HB 199

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: April 21, 1997 **FURTHER REFERRALS:**

Date of Committee Action: 5/7/97

The JUDICIARY Committee considered: **HB 199**

HOUSE BILL NO. 199 **COMMUNITY PROPERTY**

"An Act relating to the property, transactions, and obligations of spouses; relating to the augmented estate; amending Rule 301, Alaska Rules of Evidence; and providing for an effective date."

recommends it be replaced with the following committee substitute CSHB 199 (JUD) [X] the same title [ ] a new title

[ ] additional referral to _____ Committee
[ ] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) _____ [ ] fiscal note(s) _____

[X] zero fiscal note(s) COURTS & REHAB [ ] zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
	PORTER				
	RUKEBERG			✓	
	CROFT	✓			
	GREEN			✓	
	JAMES	✓			
	BUNDE			✓	
	BERKOWITZ			✓	

CHAIR'S SIGNATURE _____

CS FOR HOUSE BILL NO. 199(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE RYAN, Therriault

A BILL

FOR AN ACT ENTITLED

"An Act relating to the property, transactions, and obligations of spouses; relating to the augmented estate; amending Rule 301, Alaska Rules of Evidence; and providing for an effective date."

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

* **Section 1.** AS 13.12.208 is amended by adding a new subsection to read:

(d) Notwithstanding the other provisions of this section, the value of community property under AS 34.75 is not included in the augmented estate.

* **Sec. 2.** AS 25.15.010 is amended to read:

Sec. 25.15.010. Property of one spouse not subject to contracts or liabilities of other. When property is owned by one spouse, the other has no interest that makes the property liable for the contracts or liabilities of the spouse who is not the owner of the property, except as provided in this chapter <u>and AS 34.75</u>.

* **Sec. 3.** AS 25.15.020 is amended to read:

Sec. 25.15.020. Actions between spouses respecting property. <u>Subject to</u>

AS 34.75, if [IF] one spouse obtains possession or control of property belonging to the other, either before or after marriage, the owner of the property may maintain an action for it, or for any right growing out of it, in the same manner and to the same extent as if they were unmarried.

* **Sec. 4.** AS 25.15.050 is amended to read:

Sec. 25.15.050. Nonliability for premarital or separate debts of other. Subject to AS 34.75, neither [NEITHER] spouse is liable for the debts or liabilities of the other incurred before marriage, and, except as otherwise provided, neither is liable for the separate debts of the other, nor is the rent or income of the property of one spouse liable for the separate debts of the other.

* **Sec. 5.** AS 25.15.060 is amended to read:

Sec. 25.15.060. Control and liability of separate property of spouse. Subject to AS 34.75, the [THE] property and pecuniary rights of a married person at the time of marriage or afterwards that are acquired by gift, devise, or inheritance are not subject to the debts or contracts of the other spouse, and a [. A] spouse may manage, sell, convey, or devise the property and pecuniary rights that by will are separate property of that spouse.

* **Sec. 6.** AS 25.24.160 is amended by adding a new subsection to read:

(d) When distributing property identified as community property under a community property agreement or trust under AS 34.75, unless the parties have provided in the agreement or trust for another disposition of the community property, the court shall make such disposition of the community property as shall appear just and equitable after considering all relevant factors, including

(1) the nature and extent of the community property;

(2) the nature and extent of the separate property;

(3) the duration of the marriage; and

(4) the economic circumstances of each spouse at the time the division of property is to become effective, including the desirability of awarding the family home or right to live in the family home for reasonable periods to a spouse with whom the children reside the majority of the time.

* **Sec. 7.** AS 25.24.200(a) is amended to read:

(a) A husband and wife together may petition the superior court for the dissolution of their marriage under AS 25.24.200 - 25.24.260 if the following conditions exist at the time of filing the petition:

(1) incompatibility of temperament has caused the irremediable breakdown of the marriage;

(2) if there are unmarried children of the marriage under the age of 19 or the wife is pregnant, and the spouses have agreed on which spouse or third party is to be awarded custody of each minor child of the marriage and the extent of visitation, including visitation by grandparents and other persons if in the child's best interests, and support to be provided on the children's behalf, whether the payments are to be made through the child support enforcement agency and the tax consequences of that agreement;

(3) the spouses have agreed as to the distribution of all **real and personal property that is** jointly owned **or community** [REAL AND PERSONAL] property **under AS 34.75**, including retirement benefits [,] and the payment of spousal maintenance, if any, and the tax consequences resulting from these payments; the agreement must be fair and just and take into consideration the factors listed in AS 25.24.160(a)(2) and (4) so that the economic effect of dissolution is fairly allocated; and

(4) the spouses have agreed as to the payment of all unpaid obligations incurred by either or both of them [,] and as to payment of obligations incurred jointly in the future.

* Sec. 8. AS 25.24.310(b) is amended to read:

(b) If custody, support, or visitation is at issue, the order for costs, fees, and disbursements shall be made against either or both parents, except that, if one of the parties responsible for the costs is indigent, the costs, fees, and disbursements for that party shall be borne by the state. If the parents are only temporarily without funds, the office of public advocacy shall provide legal representation or other services required by the court. The attorney general is responsible for enforcing collections owed the state. Repayment shall be made to the Department of Revenue under AS 37.10.050 for deposit in the general fund. The court shall, if possible, avoid

assigning costs to only one party by ordering that costs of the minor's legal representation or other services be paid from proceeds derived from a sale of **joint, community, or individual** property **of the** [BELONGING JOINTLY OR INDIVIDUALLY TO BOTH] parties [,] before a division of property is made.

*** Sec. 9.** AS 34.15.110 is amended to read:

Sec. 34.15.110. Conveyances construed as creating tenancy in common. (a) A conveyance or devise of land or an interest in land made to two or more persons, other than to executors and trustees, as such, shall be construed to create a tenancy in common in the estate, except as provided in (b) of this section **and AS 34.75.100**.

(b) A husband and wife who acquire title in real property hold the estate as tenants by the entirety, **except as provided by AS 34.75.100 or** unless it is expressly declared otherwise in the conveyance or devise. The conveyance shall recite the marital status of the parties acquiring title to the real property.

*** Sec. 10.** AS 34.15.130 is amended to read:

Sec. 34.15.130. Joint tenancy abolished. Joint tenancy, with the exception of interests in personalty and tenancy by the entirety, is abolished. Except as provided in AS 34.15.110(b) **and AS 34.75.100**, persons having an undivided interest in real property are considered tenants in common.

*** Sec. 11.** AS 34 is amended by adding a new chapter to read:

Chapter 75. Community Property Act.

Sec. 34.75.010. Good faith requirement. A spouse shall act in good faith with respect to the other spouse in matters involving community property. The obligation under this section may not be varied by a community property agreement or a community property trust.

Sec. 34.75.020. Variation by marital property agreement. Except as provided in AS 34.75.010, 34.75.070(h), 34.75.080(b), and 34.75.090(c), a community property agreement or a community property trust may vary the effect of this chapter.

Sec. 34.75.030. Classification of property of spouses. (a) Except for property that is classified otherwise in this chapter, property of spouses is community property under this chapter only to the extent provided in a community property

agreement or a community property trust.

(b) If a community property agreement provides that all property acquired by either or both spouses during the marriage is community property, the property of the spouses acquired during the marriage and after the determination date is presumed to be community property.

(c) A spouse has a present undivided one-half interest in community property.

(d) If the community property agreement provides that all property acquired by either or both spouses during the marriage is community property, income earned or accrued by a spouse or attributable to property of a spouse during marriage and after the determination date is community property.

(e) Community property transferred to a trust remains community property.

(f) Whether or not the community property agreement provides that all property acquired by either or both spouses during the marriage is community property, property that is owned by a spouse at the time of a marriage but before the determination date is not community property except to the extent otherwise expressly provided in the community property agreement.

(g) Whether or not the community property agreement provides that all property acquired by either or both spouses during the marriage is community property, and except to the extent otherwise expressly provided in the community property agreement, property acquired by a spouse during marriage and after the determination date is individual property if acquired

(1) by gift or a disposition at death made by a third person to the spouse and not to both spouses;

(2) in exchange for or with the proceeds of other individual property of the spouse;

(3) from appreciation or income of the spouse's individual property except to the extent that the income or appreciation is classified as community property under AS 34.75.130;

(4) by a decree, community property agreement, written consent, or reclassification under AS 34.75.060(b) designating it as the individual property of the spouse;

(5) as a recovery for damage to property under AS 34.75.140, except as specifically provided otherwise in a decree, community property agreement, or written consent; or

(6) as a recovery for personal injury, except for the amount of the recovery attributable to expenses paid or otherwise satisfied from community property.

(h) Appreciation and income of property transferred to a community property trust is community property if declared in the trust to be community property.

(i) Community property held by a community property trust or another trust remains community property of the spouses if distributed to the spouses.

(j) Except as provided otherwise in this chapter, this chapter does not alter the classification and ownership rights of property acquired before or during the marriage.

Sec. 34.75.040. Management and control of property of spouses. (a) A spouse acting alone may manage and control

(1) that spouse's property that is not community property;

(2) except as provided in (c) of this section, community property held in that spouse's name alone or not held in the name of either spouse;

(3) a policy of insurance if that spouse is designated as the owner on the records of the issuer of the policy;

(4) the rights of an employee under an arrangement for deferred employment benefits that accrue as a result of that spouse's employment;

(5) a claim for relief vested in that spouse by other law;

(6) community property held in the names of both spouses in the alternative, including using the names of both spouses with the word "or."

(b) Spouses may not manage and control community property held in the names of both spouses other than in the alternative unless they act together.

(c) The right to manage and control community property that is transferred to a trust, including property that is community property under the trust, is determined by the terms of the trust.

(d) The right to manage and control community property does not determine the classification of property of the spouses and does not rebut the presumption of AS 34.75.030(b).

(e) The right to manage and control community property does not permit gifts of the property, except to the extent provided in AS 34.75.050.

(f) Except to the extent otherwise expressly provided in a community property agreement or a community property trust, the right to manage and control the property of spouses is not affected by this chapter if the property is acquired before the determination date.

(g) A court may appoint a conservator or guardian to exercise a disabled spouse's right to manage and control community property.

Sec. 34.75.050. Gifts of community property to third persons. (a) A spouse acting alone may not give to a third person community property that the spouse has the right to manage and control unless the value of the community property given to the third person does not aggregate more than $1,000 in a calendar year, or a larger amount if, when made, the gift is reasonable in amount considering the economic position of the spouses.

(b) A gift of community property to a third person that is not allowed under (a) of this section is subject to (d) of this section unless both spouses act together in making the gift or the other spouse ratifies the gift.

(c) Reporting any part of a gift made by the other spouse on a United States gift tax return under 26 U.S.C. 2501 - 2524 or consenting to the treatment of a gift under 26 U.S.C. 2513 (Internal Revenue Code) by signing the consent on the other spouse's United States gift tax return is treated as the spouses acting together in making the gift.

(d) If a gift of community property by a spouse does not comply with (a) of this section, the other spouse may bring the action against the donating spouse, the recipient of the gift, or both. The action must be commenced within the earlier of one year after the other spouse has notice of the gift or three years after the gift. If the recovery occurs during marriage, it is community property. If the recovery occurs after a dissolution or the death of either spouse, the recovery may not exceed one-half of the value of the gift and is individual property.

Sec. 34.75.060. Certain property transactions between spouses. (a) While both spouses are domiciled in this state, spouses may classify any or all of their

property as community property in a community property agreement.

(b) Whether or not both, one, or neither is domiciled in this state, spouses may classify any or all of their property as community property by transferring property to a community property trust and providing in the trust that the property is community property.

Sec. 34.75.070. Obligations of spouses. (a) An obligation incurred by a spouse during marriage, including an obligation attributable to an act or omission during marriage, is presumed to be incurred in the interest of the marriage or the family.

(b) After the determination date, a spouse's obligation to satisfy a duty of support owed to the other spouse or to a child of the marriage may be satisfied only from community property and the other property of the obligated spouse that is not community property.

(c) After the determination date, an obligation incurred by a spouse in the interest of the marriage or the family may be satisfied only from community property and the other property of that spouse that is not community property.

(d) After the determination date, an obligation incurred by a spouse before or during marriage that is attributable to an obligation arising before marriage or to an act or omission occurring before marriage may be satisfied only from property of that spouse that is not community property and from that part of community property that would have been the property of that spouse but for the marriage and the classification of the property as community property under this chapter.

(e) After the determination date, an obligation, except an obligation covered by (b) - (d) of this section, that is incurred by a spouse during marriage, including an obligation attributable to an act or omission during marriage, may be satisfied only from property of that spouse that is not community property and from that spouse's interest in community property.

(f) This chapter does not alter the relationship between spouses and their creditors with respect to property or an obligation in existence before the determination date.

(g) A writing that is signed by a creditor and that reduces a creditor's rights

under this section is binding on the creditor.

(h) A provision of a community property agreement or a community property trust does not adversely affect the interest of a creditor unless the creditor has actual knowledge of the provision when the obligation to the creditor is incurred. The effect of this subsection may not be varied by a community property agreement or a community property trust.

(i) This chapter does not affect an exemption provided under other law for the property of spouses.

Sec. 34.75.080. Protection of bona fide purchasers dealing with spouses. (a) Notice of the existence of a community property agreement, a community property trust, a marriage, or the termination of a marriage does not affect the status of a purchaser as a bona fide purchaser.

(b) Community property purchased by a bona fide purchaser from a spouse having the right to manage and control the property under AS 34.75.040 is acquired free of any claim of the other spouse. The effect of this subsection may not be varied by a community property agreement or a community property trust.

(c) In this section,

(1) "bona fide purchaser" means a purchaser of property for value who has not knowingly been a party to fraud or illegality affecting the interest of the spouses or other parties to the transaction, does not have notice of an adverse claim by a spouse, and has acted in the transaction in good faith; in this paragraph, a purchaser gives "value" for property if the property is acquired

(A) in return for a binding commitment to extend credit;

(B) as security for or in total or partial satisfaction of a preexisting claim;

(C) by accepting delivery under a preexisting contract for purchase; or

(D) in return for other consideration sufficient to support a contract;

(2) "purchaser" means a person who acquires property by sale, lease, discount, negotiation, mortgage, pledge, or lien, or otherwise deals with property in a

voluntary transaction other than making a gift.

Sec. 34.75.090. Community property agreement. (a) A community property agreement must be contained in a written document signed by both spouses and classify some or all of the property of the spouses as community property. It is enforceable without consideration.

(b) A community property agreement must contain the following language in capital letters at the beginning of the agreement:

THE CONSEQUENCES OF THIS AGREEMENT MAY BE VERY EXTENSIVE, INCLUDING, BUT NOT LIMITED TO, YOUR RIGHTS WITH RESPECT TO CREDITORS AND OTHER THIRD PARTIES, AND YOUR RIGHTS WITH YOUR SPOUSE BOTH DURING THE COURSE OF YOUR MARRIAGE AND AT THE TIME OF A DIVORCE. ACCORDINGLY, THIS AGREEMENT SHOULD ONLY BE SIGNED AFTER CAREFUL CONSIDERATION. IF YOU HAVE ANY QUESTIONS ABOUT THIS AGREEMENT, YOU SHOULD SEEK COMPETENT ADVICE.

(c) A community property agreement may not adversely affect the right of a child to support.

(d) Except as provided in AS 34.75.020, 34.75.070(h), 34.75.080(b), and (c) of this section, in a community property agreement, spouses may agree

(1) on the rights and obligations in the property, notwithstanding when and where the property is acquired and located;

(2) on the management and control of their property;

(3) on the disposition of their property on dissolution, death, or the occurrence or nonoccurrence of another event;

(4) on making a will, trust, or other arrangement to carry out the agreement;

(5) that, upon the death of either of them, any of their property, including after-acquired property, passes without probate to a designated person, trust, or other entity by nontestamentary disposition;

(6) on the choice of law governing the interpretation of the agreement; and

(7) on any other matter that affects their property and does not violate public policy or a statute imposing a criminal penalty.

(e) A community property agreement may not be amended or revoked unless the agreement itself provides for revocation on a particular date or on the occurrence of a particular event, or unless the agreement is amended or revoked by a later community property agreement. To amend or revoke the agreement, the later community property agreement is not required to declare any property of the spouses as community property. The amended agreement or the revocation is enforceable without consideration.

(f) Persons intending to marry each other may enter into a community property agreement as if married, but the agreement does not become effective until the persons are married.

(g) A community property agreement executed during marriage is not enforceable if the spouse against whom enforcement is sought proves that

(1) the agreement was unconscionable when made;

(2) the spouse against whom enforcement is sought did not execute the agreement voluntarily; or

(3) before execution of the agreement, the spouse against whom enforcement is sought

(A) was not given a fair and reasonable disclosure of the property and financial obligations of the other spouse;

(B) did not voluntarily sign a written consent expressly waiving the right to disclosure of the property and financial obligations of the other spouse beyond the disclosure provided; and

(C) did not have notice of the property or financial obligations of the other spouse.

(h) A community property agreement executed before marriage is not enforceable if the spouse against whom enforcement is sought proves that

(1) the spouse against whom enforcement is sought did not execute the

agreement voluntarily; or

(2) the agreement was unconscionable when made and, before execution of the agreement, the spouse against whom enforcement is sought

(A) was not given a fair and reasonable disclosure of the property and financial obligations of the other spouse;

(B) did not voluntarily sign a written consent expressly waiving the right to disclosure of the property and financial obligations of the other spouse beyond the disclosure provided; and

(C) did not have notice of the property or financial obligations of the other spouse.

(i) Whether or not a community property agreement is unconscionable is determined by a court as a matter of law.

Sec. 34.75.100. Community property trust. (a) An arrangement is a community property trust if one or both spouses transfer property to a trust, the trust expressly declares that some or all the property transferred is community property under this chapter, and at least one trustee is a qualified person whose powers include or are limited to maintaining records for the trust on an exclusive or a nonexclusive basis and preparing or arranging for the preparation of, on an exclusive or a nonexclusive basis, any income tax returns that must be filed by the trust. A community property trust is enforceable without consideration. Both spouses or either spouse may be a trustee. The trust must be signed by both spouses. In this subsection, "qualified person" means

(1) an individual

(A) who, except for brief intervals, military service, attendance at an educational or training institution, or absences for good cause shown, resides in this state;

(B) whose true and permanent home is in this state;

(C) who does not have a present intention of moving from this state; and

(D) who intends to return to this state when away;

(2) a trust company that is organized under AS 06.25 and that has its

principal place of business in this state; or

(3) a bank that is organized under AS 06.05 or a national banking association that is organized under 12 U.S.C. 21 - 216d if the bank or national banking association possesses and exercises trust powers and has its principal place of business in this state.

