

## 2012 TITLE 11 REVISIONS Summary

The proposed changes to Title 11 RCW include various technical corrections related to the Act effective January 1, 2012, otherwise known as SHB 1051 (“2011 Act”). The proposed changes also include various updates to statutes in response to comments received from practitioners since the 2011 Act was enacted.

**RCW 11.36.010; 11.36.021** - Changes made to these two statutes include specific authorization to permit certain nonprofit corporations to serve as personal representative and to permit state and regional colleges and universities to serve as trustee. RCW 28B.20.130(7), 28B.30.150(24) and 28B.35.120(10) already provide that state and regional colleges and universities may receive gifts in trust, however, RCW 11.96.021 does not now include those institutions in its list of permitted trustees. Confirming language is being added to RCW 11.36.021 to avoid any ambiguity.

**RCW 11.96A.050; 11.98.015; 11.98.019; 11.98.039; 11.98.041; 11.98.045; 11.98.051; 11.98.078; 11.106.020; 11.118.050** - These sections are modified to integrate the new definitions in RCW 11.98.004, to update statutory references, and to integrate the new section regarding notice to beneficiaries, RCW 11.98.071.

**RCW 11.96A.070** - This section is modified to clarify the method of delivery of a report for the purposes of starting the statute of limitations for a breach of trust claim. In addition, language related to beneficiary knowledge of a potential claim is being clarified to comport with Washington evidentiary law standards.

**RCW 11.96A.120** - This section is modified to include additional options for the virtual representation of another party. The new provisions have been adopted by a majority of jurisdictions that have adopted the Uniform Trust Code. The purpose of these revisions is to allow for more flexibility when delivering notice to or obtaining consent from parties in trust and estate matters. This will streamline the practice and clarify the necessary parties in a trust and estate matter, keeping legal costs down and making management of these matters more efficient.

**RCW 11.96A.125** - This section is modified to clarify that the evidentiary standard contained in this section only applies to reformations by judicial procedure. It is long standing law in Washington that reformations may be made by agreement under RCW 11.96A.220 without application of the evidentiary standard.

**RCW 11.96A.250** - This section is modified to allow for any party to a matter, or the parent of a party to a matter, as defined by RCW 11.96A.030 to petition for the appointment of a special representative to represent the interests of a minor, or an unborn, incapacitated, or unknown party. The purpose of these revisions is to reflect that modern practice incorporates the use of a special representative in many types of matters related to trusts, estates, and non-probate assets. Allowing for parties other than a personal representative or a trustee to petition for the appointment of a special representative will also streamline the process, keeping legal costs down and making management of these matters more efficient.

**RCW 11.97.010** - This section has been simplified to provide that the trustor may not modify the general duty to provide beneficiaries with trust administration information, which is now contained in a new section, RCW 11.98.071(1). Other notice-related provisions of RCW 11.98.071 may be modified by the trustor as described further below.

**RCW 11.98.004** - This new section has been added to provide definitions of “permitted distributee” and “qualified beneficiary.” These terms are used in the Uniform Trust Code and are being incorporated into portions of RCW Title 11. Each definition clarifies the class of beneficiaries to whom certain notices are to be given or from whom consents are to be received.

**RCW 11.98.005** - This section is modified to integrate the new definitions in RCW 11.98.004. The changes also clarify when a trust may have situs in Washington if the trust document is silent as to situs or governing law.

**RCW 11.98.015** - This new section clarifies how a named trustee can accept or decline the position of Trustee.

**RCW 11.98.071** - This new section clarifies the general duty of a trustee to provide administration information to trust beneficiaries. This section includes language now contained in RCW 11.97.010, with additional modifications discussed below.

Subsection (1) confirms that the trustee must keep all qualified beneficiaries reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. This duty may not be waived or modified by a trustor. This subsection (1) differs from the 2011 Act in that it no longer recites the specific information that may be provided as a safe harbor. That is already covered in RCW 11.96A.070(1)(b).

Subsection (2) now allows the trustor to waive or modify the requirement that notice of the existence of the trust under certain circumstances. This approach is taken by a majority of jurisdictions that have adopted the Uniform Trust Code.

Subsections (3) and (4) are new and are taken from the Uniform Trust Code. These sections clarify that any requirement to provide notice or information to a trust beneficiary apply only to (1) the spouse or domestic partner of the trustor if the spouse or domestic partner is the only permissible distributee of the trust and the remainder beneficiaries of the trust are the children of the trustor and the spouse or domestic partner, and (2) the trustor of a revocable trust while the trustor is living.

**RCW 11.98.080** - This section is modified to clarify the methods for consolidating trusts. The revised statute incorporates the method used in the Uniform Trust Code, which is to provide notice to the qualified beneficiaries and give them an opportunity to object. If no objection is received within a thirty day period the consolidation can take place. This change makes the statute more clear and provides more flexibility for trustees and beneficiaries to consolidate trusts in a cost-effective manner.

**RCW 11.98.090** - This section is deleted in its entirety because RCW 11.98.105, enacted in 2011, superseded this statute but was inadvertently not repealed at that time.

**RCW 11.103.030** - Subsection (5) of this section is modified solely for clarity of verbiage; no substantive change is being made.

**RCW 11.103.040** – This section is modified to clarify what duties are owed to beneficiaries of a revocable trust while the trustor of such is living.

**RCW 11.103.050** - This section is modified to clarify the information that is to be provided to start the running of the statute of limitations for contesting the validity of a revocable trust.

**RCW 11.106.010** - This section is modified to permit the application of the accounting act to trusts that are created by the court. This change is similar in purpose to the change made to RCW 11.98.009 in the 2011 Act.