

Chapter 11.98 RCW
TRUSTS

Sections

- 11.98.002 Definitions.
- 11.98.005 Trust situs and governing law.
- 11.98.008 Trust creation—Methods.
- 11.98.009 Application of chapter.
- 11.98.011 Trust creation—Requirements.
- 11.98.012 Trust creation—Other jurisdictions.
- 11.98.013 Trust creation—Allowable purposes.
- 11.98.014 Trust creation—Oral trusts.
- 11.98.015 Noncharitable trusts without ascertainable beneficiaries.
- 11.98.016 Exercise of powers by co-trustees.
- 11.98.017 Trusteeship—Accepting and declining—Powers without acceptance.
- 11.98.019 Relinquishment of powers by trustee.
- 11.98.029 Resignation of trustee.
- 11.98.039 Nonjudicial change of trustee—Judicial appointment or change of trustee—Liability and duties of successor fiduciary.
- 11.98.041 Change of trustee—Discharge of outgoing trustee, when.
- 11.98.045 Criteria for transfer of trust assets or administration.
- 11.98.051 Nonjudicial transfer of trust assets or administration—Notice—Consent required.
- 11.98.055 Judicial transfer of situs of trusts.
- 11.98.060 Power of successor trustee.
- 11.98.065 Change in form of corporate trustee.
- 11.98.070 Power of trustee.
- 11.98.071 Trustee's delegation of duties.
- 11.98.072 Trustee—Notification requirements.
- 11.98.075 Certification of trust.
- 11.98.078 Trustee duty of loyalty.
- 11.98.080 Consolidation of trusts.
- 11.98.085 Trustee—Breach of trust—Damages.
- 11.98.100 Nonliability for action or inaction based on lack of knowledge of events.
- 11.98.105 Nonliability of third persons without knowledge of breach.
- 11.98.107 Trustee exculpation.
- 11.98.108 Nonliability of trustee—Beneficiary's consent, release, or ratification.
- 11.98.110 Contract and tort liability.
- 11.98.130 Rule against perpetuities.
- 11.98.140 Distribution and vesting of assets.
- 11.98.145 Distribution upon termination.
- 11.98.150 Distribution of assets after one hundred fifty-year period.
- 11.98.160 Effective date of irrevocable inter vivos trust—Effective date of revocable inter vivos or testamentary trust.
- 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.
- 11.98.200 Beneficiary trustee—Limitations on power.

- 11.98.210 Beneficiary trustee—Disregard of provision conferring absolute or similar power—Power of removal.
- 11.98.220 Beneficiary trustee—Inferences of law—Judicial review.
- 11.98.230 Beneficiary trustee—Income under marital deduction—Spousal power of appointment.
- 11.98.240 Beneficiary trustee—Applicability—Exceptions—Election of exception—Cause of action.
- 11.98.900 Application of RCW 11.98.130 through 11.98.160—RCW 11.68.090 prevails.
- 11.98.920 Short title.
- 11.98.930 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

Assignment for the benefit of creditors: Chapter 7.08 RCW.

Assignments to trustees, priority of wages: RCW 49.56.010.

Banks and trust companies: Title 30A RCW.

Cemeteries

endowment and nonendowment care: Chapter 68.40 RCW.

endowment care fund: Chapter 68.44 RCW.

Conveyances and encumbrances of realty when held in trust: RCW 64.04.010.

Corporate

powers of trust companies, bond liability, securities, etc.: RCW 30A.08.150 through 30A.08.170.

seals, effect of absence from instrument: RCW 64.04.105.

Corporations

articles to state if trust company: RCW 30A.08.020.

sole, property held in trust: RCW 24.12.030.

Costs against trustees, civil actions: RCW 4.84.150.

Employee benefit plans, trusts, duration, etc.: Chapter 49.64 RCW.

Employees' benefit deductions from wages are trust funds: RCW 49.52.010.

Execution against property in trustee's hands: RCW 6.17.110.

Fiduciary bonds: RCW 48.28.020.

Gifts for benefit of trust: RCW 11.12.250.

Guardianship: Chapter 73.36 RCW.

Insurance

deposits held in trust: RCW 48.16.020, 48.16.070.

trustee group life insurance: RCW 48.24.070.

Investment of trust funds: Chapter 11.100 RCW.

Investment of trust funds in certain federally secured obligations:
RCW 39.60.010.

Loan agencies: Title 31 RCW.

Loans to officers of trust corporation from trust funds prohibited:
RCW 30A.12.120.

Mandamus: Chapter 7.16 RCW.

Married persons and domestic partners, property rights and liabilities: Chapter 26.16 RCW.

Massachusetts trusts: Chapter 23.90 RCW.

Mortgages and trust receipts: Title 61 RCW.

Partnerships: Title 25 RCW.

Personal property: Title 63 RCW.

Pleadings, setoff against beneficiary or trustee of trust estate: RCW
4.32.120, 4.32.140.

Powers of appointment, powers in trust: Chapter 11.95A RCW.

Private seals abolished: RCW 64.04.090.

