

HOUSE BILL NO. 308

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE PARNELL

Introduced: 4/13/95

Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the Uniform Probate Code, including nonprobate transfers,
2 guardianships, trusts, and multiple-party accounts; relating to the Uniform
3 Simultaneous Death Act; amending Alaska Rule of Probate Procedure 5; and
4 providing for an effective date."

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

6 * **Section 1.** AS 13.06.035 is repealed and reenacted to read:

7 Sec. 13.06.035. EVIDENCE OF DEATH OR STATUS. In addition to the
8 Alaska Rules of Evidence, the following rules relating to a determination of death and
9 status apply:

10 (1) death occurs when an individual has sustained either irreversible
11 cessation of circulatory and respiratory functions or irreversible cessation of all
12 functions of the entire brain, including the brain stem; a determination of death shall
13 be made under accepted medical standards;

14 (2) a certified or authenticated copy of a death certificate purporting to

1 be issued by an official or agency of the place where the death purportedly occurred
2 is prima facie evidence of the fact, place, date, and time of death and the identity of
3 the decedent;

4 (3) a certified or authenticated copy of a record or report of a
5 governmental agency, domestic or foreign, that an individual is missing, detained,
6 dead, or alive is prima facie evidence of the status and of the dates, circumstances, and
7 places disclosed by the record or report;

8 (4) in the absence of prima facie evidence of death under (2) or (3) of
9 this section, the fact of death may be established by clear and convincing evidence,
10 including circumstantial evidence;

11 (5) an individual whose death is not established under (1) - (4) of this
12 section and who is absent for a continuous period of five years, during which the
13 individual has not been heard from, and whose absence is not satisfactorily explained
14 after diligent search or inquiry, is presumed to be dead; the individual's death is
15 presumed to have occurred at the end of the period unless there is sufficient evidence
16 for determining that death occurred earlier;

17 (6) in the absence of evidence disputing the time of death stated on a
18 document described in (2) or (3) of this section, a document described in (2) or (3) of
19 this section that states a time of death 120 hours or more after the time of death of
20 another individual, however the time of death of the other individual is determined,
21 establishes by clear and convincing evidence that the individual survived the other
22 individual by at least 120 hours.

23 * **Sec. 2.** AS 13.06.050 is repealed and reenacted to read:

24 Sec. 13.06.050. GENERAL DEFINITIONS FOR AS 13.06 - AS 13.36.
25 Subject to additional definitions contained in AS 13.06 - AS 13.36 that are applicable
26 to specific provisions of AS 13.06 - AS 13.36, and unless the context otherwise
27 requires, in AS 13.06 - AS 13.36

28 (1) "agent" includes an attorney-in-fact under a durable or nondurable
29 power of attorney and an individual authorized to make decisions concerning another's
30 health care;

31 (2) "application" means a written request to the registrar for an order

1 of informal probate or appointment under AS 13.16.080 - 13.16.130;

2 (3) "beneficiary," as it relates to a trust beneficiary, includes a person
3 who has a present or future interest, vested or contingent, and also includes the owner
4 of an interest by assignment or other transfer; as it relates to a charitable trust,
5 "beneficiary" includes a person entitled to enforce the trust; as it relates to a
6 "beneficiary of a beneficiary designation," "beneficiary" means a beneficiary of an
7 insurance or annuity policy, of an account with payment on death designation under
8 AS 13.33, of a security registered in beneficiary form under AS 13.33, or of a pension,
9 profit-sharing, retirement, or similar benefit plan, or of another nonprobate transfer at
10 death; and, as it relates to a "beneficiary designated in a governing instrument,"
11 "beneficiary" includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary
12 of a beneficiary designation, a donee, appointee, or taker in default of a power of
13 appointment, and a person in whose favor a power of attorney or a power held in an
14 individual, fiduciary, or representative capacity is exercised;

15 (4) "beneficiary designation" means a governing instrument naming a
16 beneficiary of an insurance or annuity policy, of an account with payment on death
17 designation under AS 13.33, of a security registered in beneficiary form under
18 AS 13.33, or of a pension, profit-sharing, retirement, or similar benefit plan, or of
19 another nonprobate transfer at death;

20 (5) "child" includes an individual entitled to take as a child under
21 AS 13.06 - AS 13.36 by intestate succession from the parent whose relationship is
22 involved, and excludes a person who is only a stepchild, a foster child, a grandchild,
23 or a more remote descendant;

24 (6) "claims," in respect to estates of decedents and protected persons,
25 includes liabilities of the decedent or protected person, whether arising in contract, in
26 tort, or in another way, and liabilities of the estate that arise at or after the death of the
27 decedent or after the appointment of a conservator, including funeral expenses and
28 expenses of administration; "claims" does not include estate or inheritance taxes, or
29 demands or disputes regarding title of a decedent or protected person to specific assets
30 alleged to be included in the estate;

31 (7) "court" means the superior court in this state;

1 (8) "conservator" means a person who is appointed by a court to
2 manage the estate of a protected person;

3 (9) "descendant" of an individual means all of the individual's
4 descendants of all generations, with the relationship of parent and child at each
5 generation being determined by the definition of child and parent contained in
6 AS 13.06 - AS 13.36;

7 (10) "devise," when used as a noun, means a testamentary disposition
8 of real or personal property and, when used as a verb, means to dispose of real or
9 personal property by will;

10 (11) "devisee" means a person designated in a will to receive a devise;
11 in AS 13.16, in the case of a devise to an existing trust or trustee, or to a trust or
12 trustee described by will, the trust or trustee is the devisee and the beneficiaries are not
13 devisees;

14 (12) "disability" means a cause for a protective order as described in
15 AS 13.26.165;

16 (13) "distributee" means a person who has received property of a
17 decedent from the decedent's personal representative other than as a creditor or
18 purchaser; "distributee" includes a testamentary trustee only to the extent of the
19 distributed assets, or increment to the distributed assets, remaining in the hands of the
20 testamentary trustee; "distributee" includes a beneficiary of a testamentary trust to
21 whom the trustee has distributed property received from a personal representative; in
22 this paragraph, "testamentary trustee" includes a trustee to whom assets are transferred
23 by will, to the extent of the devised assets;

24 (14) "estate" includes the property of the decedent, trust, or other
25 person whose affairs are subject to AS 13.06 - AS 13.36 as originally constituted and
26 as it exists from time to time during administration;

27 (15) "exempt property" means the property of a decedent's estate that
28 is described in AS 13.12.403;

29 (16) "fiduciary" includes a personal representative, guardian,
30 conservator, and trustee;

31 (17) "foreign personal representative" means a personal representative

1 appointed by another jurisdiction;

2 (18) "formal proceedings" means proceedings conducted before a judge
3 with notice to interested persons;

4 (19) "governing instrument" means a deed, a will, a trust, an insurance
5 or annuity policy, an account with payment on death designation under AS 13.33, a
6 security registered in beneficiary form under AS 13.33, a pension, profit-sharing,
7 retirement, or similar benefit plan, an instrument creating or exercising a power of
8 appointment or a power of attorney, or a dispositive, appointive, or nominative
9 instrument of a similar type;

10 (20) "guardian" means a person who has qualified as a guardian of a
11 minor or incapacitated person in accordance with testamentary or court appointment,
12 but excludes a person who is merely a guardian ad litem;

13 (21) "heirs," except as controlled by AS 13.12.711, means a person,
14 including the surviving spouse and the state, who is entitled under the statutes of
15 intestate succession to the property of a decedent;

16 (22) "incapacitated person" has the meaning given in AS 13.26.005;

17 (23) "informal proceedings" means those proceedings conducted without
18 notice to interested persons by an officer of the court acting as a registrar for probate
19 of a will or appointment of a personal representative;

20 (24) "interested person" includes heirs, devisees, children, spouses,
21 creditors, beneficiaries, and other persons having property rights in or claims against
22 a trust estate or the estate of a decedent, ward, or protected person; "interested person"
23 also includes persons having priority for appointment as personal representative, and
24 other fiduciaries representing interested persons; "interested person," as it relates to
25 particular persons, may vary from time to time and its meaning shall be determined
26 according to the particular purposes of, and matter involved in, a proceeding;

27 (25) "issue" of a person means a descendant under (9) of this section;

28 (26) "joint tenants with the right of survivorship" includes co-owners
29 of property held under circumstances that entitle one or more of the co-owners to the
30 whole of the property on the death of one or more of the other co-owners, but excludes
31 forms of co-ownership registration in which the underlying ownership of each party

1 is in proportion to that party's contribution;

2 (27) "lease" includes an oil, gas, or mineral lease;

3 (28) "letters" includes letters testamentary, letters of guardianship,
4 letters of administration, and letters of conservatorship;

5 (29) "minor" means a person who is under 19 years of age;

6 (30) "mortgage" means a conveyance, agreement, or arrangement in
7 which property is encumbered or used as security;

8 (31) "nonresident decedent" means a decedent who was domiciled in
9 another jurisdiction at the time of the decedent's death;

10 (32) "organization" means a corporation, business trust, estate, trust,
11 partnership, joint venture, association, government or governmental subdivision or
12 agency, or another legal or commercial entity;

13 (33) "parent" includes a person entitled to take, or who would be
14 entitled to take if a child dies without a will, as a parent under AS 13.06 - AS 13.36
15 by intestate succession from the child whose relationship is in question, and excludes
16 a person who is only a stepparent, foster parent, or grandparent;

17 (34) "payor" means a trustee, insurer, business entity, employer,
18 government, governmental agency or subdivision, or another person authorized or
19 obligated by law or a governing instrument to make payments;

20 (35) "personal representative" includes an executor, an administrator,
21 a successor personal representative, a special administrator, and a person who performs
22 substantially the same function under the law governing their status; "general personal
23 representative" excludes a special administrator;

24 (36) "petition" means a written request to the court for an order after
25 notice;

26 (37) "proceeding" includes an action at law and a suit in equity;

27 (38) "property" means anything that may be the subject of ownership,
28 and includes both real and personal property and an interest in real or personal
29 property;

30 (39) "protected person" has the meaning given in AS 13.26.005;

31 (40) "protective proceeding" has the meaning given in AS 13.26.005;

1 (41) "registrar" means the official of the court designated to perform
2 the functions of registrar under AS 13.06.090;

3 (42) "security" includes a note, a stock, a treasury stock, a bond, a
4 debenture, an evidence of indebtedness, a certificate of interest or participation in an
5 oil, gas, or mining title or lease or in payments out of production under an oil, gas, or
6 mining title or lease, a collateral trust certificate, a transferable share, a voting trust
7 certificate, an interest or instrument commonly known as a security, or a certificate of
8 interest or participation in, a temporary or interim certificate, receipt, or certificate of
9 deposit for, or a warrant or right to subscribe to or purchase, one of the items
10 identified in this paragraph;

11 (43) "settlement," in reference to a decedent's estate, includes the full
12 process of administration, distribution, and closing;

13 (44) "special administrator" means a personal representative as
14 described by AS 13.16.310 - 13.16.330;

15 (45) "state" means a state of the United States, the District of
16 Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession
17 subject to the jurisdiction of the United States;

18 (46) "successor personal representative" means a personal
19 representative, other than a special administrator, who is appointed to succeed a
20 previously appointed personal representative;

21 (47) "successor" means a person, other than a creditor, who is entitled
22 to property of a decedent under the decedent's will or AS 13.06 - AS 13.36;

23 (48) "supervised administration" refers to the proceedings described in
24 AS 13.16.215 - 13.16.235;

25 (49) "survive" means to not predecease an event, including the death
26 of another individual, or to not be considered to predecease an event under
27 AS 13.12.104 or 13.12.702; "survive" includes its derivatives, including "survives,"
28 "survived," "survivor," and "surviving";

29 (50) "testacy proceeding" means a proceeding to establish a will or
30 determine intestacy;

31 (51) "testator" includes an individual of either sex;

1 (52) "trust" includes an express trust, private or charitable, with "An
2 Act additions to the trust, wherever and however created; "trust" also includes a trust
3 created or determined by judgment or decree under which the trust is to be
4 administered in the manner of an express trust; "trust" excludes other constructive
5 trusts, resulting trusts, conservatorships, personal representatives, trust accounts that
6 are POD designation accounts under AS 13.33.201 - 13.33.227, custodial arrangements
7 under AS 13.26 or AS 13.46, business trusts providing for certificates to be issued to
8 beneficiaries, common trust funds, voting trusts, security arrangements, liquidation
9 trusts, trusts for the primary purpose of paying debts, dividends, interest, salaries,
10 wages, profits, pensions, or employee benefits of any kind, and any arrangement under
11 which a person is nominee or escrowee for another;

12 (53) "trustee" includes an original, additional, or successor trustee,
13 whether or not appointed or confirmed by a court;

14 (54) "ward" has the meaning given in AS 13.26.005;

15 (55) "will" includes a codicil and a testamentary instrument that merely
16 appoints an executor, revokes or revises another will, nominates a guardian, or
17 expressly excludes or limits the right of an individual or class to succeed to property
18 of the decedent passing by intestate succession.

19 * **Sec. 3.** AS 13 is amended by adding a new chapter to read:

20 CHAPTER 12. INTESTACY, WILLS, AND DONATIVE TRANSFERS.

21 ARTICLE 1. INTESTATE SUCCESSION.

22 Sec. 13.12.101. INTESTATE ESTATE. (a) A part of a decedent's estate not
23 effectively disposed of by will passes by intestate succession to the decedent's heirs
24 as prescribed in AS 13.06 - AS 13.36, except as modified by the decedent's will.

25 (b) A decedent by will may expressly exclude or limit the right of an
26 individual or class to succeed to property of the decedent passing by intestate
27 succession. If that individual or a member of that class survives the decedent, the
28 share of the decedent's intestate estate to which that individual or class would have
29 succeeded passes as if that individual or each member of that class had disclaimed the
30 intestate share of the individual or member.

31 Sec. 13.12.102. SHARE OF SPOUSE. (a) Except as provided in (b) of this

1 section, the intestate share of a decedent's surviving spouse is

2 (1) the entire intestate estate if

3 (A) no descendant or parent of the decedent survives the
4 decedent; or

5 (B) all of the decedent's surviving descendants are also
6 descendants of the surviving spouse and there is no other descendant of the
7 surviving spouse who survives the decedent;

8 (2) the first \$200,000, plus three-fourths of any balance of the intestate
9 estate, if no descendant of the decedent survives the decedent, but a parent of the
10 decedent survives the decedent;

11 (3) the first \$150,000, plus one-half of any balance of the intestate
12 estate, if all of the decedent's surviving descendants are also descendants of the
13 surviving spouse and the surviving spouse has one or more surviving descendants who
14 are not descendants of the decedent;

15 (4) the first \$100,000, plus one-half of any balance of the intestate
16 estate, if one or more of the decedent's surviving descendants are not descendants of
17 the surviving spouse.

18 (b) The intestate share of the surviving spouse in settlement common stock or
19 other inalienable stock in a corporation organized under the laws of the state under 43
20 U.S.C. 1601 - 1641 (Alaska Native Claims Settlement Act) is

21 (1) all of it if there is no surviving issue; or

22 (2) one-half of it if the decedent is survived by issue.

23 **Sec. 13.12.103. SHARE OF HEIRS OTHER THAN SURVIVING SPOUSE.**

24 A part of the intestate estate not passing to the decedent's surviving spouse under
25 AS 13.12.102, or the entire intestate estate if there is no surviving spouse, passes in
26 the following order to the individuals designated below who survive the decedent:

27 (1) to the decedent's descendants by representation;

28 (2) if there is no surviving descendant, to the decedent's parents equally
29 if both survive, or to the surviving parent;

30 (3) if there is no surviving descendant or parent, to the descendants of
31 the decedent's parents or either of them by representation;

1 (4) if there is no surviving descendant, parent, or descendant of a
2 parent, but the decedent is survived by one or more grandparents or descendants of
3 grandparents, half of the estate passes to the decedent's paternal grandparents equally
4 if both survive, or to the surviving paternal grandparent, or to the descendants of the
5 decedent's paternal grandparents or either of them if both are deceased, the descendants
6 taking by representation; and the other half passes to the decedent's maternal relatives
7 in the same manner; but if there is no surviving grandparent or descendant of a
8 grandparent on either the paternal or the maternal side, the entire estate passes to the
9 decedent's relatives on the other side in the same manner as the half.

10 Sec. 13.12.104. REQUIREMENT THAT HEIR SURVIVE DECEDENT FOR
11 120 HOURS. An individual who fails to survive the decedent by 120 hours is
12 considered to have predeceased the decedent for purposes of homestead allowance,
13 exempt property, and intestate succession, and the decedent's heirs are determined
14 accordingly. If it is not established by clear and convincing evidence that an
15 individual who would otherwise be an heir survived the decedent by 120 hours, it is
16 considered that the individual failed to survive for the required period. This section
17 is not to be applied if its application would result in a taking of intestate estate by the
18 state under AS 13.12.105.

19 Sec. 13.12.105. NO TAKER. If there is no taker under this chapter,

20 (1) personal property in the intestate estate passes to the state and is
21 subject to AS 34.45.280 - 34.45.780; if notice to heirs, substantially equivalent to that
22 required by AS 34.45.310, has been given by the personal representative or other
23 person, AS 34.45.310 does not apply;

24 (2) real property in the intestate estate passes to the state and is subject
25 to AS 38.95.200 - 38.95.270.

26 Sec. 13.12.106. REPRESENTATION. (a) If, under AS 13.12.103(1), all or
27 part of a decedent's intestate estate passes by representation to the decedent's
28 descendants, the estate or part of the estate passing is divided into as many equal
29 shares as there are

30 (1) surviving descendants in the generation nearest to the decedent that
31 contains one or more surviving descendants; and

1 (2) deceased descendants in the same generation who left surviving
2 descendants, if any.

3 (b) Under (a) of this section, each surviving descendant in the nearest
4 generation is allocated one share, and the remaining shares, if any, are combined and
5 then divided in the same manner among the surviving descendants of the deceased
6 descendants as if the surviving descendants who were allocated a share and their
7 surviving descendants had predeceased the decedent.

8 (c) If, under AS 13.12.103(3) or (4), all or part of a decedent's intestate estate
9 passes by representation to the descendants of the decedent's deceased parents or either
10 of them or to the descendants of the decedent's deceased paternal or maternal
11 grandparents or either of them, the estate or part of the estate passing is divided into
12 as many equal shares as there are

13 (1) surviving descendants in the generation nearest the deceased parents
14 or either of them, or the deceased grandparents or either of them, that contains one or
15 more surviving descendants; and

16 (2) deceased descendants in the same generation who left surviving
17 descendants, if any.

18 (d) Under (c) of this section, each surviving descendant in the nearest
19 generation is allocated one share, and the remaining shares, if any, are combined and
20 then divided in the same manner among the surviving descendants of the deceased
21 descendants as if the surviving descendants who were allocated a share and their
22 surviving descendants had predeceased the decedent.

23 (e) In this section, "deceased descendant," "deceased parent," or "deceased
24 grandparent" means a descendant, parent, or grandparent who either predeceased the
25 decedent or is considered to have predeceased the decedent under AS 13.12.104.

26 Sec. 13.12.107. KINDRED OF HALF BLOOD. Relatives of the half blood
27 inherit the same share they would inherit if they were of the whole blood.

28 Sec. 13.12.108. AFTER-BORN HEIRS. An individual in gestation at a
29 particular time is treated as living at that time if the individual lives 120 hours or more
30 after birth.

31 Sec. 13.12.109. ADVANCEMENTS. (a) If an individual dies intestate as to

1 all or a portion of the individual's estate, property the decedent gave during the
2 decedent's lifetime to an individual who, at the decedent's death, is an heir is treated
3 as an advancement against the heir's intestate share only if

4 (1) the decedent declared in a contemporaneous writing or the heir
5 acknowledged in writing that the gift is an advancement; or

6 (2) the decedent's contemporaneous writing or the heir's written
7 acknowledgment otherwise indicates that the gift is to be taken into account in
8 computing the division and distribution of the decedent's intestate estate.

9 (b) For purposes of (a) of this section, property advanced is valued as of the
10 time the heir came into possession or enjoyment of the property or as of the time of
11 the decedent's death, whichever first occurs.

12 (c) If the recipient of the property fails to survive the decedent, the property
13 is not taken into account in computing the division and distribution of the decedent's
14 intestate estate, unless the decedent's contemporaneous writing provides otherwise.

15 Sec. 13.12.110. DEBTS TO DECEDENT. A debt owed to a decedent is not
16 charged against the intestate share of any individual except the debtor. If the debtor
17 fails to survive the decedent, the debt is not taken into account in computing the
18 intestate share of the debtor's descendants.

19 Sec. 13.12.111. ALIENAGE. An individual is not disqualified to take as an
20 heir because the individual or another individual through whom the individual claims
21 is or has been an alien.

22 Sec. 13.12.113. INDIVIDUALS RELATED TO DECEDENT THROUGH
23 TWO LINES. An individual who is related to the decedent through two lines of
24 relationship is entitled to only a single share based on the relationship that would
25 entitle the individual to the larger share.

26 Sec. 13.12.114. PARENT AND CHILD RELATIONSHIP. (a) Except as
27 provided in (b) - (d) of this section, for purposes of intestate succession by, through,
28 or from a person, an individual is the child of the individual's natural parents,
29 regardless of their marital status, and the parent and child relationship may be
30 established as indicated under AS 25.20.050.

31 (b) An adopted individual is the child of the individual's adopting parent or

1 parents and not of the individual's natural parents, but adoption of a child by the
2 spouse of either natural parent does not affect

3 (1) the relationship between the child and that natural parent; or

4 (2) the right of the child or a descendant of the child to inherit from
5 or through the other natural parent.

