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No. 65626-1-I

COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

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In the Matter of the  
ESTATE OF STEPHEN EARLS, Deceased

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HINES REIT SEATTLE DESIGN CENTER, LLC,

Appellant,

v.

BARRY WOLF,  
as personal representative of the  
Estate of Stephen Earls,

Respondent.

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BRIEF OF RESPONDENT

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## **I. INTRODUCTION**

Washington's probate non-claim statute, RCW 11.40 (commonly known as the "non-claim statute"), requires filing and presentation of creditor's claims to the personal representative of an estate within a limited time and bars all claims not so filed or presented. This appeal presents an important question of interpretation of the non-claim statute. That is, does the non-claim statute apply to a landlord's claim on a lease guaranty executed by the decedent during his lifetime where the default on the lease occurs after the decedent's death.

The lease (the "Lease") at issue was made between Appellant Hines REIT Seattle Design Center LLC's predecessor in interest, as lessor (hereinafter "Hines" or "Lessor"), and The Stephen Earls Corporation (the "Company"), as lessee. Concurrent with the execution of the Lease, decedent Stephen E. Earls ("Decedent") signed a guaranty (the "Guaranty") by which he guaranteed personally payment by the Company of all amounts due and owing under the Lease.

One week after the Decedent's death, the Personal Representative of the Decedent's estate ("Personal Representative") commenced publication of a Probate Notice to Creditors stating the time and manner for presentation of claims (the "Notice"). Two weeks after the Decedent's death, the Personal Representative sent a copy of the Notice to the Lessor, both by certified mail, return receipt requested, and by regular mail. Even though Hines received actual notice, it never filed a creditor's claim with

the Court, nor did Hines ever present a creditor's claim to the Personal Representative.

When the Company partially defaulted on its lease obligations some months after the statutory period for presenting creditor's claims had expired, Hines demanded payment from the Estate for the rental amounts not paid by the Company. The Personal Representative responded that he was not permitted nor required to make such payment because of Hines' failure to file and present a creditor's claim within the time limits and in the manner provided by the non-claim statute.

Hines filed this action six months later by way of a Trust and Estates Dispute Resolution Act ("TEDRA") petition (the "Petition") seeking to enforce the Guaranty against the Estate. Hines' principal argument is that its claim on the Guaranty is outside the purview of the non-claim statute because that statute only applies to claims that arise prior to death, and the liability on the Guaranty did not accrue until after the Decedent died.

Both the Court Commissioner and the Superior Court agreed with the Personal Representative and held that Hines' claim on the Guaranty was subject to and barred by the non-claim statute. The Guaranty is a personal obligation of the Decedent incurred *during* his lifetime. The Guaranty explicitly created primary and absolute liability to Hines. This liability, though contingent on the Company's performance of the terms and conditions of the Lease, is a "claim" under the probate statutory scheme. As a holder of this contingent claim, Hines was a creditor of the

Decedent, and was therefore required to comply with the requirements of RCW 11.40. The express language of RCW 11.40, and the weight of legal authority in Washington support the trial court's conclusion.

For the reasons set forth herein, Barry E. Wolf, as Personal Representative of the Estate of Stephen E. Earls, hereby respectfully requests that this Court affirm the rulings of the trial court and award the Estate its attorneys' fees and costs incurred in opposing this appeal.

**II. COUNTERSTATEMENT OF ISSUES PERTAINING TO HINES' ASSIGNMENTS OF ERROR**

1. Does a contractual obligation entered into by a decedent during his or her lifetime constitute a contingent claim within the meaning of Washington's Probate Code, including RCW 11.40, *et seq.*, and RCW 11.76, *et seq.*?

2. Does RCW 11.40 bar recovery on a lease guaranty executed by a decedent, where the lessor did not file its creditor's claim or present its claim with the estate prior to the expiration of the claims period?

**III. COUNTERSTATEMENT OF THE CASE**

**A. The Decedent Executed the Guaranty**

The Decedent was the president of The Stephen Earls Corporation, which owns and operates the Stephen E. Earls Showroom in Seattle. CP 5, 62. The showroom sells household furniture, furnishings and design items through interior designers. CP 62. All of the shares of the Company are held by the Stephen E. Earls Revocable Living Trust (the "Trust"),

executed by the Decedent on June 5, 1997. CP 5, 62. Prior to his death, the Decedent was the sole trustee and beneficiary of the Trust. CP 62.

On March 15, 2005, the Company entered into a lease agreement with Bay West Design Center, LLC, which is Hines' predecessor in interest, for the lease of certain commercial premises at the Seattle Design Center. CP 6, 16-56, 62. The term of the Lease is 120 months, beginning January 1, 2006, and ending December 31, 2015. CP 6, 16, 62.

Contemporaneously with the execution of the Lease, the Decedent signed a Personal Guaranty, guaranteeing personally the Company's full and timely performance and payment on the Lease. CP 6, 49, 62. By its express terms, the Guaranty is "primary and absolute," and the Lessor at its option may proceed directly against the guarantor without proceeding against the Company as lessee. CP 49, 62. The Guaranty also purports to bind the Estate of the Decedent, as well as his successors and assigns. CP 6, 49, 62.

**B. Hines Did Not File a Creditor's Claim on the Guaranty Following the Decedent's Death**

The Decedent died on October 17, 2008. CP 5, 63. Within one week of the Decedent's death, on October 24, 2008, the Personal Representative of the Estate caused the Notice to be published in compliance with RCW 11.40.020. CP 1-2, 63. On October 30, 2008, the Personal Representative sent the Notice to Hines by certified mail, return receipt requested, and also by regular mail. CP 7, 63. Hines acknowledges that it was served with the Notice on or about that date.

CP 7. The period for filing creditors' claims expired on February 24, 2009. *See generally* RCW 11.40.051. Hines did not file or present a creditor's claim to the Estate before the expiration of the claims period – or at any time. CP 7, 63.

**C. The Company Partially Defaulted on the Lease and Hines Demanded Payment from the Estate**

In August 2009, some months after the claims period expired, the Company partially defaulted on the Lease. CP 6-7. The Company continued to occupy the leased premises, and Hines continuously accepted partial rental payments from the Company. CP 63. On September 21, 2009, Hines, through its counsel, sent a letter to the Personal Representative of the Estate demanding payments of the rental amounts not paid by the Company. CP 63. Hines also demanded that the Personal Representative of the Estate set aside funds from the Estate sufficient to satisfy the obligations under the Guaranty. CP 63. The Personal Representative responded by stating that Hines' claim on the Guaranty was barred by the Washington's non-claim statute due to Hines' failure to file and present the claim before the expiration of the claims limitation period. CP 63.

**D. Procedural History**

On January 14, 2010, Hines filed a TEDRA petition against the Estate seeking to enforce the Guaranty. CP 5-56. Barry Wolf, as Personal Representative of the Estate, opposed Hines' Petition. CP 57-73. The hearing on the Petition was held before Superior Court Commissioner Eric

Watness on March 30, 2010. CP 86-88. The Court Commissioner agreed with the Estate that Hines' claim and suit based upon the Guaranty are barred by RCW 11.40 because Hines failed to present its claim to the personal representative of the Estate before the expiration of the claims period. CP 86-88.

On April 9, 2010, Hines filed a motion for revision with the Superior Court, which was assigned to the Honorable Laura Gene Middaugh. CP 118-23. Following extensive briefing and a hearing, on May 19, 2010, Judge Middaugh denied Hines' motion for revision, and orally affirmed the Court Commissioner's ruling that Hines had no right to recover against the Estate on the Guaranty. CP 127-128. This appeal followed.

#### **IV. ARGUMENT**

##### **A. Standard of Review**

The Estate agrees with Hines that the general standard of review for this appeal is de novo. The court of appeals reviews the superior court's ruling. *State v. Ramer*, 151 Wn.2d 106, 113, 86 P.3d 132 (2004). When the superior court does not make written findings, the appellate court can look to the superior court's oral decision to clarify the theory on which the superior court decided the case. *Grieco v. Wilson*, 144 Wn. App: 865, 872, 184 P.3d 668 (2008) (quoting *Goodman v. Darden, Doman & Stafford Assocs.*, 100 Wn.2d 476, 481, 670 P.2d 648 (1983)). Here, the trial court denied Hines' motion for revision and gave her oral reasoning, but did not issue separate written findings of fact and conclusions of law.

Therefore, this Court may look to the trial court's oral opinion to determine how the trial court decided the case.

**B. The Trial Court Correctly Ruled That Hines' Claim Is Subject to Washington's Non-Claim Statute**

The trial court properly dismissed Hines' Petition. Hines cannot recover on the Guaranty for the fundamental reason that the plain language of RCW 11.40 expressly bars any recovery on claims against a decedent that have not been filed and presented to the personal representative of the estate in the manner and within the time limits provided in the statute.

The primary goal in statutory interpretation is to ascertain and give effect to the intent of the Legislature. *Quadrant Corp. v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 154 Wn.2d 224, 238, 110 P.3d 1132 (2005) (citing *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 142 Wn.2d 543, 555, 14 P.3d 133 (2000)). The application of well-settled principles of statutory construction in this case supports the trial court's conclusion that Hines' claim on the Guaranty is subject to Washington's non-claim statute, and should have been presented to the personal representative of the Estate during the claims period.

**1. Washington's Non-Claim Statute Requires Strict Compliance with Its Provisions**

RCW 11.40 establishes a procedure for the resolution of claims against a decedent, and sets forth time limits within which such claims must be presented. RCW 11.40.010 provides, in relevant part:

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.<sup>1</sup> A putative creditor who receives actual notice announcing the personal representative's appointment and requiring that persons having claims against the decedent present and file their claims, must present a claim to the personal representative of the estate and file the original of the signed claim with the court within the later of: (1) thirty days after the personal representative served or mailed the notice to the creditor; or (2) four months after the date of first publication of the notice. RCW 11.40.051(1)(a) and 11.40.070. A person who fails to present his or her claim within the statutory period and in a manner specified in the statute "is forever barred from making a claim or commencing an action against the decedent." RCW 11.40.051.

Compliance with the provisions of the non-claim statute is essential for recovery. When the statutory claims limitation period expires, the right or obligation is extinguished and cannot be revived. *Lane v. Dep't of Labor & Indus.*, 21 Wn.2d 420, 425-26, 151 P.2d 440 (1944). The non-claim statute is strictly enforced, mandatory and not subject to enlargement by interpretation; its requirements cannot be waived. *Judson v. Associated Meats & Seafoods*, 32 Wn. App. 794, 798, 651 P.2d 222 (1982). Equitable considerations may not mitigate the strict

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<sup>1</sup> Copies of all statutes cited herein are set forth in the Appendix hereto.

requirements of the statute where a timely claim has not been filed by the creditor. *Estate of Wilson v. Livingston*, 8 Wn. App. 519, 525, 507 P.2d 902 (1973).

