

HOUSE BILL NO. 805

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE THERRIAULT

Introduced: 11/3/00

Referred: House Special Committee on Utility Restructuring, Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the Uniform Probate Code, including trusts and governing**
2 **instruments; relating to a trustee's duties to inform and account to beneficiaries;**
3 **relating to the revocation, modification, termination, reformation, construction, and**
4 **trustees of trusts; relating to transfer restrictions in trusts; relating to underproductive**
5 **trust property; relating to conveyances of real property and interests in real property by**
6 **or to trusts; and providing for an effective date."**

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

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

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

11 (1) [ANY BALANCE OF THE PURCHASE PRICE, TOGETHER
12 WITH ANY SECURITY AGREEMENT, OWING FROM A PURCHASER TO THE

1 TESTATOR AT DEATH BY REASON OF SALE OF THE PROPERTY;

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

4 (2) [(3)] any proceeds unpaid at death on fire or casualty insurance on
5 or other recovery for injury to the property; and

6 (3) [(4)] property owned by the testator at death and acquired as a
7 result of foreclosure, or obtained in lieu of foreclosure, of the security interest for the
8 specifically devised obligation.

9 * **Sec. 2.** AS 13.12.701 is amended to read:

10 **Sec. 13.12.701. Scope.** In the absence of a finding of a contrary intention, the
11 rules of construction in AS 13.12.701 - 13.12.712 [AS 13.12.701 - 13.12.711
12 CONTROL THE CONSTRUCTION OF A GOVERNING INSTRUMENT. THE
13 RULES OF CONSTRUCTION IN AS 13.12.701 - 13.12.711] apply to a governing
14 instrument of any type, except as the application of a particular section is limited [BY
15 ITS TERMS] to a specific type of provision or governing instrument.

16 * **Sec. 3.** AS 13.12 is amended by adding a new section to article 7 to read:

17 **Sec. 13.12.712. Nonademption of specific transfers in trust; unpaid**
18 **proceeds of sale, condemnation, or insurance; sale by conservator or agent.** (a)
19 A person to whom specific property is transferred in trust as a beneficiary has a right
20 to the specific property transferred by the trust and

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

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

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

28 (b) If property that is specifically transferred to a person in trust as a
29 beneficiary is sold or mortgaged by a conservator or by an agent acting within the
30 authority of a durable power of attorney for an incapacitated principal, or if a
31 condemnation award, insurance proceeds, or recovery for injury to the property are

1 paid to a conservator or to an agent acting within the authority of a durable power of
 2 attorney for an incapacitated principal, the beneficiary has the right to a general
 3 pecuniary property transfer that is equal to the net sale price, the amount of the unpaid
 4 loan, the condemnation award, the insurance proceeds, or the recovery.

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

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

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

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

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

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

18 * **Sec. 4.** AS 13.16.550 is amended to read:

19 **Sec. 13.16.550. Interest on general pecuniary devise.** General pecuniary
 20 devises, **whether made outright or in trust,** bear interest at the **stated** [LEGAL] rate
 21 beginning **two years** [ONE YEAR] after the **decedent's death** [FIRST
 22 APPOINTMENT OF A PERSONAL REPRESENTATIVE] until payment, unless a
 23 contrary intent is indicated by the **governing instrument** [WILL]. **In this subsection,**
 24 **"stated rate" means the annual rate charged member banks for advances by the**
 25 **12th Federal Reserve District in effect on the first day of the month that is the**
 26 **23rd month following the decedent's death, not counting the month of the**
 27 **decedent's death.**

28 * **Sec. 5.** AS 13.16.550 is amended by adding a new subsection to read:

29 (b) The provisions of (a) of this section do not apply to a marital pecuniary
 30 devise, whether stated as a formula or otherwise and whether made outright to the
 31 decedent's spouse or in trust for the benefit of the spouse, if the devise is intended to

1 qualify for the marital deduction under 26 U.S.C. (Internal Revenue Code). A marital
 2 pecuniary devise to which this subsection applies shares ratably with the residue of the
 3 estate in the income earned by the estate during the period of administration, unless a
 4 contrary intention is expressed by the governing instrument.