(b) A community property trust must contain the following language in capital letters at the beginning of the trust:

THE CONSEQUENCES OF THIS TRUST MAY BE VERY EXTENSIVE, INCLUDING, BUT NOT LIMITED TO, YOUR RIGHTS WITH RESPECT TO CREDITORS AND OTHER THIRD PARTIES, AND YOUR RIGHTS WITH YOUR SPOUSE BOTH DURING THE COURSE OF YOUR MARRIAGE AND AT THE TIME OF A DIVORCE. ACCORDINGLY, THIS AGREEMENT SHOULD ONLY BE SIGNED AFTER CAREFUL CONSIDERATION. IF YOU HAVE ANY QUESTIONS ABOUT THIS AGREEMENT, YOU SHOULD SEEK COMPETENT ADVICE.

(c) A community property trust may not adversely affect the right of a child to support.

(d) Except as provided in AS 34.75.010, 34.75.070(h), 34.75.080(b), and in (c) of this section, in a community property trust spouses may agree on

(1) the rights and obligations in the property transferred to the trust, notwithstanding when and where the property is acquired or located;

(2) the management and control of the property transferred to the trust;

(3) the disposition of the property transferred to the trust on dissolution, death, or the occurrence or nonoccurrence of another event;

(4) the choice of law governing the interpretation of the trust; and

(5) any other matter that affects the property transferred to the trust and does not violate public policy or a statute imposing a criminal penalty.

(e) A community property trust may not be amended or revoked unless the agreement itself provides for revocation on a particular date or on the occurrence of

a particular event or unless the agreement is amended or revoked by a later community property trust. To amend or revoke the trust, the later community property trust is not required to declare any property held by the trustee as community property. The amended trust or the revocation is enforceable without consideration.

(f) A community property trust executed during marriage is not enforceable if the spouse against whom enforcement is sought proves that

(1) trust was unconscionable when made; or

(2) the spouse against whom enforcement is sought did not execute the community property trust agreement voluntarily; or

(3) before execution of the community property trust agreement, the spouse against whom enforcement is sought

(A) was not given a fair and reasonable disclosure of the property and financial obligations of the other spouse;

(B) did not voluntarily sign a written waiver expressly waiving right to disclosure of the property and financial obligations of the other spouse beyond the disclosure provided; and

(C) did not have notice of the property or financial obligations of the other spouse.

(g) Whether or not a community property trust is unconscionable is determined by a court as a matter of law.

(h) The trustee of a community property trust shall maintain records that identify which property held by the trust is community property and which property held by the trust is not community property.

Sec. 34.75.110. Forms of holding property. (a) Spouses may hold community property in a form that designates the holders of it by the words "(name of one spouse) or (name of other spouse) as community property." Community property held in this form is subject to AS 34.75.040(a)(6).

(b) Spouses may hold community property in a form that designates the holder of it by the words "(name of one spouse) and (name of other spouse) as community property." Community property held in this form is subject to AS 34.75.040(b).

(c) A spouse may hold individual property in a form that designates the holder

of it by the words "(name of spouse) as individual property." Individual property held in this form is subject to AS 34.75.040(a)(1).

(d) Spouses may hold property in any other form permitted by law, including a concurrent form or a form that provides for survivorship ownership.

(e) If the words "survivorship community property" are used instead of the words "community property" in the form described in (a) or (b) of this section, the community property is survivorship community property. On the death of a spouse, the ownership rights of that spouse in survivorship community property vest solely in the surviving spouse by nontestamentary disposition at death. The first deceased spouse does not have a right of disposition at death of any interest in survivorship community property. Holding community property in a form described in (a) or (b) of this section does not by itself establish survivorship ownership between the spouses for the property held in that form.

Sec. 34.75.120. Classification of life insurance policies and proceeds. (a) If a policy issuer makes payments or takes actions in accordance with the policy and the issuer's records, the issuer is not liable because of the payments or actions unless, at the time of the payments or actions, the issuer had actual knowledge of inconsistent provisions of a community property agreement, a community property trust, a decree relating to a community property agreement or a community property trust, or an adverse claim that is brought by a spouse, former spouse, surviving spouse, or persons claiming under a deceased spouse's disposition at death and that relates to a community property agreement or a community property trust.

(b) Except as provided in (c) - (e) of this section,

(1) the ownership interest in and proceeds of a policy that insures the life of one of the spouses and that has been classified by a community property agreement or a community property trust as community property are community property without regard to the classification of property used to pay premiums on the policy;

(2) the ownership interest in and proceeds of a policy that is owned by one spouse and that has not been classified by a community property agreement or a community property trust as community property are mixed property if all or part of

a premium on the policy is paid from community property after the determination date; the community property component of the ownership interest and proceeds is the part resulting from multiplying the entire ownership interest and proceeds by a fraction that consists of a numerator that is the sum of the net premiums and portions of net premiums paid from community property and a denominator that is the sum of the net premiums paid;

(3) the ownership interest in and proceeds of a policy issued during marriage that designates the spouse of the insured as the owner are the individual property of the owner without regard to the classification of property used to pay premiums on the policy;

(4) the ownership interest in and proceeds of a policy that designates a person other than either of the spouses as the owner are not affected by this chapter if a premium on the policy is not paid from community property after the determination date; if all or part of a premium on the policy is paid from community property after the determination date, the ownership interest and proceeds of the policy are in part property of the designated owner of the policy and in part community property of the spouses without regard to the classification of property used to pay premiums on the policy after the initial payment of a premium on the policy from community property; the community property component of the ownership interest and proceeds is the part resulting from multiplying the entire ownership interest and proceeds by a fraction that consists of a numerator that is the sum of the net premiums and portions of net premiums paid from community property and a denominator that is the sum of the net premiums paid;

(5) written consent by a spouse to the designation of another person as the beneficiary of the proceeds of a policy is effective to relinquish that spouse's interest in the ownership interest and proceeds of the policy without regard to the classification of property used by a spouse or another person to pay premiums on the policy; a designation by either spouse of a parent or child of either of the spouses as the beneficiary of the proceeds of a policy is presumed to have been made with the consent of the other spouse;

(6) unless the spouses provide otherwise in a community property

agreement or community property trust, designation of a trust as the beneficiary of the proceeds of a policy with a community property component does not reclassify the component.

(c) This section does not affect a creditor's interest in the ownership interest or proceeds of a policy assigned or made payable to the creditor as security.

(d) The interest of a person as owner or beneficiary of a policy acquired under a decree or property settlement agreement incident to a prior marriage or parenthood is not community property notwithstanding the classification of property used to pay premiums on the policy.

(e) This section does not affect the ownership interest or proceeds of a policy unless a spouse is designated as an owner in the policy or on the records of the policy issuer and community property is used to pay a premium on the policy.

(f) In this section,

(1) "owner" means a person appearing on the records of a policy issuer as the person having the ownership interest, or, if a person other than the insured does not appear on the records as a person having the interest, "owner" means the insured;

(2) "ownership interest" means the rights of an owner under a policy;

(3) "policy" means an insurance policy insuring the life of a spouse and providing for payment of death benefits at the spouse's death;

(4) "proceeds" means the death benefit from a policy and all other economic benefits from the policy, whether the economic benefits accrue or become payable as a result of the death of an insured person or upon the occurrence or nonoccurrence of another event.

Sec. 34.75.130. Mixed property. (a) Except as provided otherwise in AS 34.75.110, mixing community property with property having another classification reclassifies the other property as community property unless the component of the mixed property that is not community property can be traced.

(b) If a community property agreement provides that all property acquired by either or both spouses during marriage is community property, application by one spouse of substantial labor, effort, inventiveness, physical skill, intellectual skill, creativity, or managerial activity on individual property of the other spouse creates

community property attributable to the application if

(1) reasonable compensation is not received for the application; and

(2) substantial appreciation of the individual property of the other spouse results from the application.

Sec. 34.75.140. Interspousal Remedies. (a) A spouse has a claim against the other spouse for breach of the good faith requirement under AS 34.75.010 resulting in damage to the claimant spouse's present undivided one-half interest in community property.

(b) If the spouses have signed a community property agreement or a community property trust, a court may order an accounting of the property and obligations of the spouses and may determine rights of ownership in, beneficial enjoyment of, or access to marital property and the classification of all property of the spouses.

(c) A court may order that the name of a spouse be added to community property held in the name of the other spouse alone, except

(1) a partnership interest held by the other spouse as a general partner;

(2) an interest in a professional corporation, professional association, or similar entity held by the other spouse as a stockholder or member;

(3) an asset of an unincorporated business if the other spouse is the only spouse involved in operating or managing the business; or

(4) other property if the addition would adversely affect the rights of a third person.

(d) Except as provided otherwise in AS 34.75.050(d), a spouse must begin an action against the other spouse under (a) of this section within three years after acquiring actual knowledge of the facts giving rise to the claim.

Sec. 34.75.150. Treatment of certain property at death of spouse. If a community property agreement provides that all property acquired by either or both spouses during marriage is community property, at the death of a spouse domiciled in this state, property of the spouse that can be traced to property received by the spouse after the determination date as a recovery for a loss of earning capacity during marriage shall be treated as if it were community property.

Sec. 34.75.160. Uniformity of application and construction. This chapter shall be applied and construed to effectuate its general purpose and to make uniform the law with respect to the subject of this chapter among states enacting it.

Sec. 34.75.900. Definitions. In this chapter,

(1) "acquire" in relation to property includes obtaining reductions of indebtedness on encumbered property and obtaining a lien on or a security interest in property;

(2) "appreciation" means a realized or unrealized increase in the value of property;

(3) "community property" means property owned jointly by both spouses under a community property agreement or a community property trust;

(4) "community property agreement" means an agreement that complies with AS 34.75.090;

(5) "community property trust" means an express trust that complies with AS 34.75.100;

(6) "decree" means a judgment or other order of a court;

(7) "determination date" means the later of

(A) marriage;

(B) the effective date of a community property agreement or a community property trust; or

(C) the effective date of this Act;

(8) "disposition at death" means the transfer of property by will, intestate succession, nontestamentary transfer, or other means that take effect at the transferor's death;

(9) "dissolution" means

(A) termination of a marriage by a decree of dissolution, divorce, annulment, or declaration of invalidity; or

(B) entry of a decree of legal separation or separate maintenance;

(10) "during marriage" means a period that begins at marriage and ends at divorce, dissolution, or the death of a spouse;

(11) "held" means the registration, recordation, or filing by a person in a public office in the name of the person of a document of title to property, or the issuance in the person's name of a writing that customarily operates as a document of title to the property;

(12) "income" means dividends, interest, and net rents and other net returns attributable to investment, rental, licensing, or other use of property unless attributable to a return of capital or to appreciation;

(13) "management and control" means the right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, institute or defend a civil action regarding, or otherwise deal with property as if the property is the property of an unmarried person;

(14) "notice" of a fact means a knowledge of it, receipt of a notification of it, or reason to know that it exists from the facts and circumstances known to the person;

(15) "presume" or a "presumption" means the imposition on the person against whom the presumption or presumed fact is directed of the burden of proving that the nonexistence of the presumed fact is more probable than its existence;

(16) "property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property;

(17) "written waiver" means a document signed by a person against whose interests it is sought to be enforced.

Sec. 34.75.995. Short Title. This chapter may be cited as the "Alaska Community Property Act."

*** Sec. 12.** COURT RULE. AS 34.75.900(15), enacted by sec. 11 of this Act, changes Rule 301, Alaska Rules of Evidence, by changing the effect of presumptions established under AS 34.75.

*** Sec. 13.** AS 34.75.900(15), enacted by sec. 11 of this Act, takes effect only if sec. 12 of this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

*** Sec. 14.** Except as provided by sec. 13 of this Act, this Act takes effect immediately under AS 01.10.070(c).

#70788 TO ANC

AMENDMENT

BY REPRESENTATIVE CROFT

OFFERED IN HOUSE JUDICIARY

TO: HB 199

Page 2, line 19, following (d):

Delete all material.

Insert "When distributing property identified as community property under a community property agreement or trust under 34.75, unless the parties have provided in the agreement or trust for another disposition of the community property, the court shall make such disposition of the community property as shall appear just and equitable after considering all relevant factors including, but not limited to

(1) the nature and extent of the community property;

(2) the nature and extent of the separate property;

(3) the duration of the marriage; and

(4) the economic circumstances of each spouse at the time the division of property is to become effective, including the desirability of awarding the family home or right to live therein for reasonable periods to a spouse with whom the children reside the majority of the time."

#70788 ANC

AMENDMENT

BY REPRESENTATIVE CROFT

OFFERED IN HOUSE JUDICIARY

TO: HB 199

Page 4, line 22:

Delete "34.75.090(b)"

Insert "34.75.090(c)"

Page 9, following line 31:

Insert a new subsection to read:

"(b) A community property agreement must contain the following language in capital letters at the beginning of the agreement:

THE CONSEQUENCES OF THIS AGREEMENT MAY BE VERY EXTENSIVE, INCLUDING, BUT NOT LIMITED TO, YOUR RIGHTS WITH RESPECT TO CREDITORS AND OTHER THIRD PARTIES, AND YOUR RIGHTS WITH YOUR SPOUSE BOTH DURING THE COURSE OF YOUR MARRIAGE AND AT THE TIME OF A DIVORCE. ACCORDINGLY, THIS AGREEMENT SHOULD ONLY BE SIGNED AFTER CAREFUL CONSIDERATION. IF YOU HAVE ANY QUESTIONS ABOUT THIS AGREEMENT, YOU SHOULD SEEK COMPETENT ADVICE."

Reletter the following subsections accordingly.

Page 10, lines 3 - 4:

Delete "(b) of this section"

Insert "(c) of this section"

Page 12, following line 19:

Insert a new subsection to read:

"(b) A community property trust must contain the following language in capital letters at the beginning of the trust:

#70788 ANC

THE CONSEQUENCES OF THIS TRUST MAY BE VERY EXTENSIVE, INCLUDING, BUT NOT LIMITED TO, YOUR RIGHTS WITH RESPECT TO CREDITORS AND OTHER THIRD PARTIES, AND YOUR RIGHTS WITH YOUR SPOUSE BOTH DURING THE COURSE OF YOUR MARRIAGE AND AT THE TIME OF A DIVORCE. ACCORDINGLY, THIS AGREEMENT SHOULD ONLY BE SIGNED AFTER CAREFUL CONSIDERATION. IF YOU HAVE ANY QUESTIONS ABOUT THIS AGREEMENT, YOU SHOULD SEEK COMPETENT ADVICE."

Reletter the following subsections accordingly.

Page 12, lines 22 - 23:

Delete "(b) of this section"

Insert "(c) of this section"

LAW OFFICES OF
DAVID G. SHAFTEL, PC
BANK OF AMERICA CENTER
550 WEST SEVENTH AVENUE, SUITE 706
ANCHORAGE, ALASKA 99501
(907) 276-6015
FAX (907) 278-6015

May 5, 1997

VIA FACSIMILE
(907) 465-4316

Representative Norm Rokeburg
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Rokeburg:

I urge you to vote favorably on House Bill No. 199, The Community Property Act. This Act would allow spouses to elect to have part or all of their property treated as community property. As a result, Alaska spouses would obtain an important income tax benefit which is presently available only to couples living in community property states. This benefit would allow the basis of both spouses' property to be adjusted to the fair market value of that property, at the date of death of the first spouse. As a result, the surviving spouse could sell property without having to pay income tax on the difference between the original basis and the fair market value at the date of the first spouses' death.

Since the benefits of this Act are elective, it could only affect those couples who choose to use it. I am not aware of any disadvantages in enacting this Act.

I appreciate very much your consideration in this matter.

Sincerely,

David G. Shaftel

DGS/lm

AMENDMENT

BY REPRESENTATIVE CROFT

OFFERED IN HOUSE JUDICIARY

TO: HB 199

Page 2, line 19, following (d):

Delete all material.

Insert "When distributing property identified as community property under a community property agreement or trust under 34.75, unless the parties have provided in the agreement or trust for another disposition of the community property, the court shall make such disposition of the community property as shall appear just and equitable after considering all relevant factors including, but not limited to

(1) the nature and extent of the community property;

(2) the nature and extent of the separate property;

(3) the duration of the marriage; and

(4) the economic circumstances of each spouse at the time the division of property is to become effective, including the desirability of awarding the family home or right to live therein for reasonable periods to a spouse with whom the children reside the majority of the time."

HOMPESCH & ASSOCIATES

ATTORNEYS AT LAW
A PROFESSIONAL CORPORATION
DENALI FINANCIAL CENTER
119 N. CUSHMAN STREET, SUITE 400
FAIRBANKS, ALASKA 99701

FACSIMILE TRANSMITTAL

WARNING:

The information contained in this fax is confidential and/or privileged. This fax is intended to be reviewed initially by only the individual named below. If the reader of this transmittal page is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination or copying of this fax or the information contained herein is prohibited. If you have received this fax in error, please immediately notify the sender by telephone and return this fax to the sender at the above address. Thank you.

May 2, 1997 Time: 8:00 p.m.

Sent By: Rich Hompesch
Re: HB 199 /// McCollum v. U.S.

FROM:		TO:	
Name:	Richard W. Hompesch II	Name:	Joe Green
Company:	HOMPESCH & ASSOCIATES A PROFESSIONAL CORPORATION	Company:	State Representative
Phone:	(907) 452-1700	Fax:	(907) 465-4316
Fax:	(907) 456-5693		

Total Number of Pages: 6

Special Instructions or Additional Message:

Representative Green:

Here is a copy of the case that Dick Thwaites mentioned in his memo about HB 199. If you have any questions, please give me a call.

Original Documents to Follow via:

(_____) Mail (_____) Other:_____

(_____) No Documents to Follow This Transaction.

determination, under local law, of a taxpayer's property rights is binding for Federal tax purposes, and it was the clear intent of the Oklahoma law that all married persons, who filed elections to come under it, hold their property from the date of their election as community property; (3) this being so, the property sold by the widow was acquired by her by bequest, devise or inheritance within the meaning of Sec. 113(a)(5).

References: 1958 P-H Fed. ¶ 10,449; 10,450.

Counsel

TopOfCase

Carl D. Hall, Jr., 2700 First Nat. Bldg., Oklahoma City 2, Okla. Atty. for Plaintiff.

Robert S. Rizley, U.S. Atty., 335 Federal Bldg., Tulsa, Deane E. McCormack, Jr., Asst.

Atty. Gen., Wash., D.C., for Defendant.

Opinion

TopOfCase

SAVAGE, District Judge:

Findings of Fact and Conclusions of Law

This cause having been carefully considered by the Court upon the pleadings, evidence presented by both Plaintiffs and Defendant, stipulations, answers to Requests for Admissions, and briefs of counsel, the Plaintiffs herein being represented by their attorneys, Mosteller, Fellers, Andrews & Loving, and Defendant being represented by its attorney, Deane E. McCormack, Jr., Attorney for the Tax Division, Department of Justice; the Court herewith enters its Findings of Fact and Conclusions of Law.

Findings of Fact

1. This is an income tax case arising under the 1939 Internal Revenue Code, as amended.

2. Plaintiff, Irma McCollum, Executrix of the Estate of J. W. McCollum, Deceased, is the duly appointed Executrix of said estate, having been so appointed by the County Judge of Tulsa County, Oklahoma.

