
24 in the superior court of Washington for (. . .) County. Petitioner's  
25 claim is stated in the petition, a copy of which is served upon you  
26 with this summons.

27 In order to defend against or to object to the petition, you must  
28 answer the petition by stating your defense or objections in writing,  
29 and by serving your answer upon the person signing this summons not  
30 later than five days before the date of the hearing on the petition.  
31 Your failure to answer within this time limit might result in a default  
32 judgment being entered against you without further notice. A default  
33 judgment grants the petitioner all that the petitioner seeks under the  
34 petition because you have not filed an answer.

35 If you wish to seek the advice of a lawyer, you should do so promptly  
36 so that your written answer, if any, may be served on time.

1 This summons is issued under section 303(3) of this act.

2 (Signed) . . . . .

3 Print or Type Name

4 Dated: . . . . .

5 Telephone Number: . . . . .

6 (4) Subject to other applicable statutes and court rules, the clerk  
7 of each of the superior courts shall fix the time for any hearing on a  
8 matter on application by a party, and no order of the court shall be  
9 required to fix the time or to approve the form or content of the  
10 notice of a hearing;

11 (5) The answer to the petition and any counterclaims or cross-  
12 claims must be served on the parties or the parties' virtual  
13 representatives and filed with the court at least five days before the  
14 date of the hearing, and all replies to the counterclaims and cross-  
15 claims must be served on the parties or the parties' virtual  
16 representatives and filed with the court at least two days before the  
17 date of the hearing;

18 (6) Proceedings under this chapter are subject to the mediation and  
19 arbitration provisions of this chapter. Except as specifically  
20 provided in section 506 of this act, the provisions of chapter 7.06 RCW  
21 do not apply;

22 (7) Testimony of witnesses may be by affidavit;

23 (8) Unless requested otherwise by a party in a petition or answer,  
24 the initial hearing must be a hearing on the merits to resolve all  
25 issues of fact and all issues of law;

26 (9) Any party may move the court for an order relating to a  
27 procedural matter, including discovery, and for summary judgment, in  
28 the original petition, answer, response, or reply, or in a separate  
29 motion, or at any other time; and

30 (10) If the initial hearing is not a hearing on the merits or does  
31 not result in a resolution of all issues of fact and all issues of law,  
32 the court may enter any order it deems appropriate, which order may (a)  
33 resolve such issues as it deems proper, (b) determine the scope of  
34 discovery, and (c) set a schedule for further proceedings for the  
35 prompt resolution of the matter.

1        NEW SECTION.    **Sec. 304.**    NOTICE IN JUDICIAL PROCEEDINGS UNDER THIS  
2 TITLE REQUIRING NOTICE. (1) Subject to section 309 of this act, in all  
3 judicial proceedings under this title that require notice, the notice  
4 must be personally served on or mailed to all parties or the parties'  
5 virtual representatives at least twenty days before the hearing on the  
6 petition unless a different period is provided by statute or ordered by  
7 the court. The date of service shall be determined under the rules of  
8 civil procedure.

9        (2) Proof of the service or mailing required in this section must  
10 be made by affidavit or declaration filed at or before the hearing.

11        NEW SECTION.    **Sec. 305.**    APPLICATION OF THE DOCTRINE OF VIRTUAL  
12 REPRESENTATION. (1) This section is intended to adopt the common law  
13 concept of virtual representation. This section supplements the common  
14 law relating to the doctrine of virtual representation and shall not be  
15 construed as limiting the application of that common law doctrine.

16        (2) Any notice requirement in this title is satisfied if notice is  
17 given as follows:

18        (a) Where an interest in an estate, trust, or nonprobate asset has  
19 been given to persons who comprise a certain class upon the happening  
20 of a certain event, notice may be given to the living persons who would  
21 constitute the class if the event had happened immediately before the  
22 commencement of the proceeding requiring notice, and the persons shall  
23 virtually represent all other members of the class;

24        (b) Where an interest in an estate, trust, or nonprobate asset has  
25 been given to a living person, and the same interest, or a share in it,  
26 is to pass to the surviving spouse or to persons who are, or might be,  
27 the distributees, heirs, issue, or other kindred of that living person  
28 upon the happening of a future event, notice may be given to that  
29 living person, and the living person shall virtually represent the  
30 surviving spouse, distributees, heirs, issue, or other kindred of the  
31 person; and

32        (c) Except as otherwise provided in this subsection, where an  
33 interest in an estate, trust, or nonprobate asset has been given to a  
34 person or a class of persons, or both, upon the happening of any future  
35 event, and the same interest or a share of the interest is to pass to  
36 another person or class of persons, or both, upon the happening of an  
37 additional future event, notice may be given to the living person or  
38 persons who would take the interest upon the happening of the first

1 event, and the living person or persons shall virtually represent the  
2 persons and classes of persons who might take on the happening of the  
3 additional future event.

4 (3) A party is not virtually represented by a person receiving  
5 notice if a conflict of interest involving the matter is known to exist  
6 between the notified person and the party.

7 (4) An action taken by the court is conclusive and binding upon  
8 each person receiving actual or constructive notice or who is otherwise  
9 virtually represented.

10 NEW SECTION. **Sec. 306.** SPECIAL NOTICE. Nothing in this chapter  
11 eliminates the requirement to give notice to a person who has requested  
12 special notice under RCW 11.28.240 or 11.92.150.

13 NEW SECTION. **Sec. 307.** WAIVER OF NOTICE. Notwithstanding any  
14 other provision of this title, notice of a hearing does not need to be  
15 given to a legally competent person who has waived in writing notice of  
16 the hearing in person or by attorney, or who has appeared at the  
17 hearing without objecting to the lack of proper notice or personal  
18 jurisdiction. The waiver of notice may apply either to a specific  
19 hearing or to any and all hearings and proceedings to be held, in which  
20 event the waiver of notice is of continuing effect unless subsequently  
21 revoked by the filing of a written notice of revocation of the waiver  
22 and the mailing of a copy of the notice of revocation of the waiver to  
23 the other parties. Unless notice of a hearing is required to be given  
24 by publication, if all persons entitled to notice of the hearing waive  
25 the notice or appear at the hearing without objecting to the lack of  
26 proper notice or personal jurisdiction, the court may hear the matter  
27 immediately. A guardian of the estate or a guardian ad litem may make  
28 the waivers on behalf of the incapacitated person, and a trustee may  
29 make the waivers on behalf of any competent or incapacitated  
30 beneficiary of the trust. A consul or other representative of a  
31 foreign government, whose appearance has been entered as provided by  
32 law on behalf of any person residing in a foreign country, may make the  
33 waiver of notice on behalf of the person.

34 NEW SECTION. **Sec. 308.** COST--ATTORNEYS' FEES. (1) Either the  
35 superior court or the court on appeal may, in its discretion, order  
36 costs, including reasonable attorneys' fees, to be awarded to any

1 party: (a) From any party to the proceedings; (b) from the assets of  
2 the estate or trust involved in the proceedings; or (c) from any  
3 nonprobate asset that is the subject of the proceedings. The court may  
4 order the costs to be paid in such amount and in such manner as the  
5 court determines to be equitable.

6 (2) This section applies to all proceedings governed by this title,  
7 including but not limited to proceedings involving trusts, decedent's  
8 estates and properties, and guardianship matters. This section shall  
9 not be construed as being limited by any other specific statutory  
10 provision providing for the payment of costs, including RCW 11.68.070  
11 and 11.24.050, unless such statute specifically provides otherwise.  
12 This statute shall apply to matters involving guardians and guardians  
13 ad litem and shall not be limited or controlled by the provisions of  
14 RCW 11.88.090(9).

15 NEW SECTION. **Sec. 309.** APPOINTMENT OF GUARDIAN AD LITEM. (1) The  
16 court, upon its own motion or upon request of one or more of the  
17 parties, at any stage of a judicial proceeding or at any time in a  
18 nonjudicial resolution procedure, may appoint a guardian ad litem to  
19 represent the interests of a minor, incapacitated, unborn, or  
20 unascertained person, person whose identity or address is unknown, or  
21 a designated class of persons who are not ascertained or are not in  
22 being. If not precluded by a conflict of interest, a guardian ad litem  
23 may be appointed to represent several persons or interests.

24 (2) The court-appointed guardian ad litem supersedes the special  
25 representative if so provided in the court order.

26 (3) The court may appoint the guardian ad litem at an ex parte  
27 hearing, or the court may order a hearing as provided in section 302 of  
28 this act with notice as provided in this section and section 304 of  
29 this act.

30 (4) The guardian ad litem is entitled to reasonable compensation  
31 for services. Such compensation is to be paid from the principal of  
32 the estate or trust whose beneficiaries are represented.

33 NEW SECTION. **Sec. 310.** TRIAL BY JURY. If a party is entitled to  
34 a trial by jury and a jury is demanded, and the issues are not  
35 sufficiently made up by the written pleadings on file, the court, on  
36 due notice, shall settle and frame the issues to be tried. If a jury

1 is not demanded, the court shall try the issues, and sign and file its  
2 findings and decision in writing, as provided for in civil actions.

3 NEW SECTION. **Sec. 311.** EXECUTION ON JUDGMENTS. Judgment on the  
4 issues, as well as for costs, may be entered and enforced by execution  
5 or otherwise by the court as in civil actions.

6 NEW SECTION. **Sec. 312.** EXECUTION UPON TRUST INCOME OR VESTED  
7 REMAINDER--PERMITTED, WHEN. Nothing in RCW 6.32.250 shall forbid  
8 execution upon the income of any trust created by a person other than  
9 the judgment debtor for debt arising through the furnishing of the  
10 necessities of life to the beneficiary of such trust; or as to such  
11 income forbid the enforcement of any order of the superior court  
12 requiring the payment of support for the children under the age of  
13 eighteen of any beneficiary; or forbid the enforcement of any order of  
14 the superior court subjecting the vested remainder of any such trust  
15 upon its expiration to execution for the debts of the remainderman.

16 NEW SECTION. **Sec. 313.** APPELLATE REVIEW. An interested party may  
17 seek appellate review of a final order, judgment, or decree of the  
18 court respecting a judicial proceeding under this title. The review  
19 must be done in the manner and way provided by law for appeals in civil  
20 actions.

#### 21 **PART IV**

#### 22 **NONJUDICIAL BINDING AGREEMENTS**

23 NEW SECTION. **Sec. 401.** PURPOSE. The purpose of sections 402  
24 through 405 of this act is to provide a binding nonjudicial procedure  
25 to resolve matters through written agreements among the parties  
26 interested in the estate or trust. The procedure is supplemental to,  
27 and may not derogate from, any other proceeding or provision authorized  
28 by statute or the common law.

29 NEW SECTION. **Sec. 402.** BINDING AGREEMENT. Sections 401 through  
30 405 of this act shall be applicable to the resolution of any matter, as  
31 defined by section 104 of this act, other than matters subject to  
32 chapter 11.88 or 11.92 RCW, or a trust for a minor or other  
33 incapacitated person created at its inception by the judgment or decree



1 of a court unless the judgment or decree provides that sections 401  
2 through 405 of this act shall be applicable. If all parties agree to  
3 a resolution of any such matter, then the agreement shall be evidenced  
4 by a written agreement signed by all parties. Subject to the  
5 provisions of section 404 of this act, the written agreement shall be  
6 binding and conclusive on all persons interested in the estate or  
7 trust. The agreement shall identify the subject matter of the dispute  
8 and the parties. If the agreement or a memorandum of the agreement is  
9 to be filed with the court under section 403 of this act, the agreement  
10 may, but need not, include provisions specifically addressing  
11 jurisdiction, governing law, the waiver of notice of the filing as  
12 provided in section 403 of this act, and the discharge of any special  
13 representative who has acted with respect to the agreement.

14 If a party who virtually represents another under section 305 of  
15 this act signs the agreement, then the party's signature constitutes  
16 the signature of all persons whom the party virtually represents, and  
17 all the virtually represented persons shall be bound by the agreement.

18 NEW SECTION. **Sec. 403.** ENTRY OF AGREEMENT WITH THE COURT--EFFECT.  
19 (1) If a special representative has not commenced a proceeding for  
20 approval of the agreement under section 404 of this act, any party, or  
21 a party's legal representative, may file the written agreement or a  
22 memorandum summarizing the written agreement with the court having  
23 jurisdiction over the estate or trust. However, the agreement or a  
24 memorandum of its terms may not be filed within thirty days of the  
25 agreement's execution by all parties without the written consent of the  
26 special representative. The person filing the agreement or memorandum  
27 shall within five days of the filing mail or deliver a copy of the  
28 agreement and a notice of the filing to each party whose address is  
29 known. Proof of mailing or delivery of the notice must be filed with  
30 the court. Failure to complete any action authorized or required under  
31 this subsection does not cause the written agreement to be ineffective  
32 and the agreement is nonetheless binding and conclusive on all persons  
33 interested in the estate or trust. Notice must be in substantially the  
34 following form.

35 CAPTION  
36 OF CASE  
37

NOTICE OF FILING OF  
AGREEMENT OR MEMORANDUM  
OF AGREEMENT

1 Notice is hereby given that the attached document or a memorandum  
2 summarizing its provisions was filed by the undersigned in the above  
3 entitled court on . . .

4 DATED: . . . . .

5 . . . . .

6 (Party or party's legal representative)

7 (2) On filing the agreement or memorandum, the agreement will be  
8 deemed approved by the court and is equivalent to a final court order  
9 binding on all persons interested in the estate or trust.

10 (3) If all parties or their virtual representatives waive the  
11 notice required by this section, the agreement will be deemed approved  
12 by the court and is equivalent to a final court order binding on all  
13 persons interested in the estate or trust effective upon the date of  
14 filing.