**2. By Its Express Terms, Washington’s Non-Claim Statute Applies to Claims That Are Contingent, Unliquidated or Not Yet Due**

Washington’s non-claim statute applies to a broad range of claims against a decedent. *See Davis v. Shepard*, 135 Wn. 124, 125, 237 P. 21 (1925) (“This statute ... applies to claims of every kind and nature...”). By its express terms, Washington’s non-claim statute applies to claims that are contingent or not yet due at the time of a decedent’s death, but that may become liquidated, vested and payable after death. Specifically, RCW 11.40.070(1), which governs the form and manner of presentation of claims, provides that the claim must include, among other things, the following information:

- (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.

RCW 11.40.070(1) (emphasis added). Similarly, RCW 11.76, governing the settlement of the estates, contains several sections dealing with unmatured or contingent claims. RCW 11.76.180, entitled “Order maturing claim not due,” provides that:

If there be any claim *not due* the court may in its discretion, after hearing upon such notice as may be determined by it,

mature such claim and direct that the same be paid in the due course of the administration.

RCW 11.76.180 (emphasis added). And RCW 11.76.190, entitled “Procedure on contingent and disputed claim,” provides that:

If there be any *contingent* or disputed claim against the estate, the amount thereof, or such part thereof as the holder would be entitled to, if the claim were established or absolute, shall be paid into the court where it shall remain to be paid over to the party when he or she shall become entitled thereto; or if he or she fails to establish his or her claim, to be paid over or distributed as the circumstances of the case may require.

RCW 11.76.190 (emphasis added). The provisions of the statute thus contemplate that claims which are contingent, unliquidated or unmatured must nevertheless be filed against the probate estate, and that the administrator of the estate may be required to set aside funds from the estate for the payment of such claims should they become established or absolute.

Though amended from time to time, the predecessor provisions to RCW 11.76.180 and RCW 11.76.190 have been part of Washington’s Probate Code since 1854. *See* Laws of 1965, ch. 145, §§ 11.76.180-190; Rem. Rev. Stat. §§ 1548-49; Code of 1881 § 1567; Laws of 1854 p. 298. § 189. (App. 0014-24). Therefore, Hines’ contention that the inclusion of contingent claims under the Probate Code’s statutory scheme is a rather recent and insignificant development is simply without merit. *See* Appellant’s Brief, at 20-21.

A statute must be read as a whole, giving effect to all of the language used, and each provision must be harmonized with other provisions. *State v. Young*, 125 Wn.2d 688, 696, 888 P.2d 142 (1995) (quoting *Alderwood Water Dist. v. Pope & Talbot, Inc.*, 62 Wn.2d 319, 321, 382 P.2d 639 (1963)). Where the meaning of a statute is plain on its face, the court must give effect to that plain meaning as the expression of legislative intent. *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002). The court should assume that the legislature means exactly what it says; plain words do not require construction. *Western Telepage, Inc. v. City of Tacoma*, 140 Wn.2d 599, 609, 998 P.2d 884 (2000) (quoting *State v. McCraw*, 127 Wn.2d 281, 288, 898 P.2d 838 (1995)). Here, the plain language of the statute unambiguously requires timely filing and presentment of claims based on the obligations incurred by a decedent during his or her lifetime, even though at the time of death it remains uncertain when and if performance on those obligations will become due. Hines' arguments to the contrary are directly in conflict with the plain language of the statute.

**3. The Trial Court Correctly Concluded That Hines' Claim Is a Contingent Claim That Should Have Been Filed Before the Expiration of the Claims Period**

The trial court correctly ruled that Hines' claim on the Guaranty is a contingent claim that is subject to the non-claim statute. The non-claim statute itself does not define the term "contingent claim." In the absence of other authority, Washington courts use Webster's Third New

International Dictionary to determine the plain and ordinary meaning of undefined terms. *In re Personal Restraint of Well*, 133 Wn.2d 433, 438, 946 P.2d 750 (1997). Among the dictionary meanings of “contingent” are: (1) “likely but not certain to happen”; (2) “unpredictable in outcome or effect because happening by chance and modified by unseen causes and unforeseen conditions”; (3) “dependent on, associated with, or conditioned by something else, sometimes indirectly or remotely.” *Webster’s Third New International Dictionary* 493 (1971). And Black’s Law Dictionary defines the term “contingent claim” as “one which has *not accrued* and which is dependent on some future event that may never happen.” *Black’s Law Dictionary* 265 (8<sup>th</sup> ed. 2004) (emphasis added).

Hines’ claim on the Guaranty falls squarely within these definitions. It is a contingent claim because at the time of the Decedent’s death the liability on the claim had not yet accrued, and was dependent upon the happening of a certain event, namely the Company’s default on the Lease and the triggering of the obligations under the Guaranty. As a contingent claim, Hines’ claim on the Guaranty is subject to Washington’s non-claim statute, and should have been presented in accordance with that statute’s terms.

It is undisputed that Hines did not file or present its claim to the Personal Representative of the Estate within four months after the notice to creditors was first published. CP 7, 63. Because Hines was required to do so under the statute, the trial court did not err in concluding that Hines’ claim and cause of action on the Guaranty are now barred. Contrary to

Hines' contention, the trial court did not "abrogate a contractual right of guaranty." See Appellant's Brief, at 1, 23. Hines' claim was extinguished by the operation of law.

**C. The Weight of Legal Authority in Washington Supports the Trial Court's Interpretation of the Non-Claim Statute**

The trial court's interpretation of RCW 11.40 is consistent with the manner in which other Washington courts interpreted that statute. A long line of Washington Supreme Court cases has held that the non-claim statute requires timely presentment of contingent claims, even where the nature and extent of such claims remain unclear at the time of the decedent's death. The most definitive authority of law with respect to this issue is the Washington Supreme Court case of *James v. Corvin*, 184 Wn. 356, 51 P.2d 689 (1935). In that case, the Court affirmed the principle that Washington's non-claim statute applies to a claim arising out of a leasehold obligation incurred by the decedent during his lifetime, even if the lease is not in default at the time of the decedent's death. *Id.* at 359. Inexplicably, Hines makes no mention of this case in its appellate brief, even though the holding of this Supreme Court case is controlling and was extensively addressed in the proceedings below.

In *James*, a lessee entered into a five-year term lease agreement with a lessor for the lease of certain storeroom facilities. *Id.* at 356-57. The lease agreement provided, among other things, that it would be binding upon the lessor's and lessee's "heirs, executors, administrators, successors and assigns." *Id.* at 356-57. Less than a year after the

execution of the lease agreement, the lessee died. Upon the lessee's death, the administrator of his estate gave statutory notice to creditors to file their claims against the estate. *Id.* at 357. The lessor never filed a creditor's claim. *Id.* The administrator then took possession of the leased premises and continued to pay rent on the lease for over two years. *Id.* When the administrator stopped making rent payments, the lessor filed a lawsuit to recover payments for the unexpired portion of the lease. *Id.* at 357-58. The Washington Supreme Court held that the then-operative non-claim statute, Rem. Rev. Stat. § 1477, the predecessor of RCW 11.40, barred suit against the administrator of the estate because the lessor had not timely filed a creditor's claim, notwithstanding the fact that the default on the lease occurred after the decedent's death and after the statutory period for presenting a claim expired. *Id.* at 358-59. As the *James* Court explained:

The claim for damages for the unexpired portion of the lease is not an obligation incurred by the administratrix in the course of her administration of the estate. *It arises out of a contractual obligation incurred by Louis Johnson and is governed by the statute of nonclaim.* By the terms of the lease, he obligated himself, his heirs, executors, administrators, and assigns to pay \$4,860 for the premises for a term of five years, covering the time involved in this action. A claim for damages for a breach of that contract arises out of that obligation, requiring, as a prerequisite to a suit thereon, that the claim be served on the administratrix and filed with the clerk of the court.

*Id.* at 359 (emphasis added). Though decided under the prior (though similar) version of the non-claim statute, the holding of *James* remains controlling authority today and is directly applicable to the case at bar.

Here, the Guaranty is primary and absolute, thus the obligations under the Guaranty are identical and co-extensive with the obligations of the lessee in *James*. And just as the lessor was in *James*, Hines is barred from maintaining this action against the Estate due to its failure to timely file and present the claim to the personal representative of the Estate.

Other Washington Supreme Court cases have similarly held that contingent claims must be brought pursuant to the non-claim statute, even if at the time it is uncertain when or if the underlying obligation will become due or the value of the claim is undetermined. *See e.g. Seattle Trust Co. v. Zbinden*, 170 Wn. 692, 17 P.2d 629 (1932) (holding that it was necessary to file a contingent claim for the amount of any deficiency that might result after the sale of the property covered by the mortgage, even though the mortgage was current at the time of the decedent's death, because the mortgage obligation was incurred when the decedent was alive); *Horton v. McCord*, 158 Wn. 563, 291 P. 717 (1930) (holding that a claim arising out of a post-death breach of the employment agreement entered into by the decedent must be timely presented to executors of the decedent's estate like any other claim arising out of obligations entered by the deceased during his lifetime); *Andrews v. Kelleher*, 124 Wn. 517, 214 P. 1056 (1923) (where the deceased had guaranteed corporate bonds which had not matured at his death, a claim against his estate based on such guaranty was properly allowed by his executor as a contingent claim); *Barto v. Stewart*, 21 Wn. 605, 616-17, 59 P. 480 (1899) (even though a claim arising out of liability of the decedent as a stockholder was

neither absolute nor due during the claims limitation period, it nevertheless had to be presented to the executor or administrator of the estate because it was an existing valuable claim, “assignable, devisable, and descendible”). In its appellate brief, Hines does not cite to any Washington Supreme Court decision supporting its argument that such contingent claims need not be filed and presented to the estate within the claims period, nor does such precedent exist.

Like Washington, other jurisdictions also require that a surety or beneficiary of a guaranty file a contingent claim with the estate even if no actual loss had been suffered at the time of the decedent’s death. *See e.g., In re Palmer’s Estate*, 227 N.W.2d 680 (Wis. 1975) (where a creditor of the decedent did not file within the statutory claims period a contingent claim based on a guaranty executed by the decedent during his lifetime, the claim was forever barred); *In re Estate of Bierman*, 410 S.W.2d 342 (Mo. Ct. App. 1966) (where it was uncertain at time of decedent’s death and during the claim period whether the corporation would default in payment of freight charges covered by bond, a claim of the surety on such bond based on decedent’s agreement to indemnify the surety was a contingent claim, and the surety was required to file claim with the estate within the limitation period); *American Surety Co. v. Murphy*, 9 So.2d 355 (Fla. 1942) (barring surety from bringing a claim against the decedent’s estate after the period for claims expired even though the claim did not become due during the decedent’s lifetime); *Nichols v. Harsh*, 209 N.W. 297 (Iowa 1926) (holding that the obligation of the guarantor on a

promissory note was one of the contingent liabilities contemplated by the statute requiring contingent claims to be presented within a fixed time). This authority from across the country is both persuasive and directly applicable here. It further supports the trial court's conclusion that Hines' claim on the Guaranty is subject to and barred by the non-claim statute.

