

**HOUSE BILL NO. 275**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

**BY REPRESENTATIVE THERRIAULT**

**Introduced: 1/10/00**

**Referred: Judiciary**

**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  
5 underproductive trust property; relating to conveyances of real property and  
6 interests in real property by 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  
13 TESTATOR AT DEATH BY REASON OF SALE OF THE PROPERTY;

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

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

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

8 \* **Sec. 2.** AS 13.12.701 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 \* **Sec. 4.** AS 13.16.550 is amended to read:

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

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

28 (b) The provisions of (a) of this section do not apply to a marital pecuniary  
 29 devise, whether stated as a formula or otherwise and whether made outright to the  
 30 decedent's spouse or in trust for the benefit of the spouse, if the devise is intended to  
 31 qualify for the marital deduction under 26 U.S.C. (Internal Revenue Code). A marital

1           pecuniary devise to which this subsection applies shares ratably with the residue of the  
 2           estate in the income earned by the estate during the period of administration, unless  
 3           a contrary intention is expressed by the governing instrument.

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

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

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

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

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

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

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

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

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

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

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

14 \* **Sec. 8.** AS 13.36.080 is amended to read:

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

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

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

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

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

30 (b) The trust agreement may modify the trustee's duties under this section and  
 31 may prohibit the trustee from providing any notification or information to a current

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

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

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

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

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

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

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

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

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

31 (e) The provisions of (a) and (b) of this section do not prohibit a trustee from

1 making payments, including reimbursement of and compensation of an independent  
2 trustee appointed under (d) of this section, for the protection of the trust or the assets  
3 of the trust, or for the expenses, losses, or liabilities incurred in the collection, care,  
4 administration, or protection of the trust or the assets of the trust.

5 (f) Except as provided in (g) 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 the actions occur, on or after the effective  
9 date of this Act.

10 (g) The application provisions of (f) 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 (h) of this  
15 section 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.

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

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

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

28 (k) The prohibitions of (a) of this section do not apply to a trustee who may  
29 be appointed or removed by a person for whose benefit a power may not be exercised  
30 under (a) of this section if the property would, upon the death of the person, be  
31 included in the gross estate of the person for federal estate tax purposes for any reason

1 other than the exercise of a power to appoint or remove the trustee.

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

6 (m) In this section,

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

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

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

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

12 (C) an employee of the settlor;

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

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

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

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

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

1 unequal value if the terms of the separate resulting trusts are substantially identical to  
 2 the terms of the trust before the division. The allocation of assets must be based on  
 3 the fair market value of the assets at the time of the division.

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

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

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

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

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

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

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

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

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

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

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

26 **Sec. 13.36.340. Modification and revocation of revocable trusts.** (a) A  
 27 trust that is revocable by the settlor may be modified or revoked in whole or in part  
 28 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  
 20 in 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,  
 27 whether in expression in the trust or inducement to create the trust, and if the settlor's  
 28 intent can 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 consent.**

8                   (a) Except as otherwise provided by this section, on petition by a trustee, settlor, or  
9 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  
 15 the 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  
 19 or devise real property to or from a trust whether or not the trustee of the trust is  
 20 named 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 change  
 27 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  
26 by 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  
3 to 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).