6 (c) Inheritance from or through a child by either natural parent or the natural
7 parent's kindred is precluded unless that natural parent has openly treated the child as
8 the natural parent's child, and has not refused to support the child.

9 (d) To the extent there is a conflict between this section and either
10 AS 25.20.050 or AS 25.23.130, this section controls.

11 ARTICLE 2. ELECTIVE SHARE OF SURVIVING SPOUSE.

12 Sec. 13.12.201. DEFINITIONS. (a) In AS 13.12.201 - 13.12.204 and
13 13.12.206 - 13.12.214, "decedent's nonprobate transfers to others" means the amounts
14 that are included in the augmented estate under AS 13.12.205.

15 (b) In AS 13.12.201 - 13.12.214,

16 (1) "fractional interest in property held in joint tenancy with the right
17 of survivorship," whether the fractional interest is unilaterally severable or not, means
18 the fraction, the numerator of which is one and the denominator of which, if the
19 decedent was a joint tenant, is one plus the number of joint tenants who survive the
20 decedent, and which, if the decedent was not a joint tenant, is the number of joint
21 tenants;

22 (2) "marriage," as it relates to a transfer by the decedent during
23 marriage, means a marriage of the decedent to the decedent's surviving spouse;

24 (3) "nonadverse party" means a person who does not have a substantial
25 beneficial interest in the trust or other property arrangement that would be adversely
26 affected by the exercise or nonexercise of the power that the person possesses
27 respecting the trust or other property arrangement; a person having a general power of
28 appointment over property is considered to have a beneficial interest in the property;

29 (4) "power" or "power of appointment" includes a power to designate
30 the beneficiary of a beneficiary designation;

31 (5) "presently exercisable general power of appointment" means a

1 power of appointment under which, at the time in question, the decedent, whether or
2 not the decedent then had the capacity to exercise the power, held a power to create
3 a present or future interest in the decedent, the decedent's creditors, the decedent's
4 estate, or the creditors of the decedent's estate, and includes a power to revoke or
5 invade the principal of a trust or another property arrangement;

6 (6) "probate estate" means property that would pass by intestate
7 succession if the decedent died without a valid will;

8 (7) "property" includes values subject to a beneficiary designation;

9 (8) "right to income" includes a right to payments under a commercial
10 or private annuity, an annuity trust, a unitrust, or a similar arrangement;

11 (9) "transfer," as it relates to a transfer by or of the decedent, includes

12 (A) an exercise or release of a presently exercisable general
13 power of appointment held by the decedent;

14 (B) a lapse at death of a presently exercisable general power of
15 appointment held by the decedent; and

16 (C) an exercise, release, or lapse of

17 (i) a general power of appointment that the decedent
18 created in self; and

19 (ii) a power described in AS 13.12.205(2)(B) that the
20 decedent conferred on a nonadverse party.

21 Sec. 13.12.202. ELECTIVE SHARE. (a) The surviving spouse of a decedent
22 who dies domiciled in this state has a right of election, under the limitations and
23 conditions stated in AS 13.12.201 - 13.12.214, to take an elective share amount equal
24 to one-third of the augmented estate.

25 (b) If the sum of the amounts described in AS 13.12.207, 13.12.209(a)(1), and
26 that part of the elective share amount payable from the decedent's probate estate and
27 nonprobate transfers to others under AS 13.12.209(b) - (c) is less than \$50,000, the
28 surviving spouse is entitled to a supplemental elective share amount equal to \$50,000,
29 minus the sum of the amounts described in AS 13.12.207 and 13.12.209(a)(1), (b), and
30 (c). The supplemental elective share amount is payable from the decedent's probate
31 estate and from recipients of the decedent's nonprobate transfers to others in the order

1 of priority set out in AS 13.12.209(b) - (c).

2 (c) If the right of election is exercised by or on behalf of the surviving spouse,
3 the surviving spouse's homestead allowance, exempt property, and family allowance,
4 if any, are not charged against but are in addition to the elective share and
5 supplemental elective share amounts.

6 (d) The right, if any, of the surviving spouse of a decedent who dies domiciled
7 outside this state to take an elective share in property in this state is governed by the
8 law of the decedent's domicile at death.

9 Sec. 13.12.203. COMPOSITION OF THE AUGMENTED ESTATE. Subject
10 to AS 13.12.208, the value of the augmented estate, to the extent provided in
11 AS 13.12.204 - 13.12.207, consists of the sum of the values of all property, whether
12 real or personal, movable or immovable, tangible or intangible, wherever situated, that
13 constitute the decedent's net probate estate, the decedent's nonprobate transfers to
14 others, the decedent's nonprobate transfers to the surviving spouse, and the surviving
15 spouse's property and nonprobate transfers to others.

16 Sec. 13.12.204. DECEDENT'S NET PROBATE ESTATE. The value of the
17 augmented estate includes the value of the decedent's probate estate, reduced by
18 funeral and administration expenses, homestead allowance, family allowances, exempt
19 property, and enforceable claims.

20 Sec. 13.12.205. DECEDENT'S NONPROBATE TRANSFERS TO OTHERS.
21 The value of the augmented estate includes the value of the decedent's nonprobate
22 transfers to others, not included under AS 13.12.204, of any of the following types, in
23 the amount provided respectively for each type of transfer:

24 (1) property owned or owned in substance by the decedent immediately
25 before death that passed outside probate at the decedent's death; property included
26 under this category consists of

27 (A) property over which the decedent alone, immediately before
28 death, held a presently exercisable general power of appointment; the amount
29 included is the value of the property subject to the power, to the extent the
30 property passed at the decedent's death, by exercise, release, lapse, default, or
31 otherwise, to or for the benefit of a person other than the decedent's estate or

1 surviving spouse;

2 (B) the decedent's fractional interest in property held by the
3 decedent in joint tenancy with the right of survivorship; the amount included
4 is the value of the decedent's fractional interest, to the extent that the fractional
5 interest passed by right of survivorship at the decedent's death to a surviving
6 joint tenant other than the decedent's surviving spouse;

7 (C) the decedent's ownership interest in property or accounts
8 held in pay on death, transfer on death, or co-ownership registration with the
9 right of survivorship; the amount included is the value of the decedent's
10 ownership interest, to the extent the decedent's ownership interest passed at the
11 decedent's death to or for the benefit of a person other than the decedent's
12 estate or surviving spouse;

13 (D) proceeds of insurance, including accidental death benefits,
14 on the life of the decedent, if the decedent owned the insurance policy
15 immediately before death or if and to the extent the decedent alone and
16 immediately before death held a presently exercisable general power of
17 appointment over the policy or its proceeds; the amount included is the value
18 of the proceeds, to the extent the proceeds were payable at the decedent's death
19 to or for the benefit of a person other than the decedent's estate or surviving
20 spouse;

21 (2) property transferred in any of the following forms by the decedent
22 during marriage:

23 (A) an irrevocable transfer in which the decedent retained the
24 right to the possession or enjoyment of, or to the income from, the property,
25 if and to the extent the decedent's right terminated at or continued beyond the
26 decedent's death; the amount included is the value of the fraction of the
27 property to which the decedent's right related, to the extent the fraction of the
28 property passed outside probate to or for the benefit of a person other than the
29 decedent's estate or surviving spouse;

30 (B) a transfer in which the decedent created a power over the
31 income or property, exercisable by the decedent alone or in conjunction with

1 another person, or exercisable by a nonadverse party, to or for the benefit of
2 the decedent, the decedent's creditors, the decedent's estate, or creditors of the
3 decedent's estate; the amount included with respect to a power over property
4 is the value of the property subject to the power, and the amount included with
5 respect to a power over income is the value of the property that produces or
6 produced the income, to the extent the power in either case was exercisable at
7 the decedent's death to or for the benefit of a person other than the decedent's
8 surviving spouse or to the extent the property passed at the decedent's death,
9 by exercise, release, lapse, default, or otherwise, to or for the benefit of a
10 person other than the decedent's estate or surviving spouse; if the power is a
11 power over both income and property and the preceding provision defining the
12 amount included produces different amounts, the amount included is the greater
13 amount; and

14 (3) property that passed during marriage and during the two-year period
15 next preceding the decedent's death as a result of a transfer by the decedent if the
16 transfer was of any of the following types:

17 (A) property that passed as a result of the termination of a right
18 or interest in, or power over, property that would have been included in the
19 augmented estate under (1)(A), (B), or (C) or (2) of this section, if the right,
20 interest, or power had not terminated until the decedent's death; the amount
21 included is the value of the property that would have been included under
22 (1)(A), (B), or (C) or (2) of this section, if the property were valued at the time
23 the right, interest, or power terminated, and is included only to the extent the
24 property passed upon termination to or for the benefit of a person other than
25 the decedent or the decedent's estate, spouse, or surviving spouse; as used in
26 this subparagraph, termination, with respect to a right or interest in property,
27 occurs when the right or interest terminated by the terms of the governing
28 instrument or the decedent transferred or relinquished the right or interest, and,
29 with respect to a power over property, occurs when the power terminated by
30 exercise, release, lapse, default, or otherwise, but, with respect to a power
31 described in (1)(A) of this section, termination occurs when the power

1 terminated by exercise or release, but not otherwise;

2 (B) a transfer of or relating to an insurance policy on the life
3 of the decedent if the proceeds would have been included in the augmented
4 estate under (1)(D) of this section had the transfer not occurred; the amount
5 included is the value of the insurance proceeds to the extent the proceeds were
6 payable at the decedent's death to or for the benefit of a person other than the
7 decedent's estate or surviving spouse;

8 (C) a transfer of property, to the extent not otherwise included
9 in the augmented estate, made to or for the benefit of a person other than the
10 decedent's surviving spouse; the amount included is the value of the property
11 transferred to a person to the extent that the aggregate transfers to that person
12 in either of the two years exceeded \$10,000.

13 Sec. 13.12.206. DECEDENT'S NONPROBATE TRANSFERS TO THE
14 SURVIVING SPOUSE. Excluding property passing to the surviving spouse under 42
15 U.S.C. 301 - 1397f (Social Security Act), the value of the augmented estate includes
16 the value of the decedent's nonprobate transfers to the decedent's surviving spouse,
17 which consist of all property that passed outside probate at the decedent's death from
18 the decedent to the surviving spouse by reason of the decedent's death, including:

19 (1) the decedent's fractional interest in property held as a joint tenant
20 with the right of survivorship, to the extent that the decedent's fractional interest passed
21 to the surviving spouse as surviving joint tenant;

22 (2) the decedent's ownership interest in property or accounts held in co-
23 ownership registration with the right of survivorship, to the extent the decedent's
24 ownership interest passed to the surviving spouse as surviving co-owner; and

25 (3) all other property that would have been included in the augmented
26 estate under AS 13.12.205(1) or (2) had it passed to or for the benefit of a person
27 other than the decedent's spouse, the decedent's surviving spouse, the decedent, or the
28 decedent's creditors, estate, or estate creditors.

29 Sec. 13.12.207. SURVIVING SPOUSE'S PROPERTY AND NONPROBATE
30 TRANSFERS TO OTHERS. (a) Except to the extent included in the augmented
31 estate under AS 13.12.204 or 13.12.206, the value of the augmented estate includes the

1 value of

2 (1) property that was owned by the decedent's surviving spouse at the
3 decedent's death, including

4 (A) the surviving spouse's fractional interest in property held in
5 joint tenancy with the right of survivorship;

6 (B) the surviving spouse's ownership interest in property or
7 accounts held in co-ownership registration with the right of survivorship; and

8 (C) property that passed to the surviving spouse by reason of
9 the decedent's death, but not including the spouse's right to homestead
10 allowance, family allowance, exempt property, or payments under 42 U.S.C.
11 301 - 1397f (Social Security Act); and

12 (2) property that would have been included in the surviving spouse's
13 nonprobate transfers to others, other than the spouse's fractional and ownership
14 interests included under (1)(A) or (B) of this subsection, had the spouse been the
15 decedent.

16 (b) Property included under this section is valued at the decedent's death,
17 taking the fact that the decedent predeceased the spouse into account, but, for purposes
18 of (a)(1)(A) and (B) of this section, the values of the spouse's fractional and ownership
19 interests are determined immediately before the decedent's death if the decedent was
20 then a joint tenant or a co-owner of the property or accounts. For purposes of (a)(2)
21 of this section, proceeds of insurance that would have been included in the spouse's
22 nonprobate transfers to others under AS 13.12.205(1)(D) are not valued as if the
23 spouse were deceased.

24 (c) The value of property included under this section is reduced by enforceable
25 claims against the surviving spouse.

26 Sec. 13.12.208. EXCLUSIONS, VALUATION, AND OVERLAPPING
27 APPLICATION. (a) The value of property is excluded from the decedent's
28 nonprobate transfers to others

29 (1) to the extent the decedent received adequate and full consideration
30 in money or money's worth for a transfer of the property; or

31 (2) if the property was transferred with the written joinder of, or if the

1 transfer was consented to in writing by, the surviving spouse.

2 (b) The value of property

3 (1) included in the augmented estate under AS 13.12.205, 13.12.206,
4 or 13.12.207 is reduced in each category by enforceable claims against the included
5 property; and

6 (2) includes the commuted value of any present or future interest and
7 the commuted value of amounts payable under a trust, life insurance settlement option,
8 annuity contract, public or private pension, disability compensation, death benefit or
9 retirement plan, or any similar arrangement, exclusive of 42 U.S.C. 301 - 1397f (Social
10 Security Act).

11 (c) In case of overlapping application to the same property of the provisions
12 of AS 13.12.205, 13.12.206, or 13.12.207, the property is included in the augmented
13 estate under the provision yielding the greatest value, and under only one overlapping
14 provision if all of the overlapping provisions yield the same value.

15 Sec. 13.12.209. SOURCES FROM WHICH ELECTIVE SHARE PAYABLE.

16 (a) In a proceeding for an elective share, the following are applied first to satisfy the
17 elective share amount and to reduce or eliminate any contributions due from the
18 decedent's probate estate and recipients of the decedent's nonprobate transfers to others:

19 (1) amounts included in the augmented estate under AS 13.12.204 that
20 pass or have passed to the surviving spouse by testate or intestate succession, and
21 amounts included in the augmented estate under AS 13.12.206; and

22 (2) amounts included in the augmented estate under AS 13.12.207, up
23 to two-thirds of the augmented estate.

24 (b) If, after the application of (a) of this section, the elective share amount is
25 not fully satisfied or the surviving spouse is entitled to a supplemental elective share
26 amount, amounts included in the decedent's probate estate and in the decedent's
27 nonprobate transfers to others, other than amounts included under AS 13.12.205(3)(A)
28 or (C), are applied first to satisfy the unsatisfied balance of the elective share amount
29 or the supplemental elective share amount. The decedent's probate estate and that
30 portion of the decedent's nonprobate transfers to others shall be applied so that liability
31 for the unsatisfied balance of the elective share amount or for the supplemental elective

1 share amount is equitably apportioned among the recipients of the decedent's probate
2 estate and of that portion of the decedent's nonprobate transfers to others in proportion
3 to the value of the recipients' interests in the decedent's probate estate and that portion
4 of the decedent's nonprobate transfers to others.

5 (c) If, after the application of (a) - (b) of this section, the elective share or
6 supplemental elective share amount is not fully satisfied, the remaining portion of the
7 decedent's nonprobate transfers to others shall be applied so that liability for the
8 unsatisfied balance of the elective share or supplemental elective share amount is
9 equitably apportioned among the recipients of that remaining portion of the decedent's
10 nonprobate transfers to others in proportion to the value of the recipients' interests in
11 the decedent's nonprobate transfers to others.

12 Sec. 13.12.210. PERSONAL LIABILITY OF RECIPIENTS. (a) Only original
13 recipients of the decedent's nonprobate transfers to others, and the donees of the
14 recipients of the decedent's nonprobate transfers to others, to the extent the donees
15 have the property or its proceeds, are liable to make a proportional contribution toward
16 satisfaction of the surviving spouse's elective share or supplemental elective share
17 amount. A person liable to make contribution may choose to give up the person's
18 proportional part of the decedent's nonprobate transfers to others or to pay the value
19 of the amount for which the person is liable.

20 (b) If a provision of AS 13.12.201 - 13.12.214 is preempted by federal law
21 with respect to a payment, an item of property, or another benefit included in the
22 decedent's nonprobate transfers to others, a person who, not for value, receives the
23 payment, item of property, or other benefit is obligated to return the payment, item of
24 property, or benefit, or is personally liable for the amount of the payment or the value
25 of that item of property or benefit, as provided in AS 13.12.209, to the person who
26 would have been entitled to it if that provision were not preempted.

27 Sec. 13.12.211. PROCEEDING FOR ELECTIVE SHARE; TIME LIMIT. (a)
28 Except as provided in (b) of this section, the election shall be made by filing in the
29 court and mailing or delivering to the personal representative, if any, a petition for the
30 elective share within nine months after the date of the decedent's death, or within six
31 months after the probate of the decedent's will, whichever limitation expires later. The

1 surviving spouse shall give notice of the time and place set for hearing to persons
2 interested in the estate and to the distributees and recipients of portions of the
3 augmented estate whose interests will be adversely affected by the taking of the
4 elective share. Except as provided in (b) of this section, the decedent's nonprobate
5 transfers to others are not included within the augmented estate for the purpose of
6 computing the elective share if the petition is filed more than nine months after the
7 decedent's death.

8 (b) Within nine months after the decedent's death, the surviving spouse may
9 petition the court for an extension of time for making an election. If, within nine
10 months after the decedent's death, the spouse gives notice of the petition to all persons
11 interested in the decedent's nonprobate transfers to others, the court for cause shown
12 by the surviving spouse may extend the time for election. If the court grants the
13 spouse's petition for an extension, the decedent's nonprobate transfers to others are not
14 excluded from the augmented estate for the purpose of computing the elective share
15 and supplemental elective share amounts, if the spouse makes an election by filing in
16 the court and mailing or delivering to the personal representative, if any, a petition for
17 the elective share within the time allowed by the extension.

18 (c) The surviving spouse may withdraw the surviving spouse's demand for an
19 elective share at any time before entry of a final determination by the court.

20 (d) After notice and hearing, the court shall determine the elective share and
21 supplemental elective share amounts, and shall order payment of these amounts from
22 the assets of the augmented estate or by contribution as appears appropriate under
23 AS 13.12.209 and 13.12.210. If it appears that a fund or property included in the
24 augmented estate has not come into the possession of the personal representative, or
25 has been distributed by the personal representative, the court nevertheless shall fix the
26 liability of a person who has an interest in the fund or property or who has possession
27 of the fund or the property, whether as trustee or otherwise. The proceeding may be
28 maintained against fewer than all persons against whom relief could be sought, but a
29 person is not subject to contribution in a greater amount than the person would have
30 been under AS 13.12.209 and 13.12.210 if relief had been secured against all persons
31 subject to contribution.

1 (e) An order or judgment of the court may be enforced as necessary in suit for
2 contribution or payment in other courts of this state or other jurisdictions.

3 Sec. 13.12.212. RIGHT OF ELECTION PERSONAL TO SURVIVING
4 SPOUSE; INCAPACITATED SURVIVING SPOUSE. (a) The right of election may
5 be exercised only by a surviving spouse who is living when the petition for the
6 elective share is filed in the court under AS 13.12.211(a). If the election is not
7 exercised by the surviving spouse personally, it may be exercised on the surviving
8 spouse's behalf by the surviving spouse's conservator, guardian, or agent under the
9 authority of a power of attorney.

10 (b) If the election is exercised on behalf of a surviving spouse who is an
11 incapacitated person, the portion of the elective share and supplemental elective share
12 amounts due from the decedent's probate estate and recipients of the decedent's
13 nonprobate transfers to others under AS 13.12.209(b) - (c) shall be placed in a
14 custodial trust for the benefit of the surviving spouse under AS 13.60 (Alaska Uniform
15 Custodial Trust Act), except as provided in (c) - (e) of this section. For the purposes
16 of this subsection, an election on behalf of a surviving spouse by an agent under a
17 durable power of attorney is presumed to be on behalf of a surviving spouse who is
18 an incapacitated person. For the purposes of the custodial trust established by this
19 subsection,

20 (1) the electing guardian, conservator, or agent is the custodial trustee;

21 (2) the surviving spouse is the beneficiary; and

22 (3) the custodial trust is determined to have been created by the
23 decedent spouse by written transfer that takes effect at the decedent spouse's death and
24 that directs the custodial trustee to administer the custodial trust as for an incapacitated
25 beneficiary.

26 (c) An incapacitated beneficiary or a person acting on behalf of an
27 incapacitated beneficiary may not terminate a custodial trust established under (b) of
28 this section; but if the beneficiary regains capacity, the beneficiary then acquires the
29 power to terminate the custodial trust by delivering to the custodial trustee a writing
30 signed by the beneficiary declaring the termination. If not previously terminated, the
31 custodial trust terminates on the death of the beneficiary.

1 (d) Expenditures by the custodial trustee of the property of a custodial trust
2 established under (b) of this section shall be made with regard to other support,
3 income, and property of the beneficiary and benefits of medical or other forms of
4 assistance from any state or federal government or governmental agency for which the
5 beneficiary must qualify on the basis of need.

6 (e) Upon the beneficiary's death, the custodial trustee shall transfer the
7 unexpended property of a custodial trust established under (b) of this section in the
8 following order:

9 (1) under the residuary clause, if any, of the will of the beneficiary's
10 predeceased spouse against whom the elective share was taken, as if the predeceased
11 spouse died immediately after the beneficiary;

12 (2) to the predeceased spouse's heirs under AS 13.12.711.

