

HOUSE BILL NO. 199

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES RYAN, Therriault

Introduced: 3/18/97

Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (d) Notwithstanding the other provisions of this section, if the parties have
20 entered into a community property agreement or trust under AS 34.75, the court shall
21 distribute the property of the parties under AS 34.75 as indicated in the agreement or
22 trust. When distributing property identified as community property under the
23 agreement or trust, the court shall award to each party one-half of the value of the
24 community property unless the parties have provided in the agreement or trust for
25 another disposition of the community property.

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

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

30 (1) incompatibility of temperament has caused the irremediable
31 breakdown of the marriage;

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

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

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

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

19 (b) If custody, support, or visitation is at issue, the order for costs, fees, and
 20 disbursements shall be made against either or both parents, except that, if one of the
 21 parties responsible for the costs is indigent, the costs, fees, and disbursements for that
 22 party shall be borne by the state. If the parents are only temporarily without funds,
 23 the office of public advocacy shall provide legal representation or other services
 24 required by the court. The attorney general is responsible for enforcing collections
 25 owed the state. Repayment shall be made to the Department of Revenue under
 26 AS 37.10.050 for deposit in the general fund. The court shall, if possible, avoid
 27 assigning costs to only one party by ordering that costs of the minor's legal
 28 representation or other services be paid from proceeds derived from a sale of **joint,**
 29 **community, or individual** property **of the** [BELONGING JOINTLY OR
 30 INDIVIDUALLY TO BOTH] parties [,] before a division of property is made.

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

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

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

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

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

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

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

16 **Chapter 75. Community Property Act.**

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

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

24 **Sec. 34.75.030. Classification of property of spouses.** (a) Except for
25 property that is classified otherwise in this chapter, property of spouses is community
26 property under this chapter only to the extent provided in a community property
27 agreement or a community property trust.

28 (b) If a community property agreement provides that all property acquired by
29 either or both spouses during the marriage is community property, the property of the
30 spouses acquired during the marriage and after the determination date is presumed to
31 be community property.

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

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

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

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

12 (g) Whether or not the community property agreement provides that all
13 property acquired by either or both spouses during the marriage is community
14 property, and except to the extent otherwise expressly provided in the community
15 property agreement, property acquired by a spouse during marriage and after the
16 determination date is individual property if acquired

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (f) Except to the extent otherwise expressly provided in a community property
30 agreement or a community property trust, the right to manage and control the property
31 of spouses is not affected by this chapter if the property is acquired before the

1 determination date.

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

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

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

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

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

25 **Sec. 34.75.060. Certain property transactions between spouses.** (a) While
26 both spouses are domiciled in this state, spouses may classify any or all of their
27 property as community property in a community property agreement.

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

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

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

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

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

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

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

26 (g) A writing that is signed by a creditor and that reduces a creditor's rights
27 under this section is binding on the creditor.

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

1 community property trust.

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

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

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

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

12 (c) In this section,

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

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

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

21 (C) by accepting delivery under a preexisting contract for
22 purchase; or

23 (D) in return for other consideration sufficient to support a
24 contract;

25 (2) "purchaser" means a person who acquires property by sale, lease,
26 discount, negotiation, mortgage, pledge, or lien, or otherwise deals with property in a
27 voluntary transaction other than making a gift.

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

1 (b) A community property agreement may not adversely affect the right of a
2 child to support.

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

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

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

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

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

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

15 (6) on the choice of law governing the interpretation of the agreement;
16 and

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

19 (d) A community property agreement may not be amended or revoked unless
20 the agreement itself provides for revocation on a particular date or on the occurrence
21 of a particular event, or unless the agreement is amended or revoked by a later
22 community property agreement. To amend or revoke the agreement, the later
23 community property agreement is not required to declare any property of the spouses
24 as community property. The amended agreement or the revocation is enforceable
25 without consideration.

26 (e) Persons intending to marry each other may enter into a community property
27 agreement as if married, but the agreement does not become effective until the persons
28 are married.

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

31 (1) the agreement was unconscionable when made;

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

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

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

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

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

12 (g) A community property agreement executed before marriage is not
13 enforceable if the spouse against whom enforcement is sought proves that

14 (1) the spouse against whom enforcement is sought did not execute the
15 agreement voluntarily; or

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

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

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

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

25 (h) whether or not a community property agreement is unconscionable is
26 determined by a court as a matter of law.

