Arbitration in Estate and Trust Disputes:
Friend or Foe?

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I. What is Arbitration?

A. Definition: “A process of dispute resolution in which a neutral third party (arbitrator) renders a decision after a hearing at which both parties have an opportunity to be heard. Where arbitration is voluntary, the disputing parties select the arbitrator who has the power to render a binding decision.”

B. Adversarial Process: Arbitration, like litigation, is an inherently adversarial process. Arbitration procedures (e.g., discovery, evidence, motions, etc.) may be agreed to by the parties and, therefore, may be much more relaxed than—or very similar to—the trial process. Further, arbitration may be before a single arbitrator or a panel of arbitrators.

C. Binding vs. Non-binding: The arbitrator’s decision may be binding upon the parties or non-binding. While binding arbitration is more common, non-binding arbitration may be used if the parties want to test their positions before a neutral prior to going to court. This approach may promote settlement of claims after the arbitration concludes, but adds significant costs if the parties go forward to trial.

D. Rarely Used in Estate Planning Documents: Out of 122 ACTEC Fellows from California and Florida who responded to an informal survey a few years back, only 9 stated that they include a mandatory arbitration provision in their estate planning documents, and 8 of those 9 indicated that they include arbitration provisions only 10% or less of the time.

II. Advantages and Disadvantages of Arbitration over Litigation

A. Selection of Arbitrators:

1. Advantage: Parties may select an arbitrator with a specialty in the area of the specific dispute to ensure a high quality of review. Typically, the parties must mutually agree on the arbitrator, but another process for selecting the arbitrator may be set out in the will or trust agreement. Further, a testator may desire to pre-select an arbitrator in her will if she believes her testamentary scheme may be “unpopular” with a judge or jury.

2. Disadvantage: While arbitrators may fully intend to act neutrally, certain arbitrators may have inherent biases. For instance, if your client is a beneficiary that has a claim against a corporate trustee, an arbitrator that had a previous career as a corporate trustee may bring to the table a subconscious bias in favor of corporate trustees. This concern may be remedied through careful selection of an arbitrator, but must be considered by counsel when selecting the arbitrator.

B. Limited Review by Courts:

Each state’s arbitration statutes may set forth the specific instances when an arbitration award may be vacated. However, courts typically read the exceptions strictly to further the federal policy of encouraging arbitration and enforcing agreements to arbitrate. In practice, arbitration decisions are generally enforced by courts unless the decision is (1) in manifest disregard of the law, (2) arbitrary and capricious, or (3) against public policy.

1. Advantage: The limited review of arbitration awards adds finality to the arbitrator’s decision. This greatly reduces the cost and delay associated with the appeal process. Further, an arbitrator may “ignore” precedent that may not lead to an equitable result. For instance, most states will not allow reformation of an unambiguous will, even it is clearly shown that the wording used does not express the testator’s intent (i.e., if the drafting lawyer improperly stated the testator’s intent). An arbitrator may have a greater ability to “get around” such precedent to carry out the testator’s intent than a court would.

2. Disadvantage: Many attorneys advise against arbitration for this very factor. Courts have been very reluctant to overturn arbitration decisions. For instance, to show a manifest disregard for the law, many courts require not simply that the decision went against precedent but a further showing that the arbi-
The arbitrator was well aware of and intentionally ignored settled precedent.\(^5\) Further, unless the parties require that the arbitrator write a written decision explaining his or her decision, a court will have little to review. In sum, a party may have no redress for a bad decision. When suggesting arbitration to a client, counsel should fully explain this aspect and establish arbitration procedures to protect against this result.

C. Expedited Process:

1. **Advantage:** In many jurisdictions, the court system is overburdened and understaffed. This results in significant delays in the resolution of disputes. The arbitration process usually involves an expedited process so the dispute does not drag on as long as those before a court.

2. **Disadvantage:** Arbitrations involving many complex issues may not be more efficient than litigation. For one, dispositive motions which may reduce the number of issues are typically not allowed in arbitration unless agreed beforehand by the parties. Further, arbitration may not be quicker if the parties have agreed to follow the traditional rules of discovery. Finally, if the arbitrator is a practicing attorney, the arbitrator’s schedule may delay multi-day proceedings.

D. Cost:

1. **Advantage:** Assuming arbitration is completed in an expedited process, the cost of arbitration is often significantly less than litigation. Further, an arbitration participant’s limited appeal rights help to keep costs down.

2. **Disadvantage:** While a faster process will generally keep costs down, there are additional costs involved that are absent from litigation. For one, many arbitration organizations such as the AAA have significant filing fees. Second, arbitrators charge an hourly or daily fee, which may be very significant in a complex arbitration (especially if there is a panel of arbitrators). In addition, if the parties adopt fairly complex discovery and procedural rules, the proceedings may last as long as a trial. Indeed, in some cases, arbitration may ultimately be more expensive than litigation.

E. Flexible Procedures:

1. **Advantage:** Parties may write their own rules of procedure for an arbitration, or the parties may adopt standard rules (e.g., AAA’s Arbitration Rules for Wills and Trusts; the state’s rules of procedure). Such rules may address discovery rights, whether the parties may file dispositive motions, what evidence the arbitrator may consider, or any other aspect the parties desire. This allows parties to appropriately tailor the proceedings to their specific dispute.

2. **Disadvantage:** If the parties do not specify rules, arbitrators are typically given great discretion regarding discovery (often little discovery is allowed), whether to accept preliminary motions from parties, and the evidence that will be considered.\(^6\) This discretion is in part what makes arbitration a more efficient forum, but it also removes the protections that the rules of procedure and evidence have developed over time.

F. Confidentiality:

1. **Advantage:** Arbitration hearings are not public record and, therefore, may help to keep private details of family disputes private.

G. “Ideal” Situations

With the above advantages and disadvantages in mind, the following are a few examples of when arbitration will typically be advantageous:

1. Fee disputes, including fiduciary and legal fees;
2. Prudent investing disputes;
3. Disputes involving strictly monetary relief;
4. Disputes involving only a factual dispute or a well-settled question of law.

III. Potential Concerns When Using Arbitration in Will or Trust Disputes

A. Enforceability Against Beneficiaries: Typically, arbitration cannot be forced on a party; everyone is entitled to his or her “day in court” unless the party waives this right by agreeing to arbitrate. A testator or grantor may mandate arbitration in his or her estate planning documents. The following approaches may be used to discourage, or defeat, a beneficiary’s argument that mandatory arbitration is not enforceable:

1. To discourage beneficiaries from raising this issue, a testator may include a clause, similar to a “no-contest” clause, disinheriting any beneficiary that refuses to arbitrate as required under the will.\(^7\)

2. In response to a beneficiary that raises this issue, a trustee or executor may argue that the beneficiary has no inherent right to receive the property; rather, the beneficiary’s rights derive solely from the will or trust. Therefore, to accept the gift, the beneficiary must accept all aspects of the will or trust, including the arbitration requirement.\(^8\) However, in Schoneberger v. Oelze (Division One of the Arizona Court of Appeals, August 31, 2004), the Court held that a trust agreement is not a “contract” under the Arizona arbitration statute.

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\(^{6}\) For instance, an arbitrator may consider hearsay and give it the weight the arbitrator feels appropriate. See Bette J. Roth et al., *Alternative Dispute Resolution Practice Guide* § 3:9 (West Supp. 2004).

\(^{7}\) Spitko, supra note 3, at 298.

\(^{8}\) Id. at 299.
Thus, an arbitration clause in the trust agreement was not enforceable against certain trust beneficiaries who sued the trustors and the trustees.

B. Inclusion of All Necessary Parties:

1. Third Party Rights: Though a will or trust may be enforceable against beneficiaries, parties whose claims derive apart from the will or trust may not be bound by a mandatory arbitration clause contained in such document. This group may include creditor’s, dis-inherited spouses (statutory right to elective share), or spouses with rights under a prenuptial agreement.

2. Minors, Incapacitated, Unborn, or Incapacitated Beneficiaries: In traditional court proceedings, statutes in every state allow the interests of such parties to be represented, whether through virtual representation, by the court itself, or a court-appointed special representative or guardian ad litem. However, such is not likely the case in an arbitration proceeding. If the interests of all necessary minors are not properly represented, it is extremely unlikely an arbitration decision will be enforceable against such parties. This solution may be remedied by statutes allowing courts to appoint a special representative or guardian ad litem in arbitration proceedings (See Section IV.A below); however, absent such statutes, the potential of unenforceable decisions exists.

C. Validity of Estate Planning Document: Arbitration clauses in a will or trust agreement are not likely to be enforceable if the validity of the document itself is challenged. For instance, if a party believes the testator was incompetent, or that the will was procured by fraud or undue influence, such issue likely will be determined by a court, not an arbitrator. In certain situations, however, that is not the case in an arbitration proceeding. If the interests of all necessary minors are not properly represented, it is extremely unlikely an arbitration decision will be enforceable against such parties. This solution may be remedied by statutes allowing courts to appoint a special representative or guardian ad litem in arbitration proceedings (See Section IV.A below); however, absent such statutes, the potential of unenforceable decisions exists.

D. Nonprobate Transfers: Similar to Section III.B above, parties that receive property through nonprobate transfers such as joint accounts, pay on death or transfer on death accounts, IRAs, or other retirement accounts may not be bound by an arbitration clause in the decedent’s will or trust agreement. Absent a statute addressing such issues (See Section IV.A below), the holders of such property may not be compelled to join the arbitration.

E. Adverse Tax Implications

Though the adversarial nature of arbitration proceedings will likely protect most arbitration awards from adverse tax implications, it is important to consider the following aspects on a case-by-case basis and inform clients of any potential concerns:

1. Martial Deduction (IRC § 2056)

a) The estate tax regulations state that the marital deduction is available in conjunction with settlement of a will contest for property that is surrendered as a bona fide recognition of enforceable rights of the surviving spouse in the decedent’s estate. This will be presumed where the assignment or surrender was pursuant to a decision of a local court upon the merits in an adversary proceeding following a genuine and active contest. However, such a decree…rendered by consent…will not necessarily be accepted as a bona fide evaluation of the rights of the spouse.

b) To determine whether there is a “genuine and active contest” in an alternative dispute resolution setting, courts will look to whether (1) the parties’ interests are truly adverse, (2) the parties’ are represented by counsel, and (3) there were multiple offers/counteroffers.

c) Further, some courts limit the amount of the deduction to the amount provided to the surviving spouse under the will, while others may allow the full value of the property passed according to the terms of the settlement.

2. Administrative Expenses (IRC § 2053)

a) Generally, expenses relating to a dispute incurred by an estate are deductible if they were incurred on behalf of the estate and not of the claimants to the estate. For instance, attorney’s fees approved by a probate court (or arbitrator) as an expense payable or reimbursable by the estate will not necessarily be deductible as an administrative expense if the dispute was “not essential to the proper settlement of the estate, but incurred for the individual benefit of the heirs.”

b) Therefore, parties that insert a requirement in the will or trust that “The arbitrator’s

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10 Spitko, supra note 3, at 303-306.
11 Treas. Reg. § 20.2056(c)-2(d) (as amended in 1994).
12 See Radford, supra note 4, at 656.
13 Id.
14 Treas. Reg. § 20.2053-3(a) (as amended in 1979); see also Radford, supra note 4, at 658-659.
15 26 Treas. Reg. § 20.2053-3(a); see also Treas. Reg. § 20.2053-3(c)(3).
fee shall be paid by my estate or from the principal of the trust in question” should be aware that the costs may not deductible for estate tax purposes in all cases.

