

LEGAL SERVICES

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MEMORANDUM

April 7, 2014

SUBJECT: CSHB 60() relating to the Uniform Real Property Transfer on Death Act, the law governing certain trusts, and disclaimers of property interests (Work Order No. 28-LS0265\Y)

TO: Representative Max Gruenberg
Attn: Nicoli Bailey

FROM:  Terry Bannister
Legislative Counsel

This memo describes the changes between CSHB 60() (Version Y) and CSHB 60(L&C) (Version P). Please note the comments and questions in the paragraph on the title changes.

1. Title. First, the title in Version Y reflects the addition of the material in bill section 1. The new title material reads "relating to establishing the law governing certain trusts." Second, the title in this version reflects the removal of the material relating to the repeal of AS 34.15.130. AS 34.15.130 currently abolishes the use of joint tenancy for real property transfers.

2. Bill section 1. This bill section adds new subsections (sec. 13.36.035(f) and (g)) to the statutory section dealing with choice of law and court jurisdiction over trusts. Indicates that, unless certain circumstances are met, the laws of this state govern the administration of a trust and that the courts of this state have exclusive jurisdiction over the trust and its trustees while the trust is administered in this state.

3. Sec. 13.48.045. This is a new section. It indicates that a TOD deed and an instrument revoking a TOD deed are void if obtained by fraud, duress, or undue influence. Requires that a proceeding must be brought within 12 months to contest the capacity of the transferor or to determine that a TOD deed or an instrument revoking a TOD deed is void because obtained by fraud, duress, or undue influence.

4. Sec. 13.48.050. Sec. 13.48.050(3) is new and prohibits using a beneficiary designation that only identifies beneficiaries as members of a class. It also states that a TOD deed is void if a class designation is used. Former sec. 13.48.050(3) became (4).

5. Sec. 13.48.070. Adds (D) to subsection (a)(1) to describe another type of instrument that revokes a TOD deed. Removes former (b) that provided a rebuttable presumption of

revocation for certain inter vivos deeds. As a result, removes "and (b)" from the beginning of (a) and reletters the rest of the subsections. Also adds (e), which allows a transferor's agent to revoke a TOD deed, if the agent is expressly granted the power in a recorded power of attorney or in the TOD deed .

6. Sec. 13.48.090. Removes a reference to AS 13.12.706 and 13.12.707 from (a).

7. Sec. 13.48.110. Adds a new sentence in (c). This language requires that the personal representative receive a written demand from the spouse, creditor, or child before the proceeding may be started to establish a liability under the section.

8. Sec. 13.48.120. In the TOD deed form, adds lines for identifying the marital status of the transferor(s) and the primary and alternate beneficiaries. As a practical matter, an indication of marital status is required for recording.

9. Sec. 13.48.130. In the TOD revocation form, adds lines for identifying the marital status of the owner(s) revoking the TOD deed. As a practical matter, an indication of marital status is required for recording.

10. Sec. 13.48.190. In the definition of "joint owner," makes conforming changes to reflect that the repealer of AS 34.15.130 has been removed and, therefore, that joint tenancy is still abolished in the state. Removes "who is a joint tenant" from the beginning of the definition, and inserts "or who is a joint tenant, other than an individual who is a tenant by the entirety" at the end of the definition.

11. Former bill section 5. This section was deleted. It repealed AS 34.15.130, which currently abolishes the use of joint tenancy for real property transfers.

12. Bill section 6. Former subsection (c) was deleted. It addressed the applicability of the former section that repealed AS 34.15.130.

If I may be of further assistance, please advise.

TLB:Ind

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