

CS FOR HOUSE BILL NO. 199(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 5/8/97

Referred: Rules

Sponsor(s): REPRESENTATIVES RYAN, Therriault, James

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the property, transactions, and obligations of spouses; relating
2 to the augmented estate; amending Rule 301, Alaska Rules of Evidence; and
3 providing for an effective date."

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

5 * **Section 1.** AS 13.12.208 is amended by adding a new subsection to read:

6 (d) Notwithstanding the other provisions of this section, the value of
7 community property under AS 34.75 is not included in the augmented estate.

8 * **Sec. 2.** AS 25.15.010 is amended to read:

9 **Sec. 25.15.010. Property of one spouse not subject to contracts or liabilities**
10 **of other.** When property is owned by one spouse, the other has no interest that makes
11 the property liable for the contracts or liabilities of the spouse who is not the owner
12 of the property, except as provided in this chapter and AS 34.75.

13 * **Sec. 3.** AS 25.15.020 is amended to read:

14 **Sec. 25.15.020. Actions between spouses respecting property. Subject to**

AS 34.75, if [IF] one spouse obtains possession or control of property belonging to the other, either before or after marriage, the owner of the property may maintain an action for it, or for any right growing out of it, in the same manner and to the same extent as if they were unmarried.

* **Sec. 4.** AS 25.15.050 is amended to read:

Sec. 25.15.050. Nonliability for premarital or separate debts of other.

Subject to AS 34.75, neither [NEITHER] spouse is liable for the debts or liabilities of the other incurred before marriage, and, except as otherwise provided, neither is liable for the separate debts of the other, nor is the rent or income of the property of one spouse liable for the separate debts of the other.

* **Sec. 5.** AS 25.15.060 is amended to read:

Sec. 25.15.060. Control and liability of separate property of spouse.

Subject to AS 34.75, the [THE] property and pecuniary rights of a married person at the time of marriage or afterwards that are acquired by gift, devise, or inheritance are not subject to the debts or contracts of the other spouse, **and a** [. A] spouse may manage, sell, convey, or devise the property and pecuniary rights that by will are separate property of that spouse.

* **Sec. 6.** AS 25.24.160 is amended by adding a new subsection to read:

(d) When distributing property identified as community property under a community property agreement or trust under AS 34.75, unless the parties have provided in the agreement or trust for another disposition of the community property, the court shall make such disposition of the community property as shall appear just and equitable after considering all relevant factors, including

(1) the nature and extent of the community property;

(2) the nature and extent of the separate property;

(3) the duration of the marriage; and

(4) the economic circumstances of each spouse at the time the division of property is to become effective, including the desirability of awarding the family home or right to live in the family home for reasonable periods to a spouse with whom the children reside the majority of the time.

* **Sec. 7.** AS 25.24.200(a) is amended to read:

1 (a) A husband and wife together may petition the superior court for the
 2 dissolution of their marriage under AS 25.24.200 - 25.24.260 if the following
 3 conditions exist at the time of filing the petition:

4 (1) incompatibility of temperament has caused the irremediable
 5 breakdown of the marriage;

6 (2) if there are unmarried children of the marriage under the age of 19
 7 or the wife is pregnant, and the spouses have agreed on which spouse or third party
 8 is to be awarded custody of each minor child of the marriage and the extent of
 9 visitation, including visitation by grandparents and other persons if in the child's best
 10 interests, and support to be provided on the children's behalf, whether the payments
 11 are to be made through the child support enforcement agency and the tax consequences
 12 of that agreement;

13 (3) the spouses have agreed as to the distribution of all **real and**
 14 **personal property that is** jointly owned **or community** [REAL AND PERSONAL]
 15 property **under AS 34.75**, including retirement benefits [,] and the payment of spousal
 16 maintenance, if any, and the tax consequences resulting from these payments; the
 17 agreement must be fair and just and take into consideration the factors listed in
 18 AS 25.24.160(a)(2) and (4) so that the economic effect of dissolution is fairly
 19 allocated; and

20 (4) the spouses have agreed as to the payment of all unpaid obligations
 21 incurred by either or both of them [,] and as to payment of obligations incurred jointly
 22 in the future.