3. Irma McCollum is the surviving spouse of J. W. McCollum, Deceased.

4. Irma McCollum and J. W. McCollum were married in 1922.

5. In March of 1943 Irma McCollum and J. W. McCollum filed their election to come under the provisions of the Oklahoma Community Property Law as set forth in Title 32, Sections 51, 52 and 53, Oklahoma Statutes 1941.

6. On October 11, 1943, the following described real property was purchased by Irma McCollum and J. W. McCollum for consideration in excess of $25,000.00, and was conveyed to them as joint tenants by H. P. Warfield and Ella Warfield:

> The Northwest Quarter (NW/4) of the Northwest Quarter (NW/4) of Section Thirty-One (31), Township Nineteen (19) North, Range Thirteen (13) East in Tulsa County, State of Oklahoma.

7. On July 23, 1948, J. W. McCollum died.

8. On October 25, 1948, his surviving spouse, Irma McCollum, sold the above described

real estate for $75,000.00.

9. The fair market value of said above described property on the date of J. W. McCollum's death was $75,000.00.

10. One-half (1/2) of the above figure, $37,500.00, was included in J. W. McCollum's gross estate for Federal Estate Tax purposes.

11. On March 15, 1949, Plaintiffs filed in the office of the Collector of Internal Revenue for the District of Oklahoma, their Federal Income Tax Return for the calendar year 1948 and paid the taxes shown to be due thereon in the amount of $2,462.98. In said Return, filed on March 15, 1949, Plaintiffs reported gain on the sale of the aforementioned described real property in the amount of $20,777.20.

12. In computing said gain Plaintiffs deducted from the sales price the sum of $37,500.00 as representing the alleged basis of the one-half (1/2) interest received by the Estate from J. W. McCollum, plus the sum of $15,817.78, representing Irma McCollum's alleged basis in her one-half (1/2) interest in the property.

13. On March 28, 1949, Plaintiffs filed <pg 6172> an Amended Tax Return for the year 1948, alleging that Plaintiffs had overpaid their income tax for 1948 and claiming a refund of $2,070.00. In the Amended Return Plaintiffs reported no gain on the sale of the above described real property, claiming as a basis for gain or loss of said property its entire fair market value on the date of J. W. McCollum's death.

14. On May 17, 1951, the Collector of Internal Revenue assessed additional income tax to Plaintiffs in the amount of $3,274.66 for the calendar year 1948. Among the adjustments made was one relating to the increase of the capital gain on the sale of the property described in paragraph six (6) above.

15. Plaintiffs paid said deficiency on June 8, 1951.

16. On March 15, 1952, Plaintiffs filed a claim for refund in the office of the Collector of Internal Revenue for the District of Oklahoma for that part of the tax and tax deficiency paid for the year 1948 attributable to the increase in or any alleged capital gain from the sale of the property described in paragraph six (6) above.

17. Statutory notice of the disallowance of said claim, filed on March 15, 1952, was never given by the Commissioner of Internal Revenue. Plaintiffs' suit was brought solely on this claim.

18. The amount of tax alleged by Plaintiffs to have been illegally assessed and collected for the year 1948 results from the action of the Commissioner in adding on to the taxable income of Plaintiffs, an item of $21,229.72, representing fifty (50%) per cent of the alleged capital gain of $42,459.43, alleged by the Commissioner to have been realized by Plaintiffs on the sale of the real property described in paragraph six (6) above, in 1948.

19. For the calendar years 1943 through 1947, inclusive, Irma McCollum and J. W. McCollum filed Federal and Oklahoma Income Tax Returns reflecting a division of

income between them on the theory that taxpayers held their property as community property.

20. Plaintiffs intended to hold title to the real property sold in 1948 as community property under Oklahoma law.

21. The amount in controversy is $5,326.30, plus interest as allowed by law.

Conclusions of Law

1. The Court has jurisdiction of the parties and of the subject matter of the case.

2. Where a Federal Tax Statute expressly or impliedly describes the taxpayer's property rights as a test of taxability, the existence of that right must be discovered under the controlling local law (Blair v. Comm., 300 U.S. 5 [18 AFTR 1132]; Poe v. Seaborn, 282 U.S. 101 [9 AFTR 576]).

3. Under Section 113(a)(5) of the Internal Revenue Code of 1939, the determination under local law of Plaintiffs' property rights is determinative for tax purposes.

4. The real property sold by Irma McCollum in 1948, after the death of J. W. McCollum, was community property under Oklahoma law on the date of J. W. McCollum's death. (Okla. Laws 1945, pp. 118-121, Sections 1-18).

5. It was the clear intent of Section 18 of Oklahoma Laws 1945, pp. 118-121, that all married couples who filed their election under the provisions of Section 2, Okla. Laws 1939, pp. 356-360, held their property as community property from the effective date of said election. Since J. W. McCollum died in 1948, no problem of retroactive application of the statute is involved.

6. The real property sold by Irma McCollum in 1948, after J. W. McCollum's death, was acquired by bequest, devise, or inheritance within the meaning of Section 113(a)(5) of the Internal Revenue Code of 1939.

7. Plaintiff's basis for computing gain or loss in the real property sold in 1948 was $75,000.00. Therefore, no capital gain was realized by Plaintiffs Plaintiffs when they sold said real property in 1948 for $75,000.00. (Section 113(a)(5), Internal Revenue Code of 1939).

8. The conveyance of the real property to Irma McCollum and J. W. McCollum as joint tenants did not prevent same from being community property under Oklahoma law. (In Re: Trimble's Estate, 253 P.2d 805 (N. Mex. 1953); In Re: Baldwin's Estate, 71 P.2d 791 (Ariz. 1937).

9. Comm. v. Harmon, 323 U.S. 44 [32 AFTR 1411], is inapplicable to the present controversy since that case involved a statute enacted by the Oklahoma <pg 6173> Legislature in 1939 and repealed in 1945.

10. The fact that the real property sold by Plaintiffs was handled by the County Judge in the probate proceeding as jointly held property is not sufficient to rebut the presumption that the property sold by the Plaintiffs was community property at the time of J. W. McCollum's death since such event took place subsequent to J. W. McCollum's death.

11. Both the Internal Revenue Service and the United States Tax Court recognized that the Community Property Law enacted by the Oklahoma Legislature in 1945 (Okla. Laws 1945, pp. 118-121, Sections 1-18) established a valid community property system in Oklahoma (I.T. 3782, C.B. 1946-1, 84; John M. Kane, 11 T.C. 74).

12. The Plaintiffs are entitled to judgment for a refund of $5,326.30, plus interest as allowed by law.

TO: REPRESENTATIVE JOE GREEN

FROM: RICHARD THWAITES

SUBJECT: HB199 (COMMUNITY PROPERTY BILL)

THE FOLLOWING VERIFIES THAT ALASKANS WILL MOST CERTAINLY GET THE DOUBLE STEP UP IN BASIS INCOME TAX BENEFIT IF HB 199 IS ENACTED.

IN 1939, OKLAHOMA ENACTED A LAW WHICH ALLOWED ITS CITIZENS TO ELECT FOR THEIR PROPERTY TO BE COMMUNITY PROPERTY. THIS IS JUST WHAT HB 199 WOULD DO FOR ALASKANS.

SHORTLY AFTER THE LAW WENT INTO EFFECT, MR. AND MRS. MCCOLLUM ELECTED FOR THEIR LAND TO BE COMMUNITY PROPERTY. MR. MCCOLLUM DIED AROUND 1945. IN 1958, IN MCCOLLUM V. UNITED STATES, 58-2 USTC PARA. 9957 (ND OK 1958) THE FEDERAL COURT HELD THAT MRS. MCCOLLUM WAS ENTITLED TO THE DOUBLE STEP UP IN BASIS BECAUSE THE LAND HAD BEEN ELECTED TO BE TREATED AS COMMUNITY PROPERTY BY THE SPOUSES. THE OKLAHOMA LAW IN ATTACHED. RICH HOMPESCH FROM FAIRBANKS IS FAXING YOU A COPY OF THE CASE.

OKLAHOMA REPEALED THIS LAW AROUND 1948 WHEN THE INTERNAL REVENUE CODE FIRST BEGAN TO PERMIT SPOUSES TO FILE JOINT INCOME TAX RETURNS AND TO ALLOW THE ESTATE OF A DECEASED SPOUSE A 50% MARITAL DEDUCTION. THE INTERNAL REVENUE CODE CHANGE AGAIN PUT PEOPLE IN THE COMMUNITY PROPERTY AND NON-COMMUNITY PROPERTY STATES ON EQUAL FOOTING.

BUT IN 1982 THE UNLIMITED (RATHER THAN 50%) MARITAL DEDUCTION CAME INTO EFFECT AND ON ACCOUNT OF THE DOUBLE STEP UP IN BASIS AGAIN GAVE PEOPLE IN COMMUNITY PROPERTY STATES AN ADVANTAGE.

HB 1 WOULD GIVE ALASKANS THE SAME BENEFIT THAT PEOPLE IN THE NINE COMMUNITY PROPERTY STATES ENJOY. PLEASE SUPPORT IT.

ARTICLE 2.

Community Property.

HOUSE BILL NO. 668.

AN ACT making provisions for Community Property Law; providing that the Act shall apply to husbands and wives and their property subsequent to the first day of any month after the filing of an election to come under its terms; providing that the Act shall cease to apply to husbands and wives and their property upon the death of one of them or upon a decree of divorce being rendered; defining the separate property and the community property of the husband and wife; providing for the management, control and disposition thereof and the rights and remedies of creditors in relation thereto; providing that either spouse may give or convey his or her interest in community property to the other; providing for disposition of the community property on dissolution of the marriage; providing for the substitution of one spouse under certain conditions for the other through legal proceedings in the management, control and disposition of community property; providing for the administration and distribution of the interest of a deceased spouse in community property.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

Husband and Wife—Election.

Section 1. This Act shall be available only to and apply only to husbands and wives and to their property for a period of time from the first day of the month in any year subsequent to their filing their written election to come under the terms of this Act until either an absolute decree of divorce is rendered dissolving their marriage, or until the death of one of them.

Written Election—Filing of Instrument.

Section 2. The written election to come under the terms of this Act, referred to in Section 1 of this Act, shall be a written instrument signed and acknowledged in duplicate by both husband and wife, stating in substance that they desire to avail themselves of the Act and have same apply to them and to their property on the first day of the next month in any year subsequent to the filing thereof in both the office of the county clerk and the Secretary of State as hereinafter provided. Acknowledgments shall be in the form, and may be taken before any officer now prescribed by law for acknowledgments to conveyances of real estate. One of the said written instruments shall be filed in the office of the county clerk of the county of the residence of the signers thereof, and one in the office of the Secretary of State. The county clerks and the Secretary of State shall cause all such instruments to be recorded in records kept for that purpose, and to be properly indexed.

Separate Property of Husband.

Section 3. All property, both real and personal, of the husband owned or claimed by him before the effective date of the election to come under the terms of the Act, as provided in Section 1 of this Act, and that acquired afterwards by gift, including gifts of the wife's interest in community property, by division of community property, by devise, or by descent, as also the increase of all lands thus owned or acquired, shall be his separate property. The separate property of the husband shall

not be subject to the debts contracted by the wife or liable for her torts, either before or after the effective date of said election, except as may be permitted by law as to his property prior to the enactment of this Act. The husband shall have the sole management, control and disposition of his separate property, both real and personal, to the extent permitted by law as to his property prior to the enactment of this Act.

Separate Property of Wife.

Section 4. All property, both real and personal, of the wife owned or claimed by her before the effective date of the election to come under the terms of the Act as provided in Section 1 of this Act, and that acquired afterwards by gift, including gifts of the husband's interest in community property, by division of community property, by devise, or by descent, as also the increase of all lands thus owned or acquired, shall be her separate property. The separate property of the wife shall not be subject to the debts contracted by the husband or liable for his torts, either before or after the effective date of said election, except as may be permitted by law as to her property prior to the enactment of this Act. The wife shall have the sole management, control and disposition of her separate property, both real and personal, to the extent permitted by law as to her property prior to the enactment of this Act.

Compensation for Personal Injuries.

Section 5. All property or moneys received as compensation for personal injuries sustained either by the husband or the wife shall be the separate property of the person sustaining such injuries.

Property Acquired After Effective Date of Act.

Section 6. All property acquired by the husband or the wife after the effective date of the election to come under the terms of the Act as provided in Section 1 of this Act, except that which is separate property of either one or the other, shall be deemed the community or common property of the husband and the wife and each, subject to the provisions of this Act, shall be vested with an undivided one-half interest therein. The wife shall have the management and control and may dispose of that portion of the community property consisting of her earnings, all rents, interest, dividends, incomes and other profits for her separate estate and all other community property the title to which stands in her name. The husband shall have the management and control and may dispose of all other community property, provided, however, that the homestead, if community property, shall not be sold, encumbered, or otherwise disposed of, except in the manner as is provided by law prior to the enactment of this Act, and further provided, that any funds on deposit in

any bank or banking institution, whether in the name of the husband or the wife, shall be presumed to be the separate property of the party in whose name they stand, regardless of who made the deposit, and unless said bank or banking institution is notified to the contrary, it shall be governed accordingly in honoring checks and orders against such account.

Wife—Property of Subject to Her Debts.

Section 7. The separate property of the wife and that portion of community property, record title to which is in her name or which is under the management, control and disposition of the wife, shall be subject to debts contracted by the wife arising out of tort, or otherwise, but not to debts or liabilities of the husband. The separate property of the husband and that portion of the community property, record title to which is in his name or which is under the management, control and disposition of the husband shall be subject to debts contracted by the husband or liabilities of the husband arising out of tort or otherwise, but not the debts or liabilities of the wife. The husband and the wife, and each of them, shall be entitled to the exemptions to which they, or either of them, are now entitled under the laws existing prior to the enactment of this Act.

Creditors—Husband and Wife—Rights.

Section 8. No creditor shall have recourse to the community property for the payment of debts or liabilities created by either the husband or the wife, except as provided in Section 7 of this Act; provided, however, that any creditor may satisfy his claim or demand out of the community property which was under the management, control and disposition of the spouse incurring the indebtedness or liability at the time the debt or liability was contracted or created, and which has been subsequently conveyed or transferred to the other spouse and is under the management, control and disposition of said other spouse, without proof that said creditor relied upon said community property in advancing said credit, but without prejudice to the rights of the third party purchasers, incumbrancers, or other creditors or grantees; and provided further, that the husband or wife on paying community debts shall, as between themselves, charge the same against community property.

Deeds—Husband to Wife and Wife to Husband.

Section 9. The husband may give, grant, bargain, sell or convey directly to his wife, and a wife may give, grant, bargain, sell or convey directly to her husband, his or her community right, title, interest or estate in all or any property of their community real or personal property. Every deed and conveyance made from the husband to the wife or from the wife to the husband shall operate to divest the property therein described of every claim or

demand as community property, and shall vest the same in the grantee as the separate property of the grantee; provided, however, that the deeds, conveyances or transfers hereby authorized shall not affect any existing equity in favor of creditors of the grantor at the time of such transfer, gift or encumbrance.

Divorce—Division of Property.

Section 10. In the event of the dissolution of marriage by decree of any court of competent jurisdiction, community property shall be divided between the parties by the court granting the decree, in such proportions as such court, from the facts in the case, shall deem just and equitable, and such division shall be subject to revision on appeal in all respects including the exercise of discretion by the court below.

Insanity or Conviction of Felony—Rights of Spouse.

Section 11. Whenever the husband or the wife is non compos mentis, or has been convicted of a felony or sentenced to imprisonment for a period of more than one year, or whenever the husband has abandoned his wife and family and left her and his family, if they have children, without support, or whenever the husband or the wife is an habitual drunkard, or for any other reason is incapacitated to manage, control, or dispose of the community property, the other spouse may present a petition, duly verified, to the district court of the county wherein they reside, or if they are nonresidents wherein any of the community property is located or situated, stating the name of the incapacitated spouse, a description of all community property, both real and personal, and the facts which render the other spouse incapacitated to manage, control or dispose of the community property, and praying that the spouse filing the petition be substituted for the incapacitated spouse as to the management, control or disposition of the community property then under the management, control and disposition of said spouse with the same power of managing, controlling and disposing of the community property as was vested in the incapacitated spouse.

Service of Process.

Section 12. In all such cases service of process shall be had as in other civil actions, provided, however, that where it is alleged that the other spouse is non compos mentis, a guardian ad litem shall be appointed having such powers as in other civil actions.

Hearing on Petition.

Section 13. Upon the hearing of the petition so filed, the court shall render judgment therein either dismissing said petition or adjudging the spouse filing same to have such power of managing, controlling and disposing of the community property,

either real or personal, formerly under the management, control and disposition of the other spouse as to the court may appear to be just, proper, equitable, and to the best interests of said estate.

Judgments.

Section 14. All judgments rendered as in the preceding Section provided shall be recorded in the office of the county clerk of the county where any property affected thereby is situated and such judgment when so rendered shall be notice of the facts therein set out.

Death of Husband or Wife.

Section 15. Upon the death of the husband or the wife, the surviving spouse shall administer all community property in the same manner and with the same duties, privileges and authority as are vested in a surviving partner to administer and settle the affairs of a partnership upon the death of the other partner, as provided by Section 1197, Oklahoma Statutes, 1931; provided that the surviving husband or wife shall not be disqualified from acting as executor or administrator of the estate of the deceased husband or wife; and provided further, that the survivor of the husband or wife shall pay out of the community property, except the homestead and exempt property, all debts of the community, whether created by the husband or the wife; and provided further, that when all debts of the community shall have been fully satisfied the survivor shall transfer and convey to the administrator or executor of the deceased one-half of the community property remaining to be administered and distributed as other property of the estate either subject to the terms of the will of the deceased or under the laws of descent and distribution as the case may be, and thereafter all the interest of the surviving partner in said community property shall be that of a tenant in common; and provided further, that any interest in a homestead so conveyed shall not be subject to administration under the laws of this State, except in the manner provided by law at the time of the enactment of this Act.

Approved May 10, 1939.

