

HB

221

HB 221

• split

Sec 1 old Bill \Rightarrow new compromise
on notification
 \rightarrow talk to Shechtel / Manly

Sec 2 \Rightarrow notification

Sec 3 \Rightarrow see 4 of old modification/revocation
of irrevocable trusts

13.36.370 - removed.

Sec 5 \Rightarrow spendthrift trust language
has been taken out.

RAR

Dana Olson \rightarrow DNR's reasons easements
saying they work together
she'll lose other property

Alaska State Legislature



House of Representatives House Judiciary Committee

Talking Points HB 221

- This legislation seeks to amend two areas of the Alaska Trust Act.
- The first area HB 221 addresses is a trustee's duty to inform and account to beneficiaries. The current law does not specify which beneficiaries must be notified with respect to income or principle he/she may be entitled to receive.
- Some trusts name as many as a dozen discretionary beneficiaries that a trustee may have to notify on account of the statute's vague language. HB 221 would clarify that the trustee only has to notify a beneficiary who is entitled to mandatory distribution of income or principal. This mandatory beneficiary will be referred to as a "current beneficiary" throughout the statute.
- The second area HB 221 addresses is the modification or termination of an irrevocable trust.
- Both revocable and irrevocable trusts are frequently used for estate planning purposes. Trusts are often made irrevocable to obtain certain tax advantageous tax treatment or to ensure that the settlor's purpose is achieved. Irrevocable trusts are currently prohibited from modification or termination under Alaska law.
- Accordingly, when circumstance arise under which a modification or termination of an irrevocable trust would be prudent, the movant is required to take the matter to court and face unpredictable results.
- HB 221 would amend Alaska law to permit irrevocable trusts to be amended or terminated by a trustee, settlor, or beneficiary unless the trust is expressly made irrevocable.
- The proposed legislation follows a statutory pattern that has been adopted by the drafters of the Uniform Trust Act. Comments to Section 3-102 of the Uniform Trust Act provide: Revocation or Modification of Revocable Trust. Subsection (a) of this section, following the lead of California, Montana, and Texas, provides that a trust is revocable unless the terms of the trust provide

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otherwise. The common law rule and the law of the other states is the opposite, that is, a trust is irrevocable absent contrary intent. At least one member of the drafting committee is of the view that the Act should follow the common law rule.

HOUSE BILL NO. 221

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE BY REQUEST

Introduced: 5/4/99

Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to a trustee's duties to inform and account to beneficiaries;
 2 relating to the revocation, modification, termination, reformation, construction, and
 3 trustees of trusts; and relating to transfer restrictions in trusts."

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

5 * Section 1. AS 13.16.595(a) is amended to read:

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

10 * Sec. 2. AS 13.36.080 is amended to read:

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

14 (1) within 30 days after acceptance of the trust, the trustee shall inform

1 in writing the current beneficiaries and, if possible, one or more persons who under
2 AS 13.06.120 may represent current beneficiaries [WITH FUTURE INTERESTS], of
3 the court in which the trust is registered and of the trustee's name and address;

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

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

11 * Sec. 3. AS 13.36.080 is amended by adding new subsections to read:

12 (b) The trust agreement may modify the trustee's duties under this section and
13 may prohibit the trustee from providing any notification or information to a current
14 beneficiary regarding the trust unless that beneficiary receives a distribution from the
15 trust, and then the notification or information may be limited to the accounting period
16 during which the distribution was made.

Why?

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

20 * Sec. 4. AS 13.36 is amended by adding new sections to read:

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

revocability

24 (b) Notwithstanding AS 13.36.035 - 13.36.050, this section applies only if the
25 settlor is domiciled in this state when the trust is created, the trust instrument is
26 executed in this state, or the trust provides that the law of this state governs the trust.

27 **Sec. 13.36.340. Modification and revocation of revocable trusts.** (a) A
28 trust that is revocable by the settlor may be modified or revoked in whole or in part
29 by

30 (1) substantial compliance with a method of modification or revocation
31 provided in the trust instrument; or

1 (2) a writing, other than a will, signed by the settlor and delivered to
2 the trustee during the lifetime of the settlor, except that, if the trust instrument
3 expressly makes the method of revocation provided in the trust instrument the
4 exclusive method of revocation, the trust may not be revoked under this paragraph.

5 (b) Unless otherwise provided in the trust instrument, if a trust that is
6 revocable by the settlor is created or funded by more than one settlor,

7 (1) the trust may be modified or revoked as provided in AS 34.77.100
8 to the extent the trust consists of community property under AS 34.77 (Alaska
9 Community Property Act);

10 (2) each settlor may modify or revoke the trust as to the portion of the
11 trust property contributed by that settlor that is not community property under
12 AS 34.77.

