

A BAKER'S DOZEN OF IMPORTANT CHANGES TO WASHINGTON TRUST LAW AND WHAT THEY MEAN FOR YOUR CLIENTS

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These materials are intended to provide general information and are not intended as legal advice applicable to any particular situation.

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INTRODUCTION

Trusts are commonly used in estate planning as a method to transfer property. They can be revocable or irrevocable and can be created during life or at death. A trust is created when an individual (a "trustor") transfers property to a trustee. The trustee holds legal title to the property and holds and administers the property for the benefit of the trust beneficiaries.

On May 12, 2011, Governor Gregoire signed Substitute House Bill 1051 ("SHB 1051") enacting sweeping changes to Washington trust law, all of which are effective on January 1, 2012. The changes will have a significant impact on the administration of trusts, on the duties of trustees, and on the rights of trust beneficiaries. These materials address some of the most significant changes to Washington trust law and how they might affect trust administration and dispute resolution in the future.

With one notable exception, the provisions of SHB 1051 will apply to *all* trusts, regardless of whether the trust in question was created before, on, or after January 1, 2012. The exception is that the requirement that beneficiaries are entitled to notice of the existence of the trust, discussed in Section 1 below, will apply *only* to irrevocable trusts created *after* December 31, 2011 and revocable trusts that become irrevocable *after* December 31, 2011.

1. NOTICE TO BENEFICIARIES OF EXISTENCE OF TRUST

Prior to the enactment of SHB 1051, RCW 11.97.010 provided:

The trustor of a trust may by the provisions of the trust relieve the trustee from any or all of the duties, restrictions, and liabilities which would otherwise be imposed by chapters 11.95, 11.98, 11.100, and 11.104A RCW and RCW 11.106.020, or may alter or deny any or all of the privileges and powers conferred by those provisions; or may add duties, restrictions, liabilities, privileges, or powers to those imposed or granted by those provisions. If any specific provision of those chapters is in conflict with the provisions of a trust, the provisions of the trust control whether or not specific reference is made in the trust to any of those chapters, except as provided in RCW 11.98.200 through 11.98.240 and 11.95.100 through 11.95.150. *In no event may a trustee be relieved of the duty to act in good faith and with honest judgment.*

(Emphasis added.) SHB 1051 amended RCW 11.97.010 to require trustees to provide notice to beneficiaries of the existence of an irrevocable trust, with the following revised language:

. . . In no event may a trustee be relieved of the duty to act in good faith and with honest judgment or the duty to provide information to beneficiaries as required by this section. . . . (Emphasis added.)

The phrase "this section" refers to newly amended RCW 11.97.010, which has four new subsections.

First, a new subsection (2) requires that, for irrevocable trusts created after December 31, 2011 and revocable trusts that become irrevocable after December 31, 2011, when a trust becomes irrevocable (or within sixty days of the acceptance of the position of trustee of an irrevocable trust), the trustee will have to provide notice -- to all persons "interested in the trust, as defined in RCW 11.96A.030, and who would be entitled to notice under RCW 11.96A.110 and 11.96A.120 if they were a party to judicial proceedings regarding the trust" -- of the existence of the trust and of their right to request information that would be reasonably necessary to enable such persons to enforce their rights.

The following information must be included in the notice:

- The existence of the trust;
- The identity of the trustor(s);
- The trustee's name, address, and telephone number; and
- The right to request information that would be reasonably necessary for a beneficiary to enforce his or her rights under the trust.

If a person entitled to notice is a minor, then notice must be given to the guardian or the minor's parent if no guardian has been appointed by the court. If the beneficiary is a charity whose interest is a future interest that could be revoked, then the notice must be given to the attorney general.

The last sentence of new RCW 11.97.010(2) contains the proviso that, although subsection (2) only applies to irrevocable trusts created after December 31, 2011 and revocable trusts that become irrevocable after December 31, 2011, "all common law duties of a trustee to notify beneficiaries applicable to trusts created or that became irrevocable before such date are not affected."

