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Bannister  
3/7/20

**CS FOR SENATE BILL NO. 191(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - SECOND SESSION

**BY THE SENATE JUDICIARY COMMITTEE**

**Offered:  
Referred:**

**Sponsor(s): SENATOR COGHILL**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to trusts and trustees, including trust division, the powers of trustees,**  
2 **delayed gifts to trusts, and community property trusts; and providing for an effective**  
3 **date."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 **\* Section 1.** AS 13.36 is amended by adding a new section to read:

6 **Sec. 13.36.108. Dividing into separate trusts.** Unless the governing  
7 instrument of the trust specifically refers to this section and provides otherwise, a  
8 trustee may, before, on, or after a settlor's death, divide a trust into two or more  
9 separate trusts, and the specific settlor of a trust shall be treated as the sole settlor of  
10 the separate portion of the trust to which that settlor contributed if

11 (1) more than one settlor creates a trust;

12 (2) a trustee keeps records for the trust that trace the contributions  
13 made to the trust by the different settlors and the earnings and reinvestments on the  
14 contributions; and

(3) the law of this state governs the trust because the trust was originally established under the laws of this state or the situs of the trust was moved to this state.

\* **Sec. 2.** AS 13.36.109 is amended to read:

**Sec. 13.36.109. Specific powers of trustees.** Except as otherwise provided by this chapter, in addition to the powers conferred by the terms of the trust, a trustee may perform all actions necessary to accomplish the proper management, investment, and distribution of the trust property, including the power

(1) to collect, hold, and retain trust property received from a settlor or another person; the property may be retained even if it includes property in which the trustee is personally interested;

(2) to accept additions to the property of the trust from a settlor or another person;

(3) to continue or to participate in the operation of a business or other enterprise that is part of the trust property and to effect an incorporation, dissolution, or other change in the form of the organization of the business or enterprise;

(4) to acquire or dispose of property, for cash or on credit, at public or private sale or by exchange;

(5) to manage, control, divide, develop, improve, exchange, partition, change the character of, or abandon trust property;

(6) to encumber, mortgage, or pledge trust property for a term within or extending beyond the term of the trust in connection with the exercise of a power vested in the trustee;

(7) to make ordinary or extraordinary repairs, alterations, or improvements in buildings or other trust property; to demolish improvements; and to raze existing or erect new party walls or buildings;

(8) to subdivide or develop land; to dedicate land to public use; to make or obtain the vacation of plats and to adjust boundaries; to adjust differences in valuation on exchange or partition by giving or receiving consideration; and to dedicate easements to public use without consideration;

(9) to enter into a lease for any purpose as lessor or lessee with or

without the option to purchase or renew and for a term within or extending beyond the term of the trust;

(10) to enter into a lease or arrangement for exploration and removal of gas, oil, or other minerals or geothermal energy; and to enter into a community oil lease, a pooling agreement, or a unitization agreement;

(11) to grant an option involving disposition of trust property or to take an option for the acquisition of property, including an option that is exercisable beyond the duration of the trust;

(12) with respect to shares of stock of a domestic or foreign corporation, a membership in a nonprofit corporation, or other property, to

(A) vote in person and to give proxies to exercise any voting rights with respect to the shares, memberships, or property;

(B) waive notice of a meeting or to give consent to the holding of a meeting; and

(C) authorize, ratify, approve, or confirm an action that could be taken by shareholders, members, or property owners;

(13) to pay calls, assessments, and other sums chargeable to or accruing against or on a securities account;

(14) to sell or exercise stock subscription or conversion rights;

(15) to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise; to participate in voting trusts, pooling arrangements, and foreclosures; and, in connection with a reorganization, consolidation, merger, dissolution, liquidation, voting trust, pooling arrangement, or foreclosure, to deposit securities with, transfer title, and delegate discretion to a protective or other committee as the trustee considers advisable;

(16) to deposit securities in a securities depository;

(17) to insure the property of the trust against damage or loss and to insure the trustee against liability with respect to third persons or beneficiaries of the trust;

(18) to borrow money for a trust purpose to be repaid from trust

property;

(19) to pay or contest a claim, to settle a claim by or against the trust by compromise, arbitration, or otherwise, and to release, in whole or in part, a claim belonging to the trust;

(20) to pay taxes, assessments, reasonable compensation of the trustee, employees, and agents of the trust, and other expenses incurred in the collection, care, administration, and protection of the trust;

(21) to make loans out of trust property to an eligible beneficiary or an eligible third-party entity on terms and conditions the trustee considers to be fair and reasonable under the circumstances and to guarantee loans to the eligible beneficiary or eligible third-party entity by encumbrances on trust property; in this paragraph,