Proceedings to impeach: RCW 42.04.040.

Prohibition: Chapter 7.16 RCW.

Property taxes
exemptions: Chapter 84.36 RCW.
generally: Title 84 RCW.

Prudent person rule: Chapter 11.100 RCW.

Recording, county auditor's duties: Chapter 65.04 RCW.

Recording and publication: Title 65 RCW.

Resulting state bank, provisions when not exercising trust powers: RCW
30A.49.100.

Retail sales tax, "buyer" includes trust, business trust, etc.: RCW
82.08.010.

Savings banks
limitation on deposits: RCW 32.12.010.
not to locate in same room with trust company: RCW
32.04.030.

State depositaries: Chapter 43.85 RCW.

Statute of frauds: Chapter 19.36 RCW.

Trust business to be kept separate: RCW 30A.04.240.

Trust companies

capital requirements: RCW 30A.08.010.

limitation to act as executor or administrator: RCW 11.36.010.

Trust company

as legal representative, advertising: RCW 30A.04.260, 30A.12.130.

defined: RCW 30A.04.010.

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

Trustees' accounting act: Chapter 11.106 RCW.

Trusts and monopolies: State Constitution Art. 12 s 22.

Unclaimed property in hands of city police: Chapter 63.32 RCW.

Uniform

common trust fund act: Chapter 11.102 RCW.

revised uniform unclaimed property act: Chapter 63.30 RCW.

transfers to minors act: Chapter 11.114 RCW.

Use tax, "purchaser" includes trust, business trust, etc.: RCW 82.12.010.

Washington savings association act: Title 33 RCW.

Washington savings bank act: Title 32 RCW.

Wills, generally: Chapter 11.12 RCW.

Witnesses, competency in actions involving fiduciaries: RCW 5.60.030.

RCW 11.98.002 Definitions. The definitions in this section apply throughout this chapter, and throughout this title where specifically referenced, unless the context clearly requires otherwise.

(1) "Permissible distributee" means a trust beneficiary who is currently eligible to receive distributions of trust income or principal, whether the distribution is mandatory or discretionary.

(2) "Qualified beneficiary" means a trust beneficiary who, on the date that such beneficiary's qualification is determined:

(a) Is a permissible distributee;

(b) Would be a permissible distributee if the interests of the distributees described in (a) of this subsection terminated on that date; or

(c) Would be a permissible distributee if the trust terminated on that date. [2013 c 272 s 8.]

Application—2013 c 272: "Except as otherwise provided in this act:

(1) This act applies to all trusts created before, on, or after January 1, 2013;

(2) This act applies to all judicial proceedings concerning trusts commenced on or after January 1, 2013;

(3) An action taken before January 1, 2013, is not affected by this act; and

(4) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before January 1, 2013, that statute continues to apply to the right even if it has been repealed or superseded." [2013 c 272 s 28.]

RCW 11.98.005 Trust situs and governing law. (1) If provisions of a trust instrument designate Washington as the situs of the trust or designate Washington law to govern the trust or any of its terms, then the situs of the trust is Washington provided that one of the following conditions is met:

(a) A trustee has a place of business in or a trustee is a resident of Washington; or

(b) More than an insignificant part of the trust administration occurs in Washington; or

(c) The trustor resides in Washington at the time situs is being established, or resided in Washington at the time the trust became irrevocable; or

(d) One or more of the qualified beneficiaries resides in Washington; or

(e) An interest in real property located in Washington is an asset of the trust.

(2) (a) Unless the trust instrument designates a state other than Washington as the situs of the trust and does not expressly authorize transfer of situs, the trustee may register the trust as a Washington trust if any of the factors in subsection (1) (a) through (e) of this section are present. The trustee must register the trust by filing with the clerk of the court in any county where venue lies for the trust under RCW 11.96A.050, a statement including the following information:

(i) The name and address of the trustee;

(ii) The date of the trust, name of the trustor, and name of the trust, if any;

(iii) The factor or factors listed in subsection (1) (a) through (e) of this section that are present for the trust and which qualify the trust for registration.

(b) Within five days of filing the registration with the court, the trustee must mail a copy of the registration to each qualified beneficiary who has not waived notice of the registration, in writing, filed in the cause, together with a notice that must be in substantially the same form as set forth in this section. Persons receiving such notice have thirty days from the date of filing the registration to file a petition in the court objecting to such registration and requesting the court to issue an order that Washington is not the proper situs of the trust, and to serve a copy of such petition upon the trustee or the trustee's lawyer. If a petition objecting to the registration is filed within thirty days of the date of filing the registration, the trustee must request the court to fix a time and place for the hearing of the petition and notify by mail, personal service or electronic transmission, if a

valid consent to electronic transmission is in effect under the terms of RCW 11.96A.110, all qualified beneficiaries of the time and place of the hearing, not less than ten days before the hearing on the petition.

