
SENATE BILL 6120

State of Washington 58th Legislature 2004 Regular Session

By Senators Esser, Kline, McCaslin, Winsley and Roach

Read first time 01/12/2004. Referred to Committee on Judiciary.

1 AN ACT Relating to trust and estate management; and amending RCW
2 21.35.005, 11.40.020, 11.40.030, 11.40.051, 11.40.070, 11.42.020,
3 11.42.030, 11.42.070, and 11.98.039.

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

5 **Sec. 1.** RCW 21.35.005 and 2003 c 118 s 1 are each amended to read
6 as follows:

7 Unless the context clearly requires otherwise, the definitions in
8 this section apply throughout this chapter.

9 (1) "Beneficiary form" means a registration of a security that
10 indicates the present owner of the security and the intention of the
11 owner regarding the person who will become the owner of the security
12 upon the death of the owner, referred to as a "beneficiary."

13 (2) "Devisee" means any person designated in a will to receive a
14 disposition of real or personal property.

15 (3) "Heirs" means those persons, including the surviving spouse,
16 who are entitled under the statutes of intestate succession to the
17 property of a decedent.

18 (4) "Person" means an individual, a corporation, an organization,
19 or other legal entity.

1 (5) "Personal representative" includes executor, administrator,
2 successor personal representative, special administrator, and persons
3 who perform substantially the same function under the law governing
4 their status.

5 (6) "Property" includes both real and personal property or any
6 interest therein and means anything that may be the subject of
7 ownership.

8 (7) "Register," including its derivatives, means to issue a
9 certificate showing the ownership of a certificated security or, in the
10 case of an uncertificated security, to initiate or transfer an account
11 showing ownership of securities.

12 (8) "Registering entity" means a person who originates or transfers
13 a security title by registration, and includes a broker maintaining
14 security accounts for customers and a transfer agent or other person
15 acting for or as an issuer of securities.

16 (9) "Security" means a share, participation, or other interest in
17 property, in a business, or in an obligation of an enterprise or other
18 issuer, and includes a certificated security, an uncertificated
19 security, and a security account.

20 (10) "Security account" means (a) a reinvestment account associated
21 with a security; a securities account with a broker; a cash balance in
22 a brokerage account; or cash, cash equivalents, interest, earnings, or
23 dividends earned or declared on a security in an account, a
24 reinvestment account, or a brokerage account, whether or not credited
25 to the account before the owner's death; (b) an agency account
26 including, without limitation, an investment management account,
27 investment advisory account, or custody account with a trust company or
28 a trust division of a bank with trust powers, including the securities
29 in the account; a cash balance in the account; and cash, cash
30 equivalents, interest, earnings, or dividends earned or declared on a
31 security in the account, whether or not credited to the account before
32 the owner's death; or (c) a cash balance or other property held for or
33 due to the owner of a security as a replacement for or product of an
34 account security, whether or not credited to the account before the
35 owner's death.

36 (11) "State" includes any state of the United States, the District
37 of Columbia, the Commonwealth of Puerto Rico, and any territory or
38 possession subject to the legislative authority of the United States.

1 **Sec. 2.** RCW 11.40.020 and 1999 c 42 s 601 are each amended to read
2 as follows:

3 (1) Subject to subsection (2) of this section, a personal
4 representative may give notice to the creditors of the decedent, (~~as~~
5 ~~directed~~) in substantially the form set forth in RCW 11.40.030,
6 announcing the personal representative's appointment and requiring that
7 persons having claims against the decedent present their claims within
8 the time specified in RCW 11.40.051 or be forever barred as to claims
9 against the decedent's probate and nonprobate assets. If notice is
10 given:

11 (a) The personal representative shall first file the original of
12 the notice with the court;

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

18 (c) The personal representative may, at any time during the probate
19 proceeding, give actual notice to creditors who become known to the
20 personal representative by serving the notice on the creditor or
21 mailing the notice to the creditor at the creditor's last known
22 address, by regular first class mail, postage prepaid; and

23 (d) The personal representative shall also mail a copy of the
24 notice, including the decedent's social security number, to the state
25 of Washington department of social and health services office of
26 financial recovery.