2. TRUSTEE'S DUTIES TO REPORT TO BENEFICIARIES REGARDING TRUST ADMINISTRATION

Another new addition to RCW 11.97.010, new subsection (3), requires that the trustee must continue to keep all interested persons (as defined above for purposes of giving notice of the existence of the trust) "reasonably informed" about the administration of the trust and of the material facts necessary for them to protect their interests. A report that contains the following will be presumed to satisfy the trustee's duty to keep beneficiaries reasonably informed:

- A statement of receipts and disbursements of principal and income that have occurred during the accounting period;
- A statement of assets and liabilities of the trust, including beginning and ending values for the accounting period;

- The trustee's compensation;
- The agents hired by the trustee, their relationship to the trustee, if any, and their compensation;
- Disclosure of any pledge, mortgage, option, or lease of trust property binding for a period of five years or more granted or entered into during the accounting period;
- Disclosure of all transactions that could have been affected by a conflict of interest between the trustee's fiduciary and personal interests;
- A statement that the recipient of the notice may petition the court to obtain a review of the statement and acts of the trustee; and
- A statement that claims against the trustee for breach of trust may not be made after the expiration of three years from the date the beneficiary receives the statement.

Additional new subsections, RCW 11.97.010(4) and (5) provide:

(4) Unless unreasonable under the circumstances, a trustee shall promptly respond to any beneficiary's request for information related to the administration of the trust.

(5) If a person entitled to notice under this section requests information reasonably necessary to enable the notified person to enforce his or her rights under the trust, then the trustee must provide such information within sixty days of receipt of such request. Delivery of the entire trust instrument to the persons entitled to notice under this section who request information concerning the terms of the trust reasonably necessary to enable the notified person to enforce his or her rights under the trust shall be deemed to satisfy the trustee's obligation under this subsection.

Thus, the new legislation codifies both a general requirement of "prompt response" and a specific requirement that a trustee provide certain information within 60 days of the trustee's receipt of such request.

3. STATUTE OF LIMITATIONS

RCW 11.96A.070 sets out the statutes of limitation for various types of claims against fiduciaries. This section of the Trust and Estate Dispute Resolution Act ("TEDRA") was amended by SHB 1051 to provide that a beneficiary of an express trust may not commence a proceeding against a trustee for a breach of trust more than three (3) years after the date the beneficiary or representative of that beneficiary was *sent* a report which disclosed the potential breach of trust and informed the beneficiary of the time deadline within which he or she must bring the claim. *See new* RCW 11.96A.070(1)(a). *Note:* There is a discrepancy between this provision and new RCW 11.97.010(3)(h), discussed above, which prescribes the new-three year statute of limitations for filing as claim against a trustee as three years from the date on which the beneficiary *received* the statement.

The information required to be disclosed in such a report is described in detail in RCW 11.96A.070(1)(b) and parallels the information required by the new amendment to RCW 11.97.010(3) described above:

- (i) A statement of receipts and disbursements of principal and income that have occurred during the accounting period;
- (ii) A statement of the assets and liabilities of the trust and their values at the beginning and end of the period;
- (iii) The trustee's compensation for the period;
- (iv) The agents hired by the trustee, their relationship to the trustee, if any, and their compensation, for the period;
- (v) Disclosure of any pledge, mortgage, option, or lease of trust property, or other agreement affecting trust property binding for a period of five years or more that was granted or entered into during the accounting period;
- (vi) Disclosure of all transactions during the period that are equivalent to one of the types of transactions described in section of this act or otherwise could have been affected by a conflict between the trustee's fiduciary and personal interests;
- (vii) A statement that the recipient of the account information may petition the superior court pursuant to chapter 11.106 RCW to obtain review of the statement and of acts of the trustee disclosed in the statement; and
- (viii) A statement that claims against the trustee for breach of trust may not be made after the expiration of three years from the date the beneficiary receives the statement.

In the event that a report as prescribed by RCW 11.96A.070(1)(b) has *not* been provided to the beneficiary, then newly amended RCW 11.96A.070(1)(c) provides that judicial proceedings for breach of trust must be commenced within three years after the first to occur of: (i) the removal, resignation, or death of the trustee; (ii) the termination of the beneficiary's interest in the trust; or (iii) the termination of the trust.