IV. Sample Statute Regarding Arbitration of Estate Administration Disputes

A. Washington’s Trust and Estate Dispute Resolution Act (TEDRA) (Appendix A, pages 270-288, following):

In 1999, Washington became the first state to adopt a statute providing express guidelines for the use of arbitration in estate disputes. In fact, a number of the provisions in this Act were borne from an ACTEC committee formed in 1992 to develop a proposed uniform statute allowing dispute resolution procedures in contested will and trust matters. Similar legislation has been proposed in Hawaii, though it has not yet been adopted. A few of the highlights of TEDRA, as it relates to arbitration, include:

1. The will or trust itself need not authorize arbitration. The statute states that the procedure is available for “the determination of any question arising in the administration of an estate or trust, or with respect to any nonprobate asset, or with respect to any other asset or property interest passing at death, that may include, without limitation, questions relating to: (i) The construction of wills, trusts, community property agreements, and other writings; (ii) a change of personal representative or trustee; (iii) a change of the situs of a trust; (iv) an accounting from a personal representative or trustee; or (v) the determination of fees for a personal representative or trustee.”

2. The statute expressly allows for virtual representation and the court may appoint a “special representative” to represent the interests of minor and unborn beneficiaries, or in some cases, a guardian ad litem.

3. The statute’s provisions may be altered by agreement of the parties to allow the most expeditious and cost effective process.

4. The parties, not the court, select the arbitrator, and the mediator (if mediation was first attempted) may also serve as the arbitrator.

5. Any party may appeal the arbitrator’s decision to the court within 30 days after the arbitrator’s decision. Upon such appeal, a trial de novo or by jury (if requested) will occur; however, to discourage such attempts, the prevailing party is entitled to all costs, witness fees, and attorneys’ fees in connection with the court action. If a party must seek an order of compliance from the court to enforce the arbitrator’s decision, the non-complying party again is responsible for the costs of obtaining such order.

6. Basic Procedure: Arbitration may be initiated by any interested party (1) without prior mediation if all parties agree, (2) after a failed mediation, or (3) with leave of court, after litigation has been initiated. Any party may file a petition objecting to arbitration (1) prior to any notice of arbitration (i.e., may file a lawsuit and a “preemptive” objection to arbitration concurrently), or (2) if a notice of arbitration has been received, within 20 days after such notice. The court then holds a hearing within 20 days after the objection is filed to determine whether to require arbitration.

V. Sample Clauses

A. Arbitration Clauses: Appendix B (pages 289-290, following) provides a number of sample arbitration clauses collected from various sources. Though not stated in any of the clauses included, drafters also may want to require the arbitrator to provide a written, reasoned opinion. It is the author’s experience that such requirement forces arbitrators to fully think through all aspects of difficult issues, and the explanation is appreciated by clients.

B. Arbitration Rules: See Appendix C (pages 291-300, following) for AAA’s Arbitration Rules for Wills and Trusts, effective July 1, 2003. Note, however, that parties agreeing to arbitration may write, or incorporate, almost any rules they desire, and the AAA Rules for Wills and Trusts may not be appropriate for all clients.


VI. Conclusion

In 2003, President Rosepink appointed the Arbitration Task Force to analyze the utility of arbitration in will and trust disputes. The goals of the Task Force include developing (1) sample arbitration clauses that drafters may use in their documents, (2) arbitration rules and procedures to govern will and trust disputes, (3) a uniform statute that states may adopt to help facilitate the use of arbitration and allow for all necessary parties to be represented in such arbitration proceedings, and (4) a training program for ACTEC Fellows interested in acting as arbitrators to create a deep and experienced body of arbitrators. The Task Force is currently moving forward with each of these goals. ACTEC Fellows should feel free to contact the Task Force Chairman, Bob Goldman (rgoldman@gfsestatelaw.com), with any comments or suggestions.

APPENDIX A

WASHINGTON’S TRUST AND ESTATE DISPUTE RESOLUTION ACT (TEDRA)

§ 11.96A.010. Purpose

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

HISTORY: 1999 c 42 § 102.

§ 11.96A.020. General power of courts — Intent — Plenary power of the court

(1) It is the intent of the legislature that the courts shall have full and ample power and authority under this title to administer and settle:
   (a) All matters concerning the estates and assets of incapacitated, missing, and deceased persons, including matters involving nonprobate assets and powers of attorney, in accordance with this title; and
   (b) All trusts and trust matters.

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

HISTORY: 1999 c 42 § 103.

§ 11.96A.030. Definitions

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) “Matter” includes any issue, question, or dispute involving:
   (a) The determination of any class of creditors, devisees, legatees, heirs, next of kin, or other persons interested in an estate, trust, nonprobate asset, or with respect to any other asset or property interest passing at death;
   (b) The direction of a personal representative or trustee to do or to abstain from doing any act in a fiduciary capacity;
   (c) The determination of any question arising in the administration of an estate or trust, or with respect to any nonprobate asset, or with respect to any other asset or property interest passing at death, that may include, without limitation, questions relating to: (i) The construction of wills, trusts, community property agreements, and other writings; (ii) a change of personal representative or trustee; (iii) a change of the situs of a trust; (iv) an accounting from a personal representative or trustee; or (v) the determination of fees for a personal representative or trustee;
   (d) The grant to a personal representative or trustee of any necessary or desirable power not otherwise granted in the governing instrument or given by law;
   (e) The amendment, reformation, or conformation of a will or a trust instrument to comply with statutes and regulations of the United States internal revenue service in order to achieve qualification for deductions, elections, and other tax requirements, including the qualification of any gift thereunder for the benefit of a surviving spouse who is not a citizen of the United States for the estate tax marital deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a qualified domestic trust under section...
2056A of the internal revenue code, the qualification of any gift thereunder as a qualified conservation easement as permitted by federal law, or the qualification of any gift for the charitable estate tax deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust; and

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

(i) The ascertaining of any class of creditors or others for purposes of chapter 11.18 or 11.42 RCW;
(ii) The ordering of a qualified person, the notice agent, or resident agent, as those terms are defined in chapter 11.42 RCW, or any combination of them, to do or abstain from doing any particular act with respect to a nonprobate asset;
(iii) The ordering of a custodian of any of the decedent’s records relating to a nonprobate asset to do or abstain from doing any particular act with respect to those records;
(iv) The determination of any question arising in the administration under chapter 11.18 or 11.42 RCW of a nonprobate asset;
(v) The determination of any questions relating to the abatement, rights of creditors, or other matter relating to the administration, settlement, or final disposition of a nonprobate asset under this title;
(vi) The resolution of any matter referencing this chapter, including a determination of any questions relating to the ownership or distribution of an individual retirement account on the death of the spouse of the account holder as contemplated by RCW 6.15.020(6);
(vii) The resolution of any other matter that could affect the nonprobate asset.

(2) “Notice agent” has the meanings given in RCW 11.42.010.

(3) “Nonprobate assets” has the meaning given in RCW 11.02.005.

(4) “Party” or “parties” means each of the following persons who has an interest in the subject of the particular proceeding and whose name and address are known to, or are reasonably ascertainable by, the petitioner:
(a) The trustor if living;
(b) The trustee;
(c) The personal representative;
(d) An heir;
(e) A beneficiary, including devisees, legatees, and trust beneficiaries;
(f) The surviving spouse of a decedent with respect to his or her interest in the decedent’s property;
(g) A guardian ad litem;
(h) A creditor;
(i) Any other person who has an interest in the subject of the particular proceeding;
(j) The attorney general if required under RCW 11.110.120;
(k) Any duly appointed and acting legal representative of a party such as a guardian, special representative, or attorney in fact;
(l) Where applicable, the virtual representative of any person described in this subsection the giving of notice to whom would meet notice requirements as provided in RCW 11.96A.120;
(m) Any notice agent, resident agent, or a qualified person, as those terms are defined in chapter 11.42 RCW; and

(n) The owner or the personal representative of the estate of the deceased owner of the nonprobate asset that is the subject of the particular proceeding, if the subject of the particular proceeding relates to the beneficiary’s liability to a decedent’s estate or creditors under RCW 11.18.200.

(5) “Persons interested in the estate or trust” means the trustor, if living, all persons beneficially interested in the estate or trust, persons holding powers over the trust or estate assets, the attorney general in the case of any charitable trust where the attorney general would be a necessary party to judicial proceedings concerning the trust, and any personal representative or trustee of the estate or trust.

(6) “Principal place of administration of the trust” means the trustee’s usual place of business where the day-to-day records pertaining to the trust are kept, or the trustee’s residence if the trustee has no such place of business.

(7) The “situs” of a trust means the place where the principal place of administration of the trust is located, unless otherwise provided in the instrument creating the trust.

(8) “Trustee” means any acting and qualified trustee of the trust.

(9) “Representative” and other similar terms refer to a person who virtually represents another under RCW 11.96A.120.

HISTORY: 2002 c 66 § 2; 1999 c 42 § 104.
§ 11.96A.040. Original jurisdiction in probate and trust matters — Powers of court

1. The superior court of every county has original subject matter jurisdiction over the probate of wills and the administration of estates of incapacitated, missing, and deceased individuals in all instances, including without limitation:
   a. When a resident of the state dies;
   b. When a nonresident of the state dies in the state; or
   c. When a nonresident of the state dies outside the state.

2. The superior court of every county has original subject matter jurisdiction over trusts and all matters relating to trusts.

3. The superior courts may: Probate or refuse to probate wills, appoint personal representatives, administer and settle the affairs and the estates of incapacitated, missing, or deceased individuals including but not limited to decedents’ nonprobate assets; administer and settle matters that relate to nonprobate assets and arise under chapter 11.18 or 11.42 RCW; administer and settle all matters relating to trusts; administer and settle matters that relate to powers of attorney; award processes and cause to come before them all persons whom the courts deem it necessary to examine; order and cause to be issued all such writs and any other orders as are proper or necessary; and do all other things proper or incident to the exercise of jurisdiction under this section.

4. The subject matter jurisdiction of the superior court applies without regard to venue. A proceeding or action by or before a superior court is not defective or invalid because of the selected venue if the court has jurisdiction of the subject matter of the action.

HISTORY: 2001 c 203 § 9; 1999 c 42 § 201.

§ 11.96A.050. Venue in proceedings involving probate or trust matters

1. Venue for proceedings pertaining to trusts shall be:
   a. For testamentary trusts established under wills probated in the state of Washington, in the superior court of the county where letters testamentary were granted to a personal representative of the estate subject to the will or, in the alternative, the superior court of the county of the situs of the trust; and
   b. For all other trusts, in the superior court of the county in which the situs of the trust is located, or, if the situs is not located in the state of Washington, in any county.

2. Venue for proceedings subject to chapter 11.88 or 11.92 RCW shall be determined under the provisions of those chapters.

3. Venue for proceedings pertaining to the probate of wills, the administration and disposition of a decedent’s property, including nonprobate assets, and any other matter not identified in subsection (1) or (2) of this section, may be in any county in the state of Washington. A party to a proceeding may request that venue be changed if the request is made within four months of the mailing of the notice of appointment and pendency of probate required by RCW 11.28.237, and except for good cause shown, venue must be moved as follows:
   a. If the decedent was a resident of the state of Washington at the time of death, to the county of the decedent’s residence; or
   b. If the decedent was not a resident of the state of Washington at the time of death, to any of the following:
      i. Any county in which any part of the probate estate might be;
      ii. If there are no probate assets, any county where any nonprobate asset might be; or
      iii. The county in which the decedent died.

4. Once letters testamentary or of administration have been granted in the state of Washington, all orders, settlements, trials, and other proceedings under this title shall be had or made in the county in which such letters have been granted unless venue is moved as provided in subsection (2) of this section.

5. Venue for proceedings pertaining to powers of attorney shall be in the superior court of the county of the principal’s residence, except for good cause shown.

6. If venue is moved, an action taken before venue is changed is not invalid because of the venue.

7. Any request to change venue that is made more than four months after the commencement of the action may be granted in the discretion of the court.

§ 11.96A.060. Exercise of powers — Orders, writs, process, etc.