15 NEW SECTION. **Sec. 404.** JUDICIAL APPROVAL OF AGREEMENT. Within  
16 thirty days of execution of the agreement by all parties, the special  
17 representative may note a hearing for presentation of the written  
18 agreement to a court of competent jurisdiction. The special  
19 representative shall provide notice of the time and date of the hearing  
20 to each party to the agreement whose address is known, unless such  
21 notice has been waived. Proof of mailing or delivery of the notice  
22 must be filed with the court. At such hearing the court shall review  
23 the agreement on behalf of the parties represented by the special  
24 representative. The court shall determine whether or not the interests  
25 of the represented parties have been adequately represented and  
26 protected, and an order declaring the court's determination shall be  
27 entered. If the court determines that such interests have not been  
28 adequately represented and protected, the agreement shall be declared  
29 of no effect.

30 NEW SECTION. **Sec. 405.** SPECIAL REPRESENTATIVE. (1)(a) The  
31 personal representative or trustee may petition the court having  
32 jurisdiction over the matter for the appointment of a special  
33 representative to represent a person who is interested in the estate or  
34 trust and: (i) Who is a minor; (ii) who is incompetent or disabled;  
35 (iii) who is yet unborn or unascertained; or (iv) whose identity or

1 address is unknown. The petition may be heard by the court without  
2 notice.

3 (b) The special representative may enter into a binding agreement  
4 on behalf of the person or beneficiary. The special representative may  
5 be appointed for more than one person or class of persons if the  
6 interests of such persons or class are not in conflict. The petition  
7 and order appointing the special representative may be in the following  
8 form:

9	CAPTION	PETITION FOR APPOINTMENT
10	OF CASE	OF SPECIAL REPRESENTATIVE
11		UNDER SECTION 405 OF THIS ACT

12 The undersigned petitioner petitions the court for the appointment  
13 of a special representative in accordance with section 405 of this act  
14 and shows the court as follows:

15 1. Petitioner. Petitioner . . . is the qualified and presently  
16 acting (personal representative) (trustee) of the above (estate)  
17 (trust) having been named (personal representative) (trustee) under  
18 (describe will and reference probate order or describe trust  
19 instrument).

20 2. Issue Concerning (Estate) (Trust) Administration. A question  
21 concerning administration of the (estate) (trust) has arisen as to  
22 (describe issue, for example: related to interpretation, construction,  
23 administration, distribution). The issues are appropriate for  
24 determination under section 405 of this act.

25 3. Beneficiaries. The beneficiaries of the (estate) (trust)  
26 include persons who are unborn, unknown, or unascertained persons, or  
27 who are under eighteen years of age.

28 4. Resolution. Petitioner desires to achieve a resolution of the  
29 questions that have arisen concerning the (estate) (trust). Petitioner  
30 believes that proceeding in accordance with the procedures permitted  
31 under sections 401 through 405 of this act would be in the best  
32 interests of the (estate) (trust) and the beneficiaries.

33 5. Request of Court. Petitioner requests that . . . , . . . an  
34 attorney licensed to practice in the State of Washington.

35 (OR)

36 . . . . an individual with special skill or training in the  
37 administration of estates or trusts

1 be appointed special representative for those beneficiaries who are not  
2 yet adults, as well as for the unborn, unknown, and unascertained  
3 beneficiaries, as provided under section 405 of this act.

4 DATED this . . . day of . . . . ., . . . . .

5 . . . . .

6 (Petitioner or petitioner's  
7 legal representative)

8 CAPTION ORDER FOR APPOINTMENT  
9 OF CASE OF SPECIAL REPRESENTATIVE

10 THIS MATTER having come on for hearing before this Court on  
11 Petition for Appointment of Special Representative filed herein, and it  
12 appearing that it would be in the best interests of the (estate)  
13 (trust) described in the Petition to appoint a special representative  
14 to address the issues that have arisen concerning the (estate) (trust)  
15 and the Court finding that the facts stated in the Petition are true,  
16 now, therefore,

17 IT IS ORDERED that . . . is appointed under section 405 of this act  
18 as special representative for the (estate) (trust) beneficiaries who  
19 are not yet adult age, and for unborn, unknown, or unascertained  
20 beneficiaries to represent their respective interests in the (estate)  
21 (trust) as provided in section 405 of this act. The special  
22 representative shall be discharged of responsibility with respect to  
23 the (estate) (trust) at such time as a written agreement is executed  
24 resolving the present issues, all as provided in that statute, or if an  
25 agreement is not reached within six months from entry of this Order,  
26 the special representative appointed under this Order shall be  
27 discharged of responsibility, subject to subsequent reappointment under  
28 section 405 of this act.

29 DONE IN OPEN COURT this . . . day of . . . . ., . . . . .

30 . . . . .

31 JUDGE/COURT COMMISSIONER

32 (2) The special representative must be a lawyer licensed to  
33 practice before the courts of this state or an individual with special  
34 skill or training in the administration of estates or trusts. The  
35 special representative may not have an interest in the affected estate  
36 or trust, and may not be related to a person interested in the estate  
37 or trust. The special representative is entitled to reasonable

1 compensation for services that must be paid from the principal of the  
2 estate or trust whose beneficiaries are represented.

3 (3) The special representative shall be discharged from any  
4 responsibility and shall have no further duties with respect to the  
5 estate or trust or with respect to any person interested in the estate  
6 or trust, on the earlier of: (a) The expiration of six months from the  
7 date the special representative was appointed unless the order  
8 appointing the special representative provides otherwise, or (b) the  
9 execution of the written agreement by all parties or their virtual  
10 representatives. Any action against a special representative must be  
11 brought within the time limits provided by section 204(3)(c)(i) of this  
12 act.

13 **PART V**

14 **PARTY-INITIATED MEDIATION AND ARBITRATION**

15 NEW SECTION. **Sec. 501.** PREAMBLE. The legislature finds that it  
16 is in the interest of the citizens of the state of Washington to  
17 encourage the prompt and early resolution of disputes in trust, estate,  
18 and nonprobate matters. The legislature endorses the use of dispute  
19 resolution procedures by means other than litigation. The legislature  
20 also finds that the former chapter providing for the nonjudicial  
21 resolution of trust, estate, and nonprobate disputes, chapter 11.96  
22 RCW, has resulted in the successful resolution of thousands of disputes  
23 since 1984. The nonjudicial procedure has resulted in substantial  
24 savings of public funds by removing those disputes from the court  
25 system. Enhancement of the statutory framework supporting the  
26 nonjudicial process in chapter 11.96 RCW would be beneficial and would  
27 foster even greater use of nonjudicial dispute methods to resolve  
28 trust, estate, and nonprobate disputes. The legislature further finds  
29 that it would be beneficial to allow parties to disputes involving  
30 trusts, estates, and nonprobate assets to have access to a process for  
31 required mediation followed by arbitration using mediators and  
32 arbitrators experienced in trust, estate, and nonprobate matters.  
33 Finally, the legislature also believes it would be beneficial to  
34 parties with disputes in trusts, estates, and nonprobate matters to  
35 clarify and streamline the statutory framework governing the procedures  
36 governing these cases in the court system.

1           Therefore, the legislature adopts sections 502 through 507 of this  
2 act, that enhance chapter 11.96 RCW and allow required mediation and  
3 arbitration in disputes involving trusts, estates, and nonprobate  
4 matters that are brought to the courts. Sections 502 through 507 of  
5 this act also set forth specific civil procedures for handling trust  
6 and estate disputes in the court system. It is intended that the  
7 adoption of sections 502 through 507 of this act will encourage and  
8 direct all parties in trust, estate, and nonprobate matter disputes,  
9 and the court system, to provide for expeditious, complete, and final  
10 decisions to be made in disputed trust, estate, and nonprobate matters.

11           NEW SECTION.     **Sec. 502.**     GENERAL INTENT--PARTIES CAN AGREE  
12 OTHERWISE. The intent of sections 501 through 507 of this act is to  
13 provide for the efficient settlement of disputes in trust, estate, and  
14 nonprobate matters through mediation and arbitration by providing any  
15 party the right to proceed first with mediation and then arbitration  
16 before formal judicial procedures may be utilized. Accordingly, any of  
17 the requirements or rights under sections 501 through 507 of this act  
18 are subject to any contrary agreement between the parties or the  
19 parties' virtual representatives.

20           NEW SECTION.     **Sec. 503.**     SCOPE. A party may cause the matter to be  
21 presented for mediation and then arbitration, as provided under  
22 sections 501 through 507 of this act. If a party causes the matter to  
23 be presented for resolution under sections 501 through 507 of this act,  
24 then judicial resolution of the matter, as provided in section 203 of  
25 this act or by any other civil action, is available only by complying  
26 with the mediation and arbitration provisions of sections 501 through  
27 507 of this act.

28           NEW SECTION.     **Sec. 504.**     SUPERIOR COURT--VENUE. As used in  
29 sections 501 through 507 of this act, "superior court" means: (1)  
30 Before the commencement of any legal proceedings, the appropriate  
31 superior court with respect to the matter as provided in section 201 of  
32 this act; and (2) if legal proceedings have been commenced with respect  
33 to the matter, the superior court in which the proceedings are pending.

34           NEW SECTION.     **Sec. 505.**     MEDIATION PROCEDURE. (1) Notice of  
35 mediation. A party may cause the matter to be subject to mediation by

1 service of written notice of mediation on all parties or the parties'  
2 virtual representatives as follows:

3 (a) If no hearing has been set. If no hearing on the matter has  
4 been set, by serving notice in substantially the following form before  
5 any petition setting a hearing on the matter is filed with the court:

6 NOTICE OF MEDIATION UNDER SECTION 505 OF THIS ACT

7 To: (Parties)

8 Notice is hereby given that the following matter shall be resolved by  
9 mediation under section 505 of this act:

10 (State nature of matter)

11 This matter must be resolved using the mediation procedures of section  
12 505 of this act unless a petition objecting to mediation is filed with  
13 the superior court within twenty days of service of this notice. If a  
14 petition objecting to mediation is not filed within the twenty-day  
15 period, section 505(4) of this act requires you to furnish to all other  
16 parties or their virtual representatives a list of acceptable mediators  
17 within thirty days of your receipt of this notice.

18 (Optional: Our list of acceptable mediators is as follows:)

19 DATED: . . . . .

20 . . . . .

21 (Party or party's legal representative)

22 (b) If a hearing has been set. If a hearing on the matter has been  
23 set, by filing and serving notice in substantially the following form  
24 at least three days prior to the hearing that has been set on the  
25 matter:

26 NOTICE OF MEDIATION UNDER SECTION 505 OF THIS ACT

27 To: (Parties)

28 Notice is hereby given that the following matter shall be resolved by  
29 mediation under section 505 of this act:

30 (State nature of matter)

31 This matter must be resolved using the mediation procedures of section  
32 505 of this act unless the court determines at the hearing set for

1 . . . o'clock on . . . . . , (identify place of already set hearing),  
2 that mediation shall not apply pursuant to section 505(3) of this act.  
3 If the court determines that mediation shall not apply, the court may  
4 decide the matter at the hearing, require arbitration, or direct other  
5 judicial proceedings.

6 (Optional: Our list of acceptable mediators is as follows:)

7 DATED: . . . . .

8 . . . . .

9 (Party or party's legal representative)

10 (2) Procedure when notice of mediation served before a hearing is  
11 set. The following provisions apply when notice of mediation is served  
12 before a hearing on the matter is set:

13 (a) The written notice required in subsection (1)(a) of this  
14 section may be served at any time without leave of the court.

15 (b) Any party may object to a notice of mediation under subsection  
16 (1)(a) of this section by filing a petition with the superior court and  
17 serving the petition on all parties or the parties' virtual  
18 representatives. The party objecting to notice of mediation under  
19 subsection (1)(a) of this section must file and serve the petition  
20 objecting to mediation no later than twenty days after receipt of the  
21 written notice of mediation. The petition may include a request for  
22 determination of matters subject to judicial resolution under sections  
23 301 through 313 of this act, and may also request that the matters in  
24 issue be decided at the hearing.

25 (c) The hearing on the petition objecting to mediation must be  
26 heard no later than twenty days after the filing of that petition.

27 (d) The party objecting to mediation must give notice of the  
28 hearing to all other parties at least ten days before the hearing and  
29 must include a copy of the petition.

30 At the hearing, the court shall order that mediation proceed except for  
31 good cause shown. Such order shall not be subject to appeal or  
32 revision. If the court determines that the matter should not be  
33 subject to mediation, the court shall dispose of the matter by: (i)  
34 Deciding the matter at that hearing, but only if the petition objecting  
35 to mediation contains a request for that relief, (ii) requiring  
36 arbitration, or (iii) directing other judicial proceedings.



1 (3) Procedure when notice of mediation served after hearing set.  
2 If the written notice of mediation required in subsection (1)(b) of  
3 this section is timely filed and served by a party and another party  
4 objects to mediation, by petition or orally at the hearing, the court  
5 shall order that mediation proceed except for good cause shown. Such  
6 order shall not be subject to appeal or revision. If the court  
7 determines that the matter should not be subject to mediation, the  
8 court shall dispose of the matter by: (a) Deciding the matter at that  
9 hearing, (b) requiring arbitration, or (c) directing other judicial  
10 proceedings.

11 (4) Selection of mediator; mediator qualifications.