With this significant change, the viability of Washington's "discovery rule" for claims against trustees, which had been preserved by RCW 11.96A.070(1) as it existed prior to the enactment of SHB 1051, is seriously in question, having been replaced by the new "bright line rule" of SHB 1051. *Compare Gillespie v. Seattle First National Bank*, 70 Wn. App. 150, 855 P.2d 680 (1993), *rev. denied* 123 Wn.2d 1012 (1994) (action against trustee timely when filed within three years of when beneficiary knew or should have known of claim).

4. EXERCISE OF TRUSTEE DISCRETION

RCW 11.97.010(1)'s new amendments also include the following provision:

. . . . Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as "absolute," "sole," or "uncontrolled," the trustee shall exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

It is not clear whether courts will decide that new articulation of the scope of discretion granted to a trustee is intended to change existing Washington law or simply codify existing law.

5. VIRTUAL REPRESENTATION/ELECTRONIC NOTICE

The new amendments to RCW 11.96A.120 expand the doctrine of virtual representation to identify specifically a variety of fiduciaries who may virtually represent those to whom they owe their fiduciary duties, so long as the interests of the fiduciary and the beneficiaries are not in conflict. As amended, RCW 11.96A.120(1) will now provide that:

- (a) a guardian may represent and bind the estate that the guardian controls;
- (b) an agent having authority to act with respect to the particular question or dispute may represent and bind the principal;
- (c) a trustee may represent and bind the beneficiaries of the trust; and
- (d) a personal representative of a decedent's estate may represent and bind persons interested in the estate.

A new subsection (d) has also been added to RCW 11.96A.120, which provides that the holder of a general power of appointment (or the holder of certain limited powers of appointment) can accept notice and bind persons whose interests are subject to the power. Again, the role of "virtual representative" is limited to situations where there is "no conflict of interest between the holder of the power of appointment and the persons represented with respect to the particular question or dispute." These changes provide a potential alternative avenue for a trustor who wants to limit the impact of the requirement of notice to remainder beneficiaries of the existence of a trust and should be reviewed carefully during the estate planning process.

RCW 11.96A.110, which previously required notice by personal service or mail in all TEDRA proceedings, has been amended to provide that notice can be provided "in an electronic transmission" to parties who have previously consented to receiving notice by electronic transmission. The amendment refers to the Corporations Code, RCW 23B.01.400 for definitions of "electronic transmission" and "electronically transmitted."

6. REFORMATION AND CONSTRUCTION OF TRUSTS

SHB 1051 amends TEDRA by adding a new section that provides for reformation of wills and trusts by means of either judicial proceedings or binding nonjudicial agreements. Reformation is to be based on "clear, cogent, and convincing evidence of the trustor's or testator's intent." The amendment also requires that the court find, or the parties agree, that the terms of the trust or will were the result of a mistake of fact or law, either in expression or inducement. SHB 1051 also added a new subsection to the definition of what constitutes a "matter" under TEDRA. As amended, RCW 11.96A.030(2) will have a new subsection (h), which includes as a TEDRA matter: "The reformation of a will or trust to correct a mistake under [the new section]."

A new section of RCW Chapter 11.97 will also provide that that rules of construction that apply to interpretation of a will and the disposition of property by will also apply to interpretation of a trust and disposition of trust property.

7. CAPACITY TO EXECUTE TRUST/CHALLENGES TO VALIDITY OF REVOCABLE TRUST

Under SHB 1051, a trust will be created only if the trustor has capacity to create a trust, the trustor indicates an intention to create the trust, and the trust has a definite beneficiary (or is a charitable trust or a trust for the care of an animal). The legal test for whether a person has "capacity" to create a revocable trust is now the same test that has always been used to determine whether a person has "capacity" to make a will.

SHB 1051 also adds an entirely new chapter to Title 11 that applies to revocable living trusts. Under the new chapter, unless the terms of a trust expressly provide that a trust is revocable, a trustor may not revoke or amend the trust. If the trust is revocable, it can be revoked in any of the following ways:

- By substantially complying with the method provided in the terms of the trust; or
- If no such method is provided (or if the method is not expressly described as the exclusive method), then by: (i) a later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust; or (ii) a written instrument signed by the trustor evidencing an intent to revoke or amend.