13 Sec. 13.12.213. WAIVER OF RIGHT TO ELECT AND OF OTHER RIGHTS.

14 (a) The right of election of a surviving spouse and the rights of the surviving spouse
15 to homestead allowance, exempt property, and family allowance, or to any of them,
16 may be waived, wholly or partially, before or after marriage, by a written contract,
17 agreement, or waiver signed by the surviving spouse.

18 (b) A surviving spouse's waiver is not enforceable if the surviving spouse
19 proves that

20 (1) the surviving spouse did not execute the waiver voluntarily; or

21 (2) the waiver was unconscionable when it was executed and, before
22 execution of the waiver, the surviving spouse

23 (A) was not provided a fair and reasonable disclosure of the
24 property or financial obligations of the decedent;

25 (B) did not voluntarily and expressly waive, in writing, a right
26 to disclosure of the property or financial obligations of the decedent beyond the
27 disclosure provided; and

28 (C) did not have, or reasonably could not have had, an adequate
29 knowledge of the property or financial obligations of the decedent.

30 (c) An issue of unconscionability of a waiver is for decision by the court as
31 a matter of law.

1 (d) Unless it provides to the contrary, a waiver of "all rights," or equivalent
2 language, in the property or estate of a present or prospective spouse or a complete
3 property settlement entered into after or in anticipation of separation or divorce is a
4 waiver of all rights of elective share, homestead allowance, exempt property, and
5 family allowance by each spouse in the property of the other and a renunciation by
6 each of all benefits that would otherwise pass to the spouse from the other by intestate
7 succession or by virtue of a will executed before the waiver or property settlement.

8 Sec. 13.12.214. PROTECTION OF PAYORS AND OTHER THIRD
9 PARTIES. (a) Although under AS 13.12.205 a payment, item of property, or other
10 benefit is included in the decedent's nonprobate transfers to others, a payor or other
11 third party is not liable for having made a payment or transferred an item of property
12 or other benefit to a beneficiary designated in a governing instrument, or for having
13 taken other action in good faith reliance on the validity of a governing instrument,
14 upon request and satisfactory proof of the decedent's death, before the payor or other
15 third party received written notice from the surviving spouse or spouse's representative
16 of an intention to file a petition for the elective share or that a petition for the elective
17 share has been filed. A payor or other third party is liable for payments made or other
18 actions taken after the payor or other third party received written notice of an intention
19 to file a petition for the elective share or that a petition for the elective share has been
20 filed.

21 (b) The written notice under (a) of this section of intention to file a petition
22 for the elective share or that a petition for the elective share has been filed shall be
23 mailed to the payor's or other third party's main office or home by registered or
24 certified mail, return receipt requested, or served upon the payor or other third party
25 in the same manner as a summons in a civil action. Upon receipt of written notice of
26 intention to file a petition for the elective share or that a petition for the elective share
27 has been filed, a payor or other third party may pay any amount owed or transfer or
28 deposit an item of property held by it to or with the court having jurisdiction of the
29 probate proceedings relating to the decedent's estate, or if proceedings have not been
30 commenced, to or with the court located in the judicial district of the decedent's
31 residence. The court shall hold the funds or item of property and, upon its

1 determination under AS 13.12.211(d), shall order disbursement in accordance with the
2 determination. If a petition is not filed in the court within the specified time under
3 AS 13.12.211(a) or, if filed, the demand for an elective share is withdrawn under
4 AS 13.12.211(c), the court shall order disbursement to the designated beneficiary.
5 Payments or transfers to the court or deposits made into court discharge the payor or
6 other third party from all claims for amounts so paid or the value of property so
7 transferred or deposited.

8 (c) Upon petition to the court by the beneficiary designated in a governing
9 instrument, a court may order that all or part of the property paid or transferred into
10 court under (b) of this section be paid to the beneficiary in an amount and subject to
11 conditions consistent with AS 13.12.201 - 13.12.214.

12 ARTICLE 3. SPOUSE AND CHILDREN UNPROVIDED FOR
13 IN WILLS.

14 Sec. 13.12.301. ENTITLEMENT OF SPOUSE; PREMARITAL WILL. (a)
15 If a testator's surviving spouse married the testator after the testator executed the
16 testator's will, the surviving spouse is entitled to receive, as an intestate share, no less
17 than the value of the share of the estate the surviving spouse would have received if
18 the testator had died intestate as to that portion of the testator's estate, if any, that
19 neither is devised to a child of the testator who was born before the testator married
20 the surviving spouse and who is not a child of the surviving spouse nor is devised to
21 a descendant of such a child or passes under AS 13.12.603 or 13.12.604 to such a
22 child or to a descendant of such a child, unless

23 (1) it appears from the will or other evidence that the will was made
24 in contemplation of the testator's marriage to the surviving spouse;

25 (2) the will expresses the intention that it is to be effective
26 notwithstanding a subsequent marriage; or

27 (3) the testator provided for the spouse by transfer outside the will and
28 the intent that the transfer be in lieu of a testamentary provision is shown by the
29 testator's statements or is reasonably inferred from the amount of the transfer or other
30 evidence.

31 (b) In satisfying the share provided by this section, devises made by the will

1 to the testator's surviving spouse, if any, are applied first, and other devises, other than
2 a devise to a child of the testator who was born before the testator married the
3 surviving spouse and who is not a child of the surviving spouse or a devise or
4 substitute gift under AS 13.12.603 or 13.12.604 to a descendant of the child, abate as
5 provided in AS 13.16.540.

6 Sec. 13.12.302. OMITTED CHILDREN. (a) Except as provided in (b) of
7 this section, if a testator fails to provide in the testator's will for the testator's children
8 born or adopted after the execution of the will, the omitted after-born or after-adopted
9 child receives a share in the estate as follows:

10 (1) if the testator did not have a child living when the testator executed
11 the will, an omitted after-born or after-adopted child receives a share in the estate
12 equal in value to that which the child would have received had the testator died
13 intestate, unless the will devised all or substantially all of the estate to the other parent
14 of the omitted child and that other parent survives the testator and is entitled to take
15 under the will;

16 (2) if the testator had one or more children living when the testator
17 executed the will, and the will devised property or an interest in property to one or
18 more of the then living children, an omitted after-born or after-adopted child is entitled
19 to share in the testator's estate as follows:

20 (A) the portion of the testator's estate in which the omitted
21 after-born or after-adopted child is entitled to share is limited to devises made
22 to the testator's then living children under the will;

23 (B) the omitted after-born or after-adopted child is entitled to
24 receive the share of the testator's estate, as limited in (A) of this paragraph, that
25 the child would have received had the testator included all omitted after-born
26 and after-adopted children with the children to whom devises were made under
27 the will and had given an equal share of the estate to each child;

28 (C) to the extent feasible, the interest granted an omitted after-
29 born or after-adopted child under this section must be of the same character,
30 whether equitable or legal, or present or future, as that devised to the testator's
31 then living children under the will;

1 (D) in satisfying a share provided by this paragraph, devises to
2 the testator's children who were living when the will was executed abate
3 ratably; in abating the devises of the then living children, the court shall
4 preserve to the maximum extent possible the character of the testamentary plan
5 adopted by the testator.

6 (b) Neither (a)(1) nor (a)(2) of this section applies if

7 (1) it appears from the will that the omission was intentional; or

8 (2) the testator provided for the omitted after-born or after-adopted
9 child by transfer outside the will and the intent that the transfer be in lieu of a
10 testamentary provision is shown by the testator's statements or is reasonably inferred
11 from the amount of the transfer or other evidence.

12 (c) If at the time of execution of the will the testator fails to provide in the
13 testator's will for a living child solely because the testator believes the child to be
14 dead, the child is entitled to share in the estate as if the child were an omitted after-
15 born or after-adopted child.

16 (d) In satisfying a share provided by (a)(1) of this section, devises made by
17 the will abate under AS 13.16.540.

18 ARTICLE 4. EXEMPT PROPERTY AND ALLOWANCES.

19 Sec. 13.12.401. APPLICABLE LAW. AS 12.13.401 - 12.13.405 apply to the
20 estate of a decedent who dies domiciled in this state. Rights to homestead allowance,
21 exempt property, and family allowance for a decedent who dies not domiciled in this
22 state are governed by the law of the decedent's domicile at death.

23 Sec. 13.12.402. HOMESTEAD ALLOWANCE. A decedent's surviving spouse
24 is entitled to a homestead allowance of \$27,000. If there is no surviving spouse, each
25 minor child and each dependent child of the decedent is entitled to a homestead
26 allowance amounting to \$27,000 divided by the number of minor and dependent
27 children of the decedent. The homestead allowance is exempt from and has priority
28 over all claims against the estate. Homestead allowance is in addition to a share
29 passing to the surviving spouse or minor or dependent child by the will of the
30 decedent, unless otherwise provided, by intestate succession, or by way of elective
31 share.

1 Sec. 13.12.403. EXEMPT PROPERTY. In addition to the homestead
2 allowance, the decedent's surviving spouse is entitled from the estate to a value, not
3 exceeding \$10,000 in excess of security interests in the items, in household furniture,
4 automobiles, furnishings, appliances, and personal effects. If there is no surviving
5 spouse, the decedent's children are entitled jointly to the same value. If encumbered
6 chattels are selected and the value in excess of security interests, plus that of other
7 exempt property, is less than \$10,000, or if there is not \$10,000 worth of exempt
8 property in the estate, the spouse or children are entitled to other assets of the estate,
9 if any, to the extent necessary to make up the \$10,000 value. Rights to exempt
10 property and assets needed to make up a deficiency of exempt property have priority
11 over all claims against the estate, but the right to assets to make up a deficiency of
12 exempt property abates as necessary to permit earlier payment of homestead allowance
13 and family allowance. These rights are in addition to a benefit or share passing to the
14 surviving spouse or children by the decedent's will, unless otherwise provided, by
15 intestate succession, or by way of elective share.

16 Sec. 13.12.404. FAMILY ALLOWANCE. (a) In addition to the right to
17 homestead allowance and exempt property, the decedent's surviving spouse and minor
18 children whom the decedent was obligated to support and children who were in fact
19 being supported by the decedent are entitled to a reasonable allowance in money out
20 of the estate for their maintenance during the period of administration. The allowance
21 may not continue for longer than one year if the estate is inadequate to discharge
22 allowed claims. The allowance may be paid as a lump sum or in periodic installments.
23 It is payable to the surviving spouse, if living, for the use of the surviving spouse and
24 minor and dependent children; otherwise it is payable to the children, or persons
25 having their care and custody. If a minor child or dependent child is not living with
26 the surviving spouse, the allowance may be made partially to the child or the child's
27 guardian or other person having the child's care and custody, and partially to the
28 spouse, as their needs may appear. The family allowance is exempt from and has
29 priority over all claims except the homestead allowance.

30 (b) The family allowance is not chargeable against a benefit or share passing
31 to the surviving spouse or children by the will of the decedent, unless otherwise

1 provided, by intestate succession, or by way of elective share. The death of a person
2 entitled to family allowance terminates the right to allowances not yet paid.

3 Sec. 13.12.405. SOURCE, DETERMINATION, AND DOCUMENTATION.

4 (a) If the estate is otherwise sufficient, property specifically devised may not be used
5 to satisfy rights to homestead allowance or exempt property. Subject to this restriction,
6 the surviving spouse, guardians of minor children, or children who are adults may
7 select property of the estate as homestead allowance and exempt property. The
8 personal representative may make those selections if the surviving spouse, the children,
9 or the guardians of the minor children are unable or fail to do so within a reasonable
10 time or there is no guardian of a minor child. The personal representative may execute
11 an instrument or deed of distribution to establish the ownership of property taken as
12 homestead allowance or exempt property. The personal representative may determine
13 the family allowance in a lump sum not exceeding \$18,000 or periodic installments not
14 exceeding \$1,500 per month for one year, and may disburse funds of the estate in
15 payment of the family allowance and any part of the homestead allowance payable in
16 cash. The personal representative or an interested person aggrieved by a selection,
17 determination, payment, proposed payment, or failure to act under this section may
18 petition the court for appropriate relief, which may include a family allowance other
19 than that which the personal representative determined or could have determined.

20 (b) If the right to an elective share is exercised on behalf of a surviving spouse
21 who is an incapacitated person, the personal representative may add unexpended
22 portions payable under the homestead allowance, exempt property, and family
23 allowance to the trust established under AS 13.12.212(b).

24 ARTICLE 5. WILLS, WILL CONTRACTS, AND CUSTODY
25 AND DEPOSIT OF WILLS.

26 Sec. 13.12.501. WHO MAY MAKE WILL. An individual 18 or more years
27 of age who is of sound mind may make a will.

28 Sec. 13.12.502. EXECUTION; WITNESSED WILLS; HOLOGRAPHIC
29 WILLS. (a) Except as provided in (b) of this section and in AS 13.12.506 and
30 13.12.513, a will must be

31 (1) in writing;

1 (2) signed by the testator or in the testator's name by another individual
2 in the testator's conscious presence and by the testator's direction; and

3 (3) signed by at least two individuals, each of whom signs within a
4 reasonable time after the witness witnesses either the signing of the will as described
5 in (2) of this subsection or the testator's acknowledgement of that signature or the will.

6 (b) A will that does not comply with (a) of this section is valid as a
7 holographic will, whether or not witnessed, if the signature and material portions of
8 the document are in the testator's handwriting.

9 Sec. 13.12.504. SELF-PROVED WILL. (a) A will may be simultaneously
10 executed, attested, and made self-proved, by acknowledgment of the will by the
11 testator and affidavits of the witnesses, each made before an officer authorized to
12 administer oaths under the laws of the state in which execution occurs and evidenced
13 by the officer's certificate, under official seal, in substantially the following form:

14 I, _____, the testator, sign my name
15 to this instrument this _____ day of _____, and being
16 first duly sworn, do hereby declare to the undersigned authority
17 that I sign and execute this instrument as my will and that I sign
18 it willingly (or willingly direct another to sign for me), that I
19 execute it as my free and voluntary act for the purposes
20 expressed in the will, and that I am eighteen years of age or
21 older, of sound mind, and under no constraint or undue
22 influence.

23 _____
24 Testator

25 We, _____,
26 the witnesses, sign our names to this instrument, being first duly
27 sworn, and do hereby declare to the undersigned authority that
28 the testator signs and executes this instrument as the testator's
29 will and that the testator signs it willingly (or willingly directs
30 another to sign for the testator), and that each of us, in the
31 presence and hearing of the testator, hereby signs this will as

1 witness to the testator's signing, and that to the best of our
2 knowledge the testator is eighteen years of age or older, of
3 sound mind, and under no constraint or undue influence.

4 _____
5 Witness

6 _____
7 Witness

8 State of _____

9 _____ Judicial District

10 Subscribed, sworn to, and acknowledged before me by
11 _____, the testator, and subscribed and
12 sworn to before me by _____, and
13 _____, witness, this ____ day of
14 _____.

15 (Seal)

16 _____
17 (Signed)

18 _____
19 (Official capacity of officer)

20 (b) An attested will may be made self-proved at any time after its execution
21 by the acknowledgement of the will by the testator and the affidavits of the witnesses,
22 each made before an officer authorized to administer oaths under the laws of the state
23 in which the acknowledgement occurs and evidenced by the officer's certificate, under
24 the official seal, attached or annexed to the will in substantially the following form:

25 State of _____

26 _____ Judicial District

27 We, _____, _____, and
28 _____, the testator and the witnesses,
29 respectively, whose names are signed to the attached or
30 foregoing instrument, being first duly sworn, do hereby declare
31 to the undersigned authority that the testator signed and

1 executed the instrument as the testator's will and that the testator
2 had signed willingly (or willingly directed another to sign for
3 the testator), and that the testator executed it as the testator's
4 free and voluntary act for the purposes expressed in the will,
5 and that each of the witnesses, in the presence and hearing of
6 the testator, signed the will as witness and that to the best of the
7 witnesses' knowledge the testator was at that time eighteen years
8 of age or older, of sound mind, and under no constraint or
9 undue influence.

10 _____
11 Testator

12 _____
13 Witness

14 _____
15 Witness

16 Subscribed, sworn to and acknowledged before me by
17 _____, the testator, and subscribed and
18 sworn to before me by _____, and
19 _____, witnesses, this _____ day of
20 _____.

21 (Seal)

22 _____
23 (Signed)

24 _____
25 (Official capacity of officer)

26 (c) A signature affixed to a self-proving affidavit attached to a will is
27 considered a signature affixed to the will, if necessary to prove the will's due
28 execution.

29 Sec. 13.12.505. WHO MAY WITNESS. (a) An individual generally
30 competent to be a witness may act as a witness to a will.

31 (b) The signing of a will by an interested witness does not invalidate the will

1 or a provision of it.

2 Sec. 13.12.506. CHOICE OF LAW AS TO EXECUTION. A written will is
3 valid if executed in compliance with AS 13.12.502 or if its execution complies with
4 the law at the time of execution of the place where the will is executed, or of the law
5 of the place where at the time of execution or at the time of death the testator is
6 domiciled, has a place of abode, or is a national.

7 Sec. 13.12.507. REVOCATION BY WRITING OR BY ACT. (a) A will or
8 a part of a will is revoked

9 (1) by executing a subsequent will that revokes the previous will or part
10 expressly or by inconsistency; or

11 (2) by performing a revocatory act on the will, if the testator performed
12 the act with the intent and for the purpose of revoking the will or part of the will or
13 if another individual performed the act in the testator's conscious presence and by the
14 testator's direction; in this paragraph, "revocatory act on the will" includes burning,
15 tearing, canceling, obliterating, or destroying the will or any part of it; a "revocatory
16 act on the will" includes a burning, tearing, or canceling whether or not the burn, tear,
17 or cancellation touched any of the words on the will.

18 (b) If a subsequent will does not expressly revoke a previous will, the
19 execution of the subsequent will wholly revokes the previous will by inconsistency if
20 the testator intended the subsequent will to replace rather than supplement the previous
21 will.

22 (c) The testator is presumed to have intended a subsequent will to replace
23 rather than supplement a previous will if the subsequent will makes a complete
24 disposition of the testator's estate. If this presumption arises and is not rebutted by
25 clear and convincing evidence, the previous will is revoked; only the subsequent will
26 is operative on the testator's death.

27 (d) The testator is presumed to have intended a subsequent will to supplement
28 rather than replace a previous will if the subsequent will does not make a complete
29 disposition of the testator's estate. If this presumption arises and is not rebutted by
30 clear and convincing evidence, the subsequent will revokes the previous will only to
31 the extent the subsequent will is inconsistent with the previous will; each will is fully

1 operative on the testator's death to the extent they are not inconsistent.

2 Sec. 13.12.508. REVOCATION BY CHANGE OF CIRCUMSTANCES.

3 Except as provided in AS 13.12.803 and 13.12.804, a change of circumstances does
4 not revoke a will or a part of it.

5 Sec. 13.12.509. REVIVAL OF REVOKED WILL. (a) If a subsequent will
6 that wholly revoked a previous will is thereafter revoked by a revocatory act under
7 AS 13.12.507(a)(2), the previous will remains revoked unless it is revived. The
8 previous will is revived if it is evident from the circumstances of the revocation of the
9 subsequent will or from the testator's contemporary or subsequent declarations that the
10 testator intended the previous will to take effect as executed.

11 (b) If a subsequent will that partly revoked a previous will is thereafter
12 revoked by a revocatory act under AS 13.12.507(a)(2), a revoked part of the previous
13 will is revived unless it is evident from the circumstances of the revocation of the
14 subsequent will or from the testator's contemporary or subsequent declarations that the
15 testator did not intend the revoked part to take effect as executed.

16 (c) If a subsequent will that revoked a previous will in whole or in part is
17 thereafter revoked by another, later, will, the previous will remains revoked in whole
18 or in part, unless it or its revoked part is revived. The previous will or its revoked part
19 is revived to the extent it appears from the terms of the later will that the testator
20 intended the pervious will to take effect.

21 Sec. 13.12.510. INCORPORATION BY REFERENCE. A writing in existence
22 when a will is executed may be incorporated by reference if the language of the will
23 manifests this intent and describes the writing sufficiently to permit its identification.

24 Sec. 13.12.511. TESTAMENTARY ADDITIONS TO TRUSTS. (a) A will
25 may validly devise property to the trustee of a trust established or to be established

26 (1) during the testator's lifetime by the testator, by the testator and
27 some other person, or by some other person, including a funded or unfunded life
28 insurance trust, although the settlor has reserved any or all rights of ownership of the
29 insurance contracts; or

30 (2) at the testator's death by the testator's devise to the trustee, if the
31 trust is identified in the testator's will and its terms are set out in a written instrument,

1 other than a will, executed before, concurrently with, or after the execution of the
2 testator's will or in another individual's will if that other individual has predeceased the
3 testator, regardless of the existence, size, or character of the corpus of the trust.

4 (b) A devise under (a) of this section is not invalid because the trust is
5 amendable or revocable, or because the trust was amended after the execution of the
6 will or the testator's death.

7 (c) Unless the testator's will provides otherwise, property devised to a trust
8 described in (a) - (b) of this section is not held under a testamentary trust of the
9 testator, but it becomes a part of the trust to which it is devised, and must be
10 administered and disposed of in accordance with the provisions of the governing
11 instrument setting out the terms of the trust, including any amendments to the trust
12 made before or after the testator's death.

13 (d) Unless the testator's will provides otherwise, a revocation or termination
14 of the trust before the testator's death causes the devise to lapse.