12 (a) If a petition objecting to mediation is not filed as provided  
13 in subsection (3) of this section, or if a court determines that  
14 mediation shall apply, each party shall, within thirty days of receipt  
15 of the initial notice or within twenty days after the court  
16 determination, whichever is later, furnish all other parties or the  
17 parties' virtual representatives a list of qualified and acceptable  
18 mediators. If the parties cannot agree on a mediator within ten days  
19 after the list is required to be furnished, a party may petition the  
20 court to appoint a mediator. All parties may submit a list of  
21 qualified and acceptable mediators to the court no later than the date  
22 on which the hearing on the petition is to be held. At the hearing the  
23 court shall select a qualified mediator from lists of acceptable  
24 mediators provided by the parties.

25 (b) A qualified mediator must be: (i) An attorney licensed to  
26 practice before the courts of this state having at least five years of  
27 experience in estate and trust matters, (ii) an individual, who may be  
28 an attorney, with special skill or training in the administration of  
29 trusts and estates, or (iii) an individual, who may be an attorney,  
30 with special skill or training as a mediator. The mediator may not  
31 have an interest in an affected estate, trust, or nonprobate asset, and  
32 may not be related to a party.

33 (5) Date for mediation. Upon designation of a mediator by the  
34 parties or court appointment of a mediator, the mediator and the  
35 parties or the parties' virtual representatives shall establish a date  
36 for the mediation. If a date cannot be agreed upon within ten days of  
37 the designation or appointment of the mediator, a party may petition  
38 the court to set a date for the mediation session.

1 (6) Duration of mediation. The mediation must last at least three  
2 hours unless the matter is earlier resolved.

3 (7) Mediation agreement. A resolution of the matter that is the  
4 subject of the mediation must be evidenced by a nonjudicial dispute  
5 resolution agreement under section 302 of this act.

6 (8) Costs of mediation. Costs of the mediation, including  
7 reasonable compensation for the mediator's services, shall be borne  
8 equally by the parties. The details of those costs and fees, including  
9 the compensation of the mediator, must be set forth in a mediation  
10 agreement between the mediator and all parties to the matter. Each  
11 party shall bear its own costs and expenses, including legal fees and  
12 witness expenses, in connection with the mediation proceeding: (a)  
13 Except as may occur otherwise as provided in section 507 of this act,  
14 or (b) unless the matter is not resolved by mediation and the  
15 arbitrator or court finally resolving the matter directs otherwise.

16 NEW SECTION. **Sec. 506.** ARBITRATION PROCEDURE. (1) When  
17 arbitration available. Arbitration under sections 501 through 507 of  
18 this act is available only if:

19 (a) A party has first petitioned for mediation under section 505 of  
20 this act and such mediation has been concluded;

21 (b) The court has determined that mediation under section 505 of  
22 this act is not required and has not ordered that the matter be  
23 disposed of in some other manner;

24 (c) All of the parties or the parties' virtual representatives have  
25 agreed not to use the mediation procedures of section 505 of this act;  
26 or

27 (d) The court has ordered that the matter must be submitted to  
28 arbitration.

29 (2) Commencement of arbitration. Arbitration must be commenced as  
30 follows:

31 (a) If the matter is not settled through mediation under section  
32 505 of this act, or the court orders that mediation is not required, a  
33 party may commence arbitration by serving written notice of arbitration  
34 on all other parties or the parties' virtual representatives. The  
35 notice must be served no later than twenty days after the later of the  
36 conclusion of the mediation procedure, if any, or twenty days after  
37 entry of the order providing that mediation is not required. If

1 arbitration is ordered by the court under section 505(3) of this act,  
2 arbitration must proceed in accordance with the order.

3 (b) If the parties or the parties' virtual representatives agree  
4 that mediation does not apply and have not agreed to another procedure  
5 for resolving the matter, a party may commence arbitration without  
6 leave of the court by serving written notice of arbitration on all  
7 other parties or the parties' virtual representatives at any time  
8 before or at the initial judicial hearing on the matter. After the  
9 initial judicial hearing on the matter, the written notice required in  
10 subsection (1) of this section may only be served with leave of the  
11 court.

12 Any notice required by this section must be in substantially the  
13 following form:

14 NOTICE OF ARBITRATION UNDER SECTION 506 OF THIS ACT

15 To: (Parties)

16 Notice is hereby given that the following matter must be resolved by  
17 arbitration under section 506 of this act:

18 (State nature of matter)

19 The matter must be resolved using the arbitration procedures of section  
20 506 of this act unless a petition objecting to arbitration is filed  
21 with the superior court within twenty days of receipt of this notice.  
22 If a petition objecting to arbitration is not filed within the twenty-  
23 day period, section 506 of this act requires you to furnish to all  
24 other parties or the parties' virtual representatives a list of  
25 acceptable mediators within thirty days of your receipt of this notice.

26 (Optional: Our list of acceptable arbitrators is as follows:)

27 DATED: . . . . .

28 . . . . .

29 (Party or party's legal representative)

30 (3) Objection to arbitration. A party may object to arbitration by  
31 filing a petition with the superior court and serving the petition on  
32 all parties or the parties' virtual representatives. The objection to  
33 arbitration may be filed at any time unless a written notice of  
34 arbitration has been served, in which case the objection to arbitration  
35 must be filed and served no later than twenty days after receipt of the

1 written notice of arbitration. The hearing on the objection to  
2 arbitration must be heard no later than twenty days after the filing of  
3 that petition. The party objecting to arbitration must give notice of  
4 the hearing to all parties at least ten days before the hearing and  
5 shall include a copy of the petition. At the hearing, the court shall  
6 order that arbitration proceed except for good cause shown. Such order  
7 shall not be subject to appeal or revision. If the court determines  
8 that the matter should not be subject to arbitration, the court shall  
9 dispose of the matter by: (a) Deciding the matter at that hearing, but  
10 only if the petition objecting to arbitration contains a request for  
11 such relief; or (b) directing other judicial proceedings.

12 (4) Selection of arbitrator; qualifications of arbitrator.

13 (a) If a petition objecting to arbitration is not filed as provided  
14 in subsection (3) of this section, or if a court determines that  
15 arbitration must apply, each party shall, within thirty days of receipt  
16 of the initial notice or within twenty days after the court  
17 determination, whichever is later, furnish all other parties or the  
18 parties' virtual representatives a list of acceptable arbitrators. If  
19 the parties cannot agree on an arbitrator within ten days after the  
20 list is required to be furnished, a party may petition the court to  
21 appoint an arbitrator. All parties may submit a list of qualified and  
22 acceptable arbitrators to the court no later than the date on which the  
23 hearing on the petition is to be held. At the hearing the court shall  
24 select a qualified arbitrator from lists of acceptable arbitrators  
25 provided by the parties.

26 (b) A qualified arbitrator must be an attorney licensed to practice  
27 before the courts of this state having at least five years of  
28 experience in trust or estate matters or five years of experience in  
29 litigation or other formal dispute resolution involving trusts or  
30 estates, or an individual, who may be an attorney, with special skill  
31 or training with respect to the matter. The arbitrator may be the same  
32 person selected and used as a mediator under the mediation procedures  
33 of section 505 of this act.

34 (5) Arbitration rules. Arbitration must be under chapter 7.06 RCW,  
35 mandatory arbitration of civil actions, as follows:

36 (a) Chapter 7.06 RCW, the superior court mandatory arbitration  
37 rules adopted by the supreme court, and any local rules for mandatory  
38 arbitration adopted by the superior court apply to this title. If the  
39 superior court has not adopted chapter 7.06 RCW, then the local rules

1 for mandatory arbitration applicable in King county apply, except all  
2 the duties of the director of arbitration must be performed by the  
3 presiding judge of the superior court.

4 (b) If a party has already filed a petition with the court with  
5 respect to the matter that will be the subject of the arbitration  
6 proceedings, then all other parties to the arbitration proceedings who  
7 have not yet filed a reply thereto must file a reply with the  
8 arbitrator within ten days of the date on which the arbitrator is  
9 selected or appointed.

10 (c) The arbitration provisions of this subsection apply to all  
11 matters in dispute. The dollar limits and restrictions to monetary  
12 damages of RCW 7.06.020 do not apply to arbitrations under this  
13 subsection. To the extent any provision in this title is inconsistent  
14 with chapter 7.06 RCW or the rules referenced in (a) of this  
15 subsection, the provisions of this title control.

16 (d) The compensation of the arbitrator must be set by written  
17 agreement between the parties and the arbitrator. The arbitrator must  
18 be compensated at the arbitrator's stated rate of compensation for  
19 acting as an arbitrator of disputes in trusts, estates, and nonprobate  
20 matters unless the parties or the parties' virtual representatives  
21 agree otherwise.

22 (e) Unless directed otherwise by the arbitrator in accord with  
23 subsection (6) of this section or section 507 of this act, or unless  
24 the matter is not resolved by arbitration and the court finally  
25 resolving the matter directs otherwise:

26 (i) Costs of the arbitration, including compensation for the  
27 arbitrator's services, must be borne equally by the parties  
28 participating in the arbitration, with the details of those costs and  
29 fees to be set forth in an arbitration agreement between the arbitrator  
30 and all parties to the matter; and

31 (ii) A party shall bear its own costs and expenses, including legal  
32 fees and witness expenses, in connection with the arbitration  
33 proceeding.

34 (f) The arbitrator and the parties shall execute a written  
35 agreement setting forth the terms of the arbitration and the process to  
36 be followed. This agreement must also contain the fee agreement  
37 provided in (d) of this subsection. A dispute as to this agreement  
38 must be resolved by the director of arbitration.

1 (g) The rules of evidence and discovery applicable to civil causes  
2 of action before the superior court as defined in section 504 of this  
3 act apply, unless the parties have agreed otherwise or the arbitrator  
4 rules otherwise.

5 (6) Costs of arbitration. The arbitrator may order costs,  
6 including reasonable attorneys' fees and expert witness fees, to be  
7 paid by any party to the proceedings as justice may require.

8 (7) Decision of arbitrator. The arbitrator shall issue a final  
9 decision in writing within thirty days of the conclusion of the final  
10 arbitration hearing. The final decision may be appealed by filing a  
11 notice of appeal with the superior court within thirty days of the  
12 issuance of the written decision in the arbitration proceeding. If an  
13 appeal is not filed as provided in this section, the arbitration  
14 decision is conclusive and binding on all parties.

15 (8) Arbitration decision may be filed with court; appeal. Any  
16 party to the arbitration may file the arbitrator's decision with the  
17 clerk of the superior court, together with proof of service thereof on  
18 the parties. Within twenty days after such filing, any aggrieved party  
19 may file with the clerk a written notice of appeal and request for a  
20 trial de novo in the superior court on all issues of law and fact.  
21 Such trial de novo shall thereupon be held, including a right to jury,  
22 if demanded.

23 If no appeal has been filed at the expiration of twenty days  
24 following filing of the arbitrator's decision and award, a judgment  
25 shall be entered and may be presented to the court by any party, on  
26 notice, which judgment when entered shall have the same force and  
27 effect as judgments in civil actions.

28 (9) Costs on appeal of arbitration decision. The prevailing party  
29 in any such de novo superior court decision after an arbitration result  
30 must be awarded costs, including expert witness fees and attorneys'  
31 fees, in connection with the judicial resolution of the matter. Such  
32 costs shall be charged against the nonprevailing parties in such amount  
33 and in such manner as the court determines to be equitable. The  
34 provisions of this subsection take precedence over the provisions of  
35 section 308 of this act or any other similar provision.

36 NEW SECTION. **Sec. 507.** PETITION FOR ORDER COMPELLING COMPLIANCE.  
37 If a party does not comply with any procedure of sections 501 through  
38 506 of this act, the other party or parties may petition the superior

1 court for an order compelling compliance. A party obtaining an order  
2 compelling compliance is entitled to reimbursement of costs and  
3 attorneys' fees incurred in connection with: The petition and any  
4 other actions taken after the issuance of the order to compel  
5 compliance with the order, unless the court at the hearing on the  
6 petition determines otherwise for good cause shown. Reimbursement must  
7 be from the party or parties whose failure to comply was the basis for  
8 the petition.

9 **PART VI**

10 **CONFORMING AMENDMENTS**

11 **Sec. 601.** RCW 11.40.020 and 1997 c 252 s 8 are each amended to  
12 read as follows:

13 (1) Subject to subsection (2) of this section, a personal  
14 representative may give notice to the creditors of the decedent, as  
15 directed in RCW 11.40.030, announcing the personal representative's  
16 appointment and requiring that persons having claims against the  
17 decedent present their claims within the time specified in RCW  
18 11.40.051 or be forever barred as to claims against the decedent's  
19 probate and nonprobate assets. If notice is given:

20 ~~((1))~~ (a) The personal representative shall first file the  
21 original of the notice with the court;

22 ~~((2))~~ (b) The personal representative shall then cause the notice  
23 to be published once each week for three successive weeks in a legal  
24 newspaper in the county in which the estate is being administered, and  
25 if the decedent was a Washington resident, in the county of the  
26 decedent's residence at the time of death, if different;

27 ~~((3))~~ (c) The personal representative may, at any time during the  
28 probate proceeding, give actual notice to creditors who become known to  
29 the personal representative by serving the notice on the creditor or  
30 mailing the notice to the creditor at the creditor's last known  
31 address, by regular first class mail, postage prepaid; and

32 ~~((4))~~ (d) The personal representative shall also mail a copy of  
33 the notice, including the decedent's social security number, to the  
34 state of Washington department of social and health services office of  
35 financial recovery.

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

1       (2) If the decedent was a resident of the state of Washington at  
2 the time of death and probate proceedings are commenced in a county  
3 other than the county of the decedent's residence, then notice to the  
4 creditors of the decedent as directed in RCW 11.40.030 must be filed  
5 with the superior court of the county of the decedent's residence.