(A) "eligible beneficiary" means a beneficiary of the trust who is currently eligible for or entitled to a distribution of income or principal of the trust;

(B) "eligible third-party entity" means a third-party entity if more than 50 percent of the equity of the entity is owned by the trust or by one or more beneficiaries of the trust;

(22) to pay an amount distributable to a beneficiary, whether or not the beneficiary is under a legal disability, by paying the amount to the beneficiary or by paying the amount to another person for the use or benefit of the beneficiary;

(23) to make a distribution of property and money in divided or undivided interests, pro rata or otherwise, and to adjust resulting differences in valuation;

(24) to employ accountants, attorneys, investment advisers, appraisers, or other persons, even if they are associated or affiliated with the trustee, to advise or assist the trustee in the performance of administrative duties;

(25) to inspect or investigate property that the trustee has been asked to hold or property owned or operated by an entity in which the trustee holds or has been asked to hold an interest for the purpose of determining the application of environmental law to the property and to take action to prevent, abate, or otherwise remedy an actual or potential violation of an environmental law affecting property

held directly or indirectly by the trustee;

(26) to establish for an asset a reserve for depreciation, depletion, or obsolescence, and to decide, under law, how and in what proportions a receipt or disbursement is to be credited, charged, or apportioned between principal and income;

(27) to execute and deliver instruments that are useful to accomplish or facilitate the exercise of the trustee's powers;

(28) to prosecute or defend an action, claim, or proceeding in order to protect trust property and the trustee in the performance of the trustee's duties; and

(29) to treat [CONSIDER] discretionary distributions to a beneficiary as being made first from capital gains realized during the year.

\* **Sec. 3.** AS 13.36.109 is amended by adding a new subsection to read:

(b) A trustee may pay as a charge against the property of the trust the cost incurred to perform an action authorized by (a) of this section.

\* **Sec. 4.** AS 13.36 is amended by adding a new section to read:

**Sec. 13.36.305. Promise to transfer money to trust.** (a) If a person promises to transfer a specific amount of money to a trust, the promise is valid and enforceable against the person without consideration if

(1) the trust qualifies under (b) of this section;

(2) the promise is in writing, signed by the person, and delivered to the trustee of the trust;

(3) the promise contains an express reference to this section;

(4) the promise contains a statement that the person intends to be legally bound by the promise; and

(5) the terms of the promise require that the money be delivered to the trust within nine months after the person's death.

(b) To qualify as a trust under (a) of this section,

(1) the governing instrument of the trust must contain a recital that the trust is or is intended to be a trust under this section;

(2) the trust must hold at least \$10,000 in an account of a bank or similar financial institution in the state; and

(3) the trust must have at least one trustee that is a qualified person

whose powers include or are limited to the powers described in AS 13.36.035(c)(3).

(c) When 180 days have elapsed after a person delivers a promise to a trust under (a) of this section, the trust may, notwithstanding the provisions of AS 45.03, treat the promise as a note under AS 45.03.104(e), and the promise is subject to AS 45.03 as a negotiable instrument.

(d) If a married person makes a promise under (a) of this section, property owned as community property or as tenants by the entirety by the married person and the spouse of the married person during the life of the married person may not be used to pay the obligation represented by the promise unless the spouse has provided the spouse's express written consent to the payment.

(e) A person who sells to a third party a promise treated as a note that becomes a negotiable instrument under (c) of this section shall provide written notice to the buyer that the note was derived from a promise made under this section and that consideration was not provided. In addition, the notice must state whether the note is backed by collateral and whether the note is guaranteed by the trustee or another person.

\* **Sec. 5.** AS 34.77.030(h) is amended to read:

(h) Appreciation and income of property transferred to a community property trust are [IS] community property **unless the appreciation and income are expressly** [IF] declared in the trust to be **individual property or other** [COMMUNITY] property **that is not community property.**

\* **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. (a) AS 13.36.108, enacted by sec. 1 of this Act, AS 13.36.109, as amended by sec. 2 of this Act, and AS 13.36.305, enacted by sec. 4 of this Act, apply to trusts that are created on or after the effective date of secs. 1 - 4 of this Act.

(b) AS 34.77.030(h), as amended by sec. 5 of this Act, applies to a community property trust that exists on or after May 23, 1998. In this subsection, "community property trust" has the meaning given in AS 34.77.900.

\* **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to read:

1            SAVING CLAUSE. Notwithstanding sec. 6(b) of this Act, this Act does not affect an  
2 action or proceeding begun before the effective date of sec. 5 of this Act.

3        \* **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to  
4 read:

5            RETROACTIVITY. Section 5 of this Act is retroactive to May 23, 1998.

6        \* **Sec. 9.** Sections 5, 7, and 8 of this Act take effect immediately under AS 01.10.070(c).