(c) Unless a person receiving notice of the registration files a petition with the court objecting to the registration within thirty days of the date of filing the registration, the registration will be deemed the equivalent of an order entered by the court declaring that the situs of the trust is Washington. After expiration of the thirty-day period following filing of the registration, the trustee may obtain a certificate of registration signed by the clerk, and issued under the seal of the court, which may be in the form specified in (d) of this subsection.

(d) Notice of registration and certificates of registration may be in the following form:

(i) Notice form:

NOTICE OF FILING OF REGISTRATION OF [NAME AND DATE OF TRUST] AS A WASHINGTON TRUST

NOTICE IS GIVEN that the attached Registration of Trust was filed by the undersigned in the above-entitled court on the day of, 20. . .; unless you file a petition in the above-entitled court objecting to such registration and requesting the court to issue an order that Washington is not the proper situs of the trust, and serve a copy thereof upon the trustee or the trustee's lawyer, within thirty days after the date of the filing, the registration will be deemed the equivalent of an order entered by the court declaring that the situs of the trust is Washington.

If you file and serve a petition within the period specified, the undersigned will request the court to fix a time and place for the hearing of your petition, and you will be notified of the time and place thereof, by mail, or personal service, not less than ten days before the hearing on the petition.

(ii) Certificate of Registration:

State of Washington, County of
In the superior court of the county of

Whereas, the attached Registration of Trust was filed with this court on, the attached Notice of Filing Registration of Trust and Affidavit of Mailing Notice of Filing Registration of Trust were filed with this court on, and no objections to such Registration have been filed with this court, the trust known as, under trust agreement dated, between as Trustor and as Trustee, is hereby registered as a Washington trust.

Witness my hand and the seal of said court this . . . day of, 20

(3) If the instrument establishing a trust does not designate any jurisdiction as the situs or designate any jurisdiction's governing law to apply to the trust, and the trustee of the trust has not registered the trust as allowed in subsection (2) of this section, the situs of the trust is Washington if situs has not previously been established by any court proceeding and the additional conditions specified in this subsection (3) are met.

(a) For a testamentary trust, the situs of the trust is Washington if:

(i) The will was admitted to probate in Washington; or

(ii) The will has not been admitted to probate in Washington, but any trustee of the trust resides or has a place of business in Washington, any qualified beneficiary resides in Washington, or any real property that is an asset of the trust is located in Washington.

(b) For an inter vivos trust, the situs of the trust is Washington if:

(i) The trustor is living and Washington is the trustor's domicile or any of the trustees reside in or have a place of business in Washington; or

(ii) The trustor is deceased; and:

(A) The trustor's will was admitted to probate in Washington; or

(B) The trustor's will was not admitted to probate in Washington, but any qualified beneficiary resides in Washington, any trustee resides or has a place of business in Washington, or any real property that is an asset of the trust is located in Washington.

(c) If the situs of the trust is not determined under (a) or (b) of this subsection, the determination regarding the situs of the trust is a matter for purposes of RCW 11.96A.030. Whether Washington is the situs must be determined by a court in a judicial proceeding conducted under RCW 11.96A.080 if:

(i) A trustee has a place of business in or a trustee is a resident of Washington; or

(ii) More than an insignificant part of the trust administration occurs in Washington; or

(iii) One or more of the qualified beneficiaries resides in Washington; or

(iv) An interest in real property located in Washington is an asset of the trust.

(d) Determination of situs under (c) of this subsection (3) cannot be made by nonjudicial agreement under RCW 11.96A.220. [2013 c 272 s 9; 2011 c 327 s 22.]

Application—2013 c 272: See note following RCW 11.98.002.

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

RCW 11.98.008 Trust creation—Methods. A trust may be created by:

(1) Transfer of property to another person as trustee during the trustor's lifetime or by will or other disposition taking effect upon the trustor's death;

(2) Declaration by the owner of property that the owner holds identifiable property as trustee; or

(3) Exercise of a power of appointment in favor of a trustee. [2011 c 327 s 15.]

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

RCW 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, 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. [2011 c 327 s 14; 1985 c 30 s 40. Prior: 1984 c 149 s 67; 1983 c 3 s 49; 1959 c 124 s 1. Formerly RCW 30.99.010.]

***Reviser's note:** Chapter 30.22 RCW was recodified as chapter 30A.22 RCW pursuant to 2014 c 37 s 4, effective January 5, 2015.

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 11.98.011 Trust creation—Requirements. (1) A trust is created only if:

- (a) The trustor has capacity to create a trust;
 - (b) The trustor indicates an intention to create the trust;
 - (c) The trust has a definite beneficiary or is:
 - (i) A charitable trust;
 - (ii) A trust for the care of an animal, as provided in chapter 11.118 RCW; or
 - (iii) A trust for a noncharitable purpose, as provided in RCW 11.98.015;
 - (d) The trustee has duties to perform; and
 - (e) The same person is not the sole trustee and sole beneficiary.
- (2) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

(3) A power in a trustee to select a beneficiary from an indefinite class is valid, except to the extent that the trustee may distribute trust property to himself or herself. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred. [2011 c 327 s 16.]

