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NO. 65626-1-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

In the Matter of the
ESTATE OF STEPHEN EARLS, Deceased

—
HINES REIT SEATTLE DESIGN CENTER, LLC,

Appellant,

v.

BARRY WOLF,

as personal representative of the
Estate of Stephen Earls,

Respondent.

OPENING BRIEF OF APPELLANT

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ORIGINAL

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I. INTRODUCTION

Appellant Hines REIT Seattle Design Center, LLC, leased property to a corporate tenant. Stephen Earls executed a personal guaranty to Hines of the tenant's obligations under the lease. Mr. Earls died during the term of the lease. The tenant was current on its obligations under the lease. Hines at that time had no claim against the decedent under the guaranty. It would never have had a claim unless the tenant defaulted.

Earls' personal representative served a Notice to Creditors on Hines under RCW 11.40.010 *et seq.*, which governs the presentation of claims in a probate estate by "[a] person having a claim against the decedent." RCW 11.40.010. Hines did not present a creditor's claim. When the tenant defaulted some ten months later, Hines brought an action against the estate on the guaranty.

Two decisions of this court hold, on indistinguishable facts, that the claim that Hines brought in its petition is a claim against the *estate*, not against the decedent, and is not barred even though not presented under Ch. 11.40 RCW. The trial court, however, dismissed the action under the creditor's claim statute. The trial court declined to follow the existing case authority, abrogated a contractual right of guaranty that expressly survived the death of the guarantor, and treated a future potential

contractual right as the equivalent of a current “claim.” In so doing, the trial court erred.

II. ASSIGNMENTS OF ERROR

Assignment of Error No. 1: The trial court erred in dismissing Hines REIT Seattle Design Center LLC’s Verified Petition to Enforce Personal Guaranty (the “Petition”).

Assignment of Error No. 2: The trial court erred in awarding attorneys’ fees to the Estate of Stephen Earls.

III. ISSUES RELATED TO ASSIGNMENTS OF ERROR

Issues Related to Assignment of Error No. 1.

Is a claim on a personal guaranty that arises after the guarantor’s death, as a consequence of the principal’s default that first occurs after the guarantor’s death, a claim against the guarantor’s estate rather than a claim against the decedent?

Is the creditor's claim statute, RCW 11.40.010 *et seq.*, inapplicable to an obligee under a personal guaranty, where at the date of the guarantor’s death the principal is not in default, the guarantor owes nothing, and the guarantor may never owe anything, under the guaranty?

IV. STATEMENT OF THE CASE

A. Parties

The appellant Hines REIT Seattle Design Center LLC (“Hines”) is the owner of the Seattle Design Center, a home furnishings showroom facility. The decedent Stephen Earls was the president of the Stephen Earls Corporation. All of the stock of the Stephen Earls Corporation was held in a trust formed by the decedent in 1997. CP 5-6, 58.

B. Statement of Facts

On March 15, 2005, Hines’ predecessor in interest, Bay West Design Center LLC, entered into a lease (the “Lease”) with the Stephen Earls Corporation (the “Tenant”), covering certain premises at the Seattle Design Center. The ten year Lease term began on January 1, 2006, and expires on December 31, 2015. CP 6, 58, 16-56.

The decedent personally guaranteed the obligations of the Tenant under the Lease, by execution of a Personal Guaranty that was attached to the Lease as Exhibit F. CP 49. Under the Personal Guaranty, the decedent “unconditionally and continuously guarantees to landlord. . . the full and timely performance and observance by Tenant of all terms and conditions of the Lease to be performed and observed by Tenant.” The Personal Guaranty provided that in the event of the guarantor’s death, the Personal Guaranty would remain in full force and effect and be binding on

his Estate. The Personal Guaranty also contains an attorneys' fees clause providing that the guarantor shall pay all costs and expenses incurred by the landlord in enforcing either the lease or the guaranty "including a reasonable amount for legal services performed by counsel" CP 6, 49, 58-59.

The decedent died on October 17, 2008. CP 5, 58. Barry Wolf was appointed as the personal representative of the decedent's estate. CP 5, 58. At the date of decedent's death, the Tenant was in compliance with all terms and conditions of the lease. CP 6.

The personal representative served a Probate Notice to Creditors on Hines on or about October 30, 2008. CP 7, 60. The time within which Hines would have been required to file a claim, if one were necessary, expired on or about February 28, 2009. RCW 11.40.051. Hines did not present a creditor's claim to the Estate. CP 7.

In August 2009, about ten months after the decedent's death, the Tenant defaulted on the lease, making only a partial lease payment. The Tenant continued thereafter to make only partial payments on the monthly rent, through at least January 2010. CP 6-7.

C. Procedural History

On January 14, 2010, Hines filed its verified Petition to enforce the Personal Guaranty. CP 5-56. The Estate in its answer averred that it

lacked knowledge or information sufficient to permit it to form a belief as to the truth of the Petition's allegations of the Tenant's default, *see* CP 6-7, 59, but in its narrative response, the Estate admitted the Tenant's default:

In August 2009, the Company failed to make a full payment under the Lease. To this day, the Company continues to occupy the leased premises and pay partial rent payments.

CP 63. The Estate raised the affirmative defense that the Petition was barred by the creditor's claim statute. CP 61. After hearing argument on March 30, 2010, the Ex Parte and Probate Department Commissioner dismissed the Petition with prejudice, on the ground that the action was barred by the creditor's claim statute. CP 86-88.

Hines filed a motion to revise the ruling of the Commissioner pursuant to RCW 2.24.050. CP 118-23. The revision motion was heard on the record that was before the Commissioner, with no additional briefing. The trial court, the Hon. Laura Gene Middaugh presiding, denied the revision motion on May 19, 2010. CP 127-28.

Both the Commissioner and the trial court ruled that the Estate was entitled to an award of attorneys' fees and costs. CP 88, 127-28. On June 22, 2010, the Commissioner awarded fees and costs in the total sum of \$48,587.77. CP 216-18.

Hines timely filed a notice of appeal on June 18, 2010. CP 206-15.

V. ARGUMENT

A. Standard of Review.

The trial court's rulings are subject to *de novo* review. Hines filed its petition under the Trust and Estate Dispute Resolution Act, RCW 11.96A.010 *et. seq.* Under TEDRA, petitions are to be decided at the initial hearing, unless a party requests an evidentiary hearing. RCW 11.96A.100(8). Neither party requested that the matter be put over for trial. There were no disputed facts. The parties agreed that the Tenant was not in default as of the date of death, that the Personal Representative served a notice to creditors on Hines, that Hines did not present a creditor's claim, and that the Tenant first defaulted in August 2009, several months after the expiration of the creditor's claim period. The trial court decided the matter as a pure issue of law – whether on these facts the creditor's claim statute barred the relief sought in the petition. Where the facts are undisputed, the standard of review on appeal is *de novo*. *Nelson v. Appleway Chevrolet, Inc.*, 129 Wn. App 927, 934, 121 P.3d 95 (2005); *Estate of Curry*, 98 Wn. App 107, 112-13, 988 P.2d 505 (1999). In addition, the interpretation of a statute is a matter of law subject to *de novo* review. *Castro v. Stanwood School Dist. No. 401*, 151 Wn.2d 221, 224, 86 P.3d 1166 (2004).

B. The Creditor's Claim Statute Does Not Bar Hines' Claim Against the Estate on the Guaranty Because the Claim Arose Against the Estate, Not the Decedent

1. The Statutory Scheme

RCW 11.40.010 et seq. sets out the statutory scheme by which creditors who had claims against the decedent while he was alive assert those claims against the decedent's estate, by which personal representatives allow or reject the claims, and, where the merits of the claims are disputed, by which the claims are resolved. RCW 11.40.010 sets out the basic governing law:

A person having a *claim against the decedent* may not maintain an action on the claim unless a personal representative has been appointed and the claimant has presented the claim as set forth in this chapter.

RCW 11.40.010 (emphasis supplied). (The current Ch. 11.40 RCW is set out in full in the Appendix, at App. 00001-5, for the Court's convenience.) Under RCW 11.40.020, the personal representative may publish a notice to creditors in the form prescribed in RCW 11.40.030, and may (but is not required to) serve a notice to creditors on individual creditors of whom the personal representative is aware. Within the time periods set out in RCW 11.40.051,¹ the creditor must file and serve a creditor's claim. The

¹ The time periods differ depending upon whether the personal representative gave notice, the method (publication or personal service) by which the personal representative

form of the claim submission is described in RCW 11.40.070. The personal representative must allow or reject the claim within four months of presentation. RCW 11.40.080. If the personal representative rejects the claim, “the claimant must bring suit against the personal representative within thirty days after notification of rejection or the claim is forever barred.” RCW 11.40.100.

The creditor’s claim statute has been a part of the Washington statutes governing probate procedure since 1854, although it has been frequently amended. Persons whose claims are subject to the statutes are in some places referred to as “claimants,” *see, e.g.*, RCW 11.40.100, and in other places as “creditors,” *see, e.g.*, 11.40.040.

2. The Creditor’s Claim Statute Applies Only to Claims That Have Arisen Against the Decedent, Not to Claims that Arise Against the Decedent’s Estate.

The creditor's claim statute provides that a “person having a *claim against the decedent* may not maintain an action on the claim unless . . . the claimant has presented the claim as set forth in this chapter.”

RCW 11.40.010 (emphasis added). In order for the creditor's claim statute to bar a claim, the claim must have accrued “during the lifetime of the decedent.” *Estate of Wilson v. Livingston*, 8 Wn. App. 519, 525, 507

gave notice, and, if the personal representative gave notice only by publication, whether the creditor was “reasonably ascertainable.” RCW 11.40.051.

P.2d 902 (1973). The word claim is construed to be equivalent to a cause of action. *Barto v. Stewart*, 21 Wash. 605, 615, 59 P. 480 (1899). Claims that have arisen but are contingent or not yet due must still be presented. *Seattle Trust Company v. Zbinden*, 170 Wash. 692, 694, 17 P.2d 629 (1932).

Claims that arise after the death of the decedent are *not* subject to the creditor's claim statute. A claim that arises after the decedent's death "is treated differently; it is a claim against the *estate*, not the deceased. Claims against the estate are *not* subject to the 4-month probate nonclaim statute and need not be filed in order to be allowed." *Judson v. Associated Meats & Seafoods*, 32 Wn. App. 794, 797, 651 P.2d 222 (1982) (emphasis in original).

3. Hines' Claim Against the Estate of Earls Arose After the Date of Death, and Is a Claim Against the Estate, Not Against the Decedent.

The question presented by this case is whether an obligee under a decedent's undertaking has a "claim against the decedent" at the date of death within the meaning of RCW 11.40.010, if, when the decedent died, the decedent was not in default of his obligation, owed no performance under the undertaking, and might never owe any performance under the undertaking. The law governing personal guaranties, the plain language of

the probate statute, and the case law decided by this Court, demonstrate that the answer is no.

a. No Claim Arises Against a Personal Guarantor Until the Default of the Principal.

In Washington, a contract of guaranty is a promise by a guarantor collateral to the obligation of a principal that binds the guarantor to perform in the event of the principal's nonperformance. *Wilson Court Ltd. P'ship v. Tony Maroni's Inc.*, 134 Wn.2d 692, 707, 952 P.2d 590 (1998). Even if the principal's contract with the obligee is on the same instrument or piece of paper as the guarantor's contract with the obligee, the principal's and the guarantor's obligations are separate and independent. *Id.* An obligee's cause of action against a guarantor does not accrue until liability on the guaranty is triggered and the obligee is entitled to maintain a cause of action for damages against the guarantor. *First Md. Leasecorp v. Rothstein*, 72 Wn. App. 278, 285-86, 864 P.2d 17 (1993). In *Rothstein*, the Rothsteins invested in a venture to be carried out by a partnership. The partnership obtained a bank loan that the Rothsteins personally guaranteed. Their obligations under the guaranty were secondary, requiring the obligee to first seek relief from the partnership before enforcing the guarantee against the Robinsons. The partnership later defaulted on the loan. The bank obtained a judgment against the

partnership and then commenced an action against the Rothsteins. The Rothsteins settled with the bank, and proceeded on third-party fraud claims against one of the partners. The Court adopted the federal rule on when a cause of action accrues:

“[A] cause of action accrues when the plaintiff is aware of the wrong and can successfully bring a cause of action. Applying this principle, we have held that a cause of action does not accrue at the time plaintiff becomes aware of a wrong if, at that time, the plaintiff’s damages are not certain to occur or too speculative to be proven.”

Id. at 284 (quoting *Acri v. Int’l Ass’n of Machinists*, 781 F.2d 1393, 1396 (9th Cir. 1986)). The *Rothstein* Court explained that a cause of action against a guarantor accrues once its liability on the guaranty is triggered and the obligee is able to maintain a cause of action for damages against the guarantor:

Rothsteins’ liability to [the bank] was secondary, not primary. Unless the partnership defaulted and partnership assets were insufficient to satisfy the loan, Rothsteins would have no liability on their guaranty. Therefore, at the time of the alleged misrepresentations, damages based on the guaranty were speculative and Rothsteins were not entitled to maintain an action for damages at that time. . . . Once the partnership defaulted and the bank made its demand on the guarantors, damages were no longer speculative, even though their

extent was not known. At that time,
Rothsteins' cause of action accrued.

Id. at 285-86.

Here, Hines had no cause of action against Stephen Earls on the date of his death, because the Tenant had not defaulted on its obligations under the Lease. Stephen Earls owed no performance to Hines as of the date of death, and Hines had no claim against him. The claim arose later, against the Estate, not against Mr. Earls, when the Tenant first defaulted some ten months after Mr. Earls died.

**b. Under Washington Case Law,
Undertakings as to Which No
Performance is Due Are Not “Claims”
under RCW 11.40.010.**

This Court has previously recognized that a decedent's undertakings entered into before death are not subject to the creditor's claim statute if the obligation to perform did not arise until after death. In *Foley v. Smith*, 14 Wn. App. 285, 539 P.2d 874 (1975), the Foleys sold real estate to a purchaser (the “first purchaser”). The Foleys then sold the same real estate to the Smiths, giving the Smiths a statutory warranty deed. The first purchaser thereafter brought an action for specific performance against the Foleys and the Smiths, seeking to obtain title to and possession of the real estate.

While the first purchaser's action was pending, Mr. Foley died. His personal representative gave notice to creditors. The Smiths, to whom Mr. Foley had deeded the property that the first purchaser was suing to recover, did not present a creditor's claim.

The trial court subsequently entered a decree of specific performance in favor of the first purchaser. The decree divested the Smiths of title to the property. The Smiths then sued Mr. Foley's estate for breach of his warranty of title and his covenant of quiet enjoyment in the Statutory Warranty Deed. Mr. Foley's personal representative defended on the ground that the Smiths had not presented a creditor's claim, and that their action was therefore barred by the creditor's claim statute.

This Court rejected the defense, holding that the breach of warranty took place only when the decree of specific performance was entered, and therefore that the claims arose *after* the husband's death. The court concluded that the creditor's claim statute did not apply, because it "is unnecessary to file a creditor's claim with an estate where the claim did not arise until after" the decedent's death. *Foley*, 14 Wn. App. at 294.

Foley is on all fours with this case. Mr. Foley, like Mr. Earls, executed an undertaking while he was alive. In *Foley*, the undertaking was the making of the statutory warranties to the Smiths in the Statutory

Warranty Deed. In the instant case, the undertaking was Mr. Earls' personal guaranty. Even though the Smiths were obviously aware of the contractual undertakings that ultimately resulted in a claim, Mr. Foley owed no damages and might never have owed damages to the Smiths at the date of Mr. Foley's death. Likewise Mr. Earls here owed no performance and no damages to Hines at the date of his death.² Neither the Smiths nor Hines presented a creditor's claim. Both the Smiths and Hines brought an action against the estates of their obligors after performance became due. The Court held in *Foley* that the creditor's claim statute did not bar the Smiths' action because the claim arose after the decedent died. In this case the trial court erred as a matter of law by dismissing Hines' petition under RCW 11.40.010.

Five years later this Court followed *Foley* in *Runkle v. Bank of California*, 26 Wn. App. 769, 770-71, 614 P.2d 226 (1980). In *Runkle* the decedent (Lydia) executed a Will that designated two parties (Robert, her husband, and Harry, her nephew and also her executor) as the sole beneficiaries of her estate. Shortly thereafter, Lydia executed an agreement with Robert and Harry:

² This case presents an even more compelling case than *Foley*. Even before Mr. Foley's death, both he and the Smiths already were defendants in the lawsuit by the first purchaser. The Smiths therefore were aware that if the outcome of the first purchaser's lawsuit was unfavorable, Mr. Foley would be in breach of his warranties in the deed. In this case, the Tenant was in full compliance with the lease.

Robert . . . and Harry. . . each agree at the time any money is received by each of us from [Lydia's estate] each of us will pay . . . the sum of \$2,500.00 (to each of three specified individuals).

Id. at 771. Lydia died. Before her estate distributed any money to Robert, Robert also died. The Bank of California was appointed as Robert's personal representative. No creditor's claim was presented in Robert's estate with respect to his agreement with Lydia. After the time for the presentation of creditor's claims against Robert's estate expired, Lydia's estate distributed money to Robert's executor, Bank of California. *Id.* Harry, as personal representative of Lydia's estate, then asked the Court to order the Bank of California to make the \$2,500 gifts under Robert's agreement with Lydia. *Id.* The Bank of California defended on the ground that the agreement was in place before Robert died, and that no creditor's claim had been presented. This Court held that the creditor's claim statute was inapplicable because the claim arose after the decedent's death:

We hold the Non-Claim Statute inapplicable because the claim arose after the decedent's death. The agreement stated that [Robert] would pay each of three named beneficiaries \$2,500 "at the time any money (was) received by (him) from the estate [of the decedent]." The money was not received until after [Robert's] death and therefore the Non-Claim Statute is inapplicable. *Foley v.*

Smith, 14 Wn. App. 285, 539 P.2d 874 (1975).

Id. at 773. The holding in *Runkle* applies here. In both cases the decedent entered into an undertaking while alive. In both cases no performance was due at the date of the obligor's death because the condition precedent for any obligation to perform had not yet occurred. Robert's obligation to perform was conditional upon his receipt of a distribution from Lydia's estate. Stephen Earls' obligation to perform was conditional upon the default of the Tenant. In both cases the obligee did not file a creditor's claims. In both cases, the obligation to perform ripened after the expiration of the creditor's claim period. Because Hines's claim arose against the estate, not against the decedent, the trial court erroneously dismissed the petition.

C. The Trial Court Erroneously Concluded That the Legislature Intended to Include All Possible Future Contractual Obligations Within the Meaning of the Word "Claim" in RCW 11.40.010.

The trial court in construing the creditor's claim statute relied upon a chain of reasoning based on several sections of the statute. The court observed that RCW 11.40.010 provides that a person having a claim against the decedent may not maintain an action on the claim unless the claimant has presented the claim "as set forth in this chapter." VRP 1. The Court then observed that RCW 11.40.070 provides that if the claim is

unliquidated or contingent, the claimant must describe the contingency.

VRP 2. The court appeared to recognize that neither RCW 11.40.010 nor any other section of the statute expressly requires that contingent claims be presented, but said the reference to contingent claims in RCW 11.40.070 would be “nonsensical” if the statute did not require the presentation of contingent claims. VRP 2.

The trial court was incorrect for at least two reasons. First, Hines’ potential right to seek payment from Mr. Earls if the Tenant defaulted on the lease was not a claim at all, contingent or otherwise, but a future contractual right. A claim is not the equivalent of a potential future right under a contract, and the law cannot assume that the tenant under a commercial lease will eventually default. No one would say that a party to a contract has a “claim” against the other contracting party unless and until there has been a breach or, at a minimum, it is clear that performance is or will become due. Washington courts measure the time of accrual of claims in probate matters in the same way as accrual of causes of action. *See Livingston*, 8 Wn. App. at 526 (discussing the accrual of a cause of action on an open account in the probated context).

One can readily think of rights that are indisputably claims, but at the same time are also contingent. For example, a lender plainly has a current claim against the maker of a mortgage note that is in default for

nonpayment; but if the maker dies, the lender's claim against assets of the estate other than the collateral would be contingent on the insufficiency of the proceeds of the collateral to discharge the debt. *Seattle Trust v. Zbinden* is an instance in which just such a claim was the subject of a creditor's claim, and was described by the court as "contingent." *Seattle Trust*, at 692. In this case, however, at the date of Mr. Earl's death it was entirely possible that the Tenant would never default. Hines at that time had no claim against Mr. Earls, contingent or otherwise.

The trial court's analysis is also not supported by the statute's legislative history. The language to which the trial court referred in RCW 11.40.070, stating that if the claim is contingent or not yet due, the creditor's claim submission should describe the nature of the uncertainty or the date when performance would become due, was added to the statute in 1974, in what was at the time generally called the Probate Reform Act of 1974. Laws of 1974, 1st Ex. Sess., ch. 117, Part V (App. 000006-9). Prior to the adoption of the Probate Reform Act of 1974, the basic rule (now codified in RCW 11.40.010, but which was then codified in RCW 11.40.080) read as follows:

Claims must be presented. No holder of any claim against a decedent shall maintain an action thereon, unless the claim shall have been first presented as herein provided.

Laws of 1965, ch. 145, § 11.40.080. (App. 000012) The statute did not describe the content of the creditor's claim submission, other than to require that it be supported by affidavit, as follows:

Affidavit of claimant. Every claim served and filed as above provided [in what was then RCW 11.40.010] shall be supported by the affidavit of the claimant that the amount is justly due, that no payments have been made thereon, and that there are no offsets to the same to the knowledge of the claimant.

Id. § 11.40.020 (App. 000010).

In 1969, the National Conference of Commissioners on Uniform State Laws and the American Bar Association approved the Uniform Probate Code. 8 (Part 1) UNIFORM LAWS ANNOTATED 1 (1998 ed.). Within the next few years, Washington legislators considered several bills that would have affected the probate code. One bill, House Bill 266, would have adopted the Uniform Probate Code substantially in its entirety. Another bill, House Bill 748, provided for the adoption only of portions of the Uniform Probate Code, and made other revisions to Washington's probate code. In 1973-74, the legislators and members of the bar discussed which bill among these two and others would be adopted. *See, e.g.,* Leg Hist 96, 163-67, 181, 182-86, 188-89, 233-34, 239-40.³

³ References to "Leg Hist ____" are to the legislature's bill files relating to H.B. 748 (which became Laws of 1974, ch. 117), maintained by the Secretary of State in its

Ultimately, the legislature passed H.B. 748. Laws of 1974, 1st Ex. Sess., ch. 117. The new law adopted only portions of the Uniform Probate Code. Section 34 of the act amended what had been RCW 11.40.020, to include the language that is now part of RCW 11.40.070, addressing the form of the claim submission, and providing that the form should state that:

(5) If the claim is secured, unliquidated or contingent, or not yet due, the nature of the security, the nature of the uncertainty, and the due date of the claim

Id. § 34 (App. 000007). The same section also deleted the previous requirement of RCW 11.40.020 that the claim was to be supported by affidavit. *Id.* The Probate Reform Act of 1974 *did not* modify the provisions of the fundamental rule of the creditor's claim statute in RCW 11.40.080 (now RCW 11.40.010) providing only that “no holder of any ***claim against a decedent*** shall maintain an action thereon, unless the claim shall have first been presented as herein provided.”

It is evident from the legislative history that the principal concerns of the drafters of H.B. 748 in connection with the creditor's claim statute were to delete the requirement that the claim be supported by affidavit, and to modify the time within which the personal representative must act on a claim. There is no suggestion in the legislative history that either the

archives, and attached for the convenience of the Court and the respondent to the Declaration of Ladd B. Leavens Regarding H.B. 748 Legislative History, filed herewith.

drafters of H.B. 748 or any legislator had any thought that they were expanding or the scope of the statute to cover undertakings into which the decedent had entered prior to death, but as to which no performance was due, and as to which performance might never become due, at the date of death. The legislative history repeatedly describes the purpose of the modifications to the creditors claim portion of the probate code as follows:

Provide for filing, without necessity of affidavit, of creditors' claims; the contents thereof; the powers of a personal representative as to such claims; and that claims are deemed allowed if not rejected within six months after date of first publication of notice to creditors.

Leg Hist 4, 14, 92, 115. There is no suggestion that the legislators, or the members of the bar who were advocating the changes, were contemplating that by adding the new language regarding the *form* of the notice (language made necessary only because the requirement that the claim be presented by affidavit was being dropped), they would bring all future contractual or other rights within the statute, even if they had not ripened into a claim.

This conclusion is further supported by the fact that the drafters of the H.B. 748, and the legislators themselves, *did not adopt* that portion of the Uniform Probate Code that described what types of claims were subject to the statute. The Uniform Probate Code included potentially

more expansive language than Washington's RCW 11.40.080 (now 11.40.010):

(a) All claims against a decedent's estate which arose before the death of the decedent, including claims of the estate and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, . . . are barred against the estate . . . unless presented within [time limits set forth in the section].

8 (Part 1) UNIFORM LAWS ANNOTATED § 3-803.

Both *Foley v. Smith* and *Runkle v. Bank of California* were decided after the adoption of the H.B. 748 – *Foley* in 1975 and *Runkle* in 1980. In *Foley*, the decedent died before the effective date of the adoption of H.B. 748; in *Runkle*, the decedent died after the effective date. Neither case discussed the legislation, perhaps because the operative statutory section (then RCW 11.40.080, now RCW 11.40.010) was not modified by the new legislation. As this Court recognized on indistinguishable facts in *Foley* and *Runkle*, Hines' claim was not against the decedent but rather against the decedent's estate, and is not subject to the claim presentation requirements of RCW 11.40.010 *et seq.*

D. The Courts May Not on Policy Grounds Read Into the Statute Requirements That the Legislature Has Not Chosen to Include.

As discussed above, the plain language of the statute limits the application of RCW 11.40.010 to “claim[s] against the decedent.” Nevertheless, the trial court expanded the express reach of RCW 11.40.010, suggesting that Hines’ reliance on the plain language of the statute as applying only to “claims against the decedent” would “defeat the intent of the probate structure.” VRP 3. The trial court’s construction of RCW 11.40.010 reads into the short and plain code section substance that the legislature did not express. In so doing, the trial court abrogated contractual rights that expressly survived Mr. Earl’s death under the terms of the Personal Guaranty, and that had not yet and might have never ripened into a claim, against either Mr. Earls or his estate.

The Washington Supreme Court has recently reaffirmed the importance of closely adhering to statutory language, as opposed to attempting to create what the courts might think is a rational policy by reading words and meanings into a statute that are not there. In *Broom v. Morgan Stanley DW, Inc.*, 169 Wn.2d 231, 236 P.2d 182 (2010), the Supreme Court held that statutes of limitations, which specifically require that “actions” be commenced or that parties “sue” within a certain time, do not apply in the context of arbitration proceedings, which are not literally

“actions” or “suits” as described in the statutes of limitations. Based on this interpretation of the potentially applicable statutes, RCW 4.16.005, RCW 4.16.130, and RCW 21.20.430(4)(b), the Court held that an arbitration award that applied a statute of limitations to bar the arbitration claims was facially erroneous, and affirmed the vacation of the award. *Id.* at 240-245.

Adherence to the actual wording of the statute in this case prevents the Court from incorporating into RCW 11.40.010 undertakings of the decedent that have not ripened into claims. The Legislature sets policy. It is free to enact legislation that would require the presentation, in a probate estate, of all, some, or no future contractual obligations. It would be easy enough to write a code section that would have required Hines to notify the personal representative of its potential rights under the Personal Guaranty. The legislature has not done so. The Courts must enforce the law as written.

E. The Court Should Reverse the Award of Attorneys’ Fees to the Estate

If this Court reverses the trial court and reinstates Hines’ petition on the personal guaranty, the Court should also vacate the award of attorneys’ fees in favor of the Estate.

F. The Court Should Award Hines Its Attorneys' Fees on Appeal

Hines brought its petition below under TEDRA, RCW 11.96A.010 *et seq.* TEDRA permits the Court to award fees “to any party . . . in such amount and in such manner as the court determines to be equitable.” RCW 11.96A.150. In addition, the Personal Guaranty entitles Hines to recover reasonable attorneys' fees incurred in enforcing the Personal Guaranty. CP 49. If the Court determines that Hines' petition below was not barred by the creditor's claim statute, and reinstates the action, the Court should award Hines its fees incurred in connection with this appeal, and instruct the trial court to award Hines its fees incurred there.

VI. CONCLUSION

For the foregoing reasons, Hines requests that this Court reverse the decision of the trial court, award Hines its attorneys' fees incurred on appeal, and remand for a determination of damages.

RESPECTFULLY SUBMITTED this 1st day of November, 2010.

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PROOF OF SERVICE

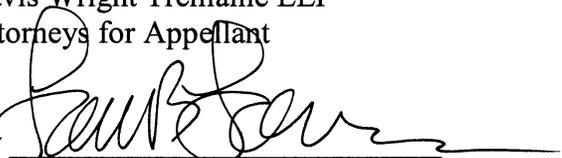
I hereby certify that on November 1, 2010, I caused a copy of the foregoing document to be served via hand delivery on the following:

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DATED this 1st day of November, 2010.

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By



Ladd B. Leavens,
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Chapter 11.40 RCW
CLAIMS AGAINST ESTATE

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11.40.010 Claims—Presentation—Other notice not affected. A person having a claim against the decedent may not maintain an action on the claim unless a personal representative has been appointed and the claimant has presented the claim as set forth in this chapter. However, this chapter does not affect the notice under RCW 82.32.240 or the ability to maintain an action against a notice agent under chapter 11.42 RCW. [1997 c 252 § 7; 1995 1st sp.s. c 18 § 58; 1994 c 221 § 25; 1991 c 5 § 1; 1989 c 333 § 1; 1974 ex.s. c 117 §

(2008 Ed.)

33; 1967 c 168 § 7; 1965 c 145 § 11.40.010. Prior: 1923 c 142 § 3; 1917 c 156 § 107; RRS § 1477; prior: Code 1881 § 1465; 1860 p 195 § 157; 1854 p 280 § 78.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

Effective dates—1994 c 221: See note following RCW 11.94.070.

Application—Effective date—1989 c 333: "This act is necessary for the immediate preservation of the public peace, health, or safety, or the support of the state government and its existing public institutions, and shall take effect immediately [May 11, 1989]. This act shall apply to probate proceedings that are open on or are commenced after the effective date, except that section 5 of this act shall apply only to decedents dying after the effective date." [1989 c 333 § 9.]

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

Publication of legal notices: Chapter 65.16 RCW.

11.40.020 Notice to creditors—Manner—Filings—Publication. (1) Subject to subsection (2) of this section, a personal representative may give notice to the creditors of the decedent, in substantially the form set forth in RCW 11.40.030, announcing the personal representative's appointment and requiring that persons having claims against the decedent present their claims within the time specified in RCW 11.40.051 or be forever barred as to claims against the decedent's probate and nonprobate assets. If notice is given:

- (a) The personal representative shall file the notice with the court;
(b) The personal representative shall cause the notice to be published once each week for three successive weeks in a legal newspaper in the county in which the estate is being administered;
(c) The personal representative may, at any time during the probate proceeding, give actual notice to creditors who become known to the personal representative by serving the notice on the creditor or mailing the notice to the creditor at the creditor's last known address, by regular first-class mail, postage prepaid; and
(d) The personal representative shall also mail a copy of the notice, including the decedent's social security number, to the state of Washington department of social and health services office of financial recovery.

The personal representative shall file with the court proof by affidavit of the giving and publication of the notice.

(2) If the decedent was a resident of the state of Washington at the time of death and probate proceedings are commenced in a county other than the county of the decedent's residence, then instead of the requirements under subsection (1)(a) and (b) of this section, the personal representative shall cause the notice to creditors in substantially the form set forth in RCW 11.40.030 to be published once each week for three successive weeks in a legal newspaper in the county of the decedent's residence and shall file the notice with the superior court of the county in which the probate proceedings were commenced. [2005 c 97 § 4; 1999 c 42 § 601; 1997 c 252 § 8; 1974 ex.s. c 117 § 34; 1965 c 145 § 11.40.020. Prior: 1917 c 156 § 108; RRS § 1478; prior: 1883 p 29 § 1; Code 1881 § 1468.]

Part headings and captions not law—Effective date—1999 c 42: See RCW 11.96A.901 and 11.96A.902.

(2008 Ed.)

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.40.030 Notice to creditors—Form. Notice under RCW 11.40.020 must contain the following elements in substantially the following form:

CAPTION) No.
OF CASE) PROBATE NOTICE TO
) CREDITORS
.....) RCW 11.40.030

The personal representative named below has been appointed as personal representative of this estate. Any person having a claim against the decedent must, before the time the claim would be barred by any otherwise applicable statute of limitations, present the claim in the manner as provided in RCW 11.40.070 by serving on or mailing to the personal representative or the personal representative's attorney at the address stated below a copy of the claim and filing the original of the claim with the court in which the probate proceedings were commenced. The claim must be presented within the later of: (1) Thirty days after the personal representative served or mailed the notice to the creditor as provided under RCW 11.40.020(1)(c); or (2) four months after the date of first publication of the notice. If the claim is not presented within this time frame, the claim is forever barred, except as otherwise provided in RCW 11.40.051 and 11.40.060. This bar is effective as to claims against both the decedent's probate and nonprobate assets.

Date of First Publication:

Personal Representative:

Attorney for the Personal Representative:
Address for Mailing or Service:
Court of probate proceedings and cause number:

[2005 c 97 § 5; 1997 c 252 § 9; 1989 c 333 § 7; 1977 ex.s. c 234 § 8; 1974 ex.s. c 117 § 35; 1965 c 145 § 11.40.030. Prior: 1963 c 43 § 1; 1917 c 156 § 109; RRS § 1479; prior: Code 1881 § 1469; 1873 p 285 § 156; 1854 p 281 § 82.]

Rules of court: SPR 98.08W, 98.10W, 98.12W.

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Application—Effective date—1989 c 333: See note following RCW 11.40.010.

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.20.020.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.40.040 "Reasonably ascertainable" creditor—Definition—Reasonable diligence—Presumptions—Petition for order. (1) For purposes of RCW 11.40.051, a "reasonably ascertainable" creditor of the decedent is one that the personal representative would discover upon exercise of reasonable diligence. The personal representative is deemed to have exercised reasonable diligence upon conducting a rea-

sonable review of the decedent's correspondence, including correspondence received after the date of death, and financial records, including personal financial statements, loan documents, checkbooks, bank statements, and income tax returns, that are in the possession of or reasonably available to the personal representative.

(2) If the personal representative conducts the review, the personal representative is presumed to have exercised reasonable diligence to ascertain creditors of the decedent and any creditor not ascertained in the review is presumed not reasonably ascertainable within the meaning of RCW 11.40.051. These presumptions may be rebutted only by clear, cogent, and convincing evidence.

(3) The personal representative may evidence the review and resulting presumption by filing with the court an affidavit regarding the facts referred to in this section. The personal representative may petition the court for an order declaring that the personal representative has made a review and that any creditors not known to the personal representative are not reasonably ascertainable. The petition must be filed under RCW 11.96A.080 and the notice specified under RCW 11.96A.110 must also be given by publication. [1999 c 42 § 607; 1997 c 252 § 10; 1994 c 221 § 28; 1974 ex.s. c 117 § 36; 1965 c 145 § 11.40.040. Prior: 1917 c 156 § 110; RRS § 1480; prior: Code 1881 § 1470; 1854 p 281 § 83.]

Part headings and captions not law—Effective date—1999 c 42: See RCW 11.96A.901 and 11.96A.902.

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Effective dates—1994 c 221: See note following RCW 11.94.070.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

Order of payment of debts: RCW 11.76.110.

11.40.051. Claims against decedent—Time limits. (1) Whether or not notice is provided under RCW 11.40.020, a person having a claim against the decedent is forever barred from making a claim or commencing an action against the decedent, if the claim or action is not already barred by an otherwise applicable statute of limitations, unless the creditor presents the claim in the manner provided in RCW 11.40.070 within the following time limitations:

(a) If the personal representative provided notice under RCW 11.40.020 and the creditor was given actual notice as provided in RCW 11.40.020(1)(c), the creditor must present the claim within the later of: (i) Thirty days after the personal representative's service or mailing of notice to the creditor; and (ii) four months after the date of first publication of the notice;

(b) If the personal representative provided notice under RCW 11.40.020 and the creditor was not given actual notice as provided in RCW 11.40.020(1)(c):

(i) If the creditor was not reasonably ascertainable, as defined in RCW 11.40.040, the creditor must present the claim within four months after the date of first publication of notice;

(ii) If the creditor was reasonably ascertainable, as defined in RCW 11.40.040, the creditor must present the claim within twenty-four months after the decedent's date of death; and

(c) If notice was not provided under this chapter or chapter 11.42 RCW, the creditor must present the claim within twenty-four months after the decedent's date of death.

(2) An otherwise applicable statute of limitations applies without regard to the tolling provisions of RCW 4.16.190.

(3) This bar is effective as to claims against both the decedent's probate and nonprobate assets. [2005 c 97 § 6; 1997 c 252 § 11.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

11.40.060 Claims involving liability or casualty insurance—Limitations—Exceptions to time limits. The time limitations for presenting claims under this chapter do not accrue to the benefit of any liability or casualty insurer. Claims against the decedent or the decedent's marital community that can be fully satisfied by applicable insurance coverage or proceeds need not be presented within the time limitation of RCW 11.40.051, but the amount of recovery cannot exceed the amount of the insurance. The claims may at any time be presented as provided in RCW 11.40.070, subject to the otherwise relevant statutes of limitations, and do not constitute a cloud, lien, or encumbrance upon the title to the decedent's probate or nonprobate assets nor delay or prevent the conclusion of probate proceedings or the transfer or distribution of assets of the estate. This section does not serve to extend any otherwise relevant statutes of limitations. [1997 c 252 § 12; 1974 ex.s. c 117 § 37; 1965 c 145 § 11.40.060. Prior: 1917 c 156 § 112; RRS § 1482; prior: Code 1881 § 1472; 1873 p 285 § 159; 1869 p 166 § 665; 1854 p 281 § 84.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.40.070 Claims—Form—Manner of presentation—Waiver of defects. (1) The claimant, the claimant's attorney, or the claimant's agent shall sign the claim and include in the claim the following information:

- (a) The name and address of the claimant;
- (b) The name, address, if different from that of the claimant, and nature of authority of an agent signing the claim on behalf of the claimant;
- (c) A statement of the facts or circumstances constituting the basis of the claim;
- (d) The amount of the claim; and
- (e) If the claim is secured, unliquidated, contingent, or not yet due, the nature of the security, the nature of the uncertainty, or the date when it will become due.

Failure to describe correctly the information in (c), (d), or (e) of this subsection, if the failure is not substantially misleading, does not invalidate the claim.

- (2) A claim does not need to be supported by affidavit.
- (3) A claim must be presented within the time limits set forth in RCW 11.40.051 by: (a) Serving on or mailing to, by regular first-class mail, the personal representative or the personal representative's attorney a copy of the signed claim; and (b) filing the original of the signed claim with the court in which probate proceedings were commenced. A claim is deemed presented upon the later of the date of postmark or

service on the personal representative, or the personal representative's attorney, and filing with the court.

(4) Notwithstanding any other provision of this chapter, if a claimant makes a written demand for payment within the time limits set forth in RCW 11.40.051, the personal representative may waive formal defects and elect to treat the demand as a claim properly filed under this chapter if: (a) The claim was due; (b) the amount paid is the amount of indebtedness over and above all payments and offsets; (c) the estate is solvent; and (d) the payment is made in good faith. Nothing in this chapter limits application of the doctrines of waiver, estoppel, or detrimental claims or any other equitable principle. [2005 c 97 § 7; 1997 c 252 § 13; 1965 c 145 § 11.40.070. Prior: 1917 c 156 § 113; RRS § 1483; prior: Code 1881 § 1473; 1854 p 281 § 85.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

11.40.080 Claims—Duty to allow or reject—Notice of petition to allow—Attorneys' fees. (1) The personal representative shall allow or reject all claims presented in the manner provided in RCW 11.40.070. The personal representative may allow or reject a claim in whole or in part.

(2) If the personal representative has not allowed or rejected a claim within the later of four months from the date of first publication of the notice to creditors or thirty days from presentation of the claim, the claimant may serve written notice on the personal representative that the claimant will petition the court to have the claim allowed. If the personal representative fails to notify the claimant of the allowance or rejection of the claim within twenty days after the personal representative's receipt of the claimant's notice, the claimant may petition the court for a hearing to determine whether the claim should be allowed or rejected, in whole or in part. If the court substantially allows the claim, the court may allow the petitioner reasonable attorneys' fees chargeable against the estate. [1997 c 252 § 14; 1994 c 221 § 29; 1988 c 64 § 22; 1965 c 145 § 11.40.080. Prior: 1917 c 156 § 114; RRS § 1484; prior: Code 1881 § 1474; 1854 p 281 § 86.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Effective dates—1994 c 221: See note following RCW 11.94.070.

Captions—Severability—1988 c 64: See RCW 83.100.904 and 83.100.905.

11.40.090 Allowance of claims—Notice—Automatic allowance—Petition for extension—Ranking of claims—Barred claims. (1) If the personal representative allows a claim, the personal representative shall notify the claimant of the allowance by personal service or regular first-class mail to the address stated on the claim.

(2) A claim that on its face does not exceed one thousand dollars presented in the manner provided in RCW 11.40.070 must be deemed allowed and may not thereafter be rejected unless the personal representative has notified the claimant of rejection of the claim within the later of six months from the date of first publication of the notice to creditors and two months from the personal representative's receipt of the claim. The personal representative may petition for an order extending the period for automatic allowance of the claims.

(2008 Ed.)

(3) Allowed claims must be ranked among the acknowledged debts of the estate to be paid expeditiously in the course of administration.

(4) A claim may not be allowed if it is barred by a statute of limitations. [1997 c 252 § 15; 1965 c 145 § 11.40.090. Prior: 1917 c 156 § 115; RRS § 1485; prior: Code 1881 § 1475; 1854 p 281 § 87.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

11.40.100 Rejection of claim—Time limits—Notice—Compromise of claim. (1) If the personal representative rejects a claim, in whole or in part, the claimant must bring suit against the personal representative within thirty days after notification of rejection or the claim is forever barred. The personal representative shall notify the claimant of the rejection and file an affidavit with the court showing the notification and the date of the notification. The personal representative shall notify the claimant of the rejection by personal service or certified mail addressed to the claimant or the claimant's agent, if applicable, at the address stated in the claim. The date of service or of the postmark is the date of notification. The notification must advise the claimant that the claimant must bring suit in the proper court against the personal representative within thirty days after notification of rejection or the claim will be forever barred.

(2) The personal representative may, before or after rejection of any claim, compromise the claim, whether due or not, absolute or contingent, liquidated, or unliquidated, if it appears to the personal representative that the compromise is in the best interests of the estate. [1997 c 252 § 16; 1974 ex.s. c 117 § 47; 1965 c 145 § 11.40.100. Prior: 1917 c 156 § 116; RRS § 1486; prior: Code 1881 § 1476; 1854 p 281 § 88.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.40.110 Action pending at decedent's death—Personal representative as defendant. If an action is pending against the decedent at the time of the decedent's death, the plaintiff shall, within four months after appointment of the personal representative, serve on the personal representative a petition to have the personal representative substituted as defendant in the action. Upon hearing on the petition, the personal representative shall be substituted, unless, at or before the hearing, the claim of the plaintiff, together with costs, is allowed. [1997 c 252 § 17; 1974 ex.s. c 117 § 38; 1965 c 145 § 11.40.110. Prior: 1917 c 156 § 117; RRS § 1487; prior: Code 1881 § 1477; 1854 p 282 § 89.]

Rules of court: SPR 98.08W.

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.40.120 Effect of judgment against personal representative. The effect of any judgment rendered against a personal representative shall be only to establish the amount of the judgment as an allowed claim. [1997 c 252 § 18; 1965 c

[Title 11 RCW—page 37]

145 § 11.40.120. Prior: 1917 c 156 § 118; RRS § 1488; prior: Code 1881 § 1478; 1854 p 282 § 90.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

11.40.130 Judgment against decedent—Execution barred upon decedent's death—Presentation—Sale of property. If a judgment was entered against the decedent during the decedent's lifetime, an execution may not issue on the judgment after the death of the decedent. The judgment must be presented in the manner provided in RCW 11.40.070, but if the judgment is a lien on any property of the decedent, the property may be sold for the satisfaction of the judgment and the officer making the sale shall account to the personal representative for any surplus. [1997 c 252 § 19; 1965 c 145 § 11.40.130. Prior: 1917 c 156 § 119; RRS § 1489; prior: Code 1881 § 1479; 1854 p 292 § 91.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

11.40.135 Secured claim—Creditor's right. If a creditor's claim is secured by any property of the decedent, this chapter does not affect the right of a creditor to realize on the creditor's security, whether or not the creditor presented the claim in the manner provided in RCW 11.40.070. [1997 c 252 § 20.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

11.40.140 Claim of personal representative—Presentation and petition—Filing. If the personal representative has a claim against the decedent, the personal representative must present the claim in the manner provided in RCW 11.40.070 and petition the court for allowance or rejection. The petition must be filed under RCW 11.96A.080. This section applies whether or not the personal representative is acting under nonintervention powers. [1999 c 42 § 608; 1997 c 252 § 21; 1965 c 145 § 11.40.140. Prior: 1917 c 156 § 120; RRS § 1490; prior: Code 1881 § 1482; 1854 p 283 § 94.]

Part headings and captions not law—Effective date—1999 c 42: See RCW 11.96A.901 and 11.96A.902.

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Request for special notice of proceedings in probate—Prohibitions: RCW 11.28.240.

11.40.150 Notice to creditors when personal representative resigns, dies, or is removed—Limit tolled by vacancy. (1) If a personal representative has given notice under RCW 11.40.020 and then resigns, dies, or is removed, the successor personal representative shall:

(a) Publish notice of the vacancy and succession for two successive weeks in the legal newspaper in which notice was published under RCW 11.40.020 if the vacancy occurred within twenty-four months after the decedent's date of death; and

(b) Provide actual notice of the vacancy and succession to a creditor if: (i) The creditor filed a claim and the claim had not been accepted or rejected by the prior personal representative; or (ii) the creditor's claim was rejected and the

vacancy occurred within thirty days after rejection of the claim.

(2) The time between the resignation, death, or removal and first publication of the vacancy and succession or, in the case of actual notice, the mailing of the notice of vacancy and succession must be added to the time within which a claim must be presented or a suit on a rejected claim must be filed. This section does not extend the twenty-four month self-executing bar under RCW 11.40.051. [1997 c 252 § 22; 1965 c 145 § 11.40.150. Prior: 1939 c 26 § 1; 1917 c 156 § 121; RRS § 1491; prior: 1891 c 155 § 28; Code 1881 § 1485; 1873 p 288 § 172; 1867 p 106 § 3.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

11.40.160 Personal representative as successor to notice agent—Notice not affected—Presumptions—Duties. If a notice agent had commenced nonprobate notice to creditors under chapter 11.42 RCW, the appointment of the personal representative does not affect the filing and publication of notice to creditors and does not affect actual notice to creditors given by the notice agent. The personal representative is presumed to have adopted or ratified all acts of the notice agent unless, within thirty days of appointment, the personal representative provides notice of rejection or nullification to the affected claimant or claimants by personal service or certified mail addressed to the claimant or claimant's agent, if applicable; at the address stated on the claim. The personal representative shall also provide notice under RCW 11.42.150. [1997 c 252 § 23.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

IRRELEVANT MATERIAL OMITTED

PART V. PROVISIONS RELATING TO CREDITORS CLAIMS

Sec. 33. Section 11.40.010, chapter 145, Laws of 1965 as amended by section 7, chapter 168, Laws of 1967 and RCW 11.40.010 are each amended to read as follows:

Every personal representative shall, immediately after his appointment, cause to be published in a legal newspaper published in the county in which the estate is being administered, a notice that he has been appointed and has qualified as such personal representative, and therewith a notice to the creditors of the deceased, requiring all persons having claims against the deceased to serve the same on the personal representative or his attorney of record, and file an executed copy thereof with the clerk of the court, ((together with proof of such service)) within four months after the date of the first publication of such notice or within four months after the date of the filing of the copy of said notice to creditors with the clerk of the court, whichever is the later. Such notice shall be published once in each week for three successive weeks and a copy of said notice shall be filed with the clerk of the court. If a claim be not filed within the time aforesaid, it shall be barred, except under those provisions included in RCW 11.40.011. Proof by affidavit of the publication of such notice shall be filed with the court by the personal representative. In cases where all the property is awarded to the widow, husband, or children as in this title provided, the notice to creditors herein provided for may be omitted.

Sec. 34. Section 11.40.020, chapter 145, Laws of 1965 and RCW 11.40.020 are each amended to read as follows:

Every claim ((served and filed as above provided shall be supported by the affidavit of the claimant that the amount is justly due, that no payments have been made thereon, and that there are no offsets to the same to the knowledge of the claimant)) shall be signed by the claimant, or his attorney, or any person who is authorized to sign claims on his, her, or its behalf, and shall contain the following information:

(1) The name and address of the claimant;

(2) The name, business address (if different from that of the claimant), and nature of authority of any person signing the claim on behalf of the claimant;

(3) A written statement of the facts or circumstances constituting the basis upon which the claim is submitted;

(4) The amount of the claim;

(5) If the claim is secured, unliquidated or contingent, or not yet due, the nature of the security, the nature of the uncertainty, and due date of the claim; PROVIDED HOWEVER, That failure to describe correctly the security, nature of any uncertainty, or the due date of a claim not yet due, if such failure is not substantially misleading, does not invalidate the presentation made.

Claims need not be supported by affidavit.

Sec. 35. Section 11.40.030, chapter 145, Laws of 1965 and RCW 11.40.030 are each amended to read as follows:

((When a claim, accompanied by the affidavit required in RCW 44.40.020 has been served and filed, it shall be the duty of the personal representative to indorse thereon his allowance or rejection, with the day and date thereof. If he allow the claim, it shall be presented to the judge of the court, who shall in the same manner indorse on it his allowance or rejection, or he may by order allow or reject the claim. If the personal representative reject the claim in whole or in part, he shall notify the claimant forthwith of said rejection and file in the office of the clerk an affidavit showing such notification and the date thereof. Such notification shall be by personal service or registered or certified mail and shall state that the holder of the rejected claim must bring suit in the proper court against the personal representative within thirty days after notification of the rejection; otherwise the claim shall be forever barred.

If the personal representative shall neglect for the period of sixty days after service upon him or his attorney to act upon any such claim, the claimant may take the matter up before the court and the court may require the personal representative to act on such claim and in its discretion may impose costs and attorney's fees.))
Unless the personal representative shall, within six months after the date of first publication of notice to creditors, have obtained an order extending the time for his allowance or rejection of claims timely and properly served and filed, all claims presented within the time and in the manner provided in RCW 11.40.010 and 11.40.020 as now or hereafter amended, shall be deemed allowed and may not thereafter be rejected, unless the personal representative shall, within six months after the date of first publication of notice to creditors, or any extended time, notify the claimant of its rejection, in whole or in part; if the personal representative shall reject the claim, in whole or in part, he shall notify the claimant of said rejection and file in the office of the clerk, an affidavit showing such notification and the date thereof. Said notification shall be by personal service or certified mail addressed to the claimant at his address as stated in the claim; if a person other than the claimant shall have signed said claim for or on behalf of the claimant, and said person's business address as stated in said claim is different from that of the claimant, notification of rejection shall also be made by personal service or certified mail upon said person; the date of the postmark shall be the date of notification. The notification of rejection shall advise the claimant, and the person making claim

on his, her, or its behalf, if any, that the claimant must bring suit in the proper court against the personal representative within thirty days after notification of rejection or before expiration of the time for serving and filing claims against the estate, whichever period is longer, and that otherwise the claim will be forever barred.

The personal representative may, either before or after rejection of any claim compromise said claim, whether due or not, absolute or contingent, liquidated or unliquidated, if it appears to the personal representative that such compromise is in the best interests of the estate.

Sec. 36. Section 11.40.040, chapter 145, Laws of 1965 and RCW 11.40.040 are each amended to read as follows:

Every claim which has been allowed by the personal representative ((and the said judge)) shall be ranked among the acknowledged debts of the estate to be paid in the course of administration.

Sec. 37. Section 11.40.060, chapter 145, Laws of 1965 and RCW 11.40.060 are each amended to read as follows:

When a claim is rejected by ((either)) the personal representative ((or the court)), the holder must bring suit in the proper court against the personal representative within thirty days after notification of the rejection or before expiration of the time for serving and filing claims against the estate, whichever period is longer, otherwise the claim shall be forever barred.

Sec. 38. Section 11.40.110, chapter 145, Laws of 1965 and RCW 11.40.110 are each amended to read as follows:

Whenever any claim shall have been filed and presented to a personal representative ((and the court)), and a part thereof shall be allowed, the amount of such allowance shall be stated in the indorsement. If the creditor shall refuse to accept the amount so allowed in satisfaction of his claim, he shall recover no costs in any action he may bring against the personal representative unless he shall recover a greater amount than that offered to be allowed, exclusive of interest and costs.

IRRELEVANT MATERIAL OMITTED

dent personal representative shall file a bond to be approved by the court.

Chapter 11.40

CLAIMS AGAINST ESTATE

SEC. 11.40.010 *Notice to Creditors—Limitation on Filing Claims.* Every personal representative shall, immediately after his appointment, cause to be published in a legal newspaper published in the county in which the estate is being administered, a notice that he has been appointed and has qualified as such personal representative, and therewith a notice to the creditors of the deceased, requiring all persons having claims against the deceased to serve the same on the personal representative or his attorney of record, and file with the clerk of the court, together with proof of such service, within four months after the date of the first publication of such notice. Such notice shall be published once in each week for three successive weeks. If a claim be not filed within the time aforesaid, it shall be barred. Proof by affidavit of the publication of such notice shall be filed with the court: *Provided, however,* In cases where all the property is awarded to the widow, husband or children as in this title provided, the notice to creditors herein provided for may be omitted.

Claims against estate. Notice to creditors—Limitation on filing claims.

SEC. 11.40.020 *Affidavit of Claimant.* Every claim served and filed as above provided shall be supported by the affidavit of the claimant that the amount is justly due, that no payments have been made thereon, and that there are no offsets to the same to the knowledge of the claimant.

Affidavit of claimant.

SEC. 11.40.030 *Allowance or Rejection of Claims—Failure to Act.* When a claim, accompanied by the affidavit required in RCW 11.40.020 has been served and filed, it shall be the duty of the personal representative to indorse thereon his allowance or rejection.

Allowance or rejection of claims—Failure to act.

Probate law
and procedure.
Claims against
estate. Allow-
ance or rejec-
tion—Failure
to act.

tion, with the day and date thereof. If he allow the claim, it shall be presented to the judge of the court, who shall in the same manner indorse on it his allowance or rejection, or he may by order allow or reject the claim. If the personal representative reject the claim in whole or in part, he shall notify the claimant forthwith of said rejection and file in the office of the clerk an affidavit showing such notification and the date thereof. Such notification shall be by personal service or registered or certified mail and shall state that the holder of the rejected claim must bring suit in the proper court against the personal representative within thirty days after notification of the rejection, otherwise the claim shall be forever barred.

If the personal representative shall neglect for the period of sixty days after service upon him or his attorney to act upon any such claim, the claimant may take the matter up before the court and the court may require the personal representative to act on such claim and in its discretion may impose costs and attorney's fees.

Effect of
allowance.

SEC. 11.40.040 *Effect of Allowance.* Every claim which has been allowed by the personal representative and the said judge, shall be ranked among the acknowledged debts of the estate to be paid in the course of administration.

Judge as cred-
itor of estate.

SEC. 11.40.050 *Judge as Creditor of Estate.* Any judge of a court may present a claim against the estate of any decedent for allowance; and if the personal representative allows such claim, he shall, in writing, designate some other judge of the superior court, who shall have the same power to allow or reject it as he would have, had letters issued in his court; and the claimant shall have, in the event of his claim being rejected, all the rights incident to any other creditor against the estate.

SEC. 11.40.060 *Suit on Rejected Claim.* When a claim is rejected by either the personal representative or the court, the holder must bring suit in the proper court against the personal representative within thirty days after notification of the rejection, otherwise the claim shall be forever barred.

Suit on re-
jected claim.

SEC. 11.40.070 *Outlawed Claims.* No claim shall be allowed by the personal representative or court which is barred by the statute of limitations.

Outlawed
claims.

SEC. 11.40.080 *Claims Must be Presented.* No holder of any claim against a decedent shall maintain an action thereon, unless the claim shall have been first presented as herein provided.

