

CERTIFICATION OF ENROLLMENT

HOUSE BILL 1125

Chapter 97, Laws of 2005

59th Legislature
2005 Regular Session

TRUST AND ESTATE MANAGEMENT

EFFECTIVE DATE: 7/24/05

Passed by the House February 4, 2005
Yeas 96 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 6, 2005
Yeas 49 Nays 0

BRAD OWEN

President of the Senate

Approved April 20, 2005.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 1125** as passed by the House of Representatives and the Senate on the dates hereon set forth.

RICHARD NAFZIGER

Chief Clerk

FILED

April 20, 2005 - 3:26 p.m.

**Secretary of State
State of Washington**

HOUSE BILL 1125

Passed Legislature - 2005 Regular Session

State of Washington 59th Legislature 2005 Regular Session

By Representatives Serben, Lantz, Priest, Shabro and Ahern

Read first time 01/17/2005. Referred to Committee on Judiciary.

1 AN ACT Relating to trust and estate management; amending RCW
2 11.02.005, 11.12.110, 11.28.170, 11.40.020, 11.40.030, 11.40.051,
3 11.40.070, 11.42.020, 11.42.030, 11.42.070, 11.88.080, 11.94.010,
4 11.98.039, 21.35.005, and 22.28.030; and repealing RCW 11.04.270.

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

6 **Sec. 1.** RCW 11.02.005 and 2001 c 320 s 1 are each amended to read
7 as follows:

8 When used in this title, unless otherwise required from the
9 context:

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

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

17 (3) "Representation" refers to a method of determining distribution
18 in which the takers are in unequal degrees of kinship with respect to
19 the intestate, and is accomplished as follows: After first determining

1 who, of those entitled to share in the estate, are in the nearest
2 degree of kinship, the estate is divided into equal shares, the number
3 of shares being the sum of the number of persons who survive the
4 intestate who are in the nearest degree of kinship and the number of
5 persons in the same degree of kinship who died before the intestate but
6 who left issue surviving the intestate; each share of a deceased person
7 in the nearest degree shall be divided among those of the deceased
8 person's issue who survive the intestate and have no ancestor then
9 living who is in the line of relationship between them and the
10 intestate, those more remote in degree taking together the share which
11 their ancestor would have taken had he or she survived the intestate.
12 Posthumous children are considered as living at the death of their
13 parent.

14 (4) "Issue" (~~((includes))~~) means all the (~~((lawful))~~) lineal
15 descendants of (~~((the ancestor and all lawfully adopted children))~~) an
16 individual. An adopted individual is a lineal descendant of each of
17 his or her adoptive parents and of all individuals with regard to which
18 each adoptive parent is a lineal descendant.

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

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

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

30 (8) "Will" means an instrument validly executed as required by RCW
31 11.12.020.

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

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

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

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

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

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

13 (15) "Nonprobate asset" means those rights and interests of a
14 person having beneficial ownership of an asset that pass on the
15 person's death under a written instrument or arrangement other than the
16 person's will. "Nonprobate asset" includes, but is not limited to, a
17 right or interest passing under a joint tenancy with right of
18 survivorship, joint bank account with right of survivorship, payable on
19 death or trust bank account, transfer on death security or security
20 account, deed or conveyance if possession has been postponed until the
21 death of the person, trust of which the person is grantor and that
22 becomes effective or irrevocable only upon the person's death,
23 community property agreement, individual retirement account or bond, or
24 note or other contract the payment or performance of which is affected
25 by the death of the person. "Nonprobate asset" does not include: A
26 payable-on-death provision of a life insurance policy, annuity, or
27 other similar contract, or of an employee benefit plan; a right or
28 interest passing by descent and distribution under chapter 11.04 RCW;
29 a right or interest if, before death, the person has irrevocably
30 transferred the right or interest, the person has waived the power to
31 transfer it or, in the case of contractual arrangement, the person has
32 waived the unilateral right to rescind or modify the arrangement; or a
33 right or interest held by the person solely in a fiduciary capacity.
34 For the definition of "nonprobate asset" relating to revocation of a
35 provision for a former spouse upon dissolution of marriage or
36 declaration of invalidity of marriage, RCW 11.07.010(5) applies. For
37 the definition of "nonprobate asset" relating to revocation of a
38 provision for a former spouse upon dissolution of marriage or

1 declaration of invalidity of marriage, see RCW 11.07.010(5). For the
2 definition of "nonprobate asset" relating to testamentary disposition
3 of nonprobate assets, see RCW 11.11.010(7).