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

29 (2) If the decedent was a resident of the state of Washington at
30 the time of death and probate proceedings are commenced in a county
31 other than the county of the decedent's residence, then in addition to
32 the requirements under subsection (1) of this section, the personal
33 representative shall cause the notice to creditors in substantially the
34 form set forth in RCW 11.40.030 to be published once each week for
35 three successive weeks in a legal newspaper in the county of the
36 decedent's residence and shall file the notice (~~(to the creditors of~~
37 ~~the decedent as directed in RCW 11.40.030 must be filed)) with the
38 superior court of the county of the decedent's residence.~~

1 **Sec. 3.** RCW 11.40.030 and 1997 c 252 s 9 are each amended to read
2 as follows:

3 Notice under RCW 11.40.020 must contain the following elements in
4 substantially the following form:

5
6 CAPTION) No.
7 OF CASE) PROBATE NOTICE TO
8) CREDITORS
9 ) RCW 11.40.030

10 The personal representative named below has been appointed as
11 personal representative of this estate. Any person having a claim
12 against the decedent must, before the time the claim would be barred by
13 any otherwise applicable statute of limitations, present the claim in
14 the manner as provided in RCW 11.40.070 by serving on or mailing to the
15 personal representative or the personal representative's attorney at
16 the address stated below a copy of the claim and filing the original of
17 the claim with the court in which the probate proceedings were
18 commenced. The claim must be presented within the later of: (1)
19 Thirty days after the personal representative served or mailed the
20 notice to the creditor as provided under RCW 11.40.020(~~(+3)~~) (1)(c);
21 or (2) four months after the date of first publication of the notice.
22 If the claim is not presented within this time frame, the claim is
23 forever barred, except as otherwise provided in RCW 11.40.051 and
24 11.40.060. This bar is effective as to claims against both the
25 decedent's probate and nonprobate assets.

26 Date of First
27 Publication:

28 Personal Representative:

29 Attorney for the Personal Representative:

30 Address for Mailing or Service:

31 Court of probate proceedings and cause number:

32 **Sec. 4.** RCW 11.40.051 and 1997 c 252 s 11 are each amended to read
33 as follows:

34 (1) Whether or not notice is provided under RCW 11.40.020, a person
35 having a claim against the decedent is forever barred from making a

1 claim or commencing an action against the decedent, if the claim or
2 action is not already barred by an otherwise applicable statute of
3 limitations, unless the creditor presents the claim in the manner
4 provided in RCW 11.40.070 within the following time limitations:

5 (a) If the personal representative provided notice under RCW
6 11.40.020(1) (~~(and (2))~~) (a) and (b) and the creditor was given actual
7 notice as provided in RCW 11.40.020(~~(+3)~~) (1)(c), the creditor must
8 present the claim within the later of: (i) Thirty days after the
9 personal representative's service or mailing of notice to the creditor;
10 and (ii) four months after the date of first publication of the notice;

11 (b) If the personal representative provided notice under RCW
12 11.40.020(1) (~~(and (2))~~) (a) and (b) and the creditor was not given
13 actual notice as provided in RCW 11.40.020(~~(+3)~~) (1)(c):

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

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

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

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

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

27 **Sec. 5.** RCW 11.40.070 and 1997 c 252 s 13 are each amended to read
28 as follows:

29 (1) The claimant, the claimant's attorney, or the claimant's agent
30 shall sign the claim and include in the claim the following
31 information:

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

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

36 (c) A statement of the facts or circumstances constituting the
37 basis of the claim;

1 (d) The amount of the claim; and

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

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

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

9 (3) A claim must be presented within the time limits set forth in
10 RCW 11.40.051 by: (a) Serving on or mailing to, by regular first class
11 mail, the personal representative or the personal representative's
12 attorney a copy of the signed claim; and (b) filing the original of the
13 signed claim with the court in which probate proceedings were
14 commenced. A claim is deemed presented upon the later of the date of
15 postmark or service on the personal representative, or the personal
16 representative's attorney, and filing with the court.

17 (4) Notwithstanding any other provision of this chapter, if a
18 claimant makes a written demand for payment within the time limits set
19 forth in RCW 11.40.051, the personal representative may waive formal
20 defects and elect to treat the demand as a claim properly filed under
21 this chapter if: (a) The claim was due; (b) the amount paid is the
22 amount of indebtedness over and above all payments and offsets; (c) the
23 estate is solvent; and (d) the payment is made in good faith. Nothing
24 in this chapter limits application of the doctrines of waiver,
25 estoppel, or detrimental claims or any other equitable principle.

26 **Sec. 6.** RCW 11.42.020 and 1997 c 252 s 25 are each amended to read
27 as follows:

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

30 (a) As of the date of the filing of the notice to creditors with
31 the court, the notice agent has no knowledge of another person acting
32 as notice agent or of the appointment of a personal representative in
33 the decedent's estate in the state of Washington; and

34 (b) According to the records of the court as are available on the
35 date of the filing of the notice to creditors, no cause number
36 regarding the decedent has been issued to any other notice agent and no
37 personal representative of the decedent's estate had been appointed.