Claims must
be presented.

SEC. 11.40.090 *Limitation Tolled by Vacancy.* The time during which there shall be a vacancy in the administration shall not be included in any limitations herein prescribed.

Limitation
tolled by
vacancy.

SEC. 11.40.100 *Action Pending at Death of Testator—Substitution.* If any action be pending against the testator or intestate at the time of his death, the plaintiff shall within ninety days after first publication of notice to creditors, serve on the personal representative a motion to have such personal representative, as such, substituted as defendant in such action, and, upon the hearing of such motion, such personal representative shall be so substituted, unless, at or prior to such hearing, the claim of plaintiff, together with costs, be allowed by the personal representative and court. After the substitution of such personal representative, the court shall proceed to hear and determine the action as in other civil cases.

Action pend-
ing at death of
testator—
Substitution.

SEC. 11.40.110 *Partial Allowance of Claim.* Whenever any claim shall have been filed and presented to a personal representative and the court, and a part thereof shall be allowed, the amount of such allowance shall be stated in the indorsement. If the cred-

Partial allow-
ance of claim.

Probate law
and procedure.
Claims against
estate.

itor shall refuse to accept the amount so allowed in satisfaction of his claim, he shall recover no costs in any action he may bring against the personal representative unless he shall recover a greater amount than that offered to be allowed, exclusive of interest and costs.

Effect of judgment against
personal
representative.

SEC. 11.40.120 *Effect of Judgment Against Personal Representative.* The effect of any judgment rendered against any personal representative shall be only to establish the amount of the judgment as an allowed claim.

Judgment
against decedent—
Payment.

SEC. 11.40.130 *Judgment Against Decedent—Payment.* When any judgment has been rendered against the testator or intestate in his lifetime, no execution shall issue thereon after his death, but it shall be presented to the personal representative, as any other claim, but need not be supported by the affidavit of the claimant, and if justly due and unsatisfied, shall be paid in due course of administration: *Provided, however,* That if it be a lien on any property of the deceased, the same may be sold for the satisfaction thereof, and the officer making the sale shall account to the personal representative for any surplus in his hands.

Claim of
personal
representative.

SEC. 11.40.140 *Claim of Personal Representative.* If the personal representative is himself a creditor of the testator or intestate, his claim, duly authenticated by affidavit, shall be filed and presented for allowance or rejection to the judge of the court, and its allowance by the judge shall be sufficient evidence of its correctness. This section shall apply to nonintervention and all other wills.

Notice to creditors when
personal
representative
resigns, etc.

SEC. 11.40.150 *Notice to Creditors When Personal Representative Resigns, Dies, or Is Removed.* In case of resignation, death or removal for any cause of any personal representative, and the appointment of an-

other or others, after notice has been given by publication as required by RCW 11.40.010, by such personal representative first appointed, to persons to file their claims against the decedent, it shall be the duty of the successor or personal representative to cause notice of such resignation, death or removal and such new appointment to be published two successive weeks in a legal newspaper published in the county in which the estate is being administered, but the time between the resignation, death or removal and such publication shall be added to the time within which claims shall be filed as fixed by the published notice to creditors unless such time shall have expired before such resignation or removal or death: *Provided, however,* That no such notice shall be required if the period for filing claims was fully expired during the time that the former personal representative was qualified.

Chapter 11.44

INVENTORY AND APPRAISEMENT

SEC. 11.44.015 *Inventory.* Within three months Inventory. after his appointment, unless a longer time shall be granted by the court, every personal representative shall make and return upon oath into the court a true inventory of all of the property of the estate which shall have come to his possession or knowledge, including a statement of all encumbrances, liens or other secured charges against any item. Such property shall be classified as follows:

- (1) Real property, by legal description and assessed valuation of land and improvements thereon;
- (2) Corporation stock;
- (3) Mortgages, bonds, notes and other written evidences of debt;
- (4) Bank accounts and money;
- (5) Furniture and household goods;

NO. 65626-1-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

2011 NOV -1 PM 4:56

In the Matter of the
ESTATE OF STEPHEN EARLS, Deceased

HINES REIT SEATTLE DESIGN CENTER, LLC,

Appellant,

v.

BARRY WOLF,

as personal representative of the
Estate of Stephen Earls,

Respondent.

DECLARATION OF LADD B. LEAVENS
REGARDING H.B. 748 LEGISLATIVE HISTORY

Ladd B. Leavens, WSBA No. 11501
Davis Wright Tremaine LLP
1201 Third Avenue, Suite 2200
Seattle, WA 98101-3045
ph 206-757-8082; fax 206-757-7082
laddleavens@dwt.com

Attorneys for Appellant
Hines REIT Seattle Design Center LLC

ORIGINAL

Ladd B. Leavens declares:

1. I am member of the firm of Davis Wright Tremaine LLP. I am the attorney principally responsible for the representation of Hines Reit, LLC, appellant in the captioned matter.

2. Attached hereto are documents numbered Leg Hist 000001-000262. Davis Wright Tremaine LLP obtained these documents from the office of the archives of the Secretary of State, in response to a request for the Washington state legislature senate and house bill files for H.B. 748, which was eventually enacted into law as Laws of 1974, 1st Ex. Sess., ch. 117.

3. The Senate bill file is numbered Leg Hist 000001-90. The House bill file is numbered Leg Hist 000091-263.

I hereby certify under penalty of perjury pursuant to the laws of the State of Washington that the foregoing declaration is true.

Executed at Seattle, Washington, this 1st day of November, 2010.



Ladd B. Leavens

PROOF OF SERVICE

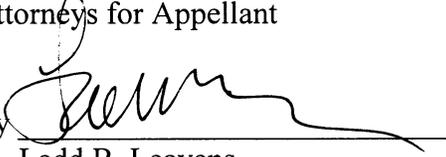
I hereby certify that on November 1, 2010, I caused a copy of the foregoing document to be served via hand delivery on the following:

Counsel for Barry Wolf, Personal Representative of the Estate of
Stephen Earls:
Peter Ehrlichman
Ieva Butkute
Dorsey & Whitney LLP
Columbia Center
701 Fifth Avenue, Suite 6100
Seattle, WA 98104-7043

DATED this 1st day of November, 2010.

Davis Wright Tremaine LLP
Attorneys for Appellant

By


Ladd B. Leavens,
WSBA #11501

2010 NOV -1 PM 11:50
0050066-000203
DWT

December 6, 1973

Cleary Cone, President
Washington State Bar Association
P.O. Box 499
Ellensburg, Wa. 98926

Re: House Judiciary Committee Probate Bill

Dear Mr. Cone:

At the request of Senator Pete Francis I am mailing you the enclosed copy of the most recent probate code proposal currently being considered by the House Judiciary Committee. Also enclosed is a digest of the bill.

Sincerely,

Jenny Van Ravenhorst
Secretary

Enc.

cc: Senator Pete Francis

J-748

Leg Hist 000001

COMMITTEE: Judiciary SHORT TITLE: An Act Relating to the Probate Code SPONSOR: Popps, Smith, Kelley, Laughlin
 DIGESTER: Jim Doerty DATE: January 30, 1974

1. Amends and adds new sections to Title 11 RCW (probate law and practice).
2. The bill's 56 sections are divided into 7 parts (part headings will not be codified), summarized as follows:

Part I. General Provisions (Sections 1 - 4)

Sections 1 - 4: These sections set forth legislative declaration and purpose, savings clause and applicability designation of new chapters, and severability clause. Senate Judiciary Amendments delete Section one - statement of purpose, and change the effective date throughout to March 1, 1975.

Part II. Provisions Relating to Distribution of Property (Sections 5 - 13)

Sections 5 - 6: Provide for transfer of personal property by affidavit, when entire estate has net value of \$10,000 or less, and for discharge and release of the person paying, delivering or transferring such property. Recipient is accountable to others having superior right to the property.

Section 7: Amends RCW 11.04.015 to provide that, in intestate succession, the surviving spouse receives all of the decedent's share of the net community estate.

Sections 8 - 11: Provide for increase of homestead amount from \$15,000 to \$20,000; and provides increase from \$10,000 to \$20,000 of the amount of collateral receivables above which the courts award of homestead of in lieu amounts shall be discretionary.

Sections 12 and 13: Provide for direct distribution to minor heirs in amounts of \$1,000 or less without appointment of guardian or requiring bond, and removes ceiling on further amounts which the probate court may order deposited for the benefit of minors.

Part III. Provisions Relating to Non-Intervention Powers (Sections 14 - 27)

Sections 14 - 25: Amend and add new provision to Chapter 11.08 RCW providing for extension of non-intervention powers to intestate estates, presumption in favor of non-intervention powers, and court determination of the reasonableness of the fees of a personal representative, his attorneys, appraisers and accountants. S.J.C. Amendment

proscribes an estate creditor from being personal representative in Section page 14, line 33, section 16, p. 15, line 1, and section 19, p. 17, line 12. Section 18 is amended to authorize court restrictions of personal representatives' powers p 17, line 1. Section 21 is amended to include powers restricted", p 18, line 22. Section 23 is amended to clarify the courts rule in establishing fees, p 19, 20, lines 32-1.

Sections 26 and 27: Extend ability to obtain non-intervention powers to administrators with will annexed and administrators de bonis non.

Part IV. Provisions Relating to Adjudication of Testacy or Intestacy and Heirship (Sections 28 - 33)

Sections 28 - 33: Provide for adjudications of testacy establishing a will, or of intestacy and heirship, without appointment of a personal representative, requiring no further administration. Section 32 provides for written notice to each heir, legatee and devisee of the decedent in such cases. Section 33 provides that, if there is no contest, the adjudication is equivalent to a final decree of distribution after four months.

Part V. Provisions Relating to Creditors Claims (Sections 34 - 39)

Section 34: Amends notice to creditors' statute to require that a copy of said notice be filed with the clerk of the court, and provide that the four month claim period commences with the letter of the date of first publication or the date of such filing. Also provides that filing of copy of claim and proof of its service with the clerk of court is to be done within ten days of service of the claim.

Sections 35 - 39: Provide for filing, without necessity of affidavit, of creditors' claims; the contents thereof; the powers of a personal representative as to such claims; and that claims are deemed allowed if not rejected within six months after date of first publication of notice to creditors. S.J.C. amendment to section 34 requires two rather than three publications and strikes the requirement to file claims within ten days of service, p. 28, lines 1-13.

Part VI. Provisions Relating to Banks, Trust Companies, Accounts (Sections 40 - 44)

Sections 40 - 43: Adds provisions to statutes concerning the various forms of banks making clear that affidavit procedure under this act (Sections 5 and 6) supplements existing pay-out provisions. Further change in Section 40 would allow non-probate pay-outs, whether estate is testate or intestate, when deposit in the particular bank is not over \$1,000, regardless of amounts deposited elsewhere.

Sections 44: Deletes proscription against a trust company or corporation personally soliciting appointment as executor, administrator or guardian. S.J.C. amendment deletes sec. 44 entirely

Part VII. Miscellaneous Provisions

(Sections 45 - 57)

Section 45: Provides for speedy hearing of petitions for letters of administration, probate or adjudication of testacy or intestacy, and for notice to surviving spouse.

Section 46: Provides for appointment of guardian ad litem for incompetent interested parties as to adjudications of testacy or intestacy.

Section 47: Provides that no personal representative bond is required where the will so directs or the representative is a bank or trust company or is the surviving spouse and it appears that the estate will all go to her (him) and minor children at home. Also provides that court may waive bond in other cases, and that court has discretion to substitute other security or financial arrangements for a bond.

Section 48: Extends from ninety days to four months the period for substituting a personal representative for the decedent as defendant in an action pending at the time of death.

Section 49: Requires personal representative to file a true inventory of property of the estate discovered subsequent to regular inventory filing.

Section 50: Provides that personal representatives shall inventory the estate and may employ an appraiser. The appraisal need not be filed or provided except upon written request.

Section 51: Provides that appraisal fee may be set by the personal representative subject to court review for reasonableness.

Section 52: Reduces from six to three years the statute of limitations as to action to prevent lapse of a devise.

Sections 53 and 54: Provide that written powers of attorney may be effective upon, or in spite of, disability of the principal if so intended.

Section 55: Provides that payable on death provisions in any written instrument effective as a contract, give, conveyance, or trust, are deemed non-testamentary and that this act does not invalidate the instrument or the listed provisions.

Section 56: Repealer.

Section 57: Effective date (7/1/74), and emergency clause.

OFFICE OF PROGRAM RESEARCH
HOUSE OF REPRESENTATIVES
STATE OF WASHINGTON

January 15, 1973

TO: MEMBERS OF THE SENATE JUDICIARY COMMITTEE

FROM: Rep. Walt O. Knowles, Chairman
House Judiciary Committee

RE: WORK SESSION ON REVISED PROBATE REFORM ACT OF 1974

The House Judiciary Committee will be conducting a work session on the Revised Probate Reform Act of 1974. Attached for your information is a copy of that draft and a section by section review. This draft is now being rewritten in light of comments, criticisms and suggestions received.

Any members of your committee interested in attending this work session are invited to do so, and any comments or criticisms will be appreciated.

WOK:kt
Enc.

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STANLEY D. MOORE
ROBERT H. WHALEY
JEROME WILLIAMS,
OF COUNSEL

January 31, 1974

Senate Judiciary Committee
Senate Office Building
Olympia, WA 98504

RE: Substituted House Bill 748

Gentlemen:

The Washington State Bar Association supports the 1974 Amendatory Act to the State Probate Code which is embodied in Substituted House Bill 748.

The Bar Association does feel, however, that it is essential that Section 34 thereof be amended; this section is currently drafted to require the following:

- 1 - That all creditors serve their claims on the attorney or personal representative within four months of the date of first Publication to Creditors or four months from the date that the Notice to Creditors was filed in the court file, whichever date is the later; and
- 2 - Once the Creditor's Claim is served on either the personal representative or his attorney, it must be filed with the court within ten days thereafter, together with proof of service thereof.

The first change was the result of a situation which arose in King County; in that instance, the personal representative had published Notice to Creditors, but did not file a copy thereof in the court file nor the Affidavit of Publication until after the four-month period had expired. One of the creditors of the decedent had periodically, during the four-month period, checked the court files, and having found that neither the Affidavit of Publication of Notice to Creditors nor the copy of the notice had been filed, did not submit his claim within the four-month period and was therefore barred.

The Bar Association had no objection to the first change indicated which was directed to eliminate this problem. The Bar Association is concerned, however, with the second ten-day requirement for the following reasons:

- A - It would appear to incorporate an unnecessary additional time period into the Creditor Claim process;
- B - It would create a legal trap for the unwary creditor or attorney who failed to file his claim within ten days after service; for example, if a claim was served within the first week after the date of publication of notice to creditors, but not filed within ten days after service, it would be barred regardless of the fact that in excess of three months remained within which other creditors could file their claims.

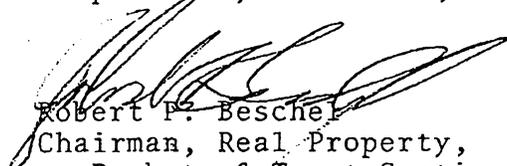
It is therefore the recommendation of the Bar Association that the ten-day requirement be eliminated in its entirety and that Section 34 be reworded as follows:

Every personal representative shall, immediately after his appointment, cause to be published in a legal newspaper published in the county in which the estate is being administered, a notice that he has been appointed and has qualified as such personal representative, and together with a notice to the creditors of the deceased, requiring all persons having claims against the deceased to serve the same on the personal representative or his attorney of record, and file an executed copy thereof with the clerk of the court, together with proof of such service, within four months after the date of the first publication of such notice or within four months after the date of the filing of the copy of said notice to creditors with the clerk of the court, whichever is the later. Such notice shall be published once in each week for three successive weeks and a copy of said notice shall be filed with the clerk of the court. If a claim be not filed within the time aforesaid, it shall be barred, except under those provisions included in RCW 11.40.011. Proof by affidavit of the publication of such notice shall be filed with the court by the personal representative. In cases where all the property is awarded to the widow, husband or children as in this title provided, the notice to creditors herein provided for may be omitted.

It was also the feeling of the Bar Association that the phrase "together with proof of service" should be stricken from the statute in any event as our Supreme Court has held that by virtue of that wording which is included in the statute, that although a creditors claim was served and filed within the four-month period, it was nevertheless barred because proof of service was not filed within the four-month period. It was our feeling that proof of service of the claim should be able to be made at any time either before or after the four-month period has expired.

We would seriously and sincerely urge your consideration of the above-proposed amendment to Section 34 of the bill.

Respectfully submitted,


Robert P. Bescher
Chairman, Real Property,
Probate & Trust Section

COMMITTEE: _____ SHORT TITLE _____ SPONSOR Rep. Smith,
Judiciary _____ An Act Relating to the Probate Code Kelley, Laughlin
DIGESTER: _____ DATE: _____
Jim Doerty _____ January 30, 1974

1. Amends and adds new sections to Title 11 RCW (probate law and practice).
2. The bill's 56 sections are divided into 7 parts (part headings will not be codified), summarized as follows:

Part I. General Provisions (Sections 1 - 4)

Sections 1 - 4: These sections set forth legislative declaration and purpose, savings clause and applicability, designation of new chapters, and severability clause.

Part II. Provisions Relating to Distribution of Property (Sections 5 - 13)

Sections 5 - 6: Provide for transfer of personal property by affidavit, when entire estate has net value of \$10,000 or less, and for discharge and release of the person paying, delivering or transferring such property. Recipient is accountable to others having superior right to the property.

Section 7: Amends RCW 11.04.015 to provide that, in intestate succession, the surviving spouse receives all of the decedent's share of the net community estate.

Sections 8 - 11: Provide for increase of homestead amount from \$15,000 to \$20,000; and provides increase from \$10,000 to \$20,000 of the amount of collateral receivables above which the courts award of homestead of in lieu amounts shall be discretionary.

Sections 12 and 13: Provide for direct distribution to minor heirs in amounts of \$1,000 or less without appointment of guardian or requiring bond, and removes ceiling on further amounts which the probate court may order deposited for the benefit of minors.

Part III. Provisions Relating to Non-Intervention Powers (Sections 14 - 27)

Sections 14 - 25: Amend and add new provision to Chapter 11.68 RCW providing for extension of non-intervention powers to intestate estates, presumption in favor of non-intervention powers, and court determination of the reasonableness of the fees of a personal representative, his attorneys, appraisers and accountants.

Sections 26 and 27: Extend ability to obtain non-intervention powers to administrators with will annexed and administrators de bonis non.

Part IV. Provisions Relating to Adjudication of Testacy or Intestacy and Heirship (Sections 28 - 33)

Sections 28 - 33: Provide for adjudications of testacy establishing a will, or of intestacy and heirship, without appointment of a personal representative, requiring no further administration. Section 32 provides for written notice to each heir, legatee and devisee of the decedent in such cases. Section 33 provides that, if there is no contest, the adjudication is equivalent to a final decree of distribution after four months.

Part V. Provisions Relating to Creditors Claims (Sections 34 - 39)

Section 34: Amends notice to creditors' statute to require that a copy of said notice be filed with the clerk of the court, and provide that the four month claim period commences with the letter of the date of first publication or the date of such filing. Also provides that filing of copy of claim and proof of its service with the clerk of court is to be done within ten days of service of the claim.

Sections 35 - 39: Provide for filing, without necessity of affidavit, of creditors' claims; the contents thereof; the powers of a personal representative as to such claims; and that claims are deemed allowed if not rejected within six months after date of first publication of notice to creditors.

Part VI. Provisions Relating to Banks, Trust Companies, Accounts (Sections 40 - 44)

Sections 40 - 43: Adds provisions to statutes concerning the various forms of banks making clear that affidavit procedure under this act (Sections 5 and 6) supplements existing pay-out provisions. Further change in Section 40 would allow non-probate pay-outs, whether estate is testate or intestate, when deposit in the particular bank is not over \$1,000, regardless of amounts deposited elsewhere.

Sections 44: Deletes proscription against a trust company or corporation personally soliciting appointment as executor, administrator or guardian.

Part VII. Miscellaneous Provisions

(Sections 45 - 57)

Section 45: Provides for speedy hearing of petitions for letters of administration, probate or adjudication of testacy or intestacy, and for notice to surviving spouse.

Section 46: Provides for appointment of guardian ad litem for incompetent interested parties as to adjudications of testacy or intestacy.

Section 47: Provides that no personal representative bond is required where the will so directs or the representative is a bank or trust company or is the surviving spouse and it appears that the estate will all go to her (him) and minor children at home. Also provides that court may waive bond in other cases, and that court has discretion to substitute other security or financial arrangements for a bond.

Section 48: Extends from ninety days to four months the period for substituting a personal representative for the decedent as defendant in an action pending at the time of death.

Section 49: Requires personal representative to file a true inventory of property of the estate discovered subsequent to regular inventory filing.

Section 50: Provides that personal representatives shall inventory the estate and may employ an appraiser. The appraisal need not be filed or provided except upon written request.

Section 51: Provides that appraisal fee may be set by the personal representative subject to court review for reasonableness.

Section 52: Reduces from six to three years the statute of limitations as to action to prevent lapse of a devise.

Sections 53 and 54: Provide that written powers of attorney may be effective upon, or in spite of, disability of the principal if so intended.

Section 55: Provides that payable on death provisions in any written instrument effective as a contract, give, conveyance, or trust, are deemed non-testamentary and that this act does not invalidate the instrument or the listed provisions.

Section 56: Repealer.

Section 57: Effective date (7/1/74), and emergency clause.

SUGGESTED COMMITTEE AMENDMENTS TO SHB 748

Page 3 Section 2 line 26 after "after" and before ",1974" strike "July 1" and insert "October 1".

Page 4 Section 2 lines 5, 9, 13, and 16 strike "July 1" and insert "October 1".

Page 43 Section 57 line 21 change "July 1" to "October 1".

Page 13 Section 14 line 26 after "solvent" and before "such" insert "if the personal representative is other than a creditor of the estate,".

Page 14 Section 16 line 33 after "representative" insert ", other than a creditor of the estate,".

Page 15 Section 16 line 2 after "testate" insert ", other than a creditor of the estate,".

Page 17 Section 18 line 1 after "amended." Insert a new sentence "The court may restrict the powers of the personal representative in such matters as the court determines and shall thereupon restrict the powers as ordered."

Page 17 Section 19 line 12 after "representative" insert ", other than a creditor of the estate,".

Page 18 Section 21 line 22 after "endorse the" strike "word" and insert "term "Vacated" or "Powers restricted".

Page 42 Section 55 line 31 after "one" strike "or" and insert "of". This is an apparent typographical error.

Page 27 Section 34 lines 21-33, and page 28, lines 1-12 strike entirely and rewrite as follows:

Every personal representative shall, immediately after his appointment, cause to be published in a legal newspaper published in the county in which the estate is being administered, a notice that he has been appointed and has qualified as such personal representative, and there-with a notice to the creditors of the deceased, requiring all persons having claims against the deceased to serve the same on the personal representative or his attorney of record, and file an executed copy thereof with the clerk of the court, ((together with proof of such service,)) within four months after the date of the first publication of such notice or within four months after the date of the filing of the copy of said notice to creditors with the clerk of the court, whichever is the later. Such notice shall be published once in each week for three successive weeks and a copy of said notice shall be filed with the clerk of the court. If a claim be not filed within the time aforesaid, it shall be barred, except under those provisions included in RCW 11.40.011. Proof by affidavit of the publication of such notice shall be filed with the court by the personal representative. In cases where all the property is awarded to the widow, husband or children as in this title provided, the notice to creditors herein provided for may be omitted.

This amendment submitted by Robert Beschel, and approved in concept at the February 1 hearing on SHB 748.

SUMMARY
PROBATE REFORM ACT OF 1974

OCTOBER 6, 1973 DRAFT BY COMMITTEE ON JUDICIARY

The October 6th committee draft is the result of several subcommittee meetings, numerous other conferences and efforts both by and with proponents of the Uniform Probate Code (HB 266 and HB 11), State Bar proposal (HB 496), and corporate trustees' proposal (HB 748), and proponents of HB 676. The resultant draft attempts to maintain the worthy provisions of existing Washington Probate Law, a law which has been shown during hearings to be significantly advanced and progressive by comparison with all other states, while at the same time inserting improvements suggested by the Uniform Probate Code and other sources.

Sections 1 and 2: Provide for transfer of personal property by affidavit, when entire estate is personalty having net value of \$10,000 or less, and for discharge and release of the person paying, delivering or transferring such property. Recipient is accountable to others having superior right to the property.

Sections 3 - 14: Amend and add new provisions to Chapter 11.68 RCW providing for extension of non-intervention powers to intestate estates, presumption in favor of non-intervention powers, and court determination of the reasonableness of the fees of a personal representative or his attorneys.

Sections 15 - 20: Provide for adjudications of testacy establishing a will, or of intestacy and heirship, without appointment of a personal representative, requiring no further administration. Section 19 provides for written notice to each heir, legatee and devisee of the decedent in such cases. Section 20 provides that, if there is no contest, the adjudication is equivalent to a final decree of distribution after four months.

Sections 21 - 25: Provide for filing, without necessity of affidavit, of creditors' claims; the contents thereof; the powers of a personal representative as to such claims; and that claims are deemed allowed if not rejected within six months after date of first publication of notice to creditors. (See also, New Section 71.)

Section 26: Provides for appointment of guardian ad litem for incompetent interested parties as to adjudications of testacy or intestacy.

Section 27: Amends RCW 11.04.015 to provide that, in intestate succession, the surviving spouse receives all of the decedent's share of the net community estate unless there be surviving issue, in which event the surviving spouse receives the first \$50,000 thereof and one-half of the excess.

Sections 28 - 29: Reduce from six to three years the statute of limitations as to action on debts of the decedent or to prevent lapse of a devise.

Section 30: Provides for speedy hearing of petitions for letters of administration, probate or adjudication of testacy or intestacy, and for notice to surviving spouse.

Section 31: Provides that no bond is required unless the decedent's will or the court so state, and that court has discretion to substitute other security or financial arrangements for a bond.

Section 32: Extends from ninety days to four months the period for substituting a personal representative for the decedent as defendant in an action pending at the time of death.

Section 33: Requires personal representative to file a true inventory of property of the estate discovered subsequent to regular inventory filing.

Section 34: Provides that personal representatives shall inventory the estate and may employ an appraiser. The appraisal need not be filed or provided except upon written request.

Section 35: Provides that appraisal fee may be set by the personal representative subject to court review for reasonableness.

Sections 36 - 39: Provide for increase of homestead amount from \$15,000 to \$20,000; and provides increase from \$10,000 to \$20,000 of the amount of collateral receivables above which the courts award of homestead of in lieu amounts shall be discretionary.

Probate Reform Act of 1974

Sections 40 and 41: Provide for direct distribution to minor heirs in amounts of \$1,000 or less without appointment of guardian or requiring bond, and removes ceiling on further amounts which the probate court may order deposited for the benefit of minors.

Sections 42 and 43: Extend ability to obtain non-intervention powers to administrators with will annexed and administrators de bonis non.

Sections 44 and 45: Provide that written powers of attorney may be effective upon, or in spite of, disability of the principal if so intended.

Sections 46 - 60: Relate to multi-party bank accounts. Define terms, and set forth common provisions relating to beneficial ownership, transfer, payment and effect of payment of sums in multi-party accounts in the various banks. Section 59 provides that payable on death provisions in any written instrument effective as a contract, give, conveyance, or trust, are deemed non-testamentary and that this act does not invalidate the instrument or the listed provisions.

Sections 61 - 69: These provisions amend the various banking statutes, and the statute pertaining to wages due an employee at his death, to conform them with the prior provisions of this act relating to affidavit transfer and multi-party accounts.

Section 70: Deletes proscription against a trust company or corporation personally soliciting appointment as executor, administrator or guardian.

Section 71: Amends notice to creditors' statute to require that a copy of said notice be filed with the clerk of the court, and provide that the four month claim period commences with the letter of the date of first publication or the date of such filing.

Section 72 and 73: Conform the exemption provisions in the homestead and in lieu statutes to the priority provisions set forth in section 58 of this act. (ie., priority over rights of set-off)

Section 74: Repealer.

Section 75: Savings clause.

Section 76: New Chapters

Section 77: This act applies to estates under prior testamentary instruments, unless the terms of such instruments clearly indicate a contrary intent.

Section 78: Short title, "Probate Reform Act of 1974".

REPORT OF STANDING COMMITTEE

February 5, 1974.

Substitute House Bill No. 748, making certain changes in the laws relating to probate,

(reported by Judiciary Committee):

MAJORITY recommendation: Do Pass as Amended

(If ALL members of committee sign, leave above line blank.)

Signed by: Senators Francis, Chairman Woody, V. Chairman Atwood Bottiger Clarke Dore Durkan Greive Marsh Twigg Van Hollebeke Perry Woodall

Pete Francis, Chairman

Frank Woody, Vice Chairman

R. Frank Atwood

R. R. Bob Greive

R. Ted Bottiger

Dan Marsh

Georgé W. Clarke

Robert W. Twigg

Fred H. Dore

Ray Van Hollebeke

Martin J. Durkan

Perry Woodall

Passed to Committee on Rules for second reading.

1 AN ACT Relating to probate; amending section 11.04.015, chapter 145, H -0
2 Laws of 1965 as last amended by section 2, chapter 168, Laws 5827;
3 of 1967 and RCW 11.04.015; amending section 11.04.270, chapter 001
4 145, Laws of 1965 and RCW 11.04.270; amending section PARTA
5 11.12.120, chapter 145, Laws of 1965 and RCW 11.12.120; ;003
6 amending section 11.20.020, chapter 145, Laws of 1965 as 6
7 amended by section 1, chapter 126, Laws of 1969 ex. sess. and 6
8 RCW 11.20.020; amending section 11.28.010, chapter 145, Laws 7
9 of 1965 and RCW 11.28.010; amending section 11.28.070, chapter 8
10 145, Laws of 1965 and RCW 11.28.070; section 11.28.110, 8
11 chapter 145, Laws of 1965 and RCW 11.28.110; amending section 9
12 11.28.237, chapter 145, Laws of 1965 as amended by section 2, 10
13 chapter 70, Laws of 1969 and RCW 11.28.237; amending section 11
14 11.28.280, chapter 145, Laws of 1965 and RCW 11.28.280; 11
15 amending section 11.40.010, chapter 145, Laws of 1965 as 12
16 amended by section 7, chapter 168, Laws of 1967 and RCW 12
17 11.40.010; amending section 11.40.020, chapter 145, Laws of 13
18 1965 and RCW 11.40.020; amending section 11.40.030, chapter 13
19 145, Laws of 1965 and RCW 11.40.030; amending section 14
20 11.40.040, chapter 145, Laws of 1965 and RCW 11.40.040; 15
21 amending section 11.40.060, chapter 145, Laws of 1965 and RCW 15
22 11.40.060; amending section 11.40.100, chapter 145, Laws of 16
23 1965 and 11.40.100; amending section 11.40.110, chapter 145, 17
24 Laws of 1965 and RCW 11.40.110; amending section 11.44.025, 17
25 chapter 145, Laws of 1965 and RCW 11.44.025; amending section 18
26 11.44.070, chapter 145, Laws of 1965 as amended by section 10, 19
27 chapter 168, Laws of 1967 and RCW 11.44.070; amending section 20

1 11.52.010, chapter 145, Laws of 1965 as last amended by 20
2 section 2, chapter 12, Laws of 1971, ex. sess. and RCW 21
3 11.52.010; amending section 11.52.012, chapter 145, Laws of 21
4 1965 and RCW 11.52.012; amending section 11.52.016, chapter 22
5 145, Laws of 1965 as amended by section 1, chapter 80, Laws of 23
6 1972 ex. sess. and RCW 11.52.016; amending section 11.52.020, 23
7 chapter 145, Laws of 1965 as last amended by section 3, 25
8 chapter 12, Laws of 1971 ex. sess. and RCW 11.52.020; amending 25
9 section 11.52.022, chapter 145, Laws of 1965 as amended by 26
10 section 4, chapter 12, Laws of 1971 ex. sess. and RCW 27
11 11.52.022; amending section 11.52.024, chapter 145, Laws of 27
12 1965 as amended by section 2, chapter 80, Laws of 1972 ex. 28
13 sess. and RCW 11.52.024; amending section 11.68.010, chapter 28
14 145, Laws of 1965 as amended by section 1, chapter 19, Laws of 30
15 1969 and RCW 11.68.010; amending section 11.68.020, chapter 30
16 145, Laws of 1965 and RCW 11.68.020; amending section 31
17 11.68.030, chapter 145, Laws of 1965 and RCW 11.68.030; 32
18 amending section 11.68.040, chapter 145, Laws of 1965 and RCW 32
19 11.68.040; amending section 11.76.080, chapter 145, Laws of 33
20 1965 as last amended by section 1, chapter 28, Laws of 1971 34
21 and RCW 11.76.080; amending section 11.76.090, chapter 145, 34
22 Laws of 1965 as amended by section 2, chapter 28, Laws of 1971 35
23 and RCW 11.76.090; amending section 11.76.095, chapter 145, 35
24 Laws of 1965 as amended by section 3, chapter 28, Laws of 1971 36
25 and RCW 11.76.095; amending section 30.04.260, chapter 33, 37
26 Laws of 1955 and RCW 30.04.260; amending section 30.20.010, 39
27 chapter 33, Laws of 1955 and RCW 30.20.010; amending section 39
28 30.20.015, chapter 33, Laws of 1955 as last amended by section 40
29 5, chapter 133, Laws of 1967 and RCW 30.20.015; amending 41
30 section 30.20.020, chapter 33, Laws of 1955 as amended by 41
31 section 2, chapter 280, Laws of 1961 and RCW 30.20.020; 42
32 amending section 10, chapter 173, Laws of 1933 as amended by 42
33 section 9, chapter 131, Laws of 1943 and RCW 31.12.140; 43

1 amending section 32.12.010, chapter 13, Laws of 1955 as last 44
2 amended by section 1, chapter 145, Laws of 1967 and RCW 45
3 32.12.010; amending section 32.12.020, chapter 13, Laws of 46
4 1955 as last amended by section 2, chapter 55, Laws of 1969 46
5 and RCW 32.12.020; amending section 32.12.030, chapter 13, 47
6 Laws of 1955 as last amended by section 4, chapter 176, Laws 48
7 of 1963 and RCW 32.12.030; amending section 46, chapter 235, 48
8 Laws of 1945 as amended by section 6, chapter 246, Laws of 49
9 1963 and RCW 33.20.080; amending section 2, chapter 139, Laws 50
10 of 1939 as amended by section 1, chapter 210, Laws of 1967 and 50
11 RCW 49.48.120; adding new chapters to Title 11 RCW; adding new 51
12 sections to chapters 11.28, 11.44, and 11.68 RCW; repealing 52
13 section 11.28.130, chapter 145, Laws of 1965 and RCW 52
14 11.28.130; repealing section 11.28.180, chapter 145, Laws of 53
15 1965 and RCW 11.28.180; repealing section 11.48.200, chapter 53
16 145, Laws of 1965 and RCW 11.28.200; repealing section 54
17 11.40.050, chapter 145, Laws of 1965 and RCW 11.40.050; 55
18 repealing section 11.44.055, chapter 145, Laws of 1965 and RCW 55
19 11.44.055; repealing section 11.44.065, chapter 145, Laws of 56
20 1965 and RCW 11.44.065; and repealing section 11.44.080, 57
21 chapter 145, Laws of 1965, section 11, chapter 168, Laws of 57
22 1967 and RCW 11.44.080. 57

23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON: 58

24 NEW SECTION. Section 1. (1) At any time after forty-five 59
25 days from the date of the decedent's death, any person indebted to 60
26 the decedent or having possession of tangible personal property or an 61
27 instrument evidencing a debt, obligation, stock or chose in action 62
28 belonging to the decedent shall make payment of the indebtedness or 62
29 deliver the tangible personal property or an instrument evidencing a 63
30 debt, obligation, stock or chose in action to a person claiming to be 64
31 the successor of the decedent upon receipt of an affidavit made by 64
32 the successor stating: 65

33 (a) The successor's name and address; 66

1 (b) That the decedent was a resident of the state of 67
2 Washington on the date of his death; 68

3 (c) That decedent did not own any real property and that the 69
4 value of the total personal property in the estate of the decedent, 69
5 wherever located, less liens and encumbrances, does not exceed ten 71
6 thousand dollars; 71

7 (d) That forty-five days have elapsed since the death of the 73
8 decedent; 73

9 (e) That no application or petition for the appointment of a 74
10 personal representative is pending or has been granted in any 75
11 jurisdiction; 75

12 (f) That all debts of the decedent including funeral and 76
13 burial expenses have been paid or provided for; and 77

14 (g) That the claiming successor is personally, or with the 78
15 written authority of all other successors of the decedent, entitled 79
16 to full payment or delivery of the property. 79

17 (2) A transfer agent of any security shall change the 80
18 registered ownership on the books of a corporation from the decedent 81
19 to the successor or successors upon the presentation of an affidavit 82
20 as provided in subsection (1) of this section. 82

21 (3) The term "successor" and "successors" as used in this 83
22 section and in section 2 of this 1974 amendatory act shall mean that 84
23 person or those persons, other than creditors, who are entitled to 85
24 the property of the decedent under his will or the laws of intestate 86
25 succession as contained in this title. 86

26 NEW SECTION. Sec. 2. The person paying, delivering, or 88
27 transferring personal property or the evidence thereof pursuant to 88
28 affidavit is discharged and released to the same extent as if he 89
29 dealt with a personal representative of the decedent. He is not 90
30 required to see to the application of the personal property or 90
31 evidence thereof or to inquire into the truth of any statement in the 91
32 affidavit or to the payment of any inheritance tax liability. If any 92
33 person to whom an affidavit is delivered refuses to pay, deliver, or 93

1 transfer any personal property or evidence thereof, it may be 93
2 recovered or its payment, delivery, transfer, or issuance compelled 94
3 upon proof of their right in a proceeding brought for the purpose by 95
4 or on behalf of the persons entitled thereto. 95

5 Any person to whom payment, delivery, transfer or issuance is 97
6 made is answerable and accountable therefor to any personal 97
7 representative of the estate, to any unpaid creditor of the decedent, 98
8 or to any other person having a superior right. 98

9 Sec. 3. Section 11.68.010, chapter 145, Laws of 1965 as 99
10 amended by section 1, chapter 19, Laws of 1969 and RCW 11.68.010 are 100
11 each amended to read as follows: 100

12 ((In all cases where it is provided in the last will and 101
13 testament of the deceased that the estate shall be settled in a 102
14 manner provided in such last will and testament, and that such estate 103
15 shall be settled without the intervention of any court or courts, and 103
16 where it duly appears to the court, by the inventory filed, and other 104
17 proof, that the estate is fully solvent, which fact may be 105
18 established by an order of the court on the filing of the inventory, 106
19 it shall not be necessary to take out letters testamentary or of 106
20 administration, except to admit the will to probate and to file a 107
21 true inventory of all the property of such estate and give notice to 108
22 creditors and to the body having charge of the collection of 108
23 inheritance tax, in the manner required by law. 109

24 After the probate of any such will and the filing of the 110
25 inventory all such estates may be managed and settled without the 111
26 intervention of the court ; if the last will and testament so 112
27 provides: However, when the estate is ready to be closed the court, 112
28 upon application, shall have authority and it shall be its duty, to 113
29 make and cause to be entered a decree finding and adjudging that all 114
30 debts have been paid, finding and adjudging also the heirs and those 114
31 entitled to take under the will and distributing the property to the 115
32 persons entitled thereto. Such decree shall be made after notice 116
33 given as provided for like decrees in the estates of persons dying 117

1 intestate. If no application for a final decree is filed, the 117
2 executor shall, when the administration of the estate has been 118
3 completed, file a written declaration to that effect, and thereupon 119
4 his powers shall cease. 119

5 The executor of a nonintervention will shall not be deemed to 120
6 waive his nonintervention powers by obtaining any order appointing 121
7 appraisers, fixing or allowing appraiser's fees, dispensing with 122
8 appraisement, or approving or allowing creditors' claims, not by 122
9 obtaining any other order or decree.) Subject to the provisions of 124
10 this chapter, if the estate of a decedent, who died either testate or 125
11 intestate, is solvent, such estate shall be managed and settled 125
12 without the intervention of the court; the fact of solvency shall be 126
13 established by the entry of an order of solvency. An order of 127
14 solvency may be entered at the time of the appointment of the 127
15 personal representative or at any time thereafter where it appears to 128
16 the court by the petition of the personal representative, or the 129
17 inventory filed, and/or other proof submitted, that the estate of the 129
18 decedent is fully solvent, and that notice of the application for an 130
19 order of solvency has been given to those persons entitled thereto 131
20 when required by RCW 11.68.040 as now or hereafter amended. 131

21 Sec. 4. Section 11.68.020, chapter 145, Laws of 1965 and RCW 132
22 11.68.020 are each amended to read as follows: 133

23 ((In all cases, if the party named in such will as executor 134
24 declines to execute the trust or dies or is otherwise disabled for 135
25 any cause from acting as such executor, letters testamentary or of 136
26 administration shall issue and the estate be settled as in other 136
27 cases.) Unless court supervision of an estate shall be specifically 137
28 required under the terms and provisions of a will, a decedent shall 138
29 be deemed to have intended any and all personal representatives named 139
30 in his will to have the power to administer his estate without the 139
31 intervention of court, and any personal representative or personal 140
32 representatives named in the decedent's will shall acquire 141
33 nonintervention powers without prior notice, upon meeting the 141

1 requirements of RCW 11.68.010 as now or hereafter amended. 142

2 Sec. 5. Section 11.68.030, chapter 145, Laws of 1965 and RCW 143
3 11.68.030 are each amended to read as follows: 144

4 ((If the person named in the will fails to execute the trust 145
5 faithfully and to take care and promote the interest of all parties; 146
6 then; upon petition of a creditor of the estate; or of any of the 147
7 heirs; or of any person on behalf of any minor heir; the court shall 148
8 cite such person to appear before it; and if; upon hearing of the 149
9 petition it appears that the trust in such will is not faithfully 150
10 discharged; and that the parties interested; or any of them; have 151
11 been or are about to be damaged by the doings of the executor; then; 152
12 in the discretion of the court; administration may be had and 153
13 required as is required in the administration of estates; and in all 154
14 such cases the costs of the citation and hearing shall be charged 155
15 against the party failing and neglecting to execute the trust as 156
16 required in the will.)) Subject to giving prior notice when required 157
17 under RCW 11.68.040 as now or hereafter amended and the entry of an 158
18 order of solvency, the personal representative of an estate of a 159
19 decedent who died intestate or the personal representative with the 160
20 will annexed of the estate of a decedent who died testate shall have 161
21 the power to administer the estate without further intervention of 162
22 court after the entry of an order of solvency and furnishing bond 163
23 when required. 164

24 Sec. 6. Section 11.68.040, chapter 145, Laws of 1965 and RCW 158
25 11.68.040 are each amended to read as follows: 159

26 ((Executors acting under nonintervention wills may; if the 160
27 estate has been adjudged solvent; mortgage; lease; sell; exchange; 161
28 and convey the real and personal property of the testator; and borrow 162
29 money on the general credit of the estate; without an order of the 163
30 court for that purpose and without notice; approval; or confirmation; 164
31 and in all other respects administer and settle the estate without 165
32 the intervention of the court. The other party to any such 164
33 transaction and his successors in interest shall be entitled to have 165

1 it conclusively presumed that such transaction is necessary for the 166
2 administration of the estate.) 166

3 If the decedent shall have died intestate, or the petitioning 167
4 personal representative is not named in the will as such, and in 168
5 either case the petitioner wishes to acquire nonintervention powers, 169
6 the personal representative shall, after filing the petition for 169
7 order of solvency, give notice of his intention to apply to the court 170
8 for nonintervention powers to all heirs, devisees, legatees of the 171
9 decedent, and all parties entitled to notice under RCW 11.28.240, who 172
10 have not, in writing, either waived notice of the hearing or 172
11 consented to the entry of an order of solvency; said notice shall be 173
12 given at least ten days prior to the date fixed by the personal 174
13 representative for the hearing on his petition for an order of 175
14 solvency: PROVIDED, That no prior notice of said hearing shall be 176
15 required when the personal representative is: 176

16 (1) The surviving spouse of the decedent and the decedent left 177
17 no issue of a prior marriage; 178

18 (2) A bank or trust company. 179

19 The notice required by this section shall be sent by regular 180
20 mail and proof of mailing of said notice shall be by affidavit filed 181
21 in the cause. Said notice shall contain the name of the decedent's 182
22 estate, the probate cause number, the name and address of the 182
23 personal representative, and shall state in substance as follows: 183

24 (a) The personal representative has petitioned the superior 184
25 court of _____ county, state of Washington, for the entry of 185
26 an order of solvency and a hearing on said petition will be held on 186
27 _____ the _____ day of _____, 186
28 19____, at _____ o'clock, _____ M.: 187

29 (b) The petition for order of solvency has been filed with 188
30 said court; 189

31 (c) Upon the entry of an order of solvency by the court, the 190
32 personal representative will be entitled to administer and close the 191
33 decedent's estate without further court intervention or supervision; 192

1 (d) Any heir, legatee or devisee shall have the right to 193
2 appear at the time of the hearing on the petition for an order of 194
3 solvency to object to the granting of nonintervention powers to the 194
4 personal representative. 195

5 If no notice is required, or all heirs, legatees and devisees 196
6 have either waived notice of said hearing or consented to the entry 197
7 of an order of solvency as provided in this section, the court may 198
8 hear the petition for an order of solvency at any time. 198

9 NEW SECTION. Sec. 7. There is added to chapter 11.68 RCW a 199
10 new section to read as follows: 200

11 If at the time set for the hearing upon the petition for the 201
12 entry of an order of solvency, any party entitled to notice under the 203
13 provisions of RCW 11.68.040 as now or hereafter amended, shall appear 203
14 and object to the granting of nonintervention powers to the personal 204
15 representative of the estate, the court shall consider said 205
16 objections, if any, and the entry of an order of solvency shall be 206
17 discretionary with the court upon being satisfied by proof as 206
18 required in RCW 11.68.010 as now or hereafter amended. If no heir, 207
19 legatee or devisee of the decedent shall appear at the time of the 208
20 hearing to object to the entry of an order of solvency, the court 208
21 shall enter an order of solvency upon being satisfied by proof as 209
22 required in RCW 11.68.010 as now or hereafter amended. 210

23 NEW SECTION. Sec. 8. There is added to chapter 11.68 RCW a 211
24 new section to read as follows: 212

25 If, after the entry of an order of solvency, any personal 213
26 representative of the estate of the decedent shall die, resign or 214
27 otherwise become disabled from any cause from acting as the 215
28 nonintervention personal representative, the successor personal 215
29 representative shall administer the estate of the decedent without 216
30 the intervention of court after notice and hearing as required by 217
31 sections 6 and 7 of this 1974 amendatory act, unless at the time of 217
32 said hearing objections to the granting of nonintervention powers to 218
33 such successor personal representative shall be made by an heir, 219

1 legatee, or devisee of the decedent, and unless the court, after 219
2 hearing said objections shall refuse to grant nonintervention powers 220
3 to such successor personal representative. If no heir, legatee, or 221
4 devisee of the decedent shall appear at the time of the hearing to 222
5 object to the granting of nonintervention powers to such successor 222
6 personal representative, the court shall enter an order granting 223
7 nonintervention powers to the successor personal representative. 224

8 NEW SECTION. Sec. 9. There is added to chapter 11.68 RCW a 225
9 new section to read as follows: 226

10 If any personal representative who has been granted 227
11 nonintervention powers fails to execute his trust faithfully or is 228
12 subject to removal for any reason specified in RCW 11.28.250 as now 229
13 or hereafter amended, upon petition of any unpaid creditor of the 229
14 estate who has filed a claim or any heir, devisee, legatee, or of any 231
15 person on behalf of any incompetent heir, devisee, or legatee, the 231
16 court shall cite such personal representative to appear before it, 232
17 and if, upon hearing of the petition it appears that said personal 233
18 representative has not faithfully discharged said trust or is subject 234
19 to removal for any reason specified in RCW 11.28.250 as now or 234
20 hereafter amended, then, in the discretion of the court said personal 235
21 representative may be removed and a successor appointed with such 236
22 powers as the court may determine, and in the event the court shall 237
23 restrict the powers of the personal representative in any manner, it 237
24 shall endorse the words "Powers restricted" upon the original order 238
25 of solvency together with the date of said endorsement, and in all 239
26 such cases the cost of the citation, hearing, and reasonable 239
27 attorney's fees may be awarded as the court determines. 240

28 NEW SECTION. Sec. 10. There is added to chapter 11.68 RCW a 241
29 new section to read as follows: 242

30 After such notice as the court may require, the order of 243
31 solvency shall be vacated upon the petition of any personal 244
32 representative, heir, legatee, devisee, or creditor, if supported by 245
33 proof satisfactory to the court that said estate has become 245

1 insolvent: 245
2 If, after hearing, the court shall vacate the prior order of 246
3 solvency, the court shall endorse the word "Vacated" upon the 247
4 original order of solvency together with the date of said 248
5 endorsement. 248

6 NEW SECTION. Sec. 11. There is added to chapter 11.68 RCW a 249
7 new section to read as follows: 250

8 Any personal representative acting under nonintervention 251
9 powers, may mortgage, encumber, lease, sell, exchange, and convey the 252
10 real and personal property of the decedent, and borrow money on the 253
11 general credit of the estate, without an order of court for that 254
12 purpose and without notice, approval or confirmation, and in all 255
13 other respects administer and settle the estate of the decedent 256
14 without intervention of court. Any other party to any such 256
15 transaction and his successors in interest shall be entitled to have 257
16 it conclusively presumed that such transaction is necessary for the 258
17 administration of the decedent's estate. 258

18 NEW SECTION. Sec. 12. There is added to chapter 11.68 RCW a 259
19 new section to read as follows: 260

20 When the estate is ready to be closed, the court, upon 261
21 application by the personal representative who has nonintervention 262
22 powers, shall have the authority and it shall be its duty, to make 263
23 and cause to be entered a decree which either: 263

24 (1) Finds and adjudges that all approved claims of the 264
25 decedent have been paid, finds and adjudges the heirs of the decedent 265
26 or those persons entitled to take under his will, and distribute the 266
27 property of the decedent to the persons entitled thereto; or 266

28 (2) Approves the accounting of the personal representative and 267
29 settles the estate of the decedent in the manner provided for in the 268
30 administration of those estates in which the personal representative 269
31 has not acquired nonintervention powers. 269

32 Either decree provided for in this section shall be made after 270
33 notice given as provided for in the settlement of estates by a 271

1 personal representative who has not acquired nonintervention powers. 272
2 Such notice, or, if no decree hereunder is applied for, a separate 272
3 notice mailed by certified mail not less than twenty days before 273
4 filing the written declaration of completion, shall state the fees 274
5 paid or proposed to be paid to the personal representative or his 275
6 attorneys. At the request of the personal representative or any 275
7 heir, devisee or legatee of the decedent whose interest in the assets 276
8 of the estate would be reduced by the amount of said fees, or on the 277
9 separate motion of any such person where no decree hereunder is 277
10 applied for, the reasonableness of said fees shall be determined by 278
11 the court at the time of the hearing on the entry of either decree 280
12 provided for in this section or at a hearing on such motion, as the 280
13 case may be. In determining the reasonableness of attorney's fees, 281
14 the court shall take into consideration all criteria forming the 282
15 basis for the determination of the amount of such fees as contained 283
16 in the code of professional responsibility; in determining the 284
17 reasonableness the fees charged by any personal representative, the 284
18 court shall take into consideration the criteria forming the basis 285
19 for the determination of attorney's fees, to the extent applicable, 286
20 and any other factors which the court determines to be relevant in 286
21 the determination of the amount of fees to be paid to such personal 287
22 representative. 287
23 NEW SECTION. Sec. 13. There is added to chapter 11.68 RCW a 288
24 new section to read as follows: 289
25 If a personal representative who has acquired nonintervention 290
26 powers shall not apply to the court for either final decree provided 291
27 for in section 12 of this 1974 amendatory act, the personal 292
28 representative shall, when the administration of the estate has been 292
29 completed, file a declaration to that effect, and thereupon his 293
30 powers shall cease. If the decedent shall have died intestate, said 294
31 declaration of completion shall specify the names, addresses (if 295
32 known), and relationship of each heir of the decedent, together with 295
33 the distributive share of each heir. 296

1 The filing of a declaration of completion of probate as 297
2 provided for in this section shall be deemed the equivalent of the 298
3 entry of a final decree of distribution in accordance with the 299
4 provisions of chapter 11.76 RCW, for the purpose of: 299

5 (1) Establishing the decedent's will as his last will and 300
6 testament and the persons entitled to receive his estate thereunder; 301
7 or 301

8 (2) Establishing the fact that the decedent died intestate, 302
9 and those persons entitled to receive his estate as his heirs at law; 303
10 and 303

11 (3) In either case, vesting and distributing ownership of the 304
12 assets of the decedent in his heirs, in the case of intestacy, or in 305
13 his legatees and devisees in the event of testacy. 306

14 NEW SECTION. Sec. 14. There is added to chapter 11.68 RCW a 307
15 new section to read as follows: 308

16 A personal representative who has acquired nonintervention 309
17 powers in accordance with this chapter shall not be deemed to have 310
18 waived his nonintervention powers by obtaining any order or decree 311
19 during the course of his administration of the estate. 311

20 Sec. 15. Section 11.20.020, chapter 145, Laws of 1965 as 312
21 amended by section 1, chapter 12b, Laws of 1969 ex. sess. and RCW 313
22 11.20.020 are each amended to read as follows: 313

23 (1) Applications for the probate of a will and for letters 314
24 testamentary, or either, may be made to the judge of the court having 315
25 jurisdiction and the court may immediately hear the proofs and either 316
26 probate or reject such will as the testimony may justify. Upon such 317
27 hearing the court shall make and cause to be entered a formal order, 317
28 either establishing and probating such will, or refusing to establish 318
29 and probate the same, and such order shall be conclusive except in 319
30 the event of a contest of such will as hereinafter provided. All 320
31 testimony in support of the will shall be reduced to writing, signed 320
32 by the witnesses, and certified by the judge of the court. If the 321
33 application for probate of a will does not request the appointment of 322

1 a personal representative and the court enters an adjudication of 322
2 testacy establishing such will no further administration shall be 324
3 required except as set forth in section 19 of this 1974 amendatory 324
4 act. 324

5 (2) In addition to the foregoing procedure for the proof of 325
6 wills, any or all of the attesting witnesses to a will may, at the 326
7 request of the testator or, after his decease, at the request of the 327
8 executor or any person interested under it, make an affidavit before 328
9 any person authorized to administer oaths, stating such facts as they 328
10 would be required to testify to in court to prove such will, which 329
11 affidavit may be written on the will or may be attached to the will 330
12 or to a photographic copy of the will. The sworn statement of any 331
13 witness so taken shall be accepted by the court as if it had been 331
14 taken before the court. 331

15 Sec. 16. Section 11.28.010, chapter 145, Laws of 1965 and RCW 332
16 11.28.010 are each amended to read as follows: 333

17 After ((probate of any will)) the entry of an order admitting 334
18 a will to probate and appointing a personal representative, or 335
19 personal representatives, letters testamentary shall be granted to 336
20 the persons therein appointed executors. If a part of the persons 336
21 thus appointed refuse to act, or be disqualified, the letters shall 337
22 be granted to the other persons appointed therein. If all such 338
23 persons refuse to act, letters of administration with the will 338
24 annexed shall be granted to the person to whom administration would 339
25 have been granted if there had been no will. 340

26 Sec. 17. Section 11.28.110, chapter 145, Laws of 1965 and RCW 341
27 11.28.110 are each amended to read as follows: 342

28 Application for letters of administration, or, application for 343
29 an adjudication of intestacy and heirship without the issuance of 344
30 letters of administration shall be made by petition in writing, 345
31 signed and verified by the applicant or his attorney, and filed with 346
32 the court, which petition shall set forth the facts essential to 346
33 giving the court jurisdiction of the case, and state, if known, the 347

1 names, ages and residences of the heirs of the deceased and that the 348
2 deceased died without a will. If the application for an adjudication 348
3 of intestacy and heirship does not request the appointment of a 349
4 personal representative and the court enters an adjudication of 349
5 intestacy no further administration shall be required except as set 350
6 forth in section 19 of this 1974 amendatory act. 351

7 Sec. 18. Section 11.28.237, chapter 145, Laws of 1965 as 352
8 amended by section 2, chapter 70, Laws of 1969 and RCW 11.28.237 are 353
9 each amended to read as follows: 353