**D. Hines' Proposed Construction of the Statute Contradicts the Express Statutory Language**

**1. Hines Improperly Equates the Term "Claim" with a "Cause of Action"**

Hines maintains that its claim on the Guaranty is not subject to the non-claim statute because it is not a claim against the Decedent within the meaning of the statute, but is rather a claim against the Estate. *See* Appellant's Brief, at 8-9. Relying on Washington authority which states that claims which arise after the decedent's death are not subject to the non-claim statute, Hines argues that its claim is precisely such a claim and did not need to be filed to be allowed. *See, e.g., Judson v. Associated Meats & Seafoods*, 32 Wn. App. 794, 797, 651 P.2d 222 (1982) ("A claim that arose after death ... is a claim against the estate, not the deceased. Claims against the estate ... need not be filed in order to be allowed"). To support this position, Hines cites several Washington cases holding (correctly) that a cause of action against a guarantor accrues only when the liability on the guaranty is triggered by nonperformance of contractual obligations by the principal obligor. *See* Appellant's Brief, at 10-12. Because the cause of action on the Guaranty did not accrue until the

Company defaulted on the Lease, Hines argues, its cause of action/claim arose after the Decedent's death, and it is therefore outside the purview of the non-claim statute. *Id.*

The main flaw in Hines' argument is that it fails to differentiate between the term "claim" under the Probate Code and a "cause of action." While Washington courts have compared the term "claim" to a "cause of action," this comparison was meant to show that, in the context of probate proceedings, the term "claim" should be construed broadly. *See Barto*, 21 Wn. at 616 (noting that the word "claim" must "be held to include every species of liability which the [personal representative] can be called on to pay...out of the general fund belonging to the estate"). This comparison of the word "claim" with the term "cause of action" does not imply that a creditor's claim necessarily arises at the time of the accrual of the cause of action on the underlying obligation. To the contrary, and as the non-claim statute itself contemplates, a valid claim in a "contingent, unliquidated or not-yet-due" form may arise before performance on the underlying obligation is actually due, which is not sufficient to support a cause of action. *See* RCW 11.40.070.

The Washington Supreme Court has acknowledged the difference between the term "claim" and a "cause of action" in the context of the Probate Code in *Young v. Estate of Snell By and Through Platis*, 134 Wn.2d 267, 948 P.2d 1291 (1997). As the Supreme Court observed:

There is a difference between a “claim” presented by creditors of a decedent’s estate and actions at law against a decedent’s estate. The filing [of] a “claim” against the estate is generally a condition precedent to maintaining a lawsuit against the estate. RCW 11.40.080 (“No holder of any claim against a decedent shall maintain an action thereon, unless the claim shall have been first presented as provided in this chapter.”)<sup>2</sup>

*Id.* at 272, n.2. By attempting to equate the term “claim” to a “cause of action,” Hines reads into the statute a requirement that, at the time of filing and presentation, a claim against the decedent must be absolute; i.e., that performance on the underlying obligation must be already due. Such reading of the statute renders the statutory provisions regarding contingent, unliquidated and unmatured claims without effect. As the trial court properly observed:

If [Hines’] position was correct, it would defeat the intent of the probate structure, and it would also make that portion of the statute [a] nullity because you wouldn’t ever have to file a claim if it was contingent.

*See* VRP 2. The trial court is correct. Because Hines’ proposed interpretation of the statute cannot be harmonized with the plain language of the statute, and, if adopted, would inevitably lead to absurd results, the trial court’s ruling dismissing Hines’ petition should be affirmed.

## **2. Hines’ Claim Is Against the Decedent, Not the Estate**

Hines’s claim on the Guaranty arose out of a contractual obligation incurred by the Decedent during his lifetime. Thus, Hines’ claim is

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<sup>2</sup> The Supreme Court referred to the former RCW 11.40.080, which was in effect when the case arose.

against the Decedent, and not against the Estate, as Hines attempts to argue. *See* Appellant’s Brief, at 9-10. Moreover, “claims against the estate” typically involve debts which accrue as a result of the death of the decedent, i.e., funeral and burial expenses, or which accrue thereafter as an expense of administration, which is not the case here. *See Estate of Wilson v. Livingston*, 8 Wn. App. 519, 525, 507 P.2d 902 (1973). Presumably, such claims are exempt from the filing requirement because the administrator of the estate is well-aware of these debts and does not need to be put on notice to set aside funds from the estate to satisfy them. Hines’ claim on the Guaranty is not related to debts incurred during the course of administration of the Decedent’s Estate, therefore, it is not a claim against the Estate but is a contingent claim against the Decedent.

**E. The Case Law Relied on by Hines Is Not Controlling**

**1. The *Foley* Case Is Factually Distinguishable**

The Washington Court of Appeals decision in *Foley v. Smith*, 14 Wn. App. 285, 539 P.2d 874 (1975) is one of the few legal authorities relied on by Hines for its proposition that claims arising out of obligations incurred by the decedent during his or her lifetime, but not actionable until after death, are not subject to the non-claim statute. *See* Appellant’s Brief, at 12-14. Hines’ reliance on *Foley* is misplaced.

In *Foley*, the Foleys conveyed land to the Smiths by statutory warranty deed after they had already promised to sell the property to another purchaser. *Id.* at 287. The prior purchaser brought a specific

performance action against the Foleys and the Smiths seeking to obtain title to the property. *Id.* Mr. Foley died during the pendency of the action, but before any decision on the action was reached. *Id.* Subsequently, a decree for specific performance was entered divesting the Foleys and the Smiths of their title and interest in the land. *Id.* In litigation that followed, the Smiths alleged breach of covenants of warranty and quiet enjoyment against Mrs. Foley and Mr. Foley's Estate on the basis of the specific performance decree. *Id.* at 288. In response, Mrs. Foley argued that the Smiths' claim and cause of action were barred by the non-claim statute because they had not presented their claim in the probate of Mr. Foley's Estate. The Court of Appeals disagreed and held that it was unnecessary for the Smiths to present a claim against Mr. Foley's Estate because the claim arose after Mr. Foley's death, when the specific performance decree became final, and the covenants were subsequently breached. *Id.* at 294.

Contrary to Hines' position, *Foley* is not "on all fours" with this case. *See* Appellant's Brief, at 13. Unlike the Decedent in this case, Mr. Foley was not obligated or indebted to the Smiths at the time of his death. Rather, he was involved in a dispute relating to certain property rights. The obligation to the Smiths arose only when the specific performance decree was entered. As noted by the United States District Court for the District of Connecticut in *Retained Realty, Inc. v. Estate of Spitzer*, No. 3:06-CV-0493, 2008 WL 4691780 (D. Conn. Sept. 12, 2008), which was called upon to analyze *Foley* in a dispute involving Washington law:

In *Foley*, there was no debt obligation at the time of Mr. Foley's death. Instead, Mrs. Foley and the Estate were defending the Smiths' title to the property. It was not until the decree entered that Smiths' title was voided, a debt was established, and a claim arose.

*Id.* at \*6. Unlike the Smiths in *Foley*, Hines *did* have a claim when the Decedent died. The contingent claim was established when the obligation was incurred prior to death, at the time of the execution of the Guaranty. Because the facts of *Foley* are distinguishable from those in the present case, *Foley* does not support Hines' arguments.

## **2. The *Runkle* Case Passes On Issue, And In Any Event Was Wrongly Decided**

The only other authority relied on by Hines in support of its argument that a decedent's obligations incurred prior to death are not subject to the non-claim statute if performance on those obligations is not due until after death is the court of appeals case of *Runkle v. Bank of California*, 26 Wn. App. 769, 614 P.2d 226 (1980). *Runkle* involved a claim arising out of a contractual obligation entered into by the decedent during his lifetime. *Id.* at 227. The contract at issue provided that the decedent would make certain payments to third parties upon the receipt of certain specified funds. *Id.* The decedent died before personally receiving the funds, but his estate received the funds following his death. *Id.* No claim was filed with the estate with respect to the funds prior to the expiration of the claims period. *Id.* at 772. In a suit to enforce the obligation to pay the funds, the *Runkle* court held that the non-claim

statute was inapplicable because the funds were not received, and thus the obligation to pay them did not arise, until after the decedent's death. *Id.* at 773.

Hines' reliance on this case is unavailing. First, *Runkle* barely touches on the discussion of the non-claim statute, dedicating only a few brief lines to the issue of whether the beneficiaries' claims were subject to the non-claim statute. Indeed, the *Runkle* court noted in a footnote that the issue of whether the non-claim was applicable, though raised in defendant's summary judgment motion, did not even reach the trial court. *Id.* at 772, n.3. As the *Runkle* Court explained:

Although raised by the defendants in their summary judgment motion, this issue was not reached by the trial court. *We will pass on the issue here*, inasmuch as a reviewing court, on an appeal from a summary judgment, makes the same inquiry as the trial court. *Highline School Dist. No. 401 v. Port of Seattle*, 87 Wash.2d 6, 548 P.2d 1085 (1976).

*Id.* (emphasis added). Therefore, the *Runkle* court did not really deal with the issue of the extent of the application of the non-claim statute.

Apart from being vague, the court's holding in *Runkle* is simply incorrect. It stands in direct contrast to Washington's non-claim statute, which explicitly provides that all forms of claims against the decedent, whether secured, unliquidated, contingent or not yet due, must be timely presented to the estate. It also completely ignores the long line of Washington Supreme Court decisions affirming the same. The fact that *Runkle* does not reference statutory provisions relating to contingent,

unliquidated or not yet due claims further evidences that the *Runkle* court did not truly or correctly analyze the non-claim statute.

The holding of *Runkle* has never been followed in Washington in the 30 years since the decision, and at least one court has held that the *Runkle* case was wrongly decided. In *Heritage Organization, LLC. v. Mikron Industries, Inc.*, 354 B.R. 407 (N.D. Tex. 2006), a case involving the Washington decedent and owner of a Washington company, the bankruptcy court considered whether Washington's non-claim statute applied to a claim based on a promissory note where the promissory note did not mature until after the decedent's death, and held that it did. In its analysis of the issue, the court performed a detailed examination of Washington's probate law, and concluded that the *Runkle* case is irreconcilable with the structure of Washington's probate code and prior Washington Supreme Court precedent. *Id.* at 440.

The *Heritage* court is correct. *Runkle* was wrongly decided, and it is contrary to Washington law. Respondent respectfully urges this Court to refuse to apply it here.

