

Chapter 11.100 RCW
INVESTMENT OF TRUST FUNDS

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Trust provisions may relieve trustee from duty, restriction, or liability imposed by statute: RCW 11.97.010.

RCW 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 s 1; 1985 c 30 s 63. Prior: 1955 c 33 s 30.24.010; prior: 1947 c 100 s 1; Rem. Supp. 1947 s 3255-10a. Formerly RCW 30.24.010.]

Application—1995 c 307: "This act applies prospectively only and not retroactively." [1995 c 307 s 7.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

RCW 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 s 64. Prior: 1955 c 33 s 30.24.015; prior: 1951 c 218 s 1. Formerly RCW 30.24.015.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

RCW 11.100.020 Management of trust assets by fiduciary. (1) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(2) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(3) Among the circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

(a) General economic conditions;

(b) The possible effect of inflation or deflation;

(c) The expected tax consequences of investment decisions or strategies;

(d) The role that each investment or course of action plays within the overall portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;

(e) The expected total return from income and the appreciation of capital;

(f) Other resources of the beneficiaries;

(g) Needs for liquidity, regularity of income, and preservation or appreciation of capital; and

(h) An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(4) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(5) A trustee may invest in any kind of property or type of investment consistent with the standards of this section.

(6) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise. [2015 c 115 s 18; 1995 c 307 s 2; 1985 c 30 s 65. Prior: 1984 c 149 s 97; 1955 c 33 s 30.24.020; prior: 1947 c 100 s 2; Rem. Supp. 1947 s 3255-10b. Formerly RCW 30.24.020.]

Application—1995 c 307: See note following RCW 11.100.010.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

*Endowment care funds to be invested in accordance with RCW 11.100.020:
RCW 68.44.030.*

RCW 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 s 66. Prior: 1984 c 149 s 98.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

RCW 11.100.025 Spousal or domestic partnership 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 or domestic partner 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 or domestic partner 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 or domestic partner 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. [2008 c 6 s 929; 1985 c 30 s 67. Prior: 1984 c 149 s 99.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

RCW 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 s 68. Prior: 1984 c 149 s 101; 1967 c 133 s 3; 1955 c 33 s 30.24.030; prior: 1947 c 100 s 3; Rem. Supp. 1947 s 3255-10c. Formerly RCW 30.24.030.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

RCW 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 s 3; 1994 c 221 s 68; 1989 c 97 s 1; 1985 c 30 s 69. Prior: 1955 c 33 s 30.24.035; prior: 1951 c 132 s 1. Formerly RCW 30.24.035.]

Application—1995 c 307: See note following RCW 11.100.010.

Effective dates—1994 c 221: "(1) Except as provided in section 74 of this act, sections 1 through 72 of this act shall take effect January 1, 1995.

(2) *Section 3 of 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 immediately [April 1, 1994]." [1994 c 221 s 75.]

***Reviser's note:** "Section 3 of this act" is erroneous. This reference was apparently intended to be to section 67. The error arose in the renumbering of sections in the engrossing of amendments to Substitute House Bill No. 2270 (1994 c 221).

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

RCW 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 s 70. Prior: 1984 c 149 s 104; 1967 c 133 s 4. Formerly RCW 30.24.037.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

RCW 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 s 71. Prior: 1955 c 33 s 30.24.040; prior: 1947 c 100 s 4; Rem. Supp. 1947 s 3255-10d. Formerly RCW 30.24.040.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

RCW 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 s 4.]

Application—1995 c 307: See note following RCW 11.100.010.

RCW 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 s 5.]

Application—1995 c 307: See note following RCW 11.100.010.

RCW 11.100.050 Scope of chapter—RCW 11.68.090 prevails. (1) The provisions of this chapter govern fiduciaries acting under wills, agreements, court orders, and other instruments effective before or after January 1, 1985.

(2) To the extent that this chapter is in conflict with RCW 11.68.090, RCW 11.68.090 prevails. [2021 c 140 s 4024; 1985 c 30 s 72. Prior: 1984 c 149 s 107; 1955 c 33 s 30.24.050; prior: 1947 c 100 s 5; Rem. Supp. 1947 s 3255-10e. Formerly RCW 30.24.050.]

Application—2021 c 140 ss 4003-4017, 4023, 4024, and 4026: See note following RCW 11.48.130.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

RCW 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 s 73. Prior: 1984 c 149 s 108.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

RCW 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 s 74. Prior: 1984 c 149 s 110; 1955 c 33 s 30.24.070; prior: 1947 c 100 s 7; 1941 c 41 s 13; Rem. Supp. 1947 s 3255-13. Formerly RCW 30.24.070.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

RCW 11.100.090 Dealings with self or affiliate. Unless the instrument creating the trust expressly provides to the contrary and except as authorized in RCW 11.98.078, 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). [2011 c 327 s 34; 1985 c 30 s 75. Prior: 1984 c 149 s 111; 1955 c 33 s 30.24.090; prior: 1947 c 100 s 9; 1941 c 41 s 17; Rem. Supp. 1947 s 3255-17. Formerly RCW 30.24.090.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

RCW 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 s 76. Prior: 1984 c 149 s 112; 1973 1st ex.s. c 89 s 1. Formerly RCW 30.24.120.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Insurable interest, guardian, trustee or other fiduciary: RCW 48.18.030(3)(c).

RCW 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 s 6; 1985 c 30 s 77. Prior: 1973 1st ex.s. c 89 s 2. Formerly RCW 30.24.130.]

Application—1995 c 307: See note following RCW 11.100.010.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

RCW 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 s 78. Prior: 1984 c 149 s 114.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.