

HB

102

<TARGET><BILL>HB 102</BILL><SUBJECT>HB
102</SUBJECT><COMM>HFIN28</COMM></TARGET>

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: CSHB 102(L&C)
Fiscal Note Number: 1
(H) Publish Date: 3/27/13

Identifier: HB102-DOA-DRB-2-22-13
Title: RETIREMENT PLANS; ROTH IRAS; PROBATE
Sponsor: KELLER
Requester: House Labor and Commerce

Department: Department of Administration
Appropriation: Centralized Administrative Services
Allocation: Retirement and Benefits
OMB Component Number: 64

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2014 Request	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES	FY 2014	FY 2014					
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By: Jim Puckett, Director
Division: Division of Retirement and Benefits
Approved By: Curtis Thayer, Deputy Commissioner
Department of Administration

Phone: (907)465-4471
Date: 02/11/2013 12:00 AM
Date: 02/22/13

FISCAL NOTE ANALYSIS #1

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSHB 102(L&C)

Analysis

HB 102 has no fiscal or actuarial impact on the state retirement systems or the Division of Retirement and Benefits. Retirement Systems' statutes do not allow any assignment of benefits to creditors, whether they are benefits paid to a member, survivor or beneficiary. This bill extends the protections on retirement plan assets from creditors to beneficiaries or survivors after the funds are disbursed from the plans.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: CSHB 102(L&C)
 Fiscal Note Number: 2
 (H) Publish Date: 3/27/13

Identifier: HB102-LAW-CIV-02-22-13
 Title: RETIREMENT PLANS; ROTH IRAS; PROBATE
 Sponsor: KELLER
 Requester: (H) Labor & Commerce

Department: Department of Law
 Appropriation: Civil Division
 Allocation: Commercial and Fair Business
 OMB Component Number: 2717

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014 Appropriation Requested	Included in Governor's FY2014 Request	Out-Year Cost Estimates				
			FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES	FY 2014	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
 If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By:	Loretta Withington, Division Operations Manager	Phone:	(907)465-5427
Division	Administrative Services Division	Date:	02/22/2013 12:00 AM
Approved By:	Michael C. Geraghty, Attorney General	Date:	02/22/13
	Department of Law		

FISCAL NOTE ANALYSIS #2

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSHB 102(L&C)

Analysis

HB 102 makes numerous changes to the Uniform Probate Code, the Alaska Principal and Income Act, the Alaska Uniform Prudent Investor Act and the Alaska Uniform Transfers to Minors Act. It also amends the exemptions from execution to include a beneficiary's interest in retirement plans, IRAs and Roth IRAs and clarifies the rights of judgment creditors of members of LLCs and partners of LLPs. These matters are not typically handled by the Department of Law but rather by private attorneys and financial advisors.

We see no fiscal impact to the Department of Law.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: CSHB 102(L&C)
 Fiscal Note Number: 3
 (H) Publish Date: 3/27/13

Identifier: HB102-DOR-TRS-02-22-13
 Title: RETIREMENT PLANS; ROTH IRAS; PROBATE
 Sponsor: KELLER
 Requester: House Labor Commerce

Department: Department of Revenue
 Appropriation: Taxation and Treasury
 Allocation: Treasury Division
 OMB Component Number: 121

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014 Appropriation Requested	Included in Governor's FY2014 Request	Out-Year Cost Estimates					
			FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency?
 If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Initial version.

Prepared By:	Pamela Leary	Phone:	(907)465-2350
Division	Treasury	Date:	02/22/2013 12:00 AM
Approved By:	Angela Rodell	Date:	02/22/13
	Deputy Commissioner, DOR		

FISCAL NOTE ANALYSIS #3

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSHB 102(L&C)

Analysis

This bill clarifys exemptions and rights relating to retirement plans, IRAs and probate assets. No additional costs will be incurred as a result of this bill being enacted.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: CSHB 102(L&C)
 Fiscal Note Number: 4
 (H) Publish Date: 3/27/13

Identifier: HB102-DCCED-DOI-02-22-13
 Title: RETIREMENT PLANS; ROTH IRAS; PROBATE
 Sponsor: KELLER
 Requester: House Labor and Commerce

Department: Department of Commerce, Community and
 Economic Development
 Appropriation: Insurance Operations
 Allocation: Insurance Operations
 OMB Component Number: 354

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2014 Request	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES	FY 2014	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues	***		***	***	***	***	***
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
 If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By:	Bret Kolb, Division Director	Phone:	(907)269-7900
Division	Division of Insurance	Date:	02/22/2013 10:30 PM
Approved By:	JoEllen Hanrahan, Director	Date:	02/22/13
	Administrative Services, Division		

FISCAL NOTE ANALYSIS #4

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSHB 102(L&C)

Analysis

HB 102 updates the trust and estate laws for the state of Alaska. It extends protection for retirement plan assets to the beneficiaries of retirement plans (often the surviving spouse), provides means of representation for minors and incapacitated persons in dealing with settlements of accounts or settlement agreements, amends the 2003 Alaska Principal and Income Act to conform to current IRS regulations, provides rules concerning who may control the disposition of decedents' remains, makes conforming amendments to Alaska's laws regarding insurable interests to align with changes to the Uniform Trust Code, provides that IRA interests can be voluntarily transferred to a family member or trust, makes amendments to Alaska's community property provisions to update and clarify the ownership of community property, shortens the statute of limitations for creditors' claims for transfers into an irrevocable trust, increases protections for L.L.C. and Limited Partnership interests, and allows a beneficiary to extend the time funds will be held in a Uniform Transfer to Minors Account.

Section 37 of the bill expands the favorable premium tax rate for individual life insurance policies to include group life insurance policies. This would have an effect on the amount of premium tax received by the Division of Insurance on group policies with annual premiums over \$100,000. Currently these group policies would be taxed under AS 21.09.210 (b) at a flat 2.7% premium tax, if amended they would be taxed at 2.7% on only the first \$100,000 of premium and then one-tenth of one percent on premium over \$100,000 in premium.

Data is not available to determine an accurate fiscal impact of this legislation. Although it reduces the tax rate for group life insurance premiums over \$100,000, which could reduce premium taxes collected by the Division, this creates a more favorable tax structure and consequently could increase the number of policies written in Alaska resulting in more premium tax being collected by the Division.

Assuming that the amount of group life insurance premium written in Alaska stays the same as in 2011 and that each insurer's group life insurance business would be taxed subject to the amended language, the maximum amount of premium tax the Division would not collect as a result of the amendment would be \$1.4 mil.

By contrast, it is possible that given the large premium amounts required to qualify for the premium tax rate under AS 21.09.210(m), there might be no reduction in premium tax, as none of the current policies would qualify. If that were the case, the only change to the amount of premium tax collected as a result of this bill would be due to additional policies sold as a result of the more favorable tax structure.

ALASKA STATE LEGISLATURE

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REPRESENTATIVE WES KELLER DISTRICT 14

Sponsor Statement

HB 102 Uniform Probate Code; Trusts, Wills; Disposition of Human Remains

Alaska first modernized its trust and estate legislation in 1997. Since then, the trust and estate planning community continuously makes recommendations to the Legislature for updates and improvements to Alaska's trust and estate laws to ensure that Alaska can continue to provide the best possible planning solutions. Alaska's trust and estate laws have significant impact on our economy, bringing literally millions of dollars to the state and creating jobs within the trust, banking, insurance, and legal fields.

