

HOUSE BILL NO. 307

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES MOSES, Ulmer

Introduced: 1/10/94

Referred: State Affairs, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

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

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

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 AS 13.06.035 is repealed and reenacted to read:**

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

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

13 **(2) a certified or authenticated copy of a death certificate purporting to**
14 **be issued by an official or agency of the place where the death purportedly occurred**

1 is prima facie evidence of the fact, place, date, and time of death and the identity of
2 the decedent;

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

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

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

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

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

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

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

30 (2) "application" means a written request to the registrar for an order
31 of informal probate or appointment under AS 13.16.080 - 13.16.130;

1 (3) "beneficiary," as it relates to a trust beneficiary, includes a person
2 who has a present or future interest, vested or contingent, and also includes the owner
3 of an interest by assignment or other transfer; as it relates to a charitable trust,
4 "beneficiary" includes a person entitled to enforce the trust; as it relates to a
5 "beneficiary of a beneficiary designation," "beneficiary" means a beneficiary of an
6 insurance or annuity policy, of an account with payment on death designation under
7 AS 13.31, of a security registered in a transfer on death beneficiary form, or of a
8 pension, profit-sharing, retirement, or similar benefit plan, or of another nonprobate
9 transfer at death; and, as it relates to a "beneficiary designated in a governing
10 instrument," "beneficiary" includes a grantee of a deed, a devisee, a trust beneficiary,
11 a beneficiary of a beneficiary designation, a donee, appointee, or taker in default of a
12 power of appointment, and a person in whose favor a power of attorney or a power
13 held in an individual, fiduciary, or representative capacity is exercised;

14 (4) "beneficiary designation" means a governing instrument naming a
15 beneficiary of an insurance or annuity policy, of an account with payment on death
16 designation under AS 13.31, of a security registered in a transfer on death beneficiary
17 form, or of a pension, profit-sharing, retirement, or similar benefit plan, or of another
18 nonprobate transfer at death;

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

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

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

31 (8) "conservator" means a person who is appointed by a court to

1 manage the estate of a protected person;

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

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

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

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

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

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

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

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

30 (17) "foreign personal representative" means a personal representative
31 appointed by another jurisdiction;

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

3 (19) "governing instrument" means a deed, a will, a trust, an insurance
4 or annuity policy, an account with payment on death designation under AS 13.31, a
5 security registered in a transfer on death beneficiary form, a pension, profit-sharing,
6 retirement, or similar benefit plan, an instrument creating or exercising a power of
7 appointment or a power of attorney, or a dispositive, appointive, or nominative
8 instrument of a similar type;

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

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

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

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

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

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

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

- 1 (27) "lease" includes an oil, gas, or mineral lease;
- 2 (28) "letters" includes letters testamentary, letters of guardianship,
3 letters of administration, and letters of conservatorship;
- 4 (29) "minor" means a person who is under 18 years of age;
- 5 (30) "mortgage" means a conveyance, agreement, or arrangement in
6 which property is encumbered or used as security;
- 7 (31) "nonresident decedent" means a decedent who was domiciled in
8 another jurisdiction at the time of the decedent's death;
- 9 (32) "organization" means a corporation, business trust, estate, trust,
10 partnership, joint venture, association, government or governmental subdivision or
11 agency, or another legal or commercial entity;
- 12 (33) "parent" includes a person entitled to take, or who would be
13 entitled to take if a child dies without a will, as a parent under AS 13.06 - AS 13.36
14 by intestate succession from the child whose relationship is in question, and excludes
15 a person who is only a stepparent, foster parent, or grandparent;
- 16 (34) "payor" means a trustee, insurer, business entity, employer,
17 government, governmental agency or subdivision, or another person authorized or
18 obligated by law or a governing instrument to make payments;
- 19 (35) "personal representative" includes an executor, an administrator,
20 a successor personal representative, a special administrator, and a person who performs
21 substantially the same function under the law governing their status; "general personal
22 representative" excludes a special administrator;
- 23 (36) "petition" means a written request to the court for an order after
24 notice;
- 25 (37) "proceeding" includes an action at law and a suit in equity;
- 26 (38) "property" means anything that may be the subject of ownership,
27 and includes both real and personal property and an interest in real or personal
28 property;
- 29 (39) "protected person" has the meaning given in AS 13.26.005;
- 30 (40) "protective proceeding" has the meaning given in AS 13.26.005;
- 31 (41) "registrar" means the official of the court designated to perform

1 the functions of registrar under AS 13.06.090;

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

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

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

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

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

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

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

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

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

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

31 (52) "trust" includes an express trust, private or charitable, with

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

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

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

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

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

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

19 ARTICLE 1. INTESTATE SUCCESSION.

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

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

29 Sec. 13.12.102. SHARE OF SPOUSE. (a) Except as provided in (b) of this
30 section, the intestate share of a decedent's surviving spouse is

31 (1) the entire intestate estate if

1 (A) no descendant or parent of the decedent survives the
2 decedent; or

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

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

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

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

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

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

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

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

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

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

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

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

30 (4) if there is no surviving descendant, parent, or descendant of a
31 parent, but the decedent is survived by one or more grandparents or descendants of

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

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

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

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

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

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

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

31 (2) deceased descendants in the same generation who left surviving

1 descendants, if any.

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

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

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

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

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

22 (e) In this section,

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

26 (2) "surviving descendant" means a descendant who neither predeceased
27 the decedent nor is considered to have predeceased the decedent under AS 13.12.104.

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

30 Sec. 13.12.108. **AFTERBORN HEIRS.** An individual in gestation at a
31 particular time is treated as living at that time if the individual lives 120 hours or more

1 after birth.

2 Sec. 13.12.109. **ADVANCEMENTS.** (a) If an individual dies intestate as to
3 all or a portion of the individual's estate, property the decedent gave during the
4 decedent's lifetime to an individual who, at the decedent's death, is an heir is treated
5 as an advancement against the heir's intestate share only if

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

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

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

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

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

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

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

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

1 as indicated under AS 25.20.050.

2 (b) Except as provided by AS 25.23.130, an adopted individual is the child of
3 the individual's adopting parent or parents and not of the individual's natural parents,
4 but adoption of a child by the spouse of either natural parent does not affect

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

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

8 (c) Except as provided by AS 25.23.130, inheritance from or through a child
9 by either natural parent or the natural parent's kindred is precluded unless that natural
10 parent has openly treated the child as the natural parent's child, and has not refused
11 to support the child.

12 **ARTICLE 2. ELECTIVE SHARE OF SURVIVING SPOUSE.**

13 **Sec. 13.12.201. ELECTIVE SHARE.** (a) The surviving spouse of a decedent
14 who dies domiciled in this state has a right of election, under the limitations and
15 conditions stated in AS 13.12.201 - 13.12.207, to take an elective share amount equal
16 to the value of the elective share percentage of the augmented estate, determined by
17 the length of time the spouse and the decedent were married to each other, in
18 accordance with the following schedule:

19 If the decedent and the spouse	The elective share
20 were married to each other:	percentage is:
21 Less than 1 year	supplemental amount only;
22 1 year but less than 2 years	3 percent of the augmented estate;
23 2 years but less than 3 years	6 percent of the augmented estate;
24 3 years but less than 4 years	9 percent of the augmented estate;
25 4 years but less than 5 years	12 percent of the augmented estate;
26 5 years but less than 6 years	15 percent of the augmented estate;
27 6 years but less than 7 years	18 percent of the augmented estate;
28 7 years but less than 8 years	21 percent of the augmented estate;
29 8 years but less than 9 years	24 percent of the augmented estate;
30 9 years but less than 10 years	27 percent of the augmented estate;
31 10 years but less than 11 years	30 percent of the augmented estate;

- 1 11 years but less than 12 years 34 percent of the augmented estate;
- 2 12 years but less than 13 years 38 percent of the augmented estate;
- 3 13 years but less than 14 years 42 percent of the augmented estate;
- 4 14 years but less than 15 years 46 percent of the augmented estate;
- 5 15 years or more 50 percent of the augmented estate.

6 (b) If the sum of the amounts described in AS 13.12.202(a)(3) - (4),
7 13.12.207(a)(1) and (3), and that part of the elective share amount payable from the
8 decedent's probate and reclaimable estates under AS 13.12.207(b) - (c) is less than
9 \$50,000, the surviving spouse is entitled to a supplemental elective share amount equal
10 to \$50,000, minus the sum of the amounts described in AS 13.12.202(a)(3) - (4) and
11 13.12.207(a)(1) and (3), (b), and (c). The supplemental elective share amount is
12 payable from the decedent's probate estate and from recipients of the decedent's
13 reclaimable estate in the order of priority set out in AS 13.12.207(b) - (c).