**F. The Trial Court's Ruling Is Consistent with the Public Policy behind Washington's Probate Code**

The trial court's ruling is consistent not only with the plain language of the statute and the Washington Supreme Court precedent, but is also supported by public policy considerations behind Washington's Probate Code. The general purpose of the non-claim statute is to facilitate and expedite the proceedings for distribution of a decedent's estate,

including an early appraisal of the respective rights of interested persons and prompt and final settlement of demands against the estate. *See Nelson v. Schnautz*, 141 Wn. App. 466, 476, 170 P.3d 69 (2007). The filing and presentation of a claim to the personal representative of the estate is a step by which the personal representative is advised of the identities of the decedent's creditors and the amount of their claims. If a creditor's claim is not filed, the personal representative cannot readily ascertain the nature and extent of the decedent's debts and obligations, estimate with reasonable certainty when the estate will be ready for distribution, set aside funds sufficient to pay the outstanding obligations of the decedent should they become due, or conceivably even close the estate.

To promote early and final settlement of estates, the Legislature made compliance with the non-claim statute mandatory and imposed a permanent bar to claims which are not filed within the claims period. Through its action here, Hines is essentially asking the Court to relax the requirements of the non-claim statute by allowing recovery on claims that have not been timely filed. Washington courts, however, have long refused to do so. As noted by the Washington Supreme Court in *Davis*:

Many courts have said that the nonclaim statute is one to be more strictly enforced than general statutes of limitations; its object being to obtain early and final settlement of estates so that those entitled may receive the property free from incumbrances and charges which might lead to long litigation. That this was the purpose of the Legislature of this state in passing the statute is especially apparent. An examination of the provision discloses that each step taken has been in the direction of making the compliance with the

statute more and more mandatory and the foreclosing of the assertion of claims after the statutory period more and more absolute. In keeping with the legislative spirit, this court has made no exceptions to the statute...

135 Wn. at 131-32. Were this Court to adopt Hines' reading of the statute and allow Hines' claim, the purpose of the non-claim statute would be undermined. The adoption of Hines' reading of the non-claim statute would inevitably allow creditors to present their claims many years after the death of a decedent, without ever giving notice to the personal representative of the estate of the nature and extent of the decedent's obligations. If such claims could be submitted after an estate is probated and closed, the beneficiaries of the estate would be forced to return assets already distributed to them. This would clearly frustrate the purpose of early and final settlement of estates.

Contrary to Hines's argument, the trial court did not use public policy considerations to alter the explicit requirements of the non-claim statute. *See* Appellant's Brief, at 23-24. In fact, public policy considerations here dovetail with the express language of the statute. However, even setting the public policy considerations aside, there is only one conclusion that this Court can reach based on the express language of RCW 11.40: contingent claims, such as the one held by Hines, must be timely filed and presented to the personal representative of the estate to be allowed. Because Hines failed to do so, its claim and cause of action on the Guaranty are forever barred.

**G. The Trial Court's Award of Attorneys' Fees Should Be Affirmed**

Because the trial court properly dismissed Hines' Petition, this Court should affirm the trial court's award of attorneys' fees to the Estate.<sup>3</sup>

**V. REQUEST FOR ATTORNEYS' FEES AND COSTS ON APPEAL**

Pursuant to RAP 18.1, the Estate hereby respectfully requests that this Court grant it an award of the reasonable attorneys' fees and costs it incurred in connection with opposing this meritless appeal. Such a fee award is specifically contemplated by the TEDRA statute and the Guaranty, and is appropriate here. RCW 11.96A.150(1) provides, in relevant part:

Either the superior court or any court on an appeal may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party: (a) From any party to the proceeding.... The court may order the costs...to be paid in such amount and in such manner as the court determines to be equitable.

RCW 11.96A.150. Basic principles of fairness and equity strongly support an award of attorneys' fees here under the TEDRA statute. The Estate has incurred substantial attorneys' fees and costs opposing Hines' repetitious attempts to secure funds from the Estate to which it is plainly not entitled.

The attorneys' fees provision in the Guaranty provides a separate ground for awarding the attorneys' fees to the Estate. CP 49. Even

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<sup>3</sup> Hines does not challenge the amount of fees awarded, merely the award of fees at all.

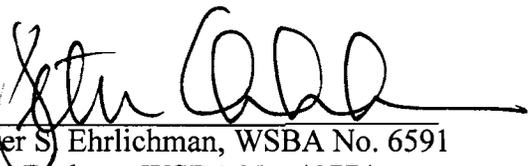
though the attorneys' fees provision in the Guaranty is one-sided, RCW 4.84.330 authorizes the award of attorneys' fees and costs to the prevailing party in an action to enforce a contract or lease where the contract or lease provides for an award of the fees and costs of one of the parties.

The Estate respectfully requests that this Court order that the Estate be awarded its reasonable attorneys' fees incurred in opposing this appeal, in an amount to be established pursuant to the procedures set forth in RAP 18.1.

#### VI. CONCLUSION

For the reasons set forth herein, Barry E. Wolf, as Personal Representative for the Estate of Stephen E. Earls, respectfully requests that this Court affirm the trial court's ruling that Hines' claim on the Guaranty is subject to and barred by the non-claim statute, affirm the trial court's award of fees, and grant the Estate an award of its reasonable attorneys' fees and costs on appeal.

RESPECTFULLY SUBMITTED, this 1st day of December, 2010.

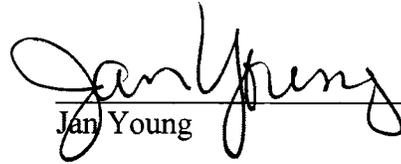
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BARRY WOLF, as Personal  
Representative of the Estate of Stephen  
Earls*

**CERTIFICATE OF SERVICE**

I hereby certify that on December 1, 2010, I caused a true and correct copy of the foregoing Respondent's Statement of Unpublished Authority to be served on the following counsel of record via electronic mail per agreement by counsel:

Ladd B. Leavens  
Davis Wright Tremaine LLP  
1201 Third Avenue, Suite 2200  
Seattle, WA 908101-3045

DATED this 1st day of December, 2010.

  
Jan Young

# APPENDIX

**VOLUME 2**  
**Titles 9 through 17**

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**2010**  
**REVISED CODE OF WASHINGTON**

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**Published under the authority of chapter 1.08 RCW.**

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Containing all laws of a general and permanent nature through the 2010 special session which adjourned April 13, 2010.

**11.32.050 Not liable to creditors.** Such special administrator shall not be liable to an action by any creditor of the deceased, and the time for limitation of all suits against the estate shall begin to run from the time of granting letters testamentary or of administration in the usual form, in like manner as if such special administration had not been granted. [1965 c 145 § 11.32.050. Prior: 1917 c 156 § 85; RRS § 1455; prior: Code 1881 § 1423; 1863 p 223 § 141; 1860 p 185 § 108.]

**11.32.060 To render account.** The special administrator shall also render an account, under oath, of his or her proceedings, in like manner as other administrators are required to do. [2010 c 8 § 2029; 1965 c 145 § 11.32.060. Prior: 1917 c 156 § 86; RRS § 1456; prior: Code 1881 § 1424; 1863 p 223 § 142; 1860 p 185 § 109.]

*Settlement of estates: Chapter 11.76 RCW.*

### Chapter 11.36 RCW QUALIFICATIONS OF PERSONAL REPRESENTATIVES

#### Sections

- 11.36.010 Parties disqualified—Result of disqualification after appointment.  
11.36.021 Trustees—Who may serve.

**11.36.010 Parties disqualified—Result of disqualification after appointment.** The following persons are not qualified to act as personal representatives: Corporations, minors, persons of unsound mind, or persons who have been convicted of any felony or of a misdemeanor involving moral turpitude: PROVIDED, That trust companies regularly organized under the laws of this state and national banks when authorized so to do may act as the personal representative of decedents' or incompetents' estates upon petition of any person having a right to such appointment and may act as executors or guardians when so appointed by will: PROVIDED FURTHER, That professional service corporations regularly organized under the laws of this state whose shareholder or shareholders are exclusively attorneys may act as personal representatives. No trust company or national bank may qualify as such executor or guardian under any will hereafter drawn by it or its agents or employees, and no salaried attorney of any such company may be allowed any attorney fee for probating any such will or in relation to the administration or settlement of any such estate, and no part of any attorney fee may inure, directly or indirectly, to the benefit of any trust company or national bank. When any person to whom letters testamentary or of administration have been issued becomes disqualified to act because of becoming of unsound mind or being convicted of any crime or misdemeanor involving moral turpitude, the court having jurisdiction shall revoke his or her letters. A nonresident may be appointed to act as personal representative if the nonresident appoints an agent who is a resident of the county where such estate is being probated or who is an attorney of record of the estate, upon whom service of all papers may be made; such appointment to be made in writing and filed by the clerk with other papers of such estate; and, unless bond has been waived as provided by RCW 11.28.185, such nonresident personal representative

(2010 Ed.)

shall file a bond to be approved by the court. [1983 c 51 § 1; 1983 c 3 § 14; 1965 c 145 § 11.36.010. Prior: 1959 c 43 § 1; 1917 c 156 § 87; RRS § 1457; prior: Code 1881 § 1409; 1863 p 227 § 164; 1860 p 189 § 131.]

*Rules of court: Counsel fees: SPR 98.12W.*

*Financial institutions may act as guardian: RCW 11.88.020.*

*Procedure during minority or absence of executor: RCW 11.28.040.*

*Trust company may act as personal representative: RCW 30.08.150.*

**11.36.021 Trustees—Who may serve.** (1) The following may serve as trustees:

(a) Any suitable persons over the age of eighteen years, if not otherwise disqualified;

(b) Any trust company regularly organized under the laws of this state and national banks when authorized to do so;

(c) Any nonprofit corporation, if the articles of incorporation or bylaws of that corporation permit the action and the corporation is in compliance with all applicable provisions of Title 24 RCW;

(d) Any professional service corporations regularly organized under the laws of this state whose shareholder or shareholders are exclusively attorneys; and

(e) Any other entity so authorized under the laws of the state of Washington.

(2) The following are disqualified to serve as trustees:

(a) Minors, persons of unsound mind, or persons who have been convicted of any felony or a misdemeanor involving moral turpitude; and

(b) A corporation organized under Title 23B RCW that is not authorized under the laws of the state of Washington to act as a fiduciary. [1991 c 72 § 1; 1985 c 30 § 6. Prior: 1984 c 149 § 9.]

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

*Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)*

### Chapter 11.40 RCW CLAIMS AGAINST ESTATE

#### Sections

- 11.40.010 Claims—Presentation—Other notice not affected.  
11.40.020 Notice to creditors—Manner—Filings—Publication.  
11.40.030 Notice to creditors—Form.  
11.40.040 "Reasonably ascertainable" creditor—Definition—Reasonable diligence—Presumptions—Petition for order.  
11.40.051 Claims against decedent—Time limits.  
11.40.060 Claims involving liability or casualty insurance—Limitations—Exceptions to time limits.  
11.40.070 Claims—Form—Manner of presentation—Waiver of defects.  
11.40.080 Claims—Duty to allow or reject—Notice of petition to allow—Attorneys' fees.  
11.40.090 Allowance of claims—Notice—Automatic allowance—Petition for extension—Ranking of claims—Barred claims.  
11.40.100 Rejection of claim—Time limits—Notice—Compromise of claim.  
11.40.110 Action pending at decedent's death—Personal representative as defendant.  
11.40.120 Effect of judgment against personal representative.  
11.40.130 Judgment against decedent—Execution barred upon decedent's death—Presentation—Sale of property.  
11.40.135 Secured claim—Creditor's right.  
11.40.140 Claim of personal representative—Presentation and petition—Filing.  
11.40.150 Notice to creditors when personal representative resigns, dies, or is removed—Limit tolled by vacancy.