An important change with respect to husbands and wives or registered domestic partners involves joint revocable trusts. If a revocable trust is created or funded by more than one trustor and unless the trust agreement provides otherwise: (1) to the extent the trust consists of community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses; (2) to the extent the trust consists of property other than community property, each trustor may revoke or amend the trust with regard to the portion of the trust property attributable to that trustor's contribution; (3) the character of community property

or separate property is unaffected by its transfer to and from a revocable trust; and (4) upon the revocation or amendment of the trust by fewer than all of the trustors, the trustee shall promptly notify the other trustors of the revocation or amendment.

SHB 1051 also adds a provision limiting the time for filing a contest to the validity of a revocable trust to the *earlier of* 24 months after the trustor's death or four months after the trustee sent the person notice containing the information required by newly amended RCW 11.97.010(2) (*see* discussion in Section 1 above). *Cf.* RCW 11.24.010 (setting a four month limitation on contests to the validity of a will).

8. TRUSTEE'S DUTIES OF LOYALTY, EXCULPATION PROVISIONS, AND DAMAGES FOR BREACH OF TRUST

SHB 1051 adds new sections to RCW 11.98 that codify the trustee's common law duty of loyalty. Specifically, the new section begins by stating: "A trustee shall administer the trust solely in the interests of the beneficiaries." The new provisions expand on the parameters of this duty and also describe circumstances where the duty may be modified or excused.

A transaction between the trustee and the trust or one that is "otherwise affected"¹ by a conflict between the trustee's fiduciary and personal interests is voidable by the beneficiary, *unless the transaction*: (1) was authorized by the terms of the trust; (2) was approved by the court or in a nonjudicial binding agreement under TEDRA; (3) the beneficiary is time barred (*see* statute of limitations section above); (4) the beneficiary consented to the trustee's conduct or ratified the transaction; or (5) the transaction involved a contract entered into before the person was the trustee.

RCW 11.100.090 currently prohibits transactions between the trust and its trustee, or an affiliate or subsidiary of the trustee, unless the trust instrument expressly authorizes the transaction. SHB 1051 amends RCW 11.100.090 to recognize the exceptions set forth in items (1) through (5) of the immediately preceding paragraph. The new amendments also provide that the court may appoint a "special fiduciary" to make a decision with respect to a proposed transaction that could violate the trustee's duty of loyalty. The common law duty of impartiality between beneficiaries is also memorialized in this new section.

A separate subsection of the new "Duty of Loyalty" section also provides that the following transactions are not voidable if they were fair to the beneficiaries: (1) an agreement between a trustee and a beneficiary about the appointment or compensation of the trustee; (2) payment of reasonable compensation to the trustee and an affiliate, so long as the combined compensation remains reasonable; (3) a transaction between a trust and another trust,

¹ The statute creates a rebuttable presumption that a transaction involving the management of trust property is "otherwise affected" by a conflict between the trustee's fiduciary and personal interests if it is entered into by the trustee with the trustee's (1) spouse or registered domestic partner; (2) descendants, siblings, parents, or their spouses or registered domestic partners; (3) an agent or attorney of the trustee; or (4) a corporation or other enterprise in which the trustee has an interest that might affect the trustee's best judgment.

estate or guardianship of which the trustee is a fiduciary or in which a beneficiary has an interest; (4) a deposit of trust funds in a financial-service institution operated by the trustee or its affiliate; (5) a delegation and any transaction made pursuant to the delegation from a trustee to an agent that is affiliated or associated with the trustee; or (6) any loan from the trustee or its affiliate.

Another new provision, relating to the exculpation of trustees, provides:

(1) An exculpatory term which was inserted as the result of an abuse of a fiduciary or confidential relationship between the trustor and the trustee is unenforceable.

(2) An exculpatory term drafted or caused to be drafted by the trustee is invalid as an abuse of a fiduciary or confidential relationship unless the trustee proves that the exculpatory term is fair under the circumstances and that its existence and contents were adequately communicated to the trustor.

SHB 1051 also adds a new section that provides guidance as to when beneficiary consent, release, or ratification can reduce or eliminate trustee liability. Under the new provision, there is no trustee liability if the beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, *unless*:

(1) The consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee; or

(2) At the time of the consent, release, or ratification, the beneficiary did not know of the beneficiary's rights or of the material facts relating to the breach.

Finally, SHB 1051 added a new section regarding the measure of damages where a trustee has breached his or her trust:

(1) A trustee who commits a breach of trust is liable for the greater of:

(a) The amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred; or

(b) The profit the trustee made by reason of the breach.