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

17 Sec. 13.12.202. AUGMENTED ESTATE. (a) The augmented estate consists
18 of the sum of

19 (1) the value of the decedent's probate estate, reduced by funeral and
20 administration expenses, homestead allowance, family allowances and exemptions, and
21 enforceable claims;

22 (2) the value of the decedent's reclaimable estate, which is composed
23 of all property, whether real or personal, movable or immovable, wherever situated,
24 not included in the decedent's probate estate, of any of the following types:

25 (A) property to the extent the passing of the principal of the
26 property to or for the benefit of a person, other than the decedent's surviving
27 spouse, was subject to a presently exercisable general power of appointment
28 held by the decedent alone, if the decedent held that power immediately before
29 the decedent's death or if and to the extent the decedent, while married to the
30 decedent's surviving spouse and during the two-year period next preceding the
31 decedent's death, released that power or exercised that power in favor of a

1 person other than the decedent or the decedent's estate, spouse, or surviving
2 spouse;

3 (B) property, to the extent of the decedent's unilaterally
4 severable interest in the property, held by the decedent and another person,
5 except the decedent's surviving spouse, with right of survivorship, if the
6 decedent held that interest immediately before the decedent's death or if and
7 to the extent the decedent, while married to the decedent's surviving spouse
8 and during the two-year period next preceding the decedent's death, transferred
9 that interest to a person other than the decedent's surviving spouse;

10 (C) proceeds of insurance, including accidental death benefits,
11 on the life of the decedent payable to a person other than the decedent's
12 surviving spouse, if the decedent owned the insurance policy, if the decedent
13 had the power to change the beneficiary of the insurance policy, if the
14 insurance policy was subject to a presently exercisable general power of
15 appointment held by the decedent alone immediately before the decedent's
16 death, or if and to the extent the decedent, while married to the decedent's
17 surviving spouse and during the two-year period next preceding the decedent's
18 death, transferred the policy to a person other than the decedent's surviving
19 spouse; and

20 (D) property transferred by the decedent to a person other than
21 a bona fide purchaser at any time during the decedent's marriage to the
22 surviving spouse, to or for the benefit of a person, other than the decedent's
23 surviving spouse, if the transfer is

24 (i) a transfer to the extent that the decedent retained at
25 the time of or during the two-year period next preceding the decedent's
26 death the possession or enjoyment of, or right to income from, the
27 property;

28 (ii) a transfer to the extent that, at the time of or during
29 the two-year period next preceding the decedent's death, the income or
30 principal was subject to a power, exercisable by the decedent alone or
31 in conjunction with another person or exercisable by a nonadverse

1 party, for the benefit of the decedent or the decedent's estate;

2 (iii) a transfer of property, to the extent the decedent's
3 contribution to it, as a percentage of the whole, was made during the
4 two-year period next preceding the decedent's death, by which the
5 property is held, at the time of or during the two-year period next
6 preceding the decedent's death, by the decedent and another person,
7 other than the decedent's surviving spouse, with right of survivorship;
8 or

9 (iv) a transfer made to a donee during the two-year
10 period next preceding the decedent's death to the extent that the
11 aggregate transfers to one donee in either of the years exceed \$10,000.

12 (3) the value of property to which the surviving spouse succeeds by
13 reason of the decedent's death, other than by homestead allowance, exempt property,
14 family allowance, testate succession, or intestate succession, including the proceeds of
15 insurance, including accidental death benefits, on the life of the decedent and benefits
16 payable under a retirement plan in which the decedent was a participant, exclusive of
17 benefits under 42 U.S.C. 301 - 1397f (Social Security Act); and

18 (4) the value of property owned by the surviving spouse at the
19 decedent's death, reduced by enforceable claims against that property or that spouse,
20 plus the value of amounts that would have been includable in the surviving spouse's
21 reclaimable estate had the spouse predeceased the decedent; but amounts that would
22 have been includable in the surviving spouse's reclaimable estate under (2)(C) of this
23 subsection are not valued as if the decedent were deceased.

24 (b) A transfer, exercise, or release of a power of appointment is excluded from
25 the decedent's reclaimable estate

26 (1) to the extent the decedent received adequate and full consideration
27 in money or money's worth for the transfer, exercise, or release; or

28 (2) if irrevocably made with the written consent or joinder of the
29 surviving spouse.

30 (c) Property is valued as of the decedent's death, but property irrevocably
31 transferred during the two-year period next preceding the decedent's death that is

1 included in the decedent's reclaimable estate under (a)(2)(A), (B), and (C) of this
2 section is valued as of the time of the transfer. If the terms of more than one of the
3 subparagraphs or sub-subparagraphs of (a)(2) of this section apply, the property is
4 included in the augmented estate under the subparagraph or sub-subparagraph that
5 yields the highest value. In this subsection, an "irrevocable transfer of property"
6 includes an irrevocable exercise or release of a power of appointment.

7 (d) Although under this section a payment, item of property, or other benefit
8 is included in the decedent's reclaimable estate, a payor or other third party is not
9 liable for having made a payment or transferred an item of property or other benefit
10 to a beneficiary designated in a governing instrument, or for having taken other action
11 in good faith reliance on the validity of a governing instrument, upon request and
12 satisfactory proof of the decedent's death, before the payor or other third party
13 received written notice from the surviving spouse or spouse's representative of an
14 intention to file a petition for the elective share or that a petition for the elective share
15 has been filed. A payor or other third party is liable for payments made or other
16 actions taken after the payor or other third party receives written notice of an intention
17 to file a petition for the elective share or that a petition for the elective share has been
18 filed.

19 (e) The written notice under (d) of this section of intention to file a petition
20 for the elective share or that a petition for the elective share has been filed shall be
21 mailed to the payor's or other third party's main office or home by registered or
22 certified mail, return receipt requested, or served upon the payor or other third party
23 in the same manner as a summons in a civil action. Upon receipt of written notice of
24 intention to file a petition for the elective share or that a petition for the elective share
25 has been filed, a payor or other third party may pay any amount owed or transfer or
26 deposit an item of property held by it to or with the court having jurisdiction of the
27 probate proceedings relating to the decedent's estate, or if proceedings have not been
28 commenced, to or with the court located in the judicial district of the decedent's
29 residence. The court shall hold the funds or item of property and, upon its
30 determination under AS 13.12.205(d), shall order disbursement in accordance with the
31 determination. If a petition is not filed in the court within the specified time under

1 AS 13.12.205(a) or, if filed, the demand for an elective share is withdrawn under
2 AS 13.12.205(c), the court shall order disbursement to the designated beneficiary.
3 Payments, transfers, or deposits made to or with the court discharge the payor or other
4 third party from all claims for the value of amounts paid to or items of property
5 transferred to or deposited with the court.

6 (f) Under (d) - (e) of this section, upon petition to the court by the beneficiary
7 designated in a governing instrument, the court may order that all or part of the
8 property be paid to the beneficiary in an amount and subject to conditions consistent
9 with this section.

10 (g) A person who purchases property from a recipient for value and without
11 notice, or who receives a payment or other item of property in partial or full
12 satisfaction of a legally enforceable obligation, is neither obligated under
13 AS 13.12.201 - 13.12.207 to return the payment, item of property, or benefit nor
14 liable under AS 13.12.201 - 13.12.207 for the amount of the payment or the value of
15 the item of property or benefit. But a person who, not for value, receives a payment,
16 item of property, or other benefit included in the decedent's reclaimable estate is
17 obligated to return the payment, item of property, or benefit, or is personally liable for
18 the amount of the payment or the value of the item of property or benefit, as provided
19 in AS 13.12.207.

20 (h) With regard to (g) of this section, if a provision of AS 13.12.201 -
21 13.12.207 is preempted by federal law with respect to a payment, an item of property,
22 or other benefit included in the decedent's reclaimable estate, a person who, not for
23 value, receives the payment, item of property, or other benefit is obligated to return
24 that payment, item of property, or benefit, or is personally liable for the amount of that
25 payment or the value of that item of property or benefit, as provided in AS 13.12.207,
26 to the person who would have been entitled to it if that provision were not preempted.