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- 11.40.160 Personal representative as successor to notice agent—Notice not affected—Presumptions—Duties.
- 11.40.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

*Action on claim not acted on—Contribution: RCW 11.76.170.*  
*Contingent or disputed claims, procedure: RCW 11.76.190.*  
*Evidence, transaction with person since deceased: RCW 5.60.030.*  
*Guardianship—Claims: RCW 11.92.035.*  
*Incompetent, deceased, claims against estate of: RCW 11.88.150.*  
*Judgment against executor or administrator, effect: RCW 4.56.050.*  
*Liability of personal representative: RCW 11.76.160.*  
*Limitation of actions: Chapter 4.16 RCW.*  
*Order maturing claim noi due: RCW 11.76.180.*  
*Order of payment of debts: RCW 11.76.110.*  
*Payment of claims where estate insufficient: RCW 11.76.150.*  
*Quasi-community property—Lifetime transfers—Claims by surviving spouse or surviving domestic partner: RCW 26.16.240.*  
*Sale, etc., of property—Priority as to realty or personalty: Chapter 11.10 RCW.*  
*Survival of actions: Chapter 4.20 RCW.*  
*Tax constitutes debt—Priority of lien: RCW 82.32.240.*

**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 § 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.]

*Publication of legal notices: Chapter 65.16 RCW.*  
 Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**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,

[Title 11 RCW—page 34]

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.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**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.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**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 reasonable 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.]

*Order of payment of debts: RCW 11.76.110.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**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

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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.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**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.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**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

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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.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**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.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**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.

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

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(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.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**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.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**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*.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

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

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**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

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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.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**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.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**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.]

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

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**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.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**11.40.160 Personal representative as successor to notice agent—Notice not affected—Presumptions—**  
(2010 Ed.)

**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.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**11.40.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 31.]

## Chapter 11.42 RCW

### SETTLEMENT OF CREDITOR CLAIMS FOR ESTATES PASSING WITHOUT PROBATE

#### Sections

11.42.010	Notice agent—Qualifications.
11.42.020	Notice to creditors—Manner—Filing—Publication.
11.42.030	Notice to creditors—Form.
11.42.040	"Reasonably ascertainable" creditor—Definition—Reasonable diligence—Presumptions—Petition for order.
11.42.050	Claims against decedent—Time limits.
11.42.060	Claims involving liability or casualty insurance—Limitations—Exceptions to time limits.
11.42.070	Claims—Form—Manner of presentation—Waiver of defects.
11.42.080	Claims—Duty to allow or reject—Notice of petition to allow—Attorneys' fees.
11.42.085	Property, liable for claims—Payment limits.
11.42.090	Allowance of claims—Notice—Payment order.
11.42.100	Rejection of claim—Time limits—Notice—Time limit for suit—Compromise of claim.
11.42.110	Effect of judgment against notice agent.
11.42.120	Execution barred upon decedent's death—Presentation—Sale of property.
11.42.125	Secured claim—Creditor's right.
11.42.130	Claim of notice agent or beneficiary—Payment.
11.42.140	Notice to creditors when notice agent resigns, dies, or is removed—Limit tolled by vacancy.
11.42.150	Appointment of personal representative—Cessation of notice agent powers and authority—Notice not affected—Personal representative's powers—Petition for reimbursement for allowance and payment of claims by notice agent.
11.42.900	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

**11.42.010 Notice agent—Qualifications.** (1) Subject to the conditions stated in this chapter, and if no personal rep-

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(2) If the requirements in subsection (1) of this section are met, the personal representative is discharged from all claims other than those relating to the settlement of any tax obligations and the actual distribution of the reserve, at the effective date of the declaration of completion. The personal representative is discharged from liability from the settlement of any tax obligations and the distribution of the reserve, and the personal representative's powers cease, thirty days after the personal representative has mailed to those persons who would have shared in the distribution of the reserve had the reserve remained intact and has filed with the court copies of checks or receipts showing how the reserve was in fact distributed, unless a person with an interest in the reserve petitions the court earlier within the thirty-day period for an order requiring an accounting of the reserve or an order determining the reasonableness, or lack of reasonableness, of distributions made from the reserve. If the personal representative has been required to furnish a bond, any bond furnished by the personal representative is automatically discharged upon the final discharge of the personal representative. [1998 c 292 § 203; 1997 c 252 § 70.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**11.68.120 Nonintervention powers not deemed waived by obtaining order or decree.** A personal representative who has acquired nonintervention powers in accordance with this chapter shall not be deemed to have waived his or her nonintervention powers by obtaining any order or decree during the course of his or her administration of the estate. [2010 c 8 § 2059; 1974 ex.s. c 117 § 24.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**11.68.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 34.]

### Chapter 11.72 RCW

#### DISTRIBUTION BEFORE SETTLEMENT

##### Sections

11.72.002	Delivery of specific property to distributee before final decree.
11.72.006	Decree of partial distribution—Distribution of part of estate.

**11.72.002 Delivery of specific property to distributee before final decree.** Upon application of the personal representative, with or without notice as the court may direct, the court may order the personal representative to deliver to any

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distributee who consents to it, possession of any specific real or personal property to which he or she is entitled under the terms of the will or by intestacy, provided that other distributees and claimants are not prejudiced thereby. The court may at any time prior to the decree of final distribution order him or her to return such property to the personal representative, if it is for the best interests of the estate. The court may require the distributee to give security for such return. [2010 c 8 § 2060; 1965 c 145 § 11.72.002.]

**11.72.006 Decree of partial distribution—Distribution of part of estate.** After the expiration of the time limited for the filing of claims and before final settlement of the accounts of the personal representative, a partial distribution may be decreed, with notice to interested persons, as the court may direct. Such distribution shall be as conclusive as a decree of final distribution with respect to the estate distributed except to the extent that other distributees and claimants are deprived of the fair share or amount which they would otherwise receive on final distribution. Before a partial distribution is so decreed, the court may require that security be given for the return of the property so distributed to the extent necessary to satisfy any distributees and claimants who may be prejudiced as aforesaid by the distribution. In the event of a request for a partial distribution asked by a person other than the personal representative of the estate, the costs of such proceedings and a reasonable allowance for attorneys fees shall be assessed against the applicant or applicants for the benefit of the estate. [1965 c 145 § 11.72.006. Formerly RCW 11.72.010 through 11.72.070.]

### Chapter 11.76 RCW

#### SETTLEMENT OF ESTATES

##### Sections

11.76.010	Report of personal representative—Contents—Interim reports.
11.76.020	Notice of hearing—Settlement of report.
11.76.030	Final report and petition for distribution—Contents.
11.76.040	Time and place of hearing—Notice.
11.76.050	Hearing on final report—Decree of distribution.
11.76.060	Continuance to cite in sureties on bond when account incorrect.
11.76.070	Attorney's fees to contestant of erroneous account or report.
11.76.080	Representation of incapacitated person by guardian ad litem or limited guardian—Exception.
11.76.095	Distribution of estates to minors.
11.76.100	Receipts for expenses from personal representative.
11.76.110	Order of payment of debts.
11.76.120	Limitation on preference to mortgage or judgment.
11.76.130	Expense of monument.
11.76.150	Payment of claims where estate insufficient.
11.76.160	Liability of personal representative.
11.76.170	Action on claim not acted on—Contribution.
11.76.180	Order maturing claim not due.
11.76.190	Procedure on contingent and disputed claim.
11.76.200	Agent for absentee distributee.
11.76.210	Agent's bond.
11.76.220	Sale of unclaimed estate—Remittance of proceeds to department of revenue.
11.76.230	Liability of agent.
11.76.240	Claimant to proceeds of sale.
11.76.243	Heirs may institute probate proceedings if no claimant appears.
11.76.245	Procedure when claim made after time limitation.
11.76.247	When court retains jurisdiction after entry of decree of distribution.
11.76.250	Letters after final settlement.

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**11.76.170 Action on claim not acted on—Contribution.** If, after the accounts of the personal representative have been settled and the property distributed, it shall appear that there is a creditor or creditors whose claim or claims have been duly filed and not paid or disallowed, the said claim or claims shall not be a lien upon any of the property distributed, but the said creditor or creditors shall have a cause of action against the personal representative and his or her bond, for such an amount as such creditor or creditors would have been entitled to receive had the said claim been duly allowed and paid, and shall also have a cause of action against the distributees and creditors for a contribution from them in proportion to the amount which they have received. If the personal representative or his or her sureties be required to make any payment in this section provided for, he or she or they shall have a right of action against said distributees and creditors to compel them to contribute their just share. [2010 c 8 § 2071; 1965 c 145 § 11.76.170. Prior: 1917 c 156 § 177; RRS § 1547; prior: Code 1881 § 1569; 1860 p 214 § 271; 1854 p 299 § 191.]

**11.76.180 Order maturing claim not due.** If there be any claim not due the court may in its discretion, after hearing upon such notice as may be determined by it, mature such claim and direct that the same be paid in the due course of the administration. [1965 c 145 § 11.76.180. Prior: 1917 c 156 § 178; RRS § 1548; prior: Code 1881 § 1567; 1854 p 298 § 189.]

**11.76.190 Procedure on contingent and disputed claim.** If there be any contingent or disputed claim against the estate, the amount thereof, or such part thereof as the holder would be entitled to, if the claim were established or absolute, shall be paid into the court, where it shall remain to be paid over to the party when he or she shall become entitled thereto; or if he or she fails to establish his or her claim, to be paid over or distributed as the circumstances of the case may require. [2010 c 8 § 2072; 1965 c 145 § 11.76.190. Prior: 1917 c 156 § 179; RRS § 1549; prior: Code 1881 § 1567; 1854 p 298 § 189.]

**11.76.200 Agent for absentee distributee.** When any estate has been or is about to be distributed by decree of the court as provided in this chapter, to any person who has not been located, the court shall appoint an agent for the purpose of representing the interests of such person and of taking possession and charge of said estate for the benefit of such absentee person: PROVIDED, That no public official may be appointed as agent under this section. [1965 c 145 § 11.76.200. Prior: 1955 ex.s. c 7 § 1; 1917 c 156 § 165; RRS § 1535.]