5 * **Sec. 6.** AS 13.16.560(a) is amended to read:

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

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

12 (2) a homestead or family allowance or devise payable in money may
 13 be satisfied by value in kind if

14 (A) the person entitled to the payment has not demanded
 15 payment in cash;

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

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

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

1 appraised;

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

10 * **Sec. 7.** AS 13.16.595(a) is amended to read:

11 (a) Before distributing to a trustee, the personal representative may require
 12 that the trust be registered if the state in which it is to be administered provides for
 13 registration and that the trustee inform the **current** beneficiaries as provided in
 14 AS 13.36.080.

15 * **Sec. 8.** AS 13.36.080 is amended to read:

16 **Sec. 13.36.080. Duty to inform and account to current beneficiaries.** The
 17 trustee shall keep the **current** beneficiaries of the trust reasonably informed of the
 18 trust and its administration. In addition, [:]

19 (1) within 30 days after acceptance of the trust, the trustee shall inform
 20 in writing the current beneficiaries and, if possible, one or more persons who under
 21 AS 13.06.120 may represent **current** beneficiaries [WITH FUTURE INTERESTS], of
 22 the court in which the trust is registered and of the trustee's name and address;

23 (2) upon reasonable request, the trustee shall provide the **current**
 24 beneficiary with a copy of the terms of the trust **that** [WHICH] describe or affect the
 25 beneficiary's interest and with relevant information about the assets of the trust and
 26 the particulars relating to the administration;

27 (3) upon reasonable request, a **current** beneficiary is entitled to a
 28 statement of the accounts of the trust annually and on termination of the trust or
 29 change of the trustee.

30 * **Sec. 9.** AS 13.36.080 is amended by adding new subsections to read:

31 (b) The trust agreement may modify the trustee's duties under this section and

1 may prohibit the trustee from providing any notification or information to a current
 2 beneficiary regarding the trust unless that beneficiary receives a distribution from the
 3 trust, and then the notification or information may be limited to the accounting period
 4 during which the distribution was made.

5 (c) In this section, "current beneficiary" means a beneficiary who is entitled to
 6 a mandatory distribution of income or principal from the trust on an annual or more
 7 frequent basis.

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

9 **Sec. 13.36.153. Restrictions on exercising certain trustee powers.** (a)
 10 Notwithstanding AS 13.36.107, a person who is both a trustee and a beneficiary of a
 11 trust may not exercise a power to make or cause to be made a discretionary
 12 distribution of either principal or income

13 (1) to or for the direct or indirect benefit of the trustee, except to the
 14 extent that the trustee exercises the power to provide for the trustee's health, education,
 15 maintenance, or support; or

16 (2) to satisfy legal obligations of the trustee.

17 (b) A trustee who is not an independent trustee may not make a discretionary
 18 distribution of either principal or income to or for the direct or indirect benefit of a
 19 person who has the right to remove or replace the trustee, unless the distribution is for
 20 the person's health, education, maintenance, or support.

21 (c) The prohibitions of (a) of this section apply to a trustee even if the
 22 governing instrument states that the trustee may make distributions in the trustee's
 23 uncontrolled, absolute, or total discretion, or that distributions are not subject to
 24 review by a court, or the governing instrument otherwise indicates that distributions by
 25 the trustee are not subject to reasonableness when the trustee exercises discretion.

26 (d) If a trustee is prohibited by (a) and (b) of this section from exercising a
 27 power and if one or more other trustees are not prohibited by (a) or (b) of this section
 28 from exercising the power, the other trustees may exercise the power. If there is not a
 29 trustee who can exercise a power prohibited under (a) or (b) of this section, a party in
 30 interest may apply to the superior court to appoint an independent trustee to exercise
 31 the power, and the independent trustee appointed by the court may exercise the power.

1 (e) The provisions of (a) and (b) of this section do not prohibit a trustee from
2 making payments, including reimbursement of and compensation of an independent
3 trustee appointed under (d) of this section, for the protection of the trust or the assets
4 of the trust, or for the expenses, losses, or liabilities incurred in the collection, care,
5 administration, or protection of the trust or the assets of the trust.