27 (i) In this section,

28 (1) "bona fide purchaser" means a purchaser for value in good faith
29 and without notice of an adverse claim;

30 (2) "nonadverse party" means a person who does not have a substantial
31 beneficial interest in the trust or other property arrangement that would be adversely

1 affected by the exercise or nonexercise of the power that the person possesses
2 respecting the trust or other property arrangement; a person having a general power of
3 appointment over property is considered to have a beneficial interest in the property;

4 (3) "presently exercisable general power of appointment" means a
5 power of appointment under which, at the time in question, the decedent by an
6 exercise of the power could have created an interest, present or future, in the decedent
7 or the decedent's creditors;

8 (4) "probate estate" means property, whether real or personal, movable
9 or immovable, wherever situated, that would pass by intestate succession if the
10 decedent died without a valid will;

11 (5) "right to income" includes a right to payments under an annuity or
12 similar contractual arrangement;

13 (6) "value of property owned by the surviving spouse at the decedent's
14 death" and "value of property to which the surviving spouse succeeds by reason of the
15 decedent's death" include the commuted value of a present or future interest then held
16 by the surviving spouse and the commuted value of amounts payable to the surviving
17 spouse after the decedent's death, under a trust, life insurance settlement option,
18 annuity contract, public or private pension, disability compensation, death benefit or
19 retirement plan, or a similar arrangement, exclusive of benefits under 42 U.S.C. 301 -
20 1397f (Social Security Act).

21 (j) In (a)(2)(C) - (D) of this section, "transfer" includes an exercise or release
22 of a power of appointment, but does not include a lapse of a power of appointment.

23 **Sec. 13.12.203. RIGHT OF ELECTION PERSONAL TO SURVIVING**
24 **SPOUSE.** (a) The right of election may be exercised only by a surviving spouse who
25 is living when the petition for the elective share is filed in the court under
26 AS 13.12.205(a). If the election is not exercised by the surviving spouse personally,
27 it may be exercised on the surviving spouse's behalf by the surviving spouse's
28 conservator, guardian, or agent under the authority of a power of attorney.

29 (b) If the election is exercised on behalf of a surviving spouse who is an
30 incapacitated person, the court shall set aside that portion of the elective share and
31 supplemental elective share amounts due from the decedent's probate estate and

1 recipients of the decedent's reclaimable estate under AS 13.12.207(b) - (c) and shall
2 appoint a trustee to administer that property for the support of the surviving spouse.
3 In this subsection, an election on behalf of a surviving spouse by an agent under a
4 durable power of attorney is presumed to be on behalf of a surviving spouse who is
5 an incapacitated person. The trustee shall administer the trust in accordance with the
6 following terms and additional terms the court determines appropriate:

7 (1) expenditures of income and principal may be made in the manner,
8 when, and to the extent that the trustee determines suitable and proper for the
9 surviving spouse's support, without court order but with regard to other support,
10 income, and property of the surviving spouse and benefits of medical or other forms
11 of assistance from a state or federal government or governmental agency for which the
12 surviving spouse must qualify on the basis of need;

13 (2) during the surviving spouse's incapacity, neither the surviving
14 spouse nor a person acting on behalf of the surviving spouse has a power to terminate
15 the trust; but if the surviving spouse regains capacity, the surviving spouse then
16 acquires the power to terminate the trust and acquire full ownership of the trust
17 property free of trust, by delivering to the trustee a writing signed by the surviving
18 spouse declaring the termination;

19 (3) upon the surviving spouse's death, the trustee shall transfer the
20 unexpended trust property in the following order:

21 (A) under the residuary clause, if any, of the will of the
22 predeceased spouse against whom the elective share was taken, as if that
23 predeceased spouse died immediately after the surviving spouse; or

24 (B) to that predeceased spouse's heirs under AS 13.12.711.

25 **Sec. 13.12.204. WAIVER OF RIGHT TO ELECT AND OF OTHER RIGHTS.**

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

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

1 (1) the surviving spouse did not execute the waiver voluntarily; or
2 (2) the waiver was unconscionable when it was executed and, before
3 execution of the waiver, the surviving spouse

4 (A) was not provided with a fair and reasonable disclosure of
5 the property or financial obligations of the decedent;

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

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

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

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

20 Sec. 13.12.205. PROCEEDING FOR ELECTIVE SHARE; TIME LIMIT. (a)
21 Except as provided in (b) of this section, the election shall be made by filing in the
22 court and mailing or delivering to the personal representative, if any, a petition for the
23 elective share within nine months after the date of the decedent's death, or within six
24 months after the probate of the decedent's will, whichever limitation expires later. The
25 surviving spouse shall give notice of the time and place set for hearing to persons
26 interested in the estate and to the distributees and recipients of portions of the
27 augmented estate whose interests will be adversely affected by the taking of the
28 elective share. Except as provided in (b) of this section, the decedent's reclaimable
29 estate, described in AS 13.12.202(a)(2), is not included within the augmented estate
30 for the purpose of computing the elective share, if the petition is filed more than nine
31 months after the decedent's death.

1 (b) Within nine months after the decedent's death, the surviving spouse may
2 petition the court for an extension of time for making an election. If, within nine
3 months after the decedent's death, the spouse gives notice of the petition to all persons
4 interested in the decedent's reclaimable estate, the court for cause shown by the
5 surviving spouse may extend the time for election. If the court grants the spouse's
6 petition for an extension, the decedent's reclaimable estate, described in
7 AS 13.12.202(a)(2), is not excluded from the augmented estate for the purpose of
8 computing the elective share and supplemental elective share amounts, if the spouse
9 makes an election by filing in the court and mailing or delivering to the personal
10 representative, if any, a petition for the elective share within the time allowed by the
11 extension.

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

14 (d) After notice and hearing, the court shall determine the elective share and
15 supplemental elective share amounts, and shall order payment of these amounts from
16 the assets of the augmented estate or by contribution as appears appropriate under
17 AS 13.12.207. If it appears that a fund or property included in the augmented estate
18 has not come into the possession of the personal representative, or has been distributed
19 by the personal representative, the court nevertheless shall fix the liability of a person
20 who has an interest in the fund or property or who has possession of the fund or the
21 property, whether as trustee or otherwise. The proceeding may be maintained against
22 fewer than all persons against whom relief could be sought, but a person is not subject
23 to contribution in a greater amount than the person would have been under
24 AS 13.12.207 if relief had been secured against all persons subject to contribution.

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

27 Sec. 13.12.206. EFFECT OF ELECTION ON STATUTORY BENEFITS. If
28 the right of election is exercised by or on behalf of the surviving spouse, the surviving
29 spouse's homestead allowance, exempt property, and family allowance, if any, are not
30 charged against but are in addition to the elective share and supplemental elective
31 share amounts.

1 **Sec. 13.12.207. CHARGING SPOUSE WITH OWNED ASSETS AND GIFTS**
2 **RECEIVED; LIABILITY OF OTHERS FOR BALANCE OF ELECTIVE SHARE.**

3 (a) In a proceeding for an elective share, the following are applied first to satisfy the
4 elective share amount and to reduce or eliminate any contributions due from the
5 decedent's probate estate and recipients of the decedent's reclaimable estate:

6 (1) amounts included in the augmented estate that pass or have passed
7 to the surviving spouse by testate or intestate succession;

8 (2) amounts included in the augmented estate under
9 AS 13.12.202(a)(3);

10 (3) amounts included in the augmented estate that would have passed
11 to the spouse but were disclaimed; and

12 (4) amounts included in the augmented estate under AS 13.12.202(a)(4)
13 up to the applicable percentage for the augmented estate; in this paragraph, the
14 "applicable percentage" means twice the elective share percentage set out in the
15 schedule in AS 13.12.201(a) appropriate to the length of time the spouse and the
16 decedent were married to each other.

17 (b) If, after the application of (a) of this section, the elective share amount is
18 not fully satisfied or the surviving spouse is entitled to a supplemental elective share
19 amount, amounts included in the decedent's probate estate and that portion of the
20 decedent's reclaimable estate other than amounts irrevocably transferred within two
21 years before the decedent's death are applied first to satisfy the unsatisfied balance of
22 the elective share amount or the supplemental elective share amount. The decedent's
23 probate estate and that portion of the decedent's reclaimable estate shall be applied so
24 that liability for the unsatisfied balance of the elective share amount or for the
25 supplemental elective share amount is equitably apportioned among the recipients of
26 the decedent's probate estate and that portion of the decedent's reclaimable estate in
27 proportion to the value of the recipients' interests in the reclaimable estate.

