SB

56

COMMITTEE REPORT

SENATE

FURTHER: None

1/17/79

Date: 1/17/79

Mr. President:

The Committee on JUDICIARY has had SB 56

effect of homicide under the Uniform Probate Code

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

CHAIRMAN

S 60 (Rev. 12/78)

CODE REVISION COMMISSION

ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4678

March 5, 1980

MEMORANDUM

TO: Senator Patrick M. Rodey

FROM: Joyce M. Roloff, Secretary
Code Revision Commission

RE: SB 54 -- International Wills Act (UPC)
SB 58 -- Uniform Disposition of Community Property Rights at Death Act

This is in further reference to the exchange of correspondence between Senator Ziegler and I regarding the above bills. Another copy of that exchange is enclosed for speedy reference.

The Senate Judiciary Committee reported out these two bills yesterday. Art Peterson, former commissioner, testified on behalf of the commission. As a favor to the commission, Chairman Ziegler signed do-pass on both of these bills. However, as the enclosed communication reflects and further discussion with Chairman Ziegler confirms, he has not committed himself to support the bills once they reach the Senate floor. Adversely, he has several problems with the bills that Art was not able to respond to at the time and we anticipate that these questions might possibly be raised during floor debate.

It was suggested that you, on whom the fate of the bill now lies, get in touch with Senator Colletta requesting that he withhold scheduling these bills until I can get further information to you from the National Conference of Commissioners on Uniform State Laws concerning the problem areas. [A request for this information has already been made.]

This resistance does come as a surprise to the commission as the bills were considered to be noncontroversial at the time of introduction. Hopefully, by the time these bills reach the Senate floor you will have enough ammunition to defend them.

JMSR/s
Enclosures

cc: Code Revision Commission
Senator Robert Ziegler

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Please reply to ANCHORAGE

March 8, 1979

Trigg T. Davis, Esq.
Davis & Goehrig
301 West Northern Lights Boulevard
Anchorage, Alaska 99503

Re: Senate Bills Nos. 54, 56 ad 58

Dear Mr. Davis:

This is to acknowledge the receipt of the three above-mentioned bills, along with your letter of February 21, 1979.

I do not take exception to Senate Bills 56 or 58 and I expect over the years there will be considerable more of this type of legislation which will define the rights of the husband and wife either before or after death.

As has been frequently observed, the Uniform Probate Code is premised upon the proposition that there would be one husband, one wife and one set of children and this does not seem to be borne out in the crucible of legal experience and practical living. It is to be expected that the legislature will from time to time recognize this fact, although, I suspect that it was quite obvious at the time the Uniform Probate Code was enacted.

Senate Bill 54, dealing with international wills, may be justified and to the extent that it takes us back to the 1949 Code, I suspect that it is useful. Under the 1949 Code, we used to have a Section 59.2.6, which provided in effect that a last will and testament executed outside of the Territory of Alaska and which complied with the laws of the place where it was executed or with the testator's domicile was deemed to be legally executed and was given the same force and effect as if it was executed in the mode prescribed by the Territory of Alaska provided that the last

will and testament was in writing and subscribed by the testator.

It would appear to me that Senate Bill 54, in part, turns back to that concept and then goes a little bit further and provides for execution by persons under disability of one kind or another, including those who are unable to write, conceivably as a result of physical disability. To the extent that the statute clarifies or enlarges on the right of a person to make a will who is under limited disability, I think the enlargement on our 1949 law is appropriate. The over-kill of Senate Bill 54 appears to me to be in Section 13.11.430 where the lieutenant governor is directed to establish a registry system by which authorized persons may register in a central information center their international wills. This is the type of tripe that bureaucrats love and inexperienced legislators think is the greatest thing since sliced bread. Bureaucrats love registration because it means the setting up of another office and filling a set of file cabinets with paper, which they may guard zealously for a number of years, hopefully, until the time they can attain early retirement through some generous disability clause in their contract of employment with the state or federal government. The legislators probably think that they have performed a noble function in that they have provided a depository for the world travelers who have cast in stone their last will and testatment and should be protected because they have no suitable office, home or safety deposit mechanism where they can take care of their own personal papers. This world guardianship of irresponsible world travelers is in keeping with our national guilt complex which requires us to correct the sins and indiscretions of the human animal.

Any lawyer who has had the experience of managing a wills file over a period of years in a legal office will have discovered a great number of things that they should have known upon thought and reflection rather than being compelled to learn it by a repeat of the experience obtained by others. Some of those items are as follows:

A will is a document that is made based upon the facts of today and might very well be changed tomorrow and has a very good likelihood of being obsolete or changed within a very few years and, therefore, must be considered as a temporary document.

The holder of a will never knows when the maker of that will has changed his mind and has written a new will and, therefore, the longer the older will is on file the more doubtful its validity becomes and the more likely it becomes that it has been superceded by a subsequent document.

Unless there is established some type of uniform vital statistic act which incorporates the filing or the nonfiling of a will in a person's social security number, and we would expect that this would be some years away, there is a grave question as to whether the will will be found upon the death of the testator. If the testator keeps accurate records of where he has filed his wills during his life, it would probably be just as easy for him to keep his will on his person and pass that information on instead of the written memorandum advising as to where his filed or recorded will of the most recent date might be located.