6 (f) Except as provided in (g) of this section, this section applies to

7 (1) a trust that is created on or after the effective date of this Act; and

8 (2) the decisions and actions of a trust that is in existence when this
9 Act takes effect if the decisions are made, or the actions occur, on or after the effective
10 date of this Act.

11 (g) The application provisions of (f) of this section do not apply if

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

15 (2) for an irrevocable trust, all parties in interest elect under (h) of this
16 section not to be subject to the application of this section; an election under this
17 paragraph must be made on or before January 1, 2001, or three years after the date on
18 which the trust becomes irrevocable, whichever date is later.

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

21 (i) A person who has the right to remove or replace a trustee does not possess,
22 and may not be considered to possess, a power that the trustee may not exercise under
23 (a) of this section.

24 (j) The prohibitions of (a) of this section do not apply to a trustee with respect
25 to trust property, including income from the trust property, if the trust property would,
26 upon the death of the trustee, be included, for any reason other than the exercise of a
27 power prohibited by (a) of this section, in the gross estate of the trustee for federal
28 estate tax purposes.

29 (k) The prohibitions of (a) of this section do not apply to a trustee who may be
30 appointed or removed by a person for whose benefit a power may not be exercised
31 under (a) of this section if the property would, upon the death of the person, be

1 included in the gross estate of the person for federal estate tax purposes for any reason
2 other than the exercise of a power to appoint or remove the trustee.

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

7 (m) In this section,

8 (1) "entity" means a person that is not an individual;

9 (2) "independent trustee" means a trustee that is not

10 (A) the settlor's spouse, if the settlor's spouse is living with the
11 settlor;

12 (B) the settlor's father, mother, issue, brother, or sister;

13 (C) an employee of the settlor;

14 (D) an entity in which the equity holdings of the settlor and the
15 trust are significant as to voting control, or the trustee is not an employee of
16 such an entity; or

17 (E) a subordinate employee of an entity if the settlor is an
18 executive officer of the entity.

19 * **Sec. 11.** AS 13.36 is amended by adding a new section to read:

20 **Sec. 13.36.169. Elections to qualify property for marital deduction and**
21 **generation-skipping transfer tax allocations.** (a) Unless a governing instrument
22 specifically refers to this section and provides otherwise, a trustee who makes an
23 election under 26 U.S.C. 2056(b)(7), 2056A, or 2523(f) (Internal Revenue Code), or
24 who makes an allocation under 26 U.S.C. 2632 (Internal Revenue Code), may benefit
25 personally from the election or allocation and is not required to reimburse another
26 person interested in the election or allocation, to make an equitable adjustment, or to
27 treat interested persons impartially with respect to the election or allocation.

28 (b) Unless a governing instrument specifically refers to this section and
29 provides otherwise, if an election is made under 26 U.S.C. 2056(b)(7), 2056A, or
30 2523(f) (Internal Revenue Code), if an allocation is made under 26 U.S.C. 2632
31 (Internal Revenue Code), or if division of a trust benefits the persons interested in the

1 trust, the trustee may divide the trust into two or more separate trusts of equal or
 2 unequal value if the terms of the separate resulting trusts are substantially identical to
 3 the terms of the trust before the division. The allocation of assets must be based on
 4 the fair market value of the assets at the time of the division.

5 (c) Except as provided in (d) of this section, this section applies to

6 (1) a trust that is created on or after the effective date of this Act; and
 7 (2) the decisions and actions of a trust that is in existence when this
 8 Act takes effect if the decisions are made or actions occur on or after the effective date
 9 of this Act.

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

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

14 (2) for an irrevocable trust, all parties in interest elect under this
 15 paragraph not to be subject to the application of this section; an election under this
 16 paragraph must be made on or before January 1, 2001, or three years after the date on
 17 which the trust becomes irrevocable, whichever date is later; the election allowed
 18 under this paragraph must be made by a written declaration delivered to the trustee.

19 * **Sec. 12.** AS 13.36 is amended by adding new sections to read:

20 **Sec. 13.36.335. Presumption of revocability.** (a) Unless a trust is expressly
 21 made irrevocable, a trust executed on or after the effective date of this Act is revocable
 22 by the settlor.

