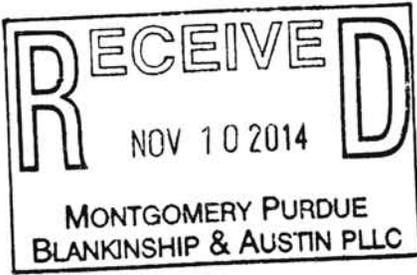


72307-3

72307-3



Case No. 72307-3

**COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON**

IN RE THE ESTATE OF VERNON D. HANNAH,

T. BERNELL HANNAH, surviving spouse

Appellant,

vs.

**CHRISTINE CHAN, Personal Representative of the
Estate of Vernon D. Hannah**

Respondent.

NOV 10 10 3:52 AM
STATE OF WASHINGTON
COURT OF APPEALS DIVISION I

BRIEF OF APPELLANT

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INTRODUCTION

When a surviving spouse files and serves her Petition for Award in Lieu of Homestead and a Petition for Increase twice in the probate of her husband's estate, once well before the end of the 18-month statute of limitations and once on the last day of that period, the second time as directed by the court clerk, and then pays the filing fee two days later when the clerk advises that the case needs to be assigned a new number, the widow should not lose the protections of the law which allows a surviving spouse who was not adequately provided for by her husband to receive a spousal award from the \$1.2 million in assets that are passing under her husband's estate to the personal representative and her husband as the remainder beneficiaries of the decedent's trust.

ASSIGNMENTS OF ERROR

A. The trial court erred in finding that May 7, 2014 was two days past the May 5, 2014 deadline for filing petitions for spousal awards (Finding of Fact #12).

B. The trial court erred in concluding that the petitions for spousal awards were not filed until May 7, 2014 (Conclusion of Law #6).

C. The trial court erred in concluding that the petitions for spousal awards were not filed within eighteen months of decedent's death

(Conclusion of Law #7).

D. The trial court erred in concluding that RCW 11.54.010 places an “actual limit” on the court’s authority to consider the widow’s petition (Conclusion of Law #14).

E. The trial court erred in concluding that RCW 11.54.010(3) is “more than a statute of limitation” and that it could not hear a petition from the widow for an award in lieu of homestead and an increase thereof unless the petition was filed within 18 months of decedent’s death. (Conclusion of Law #15).

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I. The trial court erred in concluding that it could not consider

whether the widow was in substantial compliance with the timing requirements for the filing of her Petition for Award in Lieu of Homestead with the clerk of the court or the fact that there may be no prejudice to the personal representative by the filing issues. (Conclusion of Law #22).

J. The trial court erred in concluding that it did not have equitable power under RCW 11.96A to hear the petition for an award in lieu of homestead brought by a widow against her husband's estate. (Conclusion of Law #22).

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether the 18-month time period for commencing a claim for an award in lieu of homestead is "more than a statute of limitation" and thereby bars the court from considering non-statutory doctrines such as the doctrine of substantial compliance (*Conclusions of Law #14, 15, 16, 17 & 22*);

2. Whether the term "filed" as used in RCW 11.54.010 and RCW 11.96A.090 means "to commence an action" or "physically deliver to the clerk of the court" (*Finding of Fact #12, Conclusions of Law #6, 14, & 22*);

3. Whether the tolling provisions of CR3 and RCW 4.16.170 apply to petitions for award in lieu of homestead filed under RCW 11.54.010 et. seq. and being litigated under TEDRA, RCW 11.96A (*Finding of Fact #12, Conclusions of Law #6, 7, 17, 18, 20*);

4. If the 18-month time period for commencing an action under RCW 11.54.010 is indeed a statute of limitation, whether it was tolled under RCW 4.16.170 by service on Respondent (“the personal representative”) and whether Appellant (“the widow”) substantially complied with all relevant statutes related to her filing for an award in lieu of homestead within the aforementioned 18-month time period (*Finding of Fact #12, Conclusions of Law #6, 7, 15, 16, 17, 18, 20, 22*).

5. Whether the widow should be awarded her attorneys fees and costs incurred in the handling of this case (*No applicable findings or conclusions*).

STATEMENT OF THE CASE

84-year-old Bernell Hannah, Appellant herein, was left by her husband of many years, Vernon D. Hannah, with insufficient means to provide for her care upon his death on November 5, 2012. CP 7. Her neighbor Christine Chan, personal representative herein, was named as the personal representative of his estate in his Will dated November 1, 2005 being probated under San Juan Co. Superior Court Probate No. 12-4-05075-7, which poured his assets of about \$1.2 million into his revocable living trust. CP 11; CP 110. The personal representative is the trustee of the aforementioned trust, and holds the dual relationship of trustee and remainder

beneficiary. CP 17; CP 20. That trust allowed the widow to keep living in the modest home the couple had shared during their marriage but left the bulk of his estate to the personal representative and her husband Peter, who were named as remainder beneficiaries but were not related to him. CP 32.

The widow has received only \$13,500 in distributions from the trust between April 10, 2013 and March 3, 2014, as detailed in her Petition for Increase in Award filed with the trial court. CP 7. Those amounts are woefully inadequate to provide for her care should she decline in health and require assistance with any aspects of daily living. CP 8. She has nothing other than her Social Security of \$1,340 and \$1,500 in payments on a promissory note from her son from his purchase of her house that she owned prior to her marriage to decedent. CP 8. She was not left the residence that she shared with decedent but only the right to live there during her lifetime. CP 90, 105. The residence is a part of the trust assets that will pass to the personal representative and her husband upon the widow's death. The widow is required to spend her own money to pay for the upkeep, taxes and insurance of the residence, even though it is not hers. CP 105.

As early as April 4, 2013, the personal representative assured the widow that she intended to be "fair" and to "work toward a good working relationship with her as she carries out her fiduciary role." CP 111. She also

assured the widow that she was “open to negotiating a TEDRA Agreement to provide a reasonable family allowance.” CP 113.

When no negotiations were particularly forthcoming after nearly a year, the widow wrote through her attorney to the personal representative's attorney on March 14, 2014 that she would be filing a Petition for Award in Lieu of Homestead and tentatively scheduling the hearing for April 25, 2014. CP 66. The personal representative's attorney indicated that she was unavailable until May 28, 2014 and advised that: “I trust that you can postpone preparation of your Petition until you and your client have had an opportunity to review and discuss our proposal. We believe that it will provide Bernell the security for her life that she is looking for....” CP 83; CP 117.

