

Washington Code Title 11 — Probate and trust law

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Chapter 11.96A RCW: Trust and estate dispute resolution

RCW Sections

RCW 11.96A.010: Purpose

The overall purpose of this chapter is to set forth generally applicable statutory provisions for the resolution of disputes and other matters involving trusts and estates in a single chapter under Title [11](#) RCW. The provisions

are intended to provide nonjudicial methods for the resolution of matters, such as mediation, arbitration, and agreement. The [This] chapter also provides for judicial resolution of disputes if other methods are unsuccessful.

RCW 11.96A.020: General power of courts — Intent — Plenary power of the court.

(1) It is the intent of the legislature that the courts shall have full and ample power and authority under this title to administer and settle:

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

(b) All trusts and trust matters.

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

[1999 c 42 § 103.]

RCW 11.96A.030: Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

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

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

(c) The determination of any question arising in the administration of an estate or trust, or with respect to any nonprobate asset, or with respect to any other asset or property interest passing at death, that may include, without limitation, questions relating to: (i) The construction of wills, trusts, community property agreements, and other writings; (ii) a change of personal representative or trustee; (iii) a change of the situs of a trust; (iv) an accounting from a personal representative or trustee; or (v) the determination of fees for a personal representative or trustee;

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

(e) The amendment, reformation, or conformation of a will or a trust instrument to comply with statutes and regulations of the United States internal revenue service in order to achieve qualification for deductions,

elections, and other tax requirements, including the qualification of any gift thereunder for the benefit of a surviving spouse who is not a citizen of the United States for the estate tax marital deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a qualified domestic trust under section 2056A of the internal revenue code, the qualification of any gift thereunder as a qualified conservation easement as permitted by federal law, or the qualification of any gift for the charitable estate tax deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust; and

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

(i) The ascertaining of any class of creditors or others for purposes of chapter [11.18](#) or [11.42](#) RCW;

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

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

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

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

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

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

(2) "Notice agent" has the meanings given in RCW [11.42.010](#).

(3) "Nonprobate assets" has the meaning given in RCW [11.02.005](#).

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

(a) The trustor if living;

(b) The trustee;

(c) The personal representative;

(d) An heir;

- (e) A beneficiary, including devisees, legatees, and trust beneficiaries;
 - (f) The surviving spouse of a decedent with respect to his or her interest in the decedent's property;
 - (g) A guardian ad litem;
 - (h) A creditor;
 - (i) Any other person who has an interest in the subject of the particular proceeding;
 - (j) The attorney general if required under RCW [11.110.120](#);
 - (k) Any duly appointed and acting legal representative of a party such as a guardian, special representative, or attorney in fact;
 - (l) Where applicable, the virtual representative of any person described in this subsection the giving of notice to whom would meet notice requirements as provided in RCW [11.96A.120](#);
 - (m) Any notice agent, resident agent, or a qualified person, as those terms are defined in chapter [11.42](#) RCW; and
 - (n) The owner or the personal representative of the estate of the deceased owner of the nonprobate asset that is the subject of the particular proceeding, if the subject of the particular proceeding relates to the beneficiary's liability to a decedent's estate or creditors under RCW [11.18.200](#).
- (5) "Persons interested in the estate or trust" means the trustor, if living, all persons beneficially interested in the estate or trust, persons holding powers over the trust or estate assets, the attorney general in the case of any charitable trust where the attorney general would be a necessary party to judicial proceedings concerning the trust, and any personal representative or trustee of the estate or trust.
- (6) "Principal place of administration of the trust" means the trustee's usual place of business where the day-to-day records pertaining to the trust are kept, or the trustee's residence if the trustee has no such place of business.
- (7) The "situs" of a trust means the place where the principal place of administration of the trust is located, unless otherwise provided in the instrument creating the trust.
- (8) "Trustee" means any acting and qualified trustee of the trust.
- (9) "Representative" and other similar terms refer to a person who virtually represents another under RCW [11.96A.120](#).
- (10) "Citation" or "cite" and other similar terms, when required of a person interested in the estate or trust or a party to a petition, means to give notice as required under RCW [11.96A.100](#). "Citation" or "cite" and other similar terms, when required of the court, means to order, as authorized under RCW [11.96A.020](#) and [11.96A.060](#), and as authorized by law.

11.96A.040: Original jurisdiction in probate and trust matters — Powers of court.

(1) The superior court of every county has original subject matter jurisdiction over the probate of wills and the administration of estates of incapacitated, missing, and deceased individuals in all instances, including without limitation:

- (a) When a resident of the state dies;
- (b) When a nonresident of the state dies in the state; or
- (c) When a nonresident of the state dies outside the state.

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

(3) The superior courts may: Probate or refuse to probate wills, appoint personal representatives, administer and settle the affairs and the estates of incapacitated, missing, or deceased individuals including but not limited to decedents' nonprobate assets; administer and settle matters that relate to nonprobate assets and arise under chapter [11.18](#) or [11.42](#) RCW; administer and settle all matters relating to trusts; administer and settle matters that relate to powers of attorney; award processes and cause to come before them all persons whom the courts deem it necessary to examine; order and cause to be issued all such writs and any other orders as are proper or necessary; and do all other things proper or incident to the exercise of jurisdiction under this section.

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

[2001 c 203 § 9; 1999 c 42 § 201.]

11.96A.050: Venue in proceedings involving probate or trust matters.

(1) Venue for proceedings pertaining to trusts shall be:

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

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

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

(3) Venue for proceedings pertaining to the probate of wills, the administration and disposition of a decedent's property, including nonprobate assets, and any other matter not identified in subsection (1) or (2) of this section, may be in any county in the state of Washington. A party to a proceeding may request that venue be changed if the request is made within four months of the mailing of the notice of appointment and pendency

of probate required by RCW [11.28.237](#), and except for good cause shown, venue must be moved as follows:

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

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

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

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

(iii) The county in which the decedent died.

(4) Once letters testamentary or of administration have been granted in the state of Washington, all orders, settlements, trials, and other proceedings under this title shall be had or made in the county in which such letters have been granted unless venue is moved as provided in subsection (2) of this section.

(5) Venue for proceedings pertaining to powers of attorney shall be in the superior court of the county of the principal's residence, except for good cause shown.

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

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

[2001 c 203 § 10; 1999 c 42 § 202.]

11.96A.060: Exercise of powers — Orders, writs, process, etc.

The court may make, issue, and cause to be filed or served, any and all manner and kinds of orders, judgments, citations, notices, summons, and other writs and processes that might be considered proper or necessary in the exercise of the jurisdiction or powers given or intended to be given by this title.

[1999 c 42 § 203.]

11.96A.070: Statutes of limitation.

(1)(a) An action against the trustee of an express trust for a breach of fiduciary duty must be brought within three years from the earlier of: (i) The time the alleged breach was discovered or reasonably should have been discovered; (ii) the discharge of a trustee from the trust as provided in RCW [11.98.041](#) or by agreement of the parties under RCW [11.96A.220](#); or (iii) the time of termination of the trust or the trustee's repudiation of the trust.

(b) The provisions of (a) of this subsection apply to all express trusts, no matter when created, however it shall not apply to express trusts created before June 10, 1959, until the date that is three years after January 1, 2000.

(c) For purposes of this section, "express trust" does not include resulting trusts, constructive trusts, business trusts in which certificates of beneficial interest are issued to the beneficiary, investment trusts, voting

trusts, trusts in the nature of mortgages or pledges, trusts created by the judgment or decree of a court not sitting in probate, liquidation trusts, or trusts for the sole purpose of paying dividends, interest, interest coupons, salaries, wages, pensions, or profits, trusts created in deposits in any financial institution under chapter [30.22](#) RCW, unless any such trust that is created in writing specifically incorporates this chapter in whole or in part.

(2) Except as provided in RCW [11.96A.250](#) with respect to special representatives, an action against a personal representative for alleged breach of fiduciary duty by an heir, legatee, or other interested party must be brought before discharge of the personal representative.

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

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

(A) Three years from the discharge of the special representative as provided in RCW [11.96A.250](#); or

(B) The entry of an order by a court of competent jurisdiction under RCW [11.96A.240](#) approving the written agreement executed by all interested parties in accord with the provisions of RCW [11.96A.220](#).

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

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

[1999 c 42 § 204.]

11.96A.080: Persons entitled to judicial proceedings for declaration of rights or legal relations.

(1) Subject to the provisions of RCW [11.96A.260](#) through [11.96A.320](#), any party may have a judicial proceeding for the declaration of rights or legal relations with respect to any matter, as defined by RCW [11.96A.030](#); the

) Summons
)

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

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

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

This summons is issued under RCW [11.96A.100](#)(3).

(Signed)

Print or Type Name

Dated:

Telephone Number:

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

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

(6) Proceedings under this chapter are subject to the mediation and arbitration provisions of this chapter. Except as specifically provided in RCW [11.96A.310](#), the provisions of chapter [7.06](#) RCW do not apply;

(7) Testimony of witnesses may be by affidavit;

(8) Unless requested otherwise by a party in a petition or answer, the initial hearing must be a hearing on

the merits to resolve all issues of fact and all issues of law;

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

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

[2001 c 14 § 1; 1999 c 42 § 303.]

11.96A.110: Notice in judicial proceedings under this title requiring notice.

(1) Subject to RCW [11.96A.160](#), in all judicial proceedings under this title that require notice, the notice must be personally served on or mailed to all parties or the parties' virtual representatives at least twenty days before the hearing on the petition unless a different period is provided by statute or ordered by the court. The date of service shall be determined under the rules of civil procedure.

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

[1999 c 42 § 304.]

11.96A.115: Discovery.

In all matters governed by this title, discovery shall be permitted only in the following matters:

(1) A judicial proceeding that places one or more specific issues in controversy that has been commenced under RCW [11.96A.100](#), in which case discovery shall be conducted in accordance with the superior court civil rules and applicable local rules; or

(2) A matter in which the court orders that discovery be permitted on a showing of good cause, in which case discovery shall be conducted in accordance with the superior court civil rules and applicable local rules unless otherwise limited by the order of the court.

[2006 c 360 § 11.]

11.96A.120: Application of doctrine of virtual representation.

(1) This section is intended to adopt the common law concept of virtual representation. This section supplements the common law relating to the doctrine of virtual representation and shall not be construed as limiting the application of that common law doctrine.

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

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

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

(c) Except as otherwise provided in this subsection, where an interest in an estate, trust, or nonprobate asset or an interest that may be affected by a power of attorney has been given to a person or a class of persons, or both, upon the happening of any future event, and the same interest or a share of the interest is to pass to another person or class of persons, or both, upon the happening of an additional future event, notice may be given to the living person or persons who would take the interest upon the happening of the first event, and the living person or persons shall virtually represent the persons and classes of persons who might take on the happening of the additional future event.

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

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

[2001 c 203 § 11; 1999 c 42 § 305.]

11.96A.130: Special notice.

Nothing in this chapter eliminates the requirement to give notice to a person who has requested special notice under RCW [11.28.240](#) or [11.92.150](#).

[1999 c 42 § 306.]

RCW 11.96A.140: Waiver of notice.

Notwithstanding any other provision of this title, notice of a hearing does not need to be given to a legally competent person who has waived in writing notice of the hearing in person or by attorney, or who has appeared at the hearing without objecting to the lack of proper notice or personal jurisdiction. The waiver of notice may apply either to a specific hearing or to any and all hearings and proceedings to be held, in which event the waiver of notice is of continuing effect unless subsequently revoked by the filing of a written notice of revocation of the waiver and the mailing of a copy of the notice of revocation of the waiver to the other parties. Unless notice of a hearing is required to be given by publication, if all persons entitled to notice of the hearing waive the notice or appear at the hearing without objecting to the lack of proper notice or personal jurisdiction, the court may hear the matter immediately. A guardian of the estate or a guardian ad litem may make the waivers on behalf of the incapacitated person, and a trustee may make the waivers on behalf of any competent or incapacitated beneficiary of the trust. A consul or other representative of a foreign government, whose

appearance has been entered as provided by law on behalf of any person residing in a foreign country, may make the waiver of notice on behalf of the person.

[1999 c 42 § 307.]

RCW 11.96A.150: Cost — Attorneys' fees.

(1) Either the superior court or the court on appeal may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party: (a) From any party to the proceedings; (b) from the assets of the estate or trust involved in the proceedings; or (c) from any nonprobate asset that is the subject of the proceedings. The court may order the costs to be paid in such amount and in such manner as the court determines to be equitable.

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

[1999 c 42 § 308.]

11.96A.160: Appointment of guardian ad litem.

(1) The court, upon its own motion or upon request of one or more of the parties, at any stage of a judicial proceeding or at any time in a nonjudicial resolution procedure, may appoint a guardian ad litem to represent the interests of a minor, incapacitated, unborn, or unascertained person, person whose identity or address is unknown, or a designated class of persons who are not ascertained or are not in being. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests.

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

(3) The court may appoint the guardian ad litem at an ex parte hearing, or the court may order a hearing as provided in RCW [11.96A.090](#) with notice as provided in this section and RCW [11.96A.110](#).

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

[1999 c 42 § 309.]

11.96A.170: Trial by jury.

If a party is entitled to a trial by jury and a jury is demanded, and the issues are not sufficiently made up by the written pleadings on file, the court, on due notice, shall settle and frame the issues to be tried. If a jury is not demanded, the court shall try the issues, and sign and file its findings and decision in writing, as provided for in civil actions.

[1999 c 42 § 310.]

11.96A.180: Execution on judgments.

Judgment on the issues, as well as for costs, may be entered and enforced by execution or otherwise by the court as in civil actions.

[1999 c 42 § 311.]

11.96A.190: Execution upon trust income or vested remainder — Permitted, when.

Nothing in RCW [6.32.250](#) shall forbid execution upon the income of any trust created by a person other than the judgment debtor for debt arising through the furnishing of the necessities of life to the beneficiary of such trust; or as to such income forbid the enforcement of any order of the superior court requiring the payment of support for the children under the age of eighteen of any beneficiary; or forbid the enforcement of any order of the superior court subjecting the vested remainder of any such trust upon its expiration to execution for the debts of the remainderman.

[1999 c 42 § 312.]

11.96A.200: Appellate review.

An interested party may seek appellate review of a final order, judgment, or decree of the court respecting a judicial proceeding under this title. The review must be done in the manner and way provided by law for appeals in civil actions.

[1999 c 42 § 313.]

11.96A.210: Purpose.

The purpose of RCW [11.96A.220](#) through [11.96A.250](#) is to provide a binding nonjudicial procedure to resolve matters through written agreements among the parties interested in the estate or trust. The procedure is supplemental to, and may not derogate from, any other proceeding or provision authorized by statute or the common law.

[1999 c 42 § 401.]

11.96A.220: Binding agreement.

RCW [11.96A.210](#) through [11.96A.250](#) shall be applicable to the resolution of any matter, as defined by RCW [11.96A.030](#), other than matters subject to chapter [11.88](#) or [11.92](#) RCW, or a trust for a minor or other incapacitated person created at its inception by the judgment or decree of a court unless the judgment or decree provides that RCW [11.96A.210](#) through [11.96A.250](#) shall be applicable. If all parties agree to a resolution of any such matter, then the agreement shall be evidenced by a written agreement signed by all parties. Subject to the provisions of RCW [11.96A.240](#), the written agreement shall be binding and conclusive on all persons interested in the estate or trust. The agreement shall identify the subject matter of the dispute and

the parties. If the agreement or a memorandum of the agreement is to be filed with the court under RCW [11.96A.230](#), the agreement may, but need not, include provisions specifically addressing jurisdiction, governing law, the waiver of notice of the filing as provided in RCW [11.96A.230](#), and the discharge of any special representative who has acted with respect to the agreement.

If a party who virtually represents another under RCW [11.96A.120](#) signs the agreement, then the party's signature constitutes the signature of all persons whom the party virtually represents, and all the virtually represented persons shall be bound by the agreement.

[1999 c 42 § 402.]

11.96A.230: Entry of agreement with court — Effect.

(1) Any party, or a party's legal representative, may file the written agreement or a memorandum summarizing the written agreement with the court having jurisdiction over the estate or trust. The agreement or a memorandum of its terms may be filed within thirty days of the agreement's execution by all parties only with the written consent of the special representative. The agreement or a memorandum of its terms may be filed after a special representative has commenced a proceeding under RCW [11.96A.240](#) only after the court has determined that the special representative has adequately represented and protected the parties represented. Failure to complete any action authorized or required under this subsection does not cause the written agreement to be ineffective and the agreement is nonetheless binding and conclusive on all persons interested in the estate or trust.

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

[2001 c 14 § 2; 1999 c 42 § 403.]

11.96A.240: Judicial approval of agreement.

Within thirty days of execution of the agreement by all parties, the special representative may note a hearing for presentation of the written agreement to a court of competent jurisdiction. The special representative shall provide notice of the time and date of the hearing to each party to the agreement whose address is known, unless such notice has been waived. Proof of mailing or delivery of the notice must be filed with the court. At such hearing the court shall review the agreement on behalf of the parties represented by the special representative. The court shall determine whether or not the interests of the represented parties have been adequately represented and protected, and an order declaring the court's determination shall be entered. If the court determines that such interests have not been adequately represented and protected, the agreement shall be declared of no effect.

[1999 c 42 § 404.]

11.96A.250: Special representative.

(1)(a) The personal representative or trustee may petition the court having jurisdiction over the matter for the appointment of a special representative to represent a person who is interested in the estate or trust and: (i) Who is a minor; (ii) who is incompetent or disabled; (iii) who is yet unborn or unascertained; or (iv) whose identity or address is unknown. The petition may be heard by the court without notice.

Washington.

(OR)

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

be appointed special representative for those beneficiaries who are not yet adults, as well as for the unborn, unknown, and unascertained beneficiaries, as provided under RCW [11.96A.250](#).

DATED this . . . day of,

.....

(Petitioner or petitioner's
legal representative)

VERIFICATION

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED, 2000, at, Washington.

.....

(Petitioner or other person
having knowledge)

CAPTION ORDER FOR APPOINTMENT
OF CASE OF SPECIAL REPRESENTATIVE

THIS MATTER having come on for hearing before this Court on Petition for Appointment of Special Representative filed herein, and it appearing that it would be in the best interests of the (estate) (trust) described in the Petition to appoint a special representative to address the issues that have arisen concerning

the (estate) (trust) and the Court finding that the facts stated in the Petition are true, now, therefore,

IT IS ORDERED that . . . is appointed under RCW [11.96A.250](#) as special representative for the (estate) (trust) beneficiaries who are not yet adult age, and for unborn, unknown, or unascertained beneficiaries to represent their respective interests in the (estate) (trust) as provided in RCW [11.96A.250](#). The special representative shall be discharged of responsibility with respect to the (estate) (trust) at such time as a written agreement is executed resolving the present issues, all as provided in that statute, or if an agreement is not reached within six months from entry of this Order, the special representative appointed under this Order shall be discharged of responsibility, subject to subsequent reappointment under RCW [11.96A.250](#).

DONE IN OPEN COURT this . . . day of,

.....

JUDGE/COURT COMMISSIONER

(2) Upon appointment by the court, the special representative shall file a certification made under penalty of perjury in accordance with RCW [9A.72.085](#) that he or she (a) is not interested in the estate or trust; (b) is not related to any person interested in the estate or trust; (c) is willing to serve; and (d) will act independently, prudently, and in the best interests of the represented parties.

(3) The special representative must be a lawyer licensed to practice before the courts of this state or an individual with special skill or training in the administration of estates or trusts. The special representative may not have an interest in the affected estate or trust, and may not be related to a person interested in the estate or trust. The special representative is entitled to reasonable compensation for services that must be paid from the principal of the estate or trust whose beneficiaries are represented.

(4) The special representative shall be discharged from any responsibility and shall have no further duties with respect to the estate or trust or with respect to any person interested in the estate or trust, on the earlier of: (a) The expiration of six months from the date the special representative was appointed unless the order appointing the special representative provides otherwise, or (b) the execution of the written agreement by all parties or their virtual representatives. Any action against a special representative must be brought within the time limits provided by RCW [11.96A.070](#)(3)(c)(i).

[2001 c 14 § 3; 1999 c 42 § 405.]

11.96A.260: Findings — Intent.

The legislature finds that it is in the interest of the citizens of the state of Washington to encourage the prompt and early resolution of disputes in trust, estate, and nonprobate matters. The legislature endorses the use of dispute resolution procedures by means other than litigation. The legislature also finds that the former chapter providing for the nonjudicial resolution of trust, estate, and nonprobate disputes, *chapter [11.96](#) RCW, has resulted in the successful resolution of thousands of disputes since 1984. The nonjudicial procedure has resulted in substantial savings of public funds by removing those disputes from the court system. Enhancement of the statutory framework supporting the nonjudicial process in *chapter [11.96](#) RCW would be beneficial and would foster even greater use of nonjudicial dispute methods to resolve trust, estate, and nonprobate disputes.

The legislature further finds that it would be beneficial to allow parties to disputes involving trusts, estates, and nonprobate assets to have access to a process for required mediation followed by arbitration using mediators and arbitrators experienced in trust, estate, and nonprobate matters. Finally, the legislature also believes it would be beneficial to parties with disputes in trusts, estates, and nonprobate matters to clarify and streamline the statutory framework governing the procedures governing these cases in the court system.