The court may make, issue, and cause to be filed or served, any and all manner and kinds of orders, judgments, citations, notices, summons, and other writs and processes that might be considered proper or necessary in the exercise of the jurisdiction or powers given or intended to be given by this title.

HISTORY: 1999 c 42 § 203.

§ 11.96A.070. Statutes of limitation

(1) (a) An action against the trustee of an express trust for a breach of fiduciary duty must be brought within three years from the earlier of: (i) The time the alleged breach was discovered or reasonably should have been discovered; (ii) the discharge of a trustee from the trust as provided in RCW 11.98.041 or by agreement of the parties under RCW 11.96A.220; or (iii) the time of termination of the trust or the trustee’s repudiation of the trust.

(b) The provisions of (a) of this subsection apply to all express trusts, no matter when created, however it shall not apply to express trusts created before June 10, 1959, until the date that is three years after January 1, 2000.

(c) For purposes of this section, “express trust” does not include resulting trusts, constructive trusts, business trusts in which certificates of beneficial interest are issued to the beneficiary, investment trusts, voting trusts, trusts in the nature of mortgages or pledges, trusts created by the judgment or decree of a court not sitting in probate, liquidation trusts, or trusts for the sole purpose of paying dividends, interest, interest coupons, salaries, wages, pensions, or profits, trusts created in deposits in any financial institution under chapter 30.22 RCW, unless any such trust that is created in writing specifically incorporates this chapter in whole or in part.

(2) Except as provided in RCW 11.96A.250 with respect to special representatives, an action against a personal representative for alleged breach of fiduciary duty by an heir, legatee, or other interested party must be brought before discharge of the personal representative.

(3) The legislature hereby confirms the long standing public policy of promoting the prompt and efficient resolution of matters involving trusts and estates. To further implement this policy, the legislature adopts the following statutory provisions in order to: (a) Encourage and facilitate the participation of qualified individuals as special representatives; (b) serve the public’s interest in having a prompt and efficient resolution of matters involving trusts or estates; and (c) promote complete and final resolution of proceedings involving trusts and estates.

(i) Actions against a special representative must be brought before the earlier of:

(A) Three years from the discharge of the special representative as provided in RCW 11.96A.250; or

(B) The entry of an order by a court of competent jurisdiction under RCW 11.96A.240 approving the written agreement executed by all interested parties in accord with the provisions of RCW 11.96A.220.

(ii) If a legal action is commenced against the special representative after the expiration of the period during which claims may be brought against the special representative as provided in (c)(i) of this subsection, alleging property damage, property loss, or other civil liability caused by or resulting from an alleged act or omission of the special representative arising out of or by reason of the special representative’s duties or actions as special representative, the special representative shall be indemnified: (A) From the assets held in the trust or comprising the estate involved in the dispute; and (B) by the persons bringing the legal action, for all expenses, attorneys’ fees, judgments, settlements, decrees, or amounts due and owing or paid in satisfaction of or incurred in the defense of the legal action. To the extent possible, indemnification must be made first by the persons bringing the legal action, second from that portion of the trust or estate that is held for the benefit of, or has been distributed or applied to, the persons bringing the legal action, and third from the other assets held in the trust or comprising the estate involved in the dispute.

(4) The tolling provisions of RCW 4.16.190 apply to this chapter except that the running of a statute of limitations under subsection (1) or (2) of this section, or any other applicable statute of limitations for any matter that is the subject of dispute under this chapter, is not tolled as to an individual who had a guardian ad litem, limited or general guardian of the estate, or a special representative to represent the person during the probate or dispute resolution proceeding.

HISTORY: 1999 c 42 § 204.

§ 11.96A.080. Persons entitled to judicial proceedings for declaration of rights or legal relations

(1) Subject to the provisions of RCW 11.96A.260 through 11.96A.320, any party may have a judicial proceeding for the declaration of rights or legal relations with respect to any matter, as defined by RCW 11.96A.030; the
resolution of any other case or controversy that arises under the Revised Code of Washington and references judicial proceedings under this title; or the determination of the persons entitled to notice under RCW 11.96A.110 or 11.96A.120.

(2) The provisions of this chapter apply to disputes arising in connection with estates of incapacitated persons unless otherwise covered by chapters 11.88 and 11.92 RCW. The provisions of this chapter shall not supersede, but shall supplement, any otherwise applicable provisions and procedures contained in this title, including without limitation those contained in chapter 11.20, 11.24, 11.28, 11.40, 11.42, or 11.56 RCW. The provisions of this chapter shall not apply to actions for wrongful death under chapter 4.20 RCW.

HISTORY: 1999 c 42 § 301.

§ 11.96A.090. Judicial proceedings

(1) A judicial proceeding under this title is a special proceeding under the civil rules of court. The provisions of this title governing such actions control over any inconsistent provision of the civil rules.

(2) 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 nonprobate asset.

(3) Once commenced, the action may be consolidated with an existing proceeding or converted to a separate action upon the motion of a party for good cause shown, or by the court on its own motion.

(4) 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.

HISTORY: 1999 c 42 § 302.

§ 11.96A.100. Procedural rules

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 asset, notice must be provided by summons only with respect to those parties who were not already parties to the existing judicial proceedings;

(3) The summons need only contain the following language or substantially similar language:

SUPERIOR COURT OF WASHINGTON
FOR (......) COUNTY

IN RE ....
)

) No ...
)

) Summons

)

TO THE RESPONDENT OR OTHER INTERESTED PARTY: A petition has been filed in the superior court of Washington for (...) County. Petitioner’s claim is stated in the petition, a copy of which is served upon you with this summons.
In order to defend against or to object to the petition, you must answer the petition by stating your defense or objections in writing, and by serving your answer upon the person signing this summons not later than five days before the date of the hearing on the petition. Your failure to answer within this time limit might result in a default judgment being entered against you without further notice. A default judgment grants the petitioner all that the petitioner seeks under the petition because you have not filed an answer.

If you wish to seek the advice of a lawyer, you should do so promptly so that your written answer, if any, may be served on time.

This summons is issued under RCW 11.96A.100(3).

(Signed) ............

Print or Type Name

Dated: ..... 

Telephone Number: ...... 

(4) Subject to other applicable statutes and court rules, the clerk of each of the superior courts shall fix the time for any hearing on a matter on application by a party, and no order of the court shall be required to fix the time or to approve the form or content of the notice of a hearing;

(5) The answer to the petition and any counterclaims or cross-claims must be served on the parties or the parties’ virtual representatives and filed with the court at least five days before the date of the hearing, and all replies to the counterclaims and cross-claims must be served on the parties or the parties’ virtual representatives and filed with the court at least two days before the date of the hearing;

(6) Proceedings under this chapter are subject to the mediation and arbitration provisions of this chapter. Except as specifically provided in RCW 11.96A.310, the provisions of chapter 7.06 RCW do not apply;

(7) Testimony of witnesses may be by affidavit;

(8) Unless requested otherwise by a party in a petition or answer, the initial hearing must be a hearing on the merits to resolve all issues of fact and all issues of law;

(9) Any party may move the court for an order relating to a procedural matter, including discovery, and for summary judgment, in the original petition, answer, response, or reply, or in a separate motion, or at any other time; and

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

HISTORY: 2001 c 14 § 1; 1999 c 42 § 303.

§ 11.96A.110. Notice in judicial proceedings under this title requiring notice

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

(2) Proof of the service or mailing required in this section must be made by affidavit or declaration filed at or before the hearing.

HISTORY: 1999 c 42 § 304.

§ 11.96A.120. Application of doctrine of virtual representation

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

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

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

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

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

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

(4) An action taken by the court is conclusive and binding upon each person receiving actual or constructive notice or who is otherwise virtually represented.

HISTORY: 2001 c 203 § 11; 1999 c 42 § 305.

§ 11.96A.130. Special notice

Nothing in this chapter eliminates the requirement to give notice to a person who has requested special notice under RCW 11.28.240 or 11.92.150.

HISTORY: 1999 c 42 § 306.

§ 11.96A.140. Waiver of notice

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


§ 11.96A.150. Cost — Attorneys’ fees

(1) Either the superior court or the court on appeal may, in its discretion, order costs, including reasonable attorneys’ fees, to be awarded to any party: (a) From any party to the proceedings; (b) from the assets of the estate or trust involved in the proceedings; or (c) from any nonprobate asset that is the subject of the proceedings. The court may order the costs to be paid in such amount and in such manner as the court determines to be equitable.

(2) This section applies to all proceedings governed by this title, including but not limited to proceedings involving trusts, decedent’s estates and properties, and guardianship matters. This section shall not be construed as being limited by any other specific statutory provision providing for the payment of costs, including RCW 11.68.070 and 11.24.050, unless such statute specifically provides otherwise. This statute [section] shall apply to matters involving guardians and guardians ad litem and shall not be limited or controlled by the provisions of *RCW 11.88.090(9).

HISTORY: 1999 c 42 § 308.

§ 11.96A.160. Appointment of guardian ad litem

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

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

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

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

HISTORY: 1999 c 42 § 309

§ 11.96A.170. Trial by jury

If a party is entitled to a trial by jury and a jury is demanded, and the issues are not sufficiently made up by the written pleadings on file, the court, on due notice, shall settle and frame the issues to be tried. If a jury is not demanded, the court shall try the issues, and sign and file its findings and decision in writing, as provided for in civil actions.

HISTORY: 1999 c 42 § 310.

§ 11.96A.180. Execution on judgments

Judgment on the issues, as well as for costs, may be entered and enforced by execution or otherwise by the court as in civil actions.

HISTORY: 1999 c 42 § 311.

§ 11.96A.190. Execution upon trust income or vested remainder — Permitted, when

Nothing in RCW 6.32.250 shall forbid execution upon the income of any trust created by a person other than the
judgment debtor for debt arising through the furnishing of the necessities of life to the beneficiary of such trust; or as to such income forbid the enforcement of any order of the superior court requiring the payment of support for the children under the age of eighteen of any beneficiary; or forbid the enforcement of any order of the superior court subjecting the vested remainder of any such trust upon its expiration to execution for the debts of the remainderman.

HISTORY: 1999 c 42 § 312.

§ 11.96A.200. Appellate review

An interested party may seek appellate review of a final order, judgment, or decree of the court respecting a judicial proceeding under this title. The review must be done in the manner and way provided by law for appeals in civil actions.

HISTORY: 1999 c 42 § 313.

§ 11.96A.210. Purpose

The purpose of RCW 11.96A.220 through 11.96A.250 is to provide a binding nonjudicial procedure to resolve matters through written agreements among the parties interested in the estate or trust. The procedure is supplemental to, and may not derogate from, any other proceeding or provision authorized by statute or the common law.

HISTORY: 1999 c 42 § 401.

§ 11.96A.220. Binding agreement

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

If a party who virtually represents another under RCW 11.96A.120 signs the agreement, then the party’s signature constitutes the signature of all persons whom the party virtually represents, and all the virtually represented persons shall be bound by the agreement.

HISTORY: 1999 c 42 § 402.

§ 11.96A.230. Entry of agreement with court — Effect

(1) Any party, or a party’s legal representative, may file the written agreement or a memorandum summarizing the written agreement with the court having jurisdiction over the estate or trust. The agreement or a memorandum of its terms may be filed within thirty days of the agreement’s execution by all parties only with the written consent of the special representative. The agreement or a memorandum of its terms may be filed after a special representative has commenced a proceeding under RCW 11.96A.240 only after the court has determined that the special representative has adequately represented and protected the parties represented. Failure to complete any action authorized or required under this subsection does not cause the written agreement to be ineffective and the agreement is nonetheless binding and conclusive on all persons interested in the estate or trust.

(2) On filing the agreement or memorandum, the agreement will be deemed approved by the court and is equivalent to a final court order binding on all persons interested in the estate or trust.