1 (2) The notice agent must give notice to the creditors of the
2 decedent, (~~as directed~~) in substantially the form set forth in RCW
3 11.42.030, announcing that the notice agent has elected to give
4 nonprobate notice to creditors and requiring that persons having claims
5 against the decedent present their claims within the time specified in
6 RCW 11.42.050 or be forever barred as to claims against the decedent's
7 probate and nonprobate assets.

8 (a) The notice agent shall first file the original of the notice
9 with the court.

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

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

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

21 (e) If the decedent was a resident of the state of Washington at
22 the time of death and the notice agent's declaration and oath were
23 filed in a county other than the county of the decedent's residence,
24 then in addition to the requirements in this section, the notice agent
25 shall cause the notice to creditors in substantially the form set forth
26 in RCW 11.42.030 to be published once each week for three successive
27 weeks in a legal newspaper in the county of the decedent's residence
28 and shall file the notice with the superior court of the county of the
29 decedent's residence.

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

32 **Sec. 7.** RCW 11.42.030 and 1997 c 252 s 26 are each amended to read
33 as follows:

34 Notice under RCW 11.42.020 must contain the following elements in
35 substantially the following form:

36)

1 CAPTION) No.
2 OF CASE) NONPROBATE
3) NOTICE TO CREDITORS
4) RCW 11.42.030
5 )

6 The notice agent named below has elected to give notice to
7 creditors of the above-named decedent. As of the date of the filing of
8 a copy of this notice with the court, the notice agent has no knowledge
9 of any other person acting as notice agent or of the appointment of a
10 personal representative of the decedent's estate in the state of
11 Washington. According to the records of the court as are available on
12 the date of the filing of this notice with the court, a cause number
13 regarding the decedent has not been issued to any other notice agent
14 and a personal representative of the decedent's estate has not been
15 appointed.

16 Any person having a claim against the decedent must, before the
17 time the claim would be barred by any otherwise applicable statute of
18 limitations, present the claim in the manner as provided in RCW
19 11.42.070 by serving on or mailing to the notice agent or the notice
20 agent's attorney at the address stated below a copy of the claim and
21 filing the original of the claim with the court in which the notice
22 agent's declaration and oath were filed. The claim must be presented
23 within the later of: (1) Thirty days after the notice agent served or
24 mailed the notice to the creditor as provided under RCW
25 11.42.020(2)(c); or (2) four months after the date of first publication
26 of the notice. If the claim is not presented within this time frame,
27 the claim is forever barred, except as otherwise provided in RCW
28 11.42.050 and 11.42.060. This bar is effective as to claims against
29 both the decedent's probate and nonprobate assets.

30 Date of First
31 Publication:

32 The notice agent declares under penalty of perjury under the laws
33 of the state of Washington on _____, [year], at
34 [city], [state] that the foregoing is true and
35 correct.

36

Notice Agent:

Attorney for the Notice Agent:

Address for Mailing or Service:

Court of Notice Agent's oath and declaration and cause number:

Sec. 8. RCW 11.42.070 and 1997 c 252 s 30 are each amended to read as follows:

(1) The claimant, the claimant's attorney, or the claimant's agent shall sign the claim and include in the claim the following information:

(a) The name and address of the claimant;

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

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

(d) The amount of the claim; and

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

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

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

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

(4) Notwithstanding any other provision of this chapter, if a claimant makes a written demand for payment within the time limits set forth in RCW 11.42.050, the notice agent may waive formal defects and elect to treat the demand as a claim properly filed under this chapter

1 if: (a) The claim was due; (b) the amount paid was the amount of
2 indebtedness over and above all payments and offsets; (c) the estate is
3 solvent; and (d) the payment is made in good faith. Nothing in this
4 chapter limits application of the doctrines of waiver, estoppel, or
5 detrimental claims or any other equitable principle.

6 **Sec. 9.** RCW 11.98.039 and 1999 c 42 s 618 are each amended to read
7 as follows:

8 (1) Where a vacancy occurs in the office of the trustee and there
9 is a successor trustee who is willing to serve as trustee and (a) is
10 named in the governing instrument as successor trustee or (b) has been
11 selected to serve as successor trustee under the procedure established
12 in the governing instrument for the selection of a successor trustee,
13 the outgoing trustee, or any other interested party, shall give notice
14 of such vacancy, whether arising because of the trustee's resignation
15 or because of any other reason, and of the successor trustee's
16 agreement to serve as trustee, to all adult income beneficiaries of the
17 trust and to all known and identifiable adults for whom the income of
18 the trust is being accumulated. If there are no such adults, no notice
19 need be given. The successor trustee named in the governing instrument
20 or selected pursuant to the procedure therefor established in the
21 governing instrument shall be entitled to act as trustee except for
22 good cause or disqualification. The successor trustee shall serve as
23 of the effective date of the discharge of the predecessor trustee as
24 provided in RCW 11.98.041.