28 (c) If, after the application of (a) - (b) of this section, the elective share or
29 supplemental elective share amount is not fully satisfied, the remaining portion of the
30 decedent's reclaimable estate shall be applied so that liability for the unsatisfied
31 balance of the elective share or supplemental elective share amount is equitably

1 apporportioned among the recipients of that portion of the decedent's reclaimable estate
2 in proportion to the value of the recipients' interests in the reclaimable estate.

3 (d) Only original recipients of the reclaimable estate described in
4 AS 13.12.202(a)(2), and the donees of the recipients of the reclaimable estate to the
5 extent the donees have the property or its proceeds, are liable to make a proportional
6 contribution toward satisfaction of the surviving spouse's elective share or
7 supplemental elective share amount. A person liable to make contribution may choose
8 to give up the proportional part of the reclaimable estate or to pay the value of the
9 amount for which the person is liable.

10 ARTICLE 3. SPOUSE AND CHILDREN UNPROVIDED FOR
11 IN WILLS.

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

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

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

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

28 (b) In satisfying the share provided by this section, devises made by the will
29 to the testator's surviving spouse, if any, are applied first, and other devises, other than
30 a devise to a child of the testator who was born before the testator married the
31 surviving spouse and who is not a child of the surviving spouse or a devise or

1 substitute gift under AS 13.12.603 or 13.12.604 to a descendant of the child, abate as
2 provided in AS 13.16.540.

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

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

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

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

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

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

29 (D) in satisfying a share provided by this paragraph, devises to
30 the testator's children who were living when the will was executed abate
31 ratably; in abating the devises of the then living children, the court shall

1 preserve to the maximum extent possible the character of the testamentary plan
2 adopted by the testator.

3 (b) Neither (a)(1), nor (a)(2), nor (c) of this section applies if

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

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

9 (c) Except as provided in (b) of this section, if at the time of execution of the
10 will the testator fails to provide in the testator's will for a living child solely because
11 the testator believes the child to be dead, the child is entitled to share in the estate as
12 if the child were an omitted after-born or after-adopted child.

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

15 **ARTICLE 4. EXEMPT PROPERTY AND ALLOWANCES.**

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

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

29 **Sec. 13.12.403. EXEMPT PROPERTY.** In addition to the homestead
30 allowance, the decedent's surviving spouse is entitled from the estate to a value, not
31 exceeding \$10,000 in excess of security interests in the items, in household furniture,

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

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

27 (b) The family allowance is not chargeable against a benefit or share passing
28 to the surviving spouse or children by the will of the decedent, unless otherwise
29 provided, by intestate succession, or by way of elective share. The death of a person
30 entitled to family allowance terminates the right to allowances not yet paid.

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

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

17 (b) If the right to an elective share is exercised on behalf of a surviving spouse
18 who is an incapacitated person, the personal representative may add unexpended
19 portions payable under the homestead allowance, exempt property, and family
20 allowance to the trust established under AS 13.12.203(b).

21 ARTICLE 5. WILLS, WILL CONTRACTS, AND CUSTODY
22 AND DEPOSIT OF WILLS.

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

25 Sec. 13.12.502. EXECUTION; WITNESSED WILLS; HOLOGRAPHIC
26 WILLS. (a) Except as provided in (b) of this section and in AS 13.12.503, 13.12.506,
27 and 13.12.513, a will must be

- 28 (1) in writing;
- 29 (2) signed by the testator or in the testator's name by another individual
30 in the testator's conscious presence and by the testator's direction; and
- 31 (3) signed by at least two individuals, each of whom signs within a

1 reasonable time after the witness witnesses either the signing of the will as described
2 in (2) of this subsection or the testator's acknowledgement of that signature or the will.

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

6 (c) Intent that the document constitute the testator's will can be established by
7 extrinsic evidence, including, for holographic wills, portions of the document that are
8 not in the testator's handwriting.

9 Sec. 13.12.503. WRITINGS INTENDED AS WILLS. Although a document
10 or writing added upon a document was not executed in compliance with AS 13.12.502,
11 the document or writing is treated as if it had been executed in compliance with that
12 section if the proponent of the document or writing establishes by clear and convincing
13 evidence that the decedent intended the document or writing to constitute

- 14 (1) the decedent's will;
15 (2) a partial or complete revocation of the will;
16 (3) an addition to or an alteration of the will; or
17 (4) a partial or complete revival of the decedent's formerly revoked will
18 or of a formerly revoked portion of the will.

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

24 I, _____, the testator, sign my name
25 to this instrument this _____ day of _____, and being
26 first duly sworn, do hereby declare to the undersigned authority
27 that I sign and execute this instrument as my will and that I sign
28 it willingly (or willingly direct another to sign for me), that I
29 execute it as my free and voluntary act for the purposes
30 expressed in the will, and that I am eighteen years of age or
31 older, of sound mind, and under no constraint or undue

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influence.

Testator

We, _____,

the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as the testator's will and that the testator signs it willingly (or willingly directs another to sign for the testator), and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Witness

Witness

State of _____

_____ Judicial District

Subscribed, sworn to, and acknowledged before me by _____, the testator, and subscribed and sworn to before me by _____, and _____, witness, this ____ day of _____.

(Seal)

(Signed)

(Official capacity of officer)

(b) An attested will may be made self-proved at any time after its execution by the acknowledgement of the will by the testator and the affidavits of the witnesses,

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each made before an officer authorized to administer oaths under the laws of the state in which the acknowledgement occurs and evidenced by the officer's certificate, under the official seal, attached or annexed to the will in substantially the following form:

State of _____
_____ Judicial District

We, _____, _____, and _____, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as the testator's will and that the testator had signed willingly (or willingly directed another to sign for the testator), and that the testator executed it as the testator's free and voluntary act for the purposes expressed in the will, and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of the witnesses' knowledge the testator was at that time eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Testator

Witness

Witness

Subscribed, sworn to and acknowledged before me by _____, the testator, and subscribed and sworn to before me by _____, and _____, witnesses, this _____ day of _____.

(Seal)

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(Signed)

(Official capacity of officer)

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

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

(b) The signing of a will by an interested witness does not invalidate the will or a provision of it.

Sec. 13.12.506. CHOICE OF LAW AS TO EXECUTION. A written will is valid if executed in compliance with AS 13.12.502 or 13.12.503 or if its execution complies with the law at the time of execution of the place where the will is executed, or of the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode, or is a national.

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

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

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

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

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

6 (d) The testator is presumed to have intended a subsequent will to supplement
7 rather than replace a previous will if the subsequent will does not make a complete
8 disposition of the testator's estate. If this presumption arises and is not rebutted by
9 clear and convincing evidence, the subsequent will revokes the previous will only to
10 the extent the subsequent will is inconsistent with the previous will; each will is fully
11 operative on the testator's death to the extent they are not inconsistent.

12 Sec. 13.12.508. REVOCATION BY CHANGE OF CIRCUMSTANCES.
13 Except as provided in AS 13.12.803 and 13.12.804, a change of circumstances does
14 not revoke a will or a part of it.

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

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

26 (c) If a subsequent will that revoked a previous will in whole or in part is
27 thereafter revoked by another, later, will, the previous will remains revoked in whole
28 or in part, unless it or its revoked part is revived. The previous will or its revoked part
29 is revived to the extent it appears from the terms of the later will that the testator
30 intended the pervious will to take effect.

31 Sec. 13.12.510. INCORPORATION BY REFERENCE. A writing in existence

1 when a will is executed may be incorporated by reference if the language of the will
2 manifests this intent and describes the writing sufficiently to permit its identification.

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

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

9 (2) at the testator's death by the testator's devise to the trustee, if the
10 trust is identified in the testator's will and its terms are set out in a written instrument,
11 other than a will, executed before, concurrently with, or after the execution of the
12 testator's will or in another individual's will if that other individual has predeceased
13 the testator, regardless of the existence, size, or character of the corpus of the trust.