4 (16) "Internal Revenue Code" means the United States Internal
5 Revenue Code of 1986, as amended or renumbered as of January 1, 2001.

6 (17) References to "section 2033A" of the Internal Revenue Code in
7 wills, trust agreements, powers of appointment, beneficiary
8 designations, and other instruments governed by or subject to this
9 title shall be deemed to refer to the comparable or corresponding
10 provisions of section 2057 of the Internal Revenue Code, as added by
11 section 6006(b) of the Internal Revenue Service Restructuring Act of
12 1998 (H.R. 2676, P.L. 105-206); and references to the section 2033A
13 "exclusion" shall be deemed to mean the section 2057 deduction.

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

16 Words importing the masculine gender only may be extended to
17 females also.

18 **Sec. 2.** RCW 11.12.110 and 1994 c 221 s 14 are each amended to read
19 as follows:

20 Unless otherwise provided, when any property shall be given under
21 a will, or under a trust of which the decedent is a grantor and which
22 by its terms becomes irrevocable upon or before the grantor's death, to
23 any issue of a grandparent of the decedent and that issue dies before
24 the decedent, or dies before that issue's interest is no longer subject
25 to a contingency, leaving descendants who survive the decedent, those
26 descendants shall take that property as the predeceased issue would
27 have done if the predeceased issue had survived the decedent. If those
28 descendants are all in the same degree of kinship to the predeceased
29 issue they shall take equally or, if of unequal degree, then those of
30 more remote degree shall take by representation with respect to the
31 predeceased issue.

32 **Sec. 3.** RCW 11.28.170 and 1965 c 145 s 11.28.170 are each amended
33 to read as follows:

34 Before letters testamentary or of administration are issued, each
35 personal representative or an officer of a bank or trust company
36 qualified to act as a personal representative, must take and subscribe

1 an oath, before some person authorized to administer oaths, that the
2 duties of the trust as personal representative will be performed
3 according to law, which oath must be filed in the cause (~~and~~
4 ~~recorded~~)).

5 **Sec. 4.** RCW 11.40.020 and 1999 c 42 s 601 are each amended to read
6 as follows:

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

15 (a) The personal representative shall (~~first~~) file the (~~original~~
16 ~~of the~~) notice with the court;

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

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

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

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

33 (2) If the decedent was a resident of the state of Washington at
34 the time of death and probate proceedings are commenced in a county
35 other than the county of the decedent's residence, then instead of the
36 requirements under subsection (1)(a) and (b) of this section, the
37 personal representative shall cause the notice to creditors in

1 substantially the form set forth in RCW 11.40.030 to be published once
2 each week for three successive weeks in a legal newspaper in the county
3 of the decedent's residence and shall file the 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 in which the probate proceedings were commenced.

7 **Sec. 5.** RCW 11.40.030 and 1997 c 252 s 9 are each amended to read
8 as follows:

9 Notice under RCW 11.40.020 must contain the following elements in
10 substantially the following form:

11 CAPTION) No.
12 OF CASE) PROBATE NOTICE TO
13) CREDITORS
14) RCW 11.40.030

15 The personal representative named below has been appointed as
16 personal representative of this estate. Any person having a claim
17 against the decedent must, before the time the claim would be barred by
18 any otherwise applicable statute of limitations, present the claim in
19 the manner as provided in RCW 11.40.070 by serving on or mailing to the
20 personal representative or the personal representative's attorney at
21 the address stated below a copy of the claim and filing the original of
22 the claim with the court in which the probate proceedings were
23 commenced. The claim must be presented within the later of: (1)
24 Thirty days after the personal representative served or mailed the
25 notice to the creditor as provided under RCW 11.40.020((+3)) (1)(c);
26 or (2) four months after the date of first publication of the notice.
27 If the claim is not presented within this time frame, the claim is
28 forever barred, except as otherwise provided in RCW 11.40.051 and
29 11.40.060. This bar is effective as to claims against both the
30 decedent's probate and nonprobate assets.