23 * **Sec. 8.** AS 25.24.310(b) is amended to read:

24 (b) If custody, support, or visitation is at issue, the order for costs, fees, and
 25 disbursements shall be made against either or both parents, except that, if one of the
 26 parties responsible for the costs is indigent, the costs, fees, and disbursements for that
 27 party shall be borne by the state. If the parents are only temporarily without funds,
 28 the office of public advocacy shall provide legal representation or other services
 29 required by the court. The attorney general is responsible for enforcing collections
 30 owed the state. Repayment shall be made to the Department of Revenue under
 31 AS 37.10.050 for deposit in the general fund. The court shall, if possible, avoid

1 assigning costs to only one party by ordering that costs of the minor's legal
 2 representation or other services be paid from proceeds derived from a sale of joint,
 3 community, or individual property of the [BELONGING JOINTLY OR
 4 INDIVIDUALLY TO BOTH] parties [,] before a division of property is made.

5 * **Sec. 9.** AS 34.15.110 is amended to read:

6 **Sec. 34.15.110. Conveyances construed as creating tenancy in common.**

7 (a) A conveyance or devise of land or an interest in land made to two or more
 8 persons, other than to executors and trustees, as such, shall be construed to create a
 9 tenancy in common in the estate, except as provided in (b) of this section and
 10 AS 34.75.100.

11 (b) A husband and wife who acquire title in real property hold the estate as
 12 tenants by the entirety, except as provided by AS 34.75.100 or unless it is expressly
 13 declared otherwise in the conveyance or devise. The conveyance shall recite the
 14 marital status of the parties acquiring title to the real property.

15 * **Sec. 10.** AS 34.15.130 is amended to read:

16 **Sec. 34.15.130. Joint tenancy abolished.** Joint tenancy, with the exception
 17 of interests in personalty and tenancy by the entirety, is abolished. Except as provided
 18 in AS 34.15.110(b) and AS 34.75.100, persons having an undivided interest in real
 19 property are considered tenants in common.

20 * **Sec. 11.** AS 34 is amended by adding a new chapter to read:

21 **Chapter 75. Community Property Act.**

22 **Sec. 34.75.010. Good faith requirement.** A spouse shall act in good faith
 23 with respect to the other spouse in matters involving community property. The
 24 obligation under this section may not be varied by a community property agreement
 25 or a community property trust.

26 **Sec. 34.75.020. Variation by marital property agreement.** Except as
 27 provided in AS 34.75.010, 34.75.070(h), 34.75.080(b), and 34.75.090(c), a community
 28 property agreement or a community property trust may vary the effect of this chapter.

29 **Sec. 34.75.030. Classification of property of spouses.** (a) Except for
 30 property that is classified otherwise in this chapter, property of spouses is community
 31 property under this chapter only to the extent provided in a community property

1 agreement or a community property trust.

2 (b) If a community property agreement provides that all property acquired by
3 either or both spouses during the marriage is community property, the property of the
4 spouses acquired during the marriage and after the determination date is presumed to
5 be community property.

6 (c) A spouse has a present undivided one-half interest in community property.

7 (d) If the community property agreement provides that all property acquired
8 by either or both spouses during the marriage is community property, income earned
9 or accrued by a spouse or attributable to property of a spouse during marriage and
10 after the determination date is community property.

11 (e) Community property transferred to a trust remains community property.

12 (f) Whether or not the community property agreement provides that all
13 property acquired by either or both spouses during the marriage is community
14 property, property that is owned by a spouse at the time of a marriage but before the
15 determination date is not community property except to the extent otherwise expressly
16 provided in the community property agreement.