The widow delayed filing her Petition for Award in Lieu of Homestead as long as she could in hopes that the matter would be satisfactorily resolved. CP 84. Eventually, with no resolution forthcoming, she filed her Petition for Award in Lieu of Homestead and Declaration in Support and Petition for an Order Increasing the Award in Lieu of Homestead and Declaration in Support on April 11, 2014 in the existing probate and served copies on counsel of record for the personal representative the same day. CP 125. When the personal representative's counsel later raised the

issue that the petition needed to be filed as a TEDRA matter, CP 125, both petitions were revised slightly to reflect references to the TEDRA statute and to change some of the language from first person to third person. These revised petitions were filed on May 5, 2014 and personally served on the personal representative the same day, CP 37-38.

Before filing, the widow's counsel's office called the clerk's office to inquire whether a new filing would be required since it would be filed as a TEDRA action. CP 80-81. The clerk's office advised that no fee would be required and that the petition would be filed in the same case number as the probate. CP 80-81. Therefore, this was the process followed. On May 7, 2014, Superior Court Clerk Joan White called the widow's counsel to advise that a filing fee would be required and that a separate case number would be assigned. CP 80-81. The filing fee was immediately delivered and the filing was revised accordingly. CP 80-81. In her petition, the widow sought an award in lieu of homestead of \$125,000, the statutory amount, and another \$475,000 for a total of \$600,000 to insure that she would have adequate funds to be able to remain in her home and pay for her care, rather than having to go to a nursing home for her declining years. CP 3; CP 8. The widow had devoted many years of her life to caring for her husband's uncle, father, mother, and then her husband himself on a 24-hour basis until his death, all

of whom were able to remain at home until their deaths as a result of her care. CP 8. She sought the financial assurance that she would be able to afford the care that she might need to spend her remaining days at home as well. CP 8.

In response to the petition for an award in lieu of homestead, the personal representative filed a motion to dismiss the petitions as having been untimely filed as a result of the administrative error. CP 39-79. The court granted this motion on a summary basis without considering the merits of the widow's request.

ARGUMENT

A. Standard of Review.

This court reviews the trial court's dismissal of the Petition for Award in Lieu of Homestead on a *de novo* basis. *See, e.g., Ellis vs. Barto*, 82 Wn.App. 454, 457, 918 P.2d 540 (1996).

B. Surviving Spouses are Entitled to a Portion of the Deceased Spouse's Estate When Inadequate Provision has Been Made for Them.

A surviving spouse is entitled to request the court for a portion of the deceased spouse's estate under RCW 11.54.010(1):

(1) Subject to RCW 11.54.030, the surviving spouse or surviving domestic partner of a decedent may petition the court for an award from the property of the decedent. If the decedent is survived by children of the decedent who are not also the children of the surviving spouse or surviving domestic partner, on petition of such a child the court may divide the award between the surviving spouse or surviving domestic partner and all or any of such children as it deems appropriate. If there is not a surviving spouse or surviving

domestic partner, the minor children of the decedent may petition for an award.

(2) The award may be made from either the community property or separate property of the decedent. Unless otherwise ordered by the court, the probate and nonprobate assets of the decedent abate in accordance with chapter 11.10 RCW in satisfaction of the award.

(3) The award may be made whether or not probate proceedings have been commenced in the state of Washington. The court may not make this award unless the petition for the award is filed before the earliest of:

(a) Eighteen months from the date of the decedent's death if within twelve months of the decedent's death either:

(i) A personal representative has been appointed; or

(ii) A notice agent has filed a declaration and oath as required in RCW 11.42.010(3)(a)(ii); or

(b) The termination of any probate proceeding for the decedent's estate that has been commenced in the state of Washington; or

(c) Six years from the date of the death of the decedent.

Under RCW 11.54.020, “the amount of the basic award shall be the amount specified in RCW 6.13.030(2) with regard to lands. ... The amount of the basic award may be increased or decreased in accordance with RCW 11.54.040 and 11.54.050.” The basic award is currently \$125,000 under RCW 6.13.030(2) (the homestead exemption). The basic award amount, which is of right under case law discussed below, may be increased under RCW 11.54.040:

(1) If it is demonstrated to the satisfaction of the court with clear, cogent, and convincing evidence that a claimant's present and reasonably anticipated future needs during the pendency of any probate proceedings in the state of Washington with respect to basic maintenance and support

will not otherwise be provided for from other resources, and that the award would not be inconsistent with the decedent's intentions, the amount of the award may be increased in an amount the court determines to be appropriate.

(2) In determining the needs of the claimant, the court shall consider, without limitation, the resources available to the claimant and the claimant's dependents, and the resources reasonably expected to be available to the claimant and the claimant's dependents during the pendency of the probate, including income related to present or future employment and benefits flowing from the decedent's probate and nonprobate estate.

(3) In determining the intentions of the decedent, the court shall consider, without limitation:

(a) Provisions made for the claimant by the decedent under the terms of the decedent's will or otherwise;

(b) Provisions made for third parties or other entities under the decedent's will or otherwise that would be affected by an increased award;

(c) If the claimant is the surviving spouse or surviving domestic partner, the duration and status of the marriage or the state registered domestic partnership of the decedent to the claimant at the time of the decedent's death;

(d) The effect of any award on the availability of any other resources or benefits to the claimant;

(e) The size and nature of the decedent's estate; and

(f) Oral or written statements made by the decedent that are otherwise admissible as evidence.

The fact that the decedent has named beneficiaries other than the claimant as recipients of the decedent's estate is not of itself adequate to evidence such an intent as would prevent the award of an amount in excess of that provided for in RCW 6.13.030(2) with respect to lands.

(4)(a) A petition for an increased award may only be made if a petition for an award has been granted under RCW 11.54.010. The request for an increased award may be made in conjunction with the petition for an award under RCW

11.54.010.

(b) Subject to (a) of this subsection, a request for an increased award may be made at any time during the pendency of the probate proceedings. A request to modify an increased award may also be made at any time during the pendency of the probate proceedings by a person having an interest in the decedent's estate that will be directly affected by the requested modification.