Therefore, the legislature adopts RCW [11.96A.270](#) through [11.96A.320](#), that enhance *chapter [11.96](#) RCW and allow required mediation and arbitration in disputes involving trusts, estates, and nonprobate matters that are brought to the courts. RCW [11.96A.270](#) through [11.96A.320](#) also set forth specific civil procedures for handling trust and estate disputes in the court system. It is intended that the adoption of RCW [11.96A.270](#) through [11.96A.320](#) will encourage and direct all parties in trust, estate, and nonprobate matter disputes, and the court system, to provide for expeditious, complete, and final decisions to be made in disputed trust, estate, and nonprobate matters.

[1999 c 42 § 501.]

11.96A.270: Intent — Parties can agree otherwise.

The intent of RCW [11.96A.260](#) through [11.96A.320](#) is to provide for the efficient settlement of disputes in trust, estate, and nonprobate matters through mediation and arbitration by providing any party the right to proceed first with mediation and then arbitration before formal judicial procedures may be utilized. Accordingly, any of the requirements or rights under RCW [11.96A.260](#) through [11.96A.320](#) are subject to any contrary agreement between the parties or the parties' virtual representatives.

[1999 c 42 § 502.]

11.96A.280: Scope.

A party may cause the matter to be presented for mediation and then arbitration, as provided under RCW [11.96A.260](#) through [11.96A.320](#). If a party causes the matter to be presented for resolution under RCW [11.96A.260](#) through [11.96A.320](#), then judicial resolution of the matter, as provided in RCW [11.96A.060](#) or by any other civil action, is available only by complying with the mediation and arbitration provisions of RCW [11.96A.260](#) through [11.96A.320](#).

[1999 c 42 § 503.]

11.96A.290: Superior court — Venue.

As used in RCW [11.96A.260](#) through [11.96A.320](#), "superior court" means: (1) Before the commencement of any legal proceedings, the appropriate superior court with respect to the matter as provided in RCW [11.96A.040](#); and (2) if legal proceedings have been commenced with respect to the matter, the superior court in which the proceedings are pending.

[1999 c 42 § 504.]

11.96A.300: Mediation procedure.

(1) Notice of mediation. A party may cause the matter to be subject to mediation by service of written notice of mediation on all parties or the parties' virtual representatives as follows:

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

NOTICE OF MEDIATION UNDER RCW [11.96A.300](#)

To: (Parties)

Notice is hereby given that the following matter shall be resolved by mediation under RCW [11.96A.300](#):

(State nature of matter)

This matter must be resolved using the mediation procedures of RCW [11.96A.300](#) unless a petition objecting to mediation is filed with the superior court within twenty days of service of this notice. If a petition objecting to mediation is not filed within the twenty-day period, RCW [11.96A.300](#)(4) requires you to furnish to all other parties or their virtual representatives a list of acceptable mediators within thirty days of your receipt of this notice.

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

DATED:

.....

(Party or party's legal representative)

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

NOTICE OF MEDIATION UNDER RCW [11.96A.300](#)

To: (Parties)

Notice is hereby given that the following matter shall be resolved by mediation under RCW [11.96A.300](#):

(State nature of matter)

This matter must be resolved using the mediation procedures of RCW [11.96A.300](#) unless the court determines at the hearing set for . . . o'clock on , (identify place of already set hearing), that mediation shall not apply pursuant to RCW [11.96A.300](#)(3). If the court determines that mediation shall not apply, the court may decide the matter at the hearing, require arbitration, or direct other judicial proceedings.

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

DATED:

.

(Party or party's legal representative)

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

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

(b) Any party may object to a notice of mediation under subsection (1)(a) of this section by filing a petition with the superior court and serving the petition on all parties or the parties' virtual representatives. The party objecting to notice of mediation under subsection (1)(a) of this section must file and serve the petition objecting to mediation no later than twenty days after receipt of the written notice of mediation. The petition may include a request for determination of matters subject to judicial resolution under RCW [11.96A.080](#) through [11.96A.200](#), and may also request that the matters in issue be decided at the hearing.

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

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

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

(3) Procedure when notice of mediation served after hearing set. If the written notice of mediation required in subsection (1)(b) of this section is timely filed and served by a party and another party objects to mediation, by petition or orally at the hearing, the court shall order that mediation proceed except for good cause shown. Such order shall not be subject to appeal or revision. If the court determines that the matter should not be subject to

mediation, the court shall dispose of the matter by: (a) Deciding the matter at that hearing, (b) requiring arbitration, or (c) directing other judicial proceedings.

(4) Selection of mediator; mediator qualifications.

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

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

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

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

(7) Mediation agreement. A resolution of the matter that is the subject of the mediation must be evidenced by a nonjudicial dispute resolution agreement under RCW [11.96A.220](#).

(8) Costs of mediation. Costs of the mediation, including reasonable compensation for the mediator's services, shall be borne equally by the parties. The details of those costs and fees, including the compensation of the mediator, must be set forth in a mediation agreement between the mediator and all parties to the matter. Each party shall bear its own costs and expenses, including legal fees and witness expenses, in connection with the mediation proceeding: (a) Except as may occur otherwise as provided in RCW [11.96A.320](#), or (b) unless the matter is not resolved by mediation and the arbitrator or court finally resolving the matter directs otherwise.

[2001 c 14 § 4; 1999 c 42 § 505.]

11.96A.310: Arbitration procedure.

(1) When arbitration available. Arbitration under RCW [11.96A.260](#) through [11.96A.320](#) is available only if:

(a) A party has first petitioned for mediation under RCW [11.96A.300](#) and such mediation has been concluded;

(b) The court has determined that mediation under RCW [11.96A.300](#) is not required and has not ordered that the matter be disposed of in some other manner;

(c) All of the parties or the parties' virtual representatives have agreed not to use the mediation procedures of RCW [11.96A.300](#); or

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

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

(a) If the matter is not settled through mediation under RCW [11.96A.300](#), or the court orders that mediation is not required, a party may commence arbitration by serving written notice of arbitration on all other parties or the parties' virtual representatives. The notice must be served no later than twenty days after the later of the conclusion of the mediation procedure, if any, or twenty days after entry of the order providing that mediation is not required. If arbitration is ordered by the court under RCW [11.96A.300](#)(3), arbitration must proceed in accordance with the order.

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

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

NOTICE OF ARBITRATION UNDER RCW [11.96A.310](#)

To: (Parties)

Notice is hereby given that the following matter must be resolved by arbitration under RCW [11.96A.310](#):

(State nature of matter)

The matter must be resolved using the arbitration procedures of RCW [11.96A.310](#) unless a petition objecting to arbitration is filed with the superior court within twenty days of receipt of this notice. If a petition objecting to arbitration is not filed within the twenty-day period, RCW [11.96A.310](#) requires you to furnish to all other parties or the parties' virtual representatives a list of acceptable arbitrators within thirty days of your receipt of this notice.

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

DATED:

.....
(Party or party's legal representative)

(3) Objection to arbitration. A party may object to arbitration by filing a petition with the superior court and serving the petition on all parties or the parties' virtual representatives. The objection to arbitration may be filed at any time unless a written notice of arbitration has been served, in which case the objection to arbitration must be filed and served no later than twenty days after receipt of the written notice of arbitration. The hearing on the objection to arbitration must be heard no later than twenty days after the filing of that petition. The party objecting to arbitration must give notice of the hearing to all parties at least ten days before the hearing and shall include a copy of the petition. At the hearing, the court shall order that arbitration proceed except for good cause shown. Such order shall not be subject to appeal or revision. If the court determines that the matter should not be subject to arbitration, the court shall dispose of the matter by: (a) Deciding the matter at that hearing, but only if the petition objecting to arbitration contains a request for such relief; or (b) directing other judicial proceedings.

(4) Selection of arbitrator; qualifications of arbitrator.

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

(b) A qualified arbitrator must be an attorney licensed to practice before the courts of this state having at least five years of experience in trust or estate matters or five years of experience in litigation or other formal dispute resolution involving trusts or estates, or an individual, who may be an attorney, with special skill or training with respect to the matter. The arbitrator may be the same person selected and used as a mediator under the mediation procedures of RCW [11.96A.300](#).

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

(a) Chapter [7.06](#) RCW, the superior court mandatory arbitration rules adopted by the supreme court, and any local rules for mandatory arbitration adopted by the superior court apply to this title. If the superior court has not adopted chapter [7.06](#) RCW, then the local rules for mandatory arbitration applicable in King county apply, except all the duties of the director of arbitration must be performed by the presiding judge of the superior court.

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

(c) The arbitration provisions of this subsection apply to all matters in dispute. The dollar limits and restrictions to monetary damages of RCW [7.06.020](#) do not apply to arbitrations under this subsection. To the

extent any provision in this title is inconsistent with chapter [7.06](#) RCW or the rules referenced in (a) of this subsection, the provisions of this title control.

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

(e) Unless directed otherwise by the arbitrator in accord with subsection (6) of this section or RCW [11.96A.320](#), or unless the matter is not resolved by arbitration and the court finally resolving the matter directs otherwise:

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

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

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

(g) The rules of evidence and discovery applicable to civil causes of action before the superior court as defined in RCW [11.96A.290](#) apply, unless the parties have agreed otherwise or the arbitrator rules otherwise.

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

(7) Decision of arbitrator. The arbitrator shall issue a final decision in writing within thirty days of the conclusion of the final arbitration hearing. Promptly after the issuance of the decision, the arbitrator shall serve each of the parties to the proceedings with a copy of the written arbitration decision. Proof of service shall be filed with the court. Service shall be made in conformity with CR 5(b) of the rules for superior court.

(8) Arbitration decision may be filed with the court. The arbitrator or any party to the arbitration may file the arbitrator's decision with the clerk of the superior court at any time after its issuance. Notice of such filing shall be promptly given to each party to the arbitration proceedings.

(9) Appeal. (a) The final decision of the arbitrator may be appealed by filing a notice of appeal with the superior court requesting a trial de novo on all issues of law and fact. The notice of appeal must be filed within thirty days after the date on which the decision was served on the party filing the notice of appeal. A trial de novo shall then be held, including a right to jury, if demanded.

(b) If an appeal is not filed within the time provided in (a) of this subsection, the arbitration decision is conclusive and binding on all parties. If the arbitrator's decision has been filed with the clerk of the superior court, a judgment shall be entered and may be presented to the court by any party on ten days' prior notice. The judgment when entered shall have the same force and effect as judgments in civil actions.

(10) Costs on appeal of arbitration decision. The prevailing party in any such de novo superior court decision

after an arbitration result must be awarded costs, including expert witness fees and attorneys' fees, in connection with the judicial resolution of the matter. Such costs shall be charged against the nonprevailing parties in such amount and in such manner as the court determines to be equitable. The provisions of this subsection take precedence over the provisions of RCW [11.96A.150](#) or any other similar provision.

[2001 c 14 § 5; 1999 c 42 § 506.]

11.96A.320: Petition for order compelling compliance.

If a party does not comply with any procedure of RCW [11.96A.260](#) through [11.96A.310](#), the other party or parties may petition the superior court for an order compelling compliance. A party obtaining an order compelling compliance is entitled to reimbursement of costs and attorneys' fees incurred in connection with: The petition and any other actions taken after the issuance of the order to compel compliance with the order, unless the court at the hearing on the petition determines otherwise for good cause shown. Reimbursement must be from the party or parties whose failure to comply was the basis for the petition.

[1999 c 42 § 507.]

11.96A.900: Short title.

This chapter may be known and cited as the trust and estate dispute resolution act or "TEDRA."

[1999 c 42 § 101.]

11.96A.901: Captions not law — 1999 c 42.

Part headings and captions used in chapter 42, Laws of 1999 are not any part of the law.

[1999 c 42 § 701.]

11.96A.902: Effective date — 1999 c 42.

This act takes effect January 1, 2000.

[1999 c 42 § 703.]

11.97 RCW: Effect of trust instrument

11.97.010: Power of trustor — Trust provisions control.

The trustor of a trust may by the provisions of the trust relieve the trustee from any or all of the duties, restrictions, and liabilities which would otherwise be imposed by chapters [11.95](#), [11.98](#), [11.100](#), and [11.104A](#) RCW and RCW [11.106.020](#), or may alter or deny any or all of the privileges and powers conferred by those provisions; or may add duties, restrictions, liabilities, privileges, or powers to those imposed or granted by those provisions. If any specific provision of those chapters is in conflict with the provisions of a trust, the provisions of the trust control whether or not specific reference is made in the trust to any of those chapters, except as

provided in RCW [11.98.200](#) through [11.98.240](#) and [11.95.100](#) through [11.95.150](#). In no event may a trustee be relieved of the duty to act in good faith and with honest judgment.

[2003 c 254 § 4; 1993 c 339 § 1; 1985 c 30 § 38. Prior: 1984 c 149 § 64; 1959 c 124 § 2. Formerly RCW [30.99.020](#).]

11.97.900: Application of chapter.

This chapter applies to the provisions of chapters [11.95](#), [11.98](#), [11.100](#), and [11.104A](#) RCW and to RCW [11.106.020](#).

[2003 c 254 § 5; 1985 c 30 § 39. Prior: 1984 c 149 § 65.]

11.98 RCW: Trusts

11.98.009: Application of chapter.

Except as provided in this section, this chapter applies to express trusts executed by the trustor after June 10, 1959, and does not apply to resulting trusts, constructive trusts, business trusts where certificates of beneficial interest are issued to the beneficiary, investment trusts, voting trusts, trusts in the nature of mortgages or pledges, trusts created by the judgment or decree of a court not sitting in probate, liquidation trusts, or trusts for the sole purpose of paying dividends, interest, interest coupons, salaries, wages, pensions or profits, trusts created in deposits in any financial institution pursuant to chapter [30.22](#) RCW, unless any such trust which is created in writing incorporates this chapter in whole or in part.

[1985 c 30 § 40. Prior: 1984 c 149 § 67; 1983 c 3 § 49; 1959 c 124 § 1. Formerly RCW [30.99.010](#).]

11.98.016: Exercise of powers by co-trustees.

(1) Any power vested in three or more trustees jointly may be exercised by a majority of such trustees; but no trustee who has not joined in exercising a power is liable to the beneficiaries or to others for the consequences of such exercise; nor is a dissenting trustee liable for the consequences of an act in which that trustee joins at the direction of the majority of the trustees, if that trustee expressed his or her dissent in writing to each of the co-trustees at or before the time of such joinder.

(2) Where two or more trustees are appointed to execute a trust and one or more of them for any reason does not accept the appointment or having accepted ceases to be a trustee, the survivor or survivors shall execute the trust and shall succeed to all the powers, duties and discretionary authority given to the trustees jointly.

(3) An individual trustee, with a co-trustee's consent, may, by a signed, written instrument, delegate any power, duty, or authority as trustee to that co-trustee. This delegation is effective upon delivery of the instrument to that co-trustee and may be revoked at any time by delivery of a similar signed, written instrument to that co-trustee. However, if a power, duty, or authority is expressly conferred upon only one trustee, it shall not be delegated to a co-trustee. If that power, duty, or authority is expressly excluded from exercise by a trustee, it shall not be delegated to the excluded trustee.

(4) If one trustee gives written notice to all other co-trustees of an action that the trustee proposes be taken, then the failure of any co-trustee to deliver a written objection to the proposal to the trustee, at the trustee's then address of record and within fifteen days from the date the co-trustee actually receives the notice, constitutes formal approval by the co-trustee, unless the co-trustee had previously given written notice that was unrevoked at the time of the trustee's notice, to that trustee that this fifteen-day notice provision is inoperative.

(5) As to any effective delegation made under subsection (3) of this section, a co-trustee has no liability for failure to participate in the administration of the trust.

Nothing in this section, however, otherwise excuses a co-trustee from liability for failure to participate in the administration of the trust and nothing in this section, including subsection (3) of this section, excuses a co-trustee from liability for the failure to attempt to prevent a breach of trust.

[1985 c 30 § 41. Prior: 1984 c 149 § 68; 1959 c 124 § 3. Formerly RCW [30.99.030](#).]

11.98.019: Relinquishment of powers by trustee.

Any trustee may, by written instrument delivered to any then acting co-trustee and to the current adult income beneficiaries of the trust, relinquish to any extent and upon any terms any or all of the trustee's powers, rights, authorities, or discretions that are or may be tax sensitive in that they cause or may cause adverse tax consequences to the trustee or the trust. Any trustee not relinquishing such a power, right, authority, or discretion and upon whom it is conferred continues to have full power to exercise it.

[1985 c 30 § 42. Prior: 1984 c 149 § 69.]

11.98.029: Resignation of trustee.

Any trustee may resign, without judicial proceedings, by a writing signed by the trustee and filed with the trust records, to be effective upon the trustee's discharge as provided in RCW [11.98.041](#).

[1989 c 10 § 3. Prior: 1985 c 30 § 43; prior: 1959 c 124 § 4. Formerly RCW [30.99.040](#).]

11.98.039: Nonjudicial change of trustee — Judicial appointment or change of trustee — Liability and duties of successor fiduciary.

(1) Where a vacancy occurs in the office of the trustee and there is a successor trustee who is willing to serve as trustee and (a) is named in the governing instrument as successor trustee or (b) has been selected to serve as successor trustee under the procedure established in the governing instrument for the selection of a successor trustee, the outgoing trustee, or any other interested party, shall give notice of such vacancy, whether arising because of the trustee's resignation or because of any other reason, and of the successor trustee's agreement to serve as trustee, to each adult distributee or permissible distributee of trust income or of trust principal or of both trust income and trust principal. If there are no such adults, no notice need be given. The successor trustee named in the governing instrument or selected pursuant to the procedure therefor established in the governing instrument shall be entitled to act as trustee except for good cause or disqualification. The successor trustee shall serve as of the effective date of the discharge of the predecessor trustee as provided in RCW [11.98.041](#).

(2) Where a vacancy exists or occurs in the office of the trustee and there is no successor trustee who is named in the governing instrument or who has been selected to serve as successor trustee under the procedure established in the governing instrument for the selection of a successor trustee, and who is willing to serve as trustee, then all parties with an interest in the trust may agree to a nonjudicial change of the trustee under RCW [11.96A.220](#). The successor trustee shall serve as of the effective date of the discharge of the predecessor trustee as provided in RCW [11.98.041](#) or, in circumstances where there is no predecessor trustee, as of the effective date of the trustee's appointment.

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

(4) Unless subsection (1), (2), or (3) of this section applies, any beneficiary of a trust, the trustor, if alive, or the trustee may petition the superior court having jurisdiction for the appointment or change of a trustee or co-trustee under the procedures provided in RCW [11.96A.080](#) through [11.96A.200](#): (a) Whenever the office of trustee becomes vacant; (b) upon filing of a petition of resignation by a trustee; or (c) for any other reasonable cause.

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

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

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

[2005 c 97 § 13; 1999 c 42 § 618; 1985 c 30 § 44. Prior: 1984 c 149 § 72; 1959 c 124 § 5. Formerly RCW [30.99.050](#).]

11.98.041: Change of trustee — Discharge of outgoing trustee, when.

Where a vacancy occurs in the office of trustee under the circumstances described in RCW [11.98.039](#) (1) or (2), the outgoing trustee shall be discharged upon the agreement of all parties entitled to notice or upon the expiration of thirty days after notice is given of such vacancy as required by the applicable subsection of RCW [11.98.039](#), whichever occurs first, or if no notice is required under RCW [11.98.039](#)(1), upon the date the vacancy occurs, unless before the effective date of such discharge a petition is filed under *RCW [11.98.039](#)(3) regarding the appointment or change of a trustee of the trust. Where a petition is filed under *RCW [11.98.039](#)(3) regarding the appointment or change of a trustee, the superior court having jurisdiction may discharge the trustee from the trust and may appoint a successor trustee upon such terms as the court may require.

[1985 c 30 § 141.]

11.98.045: Criteria for transfer of trust assets or administration.

(1) A trustee may transfer trust assets to a trustee in another jurisdiction or may transfer the place of administration of a trust to another jurisdiction if the trust instrument so provides or in accordance with RCW [11.98.051](#) or [11.98.055](#).

(2) Transfer under this section is permitted only if:

(a) The transfer would facilitate the economic and convenient administration of the trust;

(b) The transfer would not materially impair the interests of the beneficiaries or others interested in the trust;

(c) The transfer does not violate the terms of the trust; and

(d) The new trustee is qualified and able to administer the trust or such assets on the terms set forth in the trust.

(3) Acceptance of such transfer by a foreign corporate trustee or trust company under this section, RCW [11.98.051](#), or [11.98.055](#) shall not be construed to be doing a "trust business" as described in RCW [30.08.150](#)(9).

[1985 c 30 § 45. Prior: 1984 c 149 § 74.]

11.98.051: Nonjudicial transfer of trust assets or administration — Notice — Consent required.

(1) The trustee may transfer trust assets or the place of administration in accordance with RCW [11.96A.220](#). In addition, the trustee shall give written notice to those persons entitled to notice as provided for under RCW [11.96A.110](#) and to the attorney general in the case of a charitable trust subject to chapter [11.110](#) RCW. The notice shall:

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

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

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

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

(e) State the facts supporting the requirements of RCW [11.98.045](#)(2);

(f) Advise the beneficiaries of the right to petition for judicial determination of the proposed transfer as provided in RCW [11.98.055](#); and

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

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

[1999 c 42 § 619; 1985 c 30 § 46. Prior: 1984 c 149 § 75.]

11.98.055: Judicial transfer of trust assets or administration.

(1) Any trustee, beneficiary, or beneficiary representative may petition the superior court of the county of the situs of the trust for a transfer of trust assets or transfer of the place of administration in accordance with RCW [11.96A.080](#) through [11.96A.200](#).