17 (g) Whether or not the community property agreement provides that all
18 property acquired by either or both spouses during the marriage is community
19 property, and except to the extent otherwise expressly provided in the community
20 property agreement, property acquired by a spouse during marriage and after the
21 determination date is individual property if acquired

22 (1) by gift or a disposition at death made by a third person to the
23 spouse and not to both spouses;

24 (2) in exchange for or with the proceeds of other individual property
25 of the spouse;

26 (3) from appreciation or income of the spouse's individual property
27 except to the extent that the income or appreciation is classified as community property
28 under AS 34.75.130;

29 (4) by a decree, community property agreement, written consent, or
30 reclassification under AS 34.75.060(b) designating it as the individual property of the
31 spouse;

1 (5) as a recovery for damage to property under AS 34.75.140, except
 2 as specifically provided otherwise in a decree, community property agreement, or
 3 written consent; or

4 (6) as a recovery for personal injury, except for the amount of the
 5 recovery attributable to expenses paid or otherwise satisfied from community property.

6 (h) Appreciation and income of property transferred to a community property
 7 trust is community property if declared in the trust to be community property.

8 (i) Community property held by a community property trust or another trust
 9 remains community property of the spouses if distributed to the spouses.

10 (j) Except as provided otherwise in this chapter, this chapter does not alter the
 11 classification and ownership rights of property acquired before or during the marriage.

12 **Sec. 34.75.040. Management and control of property of spouses.** (a) A
 13 spouse acting alone may manage and control

14 (1) that spouse's property that is not community property;

15 (2) except as provided in (c) of this section, community property held
 16 in that spouse's name alone or not held in the name of either spouse;

17 (3) a policy of insurance if that spouse is designated as the owner on
 18 the records of the issuer of the policy;

19 (4) the rights of an employee under an arrangement for deferred
 20 employment benefits that accrue as a result of that spouse's employment;

21 (5) a claim for relief vested in that spouse by other law;

22 (6) community property held in the names of both spouses in the
 23 alternative, including using the names of both spouses with the word "or."

24 (b) Spouses may not manage and control community property held in the
 25 names of both spouses other than in the alternative unless they act together.

26 (c) The right to manage and control community property that is transferred to
 27 a trust, including property that is community property under the trust, is determined
 28 by the terms of the trust.

29 (d) The right to manage and control community property does not determine
 30 the classification of property of the spouses and does not rebut the presumption of
 31 AS 34.75.030(b).

1 (e) The right to manage and control community property does not permit gifts
2 of the property, except to the extent provided in AS 34.75.050.

3 (f) Except to the extent otherwise expressly provided in a community property
4 agreement or a community property trust, the right to manage and control the property
5 of spouses is not affected by this chapter if the property is acquired before the
6 determination date.

7 (g) A court may appoint a conservator or guardian to exercise a disabled
8 spouse's right to manage and control community property.

9 **Sec. 34.75.050. Gifts of community property to third persons.** (a) A
10 spouse acting alone may not give to a third person community property that the spouse
11 has the right to manage and control unless the value of the community property given
12 to the third person does not aggregate more than \$1,000 in a calendar year, or a larger
13 amount if, when made, the gift is reasonable in amount considering the economic
14 position of the spouses.

15 (b) A gift of community property to a third person that is not allowed under
16 (a) of this section is subject to (d) of this section unless both spouses act together in
17 making the gift or the other spouse ratifies the gift.

18 (c) Reporting any part of a gift made by the other spouse on a United States
19 gift tax return under 26 U.S.C. 2501 - 2524 or consenting to the treatment of a gift
20 under 26 U.S.C. 2513 (Internal Revenue Code) by signing the consent on the other
21 spouse's United States gift tax return is treated as the spouses acting together in
22 making the gift.

23 (d) If a gift of community property by a spouse does not comply with (a) of
24 this section, the other spouse may bring the action against the donating spouse, the
25 recipient of the gift, or both. The action must be commenced within the earlier of one
26 year after the other spouse has notice of the gift or three years after the gift. If the
27 recovery occurs during marriage, it is community property. If the recovery occurs
28 after a dissolution or the death of either spouse, the recovery may not exceed one-half
29 of the value of the gift and is individual property.