31 Date of First
32 Publication:

33 Personal Representative:

34 Attorney for the Personal Representative:

35 Address for Mailing or Service:

1 Court of probate proceedings and cause number:

2 **Sec. 6.** RCW 11.40.051 and 1997 c 252 s 11 are each amended to read
3 as follows:

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

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

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

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

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

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

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

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

32 **Sec. 7.** RCW 11.40.070 and 1997 c 252 s 13 are each amended to read
33 as follows:

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

- 1 (a) The name and address of the claimant;
2 (b) The name, address, if different from that of the claimant, and
3 nature of authority of an agent signing the claim on behalf of the
4 claimant;
5 (c) A statement of the facts or circumstances constituting the
6 basis of the claim;
7 (d) The amount of the claim; and
8 (e) If the claim is secured, unliquidated, contingent, or not yet
9 due, the nature of the security, the nature of the uncertainty, or the
10 date when it will become due.

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

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

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

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

32 **Sec. 8.** RCW 11.42.020 and 1997 c 252 s 25 are each amended to read
33 as follows:

34 (1) (~~The~~) Subject to subsection (2) of this section, a notice
35 agent may give nonprobate notice to the creditors of the decedent if:

36 (a) As of the date of the filing of the notice to creditors with

1 the court, the notice agent has no knowledge of another person acting
2 as notice agent or of the appointment of a personal representative in
3 the decedent's estate in the state of Washington; and

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

8 (2) The notice agent must give notice to the creditors of the
9 decedent, (~~as directed~~) in substantially the form set forth in RCW
10 11.42.030, announcing that the notice agent has elected to give
11 nonprobate notice to creditors and requiring that persons having claims
12 against the decedent present their claims within the time specified in
13 RCW 11.42.050 or be forever barred as to claims against the decedent's
14 probate and nonprobate assets.

15 (a) The notice agent shall (~~first~~) file the (~~original of the~~)
16 notice with the court.

17 (b) The notice agent shall (~~then~~) cause the notice to be
18 published once each week for three successive weeks in a legal
19 newspaper in the notice county.

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

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

28 (e) If the decedent was a resident of the state of Washington at
29 the time of death and the notice agent's declaration and oath were
30 filed in a county other than the county of the decedent's residence,
31 then instead of the requirements in (a) and (b) of this subsection, the
32 notice agent shall cause the notice to creditors in substantially the
33 form set forth in RCW 11.42.030 to be published once each week for
34 three successive weeks in a legal newspaper in the county of the
35 decedent's residence and shall file the notice with the superior court
36 of the county in which the notice agent's declaration and oath were
37 filed.

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

3 **Sec. 9.** RCW 11.42.030 and 1997 c 252 s 26 are each amended to read
4 as follows:

5 Notice under RCW 11.42.020 must contain the following elements in
6 substantially the following form:

7)
8 CAPTION) No.
9 OF CASE) NONPROBATE
10) NOTICE TO CREDITORS
11) RCW 11.42.030
12)

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

23 Any person having a claim against the decedent must, before the
24 time the claim would be barred by any otherwise applicable statute of
25 limitations, present the claim in the manner as provided in RCW
26 11.42.070 by serving on or mailing to the notice agent or the notice
27 agent's attorney at the address stated below a copy of the claim and
28 filing the original of the claim with the court in which the notice
29 agent's declaration and oath were filed. The claim must be presented
30 within the later of: (1) Thirty days after the notice agent served or
31 mailed the notice to the creditor as provided under RCW
32 11.42.020(2)(c); or (2) four months after the date of first publication
33 of the notice. If the claim is not presented within this time frame,
34 the claim is forever barred, except as otherwise provided in RCW
35 11.42.050 and 11.42.060. This bar is effective as to claims against
36 both the decedent's probate and nonprobate assets.

1 Date of First
2 Publication:

3 The notice agent declares under penalty of perjury under the laws
4 of the state of Washington on _____, [year], at
5 [city], [state] that the foregoing is true and
6 correct.

7
8 Signature of Notice Agent

9 Notice Agent:

10 Attorney for the Notice Agent:

11 Address for Mailing or Service:

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

13 **Sec. 10.** RCW 11.42.070 and 1997 c 252 s 30 are each amended to
14 read as follows:

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

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

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

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

24 (d) The amount of the claim; and

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

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

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

32 (3) A claim must be presented within the time limits set forth in
33 RCW 11.42.050 by: (a) Serving on or mailing to, by regular first class
34 mail, the notice agent or the notice agent's attorney a copy of the
35 signed claim; and (b) filing the original of the signed claim with the

1 court in which the notice agent's declaration and oath were filed. A
2 claim is deemed presented upon the later of the date of postmark or
3 service on the notice agent, or the notice agent's attorney, and filing
4 with the court.