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

[1999 c 42 § 620; 1985 c 30 § 47. Prior: 1984 c 149 § 76.]

11.98.060: Power of successor trustee.

A successor trustee of a trust shall succeed to all the powers, duties and discretionary authority of the original trustee.

[1985 c 30 § 48. Prior: 1959 c 124 § 6. Formerly RCW [30.99.060](#).]

11.98.065: Change in form of corporate trustee.

Any appointment of a specific bank, trust company, or corporation as trustee is conclusively presumed to authorize the appointment or continued service of that entity's successor in interest in the event of a merger, acquisition, or reorganization, and no court proceeding is necessary to affirm the appointment or continuance of service.

[1985 c 30 § 49. Prior: 1984 c 149 § 78.]

11.98.070: Power of trustee.

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

(1) Receive property from any source as additions to the trust or any fund of the trust to be held and

administered under the provisions of the trust;

(2) Sell on credit;

(3) Grant, purchase or exercise options;

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

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

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

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

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

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

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

(11) Compromise or submit claims to arbitration;

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

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

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

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

(16) Pay any income or principal distributable to or for the use of any beneficiary, whether that beneficiary is under legal disability, to the beneficiary or for the beneficiary's use to the beneficiary's parent, guardian,

custodian under the uniform gifts to minors act of any state, person with whom he resides, or third person;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) A trustee may not delegate all of the trustee's duties and responsibilities;

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

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

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

(28) Appoint an ancillary trustee or agent to facilitate management of assets located in another state or

foreign country;

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

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

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

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

(33) Continue to be a party to any existing voting trust agreement or enter into any new voting trust agreement or renew an existing voting trust agreement with respect to any assets contained in trust; and

(34)(a) Donate a qualified conservation easement, as defined by section 2031(c) of the Internal Revenue Code, on any real property, or consent to the donation of a qualified conservation easement on any real property by a personal representative of an estate of which the trustee is a devisee, to obtain the benefit of the estate tax exclusion allowed under section 2031(c) of the Internal Revenue Code or the deduction allowed under section 2055(f) of the Internal Revenue Code as long as:

(i)(A) The governing instrument authorizes the donation of a qualified conservation easement on the real property; or

(B) Each beneficiary that may be affected by the qualified conservation easement consents to the donation under the provisions of chapter [11.96A](#) RCW; and

(ii) The donation of a qualified conservation easement will not result in the insolvency of the decedent's estate.

(b) The authority granted under this subsection includes the authority to amend a previously donated qualified conservation easement, as defined under section 2031(c)(8)(B) of the Internal Revenue Code, and to amend a previously donated unqualified conservation easement for the purpose of making the easement a qualified conservation easement under section 2031(c)(8)(B).

[2002 c 66 § 1; 1997 c 252 § 75; 1989 c 40 § 7; 1985 c 30 § 50. Prior: 1984 c 149 § 80; 1959 c 124 § 7. Formerly RCW [30.99.070](#).]

11.98.080: Consolidation of trusts.

1) Two or more trusts may be consolidated if:

(a) The trusts so provide; or

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

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

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

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

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

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

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

(2) The trustees of two or more trusts may consolidate the trusts on such terms and conditions as appropriate without court approval as provided in RCW [11.96A.220](#).

(a) The trustee shall give written notice of proposed consolidation by personal service or by certified mail to the beneficiaries of every trust affected by the consolidation as provided in RCW [11.96A.110](#) and to any trustee of such trusts who does not join in the notice. The notice shall: (i) State the name and mailing address of the trustee; (ii) include a copy of the governing instrument of each trust to be consolidated; (iii) include a statement of assets and liabilities of each trust to be consolidated, dated within ninety days of the notice; (iv) fully describe the terms and manner of consolidation; and (v) state the reasons supporting the requirements of subsection (1)(d) of this section. The notice shall advise the recipient of the right to petition for a judicial determination of the proposed consolidation as provided in subsection (3) of this section. The notice shall include a form on which consent or objection to the proposed consolidation may be indicated.

(b) If the trustee receives written consent to the proposed consolidation from all persons entitled to notice as provided in RCW [11.96A.110](#) or from their representatives, the trustee may consolidate the trusts as provided in the notice. Any person dealing with the trustee of the resulting consolidated trust is entitled to rely on the authority of that trustee to act and is not obliged to inquire into the validity or propriety of the consolidation under this section.

(3)(a) Any trustee, beneficiary, or special representative may petition the superior court of the county in which the principal place of administration of a trust is located for an order consolidating two or more trusts under RCW [11.96A.080](#) through [11.96A.200](#). If nonjudicial consolidation has been commenced pursuant to

subsection (2) of this section, a petition may be filed under this section unless the trustee has received all necessary consents. The principal place of administration of the trust is the trustee's usual place of business where the records pertaining to the trust are kept, or the trustee's residence if the trustee has no such place of business.

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

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

(5) For powers of fiduciaries to divide trusts, see RCW [11.108.025](#).

[1999 c 42 § 621; 1991 c 6 § 2; 1985 c 30 § 51. Prior: 1984 c 149 § 81.]

11.98.090: Nonliability of third persons without knowledge of breach.

In the absence of knowledge of a breach of trust, no party dealing with a trustee is required to see to the application of any moneys or other properties delivered to the trustee.

[1985 c 30 § 52. Prior: 1984 c 149 § 83; 1959 c 124 § 8. Formerly RCW [30.99.080](#).]

11.98.100: Nonliability for action or inaction based on lack of knowledge of events.

When the happening of any event, including but not limited to such events as marriage, divorce, performance of educational requirements, or death, affects the administration or distribution of the trust, then a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for any action or inaction based on lack of knowledge of the event. A corporate trustee is not liable prior to receiving such knowledge or notice in its trust department office where the trust is being administered.

[1985 c 30 § 53. Prior: 1984 c 149 § 84; 1959 c 124 § 9. Formerly RCW [30.99.090](#).]

11.98.110: Contract and tort liability.

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

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

(1) The plaintiff may sue the trustee in the trustee's representative capacity and any judgment rendered in favor of the plaintiff is collectible by execution out of the trust property: PROVIDED, HOWEVER, If the action is in tort, collection shall not be had from the trust property unless the court determines in the action that (a) the

tort was a common incident of the kind of business activity in which the trustee or the trustee's predecessor was properly engaged for the trust; or (b) that, although the tort was not a common incident of such activity, neither the trustee nor the trustee's predecessor, nor any officer or employee of the trustee or the trustee's predecessor, was guilty of personal fault in incurring the liability; or (c) that, although the tort did not fall within classes (a) or (b) above, it increased the value of the trust property. If the tort is within classes (a) or (b) above, collection may be had of the full amount of damage proved, and if the tort is within class (c) above, collection may be had only to the extent of the increase in the value of the trust property.

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

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

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

(5) The procedure for all actions provided in this section is as provided in RCW [11.96A.080](#) through [11.96A.200](#).

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

[1999 c 42 § 622; 1988 c 29 § 8; 1985 c 30 § 54. Prior: 1984 c 149 § 85; 1983 c 3 § 50; 1959 c 124 § 10. Formerly RCW [30.99.100](#).]

11.98.130: Rule against perpetuities.

No provision of an instrument creating a trust, including the provisions of any further trust created, and no other disposition of property made pursuant to exercise of a power of appointment granted in or created through authority under such instrument is invalid under the rule against perpetuities, or any similar statute or common law, during the one hundred fifty years following the effective date of the instrument.

Thereafter, unless the trust assets have previously become distributable or vested, the provision or other disposition of property is deemed to have been rendered invalid under the rule against perpetuities.

[2001 c 60 § 1; 1985 c 30 § 55. Prior: 1984 c 149 § 87; 1965 c 145 § [11.98.010](#); prior: 1959 c 146 § 1. Formerly RCW [11.98.010](#).]

11.98.140: Distribution and vesting of assets.

If, during the one hundred fifty years following the effective date of an instrument creating a trust, any of the trust assets should by the terms of the instrument or pursuant to any further trust or other disposition resulting from exercise of the power of appointment granted in or created through authority under such instrument, become distributable or any beneficial interest in any of the trust assets should by the terms of the instrument, or such further trust or other disposition become vested, such assets shall be distributed and such beneficial interest shall validly vest in accordance with the instrument, or such further trust or other disposition.

[2001 c 60 § 2; 1985 c 30 § 56. Prior: 1984 c 149 § 88; 1965 c 145 § [11.98.020](#); prior: 1959 c 146 § 2. Formerly RCW [11.98.020](#).]

11.98.150: Distribution of assets after one hundred fifty year period.

If, at the end of the one hundred fifty years following the effective date of an instrument creating a trust, any of the trust assets have not by the terms of the trust instrument become distributable or vested, then the assets shall be distributed as the superior court having jurisdiction directs, giving effect to the general intent of the creator of the trust or person exercising a power of appointment in the case of any further trust or other disposition of property made pursuant to the exercise of a power of appointment.

[2001 c 60 § 3; 1985 c 30 § 57. Prior: 1984 c 149 § 89; 1965 c 145 § [11.98.030](#); prior: 1959 c 146 § 3. Formerly RCW [11.98.030](#).]

11.98.160: Effective date of irrevocable inter vivos trust — Effective date of revocable inter vivos or testamentary trust.

For the purposes of RCW [11.98.130](#) through [11.98.150](#) the effective date of an instrument purporting to create an irrevocable inter vivos trust is the date on which it is executed by the trustor, and the effective date of an instrument purporting to create either a revocable inter vivos trust or a testamentary trust is the date of the trustor's or testator's death.

[1989 c 14 § 2; 1985 c 30 § 58. Prior: 1984 c 149 § 90; 1965 c 145 § [11.98.040](#); prior: 1959 c 146 § 4. Formerly RCW [11.98.040](#).]

11.98.170: Designation of trustee as beneficiary of life insurance policy or retirement plan — Determination of proper recipient of proceeds — Definitions — Beneficiary designations executed before January 1, 1985, not invalidated.

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

(a) A trustee named or to be named by will, and immediately after the proving of the will, the proceeds of such insurance or of such plan designated as payable to that trustee, in part or in whole, shall be paid to the trustee in accordance with the beneficiary designation, to be held and disposed of under the terms of the will governing the testamentary trust; or

(b) A trustee named or to be named under a trust agreement executed by the insured, the plan participant, or any other person, and the proceeds of such insurance or retirement plan designated as payable to such trustee,

in part or in whole, shall be paid to the trustee in accordance with the beneficiary designation, to be held and disposed of by the trustee as provided in such trust agreement; a trust is valid even if the only corpus consists of the right of the trustee to receive as beneficiary insurance or retirement plan proceeds; any such trustee may also receive assets, other than insurance or retirement plan proceeds, by testamentary disposition or otherwise and, unless directed otherwise by the transferor of the assets, shall administer all property of the trust according to the terms of the trust agreement.

(2) If no qualified trustee makes claim to the insurance policy or retirement plan proceeds from the insurance company or the plan administrator within twelve months after the death of the insured or plan participant, determination of the proper recipient of the proceeds shall be made pursuant to the judicial or nonjudicial dispute resolution procedures of chapter [11.96A](#) RCW, unless prior to the institution of the judicial procedures, a qualified trustee makes claim to the proceeds, except that (a) if satisfactory evidence is furnished the insurance company or plan administrator within the twelve-month period showing that no trustee can or will qualify to receive such proceeds, payment shall be made to those otherwise entitled to the proceeds under the terms of the policy or retirement plan, including the terms of the beneficiary designation except that (b) if there is any dispute as to the proper recipient of insurance policy or retirement plan proceeds, the dispute shall be resolved pursuant to the judicial or nonjudicial resolution procedures in chapter [11.96A](#) RCW.

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

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

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

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

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

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

[1999 c 42 § 623; 1991 c 193 § 29; 1985 c 30 § 59. Prior: 1984 c 149 § 91.]

11.98.200: Beneficiary trustee — Limitations on power.

Due to the inherent conflict of interest that exists between a trustee and a beneficiary of a trust, unless the terms of a trust refer specifically to RCW [11.98.200](#) through [11.98.240](#) and provide expressly to the contrary, the powers conferred upon a trustee who is a beneficiary of the trust, other than the trustor as a trustee, cannot be exercised by the trustee to make:

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

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

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

A proscribed power under this section that is conferred upon two or more trustees may be exercised by the trustees that are not disqualified under this section. If there is no trustee qualified to exercise a power proscribed under this section, a person described in RCW [11.96A.080](#) who is entitled to seek judicial proceedings with respect to a trust may apply to a court of competent jurisdiction to appoint another trustee who would not be disqualified, and the power may be exercised by another trustee appointed by the court. Alternatively, another trustee who would not be disqualified may be appointed in accordance with the provisions of the trust instrument if the procedures are provided, or as set forth in RCW [11.98.039](#) as if the office of trustee were vacant, or by a nonjudicial dispute resolution agreement under RCW [11.96A.220](#).

[1999 c 42 § 624; 1994 c 221 § 65; 1993 c 339 § 2.]

11.98.210: Beneficiary trustee — Disregard of provision conferring absolute or similar power — Power of removal.

If a trustee is a beneficiary of the trust and the trust instrument confers the power to make distributions of principal or income for the trustee's health, education, support, or maintenance as described in section 2041 or 2514 of the Internal Revenue Code and the applicable regulations adopted under that section, then a trust provision purporting to confer "absolute," "sole," "complete," "conclusive," or a similar discretion relating to the exercise of such trustee powers shall be disregarded in the exercise of the power, and the power may then only be exercised reasonably and in accordance with the ascertainable standard as set forth in RCW [11.98.200](#) and this section. A person who has the right to remove or to replace a trustee does not possess nor may the person be deemed to possess by virtue of having that right the powers of the trustee who is subject to removal or replacement.

[1993 c 339 § 3.]

11.98.220: Beneficiary trustee — Inferences of law — Judicial review.

RCW [11.98.200](#) through [11.98.240](#) do not raise any inference that the law of this state prior to July 25, 1993, was different than under RCW [11.98.200](#) through [11.98.240](#). Further, RCW [11.98.200](#) through [11.98.240](#) do not raise an inference that prior to July 25, 1993, a trustee's exercise or failure to exercise a power described in RCW [11.98.200](#) through [11.98.240](#) was not subject to review by a court of competent jurisdiction for abuse of discretion or breach of fiduciary duty under chapter [11.96A](#) RCW or other applicable law. Following July 25, 1993, the power of judicial review continues to apply.

[1999 c 42 § 625; 1993 c 339 § 4.]

11.98.230: Beneficiary trustee — Income under marital deduction — Spousal power of appointment.

Notwithstanding any provision of RCW [11.98.200](#) through [11.98.240](#) seemingly to the contrary, RCW [11.98.200](#) through [11.98.240](#) do not limit or restrict the distribution of income of a trust that qualifies or that otherwise could have qualified for the marital deduction under section 2056 or 2523 of the Internal Revenue Code, those Internal Revenue Code sections requiring that all income be distributed to the spouse of the decedent or of the trustor at least annually, whether or not an election was in fact made under section 2056(b)(7) or 2523(f) of the Internal Revenue Code. Further, RCW [11.98.200](#) through [11.98.240](#) do not limit or restrict the power of a spouse of the trustor or the spouse of the decedent to exercise a power of appointment described in section 2056(b)(5) or 2523(e) of the Internal Revenue Code with respect to that portion of the trust that could otherwise qualify for the marital deduction under either of those Internal Revenue Code sections.

[1993 c 339 § 5.]

11.98.240: Beneficiary trustee — Applicability — Exceptions — Election of exception — Cause of action.

(1)(a) RCW [11.98.200](#) and [11.98.210](#) respectively apply to:

(i) A trust established under a will, codicil, trust agreement, declaration of trust, deed, or other instrument executed after July 25, 1993, unless the instrument's terms refer specifically to RCW [11.98.200](#) or [11.98.210](#) respectively and provide expressly to the contrary. However, except for RCW [11.98.200](#)(3), the 1994 c 221 amendments to RCW [11.98.200](#) apply to a trust established under a will, codicil, trust agreement, declaration of trust, deed, or other instrument executed after January 1, 1995, unless the instrument's terms refer specifically to RCW [11.98.200](#) and provide expressly to the contrary.

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

(A) The trust is revoked or amended and the terms of the amendment refer specifically to RCW [11.98.200](#) and provide expressly to the contrary;

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

(C) A person entitled to judicial proceedings for a declaration of rights or legal relations under RCW [11.96A.080](#) obtains a judicial determination that the application of this subsection (1)(a)(ii) to the trust is inconsistent with the provisions or purposes of the will or trust.

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

(i) The terms of the instrument specifically refer to RCW [11.98.200](#) or [11.98.210](#) respectively and provide

expressly to the contrary; or

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

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

(3) For the purpose of subsection (1)(a)(ii) of this section, "parties in interest" means those persons identified as "parties" under RCW [11.96A.030](#)(4).

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

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

(b) Through a nonjudicial dispute resolution agreement described in RCW [11.96A.220](#).

[1999 c 42 § 626; 1997 c 252 § 76; 1994 c 221 § 66; 1993 c 339 § 6.]

11.98.900: Application of RCW 11.98.130 through 11.98.160.

The provisions of RCW [11.98.130](#) through [11.98.160](#) are applicable to any instrument purporting to create a trust regardless of the date such instrument bears, unless it has been previously adjudicated in the courts of this state.

[1985 c 30 § 60. Prior: 1984 c 149 § 93; 1971 ex.s. c 229 § 1; 1965 c 145 § [11.98.050](#); prior: 1959 c 146 § 5. Formerly RCW [11.98.050](#).]

11.98.910: Severability — 1959 c 124.

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

[1985 c 30 § 61. Prior: 1959 c 124 § 11. Formerly RCW [30.99.900](#).]

11.98.920: Short title.

This act shall be known as the "Washington Trust Act."

[1985 c 30 § 62. Prior: 1959 c 124 § 12. Formerly RCW [30.99.910](#).]

11.99 RCW: Construction

11.99.010: Effective date of title.

This title shall take effect and be in force on and after the first day of July, 1967; except that sections [11.44.055](#), [11.44.065](#), [11.44.070](#) and [11.44.080](#) shall take effect on July 1, 1965, and the repeal of the following acts or parts of acts as listed in section [11.99.015](#) shall also take effect on July 1, 1965, to wit: In subsection (10), section 1444, Code of 1881; in subsection (47), section 95, chapter 156, Laws of 1917; in subsection (48), section 1, chapter 23, Laws of 1919; in subsection (64), section 1, chapter 112, Laws of 1929; in subsection (66), section 123, chapter 180, Laws of 1935; in subsection (71), section 8, chapter 202, Laws of 1939; and in subsection (111), section [83.16.040](#), chapter 15, Laws of 1961. Except as above provided the procedures herein prescribed shall govern all proceedings in probate brought after the effective date of the title and, also, all further procedure and proceedings in probate then pending, except to the extent that in the opinion of the court their application in particular proceedings or part thereof would not be feasible or would work injustice, in which event the former procedure shall apply.

[1965 c 145 § [11.99.010](#).]

11.99.013: Headings not part of law.

Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law.

[1965 c 145 § [11.99.013](#).]

11.99.015: Repeal.

See 1965 c 145 § [11.99.015](#).

11.99.020: Savings clause — Rights not affected.

No act done in any proceeding commenced before this title takes effect and no accrued right shall be impaired by its provisions. When a right is acquired, extinguished or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute in force before this title takes effect, such provisions shall remain in force and be deemed a part of this code with respect to such right.

[1965 c 145 § [11.99.020](#).]

11.99.030: Severability — 1965 c 145.

If any provisions of this title or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the title which can be given effect without the invalid provision or application, and, to this end, provisions of this title are declared to be severable.

[1965 c 145 § [11.99.030](#).]

11.100 RCW: Investment of trust funds

11.100.010: Provisions of chapter to control — Alteration by controlling instrument.

Any corporation, association, or person handling or investing trust funds as a fiduciary shall be governed in the handling and investment of such funds as in this chapter specified. A fiduciary who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with requirements of this chapter. The specific requirements of this chapter may be expanded, restricted, eliminated, or otherwise altered by provisions of the controlling instrument.

[1995 c 307 § 1; 1985 c 30 § 63. Prior: 1955 c 33 § [30.24.010](#); prior: 1947 c 100 § 1; Rem. Supp. 1947 § 3255-10a. Formerly RCW [30.24.010](#).]

11.100.015: Guardians, guardianships and funds are subject to chapter.

In addition to other fiduciaries, a guardian of any estate is a fiduciary within the meaning of this chapter; and in addition to other trusts, a guardianship of any estate is a trust within the meaning of this chapter; and in addition to other trust funds, guardianship funds are trust funds within the meaning of this chapter.

[1985 c 30 § 64. Prior: 1955 c 33 § [30.24.015](#); prior: 1951 c 218 § 1. Formerly RCW [30.24.015](#).]

11.100.020: Management of trust assets by fiduciary.

(1) A fiduciary is authorized to acquire and retain every kind of property. In acquiring, investing, reinvesting, exchanging, selling and managing property for the benefit of another, a fiduciary, in determining the prudence of a particular investment, shall give due consideration to the role that the proposed investment or investment course of action plays within the overall portfolio of assets. In applying such total asset management approach, a fiduciary shall exercise the judgment and care under the circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, and if the fiduciary has special skills or is named trustee on the basis of representations of special skills or expertise, the fiduciary is under a duty to use those skills.