HISTORY: 2001 c 14 § 2; 1999 c 42 § 403.
§ 11.96A.240. Judicial approval of agreement

Within thirty days of execution of the agreement by all parties, the special representative may note a hearing for presentation of the written agreement to a court of competent jurisdiction. The special representative shall provide notice of the time and date of the hearing to each party to the agreement whose address is known, unless such notice has been waived. Proof of mailing or delivery of the notice must be filed with the court. At such hearing the court shall review the agreement on behalf of the parties represented by the special representative. The court shall determine whether or not the interests of the represented parties have been adequately represented and protected, and an order declaring the court’s determination shall be entered. If the court determines that such interests have not been adequately represented and protected, the agreement shall be declared of no effect.

HISTORY: 1999 c 42 § 404.

§ 11.96A.250. Special representative

(1) (a) The personal representative or trustee may petition the court having jurisdiction over the matter for the appointment of a special representative to represent a person who is interested in the estate or trust and: (i) Who is a minor; (ii) who is incompetent or disabled; (iii) who is yet unborn or unascertained; or (iv) whose identity or address is unknown. The petition may be heard by the court without notice.

(b) In appointing the special representative the court shall give due consideration and deference to any nomination(s) made in the petition, the special skills required in the representation, and the need for a representative who will act independently and prudently. The nomination of a person as special representative by the personal representative or trustee and the person’s willingness to serve as special representative are not grounds by themselves for finding a lack of independence, however, the court may consider any interests that the nominating fiduciary may have in the estate or trust in making the determination.

(c) The special representative may enter into a binding agreement on behalf of the person or beneficiary. The special representative may be appointed for more than one person or class of persons if the interests of such persons or class are not in conflict. The petition shall be verified. The petition and order appointing the special representative may be in the following form:

CAPTION PETITION FOR APPOINTMENT
OF CASE OF SPECIAL REPRESENTATIVE UNDER RCW 11.96A.250

The undersigned petitioner petitions the court for the appointment of a special representative in accordance with RCW 11.96A.250 and shows the court as follows:

1. Petitioner. Petitioner ...... is the qualified and presently acting (personal representative) (trustee) of the above (estate) (trust) having been named (personal representative) (trustee) under (describe will and reference probate order or describe trust instrument).

2. Issue Concerning (Estate) (Trust) Administration. A question concerning administration of the (estate) (trust) has arisen as to (describe issue, for example: Related to interpretation, construction, administration, distribution). The issues are appropriate for determination under RCW 11.96A.250.

3. Beneficiaries. The beneficiaries of the (estate) (trust) include persons who are unborn, unknown, or unascertained persons, or who are under eighteen years of age.
4. Special Representative. The nominated special representative ....... is a lawyer licensed to practice before the courts of this state or an individual with special skill or training in the administration of estates or trusts. The nominated special representative does not have an interest in the affected estate or trust and is not related to any person interested in the estate or trust. The nominated special representative is willing to serve. The petitioner has no reason to believe that the nominated special representative will not act in an independent and prudent manner and in the best interests of the represented parties. (It is recommended that the petitioner also include information specifying the particular skills of the nominated special representative that relate to the matter in issue.)

5. Resolution. Petitioner desires to achieve a resolution of the questions that have arisen concerning the (estate) (trust). Petitioner believes that proceeding in accordance with the procedures permitted under RCW 11.96A.210 through 11.96A.250 would be in the best interests of the (estate) (trust) and the beneficiaries.

6. Request of Court. Petitioner requests that ......, an attorney licensed to practice in the State of Washington,

(OR)

...... an individual with special skill or training in the administration of estates or trusts

be appointed special representative for those beneficiaries who are not yet adults, as well as for the unborn, unknown, and unascertained beneficiaries, as provided under RCW 11.96A.250.

DATED this ... day of .........., ...

..............................................

(Petitioner or petitioner’s legal representative)

VERIFICATION

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.
DATED ......, ......, at ......, Washington.

........

(Petitioner or other person having knowledge)
THIS MATTER having come on for hearing before this Court on Petition for Appointment of Special Representative filed herein, and it appearing that it would be in the best interests of the (estate) (trust) described in the Petition to appoint a special representative to address the issues that have arisen concerning the (estate) (trust) and the Court finding that the facts stated in the Petition are true, now, therefore,

IT IS ORDERED that ...... is appointed under RCW 11.96A.250 as special representative for the (estate) (trust) beneficiaries who are not yet adult age, and for unborn, unknown, or unascertained beneficiaries to represent their respective interests in the (estate) (trust) as provided in RCW 11.96A.250. The special representative shall be discharged of responsibility with respect to the (estate) (trust) at such time as a written agreement is executed resolving the present issues, all as provided in that statute, or if an agreement is not reached within six months from entry of this Order, the special representative appointed under this Order shall be discharged of responsibility, subject to subsequent reappointment under RCW 11.96A.250.

DONE IN OPEN COURT this ... day of .........., ...  

............................................  

JUDGE/COURT COMMISSIONER  

(2) Upon appointment by the court, the special representative shall file a certification made under penalty of perjury in accordance with RCW 9A.72.085 that he or she (a) is not interested in the estate or trust; (b) is not related to any person interested in the estate or trust; (c) is willing to serve; and (d) will act independently, prudently, and in the best interests of the represented parties.

(3) The special representative must be a lawyer licensed to practice before the courts of this state or an individual with special skill or training in the administration of estates or trusts. The special representative may not have an interest in the affected estate or trust, and may not be related to a person interested in the estate or trust. The special representative is entitled to reasonable compensation for services that must be paid from the principal of the estate or trust whose beneficiaries are represented.

(4) The special representative shall be discharged from any responsibility and shall have no further duties with respect to the estate or trust or with respect to any person interested in the estate or trust, on the earlier of: (a) The expiration of six months from the date the special representative was appointed unless the order appointing the special representative provides otherwise, or (b) the execution of the written agreement by all parties or their virtual representatives. Any action against a special representative must be brought within the time limits provided by RCW 11.96A.070(3)(c)(i).

HISTORY: 2001 c 14 § 3; 1999 c 42 § 405.

§ 11.96A.260. Findings — Intent

The legislature finds that it is in the interest of the citizens of the state of Washington to encourage the prompt and early resolution of disputes in trust, estate, and nonprobate matters. The legislature endorses the use of dispute
resolution procedures by means other than litigation. The legislature also finds that the former chapter providing for the nonjudicial resolution of trust, estate, and nonprobate disputes, *chapter 11.96 RCW, has resulted in the successful resolution of thousands of disputes since 1984. The nonjudicial procedure has resulted in substantial savings of public funds by removing those disputes from the court system. Enhancement of the statutory framework supporting the nonjudicial process in *chapter 11.96 RCW would be beneficial and would foster even greater use of nonjudicial dispute methods to resolve trust, estate, and nonprobate disputes. The legislature further finds that it would be beneficial to allow parties to disputes involving trusts, estates, and nonprobate assets to have access to a process for required mediation followed by arbitration using mediators and arbitrators experienced in trust, estate, and nonprobate matters. Finally, the legislature also believes it would be beneficial to parties with disputes in trusts, estates, and nonprobate matters to clarify and streamline the statutory framework governing the procedures governing these cases in the court system.

Therefore, the legislature adopts RCW 11.96A.270 through 11.96A.320, that enhance *chapter 11.96 RCW and allow required mediation and arbitration in disputes involving trusts, estates, and nonprobate matters that are brought to the courts. RCW 11.96A.270 through 11.96A.320 also set forth specific civil procedures for handling trust and estate disputes in the court system. It is intended that the adoption of RCW 11.96A.270 through 11.96A.320 will encourage and direct all parties in trust, estate, and nonprobate matter disputes, and the court system, to provide for expeditious, complete, and final decisions to be made in disputed trust, estate, and nonprobate matters.

HISTORY: 1999 c 42 § 501.

§ 11.96A.270. Intent — Parties can agree otherwise

The intent of RCW 11.96A.260 through 11.96A.320 is to provide for the efficient settlement of disputes in trust, estate, and nonprobate matters through mediation and arbitration by providing any party the right to proceed first with mediation and then arbitration before formal judicial procedures may be utilized. Accordingly, any of the requirements or rights under RCW 11.96A.260 through 11.96A.320 are subject to any contrary agreement between the parties or the parties’ virtual representatives.


§ 11.96A.280. Scope

A party may cause the matter to be presented for mediation and then arbitration, as provided under RCW 11.96A.260 through 11.96A.320. If a party causes the matter to be presented for resolution under RCW 11.96A.260 through 11.96A.320, then judicial resolution of the matter, as provided in RCW 11.96A.060 or by any other civil action, is available only by complying with the mediation and arbitration provisions of RCW 11.96A.260 through 11.96A.320.

HISTORY: 1999 c 42 § 503.

§ 11.96A.290. Superior court — Venue

As used in RCW 11.96A.260 through 11.96A.320, “superior court” means: (1) Before the commencement of any legal proceedings, the appropriate superior court with respect to the matter as provided in RCW 11.96A.040; and (2) if legal proceedings have been commenced with respect to the matter, the superior court in which the proceedings are pending.

HISTORY: 1999 c 42 § 504.

(Continued on page 283)
§ 11.96A.300. Mediation procedure

(1) Notice of mediation. A party may cause the matter to be subject to mediation by service of written notice of mediation on all parties or the parties’ virtual representatives as follows:

(a) If no hearing has been set. If no hearing on the matter has been set, by serving notice in substantially the following form before any petition setting a hearing on the matter is filed with the court:

NOTICE OF MEDIATION UNDER RCW 11.96A.300

To: (Parties)

Notice is hereby given that the following matter shall be resolved by mediation under RCW 11.96A.300:

(State nature of matter)

This matter must be resolved using the mediation procedures of RCW 11.96A.300 unless a petition objecting to mediation is filed with the superior court within twenty days of service of this notice. If a petition objecting to mediation is not filed within the twenty-day period, RCW 11.96A.300(4) requires you to furnish to all other parties or their virtual representatives a list of acceptable mediators within thirty days of your receipt of this notice.

(Optional: Our list of acceptable mediators is as follows:)

DATED: .......

.............................................

(Party or party’s legal representative)

(b) If a hearing has been set. If a hearing on the matter has been set, by filing and serving notice in substantially the following form at least three days prior to the hearing that has been set on the matter:
NOTICE OF MEDIATION UNDER RCW 11.96A.300

To: (Parties)

Notice is hereby given that the following matter shall be resolved by mediation under RCW 11.96A.300:

(State nature of matter)

This matter must be resolved using the mediation procedures of RCW 11.96A.300 unless the court determines at the hearing set for ... o’clock on .........., (identify place of already set hearing), that mediation shall not apply pursuant to RCW 11.96A.300(3). If the court determines that mediation shall not apply, the court may decide the matter at the hearing, require arbitration, or direct other judicial proceedings.

(Optional: Our list of acceptable mediators is as follows:)

DATED: ........

..................................................

(Party or party’s legal representative)

(2) Procedure when notice of mediation served before a hearing is set. The following provisions apply when notice of mediation is served before a hearing on the matter is set:

(a) The written notice required in subsection (1)(a) of this section may be served at any time without leave of the court.

(b) Any party may object to a notice of mediation under subsection (1)(a) of this section by filing a petition with the superior court and serving the petition on all parties or the parties’ virtual representatives. The party objecting to notice of mediation under subsection (1)(a) of this section must file and serve the petition objecting to mediation no later than twenty days after receipt of the written notice of mediation. The petition may include a request for determination of matters subject to judicial resolution under RCW 11.96A.080 through 11.96A.200, and may also request that the matters in issue be decided at the hearing.

(c) The hearing on the petition objecting to mediation must be heard no later than twenty days after the filing of that petition.

