



# LAWS OF ALASKA

2000

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**Chapter No.**  
17

## AN ACT

Relating to the rule against perpetuities, nonvested property interests, and powers of appointment; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1

Approved by the Governor: April 21, 2000  
Actual Effective Date: April 22, 2000

AN ACT

1 Relating to the rule against perpetuities, nonvested property interests, and powers of appointment;  
2 and providing for an effective date.

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4 \* **Section 1.** AS 13.12.702(d) is amended to read:

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

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

9 (2) the governing instrument expressly indicates that an individual is  
10 not required to survive an event, including the death of another individual, by a  
11 specified period or expressly requires the individual to survive the event by a specified  
12 period, [;] but survival of the event or the specified period must be established by clear  
13 and convincing evidence;

14 (3) the imposition of a 120-hour requirement of survival would cause

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1 a nonvested property interest or a power of appointment to fail to qualify for validity  
2 under AS 34.27.051 or 34.27.100 [AS 34.27.050(a)(1), (b)(1), OR (c)(1)] or to become  
3 invalid under AS 34.27.051 or 34.27.100, [AS 34.27.050(a)(2), (b)(2), OR (c)(2);] but  
4 survival must be established by clear and convincing evidence; or

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

8 \* **Sec. 2.** AS 13.36.157(a) is amended to read:

9 (a) Unless the terms of the instrument expressly provide otherwise, a trustee  
10 who has the absolute discretion under the terms of a testamentary instrument or  
11 irrevocable inter vivos agreement to invade the principal of a trust for the benefit of  
12 the beneficiary who is eligible or entitled to the income of the trust may exercise  
13 without prior court approval the trustee's discretion by appointing part or all of the  
14 principal of the trust in favor of a trustee of a trust under an instrument other than that  
15 under which the power to invade was created if the exercise of this discretion

16 (1) does not reduce any fixed income interest of an income beneficiary  
17 of the trust;

18 (2) is in favor of the beneficiary of the trust; and

19 (3) does not violate the limitations on validity under AS 34.27.051 or  
20 34.27.100 [AS 34.27.050(a)].

21 \* **Sec. 3.** AS 34.27 is amended by adding new sections to read:

22 **Sec. 34.27.051. Statutory rule against perpetuities.** (a) A general or  
23 nongeneral power of appointment not presently exercisable because of a condition  
24 precedent is invalid unless, within a period of 1,000 years after its creation, either the  
25 power is irrevocably exercised or the power terminates. For purposes of this  
26 subsection, the period in which the power must be exercised or the power terminated  
27 is computed from the time of creation of the original power of appointment under  
28 which a subsequent general power of appointment not presently exercisable or a  
29 subsequent nongeneral power of appointment not presently exercisable was created.

30 (b) If a nongeneral power of appointment is exercised to create a new general  
31 power of appointment, all property interests subject to the exercise of that new general

1 power of appointment are invalid unless, within 1,000 years after the creation of the  
2 new general power of appointment, the property interests that are subject to the general  
3 power of appointment either vest or terminate.

4 (c) If a nongeneral power of appointment is exercised to create a new or  
5 successive nongeneral power of appointment, all property interests subject to the  
6 exercise of that new or successive nongeneral power of appointment are invalid unless,  
7 within 1,000 years from the time of creation of the original instrument or conveyance  
8 creating the original nongeneral power of appointment that is exercised to create a new  
9 or successive nongeneral power of appointment, the property interests that are subject  
10 to the nongeneral power of appointment either vest or terminate.

11 **Sec. 34.27.053. Savings provision.** A property interest that, under  
12 AS 34.27.051, becomes invalid shall, upon the expiration of the 1,000-year period set  
13 out in AS 34.27.051,

14 (1) if income from the property interest is payable

15 (A) to one person, be distributed to the person to whom the  
16 income is then payable;

17 (B) to more than one person, be distributed to the persons to  
18 whom the income is then payable

19 (i) in the shares to which the persons are entitled to the  
20 income; or

21 (ii) equally among all persons who are entitled to the  
22 income if shares are not specified;

23 (2) if income from the property interest is payable in the discretion of  
24 a trustee and is payable

25 (A) to one person, be distributed to the person then eligible to  
26 receive the income; or

27 (B) to more than one person; be distributed to the persons then  
28 eligible to receive the income

29 (i) in the shares to which the persons are entitled to the  
30 income; or

31 (ii) equally among all persons who are entitled to the

1 income if shares are not specified; or

2 (3) when there is no person then living to whom the property interest  
3 may be distributed under (1) or (2) of this section, be payable to one or more  
4 organizations described in 26 U.S.C. 2055(a) (Internal Revenue Code), or to one or  
5 more organizations described in any successor provision to 26 U.S.C. 2055(a), in the  
6 shares or proportions that the trustee or trustees then acting may determine.