**11.76.210 Agent's bond.** Such agent shall make, subscribe and file an oath for the faithful performance of his or her duties, and shall give a bond to the state, to be approved by the court, conditioned faithfully to manage and account for such estate, before he or she shall be authorized to receive any property of said estate. [2010 c 8 § 2073; 1965 c 145 § 11.76.210. Prior: 1955 ex.s. c 7 § 2; 1917 c 156 § 166; RRS § 1536.]

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**11.76.220 Sale of unclaimed estate—Remittance of proceeds to department of revenue.** If the estate remains in the hands of the agent unclaimed for three years, any property not in the form of cash shall be sold under order of the court, and all funds, after deducting a reasonable sum for expenses and services of the agent, to be fixed by the court, shall be paid into the county treasury. The county treasurer shall issue triplicate receipts therefor, one of which shall be filed with the county auditor, one with the court, and one with the department of revenue. If the funds remain in the county treasury unclaimed for a period of four years and ninety days, the county treasurer shall forthwith remit them to the department of revenue for deposit in the state treasury in the fund in which escheats and forfeitures are by law required to be deposited. [1975 1st ex.s. c 278 § 10; 1965 c 145 § 11.76.220. Prior: 1955 ex.s. c 7 § 4; 1917 c 156 § 167; RRS § 1537.]

*Escheats: Chapter 11.08 RCW.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**11.76.230 Liability of agent.** The agent shall be liable on his or her bond for the care and preservation of the estate while in his or her hands, and for the payment of the funds to the county treasury, and may be sued thereon by any person interested including the state. [2010 c 8 § 2074; 1965 c 145 § 11.76.230. Prior: 1955 ex.s. c 7 § 5; 1917 c 156 § 168; RRS § 1538.]

**11.76.240 Claimant to proceeds of sale.** During the time the estate is held by the agent, or within four years after it is delivered to the county treasury, claim may be made thereto only by the absentee person or his or her legal representative, excepting that if it clearly appears that such person died prior to the decedent in whose estate distribution was made to him or her, but leaving lineal descendants surviving, such lineal descendants may claim. If any claim to the estate is made during the period specified above, the claimant shall forthwith notify the department of revenue in writing of such claim. The court, being first satisfied as to the right of such person to the estate, and after the filing of a clearance from the department of revenue, shall order the agent, or the county treasurer, as the case may be, to forthwith deliver the estate, or the proceeds thereof, if sold, to such person. [2010 c 8 § 2075; 1975 1st ex.s. c 278 § 11; 1965 c 145 § 11.76.240. Prior: 1955 ex.s. c 7 § 6; 1917 c 156 § 169; RRS § 1539.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**11.76.243 Heirs may institute probate proceedings if no claimant appears.** If no person appears to claim the estate within four years after it is delivered to the county treasury, as provided by RCW 11.76.240, any heirs of the absentee person may institute probate proceedings on the estate of such absentee within ninety days thereafter. The fact that no claim has been made to the estate by the absentee person during the specified time shall be deemed prima facie proof of the death of such person for the purpose of issuing letters of administration in his or her estate. In the event letters of administration are issued within the period provided above, the county treasurer shall make payment of the funds held by him or her to the administrator upon being furnished a certi-

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## Chapter 11.96A RCW

## TRUST AND ESTATE DISPUTE RESOLUTION

## Sections

11.96A.010	Purpose.
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11.96A.320	Petition for order compelling compliance.
11.96A.900	Short title.
11.96A.901	Captions not law—1999 c 42.
11.96A.902	Effective date—1999 c 42.

**11.96A.010 Purpose.** The overall purpose of this chapter is to set forth generally applicable statutory provisions for the resolution of disputes and other matters involving trusts and estates in a single chapter under Title 11 RCW. The provisions are intended to provide nonjudicial methods for the resolution of matters, such as mediation, arbitration, and agreement. The [This] chapter also provides for judicial resolution of disputes if other methods are unsuccessful. [1999 c 42 § 102.]

**11.96A.020 General power of courts—Intent—Plenary power of the court.** (1) It is the intent of the legislature that the courts shall have full and ample power and authority under this title to administer and settle:

(a) All matters concerning the estates and assets of incapacitated, missing, and deceased persons, including matters involving nonprobate assets and powers of attorney, in accordance with this title; and

(b) All trusts and trust matters.

(2) If this title should in any case or under any circumstance be inapplicable, insufficient, or doubtful with reference to the administration and settlement of the matters listed in subsection (1) of this section, the court nevertheless has full power and authority to proceed with such administration and settlement in any manner and way that to the court seems right and proper, all to the end that the matters be expedi-

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tiously administered and settled by the court. [1999 c 42 § 103.]

**11.96A.030 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Citation" or "cite" and other similar terms, when required of a person interested in the estate or trust or a party to a petition, means to give notice as required under RCW 11.96A.100. "Citation" or "cite" and other similar terms, when required of the court, means to order, as authorized under RCW 11.96A.020 and 11.96A.060, and as authorized by law.

(2) "Matter" includes any issue, question, or dispute involving:

(a) The determination of any class of creditors, devisees, legatees, heirs, next of kin, or other persons interested in an estate, trust, nonprobate asset, or with respect to any other asset or property interest passing at death;

(b) The direction of a personal representative or trustee to do or to abstain from doing any act in a fiduciary capacity;

(c) The determination of any question arising in the administration of an estate or trust, or with respect to any nonprobate asset, or with respect to any other asset or property interest passing at death, that may include, without limitation, questions relating to: (i) The construction of wills, trusts, community property agreements, and other writings; (ii) a change of personal representative or trustee; (iii) a change of the situs of a trust; (iv) an accounting from a personal representative or trustee; or (v) the determination of fees for a personal representative or trustee;

(d) The grant to a personal representative or trustee of any necessary or desirable power not otherwise granted in the governing instrument or given by law;

(e) An action or proceeding under chapter 11.84 RCW;

(f) The amendment, reformation, or conformation of a will or a trust instrument to comply with statutes and regulations of the United States internal revenue service in order to achieve qualification for deductions, elections, and other tax requirements, including the qualification of any gift thereunder for the benefit of a surviving spouse who is not a citizen of the United States for the estate tax marital deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a qualified domestic trust under section 2056A of the internal revenue code, the qualification of any gift thereunder as a qualified conservation easement as permitted by federal law, or the qualification of any gift for the charitable estate tax deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust; and

(g) With respect to any nonprobate asset, or with respect to any other asset or property interest passing at death, including joint tenancy property, property subject to a community property agreement, or assets subject to a pay on death or transfer on death designation:

(i) The ascertaining of any class of creditors or others for purposes of chapter 11.18 or 11.42 RCW;

(ii) The ordering of a qualified person, the notice agent, or resident agent, as those terms are defined in chapter 11.42 RCW, or any combination of them, to do or abstain from doing any particular act with respect to a nonprobate asset;

(10) If the initial hearing is not a hearing on the merits or does not result in a resolution of all issues of fact and all issues of law, the court may enter any order it deems appropriate, which order may (a) resolve such issues as it deems proper, (b) determine the scope of discovery, and (c) set a schedule for further proceedings for the prompt resolution of the matter. [2001 c 14 § 1; 1999 c 42 § 303.]

**11.96A.110 Notice in judicial proceedings under this title requiring notice.** (1) Subject to RCW 11.96A.160, in all judicial proceedings under this title that require notice, the notice must be personally served on or mailed to all parties or the parties' virtual representatives at least twenty days before the hearing on the petition unless a different period is provided by statute or ordered by the court. The date of service shall be determined under the rules of civil procedure.

(2) Proof of the service or mailing required in this section must be made by affidavit or declaration filed at or before the hearing. [1999 c 42 § 304.]

**11.96A.115 Discovery.** In all matters governed by this title, discovery shall be permitted only in the following matters:

(1) A judicial proceeding that places one or more specific issues in controversy that has been commenced under RCW 11.96A.100, in which case discovery shall be conducted in accordance with the superior court civil rules and applicable local rules; or

(2) A matter in which the court orders that discovery be permitted on a showing of good cause, in which case discovery shall be conducted in accordance with the superior court civil rules and applicable local rules unless otherwise limited by the order of the court. [2006 c 360 § 11.]

**Clarification of laws—Enforceability of act—Severability—2006 c 360:** See notes following RCW 11.108.070.

**11.96A.120 Application of doctrine of virtual representation.** (1) This section is intended to adopt the common law concept of virtual representation. This section supplements the common law relating to the doctrine of virtual representation and shall not be construed as limiting the application of that common law doctrine.

(2) Any notice requirement in this title is satisfied if notice is given as follows:

(a) Where an interest in an estate, trust, or nonprobate asset or an interest that may be affected by a power of attorney has been given to persons who comprise a certain class upon the happening of a certain event, notice may be given to the living persons who would constitute the class if the event had happened immediately before the commencement of the proceeding requiring notice, and the persons shall virtually represent all other members of the class;

(b) Where an interest in an estate, trust, or nonprobate asset or an interest that may be affected by a power of attorney has been given to a living person, and the same interest, or a share in it, is to pass to the surviving spouse or surviving domestic partner or to persons who are, or might be, the distributees, heirs, issue, or other kindred of that living person upon the happening of a future event, notice may be given to that living person, and the living person shall virtually repre-

sent the surviving spouse or surviving domestic partner, distributees, heirs, issue, or other kindred of the person; and

(c) Except as otherwise provided in this subsection, where an interest in an estate, trust, or nonprobate asset or an interest that may be affected by a power of attorney has been given to a person or a class of persons, or both, upon the happening of any future event, and the same interest or a share of the interest is to pass to another person or class of persons, or both, upon the happening of an additional future event, notice may be given to the living person or persons who would take the interest upon the happening of the first event, and the living person or persons shall virtually represent the persons and classes of persons who might take on the happening of the additional future event.

(3) A party is not virtually represented by a person receiving notice if a conflict of interest involving the matter is known to exist between the notified person and the party.

(4) An action taken by the court is conclusive and binding upon each person receiving actual or constructive notice or who is otherwise virtually represented. [2008 c 6 § 928; 2001 c 203 § 11; 1999 c 42 § 305.]

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

**11.96A.130 Special notice.** Nothing in this chapter eliminates the requirement to give notice to a person who has requested special notice under RCW 11.28.240 or 11.92.150. [1999 c 42 § 306.]

**11.96A.140 Waiver of notice.** Notwithstanding any other provision of this title, notice of a hearing does not need to be given to a legally competent person who has waived in writing notice of the hearing in person or by attorney, or who has appeared at the hearing without objecting to the lack of proper notice or personal jurisdiction. The waiver of notice may apply either to a specific hearing or to any and all hearings and proceedings to be held, in which event the waiver of notice is of continuing effect unless subsequently revoked by the filing of a written notice of revocation of the waiver and the mailing of a copy of the notice of revocation of the waiver to the other parties. Unless notice of a hearing is required to be given by publication, if all persons entitled to notice of the hearing waive the notice or appear at the hearing without objecting to the lack of proper notice or personal jurisdiction, the court may hear the matter immediately. A guardian of the estate or a guardian ad litem may make the waivers on behalf of the incapacitated person, and a trustee may make the waivers on behalf of any competent or incapacitated beneficiary of the trust. A consul or other representative of a foreign government, whose appearance has been entered as provided by law on behalf of any person residing in a foreign country, may make the waiver of notice on behalf of the person. [1999 c 42 § 307.]