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

14 **Sec. 11.** RCW 11.88.080 and 1990 c 122 s 7 are each amended to read
15 as follows:

16 When either parent is deceased, the surviving parent of any minor
17 child (~~((may))~~) or a sole parent of a minor child, may by last will (~~((in~~
18 ~~writing appoint))~~) or durable power of attorney nominate a guardian or
19 guardians of the person, or of the estate or both, of a minor child,
20 whether born at the time of (~~((making))~~) executing the (~~((will))~~)
21 instrument or afterwards, to continue during the minority of such child
22 or for any less time. This nomination shall be effective in the event
23 of the death or incapacity of such parent. Every (~~((testamentary))~~)
24 guardian of the estate of a child shall give bond in like manner and
25 with like conditions as required by RCW 11.88.100 and 11.88.110, and he
26 or she shall have the same powers and perform the same duties with
27 regard to the person and estate of the minor as a guardian appointed
28 under this chapter. The court shall confirm the parent's
29 (~~((testamentary appointment))~~) nomination unless the court finds, based
30 upon evidence presented at a hearing on the matter, that the individual
31 (~~((appointed))~~) nominated in the surviving parent's will or durable power
32 of attorney is not qualified to serve.

33 **Sec. 12.** RCW 11.94.010 and 2003 c 283 s 27 are each amended to
34 read as follows:

35 (1) Whenever a principal designates another as his or her attorney
36 in fact or agent, by a power of attorney in writing, and the writing

1 contains the words "This power of attorney shall not be affected by
2 disability of the principal," or "This power of attorney shall become
3 effective upon the disability of the principal," or similar words
4 showing the intent of the principal that the authority conferred shall
5 be exercisable notwithstanding the principal's disability, the
6 authority of the attorney in fact or agent is exercisable on behalf of
7 the principal as provided notwithstanding later disability or
8 incapacity of the principal at law or later uncertainty as to whether
9 the principal is dead or alive. All acts done by the attorney in fact
10 or agent pursuant to the power during any period of disability or
11 incompetence or uncertainty as to whether the principal is dead or
12 alive have the same effect and inure to the benefit of and bind the
13 principal or the principal's guardian or heirs, devisees, and personal
14 representative as if the principal were alive, competent, and not
15 disabled. A principal may nominate, by a durable power of attorney,
16 the guardian or limited guardian of his or her estate or person for
17 consideration by the court if protective proceedings for the
18 principal's person or estate are thereafter commenced. The court shall
19 make its appointment in accordance with the principal's most recent
20 nomination in a durable power of attorney except for good cause or
21 disqualification. If a guardian thereafter is appointed for the
22 principal, the attorney in fact or agent, during the continuance of the
23 appointment, shall account to the guardian rather than the principal.
24 The guardian has the same power the principal would have had if the
25 principal were not disabled or incompetent, to revoke, suspend or
26 terminate all or any part of the power of attorney or agency.

27 (2) Persons shall place reasonable reliance on any determination of
28 disability or incompetence as provided in the instrument that specifies
29 the time and the circumstances under which the power of attorney
30 document becomes effective.

31 (3)(a) A principal may authorize his or her attorney-in-fact to
32 provide informed consent for health care decisions on the principal's
33 behalf. If a principal has appointed more than one agent with
34 authority to make mental health treatment decisions in accordance with
35 a directive under chapter 71.32 RCW, to the extent of any conflict, the
36 most recently appointed agent shall be treated as the principal's agent
37 for mental health treatment decisions unless provided otherwise in
38 either appointment.

1 (b) Unless he or she is the spouse, or adult child or brother or
2 sister of the principal, none of the following persons may act as the
3 attorney-in-fact for the principal: Any of the principal's physicians,
4 the physicians' employees, or the owners, administrators, or employees
5 of the health care facility or long-term care facility as defined in
6 RCW 43.190.020 where the principal resides or receives care. Except
7 when the principal has consented in a mental health advance directive
8 executed under chapter 71.32 RCW to inpatient admission or
9 electroconvulsive therapy, this authorization is subject to the same
10 limitations as those that apply to a guardian under RCW 11.92.043(5)
11 (a) through (c).