(2) Except as may be provided to the contrary in the instrument, the following are among the factors that should be considered by a fiduciary in applying this total asset management approach:

- (a) The probable income as well as the probable safety of their capital;
- (b) Marketability of investments;
- (c) General economic conditions;
- (d) Length of the term of the investments;
- (e) Duration of the trust;
- (f) Liquidity needs;

(g) Requirements of the beneficiary or beneficiaries;

(h) Other assets of the beneficiary or beneficiaries, including earning capacity; and

(i) Effect of investments in increasing or diminishing liability for taxes.

(3) Within the limitations of the foregoing standard, and subject to any express provisions or limitations contained in any particular trust instrument, a fiduciary is authorized to acquire and retain every kind of property, real, personal, or mixed, and every kind of investment specifically including but not by way of limitation, debentures and other corporate obligations, and stocks, preferred or common, which persons of prudence, discretion, and intelligence acquire for their own account.

[1995 c 307 § 2; 1985 c 30 § 65. Prior: 1984 c 149 § 97; 1955 c 33 § [30.24.020](#); prior: 1947 c 100 § 2; Rem. Supp. 1947 § 3255-10b. Formerly RCW [30.24.020](#).]

11.100.023: Authority of fiduciary to invest in certain enterprises.

Subject to the standards of RCW [11.100.020](#), a fiduciary is authorized to invest in new, unproven, untried, or other enterprises with a potential for significant growth whether producing a current return, either by investing directly therein or by investing as a limited partner or otherwise in one or more commingled funds which in turn invest primarily in such enterprises. The aggregate amount of investments held by a fiduciary under the authority of this section valued at cost shall not exceed ten percent of the net fair market value of the trust corpus, including investments made under the authority of this section valued at fair market value, immediately after any such investment is made. Any investment which would have been authorized by this section if in force at the time the investment was made is hereby authorized.

[1985 c 30 § 66. Prior: 1984 c 149 § 98.]

11.100.025: Marital deduction interests.

Notwithstanding RCW [11.98.070](#)(21)(a), [11.100.060](#), or any other statutory provisions to the contrary, with respect to trusts which require by their own terms or by operation of law that all income be paid at least annually to the spouse of the trust's creator, which do not provide that on the termination of the income interest that the entire then remaining trust estate be paid to the estate of the spouse of the trust's creator, and for which a federal estate or gift tax marital deduction is claimed, any investment in or retention of unproductive property is subject to a power in the spouse of the trust's creator to require either that any such asset be made productive, or that it be converted to productive assets within a reasonable period of time unless the instrument creating the interest provides otherwise.

[1985 c 30 § 67. Prior: 1984 c 149 § 99.]

11.100.030: Investment in savings accounts — Requirements.

A corporation doing a trust business may invest trust funds in savings accounts with itself to the extent that deposits are insured by an agency of the federal government. Additional trust funds may be so invested by the corporation only if it first sets aside under the control of its trust department as collateral security:

(1) Direct obligations of the United States or other obligations fully guaranteed by the United States as to

principal and interest; or

(2) Bonds or other obligations which constitute general obligations of any state of the United States or municipal subdivision thereof.

The securities so deposited or securities substituted therefor as collateral shall at all times be at least equal in market value to the amount of the funds so deposited.

[1985 c 30 § 68. Prior: 1984 c 149 § 101; 1967 c 133 § 3; 1955 c 33 § [30.24.030](#); prior: 1947 c 100 § 3; Rem. Supp. 1947 § 3255-10c. Formerly RCW [30.24.030](#).]

11.100.035: Investments in securities of certain investment trusts.

(1) Within the standards of judgment and care established by law, and subject to any express provisions or limitations contained in any particular trust instrument, guardians, trustees, and other fiduciaries, whether individual or corporate, are authorized to acquire and retain securities of any open-end or closed-end management type investment company or investment trust registered under the federal investment company act of 1940 as now or hereafter amended.

(2) Within the limitations of subsection (1) of this section, whenever the trust instrument directs, requires, authorizes, or permits investment in obligations of the United States government, the fiduciary may invest in and hold such obligations either directly or in the form of securities of, or other interests in, an open-end or closed-end management type investment company or investment trust registered under the federal investment company act of 1940, as now or hereafter amended, if both of the following conditions are met:

(a) The portfolio of the investment company or investment trust is limited to obligations of the United States and to repurchase agreements fully collateralized by such obligations; and

(b) The investment company or investment trust takes delivery of the collateral for any repurchase agreement either directly or through an authorized custodian.

(3) If the fiduciary is a bank or trust company, then the fact that the fiduciary, or an affiliate of the fiduciary, provides services to the investment company or investment trust such as that of an investment advisor, custodian, transfer agent, registrar, sponsor, distributor, manager, or otherwise, and is receiving reasonable compensation for those services does not preclude the bank or trust company from investing or reinvesting in the securities of the open-end or closed-end management investment company or investment trust. The fiduciary shall furnish a copy of the prospectus relating to the securities to each person to whom a regular periodic accounting would ordinarily be rendered under the trust instrument or under RCW [11.106.020](#), upon the request of that person. The restrictions set forth under RCW [11.100.090](#) may not be construed as prohibiting the fiduciary powers granted under this subsection.

[1995 c 307 § 3; 1994 c 221 § 68; 1989 c 97 § 1; 1985 c 30 § 69. Prior: 1955 c 33 § [30.24.035](#); prior: 1951 c 132 § 1. Formerly RCW [30.24.035](#).]

11.100.037: Investment or distribution of funds held in fiduciary capacity — Deposit in other departments authorized — Collateral security required, exception.

Funds held by a bank or trust company in a fiduciary capacity awaiting investment or distribution shall not be held uninvested or undistributed any longer than is reasonable for the proper management of the account. These funds, including managing agency accounts, may, unless prohibited by the instrument creating the trust or by other statutes of this state, be deposited in the commercial or savings or other department of the bank or trust company, only if the bank or trust company first sets aside under control of the trust department as collateral security:

(1) Direct obligations of the United States or other obligations fully guaranteed by the United States as to principal and interest; or

(2) Bonds or other obligations which constitute general obligations of any state of the United States or municipal subdivision thereof.

The securities so deposited or securities substituted therefor as collateral shall at all times be at least equal in market value to the amount of the funds so deposited, but such security shall not be required to the extent that the funds so deposited are insured by an agency of the federal government.

[1985 c 30 § 70. Prior: 1984 c 149 § 104; 1967 c 133 § 4. Formerly RCW [30.24.037](#).]

11.100.040: Court may permit deviation from terms of trust instrument.

Nothing contained in this chapter shall be construed as restricting the power of a court of proper jurisdiction to permit a fiduciary to deviate from the terms of any will, agreement, or other instrument relating to the acquisition, investment, reinvestment, exchange, retention, sale, or management of fiduciary property.

[1985 c 30 § 71. Prior: 1955 c 33 § [30.24.040](#); prior: 1947 c 100 § 4; Rem. Supp. 1947 § 3255-10d. Formerly RCW [30.24.040](#).]

11.100.045: Fiduciary — Duty to beneficiaries.

A fiduciary shall invest and manage the trust assets solely in the interests of the trust beneficiaries. If a trust has two or more beneficiaries, the fiduciary shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.

[1995 c 307 § 4.]

11.100.047: Fiduciary — Duty to diversify.

Subject to the provisions of RCW [11.100.060](#) and any express provisions in the trust instrument to the contrary, a fiduciary shall diversify the investments of the trust unless the fiduciary reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

[1995 c 307 § 5.]

11.100.050: Scope of chapter.

The provisions of this chapter govern fiduciaries acting under wills, agreements, court orders, and other instruments effective before or after January 1, 1985.

[1985 c 30 § 72. Prior: 1984 c 149 § 107; 1955 c 33 § [30.24.050](#); prior: 1947 c 100 § 5; Rem. Supp. 1947 § 3255-10e. Formerly RCW [30.24.050](#).]

11.100.060: Fiduciary may hold and retain trust property — Investments — Liability.

Subject to express provisions to the contrary in the trust instrument, any fiduciary may hold and retain any real or personal property received into or acquired by the trust from any source. Except as to trust property acquired for consideration, a fiduciary may hold and retain any such property without need for diversification as to kinds or amount and whether or not the property is income producing.

Any fiduciary may invest funds held in trust under an instrument creating the trust in any manner and in any investment or in any class of investments authorized by the instrument.

The investments described in this section are permissible even though the securities or other property are not permitted under other provisions of this chapter, and even though the securities may be securities issued by the corporation that is the fiduciary.

A fiduciary is not liable for any loss incurred with respect to any investment held under the authority of or pursuant to this section if that investment was permitted when received or when the investment was made by the fiduciary, and if the fiduciary exercises due care and prudence in the disposition or retention of any such investment.

[1985 c 30 § 73. Prior: 1984 c 149 § 108.]

11.100.070: Meaning of terms in trust instrument.

The terms "legal investment" or "authorized investment" or words of similar import, as used in any such instrument, shall be taken to mean any investment which is permitted by the terms of RCW [11.100.020](#).

[1985 c 30 § 74. Prior: 1984 c 149 § 110; 1955 c 33 § [30.24.070](#); prior: 1947 c 100 § 7; 1941 c 41 § 13; Rem. Supp. 1947 § 3255-13. Formerly RCW [30.24.070](#).]

11.100.090: Dealings with self or affiliate.

Unless the instrument creating the trust expressly provides to the contrary, any fiduciary in carrying out the obligations of the trust, may not buy or sell investments from or to himself, herself, or itself or any affiliated or subsidiary company or association. This section shall not be construed as prohibiting the trustee's powers under RCW [11.98.070](#)(12).

[1985 c 30 § 75. Prior: 1984 c 149 § 111; 1955 c 33 § [30.24.090](#); prior: 1947 c 100 § 9; 1941 c 41 § 17; Rem. Supp. 1947 § 3255-17. Formerly RCW [30.24.090](#).]

11.100.120: Use of trust funds for life insurance.

Subject to the standards of RCW [11.100.020](#), a fiduciary is authorized to use trust funds to acquire life insurance upon the life of any beneficiary or upon the life of another in whose life such beneficiary has an insurable interest.

[1985 c 30 § 76. Prior: 1984 c 149 § 112; 1973 1st ex.s. c 89 § 1. Formerly RCW [30.24.120](#).]

11.100.130: Person to whom power or authority to direct or control acts of fiduciary or investments of a trust is conferred deemed a fiduciary — Liability.

Whenever power or authority to direct or control the acts of a fiduciary or the investments of a trust is conferred directly or indirectly upon any person other than the designated trustee of the trust, such person shall be deemed to be a fiduciary and shall be liable to the beneficiaries of the trust and to the designated trustee to the same extent as if he or she were a designated trustee in relation to the exercise or nonexercise of such power or authority.

[1995 c 307 § 6; 1985 c 30 § 77. Prior: 1973 1st ex.s. c 89 § 2. Formerly RCW [30.24.130](#).]

11.100.140: Notice and procedure for nonroutine transactions.

(1) A trustee shall not enter into a significant nonroutine transaction in the absence of a compelling circumstance without:

(a) Providing the written notice called for by subsection (4) of this section; and

(b) If the significant nonroutine transaction is of the type described in subsection (2)(a) of this section, obtaining an independent appraisal, or selling in an open-market transaction.

(2) A "significant nonroutine transaction" for the purpose of this section is defined as any of the following:

(a) Any sale, option, lease, or other agreement, binding for a period of ten years or more, dealing with any interest in real estate other than real estate purchased by the trustee or a vendor's interest in a real estate contract, the value of which constitutes twenty-five percent or more of the net fair market value of trust principal at the time of the transaction; or

(b) The sale of any item or items of tangible personal property, including a sale of precious metals or investment gems other than precious metals or investment gems purchased by the trustee, the value of which constitutes twenty-five percent or more of the net fair market value of trust principal at the time of the transaction; or

(c) The sale of shares of stock in a corporation whose stock is not traded on the open market, if the stock in question constitutes more than twenty-five percent of the corporation's outstanding shares; or

(d) The sale of shares of stock in any corporation where the stock to be sold constitutes a controlling interest, or would cause the trust to no longer own a controlling interest, in the corporation.

(3) A "compelling circumstance" for the purpose of this section is defined as a condition, fact, or event that

the trustee believes necessitates action without compliance with this section in order to avoid immediate and significant detriment to the trust. If faced with a compelling circumstance, the trustee shall give the notice called for in subsection (4) of this section and may thereafter enter into the significant nonroutine transaction without waiting for the expiration of the twenty-day period.

(4) The written notice required by this section shall set forth such material facts as necessary to advise properly the recipient of the notice of the nature and terms of the intended transaction. This notice shall be given to the trustor, if living, to each person who is eighteen years or older and to whom income is presently payable or for whom income is presently being accumulated for distribution as income and for whom an address is known to the trustee, and to the attorney general if the trust is a charitable trust under RCW [11.110.020](#). The notice shall be mailed by United States certified mail, postage prepaid, return receipt requested, to the recipient's last-known address, or may be personally served, at least twenty days prior to the trustee entering into any binding agreements.

(5) The trustor, if living, or persons entitled to notice under this section may, by written instrument, waive any requirement imposed by this section.

(6) Except as required by this section for nonroutine transactions defined in subsection (2) of this section, a trustee shall not be required to notify beneficiaries of a trust of the trustee's intended action, to obtain an independent appraisal, or to sell in an open-market transaction.

(7) Any person dealing with a trustee may rely upon the trustee's written statement that the requirements of this section have been met for a particular transaction. If a trustee gives such a statement, the transaction shall be final unless the party relying on the statement has actual knowledge that the requirements of this section have not been met.

(8) The requirements of this section, and any similar requirements imposed by prior case law, shall not apply to personal representatives or to those trusts excluded from the definition of express trusts under RCW [11.98.009](#).

[1985 c 30 § 78. Prior: 1984 c 149 § 114.]

11.102 RCW: Common trust funds

11.102.020: Accounting.

Unless ordered by a court of competent jurisdiction the bank or trust company operating such common trust funds is not required to render a court accounting with regard to such funds; but it may, by application to the superior court, secure approval of such an accounting on such conditions as the court may establish.

[1985 c 30 § 80. Prior: 1955 c 33 § [30.28.020](#); prior: 1943 c 55 § 2; Rem. Supp. 1943 § 3388-1. Formerly RCW [30.28.020](#).]

11.102.030: Applicability of chapter.

This chapter shall apply to fiduciary relationships in existence on June 11, 1943, or thereafter established.

[1985 c 30 § 81. Prior: 1955 c 33 § [30.28.030](#); prior: 1943 c 55 § 7; Rem. Supp. 1943 § 3388-6. Formerly RCW [30.28.030](#).]

11.102.040: Interpretation of chapter.

This chapter shall be so interpreted and construed to effectuate its general purpose to make uniform the laws of those states which enact it.

[1985 c 30 § 82. Prior: 1955 c 33 § [30.28.040](#); prior: 1943 c 55 § 3; Rem. Supp. 1943 § 3388-2. Formerly RCW [30.28.040](#).]

11.102.050: Short title.

This chapter may be cited as the uniform common trust fund act.

[1985 c 30 § 83. Prior: 1955 c 33 § [30.28.050](#); prior: 1943 c 55 § 4; Rem. Supp. 1943 § 3388-3. Formerly RCW [30.28.050](#).]

11.104A RCW: Washington principal and income act of 2002

ARTICLE 1 - DEFINITIONS; FIDUCIARY DUTIES AND POWERS; REMEDIES

11.104A.001: Short title.

This chapter may be cited as the Washington principal and income act of 2002.

[2002 c 345 § 101.]

11.104A.005: Definitions.

In this chapter:

(1) "Accounting period" means a calendar year unless another twelve-month period is selected by a fiduciary. The term includes a portion of a calendar year or other twelve-month period that begins when an income interest begins or ends when an income interest ends.

(2) "Beneficiary" includes, in the case of a decedent's estate, an heir, legatee, and devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary.

(3) "Fiduciary" means a personal representative or a trustee. The term includes an executor, administrator, successor personal representative, special administrator, and a person performing substantially the same function.

(4) "Income" means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in Article 4 of this chapter.

(5) "Income beneficiary" means a person to whom net income of a trust is or may be payable.

(6) "Income interest" means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee's discretion.

(7) "Mandatory income interest" means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

(8) "Net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under this chapter to or from income during the period.

(9) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(10) "Principal" means property held in trust for distribution to a remainder beneficiary.

(11) "Remainder beneficiary" means a person entitled to receive principal, including when an income interest ends.

(12) "Terms of a trust" means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding. The "terms of a trust" shall include without limitation such modifications as may be made from time to time with respect to the trust under chapter [11.96A](#) RCW or otherwise under Washington or applicable federal laws.

(13) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

[2002 c 345 § 102.]

11.104A.010: Fiduciary duties — General principles.

(a) In allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of this chapter, a fiduciary:

(1) Shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this chapter;

(2) May administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by this chapter;

(3) Shall administer a trust or estate in accordance with this chapter if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration; and

(4) Shall add a receipt or charge a disbursement to principal to the extent that the terms of the trust and this chapter do not provide a rule for allocating the receipt or disbursement to or between principal and income.

(b) In exercising the power to adjust under RCW [11.104A.020](#) (a) or (e) or another discretionary power of administration regarding a matter within the scope of this chapter, whether granted by the terms of a trust, a will, or this chapter, a fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor one or more of the beneficiaries. A determination in accordance with this chapter is presumed to be fair and reasonable to all of the beneficiaries.

[2002 c 345 § 103.]

11.104A.010: Fiduciary duties — General principles.

(a) In allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of this chapter, a fiduciary:

(1) Shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this chapter;

(2) May administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by this chapter;

(3) Shall administer a trust or estate in accordance with this chapter if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration; and

(4) Shall add a receipt or charge a disbursement to principal to the extent that the terms of the trust and this chapter do not provide a rule for allocating the receipt or disbursement to or between principal and income.

(b) In exercising the power to adjust under RCW [11.104A.020](#) (a) or (e) or another discretionary power of administration regarding a matter within the scope of this chapter, whether granted by the terms of a trust, a will, or this chapter, a fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor one or more of the beneficiaries. A determination in accordance with this chapter is presumed to be fair and reasonable to all of the beneficiaries.

[2002 c 345 § 103.]

11.104A.020: Fiduciary's power to adjust.

(a) A trustee may adjust between principal and income to the extent the trustee considers necessary if the trustee invests and manages trust assets as a prudent investor, the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income, and the trustee determines, after applying the rules in RCW [11.104A.010](#)(a), that the trustee is unable to comply with RCW [11.104A.010](#)(b).

(b) In deciding whether and to what extent to exercise the power conferred by subsection (a) of this section, a trustee shall consider all factors relevant to the trust and its beneficiaries, including the following factors to the extent they are relevant:

(1) The nature, purpose, and expected duration of the trust;

(2) The intent of the settlor;

(3) The identity and circumstances of the beneficiaries;

(4) The needs for liquidity, regularity of income, and preservation and appreciation of capital;

(5) The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor;

(6) The net amount allocated to income under the other sections in this chapter and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;

(7) Whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

(8) The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and

(9) The anticipated tax consequences of an adjustment.

(c) A trustee may not make an adjustment:

(1) That diminishes the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;

(2) That reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

(3) That changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

(4) From any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside;

(5) If possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;

(6) If possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment;

(7) If the trustee is a beneficiary of the trust; or

(8) If the trustee is not a beneficiary, but the adjustment would benefit the trustee directly or indirectly.

(d) If subsection (c)(5), (6), (7), or (8) of this section applies to a trustee and there is more than one trustee or an additional trustee who is appointed by a court order, a binding agreement, or otherwise under chapter [11.96A](#) RCW, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

(e) A personal representative serving with nonintervention powers under chapter [11.68](#) RCW may adjust between principal and income to the extent the personal representative considers necessary, if the personal representative invests and manages assets of the estate as a prudent investor and the personal representative determines, after applying the rules of RCW [11.104A.010](#)(a), that the personal representative is unable to comply with RCW [11.104A.010](#)(b). In deciding whether and to what extent to exercise the power conferred by this subsection, the personal representative shall consider all factors relevant to the estate and its beneficiaries, including factors comparable to those a trustee would consider under subsection (b) of this section if considering such an adjustment. A personal representative may not make an adjustment under circumstances comparable to those that are described in subsection (c) of this section and that prohibit a trustee from making such an adjustment, although a copersonal representative, or an additional personal representative who is appointed by a court order, a binding agreement, or otherwise under chapter [11.96A](#) RCW, to whom such limitations do not apply may make the adjustment unless the exercise of the power by the remaining personal representative or personal representatives is not permitted by the terms of a will.

(f) A fiduciary may release the entire power conferred by subsection (a) of this section or may release only the power to adjust from income to principal or the power to adjust from principal to income if the fiduciary is uncertain about whether possessing or exercising the power will cause a result described in subsection (c)(1) through (6) or (8) of this section or if the fiduciary determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (c) of this section. The release may be permanent or for a specified period, including a period measured by the life of an individual.

(g) Terms of a trust that limit the power of a fiduciary to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the fiduciary the power of adjustment conferred by subsection (a) of this section.

(h) Unless a beneficiary has requested the fiduciary in writing that the fiduciary consider an adjustment, nothing in this section imposes a duty on the fiduciary to make an adjustment and the fiduciary is not liable for not considering whether to make an adjustment under this section.

[2002 c 345 § 104.]

11.104A.030: Judicial control of discretionary powers.