6       **Sec. 602.** RCW 4.16.370 and 1985 c 11 s 3 are each amended to read  
7 as follows:

8       The statute of limitations for actions against a personal  
9 representative or trustee for breach of fiduciary duties is as set  
10 forth in ((~~RCW 11.96.060~~)) section 204 of this act.

11       **Sec. 603.** RCW 6.15.020 and 1997 c 20 s 1 are each amended to read  
12 as follows:

13       (1) It is the policy of the state of Washington to ensure the well-  
14 being of its citizens by protecting retirement income to which they are  
15 or may become entitled. For that purpose generally and pursuant to the  
16 authority granted to the state of Washington under 11 U.S.C. Sec.  
17 522(b)(2), the exemptions in this section relating to retirement  
18 benefits are provided.

19       (2) Unless otherwise provided by federal law, any money received by  
20 any citizen of the state of Washington as a pension from the government  
21 of the United States, whether the same be in the actual possession of  
22 such person or be deposited or loaned, shall be exempt from execution,  
23 attachment, garnishment, or seizure by or under any legal process  
24 whatever, and when a debtor dies, or absconds, and leaves his or her  
25 family any money exempted by this subsection, the same shall be exempt  
26 to the family as provided in this subsection. This subsection shall  
27 not apply to child support collection actions issued under chapter  
28 26.18, 26.23, or 74.20A RCW, if otherwise permitted by federal law.

29       (3) The right of a person to a pension, annuity, or retirement  
30 allowance or disability allowance, or death benefits, or any optional  
31 benefit, or any other right accrued or accruing to any citizen of the  
32 state of Washington under any employee benefit plan, and any fund  
33 created by such a plan or arrangement, shall be exempt from execution,  
34 attachment, garnishment, or seizure by or under any legal process  
35 whatever. This subsection shall not apply to child support collection  
36 actions issued under chapter 26.18, 26.23, or 74.20A RCW if otherwise  
37 permitted by federal law. This subsection shall permit benefits under



1 any such plan or arrangement to be payable to a spouse, former spouse,  
2 child, or other dependent of a participant in such plan to the extent  
3 expressly provided for in a qualified domestic relations order that  
4 meets the requirements for such orders under the plan, or, in the case  
5 of benefits payable under a plan described in sections 403(b) or 408 of  
6 the internal revenue code of 1986, as amended, or section 409 of such  
7 code as in effect before January 1, 1984, to the extent provided in any  
8 order issued by a court of competent jurisdiction that provides for  
9 maintenance or support. This subsection shall not prohibit actions  
10 against an employee benefit plan, or fund for valid obligations  
11 incurred by the plan or fund for the benefit of the plan or fund.

12 (4) For the purposes of this section, the term "employee benefit  
13 plan" means any plan or arrangement that is described in RCW 49.64.020,  
14 including any Keogh plan, whether funded by a trust or by an annuity  
15 contract, and in sections 401(a) or 403(a) of the internal revenue code  
16 of 1986, as amended; or that is described in sections 403(b) or 408 of  
17 the internal revenue code of 1986, as amended, or section 409 of such  
18 code as in effect before January 1, 1984. The term "employee benefit  
19 plan" shall not include any employee benefit plan that is established  
20 or maintained for its employees by the government of the United States,  
21 by the state of Washington or any political subdivision thereof, or by  
22 any agency or instrumentality of any of the foregoing.

23 (5) An employee benefit plan shall be deemed to be a spendthrift  
24 trust, regardless of the source of funds, the relationship between the  
25 trustee or custodian of the plan and the beneficiary, or the ability of  
26 the debtor to withdraw or borrow or otherwise become entitled to  
27 benefits from the plan before retirement. This subsection shall not  
28 apply to child support collection actions issued under chapter 26.18,  
29 26.23, or 74.20A RCW, if otherwise permitted by federal law. This  
30 subsection shall permit benefits under any such plan or arrangement to  
31 be payable to a spouse, former spouse, child, or other dependent of a  
32 participant in such plan to the extent expressly provided for in a  
33 qualified domestic relations order that meets the requirements for such  
34 orders under the plan, or, in the case of benefits payable under a plan  
35 described in sections 403(b) or 408 of the internal revenue code of  
36 1986, as amended, or section 409 of such code as in effect before  
37 January 1, 1984, to the extent provided in any order issued by a court  
38 of competent jurisdiction that provides for maintenance or support.

1 (6) Unless contrary to applicable federal law, nothing contained in  
2 subsection (3), (4), or (5) of this section shall be construed as a  
3 termination or limitation of a spouse's community property interest in  
4 an individual retirement account held in the name of or on account of  
5 the other spouse, the account holder spouse. At the death of the  
6 nonaccount holder spouse, the nonaccount holder spouse may transfer or  
7 distribute the community property interest of the nonaccount holder  
8 spouse in the account holder spouse's individual retirement account to  
9 the nonaccount holder spouse's estate, testamentary trust, inter vivos  
10 trust, or other successor or successors pursuant to the last will of  
11 the nonaccount holder spouse or the law of intestate succession, and  
12 that distributee may, but shall not be required to, obtain an order of  
13 a court of competent jurisdiction, including any order entered under  
14 chapter (~~11.96~~) 11.-- RCW (sections 101 through 507 of this act), to  
15 confirm the distribution. For purposes of subsection (3) of this  
16 section, the distributee of the nonaccount holder spouse's community  
17 property interest in an individual retirement account shall be  
18 considered a person entitled to the full protection of subsection (3)  
19 of this section. The nonaccount holder spouse's consent to a  
20 beneficiary designation by the account holder spouse with respect to an  
21 individual retirement account shall not, absent clear and convincing  
22 evidence to the contrary, be deemed a release, gift, relinquishment,  
23 termination, limitation, or transfer of the nonaccount holder spouse's  
24 community property interest in an individual retirement account. For  
25 purposes of this subsection, the term "nonaccount holder spouse" means  
26 the spouse of the person in whose name the individual retirement  
27 account is maintained. The term "individual retirement account"  
28 includes an individual retirement account and an individual retirement  
29 annuity both as described in section 408 of the internal revenue code  
30 of 1986, as amended, and an individual retirement bond as described in  
31 section 409 of the internal revenue code as in effect before January 1,  
32 1984. As used in this subsection, an order of a court of competent  
33 jurisdiction includes an agreement, as that term is used under (~~RCW~~  
34 ~~11.96.170~~) section 402 of this act.

35 **Sec. 604.** RCW 11.12.120 and 1994 c 221 s 15 are each amended to  
36 read as follows:

37 (1) If a will makes a gift to a person on the condition that the  
38 person survive the testator and the person does not survive the

1 testator, then, unless otherwise provided, the gift lapses and falls  
2 into the residue of the estate to be distributed under the residuary  
3 clause of the will, if any, but otherwise according to the laws of  
4 descent and distribution.

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

10 (3) The personal representative of the testator, a person who would  
11 be affected by the lapse or distribution of a gift under this section,  
12 or a guardian ad litem or other representative appointed to represent  
13 the interests of a person so affected may petition the court for a  
14 determination under this section, and the petition must be heard under  
15 the procedures of chapter ((11.96)) 11.-- RCW (sections 101 through 507  
16 of this act).

17 **Sec. 605.** RCW 11.18.200 and 1997 c 252 s 3 are each amended to  
18 read as follows:

19 (1) Unless expressly exempted by statute, a beneficiary of a  
20 nonprobate asset that was subject to satisfaction of the decedent's  
21 general liabilities immediately before the decedent's death takes the  
22 asset subject to liabilities, claims, estate taxes, and the fair share  
23 of expenses of administration reasonably incurred by the personal  
24 representative in the transfer of or administration upon the asset.  
25 The beneficiary of such an asset is liable to account to the personal  
26 representative to the extent necessary to satisfy liabilities, claims,  
27 the asset's fair share of expenses of administration, and the asset's  
28 share of estate taxes under chapter 83.110 RCW. Before making demand  
29 that a beneficiary of a nonprobate asset account to the personal  
30 representative, the personal representative shall give notice to the  
31 beneficiary, in the manner provided in chapter ((11.96)) 11.-- RCW  
32 (sections 101 through 507 of this act), that the beneficiary is liable  
33 to account under this section.

34 (2) The following rules govern in applying subsection (1) of this  
35 section:

36 (a) A beneficiary of property passing at death under a community  
37 property agreement takes the property subject to the decedent's  
38 liabilities, claims, estate taxes, and administration expenses as

1 described in subsection (1) of this section. However, assets existing  
2 as community or separate property immediately before the decedent's  
3 death under the community property agreement are subject to the  
4 decedent's liabilities and claims to the same extent that they would  
5 have been had they been assets of the probate estate.

6 (b) A beneficiary of property held in joint tenancy form with right  
7 of survivorship, including without limitation United States savings  
8 bonds or similar obligations, takes the property subject to the  
9 decedent's liabilities, claims, estate taxes, and administration  
10 expenses as described in subsection (1) of this section to the extent  
11 of the decedent's beneficial ownership interest in the property  
12 immediately before death.

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

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

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

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

36 (g) Anything in this section to the contrary notwithstanding,  
37 nonprobate assets that existed as community property immediately before  
38 the decedent's death are subject to the decedent's liabilities and

1 claims to the same extent that they would have been had they been  
2 assets of the probate estate.

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

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

7 (j) An inference may not be drawn from (a) through (i) of this  
8 subsection that a beneficiary of nonprobate assets other than those  
9 assets specifically described in (a) through (i) of this subsection  
10 does or does not take the assets subject to claims, liabilities, estate  
11 taxes, and administration expenses as described in subsection (1) of  
12 this section.

13 (3) Nothing in this section derogates from the rights of a person  
14 interested in the estate to recover tax under chapter 83.110 RCW or  
15 from the liability of any beneficiary for estate tax under chapter  
16 83.110 RCW.

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

20 **Sec. 606.** RCW 11.28.240 and 1997 c 252 s 4 are each amended to  
21 read as follows:

22 (1) At any time after the issuance of letters testamentary or of  
23 administration or certificate of qualification upon the estate of any  
24 decedent, any person interested in the estate as an heir, devisee,  
25 distributee, legatee or creditor whose claim has been duly served and  
26 filed, or the lawyer for the heir, devisee, distributee, legatee, or  
27 creditor may serve upon the personal representative or upon the lawyer  
28 for the personal representative, and file with the clerk of the court  
29 wherein the administration of the estate is pending, a written request  
30 stating that the person desires special notice of any or all of the  
31 following named matters, steps or proceedings in the administration of  
32 the estate, to wit:

33 (a) Filing of petitions for sales, leases, exchanges or mortgages  
34 of any property of the estate.

35 (b) Petitions for any order of solvency or for nonintervention  
36 powers.

37 (c) Filing of accounts.

38 (d) Filing of petitions for distribution.

1 (e) Petitions by the personal representative for family allowances  
2 and homesteads.

3 (f) The filing of a declaration of completion.

4 (g) The filing of the inventory.

5 (h) Notice of presentation of personal representative's claim  
6 against the estate.

7 (i) Petition to continue a going business.

8 (j) Petition to borrow upon the general credit of the estate.

9 (k) Petition for judicial proceedings under chapter (~~11.96~~) 11.--  
10 RCW (sections 101 through 507 of this act).

11 (l) Petition to reopen an estate.

12 (m) Intent to distribute estate assets, other than distributions in  
13 satisfaction of specific bequests or legacies of specific dollar  
14 amounts.

15 (n) Intent to pay attorney's or personal representative's fees.

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

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

38 (a) That person qualifies to request special notice solely by  
39 reason of being a specific legatee, all of the property that person is

1 entitled to receive from the decedent's estate has been distributed to  
2 that person, and that person's bequest is not subject to any subsequent  
3 abatement for the payment of the decedent's debts, expenses, or taxes;

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

9 (c) That person qualifies to request special notice solely by  
10 reason of being a creditor of the decedent and that person has received  
11 all of the property that the person is entitled to receive from the  
12 decedent's estate.

13 **Sec. 607.** RCW 11.40.040 and 1997 c 252 s 10 are each amended to  
14 read as follows:

15 (1) For purposes of RCW 11.40.051, a "reasonably ascertainable"  
16 creditor of the decedent is one that the personal representative would  
17 discover upon exercise of reasonable diligence. The personal  
18 representative is deemed to have exercised reasonable diligence upon  
19 conducting a reasonable review of the decedent's correspondence,  
20 including correspondence received after the date of death, and  
21 financial records, including personal financial statements, loan  
22 documents, checkbooks, bank statements, and income tax returns, that  
23 are in the possession of or reasonably available to the personal  
24 representative.

25 (2) If the personal representative conducts the review, the  
26 personal representative is presumed to have exercised reasonable  
27 diligence to ascertain creditors of the decedent and any creditor not  
28 ascertained in the review is presumed not reasonably ascertainable  
29 within the meaning of RCW 11.40.051. These presumptions may be  
30 rebutted only by clear, cogent, and convincing evidence.

31 (3) The personal representative may evidence the review and  
32 resulting presumption by filing with the court an affidavit regarding  
33 the facts referred to in this section. The personal representative may  
34 petition the court for an order declaring that the personal  
35 representative has made a review and that any creditors not known to  
36 the personal representative are not reasonably ascertainable. The  
37 petition must be filed under ((RCW 11.96.070)) section 301 of this act

1 and the notice specified under (~~RCW 11.96.100~~) section 304 of this  
2 act must also be given by publication.