12 (4) A parent or guardian, by a properly executed power of attorney,
13 may authorize an attorney in fact to make health care decisions on
14 behalf of one or more of his or her children, or children for whom he
15 or she is the legal guardian, who are under the age of majority as
16 defined in RCW 26.28.015, to be effective if the child has no other
17 parent or legal representative readily available and authorized to give
18 such consent.

19 (5) A principal may further nominate a guardian or guardians of the
20 person, or of the estate or both, of a minor child, whether born at the
21 time of making the durable power of attorney or afterwards, to continue
22 during the disability of the principal, during the minority of the
23 child or for any less time by including such a provision in his or her
24 power of attorney.

25 (6) The authority of any guardian of the person of any minor child
26 shall supersede the authority of a designated attorney in fact to make
27 health care decisions for the minor only after such designated guardian
28 has been appointed by the court.

29 (7) In the event a conflict between the provisions of a will
30 nominating a testamentary guardian under the authority of RCW 11.88.080
31 and the nomination of a guardian under the authority of this statute,
32 the most recent designation shall control.

33 **Sec. 13.** RCW 11.98.039 and 1999 c 42 s 618 are each amended to
34 read as follows:

35 (1) Where a vacancy occurs in the office of the trustee and there
36 is a successor trustee who is willing to serve as trustee and (a) is
37 named in the governing instrument as successor trustee or (b) has been

1 selected to serve as successor trustee under the procedure established
2 in the governing instrument for the selection of a successor trustee,
3 the outgoing trustee, or any other interested party, shall give notice
4 of such vacancy, whether arising because of the trustee's resignation
5 or because of any other reason, and of the successor trustee's
6 agreement to serve as trustee, to ~~((all adult income beneficiaries of
7 the trust and to all known and identifiable adults for whom the income
8 of the trust is being accumulated))~~ each adult distributee or
9 permissible distributee of trust income or of trust principal or of
10 both trust income and trust principal. If there are no such adults, no
11 notice need be given. The successor trustee named in the governing
12 instrument or selected pursuant to the procedure therefor established
13 in the governing instrument shall be entitled to act as trustee except
14 for good cause or disqualification. The successor trustee shall serve
15 as of the effective date of the discharge of the predecessor trustee as
16 provided in RCW 11.98.041.

17 (2) Where a vacancy exists or occurs in the office of the trustee
18 and there is no successor trustee who is named in the governing
19 instrument or who has been selected to serve as successor trustee under
20 the procedure established in the governing instrument for the selection
21 of a successor trustee, and who is willing to serve as trustee, ~~((the
22 beneficiaries and the then acting trustee, if any, of a))~~ then all
23 parties with an interest in the trust may agree to a nonjudicial change
24 of the trustee under RCW 11.96A.220. ~~((The trustee, or any beneficiary
25 if there is no then acting trustee, shall give written notice of the
26 proposed change in trustee to every beneficiary or special
27 representative, and to the trustor if alive. The notice shall: (a)
28 State the name and mailing address of the trustee or the beneficiary
29 giving the notice; (b) include a copy of the governing instrument; (c)
30 state the name and mailing address of the successor trustee; and (d)
31 include a copy of the proposed successor trustee's agreement to serve
32 as trustee. The notice shall advise the recipient of the right to
33 petition for a judicial appointment or change in trustee as provided in
34 subsection (3) of this section. The notice shall include a form on
35 which consent or objection to the proposed change in trustee may be
36 indicated.))~~ The successor trustee shall serve as of the effective
37 date of the discharge of the predecessor trustee as provided in RCW

1 11.98.041 or, in circumstances where there is no predecessor trustee,
2 as of the effective date of the trustee's appointment.

3 (3) When there is a desire to name one or more co-trustees to serve
4 with the existing trustee, then all parties with an interest in the
5 trust may agree to the nonjudicial addition of one or more co-trustees
6 under RCW 11.96A.220. The additional co-trustee shall serve as of the
7 effective date of the co-trustee's appointment.

8 (4) Unless subsection (1), (2), or (3) of this section applies, any
9 beneficiary of a trust, the trustor, if alive, or the trustee may
10 petition the superior court having jurisdiction for the appointment or
11 change of a trustee or co-trustee under the procedures provided in RCW
12 11.96A.080 through 11.96A.200: (a) Whenever the office of trustee
13 becomes vacant; (b) upon filing of a petition of resignation by a
14 trustee; or (c) ~~((upon the giving of notice of the change in trustee as~~
15 ~~referred to in subsection (1) or (2) of this section; or (d))~~ for any
16 other reasonable cause.