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

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

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

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

30 Sec. 13.12.513. SEPARATE WRITING IDENTIFYING DEVISE OF
31 CERTAIN TYPES OF TANGIBLE PERSONAL PROPERTY. Whether or not the

1 provisions relating to holographic wills apply, a will may refer to a written statement
2 or list to dispose of items of tangible personal property not otherwise specifically
3 disposed of by the will, other than money. To be admissible under this section as
4 evidence of the intended disposition, the writing must be signed by the testator and
5 must describe the items and the devisees with reasonable certainty. The writing may
6 be referred to as one to be in existence at the time of the testator's death; it may be
7 prepared before or after the execution of the will; it may be altered by the testator after
8 its preparation; and it may be a writing that does not have significance apart from its
9 effect on the dispositions made by the will.

10 **Sec. 13.12.514. CONTRACTS CONCERNING SUCCESSION.** (a) A
11 contract to make a will or devise, or not to revoke a will or devise, or to die intestate,
12 if executed after the effective date of this Act, may be established only by

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

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

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

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

19 **Sec. 13.12.515. DEPOSIT OF WILL WITH COURT IN TESTATOR'S**
20 **LIFETIME.** A will may be deposited by the testator or the testator's agent with a
21 court for safekeeping, under rules of the court. The will must be sealed and kept
22 confidential. During the testator's lifetime, a deposited will shall be delivered only to
23 the testator or to a person authorized in writing signed by the testator to receive the
24 will. A conservator may be allowed to examine a deposited will of a protected testator
25 under procedures designed to maintain the confidential character of the document to
26 the extent possible, and to ensure that it will be resealed and kept on deposit after the
27 examination. Upon being informed of the testator's death, the court shall notify a
28 person designated to receive the will and deliver it to that person on request; or the
29 court may deliver the will to the appropriate court.

30 **Sec. 13.12.516. DUTY OF CUSTODIAN OF WILL; LIABILITY.** After the
31 death of a testator and on request of an interested person, a person having custody of

1 a will of the testator shall deliver it with reasonable promptness to a person able to
2 secure its probate and, if the person with custody does not know of a person able to
3 secure the will's probate, to an appropriate court. A person who wilfully fails to
4 deliver a will is liable to a person aggrieved for any damages that may be sustained
5 by the failure. A person who wilfully refuses or fails to deliver a will after being
6 ordered by the court in a proceeding brought for the purpose of compelling delivery
7 is subject to penalty for contempt of court.

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

12 ARTICLE 6. RULES OF CONSTRUCTION APPLICABLE
13 ONLY TO WILLS.

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

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

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

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

28 (2) except as provided in (4) of this subsection, if the devise is in the
29 form of a class gift, other than a devise to "issue," "descendants," "heirs of the body,"
30 "heirs," "next of kin," "relatives," or "family," or a class described by language of
31 similar import, a substitute gift is created in the deceased devisee or devisee's

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

10 (3) for the purposes of AS 13.12.601, words of survivorship, as in a
11 devise to an individual "if the individual survives me," or in a devise to "my surviving
12 children," are not, in the absence of additional evidence, a sufficient indication of an
13 intent contrary to the application of this section;

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

18 (5) unless the language creating a power of appointment expressly
19 excludes the substitution of the descendants of an appointee for the appointee, a
20 surviving descendant of a deceased appointee of a power of appointment can be
21 substituted for the appointee under this section, whether or not the descendant is an
22 object of the power.

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

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

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

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

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

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

6 (3) "younger generation devise" means a devise that
7 (A) is to a descendant of a devisee of a primary devise;
8 (B) is an alternative devise with respect to the primary devise;
9 (C) is a devise for which a substitute gift is created; and
10 (D) would have taken effect had all the deceased devisees who
11 left surviving descendants survived the testator except the deceased devisee or
12 devisees of the primary devise;

13 (4) "younger generation substitute gift" means a substitute gift created
14 with respect to a younger generation devise.

15 (d) In this section,

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

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

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

29 (4) "devisee" includes

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

31 (B) an individual or class member who was deceased at the

1 time the testator executed the testator's will as well as an individual or class
2 member who was then living but who failed to survive the testator; and

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

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

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

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

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

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

20 Sec. 13.12.605. INCREASE IN SECURITIES; ACCESSIONS. (a) If a
21 testator executes a will that devises securities and the testator then owned securities
22 that meet the description in the will, the devise includes additional securities that are
23 owned by the testator at death to the extent the additional securities were acquired by
24 the testator after the will was executed as a result of the testator's ownership of the
25 described securities and that are securities of

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

29 (2) another organization acquired as a result of a merger, consolidation,
30 reorganization, or other distribution by the organization or a successor, related, or
31 acquiring organization; or

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

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

4 Sec. 13.12.606. NONADEMPTION OF SPECIFIC DEVISES; UNPAID
5 PROCEEDS OF SALE, CONDEMNATION, OR INSURANCE; SALE BY
6 CONSERVATOR OR AGENT. (a) A specific devisee has a right to the specifically
7 devised property in the testator's estate at death and

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

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

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

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

18 (5) real or tangible personal property owned by the testator at death that
19 the testator acquired as a replacement for the specifically devised real or tangible
20 personal property; and

21 (6) unless the facts and circumstances indicate that ademption of the
22 devise was intended by the testator or ademption of the devise is consistent with the
23 testator's manifested plan of distribution, the value of the specifically devised property
24 to the extent the specifically devised property is not in the testator's estate at death and
25 its value or its replacement is not covered by (1) - (5) of this subsection.

26 (b) If specifically devised property is sold or mortgaged by a conservator or
27 by an agent acting within the authority of a durable power of attorney for an
28 incapacitated principal, or if a condemnation award, insurance proceeds, or recovery
29 for injury to the property are paid to a conservator or to an agent acting within the
30 authority of a durable power of attorney for an incapacitated principal, the specific
31 devisee has the right to a general pecuniary devise equal to the net sale price, the

1 amount of the unpaid loan, the condemnation award, the insurance proceeds, or the
2 recovery.

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

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

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

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

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

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

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

19 Sec. 13.12.608. EXERCISE OF POWER OF APPOINTMENT. In the absence
20 of a requirement that a power of appointment be exercised by a reference, or by an
21 express or specific reference, to the power, a general residuary clause in a will, or a
22 will making general disposition of all of the testator's property, expresses an intention
23 to exercise a power of appointment held by the testator only if

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

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

28 Sec. 13.12.609. ADEMPION BY SATISFACTION. (a) Property a testator
29 gave in the testator's lifetime to a person is treated as a satisfaction of a devise in
30 whole or in part, only if

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

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

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

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

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

12 ARTICLE 7. RULES OF CONSTRUCTION APPLICABLE TO
13 WILLS AND OTHER GOVERNING INSTRUMENTS.

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

19 Sec. 13.12.702. REQUIREMENT OF SURVIVAL BY 120 HOURS. (a) For
20 the purposes of AS 13.06 - AS 13.36, except as provided in (d) of this section, an
21 individual who is not established by clear and convincing evidence to have survived
22 an event, including the death of another individual, by 120 hours is considered to have
23 predeceased the event.

24 (b) Except as provided in (d) of this section, and except for a security
25 registered in a transfer on death beneficiary form, for purposes of a provision of a
26 governing instrument that relates to an individual surviving an event, including the
27 death of another individual, an individual who is not established by clear and
28 convincing evidence to have survived the event by 120 hours is considered to have
29 predeceased the event.

30 (c) Except as provided in (d) of this section, if it is not established by clear
31 and convincing evidence that one of two co-owners with right of survivorship survived

1 the other co-owner by 120 hours, one-half of the property passes as if one had
2 survived by 120 hours and one-half as if the other had survived by 120 hours, and if
3 there are more than two co-owners with right of survivorship and it is not established
4 by clear and convincing evidence that at least one of them survived the others by 120
5 hours, the property passes in the proportion that one bears to the whole number of co-
6 owners. In this subsection, "co-owners with right of survivorship" includes joint
7 tenants, tenants by the entirety, and other co-owners of property or accounts held under
8 circumstances that entitle one or more to the whole of the property or account on the
9 death of the other or others.

10 (d) This section does not apply if

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

14 (2) the governing instrument expressly indicates that an individual is
15 not required to survive an event, including the death of another individual, by a
16 specified period or expressly requires the individual to survive the event by a specified
17 period;

18 (3) the imposition of a 120-hour requirement of survival would cause
19 a nonvested property interest or a power of appointment to fail to qualify for validity
20 under AS 34.27.010 or to become invalid under AS 34.27.010; or

21 (4) the application of this section to multiple governing instruments
22 would result in an unintended failure or duplication of a disposition.