(d) The party objecting to mediation must give notice of the hearing to all other parties at least ten days before the hearing and must include a copy of the petition.
At the hearing, the court shall order that mediation proceed except for good cause shown. Such order shall not be subject to appeal or revision. If the court determines that the matter should not be subject to mediation, the court shall dispose of the matter by: (i) Deciding the matter at that hearing, but only if the petition objecting to mediation contains a request for that relief, (ii) requiring arbitration, or (iii) directing other judicial proceedings.

(3) Procedure when notice of mediation served after hearing set. If the written notice of mediation required in subsection (1)(b) of this section is timely filed and served by a party and another party objects to mediation, by petition or orally at the hearing, the court shall order that mediation proceed except for good cause shown. Such order shall not be subject to appeal or revision. If the court determines that the matter should not be subject to mediation, the court shall dispose of the matter by: (a) Deciding the matter at that hearing, (b) requiring arbitration, or (c) directing other judicial proceedings.

(4) Selection of mediator; mediator qualifications.
   (a) If a petition objecting to mediation is not filed as provided in subsection (3) of this section, or if a court determines that mediation shall apply, each party shall, within thirty days of receipt of the initial notice or within twenty days after the court determination, whichever is later, furnish all other parties or the parties’ virtual representatives a list of qualified and acceptable mediators. If the parties cannot agree on a mediator within ten days after the list is required to be furnished, a party may petition the court to appoint a mediator. All parties may submit a list of qualified and acceptable mediators to the court no later than the date on which the hearing on the petition is to be held. At the hearing the court shall select a qualified mediator from lists of acceptable mediators provided by the parties.

   (b) A qualified mediator must be: (i) An attorney licensed to practice before the courts of this state having at least five years of experience in estate and trust matters, (ii) an individual, who may be an attorney, with special skill or training in the administration of trusts and estates, or (iii) an individual, who may be an attorney, with special skill or training as a mediator. The mediator may not have an interest in an affected estate, trust, or nonprobate asset, and may not be related to a party.

(5) Date for mediation. Upon designation of a mediator by the parties or court appointment of a mediator, the mediator and the parties or the parties’ virtual representatives shall establish a date for the mediation. If a date cannot be agreed upon within ten days of the designation or appointment of the mediator, a party may petition the court to set a date for the mediation session.

(6) Duration of mediation. The mediation must last at least three hours unless the matter is earlier resolved.

(7) Mediation agreement. A resolution of the matter that is the subject of the mediation must be evidenced by a nonjudicial dispute resolution agreement under RCW 11.96A.220.

(8) Costs of mediation. Costs of the mediation, including reasonable compensation for the mediator’s services, shall be borne equally by the parties. The details of those costs and fees, including the compensation of the mediator, must be set forth in a mediation agreement between the mediator and all parties to the matter. Each party shall bear its own costs and expenses, including legal fees and witness expenses, in connection with the mediation proceeding: (a) Except as may occur otherwise as provided in RCW 11.96A.320, or (b) unless the matter is not resolved by mediation and the arbitrator or court finally resolving the matter directs otherwise.

HISTORY: 2001 c 14 § 4; 1999 c 42 § 505.

§ 11.96A.310. Arbitration procedure

(1) When arbitration available. Arbitration under RCW 11.96A.260 through 11.96A.320 is available only if:
   (a) A party has first petitioned for mediation under RCW 11.96A.300 and such mediation has been concluded;
   (b) The court has determined that mediation under RCW 11.96A.300 is not required and has not ordered that the matter be disposed of in some other manner;
   (c) All of the parties or the parties’ virtual representatives have agreed not to use the mediation procedures of RCW 11.96A.300; or
   (d) The court has ordered that the matter must be submitted to arbitration.

(2) Commencement of arbitration. Arbitration must be commenced as follows:
   (a) If the matter is not settled through mediation under RCW 11.96A.300, or the court orders that mediation is not required, a party may commence arbitration by serving written notice of arbitration on all other parties or the parties’ virtual representatives. The notice must be served no later than twenty days after the later of the conclusion of the mediation procedure, if any, or twenty days after entry of the order providing that mediation is not required. If
arbitration is ordered by the court under RCW 11.96A.300(3), arbitration must proceed in accordance with the order.

(b) If the parties or the parties’ virtual representatives agree that mediation does not apply and have not agreed to another procedure for resolving the matter, a party may commence arbitration without leave of the court by serving written notice of arbitration on all other parties or the parties’ virtual representatives at any time before or at the initial judicial hearing on the matter. After the initial judicial hearing on the matter, the written notice required in subsection (1) of this section may only be served with leave of the court.

Any notice required by this section must be in substantially the following form:

NOTICE OF ARBITRATION UNDER RCW 11.96A.310

To: (Parties)

Notice is hereby given that the following matter must be resolved by arbitration under RCW 11.96A.310:

(State nature of matter)

The matter must be resolved using the arbitration procedures of RCW 11.96A.310 unless a petition objecting to arbitration is filed with the superior court within twenty days of receipt of this notice. If a petition objecting to arbitration is not filed within the twenty-day period, RCW 11.96A.310 requires you to furnish to all other parties or the parties’ virtual representatives a list of acceptable arbitrators within thirty days of your receipt of this notice.

(Optional: Our list of acceptable arbitrators is as follows:)

DATED: ........

............................................

(Party or party’s legal representative)

(3) Objection to arbitration. A party may object to arbitration by filing a petition with the superior court and serving the petition on all parties or the parties’ virtual representatives. The objection to arbitration may be filed at any time unless a written notice of arbitration has been served, in which case the objection to arbitration must be filed and served no later than twenty days after receipt of the written notice of arbitration. The hearing on the objection to arbitration must be heard no later than twenty days after the filing of that petition. The party objecting to arbitration must give notice of the hearing to all parties at least ten days before the hearing and shall include a copy of the petition. At the hearing, the court shall order that arbitration proceed except for good cause shown.

(30) ACTEC Journal 286 (2005)
Such order shall not be subject to appeal or revision. If the court determines that the matter should not be subject to arbitration, the court shall dispose of the matter by: (a) Deciding the matter at that hearing, but only if the petition objection to arbitration contains a request for such relief; or (b) directing other judicial proceedings.

(4) Selection of arbitrator; qualifications of arbitrator.

(a) If a petition objection to arbitration is not filed as provided in subsection (3) of this section, or if a court determines that arbitration must apply, each party shall, within thirty days of receipt of the initial notice or within twenty days after the court determination, whichever is later, furnish all other parties or the parties’ virtual representatives a list of acceptable arbitrators. If the parties cannot agree on an arbitrator within ten days after the list is required to be furnished, a party may petition the court to appoint an arbitrator. All parties may submit a list of qualified and acceptable arbitrators to the court no later than the date on which the hearing on the petition is to be held. At the hearing the court shall select a qualified arbitrator from lists of acceptable arbitrators provided by the parties.

(b) A qualified arbitrator must be an attorney licensed to practice before the courts of this state having at least five years of experience in trust or estate matters or five years of experience in litigation or other formal dispute resolution involving trusts or estates, or an individual, who may be an attorney, with special skill or training with respect to the matter. The arbitrator may be the same person selected and used as a mediator under the mediation procedures of RCW 11.96A.300.

(5) Arbitration rules. Arbitration must be under chapter 7.06 RCW, mandatory arbitration of civil actions, as follows:

(a) Chapter 7.06 RCW, the superior court mandatory arbitration rules adopted by the supreme court, and any local rules for mandatory arbitration adopted by the superior court apply to this title. If the superior court has not adopted chapter 7.06 RCW, then the local rules for mandatory arbitration applicable in King county apply, except all the duties of the director of arbitration must be performed by the presiding judge of the superior court.

(b) If a party has already filed a petition with the court with respect to the matter that will be the subject of the arbitration proceedings, then all other parties to the arbitration proceedings who have not yet filed a reply there to must file a reply with the arbitrator within ten days of the date on which the arbitrator is selected or appointed.

(c) The arbitration provisions of this subsection apply to all matters in dispute. The dollar limits and restrictions to monetary damages of RCW 7.06.020 do not apply to arbitrations under this subsection. To the extent any provision in this title is inconsistent with chapter 7.06 RCW or the rules referenced in (a) of this subsection, the provisions of this title control.

(d) The compensation of the arbitrator must be set by written agreement between the parties and the arbitrator. The arbitrator must be compensated at the arbitrator’s stated rate of compensation for acting as an arbitrator of disputes in trusts, estates, and nonprobate matters unless the parties or the parties’ virtual representatives agree otherwise.

(e) Unless directed otherwise by the arbitrator in accord with subsection (6) of this section or RCW 11.96A.320, or unless the matter is not resolved by arbitration and the court finally resolving the matter directs otherwise:

(i) Costs of the arbitration, including compensation for the arbitrator’s services, must be borne equally by the parties participating in the arbitration, with the details of those costs and fees to be set forth in an arbitration agreement between the arbitrator and all parties to the matter; and

(ii) A party shall bear its own costs and expenses, including legal fees and witness expenses, in connection with the arbitration proceeding.

(f) The arbitrator and the parties shall execute a written agreement setting forth the terms of the arbitration and the process to be followed. This agreement must also contain the fee agreement provided in (d) of this section. A dispute as to this agreement must be resolved by the director of arbitration.

(g) The rules of evidence and discovery applicable to civil causes of action before the superior court as defined in RCW 11.96A.290 apply, unless the parties have agreed otherwise or the arbitrator rules otherwise.

(6) Costs of arbitration. The arbitrator may order costs, including reasonable attorneys’ fees and expert witness fees, to be paid by any party to the proceedings as justice may require.

(7) Decision of arbitrator. The arbitrator shall issue a final decision in writing within thirty days of the conclusion of the final arbitration hearing. Promptly after the issuance of the decision, the arbitrator shall serve each of the parties to the proceedings with a copy of the written arbitration decision. Proof of service shall be filed with the court. Service shall be made in conformity with CR 5(b) of the rules for superior court.

(8) Arbitration decision may be filed with the court. The arbitrator or any party to the arbitration may file the arbitrator’s decision with the clerk of the superior court at any time after its issuance. Notice of such filing shall be promptly given to each party to the arbitration proceedings.
Appeal. (a) The final decision of the arbitrator may be appealed by filing a notice of appeal with the superior court requesting a trial de novo on all issues of law and fact. The notice of appeal must be filed within thirty days after the date on which the decision was served on the party filing the notice of appeal. A trial de novo shall then be held, including a right to jury, if demanded.

(b) If an appeal is not filed within the time provided in (a) of this subsection, the arbitration decision is conclusive and binding on all parties. If the arbitrator’s decision has been filed with the clerk of the superior court, a judgment shall be entered and may be presented to the court by any party on ten days’ prior notice. The judgment when entered shall have the same force and effect as judgments in civil actions.

(10) Costs on appeal of arbitration decision. The prevailing party in any such de novo superior court decision after an arbitration result must be awarded costs, including expert witness fees and attorneys’ fees, in connection with the judicial resolution of the matter. Such costs shall be charged against the nonprevailing parties in such amount and in such manner as the court determines to be equitable. The provisions of this subsection take precedence over the provisions of RCW 11.96A.150 or any other similar provision.

HISTORY: 2001 c 14 § 5; 1999 c 42 § 506.

§ 11.96A.320. Petition for order compelling compliance

If a party does not comply with any procedure of RCW 11.96A.260 through 11.96A.310, the other party or parties may petition the superior court for an order compelling compliance. A party obtaining an order compelling compliance is entitled to reimbursement of costs and attorneys’ fees incurred in connection with: The petition and any other actions taken after the issuance of the order to compel compliance with the order, unless the court at the hearing on the petition determines otherwise for good cause shown. Reimbursement must be from the party or parties whose failure to comply was the basis for the petition.