MAY-03-94 SAT 08:24 RB&K FAX NO. 9077890783 P.01

RUDDY, BRADLEY & KOLKHORST
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

Jordan Creek Center
8800 Glacier Highway, Suite 223
P.O. Box 34338
Juneau, AK 99803

William G. Ruddy
James B. Bradley
Kathryn M. Kolkhorst

Telephone (907) 789-0047
Facsimile (907) 789-0783

TO: FACSIMILE PHONE NUMBER(______) 465-4316

DATE: 5/3/97 TIME:

TO: Lisa Fitsch

COMPANY:

RE:

cc:

FROM: Kk

BY:

MESSAGE:

Did you know that Thursday the Family Law Section of the Bar took up H B199? (Just read it in my bar newsletter)

For more info it says to call Fran Purdy 563-6393 or Maryann Foley 279-0793

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FAX COVER TRANSMISSION SHEET

DATE: May 2, 1997 PAGES FOLLOWING: 6

FAXED TO: FAX #: 465-4316

NAME: Lisa Kosak

CASE NAME: —

CASE #: —

COMMENTS: Memorandum on HB 199

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Charles A. Winegarden
William W. Whitaker

FAX COVER SHEET

DATE: April 28, 1997
FROM: Charles Winegarden
TOTAL NUMBER OF PAGES SENT: Just this one (Including this cover sheet)

SEND TO: FAX NO:
House Judiciary Committee 907/465-4316
Attn: Lisa Kirsch

RE: House Bill 199 the "Alaska Community Property Act"

COMMENTS/NOTES: Ms. Kirsch: I have practiced family law for 14 years in Kodiak and now based in Kenai. Please fax me a copy of the above referenced House Bill so that I may include my comments with those of my colleagues

---

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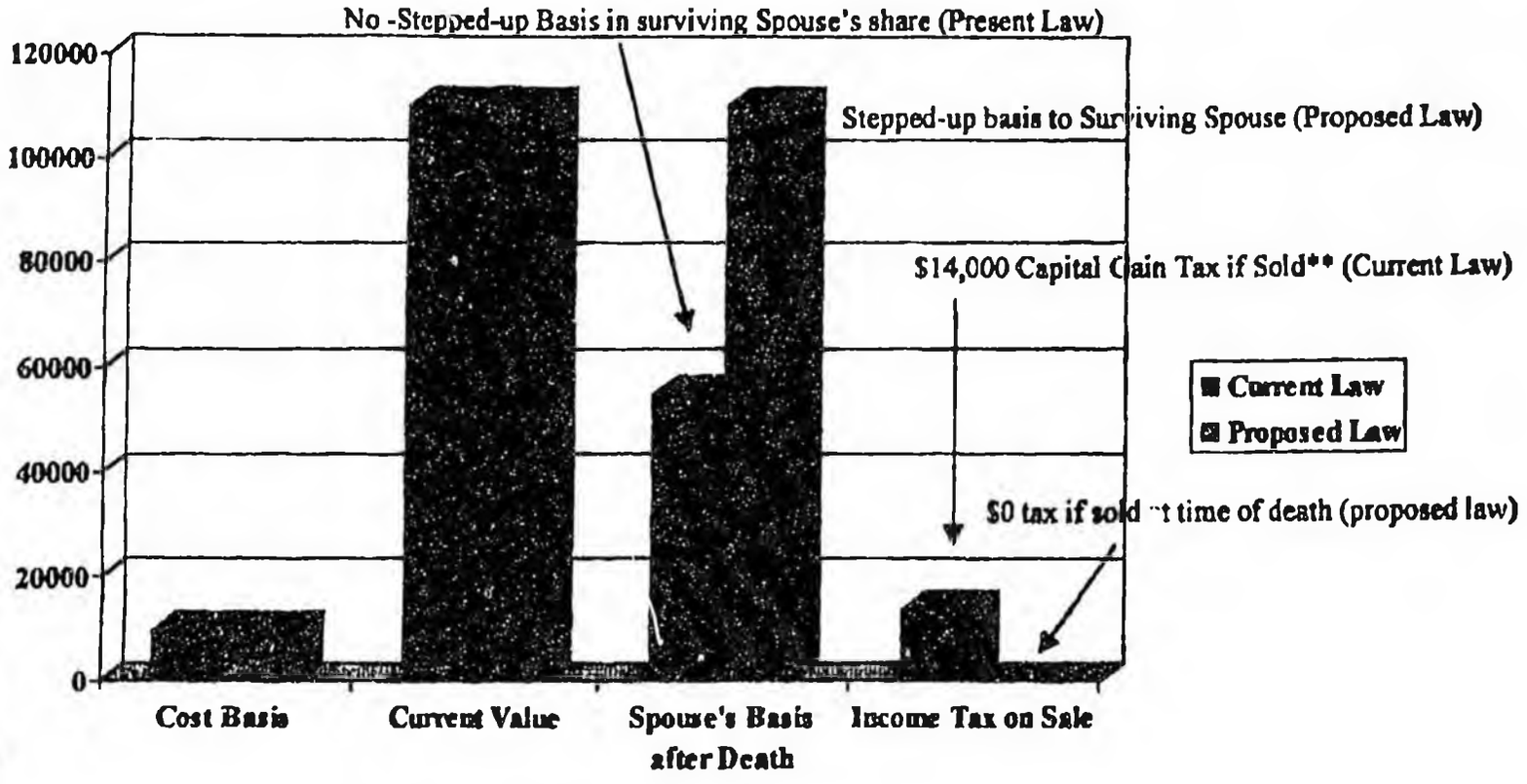
To SHARON GLEASON	Date 4/24	# of pages ▶ 21
Co./Dept.	From LISA KIRSCH	
Phone #	Co. HOUSE JUD.	
Fax # 277 0281	Phone # 465 4990	
	Fax # " 4316	

Community Property (Proposed) Tax Effect at Death of Spouse



**Assume sale of property at time of death

8:30 - 10 am
Sharon Gleason
277 6017
FAX 0281

Alaska State Legislature

House of Representatives

House Judiciary Committee

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

Date: April 23, 1997

To: Richard Wellman, University of Georgia Law School
(706) 542-5556

From: Lisa Kirsch,
Counsel House Judiciary Committee
ph: (907)465-4990 fax: (907) 465-4316

Subject: HB 199

Here is a copy of the bill drafted by Jonathan Blattmachr. He testified before our committee today. We also heard from Rich Hompesch and Mr. Thwaites, both apparently Alaska attorneys who practice probate law here. The committee appeared to accept the bill and they could easily move it out of committee Friday. If you have any comments, or would care to testify Friday, please let me know.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM March 25, 1997

SUBJECT: Sectional Summary of HB 199, the "community property" bill (Work Order No. 20-LS0522\E)

TO: Representative Joe Ryan
Attn: David Pree

FROM: Theresa Bannister
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill. The descriptions of the sections necessarily contain some generalizations and simplifications. As a result, please keep in mind that the bill itself is the best statement of its contents.

Section 1. States that community property under the new chapter (AS 34.75) is not included in the augmented estate. "Augmented estate" is a term used in the state's Uniform Probate Code to refer to the pot of property from which a surviving spouse can elect to take a one-third share; the property in the estate is "augmented" by adding to it certain other property transferred to others by the decedent.

Section 2. Makes an amendment to AS 25.15.010 to show that its provisions are subject to the new community property chapter (AS 34.75).

Section 3. Makes an amendment to AS 25.15.020 to show that the section is subject to the new community property chapter (AS 34.75).

Section 4. Makes an amendment to AS 25.15.050 to show that the provisions of the section are subject to the new community property chapter (AS 34.75).

Section 5. Makes an amendment to AS 25.15.060 to show that the provisions of the section are subject to the new community property chapter (AS 34.75).

Section 6. Adds a subsection to AS 25.24.160 (dealing with court judgments in divorce actions). The new subsection directs the court to distribute the parties' property under AS 34.75 according to their community property agreement or community property trust

under AS 34.75, if they have one. Directs the court to award one-half of the value of the community property to each party, unless the parties have agreed otherwise in the community property agreement or trust.

Section 7. Amends AS 25.24.200(a) (relating to dissolution of marriages) to include community property under AS 34.75.

Section 8. Amends AS 25.24.310(b) (relating to the payment of attorney fees, costs, and other disbursements in a child custody, support, and visitation matters) to include community property in the property that can be used to pay for a minor's legal representation or for other services.

Section 9. Amends AS 34.15.110 to make its provisions subject to the section in the new community property chapter, AS 34.75, that addresses how spouses can hold property. (The citation should be corrected to read "AS 34.75.110" in both places.)

Section 10. makes an amendment to AS 34.15.130. States that the conclusion that persons are tenants in common if they have an undivided interest in real property is subject to the provisions of the section in the new chapter, AS 34.75, that addresses how spouses can hold property. (The citation should be corrected to read "AS 34.75.110.")

Section 11. Adds a new chapter related to the property of spouses.

AS 34.75.010. Requires spouses to act in good faith towards each other if the matter involves community property. Prohibits changing this obligation in a community property agreement or trust.

AS 34.75.020. Allows a community property agreement or trust to change this chapter's effect, except for certain listed provisions.

AS 34.75.030. Limits the classification of property as community property to what the spouses say in a community property agreement or trust, except where this chapter classifies property otherwise.

Establishes a presumption that the spouses' property acquired during marriage and after the determination date (see AS 34.75.900 for definition) is community property, if the spouses' community property agreement says that all their property acquired during marriage is community property.

Gives a spouse a one-half interest in community property.

States that if the community property agreement states that all property acquired during marriage is community property, the income on the property is community property.

States that even if community property is transferred to a trust, it still remains community property.

States that property is not community property if it is owned by a spouse at the time of the marriage but before the determination date (see AS 34.75.900 for definition). This occurs even if the spouses' community property agreement provides that all property acquired during marriage is community property. However, the community property agreement may expressly provide differently.

States that certain listed property is individual property if it is owned by a spouse at the time of the marriage but before the determination date (see AS 34.75.900 for definition). This occurs even if the spouses' community property agreement provides that all property acquired during marriage is community property. However, the community property agreement may expressly provide differently.

States that appreciation and income of property transferred to a community property trust are community property if the trust says they are.

States that community property held in a trust remains community property when distributed to the spouses.

States that this chapter doesn't change property classification and ownership rights for property acquired before or during marriage, except as otherwise provided in this chapter.

AS 34.75.040. Identifies what property one spouse may manage and control alone.

Requires spouses to act together when managing and controlling community property that is held in both of their names (unless held in the alternative--"or").

States that the trust terms determine the management and control rights of community property transferred to a trust.

States that management and control rights for community property don't determine the classification of the property and don't rebut the presumption in AS 34.75.030(b).

States that management and control rights to community property do not permit gifts, except as provided in AS 34.75.050.

States that management and control rights are not affected by this chapter if the property is acquired before the determination date (see AS 34.75.900 for definition). Makes an exception to the extent provided otherwise in a community property agreement or trust.

Allows a court to appoint a conservator or guardian to handle the management and control rights of a disabled spouse.

AS 34.75.050. Prohibits one spouse acting alone from giving to a third party community property that the spouse manages and that is over $1,000 (in one calendar year), or is a larger amount unless the amount is reasonable considering the economic conditions of the spouses.

Subjects a gift not allowed under (a) of this section to a court action allowed under (d) unless both spouses act jointly or the gift is ratified by the other spouse.

Considers that the spouses have acted together when one spouse makes a gift, if either of certain U.S. gift tax activities occur.

Allows one spouse to bring a court action against a spouse making a gift that doesn't satisfy (a), or against the recipient of the gift, or both. Requires the action to be begun within a certain time. Characterizes a recovery during marriage as community property. Limits a recovery after dissolution or death of one spouse to one-half of the value of the gift and makes this recovery individual property.

AS 34.75.060. Allows spouses living in this state to classify all or part of their property as community property by using a community property agreement.

Allows spouses, even if not living in this state, to classify all or part of their property as community property by transferring the property to a community property trust that states that the property is community property.

AS 34.75.070. Establishes a presumption that an obligation incurred by a spouse during marriage is incurred in the interest of the marriage or family.

Restricts the satisfaction of a duty of support owed to the other spouse or child of the marriage to community property and the spouses's non-community property.

Restricts the satisfaction of an obligation incurred by a spouse in the interest of the marriage or family to community property and the non-community property of the spouse.

Restricts the satisfaction of certain obligations attributable to obligations, acts, or omissions before marriage to the non-community property of the spouse and certain community property.

Restricts the satisfaction of certain other obligation incurred by a spouse during marriage to the spouse's non-community property and the spouse's interest in community property.

States that this chapter doesn't change the spouses' relationship with their creditors with regard to property or obligations existing before the determination date (see AS 34.75.900 for definition).

Makes binding on a creditor a writing signed by the creditor that reduces the creditor's rights under this section.

States that creditor rights are not affected by a community property agreement or trust, unless the creditor knows about the effect when the obligation to the creditor is incurred. Prohibits changing the effect of this subsection by a community property agreement or trust.

States that this chapter doesn't affect a property exemption available under another law.

Sec. 34.75.080. Protects persons who are bona fide purchasers (in general, good faith purchasers for value without notice of a problem or adverse condition) in their transactions with spouses. States that notice of a community property agreement or trust, a marriage, or a marriage termination doesn't change the purchaser's status as a bona fide purchaser. Provides that certain community property purchased from one spouse by a bona fide purchaser is purchased free of any claim of the other spouse; prohibits changing this provision in a community property agreement or trust.

Sec. 34.75.090. Establishes certain requirements for and features of community property agreements. An agreement must be in writing, be signed, and make some property community property. Consideration (each spouse receiving something, usually money) is not needed for the agreement to be effective.

States that the agreement may not adversely affect a child's right to support.

Identifies various items that the spouses may agree on in the agreement.

Provides for the amendment or revocation of the agreement.

Allows persons who are not yet married to enter into an agreement, but prevents the agreement from becoming effective until they are married.

Establishes when community property agreements are unenforceable.

Provides that a court is the entity that determines whether an agreement is unconscionable (grossly unfair to one spouse).

Sec. 34.75.100. Establishes certain requirements for and features of community property trusts. To be a trust, it must be signed and state that some of the property transferred to the trust is community property, and one trustee must meet the qualifications given under the

section. Consideration (each spouse receiving something, usually money) is not needed for the trust to be effective.

States that the trust may not adversely affect a child's right to support.

Lists various items that the spouses may agree on in the trust.

Provides for the amendment or revocation of the agreement.

Establishes when community property trusts are unenforceable.

Provides that a court is the entity that determines whether a trust is unconscionable (grossly unfair to one spouse).

Requires the trustee to maintain certain records.

Sec. 34.75.110. Establishes how spouses may hold their property. Includes some new methods, e.g. holding separately or together as community property or holding as "survivorship community property" (where surviving spouse receives the other spouse's community property interest automatically). Provides for holding property as individual property.

Sec. 34.75.120. Prevents the issuer of an insurance policy from being liable because it makes payments or takes other actions on the policy, unless the issuer actually knew that the payments or actions were inconsistent with a community property agreement or trust or certain adverse claims.

Establishes some rules for how to classify the ownership of life insurance policies and proceeds.

States that this section does not affect a creditor's interest in a policy (or its proceeds) that is transferred or made payable to the creditor as security for an obligation.

States that this section does not affect the ownership interest or proceeds of a policy unless a spouse is listed as an owner and community property is used to pay a premium on the policy.

Sec. 34.75.130. Provides that other property becomes community property if it is mixed with community property and if it can't be traced (or except as provided in AS 34.75.110).

Provides that under certain conditions the individual property of one spouse is changed to community property if the other spouse contributes effort, skill, activity, etc. to the separate property.

Sec. 34.75.140. Gives a spouse a claim against the other spouse for failing to act in good faith, if the failure damages the claimant's community property interest.

Allows a court to order an accounting of the spouses' property and obligations. Allows a court to make certain listed determinations about the spouses' property.

Allows a court to order the addition of a spouse's name to the title of community property held in the name of only one spouse, except for certain listed property.

Requires a spouse to bring a court action against the other spouse under (a) within three years.

Sec. 34.75.150. After the death of a spouse living in this state and under certain circumstances, treats as community property the property that can be traced to certain recoveries of the decedent for a loss of earning capacity.

Sec. 34.75.160. Directs that this chapter is to be applied and construed uniformly with the laws on this same subject in other states and to be applied and construed to achieve its general purpose.

Sec. 34.75.900. Defines the terms in the chapter.

Sec. 34.75.995. Gives the chapter the title "Alaska Community Property Act."

Section 12. Describes how a section in the new chapter changes an Alaska Rule of Evidence.

Section 13. States that the provision in this bill that amends court rules only takes effect if the section describing how it amends the rule receives the necessary super-majority vote.

Section 14. Gives the bill an immediate effective date.

If I may be of further assistance, please advise.

TLB:jdr
97-218.jdr

FISCAL NOTE

STATE OF ALASKA **BILL NO. HB 199**

1997 LEGISLATIVE SESSION

Revision Date:

Department: Commerce and Economic Development

Title: AK Community Property Act

BRU: Banking, Securities & Corporations

Component: Banking, Securities & Corporations

Sponsor: Rep. Ryan

Requestor: House Labor and Commerce Committee

COMPONENT SERIAL NO. 1233

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 97) cost: $ 0.0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Willis F. Kirkpatrick, Director Phone: 465-2521

Division: Banking, Securities and Corporations Date: 3-28-97

Approved by Commissioner: William L. Hensley Date: 4-1-97

Agency: Commerce and Economic Development

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PHONE MESSAGE

DATE 4/24 TIME 9:20 A.M. P.M.

FOR Lisa

M Sharon Gleason, Attorney

OF Family Laws

PHONE ( ) 277-6017 EXT.

☐ FAX ☐ MOBILE ☐ PAGER ( )

MESSAGE Re: NB 199,
She is pretty familiar
with the case & would
like to talk to you about
it.

☐ URGENT
☐ PHONED
☐ RETURNED YOUR CALL
☒ PLEASE CALL BACK
☐ WILL CALL AGAIN
☐ WAS IN
☐ WANTS TO SEE YOU

AVERY

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Alaska State Legislature

House of Representatives

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PHONE (907) 258-8151

SESSION:
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PHONE (907) 465-3875

Representative Joe Ryan

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House Bill 199
Sponsor Statement

This Sponsor statement provides a summary of the income tax advantage of community property and a short overview of the Community Property bill. The bill is designed, among other things, to allow married Alaskans to obtain the income tax advantage available to residents of community property states and to produce business in Alaska.

Income tax advantage of community property

A person who owns assets with his or her spouse as community property in one of the nine community property states (Louisiana, Texas, New Mexico, Arizona, California, Nevada, Washington, Idaho, and Wisconsin) has a major income tax advantage over a married person who owns assets with his or her spouse but that are not community property. This advantage results from the incongruous operation of the step-up in basis rule. This rule is one of the few, if only, income tax advantages that a person's estate receives upon his or her death.

The best way to explain the step-up in basis rule is to start with an example of a single person in Alaska on her death bed who twenty years ago paid $10,000 for a homestead that is presently worth $110,000. If the person sold the homestead before she died, she would realize a long-term capital gain of $100,000. The gain would be subject to a maximum capital gains tax of 28%, or $28,000. On the other hand, if the person decided not to sell the homestead and died the next day, the $100,000 profit would be forgiven. This means that her heirs could sell the homestead for $110,000 and pay no income taxes! This is because the original cost basis of $10,000 is "stepped-

up" to $110,000, the fair market value of the homestead at death. If the homestead is sold for $110,000 with its new basis of $110,000, there is no gain and no income taxes will be owed.