3 **Sec. 608.** RCW 11.40.140 and 1997 c 252 s 21 are each amended to  
4 read as follows:

5 If the personal representative has a claim against the decedent,  
6 the personal representative must present the claim in the manner  
7 provided in RCW 11.40.070 and petition the court for allowance or  
8 rejection. The petition must be filed under (~~RCW 11.96.070~~) section  
9 301 of this act. This section applies whether or not the personal  
10 representative is acting under nonintervention powers.

11 **Sec. 609.** RCW 11.42.010 and 1997 c 252 s 24 are each amended to  
12 read as follows:

13 (1) Subject to the conditions stated in this chapter, and if no  
14 personal representative has been appointed in this state, a beneficiary  
15 or trustee who has received or is entitled to receive by reason of the  
16 decedent's death substantially all of the decedent's probate and  
17 nonprobate assets, is qualified to give nonprobate notice to creditors  
18 under this chapter.

19 If no one beneficiary or trustee has received or is entitled to  
20 receive substantially all of the assets, then those persons, who in the  
21 aggregate have received or are entitled to receive substantially all of  
22 the assets, may, under an agreement under (~~RCW 11.96.170~~) section 402  
23 of this act, appoint a person who is then qualified to give nonprobate  
24 notice to creditors under this chapter.

25 (2) A person or group of persons is deemed to have received  
26 substantially all of the decedent's probate and nonprobate assets if  
27 the person or the group, at the time of the filing of the declaration  
28 and oath referred to in subsection (3) of this section, in reasonable  
29 good faith believed that the person or the group had received, or was  
30 entitled to receive by reason of the decedent's death, substantially  
31 all of the decedent's probate and nonprobate assets.

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

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

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



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

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

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

13 (b) Minors;

14 (c) Persons of unsound mind;

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

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

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

27 **Sec. 610.** RCW 11.42.040 and 1997 c 252 s 27 are each amended to  
28 read as follows:

29 (1) For purposes of RCW 11.42.050, a "reasonably ascertainable"  
30 creditor of the decedent is one that the notice agent would discover  
31 upon exercise of reasonable diligence. The notice agent is deemed to  
32 have exercised reasonable diligence upon conducting a reasonable review  
33 of the decedent's correspondence, including correspondence received  
34 after the date of death, and financial records, including personal  
35 financial statements, loan documents, checkbooks, bank statements, and  
36 income tax returns, that are in the possession of or reasonably  
37 available to the notice agent.

1 (2) If the notice agent conducts the review, the notice agent is  
2 presumed to have exercised reasonable diligence to ascertain creditors  
3 of the decedent and any creditor not ascertained in the review is  
4 presumed not reasonably ascertainable within the meaning of RCW  
5 11.42.050. These presumptions may be rebutted only by clear, cogent,  
6 and convincing evidence.

7 (3) The notice agent may evidence the review and resulting  
8 presumption by filing with the court an affidavit regarding the facts  
9 referred to in this section. The notice agent may petition the court  
10 for an order declaring that the notice agent has made a review and that  
11 any creditors not known to the notice agent are not reasonably  
12 ascertainable. The petition must be filed under ((RCW 11.96.070))  
13 section 301 of this act, and the notice specified under ((RCW  
14 ~~11.96.100~~)) section 304 of this act must also be given by publication.

15 **Sec. 611.** RCW 11.42.085 and 1997 c 252 s 32 are each amended to  
16 read as follows:

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

22 (2) The notice agent may pay a claim allowed by the notice agent or  
23 a judgment on a claim first prosecuted against a notice agent only out  
24 of assets received as a result of the death of the decedent by the  
25 notice agent or by those appointing the notice agent, except as may be  
26 provided by agreement under ((RCW 11.96.170)) section 402 of this act  
27 or by court order issued in a judicial proceeding under ((RCW  
28 ~~11.96.070~~)) section 301 of this act.

29 **Sec. 612.** RCW 11.54.080 and 1997 c 252 s 55 are each amended to  
30 read as follows:

31 (1) This section applies if the party entitled to petition for an  
32 award holds exempt property that is in an aggregate amount less than  
33 that specified in RCW 6.13.030(2) with respect to lands.

34 (2) For purposes of this section, the party entitled to petition  
35 for an award is referred to as the "claimant." If multiple parties are  
36 entitled to petition for an award, all of them are deemed a "claimant"  
37 and may petition for an exemption of additional assets as provided in

1 this section, if the aggregate amount of exempt property to be held by  
2 all the claimants after the making of the award does not exceed the  
3 amount specified in RCW 6.13.030(2) with respect to lands.

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

8 (a) Set forth facts to establish that the petitioner is entitled to  
9 petition for an award under RCW 11.54.010;

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

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

15 (4) Notice of a petition for an order exempting assets from the  
16 claims of creditors must be given in accordance with ~~((RCW 11.96.100))~~  
17 section 304 of this act.

18 (5) At the hearing on the petition, the court shall order that  
19 certain assets of the claimants are exempt from the claims of creditors  
20 so that the aggregate amount of exempt property held by the claimants  
21 after the entry of the order is in the amount specified in RCW  
22 6.13.030(2) with respect to lands. In the order the court shall  
23 designate those assets of the claimants that are so exempt.

24 **Sec. 613.** RCW 11.54.090 and 1997 c 252 s 56 are each amended to  
25 read as follows:

26 The petition for an award, for an increased or modified award, or  
27 for the exemption of assets from the claims of creditors as authorized  
28 by this chapter must be made to the court of the county in which the  
29 probate is being administered. If probate proceedings have not been  
30 commenced in the state of Washington, the petition must be made to the  
31 court of a county in which the ~~((decedent's estate could be  
32 administered under RCW 11.96.050 if the decedent held personal property  
33 subject to probate in the county of the decedent's domicile))~~ decedent  
34 was domiciled at the time of death. If the decedent was not domiciled  
35 in the state of Washington at the time of death, the petition may be  
36 made to the court of any county in which the decedent's estate could be  
37 administered under section 202 of this act. The petition and the  
38 hearing must conform to ~~((RCW 11.96.070))~~ sections 301 through 313 of

1 this act. Notice of the hearing on the petition must be given in  
2 accordance with ((RCW 11.96.100)) section 304 of this act.

3 **Sec. 614.** RCW 11.68.065 and 1997 c 252 s 64 are each amended to  
4 read as follows:

5 A beneficiary whose interest in an estate has not been fully paid  
6 or distributed may petition the court for an order directing the  
7 personal representative to deliver a report of the affairs of the  
8 estate signed and verified by the personal representative. The  
9 petition may be filed at any time after one year from the day on which  
10 the report was last delivered, or, if none, then one year after the  
11 order appointing the personal representative. Upon hearing of the  
12 petition after due notice as required in ((chapter 11.96 RCW)) section  
13 304 of this act, the court may, for good cause shown, order the  
14 personal representative to deliver to the petitioner the report for any  
15 period not covered by a previous report. The report for the period  
16 shall include such of the following as the court may order: A  
17 description of the amount and nature of all property, real and  
18 personal, that has come into the hands of the personal representative;  
19 a statement of all property collected and paid out or distributed by  
20 the personal representative; a statement of claims filed and allowed  
21 against the estate and those rejected; any estate, inheritance, or  
22 fiduciary income tax returns filed by the personal representative; and  
23 such other information as the order may require. This subsection does  
24 not limit any power the court might otherwise have at any time during  
25 the administration of the estate to require the personal representative  
26 to account or furnish other information to any person interested in the  
27 estate.

28 **Sec. 615.** RCW 11.68.080 and 1997 c 252 s 65 are each amended to  
29 read as follows:

30 (1) Within ten days after the personal representative has received  
31 from alleged creditors under chapter 11.40 RCW claims that have an  
32 aggregate face value that, when added to the other debts and to the  
33 taxes and expenses of greater priority under applicable law, would  
34 appear to cause the estate to be insolvent, the personal representative  
35 shall notify in writing all beneficiaries under the decedent's will  
36 and, if any of the decedent's property will pass according to the laws  
37 of intestate succession, all heirs, together with any unpaid creditors,

1 other than a creditor whose claim is then barred under chapter 11.40  
2 RCW or the otherwise applicable statute of limitations, that the estate  
3 might be insolvent. The personal representative shall file a copy of  
4 the written notice with the court.

5 (2) Within ten days after an estate becomes insolvent, the personal  
6 representative shall petition under (~~chapter 11.96 RCW~~) section 301  
7 of this act for a determination of whether the court should reaffirm,  
8 rescind, or restrict in whole or in part any prior grant of  
9 nonintervention powers. Notice of the hearing must be given in  
10 accordance with (~~RCW 11.96.100 and 11.96.110~~) section 304 of this  
11 act.

12 (3) If, upon a petition under (~~chapter 11.96 RCW~~) section 301 of  
13 this act of any personal representative, beneficiary under the  
14 decedent's will, heir if any of the decedent's property passes  
15 according to the laws of intestate succession, or any unpaid creditor  
16 with a claim that has been accepted or judicially determined to be  
17 enforceable, the court determines that the decedent's estate is  
18 insolvent, the court shall reaffirm, rescind, or restrict in whole or  
19 in part any prior grant of nonintervention powers to the extent  
20 necessary to protect the best interests of the beneficiaries and  
21 creditors of the estate.

22 (4) If the court rescinds or restricts a prior grant of  
23 nonintervention powers, the court shall endorse the term "powers  
24 rescinded" or "powers restricted" upon the prior order together with  
25 the date of the endorsement.

26 **Sec. 616.** RCW 11.92.140 and 1991 c 193 s 32 are each amended to  
27 read as follows:

28 The court, upon the petition of a guardian of the estate of an  
29 incapacitated person other than the guardian of a minor, and after such  
30 notice as the court directs and other notice to all persons interested  
31 as required by chapter (~~11.96~~) 11.-- RCW (sections 101 through 507 of  
32 this act), may authorize the guardian to take any action, or to apply  
33 funds not required for the incapacitated person's own maintenance and  
34 support, in any fashion the court approves as being in keeping with the  
35 incapacitated person's wishes so far as they can be ascertained and as  
36 designed to minimize insofar as possible current or prospective state  
37 or federal income and estate taxes, permit entitlement under otherwise  
38 available federal or state medical or other assistance programs, and to

1 provide for gifts to such charities, relatives, and friends as would be  
2 likely recipients of donations from the incapacitated person.

3 The action or application of funds may include but shall not be  
4 limited to the making of gifts, to the conveyance or release of the  
5 incapacitated person's contingent and expectant interests in property  
6 including marital property rights and any right of survivorship  
7 incident to joint tenancy or tenancy by the entirety, to the exercise  
8 or release of the incapacitated person's powers as donee of a power of  
9 appointment, the making of contracts, the creation of revocable or  
10 irrevocable trusts of property of the incapacitated person's estate  
11 which may extend beyond the incapacitated person's disability or life,  
12 the establishment of custodianships for the benefit of a minor under  
13 chapter ((11.93)) 11.114 RCW, the Washington uniform transfers to  
14 minors act, the exercise of options of the incapacitated person to  
15 purchase securities or other property, the exercise of the  
16 incapacitated person's right to elect options and to change  
17 beneficiaries under insurance and annuity policies and the surrendering  
18 of policies for their cash value, the exercise of the incapacitated  
19 person's right to any elective share in the estate of the incapacitated  
20 person's deceased spouse, and the renunciation or disclaimer of any  
21 interest acquired by testate or intestate succession or by inter vivos  
22 transfer.

23 The guardian in the petition shall briefly outline the action or  
24 application of funds for which approval is sought, the results expected  
25 to be accomplished thereby and the savings expected to accrue. The  
26 proposed action or application of funds may include gifts of the  
27 incapacitated person's personal or real property. Gifts may be for the  
28 benefit of prospective legatees, devisees, or heirs apparent of the  
29 incapacitated person, or may be made to individuals or charities in  
30 which the incapacitated person is believed to have an interest. Gifts  
31 may or may not, in the discretion of the court, be treated as  
32 advancements to donees who would otherwise inherit property from the  
33 incapacitated person under the incapacitated person's will or under the  
34 laws of descent and distribution. The guardian shall also indicate in  
35 the petition that any planned disposition is consistent with the  
36 intentions of the incapacitated person insofar as the intentions can be  
37 ascertained, and if the incapacitated person's intentions cannot be  
38 ascertained, the incapacitated person will be presumed to favor  
39 reduction in the incidence of the various forms of taxation and the

1 partial distribution of the incapacitated person's estate as provided  
2 in this section. The guardian shall not, however, be required to  
3 include as a beneficiary any person whom there is reason to believe  
4 would be excluded by the incapacitated person. No guardian may be  
5 required to file a petition as provided in this section, and a failure  
6 or refusal to so petition the court does not constitute a breach of the  
7 guardian's fiduciary duties.

8 **Sec. 617.** RCW 11.95.140 and 1997 c 252 s 74 are each amended to  
9 read as follows:

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

12 (i) Under a will, codicil, trust agreement, or declaration of  
13 trust, deed, power of attorney, or other instrument executed after July  
14 25, 1993, unless the terms of the instrument refer specifically to RCW  
15 11.95.100 or 11.95.110 respectively and provide expressly to the  
16 contrary; or

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

19 (A) The trust is revoked, or amended to provide otherwise, and the  
20 terms of any amendment specifically refer to RCW 11.95.100 or  
21 11.95.110, respectively, and provide expressly to the contrary;

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

27 (C) A person entitled to judicial proceedings for a declaration of  
28 rights or legal relations under ~~((RCW 11.96.070))~~ section 301 of this  
29 act obtains a judicial determination ~~((, under chapter 11.96 RCW,))~~ that  
30 the application of this subsection (1)(a)(ii) to the trust is  
31 inconsistent with the provisions or purposes of the will or trust.