At issue in this case, and more fully discussed below, is whether the surviving spouse (the widow herein) complied with the provisions of RCW 11.54.010(3) which requires that her petition be “filed” within 18 months of her husband’s death if a personal representative has been appointed, and the TEDRA provisions, which apply to awards in lieu of homestead under RCW 11.54.090:

The petition for an award, for an increased or modified award, or for the exemption of assets from the claims of creditors as authorized by this chapter must be made to the court of the county in which the probate is being administered. If probate proceedings have not been commenced in the state of Washington, the petition must be made to the court of a county in which the decedent was domiciled at the time of death. If the decedent was not domiciled in the state of Washington at the time of death, the petition may be made to the court of any county in which the decedent's estate could be administered under RCW 11.96A.050. The petition and the hearing must conform to RCW 11.96A.080 through 11.96A.200. Notice of the hearing on the petition must be given in accordance with RCW 11.96A.110.

The widow submits that “filing a petition” means the same thing as “commencing an action” “filing a case” “starting an action” “filing a claim.”

The whole point, no matter what words are used, is to give the other side notice that an action is pending to which a response will be needed. This was done here.

1. Awards in Lieu of Homestead are favored in law.

The law favors awards in lieu of homestead as a matter of right for the protection of the surviving spouse and as a measure of fairness. *In re Estate of Garwood*, 109 Wn.App. 811, 814, 38 P.3d 362 (2002). As stated in *In re Estate of Lindsay*, 91 Wn.App. 944, 957 P.2d 818 (1998): "Homestead allowance is absolute and a high priority in Washington. *In re Estate of Boston*, 80 Wn.2d 70, 75, 491 P.2d 1033 (1971) (citing *In re Estate of Welch*, 200 Wash. 686, 94 P.2d 758 (1939). The award is mandatory provided that the surviving spouse complies with all the conditions contained in the statutes authorizing this grant." *In re Estate of Pesterkoff*, 37 Wn.App. 418, 421, 680 P.2d 1062 (1984); *Chesnin vs. Fischler*, 43 Wn.App. 360, 365, 717 P.2d 298 (1986). The fact that granting an award in lieu of homestead may interfere with the testamentary plan of a decedent is not a reason to reduce or deny the award. *In re Estate of Dillon*, 12 Wn.App. 804, 806, 532 P.2d 1189 (1975).

2. Awards in lieu of homestead derive from codification of common law protections for widows and orphans.

The origins of awards in lieu of homestead are found in the common law, which provided that widows and orphans were entitled to protection

when a decedent failed to insure their financial welfare in his or her Will. As discussed by law professors John Ritchie, Neill H. Alford, Jr. and Richard W. Effland in their treatise, *Cases and Materials on Decedents' Estates and Trusts* (Fifth Ed. 1977), the common law dealing with provisions for widows and orphans has existed since at least 1066, and the various decisions from the Medieval English period by various common law and ecclesiastical courts were codified in the 17th Century by the English Parliament and continue to this day. "The Inheritance (Family Provision) Act of 1938 authorizes the courts to provide an allowance for the family of a testator who did not make an adequate provision for them in his will." *Id*, at 23. "The English period of statutory reform was well under way when the American colonies achieved their independence. Although English law was winnowed of concepts and practices unsuited to American conditions, state legislatures adopted the substance of English statutes and courts deferred to English precedent in construction." *Id*, at 25. Thus, it is submitted that the concept that a man cannot ignore the needs of his wife in favor of someone else is foundational in the common law and is the genesis of Washington's codifications that protect her when he makes insufficient provision for her (such as the law that a will made prior to marriage is revoked upon the marriage of the testator, the laws of intestate succession, and the laws on awards in lieu of homestead).

As discussed below, the trial court could have, and should have, exercised the broad powers it had available under RCW 11.96A.020 to hear the widow's petition, based on the long-standing social policy both at common law and as codified by the legislature to protect a surviving spouse.

C. RCW 11.54.010(3) contains an 18-month statute of limitations.

Claims for awards in lieu of homestead are required to be brought within eighteen months from the date of decedent's death when a personal representative has been appointed. RCW 11.54.010(3). This 18-month period is a statute of limitations. *Black's Law Dictionary*, 9th Ed. (2009) defines a "statute of limitations" as: "A law that bars claims after a specified period..." Since RCW 11.54.010(3) provides that "the court may not make this award unless the petition is filed [within 18 months]", it follows that claims are barred after that period, thus the 18-month period is by definition, a statute of limitations. However, the trial court focused only on the word "filed" and therefore concluded that this word created "more than a statute of limitations." There is no such legal animal.

1. The term "filed" as contained in RCW 11.54.010(3) is ambiguous and should be interpreted as "commenced."

The term "file" has two meanings in *Black's Law Dictionary*, 9th ed. 2009: "1. To deliver a legal document to the court clerk or record custodian for placement into the official record; 2. To commence a lawsuit." Since the

word is apparently capable of two meanings, it is ambiguous and must be interpreted. The widow submits that the second meaning is the one applicable to petitions in lieu of homestead, and therefore the word “filed” in RCW 11.54.010(3) means the commencement of a lawsuit.

2. The legislature specifically limited the word “filed” to the first dictionary meaning in another portion of the probate code, but not for awards in lieu of homestead.

The legislature has looked at the subject word in the context of the probate code, when in 2007 it chose to specifically amend the will contest statute, RCW 11.24.010, to define “filed” as: “filed with the court and not when served upon the personal representative.” The legislature did not add this same limiting language to RCW 11.54.010 nor to RCW 11.96A.100. It left both of those statutes to read simply “filed.” Therefore, the term “filed” as used in those statutes should be given the meaning of: “to commence an action.”

In 2007, the legislature amended RCW 11.24.010 in order to expressly dictate how the tolling provisions of RCW 4.16.170 apply to will contests. Arguably, this revision occurred in light of the *Kordon* court’s ruling that all of the tolling provisions of RCW 4.16.170 apply to will contests. House Bill 2236 and its companion Senate Bill 5377 were both introduced in February 2007. The House and Senate Bill Reports for HB 2236 explained

that the proposed change to RCW 11.24.010 was to clarify and expressly limit the application of RCW 4.16.170 for will contests. In fact, the Senate and House Bill Reports for SB 5377 and HB 2236 summarized RCW 11.24.010 and the application of RCW 4.16.170:

A person wishing to contest a will must appear and petition the court within four months of the probate of the will. Court rules and statutes provide that a lawsuit may be commenced either by filing a petition with court or by service of summons on another party. Any applicable statute of limitations is tolled by the earlier of the filing of the petition or the service of summons. (Emphasis added).