The step-up in basis rule gets more complicated when a married couple is involved. If we assume that a married couple in Alaska bought the homestead twenty years ago for $10,000 and held title as husband and wife, then each would own one-half of the homestead. If the husband was on his death bed and the couple sold the homestead before the husband died for its current fair market value of $110,000, the couple would realize a $100,000 long-term capital gain just like the single person did. However, if the husband died and the wife inherited his half of the homestead and then sold it, she would only realize only a $50,000 long-term capital gain. This is because the profit in the husband's half of the homestead would be forgiven by the step-up in basis rule. The husband's half of the homestead would get a "step-up" in basis to $55,000. When the husband's half was sold for $55,000 there would be no gain. However, the wife would have a gain on the sale of her half of the homestead. Her half of the homestead would have a basis of $5,000 (one-half of the original cost basis of $10,000). When this half was sold for $55,000, the wife would realize a $50,000 long-term capital gain and would pay a maximum of $14,000 of income taxes (28% of $50,000).

If, on the other hand, the couple lived in a community property state like Washington, the income tax savings would be even greater. If the homestead was community property under Washington law, for example, the wife would get a step-up in basis in both halves of the homestead to $110,000. After her husband's death when she sold the homestead for $110,000 she would pay no income taxes! In contrast, in the prior example of the married couple in Alaska who owned the homestead that was not community property, the wife who sold the homestead after her husband died would pay $14,000 of income taxes. In this way the income tax laws favor spouses in community property states who own assets as community property over spouses in non-community property states like Alaska who as a general rule cannot own assets as community property.

Overview of HB 196

This bill will allow married Alaskans to execute a written agreement to recharacterize their assets as community property. Unlike other

states which have a community property form of ownership for married persons, Alaskans would have their assets treated as community property only to the extent they execute a written agreement and elect into a community property system under Alaska law. In contrast, community property states mandate the married couple's assets to be community property unless the spouses elect out.

The bill not only allows Alaskan couples to enter into an agreement to have some or all of their assets treated as community property, but it also permits married persons who do not reside in Alaska to have their assets treated as community property under Alaska law by executing an Alaskan Community Property Trust. Such a trust must have an Alaskan trustee. It is anticipated that many married persons who reside outside of Alaska will wish to label a portion, or all, of their assets as community property because they believe that it is a more appropriate method of owning their assets and they wish to obtain the income tax advantages which are available to community property upon the death of the first spouse.

Some believe that community property represents a more fair and rational system of sharing the ownership of property during marriage because it essentially treats the marriage like a partnership; as assets are earned during the marriage, they are treated as owned 50/50 by the two partners (the husband and wife). Others believe community property is not a fair or rational system. Regardless of one's beliefs, it seems appropriate to allow Alaskans, and residents of other states, the freedom to choose the arrangement that is most appropriate for them.

It should be emphasized that no asset would be labeled as community property under the bill. Rather, the bill merely authorizes married persons to execute a written agreement or trust in which they expressly elect to treat some or all of their assets as community property under Alaska law.

HUGHES THORSNESS POWELL HUDDLESTON & BAUMAN LLC

Est 1939

Facsimile Cover Sheet

To: Joe Ryan
Company:
Phone: 1-800-922-3875
Fax: 1-907-465-4588

From: Robert L. Manley
Company: Hughes Thorsness Powell Huddleston & Bauman LLC
Phone: 907/263-8251
Fax: 907/263-8320

Date: April 14, 1997
Re: IRC Sec. 1014 & HB 199
Your Reference No.
Client/Matter: 8-18

Pages including this cover page: 4
Original to follow?: no **Via:**

Comments:

Ryan testifies
this is statute

2. *Community Property -- Step-up In Basis for Surviving Spouse's One-half Share of Community Property*

Both the decedent's and the surviving spouse's half interests in community property receive a new basis, if at least half of the community property was includible in the decedent's gross estate.[142]

[142] Section 1014(b)(6); Regs. Section 1.1014-2(a)(5). For special rules applicable to the surviving spouse's interest in community property of a decedent dying after Oct. 21, 1942, and before 1948, see Regs. Section 1.1014-2(c)(2).

Only community property qualifies for this step-up in basis for both halves. Other forms of joint ownership do not qualify[143] unless, under applicable local law, they are regarded as community property as well.[144] Some courts have recognized that if title to realty is held in joint tenancy or tenancy in common, but the spouses intend to hold the realty as community property, both halves of the property qualify for a new basis.[145]

[143] Rev. Rul. 68-80, 1968-1 C.B. 348 (no new basis step-up on wife's interest in Virginia realty held in co-tenancy, despite community property source of purchase money); Murphy v. Comr., 342 F.2d 356 (9th Cir. 1965) (no basis step-up for surviving spouse's interest in California realty originally held as community property, converted before death to co-tenancy).

[144] See Rev. Rul. 87-98, 1987-2 C.B. 206; WASH. REV. CODE Section 64.28.040 (interests held jointly by husband and wife presumed to be community property).

[145] McCollum v. U.S., 58-2 USTC Para.9957 (N.D. Okla. 1958) (where spouses filed election to come under Oklahoma community property law, then took title to realty in joint tenancy while intending to hold as community property, both halves qualify for basis step-up); Bordenave v. U.S., 150 F. Supp. 820 (N.D. Cal. 1957) (presumption created by joint tenancy or co-tenancy record title in California realty can be overcome by evidence of mutual intention, understanding or agreement that realty was held as community property; court holding presumption of joint tenancy record title not overcome for purpose of basis step-up in both halves). McCollum and Bordenave were decided under the predecessor of Section 1014 -- 1939 Code Section 113(a)(5). See also U.S. v. Pierotti, 154 F.2d 758 (9th Cir. 1946) (although the deed to California realty stated that said property was held in joint tenancy, nevertheless the court held that evidence was admissible to show that the spouses had an agreement that said property was held as community property and that the agreement prevailed over the form of the deed); and Rev. Rul. 87-98, 1987-2 C.B. 206 (where spouses bought property with community funds, took title as joint tenants with right of survivorship, and declared, in joint wills, that the property was community property, each half interest received step-up in basis since property was considered community property under state law).

The step-up in basis produces immediate tax results in the case of oil and gas property owned as community property. In Rev. Rul. 92-37,[146] a surviving spouse filed a joint return with the executor of her late husband covering the short tax year ending with her husband's death and her normal tax year. The Service ruled that she was entitled to use the date-of-death value in calculating her depletion deduction in respect of their oil and gas properties.

[146] 92-1 C.B. 195.

The surviving spouse's interest in U.S. Treasury Bonds, which can be redeemed at par in payment of federal estate tax ("flower bonds"), held as community property receives a new basis equal to the fair market value of the bonds at the date of death or alternate valuation dates, not their par value.[147] Both halves of partnership interests held as community property qualify for the new basis if the Section 754 election has been made.[148]

[147] Neuhoff v. Comr., 75 T.C. 36 (1980), aff'd, 669 F.2d 291 (5th Cir. 1982) (Texas); Rev. Rul. 76-68, 1976-1 C.B. 216.

Sec. 1014. Basis Of Property Acquired From A Decedent

(a) In General

Except as otherwise provided in this section, the basis of property in the hands of a person acquiring the property from a decedent or to whom the property passed from a decedent shall, if not sold, exchanged, or otherwise disposed of before the decedent's death by such person, be--

(1) the fair market value of the property at the date of the decedent's death, or

(2) in the case of an election under either section 2032 or section 811(j) of the Internal Revenue Code of 1939 where the decedent died after October 21, 1942, its value at the applicable valuation date prescribed by those sections, or

(3) in the case of an election under section 2032A, its value determined under such section.

(b) Property Acquired From The Decedent

For purposes of subsection (a), the following property shall be considered to have been acquired from or to have passed from the decedent:

(1) Property acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent;

(2) Property transferred by the decedent during his lifetime in trust to pay the income for life to or on the order or direction of the decedent, with the right reserved to the decedent at all times before his death to revoke the trust;

(3) In the case of decedents dying after December 31, 1951, property transferred by the decedent during his lifetime in trust to pay the income for life to or on the order or direction of the decedent with the right reserved to the decedent at all times before his death to make any change in the enjoyment thereof through the exercise of a power to alter, amend, or terminate the trust,

(4) Property passing without full and adequate consideration under a general power of appointment exercised by the decedent by will;

(5) In the case of decedents dying after August 26, 1937, property acquired by bequest, devise, or inheritance or by the decedent's estate from the decedent, if the property consists of stock or securities of a foreign corporation, which with respect to its taxable year next preceding the date of the decedent's death was, under the law applicable to such year, a foreign personal holding company. In such case, the basis shall be the fair market value of such property at the date of the decedent's death or the basis in the hands of the decedent, whichever is lower;

(6) In the case of decedents dying after December 31, 1947, property which represents the surviving spouse's one-half share of community property held by the decedent and the surviving spouse under the community property laws of any State, or possession of the United States or any foreign country, if at least one-half of the whole of the community interest in such property was includible in determining the value of the decedent's gross estate under chapter 11 of subtitle B (section 2001 and following, relating to estate tax) or section 811 of the Internal Revenue Code of 1939;

(7) In the case of decedents dying after October 21, 1942, and on or before December 31, 1947, such part of any property, representing the surviving spouse's one-half share of property held by a decedent and the surviving spouse under the community property laws of any State, or possession of the United States or any foreign country, as was included in determining the value of the gross estate of the decedent, if a tax under chapter 3 of the Internal Revenue Code of 1939 was payable on the transfer of the net estate of the decedent. In such case, nothing in this paragraph shall reduce the basis below that which would exist if the Revenue Act of 1948 had not been enacted;

(8) In the case of decedents dying after December 31, 1950, and before January 1, 1954, property which represents the survivor's interest in a joint and survivor's annuity if the value of any part of such interest was required to be included in determining the value of decedent's gross estate under section 811 of the Internal Revenue Code of 1939;

(9) In the case of decedents dying after December 31, 1953, property acquired from the decedent by reason of death, form of ownership, or other conditions (including property acquired through the exercise or non-exercise of a power of appointment), if by reason thereof the property is required to be included in determining the value of the decedent's gross estate under chapter 11 of subtitle B or under the Internal Revenue Code of 1939. In such case, if the property is acquired before the death of the decedent, the basis shall be the amount determined under subsection (a) reduced by the amount allowed to the taxpayer as deductions in computing taxable income under this subtitle or prior income tax laws for exhaustion, wear and tear, obsolescence, amortization, and depletion on such property before the death of the decedent. Such basis shall be applicable to the property commencing on the death of the decedent. This paragraph shall not apply to—

(A) annuities described in section 72;

(B) property to which paragraph (5) would apply if the property had been acquired by bequest; and

(C) property described in any other paragraph of this subsection.

(10) Property includible in the gross estate of the decedent under section 2044 (relating to certain property for which marital deduction was previously allowed). In any such case, the last 3 sentences of paragraph (9) shall apply as if such property were described in the first sentence of paragraph (9).

(c) Property Representing Income In Respect Of A Decedent

This section shall not apply to property which constitutes a right to receive an item of income in respect of a decedent under section 691.

(d) Special Rule With Respect ToDISC Stock

If stock owned by a decedent in a DISC or former DISC (as defined in section 992(a))

Ten Years of WUMPA

by Gregg Herman

Gregg Herman

On New Year's Day, Wisconsin will celebrate(?) ten years of the distinction of being the only state in the country to adopt the Uniform Marital Property Act. Part of the reason no other state has followed suit is Wisconsin's dismal experience with this legislation. Rarely has any law caused so much harm for so little apparent good.

Cynics have referred to WUMPA as the "Divorce Lawyers and Tax Accountants Relief and Pension Fund Act." The main effect of WUMPA has been to protect creditors and to create havoc for determining taxable income the year of divorce. The benefit to society of either of these is difficult to imagine.

First, let us examine the creditor issue. Prior to WUMPA, the typical first order in divorce restrained both parties from incurring any new debt against the credit of the other party. This order was designed to protect spouses against incurrence of debt by the other party during the pendency of divorce and was valuable because there is no incentive to save money in a divorce, but plenty of incentive to run up debts.[1] Today, under WUMPA, this order is of greatly diminished value. WUMPA serves primarily as a creditor protection statute. Although the divorce court can order a spouse held harmless, because the community under WUMPA continues until the divorce the creditor has the right to seek collection from all marital property, including that awarded in a divorce to an innocent party.[2]

If the creditor protection aspects harm primarily women, the tax complications harm both men and women while benefiting no one, including the tax authorities. As WUMPA continues until the date of divorce, all income is community and must be equally reported. Absent an opt-out agreement, community property treatment of income during the year of divorce creates additional cost and aggravation to divorcing parties.[3] The transfer of income reporting from one party to the other usually does not create any greater tax liability. In fact, it can frequently result in less tax revenue.[4] Although the taxing authorities thus lose under WUMPA, the aggravation and accounting costs to the parties in attempting to figure out their taxes in the year of divorce make up for any savings.

The great irony is that WUMPA was primarily trumpeted as a women's protection statute. Wives certainly are capable of running up debt during a divorce, but most family law practitioners would agree that it is more likely to be the husband who runs up debt and disappears. Then, when the creditor sues the wife under WUMPA, there is no husband available to hold the wife harmless. Further, in my experience, it is more likely the husband who has the accountant on retainer to assist with the messy issue of community property income reporting. In sum, what was supposed to be a law to protect women has became a law that, more often than not, hurts women.

If WUMPA causes these problems, what are the advantages? Certainly it is not in property division. Wisconsin was an equitable division property state long before January 1, 1986, and WUMPA has no effect on divorce property division (a concept clients frequently have difficulty understanding).[5] Also, WUMPA does not affect payment of child or spousal support.[6]

Certainly WUMPA is a windfall to creditors. It may be a good thing in probate. For parties going through a divorce, however, especially women, it creates no additional rights, but imposes greater costs and responsibilities.

These remarks are not old sour grapes. When WUMPA was still in its formative stages, the Family Law Section board of directors met with the legislator proposing the law and expressed these concerns. We were told that none of this is a problem because women can always sit down at the kitchen table with their husbands and negotiate a marital agreement to opt out of WUMPA. I wish there were not so many ketchup stains on all those agreements we see informally negotiated.

The truth is that when a marriage is fragile, it is really not a good time to sit down at the kitchen table and discuss marital property law. Besides, marital property agreements, to be enforceable, should be drafted by attorneys, which of course costs money. To the extent there is a greater financial ability to hire a lawyer, again the woman suffers.

A couple of years ago, this writer was contacted by a legislator and asked how to correct these problems. I suggested a two sentence "rider bill" which would correct all of the above. Sentence one would be: "Chapter 766 is repealed." Sentence two: "Apologies to all." And do not bother with sentence one without sentence two.

ENDNOTES

1 Weiss v. Weiss, 122 Wis. 2d 688, 365 N.W.2d 608 (Ct. App. 1985)

2 St. Marys Hospital Med. Center v. Brody, 186 Wis. 2d 100, 519 N.W.2d 706 (Ct. App. 1994). *See also* Daniel L. Furth, *New Treatment of Debts at Divorce Under the Marital Property Act*, 5 Wis. J. Fam. L. 64 (1986).

3 Karen Cass, *Taxes and Marital Property: Things Mother Never Told Us*. 66 Wis. Law. 10 (1993); Dan Dooge, *Marital Property Law and Income Tax Reporting*, 13 Wis. J. Fam. L. 76 (1993); Lawrence M. Phillips, *Federal Tax Problems Under WUMPA*, 6 Wis. J. Fam. L. 37 (1986).

4 *See* Barbara J. Becker & Margaret H. Scholz, *How to Save Income Taxes in Divorce Cases*, 12 Wis. J. Fam. L. 41 (1993).

5 Kuhlman v. Kuhlman, 146 Wis. 2d 588, 432 N.W.2d 295 (Ct. App. 1988).

6 Abitz v. Abitz, 155 Wis. 2d 161, 465 N.W.2d 609 (1990)

Gregg Herman practices family law with the firm of Loeb, Herman & Drew, S.C., in Milwaukee.

ALASKA
CIVIL LIBERTIES UNION

An Affiliate of the American Civil Liberties Union
P. O. Box 201844 Anchorage, AK 99520-1844
Phone: 907-258-0044 Fax: 907-258-0288 E-Mail: akclu@alaska.net

April 22, 1997

The Honorable Joe Green, Chair
House Judiciary Committee
Alaska State House of Representatives
Juneau, Alaska

Re: House Bill 234 - GRM Assistance for Abortions

Dear Chairman Green and members of the Committee:

Thank you for an opportunity to comment on House Bill 234, which would have the effect of depriving women who are otherwise eligible for General Relief Medical assistance from obtaining an abortion under that program. The Alaska Civil Liberties Union opposes HB 234 because it would violate the Alaska Constitution's right to privacy; its guarantee of equal protection under the law; and its guarantee of freedom from discrimination based on sex.

In 1993 the Department of Health and Social Services under Commissioner Ted Mala promulgated regulations which attempted to deprive poor women of access to abortion. The AkCLU on behalf of seven other organizations and ten individuals successfully brought suit and in 1994 reached a final settlement which specified that a physician determine, based on his or her professional judgment, whether a particular abortion is medically necessary.

Any further efforts to deprive poor women of reproductive autonomy are nothing more than using the government to police a private position against abortion. As we have seen in recent weeks in this Legislature, it matters not to those who would outlaw abortion if a woman's life or her health is at stake. It matters not whether she is considering a "morning after" pill because the condom leaked or is seeking a first trimester abortion

because her birth control pills failed, she was raped, or she didn't know she could get pregnant the first time.

Nothing in HB 234's deletion of abortion indicates a similar change in the State's commitment to fund childbirth and pre- and postnatal expenses if a woman seeks to carry her pregnancy to term. In fact, the discriminatory funding scheme will prevent low-income Alaskan women from obtaining safe abortions and coerce them into continuing their pregnancies to term even when this decision is adverse to the interests of the women and their families. Women choose abortions for compelling reasons that profoundly affect their own and their families' futures. Unable to pay for her own health care, a poor woman will have little recourse but to accept the State's determination that she should carry her pregnancy to term.

Some will try to tell you that promoting childbirth while denying abortion is "pro-family." But it's not their family that will be affected and it should not be their decision. Please signal your recognition that a poor woman's decision can be as moral as anyone else's and reject HB 234.

Sincerely yours,

ALASKA CIVIL LIBERTIES UNION

Theda Pittman
Interim Executive Director

cc: The Honorable Tony Kn[illegible]es

Abortion: Male coercion and irresponsibility

Consider this: By vesting all reproductive responsibility in the woman, a pro-choice male creates a situation in which men can easily rationalize their irresponsibility toward women who choose not to abort. Plausible? Read on.

As Daniel Callahan puts it, ``If legal abortion has given women more choice, it has also given men more choice as well. They now have a potent new weapon in the old business of manipulating and abandoning women.`` Given that 80 percent of all abortions are sought by single women (according to the Alan Guttmacher Institute) the advent of reproductive rights has created a situation in which a man can coerce a woman to have an abortion by denying his responsibility towards her, or even abandoning her when she gets pregnant and ``chooses`` to carry the pregnancy to term.

According to feminist legal scholar Catharine MacKinnon, ``Sexual liberation in this sense does not free women, it frees male sexual aggression. The availability of abortion thus removes the one remaining legitimized reason that women had for refusing sex besides the headache.``

The anecdotal evidence for this interpretation is compelling.