10 Within twenty days after appointment, the personal 354
11 representative of the estate of a decedent shall cause written notice 355
12 of his said appointment, and of the pendency of said probate 356
13 proceedings, to be served personally or mailed to each heir, legatee 356
14 and devisee of the estate whose names and addresses are known to him, 357
15 and proof of such mailing shall be made by affidavit and filed in the 358
16 cause. 358

17 NEW SECTION. Sec. 19. There is added to chapter 11.28 RCW a 359
18 new section to read as follows: 360

19 If no personal representative is appointed to administer the 361
20 estate of a decedent, the person obtaining the adjudication of 362
21 testacy, or intestacy and heirship, shall, within twenty days after 363
22 obtaining said adjudication, cause written notice of said 364
23 adjudication to be mailed to each heir, legatee, and devisee of the 364
24 decedent, which notice shall: 365

25 (1) State the name and address of the applicant; 366

26 (2) State that on the day of, 19...., the 367
27 applicant obtained an order from the superior court of 368
28 county, state of Washington, adjudicating that the 369
29 decedent died intestate, or testate, whichever shall be the case; 369

30 (3) In the event the decedent died testate, enclose a copy of 370
31 his will therewith, and state that the adjudication of testacy will 371
32 become final and conclusive for all legal intents and purposes unless 372
33 any heir, legatee, or devisee of the decedent shall contest said will 373

1 within four months after the date the said will was adjudicated to be 374
2 the last will and testament of the decedent; 374

3 (4) In the event that the decedent died intestate, set forth 375
4 the names and addresses of the heirs of the decedent, their 376
5 relationship to the decedent, the distributive shares of the estate 377
6 of the decedent which they are entitled to receive, and that said 377
7 adjudication of intestacy and heirship shall become final and 378
8 conclusive for all legal intents and purposes, unless, within four 379
9 months of the date of said adjudication of intestacy, a petition 379
10 shall be filed seeking the admission of a will of the decedent for 380
11 probate, or contesting the adjudication of heirship. 380

12 Notices provided for in this section may be served personally 381
13 or sent by regular mail, and proof of such service or mailing shall 382
14 be made by an affidavit filed in the cause. 382

15 NEW SECTION. Sec. 20. There is added to chapter 11.28 RCW a 383
16 new section to read as follows: 384

17 Unless, within four months after the entry of the order 385
18 adjudicating testacy or intestacy and heirship, any heir, legatee or 386
19 devisee of the decedent shall offer a later will for probate or 387
20 contest an adjudication of testacy in the manner provided in this 387
21 title for will contests, or offer a will of the decedent for probate 388
22 following an adjudication of intestacy and heirship, or contesting 389
23 the determination of heirship, an order adjudicating testacy or 389
24 intestacy and heirship without appointing a personal representative 390
25 to administer a decedent's estate shall be deemed the equivalent of 390
26 the entry of a final decree of distribution in accordance with the 391
27 provisions of chapter 11.76 RCW for the purpose of: 392

28 (1) Establishing the decedent's will as his last will and 393
29 testament and persons entitled to receive his estate thereunder; or 394

30 (2) Establishing the fact that the decedent died intestate, 395
31 and those persons entitled to receive his estate as his heirs at law; 396
32 and 396

33 (3) In either case, vesting and distributing ownership of the 397

1 assets of the decedent in his heirs, in the case of intestacy, or in 398
2 his legatees and devisees in the event of a testacy. 399

3 The right of an heir, legatee, or devisee to receive the 400
4 assets of a decedent shall, to the extent otherwise provided by this 401
5 Title, be subject to the prior rights of the decedents creditors and 401
6 any person entitled to a homestead award or family allowance and 402
7 nothing contained in this section shall be deemed to prohibit said 403
8 persons, or any other person for good cause shown, from obtaining the 403
9 appointment of a personal representative to administer the estate of 404
10 the decedent after the entry of an order adjudicating testacy or 405
11 intestacy and heirship. If letters testamentary or of administration 405
12 shall be issued more than four months after the date of the 406
13 adjudication of testacy or intestacy and heirship, the issuance of 407
14 said letters shall not affect the finality of said adjudications. 407

15 Sec. 21. Section 11.40.020, chapter 145, Laws of 1965 and RCW 408
16 11.40.020 are each amended to read as follows: 409

17 Every claim ((served and filed as above provided shall be 410
18 supported by the affidavit of the claimant that the amount is justly 411
19 due; that no payments have been made thereon; and that there are no 412
20 offsets to the same to the knowledge of the claimant)) shall be 412
21 signed by the claimant, or his attorney, or any person who is 413
22 authorized to sign claims on his, her, or its behalf, and shall 414
23 contain the following information: 414

24 (1) The name and address of the claimant; 415
25 (2) The name, business address (if different from that of the 416
26 claimant), and nature of authority of any person signing the claim on 417
27 behalf of the claimant; 417
28 (3) A written statement of the facts or circumstances 418
29 constituting the basis upon which the claim is submitted; 419
30 (4) The amount of the claim; 420
31 (5) If the claim is secured, unliquidated or contingent, or 421
32 not yet due, the nature of the security, the nature of the 422
33 uncertainty, and due date of the claim: PROVIDED HOWEVER, That 423

1 failure to describe correctly the security, nature of any 423
2 uncertainty, or the due date of a claim not yet due does not 424
3 invalidate the presentation made. 424
4 Claims need not be supported by affidavit. 425
5 Sec. 22. Section 11.40.030, chapter 145, Laws of 1965 and RCW 426
6 11.40.030 are each amended to read as follows: 427
7 ((When a claim, accompanied by the affidavit required in RCW 428
8 11.40.020 has been served and filed, it shall be the duty of the 429
9 personal representative to indorse thereon his allowance or 430
10 rejection, with the day and date thereof. If he allow the claim, it 430
11 shall be presented to the judge of the court, who shall in the same 431
12 manner indorse on it his allowance or rejection, or he may by order 432
13 allow or reject the claim. If the personal representative reject the 432
14 claim in whole or in part, he shall notify the claimant forthwith of 433
15 said rejection and file in the office of the clerk an affidavit 434
16 showing such notification and the date thereof. Such notification 435
17 shall be by personal service or registered or certified mail and 435
18 shall state that the holder of the rejected claim must bring suit in 436
19 the proper court against the personal representative within thirty 437
20 days after notification of the rejection, otherwise the claim shall 438
21 be forever barred. 438
22 If the personal representative shall neglect for the period of 439
23 sixty days after service upon him or his attorney to act upon any 440
24 such claim, the claimant may take the matter up before the court and 441
25 the court may require the personal representative to act on such 441
26 claim and in its discretion may impose costs and attorney's fees.)) 442
27 Unless the personal representative shall, within six months after the 443
28 date of first publication of notice to creditors, have obtained an 444
29 order extending the time for his allowance or rejection of claims 444
30 timely and properly served and filed, all claims presented within the 445
31 time and in the manner provided in RCW 11.40.010 and 11.40.020 as now 446
32 or hereafter amended, shall be deemed allowed and may not thereafter 446
33 be rejected, unless the personal representative shall, within six 447

1 months after the date of first publication of notice to creditors, or 448
2 any extended time, notify the claimant of its rejection, in whole or 449
3 in part; if the personal representative shall reject the claim, in 449
4 whole or in part, he shall notify the claimant of said rejection and 450
5 file in the office of the clerk, an affidavit showing such 451
6 notification and the date thereof. Said notification shall be by 451
7 personal service or certified mail addressed to the claimant at his 452
8 address as stated in the claim; if a person other than the claimant 453
9 shall have signed said claim for or on behalf of the claimant, and 454
10 said person's business address as stated in said claim is different 454
11 from that of the claimant, notification of rejection shall also be 455
12 made by personal service or certified mail upon said person; the date 456
13 of the postmark shall be the date of notification. The notification 456
14 of rejection shall advise the claimant, and the person making claim 457
15 on his, her, or its behalf, if any, that the claimant must bring suit 458
16 in the proper court against the personal representative within thirty 459
17 days after notification of rejection, and that otherwise the claim 459
18 will be forever barred. 459

19 The personal representative may, either before or after 460
20 rejection of any claim compromise said claim, whether due or not, 461
21 absolute or contingent, liquidated or unliquidated, if it appears to 462
22 the personal representative that such compromise is in the best 462
23 interests of the estate. 463

24 Sec. 23. Section 11.40.040, chapter 145, Laws of 1965 and RCW 464
25 11.40.040 are each amended to read as follows: 465

26 Every claim which has been allowed by the personal 466
27 representative ((and the said judge;)) shall be ranked among the 467
28 acknowledged debts of the estate to be paid in the course of 468
29 administration. 468

30 Sec. 24. Section 11.40.060, chapter 145, Laws of 1965 and RCW 469
31 11.40.060 are each amended to read as follows: 470

32 When a claim is rejected by ((either)) the personal 471
33 representative ((or the court)), the holder must bring suit in the 472

1 proper court against the personal representative within thirty days 473
2 after notification of the rejection, otherwise the claim shall be 473
3 forever barred. 474

4 Sec. 25. Section 11.40.110, chapter 145, Laws of 1965 and RCW 475
5 11.40.110 are each amended to read as follows: 476

6 Whenever any claim shall have been filed and presented to a 477
7 personal representative ((and the court)), and a part thereof shall 478
8 be allowed, the amount of such allowance shall be stated in the 479
9 indorsement. If the creditor shall refuse to accept the amount so 480
10 allowed in satisfaction of his claim, he shall recover no costs in 480
11 any action he may bring against the personal representative unless he 481
12 shall recover a greater amount than that offered to be allowed, 482
13 exclusive of interest and costs. 482

14 Sec. 26. Section 11.76.080, chapter 145, Laws of 1965 as last 483
15 amended by section 1, chapter 28, Laws of 1971 and RCW 11.76.080 are 484
16 each amended to read as follows: 484

17 If there be any incompetent as defined in RCW 11.88.010 485
18 interested in the estate who has no legally appointed guardian, the 486
19 court: 486

20 (1) At any stage of the proceeding in its discretion and for 487
21 such purpose or purposes as it shall indicate, may, and 488

22 (2) For hearings held pursuant to RCW 11.52.010, 11.52.020, 489
23 11.68.040 and 11.76.050 as now or hereafter amended, or for entry of 490
24 an order adjudicating testacy or intestacy and heirship when no 491
25 personal representative is appointed to administer the estate of the 492
26 decendent, shall((--))appoint some disinterested person as guardian ad 493
27 litem to represent such incompetent with reference to any petition, 493
28 proceeding ((or)) report, or adjudication of testacy or intestacy 494
29 without the appointment of a personal representative to administer 495
30 the estate of decendent in which the incompetent may have an interest, 496
31 who, on behalf of the incompetent, may contest the same as any other 496
32 person interested might contest it, and who shall be allowed by the 497
33 court reasonable compensation for his services: PROVIDED, HOWEVER, 498

1 That where a surviving spouse is the sole beneficiary under the terms 498
2 of a will, the court may grant a motion by the personal 499
3 representative to waive the appointment of a guardian ad litem for a 500
4 person who is the minor child of such surviving spouse and the 500
5 decedent and who is incompetent solely for the reason of his being 501
6 under eighteen years of age. 501
502

7 Sec. 27. Section 11.04.015, chapter 145, Laws of 1965 as last 502
8 amended by section 2, chapter 168, Laws of 1967 and RCW 11.04.015 are 503
9 each amended to read as follows: 503

10 The net estate of a person dying intestate, or that portion 504
11 thereof with respect to which the person shall have died intestate, 505
12 shall descend subject to the provisions of RCW 11.04.250 and RCW 506
13 11.02.070, and shall be distributed as follows: 506

14 (1) Share of surviving spouse. The surviving spouse shall 507
15 receive the following share: 508

16 (a) All of the decedent's share of the net community estate 509
17 unless there be surviving issue ((or parents;)) in which event, the 510
18 surviving spouse shall take ((one-half of the decedent's share of the 511
19 net community estate)) the first fifty thousand dollars thereof and 511
20 one-half of the excess thereof over fifty thousand dollars; and 512

21 (b) One-half of the net separate estate if the intestate is 513
22 survived by issue; or 514

23 (c) Three-quarters of the net separate estate if there is no 515
24 surviving issue, but the intestate is survived by one or more of his 516
25 parents, or by one or more of the issue of one or more of his 517
26 parents; or 517

27 (d) All of the net separate estate, if there is no surviving 518
28 issue nor parent nor issue of parent. 519

29 (2) Shares of others than surviving spouse. The share of the 520
30 net estate not distributable to the surviving spouse, or the entire 521
31 net estate if there is no surviving spouse, shall descend and be 522
32 distributed as follows: 522

33 (a) To the issue of the intestate; if they are all in the same 523

1 degree of kinship to the intestate, they shall take equally, or if of 524
V 2 unequal degree, then those of more remote degree shall take by 525
3 representation. 525

4 (b) If the intestate not be survived by issue, then to the 526
5 parent or parents who survive the intestate. 527

6 (c) If the intestate not be survived by issue or by either 528
7 parent, then to those issue of the parent or parents who survive the 529
8 intestate; if they are all in the same degree of kinship to the 530
9 intestate, they shall take equally, or, if of unequal degree, then 530
10 those of more remote degree shall take by representation. 531

11 (d) If the intestate not be survived by issue or by either 532
12 parent, or by any issue of the parent or parents who survive the 533
13 intestate, then to the grandparent or grandparents who survive the 534
14 intestate; if both maternal and paternal grandparents survive the 534
15 intestate, the maternal grandparent or grandparents shall take 535
16 one-half and the paternal grandparent or grandparents shall take 536
17 one-half. 536

18 (e) If the intestate not be survived by issue or by either 537
19 parent, or by any issue of the parent or parents or by any 538
20 grandparent or grandparents, then to those issue of any grandparent 539
21 or grandparents who survive the intestate; taken as a group, the 539
22 issue of the maternal grandparent or grandparents shall share equally 540
23 with the issue of the paternal grandparent or grandparents, also 541
24 taken as a group; within each such group, all members share equally 542
25 if they are all in the same degree of kinship to the intestate, or, 542
26 if some be of unequal degree, then those of more remote degree shall 544
27 take by representation. 544

28 Sec. 28. Section 11.04.270, chapter 145, Laws of 1965 and RCW 545
29 11.04.270 are each amended to read as follows: 546

30 The estate of a deceased person shall not be liable for his 547
31 debts unless letters testamentary or of administration be granted, or 548
32 adjudication of testacy or intestacy entered, within ~~((six))~~ three 548
33 years from the date of the death of such decedent: PROVIDED, 549

1 HOWEVER, That this section shall not affect liens upon specific 550
2 property, existing at the date of the death of such decedent. 550

3 Sec. 29. Section 11.12.120, chapter 145, Laws of 1965 and RCW 551
4 11.12.120 are each amended to read as follows: 552

5 Whenever any person having died leaving a will which has been 553
6 admitted to probate or established by an adjudication of testacy, 553
7 shall by said will have given, devised or bequeathed unto any person, 554
8 a legacy or a devise upon the condition that said person survive him, 555
9 and not otherwise, such legacy or devise shall lapse and fall into 556
10 the residue of said estate to be distributed according to the 556
11 residuary clause, if there be one, of said will, and if there be none 557
12 then according to the laws of descent, unless said legatee or 558
13 devisee, as the case may be, or his heirs, personal representative, 559
14 or someone in behalf of such legatee or devisee, shall appear before 559
15 the court which is administering said estate within ~~((six))~~ three 560
16 years from and after the date the said will was admitted to probate 561
17 or established by an adjudication of testacy, and prove to the 561
18 satisfaction of the court that the said legatee or devisee, as the 562
19 case may be, did in fact survive the testator. 562

20 NEW SECTION. Sec. 30. There is added to chapter 11.28 RCW a 563
21 new section to read as follows: 564

22 When a petition for general letters of administration or for 565
23 letters of administration with the will annexed or for an 566
24 adjudication of testacy or intestacy shall be filed, the matter may 566
25 be heard forthwith, appointment made and letters of administration 567
26 issued: PROVIDED, That if there be a surviving spouse and a petition 568
27 is presented by anyone other than the surviving spouse, or any person 569
28 designated by the surviving spouse to serve as personal 569
29 representative on his or her behalf, notice to the surviving spouse 570
30 shall be given of the time and place of such hearing at least ten 571
31 days before the hearing, unless the surviving spouse shall waive 571
32 notice of the hearing in writing filed in the cause. 572

33 NEW SECTION. Sec. 31. There is added to chapter 11.28 RCW a 573

1 new section to read as follows: 574
2 No personal representative appointed to administer an estate 575
3 of a decedent who died either testate or intestate or applicant under 576
4 an order of testacy or intestacy shall be required to give bond or 576
5 other security unless the decedent's will or the court so requires. 577
6 Every person required to furnish bond must, before receiving 578
7 letters testamentary or of administration, execute a bond to the 579
8 state of Washington conditioned that the personal representative 580
9 shall faithfully execute the duty of the trust according to law, or 580
10 that the applicant shall faithfully execute such conditions as the 581
11 court may set forth in its order, with such surety or sureties as the 582
12 court may approve. 582
13 ✓ The court may at any time after appointment of the personal 583
14 representative or entry of such order require said personal 584
15 representative or applicant to give a bond or additional bond, the 584
16 same to be conditioned and to be approved as provided in this 585
17 section; or the court may allow a reduction of the bond upon a proper 586
18 showing. In all cases where a bank or trust company authorized to 586
19 act as a personal representative is appointed as personal 587
20 representative, no bond shall be required. 587
21 In lieu of bond, the court may in its discretion, substitute 588
22 other security or financial arrangements, such as provided under RCW 589
23 11.88.105, or as the court may deem adequate to protect the assets of 590
24 the estate. 590
25 Sec. 32. Section 11.40.100, chapter 145, Laws of 1965 and RCW 591
26 11.40.100 are each amended to read as follows: 592
27 If any action be pending against the testator or intestate at 593
28 the time of his death, the plaintiff shall within ((ninety days)) 594
29 four months after first publication of notice to creditors, or the 595
30 filing of a copy of such notice, whichever is later, serve on the 595
31 personal representative a motion to have such personal 597
32 representative, as such, substituted as defendant in such action, 597
33 and, upon the hearing of such motion, such personal representative 598

1 shall be so substituted, unless, at or prior to such hearing, the 599
2 claim of plaintiff, together with costs, be allowed by the personal 600
3 representative and court. After the substitution of such personal 600
4 representative, the court shall proceed to hear and determine the 601
5 action as in other civil cases. 601

6 Sec. 33. Section 11.44.025, chapter 145, Laws of 1965 and RCW 602
7 11.44.025 are each amended to read as follows: 603

8 Whenever any property of the estate not mentioned in the 604
9 inventory comes to the knowledge of a personal representative, he 605
10 shall cause the same to be inventoried and appraised and shall make 606
11 and return upon oath into the court a true inventory of said property 607
12 within thirty days after the discovery thereof, unless a longer time 607
13 shall be granted by the court. 608

14 NEW SECTION. Sec. 34. There is added to chapter 11.44 RCW a 609
15 new section to read as follows: 610

16 Within the time required to file an inventory as provided in 611
17 RCW 11.44.015, the personal representative shall determine the fair 612
18 net value, as of the date of the decedent's death, of each item 613
19 contained in the inventory after deducting the encumbrances, liens, 613
20 and other secured charges thereon. The personal representative may 614
21 employ a qualified and disinterested person to assist him in 615
22 ascertaining the fair market value as of the date of the decedent's 616
23 death of any asset the value of which may be subject to reasonable 616
24 doubt. Different persons may be employed to appraise different kinds 617
25 of assets included in the estate. The appraisement may, but need not 618
26 be, filed in the probate cause: PROVIDED HOWEVER, That upon receipt 619
27 of a written request for a copy of said inventory and appraisement 619
28 from any heir, legatee, devisee or unpaid creditor who has filed a 620
29 claim, the personal representative shall furnish to said person, a 621
30 true and correct copy thereof. 621

31 Sec. 35. Section 11.44.070, chapter 145, Laws of 1965 as 622
32 amended by section 10, chapter 168, Laws of 1967 and RCW 11.44.070 623
33 are each amended to read as follows: 623

1 ((The appraiser shall receive as compensation for his service 624
 2 an amount as to the court shall seem just and reasonable, but not 625
 3 less than ten dollars nor more than one-tenth of one percent of the 626
 4 gross value of the assets of the estate actually appraised by him)) 627
 5 The amount of the fee to be paid to any persons assisting the 627
 6 personal representative in any appraisal shall be determined by 628
 7 the personal representative: PROVIDED HOWEVER, That the 629
 8 reasonableness of any such compensation may, at the time of hearing 629
 9 on any final account as provided in chapter 11.76 RCW, be reviewed by 630
 10 the court, and if the court determines the compensation to be 631
 11 unreasonable, a personal representative may be ordered to make 631
 12 appropriate refund. 632

13 Sec. 36. Section 11.52.010, chapter 145, Laws of 1965 as last 633
 14 amended by section 2, chapter 12, Laws of 1971 ex. sess. and RCW 634
 15 11.52.010 are each amended to read as follows: 634

16 If it is made to appear to the satisfaction of the court that 635
 17 no homestead has been claimed in the manner provided by law, either 636
 18 prior or subsequent to the death of the person whose estate is being 637
 19 administered, then the court, after hearing and upon being satisfied 638
 20 that the funeral expenses, expenses of last sickness and of 638
 21 administration have been paid or provided for, and upon petition for 639
 22 that purpose, shall award and set off to the surviving spouse, if 640
 23 any, property of the estate, either community or separate, not 640
 24 exceeding the value of ((fifteen)) twenty thousand dollars at the 641
 25 time of death, exclusive of general taxes and special assessments 642
 26 which were liens at the time of the death of the deceased spouse, and 643
 27 exclusive of the unpaid balance of any contract to purchase, 643
 28 mortgage, or mechanic's, laborer's or materialmen's liens upon the 644
 29 property so set off, and exclusive of funeral expenses, expenses of 645
 30 last sickness and administration, which expenses may be deducted from 646
 31 the gross value in determining the value to be set off to the 646
 32 surviving spouse; provided that the court shall have no jurisdiction 647
 33 to make such award unless the petition therefor is filed with the 648

1 clerk within six years from the date of the death of the person whose 649
2 estate is being administered. 649

3 Sec. 37. Section 11.52.012, chapter 145, Laws of 1965 and RCW 650
4 11.52.012 are each amended to read as follows: 651

5 Such award shall be made by an order or judgment of the court 652
6 and shall vest the absolute title, and thereafter there shall be no 653
7 further administration upon such portion of the estate so set off, 654
8 but the remainder of the estate shall be settled as other estates: 654
9 PROVIDED, That no property of the estate shall be awarded or set off, 655
10 as in RCW 11.52.010 through 11.52.024 provided, to a surviving spouse 656
11 who has feloniously killed the deceased spouse: PROVIDED FURTHER, 657
12 That if it shall appear to the court, either (1) that there are minor 657
13 or incompetent children of the deceased by a former marriage or by 658
14 adoption prior to decedent's marriage to petitioner or (2) that the 659
15 petitioning surviving spouse has abandoned his or her minor children 659
16 or wilfully and wrongfully failed to provide for them, or (3) if such 660
17 surviving spouse or minor children are entitled to receive property 661
18 including insurance by reason of the death of the deceased spouse in 662
19 the sum of ((ten)) twenty thousand dollars, or more, then the award 662
20 in lieu of homestead and exemptions shall lie in the discretion of 663
21 the court, and that whether there shall be an award and the amount 664
22 thereof shall be determined by the court, who shall enter such decree 665
23 as shall be just and equitable but not in excess of the award 665
24 provided herein. 665

25 Sec. 38. Section 11.52.020, chapter 145, Laws of 1965 as last 666
26 amended by section 3, chapter 12, Laws of 1971 ex. sess. and RCW 667
27 11.52.020 are each amended to read as follows: 667

28 In event a homestead has been, or shall be selected in the 668
29 manner provided by law, whether the selection of such homestead 669
30 results in vesting the complete or partial title in the survivor, it 670
31 shall be the duty of the court, upon petition of any person 670
32 interested, and upon being satisfied that the value thereof does not 671
33 exceed ((fifteen)) twenty thousand dollars at the time of the death, 672

1 exclusive of general taxes and special assessments which were liens 673
 2 at the time of the death of the deceased and exclusive of the unpaid 674
 3 balance of any contract to purchase, mortgage, or mechanic's, 674
 4 laborer's, or materialmen's liens thereon, and exclusive of funeral 675
 5 expenses, expenses of last sickness and of administration, which 676
 6 expenses may be deducted from the gross value in determining the 676
 7 value to be set off to the surviving spouse, to enter a decree, upon 677
 8 notice as provided in RCW 11.52.014 or upon longer notice if the 678
 9 court so orders, setting off and awarding such homestead to the 678
 10 survivor, thereby vesting the title thereto in fee simple in the 679
 11 survivor: PROVIDED, That if there be any incompetent heirs of the 680
 12 decedent, the court shall appoint a guardian ad litem for such 681
 13 incompetent heir who shall appear at the hearing and represent the 681
 14 interest of such incompetent heir. 682

15 Sec. 39. Section 11.52.022, chapter 145, Laws of 1965 as 683
 16 amended by section 4, chapter 12, Laws of 1971 ex. sess. and RCW 684
 17 11.52.022 are each amended to read as follows: 685

18 If the value of the homestead, exclusive of all such liens, be 686
 19 less than ((fifteen)) twenty thousand dollars, the court, upon being 687
 20 satisfied that the funeral expenses, expenses of last sickness and of 688
 21 administration, have been paid or provided for, shall set off and 689
 22 award additional property, either separate or community, in lieu of 690
 23 such deficiency, so that the value of the homestead, exclusive of all 690
 24 such liens and expenses when added to the value of the other property 691
 25 awarded, exclusive of all such liens and expenses shall equal 692
 26 ((fifteen)) twenty thousand dollars: PROVIDED, That if it shall 693
 27 appear to the court, either (1) there are ((incompetent)) children of 694
 28 the deceased by a former marriage or by adoption prior to decedent's 694
 29 marriage to petitioner, or (2) that the petitioning surviving spouse 695
 30 has abandoned his or her minor children or willfully and wrongfully 696
 31 failed to provide for them, or (3) if such surviving spouse ((or 697
 32 incompetent children are)) is, or any minor child entitled to an 697
 33 award under RCW 11.52.030 is, entitled to receive property including 698

1 insurance by reason of the death of the deceased spouse in the sum of 699
2 ((fifteen)) twenty thousand dollars, or more, then the award of 700
3 property in addition to the homestead, where the homestead is of less 701
4 than ((fifteen)) twenty thousand dollars in value, shall lie in the 701
5 discretion of the court, and that whether there shall be an award in 702
6 addition to the homestead and the amount thereof shall be determined 703
7 by the court, who shall enter such decree as shall be just and 704
8 equitable, but not in excess of the award provided herein. 704

9 Sec. 40. Section 11.76.090, chapter 145, Laws of 1965 as 705
10 amended by section 2, chapter 28, Laws of 1971 and RCW 11.76.090 are 706
11 each amended to read as follows: 706

12 When a decree of distribution is made by the court in 707
13 administration upon a decedent's estate and distribution is ordered 708
14 to a person under the age of eighteen years, of a sum of ((five 709
15 hundred)) one thousand dollars or less, the court, in such order of 710
16 distribution, shall order the same paid to the clerk of the court 710
17 wherein administration of such estate is pending, and the same shall 711
18 be paid by the clerk, for the use and as the property of said minor, 712
19 to the person named in said order of distribution to receive the 712
20 same, without requiring bond or appointment of any guardian. 713

21 Sec. 41. Section 11.76.095, chapter 145, Laws of 1965 as 714
22 amended by section 3, chapter 28, Laws of 1971 and RCW 11.76.095 are 715
23 each amended to read as follows: 715

24 When a decree of distribution is made by the court in 716
25 administration upon a decedent's estate or when distribution is made 717
26 by ((an executor)) a personal representative under a nonintervention 718
27 will and distribution is ordered under such decree or authorized 718
28 under such nonintervention will to a person under the age of eighteen 719
29 years, ((and the value of such property or money is five thousand 720
30 dollars or less and there is no general guardian of the 721
31 incompetent,)) the court ((may)) shall require either that 721

32 (1) the money be deposited in a bank or trust company or be 722
33 invested in an account in an insured savings and loan association for 723

1 the benefit of the incompetent subject to withdrawal only upon the 724
2 order of the court in the original probate proceeding, or upon said 724
3 minor's attaining the age of eighteen years and furnishing proof 725
4 thereof satisfactory to the depository, or 726
5 (2) ((in all other cases)) a general guardian shall be 727
6 appointed and qualify and the money or ((other)) property be paid or 728
7 delivered to such guardian prior to the discharge of the personal 729
8 representative in the original probate proceeding. 729
9 This section shall not bar distribution under RCW 11.76.090 as 730
10 now or hereafter amended. 731
11 Sec. 42. Section 11.28.070, chapter 145, Laws of 1965 and RCW 732
12 11.28.070 are each amended to read as follows: 733
13 Administrators with the will annexed shall have the same 734
14 authority as the executor named in the will would have had, and their 735
15 acts shall be as effectual for every purpose: PROVIDED, That they 736
16 shall not lease, mortgage, pledge, exchange, sell or convey any real 736
17 or personal property of the estate except under order of the court 737
18 and pursuant to procedure under existing laws pertaining to the 738
19 administration of estates in cases of intestacy, unless the powers 739
20 expressed in the will are directory and not discretionary, or said 739
21 administrator with will annexed shall have obtained nonintervention 740
22 powers as provided in chapter 11.68 RCW. 741
23 Sec. 43. Section 11.28.280, chapter 145, Laws of 1965 and RCW 742
24 11.28.280 are each amended to read as follows: 743
25 If the personal representative of an estate dies, resigns, or 744
26 the letters are revoked before the settlement of the estate, letters 745
27 of administration of the estate remaining unadministered shall be 746
28 granted to those to whom administration would have been granted if 747
29 the original letters had not been obtained, or the person obtaining 747
30 them had renounced administration, and the administrator de bonis non 748
31 shall perform like duties and incur like liabilities as the former 749
32 personal representative, and shall serve as administrator with will 750
33 annexed de bonis non in the event a will has been admitted to 751

1 probate. Said administrator de bonis non may, upon satisfying the 751
2 requirements and complying with the procedures provided in chapter 752
3 11.68 RCW, administer the estate of the decedent without the 753
4 intervention of court. 753

5 ✓ NEW SECTION. Sec. 44. Whenever a principal designates 754
6 another his attorney in fact or agent by a power of attorney in 755
7 writing and the writing contains the words "This power of attorney 756
8 shall not be affected by disability of the principal," or "This power 756
9 of attorney shall become effective upon the disability of the 757
10 principal," or similar words showing the intent of the principal that 758
11 the authority conferred shall be exercisable notwithstanding his 759
12 disability, the authority of the attorney in fact or agent is 759
13 exercisable by him as provided in the power on behalf of the 760
14 principal notwithstanding later disability or incapacity of the 761
15 principal at law or later uncertainty as to whether the principal is 761
16 dead or alive. All acts done by the attorney in fact or agent 762
17 pursuant to the power during any period of disability or incompetence 763
18 or uncertainty as to whether the principal is dead or alive have the 764
19 same effect and inure to the benefit of and bind the principal or his 764
20 heirs, devisees and personal representative as if the principal were 765
21 alive, competent and not disabled. If a personal representative 766
22 thereafter is appointed for the principal, the attorney in fact or 766
23 agent, during the continuance of the appointment, shall account to 767
24 the personal representative rather than the principal. The personal 768
25 representative has the same power the principal would have had if he 769
26 were not disabled or incompetent, to revoke, suspend or terminate all 769
27 or any part of the power of attorney or agency. 770

28 NEW SECTION. Sec. 45. (a) The death, disability, or 771
29 incompetence of any principal who has executed a power of attorney in 772
30 writing other than a power as described by section 44 of this 1974 773
31 amendatory act, does not revoke or terminate the agency as to the 773
32 attorney in fact, agent or other person who, without actual knowledge 774
33 of the death, disability, or incompetence of the principal, acts in 775

1 good faith under the power of attorney or agency. Any action so 775
2 taken, unless otherwise invalid or unenforceable, binds the principal 776
3 and his heirs, devisees, and personal representatives. 777

4 (b) An affidavit, executed by the attorney in fact or agent 778
5 stating that he did not have, at the time of doing an act pursuant to 779
6 the power of attorney, actual knowledge of the revocation or 780
7 termination of the power of attorney by death, disability or 780
8 incompetence, is, in the absence of fraud, conclusive proof of the 781
9 nonrevocation or nontermination of the power at that time. If the 782
10 exercise of the power requires execution and delivery of any 782
11 instrument which is recordable, the affidavit when authenticated for 783
12 record is likewise recordable. 783

13 (c) This section shall not be construed to alter or affect any 784
14 provision for revocation or termination contained in the power of 785
15 attorney. 785

16 NEW SECTION. Sec. 46. As used in sections 47 through 60 of 786
17 this 1974 amendatory act unless the context otherwise requires: 787

18 (1) "account" means a contract of deposit of funds between a 788
19 depositor and a financial institution, and includes a checking 789
20 account, savings account, certificate of deposit, share account and 789
21 other like arrangement; 789

22 (2) "beneficiary" means a person named in a trust account as 790
23 one for whom a party to the account is named as trustee; 791

24 (3) "financial institution" means any organization authorized 792
25 to do business under state or federal laws relating to financial 793
26 institutions, including, without limitation, banks and trust 793
27 companies, savings banks, building and loan associations, savings and 794
28 loan companies or associations, and credit unions; 794

29 (4) "joint account" means an account payable on request to one 795
30 or more of two or more parties whether or not mention is made of any 796
31 right of survivorship; 796

32 (5) a "multiple-party account" is any of the following types 797
33 of account: (i) a joint account, (ii) a P.O.D. account, or (iii) a 798

1 trust account. It does not include accounts established for deposit 798
 2 of funds of a partnership, joint venture, or other association for 799
 3 business purposes, or accounts controlled by one or more persons as 800
 4 the duly authorized agent or trustee for a corporation, 800
 5 unincorporated association, charitable or civic organization or a 801
 6 regular fiduciary or trust account where the relationship is 801
 7 established other than by deposit agreement; 802

8 (6) "net contribution" of a party to a joint account as of any 803
 9 given time is the sum of all deposits thereto made by or for him, 804
 10 less all withdrawals made by or for him which have not been paid to 804
 11 or applied to the use of any other party, plus a pro rata share of 805
 12 any interest or dividends included in the current balance. The term 806
 13 includes, in addition, the party's pro rata share of any proceeds of 806
 14 deposit life insurance added to the account by reason of the death of 808
 15 the party whose net contribution is in question; 808

16 (7) "party" means a person who, by the terms of the account, 809
 17 has a present right, subject to request, to payment from a 810
 18 multiple-party account. A P.O.D. payee or beneficiary of a trust 810
 19 account is a party only after the account becomes payable to him by 811
 20 reason of his surviving the original payee or trustee. Unless the 812
 21 context otherwise requires, it includes a guardian, conservator, 812
 22 personal representative, or assignee, including an attaching 813
 23 creditor, of a party. It also includes a person identified as a 813
 24 trustee of an account for another whether or not a beneficiary is 814
 25 named, but it does not include any named beneficiary unless he has a 815
 26 present right of withdrawal; 815

27 (8) "payment" of sums on deposit includes withdrawal, payment 816
 28 on check or other directive of a party, and any pledge of sums on 817
 29 deposit by a party and any set-off, or reduction or other disposition 817
 30 of all or part of an account pursuant to a pledge; 818

31 (9) "proof of death" includes a death certificate, or record 819
 32 or report which is prima facie proof of death under the laws of this 820
 33 state; 820

1 (10) "P.O.D. account" means an account payable on request to 821
2 one person during lifetime and on his death to one or more P.O.D. 822
3 payees, or to one or more persons during their lifetimes and on the 822
4 death of all of them to one or more P.O.D. payees; 823
5 (11) "P.O.D. payee" means a person designated on a P.O.D. 824
6 account as one to whom the account is payable on request after the 825
7 death of one or more persons; 825
8 (12) "request" means a proper request for withdrawal, or a 826
9 check or order for payment, which complies with all conditions of the 827
10 account, including special requirements concerning necessary 827
11 signatures and regulations of the financial institution; but if the 828
12 financial institution conditions withdrawal or payment on advance 829
13 notice, for purposes of this part the request for withdrawal or 829
14 payment is treated as immediately effective and a notice of intent to 830
15 withdraw is treated as a request for withdrawal; 830
16 (13) "sums on deposit" means the balance payable on a 831
17 multiple-party account including interest, dividends, and in addition 832
18 any deposit life insurance proceeds added to the account by reason of 832
19 the death of a party; 833
20 (14) "trust account" means an account in the name of one or 834
21 more parties as trustee for one or more beneficiaries where the 835
22 relationship is established by the form of the account and the 835
23 deposit agreement with the financial institution and there is no 836
24 subject of the trust other than the sums on deposit in the account; 837
25 it is not essential that payment to the beneficiary be mentioned in 837
26 the deposit agreement. A trust account does not include a regular 838
27 trust account under a testamentary trust or a trust agreement which 838
28 has significance apart from the account, or a fiduciary account 839
29 arising from a fiduciary relation such as attorney-client; 839
30 (15) "withdrawal" includes payment to a third person pursuant 840
31 to check or other directive of a party. 841
32 NEW SECTION. Sec. 47. The provisions of sections 48, 49 and 842
33 50 of this 1974 amendatory act concerning beneficial ownership as 843

1 between parties, or as between parties and P.O.D. payees or 844
2 beneficiaries of multiple-party accounts, are relevant only to 845
3 controversies between these persons and their creditors and other 845
4 successors, and have no bearing on the power of withdrawal of these 846
5 persons as determined by the terms of account contracts. The 846
6 provisions of sections 53 through 58 of this 1974 amendatory act 847
7 govern the liability of financial institutions who make payments 847
8 pursuant thereto, and their set-off rights. 848

9 NEW SECTION. Sec. 48. (a) A joint account belongs, during 850
10 the lifetime of all parties, to the parties in proportion to the net 850
11 contributions by each to the sums on deposit, unless there is clear 851
12 and convincing evidence of a different intent. 851

13 (b) A P.O.D. account belongs to the original payee during his 852
14 lifetime and not to the P.O.D. payee or payees; if two or more 853
15 parties are named as original payees, during their lifetimes rights 853
16 as between them are governed by subsection (a) of this section. 854

17 (c) Unless a contrary intent is manifested by the terms of the 855
18 account or the deposit agreement or there is other clear and 856
19 convincing evidence of an irrevocable trust, a trust account belongs 856
20 beneficially to the trustee during his lifetime, and if two or more 857
21 parties are named as trustee on the account, during their lifetimes 858
22 beneficial rights as between them are governed by subsection (a) of 858
23 this section. If there is an irrevocable trust, the account belongs 859
24 beneficially to the beneficiary. 859

25 NEW SECTION. Sec. 49. (a) Sums remaining on deposit at the 860
26 death of a party to a joint account belong to the surviving party or 861
27 parties as against the estate of the decedent unless there is clear 862
28 and convincing evidence of a different intention at the time the 862
29 account is created. If there are two or more surviving parties, 863
30 their respective ownerships during lifetime shall be in proportion to 864
31 their previous ownership interests under section 48 of this 1974 864
32 amendatory act augmented by an equal share for each survivor of any 865
33 interest the decedent may have owned in the account immediately 865

1 before his death; and the right of survivorship continues between the 866
 2 surviving parties. 866

3 (b) If the account is a P.O.D. account, on death of the 867
 4 original payee or of the survivor of two or more original payees, any 868
 5 sums remaining on deposit belong to the P.O.D. payee or payees if 868
 6 surviving, or to the survivor of them if one or more die before the 869
 7 original payee; if two or more P.O.D. payees survive, there is no 870
 8 right of survivorship in event of death of a P.O.D. payee thereafter 870
 9 unless the terms of the account or deposit agreement expressly 871
 10 provide for survivorship between them. 871

11 (c) If the account is a trust account, on death of the trustee 872
 12 or the survivor of two or more trustees, any sums remaining on 873
 13 deposit belong to the person or persons named as beneficiaries, if 873
 14 surviving, or to the survivor of them if one or more die before the 874
 15 trustee, unless there is clear and convincing evidence of a contrary 875
 16 intent; if two or more beneficiaries survive, there is no right of 875
 17 survivorship in event of death of any beneficiary thereafter unless 876
 18 the terms of the account or deposit agreement expressly provide for 876
 19 survivorship between them. 877

20 (d) In other cases, the death of any party to a multiple-party 878
 21 account has no effect on beneficial ownership of the account other 879
 22 than to transfer the rights of the decedent as part of his estate. 879

23 (e) A right of survivorship arising from the express terms of 880
 24 the account or under this section, a beneficiary designation in a 881
 25 trust account, or a P.O.D. payee designation, cannot be changed by 881
 26 will. 881

27 NEW SECTION. Sec. 50. The provisions of section 49 of this 883
 28 1974 amendatory act as to rights of survivorship are determined by 883
 29 the form of the account at the death of a party. This form may be 884
 30 altered by written order given by a party to the financial 884
 31 institution to change the form of the account or to stop or vary 885
 32 payment under the terms of the account. The order or request must be 885
 33 signed by a party, received by the financial institution during the 886

1 party's lifetime, and not countermanded by other written order of the 887
2 same party during his lifetime. 887

3 NEW SECTION. Sec. 51. Any transfers resulting from the 889
4 application of section 49 of this 1974 amendatory act are effective 889
5 by reason of the account contracts involved and this statute and are 890
6 not to be considered as testamentary. 890

7 NEW SECTION. Sec. 52. (1) No multiple-party account will be 891
8 effective against an estate of a deceased party to transfer to a 892
9 survivor sums needed to pay debts, taxes, and expenses of 893
10 administration, including statutory allowances to the surviving 893
11 spouse, minor children and dependent children. A surviving party, 894
12 P.O.D. payee, or beneficiary who receives payment from a 894
13 multiple-party account after the death of a deceased party shall be 895
14 liable to account to his personal representative for amounts 896
15 beneficially owned by the decedent at the time of his death as his 896
16 separate property or by the decedent and the surviving spouse as 897
17 their community property but for no more thereof than necessary under 897
18 subsection (2) of this section. No proceeding to assert this 898
19 liability shall be commenced unless the personal representative has 898
20 received a written demand by a surviving spouse, a creditor or one 899
21 acting for a minor or dependent child of the decedent, and no 900
22 proceeding shall be commenced later than two years following the 900
23 death of the decedent. Sums recovered by the personal representative 901
24 shall be administered as part of the decedent's estate. This section 901
25 shall not affect the right of a financial institution to make payment 902
26 on multiple-party accounts according to the terms thereof, or make it 903
27 liable to the estate of a deceased party unless before payment the 903
28 institution has been served with process in a proceeding by the 904
29 personal representative. 904

30 (2) In determining the need for sums or property recoverable 905
31 under subsection (1) of this section or section 60 of this 1974 906
32 amendatory act, the necessary amount shall be the amount necessary to 907
33 pay or discharge: 907

1 (a) homestead allowance, allowance for support of minor 908
2 children and family allowance; 909
3 (b) claims of creditors; 910
4 (c) expenses of administration or for other purposes, as those 911
5 expenses or costs are allocated between the two types of property. 912
6 Sums and property are so recoverable only to the extent 913
7 necessary for the stated purposes after other assets of the estate 914
8 are exhausted and inter se in the following order: 914
9 (i) multiple-party accounts under section 48 of this 1974 915
10 amendatory act; 916
11 (ii) joint tenancy property under section 60 of this 1974 917
12 amendatory act; 918
13 (iii) property subject to a community property agreement under 919
14 section 60 of this 1974 amendatory act. 920
15 NEW SECTION. Sec. 53. Financial institutions may enter into 922
16 multiple-party accounts to the same extent that they may enter into 923
17 single-party accounts. Any multiple-party account may be paid, on 923
18 request, to any one or more of the parties. A financial institution 924
19 shall not be required to inquire as to the source of funds received 924
20 for deposit to a multiple-party account, or to inquire as to the 925
21 proposed application of any sum withdrawn from an account, for 926
22 purposes of establishing net contributions. 926
23 NEW SECTION. Sec. 54. Any sums in a joint account may be 928
24 paid, on request, to any party without regard to whether any other 929
25 party is incapacitated or deceased at the time the payment is 929
26 demanded; but payment may not be made to the personal representative 930
27 or heirs of a deceased party unless proofs of death are presented to 930
28 the financial institution showing that the decedent was the last 931
29 surviving party or unless there is no right of survivorship under 932
30 section 49 of this 1974 amendatory act. 932
31 NEW SECTION. Sec. 55. Any P.O.D. account may be paid, on 934
32 request, to any original party to the account. Payment may be made 934
33 on request, to the P.O.D. payee or to the personal representative or 935

1 bearing on the rights of parties in disputes between themselves or 958
2 their successors concerning the beneficial ownership of funds in, or 959
3 withdrawn from, multiple-party accounts. 959

4 NEW SECTION. Sec. 58. Notwithstanding any other provision 960
5 of law or of contract, no claim of set off or lien, encumbrance or 961
6 other security interest in the estate of a deceased or any portion of 962
7 such estate shall be asserted or effective against such estate or 962
8 portion thereof except as a claim against the estate pursuant to the 963
9 provisions of chapter 11.40 RCW, as now or hereafter amended, and any 964
10 such claim shall yield priority to the statutory allowances for 965
11 family support provided in chapter 11.52 RCW, as now or hereafter 965
12 amended. 965

13 NEW SECTION. Sec. 59. (a) Any of the following provisions 967
14 in an insurance policy, contract of employment, bond, mortgage, 967
15 promissory note, deposit agreement, pension plan, joint tenancy, 968
16 community property agreement, trust agreement, conveyance or any 969
17 other written instrument effective as a contract, gift, conveyance, 970
18 or trust is deemed to be nontestamentary, and this 1974 amendatory 970
19 act does not invalidate the instrument or any provision: 971

20 (1) that money or other benefits theretofore due to, 972
21 controlled or owned by a decedent shall be paid after his death to a 973
22 person designated by the decedent in either the instrument or a 973
23 separate writing, including a will, executed at the same time as the 974
24 instrument or subsequently; 974

25 (2) that any money due or to become due under the instrument 975
26 shall cease to be payable in event of the death of the promisee or 976
27 the promissor before payment or demand; or 976

28 (3) that any property which is the subject of the instrument 977
29 shall pass to a person designated by the decedent in either the 978
30 instrument or a separate writing, including a will, executed at the 978
31 same time as the instrument or subsequently. 979

32 (b) Nothing in this section limits the rights of creditors 980
33 under other laws of this state. 981

1 NEW SECTION. Sec. 60. No joint tenancy existing under RCW 983
2 64.28.010 and no community property agreement existing under RCW 984
3 26.16.120 will be effective against the estate of a deceased joint 984
4 tenant or deceased party to such agreement to vest in or transfer to 985
5 a survivor property needed to pay debts, taxes, and expenses of 986
6 administration, including statutory allowances to the surviving 986
7 spouse, minor children and dependent children. Surviving joint 987
8 tenants and a surviving party to such an agreement shall be liable to 987
9 account to the personal representative and only to the personal 989
10 representative for property beneficially owned by the decedent at the 989
11 time of his death as his separate property or by the decedent and the 990
12 surviving spouse as their community property but for no more thereof 990
13 than necessary under section 52(2) of this 1974 amendatory act. No 991
14 proceeding to assert this liability shall be commenced unless the 991
15 personal representative has received a written demand by a surviving 992
16 spouse, a creditor or one acting for a minor or dependent child of 993
17 the decedent, and no proceeding shall be commenced later than two 993
18 years following the death of the decedent. Property recovered by the 994
19 personal representative shall be administered as part of the 995
20 decedent's estate. 995

21 Sec. 61. Section 30.20.010, chapter 33, Laws of 1955 and RCW 996
22 30.20.010 are each amended to read as follows: 997

23 When a deposit has been or shall hereafter be made in any 998
24 national bank, state bank or trust company in the name of two or more 999
25 persons, payable to any of such persons, such deposit or any part 999
26 thereof, or any interest, or dividends thereon, ((may be paid to any 1000
27 of said persons, whether the other be living or not, and the receipt 1001
28 or acquittance of the persons so paid shall be valid and sufficient 1001
29 release and discharge of such corporation for any payment so made)) 1002
30 shall be subject to the provisions of sections 46 through 58 of this 1003
31 1974 amendatory act. 1003

32 Sec. 62. Section 30.20.015, chapter 33, Laws of 1955 as last 1004
33 amended by section 5, chapter 133, Laws of 1967 and RCW 30.20.015 are 1005

1 each amended to read as follows: 1005

2 ((After any deposit shall)) Any joint deposit with right of 1006

3 survivorship may be made in a national bank, state bank, trust 1007

4 company or any banking institution subject to the supervision of the 1007

5 supervisor of banking of this state ((; by any person in the names of 1008

6 such depositor and one or more other persons and in form to be paid 1009

7 to any of them or the survivor of them; such deposit and any 1009

8 additions thereto made by any of such persons after the making 1010

9 thereof; shall become the property of such persons as joint tenants 1010

10 with the right of survivorship; and the same; together with all 1011

11 interest thereon; shall be held for the exclusive use of such persons 1012

12 and may be paid to any of them during their lifetimes or the survivor 1012

13 or survivors. The making of the deposit in such form shall; in the 1013

14 absence of fraud or undue influence; be conclusive evidence; in any 1013

15 action or proceeding to which either such bank or the surviving 1014

16 depositor is a party; of the intention of the depositors to vest 1015

17 title to such deposit and the additions thereto in the survivor or 1015

18 survivors)) under the provisions of sections 46 through 58 of this 1016

19 1974 amendatory act. 1016

20 Sec. 63. Section 30.20.020, chapter 33, Laws of 1955 as 1017

21 amended by section 2, chapter 280, Laws of 1961 and RCW 30.20.020 are 1018

22 each amended to read as follows: 1018

23 On the death of any depositor of any bank or trust company, 1019

24 ((such bank or trust company may pay to the surviving spouse; the 1020

25 moneys in said bank or trust company on deposit to the credit of said 1020

26 deceased depositor in cases where the amount of deposit does not 1021

27 exceed the sum of one thousand dollars upon receipt of an affidavit 1022

28 from the surviving spouse; to the effect that the depositor died 1022

29 intestate and had on deposit in all banks and trust companies within 1023

30 the state of Washington money not exceeding the sum of one thousand 1024

31 dollars. The payment of such deposit made in good faith to the 1024

32 spouse making the affidavit shall be a full acquittance and release 1025

33 of the bank for the amount of the deposit so paid. 1025

1 No probate proceeding shall be necessary to establish the 1026
2 right of said surviving spouse to withdraw said deposits upon the 1027
3 filing of said affidavit: PROVIDED; HOWEVER; Whenever an 1027
4 administrator is appointed in an estate where a withdrawal of 1028
5 deposits has been had in compliance with this section; the spouse so 1029
6 withdrawing said deposits shall account for the same to the 1029
7 administrator)) the bank or trust company shall pay out the moneys on 1030
8 deposit to the credit of the deceased upon presentation of an 1030
9 affidavit as provided in section 1 of this 1974 amendatory act. 1031

10 Sec. 64. Section 32.12.010, chapter 13, Laws of 1955 as last 1032
11 amended by section 1, chapter 145, Laws of 1967 and RCW 32.12.010 are 1033
12 each amended to read as follows: 1033

13 Deposits which a savings bank may establish include but are 1034
14 not limited to the following: 1035

15 (1) Deposits in the name of the depositor and another or 1036
16 others in joint form with right of survivorship under the provisions 1037
17 of sections 46 through 58 of this 1974 amendatory act. 1037

18 (2) Deposits in the name of the depositor as trustee for 1038
19 another under a voluntary and revocable trust. 1039

20 (3) Deposits in the name of the depositor and another in joint 1040
21 form with right of survivorship as trustee for another under a 1041
22 voluntary and revocable trust and under the provisions of sections 46 1041
23 through 58 of this 1974 amendatory act. 1042

24 (4) Deposits in the name of, or on behalf of, a partnership or 1043
25 other form of multiple ownership enterprise. 1044

26 (5) Deposits in the name of a corporation, society or 1045
27 unincorporated association. 1046

28 (6) Deposits maintained by a person, society, or corporation 1047
29 as administrator, executor, guardian, or trustee under a will or 1048
30 trust agreement. 1048

31 (7) Deposits designated as community property of a marital 1049
32 community, whether in the name of either or both of the members of 1050
33 the community. 1050

1 (8) Deposits designated as separate property of the depositor. 1051
2 Every such bank may limit the aggregate amount which an 1052
3 individual or any corporation or society may have to his or its 1053
4 credit to such sum as such bank may deem expedient to receive; and 1053
5 may in its discretion refuse to receive a deposit, or may at any time 1054
6 return all or any part of any deposits or require the withdrawal of 1055
7 any dividends or interest. Any account in excess of one hundred 1055
8 thousand dollars may only be accepted or held in accordance with such 1056
9 regulations as the supervisor may establish. 1056
10 Sec. 65. Section 32.12.020, chapter 13, Laws of 1955 as last 1057
11 amended by section 2, chapter 55, Laws of 1969 and RCW 32.12.020 are 1058
12 each amended to read as follows: 1058
13 The sums deposited with any savings bank, together with any 1059
14 dividends or interest credited thereto, shall be repaid to the 1060
15 depositors thereof respectively, or to their legal representatives, 1060
16 after demand in such manner, and at such times, and under such 1061
17 regulations, as the board of trustees shall prescribe, subject to the 1062
18 provisions of this section and RCW 32.12.030. Such regulations shall 1062
19 be posted in a conspicuous place in the room where the business of 1063
20 such savings bank shall be transacted, and shall be available to 1063
21 depositors upon request. All such rules and regulations, and all 1064
22 amendments thereto, from time to time in effect, shall be binding 1065
23 upon all depositors. 1065
24 (1) Such bank may at any time by a resolution of its board of 1066
25 trustees require a notice of not more than six months before repaying 1067
26 deposits, in which event no deposit shall be due or payable until the 1067
27 required notice of intention to withdraw the same shall have been 1068
28 personally given by the depositor: PROVIDED, That such bank at its 1069
29 option may pay any deposit or deposits before the expiration of such 1069
30 notice. But no bank shall agree with its depositors or any of them 1070
31 in advance to waive the requirement of notice as herein provided. 1070
32 (2) Except as provided in subdivisions (3), (4), and (5) of 1071
33 this section the savings bank shall not pay any dividend, or 1072

1 interest, or deposit, or portion thereof, or any check drawn upon it 1072
2 by a depositor unless the certificate of deposit is produced, or the 1073
3 passbook of the depositor is produced and the proper entry is made 1074
4 therein, at the time of the payment. 1074

5 (3) The board of trustees of any such bank may by its bylaws 1075
6 provide for making payments in cases of loss of passbook or 1076
7 certificate of deposit, or other exceptional cases where the 1076
8 passbooks or certificates of deposit cannot be produced without loss 1077
9 or serious inconvenience to depositors, the right to make such 1077
10 payments to cease when so directed by the supervisor upon his being 1078
11 satisfied that such right is being improperly exercised by any such 1079
12 bank; but payments may be made at any time upon the judgment or order 1079
13 of a court. 1079

14 (4) The board of trustees of any such bank may by its bylaws 1080
15 provide for making payments to depositors at their request, of 1081
16 dividends or interest payable on any deposit, without requiring the 1081
17 production of the passbook or certificate of deposit of the 1082
18 depositor, and any payment made in accordance with any such request 1083
19 and the receipt or acquittance of the one to whom such payment is 1083
20 made shall be a valid and sufficient release and discharge to such 1084
21 savings bank for all payments made on account of such request prior 1084
22 to receipt by such savings bank of notice in writing not to pay such 1085
23 sums in accordance with the terms of such request. 1085

24 (5) The issuance of a passbook or certificate of deposit may 1086
25 be omitted for any account if a ledger record thereof is maintained 1087
26 in lieu of a passbook or certificate of deposit on which shall be 1087
27 entered deposits, withdrawals, and interest credited: PROVIDED, That 1088
28 in any event a passbook or certificate of deposit shall be issued 1089
29 upon the request of any depositor. 1089

30 (6) ((if any person dies leaving in any such bank an account 1090
31 on which the balance due him does not exceed one thousand dollars and 1091
32 no executor or administrator of his estate has been appointed, such 1091
33 bank may in its discretion pay the balance of his account to his 1092