30 **Sec. 34.75.060. Certain property transactions between spouses.** (a) While
31 both spouses are domiciled in this state, spouses may classify any or all of their

1 property as community property in a community property agreement.

2 (b) Whether or not both, one, or neither is domiciled in this state, spouses may
3 classify any or all of their property as community property by transferring property to
4 a community property trust and providing in the trust that the property is community
5 property.

6 **Sec. 34.75.070. Obligations of spouses.** (a) An obligation incurred by a
7 spouse during marriage, including an obligation attributable to an act or omission
8 during marriage, is presumed to be incurred in the interest of the marriage or the
9 family.

10 (b) After the determination date, a spouse's obligation to satisfy a duty of
11 support owed to the other spouse or to a child of the marriage may be satisfied only
12 from community property and the other property of the obligated spouse that is not
13 community property.

14 (c) After the determination date, an obligation incurred by a spouse in the
15 interest of the marriage or the family may be satisfied only from community property
16 and the other property of that spouse that is not community property.

17 (d) After the determination date, an obligation incurred by a spouse before or
18 during marriage that is attributable to an obligation arising before marriage or to an
19 act or omission occurring before marriage may be satisfied only from property of that
20 spouse that is not community property and from that part of community property that
21 would have been the property of that spouse but for the marriage and the classification
22 of the property as community property under this chapter.

23 (e) After the determination date, an obligation, except an obligation covered
24 by (b) - (d) of this section, that is incurred by a spouse during marriage, including an
25 obligation attributable to an act or omission during marriage, may be satisfied only
26 from property of that spouse that is not community property and from that spouse's
27 interest in community property.

28 (f) This chapter does not alter the relationship between spouses and their
29 creditors with respect to property or an obligation in existence before the determination
30 date.

31 (g) A writing that is signed by a creditor and that reduces a creditor's rights

1 under this section is binding on the creditor.

2 (h) A provision of a community property agreement or a community property
3 trust does not adversely affect the interest of a creditor unless the creditor has actual
4 knowledge of the provision when the obligation to the creditor is incurred. The effect
5 of this subsection may not be varied by a community property agreement or a
6 community property trust.

7 (i) This chapter does not affect an exemption provided under other law for the
8 property of spouses.

9 **Sec. 34.75.080. Protection of bona fide purchasers dealing with spouses.**

10 (a) Notice of the existence of a community property agreement, a community
11 property trust, a marriage, or the termination of a marriage does not affect the status
12 of a purchaser as a bona fide purchaser.

13 (b) Community property purchased by a bona fide purchaser from a spouse
14 having the right to manage and control the property under AS 34.75.040 is acquired
15 free of any claim of the other spouse. The effect of this subsection may not be varied
16 by a community property agreement or a community property trust.

17 (c) In this section,

18 (1) "bona fide purchaser" means a purchaser of property for value who
19 has not knowingly been a party to fraud or illegality affecting the interest of the
20 spouses or other parties to the transaction, does not have notice of an adverse claim
21 by a spouse, and has acted in the transaction in good faith; in this paragraph, a
22 purchaser gives "value" for property if the property is acquired

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

24 (B) as security for or in total or partial satisfaction of a
25 preexisting claim;

26 (C) by accepting delivery under a preexisting contract for
27 purchase; or

28 (D) in return for other consideration sufficient to support a
29 contract;

30 (2) "purchaser" means a person who acquires property by sale, lease,
31 discount, negotiation, mortgage, pledge, or lien, or otherwise deals with property in a

1 voluntary transaction other than making a gift.

2 **Sec. 34.75.090. Community property agreement.** (a) A community property
3 agreement must be contained in a written document signed by both spouses and
4 classify some or all of the property of the spouses as community property. It is
5 enforceable without consideration.

