

RCW 11.107.040 Decanting statute—Procedure to exercise

decanting power. (1) The trustee of the first trust may exercise the decanting power under RCW 11.107.020 and 11.107.030 if:

(a) The trustee determines that the exercise of the decanting power is consistent with the trustee's fiduciary duties described in RCW 11.107.080(1);

(b) In the event that the first trust contains a charitable interest, the trustee gives written notice to the attorney general of the trustee's intention to exercise the decanting power; and

(c) The trustee gives written notice of the trustee's intention to exercise the decanting power to each qualified beneficiary, each holder of a presently exercisable power of appointment over any part of the first trust, and each person that currently has the right to remove or replace the trustee not less than sixty days prior to the effective date of the exercise.

(2) The trustee of the first trust, qualified beneficiaries, and any other party as defined by RCW 11.96A.030(5) may agree to exercise by the trustee of the decanting power by means of a binding agreement under RCW 11.96A.220.

(3) The trustee of the first trust, a qualified beneficiary, a holder of a presently exercisable power of appointment over any part of the first trust, and a person that currently has the right to remove or replace the trustee may petition the court under chapter 11.96A RCW regarding exercise of the decanting power for the following relief, to:

(a) Provide instructions to the trustee regarding whether a proposed exercise of the decanting power is permitted under this chapter and consistent with the fiduciary duties of the trustee;

(b) Approve an exercise of the decanting power;

(c) Determine that a proposed or attempted exercise of the decanting power is ineffective because the proposed or attempted exercise does not or did comply with this chapter or the proposed or attempted exercise would be or was an abuse of the trustee's discretion or a breach of fiduciary duty; or

(d) Order other relief to carry out the purposes of this chapter.

(4) The trustee of the first trust may petition the court under chapter 11.96A RCW regarding exercise of the decanting power for the following relief:

(a) An increase of the trustee's compensation under RCW 11.107.070(2)(a)(ii); or

(b) Modification under RCW 11.107.070(4)(b) of a provision granting a person the right to remove or replace the trustee.

(5) If there is at least one qualified beneficiary who is not a minor or who has a representative, the trustee is not required to give notice under subsection (1)(c) of this section to a qualified beneficiary who is a minor and has no representative. If all qualified beneficiaries are minors and none has a representative, the trustee must petition for appointment of a guardian ad litem under RCW 11.98A.160 [11.96A.160].

(6) The trustee is not required to give notice under this section to a person who is not known to the trustee or is known to the trustee but cannot be located by the trustee after reasonable diligence.

(7) A notice under subsection (1) of this section or petition under subsection (3) or (4) of this section must:

(a) Specify the manner in which the trustee must exercise the decanting power;

(b) Specify the proposed effective date for exercise of the decanting power;

(c) Include a copy of all governing instruments of the first trust; and

(d) Include a copy of all governing instruments of the second trust. An exercise of the decanting power under this section must be made in a record signed by the trustee; for this purpose, a "record signed by the trustee" must include a court order under subsection (3) of this section.

(8) The decanting power may be exercised before expiration of the notice period under subsection (1) of this section if all persons entitled to receive notice waive the period in writing. An exercise of the decanting power is not ineffective because of the failure to give notice to one or more persons under subsection (1) of this section if the trustee acted with reasonable care to comply with this section.
[2017 c 29 s 4.]