1 widow (or if the decedent was a married woman, then to her husband); 1093
 2 next of kin, funeral director, or other creditor who may appear to be 1093
 3 entitled thereto. As a condition of such payment such bank may 1094
 4 require proof by affidavit as to the parties in interest, the filing 1095
 5 of proper waivers, the execution of a bond of indemnity with surety 1095
 6 or sureties by the person to whom the payment is to be made, and a 1096
 7 proper receipt and acquittance for such payment. For any such 1096
 8 payment pursuant to this section such bank shall not be liable to the 1097
 9 decedent's executor or administrator thereafter appointed, unless the 1098
 10 payment was made within six months after the decedent's death, and an 1098
 11 action to recover the amount is commenced within six months after the 1099
 12 date of payment.) On the death of any depositor of any savings bank, 1100
 13 the bank shall pay out the moneys on deposit to the credit of the 1100
 14 deceased upon presentation of an affidavit as provided in section 1 1101
 15 of this 1974 amendatory act. 1101

16 Sec. 66. Section 32.12.030, chapter 13, Laws of 1955 as last 1102
 17 amended by section 4, chapter 176, Laws of 1963 and RCW 32.12.030 are 1103
 18 each amended to read as follows: 1103

19 (1) When any deposit shall be made by or in the name of any 1104
 20 minor, the same shall be held for the exclusive right and benefit of 1105
 21 such minor, and free from the control or lien of all other persons, 1105
 22 except creditors, and shall be paid, together with dividends thereon, 1106
 23 to the person in whose name the deposit shall have been made, and his 1107
 24 receipt or acquittance shall be a valid discharge. 1107

25 (2) When any deposit shall be made by any person in trust for 1108
 26 another, and no other or further notice of the existence and terms of 1109
 27 a legal and valid trust shall have been given in writing to such 1109
 28 savings bank, in the event of the death of the trustee, the deposit 1110
 29 or any part thereof, together with the dividends thereon, may be paid 1111
 30 to the person for whom the deposit was made. 1111

31 (3) (After any deposit shall be made by any person in the 1112
 32 names of such depositor and one or more other persons and in form to 1113
 33 be paid to any of them or the survivor of them, such deposit and any 1113

1 additions thereto made by any of such persons after the making 1114
 2 thereof; shall become the property of such persons as joint tenants; 1115
 3 and the same together with all dividends thereon; shall be held for 1115
 4 the exclusive use of such persons and may be paid to any of them 1116
 5 during their lifetimes or to the survivor or survivors and such 1116
 6 payment and the receipt or acquittance of the one to whom such 1117
 7 payment is made shall be a valid and sufficient release and discharge 1118
 8 to such savings bank for all payments made on account of such deposit 1118
 9 prior to the receipt by such savings bank of notice in writing not to 1119
 10 pay such deposit in accordance with the terms thereof; The making of 1120
 11 the deposit in such form shall; in the absence of fraud or undue 1120
 12 influence; be conclusive evidence; in any action or proceeding to 1121
 13 which either such savings bank or the surviving depositor is a party; 1121
 14 of the intention of all depositors to vest title to such deposit and 1122
 15 the additions thereto in the survivor or survivors) When a deposit 1123
 16 is made in the name of two or more persons and payable to any of such 1123
 17 persons, the deposit or any part thereof, or any interest or 1124
 18 dividends thereon shall be subject to the provisions of sections 46 1125
 19 through 58 of this 1974 amendatory act. 1125
 20 Sec. 67. Section 46, chapter 235, Laws of 1945 as amended by 1126
 21 section 6, chapter 246, Laws of 1963 and RCW 33.20.080 are each 1127
 22 amended to read as follows: 1127
 23 ((If any person shall die having any savings account in an 1128
 24 association amounting to not more than one thousand dollars; and the 1129
 25 association has no knowledge that an executor or administrator has 1129
 26 been appointed; such association may pay such account to the 1130
 27 surviving spouse; next of kin; funeral director or other creditor who 1131
 28 may appear entitled thereto; For any such payment; the association 1131
 29 may require such proofs; waivers; indemnity and receipt and 1132
 30 acquittance as it may deem proper; For any payment made hereunder; 1132
 31 the association shall not be liable to the decedent's executor or 1133
 32 administrator) On the death of any person having any savings account 1134
 33 in an association, the association shall pay out the moneys on 1134

1 deposit to the credit of the deceased upon presentation of an 1135
2 affidavit as provided in section 1 of this 1974 amendatory act. 1135
3 Sec. 68. Section 2, chapter 139, Laws of 1939 as amended by 1136
4 section 1, chapter 210, Laws of 1967 and RCW 49.48.120 are each 1137
5 amended to read as follows: 1137
6 If at the time of the death of any person, his employer is 1138
7 indebted to him for work, labor and services performed, ((and no 1139
8 executor or administrator of his estate has been appointed, such 1139
9 employer shall upon the request of the surviving spouse forthwith pay 1140
10 said indebtedness, in such an amount as may be due not exceeding the 1141
11 sum of one thousand dollars, to the said surviving spouse or if the 1141
12 decedent leaves no surviving spouse, then to the child or children, 1142
13 or if no children, then to the father or mother of said decedent: 1142
14 PROVIDED, HOWEVER, That if by virtue of a community property 1143
15 agreement between the decedent and the surviving spouse, which meets 1144
16 the requirements of RCW 26.46.120, the right to such indebtedness 1144
17 became the sole property of the surviving spouse upon the death of 1145
18 the decedent, the employer shall pay to the surviving spouse the 1145
19 total of such indebtedness or that portion which is governed by the 1146
20 community property agreement upon presentation of said agreement 1147
21 accompanied by affidavit of the surviving spouse stating that such 1147
22 agreement was executed in good faith between the parties thereto and 1148
23 had not been rescinded by the parties prior to the death of the 1149
24 decedent: PROVIDED FURTHER, That in all cases the employer shall 1149
25 require proof of claimant's relationship to decedent by affidavit, 1150
26 and shall require claimant to acknowledge receipt of such payment in 1150
27 writing. Any payments made by an employer pursuant to the provisions 1151
28 of RCW 49.48.115 and 49.48.120 shall operate as a full and complete 1152
29 discharge of the employer's indebtedness to the extent of said 1152
30 payment, and no employer shall thereafter be liable therefor to the 1153
31 decedent's estate, or the decedent's executor or administrator 1153
32 thereafter appointed)) the employer shall pay the indebtedness upon 1154
33 presentation of an affidavit as provided in section 1 of this 1974 1155

1 amendatory act. 1155

2 Sec. 69. Section 10, chapter 173, Laws of 1933 as amended by 1156
3 section 9, chapter 131, Laws of 1943 and RCW 31.12.140 are each 1157
4 amended to read as follows: 1157

5 Shares may be issued and deposits received in the name of a 1158
6 minor, and such shares and deposits may, in the discretion of the 1159
7 directors, be withdrawn by such minor or by his parent or guardian, 1159
8 and in either case payments made on such withdrawals shall be valid 1160
9 and shall release the corporation from liability to the minor, parent 1161
10 or guardian in respect of such share and deposits. A minor under 1161
11 eighteen shall not have the right to vote. 1162

12 Two or more eligible persons may ((jointly become depositors 1163
13 or members in a credit union and such persons shall enjoy the same 1164
14 rights as though the deposits had been made by, or the shares issued 1164
15 to, an individual member, and unless written instructions to the 1165
16 contrary are given to the credit union relative to such account, and 1166
17 written receipt thereof acknowledged by such credit union, any of 1166
18 such persons may exercise the rights of ownership, transfer and 1167
19 withdrawal incidental to such ownership without the other joint 1167
20 holders joining therein; and in the event of death, the survivor or 1168
21 survivors may exercise all rights incidental to such deposits or 1169
22 share)) create multiparty accounts with or without the right of 1169
23 survivorship under the provisions of sections 46 through 58 of this 1170
24 1974 amendatory act. 1170

25 Sec. 70. Section 11.40.010, chapter 145, Laws of 1965 as 1171
26 amended by section 7, chapter 168, Laws of 1967 and RCW 11.40.010 are 1172
27 each amended to read as follows: 1172

28 Every personal representative shall, immediately after his 1173
29 appointment, cause to be published in a legal newspaper published in 1174
30 the county in which the estate is being administered, a notice that 1175
31 he has been appointed and has qualified as such personal 1176
32 representative, and therewith a notice to the creditors of the 1176
33 deceased, requiring all persons having claims against the deceased to 1177

1 serve the same on the personal representative or his attorney of 1178
2 record, and file with the clerk of the court, together with proof of 1179
3 such service, within four months after the date of the first 1180
4 publication of such notice or the date of the filing of a copy of 1181
5 said notice with the clerk of the court, whichever is later. Such 1182
6 notice shall be published once in each week for three successive 1183
7 weeks and a copy of said notice shall be filed with the clerk of the 1184
8 court. If a claim be not filed within the time aforesaid, it shall 1185
9 be barred, except under those provisions included in RCW 11.40.011. 1186
10 Proof by affidavit of the publication of such notice shall be filed 1187
11 with the court by the personal representative. In cases where all 1188
12 the property is awarded to the widow, husband or children as in this 1189
13 title provided, the notice to creditors herein provided for may be 1190
14 omitted. 1191

15 Sec. 71. Section 11.52.016, chapter 145, Laws of 1965 as 1192
16 amended by section 1, chapter 80, Laws of 1972 ex. sess. and RCW 1193
17 11.52.016 are each amended to read as follows: 1194

18 The order of judgment of the court making the award or awards 1195
19 provided for in RCW 11.52.010 through 11.52.024 shall be conclusive 1196
20 and final, except on appeal and except for fraud. The awards in RCW 1197
21 11.52.010 through 11.52.024 provided shall be in lieu of all 1198
22 homestead provisions of the law and of exemptions. The said 1199
23 property, when set aside as herein provided, shall be exempt from and 1200
24 have priority over all claims for the payment of any debt and all 1201
25 rights to set off debts of the deceased or of the surviving spouse 1202
26 existing at the time of death, whether such debt be individual or 1203
27 community. Under RCW 11.52.010 through 11.52.024, the court shall 1204
28 not award more property than could be awarded under the law in effect 1205
29 at the time of the granting of the award. 1206

30 Sec. 72. Section 11.52.024, chapter 145, Laws of 1965 as 1207
31 amended by section 2, chapter 80, Laws of 1972 ex. sess. and RCW 1208
32 11.52.024 are each amended to read as follows: 1209

33 Said decree shall particularly describe the said homestead and 1210

1 other property so awarded, and such homestead and other property so 1202
2 awarded shall not be subject to further administration, and such 1203
3 decree shall be conclusive and final, except on appeal, and except 1204
4 for fraud, and such awards shall be in lieu of all further homestead 1204
5 rights and of all exemptions. The property in addition to the 1205
6 homestead, when set aside as herein provided, shall be exempt from 1206
7 and have priority over all claims for the payment of any debt and all 1207
8 rights to set off debts of deceased or of the surviving spouse 1207
9 existing at the time of death, whether such debt be individual or 1208
10 community. Under RCW 11.52.010 through 11.52.024, the court shall 1209
11 not award more property than could be awarded under the law in effect 1210
12 at the time of the granting of the award. 1210

13 Sec. 73. Section 30.04.260, chapter 33, Laws of 1955 and RCW 1211
14 30.04.260 are each amended to read as follows: 1212

15 No trust company or other corporation which advertises that it 1213
16 will furnish legal advice, construct or prepare wills, or do other 1214
17 legal work for its customers, shall be permitted to act as executor, 1215
18 administrator or guardian; and any trust company or other corporation 1216
19 whose officers or agents shall solicit legal business ((or personally 1216
20 solicit the appointment of such trust company or corporation as 1217
21 executor, administrator or guardian)) shall be ineligible for a 1218
22 period of one year thereafter to be appointed executor, administrator 1218
23 or guardian in any of the courts of this state. 1219

24 Any trust company or other corporation which advertises that 1220
25 it will furnish legal advice, construct or prepare wills, or do other 1221
26 legal work for its customers, and any officer, agent or employee of 1222
27 any trust company or corporation who shall solicit legal business 1222
28 ((or personally solicit the appointment of such trust company or 1223
29 corporation as executor, administrator or guardian)) shall be guilty 1224
30 of a gross misdemeanor. 1224

31 NEW SECTION. Sec. 74. Unless the terms of a testamentary 1225
32 instrument executed prior to the effective date of this 1974 1226
33 amendatory act clearly indicate a contrary intent, said instrument 1227

1 and its attendant estate shall be disposed of in accordance with the 1228
2 applicable provisions of this 1974 amendatory act. 1226
3 NEW SECTION. Sec. 74. The following acts or parts of acts 1229
4 are each hereby repealed: 1230
5 (1) Section 11.28.130, chapter 145, Laws of 1965 and RCW 1232
6 11.28.130; 1232
7 (2) Section 11.28.180, chapter 145, Laws of 1965 and RCW 1234
8 11.28.180; 1234
9 (3) Section 11.28.200, chapter 145, Laws of 1965 and RCW 1236
10 11.28.200; 1236
11 (4) Section 11.40.050, chapter 145, Laws of 1965 and RCW 1238
12 11.40.050; 1238
13 (5) Section 11.44.055, chapter 145, Laws of 1965 and RCW 1240
14 11.44.055; 1240
15 (6) Section 11.44.065, chapter 145, Laws of 1965 and RCW 1242
16 11.44.065; and 1242
17 (7) Section 11.44.080, chapter 145, Laws of 1965, section 11, 1243
18 chapter 168, Laws of 1967 and RCW 11.44.080. 1244
19 NEW SECTION. Sec. 75. If any provision of this 1974 1245
20 amendatory act, or its application to any person or circumstance is 1246
21 held invalid, the remainder of the 1974 amendatory act, or the 1246
22 application of the provision to other persons or circumstances is not 1247
23 affected. 1247
24 NEW SECTION. Sec. 76. (1) Sections 1 and 2 of this 1974 1248
25 amendatory act shall constitute a new chapter in Title 11 RCW. 1249
26 (2) Sections 44 and 45 of this 1974 amendatory act shall 1250
27 constitute a new chapter in Title 11 RCW. 1251
28 (3) Sections 46 through 58 of this 1974 amendatory act shall 1252
29 constitute a new chapter in Title 11 RCW. 1253
30 (4) Sections 59 and 60 of this 1974 amendatory act shall 1254
31 constitute a new chapter in Title 11 RCW. 1255
32 NEW SECTION. Sec. 77. Sections 1 through 74 of this 1974 1256
33 amendatory act shall be known and may be cited as the Probate Reform 1257

1 Act of 1974.

1257

M I N U T E S

COMMITTEE: Senate Judiciary DATE: February 5, 1974
LOCATION: 433, PE TIME: 8:00 A.M.
TYPE: work session CHAIRMAN: Senator Francis
MEMBERS PRESENT: Senators Francis, Atwood, Clarke, Bottiger, Dore, Marsh,
and Van Hollebeke
STAFF PRESENT: Bernard Ryan, Jim Doerty, Jenny Van Ravenhorst, Cindy Fey
OTHER ATTENDANCE: Ken Grosse, Senator Peterson

AGENDA:

- S.H.B. 10 - Implied warranties
- S.H.B. 748 - Probate, general revisions
- E.S.H.B. 1525 - Civil commitment
- H.B.'s 1354-1361 - Code corrections
- H.B. 1259 - Code correction

SUMMARY OF COMMITTEE ACTION:

1. e.s.h.b. 1525 - Do Pass
2. S.H.B. 10 - Do Pass as Amended
3. S.H.B. 748 - Do Pass as Amended
4. H.B. 1259 - Do Pass
5. H.B. 1354 - Do Pass
6. H.B. 1355 - Do pass
7. H.B. 1356 - Do Pass
8. H.B. 1357 - Do Pass
9. H.B. 1358 - Do Pass
10. H.B. 1359 - Held Over
11. H.B. 1360 - Do Pass
12. H.B. 1361 - Do Pass

SHB 748

2-5-74

LAW OFFICES OF
HELSELL, PAUL, FETTERMAN, TODD & HOKANSON

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(1922-1968)

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WILLIAM A. HELSELL
GARY F. LINDEN
HAROLD D. JOHNSON
HAROLD R. ROOKS
JOHN E. EDERER
T. DENNIS GEORGE
JOHN P. STOCKER
THOMAS W. HUBER
MICHAEL G. NEELY
BENJAMIN G. PORTER
LAWRENCE T. DOJHERTY
PETER S. LEWICKI
LARRY SETCHELL
PHILLIP D. NOBLE
NICK S. VERWOLF
LYMAN W. HULL

December 21, 1973

*Bill re
bank solicitation*

Mr. Gerald K. Mooney, Counsel
House Judiciary Committee
Legislative Building
Olympia, Washington

Re: Probate Reform Bills

Dear Gerry:

Thank you for bringing me up to date on the status of the Committee bill for probate reform. You said you had received some comments on Section 73 which would repeal the present ban against a trust officer soliciting appointment of the bank trust department as executor, administrator or guardian, and that it would be appropriate for us to furnish some background and response to these comments.

We have previously supplied the Committee with a lengthy analysis of Substitute House Bill 748, which included this same provision. You may wish to refer to that analysis, pages 4-7.

The problem to which Section 73 is addressed is the single biggest problem in the whole field of probate and trust services-- that is, lack of public information about the availability of the different devices for transmitting property. Section 73 would encourage greater dissemination of information among the public by encouraging trust officers to get out and see their customers and encouraging advertising of the availability of probate services. Therefore, it would stimulate the public to consult counsel so that their wills are drawn and their affairs are put in proper order. Experience shows that no amount of probate reform legislation will ever measurably improve the probate process if the new tools fashioned by the legislation remain unused or unnoticed.

Two recent studies back me up. You may have seen the Fall 1973 Edition of the Real Property, Probate and Trust Journal, published by the American Bar Association. That edition contains an article by Melvin Kram called "Estate Planning-The Public's Perceptions and Attitudes". Kram was associate director of

marketing research at Cunningham & Walsh, a New York advertising agency which was hired by the American Bar Association to conduct a study on public attitudes toward estate planning. Kram had done another study for the American Bankers Association on basically the same problem. "Is Trust Marketing Ready for Chiquita Banana?", Trusts & Estates, September 1972. Kram's summary and implications for the Bar were as follows:

1. The public generally lacks awareness and knowledge of the benefits to be derived by sound estate planning.
2. They are generally unaware of the specific tools that are available to them in this area.
3. They don't appreciate the professional level required to utilize these tools.
4. They get little or no direction in their planning from their attorneys.

In the study for the Bankers, Kram found out that of the estate planning devices which are available to the public generally, the best understood device is a life insurance policy which was understood by 86% of his respondents. This is understandable: the life insurance people aggressively sell the product. A will was understood by only 79%, 75% considered it essential and only 59% had actually gone out and gotten one. This, by the way, was a group with a median income of \$20,000 and a median testamentary estate of \$100,000, and one-quarter of whom estimated their testamentary estates to be in excess of \$250,000. Again, Kram concluded that the biggest problem was that the public just does not understand estate planning.

Incidentally, in his study for the Bar, Kram found out that the public doesn't think it takes much talent to draw a will. (The lawyer is an order taker; you tell him what you want and he writes it up for you--just like ordering ham and eggs.)

The second problem to which this section is addressed is the problem of the wrong executor. Sometimes bank trust departments are named as executor in a will when it is either not feasible or not economical to do so. The bank has to decline to act and the lawyer then has to unravel the family expectations and emotions and find another executor or administrator with the will annexed. Other times, a bank is not named as executor when it should have been named because the estate turns out to be unusually complicated or the family members are incapable of handling the problems. The lawyer's alternatives

then are either to muddle it through with the family and shoulder the legal and administrative chores himself, or hire a trust department as an agent of the executor, or obtain the executor's resignation and the substitution of a trust department as administrator with the will annexed, in which case nonintervention powers are lost. In all of the cases, additional expense and delay is loaded onto the family and the estate. And in many of these instances, the problems could have been avoided by better communication at the outset between the client, the lawyer and the bank trust department.

A small group within the Bar has been the only group to ever express any reservations about trust officers soliciting the bank's appointment as executor, administrator or guardian--this is, asking for the business they are expressly chartered to do. What this phrase really means, for example, is a trust officer saying to a bank customer, "Mr. Customer, the commercial side of our bank tells us that your business is growing. You should sit down with your lawyer and work out an estate plan and when you do would you please consider naming us as executor?" As a practical matter, it is extremely rare that a bank would ever have occasion to want to solicit appointment as administrator or guardian. In drawing the will the lawyer always has the last say--as he should--on who should be executor. He can always veto a bad choice.

In 49 other states personal solicitation such as I have suggested above is permitted. Only one state (New Hampshire) prohibits advertising. In that state, the district court has said in construing the law that the legislature must have preferred personal solicitation!!

As I said above, only a few members of the Bar have objected to personal solicitation. No one else objects because, obviously, advertising and solicitation are an essential ingredient of every business. The lawyer's concern has been that allowing personal solicitation will somehow result in an unusual amount of probate business being referred to the bank's own attorneys. There are two answers to this concern: One is that most lawyers overrate the amount of referral business which trust officers have at their disposal. Referrals are the exception, not the rule. It is unusual for an individual to reach a high executive level or come into the ownership of his own business without already knowing at least a few, and often, many lawyers. Therefore, the hoped for bonanza of referral business simply isn't there. Second, all of the major banks and, I suspect, most if not all of the smaller banks have a written policy governing those few references which do come in and preference

Mr. Gerald K. Mooney, Counsel
December 21, 1973

Page Four

definitely is not to be given to the bank's own attorneys. There is a very simple economic motive for this: the banks have an interest in seeing that the referral business is disbursed as broadly as possible among the competent members of the bar because those lawyers are also the source of a major portion of the bank's business. Any bank which has a reputation for sending all of the business upstairs to its own counsel will suffer in the referrals which it needs for its own survival. No doubt isolated cases may be cited where a lawyer was offended by a reference from the bank to another lawyer. I cannot answer to those isolated cases, but I can say with certainty that trust department management have firmly established policies to avoid discrimination in favor of their own counsel or, for that matter, any single attorney. In any event, this objection has never been voiced as to the drafting of other instruments where the bank is serving in a fiduciary capacity, such as, trustee but not as executor, administrator or guardian.

On occasion, the comment has been made that repeal of this prohibition would create an unfair competitive situation between banks and attorneys. This objection is rarely made nowadays because many firms, like my own, have a policy against counsel acting as an executor. In any event, attorneys who do have a strong interest in going into the trust business as a business could either conduct an unincorporated trust company business (however, with personal liability) or form a trust company under the provisions of Title 30, R.C.W., in corporate form with limited liability, and advertise and personally solicit business.

I understand that the inheritance tax division has produced some figures to show that there is a higher cost associated with having a corporate fiduciary than there is with an individual fiduciary. I have no idea how their study was conducted. However, it is fairly obvious that where the surviving spouse or some other close family member is named as the executor, there will not be a fee. Equally obvious, no corporate fiduciary will serve without a fee. However, the statistics have no bearing on whether the corporate fiduciary ought to solicit business.

Incidentally, on the question of fees, our Supreme Court has held that an individual fiduciary may charge up to 60% more than a corporate fiduciary for the same service because the individual is not in the trust business and therefore less efficient. Higher pay for a lower level of competence! In Re Powell's Estate, 68 Wn.2d 38 (1966).

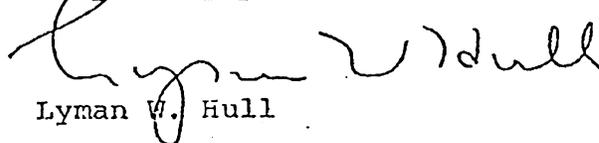
Mr. Gerald K. Mooney
December 21, 1973

Page Five

I think that I have already answered the third point which you mentioned in our telephone conversation, that is, whether the repeal of the no-solicitation clause should be included in this bill. Clearly, if any credence is to be given to the studies commissioned by the American Bar Association and the American Bankers Association adequate public information about probate services is not only important, but may be the most important element in this bill. I believe that a strong stand in favor of Section 73 in the House along with the rest of the bill will definitely foster its passage. My own survey of the lawyer members of the Senate indicates that a majority of them have no problem with Section 73.

Please let me know if you have any further questions on this section.

Very truly yours,



Lyman W. Hull

LWH:BVV

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October 26, 1973

Mr. Gerald R. Mooney
Staff Attorney
House Judiciary Committee
202 House Office Building
Olympia, Washington 98504

Re. Proposed Amendment to Laws of Intestate Succession

Dear Mr. Mooney:

Bob Beschel asked me to communicate to you my views of the most desirable statutory provision for the devolution of community property.

My views are the result of literally hundreds of conferences with clients concerning the disposition of their property, and having handled the probate of many estates, both modest and large.

I believe that the statute should provide for the devolution of all of the community property to the surviving spouse, regardless of whether or not children survive. I have a number of reasons for this conclusion.

The principal reason for my conclusion is that the vast majority of clients instruct me to prepare their wills in this fashion, and this includes many whose estates are sufficiently large to justify other plans for tax savings purposes. I have heard it said that such a rule may be detrimental to the rights of children in the case of a recent second marriage. This is not a valid criticism. In the first place the second spouse has homestead rights which will enable her to acquire all of the assets of a small estate, and in the second place the less time that has elapsed since the second marriage the less community property there will be.

I have also heard it said that the reason people make wills leaving all of their property to the surviving spouse is their desire to circumvent and change the laws of intestate succession. This comment is, also, invalid. Very seldom does a client understand the laws of intestate succession. He comes to make a will because he wants his wishes carried out and to take advantage of the nonintervention provisions.

Mr. Gerald R. Mooney

Page 2

October 26, 1973

Another reason for my conclusion is that I find in these troubled times clients are more uncertain as to how their children might turn out and are, therefore, less willing than future generations might have been to turn property over to their children. There is no assurance, as in previous generations there might have been, that children will continue to take care of a surviving parent should the latter's resources run out.

Finally, there is the advantage, all other things being relatively equal, of simplicity. All of the community property to the surviving spouse, and any separate property divided between the surviving spouse and the children, has this advantage.

If the hundreds of persons with whom I have discussed estate planning are representative of the population as a whole, the overwhelming majority of the citizens of this state will, upon reflection, desire all of their community property to go to the surviving spouse rather than to have it divided between the spouse and children. Any other rule would be merely the conclusion of the judiciary committee that people ought to dispose of their estates in a manner differently than they wish to. I hope the committee will follow the recommendations of the Washington State Bar Association that all community property pass to the surviving spouse.

Very truly yours,



ALLAN H. TOOLE

AHT:jg

cc: Mr. Robert Beschel

SUGGESTED COMMITTEE AMENDMENTS TO SHB 748

Page 3 Section 2 line 26 after "after" and before ",1974" strike "July 1" and insert "October 1".

Page 4 Section 2 lines 5, 9, 13, and 16 strike "July 1" and insert "October 1".

Page 43 Section 57 line 21 change "July 1" to "October 1".

Page 13 Section 14 line 26 after "solvent" and before "such" insert "if the personal representative is other than a creditor of the estate,".

Page 14 Section 16 line 33 after "representative" insert ", other than a creditor of ~~the estate~~,".

Page 15 Section 16 line 2 after "~~estate~~" insert "^{representative}", other than a creditor of ~~the estate~~,".

Page 17 Section 18 line 1 after "amended." Insert a new sentence "The court may restrict the powers of the personal representative in such ~~manner~~ as the court determines and shall thereupon restrict the powers as ordered."

Page 17 Section 19 line 12 after "representative" insert ", other than a creditor of the estate,".

Page 18 Section 21 line 22 after "endorse the" strike "word" and insert ~~term "Vacated"~~ or "Powers restricted". ()

Page 42 Section 55 line 31 after "one" strike "or" and insert "of". This is an apparent typographical error.

Page 27 Section 34 lines 21-33, and page 28, lines 1-12 strike entirely and rewrite as follows:

Every personal representative shall, immediately after his appointment, cause to be published in a legal newspaper published in the county in which the estate is being administered, a notice that he has been appointed and has qualified as such personal representative, and there-with a notice to the creditors of the deceased, requiring all persons having claims against the deceased to serve the same on the personal representative or his attorney of record, and file an executed copy thereof with the clerk of the court, ((together with proof of such service,)) within four months after the date of the first publication of such notice or within four months after the date of the filing of the copy of said notice to creditors with the clerk of the court, whichever is the later. Such notice shall be published once in each week for ~~three~~ ^{two} successive weeks and a copy of said notice shall be filed with the clerk of the court. If a claim be not filed within the time aforesaid, it shall be barred, except under those provisions included in RCW 11.40.011. Proof by affidavit of the publication of such notice shall be filed with the court by the personal representative. In cases where all the property is awarded to the widow, husband or children as in this title provided, the notice to creditors herein provided for may be omitted.

This amendment submitted by Robert Beschel, and approved in concept at the February 1 hearing on SHB 748.

527
SHB 748
2-5-74

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OF COUNSEL

October 25, 1973

Mr. Gerald R. Mooney
Attorney, House Judiciary
Committee
202 House Office Building
Olympia, WA 98504

RE: Descent of Community Property

Dear Gerry:

As we have indicated in our prior discussions and correspondence, it is the feeling of the State Bar Association that in those instances where the decedent left no will his surviving spouse should receive all the decedent's interest in the community property by intestate succession regardless of whether or not the decedent left children or surviving parents.

I proposed this change for the following reasons:

- 1) In a substantial majority of the cases such a provision would conform to what is the actual intent of the decedent;
- 2) It provides a simple basic rule which is easily understandable by the public at large;
- 3) It eliminates the necessity for guardianship and the expenses and complications involved therein in those instances where the decedent left minor children;
- 4) If the decedent wishes to provide a different means of distribution of his estate, he is, of course, free to dispose of his one-half of the community property by will.

In reviewing Martindale and Hubble, I find that the community property states of Idaho, California, Nevada, and New Mexico have descent provisions which leave the decedent's half of the community property to the surviving spouse in intestacy. Arizona, in adopting the UPC, (which becomes effective January 1, 1974) also provided that the surviving spouse should receive the decedent's one-half of the community property in an intestate situation; however, for some reason which is not clear, they provided that if the decedent left children of a prior marriage, the children of the prior marriage would receive the decedent's one-half interest in the community property. This distinction does not appear to make sense as it gives the decedent's children of a prior marriage greater interest in the community property than the children of his current marriage.

Gerald R. Mooney
October 25, 1973
Page 2

Therefore, eliminating this qualification with regard to Arizona, if the Bar Association proposal is adopted, six of the eight community property states would have a similar descent and distribution provision which would be of some advantage to the mobile public.

The monetary criteria currently proposed in the pending legislation would therefore be unique in the community states and would, in my judgment, be an arbitrary standard which probably would, in most instances, not conform to the actual intent of the decedent.

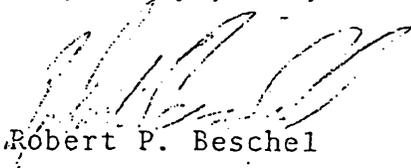
It would also be my feeling that a utilization of a monetary test in determining the manner in which the decedent's community estate is distributed has the potential of opening the door to litigation as to appraised values between heirs who have conflicting interests.

Further, in those instances where the decedent's one-half of the community property exceeded the \$50,000.00 figure, I am wondering how it would be determined, for distribution purposes, which of his assets would be included as part of the \$50,000.00. The problem would appear to become even more critical in those instances where the decedent left substantial interests in real property which would ultimately have to be distributed between his surviving spouse and children.

If the legislature is to adopt the philosophy of obtaining adjudications of intestacy, without probate, the advantage thereof would be reduced as the persons who are entitled to receive the decedent's assets could not be determined until the valuation of his estate had been resolved.

For these reasons, we would sincerely urge that the House Judiciary Sub-committee change its position in this regard to provide that the surviving spouse receive the deceased husband's entire interest in the community property.

Very truly yours,



Robert P. Beschel

RPB:cl

cc: State Representative Rick Smith, Jr.
State Representative Walter Knowles
Bernie Lonctot
Norman Trezona

ALL
ADOPTED

SUGGESTED COMMITTEE AMENDMENTS TO SHB 748

Page 3 Section 2 line 26 after "after" and before ",1974" strike "July 1" and insert "October 1".

Page 4 Section 2 lines 5, 9, 13, and 16 strike "July 1" and insert "October 1".

Page 43 Section 57 line 21 change "July 1" to "October 1".

Page 13 Section 14 line 26 after "solvent" and before "such" insert "if the personal representative is other than a creditor ~~of the estate,~~" *and*

Page 14 Section 16 line 33 after "representative" insert ", other ~~than a creditor of the estate,~~" *and*

Page 15 Section 16 line 1 after "~~testate~~" insert ", other than a ~~creditor of the estate,~~" *representative and*

Page 17 Section 18 line 1 after "amended." Insert a new sentence "The court may restrict the powers of the personal representative in such ~~matters~~ as the court determines and shall thereupon restrict the powers as ordered." *ADOPTED*

Page 17 Section 19 line 12 after "representative" insert ", other than a creditor ~~of the estate,~~".

Page 18 Section 21 line 22 after "endorse the" strike "word" and insert "~~term 'vacated'~~ or "Powers restricted".

"term 'vacated' or

Page 42 Section 55 line 31 after "one" strike "or" and insert "of". This is an apparent typographical error.

line 33, p. 14 - strike "of the estate"

ADOPTED

Page 27 Section 34 lines 21-33, and page 28, lines 1-12 strike entirely and rewrite as follows:

Every personal representative shall, immediately after his appointment, cause to be published in a legal newspaper published in the county in which the estate is being administered, a notice that he has been appointed and has qualified as such personal representative, and there-with a notice to the creditors of the deceased, requiring all persons having claims against the deceased to serve the same on the personal representative or his attorney of record, and file an executed copy thereof with the clerk of the court, ((together with proof of such service,)) within four months after the date of the first publication of such notice or within four months after the date of the filing of the copy of said notice to creditors with the clerk of the court, whichever is the later. Such notice shall be published once in each week for three successive weeks and a copy of said notice shall be filed with the clerk of the court. If a claim be not filed within the time aforesaid, it shall be barred, except under those provisions included in RCW 11.40.011. Proof by affidavit of the publication of such notice shall be filed with the court by the personal representative. In cases where all the property is awarded to the widow, husband or children as in this title provided, the notice to creditors herein provided for may be omitted.

This amendment submitted by Robert Beschel, and approved in concept at the February 1 hearing on SHB 748.

2 instead of 3

M I N U T E S

COMMITTEE: Senate Judiciary DATE: February 1, 1974
LOCATION: 433, PL TIME: 8:00 A.M.
TYPE: work session CHAIRMAN: Senator Francis
MEMBERS PRESENT: Senators Francis, Atwood, Twigg, Clarke, Bottiger, Marsh and Greive

STAFF PRESENT: Bernard Ryan, Jenny Van Ravenhorst, Jim Doerty, Claire Blaisdell

OTHER ATTENDANCE: Senator Peterson, representative Ehlers, Professor Cosway

AGENDA:

S.H.B. 10 - Providing that disclaimer of warranties in the sale of consumer goods shall be ineffective

S.H.B. 748 - Probate, general revisions

SUMMARY OF COMMITTEE ACTION:

1. SHB 10 - Held Over
2. SHB 748 - Held Over

COMMITTEE:

DATE: 2-1-79

BILL NO. 5000
SHORT TITLE: PAMA

LOCATION:

Name	Address	Tel:	Representing	Pro- Con.	Would Like to Testify	Submit Material	Receive Material
Free/Heiler	5205 Ashford	406- 2161	Admission	Pro	Yes		
Lynen Hill	1610 Wash. Blvd. So. Hill	672- 3250	Congress Tennessee	Pro	yes		
John Carter	3900 Longwood Dr. 502 SW E Ridge	357-7016	WHP	Pro	yes		
P. P. Roschard	5331 93rd St. S	78-3161	State Rep	Pro	Yes		
Ray S. Guchner	Edwards Ave.	542-6691	Sen. Assembly		yes		
Don Deane	4514 NE 39th Seattle WA 98101	623-6400	Sen. Chamber for UDC	Con			
Jack Stewart							
Robbie?							
Schumling + Davis?							

Hearing Attendance

Distribution Regarding:

SAB 748

At Committee Meeting Held:

1-1-74

SUBSTITUTE HOUSE BILL 748

By: Representatives Smith, Kelley,
and Laughlin

1. Amends and adds new sections to Title 11 RCW (probate law and practice).
2. The bill's 56 sections are divided into 7 parts (part headings will not be codified), summarized as follows:

Part I. General Provisions (Sections 1 - 3)

Sections 1 - 3: These sections set forth savings clause and applicability, designation of new chapters, and severability clause.

Part II. Provisions Relating to Distribution of Property (Sections 4 - 12)

Sections 4- 5. Provide for transfer of personal property by affidavit, when entire estate has net value of \$10,000 or less, and for discharge and release of the person paying, delivering or transferring such property. Recipient is accountable to others having superior right to the property.

Section 6: Amends RCW 11.04.015 to provide that, in intestate succession, the surviving spouse receives all of the decedent's share of the net community estate.

Sections 7 - 10 Provide for increase of homestead amount from \$15,000 to \$20,000; and provides increase from \$10,000 to \$20,000 of the amount of collateral receivables above which the courts award of homestead of in lieu amounts shall be discretionary.

Sections 11 and 12: Provide for direct distribution to minor heirs in amounts of \$1,000 or less without appointment of guardian or requiring bond, and removes ceiling on further amounts which the probate court may order deposited for the benefit of minors.

Part III. Provisions Relating to Non-Intervention Powers (Sections 13 - 26)

Sections 13 - 24: Amend and add new provision to Chapter 11.68 RCW providing for extension of non-intervention powers to intestate estates, presumption in favor of non-intervention powers, and court determination of the reasonableness of the fees of a personal representative, his attorneys, appraisers and accountants.

Sections 25 and 26: Extend ability to obtain non-intervention powers to administrators with will annexed and administrators de bonis non, except creditors not named in will.

Part IV. Provisions Relating to Adjudication of Testacy or Intestacy and Heirship (Sections 27 - 32)

Sections 27 - 32: Provide for adjudications of testacy establishing a will, or of intestacy and heirship, without appointment of a personal representative, requiring no further administration. Section 32 provides for written notice to each heir, legatee and devisee of the decedent in such cases. Section 33 provides that, if there is no contest, the adjudication is equivalent to a final decree of distribution after four months.

Part V. Provisions Relating to Creditors Claims (Sections 33 - 38)

Section 33: Amends notice to creditors' statute to require that a copy of said notice be filed with the clerk of the court, and provide that the four month claim period commences with the letter of the date of first publication or the date of such filing.

Sections 34 - 38: Provide for filing, without necessity of affidavit, of creditors' claims; the contents thereof; the powers of a personal representative as to such claims; and that claims are deemed allowed if not rejected within six months after date of first publication of notice to creditors.

Part VI. Provisions Relating to Banks, Trust Companies, Accounts (Sections 39-43)

Sections 39 - 42: Adds provisions to statutes concerning the various forms of banks making clear that affidavit procedure under this act (Sections 5 and 6) supplements existing pay-out provisions. Further change in Section 40 would allow non-probate pay-outs, whether estate is testate or intestate, when deposit in the particular bank is not over \$1,000, regardless of amounts deposited elsewhere.

Section 43: Deletes proscription against a trust company or corporation personally soliciting appointment as executor, administrator or guardian.

Part VII. Miscellaneous Provisions

(Sections 44 - 56.)

Section 44 Provides for speedy hearing of petitions for letters of administration, probate or adjudication of testacy or intestacy, and for notice to surviving spouse.

Section 45: Provides for appointment of guardian ad litem for incompetent interested parties as to adjudications of testacy or intestacy.

Section 46: Provides that no personal representative bond is required where the will so directs or the representative is a bank or trust company or is the surviving spouse and it appears that the estate will all go to her (him) and minor children at home. Also provides that court may waive bond in other cases, and that court has discretion to substitute other security or financial arrangements for a bond.

Section 47: Extends from ninety days to four months the period for substituting a personal representative for the decedent as defendant in an action pending at the time of death.

Section 48: Requires personal representative to file a true inventory of property of the estate discovered subsequent to regular inventory filing.

Section 49: Provides that personal representatives shall inventory the estate and may employ an appraiser. The appraisal need not be filed or provided except upon written request.

Section 50. Provides that appraisal fee may be set by the personal representative subject to court review for reasonableness.

Section 51. Reduces from six to three years the statute of limitations as to action to prevent lapse of a devise.

Sections 52 and 53 Provide that written powers of attorney may be effective upon, or in spite of, disability of the principal if so intended.

Section 54. Provides that payable on death provisions in any written instrument effective as a contract, give, conveyance, or trust, are deemed non-testamentary and that this act does not invalidate the instrument or the listed provisions.

Section 55. Repealer.

Section 56: Effective date (10/1/74)

TO: Representative Walt Knowles, Chairman
House Judiciary Committee

FROM: John D. Piacitelli, Chief *JP*
Office on Aging
Department of Social and Health Services

HOUSE JUDICIARY COMMITTEE

October 6, 1973

As Chief of the State Office on Aging of the Department of Social and Health Services, I appreciate the opportunity to present written testimony to the House Judiciary Committee regarding the Uniform Probate Code Bills - HB 11, HB 266, HB 496, HB 676 and HB 748. I am in no position at this time to weigh the advantages and disadvantages of various pieces of legislation being considered by your Committee. Rather, I would like to address myself to the need, as stated to us by many older persons across the state, to modernize the Washington State Probate Code to benefit older persons. The present probate code does appear to be a burden to a number of older persons residing in the State of Washington.

The concerns that we have heard from older persons has, perhaps, best been summarized by The Report of the Governor's Task Force on Aging which was co-chaired by a member of our advisory committee, the State Council on Aging. I believe the recommendations from the Governor's Task Force do indicate a need for revising the current probate code law to more realistically meet the needs of older persons throughout the state:

"The Task Force calls for modernization of the Washington State probate code with twofold emphasis on facilitation and cost reduction in small probate cases for the surviving spouse and/or siblings. Specifically, the Task Force recommends:

-----Reduction of the length of time creditors have to file bills against an estate from four months to two months. Present state law penalizes the survivor to accommodate tardy business practices by not giving him access to property for four months.

-----The establishment of a system of informal probate proceedings. The Task Force recognizes and supports the existence of the non-intervention will; however, we feel that a further reduction in red tape and court costs would be facilitated by a system in which certain types of wills in probate are taken out of formal court and serviced instead by a clerk and deputies.

-----The Task Force recommends that the legislature shift tax burden by reducing inheritance tax on small estates by at least 50 per cent. If necessary, increase revenues on larger estates to compensate for

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smaller estate tax reduction. Additionally, there should be deferral of court and attorney fees for the surviving spouse, 65 years or older, of a small estate. Such a system should be explored and implemented through legislation by the Washington Bar Association in conjunction with the Human Affairs Council and the State Office on Aging."

JDP:nj

cc: Dr. Robert Shearer, Assistant Secretary
Social Services Division - DSHS
Task Force on Aging - Secretary of State's Office

SUMMARY
PROBATE REFORM ACT OF 1974

OCTOBER 6, 1973 DRAFT BY COMMITTEE ON JUDICIARY

The October 6th committee draft is the result of several subcommittee meetings, numerous other conferences and efforts both by and with proponents of the Uniform Probate Code (HB 266 and HB 11), State Bar proposal (HB 496), and corporate trustees' proposal (HB 748), and proponents of HB 676. The resultant draft attempts to maintain the worthy provisions of existing Washington Probate Law, a law which has been shown during hearings to be significantly advanced and progressive by comparison with all other states, while at the same time inserting improvements suggested by the Uniform Probate Code and other sources.

Sections 1 and 2: Provide for transfer of personal property by affidavit, when entire estate is personalty having net value of \$10,000 or less, and for discharge and release of the person paying, delivering or transferring such property. Recipient is accountable to others having superior right to the property.

Sections 3 - 14: Amend and add new provisions to Chapter 11.68 RCW providing for extension of non-intervention powers to intestate estates, presumption in favor of non-intervention powers, and court determination of the reasonableness of the fees of a personal representative or his attorneys.

Sections 15 - 20: Provide for adjudications of testacy establishing a will, or of intestacy and heirship, without appointment of a personal representative, requiring no further administration. Section 19 provides for written notice to each heir, legatee and devisee of the decedent in such cases. Section 20 provides that, if there is no contest, the adjudication is equivalent to a final decree of distribution after four months.

Sections 21 - 25: Provide for filing, without necessity of affidavit, of creditors' claims; the contents thereof; the powers of a personal representative as to such claims; and that claims are deemed allowed if not rejected within six months after date of first publication of notice to creditors. (See also, New Section 71.)

Probate Reform Act of 1974

Section 26: Provides for appointment of guardian ad litem for incompetent interested parties as to adjudications of testacy or intestacy.

Section 27: Amends RCW 11.04.015 to provide that, in intestate succession, the surviving spouse receives all of the decedent's share of the net community estate unless there be surviving issue, in which event the surviving spouse receives the first \$50,000 thereof and one-half of the excess.

Sections 28 - 29: Reduce from six to three years the statute of limitations as to action on debts of the decedent or to prevent lapse of a devise.

Section 30: Provides for speedy hearing of petitions for letters of administration, probate or adjudication of testacy or intestacy, and for notice to surviving spouse.

Section 31: Provides that no bond is required unless the decedent's will or the court so state, and that court has discretion to substitute other security or financial arrangements for a bond.

Section 32: Extends from ninety days to four months the period for substituting a personal representative for the decedent as defendant in an action pending at the time of death.

Section 33: Requires personal representative to file a true inventory of property of the estate discovered subsequent to regular inventory filing.

Section 34: Provides that personal representatives shall inventory the estate and may employ an appraiser. The appraisal need not be filed or provided except upon written request.

Section 35: Provides that appraisal fee may be set by the personal representative subject to court review for reasonableness.

Sections 36 - 39: Provide for increase of homestead amount from \$15,000 to \$20,000; and provides increase from \$10,000 to \$20,000 of the amount of collateral receivables above which the courts award of homestead of in lieu amounts shall be discretionary.

PROBATE REFORM ACT OF 1971

Sections 40 and 41: Provide for direct distribution to minor heirs in amounts of \$1,000 or less without appointment of guardian or requiring bond, and removes ceiling on further amounts which the probate court may order deposited for the benefit of minors.

Sections 42 and 43: Extend ability to obtain non-intervention powers to administrators with will annexed and administrators de bonis non.

Sections 44 and 45: Provide that written powers of attorney may be effective upon, or in spite of, disability of the principal if so intended.

Sections 46 - 60: Relate to multi-party bank accounts. Define terms, and set forth common provisions relating to beneficial ownership, transfer, payment and effect of payment of sums in multi-party accounts in the various banks. Section 59 provides that payable on death provisions in any written instrument effective as a contract, give, conveyance, or trust, are deemed non-testamentary and that this act does not invalidate the instrument or the listed provisions.

Sections 61 - 69: These provisions amend the various banking statutes, and the statute pertaining to wages due an employee at his death, to conform them with the prior provisions of this act relating to affidavit transfer and multi-party accounts.

Section 70: Deletes proscription against a trust company or corporation personally soliciting appointment as executor, administrator or guardian.

Section 71: Amends notice to creditors' statute to require that a copy of said notice be filed with the clerk of the court, and provide that the four month claim period commences with the letter of the date of first publication or the date of such filing.

Section 72 and 73: Conform the exemption provisions in the homestead and in lieu statutes to the priority provisions set forth in section 58 of this act. (ie., priority over rights of set-off)

Section 74: Repealer.

Section 75: Savings clause.

Section 76: New Chapters

Section 77: This act applies to estates under prior testamentary instruments, unless the terms of such instruments clearly indicate a contrary intent.

Section 78: Short title, "Probate Reform Act of 1974".



OFFICE OF PROGRAM RESEARCH

HOUSE OF REPRESENTATIVES

STATE OF WASHINGTON

September 15, 1976

TO: The Honorable Earl Tilly
State Representative

FROM: Linda Larson, Legal Intern
House Committee on Social & Health Services

SUBJECT: Informal Probate

Pursuant to Bob Naon's request, I have investigated the costs which would be involved in implementing an informal probate procedure similar to the Wisconsin plan (Chapter 865, Wisconsin Statutes). Specifically, I have attempted to determine:

1. The costs which counties would incur in administering informal probate; and
2. Whether Wisconsin's informal probate procedure is less expensive for citizens involved in probating estates than Washington procedures.

My conclusions are based on a questionnaire answered by ten Wisconsin county probate registrars (Appendix A), a survey by the Wisconsin probate registrars (Appendix B), and interviews with Washington attorneys in King, Pierce and Thurston Counties.

I. What costs would counties incur in administering informal probate?

The costs of administering informal probate appear to be slight. Six out of the ten Wisconsin counties which responded to the questionnaire reported no additional costs. Most counties simply added the duties of Probate Registrar to those of the already existing position of Register in Probate. The most significant cost was increasing the salary of that person, if an increase was given at all. The average salary increase in 17 counties was \$100.24 per month; however, 27 out of 44 counties did not allocate extra compensation. Most Wisconsin counties supply the necessary forms to laypersons at cost, so that the only administrative expenses involved are the handling and storage of additional documents, and the added demand on staff time.

Since informal probate can be easily implemented through existing administrative bodies, the costs involved appear to be negligible, especially in those counties with low populations.

II. Is Wisconsin informal probate procedure less expensive for citizens involved in probating estates than Washington procedures?

Informal probate is undoubtedly cheaper than traditional forms of court supervised formal probate in both Wisconsin and Washington, but few people would actually be able to utilize informal procedures. It is more difficult to determine whether Wisconsin's informal administration process is less expensive than Washington's nonintervention administration (Chapter 11.68, Rev. Code of Wash.), since the major difference between the two is the complete lack of court appearances in the Wisconsin procedure.

The most significant difference in cost between Wisconsin informal probate and traditional formal probate is in attorney's fees. In Wisconsin informal probate, an attorney need not be engaged at all, or may be engaged on an hourly basis. In Washington, the average amount of attorney's fees involved in formal probate is about \$200 for an estate of \$10,000 or under; \$1,500 for an estate of \$50,000; and \$5,000 for an estate of \$100,000 or over. However, these are merely ballpark figures, as each estate, no matter what its size, has numerous other variables which could immensely increase or decrease the average cost estimate. For example, these figures could reflect the cost of totally administering an estate over a period of several years, a complex process which may involve a time commitment by the attorney amounting at times to a trusteeship. This same complexity severely limits the number of estates which can be probated through either informal or nonintervention administration. If any of the heirs or creditors of an estate contest a will, the matter must be decided by a court. Hence, either by personal preference or legal necessity, the majority of estates are not suitable for informal administration.

The Wisconsin experience supports this conclusion. Of all estates probated since 1973 in the ten counties surveyed, an average of 20 percent have been informally administered. The proportion of estates informally administered ranged from .046 to 25 percent per county. Of those estates which were administered informally, less than half (approximately 41.33 percent) were handled exclusively by a layperson without the aid of an attorney.

Those few people who did administer estates without an attorney did so for the price of filing fees, informal probate forms, certified copies of certain documents, publishing notice to creditors in the newspapers, bonding the personal representative, and opening a bank account for the estate. Certification and notice would be costs involved in any probate procedure, however. The filing fees vary among Wisconsin counties, but average fees are under \$10 for \$10,000 estates; \$50 for \$50,000 estates; and \$100 for \$100,000 estates. The average cost of the necessary forms is \$2.64. In addition, some laypeople hire accountants to handle the taxes involved. In any case, a layperson serving

as personal representative of an estate must invest a substantial amount of time in the procedure. Nonetheless, informal probate was less expensive than formal probate for laypersons who administered an estate without an attorney.

It is debatable whether there would be a corresponding difference in cost between Wisconsin informal administration and Washington's nonintervention administration. In Wisconsin, unless the will is contested, an estate can be totally administered without any court intervention. In Washington's nonintervention procedure, the court in fact intervenes twice. The court intervenes to issue an order allowing the personal representative to administer the will without court intervention and to enter a decree closing the estate (RCW 11.68.030 and RCW 11.68.100). The filing fees for probating an estate in Washington superior courts are about \$32.00. As in Wisconsin, the cost of bonding, notification, and certification must also be paid. Therefore, perhaps the most significant difference in the two procedures would be the time saved by both citizens and courts through the avoidance of court appearances.

III. Conclusion

A relatively small number of people are able to take advantage of informal probate procedures, but those who do use the informal procedure find it less expensive than formal procedures, especially if they do not employ attorneys. However, the cost difference between Wisconsin's informal administration and Washington's nonintervention administration is probably slight. The cost of administering the informal procedure in Wisconsin appears to be insignificant, in part because few people utilize the procedure. (Perhaps more people would take advantage of Washington's nonintervention law if a booklet similar to the one used in Wisconsin, explaining the procedure in lay terms and sold at cost, was made available.)

I hope this information has been helpful.

LL:bt

Encls.

QUESTIONNAIRE RESPONSES

CRAWFORD COUNTY

Pop. 15,252

1. What additional costs, if any, has the county incurred in administering Informal Probate?

Because our county has had only 7 estates which have been probated informally, there has been no additional cost. However, if more people took advantage of this in the future, one more person would have to be added. Our office cannot fill out the forms.

2. What is the average total cost to a layperson without an attorney informally administering an estate of:

- a) \$10,000? Forms fee of \$3.00; Filing^{fee}/of \$6.00 and costs of publication, etc. but these same charges apply to other estates as well.
- b) \$50,000? Forms fee of \$3.00; Filing fee of 50.00, and costs of pub., etc. but these same charges apply to other estates as well.
- c) over \$100,000? Forms Fee of \$3.00; \$100 and for each succeeding \$100,00 or fraction thereof an additional \$100.00

3. What is the average total cost to a layperson with an attorney informally administering an estate of:

- a) \$10,000? I am not able to say, charges are probably based on amount of work in each estate.
- b) \$50,000?
- c) over \$100,000?

4. Of all informal administrations completed in the county since 1973, approximately what percentage were handled exclusively by laypersons as opposed to attorneys?

Of the 7 in our county 1 was handled exclusively by an attorney.

5. Of all estates probated in the county since 1973, approximately what percentage were informally administered?

6. What has been the most significant problem(s) encountered in informal administrations?

For the lay person - Not enough time to devote to probating an estate.

Unfamiliar with procedure.

1. What additional costs, if any, has the county incurred in administering Informal Probate?
None.

2. What is the average total cost to a layperson without an attorney informally administering an estate of:
 - a) \$10,000? Filing fees; substantial time commitment by personal representative.
 - b) \$50,000?
 - c) over \$100,000?

3. What is the average total cost to a layperson with an attorney informally administering an estate of:
 - a) \$10,000? Same as above plus attorney's fees.
 - b) \$50,000?
 - c) over \$100,000?

4. Of all informal administrations completed in the county since 1973, approximately what percentage were handled exclusively by laypersons as opposed to attorneys?
Unknown

5. Of all estates probated in the county since 1973, approximately what percentage were informally administered?
Unknown

6. What has been the most significant problem(s) encountered in informal administrations?
Increased time demands on county staff; staff spends about 45 minutes per interview with each layperson.

*Responses based on telephone conversation with Robert Pekowsky, Probate Registrar and President of Wisconsin Registers in Probate Association.

Door County
Pop. 20,106

1. What additional costs, if any, has the county incurred in administering Informal Probate?
none. (just printing of instruction sheets)

2. What is the average total cost to a layperson without an attorney informally administering an estate of:
 - a) \$10,000? ?
 - b) \$50,000? ?
 - c) over \$100,000? ?

3. What is the average total cost to a layperson with an attorney informally administering an estate of:
 - a) \$10,000? \$500 for atty fees
 - b) \$50,000? \$1500 for atty fees
 - c) over \$100,000? \$3,000 - \$5,000 atty fees

4. Of all informal administrations completed in the county since 1973, approximately what percentage were handled exclusively by laypersons as opposed to attorneys?
two percent.

5. Of all estates probated in the county since 1973, approximately what percentage were informally administered?
two percent.

6. What has been the most significant problem(s) encountered in informal administrations?

Your question doesn't get to the point. It should be difference in costs between both. The difference is exemplified by the costs of Atty fees and personal representative fees. Other fees as funeral and administration are atty well standard.

FONA ULLAC County
84,567 Pop.