(2) Except as otherwise provided in this subsection, if more than one trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees.

This new additions to RCW Chapter 11.98 also provide that a trustee is not entitled to contribution if the trustee was substantially more at fault than another trustee. The same is true if the trustee committed a breach of trust in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. Further, the new section provides that any trustee who benefits from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received.

9. CHARITABLE TRUSTS AND CY PRES DOCTRINE

SHB 1051 codifies the common law *Cy Pres* doctrine, but with some changes from the common law presumptions regarding how to implement a trustor's or testator's alternative disposition of a charitable gift.² Under a new section of TEDRA, if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful, the disposition will not be deemed to have failed and there will be no reversion to an alternative beneficiary, the residuary beneficiaries or the trustor's heirs-at-law. Instead, the court may modify or terminate the trust and order that the property be applied or distributed in a manner consistent with the testator's or trustor's charitable purposes.

In a change from the common law presumption, the new law provides that the testator's or trustor's alternative "gift over" to a non-charitable beneficiary will *not* be honored by the court *unless* the property is to revert to the trustor and the trustor is still living. In the event that the charitable donor (trustor or testator) is *not* still living, the court similarly will not allow the property to be distributed to a non-charitable beneficiary *unless* fewer than twenty-one years have passed since either (i) the trust was created or became irrevocable or (ii) the testator died.

This new section of TEDRA also defines a "charitable purpose" to mean: "one for the relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes, or other purposes the achievement of which is beneficial to a community."

10. SITUS/VENUE

Under current law, the situs of a trust is Washington if the trust instrument designates the State of Washington as the situs and the trust has at least one connection to the state. The new law will replace the current rule that determines the situs by the location of the principal place of administration of the trust. Under the new law, if a trust instrument designates Washington as the situs of the trust or designates Washington law to govern the trust, then the situs of the trust is Washington provided that one of the following conditions is met:

² *Cy Pres* is different than equitable deviation. Courts apply equitable deviation to make changes in the manner in which a charitable trust is carried out while courts apply *cy pres* in situations where trustees seek to modify or redefine the settlor's specific charitable purpose. *Niemann v. Vaughn Community Church*, 154 Wn.2d 365, 378, 113 P.3d 463, 469 (2005).

- The trustee's place of business is in Washington or the trustee is a resident of Washington;
- A significant part of the trust administration occurs in Washington;
- The trustor resided in Washington at the time situs was established, or resided in Washington at the time the trust became irrevocable;
- One or more of the trust beneficiaries resides in Washington; or
- An interest in real property located in Washington is an asset of the trust.

Under the new law, unless the trust instrument designates a state other than Washington as the situs of the trust and does not expressly authorize transfer of situs, the trustee may register the trust as a Washington trust if any of the factors listed above are present. A trustee may register the trust by filing a statement that includes the following information:

- The name and address of the trustee;
- The date of the trust, name of the trustor, and name of the trust; and
- The facts which qualify the trust for registration in the State of Washington.

A trustee must provide notice of the registration to each person entitled to notice and who has not waived notice. Persons receiving the notice will have thirty days to file a petition objecting to the registration and requesting the court to issue an order that Washington is not the proper situs of the trust.

Situs should not be confused with *venue* for judicial proceedings, which is addressed in RCW 11.96A.050. The provisions of RCW 11.96A.050 have been amended by SHB 1051 to broaden the choices of venue available to a TEDRA petitioner. Correspondingly, any party unhappy with the petitioner's choice of venue for a TEDRA proceeding can, within the first four months of the giving of notice of the proceeding, seek to have venue moved "to the county with the strongest connection to the trust" (considering various enumerated factors) and, upon such request, venue will be changed, "except for good cause shown."

11. DISTRIBUTION AND TERMINATION OF TRUSTS

Under the new law, upon the death of the trustor of a revocable trust, the trustee may proceed to distribute the trust property in accordance with the terms of the trust, unless: (1) the trustee knows of a proceeding contesting the validity of the trust; or (2) a potential contestant has notified the trustee of a possible proceeding to contest the trust and a proceeding is commenced within sixty days after the contestant sends the notification.