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

RCW 11.98.012 Trust creation—Other jurisdictions. A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which, at the time of creation or in the case of a revocable trust, at the time the trust became irrevocable:

- (1) The trustor was domiciled, had a residence, or was a national;

- (2) The trustee was domiciled or had a place of business; or
- (3) Any trust property was located. [2011 c 327 s 17.]

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

RCW 11.98.013 Trust creation—Allowable purposes. A trust may be created only to the extent its purposes are lawful, not contrary to public policy, and possible to achieve. [2011 c 327 s 18.]

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

RCW 11.98.014 Trust creation—Oral trusts. Except as required by a statute other than this title, a trust need not be evidenced by a trust instrument, but the creation of an oral trust and its terms may be established only by clear, cogent, and convincing evidence. [2011 c 327 s 19.]

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

RCW 11.98.015 Noncharitable trusts without ascertainable beneficiaries. Except as otherwise provided in chapter 11.118 RCW or by another statute, the following rules apply:

(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for longer than the time period specified in RCW 11.98.130 as the period during which a trust cannot be deemed to violate the rule against perpetuities;

(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. Such person is considered to be a permissible distributee of the trust; and

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the trustor, if then living, otherwise to the trustor's successors in interest. Successors in interest include the beneficiaries under the trustor's will, if the trustor has a will, or, in the absence of an effective will provision, the trustor's heirs. [2013 c 272 s 22; 2011 c 327 s 20.]

Application—2013 c 272: See note following RCW 11.98.002.

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

RCW 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 s 41. Prior: 1984 c 149 s 68; 1959 c 124 s 3. Formerly RCW 30.99.030.]

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 11.98.017 Trusteeship—Accepting and declining—Powers without acceptance. (1) Except as otherwise provided in subsection (3) of this section, a person designated as trustee accepts the trusteeship:

(a) By substantially complying with a method of acceptance provided in the terms of the trust; or

(b) If the terms of the trust do not provide a method of acceptance or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.

(2) A person designated as trustee who has not yet accepted the trusteeship may decline the trusteeship by delivering a written declination of the trusteeship to the trustor or, if the trustor is deceased or is incapacitated, to a successor trustee, if any, and if none, to a qualified beneficiary.

(3) A person designated as trustee, without accepting the trusteeship, may:

(a) Act to preserve the trust property if, within a reasonable time after acting, the person sends a written declination of the trusteeship to the trustor or, if the trustor is dead or is incapacitated, to a successor trustee, if any, and if none, to a qualified beneficiary; and

(b) Inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose. [2013 c 272 s 10.]

Application—2013 c 272: See note following RCW 11.98.002.

RCW 11.98.019 Relinquishment of powers by trustee. Any trustee may, by written instrument delivered to any then acting co-trustee and to the permissible distributees 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. [2013 c 272 s 11; 1985 c 30 s 42. Prior: 1984 c 149 s 69.]

Application—2013 c 272: See note following RCW 11.98.002.

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 11.98.029 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 s 3. Prior: 1985 c 30 s 43; prior: 1959 c 124 s 4. Formerly RCW 30.99.040.]

Intent—1989 c 10 s 3: "It is the intent of the legislature that RCW 11.98.029 be restored to full force and effect." [1989 c 10 s 2.]

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

RCW 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, must 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 permissible distributee. The successor trustee named in the governing instrument or selected pursuant to the procedure therefor established in the governing instrument is entitled to act as trustee except for good cause or disqualification. The successor trustee is deemed to have accepted the trusteeship 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 is deemed to have accepted the trusteeship 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 cotrustees 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 cotrustees under RCW 11.96A.220. The additional cotrustee is deemed to have accepted the trusteeship as of the effective date of the cotrustee'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 cotrustee 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.

(6) A change of trustee to a foreign trustee does not change the situs of the trust. Transfer of situs of a trust to another jurisdiction requires compliance with RCW 11.98.005 and RCW 11.98.045 through 11.98.055. [2013 c 272 s 12; 2011 c 327 s 21; 2005 c 97 s 13; 1999 c 42 s 618; 1985 c 30 s 44. Prior: 1984 c 149 s 72; 1959 c 124 s 5. Formerly RCW 30.99.050.]

Application—2013 c 272: See note following RCW 11.98.002.

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

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

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 11.98.041 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 is 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(4) regarding the appointment or change of a trustee of the trust. Where a petition is filed under RCW 11.98.039(4) 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. [2013 c 272 s 13; 1985 c 30 s 141.]

Application—2013 c 272: See note following RCW 11.98.002.

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

RCW 11.98.045 Criteria for transfer of trust assets or administration. (1) If a trust is a Washington trust under RCW 11.98.005, a trustee may transfer the situs of the trust to a jurisdiction other than Washington 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 qualified beneficiaries or others interested in the trust;

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

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

(e) The trust meets at least one condition for situs listed in RCW 11.98.005(1) with respect to the new jurisdiction.

