



COUNSELOR'S CORNER

How the New Washington Trust Act Affects You and Your Clients

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The Washington Trust Act (“Act”) became effective on January 1, 2012, and affects trusts created before, on or after January 1, 2012. Your institution may not qualify to serve as a trustee, but your clients may be beneficiaries of trusts or they may have been nominated to serve as trustee of a family trust. While a detailed review of the full Act would be necessary to understand all of its new trustee obligations and beneficiary rights, this article addresses *some* of the significant changes in rights, duties and obligations under the new Act.

Notice of Existence. For irrevocable trusts created after December 31, 2011, and revocable trusts that become irrevocable after December 31, 2011, (or within sixty days of the acceptance of the position of trustee of an irrevocable trust), the trustee must provide notice to all persons “interested in the trust.” Those persons will vary with the particu-

lar trust, but it is a broad group. *See* RCW 11.97.010(2), RCW 11.96A.030. The notice must include: 1) the fact that the trust exists; 2) the identity of the trustor(s); 3) the trustee’s name, address and telephone number; and 4) information about the beneficiaries’ right to request information that would be reasonably necessary for a beneficiary to enforce his or her rights under the trust. This requirement of notice of existence of the trust does not apply to trusts that became irrevocable prior to December 31, 2011.

Duty to Keep Beneficiaries “Reasonably Informed” of Administration of the Trust. The new provisions contain a lengthy and detailed list of what must be included in a periodic report so that will be “presumed to satisfy the trustee’s duty” to keep beneficiaries reasonably informed. *See* RCW 11.97010(3). Trustees should be aware that the limitations period for bringing certain kinds of claims against a trustee

may not begin to run until a report that satisfies the requirements of the new provisions has been sent to the beneficiaries.

Expansion of the Doctrine of Virtual Representation. The doctrine of virtual representation allows a person to represent the interests of another, including receiving notices on behalf of the represented person, so long as certain requirements are met and there is no conflict of interest. Amendments to RCW 11.96A.120 now provide that guardians, agents, trustees, personal representatives and holders of certain powers of appointment are able to serve as virtual representatives for those to whom they have a fiduciary duty or those subject to their power of appointment.

Consistency With Rules Applicable to Wills; Confirmation of Trustee’s Duties; Modifications to Charitable and Noncharitable Trusts. A variety of amendments now clarify that challenges to the validity of revocable trusts, as well as court proceedings to interpret, construe or reform trusts, will be governed by rules analogous to those applicable to wills. *See*, for example, RCW 11.96A.030(2)(h), RCW 11.97.020 and Chapter RCW 11.103. The trustee’s common law duty of loyalty, the types of transactions potentially affected by a conflict of interest between the trustee and the trust, the enforceability of exculpation provisions, and the measure of damages for breach of a trustee’s duties have been codified in RCW 11.98.078, 11.98.079 and 11.98.107. The new statute modernizes the court’s common law power to modify or terminate a charitable trust whose purpose has become “unlawful, impracticable, impossible to achieve, or wasteful” and the definitions of a “charitable purpose” have been expanded. *See* RCW 11.96A.127. Finally, RCW 11.96A.125 provides authority for reformation to correct the terms of wills and trusts that have been affected by a mistake of law or fact, in order to conform the will or trust to the intent of the testator or trustor (by either judicial proceeding or nonjudicial binding agreement) upon “clear, cogent and convincing evidence.”

Situs, Venue and Certification of Trusts. The new statutory provisions make it easier to

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establish or change the situs of a trust and to establish appropriate venue for court proceedings regarding a trust. *See* RCW 11.96A.050, RCW 11.98.045, RCW 11.98.051, RCW 11.98.055. Certification of the existence of a trust and of the powers of a trustee, in order to facilitate transactions with third parties, is simplified now in RCW 11.98.075.

Trustee Powers, Distribution and Termination. The new amendments provide additional trustee powers (*see* RCW 11.98.070) and a mechanism for more smoothly terminating and distributing the assets of a trust whose existence is ending. *See* RCW 11.98.145.

As noted above, this article does not discuss the full array of changes to Washington trust law under the Act. Some of these changes, particularly the requirements related to notice of the existence of a trust and periodic reporting to beneficiaries, may be the subject of additional legislative revision in the very near future. Accordingly, this article should be viewed as just an “appetizer”; the “full meal” requires additional inquiry into the Washington Trust Act itself, including any future amendments. 



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