27 **Sec. 34.75.100. Community property trust.** (a) An arrangement is a
28 community property trust if one or both spouses transfer property to a trust, the trust
29 expressly declares that some or all the property transferred is community property
30 under this chapter, and at least one trustee is a qualified person whose powers include
31 or are limited to maintaining records for the trust on an exclusive or a nonexclusive

1 basis and preparing or arranging for the preparation of, on an exclusive or a
 2 nonexclusive basis, any income tax returns that must be filed by the trust. A
 3 community property trust is enforceable without consideration. Both spouses or either
 4 spouse may be a trustee. The trust must be signed by both spouses. In this
 5 subsection, "qualified person" means

6 (1) an individual

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

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

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

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

14 (2) a trust company that is organized under AS 06.25 and that has its
 15 principal place of business in this state; or

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

20 (b) A community property trust may not adversely affect the right of a child
 21 to support.

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

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

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

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

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

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

1 (d) A community property trust may not be amended or revoked unless the
2 agreement itself provides for revocation on a particular date or on the occurrence of
3 a particular event or unless the agreement is amended or revoked by a later community
4 property trust. To amend or revoke the trust, the later community property trust is not
5 required to declare any property held by the trustee as community property. The
6 amended trust or the revocation is enforceable without consideration.

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

9 (1) trust was unconscionable when made; or

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

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

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

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

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

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

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

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

30 (b) Spouses may hold community property in a form that designates the holder
31 of it by the words "(name of one spouse) and (name of other spouse) as community

1 property." Community property held in this form is subject to AS 34.75.040(b).

2 (c) A spouse may hold individual property in a form that designates the holder
3 of it by the words "(name of spouse) as individual property." Individual property held
4 in this form is subject to AS 34.75.040(a)(1).

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

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

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

25 (b) Except as provided in (c) - (e) of this section,

26 (1) the ownership interest in and proceeds of a policy that insures the
27 life of one of the spouses and that has been classified by a community property
28 agreement or a community property trust as community property are community
29 property without regard to the classification of property used to pay premiums on the
30 policy;

31 (2) the ownership interest in and proceeds of a policy that is owned by

1 one spouse and that has not been classified by a community property agreement or a
2 community property trust as community property are mixed property if all or part of
3 a premium on the policy is paid from community property after the determination date;
4 the community property component of the ownership interest and proceeds is the part
5 resulting from multiplying the entire ownership interest and proceeds by a fraction that
6 consists of a numerator that is the sum of the net premiums and portions of net
7 premiums paid from community property and a denominator that is the sum of the net
8 premiums paid;

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

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

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

1 consent of the other spouse;

2 (6) unless the spouses provide otherwise in a community property
3 agreement or community property trust, designation of a trust as the beneficiary of the
4 proceeds of a policy with a community property component does not reclassify the
5 component.

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

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

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

15 (f) In this section,

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

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

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

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

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

30 (b) If a community property agreement provides that all property acquired by
31 either or both spouses during marriage is community property, application by one

1 spouse of substantial labor, effort, inventiveness, physical skill, intellectual skill,
2 creativity, or managerial activity on individual property of the other spouse creates
3 community property attributable to the application if

4 (1) reasonable compensation is not received for the application; and

5 (2) substantial appreciation of the individual property of the other
6 spouse results from the application.

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

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

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

18 (1) a partnership interest held by the other spouse as a general partner;

19 (2) an interest in a professional corporation, professional association,
20 or similar entity held by the other spouse as a stockholder or member;

21 (3) an asset of an unincorporated business if the other spouse is the
22 only spouse involved in operating or managing the business; or

23 (4) other property if the addition would adversely affect the rights of
24 a third person.

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

28 **Sec. 34.75.150. Treatment of certain property at death of spouse.** (a) If
29 a community property agreement provides that all property acquired by either or both
30 spouses during marriage is community property, at the death of a spouse domiciled in
31 this state, property of the spouse that can be traced to property received by the spouse

1 after the determination date as a recovery for a loss of earning capacity during
2 marriage shall be treated as if it were community property.

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

6 **Sec. 34.75.900. Definitions.** In this chapter,

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

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

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

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

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

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

19 (7) "determination date" means the later of

20 (A) marriage;

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

23 (C) the effective date of this Act;

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

27 (9) "dissolution" means

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

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

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

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

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

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

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

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

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

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

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

26 * **Sec. 12.** COURT RULE. AS 34.75.900(15), enacted by sec. 11 of this Act, changes Rule
27 301, Alaska Rules of Evidence, by changing the effect of presumptions established under
28 AS 34.75.

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

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