23 (b) Notwithstanding AS 13.36.035 - 13.36.050, this section applies only if the

24 (1) settlor is domiciled in this state when the trust is created;

25 (2) trust instrument is executed in this state; or

26 (3) trust provides that the law of this state governs the trust.

27 **Sec. 13.36.340. Modification and revocation of revocable trusts.** (a) A
 28 trust that is revocable by the settlor may be modified or revoked in whole or in part by

29 (1) substantial compliance with a method of modification or revocation
 30 provided in the trust instrument; or

31 (2) a writing, other than a will, signed by the settlor and delivered to

1 the trustee during the lifetime of the settlor, except that, if the trust instrument
 2 expressly makes the method of revocation provided in the trust instrument the
 3 exclusive method of revocation, the trust may not be revoked under this paragraph.

4 (b) Unless otherwise provided in the trust instrument, if a trust that is
 5 revocable by the settlor is created by or funded by more than one settlor,

6 (1) the trust may be modified or revoked as provided in AS 34.77.100
 7 to the extent the trust consists of community property under AS 34.77 (Alaska
 8 Community Property Act);

9 (2) each settlor may modify or revoke the trust as to the portion of the
 10 trust property contributed by that settlor that is not community property under
 11 AS 34.77.

12 (c) A revocable trust may not be modified or revoked by an attorney-in-fact
 13 under a power of attorney unless the modification or revocation is expressly permitted
 14 by the trust instrument.

15 **Sec. 13.36.345. Modification or termination of irrevocable trusts because**
 16 **of unanticipated circumstances.** (a) On petition by a trustee, settlor, or beneficiary,
 17 a court may modify the administrative or dispositive terms of an irrevocable trust or
 18 terminate an irrevocable trust if, because of circumstances not anticipated by the
 19 settlor, modification or termination would substantially further the settlor's purposes in
 20 creating the trust.

21 (b) Upon termination of a trust under this section, the trust property shall be
 22 distributed in accordance with the settlor's probable intention.

23 **Sec. 13.36.350. Reformation to correct mistakes in irrevocable trusts.** (a)
 24 On petition by a trustee, settlor, or beneficiary, a court may reform the terms of an
 25 irrevocable trust, even if the trust instrument is not ambiguous, to conform to the
 26 settlor's intention if the failure to conform was due to a mistake of fact or law, whether
 27 in expression in the trust or inducement to create the trust, and if the settlor's intent can
 28 be established by clear and convincing evidence.

29 (b) A court may consider evidence, including direct evidence contradicting the
 30 plain meaning of the text, when determining the settlor's intent or for any other
 31 purpose under this section.

1 **Sec. 13.36.355. Construction of trust to achieve settlor's tax objectives.** (a)

2 The terms of a trust shall be construed to achieve the settlor's tax objectives.

3 (b) On petition by a trustee, settlor, or beneficiary, a court may modify the
4 terms of an irrevocable trust to achieve the settlor's tax objectives in a manner that
5 does not violate the settlor's probable intent. The court may order that the
6 modification operate retroactively.

7 **Sec. 13.36.360. Modification or termination of irrevocable trust by**
8 **consent.** (a) Except as otherwise provided by this section, on petition by a trustee,
9 settlor, or beneficiary, a court may modify or terminate an irrevocable trust if all of the
10 beneficiaries consent and if continuation of the trust on the existing terms of the trust
11 is not necessary to further a material purpose of the trust. However, the court, in its
12 discretion, may determine that the reason for modifying or terminating the trust under
13 the circumstances outweighs the interest in accomplishing the material purposes of the
14 trust. The inclusion of a restriction on the voluntary or involuntary transfer of trust
15 interests under AS 34.40.110 may constitute a material purpose of the trust under this
16 subsection, but is not presumed to constitute a material purpose of the trust under this
17 subsection.

18 (b) Unless otherwise provided in the trust instrument, an irrevocable trust may
19 not be modified or terminated under this section while a settlor is also a discretionary
20 beneficiary of the trust.