HISTORY: 1999 c 42 § 507.

§ 11.96A.900. Short title

This chapter may be known and cited as the trust and estate dispute resolution act or “TEDRA.”

HISTORY: 1999 c 42 § 101.

§ 11.96A.901. Captions not law — 1999 c 42

Part headings and captions used in chapter 42, Laws of 1999 are not any part of the law.

HISTORY: 1999 c 42 § 701.

§ 11.96A.902. Effective date — 1999 c 42

This act takes effect January 1, 2000.

HISTORY: 1999 c 42 § 703
APPENDIX B

SAMPLE ARBITRATION CLAUSES

1. AAA Standard Clause (see www.adr.org, “Arbitration Rules for Wills and Trusts”):

   In order to save the cost of court proceedings and promote the prompt and final resolution of any dispute regarding the interpretation of my will (or my trust) or the administration of my estate or any trust under my will (or my trust), I direct that any such dispute shall be settled by arbitration administered by the American Arbitration Association under its Arbitration Rules for Will and Trusts then in effect. Nevertheless the following matters shall not be arbitrable—questions regarding my competency, attempts to remove a fiduciary, or questions concerning the amount of bind of a fiduciary. In addition, arbitration may be waived by all sui juris parties in interest.

   The arbitrator(s) shall be a practicing lawyer licensed to practice law in the state whose laws govern my will (or my trust). The arbitrator’s decision shall not be appealable to any court, but shall be final and binding on any and all persons who have or may have an interest in my estate or any trust under my will (or my trust), including unborn or incapacitated persons, such as minors or incompetents. Judgment on the arbitrator’s award may be entered in any court having jurisdiction thereof.


   In order to save the cost of court proceedings and promote the prompt and final resolution of any dispute regarding the interpretation of my will or the administration or distribution of my estate or any trust under my will, I direct that any such dispute shall be decided by any arbitrator who shall be a Fellow of the American College of Trust and Estate Counsel selected by its chair of the state which has jurisdiction of my estate or the trust in question. The arbitrator shall establish the procedures which govern the arbitration. The arbitrator’s decision shall not be appealable to any court but shall be final and binding on any and all persons who have or may have an interest in my estate or any trust under my will, including unborn or incapacitated persons, such as minor or incompetents. No guardian or trustee ad litem shall be appointed to represent the interests of such persons in any arbitration. The arbitrator’s fee shall be paid by my estate or from the principal of the trust in question.

3. S. Walter L. Nossaman and Joseph L. Wyatt, Jr., Trust Administration and Taxation, § 53.10 (Matthew Bender, 2nd Ed. Revised):

   Any controversy between the trustee and any beneficiary (or between beneficiaries) involving the construction or application of any of the terms of this trust or the administration of this trust shall be submitted to arbitration, and such arbitration shall comply with and be governed by the provisions of local law relating to arbitration proceedings (e.g., the California Arbitration Act, Sections 1280 through 1294.2 of the California Code of Civil Procedure, (except [OR including] Section 1283.05 (allowing formal pre-trial discovery)) OR “the Uniform Arbitration Act.”

   Notice of arbitration shall be given to all interested persons as provided in the trust agreement and as approved by the arbitrator and in substantial accordance with local notice statutes, e.g., California Probate Code §§ 1215 through 1215.4].

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29 This clause, as well as the clauses in Examples 1 and 4, are also set forth in Robert D. W. Landon, II and John L. McDonnell, Jr., “Using Alternative Dispute Resolution In Trust and Estate Planning and Contested Matters,” course materials from the ACTEC Summer 2003 Meeting, St. Paul, MN (June 2003).
[Optional: It is a condition to acceptance of trusteeship under this trust, and a condition to acceptance of any benefits hereunder by any beneficiary, that any such person agrees to submit any such controversy to arbitration in the manner above described. The settler intends that such alternative dispute resolution shall represent the exclusive remedy for resolving any dispute that arises in connection with this trust. No other court action shall be instituted by any trustee or beneficiary except to enforce the award.]


To save the cost and public exposure of court proceedings and to promote the prompt and final resolution of any dispute regarding the interpretation of my will or the administration of my estate or any trust under my will, but not regarding the validity of the will itself, I direct that any dispute under my will shall be settled by arbitration conducted in the following manner:

1. Any interested person, including my executor or trustee, may initiate arbitration by giving written notice to my executor, fiduciary, or trustee, as the case may be, and all other interested persons of his or her intention to arbitrate. Such notice shall explain the nature of the dispute and the remedy sought.

2. It is my hope that the parties can agree upon a single arbitrator and, to that end, I direct my executor (or trustee) to take reasonable steps to determine whether the parties can so agree. If the parties are unable to agree upon an arbitrator within thirty (30) days of the notice to arbitrate, each party shall select an attorney who is a fellow of the American College of Trust and Estate Counsel (“ACTEC”). (If either of the parties fails to appoint an ACTEC fellow within a reasonable time, my executor (or trustee) shall appoint an attorney who is an ACTEC fellow on behalf of such party.) Such attorneys shall then name a mutually acceptable ACTEC fellow to serve as sole arbitrator.

3. The arbitrator shall apply the substantive law of the state whose laws govern this will. The procedures that govern the arbitration shall be established by an agreement of the parties and, in the absence of such agreement, by the arbitrator. It is my intention that arbitration be the exclusive remedy for resolving disputes that arise in connection with my will (except any dispute regarding the validity of my will). No interested person shall institute any suit at law or equity regarding my estate except to enforce the award of the arbitrator. [OPTIONAL: Any interested person who institutes any suit in violation of this provision shall be deemed to have died on the day before such suit was filed.]

4. The decision of the arbitrator shall be final and binding and shall not be appealable to any court. Costs of the arbitration, including fees of the arbitrators and other related expenses, shall be paid from my residuary estate (or the trust in dispute) or assessed against the parties in the manner determined by the arbitrator, as a part of his decision.


Except when a trustee elects to petition the Court for instructions, if a dispute arises among any of the trustees and/or beneficiaries concerning the interpretation of or exercise of discretion under this instrument, and the dispute is not resolved by mediation, the dispute shall be submitted to and fully and finally resolved by arbitration in Honolulu, Hawaii by a Hawaii based neutral dispute resolution organization in accordance with that organization’s rules, procedures and protocols for the arbitration of disputes, then in effect. Any decision of the arbitrator(s) shall be binding upon the parties. All expenses incurred by the trustees in such proceedings, including without limitation attorneys’ fees and costs, will be an expense of administration of the trust, except with respect to a trustee who is determined by the arbitrator to have acted in bad faith.
APPENDIX C

AAA’s ARBITRATION RULES FOR WILLS AND TRUSTS

Arbitration Rules for Wills and Trusts
Effective July 1, 2003

Introduction
Every year billions of dollars are administered by executors and trustees. Occasionally disputes arise about whether those funds are being properly administered and whether the governing will or trust is being interpreted correctly by the fiduciary. Many of these disputes can be resolved by the use of arbitration, the voluntary submission of a dispute to a disinterested lawyer or lawyers with substantial experience in the area of trusts and estates for final and binding determination. Arbitration is an effective way to resolve these disputes privately, promptly, and economically.

The American Arbitration Association (AAA) is a public service, not-for-profit organization offering a broad range of dispute resolution services to business executives, attorneys, individuals, trade associations, unions, management, consumers, families, communities, and all levels of government. Services are available through AAA headquarters in New York City and through offices located in major cities throughout the United States. Hearings may be held at locations convenient for the parties and are not limited to cities with AAA offices. In addition, the AAA serves as a center for education and training, issues specialized publications, and conducts research on all forms of out-of-court dispute settlement.

Executors and trustees, and beneficiaries of estates and trusts, can voluntarily agree to arbitrate an existing dispute under these rules. However, they should review state law to determine whether a guardian ad litem is necessary to represent any minor, incapacitated, or unborn beneficiary. Testators or settlors can require that future disputes be arbitrated by inserting the following clause into their wills and trusts.

Standard Arbitration Clause
In order to save the cost of court proceedings and promote the prompt and final resolution of any dispute regarding the interpretation of my will (or my trust) or the administration of my estate or any trust under my will (or my trust), I direct that any such dispute shall be settled by arbitration administered by the American Arbitration Association under its Arbitration Rules for Wills and Trusts then in effect. Nevertheless the following matters shall not be arbitrable—questions regarding my competency, attempts to remove a fiduciary, or questions concerning the amount of bond of a fiduciary. In addition, arbitration may be waived by all sui juris parties in interest.

The arbitrator(s) shall be a practicing lawyer licensed to practice law in the state whose laws govern my will (or my trust) and whose practice has been devoted primarily to wills and trusts for at least ten years. The arbitrator(s) shall apply the substantive law (and the law of remedies, if applicable) of the state whose laws govern my will (or my trust). The arbitrator’s decision shall not be appealable to any court, but shall be final and binding on any and all persons who have or may have an interest in my estate or any trust under my will (or my trust), including unborn or incapacitated persons, such as minors or incompetents. Judgment on the arbitrator’s award may be entered in any court having jurisdiction thereof.

Administrative Fees
The AAA’s administrative fees are based on service charges. The fees cover AAA administrative services; they do not cover arbitrator compensation or expenses, if any, reporting services, or any post-award charges incurred by the parties in enforcing the award.

There is no additional administrative fee where parties to a pending arbitration attempt to mediate their dispute under the AAA’s auspices.

Mediation
The parties might wish to submit their dispute to mediation prior to arbitration. In mediation, the neutral mediator assists the parties in reaching a settlement but does not have the authority to make a binding decision or award. Mediation is administered by the AAA in accordance with its Commercial Mediation Rules.

If the parties want to use a mediator to resolve an existing dispute, they can enter into the following submission.

The parties hereby submit the following dispute to mediation administered by the American Arbitration Association under its Commercial Mediation Rules. (The clause may also provide for the qualifications of the mediator(s), the method of payment, locale of meetings, and any other item of concern to the parties.)
The services of the AAA are generally concluded with the transmittal of the award. Although there is voluntary compliance with the majority of awards, judgment on the award can be entered in a court having appropriate jurisdiction if necessary.

**Arbitration Rules for Wills and Trusts**

1. **Incorporation of These Rules into a Will or Trust** *
   A testator or settlor shall be deemed to have made these rules a part of the will or trust whenever the will or trust has provided for arbitration by the American Arbitration Association (hereinafter AAA) or under its Arbitration Rules for Wills and Trusts. These rules and any amendment of them shall apply in the form obtaining when the demand for arbitration or submission agreement is received by the AAA. The parties, by written agreement, may vary the procedures set forth in these Rules.
   *The AAA applies the *Supplementary Procedures for Consumer-Related Disputes* to arbitration clauses in agreements between individual consumers and businesses where the business has a standardized, systematic application of arbitration clauses with customers and where the terms and conditions of the purchase of standardized, consumable goods or services are non-negotiable or primarily non-negotiable in most or all of its terms, conditions, features, or choices. The product or service must be for personal or household use. The AAA will have the discretion to apply or not to apply the Supplementary Procedures and the parties will be able to bring any disputes concerning the application or non-application to the attention of the arbitrator. Consumers are not prohibited from seeking relief in a small claims court for disputes or claims within the scope of its jurisdiction, even in consumer arbitration cases filed by the business.

2. **Administrator and Delegation of Duties**
   When a will or trust provides for arbitration under these rules, the AAA is authorized to administer the arbitration. The authority and duties of the AAA are established in the will or trust and in these rules, and may be carried out through such of the AAA's representatives as it may direct. The AAA may, in its discretion, assign the administration of an arbitration to any of its regional offices.

3. **National Panel of Arbitrators**
   The AAA shall establish and maintain a state-by-state panel of will and trust arbitrators, who shall be attorneys whose practice has been primarily devoted to estate and trust matters for at least ten years, and shall appoint arbitrators from this panel as provided in these rules.