Empirical studies have also demonstrated that male coercion and pressure play a sizable role in many women's abortion decisions. A survey from the Medical College of Ohio, for example, examined 150 women who ``identified themselves as having poorly assimilated the abortion experience.`` Of the 81 women who responded, more than one-third felt they had been coerced into having an abortion. Fewer than one-third initially considered the abortion themselves.

In cases where women initially chose to bear the child, their male partners were opposed to the decision by a margin of eight to one. In all of these cases, the man withdrew his support for his partner ``thereby eliminating that alternative.``

Even in Carol Gilligan's famous study _In a Different Voice_, not all of the women's abortion decisions she recounts were independent. Male

coercion played an important role in about one-third of the cases cited. The men in the women`s lives were unwilling to provide their partners with the moral and material support for pregnancy, childbirth, and child rearing. As one of Gilligan`s respondents noted, ``He made me feel I had one choice to make and that it was to have an abortion and I could always have children another time, and he made me feel if I didn`t it would drive us apart.``

In all these cases, the logic goes something like this: since the man was willing to pay for an abortion, and since the woman had a constitutional right to get one even if he wished to prevent it, by her failure to obtain an abortion she took sole responsibility for the child. Therefore, the reasoning concludes, the man should not be liable for any child support.

Permissive abortion policy has created a climate where men can enjoy sexual relations with little or no concern for their consequences. Abortion is often misrepresented as solely a women`s issue; clearly, however, it is a men`s issue as well as long as men are interested in protecting their sexual liberty.

- --

Women and Children First - a different kind of pro-life newsletter
http://www.prolife.org/ultimate/wcfpromo.html

Alaskan Students Reflect on Peer Attitudes About Sexual Assault Prevention, Tolerance and Respect

by John Lyle, School Counselor

At Woodriver Elementary, as in many elementary schools across the country, we've developed a series of connected lessons for fifth and sixth grade students addressing the issues of personal safety, human growth development, physical sexual assault prevention and HIV AIDS. In 1989, the first year I started giving personal safety presentations, I asked four classes of sixth grade students to anonymously respond to a "Male Access Quiz" developed by Dr. E. Mahoney (McGraw Hill, 1984). I was curious how the 100 students perceived sexual assault *before* I started the lesson. Students read the following statement and marked "yes" or "no" after ten situations which, in their opinion, did or did not make the statement appropriate. The statement read:

"It 's OK for a man to hold down a woman and physically force her to have sex for the following reasons":

1. **He has spent a lot of money on her.**
2. **He's so excited that he can't stop.**
3. **He's drunk and can't control himself.**
4. **She's had sexual relations with others.**
5. **She's drunk or high on drugs.**
6. **She lets him touch her above her waist.**
7. **She gets him sexually excited.**
8. **She was going to have sex with him and then decides not to.**
9. **They have been dating for a long time.**
10. **They are married.**

When I tabulated the results of the quiz in 1989, I was shocked and dismayed. Fifty percent of the students (52% of boys and 48% of girls) considered rape to be acceptable in certain circumstances, most typically if the man and woman were married or if they have dated a long time. One thing was obvious: many students had great misunderstandings about what is appropriate behavior, and what is dangerous and illegal behavior.

The following day I went back into the classes and shared results of the access quiz with the students, who didn't seem too surprised by the figures. I asked them to anonymously respond on paper to three questions: "Why did some students feel that sexual assault was acceptable? What might account for different response rates of boys and girls? What could be done to teach students that sexual assault is not an acceptable behavior?" Their answers were powerful. Student responses to these three questions gathered over several years include the following:

"People see this on TV or in movies. It seems normal, the way people should act."
"It's not OK for women to be wild but it's almost expected that men are wild."
"People who drink or use drugs might not think they're responsible for their actions."
"Males are more controlling, they have more power. They are in charge."
"Males may be stronger and more aggressive, but it's still not OK to do this."
"Men aren't usually the ones getting raped, so they don't know what it's like."
" A lot of men probably don't really think about it."
"Some men think women are dolls to play with and do whatever they want with."
"They may see or hear about other men doing it so they think it's OK."
"I'm a male and I don't think it's OK for anyone to force another person to have sex for any reason, period."
"I have no idea why this is, but it's wrong."

In discussing with parents and teachers the results of classroom presentations and the access quiz, it was apparent to us that we needed to become more effective in reaching students about this critical human issue. Many myths and misconceptions needed to be corrected. I contacted several local community agencies which work with prevention and intervention of physical and sexual assault, and asked them for facts and figures that specifically pertained to Alaska. I began collecting articles from the local paper which described real life incidents which could be used in class presentations. I made lists of common misconceptions about assault that could be used either as a true false quiz or a large-group oral discussion tool.

Since 1989, I've asked over 800 sixth grade students (100 students year) to respond to the "Male Access Quiz", and have charted the differences in responses each year. There have been some interesting trends that in turn pose interesting questions. In 1991 the number of sixth grade boys and girls who thought it was appropriate in certain situations for men to rape women dropped to 23% (27% of boys, 20% of girls), and continued to drop for the next three years to a low of 9% of boys and girls in 1994 (10% of boys, 8% of girls). A disturbing reversal occurred during the next two years, with overall percentages climbing back up to 20% in 1995 (28% of boys, 12% of girls), and dropping slightly to 17% in 1996 (27% of boys, 6% of girls). This backsliding and widening gender gap causes concern, and provides incentive to continue improving the quality and delivery of the information.

Over the years these connected lessons have generated respectful and insightful class discussions about different facts, myths, misconceptions and scenarios pertaining to physical/sexual assault. I am careful that males are not labeled as uncaring, aggressive monsters. Both boys and girls have wanted and needed to discuss how to prevent potentially dangerous situations, how to be assertive (knowing what "no" means), and how to successfully refuse the tremendous peer and media pressures placed upon them.

Recently, the Alaska Department of Health and Social Service's Adolescent Health Advisory Committee released information concerning the influence of television programming and advertising on young people. The following are a few significant findings from several of the 1,000 studies that correlate excessive television viewing and unhealthy behavior:

*** 80% of MTV videos show sexual imagery and violence against women**
*** Many children see 200,000 violent acts on television by age 18**
*** US television contains more violence than anywhere else in the world**
*** Media violence contributes up to 15% of real-life violence**
*** More kids recognize Joe Camel than Mickey Mouse**
*** Arcade and video games target kids with violent messages**
*** Display of sex on prime-time television doubled from 1975-1988**
*** 94% of sexual activity on soap operas is between unmarried people**
*** Women are frequently depicted in the media as weak, submissive and as victims**
*** 100% of made-for-television movies in 1986 showed drinking**
*** 97% of the 10,000 television food commercials kids will see are for unhealthy foods**
*** 360,000 commercials will be seen by the average child by age 18**

In our society, many decisions that adults make on behalf of children are not, in fact, made in the best interests of children. Powerful economic factors influence media programming and advertising content. Given that the main role of media is to deliver consumers to the corporations that pay for the programming to sell their products, most people agree that much of what children see in the media is questionable. Clearly, one of our main tasks as parents and teachers is to help children learn to make good decisions. To do this they need factual information from us, as well as encouragement, trust, and our ability to listen. Good adult examples are also extremely important.

Commenting on the rise in numbers of students who condoned sexual assault in the 1995-96 samples, one educator stressed that an important question that parents and educators should be continually asking is, "What specific examples can adults provide to children that would translate into healthier attitudes of sexual respect, and increasingly lower percentages of students who thought that physical sexual assault was justified?" Each day in our own lives we have opportunities to question behavior that crosses the line of acceptablility. The behavior can manifest itself in casual conversations, consumer products on store shelves, or messages that permeate the media. As with many things, to be silent in the face of abusive or disrespectful behavior may implicitly condone it.

The results of the Male Access Quiz provides to us a window onto beliefs and perceptions of young people. Opening up classroom discussions to include real issues increases awareness of social problems that all students will confront at some time in their lives. The inter-connected issues of safety and respect need to be taught starting in kindergarten and continuing throughout high school. Truthfully, we never outgrow the need for reinforcement of these critical lessons.

We hope increasing numbers of children will be successful in differentiating between ***appropriate*** tolerance (ie:gender differences, cultural diversity, learning styles, disabilities) and behavior that should ***not*** be tolerated, such as physical and sexual assault. Obviously our goal is eventually to have 100% of male and female students asserting that sexual assault is unacceptable for any reason, by any person. We'll surely celebrate that day; however in the meantime we'll celebrate the process, and continue to ask the questions.

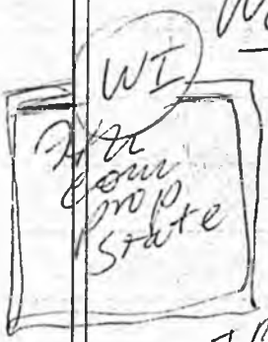
by John Lyle

Box 83715 Fairbanks, Alaska 99708

(907) 479-4211 474-4584 (1500 words)

HB 199

Wellman



Opt out of comm prop
if don't then default rule

community prop benefit
JB - Schemes to entice wealthy

- Only uniform — UMPA
- unpopular uniform act

comm prop states

- jt ten - rt survivorship
- could not - foreign to comm prop

"comm prop - full step up in basis
- joint ten," rt of survivorship
retained

- explain how it has worked
  else where
- What guarantees
- Analogies that don't work
- Confusion this generates
- Not uniform
- Not proved model
- tax shminick

Marital deduction - fed taxes
climbed comm prop, didn't have
this prob, bec 50% to other

pre 48 Feds then created marital deduction

Feds will

'82 → Unlimited marital deduction —

used to be ½ estate ⟨ now 100% deducted

set estate tax when 2d dies

marital deduction —

intention of step up in basis

both have unlimited marital ded.

→ Not how it works in reality

All came from CA probate sys

100% subject to probate

even though ½ belongs to spouse

whole community liable for decedent's debts

call it "community" & still joint tenancy

CL states have diff history

only assets of 1 spouse subject to probate

Tax basis step up

trying to bring into CL States

HB 199

AK Sep prop juris
continental code - Spanish
based CA TX LA
9 states — WA ID WI
1930 Seamens filed tax return
1 million — filed on 50K husb
wife 50K - Sep filg 35% brackets
IRS says, yes, that prop auto
vests to spouse
We will allow to file married
filg sep.
Affected estate & gift tax
no advantage until 1982
Est & G.T. stration -
Stepped up basis for income
tax
EX Homestead pd. $0
profit on sale - Cap. gains
income tax
Death covers to kids $1 million
value get through estate
@ 1 million get stepped up
their basis $1 million - no tax

Husb & wife In AK Family
business $1.2 million originally
invested 200K
If dad dies mom gets
stepped up on his 1/2

Unlimited marital deduction 1982
Comp Mom gets stepped up on whole thing

Albertson Foods - lived in Idaho
2 billion gain - Ms. Albertson
She gets stepped up basis

→ step up only based on sale

When WI adopted Comm Prop law 1985 took Uni for Marital Prop. Imposed retro - allowed people to opt out.
— We propose to reverse - option to opt into

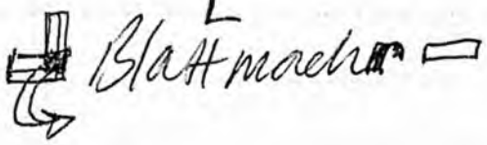
IRC law of any State allow for ct stand - Uniform act used as basis - May do it for all or part of their prop.

Residents of other states - may bring AK comm prop trust.
Fed.

CA
[trust is owner of property
[limited liability company
asset will be real property.
HB101

Terri Banister

Jumped off from Uniform Act
- create opt in program purpose
- Case litigated tax ct decision



Blackmon

Mary Ellen Beardsley 269-5100

FACSIMILE TRANSMISSION COVER SHEET

Attorney General's Office
1031 W. 4th Avenue, Suite 200
Anchorage, AK 99501-1994
PHONE: (907) 269-5200 FAX: (907) 276-8554

DATE: 4-22-97 TIME: _____

TO: Lisa Kirsch FAX: (907) 465-4316

House Judiciary

FROM: MARY ELLEN BEARDSLEY

ASSISTANT ATTORNEY GENERAL

NUMBER OF PAGES INCLUDING THIS SHEET: 8

MESSAGE: Documents from Jonathan Blattmachr re HB 199

Janine Reep or
Mary Ellen Beardsley
Not uniform law
Uniform Medical Rep Act

PLEASE INFORM US IMMEDIATELY
IF YOU DO NOT RECEIVE THIS TRANSMISSION IN FULL
(907) 269-5198 ASK FOR: Rose Grant

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FAX: 212-530-5219

LOS ANGELES
213-892-4000
FAX: 213-629-5063

WASHINGTON, D.C.
202-835-7500
FAX: 202-835-7586

LONDON
44-171-448-3000
FAX: 44-171-448-3029

MOSCOW
7-501-258-5015
FAX: 7-501-258-5014

TOKYO
813-3504-1050
FAX: 813-3595-2790

HONG KONG
852-2971-4888
FAX: 852-2840-0792

SINGAPORE
65-534-1700
FAX: 65-534-2733

JAKARTA
CORRESPONDENT OFFICE
6221-252-1272
FAX: 6221-252-2750

JONATHAN C. BLATTMACHR
PARTNER
DIRECT DIAL NUMBER
212-530-5088

January 29, 1997

Via Fax and Federal Express

Richard Hompesch, Esq.
Winfree and Hompesch, P.C.
Denali Financial Center
119 North Cushman Street, Suite 400
Fairbanks, AK 99701

Robert Manley, Esq.
Hughes, Thorsness, Gantz, Powell & Brundin, LLC
550 West 7th Avenue, Suite 1100
Anchorage, AK 99501-3563

Richard Thwaites, Esq.
500 L Street, Suite 301
Anchorage, AK 99501

Dear Rich, Bob and Dick:

I know each of you deals regularly with community property because so many Alaskans migrate from community property states (e.g., Washington, Idaho and California).

Regardless of whether one views a community property regime as more or less rational, fair or consistent than other rules dealing with property belonging to one or both spouses (e.g., elective share rights at death and equitable distribution interests at divorce), I think all agree that community property has one major advantage over other forms of ownership by the spouses: The income tax free change in basis to estate tax value for both halves of the community property in most cases (IRC §§1014 (a), 1014(b)(6)).

As you may be aware, lawyers in some non-community property states have tried to devise ways to get the "double" step-up in basis at the death of the first spouse to die. I do not think any I have seen work or are acceptable to most of my married clients, including those in extremely stable, long-term marriages. Based on discussion with them, I think a community property regime would be quite acceptable to them.

It may well be that spouses in a non-community property state could enter an agreement in which they classify their property as community property under the law of another state (e.g., under California law) even if neither spouse has ever been there), which would be respected under IRC §1014. I think this result is even more likely in those states (like Alaska) which have adopted the Uniform Disposition of Community Property at Death Act.

In any event, the enclosed Act, which I have entitled the "Alaska Community Property Act", would permit married Alaskan domiciliaries to enter into a signed, written agreement to classify all or any part of their assets (or assets of either of them) as community property. It would permit any spouses (whether neither, one or both are domiciled in Alaska) to transfer assets to a signed, written trust agreement (a "community property trust") and have all or any part of those assets constitute community property under the Act. I wish to emphasize that there will be no community property after the Act which was not community property before the Act **except to the extent expressly provided in a signed and written community property agreement or community property trust.**

I derived this draft from the Uniform Marital Property Act which is being sent to you by Federal Express. Wisconsin adopted the Act and the IRS has held that what is called "marital property" under Wisconsin law is community property under IRC §1014(b)(6). (I have used the term "community property" rather than "marital property" in the draft to emphasize that it is community property.) However, the big changes are that under the Alaska Act the couple elects into community property and may do so by trust as well as a more traditional property agreement. In the Wisconsin Act, the couple elect "out" of community property. I do not believe I can overstate the potential significance of this concept. I request that you **immediately** review it and give me your comments. I very much hope we can get it enacted into law this year.

A summary of the Act also is enclosed.

Sincerely yours,

Jonathan

Jonathan G. Blattmachr

JGB:tt
Enc.
cc: Mr. Douglas J. Blattmachr

MEMORANDUM

SUBJECT: Sectional Summary of Bill Draft Relating to Community Property (Work Order No._____)

TO: Representative Al Vezey

FROM:

You have requested a sectional summary of the above described bill, which would expressly allow Alaskan domiciliaries to classify all or a portion of their property as community property by executing a community property agreement and would permit a married couple domiciled within or outside Alaska to classify all or any portion of their property by executing a community property trust. This chapter has been derived from the Uniform Marital Property Act, which has been enacted by Wisconsin, except that, unlike the Uniform Marital Property Act, the Alaska chapter applies to make a married couple's property community property only to the extent provided in the community property agreement or a community property trust. The Uniform Marital Property Act (such as that enacted in Wisconsin) automatically makes all of the couple's property acquired during the marriage (subject to certain exceptions) community property (called "marital property" under that Act) except to the extent the spouses provide otherwise by agreement. In other words, under the Alaska chapter spouses must elect "into" a community property regime; under the Uniform Marital Property Act, the spouses must elect "out" of it.

It should be noted that a sectional summary of a bill should not be considered an authoritative interpretation of a bill, and the bill itself is the best summary of its content.

Section 1. It creates new chapter 16 to title 25. The new chapter is called Alaska Community Property Act.

AS 25.16.010 provides generally definitions for purposes of the chapter.

AS 25.16.020 provides that each spouse must act in good faith with respect to the other in matters involving community property and that this obligation may not be varied by a community property agreement or community property trust.

AS 25.16.030 provides that a community property agreement or community property trust may vary the effects of new chapter 16 except for certain matters, such as the duty of the spouses to act in good faith toward each other with respect to their community property.

AS 25.16.040 provides that property of the spouses or one of them is community property only to the extent provided in a community property agreement or community property trust. It also provides, among other things, that each spouse has a present undivided one-half interest in community property. It provides additional rule for the determination of community property.

AS 25.16.050 provides rules for the management and control of the property of the spouses. It provides that a spouse acting alone may managing control that spouse's property that is not community property that is not community property and a spouse alone may manage community property held in the name of both spouses "in the alternative" (for example, their names separate by the word "or").

AS 25.16.060 deals with gifts of community property and provides, in general, that one spouse may make a gift to a third party of community property only if it does not exceed $1,000; otherwise, the nondonating spouse may recover the property within the time limit specified in the statute, which in general, is three years after the gift.

AS 25.16.070 provides how the spouses may classify their property, through a community property agreement or community-property trust, as community property. It also specifies rules for family obligations. It further provides that the chapter does not alter the

relationship between spouses and their creditors. Moreover, it provides that the new law does not affect any exemption of property of the spouses under any other law.

AS 25.16.090 provides that a bona fide purchaser of community property from one spouse having a right to manage and control that property is free of any claim of the other spouse. It further provides that this rule may not be varied by a community property agreement or community property trust.