15 Sec. 13.12.512. EVENTS OF INDEPENDENT SIGNIFICANCE. A will may
16 dispose of property by reference to acts and events that have significance apart from
17 their effect upon the dispositions made by the will, whether they occur before or after
18 the execution of the will or before or after the testator's death. The execution or
19 revocation of another individual's will is an event covered by this section.

20 Sec. 13.12.513. SEPARATE WRITING IDENTIFYING DEVISE OF
21 CERTAIN TYPES OF TANGIBLE PERSONAL PROPERTY. Whether or not the
22 provisions relating to holographic wills apply, a will may refer to a written statement
23 or list to dispose of items of tangible personal property not otherwise specifically
24 disposed of by the will, other than money. To be admissible under this section as
25 evidence of the intended disposition, the writing must be signed by the testator and
26 must describe the items and the devisees with reasonable certainty. The writing may
27 be referred to as one to be in existence at the time of the testator's death; it may be
28 prepared before or after the execution of the will; it may be altered by the testator after
29 its preparation; and it may be a writing that does not have significance apart from its
30 effect on the dispositions made by the will.

31 Sec. 13.12.514. CONTRACTS CONCERNING SUCCESSION. (a) A

1 contract to make a will or devise, or not to revoke a will or devise, or to die intestate,
2 if executed after the effective date of this Act, may be established only by

3 (1) provisions of a will stating material provisions of the contract;

4 (2) an express reference in a will to a contract and extrinsic evidence
5 proving the terms of the contract; or

6 (3) a writing signed by the decedent evidencing the contract.

7 (b) The execution of a joint will or mutual wills does not create a presumption
8 of a contract not to revoke the will or wills.

9 Sec. 13.12.515. DEPOSIT OF WILL WITH COURT IN TESTATOR'S
10 LIFETIME. A will may be deposited by the testator or the testator's agent with a
11 court for safekeeping, under rules of the court. The will must be sealed and kept
12 confidential. During the testator's lifetime, a deposited will shall be delivered only to
13 the testator or to a person authorized in writing signed by the testator to receive the
14 will. A conservator may be allowed to examine a deposited will of a protected testator
15 under procedures designed to maintain the confidential character of the document to
16 the extent possible, and to ensure that it will be resealed and kept on deposit after the
17 examination.

18 Sec. 13.12.516. DUTY OF CUSTODIAN OF WILL; LIABILITY. After the
19 death of a testator and on request of an interested person, a person having custody of
20 a will of the testator shall deliver it with reasonable promptness to a person able to
21 secure its probate and, if the person with custody does not know of a person able to
22 secure the will's probate, to an appropriate court. A person who wilfully fails to
23 deliver a will is liable to a person aggrieved for any damages that may be sustained
24 by the failure. A person who wilfully refuses or fails to deliver a will after being
25 ordered by the court in a proceeding brought for the purpose of compelling delivery
26 is subject to penalty for contempt of court.

27 Sec. 13.12.517. PENALTY CLAUSE FOR CONTEST. A provision in a will
28 purporting to penalize an interested person for contesting the will or instituting other
29 proceedings relating to the estate is unenforceable if probable cause exists for
30 instituting proceedings.

31 ARTICLE 6. RULES OF CONSTRUCTION APPLICABLE

1 ONLY TO WILLS.

2 Sec. 13.12.601. SCOPE. In the absence of a finding of a contrary intention,
3 the rules of construction in AS 13.12.601 - 13.12.609 control the construction of a will.

4 Sec. 13.12.602. WILL MAY PASS ALL PROPERTY AND AFTER-
5 ACQUIRED PROPERTY. A will may provide for the passage of all property the
6 testator owns at death and all property acquired by the estate after the testator's death.

7 Sec. 13.12.603. ANTILAPSE; DECEASED DEVISEE; CLASS GIFTS. (a)
8 If a devisee fails to survive the testator and is a grandparent, a descendant of a
9 grandparent, or a stepchild of either the testator or the donor of a power of
10 appointment exercised by the testator's will, the following apply:

11 (1) except as provided in (4) of this subsection, if the devise is in the
12 form of a class gift and the deceased devisee leaves surviving descendants, a substitute
13 gift is created in the devisee's surviving descendants; the surviving descendants take
14 by representation the property to which the devisee would have been entitled had the
15 devisee survived the testator;

16 (2) except as provided in (4) of this subsection, if the devise is in the
17 form of a class gift, other than a devise to "issue," "descendants," "heirs of the body,"
18 "heirs," "next of kin," "relatives," or "family," or a class described by language of
19 similar import, a substitute gift is created in the surviving descendants of a deceased
20 devisee; the property to which the devisees would have been entitled had all of them
21 survived the testator passes to the surviving devisees and the surviving descendants of
22 the deceased devisees; each surviving devisee takes the share to which the surviving
23 devisee would have been entitled had the deceased devisees survived the testator; each
24 deceased devisee's surviving descendants who are substituted for the deceased devisee
25 take by representation the share to which the deceased devisee would have been
26 entitled had the deceased devisee survived the testator; in this paragraph, "deceased
27 devisee" means a class member who failed to survive the testator and left one or more
28 surviving descendants;

29 (3) for the purposes of AS 13.12.601, words of survivorship, as in a
30 devise to an individual "if the individual survives me," or in a devise to "my surviving
31 children," are not, in the absence of additional evidence, a sufficient indication of an

1 intent contrary to the application of this section;

2 (4) if the will creates an alternative devise with respect to a devise for
3 which a substitute gift is created by (1) or (2) of this subsection, the substitute gift is
4 superseded by the alternative devise only if an expressly designated devisee of the
5 alternative devise is entitled to take under the will;

6 (5) unless the language creating a power of appointment expressly
7 excludes the substitution of the descendants of an appointee for the appointee, a
8 surviving descendant of a deceased appointee of a power of appointment can be
9 substituted for the appointee under this section, whether or not the descendant is an
10 object of the power.

11 (b) If, under (a) of this section, substitute gifts are created and not superseded
12 with respect to more than one devise and the devises are alternative devises, one to the
13 other, the determination of which of the substitute gifts takes effect is resolved as
14 follows:

15 (1) except as provided in (2) of this subsection, the devised property
16 passes under the primary substitute gift;

17 (2) if there is a younger-generation devise, the devised property passes
18 under the younger-generation substitute gift and not under the primary substitute gift.

19 (c) In (b) of this section,

20 (1) "primary devise" means the devise that would have taken effect had
21 all the deceased devisees of the alternative devises who left surviving descendants
22 survived the testator;

23 (2) "primary substitute gift" means the substitute gift created with
24 respect to a primary devise;

25 (3) "younger-generation devise" means a devise that

26 (A) is to a descendant of a devisee of a primary devise;

27 (B) is an alternative devise with respect to the primary devise;

28 (C) is a devise for which a substitute gift is created; and

29 (D) would have taken effect had all the deceased devisees who
30 left surviving descendants survived the testator except the deceased devisee or
31 devisees of the primary devise;

1 (4) "younger-generation substitute gift" means a substitute gift created
2 with respect to a younger-generation devise.

3 (d) In this section,

4 (1) "alternative devise" means a devise that is expressly created by the
5 will and, under the terms of the will, can take effect instead of another devise on the
6 happening of one or more events, including survival of the testator or failure to survive
7 the testator, whether an event is expressed in condition-precedent, condition-
8 subsequent, or other form; a residuary clause constitutes an alternative devise with
9 respect to a nonresiduary devise only if the will specifically provides that, upon lapse
10 or failure, the nonresiduary devise, or nonresiduary devises in general, pass under the
11 residuary clause;

12 (2) "class member" includes an individual who fails to survive the
13 testator but who would have taken under a devise in the form of a class gift had the
14 individual survived the testator;

15 (3) "devise" includes an alternative devise, a devise in the form of a
16 class gift, and an exercise of a power of appointment;

17 (4) "devisee" includes

18 (A) a class member if the devise is in the form of a class gift;

19 (B) an individual or class member who was deceased at the
20 time the testator executed the testator's will as well as an individual or class
21 member who was then living but who failed to survive the testator; and

22 (C) an appointee under a power of appointment exercised by the
23 testator's will;

24 (5) "stepchild" means a child of the surviving, deceased, or former
25 spouse of the testator or of the donor of a power of appointment, and not of the
26 testator or donor;

27 (6) "surviving devisee" or "surviving descendant" means a devisee or
28 a descendant who neither predeceases the testator nor is considered to have
29 predeceased the testator under AS 13.12.702;

30 (7) "testator" includes the donee of a power of appointment if the
31 power is exercised in the testator's will.

1 Sec. 13.12.604. FAILURE OF TESTAMENTARY PROVISION. (a) Except
2 as provided in AS 13.12.603, a devise, other than a residuary devise, that fails for any
3 reason becomes a part of the residue.

4 (b) Except as provided in AS 13.12.603, if the residue is devised to two or
5 more persons, the share of a residuary devisee that fails for any reason passes to the
6 other residuary devisee, or to other residuary devisees in proportion to the interest of
7 each in the remaining part of the residue.

8 Sec. 13.12.605. INCREASE IN SECURITIES; ACCESSIONS. (a) If a
9 testator executes a will that devises securities and the testator then owned securities
10 that meet the description in the will, the devise includes additional securities that are
11 owned by the testator at death to the extent the additional securities were acquired by
12 the testator after the will was executed as a result of the testator's ownership of the
13 described securities and that are securities of

14 (1) the same organization acquired by reason of action initiated by the
15 organization or a successor, related, or acquiring organization, excluding securities
16 acquired by exercise of purchase options;

17 (2) another organization acquired as a result of a merger, consolidation,
18 reorganization, or other distribution by the organization or a successor, related, or
19 acquiring organization; or

20 (3) the same organization acquired as a result of a plan of reinvestment.

21 (b) Distributions in cash before death with respect to a described security are
22 not part of the devise.

23 Sec. 13.12.606. NONADEMPTION OF SPECIFIC DEVICES; UNPAID
24 PROCEEDS OF SALE, CONDEMNATION, OR INSURANCE; SALE BY
25 CONSERVATOR OR AGENT. (a) A specific devisee has a right to the specifically
26 devised property in the testator's estate at death and

27 (1) any balance of the purchase price, together with any security
28 agreement, owing from a purchaser to the testator at death by reason of sale of the
29 property;

30 (2) any amount of a condemnation award for the taking of the property
31 unpaid at death;

1 (3) any proceeds unpaid at death on fire or casualty insurance on or
2 other recovery for injury to the property; and

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

6 (b) If specifically devised property is sold or mortgaged by a conservator or
7 by an agent acting within the authority of a durable power of attorney for an
8 incapacitated principal, or if a condemnation award, insurance proceeds, or recovery
9 for injury to the property are paid to a conservator or to an agent acting within the
10 authority of a durable power of attorney for an incapacitated principal, the specific
11 devisee has the right to a general pecuniary devise equal to the net sale price, the
12 amount of the unpaid loan, the condemnation award, the insurance proceeds, or the
13 recovery.

14 (c) The right of a specific devisee under (b) of this section is reduced by any
15 right the devisee has under (a) of this section.

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

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

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

24 (2) adjudication of incapacity before death is not necessary; and

25 (3) the acts of an agent within the authority of a durable power of
26 attorney are presumed to be for an incapacitated principal.

27 Sec. 13.12.607. NONEXONERATION. A specific devise passes subject to
28 any mortgage interest existing at the date of death, without right of exoneration,
29 regardless of a general directive in the will to pay debts.

30 Sec. 13.12.608. EXERCISE OF POWER OF APPOINTMENT. In the absence
31 of a requirement that a power of appointment be exercised by a reference, or by an

1 express or specific reference, to the power, a general residuary clause in a will, or a
2 will making general disposition of all of the testator's property, expresses an intention
3 to exercise a power of appointment held by the testator only if

4 (1) the power is a general power and the creating instrument does not
5 contain a gift if the power is not exercised; or

6 (2) the testator's will manifests an intention to include the property
7 subject to the power.

8 Sec. 13.12.609. ADEMPATION BY SATISFACTION. (a) Property a testator
9 gave in the testator's lifetime to a person is treated as a satisfaction of a devise in
10 whole or in part, only if

11 (1) the will provides for deduction of the gift;

12 (2) the testator declared in a contemporaneous writing that the gift is
13 in satisfaction of the devise or that its value is to be deducted from the value of the
14 devise; or

15 (3) the devisee acknowledged in writing that the gift is in satisfaction
16 of the devise or that its value is to be deducted from the value of the devise.

17 (b) For purposes of partial satisfaction, property given during lifetime is
18 valued as of the time the devisee came into possession or enjoyment of the property
19 or at the testator's death, whichever occurs first.

20 (c) If the devisee fails to survive the testator, the gift is treated as a full or
21 partial satisfaction of the devise, as appropriate, in applying AS 13.12.603 - 13.12.604,
22 unless the testator's contemporaneous writing provides otherwise.

23 ARTICLE 7. RULES OF CONSTRUCTION APPLICABLE TO
24 WILLS AND OTHER GOVERNING INSTRUMENTS.

25 Sec. 13.12.701. SCOPE. In the absence of a finding of a contrary intention,
26 the rules of construction in AS 13.12.701 - 13.12.711 control the construction of a
27 governing instrument. The rules of construction in AS 13.12.701 - 13.12.711 apply
28 to a governing instrument of any type, except as the application of a particular section
29 is limited by its terms to a specific type of provision or governing instrument.

30 Sec. 13.12.702. REQUIREMENT OF SURVIVAL BY 120 HOURS. (a) For
31 the purposes of AS 13.06 - AS 13.36, except as provided in (d) of this section, an

1 individual who is not established by clear and convincing evidence to have survived
2 an event, including the death of another individual, by 120 hours is considered to have
3 predeceased the event.

4 (b) Except as provided in (d) of this section, for purposes of a provision of a
5 governing instrument that relates to an individual surviving an event, including the
6 death of another individual, an individual who is not established by clear and
7 convincing evidence to have survived the event by 120 hours is considered to have
8 predeceased the event.

9 (c) Except as provided in (d) of this section, if it is not established by clear
10 and convincing evidence that one of two co-owners with right of survivorship survived
11 the other co-owner by 120 hours, one-half of the property passes as if one had
12 survived by 120 hours and one-half as if the other had survived by 120 hours, and if
13 there are more than two co-owners with right of survivorship and it is not established
14 by clear and convincing evidence that at least one of them survived the others by 120
15 hours, the property passes in the proportion that one bears to the whole number of co-
16 owners. In this subsection, "co-owners with right of survivorship" includes joint
17 tenants, tenants by the entirety, and other co-owners of property or accounts held under
18 circumstances that entitle one or more to the whole of the property or account on the
19 death of the other or others.

20 (d) Survival by 120 hours is not required if

21 (1) the governing instrument contains language dealing explicitly with
22 simultaneous deaths or deaths in a common disaster and that language is operable
23 under the facts of the case;

24 (2) the governing instrument expressly indicates that an individual is
25 not required to survive an event, including the death of another individual, by a
26 specified period or expressly requires the individual to survive the event by a specified
27 period; but survival of the event or the specified period must be established by clear
28 and convincing evidence;

29 (3) the imposition of a 120-hour requirement of survival would cause
30 a nonvested property interest or a power of appointment to fail to qualify for validity
31 under AS 34.27.050(a)(1), (b)(1), or (c)(1) or to become invalid under

1 AS 34.27.050(a)(2), (b)(2), or (c)(2); but survival must be established by clear and
2 convincing evidence; or

3 (4) the application of a 120-hour requirement of survival to multiple
4 governing instruments would result in an unintended failure or duplication of a
5 disposition; but survival must be established by clear and convincing evidence;

6 (e) A payor or other third party is not liable for having made a payment or
7 transferred an item of property or other benefit to a beneficiary designated in a
8 governing instrument who, under this section, is not entitled to the payment or item
9 of property, or for having taken other action in good faith reliance on the beneficiary's
10 apparent entitlement under the terms of the governing instrument, before the payor or
11 other third party receives written notice of a claimed lack of entitlement under this
12 section. A payor or other third party is liable for a payment made or other action
13 taken after the payor or other third party receives written notice of a claimed lack of
14 entitlement under this section.

15 (f) Written notice of a claimed lack of entitlement under this section shall be
16 mailed to the payor's or other third party's main office or home by registered or
17 certified mail, return receipt requested, or served upon the payor or other third party
18 in the same manner as a summons in a civil action. Upon receipt of written notice of
19 a claimed lack of entitlement under this section, a payor or other third party may pay
20 any amount owed or transfer or deposit an item of property held by it to or with the
21 court having jurisdiction of the probate proceedings relating to the decedent's estate,
22 or if proceedings have not been commenced, to or with the court in the judicial district
23 of the decedent's residence. The court shall hold the funds or item of property and,
24 upon the court's determination under this section, shall order disbursement in
25 accordance with the determination. Payments, transfers, or deposits made to or with
26 the court discharge the payor or other third party from all claims for the value of
27 amounts paid to or items of property transferred to or deposited with the court.

28 (g) A person who purchases property for value and without notice, or who
29 receives a payment or other item of property in partial or full satisfaction of a legally
30 enforceable obligation, is not obligated under this section to return the payment, item
31 of property, or benefit or liable under this section for the amount of the payment or

1 the value of the item of property or benefit. But a person who, not for value, receives
2 a payment, item of property, or other benefit to which the person is not entitled under
3 this section is obligated to return the payment, item of property, or benefit, or is
4 personally liable for the amount of the payment or the value of the item of property
5 or benefit, to the person who is entitled to it under this section.

6 (h) If this section or a part of this section is preempted by federal law with
7 respect to a payment, an item of property, or other benefit covered by this section, a
8 person who, not for value, receives the payment, item of property, or benefit to which
9 the person is not entitled under this section is obligated to return the payment, item of
10 property, or benefit, or is personally liable for the amount of the payment or the value
11 of the item of property or benefit, to the person who would have been entitled to it if
12 this section or part of this section were not preempted.

13 Sec. 13.12.703. CHOICE OF LAW AS TO MEANING AND EFFECT OF
14 GOVERNING INSTRUMENT. The meaning and legal effect of a governing
15 instrument is determined by the local law of the state selected in the governing
16 instrument, unless the application of that law is contrary to the provisions relating to
17 the elective share described in AS 13.12.201 - 13.12.214, the provisions relating to
18 exempt property and allowances described in AS 13.12.401 - 13.12.405, or other public
19 policy of this state otherwise applicable to the disposition.

20 Sec. 13.12.704. POWER OF APPOINTMENT; MEANING OF SPECIFIC
21 REFERENCE REQUIREMENT. If a governing instrument creating a power of
22 appointment expressly requires that the power be exercised by a reference, an express
23 reference, or a specific reference, to the power or its source, it is presumed that the
24 donor's intention, in requiring that the donee exercise the power by making reference
25 to the particular power or to the creating instrument, was to prevent an inadvertent
26 exercise of the power.

27 Sec. 13.12.705. CLASS GIFTS CONSTRUED TO ACCORD WITH
28 INTESTATE SUCCESSION. (a) Adopted individuals and individuals born out of
29 wedlock, and their respective descendants if appropriate to the class, are included in
30 class gifts and other terms of relationship in accordance with the rules for intestate
31 succession. Terms of relationship that do not differentiate relationships by blood from

1 those by affinity, such as "uncles," "aunts," "nieces," or "nephews," are construed to
2 exclude relatives by affinity. Terms of relationship that do not differentiate
3 relationships by the half blood from those by the whole blood, such as "brothers,"
4 "sisters," "nieces," or "nephews," are construed to include both types of relationships.

5 (b) In addition to the requirements of (a) of this section, in construing a
6 dispositive provision of a transferor who is not the natural parent, an individual born
7 to the natural parent is not considered the child of that natural parent unless the
8 individual lived while a minor as a regular member of the household of that natural
9 parent or of that natural parent's parent, brother, sister, spouse, or surviving spouse.

10 (c) In addition to the requirements of (a) of this section, in construing a
11 dispositive provision of a transferor who is not the adopting parent, an adopted
12 individual is not considered the child of the adopting parent unless the adopted
13 individual lived while a minor, either before or after the adoption, as a regular member
14 of the household of the adopting parent.

15 Sec. 13.12.706. LIFE INSURANCE; RETIREMENT PLAN; ACCOUNT
16 WITH PAY ON DEATH DESIGNATION; TRANSFER ON DEATH
17 REGISTRATION; DECEASED BENEFICIARY. (a) If a beneficiary fails to survive
18 the decedent and is a grandparent, a descendant of a grandparent, or a stepchild of the
19 decedent, the following apply:

20 (1) except as provided in (4) of this subsection, if the beneficiary
21 designation is not in the form of a class gift and the deceased beneficiary leaves
22 surviving descendants, a substitute gift is created in the beneficiary's surviving
23 descendants; the beneficiary's surviving descendants take by representation the property
24 to which the beneficiary would have been entitled had the beneficiary survived the
25 decedent;

26 (2) except as provided in (4) of this subsection, if the beneficiary
27 designation is in the form of a class gift, other than a beneficiary designation to
28 "issue," "descendants," "heirs of the body," "heirs," "next of kin," "relatives," or
29 "family," or a class described by language of similar import, a substitute gift is created
30 in the surviving descendants of a deceased beneficiary; the property to which the
31 beneficiaries would have been entitled had all of them survived the decedent passes

1 to the surviving beneficiaries and the surviving descendants of the deceased
2 beneficiaries; each surviving beneficiary takes the share to which the surviving
3 beneficiary would have been entitled had the deceased beneficiaries survived the
4 decedent; each deceased beneficiary's surviving descendants who are substituted for
5 the deceased beneficiary take by representation the share to which the deceased
6 beneficiary would have been entitled had the deceased beneficiary survived the
7 decedent; in this paragraph, "deceased beneficiary" means a class member who failed
8 to survive the decedent and left one or more surviving descendants;

9 (3) for the purposes of AS 13.12.701, words of survivorship, as in a
10 beneficiary designation to an individual "if the individual survives me," or in a
11 beneficiary designation to "my surviving children," are not, in the absence of additional
12 evidence, a sufficient indication of an intent contrary to the application of this section;

13 (4) if a governing instrument creates an alternative beneficiary
14 designation with respect to a beneficiary designation for which a substitute gift is
15 created by (1) or (2) of this subsection, the substitute gift is superseded by the
16 alternative beneficiary designation only if an expressly designated beneficiary of the
17 alternative beneficiary designation is entitled to take.