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

1 (2) Notwithstanding subsection (1) of this section, RCW 11.95.100  
2 through 11.95.150 shall apply to a power of appointment created under  
3 a will, codicil, trust agreement, or declaration of trust, deed, power  
4 of attorney, or other instrument executed prior to July 25, 1993, if  
5 the person who created the power of appointment had on July 25, 1993,  
6 the power to revoke, amend, or modify the instrument creating the power  
7 of appointment, unless:

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

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

17 **Sec. 618.** RCW 11.98.039 and 1985 c 30 s 44 are each amended to  
18 read as follows:

19 (1) Where a vacancy occurs in the office of the trustee and there  
20 is a successor trustee who is willing to serve as trustee and (a) is  
21 named in the governing instrument as successor trustee or (b) has been  
22 selected to serve as successor trustee under the procedure established  
23 in the governing instrument for the selection of a successor trustee,  
24 the outgoing trustee, or any other interested party, shall give notice  
25 of such vacancy, whether arising because of the trustee's resignation  
26 or because of any other reason, and of the successor trustee's  
27 agreement to serve as trustee, to all adult income beneficiaries of the  
28 trust and to all known and identifiable adults for whom the income of  
29 the trust is being accumulated. If there are no such adults, no notice  
30 need be given. The successor trustee named in the governing instrument  
31 or selected pursuant to the procedure therefor established in the  
32 governing instrument shall be entitled to act as trustee except for  
33 good cause or disqualification. The successor trustee shall serve as  
34 of the effective date of the discharge of the predecessor trustee as  
35 provided in RCW (~~11.98.040~~) 11.98.041.

36 (2) Where a vacancy exists or occurs in the office of the trustee  
37 and there is no successor trustee who is named in the governing  
38 instrument or who has been selected to serve as successor trustee under



1 the procedure established in the governing instrument for the selection  
2 of a successor trustee, and who is willing to serve as trustee, the  
3 beneficiaries and the then-acting trustee, if any, of a trust may agree  
4 (~~for the~~) to a nonjudicial change of the trustee under ((RCW  
5 ~~11.96.170))~~ section 402 of this act. The trustee, or any beneficiary  
6 if there is no then-acting trustee, shall give written notice of the  
7 proposed change in trustee to every beneficiary or special  
8 representative, and to the trustor if alive. The notice shall: (a)  
9 State the name and mailing address of the trustee or the beneficiary  
10 giving the notice; (b) include a copy of the governing instrument; (c)  
11 state the name and mailing address of the successor trustee; and (d)  
12 include a copy of the proposed successor trustee's agreement to serve  
13 as trustee. The notice shall advise the recipient of the right to  
14 petition for a judicial appointment or change in trustee as provided in  
15 subsection (3) of this section. The notice shall include a form on  
16 which consent or objection to the proposed change in trustee may be  
17 indicated. The successor trustee shall serve as of the effective date  
18 of the discharge of the predecessor trustee as provided in RCW  
19 11.98.041 or, in circumstances where there is no predecessor trustee,  
20 as of the effective date of the trustee's appointment.

21 (3) Any beneficiary of a trust, the trustor if alive, or the  
22 trustee may petition the superior court having jurisdiction for the  
23 appointment or change of a trustee under the procedures provided in  
24 (~~chapter 11.96 RCW~~) sections 301 through 313 of this act: (a)  
25 Whenever the office of trustee becomes vacant((~~τ~~))i (b) upon filing of  
26 a petition of resignation by a trustee((~~τ~~))i (c) upon the giving of  
27 notice of the change in trustee as referred to in subsection (1) or (2)  
28 of this section((~~τ~~))i or (d) for any other reasonable cause.

29 (4) For purposes of this subsection, the term fiduciary includes  
30 both trustee and personal representative.

31 (a) Except as otherwise provided in the governing instrument, a  
32 successor fiduciary, absent actual knowledge of a breach of fiduciary  
33 duty: (i) Is not liable for any act or omission of a predecessor  
34 fiduciary and is not obligated to inquire into the validity or  
35 propriety of any such act or omission; (ii) is authorized to accept as  
36 conclusively accurate any accounting or statement of assets tendered to  
37 the successor fiduciary by a predecessor fiduciary; and (iii) is  
38 authorized to receipt only for assets actually delivered and has no

1 duty to make further inquiry as to undisclosed assets of the trust or  
2 estate.

3 (b) Nothing in this section relieves a successor fiduciary from  
4 liability for retaining improper investments, nor does this section in  
5 any way bar the successor fiduciary, trust beneficiaries, or other  
6 party in interest from bringing an action against a predecessor  
7 fiduciary arising out of the acts or omissions of the predecessor  
8 fiduciary, nor does it relieve the successor fiduciary of liability for  
9 its own acts or omissions except as specifically stated or authorized  
10 in this section.

11 **Sec. 619.** RCW 11.98.051 and 1985 c 30 s 46 are each amended to  
12 read as follows:

13 (1) The trustee may transfer trust assets or the place of  
14 administration in accordance with (~~RCW 11.96.170~~) section 402 of this  
15 act. In addition, the trustee shall give written notice to those  
16 persons entitled to notice as provided for under (~~RCW 11.96.100 and~~  
17 ~~11.96.110~~) section 304 of this act and to the attorney general in the  
18 case of a charitable trust subject to chapter 11.110 RCW. The notice  
19 shall:

20 (a) State the name and mailing address of the trustee;

21 (b) Include a copy of the governing instrument of the trust;

22 (c) Include a statement of assets and liabilities of the trust  
23 dated within ninety days of the notice;

24 (d) State the name and mailing address of the trustee to whom the  
25 assets or administration will be transferred together with evidence  
26 that the trustee has agreed to accept the assets or trust  
27 administration in the manner provided by law of the new place of  
28 administration. The notice shall also contain a statement of the  
29 trustee's qualifications and the name of the court, if any, having  
30 jurisdiction of that trustee or in which a proceeding with respect to  
31 the administration of the trust may be heard;

32 (e) State the facts supporting the requirements of RCW  
33 11.98.045(2);

34 (f) Advise the beneficiaries of the right to petition for judicial  
35 determination of the proposed transfer as provided in RCW 11.98.055;  
36 and

37 (g) Include a form on which the recipient may indicate consent or  
38 objection to the proposed transfer.

1 (2) If the trustee receives written consent to the proposed  
2 transfer from all persons entitled to notice, the trustee may transfer  
3 the trust assets or place of administration as provided in the notice.  
4 Transfer in accordance with the notice is a full discharge of the  
5 trustee's duties in relation to all property referred to therein. Any  
6 person dealing with the trustee is entitled to rely on the authority of  
7 the trustee to act and is not obliged to inquire into the validity or  
8 propriety of the transfer.

9 **Sec. 620.** RCW 11.98.055 and 1985 c 30 s 47 are each amended to  
10 read as follows:

11 (1) Any trustee, beneficiary, or beneficiary representative may  
12 petition the superior court of the county of the situs of the trust for  
13 a transfer of trust assets or transfer of the place of administration  
14 in accordance with (~~chapter 11.96 RCW~~) sections 301 through 313 of  
15 this act.

16 (2) At the conclusion of the hearing, if the court finds the  
17 requirements of RCW 11.98.045(2) have been satisfied, it may direct the  
18 transfer of trust assets or the place of trust administration on such  
19 terms and conditions as it deems appropriate. The court in its  
20 discretion may provide for payment from the trust of reasonable fees  
21 and expenses for any party to the proceeding. Delivery of trust assets  
22 in accordance with the court's order is a full discharge of the  
23 trustee's duties in relation to all transferred property.

24 **Sec. 621.** RCW 11.98.080 and 1991 c 6 s 2 are each amended to read  
25 as follows:

26 (1) Two or more trusts may be consolidated if:

27 (a) The trusts so provide; or

28 (b) Whether provided in the trusts or not, in accordance with  
29 subsection (2) of this section, if all interested persons consent as  
30 provided in subsection (2)(b) of this section and the requirements of  
31 subsection (1)(d) of this section are satisfied; or

32 (c) Whether provided in the trusts or not, in accordance with  
33 subsection (3) of this section if the requirements of subsection (1)(d)  
34 of this section are satisfied;

35 (d) Consolidation under subsection (2) or (3) of this section is  
36 permitted only if:

1 (i) The dispositive provisions of each trust to be consolidated are  
2 substantially similar;

3 (ii) Consolidation is not inconsistent with the intent of the  
4 trustor with regard to any trust to be consolidated; and

5 (iii) Consolidation would facilitate administration of the trusts  
6 and would not materially impair the interests of the beneficiaries;

7 (e) Trusts may be consolidated whether created inter vivos or by  
8 will, by the same or different instruments, by the same or different  
9 trustors, whether the trustees are the same, and regardless of where  
10 the trusts were created or administered.

11 (2) The trustees of two or more trusts may consolidate the trusts  
12 on such terms and conditions as appropriate without court approval as  
13 provided in ((~~RCW 11.96.170~~)) section 402 of this act.

14 (a) The trustee shall give written notice of proposed consolidation  
15 by personal service or by certified mail to the beneficiaries of every  
16 trust affected by the consolidation as provided in ((~~RCW 11.96.100 and~~  
17 ~~11.96.110~~)) section 304 of this act and to any trustee of such trusts  
18 who does not join in the notice. The notice shall: (i) State the name  
19 and mailing address of the trustee; (ii) include a copy of the  
20 governing instrument of each trust to be consolidated; (iii) include a  
21 statement of assets and liabilities of each trust to be consolidated,  
22 dated within ninety days of the notice; (iv) fully describe the terms  
23 and manner of consolidation; and (v) state the reasons supporting the  
24 requirements of subsection (1)(d) of this section. The notice shall  
25 advise the recipient of the right to petition for a judicial  
26 determination of the proposed consolidation as provided in subsection  
27 (3) of this section. The notice shall include a form on which consent  
28 or objection to the proposed consolidation may be indicated.

29 (b) If the trustee receives written consent to the proposed  
30 consolidation from all persons entitled to notice as provided in ((~~RCW~~  
31 ~~11.96.100 and 11.96.110~~)) section 304 of this act or from their  
32 representatives, the trustee may consolidate the trusts as provided in  
33 the notice. Any person dealing with the trustee of the resulting  
34 consolidated trust is entitled to rely on the authority of that trustee  
35 to act and is not obliged to inquire into the validity or propriety of  
36 the consolidation under this section.

37 (3)(a) Any trustee, beneficiary, or special representative may  
38 petition the superior court of the county in which the principal place  
39 of administration of a trust is located for an order consolidating two

1 or more trusts under (~~chapter 11.96 RCW~~) sections 301 through 313 of  
2 this act. If nonjudicial consolidation has been commenced pursuant to  
3 subsection (2) of this section, a petition may be filed under this  
4 section unless the trustee has received all necessary consents. The  
5 principal place of administration of the trust is the trustee's usual  
6 place of business where the records pertaining to the trust are kept,  
7 or the trustee's residence if the trustee has no such place of  
8 business.

9 (b) At the conclusion of the hearing, if the court finds that the  
10 requirements of subsection (1)(d) of this section have been satisfied,  
11 it may direct consolidation of two or more trusts on such terms and  
12 conditions as appropriate. The court in its discretion may provide for  
13 payment from one or more of the trusts of reasonable fees and expenses  
14 for any party to the proceeding.

15 (4) This section applies to all trusts whenever created.

16 (5) For powers of fiduciaries to divide trusts, see RCW 11.108.025.

17 **Sec. 622.** RCW 11.98.110 and 1988 c 29 s 8 are each amended to read  
18 as follows:

19 As used in this section, a trust includes a probate estate, and a  
20 trustee includes a personal representative. The words "trustee" and  
21 "as trustee" mean "personal representative" and "as personal  
22 representative" where this section is being construed in regard to  
23 personal representatives.

24 Actions on contracts which have been transferred to a trust and on  
25 contracts made by a trustee, and actions in tort for personal liability  
26 incurred by a trustee in the course of administration may be maintained  
27 by the party in whose favor the cause of action has accrued as follows:

28 (1) The plaintiff may sue the trustee in the trustee's  
29 representative capacity and any judgment rendered in favor of the  
30 plaintiff is collectible by execution out of the trust property:  
31 PROVIDED, HOWEVER, If the action is in tort, collection shall not be  
32 had from the trust property unless the court determines in the action  
33 that (a) the tort was a common incident of the kind of business  
34 activity in which the trustee or the trustee's predecessor was properly  
35 engaged for the trust; or (b) that, although the tort was not a common  
36 incident of such activity, neither the trustee nor the trustee's  
37 predecessor, nor any officer or employee of the trustee or the  
38 trustee's predecessor, was guilty of personal fault in incurring the

1 liability; or (c) that, although the tort did not fall within classes  
2 (a) or (b) above, it increased the value of the trust property. If the  
3 tort is within classes (a) or (b) above, collection may be had of the  
4 full amount of damage proved, and if the tort is within class (c)  
5 above, collection may be had only to the extent of the increase in the  
6 value of the trust property.

7 (2) If the action is on a contract made by the trustee, the trustee  
8 may be held personally liable on the contract, if personal liability is  
9 not excluded. Either the addition by the trustee of the words  
10 "trustee" or "as trustee" after the signature of a trustee to a  
11 contract or the transaction of business as trustee under an assumed  
12 name in compliance with chapter 19.80 RCW excludes the trustee from  
13 personal liability. If the action is on a contract transferred to the  
14 trust or trustee, subject to any rights therein vested at time of the  
15 transfer, the trustee is personally liable only if he or she has in  
16 writing assumed that liability.