One also learns that once you have a will on file, there is always the possibility that the will is valid even though you know not the address of testator nor whether he is living or dead and, therefore, once you have a will on file, presumably, you would have to keep it on file for the better part of one hundred years or so until you could safely assume that the person had died. You would thus have an accumulation of documents that reasonable people would conclude would have little or no value after ten years from the date of filing, yet, the possibility might exist for twenty-five or fifty years that they were in fact the last will and testament of the maker of the will.

The question then gets to be; why should any federal or state government burden itself with the guardianship of documents that they won't be able to get rid of and will have difficulty in determining whether they are valid or invalid.

My experience in maintaining wills files and attempting to contact persons whose wills have been prepared by lawyers now deceased lead me to believe that those few people who need service, either on an international basis or a local basis, for the filing of their wills are mislead and would, in fact, be better served had they maintained their own documents.

I am taking the liberty of sending a copy of this rambling letter on to Bob Zigler in the senate for what it may be worth.

Very truly yours,

John C. Hughes

JCH:jb

cc: Robert Zigler

CODE REVISION COMMISSION SB 56

ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4878

December 5, 1978

M E M O R A N D U M

SUBJECT: Uniform Probate Code - Effect of Homicide

TO: Representative Mike Miller, Chairman
Alaska Legislative Council

FROM: John W. Abbott, Chairman
Code Revision Commission

Pursuant to the authority granted in AS 24.20.075(c), the Code Revision Commission has determined that the Alaska version of the Uniform Probate Code is not consistent with the official Uniform Act in a portion relating to homicide. The commission has determined that in order to make the code consistent with the most recent version adopted by the National Conference of Commissioners on Uniform State Laws, the attached bill should be introduced at the next session of the legislature. The bill would amend AS 13.11 .305(b), relating to the effect of homicide on the succession of a decedent's assets, by making the section applicable to all multiple party accounts in any financial institution. The section does not purport to create any forms of property ownership new to Alaska, such as a joint tenancy; it serves only to eliminate whatever survivorship rights, if any, regardless of where or how created, a killer might have in his victim's property.

JWA/bb/jms

Attachment

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM August 1, 1978

SUBJECT: Uniform Probate Code

TO: Alaska Code Revision Commission

FROM: Kenneth M. Rosenstein, Legislative Counsel KMR

The following is a compilation of the differences between the latest version of the Uniform Probate Code as approved by the National Conference of Commissioners on Uniform State Laws (NCCUSL) and the version of the UPC enacted in Alaska (AS 13). Relevant history and provisions from the UPC and the Alaska Statutes are reproduced in the Appendices.

1. The NCCUSL approved a reversal of the original order of the subsections of UPC §2-608. This was done to prevent an unintended interpretation of the section that it had effect only when the testator was under a conservatorship. While such an interpretation appears possible, it also appears to be strained. An amendment to accomplish this change in the equivalent Alaska section, AS 13.11.255, was not included in the 1976 amendatory legislation because a statement of legislative intent was thought to be sufficient. (See 1976 Senate Journal Supplement No. 9, Appendix H.) A statement of legislative intent was never issued. Thus, the subsections of AS 13.11.255 are in reverse order to those of UPC §2-608. (See Appendix A.)

2. UPC §2-803(b), relating to the effect of homicide on the succession of the decedent's assets, refers to "joint and multiple-party accounts" in various financial institutions. The Alaska version, AS 13.11.305(b), refers only to "joint accounts." (See Appendix B.) Multiple-party account is defined in UPC §6-101 and AS 13.31.005 and includes joint accounts, P.O.D. (pay on death) accounts and trust accounts. The UPC provision is intended to eliminate a person's survivorship rights in any type of multiple-party account when he feloniously and intentionally kills a joint interest holder whose death would otherwise give the killer a present right to the decedent's share of the account. In Alaska multiple-party accounts other than joint accounts may come under the

umbrella term "any other form of co-ownership with survivorship incidents" included in both the Alaska and UPC provisions. Whether or not this would be so in Alaska, the practical effect of the non-uniformity of the Alaska provision may be minimal in that a court faced with this situation would probably apply the modern common law rule that bars a person from profitting from his wrongdoing and would either not recognize the killer's survivorship rights or apply a constructive trust in favor of the decedent's heirs.

3. In 1977 the NCCUSL adopted the Uniform International Wills Act (UIWA) as Part 10 of Article 2 of the UPC entitled "Will Registration." The UIWA may be incorporated into the UPC or enacted separately. It is intended to prescribe the form a will must be in so as to be valid in all countries that are party to the "Convention Providing a Uniform Law on the Form of an International Will." This has not been included in the Alaska version.

4. The 1973 amendatory legislation changed the language of AS 13.16.115(b) from "this or another judicial district" to "a judicial district." A Senate Judiciary Committee letter of intent (See 1973 Senate Journal Supplement No. 9, Appendix I) states that the change is intended to make clear the fact that the appointment of the personal representative may take place in any judicial district of the state. This difference should have no practical effect.

5. In AS 13.16.145(a)(2) the cross-reference should read "sec. 80(1)(A) - (F)" instead of "sec. 80(1)(A) - (E)." This is an apparent drafting oversight resulting from the addition of paragraph (F) to AS 13.16.080(1).

