

RCW 11.107.080 Application—Miscellaneous. (1) This chapter applies to any express trust, within the meaning of RCW 11.98.009, other than a trust during such time as the grantor has retained the right to revoke or amend. In exercising the decanting power, the trustee must act in accordance with the trustee's fiduciary duties, including the duty to act in accordance with the purposes of the first trust. Except as otherwise provided in the first trust instrument, for purposes of this chapter the terms of the first trust are deemed to include the decanting power.

(2) This chapter does not limit the power of a trustee, powerholder, or other person to distribute or appoint income and principal in further trust or to modify a trust under the trust instrument, law of this state other than this title, a court order, or a nonjudicial agreement. This chapter does not increase or modify the requirements for a binding agreement under RCW 11.96A.220 or the requirements for a directed trust under *chapter 11.98A RCW. This chapter does not affect the ability of a settlor to provide in a trust instrument for the distribution or appointment in further trust of the trust income and principal or for modification of the trust instrument.

(3) This chapter does not apply to a trust held solely for charitable purposes.

(4) This chapter does not create or imply a duty to exercise the decanting power or to inform beneficiaries about the applicability of this chapter.

(5) This chapter applies to a trust created before, on, or after July 23, 2017, that:

(a) Has its situs in this state, including a trust whose situs has been changed to this state; or

(b) Provides by its trust instrument that it is governed by the law of this state or is governed by the law of this state for purposes of:

(i) Administration, including a trust whose governing law for purposes of administration has been changed to the law of this state;

(ii) Construction of terms of the trust; or

(iii) Determining the meaning or effect of terms of the trust.

(6) A trustee may exercise the decanting power whether or not the trustee would have made or could have been compelled to make a discretionary distribution of principal at the time of the exercise.

(7) If exercise of the decanting power would be effective under this chapter except that the second trust instrument in part does not comply with this chapter, the exercise of the decanting power is effective and the following rules apply to the principal of the first trust subject to the exercise of the power:

(a) A provision in the second trust instrument which is not permitted under this chapter is void to the extent necessary to comply with this chapter.

(b) A provision required by this chapter to be in the second trust instrument which is not contained in the instrument is deemed to be included in the instrument to the extent necessary to comply with this chapter.

(8) If a trustee of a second trust discovers that subsection (7) of this section applies to a prior exercise of the decanting power, the trustee must take such appropriate corrective action as is consistent with the trustee's duties. [2017 c 29 s 8.]

***Reviser's note:** Chapter 11.98A RCW was repealed in its entirety by 2020 c 303 s 19, effective January 1, 2021.