(a) A court shall not change a fiduciary's decision to exercise or not to exercise a discretionary power conferred by this chapter unless it determines that the decision was an abuse of the fiduciary's discretion. A court shall not determine that a fiduciary abused its discretion merely because the court would have exercised the discretion in a different manner or would not have exercised the discretion.

(b) The decisions to which subsection (a) of this section apply include:

(1) A determination under RCW [11.104A.020](#) (a) or (e) of whether and to what extent an amount should be

transferred from principal to income or from income to principal.

(2) A determination of: (i) The factors that are relevant to the trust or estate and its beneficiaries; (ii) the extent to which they are relevant; and (iii) the weight, if any, to be given to the relevant factors, in deciding whether and to what extent to exercise the power conferred by RCW [11.104A.020](#) (a) or (e).

(3) A determination under RCW [11.104A.040](#)(g).

(c) If a court determines that a fiduciary has abused its discretion, the remedy is to restore the income and remainder beneficiaries to the positions they would have occupied if the fiduciary had not abused its discretion, according to the following principles:

(1) To the extent that the abuse of discretion has resulted in no distribution to a beneficiary or a distribution that is too small, the court may require the fiduciary to distribute from the trust to the beneficiary an amount that the court determines will restore the beneficiary, in whole or in part, to his or her appropriate position.

(2) To the extent that the abuse of discretion has resulted in a distribution to a beneficiary that is too large, the court may restore the beneficiaries, the trust, or both, in whole or in part, to their appropriate positions by requiring the fiduciary to withhold an amount from one or more future distributions to the beneficiary who received the distribution that was too large or requiring that beneficiary to return some or all of the distribution to the trust.

(3) To the extent that the court does not restore under (1) and (2) of this subsection the beneficiaries, the trust, or both, to the positions they would have occupied if the fiduciary had not abused its discretion, the court may require the fiduciary to pay an appropriate amount from its own funds to one or more of the beneficiaries or the trust, or both. The fiduciary has no liability under this section unless the beneficiary alleging the abuse of discretion establishes that the fiduciary did not exercise its discretion in good faith and with honest judgment.

(d) Upon a petition by the fiduciary, the court having jurisdiction over the trust or estate shall determine whether a proposed exercise or nonexercise by the fiduciary of a discretionary power conferred by the act will result in an abuse of the fiduciary's discretion. If the petition describes the proposed exercise or nonexercise of the power and contains sufficient information to inform the beneficiaries of the reasons for the proposal, the facts upon which the fiduciary relies, and an explanation of how the income and remainder beneficiaries will be affected by the proposed exercise or nonexercise of the power, a beneficiary who challenges the proposed exercise or nonexercise has the burden of establishing that it will result in an abuse of discretion.

(e) The fiduciary shall be reimbursed for any and all costs, including without limitation all attorneys' fees and costs of defense, and all liabilities that the fiduciary may incur in connection with any claim or action relating in any way to the fiduciary's exercise of its discretion under this chapter, except to the extent that the beneficiary establishes that the fiduciary did not exercise its discretion in good faith and with honest judgment. All attorneys' fees and costs shall be advanced to the fiduciary as incurred and shall only be collected from the fiduciary after it has been determined that the fiduciary did not exercise its discretion in good faith and with honest judgment.

[2002 c 345 § 105.]

11.104A.040: Power to convert to unitrust.

(a)(1) In this section, "beneficiary" means a person who has an interest in the trust to be converted and who has the legal capacity to act in his, her, or its own right with respect to all actions that such person may take under

this section.

(2) In this section, "unitrust" means both a trust converted into a unitrust under this section and a trust initially established as a unitrust. Unless inconsistent with the terms of the trust or will, subsections (f), (g), (h), (i), and (m) of this section apply to the unitrust initially so established.

(b) Unless expressly prohibited by the terms of the trust, a trustee may release the power to make adjustments under RCW [11.104A.020](#) and convert a trust into a unitrust as described in this section if all of the following apply:

(1) The trustee determines that the conversion will enable the trustee better to carry out the intent of the settlor or testator and the purposes of the trust.

(2) The trustee gives written notice of the trustee's intention to release the power to adjust and to convert the trust into a unitrust and of how the unitrust will operate, including what initial decisions the trustee will make under this section, to each beneficiary who, on the date the notice is given:

(i) Is a distributee or permissible distributee of trust income or principal; or

(ii) Would be a distributee or permissible distributee of trust principal if the interests of the distributees described in (2)(i) of this subsection terminated and the trust then terminated immediately before the notice was given and if no powers of appointment were exercised.

(3) There is at least one beneficiary under (2)(i) of this subsection and at least one other person who is a beneficiary under (2)(ii) of this subsection.

(4) No beneficiary objects to the conversion to a unitrust in a writing delivered to the trustee within sixty days after the notice is given under (2) of this subsection.

(c) The parties, as defined by RCW [11.96A.030](#)(4), may agree to convert a trust to or from a unitrust by means of a binding agreement under chapter [11.96A](#) RCW.

(d)(1) The trustee may petition the court under chapter [11.96A](#) RCW to order a conversion to a unitrust if either of the following apply:

(i) A party, as defined by RCW [11.96A.030](#)(4), timely objects to the conversion to a unitrust; or

(ii) There are no beneficiaries under (2)(i) and (ii) of this subsection.

(2) A party, as defined by RCW [11.96A.030](#)(4), may request a trustee to convert to a unitrust. If the trustee does not convert, the party, as defined by RCW [11.96A.030](#)(4), may petition the court to order the conversion.

(3) The court shall approve the conversion or direct the requested conversion if the court concludes that the conversion will enable the trustee to better carry out the intent of the settlor or testator and the purposes of the trust.

(e) In deciding whether to exercise a power to convert to a unitrust under this section, a trustee may consider, among other things, the factors set forth in RCW [11.104A.020](#)(b).

(f) After a trust is converted to a unitrust, all of the following apply:

(1) The trustee shall follow an investment policy seeking a total return for the investments held by the trust, whether the return is to be derived:

(i) From appreciation of principal;

(ii) From earnings and distributions from principal; or

(iii) From both.

(2) The trustee shall make regular distributions in accordance with the terms of the trust, or the terms of the will, as the case may be, construed in accordance with the provisions of this section.

(3) Unless expressly prohibited by the terms of the trust, the term "income" in the terms of a trust or a will means an annual distribution, the "unitrust distribution," equal to the percentage, the "payout percentage," that is no less than three percent and no more than five percent and that the trustee may determine in the trustee's discretion from time to time, or, if the trustee makes no determination, that shall be four percent of the net fair market value of the trust's assets, whether such assets would be considered income or principal under other provisions of this chapter, averaged over the lesser of:

(i) The three preceding years; or

(ii) The period during which the trust has been in existence.

(g) The trustee may in the trustee's discretion from time to time determine all of the following:

(1) The effective date of a conversion to a unitrust.

(2) The provisions for prorating a unitrust distribution for a short year in which a beneficiary's right to payments commences or ceases.

(3) The frequency of unitrust distributions during the year.

(4) The effect of other payments from or contributions to the trust on the trust's valuation.

(5) Whether to value the trust's assets annually or more frequently.

(6) What valuation dates to use.

(7) How frequently to value nonliquid assets and whether to estimate their value.

(8) Whether to omit from the calculations trust property occupied or possessed by a beneficiary.

(9) Any other matters necessary for the proper functioning of the unitrust.

(h)(1) Expenses which would be deducted from income if the trust were not a unitrust may not be deducted from the unitrust distribution.

(2) Unless otherwise provided by the terms of the trust, the unitrust distribution shall be paid from net income, as such term would be determined if the trust were not a unitrust. To the extent net income is insufficient, the unitrust distribution shall be paid from net realized short-term capital gains. To the extent net income and net realized short-term capital gains are insufficient, the unitrust distribution shall be paid from net realized long-term capital gains. To the extent net income and net realized short-term and long-term capital gains are insufficient, the unitrust distribution shall be paid from the principal of the trust.

(3) To the extent necessary to cause gains from the sale or exchange of unitrust assets to be treated as income under any federal, state, or local income tax (for example, section 643 of the Internal Revenue Code and its regulations, including Treasury Regulation § 1.643(b)-1, as amended or renumbered), the trustee has the discretionary power to allocate the gains to income, so long as the power is reasonably and impartially exercised.

(i) The trustee or, if the trustee declines to do so, a beneficiary may petition the court:

(1) To change the payout percentage.

(2) To provide for a distribution of net income, as would be determined if the trust were not a unitrust, in excess of the unitrust distribution if such distribution is necessary to preserve a tax benefit.

(3) To average the valuation of the trust's net assets over a period other than three years.

(4) To reconvert from a unitrust.

(j) Upon a reconversion, the power to adjust under RCW [11.104A.020](#) is revived.

(k) A conversion to a unitrust does not affect a provision in the terms of a trust directing or authorizing the trustee to distribute principal or authorizing a beneficiary to withdraw a portion or all of the principal.

(l) A trustee may not possess or exercise any power under this section in any of the following circumstances:

(1) The unitrust distribution would be made from any amount that is permanently set aside for charitable purposes under the terms of a trust and for which a charitable deduction from a federal gift or estate tax has been taken unless both income and principal are so set aside.

(2) The possession or exercise of the power would cause an individual to be treated as the owner of all or part of the trust for federal income tax purposes and the individual would not be treated as the owner if the trustee did not possess or exercise the power.

(3) The possession or exercise of the power would cause all or any part of the trust estate to be subject to any federal gift or estate tax with respect to the individual and the trust estate would not be subject to such taxation if the trustee did not possess or exercise the power.

(4) The possession or exercise of the power would result in the disallowance of a federal gift or estate tax marital deduction which would be allowed if the trustee did not have the power.

(5) The trustee is a beneficiary of the trust.

(m) If subsection (l)(2), (3), or (5) of this section applies to a trustee and there is more than one trustee or an

additional trustee who is appointed by a court order, a binding agreement, or otherwise under chapter [11.96A](#) RCW, a cotrustee to whom subsection (l)(2), (3), or (5) of this section does not apply may possess and exercise the power unless the possession or exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust. If subsection (l)(2), (3), or (5) of this section restricts all trustees from possessing or exercising a power under this section, the trustee may petition a court under chapter [11.96A](#) RCW for the court to effect the intended conversion or action.

(n) A trustee may release any power conferred by this section if any of the following applies:

(1) The trustee is uncertain about whether possessing or exercising the power will cause a result described in subsection (l)(2), (3), or (4) of this section.

(2) The trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (l) of this section.

The release may be permanent or for a specified period, including a period measured by the life of an individual.

[2006 c 360 § 1; 2002 c 345 § 106.]

• **ARTICLE 2 - DECEDENT'S ESTATE OR TERMINATING INCOME INTEREST**

11.104A.050: Determination and distribution of net income.

After a decedent dies, and subject to chapter [11.10](#) RCW, in the case of an estate, or after an income interest in a trust ends, the following rules apply:

(1) A fiduciary of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under the rules in Articles 3 through 5 of this chapter which apply to trustees and the rules in subsection (5) of this section. The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

(2) A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the rules in Articles 3 through 5 of this chapter which apply to trustees, except to the extent that the following apply:

(i) The fiduciary shall include in net income all income from property used to discharge liabilities;

(ii) The fiduciary shall pay from income or principal, in the fiduciary's discretion, family allowances; fees of attorneys, accountants, and fiduciaries; court costs and other expenses of administration; and interest on death taxes, but the fiduciary may pay those expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of those expenses from income will not cause the reduction or loss of the deduction; and

(iii) The fiduciary shall pay from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the terms of the trust, or applicable law.

(3) A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright the interest or any other amount provided by the will, the terms of a trust, or applicable law from net income determined under subsection (2) of this section or from principal to the extent that net income is insufficient. Otherwise, no outright gift of a pecuniary amount whether under a will, or under a trust after an income interest ends shall receive interest or any other income.

(4) A fiduciary shall distribute the net income remaining after distributions required by subsection (3) of this section in the manner described in RCW [11.104A.060](#) to all other beneficiaries, including a beneficiary who receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

(5) A fiduciary may not reduce principal or income receipts from property described in subsection (1) of this section because of a payment described in RCW [11.104A.250](#) or [11.104A.260](#) to the extent that the will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on, or after the date of a decedent's death or an income interest's terminating event, and by making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.

[2006 c 360 § 2; 2002 c 345 § 201.]

11.104A.060: Distribution to residuary and remainder beneficiaries.

(a) Each beneficiary described in RCW [11.104A.050](#)(4) is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

(b) In determining a beneficiary's share of net income, the following rules apply:

(1) The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations.

(2) The beneficiary's fractional interest in the undistributed principal assets must be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust.

(3) The beneficiary's fractional interest in the undistributed principal assets must be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation.

(4) The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

(c) If a fiduciary does not distribute all of the collected but undistributed net income to each person as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.

(d) A fiduciary may apply the rules in this section, to the extent that the fiduciary considers it appropriate, to net gain or loss realized after the date of death or terminating event or earlier distribution date from the disposition of a principal asset if this section applies to the income from the asset.

[2002 c 345 § 202.]

- **ARTICLE 3 - APPORTIONMENT AT BEGINNING AND END**

- **OF INCOME INTEREST**

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11.104A.070: When right to income begins and ends.

(a) An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

(b) An asset becomes subject to a trust:

(1) On the date it is transferred to the trust in the case of an asset that is transferred to a trust during the transferor's life;

(2) On the date of a testator's death in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate; or

(3) On the date of an individual's death in the case of an asset that is transferred to a fiduciary by a third party because of the individual's death.

(c) An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under subsection (d) of this section, even if there is an intervening period of administration to wind up the preceding income interest.

(d) An income interest ends on the day before an income beneficiary dies or another terminating event occurs, or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

[2002 c 345 § 301.]

11.104A.080: Apportionment of receipts and disbursements when decedent dies or income interest begins.

(a) A trustee shall allocate an income receipt or disbursement other than one to which RCW [11.104A.050\(1\)](#) applies to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

(b) A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement must be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins must be allocated to principal and the balance must be allocated to income.

(c) An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of this chapter. Distributions to shareholders or other owners from an entity to which RCW [11.104A.100](#) applies are deemed to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

[2002 c 345 § 302.]

11.104A.090: Apportionment when income interest ends.

(a) In this section, "undistributed income" means net income received before the date on which an income interest ends. The term does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.

(b) When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust unless the beneficiary has an unqualified power to revoke more than five percent of the trust principal immediately before the income interest ends. In the latter case, the undistributed income from the portion of the trust that may be revoked must be added to principal.

(c) When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the trustee shall prorate the final payment if and to the extent required by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate, or other tax requirements.

[2002 c 345 § 303.]

• ARTICLE 4 - ALLOCATION OF RECEIPTS DURING

ADMINISTRATION OF TRUST

PART 1: RECEIPTS FROM ENTITIES

11.104A.100: Character of receipts.

(a) In this section, "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization in which a trustee has an interest. "Entity" does not mean a trust or estate to which RCW [11.104A.110](#) applies, a business or activity to which RCW [11.104A.120](#) applies, or an asset-backed security to which RCW [11.104A.240](#) applies.

(b) Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.

(c) A trustee shall allocate the following receipts from an entity to principal:

(1) Property other than money;

(2) Money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity;

(3) Money received in total or partial liquidation of the entity; and

(4) Money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

(d) Money is received in partial liquidation:

(1) To the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or

(2) If the total amount of money and property distributed in a distribution or series of related distributions is greater than twenty percent of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial distribution.

(e) Money is not received in partial liquidation, nor may it be taken into account under subsection (d)(2) of this section, to the extent that it does not exceed the amount of income tax that a trustee or beneficiary must pay on taxable income of the entity that distributes the money.

(f) A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

[2002 c 345 § 401.]

11.104A.110: Distribution from trust or estate.

A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest in a trust that is an investment entity, and shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, RCW [11.104A.100](#) or [11.104A.240](#) applies to a receipt from the trust.

[2002 c 345 § 402.]

11.104A.120: Business and other activities conducted by trustee.

(a) If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's

general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets. The trustee shall maintain such records in accordance with principles of accounting that are generally accepted.

(b) A trustee who accounts separately for a business or other activity may determine the extent to which its net cash receipts must be retained for working capital, the acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business.

(c) Activities for which a trustee may maintain separate accounting records include:

(1) Retail, manufacturing, service, and other traditional business activities;

(2) Farming;

(3) Raising and selling livestock and other animals;

(4) Management of rental properties;

(5) Extraction of minerals and other natural resources;

(6) Timber operations; and

(7) Activities to which RCW [11.104A.230](#) applies.

[2002 c 345 § 403.]

PART 2: RECEIPTS NOT NORMALLY APPORTIONED

11.104A.130: Principal receipts.

A trustee shall allocate to principal:

(1) To the extent not allocated to income under this chapter, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest, or a payer under a contract naming the trust or its trustee as beneficiary;

(2) Money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit, subject to this article;

(3) Amounts recovered from third parties to reimburse the trust because of disbursements described in RCW [11.104A.260\(a\)\(7\)](#) or for other reasons to the extent not based on the loss of income;

(4) Proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income;

(5) Net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income; and

(6) Other receipts as provided in Part 3 of this article.

[2002 c 345 § 404.]

11.104A.140: Rental property.

To the extent that a trustee accounts for receipts from rental property pursuant to this section, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, must be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

[2002 c 345 § 405.]

11.104A.150: Obligation to pay money.

(a) An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, must be allocated to income without any provision for amortization of premium.

(b) A trustee shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the trustee more than one year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within one year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust must be allocated to income.

(c) This section does not apply to an obligation to which RCW [11.104A.180](#), [11.104A.190](#), [11.104A.200](#), [11.104A.210](#), [11.104A.230](#), or [11.104A.240](#) applies.

[2002 c 345 § 406.]

11.104A.160: Insurance policies and similar contracts.

(a) Except as otherwise provided in subsection (b) of this section, a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of, or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income, and to principal if the premiums are paid from principal.

(b) A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income, or, subject to RCW [11.104A.120](#), loss of profits from a business.

(c) This section does not apply to a contract to which RCW [11.104A.180](#) applies.

[2002 c 345 § 407.]

• **PART 3: RECEIPTS NORMALLY APPORTIONED**

11.104A.170: Insubstantial allocations not required.

If a trustee determines that an allocation between principal and income required by RCW [11.104A.180](#), [11.104A.190](#), [11.104A.200](#), [11.104A.210](#), or [11.104A.240](#) is insubstantial, the trustee may allocate the entire amount to principal unless one of the circumstances described in RCW [11.104A.020](#)(c) applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in RCW [11.104A.020](#)(d) and may be released for the reasons and in the manner described in RCW [11.104A.020](#)(f). An allocation is presumed to be insubstantial if:

(1) The amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than ten percent; or

(2) The value of the asset producing the receipt for which the allocation would be made is less than ten percent of the total value of the trust's assets at the beginning of the accounting period.

[2002 c 345 § 408.]

11.104A.180: Deferred compensation, annuities, and similar payments.

(a) In this section, "payment" means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer, including a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

(b) To the extent that a payment is characterized as interest or a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate it to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

(c) If no part of a payment is characterized as interest, a dividend, or an equivalent payment, a trustee shall allocate to income four percent of the total value of the interests of the trustee in the plan, annuity, or similar payment as of the first business day of the accounting period and the balance to principal.

(d) If, to obtain an estate tax marital deduction for a trust, a trustee must allocate more of a payment to income than provided for by this section, the trustee shall allocate to income the additional amount necessary to obtain the marital deduction.

(e) This section does not apply to payments to which RCW [11.104A.190](#) applies.

[2002 c 345 § 409.]

11.104A.190: Liquidating asset.

(a) In this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right, and right to receive payments during a period of more than one year under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include a payment subject to RCW [11.104A.180](#), resources subject to RCW [11.104A.200](#), timber subject to RCW [11.104A.210](#), an activity subject to RCW [11.104A.230](#), an asset subject to RCW [11.104A.240](#), or any asset for which the trustee establishes a reserve for depreciation under RCW [11.104A.270](#).

(b) A trustee shall allocate to income ten percent of the receipts from a liquidating asset and the balance to principal.

[2002 c 345 § 410.]

11.104A.200: Minerals, water, and other natural resources.

(a) To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows:

(1) If received as nominal delay rental or nominal annual rent on a lease, a receipt must be allocated to income;

(2) If received from a production payment, a receipt must be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal;

(3) If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, ninety percent must be allocated to principal and the balance to income; or

(4) If an amount is received from a working interest or any other interest not provided for in (1), (2), or (3) of this subsection, ninety percent of the net amount received must be allocated to principal and the balance to income.

(b) An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, ninety percent of the amount must be allocated to principal and the balance to income.

(c) This chapter applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

(d) If a trust owns an interest in minerals, water, or other natural resources on January 1, 2003, the trustee may allocate receipts from the interest as provided in this chapter or in the manner used by the trustee before January 1, 2003. If the trust acquires an interest in minerals, water, or other natural resources after January 1, 2003, the trustee shall allocate receipts from the interest as provided in this chapter.

[2002 c 345 § 411.]

11.104A.210: Timber.

(a) To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts:

(1) To income to the extent that the amount of timber removed from the land does not exceed the rate of growth of the timber during the accounting periods in which a beneficiary has a mandatory income interest;

(2) To principal to the extent that the amount of timber removed from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;

(3) To or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying the rules in (1) and (2) of this subsection; or

(4) To principal to the extent that advance payments, bonuses, and other payments are not allocated pursuant to (1), (2), or (3) of this subsection.