6. The 1973 amendatory legislation substituted new and non-uniform language in AS 13.16.255 which prior to that time was identical to UPC §3-603. (See Appendix C.) The new language requires the execution and filing of a bond by a personal representative unless (1) the estate is testate and the will expressly waives the filing of such bond, (2) the devisees or heirs waive the bond requirement, (3) a corporate fiduciary is the personal representative, or (4) the personal representative has deposited cash or other collateral with a state agency in order to secure the performance of his duties.

UPC §3-603 exempts a personal representative appointed in informal proceedings from the filing of a bond unless (1) a special administrator has been appointed, (2) an executor or personal representative is appointed to administer under a will containing an express requirement of a bond, (3) a

bond is required by UPC §3-605 (AS 13.16.265). UPC §2-503 gives the court discretion to require a bond when the personal representative is appointed in a formal proceeding. The testator's waiver of the bond requirement will be recognized unless an interested party requests one and the court is satisfied that it is desirable. The court is also given discretion to dispense with the bond if it determines that it is not necessary. Additionally, no bond is required of a personal representative who has deposited cash or other collateral with a state agency in order to secure the performance of his duties.

Clearly, the Alaska provision represents a complete departure from the policy of the UPC of doing away with a mandatory bonding requirement. The UPC philosophy is that it is not the court's responsibility to see that personal representatives perform properly. That burden is upon the persons with various interests in the decedent's estate and the UPC provides adequate protective mechanisms and remedies for those persons to insure proper performance by a personal representative.

7. The 1973 amendatory legislation changed the word "receipts" to "gives a receipt" in the second sentence of AS 13.16.420 (UPC §3-717). This change was suggested by the revisor based upon his estimation that the original language, "receipt", used correctly as a verb, was meaningless. (See 1973 Senate Journal Supplement No. 9, Appendix I.) This difference should have no practical effect.

8. In UPC §3-910 was rewritten in 1975 by the NCCUSL so as to strengthen the protection given to bona fide purchasers of decedent's property from a distributee of the estate. The changes were not made to AS 13.16.580. (See Appendix D.)

9. UPC §3-916(e)(5) has been changed by substituting "purpose" for "gift or devisee" after "charitable, public or similar" in the first sentence. The equivalent Alaska provision, AS 13.16.610(m), has not been changed. (See Appendix E.) This difference would appear to have no practical effect.

10. In UPC §3-916(g) the phrase "person interested in the state" in the second sentence has been changed to read "person interested in the estate." The former has no real meaning under the UPC, while the letter is defined in UPC §3-916(a)(3) and AS 13.16.610(a)(3). This appears to be a

correction of a typographical error in the original text. The equivalent Alaska section, AS 13.16.610(o), has not been changed. (See Appendix F.)

11. AS 13.16.700 permits a judge, on his own motion, to direct the settlement of the estate of a person dying in his judicial district and leaving an estate of not more than $6,000 with no qualified person having appeared to take charge of the assets. There is no equivalent provision in the UPC. (See Appendix G.)

12. AS 13.16.705 relates to the inheritance of stock in Alaska corporations organized under the Alaska Native Claims Settlement Act, and is necessary due to the special character of such stock existing until December 18, 1991. There is no equivalent provision in the UPC. (See Appendix G.)

KMR:hjd

...conservator; unpaid proceeds of sale, condemnation or insurance. (a) If specifically devised property is sold by a conservator, or if a condemnation award or insurance proceeds are paid to a conservator as a result of condemnation, fire, or casualty, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the condemnation award, or the insurance proceeds. This subsection does not apply if subsequent to the sale, condemnation, or casualty, it is adjudicated the disability of the testator has ceased and the testator survives the adjudication by one year. The right of the specific devisee under this subsection is reduced by any right he has under (b) of this section.

(b) A specific devisee has the right to the remaining specifically devised property and

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

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

(3) any proceeds unpaid at death on fire or casualty insurance on the property; and

(4) property owned by testator at his death as a result of foreclosure, or obtained in lieu of foreclosure, of the security for a specifically devised obligation. (§ 1 ch 78 SLA 1972)

Section 2-603. [Nonadempt on of Specific Devises in Certain Cases; Unpaid Proceeds of Sale, Condemnation or Insurance; Sale by Conservator]

(a) A specific devisee has the right to the remaining specifically devised property and:

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

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

(3) any proceeds unpaid at death on fire or casualty insurance on the property; and

(4) property owned by testator at his death as a result of foreclosure, or obtained in lieu of foreclosure of the security for a specifically devised obligation

(b) If specifically devised property is sold by a conservator, or if a condemnation award or insurance proceeds are paid to a conservator as a result of condemnation, fire, or casualty, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the condemnation award, or the insurance proceeds. This subsection does not apply if after the sale, condemnation or casualty, it is adjudicated that the disability of the testator has ceased and the testator survives the adjudication by one year. The right of the specific devisee under this subsection is reduced by any right he has under subsection (a).

Comment

In 1975, the Joint Editorial Board recommended a [illegible] of the title of this section and a reversal of the original order of the subsections. The recommendation was designed to correct an unintended interpretation of the section to the effect that all of the [illegible] only when the [illegible] was under a conservatorship. The original intent of the section, made more apparent by this recodification, was to prevent ademption in all cases involving sale, condemnation or destruction of specifically devised assets where testator's death occurred before the proceeds of the sale, condemnation or any insurance had been paid to the testator.