23 (e) A payor or other third party is not liable for having made a payment or
24 transferred an item of property or other benefit to a beneficiary designated in a
25 governing instrument who, under this section, is not entitled to the payment or item
26 of property, or for having taken other action in good faith reliance on the beneficiary's
27 apparent entitlement under the terms of the governing instrument, before the payor or
28 other third party receives written notice of a claimed lack of entitlement under this
29 section. A payor or other third party is liable for a payment made or other action
30 taken after the payor or other third party receives written notice of a claimed lack of
31 entitlement under this section.

1 (f) Written notice of a claimed lack of entitlement under this section shall be
2 mailed to the payor's or other third party's main office or home by registered or
3 certified mail, return receipt requested, or served upon the payor or other third party
4 in the same manner as a summons in a civil action. Upon receipt of written notice of
5 a claimed lack of entitlement under this section, a payor or other third party may pay
6 any amount owed or transfer or deposit an item of property held by it to or with the
7 court having jurisdiction of the probate proceedings relating to the decedent's estate,
8 or if proceedings have not been commenced, to or with the court in the judicial district
9 of the decedent's residence. The court shall hold the funds or item of property and,
10 upon the court's determination under this section, shall order disbursement in
11 accordance with the determination. Payments, transfers, or deposits made to or with
12 the court discharge the payor or other third party from all claims for the value of
13 amounts paid to or items of property transferred to or deposited with the court.

14 (g) A person who purchases property for value and without notice, or who
15 receives a payment or other item of property in partial or full satisfaction of a legally
16 enforceable obligation, is not obligated under this section to return the payment, item
17 of property, or benefit or liable under this section for the amount of the payment or
18 the value of the item of property or benefit. But a person who, not for value, receives
19 a payment, item of property, or other benefit to which the person is not entitled under
20 this section is obligated to return the payment, item of property, or benefit, or is
21 personally liable for the amount of the payment or the value of the item of property
22 or benefit, to the person who is entitled to it under this section.

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

30 Sec. 13.12.703. CHOICE OF LAW AS TO MEANING AND EFFECT OF
31 GOVERNING INSTRUMENT. The meaning and legal effect of a governing

1 instrument is determined by the local law of the state selected by the transferor in the
2 governing instrument, unless the application of that law is contrary to the provisions
3 relating to the elective share described in AS 13.12.201 - 13.12.207, the provisions
4 relating to exempt property and allowances described in AS 13.12.401 - 13.12.405, or
5 other public policy of this state otherwise applicable to the disposition.

6 Sec. 13.12.704. POWER OF APPOINTMENT; MEANING OF SPECIFIC
7 REFERENCE REQUIREMENT. If a governing instrument creating a power of
8 appointment expressly requires that the power be exercised by a reference, an express
9 reference, or a specific reference, to the power or its source, it is presumed that the
10 donor's intention, in requiring that the donee exercise the power by making reference
11 to the particular power or to the creating instrument, was to prevent an inadvertent
12 exercise of the power.

13 Sec. 13.12.705. CLASS GIFTS CONSTRUED TO ACCORD WITH
14 INTESTATE SUCCESSION. (a) Adopted individuals and individuals born out of
15 wedlock, and their respective descendants if appropriate to the class, are included in
16 class gifts and other terms of relationship in accordance with the rules for intestate
17 succession. Terms of relationship that do not differentiate relationships by blood from
18 those by affinity, such as "uncles," "aunts," "nieces," or "nephews," are construed to
19 exclude relatives by affinity. Terms of relationship that do not differentiate
20 relationships by the half blood from those by the whole blood, such as "brothers,"
21 "sisters," "nieces," or "nephews," are construed to include both types of relationships.

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

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

1 **Sec. 13.12.706. LIFE INSURANCE; RETIREMENT PLAN; ACCOUNT**
2 **WITH PAY ON DEATH DESIGNATION; TRANSFER ON DEATH**
3 **REGISTRATION; DECEASED BENEFICIARY.** (a) If a beneficiary fails to survive
4 the decedent and is a grandparent, a descendant of a grandparent, or a stepchild of the
5 decedent, the following apply:

6 (1) except as provided in (4) of this subsection, if the beneficiary
7 designation is not in the form of a class gift and the deceased beneficiary leaves
8 surviving descendants, a substitute gift is created in the beneficiary's surviving
9 descendants; the beneficiary's surviving descendants take by representation the
10 property to which the beneficiary would have been entitled had the beneficiary
11 survived the decedent;

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

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

30 (4) if a governing instrument creates an alternative beneficiary
31 designation with respect to a beneficiary designation for which a substitute gift is

1 created by (1) or (2) of this subsection, the substitute gift is superseded by the
2 alternative beneficiary designation only if an expressly designated beneficiary of the
3 alternative beneficiary designation is entitled to take.

4 (b) If, under (a) of this section, substitute gifts are created and not superseded
5 with respect to more than one beneficiary designation and the beneficiary designations
6 are alternative beneficiary designations, one to the other, the property passes under the
7 primary substitute gift, except that if there is a younger generation beneficiary
8 designation, the property passes under the younger generation substitute gift and not
9 under the primary substitute gift. In this subsection,

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

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

15 (3) "younger generation beneficiary designation" means a beneficiary
16 designation that

17 (A) is to a descendant of a beneficiary of the primary
18 beneficiary designation;

19 (B) is an alternative beneficiary designation with respect to the
20 primary beneficiary designation;

21 (C) is a beneficiary designation for which a substitute gift is
22 created; and

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

26 (4) "younger generation substitute gift" means the substitute gift created
27 with respect to the younger generation beneficiary designation.

28 (c) A payor is protected from liability in making payments under the terms of
29 the beneficiary designation until the payor has received written notice of a claim to a
30 substitute gift under this section. Payment made before the receipt of written notice
31 of a claim to a substitute gift under this section discharges the payor, but not the

1 recipient, from all claims for the amounts paid. A payor is liable for a payment made
2 after the payor has received written notice of the claim. A recipient is liable for a
3 payment received, whether or not written notice of the claim is given.

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

13 (e) A person who purchases property for value and without notice, or who
14 receives a payment or other item of property in partial or full satisfaction of a legally
15 enforceable obligation, is not obligated under this section to return the payment, item
16 of property, or benefit, or liable under this section for the amount of the payment or
17 the value of the item of property or benefit. But a person who, not for value, receives
18 a payment, item of property, or other benefit to which the person is not entitled under
19 this section is obligated to return the payment, item of property, or benefit, or is
20 personally liable for the amount of the payment or the value of the item of property
21 or benefit, to the person who is entitled to it under this section.

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

29 (g) In this section,

30 (1) "alternative beneficiary designation" means a beneficiary
31 designation that is expressly created by the governing instrument and, under the terms

1 of the governing instrument, can take effect instead of another beneficiary designation
2 on the happening of one or more events, including survival of the decedent or failure
3 to survive the decedent, whether an event is expressed in condition-precedent,
4 condition-subsequent, or another form;

5 (2) "beneficiary" means the beneficiary of a beneficiary designation and
6 includes

7 (A) a class member if the beneficiary designation is in the form
8 of a class gift; and

9 (B) an individual or class member who was deceased at the
10 time the beneficiary designation was executed as well as an individual or class
11 member who was then living but who failed to survive the decedent;

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

14 (4) "class member" includes an individual who fails to survive the
15 decedent but who would have taken under a beneficiary designation in the form of a
16 class gift had the individual survived the decedent;

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

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

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

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

1 (2) except as provided in (4) of this subsection, if the future interest is
2 in the form of a class gift, other than a future interest to "issue," "descendants," "heirs
3 of the body," "heirs," "next of kin," "relatives," or "family," or a class described by
4 language of similar import, a substitute gift is created in the deceased beneficiary's
5 surviving descendants; the property to which the beneficiaries would have been entitled
6 had all of them survived the distribution date passes to the surviving beneficiaries and
7 the surviving descendants of the deceased beneficiaries; each surviving beneficiary
8 takes the share to which the surviving beneficiary would have been entitled had the
9 deceased beneficiaries survived the distribution date; each deceased beneficiary's
10 surviving descendants who are substituted for the deceased beneficiary take by
11 representation the share to which the deceased beneficiary would have been entitled
12 had the deceased beneficiary survived the distribution date; in this paragraph,
13 "deceased beneficiary" means a class member who fails to survive the distribution date
14 and leaves one or more surviving descendants;

15 (3) for the purposes of AS 13.12.701, words of survivorship attached
16 to a future interest are not, in the absence of additional evidence, a sufficient indication
17 of an intent contrary to the application of this section; words of survivorship include
18 words of survivorship that relate to the distribution date or to an earlier or an
19 unspecified time, whether those words of survivorship are expressed in condition-
20 precedent, condition-subsequent, or another form;

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

26 (b) If, under (a) of this section, substitute gifts are created and not superseded
27 with respect to more than one future interest and the future interests are alternative
28 future interests, one to the other, the property passes under the primary substitute gift,
29 except that, if there is a younger generation future interest, the property passes under
30 the younger generation substitute gift and not under the primary substitute gift. In this
31 subsection,

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

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

6 (3) "younger generation future interest" means a future interest that
7 (A) is to a descendant of a beneficiary of the primary future
8 interest;

9 (B) is an alternative future interest with respect to the primary
10 future interest;

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

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

15 (4) "younger generation substitute gift" means the substitute gift created
16 with respect to the younger generation future interest.