**11.96A.150 Costs—Attorneys' fees.** (1) Either the superior court or any court on an appeal may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party: (a) From any party to the proceedings; (b) from the assets of the estate or trust involved in the proceedings; or (c) from any nonprobate asset that is the subject

of the proceedings. The court may order the costs, including reasonable attorneys' fees, to be paid in such amount and in such manner as the court determines to be equitable. In exercising its discretion under this section, the court may consider any and all factors that it deems to be relevant and appropriate, which factors may but need not include whether the litigation benefits the estate or trust involved.

(2) This section applies to all proceedings governed by this title, including but not limited to proceedings involving trusts, decedent's estates and properties, and guardianship matters. This section shall not be construed as being limited by any other specific statutory provision providing for the payment of costs, including RCW 11.68.070 and 11.24.050, unless such statute specifically provides otherwise. This section shall apply to matters involving guardians and guardians ad litem and shall not be limited or controlled by the provisions of RCW 11.88.090(10). [2007 c 475 § 5; 1999 c 42 § 308.]

Severability—2007 c 475: See RCW 11.05A.903.

**11.96A.160 Appointment of guardian ad litem.** (1) The court, upon its own motion or upon request of one or more of the parties, at any stage of a judicial proceeding or at any time in a nonjudicial resolution procedure, may appoint a guardian ad litem to represent the interests of a minor, incapacitated, unborn, or unascertained person, person whose identity or address is unknown, or a designated class of persons who are not ascertained or are not in being. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests.

(2) The court-appointed guardian ad litem supersedes the special representative if so provided in the court order.

(3) The court may appoint the guardian ad litem at an ex parte hearing, or the court may order a hearing as provided in RCW 11.96A.090 with notice as provided in this section and RCW 11.96A.110.

(4) The guardian ad litem is entitled to reasonable compensation for services. Such compensation is to be paid from the principal of the estate or trust whose beneficiaries are represented. [1999 c 42 § 309.]

**11.96A.170 Trial by jury.** If a party is entitled to a trial by jury and a jury is demanded, and the issues are not sufficiently made up by the written pleadings on file, the court, on due notice, shall settle and frame the issues to be tried. If a jury is not demanded, the court shall try the issues, and sign and file its findings and decision in writing, as provided for in civil actions. [1999 c 42 § 310.]

**11.96A.180 Execution on judgments.** Judgment on the issues, as well as for costs, may be entered and enforced by execution or otherwise by the court as in civil actions. [1999 c 42 § 311.]

**11.96A.190 Execution upon trust income or vested remainder—Permitted, when.** Nothing in RCW 6.32.250 shall forbid execution upon the income of any trust created by a person other than the judgment debtor for debt arising through the furnishing of the necessities of life to the beneficiary of such trust; or as to such income forbid the enforce-

ment of any order of the superior court requiring the payment of support for the children under the age of eighteen of any beneficiary; or forbid the enforcement of any order of the superior court subjecting the vested remainder of any such trust upon its expiration to execution for the debts of the remainderman. [1999 c 42 § 312.]

**11.96A.200 Appellate review.** An interested party may seek appellate review of a final order, judgment, or decree of the court respecting a judicial proceeding under this title. The review must be done in the manner and way provided by law for appeals in civil actions. [1999 c 42 § 313.]

**11.96A.210 Purpose.** The purpose of RCW 11.96A.220 through 11.96A.250 is to provide a binding non-judicial procedure to resolve matters through written agreements among the parties interested in the estate or trust. The procedure is supplemental to, and may not derogate from, any other proceeding or provision authorized by statute or the common law. [1999 c 42 § 401.]

**11.96A.220 Binding agreement.** RCW 11.96A.210 through 11.96A.250 shall be applicable to the resolution of any matter, as defined by RCW 11.96A.030, other than matters subject to chapter 11.88 or 11.92 RCW, or a trust for a minor or other incapacitated person created at its inception by the judgment or decree of a court unless the judgment or decree provides that RCW 11.96A.210 through 11.96A.250 shall be applicable. If all parties agree to a resolution of any such matter, then the agreement shall be evidenced by a written agreement signed by all parties. Subject to the provisions of RCW 11.96A.240, the written agreement shall be binding and conclusive on all persons interested in the estate or trust. The agreement shall identify the subject matter of the dispute and the parties. If the agreement or a memorandum of the agreement is to be filed with the court under RCW 11.96A.230, the agreement may, but need not, include provisions specifically addressing jurisdiction, governing law, the waiver of notice of the filing as provided in RCW 11.96A.230, and the discharge of any special representative who has acted with respect to the agreement.

If a party who virtually represents another under RCW 11.96A.120 signs the agreement, then the party's signature constitutes the signature of all persons whom the party virtually represents, and all the virtually represented persons shall be bound by the agreement. [1999 c 42 § 402.]

**11.96A.230 Entry of agreement with court—Effect.** (1) Any party, or a party's legal representative, may file the written agreement or a memorandum summarizing the written agreement with the court having jurisdiction over the estate or trust. The agreement or a memorandum of its terms may be filed within thirty days of the agreement's execution by all parties only with the written consent of the special representative. The agreement or a memorandum of its terms may be filed after a special representative has commenced a proceeding under RCW 11.96A.240 only after the court has determined that the special representative has adequately represented and protected the parties represented. Failure to complete any action authorized or required under this subsec-

than one year after the final judgment was rendered. [1955 c 44 § 1; Code 1881 § 437; 1875 p 21 § 2; RRS § 465.]

**Chapter 4.80 RCW  
EXCEPTIONS**

Sections

- 4.80.010 Exception defined.
- 4.80.020 When to be taken.
- 4.80.030 Requisites—Entry in minutes.
- 4.80.040 Manner of taking and entry.
- 4.80.140 Application of chapter.

Rules of court: *Cf. CR 46.*

**4.80.010 Exception defined.** An exception is a claim of error in a ruling or decision of a court, judge or other tribunal, or officer exercising judicial functions, made in the course of an action or proceeding or after judgment therein. [1893 c 60 § 1; RRS § 381.]

Rules of court: *Cf. CR 46.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**4.80.020 When to be taken.** It shall not be necessary or proper to take or enter an exception to any ruling or decision mentioned in RCW 4.80.010, which is embodied in a written judgment, order or journal entry in the cause. But this section shall not apply to the report of a referee or commissioner, or to findings of fact or conclusions of law in a report or decision of a referee or commissioner, or in a decision of a court or judge upon a cause or part of a cause, either legal or equitable, tried without a jury. [1893 c 60 § 2; RRS § 382.]

Rules of court: *Cf. CR 46.*

**4.80.030 Requisites—Entry in minutes.** Exceptions to any ruling upon an objection to the admission of evidence, offered in the course of a trial or hearing, need not be formally taken, but the question put or other offer of evidence, together with the objection thereto and the ruling thereon, shall be entered by the court, judge, referee or commissioner (or by the stenographer, if one is in attendance) in the minutes of the trial or hearing, and such entry shall import an exception by the party against whom the ruling was made. [1893 c 60 § 5; RRS § 385.]

Rules of court: *Cf. CR 46.*

**4.80.040 Manner of taking and entry.** Exceptions to any ruling or decision made in the course of a trial or hearing, or in the progress of a cause, except those to which it is provided in this chapter that no exception need be taken and those to which some other mode of exception is in this chapter prescribed, may be taken by any party by stating to the court, judge, referee or commissioner making the ruling or decision, when the same is made, that such party excepts to the same; whereupon such court, judge, referee or commissioner shall note the exception in the minutes of the trial, hearing or cause, or shall cause the stenographer (if one is in attendance) so to note the same. [1893 c 60 § 6; RRS § 386.]

Rules of court: *Cf. CR 46.*

(2010 Ed.)

**4.80.140 Application of chapter.** This chapter shall apply to and govern all civil actions and proceedings, both legal and equitable, and all criminal causes, in the superior courts, but shall not apply to district courts or other courts of limited jurisdiction from which an appeal does not lie directly to the supreme court or court of appeals. [1987 c 202 § 120; 1971 c 81 § 21; 1893 c 60 § 17; RRS § 397, part.]

Intent—1987 c 202: See note following RCW 2.04.190.

**Chapter 4.84 RCW  
COSTS**

Sections

- 4.84.010 Costs allowed to prevailing party—Defined—Compensation of attorneys.
- 4.84.015 Costs in civil actions for the recovery of money only—When plaintiff considered the prevailing party.
- 4.84.020 Amount of contracted attorneys' fee to be fixed by court.
- 4.84.030 Prevailing party to recover costs.
- 4.84.040 Limitation on costs in certain actions.
- 4.84.050 Limited to one of several actions.
- 4.84.060 Costs to defendant.
- 4.84.070 Costs to defendants defending separately.
- 4.84.080 Schedule of attorneys' fees.
- 4.84.090 Cost bill—Witnesses to report attendance.
- 4.84.100 Costs on postponement of trial.
- 4.84.110 Costs where tender is made.
- 4.84.120 Costs where deposit in court is made and rejected.
- 4.84.130 Costs in appeals from district courts.
- 4.84.140 Costs against guardian of infant plaintiff.
- 4.84.150 Costs against fiduciaries.
- 4.84.160 Costs against assignee.
- 4.84.170 Costs against state or county.
- 4.84.185 Prevailing party to receive expenses for opposing frivolous action or defense.
- 4.84.190 Costs in proceedings not specifically covered.
- 4.84.200 Retaxation of costs.
- 4.84.210 Security for costs.
- 4.84.220 Bond in lieu of separate security.
- 4.84.230 Dismissal for failure to give security.
- 4.84.240 Judgment on cost bond.
- 4.84.250 Attorneys' fees as costs in damage actions of ten thousand dollars or less—Allowed to prevailing party.
- 4.84.260 Attorneys' fees as costs in damage actions of ten thousand dollars or less—When plaintiff deemed prevailing party.
- 4.84.270 Attorneys' fees as costs in damage actions of ten thousand dollars or less—When defendant deemed prevailing party.
- 4.84.280 Attorneys' fees as costs in damage actions of ten thousand dollars or less—Offers of settlement in determining.
- 4.84.290 Attorneys' fees as costs in damage actions of ten thousand dollars or less—Prevailing party on appeal.
- 4.84.300 Attorneys' fees as costs in damage actions of ten thousand dollars or less—Application.
- 4.84.320 Attorneys' fees in actions for injuries resulting from the rendering of medical and other health care.
- 4.84.330 Actions on contract or lease which provides that attorney's fees and costs incurred to enforce provisions be awarded to one of parties—Prevailing party entitled to attorney's fees—Waiver prohibited.
- 4.84.340 Judicial review of agency action—Definitions.
- 4.84.350 Judicial review of agency action—Award of fees and expenses.
- 4.84.360 Judicial review of agency action—Payment of fees and expenses—Report to office of financial management.
- 4.84.370 Appeal of land use decisions—Fees and costs.