House Bill 102 provides for amendments to statute in the following areas:

- Extends protection for retirement plan assets to the beneficiaries of retirement plans (often the surviving spouse).
- Provides means of representation for minors and incapacitated persons in dealing with settlements of accounts or settlement agreements.
- Amends the 2003 Alaska Principal and Income Act to conform to current IRS regulations.
- Provides rules concerning who may control the disposition of decedents' remains.
- Makes conforming amendments to Alaska's laws regarding insurable interests to align with changes to the Uniform Trust Code.
- Provides that IRA interests can be voluntarily transferred to a family member or trust.
- Makes amendments to Alaska's community property provisions to update and clarify the ownership of community property.
- Shortens the statute of limitations for creditors' claims for transfers into an irrevocable trust.
- Increases protections for L.L.C. and Limited Partnership interests.
- Allows a beneficiary to extend the time funds will be held in a Uniform Transfer to Minors Account.
- Makes Alaska a more attractive place for residents to transfer non-grantor trusts.

Passage of HB 102 will ensure that Alaska remains the premier state in which to establish trusts and estates. I urge your support for this important legislation.

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REPRESENTATIVE WES KELLER DISTRICT 14

CSHB 102 (L&C) Sectional Analysis

Sec. 1. Asset Protection for Inherited Retirement Plans. Alaska Statute 09.38.017(a) protects an individual's interest in a retirement plan from the claims of the individual's creditors. The amendment extends this protection to claims of a beneficiary's creditors (e.g., creditors of an individual's spouse). Arizona, Florida, and Texas have enacted similar provisions.

Sec. 2. Spendthrift trusts are created for the benefit of a person (often unable to control his spending) by giving an independent trustee full authority to make decisions as to how the trust funds may be spent for the beneficiary's benefit. A beneficiary's creditors generally cannot reach the trust's funds, and the funds are not actually under the control of the beneficiary.

Section 2 designates retirement plans exempt from claims under AS 9.38.017 as spend thrift trusts. However, this designation does not apply to retirement plans that fall under AS 34.40.118 (see Sec. 42).

Sec. 3. Definitional changes implementing Section 1 and expands the definition of "retirement plan" to include the Alaska teachers' retirement, judicial retirement, public employees' retirement, and elected public officers' retirement systems.

Sec. 4 through Sec. 5. "Legal and equitable" added to Sec. 4 to clarify that a creditor's exclusive remedy against an interest in a limited liability company is a charging order against the interest and other legal or equitable remedies are not available. This clarification is added to address concerns that a creditor might argue that equitable remedies are available despite the current limit in the statute. Section 5 clarifies that the rights of judgment creditors in Alaska Statute 10.50.380 applies to a limited liability company with one member.

Sec. 6. through Sec. 7. Representation for Settlement Agreements. Alaska Statute 13.06.120 provides that minors, incapacitated persons, and similar persons may be represented by another person who has the same interests in the matter. This type of representation is important in order to simplify and make more efficient proceedings that involve persons who are not legally competent to represent themselves. The existing statute clearly applies to judicial proceedings. However, often it is important to have representation of minors and incapacitated persons with respect to the settlement of accounts of trustees of trusts and with respect to settlement agreements. These amendments clarify that the statute not only applies to court proceedings but also to non-judicial settlement proceedings.

Sec. 8. AS 13.36.072 outlines the duties of a trust's co-trustees. If the trust grants powers to some trustees over other trustees, the subordinate trustees are directed to act in accordance with

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the powers given to the other trustees. Additionally, the subordinate trustees are absolved of any consequences that may arise from the superior trustees.

Sec. 9 through Sec. 11. Alaska Statute 13.36.157 provides a trustee with a method to modify an existing trust, commonly referred to as “decanting”. Alaska enacted its “decanting” statute in 1998 based on a copy of New York’s statute. At the present time, the following states have enacted decanting statutes: Alaska, Arizona, Delaware, Florida, Indiana, Missouri, Nevada, New Hampshire, New York, North Carolina, Ohio, South Dakota, and Tennessee. In addition, decanting statutes are pending before Illinois, Michigan, and Virginia.

New York recently did a thorough revision of its decanting statute in 2011. The proposed amendment to Alaska’s decanting statute closely tracks the changes made by New York with modifications necessary to accommodate Alaska’s procedural provisions.

The purposes of a decanting statute are to allow a trustee to modify a trust in order to correct errors and to adjust to changed circumstances and laws. The revised draft distinguishes between trustees who have unlimited discretion and those without unlimited discretion. A trustee without unlimited discretion must maintain the same beneficiaries in the new trust and apply the same standard for distributions. The trustee cannot be a settlor or beneficiary of the trust, and has a fiduciary duty to exercise the power of appointment in the best interests of one or more proper objects of the exercise of the power and as a prudent person would exercise the power under prevailing circumstances. A trustee must exercise the power in writing and must give written notice to the settlor, any person having the right to remove or replace the trustee, and any qualified beneficiary. A beneficiary may object to the exercise if it is an abuse of discretion, or fails to comply with the trustee’s duties stated above. Restrictions exist to protect mandatory distribution rights, tax benefits, and to prohibit the trustee from exercising the power to either increase the trustee’s compensation or decrease the trustee’s liability.

Implementation of irrevocable trusts is best accomplished if the law provides reasonable flexibility to adjust to changed circumstances and to correct errors. The reason why so many states have enacted decanting statutes is because of the need for this flexibility. Amending Alaska’s decanting statute to include these revised provisions will benefit Alaskans, many of whom use lifetime or testamentary trusts to implement their estate planning purposes.

Sec. 12 through Sec. 13. If a person puts a life insurance policy into a trust, the trustee’s duties regarding investment of the life insurance policy are limited to AS 13.36.273. This provision only applies if the grantor wants the provisions of AS 13.36.273 to apply to the life insurance policy or the trustee notifies the beneficiaries that these provision will apply.

Sec. 14. Appointment of disinterested third parties is no longer consistent with modern trust practices. Current practice generally involves the appointment of family members as trust protectors. Allowing the appointment of family members further protects the trust’s beneficiary in case the original trustee is not acting in the beneficiary’s best interests.

Sec. 15. If the terms of a trust designate the trustee to follow the direction of a non-trustee advisory, the advisor may be held financially liable to the beneficiary for actions the advisor directs the trustee to take. This amendment adds another layer of protection for the trust’s beneficiary as well as the directed trustee.

Sec. 16 through Sec. 32. Amendments to 2003 Alaska Principal and Income Act. This modern act allows a person creating a new trust, or a trustee of an existing trust, to adopt a “unitrust” approach for determining the income of the trust which may be required to be distributed annually. A unitrust distributes a certain percentage of its assets annually to the current beneficiary. The use of this percentage unitrust approach allows the trustee to invest in order to maximize total return for both income and remainder beneficiaries.

Since 2003, the Internal Revenue Service has issued final regulations with respect to unitrusts. The Alaska Principal and Income Act amendments contained in this bill are designed to update Alaska's provisions to take advantage of these new regulations.

In summary, the most important changes contained in the bill expressly allow a trustee to choose a unitrust rate of three to five percent rather than be limited to the four percent amount presently in the law. The changes provide an explicit definition of income for a trust drafted as a unitrust. Language is added to provide the ordering of distributions among types of income and principal. A smoothing period of up to five years is allowed for determining the assets to be used when applying the unitrust percentage. Also, the new provisions clarify how the unitrust rules will apply to retirement benefits. These new changes will facilitate the use of unitrusts under Alaska law and maximize flexibility to take advantage of federal income tax planning.

Sec. 33 through 35. Amendments to Alaska Uniform Transfers to Minors Act. The Alaska Uniform Transfers to Minors Act allows donors, personal representatives, trustees, and obligors to transfer assets to an account for the benefit of a minor. A custodian is named who may then make distributions for the benefit of the minor. Under existing statutes, the minor is entitled to the property when the minor reaches age 18 years or 21 years, depending on the type of transfer. The statute allows this age of distribution to be extended in certain circumstances to age 25 years.