7 \* Sec. 4. AS 34.27.070 is amended to read:

8 **Sec. 34.27.070. Application [PROSPECTIVE APPLICATION].** (a) Except  
9 as extended by (b) of this section, **the former provisions of AS 34.27.050 - 34.27.090**  
10 **apply to a nonvested property interest or a power of appointment that is created on or**  
11 **after January 1, 1996, and before April 2, 1997.** For purposes of this **subsection**  
12 **[SECTION], a nonvested property interest or a power of appointment created by the**  
13 **exercise of a power of appointment is created when the power is irrevocably exercised**  
14 **or when a revocable exercise becomes irrevocable.**

15 (b) If a nonvested property interest or a power of appointment was created  
16 before January 1, 1996, and is determined in a judicial proceeding, commenced on or  
17 after that date, to violate this state's rule against perpetuities as that rule existed before  
18 January 1, 1996, **or if a nonvested property interest or a power of appointment**  
19 **was created on or after January 1, 1996, but before April 2, 1997, and is**  
20 **determined in a judicial proceeding, commenced on or after that date, to violate**  
21 **this state's rule against perpetuities as that rule existed, on or after January 1,**  
22 **1996, and before April 2, 1997,** a court, upon the petition of an interested person,  
23 may reform the disposition in the manner that most closely approximates the  
24 transferor's manifested plan of distribution and is within the limits of the rule against  
25 perpetuities applicable when the nonvested property interest or power of appointment  
26 was created. **For purposes of this subsection, a nonvested property interest or a**  
27 **power of appointment created by the exercise of a power of appointment is**  
28 **created when the power is irrevocably exercised or when a revocable exercise**  
29 **becomes irrevocable.**

30 \* Sec. 5. AS 34.27.070 is amended by adding a new subsection to read:

31 (c) The provisions of AS 34.27.051 apply to a trust instrument or conveyance

1           executed on or after April 2, 1997, if the trust instrument or conveyance creates a  
2           contingent power of appointment or nonvested property interest subject to the exercise  
3           of a power of appointment that creates a new or successive power of appointment.

4   \* **Sec. 6.** AS 34.27.075 is amended to read:

5           **Sec. 34.27.075. Relationship to [SUPERSESION OF] common law rule.**  
6           **AS 34.27.051 - 34.27.100** [AS 34.27.050 - 34.27.090] supersede the rule of the  
7           common law known as the rule against perpetuities. **The common law rule against**  
8           **perpetuities does not apply in this state.**

9   \* **Sec. 7.** AS 34.27 is amended by adding a new section to read:

10           **Sec. 34.27.100. Perpetuities and suspension of the power of alienation.** (a)  
11           A future interest or trust is void if, as to property subject to the future interest or trust,  
12           (1) the future interest or trust suspends the power of alienation of the  
13           property, the suspension of the power is for a period of at least 30 years after the death  
14           of an individual alive at the time of the creation of the future interest or trust, and the  
15           suspension of the power of alienation occurs in the document creating the future  
16           interest or trust;  
17           (2) the future interest or trust suspends the power of alienation of the  
18           property and the suspension of the power is for a period of at least 30 years after  
19           termination of a power to revoke the trust;  
20           (3) the future interest or trust suspends the power of alienation of the  
21           property, the future interest or trust is created by the exercise of a general power of  
22           appointment, whether by will or otherwise, and the suspension of the power is for a  
23           period of at least 30 years from the time the power of appointment is exercised; or  
24           (4) the future interest or trust suspends the power of alienation of the  
25           property, the future interest or trust is created by the exercise of a power of  
26           appointment that is not a general power of appointment, and the suspension of the  
27           power is for a period of at least 30 years from the time of creation of the original  
28           instrument or conveyance creating the original power of appointment that was  
29           exercised to create a new or successive nongeneral power of appointment.  
30           (b) For purposes of (a) of this section, the power of alienation  
31           (1) is suspended if there is no person alive who, alone or in

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1 combination with others, can, as to property that is part of the future interest or trust,  
2 convey

3 (A) title to real property in fee; or

4 (B) complete ownership of personal property;

5 (2) is not suspended by a future interest or trust or by an equitable  
6 interest in a trust if

7 (A) the trustee of the trust has power, either express or implied,  
8 to sell the property; or

9 (B) at least one person alive at the time the trust was created  
10 has an unlimited power to terminate the trust.

11 (c) The provisions of (a) of this section do not apply to a transfer

12 (1) made outright or in trust for a charitable purpose;

13 (2) to a literary or charitable organization;

14 (3) to a veterans' memorial organization; or

15 (4) to a cemetery corporation, society, or association.

16 \* Sec. 8. The uncodified law of the State of Alaska is amended by adding a new section  
17 to read:

18 RETROACTIVE EFFECT. AS 34.27.070(c), added by sec. 5 of this Act, is retroactive  
19 to April 2, 1997, and applies to a trust instrument or conveyance executed on or after that date  
20 upon the conditions set out in that subsection.

21 \* Sec. 9. AS 34.27.050, 34.27.055, 34.27.060, 34.27.065, and 34.27.090 are repealed.

22 \* Sec. 10. This Act takes effect immediately under AS 01.10.070(c).