(b) In determining net receipts to be allocated pursuant to subsection (a) of this section, a trustee shall deduct and transfer to principal a reasonable amount for depletion.

(c) This chapter applies whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

(d) If a trust owns an interest in timberland on January 1, 2003, the trustee may allocate net receipts from the sale of timber and related products as provided in this chapter or in the manner used by the trustee before January 1, 2003. If the trust acquires an interest in timberland after January 1, 2003, the trustee shall allocate net receipts from the sale of timber and related products as provided in this chapter.

[2002 c 345 § 412.]

11.104A.220: Property not productive of income.

(a) If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets, and if the amounts that the trustee transfers from principal to income under RCW [11.104A.020](#) and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee to make property productive of income, convert property within a reasonable time, or exercise the power conferred by RCW [11.104A.020\(a\)](#). The trustee may decide which action or combination of actions to take.

(b) In cases not governed by subsection (a) of this section, proceeds from the sale or other disposition of an asset are principal without regard to the amount of income the asset produces during any accounting period.

[2002 c 345 § 413.]

11.104A.230: Derivatives and options.

(a) In this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments which gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.

(b) To the extent that a trustee does not account under RCW [11.104A.120](#) for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

(c) If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust, or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option must be allocated to principal. An amount paid to acquire the option must be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, must be allocated to principal.

[2002 c 345 § 414.]

11.104A.240: Asset-backed securities.

(a) In this section, "asset-backed security" means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset to which RCW [11.104A.100](#) or [11.104A.180](#) applies.

(b) If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the payment which the payer identifies as being from interest or other current return and shall allocate the balance of the payment to principal.

(c) If a trust receives one or more payments in exchange for the trust's entire interest in an asset-backed security in one accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's interest in the security over more than one accounting period, the trustee shall allocate ten percent of the payment to income and the balance to principal.

[2002 c 345 § 415.]

• ARTICLE 5 - ALLOCATION OF DISBURSEMENTS DURING

ADMINISTRATION OF TRUST

11.104A.250: Disbursements from income.

A trustee shall make the following disbursements from income to the extent that they are not disbursements to which RCW [11.104A.050](#)(2) (ii) or (iii) applies:

(1) One-half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee;

(2) One-half of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;

(3) All of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest; and

(4) Recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

[2002 c 345 § 501.]

11.104A.260: Disbursements from principal.

(a) A trustee shall make the following disbursements from principal:

(1) The remaining one-half of the disbursements described in RCW [11.104A.250](#) (1) and (2);

(2) All of the trustee's compensation calculated on principal as a fee for acceptance, distribution, or termination, and disbursements made to prepare property for sale;

(3) Payments on the principal of a trust debt;

(4) Expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;

(5) Premiums paid on a policy of insurance not described in RCW [11.104A.250](#)(4) of which the trust is the owner and beneficiary;

(6) Estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust; and

(7) Disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties, and defending claims based on environmental matters.

(b) If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

(c) For disbursements not covered in this section or RCW [11.104A.250](#), see RCW [11.104A.110](#)(a)(4).

[2002 c 345 § 502.]

11.104A.270: Transfers from income to principal for depreciation.

(a) In this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset having a useful life of more than one year.

(b) A trustee may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but may not transfer any amount for depreciation:

(1) Of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary; or

(2) Under this section if the trustee is accounting under RCW [11.104A.120](#) for the business or activity in which the asset is used.

(c) An amount transferred to principal need not be held as a separate fund.

[2002 c 345 § 503.]

11.104A.270: Transfers from income to principal for depreciation.

(a) In this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset having a useful life of more than one year.

(b) A trustee may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but may not transfer any amount for depreciation:

(1) Of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary; or

(2) Under this section if the trustee is accounting under RCW [11.104A.120](#) for the business or activity in which the asset is used.

(c) An amount transferred to principal need not be held as a separate fund.

[2002 c 345 § 503.]

11.104A.280: Transfers from income to reimburse principal.

(a) If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

(b) Principal disbursements to which subsection (a) of this section applies include the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:

(1) An amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs;

(2) A capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments;

(3) Disbursements made to prepare property for rental, including tenant allowances, leasehold improvements, and broker's commissions;

(4) Periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments; and

(5) Disbursements described in RCW [11.104A.260](#)(a)(7).

(c) If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in subsection (a) of this section.

[2002 c 345 § 504.]

11.104A.290: Income taxes.

(a) A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

(b) A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

(c) A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid proportionately:

(1) From income to the extent that receipts from the entity are allocated to income; and

(2) From principal to the extent that:

(i) Receipts from the entity are allocated to principal; and

(ii) The trust's share of the entity's taxable income exceeds the total receipts described in (1) and (2)(i) of this subsection.

(d) For purposes of this section, receipts allocated to principal or income must be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.

[2002 c 345 § 505.]

11.104A.300: Adjustments between principal and income because of taxes.

(a) A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries which arise from:

(1) Elections and decisions, other than those described in subsection (b) of this section, that the fiduciary makes from time to time regarding tax matters;

(2) An income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust; or

(3) The ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust, or a beneficiary.

(b) If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, trust, or beneficiary are decreased, each estate, trust, or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement must equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust, or beneficiary whose income taxes are reduced must be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.

[2002 c 345 § 506.]

ARTICLE 6 - MISCELLANEOUS PROVISIONS

11.104A.900: Uniformity of application and construction.

In applying and construing chapter 345, Laws of 2002, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact similar laws.

[2002 c 345 § 602.]

11.104A.901: Application of chapter 11.96A RCW.

Nothing in chapter 345, Laws of 2002 is intended to restrict the application of chapter [11.96A](#) RCW to issues, questions, or disputes that arise under or that relate to chapter 345, Laws of 2002. Any and all such issues, questions, or disputes shall be resolved judicially or nonjudicially under chapter [11.96A](#) RCW.

[2002 c 345 § 603.]

11.104A.902: Severability — 2002 c 345.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[2002 c 345 § 604.]

11.104A.903: Captions, article and part headings not law — 2002 c 345.

Captions, article headings, and part headings used in this chapter are not any part of the law.

[2002 c 345 § 605.]

11.104A.904: Effective date — 2002 c 345.

This act takes effect January 1, 2003.

[2002 c 345 § 606.]

11.104A.905: Application of act to existing trusts and estates.

Except as specifically provided otherwise in the terms of a trust or a will, chapter 345, Laws of 2002 shall apply to any receipt or expense received or incurred on or after January 1, 2003, by any trust or decedent's estate, whether established before, on, or after January 1, 2003, and whether the asset involved was acquired by the fiduciary before, on, or after January 1, 2003.

[2002 c 345 § 607.]

11.106 RCW: Trustees' accounting act

11.106.010: Scope of chapter — Exceptions.

This chapter does not apply to resulting trusts, constructive trusts, business trusts where certificates of beneficial interest are issued to the beneficiaries, investment trusts, voting trusts, insurance trusts prior to the death of the insured, trusts in the nature of mortgages or pledges, trusts created by judgment or decree of a federal court or of the superior court when not sitting in probate, liquidation trusts or trusts for the sole purpose of paying dividends, interest or interest coupons, salaries, wages or pensions; nor does this chapter apply to personal representatives.

[1985 c 30 § 95. Prior: 1984 c 149 § 128; 1955 c 33 § [30.30.010](#); prior: 1951 c 226 § 10. Formerly RCW [30.30.010](#).]

11.106.020: Trustee's annual statement.

The trustee or trustees appointed by any will, deed, or agreement executed shall mail or deliver at least annually to each adult income trust beneficiary a written itemized statement of all current receipts and disbursements made by the trustee of the funds of the trust both principal and income, and upon the request of any such beneficiary shall furnish the beneficiary an itemized statement of all property then held by that trustee, and may also file any such statement in the superior court of the county in which the trustee or one of the trustees resides.

[1985 c 30 § 96. Prior: 1984 c 149 § 129; 1955 c 33 § [30.30.020](#); prior: 1951 c 226 § 2. Formerly RCW [30.30.020](#).]

11.106.030: Intermediate and final accounts — Contents — Filing.

In addition to the statement required by RCW [11.106.020](#) any such trustee or trustees whenever it or they so desire, may file in the superior court of the county in which the trustees or one of the trustees resides an intermediate account under oath showing:

- (1) The period covered by the account;
- (2) The total principal with which the trustee is chargeable according to the last preceding account or the

inventory if there is no preceding account;

(3) An itemized statement of all principal funds received and disbursed during such period;

(4) An itemized statement of all income received and disbursed during such period, unless waived;

(5) The balance of such principal and income remaining at the close of such period and how invested;

(6) The names and addresses of all living beneficiaries, including contingent beneficiaries, of the trust, and a statement as to any such beneficiary known to be under legal disability;

(7) A description of any possible unborn or unascertained beneficiary and his interest in the trust fund.

After the time for termination of the trust has arrived, the trustee or trustees may also file a final account in similar manner.

[1985 c 30 § 97. Prior: 1984 c 149 § 130; 1955 c 33 § [30.30.030](#); prior: 1951 c 226 § 3. Formerly RCW [30.30.030](#).]

11.106.040: Petition for statement of account.

At any time after the later of one year from the inception of the trust or one year after the day on which a report was last filed, any settlor or beneficiary of a trust may file a petition under RCW [11.96A.080](#) with the superior court in the county where the trustee or one of the trustees resides asking the court to direct the trustee or trustees to file in the court an account. At the hearing on such petition the court may order the trustee to file an account for good cause shown.

[1999 c 42 § 627; 1985 c 30 § 98. Prior: 1984 c 149 § 131; 1955 c 33 § [30.30.040](#); prior: 1951 c 226 § 4. Formerly RCW [30.30.040](#).]

11.106.050: Account filed — Return day — Notice.

When any account has been filed pursuant to RCW [11.106.030](#) or [11.106.040](#), the clerk of the court where filed shall fix a return day therefor as provided in RCW [11.96A.100](#)(4) and issue a notice. The notice shall state the time and place for the return date, the name or names of the trustee or trustees who have filed the account, that the account has been filed, that the court is asked to settle the account, and that any objections or exceptions to the account must be filed with the clerk of the court on or before the return date. The notice shall be given as provided for notices under RCW [11.96A.110](#).

[1999 c 42 § 628; 1985 c 30 § 99. Prior: 1984 c 149 § 132; 1955 c 33 § [30.30.050](#); prior: 1951 c 226 § 5. Formerly RCW [30.30.050](#).]

11.106.060: Account filed — Objections — Appointment of guardians ad litem — Representatives.

Upon or before the return date any beneficiary of the trust may file the beneficiary's written objections or exceptions to the account filed or to any action of the trustee or trustees set forth in the account. The court shall

appoint guardians ad litem as provided in RCW [11.96A.160](#) and the court may allow representatives to be appointed under RCW [11.96A.120](#) or [11.96A.250](#) to represent the persons listed in those sections.

[1999 c 42 § 629; 1985 c 30 § 100. Prior: 1984 c 149 § 133; 1977 ex.s. c 80 § 31; 1955 c 33 § [30.30.060](#); prior: 1951 c 226 § 6. Formerly RCW [30.30.060](#).]

11.106.070: Court to determine accuracy, validity — Decree.

Upon the return date or at some later date fixed by the court if so requested by one or more of the parties, the court without the intervention of a jury and after hearing all the evidence submitted shall determine the correctness of the account and the validity and propriety of all actions of the trustee or trustees set forth in the account including the purchase, retention, and disposition of any of the property and funds of the trust, and shall render its decree either approving or disapproving the account or any part of it, and surcharging the trustee or trustees for all losses, if any, caused by negligent or wilful breaches of trust.

[1985 c 30 § 101. Prior: 1984 c 149 § 134; 1955 c 33 § [30.30.070](#); prior: 1951 c 226 § 7. Formerly RCW [30.30.070](#).]

11.106.080: Effect of decree.

The decree rendered under RCW [11.106.070](#) shall be deemed final, conclusive, and binding upon all the parties interested including all incompetent, unborn, and unascertained beneficiaries of the trust subject only to the right of appeal under RCW [11.106.090](#).

[1985 c 30 § 102. Prior: 1984 c 149 § 135; 1955 c 33 § [30.30.080](#); prior: 1951 c 226 § 8. Formerly RCW [30.30.080](#).]

11.106.090: Appeal from decree.

The decree rendered under RCW [11.106.070](#) shall be a final order from which any party in interest may appeal as in civil actions to the supreme court or the court of appeals of the state of Washington.

[1985 c 30 § 103. Prior: 1984 c 149 § 136; 1971 c 81 § 80; 1955 c 33 § [30.30.090](#); prior: 1951 c 226 § 9. Formerly RCW [30.30.090](#).]

11.106.100: Waiver of accounting by beneficiary.

Any adult beneficiary entitled to an accounting under either RCW [11.106.020](#) or [11.106.030](#) may waive such an accounting by a separate instrument delivered to the trustee.

[1985 c 30 § 104. Prior: 1984 c 149 § 137; 1955 c 33 § [30.30.100](#); prior: 1951 c 226 § 11. Formerly RCW [30.30.100](#).]

11.106.110: Modification under chapter 11.97 RCW — How constituted.

This chapter is declared to be of similar import to the uniform trustees' accounting act. Any modification under chapter [11.97](#) RCW, including waiver, of the requirements of this chapter in any will, deed, or agreement

heretofore or hereafter executed shall be given effect whether the waiver refers to the uniform trustees' accounting act by name or other reference or to any other act of like or similar import.

[1985 c 30 § 105. Prior: 1984 c 149 § 138; 1955 c 33 § [30.30.110](#); prior: 1951 c 226 § 12. Formerly RCW [30.30.110](#).]

11.108 RCW: Miscellaneous provisions for distributions made by a governing instrument (formerly trust gift distribution)

11.108.010: Definitions.

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

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

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

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

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

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

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

(7) The term "gift" refers to all gifts, legacies, devises, and bequests made in a governing instrument, whether outright or in trust, and whether made during the life of the transferor or as a result of the transferor's death.

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

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

[2006 c 360 § 3; 1997 c 252 § 81; 1993 c 73 § 2; 1990 c 224 § 2; 1988 c 64 § 27; 1985 c 30 § 106. Prior: 1984 c 149 § 140.]

11.108.020: Marital deduction gift — Compliance with Internal Revenue Code — Fiduciary powers.

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

(2) If a governing instrument contains a marital deduction gift, any fiduciary operating under the governing instrument has all the powers, duties, and discretionary authority necessary to comply with the marital deduction provisions of the Internal Revenue Code. The fiduciary shall not take any action or have any power that may impair that deduction, but this does not require the fiduciary to make the elections under either section 2056(b)(7) or 2523(f) of the Internal Revenue Code that is referred to in RCW [11.108.025](#).

[1997 c 252 § 82; 1993 c 73 § 3; 1988 c 64 § 28; 1985 c 30 § 107. Prior: 1984 c 149 § 141.]

11.108.025: Election to qualify property for the marital deduction — Generation-skipping transfer tax allocations.

Unless a governing instrument directs to the contrary:

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

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

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

(a) The terms of the separate trusts which result are substantially identical to the terms of the trust before division;

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

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

(4) For state and federal estate tax purposes, a fiduciary may make inconsistent elections under section 2056(b)(7) or 2056A of the Internal Revenue Code and under similar provisions of applicable state law.

[2006 c 360 § 5; 1997 c 252 § 83; 1993 c 73 § 4; 1991 c 6 § 1; 1990 c 179 § 2; 1988 c 64 § 29.]

11.108.030: Pecuniary bequests — Valuation of assets if distribution other than money.

(1) If a governing instrument authorizes the fiduciary to satisfy a pecuniary bequest in whole or in part by distribution of property other than money, the assets selected for that purpose shall be valued at their respective fair market values on the date or dates of distribution, unless the governing instrument expressly provides otherwise. If the governing instrument permits the fiduciary to value the assets selected for the distribution as of a date other than the date or dates of distribution, then, unless the governing instrument expressly provides otherwise, the assets selected by the fiduciary for that purpose shall have an aggregate fair market value on the date or dates of distribution which, when added to any cash distributed, will amount to no less than the amount of that gift as stated in, or determined by, the governing instrument.

(2) A marital deduction gift shall be satisfied only with assets that qualify for those deductions.

[1985 c 30 § 108. Prior: 1984 c 149 § 142.]

11.108.040: Construction of certain marital deduction formula bequests.

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

(2) If this subsection applies to a testator, such expression shall be construed as referring to the estate tax marital deduction allowed by federal law immediately prior to the enactment of the unlimited estate tax marital deduction as a part of the economic recovery tax act of 1981. This subsection applies if subsection (3) of this section does not apply and:

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

(b) The testator is survived by a blood or adopted descendant who is not also a blood or adopted descendant of the testator's surviving spouse, unless such person or persons have entered into an agreement under RCW [11.96A.220](#); or

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

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

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

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

[1999 c 42 § 630; 1985 c 30 § 109. Prior: 1984 c 149 § 143.]

11.108.050: Marital deduction gift in trust.

If a governing instrument contains a marital deduction gift in trust, then in addition to the other provisions of this chapter, each of the following applies to the trust to the extent necessary to qualify the gift for the marital deduction:

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

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

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

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

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

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

(a) At least one trustee of the trust must be an individual citizen of the United States or a domestic

corporation, and a distribution, other than a distribution of income, may not be made from the trust unless a trustee who is an individual citizen of the United States or a domestic corporation has the right to withhold from the distribution the tax imposed under section 2056A of the Internal Revenue Code on the distribution;

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

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

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

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

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

[1997 c 252 § 84; 1993 c 73 § 5; 1990 c 179 § 3; 1985 c 30 § 110. Prior: 1984 c 149 § 144.]

11.108.060: Marital deduction gift — Survivorship requirement — Limits — Property to be held in trust.

For an estate that exceeds the amount exempt from state or federal tax by virtue of the credit under section 2010 of the Internal Revenue Code, if taking into account applicable adjusted taxable gifts as defined in section 2001(b) of the Internal Revenue Code, any marital deduction gift that is conditioned upon the transferor's spouse surviving the transferor for a period of more than six months, is governed by the following:

(1) A survivorship requirement expressed in the governing instrument in excess of six months or which may exceed six months, other than survival by a spouse of a common disaster resulting in the death of the transferor, does not apply to property passing under the marital deduction gift, and for the gift, the survivorship requirement may not exceed the period ending six months following the transferor's date of death, as established under section 2056(b)(3) of the Internal Revenue Code.

(2) If the property that is the subject of the marital deduction gift is passing or is to be held in trust, as opposed to passing outright, it must be held in a trust meeting the requirements of section 2056(b)(7) of the Internal Revenue Code the corpus of which must: (a) Pass as though the spouse failed to survive the transferor if the spouse, in fact, fails to survive the term specified in the governing instrument; and (b) pass to the spouse under the terms of the governing instrument if the spouse, in fact, survives the term specified in the governing instrument.

[2006 c 360 § 6; 1999 c 44 § 1; 1997 c 252 § 86; 1989 c 35 § 1; 1985 c 30 § 111. Prior: 1984 c 149 § 145.]

11.108.070: Presumptions for the interpretation, construction, and administration of governing instrument.

(1) The legislature finds that the citizens and residents of the state, and nonresidents of the state having property located in Washington, desire to take full advantage of the exemptions, exclusions, deductions, and credits allowable under the federal estate, gift, income, and generation-skipping transfer taxes, and the Washington counterparts to those taxes, if any, unless the facts and circumstances indicate otherwise, or the transferor has expressed a contrary intent in the governing instrument.

(2) In interpreting, construing, or administering a governing instrument, absent a clear expression of intent by the transferor to the contrary, the following presumptions apply and may only be rebutted by clear, cogent, and convincing evidence to the contrary, but these presumptions of intent do not require the making of any particular voluntary tax election:

(a) The transferor intended to take advantage of the maximum benefit of tax deductions, exemptions, exclusions, or credits;

(b) The transferor intended any gift to a spouse made outright and free of trust is to qualify for the gift or estate tax marital deduction and to be a marital deduction gift; and

(c) If the governing instrument refers to a trust as a marital trust, QTIP trust, or spousal trust, or refers to qualified terminable interest property, QTIP, or QTIP property, sections 2044, 2056, and 2523 of the Internal Revenue Code or similar provisions of applicable state law, the transferor intended the property passing to such a trust and the trust to qualify for the applicable gift or estate tax marital [marital] deduction, and for the gift to qualify for a marital deduction gift.

(3) References in this chapter to provisions of the Internal Revenue Code include references to similar provisions, if any, of applicable state law.

[2006 c 360 § 4.]

11.108.900: Application of chapter — Application of 2006 c 360.

(1) This chapter applies to all estates, trusts, and governing instruments in existence on or any time after March 7, 1984, and to all proceedings with respect thereto after that date, whether the proceedings commenced before or after that date, and including distributions made after that date. This chapter shall not apply to any governing instrument the terms of which expressly or by necessary implication make this chapter inapplicable. The judicial and nonjudicial dispute resolution procedures of chapter [11.96A](#) RCW apply to this chapter.

(2) Sections 3 through 6, chapter 360, Laws of 2006 are remedial in nature and shall be liberally applied in order to achieve the purposes of chapter 360, Laws of 2006.

[2006 c 360 § 7; 1999 c 42 § 631; 1985 c 30 § 112. Prior: 1984 c 149 § 146.]

11.110 RCW: Charitable trusts

11.110.010: Purpose of chapter.

The purpose of this chapter is to facilitate public supervision over the administration of public charitable trusts and similar relationships and to clarify and implement the powers and duties of the attorney general and the secretary of state with relation thereto.