17 (c) If, after the application of (a) - (b) of this section, there is not a surviving
18 taker, the property passes in the following order:

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

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

25 (d) In this section,

26 (1) "alternative future interest" means an expressly created future
27 interest that can take effect in possession or enjoyment instead of another future
28 interest on the happening of one or more events, including survival of an event or
29 failure to survive an event, whether an event is expressed in condition-precedent,
30 condition-subsequent, or other form; a residuary clause in a will does not create an
31 alternative future interest with respect to a future interest created in a nonresiduary

1 devise in the will, whether or not the will specifically provides that lapsed or failed
2 devises are to pass under the residuary clause;

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

5 (3) "class member" includes an individual who fails to survive the
6 distribution date but who would have taken under a future interest in the form of a
7 class gift had the individual survived the distribution date;

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

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

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

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

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

29 Sec. 13.12.709. REPRESENTATION; PER CAPITA AT EACH
30 GENERATION; PER STIRPES. (a) If an applicable statute or a governing instrument
31 calls for property to be distributed "by representation" or "per capita at each

1 generation," the property is divided into as many equal shares as there are

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

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

6 (b) In (a) of this section, each surviving descendant in the nearest generation
7 is allocated one share, and the remaining shares, if any, are combined and then divided
8 in the same manner among the surviving descendants of the deceased descendants as
9 if the surviving descendants who were allocated a share and their surviving
10 descendants had predeceased the distribution date.

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

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

14 (2) deceased children who left surviving descendants.

15 (d) In (c) of this section, each surviving child is allocated one share, and the
16 share of each deceased child with surviving descendants is divided in the same
17 manner, with subdivision repeating at each succeeding generation until the property is
18 fully allocated among surviving descendants.

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

23 (f) In this section,

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

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

31 (3) "surviving ancestor," "surviving child," or "surviving descendant"

1 means an ancestor, a child, or a descendant who neither predeceased the distribution
2 date nor is considered to have predeceased the distribution date under AS 13.12.702.

3 Sec. 13.12.710. **WORTHIER-TITLE DOCTRINE ABOLISHED.** The doctrine
4 of worthier title is abolished as a rule of law and as a rule of construction. Language
5 in a governing instrument describing the beneficiaries of a disposition as the
6 transferor's "heirs," "heirs at law," "next of kin," "distributees," "relatives," or "family,"
7 or language of similar import, does not create or presumptively create a reversionary
8 interest in the transferor.

9 Sec. 13.12.711. **FUTURE INTERESTS IN HEIRS AND OTHER PERSONS.**
10 If an applicable statute or a governing instrument calls for a future distribution to or
11 creates a future interest in a designated individual's "heirs," "heirs at law," "next of
12 kin," "relatives," or "family," or language of similar import, the property passes to
13 those persons, including the state under AS 13.12.105, and in such shares as would
14 succeed to the designated individual's intestate estate under the intestate succession law
15 of the designated individual's domicile if the designated individual died when the
16 disposition is to take effect in possession or enjoyment. If the designated individual's
17 surviving spouse is living but is remarried at the time the disposition is to take effect
18 in possession or enjoyment, the surviving spouse is not an heir of the designated
19 individual.

20 **ARTICLE 8. GENERAL PROVISIONS CONCERNING**
21 **PROBATE AND NONPROBATE TRANSFERS.**

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

1 attorney.

2 (b) If a property or interest has devolved to a disclaimant under a testamentary
3 instrument or by the laws of intestacy, a disclaimer shall be filed, if of a present
4 interest, not later than nine months after the death of the deceased owner or deceased
5 donee of a power of appointment and, if of a future interest, not later than nine months
6 after the event determining that the taker of the property or interest is finally
7 ascertained and the taker's interest is indefeasibly vested. The disclaimer shall be filed
8 in the court of the judicial district in which proceedings for the administration of the
9 estate of the deceased owner or deceased donee of the power are commenced. A copy
10 of the disclaimer shall be delivered in person or mailed by registered or certified mail,
11 return receipt requested, to a personal representative or other fiduciary of the decedent
12 or donee of the power.

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

27 (d) A surviving joint tenant or tenant by the entirety may disclaim as a
28 separate interest property, or an interest in the property, devolving to the tenant by
29 right of survivorship. A surviving joint tenant or tenant by the entirety may disclaim
30 the entire interest in property, or in an interest in the property, that is the subject of
31 a joint tenancy or tenancy by the entirety devolving to the tenant, if the joint tenancy

1 or tenancy by the entirety was created by act of a deceased joint tenant or tenant by
2 the entirety, the survivor did not join in creating the joint tenancy or tenancy by the
3 entirety, and the survivor has not accepted a benefit under it.

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

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

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

22 (h) If property or an interest in property devolves to a disclaimant under a
23 nontestamentary instrument or contract and the instrument or contract does not provide
24 for another disposition of that property or interest, should it be disclaimed, or of
25 disclaimed or failed interests in general, the disclaimed property or interest devolves
26 as if the disclaimant had predeceased the effective date of the instrument or contract,
27 but if by law or under the nontestamentary instrument or contract the descendants of
28 the disclaimant would take the disclaimant's share by representation were the
29 disclaimant to predecease the effective date of the instrument, then the disclaimed
30 property or interest passes by representation to the descendants of the disclaimant who
31 survive the effective date of the instrument. A disclaimer relates back for all purposes

1 to that date. A future interest that takes effect in possession or enjoyment at or after
2 the termination of the disclaimed property or interest takes effect as if the disclaimant
3 had died before the effective date of the instrument or contract that transferred the
4 disclaimed property or interest.

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

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

9 (1) an assignment, conveyance, encumbrance, pledge, or transfer of the
10 property or interest, or a contract for an assignment, conveyance, encumbrance, pledge,
11 or transfer of the property or interest;

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

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

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

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

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

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

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

31 (1) an individual who obtains or consents to a final decree or judgment

1 of divorce from the decedent or an annulment of their marriage, if the decree or
2 judgment is not recognized as valid in this state, unless subsequently they participate
3 in a marriage ceremony purporting to marry each to the other or live together as
4 husband and wife;

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

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

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

18 (b) The felonious and intentional killing of the decedent

19 (1) revokes a revocable

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

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

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

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

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

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

5 (d) Provisions of a governing instrument that are not revoked by this section
6 are given effect as if the killer disclaimed all revoked provisions or, in the case of a
7 revoked nomination in a fiduciary or representative capacity, as if the killer
8 predeceased the decedent.

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

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

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

31 (h) Written notice of a claimed forfeiture or revocation under (g) of this

1 section shall be mailed to the payor's or other third party's main office or home by
2 registered or certified mail, return receipt requested, or served upon the payor or other
3 third party in the same manner as a summons in a civil action. Upon receipt of
4 written notice of a claimed forfeiture or revocation under this section, a payor or other
5 third party may pay an amount owed or transfer or deposit an item of property held
6 by it to or with the court having jurisdiction of the probate proceedings relating to the
7 decedent's estate, or if proceedings have not been commenced, to or with the court in
8 the judicial district of the decedent's residence. The court shall hold the funds or item
9 of property and, upon the court's determination under this section, shall order
10 disbursement in accordance with the determination. Payments, transfers, or deposits
11 made to or with the court discharge the payor or other third party from all claims for
12 the value of amounts paid to or items of property transferred to or deposited with the
13 court.