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

8 THE CONSEQUENCES OF THIS AGREEMENT MAY BE
9 VERY EXTENSIVE, INCLUDING, BUT NOT LIMITED TO,
10 YOUR RIGHTS WITH RESPECT TO CREDITORS AND
11 OTHER THIRD PARTIES, AND YOUR RIGHTS WITH
12 YOUR SPOUSE BOTH DURING THE COURSE OF YOUR
13 MARRIAGE AND AT THE TIME OF A DIVORCE.
14 ACCORDINGLY, THIS AGREEMENT SHOULD ONLY BE
15 SIGNED AFTER CAREFUL CONSIDERATION. IF YOU
16 HAVE ANY QUESTIONS ABOUT THIS AGREEMENT, YOU
17 SHOULD SEEK COMPETENT ADVICE.

18 (c) A community property agreement may not adversely affect the right of a
19 child to support.

20 (d) Except as provided in AS 34.75.020, 34.75.070(h), 34.75.080(b), and (c)
21 of this section, in a community property agreement, spouses may agree

22 (1) on the rights and obligations in the property, notwithstanding when
23 and where the property is acquired and located;

24 (2) on the management and control of their property;

25 (3) on the disposition of their property on dissolution, death, or the
26 occurrence or nonoccurrence of another event;

27 (4) on making a will, trust, or other arrangement to carry out the
28 agreement;

29 (5) that, upon the death of either of them, any of their property,
30 including after-acquired property, passes without probate to a designated person, trust,
31 or other entity by nontestamentary disposition;

1 (6) on the choice of law governing the interpretation of the agreement;
2 and

3 (7) on any other matter that affects their property and does not violate
4 public policy or a statute imposing a criminal penalty.

5 (e) A community property agreement may not be amended or revoked unless
6 the agreement itself provides for revocation on a particular date or on the occurrence
7 of a particular event, or unless the agreement is amended or revoked by a later
8 community property agreement. To amend or revoke the agreement, the later
9 community property agreement is not required to declare any property of the spouses
10 as community property. The amended agreement or the revocation is enforceable
11 without consideration.

12 (f) Persons intending to marry each other may enter into a community property
13 agreement as if married, but the agreement does not become effective until the persons
14 are married.

15 (g) A community property agreement executed during marriage is not
16 enforceable if the spouse against whom enforcement is sought proves that

17 (1) the agreement was unconscionable when made;

18 (2) the spouse against whom enforcement is sought did not execute the
19 agreement voluntarily; or

20 (3) before execution of the agreement, the spouse against whom
21 enforcement is sought

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

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

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

29 (h) A community property agreement executed before marriage is not
30 enforceable if the spouse against whom enforcement is sought proves that

31 (1) the spouse against whom enforcement is sought did not execute the

1 agreement voluntarily; or

2 (2) the agreement was unconscionable when made and, before
3 execution of the agreement, the spouse against whom enforcement is sought

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

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

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

11 (i) Whether or not a community property agreement is unconscionable is
12 determined by a court as a matter of law.

13 **Sec. 34.75.100. Community property trust.** (a) An arrangement is a
14 community property trust if one or both spouses transfer property to a trust, the trust
15 expressly declares that some or all the property transferred is community property
16 under this chapter, and at least one trustee is a qualified person whose powers include
17 or are limited to maintaining records for the trust on an exclusive or a nonexclusive
18 basis and preparing or arranging for the preparation of, on an exclusive or a
19 nonexclusive basis, any income tax returns that must be filed by the trust. A
20 community property trust is enforceable without consideration. Both spouses or either
21 spouse may be a trustee. The trust must be signed by both spouses. In this
22 subsection, "qualified person" means