(3) Acceptance of such transfer by a foreign corporate trustee or trust company under this section or RCW 11.98.051 or 11.98.055 may not be construed to be doing a "trust business" as described in *RCW 30.08.150(9). [2013 c 272 s 14; 2011 c 327 s 23; 1985 c 30 s 45. Prior: 1984 c 149 s 74.]

***Reviser's note:** RCW 30.08.150 was recodified as RCW 30A.08.150 pursuant to 2014 c 37 s 4 and amended by 2014 c 37 s 167, deleting subsection (9), effective January 5, 2015.

Application—2013 c 272: See note following RCW 11.98.002.

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 11.98.051 Nonjudicial transfer of trust assets or administration—Notice—Consent required. (1) The trustee may transfer trust situs (a) in accordance with RCW 11.96A.220; or (b) by giving written notice to the attorney general in the case of a charitable trust subject to chapter 11.110 RCW and to the qualified beneficiaries not less than sixty days before initiating the transfer. The notice must:

(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 trust will be transferred together with evidence that the trustee has agreed to accept the trust in the manner provided by law of the new situs. The notice must 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 recipients of the notice of the date, not less than sixty days after the giving of the notice, by which such recipients must notify the trustee of an objection to the proposed transfer; and

(g) Include a form on which the recipient may object to the proposed transfer.

(2) If the date upon which the right to object to the transfer expires without receipt by the trustee of any objection, the trustee

may transfer the trust situs as provided in the notice. If the trust was registered under RCW 11.98.045(2), the trustee must file a notice of transfer of situs and termination of registration with the court of the county where the trust was registered.

(3) The authority of a trustee under this section to transfer a trust's situs terminates if a recipient of the notice notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.

(4) A change of trust situs does not authorize a change of trustee. Change of trustee of a trust requires compliance with RCW 11.98.039. [2013 c 272 s 15; 2011 c 327 s 24; 1999 c 42 s 619; 1985 c 30 s 46. Prior: 1984 c 149 s 75.]

Application—2013 c 272: See note following RCW 11.98.002.

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

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

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 11.98.055 Judicial transfer of situs of trusts. (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 the situs of a trust 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 the situs of a trust 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.

(3) A change of trust situs does not authorize a change of trustee. Change of trustee of a trust requires compliance with RCW 11.98.039. [2011 c 327 s 25; 1999 c 42 s 620; 1985 c 30 s 47. Prior: 1984 c 149 s 76.]

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

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

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 11.98.060 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 s 48. Prior: 1959 c 124 s 6. Formerly RCW 30.99.060.]

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

RCW 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 s 49. Prior: 1984 c 149 s 78.]

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 11.98.070 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 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)(a) Pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:

(i) Paying it to the beneficiary's guardian;

(ii) Paying it to the beneficiary's custodian under chapter 11.114 RCW, and, for that purpose, creating a custodianship;

(iii) If the trustee does not know of a guardian or custodian, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, with instructions to expend the funds on the beneficiary's behalf; or

(iv) Managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution.

(b) If the trustee pays any amount to a third party under (a) (i) through (iii) of this subsection, the trustee has no further obligations regarding the amounts so paid;

(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 and reimburse the trustee, with interest as appropriate, for expenses that were properly incurred in the administration of the trust;

(27) Engage 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, subject to RCW 11.98.071;

(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;

(34) (a) Donate a qualified conservation easement, as defined by 26 U.S.C. Sec. 2031(c) of the federal 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 26 U.S.C. Sec. 2031(c) of the federal internal revenue code or the deduction allowed under 26 U.S.C. Sec. 2055(f) of the federal 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 26 U.S.C. Sec. 2031(c)(8)(B) of the federal internal revenue code, and to amend a previously donated unqualified conservation easement for the purpose of making the easement a qualified conservation easement under 26 U.S.C. Sec. 2031(c)(8)(B);

(35) Pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;

(36) Exercise elections with respect to federal, state, and local taxes;

(37) Prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;

(38) On termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it; and

(39) Select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds. [2015 c 115 s 2; 2011 c 327 s 26; 2010 c 8 s 2091; 2002 c 66 s 1; 1997 c 252 s 75; 1989 c 40 s 7; 1985 c 30 s 50. Prior: 1984 c 149 s 80; 1959 c 124 s 7. Formerly RCW 30.99.070.]

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

Construction—1989 c 40: "(1) The amendments made in this act with respect to the excise tax imposed under section 4980A(d) of the Internal Revenue Code of 1986, as amended, are to be effective as to excise tax imposed by reason of a decedent's death occurring after April 18, 1989.

(2) The amendments made in this act regarding apportionment of the tax with respect to qualified real property, and regarding extensions to pay tax, shall be effective with respect to the tax attributable to deaths occurring after April 18, 1989.

(3) The amendment to RCW 11.98.070(13) shall be effective with respect to loans described in RCW 83.110.020(2) made or committed to be made after April 18, 1989." [1989 c 40 s 8.]

Severability—1989 c 40: "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." [1989 c 40 s 9.]