17 (3) In any such action against the trustee in the trustee's  
18 representative capacity the plaintiff need not prove that the trustee  
19 could have secured reimbursement from the trust fund if the trustee had  
20 paid the plaintiff's claim.

21 (4) The trustee may also be held personally liable for any tort  
22 committed by him or her, or by his or her agents or employees in the  
23 course of their employments only if, and to the extent that, damages  
24 for the tort are not collectible from trust property as provided in and  
25 pursuant to subsection (1) of this section.

26 (5) The procedure for all actions provided in this section is as  
27 provided in (~~chapter 11.96 RCW~~) sections 301 through 313 of this act.

28 (6) Nothing in this section shall be construed to change the  
29 existing law with regard to the liability of the trustee of a  
30 charitable trust for the torts of the trustee.

31 **Sec. 623.** RCW 11.98.170 and 1991 c 193 s 29 are each amended to  
32 read as follows:

33 (1) Any life insurance policy or retirement plan payment provision  
34 may designate as beneficiary:

35 (a) A trustee named or to be named by will, and immediately after  
36 the proving of the will, the proceeds of such insurance or of such plan  
37 designated as payable to that trustee, in part or in whole, shall be  
38 paid to the trustee in accordance with the beneficiary designation, to

1 be held and disposed of under the terms of the will governing the  
2 testamentary trust; or

3 (b) A trustee named or to be named under a trust agreement executed  
4 by the insured, the plan participant, or any other person, and the  
5 proceeds of such insurance or retirement plan designated as payable to  
6 such trustee, in part or in whole, shall be paid to the trustee in  
7 accordance with the beneficiary designation, to be held and disposed of  
8 by the trustee as provided in such trust agreement; a trust is valid  
9 even if the only corpus consists of the right of the trustee to receive  
10 as beneficiary insurance or retirement plan proceeds; any such trustee  
11 may also receive assets, other than insurance or retirement plan  
12 proceeds, by testamentary disposition or otherwise and, unless directed  
13 otherwise by the transferor of the assets, shall administer all  
14 property of the trust according to the terms of the trust agreement.

15 (2) If no qualified trustee makes claim to the insurance policy or  
16 retirement plan proceeds from the insurance company or the plan  
17 administrator within twelve months after the death of the insured or  
18 plan participant, determination of the proper recipient of the proceeds  
19 shall be made pursuant to the judicial or nonjudicial dispute  
20 resolution procedures of chapter ((11.96)) 11.-- RCW (sections 101  
21 through 507 of this act), unless prior to the institution of the  
22 judicial procedures, a qualified trustee makes claim to the proceeds,  
23 except that (a) if satisfactory evidence is furnished the insurance  
24 company or plan administrator within the twelve-month period showing  
25 that no trustee can or will qualify to receive such proceeds, payment  
26 shall be made to those otherwise entitled to the proceeds under the  
27 terms of the policy or retirement plan, including the terms of the  
28 beneficiary designation except that (b) if there is any dispute as to  
29 the proper recipient of insurance policy or retirement plan proceeds,  
30 the dispute shall be resolved pursuant to the judicial or nonjudicial  
31 resolution procedures in chapter ((11.96)) 11.-- RCW (sections 101  
32 through 507 of this act).

33 (3) The proceeds of the insurance or retirement plan as collected  
34 by the trustee are not subject to debts of the insured or the plan  
35 participant to any greater extent than if the proceeds were payable to  
36 any named beneficiary other than the personal representative or the  
37 estate of the insured or of the plan participant.

38 (4) For purposes of this section the following definitions apply:

1 (a) "Plan administrator" means the person upon whom claim must be  
2 made in order for retirement plan proceeds to be paid upon the death of  
3 the plan participant.

4 (b) "Retirement plan" means any plan, account, deposit, annuity, or  
5 benefit, other than a life insurance policy, that provides for payment  
6 to a beneficiary designated by the plan participant for whom the plan  
7 is established. The term includes, without limitation, such plans  
8 regardless of source of funding, and, for example, includes pensions,  
9 annuities, stock bonus plans, employee stock ownership plans, profit  
10 sharing plans, self-employed retirement plans, individual retirement  
11 accounts, individual retirement annuities, and retirement bonds, as  
12 well as any other retirement plan or program.

13 (c) "Trustee" includes any custodian under chapter 11.114 RCW or  
14 any similar statutory provisions of any other state and the terms  
15 "trust agreement" and "will" refer to the provisions of chapter 11.114  
16 RCW or such similar statutory provisions of any other state.

17 (5) Enactment of this section does not invalidate life insurance  
18 policy or retirement plan beneficiary designations executed prior to  
19 January 1, 1985, naming a trustee established by will or by trust  
20 agreement.

21 **Sec. 624.** RCW 11.98.200 and 1994 c 221 s 65 are each amended to  
22 read as follows:

23 Due to the inherent conflict of interest that exists between a  
24 trustee and a beneficiary of a trust, unless the terms of a trust refer  
25 specifically to RCW 11.98.200 through 11.98.240 and provide expressly  
26 to the contrary, the powers conferred upon a trustee who is a  
27 beneficiary of the trust, other than the trustor as a trustee, cannot  
28 be exercised by the trustee to make:

29 (1) Discretionary distributions of either principal or income to or  
30 for the benefit of the trustee, except to provide for the trustee's  
31 health, education, maintenance, or support as described under section  
32 2041 or 2514 of the Internal Revenue Code and the applicable  
33 regulations adopted under that section;

34 (2) Discretionary allocations of receipts or expenses as between  
35 principal and income, unless the trustee acts in a fiduciary capacity  
36 whereby the trustee has no power to enlarge or shift a beneficial  
37 interest except as an incidental consequence of the discharge of the  
38 trustee's fiduciary duties; or



1 (3) Discretionary distributions of either principal or income to  
2 satisfy a legal obligation of the trustee.

3 A proscribed power under this section that is conferred upon two or  
4 more trustees may be exercised by the trustees that are not  
5 disqualified under this section. If there is no trustee qualified to  
6 exercise a power proscribed under this section, a person described in  
7 (~~RCW 11.96.070~~) section 301 of this act who is entitled to seek  
8 judicial proceedings with respect to a trust may apply to a court of  
9 competent jurisdiction to appoint another trustee who would not be  
10 disqualified, and the power may be exercised by another trustee  
11 appointed by the court. Alternatively, another trustee who would not  
12 be disqualified may be appointed in accordance with the provisions of  
13 the trust instrument if the procedures are provided, or as set forth in  
14 RCW 11.98.039 as if the office of trustee were vacant, or by a  
15 nonjudicial dispute resolution agreement under (~~RCW 11.96.170~~)  
16 section 402 of this act.

17 **Sec. 625.** RCW 11.98.220 and 1993 c 339 s 4 are each amended to  
18 read as follows:

19 RCW 11.98.200 through 11.98.240 do not raise any inference that the  
20 law of this state prior to July 25, 1993, was different than under RCW  
21 11.98.200 through 11.98.240. Further, RCW 11.98.200 through 11.98.240  
22 do not raise an inference that prior to July 25, 1993, a trustee's  
23 exercise or failure to exercise a power described in RCW 11.98.200  
24 through 11.98.240 was not subject to review by a court of competent  
25 jurisdiction for abuse of discretion or breach of fiduciary duty under  
26 chapter (~~11.96~~) 11.-- RCW (sections 101 through 507 of this act) or  
27 other applicable law. Following July 25, 1993, the power of judicial  
28 review continues to apply.

29 **Sec. 626.** RCW 11.98.240 and 1997 c 252 s 76 are each amended to  
30 read as follows:

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

1 agreement, declaration of trust, deed, or other instrument executed  
2 after January 1, 1995, unless the instrument's terms refer specifically  
3 to RCW 11.98.200 and provide expressly to the contrary.

4 (ii) A trust created under a will, codicil, trust agreement,  
5 declaration of trust, deed, or other instrument executed before July  
6 25, 1993, unless:

7 (A) The trust is revoked or amended and the terms of the amendment  
8 refer specifically to RCW 11.98.200 and provide expressly to the  
9 contrary;

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

16 (C) A person entitled to judicial proceedings for a declaration of  
17 rights or legal relations under (~~RCW 11.96.070~~) section 301 of this  
18 act obtains a judicial determination(~~(, under chapter 11.96 RCW,)~~) that  
19 the application of this subsection (1)(a)(ii) to the trust is  
20 inconsistent with the provisions or purposes of the will or trust.

21 (b) Notwithstanding (a) of this subsection, RCW 11.98.200 and  
22 11.98.210 respectively apply to a trust established under a will or  
23 codicil of a decedent dying on or after July 25, 1993, and to an inter  
24 vivos trust to which the trustor had on or after July 25, 1993, the  
25 power to terminate, revoke, amend, or modify, unless:

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

28 (ii) The decedent or the trustor was not competent, on July 25,  
29 1993, to change the disposition of his or her property, or to  
30 terminate, revoke, amend, or modify the trust, and did not regain his  
31 or her competence to dispose, terminate, revoke, amend, or modify  
32 before the date of the decedent's death or before the trust could not  
33 otherwise be revoked, terminated, amended, or modified by the decedent  
34 or trustor.

35 (2) RCW 11.98.200 neither creates a new cause of action nor impairs  
36 an existing cause of action that, in either case, relates to a power  
37 proscribed under RCW 11.98.200 that was exercised before July 25, 1993.  
38 RCW 11.98.210 neither creates a new cause of action nor impairs an

1 existing cause of action that, in either case, relates to a power  
2 proscribed, limited, or qualified under RCW 11.98.210.

3 (3) For the purpose of subsection (1)(a)(ii) of this section,  
4 "parties in interest" means those persons identified as "~~((required))~~  
5 ~~parties ((to the dispute))~~" under ~~((RCW 11.96.170(6)(b)))~~ section  
6 104(4) of this act.

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

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

11 (b) Through a nonjudicial dispute resolution agreement described in  
12 ~~((RCW 11.96.170))~~ section 402 of this act.

13 **Sec. 627.** RCW 11.106.040 and 1985 c 30 s 98 are each amended to  
14 read as follows:

15 ~~((Upon the petition under chapter 11.96 RCW of any settlor or of~~  
16 ~~any beneficiary of such a trust after due notice as provided in chapter~~  
17 ~~11.96 RCW to the trustee)) At any time after the later of one year from  
18 the inception of the trust or one year after the day on which a report  
19 was last filed, any settlor or beneficiary of a trust may file a  
20 petition under section 301 of this act with the superior court in the  
21 county where the trustee or one of the trustees resides ((may)) asking  
22 the court to direct the trustee or trustees to file in the court an  
23 account ((at any time after one year from the day on which such a  
24 report was last filed, or if none, then after one year from the  
25 inception of the trust)). At the hearing on such petition the court  
26 may order the trustee to file an account for good cause shown.~~

27 **Sec. 628.** RCW 11.106.050 and 1985 c 30 s 99 are each amended to  
28 read as follows:

29 When any account has been filed pursuant to RCW 11.106.030 or  
30 11.106.040, the clerk of the court where filed shall fix a return day  
31 therefor as provided in ~~((RCW 11.96.090))~~ section 303(4) of this act  
32 and issue a notice. The notice shall state the time and place for the  
33 return date, the name or names of the trustee or trustees who have  
34 filed the account, that the account has been filed, that the court is  
35 asked to settle the account, and that any objections or exceptions to  
36 the account must be filed with the clerk of the court on or before the

1 return date. The notice shall be given as provided for notices under  
2 (~~RCW 11.96.100 or 11.96.110~~) section 304 of this act.

3 **Sec. 629.** RCW 11.106.060 and 1985 c 30 s 100 are each amended to  
4 read as follows:

5 Upon or before the return date any beneficiary of the trust may  
6 file the beneficiary's written objections or exceptions to the account  
7 filed or to any action of the trustee or trustees set forth in the  
8 account. The court shall appoint guardians ad litem as provided in  
9 (~~RCW 11.96.180~~) section 309 of this act and the court may allow  
10 representatives to be appointed under (~~RCW 11.96.110 and 11.96.170~~)  
11 section 305 or 405 of this act to represent the persons listed in those  
12 sections.

13 **Sec. 630.** RCW 11.108.040 and 1985 c 30 s 109 are each amended to  
14 read as follows:

15 (1) If a testator, under the terms of a governing instrument  
16 executed prior to September 12, 1981, leaves outright to or in trust  
17 for the benefit of that testator's surviving spouse an amount or  
18 fractional share of that testator's estate or a trust estate expressed  
19 in terms of one-half of that testator's federal adjusted gross estate,  
20 or by any other reference to the maximum estate tax marital deduction  
21 allowable under federal law without referring, either in that governing  
22 instrument or in any codicil or amendment thereto, specifically to the  
23 unlimited federal estate tax marital deduction enacted as part of the  
24 economic recovery tax act of 1981, such expression shall, unless  
25 subsection (2) or (3) of this section applies, be construed as  
26 referring to the unlimited federal estate tax marital deduction, and  
27 also as expressing such amount or fractional share, as the case may be,  
28 in terms of the minimum amount which will cause the least possible  
29 amount of federal estate tax to be payable as a result of the  
30 testator's death, taking into account other property passing to the  
31 surviving spouse that qualifies for the marital deduction, at the value  
32 at which it qualifies, and also taking into account all credits against  
33 the federal estate tax, but only to the extent that the use of these  
34 credits do not increase the death tax payable.