18 (b) If, under (a) of this section, substitute gifts are created and not superseded
19 with respect to more than one beneficiary designation and the beneficiary designations
20 are alternative beneficiary designations, one to the other, the property passes under the
21 primary substitute gift, except that if there is a younger-generation beneficiary
22 designation, the property passes under the younger-generation substitute gift and not
23 under the primary substitute gift. In this subsection,

24 (1) "primary beneficiary designation" means the beneficiary designation
25 that would have taken effect had all the deceased beneficiaries of the alternative
26 beneficiary designations who left surviving descendants survived the decedent;

27 (2) "primary substitute gift" means the substitute gift created with
28 respect to the primary beneficiary designation;

29 (3) "younger-generation beneficiary designation" means a beneficiary
30 designation that

31 (A) is to a descendant of a beneficiary of the primary

1 beneficiary designation;

2 (B) is an alternative beneficiary designation with respect to the
3 primary beneficiary designation;

4 (C) is a beneficiary designation for which a substitute gift is
5 created; and

6 (D) would have taken effect had all the deceased beneficiaries
7 who left surviving descendants survived the decedent except the deceased
8 beneficiary or beneficiaries of the primary beneficiary designation;

9 (4) "younger-generation substitute gift" means the substitute gift created
10 with respect to the younger-generation beneficiary designation.

11 (c) A payor is protected from liability in making payments under the terms of
12 the beneficiary designation until the payor has received written notice of a claim to a
13 substitute gift under this section. Payment made before the receipt of written notice
14 of a claim to a substitute gift under this section discharges the payor, but not the
15 recipient, from all claims for the amounts paid. A payor is liable for a payment made
16 after the payor has received written notice of the claim. A recipient is liable for a
17 payment received, whether or not written notice of the claim is given.

18 (d) In (c) of this section, the written notice of the claim shall be mailed to the
19 payor's main office or home by registered or certified mail, return receipt requested,
20 or served upon the payor in the same manner as a summons in a civil action. Upon
21 receipt of written notice of the claim, a payor may pay any amount owed by it to the
22 court having jurisdiction of the probate proceedings relating to the decedent's estate or,
23 if proceedings have not been commenced, to the court in the judicial district of the
24 decedent's residence. The court shall hold the funds and, upon its determination under
25 this section, shall order disbursement in accordance with the determination. Payment
26 made to the court discharges the payor from all claims for the amounts paid.

27 (e) A person who purchases property for value and without notice, or who
28 receives a payment or other item of property in partial or full satisfaction of a legally
29 enforceable obligation, is not obligated under this section to return the payment, item
30 of property, or benefit, or liable under this section for the amount of the payment or
31 the value of the item of property or benefit. But a person who, not for value, receives

1 a payment, item of property, or other benefit to which the person is not entitled under
2 this section is obligated to return the payment, item of property, or benefit, or is
3 personally liable for the amount of the payment or the value of the item of property
4 or benefit, to the person who is entitled to it under this section.

5 (f) If this section or a part of this section is preempted by federal law with
6 respect to a payment, an item of property, or other benefit covered by this section, a
7 person who, not for value, receives the payment, item of property, or other benefit to
8 which the person is not entitled under this section is obligated to return the payment,
9 item of property, or benefit, or is personally liable for the amount of the payment or
10 the value of the item of property or benefit, to the person who would have been
11 entitled to it if this section or part of this section were not preempted.

12 (g) In this section,

13 (1) "alternative beneficiary designation" means a beneficiary
14 designation that is expressly created by the governing instrument and, under the terms
15 of the governing instrument, can take effect instead of another beneficiary designation
16 on the happening of one or more events, including survival of the decedent or failure
17 to survive the decedent, whether an event is expressed in condition-precedent,
18 condition-subsequent, or another form;

19 (2) "beneficiary" means the beneficiary of a beneficiary designation
20 under which the beneficiary must survive the decedent and

21 (A) includes a class member if the beneficiary designation is in
22 the form of a class gift;

23 (B) includes an individual or class member who was deceased
24 at the time the beneficiary designation was executed as well as an individual
25 or class member who was then living but who failed to survive the decedent;

26 (C) excludes a joint tenant of a joint tenancy with the right of
27 survivorship and a party to a joint and survivorship account;

28 (3) "beneficiary designation" includes an alternative beneficiary
29 designation and a beneficiary designation in the form of a class gift;

30 (4) "class member" includes an individual who fails to survive the
31 decedent but who would have taken under a beneficiary designation in the form of a

1 class gift had the individual survived the decedent;

2 (5) "stepchild" means a child of the decedent's surviving, deceased, or
3 former spouse, and not of the decedent;

4 (6) "surviving beneficiary" or "surviving descendant" means a
5 beneficiary or a descendant who neither predeceased the decedent nor is considered to
6 have predeceased the decedent under AS 13.12.702.

7 Sec. 13.12.707. SURVIVORSHIP WITH RESPECT TO FUTURE
8 INTERESTS UNDER TERMS OF TRUST; SUBSTITUTE TAKERS. (a) A future
9 interest under the terms of a trust is contingent on the beneficiary's surviving the
10 distribution date. If a beneficiary of a future interest under the terms of a trust fails
11 to survive the distribution date, the following apply:

12 (1) except as provided in (4) of this subsection, if the future interest is
13 not in the form of a class gift and the deceased beneficiary leaves surviving
14 descendants, a substitute gift is created in the beneficiary's surviving descendants; the
15 beneficiary's surviving descendants take by representation the property to which the
16 beneficiary would have been entitled had the beneficiary survived the distribution date;

17 (2) except as provided in (4) of this subsection, if the future interest is
18 in the form of a class gift, other than a future interest to "issue," "descendants," "heirs
19 of the body," "heirs," "next of kin," "relatives," or "family," or a class described by
20 language of similar import, a substitute gift is created in the surviving descendants of
21 a deceased beneficiary; the property to which the beneficiaries would have been
22 entitled had all of them survived the distribution date passes to the surviving
23 beneficiaries and the surviving descendants of the deceased beneficiaries; each
24 surviving beneficiary takes the share to which the surviving beneficiary would have
25 been entitled had the deceased beneficiaries survived the distribution date; each
26 deceased beneficiary's surviving descendants who are substituted for the deceased
27 beneficiary take by representation the share to which the deceased beneficiary would
28 have been entitled had the deceased beneficiary survived the distribution date; in this
29 paragraph, "deceased beneficiary" means a class member who fails to survive the
30 distribution date and leaves one or more surviving descendants;

31 (3) for the purposes of AS 13.12.701, words of survivorship attached

1 to a future interest are not, in the absence of additional evidence, a sufficient indication
2 of an intent contrary to the application of this section; words of survivorship include
3 words of survivorship that relate to the distribution date or to an earlier or an
4 unspecified time, whether those words of survivorship are expressed in condition-
5 precedent, condition-subsequent, or another form;

6 (4) if a governing instrument creates an alternative future interest with
7 respect to a future interest for which a substitute gift is created by (1) or (2) of this
8 subsection, the substitute gift is superseded by the alternative future interest only if an
9 expressly designated beneficiary of the alternative future interest is entitled to take in
10 possession or enjoyment.

11 (b) If, under (a) of this section, substitute gifts are created and not superseded
12 with respect to more than one future interest and the future interests are alternative
13 future interests, one to the other, the property passes under the primary substitute gift,
14 except that, if there is a younger-generation future interest, the property passes under
15 the younger-generation substitute gift and not under the primary substitute gift. In this
16 subsection,

17 (1) "primary future interest" means the future interest that would have
18 taken effect had all the deceased beneficiaries of the alternative future interests who
19 left surviving descendants survived the distribution date;

20 (2) "primary substitute gift" means the substitute gift created with
21 respect to the primary future interest;

22 (3) "younger-generation future interest" means a future interest that

23 (A) is to a descendant of a beneficiary of the primary future
24 interest;

25 (B) is an alternative future interest with respect to the primary
26 future interest;

27 (C) is a future interest for which a substitute gift is created; and

28 (D) would have taken effect had all the deceased beneficiaries
29 who left surviving descendants survived the distribution date except the
30 deceased beneficiary of the primary future interest;

31 (4) "younger-generation substitute gift" means the substitute gift created

1 with respect to the younger-generation future interest.

2 (c) Except as provided in (d) of this section, if, after the application of (a) -
3 (b) of this section, there is not a surviving taker, the property passes in the following
4 order:

5 (1) if the trust was created in a nonresiduary devise in the transferor's
6 will or in a codicil to the transferor's will, the property passes under the residuary
7 clause in the transferor's will; for purposes of this section, the residuary clause is
8 treated as creating a future interest under the terms of a trust;

9 (2) if a taker is not produced by the application of (1) of this
10 subsection, the property passes to the transferor's heirs under AS 13.12.711.

11 (d) If, after the application of (a) - (b) of this section, there is not a surviving
12 taker and if the future interest was created by the exercise of a power of appointment,

13 (1) the property passes under the donor's gift-in-default clause, if any,
14 and the clause is treated as creating a future interest under the terms of a trust; and

15 (2) if a taker is not produced by the application of (1) of this
16 subsection, the property passes as provided in (c) of this section.

17 (e) In (c) of this section, "transferor" means the donor if the power was a
18 nongeneral power and means the donee if the power was a general power.

19 (f) In this section,

20 (1) "alternative future interest" means an expressly created future
21 interest that can take effect in possession or enjoyment instead of another future
22 interest on the happening of one or more events, including survival of an event or
23 failure to survive an event, whether an event is expressed in condition-precedent,
24 condition-subsequent, or other form; a residuary clause in a will does not create an
25 alternative future interest with respect to a future interest created in a nonresiduary
26 devise in the will, whether or not the will specifically provides that lapsed or failed
27 devises are to pass under the residuary clause;

28 (2) "beneficiary" means the beneficiary of a future interest and includes
29 a class member if the future interest is in the form of a class gift;

30 (3) "class member" includes an individual who fails to survive the
31 distribution date but who would have taken under a future interest in the form of a

1 class gift had the individual survived the distribution date;

2 (4) "distribution date," with respect to a future interest, means the time
3 when the future interest is to take effect in possession or enjoyment; the distribution
4 date does not need to occur at the beginning or end of a calendar day, but can occur
5 at a time during the course of a day;

6 (5) "future interest" includes an alternative future interest and a future
7 interest in the form of a class gift;

8 (6) "future interest under the terms of a trust" means a future interest
9 that was created by a transfer creating a trust or to an existing trust or by an exercise
10 of a power of appointment to an existing trust, directing the continuance of an existing
11 trust, designating a beneficiary of an existing trust, or creating a trust;

12 (7) "surviving beneficiary" or "surviving descendant" means a
13 beneficiary or a descendant who neither predeceased the distribution date nor is
14 considered to have predeceased the distribution date under AS 13.12.702.

15 Sec. 13.12.708. CLASS GIFTS TO "DESCENDANTS," "ISSUE," OR "HEIRS
16 OF THE BODY"; FORM OF DISTRIBUTION IF NONE SPECIFIED. If a class gift
17 in favor of "descendants," "issue," or "heirs of the body" does not specify the manner
18 in which the property is to be distributed among the class members, the property is
19 distributed among the class members who are living when the interest is to take effect
20 in possession or enjoyment, in such shares as they would receive, under the applicable
21 law of intestate succession, if the designated ancestor had then died intestate owning
22 the subject matter of the class gift.

23 Sec. 13.12.709. REPRESENTATION; PER CAPITA AT EACH
24 GENERATION; PER STIRPES. (a) If an applicable statute or a governing instrument
25 calls for property to be distributed "by representation" or "per capita at each
26 generation," the property is divided into as many equal shares as there are

27 (1) surviving descendants in the generation nearest to the designated
28 ancestor that contains one or more surviving descendants; and

29 (2) deceased descendants in the same generation who left surviving
30 descendants, if any.

31 (b) In (a) of this section, each surviving descendant in the nearest generation

1 is allocated one share, and the remaining shares, if any, are combined and then divided
2 in the same manner among the surviving descendants of the deceased descendants as
3 if the surviving descendants who were allocated a share and their surviving
4 descendants had predeceased the distribution date.

5 (c) If a governing instrument calls for property to be distributed "per stirpes,"
6 the property is divided into as many equal shares as there are

7 (1) surviving children of the designated ancestor; and

8 (2) deceased children who left surviving descendants.

9 (d) In (c) of this section, each surviving child, if any, is allocated one share,
10 and the share of each deceased child with surviving descendants is divided in the same
11 manner, with subdivision repeating at each succeeding generation until the property is
12 fully allocated among surviving descendants.

13 (e) For the purposes of (a) - (d) of this section, an individual who is deceased
14 and does not leave surviving descendants is disregarded, and an individual who leaves
15 a surviving ancestor who is a descendant of the designated ancestor is not entitled to
16 a share.

17 (f) In this section,

18 (1) "deceased child" or "deceased descendant" means a child or a
19 descendant who either predeceased the distribution date or is considered to have
20 predeceased the distribution date under AS 13.12.702;

21 (2) "distribution date," with respect to an interest, means the time when
22 the interest is to take effect in possession or enjoyment; the distribution date does not
23 need to occur at the beginning or end of a calendar day, but can occur at a time during
24 the course of a day;

25 (3) "surviving ancestor," "surviving child," or "surviving descendant"
26 means an ancestor, a child, or a descendant who neither predeceased the distribution
27 date nor is considered to have predeceased the distribution date under AS 13.12.702.

28 Sec. 13.12.710. WORTHIER-TITLE DOCTRINE ABOLISHED. The doctrine
29 of worthier title is abolished as a rule of law and as a rule of construction. Language
30 in a governing instrument describing the beneficiaries of a disposition as the
31 transferor's "heirs," "heirs at law," "next of kin," "distributees," "relatives," or "family,"

1 or language of similar import, does not create or presumptively create a reversionary
2 interest in the transferor.

3 Sec. 13.12.711. INTERESTS IN HEIRS AND OTHER PERSONS. If an
4 applicable statute or a governing instrument calls for a present or future distribution
5 to or creates a present or future interest in a designated individual's "heirs," "heirs at
6 law," "next of kin," "relatives," or "family," or language of similar import, the property
7 passes to those persons, including the state, and in such shares as would succeed to the
8 designated individual's intestate estate under the intestate succession law of the
9 designated individual's domicile if the designated individual died when the disposition
10 is to take effect in possession or enjoyment. If the designated individual's surviving
11 spouse is living but is remarried at the time the disposition is to take effect in
12 possession or enjoyment, the surviving spouse is not an heir of the designated
13 individual.

14 ARTICLE 8. GENERAL PROVISIONS CONCERNING
15 PROBATE AND NONPROBATE TRANSFERS.

16 Sec. 13.12.801. DISCLAIMER OF PROPERTY INTERESTS. (a) A person,
17 or the representative of a person, to whom an interest in or with respect to property,
18 or an interest in the property, devolves by whatever means, may disclaim it in whole
19 or in part by delivering or filing a written disclaimer under this section. The right to
20 disclaim exists notwithstanding a limitation on the interest of the disclaimant in the
21 nature of a spendthrift provision or similar restriction, and notwithstanding a restriction
22 or limitation on the right to disclaim contained in the governing instrument. In this
23 subsection, the "representative of a person" includes a personal representative of a
24 decedent, a conservator of a disabled person, a guardian of a minor or incapacitated
25 person, and an agent acting on behalf of the person within the authority of a power of
26 attorney.

27 (b) If a property or interest has devolved to a disclaimant under a testamentary
28 instrument or by the laws of intestacy, a disclaimer shall be filed, if of a present
29 interest, not later than nine months after the death of the deceased owner or deceased
30 donee of a power of appointment and, if of a future interest, not later than nine months
31 after the event determining that the taker of the property or interest is finally

1 ascertained and the taker's interest is indefeasibly vested. The disclaimer shall be filed
2 in the court of the judicial district in which proceedings for the administration of the
3 estate of the deceased owner or deceased donee of the power are commenced. A copy
4 of the disclaimer shall be delivered in person or mailed by registered or certified mail,
5 return receipt requested, to a personal representative or other fiduciary of the decedent
6 or donee of the power.

7 (c) If a property or interest has devolved to a disclaimant under a
8 nontestamentary instrument or contract, the disclaimer shall be delivered or filed, if of
9 a present interest, not later than nine months after the effective date of the
10 nontestamentary instrument or contract and, if of a future interest, not later than nine
11 months after the event determining that the taker of the property or interest is finally
12 ascertained and the taker's interest is indefeasibly vested. If the person entitled to
13 disclaim does not know of the existence of the interest, the disclaimer shall be
14 delivered or filed not later than nine months after the person learns of the existence
15 of the interest. The effective date of a revocable instrument or contract is the date on
16 which the maker no longer has power to revoke it or to transfer to the maker or
17 another the entire legal and equitable ownership of the interest. The disclaimer or a
18 copy of the disclaimer shall be delivered in person or mailed by registered or certified
19 mail, return receipt requested, to the person who has legal title to or possession of the
20 interest disclaimed.

21 (d) A surviving joint tenant or tenant by the entirety may disclaim as a
22 separate interest property, or an interest in the property, devolving to the tenant by
23 right of survivorship. A surviving joint tenant or tenant by the entirety may disclaim
24 the entire interest in property, or in an interest in the property, that is the subject of
25 a joint tenancy or tenancy by the entirety devolving to the tenant, if the joint tenancy
26 or tenancy by the entirety was created by act of a deceased joint tenant or tenant by
27 the entirety, the survivor did not join in creating the joint tenancy or tenancy by the
28 entirety, and the survivor has not accepted a benefit under it.

29 (e) If real property, or an interest in real property, is disclaimed, a copy of the
30 disclaimer may be recorded in the recording district where the property or interest
31 disclaimed is located.

1 (f) The disclaimer must describe the property or interest disclaimed, declare
2 the disclaimer and extent of the disclaimer, and be signed by the disclaimant.

3 (g) If property or an interest in property devolves to a disclaimant under a
4 testamentary instrument, under a power of appointment exercised by a testamentary
5 instrument, or under the laws of intestacy, and the decedent has not provided for
6 another disposition of that property or interest, should it be disclaimed, or of
7 disclaimed or failed interests in general, the disclaimed property or interest devolves
8 as if the disclaimant had predeceased the decedent, but if by law or under the
9 testamentary instrument the descendants of the disclaimant would share in the
10 disclaimed interest by representation or otherwise were the disclaimant to predecease
11 the decedent, then the disclaimed property or interest passes by representation, or
12 passes as directed by the governing instrument, to the descendants of the disclaimant
13 who survive the decedent. A future interest that takes effect in possession or
14 enjoyment after the termination of the estate or interest disclaimed takes effect as if
15 the disclaimant had predeceased the decedent. A disclaimer relates back for all
16 purposes to the date of death of the decedent.

17 (h) If property or an interest in property devolves to a disclaimant under a
18 nontestamentary instrument or contract and the instrument or contract does not provide
19 for another disposition of that property or interest, should it be disclaimed, or of
20 disclaimed or failed interests in general, the disclaimed property or interest devolves
21 as if the disclaimant had predeceased the effective date of the instrument or contract,
22 but if by law or under the nontestamentary instrument or contract the descendants of
23 the disclaimant would share in the disclaimed interest by representation or otherwise
24 were the disclaimant to predecease the effective date of the instrument, then the
25 disclaimed property or interest passes by representation, or passes as directed by the
26 governing instrument, to the descendants of the disclaimant who survive the effective
27 date of the instrument. A disclaimer relates back for all purposes to that date. A
28 future interest that takes effect in possession or enjoyment at or after the termination
29 of the disclaimed property or interest takes effect as if the disclaimant had died before
30 the effective date of the instrument or contract that transferred the disclaimed property
31 or interest.

1 (i) The disclaimer or the written waiver of the right to disclaim is binding
2 upon the disclaimant or person waiving and all persons claiming through or under
3 either of them.

4 (j) The right to disclaim property or an interest in property is barred by

5 (1) an assignment, conveyance, encumbrance, pledge, or transfer of the
6 property or interest, or a contract for an assignment, conveyance, encumbrance, pledge,
7 or transfer of the property or interest;

8 (2) a written waiver of the right to disclaim;

9 (3) an acceptance of the property or interest or a benefit under it; or

10 (4) a sale of the property or interest under judicial sale made before the
11 disclaimer is made.

12 (k) This section does not abridge the right of a person to waive, release,
13 disclaim, or renounce property or an interest in property under another statute.

14 (l) An interest in property that exists on the effective date of this section as
15 to which, if a present interest, the time for filing a disclaimer under this section has
16 not expired or, if a future interest, the interest has not become indefeasibly vested or
17 the taker finally ascertained, may be disclaimed within nine months after the effective
18 date of this section.

19 Sec. 13.12.802. EFFECT OF DIVORCE, ANNULMENT, AND DECREE OF
20 SEPARATION. (a) An individual who is divorced from the decedent or whose
21 marriage to the decedent has been annulled is not a surviving spouse unless, by virtue
22 of a subsequent marriage, the individual is married to the decedent at the time of
23 death. A decree of separation that does not terminate the status of husband and wife
24 is not a divorce for purposes of this section.