25 (2) Where a vacancy exists or occurs in the office of the trustee
26 and there is no successor trustee who is named in the governing
27 instrument or who has been selected to serve as successor trustee under
28 the procedure established in the governing instrument for the selection
29 of a successor trustee, and who is willing to serve as trustee, the
30 beneficiaries and the then-acting trustee, if any, of a trust may agree
31 to a nonjudicial change of the trustee under RCW 11.96A.220. The
32 trustee, or any beneficiary if there is no then-acting trustee, shall
33 give written notice of the proposed change in trustee to every
34 beneficiary or special representative, and to the trustor if alive.
35 The notice shall: (a) State the name and mailing address of the
36 trustee or the beneficiary giving the notice; (b) include a copy of the
37 governing instrument; (c) state the name and mailing address of the

1 successor trustee; and (d) include a copy of the proposed successor
2 trustee's agreement to serve as trustee. The notice shall advise the
3 recipient of the right to petition for a judicial appointment or change
4 in trustee as provided in subsection ~~((+3+))~~ (4) of this section. The
5 notice shall include a form on which consent or objection to the
6 proposed change in trustee may be indicated. The successor trustee
7 shall serve as of the effective date of the discharge of the
8 predecessor trustee as provided in RCW 11.98.041 or, in circumstances
9 where there is no predecessor trustee, as of the effective date of the
10 trustee's appointment.

11 (3) When there is a desire to name one or more co-trustee to serve
12 with the existing trustee, the trustor, if alive, the beneficiaries,
13 and the then acting trustee of a trust may agree to the nonjudicial
14 addition of one or more co-trustees under RCW 11.96A.220. The trustor,
15 the trustee, or any beneficiary shall give written notice of the
16 proposed addition of one or more co-trustees to the trustor, if alive,
17 to every beneficiary, to any trustee, and to any special
18 representative. The notice shall: (a) State the name and mailing
19 address of the party giving notice, and their relationship to the
20 trust, whether as trustor, trustee, or beneficiary; (b) include a copy
21 of the governing instrument; (c) state the name and mailing address of
22 a co-trustee being appointed; and (d) include a copy of a proposed
23 successor co-trustee's agreement to serve as co-trustee. The notice
24 shall include a form on which consent or objection to the proposed
25 addition of a co-trustee may be indicated. An additional co-trustee
26 shall serve as of the effective date of the co-trustee's appointment.

27 (4) Any beneficiary of a trust, the trustor, if alive, or the
28 trustee may petition the superior court having jurisdiction for the
29 appointment or change of a trustee or co-trustee under the procedures
30 provided in RCW 11.96A.080 through 11.96A.200: (a) Whenever the office
31 of trustee becomes vacant; (b) upon filing of a petition of resignation
32 by a trustee; (c) upon the giving of notice of the change in trustee or
33 the addition of one or more co-trustees as referred to in subsections
34 (1) ~~((or—(2+))~~ through (3) of this section; or (d) for any other
35 reasonable cause.

36 ~~((+4+))~~ (5) For purposes of this subsection, the term fiduciary
37 includes both trustee and personal representative.

1 (a) Except as otherwise provided in the governing instrument, a
2 successor fiduciary, absent actual knowledge of a breach of fiduciary
3 duty: (i) Is not liable for any act or omission of a predecessor
4 fiduciary and is not obligated to inquire into the validity or
5 propriety of any such act or omission; (ii) is authorized to accept as
6 conclusively accurate any accounting or statement of assets tendered to
7 the successor fiduciary by a predecessor fiduciary; and (iii) is
8 authorized to receipt only for assets actually delivered and has no
9 duty to make further inquiry as to undisclosed assets of the trust or
10 estate.

11 (b) Nothing in this section relieves a successor fiduciary from
12 liability for retaining improper investments, nor does this section in
13 any way bar the successor fiduciary, trust beneficiaries, or other
14 party in interest from bringing an action against a predecessor
15 fiduciary arising out of the acts or omissions of the predecessor
16 fiduciary, nor does it relieve the successor fiduciary of liability for
17 its own acts or omissions except as specifically stated or authorized
18 in this section.

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