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 11.98.071 Trustee's delegation of duties. (1) A trustee may delegate duties and powers that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

- (a) Selecting a delegate;
- (b) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust;
- (c) Periodically reviewing the delegate's actions in order to monitor the delegate's performance and compliance with the terms of the delegation; and
- (d) Enforcing the delegate's duties under the terms of the delegation.

(2) In performing a delegated function, in addition to any other duty inherent in the delegation, a delegate owes a duty to the trustee to exercise reasonable care to comply with the terms of the delegation.

(3) A trustee who complies with subsection (1) of this section is not liable to the beneficiaries or to the trust for an action of the delegate to whom the function was delegated. Nothing in this section relieves the trustee from any existing duty to compel the delegate to account for the delegate's actions.

(4) By accepting a delegation of powers or duties from the trustee of a trust that is subject to the law of this state, a delegate submits to the jurisdiction of the courts of this state.

(5) A delegation among co-trustees is governed by RCW 11.98.016. [2015 c 115 s 3.]

RCW 11.98.072 Trustee—Notification requirements. (1) A trustee must keep all qualified beneficiaries of a trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee must promptly respond to any beneficiary's request for information related to the administration of the trust. The trustee is deemed to have satisfied the request of a qualified beneficiary who requests information concerning the terms of the trust reasonably necessary to enable such beneficiary to enforce his or her rights under the trust if the trustee provides a copy of the entire trust instrument. If a qualified beneficiary must compel production of information from the trustee by order of the court, then the court may order costs, including reasonable attorneys' fees, to be awarded to such beneficiary pursuant to RCW 11.96A.150.

(2) (a) Except to the extent waived or modified as provided in subsection (5) of this section, within sixty days after the date of acceptance of the position of trustee, the trustee must give notice to the qualified beneficiaries of the trust of:

(i) The existence of the trust;
(ii) The identity of the trustor or trustors;
(iii) The trustee's name, address, and telephone number; and
(iv) The right to request such information as is reasonably necessary to enable the notified person to enforce his or her rights under the trust.

(b) The notice required under this subsection (2) applies only to irrevocable trusts created after December 31, 2011, and revocable trusts that become irrevocable after December 31, 2011.

(3) Despite any other provision of this section, and except to the extent waived or modified as provided in subsection (5) of this section, the trustee may not be required to provide any information described in subsection (1) or (2) of this section to any beneficiary of a trust other than the trustor's spouse or domestic partner if:

(a) Such spouse or domestic partner has capacity;

(b) Such spouse or domestic partner is the only permissible distributee of the trust; and

(c) All of the other qualified beneficiaries of the trust are the descendants of the trustor and the trustor's spouse or domestic partner.

(4) While the trustor of a revocable trust is living, no beneficiary other than the trustor is entitled to receive any information under this section.

(5) The trustor may waive or modify the notification requirements of subsections (2) and (3) of this section in the trust document or in a separate writing, made at any time, that is delivered to the trustee. [2013 c 272 s 16.]

Application—2013 c 272: See note following RCW 11.98.002.

RCW 11.98.075 Certification of trust. (1) Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee may furnish to the person a certification of trust containing the following information:

(a) That the trust exists and the date the trust instrument was executed;

(b) The identity of the trustor;

(c) The identity and address of the currently acting trustee;

(d) Relevant powers of the trustee;

(e) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust;

(f) The authority of cotrustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee; and

(g) The name of the trust or the titling of the trust property.

(2) A certification of trust may be signed or otherwise authenticated by any trustee or by an attorney for the trust.

(3) A certification of trust must state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.

(4) A certification of trust need not contain the dispositive terms of a trust.

(5) A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust

instrument and later amendments which designate the trustee and confer upon the trustee the power to act in the pending transaction or any other reasonable information.

(6) A person who acts in reliance upon a certification of trust without knowledge that the representations contained therein are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the facts contained in the certification. Knowledge of the terms of the trust may not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying upon the certification.

(7) A person who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.

(8) A person making a demand for the trust instrument in addition to a certification of trust or excerpts is liable for damages, including reasonable attorney fees, if the court determines that the person did not act in good faith in demanding the trust instrument.

(9) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust. [2011 c 327 s 31.]

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

RCW 11.98.078 Trustee duty of loyalty. (1) A trustee must administer the trust solely in the interests of the beneficiaries.

(2) Subject to the rights of persons dealing with or assisting the trustee as provided in RCW 11.98.105, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

(a) The transaction was authorized by the terms of the trust;

(b) The transaction was approved by the court or approved in a nonjudicial binding agreement in compliance with RCW 11.96A.210 through 11.96A.250;

(c) The beneficiary did not commence a judicial proceeding within the time allowed by RCW 11.96A.070;

(d) The beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with RCW 11.98.108; or

(e) The transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.

(3) (a) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be "otherwise affected" by a conflict between fiduciary and personal interests under this section if it is entered into by the trustee with:

(i) The trustee's spouse or registered domestic partner;

(ii) The trustee's descendants, siblings, parents, or their spouses or registered domestic partners;

(iii) An agent or attorney of the trustee; or

(iv) A corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

(b) The presumption is rebutted if the trustee establishes that the conflict did not adversely affect the interests of the beneficiaries.