1. What additional costs, if any, has the county incurred in administering Informal Probate? Purchase of informal probate forms and bonding the probate registrar.
2. What is the average total cost to a layperson without an attorney informally administering an estate of: unable to answer, due to the fact that a final account is not filed.
 - a) \$10,000?
 - b) \$50,000?
 - c) over \$100,000?
3. What is the average total cost to a layperson with an attorney informally administering an estate of: unable to answer, see above.
 - a) \$10,000?
 - b) \$50,000?
 - c) over \$100,000?
4. Of all informal administrations completed in the county since 1973, approximately what percentage were handled exclusively by laypersons as opposed to attorneys? very difficult to answer because the layperson may employ an attorney on an hourly bases and if an attorney did it exclusively the laypersons still bring in the papers.
5. Of all estates probated in the county since 1973, approximately what percentage were ^{had} informally administered? a very low percentage - since 1973 we have 744 informal probate matters and on the average we usually get between 15-20 a month regular matters.
6. What has been the most significant problem(s) encountered in informal administrations? lack of instructions to the laypersons.

Grant County
Pop. 48,398

1. What additional costs, if any, has the county incurred in administering Informal Probate?
 2. What is the average total cost to a layperson without an attorney informally administering an estate of:
 - a) \$10,000? None
 - b) \$50,000? None
 - c) over \$100,000? Here they need help by a (CPA) for tax returns \$50.00
 3. What is the average total cost to a layperson with an attorney informally administering an estate of:
 - a) \$10,000? \$30.00 per hour
 - b) \$50,000? " "
 - c) over \$100,000? " "
 4. Of all informal administrations completed in the county since 1973, approximately what percentage were handled exclusively by laypersons as opposed to attorneys?

98%
- In some countys in Wisconsin, Attorneys are going 100% with informal
5. Of all estates probated in the county since 1973, approximately what percentage were informally administered? 1%
 6. What has been the most significant problem(s) encountered in informal administrations?

no problem

This form HT-110 is going over in a big way. With a ten dollar bill they transfer a \$100,000.00 jointTenancy. Never go to Court.

Kenosha County
Pop. 120,000

1. What additional costs, if any, has the county incurred in administering Informal Probate?
An additional \$1,000 per year to my salary. The cost of handling additional forms. We sell forms, but at cost, and there is the problem of finding space for storage and the cost of ordering, selling, and handling the forms.
2. What is the average total cost to a layperson without an attorney informally administering an estate of:
 - a) \$10,000? \$3.00 filing fee, approx. \$2.00 for forms. Also additional if an accountant is hired to help with tax forms.
 - b) \$50,000? \$50.00 filing fee plus above.
 - c) over \$100,000? ^{\$100⁰⁰} Filing fee plus above.
3. What is the average total cost to a layperson with an attorney informally administering an estate of: It depends on the attorney and whether or not a federal estate tax return is necessary. I would
 - a) \$10,000? guess the cost for the average estate is in the neighborhood of \$600 to \$750.00.
 - b) \$50,000?
 - c) over \$100,000?
4. Of all informal administrations completed in the county since 1973, approximately what percentage were handled exclusively by laypersons as opposed to attorneys? I would estimate less than 10% are handled by lay persons.
5. Of all estates probated in the county since 1973, approximately what percentage were informally administered? Approximately 25% are handled informally.
6. What has been the most significant problem(s) encountered in informal administrations?
Making laypersons understand they must file the same papers as would be filed in a formal procedure. This includes clearance from the Wisconsin Dept. of Taxation as to income tax and inheritance tax, inventory, final account, etc. The average person has been led to believe by the legislators and media that there is nothing to informal administration, which, of course, is very far from the facts.

Irmengard Miller
Register in Probate/Probate Registrar
Kenosha County, Wisconsin

The population of Kenosha County is approx. 120,000

Leg Hist 000108

major county
Pop. 16, 958

1. What additional costs, if any, has the county incurred in administering Informal Probate?

None, we purchased the Informal probate forms but we charge a fee for them when purchased by the layman or attorney.

2. What is the average total cost to a layperson without an attorney informally administering an estate of:

a) \$10,000? filing fee \$3.00 forms fee \$3.25 *

b) \$50,000? filing fee \$25.00 forms fee \$3.25 *

c) over \$100,000? filing fee \$100.00 forms fee \$3.25 *

* plus cost of publishing in paper and certified copies

3. What is the average total cost to a layperson with an attorney informally administering an estate of:

a) \$10,000? costs would be the same as above except for attorneys fees, which I have no idea of what they charge.

b) \$50,000?

c) over \$100,000?

4. Of all informal administrations completed in the county since 1973, approximately what percentage were handled exclusively by laypersons as opposed to attorneys?

25%

5. Of all estates probated in the county since 1973, approximately what percentage were informally administered?

Approximately 20% were informal

6. What has been the most significant problem(s) encountered in informal administrations?

Trempealeau County
Pop. 23,344

1. What additional costs, if any, has the county incurred in administering Informal Probate?

Informal Probate forms are furnished without charge by county, are formal probate-Salary for Probate Registrar - starting \$150.00/month forms.

2. What is the average total cost to a layperson without an attorney informally administering an estate of:

- a) \$10,000? \$6.00 filing fee Also, a minimal charge for any certified or photocopies as needed. (\$1.00/cert. copy of 1 sheet; and .50¢ ea. photocopy)
- b) \$50,000? \$50.00 filing fee Printer's fees in publication of Notice; Appraiser, surety bond,*
- c) over \$100,000? \$100.-filing fee (\$100,000-\$200,000. estate, & additional \$100. accordingly for each graduated category)

3. What is the average total cost to a layperson with an attorney informally administering an estate of:

- a) \$10,000?) Filing fee the same, and certified copies, etc.
) as for No.2.
- b) \$50,000?) Additional cost for attorney's fee.
)
- c) over \$100,000?)

4. Of all informal administrations completed in the county since 1973, approximately what percentage were handled exclusively by laypersons as opposed to attorneys?

74%

5. Of all estates probated in the county since 1973, approximately what percentage were informally administered?

.046%

6. What has been the most significant problem(s) encountered in informal administrations?

Prohibition of giving advice

Concern for:

personal representative handling tax returns
transferring real estate

*personal representative's fees.
Difficult to estimate as each estate varies, as to expenses incurred, to a very great extent.

Washington County
Pop. 63, 839

1. What additional costs, if any, has the county incurred in administering Informal Probate?
None; no additional personnel, as yet, added to staff; no increase made in my salary and I have assumed the appointment as Probate Registrar as another duty and responsibility;
2. What is the average total cost to a layperson without an attorney informally administering an estate of:
 - a) \$10,000?
Forms - \$2.50; filing fee of \$3.00; publication fee of Notice to Creditors of \$15.50; 1 certified copy of Letters of Per. Rep., \$1.00 totaling sum of \$22.00;
 - b) \$50,000?
Forms-\$2.50; filing fee of \$50.00; publication fee of \$15.50 and \$1.00 for certified copy of Letters of per. Rep. totaling \$69.00;
 - c) over \$100,000?
Forms-\$2.50; filing fee of \$100.00 for each \$100,000 of inventory value; publication fee of \$15.50; 1 certified copy of Letters of Per. Rep. totaling minimum sum of \$119.00. See attached schedule of Filing fees due in estates. We have an Opinion of the Atty. General of the State of Wisconsin wherein it is stated that the same filing fees shall be charged in both Formal and Informal probate proceedings.
3. What is the average total cost to a layperson with an attorney informally administering an estate of:
 - a) \$10,000?
Same adm. expenses as outlined under a, b and c above and only exception is the atty. fee; some charge \$30.00 an hour for x number of hours and
 - b) \$50,000?
some charge according to a former State Bar Min. Fee Schedule which is no longer in existence but is permitted to be used as a guide-line
 - c) over \$100,000?
for fees as follows:

On the first \$10,000-----	5%
On the next \$30,000-----	3 1/2%
On amounts over \$40,000-----	2 1/2%

Minimum fee is \$150.00 under this schedule.
4. Of all informal administrations completed in the county since 1973, approximately what percentage were handled exclusively by laypersons as opposed to attorneys?
50%. Handled 50 proceedings, 25 by laypersons, 25 by attys. with a total Inventory value of \$1,520,553.57.
5. Of all estates probated in the county since 1973, approximately what percentage were informally administered?
%wise, 5% or less.
6. What has been the most significant problem(s) encountered in informal administrations?
Have had no significant problems because of a good understanding of the Probate Code as to formal probate and C. 865, Laws of '73 as to Informal Probate. But no significant trait prevails: The layperson will do anything you instruct them to do without any questioning and assume the rationale is that he or she are so appreciative of any help rendered; on the other hand, when attys. are involved, they put some burdens on the Probate Registrar which I feel are unjustified and don't go along with all requests.

SURVEY RESPONSE

As of January 2, 1976, I have received responses from the following 45 counties:

Barron, Bayfield, Brown, Buffalo, Burnett, Calumet, Chippewa, Clark, Columbia, Crawford, Dane, Dodge, Door, Dunn, Eau Claire, Fond du Lac, Grant, Green, Iowa, Iron, Jackson, Jefferson, Juneau, Kenosha, Kewaunee, LaCrosse, Lincoln, Manitowoc, Monroe, Outagamie, Ozaukee, Pierce, Portage, Price, Racine, Rock, Rusk, Sheboygan, Taylor, Trempealeau, Walworth, Washburn, Washington, Waukesha, Waushara.

In response to the specific questions asked:

(1) Does your county have a Probate Registrar?

Yes — 44 No — 1

If yes, is the Probate Registrar also the Register in Probate?

Yes — 41 No — 3

(2) Was extra compensation allowed for additional duties as Probate Registrar?

Yes — 17 No — 27

(3) If yes, how much?

The answers varied here; however, the compensation range started at \$27.00 per month and ended at \$225.00 per month. The average for the 17 reporting counties is \$100.24.

(4) How many informal administrations were started in

1973? — 98

1974? — 696

1975 (thru Aug. 31, 1976)? — 661

(5) Of these informal administrations, how many were handled by laypersons as opposed to attorneys?

	Laypersons	Attorneys
1973	43	55
1974	299	397
1975 (thru 8/31)	250	411

(6) Of these informals, how many have had the "yo-yo" effect?

1973 — 3

1974 — 31

1975 (thru 8/31) — 20

(7) What problems have been encountered in informal administrations?

The problems listed in response to this question were numerous. As a result, I shall list only those problems that reappear often.

- terminating joint tenancies when no spouse survives;
- inheritance tax returns;
- prohibitions against giving advice;
- transferring real estate;
- the instructions included in the forms are unclear;
- insufficient documents in the packet;
- requests from laypersons that the Probate Registrar fill out the forms;
- lack of office space to permit privacy when conversing with laypeople.

(8) Does your office carry the necessary forms?

Yes — 43 No — 1

What is the charge for the packet?

No charge — 5

Average of the remaining 39 counties — \$2.64

(9) What guidance, if any, do you give laypersons in information administration?

Again, the answers to this question varied greatly. The impression I am left with after reviewing your responses is that most Probate Registrars:

- determine if the layperson can proceed informally;
- explain the forms;
- outline the procedure to be following including tax returns;
- check the papers for errors when laypersons bring them in for filing;
- refer them to written material.

(10) Do you provide written information, instructions, etc.?

Almost every Probate Registrar who responded indicated that they supplied some information to laypersons interested in informal administration. In some cases, these documents are short statements indicating that no assistance can be given by the Probate Registrar. In other cases, detailed explanations of how and what to do are given to the interested parties.

The survey information, particularly as to questions 7, 9, and 10, seemed to reaffirm the impression most of us had after our discussion of informal probate at the last convention. Each county, under the supervision of its Probate Judge, is establishing its own standards regarding informal administration. The best advice we can provide someone inquiring about informal administration, in a county other than our own, is "go ask the Probate Registrar!"

MINUTES

Twenty-Fourth Annual Convention

Wisconsin Registers in Probate

Midway Motor Lodge, Wausau, Wisconsin

September 10, 11, 12, 1975

The twenty-fourth annual meeting of the Wisconsin Registers in Probate was held at Midway Motor Lodge, Wausau, Wisconsin, on September 10, 11, and 12, 1975. The meeting was called to order Thursday morning, September 11, 1975, at 9:00 a.m. by President Betty McCauley.

Hon. Robert W. Dean, Marathon County Judge, gave the address of welcome.

The membership roll was called by the Secretary and the following members were present:

COUNTY	REGISTER
Adams	Bernice Gressel
Bayfield	Lois C. Arnstson
	Violet Weber — Deputy
Brown	James Queoff
Buffalo	Donna M. Kalmes

SUBSTITUTE HOUSE BILL 748

By: Representatives Smith, Kelley,
and Laughlin

1. Amends and adds new sections to Title 11 RCW (probate law and practice).
2. The bill's 56 sections are divided into 7 parts (part headings will not be codified), summarized as follows:

Part I. General Provisions (Sections 1 - 4)

Sections 1 - 3: These sections set forth savings clause and applicability, designation of new chapters, and severability clause.

Part II. Provisions Relating to Distribution of Property (Sections 4 - 13)

Sections 4 - 5: Provide for transfer of personal property by affidavit, when entire estate has net value of \$10,000 or less, and for discharge and release of the person paying, delivering or transferring such property. Recipient is accountable to others having superior right to the property.

Section 6: Amends RCW 11.04.015 to provide that, in intestate succession, the surviving spouse receives all of the decedent's share of the net community estate.

Sections 7 - 10: Provide for increase of homestead amount from \$15,000 to \$20,000; and provides increase from \$10,000 to \$20,000 of the amount of collateral receivables above which the courts award of homestead of in lieu amounts shall be discretionary.

Sections 11 and 12: Provide for direct distribution to minor heirs in amounts of \$1,000 or less without appointment of guardian or requiring bond, and removes ceiling on further amounts which the probate court may order deposited for the benefit of minors.

Part III. Provisions Relating to Non-Intervention Powers (Sections 13 - 24)

Sections 13 - 24: Amend and add new provision to Chapter 11.68 RCW providing for extension of non-intervention powers to intestate estates, presumption in favor of non-intervention powers, and court determination of the reasonableness of the fees of a personal representative, his attorneys, appraisers and accountants.

^{25 and 26}
Sections 26 and 27: Extend ability to obtain non-intervention powers to administrators with will annexed and administrators de bonis non, except creditors not named in will.

Part IV. Provisions Relating to Adjudication of Testacy or Intestacy and Heirship ^{27 32} (Sections ~~28 - 33~~)
27 - 32

Sections 28 - 33: Provide for adjudications of testacy establishing a will, or of intestacy and heirship, without appointment of a personal representative, requiring no further administration. Section 32 provides for written notice to each heir, legatee and devisee of the decedent in such cases. Section 33 provides that, if there is no contest, the adjudication is equivalent to a final decree of distribution after four months.

Part V. Provisions Relating to Creditors Claims ^{37 - 38} (Sections ~~34 - 39~~)
33

Section 34: Amends notice to creditors' statute to require that a copy of said notice be filed with the clerk of the court, and provide that the four month claim period commences with the letter of the date of first publication or the date of such filing.

^{34 - 38}
Sections 35 - 39: Provide for filing, without necessity of affidavit, of creditors' claims; the contents thereof; the powers of a personal representative as to such claims; and that claims are deemed allowed if not rejected within six months after date of first publication of notice to creditors.

Part VI. Provisions Relating to Banks, Trust Companies, Accounts ^{39 - 43} (Sections ~~40 - 44~~)
39 - 42

Sections 40 - 43: Adds provisions to statutes concerning the various forms of banks making clear that affidavit procedure under this act (Sections 5 and 6) supplements existing pay-out provisions. Further change in Section 40 would allow non-probate pay-outs, whether estate is testate or intestate, when deposit in the particular bank is not over \$1,000, regardless of amounts deposited elsewhere.

⁴³
Sections 44: Deletes proscription against a trust company or corporation personally soliciting appointment as executor, administrator or guardian.

Part VII. Miscellaneous Provisions

(Sections ^{44 56}48 - 57)

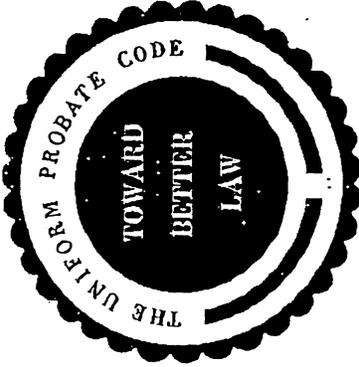
- ⁴⁴Section 45: Provides for speedy hearing of petitions for letters of administration, probate or adjudication of testacy or intestacy, and for notice to surviving spouse.
- ⁴⁵Section 46: Provides for appointment of guardian ad litem for incompetent interested parties as to adjudications of testacy or intestacy.
- ⁴⁶Section 47: Provides that no personal representative bond is required where the will so directs or the representative is a bank or trust company or is the surviving spouse and it appears that the estate will all go to her (him) and minor children at home. Also provides that court may waive bond in other cases, and that court has discretion to substitute other security or financial arrangements for a bond.
- ⁴⁷Section 48: Extends from ninety days to four months the period for substituting a personal representative for the decedent as defendant in an action pending at the time of death.
- ⁴⁸Section 49: Requires personal representative to file a true inventory of property of the estate discovered subsequent to regular inventory filing.
- ⁴⁹Section 50: Provides that personal representatives shall inventory the estate and may employ an appraiser. The appraisal need not be filed or provided except upon written request.
- ⁵⁰Section 51: Provides that appraisal fee may be set by the personal representative subject to court review for reasonableness.
- ⁵¹Section 52: Reduces from six to three years the statute of limitations as to action to prevent lapse of a devise.
- ^{52 + 53}Sections 53 and 54: Provide that written powers of attorney may be effective upon, or in spite of, disability of the principal if so intended.
- ⁵⁴Section 55: Provides that payable on death provisions in any written instrument effective as a contract, give, conveyance, or trust, are deemed non-testamentary and that this act does not invalidate the instrument or the listed provisions.
- ⁵⁵Section 56: Repealer.
- ⁵⁶Section 57: Effective date (10/1/74)

fall c a state's traditional probate code. This use may be particularly appropriate for Article VI, which deals with non-probate transfers at death via multiple-party accounts in financial institutions.

MATERIALS AVAILABLE

The Code is organized into eight articles and 301 sections. The official text, now available from the office of Richard V. Wellman, Educational Director for the Joint Editorial Board for the UPC, Hutchins Hall, University of Michigan Law School, Ann Arbor, Michigan 48104, contains extensive textual comments. These were prepared by the Reporters to aid comprehension of the material. The comments offer suggestions concerning ways states may receive the Code's proposals regarding probate court organization with the least amount of disruption of existing office and court organizations. As written, the Code is most suitable for states having a separate probate court which has, or might receive, the same power in regard to judicial matters assigned to it as a court of general trial jurisdiction. The comments suggest the kind of minor adaptation which would permit the Code to be equally well suited to a state which has combined probate and general trial jurisdiction in a single court. Also, the Code may be readily adapted for use in states which have allocated responsibility for routine probate matters to local offices, frequently manned by non-lawyers, which are not thought to be courts in the usual sense of the word.

Additional study materials, covering all aspects of the Code, are available through the Educational Director's Office.



UPC HIGHLIGHTS

The Joint Editorial Board for the Uniform Probate Code was established in 1970 by the National Conference of Commissioners on Uniform State Laws and the Real Property, Probate and Trust Law Section of the American Bar Association to promote educational activities about the Code. A non-profit organization supported entirely through contributions, J.E.B. is composed of ten members, five from each of the cooperating organizations, who work without compensation to provide information, speakers, programs and the like for individuals and groups interested in the Uniform Probate Code.

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INTRODUCTION

The Uniform Probate Code is designed to improve state laws relating to the affairs of decedents and the settlement of decedents' estates, the designation and control of guardians and conservators for minors and other disabled persons, and the relationship between family trusts and courts. It is also designed to encourage uniformity of these laws.

The Code is the product of a collaborative effort of the Real Property, Probate and Trust Law Section of the American Bar Association and of the National Conference of Commissioners on Uniform State Laws, which began in 1962. Resting on earlier work of the Bar Association which resulted in publication of the Model Probate Code in 1946, the current project achieved an officially approved uniform law in 1969.

The final product reflects the critical judgment of many hundreds of lawyers who served the National Conference and the ABA throughout the drafting process or who gave the project their reactions to preliminary drafts which were widely circulated among bar organizations, law teachers and others. Also, reactions and suggestions from a review committee of the Trust Division, American Bankers Association, and representatives of the federal government (Internal Revenue Service, Veterans Administration) and credit union, life insurance, corporate surety, legal publication, land title insurance and other service industries affected by the subject matter, were received and considered by the controlling organizations.

MAJOR OBJECTIVES

The major objectives of the Code may be summarized as follows:

- (1) Estate Planning and Settlement
To relieve married persons with children of the necessity to make wills in order to prevent unwanted inheritance by children of fractions of property and savings which most prefer to pass to the surviving spouse; and to provide a satisfactory, statutory estate plan for these persons.
- (2) To reduce procedural requirements relating to all inheritances in order to shorten the time during which heirs must

wait to receive theirs, and to lower the expense of probate in small and trouble-free estates.

- (3) To strengthen the institution of individual control of wealth and savings by making transmission of wealth at death by will or intestacy more safe and efficient, thus relieving ordinary persons of existing pressure to entangle their affairs with complex arrangements which appear to involve present commitment but are selected simply to avoid probate.

- (4) To enable efficient planning and unified administration of decedents' estates consisting of land or savings located in two or more states.

Guardianships and Other Arrangements

- (5) To modernize the law of guardianship by reducing the need for court-appointed guardians of minors, and by simplifying procedures relating to the appointment of guardians when this is necessary or desirable.

- (6) To provide modern and efficient proceedings, possibly leading to court appointment of conservators who may function like private trustees, for the necessary care of substantial estates of minors and protection of dependents of disabled (including disappeared) adults.

- (7) To strengthen agency arrangements commonly known as powers of attorney so that elderly persons can arrange for private management of their affairs by simple documents which will remain effective in spite of later incompetency.

- (8) To achieve interstate uniformity and predictability regarding multiple-party accounts in forms widely used as will substitutes by depositors in banks, savings and loans, credit unions and other financial institutions.

Courts

- (9) To establish efficient judicial proceedings available on an optional basis to trustees and beneficiaries of inter vivos and testamentary trusts.

- (10) To clarify the role of local probate officials in regard to decedents' estates, guardianships (not involving juvenile jurisdiction)

tion) and trusts by separating judicial from judicial functions, permitting the former to be handled by non-lawyers, and encouraging law-trained judges to handle only serious problems. In this connection, the Code encourages elimination of jurisdictional and procedural differences between courts of general jurisdiction and courts handling estate and guardianship matters, insofar as judicial activities are concerned.

THE NEED FOR UNIFORMITY

In a project as large as the Uniform Probate Code, it is obvious that the urgency of the claim for uniformity varies significantly with the subject matter of particular portions of the Code. There are, of course, the traditional cases of a need for uniformity such as recognition by the domiciliary state of the formal requirements for execution of wills of a place where the will was executed. At the other extreme is the substantial divergence (sometimes constitutionally required) among the states as to structure of the courts involved in transmission of wealth from one generation to another (e.g., the probate court system), the practices in the different courts and the terminology of court proceedings with which lawyers have become accustomed.

During deliberations, the Conference considered the possibility of a number of separate acts, some of which would be uniform in the sense of an urgent need for uniformity, and some of which would be "model" in the sense of desirable reform. After considering all of the possibilities, the Conference concluded that it would be better to submit a comprehensive approach for consideration by bar associations and state legislatures rather than a series of separate acts, but with the understanding that as to some of the sections there would, undoubtedly, be local changes to accommodate to local needs.

The objective in the Uniform Probate Code is, therefore, that of obtaining essential uniformity rather than obtaining a law of identical language in each of the states on the whole of the Code. The basic argument for uniformity is based on the tendency of Americans to migrate and to invest money without regard to state boundaries.

Also, portions of the Code may be separated for enactment in chapters which will

Official copy

1 AN ACT Relating to probate; amending section 11.04.015, chapter 145, H -0
2 Laws of 1965 as last amended by section 2, chapter 168, Laws 6341;
3 of 1967 and RCW 11.04.015; amending section 11.12.120, chapter 001
4 145, Laws of 1965 and RCW 11.12.120; amending section PARTA
5 11.20.020, chapter 145, Laws of 1965 as amended by section 1, ;003
6 chapter 126, Laws of 1969 ex. sess. and RCW 11.20.020; 7
7 amending section 11.28.010, chapter 145, Laws of 1965 and RCW 7
8 11.28.010; amending section 11.28.070, chapter 145, Laws of 8
9 1965 and RCW 11.28.070; section 11.28.110, chapter 145, Laws 9
10 of 1965 and RCW 11.28.110; amending section 11.28.237, chapter 9
11 145, Laws of 1965 as amended by section 2, chapter 70, Laws of 10
12 1969 and RCW 11.28.237; amending section 11.28.280, chapter 11
13 145, Laws of 1965 and RCW 11.28.280; amending section 11
14 11.40.010, chapter 145, Laws of 1965 as amended by section 7, 12
15 chapter 168, Laws of 1967 and RCW 11.40.010; amending section 12
16 11.40.020, chapter 145, Laws of 1965 and RCW 11.40.020; 13
17 amending section 11.40.030, chapter 145, Laws of 1965 and RCW 14
18 11.40.030; amending section 11.40.040, chapter 145, Laws of 14
19 1965 and RCW 11.40.040; amending section 11.40.060, chapter 15
20 145, Laws of 1965 and RCW 11.40.060; amending section 16
21 11.40.100, chapter 145, Laws of 1965 and 11.40.100; amending 16
22 section 11.40.110, chapter 145, Laws of 1965 and RCW 17
23 11.40.110; amending section 11.44.025, chapter 145, Laws of 18
24 1965 and RCW 11.44.025; amending section 11.44.070, chapter 18
25 145, Laws of 1965 as amended by section 10, chapter 168, Laws 19
26 of 1967 and RCW 11.44.070; amending section 11.52.010, chapter 20
27 145, Laws of 1965 as last amended by section 2, chapter 12, 20

	Laws of 1971 ex. sess. and RCW 11.52.010; amending section	21
2	11.52.012, chapter 145, Laws of 1965 and RCW 11.52.012;	22
3	amending section 11.52.020, chapter 145, Laws of 1965 as last	22
4	amended by section 3, chapter 12, Laws of 1971 ex. sess. and	24
5	RCW 11.52.020; amending section 11.52.022, chapter 145, Laws	25
6	of 1965 as amended by section 4, chapter 12, Laws of 1971 ex.	25
7	sess. and RCW 11.52.022; amending section 11.68.010, chapter	27
8	145, Laws of 1965 as amended by section 1, chapter 19, Laws of	28
9	1969 and RCW 11.68.010; amending section 11.68.020, chapter	28
10	145, Laws of 1965 and RCW 11.68.020; amending section	29
11	11.68.030, chapter 145, Laws of 1965 and RCW 11.68.030;	30
12	amending section 11.68.040, chapter 145, Laws of 1965 and RCW	30
13	11.68.040; amending section 11.76.080, chapter 145, Laws of	31
14	1965 as last amended by section 1, chapter 28, Laws of 1971	32
15	and RCW 11.76.080; amending section 11.76.090, chapter 145,	32
16	Laws of 1965 as amended by section 2, chapter 28, Laws of 1971	33
17	and RCW 11.76.090; amending section 11.76.095, chapter 145,	33
	Laws of 1965 as amended by section 3, chapter 28, Laws of 1971	34
	and RCW 11.76.095; amending section 30.04.260, chapter 33,	35
20	Laws of 1955 and RCW 30.04.260; amending section 30.20.020,	35
21	chapter 33, Laws of 1955 as amended by section 2, chapter 280,	36
22	Laws of 1961 and RCW 30.20.020; amending section 32.12.020,	36
23	chapter 13, Laws of 1955 as last amended by section 2, chapter	37
24	55, Laws of 1969 and RCW 32.12.020; amending section 46,	38
25	chapter 235, Laws of 1945 as amended by section 6, chapter	39
26	246, Laws of 1963 and RCW 33.20.080; amending section 2,	39
27	chapter 139, Laws of 1939 as amended by section 1, chapter	40
28	210, Laws of 1967 and RCW 49.48.120; adding new chapters to	41
29	Title 11 RCW; adding new sections to chapters 11.28, 11.44,	41
30	and 11.68 RCW; repealing section 11.28.130, chapter 145, Laws	42
31	of 1965 and RCW 11.28.130; repealing section 11.28.180,	43
32	chapter 145, Laws of 1965 and RCW 11.28.180; repealing section	43
33	11.48.200, chapter 145, Laws of 1965 and RCW 11.28.200;	44

repealing section 11.40.050, chapter 145, Laws of 1965 and RCW 44
 2 11.40.050; repealing section 11.44.055, chapter 145, Laws of 45
 3 1965 and RCW 11.44.055; repealing section 11.44.065, chapter 46
 4 145, Laws of 1965 and RCW 11.44.065; and repealing section 46
 5 11.44.080, chapter 145, Laws of 1965, section 11, chapter 168, 47
 6 Laws of 1967 and RCW 11.44.080; prescribing and effective 48
 7 date; and declaring an emergency. 48

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON: 49

9 PART I. GENERAL PROVISIONS 50

10 NEW SECTION.

Section 1. The legislature, after extensive 51

11 investigation, finds that the probate law and practice in this state 52
 12 is basically sound and expeditious, advanced in comparison to that of 53
 13 most other jurisdictions, and benefited by familiarity of practice 53
 14 and a well-developed body of case law. The legislature further finds 54
 15 that wholesale repeal of existing law and practice, and substitution 55
 16 therefor of any code which is unproven in use and contains untested 55
 17 risks and pitfalls for the people, would not be beneficial to the 56
 people of this state when the alternative of ongoing selective 57
 improvement to existing law is available. The legislature therefore 57
 20 declares its purpose of making selective improvements in the existing 58
 21 law to the end that transfer of estates after death may be expedited, 58
 22 and attendant costs diminished, consistent with the legitimate rights 59
 23 and claims of those having an interest in the estate. This 1974 60
 24 amendatory act shall be liberally construed to effectuate this 60
 25 purpose. 60

26 NEW SECTION. Sec. 2. On and after July 1, 1974: 61

27 (1) The provisions of this 1974 amendatory act shall apply to 62
28 any wills of decedents dying thereafter; 63

29 (2) The provisions of this 1974 amendatory act shall apply to 64
 30 any proceedings in court then pending or thereafter commenced 65
 31 regardless of the time of the death of decedent except to the extent 65
 32 that in the opinion of the court the former procedure should be made 66
 33 applicable in a particular case in the interest of justice or because 67

of infeasibility of application of the procedure of this 1974 67
2 amendatory act; 67
3 (3) Every personal representative including a person 68
4 administering an estate of a minor or incompetent holding an 69
5 appointment on July 1, 1974, continues to hold the appointment, has 69
6 the powers conferred by this 1974 amendatory act and is subject to 70
7 the duties imposed with respect to any act occurring or done 71
8 thereafter; 71
9 (4) An act done before July 1, 1974 in any proceeding and any 72
10 accrued right is not impaired by this 1974 amendatory act. If a 73
11 right is acquired, extinguished, or barred upon the expiration of a 74
12 prescribed period of time which has commenced to run by the 74
13 provisions of any statute before July 1, 1974, the provisions shall 75
14 remain in force with respect to that right; 75
15 (5) Any rule of construction or presumption provided in this 76
16 1974 amendatory act applies to instruments executed before July 1, 77
17 1974 unless there is a clear indication of a contrary intent. 77
NEW SECTION. Sec. 3. (1) Sections 5 and 6 of this 1974 78
amendatory act shall constitute a new chapter in Title 11 RCW. 79
20 (2) Sections 53 and 54 of this 1974 amendatory act shall 80
21 constitute a new chapter in Title 11 RCW. 81
22 (3) Part headings employed in this 1974 amendatory act do not 82
23 constitute any part of the law and shall not be codified by the code 83
24 reviser and shall not become a part of the Revised Code of 83
25 Washington. 83
26 NEW SECTION. Sec. 4. If any provision of this 1974 84
27 amendatory act, or its application to any person or circumstance is 85
28 held invalid, the remainder of the act, or the application of the 85
29 provision to other persons or circumstances is not affected. 86
30 PART II. PROVISIONS RELATING TO DISTRIBUTION 87
31 OF PROPERTY 88
32 NEW SECTION. Sec. 5. (1) At any time after forty days from 89
33 the date of the decedent's death, any person indebted to the decedent 90

or having possession of tangible personal property or any instrument 91
2 evidencing a debt, obligation, stock or chose in action belonging to 91
3 the decedent, which property is subject to probate, shall make 92
4 payment of the indebtedness or deliver the tangible personal property 93
5 or an instrument evidencing a debt, obligation, stock, or chose in 93
6 action to a person claiming to be the successor of the decedent upon 94
7 receipt of an affidavit made by the successor stating: 94
8 (a) The successor's name and address; 95
9 (b) That the decedent was a resident of the state of 96
10 Washington on the date of his death; 97
11 (c) That the value of the total estate of the decedent subject 98
12 to probate, wherever located, less liens and encumbrances, does not 99
13 exceed ten thousand dollars; 99
14 (d) That forty days have elapsed since the death of the 101
15 decedent; 101
16 (e) That no application or petition for the appointment of a 102
17 personal representative is pending or has been granted in any 103
jurisdiction; 103
(f) That all debts of the decedent including funeral and 104
20 burial expenses have been paid or provided for; 105
21 (g) That the claiming successor has mailed notice identifying 106
22 his claim to all other successors of the decedent and at least ten 107
23 days have elapsed since said mailing, and the claiming successor is 108
24 personally, or with the written authority of all other successors of 108
25 the decedent, entitled to full payment or delivery of the property; 109
26 and 109
27 (h) That the claiming successor has mailed to the inheritance 110
28 tax division of the state department of revenue a notification of his 111
29 claim in such form as the department of revenue may prescribe, and 111
30 that at least ten days have elapsed since said mailing; and 112
31 (2) A transfer agent of any security shall change the 113
32 registered ownership on the books of a corporation from the decedent 114
33 to the successor or successors upon the presentation of an affidavit 114

as provided in subsection (1) of this section; 115

(3) Upon receipt of notification from the inheritance tax 116
division of the state department of revenue that an inheritance tax 117
report is requested, the holder of any property subject to claim by a 118
successor hereunder shall withhold payment, delivery, transfer or 118
issuance of such property until provided with an inheritance tax 119
release. 119

(4) The terms "successor" and "successors" as used in this 120
section and in section 6 of this 1974 amendatory act shall mean that 121
person or those persons, other than creditors, who are entitled to 121
the property of the decedent under his will or the laws of intestate 122
succession as contained in this title. 122

NEW SECTION. Sec. 6. The person paying, delivering, or 123
transferring personal property or the evidence thereof pursuant to 124
section 5 of this 1974 amendatory act is discharged and released to 124
the same extent as if he dealt with a personal representative of the 125
decedent. He is not required to see to the application of the 126
personal property or evidence thereof or to inquire into the truth of 126
any statement in the affidavit or to the payment of any inheritance 127
tax liability. If any person to whom an affidavit is delivered 128
refuses to pay, deliver, or transfer any personal property or 128
evidence thereof, it may be recovered or its payment, delivery, 129
transfer, or issuance compelled upon proof of their right in a 129
proceeding brought for the purpose by or on behalf of the persons 130
entitled thereto. 130

If more than one affidavit is delivered with reference to the 131
same personal property, the person to whom delivered may pay, 132
deliver, transfer, or issue any personal property or evidence thereof 132
in response to the first affidavit received, or alternately implead 133
the money or other personal property into court for payment over to 134
the person entitled thereto. Any person to whom payment, delivery, 134
transfer, or issuance is made is answerable and accountable therefor 135
to any personal representative of the estate or to any other person 136

having a superior right. 136

2 Sec. 7. Section 11.04.015, chapter 145, Laws of 1965 as last 137

3 amended by section 2, chapter 168, Laws of 1967 and RCW 11.04.015 are 138

4 each amended to read as follows: 138

5 The net estate of a person dying intestate, or that portion 139

6 thereof with respect to which the person shall have died intestate, 140

7 shall descend subject to the provisions of RCW 11.04.25C and RCW 141

8 11.02.070, and shall be distributed as follows: 141

9 (1) Share of surviving spouse. The surviving spouse shall 142

10 receive the following share: 143

11 (a) All of the decedent's share of the net community estate 144

12 ((unless there be surviving issue or parents, in which event, the 145

13 surviving spouse shall take one-half of the decedent's share of the 146

14 net community estate)); and 146

15 (b) One-half of the net separate estate if the intestate is 147

16 survived by issue; or 148

17 (c) Three-quarters of the net separate estate if there is no 149

surviving issue, but the intestate is survived by one or more of his 150

parents, or by one or more of the issue of one or more of his 151

20 parents; or 151

21 (d) All of the net separate estate, if there is no surviving 152

22 issue nor parent nor issue of parent. 153

23 (2) Shares of others than surviving spouse. The share of the 154

24 net estate not distributable to the surviving spouse, or the entire 155

25 net estate if there is no surviving spouse, shall descend and be 156

26 distributed as follows: 156

27 (a) To the issue of the intestate; if they are all in the same 157

28 degree of kinship to the intestate, they shall take equally, or if of 158

29 unequal degree, then those of more remote degree shall take by 159

30 representation. 159

31 (b) If the intestate not be survived by issue, then to the 160

32 parent or parents who survive the intestate. 161

33 (c) If the intestate not be survived by issue or by either 162

parent, then to those issue of the parent or parents who survive the 163
2 intestate; if they are all in the same degree of kinship to the 164
3 intestate, they shall take equally, or, if of unequal degree, then 164
4 those of more remote degree shall take by representation. 165
5 (d) If the intestate not be survived by issue or by either 166
6 parent, or by any issue of the parent or parents who survive the 167
7 intestate, then to the grandparent or grandparents who survive the 168
8 intestate; if both maternal and paternal grandparents survive the 168
9 intestate, the maternal grandparent or grandparents shall take 169
10 one-half and the paternal grandparent or grandparents shall take 170
11 one-half. 170
12 (e) If the intestate not be survived by issue or by either 171
13 parent, or by any issue of the parent or parents or by any 172
14 grandparent or grandparents, then to those issue of any grandparent 173
15 or grandparents who survive the intestate; taken as a group, the 173
16 issue of the maternal grandparent or grandparents shall share equally 174
17 with the issue of the paternal grandparent or grandparents, also 175
18 taken as a group; within each such group, all members share equally 176
19 if they are all in the same degree of kinship to the intestate, or, 176
20 if some be of unequal degree, then those of more remote degree shall 178
21 take by representation. 178
22 Sec. 8. Section 11.52.010, chapter 145, Laws of 1965 as last 179
23 amended by section 2, chapter 12, Laws of 1971 ex. sess. and RCW 180
24 11.52.010 are each amended to read as follows: 180
25 If it is made to appear to the satisfaction of the court that 181
26 no homestead has been claimed in the manner provided by law, either 182
27 prior or subsequent to the death of the person whose estate is being 183
28 administered, then the court, after hearing and upon being satisfied 184
29 that the funeral expenses, expenses of last sickness and of 184
30 administration have been paid or provided for, and upon petition for 185
31 that purpose, shall award and set off to the surviving spouse, if 186
32 any, property of the estate, either community or separate, not 186
33 exceeding the value of ((fifteen)) twenty thousand dollars at the 187

time of death, exclusive of general taxes and special assessments 188
2 which were liens at the time of the death of the deceased spouse, and 189
3 exclusive of the unpaid balance of any contract to purchase, 189
4 mortgage, or mechanic's, laborer's or materialmen's liens upon the 190
5 property so set off, and exclusive of funeral expenses, expenses of 191
6 last sickness and administration, which expenses may be deducted from 192
7 the gross value in determining the value to be set off to the 192
8 surviving spouse; provided that the court shall have no jurisdiction 193
9 to make such award unless the petition therefor is filed with the 194
10 clerk within six years from the date of the death of the person whose 195
11 estate is being administered. 195

12 Sec. 9. Section 11.52.012, chapter 145, Laws of 1965 and RCW 196
13 11.52.012 are each amended to read as follows: 197

14 Such award shall be made by an order or judgment of the court 198
15 and shall vest the absolute title, and thereafter there shall be no 199
16 further administration upon such portion of the estate so set off, 200
17 but the remainder of the estate shall be settled as other estates: 200
18 PROVIDED, That no property of the estate shall be awarded or set off, 201
19 as in RCW 11.52.010 through 11.52.024 provided, to a surviving spouse 202
20 who has feloniously killed the deceased spouse: PROVIDED FURTHER, 203
21 That if it shall appear to the court, either (1) that there are 203
22 ((minor or incompetent)) children of the deceased by a former 204
23 marriage or by adoption prior to decedent's marriage to petitioner or 204
24 (2) that the petitioning surviving spouse has abandoned his or her 205
25 minor children or wilfully and wrongfully failed to provide for them, 206
26 or (3) if such surviving spouse or minor children are entitled to 207
27 receive property including insurance by reason of the death of the 207
28 deceased spouse in the sum of ((ten)) twenty thousand dollars, or 208
29 more, then the award in lieu of homestead and exemptions shall lie in 209
30 the discretion of the court, and that whether there shall be an award 210
31 and the amount thereof shall be determined by the court, who shall 210
32 enter such decree as shall be just and equitable but not in excess of 211
33 the award provided herein. 211

Sec. 10. Section 11.52.020, chapter 145, Laws of 1965 as last 212
2 amended by section 3, chapter 12, Laws of 1971 ex. sess. and RCW 213
3 11.52.020 are each amended to read as follows: 213
4 In event a homestead has been, or shall be selected in the 214
5 manner provided by law, whether the selection of such homestead 215
6 results in vesting the complete or partial title in the survivor, it 216
7 shall be the duty of the court, upon petition of any person 216
8 interested, and upon being satisfied that the value thereof does not 217
9 exceed ((fifteen)) twenty thousand dollars at the time of the death, 218
10 exclusive of general taxes and special assessments which were liens 219
11 at the time of the death of the deceased and exclusive of the unpaid 220
12 balance of any contract to purchase, mortgage, or mechanic's, 220
13 laborer's, or materialmen's liens thereon, and exclusive of funeral 221
14 expenses, expenses of last sickness and of administration, which 222
15 expenses may be deducted from the gross value in determining the 222
16 value to be set off to the surviving spouse, to enter a decree, upon 223
17 notice as provided in RCW 11.52.014 or upon longer notice if the 224
court so orders, setting off and awarding such homestead to the 224
survivor, thereby vesting the title thereto in fee simple in the 225
20 survivor: PROVIDED, That if there be any incompetent heirs of the 226
21 decedent, the court shall appoint a guardian ad litem for such 227
22 incompetent heir who shall appear at the hearing and represent the 227
23 interest of such incompetent heir. 228
24 Sec. 11. Section 11.52.022, chapter 145, Laws of 1965 as 229
25 amended by section 4, chapter 12, Laws of 1971 ex. sess. and RCW 230
26 11.52.022 are each amended to read as follows: 231
27 If the value of the homestead, exclusive of all such liens, be 232
28 less than ((fifteen)) twenty thousand dollars, the court, upon being 233
29 satisfied that the funeral expenses, expenses of last sickness and of 234
30 administration, have been paid or provided for, shall set off and 235
31 award additional property, either separate or community, in lieu of 236
32 such deficiency, so that the value of the homestead, exclusive of all 236
33 such liens and expenses when added to the value of the other property 237

awarded, exclusive of all such liens and expenses shall equal 238
2 ((fifteen)) twenty thousand dollars: PROVIDED, That if it shall 239
3 appear to the court, either (1) that there are ((incompetent)) 240
4 children of the deceased by a former marriage or by adoption prior to 240
5 decedent's marriage to petitioner, or (2) that the petitioning 241
6 surviving spouse has abandoned his or her minor children or wilfully 242
7 and wrongfully failed to provide for them, or (3) ((if)) that such 242
8 surviving spouse ((or incompetent children are)) is, or any minor 243
9 child entitled to an award under RCW 11.52.030 is, entitled to 244
10 receive property including insurance by reason of the death of the 245
11 deceased spouse, exclusive of property confirmed to the surviving 245
12 spouse as his or her one-half interest in community property, in the 246
13 sum of ((fifteen)) twenty thousand dollars, or more, then the award 247
14 of property in addition to the homestead, where the homestead is of 248
15 less than ((fifteen)) twenty thousand dollars in value, shall lie in 248
16 the discretion of the court, and that whether there shall be an award 249
17 in addition to the homestead and the amount thereof shall be 250
determined by the court, who shall enter such decree as shall be just 251
and equitable, but not in excess of the award provided herein. 251

20 Sec. 12. Section 11.76.090, chapter 145, Laws of 1965 as 252
21 amended by section 2, chapter 28, Laws of 1971 and RCW 11.76.090 are 253
22 each amended to read as follows: 253

23 When a decree of distribution is made by the court in 254
24 administration upon a decedent's estate and distribution is ordered 255
25 to a person under the age of eighteen years, of a sum of ((five 256
26 hundred)) one thousand dollars or less, the court, in such order of 257
27 distribution, shall order the same paid ((to the clerk of the court 257
28 wherein administration of such estate is pending, and the same shall 258
29 be paid by the clerk)), for the use and as the property of said 259
30 minor, to the person named in said order of distribution to receive 259
31 the same, without requiring bond or appointment of any guardian. 260

32 Sec. 13. Section 11.76.095, chapter 145, Laws of 1965 as 261
33 amended by section 3, chapter 28, Laws of 1971 and RCW 11.76.095 are 262

each amended to read as follows:

262

2 When a decree of distribution is made by the court in 263
 3 administration upon a decedent's estate or when distribution is made 264
 4 by ((an executor)) a personal representative under a nonintervention 265
 5 will and distribution is ordered under such decree or authorized 265
 6 under such nonintervention will to a person under the age of eighteen 266
 7 years, ((and the value of such property or money is five thousand 267
 8 dollars or less and there is no general guardian of the 268
 9 incompetent;)) the court ((may)) shall require either that 268

10 (1) the money be deposited in a bank or trust company or be 269
 11 invested in an account in an insured ((savings and loan association)) 270
 12 financial institution for the benefit of the ((incompetent)) minor 270
 13 subject to withdrawal only upon the order of the court in the 271
 14 original probate proceeding, or upon said minor's attaining the age 272
 15 of eighteen years and furnishing proof thereof satisfactory to the 273
 16 depository, or 273

17 (2) ((in all other cases)) a general guardian shall be 274
 18 appointed and qualify and the money or ((other)) property be paid or 275
 19 delivered to such guardian prior to the discharge of the personal 276
 20 representative in the original probate proceeding. 276

21 This section shall not bar distribution under RCW 11.76.090 as 277
 22 now or hereafter amended. 278

23 PART III. PROVISIONS RELATING TO NONINTERVENTION POWERS 279

24 Sec. 14. Section 11.68.010, chapter 145, Laws of 1965 as 280
 25 amended by section 1, chapter 19, Laws of 1969 and RCW 11.68.010 are 281
 26 each amended to read as follows: 281

27 ((In all cases where it is provided in the last will and 282
 28 testament of the deceased that the estate shall be settled in a 283
 29 manner provided in such last will and testament, and that such estate 284
 30 shall be settled without the intervention of any court or courts, and 284
 31 where it duly appears to the court, by the inventory filed, and other 285
 32 proof, that the estate is fully solvent, which fact may be 286
 33 established by an order of the court on the filing of the inventory, 287

1 it shall not be necessary to take out letters testamentary or of 287
2 administration, except to admit the will to probate and to file a 288
3 true inventory of all the property of such estate and give notice to 289
4 creditors and to the body having charge of the collection of 289
5 inheritance tax, in the manner required by law. 290
6 After the probate of any such will and the filing of the 291
7 inventory all such estates may be managed and settled without the 292
8 intervention of the court, if the last will and testament so 293
9 provides. However, when the estate is ready to be closed the court, 293
10 upon application, shall have authority and it shall be its duty, to 294
11 make and cause to be entered a decree finding and adjudging that all 295
12 debts have been paid, finding and adjudging also the heirs and those 295
13 entitled to take under the will and distributing the property to the 296
14 persons entitled thereto. Such decree shall be made after notice 297
15 given as provided for like decrees in the estates of persons dying 298
16 intestate. If no application for a final decree is filed, the 298
17 executor shall, when the administration of the estate has been 299
completed, file a written declaration to that effect, and thereupon 300
his powers shall cease. 300
20 The executor of a nonintervention will shall not be deemed to 301
21 waive his nonintervention powers by obtaining any order appointing 302
22 appraisers, fixing or allowing appraiser's fees, dispensing with 303
23 appraisement, or approving or allowing creditors' claims, not by 303
24 obtaining any other order or decree.) Subject to the provisions of 305
25 this chapter, if the estate of a decedent, who died either testate or 306
26 intestate, is solvent, such estate shall be managed and settled 306
27 without the intervention of the court; the fact of solvency shall be 307
28 established by the entry of an order of solvency. An order of 308
29 solvency may be entered at the time of the appointment of the 308
30 personal representative or at any time thereafter where it appears to 309
31 the court by the petition of the personal representative, or the 310
32 inventory filed, and/or other proof submitted, that the estate of the 310
33 decedent is solvent, and that notice of the application for an order 311

of solvency has been given to those persons entitled thereto when
2 required by RCW 11.68.040 as now or hereafter amended. 312

3 Sec. 15. Section 11.68.020, chapter 145, Laws of 1965 and RCW 313
4 11.68.020 are each amended to read as follows: 314

5 ((In all cases, if the party named in such will as executor 315
6 declines to execute the trust or dies or is otherwise disabled for 316
7 any cause from acting as such executor, letters testamentary or of 317
8 administration shall issue and the estate be settled as in other 317
9 cases:)) Unless court supervision of an estate shall be specifically 318
10 required under the terms and provisions of a will, a decedent shall 319
11 be deemed to have intended any and all personal representatives named 320
12 in his will to have the power to administer his estate without the 320
13 intervention of court, and any personal representative or personal 321
14 representatives named in the decedent's will shall acquire 322
15 nonintervention powers without prior notice, upon meeting the 322
16 requirements of RCW 11.68.010 as now or hereafter amended. 323

17 Sec. 16. Section 11.68.030, chapter 145, Laws of 1965 and RCW 324
18 11.68.030 are each amended to read as follows: 325

19 ((If the person named in the will fails to execute the trust 326
20 faithfully and to take care and promote the interest of all parties, 327
21 then, upon petition of a creditor of the estate, or of any of the 328
22 heirs, or of any person on behalf of any minor heir, the court shall 328
23 cite such person to appear before it, and if, upon hearing of the 329
24 petition it appears that the trust in such will is not faithfully 330
25 discharged, and that the parties interested, or any of them, have 331
26 been or are about to be damaged by the doings of the executor, then, 331
27 in the discretion of the court, administration may be had and 332
28 required as is required in the administration of estates, and in all 333
29 such cases the costs of the citation and hearing shall be charged 334
30 against the party failing and neglecting to execute the trust as 334
31 required in the will:)) Subject to giving prior notice when required 335
32 under RCW 11.68.040 as now or hereafter amended and the entry of an 336
33 order of solvency, the personal representative of an estate of a 336

decedent who died intestate or the personal representative with the 336
2 will annexed of the estate of a decedent who died testate shall have 337
3 the power to administer the estate without further intervention of 337
4 court after the entry of an order of solvency and furnishing bond 338
5 when required. 338
6 Sec. 17. Section 11.68.040, chapter 145, Laws of 1965 and RCW 339
7 11.68.040 are each amended to read as follows: 340
8 ((Executors acting under nonintervention wills may, if the 341
9 estate has been adjudged solvent, mortgage, lease, sell, exchange, 342
10 and convey the real and personal property of the testator, and borrow 343
11 money on the general credit of the estate, without an order of the 343
12 court for that purpose and without notice, approval, or confirmation, 344
13 and in all other respects administer and settle the estate without 345
14 the intervention of the court. The other party to any such 345
15 transaction and his successors in interest shall be entitled to have 346
16 it conclusively presumed that such transaction is necessary for the 347
17 administration of the estate.)) 347
18 If the decedent shall have died intestate, or the petitioning 348
19 personal representative is not named in the will as such, and in 349
20 either case the petitioner wishes to acquire nonintervention powers, 350
21 the personal representative shall, after filing the petition for 350
22 order of solvency, give notice of his intention to apply to the court 351
23 for nonintervention powers to all heirs, devisees, legatees of the 352
24 decedent, and all parties who have requested notice under RCW 353
25 11.28.240, who have not, in writing, either waived notice of the 353
26 hearing or consented to the entry of an order of solvency; said 354
27 notice shall be given at least ten days prior to the date fixed by 355
28 the personal representative for the hearing on his petition for an 356
29 order of solvency: PROVIDED, That no prior notice of said hearing 356
30 shall be required when the personal representative is: 357
31 (1) The surviving spouse of the decedent and the decedent left 358
32 no issue of a prior marriage; or 359
33 (2) A bank or trust company authorized to do trust business in 360

the state of Washington.

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The notice required by this section shall be sent by regular mail and proof of mailing of said notice shall be by affidavit filed in the cause. Said notice shall contain the name of the decedent's estate, the probate cause number, the name and address of the personal representative, and shall state in substance as follows:

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(a) The personal representative has petitioned the superior court of _____ county, state of Washington, for the entry of an order of solvency and a hearing on said petition will be held on _____, the _____ day of _____, 19____, at _____ o'clock, _____ M.:

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(b) The petition for order of solvency has been filed with said court;

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(c) Upon the entry of an order of solvency by the court, the personal representative will be entitled to administer and close the decedent's estate without further court intervention or supervision;

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(d) Any heir, legatee or devisee shall have the right to appear at the time of the hearing on the petition for an order of solvency to object to the granting of nonintervention powers to the personal representative.

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If no notice is required, or all heirs, legatees and devisees have either waived notice of said hearing or consented to the entry of an order of solvency as provided in this section, the court may hear the petition for an order of solvency at any time.