23 (1) an individual

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

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

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

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

31 (2) a trust company that is organized under AS 06.25 and that has its

1 principal place of business in this state; or

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

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

8 THE CONSEQUENCES OF THIS TRUST MAY BE VERY
9 EXTENSIVE, INCLUDING, BUT NOT LIMITED TO, YOUR
10 RIGHTS WITH RESPECT TO CREDITORS AND OTHER
11 THIRD PARTIES, AND YOUR RIGHTS WITH YOUR
12 SPOUSE BOTH DURING THE COURSE OF YOUR
13 MARRIAGE AND AT THE TIME OF A DIVORCE.
14 ACCORDINGLY, THIS AGREEMENT SHOULD ONLY BE
15 SIGNED AFTER CAREFUL CONSIDERATION. IF YOU
16 HAVE ANY QUESTIONS ABOUT THIS AGREEMENT, YOU
17 SHOULD SEEK COMPETENT ADVICE.

18 (c) A community property trust may not adversely affect the right of a child
19 to support.

20 (d) Except as provided in AS 34.75.010, 34.75.070(h), 34.75.080(b), and in (c)
21 of this section, in a community property trust spouses may agree on

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

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

25 (3) the disposition of the property transferred to the trust on dissolution,
26 death, or the occurrence or nonoccurrence of another event;

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

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

30 (e) A community property trust may not be amended or revoked unless the
31 agreement itself provides for revocation on a particular date or on the occurrence of

1 a particular event or unless the agreement is amended or revoked by a later community
 2 property trust. To amend or revoke the trust, the later community property trust is not
 3 required to declare any property held by the trustee as community property. The
 4 amended trust or the revocation is enforceable without consideration.

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

7 (1) trust was unconscionable when made; or

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

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

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

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

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

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

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

24 **Sec. 34.75.110. Forms of holding property.** (a) Spouses may hold
 25 community property in a form that designates the holders of it by the words "(name
 26 of one spouse) or (name of other spouse) as community property." Community
 27 property held in this form is subject to AS 34.75.040(a)(6).

28 (b) Spouses may hold community property in a form that designates the holder
 29 of it by the words "(name of one spouse) and (name of other spouse) as community
 30 property." Community property held in this form is subject to AS 34.75.040(b).

31 (c) A spouse may hold individual property in a form that designates the holder

1 of it by the words "(name of spouse) as individual property." Individual property held
 2 in this form is subject to AS 34.75.040(a)(1).

3 (d) Spouses may hold property in any other form permitted by law, including
 4 a concurrent form or a form that provides for survivorship ownership.

5 (e) If the words "survivorship community property" are used instead of the
 6 words "community property" in the form described in (a) or (b) of this section, the
 7 community property is survivorship community property. On the death of a spouse,
 8 the ownership rights of that spouse in survivorship community property vest solely in
 9 the surviving spouse by nontestamentary disposition at death. The first deceased
 10 spouse does not have a right of disposition at death of any interest in survivorship
 11 community property. Holding community property in a form described in (a) or (b)
 12 of this section does not by itself establish survivorship ownership between the spouses
 13 for the property held in that form.

14 **Sec. 34.75.120. Classification of life insurance policies and proceeds.** (a)
 15 If a policy issuer makes payments or takes actions in accordance with the policy and
 16 the issuer's records, the issuer is not liable because of the payments or actions unless,
 17 at the time of the payments or actions, the issuer had actual knowledge of inconsistent
 18 provisions of a community property agreement, a community property trust, a decree
 19 relating to a community property agreement or a community property trust, or an
 20 adverse claim that is brought by a spouse, former spouse, surviving spouse, or persons
 21 claiming under a deceased spouse's disposition at death and that relates to a
 22 community property agreement or a community property trust.