(4) A sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account that is voidable under subsection (2) of this section may be voided by a beneficiary without further proof.

(5) An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment complies with the prudent investor rule of chapter 11.100 RCW. In addition to its compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the trustee must at least annually notify the permissible distributees of the rate and method by which that compensation was determined. The obligation of the trustee to provide the notice described in this section may be waived or modified by the trustor in the trust document or in a separate writing, made at any time, that is delivered to the trustee.

(6) The following transactions, if fair to the beneficiaries, cannot be voided under this section:

(a) An agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;

(b) Payment of reasonable compensation to the trustee and any affiliate providing services to the trust, provided total compensation is reasonable;

(c) A transaction between a trust and another trust, decedent's estate, or guardianship of which the trustee is a fiduciary or in which a beneficiary has an interest;

(d) A deposit of trust money in a regulated financial-service institution operated by the trustee or its affiliate;

(e) A delegation and any transaction made pursuant to the delegation from a trustee to an agent that is affiliated or associated with the trustee; or

(f) Any loan from the trustee or its affiliate.

(7) The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

(8) If a trust has two or more beneficiaries, the trustee must act impartially in administering the trust and distributing the trust property, giving due regard to the beneficiaries' respective interests. [2013 c 272 s 23; 2011 c 327 s 32.]

Application—2013 c 272: See note following RCW 11.98.002.

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

RCW 11.98.080 Consolidation of trusts. (1)(a) Two or more trusts may be consolidated if:

(i) The trusts so provide; or

(ii) Whether provided in the trusts or not, the requirements of subsection (2), (3), or (4) of this section are satisfied.

(b) Consolidation under subsection (2), (3), or (4) 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.

(c) 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)(a) A trustee must deliver sixty days in advance written notice of a proposed consolidation in the manner provided in RCW 11.96A.110 to the qualified beneficiaries of every trust affected by the consolidation and to any trustee of such trusts who does not join in the notice. The notice must: (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)(b) of this section. The notice must advise the recipient of the right to petition for a judicial determination of the proposed consolidation as provided in subsection (4) of this section, and must indicate that the recipient has thirty days to object to the proposed consolidation.

(b) If the trustee receives written objection to the proposed consolidation from any trustee or beneficiary entitled to notice or from their representatives within the objection period provided in subsection (a) of this section, the trustee(s) may not consolidate the trusts as provided in the notice, though an objection does not preclude the trustee or a beneficiary's right to petition for a judicial determination of the proposed consolidation as provided in subsection (4) of this section. If the trustee does not receive any objection within the objection period provided above, then the trustee may consolidate the trusts, and such will be deemed the equivalent of an order entered by the court declaring that the trusts were combined in the manner provided in the initial notice.

(3) 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.

(4)(a) Any trustee, beneficiary, or special representative may petition the superior court of the county in which the situs of a trust is located for an order consolidating two or more trusts under RCW 11.96A.080 through 11.96A.200.

(b) At the conclusion of the hearing, if the court finds that the requirements of subsection (1)(b) 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.

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

(6) For powers of fiduciaries to divide trusts, see RCW 11.108.025. [2013 c 272 s 17; 1999 c 42 s 621; 1991 c 6 s 2; 1985 c 30 s 51. Prior: 1984 c 149 s 81.]

Application—2013 c 272: See note following RCW 11.98.002.

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

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 11.98.085 Trustee—Breach of trust—Damages. (1) A trustee who commits a breach of trust is liable for the greater of:

(a) The amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred; or

(b) The profit the trustee made by reason of the breach.

(2) Except as otherwise provided in this subsection, if more than one trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees. A trustee is not entitled to contribution if the trustee was substantially more at fault than another trustee or if the trustee committed the breach of trust in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. A trustee who received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received. [2011 c 327 s 33.]

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

RCW 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 s 53. Prior: 1984 c 149 s 84; 1959 c 124 s 9. Formerly RCW 30.99.090.]

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 11.98.105 Nonliability of third persons without knowledge of breach. (1) A person other than a beneficiary who in good faith assists a trustee, or who in good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising the trustee's powers is protected from liability as if the trustee properly exercised the power.

(2) A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise.

(3) A person who in good faith delivers assets to a trustee need not ensure their proper application.

(4) A person other than a beneficiary who in good faith assists a former trustee, or who in good faith and for value deals with a former trustee, without knowledge that the trusteeship has terminated is protected from liability as if the former trustee were still a trustee.

(5) Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section. [2011 c 327 s 28.]

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

RCW 11.98.107 Trustee exculpation. (1) An exculpatory term which was inserted as the result of an abuse of a fiduciary or confidential relationship between the trustor and the trustee is unenforceable.

(2) An exculpatory term drafted or caused to be drafted by the trustee is invalid as an abuse of a fiduciary or confidential relationship unless the trustee proves that the exculpatory term is fair under the circumstances and that its existence and contents were adequately communicated to the trustor. [2011 c 327 s 29.]

