

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 275(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 2/25/00

Referred: Rules

Sponsor(s): REPRESENTATIVE THERRIAULT

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the Uniform Probate Code, including trusts and governing
2 instruments; relating to trustees; relating to underproductive trust property; and
3 relating to conveyances of real property and interests in real property by or
4 to trusts."

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

6 * **Section 1.** AS 13.12.606(a) is amended to read:

7 (a) A specific devisee has a right to the specifically devised property in the
8 testator's estate at death and

9 (1) [ANY BALANCE OF THE PURCHASE PRICE, TOGETHER
10 WITH ANY SECURITY AGREEMENT, OWING FROM A PURCHASER TO THE
11 TESTATOR AT DEATH BY REASON OF SALE OF THE PROPERTY;

12 (2)] any amount of a condemnation award for the taking of the property
13 unpaid at death;

14 (2) [(3)] any proceeds unpaid at death on fire or casualty insurance on

1 or other recovery for injury to the property; and

2 **(3) [(4)]** property owned by the testator at death and acquired as a
 3 result of foreclosure, or obtained in lieu of foreclosure, of the security interest for the
 4 specifically devised obligation.

5 * **Sec. 2.** AS 13.12 is amended by adding new sections to article 7 to read:

6 **Sec. 13.12.712. Nonademption of specific transfers in trust; unpaid
 7 proceeds of sale, condemnation, or insurance; sale by conservator or agent.** (a)

8 A beneficiary of a trust has a right to the specific property transferred by the trust and

9 (1) any amount of a condemnation award for the taking of the property
 10 unpaid at the time of the transfer;

11 (2) any proceeds unpaid at the time of the transfer on fire or casualty
 12 insurance on or other recovery for injury to the property; and

13 (3) property owned by the settlor at the time of the transfer and
 14 acquired as a result of foreclosure, or obtained in lieu of foreclosure, of the security
 15 interest for the specifically transferred obligation.

16 (b) If property that is specifically transferred to a beneficiary of a trust is sold
 17 or mortgaged by a conservator or by an agent acting within the authority of a durable
 18 power of attorney for an incapacitated principal, or if a condemnation award, insurance
 19 proceeds, or recovery for injury to the property are paid to a conservator or to an agent
 20 acting within the authority of a durable power of attorney for an incapacitated
 21 principal, the beneficiary has the right to a general pecuniary property transfer that is
 22 equal to the net sale price, the amount of the unpaid loan, the condemnation award,
 23 the insurance proceeds, or the recovery.

24 (c) The right of a beneficiary under (b) of this section is reduced by any right
 25 the beneficiary has under (a) of this section.

26 (d) For the purposes of the references in (b) of this section to a conservator,
 27 (b) of this section does not apply if, after the sale, mortgage, condemnation, casualty,
 28 or recovery, it was adjudicated that the settlor's incapacity ceased and the settlor
 29 survived the adjudication by one year.

30 (e) For the purposes of the references in (b) of this section to an agent acting
 31 within the authority of a durable power of attorney for an incapacitated principal,

(1) "incapacitated principal" means a principal who is an incapacitated person;

- (2) adjudication of incapacity before death is not necessary; and
- (3) the acts of an agent within the authority of a durable power of attorney are presumed to be for an incapacitated principal.

Sec. 13.12.720. Family-owned business deduction. (a) If an individual includes a provision in a will, trust document, or beneficiary designation that is designed to reduce federal estate tax liability to zero, or to the lowest possible amount payable, by describing a portion or amount measured by reference to the unified credit, applicable exclusion amount, or exemption equivalent under 26 U.S.C. 2010 (Internal Revenue Code), or to other credits or deductions under 26 U.S.C. (Internal Revenue Code), then unless specifically stated otherwise, the reference to the unified credit, applicable exclusion amount, exemption equivalent, other credit, or other deduction shall be considered to include a reference to the family-owned business deduction available and allowed under 26 U.S.C. 2057 (Internal Revenue Code).