[1993 c 471 § 25; 1985 c 30 § 113. Prior: 1967 ex.s. c 53 § 1. Formerly RCW [19.10.010](#).]

11.110.020: Definitions.

When used in this chapter, unless the context otherwise requires:

"Person" means an individual, organization, group, association, partnership, corporation, or any combination of them.

"Trustee" means (1) any person holding property in trust for a public charitable purpose; except the United States, its states, territories, and possessions, the District of Columbia, Puerto Rico, and their agencies and subdivisions; and (2) a corporation formed for the administration of a charitable trust or holding assets subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes: PROVIDED, That the term "trustee" does not apply to (a) religious corporations duly organized and operated in good faith as religious organizations, which have received a declaration of current tax exempt status from the government of the United States; their duly organized branches or chapters; and charities, agencies, and organizations affiliated with and forming an integral part of said organization, or operated, supervised, or controlled directly by such religious corporations nor any officer of any such religious organization who holds property for religious purposes: PROVIDED, That if such organization has not received from the United States government a declaration of current tax exempt status prior to the time it receives property under the terms of a charitable trust, this exemption shall be applicable for two years only from the time of receiving such property, or until such tax exempt status is finally declared, whichever is sooner; or (b) an educational institution which is nonprofit and charitable, having a program of primary, secondary, or collegiate instruction comparable in scope to that of any public school or college operated by the state of Washington or any of its school districts.

[1985 c 30 § 114. Prior: 1971 ex.s. c 226 § 1; 1967 ex.s. c 53 § 2. Formerly RCW [19.10.020](#).]

11.110.040: Information, documents, and reports are public records — Inspection — Publication.

All information, documents, and reports filed with the secretary of state under this chapter are matters of public record and shall be open to public inspection, subject to reasonable regulation: PROVIDED, That the secretary of state shall withhold from public inspection any trust instrument so filed whose content is not exclusively for charitable purposes. The secretary of state may publish, on a periodic or other basis, such information as may be necessary or appropriate in the public interest concerning the registration, reports, and information filed with the secretary of state or any other matters relevant to the administration and enforcement of this chapter.

[1993 c 471 § 26; 1985 c 30 § 115. Prior: 1967 ex.s. c 53 § 4. Formerly RCW [19.10.040](#).]

11.110.051: Registration of trustee — Requirements — Exception — Application of chapter to nonregistered trustees.

(1) Except as provided in subsection (2) of this section, a trustee, as defined by RCW [11.110.020](#), must register with the secretary of state if, as to a particular charitable trust:

(a) The trustee holds assets in trust, invested for income-producing purposes, exceeding a value established by the secretary of state by rule;

(b) Under the terms of the trust all or part of the principal or income of the trust can or must currently be expended for charitable purposes; and

(c) The trust instrument does not require the distribution of the entire trust corpus within a period of one year or less.

(2) A trustee of a trust, in which the only charitable interest is in the nature of a remainder, is not required to register during any life estate or other term that precedes the charitable interest. This exclusion from registration applies to trusts which have more than one noncharitable life income beneficiary, even if the death of one such beneficiary obligates the trustee to distribute a remainder interest to charity.

(3) A trustee of a charitable trust that is not required to register pursuant to this section is subject to all requirements of this chapter other than those governing registration and reporting to the secretary of state.

[1997 c 124 § 1.]

11.110.060: Instrument establishing trust, inventory of assets, registration status, successor trustee information, and amendments to be filed.

(1) Every trustee required to file under RCW [11.110.051](#) shall file with the secretary of state within four months after receiving possession or control of the trust corpus, or after the trust becomes a trust described by RCW [11.110.051\(1\)](#):

(a) A copy of the instrument establishing his or her title, powers, or duties;

(b) An inventory of the assets of such charitable trust; and

(c) A registration form setting forth the trustee's name, mailing address, physical address if different, and additional identifying information required by the secretary by rule.

(2) A successor trustee to a previously registered trust shall file a registration form and inventory of assets within four months after receiving possession or control of the trust corpus.

(3) A trustee required to register shall file with the secretary of state copies of all amendments to the trust instrument within four months of the making of the amendment.

[1997 c 124 § 2; 1993 c 471 § 28; 1985 c 30 § 117. Prior: 1984 c 149 § 150; 1971 ex.s. c 226 § 2; 1967 ex.s. c 53 § 6. Formerly RCW [19.10.060](#).]

11.110.070: Tax or information return or report — Filing — Rules — Forms.

Every trustee required to register under RCW [11.110.051](#) shall file with the secretary of state a copy of each publicly available United States tax or information return or report of the trust at the time that the trustee files with the internal revenue service. The secretary may provide by rule for the exemption from reporting under this

section by some or all trusts not required to file a federal tax or information return, and for a substitute form containing similar information to be used by any trusts not so exempted.

[1997 c 124 § 3; 1993 c 471 § 29; 1985 c 30 § 118. Prior: 1971 ex.s. c 226 § 3; 1967 ex.s. c 53 § 7. Formerly RCW [19.10.070](#).]

11.110.075: Trust not exclusively for charitable purposes — Instrument and information not public — Access.

A trust is not exclusively for charitable purposes, within the meaning of RCW [11.110.040](#), when the instrument creating it contains a trust for several or mixed purposes, and any one or more of such purposes is not charitable within the meaning of RCW [11.110.020](#), as enacted or hereafter amended. Such instrument shall be withheld from public inspection by the secretary of state and no information as to such noncharitable purpose shall be made public. The attorney general shall have free access to such information.

[1997 c 124 § 4; 1993 c 471 § 30; 1985 c 30 § 120. Prior: 1984 c 149 § 154; 1971 ex.s. c 226 § 5. Formerly RCW [19.10.075](#).]

11.110.090: Uniformity of chapter with laws of other states.

It is the purpose of this chapter to make uniform the laws of this and other states on the subject of charitable trusts and similar relationships. Recognizing the necessity for uniform application and enforcement of this chapter, its provisions are hereby declared mandatory and they shall not be superseded by the provisions of any trust instrument or similar instrument to the contrary.

[1985 c 30 § 122. Prior: 1967 ex.s. c 53 § 9. Formerly RCW [19.10.090](#).]

11.110.100: Investigations by attorney general authorized — Appearance and production of books, papers, documents, etc., may be required.

The attorney general may investigate transactions and relationships of trustees and other persons subject to this chapter for the purpose of determining whether the trust or other relationship is administered according to law and the terms and purposes of the trust, or to determine compliance with this chapter in any other respect. He may require any officer, agent, trustee, fiduciary, beneficiary, or other person, to appear, at a time and place designated by the attorney general in the county where the person resides or is found, to give information under oath and to produce books, memoranda, papers, documents of title, and evidence of assets, liabilities, receipts, or disbursements in the possession or control of the person ordered to appear.

[1985 c 30 § 123. Prior: 1967 ex.s. c 53 § 10. Formerly RCW [19.10.100](#).]

11.110.110: Order to appear — Effect — Enforcement — Appellate review.

When the attorney general requires the attendance of any person, as provided in RCW [11.110.100](#), he shall issue an order setting forth the time when and the place where attendance is required and shall cause the same to be delivered to or sent by registered mail to the person at least fourteen days before the date fixed for attendance. Such order shall have the same force and effect as a subpoena, and, upon application of the attorney general, obedience to the order may be enforced by any superior court judge in the county where the

person receiving it resides or is found, in the same manner as though the notice were a subpoena. The court, after hearing, for good cause, and upon application of any person aggrieved by the order, shall have the right to alter, amend, revise, suspend, or postpone all or any part of its provisions. In any case where the order is not enforced by the court according to its terms, the reasons for the court's actions shall be clearly stated in the record, and shall be subject to review by the supreme court or the court of appeals.

[1988 c 202 § 20; 1985 c 30 § 124. Prior: 1984 c 149 § 157; 1971 c 81 § 64; 1967 ex.s. c 53 § 11. Formerly RCW [19.10.110](#).]

11.110.120: Proceedings to secure compliance and proper trust administration — Attorney general to be notified of judicial proceedings involving charitable trust — Powers and duties additional.

The attorney general may institute appropriate proceedings to secure compliance with this chapter and to secure the proper administration of any trust or other relationship to which this chapter applies. He shall be notified of all judicial proceedings involving or affecting the charitable trust or its administration in which, at common law, he is a necessary or proper party as representative of the public beneficiaries. The notification shall be given as provided in RCW [11.96A.110](#), but this notice requirement may be waived at the discretion of the attorney general. The powers and duties of the attorney general provided in this chapter are in addition to his existing powers and duties, and are not to be construed to limit or to restrict the exercise of the powers or the performance of the duties of the attorney general or of any prosecuting attorney which they may exercise or perform under any other provision of law. Except as provided herein, nothing in this chapter shall impair or restrict the jurisdiction of any court with respect to any of the matters covered by it.

[1999 c 42 § 632; 1985 c 30 § 125. Prior: 1984 c 149 § 158; 1967 ex.s. c 53 § 12. Formerly RCW [19.10.120](#).]

11.110.125: Violations — Refusal to file reports, perform duties, etc.

The willful refusal by a trustee to make or file any report or to perform any other duties expressly required by this chapter, or to comply with any valid rule adopted by the secretary of state under this chapter, shall constitute a breach of trust and a violation of this chapter.

[1993 c 471 § 32; 1985 c 30 § 126. Prior: 1971 ex.s. c 226 § 6. Formerly RCW [19.10.125](#).]

11.110.130: Violations — Civil action may be prosecuted.

A civil action for a violation of this chapter may be prosecuted by the attorney general or by a prosecuting attorney.

[1993 c 471 § 33; 1985 c 30 § 127. Prior: 1967 ex.s. c 53 § 13. Formerly RCW [19.10.130](#).]

11.110.140: Penalty.

Every false statement of material fact knowingly made or caused to be made by any person in any statement or report filed under this chapter and every other violation of this chapter is a gross misdemeanor.

[1985 c 30 § 128. Prior: 1967 ex.s. c 53 § 14. Formerly RCW [19.10.140](#).]

11.110.200: Tax Reform Act of 1969, state implementation — Application of RCW 11.110.200 through 11.110.260 to certain trusts defined in federal code.

RCW [11.110.200](#) through [11.110.260](#) shall apply only to trusts which are "private foundations" as defined in section 509 of the Internal Revenue Code, "charitable trusts" as described in section 4947(a)(1) of the Internal Revenue Code, or "split-interest trusts" as described in section 4947(a)(2) of the Internal Revenue Code. With respect to any such trust created after December 31, 1969, RCW [11.110.200](#) through [11.110.260](#) shall apply from such trust's creation. With respect to any such trust created before January 1, 1970, RCW [11.110.200](#) through [11.110.260](#) shall apply only to such trust's federal taxable years beginning after December 31, 1971.

[1993 c 73 § 6; 1985 c 30 § 129. Prior: 1984 c 149 § 161; 1971 c 58 § 1. Formerly RCW [19.10.200](#).]

11.110.210: Tax Reform Act of 1969, state implementation — Trust instruments deemed to contain prohibiting provisions.

The trust instrument of each trust to which RCW [11.110.200](#) through [11.110.260](#) applies shall be deemed to contain provisions prohibiting the trustee from:

(1) Engaging in any act of "self-dealing," as defined in section 4941(d) of the Internal Revenue Code, which would give rise to any liability for the tax imposed by section 4941(a) of the Internal Revenue Code;

(2) Retaining any "excess business holdings," as defined in section 4943(c) of the Internal Revenue Code, which would give rise to any liability for the tax imposed by section 4943(a) of the Internal Revenue Code;

(3) Making any investments which would jeopardize the carrying out of any of the exempt purposes of the trust, within the meaning of section 4944 of the Internal Revenue Code, so as to give rise to any liability for the tax imposed by section 4944(a) of the Internal Revenue Code; and

(4) Making any "taxable expenditures," as defined in section 4945(d) of the Internal Revenue Code, which would give rise to any liability for the tax imposed by section 4945(a) of the Internal Revenue Code:

PROVIDED, That this section shall not apply either to those split-interest trusts or to amounts thereof which are not subject to the prohibitions applicable to private foundations by reason of the provisions of section 4947 of the Internal Revenue Code.

[1993 c 73 § 7; 1985 c 30 § 130. Prior: 1984 c 149 § 162; 1971 c 58 § 2. Formerly RCW [19.10.210](#).]

11.110.220: Tax Reform Act of 1969, state implementation — Trust instruments deemed to contain certain provisions for distribution.

The trust instrument of each trust to which RCW [11.110.200](#) through [11.110.260](#) applies, except "split-interest" trusts, shall be deemed to contain a provision requiring the trustee to distribute, for the purposes specified in the trust instrument, for each taxable year of the trust, amounts at least sufficient to avoid liability for the tax imposed by section 4942(a) of the Internal Revenue Code.

[1993 c 73 § 8; 1985 c 30 § 131. Prior: 1984 c 149 § 163; 1971 c 58 § 3. Formerly RCW [19.10.220](#).]

11.110.230: Tax Reform Act of 1969, state implementation — Rights, powers, of courts, attorney general, not impaired.

Nothing in RCW [11.110.200](#) through [11.110.260](#) shall impair the rights and powers of the courts or the attorney general of this state with respect to any trust.

[1985 c 30 § 132. Prior: 1984 c 149 § 164; 1971 c 58 § 4. Formerly RCW [19.10.230](#).]

11.110.250: Tax Reform Act of 1969, state implementation — Application to trust created after June 10, 1971, or amendment to existing trust.

Nothing in RCW [11.110.200](#) through [11.110.260](#) shall limit the power of a person who creates a trust after June 10, 1971 or the power of a person who has retained or has been granted the right to amend a trust created before June 10, 1971, to include a specific provision in the trust instrument or an amendment thereto, as the case may be, which provides that some or all of the provisions of RCW [11.110.210](#) and [11.110.220](#) shall have no application to such trust.

[1985 c 30 § 134. Prior: 1984 c 149 § 167; 1971 c 58 § 6. Formerly RCW [19.10.250](#).]

11.110.260: Tax Reform Act of 1969, state implementation — Severability — RCW 11.110.200 through 11.110.260.

If any provision of RCW [11.110.200](#) through [11.110.260](#) or the application thereof to any trust is held invalid, such invalidity shall not affect the other provisions or applications of RCW [11.110.200](#) through [11.110.260](#) which can be given effect without the invalid provision or application, and to this end the provisions of RCW [11.110.200](#) through [11.110.260](#) are declared to be severable.

[1985 c 30 § 135. Prior: 1984 c 149 § 168; 1971 c 58 § 7. Formerly RCW [19.10.260](#).]

11.110.270: Tax Reform Act of 1969, state implementation — Not for profit corporations.

See RCW [24.40.010](#) through [24.40.070](#).

11.110.900: Severability — 1967 ex.s. c 53.

If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected.

[1985 c 30 § 136. Prior: 1967 ex.s. c 53 § 15. Formerly RCW [19.10.900](#).]

11.114 RCW: Uniform transfers to minors act

11.114.010: Definitions. (Effective until July 1, 2007.)

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

- (1) "Adult" means an individual who has attained the age of twenty-one years.
- (2) "Benefit plan" means an employer's plan for the benefit of an employee or partner.
- (3) "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.
- (4) "Guardian" means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions. Conservator means guardian for transfers made under another state's law but enforceable in this state's courts.
- (5) "Court" means a superior court of the state of Washington.
- (6) "Custodial property" means (a) any interest in property transferred to a custodian under this chapter and (b) the income from and proceeds of that interest in property.
- (7) "Custodian" means a person so designated under RCW [11.114.090](#) or a successor or substitute custodian designated under RCW [11.114.180](#).
- (8) "Financial institution" means a bank, trust company, savings institution, or credit union, chartered and supervised under state or federal law.
- (9) "Legal representative" means an individual's personal representative or guardian.
- (10) "Member of the minor's family" means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.
- (11) "Minor" means an individual who has not attained the age of twenty-one years.
- (12) "Person" means an individual, corporation, organization, or other legal entity.
- (13) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.
- (14) "Transfer" means a transaction that creates custodial property under RCW [11.114.090](#).
- (15) "Transferor" means a person who makes a transfer under this chapter.
- (16) "Trust company" means a financial institution, corporation, or other legal entity, authorized to exercise general trust powers.

[1991 c 193 § 1.]

11.114.020: Scope and jurisdiction. (Effective until July 1, 2007.)

- (1) This chapter applies to a transfer that refers to this chapter in the designation under RCW [11.114.090](#)(1) by which the transfer is made if at the time of the transfer, the transferor, the minor, or the custodian is a resident of

this state or the custodial property is located in this state. The custodianship so created remains subject to this chapter despite a subsequent change in residence of a transferor, the minor, or the custodian, or the removal of custodial property from this state.

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

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

(4) A matter under this chapter subject to court determination is governed by the procedures provided in RCW [11.96A.080](#) through [11.96A.200](#). However, no guardian ad litem is required for the minor, except under RCW [11.114.190](#)(1), in the case of a petition by a [an] unrepresented minor under the age of fourteen years.

[1999 c 42 § 633; 1991 c 193 § 2.]

11.114.030: Nomination of custodian — Designation of custodian by representative or specified person.

(1) A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian followed in substance by the words: ". as custodian for (name of minor) under the Washington uniform transfers to minors act." The nomination may name one or more persons as substitute custodians to whom the property shall be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines, or is ineligible to serve. The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment, or in a writing designating a beneficiary of contractual rights which is registered with or delivered to the payor, issuer, or other obligor of the contractual rights.

As an alternative to naming a specific person as custodian, the nomination may provide that the custodian may be designated by the legal representative of, or other person specified by, the person having the right to designate the recipient of the property described in this subsection. The person having the right of designation of the custodian is authorized to designate himself or herself as custodian, if he or she falls within the class of persons eligible to serve as custodian under RCW [11.114.090](#)(1).

(2) A custodian nominated under this section shall be a person to whom a transfer of property of that kind may be made under RCW [11.114.090](#)(1).

(3) Instead of designating one specific minor, the designation may specify multiple persons or a class or classes of persons, but when the custodial property is actually created under subsection (4) of this section, it must be constituted as a separate custodianship for each beneficiary, and each beneficiary's interest in it must be determined in accordance with the governing instrument and applicable law.

(4) The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under RCW [11.114.090](#). Unless the nomination of a custodian has been revoked, upon the occurrence of the future event the

custodianship becomes effective and the custodian shall enforce a transfer of the custodial property pursuant to RCW [11.114.090](#).

[1998 c 292 § 301; 1991 c 193 § 3.]

11.114.040: Transfer by gift or exercise of power of appointment.

A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor pursuant to RCW [11.114.090](#).

[1991 c 193 § 4.]

11.114.050: Transfer authorized by will or trust.

(1) A personal representative or trustee may make an irrevocable transfer pursuant to RCW [11.114.090](#) to a custodian for the benefit of a minor as authorized in the governing will or trust. The personal representative or trustee may designate himself or herself as custodian provided he or she falls within the class of persons eligible to serve as custodian under RCW [11.114.090](#)(1).

(2) If the testator or grantor has nominated a custodian under RCW [11.114.030](#) to receive the custodial property, the transfer shall be made to that person.

(3) If the testator or grantor has not nominated a custodian under RCW [11.114.030](#), or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, the personal representative or the trustee, as the case may be, shall designate the custodian from among those eligible to serve as custodian for property of that kind under RCW [11.114.090](#)(1). The personal representative or trustee may designate himself or herself as custodian, provided he or she falls within the class of persons eligible to serve as custodian under RCW [11.114.090](#)(1).

[1991 c 193 § 5.]

11.114.060: Other transfer by fiduciary.

(1) A personal representative or trustee may make an irrevocable transfer to an adult or trust company for the benefit of a minor pursuant to RCW [11.114.090](#), in the absence of a will or under a will or trust that does not contain an authorization to do so, but only if:

(a) The personal representative or trustee, or the court if an order is requested under (c) of this subsection, considers the transfer to be in the best interest of the minor;

(b) The transfer is not prohibited by or inconsistent with provisions of the applicable will, trust instrument, or other governing instrument; and

(c) The transfer is authorized by the court if it exceeds thirty thousand dollars in value.

The personal representative, the trustee, or a member of the minor's family may select the custodian, subject to court approval. The personal representative or trustee may serve as custodian, provided he or she falls within the class of persons eligible to serve as custodian under RCW [11.114.090](#)(1).

(2) A member of the minor's family may request that the court establish a custodianship if a custodianship has not already been established, regardless of the value of the transfer.

[1991 c 193 § 6.]

11.114.070: Transfer by obligor.

(1) Subject to subsections (2) and (3) of this section, a person not subject to RCW [11.114.050](#) or [11.114.060](#) who holds property of or owes a liquidated debt to a minor not having a guardian may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to RCW [11.114.090](#).

(2) If a person having the right to do so under RCW [11.114.030](#) has nominated a custodian under that section to receive the custodial property, the transfer shall be made to that person.

(3) If no custodian has been nominated under RCW [11.114.030](#), or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds thirty thousand dollars in value.

(4) A member of the minor's family or the person who holds the property of the minor or who owes a debt to the minor may request that the court establish a custodianship if not previously established, regardless of the value of the transfer.

[1991 c 193 § 7.]

11.114.080: Receipt for custodial property.

A written confirmation of delivery by a custodian constitutes a sufficient receipt and discharge of the transferor for custodial property transferred to the custodian under this chapter.

[1991 c 193 § 8.]