* * * * * * * * * * * *

(b) Any joint tenant who feloniously and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as his property and the killer has no rights by survivorship. This provision applies to joint tenancies [and tenancies by the entirety] in real and personal property, joint and multiple-party accounts in banks, savings and loan associations, credit unions and other institutions, and any other form of co-ownership with survivorship incidents.

* * * * * * * * * * * *

Sec. 13.11.305. Effect of homicide on intestate succession, wills, joint assets, life insurance and beneficiary designations.

* * * * *

(b) A joint tenant who feloniously and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as his property and the killer has no rights by survivorship. This provision applies to joint tenancies and tenancies by the entirety in real and personal property, joint accounts in banks, saving and loan associations, credit unions and other institutions, and any other form of co-ownership with survivors' ip incidents.

* * * * *

Section 6-101. [Definitions.] (Identical to AS 13.31.005

In this part, unless the context otherwise requires:

* * * * *

(4) "joint account" means an account payable on request to one or more of two or more parties whether or not mention is made of any right of survivorship;

(5) a "multiple-party account" is any of the following types of account: (i) a joint account, (ii) a P.O.D. account, or (iii) a trust account. It does not include accounts established for deposit of funds of a partnership, joint venture, or other association for business purposes, or accounts controlled by one or more persons as the duly authorized agent or trustee for a corporation, unincorporated association, charitable or civic organization or a regular fiduciary or trust account where the relationship is established other than by deposit agreement;

* * * * *

No bond is required of a personal representative appointed in informal proceedings, except (1) upon the appointment of a special administrator; (2) when an executor or other personal representative is appointed to administer an estate under a will containing an express requirement of bond or (3) when bond is required under Section 3-605. Bond may be required by court order at the time of appointment of a personal representative appointed in any formal proceeding except that bond is not required of a personal representative appointed in formal proceedings if the will relieves the personal representative of bond, unless bond has been requested by an interested party and the Court is satisfied that it is desirable. Bond required by any will may be dispensed with in formal proceedings upon determination by the Court that it is not necessary. No bond is required of any personal representative who, pursuant to statute, has deposited cash or collateral with an agency of this state to secure performance of his duties.

COMMENT

This section must be read with the next three sections. The purpose of these provisions is to move away from the idea that bond always should be required of a probate fiduciary, or required unless a will excuses it. Also, it is designed to keep the registrar acting pursuant to applications in informal proceedings, from passing judgment in each case on the need for bond. The point is that the court and registrar are not responsible for seeing that personal representatives perform as they are supposed to perform. Rather, performance is secured by the remedies available to interested persons. Interested persons are protected by their ability to demand prior notice of informal proceedings (Section 3-201), to contest a requested appointment by use of a formal testacy proceeding or by use of a formal proceeding seeking the appointment of another person. Section 3-105 gives general authority to the court in a formal proceeding to make appropriate orders as desirable incident to estate administration. This should be sufficient to make it clear that an informal application may be blocked by a formal petition which disputes the matters stated in the petition. Furthermore, an interested person has the remedies provided in Sections 3-605 and 3-607. Finally, interested persons have assurance under this Code that their rights in respect to the values of a decedent's estate cannot be terminated without a judicial order after notice or before the passage of three years from the decedent's death.

It is believed that the total package of protection thus afforded may represent more real protection than a blanket requirement of bond. Surely, it permits a reduction in the procedures which must occur in uncomplicated estates where interested persons are perfectly willing to trust each other and the fiduciary.

Sec. 13.16.255. Bond required; exceptions. A personal representative shall execute and file a bond with the registrar unless

(1) the estate is testate and the will expressly waives surety bond as to the person qualifying as personal representative;

(2) the devisees or the heirs file written waiver of surety bond;

(3) the personal representative is a qualified corporate fiduciary; or

(4) the personal representative, pursuant to statute, has deposited cash or collateral with an agency of the state to secure performance of his duties. (§ 1 ch 78 SLA 1972, am § 14 ch 56 SLA 1973)

Effect of amendment. — The 1973 amendment [illegible]

Legislative committee report. — For [illegible] see 1973 Senate Journal Supplement No. 3, 1973 House Journal, p. [illegible]

Section 3-910. [Purchasers from Distributees Protected]

If property distributed in kind or a security interest therein is acquired for value by a purchaser from or lender to a distributee who has received an instrument or deed of distribution from the personal representative, or is so acquired by a purchaser from or lender to a transferee from such distributee, the purchaser or lender takes title free of rights of any interested person in the estate and incurs no personal liability to the estate, or to any interested person, whether or not the distribution was proper or supported by court order or the authority of the personal representative was terminated before execution of the instrument or deed. This section protects a purchaser from or lender to a distributee who, as personal representative, has executed a deed of distribution to himself, as well as a purchaser from or lender to any other distributee or his transferee. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind, even if the personal representative and the distributee are the same person, or whether the authority of the personal representative had terminated before the distribution. Any recorded instrument described in this section on which a state documentary fee is noted pursuant to [insert appropriate reference] shall be prima facie evidence that such transfer was made for value.

Comment

The words "instrument or deed of distribution" are explained in Section 3-907. The effect of this section may be to make an instrument or deed of distribution a very desirable link in a chain of title involving succession of land. Cf. Section 3-901.

In 1975, the Joint Editorial Board recommended additions that strengthen the protection extended by this section to bona fide purchasers from distributees. The additional language was derived from recommendations evolved with respect to the Colorado version of the Code by probate and title authorities who agreed on language to relieve title assurers of doubts they had identified in relation to some cases.