Under the new law, upon termination or partial termination of a trust, the trustee may send notice to the beneficiaries of a proposed plan to distribute existing trust assets. A beneficiary must notify the trustee of any objection to the plan, including an objection to non-pro rata distributions within thirty days after the proposed plan was sent but only if the proposed plan informed the beneficiary of the right to object and of the time allowed for the objection. The

notice provision with respect to termination of a trust does not act as a release of the trustee. Rather, it only prevents the beneficiary from contesting the distribution itself.

12. CERTIFICATION OF TRUSTS

Currently, if a person other than a beneficiary requests information about a trust and the trustor wants to keep the trust instrument private, the trustee must provide various pages from the trust instrument (e.g., first page, signature page, trustee powers, etc.) in order to provide the requested information. Under the new law, if a person other than a beneficiary requests information regarding the trust, the trustee may provide the requesting party a certification of trust containing the following information:

- That the trust exists and the date the trust instrument was executed;
- The identify of the trustor;
- The identify and address of the currently acting trustee;
- Relevant powers of the trustee;
- The revocability or irrevocability of the trust and the identity of the person(s) holding a power to revoke the trust;
- The authority of co-trustees to sign on behalf of the trust and whether all or less than all are required to exercise the powers of the trustee; and
- The name of the trust or the titling of the trust property.

The certification may be signed by any trustee or by an attorney for the trust. The certification must state that the trust has not been revoked, modified or amended in any manner that would cause the representations in the certification to be incorrect. The certification need not contain any of the dispositive terms of the trust.

A third party who does not possess contrary knowledge may act without liability in reliance on the representations in the certification and may enforce transactions entered into in reliance on the certification. The third party may still require the trustee to provide copies of excerpts of the portions of the trust that appoint the trustee and authorize the trustee to act in the pending transaction "and any other reasonable information." The certification mechanism does not limit any party's right to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

13. CLARIFICATION OF TRUSTEE'S POWERS IN THE MANAGEMENT OF TRUST PROPERTY AND LIMITATION ON POWERS OF ATTORNEY-IN-FACT

RCW 11.98.070 enumerates a litany of specific powers held by trustees. SHB 1051 revises subsection (16) to clarify the process for trust distributions for the benefit of beneficiaries who are under a "legal disability" (i.e., they are minors or incapacitated). It also adds new subsections that address a trustee's specific authority to defend, prosecute or settle claims by or against the trust (including releasing claims belonging to the trust), exercise tax elections, wind

up trust administration and select a mode of payment under a retirement plan, annuity, or life insurance payable to the trustee.

Powers of attorney often grant the attorney-in-fact the power to make gifts on the principal's behalf. Under the new law, an attorney-in-fact will *not* have the power to exercise the principal's rights to distribute property in trust or cause a trustee to distribute property in trust, unless such powers are specifically provided for in the power of attorney. In other words, if a principal's assets are owned by a trustee of a revocable trust, the attorney-in-fact will not be able to direct the trustee to distribute assets to the attorney-in-fact for purposes of making gifts unless the power is specifically set forth in the power of attorney and only "to the extent consistent with the terms of the trust agreement."

CONCLUSION

The final substantive section of SHB 1051 ("Application") provides that, except as otherwise provided in SHB 1051: the act applies to all trusts created before, on, or after January 1, 2012; to all judicial proceedings concerning trusts commenced on or after January 1, 2012; and any rule of construction or presumption contained in the act applies to trust instruments executed before January 1, 2012, "unless there is a clear indication of a contrary intent in the terms of the trust."

Acknowledging the importance of finality in trust and estate matters, the "Application" section also provides that an action taken before January 1, 2012 "is not affected by this act" and "If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before January 1, 2012, that statute continues to apply to the right even if it has been repealed or superseded."

Although many of the changes embodied in SHB 1051 do little more than codify existing Washington law, many of the changes do significantly alter the landscape with regard to trustee duties and beneficiary rights. Many of these changes will streamline trust administration, while others may result in traps and liability for the well-meaning, but unsophisticated, trustee. Estate planning professionals and those dealing with trust administration will want to be familiar with the new requirements for reporting to beneficiaries about the existence and administration of the trust in question, as well as the many new provisions that could impact the outcome of trust disputes.