A number of situations have arisen both in Alaska and in other states where it is undesirable for assets to be distributed later than the of ages 18, 21, or 25 years due to problems the minor may have, including substance abuse problems, immaturity, and the inability to manage assets. Often the minor himself or herself is willing to have the assets remain in a custodial setting, managed by a competent person who will make distributions for the benefit of the minor. The amendments in this bill would allow for the extension to an age greater than that presently specified in the statute, as long as the minor consents to the extension during the six-month period when the minor attains the age when otherwise the assets would be distributed under the statute.

Sec. 36. Decedents Remains. Alaska does not presently have adequate statutory authority with respect to who may control the disposition of a decedent's remains. This has resulted in arguments and disputes among relatives and friends. Businesses involved in this area need protection concerning who is the person entitled to give them directions. This new act resolves the present uncertainty of the law. It provides authority for a person to provide directions and a form for a disposition document. If a person has not provided directions, then a priority list is provided of the persons who may control the disposition of the decedent's remains. Businesses that follow these directions or priority lists are protected from liability.

Sec. 37. Clarifies that the tax imposed on life insurance policies with premiums of \$100,000 or more and that are formed under or governed by Alaska trust law receive the favorable tax treatment found under AS 21.09.210 (m).

Sec. 38. New section inserting the current language of AS 21.09.210 (m).

Sec. 39. Insurable Interests. For many years, individuals have relied on life insurance in helping to meet their financial, business, and estate planning needs. Often, their needs are best served by having one or more life insurance contracts held in an irrevocable trust, partnership, or limited liability company. In particular, irrevocable life insurance trusts have been widely used throughout the United States to own life insurance policies.

However, a relatively recent federal court case (*Chawla, ex rel Giesinger v. Transamerica Occidental Life Ins. Co.*, 2005 WL 405405 (E.D. Va. 2005)) had the effect of pointing out that while state insurance statutes typically require purchasers of insurance contracts to have an

“insurable interest” in the life or body of the insured, the statutory provisions describing who may have an insurable interest did not specifically include trusts and business entities which are commonly used to purchase and own such policies. This case raised sufficient uncertainty about the status of life insurance trusts that in July, 2010, the Uniform Law Commission approved amendments to the Uniform Trust Code to clarify the situation.

Alaska has previously adopted substantial portions of the Uniform Trust Code. The proposed amendment to AS 21.42.020 is based in large part on the recommended amendments to the Uniform Trust Code, and also clarifies that persons with insurable interests may form business entities for the purposes of purchasing, holding, and administering life insurance contracts. Other states, for example Delaware, have already amended their statutes for these reasons, or are considering such amendments.

Sec. 40. Language largely mirrors Section 4 by limiting “legal or equitable” remedies of a creditor against an interest in a limited liability partnership.

Sec. 41. AS 34.40.110 (a) allows a person who in writing transfers property in trust to stipulate that the interest of a beneficiary’s trust may not be voluntarily or involuntarily transferred prior to payment or delivery of the interest to the beneficiary. Should a trust contain a restriction described in (a), a creditor may not satisfy a claim out of the beneficiary’s interest in the trust unless the creditor is a creditor of the settlor and 1) establishes by clear and convincing evidence that the settlor’s transfer of property was intended to defraud the creditor and 2) the trust provides that the settlor may revoke or terminate all or parts of the trust without the consent of a person who has a beneficial interest in the trust. This amendment clarifies that a power to “revoke or terminate” does not include a lifetime powers of appointment or similar measures.

Section 40 also ensures statute reflects the most current IRS code.

Sec. 42. Statute of Limitation for Creditors’ Claims. Many states have decided to enact a shorter period of limitation with respect to creditors’ claims for transfer into an irrevocable trust. These states include Hawaii, Nevada, Ohio, and South Dakota. This amendment puts Alaska in line with these other states by shortening the limitation period to two years. This period is still significantly longer than other limitation periods, for example, the four-month limitation period to file a claim against an estate.

Sec. 43. AS 34.40.113 codifies the common law protection that a creditor of the beneficiary cannot compel distributions from the trust. The amendment does not however prevent a creditor from obtaining relief from a fraudulent transfer under AS 34.40.110.

Transfers of IRA Interests (AS 34.40.118). Lifetime estate planning often occurs by a participant making gifts, sales or other transfers of property during lifetime to family members or trusts for their benefit. For many individuals, one of their most valuable assets is their individual retirement account (IRA). Alaska law (AS 09.38.017) protects IRAs from claims of creditors. This protection could be construed to even prohibit voluntary transfers of the participant’s interest in an IRA, which would prevent lifetime transfers of IRAs for estate planning and other purposes. Although it is important to maintain that creditor protection for IRAs, it would be beneficial to permit voluntary transfers of IRAs. Therefore, this section clarifies that the participant of an IRA may voluntarily transfer his or her IRA during lifetime.

Sec. 44 through Sec. 48. Community Property. In 1998, Alaska enacted an optional community property system. Several amendments have been made to Alaska’s act, and this bill proposes further amendments designed to improve the act. Specifically, the amendments accomplish the following:

- a. Add references to a community property trust in appropriate provisions.
- b. Eliminate language stating a confusing statute of limitations and incorporates by reference a new statute of limitations.

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- c. Provide clarification that property which spouses agree is community property is owned as community property regardless of the form of title to the property. If title to community property is in a form that provides for survivorship ownership between the spouses then the survivorship ownership is presumed to have been made with the consent of both spouses. If one spouse designates a beneficiary for an interest in property, the designation is only effective for that spouse's one half interest unless the other spouse consents in writing. Various family designations are presumed to have been made with the consent of the other spouse. The testimony of one spouse is sufficient to rebut a presumption.
- d. Enact remedies for improper transfers and limitation periods within which those remedies must be pursued.

Sec. 49. Repealed sections.

Sec. 50. Indirect rule change.

Sec. 51. Applicability

Sec. 52. The tax treatment afforded to life insurance policies guided by Alaska trust law applies on or after the effective date of AS 21.09.210(m) as amended by sec. 37 of HB 102.

Sec. 53. Requirement for two-thirds majority vote of each house.

Sec. 54. The effective date of Section 38 takes effect five years after the effective date of Section 37.

ALASKA STATE LEGISLATURE

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REPRESENTATIVE WES KELLER DISTRICT 14

Explanation of Changes HB 102 ver. A to CSHB 102 ver. U

- 1) Corrected a drafting error on pg. 3, line 3 by changing the referenced statute from AS 34.40.113 to AS 34.40.118 (found in Sec. 42 pg. 39, line 29). This change was originally passed as Amendment 1 to the "A" version of HB 102.
- 2) Deleted Sec. 38 found in Version A (pg. 35-36, lines 28-4) based on the wishes of the Labor and Commerce Committee.

Explanation of Changes HB 102 ver. U to CSHB 102 (L&C)

- 1) Clarifies that the tax imposed on life insurance policies with premiums of \$100,000 or more and that are formed under or governed by Alaska trust law receive the favorable tax treatment found under AS 21.09.210(m) (Sec. 37: pg. 35, lines 21-26). The tax treatment afforded to these particular insurance policies applies on or after the effective date of AS 21.09.210(m) as amended by sec. 37 of HB 102 (pg. 44, lines 14-16).
- 2) Inserts a new Section 38 (pg. 35-36) with the current statutory language of AS 21.09.210(m) and states its applicability (Section 52: pg. 44, lines 21-26) and effective date (Section 54: pg. 45, lines 4-5).

LEGAL SERVICES

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MEMORANDUM

January 29, 2013

SUBJECT: Bill relating to retirement plans, judgment creditors of certain organizations, the Uniform Probate Code, the Alaska Principal and Income Act, the Alaska Uniform Transfers to Minors Act, the disposition of human remains, certain insurance policies, trust interests, and community property
(Work Order No. 28-LS0335\A)

TO: Representative Wes Keller
Attn: Ernest Prax

FROM: *JB* Terry Bannister
Legislative Counsel

This memo accompanies the bill described above.