Sec. 13.16.580. Purchasers from distributees protected. If property distributed in kind or a security interest in it is acquired for value by a purchaser from or lender to a distributee who has received an instrument or deed of distribution from the personal representative, the purchaser or lender takes title free of rights of any interested person in the estate and incurs no personal liability to the estate, or to any interested person, whether or not the distribution was proper or supported by court order and whether or not the authority of the personal representative was terminated before execution of the instrument or deed. This section protects a purchaser from or lender to a distributee who, as personal representative, has executed a deed of distribution to himself, as well as a purchaser from or lender to any other distributee or his transferee. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind, even if the personal representative and the distributee are the same person, or whether the authority of the personal representative had terminated before the distribution. Any instrument described in this section which is recorded under AS 34.15 or AS 45.05 and which bears a notation of that recordation is prima facie evidence that the transfer described in it was made for value. (§ 1 ch 78 SLA 1972; am § 17 ch 154 SLA 1976)

Effect of amendment. — The 1976 amendment, in the first sentence [illegible] the end. The amendment also added the present second and fourth sentences and added the beginning phrase "even if the personal representative" to the end of the present third sentence.

Legislative committee report. — For report on C. 154, SLA 1976 (HB 739), see [illegible] p. 1790.

Section 3-915. [Apportionment of Estate Taxes]

• • • • • • • • • • • • • •

(c)(1) • • • • •

• • • • • • • • • • • • • •

(5) To the extent that property passing to or in trust for a surviving spouse or any charitable, public or similar purpose is not an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property is not included in the computation provided for in subsection (b) hereof, and to that extent no apportionment is made against the property. The sentence immediately preceding does not apply to any case if the result would be to deprive the estate of a deduction otherwise allowable under Section 2053(d) of the Internal Revenue Code of 1954, as amended, of the United States, relating to deduction for state death taxes on transfers for public, charitable, or religious uses.

• • • • • • • • • • • • • •

Sec. 13.16.610. Apportionment of estate taxes.

(m) To the extent that property passing to or in trust for a surviving spouse or any charitable, public or similar gift or devisee is not an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property is not included in the computation provided for in (b) of this section, and to that extent no apportionment is made against the property. The sentence immediately preceding does not apply to any case if the result would be to deprive the estate of a deduction otherwise allowable under Section 2053(d) of the Internal Revenue Code of 1954, as amended, of the United States, relating to deduction for state death taxes on transfers for public, charitable, or religious uses.

(g) Neither the personal representative nor other person required to pay the tax is under any duty to institute any action to recover from any person interested in the estate the amount of the tax apportioned to the person until the expiration of the 3 months next following final determination of the tax. A personal representative or other person required to pay the tax who institutes the action within a reasonable time after the 3 months' period is not subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the estate was collectible at a time following the death of the decedent but thereafter became uncollectible. If the personal representative or other person required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be equitably apportioned among the other persons interested in the estate who are subject to apportionment.

Sec. 13.16.610. Apportionment of estate taxes. (a) For purposes of this section

(3) "person interested in the estate" means any person entitled to receive, or who has received, from a decedent or by reason of the death of a decedent any property or interest in the property included in the decedent's estate; it includes a personal representative, conservator, and trustee;

(Identical to UPC §3-916(a)(3))

(o) Neither the personal representative nor other person required to pay the tax is under any duty to institute any action to recover from any person interested in the estate the amount of the tax apportioned to the person until the expiration of the three months next following final determination of the tax. A personal representative or other person required to pay the tax who institutes the action within a reasonable time after the three months' period is not subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the state was collectable at a time following the death of the decedent but thereafter became uncollectible. If the personal representative or other person required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be equitably apportioned among the other persons interested in the estate who are subject to apportionment.

Sec. 13.16.700. Settlement directed by court. When a judge receives information that a person has died in his judicial district leaving an estate of $6,000 or less and no qualified person has appeared to take charge of the assets, the judge may immediately appoint some person, corporation, or attorney to settle the estate in the manner provided for in §§ 630—695 of this chapter. (§ 1 ch 78 SLA 1972)

Sec. 13.16.705. Inheritance of certain stock. (a) Until December 18, 1991, stock in a corporation organized under the laws of Alaska under the Alaska Native Claims Settlement Act (P.L. 92-203; 85 Stat. 688; 43 U.S.C. 1601 et seq.) which is inalienable under either that Act or its articles of incorporation is not subject to probate nor shall its value be considered in determining the value of an estate or allowance under this title. Upon death of the holder, if the stock does not pass by the testamentary disposition clause on the stock certificate, properly executed, it passes by will or intestate succession. In such a case, the determination of the person entitled to the stock shall be made by the appropriate regional corporation on the basis of an affidavit, furnished to it and to the corporation which issued the stock, showing the right of the person entitled to the stock to receive it and to have a new certificate issued to him. The affidavit, accepted in good faith by a corporation, has the same effect as an affidavit under § 685 of this chapter, and the person entitled to the stock, if the affidavit is not accepted, has the remedy set out in § 685 of this chapter. In case of dispute as to the person entitled to receive the stock, a person claiming ownership may bring an independent action in the superior court.