25 (b) In AS 13.12.101 - 13.12.405 and AS 13.16.065, a surviving spouse does
26 not include

27 (1) an individual who obtains or consents to a final decree or judgment
28 of divorce from the decedent or an annulment of their marriage, if the decree or
29 judgment is not recognized as valid in this state, unless subsequently they participate
30 in a marriage ceremony purporting to marry each to the other or live together as
31 husband and wife;

1 (2) an individual who, following an invalid decree or judgment of
2 divorce or annulment obtained by the decedent, participates in a marriage ceremony
3 with a third individual; or

4 (3) an individual who was a party to a valid proceeding concluded by
5 an order purporting to terminate all marital property rights.

6 Sec. 13.12.803. EFFECT OF HOMICIDE ON INTESTATE SUCCESSION,
7 WILLS, TRUSTS, JOINT ASSETS, LIFE INSURANCE, AND BENEFICIARY
8 DESIGNATIONS. (a) An individual who feloniously kills the decedent forfeits all
9 benefits under this chapter with respect to the decedent's estate, including an intestate
10 share, an elective share, an omitted spouse's or child's share, a homestead allowance,
11 exempt property, and a family allowance. If the decedent died intestate, the decedent's
12 intestate estate passes as if the killer disclaimed the killer's intestate share.

13 (b) The felonious killing of the decedent

14 (1) revokes a revocable

15 (A) disposition or appointment of property made by the
16 decedent to the killer in a governing instrument;

17 (B) provision in a governing instrument conferring a general or
18 nongeneral power of appointment on the killer; and

19 (C) nomination of the killer in a governing instrument,
20 nominating or appointing the killer to serve in fiduciary or representative
21 capacity, including a personal representative, executor, trustee, or agent; and

22 (2) severs the interests of the decedent and killer in property held by
23 them at the time of the killing as joint tenants with the right of survivorship,
24 transforming the interests of the decedent and killer into tenancies in common.

25 (c) A severance under (b)(2) of this section does not affect a third party
26 interest in property acquired for value and in good faith reliance on an apparent title
27 by survivorship in the killer unless a writing declaring the severance has been noted,
28 registered, filed, or recorded in records that are appropriate to the kind and location
29 of the property and that are relied upon, in the ordinary course of transactions
30 involving the type of property, as evidence of ownership.

31 (d) Provisions of a governing instrument are given effect as if the killer

1 disclaimed all provisions revoked by this section or, in the case of a revoked
2 nomination in a fiduciary or representative capacity, as if the killer predeceased the
3 decedent.

4 (e) A wrongful acquisition of property or interest by a killer not covered by
5 this section shall be treated in accordance with the principle that a killer may not profit
6 from the killer's wrong.

7 (f) After all right to appeal has been exhausted, a judgment of conviction
8 establishing criminal accountability for the felonious killing of the decedent
9 conclusively establishes the convicted individual as the decedent's killer for purposes
10 of this section. In the absence of a conviction, the court, upon the petition of an
11 interested person, shall determine whether, under the preponderance of evidence
12 standard, the individual would be found criminally accountable for the felonious killing
13 of the decedent. If the court determines that, under that standard, the individual would
14 be found criminally accountable for the felonious killing of the decedent, the
15 determination conclusively establishes that individual as the decedent's killer for
16 purposes of this section.

17 (g) A payor or other third party is not liable for having made a payment or
18 transferred an item of property or other benefit to a beneficiary designated in a
19 governing instrument affected by a felonious killing, or for having taken other action
20 in good faith reliance on the validity of the governing instrument, upon request and
21 satisfactory proof of the decedent's death, before the payor or other third party received
22 written notice of a claimed forfeiture or revocation under this section. A payor or
23 other third party is liable for a payment made or other action taken after the payor or
24 other third party receives written notice of a claimed forfeiture or revocation under this
25 section.

26 (h) Written notice of a claimed forfeiture or revocation under (g) of this
27 section shall be mailed to the payor's or other third party's main office or home by
28 registered or certified mail, return receipt requested, or served upon the payor or other
29 third party in the same manner as a summons in a civil action. Upon receipt of
30 written notice of a claimed forfeiture or revocation under this section, a payor or other
31 third party may pay an amount owed or transfer or deposit an item of property held

1 by it to or with the court having jurisdiction of the probate proceedings relating to the
2 decedent's estate, or if proceedings have not been commenced, to or with the court in
3 the judicial district of the decedent's residence. The court shall hold the funds or item
4 of property and, upon the court's determination under this section, shall order
5 disbursement in accordance with the determination. Payments, transfers, or deposits
6 made to or with the court discharge the payor or other third party from all claims for
7 the value of amounts paid to or items of property transferred to or deposited with the
8 court.

9 (i) A person who purchases property for value and without notice, or who
10 receives a payment or other item of property in partial or full satisfaction of a legally
11 enforceable obligation, is not obligated under this section to return the payment, item
12 of property, or benefit, or liable under this section for the amount of the payment or
13 the value of the item of property or benefit. However a person who, not for value,
14 receives a payment, an item of property, or other benefit to which the person is not
15 entitled under this section is obligated to return the payment, item of property, or
16 benefit, or is personally liable for the amount of the payment or the value of the item
17 of property or benefit, to the person who is entitled to it under this section.

18 (j) If this section or part of this section is preempted by federal law with
19 respect to a payment, an item of property, or other benefit covered by this section, a
20 person who, not for value, receives the payment, item of property, or other benefit to
21 which the person is not entitled under this section is obligated to return the payment,
22 item of property, or benefit, or is personally liable for the amount of the payment or
23 the value of the item of property or benefit, to the person who would have been
24 entitled to it if this section or part of this section were not preempted.

25 (k) In the case of an unintentional felonious killing, a court may set aside the
26 application of (a), (b), (d), or (e) of this section if the court makes special findings of
27 fact and conclusions of law that the application of the subsection would result in a
28 manifest injustice and that the subsection should not be applied.

29 (l) In this section,

30 (1) "disposition or appointment of property" includes a transfer of an
31 item of property or other benefit to a beneficiary designated in a governing instrument;

1 (2) "governing instrument" means a governing instrument executed by
2 the decedent;

3 (3) "revocable," with respect to a disposition, appointment, provision,
4 or nomination, means a disposition, appointment, provision, or nomination under which
5 the decedent, at the time of or immediately before death, was alone empowered, by
6 law or under the governing instrument, to cancel the designation in favor of the killer,
7 whether or not the decedent was then empowered to designate the decedent in place
8 of the decedent's killer or the decedent then had capacity to exercise the power.

9 Sec. 13.12.804. REVOCATION OF PROBATE AND NONPROBATE
10 TRANSFERS BY DIVORCE; NO REVOCATION BY OTHER CHANGES OF
11 CIRCUMSTANCES. (a) Except as provided by the express terms of a governing
12 instrument, a court order, or a contract relating to the division of the marital estate
13 made between the divorced individuals before or after the marriage, divorce, or
14 annulment, the divorce or annulment of a marriage

15 (1) revokes a revocable

16 (A) disposition or appointment of property made by a divorced
17 individual to the divorced individual's former spouse in a governing instrument
18 and a disposition or appointment created by law or in a governing instrument
19 to a relative of the divorced individual's former spouse;

20 (B) provision in a governing instrument conferring a general or
21 nongeneral power of appointment on the divorced individual's former spouse
22 or on a relative of the divorced individual's former spouse; and

23 (C) nomination in a governing instrument, nominating a
24 divorced individual's former spouse or a relative of the divorced individual's
25 former spouse to serve in a fiduciary or representative capacity, including a
26 personal representative, executor, trustee, conservator, agent, or guardian; and

27 (2) severs the interests of the former spouses in property held by them
28 at the time of the divorce or annulment as joint tenants with the right of survivorship,
29 transforming the interests of the former spouses into tenancies in common.

30 (b) A severance under (a)(2) of this section does not affect a third-party
31 interest in property acquired for value and in good faith reliance on an apparent title

1 by survivorship in the survivor of the former spouses unless a writing declaring the
2 severance has been noted, registered, filed, or recorded in records appropriate to the
3 kind and location of the property that are relied upon, in the ordinary course of
4 transactions involving that kind of property, as evidence of ownership.

5 (c) Provisions of a governing instrument are given effect as if the former
6 spouse and relatives of the former spouse disclaimed all provisions revoked by this
7 section or, in the case of a revoked nomination in a fiduciary or representative
8 capacity, as if the former spouse and relatives of the former spouse died immediately
9 before the divorce or annulment.

10 (d) Provisions revoked solely by this section are revived by the divorced
11 individual's remarriage to the former spouse or by a nullification of the divorce or
12 annulment.

13 (e) A change of circumstances other than as described in this section and in
14 AS 13.12.803 does not effect a revocation.

15 (f) A payor or other third party is not liable for having made a payment or
16 transferred an item of property or other benefit to a beneficiary designated in a
17 governing instrument affected by a divorce, annulment, or remarriage, or for having
18 taken other action in good faith reliance on the validity of the governing instrument,
19 before the payor or other third party received written notice of the divorce, annulment,
20 or remarriage. A payor or other third party is liable for a payment made or other
21 action taken after the payor or other third party receives written notice of a claimed
22 forfeiture or revocation under this section.

23 (g) Written notice of the divorce, annulment, or remarriage under (f) of this
24 section shall be mailed to the payor's or other third-party's main office or home by
25 registered or certified mail, return receipt requested, or served upon the payor or other
26 third party in the same manner as a summons in a civil action. Upon receipt of
27 written notice of the divorce, annulment, or remarriage, a payor or other third party
28 may pay any amount owed or transfer or deposit any item of property held by it to or
29 with the court having jurisdiction of the probate proceedings relating to the decedent's
30 estate or, if proceedings have not been commenced, to or with the court located in the
31 judicial district of the decedent's residence. The court shall hold the funds or item of

1 property and, upon its determination under this section, shall order disbursement or
2 transfer in accordance with the determination. Payments, transfers, or deposits made
3 to or with the court discharge the payor or other third party from all claims for the
4 value of amounts paid to or items of property transferred to or deposited with the
5 court.

6 (h) A person who purchases property from a former spouse, relative of a
7 former spouse, or another person for value and without notice, or who receives from
8 a former spouse, relative of a former spouse, or another person a payment or other
9 item of property in partial or full satisfaction of a legally enforceable obligation, is not
10 obligated under this section to return the payment, an item of property, or benefit, or
11 liable under this section for the amount of the payment or the value of the item of
12 property or benefit. However, a former spouse, relative of a former spouse, or other
13 person who, not for value, receives a payment, an item of property, or other benefit
14 to which that person is not entitled under this section is obligated to return the
15 payment, an item of property, or benefit, or is personally liable for the amount of the
16 payment or the value of the item of property or benefit, to the person who is entitled
17 to it under this section.

18 (i) If this section or a part of this section is preempted by federal law with
19 respect to a payment, an item of property, or other benefit covered by this section, a
20 former spouse, relative of the former spouse, or another person who, not for value,
21 received a payment, an item of property, or other benefit to which that person is not
22 entitled under this section is obligated to return that payment, item of property, or
23 benefit, or is personally liable for the amount of the payment or the value of the item
24 of property or benefit, to the person who would have been entitled to it if this section
25 or part of this section were not preempted.

26 (j) In this section,

27 (1) "disposition or appointment of property" includes a transfer of an
28 item of property or other benefit to a beneficiary designated in a governing instrument;

29 (2) "divorce or annulment" means any divorce or annulment, or any
30 dissolution or declaration of invalidity of a marriage, that would exclude the spouse
31 as a surviving spouse within the meaning of AS 13.12.802; a decree of separation that

1 does not terminate the status of husband and wife is not a divorce for purposes of this
2 section;

3 (3) "divorced individual" includes an individual whose marriage has
4 been annulled;

5 (4) "governing instrument" means a governing instrument executed by
6 the divorced individual before the divorce or annulment of the divorced individual's
7 marriage to the divorced individual's former spouse;

8 (5) "relative of the divorced individual's former spouse" means an
9 individual who is related to the divorced individual's former spouse by blood, adoption,
10 or affinity and who, after the divorce or annulment, is not related to the divorced
11 individual by blood, adoption, or affinity;

12 (6) "revocable," with respect to a disposition, appointment, provision,
13 or nomination, means a disposition, appointment, provision, or nomination under which
14 the divorced individual, at the time of the divorce or annulment, was alone
15 empowered, by law or under the governing instrument, to cancel the designation in
16 favor of the divorced individual's former spouse or former spouse's relative, whether
17 or not the divorced individual was then empowered to designate the divorced
18 individual in place of the divorced individual's former spouse or in place of the
19 divorced individual's former spouse's relative and whether or not the divorced
20 individual then had the capacity to exercise the power.

21 ARTICLE 9. MISCELLANEOUS PROVISIONS.

22 Sec. 13.12.907. HONORARY TRUSTS; TRUSTS FOR PETS. (a) Subject
23 to (c) of this section, a trust may be performed by the trustee for 21 years but not
24 longer, whether or not the terms of the trust contemplate a longer duration, if

25 (1) the trust is for a specific lawful, noncharitable purpose or for a
26 lawful, noncharitable purpose to be selected by the trustee; and

27 (2) there is not a definite or definitely ascertainable beneficiary
28 designated.

29 (b) Except as otherwise provided by this subsection and (c) of this section, a
30 trust for the care of a designated domestic or pet animal is valid. The trust terminates
31 when a living animal is not covered by the trust. A governing instrument shall be

1 liberally construed to bring the transfer within this subsection, to presume against the
2 merely precatory or honorary nature of the disposition, and to carry out the general
3 intent of the transferor. Extrinsic evidence is admissible in determining the transferor's
4 intent.

5 (c) In addition to the provisions of (a) or (b) of this section, a trust covered
6 by either of those subsections is subject to the following provisions:

7 (1) except as expressly provided otherwise in the trust instrument, a
8 portion of the principal or income may not be converted to the use of the trustee or
9 to a use other than for the trust's purposes or for the benefit of a covered animal;

10 (2) upon termination, the trustee shall transfer the unexpended trust
11 property in the following order:

12 (A) as directed in the trust instrument;

13 (B) if the trust was created in a nonresiduary clause in the
14 transferor's will or in a codicil to the transferor's will, under the residuary
15 clause in the transferor's will; and

16 (C) if a taker is not produced by the application of (A) or (B)
17 of this paragraph, to the transferor's heirs under AS 13.12.711;

18 (3) for the purposes of AS 13.12.707, the residuary clause is treated as
19 creating a future interest under the terms of a trust;

20 (4) the intended use of the principal or income may be enforced by an
21 individual designated for that purpose in the trust instrument or, if none, by an
22 individual appointed by a court upon application to the court by an individual;

23 (5) except as ordered by the court or required by the trust instrument,
24 a filing, report, registration, periodic accounting, separate maintenance of funds,
25 appointment, or fee is not required by reason of the existence of the fiduciary
26 relationship of the trustee;

27 (6) a court may reduce the amount of the property transferred, if it
28 determines that amount substantially exceeds the amount required for the intended use;
29 the amount of the reduction, if any, passes as unexpended trust property under (2) of
30 this subsection;

31 (7) if a trustee is not designated or a designated trustee is not willing

1 or able to serve, a court shall name a trustee; a court may order the transfer of the
2 property to another trustee, if required to assure that the intended use is carried out and
3 if a successor trustee is not designated in the trust instrument or if a designated
4 successor trustee does not agree to serve or is unable to serve; a court may also make
5 other orders and determinations as are advisable to carry out the intent of the transferor
6 and the purpose of this section.

7 Sec. 13.12.912. INTERNATIONAL WILL; VALIDITY. (a) A will is valid
8 as regards form, irrespective of the place where the will is made, of the location of the
9 assets and of the nationality, domicile, or residence of the testator, if the will is made
10 in the form of an international will complying with the requirements of AS 13.12.912 -
11 13.12.921.

12 (b) The invalidity of the will as an international will does not affect its formal
13 validity as a will of another kind.

14 (c) AS 13.12.912 - 13.12.921 do not apply to the form of testamentary
15 dispositions made by two or more persons in one instrument.

16 Sec. 13.12.913. INTERNATIONAL WILL; REQUIREMENTS. (a) The
17 international will must be written. The will does not need to be written by the testator.
18 The will may be written in any language, or by hand or other means.

19 (b) The testator shall declare in the presence of two witnesses and of a person
20 authorized to act in connection with international wills that the document is the
21 testator's will and that the testator knows the contents of the will. The testator does
22 not need to inform the witnesses, or the authorized person, of the contents of the will.

23 (c) In the presence of the witnesses, and of the authorized person, the testator
24 shall sign the international will, or, if the testator has previously signed it, shall
25 acknowledge the testator's signature.

26 (d) When the testator is unable to sign, the absence of the testator's signature
27 does not affect the validity of the international will if the testator indicates the reason
28 for the testator's inability to sign and the authorized person makes note of the reason
29 on the will. In these cases, it is permissible for any other person present, including the
30 authorized person or one of the witnesses, at the direction of the testator, to sign the
31 testator's name for the testator, if the authorized person makes note of this also on the

1 will, but it is not required that a person sign the testator's name for the testator.

2 (e) The witnesses and the authorized person shall there and then attest the
3 international will by signing in the presence of the testator.

4 Sec. 13.12.914. INTERNATIONAL WILL; OTHER POINTS OF FORM. (a)
5 The signatures shall be placed at the end of the international will. If the will consists
6 of several sheets, each sheet shall be signed by the testator or, if the testator is unable
7 to sign, by the person signing on the testator's behalf or, if a person is not signing on
8 the testator's behalf, by the authorized person. In addition, each sheet shall be
9 numbered.

10 (b) The date of the international will is the date of its signature by the
11 authorized person. That date shall be noted at the end of the will by the authorized
12 person.

13 (c) The authorized person shall ask the testator whether the testator wishes to
14 make a declaration concerning the safekeeping of the will. If so and at the express
15 request of the testator the place where the testator intends to have the will kept shall
16 be mentioned in the certificate provided for in AS 13.12.915.

17 (d) An international will executed in compliance with AS 13.12.913 is not
18 invalid merely because it does not comply with this section.

19 Sec. 13.12.915. INTERNATIONAL WILL; CERTIFICATE. The authorized
20 person shall attach to the international will a certificate to be signed by the authorized
21 person establishing that the requirements of AS 13.12.912 - 13.12.921 for valid
22 execution of an international will have been complied with. The authorized person
23 shall keep a copy of the certificate and deliver another to the testator. The certificate
24 shall be substantially in the following form:

25 CERTIFICATE

26 (Convention of October 26, 1973)

- 27 1. I, _____ (name,
28 address, and capacity), a person authorized to act in connection
29 with international wills
30 2. certify that on _____ (date)
31 at _____ (place)

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3. (testator) _____
(name, address, date, and place of birth) in my presence and that
of the witnesses

4. (a) _____ (name,
address, date, and place of birth)

(b) _____ (name,
address, date, and place of birth) has declared that the attached
document is the testator's will and that the testator knows the
contents of the will.

5. I furthermore certify that:

6. (a) in my presence and in that of the witnesses

(1) the testator has signed the will or has
acknowledged the testator's signature previously affixed.

* (2) following a declaration of the testator
stating that the testator was unable to sign the testator's will for
the following reason _____, I have
mentioned this declaration on the will

*and the signature has been affixed by
_____ (name and address)

7. (b) the witnesses and I have signed the will;

8. * (c) each page of the will has been signed by
_____ and numbered;

9. (d) I have satisfied myself as to the identity of the
testator and of the witnesses as designated above;

10. (e) the witnesses met the conditions requisite to act
as witnesses according to the law under which I am acting;

11. * (f) the testator has requested me to include the
following statement concerning the safekeeping of the testator's
will: _____

12. PLACE OF EXECUTION

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13. DATE

14. SIGNATURE and, if necessary, SEAL

* to be completed if appropriate.

Sec. 13.12.916. INTERNATIONAL WILL; EFFECT OF CERTIFICATE. In the absence of evidence to the contrary, the certificate of the authorized person is conclusive of the formal validity of the instrument as an international will under AS 13.12.912 - 13.12.921. The absence or irregularity of a certificate does not affect the formal validity of a will under AS 13.12.912 - 13.12.921.

Sec. 13.12.917. INTERNATIONAL WILL; REVOCATION. An international will is subject to the ordinary rules of revocation of wills.

Sec. 13.12.918. SOURCE AND CONSTRUCTION. AS 13.12.912 - 13.12.917 and 13.12.921 derive from the Annex to Convention of October 26, 1973, Providing a Uniform Law on the Form of an International Will. In interpreting and applying AS 13.12.912 - 13.12.921, regard shall be had to its international origin and to the need for uniformity in its interpretation.

Sec. 13.12.919. PERSONS AUTHORIZED TO ACT IN RELATION TO INTERNATIONAL WILL; ELIGIBILITY; RECOGNITION BY AUTHORIZING AGENCY. Individuals who are licensed to practice law in this state and who are in good standing as active law practitioners in this state, are hereby declared to be authorized persons in relation to international wills.

Sec. 13.12.920. INTERNATIONAL WILL INFORMATION REGISTRATION. The Department of Commerce and Economic Development shall establish a registry system by which authorized persons may register in a central information center information regarding the execution of international wills, keeping that information in strictest confidence until the death of the maker and then making it available to any person desiring information about any will who presents a death certificate or other satisfactory evidence of the testator's death to the center. Information that may be received, preserved in confidence until death, and reported as indicated is limited to the testator's name, social security, or other individual identifying number established by law, address, and date and place of birth, and the intended place of deposit or safekeeping of the instrument pending the death of the maker. The Department of

1 Commerce and Economic Development, at the request of the authorized person, may
2 cause the information it receives about execution of an international will to be
3 transmitted to the registry system of another jurisdiction as identified by the testator,
4 if that other system adheres to rules protecting the confidentiality of the information
5 similar to those established in this state.