13 (c) A revocable trust may not be modified or revoked by an attorney-in-fact
14 under a power of attorney unless the modification or revocation is expressly permitted
15 by the trust instrument.

16 **Sec. 13.36.345. Modification or termination of irrevocable trusts because**
17 **of unanticipated circumstances.** (a) On petition by a trustee, settlor, or beneficiary,
18 a court may modify the administrative or dispositive terms of an irrevocable trust or
19 terminate an irrevocable trust if, because of circumstances not anticipated by the
20 settlor, modification or termination would substantially further the settlor's purposes
21 in creating the trust.

22 (b) Upon termination of a trust under this section, the trust property shall be
23 distributed in accordance with the settlor's probable intention.

24 **Sec. 13.36.350. Reformation to correct mistakes in irrevocable trusts.** (a)
25 On petition by a trustee, settlor, or beneficiary, a court may reform the terms of an
26 irrevocable trust, even if the trust instrument is not ambiguous, to conform to the
27 settlor's intention if the failure to conform was due to a mistake of fact or law,
28 whether in expression in the trust or inducement to create the trust, and if the settlor's
29 intent can be established by clear and convincing evidence.

30 (b) A court may consider evidence, including direct evidence contradicting the
31 plain meaning of the text, when determining the settlor's intent or for any other

1 purpose under this section.

2 **Sec. 13.36.355. Construction of trust to achieve settlor's tax objectives.** (a)

3 The terms of a trust shall be construed to achieve the settlor's tax objectives.

4 (b) On petition by a trustee, settlor, or beneficiary, a court may modify the
5 terms of an irrevocable trust to achieve the settlor's tax objectives in a manner that
6 does not violate the settlor's probable intent. The court may order that the
7 modification operate retroactively.

8 **Sec. 13.36.360. Modification or termination of irrevocable trust by consent.**

9 (a) Except as otherwise provided by this section, on petition by a trustee, settlor, or
10 beneficiary, a court may modify or terminate an irrevocable trust if all of the
11 beneficiaries consent and if continuation of the trust on the existing terms of the trust
12 is not necessary to further a material purpose of the trust. The inclusion of a
13 restriction on the voluntary or involuntary transfer of trust interests under
14 AS 34.40.110 may constitute a material purpose of the trust under this subsection, but
15 is not presumed to constitute a material purpose of the trust under this subsection.

16 (b) Unless otherwise provided in the trust instrument, an irrevocable trust may
17 not be modified or terminated under this section while a settlor is also a discretionary
18 beneficiary of the trust.

19 (c) If a beneficiary other than a qualified beneficiary does not consent to a
20 modification or termination of an irrevocable trust that is proposed by the trustee,
21 settlor, or other beneficiaries, a court may approve the proposed modification or
22 termination if the court determines

23 (1) if all the beneficiaries had consented, the trust could have been
24 modified or terminated under this section; and

25 (2) the rights of a beneficiary who does not consent will be adequately
26 protected or not significantly impaired.

27 (d) In (c) of this section, "qualified beneficiary" means a beneficiary who

28 (1) on the date the beneficiary's qualification is determined, is entitled
29 or eligible to receive a distribution of trust income or principal; or

30 (2) would be entitled to receive a distribution of trust income or
31 principal if the event causing the trust's termination occurs.

1 **Sec. 13.36.365. Uneconomical irrevocable trust.** (a) Notwithstanding the
 2 other provisions of AS 13.36.335 - 13.36.370, if the value of the property of an
 3 irrevocable trust is less than \$50,000, the trustee may terminate the trust unless the
 4 trust instrument provides otherwise.

5 (b) Notwithstanding the other provisions of AS 13.36.335 - 13.36.370 and the
 6 terms of the trust, on petition to the superior court by a trustee, settlor, or beneficiary,
 7 the court may modify or terminate an irrevocable noncharitable trust, or remove the
 8 trustee and appoint a different trustee, if the court determines that the value of the trust
 9 property is insufficient to justify the cost of administration.

10 (c) Upon termination of a trust under this section, the trustee shall distribute
 11 the trust property in accordance with the settlor's probable intent.

12 **Sec. 13.36.370. Exclusive procedure.** Unless otherwise provided in the trust
 13 instrument, except as provided by AS 13.12.212(c), 13.12.803, 13.12.804, 13.12.907,
 14 AS 13.33.205, AS 13.36.130, and AS 13.60.010, AS 13.36.335 - 13.36.365 provide the
 15 exclusive procedures for modifying, terminating, or revoking trusts.