AS 25.16.100 defines community property agreement. It must be signed by both spouses and classify some or all of their properties community property. The community property agreement may cover certain other matters such as the making of a Will to carry out the agreement. It also provides that the agreement will not be enforceable if certain condition arise such as the agreement being unconscionable when made. It provides that a community property agreement may be entered into before the man and woman marry, but the agreement will be effective only upon their marriage.

AS 25.16.110 defines community property trust. It is similar to a community property agreement except that it may be signed not only by a married couple domiciled in Alaska or also by one not domiciled in the state. However, at least one Alaska domiciliary, bank or trust company must be a trustee. The powers of that Alaska trustee must include maintaining trust records and arranging for the preparation of income tax returns of the trust.

AS 25.16.120 provides for optional forms for holding community property, including allowing community property to have survivorship feature so that the entire interest in the property will pass to the surviving spouse upon the death of one of the spouses.

AS 25.16.130 provides special rules for treating the ownership of a life insurance policy and proceeds paid on the death of the insured as a community property in circumstances where a portion but not all of the proceeds are paid from community property funds.

AS 25.16.140 provides that mixing (combining) community property with other property does not cause such other property to lose its classification as long as it can be traced. It provides other rules for treating certain properties community property if the community property agreement provides that all property acquired by either or both spouses during marriage is community property.

AS 25.16.150 provides certain remedies to the spouses such as for an accounting with respect to their community property and other matters.

AS 25.16.180 provides that if the community property agreement provides that all property acquired during marriage is community property, then at the death of a spouse domicile in this state, any property of the spouse which can be traced to property received as a recovery for a loss of earning capacity during marriage must be treated as it were community property.

AS 25.16.190 provides for this chapter to be construed to effectuate its general purpose and to make it uniform with respect to the subject covered by the chapter among states enacting it.

AS 25.16.200 provides that the chapter is to be called the "Alaska Community Property Act".

Section 2. Section 2 provides that AS 25.16.203 does not include community property as part of the augmented estate.

Section 3. Section 3 provides for the act to take effect immediately under AS01.10.070(c).

Karen 907 263 8251
Re: HB199

Bob Manley
HB 199 – 907 263 8251
When next hd
try to leave msg but no recorder

KK 789 0047

Steve Pearson
586-9455

Jonathan
~~Blatmayer~~ Blattmachr's #
Blattmachr
(619) 340-5668
(800) 478-7612

Jonathon
Blattmachr
Trustee
(212) 530 5066
NY
re: HB199
(A (213) 892-4432

WI
HB 196
trustee must be
domiciled

BOARD UNIFORM PROBATE
CODE
DICK WELLMAN
(706) 542-5174
542-5556 Fax
LARRY WAGGONER
(310) 574-6025

PHONE MESSAGE DATE 4-12 TIME 10 A.M. P.M.

FOR LISA
M ART PETERSON
OF 556-4000
PHONE ( ) EXT.
☐ FAX ☐ MOBILE ☐ PAGER ( )
MESSAGE NAMES + #'S you wanted
Dick Wellman 706 542 5174
Exec Dir - Jnt Ed Bd Uniform
Probate Code U Ga Law Sch
Larry Waggoner (313) 763 2586
Dir of Res - Uniform Law Sch
Larry Waggoner A (310) 574-6025

☐ URGENT
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☐ WAS IN
☐ WANTS TO SEE YOU

(313) SIGNED

AVERY

SHARON L. GLEASON
ATTORNEY AT LAW

510 L STREET, SUITE 806
ANCHORAGE, ALASKA 99501

PHONE (907) 277-6017
FAX (907) 277-0281

MEMORANDUM May 1, 1997

TO: Honorable Joe Green, Chair
House Judiciary Committee

FROM: Sharon L. Gleason, Esq.

RE: House Bill 199

As I indicated in my testimony before your committee last Friday, April 25, 1997, I have serious reservations about this proposed legislation. My perspective is as an attorney specializing in domestic relations. Currently I am a member of the American Academy of Matrimonial Lawyers. I am also one of the three lawyers in Alaska listed in the family law category in the publication "Best Lawyers in America." I am not an expert on community property law. Throughout my fourteen year legal career, I have practiced law exclusively in Alaska, which is not presently a community property state but instead relies on the principle of equitable distribution when dividing assets between spouses incident to divorce.

I have reviewed the memorandum dated April 30, 1997 from Joan Clover. I share the concerns she expressed in that memorandum. I have several additional comments. First, Sec. 34.75.090(b) indicates that "A community property agreement may not adversely affect the right of a child to support." By implication, it would appear that a community property agreement could adversely affect the right of a spouse to support. In fact, it would appear that the community property agreement could eliminate a spouse's obligation to provide support to the other spouse. In that event, the language of Sec. 34.75.070(b) regarding property available to satisfy a spouse's obligation of support would not even come in to play, since there would not be any obligation of support to be satisfied. In some cases, enforcement of a community property agreement that eliminated a right of spousal support and mandated a 50/50 division of community property may be grossly inequitable. And yet, as Ms. Clover notes in her memorandum, the current version of the bill does not clearly specify that a community property agreement should be unenforceable if it is unconscionable at the time either party seeks its enforcement.

I also believe that the language of Sec. 34.75.070(a) is unduly broad. This provision specifies that "An obligation incurred by a spouse during marriage, including an obligation attributable to an act or omission during marriage, is presumed to be incurred in the interest of the marriage or the family." First, this language does not even limit itself to property subject to community property agreements, but

instead appears to apply to all property. In my view, it is at odds with existing Alaskan law regarding debts acquired during the marriage. Moreover, in contrast to this all-inclusive presumption that all debts are marital, under this proposed legislation various types of assets are deemed to constitute individual property even when those assets are acquired during the marriage. See Sec. 34.75.030(g). This dichotomy could produce serious inequities between spouses.

Also, I believe it inappropriate to place much of this proposed legislation in Title 34, the real estate portion of the Alaska Statutes, when the implications of the legislation are far greater to the rights between spouses currently specified in Title 25.

As indicated above, I am not an expert in community property law and thus unable to fully assess the impact of this proposed legislation. But it is apparent from my preliminary review that many of the bill's provisions represent a substantial departure from existing Alaskan law, and that many of these provisions may prove detrimental to the more economically disadvantaged spouse in a marriage.

Overall, I believe the Legislature should proceed with caution before embarking on a path that adds a whole new level of legal complexity to Alaskan marital property law. In Alaska, I believe we already have in place a fair system for dividing marital property -- equitable distribution. Yet the legal and accounting fees under our current system can be quite expensive to parties that have accumulated any wealth during their marriage. I believe that if a community property opt-in provision were added to the Alaska statutes, these professional costs would be likely to dramatically increase. Moreover, I believe it is statistically far more probable that a couple will divorce than that a surviving spouse of an intact marriage will desire to sell marital property upon the death of the first spouse. For these reasons, I question whether this bill would benefit most Alaskans. Instead, it appears to be legislation designed primarily to help the very rich save on their taxes, including the very rich that reside outside of our state. It will also create a considerable amount of new work for Alaskan attorneys and other professionals. I believe these benefits may well be at the expense of the majority of the Alaskan citizenry.

I have enclosed a copy of a one page article from the Wisconsin Journal of Family Law explaining some of the problems that State has encountered since it passed a version of the Uniform Marital Property Act several years ago. I would urge this Legislature to consult with experts in community property law before adopting a bill that could so dramatically affect the rights of spouses in Alaskan marriages.

Thank you for considering my comments.

Post-it® Fax Note 7671	Date 5/3/97	# of pages ▶ 60
To DOUG WOOLIVER	From LISA KIRSCH	
Co./Dept. COURTS	Co. H. JUDICIARY	
Phone # 463 4750	Phone # 465 4990	
Fax # 463 3475	Fax # " 4316	

M E M O R A N D U M

TO: House Judiciary Committee

FROM: Maryann E. Foley

DATE: May 2, 1997

RE: HB 199

I am a practicing family law attorney in Anchorage, Alaska. I have practiced in this area for over sixteen years. I do not believe that House Bill 199 is in the best interests of Alaskans.

As I stated in my testimony before the Committee on April 25, 1997, this act discriminates against divorcing Alaskans. Section 6 of the Bill which amends AS 25.24.160 by adding a new subsection states that people who have entered into either a community property agreement or trust pursuant to AS 34.75 the court must distribute the property of the parties as indicated in the agreement or the trust. What this section means is as follows:

If you have two couples, the Jones and Smiths. If the Jones do not enter into a community property agreement or trust, they will be divorced under AS 25.24.160 with the court being able to take into account all the statutory factors to determine a fair and equitable distribution of the marital estate. This means the trial court can consider the ages of the parties, their health, their income earning capacity, the income producing capacity of the property to be awarded in the divorce, whether the marital home should be awarded to the party having primary custody of the minor children, etc.

If the Smiths get a divorce but they have entered into a community property agreement or trust then the court is precluded from utilizing the statutory factors to determine a fair and equitable distribution. The court is mandated by this new Subsection (d) to divide the property only as the agreement states it will be whether

or not such a division is fair and equitable. The result is different legal standards for two Alaskan couples similarly situated.

The second problem I see with this statute is that if the Smiths having entered into this community property agreement or trust decide to dissolve the marriage instead of divorce. Then the court is ordered in Section 7 of the new bill to take into consideration the statutory factors listed in AS 25.24.160(a)(2) and (4) to insure that the economic effects of dissolution are fairly allocated.

We could then see the Smiths embroiled in a legal quagmire. If the court does not think the Smith dissolution fairly allocated the economic effects, the court can reject it. If the Smiths then cannot resolve the dissolution to the court's satisfaction, they must then file for a divorce. Under HB 199, the court must accept the allocation in the community property agreement or trust whether or not it is fair and equitable. This results in the court having to approve an agreement in a divorce which they found inequitable in the dissolution.

The committee asked Ms. Gleason, in the hearing on April 25th, whether it is true that people entering into these agreements and trusts would have the expertise of counsel to assist them so they would know fully their rights and obligations. I must agree with Ms. Gleason in the negative. In my experience, I have seen prenuptial agreements that were drafted by the couple or by one

party. These agreements are typically presented on the eve of the wedding. There are times these agreements are drafted by an attorney but he or she is the attorney for only one party. The other party has little or no legal representation as to their rights.

There is also the further complication that people will enter into community property agreements which cover some of their property but not all of their marital property. This would result in the court dividing some of the property pursuant to the agreement and the remaining marital property under the factors listed in the statute. Such an arrangement, I believe, will only lead to increased litigation costs for the parties into trying to sort out what is in the various marital pots. Examples of the questions that could arise include employment benefits. Are they in the property agreement or not in the property agreement? A couple may buy a house that they put under a community property agreement or trust. Several years later they may buy the adjoining lot (not in agreement) and combine both the original lot and the added lot. How will we divide those? What will happen if noncommunity and community property is mixed? Increased litigation costs and added strain upon the judicial system will result.

Another concern that I have is that parties are not going to realize that by putting their property in a community property trust that they are actually giving up their powers over this property to the trustee. Many of these people may be very

surprised to learn in the future when they go to sell an asset placed in this trust that they have to have the trustee's involvement to do it. The selling of the family home and buying of another home that has been placed in a trust is going to have a whole added component to it and an additional expenses besides the closing costs already involved in two real estate transactions.

I have recently read that the costs of setting up of the new irrevocable family trust is going to cost between $7,500.00 and $12,000.00. What is going to be the cost of establishing a community property trust? Is the establishing of such a trust i.e., the initial costs and ensuing costs over the years going to justify the alleged tax benefit?

I think this committee has to recognize that thousands of Alaskans get divorced or dissolved in their marriages each year. I think the committee has to look at the costs to those parties versus the number of Alaskans who might receive some tax benefit upon the death of their partner.

The committee is well aware that one of the major social, economic, and legal problems in Alaska is domestic violence. How many people are going to enter into these agreements because of the controlling nature of their spouse? A person in a controlling relationship is not going to sit with an attorney and the abusive spouse and question their obligations and rights under such an agreement with an attorney who represents both of them. These

people are not going to seek independent counsel to advise them on their rights in a community property agreement or trust. Victims of domestic violence only start considering their legal rights and obligations when they want to break the abuse cycle and get out. By allowing community property agreements and trusts, you are giving the abuser even more potential power over the victim. You would be giving the abuser even more economic control than the abuser already has over the victim in a marital relationship. By allowing one spouse to be able to manage and control the assets in the agreement, you are giving the abuser the control to sell the family home out from under the victim.

As Ms. Gleason's testimony pointed out, even though there is a provision for the court to determine an agreement unconscionable the statute is unclear as to whether the unconscionability has to occur at the execution of the agreement or whether in the context of the circumstances that exist at the time of the divorce. It will be an interesting line for the court to draw as to when the circumstances are such that an agreement is so inequitable that it becomes unconscionable. Is that at 51 percent or is that 99 percent?

I understand that there is no fiscal note attached to this bill. Last year, there was no fiscal note attached to the domestic violence legislation. Yet the economic costs upon the court system have been tremendous. This bill will result in additional economic impact and time constraints upon the court system. The backlog of

cases will increase which will result in frustrated litigants. These litigants will not be just the divorcing couples but all litigants since all cases will be delayed.

As much as I like to see my income level rise. (I have no doubt that it will in the next few years if this statute is enacted), I cannot in good conscious support this bill. It will generate more money for attorneys and for trust companies but it will bring more economic suffering to your constituents than it is worth.

LAW OFFICES
GRUENBERG AND CLOVER
Max F. Gruenberg, Jr.
Joan M. Clover
Jennifer L. Holland

800 "H" Street, Suite #201
Anchorage, AK 99501
Ph (907) 279-0940
Fax (907) 279-4599

MEMORANDUM

TO: Honorable Joe Green, Chair
House Judicial Committee

FROM: Joan M. Clover, Esq.

DATE: April 30, 1997

RE: House Bill 199

Post-it® Fax Note 7671	Date 4-30	# of pages ▶ 3
To Lisa Kirsch	From	
Co./Dept.	Co.	
Phone #	Phone #	
Fax # 465-4316	Fax #	

As I said in my testimony on Friday, April 25, am concerned that there has been insufficient time to study the specific language of this bill to insure that it does not have unintended and adverse consequences to spouses in intact marriages and to those individuals who find themselves in a divorce. Members of the family law section of the state bar first learned of this bill less than two months ago, when we received a copy in the mail. Dick Thwaites came to our Anchorage section meeting to discuss the bill, but unfortunately there was not much lead time for advertising the topic's importance, and therefore attendance at the meeting was poor. I would hope that there would be more comment from the family law bar and other sections of the bar if there were greater time. I will bring the bill to the attention of family law section members at our state-wide meeting in conjunction with the bar convention in May.

I, personally, am generally a proponent of nuptial agreements. I believe in an individual's right to make informed, well counseled decisions for themselves by contract. Alaska law dealing with nuptial agreements is in the formative stages. Indeed, nuptial agreement law is on the cutting edge nationally. Consequently, our courts have a great deal of equitable latitude in the interpretation and enforcement of agreements that come before them. For example, our court has maintained that a nuptial agreement can be set aside if it is unconscionable at the time of divorce. HB 199 at Sections 34.75.090(f)(1) and (g)(2) appears to limit unconscionability to the time of entering the agreement. I see this as a serious mistake. For example, if an agreement specifies no spousal support and the parties, or perhaps the "managing partner," conducts community finances and spending in such a way that there remains very little community property to divide, yet one spouse has been able to sequester and watch grow their own sizable separate estate, it seems inappropriate that perhaps after a lengthy marriage (make the facts as you like) there would be no opportunity for a court to intercede, stating that some deviation from the harsh results of the nuptial contract are appropriate, in light of the time that has passed, the conduct

of the parties during the marriage in spending all joint money, and the meagerness of what remains for one spouse after divorce. It is possible that one spouse *might* be left with public assistance, while the other walks away, wealthy with their protected "separate" property.

I am concerned about Section 34.75.070(a) which appears to mean that one spouse, without the knowledge or consent of the other, could incur inappropriate debt, which would be considered presumptively community debt, then, under section (c), be subject to levy from creditors against all community property, even the innocent spouse's share. Will we have creditors calling a spouse and telling him that his wages and property are subject to garnishment for debts of a spendthrift spouse, debts of which he was unaware? Currently under AS 25.15.050, no Alaskan spouse is liable for the debts of the other separately incurred. This means that, if one spouse alone signs up for a credit card and incurs debt, the other is not responsible to the credit card company. They may, however, be found responsible for a portion of the bill at the time of divorce, because the court will likely consider it a marital debt, but that is up to the judgement of the court in light of all circumstances surrounding the debt. This only applies when the marriage is dissolved. This seems a very sensible and enlightened approach. We will take a step back with the language included in HB 199.

Section 34.75.030(g)(6) seems to exclude from community property that portion of a personal injury award designed to compensate for lost wages that would have been earned during marriage but for the injury. This is contrary to several Alaska Supreme Court opinions and would be a highly inequitable and unfair result. Money compensation for lost marital earnings should be marital.

Does Section 34.75.050(d) mean that a spouse is foreclosed five or ten years after a transfer, at the time of divorce, from seeking compensation from the other spouse for community property inappropriately gifted?

I believe that the "warning" proposed by Representative Croft's amendment should be even more strongly worded "THE CONSEQUENCES OF THIS AGREEMENT MAY BE VERY EXTENSIVE, AFFECTING, FOR EXAMPLE, YOUR RIGHTS WITH RESPECT TO CREDITORS AND OTHER THIRD PARTIES, AND YOUR RIGHTS WITH YOUR SPOUSE BOTH AT THE TIME OF A DIVORCE AND DURING THE COURSE OF YOUR INTACT MARRIAGE. ACCORDINGLY, THIS AGREEMENT SHOULD ONLY..."

These are the questions and comments that come to mind after only a preliminary review of HB 199. I have only spent a morning reviewing and thinking about the bill's language and effect. Although I was educated in a community property state, that was many years ago and I know much has changed. The laws in the eight (8) community property states significantly vary. Which state are we following? Have we looked at all their community property laws, in

practice, to pick and choose the best hybrid statutes for our Alaskan version? The Uniform Marital Property Act has only been adopted by one state and is essentially untried. Just because a uniform law exists does not mean that it is optimum. Many uniform laws exist that have not been widely adopted by the states for various reasons.

In divorce, a clear virtue of our current equitable distribution regime is that it operates within a general statutory framework, giving the courts and our constantly developing case law clear guidance, yet latitude to respond to the very particular and sometimes peculiar facts of any given case. We have case law from 41 sister states that we can look to for guidance. HB 199, as it seeks to define a new option, an Alaskan community property regime, places greater responsibility on the legislature, because it speaks with far greater specificity as to what shall occur between spouses. If that is the legislature's intent, I request that you move forward cautiously and with research as to what has happened in other community property states, so that our Alaskan version of community property can build upon their experiences and missteps. I would hope that law school community property professors would be contacted, that scholarly publications would be researched. We have a unique opportunity to offer Alaskans yet another opportunity to control their own destiny -- how they will govern their financial affairs within a marital partnership -- but let's spend some time and really research it.