23 (b) Except as provided in (c) - (e) of this section,
 24 (1) the ownership interest in and proceeds of a policy that insures the
 25 life of one of the spouses and that has been classified by a community property
 26 agreement or a community property trust as community property are community
 27 property without regard to the classification of property used to pay premiums on the
 28 policy;

29 (2) the ownership interest in and proceeds of a policy that is owned by
 30 one spouse and that has not been classified by a community property agreement or a
 31 community property trust as community property are mixed property if all or part of

1 a premium on the policy is paid from community property after the determination date;
2 the community property component of the ownership interest and proceeds is the part
3 resulting from multiplying the entire ownership interest and proceeds by a fraction that
4 consists of a numerator that is the sum of the net premiums and portions of net
5 premiums paid from community property and a denominator that is the sum of the net
6 premiums paid;

7 (3) the ownership interest in and proceeds of a policy issued during
8 marriage that designates the spouse of the insured as the owner are the individual
9 property of the owner without regard to the classification of property used to pay
10 premiums on the policy;

11 (4) the ownership interest in and proceeds of a policy that designates
12 a person other than either of the spouses as the owner are not affected by this chapter
13 if a premium on the policy is not paid from community property after the
14 determination date; if all or part of a premium on the policy is paid from community
15 property after the determination date, the ownership interest and proceeds of the policy
16 are in part property of the designated owner of the policy and in part community
17 property of the spouses without regard to the classification of property used to pay
18 premiums on the policy after the initial payment of a premium on the policy from
19 community property; the community property component of the ownership interest and
20 proceeds is the part resulting from multiplying the entire ownership interest and
21 proceeds by a fraction that consists of a numerator that is the sum of the net premiums
22 and portions of net premiums paid from community property and a denominator that
23 is the sum of the net premiums paid;

24 (5) written consent by a spouse to the designation of another person as
25 the beneficiary of the proceeds of a policy is effective to relinquish that spouse's
26 interest in the ownership interest and proceeds of the policy without regard to the
27 classification of property used by a spouse or another person to pay premiums on the
28 policy; a designation by either spouse of a parent or child of either of the spouses as
29 the beneficiary of the proceeds of a policy is presumed to have been made with the
30 consent of the other spouse;

31 (6) unless the spouses provide otherwise in a community property

1 agreement or community property trust, designation of a trust as the beneficiary of the
 2 proceeds of a policy with a community property component does not reclassify the
 3 component.

4 (c) This section does not affect a creditor's interest in the ownership interest
 5 or proceeds of a policy assigned or made payable to the creditor as security.

6 (d) The interest of a person as owner or beneficiary of a policy acquired under
 7 a decree or property settlement agreement incident to a prior marriage or parenthood
 8 is not community property notwithstanding the classification of property used to pay
 9 premiums on the policy.

10 (e) This section does not affect the ownership interest or proceeds of a policy
 11 unless a spouse is designated as an owner in the policy or on the records of the policy
 12 issuer and community property is used to pay a premium on the policy.

13 (f) In this section,

14 (1) "owner" means a person appearing on the records of a policy issuer
 15 as the person having the ownership interest, or, if a person other than the insured does
 16 not appear on the records as a person having the interest, "owner" means the insured;

17 (2) "ownership interest" means the rights of an owner under a policy;

18 (3) "policy" means an insurance policy insuring the life of a spouse and
 19 providing for payment of death benefits at the spouse's death;

20 (4) "proceeds" means the death benefit from a policy and all other
 21 economic benefits from the policy, whether the economic benefits accrue or become
 22 payable as a result of the death of an insured person or upon the occurrence or
 23 nonoccurrence of another event.

24 **Sec. 34.75.130. Mixed property.** (a) Except as provided otherwise in
 25 AS 34.75.110, mixing community property with property having another classification
 26 reclassifies the other property as community property unless the component of the
 27 mixed property that is not community property can be traced.

28 (b) If a community property agreement provides that all property acquired by
 29 either or both spouses during marriage is community property, application by one
 30 spouse of substantial labor, effort, inventiveness, physical skill, intellectual skill,
 31 creativity, or managerial activity on individual property of the other spouse creates

community property attributable to the application if

- (1) reasonable compensation is not received for the application; and
- (2) substantial appreciation of the individual property of the other spouse results from the application.

Sec. 34.75.140. Interspousal Remedies. (a) A spouse has a claim against the other spouse for breach of the good faith requirement under AS 34.75.010 resulting in damage to the claimant spouse's present undivided one-half interest in community property.

