

Sec. 34.77.100. Community property trust.

(a) An arrangement is a community property trust if one or both spouses transfer property to a trust, the trust expressly declares that some or all the property transferred is community property under this chapter, and at least one trustee is a qualified person whose powers include or are limited to maintaining records for the trust on an exclusive or a nonexclusive basis and preparing or arranging for the preparation of, on an exclusive or a nonexclusive basis, any income tax returns that must be filed by the trust. A community property trust is enforceable without consideration. Both spouses or either spouse may be a trustee. The trust must be signed by both spouses. In this subsection, “qualified person” means

(1) an individual

(A) who, except for brief intervals, military service, attendance at an educational or training institution, or absences for good cause shown, resides in this state;

(B) whose true and permanent home is in this state;

(C) who does not have a present intention of moving from this state; and

(D) who intends to return to this state when away;

(2) a trust company that is organized under [AS 06.26](#) and that has its principal place of business in this state; or

(3) a bank that is organized under [AS 06.05](#) or a national banking association that is organized under 12 U.S.C. 21 — 216d if the bank or national banking association possesses and exercises trust powers and has its principal place of business in this state.

(b) A community property trust must contain the following language in capital letters at the beginning of the trust:

THE CONSEQUENCES OF THIS TRUST MAY BE VERY EXTENSIVE, INCLUDING, BUT NOT LIMITED TO, YOUR RIGHTS WITH RESPECT TO CREDITORS AND OTHER THIRD PARTIES, AND YOUR RIGHTS WITH YOUR SPOUSE BOTH DURING THE COURSE OF YOUR MARRIAGE AND AT THE TIME OF A DIVORCE. ACCORDINGLY, THIS AGREEMENT SHOULD ONLY BE SIGNED AFTER CAREFUL CONSIDERATION. IF YOU HAVE ANY QUESTIONS ABOUT THIS AGREEMENT, YOU SHOULD SEEK COMPETENT ADVICE. (c) A community property trust may not adversely affect the right of a child to support.

(d) Except as provided in [AS 34.77.010](#), 34.77.070(h), 34.77.080(b), and in (c) of this section, in a community property trust spouses may agree on

(1) the rights and obligations in the property transferred to the trust, notwithstanding when and where the property is acquired or located;

(2) the management and control of the property transferred to the trust;

(3) the disposition of the property transferred to the trust on dissolution, death, or the occurrence or

nonoccurrence of another event;

(4) the choice of law governing the interpretation of the trust; and

(5) any other matter that affects the property transferred to the trust and does not violate public policy or a statute imposing a criminal penalty.

(e) A community property trust may not be amended or revoked unless the agreement itself provides for amendment or revocation, or unless the agreement is amended or revoked by a later community property trust. To amend or revoke the trust, the later community property trust is not required to declare any property held by the trustee as community property. The amended trust or the revocation is enforceable without consideration. However, notwithstanding the other provisions of this subsection, unless the community property trust expressly provides otherwise, at any time after the death of the first spouse the surviving spouse may amend the community property trust with regard to the surviving spouse's property to be disposed of at the surviving spouse's death. In this subsection, "surviving spouse's property" means the property that consists of the surviving spouse's separate property and the surviving spouse's share of the community property determined as of the date of the first spouse's death.

(f) A community property trust executed during marriage is not enforceable if the spouse against whom enforcement is sought proves that

(1) trust was unconscionable when made; or

(2) the spouse against whom enforcement is sought did not execute the community property trust agreement voluntarily; or

(3) before execution of the community property trust agreement, the spouse against whom enforcement is sought

(A) was not given a fair and reasonable disclosure of the property and financial obligations of the other spouse;

(B) did not voluntarily sign a written waiver expressly waiving right to disclosure of the property and financial obligations of the other spouse beyond the disclosure provided; and

(C) did not have notice of the property or financial obligations of the other spouse.

(g) Whether or not a community property trust is unconscionable is determined by a court as a matter of law.

(h) The trustee of a community property trust shall maintain records that identify which property held by the trust is community property and which property held by the trust is not community property.

(i) In addition to other transfers of property to a community property trust, property will be considered transferred to a community property trust if the property is subject to a nonprobate transfer on death under [AS 13.33.101](#) and the community property trust is designated as the beneficiary to receive the property under the transfer.