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

RCW 11.98.108 Nonliability of trustee—Beneficiary's consent, release, or ratification. A trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless:

(1) The consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee; or

(2) At the time of the consent, release, or ratification, the beneficiary did not know of the beneficiary's rights or of the material facts relating to the breach. [2011 c 327 s 30.]

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

RCW 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 s 622; 1988 c 29 s 8; 1985 c 30 s 54. Prior: 1984 c 149 s 85; 1983 c 3 s 50; 1959 c 124 s 10. Formerly RCW 30.99.100.]

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

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 11.98.130 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 s 1; 1985 c 30 s 55. Prior: 1984 c 149 s 87; 1965 c 145 s 11.98.010; prior: 1959 c 146 s 1. Formerly RCW 11.98.010.]

Application—2001 c 60: "This act applies to any irrevocable trust with an effective date on or after January 1, 2002. Unless the trust instrument otherwise provides, this act does not apply to: (1) Any irrevocable trust with an effective date prior to January 1, 2002; or (2) a revocable inter vivos trust or testamentary trust with an effective date on or after January 1, 2002, if at all times after the date of enactment the creator of the revocable inter vivos trust or testamentary trust was not competent to revoke, amend, or modify the instrument." [2001 c 60 s 4.]

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 11.98.140 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 s 2; 1985 c 30 s 56. Prior: 1984 c 149 s 88; 1965 c 145 s 11.98.020; prior: 1959 c 146 s 2. Formerly RCW 11.98.020.]

Application—2001 c 60: See note following RCW 11.98.130.

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 11.98.145 Distribution upon termination. (1) Upon termination or partial termination of a trust, the trustee may send, by personal service, certified mail with return receipt requested, or in an electronic transmission if there is a consent of the recipient to electronic transmission then in effect under the terms of RCW 11.96A.110, to the beneficiaries a proposed plan to distribute existing trust assets. The right of any beneficiary to object to the plan to distribute existing trust assets, including the right to object to nonpro rata distributions authorized under RCW 11.98.070(15), terminates if the beneficiary does not notify the trustee of an objection within thirty days after the proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection.

(2) Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes. [2011 c 327 s 27.]

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

RCW 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 s 3; 1985 c 30 s 57. Prior: 1984 c 149 s 89; 1965 c 145 s 11.98.030; prior: 1959 c 146 s 3. Formerly RCW 11.98.030.]

Application—2001 c 60: See note following RCW 11.98.130.

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 11.98.160 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 s 2; 1985 c 30 s 58. Prior: 1984 c 149 s 90; 1965 c 145 s 11.98.040; prior: 1959 c 146 s 4. Formerly RCW 11.98.040.]

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 11.98.170 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 s 623; 1991 c 193 s 29; 1985 c 30 s 59. Prior: 1984 c 149 s 91.]

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

Effective date—Severability—1991 c 193: See RCW 11.114.903 and 11.114.904.

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 11.98.200 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 s 624; 1994 c 221 s 65; 1993 c 339 s 2.]

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

Application—1994 c 221: "The 1994 c 221 amendments to RCW 11.98.200(3) are remedial in nature and apply retroactively to July 25, 1993." [1994 c 221 s 74.]

Effective dates—1994 c 221: See note following RCW 11.100.035.

Severability—1993 c 339: "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." [1993 c 339 s 14.]

RCW 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 s 3.]

Severability—1993 c 339: See note following RCW 11.98.200.

RCW 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 s 625; 1993 c 339 s 4.]

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

Severability—1993 c 339: See note following RCW 11.98.200.

RCW 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 s 5.]

Severability—1993 c 339: See note following RCW 11.98.200.

RCW 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 s 626; 1997 c 252 s 76; 1994 c 221 s 66; 1993 c 339 s 6.]

***Reviser's note:** RCW 11.96A.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (4) to subsection (5).

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

Effective dates—1994 c 221: See note following RCW 11.100.035.

Severability—1993 c 339: See note following RCW 11.98.200.

RCW 11.98.900 Application of RCW 11.98.130 through 11.98.160—RCW 11.68.090 prevails. (1) 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.

(2) To the extent that this chapter is in conflict with RCW 11.68.090, RCW 11.68.090 prevails. [2021 c 140 s 4023; 1985 c 30 s 60. Prior: 1984 c 149 s 93; 1971 ex.s. c 229 s 1; 1965 c 145 s 11.98.050; prior: 1959 c 146 s 5. Formerly RCW 11.98.050.]

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.

Effective date—1959 c 146: The effective date of 1959 c 146, herein reenacted by 1965 c 145 s 11.98.050, was midnight June 10, 1959, see preface 1959 session laws.

RCW 11.98.920 Short title. This act shall be known as the "Washington Trust Act." [1985 c 30 s 62. Prior: 1959 c 124 s 12. Formerly RCW 30.99.910.]

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

RCW 11.98.930 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 s 39.]