11.114.090: Manner of creating custodial property and effecting transfer — Designation of initial custodian — Control. (Effective until July 1, 2007.)

11.114.100: Single custodianship.

A transfer may be made only for one minor, and only one person may be the custodian. All custodial property held under this chapter by the same custodian for the benefit of the same minor constitutes a single custodianship.

[1991 c 193 § 10.]

11.114.110: Validity and effect of transfer.

(1) The validity of a transfer made in a manner prescribed in this chapter is not affected by:

- (a) Failure of the transferor to comply with RCW [11.114.090](#)(3) concerning possession and control;
- (b) Designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under RCW [11.114.090](#)(1); or
- (c) Death or incapacity of a person nominated under RCW [11.114.030](#) or designated under RCW [11.114.090](#) as custodian or the disclaimer of the office by that person.

(2) A transfer made pursuant to RCW [11.114.090](#) is irrevocable, and the custodial property is indefeasibly vested in the minor, but the custodian has all the rights, powers, duties, and authority provided in this chapter, and neither the minor nor the minor's legal representative has any right, power, duty, or authority with respect to the custodial property except as provided in this chapter.

(3) By making a transfer, the transferor incorporates in the disposition all the provisions of this chapter and grants to the custodian, and to any third person dealing with a person designated as custodian, the respective powers, rights, and immunities provided in this chapter.

[1991 c 193 § 11.]

11.114.120: Care of custodial property. (Effective until July 1, 2007.)

(1) A custodian shall, as soon as custodial property is made available to the custodian:

- (a) Take control of custodial property;
- (b) Register or record title to custodial property if appropriate; and
- (c) Collect, hold, manage, invest, and reinvest custodial property.

(2) In dealing with custodial property, a custodian shall observe the standard of care applicable to fiduciaries under chapter [11.100](#) RCW. If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use that skill or expertise. A custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received from a transferor according to the same standards as apply to a fiduciary holding trust funds under RCW [11.100.060](#). However, the provisions of RCW [11.100.025](#), [11.100.040](#), and [11.100.140](#) shall not apply to a custodian.

(3) A custodian may invest in or pay premiums on life insurance or endowment policies on (a) the life of the minor only if the minor or the minor's estate is the sole beneficiary, or (b) the life of another person in whom the minor has an insurable interest only to the extent that the minor, the minor's estate, or the custodian in the capacity of custodian, is the irrevocable beneficiary.

(4) A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property consisting of an undivided interest is so identified if the minor's interest is held as a tenant in common and is fixed. Custodial property subject to recordation is so identified if it is recorded, and custodial property subject to registration is so identified if it is either registered, or held in an account designated, in the name of the custodian, followed in substance by the words: ". as custodian for (name of minor) under the Washington uniform transfers to minors act."

(5) A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make them available upon request for inspection by a parent or legal representative of the minor or by the minor if the minor has attained the age of fourteen years.

[1991 c 193 § 12.]

RCW 11.114.120

Care of custodial property. (Effective July 1, 2007.)

(1) A custodian shall, as soon as custodial property is made available to the custodian:

- (a) Take control of custodial property;
- (b) Register or record title to custodial property if appropriate; and
- (c) Collect, hold, manage, invest, and reinvest custodial property.

(2) In dealing with custodial property, a custodian shall observe the standard of care applicable to fiduciaries under chapter [11.100](#) RCW. If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use that skill or expertise. A custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received from a transferor according to the same standards as apply to a fiduciary holding trust funds under RCW [11.100.060](#). However, the provisions of RCW [11.100.025](#), [11.100.040](#), and [11.100.140](#) shall not apply to a custodian.

(3) A custodian may invest in or pay premiums on life insurance or endowment policies on (a) the life of the minor only if the minor or the minor's estate is the sole beneficiary, or (b) the life of another person in whom the minor has an insurable interest only to the extent that the minor, the minor's estate, or the custodian in the capacity of custodian, is the irrevocable beneficiary.

(4) A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property consisting of an undivided interest is so identified if the minor's interest is held as a tenant in common and is fixed. Custodial property subject to recordation is so identified if it is recorded, and custodial property subject to registration is so identified if it is either registered, or held in an account designated, in the name of the custodian, followed in substance by the words: ". as custodian for (name of minor) under the Washington uniform transfers to minors act."

(5) A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make them available upon request for inspection by a parent or legal representative of the minor or by the minor if the minor has attained the age of eighteen years.

[2006 c 204 § 4; 1991 c 193 § 12.]

11.114.130: Powers of custodian.

(1) A custodian, acting in a custodial capacity, has all the rights, powers, and authority over custodial property that unmarried adult owners have over their own property, including without limitation all the powers granted to a trustee under RCW [11.98.070](#), but a custodian may exercise those rights, powers, and authority only in a custodial capacity.

(2) This section does not relieve a custodian from liability for breach of RCW [11.114.120](#).

[1991 c 193 § 13.]

11.114.140: Use of custodial property. (Effective until July 1, 2007.)

(1) A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to (a) the duty or ability of the custodian personally or of any other person to support the minor, or (b) any other income or property of the minor which may be applicable or available for that purpose.

(2) On petition of an interested person or the minor if the minor has attained the age of fourteen years, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.

(3) A delivery, payment, or expenditure under this section is in addition to, not in substitution for, and does not affect any obligation of a person to support the minor.

[1991 c 193 § 14.]

RCW 11.114.140

Use of custodial property. (Effective July 1, 2007.)

(1) A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to (a) the duty or ability of the custodian personally or of any other person to support the minor, or (b) any other income or property of the minor which may be applicable or available for that purpose.

(2) On petition of an interested person or the minor if the minor has attained the age of eighteen years, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.

(3) A delivery, payment, or expenditure under this section is in addition to, not in substitution for, and does not affect any obligation of a person to support the minor.

[2006 c 204 § 5; 1991 c 193 § 14.]

11.114.150: Custodian's expenses, compensation, and bond.

(1) A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(2) Except for one who is a transferor under RCW [11.114.040](#), a custodian has a noncumulative election

during each calendar year to charge reasonable compensation for services performed during that year.

(3) Except as provided in RCW [11.114.180](#)(6), a custodian need not give a bond.

(4) Notwithstanding RCW [11.114.190](#), a custodian not compensated for services is not liable for losses to the custodial property unless they result from bad faith, intentional wrongdoing, or gross negligence, or from failure to maintain the standard of prudence in investing the custodial property provided in this chapter.

[1991 c 193 § 15.]

11.114.160: Exemption of third person from liability.

A third person in good faith and without court order may act on the instructions of or otherwise deal with any person purporting to make a transfer or purporting to act in the capacity of a custodian or successor custodian and, in the absence of knowledge, is not responsible for determining:

(1) The validity of the purported custodian's designation;

(2) The propriety of, or the authority under this chapter for, any act of the purported custodian;

(3) The validity or propriety under this chapter of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian; or

(4) The propriety of the application of any property of the minor delivered to the purported custodian.

[1991 c 193 § 16.]

11.114.170: Liability to third persons.

(1) A claim based on:

(a) A contract entered into by a custodian acting in a custodial capacity;

(b) An obligation arising from the ownership or control of custodial property;

(c) A tort committed during the custodianship, may be asserted against the custodial property by proceeding against the custodian in the custodial capacity, whether or not the custodian or the minor is personally liable therefor; or

(d) A noncontractual obligation, including obligations in tort, is collectible from the custodial property only if:

(i) The obligation was a common incident of the kind of business activity in which the custodian or the custodian's predecessor was properly engaged for the custodianship;

(ii) Neither the custodian nor the custodian's predecessor, nor any officer or employee of the custodian or the custodian's predecessor was personally at fault in incurring the obligation; or

(iii) Although the obligation did not fall within (d)(i) or (ii) of this subsection, the incident that gave rise to the obligation increased the value of the custodial property.

If the obligation is within (d)(i) or (ii) or [of] this subsection, collection may be had of the full amount of damage proved. If the obligation is within (d)(iii) of this subsection, collection may be had only to the extent of the increase in the value of the trust property.

(2) A custodian is not personally liable:

(a) On a contract properly entered into in the custodial capacity unless the custodian fails to reveal that capacity. The addition of the words "custodian" or "as custodian" after the signature of a custodian is adequate revelation of this capacity; or

(b) For an obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodial property is not liable for the obligation under *(b) of this subsection and unless the custodian is personally at fault.

(3) A minor is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the minor is personally at fault.

[1991 c 193 § 17.]

11.114.180: Renunciation, resignation, death, or removal of custodian — Designation of successor custodian. (Effective until July 1, 2007.)

(1) A person nominated under RCW [11.114.030](#) or designated under RCW [11.114.090](#) as custodian may decline to serve. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing, and eligible to serve was nominated under RCW [11.114.030](#), the person who made the nomination may nominate a substitute custodian under RCW [11.114.030](#); otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under RCW [11.114.090](#)(1). The custodian so designated has the rights of a successor custodian.

(2) A custodian at any time may designate a trust company or an adult other than a transferor under RCW [11.114.040](#) as successor custodian by executing and dating an instrument of designation. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated, or is removed, and custodial property is transferred to the successor custodian.

(3) A custodian may resign at any time by delivering written notice to the minor, if the minor has attained the age of fourteen years, and to the successor custodian, and by delivering the custodial property to the successor custodian.

(4) If a custodian is ineligible, dies, or becomes incapacitated and no successor custodian has been designated as provided in this chapter, and the minor has attained the age of fourteen years, the minor may designate as successor custodian, in the manner prescribed in subsection (2) of this section, an adult member of the minor's family, a guardian of the minor, or a trust company. If the minor has not attained the age of fourteen years or fails to act within sixty days after the ineligibility, death, or incapacity, the guardian of the minor becomes successor custodian. If the minor has no guardian or the guardian declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family, or any other interested person may petition the court to designate a successor custodian.

(5) A custodian who declines to serve under subsection (1) of this section or resigns under subsection (3) of this section, or the legal representative of a deceased or incapacitated custodian, as soon as practicable, shall put the custodial property and records in the possession and control of the successor custodian. The successor custodian by action may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

(6) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the minor, or the minor if the minor has attained the age of fourteen years may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under RCW [11.114.040](#) or to require the custodian to give appropriate bond.

[1991 c 193 § 18.]

RCW 11.114.180

Renunciation, resignation, death, or removal of custodian — Designation of successor custodian. (Effective July 1, 2007.)

(1) A person nominated under RCW [11.114.030](#) or designated under RCW [11.114.090](#) as custodian may decline to serve. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing, and eligible to serve was nominated under RCW [11.114.030](#), the person who made the nomination may nominate a substitute custodian under RCW [11.114.030](#); otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under RCW [11.114.090](#)(1). The custodian so designated has the rights of a successor custodian.

(2) A custodian at any time may designate a trust company or an adult other than a transferor under RCW [11.114.040](#) as successor custodian by executing and dating an instrument of designation. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated, or is removed, and custodial property is transferred to the successor custodian.

(3) A custodian may resign at any time by delivering written notice to the minor, if the minor has attained the age of eighteen years, and to the successor custodian, and by delivering the custodial property to the successor custodian.

(4) If a custodian is ineligible, dies, or becomes incapacitated and no successor custodian has been designated as provided in this chapter, and the minor has attained the age of eighteen years, the minor may designate as successor custodian, in the manner prescribed in subsection (2) of this section, an adult member of the minor's family, a guardian of the minor, or a trust company. If the minor has not attained the age of eighteen years or fails to act within sixty days after the ineligibility, death, or incapacity, the guardian of the minor becomes successor custodian. If the minor has no guardian or the guardian declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family, or any other interested person may petition the court to designate a successor custodian.

(5) A custodian who declines to serve under subsection (1) of this section or resigns under subsection (3) of this section, or the legal representative of a deceased or incapacitated custodian, as soon as practicable, shall put the custodial property and records in the possession and control of the successor custodian. The successor

custodian by action may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

(6) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the minor, or the minor if the minor has attained the age of eighteen years may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under RCW [11.114.040](#) or to require the custodian to give appropriate bond.

[2006 c 204 § 6; 1991 c 193 § 18.]

11.114.190: Accounting by and determination of liability of custodian. (Effective until July 1, 2007.)

(1) A minor who has attained the age of fourteen years, the minor's legal representative, an adult member of the minor's family, a transferor, or a transferor's legal representative may petition the court (a) for an accounting by the custodian or the custodian's legal representative; or (b) for a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under RCW [11.114.170](#) to which the minor or the minor's legal representative was a party.

(2) A successor custodian may petition the court for an accounting by the predecessor custodian.

(3) The court, in a proceeding under this chapter or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.

(4) If a custodian is removed under RCW [11.114.180](#)(6), the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

[1991 c 193 § 19.]

RCW 11.114.190

Accounting by and determination of liability of custodian. (Effective July 1, 2007.)

(1) A minor who has attained the age of eighteen years, the minor's legal representative, an adult member of the minor's family, a transferor, or a transferor's legal representative may petition the court (a) for an accounting by the custodian or the custodian's legal representative; or (b) for a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under RCW [11.114.170](#) to which the minor or the minor's legal representative was a party.

(2) A successor custodian may petition the court for an accounting by the predecessor custodian.

(3) The court, in a proceeding under this chapter or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.

(4) If a custodian is removed under RCW [11.114.180](#)(6), the court shall require an accounting and order

delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

[2006 c 204 § 7; 1991 c 193 § 19.]

11.114.200: Termination of custodianship. (Effective until July 1, 2007.)

Subject to RCW [11.114.220](#), the custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

(1) The minor's attainment of twenty-one years of age with respect to custodial property transferred under RCW [11.114.040](#) or [11.114.050](#);

(2) The minor's attainment of eighteen years of age with respect to custodial property transferred under RCW [11.114.060](#) or [11.114.070](#); or

(3) The minor's death.

[1991 c 193 § 20.]

RCW 11.114.200

Termination of custodianship — Extension. (Effective July 1, 2007.)

(1) Subject to RCW [11.114.220](#), the custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

(a) The minor's attainment of twenty-one years of age with respect to custodial property transferred under RCW [11.114.040](#) or [11.114.050](#);

(b) The minor's attainment of eighteen years of age with respect to custodial property transferred under RCW [11.114.060](#) or [11.114.070](#); or

(c) The minor's death.

(2) The transferor may, in the initial nomination of custodian, extend the custodianship to the earlier of the minor's attainment of twenty-five years of age or the minor's death unless:

(a) The governing will, trust, or instrument creating the power of appointment specifically provides otherwise if the custodial property is transferred under RCW [11.114.040](#), [11.114.050](#), or [11.114.060](#); or

(b) The custodial property is transferred under RCW [11.114.070](#). In that case, the person nominating the custodian under RCW [11.114.030](#) may elect to extend the custodianship. If no custodian has been nominated under RCW [11.114.030](#), the court establishing the custodianship under RCW [11.114.070](#)(4) may extend the custodianship if it determines that doing so would not be contrary to the interest of the minor.

(3) An extension of the custodianship under subsection (2) of this section will be valid only if the transfer creating the custodianship is made on or after July 1, 2007.

(4) Any bank, trust company, insurance company, registered broker-dealer, investment company regulated under the federal Investment Company Act of 1940, investment advisor regulated under the federal Investment Advisors Act of 1940, or other person who makes custodianship forms available for adoption in contemplation of selling assets to or managing assets for a custodianship shall include, in any form made available on or after July 1, 2007, an option to extend the custodianship under subsection (2) of this section and a warning to the transferor that exercising the option to extend may result in the transfer not qualifying for annual exclusion from federal gift tax. An instrument in the form described in RCW [11.114.090\(2\)](#) will satisfy the requirements of this subsection.

[2006 c 204 § 8; 1991 c 193 § 20.]

11.114.210: Applicability.

This chapter applies to a transfer within the scope of RCW [11.114.020](#) made after July 1, 1991, if:

(1) The transfer purports to have been made under the Washington uniform gifts to minors act; or

(2) The instrument by which the transfer purports to have been made uses in substance the designation "as custodian under the uniform gifts to minors act" or "as custodian under the uniform transfers to minors act" of any other state, and the application of this chapter is necessary to validate the transfer.

[1991 c 193 § 21.]

11.114.220: Effect on existing custodianships.

(1) Any transfer of custodial property as now defined in this chapter made before July 1, 1991, is validated notwithstanding that there was no specific authority in the Washington uniform gifts to minors act for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(2) This chapter applies to all transfers made before July 1, 1991, in a manner and form prescribed in the Washington uniform gifts to minors act, except insofar as the application impairs constitutionally vested rights or extends the duration of custodianships in existence on July 1, 1991. However, as to any custodianship established after August 9, 1971, but prior to January 1, 1985, a minor has the right after attaining the age of eighteen to demand delivery from the custodian of all or any portion of the custodial property.

[1991 c 193 § 22.]

11.114.230: Uniformity of application and construction.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

[1991 c 193 § 23.]

11.114.900: Short title.

This chapter may be cited as the uniform transfers to minors act.

[1991 c 193 § 24.]

11.114.901: Captions not law.

Section headings as used in this chapter do not constitute any part of the law.

[1991 c 193 § 25.]

11.114.902: Savings — 1991 c 193.

To the extent that this chapter, by virtue of RCW [11.114.220\(2\)](#), does not apply to transfers made in a manner prescribed in the uniform gifts to minors act of Washington or to the powers, duties, and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of the uniform gifts to minors act of Washington does not affect those transfers or those powers, duties, and immunities.

[1991 c 193 § 26.]

11.114.903: Effective date — 1991 c 193.

This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991.

[1991 c 193 § 34.]

11.114.904: Severability — 1991 c 193.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[1991 c 193 § 35.]

11.118 RCW: Trusts — animals

11.118.005: Purpose — Intent.

The purpose of this chapter is to recognize and validate certain trusts that are established for the benefit of animals. Under the common law such trusts were unenforceable at law. The legislature intends that such trusts be recognized as valid, and that such trusts be enforceable in accordance with their terms.

[2001 c 327 § 1.]

11.118.010: Definition.

As used in this chapter, "animal" means a nonhuman animal with vertebrae.

[2001 c 327 § 2.]

11.118.020: Validity of animal trust.

A trust for the care of one or more animals is valid. The animals that are to be benefited by the trust may be individually identified, or may be identified in such other manner that they can be readily identified. Unless otherwise provided in the trust instrument or in this chapter, the trust will terminate when no animal that is designated as a beneficiary of the trust remains living.

[2001 c 327 § 3.]

11.118.030: Use of trust principal or income.

Except as expressly provided otherwise in the trust instrument or in RCW [11.118.070](#), and except as may be necessary to pay the trustee reasonable compensation and to reimburse the trustee for reasonable costs incurred on behalf of the trust, no portion of the principal or income of the trust may be converted to the use of the trustee or to any use other than for the trust's purpose or for the benefit of the designated animal or animals.

[2001 c 327 § 4.]

11.118.040: Termination of trust.

Upon termination of the trust, the trustee shall transfer the unexpended trust property in the following order:

(1) As directed in the instrument;

(2) If the trust was created in a nonresiduary clause in the trustor's will or in a codicil to the trustor's will and the will or codicil does not direct otherwise, under the residuary clause in the trustor's will, which shall be read as though the testator died on the date the trust terminated; and

(3) If no taker is produced by the application of subsection (1) or (2) of this section, to the trustor's heirs under RCW [11.04.015](#), as it exists at the time of the trust's termination.

[2001 c 327 § 5.]

11.118.050: Enforcement of trust provisions.

The intended use of the principal or income can be enforced by a person designated for that purpose in the trust instrument, by the person having custody of an animal that is a beneficiary of the trust, or by a person appointed by a court upon application to it by any person. A person with an interest in the welfare of the animal may petition for an order appointing or removing a person designated or appointed to enforce the trust.

[2001 c 327 § 6.]

11.118.060: Accounting requirements.

Except as ordered by the court or required by the trust instrument, no filing, report, registration, or periodic accounting shall be required of the trust or the trustee.

[2001 c 327 § 7.]

11.118.070: Appointment and removal of trustee.

If no trustee is designated or no designated trustee is willing or able to serve, the court shall name a trustee. The court may order the removal of an acting trustee and the transfer of the property to another trustee if it is necessary or appropriate in order to assure that the intended use is carried out. A court may also make such other orders and determinations as shall be advisable to carry out the intent of the trustor and the purpose of this chapter.

[2001 c 327 § 8.]

11.118.080: Construction of trust language.

In construing the language of a trust for an animal, the governing instrument shall be liberally construed to provide the protections of this chapter. It is presumed that language contained in a trust for an animal is not merely precatory or honorary in nature unless it can be shown by clear and cogent evidence that such was the trustor's intent. Extrinsic evidence is admissible in determining the trustor's intent.

[2001 c 327 § 9.]

11.118.090: Application of rule against perpetuities — Effective date of trust.

RCW [11.98.130](#) through [11.98.160](#) apply to trusts that are subject to this chapter.

[2001 c 327 § 11.]

11.118.100: Trustee powers.

Except as otherwise provided in the trust instrument or in this chapter, all powers and duties conferred on a trustee under Washington law also apply to the trustee of a trust for animals.

[2001 c 327 § 12.]

11.118.110: Application of chapter.

This chapter applies to trusts that are created on or after July 22, 2001, and to trusts that are in existence on July 22, 2001, but that are revocable by the trustor on July 22, 2001. If a trustor is incompetent to exercise a power of revocation on July 22, 2001, this chapter does not apply to such trust unless the trustor later becomes competent to exercise such power of revocation, in which case this chapter applies to such trust.

[2001 c 327 § 13.]