21 (c) If a beneficiary other than a qualified beneficiary does not consent to a
22 modification or termination of an irrevocable trust that is proposed by the trustee,
23 settlor, or other beneficiaries, a court may approve the proposed modification or
24 termination if the court determines

25 (1) if all the beneficiaries had consented, the trust could have been
26 modified or terminated under this section; and

27 (2) the rights of a beneficiary who does not consent will be adequately
28 protected or not significantly impaired.

29 (d) In (c) of this section, "qualified beneficiary" means a beneficiary who

30 (1) on the date the beneficiary's qualification is determined, is entitled
31 or eligible to receive a distribution of trust income or principal; or

1 (2) would be entitled to receive a distribution of trust income or
2 principal if the event causing the trust's termination occurs.

3 **Sec. 13.36.365. Uneconomical irrevocable trust.** (a) Notwithstanding the
4 other provisions of AS 13.36.335 - 13.36.370, if the value of the property of an
5 irrevocable trust is less than \$50,000, the trustee may terminate the trust unless the
6 trust instrument provides otherwise.

7 (b) Notwithstanding the other provisions of AS 13.36.335 - 13.36.370 and the
8 terms of the trust, on petition to the superior court by a trustee, settlor, or beneficiary,
9 the court may modify or terminate an irrevocable noncharitable trust, or remove the
10 trustee and appoint a different trustee, if the court determines that the value of the trust
11 property is insufficient to justify the cost of administration.

12 (c) Upon termination of a trust under this section, the trustee shall distribute
13 the trust property in accordance with the settlor's probable intent.

14 **Sec. 13.36.370. Exclusive procedure.** Unless otherwise provided in the trust
15 instrument, except as provided by AS 13.12.212(c), 13.12.803, 13.12.804, 13.12.907,
16 AS 13.33.205, AS 13.36.130, 13.36.169, and AS 13.60.010, AS 13.36.335 - 13.36.365
17 provide the exclusive procedures for modifying, terminating, or revoking trusts.

18 **AS 13.36.380. Application of special distribution provisions.** The asset
19 distribution provisions of AS 13.16.540 - 13.16.560 and AS 13.38.030(a) apply to the
20 administration of a revocable trust following the death of the settlor of the trust, unless
21 the terms of the trust indicate a different intention.

22 * **Sec. 13.** AS 13.36.390 is amended by adding a new paragraph to read:

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

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

27 (B) irrevocable,

28 (i) each trustee serving at the time;

29 (ii) each income beneficiary in existence at the time or,
30 if an income beneficiary is not 18 years of age or is incapacitated, the
31 income beneficiary's legal representative under applicable law or the

1 income beneficiary's agent under a durable power of attorney; and

2 (iii) each remainder beneficiary in existence at the time
 3 or, if a remainder beneficiary is not 18 years of age or is incapacitated,
 4 the remainder beneficiary's legal representative under applicable law or
 5 the remainder beneficiary's agent under a durable power of attorney.

6 * **Sec. 14.** AS 13.38.110 is amended by adding a new subsection to read:

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

17 * **Sec. 15.** AS 34.25 is amended by adding a new section to read:

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

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

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

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

28 (e) In this section,

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

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

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

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

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

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

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

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

12 (5) "value" means acquisition of property

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

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

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

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

21 * **Sec. 16.** AS 34.40.110 is amended by adding a new subsection to read:

22 (g) If a trust contains a transfer restriction allowed under (a) of this section and
23 effective under (b) of this section, a beneficiary may not transfer an interest in the
24 trust, and a creditor or assignee of a beneficiary may not attach an interest in or a
25 distribution from the trust by the trustee before receipt of the interest or distribution by
26 the beneficiary. In this subsection, "receipt of the interest or distribution by the
27 beneficiary" does not include

28 (1) direct payment of a beneficiary's health, medical, or educational
29 expenses to the provider of the health, medical, or educational goods or services;

30 (2) the use or occupancy of property owned by the trust; or

31 (3) expenditures made for the maintenance or preservation of property

1 owned by the trust.

2 * **Sec. 17.** The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 APPLICABILITY. AS 34.40.110(g), added by sec. 16 of this Act, applies to trusts
5 regardless of whether the trusts were created before, on, or after the effective date of this Act.

6 * **Sec. 18.** This Act takes effect immediately under AS 01.10.070(c).