6 Sec. 13.12.921. DEFINITIONS FOR AS 13.12.912 - 13.12.921. In
7 AS 13.12.912 - 13.12.921,

8 (1) "authorized person" and "person authorized to act in connection
9 with international wills" mean a person who by AS 13.12.919, or by the laws of the
10 United States, including members of the diplomatic and consular service of the United
11 States designated by federal regulations, is empowered to supervise the execution of
12 international wills;

13 (2) "international will" means a will executed in conformity with
14 AS 13.12.912 - 13.12.915.

15 * **Sec. 4.** AS 13.16.010 is repealed and reenacted to read:

16 Sec. 13.16.010. NECESSITY OF ORDER OF PROBATE FOR WILL. Except
17 as provided in AS 13.16.680, to be effective to prove the transfer of property or to
18 nominate an executor, a will must be declared to be valid by an order of informal
19 probate by the registrar or by an adjudication of probate by the court.

20 * **Sec. 5.** AS 13.16.040 is repealed and reenacted to read:

21 Sec. 13.16.040. PROBATE, TESTACY, AND APPOINTMENT
22 PROCEEDINGS; ULTIMATE TIME LIMIT. (a) An informal probate or appointment
23 proceeding or formal testacy or appointment proceeding, other than a proceeding to
24 probate a will previously probated at the testator's domicile and appointment
25 proceedings relating to an estate in which there has been a prior appointment, may not
26 be commenced more than three years after the decedent's death, except

27 (1) if a previous proceeding was dismissed because of doubt about the
28 fact of the decedent's death, appropriate probate, appointment, or testacy proceedings
29 may be maintained at any time after the dismissal upon a finding that the decedent's
30 death occurred before the initiation of the previous proceeding and the applicant or
31 petitioner has not delayed unduly in initiating the subsequent proceeding;

1 (2) appropriate probate, appointment, or testacy proceedings may be
2 maintained in relation to the estate of an absent, disappeared, or missing person for
3 whose estate a conservator has been appointed, at any time within three years after the
4 conservator becomes able to establish the death of the protected person;

5 (3) a proceeding to contest an informally probated will and to secure
6 appointment of the person with legal priority for appointment in the event the contest
7 is successful, may be commenced within the later of 12 months from the informal
8 probate or three years from the decedent's death;

9 (4) an informal appointment or a formal testacy or appointment
10 proceeding may be commenced after the three years if proceedings concerning the
11 succession or estate administration have not occurred within the three-year period after
12 the decedent's death, but the personal representative may not possess estate assets as
13 provided in AS 13.16.380 beyond that necessary to confirm title to the assets in the
14 successors to the estate and claims other than expenses of administration may not be
15 presented against the estate; and

16 (5) a formal testacy proceeding may be commenced at any time after
17 three years from the decedent's death for the purpose of establishing an instrument to
18 direct or control the ownership of property passing or distributable after the decedent's
19 death from a person other than the decedent when the property is to be appointed by
20 the terms of the decedent's will or is to pass or be distributed as a part of the
21 decedent's estate or its transfer is otherwise to be controlled by the terms of the
22 decedent's will.

23 (b) The limitations in (a) of this section do not apply to proceedings to
24 construe probated wills or determine heirs of an intestate.

25 (c) In cases under (a)(1) or (2) of this section, the date on which a testacy or
26 appointment proceeding is properly commenced is considered to be the date of the
27 decedent's death for purposes of other limitations provisions of AS 13.06 - AS 13.36
28 that relate to the date of death.

29 * **Sec. 6.** AS 13.16.090(c) is amended to read:

30 (c) A will **that** [WHICH] appears to have the required signatures and **that**
31 [WHICH] contains an attestation clause showing that requirements of execution under

1 AS 13.12.502 or 13.12.506 [AS 13.11.155, 13.11.160, OR 13.11.175] have been met
2 shall be probated without further proof. In other cases, the registrar may assume
3 execution if the will appears to have been properly executed, or the registrar may
4 accept a sworn statement or affidavit of a [ANY] person having knowledge of the
5 circumstances of execution, whether or not the person was a witness to the will.

6 * **Sec. 7.** AS 13.16.195(a) is amended to read:

7 (a) Subject to appeal and subject to vacation as provided in this section
8 [HEREIN] and in AS 13.16.200, a formal testacy order under AS 13.16.180 -
9 13.16.190, including an order that the decedent did not leave a [LEFT NO] valid will
10 and determining heirs, is final as to all persons with respect to all issues concerning
11 the decedent's estate that the court considered or might have considered incident to its
12 rendition relevant to the question of whether the decedent left a valid will, and to the
13 determination of heirs, except that

14 (1) the court shall entertain a petition for modification or vacation of
15 its order and probate of another will of the decedent if it is shown that the proponents
16 of the later-offered will were

17 (A) unaware of the later-offered will's [ITS] existence at the
18 time of the earlier proceeding; or

19 (B) [WERE] unaware of the earlier proceeding and were not
20 given [NO] notice of the proceeding [IT], except by publication;

21 (2) if intestacy of all or part of the estate has been ordered, the
22 determination of heirs of the decedent may be reconsidered if it is shown that one or
23 more persons were omitted from the determination and it is also shown that the
24 persons were unaware of their relationship to the decedent, were unaware of the death,
25 or were not given [NO] notice of any proceeding concerning the estate, except by
26 publication;

27 (3) a petition for vacation under either (1) or (2) of this subsection must
28 be filed before the earlier of the following time limits:

29 (A) if a personal representative has been appointed for the
30 estate, the time of entry of an [ANY] order approving final distribution of the
31 estate, or, if the estate is closed by statement, six months after the filing of the

1 closing statement; [,]

2 (B) whether or not a personal representative has been appointed
3 for the estate of the decedent, the time prescribed by AS 13.16.040 when it is
4 no longer possible to initiate an original proceeding to probate a will of the
5 decedent; or [,]

6 (C) 12 months after the entry of the order sought to be vacated;

7 (4) the order originally rendered in the testacy proceeding may be
8 modified or vacated, if appropriate under the circumstances, by the order of probate
9 of the later-offered will or the order redetermining heirs;

10 (5) the finding of the fact of death is conclusive as to the alleged
11 decedent only if notice of the hearing on the petition in the formal testacy proceeding
12 was sent by registered or certified mail addressed to the alleged decedent at the last
13 known address of the alleged decedent and the court finds that a search under
14 AS 13.16.150(b) was made.

15 * **Sec. 8.** AS 13.16.260 is amended to read:

16 Sec. 13.16.260. BOND AMOUNT; SECURITY; PROCEDURE;
17 REDUCTION. If bond is required and the provisions of the will or order do not
18 specify the amount, unless stated in the application or petition, the person qualifying
19 shall file a statement under oath with the registrar indicating the person's best estimate
20 of the value of the personal estate of the decedent and of the income expected from
21 the personal and real estate during the next year. The person qualifying shall execute
22 and file a bond with the registrar, or give other suitable security, in an amount not less
23 than the estimate. The registrar shall determine that the bond is duly executed by a
24 corporate surety, or one or more individual sureties whose performance is secured by
25 pledge of personal property, mortgage on real property or other adequate security. The
26 registrar may permit the amount of the bond to be reduced by the value of assets of
27 the estate deposited with a domestic financial institution, [() as defined in
28 AS 13.33.201, [AS 13.31.005)] in a manner that prevents their unauthorized
29 disposition. On petition of the personal representative or another interested person the
30 court may excuse a requirement of bond, increase or reduce the amount of the bond,
31 release sureties, or permit the substitution of another bond with the same or different

1 sureties.

2 * **Sec. 9.** AS 13.16.560(a) is amended to read:

3 (a) Unless a contrary intention is indicated by the will, the distributable assets
4 of a decedent's estate shall be distributed in kind to the extent possible through
5 application of the following provisions:

6 (1) a [A] specific devisee is entitled to distribution of the thing devised,
7 and a spouse or child who has selected particular assets of an estate as provided in
8 AS 13.12.402 - 13.12.405 [AS 13.11.130] shall receive the items selected; [.]

9 (2) a [ANY] homestead or family allowance or devise payable in
10 money may be satisfied by value in kind if

11 (A) the person entitled to the payment has not demanded
12 payment in cash;

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

15 (C) no residuary devisee has requested that the asset in question
16 remain a part of the residue of the estate; [.]

17 (3) for [FOR] the purpose of valuation under (2) of this subsection,
18 securities regularly traded on recognized exchanges, if distributed in kind, are valued
19 at the price for the last sale of like securities traded on the business day before
20 distribution, or if there was no sale on that day, at the median between amounts bid
21 and offered at the close of that day; assets [. ASSETS] consisting of sums owed the
22 decedent or the estate by solvent debtors as to which there is no known dispute or
23 defense are valued at the sum due with accrued interest or discounted to the date of
24 distribution; for [. FOR] assets that [WHICH] do not have readily ascertainable
25 values, a valuation as of a date not more than 30 days before the date of distribution,
26 if otherwise reasonable, controls; for [. FOR] purposes of facilitating distribution, the
27 personal representative may ascertain the value of the assets as of the time of the
28 proposed distribution in any reasonable way, including the employment of qualified
29 appraisers, even if the assets may have been previously appraised; [.]

30 (4) the [THE] residuary estate shall be distributed in any equitable
31 manner [KIND IF THERE IS NO OBJECTION TO THE PROPOSED

1 DISTRIBUTION AND IT IS PRACTICABLE TO DISTRIBUTE UNDIVIDED
2 INTERESTS. IN OTHER CASES, RESIDUARY PROPERTY MAY BE
3 CONVERTED INTO CASH FOR DISTRIBUTION].

4 * **Sec. 10.** AS 13.16.665 is amended to read:

5 Sec. 13.16.665. EFFECT OF APPROVAL OF AGREEMENTS INVOLVING
6 TRUSTS, INALIENABLE INTERESTS, OR INTERESTS OF THIRD PERSONS. A
7 compromise of any controversy as to admission to probate of any instrument offered
8 for formal probate as the will of a decedent, the construction, validity, or effect of any
9 **governing instrument** [PROBATED WILL], the rights or interests in the estate of the
10 decedent, of any successor, or the administration of the estate, if approved in a formal
11 proceeding in the court for that purpose, is binding on all the parties **to the**
12 **compromise** [THERETO] including those unborn, unascertained or who could not be
13 located. An approved compromise is binding even though it may affect a trust or an
14 inalienable interest. A compromise does not impair the rights of creditors or of taxing
15 authorities who are not parties to it.

16 * **Sec. 11.** AS 13.16.670 is amended to read:

17 Sec. 13.16.670. PROCEDURE FOR SECURING COURT APPROVAL OF
18 COMPROMISE. The procedure for securing court approval of a compromise is as
19 follows:

20 (1) **the** [THE] terms of the compromise shall be set out in an
21 agreement in writing **that** [WHICH] shall be executed by all competent persons and
22 parents acting for any minor child having beneficial interests or having claims **that**
23 [WHICH] will or may be affected by the compromise; **execution** [. EXECUTION]
24 is not required by any person whose identity cannot be ascertained or whose
25 whereabouts is unknown and cannot reasonably be ascertained; [.]

26 (2) **an** [ANY] interested person, including the personal representative,
27 **if any**, or a trustee, then may submit the agreement to the court for its approval and
28 for execution by the personal representative, the trustee of every affected testamentary
29 trust, and other fiduciaries and representatives; [.]

30 (3) **after** [AFTER] notice to all interested persons or their
31 representatives, including the personal representative of **any** [THE] estate and all

1 affected trustees of trusts, the court, if it finds that the contest or controversy is in
2 good faith and that the effect of the agreement upon the interests of persons
3 represented by fiduciaries or other representatives is just and reasonable, shall make
4 an order approving the agreement and directing all fiduciaries under its supervision to
5 execute the agreement; minor [. MINOR] children represented only by their parents
6 may be bound only if their parents join with other competent persons in execution of
7 the compromise; upon [. UPON] the making of the order and the execution of the
8 agreement, all further disposition of the estate is in accordance with the terms of the
9 agreement.

10 * **Sec. 12.** AS 13 is amended by adding a new chapter to read:

11 CHAPTER 33. NONPROBATE TRANSFERS.

12 ARTICLE 1. PROVISIONS RELATING TO EFFECT OF DEATH.

13 Sec. 13.33.101 NONPROBATE TRANSFERS ON DEATH. (a) A provision
14 for a nonprobate transfer on death in an insurance policy, contract of employment,
15 bond, mortgage, promissory note, certificated or uncertificated security, account
16 agreement, custodial agreement, deposit agreement, compensation plan, pension plan,
17 individual retirement plan, employee benefit plan, trust, conveyance, deed of gift,
18 marital property agreement, or other written instrument of a similar nature is
19 nontestamentary. This subsection includes a written provision that

20 (1) money or other benefits due to, controlled by, or owned by a
21 decedent before death must be paid after the decedent's death to a person whom the
22 decedent designates either in the instrument or in a separate writing, including a will,
23 executed either before or at the same time as the instrument, or later;

24 (2) money due or to become due under the instrument ceases to be
25 payable in the event of death of the promisee or the promisor before payment or
26 demand; or

27 (3) property controlled by or owned by the decedent before death that
28 is the subject of the instrument passes to a person the decedent designates either in the
29 instrument or in a separate writing, including a will, executed either before or at the
30 same time as the instrument, or later.

31 (b) This section does not limit rights of creditors under other laws of this state.

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ARTICLE 2. MULTIPLE-PERSON ACCOUNTS.

Sec. 13.33.201. DEFINITIONS. In AS 13.33.201 - 13.33.227,

(1) "account" means a contract of deposit between a depositor and a financial institution and includes a checking account, savings account, certificate of deposit, and share account;

(2) "agent" means a person authorized to make account transactions for a party;

(3) "beneficiary" means a person named as one to whom sums on deposit in an account are payable on request after death of all parties or for whom a party is named as trustee;

(4) "financial institution" means an organization authorized to do business under state or federal laws relating to financial institutions, and includes a bank, trust company, savings bank, building and loan association, savings and loan company or association, and credit union;

(5) "multiple-party account" means an account payable on request to one or more of two or more parties whether or not a right of survivorship is mentioned;

(6) "party" means a person who, by the terms of an account, has a present right, subject to request, to payment from the account other than as a beneficiary or agent;

(7) "payment" of sums on deposit includes withdrawal, payment to a party or third person pursuant to check or other request, and a pledge of sums on deposit by a party, or a setoff, reduction, or other disposition of all or part of an account pursuant to a pledge;

(8) "POD designation" means the designation of

(A) a beneficiary in an account payable on request to one party during the party's lifetime and on the party's death to one or more beneficiaries, or to one or more parties during their lifetime and on death of all of them to one or more beneficiaries; or

(B) a beneficiary in an account in the name of one or more parties as trustee for one or more beneficiaries if the relationship is established

1 by the terms of the account and there is no subject of the trust other than the
2 sums on deposit in the account, whether or not payment to the beneficiary is
3 mentioned;

4 (9) "receive," as it relates to notice to a financial institution, means
5 receipt in the office or branch office of the financial institution in which the account
6 is established, but if the terms of the account require notice at a particular place, in the
7 place required;

8 (10) "request" means a request for payment complying with all terms
9 of the account, including special requirements concerning necessary signatures and
10 regulations of the financial institution; but, for purposes of AS 13.33.201 - 13.33.227,
11 if terms of the account condition payment on advance notice, a request for payment
12 is treated as immediately effective and a notice of intent to withdraw is treated as a
13 request for payment;

14 (11) "sums on deposit" means the balance payable on an account,
15 including interest and dividends earned, whether or not included in the current balance,
16 and deposit life insurance proceeds added to the account by reason of death of a party;

17 (12) "terms of the account" includes the deposit agreement and other
18 terms and conditions, including the form, of the contract of deposit.

19 Sec. 13.33.202. LIMITATION ON SCOPE. AS 13.33.201 - 13.33.227 do not
20 apply to

21 (1) an account established for a partnership, joint venture, or other
22 organization for a business purpose;

23 (2) an account controlled by one or more persons as an agent or trustee
24 for a corporation, unincorporated association, or charitable or civic organization; or

25 (3) a fiduciary or trust account in which the relationship is established
26 other than by the terms of the account.

27 Sec. 13.33.203. TYPES OF ACCOUNT; EXISTING ACCOUNTS. (a) An
28 account may be for a single party or multiple parties. A multiple-party account may
29 be with or without a right of survivorship between the parties. Subject to
30 AS 13.33.212(c), either a single-party account or a multiple-party account may have
31 a POD designation, an agency designation, or both.

1 (b) An account established before, on, or after January 1, 1997, whether in the
2 form prescribed in AS 13.33.204 or in another form, is either a single-party account
3 or a multiple-party account, with or without right of survivorship, and with or without
4 a POD designation or an agency designation, within the meaning of AS 13.33.201 -
5 13.33.227 and is governed by AS 13.33.201 - 13.33.227.

6 Sec. 13.33.204. FORMS. (a) A contract of deposit that contains provisions
7 in substantially the following form establishes the type of account provided, and the
8 account is governed by the provisions of AS 13.33.201 - 13.33.227 applicable to an
9 account of that type:

10 UNIFORM SINGLE- OR MULTIPLE-PARTY ACCOUNT FORM PARTIES

11 (Name one or more parties):

12 _____
13 OWNERSHIP (Select one and initial):

14 _____ SINGLE-PARTY ACCOUNT

15 _____ MULTIPLE-PARTY ACCOUNT

16 Parties own the account in proportion to net contributions unless
17 there is clear and convincing evidence of a different intent.

18 RIGHTS AT DEATH (Select one and initial):

19 _____ SINGLE-PARTY ACCOUNT

20 At death of party, ownership passes as part of party's estate.

21 _____ SINGLE-PARTY ACCOUNT WITH POD (PAY ON DEATH)
22 DESIGNATION

23 (Name one or more beneficiaries):

24 _____
25 At death of party, ownership passes to POD beneficiaries and is
26 not part of party's estate.

27 _____ MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP

28 At death of party, ownership passes to surviving parties.

29 _____ MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP
30 AND POD (PAY ON DEATH) DESIGNATION

31 (Name one or more beneficiaries):

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At death of last surviving party, ownership passes to POD beneficiaries and is not part of last surviving party's estate.

MULTIPLE-PARTY ACCOUNT WITHOUT RIGHT OF SURVIVORSHIP

At death of party, deceased party's ownership passes as part of deceased party's estate.

AGENCY (POWER OF ATTORNEY) DESIGNATION (Optional)

Agents may make account transactions for parties but do not have ownership or rights at death unless named as POD beneficiaries. (To add agency designation to account, name one or more agents):

(Select one and initial):

AGENCY DESIGNATION SURVIVES DISABILITY OR INCAPACITY OF PARTIES

AGENCY DESIGNATION TERMINATES ON DISABILITY OR INCAPACITY OF PARTIES.

(b) A contract of deposit that does not contain provisions in substantially the form provided in (a) of this section is governed by the provisions of AS 13.33.201 - 13.33.227 applicable to the type of account that most nearly conforms to the depositor's intent.

Sec. 13.33.205. DESIGNATION OF AGENT. (a) By writing signed by all parties, the parties may designate as agent of all parties on an account a person other than a party.

(b) Unless the terms of an agency designation provide that the authority of the agent terminates on disability or incapacity of a party, the agent's authority survives disability and incapacity. The agent may act for a disabled or incapacitated party until the authority of the agent is terminated.

(c) Death of the sole party or last surviving party terminates the authority of an agent.

Sec. 13.33.206. APPLICABILITY. The provisions of AS 13.33.211 -

1 13.33.216 concerning beneficial ownership as between parties or as between parties
2 and beneficiaries apply only to controversies between those persons and their creditors
3 and other successors and do not apply to the right of those persons to payment as
4 determined by the terms of the account. AS 13.33.221 - 13.33.227 govern the liability
5 and setoff rights of financial institutions that make payments under AS 13.33.221 -
6 13.33.227.

7 Sec. 13.33.211. OWNERSHIP DURING LIFETIME. (a) During the lifetime
8 of all parties, an account belongs to the parties in proportion to the net contribution of
9 each to the sums on deposit, unless there is clear and convincing evidence of a
10 different intent. As between parties married to each other, in the absence of proof
11 otherwise, the net contribution of each is presumed to be an equal amount.

12 (b) A beneficiary in an account having a POD designation does not have a
13 right to sums on deposit during the lifetime of any party.

14 (c) An agent in an account with an agency designation does not have a
15 beneficial right to sums on deposit.

16 (d) In this section, "net contribution" of a party means the sum of all deposits
17 to an account made by or for the party, less all payments from the account made to
18 or for the party that have not been paid to or applied to the use of another party and
19 a proportionate share of any charges deducted from the account, plus a proportionate
20 share of any interest or dividends earned, whether or not included in the current
21 balance. The term includes deposit life insurance proceeds added to the account by
22 reason of death of the party whose net contribution is in question.