The proposed legislative revision (which, was ultimately passed and is the present form of RCW 11.24.010) read:

For the purpose of tolling the four-month limitations period, a contest is deemed commenced when a petition is filed with the court and not when served upon the personal representative. The petitioner shall personally serve the personal representative within ninety days after the date of filing the petition. If, following filing, service is not so made, the action is deemed to not have been commenced for purposes of tolling the statute of limitations.

House Bill 2236 and SB 5377 restricted the application of RCW 4.16.170, by providing that the only way a party can toll the four-month statute of limitations for will contests is by filing a petition within that period, and perfecting service within 90 days thereafter. The effect of the proposed legislative change was explained in the House Bill Report:

The four month period for contesting a will is tolled by the

filing of a petition with the court. However, the action is deemed not to have been commenced, and the period of limitation not tolled, if the petitioner does not personally serve the personal representative of the estate within 90 days of the filing.

Thus, as RCW 11.24.010 stood prior to the 2007 revision, will contests could be commenced “*either* by filing a petition with the court or by service of summons on another party. Any applicable statute of limitations is tolled by the earlier of the filing of the petition or the service of summons.” House Bill 2236 Report (emphasis added); CP 119 .

Just like RCW 11.54.010, RCW 11.24.010 directed that a challenging party “shall file a petition” within the prescribed statutory limitation period. It was only after the passage of HB 2236 that the tolling provisions of RCW 4.16.170 were limited as applied to will contests. The revised statute expressly limited the application of RCW 4.16.170 by stating:

For the purpose of tolling the four-month limitations period, a contest is deemed commenced when a petition is filed with the court and not when served upon the personal representative.

Both the former RCW 11.24.010 and current RCW 11.54.010(3) require that a claimant *file a petition* within a prescribed period of time. However, this requirement does not affect the application of RCW 4.16.170. The *Kordon* case put the legislature on notice by stating that unless some legislative action is taken to limit the application of RCW 4.16.170, the statutory limitation

periods under Title 11 RCW can be tolled by either timely filing *or service*. Knowing this, the legislature did not take any action to limit the language in RCW 11.54.010 to provide that “file” means physically placed with the court clerk, although they did so with regard to RCW 11.24.010.

3. The trial court impermissibly applied the petition for award in lieu of homestead, the legislative limitation imposed on how to file a will contest.

The trial court's dismissal of the widow's Petition for Award in Lieu of Homestead essentially extracted and applied the provision that the legislature added only for will contests in 2007 (“For the purpose of tolling the four-month limitations period, a contest is deemed commenced when a petition is filed with the court and not when served upon the personal representative.”) The trial court erroneously determined that the same holds true for claims for awards in lieu of homestead brought under RCW 11.54.010, even though the legislature did not revise RCW 11.54.010 to this end. The trial court may not add language to a statute that was not placed there by the legislature. “In interpreting a statute, we strive to ascertain the legislature's intent. *Dep't of Ecology vs. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). Absent ambiguity, we derive the plain meaning of the statute “from all that the legislature has said in the statute and related statutes which disclose legislative intent about the provision in question.” *Id.* at 11.

4. TEDRA applies the court rules to a determination of how a judicial proceeding is commenced.

RCW 11.96A.090(4) provides that: “The procedural rules of court apply to judicial proceedings under this title only to the extent that they are consistent with this title, unless otherwise provided by statute or ordered by the court under RCW 11.96A.020 or 11.96A.050, or other applicable rules of court.” RCW 11.96A.100 provides that:

Unless rules of court require *or this title provides otherwise*, or unless a court orders otherwise: (1) A judicial proceeding under RCW 11.96A.090 is to be commenced by filing a petition with the court; (2) A summons must be served in accordance with this chapter and, where not inconsistent with these rules, the procedural rules of court, however, if the proceeding is commenced as an action incidental to an existing judicial proceeding relating to the same trust or estate or nonprobate assets, notice must be provided by summons only with respect to those parties who were not already parties to the existing judicial proceeding.” [Emphasis added.]

The personal representative argued to the trial court that RCW 11.96A.100 should be read to say: “Unless otherwise provided by the rules of court, the statute of limitations is tolled only by filing a complaint.” That neither is what Chapter 11.96A RCW says, nor is this what Chapter 11.54 RCW requires. Unlike the will contest statute (discussed below), the legislature did not, and to this date has not, amended Chapter 11.54 RCW or the TEDRA statute to modify how a period of limitations is tolled with respect to the filing of a petition for an award in lieu of homestead. Under

the doctrine of *expressio unius est exclusio alterius*: “Where a statute specifically designates the things or classes of things upon which it operates, an inference arises in law that all things or classes of things omitted from it were intentionally omitted by the legislature. *Wash. Natural Gas Co. vs. Public Utility Dist. No. 1*, 77 Wn.2d 94, 98, 459 P.2d 633 (1969); *See also, State vs. Swanson*, 116 Wn. App. 67, 75, 65 P.3d 343 (2003). If the legislature had wanted to limit the ability to toll the statute of limitations solely to the filing of a complaint with the court clerk, it would have placed language into either the homestead statute or TEDRA to so state; it did not do so.

5. A petition for award in lieu of homestead, which falls under TEDRA, could previously be commenced as a new action or as an action incidental to an existing probate.

Prior to July 28, 2013 RCW 11.96A.090(2) provided that: “A judicial proceeding under this title may be commenced as a new action or as an action incidental to an existing judicial proceeding relating to the same trust or estate or non-probate asset.” It was not until 2013, some months after the widow's rights were fixed by the death of her husband, that the legislature amended RCW 11.96A.090(2), to read as follows: “A judicial proceeding under this title ~~may~~ *must* be commenced as a new action ~~or as an action incidental to an existing judicial proceeding relating to the same trust or~~

~~estate or non-probate asset.~~” Therefore, her petitions (for an award in lieu of homestead and for an increase thereon) could have legally remained in the same case number as the probate without issue, and this can readily be seen when considering that the court on its own may consolidate a separate filing with an existing probate under RCW 11.96A.090(3): “Once commenced, the action may be consolidated with an existing proceeding upon the motion of a party for good cause shown, or by the court on its own motion.”