1. Single subject issue. It is my opinion that, by combining all of the subjects in the bill, the bill is not confined to one subject, and could be held by a court to violate the constitutional requirement that a bill be confined to one subject.¹

The Alaska Supreme Court standard is that an "act should embrace some one general subject; and by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject."²

Historically, the Alaska Supreme Court has interpreted Alaska's single subject rule to permit very broad subject matter in one bill without violating the single subject requirement. For example, the Court has held that bills relating to such broad themes as "development of water resources,"³ "taxation,"⁴ "land,"⁵ "intoxicating liquor,"⁶ and

¹ Article II, sec. 13, Constitution of the State of Alaska.

² State v. First Nat'l Bank of Anchorage, 660 P.2d 406 (Alaska 1982).

³ Gellert v. State, 522 P.2d 1120 (Alaska 1974).

⁴ North Slope Borough v. Sohio Petroleum Corp., 585 P.2d 534, 545 (Alaska 1978).

⁵ State v. First Nat'l Bank of Anchorage, 660 P.2d 406 (Alaska 1982).

"criminal law"⁷ are acceptable.⁸ However, there was a strong dissent in one case against allowing broad subject matter in a single bill.⁹ And, in 2010, the Alaska Supreme Court found that a proposed initiative violated the single subject requirement.¹⁰ Please be aware that failure to comply with this requirement could jeopardize this bill if it were ever challenged.

2. Impairment of contracts issues. The applicability section of the bill (bill secs. 51(a) and (d)) applies the sections of the bill to retirement plans, individual retirement accounts (IRAs), and Roth IRAs that exist before the effective date of the bill. Applying the changes and new provisions in AS 09.38.017 and AS 34.40.118 to retirement plans, IRAs, and Roth IRAs that pre-date the effective date of these changes and new provisions may raise constitutional impairment of contracts issues if the changes or new provisions operate as a substantial impairment of any contractual relationships involved in these plans, IRAs, or Roth IRAs.

The applicability section of the bill (bill sec. 51(b)) applies sections of the bill to trusts that exist before the effective date of the bill. Applying the changes and new provisions in AS 13.36.157 - 13.36.159, AS 13.36.072(c), AS 13.36.215(b), AS 13.36.225(a), AS 13.36.273, AS 13.36.375, AS 13.36.370(a), and AS 13.36.375(c) to trusts that pre-date the effective date of these changes and new provisions may raise constitutional impairment of contracts issues if the changes or new provisions operate as a substantial impairment of any contractual relationships involved in the trusts.

The applicability section of the bill (bill sec. 51(c)) applies the changes to AS 13.46 to transfers that are made before the effective date of this bill, and may raise constitutional impairment of contracts issues if the changes or provisions operate as a substantial impairment of any contractual relationships already established by the transaction that created the transfers.

If I may be of further assistance, please advise.

TLB:ljw
13-038.ljw

Enclosure

⁶ Van Brunt v. State, 646 P.2d 872 (Alaska App. 1982).

⁷ Galbraith v. State, 693 P.2d 880 (Alaska App. 1985).

⁸ Evans v. State, 56 P.3d 1046, 1070 (Alaska 2002).

⁹ Yute Air Alaska, Inc. v. McAlpine, 698 P.2d 1173 (Alaska 1985). In his dissent, at page 1182, Justice Moore stated: "This court has mistakenly continued to give the rule such an extremely liberal interpretation that the rule has become a farce."

¹⁰ Croft v. Parnell, 236 P.3d 369 (Alaska 2010).

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REPRESENTATIVE WES KELLER DISTRICT 14

HB 102 Single Subject Rule

Art II, Section 13. Form of Bills

Every bill shall be confined to one subject unless it is an appropriation bill or one codifying revising, or rearranging existing laws. Bills for appropriations shall be confined to appropriations. The subject of each bill shall be expressed in the title. The enacting clause shall be: "Be it enacted by the Legislature of the State of Alaska."

Alaska's Constitution, A Citizen's Guide by Gordon S. Harrison further goes on to read,

"The Alaska Supreme Court has consistently construed the single-subject rule broadly, in deference to the judgment of the legislature on how best to structure individual pieces of legislation."

In (*Short v. State*, 600 P.2d 20, 1979), The court said that complying with the one-subject rule required that matters treated in legislation fall under one general idea and be so connected with or related to each other, either logically or in popular understanding, as parts of, or germane to, one general subject. In (*State v. First National Bank of Anchorage*, 660 P.2d 406, 1982) the Court upheld the constitutionality of a bill dealing with the general subject of "lands" although several sections were otherwise unrelated. In (*Van Brunt v. State*, 646 P.2d 872, Alaska App. 1982), the court found an amendment that changed a driving-while-intoxicated statute to be sufficiently germane to a bill changing liquor laws, since both dealt with "intoxicating liquor". Bonds that financed both flood control and small boat harbor projects were upheld by the Court in (*Gellart v. State*, 522 P.2d 1120, 1974)

In the most recent Supreme Court ruling in (*Croft v. Parnell*, 236 P.3d 369, 2010), the Court affirmed the summary judgment of the superior court on this issue the initiative violated the "single-subject" rule, because the "soft dedication" of funds connecting the two aspects of the initiative was an insufficient link, and because it found no other sufficient connection between the initiative's proposed new oil production tax and the initiative's proposed new "clean

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election” program. The Supreme Court affirmed the superior court’s order of summary judgment.

But we have never addressed the question, raised by the Sponsors in this case, whether creating a revenue source that might fund an otherwise unrelated program suffices to unite the revenue source with the program as a “single subject.”

Sponsors of an initiative challenged the lieutenant governor for denying certification of an initiative for violation of the single subject rule. In this case the court ruled,

In ruling on single-subject challenges, we must balance the rule's purpose against the need for efficiency in the legislative process. If the rule were applied too narrowly, “statutes might be restricted unduly in scope and permissible subject matter, thereby multiplying and complicating the number of necessary enactment[s] and their interrelationships.” Our solution has been to construe the single-subject “provision with considerable breadth.” We have consistently articulated the substance of the test to reflect this approach:

All that is necessary is that [the] act should embrace some one general subject; and by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject.

In applying this test, we “disregard mere verbal inaccuracies, resolve doubts in favor of validity,” and strike down challenged proposals only when the violation is “substantial and plain.”

The Court went on to further state in its decision,

In each of the seven cases in which this court has addressed a single-subject challenge, we upheld the challenged bill or initiative by determining that all provisions related to a single general subject, theme, or purpose.

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REPRESENTATIVE WES KELLER DISTRICT 14

HB 102 Contracts Clause Issue

The question has been raised about whether the applicability of certain provisions of the bill to existing retirement accounts, IRAs, trusts, and Uniform Transfers to Minors Accounts might violate the Contracts Clause of the United States Constitution. Analysis indicates that these provisions do not violate that clause.

The Constitution prohibits the states from "impairing" contractual obligations. See U.S. Const. art. 1, § 10, cl. 1. Thus, unless a contractual obligation is impaired, there can be no violation of the Contracts Clause. The proposed legislation with respect to IRAs does not impair or restrict any contract right. To the contrary, it expands the rights of an IRA participant/owner in that it authorizes the assignment of an interest in the plan. Since the owner/participant could, prior to the proposed legislation, freely withdraw all of the money from the plan, enacting legislation that permits an assignment, as well as maintaining the right of withdrawal, cannot be viewed as an impairment. It is instead a permissible expansion of rights that does not constitute an impairment of rights within the meaning of the constitutional provision.