(b) Unless specifically stated otherwise, the reference in the will, trust document, or beneficiary designation to the unified credit, applicable exclusion amount, exemption equivalent, family-owned business deduction, other credit, or other deduction shall be considered to refer to the unified credit, applicable exclusion amount, exemption equivalent, family-owned business deduction, other credit, or other deduction as it exists at the time of death of the individual.

* **Sec. 3.** AS 13.16.550 is amended to read:

Sec. 13.16.550. Interest on general pecuniary devise. General pecuniary devises, whether made outright or in trust, bear interest at the stated [LEGAL] rate beginning two years [ONE YEAR] after the decedent's death [FIRST APPOINTMENT OF A PERSONAL REPRESENTATIVE] until payment, unless a contrary intent is indicated by the **governing instrument. In this subsection,**

(1) "discount rate" means the rate charged member banks for advances by the 12th Federal Reserve District;

(2) "stated rate" means the annual discount rate in effect on the first day of the month that is the 23rd month following the decedent's death, not

1 counting the month of the decedent's death [WILL].

2 * **Sec. 4.** AS 13.16.550 is amended by adding a new subsection to read:

10 * Sec. 5. AS 13.16.560(a) is amended to read:

14 (1) a specific devisee is entitled to distribution of the thing devised, and
15 a spouse or child who has selected particular assets of an estate as provided in
16 AS 13.12.402 - 13.12.405 shall receive the items selected;

19 (A) the person entitled to the payment has not demanded
20 payment in cash;

21 (B) the property distributed in kind is valued at fair market
22 value as of the date of its distribution; and

23 (C) no residuary devisee has requested that the asset in question
24 remain a part of the residue of the estate;

1 have readily ascertainable values, a valuation as of a date not more than 30 days
2 before the date of distribution, if otherwise reasonable, controls; for purposes of
3 facilitating distribution, the personal representative may ascertain the value of the
4 assets as of the time of the proposed distribution in any reasonable way, including the
5 employment of qualified appraisers, even if the assets may have been previously
6 appraised;

(4) the residuary estate shall be distributed in any equitable manner, including distribution in kind, in cash, partially in kind, partially in cash, in divided interests, in undivided interests, pro rata among all the distributees, or by a method other than pro rata among all distributees; distribution under this paragraph may be made without regard to the income tax basis or other special tax attributes of the assets; a distribution under this paragraph may be made in whatever manner the personal representative finds to be the most practicable and in the best interests of the distributees.

* **Sec. 6.** AS 13.36 is amended by adding a new section to read:

Sec. 13.36.153. Restrictions on exercising certain trustee powers. (a)

Notwithstanding AS 13.36.107, a trustee who is not an independent trustee may not exercise a power to make or cause to be made a discretionary distribution of either principal or income

(1) to or for the direct or indirect benefit of the trustee individually or to any person holding a power to remove and replace the trustee, except to the extent that the power is exercised in accordance with an ascertainable standard that relates to the health, education, maintenance, or support of the trustee or person;

(2) to satisfy a legal obligation that is owed by the trustee individually or by any person holding a power to remove and replace this trustee; or

(3) if the distribution would constitute a taxable gift from the trustee individually or from a person holding a power to remove and replace the trustee.

(b) The prohibitions of (a) of this section apply to a trustee even if the governing instrument states that the trustee may make distributions in the trustee's uncontrolled, absolute, or total discretion, or that distributions are not subject to review by a court, or the governing instrument otherwise indicates that distributions by the

1 trustee are not subject to reasonableness when the trustee exercises discretion.

2 (c) If a trustee is prohibited by (a) of this section from exercising a power and
 3 if one or more other trustees are not prohibited by (a) of this section from exercising
 4 the power, the other trustees may exercise the power. If there is not a trustee who can
 5 exercise a power prohibited under (a) of this section, a party in interest may apply to
 6 the superior court to appoint an independent trustee to exercise the power.