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NEW SECTION. Sec. 18. There is added to chapter 11.68 RCW a new section to read as follows:

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If at the time set for the hearing upon the petition for the entry of an order of solvency, any party entitled to notice under the provisions of RCW 11.68.040 as now or hereafter amended, shall appear and object to the granting of nonintervention powers to the personal representative of the estate, the court shall consider said objections, if any, and the entry of an order of solvency shall be discretionary with the court upon being satisfied by proof as

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required in RCW 11.68.010 as now or hereafter amended. If no heir, 389
2 legatee or devisee of the decedent shall appear at the time of the 390
3 hearing to object to the entry of an order of solvency, the court 390
4 shall enter an order of solvency upon being satisfied by proof as 391
5 required in RCW 11.68.010 as now or hereafter amended. 392

6 NEW SECTION. Sec. 19. There is added to chapter 11.68 RCW a 393
7 new section to read as follows: 394

8 If, after the entry of an order of solvency, any personal 395
9 representative of the estate of the decedent shall die, resign or 396
10 otherwise become disabled from any cause from acting as the 397
11 nonintervention personal representative, the successor personal 397
12 representative shall administer the estate of the decedent without 398
13 the intervention of court after notice and hearing as required by 399
14 sections 17 and 18 of this 1974 amendatory act, unless at the time of 399
15 said hearing objections to the granting of nonintervention powers to 400
16 such successor personal representative shall be made by an heir, 401
17 legatee, devisee, or creditor of the decedent, and unless the court, 401
18 after hearing said objections shall refuse to grant nonintervention 402
19 powers to such successor personal representative. If no heir, 403
20 legatee, devisee, or creditor of the decedent shall appear at the 403
21 time of the hearing to object to the granting of nonintervention 404
22 powers to such successor personal representative, the court shall 405
23 enter an order granting nonintervention powers to the successor 406
24 personal representative. 406

25 NEW SECTION. Sec. 20. There is added to chapter 11.68 RCW a 407
26 new section to read as follows: 408

27 If any personal representative who has been granted 409
28 nonintervention powers fails to execute his trust faithfully or is 410
29 subject to removal for any reason specified in RCW 11.28.250 as now 411
30 or hereafter amended, upon petition of any unpaid creditor of the 411
31 estate who has filed a claim or any heir, devisee, legatee, or of any 413
32 person on behalf of any incompetent heir, devisee, or legatee, such 413
33 petition being supported by affidavit which makes a prima facie 414

showing of cause for removal or restriction of powers, the court 415
2 shall cite such personal representative to appear before it, and if, 415
3 upon hearing of the petition it appears that said personal 416
4 representative has not faithfully discharged said trust or is subject 417
5 to removal for any reason specified in RCW 11.28.250 as now or 417
6 hereafter amended, then, in the discretion of the court said personal 418
7 representative may be removed and a successor appointed with such 419
8 powers as the court may determine, and in the event the court shall 420
9 restrict the powers of the personal representative in any manner, it 420
10 shall endorse the words "Powers restricted" upon the original order 421
11 of solvency together with the date of said endorsement, and in all 422
12 such cases the cost of the citation, hearing, and reasonable 422
13 attorney's fees may be awarded as the court determines. 423

14 NEW SECTION. Sec. 21. There is added to chapter 11.68 RCW a 424
15 new section to read as follows: 425

16 After such notice as the court may require, the order of 426
17 solvency shall be vacated upon the petition of any personal 427
18 representative, heir, legatee, devisee, or creditor, if supported by 428
19 proof satisfactory to the court that said estate has become 428
20 insolvent. 428

21 If, after hearing, the court shall vacate the prior order of 429
22 solvency, the court shall endorse the word "Vacated" upon the 430
23 original order of solvency together with the date of said 431
24 endorsement. 431

25 NEW SECTION. Sec. 22. There is added to chapter 11.68 RCW a 432
26 new section to read as follows: 433

27 Any personal representative acting under nonintervention 434
28 powers, may mortgage, encumber, lease, sell, exchange, and convey the 435
29 real and personal property of the decedent, and borrow money on the 436
30 general credit of the estate, without an order of court for that 437
31 purpose and without notice, approval or confirmation, and in all 438
32 other respects administer and settle the estate of the decedent 439
33 without intervention of court. Any other party to any such 439

transaction and his successors in interest shall be entitled to have 440
it conclusively presumed that such transaction is necessary for the 441
administration of the decedent's estate. 441

NEW SECTION. Sec. 23. There is added to chapter 11.68 RCW a 442
new section to read as follows: 443

(1) When the estate is ready to be closed, the court, upon 444
application by the personal representative who has nonintervention 445
powers, shall have the authority and it shall be its duty, to make 446
and cause to be entered a decree which either: 446

(a) Finds and adjudges that all approved claims of the 447
decedent have been paid, finds and adjudges the heirs of the decedent 448
or those persons entitled to take under his will, and distribute the 449
property of the decedent to the persons entitled thereto; or 449

(b) Approves the accounting of the personal representative and 450
settles the estate of the decedent in the manner provided for in the 451
administration of those estates in which the personal representative 452
has not acquired nonintervention powers. 452

(2) Either decree provided for in this section shall be made 453
after notice given as provided for in the settlement of estates by a 454
personal representative who has not acquired nonintervention powers. 455
The petition for either decree provided for in this section shall 455
state the fees paid or proposed to be paid to the personal 456
representative, his attorneys, accountants, and appraisers, and any 456
heir, devisee, or legatee whose interest in the assets of a 457
decedent's estate would be reduced by the amount of said fee shall 458
receive a copy of said petition with the notice of hearing thereon; 458
at the request of the personal representative or any said heir, 459
devisee, or legatee, the court shall, at the time of the hearing on 460
either petition, determine the reasonableness of said fees. The 460
criteria for and reasonable range of fees reviewed shall be as 461
established by court rules issued by the state supreme court. 461
Pending establishment and publication of such rules in determining 462
the reasonableness of attorney's fees, the court shall not accept as 463

the sole basis a percentage of the estate, but shall take into
2 consideration all criteria forming the basis for the determination of
3 the amount of such fees as contained in the code of professional
4 responsibility; in determining the reasonableness of the fees charged
5 by any personal representative, accountants, and appraisers the court
6 shall take into consideration the criteria forming the basis for the
7 determination of attorney's fees, to the extent applicable, and any
8 other factors which the court determines to be relevant in the
9 determination of the amount of fees to be paid to such personal
10 representative.

11 NEW SECTION. Sec. 24. There is added to chapter 11.68 RCW a
12 new section to read as follows:

13 If a personal representative who has acquired nonintervention
14 powers shall not apply to the court for either final decree provided
15 for in section 23 of this 1974 amendatory act, the personal
16 representative shall, when the administration of the estate has been
17 completed, file a declaration to that effect, which declaration shall
18 state as follows:

(1) The date of the decedent's death, and his residence at the
20 time of death, whether or not the decedent died testate or intestate,
21 and if testate, the date of his last will and testament and the date
22 of the order admitting said will to probate;

(2) That each creditor's claim which was justly due and
24 properly presented as required by law has been paid or otherwise
25 disposed of by agreement with the creditor, and that the amount of
26 state inheritance or federal estate tax due as the result of the
27 decedent's death has been determined, settled, and paid;

(3) The personal representative has completed the
29 administration of the decedent's estate without court intervention,
30 and the estate is ready to be closed;

(4) If the decedent died intestate, the names, addresses (if
32 known) and relationship of each heir of the decedent, together with
33 the distributive share of each said heir;

(5) The amount of fees paid or to be paid to each of the 486
 2 following: (a) Personal representative or representatives, (b) 487
 3 attorney or attorneys, (c) appraiser or appraisers, and (d) 487
 4 accountant or accountants. That the personal representative believes 488
 5 said fees to be reasonable and does not intend to obtain court 489
 6 approval of the amount of said fees or to submit an estate accounting 489
 7 to the court for approval. 489

8 Subject to the requirement of notice as provided in this 490
 9 section, unless an heir, devisee, or legatee of a decedent shall 491
 10 petition the court either for an order requiring the personal 491
 11 representative to obtain court approval of the amount of fees paid or 492
 12 to be paid to the personal representative, his attorneys, appraisers, 493
 13 or accountants, or for an order requiring an accounting, or both, 493
 14 within thirty days from the date of filing a declaration of 494
 15 completion of probate, the personal representative will be discharged 494
 16 and his powers cease thirty days after the filing of said declaration 495
 17 of completion of probate, and said declaration of completion of 496
 18 probate shall, at said time, be the equivalent of the entry of a 496
 19 decree of distribution in accordance with the provisions of chapter 497
 20 11.76 RCW for all legal intents and purposes. 497

21 Within five days of the date of the filing of the declaration 498
 22 of completion, the personal representative or his attorney shall mail 499
 23 a copy of said declaration of completion to each heir, legatee, or 500
 24 devisee of the decedent (who has not waived notice of said filing, in 500
 25 writing, filed in the cause) together with a notice which shall be as 501
 26 follows: 501

27 CAPTION OF CASE NOTICE OF FILING OF 503
 28 DECLARATION OF COMPLETION 504
 29 OF PROBATE 505

30 NOTICE IS HEREBY GIVEN that the attached Declaration of 506
 31 Completion of Probate was filed by the undersigned in the 507
 32 above-entitled court of the day of, 19.....; unless you 507
 33 shall file a petition in the above-entitled court requesting the 508

1 court to approve the reasonableness of said fees, or for an 509
 2 accounting, or both, and serve a copy thereof upon the personal 509
 3 representative or his attorney, within thirty days after the date of 510
 4 said filing, the amount of fees paid or to be paid will be deemed 511
 5 reasonable, the acts of the personal representative will be deemed 511
 6 approved, and the Declaration of Completion of Probate will be final 512
 7 and deemed the equivalent of a Decree of Distribution entered under 513
 8 chapter 11.76 RCW. 513

9 If you file and serve a petition with the period specified, 514
 10 the undersigned will request the court to fix a time and place for 515
 11 the hearing of said petition, and you will be notified of the time 515
 12 and place thereof, by mail, or personal service, not less than ten 516
 13 days before the hearing on said petition. 516

14 Dated this day of, 19 517
 15 519

16 Personal Representative 520

17 If all heirs, devisees, and legatees of the decedent shall 521
 waive, in writing, the notice required by this section, the personal 522
 representative shall be discharged and the declaration of completion 523
 20 of probate will become effective as a decree of distribution upon the 523
 21 date of filing thereof. 523

22 NEW SECTION. Sec. 25. There is added to chapter 11.68 RCW a 524
 23 new section to read as follows: 525

24 A personal representative who has acquired nonintervention 526
 25 powers in accordance with this chapter shall not be deemed to have 527
 26 waived his nonintervention powers by obtaining any order or decree 528
 27 during the course of his administration of the estate. 528

28 Sec. 26. Section 11.28.070, chapter 145, Laws of 1965 and RCW 529
 29 11.28.070 are each amended to read as follows: 530

30 Administrators with the will annexed shall have the same 531
 31 authority as the executor named in the will would have had, and their 532
 32 acts shall be as effectual for every purpose: PROVIDED, That they 533
 33 shall not lease, mortgage, pledge, exchange, sell or convey any real 533

1 or personal property of the estate except under order of the court 534
2 and pursuant to procedure under existing laws pertaining to the 535
3 administration of estates in cases of intestacy, unless the powers 536
4 expressed in the will are directory and not discretionary, or said 536
5 administrator with will annexed shall have obtained nonintervention 537
6 powers as provided in chapter 11.68 RCW. 538

7 Sec. 27. Section 11.28.280, chapter 145, Laws of 1965 and RCW 539
8 11.28.280 are each amended to read as follows: 540

9 If the personal representative of an estate dies, resigns, or 541
10 the letters are revoked before the settlement of the estate, letters 542
11 of administration of the estate remaining unadministered shall be 543
12 granted to those to whom administration would have been granted if 544
13 the original letters had not been obtained, or the person obtaining 544
14 them had renounced administration, and the administrator de bonis non 545
15 shall perform like duties and incur like liabilities as the former 546
16 personal representative, and shall serve as administrator with will 547
17 annexed de bonis non in the event a will has been admitted to 548
18 probate. Said administrator de bonis non may, upon satisfying the 548
19 requirements and complying with the procedures provided in chapter 549
20 11.68 RCW, administer the estate of the decedent without the 550
21 intervention of court. 550

22 PART IV. PROVISIONS RELATING TO ADJUDICATIONS OF TESTACY OR 551
23 INTESTACY AND HEIRSHIP 552

24 Sec. 28. Section 11.20.020, chapter 145, Laws of 1965 as 553
25 amended by section 1, chapter 126, Laws of 1969 ex. sess. and RCW 554
26 11.20.020 are each amended to read as follows: 554

27 (1) Applications for the probate of a will and for letters 555
28 testamentary, or either, may be made to the judge of the court having 556
29 jurisdiction and the court may immediately hear the proofs and either 557
30 probate or reject such will as the testimony may justify. Upon such 558
31 hearing the court shall make and cause to be entered a formal order, 558
32 either establishing and probating such will, or refusing to establish 559
33 and probate the same, and such order shall be conclusive except in 560

the event of a contest of such will as hereinafter provided. All 561
 2 testimony in support of the will shall be reduced to writing, signed 561
 3 by the witnesses, and certified by the judge of the court. If the 562
 4 application for probate of a will does not request the appointment of 563
 5 a personal representative and the court enters an adjudication of 563
 6 testacy establishing such will no further administration shall be 565
 7 required except as commenced pursuant to section 33 of this 1974 565
 8 amendatory act. 565

(2) In addition to the foregoing procedure for the proof of 566
 10 wills, any or all of the attesting witnesses to a will may, at the 567
 11 request of the testator or, after his decease, at the request of the 568
 12 executor or any person interested under it, make an affidavit before 569
 13 any person authorized to administer oaths, stating such facts as they 569
 14 would be required to testify to in court to prove such will, which 570
 15 affidavit may be written on the will or may be attached to the will 571
 16 or to a photographic copy of the will. The sworn statement of any 572
 17 witness so taken shall be accepted by the court as if it had been 572
 18 taken before the court. 572

Sec. 29. Section 11.28.010, chapter 145, Laws of 1965 and RCW 573
 20 11.28.010 are each amended to read as follows: 574

After ((probate of any will)) the entry of an order admitting 575
 22 a will to probate and appointing a personal representative, or 576
 23 personal representatives, letters testamentary shall be granted to 577
 24 the persons therein appointed executors. If a part of the persons 577
 25 thus appointed refuse to act, or be disqualified, the letters shall 578
 26 be granted to the other persons appointed therein. If all such 579
 27 persons refuse to act, letters of administration with the will 579
 28 annexed shall be granted to the person to whom administration would 580
 29 have been granted if there had been no will. 581

Sec. 30. Section 11.28.110, chapter 145, Laws of 1965 and RCW 582
 31 11.28.110 are each amended to read as follows: 583

Application for letters of administration, or, application for 584
 33 an adjudication of intestacy and heirship without the issuance of 585

1 letters of administration shall be made by petition in writing, 586
 2 signed and verified by the applicant or his attorney, and filed with 587
 3 the court, which petition shall set forth the facts essential to 587
 4 giving the court jurisdiction of the case, and state, if known, the 588
 5 names, ages and ((residences)) addresses of the heirs of the deceased 588
 6 and that the deceased died without a will. If the application for an 589
 7 adjudication of intestacy and heirship does not request the 590
 8 appointment of a personal representative and the court enters an 590
 9 adjudication of intestacy no further administration shall be required 591
 10 except as set forth in section 32 of this 1974 amendatory act. 592

11 Sec. 31. Section 11.28.237, chapter 145, Laws of 1965 as 593
 12 amended by section 2, chapter 70, Laws of 1969 and RCW 11.28.237 are 594
 13 each amended to read as follows: 594

14 Within twenty days after appointment, the personal 595
 15 representative of the estate of a decedent shall cause written notice 596
 16 of his said appointment, and of the pendency of said probate 597
 17 proceedings, to be served personally or mailed to each heir, legatee 597
 18 and devisee of the estate whose names and addresses are known to him, 598
 19 and proof of such mailing shall be made by affidavit and filed in the 599
 20 cause. 599

21 NEW SECTION. Sec. 32. There is added to chapter 11.28 RCW a 600
 22 new section to read as follows: 601

23 If no personal representative is appointed to administer the 602
 24 estate of a decedent, the person obtaining the adjudication of 603
 25 testacy, or intestacy and heirship, shall, cause written notice of 604
 26 said adjudication to be mailed to each heir, legatee, and devisee of 604
 27 the decedent, which notice shall contain the name of the decedent's 605
 28 estate and the probate cause number, and shall: 606

29 (1) State the name and address of the applicant; 607

30 (2) State that on the day of, 19...., the 608
 31 applicant obtained an order from the superior court of 609
 32 county, state of Washington, adjudicating that the 610
 33 decedent died intestate, or testate, whichever shall be the case; 610

(3) In the event the decedent died testate, enclose a copy of his will therewith, and state that the adjudication of testacy will become final and conclusive for all legal intents and purposes unless any heir, legatee, or devisee of the decedent shall contest said will within four months after the date the said will was adjudicated to be the last will and testament of the decedent;

(4) In the event that the decedent died intestate, set forth the names and addresses of the heirs of the decedent, their relationship to the decedent, the distributive shares of the estate of the decedent which they are entitled to receive, and that said adjudication of intestacy and heirship shall become final and conclusive for all legal intents and purposes, unless, within four months of the date of said adjudication of intestacy, a petition shall be filed seeking the admission of a will of the decedent for probate, or contesting the adjudication of heirship.

Notices provided for in this section may be served personally or sent by regular mail, and proof of such service or mailing shall be made by an affidavit filed in the cause.

NEW SECTION. Sec. 33. There is added to chapter 11.28 RCW a new section to read as follows:

Unless, within four months after the entry of the order adjudicating testacy or intestacy and heirship, and the mailing of the notice required in section 32 of this 1974 amendatory act any heir, legatee or devisee of the decedent shall offer a later will for probate or contest an adjudication of testacy in the manner provided in this title for will contests, or offer a will of the decedent for probate following an adjudication of intestacy and heirship, or contesting the determination of heirship, an order adjudicating testacy or intestacy and heirship without appointing a personal representative to administer a decedent's estate shall, as to those persons by whom notice was waived or to whom said notice was mailed, be deemed the equivalent of the entry of a final decree of distribution in accordance with the provisions of chapter 11.76 RCW

for the purpose of:

635

2 (1) Establishing the decedent's will as his last will and 636
3 testament and persons entitled to receive his estate thereunder; or 637

4 (2) Establishing the fact that the decedent died intestate, 638
5 and those persons entitled to receive his estate as his heirs at law. 639

6 The right of an heir, legatee, or devisee to receive the 640
7 assets of a decedent shall, to the extent otherwise provided by this 641
8 title, be subject to the prior rights of the decedent's creditors and 642
9 of any persons entitled to a homestead award or award in lieu of 643
10 homestead or family allowance, and nothing contained in this section 644
11 shall be deemed to alter or diminish such prior rights, or to 645
12 prohibit any person for good cause shown, from obtaining the 646
13 appointment of a personal representative to administer the estate of 647
14 the decedent after the entry of an order adjudicating testacy or 648
15 intestacy and heirship. However, if the petition for letters 649
16 testamentary or of administration shall be filed more than four 650
17 months after the date of the adjudication of testacy or of intestacy 651
18 and heirship, the issuance of such letters shall not affect the 652
19 finality of said adjudications. 653

20 PART V. PROVISIONS RELATING TO CREDITORS CLAIMS 654

21 Sec. 34. Section 11.40.010, chapter 145, Laws of 1965 as 655
22 amended by section 7, chapter 168, Laws of 1967 and RCW 11.40.010 are 656
23 each amended to read as follows: 657

24 Every personal representative shall, immediately after his 658
25 appointment, cause to be published in a legal newspaper published in 659
26 the county in which the estate is being administered, a notice that
27 he has been appointed and has qualified as such personal
28 representative, and therewith a notice to the creditors of the
29 deceased, requiring all persons having claims against the deceased to
30 serve the same on the personal representative or his attorney of
31 record((7 and file with the clerk of the court, together with proof
32 of such service)) within four months after the date of the first
33 publication of such notice or the date of the filing of a copy of

1 said notice with the clerk of the court, whichever is later, and 659
2 within ten days of such service file said claim or claims with the 660
3 clerk of the court together with proof of such service. Such notice 660
4 shall be published once in each week for three successive weeks and a 661
5 copy of said notice shall be filed with the clerk of the court. If a 662
6 claim be not filed within the time aforesaid, it shall be barred, 663
7 except under those provisions included in RCW 11.40.011. Proof by 664
8 affidavit of the publication of such notice shall be filed with the 665
9 court by the personal representative. In cases where all the 665
10 property is awarded to the widow, husband or children as in this 666
11 title provided, the notice to creditors herein provided for may be 667
12 omitted. 667

13 Sec. 35. Section 11.40.020, chapter 145, Laws of 1965 and RCW 668
14 11.40.020 are each amended to read as follows: 669

15 Every claim ((served and filed as above provided shall be 670
16 supported by the affidavit of the claimant that the amount is justly 671
17 due; that no payments have been made thereon; and that there are no 672
18 offsets to the same to the knowledge of the claimant)) shall be 672
19 signed by the claimant, or his attorney, or any person who is 673
20 authorized to sign claims on his, her, or its behalf, and shall 674
21 contain the following information: 674

22 (1) The name and address of the claimant; 675

23 (2) The name, business address (if different from that of the 676
24 claimant), and nature of authority of any person signing the claim on 677
25 behalf of the claimant; 677

26 (3) A written statement of the facts or circumstances 678
27 constituting the basis upon which the claim is submitted; 679

28 (4) The amount of the claim; 680

29 (5) If the claim is secured, unliquidated or contingent, or 681
30 not yet due, the nature of the security, the nature of the 682
31 uncertainty, and due date of the claim: PROVIDED HOWEVER, That 683
32 failure to describe correctly the security, nature of any 683
33 uncertainty, or the due date of a claim not yet due, if such failure 684

1 is not substantially misleading, does not invalidate the presentation 684
2 made. 684
3 Claims need not be supported by affidavit. 685
4 Sec. 36. Section 11.40.030, chapter 145, Laws of 1965 and RCW 686
5 11.40.030 are each amended to read as follows: 687
6 ((When a claim, accompanied by the affidavit required in RCW 688
7 11.40.020 has been served and filed, it shall be the duty of the 689
8 personal representative to indorse thereon his allowance or 690
9 rejection, with the day and date thereof. If he allow the claim, it 690
10 shall be presented to the judge of the court, who shall in the same 691
11 manner indorse on it his allowance or rejection, or he may by order 692
12 allow or reject the claim. If the personal representative reject the 692
13 claim in whole or in part, he shall notify the claimant forthwith of 693
14 said rejection and file in the office of the clerk an affidavit 694
15 showing such notification and the date thereof. Such notification 695
16 shall be by personal service or registered or certified mail and 695
17 shall state that the holder of the rejected claim must bring suit in 696
18 the proper court against the personal representative within thirty 697
19 days after notification of the rejection, otherwise the claim shall 698
20 be forever barred. 698
21 If the personal representative shall neglect for the period of 699
22 sixty days after service upon him or his attorney to act upon any 700
23 such claim, the claimant may take the matter up before the court and 701
24 the court may require the personal representative to act on such 701
25 claim and in its discretion may impose costs and attorney's fees.)) 702
26 Unless the personal representative shall, within six months after the 703
27 date of first publication of notice to creditors, have obtained an 704
28 order extending the time for his allowance or rejection of claims 704
29 timely and properly served and filed, all claims presented within the 705
30 time and in the manner provided in RCW 11.40.010 and 11.40.020 as now 706
31 or hereafter amended, shall be deemed allowed and may not thereafter 706
32 be rejected, unless the personal representative shall, within six 707
33 months after the date of first publication of notice to creditors, or 708

any extended time, notify the claimant of its rejection, in whole or 709
 2 in part: if the personal representative shall reject the claim, in 709
 3 whole or in part, he shall notify the claimant of said rejection and 710
 4 file in the office of the clerk, an affidavit showing such 711
 5 notification and the date thereof. Said notification shall be by 711
 6 personal service or certified mail addressed to the claimant at his 712
 7 address as stated in the claim: if a person other than the claimant 713
 8 shall have signed said claim for or on behalf of the claimant, and 714
 9 said person's business address as stated in said claim is different 714
 10 from that of the claimant, notification of rejection shall also be 715
 11 made by personal service or certified mail upon said person: the date 716
 12 of the postmark shall be the date of notification. The notification 716
 13 of rejection shall advise the claimant, and the person making claim 717
 14 on his, her, or its behalf, if any, that the claimant must bring suit 718
 15 in the proper court against the personal representative within thirty 719
 16 days after notification of rejection or before expiration of the time 719
 17 for serving and filing claims against the estate, whichever period is 720
 longer, and that otherwise the claim will be forever barred. 720

The personal representative may, either before or after 721
 20 rejection of any claim compromise said claim, whether due or not, 722
 21 absolute or contingent, liquidated or unliquidated, if it appears to 723
 22 the personal representative that such compromise is in the best 723
 23 interests of the estate. 724

Sec. 37. Section 11.40.040, chapter 145, Laws of 1965 and RCW 725
 25 11.40.040 are each amended to read as follows: 726

Every claim which has been allowed by the personal 727
 27 representative ((and the said judge)) shall be ranked among the 728
 28 acknowledged debts of the estate to be paid in the course of 729
 29 administration. 729

Sec. 38. Section 11.40.060, chapter 145, Laws of 1965 and RCW 730
 31 11.40.060 are each amended to read as follows: 731

When a claim is rejected by ((either)) the personal 732
 33 representative ((or the court)), the holder must bring suit in the 733

proper court against the personal representative within thirty days 734
 2 after notification of the rejection or before expiration of the time 734
 3 for serving and filing claims against the estate, whichever period is 735
 4 longer, otherwise the claim shall be forever barred. 735

5 Sec. 39. Section 11.40.110, chapter 145, Laws of 1965 and RCW 736
 6 11.40.110 are each amended to read as follows: 737

7 Whenever any claim shall have been filed and presented to a 738
 8 personal representative ((and the court)), and a part thereof shall 739
 9 be allowed, the amount of such allowance shall be stated in the 740
 10 indorsement. If the creditor shall refuse to accept the amount so 741
 11 allowed in satisfaction of his claim, he shall recover no costs in 741
 12 any action he may bring against the personal representative unless he 742
 13 shall recover a greater amount than that offered to be allowed, 743
 14 exclusive of interest and costs. 743

15 PART VI. PROVISIONS RELATING TO BANKS, TRUST COMPANIES, 744
 16 ACCOUNTS 745

17 Sec. 40. Section 30.20.020, chapter 33, Laws of 1955 as 746
 18 amended by section 2, chapter 280, Laws of 1961 and RCW 30.20.020 are 747
 each amended to read as follows: 747

20 On the death of any depositor of any bank or trust company, 748
 21 such bank or trust company may pay to the surviving spouse, the 749
 22 moneys in said bank or trust company on deposit to the credit of said 749
 23 deceased depositor in cases where the amount of deposit does not 750
 24 exceed the sum of one thousand dollars upon receipt of an affidavit 751
 25 from the surviving spouse, to the effect that the depositor died 751
 26 ((intestate)) and no executor or administrator has been appointed for 751
 27 the depositor's estate, and the depositor had on deposit in ((all 752
 28 banks and trust companies within the state of Washington)) said bank 752
 29 or trust company money not exceeding the sum of one thousand dollars. 753
 30 The payment of such deposit made in good faith to the spouse making 753
 31 the affidavit shall be a full acquittance and release of the bank for 754
 32 the amount of the deposit so paid. 754

33 No probate proceeding shall be necessary to establish the 755

1 right of said surviving spouse to withdraw said deposits upon the 756
2 filing of said affidavit: PROVIDED, HOWEVER, whenever an 756
3 administrator is appointed in an estate where a withdrawal of 757
4 deposits has been had in compliance with this section, the spouse so 758
5 withdrawing said deposits shall account for the same to the 758
6 administrator. The bank or trust company may also pay out the moneys 759
7 on deposit to the credit of the deceased upon presentation of an 759
8 affidavit as provided in section 5 of this 1974 amendatory act. 760

9 Sec. 41. Section 32.12.020, chapter 13, Laws of 1955 as last 761
10 amended by section 2, chapter 55, Laws of 1969 and RCW 32.12.020 are 762
11 each amended to read as follows: 762

12 The sums deposited with any savings bank, together with any 763
13 dividends or interest credited thereto, shall be repaid to the 764
14 depositors thereof respectively, or to their legal representatives, 764
15 after demand in such manner, and at such times, and under such 765
16 regulations, as the board of trustees shall prescribe, subject to the 766
17 provisions of this section and RCW 32.12.030. Such regulations shall 766
18 be posted in a conspicuous place in the room where the business of 767
19 such savings bank shall be transacted, and shall be available to 767
20 depositors upon request. All such rules and regulations, and all 768
21 amendments thereto, from time to time in effect, shall be binding 769
22 upon all depositors. 769

23 (1) Such bank may at any time by a resolution of its board of 770
24 trustees require a notice of not more than six months before repaying 771
25 deposits, in which event no deposit shall be due or payable until the 771
26 required notice of intention to withdraw the same shall have been 772
27 personally given by the depositor: PROVIDED, That such bank at its 773
28 option may pay any deposit or deposits before the expiration of such 773
29 notice. But no bank shall agree with its depositors or any of them 774
30 in advance to waive the requirement of notice as herein provided. 774

31 (2) Except as provided in subdivisions (3), (4), and (5) of 775
32 this section the savings bank shall not pay any dividend, or 776
33 interest, or deposit, or portion thereof, or any check drawn upon it 776

1 by a depositor unless the certificate of deposit is produced, or the 777
2 passbook of the depositor is produced and the proper entry is made 778
3 therein, at the time of the payment. 778
4 (3) The board of trustees of any such bank may by its bylaws 779
5 provide for making payments in cases of loss of passbook or 780
6 certificate of deposit, or other exceptional cases where the 780
7 passbooks or certificates of deposit cannot be produced without loss 781
8 or serious inconvenience to depositors, the right to make such 781
9 payments to cease when so directed by the supervisor upon his being 782
10 satisfied that such right is being improperly exercised by any such 783
11 bank; but payments may be made at any time upon the judgment or order 783
12 of a court. 783
13 (4) The board of trustees of any such bank may by its bylaws 784
14 provide for making payments to depositors at their request, of 785
15 dividends or interest payable on any deposit, without requiring the 785
16 production of the passbook or certificate of deposit of the 786
17 depositor, and any payment made in accordance with any such request 787
18 and the receipt or acquittance of the one to whom such payment is 787
19 made shall be a valid and sufficient release and discharge to such 788
20 savings bank for all payments made on account of such request prior 788
21 to receipt by such savings bank of notice in writing not to pay such 789
22 sums in accordance with the terms of such request. 789
23 (5) The issuance of a passbook or certificate of deposit may 790
24 be omitted for any account if a ledger record thereof is maintained 791
25 in lieu of a passbook or certificate of deposit on which shall be 791
26 entered deposits, withdrawals, and interest credited: PROVIDED, That 792
27 in any event a passbook or certificate of deposit shall be issued 793
28 upon the request of any depositor. 793
29 (6) If any person dies leaving in any such bank an account on 794
30 which the balance due him does not exceed one thousand dollars and no 795
31 executor or administrator of his estate has been appointed, such bank 795
32 may in its discretion pay the balance of his account to his widow (or 796
33 if the decedent was a married woman, then to her husband), next of 797

kin, funeral director, or other creditor who may appear to be 797
2 entitled thereto. As a condition of such payment such bank may 798
3 require proof by affidavit as to the parties in interest, the filing 799
4 of proper waivers, the execution of a bond of indemnity with surety 799
5 or sureties by the person to whom the payment is to be made, and a 800
6 proper receipt and acquittance for such payment. For any such 800
7 payment pursuant to this section such bank shall not be liable to the 801
8 decedent's executor or administrator thereafter appointed, unless the 802
9 payment was made within six months after the decedent's death, and an 802
10 action to recover the amount is commenced within six months after the 803
11 date of payment. On the death of any depositor of any savings bank, 804
12 the bank may also pay out the moneys on deposit to the credit of the 804
13 deceased upon presentation of an affidavit as provided in section 5 805
14 of this 1974 amendatory act. 805

15 Sec. 42. Section 46, chapter 235, Laws of 1945 as amended by 806
16 section 6, chapter 246, Laws of 1963 and RCW 33.20.080 are each 807
17 amended to read as follows: 807

18 If any person shall die having any savings account in an 808
19 association amounting to not more than one thousand dollars, and the 809
20 association has no knowledge that an executor or administrator has 809
21 been appointed, such association may pay such account to the 810
22 surviving spouse, next of kin, funeral director or other creditor who 811
23 may appear entitled thereto. For any such payment, the association 811
24 may require such proofs, waivers, indemnity and receipt and 812
25 acquittance as it may deem proper. For any payment made hereunder, 812
26 the association shall not be liable to the decedent's executor or 813
27 administrator. On the death of any person having any savings account 814
28 in an association, the association may also pay out the moneys on 814
29 deposit to the credit of the deceased upon presentation of an 815
30 affidavit as provided in section 5 of this 1974 amendatory act. 815

31 Sec. 43. Section 2, chapter 139, Laws of 1939 as amended by 816
32 section 1, chapter 210, Laws of 1967 and RCW 49.48.120 are each 817
33 amended to read as follows: 817

If at the time of the death of any person, his employer is 818
2 indebted to him for work, labor and services performed, and no 819
3 executor or administrator of his estate has been appointed, such 819
4 employer shall upon the request of the surviving spouse forthwith pay 820
5 said indebtedness, in such an amount as may be due not exceeding the 821
6 sum of one thousand dollars, to the said surviving spouse or if the 821
7 decedent leaves no surviving spouse, then to the child or children, 822
8 or if no children, then to the father or mother of said decedent: 822
9 PROVIDED, HOWEVER, That if by virtue of a community property 823
10 agreement between the decedent and the surviving spouse, which meets 824
11 the requirements of RCW 26.16.120, the right to such indebtedness 824
12 became the sole property of the surviving spouse upon the death of 825
13 the decedent, the employer shall pay to the surviving spouse the 825
14 total of such indebtedness or that portion which is governed by the 826
15 community property agreement upon presentation of said agreement 827
16 accompanied by affidavit of the surviving spouse stating that such 827
17 agreement was executed in good faith between the parties thereto and 828
18 had not been rescinded by the parties prior to the death of the 829
19 decedent: PROVIDED FURTHER, That in all cases the employer shall 829
20 require proof of claimant's relationship to decedent by affidavit, 830
21 and shall require claimant to acknowledge receipt of such payment in 830
22 writing. Any payments made by an employer pursuant to the provisions 831
23 of RCW 49.48.115 and 49.48.120 shall operate as a full and complete 832
24 discharge of the employer's indebtedness to the extent of said 832
25 payment, and no employer shall thereafter be liable therefor to the 833
26 decedent's estate, or the decedent's executor or administrator 833
27 thereafter appointed. The employer may also pay the indebtedness upon 834
28 presentation of an affidavit as provided in section 5 of this 1974 835
29 amendatory act. 835
30 Sec. 44. Section 30.04.260, chapter 33, Laws of 1955 and RCW 836
31 30.04.260 are each amended to read as follows: 837
32 No trust company or other corporation which advertises that it 838
33 will furnish legal advice, construct or prepare wills, or do other 839

1 legal work for its customers, shall be permitted to act as executor, 840
 2 administrator or guardian; and any trust company or other corporation 841
 3 whose officers or agents shall solicit legal business ((or personally 841
 4 solicit the appointment of such trust company or corporation as 842
 5 executor, administrator or guardian)) shall be ineligible for a 843
 6 period of one year thereafter to be appointed executor, administrator 843
 7 or guardian in any of the courts of this state. 844

8 Any trust company or other corporation which advertises that 845
 9 it will furnish legal advice, construct or prepare wills, or do other 846
 10 legal work for its customers, and any officer, agent or employee of 847
 11 any trust company or corporation who shall solicit legal business 847
 12 ((or personally solicit the appointment of such trust company or 848
 13 corporation as executor, administrator or guardian)) shall be guilty 849
 14 of a gross misdemeanor. 849

15 PART VII. MISCELLANEOUS PROVISIONS 850

16 NEW SECTION. Sec. 45. There is added to chapter 11.28 RCW a 851
 17 new section to read as follows: 852

When a petition for general letters of administration or for 853
 letters of administration with the will annexed shall be filed, the 854
 20 matter may heard forthwith, appointment made and letters of 855
 21 administration issued: PROVIDED, That if there be a surviving spouse 856
 22 and a petition is presented by anyone other than the surviving 856
 23 spouse, or any person designated by the surviving spouse to serve as 857
 24 personal representative on his or her behalf, notice to the surviving 858
 25 spouse shall be given of the time and place of such hearing at least 859
 26 ten days before the hearing, unless the surviving spouse shall waive 859
 27 notice of the hearing in writing filed in the cause. 860

28 Sec. 46. Section 11.76.080, chapter 145, Laws of 1965 as last 861
 29 amended by section 1, chapter 28, Laws of 1971 and RCW 11.76.080 are 862
 30 each amended to read as follows: 862

31 If there be any incompetent as defined in RCW 11.88.010 863
 32 interested in the estate who has no legally appointed guardian, the 864
 33 court: 864

(1) At any stage of the proceeding in its discretion and for 865
 2 such purpose or purposes as it shall indicate, may, and 866
 3 (2) For hearings held pursuant to RCW 11.52.010, 11.52.020, 867
 4 11.68.040 and 11.76.050 as now or hereafter amended, or for entry of 868
 5 an order adjudicating testacy or intestacy and heirship when no 869
 6 personal representative is appointed to administer the estate of the 870
 7 decedent, shall ((--)) appoint some disinterested person as guardian ad 871
 8 litem to represent such incompetent with reference to any petition, 871
 9 proceeding ((or)), report, or adjudication of testacy or intestacy 872
 10 without the appointment of a personal representative to administer 873
 11 the estate of decedent in which the incompetent may have an interest, 874
 12 who, on behalf of the incompetent, may contest the same as any other 874
 13 person interested might contest it, and who shall be allowed by the 875
 14 court reasonable compensation for his services: PROVIDED, HOWEVER, 876
 15 That where a surviving spouse is the sole beneficiary under the terms 876
 16 of a will, the court may grant a motion by the personal 877
 17 representative to waive the appointment of a guardian ad litem for a 878
 18 person who is the minor child of such surviving spouse and the 878
 19 decedent and who is incompetent solely for the reason of his being 879
 20 under eighteen years of age. 879

21 NEW SECTION. Sec. 47. There is added to chapter 11.28 RCW a 880
 22 new section to read as follows: 881

23 When the terms of the decedent's will manifest an intent that 882
 24 the personal representative appointed to administer the estate shall 883
 25 not be required to furnish bond or other security, or when the 884
 26 personal representative is the surviving spouse of the decedent and 884
 27 it appears to the court that the entire estate, after provision for 885
 28 expenses and claims of creditors, will be distributable to such 886
 29 spouse and any minor children born to or adopted by decedent and 886
 30 living with said surviving spouse, then such personal representative 887
 31 shall not be required to give bond or other security as a condition 888
 32 of appointment. In all cases where a bank or trust company 888
 33 authorized to act as personal representative is appointed as personal 889

representative, no bond shall be required. In all other cases, 890
2 unless waived by the court, the personal representative shall give 890
3 such bond or other security, in such amount and with such surety or 891
4 sureties, as the court may direct. 891

5 Every person required to furnish bond must, before receiving 892
6 letters testamentary or of administration, execute a bond to the 893
7 state of Washington conditioned that the personal representative 894
8 shall faithfully execute the duty of the trust according to law. 894

9 The court may at any time after appointment of the personal 895
10 representative require said personal representative to give a bond or 896
11 additional bond, the same to be conditioned and to be approved as 897
12 provided in this section; or the court may allow a reduction of the 897
13 bond upon a proper showing. 898

14 In lieu of bond, the court may in its discretion, substitute 899
15 other security or financial arrangements, such as provided under RCW 900
16 11.88.105, or as the court may deem adequate to protect the assets of 901
17 the estate. 901

18 Sec. 48. Section 11.40.100, chapter 145, Laws of 1965 and RCW 902
19 11.40.100 are each amended to read as follows: 903

20 If any action be pending against the testator or intestate at 904
21 the time of his death, the plaintiff shall within ((ninety days)) 905
22 four months after first publication of notice to creditors, or the 906
23 filing of a copy of such notice, whichever is later, serve on the 906
24 personal representative a motion to have such personal 908
25 representative, as such, substituted as defendant in such action, 908
26 and, upon the hearing of such motion, such personal representative 909
27 shall be so substituted, unless, at or prior to such hearing, the 910
28 claim of plaintiff, together with costs, be allowed by the personal 911
29 representative and court. After the substitution of such personal 911
30 representative, the court shall proceed to hear and determine the 912
31 action as in other civil cases. 912

32 Sec. 49. Section 11.44.025, chapter 145, Laws of 1965 and RCW 913
33 11.44.025 are each amended to read as follows: 914

Whenever any property of the estate not mentioned in the inventory comes to the knowledge of a personal representative, he shall cause the same to be inventoried and appraised and shall make and return upon oath into the court a true inventory of said property within thirty days after the discovery thereof, unless a longer time shall be granted by the court.

NEW SECTION. Sec. 50. There is added to chapter 11.44 RCW a new section to read as follows:

Within the time required to file an inventory as provided in RCW 11.44.015, the personal representative shall determine the fair net value, as of the date of the decedent's death, of each item contained in the inventory after deducting the encumbrances, liens, and other secured charges thereon. The personal representative may employ a qualified and disinterested person to assist him in ascertaining the fair market value as of the date of the decedent's death of any asset the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate. The appraisement may, but need not be, filed in the probate cause: PROVIDED HOWEVER, That upon receipt of a written request for a copy of said inventory and appraisement from any heir, legatee, devisee or unpaid creditor who has filed a claim, or from the inheritance tax division of the department of revenue, the personal representative shall furnish to said person, a true and correct copy thereof.

Sec. 51. Section 11.44.070, chapter 145, Laws of 1965 as amended by section 10, chapter 168, Laws of 1967 and RCW 11.44.070 are each amended to read as follows:

((The appraiser shall receive as compensation for his service an amount as to the court shall seem just and reasonable, but not less than ten dollars nor more than one-tenth of one percent of the gross value of the assets of the estate actually appraised by him.))
The amount of the fee to be paid to any persons assisting the personal representative in any appraisement shall be determined by

1 the personal representative: PROVIDED HOWEVER, That the 941
2 reasonableness of any such compensation shall, at the time of hearing 941
3 on any final account as provided in chapter 11.76 RCW or on a request 942
4 or petition under sections 23 or 24 of this 1974 amendatory act, be 943
5 reviewed by the court in accordance with the provisions of section 23 943
6 of this 1974 amendatory act, and if the court determines the 944
7 compensation to be unreasonable, a personal representative may be 944
8 ordered to make appropriate refund. 945

9 Sec. 52. Section 11.12.120, chapter 145, Laws of 1965 and RCW 946
10 11.12.120 are each amended to read as follows: 947

11 Whenever any person having died leaving a will which has been 948
12 admitted to probate or established by an adjudication of testacy, 948
13 shall by said will have given, devised or bequeathed unto any person, 949
14 a legacy or a devise upon the condition that said person survive him, 950
15 and not otherwise, such legacy or devise shall lapse and fall into 951
16 the residue of said estate to be distributed according to the 951
17 residuary clause, if there be one, of said will, and if there be none 952
18 then according to the laws of descent, unless said legatee or 953
19 devisee, as the case may be, or his heirs, personal representative, 954
20 or someone in behalf of such legatee or devisee, shall appear before 954
21 the court which is administering said estate within ~~((six))~~ three 955
22 years from and after the date the said will was admitted to probate 956
23 or established by an adjudication of testacy, and prove to the 956
24 satisfaction of the court that the said legatee or devisee, as the 957
25 case may be, did in fact survive the testator. 957

26 NEW SECTION. Sec. 53. Whenever a principal designates 958
27 another his attorney in fact or agent by a power of attorney in 959
28 writing and the writing contains the words "This power of attorney 960
29 shall not be affected by disability of the principal," or "This power 960
30 of attorney shall become effective upon the disability of the 961
31 principal," or similar words showing the intent of the principal that 962
32 the authority conferred shall be exercisable notwithstanding his 963
33 disability, the authority of the attorney in fact or agent is 963

exercisable by him as provided in the power on behalf of the 964
2 principal notwithstanding later disability or incapacity of the 965
3 principal at law or later uncertainty as to whether the principal is 965
4 dead or alive. All acts done by the attorney in fact or agent 966
5 pursuant to the power during any period of disability or incompetence 967
6 or uncertainty as to whether the principal is dead or alive have the 968
7 same effect and inure to the benefit of and bind the principal or his 968
8 guardian or heirs, devisees and personal representative as if the 969
9 principal were alive, competent and not disabled. If a guardian 970
10 thereafter is appointed for the principal, the attorney in fact or 970
11 agent, during the continuance of the appointment, shall account to 971
12 the guardian rather than the principal. The guardian has the same 972
13 power the principal would have had if he were not disabled or 973
14 incompetent, to revoke, suspend or terminate all or any part of the 973
15 power of attorney or agency. 974

16 NEW SECTION. Sec. 54. (1) The death, disability, or 975
17 incompetence of any principal who has executed a power of attorney in 976
18 writing other than a power as described by section 44 of this 1974 977
19 amendatory act, does not revoke or terminate the agency as to the 977
20 attorney in fact, agent or other person who, without actual knowledge 978
21 of the death, disability, or incompetence of the principal, acts in 979
22 good faith under the power of attorney or agency. Any action so 979
23 taken, unless otherwise invalid or unenforceable, binds the principal 980
24 and his heirs, devisees, and personal representatives. 981

25 (2) An affidavit, executed by the attorney in fact or agent 982
26 stating that he did not have, at the time of doing an act pursuant to 983
27 the power of attorney, actual knowledge of the revocation or 984
28 termination of the power of attorney by death, disability or 984
29 incompetence, is, in the absence of a showing of fraud or bad faith, 985
30 conclusive proof of the nonrevocation or nontermination of the power 985
31 at that time. If the exercise of the power requires execution and 986
32 delivery of any instrument which is recordable, the affidavit when 987
33 authenticated for record is likewise recordable. 987

(3) This section shall not be construed to alter or affect any provision for revocation or termination contained in the power of attorney.

NEW SECTION. Sec. 55. (1) Any of the following provisions in an insurance policy, contract of employment, bond, mortgage, promissory note, deposit agreement, pension plan, joint tenancy, community property agreement, trust agreement, conveyance or any other written instrument effective as a contract, gift, conveyance, or trust is deemed to be nontestamentary, and this 1974 amendatory act does not invalidate the instrument or any provision:

(a) that money or other benefits theretofore due to, controlled or owned by a decedent shall be paid after his death to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently;

(b) that any money due or to become due under the instrument shall cease to be payable in event of the death of the promisee or the promissor before payment or demand; or

(c) that any property which is the subject of the instrument shall pass to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently.

(2) Nothing in this section limits the rights of creditors under other laws of this state.

(3) Any provision in a lease of a safety deposit repository to the effect that two or more persons shall have access to the repository, or that purports to create a joint tenancy in the repository or in the contents of the repository, or that purports to vest ownership of the contents of the repository in the surviving lessee, is ineffective to create joint ownership of the contents of the repository or to transfer ownership at death of one or the lessees to the survivor. Ownership of the contents of the repository and devolution of title to those contents is determined according to

rules of law without regard to the lease provisions. 1011

2 NEW SECTION. Sec. 56. The following acts or parts of acts 1012

3 are each hereby repealed: 1013

4 (1) Section 11.28.130, chapter 145, Laws of 1965 and RCW 1015

5 11.28.130; 1015

6 (2) Section 11.28.180, chapter 145, Laws of 1965 and RCW 1017

7 11.28.180; 1017

8 (3) Section 11.28.200, chapter 145, Laws of 1965 and RCW 1019

9 11.28.200; 1019

10 (4) Section 11.40.050, chapter 145, Laws of 1965 and RCW 1021

11 11.40.050; 1021

12 (5) Section 11.44.055, chapter 145, Laws of 1965 and RCW 1023

13 11.44.055; 1023

14 (6) Section 11.44.065, chapter 145, Laws of 1965 and RCW 1025

15 11.44.065; and 1025

16 (7) Section 11.44.080, chapter 145, Laws of 1965, section 11, 1026

17 chapter 168, Laws of 1967 and RCW 11.44.080. 1027

18 NEW SECTION. Sec. 57. This 1974 amendatory act is necessary 1028

19 for the immediate preservation of the public peace, health and 1029

20 safety, the support of the state government and its existing public 1029

21 institutions, and shall take effect July 1, 1974. 1030

HB 748

by

1. ~~Amend~~ This bill relates to probate: providing for the appointment of personal representatives; providing for the affairs of minors and incapacitated persons; providing for the validity and effect of certain non-testamentary transfers, contracts, and deposits which relate to death; providing for the powers of attorney relating to disability, and amending
2. Amend applicable sections of the P.C.W.

2. Section 1 same as 3-1201 H 13266 Collection of Personal Property of decedent. ~~Person indebted to decedent may pay debt to claiming survivor if estate does not exceed \$10,000, and payment is not made before 30 days after decedent's death, and no personal representative has been appointed, and claimant is entitled to payment.~~

3. This bill repeats verbatim certain portions of H B 266 (Uniform Probate Code). Digest of these acts is therefore repetitive of that for these sections of H 13266.

³⁻⁹¹⁶
3-1201 - 1204

5-103

5-104

5-501

5-502

6-101 - 6-113

6-201

6-301

FORTY-THIRD LEGISLATURE
1973-74

SESSIONS SERVED:
HOUSE: 1969, '69 EX.
SENATE: 1970 EX., '71, '71 EX., '72 EX.,
1973, '73 EX.

COMMITTEES

CHAIRMAN: JUDICIARY
COMMERCE
SOCIAL AND HEALTH SERVICES

Washington State Senate



SENATOR
PETE FRANCIS
THIRTY-SECOND DISTRICT
7310 E. GREENLAKE DR. NO.
SEATTLE, WASHINGTON 98115
SEATTLE: 522-7244
OLYMPIA: 753-7662

June 12, 1973

Marilyn Hammond
Senate Minority Caucus
Legislative Building
Olympia, Washington 98504

Dear Marilyn:

Below for your reference is a brief outline of the information communicated to you in our phone conversation of June 11th regarding the Uniform Probate Code:

BACKGROUND OF THE UNIFORM PROBATE CODE:

The Uniform Probate Code originates with the National Conference of Commissioners on Uniform State Laws. Judge Charles Horowitz from the state of Washington is a member of this commission and was a member of the sub-committee selected to author the Uniform Probate Code.

HISTORY OF THE UPC IN WASHINGTON STATE:

During the 1971 session S.B. 313, sponsored by Senators Holman, Dore, Foley, and Atwood, was introduced by request of the Uniform Law Commission. The bill did not leave the Senate Judiciary Committee.

In June of 1971 a Task Force was appointed by the Washington Judicial Council to review the UPC. The work of this task force resulted in a Judiciary Council request bill during the 1972 session. This bill entitled the Uniform Probate Code Practices Act, was introduced in both the House and the Senate. H.B. 113, sponsored by Representative Axel Julin, et. al., was passed unanimously by the House Judiciary Committee but died in the Senate Judiciary Committee. The Senate Bill, #75, by Senators Gissberg, Holman, and Clarke died in the Senate Judiciary Committee.

In 1973 3 versions of the Uniform Probate Code were introduced:

H.B. 266 - by Judicial Council request (a revisions of the 1972 version), the UPC with Judicial Council variations, sponsored by Axel Julin, et. al., it is presently in the House Judiciary Committee.

H.B. 11 - sponsored by Representative Kilbury, the Idaho version of the UPC without the Idaho Legislature's 1972 amendments. It is presently in the House Judiciary Committee.

S.B. 2047 - sponsored by Ted Peterson, et. al., the Idaho version with the Idaho Legislature's 1972 amendments. It is presently in the Senate Judiciary Committee.

The House Judiciary Committee held a hearing on H.B. 266 and H.B. 11 on the 23rd of March, 1973. Both bills were held over.

Marilyn Hammond

-2-

June 12, 1973

The Senate Judiciary Committee held a hearing on S.B. 2047 March 30th. The background of the UPC was provided by Judge Horowitz. Norm Trezona communicated the position of the Washington State Bar Association -- opposed to the UPC as a complete package, and Dan Reaugh representing the Judicial Council spoke in favor of the UPC. (See attached minutes of the March 30th meeting.)

A second hearing of S.B. 2047 was held by the Senate Judiciary Committee June 2nd. It was decided by the committee at that time, upon recommendation of Judge Horowitz, Bob Beschel, Dan Reaugh, and Bob Fletcher to delay committee action until a consensus has been reached by the Bar Association and the Judicial Council as to what legislation they will jointly support.

PERSONS APPEARING BEFORE THE SENATE JUDICIARY COMMITTEE:

Judge Charles Horowitz, National Conference on Commissioners on Uniform State Law -- pro UPC, 464-7657, Seattle.

Mr. Dan Reaugh, Washington Judicial Council -- pro UPC, 623-6400, Seattle. (practicing attorney)

Mr. Robert Fletcher, Washington Judicial Council -- pro UPC, 543-4928, Seattle. (Professor, University of Washington School of Law)

Mr. Robert Beschel, Washington State Bar Association, -- opposed UPC, TE3-6131, Spokane. (Practicing attorney)

Mr. Norman Trezona, Washington State Bar Association -- opposed UPC, 747-6173, Spokane. (Practicing attorney)

Mr. E. M. Oliver, American Association of Retired Persons, MRTA -- pro UPC, 357-7016, Olympia.

STATUS OF THE UPC NATIONALLY (TO DATE):

Arizona, Idaho, and Alaska have adopted the Uniform Probate Code.

Colorado - the UPC has been passed by the Colorado House of Representatives.

Wisconsin - in 1967 borrowed heavily from the UPC but did not include article 3, now has an article 3 fashioned along article 3 of the UPC.

Maryland - strongly influenced by the UPC, has adopted much of it.

Oregon - strongly influenced by an earlier draft of the Uniform Probate Code.

Nebraska - the Nebraska Bar Association House of Delegates has approved the UPC in principle

Ohio - the Cleveland Bar Association has approved the UPC in principle.

Marilyn, I am also enclosing a very comprehensive statement on the UPC written by Judge Horowitz, 2 booklets published by the National Conference of Commissioners on Uniform State Laws and the Real Property, Probate and Trust Law Section of the American Bar Association provided by Judge Horowitz, and a digest of S.B. 2047, the version of the UPC heard by the Senate Judiciary Committee. I'm sure you can obtain a digest of H.B. 11 and H.B. 266 from Kathy Thompson the secretary of the House Judiciary Committee, HOB 411, 753-4826, Olympia. I am also enclosing a list we had of bills relating to probate that were introduced during the recent session.

I hope this will provide you the information you need. If you have any questions please feel free to call.

Sincerely,

Jenny Van Ravenhorst, Secretary

Leg Hist 000164

COMMITTEE: Senate Judiciary

BILL NO: S.B. 2047

HEARING:

SHORT TITLE: Uniform Probate Code

DATE: 3/30/73 TYPE: Public Hearing

PLACE: PL 433 TIME: 8am

CHAIRMAN: SENATOR PETE FRANCIS

Persons appearing before Committee:

Pro-Con

Charles Horowitz		Pro
Robert Beschel	WSBA	Con
Dan Reaugh	WJC	Pro
Norman F. Tfezona	WSBA	Con
E.M. Oliver	AARP & NRTA	Pro

Notes:

Charles Horowitz was the first speaker. He predicted a financial cost of \$3100 per year to the state, if the UPC was adopted. Article II was written to eliminate the present problem of settling an estate when there is no will provided by the deceased. The inheritance provision was written to provide that in the case of no will, the estate would be distributed to the remaining spouse. If there are children, then the remaining spouse receives the first 50%. The second 50% is divided up between the children. Judge Horowitz explained that this provision was written in alliance with studies that revealed that this is the procedure most people follow and prefer.

The UPC is the result of a seven year study. It is the desire of the commission to establish a probate code that is uniform in all states. However, it was pointed out that individual states can amend the code to coincide with the particular state's laws and desires. This doesn't sound very uniform. It only lends to weakening the uniformity of

the code. Idaho has adopted the code, but has amended specific sections.

Norman Tiezona spoke out against the bill. He and the Wash. State Bar oppose adoption of the bill as a total package, but do not object to the bill totally. He feels Washington already has a good, workable code, and that this bill would only complicate, rather than simplify probate proceedings. The bill also has too much ambiguity.

- 1) This code is not uniform, as Idaho has repealed parts of it. (ex; pg. 5.501, granting power of attorney)
- 2) UP committee has abandoned UP concept of registering trusts (no longer required in code)
- 3) Suggests that a committee composed of the Bar and UPC task force get together to work out some of the differences
- 4) Probate committee of Supreme Court judges have never been asked for their opinions
- 5) Informal Probate proceedings:
 - 1) Start any time under the condition (do not need a petition)
 - 2) Prof. Peterson has written an article in the Reader's Digest which says that the new code in Idaho is working out just fine, although it has been in existence for only 2 months.
 - 3) No bond or public notice is required in informal probate proceedings
 - 4) pg. 3.715; grants too great of powers
- 6) Creditor's Claim

Presently, file them a mail statement when closing estate, lawsuits result when one claims he didn't receive mailed statement. If you are distributee, the burden of proof is on you.

Mr. Bestual of the Washington State Bar spoke favorable on HB 496, which is a bill the Wash. State Bar is presently as a compromise to SB 2047. This HB has no intervention probate procedure, liberalizes creditor's claim (removes necessity of an affidavit), and maintains the UPC concept of formal adjudication in court, without going further on probate estate.

He referred to the UPC adopted in Idaho as a complex nightmare.

Bestual asked the committee to seriously consider the social and political effects of the UPC, example; regardless of provision of a will, surviving spouse takes one-third of the estate automatically.

Mr. Ray of the Washington Judicial Council, and on the UPC task force, criticized the Bar Assoc. He said that UPC puts a greater responsibility upon the consumer. The code provides intervention privileges for people when there is no will available.

One further criticism of the code by Mr. Tiezona was that under the UPC notice has to be given to all interested parties for 3 consecutive weeks before proceed to court.

HOUSE BILL NO. 748

by Representatives Smith, Kelley, and Laughlin

1. This bill relates to probate providing for the appointment of personal representatives; providing for the affairs of minors and incapacitated persons; providing for the validity and effect of certain nontestamentary transfers, contracts and deposits which relate to death; providing for the powers of attorney relating to disability.
2. Amends applicable sections of the RCW.
3. This bill repeats verbatim certain portions of HB 266 (Uniform Probate Code). Digest is therefor repetitive of that for those sections of HB 266.

3-916
3-1201 / 1204
5-103
5-104
5-501
5-502
6-101 / 113
6-201
6-301

COMMITTEE:

SHORT TITLE

Senators Peterson (tec
Wanamaker, Washington,
Ridder, Canfield, Keefe
SPONSOR Stender and Talley

Judiciary

Probate, uniform code

DIGESTER:

DATE:

Matthews

March 28, 1973

1. This bill is a proposed act relating to the affairs of decedents, protected persons, minors and incapacitated persons, and constituting the Uniform Probate Code; consolidating and revising aspects of the law relating to wills and intestacy and the administration and distribution of estates of decedents, protected persons, minors, and incapacitated persons providing for the validity and effects of certain non-testamentary transfers, contracts and deposits which relate to death and appear to have testamentary effect; providing certain procedures to facilitate enforcement of testamentary and other trusts; making uniform the law with respect to decedents, protected persons, minors and incapacitated persons.
2. Repeals applicable sections of RCW.
3. Index to HB 266.