16 * **Sec. 5.** AS 34.40.110 is amended by adding a new subsection to read:

17 (g) If a trust contains a transfer restriction allowed under (a) and effective
 18 under (b) of this section, a beneficiary may not transfer an interest in the trust, and a
 19 creditor or assignee of a beneficiary may not attach an interest in or a distribution from
 20 the trust by the trustee before receipt of the interest or distribution by the beneficiary.
 21 In this subsection, "receipt of the interest or distribution by the beneficiary" does not
 22 include

23 (1) direct payment of a beneficiary's health, medical, or educational
 24 expenses to the provider of the health, medical, or educational goods or services;

25 (2) the use or occupancy of property owned by the trust; or

26 (3) expenditures made for the maintenance or preservation of property
 27 owned by the trust.

28 * **Sec. 6. APPLICABILITY.** AS 34.40.110(g), added by sec. 5 of this Act, applies to trusts
 29 regardless of whether the trusts were created before, on, or after the effective date of this Act.

SB 163 - Analyze concerns w/ notification
Have Shattel → notification - compromise notice is provided

SPONSOR STATEMENT

HB 221

"An act relating to a Trustee's duties to inform and account to beneficiaries; relating to the revocation, modification, termination, reformation, construction, and trustees of trusts; and providing for an effective date."

This legislation defines a current beneficiary as a person who receives a mandatory distribution of income or principal from a trust. Current law does not ~~not~~ who is a current beneficiary. Some trusts name as many as dozens of discretionary beneficiaries who may not be entitled to receive any income or principal for years. Under current law the trustees of such trusts do not know whether they have to notify these discretionary beneficiaries. The new legislation would clarify that the trustee only has to notify a beneficiary who is entitled to a mandatory distribution of income or principal from the trust.

Policy
administrative
costs

Both revocable and irrevocable trusts are frequently used for estate planning purposes. Trusts are often made irrevocable in order to obtain certain advantageous tax treatment and to ensure obtainment of the settlor's purposes. However, changed circumstances or errors involved in the formation of the trust may require modification or termination of a trust. For example, modification or termination of an irrevocable trust may be desirable for one or more of the following reasons.

- To make a distribution to a beneficiary which is not clearly within the "health, support, maintenance or education" standard otherwise required by the trust;
- To be able to hold "S" corporation stock in the trust;
- To divide one trust into two trusts, one of which is exempt and one of which is non-exempt from the Federal Generation-Skipping Transfer Tax;
- To authorize the trustees to engage in transactions not authorized by the existing trust agreement;
- To authorize an individual trustee in a trust that presently requires a corporate trustee;
- To divide one trust with multiple beneficiaries into two or more trusts because the beneficiaries wish to pursue separate investment policies;
- To try to achieve a Federal Gift or Estate Tax goal;
- To make changes to restrictions on the disposition of property in light of the maturity of children beneficiaries;
- To accommodate new, unanticipated beneficiaries;
- To consolidate several trusts which are for the benefit of a single beneficiary;
- To terminate a trust which is no longer economical to continue.

Alaska does not presently have statutes which allow for the modification or termination of trusts. Therefore, whenever such modification or termination is desired, the individuals involved and the court hearing the matter, have to rely upon general trust principles. If there is opposition to the modification or termination, then the results become unpredictable.

The proposed legislation follows the statutory pattern which has been adopted and in place in California for a number of years and recently adopted in South Dakota. It is also consistent with the pattern of the Uniform Trust Act. The legislation adopts methods for modifying and terminating irrevocable trusts, and procedures which are fair to all parties involved.

FISCAL NOTE

**STATE OF ALASKA
2000 LEGISLATIVE SESSION**

BILL NO. HB 221

Revision Date/Time (Note if correction) 1/13/00, 8:25 AM Dept. Affected Law
 Title "... relating to a trustee's duties to inform and BRU Civil Division
account to beneficiaries; ... revocation, modification ... of trusts ... Component Commercial
 Sponsor House Judiciary Committee by Request
 Requester House Judiciary Committee Component Serial No. 2211

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 221 requires a trustee to give current beneficiaries notice of the registration of a trust and to keep the beneficiaries informed about its administration. Under this bill, trusts are presumed revocable unless expressly made irrevocable. It further defines how trusts can be revoked, whether they are revocable or not, modified and reformed to correct mistakes not intended by the person creating the trust.

This bill will have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson *Joan M. Kasson*
 Division Attorney General's Office
 Approved by Commissioner *Rodger* Bruce M. Botelho, Attorney General
 Agency Department of Law

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 Date/Time 1/13/00, 8:25 AM
 Date 1/13/00

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