The Senate Bill Report regarding the change in the wording of TEDRA statute that requires a judicial proceeding to be commenced as “new action” makes it clear that this was a technical update intended to enable county clerks to ensure proper record-keeping. See Appendix 1. The change in the statute was not to protect responding parties or any substantive rights. It was only for record-keeping purposes of the court clerk. This highlights that the filing of the widow’s petitions in the probate case number did nothing to prejudice the personal representative’s position in regard to responding to the petitions.

It should also be noted that a petition for award in lieu of homestead is inextricably entwined with the probate of an estate. The right to request an award accrues upon the death of a spouse (RCW 11.54.010); the venue is the county where the probate is being administered (RCW 11.54.090); a petition

for increase in the award can be made at any time during the pendency of the probate proceedings (RCW 11.54.040); the award can be exempt from creditor's claims in the probate (RCW 11.54.100); and if the award exhausts the estate, the court shall order the estate to be closed and the personal representative discharged (RCW 11.54.100). Also, under RCW 11.96A.090(3), once an action is commenced for an award in lieu of homestead, it can be consolidated back into the probate either upon the motion of a party or on the court's own motion. Considering all of this, it is clear that there is no prejudice to the personal representative for the clerk to have placed the widow's petitions in the original probate cause number.

D. RCW 4.16.170 & CR 3 apply to claims for spousal awards brought under RCW 11.54.010.

As indicated by RCW 11.96A.090, the legislature has expressly stated that the court rules apply to TEDRA actions. This would include CR 3, and there is nothing elsewhere in the TEDRA statutes to limit the applicability of CR 3.

1. CR3 allows an action to be commenced either by service or by filing and allows a further 90 days to file if it is commenced by service (which is what happened in this case).

CR 3 provides that an action is commenced by either service or filing, and if it is commenced by service, an additional 90 days are available under RCW 4.16.170 to file. CR 3 also provides that: "An action shall not be

deemed commenced for the purpose of tolling any statute of limitations except as provided in RCW 4.16.170.”

2. CR3 works hand in hand with RCW 4.16.170, the general tolling statute applicable to any statute of limitations.

Under RCW 4.16.170, a statute of limitations is tolled by either filing a complaint or serving a summons:

For the purpose of tolling any statute of limitations an action shall be deemed commenced when the complaint is filed or summons is served whichever occurs first. . . . If the action is commenced by service on one or more of the defendants or by publication, the plaintiff shall file the summons and complaint within ninety days from the date of service.

This tolling statute applies by its very wording to *any* statute of limitations, including the 18-month statute of limitations under RCW 11.54.010(3) for bringing a petition in lieu of homestead.

The legislature acknowledged that RCW 4.16.170 applied to will contests under Title 11 RCW (and knowing as well that such contests must be litigated under the procedural rules of TEDRA) and then changed the statute to override the tolling provisions of RCW 4.16.170. But again, the legislature did nothing to amend the period of limitations language in RCW 11.54.010. For the trial court to read the tolling provisions of RCW 11.54.010 in the same manner as RCW 11.24 reads is clear error. A legislature’s omission of language from a statute is presumed intentional.

Wash. Natural Gas Co. vs. Public Utility Dist. No. 1, 77 Wn.2d 94, 98, 459 P.2d 633 (1969). Of note, RCW 11.54.010 was amended in 2008, two years after the *Kordon, supra*, decision was issued, and one year after RCW 11.24.010 was amended, to alter the application of the tolling provisions of RCW 4.16.170, and yet no legislative change was made to the way in which an action under RCW 11.54.010 is commenced. As noted by the court in *In re Estate of Stover*, 178 Wn.App 550 at 563, 351 P.3d 579 (2013), “we presume that the legislature enacts laws with full knowledge of existing laws.”

E. All requirements of RCW 11.54.010, RCW 11.96A.090, and RCW 11.96A.100 were timely satisfied because the statute of limitations was tolled.

1. The statute of limitations was tolled when the personal representative was served, no matter where the petitions were placed by the court clerk.

When a party chooses to toll the statute by service, another 90 days is added to the statute of limitations period during which filing must occur. Thus, the May 5, 2014 statute of limitation deadline was tolled by service of the summons and another 90 days was then available under CR3 and RCW 4.16.170 to file and thus perfect the legal action. *See, Nearing vs. Golden State Foods Corp.*, 114 Wn.2d 817, 820, 792 P.2d 500 (1990) (an action is tentatively commenced by service of summons or upon filing of the

complaint, and the statute of limitations is tolled as long as the other act occurs within ninety days' time).

If the legislature did not want RCW 4.16.170 to apply to RCW 11.54.010 et seq. it would have said so. It did not. As well, when enacting TEDRA, 11.96A, the legislature specifically modified the tolling provisions of RCW 4.16.190, but not RCW 4.16.170. *See* RCW 11.96A.070.

2. The legislature understands that RCW 4.16.170 applies to actions under Title 11 as a result of the *Kordon* decision and the subsequent amendment to the will contest statute.

The applicability of CR 3 and RCW 4.16.170 to will contests litigated under the procedural rules of TEDRA has been recognized by the Supreme Court in *In re Estate of Kordon*, 157 Wn.2d 206, 137 P.3d 16 (2006). In *Kordon*, the petitioner timely filed a petition to challenge a will under chapter RCW 11.24. She however did not serve notice of the claim on the personal representative until more than two years later. The court explained that “while RCW 11.24.020 imposes no explicit statutory time limit on the issuance of a citation it implicitly adopts the requirements of the Superior Court Civil Rules and Title 4 governing civil procedure.” *Id.* at 213. The Supreme Court reasoned that CR 3 and RCW 4.16.170 apply to will contests and explained that “a party contesting a will may request and serve citations any time within the four-month statute of limitations on bringing a will

contest or any time within 90 days of timely filing a petition contesting the will. *Id.*, at 213.

Under RCW 11.54.010, the legislature chose to not provide that a petition of award in lieu of homestead must be *filed with the court* in order to toll the period of limitations. However, they did so when amending the will contest statute, RCW 11.24, and there is no provision in TEDRA which limits the applicability of RCW 4.16.170. Without any express delineation in RCW 11.54.010 as to the method of tolling the statute of limitations, RCW 4.16.170 must then apply to a determination of when the period of limitation is tolled. This is because by its express language, RCW 4.16.170 applies to any statute of limitations, and absent an express legislative override of its application, it applies to RCW 11.54.