Deposit of jury fee taxable as costs: RCW 4.44.110.

**4.84.010 Costs allowed to prevailing party—Defined—Compensation of attorneys.** The measure and mode of compensation of attorneys and counselors, shall be left to the agreement, expressed or implied, of the parties, but there shall be allowed to the prevailing party upon the judgment certain sums for the prevailing party's expenses in the action, which allowances are termed costs, including, in addi-

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prevailing party. The defendant, or party resisting relief, shall be deemed the prevailing party within the meaning of RCW 4.84.250, if the plaintiff, or party seeking relief in an action for damages where the amount pleaded, exclusive of costs, is equal to or less than the maximum allowed under RCW 4.84.250, recovers nothing, or if the recovery, exclusive of costs, is the same or less than the amount offered in settlement by the defendant, or the party resisting relief, as set forth in RCW 4.84.280. [1980 c 94 § 2; 1973 c 84 § 3.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**4.84.280 Attorneys' fees as costs in damage actions of ten thousand dollars or less—Offers of settlement in determining.** Offers of settlement shall be served on the adverse party in the manner prescribed by applicable court rules at least ten days prior to trial. Offers of settlement shall not be served until thirty days after the completion of the service and filing of the summons and complaint. Offers of settlement shall not be filed or communicated to the trier of the fact until after judgment, at which time a copy of said offer of settlement shall be filed for the purposes of determining attorneys' fees as set forth in RCW 4.84.250. [1983 c 282 § 1; 1980 c 94 § 3; 1973 c 84 § 4.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**4.84.290 Attorneys' fees as costs in damage actions of ten thousand dollars or less—Prevailing party on appeal.** If the case is appealed, the prevailing party on appeal shall be considered the prevailing party for the purpose of applying the provisions of RCW 4.84.250: PROVIDED, That if, on appeal, a retrial is ordered, the court ordering the retrial shall designate the prevailing party, if any, for the purpose of applying the provisions of RCW 4.84.250.

In addition, if the prevailing party on appeal would be entitled to attorneys' fees under the provisions of RCW 4.84.250, the court deciding the appeal shall allow to the prevailing party such additional amount as the court shall adjudge reasonable as attorneys' fees for the appeal. [1973 c 84 § 5.]

**4.84.300 Attorneys' fees as costs in damage actions of ten thousand dollars or less—Application.** The provisions of RCW 4.84.250 through 4.84.290 shall apply regardless of whether the action is commenced in district court or superior court except as provided in RCW 4.84.280. This section shall not be construed as conferring jurisdiction on either court. [1987 c 202 § 123; 1980 c 94 § 4; 1973 c 84 § 6.]

Intent—1987 c 202: See note following RCW 2.04.190.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**4.84.320 Attorneys' fees in actions for injuries resulting from the rendering of medical and other health care.** See RCW 7.70.070.

**4.84.330 Actions on contract or lease which provides that attorney's fees and costs incurred to enforce provisions be awarded to one of parties—Prevailing party entitled to attorney's fees—Waiver prohibited.** In any action on a contract or lease entered into after September 21, 1977, where such contract or lease specifically provides that attorney's fees and costs, which are incurred to enforce the provisions of such contract or lease, shall be awarded to one of the parties, the prevailing party, whether he is the party specified in the contract or lease or not, shall be entitled to reasonable attorney's fees in addition to costs and necessary disbursements.

Attorney's fees provided for by this section shall not be subject to waiver by the parties to any contract or lease which is entered into after September 21, 1977. Any provision in any such contract or lease which provides for a waiver of attorney's fees is void.

As used in this section "prevailing party" means the party in whose favor final judgment is rendered. [1977 ex.s. c 203 § 1.]

**4.84.340 Judicial review of agency action—Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 4.84.340 through 4.84.360.

(1) "Agency" means any state board, commission, department, institution of higher education, or officer, authorized by law to make rules or to conduct adjudicative proceedings, except those in the legislative or judicial branches, the governor, or the attorney general except to the extent otherwise required by law.

(2) "Agency action" means agency action as defined by chapter 34.05 RCW.

(3) "Fees and other expenses" includes the reasonable expenses of expert witnesses, the reasonable cost of a study, analysis, engineering report, test, or project that is found by the court to be necessary for the preparation of the party's case, and reasonable attorneys' fees. Reasonable attorneys' fees shall be based on the prevailing market rates for the kind and quality of services furnished, except that (a) no expert witness shall be compensated at a rate in excess of the highest rates of compensation for expert witnesses paid by the state of Washington, and (b) attorneys' fees shall not be awarded in excess of one hundred fifty dollars per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee.

(4) "Judicial review" means a judicial review as defined by chapter 34.05 RCW.

(5) "Qualified party" means (a) an individual whose net worth did not exceed one million dollars at the time the initial petition for judicial review was filed or (b) a sole owner of an unincorporated business, or a partnership, corporation, association, or organization whose net worth did not exceed five million dollars at the time the initial petition for judicial review was filed, except that an organization described in section 501(c)(3) of the federal internal revenue code of 1954 as exempt from taxation under section 501(a) of the code and a cooperative association as defined in section 15(a) of the agricultural marketing act (12 U.S.C. 1141J(a)), may be a party regardless of the net worth of such organization or cooperative association. [1995 c 403 § 902.]

**Findings—1995 c 403:** "The legislature finds that certain individuals, smaller partnerships, smaller corporations, and other organizations may be deterred from seeking review of or defending against an unreasonable agency action because of the expense involved in securing the vindication of their rights in administrative proceedings. The legislature further finds that

# REVISED CODE OF WASHINGTON



## TITLE 11

Probate Law And Procedure - 1965 Act

Effective July 1, 1967

"IRRELEVANT MATERIAL OMITTED"

**11.76.180 Order maturing claim not due.** If there be any claim not due the court may in its discretion, after hearing upon such notice as may be determined by it, mature such claim and direct that the same be paid in the due course of the administration. [1965 c 145 § 11.76.180. Prior: 1917 c 156 § 178; RRS § 1548; prior: Code 1881 § 1567; 1854 p 298 § 189.]

S—9/1/65

[ 11.76—p 9 ]

**11.76.190 Probate Law and Procedure—1965 Act**

**11.76.190 Procedure on contingent and disputed claims.** If there be any contingent or disputed claim against the estate, the amount thereof, or such part thereof as the holder would be entitled to, if the claim were established or absolute, shall be paid into the court, where it shall remain to be paid over to the party when he shall become entitled thereto; or if he fail to establish his claim, to be paid over or distributed as the circumstances of the case may require. [1965 c 145 § 11.76.190. Prior: 1917 c 156 § 179; RRS § 1549; prior: Code 1881 § 1567; 1854 p 298 § 189.]

"IRRELEVANT MATERIAL OMITTED"

REMINGTON'S  
REVISED STATUTES  
OF WASHINGTON

ANNOTATED

SHOWING ALL  
STATUTES IN FORCE TO AND INCLUDING  
THE SESSION LAWS OF 1931

BY

HON. ARTHUR REMINGTON

Reporter of the Supreme Court of the State of Washington, Author of  
"Notes on Washington Reports," "Remington's Washington Digest,"  
"Remington's Compiled Statutes of Washington," etc.

VOLUME III

CODES OF PROCEDURE

TITLE VI.—ACTIONS IN PARTICULAR CASES  
TITLE VII.—SPECIAL PROCEEDINGS  
TITLE VIII.—LIENS AND THEIR ENFORCEMENT  
TITLE IX.—EVIDENCE  
TITLE X.—PROBATE LAW AND PROCEDURE

SAN FRANCISCO  
BANCROFT-WHITNEY COMPANY  
1932

"IRRELEVANT MATERIAL OMITTED"

§ 1548. Order maturing claim not due. If there be any claim not due the court may in its discretion, after hearing upon such notice as may be determined by it, mature such claim and direct that the same be paid in the due course of the administration. [L. '17, p. 693, § 178.]

§ 1549. **Contingent and disputed claims.** If there be any contingent or disputed claim against the estate, the amount thereof, or such part thereof as the holder would be entitled to, if the claim were established or absolute, shall be paid into the court, where it shall remain to be paid over to the party when he shall become entitled thereto; or if he fail to establish his claim, to be paid over or distributed as the circumstances of the case may require. [L. '17, p. 693, § 179.]

Cited in 108 Wash. 653, 185 Pac. 618; 158 Wash. 566, 291 Pac. 717.

"IRRELEVANT MATERIAL OMITTED"

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# CODE OF WASHINGTON

1881

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C. BAGLEY, PUBLIC PRINTER, OLYMPIA, W. T.

**"IRRELEVANT MATERIAL OMITTED"**

Sec. 1567. If there be any claim not due, or any contingent or disputed claim against the estate, the amount thereof, or such part thereof as the holder would be entitled to if the claim were due, established, or absolute, shall be paid into the court, where it shall remain to be paid over to the party when he shall become entitled thereto; or if he fail to establish his claim, to be paid over or distributed, as the circumstances of the case may require: *Provide*, That if any creditor whose claim has been allowed, but is not yet due, shall appear and assent to a reduction therefrom of the legal interest for the time the claim has yet to run he shall be entitled to be paid accordingly.

**"IRRELEVANT MATERIAL OMITTED"**

# STATUTES

OF THE

## TERRITORY OF WASHINGTON:

BEING THE CODE PASSED BY THE

### LEGISLATIVE ASSEMBLY,

AT THEIR FIRST SESSION BEGUN AND HELD AT  
OLYMPIA, FEBRUARY 28TH, 1854.

ALSO, CONTAINING

THE DECLARATION OF INDEPENDENCE, THE CONSTITUTION OF  
THE UNITED STATES, THE ORGANIC ACT OF WASHING-  
TON TERRITORY, THE DONATION LAWS, &C., &C.

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PUBLISHED BY AUTHORITY.  
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OLYMPIA:  
GEO. B. GOUDY, PUBLIC PRINTER.

1855.

"IRRELEVANT MATERIAL OMITTED"

SEC. 189. If there be any claim not due, or any contingent or disputed claim against the estate, the amount thereof, or such part thereof as the holder would be entitled to if the claim were due, established, or absolute,

shall be paid into the court, where it shall remain to be paid over to the party, when he shall become entitled thereto ; or if he fail to establish his claim, to be paid over or distributed as the circumstances of the case may require : *Provided*, That if any creditor whose claim has been allowed, but is not yet due, shall appear and assent to a deduction therefrom of the legal interest for the time the claim has yet to run, he shall be entitled to be paid accordingly.

"IRRELEVANT MATERIAL OMITTED"