23 Sec. 13.33.212. RIGHTS AT DEATH. (a) Except as otherwise provided in
24 AS 13.33.201 - 13.33.227, on death of a party, sums on deposit in a multiple-party
25 account belong to the surviving party or parties. If two or more parties survive and
26 one is the surviving spouse of the decedent, the amount to which the decedent
27 immediately before death was beneficially entitled under AS 13.33.211 belongs to the
28 surviving spouse. If two or more parties survive and none is the surviving spouse of
29 the decedent, the amount to which the decedent immediately before death was
30 beneficially entitled under AS 13.33.211 belongs to the surviving parties in equal
31 shares and augments the proportion to which each survivor immediately before the

1 decedent's death was beneficially entitled under AS 13.33.211, and the right of
2 survivorship continues between the surviving parties.

3 (b) In an account with a POD designation

4 (1) on death of one of two or more parties, the rights in sums on
5 deposit are governed by (a) of this section;

6 (2) on death of the sole party or the last survivor of two or more
7 parties, sums on deposit belong to the surviving beneficiary or beneficiaries; if two or
8 more beneficiaries survive, sums on deposit belong to them in equal and undivided
9 shares, and there is no right of survivorship in the event of death of a beneficiary after
10 coming into ownership; if no beneficiary survives, sums on deposit belong to the estate
11 of the last surviving party.

12 (c) Sums on deposit in a single-party account without a POD designation, or
13 in a multiple-party account that, by the terms of the account, is without right of
14 survivorship, are not affected by death of a party, but the amount to which the
15 decedent immediately before death was beneficially entitled under AS 13.33.211 is
16 transferred as part of the decedent's estate. A POD designation in a multiple-party
17 account without right of survivorship is ineffective. For purposes of this section,
18 designation of an account as a tenancy in common establishes that the account is
19 without right of survivorship.

20 (d) The ownership right of a surviving party or beneficiary, or of the
21 decedent's estate, in sums on deposit is subject to requests for payment made by a
22 party before the party's death, whether paid by the financial institution before or after
23 death, or unpaid. The surviving party or beneficiary, or the decedent's estate, is liable
24 to the payee of an unpaid request for payment. The liability is limited to a
25 proportionate share of the amount transferred under this section to the extent necessary
26 to discharge the request for payment.

27 Sec. 13.33.213. ALTERATION OF RIGHTS. (a) Rights at death under
28 AS 13.33.212 are determined by the type of account at the death of a party. The type
29 of account may be altered by written notice given by a party to the financial institution
30 to change the type of account or to stop or vary payment under the terms of the
31 account. The notice shall be signed by a party and received by the financial institution

1 during the party's lifetime.

2 (b) A right of survivorship arising from the express terms of the account,
3 AS 13.33.212, or a POD designation may not be altered by will.

4 Sec. 13.33.214. ACCOUNTS AND TRANSFERS NONTESTAMENTARY.
5 Except as provided in AS 13.12.201 - 13.12.214 or as a consequence of and to the
6 extent directed by AS 13.33.215, a transfer resulting from the application of
7 AS 13.33.212 is effective by reason of the terms of the account involved and
8 AS 13.33.201 - 13.33.227 and is not testamentary or subject to AS 13.06 - AS 13.21.

9 Sec. 13.33.215. RIGHTS OF CREDITORS AND OTHERS. (a) If other
10 assets of the estate are insufficient, a transfer resulting from a right of survivorship or
11 POD designation under AS 13.33.201 - 13.33.227 is not effective against the estate of
12 a deceased party to the extent needed to pay claims against the estate and statutory
13 allowances to the surviving spouse and children.

14 (b) A surviving party or beneficiary who receives payment from an account
15 after death of a party is liable to account to the personal representative of the decedent
16 for a proportionate share of the amount received to which the decedent immediately
17 before death was beneficially entitled under AS 13.33.211, to the extent necessary to
18 discharge the claims and allowances described in (a) of this section remaining unpaid
19 after application of the decedent's estate. A proceeding to assert the liability may not
20 be commenced unless the personal representative has received a written demand by the
21 surviving spouse, a creditor, a child, or a person acting for a child of the decedent.
22 The proceeding must be commenced within one year after death of the decedent.

23 (c) A surviving party or beneficiary against whom a proceeding to account is
24 brought may join as a party to the proceeding a surviving party or beneficiary of any
25 other account of the decedent.

26 (d) Sums recovered by the personal representative shall be administered as part
27 of the decedent's estate. This section does not affect the protection from claims of the
28 personal representative or estate of a deceased party provided in AS 13.33.226 for a
29 financial institution that makes payment in accordance with the terms of the account.

30 Sec. 13.33.216. COMMUNITY PROPERTY AND TENANCY BY THE
31 ENTIRETY. (a) A deposit of community property in an account does not alter the

1 community character of the property or community rights in the property, but a right
2 of survivorship between parties married to each other arising from the express terms
3 of the account or AS 13.33.212 may not be altered by will.

4 (b) AS 13.33.201 - 13.33.227 does not affect the law governing tenancy by the
5 entirety.

6 Sec. 13.33.221. AUTHORITY OF FINANCIAL INSTITUTION. A financial
7 institution may enter into a contract of deposit for a multiple-party account to the same
8 extent it may enter into a contract of deposit for a single-party account and may
9 provide for a POD designation and an agency designation in either a single-party
10 account or a multiple-party account. A financial institution need not inquire as to the
11 source of a deposit to an account or as to the proposed application of a payment from
12 an account.

13 Sec. 13.33.222. PAYMENT ON MULTIPLE-PARTY ACCOUNT. A financial
14 institution, on request, may pay sums on deposit in a multiple-party account to

15 (1) one or more of the parties whether or not another party is disabled,
16 incapacitated, or deceased when payment is requested and whether or not the party
17 making the request survives another party; or

18 (2) the personal representative, if any, or, if there is none, the heirs or
19 devisees of a deceased party if proof of death is presented to the financial institution
20 showing that the deceased party was the survivor of all other persons named on the
21 account either as a party or beneficiary, unless the account is without right of
22 survivorship under AS 13.33.212.

23 Sec. 13.33.223. PAYMENT ON POD DESIGNATION. A financial institution,
24 on request, may pay sums on deposit in an account with a POD designation to

25 (1) one or more of the parties whether or not another party is disabled,
26 incapacitated, or deceased when the payment is requested and whether or not a party
27 survives another party;

28 (2) the beneficiary or beneficiaries if proof of death is presented to the
29 financial institution showing that the beneficiary or beneficiaries survived all persons
30 named as parties; or

31 (3) the personal representative, if any, or, if there is none, the heirs or

1 devisees of a deceased party if proof of death is presented to the financial institution
2 showing that the deceased party was the survivor of all other persons named on the
3 account either as a party or beneficiary.

4 Sec. 13.33.224. PAYMENT TO DESIGNATED AGENT. A financial
5 institution, on request of an agent under an agency designation for an account, may
6 pay to the agent sums on deposit in the account whether or not a party is disabled,
7 incapacitated, or deceased when the request is made or received and whether or not
8 the authority of the agent terminates on the disability or incapacity of a party.

9 Sec. 13.33.225. PAYMENT TO MINOR. If a financial institution is required
10 or permitted to make payment under AS 13.33.201 - 13.33.227 to a minor designated
11 as a beneficiary, payment may be made under AS 13.46.

12 Sec. 13.33.226. DISCHARGE. (a) Payment made under AS 13.33.201 -
13 13.33.227 in accordance with the type of account discharges the financial institution
14 from all claims for amounts so paid, whether or not the payment is consistent with the
15 beneficial ownership of the account as between parties, beneficiaries, or their
16 successors. Payment may be made whether or not a party, beneficiary, or agent is
17 disabled, incapacitated, or deceased when payment is requested, received, or made.

18 (b) Protection under this section does not extend to payments made after a
19 financial institution has received written notice from a party, or from the personal
20 representative, surviving spouse, or heir or devisee of a deceased party, to the effect
21 that payments in accordance with the terms of the account, including one having an
22 agency designation, should not be permitted, and the financial institution has had a
23 reasonable opportunity to act on it when the payment is made. Unless the notice is
24 withdrawn by the person giving it, the successor of any deceased party must concur
25 in a request for payment if the financial institution is to be protected under this section.
26 Unless a financial institution has been served with process in an action or proceeding,
27 other notice or other information shown to have been available to the financial
28 institution does not affect its right to protection under this section.

29 (c) A financial institution that receives written notice under this section or
30 otherwise has reason to believe that a dispute exists as to the rights of the parties may
31 refuse, without liability, to make payments in accordance with the terms of the

1 account.

2 (d) Protection of a financial institution under this section does not affect the
3 rights of parties in disputes between themselves or their successors concerning the
4 beneficial ownership of sums on deposit in accounts or payments made from accounts.

5 Sec. 13.33.227. SETOFF. Without qualifying any other statutory right to
6 setoff or lien and subject to any contractual provision, if a party is indebted to a
7 financial institution, the financial institution has a right to setoff against the account.
8 The amount of the account subject to setoff is the proportion to which the party is, or
9 immediately before death was, beneficially entitled under AS 13.33.211 or, in the
10 absence of proof of that proportion, an equal share with all parties.

11 ARTICLE 3. UNIFORM TRANSFER-ON-DEATH SECURITY
12 REGISTRATION ACT.

13 Sec. 13.33.301. DEFINITIONS. In AS 13.33.301 - 13.33.310,

14 (1) "beneficiary form" means a registration of a security that indicates
15 the present owner of the security and the intention of the owner regarding the person
16 who will become the owner of the security upon the death of the owner;

17 (2) "POD" means "pay on death";

18 (3) "register," including its derivatives, means to issue a certificate
19 showing the ownership of a certificated security or, in the case of an uncertificated
20 security, to initiate or transfer an account showing ownership of securities;

21 (4) "registering entity" means a person who originates or transfers a
22 security title by registration and includes a broker maintaining security accounts for
23 customers and a transfer agent or other person acting for or as an issuer of securities;

24 (5) "security" means a share, participation, or other interest in property,
25 in a business, or in an obligation of an enterprise or other issuer and includes a
26 certificated security, an uncertificated security, and a security account;

27 (6) "security account" means

28 (A) a reinvestment account associated with a security, a
29 securities account with a broker, a cash balance in a brokerage account, cash,
30 interest, earnings, or dividends earned or declared on a security in an account,
31 a reinvestment account, or a brokerage account, whether or not credited to the

1 account before the owner's death; or

2 (B) a cash balance or other property held for or due to the
3 owner of a security as a replacement for or product of an account security
4 whether or not credited to the account before the owner's death;

5 (7) "TOD" means "transfer on death".

6 Sec. 13.33.302. REGISTRATION IN BENEFICIARY FORM; SOLE OR
7 JOINT TENANCY OWNERSHIP. Only individuals whose registration of a security
8 shows sole ownership by one individual or multiple ownership by two or more with
9 right of survivorship, rather than as tenants in common, may obtain registration in
10 beneficiary form. Multiple owners of a security registered in beneficiary form hold
11 as joint tenants with right of survivorship, as tenants by the entirety, or as owners of
12 community property held in survivorship form, and not as tenants in common.

13 Sec. 13.33.303. REGISTRATION IN BENEFICIARY FORM; APPLICABLE
14 LAW. (a) A security may be registered in beneficiary form if the form is authorized
15 by this or a similar TOD statute of the state of

16 (1) organization of the issuer or registering entity;

17 (2) the registering entity's principal office;

18 (3) the office of the registering entity's transfer agent or the registering
19 entity's office making the registration; or

20 (4) the owner's address at the time of registration.

21 (b) A registration governed by the law of a jurisdiction in which this or similar
22 TOD legislation is not in force or was not in force when a registration in beneficiary
23 form was made is nevertheless presumed to be valid and authorized as a matter of
24 contract law.

25 Sec. 13.33.304. ORIGINATION OF REGISTRATION IN BENEFICIARY
26 FORM. A security, whether evidenced by certificate or account, is registered in
27 beneficiary form when the registration includes a designation of a beneficiary to take
28 the ownership at the death of the owner or the deaths of all multiple owners.

29 Sec. 13.33.305. FORM OF REGISTRATION IN BENEFICIARY FORM.
30 Registration in beneficiary form may be shown by the words "transfer on death" or the
31 abbreviation "TOD," or by words "pay on death" or the abbreviation "POD," after the

1 name of the registered owner and before the name of a beneficiary.

2 Sec. 13.33.306. EFFECT OF REGISTRATION IN BENEFICIARY FORM.

3 The designation of a TOD beneficiary on a registration in beneficiary form does not
4 have an effect on ownership until the owner's death. A registration of a security in
5 beneficiary form may be cancelled or changed at any time by the sole owner or all
6 then surviving owners without the consent of the beneficiary.

7 Sec. 13.33.307. OWNERSHIP ON DEATH OF OWNER. On death of a sole
8 owner or the last to die of all multiple owners, ownership of securities registered in
9 beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On
10 proof of death of all owners and compliance with any applicable requirements of the
11 registering entity, a security registered in beneficiary form may be reregistered in the
12 name of the beneficiary or beneficiaries who survived the death of all owners. Until
13 division of the security after the death of all owners, multiple beneficiaries surviving
14 the death of all owners hold their interests as tenants in common. If no beneficiary
15 survives the death of all owners, the security belongs to the estate of the deceased sole
16 owner or the estate of the last to die of all multiple owners.

17 Sec. 13.33.308. PROTECTION OF REGISTERING ENTITY. (a) A
18 registering entity is not required to offer or to accept a request for security registration
19 in beneficiary form. If a registration in beneficiary form is offered by a registering
20 entity, the owner requesting registration in beneficiary form assents to the protections
21 given to the registering entity by AS 13.33.301 - 13.33.310.

22 (b) By accepting a request for registration of a security in beneficiary form,
23 the registering entity agrees that the registration will be implemented on death of the
24 deceased owner as provided in AS 13.33.301 - 13.33.310.

25 (c) A registering entity is discharged from all claims to a security by the
26 estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of the
27 security in accordance with AS 13.33.307 and does so in good faith reliance on

28 (1) the registration;

29 (2) AS 13.33.301 - 13.33.310; and

30 (3) information provided to it by affidavit of the personal representative
31 of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's

1 representatives, or other information available to the registering entity.

2 (d) The protections of AS 13.33.301 - 13.33.310 do not extend to a
3 reregistration or payment made after a registering entity has received written notice
4 from a claimant to any interest in the security objecting to implementation of a
5 registration in beneficiary form. Other notice or other information available to the
6 registering entity does not affect its right to protection under AS 13.33.301 -
7 13.33.310.

8 (e) The protection provided by AS 13.33.301 - 13.33.310 to the registering
9 entity of a security does not affect the rights of beneficiaries in disputes between
10 themselves and other claimants to ownership of the security transferred or its value or
11 proceeds.

12 Sec. 13.33.309. NONTESTAMENTARY TRANSFER ON DEATH. (a) A
13 transfer on death resulting from a registration in beneficiary form is effective by reason
14 of the contract regarding the registration between the owner and the registering entity
15 and AS 13.33.301 - 13.33.310 and is not testamentary.

16 (b) AS 13.33.301 - 13.33.310 do not limit the rights of creditors of security
17 owners against beneficiaries and other transferees under other laws of this state.

18 Sec. 13.33.310. TERMS, CONDITIONS, AND FORMS FOR
19 REGISTRATION. (a) A registering entity offering to accept registrations in
20 beneficiary form may establish the terms and conditions under which it will receive
21 requests for registrations in beneficiary form and for implementation of registrations
22 in beneficiary form, including requests for cancellation of previously registered TOD
23 beneficiary designations and requests for reregistration to effect a change of
24 beneficiary. The terms and conditions established under this subsection may provide
25 for proving death, avoiding or resolving problems concerning fractional shares,
26 designating primary and contingent beneficiaries, and substituting a named
27 beneficiary's descendants to take in the place of the named beneficiary in the event of
28 the beneficiary's death. Substitution may be indicated by appending to the name of the
29 primary beneficiary the letters LDPS, standing for "lineal descendants per stirpes."
30 This designation substitutes a deceased beneficiary's descendants who survive the
31 owner for a beneficiary who fails to so survive, the descendants to be identified and

1 to share in accordance with the law of the beneficiary's domicile at the owner's death
2 governing inheritance by descendants of an intestate. Other forms of identifying
3 beneficiaries who are to take on one or more contingencies, and rules for providing
4 proofs and assurances needed to satisfy reasonable concerns by registering entities
5 regarding conditions and identities relevant to accurate implementation of registrations
6 in beneficiary form, may be contained in a registering entity's terms and conditions.

7 (b) The following are illustrations of registrations in beneficiary form that a
8 registering entity may authorize:

9 (1) sole owner-sole beneficiary: John S Brown TOD (or POD) John
10 S Brown Jr.;

11 (2) multiple owners-sole beneficiary: John S Brown Mary B Brown
12 JT TEN TOD John S Brown Jr.;

13 (3) multiple owners-primary and secondary (substituted) beneficiaries:
14 John S Brown Mary B Brown JT TEN TOD John S Brown Jr. SUB BENE Peter Q
15 Brown; or John S Brown Mary B Brown JT TEN TOD John S Brown Jr. LDPS.

16 * **Sec. 13.** AS 13.60.010(e) is amended to read:

17 (e) Except as otherwise provided by AS 13.12.212(c), the [THE] beneficiary,
18 if not incapacitated, or the conservator of an incapacitated beneficiary, may terminate
19 a custodial trust by delivering to the custodial trustee a writing signed by the
20 beneficiary or conservator declaring the termination. If not previously terminated, the
21 custodial trust terminates on the death of the beneficiary.

22 * **Sec. 14.** AS 13.60.050 is amended by adding a new subsection to read:

23 (d) The provisions of (b) of this section do not apply to a custodial trust
24 established under AS 13.12.212.

25 * **Sec. 15.** AS 13.60.080(b) is amended to read:

26 (b) If the beneficiary is incapacitated, the custodial trustee shall expend so
27 much or all of the custodial trust property as the custodial trustee considers advisable
28 for the use and benefit of the beneficiary and individuals who were supported by the
29 beneficiary when the beneficiary became incapacitated, or who are legally entitled to
30 support by the beneficiary. Expenditures may be made in the manner, when, and to
31 the extent that the custodial trustee determines suitable and proper, without court order

1 and, except as otherwise provided in AS 13.12.212(d), without regard to other
2 support, income, or property of the beneficiary.

3 * **Sec. 16.** AS 13.60.160(a) is amended to read:

4 (a) Except as otherwise provided by AS 13.16.212(e), upon [UPON]
5 termination of a custodial trust, the custodial trustee shall transfer the unexpended
6 custodial trust property

7 (1) to the beneficiary, if not incapacitated or deceased;

8 (2) to the conservator or other recipient designated by the court for an
9 incapacitated beneficiary; or

10 (3) upon the beneficiary's death, in the following order:

11 (A) as last directed in a writing signed by the deceased
12 beneficiary while not incapacitated and received by the custodial trustee during
13 the life of the deceased beneficiary;

14 (B) to the survivor of multiple beneficiaries if survivorship is
15 provided for under AS 13.60.050;

16 (C) as designated in the instrument creating the custodial trust;
17 or

18 (D) to the estate of the deceased beneficiary.

19 * **Sec. 17.** AS 16.43.150(h) is amended to read:

20 (h) Unless an entry permit holder has expressed a contrary intent in a will that
21 is probated, the commission shall, upon the death of the permit holder, transfer the
22 permanent permit by right of survivorship directly to the surviving spouse or, if no
23 spouse survives, to a natural person designated by the permit holder on a form
24 provided by the commission. If no spouse survives and if the person designated on the
25 form, if any, does not survive, the permit passes as part of the permit holder's estate.
26 A designation under this subsection must be acknowledged before a person authorized
27 to administer an oath under AS 09.63.010 or must be witnessed by two persons who
28 are qualified under AS 13.12.505 [AS 13.11.170] to witness the will of the permit
29 holder. Except as provided in AS 16.10.333 - 16.10.337, AS 44.81.210, and
30 44.81.230 - 44.81.250, the permit is exempt from the claims of creditors of the estate.

31 * **Sec. 18.** AS 13.11, AS 13.31, and AS 13.43 are repealed.

1 * **Sec. 19.** TRANSITION PROVISIONS. (a) Except as otherwise provided in (b) of this
2 section or in this Act,

3 (1) this Act applies to the governing instruments executed by decedents dying
4 on or January 1, 1997;

5 (2) this Act applies to a proceeding in court pending on or begun on or after
6 January 1, 1997, regardless of the time of the death of the decedent, except to the extent that
7 in the opinion of the court the former procedure should be made applicable in a particular case
8 in the interest of justice or because of the infeasibility of applying the procedures of this Act;

9 (3) an act done before January 1, 1997, in any proceeding and an accrued right
10 are not impaired by this Act; if a right is acquired, extinguished, or barred upon the expiration
11 of a prescribed period of time that began to run under a statute before January 1, 1997, the
12 provisions of the statute apply to that right on and after January 1, 1997;

13 (4) a rule of construction or presumption provided in this Act, applies to
14 governing instruments executed before January 1, 1997, unless there is a clear indication of
15 a contrary intent.

16 (b) AS 13.33.301, 13.33.302, 13.33.303, 13.33.304, 13.33.305, 13.33.306, 13.33.307,
17 13.33.308, 13.33.309, and 13.33.310, enacted by sec. 12 of this Act, apply to registrations of
18 securities in beneficiary form made before, on, or after January 1, 1997, by decedents dying
19 on or after January 1, 1997.

20 (c) In this section, "court," "governing instrument," and "proceeding" have the
21 meanings given in AS 13.06.050, amended by sec. 2 of this Act.

22 * **Sec. 20.** AMENDMENT OF COURT RULES. AS 13.12.515, enacted by sec. 3 of this
23 Act, amends Alaska Rule of Probate Procedure 5 by requiring that a will deposited with the
24 court be sealed.

25 * **Sec. 21.** This Act takes effect January 1, 1997.