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515

Joe

March 21

SB 514-515

Matthew Black - Probate Committee / Bar Assoc.

SB 514 -

Bar Assoc. would like to study
full more closely. (don't have a position
cloud in title of property for
one sp. if spouses name is not in
title.

Protection in statute for
surviving spouse.

Should not affect tenancy by
entirety - must be stated in deed -
both names. Title companies require
both names in title.

SB 515

has been before legislature before
important for probate purposes.
community property interest
recognized if: 1) domiciled outside
state (comm prop) and moved to
Alaska 2) have bought w/ proceeds
of community property.
could affect IRS action

Will clarify the common law in practice
in Alaska.

Apply to assets when community
property records are retained as proof.

Dice Regan - Code Rev. Comm

36 514

Bill would clarify title problems when titles to real property do not indicate marital status.

OK. law an anachronism

34,15,010 (C) (D) put in law when state had dower rights so a wife could claim interest in a family home. Present, no substance or basis to set aside deed.

If (b) is retained, title problems stay w/o a limitation period.

on other side, the interest of the spouse may be served by maintaining 34,15,010

FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 515
 Title: "...disposition of certain property rights at death."
 Sponsor: Sen. Rules/Code Rev. Comm.
 Requestor: Sen. Judiciary
 Date of Request: 3/13/84

FISCAL DETAIL

Agency Affected: Department of Law
 Program Category Affected: General Government
 RU, Program or Subprogram(s) Affected: Legal Services Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Division Date: 3-13-84
 Approved by Commissioner: Norman C. Gorsuch Date: 3-13-84
 Agency: Department of Law

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

This bill was requested to prescribe the rights, at death, of a married person who has community property acquired prior to a change in domicile to Alaska, or which is traceable to community property, where the spouses have not indicated an intention that their community rights be severed.

The Act codifies what the Code Revision Commission believes is now common law in Alaska. The Act should help eliminate the necessity of stating that common law through litigation, thus saving private parties some litigation expense and reducing court costs. Because the bill deals only with private estate interests, it will not have a fiscal impact on state government operations, other than slightly reducing crowded court calendars.

58513

ALASKA CODE REVISION COMMISSION
COMMENTARY TO ACCOMPANY BILL ON
UNIFORM DISPOSITION OF CERTAIN PROPERTY RIGHTS AT DEATH ACT

The Act is intended to prescribe the rights, at death, of a married person who has community property acquired prior to a change in domicile to Alaska, or which is traceable to community property, where the spouses have not indicated an intention that their community rights be severed.

The Act codifies what the code revision commission believes is now the common law in Alaska. The Act is intended to eliminate the necessity of stating that common law through litigation.

AS 13.41.005 defines the property which is subject to disposition under chapter 41. Subsection (1) covers all personal property acquired by the spouses while domiciled in a community property state to the extent that property would have been treated as community property at the time of acquisition under the laws of that state and in which the spouses have expressed no intent to sever their community rights. Also included would be property which the spouses have agreed to treat as community property. Subsection (2) covers real property in the state (real property located in other states would be treated under the laws of those states) to the extent that it can be traced to a community source (e.g., was purchased with the proceeds of community property).

AS 13.41.010 establishes rebuttable presumptions intended to assist a court in applying the definitions of sec. 5. The presumptions are that (1) property acquired by a married person while domiciled in a community property state is and remains community property, and (2) property acquired by a married person while domiciled in a common law state, title to which included a right of survivorship, is not community property.

AS 13.41.015 requires that one-half of a deceased married person's property to which the chapter applies, i.e., community property or property traceable to it, becomes the property of the surviving spouse and is not subject to testamentary or intestate disposition. The other half is subject to the applicable manner of disposition. The one-half of the property to which the chapter applies is made not subject to the surviving spouse's elective share.

SBS13

AS 13.41.020 provides a method for the perfection, by means of a court order, of the title to property passing to the surviving spouse under the provisions of this chapter. It is intended to protect the personal representative from liability for failing to search the decedent's estate for property to which the chapter applies. The personal representative's duty may be reinstated by written demand of the surviving spouse or that spouse's successor in interest.

AS 13.41.025 provides a method whereby the personal representative, heir, or devisee may institute an action to perfect the surviving spouse's title to property to which the chapter applies. It is a corollary to sec. 20.

AS 13.41.030 protects purchasers and lenders taking a security interest, who acquire such interest for value, after the spouse's death, from liability to a person who appears to have title to property to which the chapter applies. It is intended to permit reliance upon apparent title and to facilitate both ascertainment of title and disposition of assets where adequate consideration is paid.

AS 13.41.035 merely states that the rights of creditors in property to which the chapter applies is not affected.

AS 13.41.040 makes clear that the rights of spouses to sever their community property interests or to create a form of ownership not subject to this chapter are in no way limited by the chapter.

AS 13.41.045 provides that the chapter does not authorize the testamentary disposition of property which is otherwise prevented from such disposition.

AS 13.41.050 and 13.41.055 provide for uniform construction and application and for citation for short title, respectively.

Nine states have adopted the 1971 uniform Act.

ALASKA CODE REVISION COMMISSION

SB 511-575



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EXECUTIVE SECRETARY
BILLY G. BERRIER

March 1, 1984

Senator Bill Ray, Chairman
Alaska Legislative Council
Pouch V, State Capitol
Juneau, Alaska 99811

- RE: (1) a bill relating to principal and income of trusts;
(2) a bill relating to administration of decedents' estates;
(3) a bill relating to renunciation of rights in decedents' estates;
(4) a bill relating to married persons' rights in a family home; and
(5) a bill relating to the uniform disposition of certain property rights at death.

Dear Senator Ray:

Pursuant to AS 24.20, the Alaska Code Revision Commission has prepared the enclosed bills and respectfully asks that they be introduced in the legislature.

They are technical bills the commission has been working on with the probate committee of the Alaska Bar Association. They relate generally to rights at death and to property arrangements that usually have their inception in death.

At its last meeting, the Legislative Council agreed to introduce the bills.

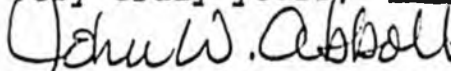
One of the bills, the bill on disposition of certain property rights at death, was previously in the legislature but received little notice. It is revived at the request of the probate committee of the Alaska Bar Association, and that

Senator Bill Ray, Chairman
March 1, 1984
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committee has advised the commission that it will actively support the bill.

A commentary on each bill is enclosed.

Very truly yours,



John W. Abbott, Chairman
Alaska Code Revision Commission

JWA:chw

Enclosures

cc: Hon. Bill Sheffield
Hon. Edmond W. Burke, Chief Justice
Myrton R. Charney, Executive Director
Legislative Affairs Agency