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

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

30 (k) In this section,

31 (1) "disposition or appointment of property" includes a transfer of an

1 item of property or other benefit to a beneficiary designated in a governing instrument;

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

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

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

16 (1) revokes a revocable

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

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

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

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

31 (b) A severance under (a)(2) of this section does not affect a third-party

1 interest in property acquired for value and in good faith reliance on an apparent title
2 by survivorship in the survivor of the former spouses unless a writing declaring the
3 severance has been noted, registered, filed, or recorded in records appropriate to the
4 kind and location of the property that are relied upon, in the ordinary course of
5 transactions involving that kind of property, as evidence of ownership.

6 (c) Provisions of a governing instrument that are not revoked by this section
7 are given effect as if the former spouse and relatives of the former spouse disclaimed
8 the revoked provisions or, in the case of a revoked nomination in a fiduciary or
9 representative capacity, as if the former spouse and relatives of the former spouse died
10 immediately before the divorce or annulment.

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

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

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

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

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

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

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

27 (j) In this section,

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

30 (2) "divorce or annulment" means any divorce or annulment, or any
31 dissolution or declaration of invalidity of a marriage, that would exclude the spouse

1 as a surviving spouse within the meaning of AS 13.12.802; a decree of separation that
2 does not terminate the status of husband and wife is not a divorce for purposes of this
3 section;

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

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

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

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

22 **ARTICLE 9. MISCELLANEOUS PROVISIONS.**

23 **Sec. 13.12.907. HONORARY TRUSTS; TRUSTS FOR PETS.** (a) A trust for
24 a noncharitable corporation or an unincorporated society or for a lawful noncharitable
25 purpose may be performed by the trustee for 21 years but not longer, whether or not
26 there is a beneficiary who can seek the trust's enforcement or termination and whether
27 or not the terms of the trust contemplate a longer duration.

28 (b) Except as otherwise provided by (c) of this section, a trust for the care of
29 a designated domestic or pet animal and the animal's offspring is valid.

30 (c) Except as expressly provided otherwise in the trust instrument,

31 (1) a portion of the principal or income may not be converted to the

1 use of the trustee or to a use other than for the benefit of a covered animal;
2 (2) the trust terminates at the earlier of 21 years after the trust was
3 created or when no living animal is covered by the trust;
4 (3) upon termination, the trustee shall transfer the unexpended trust
5 property in the following order:
6 (A) as directed in the trust instrument;
7 (B) if the trust was created in a nonresiduary clause in the
8 transferor's will or in a codicil to the transferor's will, under the residuary
9 clause in the transferor's will; and
10 (C) if a taker is not produced by the application of (A) or (B)
11 of this paragraph, to the transferor's heirs under AS 13.12.711;
12 (4) for the purposes of AS 13.12.707, the residuary clause is treated as
13 creating a future interest under the terms of a trust;
14 (5) the intended use of the principal or income may be enforced by an
15 individual designated for that purpose in the trust instrument or, if none, by an
16 individual appointed by a court upon application to the court by an individual;
17 (6) except as ordered by the court or required by the trust instrument,
18 a filing, report, registration, periodic accounting, separate maintenance of funds,
19 appointment, or fee is not required by reason of the existence of the fiduciary
20 relationship of the trustee;
21 (7) a governing instrument shall be liberally construed to bring the
22 transfer within this section, to presume against the merely precatory or honorary nature
23 of the disposition, and to carry out the general intent of the transferor; extrinsic
24 evidence is admissible in determining the transferor's intent;
25 (8) a court may reduce the amount of the property transferred, if it
26 determines that amount substantially exceeds the amount required for the intended use;
27 the amount of the reduction, if any, passes as unexpended trust property under (3) of
28 this subsection;
29 (9) if a trustee is not designated or a designated trustee is not willing
30 or able to serve, a court shall name a trustee; a court may order the transfer of the
31 property to another trustee, if required to assure that the intended use is carried out and

1 if a successor trustee is not designated in the trust instrument or if a designated
2 successor trustee does not agree to serve or is unable to serve; a court may also make
3 other orders and determinations as are advisable to carry out the intent of the transferor
4 and the purpose of this section.

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

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

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

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

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

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

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

31 (e) The witnesses and the authorized person shall there and then attest the

1 international will by signing in the presence of the testator.

2 **Sec. 13.12.914. INTERNATIONAL WILL; OTHER POINTS OF FORM. (a)**

3 The signatures shall be placed at the end of the international will. If the will consists
4 of several sheets, each sheet shall be signed by the testator or, if the testator is unable
5 to sign, by the person signing on the testator's behalf or, if a person is not signing on
6 the testator's behalf, by the authorized person. In addition, each sheet shall be
7 numbered.

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

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

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

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

23 **CERTIFICATE**

24 (Convention of October 26, 1973)

25 1. I, _____ (name,
26 address, and capacity), a person authorized to act in connection
27 with international wills

28 2. certify that on _____ (date)
29 at _____ (place)

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

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

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

5. I furthermore certify that:

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

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

* (2) following a declaration of the testator stating that the testator was unable to sign the testator's will for the following reason

_____, I have mentioned this declaration on the will *and the signature has been affixed by _____ (name and address)

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

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

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

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

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

12. PLACE OF EXECUTION

13. DATE

14. SIGNATURE and, if necessary, SEAL

* to be completed if appropriate.

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

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

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

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

18 Sec. 13.12.920. INTERNATIONAL WILL INFORMATION REGISTRATION.
19 The Department of Commerce and Economic Development shall establish a registry
20 system by which authorized persons may register in a central information center
21 information regarding the execution of international wills, keeping that information in
22 strictest confidence until the death of the maker and then making it available to any
23 person desiring information about any will who presents a death certificate or other
24 satisfactory evidence of the testator's death to the center. Information that may be
25 received, preserved in confidence until death, and reported as indicated is limited to
26 the testator's name, social security, or other individual identifying number established
27 by law, address, and date and place of birth, and the intended place of deposit or
28 safekeeping of the instrument pending the death of the maker. The Department of
29 Commerce and Economic Development, at the request of the authorized person, may
30 cause the information it receives about execution of an international will to be
31 transmitted to the registry system of another jurisdiction as identified by the testator,

1 if that other system adheres to rules protecting the confidentiality of the information
2 similar to those established in this state.

3 Sec. 13.12.921. DEFINITIONS FOR AS 13.12.912 - 13.12.921. In
4 AS 13.12.912 - 13.12.921,

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

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

12 * Sec. 4. AS 13.16.090(c) is amended to read:

13 (c) A will that [WHICH] appears to have the required signatures and that
14 [WHICH] contains an attestation clause showing that requirements of execution under
15 AS 13.12.502 or 13.12.506 [AS 13.11.155, 13.11.160, OR 13.11.175] have been met
16 shall be probated without further proof. In other cases, the registrar may assume
17 execution if the will appears to have been properly executed, or the registrar may
18 accept a sworn statement or affidavit of a [ANY] person having knowledge of the
19 circumstances of execution, whether or not the person was a witness to the will.

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

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

24 (1) a [A] specific devisee is entitled to distribution of the thing devised,
25 and a spouse or child who has selected particular assets of an estate as provided in
26 AS 13.12.403 [AS 13.11.130] shall receive the items selected; [.]

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

29 (A) the person entitled to the payment has not demanded
30 payment in cash;

31 (B) the property distributed in kind is valued at fair market

1 value as of the date of its distribution; and

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

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

17 (4) the [THE] residuary estate shall be distributed in kind if there is no
18 objection to the proposed distribution and it is practicable to distribute undivided
19 interests; in [IN] other cases, residuary property may be converted into cash for
20 distribution.

21 * Sec. 6. AS 16.43.150(h) is amended to read:

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

1 44.81.230 - 44.81.250, the permit is exempt from the claims of creditors of the estate.

2 * Sec. 7. AS 13.11 is repealed.

3 * Sec. 8. TRANSITION PROVISIONS. Except as otherwise provided in this Act,

4 (1) this Act applies to the will of a decedent dying on or after the effective
5 date of this Act;

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

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

16 * Sec. 9. AMENDMENT OF COURT RULES. AS 13.12.515, enacted by sec. 3 of this
17 Act, amends Alaska Rule of Probate Procedure 5 by

18 (1) requiring that a will deposited with the court be sealed; and

19 (2) requiring that the court deliver a deposited will, not just a copy of the will,
20 to the person designated to receive the will after the testator's death.

21 * Sec. 10. This Act takes effect January 1, 1996.