7 (d) The provisions of (a) of this section do not prohibit a trustee from making
 8 payments, including reimbursement of and compensation of an independent trustee
 9 appointed under (c) of this section, for the protection of the trust or the assets of the
 10 trust, or for the expenses, losses, or liabilities incurred in the collection, care,
 11 administration, or protection of the trust or the assets of the trust.

12 (e) Except as provided in (f) of this section, this section applies to

13 (1) a trust that is created on or after the effective date of this Act; or
 14 (2) the decisions and actions of a trust that is in existence on the
 15 effective date of this Act if the decisions are made, or the actions occur, on or after
 16 the effective date of this Act.

17 (f) The application provisions of (e) of this section do not apply if

18 (1) the terms of the trust, including the terms as amended, expressly
 19 provide that this section does not apply and either specifically refer to this section or
 20 otherwise clearly demonstrate the intent that this section does not apply; or

21 (2) the trust is irrevocable and all parties in interest elect under (g) of
 22 this section not to be subject to the application of this section; an election under this
 23 paragraph must be made on or before January 1, 2003, or three years after the date on
 24 which the trust becomes irrevocable, whichever date is later; however, notwithstanding
 25 AS 13.36.080, the trustee does not have a duty to inform the parties in interest of this
 26 election.

27 (g) The election allowed under (f) of this section shall be made by a written
 28 declaration that is delivered to the trustee.

29 (h) The prohibitions of (a) of this section do not apply to a trustee with respect
 30 to trust property, including income from the trust property, if the trust property would,
 31 upon the death of the trustee, be included, for any reason other than the exercise of a

1 power prohibited by (a) of this section, in the gross estate of the trustee for federal
 2 estate tax purposes.

3 (i) This section does not create a new cause of action, or impair a cause of
 4 action existing before the effective date of this Act, if the new or existing cause of
 5 action relates to the exercise of a power prohibited by (a) of this section that was
 6 exercised before the effective date of this Act.

7 (j) In this section, "independent trustee" means a trustee that is not related or
 8 subordinate, as defined in 26 U.S.C. 672(c), to the person having the power to remove
 9 the trustee or to any beneficiary.

10 * **Sec. 7.** AS 13.36 is amended by adding a new section to read:

11 **Sec. 13.36.169. Elections to qualify property for marital deduction and**
 12 **generation-skipping transfer tax allocations.** (a) Unless a governing instrument
 13 specifically refers to this section and provides otherwise, a trustee who makes an
 14 election under 26 U.S.C. 2056, 2056A, or 2523 (Internal Revenue Code), or who
 15 makes an allocation under 26 U.S.C. 2632 (Internal Revenue Code), may benefit
 16 personally from the election or allocation and is not required to reimburse another
 17 person interested in the election or allocation, to make an equitable adjustment, or to
 18 treat interested persons impartially with respect to the election or allocation.

19 (b) Unless a governing instrument specifically refers to this section and
 20 provides otherwise, if an election is made under 26 U.S.C. 2056, 2056A, or 2523
 21 (Internal Revenue Code), if an allocation is made under 26 U.S.C. 2632 (Internal
 22 Revenue Code), or if division of a trust benefits the persons interested in the trust, the
 23 trustee may divide the trust into two or more separate trusts of equal or unequal value
 24 if the terms of the separate resulting trusts are substantially identical to the terms of
 25 the trust before the division. The allocation of assets must be based on the fair market
 26 value of the assets at the time of the division.

27 (c) Except as provided in (d) of this section, this section applies to
 28 (1) a trust that is created on or after the effective date of this Act; or
 29 (2) the decisions and actions of a trust that is in existence on the
 30 effective date of this Act if the decisions are made or actions occur on or after the
 31 effective date of this Act.

(d) The application provisions of (c) of this section do not apply if

(1) the terms of the trust, including the terms as amended, expressly state that this section does not apply and either specifically refer to this section or otherwise clearly demonstrate the intent that this section does not apply; or

(2) the trust is irrevocable and all parties in interest elect not to be subject to the application of this section; an election under this paragraph must be made on or before January 1, 2003, or three years after the date on which the trust becomes irrevocable, whichever date is later; however, notwithstanding AS 13.36.080, the trustee does not have a duty to inform the parties in interest of this election; the election allowed under this paragraph must be made by a written declaration delivered to the trustee.