Similarly, the provision in the proposed legislation that would provide expanded creditor protection for an inherited IRA or retirement interest does not effect an impairment of contract rights. The only people whose rights are constrained by this provision are creditors. But a creditor has no contract right to enforce a claim against the IRA or retirement interest. Thus, the legislation does not effect an impairment of contract rights. So, for example, when Congress amended the Bankruptcy Code in 2005 to provide expanded creditor protection for existing IRAs, no concern was raised about its constitutional validity. See section 522 of the Bankruptcy Code. So, too, here, the expansion of creditor protection does not implicate the Contracts Clause.

The ability of a trustee to modify a trust, pursuant to the amendments provided by sections 9 through 11 of the bill, does not raise Contract Clause issues. Many modifications are to administrative provisions. It is well established that changes that are administrative in nature do not implicate the Contract Clause. With respect to dispositive changes, if the existing trust provides for a limited standard, then the standard and beneficiaries cannot be changed. With

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respect to the ability of a trustee to “extend” the duration of a trust, it appears that the authority to invade trust principal by paying to another trust of longer duration is provided by common law. In the 1940 case of *Phipps*, the Supreme Court of Florida held the trustee had such power under common law. It relied on the RESTATEMENT OF PROPERTY. When New York, in 1991, enacted the country’s first “decanting” statute (EPTL 10-6.6), the legislature stated it was declaratory of existing common law. Both Florida and New York have recently substantially amended their “decanting” statutes. Both of these states applied their amendments to existing trusts.

The changes to the Uniform Transfers to Minors Accounts provisions which allow for extension of the custodial period do not impair contract obligations of the minor. These changes allow the minor to compel distributions at the present statutory age (18 years or 21 years, depending on the existing provision), or at the beginning of an already extended period. Only if the minor consents, can the age be extended.

In summary, none of the provisions in the bill which apply to existing retirement accounts, IRAs, trusts, and Uniform Transfers to Minors Accounts violate the Contract Clause of the United States Constitution.

Chapter 4

TRUSTS

Like a will, a trust is a very useful instrument in the estate-planning arsenal. Estates can be as diverse as people, and the flexibility of a trust makes it useful for many different needs. A trust can do a number of things a will can't do as well, including

- manage assets efficiently if you should die and your beneficiaries are minor children or others not up to the responsibility of handling the estate;
- protect your privacy (unlike a will, a trust is confidential);
- depending on how it is written, and on state law, a trust can protect your assets by reducing taxes;
- if it is a living trust, the trustee can manage property for you while you're alive, providing a way to care for you if you should become disabled. A living trust also avoids probate, lowers estate administration costs, and speeds transfer of your assets to beneficiaries after your death.

Should you have a trust? It depends on the size of your estate and the purpose of the trust. For example, if you mainly want a living trust to protect assets from taxes and probate, but your estate is under the current federal tax floor and small enough to qualify for quick and inexpensive probate in your state, some lawyers would tell you it isn't worth the cost. If, however, you want to avoid a court hearing if you become incompetent or unable to provide for yourself or you want to provide for grandchildren, minor children, or relatives with a disability that makes it difficult for them to manage money, a trust has many advantages.

This chapter discusses general principles of trusts and their common uses (to learn about

amending or revoking a trust, see chapter nine, Changing Your Mind). It should help you determine if one is suitable for you. The next chapter covers the most popular trust--the revocable living trust.

WHAT IS A TRUST?

A trust is a legal relationship in which one person (or qualified trust company) (**trustee**) holds property for the benefit of another (**beneficiary**). The property can be any kind of real or personal property--money, real estate, stocks, bonds, collections, business interests, personal possessions and automobiles. It is often established by one person for the benefit himself or of another. In those cases, it generally involves at least three people: the **grantor** (the person who creates the trust, also known as the **settlor** or **donor**), the **trustee** (who holds and manages the property for the benefit of the grantor and others), and one or more **beneficiaries** (who are entitled to the benefits).

It may be helpful to think of a trust as a contract between the grantor and the trustee. The grantor makes certain property available to the trustee, for certain purposes. The trustee (who often receives a fee) agrees to manage the property in the way specified.

Putting property in trust transfers it from your personal ownership to the trustee who holds the property for you. The trustee has **legal title** to the trust property. For most purposes, the law looks at these assets as if they were now owned by the trustee. For example, many trusts have separate taxpayer identification numbers. But trustees are not the full owners of the property. Trustees have a legal duty to use the property as provided in the trust agreement and permitted by law. The beneficiaries retain what is known as **equitable title**, the right to benefit from the property as specified in the trust.

The donor may retain control of the property. If you set up a revocable living trust with yourself as trustee, you retain the rights of ownership you'd have if the assets were still in your name. You can buy

anything and add it to the trust, sell anything out of the trust, and give trust property to whomever you wish.

If you set up the trust by your will to take effect at your death--a **testamentary trust**--you retain the title to the property during your lifetime, and on your death it passes to the trustee to be distributed to your beneficiaries as you designate.

We speak of putting assets "in" a trust, but they don't actually change location. Think of a trust instead as an imaginary container. It's not a geographical place that protects your car, but a form of ownership that holds it for your benefit. On your car title, the owner blank would simply read "the Richard Petty trust." It's common to put whole bank and brokerage accounts, as well as homes and other real estate, into a trust.

After your trust comes into being, your assets will probably still be in the same place they were before you set it up--the car in the garage, the money in the bank, the land where it always was--but it will have a different owner: the Richard Petty trust, not Richard Petty.

This may sound abstract, but as this and the next chapter show, the benefits are concrete.

HOW DO TRUSTS OPERATE?

There is no such thing as a standard trust, just as there's no standard will. You can include any provision you want, as long as it doesn't conflict with state law. The provisions of a written trust instrument govern how the trustee holds and manages the property. That varies greatly depending on why the trust was set up in the first place.

In a living trust, the grantor may be the trustee and the beneficiary. In trusts set up in your will, the trustee is often one or more persons or, for larger estates where investment expertise is required, a corporate trust company or bank.

Trusts can be revocable (that is, you can legally change the terms and end the trust) or irrevocable. Later chapters, particularly chapter five, discuss the practical effects of each. Here it's enough to say that a revocable trust gives the donor great flexibility but no tax advantages. If the trust is revocable and you are the trustee, you will have to report the income from the trust on your personal income tax return, instead of on a separate income tax statement for the trust. The theory is that by retaining the right to terminate the trust, you have kept enough control of the property in it to treat it for tax purposes as if you owned it in your name.

Irrevocable trusts are the other side of the coin--far less flexibility but possible tax benefits. The trustee must file a separate tax return.

Trusts can be very simple, intended for limited purposes, or they can be quite complex, spanning two or more generations, providing tax benefits and protection from creditors of the beneficiary, and displacing a will as the primary estate planning vehicle.

WHO NEEDS A TRUST?

Parents with young children

If you have young children, want to assure a good education for them, and will have enough assets to do so after death (including life insurance proceeds), you should consider setting up a trust. The trustee manages the property in the trust for the benefit of your children during their lifetime or until they reach the ages that you designate. Then any remaining property in the trust may be divided among the children. This type of arrangement has an obvious advantage over an inflexible division of property among children of different ages without regard to their respective ages or needs. Trusts are more flexible than giving outright gifts to minors in your will (which requires a guardian) or a gift under the Uniform Transfer to Minors Act,

which requires appointment of a custodian and transfers of property to the child at age 18. Issues to consider when setting up a trust for the benefit of your children:

- **One trust or many?** Most people will set up one trust that all the children can draw on, until they've completed their educations (or reached an age by which they should have done so). Then the remaining principal is divided among them equally. This permits the trustee greater flexibility to distribute ("sprinkle") the money unequally according to need; for example, one child may choose to pursue an advanced degree at an expensive private university, while another may drop out of community college after a semester. Obviously, they will have different educational expenses.