Thank you for your consideration.

LAW OFFICES
GRUENBERG AND CLOVER
Max F. Gruenberg, Jr.
Joan M. Clover
Jennifer L. Holland

880 "H" Street, Suite #201
Anchorage, AK 99501
Ph (907) 279-9940
Fax (907) 279-4699

To: House Judiciary Committee
From: Max Gruenberg and Jennifer Holland
Re: House Bill 199

Dear Committee Members,

We are family law attorneys having practiced almost exclusively in domestic relations law in Alaska for the past 25 and 4 years respectively.

It has come to our attention that the legislature is considering adopting a community property regime which would be available to cpt into by means of a nuptial agreement. We are concerned that this legislation be studied carefully before becoming law. Tax advantage is but a small part of the ramifications this legislation will have upon intact marriages and spouses upon divorce.

4/29/97 Jennifer L. Holland
4/29/97 Max Gruenberg

Post-it™ Fax Note 7671 | Date | # of pages ▶ 1

To Lisa Kirsch	From
Co./Dept.	Co.
Phone #	Phone #
Fax # 465-4316	Fax #

TOTAL P.01

Law Office Of
PAMELA SCOTT BROWN
733 West Fourth Avenue, Suite 204, Anchorage, Alaska 99501, Telephone (907) 277-7788/Fax 277-7623

April 29, 1997

SENT FACSIMILE

House Judiciary Committee
Attn: Lisa Kirsch
Facsimile No. 465-4316

Re: House Bill 199/ "Alaska Community Property Act"

Dear Lisa:

I would like to express my opposition to the passage of House Bill 199. As a family law practitioner, I believe more time should be devoted to researching the many consequences of Bill 199. Please hold the Bill over until the next session and make an effort to afford as many people as possible, particularly in the legal field, to address very real concerns about the ramifications to individuals who opt into community property.

Sincerely,

Pamela D. Scott

PSB:ps

LAW OFFICE OF
JILL DEAN

3003 MINNESOTA DRIVE
SUITE 301
ANCHORAGE, AK 99503
PHONE (907) 277-8118
FAX(907) 272-4474

April 28, 1997 SENT BY FAX ONLY

House Judiciary Committee

Attn: Lisa Kirsch

Re: House Bill 199, "Alaska Community Property Act"

Dear Ms. Kirsch,

It has come to my attention that House Bill 199, the "Alaska Community Property Act" is under serious consideration by the legislature. While I am not extremely familiar with the bill I am concerned that its ramifications from the family law point of view have not been given adequate consideration.

My understanding is that this bill has primarily been considered for the tax and probate advantages it may provide. However, this bill may also seriously affect basic domestic relations law in Alaska. For example, Alaska law (A.S.25.24.160) now provides for an equitable distribution of property upon divorce based upon certain enumerated factors. How will a couple's decision to execute a community property agreement interact with A.S.25.24.160? There are many serious questions about HB 199 from the family law point of view.

My concern is that the impact of this bill on domestic relations law in Alaska has not been given adequate consideration. Since the bill has such great ramifications on family law, those ramifications should be thoroughly considered prior to its passage. I believe this bill should be held over until next session so further consideration of its interaction with Alaska domestic relations law can take place.

Sincerely,
LAW OFFICE OF JILL DEAN

Jill Dean

JD\jt

04/25/97 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1150

08:39:35 PARTICIPANT LIST (ALL PARTICIPANTS) BY:ANC

TCN:70708 SCHEDULED FOR:04/25/97 08:30 TO 10:30 FOR:ANC

PUBLIC HEARING HOUSE JUDICIARY

LOCATION:ANCHORAGE

HB 163	GEORGE	TAFT (ANS ?)	PUBLIC SAFETY LB	TESTIFY
HB 199	DICK	THWAITES		TESTIFY
HB 199	GEORGE	GORRIG	Estate Atty (supp'd IRS)	TESTIFY
HB 199	SHARON	GLEASON		TESTIFY
HB 234	THEDA	PITTMAN		TESTIFY

HB 199 MS. MARYANN FOLEY TESTIFY

08:51:12 PARTICIPANT LIST (ALL PARTICIPANTS) BY:ANC

TCN:70708 SCHEDULED FOR:04/25/97 08:30 TO 10:30 FOR:ANC

PUBLIC HEARING HOUSE JUDICIARY

LOCATION:ANCHORAGE

HB 163	GEORGE	TAFT (ANS ?)	PUBLIC SAFETY LB	TESTIFY
HB 199	DICK	THWAITES		TESTIFY
HB 199	GEORGE	GORRIG – Estate Planner Atty		TESTIFY worked IRS
HB 199	SHARON	GLEASON – Not Est./ divorce prob		TESTIFY – lg asset cases
HB 199	JOAN	CLOVER		TESTIFY
HB 234	THEDA	PITTMAN		TESTIFY
HB 234	PAULINE	UTTER		TESTIFY

HB199 MARY ANN FOLEY

FAIR BANKS

HB199 MR RICH HOMPESCH TEST

4 25 97 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1150

08:39:35 PARTICIPANT LIST (ALL PARTICIPANTS) BY:ANC

TCN:70708 SCHEDULED FOR:04/25/97 08:30 TO 10:30 FOR:ANC

PUBLIC HEARING HOUSE JUDICIARY

LOCATION:ANCHORAGE

HB 163	GEORGE	TAFT (ANS ?)	PUBLIC SAFETY LB	TESTIFY
HB 199	DICK	THWAITES ← HEARD BEFORE		TESTIFY
HB 199	GEORGE	GORRIG		TESTIFY
HB 199	SHARON	GLEASON		TESTIFY
HB 234	THEDA	PITTMAN		TESTIFY
HB199	MARY ANN	FOLEY		TEST.

SHARON L. GLEASON
ATTORNEY AT LAW
510 L STREET, SUITE 306
ANCHORAGE, ALASKA 99501
(907) 277-6017
FAX (907) 277-0281

FAX INFORMATION COVER SHEET

DATE: May 1, 1997

TIME: 2:30 p.m.

FAX NO: 907-465-4316

THE FOLLOWING PAGES ARE FOR: Lisa KIrsch - House Judiciary Committee

If you do not receive all 4 pages being transmitted, including this information sheet please call Sharon Smith at the above number.

___ Hard Copy to follow via U.S. Mail/personal delivery.

MEMO:

Ms. Kirsch:

Please see that my comments are presented to the Committee. Please call me if you have any questions. Thank you.

Sharon L. Gleason

CONFIDENTIAL

HB 196

Section 1 of HB 196 adds a new section to Chapter 6 of Title 13, Decedents' Estates, Guardianships and Trusts. Chapter 6 is the general provisions that apply to AS 13.06 - 13.36, the Uniform Probate Code. This new section, AS 13.06.068, primarily deals with which state's laws will be applicable to testamentary dispositions of both real and personal property. The primary purpose of Sections 1 through 8 of the bill appears to be to correct inconsistencies regarding choice of law throughout the Uniform Probate Code. Sections 9 - 11 deal with trust administration. In particular, Section 11 adds new sections to Article 3 which deal with the duties and liabilities of trustees. Many of the new sections provide protections to trustees and limit a trustee's personal liability. The new sections also outline certain actions which may be taken by the trustee with regard to managing trust assets and property.

In general, this bill does tie up some loose ends and inconsistencies throughout these statutes dealing with choice of law as it is applied to testamentary dispositions. The sections dealing with trusts and the duties and liabilities of trustees may also open up the area of trust management in Alaska. There does not appear to be any direct connection between HB 196, HB 199 and HB 101 except that they are all related to estate planning of one form or another. HB 196 does allow persons outside of Alaska to use Alaska as a situs for a trust and for Alaska law to govern testamentary dispositions and trust management.

HB 199

The main thrust of HB 199 is to provide a means for spouses living in Alaska to elect to have their property, both real and personal, treated as community property. The main purpose for this is estate planning. Under §1014 of the Internal Revenue Code, community property, in its entirety, will receive a stepped-up date of death basis at the death of one spouse. However, with property held as tenants in common or as tenants by the entirety, only the deceased spouse's share in the property will receive the stepped-up basis upon the death of that spouse. In some instances this could be devastating to the surviving spouse at a later date when he/she sells the property for that person will be required to pay capital gains tax on his/her share that did not get a stepped-up basis. For example, assume husband and wife have been married 50 years and at the death of the husband, who is the first to die, they owned shares in a business that have a value of two billion dollars. However, the couple's basis in the shares is only $100,000. If the shares are considered community property, then the all of the shares receive a stepped-up basis at the death of the husband(i.e., $2 billion). When the wife goes to sell the shares she will not have to pay any capital gains tax on her shares because they have received a stepped-up basis in value. However, if they had been held as tenants by the entirety, the wife would have had to pay a capital gains tax on her half of the shares that she did not receive due to her husband's death.

The first 8 sections of the bill deal with husbands and wives, their separate property, their rights in that property and the effect of divorce on their rights in the property. Generally, the law in Alaska remains the same unless the spouses have elected to have some or all of their property treated as community property. Should the spouses elect to have some or all of their property classified as community property, there is a general requirement that each spouse must act in good faith with respect to the other spouse as to this community property. Electing to have property treated as community property will have no effect on the augmented estate of a decedent and actually may be more beneficial to a surviving spouse for he/she would only receive a one-third interest in the augmented estate whereas he/she receives 50% of the community property. The bill also empowers the courts to set aside a community property agreement or trust if its determined that it is unconscionable, the spouse did not sign it voluntarily or sufficient disclosures were not made by either spouse regarding their property prior to entering into the agreement. The decision to have property classified as community property is completely voluntary and must be specifically elected. It can be revoked or amended at a later date by the spouses simply entering into another agreement.

There does not appear to be any direct connection to or relationship between HB 196 except that both are a means of implementing estate planning. HB 199 may be a beneficial estate planning tool for spouses who have been married for a long time and who have substantial property that would realize substantial capital gains tax if sold as separate property or after the death of one of the spouses.

J:\LEGISREG\HB199.MEM

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 199

Page 4, line 22:

Delete "34.75.090(b)"

Insert "34.75.090(c)"

Page 9, following line 31:

Insert a new subsection to read:

"(b) A community property agreement must contain the following language in capital letters at the beginning of the agreement:

THE CONSEQUENCES OF THIS AGREEMENT MAY BE VERY EXTENSIVE. ACCORDINGLY, THIS AGREEMENT SHOULD ONLY BE SIGNED AFTER CAREFUL CONSIDERATION. IF YOU HAVE ANY QUESTIONS ABOUT THIS AGREEMENT, YOU SHOULD SEEK COMPETENT ADVICE."

Reletter the following subsections accordingly

Page 10, lines 3 - 4:

Delete "(b) of this section"

Insert "(c) of this section"

Page 12, following line 19:

Insert a new subsection to read:

"(b) A community property trust must contain the following language in capital letters at the beginning of the trust:

THE CONSEQUENCES OF THIS TRUST MAY BE VERY EXTENSIVE. ACCORDINGLY, THIS TRUST SHOULD ONLY BE SIGNED AFTER CAREFUL CONSIDERATION. IF YOU HAVE ANY QUESTIONS ABOUT THIS TRUST, YOU SHOULD SEEK COMPETENT ADVICE."

Reletter the following subsections accordingly.

Page 12, lines 22 - 23:

Delete "(b) of this section"

Insert "(c) of this section"

LAW OFFICE OF
JILL DEAN

3003 MINNESOTA DRIVE
SUITE 301
ANCHORAGE, AK 99503
PHONE (907) 277-8118
FAX(907) 272-4474

FAX TRANSMISSION

DATE: 4/28/97

TO: House Judiciary Committee
Attn: Lisa Kirsch
FAX # 465-4316

FROM: Jill Dean

RE: HB 199

Pages 2 (including this page)

Attachments/Message:

Please call 277-8118 if transmission is unsuccessful. Sender's FAX Number is (907) 272-4474

But not [LISA] necessarily in Family Trusts!!

Keep this quiet indeed!

Let 'ch my IRS on this — the gloves are off.

■ **IN BRIEF:** Keep up with high technology / C-2 ■ **BAD NEWS FOR GOOD NEWS:** Upbeat magazines struggle / C-4

BUSINESS

SUNDAY, April 27, 1997 ANCHORAGE DAILY NEWS SECTION C

In Alaska we trust

New state law gives protection from creditors

By DWAYNE ATWOOD
Daily News reporter

Fairbanks attorney Rich Hompesch was impressed when he toured the Cook Islands last year to get an up-close look at the financial-trust industry there.

The cluster of tiny islands some 2,000 miles northeast of New Zealand is home to fewer than 20,000 people but supports an industry that attracts millionaires.

"They are in the middle of nowhere, away from the major financial centers, and they had three major trust companies," said Hompesch, an estate-planning and probate attorney who supported recent changes to state family trust laws.

"It is the perfect industry for Alaska," Hompesch said. "We don't have to cut any trees; we don't have to dig any holes in the ground."

Hompesch and others involved in the somewhat obscure world of trust and estate planning see vast opportunity in a state law that took effect this month.

For years, investors who wanted to stash their wealth beyond the grasp of the Internal Revenue Service or creditors have set up trusts outside the country. Although the new law does not give people a way to elude existing or anticipated debts, the "perpetual trusts" available in Alaska do provide some protection from future creditors. And that unique feature has people talking.

Nobody knows if Alaska will become an international center for an industry that has drawn billions in American assets to places like Switzerland, the Cayman Islands and other offshore jurisdictions. But the new law is gaining attention. Outside attorneys have been calling trust officers at local banks, and at least one company already has set up shop to capitalize on an anticipated surge in business.

A trust is a legal arrangement in which a trustee holds title to property for the benefit of others who are named as beneficiaries. One appeal of trusts is that they offer a way to reduce the estate taxes that cut into

Please see Page C-6, TRUST

JIM LAVRAKAS / Anchorage Daily News

Richard Thwaites is a lawyer involved in changing the state trust law.

Family trusts aren't best idea for all

By DWAYNE ATWOOD
Daily News reporter

Family trusts are not for everybody.

First of all, federal estate taxes don't kick in until assets of more than $600,000 are passed on to children or family members other than a spouse.

But if a couple plans to leave a larger sum to their children, a trust might be a good financial tool.

A married couple can use a trust to provide up to $1.2 million for their children, avoiding substantial taxes. If that $1.2 million in assets were instead passed from

Please see Page C-6, FAMILY

TRUST: New state law gives protection from creditors

Continued from Page C-1

assets as they are passed from one generation to the next.

Many kinds of trusts exist. A typical trust today might be created to set aside money for your children to go to college, while giving you the control to direct the remaining assets to a spouse or other beneficiaries.

The new state law allows for the creation of irrevocable trusts — trusts that can continue for numerous generations if they are kept open by a person or organization.

A unique feature of Alaska's law allows the person creating an irrevocable trust to be eligible, but not entitled, to receive distributions from the trust. In effect, that means future creditors can't raid the trust, according to the law's supporters. If the creator of the trust is sued, the property he or she put into the trust cannot be seized or claimed.

A person can't create a trust to avoid existing or anticipated creditors, according to the law. Anyone who believes a trust was created fraudulently to avoid creditors could have four years from the time property is transferred into a trust, or one year from the time the suspected fraud is discovered, to pursue their claims.

The law's sponsor, Rep. Al Vezey, R-North Pole, said he views the new law as a vehicle for expanding the state's economy.

"Since I first came to the Legislature, I asked the question, 'What could we do to make the state's financial services industry bigger?' We got all kinds of excuses, but very few suggestions," Vezey said.

One suggestion came from people involved in the state's trust industry. Built into the law is the requirement that a trustee must be an Alaska business operated by Alaska residents, Vezey said. And Alaska may be attractive to investors because there is no statewide sales tax, no state personal income tax, and the state is a popular tourism destination.

"People who are in the trust business realized the tremendous opportunity that this would create."

Charles D. Fox IV, a trust attorney for Schiff Hardin and Waite in Chicago, said his 200-person firm is interested in Alaska's trust law. Schiff Hardin maintains a 20-employee estate and trust division and some 90 percent of its trust clients live outside Illinois, he said.

While a handful of states, including South Dakota, Wisconsin, Idaho and Delaware, have made provisions for trusts in perpetuity, Alaska's credit-protection feature is unique, he said.

"Quite honestly, that is astounding," Fox said. "It is something that I intend to look at."

But there is no patent for trust law, he noted.

"It will be interesting to see if other states try to emulate this," Fox said. "The biggest reaction I have heard is, 'Why didn't they do this in Hawaii?'"

One new business, Alaska Trust Co., has begun operation in Anchorage because its managers believe the state will become one of the most desirable places in the world to create trusts.

"We think a lot of people with $20 million and $30 million estates back east will come up here and use this," said Richard S. Thwaites, chairman of Alaska Trust. "We are after that Outside market."

The cost for establishing a trust likely will range from $7,500 to $12,500, he said.

Alaska Trust Co. was incorporated a year ago in anticipation of expanding trust markets. The majority shareholders are The Aleut Corp. and DADCO Inc.

Other shareholders are Thwaites and real estate appraiser Stephen W. Noey, each of whom holds about a 7 percent interest in the company. Douglas Blattmachr, president and chief executive of Alaska Trust Co., holds about 8 percent, and lobbyist Joe Hayes holds 4 percent.

Thwaites is co-author of the new trust law. Vezey, Thwaites and other proponents pushed for changes to the state's trust laws last year, but Gov. Tony Knowles vetoed that bill.

"The governor did have concerns that the law would be used as a loophole," said the Bob King, the governor's press secretary. "People can't use this as a way to avoid their obligations."

Vezey and others say the new law includes provisions that would stop a deadbeat dad from locking up assets that might go to spouses or children, and the governor was confident enough to approve the revised measure.

Trust managers for local banks said they were unsure what the new law might mean for the industry.

"There really is some opportunity for business from within our state," said Rod Shipley, senior vice president and manager of the trust department for National Bank of Alaska. "Once word of this gets out, some of the banks not providing the service will come around."

Bob McKay, a senior trust officer for First National Bank of Anchorage, was among those who said it is too early to tell what the real economic benefit to Alaska will be. McKay said he is waiting to see what kinds of working documents are drafted by attorneys when the trusts are established.

"I don't really have a sense of it," he said. "It is just so new."

FAMILY: Trusts complex

Continued from Page C-1

one spouse to the next, then on to the children, the taxes could total about $235,000, said Richard Thwaites, chairman of Alaska Trust Co.

But in all likelihood, people who are looking to take advantage of the new "perpetual trusts" now offered in Alaska will be of greater wealth, Thwaites said.

"My guess is you are looking at somebody with a $2.5 million estate or more," he said, pointing out that investors generally don't put more than 25 percent of their net worth into a trust.

And there is some expense. The cost of establishing the kind of irrevocable trust created by the new law could run about $12,500, say attorneys in the field.

"This is probably one of the most complex trusts that an attorney can draft, and it involves a lot of money," said Rich Hompesch, a Fairbanks estate planning and probate attorney who supported the new trust law. "It is very specialized work."