4. **Initiation under a Submission**
   Parties to any existing dispute may start an arbitration under these rules by filing at any regional office of the AAA three copies of a written submission to arbitrate under these rules, signed by the parties. It shall contain a statement of the matter in dispute, the amount involved, if any, the remedy sought, and the hearing locale requested, together with the appropriate filing fee.

5. **Initiation under an Arbitration Provision in a Will or Trust**
   Arbitration under an arbitration provision in a will or trust shall be initiated by the claimant in the following manner.
   The initiating party shall give written notice to all other parties (hereinafter respondent) of its intention to arbitrate (demand), which notice shall contain a statement setting forth the nature of the dispute, the amount involved, if any, the remedy sought, and the hearing locale requested, and shall file at any regional office of the AAA three copies of the notice and three copies of the arbitration provisions of the will or trust, together with the appropriate filing fee. The AAA shall give notice of such filing to the respondents named by the claimant.

6. **Answer**
   A respondent may file an answering statement in duplicate with the AAA within ten days after notice from the AAA, in which event the respondent shall at the same time send a copy of the answering statement to the claimant. If a counterclaim is asserted, it shall contain a statement setting forth the nature of the counterclaim, the amount involved, if any, and the remedy sought. If a counterclaim is made, the appropriate fee shall be forwarded to the AAA with the answering statement. If no answering statement is filed within the stated time, it will be treated as a denial of the claim. Failure to file an answering statement shall not operate to delay the arbitration.
7. Changes of Claims
After filing of a claim, if either party desires to make any new or different claim or counterclaim, it shall be made in writing and filed with the AAA. Simultaneously, a copy must be sent to the other party, who shall have a period of ten days from the date of such transmittal within which to file an answer with the AAA. After the arbitrator is appointed, however, no new or different claim may be submitted except with the arbitrator’s consent.

8. Procedures for Large, Complex Disputes
The AAA’s Supplementary Procedures for Large, Complex Disputes shall apply where (1) the parties agree to have those procedures apply or (2) where the disclosed claim or counterclaim exceeds $1 million, one party has requested that those procedures apply, and the AAA in its discretion determines that those procedures will apply.

9. Administrative Conferences and Mediation
At the request of any party or at the discretion of the AAA, an administrative conference with the AAA and the parties and/or their representatives will be scheduled in appropriate cases to expedite the arbitration proceedings. There is no administrative fee for this service.

Unless the parties agree otherwise, the AAA at any stage of the proceeding may arrange a mediation conference under the Commercial Mediation Rules, in order to facilitate settlement. The mediator shall not be an arbitrator appointed to the case. Where the parties to a pending arbitration agree to mediate under the AAA’s rules, no additional administrative fee is required to initiate the mediation.

10. Fixing of Locale
The parties may agree on the locale where the arbitration is to be held. If any party requests that the hearing be held in a specific locale and the other party files no objection thereto within ten days after notice of the request has been sent to it by the AAA, the locale shall be the one requested. If a party objects to the locale requested by the other party, the AAA shall have the power to determine the locale in the state whose law governs the will or trust, and its decision shall be final and binding.

11. Appointment from the Panel
If the parties have not appointed an arbitrator and have not provided any other method of appointment, the arbitrator shall be appointed in the following manner: immediately after the filing of the demand or submission, the AAA shall send simultaneously to each party to the dispute an identical list of names of persons chosen by the AAA from its will and trust panel.

Each party to the dispute shall have ten days from the transmittal date in which to strike any names objected to, number the remaining names in order of preference, and return the list to the AAA. In a single-arbitrator case, each party may strike three names on a peremptory basis. In a multi-arbitrator case, each party may strike five names on a peremptory basis. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of an arbitrator to serve. If the parties fail to agree on any of the persons named, or if acceptable arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the AAA shall have the power to make the appointment from among other members of the panel without the submission of additional lists.

12. The Number of Arbitrators
If the will or trust has not specified the number of arbitrators or if the parties have not agreed to the number of arbitrators, the dispute shall be heard and determined by one arbitrator, unless the AAA, in its discretion, directs that a greater number of arbitrators be appointed.

13. Notice to Arbitrator of Appointment
Notice of the appointment of the arbitrator, whether appointed mutually by the parties or by the AAA, shall be sent to the arbitrator by the AAA, together with a copy of these rules. The signed acceptance of the arbitrator shall be filed with the AAA prior to the opening of the first hearing.

14. Disclosure and Challenge Procedure
Any person appointed as arbitrator shall disclose to the AAA any circumstance likely to affect impartiality, including any bias or any financial or personal interest in the result of the arbitration or any past or present relation-
ship with the parties or their representatives. Upon receipt of such information from the arbitrator or another source, the AAA shall communicate the information to the parties and, if it deems it appropriate to do so, to the arbitrator and others. Upon objection of a party to the continued service of a arbitrator, the AAA shall determine whether the arbitrator should be disqualified and shall inform the parties of its decision, which shall be conclusive.

15. Vacancies
If for any reason an arbitrator is unable to perform the duties of the office, the AAA may, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled by the AAA.

In the event of a vacancy in a panel of arbitrators after the hearings have commenced, unless the parties agree otherwise, the vacancy shall be filled as provided above, and the newly constituted panel shall determine whether all or part of any prior hearing shall be repeated.

16. Preliminary Hearing
At the request of any party or at the discretion of the arbitrator or the AAA, a preliminary hearing with the parties and/or their representatives and the arbitrator may be scheduled by the arbitrator to specify issues to be resolved, to stipulate uncontested facts, to schedule hearings to resolve the dispute, and to consider other matters that will expedite the arbitration proceedings. There is no administrative fee for the first preliminary hearing.

Consistent with the expedited nature of arbitration, the arbitrator may establish (i) the extent of and schedule for production of documents and other information, (ii) identification of any witnesses to be called, and (iii) a schedule for further hearings to resolve the dispute. The arbitrator is authorized to resolve any dispute over this information exchange.

17. Date, Time, and Place of Hearing
The arbitrator shall set the date, time, and place for each hearing. The AAA shall send a notice of hearing to the parties at least ten days in advance of the hearing date, unless otherwise agreed by the parties.

18. Representation
Any party may be represented by counsel or other authorized representative. A party intending to be represented shall notify the other party and the AAA of the name, address and telephone number of the representative at least three days prior to the date set for the hearing at which that person is first to appear. When a representative initiates an arbitration or responds for a party, notice of representation is deemed to have been given.

19. Stenographic Records
Any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of these arrangements in advance of the hearing. The requesting party or parties shall pay the cost of the record.

If the transcript is agreed by the parties to be, or determined by the arbitrator to be, the official record of the proceeding, it must be made available to the arbitrator and to the other parties for inspection, at a date, time and place determined by the arbitrator.

20. Interpreters
Any party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service.

21. Attendance at Hearings; Experts
The arbitrator shall maintain the privacy of the hearings unless the law provides to the contrary. Any person having a direct interest in the arbitration is entitled to attend hearings. Although expert witnesses are generally permitted to attend the hearing, the arbitrator shall have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person.

22. Postponements
The arbitrator for good cause shown may postpone any hearing upon the request of a party or upon the arbitrator’s own initiative, and shall grant a postponement when all of the parties agree.
23. Oaths
Before proceeding with the first hearing, each arbitrator may take an oath of office and, if required by law, shall do so. The arbitrator may require witnesses to testify under oath administered by any duly qualified person and, if it is required by law or requested by any party, shall do so.

24. Majority Decision
All decisions of the arbitrators, including the award, shall be by a majority.

25. Order of Proceedings and Communication with the Arbitrator
A hearing shall be opened by the filing of the oath of the arbitrator, where required; by the recording of the date, time and place of the hearing, and the presence of the arbitrator, the parties and their representatives, if any; and by the receipt by the arbitrator of the statement of the claim and the answering statement, if any.

The arbitrator may, at the beginning of the hearing, ask for statements clarifying the issues involved. In some cases, part or all of the above will have been accomplished at the preliminary hearing conducted by the arbitrator pursuant to Section 16.

The complaining party shall then present evidence to support its claim. The defending party shall then present evidence supporting its defense. Witnesses for each party shall submit to questions or other examination. The arbitrator has the discretion to vary this procedure but shall afford a full and equal opportunity to all parties for the presentation of any material and relevant evidence.

Exhibits, when offered by either party, may be received in evidence by the arbitrator.

The names and addresses of all witnesses and a description of the exhibits in the order received shall be made a part of the record.

There shall be no direct communication between the parties and the arbitrator other than at oral hearing, unless the parties and the arbitrator agree otherwise. Any other oral or written communication from the parties to the arbitrator shall be directed to the AAA for transmittal to the arbitrator.

26. Arbitration in the Absence of a Party or Representative
Unless the law provides to the contrary, the arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement. An award shall not be made solely on the default of a party. The arbitrator shall require the party who is present to submit such evidence as the arbitrator may require for the making of an award.

27. Evidence
The parties may offer evidence that is relevant and material to the dispute, and shall produce such evidence as the arbitrator deems necessary to an understanding and determination of the dispute. An arbitrator or other person authorized by law to subpoena witnesses or documents may do so upon the request of any party or independently.

The arbitrator shall be the judge of the relevance and materiality of the evidence offered, and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all the arbitrators and all the parties, except where any of the parties is absent in default or has waived the right to be present.

28. Evidence by Affidavit and Posthearing Filing of Documents or Other Evidence
The arbitrator may receive and consider the evidence of witnesses by affidavit, but shall give it only such weight as the arbitrator deems it entitled to after consideration of any objection made to its admission.

If the parties agree or the arbitrator directs that documents or other evidence be submitted to the arbitrator after the hearing, the documents or other evidence shall be filed with the AAA for transmission to the arbitrator. All parties shall be afforded an opportunity to examine such documents or other evidence.

29. Inspection or Investigation
An arbitrator finding it necessary to make an inspection or investigation in connection with the arbitration shall direct the AAA to so advise the parties. The arbitrator shall set the date and time and the AAA shall notify the parties. Any party who so desires may be present at such an inspection or investigation. In the event that one or all parties are not present at the inspection or investigation, the arbitrator shall make a verbal or written report to the parties and afford them an opportunity to comment.

30. Interim Measures

The arbitrator may direct whatever interim measures are deemed necessary with respect to the dispute, including measures for the conservation of property, without prejudice to the rights of the parties or to the final determination of the dispute. Such interim measures may be taken in the form of an interim award and the arbitrator may require security for the costs of such measures.

31. Closing of Hearing
   The arbitrator shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies or if satisfied that the record is complete, the arbitrator shall declare the hearing closed.
   If briefs are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator for the receipt of briefs. If documents are to be filed as provided in Section 28 and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the date of closing the hearing. The time limit within which the arbitrator shall endeavor to make the award shall start to run, in the absence of other agreements by the parties, upon the closing of the hearing.

32. Reopening of Hearing
   The hearing may be reopened on the arbitrator’s initiative, or upon application of a party, at any time before the award is made.

33. Waiver of Oral Hearing
   The parties may provide, by written agreement, for the waiver of oral hearings in any case. If the parties are unable to agree as to the procedure, the AAA shall specify a fair and equitable procedure.

34. Waiver of Rules
   Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state an objection in writing shall be deemed to have waived the right to object.

35. Extensions of Time
   The parties may modify any period of time by mutual agreement. The AAA or the arbitrator may for good cause extend any period of time established by these rules, except the time for making the award. The AAA shall notify the parties of any extension.

36. Serving of Notice
   Each party shall be deemed to have consented that any papers, notices, or process necessary or proper for the initiation or continuation of an arbitration under these rules; for any court action in connection therewith; or for the entry of judgment on any award made under these rules may be served on a party by mail addressed to the party or its representative at the last known address or by personal service, in or outside the state where the arbitration is to be held, provided that reasonable opportunity to be heard with regard thereto has been granted to the party.
   The AAA and the parties may also use facsimile transmission, telex, telegram or other written forms of electronic communication to give the notices required by these rules.