(b) Unless a separate form is provided which substantially satisfies the requirements of this subsection and which is distributed to the same extent as the certificate, each certificate representing stock in a corporation organized under the Alaska Native Claims Settlement Act shall bear provisions, on its reverse side, containing blanks to be filled in by the owner, constituting a last will and testament for the purposes of this section and sec. 7(h)(2) of the Alaska Native Claims Settlement Act insofar as the shares represented by that certificate are concerned during the period of its inalienability. The clause may be signed by the owner, dated and notarized. This testamentary disposition may be changed from time to time or revoked, and it governs unless there is a subsequently executed formal will making the specific disposition of the stock.

(f) Where appropriate, terms used in this section have the meanings set out in AS 13.06.050. In this section "stock" includes membership in a corporation organized under AS 10.20 and inchoate rights to stock. (am §§ 17, 18 ch 53 SLA 1973; am § 1 ch 83 SLA 1973; am §§ 1, 2 ch 97 SLA 1974)

DEPARTMENT OF LAW
Office of the Attorney General
Pouch K - State Capitol
Juneau 99811

March 25, 1976

Honorable Robert Ziegler
Chairman
Senate Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: 1975 Uniform Probate Code amendments

Bob
Dear Senator Ziegler:

In my role as a Uniform Law Commissioner for Alaska, and because of your interest in the Uniform Probate Code (UPC), I am sending to you for your committee's consideration and possible introduction the amendments to the UPC promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 1975. A bill proposing enactment of these amendments [illegible] is attached, as is a copy of the amendments and "official commentary" as distributed by the NCCUSL.

You may find the information in this letter and in the attached sheets sent to me by Professor Richard V. Wellman, educational Director for the Joint Editorial Board for the Uniform Probate Code, helpful in preparing a committee report to be printed in the Senate Journal. Such a report, including reference to the NCCUSL official commentary, would provide an indication of legislative intent and a guide to future interpretation.

In preparing the attached bill, I have omitted or modified [illegible] of the sections included in the attached NCCUSL draft, as follows:

1. AS 13.11.045(a)(2) (U.P.C. section 2-109) is not proposed for amendment in this bill because the NCCUSL change was intended to provide an option for states which had enacted the Uniform Parentage Act (promulgated by the NCCUSL in 1973). Alaska has not enacted that Act. (That, incidentally, is another matter which your committee may wish to consider; I have information available should you wish to see it at this time.)

2. AS 13.11.225 (U.P.C. section 2-602) was amended in 1973, adopting the same change now promulgated by the NCCUSL. See ch. 56 SLA 1973; 1973 Senate Journal Supplement No. 9; and 1973 House Journal, page [illegible].

3. AS 13.11.255 (U.P.C. section 2-608) is not proposed for change here because an intent statement in your committee report should suffice. The NCCUSL change would merely have reorganized the existing language of the section to forestall a possible interpretation question. I assume that Alaska would agree with the interpretation intended by the NCCUSL.

4. AS 13.11.270 (U.P.C. section 2-611) is not proposed for amendment because the proposed change is also one merely intended to provide an option for states which have enacted the Uniform Parentage Act.

5. AS 13.11.300 (U.P.C. section 2-802) was amended in 1973 in the manner suggested by the NCCUSL (see item 2, above).

6. In AS 13.16.030 (U.P.C. section 3-106), I have slightly changed the NCCUSL wording for clarity; no substantive difference from the intent expressed by the NCCUSL is intended.

7. AS 13.16.105(b) (U.P.C. section 3-306) is offered for legislative consideration, although the NCCUSL merely presents it as an optional provision.

8. The following statutes were amended in 1973 in the way currently recommended by the NCCUSL (see item 2, above), and therefore are not proposed for amendment in the attached bill:

AS 13.16.470 (U.P.C. section 3-605)
AS 13.21.055 (U.P.C. section 4-301)
AS 13.26.035 (U.P.C. section 5-202)
AS 13.26.010 (U.P.C. section 5-[illegible])
AS 13.26.120 (U.P.C. section 5-306)
AS 13.26.300 (U.P.C. section 5-428)
AS 13.26.320 (U.P.C. section 5-432)

In addition to the statutory amendments proposed by the NCCUSL in the attached material, that organization is proposing additions to the "official commentary" accompanying the U.P.C. See the last few pages of the attached material.

Yours truly,

Arthur H. Peterson
Assistant Attorney General
Uniform Law Commissioner
for Alaska

AHP:md

APPENDIX

JOURNAL

SUPPLEMENT

March 7, 1973 SENATE No. 9

Following is a letter of intent from the Judiciary Committee and a memorandum from the Legislative Affairs Agency which accompanied the Judiciary Committee report on SENATE BILL NO. 140:

"March 1, 1973

LETTER OF LEGISLATIVE INTENT

Re: Senate Bill 140 (Uniform Probate Code)

This bill is essentially a revisor's bill which rectifies some oversights and defects in the Uniform Probate Code which the legislature adopted last year.

It is the intent of the Judiciary Committee to request that the Legislative Affairs Agency analysis of the bill be spread upon the supplemental journal in order that a section by section review will be available to everyone; said memo bears date of February 27, 1973.