Where very young children are involved, it's especially important to build in some flexibility; who knows if a two-year-old may turn out to need special counseling or education by the time he turns five or six?

There are two philosophies about what to do if there's a disparity in ages among the children. One theory is that the older children have already received the benefit of the parents' spending before they died, so the trustee should have authority to make unequal distributions in favor of the younger children to compensate. The other camp, by contrast, thinks it better to establish separate trusts, so that the older children don't have to wait until they're well into adulthood before the trust assets are distributed (which usually happens when the youngest child reaches majority age). You'll have to decide which course is best for your family's circumstances.

Generally speaking, the less money you have to distribute, the more likely you would put it all in one trust. Since there is a limited amount of money, you want to pool it to be sure that it goes for the greatest need. On the other hand, if equality is your primary consideration and there's plenty of money available to take care of each child's likely needs, then you may want to set up separate trusts for each

child, to assure that each gets an equal share.

- **What should the assets be used for?** You can specify that the trust pay for education, health care, food, rent, and other basic support. Given life's unpredictability, however, it's often better to write a vague standard (e.g., "for the support of my children") into the document and allow the trustee the discretion to decide if an expenditure is legitimate. Such a provision also gives the trustee flexibility. For example, if one of your children has an unanticipated expenditure, like a serious illness, the trustee could give him more money that year than the other children.
- **When should the assets be distributed?** Some parents pick the age of majority (18) or the age when a child will be out of college (22 or so). If all the assets are in one trust that serves several children, you would usually have the assets distributed when the youngest child reaches the target age. If you have separate trusts and a pretty good idea about each child's level of maturity, you can pick the age that seems appropriate for each one to receive his or her windfall.

If you don't know when each child will be capable of handling money, you can leave the age of distribution up to the trustee (and risk friction between the trustee and the children), have the trustee distribute the assets at different times (say, half when the first child turns 25 and the rest when the youngest does so), or just pick an age for each child, such as 30.

Like any trust, a children's trust costs money to set up: lawyers' fees for creating the trust, fees for preparing and filing the separate tax returns required, and so on. For families of limited assets, it might be best to give the money via a custodial account under the Uniform Gift to Minors Act or the Uniform Transfers to Minors Act. (See chapter six.)

People with beneficiaries who need help

Trusts are especially popular among people with beneficiaries who aren't able to manage property well. This includes elderly beneficiaries with special needs or a relative who may be untrustworthy with money. For example, if you have a granddaughter who has been in a juvenile detention center, it may be a good idea to require her to obtain the money at intervals from a trustee instead of giving her a gift outright in your will. A **discretionary trust** gives the trustee leeway to give the beneficiary as much or as little he or she thinks appropriate.

Another type of trust is for improvident beneficiaries a **spendthrift trust**. It's simply a trust in which your instructions to the trustee carefully control how much money is released from the trust and at what intervals, so you can keep an irresponsible beneficiary from the temptation of getting thousands of dollars in one stroke. You can stipulate that the trustee will pay only certain expenses for the beneficiary--those you (or the trustee) consider legitimate, such as rent and utility bills. In a spendthrift trust the beneficiary cannot assign his or her interest in the trust, and creditors of the beneficiary can't get at the principal in a trust, but can make a claim (if it's otherwise legal) on whatever income the beneficiary receives. Spendthrift provisions raise a number of tricky questions and should be used cautiously--your lawyer can tell you whether such a trust is right for your situation.

People who own property that is hard to divide

Trusts help you transfer property that's not easy to divide evenly among several beneficiaries. Suppose you have a little vacation cottage on the Cape, and four children who each want to use it. You can pass it to them in a trust that sets out each child's right to use the property, establishes procedures to prevent conflicts, requires that when the property is sold the trustee divide the proceeds evenly (or unevenly, if some children aren't as well off as others), and sets up a procedure by which any child may buy out another's interest in the cottage.

People who want to control their property because of family dynamics

Through a trust, you can maintain more control over a gift than you can through a will. Some people use trusts to pass money to a relative when they have doubts about that person's spouse. For example, you love your son, but don't trust his wife, Livia. You're afraid she'll spend the money you give him on astrologers and shoes. Leave the money in trust for your son instead of making a direct gift to him, and you can direct that he get only the income, so neither he nor his wife can squander the principal. In many states, if you leave money in trust to your son, Livia can't get at the assets if they divorce. Moreover, he can choose how much, if any, of the trust income or principal to leave Livia; if she hasn't been a good and faithful companion, he can leave the whole thing to whomever he desires.

People who want to provide for administration of their estates if they become physically or mentally unable to do so

People concerned about estate taxes

Trusts are very useful to people with substantial assets, because they can help avoid or reduce estate taxes. For example, by establishing a trust for their benefit, you can make tax-free gifts (up to the limit allowed by law) each year to your children or grandchildren during your lifetime, even if they're minors. This will reduce your taxable estate and save taxes upon your death. A properly drawn trust may also reduce estate taxes by utilizing the marital deduction or avoiding the generation skipping tax. (See chapter eight.)

SETTING UP A TRUST

If you establish one in your will, the trust provisions are contained in that document. If you create a trust during your lifetime, its provisions are contained in the **trust agreement** or **trust declaration**. The provisions of that trust document (not your will or state law) will determine what happens to the property in the trust upon your death.

With any type of trust, one of the most important issues is choosing the trustee. See chapter ten for a discussion of this issue.

Funding the trust

A testamentary trust is funded after your death, with assets that you've specified in your will and through beneficiary designations of your life insurance, IRA, and so on. Such trusts generally receive most of the estate assets, such as the proceeds from the sale of a house. Or you could set up an "unfunded" standby trust. This is a trust that could be called "minimally" funded to avoid confusion. It may have a nominal sum of money in it--\$100 or so--to get it started while you're alive (and thus make it a living trust), but it only receives substantial assets when you die. Your pourover will would direct that many or all of your assets be transferred from your estate to the trust at your death. Life insurance payable to the trust, as well as designating the trust as the beneficiary of IRAs, profit-sharing plans, and so on, will pass these assets directly to the trust outside of probate. However, other assets not already owned by the trust when you die will have to go through probate. This is why many lawyers shy away from unfunded trusts, unless probate avoidance isn't the primary goal (see chapter eleven for some reasons why you might not want to avoid probate).

If your estate--with life insurance benefits included--will add up to more than \$1 million, you can save taxes by removing the life insurance proceeds from your estate and establishing an irrevocable life insurance trust that owns the policy; all incidents of ownership in the policy belong to the trust. When you

die, the proceeds are paid into the trust, escaping estate taxation and creditors in so far as the insurance policy is concerned.

Trusts and taxes

Chapter eight discusses death and taxes, and trusts are a major part of that discussion. However, there are a few basic principles worth mentioning here. While gifts under the \$1 million level (in a trust or in a will) escape federal estate taxation, the recipients of the trust income will still have to pay income tax when they receive income from the trust. They would not have to pay tax on the principal in the trust when they collected it (unless their state has an inheritance tax).

The trustee pays, out of the principal, the taxes on income from the trust that's reinvested or put back into the principal. Capital gains from the sale of stock, real estate, and the like are generally added to the principal unless you specify otherwise.

The choice of trustee can affect the tax the trust owes. If the beneficiary is made the only trustee, some of the tax advantages of the trust can be lost. Similarly, the more powers the grantor retains, the more likely the assets in the trust will be taxable, either during the grantor's life as income tax or after death as estate tax. Consult your attorney or a tax advisor before setting up any trust for tax purposes.

Terminating a trust

Only charitable trusts can last indefinitely. Since trusts of this sort are established to accomplish a substantial benefit to the public, it is entirely appropriate that Rhodes scholarships, Pulitzer and Nobel prizes, and thousands of other awards and grants be funded by trusts that are expected to endure.