Under RCW 4.16.170 a party can either file or serve within the statute of limitations period, as long as the other act occurs within ninety days. As long as a party claiming an award in lieu of homestead files a complaint *or serves a summons* within the statutory time period, then he or she has an additional ninety days to complete the other act.

In the instant case, both the summons and petition were timely served upon the personal representative on May 5, 2014 (and virtually the same petition was served upon her counsel a month prior). The action was also

filed that same day, but was filed in the existing cause number per erroneous advice from the clerk and then refiled with a separate case number on May 7, 2014 after the clerk discovered her error. Whether or not the court finds that the action was filed with the clerk's office on May 5th or May 7th is of no consequence. The 18-month period of limitations set forth in RCW 11.54.010 was tolled on May 5th under RCW 4.16.170 and CR 3 when proper service was made upon the personal representative, and the widow's Petition for Award in Lieu of Homestead could be filed any time before the expiration of the 90-day period beginning May 5, 2014 -- and it was.

F. The trial court had broad authority to consider the widow's petition under TEDRA.

The court has significant power under RCW 11.96A.020(2) to hear the pending dispute and to rule that the personal representative had adequate notice and that the case was properly filed:

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 expeditiously administered and settled by the court.

Therefore, the court would have been well within its authority to declare that the widow's claim was timely filed either by application of CR 3, RCW

4.16.170, or by the application of the doctrine of substantial compliance (discussed below).

G. The widow substantially complied with all of the notice and filing requirements contained in chapters 11.54 and 11.96A RCW necessary to toll the period of limitation under RCW 11.54 and effect proper commencement of the action.

“Substantial compliance has been defined as actual compliance in respect to the substance essential to every reasonable objective of [a] statute.... In the cases where substantial compliance has been found, there has been actual compliance with the statute, albeit procedurally faulty.” *Weiss vs. Glemp*, 127 Wn.2d 726, 731-732, 903 P.2d 455 (1995); *Seattle vs. Public Employment Relations Comm’n.*, 116 Wn.2d 923, 928, 809 P.2d 1377 (1991).

Substantial compliance “means a court should determine whether the statute has been followed sufficiently so as to carry out the intent for which the statute was adopted.” *In the Matter of the Application of Santore*, 28 Wn.App. 319, 327, 623 P.2d 702 (1981). “If an act is performed, but not in the time or in the precise manner directed by statute, the statutory provisions should not be considered mandatory if the purpose of the statute has been substantially complied with and no substantial rights have been jeopardized.”

Id. at 328. More poignantly stated by the *Santore* court at 328-329:

In matters of formal procedure, even though it be in proceedings so highly important as the process by which a party is brought into court, this court has never exacted

anything more than a substantial compliance with the statute. Amendable defects, such as the one in question, have not been held fatal unless injury directly caused thereby has been shown, and it seems to us now that this is a just rule. Any other usually leads to a sacrifice of substance to form, and to decisions which shock the sense of justice and right, even in minds trained to the technicalities of the law.

As discussed above, the petition for an award in lieu of homestead was served within the statutory time period and filed within the statutory time period, albeit under the probate cause number rather than in a separate cause number due to the clerk's administrative error. But for the administrative error of the court clerk, the issue at bar would never have arisen. "Omissions or failures by public officials should not prejudice the interests of those, such as the [widow] in this case, who have no direct and immediate control over such officials." *Santore* at 328.

The widow respectfully submits that all of the substantive requirements contained in chapters 11.54 and 11.96A RCW have been satisfied, the purpose of the statutes has been fulfilled, and that there was no prejudice whatsoever to the personal representative for the petition to have been misfiled in the probate action and moved to a separate cause number two days later.

"Statutes of limitations, like the equitable doctrine of laches, in their conclusive effects are designed to promote justice by preventing surprises

through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared.” *Order of R.R. Telegraphers vs. Railway Express Agency*, 321 U.S. 342, 348-49, 64 S.Ct. 582, 586 (1944). Here, the personal representative had notice in April 2014 (and by May 5, 2014 had been served a second time) of the existence of the claim for an award in lieu of homestead and an increase therein. The fact that a separate cause number was not initially assigned due to an administrative error does not negate the validity of the notice, because the filing with the court provided notice of the existence of the petitions, and the legal issues raised therein, within the statutory period. The “faulty” procedure here was the original filing of the summons and petitions under the existing probate cause number, which was corrected immediately when discovered two days later.

In *Stasher vs. Harger-Haldeman*, 22 Cal.Rptr., 657, 660, 372 P.2d 649 (1962), the Superior Court for the State of California set forth the test for what comprises the doctrine of substantial compliance (a decision that has been adopted by the courts of our state. *See, e.g., Santore, infra*, and *Weiss, infra*):

‘Substantial compliance, as the phrase is used in the decisions, means actual compliance in respect to the substance essential to every reasonable objective of the statute. But when there is such actual compliance as to all matters of substance then

mere technical imperfections of form or variations in mode of expression by the seller, or such minima as obvious typographical errors, should not be given the stature of non-compliance and thereby transformed into a windfall for an unscrupulous and designing buyer." (Citations omitted.)

In the instant case, the trial court's failure to hear the widow's petition for an award in lieu of homestead, a statutorily favored request, creates a windfall for the unscrupulous personal representative as the remainder beneficiary to a \$1.2 million estate.

H. The widow requests attorneys' fees and costs be awarded to her pursuant to RCW 11.96A.150 and RAP 18.1.

Under TEDRA, the court has broad discretion to award attorneys' fees and costs in any proceeding governed by Title 11. RCW 11.96A.150; *Estate of Stover*, 178 Wn.App. 550, 564, 315 P.3d 579 (2013). Fees may be awarded to any party from any party to the proceedings. RCW 11.96A.150(1)(c). 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. *Id.*; *Stover* at 564. In exercising its discretion, the court may consider any and all factors that it deems to be relevant and appropriate. RCW 11.96A.150(1).

The issues presented in the case are not novel or unique. The issues are well situated to be decided under current case law and legal doctrine. But for a clerk's error and the personal representative's greed, this matter should

not be on appeal. It is fair and equitable that personal representative reimburse the widow for all of her costs and her actual attorney's fees incurred in the prosecution of this appeal.