GENERAL

- Article I. General provisions, definitions and probate jurisdiction of courts
- Article II. Intestate succession and wills
- Article III. Probate of wills and administration
- Article IV. Foreign representatives; ancillary administration
- Article V. Protection of persons under disability and their property
- Article VI. ~~Non-probate transfers~~ ~~X~~
- Article VII. Trust administration
- Article VIII. Effective date and repealer
- Article IX. Amendments

SPECIFIC

ARTICLE I - General Provisions, Definitions and Probate Jurisdiction of Courts

Part I - Short Title, Construction, General Provisions

- Section 1-101 Short Title
- 1-102 Purposes
- 1-103 Supplementary General Principles of Law Applicable
- 1-104 Severability
- 1-105 Construction against Implied Repeal
- 1-106 Effect of Fraud and Evasion
- 1-107 Evidence as to Death or Status
- 1-108 Acts by Holder of General Power
- 1-109 "Code" Defined
- 1-110 Title, Part, Section, Subsection Headings Not Part of Law

Part II - Definitions

- Section 1-201 General Definitions

Part III - Scope, Jurisdiction and Courts

- Section 1-301 Territorial Application
- 1-302 Subject Matter Jurisdiction
- 1-303 Venue; Multiple Proceedings; Transfer
- 1-304 Practice in Court
- 1-305 Records and Certified Copies
- 1-306 Jury Trial
- 1-307 Registrar; Powers
- 1-308 Appeals
- 1-309 Oath or Affirmation on Filed Documents

Part IV - Notice, Parties and Representation in Estate Litigation and Other Matters

- Section 1-401 Notice; Method and Time of Giving
- 1-402 Notice; Waiver
- 1-403 Pleadings; When Parties Bound by Others; Notice

ARTICLE II - Intestate Succession and Wills

Part I - Intestate Succession

- Section 2-101 Intestate Estate
- 2-102 Share of the Spouse
- 2-103 Share of Heirs Other Than Surviving Spouse
- 2-104 Requirement that Heir Survive Decedent for One Hundred Twenty Hours
- 2-105 No Taker
- 2-106 Representation
- 2-107 Kindred of Half Blood
- 2-108 Afterborn Heirs
- 2-109 Meaning of Child and Related Terms
- 2-110 Advancements
- 2-111 Debts to Decedent

ARTICLE II - Intestate Succession and Wills (continued)

- Section 2-112 Alienage
- 2-113 Dower and Curtesy Abolished

Part II - Elective Share of Surviving Spouse

- Section 2-201 Right to Elective Share
- 2-202 Augmented Separate Estate
- 2-203 Right of Election Personal Surviving Spouse
- 2-204 Waiver of Right to Elect and of Other Rights
- 2-205 Proceeding for Elective Share; Time Limit
- 2-206 Effect of Election on Benefits by Will or Statute
- 2-207 Charging Spouse with Gifts Received; Liability of Others for Balance of Elective Share

Part III - Spouse and Children Unprovided for in Wills

- Section 2-301 Omitted Spouse
- 2-302 Omitted Children

Part IV - Exempt Property and Allowances

- Section 2-401 Homestead Allowance
- 2-402 Exempt Property
- 2-403 Family Allowance
- 2-404 Source, Determination and Documentation

Part V - Wills

- Section 2-501 Who May Make a Will
- 2-502 Execution
- 2-503 Holographic Will
- 2-504 Self-Proved Will
- 2-505 Who May Witness
- 2-506 Choice of Law as to Execution
- 2-507 Revocation by Writing or by Act
- 2-508 Revocation by Divorce; No Revocation by other Changes of Circumstances
- 2-509 Revival of Revoked Will
- 2-510 Incorporation by Reference
- 2-511 Testamentary Additions to Trusts
- 2-512 Events of Independent Significance
- 2-513 Separate Writing Identifying Request of Tangible Property

PART VI - Rules of Construction

- Section 2-601 Requirement that Devisee Survive Testator by One Hundred
Twenty Hours
2-602 Choice of Law as to Meaning and Effect of Wills
2-603 Rules of Construction and Intention
2-604 Construction that Will Passes All Property; After-Acquired
Property
2-605 Anti-lapse; Deceased Devisee; Class Gifts
2-606 Failure of Testamentary Provision
2-607 Change in Securities; Accessions; Nonademption
2-608 Nonademption of Specific Devises in Certain Cases; Sale
by Conservator; Unpaid Proceeds of Sale, Condemnation or
Insurance
2-609 Nonexoneration
2-610 Exercise of Power of Appointment
2-611 Construction of Generic Terms to Accord with Relationships
as Defined for Intestate Succession
2-612 Ademption by Satisfaction

PART VII - Contractual Arrangements Relating to Death

- Section 2-701 Contracts Concerning Succession

PART VIII - General Provisions

- Section 2-801 Renunciation of Succession,
2-802 Effect of Divorce, Annulment, and Decree of Separation
2-803 Effect of Homicide on Intestate Succession, Wills, Joint
Assets, Life Insurance and Beneficiary Designations

PART IX - Custody and Deposit of Wills

- Section 2-901 Deposit of Will with Court in Testator's Lifetime
2-902 Duty of Custodian of Will; Liability

ARTICLE III - PROBATE OF WILLS AND ADMINISTRATION

Part I - General Provisions

- Section 3-101 Devolution of estate at Death; Community Property;
Restrictions
3-102 Necessity of Order of Probate for Will
3-103 Necessity of Appointment for Administration
3-104 Claims Against Decedent; Necessity of Administration
3-105 Proceedings Affecting Devolution and Administration;
Jurisdiction of Subject Matter.
3-106 Proceedings Within the Exclusive Jurisdiction of Court;
Service; Jurisdiction over Persons
3-107 Scope of Proceedings; Proceedings Independent; Exception
3-108 Probate, Testacy and Appointment Proceedings; Ultimate
Time Limit
3-109 Statutes of Limitation on Decedent's Cause of Action

PART VII - Duties and Powers of Personal Representatives (continued)

- Section 3-707 Employment of Appraisers
- 3-708 Duty of Personal Representative; Supplementary Inventory
- 3-709 Duty of Personal Representative; Possession of Estate
- 3-710 Power to Avoid Transfers
- 3-711 Powers of Personal Representatives; in General
- 3-712 Improper Exercise of Powers; Breach of Fiduciary Duty
- 3-713 Sale, Encumbrance or Transaction Involving Conflict of Interest, Voidable; Exceptions
- 3-714 Persons Dealing with Personal Representative; Protection
- 3-715 Transactions Authorized For Personal Representatives; Exceptions
- 3-716 Powers and Duties of Successor Personal Representative
- 3-717 Co-Representatives; When Joint Action Required
- 3-718 Powers of Surviving Personal Representative
- 3-719 Compensation of Personal Representative
- 3-720 Expenses in Estate Litigation
- 3-721 Proceedings for Review of Employment of Agents and Compensation of Personal Representatives and Employees of Estate

PART VIII - Creditors' Claims

- Section 3-801 Notice of Creditors
- 3-802 Statutes of Limitations
- 3-803 Limitations on Presentation of Claims
- 3-804 Manner of Presentation of Claims
- 3-805 Classification of Claims
- 3-806 Allowance of Claims
- 3-807 Payment of Claims
- 3-808 Individual Liability of Personal Representative
- 3-809 Secured Claims
- 3-810 Claims Not Due and Contingent or Unliquidated Claims
- 3-811 Counterclaims
- 3-812 Execution and Levies Prohibited
- 3-813 Compromise of Claims
- 3-814 Encumbered Assets
- 3-815 Administration in More Than One State; Duty of Personal Rep.
- 3-816 Final Distribution to Domiciliary Representative

PART IX - Special Provisions Relating to Distribution

- Section 3-901 Successors' Rights If No Administration
- 3-902 Distribution; Order in Which Assets Appropriated; Abatement
- 3-903 Right of Retainer
- 3-904 Interest on General Pecuniary Devise
- 3-905 Penalty Clause for Contest
- 3-906 Distribution in Kind; Valuation; Method

PART IV - Formal Testacy and Appointment Proceedings (continued)

Section 3-414 Formal Proceedings Concerning Appointment of Personal Representative

PART V - Supervised Administration

- Section 3-501 Supervised Administration; Nature of Proceeding
3-502 Supervised Administration; Petition; Order
3-503 Supervised Administration; Effect on Other Proceedings
3-504 Supervised Administration; Powers of Personal Representative
3-505 Supervised Administration; Interim Orders; Distribution and Closing Orders

PART VI - Personal Representative; Appointment, Control and Termination of Authority

- Section 3-601 Qualification
3-602 Acceptance of Appointment; Consent to Jurisdiction
3-603 Bond Not Required Without Court Order, Exceptions
3-604 Bond Amount; Security; Procedure; Reduction
3-605 Demand for Bond by Interested Person
3-606 Terms and Conditions of Bonds
3-607 Order Restraining Personal Representative
3-608 Termination of Appointment; General
3-609 Termination of Appointment; Death or Disability
3-610 Termination of Appointment; Voluntary
3-611 Termination of Appointment by Removal; Cause; Procedure
3-612 Termination of Appointment; Change of Testacy Status
3-613 Successor Personal Representative
3-614 Special Administrator; Appointment
3-615 Special Administrator; Who May Be Appointed
3-616 Special Administrator; Appointed Informally; Powers and Duties
3-617 Special Administrator; Formal Proceedings; Powers and Duties
3-618 Termination of Appointment; Special Administrator

PART VII - Duties and Powers of Personal Representatives

- Section 3-701 Time of Accrual of Duties and Powers
3-702 Priority Among Different Letters
3-703 General Duties; Relation and Liability to Persons Interested in Estate; Standing to Sue
3-704 Personal Representative to Proceed Without Court Order; Exception
3-705 Duty of Personal Representative; Information to Heirs and Devisees
3-706 Duty of Personal Representative; Inventory and Appraisalment

PART II - Venue for Probate and Administration; Priority to Administer;
Demand for Notice

- Section 3-201 Venue for First and Subsequent Estate Proceedings; Location
of Property
3-202 Appointment or Testacy Proceedings; Conflicting Claim of
Domicile in Another State
3-203 Priority Among Persons Seeking Appointment as Personal
Representative
3-204 Demand for Notice of Order or Filing Concerning Decedent's
Estate

PART III - Informal Probate and Appointment Proceedings

- Section 3-301 Informal Probate or Appointment Proceedings; Application;
Contents
3-302 Informal Probate; Duty of Registrar; Effect of Informal
Probate
3-303 Informal Probate; Proof and Findings Required
3-304 Informal Probate; Unavailable in Certain Cases
3-305 Informal Probate; Registrar Not Satisfied
3-306 Informal Probate; Notice Requirements
3-307 Informal Appointment Proceedings; Delay in Order;
Duty of Registrar; Effect of Appointment
3-308 Informal Appointment Proceedings; Proof and Findings
Required
3-309 Informal Appointment Proceedings; Registrar not satisfied
3-310 Informal Appointment Proceedings; Notice Requirements
3-311 Informal Appointment Unavailable in Certain Cases

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3-402 Formal Testacy or Appointment Proceedings; Petition;
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3-403 Formal Testacy Proceeding; Notice of Hearing on Petition
3-404 Formal Testacy Proceedings; Written Objections to Probate
3-405 Formal Testacy Proceedings; Uncontested Cases; Hearings
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3-406 Formal Testacy Proceedings; Contested Cases; Testimony of
Attesting Witnesses
3-407 Formal Testacy Proceedings; Burdens in Contested Cases
3-408 Formal Testacy Proceedings; Will Construction, Effect of
Final Order in Another Jurisdiction
3-409 Formal Testacy Proceedings; Order; Foreign Will
3-410 Formal Testacy Proceedings; Probate of More than One
Instrument
3-411 Formal Testacy Proceedings; Partial Intestacy
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 3-916 Recoverable Nonprobate Sums and Property. Uses Thereof.
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 3-917 Escheat for Want of Heirs
 3-918 Title to Property Vests in State at Death of Owner
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5-207 Court Appointment of Guardian of Minor; Procedure
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PART IV - Protection of Property of Persons Under Disability and Minors

- Section 5-401 Protective Proceedings
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- 5-403 Venue
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- 5-407 Procedure Concerning Hearing and Order on Original Petition
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- 5-410 Who May Be Appointed Conservator; Priorities
- 5-411 Bond
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- 5-415 Death, Resignation or Removal of Conservator
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- 5-418 Inventory and Records
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- 5-422 Sale, Encumbrance or Transaction Involving Conflict of Interest; Voidable; Exceptions
- 5-423 Persons Dealing with Conservators; Protection
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- Section 6-201 Provisions for Payment or Transfer at Death

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- Section 6-301 Joint Tenancies and Community Property Agreements

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Compensation of Trustees and Employees of Trust
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and Third Parties

PART III - Duties and Liabilities of Trustees

- Section 7-301 General Duties Not Limited
- 7-302 Trustee's Standard of Care and Performance
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Account

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- Section 8-101 Time of Taking Effect; Provisions for Transition
- 8-102 Specific Repealer

ARTICLE IX - AMENDMENTS

BILLS RELATING TO PROBATE IN 1973 SESSION OF LEGISLATURE

(Status as of May 22, 1973)

S.B. 2047	- Uniform Probate Code (cf H.B. 11, H.B. 266)	Senate Judiciary
H.B. 11	- Probate, Uniform Code (cf H.B. 266, S.B. 2047)	Judiciary - House
H.B. 266	- Probate, Uniform Code (cf H.B. 11, S.B. 2047)	House Judiciary
S.B. 2137	- Disclaimer of interest, wills, trusts (cf H.B. 48)	House Judiciary
H.B. 48	- Disclaimer of interest, wills, trust (cf S.B. 2137)	<u>C 148 L 73</u>
S.B. 2025	- Institutions, deceased residents' funds	<u>LAW</u>
S.B. 2588	- Revenue dept. escheat records, inspection	<u>C 25 L 73</u>
S.B. 2867	- Probate, title only	Senate Judiciary
H.B. 63	- Awards, probate, homesteads, children	Senate Judiciary
H.B. 496	- Probate, general revisions	House Judiciary
H.B. 676	- Estate assets, percentage, personal rep. fees	House Judiciary
H.B. 748	- Probate, general revisions	House Judiciary
H.B. 855	- Probate law and procedure, title only	House Judiciary

748

HOUSE JUDICIARY COMMITTEE HEARING

March 22, 1973

7:30 P.M.
HOB #431

The Chairman called the meeting to order at 7:30 P.M.

HB 496 - Uniform Probate Code

First witness, Representative Hayner, chief sponsor for HB 496, testified in support of the bill. Stated that in 1961 the Washington Bar Association started a study. The legislators started acting on it in 1965 and it became law in 1967. This has been omitted many times. It seems impractical to abandon the whole code in order to update what is already a very good probate law. Recognizes that there are some things that the uniform probate code that are better than the Washington law at the present time, and HB 496 is an attempt to codify some of the improvements into the Washington statute.

Representative Kilbury, sponsor of HB 11 testified in support of the bill. He stated the uniformity is vital to promote and encourage more efficient handling of estate. Felt that if the uniform probate code was adopted it would retain all of the simplicity now in the Washington law and add improvements that time has developed.

Judge Charles Horowitz, member of the uniform law commission, also Judge of the Court of Appeals, testified in support of the uniform probate code as outlined in HB 266. He stated wills and probate have been the subject for conversation since 1945 when he first went on the uniform law commission. Action was started on it in 1962 and the House passed the bill in 1965 that

became effective in 1967 and House of Delegates and American Bar Association have been working on the uniform code. In 1970 an official text was prepared. Two states have adopted the uniform code, Idaho and Alaska. Senator Cline, Senate Judiciary Committee Chairman of Idaho stated that in an article in Readers Digest that the uniform probate code was beneficial to the Idaho law. The uniform probate code is supported by the American Bar Association, American College of Probate Counsel and three state bar associations. He discussed the code generally and specifically certain aspects such as Article III of the probate, Article IV and V. Pointed out that there were three types of guardianships in Article V, guardian of minor child, guardian of incapacitated persons and conservatorship or guardian of the state. The Uniform Probate Code developed a single system of guardian, applicable to all guardianships. His statement was a summary of his statement on uniform probate code available in the bound volume and the text of his speech delivered to the Pacific Coast Baking School on September 16, 1969.

Next witness, Bernard Lonctot, Washington State Bar Association, testified in support of the bill for HB 496. He introduced Norman F. Legona, Spokane, Chairman, Washington State Bar Association Committee on Real Property, Probate and Trust, who stated the Washington State Bar Association opposed uniform probate code as an entire package; Specifically, HB 266. They are not opposed to the uniform probate code, but feel that HB 266 contains some provisions that would be detrimental to probate law. Specifically, he pointed out that the power of attorney which does not terminate on disability has already been repealed in Idaho. Why, he was not able to say, because he did not have the facts.

Stated the probate committee of superior court judges and the person, Judge Shields of Spokane, the Chairman, were opposed to uniform probate code as a package. They were opposed to the earlier House Bill, 113. In references to the article in the post intelligencer on the uniform probate code, stated that many of the statements in that article were not true. Admitted a written statement to the Committee which is attached. Next witness, Mr. Dan Reaugh, Washington Chairman for the Joint Editorial Board for the UPC, testified in support of the bill.

Next witness, Mr. Robert Buschel, Chairman, State Bar Association Subcommittee on Trusts of the committee on probate and trusts, testified against the bill. Stated that HB 496 embodied many of the improvements of the uniform probate code into the Washington law. Apologized that time ran out as there were other improvements they would like to have made, but like to have 18 months in which to work on the improvements so that they could prepare a bill that would embody into the Washington code desirable features of the uniform probate code. Stated the Washington Bar Association was never approached by the task force, referred to the PI Article. Stated that the Beverly problem in that article would have been corrected if one word in the present law had been changed.

Dan Reaugh testified and referred to a recent article by the same individual that prepared the Readers Digest Article in the Idaho Advocate, Volume 15, December 12, 1972 in which Professor Peterson stated the Uniform Probate Procedures were having some problems in the Idaho Law. Proposed a technical correction to HB 496 and raised from 10 to 20,000 the amount of the estate which could use the summary of administrative procedure for small estates.

Next witness, Mr. George Bovington, American Insurance Association testified in support of the uniform probate code.

Next witness, Mr. Lyman Hull, Corporate Trustees Association of Washington, testified in support of HB 748. Stated that this bill was the same as the uniform probate code with the exception of one part and attempted to lift from the uniform probate code just so parts of it could improve the Washington law. Specifically, Section 24 of HB 748 strikes prohibition of trust officers from soliciting trusts.

Next witness, Mr. Fred Kelley, task force on aging, testified in support of the Uniform Probate Code, or at least an improvement in the probate laws of the State of Washington. He said that many of the elderly people were concerned about retaining as much of their estate as possible to pass on to their heirs. This was the subject of top priority in meetings all over the State. He represented 317,000 elderly people in the State of Washington.

Meeting adjourned.

MINUTES

COMMITTEE: HOUSE JUDICIARY COMMITTEE
CHAIRMAN: REPRESENTATIVE WALT O. KNOWLES

SUBCOMMITTEE: SUBCOMMITTEE NO. 2
CHAIRMAN: REPRESENTATIVE RICK SMITH

DATE: SEPTEMBER 4, 1973

TIME: 1:30 P.M.

LOCATION: Western Washington State College; Bellingham

SUBJECT(s): UNIFORM PROBATE CODE

MEMBERS PRESENT:

- _____
Representative Smith
- _____
Representative Eikenberry
- _____
Representative Hayner
- _____
Representative Knowles - Ex-officio member

MEMBERS ABSENT:

- _____
Representative Sommers
- _____
Representative Julin

OTHERS PRESENT:

See attached agenda.

The meeting was called to order by Chairman Smith
at 1:30 P.M.

MINUTES

1.

The meeting was called to order by Chairman Smith at 1:30 P.M. Present were Representatives Smith, Knowles, Eikenberry and Hayner.

Mr. Willard Wright, Seattle attorney, led the committee in a general "background" discussion of Washington probate law and practice.

Mr. Wright pointed out that the average estate, nation-wide, is less than \$15,000 in size. For purposes of the discussion, Mr. Wright proposed a hypothetical estate valued at \$50,000, all community property, involving no unusual legal troubles, and consisting of: A home valued at \$20,000; a bank account valued at \$10,000; miscellaneous personal property valued at \$10,000 and life insurance valued at \$10,000. The family is husband, wife and two minor children.

The first example involved a community property agreement. Washington is the most advanced state in the nation as to community property agreements, and only two other states have anything similar (California and Idaho). In Washington, under the above hypothetical with a community property agreement, there would be no probate. No tax would be due because the property is under the exemption lines for both state and federal taxation. All that would be necessary would be to record the community property agreement, obtain an inheritance tax certificate that no taxes are due, and clear the title through the title company for distribution. Approximate costs would be: Certificates and filing fees \$4; attorneys' fees approximately \$175. The time element would be from one to five months depending upon whether there were questions as to creditors of the estate.

The next example involved use of the joint tenancy. The effect of this tool would be much the same as community property agreements, with some additional tax problems. The time and cost involved would be approximately the same.

The third example involved the use of a non-intervention will. Washington was first in the nation to have this probate tool and remains the most advanced state in the nation. Texas is just beginning to make use of it. Under the non-intervention will, for the above hypothetical estate, the costs would be: Court costs and filing fees about \$65; attorney fees \$300-500; and appraisal fee of approximately \$50. The time involved would be just over four months.

The fourth example was a situation where there is no will or community property agreement, that is, where the estate passes in accordance with the intestacy statute. This is the area where the situation can get complicated, time consuming and expensive. Guardians for the minor children would be necessary. Property could not be sold without difficulty. A bond would be required and court approval for actions by the administrator would be required. Cost of such a probate would run from \$650 to \$1,150.

Mr. Wright observed that Washington practice and law, especially as to community property agreements and non-intervention wills, is far advanced of the rest of the nation. The uniform probate code is, to a large extent, an attempt to achieve in other states that which Washington already has. A problem arises because people are not using that which is available, but statutory changes alone will not overcome that problem.

Further discussion among the committee members and Mr. Wright pertained to areas of potential improvement in the existing Washington law. Suggestions were:

- (1) Amend the community property statute to allow for more general, third party designations. For example, to allow for a designation of contingent beneficiaries, or even other third party beneficiaries.
- (2) As to intestate estates, change the law to provide that the surviving spouse automatically receives all of the decedent's one-half of community property. Also, increase the allowable amount of the homestead exemption to twenty-thousand dollars.
- (3) Permit broader usage of the affidavit form of transfer of bank accounts, etc., and for larger amounts. As to this, a problem exists regarding means of protecting against false affidavits.
- (4) As to creditors claims, delete the requirement that these be "verified", but leave in the requirement that they be filed.
- (5) As to the requirement of appraisals, liberalize the statutory provisions so that no appraisal is required where a federal estate tax is involved (The federal people will see to a fair appraisal there) or where all the property will be going to a surviving spouse.

- (6) Improve the requirements in the area of guardianships. Mr. Wright suggested that the Uniform Probate Code is very good as to incompetents other than children, but is too broad in the area of minor guardianships.
- (7) As to bonds, require less by way of security from executors and administrators.

Mr. Wright took issue with the "elective share" provision of the Uniform Probate Code. He proposed that "quasi community property" notions be applied to the situation where property is passed which would have been community property if accumulated in this state. Idaho and Arizona have adopted this sort of approach, and it struck Mr. Wright as being more sensible.

The discussion then turned to House Bill 676, dealing with attorneys' fees. Mr. Wright observed that larger estates involve very high risks for the attorneys, as the tax laws become very complicated and probate steps become very tricky. In those and other situations, the amount involved in an estate is a fair point of reference and factor in determining the reasonable fee. Mr. Wright contended that HB 676, in its insistence that a percentage of the amount involved never be considered, was not reasonable.

MINUTES

COMMITTEE: HOUSE JUDICIARY COMMITTEE
CHAIRMAN: REPRESENTATIVE WALT O. KNOWLES

SUBCOMMITTEE: SUBCOMMITTEE NO. 2
CHAIRMAN: REPRESENTATIVE RICK SMITH

DATE: SEPTEMBER 5, 1973

TIME: 9 A.M.

LOCATION: Western Wash. State College; Bellingham

SUBJECT(s): UNIFORM PROBATE CODE
HB 11 - Probate, uniform code
HB 266 - Probate, uniform code
HB 496 - Probate, general revisions
HB 676 - Estate assets, percentage, personal
rep. fees
HB 748 - Probate general revisions

MEMBERS PRESENT:
Representative Hayner
Representative Eikenberry
Representative Smith
Representative Knowles

MEMBERS ABSENT:
Representative Sommers
Representative Julin

OTHERS PRESENT:
See attached agenda.

The meeting was called to order by Chairman Smith
at 9 A.M.

The meeting was called to order at 9 A.M. by Chairman Smith. Present were Representatives Hayner, Knowles, Smith and Eikenberry.

A hearing was conducted on the following bills:

HB 676

Representative Lysen, prime sponsor, submitted his written sponsor report, together with a proposed amendment. He testified that the present system has excessive fees and no method for court review of the fees.

Mr. Mal Edwards spoke in favor of the bill, saying it would improve the public attitude towards lawyers and the administration of estates. He cited the case of In re Boston 80 Wash., as having stated very difficult requirements for overturning attorneys' fees in probate.

Mr. Bob Beschel, Wash. State Bar Assn., spoke against the requirement that fees be based solely on a per hour rate, but was in favor of a review of the reasonableness of the fees by the courts.

After further discussion, the parties agreed that a compromise bill could be worked out to satisfy the needs of both sides. Mr. Edwards stated that he would draft such a bill and forward it to Mr. Beschel and the committee.

Mr. Lyman Hull, representing corporate trustees, observed that his clients have different problems as executors than attorneys do, and that the fee provisions should take account of this.

House Bills 496, 266, 11, and 748 (the probate revision bills)

Mr. Norm Trezona and Mr. Bob Beschel testified in favor of the Bar Assn. bill (HB 496). They pointed out that the bill would provide for statutory changes affecting:

- (1) An easy transfer (affidavit) provision for amounts of \$20,000 or less,
- (2) extending non-intervention powers to intestate estates as to the surviving spouse, or a corporate trustee, and even to others if there is notice and hearing.
- (3) Amending the statutes to allow direct payment to minors up to \$1,000, and, for amounts over that, payment either to a guardian or to be held in a savings account in trust for the minor.

- (4) Providing that after six months, a creditor's claim that has not been rejected is deemed admitted.

It was reported that an ad hoc joint committee of members of the Bar Assn. and representatives favoring the Uniform Probate Code continue to be at work in ironing out their differences.

Testimony was that the Uniform Probate Code at this time is unproved, whereas Washington's probate procedure is far advanced and has the benefit of substantial developed law. Further discussion related to the possibility of amending the community property act statute to allow revocation on incompetency, the "elective share" provision of the Uniform Probate Code, and a "quasi community property" concept from HB 11 (the Idaho version), and the exempt property and homestead allowance sections of the various proposed statutes.

MINUTES

COMMITTEE: HOUSE JUDICIARY
CHAIRMAN: REP. WALT O. KNOWLES

SUBCOMMITTEE: _____
CHAIRMAN: _____

DATE: January 25, 1974

TIME: 8:00 A.M.

LOCATION: House Office Building, Rm. 416

SUBJECT(s): EXECUTIVE SESSION:
Revised Probate Reform Act of 1974

MEMBERS PRESENT:

Rep. Knowles	Rep. Hayner	Rep. Smith
Rep. Kelley	Rep. Maxie	Rep. Sommers
Rep. Gaspard	Rep. Newhouse	
Rep. Eikenberry	Rep. North (Lois)	

MEMBERS ABSENT:

Rep. Julin
Rep. Shinpoch

OTHERS PRESENT:

See attached agenda.

The meeting was called to order by Chairman Rep. Knowles
at 8:30 A.M.

On Wednesday, January 25, 1974, Chairman Rep. Knowles of the House Judiciary Committee called the meeting to order at 8:30 A.M. Scheduled on the agenda was an Executive Session to be held on the Revised Probate Reform Act of 1974. The Chairman turned the discussion over to Rep. Rick Smith, Subcommittee Chairman, who had held several work sessions in an attempt to draft and to present a bill in final form to the full committee for consideration.

In order to familiarize the committee members with the provisions of this bill, Rep. Smith and staff counsel, G. K. Mooney, summarized the contents of each section.

Present at this hearing were staff members Bernie Ryan, Jim Dougherty, and Senator Clark from the Senate Judiciary Committee; Roberta Kaiser and Dee Cooper of the Inheritance Tax Division; Norman Trezona, Wash. State Bar Association; Bill Stephens, State Bar Association; J. H. Broachaus, Seattle-First National Bank; Lyman Hull, Corporate Trustee, and several others who sat in attendance. The meeting did not entertain testimony, except as requested by the Chairman.

A major change in this bill from the October 6, 1973 draft was the omission of the multi-party bank accounts (Sections 46-69 in the Oct. 6 draft). Rep. Smith explained that a number of problems had been shown to exist and that further work to coordinate these provisions with other banking laws, community property rights and contract rights of depositors would be necessary.

Representative Kelley made the motion to substitute this draft as SHB 748. The motion was carried (9).

The meeting was adjourned at 9:30 A.M.

COURT: House Judiciary
 DATE: Jan. 16

PROBATE

ATTENDANCE ROSTER

NAME	ORGANIZATION	MAILING ADDRESS	PHONE
Walt Kinn	Industries Inc	Albany	753-552
Al Bocking	Industries Inc	Albany	753-725
Don Deak	Robt's Trade Co of WJC	Leattle	693-641
Donny Spade	SPACON	"	545-561
Ally Camp	"	"	545-3781
J.T. CHAMPAGNE	Wm. St. Bar. Assn.	Albany	753-219
Bill Stephens	Wm. St. Bar Assn.	Albany	943-641
Dean Ginn	Wm. St. Bar Assn.	Seattle	
John Chapman	The Natl Bar	Seattle	292-318
Monty Sparks	Governor's Office	Og	6782
Walt Smith	State Bar Assn	Spokane	325-212
James Hall			

COMMITTEE: HOUSE JUDICIARY COMMITTEE
CHAIRMAN: REP. WALT O. KNOWLES

SUBCOMMITTEE: SUBCOMMITTEE #2
CHAIRMAN: Rep. Rick Smith

DATE: January 16, 1974

TIME: 7:00 P.M.

LOCATION: HOB, Rm. 416

SUBJECT(s): PROPOSED PROBATE REFORM ACT OF 1974

MEMBERS PRESENT:

Rep. Smith

Rep. Knowles

Rep. Hayner

MEMBERS ABSENT:

Rep. Sommers

Rep. Julin

OTHERS PRESENT:

See attached agenda.

The meeting was called to order by Chairman Rep. Smith
at 7:00 P.M.

On January 16, 1974, the House Judiciary Committee conducted a continuation of the work session held at the Sea-Tac Airport on January 5 regarding the Revised Probate Reform Act of 1974. The main objective of this meeting was an attempt to complete the review of this draft and to present a bill in final form to the full committee for consideration the following week. Subcommittee Chairman, Rep. Rick Smith, led the discussion, commencing with Section 31.

A section by section review followed and the meeting was open for any comments, criticisms or suggestions to improve the language of the remaining sections in the proposed draft.

Section 31 provides that no bond is required unless the decedent's will or the court so state. Mr. Barney Hyde of Safeco stated that his company had no real objection to this section and introduced Mr. Gerald Perry to give detailed specifics to the committee. Mr. Perry stated that of all those states that have adopted the UPC, Washington State is the only one to retain the exclusion of the bonding requirement. All the rest have retained the bonding requirement that there be some protection for the heirs; creditors and state involved (taxing bodies). Florida and California are presently putting the bonding requirement back in.

Rep. Knowles asked Mr. Perry to furnish the committee with the percentage of bond claims in relation to bonds issues during the prior three-year period.

Mr. Robert Beschel, representing the State Bar Association submitted several suggested amendments which the committee took into consideration.

Roberta Kaiser and Al Borley from the Inheritance Tax Division, also were in attendance and participated in the discussion. One main concern they expressed was to ask that the Inheritance Tax Division be able to make written request for and receive a copy of an appraisal in relation to Section 34.

Discussion then followed, led by Dan Reaugh, an attorney favoring the UPC, on the policy thinking of setting a specified amount for the homestead provision.

Lyman Hull, Corporate Trustees, discussed sections 46-60 dealing with the multi-party bank accounts. Discussion and comments suggested by Dan Reaugh and Ned Langley resulted in several suggested amendments which counsel, G. K. Mooney was asked to redraft.

Considerable discussion followed on setting an implementation date, and the committee agreed to present that question before the full committee for their opinion.

Having reviewed all the remaining sections, the work session was adjourned at 10:30 P.M.

ATTENDANCE ROSTER

NAME	ORGANIZATION	MAILING ADDRESS	PHONE	BILL OR SUBJECT OF INTEREST	WISH TO TESTIFY? (YES/NO)	IF PRO/CON
Bob Beschoff	State Bar	507 S.W. 6th St Spokane	728-6113	HB-476 " 496 " 328 " 348		
William L. Hill	Corporate Trainers Association	Box 700 Norton, WA Scientific L.L. Street	728-2173	"		
Malcolm L. Edwards	Attorney: Private Practice	618 United Pacific Bldg. Seattle, Washington	MA 4-0750	"		
Ernest R. Chapman	Facific NTI Bank	P.O. Box 160 Seattle 98101	684-0974	HB-716	Yes	Pro
Henry Westphalen	Seattle First Natl Bank	P.O. Box 3586 Seattle 98134	478-7218	HB-748, 676, 266, #96	No	
			292-3587			
			583-3235			

SUBSTITUTE HOUSE BILL 748

By: Representatives Smith, Kelley,
and Laughlin

1. Amends and adds new sections to Title 11 RCW (probate law and practice).
2. The bill's 56 sections are divided into 7 parts (part headings will not be codified), summarized as follows:

Part I. General Provisions (Sections 1 - 4)

Sections 1 - 4: These sections set forth legislative declaration and purpose, savings clause and applicability, designation of new chapters, and severability clause.

Part II. Provisions Relating to Distribution
of Property (Sections 5 - 13)

Sections 5 - 6: Provide for transfer of personal property by affidavit, when entire estate has net value of \$10,000 or less, and for discharge and release of the person paying, delivering or transferring such property. Recipient is accountable to others having superior right to the property.

Section 7: Amends RCW 11.04.015 to provide that, in intestate succession, the surviving spouse receives all of the decedent's share of the net community estate.

Sections 8 - 11: Provide for increase of homestead amount from \$15,000 to \$20,000; and provides increase from \$10,000 to \$20,000 of the amount of collateral receivables above which the courts award of homestead of in lieu amounts shall be discretionary.

Sections 12 and 13: Provide for direct distribution to minor heirs in amounts of \$1,000 or less without appointment of guardian or requiring bond, and removes ceiling on further amounts which the probate court may order deposited for the benefit of minors.

Part III. Provisions Relating to Non-Intervention
Powers (Sections 14 - 27)

Sections 14 - 25: Amend and add new provision to Chapter 11.68 RCW providing for extension of non-intervention powers to intestate estates, presumption in favor of non-intervention powers, and court determination of the reasonableness of the fees of a personal representative, his attorneys, appraisers and accountants.

Sections 26 and 27: Extend ability to obtain non-intervention powers to administrators with will annexed and administrators de bonis non.

Part IV. Provisions Relating to Adjudication of Testacy or Intestacy and Heirship (Sections 28 - 33)

Sections 28 - 33: Provide for adjudications of testacy establishing a will, or of intestacy and heirship, without appointment of a personal representative, requiring no further administration. Section 32 provides for written notice to each heir, legatee and devisee of the decedent in such cases. Section 33 provides that, if there is no contest, the adjudication is equivalent to a final decree of distribution after four months.

Part V. Provisions Relating to Creditors Claims (Sections 34 - 39)

Section 34: Amends notice to creditors' statute to require that a copy of said notice be filed with the clerk of the court, and provide that the four month claim period commences with the letter of the date of first publication or the date of such filing. Also provides that filing of copy of claim and proof of its service with the clerk of court is to be done within ten days of service of the claim.

Sections 35 - 39: Provide for filing, without necessity of affidavit, of creditors' claims; the contents thereof; the powers of a personal representative as to such claims; and that claims are deemed allowed if not rejected within six months after date of first publication of notice to creditors.

Part VI. Provisions Relating to Banks, Trust Companies, Accounts (Sections 40 - 44)

Sections 40 - 43: Adds provisions to statutes concerning the various forms of banks making clear that affidavit procedure under this act (Sections 5 and 6) supplements existing pay-out provisions. Further change in Section 40 would allow non-probate pay-outs, whether estate is testate or intestate, when deposit in the particular bank is not over \$1,000, regardless of amounts deposited elsewhere.

Sections 44: Deletes proscription against a trust company or corporation personally soliciting appointment as executor, administrator or guardian.

Part VII. Miscellaneous Provisions

(Sections 45 - 57)

Section 45: Provides for speedy hearing of petitions for letters of administration, probate or adjudication of testacy or intestacy, and for notice to surviving spouse.

Section 46: Provides for appointment of guardian ad litem for incompetent interested parties as to adjudications of testacy or intestacy.

Section 47: Provides that no personal representative bond is required where the will so directs or the representative is a bank or trust company or is the surviving spouse and it appears that the estate will all go to her (him) and minor children at home. Also provides that court may waive bond in other cases, and that court has discretion to substitute other security or financial arrangements for a bond.

Section 48: Extends from ninety days to four months the period for substituting a personal representative for the decedent as defendant in an action pending at the time of death.

Section 49: Requires personal representative to file a true inventory of property of the estate discovered subsequent to regular inventory filing.

Section 50: Provides that personal representatives shall inventory the estate and may employ an appraiser. The appraisal need not be filed or provided except upon written request.

Section 51: Provides that appraisal fee may be set by the personal representative subject to court review for reasonableness.

Section 52: Reduces from six to three years the statute of limitations as to action to prevent lapse of a devise.

Sections 53 and 54: Provide that written powers of attorney may be effective upon, or in spite of, disability of the principal if so intended.

Section 55: Provides that payable on death provisions in any written instrument effective as a contract, give, conveyance, or trust, are deemed non-testamentary and that this act does not invalidate the instrument or the listed provisions.

Section 56: Repealer.

Section 57: Effective date (7/1/74), and emergency clause.

NEW PROBATE CODE

Substitute House bill 748 amends and adds new sections to Title 11 of RCW relating to our probate law and practice.

The bill is summarized as follows:

General Provisions

Effective Date (Sec. 2):

- (1) Decedents dying after October 1, 1974.
- (2) Any proceedings pending in court regardless of date of death except if in the opinion of the court old procedure should be followed.
- (3) Personal representatives as of October 1 have powers conferred by new law.
- (4) Acts done before October 1 are not impaired by new law.
- (5) Rules of construction and presumption provided in new law applies to instruments executed before October 1, 1974.

Provisions Relating to Distribution
of Property - Sections 5 - 13

Transfer of Personal Property By Affidavit up to \$10,000 in Value:

- (1) At any time after 40 days from death.
Personal property may be transferred to a "successor" of the decedent upon affidavit stating:
 - (a) Successor's name and address.
 - (b) That decedent was a resident.
 - (c) Value does not exceed \$10,000.
 - (d) Forty days have elapsed.
 - (e) No application or petition for appointment of personal representative.
 - (f) All debts paid or provided for.
 - (g) That claiming successor has mailed notice identifying claim to all other possible successors at least ten days before claiming transfer.

(h) That claiming successor has mailed to Inheritance Tax Division a notice of at least ten days prior.

- (2) Securities may be transferred under this Section.
- (3) Inheritance Tax Division may stop transfer until tax is paid.
- (4) Successor shall mean any person, other than creditors, who are entitled to the property of the decedent under his Will or laws of intestacy.

Transferor Discharged (Sec. 6):

- (1) Transferor pursuant to affidavit is discharged and released.
- (2) Not required to inquire into the truth of the affidavit.
- (3) If refuse to transfer, court can compel the transfer.
- (4) If more than one affidavit is delivered, may respond to first affidavit or in the alternative, implead the money or personal property into court.

Laws of Intestacy (Sec. 7):

Die intestate, distribute as follows:

- (1) All community property to surviving spouse.
- (2) One-half of separate estate to spouse if survived by issue.
- (3) If no issue, three-fourths of separate estate to spouse, one-fourth to parents or issue of parents.
- (4) If no parents or issue, all separate estate to spouse.
- (5) If there is no surviving spouse:
 - (a) To issue by right of representation.
 - (b) No issue, then parents.
 - (c) If no issue nor parents, then to issue of parents by right of representation.
 - (d) If no issue of parent, then to grandparents.
 - (e) If no grandparents, then issue of grandparents.

Homestead (Sec. 8-11):

- (1) Increase homestead to \$20,000.
- (2) Up to \$20,000 of collateral receivables may be awarded in lieu of homestead.
- (3) Must file within six years from the date of death.

Exceptions (to Homestead) (Sec. 9):

- (1) No award to a surviving spouse who has feloniously killed the deceased spouse.
- (2) If there are children of the deceased by a former marriage; or if petitioning surviving spouse has abandoned children or failed to provide; or if surviving spouse is entitled to insurance benefits or property in the sum of \$20,000 or more, exclusive of the spouse's 1/2 interest in community property, then the award in lieu of homestead shall be discretionary.

Direct Distribution to Minor Heirs Without Guardian (Sec. 11):

If the amount to be distributed to minor under age 18 is \$1,000 or less, may distribute to a person for the minor without appointing guardian and without requiring bond.

Provisions Relating to Non-
Intervention Powers

Non-Intervention (Sec. 14):

- (1) Non-intervention powers extended to intestate estates, if estate is solvent and personal representative is one other than a creditor.
- (2) An Order of Solvency may be entered at time of appointment of personal representative on petition showing solvency.
- (3) Unless will states to contrary, it is presumed that decedent intended that any will be administered without intervention of court.
- (4) (a) If decedent died intestate, must give heirs notice by mail of his intention to apply to the court for non-intervention powers unless application by:

1. Surviving spouse, and there is no issue of a prior marriage, or by
 2. A bank or trust company in this state.
- (b) Heirs or legatees can object to non-intervention powers at time of hearing. If objection, then discretionary.

Successor - Personal Representative (Sec. 19):

A successor personal representative of solvent estate shall administer the estate without intervention after notice.

Failure to Perform (Sec. 20):

If personal representative fails to execute his trust faithfully, any heir, creditor or persons may petition for his removal or the court may impose restrictions upon his powers with the words "powers restricted" endorsed upon the original Order of Solvency, together with the date of endorsement.

Vacating Order of Solvency (Sec. 21):

Upon notice, the order of solvency may be vacated upon petition of personal representative, heir, legatee, devisee or creditor if supported by proof satisfactory to court that the estate has become insolvent.

Non-Intervention Powers Include (Sec. 22):

- (1) Mortgage, lease, sell, convey real or personal property and borrow on general credit.

Close Estate (Sec. 23):

- (1) May apply to distribute property by Decree or approve accounting and settle estate in same manner that it would in an estate without non-intervention powers.
- (2) Adjudicate creditors claims and heirship; distribute.
- (3) If apply for decree, the petition must state the fees paid or proposed to be paid to the personal

representative, attorney, accountant and appraisers. Such notice must go to all heirs whose interest would be reduced by the amount of the fee.

- (4) At request of personal representative or any heir court must determine reasonableness of fees.

Criteria for Fees (Sec. 23):

Fees for attorney, personal representatives, accountants and appraisers shall be established by court rules based on Code of Professional Responsibility.

Declaration of Closing (Sec. 24):

(a) If personal representative with non-intervention powers does not apply for a decree he shall file a declaration of closing stating:

- (1) Date of death, residence and information re will.
- (2) That creditors' claims were disposed of.
- (3) That administration is complete.
- (4) Names and addresses of heirs.
- (5) Amount of fees to be paid attorney, personal representative, appraiser, etc. and must state that he does or does not intend to obtain order approving fees from the court.

(b) Within 5 days of filing declaration must mail notice of filing to heirs. (Form of notice set out in statute). Heir has thirty days within which to object. If no objection, then personal representative will be discharged. Declaration is equivalent to a decree.

Heirs have the right to waive in writing notice requirement. If so, declaration of completion becomes effective upon date of filing.

Waiver (Sec. 25):

After acquiring non-intervention powers, they are not lost by obtaining a court order during probate.

Administrator de bonis non and
Administrator With Will Annexed (Secs. 26 - 27):

Following death or resignation of the personal representative, the successor must apply for non-intervention powers the same as an original personal representative.

Provisions Relating to Adjudication
of Testacy or Intestacy and Heirship

Application for Probate Without Appointing
Personal Representative:

There has been added a provision that an application can be made to probate a will without requesting the appointment of a personal representative. The court enters an order establishing that the decedent died testate. Then no further proceeding is required except pursuant to Secs. 32 and 33.

Application for Adjudication of Intestacy (Sec. 30):

It is also possible to apply for an adjudication that a decedent died intestate and have the court establish heirship without the issuance of letters of administration and no further administration is required except pursuant to Sections 32 and 33.

Notice if No Personal Representative (Secs. 32 and 33):

If application for heirship is made without appointing a personal representative, then notice must be mailed to or served on each heir with a copy of the will, if there is one, if died intestate, the name and addresses of the potential heirs should be included.

Then after four months if there has been no contest, court may establish:

- (1) That decedent died testate or intestate.
- (2) The right of the heir to receive assets of the

decedent subject only to the rights of creditors, awards in lieu of homestead, family allowances and taxes.

Notice to Creditors (Sec. 34):

- (1) A copy of the notice to creditors must be filed with the court and published. Creditors shall have four months from the date of the first publication or four months from the date of the filing, whichever later, to serve claims.
- (2) Creditor's claims after service must be filed with the clerk within the same four-month period.

Signing of Claims (Sec. 35):

- (1) Claims shall be signed by the claimant or his attorney or a person authorized to sign for him.
- (2) Contain name and address, basis of claim, amount of claim, whether the claim is secured, unliquidated, etc.
- (3) Claim need not be supported by affidavit.
- (4) No longer need to endorse thereon rejected or allowed.
- (5) If personal representatives do nothing within six months of date of first publication, claim automatically allowed. If reject, notified by personal service or certified mail.
- (6) If rejected, must bring suit within 30 days after notification of rejection, or before expiration of the time for the serving and filing of claims against the estate, whichever period is the longer.

In other words, a bank or trust company cannot solicit legal business but it can personally solicit the appointment for the bank to serve as executor, administrator or guardian.

Miscellaneous Provisions

Petition for Letters of Administration (Sec. 45):

The matter may be heard forthwith. If there is a surviving spouse and petition presented by someone other than surviving spouse, notice to the surviving spouse shall be given at least ten days before the hearing unless the surviving spouse waives notice.

Incompetents (Sec. 46):

The court may enter an order adjudicating testacy or intestacy and heirship and shall at such hearings appoint guardian ad litem for incompetent. If there is a surviving spouse and a minor child, may waive the appointment of a guardian ad litem for child.

Bond (Sec. 47):

- (1) No bond is required, testate or intestate, when the personal representative is the surviving spouse and it appears that the entire estate will be distributed to such spouse and minor children.
- (2) No bond is required of banks or trust companies.
- (3) The court may waive bond for any personal representatives.
- (4) In lieu of bond, the court may substitute some other security or financial arrangement.

Suit Pending at Death - (Sec. 48)

The plaintiff may have four months instead of 90 days after first publication of notice to creditors to serve on personal representative a motion to have such personal representative substituted as the defendant in such action.

Inventory and Appraisal (Sec. 50):

- (1) The personal representative determines fair net value at date of death. He may (but not required) employ a disinterested person to assist in appraising property. Different persons may be employed to appraise different kinds of assets.
- (2) The appraisement need not be filed in the probate cause.
- (3) Upon written request for a copy of the inventory and appraisement from any heir, legatee, devisee, unpaid creditor who has filed a claim, or from the Inheritance Tax Division of the Department of Revenue, the personal representative shall furnish such person a true and correct copy.

Fee to Appraiser (Sec. 51):

- (1) Personal representative shall determine fee for appraiser.
- (2) Reasonableness shall be reviewed by the court at the time of the final account.
- (3) If unreasonable, the personal representative may be ordered to make appropriate refund.

Lapse (Sec. 52):

- (1) Lapsed legacy becomes part of the residue of the estate.
- (2) If the legatee shows up within three years (formerly six years) and establishes his identity, he can inherit, otherwise, he is forever barred.

Power of Attorney (Sec. 53):

- (1) On a Power of Attorney you can insert the words, "this power of attorney shall not be affected by disability of the principal" or "this power of

attorney shall become effective upon the disability of the principal" or similar words. The authority conferred shall be exercisable notwithstanding his disability or incapacity or death (if unknown to attorney).

- (2) Anything the attorney in fact does shall inure to the benefit of and bind the principal or his guardian or heirs, devisees, or personal representatives as if the principal had been alive, competent, and not disabled.

Revocation Power of Attorney (Sec. 54):

- (1) The death, disability or incompetence of any principal who has executed a power of attorney in writing does not revoke the power of attorney who, without actual knowledge of the death, disability or incompetence acts in good faith under the power of attorney or agency.
- (2) Any action so taken binds the principal and his heirs.
- (3) An affidavit executed by the attorney in fact that at the time of the act he was acting pursuant to his power and that he does not have actual knowledge of the revocation, termination, death or disability or incompetence is, in absence of fraud, conclusive proof of non-revocation or non-termination of the power at the time.

Instruments Payable on Death (Sec. 55):

- (1) Any contract, mortgage, promissory note, pension plan, joint tenancy, community property agreement, etc., is deemed to be non-testamentary and the 1974 amendatory act does not invalidate the instrument.
- (2) New law does not invalidate instrument containing provision:

- (a) That money or other benefits shall be paid after the death to a person designated by the decedent executed at the same time as the instrument.
- (b) That any money due or to become due under the instrument shall cease to be payable in the event of death.
- (c) That any property which is the subject of the instrument shall pass to the person designated by the decedent in either instrument, including a will.
- (d) Ownership of the contents of deposit box are determined according to rules of law without regard to the lease provisions for the repository.

SUBSTITUTE
HOUSE BILL NO. 748

By COMMITTEE ON
Judiciary

~~XXXXXXXXXX~~
(Originally sponsored by:
Representatives Smith, Kelley
Laughlin)

BRIEF TITLE
Making certain changes in the
laws relating to probate.

HOUSE RECORD—

Reported out of
committee with the recommendation that
the substitute bill be substituted for the
original bill and that the substitute bill do
pass. ed printed.

On motion

substituted for original bill and placed on
calendar.

Read second time and

SENATE RECORD—

Received from House

Read first time and referred to Committee

Reported back by

Committee with recommendation

Read second time and

Receive

Read third time and

Read third time and

Signed by the Spe

Yeas, Nays

Title agreed to

Sent to Senate

Yeas, Nays

Title agreed to

Returned to House

Signed by the Pr

Civil Cl

Secretary of Senate

REPORT TO SPEAKER'S OFFICE
(Confidential - Please Deliver in Envelope)

BILL NO. HB 748 BY Representatives Smith, Kelley and Laughlin

BRIEF TITLE Amend Making certain changes in the laws relating to probate

REPORTED BY: Committee on HOUSE JUDICIARY

COMMITTEE RECOMMENDATION: Majority - The Substitute Bill be substituted and the substitute bill do pass (Indicate number signing report)

A. EXISTING LAW:

Amends and adds new sections to Title 11 RCW (probate law and practice)

B. PURPOSE OF BILL AND EFFECT ON EXISTING LAW:

See attached digest.

C. EFFECT OF AMENDMENT(S):

FISCAL IMPACT:

BILL SUBSTANTIALLY SIMILAR: (if any)

No. _____

Rep. Wait Knowles
Chairman

DRAFTER: Code Reviser: Jim Kaeding

Other: _____

PRINCIPAL PROPONENTS: (Individuals and Organizations)

Norman Trezona - State Bar Assn.

Bob Beschel - State Bar

Bill Steppens - Wash. State Bar

Robertta Kaiser - Inheritance Tax Division

PRINCIPAL OPPONENTS: (Individuals and Organizations)

Dan Reaugh - Probate Task Committee of WJC

PRINCIPAL ARGUMENTS:

FOR:

This is an attempt to simplify the procedures and time involved in processing estates.

AGAINST:

It was suggested that an attempt to follow more closely the U.P.C. should be made.

Report of Standing Committee

HOUSE OF REPRESENTATIVES
Washington, D.C.

January 23, 1971

HOUSE BILL
Title: [Illegible]

Author: [Illegible]
Sponsor: Rep. Smith

Making certain changes in the law relating to probate

reported bill committee on [Illegible]
MAJOR recommendation: The substitute bill be substituted therefor and the substitute bill

Signed by
Representative

Krowles
Chairman

Katley
Vice Chairman

Eikenberry

Gaspard

Hayner

JULIAN

Max

Newhouse

North (Lions)

Sharnbough

Smith

Sommer

9

BILL DIGEST FORM

By Representatives Smith, Kelley and Laughlin

Bill No. HB 748

Brief Title: Making certain changes in the laws relating to probate

Reported By: Committee on HOUSE JUDICIARY

Committee Recommendation: Majority - The Substitute Bill be substituted and the substitute bill do pass (9). (Indicate number signing report)

SEE ATTACHED

Digester G. K. Mooney

Approved Rep. Walt Knowles
Committee Chairman

Date Jan. 23, 1974

(Distribution: House Majority Caucus - 6 copies)

Leg Hist 000217

On page 1, section 1, line 6, after "after"
strike "March 1, 1975" and insert "October
1, 1974"

On page 1, section 1, line 18, after "on"
strike "March 1, 1975" and insert "October
1, 1974"

On page 1, section 1, line 22, after "before"
strike "March 1, 1975" and insert "October 1,
1974"

On page 1, section 1, line 26, after "before"
strike "March 1, 1975" and insert "October 1,
1974"

On page 2, section 1, line 2, after "before" and
before "unless" on page 2, line 3, strike "March
1, 1975" and insert "October 1, 1974"

On page 11, section 13, line 13, after "estate"
insert "not designated as executor in the decedent's
will"

On page 14, section 17, line 21, after "amended."
strike "The" and insert "Unless unrestricted non-
intervention powers are directed by the will of the
decedent, the"

On page 15, section 18, line 2, after "creditor"
insert "not designated as executor in the decedent's
will"

On page 16, section 20, line 7, after "vacated" insert
"or restricted"

On page 41, section 56, line 6, after "effect" strike
"March 1, 1975" and insert "October 1, 1974"

19, SRS 748
to amend
by the Senate
to SRS 748
or amended

On Page 1, sec. 1, line ⁶, after "after" strike
" March 1, 1975 " and insert " October
1, 1974 "

On Page 1, sec. 1, line 18, after "on" strike
" March 1, 1975 " and insert " October 1, 1974 "

On Page 1, sec. 1, line ²² ~~18~~, after "before" strike
" March 1, 1975 " and insert " October 1, 1974 "

On Page 1, sec. 1, line ²⁶ ~~29~~, after "before" strike
" March 1, 1975 " and insert " October 1, 1974 "

On Page 2, sec. 1, line 2, after "before" and
before "unless" on page 2, line 3, strike
" March 1, 1975 " and insert " October 1, 1974 "

insert PP - 14 - 15 - 16
On Page 41, sec. 56, line 6, after "effect" strike
" March 1, 1975 " and insert " October 1, 1974 "

On Page 11, sec. 13, line 13, after ~~"and of"~~
~~strike "the" and insert "an intestate"~~
after "estate" insert "not designated as
Page 12, executor in the decedent's will"

Page 15, sec. 18, line 2, after "creditor"
insert ~~of an intestate estate~~ "not designated
as executor in the decedent's will"

Page 14, sec. 17, line 21, after "amended."
strike "The" and insert ~~of the~~
~~estate is intestate~~ "If full nonintervention

~~powers~~
"unless
unrestricted nonintervention
powers are ~~not~~ directed by
the will of the decedent, the

Page 16, sec. 20, line 7, after "vacated" insert
"or restricted"

verified
verified

LSI-UPC 0.0(731)
By Dan Reaugh

COMPARATIVE CHART ANALYSIS

of

ALTERNATE PROBATE PROCEDURES

for

ESTATES OF DECEDENTS

Under

WASHINGTON'S UNIFORM PROBATE CODE

as Proposed in

HB - 266
1973

by

DAN REAUGH
1100 IBM Building
Seattle, WA 98101
206-623-6400

73-1-20

EXPLANATION

The charts are organized to compare the five alternate UPC procedures and the two Washington alternates in relation to the six major categories of probate procedure.