(b) If the spouses have signed a community property agreement or a community property trust, a court may order an accounting of the property and obligations of the spouses and may determine rights of ownership in, beneficial enjoyment of, or access to marital property and the classification of all property of the spouses.

(c) A court may order that the name of a spouse be added to community property held in the name of the other spouse alone, except

- (1) a partnership interest held by the other spouse as a general partner;
- (2) an interest in a professional corporation, professional association, or similar entity held by the other spouse as a stockholder or member;
- (3) an asset of an unincorporated business if the other spouse is the only spouse involved in operating or managing the business; or
- (4) other property if the addition would adversely affect the rights of a third person.

(d) Except as provided otherwise in AS 34.75.050(d), a spouse must begin an action against the other spouse under (a) of this section within three years after acquiring actual knowledge of the facts giving rise to the claim.

Sec. 34.75.150. Treatment of certain property at death of spouse. If a community property agreement provides that all property acquired by either or both spouses during marriage is community property, at the death of a spouse domiciled in this state, property of the spouse that can be traced to property received by the spouse after the determination date as a recovery for a loss of earning capacity during marriage shall be treated as if it were community property.

Sec. 34.75.160. Uniformity of application and construction. This chapter shall be applied and construed to effectuate its general purpose and to make uniform the law with respect to the subject of this chapter among states enacting it.

Sec. 34.75.900. Definitions. In this chapter,

(1) "acquire" in relation to property includes obtaining reductions of indebtedness on encumbered property and obtaining a lien on or a security interest in property;

(2) "appreciation" means a realized or unrealized increase in the value of property;

(3) "community property" means property owned jointly by both spouses under a community property agreement or a community property trust;

(4) "community property agreement" means an agreement that complies with AS 34.75.090;

(5) "community property trust" means an express trust that complies with AS 34.75.100;

(6) "decree" means a judgment or other order of a court;

(7) "determination date" means the later of

(A) marriage;

(B) the effective date of a community property agreement or a community property trust; or

(C) the effective date of this Act;

(8) "disposition at death" means the transfer of property by will, intestate succession, nontestamentary transfer, or other means that take effect at the transferor's death;

(9) "dissolution" means

(A) termination of a marriage by a decree of dissolution, divorce, annulment, or declaration of invalidity; or

(B) entry of a decree of legal separation or separate maintenance;

(10) "during marriage" means a period that begins at marriage and ends at divorce, dissolution, or the death of a spouse;

(11) "held" means the registration, recordation, or filing by a person in a public office in the name of the person of a document of title to property, or the issuance in the person's name of a writing that customarily operates as a document of title to the property;

(12) "income" means dividends, interest, and net rents and other net returns attributable to investment, rental, licensing, or other use of property unless attributable to a return of capital or to appreciation;

(13) "management and control" means the right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, institute or defend a civil action regarding, or otherwise deal with property as if the property is the property of an unmarried person;

(14) "notice" of a fact means a knowledge of it, receipt of a notification of it, or reason to know that it exists from the facts and circumstances known to the person;

(15) "presume" or a "presumption" means the imposition on the person against whom the presumption or presumed fact is directed of the burden of proving that the nonexistence of the presumed fact is more probable than its existence;

(16) "property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property;

(17) "written waiver" means a document signed by a person against whose interests it is sought to be enforced.

Sec. 34.75.995. Short Title. This chapter may be cited as the "Alaska Community Property Act."

* **Sec. 12.** COURT RULE. AS 34.75.900(15), enacted by sec. 11 of this Act, changes Rule 301, Alaska Rules of Evidence, by changing the effect of presumptions established under AS 34.75.

* **Sec. 13.** AS 34.75.900(15), enacted by sec. 11 of this Act, takes effect only if sec. 12 of this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

* **Sec. 14.** Except as provided by sec. 13 of this Act, this Act takes effect immediately under AS 01.10.070(c).