CONCLUSION

The trial court's ruling deprives an 84-year-old widow of the right to present her Petition for Award in Lieu of Homestead and her Petition for Increase in said award to the court, and effectively rewards the personal representative's actions in stalling the widow's filing of the petition until the end of the tolling period. It allows the personal representative to keep \$1.2 million in assets and denies the widow the means to pay for the same care that she lovingly and diligently provided to her deceased husband and three other members of his family during the end of their lives. Despite comments through counsel to the contrary of her interest in helping the widow, the personal representative's aggressive litigation tactics (which legal fees are likely being paid by the trust, so the widow is hit with fees twice, once for her own attorney and once for the personal representative to fight against having the petition heard) serve only to protect the personal representative's own interests in fulfilling her fiduciary duties to herself as remainder beneficiary, and doing everything possible to hurt this elderly widow of the man who apparently thought highly enough of her to place his wife's care in her hands.

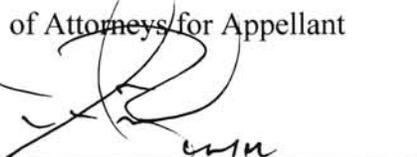
The widow requests the court to find that her petition was timely filed, order an award in lieu of homestead in the statutory amount of \$125,000, remand the case to the trial court for a hearing on her petition for an increase in said award and award the widow her attorney's fees and costs related to the prosecution of this appeal.

RESPECTFULLY SUBMITTED this 10th day of November, 2014.

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SENATE BILL REPORT

SB 5135

As of January 28, 2013

Title: An act relating to judicial proceedings and forms.

Brief Description: Concerning judicial proceedings and forms.

Sponsors: Senators Pearson, Kline and Padden.

Brief History:

Committee Activity: Law & Justice: 1/28/13.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Aldo Melchiori (786-7439)

Background: A jury source list is a list of all registered voters of a county, merged with a list of licensed drivers and identocard holders who reside in that county. The list specifies each person's first and last name, middle initial, date of birth, gender, and residence address. Information provided to the court for preliminary determination of qualification for jury duty may only be used for the term the person is summoned and may not be used for any other purpose. Jury source lists are used to create a master list from which jurors are randomly selected. The jurors drawn for service are summoned by mail or personal service. The court clerk must report nondelivery of summons of persons summoned for jury duty to the county auditor.

Disputes in trust and estate matters may be resolved using nonjudicial methods. If mediation, arbitration, or agreement are unsuccessful, judicial resolution of a trust and estate dispute may be resolved by the court. These judicial proceedings may be commenced as new actions or as actions incidental to other proceedings relating to the same trust, estate, or nonprobate asset. These actions may also be converted into separate actions.

In proceedings to adjudicate parentage, the court may close the proceeding for good cause. Final orders in parentage proceedings are available for public inspection.

Summary of Bill: The court clerk is no longer required to report a summons as undeliverable for persons summoned for jury duty to the county auditor.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Judicial proceedings in trust and estate matters must be commenced as new actions. They may be consolidated with existing proceedings, but they may no longer be converted into separate actions.

In parentage proceedings all documents or pleadings filed subsequent to a final order are also available for public inspection.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: These are intended to be technical updates. County auditors have better methods that they use to update jury lists. Requiring trust and estate cases to be filed as new actions enables county clerks to ensure proper record-keeping. It is not uncommon to have subsequent documents filed in paternity proceedings and it is not clear whether those documents are open for public inspection.

Persons Testifying: PRO: Senator Pearson, prime sponsor; James McMahan, Assn. of County Officials.

Judiciary Committee

HB 2236

Title: An act relating to the disposition of certain assets.

Brief Description: Disposing of certain assets.

Sponsors: Representatives Goodman and Lantz.

Brief Summary of Bill

- Adopts the 1991 version of the Uniform Simultaneous Death Act, including a 120 hour rule for determining survivorship under instruments or laws that transfer title to property based on priority of death.
- Clarifies various definitions for purposes of probate and trust law, including that a child who was conceived before, but born after, the death of a parent is the surviving issue of the parent.
- Makes various changes with respect to nonprobate assets, the use of separate lists of property in connection with revocable trusts, statutes of limitation in will challenges, and the award of attorney's fees in trust and estate disputes.

Hearing Date: 2/26/07

Staff: Bill Perry (786-7123).

Background:

The probate and trust law affects the distribution of property through intestate succession or under various legal instruments such as wills or trusts.

Uniform Simultaneous Death Act.

The operation of various laws or legal instruments may depend on the order in which two or

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

more people die. If the death of two or more such persons is apparently simultaneous, such as in an automobile accident, the Uniform Simultaneous Death Act (USDA) may apply. The USDA provides generally that if there is not sufficient evidence that the persons died other than simultaneously, each person will be deemed to have survived the others for purposes of determining property title or distribution. The effect of the USDA can be to avoid having property go through two or more estates. The USDA does not override express provisions in an instrument that provide for some other rule in determining order of death.

Representation, Posthumous Children, and Surviving Spouses.

Various terms are used throughout the probate and trust laws. Some are defined and some are not.

"Representation" is a method of distributing property to persons based on their degree of kinship to the "intestate." An intestate is a person who has died without a will.

A "posthumous child" is one born after the death of a parent. The law provides that such a child is among those entitled to share in the parent's estate. At the time the definition of a posthumous child was enacted, the possibility of a child being conceived, as well as born, after the death of a parent was probably not considered. Medical science has now made it possible for a child to be conceived long after a child's parent has died.

There is currently no statutory definition of a "surviving spouse" that applies to the probate and trust laws. However, the term is used in dozens of statutes that control the distribution of assets, impose responsibilities, and confer rights under those laws.

Nonprobate Assets.

Certain assets may pass to a beneficiary under a written instrument other than a will and outside of the probate process. Examples of nonprobate assets are payable-on-death life insurance policies, employee benefit plans, annuities, certain trusts, and certain bank or security accounts. If a married couple are divorced, the law operates to revoke a designation of a spouse as the beneficiary of a nonprobate asset unless a contrary intent has been expressed or a court has ordered otherwise. This revocation provision applies only to marriage dissolutions obtained in this state.

Tangible Personal Property Lists for Gifts under a Will.

A will may reference and incorporate a separate list of gifts of tangible personal property. As long as the list is not inconsistent with the will and identifies the gifts and their recipients with reasonable certainty, the list is given effect as though it were part of the will. The list may be changed by the testator at any time without having to redo the will. In case of inconsistencies between versions of a list, the latest list controls.