The procedural alternatives are listed across the top of the charts and include:

- A. UPC Nonprobate Transfers
Article VI
- B. UPC Collection of Personal Property by Affidavit
§ 3-1201 et. seq.
- C. UPC Informal Probate
§ 3-301 et seq.
- D. UPC Formal Probate
§ 3-401 et seq.
- E. UPC Supervised Probate
§ 3-501 et seq.
- F. Washington Non-Intervention
- G. Washington Administration

Under the following six major categories of probate procedure are listed in the left columns the individual steps in probate procedure.

- I. Commencing Probate
- II. Assets - Collections etc.
- III. Claims of Creditors
- IV. Taxes - Death and Income
- V. Distribution
- VI. Closing the Estate

While the charts do not purport to be complete they are designed to illustrate:

- (1) The UPC follows traditional procedures.
- (2) The five alternative procedures under the UPC makes available to each estate as little or as much court supervision as needed.

COMPARATIVE CHART OF ALTERNATE UPC PROCEDURES.

PROCEDURAL STEPS		Non Probate A. Transfers Article VI,	Collection of PP B. by Affidavit § 3-1201 et seq. (\$10,000 Limitation)	Informal C. Probate § 3-301 et seq.	Formal D. Probate § 3-401 et seq.	Supervised E. Probate § 3-501 et seq.
I. COMMENCING PROBATE						
1.1	Death	title passes at § 6-104, p 105 § 6-201, p 110				
1.2	Demand for Notices	§ 3-204, p 26	same	same	same	same
1.3	Initiating			by Application § 3-310	by Petition Prob: § 3-402 Appt: § 3-414	by Petition § 3-502
1.4	Notices § 1-401			to persons demand- ing & to any PR Prob: § 3-306 Appt: § 3-310	To Heirs, etc. Prob: § 3-403 Appt: § 3-414(b)	to interested Persons § 3-502
1.5	Waiting Periods	none	30 days § 3-1201(a)	120 hours Prob: § 3-302 Appt: § 3-307	Time fixed by Ct. § 3-403	none § 3-501
1.6	Hearing & Findings			Prob: § 3-303 Appt: § 3-308	§ 3-405 et seq	§ 3-502
1.7	Authorizing			Prob: § 3-302 Appt: § 3-307	Prob: § 3-409 Appt: § 3-414(a)	§ 3-502
1.8	Qualifying PR			Written Acceptance § 3-602	No Bond Except § 3-503	
1.9	Notice to Heirs, etc.			§ 3-705	same	same
1.10	Notice to Inh. Tax Div			RCW 83.36.040	same	same

PROCEDURAL STEPS	PROBATE IN WASHINGTON NOW	
	F. Non-Intervention	G. Administration
	I. <u>COMMENCING PROBATE</u>	
1.1 Death	RE vests on RCW 11.04.25	
1.2 Demand for Notices	Authorized RCW 11.28.240	
1.3 Initiating	<u>By Application</u> RCW 11.20.020	<u>By verified, after issuance of letters Petition</u> RCW 11.28.110
1.4 Notices § 1-401,	Notice of Hearing: None Notice of Pendency: RCW 11.28.237	Notice of Hearing: 10 days required
1.5 Waiting Periods	None on Wills RCW 11.20.020(1)	10 days for non-spouses during first 40 days af- ter death RCW 11.28.130
1.6 Hearing & Findings	RCW 11.20.020	RCW 11.28.110
1.7 Authorizing	<u>Order Admitting Will</u> RCW 11.20.020	<u>Order Appointing Admin.</u> RCW 11.28.130
1.8 Qualifying PR	<u>Oath</u> RCW 11.28.170 [64.16.070]	<u>Oath</u> RCW 11.28.170
1.9 Notice to Heirs, etc.	<u>Notice of Pendency</u> RCW 11.28.238	<u>Notice of Pendency</u> RCW 11.28.238
1.10 Notice to Inh. Tax. Div.	Required: RCW 11.28.238	

PROCEDURAL STEPS	COMPARATIVE CHART OF ALTERNATE UPC PROCEDURES.				
	Non Probate A. Transfers Article VI	Collection of Probate B. by Affidavit § 3-1201 et seq.	Informal Probate C. § 3-301 et seq.	Formal Probate D. § 3-401 et seq.	Supervised Probate E. § 3-501 et seq.
1.1 Collecting	II. ASSETS - COLLECTION, SALES ETC. (\$10,000 Limitation)		§ 3-1201(a)	§ 3-709	same
1.2 Avoiding Transfers			§ 3-710	same	same
1.3 Demanding PR to apply non-prob prop	§ 3-916 § 6-107 § 6-301		§ 2-701 et seq.	same	Subject to Restrictions § 3-504
1.4 Duties and Powers of PRs			File or Mail § 3-706	same	same
1.5 Inventory with Values			§ 3-707	same	same
1.6 Appraisers Optional			§ 3-713 et seq.	same	same
1.7 Sales, etc.			§ 3-715	same	same
1.8 Misc. other Dealings					

PROCEDURAL STEPS	PROBATE IN WASHINGTON NOW	
	F. Non-Intervention	G. Administration
	II. <u>ASSETS - COLLECTION, SALES etc.</u>	
2.1 Collecting	Right to Possession & Management RCW 11.48.020 Recovery: RCW 11.18.060 <u>et seq.</u>	
2.2 Avoiding Transfers		
2.3 Demanding PR to apply non-prob. prop	<u>Wash. Cases Contra:</u> Nonprobate property not required to contribute to Death Taxes: <u>Sea-1st NBv Macomber,</u> 1949, 32 Wn 2d 696	
2.4 Duties and Powers of PRs	RCW 11.48	
2.5 Inventory with values	RCW 11.44.015	
2.6 Appraisers Optional	<u>Waiver of Appraisers</u> RCW 11.44.080	
2.7 Sales, etc.	RCW ch. 11.56	
2.8 Misc. other Dealings	Performance of decedent's contracts: RCW 11.60	

PROCEDURAL STEPS	COMPARATIVE CHART OF ALTERNATE UPC PROCEDURES				
	Non Probate A. Transfers Article VI	Collection of PP B. by Affidavit § 3-1201 et seq. (\$10,000 Limitation) CLAIMS OF CREDITORS	Informal C. Probate § 3-301 et seq.	Formal D. Probate § 3-401 et seq.	Supervise E. Probate § 3-501 et s
3.1 Notice to Creditors	Should §3-801 be made applicable?		Publication § 3-801	same	same
3.2 Demanding PR to apply non probate prop	§ 3-916 § 6-107 § 6-301				
3.3 Written Claim		Filing or Service § 3-804(1)	same	same	
3.4 Commencing Independent Action OR		§ 3-804(2)	same	same	
3.5 Allowing or Disallowing		§ 3-806(a)	same	same	
3.6 Commencing Proceeding or Indep. Action		§ 3-806(b) - (d)	same	same	
3.7 Payment of claims		§ 3-807 et seq.	same	same	
3.8 Receipts for Payments	[Assume will be covered by Court Rule]				

PROCEDURAL STEPS	PROBATE IN WASHINGTON NOW	
	F. Non-Intervention	G. Administration
	III. <u>CLAIMS OF CREDITORS</u>	
	<u>Publication</u>	
3.1 Notice to Creditors	RCW 11.40.010	
3.2 Demanding PR to apply non probate prop	No procedure prescribed but non-probate property is subject to claims of creditors RCW 26.16.120 & 68.28.010	
3.3 Written Claim	RCW 11.40.020	
3.4 or Commencing Independent Action	<u>Prohibited before Presentation</u> RCW 11.40.080	
3.5 Allowing or Disallowing	Rejection RCW 11.40.030 Allowing RCW 11.40.040	
3.6 Commencing Proceeding or Indep. Action	<u>Only after Presentation etc.</u> RCW 11.40.020	
3.7 Payment of claims	RCW 11.76.110 et seq	
3.8 Receipts for Payments	RCW 11.76.100	

PROCEDURAL STEPS		COMPARATIVE CHART OF ALTERNATE UPC PROCEDURES			
.1 Partial Distribution	Non Probate A. Transfers Article VI	Collection of PP by Affidavit § 3-1201 et seq. (\$10,000 Limitation)	Informal Probate § 3-301 et seq.	Formal Probate § 3-401 et seq.	Supervised Probate § 3-501 et seq.
		IV. <u>TAXES - DEATH AND INCOME</u> [No changes in existing procedures]			
.2 Final Distribution		V. <u>DISTRIBUTIONS</u>	§ 3-901 et seq.	same	Interim Orders § 3-505
		[See Part VI on Closing]	[More Work Needed]		

PROCEDURAL STEPS	PROBATE IN WASHINGTON NOW	
	F. Non-Intervention	G. Administration
	IV. <u>TAXES - DEATH AND INCOME</u>	
	V. <u>DISTRIBUTIONS</u>	
5.1 Partial Distribution	Permitted after Sol- vency Decree RCW 11.68.010 By Petition and Order RCW 11.72	
5.2 Final Distribution	Written Declaration: RCW 11.68.101 Decree: RCW ch. 11.76	

PROCEDURAL STEPS		COMPARATIVE CHART OF ALTERNATE UPC PROCEDURES				
	Non Probate A. Transfers Article VI	Collection of pp B. by Affidavit § 3-1201 et seq. (\$10,000.00 Limitation)	Informal C. Probate § 3-301 et seq.	Formal D. Probate § 3-401 et seq.	Supervised E. Probate § 3-501 et seq	
5.1	Petition for complete Settlement	VI. CLOSING THE ESTATE			same per § 3-505	
5.2	Petition for [limited] Settlement		§ 3-1002	same	NA	
5.3	Notice of Hearing		§ 3-1001 § 3-1002	same	same	
5.4	Closing Orders		§ 3-1001 § 3-1002	same	same	
5.5	Verified Closing Statement	§ 3-1003 § 3-1203 § 3-1204	§ 3-1003	same	NA	
5.6	Termination of Probate		One Year After Closing Statements § 3-1003 (b)		NA	
5.7	Certificate of Discharge		§ 3-1007	same	same	
5.8	Limitation or Expiration	Two years after Death § 6-107	Six months after Clos. Estate vs. PR § 3-1005 3 Or 1 year vs. Distributees § 3-1006	Six months after Clos. Estate vs. PR § 3-1005 3 Or 1 year vs. Distributees § 3-1006	Closing Order Final Adjudication (except as limited in step 6.2)	
5.9	Receipts & Vouchers	(Assume will be covered by Court Rule)				

PROCEDURAL STEPS	PROBATE IN WASHINGTON NOW	
	F. Non-Intervention	G. Administration
	VI. <u>CLOSING THE ESTATE</u>	
6.1 Petition for complete Settlement	<u>Final Report & Petition for Distribution</u> RCW 11.76.030	
6.2 Petition for [Limited] Settlement	RCW 11.68.010	No Provision
6.3 Notice of Hearing	Publication RCW 11.76.040 Mailing RCW 11.76.040	
6.4 Closing Orders	RCW 11.76.050	
6.5 Verified Closing Statement	<u>Declaration of Completion</u> RCW 11.68.010	
6.6 Termination of Probate	<u>Order Approving Final Report etc.</u> RCW 11.76.050	
6.7 Certificate of Discharge	<u>Order Discharging Bond</u> RCW 11.76.030	
6.8 Limitation or Expiration		
6.9 Receipts & Vouchers	For Fees: RCW 11.76.100 For Distribution: RCW 11.76.050	



House of Representatives

STATE OF WASHINGTON

OLYMPIA

October 6, 1973.

TO: House Committee on Judiciary

FROM: House Judiciary Subcommittee No. 2

RE: PROBATE REFORM MEASURES - Subcommittee recommendations

Pursuant to direction of the Chairman, Subcommittee No. 2 has conducted hearings and work sessions relating to House Bills 11, 266, 496, 676 and 748, the probate revision measures, and herewith submits its report and recommendations.

A threshold question before the Subcommittee has been whether to repeal all present Washington probate law and substitute some version of the "Uniform Probate Code". Testimony before the Subcommittee has established that: (1) As a general matter, present Washington law relating to testate succession is significantly more efficient and less costly than the laws of all but a few other states; (2) in these areas, present Washington law has the added benefits of experience and familiarity to courts and practitioners; (3) that the major areas meriting reform are those relating to intestate succession, non-probate transfers, and various mechanical elements in estate administration; (4) that significant and effective reform can be achieved by selective amendment and addition to present law; (5) that the "Uniform Probate Code" has already been "modified" for Washington use, and will require consider-

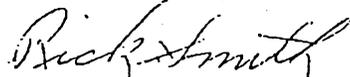
able further modification, thereby rendering it less than uniform; (6) that the Uniform Probate Code has not yet received the benefit of experience with implementation, and (7) that selected concepts of the Uniform Probate Code and other proposals before the Subcommittee do offer desirable reforms to present Washington law in those areas shown to have need of reform.

Accordingly, the Subcommittee has concluded, and recommends to the full Committee, that present Washington law be selectively reformed without wholesale repeal and substitution. The Subcommittee has prepared a draft for a Committee Bill in this area. This draft embodies major reforms in present Washington law designed to minimize red tape, delay and costs of estate disposition. It has resulted from meetings and discussions with proponents of all measures before the Subcommittee. It is not a compromise measure, however, rather, it is a package designed to achieve reforms for which a need has been demonstrated without going beyond that to jeopardize the good that has been achieved by present Washington law.

The purpose and direction of the Subcommittee have been to achieve legislation that best suits the people of Washington. In the drafting of the submitted Committee Bill, we have adopted the best and least doubtful features of the Uniform Probate Code while preserving some of the outstanding features of Washington's present code, not yet found in other states. We think this achieves the best of both worlds.

The Subcommittee does not consider the proposed bill as being in final form. We recommend that the Proposed Probate Reform Act of 1974 be presented to the public and interested parties for comment. There should be a deadline for comments so that probate reform might be achieved in the January session. December 1, 1973 is recommended.

Respectfully,



Rep. Rick Smith, Chairman
Subcommittee No. 2
House Judiciary Committee

RK:kt



OFFICE OF PROGRAM RESEARCH
HOUSE OF REPRESENTATIVES
STATE OF WASHINGTON

October 30, 1973

TO: Representative Walt O. Knowles
Chairman, House Judiciary Committee

Rep. Rick Smith
Chairman, Subcommittee #2

FROM: G. K. Mooney, Counsel *Glem*

RE: Comments by Professor Nappi and Mr. Dan Reagh regarding
Proposed Probate Reform Act of 1974, October 6, 1973
draft

Comments on the October 6th committee drafted have been elicited. Among those comments received have been preliminary comment notation remarks by Mr. Dan Reagh, a proponent of the UPC, and verbal comments by Professor Joseph Nappi, Gonzaga Law School.

Mr. Reagh is generally opposed to the committee draft and indicates strong personal objection to the drafting of the October 6 bill. Professor Nappi favors the basic notion of selective amendment, rather than the UPC approach, and believes that great care should be taken to see that a desire for speedy disposition does not override due process considerations.

The following is an attempt to summarize the substantive comments of Professor Nappi and Mr. Reagh:

Sections 1 and 2 (Transfer by affidavit) -- Professor Nappi: Due process, notice and opportunity to be heard are not adequately protected under Section 1. Perhaps the amount receivable should be tied more closely to the amount that a successor could recover under statutory allowances.

(Staff Note: Also, does the term "date of the decedent's death" cover situations where there is a presumption of death after seven years? Secondly, the State Inheritance Tax Division is concerned

that this procedure would avoid notice to them, and that either a preliminary statement should be a required part of the process or that the process should be restricted to Class A heirs and estates of \$10,000 or less.

Mr. Reagh: Why not 30 days instead of 45? Only property not disposed of by a community property agreement, etc., should be transferable under these sections. Amount of homestead should be transferable. The term "successor" should include persons entitled to receipt of property under multi-party accounts.

Sections 3 - 14: (Non-intervention Powers) -- Professor Nappi: Section 12's notice as to fees should be mailed but not published.

Mr. Reagh: The statute should make it clear that a grant of non-intervention powers is discretionary with the court. Court should be able to place conditions or restrictions. Order should be designated "order confirming non-intervention powers" rather than "order of solvency". Notices should be by alternative methods of personal service or mailing. As to subsequent revocation or restriction of non-intervention powers, a prima facie showing of failure to execute trust or being subject to removal should be required. On insolvency, vacation of non-intervention status should not be automatic. Personal representative should be required to give notice when insolvency is discovered. Parties dealing with non-intervention personal representative should be required to act in good faith before being entitled to Section 11 presumption. Section 12 speaks of approving an accounting, but no accounting is required. Section 13 is unconstitutional for lack of notice and time period.

Sections 15 - 20 (Adjudications of testacy or intestacy) -- Professor Nappi: These sections need to be limited as to amount or status of people entitled to the adjudication. They need revision as to who may apply, prior notice and time to object, and the effect of an adjudication as to powers in dealing with the estate.

Mr. Reagh: These sections should follow UPC Section 2-504, should state a prior notice requirement, should identify who may make application, should allow service to be personally served or mailed, should allow longer time to contest upon a later will or discovery of will.

Sections 21 - 25, 70 (Creditors' claims) -- Professor Nappi: Requirement that proof of service be filed within the claim period should be deleted. Notice of claim should be filed, and

a copy served within ten days thereafter. Time for claimant's suit after rejection should be 30 days or till end of claim period, whichever is later.

Mr. Reagh: Too much detail is required in the notice of claim. The 30-day time for a claimant's suit after rejection is too short.

Sections 28 and 29: (Shortening limitation on actions from six to three years) -- Professor Nappi: As to Section 28 there is a question of due process, since creditors generally have six years under a written debt instrument.

Sections 34 and 35 (Inventory, Appraisal, Appraisal Fee) -- Professor Nappi: These sections do not say what happens when inventory and appraisal differ. Some appraisal requirement may be desirable in all cases. Fee review should be like that under Section 12.

(Staff Note: Inheritance Tax Division wants to be able to make written request for and get a copy of an appraisal.)

Sections 40 and 41 (Minor Heirs) -- Professor Nappi: Reference to "incompetent" in Section 41(1) should be changed to "minor".

Mr. Reagh: Payment should be direct rather than through Clerk. Money should be depositable in any FDIC insured institution. This procedure should be available in all estates administered under non-intervention powers.

Sections 44 and 45 (Powers of Attorney) -- Professor Nappi: Questions whether power of attorney should be so dangerously liberalized. Perhaps powers should be limited as to disposal of property; or perhaps we should be looking at improvement of the guardianship laws rather than avoiding them under these sections.

Sections 46 - 69 (Multi-Party Bank Accounts) -- Professor Nappi: These sections seem heavily weighted in favor of banks. Community property, contract and statutory withdrawal rights are not adequately protected. Section 52 does not protect surviving spouse where there is no probate and otherwise requires her to go through personal representative. Banks should be bound by contract or other actual notice that payment is improper (Section 57). In Sections 58, 71 and 72, bank claim of priority should be related to general creditor claim priority statute. Sections 63, 65, 67 and 68 have the problems relative to Section 1.

Mr. Reagh: Under Section 49(e) survivorship rights should be changeable by statutory community property or a joint tenancy agreements.

Section 70 (Bank Solicitation) -- Professor Nappi: This section seems undesirable and could lead to a bank take over of probate practice. This would not serve the public interest and could mean a significant increase in the costs of probate.

(Staff Note: The Inheritance Tax Division notes that bank fees as executor or personal representatives are always much higher than usual private executor fees, and also carry with them "add-on" charges.)

Section 74 (Retroactivity) -- Professor Nappi: Procedural and substantive provisions should be segregated, language should assure that there is no prejudice to rights vested prior to the effective date.

GKM:kt

BCC: Bob Beschel
Prof. Nappi
Mr. Reagh:

National Conference of Commissioners on Uniform State Laws
Joint Editorial Board for the Uniform Probate Code

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73-11-1 H-58276 HRZ

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You have requested comments by me - undoubtedly in my capacity as a member of the Uniform Law Commission - on the proposed Probate Reform Act of 1974. I am enclosing some written comments for your consideration. You will note that I raise no objection to certain of the provisions, and raise various objections to others of the provisions.

The proposed act borrows some ideas from the UPC and HB 266, and in other instances retains the present Washington law with some amendments.

What strikes one immediately upon reviewing the proposed act is that except for some sections, particularly Sections 46-60, there has been no adequate attempt to attain the benefits of uniformity. I consider this highly unfortunate because it does not, with few exceptions, eliminate one of the big problems facing the states of the union, namely, lack of uniformity in the law pertaining to probate. It will continue to be as difficult as formerly to do any estate planning that may require knowledge of the laws in the various states to which persons move or from which they leave, and it will continue to be difficult for Washington residents to attain the benefit that uniformity would otherwise make possible.

Furthermore, the proposed act fails to take advantage of many valuable provisions contained in the UPC and HB 266. These provisions will have the effect of reducing probate expense and facilitate the early closing of estates with reasonable protection to all interested parties. Third, the proposed changes, with few exceptions, continue to involve the court in unnecessary supervision with corresponding increased expense. Instead of enabling probates to enjoy the simplicity of trust agreement administration, many of the provisions of the proposed act will require or invite court supervision when there is no real necessity therefor.

There is important potential consequence of the enactment of the proposed act in its present form. Aside from the provisions for multi-party accounts and the elimination of the testamentary character of the agreements providing for postmortem benefits and payments and the provision for irrevocable powers of attorney, the enactment of the proposed act may well destroy for some time to come any prospect for the enactment of HB 266, which embodies the UPC as modified by the requirements of our community property system.

It is therefore suggested that there be an alternative. While it would be desirable, in the interests of attaining uniformity, to join the states that have now enacted the UPC in substantially its recommended form, it is possible to enact the UPC in stages. Thus, if the proposed act was limited to those sections which conform to UPC and HB 266, that would be a step in that direction. If there was added to those provisions those portions of Article 2, such as Parts 1, 3, 4, 5, 6, 7, 8 and 9 as contained in HB 266, it would seem to me that the law of Washington would be substantially improved. You will note that I have left out from this suggestion the enactment of Article 2, Part 2, which deals with elective share of surviving spouse. Under HB 266, the provision concerning elective share is limited to separate property and is intended to put the surviving spouse, husband or wife, in the same position with respect to the decedent's separate property as he has in common law jurisdictions when the decedent leaves a separate estate. However, for purposes of minimizing controversy, the elective share provision can presently be omitted. By enacting Article 2 in the manner described, and Article 6, Parts 1 and 2 the substance of which is contained in the proposed act, and added to it the definitions contained in Article 1, I think the probate law of Washington will be considerably improved. It will still be necessary, however, to enact Articles 3 and 4 and a portion of Article 7 dealing with the standard of a fiduciary's conduct, in order to obtain the maximum benefits from the simplified probate procedure. That could await a later session of the legislature.

Very truly yours,

CHARLES HOROWITZ

CH:vm

Enc.

COMMENT ON PROPOSED PROBATE REFORM ACT OF 1974

Sections 1 and 2: Provide for transfer of personal property by affidavit, when entire estate is personalty having net value of \$10,000 or less, and for discharge and release of the person paying, delivering or transferring such property. Recipient is accountable to others having superior right to the property.

These sections appear to be an adaptation of UPC 3-1201-3 and HB 266 §§ 11A.3-1201, 3-1202. There are important differences, however. Section 1 makes the affidavit procedure applicable after 45 days from decedent's death instead of 30, contrary to the national norm set forth in UPC. Section 1 limits the use of the affidavit procedure to cases in which the decedent was a Washington resident at the date of his death, contrary to the national norm and HB 266. Section 1 limits the use of the affidavit procedure to persons who do not own real property. Why the affidavit procedure should be limited to residents and thus impair the attainment of the UPC objective of aiding transmission of multi-state estates is not clear. Furthermore, it is not clear why the affidavit procedure should not be available to secure transfer of small amounts of personal property in estates that also include real estate, especially if the value is small. Furthermore, Section 1 forbids the use of affidavit procedure unless all debts of the decedent, including funeral and burial expenses, have been provided for. It is entirely possible that the survivor will not know the nature and extent of decedent's debts until after notice to creditors has been published and the time expired for the filing of claims - thus requiring the probate of an estate. The purpose of the affidavit procedure was to dispense with the necessity of probate proceedings in the small estate. Section 1 is limited to estates the total value of which, wherever located, less liens and encumbrances, does not exceed \$10,000. These changes from the UPC pattern are not changes embodied in HB 266 § 11A.3-1201 and 3.1202.

The Probate Reform Act of 1974 provides for use of the affidavit procedure in withdrawing deposits from bank accounts. See Sections 63, 65, 67, at pages 43, 46, 48. The affidavit procedure is also provided for to enable an employer to pay the indebtedness owing to an employee pursuant to Section 68, page 48 of the proposed act. Compliance with the affidavit requirements would seriously impair, if not destroy, the usefulness of the affidavit procedure in the instances mentioned. The affidavit procedure as provided by HB 266 §§ 11A.3-1201 and 3-1202 should be restored.

Sections 3 - 14: Amend and add new provisions to Chapter 11.68 RCW providing for extension of nonintervention powers to intestate estates, presumption in favor of nonintervention powers, and court determination of the reasonableness of the fees of a personal representative or his attorneys.

Sections 3 - 14 seek to extend the use of nonintervention probate to intestate estates. Both the UPC and HB 266 accomplish the same objective; however, both the UPC and HB 266 accomplish this objective by a much simpler procedure and without the necessity for complying with the procedural requirements imposed by the proposed sections. Both the UPC and HB 266 permit intestate estates to have the benefit of nonintervention probate by compliance with the provisions of UPC Article 3, or the corresponding provisions of HB 266, Article 3. Sections 3 - 14 require the court to intervene even when there is no necessity for it. It forces every intestate estate before a court, even though creditors' claims are a problem in a very small percentage of small estates. According to the Ohio study, approximately one-third of estates are intestate. According to that same study, the median gross value of intestate estates is \$6,000. In many instances, an estate of that size would be distributable under the homestead provisions of Article 2 of the UPC. For example, the surviving spouse would be entitled to a distribution of \$14,500 in both intestate and testate estates, the sum being made up of the homestead award, the exempt property award, and the family allowance award. Under HB 266, the total amount that could be distributed free of any claims of creditors would be a minimum of \$24,500. Furthermore, in the case of a surviving spouse under HB 266 § 11A.2-102, if there was separate property and no surviving issue or parent of the decedent, the surviving spouse gets the entire intestate estate. If there is no surviving issue but a surviving parent or parents of the decedent, the surviving spouse gets the first \$50,000, plus one-half of the balance of the intestate estate.

It is unnecessary to mention other provisions which would give a surviving spouse more than enough to absorb the intestate estate. As to community property, the one-half of community property which belongs to the decedent passes to the surviving spouse. With provisions such as these, it is difficult to justify the additional procedures called for under Sections 3 - 14 in order to make applicable to intestate estates the benefits of nonintervention probate. There are other matters that might be mentioned in passing. Section 6 permits a personal representative not named in the will as such to acquire nonintervention powers by court order on hearing. Under the UPC and HB 266, such powers exist without the necessity of court authorization, the courts being available, however, to restrict such powers as in the case of supervised administration described in Article 3 both in the UPC and HB 266. Section 9 permits the powers granted to a personal representative to be restricted by endorsing the words "powers restricted" upon the original order of solvency, together with the date of the endorsement, but such protection is available if the court finds the personal representative has not faithfully discharged his trust or is subject to removal. Under the UPC and HB 266, the court is empowered by the use of supervised administration to restrict the powers of a personal representative who has not breached his trust but it is desirable for other reasons to restrict his powers. Furthermore, under the UPC and HB 266, a testator could by will request supervised administration.

Section 11 deals with the powers of a personal representative acting under nonintervention powers. It is difficult to understand why the powers should be restricted in the manner set forth in the section. The last sentence of Section 11 provides that any other party to a transaction and his successors in interest "shall be entitled to have it conclusively presumed that such transaction is necessary for the administration of the decedent's estate." The operation of this sentence is not clear. Suppose the will prohibits a sale and there is a reasonable difference of opinion as to whether the sale "is necessary" for the administration of the decedent's estate. Obviously the purchaser has notice of the prohibition contained in the will. Can such a purchaser "have it conclusively presumed that such transaction is necessary for the administration of the decedent's estate"?

Section 13, the provision requiring a closing declaration to specify the distributive share of each heir, provides a requirement which does not presently exist in the case of closing declarations in testate estates. Why this new requirement should be imposed is not clear. Furthermore, what is the effect of error in the declaration as, for example, a statement in the declaration which is inconsistent with the law which provides for the devolution of property on death of an intestate. It is also not clear why the filing of a declaration of completion without a hearing is "deemed the equivalent of the entry of a final decree of distribution in accordance with the provisions of chapter 11.76 RCW." This is all the more troublesome because the declaration has the effect of "vesting and distributing ownership of the assets of the decedent in his heirs, in the case of intestacy, or in his legatees and devisees in the event of testacy." Who owns the property between the date of death and the date of the filing of the declaration? Is ownership left in limbo?

Sections 15 - 20: Provide for adjudications of testacy establishing a will, or of intestacy and heirship, without appointment of a personal representative, requiring no further administration. Section 19 provides for written notice to each heir, legatee and devisee of the decedent in such cases. Section 20 provides that, if there is no contest, the adjudication is equivalent to a final decree of distribution after four months.

The effort here is to provide for probate of a will without further proceeding to probate the estate by appointing a personal representative. The probate of a will alone, without proceeding further, is permissible and is provided for both in the UPC and HB 266, Article 3. This can be done both by using the informal or formal probate procedure. Under the proposed act, Section 17, there may be an application for adjudication of intestacy and heirship without the issuance of letters of administration. If there is no administration, either intestate or testate, Section 19 provides that notice shall be given to each heir, legatee and devisee of the decedent, including a statement that the adjudication of testacy will be final unless any heir, legatee or devisee of the decedent contests within four months after the date the will was adjudicated to be the last will and testament of the decedent.

A somewhat similar provision is provided for the decedent who dies intestate. Section 20 provides that unless, within four months after the entry of the order adjudicating testacy or intestacy and heirship, any heir, legatee or devisee of the decedent shall offer a later will for probate or contest an adjudication of testacy, or contest a determination of heirship, the order adjudicating testacy or intestacy and heirship shall be deemed the equivalent of the entry of a final decree of distribution. It is further provided that the rights of an heir, legatee or devisee to receive the decedent's assets is subject to the prior rights of decedent's creditors, homestead award or family allowance, and any of these have the right to obtain the appointment of a personal representative to administer the estate.

Under the UPC, there is a one-year period for will contests in order to be certain that all interested parties have an adequate time to contest an adjudication of testacy or intestacy. This may be especially important in the case of relatives who are not residents of the decedent's state. It is to be remembered that Section 19 requires a mailed notice of the adjudication to each heir, legatee and devisee, but contains no provision requiring notice to any other person or relative who may never receive notice of the decedent's death or of the adjudication of testacy and intestacy and heirship. The effect of the 4-month provision is to cut off the right of persons who might otherwise have a legitimate claim. The period for will contests provided by the UPC and HB 266, and the provisions for notices which must be given by the personal representative even in the case of informal probates, provide far greater protection to persons who might have an interest in the estate.

Sections 21 - 25: Provide for filing, without necessity of affidavit, of creditors' claims; the contents thereof; the powers of a personal representative as to such claims; and that claims are deemed allowed if not rejected within six months after date of first publication of notice to creditors. (See also, New Section 71.)

I believe this to be an improvement of our present Washington code, and in general it is consistent with both the UPC and HB 266. However, attention is called to the following: In Section 22 there is a provision requiring a notice of claim rejection to the claimant and advising the claimant that he must bring suit within 30 days after the rejection or his claim will be barred. Suppose no notice is given concerning the time within which claimant must bring suit. Is his claim barred?

Section 26: Provides for appointment of guardian ad litem for incompetent interested parties as to adjudications of testacy or intestacy.

This section now for the first time introduces the requirement that there must be a guardian ad litem appointed for the entry of an order adjudicating testacy or intestacy and heirship. Even under the present law such an appointment is not required in the

case of a surviving spouse who obtains an order admitting the will to probate. This does not cut off the rights of an incompetent heir, including minors. They can still assert their rights subsequent to the admission of the will. The appointment of a guardian ad litem at the initial stage when everyone is anxious to get the estate started might well serve to unnecessarily delay the probate without any real benefit. Even under the present law, the court has the power to appoint a guardian ad litem for a minor or incompetent, but so far as I know does not exercise it. After the will is probated and after notice is sent out by the personal representative to all heirs, devisees, etc., there is still time for any minor or other incompetent to assert his rights. Furthermore, if there is a hearing on a decree of distribution, it must be done after notice to the interested parties, including notice by publication.

Section 27: Amends RCW 11.04.015 to provide that, in intestate succession, the surviving spouse receives all of the decedent's share of the net community estate unless there be surviving issue, in which event the surviving spouse receives the first \$50,000 thereof and one-half of the excess.

The increase of the surviving spouse's share over what is presently permissible is an idea borrowed from the UPC and HB 266. However, the pattern of descent does not conform to the pattern provided by UPC and HB 266 and is therefore non-uniform. This raises the question of the importance of uniformity, which will be separately discussed.

Sections 28 - 29: Reduce from six to three years the statute of limitations as to action on debts of the decedent or to prevent lapse of a devise.

The reduction from six to three years is a concept borrowed from the UPC and HB 266.

Section 30: Provides for speedy hearing of petitions for letters of administration, probate or adjudication of testacy or intestacy, and for notice to surviving spouse.

No objection.

Section 31: Provides that no bond is required unless the decedent's will or the court so state, and that court has discretion to substitute other security or financial arrangements for a bond.

No objection. The no-bond concept is borrowed from the UPC and HB 266.

Section 32: Extends from ninety days to four months the period for substituting a personal representative for the decedent as defendant in an action pending at the time of death.

No objection.

Section 33: Requires personal representative to file a true inventory of property of the estate discovered subsequent to regular inventory filing.

No objection.

Section 34: Provides that personal representatives shall inventory the estate and may employ an appraiser. The appraisement need not be filed or provided except upon written request.

The concept of no mandatory appraisement is borrowed from UPC and HB 266. No objection.

Section 35: Provides that appraisal fee may be set by the personal representative subject to court review for reasonableness.

No objection. Under the UPC and HB 266, the personal representative sets the appraisal fee.

Sections 36 - 39: Provide for increase of homestead amount from \$15,000 to \$20,000; and provides increase from \$10,000 to \$20,000 of the amount of collateral receivables above which the courts award of homestead of in lieu amounts shall be discretionary.

No objection. The homestead provisions differ from the UPC and HB 266 and are more complicated.

Sections 40 - 41: Provide for direct distribution to minor heirs in amounts of \$1,000 or less without appointment of guardian or requiring bond; and removes ceiling on further amounts which the probate court may order deposited for the benefit of minors.

No objection.

Sections 42 - 43: Extend ability to obtain nonintervention powers to administrators with will annexed and administrators de bonis non.

No objection, except for the observation that the UPC and HB 266 provisions concerning nonintervention powers are much simpler.

Sections 44 - 45: Provide that written powers of attorney may be effective upon, or in spite of, disability of the principal if so intended.

These sections are borrowed from the UPC and HB 266.

Sections 46 - 69: Sections 46-60 relate to multi-party bank accounts. Define terms, and set forth common provisions relating to beneficial ownership, transfer, payment and effect of payment of sums in multi-party accounts in the various banks. Section 59 provides that payable on death provisions in any written instrument effective as a contract, gift, conveyance, or trust, are deemed non-testamentary and that this act does not invalidate the instrument

or the listed provisions. Sections 61-69 amend the various banking statutes, and the statute pertaining to wages due an employee at his death, to conform them with the prior provisions of this act relating to affidavit transfer and multi-party accounts.

These sections are borrowed from the UPC and HB 266 and are highly desirable and important. Additional sections not in the UPC amend the banking laws of Washington to conform to the sections relating to multi-party bank accounts. However, attention is called to Section 73, which eliminates the present prohibition upon any trust company or other corporation whose officers or agents personally solicit the appointment of such trust company or corporation as administrator or guardian. The UPC and HB 266 do not deal with this problem, which is one peculiar to the state of Washington.

Section 70: Amends notice to creditors statute to require that a copy of said notice be filed with the clerk of the court, and provides that the 4-month claim period commences with the date of first publication of the notice or the date of filing of a copy of the notice with the clerk of court, whichever is later.

No objection as an amendment to the present Washington law.

Sections 71 - 72: Conform the exemption provisions in the homestead and in lieu statutes to the priority provisions set forth in Section 58 of this act, i.e., priority over rights of setoff.

No objection as an amendment to the present Washington law.

Section 73: Deletes proscription against a trust company or corporation personally soliciting appointment as executor, administrator or guardian.

Sections 74 - 74*: Savings clause - repealer. This act applies to estates under prior testamentary instruments, unless the terms of such instruments clearly indicate a contrary intent. It is suggested that first Section 74 add also HB 266 § 11A.8-101(b)(4), (5).

Section 75: Rule of construction. No objection.

Sections 76 - 77: New chapters - short title, "Probate Reform Act of 1974." No objection.

*Evidently a duplication in numbering.

SUPPLEMENTAL COMMENT ON
PROPOSED PROBATE REFORM ACT OF 1974

In commenting upon the proposed act an attempt has not been made to give a detailed list of all desirable changes if it were to be assumed that the proposed act was found acceptable in substance. E.g., Section 26 raises the question, may the appointment of a guardian ad litem otherwise required be waived for a minor whose interest is arguably in need of protection. E.g., Section 30, is the phrase "letters of administration" appropriate when we are dealing with "adjudication of testacy."

Section 34, line 18 on page 25, is the term "net value" intended to mean "market value."

Section 34, line 21 on page 25, if a person otherwise qualified is not a disinterested person, is the estate to forego the benefit of the knowledge and experience of such a qualified person.

Section 35 - why is the review of an appraisal fee limited to the final account, especially since a final account may not take place for sometime after the appraisal.

Section 41, page 30, line 3 - why is the phrase used "furnishing proof thereof satisfactory to the depository," instead of merely "furnishing satisfactory proof thereof."

SOME OBSERVATIONS

Subsequent to the preparation of Comment and Supplemental Comment on the Proposed Probate Reform Act of 1974, a copy of comments by two others was received concerning the proposed Probate Reform Act of 1974. The comments are merely summarized, so that the argument or detail in support of the summaries has not been seen by the writer. The writer, therefore, will confine his comments here to raising questions concerning several matters setting forth the views of Professor Joseph Nappi of Gonzaga Law School as contained in the summary.

According to the summary, concerning Sections 1, 2, 63, 65, 67 and 68, it is suggested that the use of the affidavit procedure generally and in connection with the multi-party bank account and payment by employers of indebtedness to a deceased employee is violative of due process because of the absence of an adequate notice and opportunity to be heard. It is assumed that this suggestion has reference to the use of the affidavit procedure in the future so as to avoid the argument as to the impairment of vested rights. See HB 266, § 11A.8-101(b)(4), (5). Because the details of the argument made are not available in the summary, the writer merely contents himself with calling attention to an article published in the December 1969 issue of "Prospectus, A Journal of Law Reform" published by the University of Michigan Law School. The article is entitled "Informal Proceedings Under the Uniform Probate Code: Notice and Due Process." In their conclusion that due process is not violated, the article states:

The Uniform Probate Code offers the individual seeking probate of a will an array of alternative methods which allow him to dispose of the matter in an efficient and timely manner. The Code permits an individual to make his own decision in this matter while offering him as much protection, through a combination of formal and informal procedures, as he deems necessary and desirable. The provisions calling for a detailed sworn application, a statutory check by the registrar of all wills informally offered for probate and the generous three year period in which a will may be contested assures that the no-notice characteristic of informal probate will not work substantial injustice. Additional protection is supplied by the requirement that all interested persons be informed by ordinary mail of the appointment of a personal representative. The injustice of unnecessary delay too often occasioned by present probate proceedings, coupled with the fact that the great majority of wills are uncontested, point out the need for reorganization of American probate law. The flexible response of the Uniform Probate Code offers an efficient, expeditious method of settling estates while maintaining that fairness commensurate with the Supreme Court's due process standards. It serves as an excellent guide for state legislatures in their efforts to reform probate law and procedures.

The pertinence of this conclusion on the question of the use of the affidavit procedure is simply this: that if informal probate, which is sometimes called no-notice probate, is constitutional, then similar rationale is applicable to the use of the affidavit procedure in providing the means whereby a creditor may be discharged from liability by paying money to a decedent's successor, the successor, however, to remain liable to anyone who may have a superior right to the funds. The theory is that it is within the police power of the state to provide how the rights or duties of persons may be discharged without impairing vested rights. Since the statute would be applicable to transactions later occurring, one who enters into a transaction with knowledge or presumed knowledge of the law applicable to the method of obtaining a discharge would be in a difficult position to complain. However, no opinion is expressed concerning the merits of the argument until the details are seen.

My second comment concerns Sections 44 and 45 (Powers of Attorney). Again, the absence of detail in the summary makes it difficult to discuss the question as to whether a power of attorney should be "so dangerously liberalized." Since the power is exercised under the restrictions of fiduciary responsibility, and since any interested party can always apply for the appointment of a guardian of the estate, i.e., conservator (see Section 44, lines 21. to 24 on page 31), I am unable to view the danger stated as constituting the disadvantage suggested. The clear benefits seem to me to outweigh the danger mentioned.

Sections 46 - 69 (Multi-Party Bank Accounts). The summary states that these sections "seem heavily weighted in favor of banks," and that "community property, contract and statutory withdrawal rights are not adequately protected." It is also stated that Section 52 does not protect the surviving spouse where there is no probate and that she is required to go through the personal representative to obtain the protections called for. In the first place, the surviving spouse will generally be the personal representative. In the second place, the personal representative, upon demand of the surviving spouse, must comply and obtain the funds required to protect the claims specified in the statute. In the third place, community property, contract and statutory withdrawal rights can be further protected. See Section 57, lines 24 to 28 on page 39, which withdraws protection from a financial institution who has received written notice setting forth an objection to payment. What the sections do is to distinguish between the rights of the parties while living, the rights of the parties upon the death of one or more, and the rights of the parties on the one hand and the multi-party account persons on the other. If the latter distinction is not made, banks will not use the procedure and the benefits of the procedure will become unavailable.

HOW THE UPC (HB-266) WOULD HELP THIS FAMILY

by

Dan Reaugh, a Lawyer Member of WJC

John and Beverly were married in Detroit in 1955. John was an auto mechanic in Detroit and in 1960 moved to Seattle to work at Boeing. Beverly had worked in Detroit, but their first child arrived soon after arriving in Seattle, and hasn't worked since. A second child was born in 1963. John continued to work at Boeing until his death by car accident on the way to work in January, 1973. John died without a will. Soon after arriving in Seattle, John and Beverly used their savings, totalling \$7,500., to purchase a home at a price of \$30,000., title to which was in both names. At the time of his death the home was worth \$45,000., with a balance due of \$25,000. The market value at death of all assets consisted of:

ASSETS TO BE PROBATED

<u>Description</u>	<u>Value at Death</u>
Equity in Home	\$ 20,000.00
Tangible Personal Property (TPP):	
Household Furniture & Personal Effects	\$ 1500.00
Two Automobiles	<u>2000.00</u>
	35,000.00
Boeing Credit Union Account	2,500.00
Investment Account	5,000.00
Securities in John's Name	
Inherited from Parents	<u>10,000.00</u>
Total Probate Assets	\$ <u>41,000.00</u>
<u>Non Probate Assets</u>	
Cash in Survivorship Account	\$ 5,000.00
Boeing Death Benefits Payable to Beverly	15,000.00
Life Insurance Payable to Beverly	25,000.00
Total Non-Probate Assets	<u>45,000.00</u>
Value of Total Estate	\$ <u>86,000.00</u>

All assets are community property except the \$10,000.00 of inherited securities, which is John's separate property.

Even though Beverly will receive \$45,000.00 without probate under the existing Washington Probate Code, she is still involved in questionable red tape. Since John did not leave a will, Beverly will be required to probate \$41,000.00 of assets, which means that after appointment as administratrix, Beverly is required to seek court authorization for every move she desires to make in the administration of the estate. Particularly onerous is the requirement that she pay the premiums on a surety bond for herself, and the appointment of an outside guardian ad litem for the two minor children. At the conclusion of the probate she must have herself appointed guardian for the amounts to be received by their two minor children.

Beverly's situation would be much improved under the UPC as proposed in HB 266. After having herself appointed as the personal representative (PR), without a bond, Beverly as PR could take all the following actions without obtaining additional court orders:

1. She could appraise the assets herself or hire an appraiser.
2. She could sell one car and the house since it is now too large, and she plans to go back to work.
3. She can pay all creditors, taxes, and administrative expenses and fees.
4. She can distribute to herself, as exempt property, all tangible personal property (TPP) valued at \$3,500.00.
5. From the proceeds from the sale of the home and from other probate assets she can pay herself \$15,000.00 as a homestead allowance.
6. She can pay herself a family allowance of \$500 per month for one year or a lump sum of \$6000.00.
7. She can make final distribution of the remainder of the estate to herself and to the children.

DISTRIBUTION OF PROBATE ASSETS

Of the \$41,000.00 of probate assets, Beverly may distribute to herself a total of \$24,500.00 consisting of three allowances:

Exempt TPP	\$ 3,500.00
Homestead	15,000.00
Family Allowance	<u>6,000.00</u>
Total Allowances	\$ 24,500.00

This leaves a residue of \$16,500.00 to pay debts, taxes, and fees, which is assumed to be not over \$1,500.00. Thus there remains to be distributed \$5000.00 of community property and \$10,000.00 of separate property. Under the UPC, Beverly would be entitled to all of John's probate estate, thus avoiding a general guardianship for their minor children.

Under the present Washington law, Beverly would be appointed as general guardian for the minor children who will receive \$1,250.00 each from the community property, and \$2,500.00 each from separate property. In other words there will be a guardianship of \$3,750.00 for each child. The premium cost for bonds will be \$37.50 per year plus attorney fees of approximately \$100 per year for making annual reports to the court and obtain authority for any necessary expenditures.

73/3/21

UNIFORM PROBATE CODE (UPC) AS PROPOSED IN HB-266

Some Miscellaneous Comparisons

by

Dan Reaugh, a Lawyer. Member of WJC

I. EXISTING STREAMLINED PROCEDURE EXTENDED TO ALL ESTATES

The absence of a will does not penalize surviving spouses and other heirs under the UPC as proposed in HB-266 because the existing non-intervention probate procedure applicable to wills is extended to estates with no wills. In other words in the no will cases after the surviving spouse or other PR is appointed, the following may be done without court order:

1. PR may appraise the assets or have some or all appraised by an expert.
2. PR may sell assets.
3. PR may pay claims and taxes.
4. PR may make partial distributions:
 - (a) Of exempt (TPP) property (\$3,500.00)
 - (b) Of Assets for award in lieu of homestead (\$15,000.00)
 - (c) Pay family allowance of \$500 per month for one year or lump sum of \$6000.00).
 - (d) Make other distributions not needed to pay creditors
5. Pay fees of attorney and/or PR.
6. Make accounting to heirs and/or beneficiaries.
7. Make final distribution.
8. Close the estate.

II. IMMEDIATE RIGHTS OF SURVIVING SPOUSES TO ALLOWANCES ARE SIMPLIFIED AND EXPANDED

Presently in
Washington

Under UPC as Proposed
in HB-266

Necessity for Court Approval

Presently required in WA
for all 3 allowances

No court approval under UPC
unless requested by aggrieved
parties 11A.2-404

Exempt Property - TPP

No exemption in WA

TPP such as household goods,
automobiles, personal effects
up to \$3,500.00 11A.2-402

Allowances for Family Support

\$1000.00 to surviving spouse
more if needed for support

\$500 per month for one year or
lump sum of \$6,000.00 11A.2-403

Award in Lieu of Homestead

\$15,000.00 in WA
11.52.022

\$15,000.00 under UPC
11A.2-401(a)

III. INHERITANCE - RIGHTS OF SURVIVING SPOUSE

IN COMMUNITY PROPERTY

Surviving Spouse owns 1/2

Same 11A-2.102

DECEDENT'S 1/2 OF C/P

If no Children or Parents

Surviving spouse receives
all

Surviving spouse receives
all

If There Are Children

Survivor receives 1/2

Survivor receives all of C/P
(This eliminates guardianship
in most cases)

If There Are Parents But no Children

Survivor receives 1/2

Survivor receives all of C/P

Presently in
Washington

Under UPC as Proposed
in HB-266

IN SEPARATE PROPERTY

Survivor gets 1/2 if
there are children

Survivor takes first \$50,000.00
less allowances if there are
children of deceased and sur-
viving plus 1/2 of balance.

If there are no children
but are parents of des-
cendants of parents
survivor takes 3/4

If there are parents but no
children - survivor takes 1st
\$50,000.00 plus 1/2

If there are no children or
parents - survivor takes all

Same - survivor takes all

If descendants had children by
another marriage - survivor takes
only one half - does not get first
\$50,000.00

IV. DISINHERITANCE OF SURVIVOR BY DECEDENT

The inheritance rights of a surviving spouse are improved
under the UPC as proposed in HB-266 where the decedent attempts
to disinherit a surviving spouse from receiving any of the
separate property (S/P) of the deceased spouse.

Presently in
Washington

Under UPC as Proposed
in HB-266

Survivor has no inheritance rights
to separate property of decedent

Survivor has elective right
to 1/3 of augmented separate
estate § 11A.2-201(a)

Thus survivors can be completely
disinherited as far as S/P is
concerned.

Under both present and proposed Probate Codes, survivor owns
outright 1/2 of C/P and cannot be disinherited with respect to
the one-half owned.

V. POSSIBLE USE OF NON-PROBATE TRANSFERS TO AVOID PROBATE WOULD BE EXPANDED

For example use of Community Property Agreements now avoids probate on death of first spouse. If properly drafted a community property agreement could avoid probate on the death of the surviving spouse under the UPC.

Similar results are applicable for Joint Tenancy Agreements.

VI. MISC. OTHER BENEFITS UNDER UPC AS PROPOSED IN HB-266

1. Bonds for PRs would not be required unless a will so provides or unless a court specifically finds a need. 11A. 3-603
At present a bond can be waived only by a will, or if a corporate fiduciary is appointed.
2. No guardians ad litem would be required for minors etc. unless the court finds a specific need. 11A.1-304(4)
At present guardians ad litem are required in all cases where there are minor children or other incompetent heirs or beneficiaries.
3. No public records are made of the assets of an estate unless there is a disagreement.
4. The UPC encourages the settlement of disputes relating to estates.
5. Ancillary probates will be reduced because authority of foreign PRs are recognized outside the state of their appointment.



OFFICE OF PROGRAM RESEARCH
HOUSE OF REPRESENTATIVES
STATE OF WASHINGTON

December 3, 1973

Representative Charles D. Kilbury
P.O. Box 2482
Pasco, Washington 99302

Dear Representative Kilbury:

On November 21, Representative Smith informed me of your request for a survey of likely probate revisions by the Judiciary Committee. Projects requiring completion prior to last weekend's meetings kept me from responding before today.

I enclose copies of: (1) recommendations by the Smith Subcommittee, (2) summary and text of the October 6 draft, and (3) comments received by Professor Nappi of Gonzaga Law School and Mr. Dan Raugh regarding the October 6 draft.

These materials give a rough indication of the form that the final committee product will take. Among the more significant changes: (1) extension of "non-intervention" powers to intestate estates, (2) provision that all community property goes to the surviving spouse in intestate estates, (3) change in the statutes as to minor heirs so that guardianships will not usually be necessary, (4) development (incomplete in the October 6 draft) of a "short form" probate for smaller estates, and (5) increase of "homestead" award amounts.

The intent of this revision effort is to improve Washington's existing probate law (already one of the nation's most advanced), and speed-up the process without unduely jeopardizing the rights of heirs and creditors.

The subcommittee is working hard to produce a good enactment. Comments have been invited and, as the third enclosure shows, they are being received. At this time, a full-day work session is being requested for Saturday, January 5, 1974, to review comments received and make revisions in the October 6 draft. I am certain the subcommittee will be grateful for any comments and suggestions that you may wish to provide.

Rep. Kilbury
December 3, 1973
Page 2

I hope this information is useful to you.

Respectfully yours,

G. K. Mooney, Counsel
House Judiciary Committee

GKM:kt
Enc.



OFFICE OF PROGRAM RESE
HOUSE OF REPRESENTATIV
STATE OF WASHINGTON

January 14, 1973

The Hon. Judge Felix Rea
Grant County Courthouse
Ephrata, Washington

Dear Judge Rea:

I enclose for your information the October 6 probate revision draft by the House Judiciary Committee. As previously explained, this draft is now being rewritten in light of comments, criticisms and suggestions received.

Representative Knowles, Chairman of the Committee, and Representative Smith, Chairman of the Probate Subcommittee, are especially interested in having input from the Superior Court Judges Association regarding this bill. The hope is that you will have time to scan the enclosed draft for purpose of familiarization, then review the next draft (which should be ready in ten days) and supply the Committee with your comments, criticisms and suggestions.

The existence of this draft reflects a threshold decision of the Committee to proceed by selective amendment of existing law rather than wholesale substitution of the Uniform Probate Code. Your comments on this decision would be appreciated.

Thank you for your valuable assistance.

Respectfully yours,

Gerald K. Mooney, Counsel
House Judiciary Committee

GKM:kt
Enc.

BCC: Judge William H. Williams



OFFICE OF PROGRAM RESEARCH
HOUSE OF REPRESENTATIVES
STATE OF WASHINGTON

January 14, 1973

The Hon. Judge Frank Baker
Thurston County Courthouse
Olympia, Washington

Dear Judge Baker:

I enclose for your information the October 6 probate revision draft by the House Judiciary Committee. As previously explained, this draft is now being rewritten in light of comments, criticisms and suggestions received.

Representative Knowles, Chairman of the Committee, and Representative Smith, Chairman of the Probate Subcommittee, are especially interested in having input from the Superior Court Judges Association regarding this bill. The hope is that you will have time to scan the enclosed draft for purpose of familiarization, then review the next draft (which should be ready in ten days) and supply the Committee with your comments, criticisms and suggestions.

The existence of this draft reflects a threshold decision of the Committee to proceed by selective amendment of existing law rather than wholesale substitution of the Uniform Probate Code. Your comments on this decision would be appreciated.

Thank you for your valuable assistance.

Respectfully yours,

Gerald K. Mooney, Counsel
House Judiciary Committee

GKM:kt
Enc.

BCC: Judge William H. Williams



OFFICE OF PROGRAM RESEARCH
HOUSE OF REPRESENTATIVES
STATE OF WASHINGTON

January 15, 1973

TO: MEMBERS OF THE SENATE JUDICIARY COMMITTEE

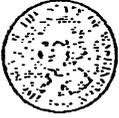
FROM: Rep. Walt O. Knowles, Chairman
House Judiciary Committee

RE: WORK SESSION ON REVISED PROBATE REFORM ACT OF 1974

The House Judiciary Committee will be conducting a work session on the Revised Probate Reform Act of 1974. Attached for your information is a copy of that draft and a section by section review. This draft is now being rewritten in light of comments, criticisms and suggestions received.

Any members of your committee interested in attending this work session are invited to do so, and any comments or criticisms will be appreciated.

WOK:kt
Enc.



OFFICE OF PROGRAM RESEARCH
HOUSE OF REPRESENTATIVES
STATE OF WASHINGTON

January 14, 1973

The Hon. Judge Richard Ennis
Lincoln County Courthouse
Davenport, Washington

Dear Judge Ennis:

I enclose for your information the October 6 probate revision draft by the House Judiciary Committee. As previously explained, this draft is now being rewritten in light of comments, criticisms and suggestions received.

Representative Knowles, Chairman of the Committee, and Representative Smith, Chairman of the Probate Subcommittee, are especially interested in having input from the Superior Court Judges Association regarding this bill. The hope is that you will have time to scan the enclosed draft for purpose of familiarization, then review the next draft (which should be ready in ten days) and supply the Committee with your comments, criticisms and suggestions.

The existence of this draft reflects a threshold decision of the Committee to proceed by selective amendment of existing law rather than wholesale substitution of the Uniform Probate Code. Your comments on this decision would be appreciated.

Thank you for your valuable assistance.

Respectfully yours,

Gerald K. Mooney, Counsel
House Judiciary Committee

GKM:kt
Enc.

BCC: Judge William H. Williams