* **Sec. 8.** AS 13.36 is amended by adding a new section to read:

Sec. 13.36.335. Application of special distribution provisions. The asset distribution provisions of AS 13.16.540 - 13.16.550, 13.16.560, and AS 13.38.030(a) apply to the administration of a revocable trust following the death of the settlor of the trust, unless the terms of the trust indicate a different intention.

* **Sec. 9.** AS 13.36.390 is amended by adding a new paragraph to read:

(4) "party in interest" means, if the trust is

(A) revocable and if the settlor is incapacitated, the settlor's legal representative under applicable law or the settlor's agent under a durable power of attorney; or

(B) irrevocable,

(i) each trustee serving at the time;

(ii) each beneficiary entitled to receive a mandatory distribution of income or principal from a trust or, if a beneficiary receives a mandatory distribution of income or principal from under applicable law or the beneficiary's agent under a power of attorney; and

(iii) each vested remainder beneficiary in existence at the time or, if a vested remainder beneficiary is not 19 years of age or

is incapacitated, the vested remainder beneficiary's legal representative under applicable law or the vested remainder beneficiary's agent under a durable power of attorney.

* **Sec. 10.** AS 13.38.110 is amended by adding a new subsection to read:

(e) Notwithstanding (a) - (d) of this section, if a trust, except a trust that provides for the payment of the entire remaining trust estate to the estate of the spouse when the income interest terminates, is created under a will or trust for the benefit of the spouse of the testator or the grantor of the trust, if the trust requires that all income of the trust be paid at least annually to the spouse, and if a federal estate or gift tax marital deduction is claimed with respect to the trust, then, unless the will or trust specifically refers to this subsection and provides otherwise, an investment in or retention of unproductive property as an asset of the trust is subject to the power of the spouse to require that, within a reasonable time, the asset produce income or be converted to assets that produce income.

* **Sec. 11.** AS 34.25 is amended by adding a new section to read:

Sec. 34.25.055. Conveyances to or from trusts. (a) A person, including a trustee, may convey real property to a trust whether or not a trustee of the trust is named as a grantee in the instrument of conveyance. A trustee of a trust may convey real property from a trust whether or not a trustee of the trust is named as a grantor in the instrument of conveyance.

(b) In a conveyance under (a) of this section, notice of the existence of the trust does not affect the status of a purchaser as a bona fide purchaser.

(c) Real property that is owned by a trust and that is purchased by a bona fide purchaser from a person in the person's capacity as trustee of the trust is acquired free of any claim of the beneficiaries of the trust.

(d) Notwithstanding other provisions of law, a trust instrument may not change the effect of (c) of this section.

(e) In this section,

(1) "bona fide purchaser" means a person who purchases real property for value from a trust and who

(A) has not knowingly been a party to fraud or illegality

1 affecting the interest of persons who are parties to the purchase transaction or
2 beneficiaries of the trust;

3 (B) does not have notice of an adverse claim by a beneficiary
4 of the trust; and

5 (C) has acted in good faith in the purchase transaction;

6 (2) "conveyance" means a conveyance made before, on, or after the
7 effective date of this section;

(3) "purchaser" means a person who acquires real property by sale, lease, mortgage, pledge, or lien, or who otherwise deals with real property in a voluntary transaction other than by making a gift;

11 (4) "real property" includes an interest in real property;

12 (5) "value" means acquisition of property

13 (A) in return for a binding commitment to extend credit;

14 (B) as security for or in total or partial satisfaction of a claim
15 that existed before the giving of the security;

16 (C) by accepting delivery of the real property under a contract
17 that is for the purchase of the real property and that existed before the delivery;
18 or

19 (D) in return for other consideration sufficient to support a
20 contract.