Commencing a Will Contest.

A person wishing to contest a will must appear and petition the court within four months of the probate of the will. Court rules and statutes provide that a lawsuit may be commenced either by filing a petition with the court or by service of summons on another party. A statute of limitations is tolled by the earlier of the filing of the petition or the service of summons.

Award of Attorneys' Fees in Dispute Resolution Actions.

Under the Trust and Estate Dispute Resolution Act (TEDRA), the court has discretion to award costs and reasonable attorneys' fees to any party from another party, or from the assets of the trust or estate, or from a nonprobate asset that is subject to the action.

Bar Section Recommendations.

The Real Property, Probate and Trust Section of the state bar is recommending several changes to the probate and trust law in the areas discussed above.

Summary of Bill:

Uniform Simultaneous Death Act.

The 1940 version of the USDA is replaced with the 1991 version.

The general rule in a simultaneous death situation is that a person is deemed to have died first if it is not established by clear and convincing evidence that he or she survived the other relevant person or persons by 120 hours. The general rule is applicable if any of the following depend on one person surviving another:

- the devolution of property;
- the right to elect an interest in property; or
- the right to exempt property, a homestead, or a family allowance.

The rule is not to be used if it would result in the state taking intestate property.

A 120 hour rule is also specifically applied to any governing instrument that relates to an individual surviving an event and to the survivorship rights of a co-owner.

For purposes of the USDA, death occurs as determined by an attending physician, or a county coroner or medical officer. Death certificates or government records or reports are prima facie evidence that a person is dead or missing. If a person is missing for seven years without explanation after diligent search or inquiry, the person is presumed to have died at the end of the seven year period.

The 120 hour rule does not apply if there is a contradictory governing instrument, if application would invalidate a nonvested interest or a power of appointment under the rule against perpetuities, or if application would cause failure or duplication of a disposition.

Payors given immunity from liability for a good faith payment to a person not entitled under the USDA if the payment is made before notice of a challenge under the USDA. Likewise, a person who buys property for value and without notice is not liable and need not return the property.

Representation, Posthumous Children, and Surviving Spouses.

The definition of "representation" is changed to cover distributions based on degrees of kinship to any "decendent," not just decedents who die intestate.

A "posthumous child" is defined as one conceived before, but born after, the death of a parent.

A "surviving spouse" is defined to exclude a decedent's spouse if the marriage has been dissolved or invalidated, unless there has been a subsequent remarriage. A decree of separation is not a dissolution or invalidation unless the decree has terminated the husband and wife status.

Nonprobate Assets.

The termination of a spousal beneficiary designation in a nonprobate asset instrument upon a marriage dissolution is no longer restricted to dissolution decrees from courts of "this state."

The definition of "nonprobate asset" is expended to include certain brokerage accounts, contracts, and other written instruments that may provide for the nonprobate transfer of property, such as insurance policies, employment contracts, mortgages, bonds, promissory notes, and retirement accounts.

Tangible Personal Property Lists for Gifts under a Will.

Separate lists designating recipients of tangible personal property may be used in conjunction with irrevocable trusts, as well as with wills.

Commencing a Will Contest.

The four month period for contesting a will is tolled by the filing of a petition with the court. However, the action is deemed not to have been commenced, and the period of limitation not tolled, if the petitioner does not personally serve the personal representative of the estate within 90 days of the filing.

Award of Attorneys' Fees in Dispute Resolution Actions.

In order to award costs and attorneys' fees, a court need not find that the litigation has benefited the trust or estate involved.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

SENATE BILL REPORT

SB 5377

As of January 18, 2007

Title: An act relating to the disposition of certain assets.

Brief Description: Disposing of certain assets.

Sponsors: Senators Weinstein and Kline.

Brief History:

Committee Activity: Judiciary: 1/16/07.

SENATE COMMITTEE ON JUDICIARY

Staff: Dawn Noel (786-7472)

Background: Washington law contains provisions regarding the distribution of assets following one's death. Currently, if one dies without a will, that person's assets are, by default, distributed to relatives depending on closeness in relation to the deceased, with spouses and children having priority. "Nonprobate assets" are those assets distributed by means other than a will, such as by beneficiary designation, as with certain accounts. An ex-spouse of the deceased is ineligible to inherit nonprobate assets from the deceased unless certain legal documentation provides otherwise. If spouses die close to the same time, and insufficient evidence exists to indicate that the individuals died other than simultaneously, each individual's property is distributed to that individual's relatives, rather than to the relatives of the other spouse. Concern exists regarding litigation in which the representative of one spouse's estate attempts, through the use of gruesome evidence, to prove that one spouse outlived the other by an instant or two.

Summary of Bill: The default method of asset distribution is extended to deceased persons generally, rather than to only those persons who die without wills. It is clarified that a child who is conceived prior to the death of the parent, but born after the parent's death, is eligible to inherit from the deceased parent. It is also clarified that an ex-spouse is ineligible to inherit from the deceased unless, by virtue of a subsequent marriage, they are married at the time of the deceased's death. Further, a decree of separation, by itself, is ineffective to defeat a spouse's eligibility to inherit from the deceased. The provisions governing an ex-spouse's inheritance of nonprobate assets apply, regardless of whether the deceased and the ex-spouse were divorced in Washington. The definition of "nonprobate asset" is expanded to include brokerage accounts, other accounts governed by beneficiary designation, and several types of bank accounts.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

To contest the validity of a will, the party contesting the will must file a petition with the court within four months following probate proceedings, and personally serve the representative of the estate with a copy of the petition within 90 days of filing the petition. A court presiding over disputes regarding inheritance may order the payment of attorney fees to any party. In using its discretion, the court may consider all factors it deems relevant, which may, but need not, include whether the litigation benefits the estate or trust involved.

In order for one spouse to inherit from the other, the spouse must survive the other by 120 hours.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill discourages litigation by the estate of one spouse against the other spouse's estate when spouses die close in time to one another when involved in a common accident. This bill is part of uniform legislation adopted throughout the country. Legislation proposed by the Washington State Bar Association typically does not involve major policy decisions; it often involves streamlining the law, bringing the law to conform with reality, or with a court decision. The intent of such legislation is to make the law easier to understand for practitioners and the public.

Persons Testifying: PRO: Senator Kline; Tim Burkart, Real Property, Probate and Trust Section, Washington State Bar Association.