35 (2) If this subsection applies to a testator, such expression shall  
36 be construed as referring to the estate tax marital deduction allowed  
37 by federal law immediately prior to the enactment of the unlimited

1 estate tax marital deduction as a part of the economic recovery tax act  
2 of 1981. This subsection applies if subsection (3) of this section  
3 does not apply and:

4 (a) The application of this subsection to the testator will not  
5 cause an increase in the federal estate taxes payable as a result of  
6 the testator's death over the amount of such taxes which would be  
7 payable if subsection (1) of this section applied; or

8 (b) The testator is survived by a blood or adopted descendant who  
9 is not also a blood or adopted descendant of the testator's surviving  
10 spouse, unless such person or persons have entered into an agreement  
11 under ~~((the dispute resolution procedures in chapter 11.96 RCW))~~  
12 section 402 of this act; or

13 (c) The testator amended the governing instrument containing such  
14 expression after December 31, 1981, without amending such expression to  
15 refer expressly to the unlimited federal estate tax marital deduction.

16 (3) If the governing instrument contains language expressly stating  
17 that federal law of a particular time prior to January 1, 1982, is to  
18 govern the construction or interpretation of such expression, the  
19 expression shall be construed as referring to the marital deduction  
20 allowable under federal law in force and effect as of that time.

21 (4) If subsection (2) or (3) of this section applies to the  
22 testator, the expression shall not be construed as referring to any  
23 property that the personal representative of the testator's estate or  
24 other authorized fiduciary elects to qualify for the federal estate tax  
25 marital deduction as qualified terminable interest property. If  
26 subsection (1) of this section applies to the testator, any provision  
27 shall be construed as referring to any property that the personal  
28 representative of the testator's estate or other authorized fiduciary  
29 elects to qualify for the federal estate tax marital deduction as  
30 qualified terminable interest property, but only to the extent that  
31 such construction does not cause the amount or fractional share left to  
32 or for the benefit of the surviving spouse to be reduced below the  
33 amount that would pass under subsection (2) or (3) of this section,  
34 whichever is applicable.

35 (5) This section is effective with respect to testators dying after  
36 December 31, 1982.

37 **Sec. 631.** RCW 11.108.900 and 1985 c 30 s 112 are each amended to  
38 read as follows:

1 This chapter applies to all estates, trusts, and governing  
2 instruments in existence on or any time after March 7, 1984, and to all  
3 proceedings with respect thereto after that date, whether the  
4 proceedings commenced before or after that date, and including  
5 distributions made after that date. This chapter shall not apply to  
6 any governing instrument the terms of which expressly or by necessary  
7 implication make this chapter inapplicable. The judicial and  
8 nonjudicial dispute resolution procedures of chapter (~~11.96~~) 11.--  
9 RCW (sections 101 through 507 of this act) apply to this chapter.

10 **Sec. 632.** RCW 11.110.120 and 1985 c 30 s 125 are each amended to  
11 read as follows:

12 The attorney general may institute appropriate proceedings to  
13 secure compliance with this chapter and to secure the proper  
14 administration of any trust or other relationship to which this chapter  
15 applies. He shall be notified of all judicial proceedings involving or  
16 affecting the charitable trust or its administration in which, at  
17 common law, he is a necessary or proper party as representative of the  
18 public beneficiaries. The notification shall be given as provided in  
19 (~~RCW 11.96.100~~) section 304 of this act, but this notice requirement  
20 may be waived at the discretion of the attorney general. The powers  
21 and duties of the attorney general provided in this chapter are in  
22 addition to his existing powers and duties, and are not to be construed  
23 to limit or to restrict the exercise of the powers or the performance  
24 of the duties of the attorney general or of any prosecuting attorney  
25 which they may exercise or perform under any other provision of law.  
26 Except as provided herein, nothing in this chapter shall impair or  
27 restrict the jurisdiction of any court with respect to any of the  
28 matters covered by it.

29 **Sec. 633.** RCW 11.114.020 and 1991 c 193 s 2 are each amended to  
30 read as follows:

31 (1) This chapter applies to a transfer that refers to this chapter  
32 in the designation under RCW 11.114.090(1) by which the transfer is  
33 made if at the time of the transfer, the transferor, the minor, or the  
34 custodian is a resident of this state or the custodial property is  
35 located in this state. The custodianship so created remains subject to  
36 this chapter despite a subsequent change in residence of a transferor,

1 the minor, or the custodian, or the removal of custodial property from  
2 this state.

3 (2) A person designated as custodian under this chapter is subject  
4 to personal jurisdiction in this state with respect to any matter  
5 relating to the custodianship.

6 (3) A transfer that purports to be made and which is valid under  
7 the uniform transfers to minors act, the uniform gifts to minors act,  
8 or a substantially similar act of another state is governed by the law  
9 of the designated state and may be executed and is enforceable in this  
10 state if at the time of the transfer, the transferor, the minor, or the  
11 custodian is a resident of the designated state or the custodial  
12 property is located in the designated state.

13 (4) A matter under this chapter subject to court determination is  
14 governed by the procedures provided in (~~chapter 11.96 RCW~~) sections  
15 301 through 313 of this act. However, no guardian ad litem is required  
16 for the minor, except under RCW 11.114.190(1), in the case of a  
17 petition by a unrepresented minor under the age of fourteen years.

18 **Sec. 634.** RCW 36.18.012 and 1996 c 211 s 1 are each amended to  
19 read as follows:

20 (1) Revenue collected under this section is subject to division  
21 with the state for deposit in the public safety and education account  
22 under RCW 36.18.025.

23 (2) The party filing a transcript or abstract of judgment or  
24 verdict from a United States court held in this state, or from the  
25 superior court of another county or from a district court in the county  
26 of issuance, shall pay at the time of filing a fee of fifteen dollars.

27 (3) For the filing of a tax warrant by the department of revenue of  
28 the state of Washington, a fee of five dollars must be paid.

29 (4) The clerk shall collect a fee of twenty dollars for: Filing a  
30 paper not related to or a part of a proceeding, civil or criminal, or  
31 a probate matter, required or permitted to be filed in the clerk's  
32 office for which no other charge is provided by law.

33 (5) If the defendant serves or files an answer to an unlawful  
34 detainer complaint under chapter 59.18 or 59.20 RCW, the plaintiff  
35 shall pay before proceeding with the unlawful detainer action eighty  
36 dollars.

1 (6) For a restrictive covenant for filing a petition to strike  
2 discriminatory provisions in real estate under RCW 49.60.227 a fee of  
3 twenty dollars must be charged.

4 (7) A fee of twenty dollars must be charged for filing a will only,  
5 when no probate of the will is contemplated.

6 (8) A fee of two dollars must be charged for filing a petition,  
7 written agreement, or written memorandum in a nonjudicial probate  
8 dispute under ((RCW 11.96.170)) section 402 of this act.

9 (9) A fee of thirty-five dollars must be charged for filing a  
10 petition regarding a common law lien under RCW 60.70.060.

11 (10) For certification of delinquent taxes by a county treasurer  
12 under RCW 84.64.190, a fee of five dollars must be charged.

13 **Sec. 635.** RCW 36.18.020 and 1996 c 211 s 2 are each amended to  
14 read as follows:

15 (1) Revenue collected under this section is subject to division  
16 with the state public safety and education account under RCW 36.18.025  
17 and with the county or regional law library fund under RCW 27.24.070.

18 (2) Clerks of superior courts shall collect the following fees for  
19 their official services:

20 (a) The party filing the first or initial paper in any civil  
21 action, including, but not limited to an action for restitution,  
22 adoption, or change of name, shall pay, at the time the paper is filed,  
23 a fee of one hundred ten dollars except, in an unlawful detainer action  
24 under chapter 59.18 or 59.20 RCW for which the plaintiff shall pay a  
25 case initiating filing fee of thirty dollars, or in proceedings filed  
26 under RCW 28A.225.030 alleging a violation of the compulsory attendance  
27 laws where the petitioner shall not pay a filing fee. The thirty  
28 dollar filing fee under this subsection for an unlawful detainer action  
29 shall not include an order to show cause or any other order or judgment  
30 except a default order or default judgment in an unlawful detainer  
31 action.

32 (b) Any party, except a defendant in a criminal case, filing the  
33 first or initial paper on an appeal from a court of limited  
34 jurisdiction or any party on any civil appeal, shall pay, when the  
35 paper is filed, a fee of one hundred ten dollars.

36 (c) For filing of a petition for judicial review as required under  
37 RCW 34.05.514 a filing fee of one hundred ten dollars.



1 (d) For filing of a petition for unlawful harassment under RCW  
2 10.14.040 a filing fee of one hundred ten dollars.

3 (e) For filing the notice of debt due for the compensation of a  
4 crime victim under RCW 7.68.120(2)(a) a fee of one hundred ten dollars.

5 (f) In probate proceedings, the party instituting such proceedings,  
6 shall pay at the time of filing the first paper therein, a fee of one  
7 hundred ten dollars.

8 (g) For filing any petition to contest a will admitted to probate  
9 or a petition to admit a will which has been rejected, or a petition  
10 objecting to a written agreement or memorandum as provided in ((RCW  
11 ~~11.96.170~~)) section 402 of this act, there shall be paid a fee of one  
12 hundred ten dollars.

13 (h) Upon conviction or plea of guilty, upon failure to prosecute an  
14 appeal from a court of limited jurisdiction as provided by law, or upon  
15 affirmance of a conviction by a court of limited jurisdiction, a  
16 defendant in a criminal case shall be liable for a fee of one hundred  
17 ten dollars.

18 (i) With the exception of demands for jury hereafter made and  
19 garnishments hereafter issued, civil actions and probate proceedings  
20 filed prior to midnight, July 1, 1972, shall be completed and governed  
21 by the fee schedule in effect as of January 1, 1972: PROVIDED, That no  
22 fee shall be assessed if an order of dismissal on the clerk's record be  
23 filed as provided by rule of the supreme court.

24 (3) No fee shall be collected when a petition for relinquishment of  
25 parental rights is filed pursuant to RCW 26.33.080 or for forms and  
26 instructional brochures provided under RCW 26.50.030.

27 **Sec. 636.** RCW 83.100.180 and 1988 c 64 s 17 are each amended to  
28 read as follows:

29 At any time prior to the making of an order under RCW 83.100.170,  
30 any person having an interest in property subject to the tax may file  
31 objections in writing with the clerk of the superior court and serve a  
32 copy thereof upon the department, and the same shall be noted for trial  
33 before the court and a hearing had thereon as provided for hearings in  
34 ((~~chapter 11.96~~ RCW)) sections 301 through 313 of this act.

35 NEW SECTION. **Sec. 637.** The following acts or parts of acts are  
36 each repealed:

37 (1) RCW 11.16.060 and 1965 c 145 s 11.16.060;

- 1 (2) RCW 11.16.070 and 1965 c 145 s 11.16.070;  
2 (3) RCW 11.16.082 and 1965 c 145 s 11.16.082;  
3 (4) RCW 11.16.083 and 1996 c 249 s 7, 1977 ex.s. c 234 s 1, & 1965  
4 c 145 s 11.16.083;  
5 (5) RCW 11.96.009 and 1994 c 221 s 51 & 1985 c 31 s 2;  
6 (6) RCW 11.96.020 and 1994 c 221 s 52 & 1985 c 31 s 3;  
7 (7) RCW 11.96.030 and 1985 c 31 s 4;  
8 (8) RCW 11.96.040 and 1985 c 31 s 5;  
9 (9) RCW 11.96.050 and 1994 c 221 s 53 & 1985 c 31 s 6;  
10 (10) RCW 11.96.060 and 1994 c 221 s 54 & 1985 c 31 s 7;  
11 (11) RCW 11.96.070 and 1997 c 252 s 77, 1994 c 221 s 55, 1990 c 179  
12 s 1, 1988 c 29 s 6, & 1985 c 31 s 8;  
13 (12) RCW 11.96.080 and 1994 c 221 s 56 & 1985 c 31 s 9;  
14 (13) RCW 11.96.090 and 1994 c 221 s 57 & 1985 c 31 s 10;  
15 (14) RCW 11.96.100 and 1994 c 221 s 58 & 1985 c 31 s 11;  
16 (15) RCW 11.96.110 and 1994 c 221 s 59 & 1985 c 31 s 12;  
17 (16) RCW 11.96.120 and 1985 c 31 s 13;  
18 (17) RCW 11.96.130 and 1994 c 221 s 60 & 1985 c 31 s 14;  
19 (18) RCW 11.96.140 and 1994 c 221 s 61 & 1985 c 31 s 15;  
20 (19) RCW 11.96.150 and 1985 c 31 s 16;  
21 (20) RCW 11.96.160 and 1994 c 221 s 62, 1988 c 202 s 19, & 1985 c  
22 31 s 17;  
23 (21) RCW 11.96.170 and 1994 c 221 s 63, 1988 c 29 s 7, & 1985 c 31  
24 s 18;  
25 (22) RCW 11.96.180 and 1994 c 221 s 64 & 1985 c 31 s 19;  
26 (23) RCW 11.96.900 and 1985 c 31 s 1; and  
27 (24) RCW 11.96.901 and 1985 c 31 s 20.

28 **PART VII**

29 **MISCELLANEOUS--EFFECTIVE DATES**

30 NEW SECTION. **Sec. 701.** Part headings and captions used in this  
31 act are not any part of the law.

32 NEW SECTION. **Sec. 702.** Sections 101 through 507 of this act  
33 constitute a new chapter in Title 11 RCW.

34 NEW SECTION. **Sec. 703.** This act takes effect January 1, 2000.

1        NEW SECTION.    **Sec. 704.**    Section 405 of this act is remedial in  
2 nature and applies to all actions taken by special representatives from  
3 January 1, 1985, and thereafter.

      Passed the Senate March 4, 1999.

      Passed the House April 7, 1999.

      Approved by the Governor April 20, 1999.

      Filed in Office of Secretary of State April 20, 1999.