Robert H. Ziegler, Sr.
Chairman
Senate Judiciary Committee"

"February 27, 1973

MEMORANDUM

TO: Senator Ziegler, Chairman
Senate Judiciary Committee

FROM: Russell E. Mulder, Deputy Director

SUBJECT: Amendments to Uniform Probate Code (SB 140)

Pursuant to your request, the following sectional [illegible]

of correcting some technical drafting and printing errors that crept into the original approved Uniform Probate Code (UPC). These changes have been approved and suggested by the Joint Editorial Board for the UPC (JEB). The remaining amendments are aimed at correcting some problems, inconsistencies, and technical errors which were made while the legislature considered the UPC last session. These latter amendments are suggested by Professor Richard V. Wellman, University of Michigan Law School (and chief reporter for the UPC), the Revisor of Statutes, and the Legislative Affairs Agency (LAA) staff.

Section 1: Substituting "includes" for "means all of" in AS 13.06.050(11), merely corrects an original drafting error (suggested by JEB).

Section 2: Inserting "first" before "publication" in AS 13.11.090(a) clarifies which publication date is referred to (suggested by JEB).

Section 3: Deletes the "mobile home" provisions from the Homestead Allowance section. The reason behind this is that the homestead allowance applies to all surviving spouses whether or not the decedent left real property. It is, as amended, a dwelling or housing allowance and applies evenly to all people. In fact, to not make the change will cause confusion and resulting litigation. On this point Professor Wellman states:

> The change made by adding express reference to up to $8,000 in value in a trailer home may be unobjectionable, but I wonder how it relates to the rest of the section and to sections 13.11.125 and 13.11.135. Is it the intent to create exemptions of $3,500 plus $8,000 in a trailer home plus the $12,000 homestead allowance, plus $500 per month for twelve months? As the statute stands, it appears to me that a surviving spouse of an Alaskan decedent who owned an $8,000 trailer home, is entitled to $30,500 off the top of the estate, ahead of the terms of the decedent's will and ahead of his creditors.
>
> Part of the problem may result from the view of the U.P.C. framers that the homestead allowance in 13.11.125 and the exempt property concept in 13.11.130 are both dollar charges against any assets of an estate. The right to homestead allowance is not contingent upon whether the decedent had an interest in homestead land; the exempt chattel idea includes the point that cash from any source may be due to satisfy the $3,500 allowance if there are not sufficient chattels to cover the item.

(Suggested by Professor Wellman and LAA staff).

Sections 4, 5 and 6: Change "personal" property to "exempt" property in three sections in the Exempt Property and Allowances article of chapter 11. Professor Wellman explains why the word "personal" should not be used here:

> ... the statute permits delivery of personal property but says nothing of intangible property. The words "personal property" are frequently used to include "intangible property", but the words deleted suggest that the Legislature wanted to eliminate intangibles

from the assets that would be turned over orally to a personal representative from another state where the decedent was domiciled.

(Suggested by Professor Wellman and LAA staff)

Section 7: Under the UPC the age of majority is 21 and the legal age for making a will is 18. It seems obvious that the UPC drafters thought it wise for a person to be able to write a will before he reaches majority. The change made in this section which would allow a person 18 to make a will reflects the same thinking (suggested by the Revisor of Statutes and LAA staff).

Section 8: AS 13.11.173 (Proof of Wills) conflicts with AS 13.16.-050(c) and AS 13.16.155. The latter two sections are original UPC provisions and it would seem for the sake of uniformity they should prevail (suggested by Professor Wellman and LAA staff).

Section 9: Since the Official Text of the UPC was published, the drafters have come to the conclusion that the reference to "public policy of this state" in AS 13.11.225 is unnecessarily vague. The new language inserted is taken from the Idaho UPC and resolves the vagueness question (suggested by JEU).

Section 10: This amendment extends the definition of "spouse" contained in AS 13.11.300(b) so that it applies to determine priorities to serve as personal representatives (suggested by JEU).

Section 11: The context in which this age reference appears shows that it should not refer to the minor/major cutoff line. In addition, the phrase "minor under the age of 19" does not mean anything because, by definition in Alaska, all minors are under 19, at which age they reach majority (suggested by the Revisor of Statutes and LAA staff).

Section 12: This amendment deletes the word "ancillary" because it is not used anywhere else in the code (suggested by JEU and LAA staff).

Section 13: Removing "this or another" and inserting instead "a" before "judicial district" in AS 13.16.115(b) is intended to clarify the fact that the personal representative's appointment can be in any district in the state (suggested by the Revisor of Statutes).

Section 14: Substituting "gives a receipt" for "receipts" in AS 13.16.420 was made because "receipts" is meaningless in the context of the sentence (suggested by the Revisor of Statutes and LAA staff).

Section 15: By preferring claims of those who rendered services to the decedent in his last illness, the section runs against federal law (31 USCA sec. 191) which directs that claims of the federal government have priority over "debts due from the decedent" (suggested by JEU).

Section 16: The Revisor of Statutes originally changed "shall be" to "is" and now believes it should perhaps be changed back to its original language.

Sections 17, 18 and 19: These amendments are an attempt to bring the Alaska probate procedures back in line with the Uniform Probate Code in an important area. Last year the House Judiciary Committee amendments (which are reflected in existing law) tried to throw up a barrier to a foreign domiciliary personal representative's use of the affidavit procedure to collect local assets of a decedent. Later consultation with Professor Wellman revealed that the amendments failed to accomplish their intended purpose. Because of the ineffectiveness of last year's amendments, it is suggested that the original UPC language be restored. Such action would have the effect of bringing Alaska's Probate Code back into conformity with the Uniform Code and further providing for the more expedient and inexpensive handling of decedents' estates (suggested by LAA staff).