17 ~~((4))~~ (5) For purposes of this subsection, the term fiduciary
18 includes both trustee and personal representative.

19 (a) Except as otherwise provided in the governing instrument, a
20 successor fiduciary, absent actual knowledge of a breach of fiduciary
21 duty: (i) Is not liable for any act or omission of a predecessor
22 fiduciary and is not obligated to inquire into the validity or
23 propriety of any such act or omission; (ii) is authorized to accept as
24 conclusively accurate any accounting or statement of assets tendered to
25 the successor fiduciary by a predecessor fiduciary; and (iii) is
26 authorized to receipt only for assets actually delivered and has no
27 duty to make further inquiry as to undisclosed assets of the trust or
28 estate.

29 (b) Nothing in this section relieves a successor fiduciary from
30 liability for retaining improper investments, nor does this section in
31 any way bar the successor fiduciary, trust beneficiaries, or other
32 party in interest from bringing an action against a predecessor
33 fiduciary arising out of the acts or omissions of the predecessor
34 fiduciary, nor does it relieve the successor fiduciary of liability for
35 its own acts or omissions except as specifically stated or authorized
36 in this section.

1 **Sec. 14.** RCW 21.35.005 and 2003 c 118 s 1 are each amended to read
2 as follows:

3 Unless the context clearly requires otherwise, the definitions in
4 this section apply throughout this chapter.

5 (1) "Beneficiary form" means a registration of a security that
6 indicates the present owner of the security and the intention of the
7 owner regarding the person who will become the owner of the security
8 upon the death of the owner, referred to as a "beneficiary."

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

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

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

16 (5) "Personal representative" includes executor, administrator,
17 successor personal representative, special administrator, and persons
18 who perform substantially the same function under the law governing
19 their status.

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

23 (7) "Register," including its derivatives, means to issue a
24 certificate showing the ownership of a certificated security or, in the
25 case of an uncertificated security, to initiate or transfer an account
26 showing ownership of securities.

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

31 (9) "Security" means a share, participation, or other interest in
32 property, in a business, or in an obligation of an enterprise or other
33 issuer, and includes a certificated security, an uncertificated
34 security, and a security account.

35 (10) "Security account" means (a) a reinvestment account associated
36 with a security; a securities account with a broker; a cash balance in
37 a brokerage account; or cash, cash equivalents, interest, earnings, or
38 dividends earned or declared on a security in an account, a

1 reinvestment account, or a brokerage account, whether or not credited
2 to the account before the owner's death; (b) an agency account
3 including, without limitation, an investment management account,
4 investment advisory account, or custody account, with a trust company
5 or a trust division of a bank with trust powers, including the
6 securities in the account; a cash balance in the account; and cash,
7 cash equivalents, interest, earnings, or dividends earned or declared
8 on a security in the account, whether or not credited to the account
9 before the owner's death; or (c) a cash balance or other property held
10 for or due to the owner of a security as a replacement for or product
11 of an account security, whether or not credited to the account before
12 the owner's death.

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

16 **Sec. 15.** RCW 22.28.030 and 1923 c 186 s 3 are each amended to read
17 as follows:

18 Whenever any safe deposit company shall let or lease any vault,
19 safe, box or other receptacle for the keeping or storage of personal
20 property such safe deposit company shall be bound to exercise due care
21 to prevent the opening of such vault, safe, box or receptacle by any
22 person other than the lessee thereof, or his or her duly authorized
23 agent, and (~~said~~) the parties may provide in writing the terms,
24 conditions, and liabilities in (~~said~~) the lease. Authorized agent as
25 used in this section includes, but is not limited to, a duly appointed
26 personal representative, an attorney in fact, a special representative,
27 or a trustee acting under a revocable living trust.

28 NEW SECTION. **Sec. 16.** RCW 11.04.270 (Limitation of liability for
29 debts) and 1965 c 145 s 11.04.270 are each repealed.

Passed by the House February 4, 2005.

Passed by the Senate April 6, 2005.

Approved by the Governor April 20, 2005.

Filed in Office of Secretary of State April 20, 2005.