Private trusts--set up to benefit private beneficiaries--cannot last forever. The **rule against perpetuities**, which is embodied in state law and may vary somewhat from state to state, is designed to

limit the time a trust may be operative. Usually it specifies that a trust can last no longer than the life of a person alive at the time the trust is created, plus 21 years. So if you set up a trust to benefit your infant granddaughter and any children she may eventually have, and she has a long life, your trust may extend 100 years, but not much more.

Your trust agreement should contain a clause that provides how it can be terminated. A good trust drawn up by a lawyer will certainly have such a clause.

A trust often terminates when the principal is distributed to the beneficiaries, at the time stated in the trust agreement. For example, you might provide that a trust for the benefit of your children would end when the youngest child reaches a certain age. At that time, the trustee would distribute the assets to the beneficiaries according to your instructions. The law generally allows a "windup phase" to complete administration of trust duties (e.g., filing tax returns) after the trust has officially terminated.

You can also give your trustees the discretion to distribute the trust assets and terminate the trust when they think it's a good idea, or place some restrictions on their ability to do so. For example, you could allow the trustees to terminate the trust in their discretion, provided that your daughter has completed her education.

Your trust should have a termination provision even if it is an irrevocable trust. "Irrevocability" means that you, the donor, can't change your mind about how you want the trust to terminate. It doesn't mean that you can't set up termination procedures in the first place.

If you have an irrevocable trust and don't have a termination provision, it can usually terminate only if all beneficiaries consent and no material purpose of the trust is defeated. However, an irrevocable trust can also be terminated if there was fraud, duress, undue influence or other problems when the trust was set up; if the trustee and the beneficiary become the same person; if the operation of the trust becomes impracticable or illegal; or if the period of time specified in state law expires. We're obviously into technical territory here, so the basic rule is, don't

set up an irrevocable trust unless you're prepared to live--and die--by its terms.

Sidebar

CONSUMER TIP

When you approach a lawyer to help you set up a trust, make sure he or she is willing to work with you to tailor the trust to your particular needs; otherwise the primary benefit of trusts--their flexibility--is wasted. It's another reason to avoid those prefabricated, all-purpose trusts you see in self-help books and at seminars.

A good lawyer will provide you with a financial analysis to show how much you might save over time by structuring your trust in certain ways. You, in return, can help by providing comprehensive lists of assets as determined by the form in Appendix A.

Make sure you choose a lawyer who's familiar with estate planning, trusts, and, if your trust is used for saving taxes, tax law. IRS regulations governing trusts change often, and the agency has always given trusts special scrutiny.

Sidebar

WHAT IF I SET UP A TRUST AND THEN MOVE TO ANOTHER STATE?

WHICH LAW APPLIES?

State law governs trusts. If the trust involves real estate, the law of the state where the property is located applies. If it's personal property, like a car or money, or most other things, the law of the state where the grantor created the trust will probably control. If you have residences in more than one state, you can provide in your trust which of those states' laws will control the disposition of your real property.

Sidebar

KINDS OF TRUSTS

Charitable trusts are created to support some charitable purpose. Often these trusts will make an annual gift to a worthy cause of your choosing, simultaneously helping good causes and reducing the taxes on your estate.

Discretionary trusts permit the trustee to distribute income and principal among various beneficiaries or to control the disbursements to a single beneficiary, as he or she sees fit.

Insurance trusts are tax-saving trusts in which trust assets are used to buy a life insurance policy whose proceeds benefit the settlor's beneficiaries. (See chapter eight.)

Living trusts (see chapter five) enable you to put your assets in a trust while still alive. You can wear all the hats--donor, trustee, and beneficiary--or have someone else be trustee and have other beneficiaries.

Medicaid qualifying trusts are trusts that may help you qualify for federal Medicaid benefits by placing certain property in a trust, sometimes limiting your assets for Medicaid purposes. This device is mostly used when family members are concerned with paying the costs of nursing home care. It is dealt with in chapter twelve.

Revocable trusts are simply ones that can be changed, or even terminated, at any time by the donor. (Though most living trusts are revocable, a living trust and a revocable trust are not synonymous).

Irrevocable trusts cannot be changed or terminated before the time specified in the trust, but the loss of flexibility may be offset by savings in taxes.

Spendthrift trusts can be set up for people whom the grantor believes wouldn't be able to manage their own affairs--like an extravagant relative, or someone who's mentally incompetent. They may also be useful for beneficiaries who need protection from creditors.

Support trusts direct the trustee to spend only as much income and principal as may be needed for the education and support of the beneficiary.

Testamentary trusts are set up in wills.

Totten trusts are not really trusts at all. They're simply bank accounts that pass to a beneficiary immediately upon your death.

Wealth trusts are tax-saving trusts that benefit several generations of your descendants.

Sidebar

FIVE OTHER REASONS TO HAVE A TRUST

1. Trusts are generally more difficult to contest than wills.
2. Trusts can be flexible; you can authorize that payments fluctuate with the cost of living, allow extra withdrawals in case of emergency, or even set a standard figure for payment each year; if the income doesn't meet that amount, the difference can be made up out of the principal.
3. Or you can use them to impose discipline on the beneficiary. You could require the beneficiary to live within a set figure, getting a certain amount of income each year, regardless of inflation, need, or the stock market's effect on the principal.
4. Trusts are sometimes set up in divorce, for example to provide for the education of the couple's children.
5. Trusts can also be helpful if you want to make a major charitable gift but wish to retain some use of the property.

[Click here to go to Chapter 5](#)

Alaska Bankers Association

P.O. Box 241489 • Anchorage, Alaska 99524-1489 • T: 907-261-3525 • F: 907-562-1758

March 1, 2013

Representative Keller
State Capitol
Room 118
Juneau, AK 99801

RE: HB-102 Retirement Plans; Roth IRAs; Probate

Dear Representative Keller:

The Alaska Bankers Association consists of the following eight member banks: Alaska Pacific Bank, Denali State Bank, First Bank Ketchikan, First National Bank Alaska, KeyBank, Mt. McKinley Bank, Northrim Bank, and Wells Fargo Bank.

The Alaska Bankers Association supports Alaska House Bill 102.

This bill makes a number of updates to trust and estate law in the state of Alaska which are important for us to continue to meet the needs of our customers. Thank you for your work in helping to advance this piece of legislation.

Sincerely,



Joseph C. Everhart
President
Alaska Bankers Association



February 19, 2013

Representative Wes Keller
State House of Representatives
State Capitol, Room 118
Juneau, Alaska 99801-1182

Support for HB102 Trust Laws In Alaska – Request Competitive Update

Dear Representative Keller,

While Northrim Bank has not applied for trust powers and does not have ownership in a trust company that utilizes the benefits of Alaska trust laws, we support modernization of our trust laws to keep Alaska competitive and to retain and grow the business that Alaskans have earned.

Northrim does enjoy meaningful depository relationships originating from local as well as national trusts that utilize Alaska's competitive advantages that have diminished as other States have modernized their trust laws. To acquaint myself with this issue I have reviewed the draft legislation, spoken with other Alaska banks and trust companies and visited with American Bankers Association representatives familiar with such matters. This homework gives me confidence that HB102 is reasonable and appropriate to keep Alaska competitive.

This bill provides increased clarity to Alaska's unique and favorable trust laws. Since the passage of the Alaska Trust Act in 1997, Alaska has become a premier jurisdiction for trust planning. Our distinctive statutes have provided Alaska with increased revenue, job creation and benefits for our residents. More specifically, Northrim Bank has benefited with very material deposits which have allowed us to increase our lending to Alaskans and their businesses. Outside of the increased economic activity generated by our lending, many Alaskans have used these progressive statutes to engage in beneficial financial planning.