37. The Award
   a. The arbitrator shall endeavor to issue the award within thirty days from the date of closing of the hearing or, if oral hearings have been waived, from the date of the AAA’s transmittal of the final statements and proofs to the arbitrator.
   b. The award shall be in writing, shall be signed by a majority of the arbitrators, and shall be executed in the manner required by law. The award shall contain the names of the parties and representatives, if any, a summary of the issues, the damages and/or other relief requested and awarded, a statement of any other issues resolved, a statement regarding the disposition of any statutory claim, the names of arbitrators, the date when the case was filed, the date of the award, the number and dates of hearings, the location of the hearings, and the signatures of the arbitrators concurring in or dissenting from the award.
   c. The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable within the scope of the claims or counterclaims being arbitrated including, but not limited to, specific performance. The arbitrator
shall, in the award, assess arbitration fees, expenses, and compensation as provided in Sections 41, 42, and 43 in favor of any party and, in the event that any administrative fees or expenses are due the AAA, in favor of the AAA.

d. If the parties settle their dispute during the course of the arbitration, the arbitrator may, upon the written agreement of those parties, set forth the terms of the agreed settlement in an award. Such an award is called a consent award.

e. Parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail addressed to a party or its representative at the last known address, personal service of the award, or the filing of the award in any other manner that is permitted by law.

38. Correction of the Award

Within twenty days after the transmittal of an award, any party, upon notice to the other parties, may request that the arbitrator correct any clerical, typographical, technical, or computational error in the award. The arbitrator is not empowered to redetermine the merits of any claim already decided.

The other parties shall be given 10 days to respond to the request. The arbitrator shall dispose of the request within twenty days after transmittal by the AAA to the arbitrator of the request and any response thereto.


The AAA shall, upon the written request of a party, furnish to the party, at its expense, certified copies of any papers in the AAA's possession that may be required in judicial proceedings relating to the arbitration.

40. Applications to Court and Exclusion of Liability

a. No judicial proceeding by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party’s right to arbitrate.

b. Neither the AAA nor any arbitrator in a proceeding under these rules is a necessary party in judicial proceedings relating to the arbitration.

c. Parties to these rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.

d. Neither the AAA nor any arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these rules.

41. Administrative Fees

As a not-for-profit organization, the AAA shall prescribe filing and other administrative fees to compensate it for the cost of providing administrative services. The fees in effect when the fee or charge is incurred shall be applicable.

The filing fee shall be advanced by the initiating party or parties, subject to final apportionment by the arbitrator in the award.

The AAA may, in the event of extreme hardship on the part of any party, defer or reduce the administrative fees.

42. Expenses

The fees and expenses of witnesses shall be paid by the party producing the witnesses. Unless the parties agree otherwise, all other expenses of the arbitration not specifically provided for in these Rules, including required travel and other expenses of the arbitrator, and AAA representatives and the cost of any proof produced at the direct request of the arbitrator, shall be borne equally by the parties, subject to final allocation by the arbitrator as provided in Section 37(c).

43. Arbitrator’s Compensation

Unless the parties agree otherwise, an arbitrator will receive compensation at his or her customary hourly rate, advanced equally by the parties.

44. Deposits

The AAA may require the parties to deposit at any time or times such sums of money as it deems necessary to cover the expense of the arbitration, including the arbitrator’s fee, if any, and shall render an accounting to the parties and return any unexpended balance at the conclusion of the case.

45. Interpretation and Application of Rules

The arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator’s powers and duties.
When there is more than one arbitrator and a difference arises among them concerning the meaning or application of these rules, it shall be decided by a majority vote. If that is not possible, either an arbitrator or a party may refer the question to the AAA for final decision. All other rules shall be interpreted and applied by the AAA.

Large, Complex Disputes

46. Applicability
   a. The Supplementary Procedures for Large, Complex Disputes shall apply to the Arbitration Rules for Wills and Trusts as provided in Section 8 thereof. The procedures are designed to complement the Wills and Trusts rules selected by the parties to govern their dispute. To the extent that there is any variance between such rules and the procedures, the procedures shall control. Any such cases are herein referred to as “Large, Complex Cases.”
   b. The parties to any arbitration proceeding that is to be subject to the procedures may, by consent of all parties, agree to eliminate, modify or alter any of the procedures, and, in such case, the procedures as so modified or altered shall apply to that particular case.

47. Administrative Conferences
   Prior to the dissemination of a list of potential arbitrators, the AAA shall, unless it determines the same to be unnecessary, conduct an administrative conference with the parties or their attorneys or other representatives, either in person or by conference call, at the discretion of the AAA. The administrative conference shall be conducted for the following purposes and for such additional purposes as the parties or the AAA may deem appropriate:
      a. to obtain additional information about the nature and magnitude of the dispute and the anticipated length of hearing and scheduling;
      b. to discuss the views of the parties about the technical and other qualifications of the arbitrators;
      c. to consider, with the parties, whether mediation or other nonadjudicative methods of dispute resolution might be appropriate.

48. Arbitrators
   a. Large, Complex Disputes shall be heard and determined by three arbitrators, or as may be otherwise agreed upon by the parties. If the parties are unable to agree upon the number of arbitrators, then three arbitrators shall hear and determine the case unless the AAA shall determine otherwise.

49. Management of Proceedings
   a. Arbitrators shall take such steps as they may deem necessary or desirable to avoid delay and to achieve a just, speedy and cost-effective resolution of Large, Complex Disputes.
   b. Parties shall cooperate in the exchange of documents, exhibits, and information within their control if the arbitrators consider such production to be consistent with the goal of achieving a just, speedy, and cost-effective resolution of a Large, Complex Dispute.
   c. At the request of a party, the arbitrators may order the conduct of the deposition of, or the propounding of interrogatories to, such persons who may possess information determined by the arbitrators to be necessary to a determination of a Large, Complex Dispute and who will not be available to testify at the hearings.

50. Form of Award
   If requested by all parties, the award of the arbitrators shall be accompanied by a statement of the reasons upon which such award is based. If requested by one party the arbitrators may, in their discretion, issue such a statement.

51. Interest, Fees and Costs
   The award of the arbitrators may include: (a) interest at such rate and from such date as the arbitrators may deem appropriate; (b) an apportionment between the parties of all or part of the fees and expenses of the AAA and the compensation and expenses of the arbitrators; and (c) an award of attorneys’ fees if all parties have requested or authorized such an award.

ADMINISTRATIVE FEES
   The administrative fees of the AAA are based on the amount of the claim or counterclaim. Arbitrator compensation is not included in this schedule. Unless the parties agree otherwise, arbitrator compensation and administrative fees are subject to allocation by the arbitrator in the award.
In an effort to make arbitration costs reasonable for consumers, the AAA has a separate fee schedule for consumer-related disputes. Please refer to Section C-8 of the Supplementary Procedures for Consumer-Related Disputes when filing a consumer-related claim.

The AAA applies the *Supplementary Procedures for Consumer-Related Disputes* to arbitration clauses in agreements between individual consumers and businesses where the business has a standardized, systematic application of arbitration clauses with customers and where the terms and conditions of the purchase of standardized, consumable goods or services are non-negotiable or primarily non-negotiable in most or all of its terms, conditions, features, or choices. The product or service must be for personal or household use. The AAA will have the discretion to apply or not to apply the Supplementary Procedures and the parties will be able to bring any disputes concerning the application or non-application to the attention of the arbitrator. Consumers are not prohibited from seeking relief in a small claims court for disputes or claims within the scope of its jurisdiction, even in consumer arbitration cases filed by the business.

**Fees**

An initial filing fee is payable in full by a filing party when a claim, counterclaim or additional claim is filed. A case service fee will be incurred for all cases that proceed to their first hearing. This fee will be payable in advance at the time that the first hearing is scheduled. This fee will be refunded at the conclusion of the case if no hearings have occurred. However, if the Association is not notified at least 24 hours before the time of the scheduled hearing, the case service fee will remain due and will not be refunded.

These fees will be billed in accordance with the following schedule:

<table>
<thead>
<tr>
<th>Amount of Claim</th>
<th>Initial Filing Fee</th>
<th>Case Service Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Above $0 to $10,000</td>
<td>$500</td>
<td>$200</td>
</tr>
<tr>
<td>Above $10,000 to $75,000</td>
<td>$750</td>
<td>$300</td>
</tr>
<tr>
<td>Above $75,000 to $150,000</td>
<td>$1,500</td>
<td>$750</td>
</tr>
<tr>
<td>Above $150,000 to $300,000</td>
<td>$2,750</td>
<td>$1,250</td>
</tr>
<tr>
<td>Above $300,000 to $500,000</td>
<td>$4,250</td>
<td>$1,750</td>
</tr>
<tr>
<td>Above $500,000 to $1,000,000</td>
<td>$6,000</td>
<td>$2,500</td>
</tr>
<tr>
<td>Above $1,000,000 to $5,000,000</td>
<td>$8,000</td>
<td>$3,250</td>
</tr>
<tr>
<td>Above $5,000,000 to $10,000,000</td>
<td>$10,000</td>
<td>$4,000</td>
</tr>
<tr>
<td>Above $10,000,000</td>
<td>*</td>
<td>*</td>
</tr>
<tr>
<td>Nonmonetary Claims **</td>
<td>$3,250</td>
<td>$1,250</td>
</tr>
</tbody>
</table>

* Contact your local AAA office for fees for claims in excess of $10 million.

** This fee is applicable when a claim or counterclaim is not for a monetary amount. Where a monetary claim is not known, parties will be required to state a range of claims or be subject to the highest possible filing fee.

Fees are subject to increase if the amount of a claim or counterclaim is modified after the initial filing date. Fees are subject to decrease if the amount of a claim or counterclaim is modified before the first hearing.

The minimum fees for any case having three or more arbitrators are $2,750 for the filing fee, plus a $1,250 case service fee.

Parties on cases held in abeyance for one year by agreement, will be assessed an annual abeyance fee of $300. If a party refuses to pay the assessed fee, the other party or parties may pay the entire fee on behalf of all parties, otherwise the matter will be closed.

**Refund Schedule**

The AAA offers a refund schedule on filing fees. For cases with claims up to $75,000, a minimum filing fee of $300 will not be refunded. For all other cases, a minimum fee of $500 will not be refunded. Subject to the minimum fee requirements, refunds will be calculated as follows:

- 100% of the filing fee, above the minimum fee, will be refunded if the case is settled or withdrawn within five calendar days of filing.
- 50% of the filing fee, in any case with filing fees in excess of $500, will be refunded if the case is settled or

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- 100% of the filing fee, above the minimum fee, will be refunded if the case is settled or withdrawn within five calendar days of filing.
- 50% of the filing fee, in any case with filing fees in excess of $500, will be refunded if the case is settled or
withdrawn between six and 30 calendar days of filing. Where the filing fee is $500, the refund will be $200.

- 25% of the filing fee will be refunded if the case is settled or withdrawn between 31 and 60 calendar days of filing.

No refund will be made once an arbitrator has been appointed (this includes one arbitrator on a three arbitrator panel). No refunds will be granted on awarded cases.

Note: the date of receipt of the demand for arbitration with the AAA will be used to calculate refunds of filing fees for both claims and counterclaims.

Hearing Room Rental

The fees described above do not cover the rental of hearing rooms, which are available on a rental basis. Check with the AAA for availability and rates.

Rules forms, procedures and guidelines, as well as information about applying for a fee reduction or deferral, are subject to periodic change and updating. To ensure that you have the most current information, see our Web site at www.adr.org.

AAA-201
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