

**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.