The Alaska Trust Act created such significant planning opportunities that it has attracted some of the wealthiest families in America to use Alaska for a portion of their financial planning; not unlike Delaware or the Dakotas that have benefited by various laws that attracted business to their states. Alaska laws have heretofore been sufficiently competitive that some 14 other states have now adopted similar legislation, providing Alaska's trust industry with significantly increased competition. With your support and eventual passage HB 102, the Alaska legislature will help to ensure that Alaska remains at the forefront of trust planning and retains its status as a premier state to serve trust customers locally and nationally.

Accordingly, I hereby thank you for your support and submit this letter as evidence of finance industry support for this legislation.

Sincerely,

Joseph Beedle, President & CEO – Northrim Bank

P.O. Box 241489
Anchorage, Alaska 99524-1489
Phone: (907) 562-0062 • (800) 478-2265

northrim.com
Member FDIC • Equal Housing Lender



Senior Bank Administration
MAC K3212-051
P.O. Box 196127
Anchorage, AK 99519

Wells Fargo Bank, N.A.

March 1, 2013

Representative Keller
State Capitol
Room 118
Juneau, AK 99801

RE: HB-102 Retirement Plans; Roth IRAs; Probate

Dear Representative Keller:

Wells Fargo is writing to support Alaska House Bill 102.

This bill makes a number of important changes in trusts and estate law, changes that are helpful to individuals, private professionals, and corporate fiduciaries. It adds much desired flexibility to the law by allowing trustees to make certain decisions in administering a total return or unitrust without court involvement.

Many states already have made the changes proposed by this bill. These changes improve the trustee's ability to administer these types of trusts in small but important ways. The bill also provides liability protection to trustees when trustees are being directed by other fiduciaries under the terms of the trust. A number of the popular dynasty trust jurisdictions, such as South Dakota and Delaware, already provide liability protection for so-called "excluded fiduciaries". Corporate fiduciaries view this liability protection as an important factor in determining where these types of trusts should be administered.

This bill also updates and modernizes the decanting statute, a relatively recent and popular statutory development which is being introduced in a number of states. Decanting statutes are viewed by many attorneys as an important tool to be used to correct errors and make modifications to irrevocable trusts under certain circumstances.

In sum, the bill will allow trustees to administer Alaska trusts within sensible but flexible parameters and with protection from liability when appropriate.

Thank you for the opportunity to provide comment on HB-102.

Sincerely,

Joseph Everhart
Regional President
Wells Fargo Bank, N.A.
Anchorage, AK

HOMPESCH & EVANS

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RICHARD W. HOMPESCH II**

SUSAN L. EVANS

MICHAEL J. CAVALIERE**

DEREK R. AVERETT

**Admitted in Montana

PROFESSIONAL STAFF

BARBARA CORY HOMPESCH

ENROLLLED AGENT (IRS)

February 26, 2013

Representative Wes Keller
State House of Representatives
State Capitol, Room 118
Juneau, Alaska 99801-1182

Support for HB 102 Trust Laws in Alaska – Request Competitive Update

Dear Representative Keller,

I am an attorney practicing in Fairbanks, Alaska in the trusts and estates area. We support modernization of our trust laws to keep Alaska competitive and to retain and grow the business that Alaskan's have earned. In the past few years, Alaska has slipped from the premier trust jurisdiction in the nation and now finds itself consistently ranked second or third in the nation. I have reviewed the draft legislation set out in HB 102 and it is reasonable and appropriate to keep Alaska competitive and to once again make Alaska the premier trust jurisdiction.

HB 102 provides increased clarity to Alaska's unique and favorable trust laws. Since the passage of the Alaska Trust Act in 1997, Alaska has become a premier jurisdiction for trust planning. Our distinctive statutes have provided Alaska with increased revenue, job creation and benefits for our residents. More specifically, our firm has experienced an increase in business which has led our firm to employ an additional attorney and staff. Outside of the increased economic activity experienced by our firm, many of our Alaskan clients have used these progressive statutes to engage in beneficial financial planning for themselves and their families.

The Alaska Trust Act created such significant planning opportunities that it has attracted some of the wealthiest families in America to use Alaska for a portion of their financial planning, similar to Delaware, Nevada and the Dakotas which have benefited by various laws that attracted business to their states. Alaska laws have heretofore been sufficiently competitive that some 14 other states have now adopted similar legislation, providing Alaska's trust industry with significantly increased competition. With your support and eventual passage HB 102 the Alaska legislature will help to ensure that Alaska remains at the forefront of trust planning and retains its status as a premier state to serve trust customers locally and nationally.

Accordingly, I hereby thank you for your support and submit this letter as evidence of finance industry support for this legislation.

February 26, 2013
Page 2

Sincerely,

HOMPESCH & EVANS
A Professional Corporation



Michael J. Cavaliere

MJC

HOMPESCH & EVANS
ATTORNEYS AT LAW
A PROFESSIONAL CORPORATION



ALASKA TRUST COMPANY

Complete Trust and Investment Solutions™

March 15, 2013

Representative Wes Keller
State House of Representatives
State Capitol, Room 118
Juneau, Alaska 99801-1182

Dear Representative Keller,

On behalf of Alaska Trust Company, we would like to emphasize the importance of HB 102.

This bill updates and provides increased clarity to Alaska's unique and favorable trust laws. Since the passage of the Alaska Trust Act in 1997, Alaska has become a premier jurisdiction for trust planning. Our distinctive statutes have made Alaska a top destination for trust business and have provided Alaska with increased revenue, job creation and great benefits for our residents.

More specifically, due to the asset requirement for Alaska trusts, local banks have received tens of millions of dollars in additional deposits. Due to Alaska's favorable life insurance premium tax structure and the benefits of holding life insurance inside of a trust, the State has received millions of dollars in insurance premium tax revenue. The funds placed in local banks has allowed for increased lending and economic activity, the increased insurance premium tax revenue has benefited the State, the administration of these trusts has created hundreds of jobs and tens of thousands of Alaskans have used these progressive statutes to engage in advantageous financial planning. Additionally, these laws have cost the state of Alaska nothing.

The Alaska Trust Act created such significant planning opportunities that it has attracted families from all across America to use Alaska for a portion of their financial planning. In fact, these laws are so differentiating that approximately 14 other states have now adopted similar legislation, providing Alaska's trust industry with significantly increased competition. With your support, HB 102 will help to ensure that Alaska remains at the forefront of trust planning and retains its status as a premier trust situs.

With this, we would like to voice our strong support for the ratification of House Bill 102.

Sincerely,

Matthew D. Blattmachr
Vice President and Trust Officer

AlaskaUSA Trust Company

February 22, 2013

Representative Wes Keller
State Capitol, Room 118
Juneau, AK 99801

Re: HB 102

Dear Representative Keller:

The purpose of this letter is to express Alaska USA Trust Company's full support of the passage of HB 102, Uniform Probate Codes: Trusts, Wills, Disposition of Human Remains.

Alaska USA Trust Company serves as the trustee for numerous Alaskans and has experience with the issues which the Bill addresses. We believe HB 102 adds language to Alaska's trust law to reflect changing needs, clarifies ambiguities in current law, and will directly benefit Alaskans in all stages of life, from minor children to widowed spouses.

We also serve as the trustee for a number of trusts established by non-residents. Alaska is currently one of the top trust jurisdictions in the country and passage of HB 102 is critical to maintaining this standing. Over the years, we have seen steady growth in trust accounts from the Lower 48 due to Alaska's trust laws as well as Alaska's favorable tax environment for this type of business. Servicing these trusts provides additional revenue for Alaska's economy and keeps Alaska's name in the forefront as a leader in the estate and tax planning communities.

We strongly support HB 102 and urge its passage.

Thank you.

Sincerely,



Glenn Cipriano
President