Section 20: The changes made in AS 13.21.055 were done because of the existing lack of parallel language in this section and AS 13.16.250, leading to the implication that consent to jurisdiction by specific acts of a foreign personal representative is broader than consent involved by acceptance of appointment by a local personal representative (suggested by Professor Wellman and LAA staff).

Sections 21 and 22: The testamentary guardianship provisions are defective because no notice to the minor is required of one who accepts a testamentary appointment. Therefore, the ability of a minor of 14 or older to object to a particular person as his guardian, if he acts within a short time after the person accepts the nomination, is useless. The new language added to AS 13.26.035 and AS 13.26.040 will eliminate this problem (suggested by Professor Wellman and LAA staff).

Section 23: This amendment is offered for two reasons. First, the court should not appoint a guardian where a testamentary guardian has "failed to properly exercise his duties as a guardian." The court should await the institution of removal proceedings under AS 13.26.085. Second, the existing section makes an unfortunate distinction between a testamentary guardian and a court-appointed guardian in relation to a replacement appointment. It would seem that both should have equivalent status (suggested by Professor Wellman and LAA staff).

Section 24: Change made because it seems unnecessary to require a guardian to file a report every year. The new language is that of the original UPC (suggested by Professor Wellman).

Section 25: The new language in AS 13.26.120 was added to establish parallel language in AS 13.16.300 and this section (suggested by JEU).

Section 26: The word "incompetent" should be removed from AS 13.-26.190(a)(4)(B) because it is not used elsewhere in the code (suggested by JEU).

Section 27: The change from 19 to 18 is necessary because the context in which this age reference appears shows that it should not refer to the minor/major cutoff line. In addition, the phrase "minor under the age of 19" doesn't mean anything because, by definition in Alaska, all minors are under 19, at which age they reach majority (suggested by the Revisor of Statutes and LAA staff).

Section 28: The language deleted from AS 13.26.250(c)(7) should be deleted because it is senseless. The changes to AS 13.26.-250(c)(22) were made because the word "minor" is not necessary and the word "incompetent" is not defined or used elsewhere in the code (suggested by JEB).

Section 29: AS 13.26.300(a) was repealed and re-enacted in order to define when a claim against a conservator is considered filed and allowed and to establish parallel treatment in this section and AS 13.16.465 (suggested by JEB).

Section 30: AS 13.26.320 was added to establish parallel treatment of foreign conservators and foreign personal representatives (suggested by JEB).

Section 31: The words "and this statute" are unnecessarily vague and therefore should be deleted (suggested by LAA staff).

Section 32: Because under the UPC there are no longer "executors or administrators" who administer decedents' estates but "personal representatives", the terminology must be changed (suggested by the Revisor of Statutes and LAA staff).

Section 33: The deletion of the language in AS 13.11.045(1) would mean that for purposes of intestate succession an adopted child is only the child of the adopting parents. Under existing law a child can inherit in intestate succession situations both from his natural and adopting parents unless the decree of adoption provides that the child cannot inherit from his natural parents (suggested by Alaska Supreme Court).

Section 34: This section adds needed transitional provisions (suggested by Alaska Supreme Court)."

The following letter of intent from the Judiciary Committee accompanied the committee's report on SENATE BILL NO. 141:

"March 1, 1973

LETTER OF LEGISLATIVE INTENT

Re: Senate Bill 141 (relating to the residence exemptions)

Senate Bill 141 clarifies problems which arise in interpreting the provisions of AS 09.35.090 and AS 34.35.050 (c).

By amending AS 09.35.090, as this bill would purport to do, we are protecting, as the law intends, the rights of laborers and materialmen.

Robert H. Ziegler, Sr.
Chairman
Senate Judiciary Committee"

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M January 29, 1979

SUBJECT: Analysis of SB 56 - Effect of homicide under the Uniform Probate Code (Work Order No.6160)

TO: Senator Robert H. Ziegler, Sr.

FROM: Kenneth M. Rosenstein, Legislative Counsel KMR

AS 13.11.305(b) is Alaska's version of Uniform Probate Code (UPC) §2-803(b). It relates to the effect of homicide on succession of a decedent's assets. Currently AS 13.11.305(b) refers only to "joint accounts" whereas the latest version of UPC §2-803(b) refers to "joint and multiple-party accounts." SB 56 conforms the Alaska Statute with the UPC version.

Multiple-party account is defined in UPC §6-101 and AS 13.31.005 and includes joint accounts, P.O.D., (pay on death) accounts, and trust accounts. The UPC provision is intended to eliminate a person's survivorship rights in any type of multiple-party account when that person feloniously and intentionally kills a joint interest holder whose death would otherwise give the killer a present right to the decedent's share of the account. In Alaska multiple-party accounts other than joint accounts may come under the umbrella term "any other form of co-ownership with survivorship incidents" included in both the Alaska and UPC provisions. Whether or not this would be so, the practical effect of the non-uniformity of the Alaska provision may be minimal in that a court faced with this situation would probably apply the modern common law rule that bars a person from profitting from his wrongdoing, and would either not recognize the killer's survivorship rights or apply a constructive trust in favor of the decedent's heirs.

KMR:nem

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907-465-3800

MEMORANDUM January 29, 1979

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KMR:nem